

Before the  
**COPYRIGHT ROYALTY BOARD**  
**LIBRARY OF CONGRESS**  
Washington, DC

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In the Matter of	)	
	)	
Notice and Recordkeeping for Use of	)	
Sound Recordings Under Statutory	)	Docket No. 14-CRB-0005 (RM)
License	)	
Notice of proposed rulemaking	)	
	)	
_____	)	

**Comments of KBHU-FM**

Pursuant to the above captioned Notice of Proposed Rulemaking ("Notice") which appeared in the Federal Register on May 2, 2014, KBHU-FM, [a student-run station at Black Hills State University](#), submits its comments. KBHU-FM is currently considered a Noncommercial Educational Webcaster ("NEW") as defined by 37 CFR §380.21.

The designation as a NEW has suited us well as the Reporting requirements under 37 CFR §380.23 provide KBHU-FM to Reports of Use (ROUs) through limited data collection which does not require reporting Aggregate Tuning Hours ("ATH") or Actual Total Performances ("ATP"). We would like to retain the ability to report as a NEW for as long as possible, and request that the regulations which appear to sunset these recordkeeping provisions be removed so we can continue to report as a NEW even after December 31, 2015. The §380.23 regulations were adopted as precedent and should be allowed to remain as the recordkeeping and reporting regulations as they serve us well, will allow us to continue to webcast and have been previously approved and adopted as a reasonable.

The Notice also proposes numerous changes requested by SoundExchange. With respect to the elimination of the requirement of a template in Quatro Pro, KBHU-FM has no objection; however we respectfully request that this requirement be replaced with a template as Google spreadsheet. Also, the current Excel template should be updated to conform to any and all proposed changes.

KBHU-FM feels that the requirement to submit a copy the Notice of Use directly to SoundExchange is unnecessary and likely to be overlooked. This problem would be eliminated if KBHU-FM could complete a form online and submit payment with a purchase order. A copy of the electronic submission could then automatically be forwarded to SoundExchange.

KBHU-FM is very relieved to see that the proposed regulations included the qualifier, “if feasible” with respect to reporting the ISRC because it is absolutely not feasible for that to happen at KBHU-FM. We simply do not have the staff or the resources to accomplish this.

KBHU-FM must object to these new requirements because our current licensing fees are already straining our small budget. We may even be forced to eliminate music programming altogether.

KBHU-FM must also strongly object to the proposed new requirement to be required to add the “The letters “NLR” (for “no license required”) if the Service has excluded the sound recording from its calculation of statutory royalties in accordance with regulations setting forth the applicable royalty rates and terms because transmission of the sound recording does not require a license, or the letters “DL” (for “direct

license’’) if the Service has excluded the sound recording from its calculation of statutory royalties in accordance with regulations setting forth the applicable royalty rates and terms because the Service has a license directly from the copyright owner of such sound recording.”

KBHU-FM objects because we have no way of knowing what is allowed to be excluded and what is not. To our knowledge no definitive list exists which would allow us to include this information in our automation system. Even if one did exist, we do not have the resources to update our database of over 6,000 recordings.

KBHU-FM is uncomfortable with the provisions for a late fee for “non-compliant” reports of use, even if timely filed. We are unsure what constitutes a non-compliant ROU. For instance, is it one line of data with missing information or a typo? What is the threshold level of non-compliance that would justify a late fee?

KBHU-FM must object to the proposed change of due date for ROUs submitted from the current 45 days after the close of the relevant reporting period to 30 days because we use an all-volunteer staff that is not familiar with the reporting requirements. This staff changes each semester and the training time for new volunteers would prohibitively expensive.

### **Conclusion**

For the above reasons, KBHU-FM believes that the §380.23 provisions for NEWS should be extended indefinitely as our web stream may not exist if they go away.

In the alternative, the proposed changes to 37 CFR §370.4(b)(2) should be adopted so KBHU-FM might have a chance to survive.

KBHU-FM objects to the requirement to submit a copy the Notice of Use directly to SoundExchange, the proposed new requirements to add the letters “NLR” (for “no license required”) or “DL” (for “direct license”) to our reports, the provisions for a late fee for “non-compliant” reports of use, and to the proposed change of due date for ROUs submitted.

Dated: MAY 19, 2014.

Respectfully submitted,

Scott H. Clarke

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SCOTT H. CLARKE  
BLACK HILLS STATE  
UNIVERSITY, UNIT 9003  
1200 UNIVERSITY ST.  
SPEARFISH, SD 57799-9003  
605-642-6750  
scott.clarke@bhsu.edu