

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

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In re )  
Notice of Inquiry )  
NOTICE AND RECORD KEEPING FOR USE OF )  
SOUND RECORDINGS UNDER STATUTORY )  
LICENSE )

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Docket No. RM 2008-7

**COMMENTS OF TOM WORSTER AND SPINIRON**

**Introductory statement**

Spinitron is a business located in Boston, MA that, since 2003, has provided record keeping and reporting services to radio stations and webcasters including, among other services:

1. A web-based user interface for logging manual playlists,
2. A central database that stores the logs (currently over 1.6 million),
3. Web-based tools for generating compliance reports from data in the database,
4. One such tool generates SoundExchange reports of use in the format specified in the interim record keeping and reporting regulations 71 FR 59010 (October 6, 2006).

Spinitron mostly serves non-commercial and educational radio stations. Many of these stations also provide a simultaneous webcast of their AM/FM program.

Spinitron submitted comments on the Copyright Royalty Board's Notice of Proposed Rulemaking (Dec 30, 2008, 37 CFR Part 370, Docket No. RM 2008-7).

In the following comments I answer questions posed in the Notice of Inquiry on the topics:

1. Consideration of impact on small entities

2. Costs of census reporting to stations using manual logging
3. Comments on entities that do not use automated playlists

### **Consideration of impact on small entities**

The Notice of Inquiry mentions comments from N.A.B. that generating actual total performances reports requires matching of the identity of a song to the number of listeners to the webcast at the moment when that song plays while ATH reporting does not. This matching requires precise time-synchronized integration of the song record keeping with the webcast server logs. Often these systems, which are frequently operated by different organizations, do not allow such integration. Spintron and RadioActivity.fm also pointed out this critical technical impediment to actual total performances reports.

This problem may arise whether automated playlists are used or not.

The section "Consideration of Impact on Small Entities" discusses possible alternatives to mitigate the impact on small entities: *"Moreover, with respect to certain services, the proposal includes an ATH alternative to measuring performances to the extent that technological impediments hamper such a service's ability to measure actual listenership."*

This alternative is critically important. It needs to be based on the technical impediment criterion and be independent of other criteria such as a revenue basis or qualification for the minimum \$500 performance royalty. For example, stations that do not use automated playlists and therefore rely on manual song logging cannot provide actual total performances reports (as explained by N.A.B., Spintron and RadioActivity.fm in comments to the Dec 30 2008 Notice of Proposed Rulemaking) regardless of revenue, technical sophistication or royalty fees.

## **Costs of Census Reporting**

Spinitron's service has supported SoundExchange census reporting since the current regulations came in force. The annual fee for Spinitron service is independent of the client's use of census versus sample reporting. So, with respect to stations that use manual playlists and record keeping, the cost of Spinitron service is a relevant datum in evaluation of census reporting.

The notice of inquiry says that the Judges seek information to support better understanding of costs and benefits of census reporting. The notice says: "Copyright Act to establish requirements by which copyright owners may receive reasonable notice of the use of their sound recordings and under which records of use shall be kept and made available by entities performing sound recordings." The measure of reasonableness must include weighing the annual monetary costs of implementing census reporting against the difference between annual royalty fees paid to copyright holders on the basis of census reports and the fees paid on the basis of the current reporting requirements.

In support of this evaluation of reasonableness, I offer information relating to the additional cost of implementing census reporting by means of Spinitron's services.

In order to evaluate the reasonableness of census reporting, there is a need for similarly absolute (as opposed to relative) and defensible dollar amounts for the royalty fee increase that census reporting will bring to copyright holders. Spinitron has no information to offer on that difference. To date, SoundExchange's claims relating to this difference have been neither absolute nor defensible.

In the following, term "radio station" refers to the kind of entity Spinitron serves. Many of them are small entities, so we have much experience with the kind of entity the Judges expressed

concern to not unduly burden with new record keeping and reporting requirements. These radio stations have the following characteristics in common:

1. They are broadcast services.
2. Some have simultaneous webcasts.
3. They use manual programming.
4. They use manual record keeping.

The additional cost of implementing census reporting by means of Spinitron's services to an individual radio station over and above their current costs depends on the station's baseline of equipment and record keeping methods. I break the radio stations into three classes to illustrate how the costs vary.

Absent from the following is any accounting for the cost of data entry. In order to generate census reports, all performances must be entered into the Spinitron database, labor that the cost/benefit reckoning of census reporting should somehow recognize. Harvard Radio Broadcasters (WHRB Cambridge) gave a quantitative analysis of these costs in their Jan 29, 2009 comments to the Board's Dec 30, 2008 NPRM.

#### A. Stations using Spinitron in any case

Many of Spinitron's clients subscribed to our service before the initial webcasting record keeping regulations were promulgated. Some have no webcast. They choose to use Spinitron for other reasons. For example, many stations want to keep records of what they play in any case and Spinitron is a convenient solution for computerizing this function. Another popular reason is that Spinitron publishes their playlists for the public to view on the web as each performance log is entered by the DJ; this service is very popular with listeners and DJs alike. Another reason is to be able to search and tabulate statistics based on the recorded data. Another is the ability to

browse and search records in various ways. So many (perhaps most) of our client stations use Spinitron regardless of any needs to keep webcasting records.

To these stations, the additional cost of implementing census reporting by means of Spinitron's services relative to their current basis is nil since Spinitron does not charge for the generation of census reports.

### B. Computerized Stations without Spinitron

This class includes those radio stations that in any case have a computer with internet connection in their broadcast booth. The additional cost of implementing census reporting by means of Spinitron's services to these stations is the Spinitron service fee, which varies from one station to another with the average annual fee (over the current clients) being \$630.

Within this class we should recognize that other motivations besides complying with webcast reporting requirements may lie behind the decision to buy Spinitron service. So it is often not appropriate to designate the entire Spinitron service fee as a webcast reporting cost.

### C. Non-computerized Stations

The final class is those radio stations that have no computer in their broadcast booth. To use Spinitron services for record keeping and reporting these stations face, in addition to Spinitron service fees, the cost of the computer, internet service, software maintenance and support costs, and network equipment. These costs will vary from one radio station to another depending on their circumstances. Some will face all the costs themselves while others may be able to use services provided by a host institution, such as the school or college they belong to. Some radio stations may choose to get by with donated used equipment, others not.

For the purpose of the current discussion one could take a budgetary cost that a small business might use to provide a networked computer with operating system and support to an

office worker. \$700 per year is a fair estimate for an ordinary office computer and operating system, amortized over 3 years with 3-year warranty and hardware support contract. Broadband Internet service may add to this if it is not already available in the station.

Once again, there may be other uses for the computer besides logging playlists so it may not be appropriate to designate the entire computer cost as a webcast reporting cost.

### Summary of additional costs of census reporting

While noting the above mentioned caveats of cost variation, fairness of this estimation method, and absence of data entry labor costs, the following table summarizes additional estimated annual costs of implementing census reporting by means of Spinitron's services for the three classes of station described above.

Station class	Additional annual costs		
	Computer	Spinitron	Total
A. Stations using Spinitron in any case	\$0	\$0	\$0
B. Computerized Stations without Spinitron	\$0	\$630	\$630
C. Non-computerized Stations	\$700	\$630	\$1330

### **Entities that do not use automated playlists**

The final paragraph of the Notice of Inquiry concerns entities that do not use automated playlists. These entities are precisely those that Spinitron supports, i.e. stations that require a computerized solution for manual logging because they use manual programming. Such stations sometimes also use automation, for example automation might be used part time when no DJ is available for manual programming. Moreover, such stations might not be small, might have

significant resources and deep technical sophistication but choose to use manual programming nonetheless.

The Notice of Inquiry asks several questions (quoted here in italics) regarding these entities. I answer these in turn below from the point of view of Spinitron serving its clients and understanding its market.

First, I emphasize that the use of automated playlists is not necessary for compliance with the proposed census reporting. The computerized manual playlist logging used by Spinitron clients already supports census reporting.

*"For those entities that do not use automated playlists, what means do they use for complying with current reporting requirements?"*

Some use Spinitron or a similar service which can record playlists manually (as well as by other means) and output reports of use automatically. Other stations use general purpose spreadsheet/database programs or computer solutions of their own devising or paper and pen record keeping -- such stations then compile these records into reports of use.

*"Is all programming on college and other educational stations done manually?"*

Not all. Many stations exclusively use manual programming. Some stations prefer manual programming but use automation when manual programming is not convenient, e.g. overnight.

*"Do such stations currently have automated playlist capabilities in place?"*

Some do while many do not. Of those that do, many have no intention of exclusively operating automated playlists.

*"In other words, does manual programming occur simply as a matter of creative choice?"*

Yes. This is often emphatically and explicitly the case. Often this is written into or implied by a station's mission statement. Additionally, some stations use manual programming as an educational device.

*"What technologies, if any, are currently employed in complying with the current requirements?"*

Services such as Spinitron provide computerized record keeping and reporting tools for stations that use manual programming. The technologies used by Spinitron are commonplace. On the Spinitron server: a database and dynamic web site; and at the radio station: a standard computer with internet connection and web browser.

*"Which companies offer them and at what cost?"*

Spinitron offers the service mentioned above that enables compliance with current requirements. Average annual cost (over current client basis) is \$630.

*"What changes, if any, would be required to comply with the proposed census reporting requirement?"*

No changes to Spinitron would be required. For stations using Spinitron, a small change would be made: the frequency of report of use generation would rise from once a quarter to once a month. Generating and delivering a report of use with Spinitron takes only a few minutes.

*"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?"*

Additional costs of census reporting relative to the current reporting was set out in the previous section of this document entitled "Costs of Census Reporting". For stations already using Spinitron, the cost is zero since Spinitron service already supports census reporting. For other stations, see the data in the previous section.

However, the proposal also includes actual total performance-based reporting, which will be very disruptive for the reasons set out above and in comments from various entities to the Board's Dec 30, 2008 NPRM.

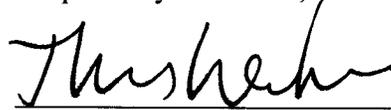
*"Is technology currently available that would permit entities that do not use automated playlists to comply with the proposed census provision?"*

Yes.

*"If so, what companies provide such capabilities and at what cost?"*

Spinitron offers these capabilities. Average annual fee for Spinitron service is \$630 but accounting for this as a specific cost of census reporting is not straightforward and was discussed in the previous section.

Respectfully submitted,



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