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from the June 17, 2002 edition



WEBCASTER: Kevin Shively, director of an Internet-only station in Hartford, Conn., says he knows his station will eventually pay 'some kind of performance royalties' to artists.
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Why Internet radio may fade

By James Turner | *Special to The Christian Science Monitor*

The Librarian of Congress is usually not considered a magnet for controversy.

But on June 20th, the eyes of Internet broadcasters and music industry insiders will focus on James H. Billington as he decides what royalties Internet radio stations will pay to record labels.

Depending on how the rates are set, some insiders believe the announcement could put some Web broadcasters out of business.

The issue of Internet-radio royalties was first raised when Congress passed the Digital Millennium Copyright Act (DMCA) in 1998. This law, intended to strengthen the copyright protections of digital media such as software and CDs, also required the recording industry to negotiate with Internet broadcasters to determine how much artists should be paid when their music is played on an Internet radio station.

The sides failed to reach an agreement, so Congress directed Mr. Billington to form a panel to set the rates.

Traditional radio stations pay royalties to songs' copyright holders – not necessarily the artists performing the music. The operating philosophy: The promotional value of songs played on the radio outweighs the artists' loss in revenue from royalties.

But the music industry has never been happy about this exemption, and saw the DMCA as an opportunity to prevent the same thing from happening to music broadcast over the Internet.

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"Our performance rights in this country are more limited than they are in most other modern countries around the world," says John Simson, executive director of Sound Exchange, which manages the distribution of digital performance royalties for artists and record labels. "We only have digital cable and satellite rights, we don't have terrestrial radio or television rights, unlike most of the other countries. It's an inequity in US law and it's finally been corrected, at least in some small part."

At least on the surface, Internet broadcasters agree.

"We've known that there was going to be some kind of performance royalties," says Kevin Shively of Beethoven.com, an Internet-only classical station.

"We had always assumed that, and had budgeted for it to be somewhere in the range of what the songwriting royalties were – about 3 percent [of gross revenues]," he says.

But in February, the panel chose a pricing model based on a per-song rate – roughly \$1.40 per song for every 1,000 listeners, or 70 cents for terrestrial broadcasters simulcasting online.

Web-only broadcasters claimed that the rates would force them to shut down. Hundreds of Internet broadcasters went silent for one day last month in protest. Many listeners, who feared the loss of their stations, flooded Congress with complaints. Perhaps as a result of the outcry, Billington rejected the proposal, leading up to the final resolution of the issue next week.

Had the royalty structure been approved, it would have spelled disaster for Internet broadcasters, according to Kurt Hanson, publisher of RAIN: The Radio and Internet Newsletter.

"What was surprising about the [panel's] decision is that in the current advertising environment, that's about 200 percent of revenue," says Mr. Hanson. "When you have to pay 200 percent of your revenue to somebody, it kills your business."

But those representing the recording industry argue that this is beside the point. "It's not really our job to figure out their business model, that's their job," says Mr. Simson. "We've just asked that we be paid fair market value for our service."

Simson adds that if the smaller broadcasters believe that the proposed royalties would drive them out of business, it may be because they were poorly represented on the panel. Larger players like MTV and Yahoo! had greater influence on the panel. They favor per-play royalty rates.

"[Small] stations like us couldn't afford to be in it," rebuts Jim Atkinson of Internet broadcaster W3K. "In the end, since it was the participating stations and record companies that had to pay for the judges that presided over that [panel], the number we kept hearing was that every business that participated ended up owing something like \$300,000" – a figure that small Internet stations could not afford.

Internet radio stations let computer users connect to a website and listen to music using special software. According to Sven Haarhoff, spokesman for MeasureCast in Portland, Ore., company

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that tracks Web broadcasters, as many as 10,000 broadcasters operate on the Web. "In the US, some 77 million people have tuned in at some point to an Internet radio station," he says. "It's largely a workplace phenomenon – 76 percent of listening takes place during the traditional workday."

High-speed connections at work makes it easier for workers to tune in to webcasts. But as Internet access becomes more ubiquitous through technologies like wireless devices, Internet radio is likely to become more popular in the home.

Internet radio broadcasters say they fill an important role by playing and promoting music that would never be played on traditional stations. "Today, the Internet is almost a savior for the small artist," says Doug Balogh of alternative station and Internet simulcaster, XOXY.

But Simson says such exposure may not translate into sales for artists. "If someone can turn on a Chicago blues channel on the Internet and listen to great Chicago blues all day long, will they feel a need to go out and buy a great Chicago blues record?"

Classical broadcaster Mr. Shively disagrees. "Last year alone, just from people clicking through our website, we sold over \$20,000 worth of CDs, and that doesn't count any CD sales that might have gone directly to the retailer."

Mr. Atkinson of W3K, who says his station would have had to pay 342 percent of its revenue in royalties under the panel's proposal, is hopeful that Billington will either choose a system based on a small percentage of gross revenues, or send the problem back to a new arbitration panel with greater representation of smaller broadcasters.

"Things will work out properly now; artists will finally get paid," he says.

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