

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)

**JOINT MOTION OF COLLEGE BROADCASTERS, INC. AND HARVARD RADIO
BROADCASTING CO., INC. FOR ADDITIONAL TIME TO COLLECT DATA AND
TO OFFER COMMENTS ON RECORDKEEPING AND REPORTING**

This motion is filed on behalf of Collegiate Broadcasters, Inc., a national membership association of non-profit, student-staffed radio stations and Harvard Radio Broadcasting Co., Inc., an eleemosynary Massachusetts corporation, which is licensee of student-operated FM broadcast station WHRB (FM), Cambridge, Massachusetts (“WHRB”). These movants jointly request that the time for filing comments in response to the Board’s NPRM, published in 73 F.R., No. 250, 79727 (December 30, 2008) soliciting comments regarding proposed requirements for recordkeeping and reporting of use of digital sound recordings under statutory license, be extended to Monday, March 30, 2009, to allow the small, non-profit webcasters to collect data on the peculiar impact of the proposed rules on their diverse web operations.

CBI and WHRB were fully participating parties in the webcasting royalty hearings before the Board (Dkt. 2005-1 CRB DTRA), now before the U.S. Court of Appeals for the D.C. Circuit, Dkt. 07-1123. In the course of the hearing the movants here presented testimony and documentary evidence as to the distinctive characteristics of the non-profit webcasting operations staffed by college and high school students. These operations are very local and diverse in nature and bear little resemblance to larger commercial and non-commercial operations and programming. The Board received additional testimony as to the peculiar

burdens on stations with these characteristics of applying recordkeeping and reporting requirements more suitable for larger operations with paid staffs. The listenership to music subject to licensing under Sections 112 and 114 of the Copyright Act is relatively limited; the academic witnesses were agreed that the number of instantaneous listeners is only about five. Because of the unique characteristics of these stations, the data and comments to be collected from these stations would not be otherwise duplicated by other comments on the instant NPRM.

The present January 29th deadline, by which attempts to collect data representative of the varying impacts on over a thousand structurally and geographically diverse student-staffed operations must be completed and analyzed, is impracticably short. Despite Notice's characterization that it "propose[s] only one substantial change," the proposed changes have far-reaching impacts. Further the Notice poses a number of detailed questions that are very pertinent to the underlying reasons for the proposed changes that cannot be researched and addressed in the limited period of time presently allowed.

More specifically, the Notice was published on December 30, 2008, in the midst of the winter holidays for the academic institutional services represented by the CBI and WHRB. Many entities having a strong interest in the substance of the notice were first aware of it upon the resumption of academic classes on January 5, 2009, or later. Some have still not resumed classes. This leaves at most only nineteen business days, or fewer, for these parties affected to complete research and preparation of comments to a significant set of proposed rule changes. Moreover, many educational institutions, such as those who are members of CBI, are not in session until mid-January, leaving few hands to conduct the necessary research to respond to the Notice in a meaningful and comprehensive manner. Given the breadth of the proposed changes (discussed below), the time needed to respond includes potentially hundreds of hours of work. Because the Board would benefit by having meaningful and comprehensive comments from *all* members of the public regarding the rule changes proposed in the Notice, including college stations and small broadcasters, the time to respond should be extended to March 30, 2009.

The changes proposed are "substantial" as to these stations and present major technical problems. While on its face the Notice claims to only require "one substantial change" to the regulations, the proposed new rules are, in fact, far reaching and will have multiple effects on

those entities least able to adapt to and absorb the costs of the proposed changes. For example, the proposed rules require all services to provide data 365 days a year, compared to the current regulations, which only require data for 56 days per year. The proposed new rules also remove the ability of college stations, like those who are members of CBI, and other college stations, like WHRB, from utilizing aggregate tuning hours (ATH). These are significant changes to the recordkeeping and reporting requirements. Providing meaningful comment to the Board regarding the real impact of such changes will require inquiries to hundreds of stations and technical analyses of alternatives in order to collect relevant and responsive information regarding the feasibility of implementing such a system.

The Notice properly raises a number of questions seeking further information from the public, however these questions cannot be adequately researched and fully addressed before the deadline to file comments.

Section V of the Notice requests further information and poses ten additional questions on topics covering the topics from commercial availability of spreadsheet software for completing reports and to the technical aspects of delivering such reports. Some questions are far reaching and requiring significant market analysis of software available on the market (or lack thereof). For example:

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

“Would such software produce records of use that are format compatible with Sound Exchange’s data processing system?”

“What are the costs associated with such software?”

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

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

Providing substantive and comprehensive responses to these and other questions posed in the Notice by January 29, the current deadline, would compromise the quality of the responses and lead, unnecessarily, to an incomplete record for the Board's consideration.

For these reasons, CBI and WHRB jointly request that the Board extend the comment period for Docket No. RM 2008-7 up to and including March 30, 2009.

Respectfully submitted,

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