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**LIBRARY OF CONGRESS**
**Copyright Office****37 CFR Part 253****[Docket No. 2002-4 CARP NCBRA]****Cost of Living Adjustment for Performance of Musical Compositions by Colleges and Universities****AGENCY:** Copyright Office, Library of Congress.**ACTION:** Final rule.

**SUMMARY:** The Copyright Office of the Library of Congress announces a cost of living adjustment of 2.0% in the royalty rates paid by colleges, universities, or other nonprofit educational institutions that are not affiliated with National Public Radio for the use of copyrighted published nondramatic musical compositions in the BMI and ASCAP repertories. The cost of living adjustment is based on the change in the Consumer Price Index from October, 2001, to October, 2002.

**EFFECTIVE DATE:** January 1, 2003.**FOR FURTHER INFORMATION CONTACT:**

Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707-8380. Telefax: (202) 252-3423.

**SUPPLEMENTARY INFORMATION:**

Section 118 of the Copyright Act, 17 U.S.C., creates a compulsory license for the use of published nondramatic musical works and published pictorial, graphic, and sculptural works in connection with noncommercial broadcasting. Terms and rates for this compulsory license, applicable to parties who are not subject to privately negotiated licenses, are published in 37 CFR part 253 and are subject to adjustment at five-year intervals. 17 U.S.C. 118(c). The most recent proceeding to adjust the terms and rates for the section 118 license began in April of this year. 67 FR 15414 (April 1, 2002).

On October 30, 2002, the Copyright Office announced proposed regulations governing the terms and rates of copyright royalty payments with respect to certain uses by public broadcasting

entities of published nondramatic musical works, and published pictorial, graphic, and sculptural works, including a provision to adjust § 253.10 which provides for an annual cost of living adjustment of the rates for the public performance of musical compositions in the ASCAP and BMI repertories by public broadcasting entities licensed to colleges and universities set forth in § 253.5 for the new license period, 2003-2007. 67 FR 66090 (October 30, 2002). Under the proposed rules, the § 253.5 rate for the public performance of musical compositions in the SESAC repertory will be \$80 for 2003, subject to an annual cost of living adjustment in each subsequent year thereafter during the licensing period.

Section 253.10(b) requires that the Librarian publish a revised schedule of rates for the public performance of musical compositions in the ASCAP, BMI, and SESAC repertories by public broadcasting entities licensed to colleges and universities, reflecting the change in the Consumer Price Index. Accordingly, the Copyright Office of the Library of Congress is hereby announcing the change in the Consumer Price Index and performing the proposed annual cost of living adjustment to the rates set out in § 253.5(c) for the public performance of musical compositions in the BMI and ASCAP repertories in accordance with the October 30 proposed regulations.

The change in the cost of living as determined by the Consumer Price Index (all consumers, all items) during the period from the most recent Index published before December 1, 2001, to the most recent Index published before December 1, 2002, is 2% (2001's figure was 177.7; the figure for 2001 is 181.3, based on 1982-1984=100 as a reference base). Rounding off to the nearest dollar, the royalty rate for the use of musical compositions in the repertory of ASCAP is \$249 and the use of the musical compositions in the repertory of BMI is the same, \$249.

If no comments are received regarding the proposed amendments to §§ 253.5 and 253.10 announced in the October 30 **Federal Register** notice and the final rules are published before January 1, 2003, the cost of living adjustments announced in this notice shall become effective on January 1, 2003.

**List of Subjects in 37 CFR Part 253**

Copyright, Radio, Television.

**Final Regulation**

For the reasons set forth in the preamble, part 253 of title 37 of the

Code of Federal Regulations is amended as follows:

**PART 253—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING**

1. The authority citation for part 253 continues to read as follows:

**Authority:** 17 U.S.C. 118, 801(b)(1) and 803.

2. Section 253.5 is amended by revising paragraphs (c)(1) through (c)(2) as follows:

**§ 253.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.**

\* \* \* \* \*

(c) \* \*

(1) For all such compositions in the repertory of ASCAP, \$249 annually.

(2) For all such compositions in the repertory of BMI, \$249 annually.

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Dated: November 21, 2002.

**Marybeth Peters,***Register of Copyrights.*

[FR Doc. 02-30145 Filed 11-27-02; 8:45 am]

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