

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

In re)
)
Notice of Notice of Inquiry/Proposed Rulemaking) RM 2008-7
)
NOTICE AND RECORDKEEPING FOR USE OF)
SOUND RECORDINGS UNDER STATUTORY)
LICENSE)
)
)

COMMENTS OF WSOU-FM

Seton Hall University, licensee of noncommercial FM Class A station WSOU, South Orange, New Jersey (“WSOU”), submits the following Comments in response to questions raised by the Copyright Royalty Board (“CRB”) in its April 3, 2009 Notice of Inquiry (“NOI”) in the matter of “Notice and Recordkeeping for Use of Sound Recordings Under Statutory License” [Docket No. RM 2008–7]. WSOU is a student-operated, college radio station broadcasting on 89.5 FM and streaming on the Internet. The station, which began broadcasting in 1948, is not automated and is staffed 24/7, 365 days a year by Seton Hall University students, although there are some community volunteers who host programs for underserved audiences in the New York market.

INTRODUCTION

WSOU is an interested party to this matter because as a modest-sized student broadcasting operation, the station would be negatively impacted by the proposed changes. In our comments of January 26, 2009, WSOU outlined how the proposed rulemaking represented an unworkable burden upon college broadcasters like WSOU and, if enacted without modification, could mean not only the end of WSOU’s Internet stream, but the end of the streams of hundreds of college radio stations across the country. WSOU appreciates the opportunity the CRB is granting broadcasters through its NOI to further explore the potential impact of these proposed changes.

IMPACT OF THE PROPOSED CHANGES

Census Reporting

In the NOI, the Copyright Royalty Judges (“CRJs”) ask, “*What changes, if any, would be required to comply with the proposed census reporting requirement?*” and “*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?*”, among other questions. For WSOU, and we believe many other college broadcasters, the changes and costs would be considerable.

As noted in our January 26, 2009 comments, the requirement to report “Actual Total Performances” (ATP) as opposed to the current “Aggregate Tuning Hours” will mean a complete change in the way WSOU currently handles its web stream. Extensive changes would be required in order for WSOU to determine and report actual number of listeners per song in order to comply with one of the requirements of Census Reporting. Our current stream and IT architecture cannot generate the data necessary for ATP reporting. Furthermore, WSOU has been told that no investments will be made in the University’s IT resources to accommodate Census Reporting requirements. Therefore, to comply with the proposed rules changes, WSOU would need to use an outside hosting service that has the technology to measure ATP. Investigations into potential service providers indicate an annual cost to WSOU of between \$5,000 and \$10,000, plus an additional \$1,500 to \$2,500 in start-up investments (new computer hardware, software, labor, etc). The cost of using an outside provider to host our web stream could consume as an annual expenditure nearly 25% of the money allocated by the University to WSOU for operating expenses.

It should be noted that the software of outside service providers is not always capable of fully meeting the reporting standards proposed, nor do providers guarantee the accuracy of the data. Thus, students will need to become the “proof readers” of all reports generated by an outside service, because in the end it is the station that will be held liable for the accuracy of the data.

Additional costs would be incurred by WSOU in order to meet the monthly reporting deadlines. In order to file reports by the deadline of 45 days after the close of each month, WSOU would need to create a new paid position for someone to take WSOU’s handwritten playlists and input the information into a format usable by the SoundExchange. University standards require that work of this nature be compensated, so volunteers cannot be utilized. Another option is to switch over to automated playlists in order to meet the proposed deadlines. Neither option is feasible for WSOU.

At present, there is a hiring freeze at Seton Hall and even when the economy improves, it is doubtful that a staffing increase for WSOU would be approved. On the automation front, the cost of switching over to music scheduling software is significant. We have estimated the cost to be \$30,000 to \$40,000, plus annual fees. Again, because of the fiscal challenges facing Seton Hall and all of higher education during this deep recession, there are no extra resources for us to draw upon to support this purchase. Indeed, WSOU has already seen its funding slashed by the University and this may continue. Thus, we do not see a way for WSOU to fund the resources necessary to meet the monthly reporting deadlines.

In short, the cost to comply with the proposed rules would add tens of thousands of dollars to WSOU annual operating budget. These are expenses that the station currently does not have to pay and nor do we have the financial resources to absorb them.

Automation

A number of questions were raised by the CRJs in the NOI about “automated playlists” and station automation. WSOU is staffed 24 hours a day. Our structure is designed so that at least two people are in the on-air studio at any given time – a DJ and an Assistant Producer. It is a system that has worked well for WSOU for several decades. Because the station is “live” 24/7, programming is done manually and songs aired are written, by hand, on to playlists, which

are kept and reviewed by the Program Director and Music Director, both of whom are students. While labor intensive to utilize, these handwritten playlists are serviceable for short-term reports to entities such as BMI or SoundExchange. They are not serviceable for reporting every song aired on WSOU because of the labor involved in inputting such a high volume of data.

The CRJs wonder how much costs would increase in preparing a Report of Use if the requirement were raised to all songs played from the current two-weeks per quarter sampling period. As discussed above, meeting this requirement would require WSOU to either hire a new employee or switch to automated playlists created by a music scheduling software program. For either option, we note again that the costs would be prohibitive.

Is Live Programming simply a matter of creative choice?

In the NOI, the CRJs pose the question, “*does manual programming occur simply as a matter of creative choice?*” At first, WSOU found this question somewhat puzzling since by its nature, all broadcasting is a creative enterprise. Creativity is a key component to what stations do, and it is something listeners desire. Whether automated or not, virtually all radio programmers try to create the impression that their station is “live.” That some stations choose to use computers and voice-tracking does not make a station that uses manual programming and live DJs any less valid. WSOU does not view its practice of live, manual programming as either superior or inferior to fully-automated, partially-automated or any other type of format. It is simply what we do.

There are, however, a number of very practical reasons for WSOU to continue its long-standing practice of manual programming. First and foremost is the station’s educational mission. The University mandates that WSOU “provide students with an educational experience in a co-curricular activity which is both pedagogically sound and professionally realistic.” We have found the best way to achieve this is through live, manual programming that emphasizes hands-on learning. Given the number of station alumni who work in the broadcast and music industries, WSOU is clearly providing a solid educational and professionally realistic experience for its student staff members.

Additional reasons we choose manual programming include:

- WSOU’s is highly interactive with its listeners. Some 20 minutes of each hour of music is set aside for listener requests and our DJs take callers on the air for a number of interactive features. Automation or even just automated playlists would make this kind of interactivity – a hallmark of WSOU’s brand and on-air sound – nearly impossible to continue in the manner our audience expects.
- WSOU is more than 60 years old and our signature loud rock format has been around since 1986. This has led to an extensive physical music library, one that we lack the resources to fully copy into a computerized system.

- The volunteers who make up WSOU's team of "Community Programmers" play music from personal collections. Using music from personal collections is necessary for our community programs, which include shows such as *The Armenian Program*, *Arab Caravan*, and *Asia in Focus*, because they are programming to underserved audiences with music that is not readily commercially available in the United States. WSOU believes that material copied from personal collections onto a Seton Hall computer is arguably copyright infringement. In addition, we know that these volunteer announcers lack the resources to digitize their collections, even if copyright infringement were not an issue. Finally, even if these personal collections could be transferred to a portable digital form, this media will likely not have the associated metadata in readable form to comply with whatever recordkeeping requirements might be adopted.
- As noted earlier, WSOU cannot afford an automation system as the start-up costs and annual fees are considerable. Manual programming is the affordable option for WSOU.

Small Entity Exemptions

The CRJs ask, "*If the Judges were to exempt certain classes of entities from the proposed year-round reporting provision, what would be appropriate criteria for such an exemption?*" WSOU strongly encourages the Judges to establish an exemption for small entities and favors an exemption from the proposed Census Reporting provisions for all entities that qualify for the minimum \$500 per channel annual SoundExchange fee. At the very least, this exemption should be applied to noncommercial broadcasters, entities that are "*least likely to have the resources or technological sophistication to comply with the proposed census provision.*"

CONCLUSION

WSOU and Seton Hall University continue to believe the best decision in this matter is to essentially leave the current rules in place. WSOU asks that the CRB establish rules that allow stations paying only the minimum fee to continue using the Aggregate Tuning Hours standard and the current reporting standard of two weeks of records per quarter. Any rules that are more stringent will be unduly burdensome upon WSOU and most other college broadcasters.

WSOU thanks the CRB and its Judges for this opportunity to further expand upon our concerns with the proposals contained in "Notice and Recordkeeping for Use of Sound Recordings Under Statutory License [Docket No. RM 2008-7]" and to address the questions raised in the April 3, 2009 Notice of Inquiry. We ask that the CRB take our views into account before considering any new regulations. Thank you.

Respectfully submitted,
WSOU-FM

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