Internet Radio Equality Act

H.R. 2060

The ***Internet Radio Equality Act*** , introduced by Congressmen Jay Inslee (D – WA 1st CD) and Don Manzullo, (R- ILL 16th CD), addresses mistakes and deficiencies of a March 2, 2007 decision by the Copyright Royalty Board that will dramatically increase the royalties payments owed to rights holders for the streaming of music offered on the internet. The legislation addresses both noncommercial and commercial streaming services. Among the groups affected by the CRB decision are public radio websites and programming containing sound recordings of music, whether whole or partial tracks. The exceptions are recordings directly licensed or covered by fair use, or less than 30 seconds. .

The ***Internet Radio Equality Act*** corrects the shortcomings of the CRB's decision by modernizing the Copyright Act to recognize public radio's public service mission. This is accomplished by putting royalties paid by public broadcasters to owners of copyrights in sound recordings under the same system and standards as royalties paid by public broadcasters to owners of copyrights in musical works.

Why is this needed:

- For many years, public broadcasters did not engage in activities requiring payment of royalties for copyrights in sound recordings. The advent of new technology and new means to fulfill our public service mission has brought on these royalty obligations and, accordingly, the need to update Section 118 of the Copyright Act.
- The recent CRB decision resoundingly demonstrates the serious problems with treating public broadcasting under the general Copyright Act provisions applicable to commercial entities for streaming sound recordings. It also demonstrates the urgent need to include public interest factors when setting royalty rates and structures for public broadcasters.

What is Section 118:

- **Section 118** was established by Congress as part of the **Copyright Act of 1976** for the explicit purpose of recognizing the public interest in "*encouragement and support of noncommercial broadcasting*" which led Congress to determine that "*the nature of public broadcasting does warrant special treatment in certain areas*." H.R. Rep. No. 94-1476 (1976) at 117 (emphasis added). Accordingly, Congress stated its intent to "*assure a fair return to copyright owners without unfairly burdening public broadcasters*." Id. at 118 (emphasis added).

- **With Section 118, Congress recognized the Public Policy need to treat public broadcasting separately**. Section 118 encourages the owners of copyrights and public broadcasters to reach negotiated agreements on royalty levels, and such agreements have been the pattern in the 30-year history of the provision.

- **Public Broadcast Royalty Status When 118 Enacted**. In 1976, public broadcasters were using the airwaves to transmit their programming and, accordingly, did not owe owners of copyrights in sound recordings any royalties for those activities. However, public broadcasters are making use of digital networks to deliver content. Accordingly, public broadcasters using websites to stream music programming and other programming with music components are subject to royalty payments to owners of copyrights in sound recordings.
- **Negotiated Agreements Have Been the Pattern**. Section 118 encourages the owners of copyrights and public broadcasters to reach negotiated agreements on royalty levels, and such agreements have been the pattern in the 30-year history of the provision. Where negotiated agreements have not been reached with all parties, the fact that some agreements have been achieved has served to guide arbitrators to reasonable balancing of the dual public interests involved.

Recent CRB Streaming Decision Demonstrates the Need to Change Section 118.

- The recent CRB decision demands both fees and measurement methods that are impossible for public broadcasting to provide and inappropriate to public broadcasting's public service mission.
  - Its basic royalty increases are 250% above the previous rates.
  - It also requires a wholly new "per play" royalty calculation process and payment scale for stations that have significant online streaming listeners, an approach that is simply unworkable (as well as unaffordable) for public broadcasters.
- In making its determination, the CRB rejected arguments from public broadcasters for public policy considerations favoring lower rates, stating that Congress had not expressed its intent to apply such considerations for these services.
- These levels would be catastrophic for public broadcasters and negate decades of Congressional support for the public interest in promoting public broadcasting. **It is time for Congress to act to reassert those public interest considerations.**

Transition Provision. Because this would authorize new negotiations and, if negotiations fail, new Copyright Royalty Board proceedings, the proposal would also establish annual royalty levels for a transition period, set at 1.5 times the annual royalties paid during the period ending December 31, 2004 (the last date on which the previous royalty agreements were in effect). This would provide copyright owners with a reasonable increase in royalty levels without causing the major disruptions that the CRB decision would have.

For more information, contact Mike Riksen
NPR 202-513-2741 or mriksen@npr.org