

**Public comment to Proposed Rule
37 CFR PART 370—NOTICE AND
RECORDKEEPING REQUIREMENTS
FOR STATUTORY LICENSES**

Submitted by: streamSerf, Inc.

Contact: Paul Mockenhaupt, CEO
e-mail: paulm@streamSerf.com
Website: <http://www.streamserf.com>
Phone: (612) 616-3606

This public comment is provided in response to proposed rulemaking by the Copyright Royalty Arbitration Panel on December 30, 2008 to 37 CFR Part 370. For purposes of this public comment, terms used are intended to have the same definition(s) as provided in the proposed rule.

Questions:

What, if any, commercially available software has become available since the promulgation of the interim regulation in 2006 that could be used to compile records of use?

streamSerf, Inc. is an independent radio auditing and radio data intelligence provider. The Company utilizes a proprietary data collection and aggregation process to audit radio broadcasts worldwide in several formats, including internet and satellite radio broadcasts. Since going live in March 2008, the company has audited over 250,000,000 unique song plays and is simultaneously auditing +/- 10,000 internet broadcasters as well as all Sirius and XM satellite radio stations in real-time. The Company has definitively established proof of concept of “census” data collection, and with appropriate resources can provide cost-effective reporting for all current and future registered Services to a Collective for statutory licensing purposes.

The application of the software to any individual Service required to report to a Collective can easily be completed via secure access to the streamSerf.com website and sent by approved means to the Collective. Alternatively, a standardized web-based report could be created and approved in collaboration with a Collective. As discussed in the proposed Rule, census reporting provides important improvements to the existing model. First, by utilizing some form of the above-described methods, there would be greatly improved accuracy in reporting, thus providing more equitable royalty payments to rights holders. Second, technology and security issues have been sufficiently advanced and addressed to provide a long-term improvement in efficiency of reporting, thus streamlining the cost to Services and a Collective.

At present streamSerf, Inc. operates as an independent auditor with no affiliation to any industry group or authorized collection agent. Its’ collected data is purely objective and does not favor any trade group, organization or lobby. The Company has the present ability to provide secure, individualized reports by Service (broadcaster / webcaster) containing the required

data under the existing rules.

Currently, streamSerf collects the following required data information on a per song broadcast basis:

- Artist Name
- Song Name
- Station Identification
- Country, Region and City of broadcast
- Date/Time of broadcast
- Broadcast Format

All additional information such as Album Name, ISRC Code, Label and other unique industry identifiers are available from both commercial and non-commercial, public domain databases.

Would such software produce records of use that are format compatible with SoundExchange's data processing system? What are the costs associated with such software?

streamSerf, Inc. can easily and cost-effectively provide individualized reports on behalf of broadcast Services to SoundExchange, or another collective in any or all of the currently available formats. Based upon streamSerf's current level of development, investigation and research, the preferred method of delivery would be using secure FTP or over HTTPS using secured socket layer (SSL).

There would be de minimus additional development costs as this technology is currently being utilized by the Company. There would be scaled operational costs including, creation of customized reports, bandwidth requirements and general costs of operation. A more complete assessment of actual and projected Company costs can be provided upon request.

Have technological developments or software improvements reduced the average estimated costs of creating and maintaining a Web site for receipt of records of use since the interim regulation was promulgated in 2006?

Yes. It is anticipated that at current levels of operation, streamSerf, Inc. can handle customized reporting for all internet Service reporting requirements. That being said, there would be certain start-up costs regarding integration and development of an online based reporting system which is compliant with the Statute and Rules, and operating costs for collection, storage, access and security associated with the online reporting service. Below are projections for costs by streamSerf, which may be compared to existing costs by Services and SoundExchange for current collection. (Note: It is important to reiterate that the below projections are based upon the census based reporting approach, which dramatically differs from the existing quarterly reporting approach currently in use.)

Database administration and management	\$10,000/month	Yes
Broadband internet access	\$5,000/month	Yes
Report customization	\$25,000 one time	No
Website access and administration	\$5,000/month	Yes
General administration	20,000/month	Yes
Further Development costs:		
Software:	\$75,000	No
Hardware:	\$125,000	No

Have data security methods improved since the promulgation of the interim regulation such that maintaining a Web site for receipt of records of use is now subject only to the same general level of risks as other methods of electronic delivery?

Using the same technology that is currently utilized by online banking, brokerage houses and Internet retailing, streamSerf, Inc. strongly believes that security measures are available and economically feasible for online delivery of data. These technologies include 128-bit encryption over Secure Sockets Layer utilizing HTTPS.

What are the current security concerns and how may they be addressed?

HTTPS delivery of data is completely secure. The only concern is if end users “share” their usernames and passwords. streamSerf, Inc. would recommend a periodic password expiration to ensure that even shared user credentials have limited value.

streamSerf is prepared to address any other questions regarding security concerns from Services, Collectives or the Panel. Please feel free to contact the Company.

Is there now commercially available software that could facilitate the electronic delivery of reports of use to a Web site and, if so, would the benefits of such software justify its costs?

Yes. streamSerf, Inc. has developed an enterprise software solution that can facilitate electronic delivery of reports of use to a website. The Company presently operates a secure website at <http://www.streamserf.com> that has a login portal for customers. From that site a broadcast service could securely download an aggregated report that can easily be accessed or transmitted to SoundExchange or another Collective.

The Company was conceived and has been designed with exactly this sort of application in mind, thus additional development costs would be extremely low in comparison to restarting the process with SoundExchange or another developer.

Due to the variable nature of the number of services, the number of unique plays by service and possible other administrative costs for data that is not currently available for collection by digital means, specific costs are difficult to ascertain. It is very apparent that given the continued growth of the digital transmission of music, the efficiency created by this type of web-based service has an immediate and long-term benefit to broadcast Services, Collectives and rights holders. streamSerf.com is currently set up to allow for access by any and all of the above groups.

Is it more efficient for the Collective to develop a system to report and deliver the records of use and make that system available to the Services?

It is anticipated that the system of collection requires collaboration from all involved parties. In order to create the most standardized, efficient and equitable collection model and methods, and based upon streamSerf, Inc.'s existing efforts to market to all of the relevant parties, including Services, Collectives and rights holders, the most efficient method, is in fact, through the Collective.

In addition to the particular technical questions presented above, interested persons are also encouraged to supply their views on the following questions of a more general nature.

What further improvements to the reporting regulations can be made in light of recent technological developments, newly available software or substantially reduced costs for certain delivery mechanism alternatives since the promulgation of the interim regulation?

A regulation requiring registration of a http: address by any Service desirous of, or already broadcasting (regardless of broadcaster or audience size) would allow an auditor to ascertain the total number of Services to monitor. The cost to the Service of allowing census reporting would likely save tremendous administrative costs over the current system. This additionally enables the Collective an automatic registration of broadcasters rather than having to seek them out for registration.

Obviously given the global availability of internet streams, it may be difficult to enforce internationally.

To what extent are such improvements currently being utilized in negotiated agreements between services and SoundExchange?

Unknown to this party.