

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

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

COMMENTS OF WJCU, LICENCEE OF JOHN CARROLL UNIVERSITY

WJCU hereby submits comments in the above captioned proceedings. WJCU is a federally licensed Class A non-commercial, educational (NCE) FM broadcast station operated by the Communication and Theatre Arts Dept in the College of Arts and Sciences at John Carroll University, the station licensee, in University Heights, Ohio. WJCU is staffed by student and community volunteers under the management of one full-time university administrator that divides his time between station oversight and teaching assignments. WJCU operates continuously, 24 hours/365 days per year, and has a compelling interest in the aforementioned proceedings because the station currently streams all of its broadcast programming via Internet.

WJCU is currently in substantial compliance with statutory performance royalty requirements, such as filing Reports of Use to SoundExchange and paying the minimum fee of \$500 annually based on our ATH statistic. Meeting the current standard has been a difficult, costly, and labor intensive project, involving manual entry of play data, since much of our recorded music is played live from either CD's or vinyl LP records in our station library. WJCU has never exceeded the current ATH threshold that establishes the minimal annual payment for small, non-commercial webcasters.

However, rule changes proposed by CRB are likely to impede WJCU's ability to continue streaming, as the NPRM would pose two serious obstacles to operation in compliance with its statutory obligations. In order to understand why this is so, an explanation of WJCU's programming and system of streaming is in order.

Unlike commercial radio stations and most webcast-only operations, WJCU programs an extremely eclectic mix of recorded music in a variety of formats. Program sources include CD's, reel and cassette magnetic tape, vinyl LP and 45 RPM records, and even 15" transcription discs. The station has a combined library of approximately 20,000 albums, and many of our independent shows include ethnic, foreign and specialty music from the hosts' personal collections. This highly diverse programming repertoire and its "live" presentation renders fully automated collection of data impossible, requiring manual entry of artist, title, album, and label information via a third-party online data aggregation system (RadioActivity). That firm has also filed comments in this proceeding, pointing out that they are unable to provide an ATP statistic for their clients with technology currently available.

In order to hold operating costs within our limited budget, an audio stream of WJCU's programming is made available to the public Internet via a single server utilizing existent university bandwidth. There is no direct correlation between the streaming server and the play data accumulation system, but songs played data is made available in real time on WJCU's website via a feed from the third party aggregator.

Under the current rules, WJCU is required to submit reports of use for two weeks during each quarter of operation. Because the amount of data is limited, and there is sufficient additional time to review it for accuracy, we find we are just able to meet the current requirement with a considerable expenditure of time and labor on the part of our volunteers. Maintaining a contract for the maintenance of our third-party play data aggregation systems has also imposed a significant additional operating cost.

However, should the reports of use requirement become ongoing (“census”), as suggested in the NPRM, it’s hard to see how WJCU will be able to keep up with the massive compilation of data. Such an effort would certainly require hiring a part-time employee at the cost of many thousands of dollars. As a bona fide non-profit with a primarily educational mission, it’s unlikely that financial support for such an increase in record keeping could be found even in a favorable economic climate. Also, the change from the non-statutory 90-day reporting deadline currently requested by SoundExchange to a 45-day statutory reporting deadline would reduce the flexibility WJCU currently has to inspect that data for accuracy.

The NPRM will pose another serious problem for WJCU. Currently, WJCU is permitted to submit its report of use using the Aggregate Tuning Hour (ATH) statistic. We meet this requirement by parsing our stream server connection logs during the reporting period and merging them with our play data to produce an electronic report of use file per SoundExchange specifications. Should this requirement be changed to require a per-song “performances”(ATP) statistic based on actual listener connections at a given moment, compliance will become impossible, at least in the short term, since no currently available software capable of accumulating and correlating that data is known to be available. Thus, to become compliant with the NPRM in this context would likely require the development of custom software and acquisition of significant additional IT hardware/infrastructure at a probable cost of tens of thousands of dollars – clearly beyond WJCU’s limited financial means. Indeed, since much of the data will continue to require manual entry, the difference between the actual times a given piece of music plays and (keyboard) data is entered calls into question whether such a system, once developed, would be practical in a “live” studio environment. Would a studio operator be forced to complete an entire data field before a given piece could be played? It’s difficult to know how such an as-yet undeveloped application might work. These are serious issues that need to be recognized and addressed as the regulatory framework is updated.

It should also be noted that the current structure of reporting requirements already appears to be burdensome even for rights-holder organization SoundExchange. Under

that organization's current published guidelines, reports of usage are supposed to be confirmed upon receipt. Yet it has been the experience of WJCU, and other NCE small webcasters that our reports frequently go unacknowledged. It seems logical to conclude that the increased volume of data called for in the NPRM might exacerbate this situation.

In summary, WJCU, like many other non-commercial, non-profit broadcasters, desires to serve its audience in a way that conforms to the many regulatory and statutory requirements that incumbent with our educational and service mission as non-commercial broadcasters. Furthermore, WJCU and similar entities are currently contributing to the performance royalty system, and rights holders are benefiting from those contributions. If the current NPRM is adopted, and small non-commercial operations like WJCU are forced to terminate their streaming, all the stakeholders, including rights holders, will lose.

It is our fervent hope that the CRB will reexamine possible adoption of a one-size-fits all approach to administering statutory royalty requirements in a way that will permit small, non-commercial, non-profit operations like WJCU to continue to stream their unique and diverse programming via the Internet, paying the current minimum fee under the existing sample and ATH specification, at least until such time that affordable, proven technology becomes available for them to improve upon current reporting practices.

Respectfully submitted,

WJCU Radio – Licensee of John Carroll University

By: _____

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