



THE SIX STEPS TO STREAMING MUSIC ON THE INTERNET

Presented by

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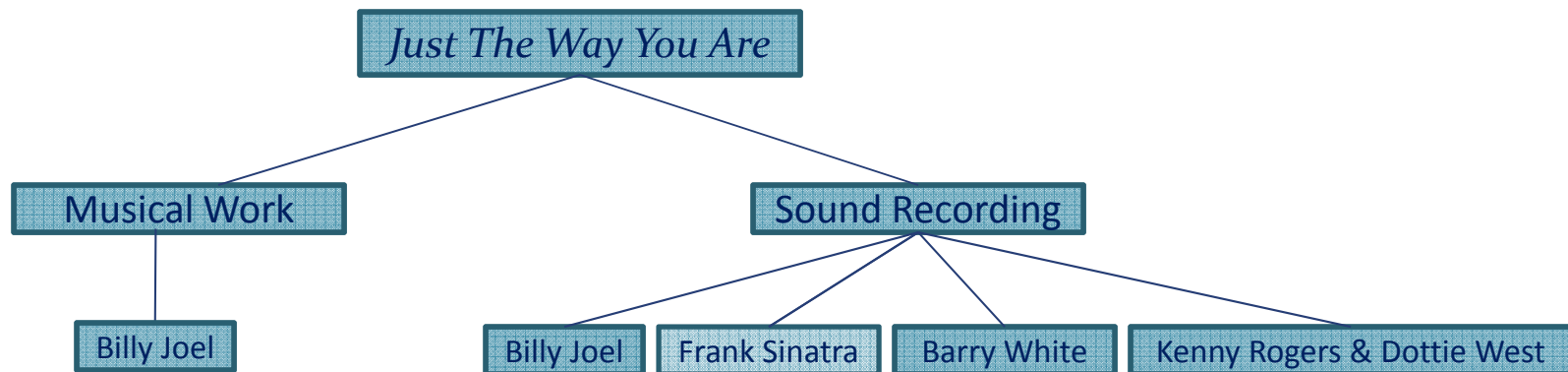
WHAT DO I NEED TO DO TO STREAM MUSIC OVER THE INTERNET?

- Step 1: Understand the Copyrights Involved
- Step 2: Understand the Licenses Required
- Step 3: Register as Statutory Licensee and Select Rates and Terms
- Step 4: Comply with the Requirements of the Statutory License
- Step 5: Calculate and Submit Royalty Payments
- Step 6: Submit Reports of Use

Step 1: Understand the Copyrights Involved

Each musical recording embodies two distinct copyrights.

- ◆ Musical work – the notes and lyrics of a song.
- ◆ Sound recording – the interpretation of a song by the artist, producer, background musicians.



- ◆ To publicly perform a song (*i.e.*, broadcast over the air or stream on the Internet), you must obtain the permission of the copyright holders or acquire appropriate licenses to avoid possible copyright infringement.

Step 2: Understand the Licenses Required

◆ Which Licenses Do You Need?

Type of Work	Terrestrial Broadcast	Internet Webcast
Musical Work	➤ Permission directly from copyright holder (typically the music publishers) <i>or</i> ASCAP, BMI, SESAC blanket license.	➤ Permission directly from copyright holder (music publisher) <i>or</i> ASCAP, BMI, SESAC blanket license.
Sound Recording	➤ None required (for now . . .)	➤ Permission directly from copyright holder (typically the record label) <i>or</i> statutory license authorizing “non-interactive” performance of sound recording by means of digital audio transmission (<i>e.g.</i> , the Internet).

- ◆ Statutory licenses are administered by SoundExchange, a former division of the RIAA. It collects and distributes royalties to copyright holders and performing artists.

Step 3: Register as Statutory Licensee and Select Rates and Terms

Registration

- ◆ File Notice of Use of Sound Recording under Statutory License with the U.S. Copyright Office *before* streaming.
 - One-page form available from the Copyright Office website (www.copyright.gov/forms/form112-114nou.pdf).
 - \$20 filing fee.
- ◆ Indicate that you intend to use both Section 114 license and Section 112 license.
- ◆ Indicate eligible non-subscription transmission service, unless you are charging a fee.
- ◆ File new Notice of Use amending prior Notice within 45 days if any information has changed.

Step 3: Register as Statutory Licensee and Select Rates and Terms

(continued)

Selection

Commercial broadcasters have choice of two royalty approaches:

- ◆ the Copyright Royalty Board (CRB) rates and terms adopted in 2007; or
- ◆ the NAB/SoundExchange rates and terms agreed to in 2009.

Noncommercial broadcasters (tax-exempt organizations or governmental entities) do not make a selection. Instead, one of two arrangements apply:

- ◆ the CRB rates and terms adopted in 2007; or
- ◆ if eligible, the Corporation for Public Broadcasting (CPB)/SoundExchange rates and terms agreed to in 2009.
 - Must be member/affiliate of National Public Radio, American Public Media, Public Radio International, or Public Radio Exchange; member of National Federation of Community Broadcasters; or public radio station receiving funding from CPB.

Step 3: Register as Statutory Licensee and Select Rates and Terms

(continued)

Selection

- ◆ To select NAB terms, must file Notice of Election form with SoundExchange within 30 days of date streaming of music commences.
 - Form available from SoundExchange website (www.soundexchange.com).
 - No filing fee.
- ◆ Eligible broadcasters may also elect “small broadcaster” status within 30 days of date streaming of music commences. Small broadcasters are exempt from requirement to provide reports of use of sound recordings.
 - Must elect on annual basis by January 31. Eligibility based on whether sound recording use during previous year, and the anticipated use for upcoming year, exceeds 27,777 aggregate tuning hours.
 - Form available from SoundExchange website. Both election forms should be filed for small broadcasters.
 - No filing fee.

Step 4: Comply with the Requirements of the Statutory License

- ◆ Statutory licensees are restricted in the way they may use sound recordings. Record labels agreed to waive some of these restrictions for broadcasters electing the NAB terms.

CRB	NAB
No “Interactive” Service	
<ul style="list-style-type: none"> ➤ Cannot be listener directed. No podcasts. No downloads. ➤ Call-in requests allowed if request not played at a pre-determined time. 	Same.
No Advance Publication or Announcement of Program Schedules	
<ul style="list-style-type: none"> ➤ May announce the names of particular artists to be played at unspecified future time. 	<ul style="list-style-type: none"> ➤ Publication of written or visual advance program schedules still prohibited. ➤ Announcement of programs permitted if within range of typical over-the-air practices.

Step 4: Comply with the Requirements of the Statutory License

(continued)

CRB	NAB
Limited Sound Recording Performances	
<ul style="list-style-type: none"> ➤ May not play more than 3 different songs for 1 album or CD, and no more than 2 such songs consecutively within 3-hour period. ➤ May not play more than 4 different songs by the same featured artist or from any set or compilation, and no more than 3 such songs consecutively within 3-hour period. 	<ul style="list-style-type: none"> ➤ Requirement waived, except that broadcaster may only stream at most one-half of a CD's songs either consecutively or within 3-hour period (depending on record label).
Simultaneous Identification of Copyright Information	
<ul style="list-style-type: none"> ➤ Identify in text on website during, but not before, sound recording is performed: title of song, album or CD it comes from, and name of featured artist. 	<ul style="list-style-type: none"> ➤ Requirement waived, except that one record label still requires identification of song title and featured artist.

Step 5: Calculate and Submit Royalty Payments

SoundExchange does not send bills. Each licensee must calculate its own royalty obligation and submit royalty payments on a monthly basis.

- ◆ Royalty depends on number of “performances” made.
 - Broadcasters may pay royalties on limited aggregate tuning hour (ATH) basis. (See Step 6.)
- ◆ “Performance” is each instance in which any portion of a sound recording is publicly performed to a listener by means of digital audio transmission – that is, royalties are determined on a per song, per listener basis.
- ◆ Excludes transmission of sound recordings:
 - that do not require a license (*e.g.*, in public domain);
 - for which a license has previously been obtained; or
 - that are “incidental.”

Step 5: Calculate and Submit Royalty Payments *(continued)*

Year	CRB Rate	NAB Rate
2006	\$0.0008	\$0.0008
2007	\$0.0011	\$0.0011
2008	\$0.0014	\$0.0014
2009	\$0.0018	\$0.0015
2010	\$0.0019	\$0.0016
2011	--	\$0.0017
2012	--	\$0.0020
2013	--	\$0.0022
2014	--	\$0.0023
2015	--	\$0.0025

- ◆ CRB rates for 2011-2015 to be determined through ratemaking proceeding that commenced earlier this year.

Step 5: Calculate and Submit Royalty Payments *(continued)*

$$\left(\begin{array}{c} \text{5 songs} \\ \text{100 listeners} \end{array} \right) = 500 \text{ performances}$$

+

$$\left(\begin{array}{c} \text{5 songs} \\ \text{200 listeners} \end{array} \right) = 1,000 \text{ performances}$$

1,500 performances

$$\begin{array}{l} 1,500 \\ \text{\# of performances} \end{array} \times \begin{array}{l} \$.0014 \\ \text{royalty rate} \end{array} = \begin{array}{l} \$2.10 \\ \text{= royalty liability} \end{array}$$

Step 5: Calculate and Submit Royalty Payments *(continued)*

- ◆ How do I pay?
 - Submit Statement of Account and payment to SoundExchange by the 45th day after the end of each month for that month.
 - Statement of Account forms with applicable rates available from SoundExchange website.
- ◆ Noncommercial broadcasters eligible for the CPB terms make no royalty payment through 2010. CPB will pay SoundExchange \$1.85 million on behalf of eligible noncommercial broadcasters.
- ◆ All other noncommercial broadcasters pay \$500 per channel, per year for up to 159,140 ATH in a given month. Sound recording use in excess of this amount is subject to commercial per performance rate.

Step 5: Calculate and Submit Royalty Payments *(continued)*

- ◆ Annual minimum fee of \$500 per channel or station is due on January 31.
 - Non-refundable but recoupable against future royalty payments.
 - Capped at \$50,000 per broadcaster under NAB terms.
- ◆ Late fees – Liable for a late fee of 1.5% per month for any payment or Statement of Account received by SoundExchange after the due date.
- ◆ Audit rights – SoundExchange can audit a licensee for any one or all of the three prior years.
 - Cost of audit is SoundExchange’s responsibility unless there is an underpayment of 10% or more, in which case licensee must pay cost of audit.

Step 6: Submit Reports of Use

- ◆ A licensee reports its use of sound recordings to allow Sound Exchange to determine how to distribute royalties.
- ◆ Specific data to be kept and frequency of reports depend on licensee’s royalty selection and status as small or other broadcaster.

All Broadcasters Other Than Small Broadcasters

CRB	NAB
<ul style="list-style-type: none"> ➤ Quarterly report of each sound recording performed during two separate 7-day periods. 	<ul style="list-style-type: none"> ➤ Monthly report of each sound recording performed to each listener (<i>i.e.</i>, “census reporting”). ➤ Where census reporting is not reasonably practical, may report limited use (and pay royalties) based on ATH, and file playlist ➤ Total number of ATH may not exceed 20% in 2009; gradually decreases to 8% in 2015.

Step 6: Submit Reports of Use *(continued)*

Small Broadcasters

➤ Small Broadcasters may pay \$100 “proxy fee” and be exempt from filing any reports of use.

- ◆ Reports of use due 45 days from the end of the quarter or month.
- ◆ Reports should include: name of the featured artist, song title, album title and marketing label or International Standard Recording Code (ISRC); and aggregate tuning hours, channel or program name, and play frequency or actual total performances.
- ◆ Reports must be filed electronically in a standardized, electronic format (ASCII), and may be delivered to SoundExchange via e-mail, File Transfer Protocol (FTP), CD-ROM, or floppy diskette. Hard copy reports are not permitted.
- ◆ Excel template used to create a report available from SoundExchange website.

This document is intended only as a general discussion of these issues as of the date of presentation, and should not be assumed to be accurate beyond that date. This document should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired. To discuss any of the issues presented here, please contact any attorney in our office.