

Before the
COPYRIGHT ROYALTY BOARD
LIBRARY OF CONGRESS
Washington, DC

In the Matter of)
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)
Notice and Recordkeeping for Use of)
Sound Recordings Under Statutory) Docket No. 14–CRB–0005 (RM)
License)
Notice of proposed rulemaking)
)
)

Comments of All-Campus Radio Network (ACRN)

Pursuant to the above captioned Notice of Proposed Rulemaking ("Notice") which appeared in the Federal Register on May 2, 2014, All-Campus Radio Network ("ACRN") submits its comments. ACRN has been in operation as the student radio service at Ohio University since 1971, originating as a carrier-current AM station before switching to cable radio in the late 1970s and then webcasting in 1999. ACRN is a Noncommercial Educational Webcaster ("NEW") as defined by 37 CFR §380.21. Since ACRN does not possess an FCC license, it cannot qualify as a "minimum fee broadcaster" as currently defined in 37 CFR 370.4(b)(3).

The designation as a NEW has suited us well as the reporting requirements under 37 CFR §380.23 provide ACRN with the ability to forego Reports of Use ("ROU") through a proxy fee. Much of our programming is created by students using legacy media (including CDs, vinyl LPs, and even cassette tapes). Because a significant amount of our programming originates from a non-digital source (and is sometimes from a mix of multiple types of media within a single show), there was no available software solution to

the hand compilation of playlist data. We tried compiling sample ROUs from a mix of airplay tracking (including digital automation reports, songs entered in Excel files, and handwritten playlists) in the first year of the current rules. However, the task proved nearly impossible to complete with even a modest degree of accuracy and the proxy fee provided a much more amenable option in subsequent years. We would like to retain the ability to report as a NEW indefinitely. Therefore, ACRN requests that the regulation that sunset the recordkeeping provisions be removed so that we may continue to report as a NEW using a proxy fee after December 31, 2015. The §380.23 regulations were approved and adopted as reasonable, and should remain in the recordkeeping and reporting regulations. They serve ACRN and similar stations well, and will allow us to continue to webcast.

If the NEW option does not remain after January 1, 2016, ACRN would alternatively strongly support the changes proposed to 37 CFR §370.4(b)(2) by the Petitioners that would qualify ACRN as a Minimum Fee Broadcaster. Amending that definition is the only alternative to NEW status which might allow us to continue as a wholly student-operated, non-profit, educational service, although it is far less desirable than continuing as a NEW.

In the Notice, the Copyright Royalty Judges (“Judges”) asked how unlicensed minimum fee Educational Stations have been reporting under the current regulations. As describe above, ACRN has been reporting under §380.23. If it were not for this section of the regulations, it is likely that ACRN would have been forced to dramatically curtail its programming in order to efficiently comply with a rule requiring full reports. It is possible the station would have had to cease webcasting if we were unable to muster the additional personnel and software resources that census reporting would require, or if it

proved impossible to gain full student compliance with the complex processes needed to incorporate both analog source and digital playlist data into the reports.

The Judges further asked if the proposed change is warranted. If the ability to report as a NEW went away and our only option were to report census data on a monthly basis with ATP, ACRN would very likely have to cease operation, or at minimum dramatically curtail our programming—which may effectively be the same thing because the station would lose its distinctly student voice as a result of that limit. We do not, and would not in the near future, have the resources to comply with a requirement for full census ROUs with ATP on a monthly basis. In addition to being staffed entirely by student volunteers, the faculty advisor is expected to work no more than a couple of hours per week on station business. In addition, during the summer months, there are many fewer students involved on a daily or weekly basis further cutting our resources. As such, ACRN believes the changes are warranted only if the alternative to report under §380.23 were to not sunset.

ACRN is very relieved to note that the proposed regulations included the qualifier “if feasible” with respect to reporting the ISRC and hopes that any such language will be interpreted to give stations discretion. Because the nature of our programming and our library is such that the code is sometimes not present, it is not feasible for that to happen 100% of the time at ACRN.

ACRN is uncomfortable with the provisions for a late fee for “non-compliant” reports of use, even if timely filed. There are unanswered questions about what might constitute a non-compliant report and the devil is in the details here—is a single error or missing data point enough? Or must there be egregious non-compliance? What would assure timely review of ROU submissions and notification to the service of any errors?

When a processing error in the University's financial office resulted in our annual payment not being attached to our paperwork (which was on time) a couple of years ago, it was four months before SoundExchange notified the station of the missing check—with a late fee. While ACRN continues to hope that census ROUs will not be required because of the difficulties we encountered in our previous experience trying to implement a reporting system and train students to compile the reports (and to do so with dozens of new students every few months), ACRN believes that if the rules are changed then good faith ROU efforts must not be subject to financial penalties.

Finally, ACRN must also object to the proposed change of due date for ROUs submitted from the current 45 days after the close of the relevant reporting period to 30 days because of our previous experience with trying to compile even a two week sample report. Producing the report and checking for compliance with all requirements, even within 30 days, when we have a station staffed only by student volunteers and one faculty advisor whose workload expectation is no more than a couple of hours a week would present an impossible challenge.

Conclusion

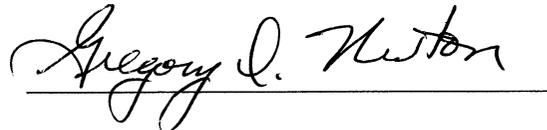
For the above reasons, ACRN strongly urges that the §380.23 provisions for NEWs be extended indefinitely as we (and many other student stations) are likely to dramatically curtail programming or simply cease to exist if they go away. In the alternative, we ask that the proposed changes to 37 CFR §370.4(b)(2) be adopted so that ACRN might have some chance to survive.

ACRN strongly objects to the proposed changes in reporting requirements described above as unnecessary and overly burdensome, including census reporting and

monthly ATP data, ISRC reporting, late fees for non-compliant reports, and any shortening of report due date time frames.

Dated: June 9, 2014.

Respectfully submitted,

A handwritten signature in black ink that reads "Gregory D. Newton". The signature is written in a cursive style and is positioned above a horizontal line.

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