Webcast Measure Divides Its Ranks

Some oppose a bill in Congress to reduce royalties from small stations, saying it still would not help them.

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Brian Hurley broadcasts little-known music over the Internet purely for the love of it, transmitting songs to a tiny audience from a computer in the spare bedroom of his suburban Detroit home.

New royalties for record companies and performers just raised the price of Hurley’s hobby, threatening to drive him and many other small Internet broadcasters off the virtual airwaves. Yet Hurley fiercely opposes a proposal in Congress to reduce royalties from small Webcasters, arguing that the bill wouldn’t help the vast majority of them.

"The practical effect of what [the bill] was going to achieve is that a huge Webcaster with 1,000 listeners may pay as much as one with 20, and that doesn’t strike me as fair," said Hurley, whose Webcasts reach an average of 30 listeners. "People at the bottom would effectively be eliminated," even by the discounted rates Congress is considering.

His views reflect the growing rift in Webcasters’ ranks over how to treat the little guys, whether they be small businesses, nonprofits or hobbyists like Hurley. That rift spells trouble for the small Webcasters’ bill that passed the House but got bogged down in the Senate last week. It also threatens to spoil the chances for any other legislation this year to discount Webcast royalties.

The House-passed bill includes discounts that would keep some small Webcasting businesses afloat. But its limited scope worries other Webcasters, who fear that Congress won’t revisit the issue to provide any help for them.

Congress ordered Webcasters in 1998 to pay royalties to record labels for the music they played online, in addition to the royalties they already were obliged to pay songwriters. After a long and costly arbitration process, the librarian of Congress set the rates in July.

For commercial Webcasters, the fee is about a penny per hour for each listener. For noncommercial stations, the royalty is about a third of a cent per listener hour. That can add up to thousands of dollars per year. For Hurley, the bill could be more than $2,500.

A computer network engineer who’s between jobs, Hurley has been broadcasting online since February 1999. "I wanted something that would combine my interest in computers with my interest in music," he said.

Hurley’s station -- dubbed Detroit Industrial Underground -- plays songs from the industrial and electronic genres, resulting in a propulsive and occasionally harsh mix of music.
"It’s basically a one-man project," he said, adding that he spends about 20 hours per week on the station.

The effort costs him a couple hundred dollars per month, including the money he spends buying music for his playlists. He also receives some CDs for free from independent record labels and artists, including a number of bands from Detroit’s burgeoning electronic-music scene.

To Hurley, Internet radio is an important outlet for bands who don’t play mainstream music. "If you’re an industrial band starting out, you will get no airplay on any station in the country, except maybe some college stations."

One fan of Hurley’s efforts is Ed Altounian of the Detroit Electronica Coalition, a promotional group for about three dozen local electronic-music bands.

"It kind of levels the playing field between us and the big artists that all the record labels are pouring their money into to promote," he said.

Some record labels and artists agree, saying Webcasters are an important promotional tool at a time when over-the-air broadcasters are consolidating stations and shrinking playlists. But John Simson, executive director of SoundExchange -- the royalties arm of the Recording Industry Assn. of America -- said if Internet radio really promoted CD sales, "we would have seen great increases in sales.... We haven’t."

Beyond that, Simson said, Webcasting isn’t like over-the-air radio. It can better satisfy a listener’s cravings for some genres, potentially reducing CD sales, he said. There’s also the threat of digital radio recorders that could search for and record specific songs from online radio streams, Simson said.

These concerns are driving the RIAA to demand higher royalties from Webcasters than any other group pays to broadcast music anywhere in the world, critics say. In the compromise that the RIAA and artists struck with representatives of 14 small Webcasters, commercial stations would pay up to 12% of their revenues or 7% of their expenses instead of the rates set by the librarian of Congress.

The House speedily approved a bill by House Judiciary Committee Chairman F. James Sensenbrenner Jr. (R-Wis.) to implement that compromise, but the bill ran aground in the Senate after Sen. Jesse Helms (R-N.C.) raised objections. His move was blasted by the bill’s proponents, but a number of hobbyists, college radio and noncommercial broadcasters praised Helms.

"I can’t fault [the Webcasters who negotiated the bill] for trying to get better rates, but it was at the expense of everyone else in the industry," Hurley said. "The Webcasting industry as a whole needs to work together to get lower rates for everybody."

Although Congress is expected to go back into session in mid-November, an aide to Senate Majority Leader Tom Daschle (D-S.D.) said it was highly unlikely that any new measures would be taken up by lawmakers. Nevertheless, Webcasters opposed to the Sensenbrenner bill are pinning their hopes on persuading the House and Senate to pass a broader measure.

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