

As someone who has been involved in internet radio since 2005, I would like to contribute to the discussion concerning copyright reforms.

One of the provisions of the Digital Copyright Millennium Act provides that where the setting of royalties is concerned, internet radio stations must abide by the criterion of the “willing buyer and willing seller”.

Although that standard assumes, wrongly I would suggest, that both parties negotiate on a level playing field, in reality, since before passage of the DMCA, for the most part, internet radio has been a nascent medium, without the clout or influence of either media companies represented by the National Broadcasters Association or of the recording industry as represented by the Recording Industry Association of America.

With respect, in my view, substantial parts of the DMCA were crafted and authored by the very interests mentioned above, in an effort to stifle small media.

In the instance of the NBA, the DMCA exempted terrestrial radio stations from being required to pay royalties to the copyright holders of digital recordings.

In the instance of the RIAA, the latter placed an undue burden on internet-only radio stations by requiring them to pay royalties on a per performance formula, while allowing satellite radio companies like Sirius to pay royalties on the basis of a percentage of revenue.

Indeed, several years ago the US Court of Appeals for the District of Columbia Circuit ruled in favor of Sirius and other satellite companies when it upheld the decision of Copyright Royalty Board to require royalty payments in the range of 6%-8%, denying SoundExchange’s petition to increase payments to the level of 13% of revenue.

It upheld the basis for the decision made by the CRB, namely, that the 801(b)1 standard should apply.

That standard rightly takes into account a number of factors, for example, the effect royalty rates will have on an existing business as well as the concern for the interests not only of copyright holders but of copyright users too.

That standard expresses a concern for the deleterious effects exorbitant royalty rates might have on innovation and the sharing of art and intellectual creations.

It is unfortunate and sad that the 801(b)1 standard was not extended to internet radio, as it should have been.

In my opinion, because internet radio was not granted that consideration, the law has given the CRB leave and latitude to apply a stringent and, in my view, an unfair criterion, where the setting of royalty rates has been concerned.

Because the “willing buyer, willing seller” standard is more exacting, royalty rates imposed on internet radio stations, whether the latter are profitable or revenue-generating, have had a debilitating effect on the potential growth of small and innovative media.

Indeed, because, in part, internet radio has endured such restrictions and burdens, the only internet music services that have experienced success have been large entities Like Pandora and Spotify, justifying the belief that often in the United States only the largest companies and entities have any chance of succeeding in the marketplace.

Should anyone doubt this observation, it is well to note that Sirius and Pandora account for approximately 90% of SoundExchange’s revenue.

Thus, perhaps one can be forgiven for concluding that only well-connected and well-financed entities have any chance of reaching a larger audience or of being allowed to operate on a long-term or viable basis.

Another restriction that has harmed internet radio has been the provision of the DMCA that prohibits the broadcasting of more than four songs in a three hour period.

While the concern about stream rippers was not unjustified, since the enactment of the DMCA technology has changed dramatically, rendering moot the incentive to rip or record internet radio streams, especially when internet radio broadcasts occur at lower kilobit rates.

This provision of the DMCA has hampered the programming options and creativity of internet-only radio stations, thus granting an additional advantage to other broadcasting entities that are not hobbled by such requirements.

In conclusion, it is my hope that the Copyright Royalty Board will take into consideration the several restrictions and disabilities the DMCA imposes on internet radio and how those restrictions have retarded its potential growth, redounding to the benefit of corporations like Clear Channel and large internet music services like Pandora.

It would seem that there could be no better legislation than the DMCA if the purpose of the authors of that bill was to hamper and stifle small media and to benefit those interests whose influence in Congress is overwhelming.

Thank you for your consideration.

Sincerely,

Charles St James