

**DISTRICT OF COLUMBIA COURT OF APPEALS  
PETITION FOR REVIEW**

Appeal No. 07-\_\_\_\_\_

Ryalty Logic, Inc.,	)	
Petitioner	)	
v.	)	Petition for Review
	)	
Copyright Royalty Board,	)	
Respondent	)	
	)	

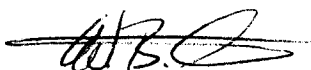
**PETITION FOR REVIEW OF AN ADMINISTRATIVE ORDER**

Ryalty Logic, Inc., Petitioner, being a party to the rate-making proceeding below, hereby petitions the Unites States Court of Appeals for the District of Columbia Circuit for review of the attached final rule and order of the Copyright Royalty Board, published in the Federal Register, 72 Fed. Reg. 24084 (May 1, 2007).

Venue is lodged under 17 U.S.C. §803(d)(1).

Dated: May 21, 2007

Respectfully submitted,



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Attachment

CERTIFICATE OF SERVICE

I, William B. Colitre, hereby certify that a copy of the foregoing Petition for Review (with cover page only of the attachment) has been served on this 21<sup>st</sup> day of May, 2007 by email and U.S. mail to the following persons:

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## LIBRARY OF CONGRESS

## Copyright Royalty Board

## 37 CFR Part 380

[Docket No. 2005-1 CRB DTRA]

## Digital Performance Right in Sound Recordings and Ephemeral Recordings

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule and order.

**SUMMARY:** The Copyright Royalty Judges, on behalf of the Copyright Royalty Board of the Library of Congress, are announcing their final determination of the rates and terms for two statutory licenses, permitting certain digital performances of sound recordings and the making of ephemeral recordings, for the period beginning January 1, 2006, and ending on December 31, 2010.

**DATES:** *Effective date:* May 1, 2007.

*Applicability date:* The regulations apply to the license period January 1, 2006 through December 31, 2010.

**ADDRESSES:** The final determination is also posted on the Copyright Royalty Board Web site at <http://www.loc.gov/crb/proceedings/2005-1/final-rates-terms2005-1.pdf>.

**FOR FURTHER INFORMATION CONTACT:** Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor. Telephone: (202) 707-7658. Telefax: (202) 252-3423.

**SUPPLEMENTARY INFORMATION:****I. Introduction***A. Subject of the Proceeding*

This is a rate determination proceeding convened under 17 U.S.C. 803(b) *et seq.* and 37 CFR 351 *et seq.*, in accord with the Copyright Royalty Judges' Notice announcing commencement of proceeding, with a request for Petitions to Participate in a proceeding to determine the rates and terms for a digital public performance of sound recordings by means of an eligible nonsubscription transmission or a transmission made by a new subscription service under section 114 of the Copyright Act, as amended by the Digital Millennium Copyright Act ("DMCA"), and for the making of ephemeral copies in furtherance of these digital public performances under section 112, as created by the DMCA, published at 70 FR 7970 (February 16, 2005). The rates and terms set in this proceeding apply to the period of January 1, 2006 through December 31, 2010. 17 U.S.C. 804(b)(3)(A).

*B. Parties to the Proceeding*

The parties to this proceeding are: (i) Digital Media Association and certain of its member companies that participated in this proceeding, namely: America Online, Inc. ("AOL"), Yahoo!, Inc. ("Yahoo!"), Microsoft, Inc. ("Microsoft"), and Live365, Inc. ("Live365") (collectively referred to as "DiMA"); (ii) "Radio Broadcasters" (this designation was adopted by the parties): namely, Bonneville International Corp., Clear Channel Communications, Inc., National Religious Broadcasters Music License Committee ("NRBMLC"), Susquehanna Radio Corp.; (iii) SBR Creative Media, Inc. ("SBR") and the "Small Commercial Webcasters" (this designation was adopted by the parties): namely, AccuRadio, LLC, Digitally Imported, Inc., Radioio.com LLC, Discombobulated, LLC, 3WK, LLC, Radio Paradise, Inc.; (iv) National Public Radio, Inc. ("NPR"), Corporation for Public Broadcasting-Qualified Stations ("CPB"), National Religious Broadcasters Noncommercial Music License Committee ("NRBNMLC"), Collegiate Broadcasters, Inc. ("CBI"), Intercollegiate Broadcasting System, Inc., ("IBS"), and Harvard Radio Broadcasting, Inc. ("WHRB"); (v) Royalty Logic, Inc. ("RLI"); and (vi) SoundExchange, Inc. ("SoundExchange").

DiMA, Radio Broadcasters, Small Commercial Webcasters, SBR, NPR, CPB, NRBNMLC, CBI, IBS and WHRB are sometimes referred to collectively as "the Services." The Services are Internet webcasters or broadcast radio simulcasters that each employ a technology known as streaming, but comprise a range of different business models and music programming. DiMA and certain of its member companies that participated in the proceeding (namely: AOL, Yahoo!, Microsoft and Live365), Radio Broadcasters, SBR and Small Commercial Webcasters are sometimes referred to collectively as "Commercial Webcasters." NPR, CPB, NRBNMLC, CBI, IBS and WHRB are sometimes referred to collectively as "Noncommercial Webcasters."

**II. The Proceedings***A. Pre-Hearing Proceedings*

A notice calling for the filing of Petitions to Participate in this proceeding to set the rates and terms for the period beginning January 1, 2006, and ending on December 31, 2010, was published February 16, 2005. 70 FR 7970. The Petitions were due by March 18, 2005. Forty-two petitions were filed. Following an order to file a Notice of Intention to Submit Written Direct

Statements, the participants were reduced to the following twenty eight: SBR; NPR; NPR Member Stations; CPB; CBI; SoundExchange; RLI; IBS; WHRB; Digital Media Association; AOL; Live365; Microsoft; Yahoo!; AccuRadio LLC; Discombobulated LLC; Digitally Imported, Inc.; Radioio.com LLC; Radio Paradise, Inc.; Educational Media Foundation; NRBNMLC; Bonneville International Corp.; Clear Channel Communications, Inc.; CBS Radio, Inc.; NRBNMLC; Salem Communications Corp.; Susquehanna Radio Corp.; and Beethoven.com LLC.

Following an unsuccessful negotiation period, the Written Direct Statements were due October 31, 2005. All of the above filed plus the additional following: Mvradio.com LLC; 3WK; XM Satellite Radio, Inc.; Sirius Satellite, Inc.; Infinity Broadcasting Corp.

*B. The Direct Cases*

The participants conducted discovery and then began live testimony. By the time testimony began, the participants reduced to the following: SBR; NPR; NPR Member Stations; CPB; CBI; SoundExchange; RLI; IBS; WHRB; Digital Media Association; AOL; Yahoo!; AccuRadio LLC; Discombobulated LLC; Digitally Imported, Inc.; Mvradio.com LLC; Radioio.com LLC; Radio Paradise, Inc.; 3WK LLC; Educational Media Foundation; NRBNMLC; Bonneville International Corp.; Clear Channel Communications, Inc.; NRBNMLC; and Susquehanna Radio Corp.

Testimony was taken from May 1, 2005, through August 7, 2006. SoundExchange presented the testimony of the following 14 witnesses: (1) John Simson, SoundExchange, executive director; (2) Barrie Kessler, SoundExchange, chief operating officer; (3) James Griffin, One House LLC, chief executive officer; (4) Erik Brynjolfsson, MIT Sloan School of Management, professor of management and director of Center for eBusiness at MIT; (5) Michael Pelcovits, MiCRA, economic consultant; (6) Mark Eisenberg, SONY BMG, senior vice president of business and legal affairs; (7) Lawrence Kenswil, Universal eLabs, a division of Universal Music Group, president; (8) Michael Kushner, Atlantic Records Group, business and legal affairs; (9) Stephen Bryan, Warner Music Group, vice president of strategic planning and business development; (10) Harold Bradley, American Federation of Musicians of United States and Canada, vice president; (11) Jonatha Brooke, songwriter and performer, owner of Bad Dog Records; (12) Cathy Fink, songwriter and performer; (13) Bruce Iglauer, Alligator