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Client Alert

Webcaster Royalties Update: Discount Offer for Small Webcasters, Fee Caps for the Largest

by Cydney A. Tune

On Tuesday, August 21, SoundExchange—the organization representing copyright owners in connection with statutory licenses for broadcasting music on the Internet—began sending formal offers of discounted royalty rates through the year 2010 to qualified small webcasters. These are generally those webcasters earning \$1.25 million or less in gross revenues.

In essence, the SoundExchange offer would extend the same webcasting terms and rates as were available under the *Small Webcaster Settlement Act*. This means that, if accepted, qualified small commercial webcasters would be paying the same rates through 2010 that have been paid since 1998, subject to the new usage cap we previously reported. Note, however, that the offer would apply only for use of sound recordings owned by SoundExchange members (approximately 20,000 recording artists and 3,500 record labels). Streaming of sound recordings from non-members would continue to be subject to the new royalty rates.

Webcasters who qualify for the SoundExchange offer have until **September 14, 2007**, to accept the offer. Those small webcasters who do not sign the offered agreement and who continue to stream will be subject to the new, higher rates that were set by the Copyright Royalty Board in March. On its website, however, SoundExchange notes that while it can extend this offer only on behalf of its members, it hopes for an industry-wide resolution that would be implemented by the Copyright Royalty Board.

Large Webcaster Fee Cap

On Thursday, August 23, SoundExchange announced that it had reached agreement with several of the largest webcasters to limit “per channel” minimum fees for webcasters who stream music on multiple channels. The Copyright Royalty Board decision had required each webcasting service to pay a \$500 minimum annual fee “per station or channel” regardless of the number of stations or channels that they stream. In the announcement, SoundExchange said that it had agreed to cap the minimum fees at \$50,000 per service.

The Fee Cap agreement calls for reporting on all tracks actually played by a service, as opposed to a sampling. The agreement also calls for cooperation on discussion and assessment of anti-stream-ripping technologies, though there is no requirement that a webcaster implement a particular technology or develop or accept from a third party a particular technology. Rather, webcasters who accept the terms of the fee cap agreement would cooperate in the effort to determine the best ways to prevent unauthorized copying of streaming copyrighted music.

While the agreement applies only to those specific webcasters who signed it and only on behalf of SoundExchange's members, SoundExchange stated that it intends to present the agreement to the Copyright Royalty Board and seek its adoption industry-wide.

Live Links

Royalty Uncertainty: How Should Webcasters Proceed?, Client Alert, Pillsbury Winthrop Shaw Pittman, 27-Jul-2007

Webcasting Royalties Update: Temporary Relief for Public Broadcasters, Client Alert, Pillsbury Winthrop Shaw Pittman, 25-Jul-2007

Webcaster Music Royalty Rates—in Flux and on the Rise, Client Alert, Pillsbury Winthrop Shaw Pittman, 15-Jun-2007

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