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Royalty Ratemaking Ready to Roll

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We haven't fully resolved the ongoing controversy surrounding the copyright royalties paid by webcasters in exchange for the right to perform sound recordings during the years 2006-2010, but it's already time for non-interactive webcasters (which includes radio stations simulcasting an over-the-air signal on the Internet) to worry about another increase in the rates for 2011 and beyond.

With the appeal of the Copyright Royalty Board's (CRB) March, 2007 rate-setting decision still pending in the United States Court of Appeals for the District of Columbia Circuit, the CRB is already starting up the next ratemaking proceeding. Of course, this also comes as the CRB considers expanding webcasters' filing requirements (from the current reporting requirement covering two seven-day periods per quarter to a comprehensive year-round "census" requirement).

The ratemaking proceeding is a trial-type process in which interested parties present detailed statistical and economic evidence designed to assist the CRB in determining the value of a non-interactive performance of a sound recording (that particular version of a musical work that you hear over the Internet) under a "willing buyer/willing seller" standard.

Anyone can participate, though the extended, intensive – and almost invariably pricey – process often deters individual webcasters from joining in the fun, especially if they believe that one or more trade associations will represent their interests. Still, if you want a seat at the table, it's yours – the cost of the ante is only \$150.00 and the time required to file an original and five copies of a Petition to Participate with the CRB by February 4, 2009, to reserve your right to participate. More information regarding the details of how and where to file the Petition are available in the January 5, 2009, Federal Register notice of this proceeding.

The substantive aspects of the Petition are remarkably simple, requiring just:

- ☞ The petitioner's full name, address, telephone number, facsimile number (if any), and e-mail address (if any); and
- ☞ A description of the petitioner's significant interest in the subject matter of the proceeding.

You can also join up with some friends and jointly file a Petition with the following information:

- ☞ The full name, address, telephone number, facsimile number (if any), and e-mail address (if any) of the person filing the petition;
- ☞ A list identifying all participants to the joint petition;
- ☞ A description of the participants' significant interest in the subject matter of the proceeding; and
- ☞ If the joint petition is filed by counsel or a representative of one or more of the participants that are named in the joint petition, a statement from such counsel or representative certifying that, as of the date of submission of the joint petition, such counsel or representative has the authority and consent of the participants to represent them in the royalty rate proceeding.

If you are webcasting and interested in participating, but have further questions about the Petition or the entire proceeding, please contact a Fletcher, Heald & Hildreth attorney.