

Before the
COPYRIGHT ROYALTY BOARD
in the Library of Congress
Washington, D.C. 20559

In re)
)
Notice of Proposed Rulemaking) RM 2008-7
)
NOTICE AND RECORDKEEPING FOR USE OF)
SOUND RECORDINGS UNDER STATUTORY)
LICENSE)
_____)

COMMENTS OF KSYM-FM

My name is John Onderdonk and I am the faculty advisor and General Manager of KSYM-FM. Ksym is licensed to San Antonio College and serves the San Antonio, Texas community.

KSYM hereby submits comments in the above captioned proceeding.

KSYM is a, non-commercial, non-profit radio/web station on the campus of San Antonio College. We are a faculty-directed, student-operated educational non-commercial radio station with no full time employees. We are funded jointly by listener donations and by San Antonio College, part of the Alamo Community College District. We are staffed by a combination of part-time faculty, part-time student positions and community volunteers. We broadcast on 90.1 FM and simulcast our programming on the Internet at KSYM.org. We are an interested party because the proposed rule changes will impact enormously the way in which we operate.

We are submitting comments because we feel that the proposed changes concerning census reporting, where we are required to report actual performances rather than ATH performances will create an undue burden for the station. Indeed, without technology (currently unavailable), the change in reporting requirements will most certainly require us to stop webcasting altogether. We are paying only the minimum fee at present, and with limited staff we are barely able to meet the current reporting requirements. We ask that small noncommercial minimum fee only stations such as ours be exempted from the proposed changes.

KSYM streams in two different formats, Real Audio and Windows Media Player. We encode our signal at the station and it is sent to our college district headquarters by T-1 line. We must do this so that listeners can access our signal without penetrating campus security and the district firewall. This is a different method than that used by commercial Webcasters who make use of integrated systems with close connection between recording playback and streaming server. Our district IT department has reported that: "At the height of the business day we typically have over 40,000 different firewall/internet sessions running with about 250 megabits of data going across the link. You will need a very powerful processor to parse this data for KSYM sessions, or a very high capacity logging system with a powerful analytical system to extract the data. We typically think of internet traffic as transient and do not log or analyze it in this detail." Separating out and monitoring individual listener use from a district site that sees 40,000 sessions of internet traffic per day is beyond our capabilities.

Unlike commercial stations with limited playlists, we broadcast a wide variety of music including an all vinyl jazz program, archival Texas Swing and country and Bluegrass music, and locally produced and independent music. Because our playlist is so wide-ranging, most of our logging must be done by hand and cannot be managed by digital "fingerprinting" or automated software. Because of the lapse in time between logging and the required reporting rules, we would rarely get an accurate picture of the performance listener data. Moreover, we currently log songs, but not voice breaks, PSAs College announcements and other non-copyrighted material. It is unlikely that the per-

song audience calculation will ever accurately reflect actual song listening because of the lag in logging time and the inclusion of non musical material. We see no practical means to correct this problem. We are currently required to report an average audience size in "ATH". The proposal requires stations to report each and every connection to the streaming server during each song played-the actual total performances. Reporting ATH is difficult enough, and I am not aware of any practical, technical method of generating actual total performance data for each song, much less an accurate one.

Additionally the proposed move from quarterly reports to year-round "census" reports would be burdensome or even impossible for us. We have a very limited staff and no hope of increased financial support in the face of the current fiscal crisis. Our extremely limited staff would have a great deal of difficulty complying with the proposed change requiring reports due 45 days after the last day of each month.

We therefore request that for small noncommercial minimum fee only webcasters such as ourselves that we would continue to file reports for two weeks per calendar quarter with a filing deadline of 90 days after the first of each calendar year.

After a thorough search I have not been able to locate any commercial products that will allow us to comply with the current regulations. Moreover, my I.T. Department at the College District is not aware of any, either. Not only have I not found any such software that will produce records of use that are format compatible with Sound Exchange's requirements. We would be willing to comply with the purchase of commercial products for recordkeeping and reports if they were available and affordable, although this again would strain our rather limited resources

Attempting to comply with the proposed rules as they are currently structured would require us to hire a skilled I.T. person on a half time basis. We function on a limited budget, and according to the District's accounting principles donations from listeners cannot be used to fund personnel positions. Again, in the current financial climate we are unlikely to be funded for a half time position to serve an on-line audience the averages under ten listeners at any one time.

In eight years of webcasting we have never exceeded the listening levels and incurred fees above the \$500 minimum. Indeed, we feel that the \$500 minimum fee is quite generous for the size of our on-line audience which averages fewer than ten listeners per hour. I submit to you that the ultimate impact of the increased burdens being proposed will be for us to cease webcasting altogether. Not only will this decrease the overall royalty funds available to be distributed to performers, but also it will inadvertently harm the very people this law was intended to benefit. Furthermore, an end to our webcasting will deprive students of an educational resource and the San Antonio Community of access to our public service and entertainment programming.

We feel that the existing flat fee rate for small webcasters with a tiny on-line audience like ours is more than appropriate compensation. Again, we request an exemption from the onerous new reporting requirements for stations paying only the minimum fee with respect the proposed changes from sample to census reporting. We would ask that you allow the use of ATH instead of per performance reporting.

Respectfully submitted,

KSYM-FM

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