

## **Public Radio Agreement with Sound Exchange for Royalties for Stations Webcasting Sound Recordings**

### ***Q & A***

*(last updated 1/14/09)*

- 1. CPB has just released a joint statement with SoundExchange announcing that an agreement has been reached on royalty payments and recordkeeping requirements for public radio stations that webcast sound recordings. Who is covered and what are the terms?***

The agreement covers all CPB-supported stations, other noncommercial stations that are members of NPR, American Public Media, Public Radio International, Public Radio Exchange, and the National Federation of Community Broadcasters, and NPR, APM, PRI, and PRX themselves. Transmissions of sound recordings over the internet by these entities are covered from January 1, 2005 through December 31, 2010, when this agreement expires.

The agreement between SoundExchange and CPB supplants the May 2007 decision of the Copyright Royalty Board and establishes flat rate reporting requirements that are appropriate to public radio's non-commercial, public service status. A lump-sum payment from CPB to SoundExchange will fully satisfy the webcasting royalty obligations of all the entities above for the covered period.

The agreement also requires all covered entities to implement a comprehensive reporting system, which is discussed in more detail below.

Public radio stations and other entities currently streaming sound recordings may continue and, in fact, are encouraged to continue this important expression of our public service mission. Stations may offer a single stream or multiple streams, a decision determined by the station to meet the needs of its community and audience(s).

- 2. Why was this negotiated agreement necessary?***

The May 2007 decision of the Copyright Royalty Board simply was inadequate in recognizing public radio's unique not-for-profit status and its historic public service mission.

SoundExchange acknowledged these differences between commercial and noncommercial entities and moved forward with an agreement that enables public radio webcasters to continue to meet their public service and non-profit missions.

- 3. How is this agreement similar to and different from previous agreements that covered public radio entities?***

First the similarities - This agreement preserves public radio's community and public service mission and our status as independent, non-profit entities. CPB continues to be the source of royalty payments on behalf of covered public radio entities. And the CPB payment is made on behalf of all covered entities that choose to accept this agreement. Any covered entity that chooses to be covered by this agreement need not make any additional royalty payments during the entire term (Jan. 1, 2005 through Dec. 31, 2010), so there are no back liabilities for anyone who elects to be covered by this agreement. CPB's negotiating and payment role are important because it preserves the cohesive and system character of public radio.

Now the differences - This agreement is based upon payment for consumption. While a single payment covers the entire system for the entire duration of the agreement, the payment has been calculated based on listening to web streams for the system. Growth in audience to public radio's web streams results in higher royalties. The agreement contains annual growth estimates, both in audiences and in the number of covered entities. This is important to us for two reasons: First, we can use audience growth as one metric of determining the value of our service. Secondly, paying more as more people use our music web streams means that more musicians will share in our success.

The concept of payment for consumption also underscores the importance of usage reporting. To ensure that public radio's royalty costs are in line with actual use, those covered by this agreement must establish reliable reporting systems. These reporting systems will also be of great importance in making more accurate and certain payments to musicians.

One last point on reporting ... during the negotiations, we learned that a significant portion of the labels whose sound recordings appear on our systems' web streams are not members of SoundExchange. Without reporting across the entire system, we cannot be sure that these independent musicians and labels will receive the compensation to which they are entitled. Reporting strengthens the connections between our stations, their audiences and the musicians who appear on our web streams by making royalty payments a certainty for all musicians, SX members and non members' labels alike.

#### ***4. What do stations have to do to become part of this agreement?***

Stations that want to take advantage of the rates and terms of this agreement will be directed to a CPB designated website to complete the registration process. Details on the registration website will be coming soon. Even if your station has previously registered for music rights on this site, you must register your station again to agree to comply with the terms of this particular agreement.

You will need to provide administrative information about your station and its website that will be provided to SoundExchange as well as to the licensing entity of any other licensing agreement on the website under which your station elects to receive rights. After your registration has been accepted, you will receive a confirmation e-mail with a

password which will give you access to the site where you will be able to review a copy of the SoundExchange agreement.

To secure the benefits of this agreement for your station, you will need to indicate that your station agrees to the terms of the agreement by checking a box provided for that purpose. Once you have provided all of the necessary administrative information about your station and its website, and have checked the box indicating that your station agrees to the terms of the SoundExchange agreement, your station will be covered for webcasting sound recordings.

**5. *Do stations have any financial responsibilities to pay royalties directly to SoundExchange?***

Stations and public radio entities that register with CPB under the agreement have no additional royalty payment responsibilities to SoundExchange. CPB's payment meets all royalty payment obligations for all entities covered in the agreement.

**6. *What reporting obligations will stations have and will CPB provide assistance for stations that need help?***

CPB will make an additional investment to establish an independent reporting support structure to assist public radio stations in complying with the playlist and usage reporting requirements of the Agreement. This method of reporting will be made available to everyone covered by the agreement. Qualified entities that wish to be covered under the agreement will provide reports to CPB and SX through this independent reporting support structure. More details on the independent reporting support structure will be coming soon.

**7. *Past agreements for Internet streaming rights have included limits on the number of plays over time by a given artist and included other limitations. Do those limitations still apply?***

Yes. The agreement with SoundExchange has certain limitations that do not apply to public radio's broadcast licenses or to the ASCAP, BMI or SESAC Internet licenses. These limitations are set out in the federal law that created the compulsory license to distribute sound recordings over the Internet. You must comply with them.

First, the Internet service cannot be distributed on a subscription basis. Second, the Internet service cannot be interactive or "on-demand". That means your service cannot allow listeners to select a particular sound recording, whether or not as part of a program. Third, you cannot publish or distribute a program schedule or list of the titles of the specific sound recordings that will be transmitted in advance. Fourth, there are limitations on the number of tracks you can play from the same CD, album or cassette ("CD"), limitations on the number of songs by the same artist, and limitations on how many songs from the same CD or artist can be transmitted consecutively:

In any three (3) hour period you can transmit up to three (3) different selections of sound recordings from any one CD, but you can transmit no more than two (2) consecutively. Additionally, in any three (3) hour period you can transmit up to four (4) different selections by the same featured artist, or up to four (4) different selections of sound recordings from any set or compilation of CD's, but you can transmit no more than three (3) consecutively.

Fifth, there are restrictions on the webcasting of continuous, looped programs of less than three (3) hours duration and on the number of times that a program may be repeated during a two (2) week period. You can transmit a program that is longer than one (1) hour and that includes performances of sound recordings up to four (4) times in any two (2) week period that have been publicly announced in advance. If the program is less than one (1) hour long, you can transmit the program up to three (3) times in any two (2) week period that have been publicly announced in advance.

***8. I have concerns with this agreement and may not want to sign? Does my station have that option?***

This agreement was negotiated on behalf of the public radio system and specifically designed to meet the needs of public radio webcasters. Acceptance of the agreement is, however, optional. Stations that decline to accept the agreement will not be covered by it, nor CPB's lump-sum payment, and will be bound by the royalty payment and reporting requirements of the May 2007 Copyright Royalty Board decision. NPR will drop its appeal of the CRB decision as a condition of being covered by the agreement.

***9. Are all artists who are streamed on our station's website covered by this agreement and will they receive royalty payments? What if these featured artists are independents and not members of SoundExchange?***

The terms of the Agreement apply to all artists, whether or not they are members of SoundExchange. SoundExchange has statutory obligations to make payments to all artists who appear on internet music streams.

***10. The term "webcasting" is used frequently. Is "streaming" the only form of web-distribution of sound recordings covered by the agreement? What about downloads?***

This Agreement covers only streaming of sound recordings. Downloads of individual songs or podcasts that contain copyrighted sound recordings are not covered by this Agreement.