

[SoundExchange Seeks Permission to Distribute Royalties Based on Proxy Information](#)

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What should SoundExchange do with money that it collects for the performance of sound recordings, when it does not know what sound recordings were played by a particular service? As we've written many times on this blog, SoundExchange collects royalties from **digital music services**, including satellite radio, cable radio and webcasters, for the performance of **sound recordings** (i.e. a recording of a song by a particular artist). It is charged with the obligation to distribute these royalties one-half to those who hold of the copyright to the sound recording and one-half to the artists who perform on those recordings. However, SoundExchange, according to a [filing recently made with the Copyright Royalty Board](#), does not always know which songs were played by a particular music service. Thus, it has had difficulty distributing all of the money it collects - currently holding **\$28 Million** in royalties from the period 2004 to 2009 that have not been distributed. Why? According to SoundExchange much of the problem is that not all services report what they played and how often, and other information that is submitted is sometimes inaccurate or otherwise does not adequately identify the music that was played. To deal with this problem, SoundExchange has asked that the Copyright Royalty Board authorize it to use **proxy information** to distribute these funds from 2004-2009. The [CRB has asked for comments](#) on that proposal. **Comments are due on May 19.**

What is **proxy information**? Basically, SoundExchange plans to infer from the information that it does have what music was played by the services for which it has no information. According to the SoundExchange filing, they would make these assumptions based on the type of service. Thus, information from webcasters would be used to estimate what other webcasters were playing. Information from background music services who did report would be used to determine what other background music services played, and so on. The CRB, in its request for comments, asks if the proxy should be further broken down so that, for instance, noncommercial webcasters would serve as a proxy for other noncommercial webcasters, and commercial webcasters would serve as a proxy for other commercial webcasters. The Copyright Royalty Judges are also seeking to assess whether SoundExchange has done all that it can do to get the required information, and if the proxy system is a fair way of determining distributions for the money that has not yet been awarded to rightsholders and artists.

Does this proposal have any impact on the services themselves? Apparently not, as SoundExchange is at this point only looking for this authority in order to distribute money collected for royalties that came in from 2004 to 2009. It does not appear to be looking at imposing any new restrictions on webcasters or other digital music services. Instead, it is only looking for the authority to distribute the money that it has already collected based on the information that it has available. What should music services take away from this request?

Clearly, digital music services should understand that the actions taken here are taken only because SoundExchange did not get full reporting. In some of the webcaster settlement agreements (see, e.g. the settlement with broadcasters, summarized [here](#)), and in the CRB's [own record keeping rulemaking proceeding](#), it was recognized that certain classes of webcasters could not be expected to provide **full census reporting**, i.e. reporting that lists all of the songs played by the service and how many listeners heard each song. This reporting process can be expensive, especially for groups like noncommercial webcasters and even some small broadcasters and other small companies. In some cases, the cost of reporting would be greater than the royalties collected or certainly the revenue produced by the streaming. In many of these cases, SoundExchange is already authorized to distribute proceeds based on some proxy methodology.

But other webcasters, who are supposed to be reporting on a census basis, should do so. The Copyright Royalty Board has [asked](#) whether SoundExchange has exhausted all its avenues to collect information about what is being played. SoundExchange, in its pleading, notes that many services simply have lost past data, and some services are no longer in business. So getting that information is difficult or impossible. But in the future, SoundExchange will no doubt be looking to develop stronger enforcement capabilities against webcasters and others who do not meet reporting requirements. But, even then, there will no doubt be gaps, as there will be computer malfunctions, inaccurate data that is entered, and companies that go out of business without having met all of their obligations.

Clearly, no one wants musicians to go unpaid - especially when the royalties have already been collected. In the past, there has been talk of developing monitoring systems that would be easy and inexpensive to use. Many streaming service providers already provide some type of reporting system. But virtually all still require human input - identifying the songs correctly in a service's music scheduling software, and that sometimes is not easy, as information from record companies and other music suppliers is not always available and consistent. Automating such systems, making them ubiquitous, foolproof, easy to use and inexpensive, should be the priority of SoundExchange and webcasters and other music services, so that those who deserve

to get paid are paid, but avoiding systems that are so hard to use that they make streaming or other digital music use difficult or impossible.

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