



LEVENTHAL SENTER & LERMAN PLLC

To All Broadcast Clients

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Copyright Royalty Board Significantly Increases Webcasting Fees for 2006-2010 License Period

The Copyright Royalty Board (CRB) recently released its decision to significantly increase the sound recording digital performance royalty rates for the years 2006-2010.

The royalty rates will increase incrementally each year and will apply to all webcasters (those services that make eligible transmissions of digital audio programming over the Internet, whether a retransmission of a terrestrial broadcast transmission or a transmission intended solely for Internet use) that take advantage of the statutory licenses under Sections 112 and 114 of the Copyright Act, which govern the digital transmission ("webcasting" or "streaming") of sound recordings. The newly-adopted rates will not apply to privately negotiated license agreements unless the terms of such agreements specifically require compliance with the regulations of the CRB. Webcasters who have already paid estimated royalties for 2006 and 2007 using the 2005 royalty rate must amend their filings to account for the differences in the new rates.

Previously, webcasters could choose between two royalty calculation methods – Aggregate Tuning Hour (ATH) or Per Performance. In this decision, the CRB eliminated the ATH option of rate calculation (which measured number of listener hours) and mandated that royalty calculations be made using the Per Performance method (a "performance" is one song received by one listener).

The Per Performance rates for the 2006-2010 license period are as follows:

2006	\$0.0008 per listener/per song
2007	\$0.0011 per listener/per song
2008	\$0.0014 per listener/per song
2009	\$0.0018 per listener/per song
2010	\$0.0019 per listener/per song

All webcasters must make an annual minimum payment of \$500 for each channel or station, which is credited against any further royalty fees due. For noncommercial webcasters, this minimum payment covers royalties for streaming of up to 159,140 ATH per month (although ATH has been eliminated as a royalty calculation method, it is still used for the limited purpose of determining the royalty obligations of a noncommercial webcaster); for any traffic above that point, a noncommercial webcaster must pay at the Per Performance rate listed above. All payments must still be submitted to SoundExchange, the entity designated to collect the statutory royalties.

With the elimination of the ATH rate calculation option, webcasters that stream music must track each performance transmitted to each listener. With respect to webcasters that have not already implemented the automated technology necessary to track such information, it is not yet known whether SoundExchange will accept Per Performance figures estimated from ATH tracking for the purpose of retroactive royalties.

Retroactive payments for 2006 and the first two months of 2007, annual minimum payments, and/or monthly payments for March are due on **May 14, 2007**. Late fees for the delinquent submission of monthly statement of account forms and royalties have increased to a monthly 1.5% of total royalties owed.

The CRB's decision may be appealed, in which case it may be 12-24 months before a final decision is rendered on whether the new rates will remain in place. Although some modification of rates is possible on appeal, webcasters are currently obligated to make timely payments under the new regulation

without regard to any challenges to the decision that may be filed.

Accordingly, if you have streamed music under the statutory license during 2006 or 2007, you should prepare the necessary royalty statements and payments as soon as possible.

If you have any questions about the impact of the new regulation and rates for the 2006-2010 license period, please contact our office.

Leventhal Senter & Lerman PLLC

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. To discuss any of the issues presented here, please contact Suzanne Head (202) 416-1082 or any other attorney in our office.