

Copyright Royalty Board
Docket No. RM 2008-7
Request for Comments: Notice and Recordkeeping for Use of Sound Recordings Under Statutory License

WTBU submits these comments in response to the notice published by the Copyright Royalty Board on April 8, 2009 seeking commentary on recordkeeping costs and other Reports of Use developments.

WTBU is Boston University's student radio station, broadcasting on the BU cable TV system channel 6 and in selected buildings on campus on either 640 AM or 89.3 FM and online on www.WTBUradio.org. WTBU offers listeners unique music programming along with local and national news and live sport broadcasts. WTBU is entirely staffed by volunteer students under the supervision of a faculty advisor. Currently, due to the limited size of its audience, WTBU pays only the minimum fee (\$500) prescribed under 37 CFR 380.3(a)(2).

WTBU submits these comments in support of its request that the CRB not implement its proposed changes regarding reporting to Sound Exchange, or at the very least, exempt from the proposed rules changes non-commercial stations that pay only the minimum fee.

In particular, WTBU urges the CRB not implement the proposed changes that would:

- (1) require the reporting of "Actual Performances" for each copyrighted song that is webcast;
- (2) require monthly submissions of reports of use to Sound Exchange; and
- (3) require that every song webcast be included in each monthly report of use.

I. Additional reporting would undermine WTBU's mission.

Any change mandating reporting of Actual Total Performances (ATP) rather than of Aggregate Tuning Hours (ATH) would greatly impair WTBU's mission. Unlike many commercial stations that use professional automation software to program virtually all of their broadcasts, we use live student DJs who manually assemble their own playlists and often bring their own audio equipment into the studio to play their sets.

Our low-key, decentralized approach to music programming is central to the ethos of college radio generally and to the mission of WTBU in particular. We exist not to replicate "Top 40" commercial radio but to serve a diverse university community even as we thoroughly train our students pursuing careers in broadcasting. There is no commercially available hardware and software that permits data collection in the detail that Sound Exchange proposes without sweeping changes to our open programming model. We do not fully serve our community by limiting ourselves to an easy-to-report-on database of songs reflecting only the latest hits, and we ill-prepare our student volunteers for future careers in broadcasting if we substitute easily obtained technical proficiency on a particular vendor's broadcasting solution for hands-on training in the art of manual musical programming.

In short, imposition of additional, onerous reporting requirements would fundamentally change WTBU's day-to-day operations to the detriment of our culture and mission.

II. Additional reporting would be prohibitively expensive.

Currently, WTBU has no automatic logging software whatsoever; any logs that the station generates must be

Comments of WTBU

made by hand by DJs in the recording booth. Even aside from the philosophical problems with adopting an automated approach to radio (see part I), a move to automation in order to enable ATP reporting would be prohibitively expensive. Simply the licensing cost of a radio automation system would probably exceed \$20,000, a sum almost double our entire 2008-2009 budget (\$11,100).

Moreover, there is consensus within Boston University that WTBU could no longer be student-run if it adopted automation. WTBU is presently staffed entirely by volunteer students under the supervision of a faculty advisor, all of whom are already stretched thin keeping up with the station's business operations in addition to delivering quality broadcasts. Because we are a volunteer, student-run station, staff changes regularly, and the additional training and monitoring of staff compliance that would be required under the proposed rules would be an onerous task that would redirect limited resources away from delivering quality broadcasts.

Given these realities, a move to automation in order to comply with the proposed rule change would necessitate the addition of a paid university employee to manage the automation and administer the ATP reporting. Hiring a full-time staff member and buying the requisite hardware and software could easily drive the total cost of compliance as high as \$100,000.

Given that WTBU is a small station that currently pays only the \$500 statutory minimum to Sound Exchange based on our low ATH, it is unlikely that we would ever actually incur these additional compliance costs. More likely, WTBU would simply cease to webcast entirely or would webcast only when presenting wholly original content (e.g., live coverage of the university's own sporting events). While far from ideal, WTBU would probably be unable to justify incurring what amounts to an initial compliance cost as much as 200 times the cost of the royalty itself (i.e., \$500 yearly royalty compared with up to \$100,000 in additional costs of compliance) plus an ongoing expense of an otherwise unnecessary full-time staff member.

The likely cessation of WTBU's webcasting under such a scenario would be as unfortunate as it is unnecessary. It would remove an important, entertaining, and informative resource from the Boston University community. Moreover, it would deprive the recording artists that Sound Exchange represents of a steady source of royalty income from WTBU. Simply put, everyone would lose by the forced adoption of an ATP reporting standard.

III. Additional reporting is unnecessary.

Forcing census-style reporting of ATP from every webcaster, no matter how small, is simply unnecessary. Several comments from the last round of proceedings lay out the nonsensical nature of ATP reporting from small webcasters like WTBU in a particularly cogent fashion. See, e.g., Intercollegiate Broadcasting System Comments at 2-5 in RM 2008-7, filed January 29, 2009 (noting that "[u]nder the law of large numbers, fuller reports by the small, non-commercial webcasters would not yield significantly more accurate or cost-effective payments to the statutory beneficiaries"); College Broadcasters, Inc. Comments at 5 in RM 2008-7, filed January 29, 2009 (noting that "[r]easonable recordkeeping regulations should not force the re-making of an entire segment of services" such as small educational broadcasters "for whom Congress expressly intended the statutory license").

IV. Conclusion

WTBU urges you to look at the big picture in evaluating the proposed rule changes. It does not seem likely that they will result in any real benefit to copyright owners, and the burden they will place on college radio stations is

Comments of WTBU

staggering.

WTBU urges the CRB not to implement the proposed changes discussed herein, or, in the alternative to exempt from the proposed changes all non-commercial stations that pay only the minimum fee.

/s/ Kathleen Farrell

On behalf of WTBU