



Web Radio: Does It Pay To Play?

While terrestrial airwaves drone on with corporate programming and Top 40 humdrum, Web radio has evolved in recent years from a DIY novelty into a sanctuary for Independent musicians, programmers and likeminded music fans.

The only hitch: fair compensation- who deserves it and who must pay.

Well into the first decade of the “new music industry,” - a virtual frontier rife with .com entrepreneurs, rogues and industry watchdogs - artists, music fans & Internet broadcasters are ensnared in a showdown that will likely revolutionize the concept of free music.

At the urging of special interest groups, the US Copyright Royalty Board (CRB), a three man panel appointed by the Library of Congress to adapt legislation for the burgeoning realm of digital music, passed a new royalty rate decision on March 2nd designed to control unfettered web broadcasts.

In the wake of the CRB's decision, webcasters (led by lobbyist and Radio & Internet Newsletter publisher Kurt Hanson), and the Performing Rights Organization SoundExchange (fronted by Executive Director John Simson), have engaged in a public show of press release rhetoric and rancor, culminating with the CRB's April 16 denial of motions by Internet radio broadcasters for a rehearing.

While it is yet to be determined whether the CRB's verdict will benefit the artists it intends to protect, there is no question that the outcome will be debilitating for webcasters -forcing most Internet stations to either adapt business models or pull the plug.

The Issue:

Based on an unprecedented “per performance” basis, (the term “performance” equals one song streaming to one listener), the CRB's resolution upends the “percentage of revenue royalty” ratified by the Small Webcasters Settlement Act of 2002, and mandates that Internet radio stations must now pay artists and record labels in accordance with the equitable market value of their handiwork.

What is equitable market value?

The rate recently approved by the CRB was originally proposed by the Performing Rights Organization SoundExchange, an RIAA offshoot that represents record labels and the performers of music that is digitally broadcasted on the web.

SoundExchange asserts that the purchase of “intellectual property” (i.e. legally-protected, original work) should be no different than the acquisition of any other commodity: the fee should be identical to that which a retailer would charge a consumer in a common, marketplace transaction.

In addition to the “per performance” fee, the ruling enacts a compulsory \$500 annual charge for each Web Channel. While the definition of a web “channel” is nebulous at best - especially considering webcasts that offer personalized playlists - digital media companies and record labels are once again trying to safeguard their revenue streams.

Perhaps the most revolutionary outcome of the new royalty reform will be that, for the first time in the United States, backup bands and session musicians will be compensated for digital performances of recordings to which they contributed; a deserving victory for an otherwise voiceless vertebrae in the industry backbone.





"The music created by artists is the main reason people listen to Internet radio," said SoundExchange Executive Director John Simson in a March 21st press release. "And those artists should be fairly compensated for the value they bring to each webcaster's business."

But will royalty reform benefit performers if broadcasters are unable to pay the proposed fees and stations with indie-heavy playlists are silenced?

Previously, digital channels paid royalties based on revenue, with small webcasters paying an average minimum payment of \$200.

Some estimate that under the new fees, terrestrial radio will pay about \$1.50 per listener for 2006 (the rates are retroactive) – digital broadcasters will be charged about \$9.00 per listener for 2006 & up to \$15.00 in 2008.

AM/FM stations will have to pay twice – once for the terrestrial broadcast and again for webcasting the same song.

It is likely these steep royalty obligations will force many webcasters to terminate their transmissions. Who will be left? Perhaps only those with the same deep pockets that dominate the terrestrial airwaves?

Follow the Money:

PERFORMING RIGHTS ORGANIZATIONS

Until now, Performing Rights Organizations such as ASCAP, BMI & SESAC collected royalties from web broadcasters on behalf of the songwriter (composer) and publisher, based either on total revenues (the old benchmark was 12%) or website usage.

According to Keith Meehan, the executive director of the Radio Music License Committee, in early 2000 ASCAP & BMI settled on a cap of royalty payments, and stopped using estimated revenue as a benchmark for royalty compensation.

"It is now a flat-dollar figure," says Meehan. "The starting point for calculating that number is the fee that Individual stations paid to BMI In 2002, and ASCAP In 2003".

According to some estimates, in 2006 ASCAP reportedly collected \$208,650,000; BMI \$208,000,000. SESAC with a reported 5% of the market may have collected upwards of \$20,000,000 on their artists' behalf.

However, the CRB's ruling imposes additional fees on broadcasters to compensate copyright holders - typically the record label - and performers featured on a recording – groups represented by SoundExchange, which, based on the new rates, will become a \$2.3 billion dollar per year business.

While accusations criticizing the RIAA and SoundExchange for shrouding major label interests with diversionary pleas for artists rights stream from web radio operators, the RIAA maintains that they are merely looking out for artists and copyright holders by protecting control of the digital performances of their work:

"Contrary to what has been reported in the news media and circulated on the Internet, the RIAA and its member companies want ALL Webcasters, large and small, to succeed," read a recent RIAA website post.





Willem Dicke, Communications Director for SoundExchange, concurred: "While we want Internet radio to succeed, it is only fair that artists be compensated for the value of their work."

Untangling the Knot: More Than Meets the Eye

Some of the dust has settled since the CRB's April 16th rejection of the webcaster's request for a rehearing, but there is still no closure. In fact, this rapidly evolving story continues to morph.

SoundExchange, portrayed by webcasters as the villain prior to the CRB's final decision, may now actually become a quasi-advocate for webcasters as well as the musicians they represent.

According to one pundit close to the source, much of the rhetoric and rancor spewed by PROs and Webcasters was merely part of the choreographed dance opposing parties are required to perform before presenting their case before a panel of judges.

Now, it seems that heated debate will give way to more amicable negotiations. In fact, John Simson of SoundExchange told us that the PRO has already held preliminary meetings with NPR, DMA, broadcasters, NAB and Dave Oxenford, the lawyer for small webcasters, and many more meetings are in the works.

Yet, the fact remains that the tide has changed and webcasters will be left in troubled waters without life vests unless a compromise is reached.

SMALL WEBCASTERS

As the only webcaster to testify before the CRB on behalf of Internet stations, Kurt Hanson is clearly wary of the new rates. According to Hanson, who also operates AccuRadio, a site that hosts 320 streaming channels (each of which is accountable for the new \$500 compulsory fee, plus the "per performance" rates outlined by the CRB); small webcasters will be hit the hardest by the CRB's new royalty policies.

In a March newsletter, Hanson revealed that while **AccuRadio** amassed \$400,000 in revenue for 2006, under the new payment policy the station would have ended up \$600,000 in debt.

The list goes on...

WMVYRadio, a twenty-five year-old Martha's Vineyard public radio darling that continually ranks as one of the 20 most streamed webcasts on the net, will be forced to shut down if the CRB's decision is not overruled.

"This is not rhetoric," wrote Joseph Gallagher, President of **WMVYRadio's** parent company, Aritaur Communications, Inc., in a recent correspondence. "We do not make enough now to be truly viable. The proposed fees would make it impossible to even continue trying."

Perhaps Chuck Singleton, program director for **WFUV** in New York says it best:

"This has sent us- and every other small webcaster- to their calculators looking for a way to continue offering online music services."

MEDIUM AND LARGE WEBCASTERS

According to Hanson, medium-to-large operators like **Radio Paradise** and **Pandora** will be mandated to pay 125-200% of their total revenues.





Even web-only corporate behemoths with massive listenership like AOL Radio Network will be affected mightily. At the CRB's royalty rate for 2006 alone (\$0.0008 per performance), Hanson posits that AOL Radio Network will be accountable for "a royalty obligation to SoundExchange for the month of November of about 1.65 million. Annualized, that's about \$20 million for 2006."

While the CRB's policy will persist for individual, terrestrial radio stations simulcasting on the web, the actual royalty amounts will, however, be smaller for Clear Channel and other commercial subsidiaries due the smaller number of "channels" streaming on terrestrial radio websites.

And, with advertising already thriving for corporate broadcasts, the fees will be significantly more manageable. "It won't really affect us," admits Rob Morris, program director for Clear Channel affiliate **KDWB** in Minneapolis, "because we're already paying for it."

THE SILENT MAJORITY

While webcasters and PROs continue to scrap over the new performance royalties, many US labels and musicians are not even aware that they are entitled to the revenue.

"Artists want to be paid, and this is money that they are owed," says Nancy Prager, a corporate and intellectual property attorney who represents both Independent labels and artists.

Yet, according to Prager, the new royalty structure "is not even a part of their (the artists) thought process."

"Because the US doesn't give a full performance rate on sound recording, US artists and labels leave millions of dollars on the table every year," says Prager. "Other countries take advantage of that money."

What about other countries?

Artists have been collecting performance royalties for decades overseas.

For example, The German performing rights society GEMA works in conjunction with BMI & ASCAP in the US, as well as European Mechanical Rights organizations (which collect royalties for hardcopy music sales). GEMA collects performance income on a per-patron basis for everything from radio play to songs performed on film soundtracks. The same is true for PRS (UK), SACEM (France), and JASRAC (Japan).

Yet, here in America, many artists have been left with one burning question: Where has all that money gone?

One industry insider who asked to remain anonymous asserts that artists, composers, managers and publishers must understand and question the practices, procedures and royalty structures of their PROs.

"PROs are collecting money from all kinds of venues. They are supposed to distribute all of the money after they deduct administrative costs. My guess would be that their structure affords them more flexibility. It allows them to create pools of funds that can then be used to attract new members."

Will these "structures" be disclosed to the public?

"Only if pressure is brought to bear on PROs to make their distribution systems more apparent."

And what of the artists?





When asked to weigh in on the CRB's decision, Dan Bern, a 2007 IMA Winner for Best Folk/Singer/Songwriter Album admitted, "pardon my ignorance, but what recent decision? The fact that I don't know may tell you all you need to know."

KILLING THE GOLDEN GOOSE?

Perhaps the most fascinating facet of the royalty feud is that both PROs and Webcasters claim the best interests of artists as their chief concerns.

"The shame of this entire thing is that the RIAA is trying to tell the musicians this is in their best interest and the rates are reasonable," says Gallagher. "If you shut off lots of outlets that play artist's music that wouldn't get airplay in today's mainstream media, is that good for artists?"

Yet, as SoundExchange spokesman Willem Dicke contends, "Webcasters have a number of opportunities to maximize revenue with a captive audience attracted by music created by artists through banner ads, pop-ups, video pre-rolls, audio commercials and other avenues of revenue generation."

The question, then, is a matter of value: Will artists benefit more from the immediate returns from performance royalties, or from the long-term exposure afforded by independent Webcasters- many of whom will be forced to end their broadcasts as a direct result of the CRB's decision?

Is it even possible to match a tangible answer with such an ambiguous question?

"I think fair artist compensation is as possible as universal healthcare," says Singer/Songwriter Michelle Shocked. "Inevitable and long overdue."

As for Dan Bern?

"Naturally, it sounds good," Bern admitted, after being enlightened about the new royalty rate decision. "Little revenue bells tinkling every time something plays someplace. Maybe it will be good. But I'm suspicious of measures that end up shutting the little guys down."

Given the CRB's new royalty rates, there may even be a dispute over who the little guys are.

Editor's Note: After repeated attempts, members of the Copyright Royalty Board declined AtlasPlugged's request to comment on their decision.

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