

Copyright Royalty Board
Library of Congress
crb@loc.gov

Re: Notice of Proposed Rulemaking – **37 CFR Part 370**
Docket No. RM 2009-7

**Notice and Recordkeeping for Use of
Sound Recordings Under Statutory License**

Comments on proposed rules by:
Paul R. Gathard, President, *Barnabas Road Media, Inc.* Indianapolis, Indiana

To the Copyright Royalty Judges

Dear Sirs,

The proposed rule requiring a general census of music played by each service covered by the statutory license is generally the most accurate means of determining the royalties owed to each copyright owner and I am sure all of our service provider customers agree copyright owners well deserve accurate payments.

Barnabas Road Media (BRM) is an internet service provider to hundreds of non-commercial terrestrial radio stations and a few commercial terrestrial radio stations. In short we are an internet service that simulcasts the over-the-air broadcast and internet only broadcast of our client radio stations. We provide the server farm that distributes the internet broadcasts to the public. Our radio station clients have millions of listeners each month. We do not provide licensing assistance or collect royalties from our stations or otherwise facilitate payments to SoundExchange.

BRM does provide media logging file information to our radio station clients specifically regarding how many media players are open at any given point in time and certain other summary data such as the total aggregate tuning hours distributed during the month for each broadcast streamed to the public. Therefore, we provide only a portion of the data required for SoundExchange reporting. Our data does not include the song information required by SoundExchange. Radio stations generating the broadcast must provide the song meta-data. This meta-data is normally generated by the radio station's computerized automation system via its own set of various formatted logging files.

Newer and more robust automation systems provide all of the SoundExchange data required and are very expensive simply by the nature of the relatively small market for such systems. A worldwide market of probably a little over 100,000 radio stations does not constitute a large market for software development. In short, those software providers that do constantly improve their products usually require additional or new hardware systems to run their improved automation systems. It is the only way they can make any money in this market.

Non-commercial and especially religious radio stations do not usually have large budgets for any aspect of their radio broadcast operations and are in fact publically supported. Many of these same non-commercial radio stations are located in such small markets that public support is extremely limited in possibility. It is not unusual that such stations while providing a much needed public service operate within extremely low annual budgets and inexpensive and low capability radio station automation systems. Rarely can such stations afford more modern hardware and software capable of generating the specifically required SoundExchange reporting meta-data.

Older radio automation software may not generate any song lists and such lists have to be manually created. While other systems generate some of the required data, but they may not produce one or more of the required data fields automatically and this data must be entered manually.

Even if a radio station's automation system can generate all of the required song meta-data in the appropriately configured field, this data must be combined with the listener data provided by the internet service provider (BRM) in order to determine how many people heard each song played. This is no small electronic task. Linking these two data sources in such a way as to provide accurate SoundExchange reporting requires computer software beyond the developmental skills and budgets of radio stations and service providers such as BRM.

Again, it appears that no software provider sees internet radio as a large enough market to spend the money to develop such a software package unless this package is used by an internet service provider as a proprietary means to obtain new radio station stream hosting business. The CRB Judges ruling created an opportunity for a handful of internet service providers to gain a somewhat unfair advantage over smaller capitalized service providers thereby limiting the number of service providers and causing the cost of services to rise beyond the means of many terrestrial broadcasters.

Although there is no doubt in the fact that each broadcaster is responsible to generate the song meta-data required by SoundExchange, the only entity that should rightfully benefit from such onerous automated data requirements is SoundExchange and its copyright owners. Therefore, it seems all to appropriate that SoundExchange itself, having such a vested interest in the accuracy and consistency of provided data, develop and distribute to each statutory licensee the software and reporting system that combines a stations automation data with the streaming media service provider listener data.

This proposed ruling should be modified to impose the development and distribution of such a reporting system on SoundExchange and the ruling should include a new technology fee to be paid by each licensee required to transmit reports to SoundExchange.

SoundExchange can thereby use their new economy of scale in the development and maintenance of the technology required to provide the reporting system so desperately needed by all broadcasters. The imposition of higher digital performance copyright fees along with the requirement that each station provide a robust reporting system is more than many can stand. Many stations will surrender their statutory license and abandon the

internet if some form of relief is not made a part of this new rule. This does not serve the public interest or the interests of copyright owners.

By mandating SoundExchange to develop such a reporting system and authorizing the collection of a technology fee that would undoubtedly be in the long run less expensive to licensees, the CRB demonstrates the balance required in the symbiotic relationship between internet radio broadcasters and copyright owners.

The benefit is obvious to all parties involved. Radio stations obtain a less expensive means of reporting on a global census basis, copyright owners receive an accurate representation of the use of their musical property and SoundExchange lessens their cost of collecting required data for reporting.

We know the technology exists or can be created to accurately obtain usage reports. The most obvious party to create and control such reporting technology is SoundExchange. Overcoming the economy of scale problem is solved by empowering SoundExchange to provide common software and reporting systems that otherwise make more detailed and total census reporting less a burden to all parties involved in this growing and evolving new media enterprise.

The CRB judges have the power to regulate not only the licensees, but also SoundExchange. Please be more even handed and logical while providing for the interests of the copyright owners. Common sense dictates the means for problem resolution and this technology problem is best solved using the resources of all of the music service providers and not just those that can afford to meet the new rule reporting requirements.

Sincerely

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