

Before the
UNITED STATES
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in the Library of Congress
Washington, D.C. 20559

In the Matter of)	
)	
Digital Performance in Sound Recordings)	Docket No. 2009-1
and Ephemeral Recordings)	CRB Webcasting III
)	

COMMENTS OF IBS

Intercollegiate Broadcasting System responds to the NPRM in Web III published for comment in the 75 Fed. Reg., No. 62 (April 1, 2010), particularly proposed Subpart C at 16383 ff, which would be effective during the calendar years 2011 through 2015. Subpart C contains provisions as to both rates and reporting requirements for that period.

IBS objects to the impression to the ordinary reader that, by adopting the proposed rates and terms, the Board has prejudged the outcome of the adjudicatory hearing on such issues now before the Judges in Web III. If the Judges' determination of such terms is not expected until the end of 2010, then the ordinary reader who would act in reliance on these rates and terms for this five-year term would be rudely surprised to find them substantially altered during the period.

Now it is true that the proposed rates and terms in Subpart C are non-exclusive, i.e., it provides for other parties' agreeing with SX to different rates and terms. See section 380.20(c). Nevertheless, IBS respectfully submits that the reader is not put on adequate notice that the rates to be adopted supersede the "default" rates prescribed in the adjudicatory part of this docket.

In addition the drafting of Section 380.20 is ambiguous as to whether college and high school webcasters carrying commercial announcements are included in the definition of NCEW. What the introductory paragraph gives by the citation of 17 U.S.C. § 114(f)(5)(E)(i), is arguably taken away in the definition of "incidental performance." What is the scope of "commercial time" by the small educational webcasters who depend for their continued viability on a more favorable outcome of the current adjudicatory proceeding?

Respectfully submitted,

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April 22, 2010

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