

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

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

COMMENTS OF 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.

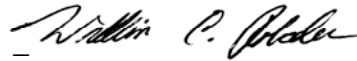
In summary, KTRU respectfully requests that the CRB exempt stations that pay only the minimum fee from the proposed rule changes, as they pertain to census

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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