The law arrives in wild west of webcasts
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Since Pandora.com closed its box of digital musical delights this month to users outside the United States, the eulogies for the popular American radio Webcaster have been pouring in from Dubai to Patagonia.

It is "a step back to the dark ages in the music world!" fumed Mario from Mexico City. "No por favor!" declared a user from Spain. "Why can't they leave us in peace?"

With 6.5 million registered users, Pandora stands at the vanguard of the sprawling, global Internet radio market. But Webcasters are suffering severe growing pains in the form of a looming increase in U.S. royalty rates and the free-wheeling atmosphere of the Wild West with competing collection agencies all over the world in search of royalties.

On May 3, that chaos prompted Tim Westergen, a former musician who founded Pandora in a San Francisco apartment, to pull the plug on the international market, blocking foreign visitors through computer IP addresses, which identify the country of the user.

"This is a watershed period that we're going through," said Westergen, who had intended to start a British site this week, but scrapped the project temporarily with royalty struggles overwhelming the company. "We're a nascent industry that is transforming the landscape of the business, offering a massive diversity of music and I think that's challenging the powers that be."
The fundamental issue is that Internet radio sites are global by nature - streaming musical programs digitally to users all over the world. But there is no one-stop global shopping for royalty collections, which means that Pandora has to negotiate agreements with institutions from each territory or directly with independent and major music labels.

Global demand, though, respects no boundaries. The U.S. Internet radio audience climbed to 34.5 million in March, with the share of listeners higher in Europe at 49.5 million, according to ComScore Media Mextrix, a marketing research company that tracks Internet traffic.

"The number I like is average daily visits," Bob Ivins, marketing director for ComScore, said. "Across the European Union we have 5.8 million people hitting a radio site daily versus 4.2 million in the U.S. on an average day."

Those listeners are logging on to sites with a vast depth of music that can tailor programming to eclectic tastes. Live365.com, for instance, is a ten-year-old network of thousands of members who create their own online stations offering everything from Konkani music from the west coast of India to a Webcaster playing hundreds of versions of the same music: "Ave Maria."

The expanding market, which at this point lacks leaders, has overwhelmed the existing royalty structure. But the International Federation of the Phonographic Industry, or IFPI, in London has just hammered out an international agreement to develop a more manageable way to stream across competing territories and collect royalties.

"In actual practice, companies had to two options if they wanted to remain legal," said Lauri Rechardt, a legal consultant who helped negotiate the agreement for IFPI, which represents 1,400 record companies in 70 countries. Either they limited their service to certain territories for which they had cleared the rights, Rechardt said, or they attempted the physically impossible task of striking deals with hundreds of record labels.

Within the next three months, Rechardt said, he expected 40 national royalty collection agencies in the United States, Europe, Asia and Latin America to sign the agreement to allow these institutions to license rights for musical streaming across several markets. On Friday, Gramex, the Finnish collection agency, was the first to sign.

"This agreement would make it a lot easier for us," said Mark Lam, chief executive of Live365.com, whose company is expanding into Taiwan and Japan. "Every time we go into new markets, we're called by the various societies who say, 'you owe us money.' So if there's a cross-border agreement that is reasonably priced it would lessen friction."

But the agreement leaves rate-setting to each individual country, and for the moment the United States is poised to set what is, in effect, a global benchmark. Those royalty rates are the subject of a furious political struggle over proposed increases that could raise the cost of sound recordings for Internet stations ranging between 300 percent to 1,200 percent.

Westergen, of Pandora, said that his negotiations to obtain a licensing agreement with the British collection agency, Phonographic Performance, ground to a halt because the U.S. increases "cast a shadow over all ongoing negotiations" as collection societies watched to see what happened in the United States.

Currently, Webcasters pay a percentage of revenues in performance royalties for music streamed to the United States to an industry-backed association called Sound Exchange, which collects and distributes the money. But the Copyright Royalty Board has set new rates effective July 15 that change the structure so Webcasters are charged each time a user listens to a song.
With the passage of the Digital Millennium Copyright Act in 1998, U.S. law exacts a higher value for digital content than for traditional radio, a system that allows the recording industry to charge performance royalties to digital music streamers and distributors like iTunes.

The new rate increases have sparked an intense lobbying campaign in Congress by small and large Webcasters like AOL radio and Clear Channel.

On Thursday those efforts prompted U.S. Senators Ron Wyden, Democrat of Oregon, and Sam Brownback, Republican of Kansas, to introduce legislation reverse a Copyright Royalty Board decision setting the new rates.

John Simson, executive director of SoundExchange in Washington, D.C., said that the Webcasters have managed to portray themselves as a grassroots collection of gritty, small independent Webcasters, but the ones who would benefit most are large companies with deep pockets like AOL Radio and Clear Channel.

"Do you say that if this service plays this music I get paid very handsomely, but if this service pays my music I don't?" Simson said of the divide in resources between big Internet radio companies and smaller independents. "I think it's a very delicate issue. And I think in any new area like the Internet there will be some businesses that survive and some that don't."

Along with a lobbying campaign in Congress, Webcasters are also pursuing an active public relations offensive online through the Savenet Radio Coalition, which is urging listeners to contact their legislators to support the "Internet Radio Equality Act."

Last.fm, a popular London-based Webcaster that is also a social networking site, will be affected by the rate increases, but is not terribly worried because of direct deals that it has negotiated with major labels, according to Christian Ward, a spokesman for Last.fm. "The industry trusts us," Ward said, "which means that there are always ways around the issues. It will be difficult, but we'll find our way around the problem."

Mark Lam, of Live365.com, is not so sanguine. "Obviously independent players will not be able to survive and that's because they want them to go away and make room for others with rich corporate parents," he said, adding, "I have never seen insanity like this one in the music industry. This is true insanity."

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