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SoundExchange, CPB Strike Deal For Webcast Royalties Through 2010

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Attention all broadcasters:

Are you a noncommercial broadcaster currently engaged in webcasting?

- ? Are you one of the more than 450 public radio webcasters that are either:
- ? A Corporation for Public Broadcasting (CPB)-supported station;
- ? An NPR member;
- ? A National Federation of Community Broadcasters Member; or
- ? Part of American Public Media, the Public Radio Exchange or Public Radio International?

If the answer to both of these questions is “YES!”, you’ll want to read more about an exciting new offer available to you.

SoundExchange and CPB have announced that a settlement has been reached that will alter the way in which such stations pay royalties and report webcasting performances through 2010.

The current royalty rates have been the subject of significant discussion in the broadcasting community, including several informative articles posted on our blog (www.commlawblog.com). The sharp increase in rates for the period 2006-2010 was especially feared by noncommercial stations with a large web audience, as those **noncommercial** stations would pay at **commercial** rates anytime their internet listenership exceeded 159,140 “aggregate tuning hours” in a given month, as opposed to the flat fee these stations (and small webcasters) had paid prior to the institution of new rates.

Pursuant to the Webcaster Settlement Act of 2008, this settlement agreement can go into effect immediately, with the following applicable terms:

- © Any eligible radio station which chooses to participate will not have to make any

further royalty payments until December 31, 2010, as CPB will make a single, up-front payment of \$1.85 million to SoundExchange on behalf of public radio stations.

- © SoundExchange will also create a consolidated playlist reporting system for use by all stations which choose to become a part of this program. Those stations will be responsible for providing playlist information to CPB.
- © Stations wishing to participate must register their intent with CPB on a designated website. CPB will provide details regarding that registration website in the near future.
- © This agreement does not affect the “sound performance complement” portion of the statutory license (the restrictions on the number of songs that can be played from a certain CD or by a certain artist within a given time-frame, the length of time for which a program can be archived, etc.), meaning even participating stations will still be subject to those “sound performance” limitations.
- © As a condition of the settlement, NPR will withdraw its appeal of the Copyright Royalty Board decision. (We see this as an indication that more settlement discussions continue between SoundExchange and those segments of the webcasting community that are part of the pending court appeal).

No station is required to participate in this settlement. Thus, a station that is certain it will never exceed the aggregate tuning hour limitation in any given month may simply decide to ride out the next two years until the new rates are determined for 2011 and beyond. Still, if you believe you may be eligible and wish to participate, keep an eye out for further communications from CPB or contact a Fletcher, Heald & Hildreth attorney.