



January 26, 2009

Proceeding Announced to Set New Streaming Royalty Rates for 2011-2015

Deadline to Petition to Participate is February 4

The Copyright Royalty Board (“CRB”) has announced the start of the proceeding to set the royalty rates that webcasters, including broadcasters that stream their over-the-air signals, will pay to perform sound recordings over the Internet from 2011 through 2015. Parties interested in making their case for affordable rates must file a Petition to Participate with the CRB by February 4, 2009.

Broadcasters may stream music over the Internet without the permission of the sound recording’s copyright holder provided they pay the established royalty to SoundExchange on a monthly basis. The current royalty rates, set during the last ratemaking proceeding covering the years 2006-2010, have been a source of great controversy since their adoption. Royalties are calculated on a “per performance” basis (*i.e.*, the number of listeners hearing any given song) which has more than doubled since 2006, with an additional increase set for 2010. Many broadcasters have discovered that these sharply escalating rates prevent profitable streaming.

To help make the case against another potential five years of excessive royalties, broadcasters are encouraged to participate in the next ratemaking proceeding. To do so, you must file a Petition to Participate with the CRB by no later than February 4, 2009. Petitions may be filed individually or, together with other parties with similar interests, jointly. Each petition must be accompanied by a \$150 filing fee. Once the pool of participants is established, and following a mandatory negotiations period, the CRB will announce when participants may begin submitting comments and testimony.

The significance of the next ratemaking proceeding may be lessened if royalty rates can be independently established pursuant to the recently enacted Webcaster Settlement Act. Under that legislation, broadcasters and SoundExchange have until February 15, 2009, to agree to rates covering the 2006-2010 and 2011-2015 royalty periods as an alternative to rates set (or to be set) by the CRB. Negotiations between these parties are ongoing. However, because the February 15 deadline falls after the February 4 deadline to file a Petition to Participate, broadcasters are urged to submit a petition to ensure their participation in the ratemaking proceeding should one become necessary.

If you have any questions regarding the CRB’s ratemaking proceeding, or would like our assistance in filing a Petition to Participate, please contact any attorney in our office.

This memorandum is intended only as a general discussion of these issues and should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

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