

Before the
COPYRIGHT ROYALTY BOARD
Washington, D.C.

In the Matter of)	
)	
Notice and Recordkeeping for Use of)	37 C.F.R. Part 370
Sound Recordings Under Statutory)	[Docket No. RM 2008-7]
License)	
)	

COMMENTS OF KSBJ EDUCATIONAL FOUNDATION
IN RESPONSE TO NOTICE OF PROPOSED RULEMAKING

KSBJ Educational Foundation (“KSBJ”) submits these comments in response to the Copyright Royalty Board’s Notice of Proposed Rulemaking (“NPRM”) published in the Federal Register, 73 Fed. Reg. 79727, on December 30, 2008.

KSBJ is a listener-supported non-commercial religious radio broadcaster in Humble, Texas. It broadcasts on 89.3 FM in the greater Houston area, and simulcasts its broadcast online at www.godlistens.com. KSBJ contributes its views in the interests of small radio webcasters that depend on the availability of affordable, easy-to-use, blanket licenses and statutory licenses to provide the important on-line programming and information offered by a community minded station like KSBJ. The statutory licenses are meant to make it easier for entities like KSBJ to obtain permission for the broadcasting and streaming of music. Yet, increasingly, the myriad of licenses needed, the exponential growth in fees, the extensive reporting requirements, and the labyrinthine copyright statutes and regulations all conspire to make webcasting more and more difficult. As the public increasingly looks to the Internet as a source of music, the legal burdens imposed on webcasters ultimately hurt the American public, who suffer from reduced options in music sources.

KSBJ urges the Copyright Royalty Board not to enact regulations requiring full-year census reporting of webcasting playlists. As most non-commercial stations have limited staff and financial resources, it is already costly and burdensome to compile the required information in the prescribed

format for SoundExchange under the current recordkeeping requirements with a minimum of 2 week period of data every three months. Expanding the required data to reflect the entire year would significantly increase the time and expense needed to compile the data and fulfill the reporting requirements.

The current requirement to report on a per performance basis is already so complex that software applications had to be developed to fulfill the reporting requirements. Many non-commercial stations are unable to justify the cost of these applications or outsourced vendor services. Therefore, many stations have been faced with the decision of whether or not to continue webcasting. To further increase the reporting burdens could compel more stations to stop webcasting.

Furthermore, many of the software applications used by broadcasters to schedule and play the song lists have not yet incorporated all the necessary data fields required under the reporting regulations. Therefore, this data has to be pulled, researched, and inputted manually into the detailed reports sent to SoundExchange, which requires significant man-hours. It is unreasonable to require excessive amount of staff time and money to comply with the license fees and reporting requirements at a time when nonprofits and broadcasters have had to limit important public service functions like news and public affairs due to economic constraints.¹

Based on information and belief, other music collectives, including ASCAP, BMI, SESAC, and Christian Copyright Licensing International, all require only data samples from broadcasters, churches, and other copyright users. These collectives have used data sampling for decades to successfully

¹ Even with the use of software applications to capture and compile the data to calculate the total performances, there will undoubtedly be times in which broadcasters experience hardware or software technical failures, which could result in data being inadvertently lost. Requiring a constant, full-year census would place an unreasonable burden of compliance in the event of such technical failures.

If the CRB does impose a requirement to report more than a quarterly, two-week sampling of data, we urge that the reports still be required to be provided on only a quarterly basis. We note that there is a discrepancy in the proposed rules on the timing of the reports. Section 370.4(c) of the proposed rules states that "Reports of Use shall be delivered on or before the forty-fifth day after the close of each month." Section 370.4(d)(3) states "A Report of Use shall be prepared for each calendar quarter of the year." We urge that that the quarterly reporting obligation be kept, to minimize the administrative burden on webcasters.

distribute royalties to copyright owners. The Copyright Royalty Board has not presented any sound factual basis for why SoundExchange alone would need full-year census reporting to distribute royalties.

As webcasting requirements and royalties continue to grow, more noncommercial and small webcasters will be forced to stop webcasting. The more noncommercial and small webcasters that cease their streaming, the worse off copyright owners will be, especially owners of music that is less popular. Noncommercial and smaller, independent webcasters tend to play more songs that are less popular and not played by larger mainstream webcasters, and add to the diversity of music played in the country. As more small webcasters are forced to stop streaming, this will result in less diversity of music on the web, and lesser-known artists will get less playtime, and therefore, less revenue.

CONCLUSION

Noncommercial and small webcasters already have enough of a burden in complying with existing copyright license requirements. KSBJ urges the Copyright Office not to impose a full-year census reporting requirement, which would be an additional burden on the small staff of many webcasters who are already struggling to continue their streaming activities.

Respectfully submitted,

KSBJ EDUCATIONAL FOUNDATION



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