



LEVENTHAL SENTER & LERMAN PLLC

To All Broadcast Clients

May 7, 2007

## **Copyright Royalty Board Extends Deadline for Payment of Webcasting Royalty Fees; Error in Published Royalty Rates for Non-Music Programming**

The Copyright Royalty Board (CRB) has issued its official Final Determination setting rates and terms for webcasting under the compulsory license provided by Section 114 of the Copyright Act. The recent publication of the Final Determination in the Federal Register opens a 30-day window for judicial appeals, which are due by May 31, 2007.

Importantly, the Final Determination changes the due date of the first payment under the new rates. Retroactive payments for 2006 and the first two months of 2007 had previously been due on May 15, 2007. Retroactive payments for 2006 and the first five months of 2007 are now due on July 15, 2007.

In addition, there appears to be an error in the rates specified in CRB's recent Order permitting calculation of royalty fees based on an Aggregate Tuning Hours (ATH) metric, in addition to Per Performance received by each listener. For 2006 and 2007, the correct ATH rates should be \$0.0008 and \$0.0011, respectively, for broadcast stations that stream "Non-Music Programming," that is, programming reasonably classified as news/talk, sports, or business programming. Thus, the correct ATH rates for 2006 and 2007 are as follows:

2006: \$.0123 per hour for Internet-only webcasters; \$.0092 per hour for broadcasters that simulcast their over-the-air programming; and \$.0008 for broadcast stations that stream programming reasonably classified as news/talk, sports, or business programming.

2007: \$.0169 per hour for Internet-only webcasters; \$.0127 per hour for broadcasters that simulcast their over-the-air programming; and \$.0011 for broadcast stations that stream programming reasonably classified as news/talk, sports, or business programming.

The parties are in the process of alerting the CRB to this technical error and hope that a clarification on the matter will be issued shortly. In the meantime, in anticipation of the CRB's correction of this apparent error in the published rates, if you have streamed Non-Music Programming under the statutory license during 2006 or 2007, you should prepare the necessary royalty statements and payments using the correct rates set forth above rather than the ones previously published by the CRB.

If you have any questions about the CRB Determination regarding royalty rates or payments for the 2006-2010 license period, please contact our office.

*Leventhal Senter & Lerman PLLC*

This memorandum is intended only as a general discussion of these issues and should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired. To discuss any of the issues presented here, please contact Suzanne Head at (202) 416-1082 or any other attorney in our office.