

**Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
The Library of Congress**

In re
**Rulemaking regarding Notice and
(RM)
Recordkeeping for Use of
Sound Recording Under Statutory
License**

Docket No. 14-CRB-0005

**REPLY COMMENTS OF INTERCOLLEGIATE
BROADCASTING SYSTEM, INC.**

The Intercollegiate Broadcasting System, Inc. (“IBS”) welcomes the support of SoundExchange (“SX”) for relieving noncommercial educational webcasters (“NEWs”) from reporting requirements. SX Comments (June 30, 2014) at 3. Similarly, IBS agrees with SoundExchange’s position that NEWs with fewer than 55,000 aggregate tuning hours (ATH) per month should be subject to an annual \$100 proxy fee in lieu of royalty payments. *Id.* In addition, IBS submits that NEWs with fewer than 15,914 ATH per month should pay a \$50 proxy fee rather than the \$100 fee and NEWs with fewer than 6,365 ATH per month should pay only a \$20 proxy fee. Finally, NEWs who meet these standards should not have to pay the \$500 administrative fee.

With respect to relieving NEWs with fewer than 55,000 ATH from reporting requirements and mandating a \$100 proxy fee,

SoundExchange aptly explained that “[u]sage by internet-only educational webcasters represents only a tiny sliver of the market.” *Id.* For that reason, the regime established by 37 C.F.R. § 370.23(g)(1), under which NEWs “may elect to pay a ‘proxy fee’ of \$100 and forgo providing reports of use altogether,” SX Comments at 3, is sensible. The burden census reporting places on NEWs is simply not worth the benefit.

If a \$100 proxy fee is reasonable for a NEW with 55,000 ATH, as SoundExchange agrees, it stands to reason that a lower proxy fee is warranted for small and very small NEWs. IBS has consistently taken the position that, in a competitive market, those NEWs would be willing to pay \$50 and \$20 respectively. This is plainly a reasonable position. Under IBS’s definition, a small NEW would pay 50% of the royalty paid by a NEW with 55,000 ATH even though a small NEW with 15,914 ATH would have less than 29% of the larger NEW’s ATH. Similarly, a very small NEW with 6,365 ATH would pay 20% of the royalty paid by a NEW with 55,000 ATH but would have less than 12% of the larger NEW’s ATH. In short, if \$100 is a reasonable royalty fee for a NEW with 55,000 ATH, as SoundExchange agrees, there is no sound basis for requiring small and very small NEWs with a fraction of that ATH to

pay more than \$50 and \$20, respectively.

In addition, it is clear that NEWs that are not required to submit usage reports should not be required to pay a \$500 administrative fee.

That fee was calculated by a back-of-the-envelope method:

SoundExchange's Chief Operating Officer simply divided SX's total expenses for 2008 by the number of webcasters, then further divided by the average number of channels per webcaster. 76 Fed. Reg. 13,026,

13,041 (2011). That one-size-fits-all approach is unreasonable and

contrary to 17 U.S.C. §114(f)(2)(B) to subject small and very small

webcasters to the same administrative fee assessed on the largest

commercial webcasters. 76 Fed. Reg. at 13,040. That is surely the case

with respect to webcasters that do not have to submit usage reports.

The administrative burden such webcasters place on SoundExchange

cannot be comparable to the burden imposed by the largest

webcasters—particularly if NEWs are not required to file reports that

SX must process. If the Judges were to rule otherwise, they would be

committing essentially the same error that led the D.C. Circuit to vacate

the \$500 administrative fee in 2009—arbitrarily applying a \$500 fee in

the absence of record evidence that it approximates the costs caused by

noncommercial educational webcasters. *Intercollege Broadcasting*

System, Inc. v. CRB, 574 F.3d 748, 767 (D.C. Cir. 2009).

Respectfully submitted,

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Declaration of Service

I, John R. Grimm, hereby declare:

I am over eighteen years of age and not a party to the within cause. My business address is 1200 18th St, Suite 1200, Washington, DC 20036. On August 11, 2014, I caused a copy of the **Reply Comments** to be served on each of the following, by email:

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