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Client Alert

Internet Radio Royalty Costs to Increase Significantly

by Cydney A. Tune

In a decision that will likely have a significant impact on webcasters, the Copyright Royalty Board (CRB) on March 2 issued a decision on the royalties owed by both FCC-licensed broadcast stations that simulcast over the Internet and stand-alone Internet stations that stream music. The new rules will apply from 2006 through 2010. Under the new scheme, royalties will no longer be based on a percentage of revenue, as they were under the Small Webcasters Settlement Act. Instead, all rates are on a “per performance” basis and will go up significantly over the next few years.

The CRB rejected requests from small webcasters to set royalty rates based on a percentage of revenue. Instead, it adopted the rate proposed by SoundExchange, the entity that administers most performance licenses for the Internet, collects the royalties from such licenses, and distributes the money to the copyright owners and performers. Under this rate scheme, all royalties are calculated on a per performance basis—i.e., there is a royalty payment for each song every time a listener hears that song. The rates set by the CRB for commercial webcasters, including broadcasters who retransmit their over-the-air signals on the Internet, are:

- 2006 - \$.0008 per performance
- 2007 - \$.0011 per performance
- 2008 - \$.0014 per performance
- 2009 - \$.0018 per performance
- 2010 - \$.0019 per performance

Under reporting requirements currently in effect, a webcaster (including a radio station that streams its programming over the Internet) must track the total number of Internet listeners in order to compute a per performance rate. For example, if 100 listeners tune in to the Internet stream of a single song, the fee for streaming that one song would be eight cents, while the royalty for the same song would be 80 cents if there are 1,000 listeners, and so forth. A typical Internet radio station plays about 16 songs per hour; at the new rate, the royalty obligation during 2006 would be 1.28 cents per listener per hour. And the rates will be increasing substantially over time: the 2007 rate is 37.5% higher than 2006; the increases in 2007 and 2008 are approximately 28% per year; and the rate will increase by another 5.5% in 2010.

The minimum fee is \$500 per channel per year. One outstanding issue is that it is not clear what constitutes a “channel” with respect to services that individualize playlists for users.

For noncommercial webcasters, the annual fee will be \$500 per channel, for up to 159,140 Aggregate Tuning Hours per month. (One listener, listening for one hour, constitutes one “Aggregate Tuning Hour.”) Non-commercial webcasters will pay at the commercial rate for all listening that exceeds that limit. Public radio stations that stream their signals will also be affected by this decision. Such stations were previously permitted to pay a flat fee under a separate agreement with the music industry but now will be subject to the new rates above a small number of exempted hours.

A request for rehearing can be made by any party to the case within 15 days of the decision. The CRB’s decision will be published in the Federal Register within 60 days and appeals may be filed with the U.S. Court of Appeals in Washington, DC within 30 days of the Federal Register publication.

Due to the significant impact of the CRB decision, appeals are likely and it is also possible that the issue could end up back in Congress. In the meantime, many small webcasters are weighing in, arguing that these royalty rates could mean the end of streaming music stations in the United States.

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