

Before the
COPYRIGHT ROYALTY BOARD
LIBRARY OF CONGRESS
Washington, DC

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 SETON HALL UNIVERSITY (WSOU-FM)

Pursuant to the above captioned Notice of Proposed Rulemaking ("Notice") which appeared in the Federal Register on May 2, 2014, Seton Hall University, licensee of noncommercial FM Class A station WSOU, South Orange, New Jersey ("WSOU"), submits its comments. As a student-run college radio station with an emphasis on experiential learning and pre-professional development, WSOU is currently considered a Noncommercial Educational Webcaster ("NEW") as defined by 37 CFR §380.21.

The Reporting requirements under 37 CFR §380.23 provide entities designated as NEW, such as WSOU, with a manageable method for submitting Reports of Use ("ROUs") by utilizing the proxy Waiver fee. The ability to use the proxy Waiver fee is of tremendous benefit to noncommercial educational webcasters in view of their limited resources. WSOU urges that the ability to report as a NEW be retain for as long as possible, and requests that the regulations which appear to sunset these recordkeeping provisions be removed so WSOU 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 allow WSOU – and many other noncommercial educational stations – to fulfill reporting obligations within the confines of the limited resources allocated to them. Maintaining the current regulations, which have been previously approved and adopted as reasonable, will allow

us to continue to webcast. Any changes to §380.23 regulations have the very real potential to force WSOU to cease webcasting.

The Notice proposes numerous changes requested by SoundExchange. When it comes to issues related to NEW webcasters, WSOU believes that when a system is working at its best, it is best to leave it alone. That applies here. The rules currently in place have greatly benefited both SoundExchange and student-run educational webcasters. Changing the current structure poses the real risk of harming NEW stations like WSOU and thereby reducing the benefit to SoundExchange and the artists they are chartered to serve.

While WSOU has concerns about a number of the proposed changes, we are focusing our comments on several key items that have the potential to cause harm to NEW station operations. The first critical area for WSOU concerns the proposed requirement of reporting the International Standard Recording Code (“ISRC”), to which we object. WSOU is encouraged to see that the proposed regulation included the qualifier “if feasible” with respect to reporting the ISRC because it is absolutely not feasible for WSOU to comply. If the regulations require WSOU to report the ISRC associated with every sound/song recording used by our station, it would necessitate both a massive recoding of our music library database, as well manual research to find the ISRC information on music (CDs, vinyl, etc.) not contained within our music database. Such an undertaking is beyond the resources of a student-run station.

Furthermore, in the case of classical music, the ISRC requirement is even more onerous. Not only is the amount of information required excessive, but in the case of WSOU, tracking down this information will be highly burdensome, if not impossible. As a result, if the proposed regulations are adopted, it would likely mean the end of WSOU’s annual Christmas Eve and Christmas Day broadcasts of classical music composed to the season. WSOU’s annual Christmas broadcast is heard online by members of the university and local communities and as a Catholic university the failure to provide sectarian classical performances will certainly not be

in keeping with our Catholic mission. Many other recorded classical performances, both secular and sectarian, will be impacted if the new regulations are adopted, resulting in a significant reduction or possible elimination of classical music on WSOU, or the extermination of the webcast of our terrestrial broadcasts.

WSOU also strongly objects to the proposed new requirement that Reports of Use include every sound recording aired and that, in addition, we must flag the recordings not subject to a royalty payment as “NLR” (no license required) or “DL” (directly licensed). As with the ISRC issue, WSOU would need to go through our entire music library and re-code. WSOU simply does not have the resources necessary to perform this task, nor can students be expected to have sufficient knowledge of what constitutes a NLR or DL recording to accurately code this information. The latter point doubly applies to the community volunteers who host ethnic and religious programs on WSOU. It is unreasonable to expect a priest or nonprofessional volunteer broadcaster to have, or gain, a working knowledge of these designation issues.

WSOU feels that the requirement to submit a copy of the Notice of Use directly to SoundExchange is unnecessary. In addition in the context of student-run stations, this requirement is unduly burdensome, especially when the requirement could be easily satisfied if stations could complete a form on-line and submit payment with a credit card. A copy of the electronic submission could then automatically be forwarded to SoundExchange for their reference and use.

WSOU is deeply worried about the proposed provisions for a late fee for “non-compliant” ROUs, even when such reports are filed on time. Our concern is rooted, in part, in the lack of clear criteria for what constitutes a non-compliant ROU. Is it just one line with inaccurate or inadvertently omitted information? Do typos or a misspelling trigger a “non-compliant” flagging? As a station that is never automated and programs manually, rather than by software, ROUs will have to be generated by hand, thus creating opportunities for human

error. Without knowing the intended threshold level for determining non-compliance, it is impossible to assess whether this proposal is reasonable. If regulations move forward for an assessment of late fees for ROUs that are untimely and/or noncompliant, WSOU believes that in the case of NEWs, the Judges should impose a cap on the amount SoundExchange can collect. Given the modest budgets of most NEW operations, a maximum fee of \$100 should be established.

WSOU objects also to the proposed change of due date for ROU submission from the current 45 days to 30 days after the close of the relevant reporting period. Again, because WSOU's programming is not generated by computer software and music is selected by the individual DJs and recorded by hand, creating and reporting ROUs is not a matter of a few simple mouse clicks. It is a labor intensive, time consuming process and accelerating the reporting deadline would stretch resources further while increasing the risk of inaccurate ROUs.

WSOU agrees with SoundExchange regarding the limitations of ASCII and the need for more modern options. However, the proposed regulations which specify use of "UTF-8" are vague as to the actual technical requirements. Until WSOU knows exactly what would be considered acceptable and if we would be able to comply with the specifications, we cannot yet endorse these specific regulations. Fortunately, the use of "if feasible" in association with the UTF-8 requirement does give WSOU some temporary comfort that there will be some flexibility when it comes to character encoding.

Concerning the proposed elimination of the requirement specifying Quatro Pro for templates, WSOU has no objection. We respectfully request, however, that this requirement be replaced with a template such as an Excel and/or Google spreadsheet.

Conclusion

For the above reasons, WSOU believes that the §380.23 provisions for NEWs should be extended indefinitely as they have demonstrated to date their workability and success in helping student-run stations/webcasters comply with regulations. Furthermore, the failure to extend the §380.23 provisions for NEWs may result in WSOU having to shut down its webcasting operations, which would be a disservice to both our students and our listeners.

WSOU strongly objects to any regulations that remove the option to pay a proxy Waiver fee based on audience size and require NEWs to submit quarterly ROUs, as it will place an unmanageable burden upon our station. We object, as well, to the proposals to report ISRC, NLR, DL and Notice of Use information as they also present workload requirements that are simply beyond our abilities. WSOU also cannot support, in current form, the proposed provisions for a late fee for “non-compliant” ROUs and the reduction in due date for ROU submissions from 45 days to 30 days after the close of a reporting period.

In short, the proposed changes and regulations would have a chilling effect on noncommercial educational webcasting and noncommercial broadcasting. Stations designated as NEW will be hampered by over-burdensome rules that are simply unnecessary given the current successful and manageable regulations currently in place.

The CRB has already demonstrated great wisdom in recognizing the very real differences in resources and capabilities that exist between NEWs and larger, well-funded and more technologically advanced corporations and organizations. We urge the Judges to continue this understanding by extending indefinitely the §380.23 provisions for NEWs.

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Respectfully submitted,

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