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Final Playlist Reporting Requirements For Webcasters Announced

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After years of proposals and deliberations and interim policies, the Copyright Royalty Board (CRB) has at long last published “final rules” dictating the playlist reporting requirements for web-casters. But like so many things in this day and age of fast-paced technological and regulatory development, the “new” rules, which take effect on November 12, 2009, are likely to be of little more than academic interest to many. That’s because intervening events – including multiple separate agreements among various webcaster groups and SoundExchange – have largely marginalized the significance of the CRB’s role in this aspect of webcasting.

The rules won’t be of particular interest to

- © “smaller” Internet-streaming broadcasters, *i.e.*, operators with such a small on-line listenership that they never exceed the \$500 annual minimum payment in a given year, to whom the full-time “census” reporting of playlist information does not apply; or
- © broadcasters who have elected to participate in one or more of the agreements (general noncommercial and noncommercial educational or CPB or commercial broadcaster) to settle outstanding appeals of the March 2, 2007 decision of the CRB to institute rates and terms for the statutory license for the period 2006-2010.

Still, if you are in the dwindling universe of webcasters who remain subject to the CRB’s reporting requirements, you should familiarize yourself with the “new” rules.

The reporting rules are part of the system established by the CRB for assuring collection and payment of appropriate royalties to copyright holders. Using webcaster-supplied playlists reflecting the frequency with which songs are played on the web, SoundExchange can fairly distribute the royalties it collects. When the CRB first finalized the playlist reporting requirements in 2006, all webcasters were required to file quarterly reports with SoundExchange listing every song played by the webcaster during two seven day periods in that quarter. In December 2008, the CRB proposed to change

those quarterly filings to “census” filings – *i.e.*, monthly filings containing information about every song played during the month. The recently-published rules formally adopt that census filing approach.

Under the “new” rules, census reporting – that is, reporting within 45 days of the end of each month the required information about *all* songs played during that month – is required for *all* webcasters *except*

- broadcasters simulcasting an over-the-air broadcast on the Internet which have such a small listenership that they do not exceed the \$500 annual minimum payment per year (in other words, any very small commercial webcasters and noncommercial webcasters that do not exceed 159,140 aggregate tuning hours in any month); and
- preexisting satellite digital audio radio services, new subscription services or business establishment services who cannot accurately measure listenership for technological reasons. (These folks must still report their playlists, but can do so on a modified “aggregate tuning hour” basis.)

Of course webcasters who elected to participate in one of the several settlement agreements reached in the past couple of years are bound by the playlist reporting requirements in the applicable agreement. These webcasters should review their particular settlement agreement, and let us know if you have any questions about your reporting requirements.

The song-related information which must be filed has not markedly changed, though there is one key exception applicable to broadcasters. The reportable information still consists of:

- The name of the webcasting service
- The category transmission code, *although this has changed slightly, with broadcasters now using one of the following category codes:*
 - Eligible nonsubscription transmissions of broadcast simulcast programming not reasonably classified as news, talk, sports or business programming (essentially, simulcast of a broadcast station’s music programming);
 - Eligible nonsubscription transmissions of non-music programming reasonably classified as news, talk, sports or business programming (essentially, a broadcast station’s news, talk, sports or business programming); and
 - Transmissions of broadcast simulcast programming not reasonably classified as news, talk, sports or business programming made by an eligible new subscription service (this category involves subscription-only simulcast of

music programming by a broadcast station)

- The featured artists
- The sound recording title
- The International Standard Recording Code, or a combination of (a) album title and (b) marketing label
- Actual total performances of the song, or a combination of (a) aggregate tuning hours and (b) channel or program name and (c) number of times the song was played during the relevant period

For the last category (actual total performances of the song or the listed combination), the “combination” alternative is applicable only to a preexisting satellite digital audio radio service, a new subscription service, a business establishment service and broadcasters who do not exceed the annual minimum payment required for a given channel (currently \$500).

The new rules have been purged of unnecessary references to prior license terms, obsolete categories (*e.g.*, “small webcaster”) and the like. And illustrating the March of Technology, the CRB has deleted the option of filing the reports on floppy diskettes.

Notably, the Copyright Royalty Board did *not* adopt the following proposed changes:

- Any form of “proxy fee” or other exemption from filing altogether, even for the smallest webcasters;
- Imposition of a late fee for tardy or non-filed playlist reports; or
- An exemption from playlist reporting of songs played during syndicated radio programming

While we have focused here on the applicability of these rules to broadcasters who are also webcasting, a section of the newly final rules applies slightly different standards to “preexisting subscription services”. Please contact us if you believe you qualify as a “preexisting subscription service” and require guidance as to how the new rules apply to you.

Again, the CRB’s changes go into effect on November 12, 2009.