

Before the
COPYRIGHT ROYALTY BOARD
LIBRARY OF CONGRESS
Washington, DC

_____)	
In the Matter of)	
)	
Determination of Royalty Rates for)	
Digital Performance in Sound Recordings)	14-CRB-0005-RM
and Ephemeral Recordings)	NPRM
)	
_____)	

**COLLEGE BROADCASTERS, INC.'S REPLY COMMENT IN RESPONSE TO
THE COPYRIGHT ROYALTY BOARD'S NOTICE OF PROPOSED
RULEMAKING**

INTRODUCTION

On June 30, 2014, College Broadcaster's Inc. ("CBI") submitted a comment in response to the Copyright Royalty Board ("CRB") "notice of proposed rulemaking" issued to address two petitions. See Notice and Recordkeeping for Use of Sound Recordings Under Statutory License, Docket No. 14-CRB-0005-RM, 79 FR 25038, 25039 (May 2, 2014) ("NPRM" or "Notice"). The first was a joint petition ("Joint Petition") filed by CBI, American Council on Education ("ACE") and Intercollegiate Broadcasting Systems, Inc. ("IBS") on October 28, 2009, which had asked the CRB to clarify the final regulation it had issued on October 13, 2009. See 74 FR 52418. The second was a petition by SoundExchange ("SoundExchange Petition") seeking to make numerous changes to the rules pertaining to recordkeeping.

In its June 30 comment CBI made three essential points: (1) that the CRB should clarify that the definition of the "minimum fee webcaster" included those services that did not also possess FCC licenses; (2) that the CRB should additionally incorporate the regulations at 37 CFR § 380.23(g) & (h) as the recordkeeping regulations at 37 CFR §

370 *et seq.*; and (3) that several of the changes to recordkeeping terms proposed by SoundExchange in its petition were unfeasible for most non-commercial educational webcasters ("NEWS") to comply with. With regard to these three points CBI replies as follows.

DISCUSSION

- (1) **The Joint Petition to clarify that the definition of "minimum fee webcaster" included those services that did not also possess FCC licenses should be granted.**

In response to the notice of proposed rulemaking the CRB has received no comments arguing against redefining the "minimum fee webcaster" to include those otherwise eligible services that didn't have FCC licenses. Instead, CBI was joined in its comment supporting the redefinition by fellow joint petitioner Intercollegiate Broadcasting System, Inc. See "Comments of Intercollegiate Broadcasting System, Inc.," June 30, 2014. Additionally SoundExchange also noted that it has no objection to expanding the definition of "minimum fee webcaster" as the Joint Petition seeks. See "Comments of SoundExchange, Inc.," June 30, 2014 at n.2, available at <http://www.loc.gov/crb/proceedings/14-CRB-0005/SoundExchange.pdf>. Therefore, with respect to the Joint Petition, the CRB should at minimum adopt this new definition to include non-FCC licensed webcasters as no objection has been raised to the regulations the CRB has proposed in response to the Joint Petition.

- (2) **In response to the Joint Petition the CRB should incorporate the terms at 37 CFR § 380.23(g) & (h) as the recordkeeping terms at 37 CFR § 370 *et seq.***

In its June 30 comment CBI proposed the CRB adopt the recordkeeping terms currently at 37 CFR § 380.23(g) & (h) as the applicable recordkeeping terms in § 370 *et seq.* that the Joint Petition addresses. No comments arguing the contrary have been

received by the CRB. Instead the CRB received comments in support from several webcasters supporting this proposal.¹ Therefore the CRB should respond to the Joint Petition consistent with CBI's proposal.

(3) If the CRB adopts any of the changes to recordkeeping regulations proposed by SoundExchange, it should not make the provisions identified in CBI's June 30 comment applicable to NEWs.

CBI continues to have no comment as to how SoundExchange's proposed changes to recordkeeping regulations might affect non-NEWs.² CBI notes, however, that the CRB has received numerous comments by NEWs expressing concern that if several of proposed changes sought by SoundExchange were to become enforceable as to NEWs, it would be difficult, if not impossible, for them to comply with these terms and could cause these student endeavors to cease to exist.³

NEWs are unique services among all webcasters. They are often volunteer-run, always of educational character, typically of limited financial means, and frequently operated with basic traditional broadcast and/or legacy technologies. They also generally have small audiences.

As a result of these characteristics, many NEWs, to date, have qualified for some form of relief from reporting requirements, either pursuant to the terms currently at § 370 *et seq.* or the terms at § 380.23, which incorporate a waiver. This waiver, however, will sunset after the rates and terms established in 2009-1 CRB Webcasting III expire at the

¹ See, e.g., the comments of WKNC-FM, WJCU Radio, WGSU-FM, SCAD, Lasell College Radio, KWSC-FM, KUIW, KSSU, WSDP-FM, and WRFL-FM, noting in particular that the reporting waiver incorporated in these terms should be extended.

² Additionally, as it noted in its June 30 comment, CBI does not oppose all the changes proposed by SoundExchange to the extent they do affect NEWs. For instance, CBI supports SoundExchange's effort to obtain clarity in the requirement dispensing with the need for a handwritten signature, and for NEWs reporting via waiver, CBI agrees that the "Annual/License Type" methodology proposed by SoundExchange is appropriate. The specific provisions CBI objects to are set forth in Section III.c of the June 30 comment.

³ See, e.g., comments of WRFL-FM, WKNC-FM, WGSU-FM, WSDP-FM, SCAD, Lasell College Radio, KWSC-FM, KUIW, and KSSU.

end of 2015. Furthermore, all the recordkeeping relief phases out as NEWS' audiences get larger, but not very much larger.

To date, those recordkeeping terms have been feasible for the larger NEWS to meet. With the proposed, however, any NEWS not eligible for a reporting waiver, either because its audience has grown slightly too large or the provision has expired at the end of 2015, would have to make either a considerable investment in order to have any possible chance of compliance, change the nature of the operation of the station in a way that that would be detrimental to the educational experience, or both, and that presumes that either course of action would even be possible given NEWS' fiscal and human resource constraints. This investment would be disproportionate with respect to the increase in audience size, as well as disproportionate to the investment other webcasters might need to make, given the nature of NEWS' operations and equipment. It wouldn't simply be a question of upgrading software; many NEWS' operations are manual, where music is played from physical media on appliances detached from any computer tracking usage. In order to comply, many NEWS would need to re-architect their entire studios and redesign their operations, neither of which are likely feasible. Instead they will likely cease webcasting.

For these reasons, the CRB, if it chooses to adopt the terms proposed by SoundExchange, should ensure that they do not apply to NEWS.

CONCLUSION

As CBI noted in its June 30 comment, without adequate protection for NEWS to ensure that they can comply with the recordkeeping regulations, many will be forced to abandon playing music subject to the license or even cease webcasting – which, in the case of non-FCC licensed stations, would lead to them being shuttered entirely. The CRB should therefore take steps to ensure these educational webcasters are adequately

protected by, at minimum, adopting the regulations as proposed in the Joint Petition and, more appropriately, by adopting the respective terms codified at § 380.23(g), as proposed by CBI in the attached Exhibit A to its June 30 comment. At the same time, the CRB should refrain from adopting the changes proposed by SoundExchange that CBI has objected to in a way that would affect this class of webcaster.

Dated: September 5, 2014

Respectfully submitted,

/s/ Catherine R. Gellis

Catherine R. Gellis
(CA Bar # 251927)
P.O. Box 2477
Sausalito, CA 94966
Phone: 202-642-2849
cathy@cgcounsel.com

David D. Golden
(D.C. Bar #985047)
CONSTANTINE CANNON LLP
1301 K Street N.W., Suite 1050 East
Washington, D.C. 20005
Tel: (202) 204-3500
Fax: (202) 204-3501
dgolden@constantinecannon.com

Counsel for College Broadcasters, Inc.

Keys, LaKeshia

From: Ablin, Karyn <KAblin@wileyrein.com>
Sent: Friday, September 05, 2014 4:17 PM
To: crb
Subject: NAB-RMLC Joint Reply Comments in Docket No. 14-CRB-0005 (RM)
Attachments: NAB-RMLC_NRK_Reply_Comments.pdf

Dear Copyright Royalty Judges,

Attached are the Joint Reply Comments of the National Association of Broadcasters and the Radio Music License Committee Regarding the Copyright Royalty Judges' Notice and Recordkeeping Rulemaking.

Respectfully submitted,

Karyn K. Ablin
Counsel for the National Association of Broadcasters



Karyn K. Ablin
Attorney At Law
Wiley Rein LLP

1776 K Street NW
Washington, DC 20006
Tel: 202.719.4913 | Fax: 202.719.7049
Email: kablin@wileyrein.com
www.wileyrein.com

NOTICE: This message (including any attachments) from Wiley Rein LLP may constitute an attorney-client communication and may contain information that is PRIVILEGED and CONFIDENTIAL and/or ATTORNEY WORK PRODUCT. If you are not an intended recipient, you are hereby notified that any dissemination of this message is strictly prohibited. If you have received this message in error, please do not read, copy or forward this message. Please permanently delete all copies and any attachments and notify the sender immediately by sending an e-mail to Information@wileyrein.com. As part of our environmental efforts, the firm is WILEY GREEN^(TM). Please consider the environment before printing this email.

Keys, LaKeshia

From: cathy.gellis@gmail.com on behalf of Catherine R Gellis <cathy@cgcounsel.com>
Sent: Friday, September 05, 2014 6:43 PM
To: crb
Cc: Golden, David
Subject: Reply comments of College Broadcasters, Inc. in response to Docket No. 14-CRB-0005 (RM)
Attachments: 20140905_CBI_replycomment FINAL.pdf

Attached please find the reply comments of College Broadcasters, Inc. in response to the Notice of Proposed Rulemaking of May 2, 2014.

Thank you,

Catherine R. Gellis
Counsel for College Broadcasters, Inc.