

Before the
COPYRIGHT ROYALTY BOARD
LIBRARY OF CONGRESS
Washington, DC

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

COMMENTS OF COLLEGE BROADCASTERS, INC.

College Broadcasters, Inc. (“CBI”), hereby respectfully submits these comments in response to the Notice of Proposed Rulemaking (“Notice”), 73 F.R. 79727 (December 30, 2008) soliciting comments regarding the Copyright Royalty Judges’ (“CRJs”) proposal to revise its “final interim regulations” for recordkeeping and reports of use of sound recordings under two statutory licenses.

As a national membership association of non-profit, student-staffed electronic media outlets, many of which are making or planning to make transmissions subject to the relevant statutes and regulations, CBI is an interested party. CBI has extensively participated in the webcasting proceedings recordkeeping and reports of use since their inception.¹

¹ CBI has filed comments and, where appropriate, reply comments in response to many of the recordkeeping and notice of use proceedings before the Copyright Office and Copyright Royalty Judges. Some of these include the Notice of Proposed Rulemaking, 67 F.R. 5761 (February 7, 2002), Notice requesting written proposals and announcing status conference RM2002-1B, 67 F.R. 59573 (September 23, 2002) and participated in the status conference, Notice of Inquiry RM 2002-1D, 68 F.R. 58054 (October 8, 2003), the Notice of Proposed Rulemaking, RM 2002-1H, F.R. 21704 (April 27, 2005), Supplemental Request for Comments, 70 FR 43364 (July 27, 2005). CBI also participated on the recordkeeping roundtable on May 10, 2002, in response to the request by the Office for participation by those affected by

There is a need to extend the rules that currently allow noncommercial educational stations² (“Educational Stations”), paying only the minimum fee, to continue to report on a sample basis as opposed to the proposed census basis. The proposal for Actual Total Performance (“ATP”) performance reporting is, at best, problematic, if not impossible, for most Educational Stations to report. Further, the proposal for monthly reports of use, with a 45 day window for filing, needs to be modified to accommodate these Educational Stations.

A number of Educational Stations have submitted comments in this proceeding.³ Some of them have given CBI permission to reference their comments in the CBI comments. Accordingly, CBI includes herein some of the comments from individual stations to further illustrate, document and support its position that the current rules are already extremely burdensome and the proposed changes in the Notice are unreasonable and unduly burdensome.

CBI suggests a simple remedy to this situation: Allow Educational Stations that under current regulations only pay the minimum fee to continue to report under the existing rules.

Further, the CRJs should compel SoundExchange (“SX”) to comply with regulations adopted in 2006 with respect to submission of reports of use and the posting

the proposed regulations as published at 67 F.R. 18148 (April 15, 2002). CBI provided testimony with respect to these issues before the CRJs (Dkt. 2005-1 CRB DTRA). By reference, CBI is incorporating our previous comments in these comments regarding the instant Notice of Proposed Rulemaking.

² CBI uses the term “educational” to refer to all Webcasters that are directly operated by, or are affiliated with and officially sanctioned by, and the digital audio transmission operations of which are, during the course of the year, staffed substantially by students enrolled at a domestically accredited primary or secondary school, college, university or other post-secondary degree-granting educational institution, but that is not a “public broadcasting entity” (as defined in 17 U.S.C. § 118(g)) qualified to receive funding from the Corporation for Public Broadcasting pursuant to the criteria set forth in 47 U.S.C. § 396. Further, these Webcasters are exempt from taxation under section 501 of the Internal Revenue code, have applied for such exemption, or are operated by a State or possession or any governmental entity or subordinate thereof, or by the United States or District of Columbia, for exclusively public purposes.

³ It is important to note that most of these stations were not subject to the regulations concerning recordkeeping and reports of use until after December 31, 2005 due to their participation in the noncommercial settlement under the Small Webcaster Settlement Act of 2002 (“SWSA”), which was extended through December 31, 2005 by the Copyright Royalty and Distribution Reform Act of 2004.

of a template for generating reports of use. Finally, the CRJs should compel SX to demonstrate that a large portion of Educational Stations are capable of submitting reports of use and that they have used the data collected to distribute royalties from these stations since 1998. Absent such evidence, there is no proper justification for adopting new rules that would further burden Educational Stations.

BACKGROUND

Since the beginning of recordkeeping and reports of use proceedings before the Copyright Office, CBI has been diligent in bringing pertinent facts before the Copyright Office and subsequently the CRJs concerning the nature of Educational Stations with respect to their ability to comply with proposed regulations concerning recordkeeping and reports of use. *See, e.g., supra* Footnote 1 (describing some prior proceedings in which CBI has participated). Each step along the way CBI has described how most of these stations are fundamentally different from most of the other services in the nature of their operations. These fundamental differences include the non-profit, educational nature of their service, the fact that live broadcast studios that employ native media, such as records, cassettes, CDs and others are still common, if not predominate, along with the fact that the stations are largely comprised of student and volunteer staffs with few or no full time employees.

In order for the regulations concerning recordkeeping and reports of use to remain reasonable, as required by statute,⁴ the defining qualities of Educational Stations must be taken into account. To a limited extent, the current “final interim” requirements have attempted to take the nature of these uniquely situated stations into account.

Unfortunately, CBI must report that it is aware that some stations have already ceased their webcasting activities because even the current standards were either too costly or too burdensome to maintain operations. CBI has also heard of stations that continue to stream despite the fact that they are unable to comply with the current recordkeeping requirements. CBI does not condone noncompliance, but the CRJs should consider that,

⁴ “The Copyright Royalty Judges shall also establish requirements by which copyright owners may receive reasonable notice of the use of their sound recordings under this section, and under which records of such use shall be kept and made available by entities performing sound recordings.” 117 USC 114 (f)(4)(A).

for at least some educational webcasters, noncompliance might be the direct result of overreaching existing regulations. The Notice proposes new burdens on all educational webcasters, which will only exacerbate these problems.

Specifically, three proposed changes are cause for concern: (1) The change from the current sample method of collecting data to year-round “census” recordkeeping, (2) the proposal to require monthly reports of use within 45 days of the close of each month,⁵ and (3) the proposal to eliminate the ability to use aggregate tuning hours (“ATH”) and require the reporting of actual total performances (“ATP”).

Sample vs. Census

The current regulations only require recordkeeping for 56 days per year. Many member stations have expressed to CBI that this level of recordkeeping already presents a large burden on their limited resources due to labor-intensive manual collection, manipulation and accuracy checks. Raising this requirement by a factor of greater than six will likely break the proverbial camel’s back. Admittedly, *some* stations have reported that, in their specific circumstances, census reporting would be feasible; that is not to say that census reporting is reasonable for *all*, or even for a substantial majority. The regulations already allow stations to submit census reporting and CBI encourages those who are able to exceed the requirements to do so.

The CRJs should acknowledge that the programming offered by educational broadcasters, and the technology used to produce these webcasts, differs in critical ways from many of the other services subject to the statutory license. Because Educational Stations in many cases produce programming originating entirely or in part from native media (CDs, vinyl records, cassette tapes, and the like), as opposed to employing computer-based storage systems, the feat of generating reports of use becomes a very labor intensive matter. This is a distinction that CBI has brought to the attention of the Copyright Office and the CRJs time and again, and it is a characteristic that has not

⁵ See proposed 370.4 (c) in the Notice.

changed appreciably since the first recordkeeping proceeding before the Copyright Office. For a service making use of computer-based music storage systems, migration from sample reporting to census reporting might be a relatively minor issue. But this simply is not the case for most Educational Stations, for whom the proposed change in regulations would exponentially increase the existing burden.

When the interim regulations were adopted, the CRJs telegraphed to services that census reporting might one day replace the initial sample reporting. Before the CRJs conclude that all services have been operating under sufficient notice to be now prepared to provide census reporting, CBI suggests that even well-intentioned services have limited power to influence the products the marketplace will produce, and indeed the marketplace has not produced complete recordkeeping solutions to enable Educational Stations to reasonably provide census reports of use.

Reasonable recordkeeping regulations should not force the re-making of an entire segment of services for whom Congress expressly intended the statutory license. Should the proposed regulations be adopted for Educational Stations, however, that is exactly what would happen. In fact, many CBI stations have already modified their operations, at a significant cost of resources, just to comply with the existing regulations. Accordingly, CBI urges that the CRJ not change from the current sample method of collecting data to a year-round “census” recordkeeping procedure.

Monthly Reports of Use and the 45 Day Deadline

Currently, the regulations do not include a deadline for the submission of reports of use. This is likely to be problematic for SX and should be corrected; however, the proposal for monthly reports of use with a short 45-day deadline is logistically problematic, at a minimum, for Educational Stations.

As the attached comments demonstrate, Educational Stations operate in a variety of methods, under different management and organizational structures, and with limited

resources. Many of these stations report that the imposition of monthly reports would be impractical and that the 45 day window for the filing reports of use would require resources that are not available to the stations.

Obviously, the CRJs must establish a deadline for submitting reports of use. CBI suggests that it would be appropriate for Educational Stations who under the current regulations only pay the minimum fee, to submit reports of use at the time that the minimum fee is paid. At minimum, Educational Stations should be provided 90 days after the close of each calendar quarter to submit reports of use if annual reports of use are, for some reason unacceptable.

ATH vs ATP

Despite the comments of the CRJs⁶ in the Notice, stations historically paying only the minimum fee have been properly developing and submitting reports of use with ATH, rather than with ATP. The current recordkeeping regulations provide stations with the option of reporting ATH or ATP.⁷ In the Notice, the CRJs, in a footnote, stated that the ATH alternative was “was phased out as of the end of the 2007 calendar year. *Digital Performance Right in Sound Recordings and Ephemeral Recordings, Final rule, 72 FR 24096 n.33*” (“Rate Determination”). However, the phase-out of the ATH alternative appears to only apply to rate calculations. “Aggregate Tuning Hours (ATH) usage rate *calculation* options, in lieu of the per-performance fee, are available for the transition period of 2006 and 2007”⁸ (emphasis added). Noncommercial stations paying only the minimum fee do not need to calculate royalties and thus have never had the need to determine ATP; therefore, it is incorrect to assume that Educational Stations have previously developed the methodology to determine and report ATP. Changing the recordkeeping and reporting regulations to also eliminate the ability to use ATH would present an unreasonable burden on those stations that continue to use it.

⁶ “For nonsubscription services, such census reporting requires full reporting of the actual total performances of the sound recording for each calendar quarter of the year.” Notice of Proposed Rulemaking, 73 F.R. 79727 (December 30, 2008).

⁷ See § 370.3(c)(2)(vi)(A)

⁸ § 380.3 (a)(2)(iii)

One of the questions asked in the Notice concerns the availability of commercial software to compile reports of use. CBI is aware of no software that would produce ATP for *live* stations, making use of native media as explained above, streaming from their own servers. As discussed in CBI's previous comments before the CRJs and the Copyright Office, even if such software did exist, the numbers produced would be inaccurate and likely attribute performances to non-compensable programming. The comments submitted directly by Educational Stations in this proceeding further demonstrate the lack of any known commercially-available software to solve this ATP problem and those comments stress the problems of accuracy in any generated ATP data at educational facilities due to the nature of their operations.

Additionally, the CRJs should consider the costs to develop solutions in the context of the royalties to be paid by educational services. In fulfilling the statutory mandate to specify requirements for *reasonable* reports of use, the CRJs should not create an environment where Educational Stations are required to expend more financial and human resources than is the value of the royalties to be paid by those services, in most cases \$500.00 per year.

In adopting the interim regulations, the CRJs likely assumed, as did the Register previously, that the marketplace would develop appropriate solutions once regulations were adopted. In the instance of Educational Stations, this simply has not been the case. Because of the great variety in the procedures and technologies used by Educational Stations, appropriate solutions are not simple. Because potential revenues from Educational Stations are, even in combination, small, developers have little motivation to take on the challenge of developing a solution or solutions for this distinct market segment. Complete recordkeeping solutions, developed for other services, have proven to not be economically transferable to a large segment of educational services.

An overarching question underlying the CRJ's instant Notice is, "What has changed since the previous recordkeeping proceeding?" In the context of educational

services, the answer is – perhaps, surprisingly – “Not much.” With this in mind, CBI will not repeat here the exhaustive arguments it presented in lengthy previous proceedings spanning a significant period of time, but CBI reminds the CRJs that all of those issues still stand today. All the great hopes that appropriate solutions would present themselves have not come to fruition, particularly with reference to ATP. The separate comments directly from representative Educational Stations repeat and amplify the same issues previously presented to the CRJs by CBI, clearly reinforcing the contention that the landscape has not changed in a way to support enacting the proposed regulations – at least as they would apply to Educational Stations.

The Collective

SX is currently the collective for receiving royalties and reports of use under Sections 112 and 114 of the Copyright Act. CBI believes the CRJs should compel SX to comply with regulations adopted in 2006 with respect to submission of reports of use and the posting of a template for generating reports of use. SX should also be compelled to provide evidence that reports of use from Educational Stations are being used to allocate and distribute royalties.

In April of 2005, the Copyright Office proposed that SX “post on its Web site a template for creating a record of use of sound recordings using Microsoft’s Excel spreadsheet and Corel’s Quattro Pro spreadsheet.”⁹ In July of the same year, the Interim Chief Copyright Royalty Judge noted that “SoundExchange has agreed to allow webcasters to use two commercially available spreadsheets in creating and formatting records of use for each sound recording used under sections 112 and 114 of the Copyright Act. SoundExchange has already posted on its Web site a template for Microsoft Excel and asserts that a version for Correl’s Quattro Pro will soon be posted”.¹⁰ Next the CRJs directed SX “to complete that negotiation with Corel and post the result on its Web site.”¹¹ As of this date, CBI is unable to find the Corel template on the SX Web site.

⁹ 70 FR 21706 (April 27, 2005)

¹⁰ 70 FR 43365 (July 27, 2005)

¹¹ 71 FR 59012 (October 6, 2006)

It has been long permitted that services could deliver reports of use via FTP. “SoundExchange is required to post on a publicly available portion of its Web site instructions for applying for a username, password and delivery instructions. SoundExchange shall have 15 days from date of request to respond with a username, password and delivery instructions.”¹² While the information is present, it is not easy to find on the SX Web site. Further, CBI member stations state that they have followed the instructions for obtaining a username, password and delivery instructions and SX has never replied to those requests – including multiple requests from individual stations. SX’s failure to follow the established regulations belie its repeated claims of the importance of complete data from all services, including Educational Stations. Were SX genuinely interested in obtaining more extensive data from services, one would expect them to show more diligence in enabling Educational Stations endeavoring to comply with the existing regulations to do so. The CRJs should not adopt more strenuous regulations unless and until SX demonstrates that it complies with existing regulations.

Moreover, SX should be compelled to provide services with a receipt, acknowledging the submission of a report of use. Failure to submit a report of use by deadline would put the webcasters using the statutory license in jeopardy of infringing on copyrights. The services should be provided a receipt so they are able to demonstrate that they, in good faith, have submitted the required reports. SX, in its “Guide on File and Reports of Use Delivery Specifications” states that it will “acknowledge receipt of a report of use via electronic mail within fifteen (15) business days of receipt of the report, provided that the Service has provided SoundExchange with a current electronic mail address.”¹³ Educational Stations have reported to CBI that it is routine for them to *not* receive an acknowledgement. SX should be compelled to provide receipts for reports of use that include, in the least: the full name of the service, filename, date of receipt, and file size. The latter will allow the stations to verify that the file was successfully delivered.

¹² 37 CFR 370.3(d)(3)(i)

¹³ See http://www.soundexchange.com/licensee/documents/Reports_of_Use_Delivery_Spec.pdf

Ironically, SX's failure to provide services with a receipt for submitted reports is not as much of an issue in the case of reports submitted by FTP, regulations for which SX has apparently shunned, because services could automatically confirm the successful receipt of reports submitted via such a method, even though it could not document the successful file transfer if it is alleged that the service did not submit a report of use.

Before enacting the proposed new record-keeping rules, the CRJs should compel SX to demonstrate which portion of Educational Stations have been capable of submitting reports of use. It is only through such evidence that the CRJs could determine whether services have been able to comply the existing regulations, before enacting significantly more burdensome requirements. SX is the only entity with possession of this information, and therefore is uniquely able to provide it to the CRJs. Comments filed by individual Educational Stations attest to the difficulties encountered under the present reporting regulations; CBI is aware of other Educational Stations that are unable to comply with the present regulations, but are reluctant to call attention to themselves by filing comments in this matter.

The CRJs should also compel SX to demonstrate that they have used the data collected to distribute royalties from these stations since the 1998 inception of the statutory license. Absent such evidence, there is no proper justification for adopting new, more burdensome, rules for Educational Stations. CBI is unaware of *any* distributions of the royalties collected from Educational Stations under either the SWSA settlement or under the regulations. Given the apparent lack of distributions, the need for the current level of data is hard to justify, much less an increased reporting burden.

Finally, the only argument SX has made in support of an increased reporting requirement – particularly the ATP and census reporting to which CBI objects – has been that such data is necessary for the fair distribution of royalties paid. In the case of royalties paid by Educational Stations, CBI does not believe any royalties have actually been paid for the entire history of the statutory license – even royalties paid under the

negotiated SWSA agreement, which did not require SX to distribute funds on the basis of any reports from the services.

Therefore, CBI respectfully suggest that, before adopting more burdensome reporting requirements, the CRJs require SX to provide information (under oath) concerning the actual distribution of royalties collected by noncommercial stations under the SWSA and 112 and 114, if any distributions indeed have been made, and to further explain, specifically, if and how the reports of use were actually used in the allocation of and distribution of the collected royalties. Until such time as the collective can demonstrate the use of the reports to allocate and actually distribute royalties, any change to the rules as they apply to Educational Stations should not be adopted.

Our understanding is that several commercial services, for a variety of reasons and under various contexts, have reached agreements to provide SX with census reports of use containing more extensive data than what is required by the existing regulations. Such agreements are not evidence of the willingness and ability of *all* services to provide more wide-ranging reports, such as those proposed in the Notice. Indeed, these agreements are evidence of the exact opposite. CBI submits that those services that can readily provide more comprehensive reports have already voluntarily agreed to do so, leaving only those services least able to comply with highly detailed, census reports of use to be subject to regulatory reports of use. All that is to be accomplished by adopting these unreasonable and stringent regulations would be to force out the remainder – services least able to comply, such as educational services – or to unwittingly encourage noncompliance. CBI does not believe that Congress, in specifying *reasonable* reports of use, intended to prescribe regulations that would force out an entire class of services, which would be the likely result should the proposed regulations be adopted.

Published reports describe a settlement reached, under the Webcaster Settlement Act of 2008, between SX and the Corporation for Public Broadcasting (“CPB”) and other entities for the royalties from 2005-2010. It appears from these reports that the settlement also includes provisions relating to recordkeeping and reports of use that

would seem to be less burdensome than those currently in place in the regulations, as well as less burdensome than those now proposed. A large majority of the stations covered by the CPB settlement have many full time employees and financial resources that far exceed those of Educational Stations. It would be illogical and unreasonable to require smaller, non-profit, educationally-oriented, student services to collect and report at a higher standard than the stations covered under the CPB agreement. Further, a savvy negotiator such as SX would not voluntarily enter into an agreement on reports of use that does not meet its needs; if SX needs data from other noncommercial services less extensive than is required in the present or proposed regulations, then SX also does not need such extensive data from educational services. The CRJs should not adopt the proposed additional requirements without first obtaining and considering the reporting requirements contained in the SX/CPB agreement.

Conclusion

The record in these proceedings shows that the existing regulations have been adopted carefully and with great caution in an attempt to not unreasonably burden the services. The Recording Industry Association of America's¹⁴ original proposal for recordkeeping was so exhaustive and contained so many unnecessary elements that the Copyright Office correctly pared down the elements to only those it believed to be absolutely necessary for reasonable reports of use. The Copyright Office tried to balance SX's desire for massive data with the ability of services to comply, "the burdens associated with reporting information cannot be so high as to be unreasonable or to create a situation where many services cannot comply."¹⁵ The CRJs have previously acted with similar caution, "SoundExchange presses for census reporting, but the record is incomplete as to effectiveness of the current periodic reporting requirement."¹⁶

CBI realizes that the proposed regulations contained in the Notice may not likely have a major impact on the large computer-based commercial webcasters. In fact, some of the other entities involved in these proceedings in the past have negotiated settlements

¹⁴ Recording Industry Association of America, which created SoundExchange.

¹⁵ 69 FR 11521 (March 11, 2004)

¹⁶ Rate Determination at 24110

that include reports of use that include more data than is currently required. CBI has reached out to SX in an attempt to also reach a voluntary agreement on royalties and recordkeeping going forward, but has not received any response from SX.

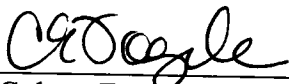
Implementing the proposed regulations without allowing the Educational Stations that pay only the minimum fee to continue reporting as they have would have far-reaching implications that would create a situation where many educational services cannot comply.

Specifically, CBI recommends that Educational Stations that pay only the minimum fee under current regulations be allowed to continue to submit reports of use using the current 14 days per calendar quarter sampling method (56 days per year) and to continue to be permitted to use ATH in those reports. The reports of use should be submitted to the collective with the payment of the annual minimum fee. In order to facilitate this, it may be proper for the CRJs to establish a category code for Educational Stations that pay only the minimum fee.

For the reasons stated above, CBI asks the CRJs to not adopt the proposed rule changes, or in the alternative, should create rules that are specific to the educational noncommercial entities that only pay the minimum fee as CBI has proposed herein.

Respectfully submitted,

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January 29, 2009

Before the
COPYRIGHT ROYALTY BOARD
in the Library of Congress
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NOTICE AND RECORDKEEPING FOR USE OF))
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LICENSE))
_____))

COMMENTS OF WREK ATLANTA

WREK hereby submits comments in the above captioned proceeding. WREK is a student staffed, student funded, non-commercial, no profit radio station located on the campus of the Georgia Institute of Technology in Atlanta, Georgia. We broadcast on 91.1 FM and simulcast the majority of our programming on the Internet at <http://www.wrek.org>. We are an interested party because the proposed rule change would affect our ability to simulcast our programming.

Currently, WREK only pays the minimum required fee for internet streaming. The proposed changes would add an undue burden for our station. We would be unable to comply with the reporting requirements in the proposed timeline, and we would be forced to cease our internet simulcast if those paying the minimum fee are not exempt from the requirements.

WREK employs an integrated digital system for a portion of the broadcasted programming, however most content is aired by an operator playing other forms of media, such as CDs and records. While the digital system is tightly integrated with our

streaming system, most of the programming is recorded through human data entry into the computer or on to paper records. WREK currently has no means of associating the number of listeners to the internet stream with a specific performance of a song.

Also, WREK does currently have a method for recording non-copyrighted material, such as voice breaks and PSAs. Because of this and the fact that we can not associate the number of listeners to a specific song, WREK is currently unable to calculate the actual total performances for our programming without significant human interaction for each recording aired. Using aggregate data, however, WREK has been able to automate the calculation of the aggregate tuning hours as currently required.

The proposed change to census reports would constitute a burdensome amount of record keeping, that our volunteer-staffed station would be unable to comply with in any expedient timeline. Our station would require a significant amount of software development, as well as a complete overhaul of our record keeping procedures to automate the calculation that the proposed reports would require. As a student funded and staffed radio station, this would be a large undertaking, and in all likelihood, would require us to cease our simulcast for some time.

The proposed requirement of reports being due 45 days after the last day of each month also poses a challenge for our station. As a student staffed station, the number of our staff fluctuates with our institute's calendar. During summers and breaks, the proposed reports would require the majority of our shrunken staff's time and effort.

WREK is unaware of any commercial products which would easily bring us into compliance with the proposed changes. Due to WREK's long history, and our emphasis on engineering, many of the systems we have in place were custom built. For any product to truly integrate with our current systems to generate the required reports, it would have to be built in house at WREK. This process would require many man hours from our volunteers as well as compensation for our engineering staff for the product to be finished on time. The project would take our engineering staff at least 200 man hours

to complete at a cost close to \$1500. Currently, our station is unable to spare either of these resources to continue our simulcast.

If these proposed changes are placed into effect, without an exemption for those who pay the minimum fee, WREK will be unable to continue streaming over the Internet for the foreseeable future. This would mean that none of the artists played by WREK would receive any performance royalties from our Internet stream. Also, these measures would deprive 2% of our listenership, close to 300 people a day, from the entertainment and public services we provide.

In closing, the staff of WREK feels that the proposed changes should be amended to include an exemption for those stations that do not surpass the minimum amount of aggregate tuning hours for the current minimum fee. If the changes are implemented as they stand now, WREK will be unable to continue simulcasting our programming via Internet stream. This would put an unfortunate end to our webcast, which has been available for the last 14 years.

Respectfully submitted,

WREK Atlanta

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COMMENTS OF WRKE-LP SALEM VIRGINIA

WRKE-LP hereby submits comments in the above captioned proceeding. WRKE-LP 100.3 FM is a student staffed, non-commercial, non-profit, 100 watt Low Power FM (“LPFM”) radio station, operating from a broadcast studio located on the campus of Roanoke College in Salem, Virginia. WRKE-LP recently started a web simulcast of its on-air programming at <http://www.wrke.org> due to demand from on-campus students who don’t own FM radios – yet have ready access to laptops and PCs, college alumni, and parents of students who operate the station who wish to hear their children “on-air”. We are an interested party as the proposed changes to “Notice and Recordkeeping for Use of Sound Recordings Under Statutory License” will adversely affect the way our station operates.

WRKE-LP is currently paying the minimum fee required by SoundExchange, as our total web streaming output is capped at 50 listeners due to bandwidth limitations. We feel that the proposed changes concerning census reporting as well as the requirement to report actual performances in lieu of Aggregate Tuning Hours (“ATH”) is an undue burden for us. It is the opinion of WRKE-LP staff that small stations paying only the minimum fee should be exempted from the proposed changes, especially since stations like ours rely on minimal staffing for operation and have little or no budget to work with.

Since WRKE-LP just commenced streaming recently, we are in the process of filing our first quarterly report of use, and have come across several areas of concern: 1) creating accurate usage data from station automation systems and human volunteers in a timely manner, and 2) accurate measurement of ATH from web streaming server logs.

While WRKE-LP's automation system log software (OMT iMediaTouch) can export fairly detailed ASCII text reports about which music is played and when it is played, this exported log data has to be manually manipulated several times before it is acceptable for the Excel spreadsheet format used for quarterly reporting to SoundExchange.

Additionally, several student DJs like to play music from vinyl LPs, CDs, and MP3 players/iPods. Although on-air DJs are supposed to manually log this data, complete with time played, artist, title, etc. they sometimes fail to accurately record this information. These "paper logs" must also be manually merged with the data from the iMediaTouch automation system before we can create the final quarterly two-week usage report. This manual process is very tedious and time consuming for each two-week per quarter reporting period. Although there have been efforts to identify software and hardware to help us automate this task, we have so far been unable to identify any products that suit our needs for efficient quarterly SoundExchange reporting. We have contacted SoundExchange, OMT/iMediaTouch, and several other "traffic and billing" software companies to see if they have a complete solution, but there is no solution that we are aware of currently to help us automate this process.

If a commercial software package is created to allow stations to automate quarterly SoundExchange reporting, it would have to be free or very inexpensive as WRKE-LP operates on a very limited budget. Current quarterly use reporting is being done by a volunteer, who has expressed frustration about the entire process, saying it is quite tedious and time consuming to properly gather and format the requested data.

Because the data is being compiled by volunteer staff we have serious doubts about the feasibility of the 45 day reporting requirement – this seems like a short timeline to properly gather and format the requested Reports of Use.

Because of the current troubles WRKE-LP is experiencing with even compiling quarterly reporting per the current requirements, we see no practical way for us to provide census reporting data to SoundExchange on a monthly basis. If monthly census data becomes a reporting requirement, WRKE-LP will have no choice but to terminate its broadcast simulcast stream.

While WRKE-LP staff can compile a general list of Aggregate Tuning Hours (“ATH”) by accessing our streaming server logs, manually compiling the data, and coming up with how many hours people were listening to the stream, we have no practical way of determining actual performances with dates and times that listeners were connected to the stream from our server logs. WRKE-LP staff have been unable to identify effective reporting tools to easily access current ATH requirements, and Roanoke College IT staff say that it would be highly unlikely for our Windows 2003 web server to provide the data necessary for determining actual performances of music with dates and times and number of listeners.

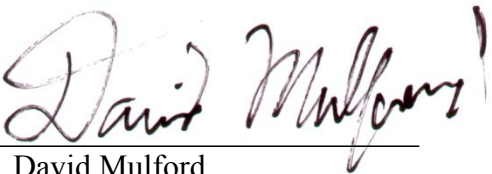
Because the volunteer staff at WRKE-LP is currently under tremendous pressure to meet current SoundExchange reporting requirements, we simply do not see a way for us to meet the even more stringent proposed reporting requirements. If the CRB decides to enforce the proposed changes we feel that it will be the end of on-line simulcasting for WRKE-LP and possibly hundreds of other small non-profit webcasters.

We as broadcasters acknowledge that musicians and publishers should be rewarded and properly compensated for their intellectual property and related works. WRKE-LP already pays a fair amount of money each year to ASCAP, BMI, and SESAC for this intended purpose – each without reporting requirements. Further, WRKE-LP feels the same rules should apply to our broadcast simulcasts if we pay our annual fee to SoundExchange. WRKE-LP feels that current CRB and SoundExchange rules make it difficult enough for small non-profit stations to webcast their programming.

In summary, it is the belief of WRKE-LP staff that in order for our radio station to stay in compliance with the rules, small stations paying only the minimum fee should be exempted from the proposed changes, especially since stations like ours rely on minimal staffing for operation and have little or no budget to work with. We believe that if such an exemption is not made, our station will be negatively impacted and will have to cease our simulcast streaming.

Respectfully submitted,

WRKE-LP 100.3 FM, Salem, VA

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Before the
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_____))
In re))
Notice of Proposed Rulemaking)) RM 2008-7
NOTICE AND RECORDKEEPING FOR USE OF))
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COMMENTS OF WRVU

My name is Jim Hayes and I am the adviser for WRVU radio at Vanderbilt University. WRVU is a non-commercial educational station with an all-volunteer staff comprised of students in leadership positions and some Nashville community members as DJ's. WRVU has an annual operating budget of approximately \$10,000 provided by a combination of student activity fees and local underwriting. WRVU currently streams a simulcast of its broadcast programming.

WRVU is submitting comments regarding the proposed rulemaking for several reasons. First the proposed move from quarterly reports to year-round census reporting would be almost impossible given the detailed nature of these reports, the lack of full time professional staff to dedicate to this task, as well as the lack of funding necessary to provide the technological support necessary for such a year-round census report. In addition, after an extensive search there doesn't even seem to be a viable low cost commercial software option that could be utilized to automate these reports. If the year-round census report goes into effect WRVU will have two choices: 1) hire part-time personnel to compile this report (which is financially impossible due to WRVU's limited budget), OR 2) cease webcasting operations. I would further request that the proposal to

calculate the number of stream listeners per each song be dismissed in favor of the current method that allows reporting of Aggregate Tuning Hours (ATH). WRVU has no means to perform calculations for individual streams per song, and after an extensive review I have found no other commercially available software that would perform that function.

WRVU has never exceeded the current listening levels to incur fees above the \$500 minimum license fee, but with the increased burden being proposed for year-round census reporting WRVU will be forced to cease webcasting, which will result in \$0 in royalties from WRVU to distribute to the entitled artists and it will deprive the public of our public service and entertainment programming via the stream.

In closing I believe the current guidelines that allow for quarterly reporting of 2 week periods is already taxing non-commercial educational broadcasters such as WRVU to the limit of our capabilities. I would implore those involved in this decision making process to allow the use of ATH and quarterly reports for stations paying only the minimum fee, such as non-commercial educational stations like WRVU.

Respectfully submitted,

WRVU

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January 27, 2009

Copyright Royalty Board
Docket No. RM 2008-7
Request for Comments: Notice and Recordkeeping for Use of Sound Recordings Under Statutory License

WTBU submits these comments in response to the notice published by the Copyright Royalty Board on December 30, 2008 seeking commentary on recordkeeping costs and other Reports of Use developments.

WTBU is Boston University's student radio station, broadcasting on the BU cable TV system channel 6 and in selected buildings on campus on either 640 AM or 89.3 FM and online on www.WTBUradio.org. WTBU offers listeners unique music programming along with local and national news and live sport broadcasts. WTBU is entirely staffed by volunteer students under the supervision of a faculty advisor. Currently, due to the limited size of its audience, WTBU pays only the minimum fee.

WTBU submits these comments in support of its request that the CRB not implement its proposed changes regarding reporting to Sound Exchange, or at the very least, exempt from the proposed rules changes non-commercial stations that pay only the minimum fee. In particular, WTBU urges the CRB not implement the proposed changes that would: (1) require monthly submissions of reports of use to Sound Exchange; (2) require the reporting of "Actual Performances" for each copyrighted song that is webcast; and (3) require that every song webcast be included in each monthly report of use.

With respect to monthly submissions of reports of use to Sound Exchange, the burden on small radio stations like WTBU to produce these reports would be overwhelming. WTBU is run by student volunteers, who are already stretched thin keeping up with the station's business operations in addition to delivering quality broadcasts. There is no paid staff who can take on this responsibility, nor has WTBU been able to discover any affordable and effective technological solutions to this problem. Because we are a volunteer student run station, staff changes regularly, and the additional training and monitoring of staff compliance that would be required under the proposed rules would be an onerous task that would redirect limited resources away from the station's core function – delivering quality broadcasts. Further, it is our sense that it has not been shown that the more frequent reports required under the proposed rules would result in a fairer allocation of copyright royalties to the copyright owners. For these reasons, the current quarterly ATH-based reporting requirements should not be changed.

With respect to the proposed change to reporting Actual Total Performances, commercially available hardware and software does not permit calculation of this metric. Since the ATP metric cannot be computed accurately, generating these kinds of reports would not produce reliable information and, therefore, would not improve the quality of information provided to Sound Exchange, calling to mind the trite but true adage, garbage in, garbage out. How would copyright owners benefit from that?

With respect to the proposed change to census reporting, again the increased manpower required to collect, integrate and format the required data is not available to a small, volunteer student run station, particularly small stations like WTBU whose broadcast range is so limited. The new reporting requirements would essentially require the addition of a staff member with database programming skills and webcasting technology expertise.

Comments of WTBU

This is simply not feasible.

WTBU urges you to look at the big picture in evaluating the proposed rule changes. It does not seem likely that they will result in any real benefit to copyright owners, and the burden they will place on college radio stations is staggering. Indeed, it is not unlikely that, given the probable costs of compliance and the unavailability of increased funding in these dire economic times, the effect of these changes will be that many stations may need to stop webcasting. That would be a most unfortunate result.

WTBU urges the CRB not to implement the proposed changes discussed herein, or, in the alternative to exempt from the proposed changes all non-commercial stations that pay only the minimum fee.

/s/ Kathleen Farrell

On behalf of WTBU

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In re)	
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Notice of Proposed Rulemaking)	RM 2008-7
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NOTICE AND RECORDKEEPING FOR USE OF)	
SOUND RECORDINGS UNDER STATUTORY)	
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COMMENTS OF WCSB 89.3 FM

WCSB hereby submits comments in the above captioned proceeding. WCSB is Cleveland State University's student-run, noncommercial college radio station. We currently simulcast our broadcast signal (89.3 FM) on the web at www.wcsb.org. The station is staffed entirely by volunteer students, faculty, staff and Cleveland community members. We broadcast a diverse array of programming including locally produced public affairs shows, ethnic language shows and various musical genres. We receive a small amount of student activity fees and listener donations to operate. We are an interested party because the proposed rule changes will affect the way in which we operate.

WCSB is submitting comments because the proposed changes concerning census reporting and the requirement to report actual performances in lieu of ATH is an undue burden for our station paying only the minimum fee and that our station should be exempt from the proposed changes.

WCSB's streaming is rather simplistic. Our web server (we host our own website) does not track the content of the audio stream sent out. It basically acts as a relay for the data that is encoded by our broadcasting system hardware. It does not know when a track starts or ends. It just passes the bits of constant data onto whoever attaches to the stream. WCSB is relies on Cleveland State University's network system for listeners to access

our stream. Because of network limitations, we never get close to the minimum ATH and therefore have never have exceeded listening levels above the \$500 minimum fee.

WCSB has not been able to locate any software since 2006 that could be used to compile records of use. We rely on our programmers to manually log every song that is played during reporting periods. Because our music comes from sources other than digital, vinyl for example, we have no choice but to manually input all information required. For a station with an all-volunteer staff, we barely keep up with the quarterly reporting now. Moving to a year-round reporting structure would be impossible for us to complete. We would need to hire a full-time staff to maintain all records and would need to invest in other software to accomplish. On a very limited budget, we could not afford this luxury.

If the new proposed rule changes are implemented, WCSB will not be able to comply and therefore would not be able to continue to offer its programming via webstream. Because WCSB only broadcasts at 800 watts, we would lose listeners, many of whom are CSU alumni. We hope that the CRB takes in consideration the unique nature of small college broadcasters that attempt to stream their signal and exempt stations such as WCSB from the proposed changes.

Respectfully submitted,

WCSB 89.3 FM

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January 29, 2009

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COMMENTS OF Blaze Radio at University of Alabama/Birmingham

Blaze Radio hereby submits comments in the above caption proceeding. Blaze Radio is student-staffed, non-commercial, non-profit radio/web station on the campus of the University of Alabama at Birmingham. We webcast our programming on the Internet at www.blazeradio.org. We are an all volunteer station with minimal support from the University. We are an interested party because the proposed rule changes will adversely affect the way in which we operate.

We are submitting comments because having reviewed the potential rule changes, there is no doubt that if passed in their current form, these changes would place significant obstacles on our volunteers and would more than likely result in shutting our station down completely. Blaze Radio is a small, streaming operation that does not exceed minimum Aggregate Tuning Hours, and therefore we would argue that an exemption from census reporting is a fair a reasonable option for very small, educational streaming operations.

The proposed changes concerning census reporting and the requirement to report actual performances in lieu of ATH is an undue burden for those stations like Blaze Radio paying only the minimum fee and that those stations should be exempt from the proposed

changes. The streaming process for Blaze Radio is accomplished through a hybrid system cobbled together consisting of second-hand studio gear and surplus computers that have been brought to new life as part of the educational challenge of equipping the station. The station does use automation software at times. However, the “home grown” system is not as robust and integrated as the systems deployed at commercial webcasters.

Our programming is logged using both manual and automated processes. We currently log songs, but not voice breaks, PSAs and other non-copyrighted material. To comply with the proposed rules the station would have to abandon live studio webcasts, and the concomitant education value those sessions provide, and process all content through an automation system so logs can be generated. Even so we are not sure that those logs would meet the level of precision dictated under the proposed rules. This would be a burdensome activity for volunteers who are seeking training as webcasters not clerical personnel. As a practical matter, we have found that compliance with ATH is difficult enough without any practical, technical method of generating actual total performance data for each song, much less an accurate one.

The move from quarterly reports to year-round ("census") reports would be not only be burdensome but more than likely undoable. Census reports more than would require the station to hire a part-time clerical assistant and software acquisition (if and when that software for reporting becomes available) just to process census reports. The staff expansion alone, given today's economic situation, along with the 45 day turnaround required for the Monthly reports, would probably silence our operation.

Blaze Radio uses MegaSeg Software, a commercially available automation solution that produces log information that might be satisfactory for a portion of our programming. However, a 100 percent level of accuracy cannot be guaranteed given the manual manipulation of data involved. Webcast material that is not processed through our automation software must be entered manually. Even for the two weeks per calendar quarter that is required under present rules, this is a labor intensive process for our volunteers. We know of no commercially available software solution for our logging.

Because the current reporting strategy has to be supplemented, expanding the reporting period to a census basis would place a severe hardship on our station, one that we likely could not overcome.

Blaze Radio has a budget less than \$10,000 per year. The station sells neither advertising nor subscriptions, and has no revenue whatsoever other than activity budget allocations. The only paid staff member is the general manager who draws a modest stipend. Other budget allocations are earmarked for licensing, equipment acquisition, software licensing and little else. The new rules proposed would likely double our current budget – a request likely to be denied by university officials since they are already grappling with a near 10 percent proration of allocations for higher education. Thus, we would have to stop operations.


Blaze Radio has never exceeded listening levels that would cause our fees to rise above the \$500 minimum. The most recent ATH reports submitted internally for the station show an average of less than 15 listeners per hour average. The increased burden being proposed will cause us cease webcasting, an action that will result in no royalties being collected from our station to distribute, accurately or not, to those entitled and further would deprive the public of public service and entertainment programming, and, perhaps more importantly for an educational institution, would deprive students of a valuable activity intended to provide real-world training in the media arts.

As a new webcasting station, Blaze Radio's volunteer staff finds the current level of regulatory requirement burdensome as is. And this burden comes merely from volunteers coping with sampling two weeks of data each quarter. In all fairness, and with a nod to the intent in which the webcasting initiative was drafted originally, Blaze Radio strongly believes that stations that are paying the minimum licensing fee should be exempted from the new census reporting regulations.

Therefore, we are requesting an exemption for ours and other stations that pay only the minimum fee with respect to the proposed changes from sample to census reporting and allow the use of ATH instead of per performance.

Respectfully submitted,

Blaze Radio

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January 23, 2009

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Notice of Proposed Rulemaking)) RM 2008-7
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COMMENTS OF SCAD Radio

These comments are submitted on behalf of SCAD Radio, the Internet radio station at the Savannah College of Art and Design in Savannah, Georgia. Our station is entirely student run and operated following a noncommercial model. SCAD Radio is staffed primarily by student volunteers, with a handful of students receiving small monthly stipends.

We are an interested party in the proposed rule changes for a number of reasons. First, the changes will induce a significant administrative burden, which we are currently unequipped to handle. Also, the proposed changes are incompatible with both our operational situation and our educational programming philosophy and would require the purchase and deployment of technology that to our knowledge does not currently exist. Ultimately, the proposed requirements threaten the very existence of our educational program.

The proposed requirement to report actual performances instead of aggregate tuning hours is particularly troubling because our station is operated by student volunteers, who play a wide variety of music from different formats including compact discs, vinyl

records and even cassette tapes. Unlike large commercial Web casters that have integrated operations linking recordings and streaming data, SCAD Radio is more closely related to an older radio model. Our students play music from native media and follow a programming philosophy that encourages them to present a diverse array of music with special emphasis on emerging and innovative artists and culturally significant recordings seldom heard elsewhere. Stations such as ours, which pay the current minimum fee, should be exempt from the proposed changes. This would allow us to continue providing dynamic, entertaining and educational programming for our listeners and preserve important educational opportunities for students.

SCAD Radio's Web stream is fed directly from the analog output of our mixing console. Additional data is not embedded in the stream. As described above, this makes our station different from larger Web casters who have completely digital playback and streaming environments. And, as described above, the console receives input from a variety of playback devices. Our student volunteers are required to manually log the songs they play, but do not log public service announcements, voice breaks, news updates and other content that does not contain copyrighted material. It is our belief that the presence of these elements will complicate and likely prevent any accurate reporting of actual performances. We are not aware of any commercially available, affordable solutions that would allow us to accurately collect and report this data. In essence, the proposed changes would require a reporting standard that is impossible to produce. In addition, the move from quarterly reports to year-round "census" reports would bring very negative consequences for student-staffed, educational stations such as ours. It is our understanding that reports would be due 45 days after the last day of each month, an arrangement that will be impractical given our current staffing patterns.

We have made an honest and determined effort to find commercial products to help us comply with the current regulations. As stated above, student staff members manually log information via a Web-based interface. Still, this falls short of a solution for documenting actual performances at a station that features live radio programming played from a variety of media and often selected spontaneously by student staff. Even if commercial

products were available and compatible with our programming and operational circumstances, at present we have very limited annual budget for new software and upgrades to existing software. In addition, much of the computer hardware in our station is surplus inventory that has been retired from campus computer labs. Purchasing new hardware and software to comply with the proposed changes, even if such hardware and software existed, would be difficult for us.

SCAD Radio has never exceeded the listening levels that trigger fees above the \$500 minimum. This makes it especially critical to avoid additional and impossible reporting requirements. Such requirements could necessitate the discontinuation of our Internet radio station, resulting in no royalty payments to Sound Exchange at all. What's more, the proposed requirements would eliminate educational programming and deprive students of beneficial professional and personal development opportunities. Having spent the last decade working with college radio stations, it's the prospect of terminating these valuable educational experiences that is most concerning to me.

To use an analogy from sports, suggesting that the proposed changes are practical for all stations is like suggesting that there are no budgetary, operational or staffing differences between a professional sports team and a small college team competing in a regional athletics conference. Any reasonable person can conclude that the financial, physical and human resources available to a Major League Baseball team such as the Atlanta Braves are infinitely greater than those available to the SCAD Bees baseball team, which competes in the Florida Sun Conference of the National Association of Intercollegiate Athletics. In addition, the purposes of the two teams are much different. In the case of our college's baseball team, players are "encouraged to develop both academic and athletic abilities in an environment where the foremost goal is the successful completion of the college's academic requirements for graduation." Likewise the purpose of SCAD Radio is to provide students with "excellent preparation for successful careers in electronic media and other fields."

Educational, noncommercial stations that are paying the current minimum fee should be exempted from the proposed reporting requirements, in recognition of the limited resources available to these stations and in recognition of the unique and beneficial missions they serve.

Respectfully submitted,

SCAD Radio

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Jan. 28, 2009

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COMMENTS OF WUVT

Introduction

WUVT hereby submits comments in the above captioned proceeding. WUVT is a student-staffed, non-commercial, educational, radio station licensed to Virginia Tech. WUVT broadcasts on 90.7 FM and simulcasts that programming on the Internet at www.wuvt.vt.edu. Housed in the student center, the station is operated by students who are almost all volunteers and four of whom receive small student leadership stipends. WUVT employs no full-time staff members. WUVT has served the community for more than 60 years on a tiny budget. WUVT's university support consists of approximately \$9,000 per year from student activity fees and about 1400 square feet of rent-free space for studios and office. The rest of the station's funding comes from underwriting and community donations. The station's annual budget ranges from about \$26,000 to \$30,000.

We are an interested party because the proposed rule changes will adversely affect the way in which we operate and deprive internet listeners of WUVT's service. WUVT pays the annual minimum fee to Soundexchange for webcasting and provides quarterly ATH reporting. The proposed requirement to report actual performances in a census format in

lieu of ATH would make it impossible for WUVT to comply with the recording obligation.

Summary

1. WUVT, like many other small, educational, non-commercial stations, employs legacy playout methods such as vinyl and tape; and manual logging by DJs.
2. WUVT has found no commercial technology available to create the monthly census reports of actual total performances (ATP) as proposed.
3. WUVT has written its own in-house logging software with manual DJ entry to be able to produce the quarterly reports currently required. Both the lack of precise performance end times and an encoding latency that occurs between the client connection and the streaming software makes it impossible to accurately and fairly produce the precise time-stamping that would be required to report ATP instead of ATH.
4. WUVT calculates that it would take the equivalent of almost 5 continuous years of labor as well as twenty terabytes of storage space to transcribe its library of manual playout media, collected over more than 60 years of the station's history and a significant portion of its content, to digital format.
5. WUVT urges the CRB to take the physical realities of operating a small, non-commercial radio station into account and create an exemption whereby such stations may continue to pay the \$500 annual streaming fee and employ quarterly sample ATH reporting.

Legacy playout media at small stations

WUVT's pre-recorded copyrighted air material is contained in a variety of media, including optical disc, vinyl phonograph, magnetic tape, and hard disk. Playout mechanisms for the former three media, including Denon DNC-635 compact disc players, Technics SL1200MkII turntables, and other devices capable of audio signal reproduction via magnetic tape are all manually operated by the station's airstaff. The metadata for program logging and reception device display is entered into a computer

manually. This is discussed in more detail below. Hard disk playout is achieved using open source and in-house developed software, which can export metadata automatically.

WUVT's streaming and client connections

WUVT provides Ogg Vorbis streams for internet listeners from entirely donated equipment from FM listenership. A single server accomplishes both encoding of the audio into three bandwidth varieties and the handling of client connections. The bandwidth varieties are made available as such to accommodate all types of listener connections, including dial-up connections, still prevalent in the immediate rural areas of the served community just outside the station's FM coverage area. The stream serving software and coding scheme employed are open source. The server is connected to the Virginia Tech network on a public TCP address on a 10 megabit per second Ethernet port.

Logging of programming techniques

Logging of programming, including those items required by law for internet streaming, is achieved by an advanced in-house-developed software suite tailored to the station's operational norm of a variety of playout methods. Called *QuickTrack* (QT), the software includes a MySQL-driven database, a user interface built on PHP and JAVA, and data handling modules rooted in Python scripts. To date, WUVT is the only operation to use this software suite. The user interface includes text boxes for manual playlist entry where necessary items for internet streaming reporting are typed (featured artist, song title, album title, and marketing label). Internal script functions grab time and date data, as well as a count of clients connected to WUVT's internet stream. These elements are then passed to the database where they are stored, to the streaming server where they are made available for display to streaming clients and to metadata mechanism specific to FM air operation such as RDS.

By the data collected, WUVT is able to create reports for the traditional composer royalty agencies for annual reports of on air usage, as well as a *snapshot report* of internet stream usage on a per performance basis. By this data, to date, WUVT's internet audio stream has yet to reach even one quarter the excessive usage ATH figure. Calculations have been made of the WUVT streaming system's performance limitations, and these figures have been tested and verified by both controlled and real-world high-usage scenarios. Indeed, results have revealed that the hardware in place could never *functionally* approach one tenth of the excessive usage figure.

Inaccurate data from manual playout methods

With concern to the proposed total census reporting requirement, the manual data entry model, employed by necessity at WUVT, could not achieve accurate usage data. WUVT's DJs are human beings who are playing songs, telling listeners about the music they are playing, giving weather reports, public service announcements, and other information at the same time they are manually logging performances. They can reasonably be expected to and do log the song they played and the time according to the wall clock in front of them but it is impossible to achieve precise, to-the-second entries of start and stop times. The log entry is made as soon as possible at the commencement of a title, but no indication is entered for the end of the performance. Thus, no account is made for non-performance time during program breaks. In addition, DJs are often transitioning music through a board, which further muddies precise end times.

Inaccurate data from stream encoding latency

Errors in the model are compounded by the *variable* timing factor of stream encoding latency and manual playout device operation working in unavoidable temporal disjoint with manual data entry.

The fix for this problem, as proposed by the recording industry's proponents, involves a totally integrated hard disk playout and streaming system, whereby the stream client

connection data is under constant analysis by the same system dictating playout. In order to be completely error-free, this same system must also account for streaming latency, which has been found by WUVT to be a variable figure dependent on a complex load equation. This equation involves at least the number of connections, the distribution of connections across bandwidth varieties, and total bandwidth usage at the “local” network’s “head-end” (in the case of Virginia Tech, during peak real world stress, multiple OC-X-class connections to several internet backbones and Virginia’s exclusive INET2 educational intranet.), processor load, and possibly other yet unknown factors. But it is not the *network* latency that is of concern here, but rather the load induced *encoding latency* where client connection taxation slows down the transformation of audio information from the input format (be it analog or digital SPDIF, AES/EBU, etc.) to the streaming format. Considering this, even though a client connection to the stream is made during one title, and thus the performance royalty attributed to that work, the actual work decoded and consequently consumed by the client may have occurred further up the playlist. The latent performer is then robbed of his just royalty, which is handed off unfairly to the current artist “on air”. The problem is present also upon client disconnection, where it is not necessarily the case that all data sent to the decoder’s buffer (and logged by the system as subject to royalty payment on the premise that a digital telegram of the work was realized and consumed on part of the client) is indeed decoded and consumed, and as such warranting royalty.

Though it is not known if such phenomena are unique to WUVT’s streaming hardware and methodology, experience suggests that this is not the case. Given this variable nature of streaming latency, it seems questionable that the industry-suggested software and hardware packages, or similar products could produce a *fair and accurate* usage statistic to the industry’s desired resolution.

There must be some kind of active feedback on part of the client to render the census royalty idea as valid enough to warrant the expenses involved in its implementation. A positive acknowledgement of receipt *and successful decoding* is thus required, and to date such feedback is absent in the majority, if not the total spectrum of streaming client

technologies. To mandate such a system abolishes the free market approach to streaming platforms enjoyed to date by many broadcasters. This pushes toward the recently suggested Googleian vision of broadcasting, where traditional uses of RF spectrum are abandoned (in the most recent suggestion, traditional digital television standards throw aside for cognate radio devices aimed at personal information consumption). In this vision, all media is digitally streamed to addressable devices, most of which are mobile and connected to private “public” networks, and thus subject to latency issues yet undiscovered. The merits of such a vision are not contested here, but the precedents for nation-wide (and perhaps global) standard alteration set forth to date cause concern. The cost of mandating such a system falls not on this station then, but on the mandating authority.

Impossible labor and costs to transcribe manual playout methods to digital methods

More specific to WUVT’s operation, costs involved in consolidation of all library media to hard disk playout are relatively staggering in hardware, and incalculable in terms of labor involved in transcribing necessary metadata let alone transforming audio information. Fitting the operational model of system redundancy, some twenty terabytes of data storage would be required across several concurrent devices. While it is likely a matter of time before storage costs are reasonable to the operation, at best, given the growth rate of WUVT’s library, an investment of nearly 5 consecutive years of labor (volunteer or otherwise) would be required to realize the conversion.

Conclusion

WUVT would have no reasonable or even extraordinary way of complying with the proposed changes in regulation to monthly census reporting of actual total performances. The practical effect of such a requirement would be to force WUVT to discontinue its webstreaming service, thus denying internet listeners both in and out of WUVT’s terrestrial broadcast area the service the station provides. WUVT would no longer pay the annual minimum statutory license fee to Soundexchange that it has for several years.

The importance of streaming for the broadcaster lies in the ability to utilize new and innovative methodologies to further the mission of providing public service. Since many listeners within the licensed community make use of and are dependent upon internet streaming of the station for not only entertainment but also information, most notably emergency information, the internet stream has become a vital tool for public service.

WUVT urges the Copyright Royalty Board to preserve access for small, community and educational, non-profit stations to webcasting by exempting stations that pay only the minimum fee from proposed changes from sample ATH to census ATP reporting.

Respectfully submitted,

Jared Thomson, General Manager WUVT
Josh Arritt, former General Manager, WUVT
Kelly Wolff, General Manager, Educational Media
Company at Virginia Tech

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January 29, 2009

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In re))
Notice of Proposed Rulemaking)) RM 2008-7
NOTICE AND RECORDKEEPING FOR USE OF))
SOUND RECORDINGS UNDER STATUTORY))
LICENSE))
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COMMENTS OF WICB (FM) and VIC Radio at Ithaca College

The Ithaca College radio stations in Ithaca, NY hereby submit comments in the above captioned proceedings. The College operates WICB (FM), a class B1, non-commercial, educational (NCE) station, and VIC Internet Radio. WICB is in operation 24/7/365; VIC is Internet-only, and operates when classes are in session. We are an interested party in the above captioned Notice of Proposed Rulemaking since both our student-operated, non-commercial radio stations stream on the Internet. The proposed rule changes will drastically affect the way in which we operate.

Ithaca College Radio is submitting comments because we are certain that if the NPRM, particularly with respect to census reporting and the requirement to report actual performances is enacted, the radio stations at Ithaca College will have to stop streaming altogether. Thanks to the low Aggregate Tuning Hours (ATH) numbers our streams generate, our stations pay the minimum annual fee—\$500 each—to SoundExchange. We are requesting that stations like ours with relatively small online audiences be exempted from census reporting and the requirement to report actual performances. We also request an exemption from the monthly reporting requirement with 45 days to submit the report.

Our stations produce a combined 336 hours of programming per week, yet employ only one full time staff member. Programming is produced by student volunteers and a small number of community volunteers. Census reporting and the requirement to report actual performances in lieu of ATH would be an undue burden on our operation. We are unaware of any commercially available software to aid in the calculation of actual performances. Furthermore, our stations lack the manpower necessary to comply with the newly proposed rules.

WICB and VIC pride themselves on producing quality, innovative programming. That is accomplished by employing several playback formats, including LP and 45 rpm records, CDs and an AudioVAULT digital on-air system. We send the analog signal of each station to an encoding computer that digitizes the signal and sends it to Live365.com for distribution to our online audience. Unlike commercial webcasters with a closed connection between the playback system and the streaming server, the fact that we have a wide variety of eclectic program offerings, making use of various playback formats, makes accurate playlist logging—even under the current rules requiring two weeks per quarter—exceedingly cumbersome and complicated. In addition, our programming is not logged to the second, so determining actual performances of music is simply not possible. Attempting to comply with the NPRM could be a full-time job for someone, but given the current state of the economy, we are not in a position to hire anyone.

Webcasting is a cost center of our radio operation, not a source of income. Any one of the proposed new rules would increase those costs, and it is doubtful that compliance is even possible. Certainly, the addition of the proposed rules would end our streaming activities.

Being forced to cease webcasting would mean the end of VIC Radio. That would affect nearly 40 student volunteers, who are learning the art and science of radio, while allowing friends, family and prospective students to hear their webcasts. Silencing our streams will result in no royalties from our stations to SoundExchange and the artists we support, and would deprive the public of our public service, news, sports and entertainment programming.

We believe the rules should be not be changed in order to allow our stations and others like ours to continue to comply with the rules and continue webcasting. We respectfully request an exemption for stations paying only the minimum fee from the proposed changes from sample to census reporting. We also request that such stations be allowed the use of ATH instead of per-performance reporting.

Respectfully submitted,

Ithaca College Radio

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January 28, 2009

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Notice of Proposed Rulemaking)	RM 2008-7
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COMMENTS OF KBVR FM

KBVR FM is an educational radio station licensed under the Oregon University System that strives to serve the community through the introduction of new music and activities of the community. The station staff is supervised through the Educational Activities Board at Oregon State University (OSU) within the Division of Student Affairs and offers OSU students the opportunity to serve the community through broadcast and by streaming the on air signal over the web. The station is funded by student fee dollars and offers training and on-air experience to over 120 students each term.

We are submitting comments because we are concerned about the number of staff hours and expensive technology that will be required of our educational endeavor should expansion of reporting rules be required.

Our quarterly reports are managed and checked by a part-time employee. Moving to the system required a shift of financing in order to accommodate that recordkeeping. A move from quarterly reports to year-round ("census") reports would prove extremely burdensome and might be financially undoable. The compilation of reports must fall to our part time engineer and requires manual reformatting of records. Completing reports

for a short period of time with several months for completion, allows us to perform the chores during hours when the needed employee is anticipated to be working at the station. Allowing a 90 day window for completions that happen once a quarter would be a challenge, but the expectation that census reporting within a month and a half would likely prove impossible for a station with a budget of less than \$90,000 annually.

We are not aware of any commercial products that allow us to comply with this requirement. Currently, we use a created solution that combines some automation with manual recordkeeping in order to meet requirements. Our current system is too cumbersome to allow us to comply with the proposed changes.

Our computer takes the same signal path that goes over the air. Because we use the University backbone to send out our signal, we are currently limited to 30 listeners at any one time which means that we have never and are for noncommercial stations not exceeding the minimum fee not likely to exceed the minimum fee. for noncommercial stations not exceeding the minimum fee We do separate out programming for which we do not have streaming rights, which is a manual process and creates two separate program logs.

Our programming is not broken down to the second and is logged in a manner that reports all listening without separating out non-copyrighted material which will cause the per-song audience calculation to inaccurately reflect actual song listening by including other program segments. We have not discovered a workable, affordable way to solve the issue Even if we had a solution to the accuracy issue, we are unaware of any software that would calculate the actual performance data, as proposed.

In order to allow 30 listeners at a time to listen to KBVR on the Internet, we pay \$500 annually to the RIAA. We devote at least an hour a week of a 16-hour a week employee's time to creating records, monitoring records and training students to be able to assist in meeting the current requirements. The more frequently such reporting is required, the higher the number of engineering hours required, that number is likely to rise even more

if the turn around time for such reports is short. We do not have money to support increased engineering time and the justification for increased expense is not present based on the small ATH we are capable of sustaining.

KBVR FM believes that for noncommercial stations not exceeding the minimum fee, the reporting requirements should not be expanded beyond a quarterly sample requirement with at least a minimum 90 day turn around for data submission. The requirement for ATH should be retained allow for systems which cannot detail the precise element being transmitted with the exact listening audience.

Respectfully submitted,

KBVR FM

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January 28, 2009

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**COMMENTS OF KCSU, LICENCEE OF BOARD OF GOVERNORS OF
COLORADO STATE UNIVERSITY**

KCSU hereby submits comments in the above captioned proceedings. KCSU is a federally licensed Class C non-commercial, educational (NCE) FM broadcast station operated by the Rocky Mountain Student Media Corporation, for the station licensee the Board of Governors of Colorado State University, in Fort Collins, Colorado. KCSU is staffed by student volunteers under the management of student managers with the advisement of one professional staff member. KCSU 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.

KCSU is currently paying the minimum fee of \$500 annually based on our ATH statistic. Meeting the new standards will be difficult, costly, and labor intensive project, involving manual entry of play data, since much of our recorded music is played live from CD's, vinyl LP records, and via computer. KCSU 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 KCSU'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 KCSU's programming and system of streaming is in order.

Unlike commercial radio stations and most webcast-only operations, KCSU programs an extremely eclectic mix of recorded music in a variety of formats. Program sources include CD's, vinyl LP and 45 RPM records. The station has a combined library of approximately 20,000 albums, and many of our independent shows include ethnic, foreign and specialty music from the hosts' personal collections. This highly diverse programming repertoire and its "live" presentation renders fully automated collection of data impossible, requiring manual entry of artist, title, album, and label information into our computer. In order to hold operating costs within our limited budget, an audio stream of KCSU's programming is made available to the public Internet via a single server utilizing 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 KCSU's website.

Should the reports of use requirement become ongoing ("census"), as suggested in the NPRM, it's hard to see how KCSU 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.

Also, there is no currently available software capable of accumulating and correlating per-song "performance" data. This would make compliance impossible until a suitable piece of software is developed. 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 KCSU'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. Would a studio operator be forced to complete an entire data field before a given piece could be played? 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.

In summary, KCSU, 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, KCSU 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 KCSU are forced to terminate their streaming, all the stakeholders, including rights holders, will suffer.

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 like KCSU 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,

KCSU Radio

January 26, 2009

By: _____
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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

By: _____
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January 29, 2009

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COMMENTS OF KUIW.org

KUIW.org started webcasting in January 2004. It is a student-run radio station that broadcasts from the University of the Incarnate Word in San Antonio, TX. Our primary format is the broadcasting of music. We also broadcast live sporting events. The station is funded currently by a grant that ends in May 2009 at which time the University will fund the station from its operating budget. KUIW has over 50 student volunteers to run the station. We are not a FCC licensed station and have no plans to do so because of the cost factor as well as lack of frequencies.

The following paragraphs are comments about the proposed reporting changes Sound Exchange is asking the CRB to make a decision on.

Currently KUIW.org is reporting to Sound Exchange (SX) with a quarterly two-week report on music that is played. We are using a company to compile the data and we are emailing it to SX. This new proposal of a monthly report will create a heavy burden on our station to comply with. Just the compliance factor alone with the regulations that are in place today creates a problem with what to do and what not to do during our webcasts.

Currently just to comply with regulations our students work on the importing of music into the broadcast computer with the proper data (artist, album, title, record label, etc), ensuring we do not play 3 songs in a row from the same artist, not playing from the same album over a three hour period, and constantly are vigilant for bad tags and data on each song we play. All these requirements have come from SX. This takes up a considerable amount of time for our DJ's and music directors. The cost of these new proposed rules will virtually eat up any stipend I pay students and ensure more time taken away from a true educational experience. We are teaching students in our radio coursework about other aspects of a radio station and just what duties are needed to work in this field. I have had to cut back on their exposure on other operational aspects of a radio station at our university because of the recordkeeping and compliance factor of SX.

It has been our concern since we began reporting data to SX as to why the data is needed? Is the data being used to help musicians create a better understanding of their market? Is the data shared with the talent that performs the music? This has been the most disturbing part of the data collection from a stations standpoint. There really has been no answer from SX on why they deem this data is necessary. What is the purpose of going from a two-week reporting period to a monthly report? I have had more questions than answers from Sound Exchange at this point. What do I tell students when asked these questions?

There is also concern from my fellow college broadcasters as to why this data is necessary as well. Many of them pre-exist the streaming regulations and have expressed concern that current regulations are extremely taxing and some stations have confided that they can't comply with the recordkeeping regulations, but are, nonetheless paying royalties. Making the recordkeeping requirements even more unreasonable and burdensome, as proposed, will likely decrease the number of stations that are able to comply with the regulations. As a result, stations will stop streaming, or stop complying with the rules altogether.

The University will begin funding our radio station beginning in the fall of this year. The current budget takes into account the \$500 we currently send to SX. It also includes a lot of operational expenses including the amount of recordkeeping functions our paid students perform to comply with SX regulations. We also pay a third party to capture this data and provide the reports. I am currently paying a lot from our budget just to keep up with this record keeping. Our university does not ask students to fund this operation or a lot of other things for that matter. Tuition is high enough as it is. It is becoming extremely difficult to justify a cost-benefit factor to my administration about our campus radio station. The buzz and enthusiasm created in 2004 with the start of this operation is still in existence today. Students are learning and working together to create a station that is truly theirs. I would hate to see the loss of this enthusiasm by creating further regulations that are burdensome and more costly to our students and administration. This continued ratcheting up of regulations may very well kill our station altogether.

Respectfully submitted,

KUIW Hank McDonnell

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January 27, 2009

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COMMENTS OF KTRU

KTRU, the student radio station at William Marsh Rice University in Houston, TX, hereby submits its comments in the above captioned proceeding (“NPRM”). Our staff is comprised of student and community volunteers, along with the aid of 2.2 Full Time Equivalent professionals. Our operations are supported by student fees. KTRU broadcasts locally with an FM license and simulcasts its programming on the Internet. KTRU is an interested party because the NPRM, if enacted, would have a direct and substantial impact on our operations.

KTRU is submitting comments because the proposed rule changes would adversely affect our ability to continue to offer our unique programming to audiences and likely require us stop streaming until we are able to find a reasonable solution, if any, to the new requirements proposed in the NPRM. We will delineate specific concerns we have with the proposed rule changes in the body of our comments.

It is our belief that we are not alone in finding your proposal to be unreasonable for the vast majority of college stations. With that in mind, we suspect that there is a simple solution. Exempt college stations which pay only the annual minimum fee from

the proposed changes. KTRU does not object to the proposed category code changes and requests that a code be designated for stations that are exempt from the changes proposed in the NPRM.

KTRU Operations

As previously mentioned, KTRU is an FCC licensed broadcasting facility. The majority of our broadcasts are programmed live, by volunteers in a studio. We do not use computers to select or play songs during our live programming. Live programming is supplemented with an inexpensive automation system, which was purchased outright (no annual fees). The automation system is used when volunteers are unable to be in the studio and is not used to replace volunteers.

Our programming is then sent to our broadcast facilities and our streaming encoders. In order to make our audio as widely available as possible, given our fiscal restraints, we encode our programming with free products from Real Networks (Real Producer), Microsoft (Windows Media Encoder) Microsoft and AOL (Shoutcast). The encoded audio is then sent across the campus intranet to the Rice University IT department, which hosts the required servers. Due to the small size of our audience, KTRU does not incur any expenses for the use of the servers or bandwidth.

KTRU collects data concerning the programming chosen by the volunteers via an application that uses Lotus Notes as its platform. This application was designed by a community volunteer. DJs using this application manually enter the song title, artist, album and record label into an on-screen form. This data is compiled into a file. The computer that generates the automated programming also compiles a file with the required data.

Reports of use are generated by manually combining the contents of the files generated by the custom application and the automation system. The new file is then scanned for missing, incorrect and corrupt data. Additionally, the file is scanned for

entries that obviously do not pertain to the 112 and 114 statutory licenses. This data is then copied and pasted into the excel template provided by SoundExchange. Then all of the redundant fields, such as the name of the service, transmission category, aggregate tuning hours and the channel are manually entered. The report is not complete, because the ATH figure has not yet been calculated.

In order to calculate ATH, raw server logs are then obtained and placed into the proper folders for parsing by the custom application previously discussed. Due to the differences in how the servers offset time from Greenwich Mean Time, the logs need to be manually adjusted. The software used to generate ATH is then configured and run. Often the resulting reports generate data that is obviously flawed. This most often occurs due to configuration issues or the manually adjusted logs being improperly adjusted. The application to determine the ATH is then re-run. Once we are satisfied that the resulting ATH number is reasonable and, in our best judgment, as correct as possible (see next section), the ATH data is added to the SX template.

We believe the amount of resources required to complete the reports of use are borderline unreasonable, particularly when coupled with the fact that we pay the minimum fee and are unaware of any distributions of the royalties we have paid to date.

ATH is Imprecise, but Achievable for KTRU.

Actual Performance Data is NOT Achievable and Inaccurate.

At present, the regulations require KTRU to calculate ATH. We are aware of no commercially available software that will produce this data for us. As briefly described below, the ATH figures are inaccurate in that they cover activities that are unrelated to the section 112 and 114 licenses. Even if commercial Actual Performance Data software became available that would interface with our logging system and the three different servers used, it would not solve the problems we already have with accuracy.

Again, we are not aware of any commercial software that would provide us with ATH, much less an accurate ATH that pertains solely to 112 and 114 uses. Even so, the regulations require us to report ATH. We use a program written and provided by a professor at another campus. This program is not user friendly, as it does not contain a graphical user interface, requires manual configuration and access to raw server logs. Further, the software does not provide us with ATH that is specific to our streams; rather it includes all streaming activity on the servers, over which KTRU has no control.

In addition to the known overstatement of ATH, due to unrelated activities on the streaming servers, we have no means of separating non-musical programming from musical programming when generating ATH. Not insignificantly, the ATH produced includes Public Service Announcements (PSAs), talk between songs, live performances that are not covered under 112 and 114, and programming that contains no music, such as news and sporting events. The Rice University baseball team is one of the best collegiate teams in the country. It has repeatedly won Division 1A conference championships and appeared in the college world series. These events are carried live over the air and on the Internet. By multiples of 100, or more, these championship events eclipse our normal programming in terms of users, yet these events are counted when determining our ATH.

Even if commercially produced software were available to calculate Actual Performance data for KTRU, it would not produce accurate results due to the fact that the data about the sound recording is entered manually and there is nothing that distinguishes programming segments covered under the statutory license from those that are not, such as those identified above. It is not uncommon for KTRU volunteers to forget to input into the computer the fact that an athletic event or live concert has started. If KTRU was able to locate reasonably priced software to calculate Actual Performance Data, all of the data collected during a 2-5 hour event would be attributed to the last song entered by the volunteer. In a less gross comparison, we picked an hour at random from this past week and compared song data reported through our system against the actual song data. Not surprisingly, not one reported song length matched the actual song duration. This was expected due to the manual input of data by DJs, which in our live studio setting, is

unavoidable. Some of the discrepancies were relatively small and others were minutes apart. Further, we would expect the clocks from the various computers to not drift at the same pace or even direction, which would further reduce the accuracy of data.

None of the above accounts for the delay in time between when the song begins playing in the studio and when the device connected to the server is actually able to reproduce the audio or when users pause the live stream.

In short, KTRU finds the proposal to report actual performances to be something that it would not be capable of producing because we are not aware of any commercial software that even attempts to address the calculation of Actual Performance data. If somehow that problem were solved, with a reasonably priced solution, the end result would be highly inaccurate and the burdens associated unreasonable. Because manually entered data is not reliable, our software is incapable of distinguishing between 112 and 114 content and that which is not, and the server logs and the “playlist” logs would still provide inaccurate results due to buffering, clock differentials in the computers and end users pausing the stream.

MONTHLY REPORTS ARE NOT REASONABLE

The Notice proposes that services supply SoundExchange (“SX”) with monthly reports of use within 45 days of the end of the month. Currently the regulations do not impose a deadline for the submission of reports of use. Obviously, the lack of a deadline is problematic for SX and unacceptable; however, the proposal to require reports of use from stations paying only the minimum fee on a monthly basis is unreasonable.

Students are provided with breaks between academic years, and semesters. These breaks often include extended periods of time, including the summer recess. This year, our summer recess runs from April 17, 2009 through August 24, 2009, a period of 130 days. Obviously the proposed intervals and deadlines do not account for stations like KTRU that aren’t fully staffed throughout the year.

At best, we might be able to comply with quarterly filing intervals, but only with a 90 day deadline as opposed to the 45 day deadline, but not without dedicating a volunteer to handle this requirement. At the moment, we, like other college stations, are having a hard time filling all of our shifts, much less soliciting a volunteer to complete monthly reports.

We are unaware of how SX uses ATH to distribute royalties based upon the minimum fee. We question the need for the frequency of data, particularly since we are unaware of any distributions of royalties based on what has or has not been submitted.

We expect that, due to the student volunteer nature of KTRU, we will not be able to comply with the requirement to submit reports of use on a monthly basis, particularly during breaks. Based upon our discussions with other college stations, we are not alone, which suggests that the proposed requirement is unreasonable for stations like KTRU. It is clear that the statute requires for recordkeeping and reports of use be reasonable.

KTRU also recognizes the clear need for a deadline to submit reports of use. Given the above, KTRU would agree that an annual report of use, within 90 days of the end of the years would be reasonable and that stations able and wishing to submit more frequently be allowed and encouraged to do so.

Census Vs. Sample

KTRU understands the desire of the copyright owners and performers for census reporting. This would obviously capture more performances than the current sampling method. However, given the little information provided by SX concerning the allocation *and* distribution of royalties collected from minimum fee only stations, we don't know that the intended recipients will actually benefit. Thus, the proposed requirement to change from sample reporting to census reporting comes into question, as it will certainly

produce additional costs to KTRU, and undoubtedly dilute the pool of revenues to be distributed.

The need to impose additional burdens on KTRU must be weighed against any potential benefit in order for the proposed rule to be reasonable. It does not appear to be clear that there is a demonstrated need for the proposed rule with respect to student stations that comply with the current regulations and pay only the minimum fee.

SUMMARY

We believe our status as a live student station, operated by volunteers, makes us distinctly different from the commercial webcasters that are computer operated with all music stored on computers and meta-data incorporated in the audio files in a way that makes basic data collection a simple matter. The recordkeeping rules must not try to impose a “one size fits all” requirement that would exclude KTRU or other stations like KTRU due to the nature of our operations.

The only software we know to be available (which is not a commercial product) to calculate ATH does not differentiate between non-compensable listening and the compensable listening. The NPRM proposes changes that will require KTRU to abandon the only software it knows of for reporting ATH in favor of unknown software to inaccurately calculate actual performances. We consider the proposal to require KTRU to calculate “performances”, unreasonable and unjustified.

The proposal to require KTRU to file monthly reports of use is also unreasonable because it, like the other proposals, attempts apply a “one size fits all” requirement on disparate parties, including student operated stations that operate at institutions with summer and winter breaks.

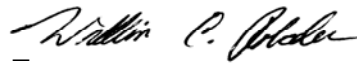
In summary, KTRU respectfully requests that the CRB exempt stations that pay only the minimum fee from the proposed rule changes, as they pertain to census

reporting, actual performances and monthly reports of use, as they impose additional and unreasonable burdens on those stations with no demonstrated benefit. We specifically request that the “final Interim” rules be adopted for minimum fee paying non-commercial stations such as KTRU, with one change. We propose that stations that fall under the proposed exception be required to submit reports of use within 90 days of the end of the calendar year.

Respectfully submitted,

KTRU

By:



—
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January 28, 2009

Before the
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Washington, D.C. 20559

In re)	
)	
Notice of Proposed Rulemaking)	RM 2008-7
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NOTICE AND RECORDKEEPING FOR USE OF)	
SOUND RECORDINGS UNDER STATUTORY)	
LICENSE)	
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**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
New York, College at Brockport

By: _____

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January 28, 2009

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LICENSE))
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COMMENTS OF WJCU, LICENCEE OF JOHN CARROLL UNIVERSITY

WJCU hereby submits comments in the above captioned proceedings. WJCU is a federally licensed Class A non-commercial, educational (NCE) FM broadcast station operated by the Communication and Theatre Arts Dept in the College of Arts and Sciences at John Carroll University, the station licensee, in University Heights, Ohio. WJCU is staffed by student and community volunteers under the management of one full-time university administrator that divides his time between station oversight and teaching assignments. WJCU 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.

WJCU is currently in substantial compliance with statutory performance royalty requirements, such as filing Reports of Use to SoundExchange and paying the minimum fee of \$500 annually based on our ATH statistic. Meeting the current standard has been a difficult, costly, 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. WJCU 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 WJCU'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 WJCU's programming and system of streaming is in order.

Unlike commercial radio stations and most webcast-only operations, WJCU programs an extremely eclectic mix of recorded music in a variety of formats. Program sources include CD's, reel and cassette magnetic tape, vinyl LP and 45 RPM records, and even 15" transcription discs. The station has a combined library of approximately 20,000 albums, and many of our independent shows include ethnic, foreign and specialty music from the hosts' personal collections. This highly diverse programming repertoire and its "live" presentation renders fully automated collection of data impossible, requiring manual entry of artist, title, album, and label information via a third-party online data aggregation system (RadioActivity). That firm has also filed comments in this proceeding, pointing out that they are unable to provide an ATP statistic for their clients with technology currently available.

In order to hold operating costs within our limited budget, an audio stream of WJCU's programming is made available to the public Internet via a single server utilizing 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 WJCU's website via a feed from the third party aggregator.

Under the current rules, WJCU 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 volunteers. Maintaining a contract for the maintenance of our third-party play data aggregation systems has also imposed a significant additional operating cost.

However, should the reports of use requirement become ongoing (“census”), as suggested in the NPRM, it’s hard to see how WJCU 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. Also, the change from the non-statutory 90-day reporting deadline currently requested by SoundExchange to a 45-day statutory reporting deadline would reduce the flexibility WJCU currently has to inspect that data for accuracy.

The NPRM will pose another serious problem for WJCU. Currently, WJCU 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 “performances”(ATP) 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 WJCU’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. Would a studio operator be forced to complete an entire data field before a given piece could be played? 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. Under

that organization's current published guidelines, reports of usage are supposed to be confirmed upon receipt. Yet it has been the experience of WJCU, 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.

In summary, WJCU, 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, WJCU 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 WJCU 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 like WJCU to continue to stream their unique and diverse programming via the Internet, paying the current minimum fee 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,

WJCU Radio – Licensee of John Carroll University

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January 26, 2009

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Notice of Proposed Rulemaking)	RM 2008-7
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NOTICE AND RECORDKEEPING FOR USE OF)	
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COMMENTS FROM WKNC-FM

WKNC-FM, offers these comments on the Copyright Royalty Boards' Notice of Proposed Rulemaking (Dec 30, 2008, 37 CFR Part 370, Docket No. RM 2008-7). WKNC is a student-run non-commercial radio station operating under Student Media at North Carolina State University. We broadcast at 88.1 FM and simulcast our programming online at wknc.org. We are an interested party, as these proposed rule changes will impact the way WKNC operates.

Because of our relatively small audience, WKNC currently pays only the annual minimum fee for non-commercial webcasters. The proposed changes concerning census reporting and the requirement to report actual total performances instead of aggregate tuning hours would be an undue burden on our small station. We also have concerns about the 45-

day proposed deadline for filing reports of use on a monthly basis.

WKNC currently logs its playlist using a combination of automatic and manual entries. Every song played from a CD or LP must be manually entered by a volunteer student DJ. While we do our very best to ensure accuracy in our reporting, it would be impossible to provide a 100% accurate report of our weekly playlist. It is currently up to the station adviser to compile the two-week playlist required for quarterly reports of use. This is an important, but burdensome, task that takes between five and eight hours each quarter. The proposed changes call for census reporting, a report of each and every sound recording played on our radio station. While we respect that census reporting will present a more accurate report of use, we believe the two-week period currently required is sufficient. Even performing rights organizations ASCAP, BMI and SESAC only require representational samples. The Notice of Proposed Rulemaking states stations have had ample time to familiarize themselves with the reporting requirements and make adjustments to comply with census reporting, but a non-commercial radio station operated by students, like WKNC, does not and likely never will have the time or expertise required to allow census reporting.

Our second concern is with the proposed change to require reporting of actual total performances rather than aggregate tuning hours. Our log file shows thousands of one- or two-second connections by bots and spiders, programs or automated scripts that connect to the stream but do not represent an actual listener. Counting every connection regardless of

length would artificially inflate the number of total performances, while aggregate tuning hours represents actual time listened to the station. Our station's stream is set up in-house and has no connection to our logged playlist. To even attempt to provide an accurate number of actual total performances, we would need to manually log the start and stop time of each sound recording and then compare those times to the streaming log. For students just learning radio operations and making sure they press the right buttons, they simply do not have the capacity to log start and stop times. We have a mechanism to count the current number of streaming listeners, but accounting for constant connects and disconnects from spiders and bots for every second of every day is an unrealistic and an undue burden for a station of our size and circumstance. We simply do not possess the resources to calculate actual total performances and are not aware of any commercially produced software to accomplish this task.

Finally, WKNC has attempted to file its quarterly reports of use within 45 days of the end of each quarter. On more than one occasion, however, we have failed to meet this requirement. We believe a 90-day requirement in which to file reports of use would allow us sufficient time to compile reports of use and calculate aggregate tuning hours for a two-week period.

Our Web stream allows WKNC to reach former students of N.C. State and others no longer in our broadcast coverage area. We are proud to offer this service and strive to comply with the rules set forth by the Copyright Royalty Board in respect to webcasting.

However, we would likely be unable to comply with proposed changes to require census reporting and actual total performances and thus be forced to stop streaming. We urge you to consider exempting WKNC and similar non-commercial, student-operated radio stations that pay the minimum fee from these proposed changes.

Respectfully submitted,

WKNC-FM

January 29, 2009

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COMMENTS OF WONB RADIO

WONB Radio, 94.9 FM, has been in operation for over 17 years on the campus of Ohio Northern University in Ada, Ohio, a small, rural community in West Central Ohio. WONB is professionally managed by one person and student operated, 365 days a year. We air approximately 30,000 public service messages a year for area non-profit organizations. In addition to the public service announcements, we air programming for specific minority audiences including gospel music; a local church service; and a weekly public affairs program.

WONB has been streaming on the internet for almost ten years. Throughout that time, we have obeyed all laws and requirements for streaming, paying our fees on time as obligated. Our internet audience is very small, perhaps 15 to 25 people at a time, primarily during sporting events and our weekly church service. Our web address is: <http://www.wonbradio.net>

We are an interested party because the proposed rule changes will affect the way in which we operate. The new proposed rulings concerning census reporting and the

requirement to report actual performances in lieu of ATH is an undue burden for WONB and other stations paying only the minimum fee (as we do) and we should be exempt from the proposed changes.

Many, if not all, college radio stations, similar to WONB, stream to small audiences. Our internet audience will never be larger than what it is now. We have always met the obligations of RIAA and Sound Exchange but the increase in documenting all of the music we play, year round, will cause us, and other stations, a hardship. The documentation expectations of the music we play, much of which is the music that has been stored in our computer over many years, does not include all of the documentation expected of our station. Some of our music comes from original recordings; some music is out of print; and, some older music never contained the documentation required. We have a volunteer staff with limited funding. If obligated to document all of our music, that is heard by fewer than 25 people an hour, we would have to consider ending our stream. This, I feel, is a disservice to our audience.

Respectfully submitted,

WONB Radio

By: _____

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WONB Radio
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January 26, 2009

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COMMENTS OF WPTS-FM

WPTS-FM is a non-profit, non-commercial, educational Class D FM radio station licensed to the University of Pittsburgh. We also simulcast our programming on the internet at www.wpts.pitt.edu/live, which is a vital component of our operations, particularly in light of our target demographic (high school and college students) and our limited range (10 watts). Aside from a full-time staff advisor and a part-time staff engineer, WPTS-FM is entirely student operated. Its operating budget is funded entirely by student activity fees paid by University of Pittsburgh undergraduates.

We are submitting comments because the proposed rules for recordkeeping are, in our view, onerous and unreasonable, and will create severe hardship for us, forcing us either to eliminate our webstream entirely (resulting in no royalties at all being paid) or, even if we were able to continue webstreaming, to devote such resources to comply that other operations will be truncated or eliminated. We request that small webcasters – those currently paying the \$500 minimum fee – be exempt from the proposed regulations.

Like many college stations, WPTS offers an eclectic mix of music on various media, with operators utilizing compact discs, vinyl, and Mp3, in addition to an automation system for use when running unattended. This creates a great degree of difficulty in accurately tracking what is played on our air.

To mitigate this problem, we have internally developed an electronic logging system which keeps record of all sound files played from the automation systems and allows operators to manually input items played from other sources. However, this does not make complying with even the current regulations easy, for several reasons:

1. The system is designed to capture ALL elements broadcast on WPTS, not just songs. In preparing the reports for SoundExchange, about 15 minutes per broadcast day is spent manually deleting non-song elements from the log.
2. Our automation system – the SS32 – limits what metadata can be entered into each track. Therefore, even if we fundamentally changed the nature of our operation to require all music to originate from the SS32, we still could not simply cut-and-paste the data into the SoundExchange templates. Among other issues, there are only three fields available in the SS32 (Title, Artist, Note) and a very limited number of characters per field.
3. Our logging system is only as good as the people and technology it utilizes. Commonly, operators do not have access to all the required information, make typographical errors, or use abbreviations. Furthermore, occasional network outages will cause us to lose data. Finding and correcting these problems requires a line-by-line review of the logs prior to submission.

We estimate that preparing each day's log for submission to SoundExchange takes two hours of work. Under the current two-weeks-per-quarter regulations, this additional time can be absorbed by current staff. However, should census reports be required, an additional part-time staff member have to be added at a cost – according to University of Pittsburgh staffing requirements – of an estimated \$7650 per year – a significant portion of our annual operating budget, including compensation.

Making this issue more troubling is the divergence between these proposed regulations and the requirements imposed on behalf of other copyright administrators, such as ASCAP, BMI, and SESAC. These administrators ask for, at most, only small amounts of data from radio stations. These precedents demonstrate that the claim that census reporting is necessary for a copyright administrator to fairly allocate royalties is specious.

Further complicating matters is the proposed deadline of 45 days after the last day of each month. Being student-run, WPTS-FM's staffing levels fluctuate with the academic calendar. While the proposed deadline may not be a problem during the Fall and Spring semesters, it would be very difficult to comply with during summers and school breaks.

The proposed technical requirements are no less troublesome. I am aware of no streaming service which offers per-listener-per-song data to its clients. We operate our own streaming server. We are currently ascertaining whether we can parse our logs to comply with the proposed regulations. If so, it would certainly involve hiring a programmer to create a program to calculate this data – another major expense. Even were it possible to ascertain, the accuracy of such data would be questionable. For instance, since only element start times are recorded by our system, the per-listener-per-song data might include listeners who tune in only during unlogged events (such as DJ mic breaks). Those listeners would erroneously be credited to the previous song under our system. To my knowledge, there is no system available for purchase that will allow us to comply with the proposed requirements.

WPTS-FM is a very small operation. We pay only the minimum fees under the current system. Even if we were able to provide accurate numbers of actual performances, the miniscule amount of variance would hardly be worth the burden the proposed requirements would impose. We feel that ATH, for webcasters with such small audiences, is a sufficient metric.

To recap, WPTS-FM believes that small student webcasters paying only the minimum fee should be exempt from the proposed regulations for the following reasons:

1. Census reporting is overly burdensome to small webcasters.
2. The 45-day deadline is not feasible for student-staffed stations
3. The technology to comply with the technical requirements does not exist commercially.

Thank you for your attention in this matter.

Respectfully submitted,

WPTS-FM

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January 26, 2009