

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 WKNC-FM NORTH CAROLINA STATE UNIVERSITY

Pursuant to the above captioned Notice of Proposed Rulemaking ("Notice") which appeared in the Federal Register on May 2, 2014, WKNC-FM submits its comments. WKNC-FM is currently considered a Noncommercial Educational Webcaster ("NEW") as defined by 37 CFR §380.21. WKNC-FM is licensed to the Board of Trustees of North Carolina State University, substantially staffed and operated by N.C. State students, and not eligible to received funding from the Corporation for Public Broadcasting.

The designation as a NEW has suited us well, as the Reporting requirements under 37 CFR §380.23 allow WKNC-FM to submit Reports of Use (ROUs) through a proxy fee. We would like to retain the ability to report as a NEW for as long as possible, and request that the regulations that 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. The regulations will allow us to continue to webcast, potentially expand our webcast operations, and have been previously approved and adopted as a reasonable.

The Notice proposes several changes requested by SoundExchange. With respect to the elimination of the requirement of a template in Quatro Pro, WKNC-FM has no objection. We do, however, respectfully request the currently available Microsoft Excel template be updated to conform to any and all proposed changes.

WKNC-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 WKNC-FM could complete a form online and submit payment with a credit card or university purchase card. A copy of the electronic submission could then automatically be forwarded to SoundExchange and allow stations like WKNC-FM to have an electronic copy for their own records. Alternatively, as the Copyright Office regularly updates all entities that have submitted a copy of the Notice of Use (see http://www.copyright.gov/licensing/114_list.pdf), the Copyright Office could instead provide the list as a RSS feed to which SoundExchange could subscribe. That way SoundExchange, and any other interested parties, will be updated each time a new entity is added to the master list.

WKNC-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 WKNC-FM. Our radio station currently maintains well over 10,000 songs for scheduled airplay. Every one of these song records would have to be revised to include the ISRC. As many of the songs we play are North Carolina-based independent musicians, an ISRC will not be available for a large section of our music library. While software could determine the ISRC for a portion of our daily playlist, live DJs often play music from their personal collections. For every manual entry to the playlist, someone would need to look up the individual ISRC code and assign it to the entry.

The proposal concerning classical music is even more burdensome and WKNC-FM must object to these new requirements. The regulations assume commercial product packaging is available to the DJ. Many of our DJs store their personal music collections electronically instead of playing music from a CD. Even if the information was available, WKNC-FM has no mechanism in place for recording this information. Should this regulation be imposed, WKNC-FM would have to eliminate any future applications for classical music programming. As NEWs such as WKNC-FM are considered a place for non-commercial non-mainstream media, this burden would severely limit the availability of classical music available via terrestrial and Internet radio. Rather than shut down our webcast during classical music programming WKNC-FM will just eliminate it from the schedule.

WKNC-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.” WKNC-FM objects to this requirement because the staff does not have the legal expertise to determine whether a sound recording requires a license.

WKNC-FM is uncomfortable with the provisions for a late fee for “non-compliant” reports of use, even if reports are filed on time. When WKNC-FM was previously required to submit sample ROUs the reports contained artist and song title information, but was often missing album and record label information. Would this be

considered “non-compliant”? What threshold does SoundExchange propose to determine a report’s compliance? The proposal also calls for a late fee continuing to accrue until a compliant ROU is filed. If a NEW such as WKNC-FM was unable to provide a “compliant” report to begin with, assessing a late fee provides no incentive to comply but instead punishes a station for not having the resources to meet SoundExchange’s vague definition of compliance. Ensuring the ISRC code or album and label information for each song played will take more time, not less. WKNC-FM will then be faced with the dilemma of submitting an incomplete report to meet the deadline and being fined as “non-compliant” or taking the time needed to complete the report to the best of our ability and being fined for submitting a late report.

WKNC-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. Universities are not 24/7/365 operations and are especially short-staffed during the summer months and in between semesters. Particularly if a fine is to be assessed for late filing and/or whatever SoundExchange considers “non-compliance,” those additional 15 days may be crucial to avoiding fees.

Conclusion

For the above reasons, WKNC-FM believes that the §380.23 provisions for NEWs should be extended indefinitely. WKNC-FM may be forced to cease its web stream if the proposed changes are enacted.

WKNC-FM objects to the proposed regulations concerning direct delivery of notices of use, additional reporting requirements for classical music programming, designating sound recordings as ‘NLR’ and ‘DL,’ assessing fees for “non-compliance,” and shortening the due date for ROUs.

WKNC-FM believes an indefinite continuation of the current webcasting terms outlined in §380.23, rather than enacting SoundExchange's proposed changes, is an agreeable and feasible compromise between SoundExchange's need for information to make accurate distributions of royalties and the limited fiscal and human resources of a NEW like WKNC-FM.

Dated: JUNE 9, 2014

Respectfully submitted,



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