

Before the
COPYRIGHT ROYALTY BOARD
LIBRARY OF CONGRESS
Washington, DC

In re)	
)	
Notice of Proposed Rulemaking)	RM 2008-7
)	
NOTICE AND RECORDKEEPING FOR)	
USE OF SOUND RECORDINGS UNDER)	
STATUTORY LICENSE)	

**COLLEGE BROADCASTERS, INC.'S MOTION TO (1) OPEN REPLY
COMMENT PERIOD AND (2) TO PUBLISH ON THE CRB WEBSITE ALL OF
THE PREVIOUSLY SUBMITTED COMMENTS**

College Broadcasters, Inc. ("CBI"), hereby respectfully submits these motions in above captioned Notice of Proposed Rulemaking ("Notice"), 73 F.R. 79727 (December 30, 2008) which solicits comments regarding the Copyright Royalty Board's ("Board") proposal to revise its "final interim regulations" for recordkeeping and reports of use of sound recordings under two statutory licenses.

1. MOTION TO OPEN REPLY COMMENT PERIOD.

CBI timely submitted Comments¹ in this proceeding and deferred reply comments until such time as the Board has indicated the time during which to submit reply comments. In order to develop a full record that would allow the Board to take appropriate actions concerning the Notice of Use and Recordkeeping regulations, it is paramount that the Board hear not only the initial comments of the interested parties, but

¹ While CBI and WHRB jointly proposed an extension to the deadline for providing initial Comments in this proceeding, *see* Joint Motion Of College Broadcasters, Inc. And Harvard Radio Broadcasting Co., Inc. For Additional Time To Collect Data And To Offer Comments On Recordkeeping And Reporting (submitted to crb@loc.gov on Jan. 12, 2009 via email from wmalone@millervaneaton.com) ("Joint Motion For Additional Time"), the Board never provided a ruling or other response on that request. Therefore, CBI (and WHRB) each submitted comments in this matter within the originally proscribed time period (by January 29, 2009).

also reply comments by the interested parties. As noted by the Board, the topics in this proceeding are and have been contested for years by the parties involved. The Notice proposes adding burdens to the services, yet places no burden on the collective SoundExchange (“SX”). SX appears to support the additional burdens on services without regard to the nature of and differences between the various kinds of services.

For example, many of the claims made in the comments by SX are unsupportable with respect educational² stations (“Educational Stations”). Without an opportunity to reply to those claims, SX’s assertions go unchallenged. CBI and other interested parties should, therefore, be permitted to file reply comments and likewise SX should be permitted to reply to the comments submitted by CBI and other parties who will be subject to the proposed record keeping requirements.

Accordingly, CBI requests that the Board immediately open a reply comment window that would close April 30, 2009, or open a reply comment window that permits at least 60 days during which the parties may submit reply comments from the announcement of the reply comment window opening. This reply period would allow those disadvantaged by the original deadline of January 29, 2009, *see* Joint Motion For Additional Time, to submit comments in this proceeding that would allow the Board to consider all the pertinent facts before implementing the regulations which will govern recordkeeping and reports of use of sound recordings under the two statutory licensees in question.

2. THE BOARD SHOULD POST ALL COMMENTS TO ITS WEBSITE IN A TIMELY MANNER.

WHRB, in its comments, proposed that the Board post the submitted comments in this proceeding on its website. *See* Comments Of Harvard Radio Broadcasting Company

² CBI uses the term “educational” to refer to all Webcasters that are directly operated by, or are affiliated with and officially sanctioned by, and the digital audio transmission operations of which are, during the course of the year, staffed substantially by students enrolled at a domestically accredited primary or secondary school, college, university or other post-secondary degree-granting educational institution, but that is *not* a “public broadcasting entity” (as defined in 17 U.S.C. § 118(g)) qualified to receive funding from the Corporation for Public Broadcasting pursuant to the criteria set forth in 47 U.S.C. § 396. Further, these Webcasters are exempt from taxation under section 501 of the Internal Revenue code, have applied for such exemption, or are operated by a State or possession or any governmental entity or subordinate thereof, or by the United States or District of Columbia, for exclusively public purposes.

at 4 (“WHRB Comments”) (available at http://www.askcbi.org/wp-content/uploads/2009/01/whrb_comments_on_recordkeeping_nprm_20090129_-_final.pdf) (last visited Feb. 17, 2009). CBI concurs with that proposal. Many of the services that are participating in this proceeding are not based in Washington, DC and do not have the resources available to obtain counsel in the District of Columbia that could efficiently obtain copies of the comments provided by all parties in order to provide reply comments. This practical disadvantage should not be allowed to convert into real prejudice to parties directly affected by the proposed rulemaking, particularly since the many (if not all) of the comments were submitted to the Board by parties electronically via email.


While CBI has published on its website copies of all of the comments in this proceeding that it has received, *see* http://www.askcbi.org/?page_id=207, it has no way of knowing about comments that were submitted to the Board and not also circulated among the commenting parties. Further, to the extent the Board is constrained due to time, efforts, or costs, to post this information on its own web site, CBI would be willing to host at its website the comments of all of the other participants in this proceeding as soon as a copy of those comments are provided to CBI in print or electronic format.

For the foregoing reasons, CBI respectfully request that the Board open a reply comment period and also publish to its website (or make available to CBI for publication on its website) all of the comments received by the Board in this proceeding.

February 17, 2009

Respectfully submitted,

COLLEGE BROADCASTERS INC.

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