



Soundcheck

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Copyright Royalty Board Announces Mechanical Rates

A few words from Gary Churgin, HFA President & CEO:

If you receive our email updates, you already know that on October 2, 2008, the Copyright Royalty Judges announced the new schedule for U.S. mechanical rates for physical product, permanent digital downloads, and ringtones. Their ruling also included a provision allowing publishers to charge interest on late payments. In addition, the CRB affirmed a settlement agreement reached by the NMPA, NSAI, SGA, DiMA, and RIAA regarding rates on interactive streaming and limited downloads. The following page includes the press release that HFA issued regarding these rates, with a table of the digital rate calculations.

On November 24th, the CRJ codified their October 2nd determination of rates and terms, and rejected Comments from the wireless organization CTIA and the radio group NAB. The U.S. Copyright Office now has until January 23, 2009 to review the decision.

Once this review is completed, the decision will be published in the federal register. These rates will take effect 60 days after their publication in the Federal Register, around April 2009. The rates will be retroactive to January 1, 2008. The rates for on-demand streams and limited downloads are retroactive to 2001. These rates will remain in effect until 2012.

The regulations adopted in connection with the agreement require payment 180 days after the final publication of the decision, sometime in July 2009. At this point, record labels, online music services, and other licensees must include these new royalties in their quarterly reporting. So the earliest publishers can expect to see these royalty payments will be next July.

Although the RIAA filed a petition for reconsideration with the CRB regarding the interest provision, on November 12th, the CRB rejected this motion. However, the RIAA has 30 days after the final publication on or before January 23, 2009 to file an appeal with the Washington D.C. District Court. An appeal could result in different rates or different terms.

As always, we will continue to keep you updated as the schedule evolves.

New Look for HFA Soundcheck

Starting with this issue, the paper version of HFA Soundcheck will come out quarterly. This will help us keep our costs for postage and printing contained. To continue to provide you with timely updates, the monthly version of HFA Soundcheck will continue to be posted on our website, with a link emailed to all subscribers.

A redesigned quarterly version, which will contain highlights from the monthly online issues, will debut in April 2009.

If you are not receiving HFA Soundcheck by email, and would like to receive notification that the monthly digital version is available, you can sign up through www.harryfox.com or by sending an email to soundcheck@harryfox.com.

HFA Ready to Implement New Digital Era Mechanical Royalty Rates

HFA applauds the decision of the Copyright Royalty Judges (CRJ), and is ready to implement the new digital era mechanical royalty rates, including the first-ever statutory royalties for on-demand streams, limited downloads, and ringtones, as well as for physical recordings and permanent downloads. The regulations adopted in connection with the agreement require payment 180 days after the rates take effect. This will include the payment of all of the retroactive royalties for subscription services, which HFA has been licensing since 2001.

“HFA has more than 80 years’ experience licensing, collecting, and distributing royalties – we have evolved with every rate and music delivery format in the history of the U.S. recording industry, and we have already issued millions of licenses for online music services. With this decision from the Copyright Royalty Judges, we’re very pleased to finally be able to distribute these long-awaited royalties,” said Gary Churgin, HFA’s President and CEO. “Our systems are ready to handle these more complex royalty reports, and we also have the added strength of our highly skilled Collections and Royalty Compliance teams to ensure the application of the correct rate structure. Publishers and licensees can trust HFA to deliver for them as we have for nearly a century.”

The new schedule of mechanical rates, which will be in effect after final publication in the Federal Register until December 31, 2012, is:

Physical recordings: 9.1 ¢ for recordings five minutes or less; for recordings over 5 minutes, 1.75 ¢ for each minute, rounded up.

Permanent Digital Downloads: 9.1 ¢ for recordings five minutes or less; for recordings over 5 minutes, 1.75 ¢ for each minute, rounded up.

Mastertone Ringtones: 24¢ (non-derivative works only)

Rates for limited downloads and on-demand streams vary by service offering; see chart on following page.

Key Upcoming Dates for New Mechanical Rates

January 23, 2009 – Final date rates can be published in Federal Register

February 22, 2009 – Last possible date for appeal to be filed

April 2009 – Pending date of publication in Federal Register, approximately when new rates and compulsory license terms go into effect

July 2009 - Pending date of publication in Federal Register, approximately when royalties under new rates and retroactive royalties for subscription services will be due to HFA & distributions to publishers will begin

Royalty Rates for the Use of Musical Works in Services Providing Interactive Streaming and Limited Downloads

Calculation Steps:	Offering Type				
	Standalone Non-Portable Subscriptions, Streaming Only	Standalone Non-Portable Subscriptions, Mixed Use	Standalone Portable Subscriptions, Mixed Use.	Bundled Subscription Services	Free Non-Subscription / Ad-Supported Services
1. Calculate All-In Royalty For Service as greater of: (a) applicable % of Service's Revenue, and (b) applicable Service Type Minimum	(a) pre-12/31/07: 8.5%, 10.5% from 1/1/08 (b) Lesser of \$.50 per subscriber per month, and if pass thru license, 18% (14.53% if pre-01/08) of service roy. exp. for label, if not pass thru, 22% (17% if pre-01/08) of service roy. exp. for label	(a) pre-12/31/07: 8.5%, 10.5% from 1/1/08 (b) Lesser of \$.50 per subscriber per month, and if pass thru license, 17.36% (14.53% if pre-01/08) of service roy. exp. for label, if not pass thru, 21% (17% if pre-1/08) of service roy. exp. for label	(a) pre-12/31/07: 8.5%, 10.5% from 1/1/08 (b) Lesser of \$.80 per subscriber per month, and if pass thru license, 17.36% (14.53% if pre-01/08) of service roy. exp. for label, if not pass thru, 21% (17% if pre-1/08) of service roy. exp. for label	(a) pre-12/31/07: 8.5%, 10.5% from 1/1/08 if pass thru license, 17.36% (14.53% if pre-01/08) of service roy. exp. for label, if not pass thru, 21% (17% if pre-1/08) of service roy. exp. for label	(a) pre-12/31/07: 8.5%, 10.5% from 1/1/08 if pass thru license, 18% (14.53% if pre-01/08) of service roy. exp. for label, if not pass thru, 22% (17% if pre-1/08) of service roy. exp. for label
2. Subtract from All - In Royalty for Offering	PRO royalties for these licensed activities	PRO royalties for these licensed activities	PRO royalties for these licensed activities	PRO royalties for these licensed activities	PRO royalties for these licensed activities
3. Payable Royalty Pool (\$ payable for all	Greater of: 1. Step 2 Result, or 2. \$.15 per Subscriber Month *	Greater of: 1. Step 2 Result, or 2. \$.30 per Subscriber Month *	Greater of: 1. Step 2 Result, or 2. \$.50 per Subscriber Month *	Greater of: 1. Step 2 Result, or 2. \$.25 per Subscriber Month *	Step 2 Result
4. Per Work Royalty Allocation for Each Relevant Work, applicable to all offering types: (a) <i>Payable Royalty Pool</i> for an offering divided by the total number of plays of all musical works through the offering (other than promo rate plays) to yield a <i>per-play allocation</i> . (b) Multiply <i>per-play allocation</i> by the number of plays each musical work (other than promo rate plays). After 10/01/10 the number of plays for musical works with a playing time of over 5 minutes shall be counted so that each actual play is counted as 1 plus 0.2 for each minute or portion thereof in excess of 5 minutes.					

* - Subscriber Month for all offerings except bundled subscription services shall be calculated for the accounting period, taking into account all end users who were subscribers for complete calendar months, prorating in the case of end users who were subscribers for only part of a calendar month, and deducting on a prorated basis for end users covered by a free trial period subject to the promo royalty rate. For bundled subscription services, determined with respect to active subscribers (i.e., each end user who made at least one play of a licensed work during such month).

HFA Online Updates

HFA Gives Publishers More Transparency on Royalty Payments *New Online Report Provides Daily Updates of Pending Royalty Payments*

HFA has introduced a new option in its suite of HFA Online Reporting tools. The Report of Preliminary Royalty Payments gives HFA affiliated publishers the ability to review, by specific licensee, the aggregate amount of royalties due to them which have been processed by HFA and are pending distribution. This new option is updated daily.

“These new reports keep our publishers up to date on their royalty income from their HFA-licensed catalog,” said Ed Hunt, Senior Vice President Publisher Services & Distributions, HFA. “By using the full suite of HFA Online tools, publishers can virtually eliminate the hassle of paper, and literally maintain all of their HFA-represented catalog activity online.”

“Digital music distribution has exponentially increased the number of licenses issued by HFA each year,” said Gary Churgin. “With the first payments of royalties from limited downloads and interactive streams expected in 2009 – including royalties retroactive to 2001 - we anticipate an even greater increase in the number of royalty statements. HFA Online will make dealing with this volume simple, and publishers need have no special technology other than a computer with an Internet connection.”

HFA Online allows publishers to manage all of their HFA business online, from song registration and catalog updates, to reviewing and responding to license requests, to viewing reports of licensing activity and royalty payment information. These reports can be downloaded directly to the desktop for use in popular database programs, and every license issued by HFA since 1972 is available through HFA Online. HFA Affiliate Publishers can also see the status of pending Royalty Compliance Examination activity, and respond to new licensing opportunities from HFA – all online.

Publishers interested in using HFA Online should contact HFA Publisher Services at publisherservices@harryfox.com or call 212-834-0100.

Coming in the New Year: Licensee Comparison Reports

In January 2009, HFA will introduce a new online reports option as part of its Income Tracking Reports (ITR) application, Licensee Comparison Reports. These new reports give publishers the ability to create customized reports to track payment status and compare earnings year over year and quarter to quarter for particular licensees. Like all HFA Online reports, once have downloaded and saved the report to your computer, the file can be opened in formats such as Excel or Access for further use. These reports will be available to all publishers who have HFA Online accounts with “ITR” credentials.

The data contained in these reports will be updated weekly. The date of the last update will always appear in the upper left corner of the screen.

HFA International News – New Reciprocal Licensing Agreements

It can be difficult for a music publisher to pursue royalties for the use of its works outside of its home country. Reciprocal licensing arrangements assist them with this effort. HFA has reciprocal licensing agreements with over 30 rights societies around the world. Through these agreements, HFA can pursue royalty collections for its affiliated publishers in 100 international territories. HFA provides their rights society partners with the ability to have their repertoire licensed and collect royalties from the U.S., the largest music market in the world.

If a publisher would like to have HFA collect for it in South Africa and/or Russia, please send a written notice to HFA Publisher Services by email at publisherservices@harryfox.com, by fax to 646-487-6779, or by mail to 601 West 26th Street Suite 500, New York, NY 10001. If you have questions, call 212-834-0100.

Russia Authors Society

The Russia Authors Society (RAO) handles the licensing and collection of music copyright royalties in the Russian Federation. RAO reported \$41.2 million in music-related revenues in 2007, a 35% increase from the previous year.

“Russia is one of the largest countries in the world, and since 1993, RAO has lead the effort to establish and enforce effective laws for copyright to create a real marketplace for music,” said Gary Churgin. “We are very excited to offer our publishers the opportunity to work through HFA to collect their royalties from the use of their music in Russia, as well as being able to offer RAO’s catalog to potential licensees in the United States.”

“According to the 2000 U.S. Census, there are over 700,000 Russian speakers in the country. We are pleased for this opportunity to have HFA represent RAO’s catalog in the U.S., especially now that licensing terms for online music services have been determined for the American market,” said Chairman of the Board of Directors of RAO, Sergey S. Fedotov.

Southern Africa Music Rights Organisation

The Southern Africa Music Rights Organisation (SAMRO) is a licensing agent in The Republic of South Africa.

“HFA is pleased to offer this reciprocal agreement with SAMRO to its almost 36,000 music publisher affiliates,” said Gary Churgin. “We are also excited to offer SAMRO’s repertoire for licensing in the U.S. With such diverse artists as Ladysmith Black Mambazo, Alan Lazar, Soweto Gospel Choir, Johnny Clegg and Mahotella Queens, South African music has tremendous international appeal.”

“Since adding mechanical licensing to its services in 2006, SAMRO has been expanding its reciprocal relationships, and we are very happy to have concluded this agreement with HFA, linking us with the largest music market in the world,” said Joyce Schulten, Executive General Manager: Mechanical Rights at SAMRO.

The South African Department of Arts and Culture has stated that South Africa’s music industry, with other creative industries, is the country’s fifth-largest economic sector, is worth about R7.4-billion (\$920-million), and more than 100,000 people are employed within film, television and music.

Behind the Song:

“Monster Mash” – Bobby “Boris” Pickett and Lenny Capizzi

By David Schneider, HFA Publisher Services Agent

For almost 50 years, as Halloween season rolls around, a quirky, infectious tune starts pulsating through sound-systems across the country. “Monster Mash” first topped the charts on October 20, 1962, and it has remained a favorite ever since. The enduring appeal of the song can be attributed not only to a catchy melody and charmingly theatrical lyrics, but also to a sharp publishing acumen strengthened by the belief that a “novelty” song can transcend the cultural tastes of its time.

Bobby “Boris” Pickett launched his ghoulish legacy on a whim one night by suddenly imitating the voice of Frankenstein actor Boris Karloff onstage. Inspired by the audience’s enthusiastic reception as well as bandmate Lenny Capizzi’s encouragement, Pickett tweaked the narrative and, along with Capizzi, fashioned it in the bouncy “mash potato” style that was popular at the time. The track was recorded in one take by a band calling themselves “The Cryptickers,” which included Gary Paxton, a guitarist who had experienced his own novelty hit with “Alley Oop” in 1957. Paxton pitched the final cut to several labels. No one was interested, so he pressed the record himself and started taking it directly to radio stations – and started his kooky Halloween legacy.

“Monster Mash” charted in the Billboard top 10 twice more in 1970 and 1973, and inspired dozens of covers, parodies, adaptations, and spin-offs. The song is currently published by S1 Songs and the Estate of Lenny Capizzi. Neil Gillis, President of S1 Songs, explains, “We definitely see it as an evergreen. The usages are amazing. It’s clearly as much of an iconic song as any.” Not only has “Monster Mash” been covered by a diverse bevy of artists ranging from The Misfits to The Beach Boys, but it has become even more firmly embedded in pop culture consciousness through placements in *Happy Days*, *Cheers*, and *The Simpsons*. It has even been performed on the *Jimmy Kimmel Show* as a costumed duet of Bobby Brown and Mike Tyson. It’s remarkable that a song which so powerfully recalls the signature style of a specific era has grown to transcend every demographic in American culture for multiple generations. As Gillis notes, “It’s like an American Songbook song, a gift that keeps on giving. It will last forever.”

During his lifetime, Pickett, who passed away last year, was as instrumental as his publishers in nourishing the longevity of his creation. He released the Christmas-themed “Monsters’ Holiday” in 1962 as well as “Monster’s Rap” in 1985, which expanded upon the monster’s story in the newly popularized hip-hop style. In 1995 he starred in *Monster Mash: The Movie*, and in 2005 he adapted the idea for a derivative work called “Climate Mash” designed to educate listeners about the issue of global warming. Gillis reports that S1 Songs is currently negotiating a line of “Monster Mash”-inspired, Halloween-themed toys, and has also entered into an exclusive deal with a film company to produce an animated film featuring characters from the song. “Monster Mash” has gone from novelty to classic, and it’s a sure bet that it will remain the theme for Halloween as long as stores are stocking candy.

HFA on the Road

HFA was represented at numerous events this fall, including the Billboard Regional Mexican Music Summit, Digital Music West, CMJ, AIMP- New York Chapter, and the Copyright Society. HFA also hosted its own event in Nashville in November.

HFA November Nashville Event



In November, HFA hosted 120 people at a “Lunch and Learn” event at the Loews Vanderbilt, which provided updates on recent news and training on several of our online tools, especially highlighting digital licensing and royalty information.

Pictured are (left to right) Janice Bane from MCS America, Wynne Adams of Wynnestar Music, Cori Barger of HFA and Danielle Boone of HFA.

(Photo credit: Kay Williams)

HFA Mechanical Licensing Panel at the Billboard Regional Mexican Music Summit

As part of the Billboard Regional Mexican Music Summit, HFA presented a lunch panel, “Get the Royal(ty) Treatment: Mechanical Licensing North & South of the Border.” The panel included (left to right) Josh Norek, Nacional Records; moderator Cristal Downing, HFA Senior Latin Licensing Agent; Elias Andrade, Peer Music Publishing; Claribel Cuevas, Sony/ATV Publishing; and Jose Angel Echevarría, UMLE-Fonodisa.

(Photo credit: Arnold Turner/
WireImage)



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Make Sure Your Mail’s Not
Marked “Return to Sender”***

On the move? Make sure HFA has your current contact information. You can obtain change of address information on our website at www.harryfox.com or by contacting HFA Publisher Services at 212-834-0100.

The HFA website also has a list of publishers for whom we may be holding royalties due to the lack of a valid mailing address - see the “Help Us Find Publishers” link.

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If you have any comments regarding HFA Soundcheck, please contact Laurie Jakobsen at 212-834-0133 or email soundcheck@harryfox.com.

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