

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

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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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**MOTION of INTERCOLLEGIATE BROADCASTING SYSTEM  
for ISSUANCE of REGULATORY FLEXIBILITY ANALYSES**

This motion for issuance of regulatory flexibility analyses is filed on behalf of Intercollegiate Broadcasting Systems, Inc. (IBS), the nation's first and largest association of academically affiliated broadcasters and webcasters since 1940. IBS is incorporated as a non-profit corporation in Rhode Island. IBS filed comments in prior rulemakings and was a party to the webcasting royalty hearing before the Board (Dkt. 2005-1 CRB DTRA), now before the U.S. Court of Appeals for the D.C. Circuit, Dkt. No. 07-1123. In the course of the hearing IBS presented oral testimony and documentary evidence as to the distinctive characteristics of the non-profit webcasting operations staffed by college and high school student-volunteers. These operations are generally local and diverse in nature and bear little resemblance to larger commercial and non-commercial operations and their programming. In that hearing 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 was only about five. Because of the unique characteristics of these stations, the collection and reporting of the data from these small entities would carry with it a special burden, which the proposed rules appear not to reflect, as required by the Regulatory

Flexibility Act of 1980, as amended by P.L. 104-121, 110 Stat. 864 (1996), and enacted into positive law as 5 U.S.C., ch. 6,<sup>1</sup> and as supplemented by Executive Orders 12866, 58 Fed. Reg. 51,735 (Sept. 30, 1993), and 13272, 67 Fed. Reg. 53,461 (Aug. 13, 2002).

IBS members fall within the definition of small business entities in Section 601(3)-(5) of the Regulatory Flexibility Act. Under Section 601, all IBS members are “small entities”: most are “small organizations,” some are “small governmental jurisdictions,” and a few are “small businesses.” A substantial number of small entities – well over fourteen hundred student-operated radio stations and webcasting operations – are involved.

Sections 603 and 604 of the Regulatory Flexibility Act, as amended, 5 U.S.C. §§ 603-04, require an agency required by any law to publish a NPRM to prepare initial and final regulatory analyses. *See, generally*, the SBA’s “A Guide for Government Agencies – How to Comply with the Regulatory Flexibility Act” (May 2003), available on the SBA’s website at [www.sba.gov/advo/laws/rfaguide.pdf](http://www.sba.gov/advo/laws/rfaguide.pdf).

The Copyright Royalty Board is a government agency subject to the statutory requirement to publish interim and final regulatory analysis statements in accordance with the Act. The CRB is an agency “required by .... law, to publish general notice of proposed rulemaking for any proposed rule,...”, which is the statutory formula that invokes Sections 604 and 605 of the Regulatory Flexibility Act, requiring publication of an initial regulatory flexibility analysis and a final regulatory flexibility analysis, respectively. The agency is excused from

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<sup>1</sup> The legal constraints on the outcome of this proceeding are imposed by the Regulatory Flexibility Act, P.L. 95-354, as amended by the Debt Limit Act, P.L. 104-121, Title II of which is known as the Small Business Regulatory Enforcement Fairness Act of 1996, enacted into positive law as 5 U.S.C., ch. 6. The legal limitations on the outcome of the notice of inquiry are imposed by the Regulatory Flexibility Act, P.L. 95-354, as amended by the Debt Limit Act, P.L. 104-121, Title II of which is known as the Small Business Regulatory Enforcement Fairness Act of 1996, enacted into positive law as 5 U.S.C., ch. 6. The public policy of the United States government, as declared in Congress in Section 2 (Congressional Findings and Declaration of Purpose) of the Regulatory Flexibility Act, 5 U.S.C. § 601 nt, is to require that both governmental regulations and “informational requirements” differentiate in a meaningful way between large entities and small entities, so as “to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.” Section 2(b) then “establish[es] as a principle of regulatory issuance that agencies shall endeavor ... to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions” subject thereto.

The foregoing is not intended to be a comprehensive list of federal policies and laws applying to webcasters of various categories. For example, burdens imposed on webcasting operations associated with government entities – state, local, and tribal -- would also be subject to the policies and procedures of Unfunded Mandates Reform Act of 1995, 2 U.S.C., ch. 25. All of which remain applicable to actions with respect to small entities. Section 606.

publishing regulatory flexibility analyses only upon certification under Section 605 or waiver under Section 608.

The RFA is particularly sensitive to the economic burden on small entities imposed by disproportionate information collection, recordkeeping, and reporting requirements. *See, e.g.*, Sections 603(b)(4) and (c) and 604(a)(4).

The Board already has received sufficient information of record in Dkt. No. 2005-1 and RM-2002-1 to issue an interim regulatory analysis and to offer alternatives to the instant proposed rules that would not be a “disproportionate regulatory burden” upon small entities. SBA Guide, *supra*, at 30; 35-37; Section 603(c), 604(a)(5). The SBA Guide at 35 characterizes as “the keystone of the IRFA ... the description of any significant alternatives to the proposed rule ... that minimize the rule’s economic impact on small entities.”

WHEREFORE, IBS moves the Board to perform the regulatory analyses of its proposal and the less-disproportionately burdensome alternatives as required by law (1) by issuing for comment an initial regulatory analysis (IFRA) relying on the evidence available to it, including the evidence received for this purpose in Docket No. 2005-1 CRB-DTRA, which is identified in IBS’ concurrent motion to incorporate in the record of the instant proceeding, and (2) by issuing a final regulatory analysis statement (FRFA); and to otherwise conform the proceeding to the federal policies and statutes protecting small entities.

Respectfully submitted,

INTERCOLLEGIATE BROADCASTING SYSTEM.

by: 

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Certificate of Service

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IBS

Motion for Issuance of Regulatory  
Flexibility Analyses  
(Docket No. RM 2008-7)

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January 29, 2009

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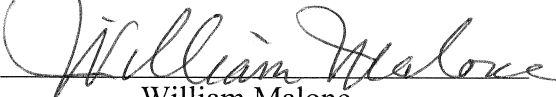
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