

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 WBSU, LICENCEE OF STATE UNIVERSITY OF NEW
YORK, COLLEGE AT BROCKPORT**

WBSU hereby submits comments in the above captioned proceedings. WBSU is a federally licensed Class A non-commercial, educational (NCE) FM broadcast station operated by the Office of Campus Life at the State university of New York, College at Brockport in Brockport, New York. WBSU is staffed by student volunteers under the management of one half-time university administrator that divides his time between station oversight, campus activities and teaching assignments. WBSU operates continuously, 24 hours/365 days per year, and has a compelling interest in the aforementioned proceedings because the station currently streams all of its broadcast programming via Internet.

WBSU 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 WBSU'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 WBSU's programming and system of streaming is in order.

Unlike commercial radio stations and most webcast-only operations, WBSU programs a mix of recorded music in a variety of formats. Under the current rules, WBSU 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 volunteer staff.

However, should the reports of use requirement become ongoing ("census"), as suggested in the NPRM, it's hard to see how WBSU will be able to keep up with the massive compilation of data. Such an effort would certainly require hiring a part-time employee at the cost of many thousands of dollars. As a bona fide non-profit with a primarily educational mission, it's unlikely that financial support for such an increase in record keeping could be found even in a favorable economic climate.

The NPRM will pose another serious problem for WBSU. Currently, WBSU is permitted to submit 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/infrastructure at a probable cost of tens of thousands of dollars – clearly beyond WBSU's limited financial means. Indeed, since much of the data will continue to require manual entry, the difference between the actual times a given piece of music plays and (keyboard) data is entered calls into question whether such a system, once developed,

would be practical in a “live” studio environment. It’s difficult to know how such an as-yet undeveloped application might work. These are serious issues that need to be recognized and addressed as the regulatory framework is updated.

It should also be noted that the current structure of reporting requirements already appears to be burdensome even for rights-holder organization SoundExchange, who has failed to live up to its promise that stations should be provided a receipt upon payment.

In summary, WBSU, like many other non-commercial, non-profit broadcasters, desires to serve its audience in a way that conforms to the many regulatory and statutory requirements that incumbent with our educational and service mission as non-commercial broadcasters. Furthermore, WBSU and similar entities are currently contributing to the performance royalty system, and rights holders are benefiting from those contributions. If the current NPRM is adopted, and small non-commercial operations like WBSU are forced to terminate their streaming, all the stakeholders, including rights holders, will lose.

It is our fervent hope that the CRB will reexamine possible adoption of a one-size-fits all approach to administering statutory royalty requirements in a way that will permit small, non-commercial, non-profit operations that pay only the minimum fee like WBSU 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 for them to improve upon current reporting practices.

Respectfully submitted,

WBSU Radio – Licensee of State University of
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