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Radio And Internet Newsletter

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Strategy and tactics for broadcasters & worldwide

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Daily news and commentary on the key issues involving radio and the Internet

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News from the NAB

Inslee says "terrible legislation" could "destroy" webcasting

U.S. Rep. Jay Inslee (D-WA) called the final determination for webcasting fees an "absurd" royalty rate that clearly has the potential to **destroy** this nascent industry," and an "accident" that was the result of misapplying older laws that weren't meant to deal with Internet streaming. **Inslee (pictured being interviewed at the conference)** spoke to the National Association of Broadcasters convention Saturday as a panelist at the annual "Congressional Breakfast."



Inslee is one of three authors of the **Internet Radio Fairness Act**, a bill that would make royalty conditions more favorable to webcasters that fit



under a "small business" threshold (more on the IRFA in [RAIN here](#)).

Inslee observed, "I think this disaster could be the equivalent of overregulation of the airline industry during Lindbergh's era...shutting it down at that point."

"This is a case where a great technology is potentially strangled by **terrible legislation**," Inslee commented, apparently blaming Internet radio's precarious position on the Digital Millennium Copyright Act. However, he said he doesn't support the broadcast industry's efforts to get Internet simulcasts of **terrestrial** broadcasts exempted from the royalties.



Inslee's position was reiterated by one of the chief legislative aides in **Congressman Rick Boucher's** office, **Johanna Mikes** (pictured below), in a panel called "Congressional Staff Panel: Radio, Recording, and Regulation."

"I'm frankly a little

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surprised that the broadcasting community is not more engaged on these issues," Mikes said. "I'm surprised there's not more emphasis on ephemeral copies, on the 'performance compliment,' and, of course, there's the rate."

She counseled broadcasters that they could take on these issues on a legislative level while still protecting their position in their judicial fight to be exempted from the obligations entirely.

On the same panel, Melissa McDonald, of the House Subcommittee on Courts, the Internet, and Intellectual Property, pointed out that when there were collective groups of people with a commonality of interests, "That helps a lot."



In other words, she was suggesting that broadcasters and large and small webcasters should find a common ground and speak to her subcommittee with, ideally, one voice.

During the Q&A portion of the session, I observed that the big issue for broadcasters was the question of whether Congress had always intended broadcasters' simulcasts to be exempt from the provisions of the DMCA. If so, that would have been a nice issue for his "Internet Radio Fairness Act" to address.

I asked Congressman Inslee whether he had heard from broadcasters during the several-week period after he announced he was working on an "Internet Radio Fairness Act" – i.e., while his staff was drafting the bill.

He said that, as far as he knew, his staff **hadn't**.

(It should be noted that moderator and NAB Radio Board Chair Ginny Morris did subsequently assure the audience that some conversations HAD taken place between the NAB and aides.) – KH

RAIN Reader Cocktail Party attracts 200 delightful guests

Tempted by microbrewed beer, garlic fries, and the chance to mingle with dozens of similarly-minded cutting-edge individuals, more than 200 broadcasters, webcasters, and vendors dropped by our "**RAIN Reader Cocktail Party**" at the Gordon Biersch Brewery Restaurant in Seattle last Friday afternoon.



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The guests included high-level executives for four of the largest broadcasters with active streaming initiatives (Clear Channel, Susquehanna, Cox, and Standard Radio), and many of the top vendors (including Microsoft, Real Networks, Hiwire, Arbitron, Susquehanna Technologies, Loudeye, and many more).

Thanks to everyone who stopped by!

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The LMiV debacle ([here](#)) is just another example of a venture that could have used a fresh perspective from a disinterested outsider.

One option to consider: RAIN's **Kurt Hanson** is now available to help you and/or your management team make intelligent decisions — and maybe help you save up to \$37 million!

With your initial consulting visit, you can also schedule a **free two-hour seminar** for your staff and/or clients on the long-term future of Internet radio. Click [here](#) to learn more.

Copyright Office wants comments on broadcasters' "stay" motion

From the US Copyright Office: "The [Copyright Office](#) is **seeking comments** on a motion by Bonneville International Corp., Clear Channel Communications, Inc., Cox Radio, Inc., Emmis Communications Corp., Entercom Communications Corp., Salem Communications Corp., Susquehanna Radio Corp. and the National Association of Broadcasters requesting a stay of the Register of Copyrights' December 11, 2000 final rule, 65 FR 77330 (December 11, 2000), which clarified that a **retransmission** of an **AM/FM program** over the Internet **is** subject to the digital performance right...



"A Federal Register notice will be published September 17, 2002, offering any person with an interest in this proceeding an opportunity to comment on the motion...

"Oppositions to the motion are due in the Copyright Office no later than close of business on Tuesday, September 24, 2002. Replies are due no later than Friday, September 27, 2002. All responsive filings must be hand delivered to:

Office of the General Counsel
James Madison Memorial Building, LM-403
First and Independence Avenue, S.E.
Washington, D.C. 20540."

A copy of the motion to stay is posted to the Office's website [here](#). RAIN's coverage of the broadcast groups' filing of the motion to stay is [here](#). Pictured are Register of Copyrights Marybeth Peters and Library of Congress General Counsel David Carson.

Send a quick message to RAIN!

Have an opinion? Drop us a note! (Or, to use your own e-mail software, click [here](#).)

Your e-mail address:

Your name (if not obvious from your e-mail address):

Kurt and Paul, this is deep background -- don't quote me!

Submit

Thanks!

This is the final part of a 5 in a series...

RAIN Guest Essay

Royalty Voodoo Economics: It's not just about fees



BY JOEL WILLER
for Radio And Internet Newsletter

"[C]urrently available software allows the generation of a performance report that 'truly is the push of a button,'" states the sound recording performance CARP final report.

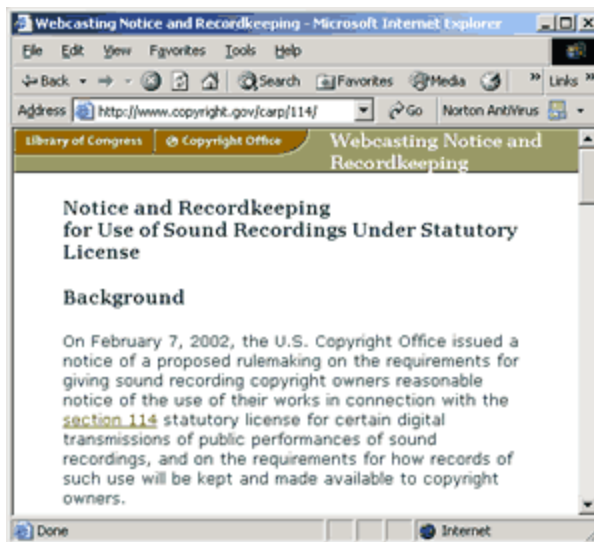
The arbitration panel arrived at this conclusion based partially on the testimony of [SoundExchange's](#) [Barrie Kessler](#), Executive Director for Internal Operations and Data Management. Even if this statement accurately represents the comparatively large entities participating in the CARP proceedings, it is certainly not true for small noncommercial webcasters like high school, college, and university radio stations. This is just one example of how the royalty arbitration process

was **fatally crippled** by the exclusion of small noncommercial webcasters.

Recordkeeping could be as punishing as fees for college radio

For many college webcasters, concern over royalty fees has taken a back seat to outright fear of accompanying **recordkeeping requirements** that have yet to be announced by the Copyright Office. Even for those noncommercial webcasters that might be able to survive the oppressive fees, the costs and burdens of gearing up for yet-to-be-determined data collection mandates could end their Internet presence.

College radio stations are very different than commercial services that participated in the CARP process, in extremely important and fundamental ways. To comply with pending recordkeeping rules, as hinted at by the Copyright Office, could require college stations to change the very nature of their programming. New regulations could force college radio stations to programmatically cease being "college radio stations." For many, continuing their Web streaming is not worth that cost.



Other potential requirements, like reporting the total number of Internet visitors listening to each specific song performed, is currently technologically **impossible** for even the best equipped college radio stations. Faced with expensive hardware and software acquisition costs, many noncommercial webcasters will simply pull the plug on their streams.

It's time for record industry to play fair

SoundExchange and the RIAA are partially to blame for the turmoil that continues to exist as we rapidly approach the due date for retroactive royalty fees. Unlike small noncommercial radio stations, the **RIAA** and SoundExchange had seats at the arbitration table and had the opportunity to influence that decision. Perhaps Ms. Kessler's testimony – and similar testimony given by **Steven Marks** (right), RIAA Senior Vice President for Business and Legal Affairs – was uninformed, and these executives were genuinely unaware of the



capabilities of various services likely to make use of the new



statutory license. If that is the case, then that is the failing of Kessler (photo below) and Marks. In their positions, these recording industry officers are obliged to make themselves aware of important considerations relevant to their duties. SoundExchange and the RIAA must now contribute to remedying the problem that is, in part, of their own creation.

The RIAA has already entered into a negotiated agreement with noncommercial radio stations funded by the Corporation for Public Broadcasting. Under a blanket royalty fee – paid not by the individual stations, but by funds acquired by CPB from the federal government – that agreement applies to 410 stations. Among the terms of the existing



pact is a **total waiver** of recordkeeping requirements for stations with fewer than ten employees. How can the RIAA now expect more from noncommercial stations operated by high school, college, and university students?

Sitting in the offices of Marks and of SoundExchange executive director **John Simson**, I have been told that the recording industry representatives will not enter into negotiations with noncommercial college webcasters unless and until an agreement is reached with commercial webcasters. However, Simson publicly committed, just last month in an Associated Press article, to actively negotiating with college webcasters. Similar sentiment was also recently repeated in a report at Wired.com.



It's now incumbent upon Simson to prove that his promises are more than mere press statements meant to mollify artists, politicians, and the public. There's no need to wait for other deals to be done.

Joel Willer is an Assistant Professor of Mass Communications at the University of Louisiana at Monroe and general manager of the school's radio station KXUL. This is the final installment of this series. Read Part 1 [here](#), Part 2 [here](#), and Part 3 [here](#), and Part 4 [here](#)...



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Silenced by royalties

Here is a growing list of webcasters who, because they don't feel they can manage webcasting royalties in a viable business, have decided that it's in their best interests to silence their streams. (We thank them for their hard work and dedication to their audiences and the industry, and wish them luck in their future endeavors...)

247PolkaHeaven.com	All80s.com	AudioCandy.com
BlueMars.org	BrazilCast 1 & 2	Celtic Heritage Webradio

Chez Whitey	CIRNH.com	Citadel stations
Clownmask Radio	Entercom stations	Gleiser Communications
Good Time Oldies Radio	Greater Media stations	GrrlRadio
HitRadio.biz	Hot Hit Radio	IdahosCast.com
Ithaca College Radio	Jones College Radio	KBCS /Bellevue
KBVR /Corvallis	KDEC /San Francisco	KEDM /Monroe
KEOM /Mesquite	KETR /Commerce	KGRK /Cedar Falls
KHUM /Humboldt. Co.	KKDV /San Francisco	KKNX /Eugene
KKNG /Oklahoma City	KKPT /Little Rock	KKUP /Cupertino
KMGO /Centerville	KNHC /Seattle	KOIT /San Francisco
KOKE /Oklahoma City	KOMA /Oklahoma City	KPIG /Freedom
KRCL /Salt Lake City	KROK /DeRidder	KTPW /Dallas
KTRS /St. Louis	KTXN /Victoria	KVVP /Leesville
KUMX/South Fort Polk	KWXY /Cathedral City	Lotus Radio stations
Maranatha stations	McClure stations	Midwest Family stations
Minion Radio	MonkeyRadio.org	MoreMusicRadio.net
MYNDFK.com	NetRockRadio.com	NextMedia stations
OnTheCorner.fm	Perkigoth.com	PissMonkey
Powerrocks.com	Progrock.com	Psychedelic Time Warp
Pulverradio.com	RadioAmerica	RadioBoston.com
RadioCentral.com	RadioMAX	Radio Free Akron
Radio Free BD	Radio Free Tiny Pineapple	Radio Isla Negra
ReggaeTrain.com	Renda Broadcasting	RKNA: Aural Arcana
SavageRockRadio.com	Shwango Radio	Simmons Media stations
SomaFM.com	StarDogRadio.com	TagsTrance.com
The City Radio	The Lost 45s	The Radio People stations
therockfm.com	TheVoice	The Zoo
UCLARadio.com	WAAF /Worcester	Waitt Radio Network
WAME /Statesville	WBEB /Philadelphia	WCKW /La Place
WDCE /Richmond	WDWN /Auburn	WellsRadio.net
WELW /Cleveland	WEST /Easton	WEZS /Laconia
WGQR /Elizabethtown	WIYY /Baltimore	WJTL /Lancaster
WLUP /Chicago	WMHB /Waterville	WMMR /Philadelphia
WOVRadio.com	WRLT /Nashville	WRSI /Greenfield
WRUR /Rochester	WRVG /Georgetown	WSBF /Clemson
WSWI /Evansville	WUVT /Blacksburg	WVKR /Poughkeepsie
WXRV /Haverhill	WYYB /Phoenix	WZBC /Newton
WZIP /Akron	WZMR /Albany	Yahoo! Radio stations

Have we missed others? Use the feedback form above or e-mail us [here](#).

Other public stations now off line

This is from the [SOS: Save Our Streams](#) website, which focuses the struggle against the webcasting royalty rates as they pertain to independent educational and noncommercial stations.

KAPU-CA; KSDS-CA; KTAI-TX; KTSW-TX; KWJC-MO; KXCI-AZ; KXRJ-AR; WEBR-VA; WERS-MA; WEVL-TN; WMHW-MI; WMUA-MA; WNYU-NY; WONB-OH; WPTS-PA; WRMC-VT; WSRN-PA; WSTB-OH; WSUM-WI; WSUW-WI; WUTK-TN; WXOU-MI

Upcoming conferences

Sep. 26-Oct. 6, 2002	Museum of Television & Radio 8th Annual Festival : New York, NY
Oct. 1-4, 2002	Streaming Media East : New York, NY
Oct. 20-22, 2002	NAB European Radio Conference : Prague, Czech Republic
Oct. 30-Nov. 2, 2002	CMJ Music Marathon 2002 : New York, NY

Need advice on Internet radio-related issues?

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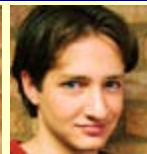
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