

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 KXUL

Pursuant to the above captioned Notice of Proposed Rulemaking ("Notice") which appeared in the Federal Register on May 2, 2014, KXUL, submits its comments. KXUL 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 KXUL to Reports of Use ("ROU's") 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 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 proposes numerous changes requested by SoundExchange. KXUL 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 KXUL could complete a form on-line. A copy of the electronic submission could then automatically be forwarded to SoundExchange.

KXUL 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 KXUL, due to a number of concerns including the expense of KXUL’s recording library that does not include an ISRC. The expense of acquiring the ISRC for all recordings in a digital library would be overly burdensome, threatening financial viability of KXUL’s service..

KXUL 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.”

KXUL objects for a number of reasons. Live student DJ’s would likely guess at these designations, resulting in inaccurate reporting. KXUL has no way of knowing which recordings in the library would qualify for those designations, since to our knowledge no definitive resource identifies either of those groups of recordings. Even if such a resource did exist, a requirement for KXUL to update our current database of thousands of recordings would be overly burdensome for a service with limited financial resources.

KXUL is uncomfortable with the provisions for a late fee for “non-compliant” reports of use, even if timely filed. Given the complexity of reporting, substantial risk exists that some part of the reports, at some time, would be less than perfect. Without overly specific guidelines on what substantiates “non-compliant” reports, late fees could be arbitrarily applied for anything from a simple typographical error to one line of data with missing information. Further, KXUL contends the proposal that the late fee accrue from the original due date until receipt of a fully compliant ROU would be punitive in nature.

KXUL 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. The additional time is necessary to format the data and check for accuracy, especially with use of volunteer staff. Data quality assurance by KXUL and other reporting services serves all parties involved.

Conclusion

For the above reasons, KXUL believes that the §380.23 provisions for NEWS should be extended indefinitely as we may not exist if they go away.

KXUL objects to the requirement to submit a copy the Notice of Use directly to SoundExchange, required reporting of the ISRC, adding “NLR” or “DL” for excluded recordings, provisions for a late fee for reports deemed “non-compliant,” and the proposed change of the due date for ROU’s.

Dated: August 11, 2014

Respectfully submitted,

Jay Curtis
Director of University Broadcasting
University of Louisiana at Monroe
700 University Avenue
Monroe, LA 71209
318-342-5556
kedmgm@ulm.edu