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GENERAL COUNSEL
OF COPYRIGHT

In The Matter Of:

Notice and Recordkeeping for
Use of Sound Recordings
Under Statutory License

Docket No. RM 2002-1

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COMMENT NO. 31

JOINT COMMENTS OF RADIO BROADCASTERS

Filed on Behalf of

*Bonneville International Corporation, Clear Channel Communications, Inc., Cox Radio, Inc.,
the National Association of Broadcasters, the National Religious Broadcasters Music License
Committee ("NRBMLC"), Salem Communications Corp., and Susquehanna Radio Corp.*

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INTRODUCTION

Bonneville International Corporation, Clear Channel Communications, Inc., Cox Radio, Inc., the National Association of Broadcasters, the National Religious Broadcasters Music License Committee ("NRBMLC"), Salem Communications Corp., and Susquehanna Radio Corp. (collectively, "Broadcasters") hereby provide their comments on the Copyright Office's proposed rule for giving copyright owners *reasonable* notice of the use of their sound recordings under the statutory licenses set forth in 17 U.S.C. §§ 112 and 114 and for how records of such use shall be kept and made available to copyright owners (the "Proposed Rule"). See Notice and Recordkeeping for Use of Sound Recordings Under Statutory License: Notice of Proposed Rulemaking, Docket No. RM 2002-1, 67 Fed. Reg. 5761 (Feb. 7, 2002) (the "NPRM").¹

In enacting Section 114, Congress made clear that its goal, in significant part, was to facilitate the development of new transmission services. Among other things, Congress repeatedly emphasized that it intended to do nothing to alter the long-standing, mutually beneficial relationship between radio Broadcasters and the record industry. When it amended Section 114 and adopted Section 112(e) in the Digital Millennium Copyright Act in 1998,

¹ Broadcasters' submission of these comments should not be construed as a waiver of their position that they are exempt from the digital sound recording performance right for their simultaneous transmission over the Internet of their over-the-air broadcast programming (and by extrapolation from the associated recordkeeping requirements), an issue that is currently on appeal to the Third Circuit Court of Appeals. See *Bonneville Int'l Corp. v. Peters*, No. 01-CV-408 (E.D. Pa. Aug. 1, 2001), appeal docketed, No. 01-3720 (3d Cir. Oct. 1, 2001). Indeed, the sharp conflicts between the Copyright Office's proposed requirements and the longstanding business practices between the recording industry and the radio broadcast industry confirm that Congress simply did not have radio Broadcasters in mind when it created the Section 114 statutory license.

Congress reiterated that it did not believe it was taking any action to affect the relationship between Broadcasters and record companies.

At the outset, we are compelled to observe that the procedure employed by the Copyright Office in the NPRM is fundamentally flawed and inconsistent with the requirements of administrative procedure. The NPRM improperly adopts *in haec verba* the grossly excessive wish list put forth by the Recording Industry Association of America ("RIAA") in its rulemaking petition, despite the absence of any showing by RIAA that its proposal is reasonable. The NPRM compounds this error by wrongfully imposing the burden of proof upon transmitting services to demonstrate that RIAA's proposal is unreasonable.

RIAA should be required, in the first instance, to demonstrate why each element of data it seeks is necessary for the collection and distribution of statutory license royalties and is reasonably available to all services without undue burden. Thereafter, the services should have an opportunity to reply to RIAA's efforts to make this demonstration. Under the procedure outlined by the Copyright Office, Broadcasters and other services are likely to be deprived of any meaningful opportunity to reply to RIAA's efforts to support its proposed rule—which we anticipate will first be attempted by RIAA in its own reply comments. Broadcasters urge that the Copyright Office withdraw the Proposed Rule and publish a new Proposed Rule for comment after a *de novo* consideration of the evidence and comments presented here.

As presently formulated, the Copyright Office's Proposed Rule totally ignores the realities of the radio industry and would impose on Broadcasters an unrealistic and impossibly burdensome reporting and recordkeeping regime, modeled on the demands of the record

companies and, to a lesser extent, the current business practices of a few entities in a wholly different business. The burden that would be imposed by the Proposed Rule is so out of keeping with the ancillary nature of Internet streaming, that most Broadcasters would simply stop streaming were it to be adopted. That is not what Congress meant to accomplish when it asked the Copyright Office to adopt *reasonable* notice and record keeping rules.

Broadcasters' businesses and their business systems have been developed over decades and are geared towards the effective pursuit of their primary business and the mandates of their FCC licenses – serving the needs and the interests of the community they are licensed to serve. The advent of the Internet has not changed that reality. While Broadcasters have attempted to embrace the Internet, it is an ancillary means of serving their broadcast audience. Audiences for the simultaneous streaming of broadcast programming are tiny compared to over-the-air audiences and, in all but a few very rare cases, generate virtually no revenue. No broadcaster is operating its Internet streaming at a profit; each is online to provide their audiences with a service they believe the audiences want.

This over the air business model has served the record industry well. Record companies and artists use radio broadcasting as free advertising and promotion for their products and personae. All agree that radio is the primary means by which audiences come to know sound recordings and artists and develop the desire to purchase their products, attend their concerts, etc. Indeed, the recording industry spends hundreds of millions of dollars each year to encourage radio stations to play their recordings.

Most of the sound recordings played by radio stations are provided to those stations by the record companies themselves. Typically, these sound recordings are provided on special promotional disks, not the retail album sold to consumers. The precise nature of these promotional recordings varies. In some cases, they are in slickly produced special promotional singles. At other times, the recordings are on "homemade" CD-Recordables, or "CD-Rs," not unlike the discs consumers would burn using their home computers, that contain one or more songs and are identified by nothing more than a handwritten or typed label. Some stations get their music by direct electronic download into the broadcast group's servers, or are sent MP3 files. Smaller labels provide music with even less formality. There is only one constant—*the music provided by the record labels to radio Broadcasters rarely, if ever, contains most of the information sought by RIAA in the Proposed Rule.*

Further, the radio industry is exceptionally diverse. Among the music format stations, most use music scheduling software to create the desired balance of tempo, mood, and variety. Some radio stations use digital automation systems to manage their over-the-air broadcasts, but many smaller radio stations and some of the largest, still run their broadcasts the old-fashioned way – production staff place a CD manually into the player, hit the play button, and turn dials to fade out one song and start the next. Even within one commonly owned group of radio stations, digital automation systems and scheduling programs can vary widely, and the systems at one station often capture different information and cannot communicate or share data with the systems of another. Between digital automation systems and music scheduling programs, there are literally more than a dozen different software packages that radio stations

today use to produce their daily broadcasts, and some of the packages still in use are so old that they are no longer supported by their manufacturers. Of course, many radio stations—such as news, talk and sports format stations – play very little featured music in their over-the-air broadcasts and thus in their simulcast transmissions. None of these business realities is reflected in the Proposed Rule.

As discussed below, copyright owners can receive “reasonable notice of the use of their sound recordings” through reports that include significantly fewer items of data and through employing sampling methods similar to those that other copyright owner collectives such as ASCAP and BMI already use to implement their licensing and distribution functions.

In the comments that follow, we discuss first the nature of this rulemaking proceeding and the appropriate procedure going forward. We next provide a description of how radio Broadcasters obtain the sound recordings they perform, the information they receive, and how they manage that information. We then demonstrate why the Office should reject RIAA’s proposed regulations with respect to radio Broadcasters. In particular, Broadcasters:

- should not be required to report duplicative data; title and artist are sufficient to provide reasonable identification of a sound recording that is performed;
- should be required only to report data that are provided to Broadcasters by the record labels themselves when Broadcasters perform sound recordings provided by a record label;
- should be allowed to report on a sample, rather than a census basis;
- should be allowed to report aggregate listener data, not detailed records of every single listener session;

- should not be required to design and implement entirely new systems to track ephemeral phonorecord usage when the ephemeral royalty is simply a percentage add-on to the performance royalty.²

I. THE NATURE OF THIS PROCEEDING AND RELEVANT EVIDENCE

A. Congress Has Mandated "Reasonable" Reporting Requirements That Do Not Place an Undue Burden on Digital Transmission Services.

Congress has made clear that, in establishing the sound recording performance statutory license, it attempted "to strike a balance among all of the interests affected thereby." S. Rep. No. 104-128, at 15-16 (Aug. 4, 1995); *see also* H.R. Rep. No. 104-272, at 14-15 (asserting that "legislation reflects a careful balancing of interests, reflecting the statutory and regulatory requirements imposed on U.S. Broadcasters, recording interests, composers, and publishers") (Oct. 11, 1995). As the Senate Judiciary Committee stated in its report accompanying the 1995 Digital Performance Rights in Sound Recordings Act ("DPRA"):

It is the Committee's intent to provide copyright holders of sound recordings with the ability to control the distribution of their product by digital transmissions, *without hampering the arrival of new technologies.*

S. Rep. No. 104-128, at 15 (emphasis added). The House similarly stated that the new right being conferred upon sound recording copyright holders was provided "without imposing new and unreasonable burdens on radio and televisions Broadcasters, which often promote, and appear to pose no threat to, the distribution of sound recordings." H.R. Rep. No. 104-272 at 14.

Indeed, Congress made clear that it wanted to do nothing to upset "the longstanding business and contractual relationships among record producers and performers, music composers

² In order to take into account the views of other commenting parties, Broadcasters intend to submit a proposed regulation along with their reply comments.

and publishers and Broadcasters that have served all of these industries well for decades.” H.R. Rep. No. 104-274, at 12. Noting that the “sale of many sound recordings and the careers of many performers have benefited considerably from airplay and other promotional activities provided by both noncommercial and advertiser-supported, free over-the-air broadcasting,” Congress explicitly expressed its intent that the legislation “not change or jeopardize the mutually beneficial economic relationships between the recording and traditional broadcasting industries.” *Id.* at 13. Congress did not waiver from this stated intention when it enacted the clarifying provisions of the Digital Millennium Copyright Act in 1998. See H.R. Rep. 105-551 at 67 (July 22, 1998).

Previously, the Copyright Office has expressly recognized the importance of balancing the interests of sound recording copyright owners and transmission services in establishing notice and recordkeeping requirements. In its recordkeeping rulemaking for the preexisting subscription services, the Office directed the commenting parties to focus on “both the adequacy of the notice to the copyright owners of the sound recordings *and the administrative burdens placed on the digital transmission services in providing notice and maintaining records of use.*” Notice and Recordkeeping for Subscription Digital Transmissions: Notice of Proposed Rulemaking, 61 Fed. Reg. 22004, 22004 (May 13, 1996) (emphasis added). Indeed, those rules were adopted based on an inquiry into the data collection systems and capabilities of the few, unique preexisting subscription services. See Interim Regulations on Notice and Recordkeeping for Digital Subscription Transmissions, Docket No. RM 96-3B, at 3-4, 7, 12, 21-22 (July 1, 1998) (observing that only “three digital music subscription services operating in the United

States” submitted comments and describing extensive negotiations between RIAA and those services concerning reporting fields and format requirements). The capabilities and systems of the hundreds of eligible non-subscription services – including, most particularly, the radio Broadcasters – were not considered. *See* Docket No. 2000-9, CARP DTRA 1 & 2, Tr. 11799, 11850-51 (Kessler). They must be considered now.

The operative statutory provision grants the Office authority to “establish requirements by which copyright owners may receive *reasonable* notice of the use of their sound recordings under this section.” 17 U.S.C. § 114(f)(4)(A) (emphasis added); *see also id.* § 112(e)(4). By the express terms of Section 114, the records need only give *reasonable* notice – perfection is not required. *See* 17 U.S.C. §§ 112(e)(4), 114(f)(4)(A).

Moreover, the Copyright Office’s interpretation of the statutory term “reasonable” must itself be reasonable and consistent with the goals of the underlying statute described above. As the United States Court of Appeals for the D.C. Circuit has observed, an administrative rule must be “reasonable and consistent with the statutory purpose.” *Troy Corp. v. Browner*, 120 F.3d 277, 285 (D.C. Cir. 1997); *see also City of Cleveland v. U.S. Nuclear Regulatory Comm’n*, 68 F.3d 1361 (D.C. Cir. 1995) (an agency’s interpretation must be “reasonable and consistent with the statutory scheme”). A court will not uphold a rule “that diverges from any realistic meaning of the statute.” *Massachusetts v. Department of Transp.*, 93 F.3d 890, 893 (D.C. Cir. 1996).

To accomplish the statutory purpose of fostering the development of new digital transmission services in a manner consistent with the express statutory requirement of “reasonable” notice, a notice and recordkeeping rule must strike the balance described above

between being sufficient to provide notice of use, on one hand, and not unduly burdensome to collect, provide, and maintain on the other. The Proposed Rule fails to meet this statutory requirement. The Proposed Rule seeks to achieve perfect accuracy to the point of redundancy, but imposes an unreasonably (and, in many respects, impossibly) high compliance burden upon Broadcasters.

B. By Adopting the Reporting Obligations Sought by RIAA and Asking Services To Disprove the Reasonableness of Those Obligations, the Copyright Office Has Improperly Allocated the Burden of Proof and Prejudiced Broadcasters.

The Proposed Rule does not begin to achieve the required balance between information and burden mandated by the Act. Although RIAA's petition made no showing of the reasonableness of its requested requirements, the NPRM speculated that the requested requirements "seem[] reasonabl[e]" and preliminarily appears to agree with RIAA's conclusory, unsupported assertions that the requirements are "easily provided, [] not burdensome, and in fact, [are] currently provided by a number of licensees who have obtained licenses through negotiations with the RIAA and/or Sound Exchange." 67 Fed. Reg. at 5763. The Office then placed the burden on transmission services who "may find the requirements too stringent and burdensome" to *disprove* the reasonableness of these requirements. Specifically, the Office required transmission services to "identify any problems they perceive with the proposed regulations and explain with specificity the reasons why the regulations are unworkable or unduly burdensome, or exceed the needs of the copyright owners." 67 Fed. Reg. at 5763.

This approach is inappropriate in several important respects. First, it wrongfully allocates the burden of persuasion to the transmission services. Second, it preliminarily adopts RIAA's

request without any explanation or showing of why any of the data elements are necessary to give copyright owners reasonable notice of the use of their sound recordings under the statutory license and why they will not be burdensome. Third, it prejudices the services, which likely will have no opportunity to respond to any showing that RIAA attempts to make in reply to these comments. Fourth, it is based on the erroneous premise that the notice and recordkeeping requirements of sections 114 and 112 include a duty on licensees to demonstrate compliance with the conditions of the Section 114 and 112 statutory license, a duty nowhere found in the statute or its legislative history. Fifth, it fails to consider the severe burden that the requirements would place on small broadcast simulcasters pursuant to the Regulatory Flexibility Act. *See* 5 U.S.C. §§ 601-612.

In proceeding with this rulemaking, the Copyright Office should reconsider its baseline and not simply presume that RIAA's wish list is appropriate. Rather, the Office should evaluate each potential reporting element in light of the evidence in this rulemaking to determine objectively which requirements are both necessary for copyright owners to receive reasonable notice of the use of their sound recordings and reasonable to impose upon the Broadcasters and other services to provide. This analysis should form the basis for a new Proposed Rule developed by the Copyright Office itself, which can then be published for comment by interested parties before it is adopted as a final rule. In fashioning a new Proposed Rule, the Copyright Office also must take account of whatever action the Librarian takes on the pending appeals of the CARP's Report.

1. The Burden of Persuasion Should Rest Equally on All Parties to this Rulemaking.

The Copyright Office's suggestion that services who oppose RIAA's wish list are under a burden to disprove the reasonableness of RIAA's proposal, when RIAA has offered no evidence of its need for, or the reasonableness of, that proposal, violates fundamental principles of administrative law. In notice-and-comment rulemakings, *neither* the proponent *nor* the opponent of a rule should bear the burden of proof; rather, that concept is simply inapplicable. *See* Jacob A. Stein et al., 3 *Administrative Law* § 13.02[2], at 13-25 (2001) (citing *American Trucking Ass'ns v. United States*, 344 U.S. 298, 318-20 (1953)). The Office should examine both RIAA's and the services' comments, without favoring one over the other, to determine on the basis of the submitted evidence what is reasonable and necessary and what is not.

If any party logically should bear a burden, that burden here should rest on RIAA, the petitioner, who has proposed an extensive list of reporting obligations. In those cases where a burden of proof is allocated in a rulemaking proceeding, it falls on the proponent of the proposed rule. *See id.*; 5 U.S.C. § 556(d) (allocating burden of proof to proponent in formal rulemaking involving hearing). Although this proceeding is not a formal, on the record, rulemaking where the proponent of a rule would have the burden of proof, it nevertheless makes sense for RIAA to demonstrate why it needs the extensive information it seeks before putting others to the task of demonstrating why that information is burdensome to provide.

2. Neither RIAA's Petition, the Secret Agreements Referenced by RIAA, Nor the Interim Regulations, Support RIAA's Proposed Reporting Requirements.

RIAA's Petition is devoid of any support for the data it seeks. RIAA stated only that it was proposing reporting requirements that allegedly "evolved" from its negotiating experience with the handful of statutory licensees under Sections 112 and 114. RIAA Petition at 6. RIAA asserted that its proposed requirements were "based on the existing recordkeeping regulations of 37 C.F.R. § 201.36 but adapted to the statutory license conditions added by the DMCA and to the other differences between cable music services and new types of services." *Id.* Yet neither the referenced RIAA agreements, nor the Interim Regulations, nor RIAA's Petition itself, for that matter, supports the requirements requested by RIAA here.

RIAA asserts that it has entered into agreements with Section 112 and Section 114 statutory licensees, which it claims have "achieved a level of consistency" over "two years" of negotiating these licenses. RIAA Petition at 6. However, RIAA did not identify the specific agreements, did not attach copies of those agreements, and presented no evidence related to the negotiation of those agreements, or their specific terms. Broadcasters can only assume that RIAA is referring to the same 26 agreements that it proffered as evidence of a supposedly appropriate royalty in the recently concluded eligible nonsubscription services Copyright Arbitration Royalty Panel ("CARP") proceeding. Although counsel to some of the Broadcasters participating in these comments have obtained access to those agreements under the CARP protective order, other participants in this rulemaking are left to speculate about the content of those agreements. *See In re Digital Performance Right in Sound Recordings and Ephemeral*

Recordings, Docket No. 2000-9, CARP DTRA 1 & 2, Report of the Copyright Arbitration Royalty Panel at 2 (Feb. 20, 2002) ("CARP Report"). For a number of reasons, the Copyright Office should reject RIAA's reliance on these agreements as evidence that RIAA's proposed recordkeeping requirements are reasonable.

First, none of the handful of companies that entered into agreements with RIAA were Broadcasters or faced the reporting difficulties or other factual circumstances faced by Broadcasters. According to RIAA, fully 1557 Broadcasters have filed notices of transmission saying they intended to rely upon the Section 114 statutory license, not one of which accepted RIAA's proposed reporting requirements. *See In re Digital Performance Right in Sound Recordings and Ephemeral Recordings*, Docket No. 2000-9, CARP DTRA 1 & 2, Written Direct Testimony of Steven Marks at 4 & n.2 (Apr. 11, 2001).³

Second, these agreements are confidential, and their confidentiality has been guarded jealously by RIAA. *See In re Digital Performance Right in Sound Recordings and Ephemeral Recordings*, Docket No. 2000-9, CARP DTRA 1 & 2, Written Direct Testimony of Steven Marks Att B & Exh. List (Apr. 11, 2001) (redacting information concerning substance of agreements and identifying licenses as restricted). Significantly, RIAA did not seek to support its Petition with copies of these supposed "consistent" licenses. Further, the circumstances

³ In addition, the 26 agreements that RIAA relies upon represent only a small fraction of the webcasting entities intending to transmit sound recordings pursuant to the statutory licenses. As RIAA itself conceded, notices of transmission have been filed on behalf of fully 736 web sites and 1557 Broadcasters – a total of 2293, in all. *See In re Digital Performance Right in Sound Recordings and Ephemeral Recordings*, Docket No. 2000-9, CARP DTRA 1 & 2, Written Direct Testimony of Steven Marks at 4 & n.2 (Apr. 11, 2001). Moreover, RIAA itself admits that the data reporting requirements in even this tiny universe of 26 unreliable benchmarks are not uniform but "have varied somewhat over time and among agreements." RIAA Petition at 6.

surrounding those license agreements are relevant to determining whether the reporting requirements are "reasonable." It is plainly untenable for RIAA to be permitted to characterize the agreements under circumstances where the proceeding is not structured to permit a showing that RIAA's characterizations are false.

Third, the CARP specifically found that 25 of the 26 agreements it reviewed were "unreliable benchmarks." CARP Report at 60. The CARP reviewed extensive evidence not available in this rulemaking proceeding and concluded that the agreements were the result of RIAA's scheme to manipulate the evidence before the CARP by picking off the potential licensees most "willing to pay higher rates for [sound recordings] than most other buyers pay" and inducing them to enter into agreements at RIAA's supra-competitive rate, on terms favorable to RIAA. CARP Report at 48-50 & 48 n.27. In particular, RIAA negotiated contracts using "a take-it-or-leave-it approach" with those potential licensees that, for unique reasons, needed the RIAA license. *See* CARP Report at 51.

Moreover, "[a]ll but a handful of the 26 licensees either (1) paid zero royalties; (2) paid no royalties beyond the prescribed minimum (due to low revenues or because they streamed so few transmissions); or (3) quickly went out of business." CARP Report at 52. As the CARP found, such webcasters would care little, when negotiating their agreements, about details of their agreements other than the minimum fee. CARP Report at 53. The CARP also noted that "services that quickly terminated their businesses tend to exhibit little business acumen or experience." CARP Report at 54. In short, for these same reasons that caused the CARP to reject these licenses as evidence of a reasonable market rate upon which willing buyers and

willing sellers would agree, the licenses cannot be considered as evidence that the data reporting requirements contained therein are reasonable.

Fourth, RIAA has made no showing whether even these 26 licensees actually submitted use reports at all or, if they did, the nature, scope and accuracy of their submissions. Did each and every licensee file the reports on time for each and every reporting period set forth in the license, and did the reports include each of the required data elements? Rather than supporting RIAA's position, the fact that many of these licensees paid no fees or went out of business suggests that RIAA's proposed reporting requirements were not followed even by many of these 26 licensees. Or perhaps the reporting requirements themselves were one of the factors driving webcasters out of business.

Under these circumstances, the Copyright Office should not accord any weight to RIAA's allegations that it has entered into agreements that support its proposed recordkeeping requirements.

Nor do the existing interim rules, developed for the pre-existing subscription services, provide any support for a determination of "reasonableness" of the proposed reporting requirements for Broadcasters. Indeed, while the interim rules do not require many of the reporting elements that the Copyright Office now proposes for Broadcasters,⁴ many of the

⁴ For example, the interim rules do not require preexisting subscription services in the same medium to report program type, time zone, numeric designation of the place of the sound recording in an archived program, duration, release year, P-Line information, genre, or any of the listener log requirements proposed in the NPRM. *See* 37 C.F.R. § 201.36. Nor does the Copyright Office propose that these services report these elements in the NPRM. *See* 67 Fed. Reg. at 5765-66.

requirements in the interim rules are unnecessary, impossible, or impractical for Broadcasters to provide, as explained in Part III below.

As the Copyright Office knows, the interim rules resulted from intense discussions (often facilitated by the Copyright Office) between the handful of affected parties and were strongly influenced by the amount of information that the preexisting subscription services could provide from their existing records. No Broadcasters were party to those negotiations. The capabilities of and potential burden on Broadcasters were not at issue and were not considered. It would be fundamentally unfair to base reporting requirements for Broadcasters on an extensive public/private process to which they were not invited to participate.⁵ Rather than assume that the interim rules are reasonable, the Copyright Office must freshly examine those requirements as well to determine if those rules are necessary for copyright owners to obtain reasonable notice of the use of their sound recordings, without undue burden upon the full range of services intended to be covered by the instant rule making proceeding.

3. The Process Adopted by the Office Is Prejudicial; RIAA Should Demonstrate The Need for Each of the Reporting Element It Seeks, and the Services Should Have an Opportunity To Respond.

The process adopted by the Copyright Office in this rulemaking is skewed and has the potential to deny due process to the participant services. In light of the wholesale adoption of RIAA's proposal, the unsubstantiated declaration that the proposal "seems" reasonable, and the imposition of a burden upon the services to demonstrate why that proposal is burdensome, there

⁵ Further, the Copyright Office issued interim, rather than final, rules because the Office recognized that this was a new and evolving area that required further examination before issuing a final rule. See Interim Regulations on Notice and Recordkeeping for Digital Subscription Transmissions, Docket No. RM 96-3B, at 1 (July 1, 1998).

is little reason to suppose that RIAA will provide much evidence in support of its proposal in its initial comments. RIAA can be expected to take advantage of the opportunity to "sandbag" the services by saving its arguments and evidence for the reply comments. As a result, the services will not have an opportunity to respond to those arguments and that evidence. That is fundamentally unfair. Broadcasters and other services should have an opportunity to respond fully to RIAA's showing that its request is reasonable, not burdensome, and necessary for the receiving and designated agents to perform their collection and distribution functions.

4. The Reporting Requirements Should Not Be Based on the Demonstration of Compliance with Statutory License Conditions.

The Proposed Rule appears to be based, in part, on the erroneous premise that copyright owners are entitled to receive not only "reasonable notice of use of their sound recordings" as set forth by statute, but also detailed records affirmatively demonstrating users' compliance with the terms of the licenses – such as the sound recording performance complement. *See* NPRM, 67 Fed. Reg. at 5763 (observing that proposed recordkeeping requirements "seem[] reasonably based on the premise the copyright owners need certain specific information to monitor compliance and use by the Services").⁶ Many of the more burdensome aspects of the Proposed

⁶ The Office also reached this result in promulgating the interim rules governing reporting by the preexisting subscription services, but offered no basis in Section 114 substantiating its determination. Rather, the Office simply stated that the DPRA "contemplates that digital subscription services keep and make available ... records of use to enable sound recording copyright owners to generally monitor Services' compliance with the sound recording performance complement" and "that establishing such a reporting requirement is within its rulemaking authority under 17 U.S.C. 114 (f)(2)." Interim Regulations on Notice and Recordkeeping for Digital Subscription Transmissions, Docket No. RM 96-3B, at 8 (July 1, 1998) (internal citations omitted).

Rule stem directly from this premise. Notice of use sufficient to permit collection and distribution would require substantially less information.

There is nothing in the Copyright Act or its history to suggest that Congress intended services to be required to provide reports demonstrating compliance with the sound recording performance complement or, for that matter, any of the other statutory license requirements. The plain language of the operative statutory provisions suggests that Congress did *not* intend to impose affirmative reporting requirements demonstrating compliance with the statutory license. Rather, the provision merely entitles copyright owners to records “of the *use* of *their* sound recordings” under the statutory license – not records of *compliance* with the statutory conditions and not records of the use of *all* copyrighted sound recordings. Indeed, most of the license conditions imposed under the DMCA are not even amenable to evaluation from use reports. It is not possible, for example, for use reports to demonstrate whether a webcaster’s site is providing an advance program schedule or is accompanying a performance with a misleading image. A report of use cannot disclose that a service is making advance oral announcements of programs or is inducing copying. Simply put, these are not within the ambit of “notice of use” of a sound recording. Moreover, just as it is impossible to evaluate compliance with the other statutory conditions from use reports, it is difficult, if not impossible, reliably to evaluate compliance with the complement even using census reports of use. Different owners may own the rights in different tracks from the same CD. It is not uncommon for recording artists to switch labels during their career. If four tracks with different owners from the same CD were played within a three-hour period, no single owner would be entitled to information from which it could identify

a violation of the complement, as owners are only entitled to notice of use of their own sound recordings. If five sound recordings by the same artist that were recorded while under contract to different labels were played within a three-hour period, no single owner would be entitled to information from which it could identify a violation of the complement.

The fact that copyright owners have designated distribution agents to process records of use does not grant them more rights to monitor compliance than those accorded to copyright owners individually. Use of such an agent serves to ease the administrative burden on both owners and users of submitting and reviewing such records – but does *not* convert the agent into a “big brother” figure with authority to monitor compliance with the license terms. The existence of an agent should not engender extensive additional recordkeeping and reporting burdens for the services that copyright owners would not otherwise possess if collection and distribution occurred on an owner-by-owner basis.

Indeed, the provision in the Copyright Act that specifically permits copyright owners to designate common agents to perform certain functions relating to the statutory license without running afoul of the antitrust laws supports the view that compliance monitoring is not part of the joint agent function (or the reporting requirements). That section expressly states that those agents may only “negotiate, agree to, pay, or receive payments” free from antitrust concerns. *See* 17 U.S.C. § 114(e)(1). Where a CARP has set the statutory rates and terms, the only permissible function of a common agent for copyright owners is to “receive payments.” Nowhere does this provision permit common agents also to “monitor compliance with the statutory license.” Indeed, in the House Judiciary Committee Report accompanying the DPRA,

the Committee stated that this provision "is a very limited antitrust exemption" that "authorizes the copyright holders to take actions which are necessary to effectuate Congress's intent to enable the statutory goals to be met. It is important to emphasize that it encompasses only certain actions that are taken . . ." H.R. Rep. No. 104-274, at 22 (Oct. 11, 1995). The report also makes clear that where there is no such antitrust exemption, copyright owners must act "on their own" rather than through common agents. *Id.* at 23. Enforcement of the statutory conditions is a major function that is wholly independent from paying or receiving payments.

Basing the requirements for reports of use on a perceived need to demonstrate compliance dramatically increases the volume and burden of those reports. For example, the following aspects of the Proposed Rule applicable to "intended playlists" appear to be based at least in significant part on demonstration of compliance: the type of program, date of transmission, time of transmission, time zone, and the numeric designation of the place of the sound recording within the order of the program.

Further, requiring reports of use to demonstrate license compliance leads to particularly absurd results in connection with ephemeral recordings. The ephemeral license metric proposed by the CARP for Broadcasters is a percentage of the performance fee that does not depend in any way upon the number of copies made or when those copies were made. There is no justification at all to require services to establish a complete reporting system that is unrelated to fees paid. *See Part III.E infra.* Many, if not all, of the proposed requirements with respect to the Section 112 license could be eliminated if the requirements were limited to those necessary to verify payments and distribute them to copyright owners. At a minimum, the following proposed

requirements would no longer be necessary: whether ephemeral copies were made or destroyed, the date on which ephemeral copies were created or destroyed, and the number of ephemeral phonorecords that were created or destroyed. The question of what constitutes an ephemeral recording in the streaming context is a thorny issue that has never been resolved. Including any such requirements, none of which are relevant to the fee calculation, is an invitation to a host of new disputes.

In short, nothing in the Act entitles copyright owners to reports that provide an affirmative demonstration of compliance with each of the statutory license conditions.

5. The Copyright Office Did Not Analyze the Crushing Impact of the Proposed Requirements on Small Broadcast Streamers Struggling To Survive.

In the NPRM, the Copyright Office did not discuss the impact of its proposed recordkeeping requirements on small businesses and non-profit organizations pursuant to the Regulatory Flexibility Act ("RFA"). *See* 5 U.S.C. §§ 601-612. The RFA requires notices of proposed rulemaking promulgated under 5 U.S.C. § 553 either to (a) include "for public comment an initial regulatory flexibility analysis . . . [that] describe[s] the impact of the proposed rule" on those entities or (b) certify "that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." *See* 5 U.S.C. §§ 603, 605. The regulatory analysis must consider various factors set forth in the statute, including a description of the steps "taken to minimize the significant economic impact [of the rule] on small entities." *See id.* § 603 (b), (c).

Although the Copyright Office issued a proposed rule pursuant to 5 U.S.C. § 553 and is otherwise subject to the provisions of the Administrative Procedure Act (*see* 17 U.S.C. § 701(e)), it did not address the potentially devastating impact that its proposed recordkeeping requirements would have on the numerous small and non-profit radio stations who are struggling to keep their streaming operations alive. As a result, the very parties that the RFA was designed to protect may instead be harmed by the Office's failure to consider their special circumstances in issuing the proposed rule. In light of the devastating impact that unreasonable reporting requirements would have on small businesses, both the letter and the underlying policies of the RFA require the Copyright Office to publish a new proposal that would (1) be formulated with an eye toward minimizing the impact on small business, and (2) would explain the efforts undertaken to that end. This would allow a response to the Copyright Office analysis, as the RFA contemplates.

II. RADIO BROADCASTERS AND THEIR USE AND HANDLING OF SOUND RECORDINGS AND INFORMATION RELATING TO THOSE SOUND RECORDINGS.

A. The Broadcasters Providing These Comments

Today, about 13,000 FCC-licensed commercial and non-commercial radio stations operate in hundreds of formats across the United States. See Broadcast Station Totals As of September 30, 2001 (visited April 5, 2002) <http://www.fcc.gov/Bureaus/Mass_Media/News_Releases/2001/nrmm0112.txt>. These radio stations and the groups that own them come in a diverse mix of sizes and other characteristics. The largest radio group in the United States is Clear Channel Communications, Inc. Clear Channel operates 1,225 stations in virtually all formats in all 50 states and the District of

Columbia, including 47 of the top 50 U.S. markets. Statement of Brian Parsons, Clear Channel Communications, Inc. ¶¶ 2, 3 (Tab B) ("Parsons"). Cox Radio Inc., the third largest broadcasting group based upon sales, owns and operates 81 radio stations nationwide, in a variety of formats from Gospel to Urban Adult Contemporary, from Oldies to Contemporary Hit Radio, and from Classic Rock to Country. Statement of Gregg Lindahl, Cox Radio, Inc. ¶ 2 (Tab C) ("Lindahl"). Salem Communications Corp. also owns more than 80 radio stations, and shares its message through its FISH™ contemporary Christian music format, as well as through dozens of Christian Talk/Teaching stations scattered throughout the United States in more than 30 different markets. Statement of Rick Killingsworth, Salem Communications Corp. ¶ 2 (Tab H) ("Killingsworth"); Statement of Jim Tinker, Salem, KKLA Communications Group ¶¶ 1-2 (Tab I) ("Tinker").

Bonneville International owns a number of stations in each of 5 markets, including Washington DC's award-winning news radio station, WTOP-AM, Z104 (WWZZ), and classical station 103.5 WGMS. Statement of Jaime Kartak, Bonneville Chicago Radio Group ¶ 2 (Tab A) ("Kartak"). Susquehanna Radio Corp. operates 32 stations with varying formats, including oldies stations in Kansas City and Indianapolis, sports talk in San Francisco, Indianapolis, and Dallas, news talk in Kansas City, New York, and Dallas, and music-intensive hard and soft rock formats in Atlanta, Cincinnati, and Houston. Statement of Dan Halyburton, Susquehanna Radio Corp. Halyburton Statement ¶ 2 (Tab J) ("Halyburton"). Crawford owns and operates 30 nationwide, most of which broadcast in religious talk, Christian music, or mixed religious talk and music formats. Statement of Mike Cary, Crawford Communications ¶ 2 (Tab D) ("Cary").

Aside from these and a few other larger groups, there are many radio stations in the U.S. today that operate as single units, or in small clusters of stations. For example, the WAY-FM radio group operates, on a totally non-profit basis, three over-the-air broadcast stations that reach thousands of additional people through the use of low power repeater transmitters scattered throughout the Southeast. Statement of Dusty Rhodes, WAY-FM Radio Group ¶ 4 (Tab K) ("Rhodes"). Radio Nueva Vida reaches Spanish-speaking audiences in California through one main station, KMRO-FM, and a handful of sister stations that for the most part re-transmit the KMRO-FM signal. Statement of Mary Guthrie, Radio Nueva Vida Network ¶ 2 (Tab G) ("Guthrie"). Northwestern College Radio operates a small group of 3 non-profit radio stations. Statement of Harv Hendrickson, Northwestern College Radio Hendrickson Statement, ¶ 2 (Tab F) ("Hendrickson").

The radio industry is also represented in this proceeding by two trade associations. The National Association of Broadcasters ("NAB") is a non-profit incorporated association that serves and represents America's radio and television broadcast stations and networks. Its members include over 6,100 radio stations. The National Religious Broadcasters Music License Committee ("NRBMLC"), a committee of the National Religious Broadcasters, represents both religious stations and other radio stations that use relatively little copyright music.

Representatives of many of these Broadcasters have supported these comments with their own statements in order to provide the Copyright Office with more direct and personal information. These statements contain more detailed information than we will highlight in these

comments. They are attached hereto as Attachments A through K. We offer them to the Copyright Office as comments in their own right in this rulemaking.

B. Streaming and Its Relationship to the Broadcasters' Business

Despite the wide range of formats and business models followed by radio Broadcasters, they have a number of things in common: simulcast streaming of their over-the-air broadcast programming is an activity that is ancillary to their primary broadcasting business and is offered as a convenience to their audience. To date, Internet streaming has resulted in audiences that are tiny compared to stations' over the air audience. By one estimate, even the most popular radio station simulcasts garner only a small fraction of their over-the-air listenership through their websites. Parsons ¶ 4. Some radio groups, Crawford among them, have refrained from streaming entirely, in part to observe the outcome of the CARP appeal and this rulemaking before deciding whether to undertake the significant costs that may be imposed. Cary ¶ 2.

Even the largest group, despite having a simulcast operation that nets the second highest listenership on the Internet, has a relative Internet audience that is a small fraction of its over-the-air audience. Clear Channel's Director of Technology views his company's streaming as "only a small part of Clear Channel's enterprise to make it more convenient for our listeners to hear our broadcasts." Parsons ¶ 5.

In fact, even before the imposition of royalties and recordkeeping costs, simulcasting is, and has been, a money-losing proposition. Halyburton ¶ 4. The costs of additional equipment, and paying outside vendors to provide bandwidth and advertisement insertion services, far outweighs the marginal additional listenership attained through streaming. The additional

burden that would be imposed by the proposed recordkeeping requirements threatens to shut down the nascent arena of radio station simulcasting before it ever gets the chance to become viable.

C. Broadcasters Obtain Most of their Sound Recordings from the Record Companies, Which Typically Provide Very Little of the Information Sought in the Proposed Rule.

Record companies have spent many millions of dollars over many decades to promote air play of their releases. See Report of the Copyright Arbitration Royalty Panel, Docket No. 2000-9 CARP DTRA 1 & 2, at 75 (Feb. 20, 2002) (hereinafter CARP Report). A portion of these monies is spent to provide radio stations with copies of sound recordings that the labels want to promote. These songs come to the stations in several forms, but none of them come with all or even most of the information RIAA would have radio stations report for each song they schedule.

The vast majority of recordings that most radio stations play are provided to them by the record labels for free in the hope that the stations will decide to add those songs to their playlist. Parsons ¶ 6; Statement of Amy Van Hook, Entercom Communications Corp. ¶ 10 (Tab E) ("Van Hook"); Tinker ¶ 5; Killingsworth ¶ 8. New songs are distributed mostly in the form of special promotional compact discs (CDs). Parsons ¶ 8.

Promotional releases can take several forms. In order to catch they eye of Program Directors and DJs, the promo singles are sometimes slickly packaged, with photos of the performer, color CD sleeve inserts, and basic identifying information about the name of the song, the length of the track, and the names of the people in addition to the artists who contributed to

the work. Van Hook ¶ 11. These promotional singles are often sent to the radio stations in anticipation of a new album before the retail version is released, so retail information such as UPC code, catalog number, and sometimes even the album title, is not available to anyone. Parsons ¶ 6; Van Hook ¶ 11; Tinker ¶ 5; Killingsworth ¶¶ 8-9. The ISRC code is never listed on the packaging of these promotional disks. Killingsworth ¶ 8. An example of such a promotional single, Aerosmith's "Fly Away from Here," is attached as Exhibit 1 to the Van Hook Statement.

Other times, CD singles are distributed with very little information or documentation. Killingsworth ¶¶ 8-10. Clear Channel, for example, receives fully half of its music in the form of CD-Rs, recordable compact disc media. Parsons ¶ 7. These recordable compact discs are packaged in clear jewel cases or paper sleeves and are labeled with only the most basic information the station needs to decide to broadcast a particular song – the title, the artist name, and sometimes the duration of the song. Parsons ¶ 7. A sample of this type of promo CD is attached as Exhibit 1 to the testimony of Brian Parsons. The CD-R contains a copy of the song "Baby Got Back," performed by "The Grandskeem" and lasting 2 minutes and 30 seconds. Parsons ¶ 7. No other information is printed on the CD or its packaging – not even the name of the label. Parsons ¶ 7.

Sometimes, a label provides a promotional compilation disk, which is intended to highlight the work of a particular artist. Van Hook ¶ 13; Tinker ¶ 6. The Nikka Costa "Everybody Got Their Something Sampler," attached as exhibit 3 to the Van Hook Statement, is a typical example of such a compilation. Van Hook ¶ 13. The packaging of that disk lists the title of seven songs drawn from the "Everybody Got Their Something" album, the name of the

artist, and the title of her forthcoming album. Van Hook ¶ 13. In small type, it also has a “P line” of copyright information. Van Hook ¶ 13. The listed catalog number does not appear to coincide with the catalog number of the retail album, and there is no indication whatsoever of any UPC or ISRC –rather, the packaging and the disk itself both explicitly indicate that the CD is “For Promotional Use Only – Not for Sale.” Van Hook ¶ 13. The disk itself is printed with the artist’s name, the song titles and track lengths, and the name of the sampler. Van Hook ¶ 13. Although the sleeve insert makes clear that “Everybody Got Their Something” is both the name of Costa’s forthcoming album and the name of the Sampler, that fact is unclear from the face of the disk itself. Van Hook ¶ 13. The packaging and the disk both bear the logos of two different record labels, and it is unclear which label would be the correct one to report under the rules – on the packaging, Cheeba Records is listed first, and Virgin Records is listed second; on the CD the order is reversed. Van Hook ¶ 13. Very rarely, the labels send an entire retail CD as a promotional tool. When full CDs are sent, they are often stripped of their retail information (such as the UPC code), to prevent re-sale.

On occasion, the labels will even send radio stations electronic MP3 files. Parsons ¶ 9. In those cases, the only relevant information the stations receive is title, artist, and duration of the song. Parsons ¶ 9. And in a preview of things to come for the entire radio industry, Clear Channel is currently in an experimental project with one record label, Sony, at Sony’s request. Parsons ¶ 10. This project allows Sony to upload digital music into Clear Channel’s music library directly. Parsons ¶ 10. After uploading the song, Sony sends Clear Channel an e-mail telling it the filename, as well as the title of the song and the artist who performed it. Parsons

¶ 10. When electronic copies of the music are sent, radio stations see little or no documentation regarding the song, and are not provided with such information as the name of the retail album, the name of sound recording copyright owner, the release year as indicated in the copyright notice, the album catalog number, the UPC, or the ISRC. Parsons ¶ 10.

D. Broadcasters Have Diverse Systems for Handling Sound Recording Information, Ranging from the Entirely Manual to the Automated; Even the Most Sophisticated Systems Handle Far Less Data than Sought in the Proposed Rule.

As the broadcast industry has evolved, more and more radio stations have come to use automated systems to both schedule and broadcast various program elements. The different combinations of human practices, digital automations systems (DAS), and scheduling software that are employed by radio stations across the country are almost as diverse as the resulting broadcasts.

Many radio stations use DAS to manage their broadcasts. Parsons ¶ 20. The DAS pulls songs from the stations' servers, inserts commercials, managing the transition between songs, cues Disk Jockeys (DJs) to insert live commentary, and feeds syndicated programming and other materials. Lindahl ¶ 12.

Other stations use DAS technology in a much more limited capacity. For example, several Entercom stations use their DAS solely to coordinate syndicated programming, non-music elements of their broadcasts, and commercial insertion systems. Van Hook ¶ 3. Still other stations, even within the larger radio groups, do not use DAS at all. Rhodes ¶ 23; Halyburton ¶ 11; Lindahl ¶ 13. Instead, they continue to play their music without the aid of a computer, by slipping the promo CDs they receive from the record labels into a CD player. Halyburton ¶ 11.

Smaller Broadcasters are even less likely to use such systems. Radio Nueva Vida, for example, produces its broadcasts completely without the aid of digital automation. Guthrie ¶ 9.

Even within one commonly owned group of radio stations, the digital automation systems in use can vary widely, and the systems at one station often can't communicate or share data with the systems of another. Entercom alone uses no fewer than ten different digital automation systems. Van Hook ¶ 3. Between digital automation systems and music scheduling programs, there are literally more than a dozen different software packages that radio stations today can use to produce their daily broadcasts, and some of the packages still in use are so old that they are no longer supported by their manufacturers.

Digital automation systems play music, but they are not designed to store detailed information about every aspect of that song's production in their databases. Most DAS track the title, artist, and timing information for each song. The Enco system, for example, does not allow the user to create new data fields to track. Nor do DAS decide the schedule of songs to be played – that function is fulfilled by more robust music scheduling software.

Music scheduling software programs replace the index card scheduling systems radio stations used before the advent of personal computers. Tinker ¶¶ 12-13. In order to ensure that songs did not get too much or too little airplay, music directors used to make an index card for each song in their libraries, and group these cards into rotation categories. Tinker ¶ 12. The heavy rotation category might include 10 songs, while the medium rotation category would contain 30 songs, and so on down the line. Breaking each day into one hour programming blocks, they would schedule songs based upon an hourly "clock," which indicated how many of

each category of song to play, and in what order. Tinker ¶ 12. Once a song was played, it would go to the back of the stack of index cards for that category, and would not be played again until it reached the top of the rotation. Tinker ¶ 12. Music scheduling software operates on the same basic principle as this index card system, but allows for more sophisticated decision making. Tinker ¶ 13. The music director categorizes the songs in the library, and creates rules to determine what kinds of songs can be played near each other. Tinker ¶ 12.

There are several different music scheduling software programs in use today, including Selector, MusicMaster, and Powergold. These programs allow the user to store dozens of different properties of a single song. However, most do not provide data fields for sound recording copyright owner or year, UPC, ISRC, catalog number, or the station-specific fields such as call letters or genre that are contemplated by the rules. Although some programs do provide a field for album and label name, most radio stations do not record such information. In reality, most radio stations do not have the time or ready access to the information necessary to fill most of the myriad data fields that are available to them in their scheduling software. Most stations track only title, artist, song length, and several fields such as ending type, intro length, etc. that facilitate scheduling and on-air announcements.

E. Broadcasters Receive Limited Information from Third-Party Program Providers (Syndicators), Whose Primary Business Also Is Over-the-Air Service.

Almost all radio stations broadcast third-party content at some point during their broadcast day, see, e.g. Halyburton at ¶ 14; Tinker at ¶ 20; Parsons at ¶ 33, Guthrie at ¶ 7; Killingsworth ¶ 3, 6. This programming can come in the form of popular national programs

provided via direct satellite link, pre-recorded programming sent to subscribers via cassette or CD in advance, or even small church groups that purchase airtime to share their ministries, Cary at ¶ 8.

These syndicated and third party programs provide little, if any, detailed information about the pre-recorded music they play. Killingsworth ¶¶ 6-7. Some provide playlists with title and artists information. Guthrie ¶ 7; Halyburton ¶ 14. However, the smaller program providers, in particular, often fail to provide even that information. Cary ¶ 9.

Even the larger syndicators would have trouble providing all of the detailed information required by the proposed rulemaking. Their primary interest is in over the air broadcasts, not webcasts. Halyburton ¶ 14. For the same reasons that it would be extremely burdensome (if not impossible) for radio stations to provide the extraordinarily detailed data requested by the proposed regulations, it also would be extremely burdensome (if not impossible) for the syndicators who provide music programming. Halyburton ¶ 14. If syndicators ultimately made the business decision to undertake such reporting, the cost would surely be passed on to radio stations as higher syndication fees. Halyburton ¶ 14.

Moreover, if radio stations were compelled to research the information missing from the third party program providers reports, the research burden on the stations could, itself, be crushing. Halyburton ¶ 14. In addition, integrating the syndicator's data with those of the radio station to prepare the single report requested in the Proposed Rule would lead to additional expenses if it were feasible at all. Halyburton ¶ 14.

III. THE NUMEROUS REQUIREMENTS PROPOSED BY RIAA ARE ABSURDLY BURDENSOME AND REDUNDANT; COPYRIGHT OWNERS CAN OBTAIN REASONABLE NOTICE OF THE USE OF THEIR SOUND RECORDINGS FROM A DRAMATICALLY SCALED-DOWN LIST OF REPORTING ELEMENTS.

A. Broadcasters Should Provide Information That Is Reasonably Necessary To Give Copyright Owners Notice of the Use of Their Sound Recordings and Is Not Unduly Burdensome.

Broadcasters understand that copyright owners need to receive certain information in order reasonably to identify sound recordings transmitted pursuant to the Section 114 statutory license. Broadcasters are willing to provide that information to the extent that (a) RIAA can demonstrate that the receiving and designated agents need the information to make a reasonable determination of what sound recordings are transmitted for purposes of royalty collection and not simply to ensure that distributions are as perfect as possible (b) Broadcasters themselves have that information, (c) it is not unreasonably burdensome for them to provide that information.

The Copyright Office's proposed reporting elements would impose burdens on Broadcasters that are completely unnecessary to serve the receiving and designated agents' statutory functions. Indeed, the sheer volume of data that would be generated would render the notice and recordkeeping process completely unworkable for receiving and designated agents and licensees alike, and thus would jeopardize the distribution of royalties to copyright owners. (*see infra* discussion of SoundExchange distribution experience with respect to the preexisting subscription services and voluntary licensees). Moreover, many of these elements, if adopted, would co-opt licensees to bear the administrative burden that designated agents have agreed to undertake in connection with their task of distributing royalties to copyright owners. Designated

agents are appointed to determine the proper allocation of royalties to copyright owners for which they are entitled to deduct reasonable administrative costs and fees.⁷ RIAA cannot be permitted to transfer the statutory responsibilities of designated agents to licensees. Such a result would be dramatically at odds with the established practices of performing rights organizations that license musical works. ASCAP, BMI and SESAC all undertake the burden of collecting data for distribution purposes and, where they seek data from licensees, often request only a very small sample (e.g., one week per year). The marketplace experience of the performing rights organizations demonstrates that efficient and cost-effective methodologies can be employed to determine the reasonable and appropriate allocation of royalties without imposing unreasonable burdens on licensees.

Furthermore, there are a number of significant limitations on Broadcasters' ability to provide this information that the Copyright Office should consider in issuing final notice and recordkeeping regulations. First, while some Broadcasters maintain databases of information concerning the sound recordings that they broadcast, those databases typically do not contain fields for many of the reporting elements currently proposed by the Copyright Office. This is largely because those systems (where they exist) were built for the Broadcasters' over-the-air business and because a substantial proportion of the sound recordings that Broadcasters transmit are provided by the record labels in the form of promotional copies devoid of the information RIAA would have Broadcasters provide.

⁷ Report of the Copyright Arbitration Royalty Panel App B: Rates and Terms for Eligible Nonsubscription Transmissions and the Making of Ephemeral Reproductions, Docket No. 2000-9 CARP DTRA 1 & 2, at 1.(i)(Feb. 20, 2002) (defining "Designated Agent").

Second, almost all Broadcasters transmit at least some programming provided to them by third parties. As to that programming, the only information that Broadcasters have is what the third parties provide. Broadcasters are certainly willing to exert a reasonable, good faith effort to obtain information from these third-party programmers, but they should not be penalized for not reporting this information where a third party simply does not provide it, or provides incomplete or inaccurate information.

Third, Internet streaming is a small, ancillary part of Broadcasters' business that is generating little, if any, revenue. It would literally cost millions of dollars to re-design existing systems or to create entirely new systems, to reorder those fields that exist, to include additional fields, and fully populate those added fields. Broadcasters cannot justify these costs for the limited benefits of streaming. Most would simply pull the plug on this desired public service rather than incur these costs.

B. The Copyright Office Should Allow Broadcasters To Submit Records for a Reasonable Sample of Their Programming Rather Than for Each and Every Sound Recording They Perform.

Even if the Copyright Office scales back the proposed playlist reporting elements, the volume of paper necessary just to print those playlists on a 24/7 basis is enormous. For stations that are not automated, each performance that must be reported adds significant work. Census reporting would impose an unreasonably large burden. Moreover, even for automated stations, if the Copyright Office includes even one reporting element that stations do not currently track, the burden in finding this information and recording it for each and every song played is staggering. Therefore, Broadcasters request that the Office allow them to report music use for a reasonable

sample of their programming – perhaps four or five weeks per year – rather than for each and every song played, 365 days a year.

Reporting based on a reasonable sample has a number of advantages. First, it greatly reduces the amount of data processing involved in reporting music use, which, in turn simplifies royalty verification and distribution. In lowering both music reporting and royalty administration costs, sampling benefits both owners and users. Indeed, RIAA has expressly acknowledged in the subscription services proceeding that if it were inundated with music use data from the entire over-the-air radio industry, “the amount of data generated would be of a magnitude that would preclude a collective from being able to process actual, comprehensive use information.” RIAA’s Reply Comments, Docket No. RM 96-3, at 8 (Aug. 12, 1996).

Although not every radio station streams, the number that potentially do, coupled with the number of Internet-only webcasters, would submit a volume of reports that would bury SoundExchange in data if census reporting were required. Even when only three services were reporting music use, Sound Exchange took more than three years to make a single distribution of any royalty payments they made (and a full year and a half between the last collection and the first payment) See Rebuttal Testimony of Barrie Kessler, Docket No. 2000-9 CARP 1&2 DTRA, Tr. 11761-62, 11812 (Oct. 18, 2001). Moreover, these three services pay royalties under a percentage of revenues model and submit reports of use that are far less detailed than the data elements RIAA is seeking to obtain from thousands of services streaming under the statutory licenses here. *Id.* at 11763. Tellingly, SoundExchange has not made a single distribution of

royalties from its 26 voluntary eligible nonsubscription licensees, despite having collected royalties under these licensees since 1999. *Id.* at 11796, 11807-08.

Second, sampling would be particularly well-suited to measure music use for radio broadcast streams because radio stations focus more on mainstream, hit selections than do Internet-only services. Indeed, RIAA specifically identified this difference between broadcast radio programming and the Internet-only services participating in the subscription services proceeding in initially opposing sample reporting that “[s]ampling could deny many sound recording copyright owners of non-mainstream sound recordings.” RIAA’s Reply Comments, Docket No. RM 96-3, at 7 (Aug. 12, 1996). This argument is not applicable to the radio programming streamed by the Broadcasters.

Third, sampling is a widely used, well-respected, and accurate means of gauging music use that even RIAA has previously agreed to accept. Although RIAA initially opposed sample reporting in the subscription services rulemaking, RIAA later agreed to accept sample reporting. *See* RIAA Comments, Docket No. RM 96-3A, at 2 (Aug. 25, 1997) (stating that “RIAA proposed a notice of use that consisted of frequency data, an error log, and a one-third subsample of the actual playlist, instead of the detailed notice of use originally proposed”).

Likewise, the music performing rights organizations extensively rely on samples to calculate their member distributions from over-the-air radio station royalties.⁸ ASCAP, for

⁸ In the Eligible Nonsubscription CARP Proceeding, Mr. Gertz testified that:

ASCAP, BMI and SESAC have developed various methods for determining the appropriate allocation of royalties collected under licenses to publicly perform their copyrighted musical works. These performing rights organizations distribute royalties based, *inter alia*, on data they have obtained from surveys and other third party sources at their own cost. For example, SESAC and ASCAP regularly purchase radio song

example, has long distributed to its members royalties collected from over-the-air radio broadcasts on the basis of sample surveys. Indeed, for over 40 years, the consent decree governing ASCAP's operations has permitted ASCAP to distribute royalties to its members on the basis of sample surveys rather than on census data. *United States v. ASCAP*, 1960 Trade Cas. (CCH) ¶ 69,612, at 76,468 (S.D.N.Y. 1960) (allowing ASCAP to conduct a sample survey of performances of its members' compositions for royalty distribution purposes in lieu of a census survey); Second Amended Final Judgment, *United States v. ASCAP*, Civ. Action No. 41-1395, slip op. at 18-19 (June 11, 2001) (ordering ASCAP to distribute royalties to members "primarily on the basis of performances of its members' works ... as indicated by objective surveys" and allowing ASCAP to conduct sample, in lieu of census, surveys). Likewise, BMI also distributes royalties collected from over-the-air radio performances on the basis of sample surveys. See <http://www.bmi.com/songwriter/about/performance.asp#What%20BMI%20Does%20For>. Moreover, while both ASCAP and BMI reserve the right to require blanket-licensed radio stations to submit reports of music use, presumably in order to assist in calculating member distributions, ASCAP only requires those reports for a sample of one month per year, and BMI only requires them for one week per year. See ASCAP Local Station Blanket Radio License, at 3; BMI Single station Radio Blanket License Agreement, at 9. In other contexts as well,

detect data from Broadcast Data Systems to determine the appropriate allocation of royalties collected under the broadcaster blanket and per program licenses. ASCAP supplements its own extensive sample listening surveys by purchasing BDS data segments ranging from six hours to four continuous days of song detects.

Written Rebuttal Testimony of Ronald Gertz, ¶ 12, n. 9 (Oct. 4, 2001).

statisticians and pollsters such as Gallup or The Harris Poll routinely use sample surveys to reach determinations about the universe from which the sample is drawn.

In light of the well-established reliability of sampling, it makes no sense not to allow Broadcasters to submit reports of music use on a sample basis. As previously explained, Section 114 explicitly states that copyright owners are only entitled to "*reasonable* notice of the use of their sound recordings." Sample reports fulfill this requirement. Indeed, to require census reporting would cause the administrative burden in reporting under the statutory license to outweigh by far any benefits that it might otherwise convey. This is particularly true for Broadcasters that do not use automation software but rather create playlogs by hand.

Moreover, if stations were to submit reports for five weeks per year, or approximately 10% of their programming, RIAA would have more than ample data upon which to base its member distribution. As Brian Parsons of Clear Channel states, submission of a 10% sample would translate into reports of use for fully 10,000 songs per year for just a single music-intensive station. Parsons ¶ 43. When one remembers that data will be submitted not just for one station but on an industrywide basis, it is easy to see that the amount of data provided to receiving and designated agents, even on a sampling basis, will be enormous.

In any event, services should not be required to provide monthly reports in the rigid formats outlined in the proposed rule. Allowing services to report on a staggered quarterly basis, for example, would greatly lessen the administrative burden on the services, without appreciably affecting the flow of data to the collective agent. Moreover, there must be alternative reporting formats besides the elaborate electronic files requested by RIAA. Particularly for smaller

Broadcasters with limited staffing and computer power, and for those stations that do not use automated systems, the burden of creating the reports requested would be substantial. The PROs accept handwritten logs and are able to administer their royalties just the same; there is no reason to foreclose this option in the sound recording royalty context.

In short, submission of sampling reporting represents a reasonable balance between administrative burden and accuracy. Incorporation of a sampling provision in the final regulations will allow Broadcasters to focus on their primary business activity – over-the-air broadcasting – instead of allowing their streaming tail to wag the over-the-air dog in so disproportionate a manner.

C. The Intended Playlist Reporting Elements Should Be Narrowed to a List of Truly Necessary Elements That Excludes Information That Is Redundant, Impossible, or Highly Burdensome for Broadcasters To Provide.

The Copyright Office's proposed reporting elements for intended playlists would impose burdens on Broadcasters that are completely unnecessary to serve the designated agents' statutory function. Some of the elements would be impossible to provide; others would be so burdensome as to nullify the statutory licenses; many are duplicative elements that receiving and designated agents simply do not need in order reasonably to identify the transmitted sound recordings and their copyright owners.

1. **Elements That Broadcasters Propose To Provide: Service Name, Sound Recording Title, Artist, Call Letters, and Date of Transmission**

The following information would allow receiving and designated agents to determine Broadcasters' sound recording usage and accurately to distribute royalties: (i) name of the Service or entity; (ii) sound recording title; and (iii) artist.⁹

In the vast majority of cases, provision of title and artist information will be sufficient to identify a sound recording. Indeed, Barrie Kessler, the Chief Operating Officer of Sound Exchange, RIAA's licensing and distribution arm, testified during the nonsubscription services proceeding that for all sound recordings except possibly some included on compilations, title, artist, and album name were sufficient to identify the track. *See* Docket No. 2000-9, CARP DTRA 1 & 2, Tr. 11828-30 (Kessler).¹⁰ Moreover, even when a particular song performed by a particular artist appears on more than one album – *i.e.*, on the artist's original release and on compilation albums – it will be a rare case, indeed, where the copyright owner would change based on the album on which the song appears. Certainly, provision of title and artist information is well within the ambit of providing copyright owners with *reasonable* notice of the use of their sound recordings.

Actual marketplace experience confirms that title and artist information constitutes sufficient identifying information. First, RIAA's members have demonstrated by their actual

⁹ Further, to the extent that it is not available to Broadcasters, RIAA, as the representative of approximately 90% of the sound recordings legitimately distributed in the United States, is in a far better position accurately to ascertain this information than Broadcasters, who would be forced to deduce or guess at the album title based on commercially available information.

¹⁰ Before becoming Chief Operating Officer, Ms. Kessler was the Director of Data Administration for Sound Exchange.

business practices that title and artist information alone suffices to identify a sound recording and its copyright owners in the vast majority of cases. Record labels routinely send radio stations songs with only title and artist information provided, along with the song's length, in their constant quest to obtain free airplay. Parsons ¶ 6. The whole point in sending this music to radio stations is to get it played so that consumers will purchase the recording. The record labels must believe that title and artist information alone is enough to allow the consumer to identify the song in order to buy it; otherwise, they would regularly provide radio stations with additional identifying information.

Second, industry publications to which record labels subscribe in order to obtain radio station playlist information – e.g., *Radio & Records* – identify songs by title and artist alone. Again, if the labels were unable to identify songs based on these two bits of information alone, they would insist that these publications include additional identifying data for the songs listed in the playlists.

Third, both ASCAP and BMI have issued per program licenses to radio stations that allow radio stations to identify songs by title and artist alone, among other options. ASCAP, for example, allows sound recording identification based on “the title thereof and the name of *one* of the composer, or publisher or performing artist.” See ASCAP Local Station Per Program radio License (South Florida), at 4 (emphasis added). Similarly, BMI permits identification based on “the title thereof, and the name of *one* of the composer or publisher, or after December 31, 1999, the performing artist (if the performance was made by means of a recording). See BMI NRBMMLC 1998 Single Station Radio Per Program License Agreement, at 6 (emphasis added).

Indeed, in a rate court proceeding against ASCAP a few years ago, the court held that ASCAP had overreached in demanding additional identifying data elements in its reporting requirements and instead required ASCAP to allow stations to identify songs based on "a composition's title and the identity of either the performer, composer, or recording artist." *United States v. ASCAP (In re Salem Media)*, 981 F. Supp. 199, 221 (S.D.N.Y. 1997).

Broadcasters are also willing to provide their call letters and transmission date, in some fashion, somewhere in their reports, if providing such fields is consistent with a broadcaster's data system; however, such information does not appear to be necessary to determine a licensee's sound recording usage.

While designated agents are at liberty to use additional data elements in carrying out their distribution function, there is no basis to place the burden on Broadcasters to hunt down and provide that information. The U.S. District Court for the Southern District of New York rejected a similar argument by ASCAP in *United States v. ASCAP (In re Application of Salem Media et al.)*, 981 F. Supp. 199 (S.D.N.Y. 1997). There, ASCAP had argued that radio stations operating on a per program license (whose fee depended on the identity of the musical works performed) should be required to report: "(1) title; (2) name of composer, author, and publisher; (3) name of performing artist; (4) name of record company; and (5) all other information as to composer, author and publisher in full as shown on the label." *Id.* at 221. There was evidence at trial, however, that ASCAP was actually able to identify songs based on title and artist information alone. *See id.* Despite ASCAP's argument that "the more information the station gives us, the easier it is to identify the work," the court found that "ASCAP's reporting requirements are

excessive.” *Id.* The court then scaled back ASCAP’s proposed reporting requirement to include only (a) title and (b) publisher, composer, *or* recording artist.” *Id.* No further information should be required from Broadcasters here.

Nor has RIAA offered any demonstration of the scope of the errors that failure to provide additional information would produce or the burden that addressing those errors would impose on receiving or designated agents. Even if additional information will marginally enhance accuracy, that added accuracy comes at a huge cost to all transmitting services. RIAA should bear the burden of demonstrating that the benefit of that added accuracy justifies the cost. Broadcasters submit that RIAA will be unable to sustain that burden, particularly where, as here, RIAA has no basis to believe that added accuracy will significantly affect the fees paid by Broadcasters to copyright owners or will have a significant impact on designated agents’ distribution.

The Copyright Office should carefully examine each proposed reporting element and determine if it is absolutely necessary in order to identify the sound recording in light of the collecting and reporting burden that requiring that element to be reported would impose on the services. Broadcasters submit that their proposal more than serves the relevant need.

2. Broadcasters Should Not Be Obligated To Provide Information that the Record Labels Themselves Do Not Consider Important Enough To Provide to the Services.

As previously discussed, the great majority of the music that Broadcasters play is provided to them by the record labels in order to obtain free airplay, and the labels themselves do not provide most of the data elements that their collective now seeks. As a matter of

fundamental fairness, and to allocate the burden on the party best able to shoulder it, Broadcasters should (in any event) not be required to report information concerning a particular sound recording if the sound recording was obtained from a record label and that label did not supply that information to the broadcaster to begin with.

Further, one goal of RIAA in seeking the extensive information in the Proposed Rule appears to be to build its own sound recording database. Indeed, RIAA itself has admitted in a recent filing that it has already been doing precisely that. *See Reply of the Copyright Owners and Performers to Petitions Filed by Webcasters and Commercial Broadcasters*, at 83 n.238 (Apr. 1, 2002) (arguing that Sound Exchange is a “more efficient distribution agent” due to “the thousands of sound recordings for which data has been obtained and entered into the SoundExchange database” from subscription services’ music reports). It makes no sense to obligate every service to duplicate the task of burdensome reporting.

3. Numerous Elements of the Proposed Rule Are Impossible, Unreasonable, or Unnecessary To Provide and Should Not Be Required.

Broadcasters oppose the inclusion in the regulation of the following reporting elements, which are unnecessarily duplicative, unduly burdensome, and, in some cases, simply impossible to provide. Because RIAA has provided no justification for any of the proposed data requirements, Broadcasters are left to speculate in many cases as to the reason that they are included in the Proposed Rule. In these comments, Broadcasters offer a preliminary response based on their incomplete understanding of RIAA’s goals. Full response must await RIAA’s showing of need.

a. Type of Program: Archived, Looped, Continuous, or Live

The only basis to require information regarding the type of program is if licensees' royalty obligations are set differently according to the type of program in which the performance is made. In their Petition to Set Aside the CARP Report, Broadcasters explained that there is no basis in the record to set rates for performances in archived programming and substituted programming any differently from radio broadcast simulcasting – since it is the very same over-the-air programming (albeit transmitted on a time-shifted basis). Thus, Broadcasters submit that the Librarian should set aside as arbitrary and unsupported by the record, the CARP's determination that archived programming and substituted programming transmitted by radio Broadcasters should be subject to the webcaster rate rather than the radio broadcaster rate.

Insofar as this proposal is aimed at monitoring compliance with certain statutory conditions governing archived and continuous programs (*see* 17 U.S.C. § 114 (d)(2)(C)(iii)), as discussed in Part I.B.4 *supra*, Broadcasters do not believe that copyright owners are entitled to such records.

Finally, providing this information would be unreasonably burdensome. Neither Broadcasters' automation software nor their scheduling software typically has a data field for this item, and most systems do not allow users to create their own fields. Van Hook, ¶¶ 4-5; Halyburton ¶ 10. Broadcasters would be reliant on third-party software vendors to, in effect, re-write their programs for their benefit. Most software vendors that cater to the broadcast industry do so with very little programming staff, and the database changes alone would take many months and unknown monetary investment to complete.

b. Time Zone Where Transmission Originated

Designated agents do not need time zone information in order to achieve reasonable accuracy in member distributions. As explained in Part III.B *infra*, perfect accuracy is a largely unattainable goal and will cause the reporting burden to exceed the value of the license if the Copyright Office insists upon such a draconian standard.

c. Numeric Designation of Place of the Sound Recording Within an Archived Program

Receiving and designated agents do not need to know the numeric designation of the place of the sound recording within an archived program in order to calculate either royalty payments or distributions for Broadcasters. Identifying the numeric designation of the place of a sound recording within an archived program is unrelated to gauging sound recording usage, as it does not even provide enough information to match listeners with sound recordings, assuming that all of the other information necessary to do so were otherwise available. Broadcasters can only speculate that this proposed requirement is geared solely toward monitoring compliance with statutory conditions, which they believe is an improper use of sound recording usage records. *See supra* Part. I.B.4.

Further, this is just not a type of data that Broadcasters track, and Broadcasters do not even have a field in their music databases to store this information. In addition, most archived programs on Broadcasters' websites originate with third parties, and many of them are talk-oriented, with only occasional use of sound recordings. As discussed in Part V below, Broadcasters have no control over the content of these programs, receive limited or no information from third parties indicating sound recording order, and generally do not have the

ability to require third parties to provide this information under existing contracts. Even if they did, the costs of tracking would far outweigh the benefit of streaming these programs. Broadcasters likely would simply exclude archived programming from their websites, an undesirable result. Parsons ¶ 32.

d. Start Time

Designated agents do not need to know the start time of each transmission in order to achieve reasonable accuracy in member distributions. Rather, this proposed requirement appears aimed more to monitor compliance with statutory conditions, which Broadcasters believe is an improper use of sound recording usage records. *See supra* Part. I.B.4.

e. Duration

Receiving and designated agents do not need to know the duration of each and every sound recording that Broadcasters stream. It has no bearing on which recordings were played and thus has nothing to do with the royalties paid. RIAA apparently included this data field under the expectation that the RIAA might prevail on its request for the CARP to adopt a long song surcharge. Since the CARP rejected this request, the information is clearly irrelevant to the recordkeeping obligations under the statutory license.¹¹ Given the complete irrelevance of duration information to the royalty calculation and distribution process, the Copyright Office should delete this data item from its recordkeeping requirements.

¹¹ Even if Broadcasters believed that monitoring compliance with the sound recording performance complement were an appropriate use of sound recording use records (which they do not), this information is not even relevant to that activity.

f. ISRC

RIAA's request to receive the International Standard Recording Code ("ISRC") is extraordinarily overreaching. As the Copyright Office is no doubt aware, the ISRC constitutes a unique 12-character identifier for a recording such that providing this code would enable the recording industry quickly to identify each sound recording transmitted and would obviate the need to provide the other data elements in the intended playlist. By definition, the code indicates the country of origin, the original copyright owner's name, a reference year, and a five digit number unique to the particular song. See International Standard Recording Code (ISRC) Handbook: Incorporating the ISRC Practical Guide, § 3.5.1 (1st ed., Jan. 2002). Revised parameters for implementation of the ISRC system, also known as ISO 3901:2001, were published just recently, on October 1, 2001. The parameters required that the ISRC be encoded in a compact disc's sub-code (Q channel) during the disc mastering process, and thus must be encoded into the pre-master of a track before it the album master is even made – not available to the naked eye. See International Standard Recording Code (ISRC) Handbook: Incorporating the ISRC Practical Guide, § 3.7.1 (1st ed., Jan. 2002). In the United States, RIAA is the sole National ISRC Agency, and is charged with doling out to record companies blocks of numbers to identify their sound recordings and music videos.

Barrie Kessler, Sound Exchange's Chief Operating Officer, testified during the nonsubscription services proceeding that "there's no public place to go and get the ISRC number." See Docket No. 2000-9, CARP DTRA 1 & 2, Tr. 11836 (Kessler). Even RIAA itself, which owns and controls the database of ISRC information, does not have access to ISRC

information for all sound recordings in its repertory. Rather, that information exists for "somewhere . . . in between" 10-80% of those recordings, and it widely varies among RIAA members and among individual labels within each member depending on their individual business practices. *See id.* at 11834-35, 11839 (Kessler). The older a sound recording is, the less likely that it will have an affiliated ISRC. *Id.* at 11836 (Kessler).

More ironically still, RIAA guards what information it has in secret. *Id.* at 11836-37 (Kessler) (conceding that "[t]here's no place to access it currently"). Although Ms. Kessler admitted that RIAA could make its sound recording database containing ISRCs available to the public if it chose to, thus far, RIAA has refused to do so. *Id.* at 11837-39 (Kessler). Nor did Ms. Kessler have any idea whether RIAA would, in the future, release this information to the public. *Id.* at 11838-39 (Kessler). Ms. Kessler acknowledged that this field was typically not populated in the records submitted by the preexisting subscription services pursuant to the interim regulations because "you can't read this number, you can't find it." *Id.* at 11837-38 (Kessler). Nevertheless, she insisted that this field should be a required element because RIAA "wanted to provide a format that we could use in the future as well as the present." *Id.* at 11837-38 (Kessler). Until ISRC information becomes broadly available to the general public (or at least available to Section 112 and 114 statutory licensees), the Copyright Office should not require this information to be reported at all, even if it might be "available and feasible" for a handful of sound recordings.

g. Release Year

Receiving and designated agents do not need to know the release year for each and every sound recording to be reported. The record labels frequently do not provide this information when they service radio stations with free music. *See* Van Hook, ¶ 12; Rhodes ¶ 10. As stated above, title and artist information alone is sufficient to identify the vast majority of sound recordings, and Broadcasters are willing to report this information. Provision of release year information on top of these data elements would be redundant.

Moreover, provision of this information would be enormously burdensome. Most Broadcasters do not maintain release year information in their software systems. It would require countless hours of manual labor to in some instances redesign software to create a field for this information, research the correct release years as indicated in the copyright notice, and then input the release years for each sound recording in their databases. In light of the duplicative nature of this information and the burdens associated with maintaining and providing it, the Copyright Office should strike this proposed reporting element from its intended playlist.

h. Recording Label

Once again, RIAA has failed to show any reason why receiving or designated agents need to know the label for every sound recording transmitted in order to identify those sound recordings – the information is cumulative of title/artist information, which Broadcasters have already offered to provide. Moreover, most radio stations do not track this information once they receive music from a label. To go back and create a field for this information and backfill this

information would impose a huge burden on the industry. Indeed, if the promo CD was separated from its original packaging, it may not even be possible for the radio station to do.

i. UPC

Receiving and designated agents do not need UPC information to identify the sound recordings played. UPC is just another way to identify a sound recording, which Broadcasters' proposal to report title and artist information already achieves. There is no reason to provide nine ways to skin a cat when only one will suffice.

It is ironic that RIAA is even requesting this information, as the vast majority of CDs that RIAA's members provide are promotional versions that do not even contain UPC or any other retail information. Most, if not all, of their databases do not have a field in which to store this information. In fact, there is no good business reason for Broadcasters to track this information in their over-the-air operations, nor should they be required to do so here. It makes no sense whatsoever to require Broadcasters to bear this burden when RIAA itself has failed to provide it in the first instance and, in any event, does not need it to calculate royalty payments and distributions.

j. Catalog Number

Catalog number – the label's internal tracking number for a particular release – is a similarly unnecessary piece of information for RIAA to collect because it is just another means of identifying a sound recording. Broadcasters repeat: title and artist information is sufficient identifying information for the overwhelming majority of sound recordings. Provision of additional information constitutes an unjust data bonanza.

Moreover, most Broadcasters' systems do not even have a field to store this information and should not be required to implement extensive software modifications to create and populate one. In the majority of cases, record company promotional disks do not contain this information. Under such circumstances, Broadcasters should not be required to report this information .

k. Copyright Owner Information

Receiving and designated agents do not need copyright owner information from Broadcasters in order to allocate royalty distributions. Designated agents can and do obtain such information directly from copyright owners *See* Docket No. 2000-9, CARP DTRA 1 & 2, .Tr. 11836-38 (Kessler). Again, this information is merely another means of identifying the sound recording and, as such, is duplicative of the Broadcasters' proposal to provide title, artist, and album information. This information also risks being out-of-date, as copyright owners often change.

In addition, the record labels themselves do not always provide copyright owner information when they service Broadcasters with free CDs. Thus, most Broadcasters do not even maintain a field for this information in their databases, much less populate such a field. The burdens imposed on Broadcasters to modify their software, add this field, and populate it would be substantial and would certainly outweigh any marginal benefit that RIAA might argue would be achieved by receiving this information.. Once the record labels' collective has identified a particular sound recording – which, in most cases, it will be able to do from the title and artist information that Broadcasters have offered to provide – it is in a far better position to ascertain

the copyright owner directly from the labels than Broadcasters are to report that information in the first instance.

I. Station Format

RIAA's quest for station format information is an improper fishing expedition for information that receiving and designated agents plainly do not need. A station's format has no relevance to fee collection or distribution. The more likely explanation for RIAA's attempt to obtain this information is to collect useful marketing information (*i.e.*, determine sound recordings with "cross-over" appeal) in order to target more accurately its promotional efforts and perhaps even program competing webcasting channels. As Broadcasters discuss in Part VII below, the Copyright Office should not permit RIAA to abuse this recordkeeping rulemaking in this manner.

Moreover, Broadcasters do not currently maintain a field in their digital automation systems to track and print format information as a line item in their playlogs, and cannot maintain such information on a song-by-song basis, as songs could be played on stations of varying formats. Even scaled down, the recordkeeping requirements will be burdensome enough without requiring Broadcasters to jump through additional hoops to provide information that serves no useful purpose in calculating and distributing royalties.

D. The Listener Log Requirement of the Proposed Rule Is Unreasonable for Internet Streaming by Broadcasters.

At the outset, it should be noted that any request for user-identifying information raises significant privacy concerns. RIAA must provide compelling reasons for seeking to overriding listeners' right to privacy (which it has manifestly failed to do) and Broadcasters and their

listeners should have the right to respond. Stream listeners should not have to worry about how information about their listening habits may be used.

Moreover, the listener log requirement of the Proposed Rule creates a multitude of additional burdens for Broadcasters. The Proposed Rule exalts perfection over reasonableness and raises significant issues of technical possibility, burden and relevance. A far simpler report of listenership should suffice.

Broadcasters typically use third party services to stream their broadcast programming over the Internet. Most do not receive server records from their respective service providers on a listener-by-listener basis. In response to broadcaster inquiries, these third parties report that such logs may be technically feasible, but would require expensive development work to implement. Of course, Broadcasters would be forced to rely upon the accuracy of the third-party data rather than attesting to it themselves. For this reason, Broadcasters should not have to report system failures, as these records are in the hands of third parties and not controlled by Broadcasters themselves.

Even where detailed records are available, the potential volume of information in the listener log is enormous. For each session on the website, the service must provide seven fields of information about *each* listener, including the date and time that a user logs in and out, the time zone and country that the user receives the transmission. The magnitude of the data required is staggering. For example, MeasureCast, Inc. reported that the 1,353 Internet radio stations it measured for the month of February 2002, streamed a total of 22,764,225 hours of music, news, and talk programming to some 2,733,823 listeners.

<http://www.measurecast.com/news/pr/2002/pr20020308m.html> (Press Release of March 8, 2002). This would amount to billions of data records for millions of listeners even for this sample of stations for a single month.

This number increases exponentially when one recognizes that the number of *listeners* to a stream is much smaller than the number of *listener sessions* that log in and out of the stream. In the course of one sitting, a single user may be logged in and out dozens of times, and the proposed regulations would require a separate report for each new session. More staggeringly still, these numbers quickly magnify into trillions of seven field data records when one factors in the hundreds of services that will be submitting records under Section 114.

Against this crushing burden is an extremely small potential benefit. Broadcasters typically can provide aggregate Internet listener data expressed in monthly "Aggregate Tuning Hours," or ATH. From those data, it is possible to determine the average number of listeners to the service at any given time. Such a report would allow a very close estimate of the total royalty fee due and a reasonable estimate of the number of listeners to any given performance.

By analogy, ASCAP and BMI distribute millions of dollars to a diverse group of musical works copyright owners on the basis of statistical sampling. *See supra* Part III.B. Neither ASCAP nor BMI require perfect accuracy and there is no justification for requiring Broadcasters to provide it here.

Even beyond the foregoing, there are other significant problems with specific aspects of RIAA's request. For example, the Proposed Rule requires reporting of various time data in the local time or time zone where the user is located. It is not possible to determine with certainty

any user's location from Internet server logs. Although the stream provider can capture the IP address of the listener, this number does not necessarily reflect the correct locale of the listener – AOL users, for example, would likely appear in any reports as originating in Virginia, where the majority of AOL's servers reside, even if they are actually listening in Oregon. Kartak, ¶ 12. Moreover, many Broadcasters do not require listeners to register. Further, even such a log-on would not necessarily provide accurate information. More to the point, there is no valid reason for receiving or designated agents to know where the user is located or to request time and date data based on the user's time zone. Similarly, the request for information about the country where a listener is located similarly serves no purpose. There is no reason to require Broadcasters to provide such information.

E. No Ephemeral Phonorecord Logs Should Be Required At All Given That (1) No Ephemeral Fee Has Ever Been Based on the Number of Copies Made, (2) the Office Has Found That Such Copies Have No Economic Value, and (3) the Burden in Maintaining Such Logs Is Substantial.

RIAA has made no showing to justify how a detailed ephemeral recording log bears any relationship to the royalty payments to be made for ephemeral recordings. In fact, the nonsubscription services Panel was clear in its determination that the number of ephemeral recordings made and destroyed, the songs recorded, and the creation and destruction dates of those recordings were wholly unrelated to the royalty payment to be made by the services. The ephemeral recording fee was merely a percentage of the *total* performance license fee for any and all ephemeral recordings.

Nor has RIAA made any showing that its payments for ephemeral recordings will be based on the number, dates and times of copies made. In fact, because the ephemeral fee is

derived from the performance fee, designated agents should pay on that basis. Any other basis would pay copyright owners of performed songs less than the revenue generated by those songs. Thus, by analogy, ASCAP has long adhered to a "follow-the-dollar" approach – *i.e.*, distributing royalties to members whose works generated those fees. *See, e.g.*, <http://www.ascap.com/playback/1999/september/payment.html> ("ASCAP is guided by a 'follow-the-dollar' principle in the design of its payment system. In other words, revenues collected from radio stations are paid out to those members whose works are performed on radio . . .").

Nor can RIAA be heard to argue that using performance fees as a proxy for ephemeral recording royalties is inappropriate. That was precisely the model advocated by RIAA in the nonsubscription services CARP. *See* RIAA's Proposed Findings of Fact and Conclusions of Law, Docket No. 2000-9, CARP DTRA 1 & 2, ¶ 244 (Dec. 3, 2001) (proposing ephemeral fee of 10% of performance royalty).

Moreover, it would be unreasonably burdensome for Broadcasters to develop the systems necessary to provide the requested log. The sound recording identifying elements are unduly burdensome to report for the reasons discussed in Part III.C above. Broadcasters currently do not track ephemeral copies because it made no sense to do so from a business perspective. It would be enormously expensive to develop software to track this information and, in Broadcasters' view, pointless given that (a) these copies bear no relation to the ephemeral license fee and (b) the Copyright Office itself already has determined that such copies "have no economic value independent of the public performance that they enable." *See* U.S. Copyright Office, DMCA Section 104 Report at 144 (Aug. 2001).

On top of the irrelevance and burden of tracking these copies, the sheer paperwork in maintaining these records would be enormous. Across all Section 112 licensees, the volume of paperwork would be crushing –faced with so much paper, it is difficult to imagine what benefit RIAA perceives it will gain from these records.

IV. NON-FEATURED PERFORMANCES OF SOUND RECORDINGS AND FEATURED PERFORMANCES ON TALK-BASED CHANNELS SHOULD BE EXPRESSLY EXCLUDED FROM ANY RECORDKEEPING REQUIREMENTS.

A. Non-Featured Performances

RIAA's Petition for Rulemaking expressly acknowledged that it was not requesting that the Copyright Office establish recordkeeping requirements for non-feature uses of music, such as incidental or background uses. *See* Petition for Rulemaking To Establish Notice and Recordkeeping Requirements for the Use of Sound Recordings in Certain Digital Audio Services (May 24, 2001) ("We also reserve the right to request information concerning non-featured uses of sound recordings, although *we have not done so at this time.*" (emphasis added)) ("RIAA Petition").

The Proposed Rule, however, does not specify the types of sound recordings for which it proposes that records be kept. On its face, it could be read to require users to maintain records relating to non-feature uses of music in addition to feature uses. Thus, the Office should clarify that the recordkeeping requirements apply only to feature uses of sound recordings. No Section 112 or Section 114 license to date has imposed a separate license fee at all, much less a performance-based license fee, for incidental uses. In the nonsubscription services proceeding, the CARP proposed a feature fee but specifically excluded from the license fee "transmissions or

retransmissions that make no more than incidental use of sound recordings, including but not limited to, certain performances of brief musical transitions, brief performances during news, talk and sports programming, commercial jingles, and certain background music.” See *In re Rate Setting for Digital Performance Right in Sound Recordings and Ephemeral Recordings*, Report of the Copyright Arbitration Royalty Panel to the Librarian of Congress 108 (Feb. 20, 2002) (public version).¹²

B. Featured Performances on Talk-Based Channels

The burdens imposed by a reporting requirement for featured performances in talk-based programming would also nullify the value of the statutory license with respect to that programming. First, many of talk stations are programmed by third parties, which, in and of itself, raises the reporting concerns discussed in Part II.C, above. Moreover, if Broadcasters were required to report these minimal featured performances, the monitoring burden in identifying those sound recordings could not be justified against the relatively few performances that were made and, in itself, likely would render the statutory license unusable. To address this problem, the Office should allow services transmitting talk-based programs to rely on commercially reasonable estimates of the number of featured performances in that programming rather than forcing them to search for the proverbial “needle in a haystack” merely to satisfy RIAA’s data fetish.

¹² In any event, it is next to impossible for copyright users or owners to track non-feature performances of music on radio. Cf. *United States v. ASCAP (In re Applications of Salem Media, et al.)*, 981 F. Supp. 199, 219 (S.D.N.Y. 1997) (finding that a radio station could not reasonably “monitor and report its incidental music use” and that ASCAP could not track such use). To require such reporting would render the statutory licenses wholly useless.

V. BROADCASTERS SHOULD ONLY BE REQUIRED TO EXERCISE REASONABLE, GOOD FAITH EFFORTS TO OBTAIN PLAYLIST INFORMATION FROM THIRD-PARTY PROGRAM PROVIDERS.

Broadcasters can reliably provide reports of use containing the above-referenced elements in Part III.C.1 for their original programming. As discussed in Parts II.E and V, however, a portion of each company's programming comes from third parties, and Broadcasters must rely on the information provided to them by their third-party programmers. Broadcasters propose that for channels programmed by third parties, Broadcasters will make a good faith effort to request this information from those third parties and provide it the copyright owners, similar to the good faith effort required of PBS and NPR stations in their reporting to ASCAP and BMI under the terms of the Section 118 license. 37 C.F.R. § 253.3(e). In *no* event should Broadcasters suffer any consequences if a third-party programmer fails to provide them with this information or provides them with incomplete information. Rather, Broadcasters should only be required to provide to the copyright owners' designated agents what they themselves receive from third parties.

VI. THE NOTICE AND RECORDKEEPING REQUIREMENTS SHOULD PROVIDE FOR A TRANSITIONAL COMPLIANCE PERIOD AND SHOULD ALLOW FOR GOOD-FAITH REPORTING ERRORS OR INADEQUACIES.

The Copyright Office's recordkeeping requirements, as ultimately adopted, may require Broadcasters to maintain and report records of use that they previously were not required to keep. No doubt, Broadcasters will need a transitional period to make appropriate adjustments to their software, databases, and record preservation practices. Accordingly, Broadcasters propose that the Copyright Office institute a one-year transition period during which Broadcasters will

exercise commercially reasonable efforts to provide the records to receiving and designated agents, but will suffer no adverse consequences from the provision of incomplete or incorrect information.

Even after the requirements go into full force, there will inevitably be reporting errors despite Broadcasters' efforts to supply accurate information. Therefore, the Copyright Office's recordkeeping provisions should provide that good faith reporting errors or inadequacies will not deprive licensees of the statutory license nor subject Broadcasters to other sanctions. Rather, the Office should include provisions providing that in the case of a good-faith reporting error identified by a receiving or designated agent, Broadcasters and agents will cooperate to resolve such errors.

VII. THE OFFICE SHOULD MAKE CLEAR THAT THE CONFIDENTIALITY PROVISIONS CONCERNING USE OF AND ACCESS TO RECORDS ADOPTED BY THE ARBITRATION PANEL IN THE NONSUBSCRIPTION SERVICES PROCEEDING APPLY TO ALL RECORDS REQUIRED TO BE SUBMITTED AS A RESULT OF THIS RULEMAKING.

Regardless of the recordkeeping requirements adopted, it is absolutely essential that the Office impose strict confidentiality requirements over the use and disclosure of the reports. The arbitration panel in the nonsubscription services proceeding has already proposed confidentiality terms, with the consent and support of RIAA, that govern "statements of account" and "any information pertaining to statements of account" that Broadcasters and other nonsubscription services may designate as confidential. *See* CARP Report App. B, at B-13 to B-19. The provisions restrict access to that confidential information to:

- (1) “[t]he Receiving Agent or a Designated Agent, subject to an appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities directly related thereto, who are not also employees or officers of a Copyright Owner or Performer, and who, for the purpose of performing such duties during the ordinary course of employment, require access to the records”;
- (2) independent auditors; and
- (3) in connection with a *bona fides* fee dispute or with future CARP proceedings, outside counsel, consultants, and other authorized agents to the parties.

CARP Report App. B, at B-16.

With respect to use, the provisions mandate that “[I]n no event shall the Receiving Agent or Designated Agent(s) use any Confidential Information for any purpose other than royalty collection and distribution and activities directly related thereto.” CARP Report App. B, at B-14.¹³ Broadcasters request that the Copyright Office make clear that these terms apply to all records required to be maintained and reported as a result of this rulemaking.

The reason for imposing such strict confidentiality requirements is clear. The music performed by a radio broadcaster is a valuable asset that reflects the competitive character of the broadcaster. A convenient list of performances is particularly vulnerable to abuse by the broadcaster’s competitors. Moreover, performance information has great economic value to record companies. Indeed, record labels routinely pay companies such as BDS Spin and Mediabase 24/7 substantial sums of money to obtain precisely the information that RIAA now

¹³ The provisions do allow the Designated Agent(s) to report confidential information in aggregate form “so long as Confidential Information pertaining to any Licensee or group of Licensees cannot directly or indirectly be ascertained or reasonably approximated.” CARP Report App. B, at B-14.

seeks to obtain for free in this rulemaking. The labels should not be allowed to obtain free use of this valuable information for purposes unrelated to the administration of the statutory license.

Although the Copyright Office has included a confidentiality provision in the Proposed Rule that prohibits use of the information "for purposes other than royalty collection and distribution, and determining compliance with statutory license requirements, without express consent of the Service providing the Report of Use,"¹⁴ the proposed provision currently allows the record labels themselves and other copyright owners access to this valuable marketing information. For a number of reasons, access to these records should be strictly limited to the collective agents. First, the CARP already has forbidden access to records by "employees or officers of a Copyright Owner or Performer," as discussed above. Second, copyright owners are entitled to access records of use only of *their own* sound recordings, not of *all* copyrighted works. See 17 U.S.C. §§ 112(e)(5), 114(f)(4)(A); Interim Regulations on Notice and Recordkeeping for Digital Subscription Transmissions, Docket No. RM 96-3B, at 8 (July 1, 1998). Because radio stations will be reporting music use on an aggregate basis, not separated out on a copyright owner-by-owner basis, only the agent should view these records. Third, despite the use restriction contained in the Copyright Office's proposal, the risk for mischief is simply too great in light of the substantial commercial value that such records embody. Finally, it would be economically unfair for the Office to allow the record labels themselves to access this data because its value was not reflected in the CARP's proposed royalty fee for

¹⁴ For the reasons discussed in Part I.B.4 *supra*, Broadcasters believe that monitoring compliance with statutory license requirements is an improper use of the records.

nonsubscription services. Rather, the CARP proposed fees before any reporting requirements for nonsubscription services were in place that would have put the CARP on notice that the value to the labels of receiving this information should be reflected in the license fee in the form of a discount.

In short, the Copyright Office should ensure against this misuse of information by applying both the use *and* access restrictions described above to all records required to be maintained as a result of this proceeding.

CONCLUSION

Congress made abundantly clear that in enacting Sections 112 and 114, it did not intend to disturb the symbiotic relationship between the record and radio industries, which has served each industry well for years and caused them both to thrive. The Copyright Office's proposed recordkeeping requirements are particularly troubling for Broadcasters because they fail to account for this special relationship between the two industries and the longstanding business practices that have developed over the years. Most fundamentally, record labels and radio stations have routinely relied on title and artist information alone to identify sound recordings when (a) the labels send songs to radio stations to get them played over the air, (b) radio stations announce the songs that they are playing, and (c) trade journals such as Radio & Records, upon which both record labels and radio stations rely, publish playlists of what was actually played. Similarly, ASCAP and BMI have required reporting of only title and artist information, among other options, by those radio station licensees that challenged more burdensome requirements.

The Copyright Office's proposed playlist requirements are completely at odds with this long-established practice. In addition to title and artist information, the Copyright Office's current proposal would have stations supply no fewer than seven additional data elements geared toward identifying the sound recordings that Broadcasters transmit. Radio stations simply do not have this additional information. It would be particularly perverse for the Office to require radio stations, rather than the record labels (who presumably already have information concerning their own sound recordings) to hunt down and report this information. The Office's proposed listener log and ephemeral log reporting requirements are similarly burdensome and unnecessary. Substantially scaled back requirements will achieve the same goals, with little sacrifice in accuracy and huge gains in efficiency.

If the Office's requirements go into effect unaltered, they will likely force most radio stations to cease streaming altogether, particularly given that streaming is only a tiny part of what radio stations do and is offered primarily as a courtesy to stations' local listeners rather than from any illusions of achieving a viable business model in the foreseeable future. This result is no good for anyone – not Broadcasters, not the listening public, and not even the labels, who would be deprived of the additional exposure that their songs get over the Internet in the same format

that they like so much over the air. The Copyright Office should reject the Proposed Rule and adopt a rule based on these comments.

Respectfully submitted,

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A

**Before the
LIBRARY OF CONGRESS
Washington, D.C.**

In The Matter Of:

Docket No. RM 2002-1

Notice and Recordkeeping for
Use of Sound Recordings
Under Statutory License

Statement of Jaime Kartak, Bonneville Chicago Radio Group

1. My name is Jaime Kartak, and I am the Director of Digital and New Media/Webmistress for the Bonneville Chicago Radio Group. I have been in the radio broadcasting industry for 24 years in various positions including on-air talent, Music Director and Program Director in major markets such as Chicago, Houston and Denver. I've been doing web development for 6 years (2 of those full-time). The information in this statement is based on my personal knowledge and experience and my discussions with Todd Clark, our Chief Engineer, who is handling our streaming implementation at our Chicago stations, and BJ McCarty, our Station Manager.

Background

2. The company of which we are a division, Bonneville International Corporation, operates twenty radio stations in several markets, including Salt Lake City, Utah, St. Louis, Missouri, and San Francisco, California. In Washington, DC, we own the award-winning news radio station, WTOP-AM, as well as Z104 (WWZZ) and classical station 103.5 WGMS. All five of our Chicago-area stations – WTMX-FM/WTNX-FM, WNND-FM, WLUP-FM, and WDRV-FM – recently began to simulcast their signal over the Internet. All five are music-intensive stations.

3. If the Copyright Office issues recordkeeping requirements for the use of sound recordings under statutory license in the form currently proposed, we may well be forced to discontinue streaming altogether. Our day-to-day operations simply cannot support the additional time, effort, and expense that it would take to supply most of the requested information.

4. That said, we would like to continue streaming, and we of course wish to provide copyright owners with the information they need to get paid for their intellectual property. The difficulty is in the details – it just doesn't seem possible that the copyright owners truly need more than 18 separate fields of information about our playlists in order to administer their rights. It should be sufficient for us to provide the name of our service, along with song title and artist name. This information, coupled with sampling of our listenership, is all that is needed to determine copyright ownership. The rest of the information requested by RIAA is redundant, and misplaces the burden on our radio stations to provide data well outside our realm of knowledge.

Music Sources

5. We obtain at least 90% of the music we play directly from the record labels. In addition, we purchase CDs when we need to add "gold," or older, titles into our playlists and we no longer have the product in our library. Our more gold-focused stations probably purchase music more frequently than our other stations. The only information we readily receive about the songs we play is whatever is available via the liner or package notes or on the CD itself. That usually includes title, artist, record company, and sometimes album name and copyright information about both the musical work and the sound recording. When promo CDs have a catalog number, that number is not necessarily the catalog number of the album the song appears on. We don't always receive this information – sometimes all we get from the label is artist name and title of the song, particularly if we received the song via digital download or on a custom-burned CD. We do not believe we should be required to track and report data that the labels do not provide to us with the music in the first instance. These recordkeeping requirements are asking for information that the labels are in a better position to know about than broadcasters.

6. All of our Chicago stations use Selector software, by RCS, to schedule music. The stations each have several hundred songs in their respective Selector databases. But even within our small Chicago subset of Bonneville stations, the information that is currently kept about each song is not consistent; it varies by Program Director preference. We simply never needed to track the kind of detailed information requested in order to run our business. Generally, we track artist, title, song length, and record label, among other things, on each song. We track the album name, when it is available. We do not, for example, currently keep track of the copyright owner, and we certainly do not track information we don't receive from the labels, such as ISRC, retail album catalog number or UPC code.

7. To ensure that our databases have all of the information that these requirements would have us report, we would have to hire someone to research the information, which would greatly add to our data entry time and costs. Even if it did make economic sense for us to go through this exercise, there is no guarantee that we would get it right despite our best efforts. The information will be far more accurate if drawn from the record label's own database of sound recording information rather than from numerous radio stations sending employees to a record store to guesstimate this information. Radio stations should only be responsible to provide information that the record labels themselves have given to the stations to begin with, directly on the promotional CD they provide.

8. We normally retain copies of our playlists for about 90 days. We do not have data reaching back much further than that for most of our stations. As with our current playlists, these older playlists do not contain all of the information sought by the proposed rule. Any reporting that we are required to do for broadcasts made before the recordkeeping requirements are finalized should be limited to existing records, as maintained subject to our normal document retention process.

Incidental Music Use and Syndicated Programs

9. Our playlists do not include listings of incidental music used as background for traffic and weather reports and news stories, in introductions to programs, as bumpers between program segments, as disc jockey themes, and in promotional segments. As a practical matter, we cannot track this sort of music usage. Similarly, our talk stations such as WTOP sometimes make incidental use of music, either as bumpers, background to stories, or in promotions. If the Copyright Office's proposed regulations were to apply to our talk programming, we would consider pulling the plug on streaming even our talk stations.

10. We also get many programming segments from syndicators, whose focus it is to serve radio stations. These programs include specialty "event" shows from such providers as MJJ. Most of our syndicators currently provide us with basic playlist information, such as title and artist. If we start requiring our program suppliers to provide us with more detailed information about what is being played during their programs, I am hopeful that they may provide it – on a going forward basis. However, for the same reasons that we could not provide the more detailed data requested by the proposed regulations, I doubt the syndicators could either. And if the syndicators nonetheless chose to leave off certain information, the added research burden on our own staff would be considerable. In addition, figuring out how we would

integrate the syndicator's data with our own to prepare the single report requested by the proposed rules is an additional expense, which will require ramp-up time, if it can be done at all.

Listener Logs

11. We have only recently reestablished our Chicago-wide streaming operations after an 11-month hiatus. We work with Broadcast Electronics (BE) for our streaming needs. They ensure that our music makes it from our broadcast to the Internet. We currently receive limited information about listenership from BE. According to our contract with them, we should be able to "access and determine listener traffic levels, including, but not limited to, listening hours." It is unclear at this time whether the information will come in a format consistent with that required by the proposed regulations. We anticipate that if we require more information than what is currently provided for in our contract, we will have to pay additional fees to BE. It is too soon to tell what those fees might be, but they have the potential to be substantial. It may not be possible for BE to provide the kind of listener session-specific information sought by the proposed rule.

12. Regardless of what information is provided by BE, there is no way for the listener data to be completely accurate, even under the best of circumstances. For example, the data will show an inordinate number of users coming from "Herndon, VA." This is because their Internet Service Provider is AOL, and all AOL user's IP addresses will link to Herndon, VA, even if the end user is actually in Chicago. I would not want to be the person who has to swear to the accuracy of the listener data, when it is coming from a third-party vendor and is known to have inaccuracies such as the AOL problem. Broadcasters should not be held responsible for faults in the technology that make it impossible to provide the data requested.

Ephemeral Phonorecord Log

13. The Copyright Office's proposed recordkeeping requirements for the ephemeral recording license are perhaps the most burdensome of all. As I understand it, the CARP proposed a rate for ephemeral copies equal to 9% of each streaming station's performance fee. I am not even sure our current computer systems are capable of tracking this kind of creation and deletion activity. On our music-intensive stations, even one ephemeral copy per song streamed would equate to more than a million pieces of data being reported per year. Our stations should not have to keep track of the creation and destruction of each and every copy of a song made in the course of streaming the song when the rate set for making those copies has nothing to do with the number of copies made.

Confidentiality and Privacy

14. Finally, we are concerned about being forced to turn over so much commercially sensitive data about our internal operations and listenership. Our playlists are the product of the expertise and experience of talented programming professionals. We don't want our competitors to have easy access to our playlists, and we most certainly don't want record labels to use data we provide to create their own competing services.

15. Similarly, we are uncomfortable with the notion of providing listening data that would identify the listening habits of each unique listener to our stream. We do not want our listeners to feel that their privacy is being invaded. Specific listener information is simply not necessary to administer the royalty.

16. We respectfully request that regardless of the recordkeeping requirements imposed, only the collective agents have access to it. Moreover, the collective agents should be strictly limited in their use of the collected data – it should be used solely to collect and distribute royalties, and not for marketing or any other purposes.

Conclusion

Bonneville is a company built on a commitment to public service. Our stations in Chicago have consistently won awards for their service to the people of Chicago and the surrounding communities. We have only just begun consistently simulcasting our signal on the Internet, and we see our stream as an important extension of our local community service as it enables us to reach people who otherwise would be unable to receive our terrestrial broadcast signal due to multipathing or other problems inherent in the infrastructure of a large metropolitan area. If the recordkeeping requirements are enacted as proposed, we likely could not justify the enormous expense of radically changing the way we do business in order to comply. We think this would be a shame, because these kinds of records do not seem to be really necessary to administer a license. Certainly, ASCAP, BMI, and SESAC only require us to provide samples of our playlists for short periods of time, and with far fewer data points, yet composers and publishers still get paid. We respectfully request that the Copyright Office adopt a strongly scaled-back proposal – one that allows for sampling reporting, requires only the essential identifying information about each song, and better accommodates the realities of broadcaster operations, our existing relationships with record labels, and current technologies.

Date: _____

4-3-02



Jaime Kartak
Bonneville Chicago Radio Group

B

Before the
LIBRARY OF CONGRESS
Washington, D.C.

In The Matter Of:

Docket No. RM 2002-1

Notice and Recordkeeping for
Use of Sound Recordings
Under Statutory License

Statement of Brian Parsons, Clear Channel Communications

1. My name is Brian Parsons, and I am the Director of Technology for Clear Channel Radio Interactive, a division of Clear Channel Communications, Inc. ("Clear Channel"), headquartered in San Antonio, Texas. My background is in information systems management, and I have several years of experience at Jacor Communications, where I built Intranet and Internet applications, worked on streaming initiatives, and put together Jacor's Internet platform, which Clear Channel adopted when it purchased Jacor in 2000. When Clear Channel created a separate Internet division in Los Angeles, I briefly left the company to become President of nTunes, an ecommerce company for the broadcast industry, but returned to Clear Channel in 2001 and assumed my current position after this separate Internet division was dissolved. My statement is based on personal knowledge and on discussions with other Clear Channel radio personnel and stream providers.

Clear Channel's Operations

2. Clear Channel was founded in 1972 with the purchase of a single radio station in San Antonio, Texas. Since then, Clear Channel has grown to include approximately 1225 radio stations, making it the largest operator of radio stations in the United States. Clear Channel also operates a number of television stations, outdoor displays and entertainment venues in 66 countries around the world. All told, Clear Channel has approximately 55,000 employees in the U.S., 22,000 of whom are involved in radio-related duties. A great deal of information about Clear Channel can be found at <www.clearchannel.com>.

3. Clear Channel Radio oversees Clear Channel's 1225 radio stations. Broadcasting across all 50 states and the District of Columbia, in every top ten market, and in 47 of the top 50,

Clear Channel's radio programming reaches more than 110 million listeners every week in nearly every demographic. Clear Channel radio stations generated nearly half of total company revenue in Fiscal Year 2001. Our radio stations broadcast in dozens of different talk and music formats, ranging from News/Talk to New Wave.

4. Clear Channel Radio Interactive ("CCRI"), based on Covington, Kentucky, manages Clear Channel's approximately 847 radio station websites, as well as its radio streaming operations. Although at one time Clear Channel also operated some Internet-only channels, they were all shut down last year. Clear Channel does not intend to stream Internet-only channels until there's a viable business model in place to do so. As of March 2002, approximately 211 of Clear Channel's stations were streaming their broadcast programming. Just last month, MeasureCast and Arbitron began to track Clear Channel's streaming hours. For the week ending on March 10, 2002, MeasureCast reported that Clear Channel streamed more hours of online programming than any other radio group in the world. As measured by Arbitron, Clear Channel ranked second in the world in streaming hours for the month of February. Despite Clear Channel's success in attracting stream listeners vis-à-vis other companies, its stream listeners constitute only a small fraction of its over-the-air listeners. Indeed, the number of unique listeners to all of our streams combined represents the approximate cume of a poorly performing small market radio station.

5. The Copyright Office's recordkeeping requirements in their currently proposed form are so burdensome that they outweigh any benefits in increased accuracy that they might provide. Indeed, many of the proposed requirements are, quite simply, impossible to comply with, even for a large, well-established radio broadcaster such as Clear Channel. Moreover, streaming is only a small part of Clear Channel's enterprise to make it more convenient for our listeners to hear our broadcasts. Our decision of whether to continue streaming will depend on whether it makes sense from a business standpoint to do so. In fact, just last year, Clear Channel pulled the plug essentially overnight on all of its then-current streaming operations for several months due to a dispute with AFTRA over the use of certain commercials in radio streams and to the uncertainty in the sound recording royalties that we would have to pay to stream. Although we were able to resolve the dispute with AFTRA and slowly have resumed streaming some of our stations, that could change at any time if business conditions change. While we recognize that a business model needs to be worked out that will be fair for everyone, including broadcasters, record labels, and the consuming public, the fees set by the recent CARP and the notice and recordkeeping rules proposed by the Copyright Office each, independently, has the potential to end Clear Channel's streaming operations.

Where Clear Channel Gets Its Music and What Information It Receives

6. A major problem with the Copyright Office's proposal is that it requires radio stations to report information concerning the songs that they play that our stations do not have. The proposal appears to assume that radio stations and other services play music from actual retail albums, which is not at all the case. Rather, virtually all of the songs that our stations play are provided to them by the record labels for free in hopes that the stations will decide to add those songs to their playlist. These promotional copies do not contain much of the information that the Copyright Office proposes that we report. In fact, we receive many of these promotional copies before the retail version has even been released, so the retail information such as UPC code, catalog number, and sometimes even the album title, is not available to anyone. Our radio stations never receive any retail music unless it's something the label sent to give away on the air. In those rare cases when we do receive retail albums, the retail information often has been stripped off.

7. About 50% of the music that the labels send us come in the form of CD-Recordable discs ("CD-Rs") that the label representatives have made themselves. These CD-Rs come in clear jewel cases with mailing labels, usually contain only one song, and typically provide only title and artist. On occasion, the CD-R will contain an entire album, in which the album title will also be provided. Duration information is sometimes provided as well although we do not track it. The information is sometimes typed and sometimes handwritten onto a sticker affixed to the CD. To illustrate this point, I am attaching as Exhibit 1 to this statement a copy of a CD-R that we received from a label. As the Office can see, the CD-R contains a copy of the song "Baby Got Back," performed by The Grandskeem and lasting 2 minutes and 30 seconds. No other information appears on the CD-R, but we do typically keep track of the label who sent it to us.

8. The other half of the music that we receive consists primarily of promotional CDs, most of which are singles. Usually, these CDs come in packaging similar to but not the same as retail packaging. For example, these CDs generally do not contain UPC or catalog number information. Beyond that, the information contained on the CDs varies widely. Sometimes, these CDs contain as little information as title, artist, duration, and label information, as the promo CDs attached as Exhibits 2 and 3 illustrate. Exhibit 2 contains a promo CD of the song "Sugarhigh," performed by Jade Anderson, lasting 3 minutes and 29 seconds, recorded on February 5, 2002, and provided by the Columbia label. Similarly, Exhibit 3 contains a promo CD of the song "Uh Huh," performed by B2K, lasting 3 minutes and 44 seconds, and provided by Epic. No other information appears on the CD-R.

9. On occasion, the labels will even send us electronic MP3 files. In those cases, we typically receive only title and artist.

10. Clear Channel is currently in an experimental project with one record label, Sony, at Sony's request. This project allows Sony to upload digital music into Clear Channel's music library directly via a file transfer protocol based exchange or similar web protocol. After uploading the song, Sony will send us an e-mail telling us the filename, as well as the title of the song and the artist who performed it. Beyond title and artist, we receive no other information from Sony except our own knowledge that that Sony sent the file.

11. I find the Copyright Office's apparent assumption that the record labels need all of the proposed reporting elements to identify the songs being played to be particularly ironic. As I explained above, record labels routinely send our radio stations songs with only title and artist information provided, along with the song's length, in their constant clamor to get us to play their songs. Obviously, the record labels do not care whether radio stations know the album title or any other information about the songs they're pushing beyond title and artist information. They clearly believe that these two bits of information alone are enough to identify a song so that a consumer can go out and purchase it – after all, that is the whole reason why record labels are so anxious to get their song played on the radio. This is confirmed by a number of trade publications upon which the record industry relies to determine which songs are receiving the most airplay, which routinely identify songs by title and artist alone. To illustrate this point, I am attaching as Exhibit 4 an excerpt from Radio & Records, which shows numerous playlists identifying only title and artist information. If the record labels truly believed that they needed all of the information that RIAA now requests to identify a song, then they would be providing it to radio stations to begin with. It seems downright perverse to me to force radio stations to report information to the collection agent representing the record labels when the labels themselves are not providing the very information they now seek. If it is standard practice for labels to give music to us with just this information for our over-the-air broadcasts, why should we be subjected to a completely different set of rules for our radio streaming, a tiny offshoot of our broadcast operations?

**The Limited Information Stored in Our Music
Information Database and Digital Automation Systems**

12. In addition to the limited information that we receive from the record labels, we are also limited in what we can report by certain constraints of our music information database and digital automation systems. Clear Channel's centralized song database has information

about approximately 43,000 titles although perhaps up to 20% of these entries may be duplicates. An individual station has the ability to obtain information from Clear Channel's music servers for us in their local digital automation system and has perhaps 200-300 songs in rotation at any given time.

13. Our central music database has the following fields of information: cart number, title, artist, album, and label. We do not have fields for duration, ISRC, release year, UPC, catalog number, or copyright owner. I explain each of these fields that we do have below and the limitations on the data contained therein. The Copyright Office should be aware, however, that these fields are *not* the same as the fields that our scheduling software and digital automation systems generate when creating intended playlists and actual playlists, which I discuss below in paragraph 20. For example, there is no field at all for album title in our digital automation systems, which generate our playlists.

14. *Cart numbers* are internally assigned identification numbers for each song in Clear Channel's database. Record labels have access to these numbers and frequently call our stations' program directors to request that particular cart numbers be added to the playlist. The cart number field is 100% populated.

15. The *song title* field, which is 100% populated, stores the radio release title or in some cases a special Clear Channel release title – not necessarily the actual single on the retail album. The *artist* field is also 100% populated and stores the name of the performing artist for the song.

16. Unlike the cart number, title, and artist fields, the *album* field, identifying the name of the album on which the song appears, is only populated about 35-40% of the time. Because the labels usually only send us the single, and in most cases we are not told what album that single is on, we are usually unable to put the name of the album into the system. For new music, our data entry personnel try to find out the album name, but usually the labels want the music loaded into our system as fast as they can get it in there in order to get the song on the air. Therefore, often the album title has not even been determined, or the record labels just don't bother to let us know what it is.

17. Although our library system has a field for the label name, we are using it for another purpose to store other information that is important to us. If we were required to track label information, we would have to rewrite our software and reconfigure our database to allow for an additional field rather than replacing the information we now track. Of course, we do

know who the record label is at the time when that label sends us music, but it's just not information that made business sense for us to track. Therefore, it would be incredibly time-consuming and burdensome – and in many cases impossible – to track down label information. Songs that are older than four years old and not in the Top 40 are frequently not available at record stores, so we could not even find out label information by sending someone down to a retail store to look it up for many of our 43,000 titles even if we were to modify our software to accommodate an additional field.

18. Most of our stations create their playlists using a music scheduling program known as Selector. Clear Channel uses its cart numbers to identify the songs to be included in its playlist.

19. The data fields that print out on the playlists generated by Selector include title, artist, and cart number. Typically, however, Selector overschedules songs to ensure that DJs will have enough to play within any given hour. A more accurate listing of the songs actually played can be generated from our digital automation systems.

20. Most of our stations employ a digital automation system (usually Prophet) to pull the music listed in the playlist from the station's music library and actually play it. Stations then use the digital automation system to generate a playlist of what's played and when. The fields on that playlist include: title, artist, cart number, start time, and song length. Because the fee proposed by the arbitration panel is based on a per performance metric, we request that the Copyright Office provide in its regulations that stations may have the option of submitting reports of use based on actual playlists, discussed below, even if stations may also generate intended playlists via a music scheduling system. We also request that stations that cannot automatically generate an actual playlist, receive an ability to adjust their fee reports to account for this overscheduling. We should not be forced to choose between following the good business practice of overscheduling music to ensure against dead air and paying for music we don't use.

21. A few words are in order about the *song length* field. Although the song length listed on the playlist will be accurate, it will not always be the same length each time a song is played. A station's digital automation system will sometimes stretch a song to make it fit in a given slot. The labels often send us several different versions of a song in different lengths so that their music can fit into more than one programming space. One version may be 3 minutes and 13 seconds; another 2 minutes and 48 seconds; each version will be assigned its own cart number. These differing versions will never be released for retail sale, so some of the data

elements that the Copyright Office proposes to require – such as UPC, ISRC, and release year – will never exist.

22. Because our actual playlists currently generate title, artist, date, start time, and song length, we are certainly willing to provide those fields although I fail to see how a song's duration has anything to do with calculation of the performance-based royalty that the arbitration panel has proposed that radio broadcast streamers pay, which does not hinge on duration. Actions speak louder than words, and the record labels have already demonstrated in their actual business practices vis-à-vis radio stations that they themselves believe that title and artist information is typically enough to identify a sound recording. In fact, when we send our music use logs to ASCAP and BMI, they accept (a) title and (b) artist or composer information alone as sufficient to identify a particular composition.

23. In addition to the problems I have already identified, there are a host of other problems with providing the proposed data elements beyond title, artist, date, and start time, which I discuss below in paragraphs 24-32.

24. *Album:* As I mentioned earlier, neither our scheduling software nor our digital automation system has a field for album title, nor is it currently possible to create an intended or actual playlist that integrates the scant album information that we do store in our music database. If we did decide to write software to export information from our music database and create playlists reflecting this additional information, an integrated playlist using information from both our library and our digital automation system, it would cost about \$1,500,000 if we developed that software internally and about \$2,500,000 if we used an outside vendor. Of course, these figures do not account for the substantial additional expense entailed in tracking down album information and backfilling this field where it is not already populated.

25. *ISRC:* It is ridiculous for the Copyright Office to require reporting of this field, even with the qualifier "where available and feasible." The fact of the matter is that this information is virtually *never* available and feasible to report, as RIAA has chosen to guard it as a secret.

26. *Release Year:* As I previously explained, release year is usually not listed on the CDs that we receive from the labels. Although we could make an educated guess of the release year based on when we receive the song, the labels often send songs to us several months in advance of the scheduled release date to create a "buzz" about the song and to test the song's

marketability with our programming directors. Also, if, for any reason, the release date is delayed, that would throw off our guesses even more.

27. *UPC*: The vast majority of the songs that the labels send us are promotional, not for retail sale, and therefore by definition do not contain UPC information. In the rare instances when we do receive a retail copy, the UPC has been destroyed to prevent resale of the song.

28. *Catalog Number*: We almost never receive this information from the labels.

29. *Copyright Owner Information Identified on the P-Line*: None of the CD-Rs that we receive have a P-Line, and no more than half of the promotional CDs have a P-Line. Moreover, neither our music database, nor our scheduling software, nor our digital automation systems even have a field for storing this information. Thus, it would be wholly unreasonable to require us to report this information.

30. If all of these data points beyond title and artist are truly necessary to administer the royalty – and based on what I know of record labels' music marketing practices, I cannot imagine that they are – it makes much more sense for RIAA to match title and artist information provided by us with its own master database. Its member labels are in a far better position to determine the remaining types of information from their own records than we are. The result would be a much more consistent body of data from which RIAA can do its number crunching.

31. Another possible approach would be for the record companies to be required to provide us with all of the information we are supposed to report about each track in an on-line, easily manipulated format that is consistent from label to label and on CDs distributed periodically at cost. This solution itself is fraught with problems, however. We would still have to figure out how to integrate this database with our current data systems. DC Information Concepts, the company that built RIAA's database, has approached us with an offer to write middleware to allow Clear Channel's music library to communicate with that database. The price tag for developing the middleware alone, however, is \$1 million. This price does not even reflect the substantial additional costs in providing software support and other costs, which I estimate to total several million dollars over the first few years of using the software.

32. *Numeric Designation of the Place of the Sound Recording Within the Order of Archived Programs*: The Copyright Office's proposal that stations identify the numeric designation of the place of each sound recording within the order of an archived program is also quite troubling. Much of the archived programming available on stations' websites is provided to us by third parties, and they do not send us this information. For archived programming that

we originate, we do not track the order in which sound recordings are played within that programming. Therefore, to comply, we would probably have to have someone listen to every archived program on our radio stations' websites and develop a "table of contents" for each, which would be quite expensive to do on an ongoing basis, as one can imagine. It seems unfair in the extreme to force us to incur this enormous expense and burden when the order in which songs are played has nothing to do with our license fee.

The Special Problems with Third-Party Programming and Non-Featured Music

33. The proposed requirements are problematic enough when we ourselves control what is played. Clear Channel stations, however, broadcast a fair amount of programming provided by third parties, over which they have no control and for which they receive little or no information concerning the sound recordings in that programming. Short of having an employee listen to each and every program and create a program log (if they even recognize the songs), the only way to obtain this information is for the third parties themselves to send it to us. They are under no contractual obligation to do so, however, and would likely be unwilling to take on this burden in the absence of such an obligation. Even if they were willing to identify sound recordings, they would have problems similar to ours in identifying all of the data elements listed in the Copyright Office's proposal. We should only be required to make a good faith effort to obtain a music log, and the information required to be reported should be limited to title and artist information. Unless radio stations receive significant relief from the reporting requirements in the context of third-party programming, they would likely be forced to black out this programming altogether from their stream, which would either create undesirable "dead air" or force stations to use substitute programming, either of which would significantly disrupt the flow of the broadcast (to the disadvantage of the record companies as well as the radio stations).

34. Another significant reporting problem for us concerns our use of non-feature music on many of our stations, including incidental and background music played in talk shows. There is no way that we can track these types of music uses, nor do ASCAP or BMI require us to do so. If the Copyright Office's proposed regulations were to apply to these uses, we would consider pulling the plug on streaming even our most non-music-intensive programming. This would be a particularly perverse result given my understanding that the arbitration panel has proposed no sound recording fee at all for such nonfeatured uses of music. We urge instead that the Office make clear that no reporting requirements apply at all to such uses of music.

**Costs of Modifying Software and Backfilling Information
or Employing Third-Party Vendor To Identify Music**

35. Clear Channel has expended substantial sums of money to obtain its music scheduling and digital automation software, and that software has served us well for our traditional radio broadcasting operations. For example, we paid \$40 million initially to obtain our digital automation system with the existing fields. If we were forced to rewrite this software to add additional fields, it would cost us millions of dollars. Given that streaming is such a minor part of a radio station's business, it seems particularly unfair to require us to go back and modify that software just to provide RIAA with extra information concerning the sound recordings that we play that serves only to provide marginally useful additional information to RIAA.

36. Apart from the costs of complying on a going-forward basis, yet another problem we will face unless the Office dramatically scales down its playlist requirements is what to do with the songs about which we already have information stored in our database, which total approximately 43,000 and sometimes date back decades. Because record labels have not provided radio stations with the information that RIAA now seeks to have stations report, stations would likely be forced to send their personnel on wild goose chases to track down this information. This could conceivably cost over a few million dollars to hunt down and input just the information that is reasonably available. As I explained earlier, much of it is not – radio stations often play music that is never released for retail sale and will not have items such as catalog number and UPC affiliated with it. Quite frankly, I cannot understand why radio stations should have to take on this burden at all when the record labels that provided us the songs to begin with are in a much better position to find it.

37. I have even considered the possibility of paying a third party such as Gracenote or FM3 ID to identify and report our music usage for us. Gracenote identifies songs using audio recognition technology, whereas FM3 ID uses encoded information within the song. These programs are only about 65% accurate, however, and it would cost several million dollars for us to use either of them given that each of our stations would have to purchase the proper equipment and a separate license. Also, FM3 ID: (1) only displays title, artist, and ISRC (in the rare cases where ISRC information is available); and (2) would require us to reencode all of the music we have. In short, neither of these programs is a remotely viable option for us.

Proposed Listener Log Requirements

38. The Copyright Office's proposed listener log requirements also pose significant problems. Clear Channel currently uses two stream providers: Hi-Wire, who processes and builds the stream signal, and Globix, who actually transmits the stream. The Copyright Office should understand up front that our stream providers are independent third parties, so we cannot guarantee the accuracy of any information that we receive from them. We should not have to worry about our licensee status if it turns out that this information is inaccurate.

39. Most stations get server-based streaming information from Globix. Clear Channel itself receives monthly Aggregate Tuning Hours, or ATH, from Hi-Wire. I have checked with Hi-Wire and found out that while it is possible to obtain a list of logins and logouts on a user-by-user basis, we would be charged a significant amount of money – in the neighborhood of \$1.2 million – to obtain them in the precise format proposed by the Copyright Office. Moreover, it is impossible to know the time zone where listeners are located. The stream provider can capture the IP address of the listener, but this number does not necessarily associate with the correct locale of the listener – AOL users, for example, would likely appear in any reports as originating in Virginia, where the majority of AOL's servers reside, even if they are actually listening in California. Corporate firewalls and proxy servers similarly make user location difficult.

40. Hi-Wire does require listeners to register and input their zip codes; however, even this information may be inaccurate because users have entered incorrect information. More importantly, providing detailed user information such as zip code and user ID raises serious privacy concerns. We are deeply concerned about the issue of privacy on the Internet and simply cannot agree to any requirements by the federal government to turn over to RIAA information about our listeners and what they listen to, particularly where Congress has not yet made clear what is and is not appropriate to provide.

Ephemeral Logs

41. Finally, I see no reason why we should have to report any information at all about the ephemeral copies we might make under the ephemeral recording license. I understand that the arbitration panel has proposed that radio broadcast streamers pay 9% of their total performance fee for the right to make ephemeral copies to facilitate their stream. That fee is not at all based on the number of copies made.

Sampling; Confidentiality Concerns

42. I strongly urge the Office to allow stations to report on a sample basis. According to the estimates made by the Copyright Arbitration Royalty Panel in the nonsubscription services proceeding, a single music-oriented radio station plays about 12 songs per hour, which amounts to 288 songs a day and about 105,000 songs per year. Add to that the listener logs, and it becomes obvious that the sheer volume of paper that these requirements would generate is enormous, without even factoring in the huge burden in tracking down the information that I've already discussed. There is no reason that RIAA needs records of each and every song and each and every listener to that song for its members to receive reasonable notice of use of their sound recordings and to enable RIAA to calculate a fair and accurate distribution of royalties received. Therefore, I strongly urge the Copyright Office to allow reporting based on a sample of our programming – perhaps four or five weeks a year, allowing us to report information on 10,500 instead of 105,000 songs per year. Statisticians and pollsters rely on samples all the time to draw conclusions about the population at large with only minimal margins for error. Indeed, ASCAP and BMI rely on sampling to determine their royalty distributions to their members. There is simply no reason why RIAA cannot do the same. With such a sample, our stations will be able to focus on their primary mission – over-the-air broadcasting – instead of streaming, which we offer as a convenience to our listeners.

43. There is another substantial benefit to the use of sampling. We regard our playlists as valuable business information that record labels should not be able to access for free. Indeed, the labels pay large sums of money to subscribe to services like BDS Spin and Mediabase 24/7, which provide them with radio station playlists so that they can monitor which songs are receiving the most airplay. The labels should not be able to use our playlist information for free to plot their own marketing strategy (and perhaps even program competing webcasting channels). Providing sampling data will limit their ability to do so.

44. In any event, whether sampling or census data is required, the Copyright Office should make clear that all of the data that it requires us to turn over to RIAA *not* be provided to the record labels themselves and *not* be used for any purpose other than to calculate royalty payments and distributions. We would be quite incensed to find out that the labels were using our playlist data to compete with us on the Internet, and the value of these data (which relate to our fundamental over-the-air business much more than to our Internet streams) were not considered by the arbitration panel that set our streaming fee because no reporting requirements had yet been set.

Transition Period; Inadvertent Errors

45. No matter what form the Copyright Office's recordkeeping requirements take, they will, no doubt, require us to put systems in place to keep records that we were not previously required to keep. We request a transition period of one year in order to institute these changes so that we will suffer no adverse consequences from inadvertently providing incomplete or inaccurate information. We will, however, exercise good faith efforts to comply with those requirements during that year nonetheless. We believe that providing such a period is eminently fair: we had no way to know exactly what the recordkeeping requirements would be, and until a good business reason for altering a practice existed, it would have been irrational for us from a business standpoint to attempt to guess what these changes would have been.

46. The Copyright Office should also realize that perfection in reporting is just not an attainable standard. The Copyright Office should recognize these practical realities by making it clear that good faith errors will not deprive a station of the statutory license. When an error is identified, our stations will work with RIAA to correct it.

Record Retention

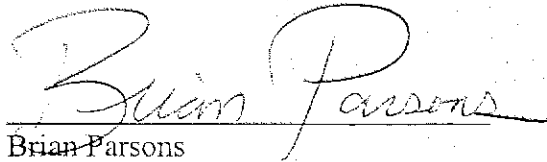
47. Finally, the Office's proposed three-year retention requirement would create enormous burdens. We would have to allocate an entire data warehouse and/or multiple servers just to store these records for all of our stations for three years. We recently paid \$700,000 for a relational database management system for another purpose and would have to reallocate that database to track these records if a three-year retention requirement is imposed. We would also have to pay \$70,000 per year in license fees in addition to the \$700,000 hardware costs – a substantial price tag indeed to do nothing more than store old records. I also estimate that we would need a staff of three full-time employees to do nothing but maintain and update this database. These costs in both finance and labor are completely out of whack with any appreciable benefit that anyone, including copyright owners, would gain from imposing such onerous data storage requirements. A more reasonable retention requirement would be three months.

Conclusion

Our fundamental problem with the Copyright Office's proposed requirements is that they seem geared toward a business model that has nothing whatsoever to do with broadcast radio. Radio is a different animal altogether from Internet-only webcasting. There has been a longstanding, symbiotic relationship between the record and radio industries, in which both record labels and radio stations have routinely relied on title and artist information alone to identify songs. The proposed requirements threaten to disrupt that relationship. If the Office's requirements go into effect as is, they will likely force many radio stations off the Internet because streaming is only a tiny part of what radio stations do and is offered primarily as a courtesy to stations' local listeners. This result is not good for anyone – not radio stations, not the listening public, and not even the music labels themselves, who would be deprived of the additional exposure that their songs get over the Internet in the same manner that they enjoy and lobby for so much over the airwaves. I can't imagine that the labels themselves would want this, and I wonder if the RIAA is truly acting in its members' best interests in insisting upon such burdensome requirements.

Date:

April 3, 2002


Brian Parsons

1



THE GRANDSKEEM
"BABY GOT BACK"
2:30

2



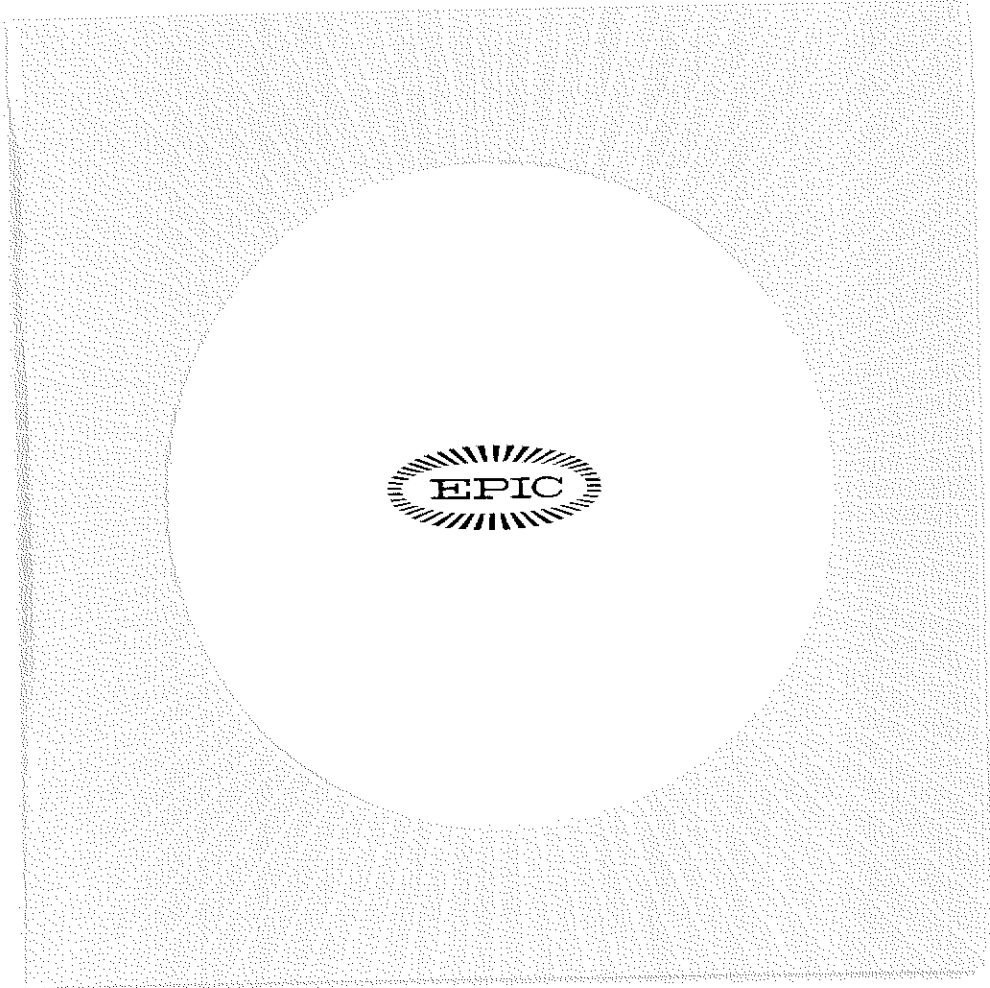


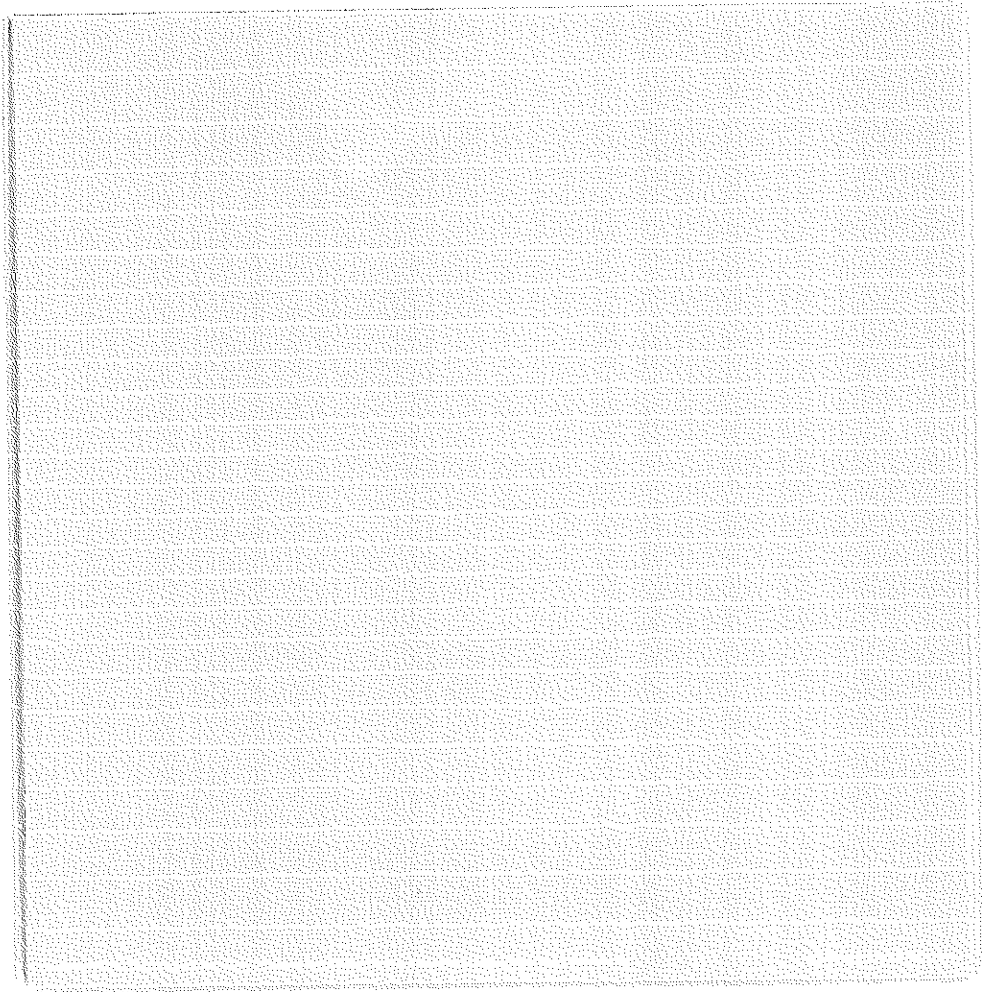
3

B2K
"Uh Huh"
3:44

EPIC









4

Oh My! Tweet Is No. 1 Again

Tweet holds on to the top spot on R&R's Urban chart for a second consecutive week with "Oops (Oh My)." The freshman effort by the Gold Mind/Elektra/EEG artist also moves 7-4* at CHR/Rhythmic and is second Most Added at CHR/Pop, with 39.



Grammy Gold-Digging!

R&R photographers were all over the post-Grammy parties last week, snapping off the best shots the trades have to offer. It all begins on Page 1 with a photo recap of the evening's biggest winners, followed by Grammy-party snaps on Page 33.



TALENT BRAINS BEAUTY



IT RUNS IN THE FAMILY



ATLANTIC RECORDS




Hot AC Playlists

80 • R&R March 8, 2002

MARKET #1


WPLJ New York
ABC
(212) 613-8800
Lucky Charms/Mascot
12: Cum 2,256,300



PLAYS	ARTIST/TITLE	Q1 (99)
1	01 NICKELBACK/How You Remind Me	3960
2	02 CALLING/Warner You Will Go	3960
3	03 FIVE FOR FIGHTING/Superman (It's...)	3960
4	04 CREDITS/Sacrifice	3960
5	05 LIZ SUCK IN A MOMENT...	3960
6	06 ALANIS MORISSETTE/Hands Clean	3960
7	07 NICKELBACK/How You Remind Me	3918.4
8	08 JOHN MELLENCAMP/Phantom World	3729.6
9	09 MICHELLE BRANCH/You Wanted	2297.6
10	10 TRAIN DROPS OF JADE...	2297.6
11	11 Lenny Kravitz/Get It	2204.8
12	12 LEANN Rimes/Can't Fight...	2038.8
13	13 SPIN/Get It Right	2038.8
14	14 MACHO MAN/It's Not About You	2220.0
15	15 JEWEL/Standin' Still	2220.0
16	16 SHERYL CROW/Suck on This	2131.2
17	17 DAVE MATTHEWS BAND/The Space Between	1864.8
18	18 NICKELBACK/How You Remind Me	1864.8
19	19 NICKELBACK/How You Remind Me	1776.0
20	20 SHAKIRA/Whenever You Hear...	1776.0
21	21 NICKELBACK/How You Remind Me	1776.0
22	22 NICKELBACK/How You Remind Me	1877.2
23	23 SHAKIRA/Whenever You Hear...	1877.2
24	24 JOHN MELLENCAMP/Phantom World	1907.2
25	25 LIZ SUCK IN A MOMENT...	1907.2
26	26 CHEESE/For The Lonely	1243.2
27	27 DAVE MATTHEWS BAND/Everyday	1243.2
28	28 LIZ SUCK IN A MOMENT...	1243.2
29	29 NICKELBACK/How You Remind Me	1243.2
30	30 NICKELBACK/How You Remind Me	1243.2
31	31 NICKELBACK/How You Remind Me	1243.2
32	32 NICKELBACK/How You Remind Me	1243.2
33	33 NICKELBACK/How You Remind Me	1243.2
34	34 NICKELBACK/How You Remind Me	1243.2
35	35 NICKELBACK/How You Remind Me	1243.2
36	36 NICKELBACK/How You Remind Me	1243.2
37	37 NICKELBACK/How You Remind Me	1243.2
38	38 NICKELBACK/How You Remind Me	1243.2
39	39 NICKELBACK/How You Remind Me	1243.2
40	40 NICKELBACK/How You Remind Me	1243.2

MARKET #2


KRIGS Los Angeles
Clear Channel
(818) 465-7949
Big 102.5
12: Cum 1,148,280



PLAYS	ARTIST/TITLE	Q1 (99)
1	01 NICKELBACK/How You Remind Me	1426.0
2	02 CALLING/Warner You Will Go	1426.0
3	03 FIVE FOR FIGHTING/Superman (It's...)	1426.0
4	04 CREDITS/Sacrifice	1377.6
5	05 LIZ SUCK IN A MOMENT...	1377.6
6	06 ALANIS MORISSETTE/Hands Clean	1377.6
7	07 NICKELBACK/How You Remind Me	1377.6
8	08 JOHN MELLENCAMP/Phantom World	1377.6
9	09 MICHELLE BRANCH/You Wanted	1377.6
10	10 TRAIN DROPS OF JADE...	1377.6
11	11 Lenny Kravitz/Get It	1377.6
12	12 LEANN Rimes/Can't Fight...	1377.6
13	13 SPIN/Get It Right	1377.6
14	14 MACHO MAN/It's Not About You	1377.6
15	15 JEWEL/Standin' Still	1377.6
16	16 SHERYL CROW/Suck on This	1377.6
17	17 DAVE MATTHEWS BAND/The Space Between	1377.6
18	18 NICKELBACK/How You Remind Me	1377.6
19	19 NICKELBACK/How You Remind Me	1377.6
20	20 SHAKIRA/Whenever You Hear...	1377.6
21	21 NICKELBACK/How You Remind Me	1377.6
22	22 NICKELBACK/How You Remind Me	1377.6
23	23 NICKELBACK/How You Remind Me	1377.6
24	24 NICKELBACK/How You Remind Me	1377.6
25	25 NICKELBACK/How You Remind Me	1377.6
26	26 NICKELBACK/How You Remind Me	1377.6
27	27 NICKELBACK/How You Remind Me	1377.6
28	28 NICKELBACK/How You Remind Me	1377.6
29	29 NICKELBACK/How You Remind Me	1377.6
30	30 NICKELBACK/How You Remind Me	1377.6

MARKET #3


KYSR Los Angeles
Clear Channel
(818) 955-7949
95.5
12: Cum 1,265,300



PLAYS	ARTIST/TITLE	Q1 (99)
1	01 NICKELBACK/How You Remind Me	1488.0
2	02 CALLING/Warner You Will Go	1488.0
3	03 FIVE FOR FIGHTING/Superman (It's...)	1488.0
4	04 CREDITS/Sacrifice	1488.0
5	05 LIZ SUCK IN A MOMENT...	1488.0
6	06 ALANIS MORISSETTE/Hands Clean	1488.0
7	07 NICKELBACK/How You Remind Me	1488.0
8	08 JOHN MELLENCAMP/Phantom World	1488.0
9	09 MICHELLE BRANCH/You Wanted	1488.0
10	10 TRAIN DROPS OF JADE...	1488.0
11	11 Lenny Kravitz/Get It	1488.0
12	12 LEANN Rimes/Can't Fight...	1488.0
13	13 SPIN/Get It Right	1488.0
14	14 MACHO MAN/It's Not About You	1488.0
15	15 JEWEL/Standin' Still	1488.0
16	16 SHERYL CROW/Suck on This	1488.0
17	17 DAVE MATTHEWS BAND/The Space Between	1488.0
18	18 NICKELBACK/How You Remind Me	1488.0
19	19 NICKELBACK/How You Remind Me	1488.0
20	20 SHAKIRA/Whenever You Hear...	1488.0
21	21 NICKELBACK/How You Remind Me	1488.0
22	22 NICKELBACK/How You Remind Me	1488.0
23	23 NICKELBACK/How You Remind Me	1488.0
24	24 NICKELBACK/How You Remind Me	1488.0
25	25 NICKELBACK/How You Remind Me	1488.0
26	26 NICKELBACK/How You Remind Me	1488.0
27	27 NICKELBACK/How You Remind Me	1488.0
28	28 NICKELBACK/How You Remind Me	1488.0
29	29 NICKELBACK/How You Remind Me	1488.0
30	30 NICKELBACK/How You Remind Me	1488.0

MARKET #4


WTKM Chicago
Bonneville
(312) 346-1015
Radio/Star
12: Cum 874,800



PLAYS	ARTIST/TITLE	Q1 (99)
1	01 NICKELBACK/How You Remind Me	2164.8
2	02 CALLING/Warner You Will Go	2164.8
3	03 FIVE FOR FIGHTING/Superman (It's...)	2164.8
4	04 CREDITS/Sacrifice	2164.8
5	05 LIZ SUCK IN A MOMENT...	2164.8
6	06 ALANIS MORISSETTE/Hands Clean	2164.8
7	07 NICKELBACK/How You Remind Me	2164.8
8	08 JOHN MELLENCAMP/Phantom World	2164.8
9	09 MICHELLE BRANCH/You Wanted	2164.8
10	10 TRAIN DROPS OF JADE...	2164.8
11	11 Lenny Kravitz/Get It	2164.8
12	12 LEANN Rimes/Can't Fight...	2164.8
13	13 SPIN/Get It Right	2164.8
14	14 MACHO MAN/It's Not About You	2164.8
15	15 JEWEL/Standin' Still	2164.8
16	16 SHERYL CROW/Suck on This	2164.8
17	17 DAVE MATTHEWS BAND/The Space Between	2164.8
18	18 NICKELBACK/How You Remind Me	2164.8
19	19 NICKELBACK/How You Remind Me	2164.8
20	20 SHAKIRA/Whenever You Hear...	2164.8
21	21 NICKELBACK/How You Remind Me	2164.8
22	22 NICKELBACK/How You Remind Me	2164.8
23	23 NICKELBACK/How You Remind Me	2164.8
24	24 NICKELBACK/How You Remind Me	2164.8
25	25 NICKELBACK/How You Remind Me	2164.8
26	26 NICKELBACK/How You Remind Me	2164.8
27	27 NICKELBACK/How You Remind Me	2164.8
28	28 NICKELBACK/How You Remind Me	2164.8
29	29 NICKELBACK/How You Remind Me	2164.8
30	30 NICKELBACK/How You Remind Me	2164.8

MARKET #5


WLLC San Francisco
Infinity
(415) 765-4000
Pulsar/Star
12: Cum 818,700



PLAYS	ARTIST/TITLE	Q1 (99)
1	01 NICKELBACK/How You Remind Me	1136.0
2	02 CALLING/Warner You Will Go	1136.0
3	03 FIVE FOR FIGHTING/Superman (It's...)	1136.0
4	04 CREDITS/Sacrifice	1097.2
5	05 LIZ SUCK IN A MOMENT...	1097.2
6	06 ALANIS MORISSETTE/Hands Clean	1097.2
7	07 NICKELBACK/How You Remind Me	1097.2
8	08 JOHN MELLENCAMP/Phantom World	1097.2
9	09 MICHELLE BRANCH/You Wanted	1097.2
10	10 TRAIN DROPS OF JADE...	1097.2
11	11 Lenny Kravitz/Get It	1097.2
12	12 LEANN Rimes/Can't Fight...	1097.2
13	13 SPIN/Get It Right	1097.2
14	14 MACHO MAN/It's Not About You	1097.2
15	15 JEWEL/Standin' Still	1097.2
16	16 SHERYL CROW/Suck on This	1097.2
17	17 DAVE MATTHEWS BAND/The Space Between	1097.2
18	18 NICKELBACK/How You Remind Me	1097.2
19	19 NICKELBACK/How You Remind Me	1097.2
20	20 SHAKIRA/Whenever You Hear...	1097.2
21	21 NICKELBACK/How You Remind Me	1097.2
22	22 NICKELBACK/How You Remind Me	1097.2
23	23 NICKELBACK/How You Remind Me	1097.2
24	24 NICKELBACK/How You Remind Me	1097.2
25	25 NICKELBACK/How You Remind Me	1097.2
26	26 NICKELBACK/How You Remind Me	1097.2
27	27 NICKELBACK/How You Remind Me	1097.2
28	28 NICKELBACK/How You Remind Me	1097.2
29	29 NICKELBACK/How You Remind Me	1097.2
30	30 NICKELBACK/How You Remind Me	1097.2

MARKET #6


ADMX Dallas-Ft. Worth
Clear Channel
(972) 351-1025
Mascot/Wright
12: Cum 433,500



PLAYS	ARTIST/TITLE	Q1 (99)
1	01 NICKELBACK/How You Remind Me	2254.4
2	02 CALLING/Warner You Will Go	2254.4
3	03 FIVE FOR FIGHTING/Superman (It's...)	2254.4
4	04 CREDITS/Sacrifice	2254.4
5	05 LIZ SUCK IN A MOMENT...	2254.4
6	06 ALANIS MORISSETTE/Hands Clean	2254.4
7	07 NICKELBACK/How You Remind Me	2254.4
8	08 JOHN MELLENCAMP/Phantom World	2254.4
9	09 MICHELLE BRANCH/You Wanted	2254.4
10	10 TRAIN DROPS OF JADE...	2254.4
11	11 Lenny Kravitz/Get It	2254.4
12	12 LEANN Rimes/Can't Fight...	2254.4
13	13 SPIN/Get It Right	2254.4
14	14 MACHO MAN/It's Not About You	2254.4
15	15 JEWEL/Standin' Still	2254.4
16	16 SHERYL CROW/Suck on This	2254.4
17	17 DAVE MATTHEWS BAND/The Space Between	2254.4
18	18 NICKELBACK/How You Remind Me	2254.4
19	19 NICKELBACK/How You Remind Me	2254.4
20	20 SHAKIRA/Whenever You Hear...	2254.4
21	21 NICKELBACK/How You Remind Me	2254.4
22	22 NICKELBACK/How You Remind Me	2254.4
23	23 NICKELBACK/How You Remind Me	2254.4
24	24 NICKELBACK/How You Remind Me	2254.4
25	25 NICKELBACK/How You Remind Me	2254.4
26	26 NICKELBACK/How You Remind Me	2254.4
27	27 NICKELBACK/How You Remind Me	2254.4
28	28 NICKELBACK/How You Remind Me	2254.4
29	29 NICKELBACK/How You Remind Me	2254.4
30	30 NICKELBACK/How You Remind Me	2254.4

MARKET #7


WJZZ Philadelphia
Clear Channel
(610) 666-0750
Bigman/Wright
12: Cum 556,800



PLAYS	ARTIST/TITLE	Q1 (99)
1	01 NICKELBACK/How You Remind Me	9733.6
2	02 CALLING/Warner You Will Go	9733.6
3	03 FIVE FOR FIGHTING/Superman (It's...)	9733.6
4	04 CREDITS/Sacrifice	9733.6
5	05 LIZ SUCK IN A MOMENT...	9733.6
6	06 ALANIS MORISSETTE/Hands Clean	9733.6
7	07 NICKELBACK/How You Remind Me	9733.6
8	08 JOHN MELLENCAMP/Phantom World	9733.6
9	09 MICHELLE BRANCH/You Wanted	9733.6
10	10 TRAIN DROPS OF JADE...	9733.6
11	11 Lenny Kravitz/Get It	9733.6
12	12 LEANN Rimes/Can't Fight...	9733.6
13	13 SPIN/Get It Right	9733.6
14	14 MACHO MAN/It's Not About You	9733.6
15	15 JEWEL/Standin' Still	9733.6
16	16 SHERYL CROW/Suck on This	9733.6
17	17 DAVE MATTHEWS BAND/The Space Between	9733.6
18	18 NICKELBACK/How You Remind Me	9733.6
19	19 NICKELBACK/How You Remind Me	9733.6
20	20 SHAKIRA/Whenever You Hear...	9733.6
21	21 NICKELBACK/How You Remind Me	9733.6
22	22 NICKELBACK/How You Remind Me	9733.6
23	23 NICKELBACK/How You Remind Me	9733.6
24	24 NICKELBACK/How You Remind Me	9733.6
25	25 NICKELBACK/How You Remind Me	9733.6
26	26 NICKELBACK/How You Remind Me	9733.6
27	27 NICKELBACK/How You Remind Me	9733.6
28	28 NICKELBACK/How You Remind Me	9733.6
29	29 NICKELBACK/How You Remind Me	9733.6
30	30 NICKELBACK/How You Remind Me	9733.6

MARKET #8


WMMX Philadelphia
Greater Media
(610) 771-0932
Econo/Wright
12: Cum 814



PLAYS	ARTIST/TITLE	Q1 (99)
1	01 NICKELBACK/How You Remind Me	8733.6
2	02 CALLING/Warner You Will Go	8733.6
3	03 FIVE FOR FIGHTING/Superman (It's...)	8733.6
4	04 CREDITS/Sacrifice	8733.6
5	05 LIZ SUCK IN A MOMENT...	8733.6
6	06 ALANIS MORISSETTE/Hands Clean	8733.6
7	07 NICKELBACK/How You Remind Me	8733.6
8	08 JOHN MELLENCAMP/Phantom World	8733.6
9	09 MICHELLE BRANCH/You Wanted	8733.6
10	10 TRAIN DROPS OF JADE...	8733.6
11	11 Lenny Kravitz/Get It	8733.6
12	12 LEANN Rimes/Can't Fight...	8733.6
13	13 SPIN/Get It Right	8733.6
14	14 MACHO MAN/It's Not About You	8733.6
15	15 JEWEL/Standin' Still	8733.6
16	16 SHERYL CROW/Suck on This	8733.6
17	17 DAVE MATTHEWS BAND/The Space Between	8733.6
18	18 NICKELBACK/How You Remind Me	8733.6
19	19 NICKELBACK/How You Remind Me	8733.6
20	20 SHAKIRA/Whenever You Hear...	8733.6
21	21 NICKELBACK/How You Remind Me	8733.6
22	22 NICKELBACK/How You Remind Me	8733.6
23	23 NICKELBACK/How You Remind Me	8733.6
24	24 NICKELBACK/How You Remind Me	8733.6
25	25 NICKELBACK/How You Remind Me	8733.6
26	26 NICKELBACK/How You Remind Me	8733.6
27	27 NICKELBACK/How You Remind Me	8733.6
28	28 NICKELBACK/How You Remind Me	8733.6
29	29 NICKELBACK/How You Remind Me	8733.6
30	30 NICKELBACK/How You Remind Me	8733.6

MARKET #9


WRD Washington, DC
ASC
(301) 556-3100
Kappa/Star
12: Cum 568,800



PLAYS	ARTIST/TITLE	Q1 (99)
1	01 NICKELBACK/How You Remind Me	11488.8
2	02 CALLING/Warner You Will Go	11488.8
3	03 FIVE FOR FIGHTING/Superman (It's...)	11488.8
4	04 CREDITS/Sacrifice	11488.8
5	05 LIZ SUCK IN A MOMENT...	11488.8
6	06 ALANIS MORISSETTE/Hands Clean	11488.8
7	07 NICKELBACK/How You Remind Me	11488.8
8	08 JOHN MELLENCAMP/Phantom World	11488.8
9	09 MICHELLE BRANCH/You Wanted	11488.8
10	10 TRAIN DROPS OF JADE...	11488.8
11	11 Lenny Kravitz/Get It	11488.8
12	12 LEANN Rimes/Can't Fight...	11488.8
13	13 SPIN/Get It Right	11488.8
14	14 MACHO MAN/It's Not About You	11488.8
15	15 JEWEL/Standin' Still	11488.8
16	16 SHERYL CROW/Suck on This	11488.8
17	17 DAVE MATTHEWS BAND/The Space Between	11488.8
18	18 NICKELBACK/How You Remind Me	11488.8
19	19 NICKELBACK/How You Remind Me	11488.8
20	20 SHAKIRA/Whenever You Hear...	11488.8
21	21 NICKELBACK/How You Remind Me	11488.8
22	22 NICKELBACK/How You Remind Me	11488.8
23	23 NICKELBACK/How You Remind Me	11488.8
24	24 NICKELBACK/How You Remind Me	11488.8
25	25 NICKELBACK/How You Remind Me	11488.8
26	26 NICKELBACK/How You Remind Me	11488.8
27	27 NICKELBACK/How You Remind Me	11488.8
28	28 NICKELBACK/How You Remind Me	11488.8
29	29 NICKELBACK/How You Remind Me	11488.8
30	30 NICKELBACK/How You Remind Me	11488.8

MARKET #10

WZZZ Washington, DC
ASC
(301) 522-1001
Kappa/Star
12: Cum 817,700



PLAYS	ARTIST/TITLE	Q1 (99)
1	01 NICKEL	

Hot AC Playlists

MARKET #1


WPLJ/New York
ABC
(212) 613-8900
Cuddy/Shannon/Mascaro
12+ Cumc 2,256,386



PLAYS	LW	TW	ARTIST/TITLE	GI (000)
46	45	NO DOUBT/Hey Baby	39960	
43	45	CALLING/Wherever You Will Go	39960	
45	45	LIFHOUSE/Hanging By A Moment	39960	
45	45	CREEED/My Sacrifice	39960	
45	45	U2/Stuck In A Moment...	39960	
44	44	ALANIS MORISSETTE/Hands Clean	39072	
44	44	NICKELBACK/How You Remind Me	38184	
44	42	JOHN MELLENCAMP/Peaceful World	37296	
22	27	MICHELLE BRANCH/You Wanted	23976	
27	27	TRAIN/Drops Of Jupiter...	23976	
26	26	LENNY KRAVITZ/Dig In	23088	
23	26	PINK/Get The Party...	23088	
26	26	MATCHBOX TWENTY/Beit	23088	
28	25	JEWEL/Saving All	22200	
10	25	SHERYL CROW/Seak Up The Sun	22200	
25	24	DAVE MATTHEWS BAND/The Space Between	21312	
21	21	JOHN MAYER/No Such Thing	18648	
17	20	NATALIE IMBRUGLIA/Wrong Impression	17760	
30	20	SHAKIRA/Whenever Whenever	17760	
25	20	STAIN'D/It's Been Awful	17680	
24	19	DAVE MATTHEWS BAND/Everyday	16872	
17	19	EDDIE VEDDER/You've Got To...	16872	
17	18	CHRIS ISAAK/Let Me Down Easy	14208	
13	14	CELINÉ DION/A New Day Has Come	12432	
9	14	ELTON JOHN/In The Train Don't...	12432	
9	13	NELLY FURTADOTTIN Like A Bird	11544	
11	12	SARAH McLAUGHLIN/Backyard	10656	
11	12	DIXIE/Thankyou	10656	

MARKET #2


KBIG/Los Angeles
Clear Channel
(818) 546-1043
Kaye/Archer
12+ Cumc 1,140,200



PLAYS	LW	TW	ARTIST/TITLE	GI (000)
26	26	FIVE FOR FIGHTING/Superman (It's...)	14268	
30	29	SHAKIRA/Whenever Whenever	14268	
31	28	JEWEL/Saving All	13776	
27	27	PINK/Get The Party...	13284	
27	27	LEANN RIMES/Can't Fight...	13284	
14	14	JENNIFER LOPEZ/It's Real	6888	
13	14	ENRIQUE IGLESIAS/Hero	6888	
9	13	ENRIQUE IGLESIAS/Escapar	6396	
14	13	CHEE/Song For The Lonely	6396	
13	12	ALICIA KEYS/Fallin'	5904	
14	12	NATALIE IMBRUGLIA/Wrong Impression	5904	
10	11	LENNY KRAVITZ/Again	5412	
7	11	'N SYNC/It's Gonna Be Me	5412	
8	10	CELINÉ DION/That's The Way It Is	4920	
11	10	JENNIFER LOPEZ/Love Don't Cost...	4920	
10	10	'N SYNC/It's Promise You	4920	
10	10	DIDD/Thankyou	4920	
10	10	JANET/Someone To Call...	4920	
10	9	MAHC ANTHONY/You Sang To Me	4428	
10	9	FAITH HILL/You Want Me	4428	
8	9	EVAN ANI/JARON/Crazy For This Grl	4428	
8	9	LEANN RIMES/Need You	4428	
9	8	SAVAGE GARDEN/If I Loved You	3936	
5	8	MATCHBOX TWENTY/You're Gone	3936	
9	7	RICKY MARTIN/She Bangs	3444	
7	7	MADONNA/Don't Tell Me	3444	
6	7	MARTIN MCGILL/No One Wants...	3444	
7	7	ENYA/Only Time	3444	
7	7	ATC/Around The World...	3444	
5	8	'N SYNC/Bye Bye Bye	2952	

MARKET #2


KYSR/Los Angeles
Clear Channel
(818) 955-7000
Ivey/Patyk
12+ Cumc 1,265,300



PLAYS	LW	TW	ARTIST/TITLE	GI (000)
36	30	LINKIN PARK/In The End	44880	
79	70	NICKELBACK/How You Remind Me	39270	
75	80	DAVE MATTHEWS BAND/Everyday	38709	
75	68	NO DOUBT/Hey Baby	38148	
79	68	CALLING/Wherever You Will Go	37026	
37	48	EDDIE VEDDER/You've Got To...	26928	
30	46	ALANIS MORISSETTE/Hands Clean	25806	
41	37	PETE DINKOVSKI/Strange Condition	20757	
81	36	JEWEL/Saving All	20196	
32	33	JOHN MAYER/No Such Thing	18513	
26	33	JACK JOHNSON/Just	18513	
28	32	SHERYL CROW/Seak Up The Sun	17952	
41	30	CREEED/My Sacrifice	16530	
7	30	COLDFPLAY/Trouble	16530	
36	29	FIVE FOR FIGHTING/Superman (It's...)	16330	
36	27	NATALIE IMBRUGLIA/Wrong Impression	15147	
16	25	COLDFPLAY/Trouble	14025	
16	24	CHRIS ISAAK/Let Me Down Easy	13464	
8	23	NO DOUBT/Don't Let Me Down	12903	
19	23	STING/Last Nite	12903	
21	22	VANESSA CARLTON/A Thousand Miles	12342	
19	21	LEWIS WOODS/Outside	11781	
16	20	PUDDLE OF MUDD/Blurry	11220	
22	19	MATCHBOX TWENTY/Wasting My Time	10659	
17	18	ZERO 7/Destiny	10658	
20	17	MICHELLE BRANCH/You Wanted	9537	
17	16	DAVE MATTHEWS BAND/The Space Between	8976	
14	15	TRAIN/Drops Of Jupiter...	8415	
5	14	JIMMY EAT WORLD/The Middle	7854	
13	14	LIFHOUSE/Hanging By A Moment	7854	

MARKET #3


WTMX/Chicago
Bonnieville
(312) 946-1019
Kachinska
12+ Cumc 874,800



PLAYS	LW	TW	ARTIST/TITLE	GI (000)
49	52	CALLING/Wherever You Will Go	21684	
48	51	ALANIS MORISSETTE/Hands Clean	21267	
51	48	DAVE MATTHEWS BAND/Everyday	20016	
35	44	TRAIN/She's On Fire	18346	
43	42	NO DOUBT/Hey Baby	17514	
40	41	CAKE/Short Skirt/Long...	17097	
40	41	ALANIS MORISSETTE/Hands Clean	17097	
43	39	BETTER THAN EZRA/Extra Ordinary	16263	
42	39	TRAVIS/Drive	16263	
39	38	U2/Stuck In A Moment...	15846	
25	33	NICKELBACK/How You Remind Me	13761	
9	31	SENSE FIELD/Save Yourself	12927	
24	30	NATALIE IMBRUGLIA/Wrong Impression	12510	
28	29	HEAVY DUTY/Star Fighting It	12003	
28	24	SHERYL CROW/Seak Up The Sun	11259	
28	24	JOHN MAYER/No Such Thing	10008	
16	24	CHRIS ISAAK/Let Me Down Easy	10008	
23	22	LENNY KRAVITZ/Dig In	9174	
19	21	DAKOTA MOON/Looking For...	8757	
32	21	JOHN MELLENCAMP/Peaceful World	8757	
9	20	PUDDLE OF MUDD/Blurry	8340	
16	20	SUGAR RAY/When It's Over	8340	
22	19	LIFHOUSE/Hanging By A Moment	7923	
27	17	MICHELLE BRANCH/Everywhere	7089	
13	17	LIFHOUSE/Breathing	7089	
15	16	INCUBUS/Drive	6672	
15	15	NINE DAYS/Absolutely...	6255	
18	15	FIVE FOR FIGHTING/Superman (It's...)	6255	
15	14	EVERCLEAR/Wonderful	5838	
15	14	STAIN'D/It's Been Awful	5838	

MARKET #4


KLLC/San Francisco
Infinity
(415) 765-0000
Pena/Schaefer
12+ Cumc 816,786



PLAYS	LW	TW	ARTIST/TITLE	GI (000)
56	55	NICKELBACK/How You Remind Me	31284	
55	54	CALLING/Wherever You Will Go	31176	
49	53	CREEED/My Sacrifice	29871	
34	52	NO DOUBT/Hey Baby	29237	
46	51	PINK/Get The Party...	17514	
39	43	FIVE FOR FIGHTING/Superman (It's...)	8241	
41	42	NELLY FURTADOTTIN Like A Bird	8241	
40	42	ALANIS MORISSETTE/Hands Clean	8241	
36	41	DAVE MATTHEWS BAND/Everyday	5442	
57	37	ALICIA KEYS/Fallin'	7669	
24	37	EDDIE VEDDER/You've Got To...	7669	
23	36	U2/Stuck In A Moment...	7432	
37	35	STAIN'D/It's Been Awful	7244	
34	34	JEWEL/Saving All	7244	
31	31	THOMAS NEWMAN/Six Feet Under	6417	
33	29	NATALIE IMBRUGLIA/Wrong Impression	6005	
27	28	JOHN MAYER/No Such Thing	5796	
24	25	MICHELLE BRANCH/You Wanted	5175	
1	23	SHERYL CROW/Seak Up The Sun	4761	
37	21	TRAIN/Drops Of Jupiter...	4347	
9	18	MADONNA/Don't Tell Me	3726	
17	17	INCUBUS/Drive	3519	
7	17	INDIA ARIEL/Video	3519	
15	18	CHRIS ISAAK/Let Me Down Easy	3312	
17	15	LINKIN PARK/In The End	3105	
14	14	U2/Stuck In A Moment...	2898	
13	14	COLDFPLAY/Trouble	2898	
10	13	LIFHOUSE/Hanging By A Moment	2691	
8	11	NELLY FURTADOTTIN Like A Bird	2277	
12	11	WESLEY/Say It The Common	2277	

MARKET #5


KOMX/Dallas-Ft. Worth
Clear Channel
(972) 991-1029
McMahon/Thomas
12+ Cumc 435,500



PLAYS	LW	TW	ARTIST/TITLE	GI (000)
34	34	CALLING/Wherever You Will Go	7524	
38	36	NICKELBACK/How You Remind Me	7128	
22	34	LEANN RIMES/Can't Fight...	6732	
30	33	TRAIN/Drops Of Jupiter...	6534	
27	29	STAIN'D/It's Been Awful	5346	
32	27	LIFHOUSE/Hanging By A Moment	5346	
26	27	INCUBUS/Drive	5346	
27	24	SMASH MOUTH/It's A Believer	4752	
17	24	ENRIQUE IGLESIAS/Hero	4752	
26	22	ENYA/Only Time	4356	
26	22	SUGAR RAY/When It's Over	4356	
16	22	CELINÉ DION/A New Day Has Come	4356	
18	21	NATALIE IMBRUGLIA/Wrong Impression	4158	
15	19	3 DOORS DOWN/Be Like That	3782	
16	16	CREEED/My Sacrifice	3168	
3	12	CHRIS ISAAK/Let Me Down Easy	2376	
12	12	JACOB YOUNG/It's Good	2376	
10	11	ALANIS MORISSETTE/Hands Clean	2178	
7	8	EVAN ANI/JARON/Crazy For This Grl	1584	
7	7	SHERYL CROW/Seak Up The Sun	1386	
7	6	MATCHBOX TWENTY/Beit	1188	
4	6	MADONNA/Don't Tell Me	1188	
5	5	THE CORRS/Breathless	990	
5	5	DIDD/Thankyou	990	
5	5	MATCHBOX TWENTY/You're Gone	990	
4	5	NINE DAYS/Absolutely...	990	
5	5	LENNY KRAVITZ/Again	990	
4	4	CREEED/With Arms Wide Open	792	
8	4	NELLY FURTADOTTIN Like A Bird	792	
4	4	VERTICAL HORIZON/You're A God	792	

MARKET #6


WLCE/Philadelphia
Clear Channel
(610) 568-0750
Bridgman/Wright
12+ Cumc 558,000



PLAYS	LW	TW	ARTIST/TITLE	GI (000)
39	41	FIVE FOR FIGHTING/Superman (It's...)	8733	
40	41	TRAIN/Drops Of Jupiter...	8733	
40	41	SMASH MOUTH/It's A Believer	8733	
37	41	CALLING/Wherever You Will Go	8733	
36	38	NICKELBACK/How You Remind Me	7455	
32	34	SUGAR RAY/When It's Over	7242	
37	33	UNCLE KRACKER/Follow Me	7029	
28	31	DAVE MATTHEWS BAND/The Space Between	6603	
30	30	LIFHOUSE/Hanging By A Moment	6390	
23	28	CREEED/My Sacrifice	5964	
26	22	ALANIS MORISSETTE/Hands Clean	5538	
20	23	JEWEL/Saving All	4999	
18	22	LENNY KRAVITZ/Dig In	4586	
24	21	LIFHOUSE/Breathing	4473	
16	16	NATALIE IMBRUGLIA/Wrong Impression	3408	
12	14	INCUBUS/Drive	2982	
20	14	MATCHBOX TWENTY/You're Gone	2982	
11	14	DIDD/Thankyou	2982	
13	12	CREEED/With Arms Wide Open	2556	
10	12	MATCHBOX TWENTY/Beit	2556	
10	11	NELLY FURTADOTTIN Like A Bird	2147	
12	9	ELTON JOHN/In The Train Don't...	1913	
8	8	3 DOORS DOWN/Kryptonite	1704	
7	6	STAIN'D/It's Been Awful	1278	
6	5	PHIL COLLINS/You'll Be In My...	1065	
5	3	BON JOVIVI/My Life	689	
2	2	3 DOORS DOWN/Be Like That	426	
1	2	NINE DAYS/Absolutely...	426	
4	2	LENNY KRAVITZ/Again	426	
1	1	JOHN MAYER/No Such Thing	213	

MARKET #6


WMWX/Philadelphia
Greater Media
(610) 771-0933
Ebbott/Mavro
12+ Cumc N/A



PLAYS	LW	TW	ARTIST/TITLE	GI (000)
53	70	PUDDLE OF MUDD/Blurry	0	
69	59	NICKELBACK/How You Remind Me	0	
61	67	CREEED/My Sacrifice	0	
62	65	3 DOORS DOWN/Be Like That	0	
68	65	CALLING/Wherever You Will Go	0	
64	64	FIVE FOR FIGHTING/Superman (It's...)	0	
44	46	PINK/Get The Party...	0	
37	46	ALANIS MORISSETTE/Hands Clean	0	
42	45	FUEL/Lead Day	0	
43	44	INCUBUS/Drive	0	
42	44	BETTER THAN EZRA/Extra Ordinary	0	
25	43	NO DOUBT/Hey Baby	0	
19	43	U2/Stuck In A Moment...	0	
44	40	LIFHOUSE/Breathing	0	
41	37	LENNY KRAVITZ/Dig In	0	
35	32	JEWEL/Saving All	0	
33	31	NATALIE IMBRUGLIA/Wrong Impression	0	
27	31	DAVE MATTHEWS BAND/Everyday	0	
27	31	JOHN MAYER/No Such Thing	0	
22	30	SHERYL CROW/Seak Up The Sun	0	
17	30	VANESSA CARLTON/A Thousand Miles	0	
21	26	SENSE FIELD/Save Yourself	0	
19	25	MOBY/F/GWEN STEFAN/Southside	0	
23	25	TRAIN/Drops Of Jupiter...	0	
24	25	SUGAR RAY/Outs	0	
21	23	DIDD/Thankyou	0	
20	23	SUGAR RAY/When It's Over	0	
20	23	MATCHBOX TWENTY/You're Gone	0	
21	23	LENNY KRAVITZ/Again	0	
21	23	LIFHOUSE/Hanging By A Moment	0	

MARKET #7

WRQX/Washington, DC
ABC
(202) 686-3100
Kosbau/Parker
12+ Cumc 568,000



PLAYS	LW	TW	ARTIST/TITLE	GI (000)
37	39	NICKELBACK/How You Remind Me	11466	
26	38	TRAIN/Drops Of Jupiter...	11172	
18	36	STAIN'D/It's Been Awful	10564	
36	36	CALLING/Wherever You Will Go	10584	
24	33	SMASH MOUTH/It's A Believer	9702	
3	23	ALICIA KEYS/Fallin'	6762	
34	22	LIFHOUSE/Hanging By A Moment	6469	
24	22	U2/Stuck In A Moment...	6468	
35	21	FIVE FOR FIGHTING/Superman (It's...)	6174	
19	20	JEWEL/Saving All	5880	
15	19	DAVE MATTHEWS BAND/Everyday	5586	
35	18	DAVE MATTHEWS BAND/The Space Between	5586	
23	19	NATALIE IMBRUGLIA/Wrong Impression	5586	
20	19	LENNY KRAVITZ/Dig In	5586	
22	19	ALANIS MORISSETTE/Hands Clean	5586	
21	19	ENRIQUE IGLESIAS/Hero	5586	
19	18	JEFFREY GAINES/In		

MARKET #8			
WBWX/Boston Infinity (617) 779-2000 Strassel/Mulaney 12+ Cumc 752,700		Mix 98.5 100% BEST VARIETY	
PLAYS	LW TW	ARTIST/TITLE	GI (000)
51	49	CREED/My Sacrifice	15827
53	46	CALLING/Wherever You Will Go	14858
51	42	ALANIS MORISSETTE/Hands Clean	13566
47	42	NICKELBACK/How You Remind Me	13566
45	41	DAVE MATTHEWS BAND/Everyday	13243
46	37	FIVE FOR FIGHTING/Superman (It's...)	11951
46	34	JEWEL/Standing Still	10982
35	32	NO DOUBT/Hey Baby	10336
35	31	PINK/Get The Party...	10013
32	30	U2/Stuck In A Moment...	9690
27	29	JOHN MELLENCAMP/Peaceful World	9367
27	29	MICHELLE BRANCH/If You Wanted	9367
7	29	KYLIE MINOGUE/Can't Get You...	9367
31	28	NATALIE IMBRUGLIA/Wrong Impression	9044
22	25	JOHN MAYER/No Such Thing	8075
2	24	EDDIE VEDDER/You've Got To...	7752
34	24	U2/Elevation	7752
22	23	VANESSA CARLTON/A Thousand Miles	7429
31	23	3 DOORS DOWN/Be Like That	7429
33	22	SARAH McLACHLAN/Blackbird	7106
23	21	SHERYL CROW/Soak Up The Sun	6783
18	21	TRAIN/Drops Of Jupiter...	6783
16	20	NELLY FURTADO/If I Like A Bird	6460
13	19	MATCHBOX TWENTY/If You're Gone	6137
16	19	LIFEHOUSE/Hanging By A Moment	6137
13	19	DAVE MATTHEWS BAND/The Space Between	6137
15	19	PUDDLE OF MUDD/Blurry	6137
20	18	SENSE FIELD/Save Yourself	5814
16	18	SMASH MOUTH/If A Believer	5814
15	18	STAIN'D/It's Been Awhile	5814

MARKET #9			
KHMD/Houston-Galveston Infinity (713) 790-0965 Sherman 12+ Cumc 388,400		Mix 96.5 www.96.5.com	
PLAYS	LW TW	ARTIST/TITLE	GI (000)
32	32	ENYA/Only Time	4160
65	63	CALLING/Wherever You Will Go	4160
34	32	TRAIN/Drops Of Jupiter...	4160
31	31	INCURUS/Drive	4030
31	29	SMASH MOUTH/If A Believer	3770
20	17	LIFEHOUSE/Hanging By A Moment	2210
11	17	AEROSMITH/Jaded	2210
15	17	MADONNA/Don't Tell Me	2210
18	17	DIDD/Thankyou	2210
3	17	DIDD/Here With Me	2210
18	17	CREED/When Arms Wide Open	2210
9	15	PHIL COLLINS/You'll Be In My...	2080
17	16	MATCHBOX TWENTY/If You're Gone	2080
17	15	UNCLE KRACKER/Follow Me	2080
14	15	LEANN RIMES/Can't Fight...	2080
11	16	3 DOORS DOWN/Kryptonite	2080
16	16	SAVAGE GARDEN/I Knew I Loved You	2080
19	16	NICKELBACK/How You Remind Me	2080
16	16	LENNY KRAVITZ/Dig In	2080
9	15	NO DOUBT/Hey Baby	1950
16	15	SUGAR RAY/When It's Over	1950
14	15	BON JOVI/It's My Life	1950
17	15	CALLING/Wherever You Will Go	1950
15	15	JEWEL/Standing Still	1950
18	14	CREED/My Sacrifice	1820
17	14	LEE ANN WOMACK/If I Hope You Dance	1820
18	14	LEANN RIMES/Need You	1820
16	14	ALANIS MORISSETTE/Hands Clean	1820
9	11	NINE DAYS/Absolutely...	1430
5	8	MICHELLE BRANCH/If You Wanted	1040

MARKET #10			
WQVD/Detroit ABC (313) 871-3030 O'Brien/Hazleton/Delisi 12+ Cumc 473,400		96.3	
PLAYS	LW TW	ARTIST/TITLE	GI (000)
64	63	CREED/My Sacrifice	10206
65	63	CALLING/Wherever You Will Go	10206
47	62	LIFEHOUSE/Hanging By A Moment	10044
54	61	NICKELBACK/How You Remind Me	9882
27	51	STAIN'D/It's Been Awhile	8262
25	32	PUDDLE OF MUDD/Blurry	5184
33	31	MICHELLE BRANCH/If You Wanted	5022
31	31	SENSE FIELD/Save Yourself	5022
27	31	NO DOUBT/Hey Baby	5022
45	31	DAVE MATTHEWS BAND/Everyday	5022
45	30	ENYA/Only Time	4860
32	29	NATALIE IMBRUGLIA/Wrong Impression	4698
22	28	TRAIN/Drops Of Jupiter...	4212
23	28	ALANIS MORISSETTE/Hands Clean	4212
33	26	JOHN MAYER/No Such Thing	4212
20	25	MICHELLE BRANCH/Everywhere	4050
26	25	FIVE FOR FIGHTING/Superman (It's...)	4050
14	23	TRAIN/She's On Fire	3726
23	23	U2/Beautiful Day	3726
23	23	MATCHBOX TWENTY/Bent	3726
7	23	SHERYL CROW/Soak Up The Sun	3726
24	22	EVE 6/Here's To The Night	3564
24	22	FUEL/Bad Day	3564
22	22	AMERICAN HI-FI/Flavor Of The Weak	3564
25	22	SUGAR RAY/When It's Over	3564
23	22	MOBY F/GWEN STEFANI/Southside	3564
25	22	3 DOORS DOWN/Be Like That	3564
18	21	LENNY KRAVITZ/Again	3402
24	21	INCUBUS/Drive	3402
17	21	DAVE MATTHEWS BAND/The Space Between	3402

MARKET #14			
KPLZ/Seattle-Tacoma Fisher (206) 223-5700 Phillips/Hashimoto 12+ Cumc 318,400		STAR 101.5	
PLAYS	LW TW	ARTIST/TITLE	GI (000)
49	49	CALLING/Wherever You Will Go	6076
43	46	INCUBUS/Drive	5704
45	45	FIVE FOR FIGHTING/Superman (It's...)	5580
45	44	LIFEHOUSE/Hanging By A Moment	5456
45	44	STAIN'D/It's Been Awhile	5456
43	42	TRAIN/Drops Of Jupiter...	5208
44	40	NICKELBACK/How You Remind Me	4960
32	35	JEWEL/Standing Still	4340
31	34	3 DOORS DOWN/Be Like That	4216
33	34	JOHN MELLENCAMP/Peaceful World	4216
29	33	CREED/My Sacrifice	4092
28	33	NATALIE IMBRUGLIA/Wrong Impression	4092
29	33	NO DOUBT/Hey Baby	4092
30	31	ALICIA KEYS/Fallin'	3844
30	31	ALANIS MORISSETTE/Hands Clean	3844
32	30	PINK/Get The Party...	3720
33	30	LONESTAR/If I Already There	3720
28	29	DAVE MATTHEWS BAND/Everyday	3596
31	28	DAVE MATTHEWS BAND/The Space Between	3472
24	25	JOHN MAYER/No Such Thing	3224
23	24	SHERYL CROW/Soak Up The Sun	2976
22	23	PUDDLE OF MUDD/Blurry	2852
3	23	SHAKIRAH/Whenever Wherever	2852
13	23	VANESSA CARLTON/A Thousand Miles	2852
14	22	EDDIE VEDDER/You've Got To...	2728
21	22	CHRIS ISAAK/Let Me Down Easy	2728
22	22	MICHELLE BRANCH/If You Wanted	2728
19	20	LINKIN PARK/In The End	2480
35	19	U2/Beautiful Day	2356
18	17	LEANN RIMES/Can't Fight...	2108

MARKET #16			
KSTP/Minneapolis Hubbard (651) 642-4141 Roer 12+ Cumc 409,500		KS95 94.5 FM	
PLAYS	LW TW	ARTIST/TITLE	GI (000)
55	57	NICKELBACK/How You Remind Me	7695
52	54	CREED/My Sacrifice	7290
55	53	CALLING/Wherever You Will Go	7155
49	52	JOHN MELLENCAMP/Peaceful World	7020
40	48	TRAIN/Drops Of Jupiter...	6480
50	47	JEWEL/Standing Still	6345
41	44	DAVE MATTHEWS BAND/Everyday	5940
40	39	PINK/Get The Party...	5265
34	38	NATALIE IMBRUGLIA/Wrong Impression	5130
38	37	LENNY KRAVITZ/Dig In	4995
35	36	ALANIS MORISSETTE/Hands Clean	4860
26	35	LIFEHOUSE/Hanging By A Moment	4725
32	31	CHRIS ISAAK/Let Me Down Easy	4185
18	27	3 DOORS DOWN/Be Like That	3645
11	26	STAIN'D/It's Been Awhile	3510
31	26	FIVE FOR FIGHTING/Superman (It's...)	3510
30	24	DAKOTA MOON/Looking For...	3240
20	22	MATCHBOX TWENTY/Mad Season	2970
17	19	MADONNA/Don't Tell Me	2565
17	19	DIDD/Thankyou	2565
20	19	SMASH MOUTH/If A Believer	2565
16	19	DAVID GRAY/Please Forgive Me	2565
18	18	U2/Beautiful Day	2430
12	18	MICHELLE BRANCH/Everywhere	2430
19	18	MOBY F/GWEN STEFANI/Southside	2430
16	18	LENNY KRAVITZ/Again	2430
19	17	NELLY FURTADO/If I Like A Bird	2295
12	17	DAVE MATTHEWS BAND/The Space Between	2295
18	16	EVE 6/Here's To The Night	2160
11	16	EVERCLEAR/Wonderful	2160

MARKET #17			
KFMB/San Diego Midwest (651) 571-8888 Johnson/Sewell 12+ Cumc 318,300		STAR 102.5 FM	
PLAYS	LW TW	ARTIST/TITLE	GI (000)
47	49	NO DOUBT/Hey Baby	7105
48	48	NICKELBACK/How You Remind Me	6960
45	48	JEWEL/Standing Still	6960
46	48	PINK/Get The Party...	6960
36	39	DAVE MATTHEWS BAND/Everyday	5655
35	38	ALANIS MORISSETTE/Hands Clean	5510
35	37	MICHELLE BRANCH/If You Wanted	5365
26	37	NATALIE IMBRUGLIA/Wrong Impression	5365
34	36	LENNY KRAVITZ/Dig In	5220
24	24	SHERYL CROW/Soak Up The Sun	3480
22	23	JOHN MELLENCAMP/Peaceful World	3335
20	23	U2/Stuck In A Moment...	3335
20	22	ENYA/Only Time	3190
22	22	DARRIN HAYES/Insatiable	3190
29	22	CALLING/Wherever You Will Go	3190
18	21	KYLIE MINOGUE/Can't Get You...	3045
25	19	FIVE FOR FIGHTING/Superman (It's...)	2755
20	19	3 DOORS DOWN/Be Like That	2755
20	19	CHRIS ISAAK/Let Me Down Easy	2755
23	18	LIFEHOUSE/Hanging By A Moment	2610
15	15	MARC ANTHONY/Need You	2175
24	14	CHER/Song For The Lonely	2030
23	13	DAKOTA MOON/Looking For...	1885
13	13	MATCHBOX TWENTY/Last Beautiful...	1885
12	12	ALICIA KEYS/Fallin'	1740
13	12	U2/Beautiful Day	1740
16	12	SMASH MOUTH/Holiday In My Head	1740
6	11	DAVE MATTHEWS BAND/The Space Between	1595
15	10	TRAIN/Drops Of Jupiter...	1450
11	10	SUGAR RAY/When It's Over	1450

MARKET #19			
KYKY/St. Louis Infinity (314) 531-0000 Rivers/Mewitt 12+ Cumc 256,700		Y98 ST. LOUIS SILENT VARIETY	
PLAYS	LW TW	ARTIST/TITLE	GI (000)
52	50	CALLING/Wherever You Will Go	5900
44	48	NICKELBACK/How You Remind Me	5664
33	44	ALANIS MORISSETTE/Hands Clean	5192
26	41	TRAIN/Drops Of Jupiter...	4838
44	40	PINK/Get The Party...	4720
36	39	FIVE FOR FIGHTING/Superman (It's...)	4602
38	39	LENNY KRAVITZ/Dig In	4602
31	38	SHERYL CROW/Soak Up The Sun	4484
38	37	JEWEL/Standing Still	4366
45	36	LIFEHOUSE/Hanging By A Moment	4248
29	35	NO DOUBT/Hey Baby	4130
34	28	BETTER THAN EZRA/Extra Ordinary	3304
27	27	NATALIE IMBRUGLIA/Wrong Impression	3186
23	26	JOHN MAYER/No Such Thing	3068
21	25	MICHELLE BRANCH/If You Wanted	2950
41	23	JOHN MELLENCAMP/Peaceful World	2714
26	23	DAKOTA MOON/Looking For...	2714
24	22	CHRIS ISAAK/Let Me Down Easy	2596
20	21	CREED/My Sacrifice	2478
11	18	DIDD/Thankyou	2124
27	17	3 DOORS DOWN/Be Like That	2006
14	15	DAVE MATTHEWS BAND/The Space Between	1770
16	14	STAIN'D/It's Been Awhile	1652
11	13	ENYA/Only Time	1534
12	13	MATCHBOX TWENTY/If You're Gone	1534
9	13	UNCLE KRACKER/Follow Me	1534
10	12	NELLY FURTADO/If I Like A Bird	1416
9	12	SISTER HAZEL/Change Your Mind	1416
14	12	PUDDLE OF MUDD/Blurry	1416
12	12	LEANN RIMES/Can't Fight...	1416

MARKET #19			
WVRV/St. Louis Bonneville (314) 231-3699 Edwards 12+ Cumc 324,600		101.5 ST. LOUIS SILENT VARIETY	
PLAYS	LW TW	ARTIST/TITLE	GI (000)
51	54	NICKELBACK/How You Remind Me	8262
54	54	CALLING/Wherever You Will Go	8262
44	50	ALANIS MORISSETTE/Hands Clean	7650
50	47	CREED/My Sacrifice	7191
45	46	JEWEL/Standing Still	7038
43	45	DAVE MATTHEWS BAND/Everyday	7038
46	45	JOHN MAYER/No Such Thing	6885
43	45	LIFEHOUSE/Hanging By A Moment	6885
47	44	PUDDLE OF MUDD/Blurry	6732
20	38	EDDIE VEDDER/You've Got To...	5814
27	30	SHERYL CROW/Soak Up The Sun	4590
21	29	LOUISE GOFFIN/Sometimes A Circle	4437
26	28	NATALIE IMBRUGLIA/Wrong Impression	4437
28	28	SENSE FIELD/Save Yourself	4284
32	23	VERVE PIPE/Never Let You Down	3519
8	22	DEFAULT/Wasting My Time	3366
13	17	BETTER THAN EZRA/Extra Ordinary	2601
16	16	DAKOTA MOON/Looking For...	2448
15	16	TRAIN/Drops Of Jupiter...	2448
14	15	U2/Beautiful Day	2295
14	15	3 DOORS DOWN/Be Like That	2295
26	15	MATCHBOX TWENTY/Last Beautiful...	2295
12	14	DAVE MATTHEWS BAND/The Space Between	2142
14	14	STAIN'D/It's Been Awhile	2142
15	14	LENNY KRAVITZ/Dig In	2142
16	14	FIVE FOR FIGHTING/Superman (It's...)	2142
6	13	ANIKA MOA/Youthful	1989
10	13	PETE YORN/Strange Condition	1989
14	13	JOHN MELLENCAMP/Peaceful World	1989
11	12	CHRIS ISAAK/Let Me Down Easy	1836

C

Before the
LIBRARY OF CONGRESS
Washington, D.C.

In The Matter Of:

Docket No. RM 2002-1

Notice and Recordkeeping for
Use of Sound Recordings
Under Statutory License

STATEMENT OF GREGG LINDAHL, COX RADIO, INC.

1. My name is Gregg Lindahl, and I am the Vice President of Cox Radio Interactive, a division of Cox Radio, Inc. ("Cox"). I am a former radio station general manager, and have been involved with Internet activities of Cox Enterprises, Inc. since 1999. The information set forth in this statement is based either on my personal knowledge or on discussions with the employees and/or streaming service providers of the Cox stations.

2. Cox Radio, Inc. is the third largest radio broadcasting company in the United States, based on net revenues. Cox owns, operates, or provides sales and marketing services to 81 stations (68 FM, 13 AM) in 18 markets and employs over 2,300 people. Our stations offer a wide variety of programming formats, from News/Talk to Gospel to Urban Adult Contemporary, from Oldies to Contemporary Hit Radio, and from Classic Rock to Country. As of mid-March 2002, 68 of our radio stations were simultaneously streaming their broadcast programming over the Internet. In this nascent industry, however, this number rarely remains static for long. At any given moment, various technical and business reasons often cause any one or more of our stations to discontinue streaming.

3. If the Copyright Office issues formal regulations for recordkeeping requirements under the Digital Millennium Copyright Act statutory webcasting license in the form recently proposed, Cox will likely discontinue streaming on all of its stations. Streaming is provided as a service to our local listeners, many of whom regularly email us to thank us for providing this service. In fact, on September 11, 2001, WSB Radio had as many as 5,000 people simultaneously connected to the stream of the station's coverage of the day's tragic events. Without this streaming, many of these people would not have had access to the breaking news coverage. However, providing this service with the huge additional burden of the proposed recordkeeping obligations imposed on our resources would penalize our efforts to develop this service as a business. As I will explain more fully below, the systems and operations of our radio stations are as varied as the formats we broadcast, and the investment that would be necessary to provide the minutia required by the proposed regulations from all of these different systems would cost Cox many thousands of hours of employee time, in addition to many hundreds of thousands of dollars. Our day-to-day operations simply cannot support the additional time, effort, and expense that it would take to supply much of the requested information at all, much less on a census basis.

INTENDED PLAYLIST REQUIREMENTS

4. At least half, if not more, of the music we broadcast comes directly from record companies in the form of promotional CDs. These promotional CDs do not generally contain all of the songs on an album, but rather have one or two mixes of a single song the particular record company is hoping to promote. Some of our stations are more likely to purchase music than others as a result of the station format. Our Oldies stations, for example, are more likely to purchase CDs or tracks from music services than our Adult Contemporary stations are, because record companies are less likely to be actively promoting "oldies."

5. Much of the information required under the proposed regulations is not even available on these promotional CDs, which typically identify only the title of the song, the name of the artist, and the name of the label sending the music. In many cases, the CD singles do not even identify the name of the album the song will be on. Some of the promotional CDs do not have the UPC code on the packaging. Generally, if these singles have a catalog number in them, it is not clear whether the number is keyed to the single itself, rather than the retail album on which the song ultimately appears. Promotional CDs currently received by our stations do not contain the International Standard Recording Code. Moreover, the release year, copyright year and copyright owner information is not always listed on these singles. When the information is available, the single CDs sometimes identify multiple owners, which would create confusion and raise significant data entry issues.

6. If all of these data points are truly necessary to administer the license fees, it would be more efficient and provide more consistent results to require SoundExchange to match title and artist information provided by broadcasters and webcasters with the information SoundExchange maintains on its own master database. The labels and SoundExchange are in a far better position to compile the remaining types of information from their own records than Cox or any broadcaster would be.

7. The information requested under the proposed regulations will be far more accurate if it was drawn from the databases of sound recording information of the record labels. Broadcasters should not be forced to provide more information to the record labels than they themselves provide to us in the first instance to obtain free airplay for their songs on our stations.

8. The purpose for the requested information is also unclear. If the performance rights organizations are able to administer comparable performance licenses on just two categories of data: title and artist, the RIAA's need for such large amounts of data is incomprehensible. It appears that RIAA is using this rulemaking to build a marketing tool off of the efforts of radio station streamers and webcasters. In fact, record labels currently pay third-party services like BDS to provide the very playlist data they seek in this rulemaking.

9. Even where the requested information is available – such as the record label name, which is generally on all of the CDs we use – it will still be an enormous challenge to add this information to our existing database systems for reporting purposes. Most of our stations use RCS Selector software to schedule playlists in advance. The primary purpose of this software is to allow our programmers to schedule a balanced mix of music to be played each hour. The data we keep on each song is geared toward that purpose. For each song, we currently track title,

artist, song length, song intro time, type of ending, tempo, scheduling rules, and an internal song number we assign to each song. This software can be configured to track additional fields of information, including, additional artists, composer, publishers, arrangers, record number, promoter, country content, address and responsible performance rights organization, but we have not used these fields in the past. Moreover, this software cannot be configured to add fields for ISRC, UPC, catalog number, release year, or sound recording copyright owner. A minority of our stations store album title, when available, but most do not.

10. Using a very conservative estimate, the cost of researching and repopulating our databases – to the extent they are flexible enough to handle additional fields – is at least \$588,000. This estimate is based on the assumption that it would take about 2 hours per song for research and data entry, costing \$12.00 per hour in labor and related expenses. I multiplied this by about 350 songs in active rotation at each of our stations. Many of our stations have databases with information about more than 350 songs, even if all of those songs are not in current active rotation.

11. It would also be impossible to comply with the proposed requirement to report the time a song played to the nearest second. In the radio business, music is typically scheduled in hour blocks. To ensure a cushion and give programmers flexibility, we schedule more music in an hour than can actually be played. If the time a song is to be played must be reported, it should be sufficient to report the hour in which it is scheduled. The Copyright Office should recognize that intended playlists overstate the amount of music actually played, and should allow for adjustment of royalty payments accordingly.

12. The alternative to manual reconciliation (by employees dedicated to this sole task) to record and report the actual songs played and the time at which they were played – is to take the information from our Digital Automation Systems (DASs), for the stations that use these systems. A DAS is generally used by radio stations to store and play music, commercials, and other pre-recorded materials, leaving appropriate time for live intervention from radio show hosts.

13. Cox Radio currently employs six different systems with various capabilities; even within each brand the capabilities vary depending upon the version in use. A small number of our stations don't use any DAS at all; for these stations, the intended playlist or manual reconciliation are the only options. Many of our stations use the DAS for commercials and pre-scheduled programming only. Others use the DAS only for some of their music, while the rest of the music is played manually from CDs by the on-air personality. These stations, also, could not use the DAS to provide an accurate listing of songs played to the second.

14. Generally, the DAS is capable of recording only title, artist, song length, song intro time, type of ending, tempo, and our internal song number. The DAS can also provide a listing of the songs played on a given day – perhaps even to the nearest second – but it cannot tie that information to data fields that are not available, or to the data in the scheduling system.

15. It may be that some of our vendors would be able to modify their software to accommodate additional fields of information if the proposed regulations are approved, but the costs, the development time, and any subsequent pass through costs related to these

modifications, are indeterminate. If our outside vendors did alter their programs for us, we would need time at the station level to learn how to use these new upgrades and generate the required reports. My understanding is that, in the United Kingdom, the beneficiaries of the rights payments are required to bear the costs of supplying the tools necessary to comply with the reporting requirements.

16. The Copyright Office must allow a reasonable grace period – we estimate one year – from the time the final regulations are adopted to allow us to implement the necessary changes to be able to comply. Moreover, these recordkeeping requirements at this level of detail should not be required on a retroactive basis.

17. Cox stations would not be able to report on music played during syndicated programming. Almost all of our stations use pre-scheduled programming from syndicators at some point during each day, including countdown shows, talk shows, and popular morning shows. These shows do not currently provide us with information about each individual song played. When the shows are broadcast using a DAS, the system merely reflects the large block of time taken up by the show, and perhaps the name of the show, but it does not receive or record information about each song played. Broadcasters cannot be expected to provide detailed information about shows over which they have no control, and should only be required to turn over the information about each syndicated show that is actually provided by the syndicator.

18. Our talk stations sometimes play non-featured music, such as introductions to programs, disc jockey themes, bumpers between program segments, background for traffic and weather reports or news stories, and in promotional segments. If the Copyright Office's proposed regulations were to apply to the performance of non-featured music, we would have to discontinue the streaming of our talk stations.

LISTENER LOG REQUIREMENTS

19. As is common in the radio industry, Cox stations work with outside service providers to stream their AM/FM signals over the Internet. These outside vendors, and not Cox, are the record keepers and retain any and all data regarding listenership. The Copyright Office should recognize that because these data come from third parties, Cox will not be able to guarantee the accuracy of these data. Radio stations should not be subject to copyright liability simply because data collected by third parties are incorrect.

20. Currently, our streaming service provider reports to us the number of unique listeners, the number of tune-ins or sessions, the total time spent listening, and the time spent listening for the average listening session. Based on discussions with our outside vendor, some, but not all, of the requested data could be gathered, subject to technical hurdles and as yet undetermined costs.

21. For example, one of the most difficult requirements would be to isolate the location of each individual user, so as to provide the date and time (in the user's time zone) of each log in and log out. While our provider can capture the IP address of the listener, this number does not necessarily reveal the correct location of the listener – AOL users, for example, would likely appear in any reports as originating in Virginia, where the majority of AOL's

servers reside, even if they are actually listening in California. Corporate firewalls similarly make user identification difficult.

22. In addition, it is difficult to provide a unique user identifier. Even when streaming software assigns a unique user ID to a particular computer, the uniqueness of that number can be defeated if the multiple copies of the system are "ghosted" using disk replication software, as is often done in office environments. Some programs also allow sophisticated users to disable the unique identifier. Other techniques for obtaining this information, such as requiring users to register and provide their zip code so that we can pinpoint their location, raise other problems. While collecting these data for internal use is acceptable, sharing the data with third parties would expose Cox to a whole host of privacy concerns. In fact, Congress has recently expressed heightened concerns about respecting online privacy rights. Given these concerns, it is entirely unclear why the U.S. government should be requiring the collection of this information, and requiring the mandatory disclosure of it to commercial entities, particularly because the information is not necessary in order to determine either our fee payments or the royalty distribution.

23. The sheer enormity of the data that would be generated by reporting each and every listener session is also beyond reason. It is not clear why we would need to report this information as it hardly relates to the collection and distribution of license fees.

EPHEMERAL LOGS

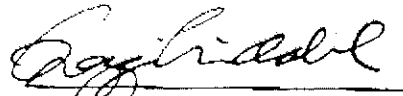
24. Finally, Cox objects to the proposed recordkeeping requirements for the ephemeral recording license. Given the CARP has proposed a flat rate for ephemeral copies equal to 9% of each streaming station's performance license fee, rather than a rate based on the number of ephemeral copies made, the requirement to track the creation and destruction of each and every copy of a song made in the course of streaming the song seems excessive and wholly unrelated to the administration of the license. We do not currently record these data, and it doesn't make sense for us to do so. It would take significant program development work to create a system that could track these data, and the cost would be quite disproportionate to the royalty paid.

SAMPLES

25. The overwhelming amount of data requested to administer the performance license fees is staggering. The playlist log alone would require the reporting of 18 data fields for each sound recording performed for each of the 12 sound recordings typically performed each hour of the day, in 18 to 24 hours of daily programming. ASCAP, BMI, and SESAC have never required this level of detailed reporting. In fact, they manage to administer their royalties based only on title and artist information. It would be more efficient for all interested parties, licensors and licensees, to administer these licenses on only samples of sound recordings performed, as they do in other licensing contexts. An alternative would be to obtain the information from companies such as Arbitron, for listenership information, and BDS, for song plays information, which spend all of their time tracking this kind of information about radio stations. Our radio stations should be allowed to continue to focus on being radio stations, and not be transformed into market analysts on behalf of the record industry.

CONCLUSION

While Cox would like to continue providing its listeners with another convenient way to listen to local broadcasts from work or other locations, the significantly increased costs, the substantial amount of employee time, and the fundamental changes to the way we do business that would be required to comply with the proposed regulations would likely lead Cox to cease streaming. The Copyright Office should not implement regulations that would have such a detrimental effect on an emerging industry. Cox urges the Copyright Office to reduce the recordkeeping requirements to correspond to those required for administering performance licenses for musical compositions. Sound recording title and featured artist are the only fields that are necessary to distribute any license fees collected under these statutory licenses.



Gregg Lindahl
Vice President
Cox Radio Interactive

D

Before the
LIBRARY OF CONGRESS
Washington, D.C.

In The Matter Of:

Docket No. RM 2002-1

Notice and Recordkeeping for
Use of Sound Recordings
Under Statutory License

Statement of Michael Cary, Crawford Broadcasting Company

1. My name is Michael Cary, and I am the Chief Financial Officer of Crawford Broadcasting Company. I have been with Crawford for 12 years, and have worked in the radio industry for 12 years. One of my responsibilities is preparing music licensing reports for ASCAP, BMI, and SESAC. I base this statement on my own personal knowledge, and on conversations I have had with other Crawford staff members, including our director of corporate engineering, Cris Alexander.

2. Crawford owns and operates 30 FCC-licensed radio stations throughout the country, most of which broadcast Christian talk, Christian music, or mixed Christian talk and music formats. We also have eight secular music stations. I serve on the advisory board of the NRB Music License Committee (the "NRBMLC").

3. None of Crawford's radio stations currently stream their broadcast programs on the Internet, although we hope to be able to do so in the future. As NRBMLC members, we actively followed the progress of the Copyright Arbitration Royalty Panel (CARP) that set the rates and terms under which broadcasters using the statutory licenses will be allowed to simulcast their programming over the Internet. We also provided data about our broadcast operations and music licensing payments to the Broadcasters' expert, Dr. Adam Jaffe, as part of that CARP proceeding.

4. Even though we do not currently stream our broadcasts, we have an important stake in the outcome of this rulemaking. Our decision to stream in the future will be strongly affected by the recordkeeping requirements that accompany the statutory licenses. From an operational perspective, it would currently be impossible for us to comply with the current proposed

regulations. We are a small broadcasting group. It would be cost prohibitive for us to undertake the expense of upgrading our music scheduling and automation systems, researching and inputting into those upgraded systems new information about each of the 1,000 to 5,000 songs in the repertoire of each of our music-intensive stations, and preparing daily reports on our intended playlists, listener logs, and ephemeral phonorecords.

5. In the first place, our standard radio station systems are not designed to keep track of all of the different data points the reporting regulations would require. For example, neither our music scheduling software, nor our Digital Automation Systems (DAS), has fields in place to track ISRC, UPC Code, album catalog number, sound recording release year, or sound recording copyright owner. In addition, we do not currently track the album title or record label name. Our engineers tell me that these programs do not allow us to simply create new data fields for tracking all of this additional information. We would have to go back to our vendors and ask them to upgrade their systems, which surely would take several months on their end. We do not know at this time what they would charge us for the upgraded software.

6. It takes our music programmers between three and five minutes to enter the data we currently track about a song into our scheduling software. Assuming we had all of the relevant data points, and the proper fields within which to enter the additional requested information, our data entry time for each new song would likely double. With all of the data in hand, we estimate it would take at least five to ten minutes to update each previously-entered song record. At a station with a database of information about 3,000 songs—the average for our music intensive stations—the data entry alone would take one person, working eight full hours a day, two full months to complete. We could not spare the personnel to take on such a task at each of our music intensive stations.

7. Moreover, that estimate assumes the relevant data is in front of the data processor when she begins her work. In reality, most of the music we play does not come to us with the requested information readily available. We get a significant amount of our music through promotional discs sent to us directly from record labels, and we fill out most of the rest of our catalog by purchasing compilation discs from services such as Happy Hits. These compilations services provide made-for-radio cuts of ready-to-play songs, and are generally used by our Oldies stations to build a library of older songs. We only very rarely purchase a CD at retail. The label-provided promos generally do not have UPC code, ISRC code, or catalog number listed on them, and they rarely list the album title. The compilation discs have even less of the requested information—generally only title, artist, and track length. If the information is not provided directly with the cut, then it could take an hour or more to research each song.

8. Transforming our music scheduling operations this radically would not even be enough to ensure complete compliance with the playlist requirements of the proposed rules. A large portion of the programming on our religious talk/teaching stations comes from third parties, mostly ministries and churches, that purchase air time in blocks. This type of programming, which typically lasts from 14 to 58 minutes, can be as little as 20% or as much as 100% of the programming on our stations. KCBC-AM in California and KLTT-AM in Colorado, for example, broadcast 100% paid programming of this type. These ministries sometimes use pre-recorded music as minor elements of their broadcasts. Our personnel could not, based upon just listening to those broadcasts, track the detailed song information requested.

9. In theory, these ministries are supposed to provide us with at least the title and artist for each song they play so we can report to ASCAP and BMI under their per program licenses. In reality, we rarely get this information in a complete fashion from small ministries, and we often end up conceding music to both PROs because we do not have even the title or artist information, which is necessary to identify the correct PRO.

10. Imposing such detailed reporting requirements on these small ministries would be fruitless. First, not all of the requested information is available even on the retail album. Second, the people who produce these talk segments are primarily ministers, and not copyright lawyers, or even radio industry professionals. Despite our best instructions, they likely would not provide complete or accurate information. Ordinary citizens simply are not usually concerned with the release year and copyright owner identified in the tiny print of a copyright notice, the catalog number, the UPC code, or the ISRC. Short of taking a trip to the record store ourselves, I do not know how we could provide reliable information from these ministries, and even then we would often need to guess at what is included in the program.

11. All of our stations also use recorded music in an incidental fashion. This applies to all programming, not just the programming we originate. It is my understanding that the CARP decision does not require stations to pay for these incidental uses of music, but the proposed regulations appear to require us to track the usage nonetheless. I do not think it would be possible to even identify most of this music, let alone track 18 different data points every time we use it. The costs of doing so simply could not be justified by the benefit we would get from streaming our stations over the Internet.

12. The form in which the proposed regulations require that the data be reported is also quite burdensome. Our music scheduling software is not built to create a field to report our call letters and service name as a separate data field associated with each song played. It also could

not handle integrating song data from program segments in which it does not actually program the music. Currently, we send hand written logs to the PROs for those predominantly talk segments, and we only report the song title and one of either artist, composer, or publisher, when we have any information at all. In most cases, we report title and artist only, because that is the easiest information to gather.

13. Because we do not currently stream, I cannot address in detail the listener log requirements outlined in the proposed regulations. However, Crawford urges the Copyright Office to keep smaller operations such as ours in mind as it considers final regulations in this regard. It appears that the data processing required by this portion of the regulations would be at least as burdensome as the playlist requirements.

14. Finally, the reporting requirements for the Ephemeral Phonorecords Logs appear to be extensive. My understanding is that the royalty set by the CARP for such copies is based upon a percentage of the performance royalty. Under this kind of fee model, it makes no sense to undertake the enormous work that would be involved in creating an entirely new data processing system to track ephemeral recordings or tracking so many data points for ephemeral copies.

Conclusion

15. Given all of these factors, Crawford could not begin streaming any time in the near future. Our stations would not be near capable of satisfying these proposed reporting requirements with the way the stations currently operate. We are of course willing to ensure that copyright owners get paid if we stream sound recordings that they create. However, Crawford cannot financially justify expending potentially hundreds of thousands of dollars and alter its operations just to accommodate what would essentially be a side service for our local listeners.

Date:

4/4/02


Michael Cary
Crawford Broadcasting Company

E

**Before the
LIBRARY OF CONGRESS
Washington, D.C.**

In The Matter Of:

Docket No. RM 2002-1

Notice and Recordkeeping for
Use of Sound Recordings
Under Statutory License

Statement of Amy Van Hook, Entercom Communications Corp.

1. My name is Amy Van Hook, and I am Director of Internet Operations for Entercom Communications Corp. Since it was founded in 1968, Entercom has grown from a small group of three radio stations to become the fifth largest radio broadcasting company in the United States. Today, we operate 100 radio stations in 19 leading markets, including Boston, Seattle, Denver, Portland, Sacramento, Kansas City, Milwaukee, Norfolk, New Orleans, Greensboro, Buffalo, Memphis, Rochester, Greenville/Spartanburg, Wilkes-Barre/Scranton, Wichita, Madison, Gainesville/Ocala and Longview/Kelso, WA. I base this statement on my own personal knowledge and on conversations with other Entercom employees, including our Vice President of Engineering, Martin Hadfield, and several program directors on the station level.

2. Entercom's stations operate myriad formats, from oldies to rock, news/talk to country, smooth jazz to sports. Of our 100 radio stations, 20 currently simulcast their broadcast signal over the Internet. Prior to a dispute with AFTRA last year regarding payments to commercial performers when radio broadcasts are simulcast, 54 of our stations streamed. We were unable to resume streaming more than half of our previously simulcasting stations because their outdated digital audio software systems could not supply our streaming partner, Chaincast/Stream Audio, with the necessary information to allow ChainCast to block out disputed ads. At that time, we determined that the small benefit we get from making our broadcasts available to our listeners over the Internet was far outweighed by the cost of upgrading the systems at those stations.

Technology Constraints

3. Entercom stations operate using at least ten different digital automation systems (DAS). These DAS include programs from Dalet (at least two versions in use), AudioVault (at least three versions in use) Scott Studios, Enco, Maestro, AudioWizard from Prophet, and RCS. The DAS programs are used to orchestrate the on-the-air programming. They coordinate music, traffic, weather, sports, DJ chatter time, and other programming elements based upon schedules we upload from our scheduling software.

4. None of the DAS that Entercom stations employ contain data fields to track all of the 18 different data points the recordkeeping requirements would have us report under the proposed playlist requirements. Most of these programs lack separate data fields to track the name of our service, our call letters, the "type of program" as defined in the proposed rule, our time zone, the ISRC, the UPC, the catalog number, the copyright owner as provided on the retail album, the release year, or the musical genre of the station. Most of them do not even have a field to track the title of the retail album on which a song might be obtained, or for the name of the record label.

5. Most of the DAS do not allow the user to add unlimited user-defined fields, so we would have to turn to our vendors to upgrade their systems if we had to comply with the regulations as proposed. Some of the systems we currently use are quite out of date, and the vendors do not even support them anymore.

6. Our stations also use at least three different types of music scheduling software. The scheduling software is used by the program or music director to help select music that we believe our listeners want to hear.

7. These programs also do not have data fields available for all of the information required by the proposed rule. In particular, these programs do not have pre-made data fields for the name of our service, our call letters, the "type of program" as defined in the proposed rule, our time zone, the ISRC, the UPC, the catalog number, the sound recording copyright owner as provided on the retail album, the release year, or the musical genre of the station. Even when there are fields available for items such as record label or album title, we rarely track that data.

8. Just as we chose to forego streaming dozens of stations rather than incur the expense of upgrading so many DAS and scheduling systems at once, we likely would have to abandon streaming all together if we had to provide the data items that would be

required by the proposed regulations. We've looked into the costs of upgrading the systems at some of our stations, and the newer available systems require an investment of tens of thousands of dollars per station in software and hardware costs. We cannot justify incurring that kind of cost for the small benefits we get from simulcast streaming.

9. Implementing the required changes in either the digital audio software or the music scheduling software isn't just a matter of money for the stations and willingness of the vendor to do so, but also one of time. Most software vendors that cater to the broadcast industry do so with very little software programming staff. We believe that if the changes can be made, the software could not be delivered for at least six months. After that, we would need to learn to use the new software and integrate it into our operations. We believe the costs and time expenditure would be substantial.

Lack of Information

10. Each of our stations have information about hundreds of songs in their databases. Even if we could redesign databases to accommodate tracking the requested information, we would then have to go back to the original music source to look up the data fields that we do not currently track, and fill them in. However, about 95% of the music we broadcast is drawn from promotional CDs sent to us by the record labels, and these promos do not provide us with all of the information we would need to track the requested data. To illustrate, I worked with some of our music programming professionals to find some representative promotional disks. I have attached three sample promos to this statement.

11. Many of the promos singles we received are slickly packaged, with photos of the performer, color CD sleeve inserts, and basic identifying information about the name of the song, the length of the track, the name of the label, and often the copyright owner and date. Of the promos we receive from labels, the colorfully packaged ones, such as the Aerosmith "Fly Away from Here" single, attached as Exhibit 1 to this Statement, tend to report the most information about the songs contained on them. These promotional singles are often sent to the radio stations in anticipation of a new album before the retail version is released, so retail information such as UPC code, catalog number, and sometimes even the album title, is not available to anyone. If the ISRC codes are on these promos, we cannot access them.

12. Other promotional singles provide much less information. For example, the Our Lady Peace "Somewhere Out There" promo, attached as Exhibit 2 to this Statement, only provides artist, title, cut length, label name, and two dates: one labeled "Source Date," and another under the label name. These dates do not indicate whether they are the album release date, and are not listed in conjunction with a copyright notice.

13. Although we mostly receive CD singles from the labels, they occasionally provide a promotional compilation disk, which is intended to highlight the work of a particular artist. The Nikka Costa "Everybody Got Their Something Sampler," attached as Exhibit 3 to this Statement, is a typical example of such a compilation. The sampler appears to contain seven tracks from the artist's forthcoming album, "Everybody Got Their Something." The packaging of the sampler lists the title of several songs, the name of the artist being promoted, and the title of her forthcoming album. In small type, it also lists the copyright owner and year. The listed catalog number does not appear to coincide with the catalog number of the retail album, and there is no indication whatsoever of any UPC or ISRC –rather, the packaging and the disk itself both explicitly indicate that the CD is "For Promotional Use Only – Not for Sale." The disk itself is printed with the artist's name, the song titles and track lengths, and the name of the sampler. Although the sleeve insert makes clear that "Everybody Got Their Something" is both the name of Costa's forthcoming album and the name of the Sampler, that fact is unclear from the face of the disc itself. The packaging and the disk both bear the logos of two different record labels, and it is unclear which label would be the correct one to report under the rules – on the packaging, Cheeba Records is listed first, and Virgin Records is listed second; on the CD, the order is reversed.

14. In our day-to-day operations, it is not uncommon for promo CDs to get separated from their original packaging after their information has been entered into the scheduling and automation systems. In the case of the Nikki Costa compilation, if we had lost the case we would not be able to backfill the title of the album even though it was initially provided.

The Human Element

15. Automated systems do not always tell the full story of what is played on the air. For example, the DAS will not reflect what was actually played when it is overridden by a DJ who chooses to play directly from a CD instead. Also, personnel sometimes alter or mix sound recordings. For example, one DJ at WQSX in Boston often

puts together segued dance tracks, which consist of portions of several songs mixed and segued. It is not clear how we would be expected to report this type of performance. Further, there is no mechanism within either our automation systems or our scheduling programs to record the information on all of these mixes.

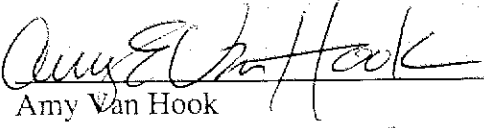
16. Given the size of our databases, *if* all the requested data could be obtained and *if* our programs could be modified to allow us to enter the data, we would likely need to take on the cost of a full or part time person to initially enter all the data, and take on the responsibility of tracking the data on new promos as they come in. Aside from the data entry, the actual reporting would also be an enormous draw on our human resources. If we were forced to prepare and format and file detailed daily reports for all of our streaming stations, we would likely have to take on additional staff. It does not make sense to impose these kinds of accounting requirements on our radio professionals.

17. Moreover, incurring these costs on our part is simply not necessary for the collective agents to administer the license. When we send in our BMI and ASCAP logs, we just send in very basic information, and BMI and ASCAP has all the other information they need to administer their royalties in their own computer system. Similarly, SoundExchange has all this data available to it already. The burden should be on SoundExchange to add the necessary data to the logs we send them. In fact, the record labels already pay companies like BDS and Media Base to catalog our playlists. Those companies monitor what the radio stations play, and use the information as the benchmark for creating the charts.

Conclusion

18. Providing the play list information requested by the proposed recordkeeping requirements would be an insurmountable task. We do not believe we should have to spend tens or hundreds of thousands of dollars to upgrade our systems, and increase our personnel costs, in order provide the record labels with information they already have. Even if we did take the steps to conform our practices to these requirements, the incomplete information we receive from the labels – who, after all, are asking us to play their music – would prevent us from providing complete reports. If the requirements are enacted as proposed, we would most likely cease our streaming operations altogether.

Date: 4-4-02


Amy Van Hook
Entercom Communications, Corp.

1

CSK 16/17

AEROSMITH Fly Away From Here

COL 11818A



fly away from here

- 1. Radio Remix Edit^ (4:23)
- 2. Album Version+ (5:01)

(Written by Marti Frederiksen, Todd Chapman)-EMI BLACKWOOD MUSIC INC. /OBO ITSELF AND PEARL WHITE MUSIC/ TODSKE MUSIC/WARNER-TAMERLANE PUBLISHING CORP. (BMI)-

Produced by The Boneyard Boys*


^Remixed by Mike Shipley
+Mixed by Mike Shipley & The Boneyard Boys*

John Kalodner: John Kalodner

HK Management-Howard Kaufman, Trudy Green

*The Boneyard Boys are Steven Tyler, Joe Perry, Mark Hudson & Marti Frederiksen

Taken from the Columbia album JUST PUSH PLAY (62088) in stores now.

 www.aerosmith.com
www.aerosmith.net
www.columbiarecords.com

DEMONSTRATION ONLY - NOT FOR SALE

CSK 16/17

AEROSMITH Fly Away From Here

COL 11818A



fly away from here



fly away from here

(Fredenksen - Chapman)

Gotta find a way
Yeah, I can't wait another day
Ain't nothin' gonna change
If we stay 'round here
Gotta do what it takes
Cuz it's all in our hands
We all make mistakes
Yeah, but it's never too late

To start again, take another breath
And say another prayer

And fly away from here
Anywhere, yeah I don't care
We'll just fly away from here
Our hopes and dreams are
out there somewhere
Won't let time pass us by
We'll just fly

If this life gets any harder now
It ain't, no, never mind
You got me by your side
And any time you want

Yeah, we can catch a train and
find a better place
Yeah, cuz we won't let nothin'
Or no one keep gettin' us down

Maybe you and I
Can pack our bags and hit the sky

And fly away from here
Anywhere, yeah I don't care
We'll just fly away from here
Our hopes and dreams are out there
somewhere
Won't let time pass us by
We'll just fly

Do you see a bluer sky now
You can have a better life now
Open your eyes
Cuz no one here can ever stop us
They can try but we won't let them
No way

Maybe you and I
Can pack our bags and say goodbye

And fly away from here
Anywhere, honey I don't care

We'll just fly away from here
Our hopes and dreams are out there
somewhere

Fly away from here
Yeah anywhere honey
I don't I don't I don't care

We'll just fly

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BLACKWOOD MUSIC INC. / DOB ITSELF AND
PEARL WHITE MUSIC / TODSKI MUSIC/WARNER
TAMERLANE PUBLISHING CORP. (BMI) 03/15/01

2

OUR LADY OF PEACE
"Somewhere Out There"



March 14, 2002

Source Date:
March 13, 2002

1. Somewhere Out There (4:11)

OUR LAST PEACE
"Somewhere Out There"

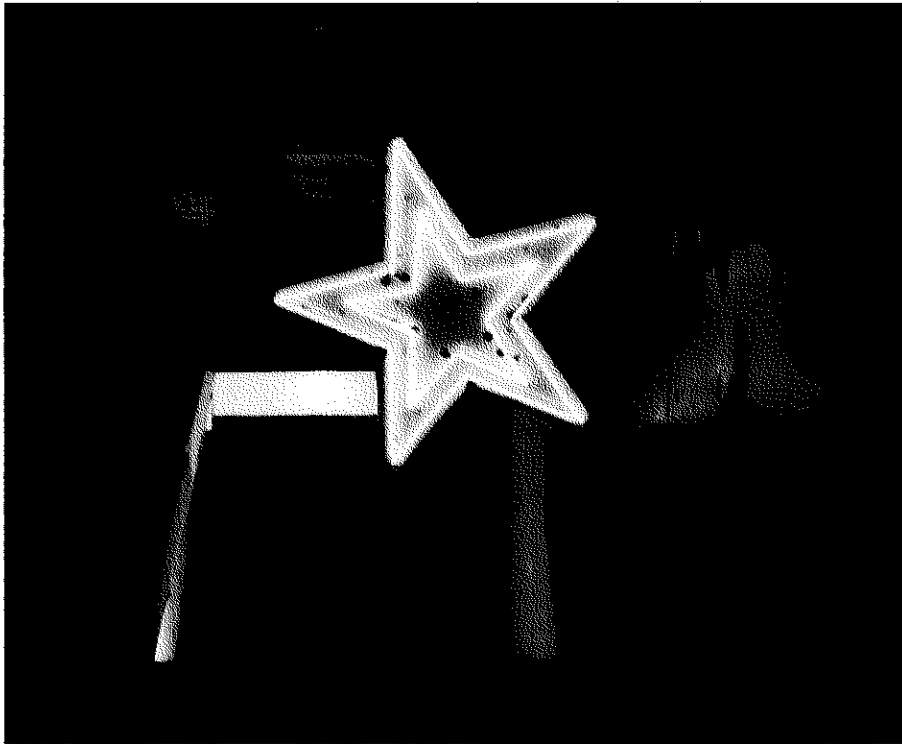


March 14, 2002

Source Date:
March 13, 2002

1. Somewhere Out There (4:11)

3

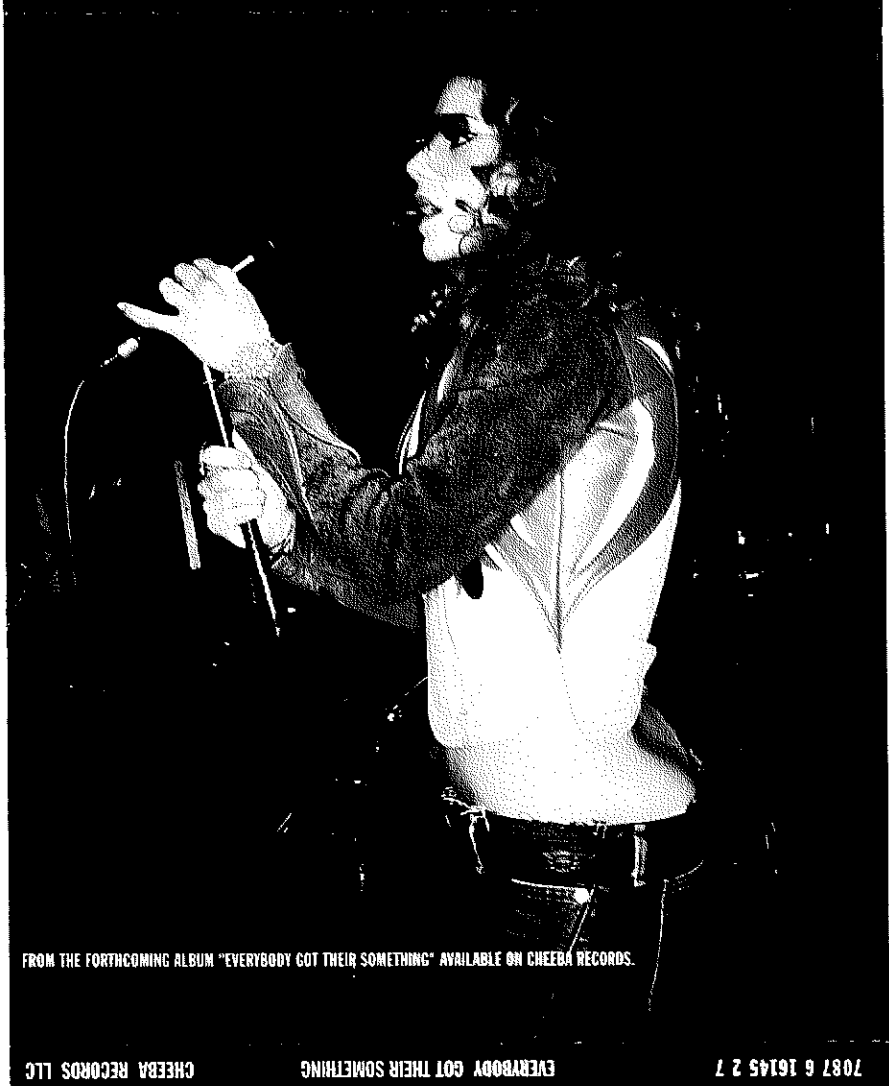


NIKKA COSTA

7087 6 16145 2 7

EVERYBODY GOT THEIR SOMETHING

CHEEBA RECORDS LLC



FROM THE FORTHCOMING ALBUM "EVERYBODY GOT THEIR SOMETHING" AVAILABLE ON CHEEBA RECORDS.

CHEEBA RECORDS LLC

EVERYBODY GOT THEIR SOMETHING

7087 6 16145 2 7

NIKKA COSTA

SAMPLER

2007 & JUNE 27

1. LIKE A FEATHER 3:54
2. EVERYBODY GOT THEIR SOMETHING 4:19
3. SOME KIND OF BEAUTIFUL 3:04
4. SO HAVE I FOR YOU 5:10
5. HOPE IT FELT GOOD 3:52
6. NOTHING 4:13
7. PUSH & PULL (FROM THE "BLOW" SOUNDTRACK) 5:26



Produced by [illegible]
Mixed by [illegible]
Mastered by [illegible]

F

**Before the
LIBRARY OF CONGRESS
Washington, D.C.**

In The Matter Of:

Docket No. RM 2002-1

Notice and Recordkeeping for
Use of Sound Recordings
Under Statutory License

Harv Hendrickson, Northwestern College Radio Network

1. My name is Harv Hendrickson, and I am the Vice President for Broadcast Support (operations) of the Northwestern College Radio Network. Currently, I am also serving as interim Vice President for Radio as well.

2. Our namesake, Northwestern College, is a 1,600 student Bible-centered, liberal arts college located in St. Paul, Minnesota. Since 1949, Northwestern College has extended its ministry beyond the borders of its campus through a media ministry. Today, our network operates 13 radio stations (five of which simulcast their stream) and one Internet-only broadcast. Several of our radio stations retain their historic licenses in the commercial FM band, but they all operate as noncommercial stations.

3. I have worked in the radio business and for Northwestern College Radio for 38 years. I began my career at our Sioux Falls station in 1964, and since that time have worked in all aspects of our business, from announcer to station manager, and from engineering to operations. I am also the chair of the National Religious Broadcasters Noncommercial Music License Committee (NRBNMLC).

4. I have reviewed the proposed recordkeeping requirements, and both technological and cost considerations would prevent us from complying with them in their current form. Our stations use Music Master 2.0 to schedule their programs, and the Dalet digital automation system. Neither of these systems are currently capable of maintaining information such as the name of the sound recording copyright owner, the UPC, the ISRC, or the album catalog number. Dalet cannot even track the album name, and while MusicMaster does have a field for album name, we rarely record it. We currently keep track of the year that each song's information is

entered into our database, but that date does not necessarily correspond with the release year as indicated on the copyright notice. In addition, these programs cannot store the station-specific data required by the proposed rule. We can provide our call letters, genre and service name easily, but not as a part of an intended playlist report in the format described by the rule.

5. Our stations are non-commercial entities, and we are almost entirely listener supported. Fully 75 percent of our operating budget comes directly from generous listeners who are touched by our ministry. The remaining 25 percent comes to us as proceeds from concerts we help organize in the community or as gifts from ministries whose sermons we broadcast. The average donation we receive from an individual is about \$100 per year.

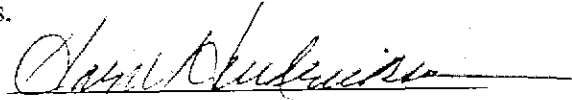
6. On the expense side, 98 percent of our budget goes to covering our operating expenses, and the rest is dedicated to capital expenditures. Our largest pair of stations, KTIS-AM and KTIS-FM in Minneapolis, shares a staff of eleven full time employees, along with a small handful of part-time employees. Only one of these people does solely on-air work. The rest of the staff perform a combination of on-air, administrative, and clerical jobs to keep the stations on the air 24 hours a day. Our other stations are usually staffed by 7 or 8 people, and those people similarly wear several hats.

7. I estimate that we would require one full-time staff person per station dedicated to doing nothing else but maintaining databases and preparing reports in order to comply with the proposed rule. The cost of an additional full-time employee who could handle these kinds of crushing details would be at least \$35-40,000 per year, plus benefits. Across 13 stations, that adds up to about \$500,000. Based upon our average donation of about \$100, we would have to receive gifts from an additional 5,000 listeners in order to sustain these costs. When every penny counts, we just cannot afford to dedicate that amount of resources to keeping these kinds of records.

Conclusion

We do not believe the detailed records proposed are truly necessary to determining or distributing the sound recording royalty owed. The burden of these proposed reporting requirements on noncommercial stations like ours is far greater than can be justified when the record companies could easily use their own existing databases to determine sound recording ownership. We strongly request that the Copyright Office adopt the more reasonable reporting requirements proposed by the broadcasters.

Date: 4-5-02


Harv Hendrickson
Northwestern College Radio Network

G

**Before the
LIBRARY OF CONGRESS
Washington, D.C.**

In The Matter Of:

Docket No. RM 2002-1

Notice and Recordkeeping for
Use of Sound Recordings
Under Statutory License

Statement of Mary Guthrie, Radio Nueva Vida Network

1. My name is Mary Guthrie, and I am the general manager of the Radio Nueva Vida Network. Over the last 15 years, I have been intimately involved in every aspect of radio broadcasting: administration, programming, production, facility maintenance, fundraising and community outreach. I am a member of the original NRBNMLC, the National Religious Broadcasters Noncommercial Music License Committee. The information contained in this statement is based either on my personal knowledge and discussions with other radio station employees and/or the stream provider that our station uses.

2. The Radio Nueva Vida Network is a group of five full service and 14 translator FCC-licensed radio stations in California. Of the five, three are non-commercial and two are commercial. Our main station, KMRO-FM, is a non-commercial educational station operating in the reserved band that provides Spanish-language worship and religious programming 24 hours a day, seven days a week. Our non-commercial stations are funded by donations from our listeners and friends. We have never sought funding from the Corporation for Public Broadcasting. The other terrestrial radio stations in our group re-transmit KMRO's Radio Nueva Vida programming to their local audience. In addition, KMRO-FM's signal is streamed over the Internet via our on-line ministry, www.nuevavida.com. In total, approximately 500,000 people listen to our traditional broadcast ministry, while 14,200 people currently visit our ministry through our website per month. We do not have the capacity to know the exact number of people who listened to our simulcast, but it is undoubtedly much less than the number of people who simply visit our website.

3. The administrative burden posed by the proposed recordkeeping requirements, unless dramatically scaled back, would, without a doubt, force us to remove our ministry from the Internet. Our day-to-day operations simply cannot support the additional time, effort, and expense that it would take to supply much of the requested information at all, much less in the detail required by the proposed recordkeeping requirements.

4. Radio Nueva Vida broadcasts Spanish-language Christian music about half of the time and Spanish-language religious talk programming the other half of the time. There are few major record labels that produce the kind of music we broadcast. Of the music we play, we receive only about 35 to 40 percent from major labels. The rest of our music comes from small independent labels or local performers or church groups who have self-published their songs. We currently have a song library of about 1,500 songs from which we draw our playlists.

Music Sources

5. The music we use for our broadcast does not usually come to us with the information we would need to report under the proposed recordkeeping requirements. For the music that comes from major labels, we generally get the title, artist, record label name, and length of the track. The promo CDs also generally have the composer information, the names of the sound recording copyright owner and label, and the release year. If there is a catalog number on these promotional disks, it appears to be unique to the promo and not related to the album on which the song is being released to the general public. Some of the discs we receive from record companies do have UPCs on them, but this is rare, since the promotional CDs are not intended for retail sale. In fact, the album title is not always available because the promotional singles sometimes do not have album titles on them. Despite my many years in the broadcast industry, I had never even heard of an "International Standard Recording Code" before these recordkeeping requirements were released, and it is my understanding that such information is not currently available even on commercially purchased compact discs, much less on the promotional discs that we receive.

6. The information we receive from the smaller labels or self-publishers is even less complete. Artists often hand deliver a cassette tape or CD with the title of the song and the name of the performer handwritten on the label, without any other identifying information except perhaps a telephone number.

Pre-Recorded and Syndicated Programming

7. As I mentioned before, about half of our programming consists of religious talk. Some of this programming consists of pre-recorded or live preaching and teaching programs, which are provided to us by ministries or other outside sources. Often, however, these programs contain a small amount of music. Some music is from pre-recorded materials provided for broadcast, and some is live performance via ISDN from remote locations. We do not control the content of those programs, and we do not have any way of knowing any detailed information about the music played in those programs. Some of the programmers provide us with very basic information on song usage, so that we can provide reports to ASCAP. This information is generally confined to title and artist only; some provide only the title, and one of them provides title, composer and artist.

8. A few ministries may provide a separate sheet with daily program titles and the airing dates, but I have never seen any music information on these sheets. No one has voluntarily offered to provide information about the songs contained in their pre-recorded material, not even if they interview an artist. We must request it. While we have contracts with some ministries, others may be aired without written contracts. Our agreements with these ministries require them to supply any music licensing documentation we need to meet our reporting obligations. However, the burden of the timely reporting of such detailed information will cause some of those ministries to either cut or eliminate music usage from their programs, or discontinue placing their programs with us altogether if they can't comply. The potential loss of that program content and revenue would likely cause us to just stop streaming rather than cancel those programs.

Intended Playlists

9. Radio Nueva Vida broadcasts its music directly from the compact discs it receives from these various sources. Our daily playlist is generated by our Music Director, Elizabeth Meza, using a computer program called MusicMaster Lite. Each time we receive a new song, Elizabeth and at least two other people at the station evaluate the song and decide whether it should be added to our rotation. If they decide the song should be played, the song is entered into the MusicMaster Lite database.

10. Currently, that database tracks the information about a song that is pertinent to our programming decisions. When we enter a new song into the database, we record the title of the song, the artist name, our internally-assigned disk number (so that we can find the CD in our library), the length of the musical intro, the duration of the song, and certain other pertinent

programmatic information about the song, and, when the information is available, which performing rights organization licenses the song for the publisher. The program records the date that the song is added to our system, but we do not track the date that the album was released. Since Elizabeth became our music director a few years ago, we also started tracking the name of the album and an e-mail address or phone number of the artist, when available. There are fields that could be used to keep track of information about the composer, arranger, publisher, and record company, but we currently do not keep that information because it is not necessary for programming. Not counting the evaluation time, it takes at least 5-7 minutes to enter the information we record into our database for each new song.

11. Each day, Elizabeth uses the MusicMaster Lite software to generate a draft playlist for the following day. She goes through the playlist and often makes small notations or changes to the draft. Within each programming hour, she generally includes extra songs so that there is enough music scheduled even if the disc jockey doesn't speak for as long as we expect her to. DJs also sometimes make alterations to the play list. Also, the song length as listed in the database may well be longer than the length of time the song was actually played, because we sometimes fade out a song early or cut out some of the intro. We could not provide to-the-second start and stop times for the song we broadcast.

12. We use our playlists to generate the music licensing reports that we currently send to ASCAP. These playlists are only kept for three months. MusicMaster Lite software does not retain historical playlists going back more than 98 days and therefore could not provide any information at all concerning the songs we played before that time. As I stated before, we operate on both noncommercial and commercial frequencies. Noncommercial stations with blanket non-commercial aural music licenses are not required to provide any playlist reports to the music license providers. The reports we do make available are only for the music licenses we hold for our commercial stations. Our noncommercial stations are not required to provide any music licensing reports at all.

13. Under our current practices, we do not track even close to all of the information that we would be required to report under the proposed recordkeeping requirements. In large part, this is because the labels themselves do not supply this information in the first instance. Even for information that we often receive, such as the album title, the name of the record company, the release year of the album, or the catalog number of the album, we would have to expend significant time backfilling our database. When we got MusicMaster Lite, we could not afford to purchase training on the system, and our knowledge of the software is self-taught. We believe the current software allows us to create additional fields for inclusion of this information.

If our current software supports the addition of these new fields, we expect it would take several months to complete the database. There is a chance that we would have to upgrade our software to be able to add all the datafields we would need to report. We've investigated how much it would cost to upgrade to a more recent and complete version of MusicMaster, and we probably cannot afford the approximately \$2,640 annual software license fee we would be charged for the updated system, much less the training costs of coming up to speed on a new system.

14. Even if we endeavored to backfill our database, much of the required information is simply unavailable to us because, as I previously mentioned, the record labels whose music we play often do not provide it to us – these fields include such items as catalog number, UPC code, and ISRC. We cannot backfill our database, nor can we begin recording this information on a going forward basis, if it is not clearly printed on the disk. I cannot even begin to quantify the cost to us if we had to research this information. In all likelihood, we would sooner pull the plug on our streaming altogether rather than undertake this monumental task.

Listener Logs

15. Our streaming operation at www.nuevavida.com was set up by a local mother who volunteers at an elementary school's computer lab. We do not have anyone on staff who is an expert in the technical issues surrounding our stream, and if anything goes wrong with the stream, we have to hire expensive outside help to repair it. It is unclear whether our stream provider will be able to give us reports to the level of detail requested by this rulemaking. We currently get general information regarding the number of website visitors from our visitor counter provider. My stream provider stated that it is impossible to directly and accurately report data about each individual user session, such as start and stop time to the second or the user's time zone or country. Currently, we may look at any one point in time to see the users logged on, but we do not have a way to gather historical data on user sessions. Our stream provider informed me they must install a dedicated computer and specialized software in order for our stream to provide information about the song titles, composers and performers. That does not take into account the hardware and software required on our side.

Ephemeral Phonorecord Log

16. We do not believe we could provide the information required by the proposed ephemeral phonorecord log. The amount of data that would need to be reported is enormous, and we only play featured music about 50 percent of the time. Assuming that we made even one ephemeral recording per song streamed, these requirements would have us report 13 data points, times about 12 songs an hour, times 12 hour hours in a day – that adds up to over 1,800

additional items to report each day, and well over a half a million pieces of data each year. In any event, it does not seem reasonable to require such burdensome reporting requirements for ephemeral recordings when the information is not necessary to calculate the royalty due. The extreme burden in trying to gather and maintain such information far outweighs any benefit received by collecting it.

Phase in

17. Also, we believe that radio stations should be given some time to adjust to the new reporting requirements, say, one year, before the requirements are in full force. Although we would certainly do our best to report the information, we should not be penalized as we attempt to conform to the new requirements. Even after the one-year transition period, we should not lose the benefit of the statutory license for good faith reporting errors or inadequacies.

Conclusion

The cost and effort that would be involved in keeping the detailed records proposed would disproportionately burden our budget. Unless we are able simply to copy and submit the logs that we already submit to ASCAP, we could not comply with the proposed reporting requirements at our current staff levels. We believe that submitting playlists on a small sample of our programming, combined with basic information about our listenership, should be sufficient for determining the royalty owed. Otherwise, we will likely be forced to cease streaming altogether and deprive our listeners of the benefit of listening over the Internet to our non-profit, religious programming.

Date:

4/3/02

Mary Guthrie
Mary Guthrie
Radio Nueva Vida Network

H

**Before the
LIBRARY OF CONGRESS
Washington, D.C.**

In The Matter Of:

Docket No. RM 2002-1

Notice and Recordkeeping for
Use of Sound Recordings
Under Statutory License

Statement of Rick Killingsworth, Salem Communications Corp./OnePlace

1. My name is Rick Killingsworth, and I am the Vice-President New Media for Salem Communications Corp. and General Manager of Salem's Internet division, Oneplace.com. I have been with Salem Communications since November 1993 and have been General Manager of Oneplace.com since 1999. All in all, I have over 15 years of experience in broadcast radio and 4 years of experience in radio streaming. I base this statement on my personal knowledge and on discussions with other Salem and Oneplace personnel and stream providers.

Salem Communications

2. Salem Communications Corporation is the nation's leading provider of Christian and family-friendly radio content. As of September 30, 2001, Salem Communications owned, operated or had agreements to acquire 81 radio stations located in 32 markets. Salem's core business is the ownership and operation of radio stations in large metropolitan markets, and Salem owns or operates 23 stations in 9 of the top 10 markets and 57 stations in the top 25 markets. In addition to Salem's core broadcasting business, Salem operates Salem Radio Network, which syndicates talk programming, news and music to more than 1,600 affiliated radio stations throughout the United States. Salem also owns CCM Communications, a Christian publisher of four consumer and trade publications serving the Christian music industry with a combined readership of more than 330,000. Salem is a member of the National Religious Broadcasters ("NRB") and is represented by the National Religious Broadcasters Music License Committee ("NRBMLC"), a committee formed under the auspices of the NRB to represent religious and other mixed-talk and limited music formatted radio stations in music licensing matters.

3. Salem's primary format is talk-oriented programming focusing on religious and family themes, and Salem's stations of this format generally feature nationally syndicated and local programs produced by religious, educational and non-profit organizations. Salem's religious talk stations derive substantial revenues from the sale of uninterrupted blocks of broadcast time (usually in 26 or 55 minute increments) to groups or entities desiring an opportunity to broadcast to a community interested in the content of their message. There are over 120 national ministries that purchase broadcast time from Salem in this manner. This block programming business represents 80% of the broadcast day on stations with this format and over 40% of Salem's total revenues.

4. Salem is also developing an on-line presence. About 60 of Salem's stations have websites, and approximately 20 Salem stations stream their signal over the Internet. During 1999, Salem Communications expanded its online initiatives by acquiring OnePlace® in January 1999 and becoming the leading distributor of online streaming for religious ministries and radio stations less than one year thereafter. Salem aims to have OnePlace serve as both a complement to and extension of the company's core radio broadcasting business. OnePlace offers audio streaming through a third-party vendor to some, but not all, of Salem's radio stations. Additional information about Salem appears at <www.salem.cc>.

5. If the Copyright Office finalizes its proposed notice and recordkeeping provisions as is, particularly if no allowances are made for the many stations like ours that are talk-oriented or that broadcast a great deal of third-party programming, Salem and OnePlace likely will decide to discontinue streaming.

Salem's Special Problems with Third-Party Programming and Non-Featured Music

6. Salem faces particularly acute problems in attempting to track and report non-feature music uses and the music played in programming provided by third parties. Unlike many other broadcasters, Salem has built its radio business around selling blocks of time to religious, educational and non-profit organizations desiring to reach Salem's target audience with their message. This means that (a) the music on such programming is often "non-feature" music – e.g., played as background to the main talk-based message or used to enter and exit programs – and (b) our stations have no control over the content of the programming and must depend on the third-party program providers to tell them what music is played. It is, quite simply, impossible for us to track and report non-feature music uses at all given their fleeting nature, much less to report the numerous bits of information proposed by the Copyright Office with respect to each and every

such use. The Copyright Office's final regulations should make clear that its reporting requirements apply only to featured uses of music; otherwise, compliance with the reporting requirements, despite our best efforts, would be unattainable.

7. The Copyright Office also should make special allowances for how radio stations may report music used in programming provided by third parties. Short of having employees listen to each and every syndicated program and log the music played therein (assuming that they can even recognize the music), our stations are largely at the mercy of the program suppliers to let them know what music is in those programs. Typically, our stations receive no information at all concerning the music played in syndicated programs, and they have no rights under their existing contracts to require program providers to supply such information. Even if the program providers were willing to supply music use information, it would be a fantasy to think that they would provide each and every data element proposed by the Copyright Office, such as UPC, ISRC, release year, catalog number, copyright owner, and album title. If we were required to provide this information for third-party programs as a condition of the statutory license, we would likely be forced to cease streaming our religious talk stations altogether, as approximately 80% of their broadcast day consists of these programs. The Office should recognize these programmatic realities and allow our stations to report music use for syndicated programs in the same form as those reports, if any, are provided to us, based upon our good faith efforts to obtain those reports from the program suppliers.

Where Salem Gets Its Music and The Information It Receives

8. One of our many concerns with the Copyright Office's proposal is that it requires radio stations to report information concerning the songs that they play that our stations do not have. Most of those songs are provided to our stations by the record labels themselves in the form of promotional copies in an attempt to gain free airplay for their songs. These promotional copies – which include both CD singles and compilations – do not contain many of the data elements that the Copyright Office proposes that our stations report – including the UPC and ISRC

9. Although most of the promo CDs we receive include album title, many of them do not. I have attached one of these to my statement as Exhibit 1, which lists song title ("Let's Dance"), artist (Hezekiah Walker, featuring B.B. Jay & Dave Hollister), label (Verity), and duration (3 minutes 24 seconds without rap; 3 minutes 54 seconds with rap). The CD does not include album title, ISRC, UPC, catalog number, or P-Line, but it does contain a C-Line listing copyright year and copyright owner information (2000 Verity Records).

10. In fact, the labels sometimes even send us CD-Recordable disc promos ("CD-Rs") that were burned on a personal computer. CD-Rs can contain one or several songs and lack many of the data elements proposed by the Copyright Office. I have attached an example of a CD-R to my statement as Exhibit 2, which contains several songs ("I am Redeemed," "Praise Him While You Can," "Think Of His Goodness," and "God's Got It") by the same artist (Jessy Dixon). Apart from song title and artist, however, the CD only contains a C-Line listing copyright year and copyright owner information (1999 Ambassador Records, Inc.). The CD does not include album title, ISRC, UPC, catalog number, or a P-Line.

The Limited Information Stored in Our Music Scheduling and Digital Automation Systems

11. Most of our stations schedule their programming using MusicMaster. This software is described in detail in paragraph 11 of the statement of Jim Tinker, the Vice President of Operations for Salem Los Angeles. As Mr. Tinker explains, MusicMaster does not even contain fields for many of the intended playlist data elements listed in the Copyright Office's notice such as release year, copyright owner, UPC, ISRC, catalog number. Other fields, such as album and label, are often not filled in by our stations. We have no business reason to track this information, and the labels frequently do not even send us album information with the songs that they send us in their attempt to get their music added to our playlists.

12. Our stations also use three different digital automation systems, ENCO, Prophet, and Scott Studios, which create and air broadcast programming based on information they receive from MusicMaster's playlist. Of the sound recording identifying fields that the Copyright Office proposes that we report, only title is included in the ENCO database. Stations often use the field labeled "agency," however, to store artist information. ENCO contains no fields for album, label, release year, copyright owner, UPC, ISRC, or catalog number. To illustrate this point, I am attaching as Exhibit 3 to this statement a data entry screen shot for ENCO, which depicts the available fields. The decisions as to how to use each field and which of them to populate are left to the local stations. In terms of sheer inputting of data alone, putting aside the undoubtedly substantial costs entailed in modifying the digital automation software itself to accommodate additional fields, I estimate that it would take one full-time employee *per stream*, doing nothing but data entry, if any more than two additional fields beyond what we currently populate in ENCO are required.

Proposed Listener Log Requirements

13. The Copyright Office's proposed listener log requirements would also be difficult, and in some cases impossible, for us to follow. Real Broadcast Networks ("RBN") is the stream provider for all but 12 of our stations, and because any listener information that we report would be tracked and provided by that company, we would be unable personally to vouch for its accuracy.

14. The reports that we currently receive from RBN include the number of system attempts, the average number of concurrent users, the maximum number of concurrent users, and the total megabytes transferred. We have attempted to find out from RBN whether it would be capable of providing the proposed information, but so far RBN has been unwilling to provide us with any definitive answers or with any cost estimates for providing this additional information. It is my understanding, though, that it is impossible to know the time zone where the listener is located because listener location is measured by the listener's IP address, which is associated with the Internet service provider rather than the location of the listener's computer. Although requesting zip code information from our listeners would be another possibility for obtaining location information (assuming that they would be truthful in providing it), we have made a policy decision to keep our streams free and our listeners anonymous in order to enhance the appeal of our stations.

Transition Period; Inadvertent Errors

15. If the Copyright Office adopts regulations that impose requirements beyond what we do now, we will need time to implement those changes. In particular, we will be at the mercy of third parties if those changes require us to alter our software or require us to obtain additional information from service providers. It could easily take a year-and-a-half to change when one accounts for the delays that software vendors often encounter and the complexity of switching integrated systems. Further, we will not be able to start until the final regulations are announced. We certainly had no reason to think that the regulations would include the many detailed requirements that they do. During the transition period, we will attempt in good faith to submit the required records.

16. Despite our best efforts, absolute perfection is impossible to achieve. Although we are willing to work with the copyright owners' agent(s) to resolve any errors that might appear on our reports, we ask that the Copyright Office include in its final regulations a provision stating that good faith reporting errors or inadequacies will not deprive us of our statutory licensee status.

Conclusion

Perhaps more than any other commenting broadcaster, Salem is particularly concerned with the reporting requirements associated with third-party programming. Salem's religious talk stations devote the overwhelming majority of their broadcast day to such programs. Providing religious and other organizations with the opportunity to communicate their message to our listeners goes to the heart of who Salem is. Although this programming consists primarily of talk, it also occasionally contains both feature and non-feature uses of music, such as music played as background to the main talk-based message or used to enter and exit programs. Our third-party providers supply us with no information at all about this music, much less the numerous data elements for each song that the Copyright Office proposes that we report. There has been no business reason for them to provide us with this information, and if the Copyright Office were to require reporting of that information, they would likely insist that we remove their programming from our stream. This, in turn, would force us to cease streaming our religious talk stations altogether. Therefore, we request that the Copyright Office take into consideration the special circumstances of stations who broadcast such programming, limit the reporting requirements for such programming to information that stations receive from these third parties, and make clear that no reporting requirements at all apply to non-featured uses of music. We are certainly willing to turn over whatever music use records we might receive concerning this programming, but it goes without saying that we cannot provide information that we simply do not have.

Date:

4-4-2001

Rick Killingsworth

Rick Killingsworth

1

HEZEKIAH WALKER

B.B. JAY & BONE HOLLISTER



Woolsey CDR
CD Copying & Printing
615-641-7737

Verity

©2000 Verity Records
Pre-Release CD

"Let's Dance"

1. Remix (Radio Edit - without rap) 3:24 **MBD**
2. Radio Edit (with rap) 3:54

B.B. JAY & BONE HOLLISTER



EZEKIEL WALKER

B.B. J... HOLSTER



Remix

3.24 MED

2

Jessy Dixon

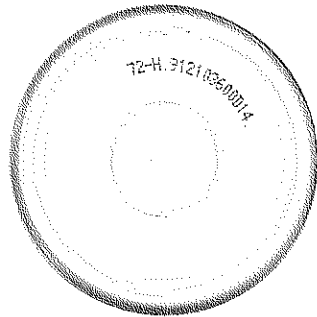
Promotional
Not for sale

1. I Am Redeemed
2. Praise Him While
You Can
3. Think Of His
Goodness
4. God's Got It

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Jessy Dixon

Promotional
Not for sale



1. I Am Redeemed
2. Praise Him While You Can
3. Think Of His Goodness
4. God's Got It

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3

ADD CUT

Cut: Length:

Title:

Plays:

Outcue:

Agency:

Recorded: Kill Date:

Rate:

Start: End:

Secondary: Tertiary:

Fade In: Fade Out:

Seg Start: Segue End:

Start Talk: End Talk:

Start Date: Active Time:

Location: Switcher:

User Def:

Billboard:

EDIT SCRIPT

Script:

Kill Time:

Last Play Time:

Last Play Date:

Level:

PlayTime:

Pitch Change:

File Ext:

Hook Start:

Hook End:

SAVE and EXIT

CANCEL

1

**Before the
LIBRARY OF CONGRESS
Washington, D.C.**

In The Matter Of:

Docket No. RM 2002-1

Notice and Recordkeeping for
Use of Sound Recordings
Under Statutory License

Statement of Jim Tinker, Salem Los Angeles

1. My name is Jim Tinker, and I am the Vice President of Operations for Salem Los Angeles, the Los Angeles operating division of Salem Communications, Inc. Salem Communications Corp. is the nation's leading provider of Christian and family-friendly radio content, with more than 80 radio stations nationwide. For more information about Salem and its Internet streaming activities, please see the statement of Rick Killingsworth, which is also being submitted in support of the broadcasters' petition.

2. I have worked in various capacities with KKLA and the other Salem Los Angeles radio stations for ten years. Prior to my tenure with Salem, I worked in production at several different Southern California radio stations. In my current position, I oversee the operations of all five of Salem's commercial, FCC-licensed broadcast radio stations in the Los Angeles area. These stations include Christian talk station KKLA-FM, conservative talk stations KRLA-AM and KRLH-AM, foreign language station KXXM, and contemporary Christian music station KFSH-FM ("The Fish"). KKLA is regarded nationwide as a leader in the Christian talk format, and The Fish is the nation's most listened-to Christian music station. Salem's other successful "Fish" stations in such markets as Atlanta, San Francisco and Chicago are based upon the model pioneered by KFSH.

3. KKLA was the first radio station in L.A., and among the first radio stations in the country, to simulcast its broadcast – its signal first hit the Internet in the fall of 1995. Today, all but one of our LA radio stations simulcast their broadcast over the Internet, and I oversee those streaming activities. In addition, I helped launch and continue to work with Christian Pirate Radio (CPR), an Internet-only service that operates seven separate channels of streamed content

under the umbrella of www.ChristianPirateRadio.com and www.myCPR.com. The CPR family of entertainment channels includes CPRXtreme, CPRCelebration, CPR Kids, CPRClassics, CPRGospel, and CPRLite. We began CPR in September 1997, and the service has become quite popular as a source for programming not regularly available in most radio markets. My main responsibility with all of the stations is to oversee the computer systems that facilitate their broadcasts.

4. I have read the proposed recordkeeping requirements, and there is no way that our radio stations or Internet-only channels could comply with them. We do not have all of the information that we would be required to report, and we do not even have the technological systems in place to track much of the requested information. The proposed regulations are entirely disconnected from the way record labels actually send music to radio stations, and the way stations categorize, organize and broadcast the music they play.

Where Salem LA Gets Its Music and What Information It Receives

5. Much of the music we broadcast comes to us in the form of record company promotions or other promotional distributions. I estimate that about 75% of the promotional songs we receive come to us as CD singles. These singles, which are distributed to us free of charge by the record labels, generally are not packaged with all of the information the proposed recordkeeping requirements would have us collect. For example, the promo singles are not labeled with the UPC, ISRC, or catalog number of the retail album; they are explicitly labeled not for retail sale. In fact, they do not always list the title of the retail album, which is sometimes yet to be determined when the single is released to radio.

6. The rest of the promotional music we receive consists of either free compilations provided by the labels, or radio-specific compilations purchased through a service such as TM Century, a Dallas-based company that creates, produces, and distributes music for broadcast media use. The free compilations are generally intended to highlight a handful of songs by a single artist. They list the name of the artist, the name of the songs, and often the name of the distributing label. Like the singles, they are not labeled with the UPC, ISRC, or catalog number of the retail album. Many of these compilations bear sound recording copyright notices. Compilation services like TM Century provide even less information about each song. Those discs combine several songs from a variety of artists. Their packaging lists title and artist, but does not list album name or record label. The commercial compilations also do not list the sound recording copyright owner or release year.

Music Scheduling

7. Even within our Los Angeles group of stations, we use two different music-scheduling programs and two different digital automation systems (DAS) to effectuate our broadcasts. For each station, all of the data we track about the songs we play are kept in one or both of these programs.

8. When we first receive a new promotional CD, the music director listens to the track and decides whether it should be added to our rotation. If the new song makes the cut, the music director adds pertinent information about the song into the music scheduling system.

9. Some of our stations use a program called Selector for this purpose. The version of Selector we use has DOS-based interface. I have attached as Exhibit 1 printouts of four different song data entry screens from our Selector system. As is clear from the first page of that exhibit, the primary song information sought by the Selector database is Song ID (our internal tracking number), Media, Category, Song Title, and two different fields for Artist. The "Additional Song Information" section of the screen gives further room to record three other artists, Composers, Publishers, Arrangers, License (generally meaning which PRO administers the musical work licenses), Label, and other fields. On the second data entry screen, there is space to record the Album Title, as well as many different programming properties. On the third page, there are fields to allow entry of dates relating to the use of the song on the station's playlist. The fourth page of song information includes a section entitled "Chart Information," in which stations may record the progress of a particular song on the charts. There is also a space to record the total run time. While Selector has the capability to track many different types of information, there are no fields dedicated to collecting several of the types of data that would be required under the proposed rules, such as sound recording copyright owner, release year as identified in the copyright notice, UPC, ISRC, and album catalog number.

10. On this printout, very few of the available data fields are actually populated. This is typical of the way we enter song data into our scheduling systems – we generally only track song title (in this case, "Jesus"), artist (in this case, Whiteheart), composer, mood and energy information, and runtime, because these are the fields that most affect our scheduling choices. In this example, we happened to also record the name of the retail album ("Redemption"). The album title is generally not important for scheduling purposes, and we only record it only about 10-15% of the time. In this example, we did not track the label name, and we only do so about 5% of the time.

11. Our other stations use MusicMaster for program scheduling. Our version of MusicMaster also runs on a DOS-based interface. I have attached as Exhibit 2 printouts of several different song data entry screens from our MusicMaster system. The primary information requested on the first data entry screen is "Cart," "Disc," Artist, and Title. That screen also has fields for entering the run time of the song, the gender of the performer, and other restrictions. There is a field for "Add Date," but not for release date. Except for "RunTime," none of these fields aid us in providing the reports requested by the proposed rules. The second screen allows for input of "Additional Information," including Album, Composer, Publisher, Arranger, and Record Co. The next screen allows the user to record Chart Information, and the fourth screen allows the music director to assign up to eight theme codes to the cut. The last two screens allow data entry of "Trivia Lines" and "Auto-Move Dates." We rarely fill in any of the data fields on these latter pages, and thus do not track album and record label information for most of the songs profiled in the database. There are not specific fields in which to enter information such as sound recording copyright owner, release year as identified in the copyright notice, UPC, ISRC, and album catalog number. There are additional optional fields, such as RecordID, which according to MusicMaster could be used for the catalog number assigned by the record company. However, it is unclear what this field actually corresponds to, and it is only available for reference purposes and may not be available for inclusion in a printed report or exported dataset.

12. The music director uses the scheduling software to create a proposed schedule for each day's airplay. Before the advent of computers, radio stations used an index card system to rotate songs. Songs would be grouped in categories, and once they were played, they would be put in the back of the stack for that category. The music director would determine a scheduling formula, which would generally indicate that each hour, a certain number of songs from each category should be played, or other rules such as "never play two female artists back-to-back."

13. Selector and MusicMaster replaced this index card system with automated protocols that perform a similar task. The resulting hour-long program blocks, known as "clocks," over-schedule the music in each hour, to be used as a back up if some other programming element is dropped at the last minute or if the hour ran short of anticipated music titles. This is especially important for stations that run unattended - where a live operator is not supervising the DAS to prevent dead air from occurring. The DJ is handed a physical printout of the schedule and uses that printout to announce songs and otherwise control the broadcast. The playlist that we print for our DJs and feed into our digital automation systems provide only title, artist, cut number and a programming fact or comment. We can custom create reports within the

parameters provided with each program; however, there is only so much space on a letter-sized page, and increasing the displayed data would require additional pages, printing time and expense.

Digital Automation Systems

14. Once the song data is in our scheduling software, it must also be entered into our Digital Automation System (DAS). We have two different systems in use in L.A. – Christian Pirate Radio uses the newer Prophet NexGen software, while the other stations use Prophet's Audio Wizard CFS. Both of these systems are used by our stations to create their broadcasts.

15. The most important information associated with each song's data are the spot number, song title, artist, and song length. These are the fields that the program uses to retrieve and play each song. The song length is filled in automatically when the song data is included in the system; this length typically does not always match the song length reported by the labels on the promo CDs, due to fade out thresholds and segue preferences. We may also edit an especially long song to eliminate an extended intro or lengthy fade-out. While there are data entry fields for such items as composer and label name, we do not generally populate these fields.

16. The DAS systems allow us to generate custom reports of the songs that have actually been played, but those reports have limitations. In the first place, they cannot include any fields that are not available in the database. Moreover, the system cannot report last minute changes to playlists that are not executed through the system. Our stations often use the DAS in live assist mode, which means that the DJ has the power to divert from the planned music/programming schedule, either because of timing issues, or to accommodate a live studio guest or special promotional activity, for example.

Incomplete Data

17. Even entering the key fields we regularly track, it takes our music directors approximately five to eight minutes to make the appropriate judgments about a song and enter the relevant information into both the scheduling software and the DAS software. Considering the number of songs we keep information on, it would take months of effort to backfill additional data about those songs. It would also more than double our current data entry time.

18. Our scheduling and DAS programs do not have appropriate data fields to track items such as catalog number, ISRC, UPC code, release year, or sound recording copyright

owner. If we were able to install new systems – at great expense – so that they could track the missing data fields, we could not populate those fields in any event. We would be entirely dependent on the individual software vendors to develop the new systems we would need.

19. If all of these data points are truly necessary to administer the royalty, it makes much more sense for SoundExchange to match the title and artist information provided by us with its own master database. The labels and SoundExchange are in a far better position to deduce the remaining types of information from their own records than we are.

Special Problems with Syndicated Programming and Incidental Usage

20. Our stations also utilize a wide variety of syndicated programming provided by third parties that sometimes include both featured and incidental performances of music. KKLA's programming, in particular, primarily consists of nationally syndicated programming, such as Focus on the Family with James Dobson, Insight for Living with Chuck Swindoll, Thru the Bible with J. Vernon McGee, Money Matters with Larry Burkett, and Duffy & Company with Warren Duffy. KRLA/KRLH-AM feature popular syndicated talk show hosts, including Mike Gallagher, Dennis Prager, Michael Medved and Hugh Hewitt.

21. When these programs are played through the DAS, the computer has no way of knowing whether pre-recorded music was used in the course of the live or pre-recorded show. The DAS system is programmed with a default clock for each program and is not customized for each day. Those shows are reflected in the DAS playlogs as syndicated programming. Not only would our software and hardware systems need to be updated and upgraded to meet the requirements specified – but every third-party broadcaster who utilized music would also have to update and upgrade their reporting systems.

22. All of our stations make incidental use of music for items such as song promos, weather, traffic and news lead-ins, bumpers, and other non-featured uses. We could not possibly track such music usage at all, much less the 18 different data points about each of these short clips, and it would not make sense to require us to do so.

Listener Log Requirements

23. Our LA stations work with three different outside providers to enable the on-air broadcast signal and Internet-only Christian Pirate Radio to be streamed over the Internet. Hiwire encodes our streams, provides the Internet player used on our websites, and provides advertisement insertion technology. Globix provides us with bandwidth and server space. We

also use Blue Falcon's decentralized distributed networks solution to improve stream quality while decreasing bandwidth costs.

24. We would have to rely upon Hiwire, Globix and Blue Falcon to provide us with the information demanded by the listener log requirements. I have discussed the requirements with these vendors, and they could not currently provide us with all of the requested information.

25. The use of Blue Falcon's services to control our costs makes it more difficult to track precisely the kind of listener data requested. Basically, Blue Falcon's product allows users to receive their signal from fellow users, rather than having to reach back all the way to the central server. This means that the logs generated by the Hiwire tuner – the basic building block of our stream delivery technology – are incomplete. The Hiwire logs would not reflect any users that received their stream from fellow listeners – ten listeners connected through one person's computer would look like only a single person to Hiwire. Blue Falcon's technology allows it to take a "snapshot" of the users connected through its systems every ten seconds. Thus, reports provided by Blue Falcon would not accurately capture a log-in or log-out event, for example, during those interim ten seconds. A solution would require complex integration between vendors and their subsystems.

26. When Hiwire first began offering streaming services, it endeavored to identify users' locations by collecting their zip codes upon initial log-in. Hiwire soon found that users were purposely thwarting this plan by entering false zip codes. Hiwire's new system for identifying user location, which relies on the use of IP addresses, is more accurate than zip code registration, but it is still not foolproof. Hiwire states that it is just not technologically feasible at this time to capture all of the listener data required by the proposed rule. If Hiwire – which has invested a great deal of time and resources to determine the optimal ways to identify listeners – cannot accomplish this task, it is difficult to imagine that any stream provider will come close to satisfying the proposed listener log requirements.

27. We are also concerned about being asked to provide unique user identifiers for all of our listeners. It is one thing for us to collect such data in a way that will be maintained internally. It is quite another for us to be forced to share data about individuals with third parties. Sharing our users' individual identities opens up a Pandora's box of privacy concerns. I am concerned that, were our listeners to discover that their location and listening habits were being shared with representatives of the record companies, they would stop listening to us to prevent this information from being captured and distributed.

28. The sheer enormity of the data that would be generated by reporting each and every listener session is also beyond reason. We have 17 different streaming configurations – representing over 2,327 gigabytes of transferred data for thousands of listeners for the month of February 2002. Extrapolating out data for each listener – for each stream – for each moment of each day – would require a substantial amount of man-hours and resources.

Samples

29. The overwhelming amount of data requested by RIAA to administer the royalty is staggering. The playlist requirement alone would have us reporting 18 data fields for each sound recording performed, times about 11-12 sound recordings per hour, times 18 to 24 hours of daily programming, 365 days a year. This translates into reporting between 1.3 and 1.9 million different data elements for a single station!

30. It makes much more sense for radio stations to provide reasonable samples of their playlists, as they do in other licensing contexts. Outside companies such as Arbitron, for listenership information, and BDS, for song plays information, spend 100% of their time tracking this kind of information about radio stations – it's a full time job. Our radio stations should be allowed to continue to focus on being radio stations, rather than accountants.

Ephemeral Logs

31. The most burdensome proposed rule of them all is the ephemeral phonorecord log requirement. As I understand it, the CARP proposed a rate for ephemeral copies equal to 9% of each streaming station's performance fee payable rather than a rate based on the number of ephemeral copies made. The burden of tracking the creation and destruction of each and every ephemeral copy is extreme, especially considering that the collected data has no impact on the royalty paid. It would take significant program development work to create a system that could report these data, and the cost would be quite disproportionate to the royalty paid.

Record Retention

32. We currently keep our playlist logs for about three months. Retaining the records for any longer period of time would require a much larger filing space than we have available – each day's programming log consists of more than one page per hour programmed. If we wanted to maintain these records electronically, we would have to create and maintain a robust and (likely expensive) data archiving system. We would likely have to employ a full time

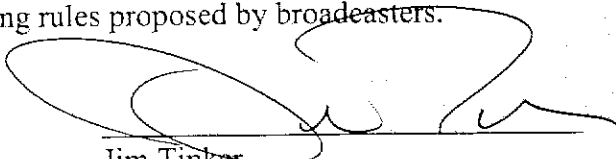
employee whose sole job would be to prepare daily playlist reports. We cannot justify taking on that kind of cost just for reporting purposes.

33. The data storage problem is also onerous for the listener log and ephemeral recording log reporting requirements. A single stream listener may log in and out of our stream, for technical reasons, dozens of times over the course of one sitting. And if we had to collect 13 separate data points on even one ephemeral recording per song broadcast, assuming we play 288 songs per day, this would translate into more than 3,000 data points *per day*, or more than 1.3 million data points per year.

Conclusion

The Copyright Office's proposal would require radio stations to absolutely bury the collectives in data, the vast majority of which they already have in their in-house databases. This enormous abuse of radio station resources is simply unjustified by the terms of the statutory license. The fundamental changes to our core business model, and the changes we would have to impose on the business models of our syndicators and other third party vendors, would be costly in the extreme, and the meager benefit we get from our streaming activities would be far outweighed by the administrative burden of reporting compliance. We ask the Copyright Office to adopt the scaled back record keeping rules proposed by broadcasters.

Date: 04-04-02



Jim Tinker
Salem Los Angeles

1

10F4

S E L E C T O R

Song Information 799

Song ID	Media	Cat	Lev	Pack	Song Title	Artist 2
00098	H	1	0	JESUS	182	Artist 2
Artist 1						
WHITEHEART						

Additional Song Information

Artist 3	Artist 4	
Additional Artists		
Composers		
GERSMEHL, SMILEY		
Publishers		
Arrangers	License	Label
	CURB	
Record #	Promoter	Country Content
		00098
Radio Text		Address
Complete Work Name		Complete Work?

F1-Help F2-Save

30F4

Song Information

SELECTOR _____
Song ID Media Cat Lev Pack Song Title
* 1 0
Artist 1 Artist 2

Number	Start Date	NOTES FOR Kill Date/Hour	Kill Count	Anniversary	Print Status
1.	/ /	/ /		/ /	
2.	/ /	/ /		/ /	
3.	/ /	/ /		/ /	
4.	/ /	/ /		/ /	
5.	/ /	/ /		/ /	

F1-Help F2-Save Spacebar-Toggle Status Options

40K4

Song Information 799

SELECTOR
 Song ID Media Cat Lev Pack Song Title
 00098 H 1 0 JESUS
 Artist 1 182 Artist 2
 WHITEHEART
 Album Title 800 Role Group %Back
 REDEMPTION G 100%

Mood 2
 Energy 3
 Tempo MM
 BPM
 Texture
 Sound Code H
 Opener
 Era
 Type
 Pattern
 Key/Chord

Chart Information
 This Week
 Last Week
 Weeks On
 Weeks at Peak
 Peak Position
 Peak Month
 Peak Year
 Year-End Rank
 Chart Note
 Rotation
 Chart Debut Date / /
 Entered Category / /

F3 Song Notes
 F4 Artist Notes
 F5 Current Options
 F6 Additional Info.
 F7 Song History
 F8 Themes
 F9 Print/File
 Alt F2 Auto-Save OFF
 Alt F7 Delete History
 Alt F9 MUSICbase Info
 Alt A Alternate Cat.
 Alt C Chart Info.
 Alt F Future Moves
 Alt I Digital Audio
 Alt R Research
 Alt T TV Information
 Alt W Show Assignment

Runtime 4:05.0
 Intro 19.0/ /
 Opening/Ending /CO | CHRI-FM Song 1 of 11
 F1-Help F2-Save PgUp/PgDn-Previous/Next Song

Song Information 799

SELECTOR
 Song ID Media Cat Lev Pack Song Title
 00098 H 1 0 JESUS
 Artist 1 182 Artist 2
 WHITEHEART
 Album Title 800 Role Group %Back
 REDEMPTION G 100%

Mood 2
 Energy 3
 Tempo MM
 BPM
 Texture
 Sound Code H
 Opener
 Era
 Type
 Pattern
 Key/Chord

Chart Information
 This Week *
 Last Week
 Weeks On
 Weeks at Peak
 Peak Position
 Peak Month
 Peak Year
 Year-End Rank
 Chart Note
 Rotation
 Chart Debut Date / /
 Entered Category / /

F3 Song Notes
 F4 Artist Notes
 F5 Current Options
 F6 Additional Info.
 F7 Song History
 F8 Themes
 F9 Print/File
 Alt F2 Auto-Save OFF
 Alt F7 Delete History
 Alt F9 MUSICbase Info
 Alt A Alternate Cat.
 Alt C Chart Info.
 Alt F Future Moves
 Alt I Digital Audio
 Alt R Research
 Alt T TV Information
 Alt W Show Assignment

Runtime 4:05.0
 Intro 19.0/ /
 Opening/Ending /CO | CHRI-FM Song 1 of 11
 F1-Help F2-Save PgUp/PgDn-Previous/

Song Information 799

SELECTOR
 Song ID Media Cat Lev Pack Song Title
 00098 H 1 0 JESUS
 Artist 1 182 Artist 2
 WHITEHEART
 Album Title 800 Role Group %Back
 REDEMPTION G 100%

F3 Song Notes

2

save

1 of 5

MusicMaster		✓ Mark	Hot	+ Memo	↔ Link *A/0016
Cart: _____ Artist: _____ Title: _____			Disc: _____		
Intro: _____ RunTime: 03:30 Ending: _____ Sound: _____ Gender: _____ Tempo: 555 Power: 555 Like: _____ Burn: _____ Match: _____ Keys: _____			Daypart: _____ Keyword 1: _____ Keyword 2: _____ Keyword 3: _____ Keyword 4: _____ Keyword 5: _____ TWord: _____ Add Date: 03-14-2002 Test Date: _____ Notes: _____ Simulcast: _____		
			Function Key Assignments		
			[F1]-Function Key Help [F2]-Coding/Field Lookup [F4]-Toggle Mark Status [F6]-Display History Graph [F7]-Previous Coding Page [F8]-Next Coding Page [Alt-F2]-Coding Reference [Alt-F5]-Song Link Editor [Alt-F6]-Playdate History [Alt-F7]-Select Coding Page [Ctrl-F3]-Edit Song Memo [Shift-F1]-Editing Keys [Shift-F6]-Reference Cards		
Index: 5954		Packet: _____		New Song Entry	

[Esc]-Abort

[Alt-F3]-Storage

[Alt-F10]-Save/Copy

[F10]-Save

2 OF 5

MusicMaster	✓ Mark	Hot	+ Memo	→ Link *A/0016
Cart: _____ Artist: _____ Title: _____	Disc: _____		Function Key Assignments	
A D D I T I O N A L I N F O R M A T I O N			[F1]-Function Key Help [F2]-Coding/Field Lookup [F4]-Toggle Mark Status [F6]-Display History Graph [F7]-Previous Coding Page [F8]-Next Coding Page [Alt-F2]-Coding Reference [Alt-F5]-Song Link Editor [Alt-F6]-Playdate History [Alt-F7]-Select Coding Page [Ctrl-F3]-Edit Song Memo [Shift-F1]-Editing Keys [Shift-F6]-Reference Cards	
Album: _____ Composer: _____ Publisher: _____ Arranger: _____	Record Co: _____ Record ID: _____	License: _____ Content: _____	New Song Entry	
Index: 5954	Packet: _____			

[Esc] -Abort [Alt-F3] -Storage [Alt-F10] -Save/Copy [F10] -Save

MusicMaster	✓ Mark	Hot	+ Memo	→ Link *A/0016
Cart: _____ Artist: _____ Title: _____	Disc: _____		Function Key Assignments	
C H A R T I N F O R M A T I O N			[F1]-Function Key Help [F2]-Coding/Field Lookup [F4]-Toggle Mark Status [F6]-Display History Graph [F7]-Previous Coding Page [F8]-Next Coding Page [Alt-F2]-Coding Reference [Alt-F5]-Song Link Editor [Alt-F6]-Playdate History [Alt-F7]-Select Coding Page [Ctrl-F3]-Edit Song Memo [Shift-F1]-Editing Keys [Shift-F6]-Reference Cards	
This Week: _____ Last Week: _____ Two Weeks: _____	Peak Pos: _____ Peak Weeks: _____ Weeks On: _____	Peak Date: _____ Debut Date: _____ Year End: _____	New Song Entry	
Rotation: _____ Chart Note: _____	Index: 5954	Packet: _____		

[Esc] -Abort [Alt-F3] -Storage [A1]

MusicMaster	✓ Mark	Hot	+ Memo	→ Link *A/0016
Cart: _____ Artist: _____ Title: _____	Disc: _____		Function Key Assignments	
			[F1]-Function Key Help [F2]-Coding/Field Lookup	

3 OF 5

MusicMaster	✓ Mark	Hot	+ Memo	↔ Link *A/0016
Cart: _____	Disc:		Function Key Assignments	
Artist: _____			[F1]-Function Key Help	
Title: _____			[F2]-Coding/Field Lookup	
T H E M E C O D E S			[F4]-Toggle Mark Status	
Theme 1:			[F6]-Display History Graph	
Theme 2:			[F7]-Previous Coding Page	
Theme 3:			[F8]-Next Coding Page	
Theme 4:			[Alt-F2]-Coding Reference	
Theme 5:			[Alt-F5]-Song Link Editor	
Theme 6:			[Alt-F6]-Playdate History	
Theme 7:			[Alt-F7]-Select Coding Page	
Theme 8:			[Ctrl-F3]-Edit Song Memo	
			[Shift-F1]-Editing Keys	
			[Shift-F6]-Reference Cards	
Index: 5954	Packet:	New Song Entry		

[Esc]-Abort [Alt-F3]-Storage [Alt-F10]-Save/Copy [F10]-Save

MusicMaster	✓ Mark	Hot	+ Memo	↔ Link *A/0016
Cart: _____	Disc:		Function Key Assignments	
Artist: _____			[F1]-Function Key Help	
Title: _____			[F2]-Coding/Field Lookup	
T H E M E C O D E S			[F4]-Toggle Mark Status	
Theme 1:			[F6]-Display History Graph	
Theme 2:			[F7]-Previous Coding Page	
Theme 3:			[F8]-Next Coding Page	
Theme 4:			[Alt-F2]-Coding Reference	
Theme 5:			[Alt-F5]-Song Link Editor	
Theme 6:			[Alt-F6]-Playdate History	
Theme 7:			[Alt-F7]-Select Coding Page	
Theme 8:			[Ctrl-F3]-Edit Song Memo	
			[Shift-F1]-Editing Keys	
			[Shift-F6]-Reference Cards	
Index: 5954	Packet:	New Song Entry		

duplicate

[Esc]-Abort [Alt-F3]-Storage [Alt-F10]-Save/Copy [F10]

MusicMaster	✓ Mark	Hot	+ Memo	-- Link +A/0016
Cart: _____	Disc:	Function Key Assignments		
Artist: _____				
Title: _____		[F1]-Function Key Help [F2]-Coding/Field Lookup [F4]-Toggle Mark Status [F6]-Display History Graph [F7]-Previous Coding Page [F8]-Next Coding Page [Alt-F2]-Coding Reference [Alt-F5]-Song Link Editor [Alt-F6]-Playdate History [Alt-F7]-Select Coding Page [Ctrl-F3]-Edit Song Memo [Shift-F1]-Editing Keys [Shift-F6]-Reference Cards		
TRIVIA LINES				
Fixed:				
Rotate 1:				
End Date 1:				
Rotate 2:				
End Date 2:				
Rotate 3:				
End Date 3:				
Rotate 4:				
End Date 4:				
Index: 5954	Packet:	New Song Entry		

[Esc]-Abort [Alt-F3]-Storage [Alt-F10]-Save/Copy [F10]

5 OF 5

MusicMaster		✓ Mark	Hot	+ Memo	↔ Link *A/0016
Cart: _____ Artist: _____ Title: _____			Disc: _____		
A U T O - M O V E D A T E S			Function Key Assignments		
AutoMove 1:		Move Cat 1:	[F1]-Function Key Help		
AutoMove 2:		Move Cat 2:	[F2]-Coding/Field Lookup		
AutoMove 3:		Move Cat 3:	[F4]-Toggle Mark Status		
AutoMove 4:		Move Cat 4:	[F6]-Display History Graph		
			[F7]-Previous Coding Page		
			[F8]-Next Coding Page		
			[Alt-F2]-Coding Reference		
			[Alt-F5]-Song Link Editor		
			[Alt-F6]-Playdate History		
			[Alt-F7]-Select Coding Page		
			[Ctrl-F3]-Edit Song Memo		
			[Shift-F1]-Editing Keys		
			[Shift-F6]-Reference Cards		
Index: 5954		Packet: _____		New Song Entry	

[Esc]-Abort [Alt-F3]-Storage [Alt-F10]-Save/Copy [F10]

J

Before the
LIBRARY OF CONGRESS
Washington, D.C.

In The Matter Of:

Docket No. RM 2002-1

Notice and Recordkeeping for
Use of Sound Recordings
Under Statutory License

Statement of Dan Halvburton, Susquehanna Radio Corp.

1. My name is Dan Halyburton, and I am the Senior Vice President and General Manager for Group Operations for Susquehanna Radio Corp. Susquehanna's core business is radio broadcasting, and today it is one of the ten largest radio groups in the United States in terms of revenues. Today, the company owns and operates 32 FM and AM broadcast stations. These stations operate in varied formats – we have oldies stations in Kansas City and Indianapolis, sports talk in San Francisco, Indianapolis, and Dallas, traditional talk in Kansas City, New York, and Dallas, and music-intensive hard and soft rock formats in Atlanta, Cincinnati, and Houston, just to name a few. All 32 of our stations currently have Internet websites, and all of them are simulcast streaming.

2. In my current position, I oversee Susquehanna's Internet strategies, our programming and research departments, and the broadcast engineering department. I have worked in the radio industry for more than thirty years and with Susquehanna for more than twenty years. During that time, I've served as a general manager, operations manager, and program director for several different radio stations, in such diverse markets as Dallas, Texas, Indianapolis, Indiana, Huntington, West Virginia, and Miami, Florida. I am making this statement on Susquehanna's behalf based upon my own extensive experience in the radio business in general and Susquehanna in particular, as well as on conversations with my staff.

3. Susquehanna is proud to say that we were one of the first radio broadcasters to simulcast our over-the-air signal. In the fall of 1995, Mark Cuban of AudioNet – which would later become Broadcast.com, and later still become Yahoo!Broadcast – approached our Dallas

news/talk station, KLIF/KKLF-AM, and offered to stream its signal. At the time, streaming technology was not even advanced enough to transmit music content.

4. As I described in detail in my testimony before the Copyright Arbitration Royalty Panel, Docket No. 2000-9 CARP DTRA 1 & 2, simulcast streaming is not profitable for our company. Each individual station bears the cost of streaming, which runs tens of thousands of dollars annually, and the stream does not earn enough revenues to cover those costs.

5. Given Susquehanna's historic stake in Internet simulcasting, it is disappointing that the Copyright Office has proposed regulations that threaten our streaming activity. We would like to provide copyright owners with the information they need to get the royalty they are due. The administrative burden of these regulations as proposed, however, would make continuing our streaming operations cost prohibitive. For the reasons explained more fully below, we believe it should be sufficient for us to provide much more available identifying information, such as title and artist on a sampled rather than census basis.

6. Our streaming audiences are predominantly over-the-air listeners who use streaming as a new method of accessing Susquehanna's stations at times when they don't have a radio handy or where reception is poor. Our streaming audiences are only a tiny fraction of our over-the-air listenership – less than 1 percent. Since our revenues come from selling advertisements intended to reach our local listeners, the small additional convenience to our local listeners provided by the stream is not enough to make the stream profitable. The new costs that would be imposed by the proposed regulations – indeed, the fundamental change to the way we do business that would be required in order to comply – would transform our stream from a slightly unprofitable but nonetheless valuable service into an unsustainable liability.

Playlist Requirements

7. Our music intensive stations get about 95 percent of the music they play directly from the record labels. This makes sense – the record companies want to reach new listeners as much as we want to bring our listeners the best new music. The labels generally provide the music in the form of promotional CD singles. These singles might have two or three versions of the same song on them, such as the “album version,” the “radio mix,” and some sort of remix.

8. These CDs have on them only the most basic information about the song being promoted. They of course list the title of the song and the name of the artist. They frequently mention the name of the album the song is going to appear on, but not always – sometimes, the album title is not yet determined when the single is released to us. They also sometimes list

composer information, the length of the track, the name of the label, and the year and copyright owner information contained in the copyright notice, or "P line." However, there is no way for us to know if the copyright information on the CD single is the same as "the release year identified in the copyright notice on the album" and the "copyright owner information provided in the copyright notice on the retail album" because we don't work from the retail album. In fact, there are many instances when we receive a CD-R with only a handwritten notation of the title and artist. We cannot be expected to know if the album information varies from the information supplied to us by the labels on the promo CDs.

9. Our stations use the popular Selector software by RCS to schedule the music they play. To add a song to our rotation, we type into Selector very basic information about the song, such as title, artist, intro, length of track, ending type, and other data relevant to making our scheduling choices. We also track composer. The software has a field for album title, but we only track that information some of the time. Selector does not have built-in fields to accommodate keeping track of such fields as ISRC, UPC code, and catalog number. I do not believe this music scheduling software can be easily modified to track additional fields. The cost to us to keep the requested records would therefore be substantial. We would need to rely on outside vendors to modify or upgrade our music scheduling software.

10. All of our stations that use a Digital Automation System use the Enco DAS to actually play the music and schedule the other elements of the broadcast. The Enco system only holds the basic data required to play a song. It does not contain data fields for ISRC, release year, album title, UPC code, catalog number, or sound recording copyright owner. The Enco system cannot be modified to add more fields by a user; we would have to ask the vendor to modify its systems in order to use Enco for generating playlist reports. Even if the company doesn't charge us for redesigning their software, we would almost surely have to pay for the revised version of it. There is no telling how long it would take for the company to make these development changes, but it surely would not be as easy as pushing a button.

11. Two of our most listened-to stations, 99X WNNX in Atlanta and KPLX in Dallas, do not use digital automation at all. These stations still get their music directly from compact discs. At these stations, the DJs often stray from the intended play list, and there is no process for tracking whether or not a scheduled song was actually played.

12. To the extent possible, the Copyright Office should adopt regulations that are consistent with the way the radio industry actually operates today. Even then, we will need to make some changes in the way we handle data in order to provide the required reports and will

need time to implement these changes. Of course, if the Copyright Office requires us to report information beyond the capabilities of our current systems, the necessary time to develop these systems (wholly apart from the cost and burden) will be much greater. Although it is difficult to estimate until we know what requirements will be imposed, any rules that require us to change our software and make fundamental changes in the way we do business would likely take a year or more to implement.

Incidental Music Use and Syndicated Programs

13. Our playlists do not include listings of incidental music used as introductions to programs, as disc jockey themes, as bumpers between program segments, as background for traffic and weather reports or news stories, and in promotional segments. It would be impossible for us to track this sort of music usage. It is not required for any existing purpose (not even ASCAP or BMI ask for reports of these kinds of uses). Similarly, our talk stations occasionally make incidental use of music in promotions and as background, intros, and outros to talk segments. The regulations as proposed seem to require that we track even this kind of music usage, even though I understand that the Copyright Arbitration Royalty Panel has proposed no sound recording fee at all for such nonfeatured uses of music. If the Copyright Office's proposed regulations were to apply to our talk programming, we would need to consider pulling the plug on streaming even our talk stations.

14. We also get many programming segments from syndicators. Most of our syndicators of music programs currently provide us with basic playlist information, such as title and artist. If we require our program suppliers to provide us with more detailed information about what is being played during their programs, I would expect them to carefully reconsider whether the inclusion of their programs on the Internet is worth it to them. I would not be surprised if many would conclude that they did not want their programs streamed. Remember, their primary interest, like ours, is in over the air broadcasts. For the same reasons that it would be extremely burdensome (if not impossible) for us to provide the extraordinarily detailed data requested by the proposed regulations, it would be extremely burdensome (if not impossible) for the syndicators who provide music programming to do so. If they ultimately made the business decision to undertake such reporting, the cost would surely be passed on to us in the form of higher syndication fees. If the syndicators provide us with incomplete information, the research burden on our stations would, itself, be crushing. In addition, integrating the syndicator's data with our own to prepare the single report requested by the proposal is an additional expense, which would require time and money to figure out.

Listener Log Information

15. We currently stream using the services of our long-time partner, Yahoo!Broadcast. In its reporting to us, Yahoo!Broadcast provides data such as average tuning hours (ATH) and aggregated data about the numbers of log-ins/log-outs the system experiences. We do not yet know what the cost would be to provide individualized data that includes a report of the date and time of each individual user's log-in and log-out in their local time zone, a unique user identifier, and time zone information about the user. I do know that it is not as simple as just pushing a button to generate these kinds of data reports.

16. In addition, there are many difficulties with precisely pinning down the user's location and local time zone. My understanding is that basing the information on the IP address of the user is far from accurate, because many Internet Service Providers do not assign their users static IP addresses. Moreover, the IP address is tied to the server location, which is not necessarily in the same time zone where the user is located. Users accessing the Internet through a corporate fire wall, for instance, generally appear to all be coming from the same single computer, even though they might be scattered at branch offices all over the country.

17. Further, the amount of raw data generated by census reports of each and every listener session would be staggering. On a single day in February 2001, the stream of our popular San Francisco station, KFOG, registered more than 26,000 individual listener sessions. (This number does not reflect the number of people who actually listened – because streams are often interrupted, listeners can connect in multiple individual sessions in one sitting). Assuming this connection level is about average for that station, in a short month like February, we would end up reporting more than 720,000 data individual records. Over the course of a year, we would have to report almost one *billion* separate listener log data records – for only one of our stations. This staggering reporting requirement, of itself, may render streaming under the statutory license not worth the trouble in light of the fact that KFOG's Internet listenership is less than one percent of its over-the-air listenership.

Ephemeral Phonorecord Log

18. The proposed regulations regarding recordkeeping for the ephemeral recording license is perhaps the most burdensome, and least justifiable, of the proposed requirements. As I understand it, the CARP proposed a rate for ephemeral copies equal to 9% of each streaming station's performance fee. It is not related in any way to the number of copies made, when those copies are made and destroyed, or even what songs are copied. From our experience with other computer systems, I know that the costs of designing and implementing an entirely new data

tracking system are huge. They include not only the direct costs paid to the software company, but the costs and internal disruption of implementing the system and learning to use it.

19. Although we cannot at this time pin it down, the cost of creating a system to track these temporary copies would likely be extraordinarily high. Once the system was designed, the reporting burden would also be substantial. Assuming that we made even one ephemeral recording per song streamed, these requirements would have us report 13 data points, times about 12 songs an hour, times 24 hour hours in a day – that adds up to over 3,700 additional items to report each day, and well over a million pieces of data each year. This kind of data collection would be pointless. It makes no sense to require stations to keep track of the creation and destruction of each and every copy of a song made in the course of streaming the song when the rate set for making those copies has nothing to do with the number of copies made.

Confidentiality and Privacy

20. The data requested by the proposed rules are enormously intrusive. We are quite concerned about being forced to turn over so much commercially sensitive data about our internal operations and listenership. Talented programmers put enormous effort into crafting perfect playlists to keep our audiences happy. We don't want our competitors to have easy access to those playlists, and we most certainly don't want record labels to use data we provide to create their own competing services. We respectfully request that regardless of the requirements imposed, only the collective agents have access to it. Moreover, the collective agents should be strictly limited in their use of the information – the data should be used solely to collect and distribute royalties. Under no circumstances should the agent(s) be allowed to use it for any other purpose.

21. The requirements surrounding our listener logs are even more intrusive – although the standard in the data collection industry is to aggregate data, these requirements seek to have every individual user session traceable to a unique listener and its duration accurate to the last second. We believe our users would view this as a huge violation of their trust in us. We could not even begin providing user-specific data until we revamped the privacy policies on all of our websites to explain that we are sharing such data, for fear of running afoul of current FTC regulations. In any event, we are troubled by the thought of RIAA or the individual labels using this information for marketing purposes. As with our playlists, any listenership data should only be made available to the collective agents, and the agents should only use it for royalty collection and distribution purposes.

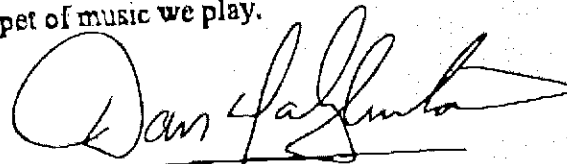
Conclusion

Susquehanna Radio Corp.'s core business is radio broadcasting, not webcasting. Our simulcast is an interesting and cutting-edge added service that we provide to our local listenership, but it is not a profitable aspect of our operations. Our Internet listenership is a tiny percentage of our over-the-air ratings. To comply fully with the proposed recordkeeping requirements as written, we would have to invest hundreds of thousands of dollars and countless hours of labor. It would fundamentally alter the way we do business. We cannot justify to our shareholders the expense of such a transformation, when the resultant product is not a sure profit source.

We believe the statutory license was intended to make it easier, not more difficult, for radio stations to take advantage of emerging Internet technologies. We urge the Copyright Office to hold true to this intent and enact much simpler requirements. Radio stations should only be required to report sound recording title, artist, and album information, where available. These reports should be made on a sample basis, for featured music only, rather than requiring us to store and process data on every single snippet of music we play.

Date:

April 5 2002



Dan Halyburton
Susquehanna Radio Corp.

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**Before the
LIBRARY OF CONGRESS
Washington, D.C.**

In The Matter Of:

Docket No. RM 2002-1

Notice and Recordkeeping for
Use of Sound Recordings
Under Statutory License

Statement of Dusty Rhodes, WAY-FM Media Group

1. My name is Dusty Rhodes, and I am the Chief Operating Officer of WAY-FM Media Group, Inc., a non-profit company dedicated to bringing Christian music to youth and young adults.

2. I started working in radio as a college student in the early 1970s, and in 1978 I joined mainstream top-40 radio station WCHV in Charlottesville, Virginia as a DJ. I later went on to host the morning show and serve as Program Director at contemporary Christian station WPIT-FM for 11 years. In 1988, I was voted Pittsburgh's Favorite Morning Personality by readers of the *Pittsburgh Post Gazette*. In 1993, I relocated to South Florida to launch Christian Hit Radio WAY-FM, a station that won the prestigious Dove Award for Radio Station of the Year in 2000.

3. In my current position as Chief Operating Officer of the WAY-FM Media Group, I help oversee our current radio and Internet ministries and our efforts to launch new radio stations throughout the country. I also serve on the National Religious Broadcasters Noncommercial Music License Committee, as well as on the Executive Steering Committee of the National Christian Radio Alliance. The information in this statement is based both on my personal knowledge and experience with WAY-FM's operations and my discussions with members of our staff.

Our Operations

4. Our family of three full-powered radio stations operate out of Nashville, Tennessee (88.7 WAYM-FM), West Palm Beach, Florida (88.1 WAYF-FM), and Fort Myers, Florida (88.7 WAYJ-FM) and can be received in many more communities in Florida, Georgia,

Alabama, Kentucky, and Tennessee through the use of low-power repeater transmitters. These three WAY-FM stations form the backbone of our ministry, and all three operate in a Christian Hit Radio format. We are in the process of developing WAY-FM stations in several other communities.

5. To further our ministry, we stream the signals of our Nashville and West Palm Beach WAY-FM stations over the Internet through our website, www.wayfm.com. We also have an Internet-only ministry, The X Station, located at www.thexstation.com. The X Station is an edgier, male-oriented Christian modern rock "station." The X Station allows us to reach a small but important segment of the Christian audience – youth who enjoy modern rock music with a Christian message. We do not receive funding from the Corporation for Public Broadcasting. For each of our three stations, more than half of our funding comes from the generosity of individual listeners, with a smaller percentage of our funding coming from small, mostly local businesses and other small corporate underwriters.

6. I have reviewed the draft recordkeeping requirements proposed by the Copyright Office, and I am frankly shocked at the administrative burden these requirements would force our stations to undertake in order to continue streaming. Our business model is designed to work within the context of a standard historical radio station operation, and we would find it extremely burdensome, if not humanly impossible, to even attempt the proposed requirements for reporting.

7. Fulfilling these proposed requirements would also be difficult to justify to our donors. I can't imagine having to report that we are spending X-amount of *our* time and *their* money on the paperwork involved. I believe they would see that as poor stewardship of their monies and would perhaps withhold their support, which is of course vital to our existence and our ability to pay any additional licensing fees.

The Playlist Requirements

8. We obtain nearly 100% of our sound recordings for both our on-air and Internet-only streaming operations as promotional releases from record labels. They are almost always free of charge and are provided expressly for our use. Sometimes, we are mailed the same CD available to consumers, but this is rare.

9. The only information we can count on being sent to us with a CD provided by the label is title and artist – sometimes, the labels don't even provide the album name or a copyright notice indicating the date and owner of the sound recording copyright, much less UPC, ISRC, or catalog number. Whatever information is provided can be found in various places, such as on

the CD itself, on a tray card, or on a separate sheet of paper packaged with the song. The reporting is not standardized, even across CDs from a single label.

10. For example, attached as Exhibit 1 is a promo single that was received by our Fort Myers station, WAYJ-FM. The artist is SONICFLOOD, and the song title is "Write Your Name Upon My Heart." The disc has three different re-mixes of that song, including a "Heavy loop re-mix," a "Loop w/kick & share re-mix," and an "Original re-mix." There is a credit for the songwriter, but no copyright notice indicating date and year of either the sound recording or the musical work copyright. The only other information is the name of the label, Inotof, and a cite to the band's web page – the disc does not even indicate the lengths of the various mixes.

11. Jennifer Knapp's "Say Won't You Say" promo single, attached as Exhibit 2 to this statement, is another example of a promo that contains very few of the requested data items. The disc itself lists song title, artist, label, and helpfully tells us the length of the intro, the total length of the cut, and the type of ending. There is a copyright notice, but that notice does not contain a ©, so it is not clear whether it is referring to the sound recording or the musical work. None of the other requested data are listed.

12. The music provided by the labels does not, to my knowledge, include such items as an ISRC code. When promo CDs do have a catalog number, it generally appears to be the number of the promo, not of the album the song comes from. The promo CDs don't generally have UPC codes on them; indeed, they are generally expressly labeled "Not for resale."

13. Under our current practices, we simply do not track even label or album data, much less the more detailed information requested in the proposed regulations, because it never made good business sense to do so. At our most sophisticated station, our flagship WAYM-FM in Tennessee, the music director uses a computer program called Powergold to generate playlists of music. Powergold has many available data fields, and it is my understanding that the program has the ability to track new, user-defined data fields on a going-forward basis. In practice, however, we only track title, artist, the length of the song, and basic texture and tempo information about the song. These are the data that we need to program a successful radio station.

14. Short of conducting labor-intensive and prohibitively expensive research in record stores, we simply do not have access to the information the Copyright Office is proposing that we collect. Even if we could chase down the requested information, there is a high likelihood of human error. I don't understand how this information can be necessary if the labels themselves don't even provide it to us. Indeed, the labels themselves already keep databases of this kind of information about their songs.

15. Frankly, the information would be much more accurate if the labels relied on their own databases for much of this information, rather than asking small radio stations like ours to create massive databases from whole cloth. After all, the record labels are the ones that send us these free CDs and ask us to play their music in the first place. Radio stations should at most be required to supply service name, title, and artist. Forcing us to record and report more detailed information is needless busywork, and I cannot ask our donors to support that effort. We are entrusted to be good stewards of their money in support of our ministry, and acting as a data source for record labels does not fulfill our mission or any FCC requirements.

16. After we enter the information about a song into Powergold, we record the song's information in our Digital Automation System, MediaTouch. The MediaTouch song data records only contain the minimum amount of information it needs to retrieve and play a song -- we maintain any more detailed information in our Powergold database.

17. Once the song information is in Media Touch, the CDs are removed from their original packaging and placed into a special CD cartridge. These CD cartridges *do not* allow us to store any original documentation with the CD, and that documentation has traditionally been discarded.

18. MediaTouch generally plays the items that were scheduled using Powergold. However, DJs are permitted to override the playlists within MediaTouch and play fewer songs. This means that the computerized intended playlist does not necessarily reflect what was actually played over the air, and by extension, what is being streamed. Our Powergold system knows to the second how long a scheduled song is, but it does not know to the second when it was actually played, or even if it was actually played as scheduled.

Lack of Data

19. WAYM-FM currently has information about hundreds of songs in its Powergold song information database, with about two hundred of those in active rotation. We would have to research any information not printed directly on the promo disc itself in order to update our current database, and there doesn't seem to be an easy way to look up the information at this time. Even with the information all in one place, however, performing the look-up and incorporating the data into our intended playlists for each of the hundreds of songs in our libraries would be a burdensome new cost for us. Because each station that uses Powergold has a different database, the data entry (and probably the other work) would have to be duplicated on a station-by-station basis.

Sampling

20. In any event, we do not believe that the record labels need so much redundant information to identify the songs that are being played. Other licensing groups manage to administer their licenses based solely on title and artist information. Providing title, artist, and album name where available should be sufficient for purposes of this license as well.

21. Moreover, we believe that a procedure of sample reporting of basic identifying information, say, a random sample of five weeks a year, is vastly preferable to being required to report information about every single song that is played. Sampling is much more in line with how radio currently reports to other licensing bodies. Leaving aside the amount of data about each song reported – which we think should be drastically reduced from what is currently proposed – providing reports on every song played, times twelve songs an hour, times twenty-four hours in a day is an unreasonable demand.

22. We strongly advocate adoption of a very-scaled back reporting system – one that allows for random sampling, rather than second-by-second breakdowns, and only requires radio stations to report the most basic identifying information. Requiring us to report more detailed information moves us away from our core purpose and mission – to play and promote Christian music – and instead turns us into a “farmed out” secretarial branch of the recording industry, and we are being asked to foot the bill. If we are going to be required to do their secretarial work, why shouldn’t we be compensated by them for the recordkeeping of their data?

Stations Without Software Databases

23. There are special challenges to data collection when stations do not use scheduling or DAS software. Our smallest station, WAYJ-FM in Fort Myers, Florida, does not even have an automated database of the music it plays. Most of that station’s programming comes from our affiliated syndicator, Christian Hit Radio Satellite Network (CHRSN). WAYJ uses a satellite receiver to obtain a feed of programming generated by DJs in Nashville. A Digital Commercial System (DCS) processes the satellite signal and allows for insertion of local content at two four-minute intervals each hour, based upon a “stopset” signal transmitted by the satellite to the DCS. Rather than maintaining its own separate database, WAYJ-FM gets all of its information from the signal it is receiving from CHRSN. WAYJ accesses the playlists generated in Nashville – described above – through a password-protected area of the CHRSN web page that is available to all stations that use the CHRSN syndicated programming. Again, these playlists overstate the actual music usage, often by one or two songs per hour.

24. The only live local content in Fort Myers is the weekday morning show, from 6 am through 10 am, Monday through Friday. For that local show, the DJs in Fort Myers use Nashville's playlist, but they physically pull the CDs from the shelves and put the CDs into the CD player in our studio. The only record of what was played is the Nashville playlist.

The Special Problems of Syndicated Shows and Incidental Music

25. Our Nashville station uses syndicated programming from syndicators that are not in any way affiliated with the WAY-FM family – between 10 and 20 different syndicated programs per day. If even half of those programs featured even a small portion of copyrighted music, we would keep an employee busy all day tracking down this information. Assuming the syndicator even has all of the necessary information, we would need to contact the syndicator, obtain all the detailed information required under these new guidelines, then chronicle it.

26. Only a handful of the syndicators we work with currently provide any information at all about the songs they use in their programming, and none of them provide the level of detail sought here. If we get any information at all from the syndicators, it is generally in the form of a playlist generated by their own music scheduling program – which we assume would have the same issues regarding backfilling their databases and expanding the types of fields collected that our stations face. We would still have the problem of having to integrate the data from the syndicators into the same file as the data we generate in our own system.

27. The effort would be greater still if we also had to provide detailed records of music used in conjunction with news, traffic, contests, and other talk-intensive segments. It is not humanly possible to, in every instance, identify a song used in one of those programs based on listening to it alone, and then track down the title, artist, album, UPS, ISRC, catalog number, time played to the nearest second, and all the myriad of other data the proposal would have us provide. We simply could not accurately report incidental use of music, and it would be unreasonable to require us to do so considering that the CARP has said that it is not setting a rate for such uses.

28. If we place these kinds of demands on our syndicators, they may re-think doing business with us. We do not want to be put into a position of having to choose between our longstanding relationships with syndicated programmers and simulcasting our broadcast.

29. Stations that use syndicated programming should not be required to provide any more information about music within that program than is provided to them from the syndicator. If syndicators are even willing to provide this information, syndicators will likely have the same

issues we have with computer systems that do not contain the requested information and will be difficult to backfill.

Transition Period

30. We ask the Copyright Office to recognize that our systems are fallible, they are not always automated, and providing this information is not simply a matter of pushing a button and having a computer print out a report. We ask that the Copyright Office give us, our program suppliers, and our software vendors' time to conform our systems to whatever the final rules required of us. Even after the grace period, stations should suffer no penalties for good faith reporting errors or oversights. Our radio stations should not be penalized for human error, and certainly should not be penalized for being unable to report data not provided to us by the labels when they send us music.

Listenership Data

31. We currently use the services of Streamaudio.com to stream our broadcast signal over the Internet. Streamaudio.com does not supply us with all of the information the proposed regulations would have us report. The monthly reports we receive from streamaudio.com provide us with total unique visitors, total streams, total streamed hours, total streamed minutes, and average minutes spent listening.

32. Streamaudio.com tells me that some of the information required by the proposed regulations – but not all – could be provided to us, but it will entail additional costs on their end, which would then be passed on to our stations. It is too early to know the extent of those costs yet, but they likely would be substantial.

33. Users who want to listen to our stream are asked to provide their e-mail address, age, and zip code. We use this information in the aggregate to learn about our Internet listenership, but we do not tie it to individual listening sessions, nor are we able to do so. Also, users are not *required* to provide this information in order to hear our stream – we wouldn't want to limit our ministry by conditioning its reach on users providing personal information. Therefore, we could not use that data to provide such detailed information as to when and where a specific listener logged on and logged off.

34. We are very concerned that we may be forced to violate the trust of our listeners and provide the recording industry with data about our individual listeners' listening habits. We strongly believe that our listeners' privacy should not be compromised by requiring reporting of individually-identifiable listening information.

Data Usage

35. No matter what information we are required to report, we strongly urge the Copyright Office to limit strictly the use of the data. It should be used solely for the purpose it is being collected – for royalty collection and distribution – and for no other reason. The individual record labels should not be able to use the data as a free source of marketing information.

Ephemeral Recordings

36. Finally, I am mystified by the Copyright Office's proposed recordkeeping requirements for the ephemeral recording license. I understand that the CARP's proposed licensing rate for these temporary copies is 9% of each streaming station's performance fee. My understanding is that the rate is not, therefore, based on how many ephemeral copies are made. It makes no sense to require small, noncommercial entities like ours to keep track of the creation and destruction of each and every copy of a song made in the course of streaming the song when that information has nothing to do with determining the royalty. We do not even know if it is possible under our current systems to gather this type of data.

37. If there were ever a case where the administrative burden and cost of performing a task outweighed the benefit of the result, this is it – keeping the proposed ephemeral logs would be a waste of valuable time, money, and disk space. Assuming that even one ephemeral copy is made each time a song is streamed, we would have to report 13 data items, times about 12 songs per hour, times 24 hours, times seven days a week, times 52 weeks a year – by my math, this adds up to 1,362,816 different points of information gathered over the course of a single year. Why should we gather and store millions of items of data when these items are not necessary to determining the amount owed?

Conclusion

At WAY-FM we love music, and we thank God for the artists who make the music that allows us to share our Christian message with so many fellow believers. We of course want those artists to be paid for their work. However, these proposed recordkeeping requirements, far from ensuring that artists get paid for their work, will instead ensure that we stop bringing their message to our Internet listeners. I cannot imagine that this is what the artists would want to happen. But because of the costs involved, budget may require that we disband our Internet streaming.

I recently read in The M Street Journal – the radio industry’s journal of record – an interesting characterization of the issues surrounding the CARP. The article stated, “The Oliver Stone-style conspiracy theory that’s circulating is this: The RIAA wants to make streaming so expensive that only the labels themselves will be able to do it.” See M. Street Journal, March 6, 2002, at p. 4. I honestly don’t know if this is true, but I found it enlightening nonetheless. If this theory is true, it could mean that the labels are using this rulemaking to force Internet streamers like ourselves out of providing this public service, which our listeners have grown accustomed to us providing. The streaming royalty rates recommended by the CARP are high, even for non-commercial stations like ours. But the proposed recordkeeping requirements threaten to impose many additional hidden costs, on top of the per performance fee, that smaller operations such as ours are even less likely to be able to absorb than the larger radio station groups. The Copyright Office is in a position to prevent this kind of disproportionate impact on small businesses, and we ask that it adopt the broadcaster’s proposed reporting requirements so that the Internet can remain a level playing field for our small ministry.

Date: 4-4-02

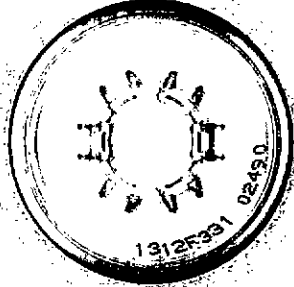

Dusty Rhodes
WAY-FM Media Group

1

SONICFLOOD

1. "Write Your Name Upon My Heart"
"Heavy loop re-mix"
2. "Write Your Name Upon My Heart"
"Loop w/kick & snare re-mix"
3. "Write Your Name Upon My Heart"
"Original re-mix"

SONICFLOOD / WRITE YOUR NAME UPON MY HEART



New Re-Mix!

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Mixed by Rick Hall and Tom Michael / VIP Radio page www.mot.com

SONICFLOOD

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Written by Rick Hill and Tom Michael / VIP Radio page www.mn.com

2

jennifer knapp say won't you say

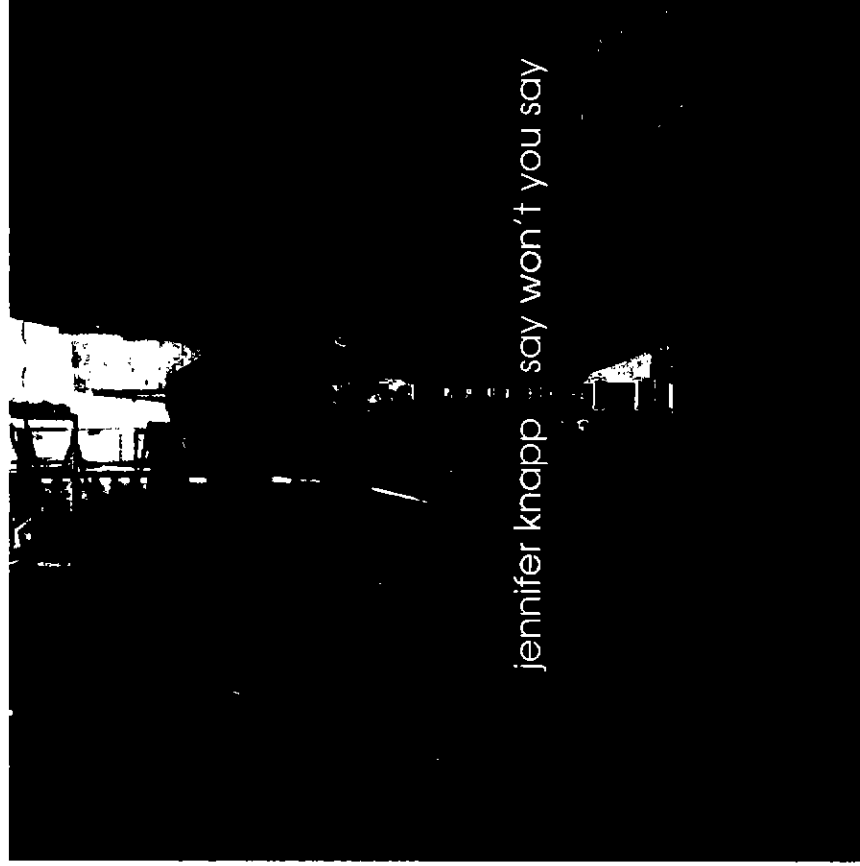
written by jennifer knapp
produced by hank mazzucco
"i want police music" with hudson music (B2) distributed by sml c/w/n
:13/3:58/fade

say won't you say,
say that you love me
with love, oh-oh, love, love everlasting?
all my devotion put into motion by you

every morning I
have a chance to rise and give my all
but every afternoon I find I have only wasted time
in light of your eyes
am I love amazing, I forgot how to speak
knowing you are near and I can finally see

my eyes rear to close
this reckless letting go is hard to bear
on the edge of all I need, still I cling to what I just
and what have I there?
brod my own disaster, who have I to blame?
all I need is willing to be fanned to flames

As I open up my eyes to see you standing there
Oh I can barely breathe, and I can't let go
All the love that I feel for you inside
I hope you feel it now somehow



jennifer knapp say won't you say

For More Information Contact: Coffee Records Promotion at 15.370.270x212 nik@police.com
Management Touchwood, LLC at 15.952.2687 (fx) Booking, Creative Artist Agency 615.383.8787 (pm)



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www.jenniferknapp.com

jennifer knapp say won't you say

01. say won't you say :13/3:58/fade



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