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To: All Radio Clients

January 11, 2008

## **NEW DIGITAL PERFORMANCE ROYALTY CALCULATION METHOD IN EFFECT**

Commercial webcasters, including radio broadcasters who stream music over the Internet, are reminded that the method for calculating digital performance royalty payments has changed effective January 1, 2008.

Webcasters are now required to calculate their royalty payments on a Per Performance basis. Under this method, a "performance" is one song heard by one listener. For example, a webcaster streaming 10 songs heard by one listener equates to 10 performances. Those same 10 songs if heard by two listeners equates to 20 performances. The royalty rate for 2008 is \$0.0014 per performance. The rate increases to \$0.0018 per performance in 2009 and to \$0.0019 per performance in 2010.

The Aggregate Tuning Hour (ATH) method previously available as a royalty calculation option is no longer available to commercial webcasters.

Noncommercial webcasters (i.e. entities that qualify for 501 tax exempt status) will continue to pay royalties of \$500 per year for a maximum monthly threshold of 159,140 ATH. Noncommercial webcasters who

exceed this threshold will be required to make royalty payments based on the Per Performance rate for their excess use.

With the elimination of the ATH rate calculation option, webcasters that stream music must track each performance transmitted to each listener. Vendors have developed playlist tracking software for this purpose. Sound-Exchange, the entity that collects digital performance royalties, has indicated that it will provide a list of such vendors upon request. To request a copy of the list, contact Marc Hines at [mhines@soundexchange.com](mailto:mhines@soundexchange.com). We have not tested, and thus cannot vouch for the effectiveness or accuracy of, this type of software.

The royalty payment for January 2008 performances is due on March 16, 2008 (45 days after the end of the month) to SoundExchange. Future royalty payments will continue to be due 45 days after the end of the month.

If you have any questions concerning your digital performance royalty rate calculation, 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 any attorney in our office.