

crb - WSOU-FM Comments Regarding Docket No. RM 2008-7

From: Mark Maben <mabenmar@shu.edu>
To: <crb@loc.gov>
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Subject: WSOU-FM Comments Regarding Docket No. RM 2008-7
CC: Mark Maben <mabenmar@shu.edu>

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Copyright Royalty Board
Library of Congress
P.O. Box 70977
Washington DC 20024-0977
VIA EMAIL

To Whom It May Concern:

Seton Hall University, licensee of noncommercial FM Class A station WSOU, South Orange, New Jersey (“WSOU”), submits the following Comments in objection to the proposals contained in the Copyright Royalty Board’s (“CRB”) *Notice and Recordkeeping for Use of Sound Recordings Under Statutory License* [Docket No. RM 2008-7]. It is our view that for noncommercial stations paying only the minimum fee, the current reporting and audience tabulation standards should remain in place.

Simply put, the proposed rulemaking represents an unacceptable and unworkable burden upon college broadcasters like WSOU. Should the CRB’s proposal be enacted, it will mean not only the end of WSOU’s Internet stream, but the end of the streams of hundreds of college radio stations across the country. The elimination of hundreds of Internet audio streams can hardly be in the best interests of consumers, artists, music labels, the CRB, SoundExchange or college broadcasters.

If such a doomsday scenario seems far fetched or alarmist, please understand that it is not. The proposed rules are simply too expensive and too labor intensive for a minimally staffed radio station to comply with. For example:

- The requirement to report “Actual Number of Listeners per Song” as opposed to the current “Aggregate Tuning Hours” means stations will have to install systems that can determine how many devices were connected for each song, even if it was only for a few seconds. It will also require systems that can match device connections to play lists. WSOU is not currently equipped for this kind of tabulation, nor is the University’s IT department. Given the current severe national economic recession and the financial restraints it places on higher education budgets, it is not possible for WSOU or Seton Hall University to make the financial investment necessary to fulfill this requirement. Furthermore, as noted below, even if resources were available, we know of no existing technology that makes the accurate reporting of actual number of listeners per song possible.
- The requirement to provide “Census Reporting” is something WSOU cannot comply with due to a lack of staffing and funding. Believe it or not, unlike most of our commercial brethren, WSOU is not programmed by computer. DJs have the freedom to pick and choose the music they play and

play lists are done manually. We know this to be the case at many other campus stations around the country. It would be a fulltime job for someone to report on every single song aired/streamed on WSOU and then input that data into a format of use to the SoundExchange. As noted above, WSOU and Seton Hall University are not in a position to fund additional staffing levels. Indeed, colleges and universities across the country are facing hiring freezes or layoffs. Nor is WSOU in a position to upgrade to music scheduling software (and the hardware to support it) in order to facilitate easier collection of the information necessary for Census Reporting. Even the current reporting standard of two weeks of records per quarter is difficult for many non-CPB, noncommercial broadcasters to meet. Furthermore, given the technical and personnel limitations of college stations, the proposal that stations submit their reports monthly is equally unreasonable.

- WSOU is unaware of any commercially available software that can calculate and provide the information required under the proposed rules. If there is a software program that can help stations fulfill the requirement to report actual performances of copyrighted songs, the broadcasting and webcasting industries do not know about. Even if such software is indeed available, which we doubt, WSOU lacks the financial resources to purchase, install and maintain such software.

From the above examples it is easy to see how the proposed new rules will require WSOU – and many other stations – to pull the plug on the streaming of its off-air signal. We simply lack the capability to meet the new requirements.

Pulling the plug on our Internet audio stream is not something we want to do. Our online listening audience may be modest, but it is nonetheless an important service to those who click on our stream. Our internet stream serves individuals who have difficulty receiving WSOU in the signal shadowed areas of the Passaic Hills or in the concrete canyons of New York City. It is a vital service to Seton Hall alumni who live beyond the reach of our broadcast signal. The stream is monitored by out-of-market potential employers of our graduates and the music label representatives we work with who do not reside in the New York market. While we value all our Internet-only listeners and believe it is important to serve them, the CRB should understand that WSOU's Internet audience, and that of most college radio stations, is so low that it is not economically prudent to budget a significant amount of money to that aspect of our operations.

Surely it is not the intent of the CRB to create a system that forces the closure of hundreds of Internet audio streams due not to a lack of willingness to pay royalties, but because of the onerous nature of recordkeeping and reporting regulations. It cannot be the intent to the CRB to reduce the amount of royalty income to the SoundExchange, which will be the outcome if these rules go into effect. While well-intentioned, the proposed rulemaking has the unintended consequences of reducing the amount of Internet audio streaming and eliminating royalties for copyright owners. This outcome is not in the interest of consumers, broadcasters, webcasters, musicians or record labels.

If the collection of the actual number of listeners per song and complete Census Reporting is deemed essential by the CRB, SoundExchange and copyright owners, then we believe it is incumbent upon them to find a cost-effective method to collect this data. To expect stations with modest, stagnant or declining budgets to absorb the expense of creating the tools to comply with the proposed regulations is unfair.

WSOU and Seton Hall University believe the correct path in this matter is to essentially leave the current rules in place. Noncommercial stations, such as WSOU, that are in the position of only having to pay the minimum annual fee should be allowed to continue to use the Aggregate Tuning Hours

standard and be permitted to continue with the current reporting standard of two weeks of records per quarter. It is the only workable system for us.

We strongly urge the CRB to revise its proposal to eliminate these burdensome regulations. Otherwise, the American public will be the losers in this situation when hundreds of Internet streams go silent because small broadcasters like WSOU are unable to meet the new requirements.

Thank you for your consideration of our concerns. We ask that the CRB take our views into account before finalizing and approving any new regulations.

Sincerely,
Mark Maben

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