

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

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In re )  
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Notice of Inquiry ) RM 2008-7  
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NOTICE AND RECORDKEEPING FOR USE OF )  
SOUND RECORDINGS UNDER STATUTORY )  
LICENSE )  
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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 (“NOI”). The KTRU staff is comprised of student and community volunteers, along with the aid of 2.2 Full Time Equivalent professionals. Our operations are primarily 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 devastating impact on its operations.

KTRU is submitting comments because the proposed rule changes would adversely affect our ability to continue to offer unique programming to audiences and likely require us stop streaming until it can find a reasonable solution, if any exist, to the new requirements proposed in the NPRM.

**INTRODUCTION**

KTRU is responding to the NOI because KTRU is a small non-commercial educational entity that, like most other college radio stations, would be impacted by the proposed changes, including census recordkeeping with monthly reports of use within 45 days and the proposed requirement to provide Actual Total Performance (“ATP”) data.

**CENSUS REPORTING**

The NOI asked, “What changes, if any, would be required to comply with the proposed census reporting requirement? What are the likely costs that would be required to move

from the current reporting methodology to one that would be required under the proposal?”

KTRU’s programming primarily consists of live DJs utilizing analog and digital media in the native formats in a traditional broadcast studio using CD players, turntables, tape machines, etc. KTRU also uses an automation system to program the station during hours when student and community volunteers are unavailable. Each quarterly report requires between 8 and 16 hours to prepare due to the need to calculate ATH, research and select the sound recording data, review it for errors, correct errors and then format the reports to comply with the requirements<sup>1</sup>. The current requirements are already a heavy burden on KTRU’s limited resources.

Expanding the recordkeeping requirement from eight weeks per year to fifty two weeks per year would increase the work load proportionately and require more resources than available. Even if KTRU could somehow develop resources to produce the data, it is unlikely that KTRU would be able to produce the reports consistently within the 45 day deadline proposed, even during the academic year and highly unlikely that they would be produced in a timely fashion during the summer and winter recesses when the number of volunteers drops dramatically.

#### ATP

As stated in our previous comments (*KTRU’s original RM 2008-7 Comments (January 29, 2009)*) (“Original Comments”), KTRU is not currently able to calculate ATP and due to the nature of its operations, is not aware of any means of generating accurate ATP data which would not require a dramatic change in the nature of our operations by replacing all of the live programming produced by student and community volunteer DJs. As a student and community volunteer operated and student managed broadcast and webcast station, a decision to replace live programming, even if financially viable, would have a devastating effect on KTRU’s ability to recruit enough volunteers to keep the station operating. Additionally, such a change would dramatically change the manner in which the public and the DJs interact, because the later half of the equation would be removed. Thus, the often times, highly interactive nature of KTRU’s programming would be lost. Further, most of the educational opportunities that KTRU provides students and community volunteers about the world of broadcasting and webcasting would no longer exist.

The NOI requested information about small entities that would be affected by proposed changes (including ATP). In short, the proposed requirement to provide ATP data would require such dramatic changes that the nature of KTRU would be lost to the point that the station itself would likely cease to exist. KTRU has been operating for more than 40 years as radio station and would not consider risking its heritage and future in trying to change its operations to attempt to address the complex issues raised by the proposed requirement to report ATP.

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<sup>1</sup> The methods and software used to develop reports of use at KTRU are provided in more detail in KTRU’s our original comments.

## **Is Live Programming simply a matter of creative choice?**

As discussed *supra*, live programming is not a matter of creative choice, it is, in fact what makes KTRU, KTRU and without live programming KTRU as a broadcast and webcasting entity would likely cease to exist due to the loss of volunteers, inherent changes in the nature of programming, lack of responsiveness to the audience, and the loss of educational opportunities at an institution of higher learning, Rice University.

Putting aside the matter of the fundamental changes that automation would require, which would likely result in the destruction of KTRU and its contributions to the local and Internet community, there are very practical reasons that KTRU continues to manually program our station. KTRU simply lacks the resources to copy its extensive physical music library, consisting of more than an estimated one million individual songs, to a computerized system and an important facet of KTRU's programming and culture is the ability to play anything at any time in order to foster learning about the music.

Many of the DJs program music from their extensive personal collections, often encompassing rare recordings. We have no means to legally or practically digitize those individual collections.

At KTRU, it is all about music. A large portion of the KTRU Mission Statement<sup>2</sup> reads, "to educate the station membership, the greater Houston community, and the students of Rice University through its progressive and eclectic programming in the spirit of the station's non-commercial, educational license. Musically, KTRU programming will endeavor to solely feature genres and/or artists who are unexposed, or unavailable on, the Houston commercial radio dial."

## **SMALL ENTITY EXEMPTION**

The NOI asks if certain small entities should be exempt from the proposed regulations. KTRU believes that, among others, the Copyright Royalty Judges should exclude small educational stations like KTRU that do not more than the annual \$500 minimum fee.

## **CONCLUSION**

The NOI sought to gather information concerning the effect that the proposed regulations contained in the NPRM would have on small entities. The preceding comments in response to the NOI demonstrate that, at minimum, the proposed regulations, without inclusion of the proposed ATP data element would increase the already significant burden placed on KTRU by the existing regulations. The existing regulations are far

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<sup>2</sup> See <http://bang.rice.edu/constitution.shtml>

more burdensome than those placed on KTRU when complying with the requirements to report the use of musical works to ASCAP, BMI and SESAC. The proposal to require census data and monthly reports can not be supported by the resources available to KTRU at this time. If the Copyright Royalty Judges change the regulations in a manner to require KTRU to report ATP data, it will cease webcasting as a matter of survival. Automation is simply not an option at KTRU because of the nature of the operations, as discussed *supra*. For these reasons, KTRU asks the Copyright Royalty Judges to ensure the survival of KTRU and other college radio stations by allowing the use of ATH and quarterly reports for stations under paying only the minimum fee.

Respectfully submitted,

KTRU



By:

Will Robedee  
Rice University  
6100 Main St., MS-506  
Houston, TX 77005  
(Voice) 713-348-2935  
(Fax) 713-348-5199  
Email: WillR@Rice.edu

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