



LEVENTHAL SENTER & LERMAN PLLC

To All Broadcast Clients

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Internet Radio Equality Act Introduced To Nullify New Webcasting Royalty Rates

Congressmen Jay Inslee (D-WA) and Donald Manzullo (R-IL) have proposed legislation that would nullify the Copyright Royalty Board's recent royalty rate decision on the digital performance of sound recordings under Section 114 of the Copyright Act, which controls the compulsory license for webcasting. The Internet Radio Equality Act (IREA) would set rates for the 2006-2010 license period at the webcaster's option of 0.33 cents per Aggregate Tuning Hour or 7.5% of revenue directly related to webcasting.

IREA would also change the standard used to determine webcasting royalty rates from the current "willing buyer/willing seller" standard, which presumes that there is a functioning marketplace which produces a fair rate, to the so-called "801(b)" standard, which considers a variety of factors set forth in Section 801(b) of the Copyright Act. The 801(b) standard is used to determine royalty rates for digital music services other than webcasters, including satellite radio.

For noncommercial stations, the rate-setting standard for the digital performance of sound recordings under the statutory license would be the same as for noncommercial webcasting royalties paid for the performance of musical compositions (*i.e.*, those royalties

paid to composers, songwriters, and music publishers). IREA would also set a transitional 2006-2010 noncommercial royalty rate at 150% of the rate a station paid for the performance of sound recordings during the 2004 calendar year.

In addition, IREA would provide that the minimum annual payment could not be set higher than \$500 for each provider of services.

Finally, the proposed legislation would require that the Commerce Department (specifically, the National Telecommunications and Information Administration), the Federal Communications Commission and Corporation for Public Broadcasting conduct certain studies concerning the potential economic and public interest impact of the proposed royalty rates and report their findings during the next rate-setting proceeding for consideration by the CRB.

If you have any questions about this proposed legislation or about the recent CRB decision regarding royalty rates for the 2006-2010 license period, please contact our office.

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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.