

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

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

**COMMENTS OF KVRX AT THE UNIVERSITY OF TEXAS-AUSTIN**

KVRX hereby submits comments in the above captioned proceedings. KVRX is a federally licensed Class A non-commercial, educational (NCE) FM broadcast station operated by Texas Student Media at the University of Texas-Austin on behalf of the University of Texas System Board of Regents, the station licensee, in Austin, Texas. KVRX is staffed by students under the management of one-part-time adviser and an administrative staff of six full-time professionals. KVRX operates on the air from 7 p.m. to 9 a.m. weekdays and from 7 p.m. to 10 a.m. weekends, but also streams over the internet 24 hours a day, seven days a week. The station has a compelling interest in the aforementioned proceedings because of the large amount of programming that is streamed over the Internet.

KVRX is currently in compliance with statutory performance royalty requirements, such as filing Reports of Use to SoundExchange and paying the minimum fee of \$500 annually based upon our ATH statistic. Meeting the current standard has been a difficult and labor intensive project, involving manual entry of play data, since much of our recorded music is played live from either CD's or vinyl LP records in our station library.

KVRX has never exceeded the current ATH threshold that establishes the minimal annual payment for small non-commercial webcasters.

However, rule changes proposed by CRB are likely to impede KVRX's ability to continue streaming, as the NPRM would pose two serious obstacles to operation in compliance with its statutory obligations. In order to understand why this is so, an explanation of KVRX's programming and system of streaming is in order.

KVRX programs an eclectic mix of recorded music in a variety of formats. The station library includes about 18,000 albums of music, and many student D.J.s bring in specialty and ethnic music from their own personal collections. This highly diverse programming and its "live" presentation renders fully automated collections of data impossible, requiring manual entry of artist, title, album and label information. In order to hold operating costs within our limited budget, an audio stream of KVRX's programming is made available to the public Internet via a single server ?????? using existent university bandwidth. There is no direct correlation between the streaming server and the play data accumulation system, but songs played data is made available in real time on KVRX's website via a feed developed as part of the web platform.

Under the current rules, KVRX is required to submit reports of use for two weeks during each quarter of operation. Because the amount of data is limited, and there is sufficient additional time to review it for accuracy, we find we are just able to meet the current requirement with a considerable expenditure of time and labor on the part of our student staff and part-time adviser.

However, should the reports of use requirement become ongoing, as suggested in the NPRM, it is difficult to see how KVRX will be able to keep up with the massive compilation of data. Such an effort would require hiring a part-time employee at a minimum. As a station that operates in an educational environment to serve students and listeners on very limited funds, it is unlikely that financial support for such a position could be obtained. Also, the change from a 90-day reporting deadline to a 45-day reporting deadline would reduce the flexibility KVRX currently has to inspect that data for accuracy.

The NPRM will pose another serious problem for KVRX. Currently, KVRX submits its report of use using the Aggregate Tuning Hour (ATH) statistic. We meet this requirement by parsing our stream server connection logs during the reporting period and merging them with our play data to produce an electronic report of use file per SoundExchange specifications. Should this requirement be changed to require a per-song "performance" statistic based on actual listener connections at a given moment, compliance will become impossible, at least in the short term, since no currently available software capable of accumulating and correlating that data is known to be available. Thus, to become compliant with the NPRM in this context would likely require the development of custom software and acquisition of significant additional IT hardware and infrastructure that we simply could not afford to provide. Indeed, moving forward much of our data will continue to require manual entry, the difference between the actual times a given piece of music plays and data is entered calls into question whether such a system would be at all practical in a "live" environment. Could a student be forced to complete all of the data before playing a given piece? We don't know, but these are issues that should be recognized and addressed as the NPRM is considered.

It should also be noted that the current structure of reporting requirements already appears to be burdensome even for rights-holder organization SoundExchange. Under current rules, the organization is supposed to confirm reports of usage upon receipt. Yet it has been the experience of KVRX and other NCE small webcasters, that our reports frequently go unacknowledged?????????. It seems logical to conclude that the increased volume of data called for in the NPRM might exacerbate this situation.

Finally, KVRX, like many other non-commercial, non-profit broadcasters, desires to serve its audience in a way that conforms to the regulatory and statutory requirements that are incumbent in our educational and service missions. KVRX and similar entities are contributing to the performance royalty system, and rights holders are benefiting from those contributions. If the current NPRM is adopted and small student-staffed stations like ours are forced to terminate their streaming, all the stakeholders, including rights holders, will lose.

It is our fervent hope that the CRB will re-examine possible adoption of a one-size-fits-all model to administering these requirements in a way that will permit small non-profit, educational operations like KVRX to continue to stream their unique and diverse programming via the Internet under the existing sample and ATH specification, at least until such time that affordable, proven technology becomes available or them to improve upon current reporting practices.

Respectfully submitted,

KVRX-FM Radio, Licensee of University of Texas Board of Regents

By: \_\_\_\_\_

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