Small Internet radio stations, angered over what they say is the recording industry's effort to wield royalty rates as a weapon to drive them out of business, say they are preparing to file an antitrust suit against the Recording Industry Association of America.

The Las Vegas-based Webcaster Alliance will send a letter today to the RIAA, threatening to sue the group for violations of the Sherman Antitrust Act unless the RIAA agrees to reopen negotiations over the royalty rates webcasters must fork over to artists and record labels, Webcaster Alliance attorney Perry Narancic said.

"We're trying to negotiate with these people, but with a big stick," Narancic said.

The existing royalty rates structure would force as many as 90 percent of small commercial Internet radio stations to close if left unchanged, Narancic said.

The Webcaster Alliance has more than 300 members ranging from tiny hobbyists to small broadcast stations with accompanying Internet sites. The group's members include stations specializing in trance, bluegrass, classical and other genres.

The RIAA has not seen the letter and as such had no comment about its contents, but spokesman Jonathan Lamy said the organization has negotiated in good faith with webcasters.

"We have worked diligently to negotiate fair agreements that offer a broad and flexible array of rates and terms to large, small and non-commercial webcasters," he said.

Webcasters of all sizes have wrangled with the recording industry since 1998, when Congress passed a law requiring Internet radio stations to pay royalties to artists and record labels.

Even after the Librarian of Congress inked a royalty compromise last year, many smaller Internet radio operators maintained that the rates were too high.

Under pressure from Congress, the RIAA and its royalty agent, SoundExchange, negotiated tailored royalty arrangements with specific webcasting segments, including large commercial operators, college stations and small commercial stations, like those represented by the Webcaster Alliance. In June, the RIAA announced that it had struck deals with all major classes of webcasters.

But the Webcaster Alliance maintains that the RIAA and SoundExchange did not go far enough to craft royalty deals with small Internet radio stations and that its lawsuit would challenge the special royalty deals it has already struck, Narancic said.

At issue is which group speaks for small commercial webcasters. To establish royalty rates for this class of Web radio stations, the RIAA negotiated with a group called Voice of Webcasters, which represented fewer than 15 Internet radio stations, according to Narancic.

The VOW members, who Narancic characterized as some of the largest "small" webcasters in the country, agreed to a comparatively high baseline royalty rate -- under which all small webcasters would pay at least $2,000 a year to record
labels and artists -- in exchange for a break on high, per-song rates.

The $2,000 figure is four times higher than the $500 baseline established by the U.S. Copyright Office and the Librarian of Congress and is beyond the reach of the smallest players in the commercial market, Narancic said.

"This is not an industry where people are making money hand over fist and ripping off the RIAA. You can't imagine what the effect of a $2,000 minimum is," Narancic said. "We've got about 10,000 webcasting operations in the United States. Of that 10,000 we're talking about eliminating all but a few thousand."

The Webcaster Alliance is asking that the minimum annual rate be returned to $500, while keeping the other terms of the small webcasting deal in place.

Jim Atkinson, co-owner of St. Louis-based 3WK Underground Radio and a founding member of Voice of Webcasters, said webcasters faced a daunting task negotiating with the RIAA and "were lucky to get what we got."

"We did everything we could to keep it at a reasonable amount that stations could afford and stay in business," Atkinson said, adding that the loosely knit VOW never purported to represent hobbyist webcasters.

SoundExchange Executive Director John Simson said that the recording industry has tried to accommodate webcasters of different sizes and business models. "If people want very specialized deals, they've got to negotiate with the publishers themselves," he said in June.

In the meantime, hanging over both webcasters and record companies is the specter of yet another costly round of federal arbitration.

Under federal law, copyright owners and Internet broadcasters can challenge established royalty rates every two years. If valid challenges are filed with the Copyright Office, the matter is handed over to federal arbitrators.

While the Copyright Office has fielded challenges to the rates this year, it's not yet clear whether the challengers have standing to force another round of arbitration Copyright Office General Counsel David Carson said. The Copyright Office will sort that out in the coming weeks.

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