

Before the  
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in the Library of Congress

Washington, D.C. 20559

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

COMMENTS OF WBER

WBER is a listener and school district supported community radio station owned and operated by the Board of Cooperative Educational Services, Monroe #1. WBER has been serving the Rochester and Western New York area since 1985, as a real life training ground for students in Monroe #1 BOCES Eastern Monroe Career Center (EMCC) Radio and Television Career & Technical Education (CTE) class as well as members of the community interested in learning about radio broadcasting. WBER also offers remote broadcasting services to area school districts which currently include Webster, West Irondequoit and Brighton. WBER has a very limited annual budget and operates with just 1 full time paid staff member. Our on air staff consists entirely of student and volunteer DJ's.

WBER is interested in the proposed rulemaking of the notice and recordkeeping for use of sound recordings under statutory license because we are broadcasting our station online using an icecast streaming server. WBER has been broadcasting online since the mid/late 90's and were one of the first radio stations in Rochester to do this. The growth of our on-line community worldwide and in Rochester has been one of the single biggest developments to happen to WBER in our 23 year history. We have listeners in all 50 states and in over 50 countries, but we have never had enough listeners for us to pay royalties in excess of the \$500 minimum fee. Not only does WBER online help fans of the station that live outside of Rochester, but it is also a great tool for people who live in our listening radius that cannot pick up our terrestrial signal.

WBER is extremely concerned with the proposed rule change from quarterly reports to year round census reports which would be due 45 days after the last day of each month. WBER employees 1 full time staff member who acts as a Station Manager, Program Director, Production Director, Promotions Director and basically oversees the day to day operations and all volunteers DJ's and students at WBER. This proposed rule change would add a tremendous amount of work to the already full work load required to run the station on a day to day basis. Between programming the station, teaching and training the students and volunteer staff, and handling all underwriting requirements, in addition to all the other day to day stuff going at WBER, there is not enough time to also prepare the monthly reports that would be required. Thus this new proposed census rule could potentially cause the station to cease from broadcasting online which would be a huge loss to the station and reverse the single most important advancement for WBER over the past 15 years. If we had to stop broadcasting online, WBER's listeners would be upset and disappointed that we had to take away a part of their daily lives that they truly love. The mission statement of WBER revolves around providing listeners with a type of music that they cannot find anywhere else. We have worked very hard since our inception to fulfill this goal and feel that ceasing to broadcast online would be a major step backwards for the station.

If WBER wanted to continue broadcasting online and had to do the census reporting, we would most likely have to outsource the reporting to a company because WBER only has 1 full time staff member and there is not enough time and hours to do the proper reporting. The price of hiring an outside company to prepare the census reports would be very taxing and detrimental to WBER's already tight budget. WBER already starts its fiscal year in a deficit and must meet our budgetary goals to stay on the air from year to year through underwriting and fund raising. Adding another piece to our budget to pay for census reporting requirements would likely be too much for our already tight budget to deal with.

We have found that using RadioActivity might be a way for WBER to submit the reports of use, but we are unsure if they are a complete solution to the problem under the current rules or if there is more to the process they are unaware of. We are also not sure exactly how RadioActivity works, only that they offer a service to assist with reporting usage. WBER is also concerned that should the census reporting be adopted, that RadioActivity pricing would greatly increase as mentioned in their comments ("The proposed CRB census reporting requirements would effectively increase station duties by a factor of six."). Again, this would make it tough for a station like WBER to pay for the service and continue to webcast.

WBER is aware of RadioActivity's comments regarding ATP; "I believe the CRB's proposed change to the Actual Total Performances ("ATP") metric, however, is deeply flawed, as this metric simply cannot be calculated properly by the current commercially available hardware and software in use by the majority of webcasters." WBER, like RadioActivity, has not found a solution to the proposal to use ATP in place of ATH.

WBER streams its signal online via a live encoding of the output of the master board. The signal is converted to MP3 format and sent to an icecast streaming server. Any MP3 capable streaming client can be used to receive the broadcast.

The streaming server does log listeners down to the second, but even if we were able to build a system to match up to our station logs report to the per song listening audience, the results would likely be inaccurate because of how our live studio is operated. The work that would be needed to be complete this would be expensive and a lot of programming on our part, which still might yield potentially inaccurate data. Due to the fact that WBER only pays the minimum fee and that we also have a small listening audience online, we don't believe the proposed required ATP and census reporting with a short deadline is fair for a station like ours.

In closing, WBER would like nothing more than to continue to provide its listeners locally and worldwide with the best programming of alternative music that we believe is available. WBER webcasting has changed the face of radio for us over the past 10 plus years and for us to cease to broadcast online would be a giant step backwards in the technology that is out there and available to our listeners and our students. We would like to see the reporting requirement allow radio stations like WBER to be able to take part in web casting, not prevent it. At the very most, we'd like to see the use of ATH and quarterly reports for stations that qualify to pay only the minimum fee.

Respectfully submitted,

WBER

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