



WOMBLE
CARLYLE
SANDRIDGE
& RICE
PROFESSIONAL LIMITED
LIABILITY COMPANY

Copyright Royalty Board Sets New Rates for Digital Streaming

March 7, 2007

To: Radio Clients
From: Michael H. Shacter

On March 6, 2007, the Copyright Royalty Board (“CRB”) announced new rates and terms that apply to digital streaming of sound recordings over the Internet. The new rates represent a steep increase over the rates that broadcasters previously paid to stream their stations’ broadcasts. The full text of the CRB’s decision is available from <http://www.loc.gov/crb/proceedings/2005-1/rates-terms2005-1.pdf>.

The new rates for commercial webcasters are:

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

The transmission of a song to each listener is considered a performance. Thus, transmitting one song to 500 people would be considered 500 performances. It has been estimated that in the case of a commercial webcaster with an average of 500 listeners at any moment, broadcasting 16 songs an hour, 24 hours a day, this would result in a payment of about \$211 a day for 2007.

In addition, all webcasters are required to make a minimum \$500 per channel annual payment by January 31 of the year. This amount is credited against their required license payments.

Non-commercial webcasters playing less than 159,140 Aggregate Tuning Hours per month are only required to make the minimum \$500 payment. (Aggregate Tuning Hours or ATH refers to the total hours of programming transmitted to all listeners during the relevant time period. Thus, one hour of programming transmitted to 20 simultaneous listeners would produce 20 ATH.) However, non-commercial webcasters would have to pay the commercial per performance rate for any performances in excess of 159,140 ATH. The \$500 fee would be a credited towards those excess payments.

The law contemplates a separate royalty for what are known as “ephemeral copies”. These are digital copies of a sound recording that are prepared specifically for digital transmission—for example, storing songs on a hard drive. The CRB decided that the license fee for ephemeral copies is included in the transmission royalty.

SoundExchange was designated as the entity to collect royalties through 2010. Royalties are to be submitted to SoundExchange on a monthly basis by the 45th day after the end of each month. A statement of account is required to accompany each monthly statement to include, among other things, sufficient information to calculate the payment and the signature of the licensee. The contents of the statements of account are not to be disclosed by SoundExchange to the public. A penalty of 1.5% per month is levied for late payments or statements of account. Licensees are required to keep records for 3 calendar years. Finally, the CRB established a procedure for SoundExchange to audit licensees.

Royalty rates were last set in February 2004 and covered the period through the end of 2005. Webcasters had been paying SoundExchange at the 2005 royalty rate. Retroactive payments are due by May 15 (the 45th day after the last day of the month of the decision).

In the past royalty decisions were reviewable by the Librarian of Congress. That is no longer the case. The only appeal is to the District of Columbia Circuit Court of Appeals.

Bear in mind that these new rates apply only to the sound recording component of a broadcast. Royalties for the underlying musical compositions are collected by ASCAP, BMI and SESAC. The current ASCAP and BMI licenses permit broadcast radio simulcasts from a station's website. SESAC requires a separate license.

Please let us know if you have any questions about these new rates.

**The Communications Lawyers at
Womble Carlyle Sandridge & Rice, PLLC**

Michael H. Shacter, (202) 857-4494, mshacter@wcsr.com

Howard J. Barr, (202) 857-4506, hbarr@wcsr.com

Ross Buntrock, (202) 857-4479, rbuntrock@wcsr.com

John F. Garziglia, (202) 857-4455, jgarziglia@wcsr.com

Peter Gutmann, (202) 857-4532, pgutmann@wcsr.com

Michael B. Hazzard, (202) 857-4540, mhazzard@wcsr.com

Mark Palchick, (202) 857-4411, mpalchick@wcsr.com

Vincent A Pepper, (202) 857-4560, vpepper@wcsr.com

Gregg P. Skall, (202) 857-4441, gskall@wcsr.com