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## Congress Gives SoundExchange and Webcasters Authority to Settle Royalty Rates

by Cydney A. Tune and Christopher R. Lockard

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*On September 30, the U.S. Senate approved the Webcaster Settlement Act of 2008, a bill giving SoundExchange and webcasters authority to finalize an agreement on performance royalty rates. The bill amends section 114 of the Copyright Act to give SoundExchange until February 15, 2009, to reach a deal over the statutory royalties owed by Internet radio stations, and other non-interactive online music services, to performers and sound recording copyright owners (generally record labels) when their music is performed publicly by means of a digital transmission. The legislation, which was passed by the House of Representatives on September 27, is expected to be signed into law by President Bush.*

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SoundExchange is a non-profit performance rights organization established by the Recording Industry Association of America (RIAA) and designated by the Copyright Royalty Board (CRB) as the receiving agent to collect statutory royalties and distribute them to copyright owners and performers.

Royalty rates set by the CRB in March 2007 significantly increased the royalties owed by webcasters, which include both FCC-licensed stations that broadcast over the Internet and stand-alone Internet stations that stream music. The rates were heavily criticized by webcasters, particularly smaller webcasters who previously paid royalties based on a percentage of revenue, as opposed to the per performance royalties implemented by the 2007 CRB decision. Under the text of the webcaster legislation, any negotiated royalty rates will be retroactive to 2005 and last through 2015.

It follows the announcement made on September 23 that the RIAA, DiMA, the National Music Publishers' Association and several songwriters' associations had reached a landmark deal on "mechanical" royalties owed to composers, songwriters and music publishers by websites that offer interactive music streaming or limited music downloads. That deal is currently awaiting approval by the CRB.

The Webcaster Settlement Act gives SoundExchange the authority to enter into a legally binding agreement over the rates. It was supported by webcasters such as Pandora, which argued that it may be forced to shut down if a settlement is not reached while Congress is in recess this fall. The bill was also reportedly supported by the RIAA, DiMA and National Public Radio. The text of the bill as originally introduced in the House last week would have given SoundExchange until December 15, 2008, to reach an agreement. However, to assuage objections by the National Association of Broadcasters (NAB), the deadline was extended until February 15, 2009, to remove NAB's objection. The NAB's participation suggests that FCC-licensed broadcast stations that stream their signals over the Internet are also trying to take advantage of Congress's clear interest in seeing that settlement agreements are reached among as many parties as possible.

While the bill does not guarantee that SoundExchange and webcasters will reach a settlement on statutory royalty rates, it does give them time to negotiate an agreement.

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