

**United States Copyright Office
Roundtable**

Panel III

Friday, May 10, 2002
Washington, D.C.

PANEL III - SMALL BUSINESSES

MR. GELFAN: Hi, I'm Marty Gelfan with Congressman Kucinich's office.

MS. MILES: Hello, I'm Peggy Miles, International Webcasting Association.

MS. POLACH: I'm Patricia Polach representing the American Federation of Musicians, the American Federation of Television and Radio Artists and the AFM and AFTRA Intellectual Property Rights Distribution Fund that distributes to non-featured artists.

MS. PROCTOR: I'm Deborah Proctor with WCPT Radio, the party that tried to get the amicus pleading filed. We are a party that evidently had our copyright violated yesterday.

MR. HIMELFARB: I am Gary Himelfarb. I'm the President of Ross Records. We are a record label. I am also on the board of AFIM Association for Independent Music and also on the Sound Exchange Board as the independent label rep.

MR. ROBEDEE: I am Will Robedee from KTRU at Rice University. I'm representing Collegiate Broadcasters, Incorporated, or CBI.

MR. WILLER: I'm Joel Willer. I am faculty supervisor of KXUL Radio at the University of Louisiana, Monroe and one of the 13 college and university broadcasters filing comments.

MR. DOBEK: Gary Dobek with Digitally Imported Radio, Vice President.

MR. ROE: I am Mike Roe, owner and operator of Radio IO in Jacksonville, Florida. I am here representing several small commercial independent webcasters.

MR. MONAHAN: I am Michael Monahan representing Special Audio.

MR. ZISK: I'm Brian Zisk, Technologies Director of the Future of Music Coalition. I was also a founder of the legendary Green Witch Internet Radio, which was bought, merged and then closed down. We got the rights back and we will stream again as soon as this is all straightened out to where we think we can do it legitimately.

MR. ESHLEMAN: My name is Dave Eshleman. I'm President and owner of Massanutten Broadcasting, a small market radio broadcaster in the Shenandoah Valley.

MR. HANSON: Kurt Hanson from RAIN, Radio and Internet Newsletter. We also have on site 14 channels of music called RAIN Radio.

MR. SIMSON: I'm John Simson, Executive Director of Sound Exchange, former recording artist and artist manager, recovered.

(Laughter)

MR. GREENSTEIN: Gary Greenstein, Recording Industry Association.

MS. PETERS: Back to you, James. Introduce yourself.

MR. CANNINGS: I would like to thank Mr. Carson for allowing me and yourself and the moderators for having me on the panel. I thank you very much.

My name is James Cannons. I am from the Our Own Performance Society, for which the acronym is OOPS.

MS. PETERS: The focus here is on the rule making and how it applies to small businesses and what particular problems there are and how they might be ameliorated. I could ask a bunch of questions, but maybe the best thing to do is just to let you tell us what you think the issues are.

As always, we always come over to this corner and say, respond.

So, does anyone want to start?

MR. GELFAND: I am Marty Gelfand. I'm staff counsel for Congressman Dennis Kucinich. In the other panels -- I want to represent a perspective that really hasn't been addressed and of course this panel is doing that for small businesses.

Congressman Kucinich represents about 600,000 constituents in the Cleveland area. In that constituency we are served by four college radio stations. In our broadcast area we've got Baldwin-Wallace College in Berea, Ohio; Cleveland State University in Cleveland, and then in our broadcast area is Case Western Reserve's WNEW and we also have John Carroll University, all of whom stream.

We also have some small Internet. We have Radio Crow based in our district and there may be others. We don't know unless they contact us for the most part. We are real concerned about this because this affects our constituents.

I'm not here representing any committee or subcommittee in Congress. I'm representing one Member of Congress who represents about 600,000 constituents. But our district is not unique. I mean I think we have the best college radio, but other than that we are not really unique. There is great college radio everyone. There are small Internet stations everyone. Those are the people that are building the Internet and these are the people that are putting out music that the commercial stations just aren't putting out.

You know, we have six or seven or eight or ten Clear Channel stations, not to offend anybody from Clear Channel, but you hear Sting and you hear Puff Daddy or Puff Diddy or you hear all these other people that we were talking about today. But you don't hear Blue Lunch. Blue Lunch is a local band that plays blues and Swing. And you know, you don't hear the Mercurys. I actually do a radio show on WRAW, too. I have been doing that since I was in law school and I just couldn't stop.

People call my show and say, "Hey, Marty, we are doing a CD release party. Can you tell the folks about it?"

And I say, "Sure, and I'll play something by them." You know, this is so typical of from Congressional district in the country. You have small webcasters who want to put out some good music and they don't want to be subjected to onerous terms that were worked out wherever they were worked out.

I know that Deborah here is from a small station and she wanted to be on the CARP Panel. I know we are not here to talk about royalties and I'm not going to talk about royalties, but I am going to talk about the process that the Copyright Office goes through in coming up with these.

Now, I think that this is a great process that we are going through right now. I hope that the things that people are saying get through. But I know that the Copyright Office doesn't always do things that way. The CARP, for instance, was one example.

Another example is, this is the April 26, 2002 Washington Internet Daily, the Eldridge decision came out which, well it wasn't a decision, it was just a certiorari decision by the Supreme Court to look at whether or not the Sonny Bono Copyright Act, the Copyright extension where when a copyright comes to its full term, whether you can extend it or not, and the Supreme Court decided to look at it.

We have both you, Mr. Carson and you, Ms. Peters, on the record as saying this is a wrong decision by the Supreme Court to even look at this decision.

MS. PETERS: No, we said we were surprised that they took the case since there is no conflict in the circuits.

MR. CARSON: Mr. Gelfand, we have a very short amount of time. We have some small webcasters whose concerns we want to hear and I would like you to stick to the point.

MR. GELFAND: I'm sorry if I offended you, but --

MR. CARSON: You are wasting time.

MR. GELFAND: I am not really wasting time, but I'm almost done here. I know everyone wants to talk, but the Copyright Office really needs to really listen to what the people are saying here today.

I really don't mean to be offending anyone. These are our constituents that we represent.

My final point is that what's going to happen here with the record keeping, if we can't get something that is less onerous to the small broadcasters, webcasters and college radio, what is going to happen is they are going to be force off the Internet.

You are going to limit free speech. You are not going to get people like Gialo Biaffen, for instance. Commercial stations are not going to broadcast Gialo Biaffen and the kind of music that he does and the kind of thoughts that he disseminates are not going to get out there in the world because the commercial stations are just not going to play him and others just like him.

It's so important that there be some kind of exemption, at least temporarily, for the onerous record keeping requirements in this rule.

MS. PETERS: Okay. I have Mike and then I have Will.

MR. MONAHAN: Well, I can actually speak in agreement with a couple of things that Martin says. Spatial

Audio represents an aggregate of about 190 broadcasters. They are all hobbyists. What is about to be required of us as hobbyists, and I won't repeat it again, if the rates don't force most of us out, the record keeping probably will because you are looking at people who are trying to build a business out of a hobby and they are doing it as a one-man team, putting together all the music, all the commercials, all the promotions and record keeping to an extent, but the kind that's being required by this legislation will make it incredibly difficult for any of us to continue in this hobby.

MR. ROE: His comments are kind of a great segue into my comments. I really appreciate the fact that this roundtable wanted to take a look at the specific interests of small Webcasters and before making my comments, just very briefly to help you understand Radio IO and my project, my business Radio IO operates in the space that is somewhere half between hobbyist and serious commercial entity.

I started my project two years ago as a hobby and over the past two years it's grown into what I believe is a viable business. Certainly part of creating a viable business is creating an audience, creating my programming.

Like many of my fellow Webcasters, I have spent the majority of these past two years focusing on developing the infrastructure of my business, developing my audience and my programming. I've done so as the sole proprietor of my business. I am Webmaster. I am network engineer. I am program director. I am music director. I am the Radio IO guy.

So, in considering those particular or special interests of small commercial Webcasters, I think it is very, very important that everyone truly understand who we are and what our businesses are. I have noticed both in the press and even physical reactions of many, when comments are made that, you know, shouldn't these rates be imposed upon us, and I know this is not about the rates. I'm not going to go there. But should these record keeping measures be imposed upon us, we will go out of business.

I see skeptical reactions. I would simply say to any of you who might be skeptical about that, if you took a real look at what my resources are, both in terms of my financial resources and my personal resources that I have committed to my business, come spend the day with me at Radio IO and look at what I have to work with as a small business.

I certainly don't apologize for that. I'm very proud of what I have been able to build with retirement savings. Unlike many others that have been part of this proceeding and many others, I'm not a radio guy. I don't have a background in radio. I'm not a technical guy. When I started this business all I have ever really done with a computer really was to generate an Excel spreadsheet or a Word document. But I've applied myself and I have built this business.

But anyway, my point is that I would simply encourage this roundtable, and in particular, members of the Copyright Office to understand who we are and to truly understand who we are. For every one Yahoo Radio, for every one large commercial entity, there are 999 of us.

What I believe, the largest single group, I mean if you look at what casters as a whole, as a universe, we, businesses like mine, we make up the largest single percentage of that universe. And if we are gone, and when I say, "we are gone," both as a function of the rate, but even as a function of the record keeping itself and the fact that I would be expected, as a small, one-man business to keep records that I just wouldn't be able to keep.

The fact that I would be gone, I fail to see how the artists and the labels that you purport to represent and whose interest that you allege to want to protect, I fail to see how you have done that.

MS. PETERS: Okay. We have Will and then James.

MR. ROBEDEE: First, I would like to thank you for the opportunity to be here today. It's an honor and a privilege. I want to talk a little bit about who we represent and the impact that the record keeping has on our organizations.

First, we are not a business. These are, in most instances, a volunteer student organization. Sometimes they have to be part of an academic program, but these stations are based at colleges and universities and other non-profit institutions of learning.

In the past, through precedent, the models that have worked have been sample reporting. Under the statute, 253.5, it has been allowed, for the PRO's to sample up to ten stations for one week a year. In reality, that's not what happens. Reality is 72 hours once a year, all stations. It works.

Going to a new model such as the one that is proposed won't work. Plain and simple, it can't be done without putting all these stations off the Internet. Part of the reason why is because these stations have a prior history, a prior working model that they work within. In order to implement what has been requested, it will change the nature of the operation. I can't see that meeting the Congress intent of being reasonable.

How can you change the nature of a student volunteer operation and be reasonable? There are, again, historical precedent for sampling within these organizations. Congress understands that public radio is different. That's why it set up Section 253, because they understand that these stations have limited resources, that they program differently and also looking at some of the possibilities for going ahead, John Potter brought it up before, that there was at least some public knowledge of the CPB-NPR-RIAA agreement.

We don't know the exact details, but we know at least in recording that there was an exemption for less than ten full-time employees and for above ten, it's sample reporting. It's reasonably possible. How can CPB stations who have hundreds of thousands of dollars in their budget, and all the details are in our reply comments, be exempted for under ten and with ten or more, get sample only, yet the students will be shut down because they want census-style reporting?

One of the comments in the RIAA reply comments talked about 30,000 hours at a station to input the data for 25,000 CD's. They said, "We only want the data for the songs that you actually play."

The problem is that at any given moment, any one of those songs from those 30,000 CD's averaging about ten songs a piece contribute pulled off the shelf. If all that data is not into a computer somewhere, in a software database yet to be created, how can they play the song?

So, one of the things you also asked about in one of the earlier proceedings was, you know, a time to implement. One of the things that we anticipated in our reply comments is, you know, at a typical college station the funding for the next academic year has already been allocated.

They can't go out and buy a system. They can't go out and buy software when they don't know what the needs are. So, they can't ask for that money until next year, but they won't get the money until the following year.

So, we do need to move ahead. There has to be some sort of reporting, if there is not an exemption, obviously. If it has to happen, there has to be a reasonable timeframe to implement a system that will work.

The most important part about this is that we are looking, I think everybody here at the table will agree, at an emerging technology and for the people who are not involved with college and educational broadcasting and webcasting, we are looking at an emerging business. We want to train the students to enter that world. Without the opportunity to webcast, they won't have that education.

Thank you.

MS. PETERS: Thank you. Jim?

MR. CANNINGS: Thank you. I would like to say that I'm also an artist. I heard this gentleman, what's your name, sir? Mike, right? I heard you say the amounts of things you have to do.

I, as an artist and a businessman, I have just as much to do in order to bring the product to you so that you can be on the air. We have to also look at that. I mean there is a complement here. We need you and you need us, okay?

So, if there is a requirement to satisfy us, we have to meet half and half, okay? I'm just asking all the Webcasters to look at it from that perspective because there is a responsibility that I have within myself in order to give you the material that you need and there is a certain responsibility that you have in order to do what you have to do in order to fulfill my needs.

So, I would like to just go down a few points here that I kind of summed up as I was sitting in the back. I took some notes down and I thought that there could be a marriage here because I see that there is a leaning on this side and there is a leaning on that side. I think it is the Wisdom of Solomon here that has to come down the middle. I hope that I could hit that barometer.

I wrote these points down because I felt that I could try to suggest the marriage.

First of all, as an artist I am not in favor of sampling. I have heard that mentioned here because sampling is in essence for artists that are not paid, ends up bridging the act of infringement, okay? Because sampling, as this gentleman pointed out, goes for a very short period of time. I cannot really come for everybody, but people are played and not paid, and that's not fair also.

So, I think the intent of this particular act says, "reasonable notice to copyright owners." I think that that is a very good standard to set. Everybody should read that because as an artist, whenever anyone reads that standard, the artist isn't paid. Okay? There are only a certain group of artists that would get paid. Okay? That is number one.

So, I feel the sampling, we should start to step away from that particular barometer as a way of determining how royalties are paid to artists.

MR. ROBEDEE: When it is reasonable, I agree with you.

MR. CANNINGS: Well, I'm getting to that, okay? So, the other part of it is that record companies are asked -- and this is what I heard here -- some people felt that the record companies do have information that they could complement the requirement. I think it is a little reasonable from one perspective. I think the record companies have information.

I, as a record company, I do have information. I know what records I'm putting out. I know what songs are in that record. I know what catalogue numbers is there. I know everything about it. So, if I could furnish that to some

exchange, as a representative of mine, that is half of the burden.

Your half of the burden is what you played and trying to match that. In other words, whatever requirements you may need in order to fill the gap, I think that that is a reasonable approach. In my opinion, that is hitting it on center. Everybody is contributing to the end result which to the artist and the record companies, of course.

Then someone raised the point of view that for instance a live performance of the same song, different background artists. I think the person who is responsible for hiring the performers would know the names of the performers and what part of the performance it was. In other words, if it were singers or musicians they could furnish that information to the record company who are also usually involved in the promotion of such concerts or active in those particular events. So, the record companies could furnish some exchange again, being responsible for collecting their royalties. I think that that has modified the situation that could bring this problem to a solution.

I would ask this: This is my asking because I think that the records, the gentlemen who are Webcasters can present to Sound Exchange or a record company, I think having a record in the office would be also essential because in essence I think that if there is no record in the office, then there is no public information and I think there should be public access.

Then I suggest, also, Internet regulations so that you try this situation out, whichever way you decide to go, so that you see how it works. You could make adjustments before you do the final decision and then have to make amendments.

It also gets to the regulation and we're not getting paid. It at least says to us there is no money going through the window like what happened with Napster. Everybody lost. They are out of business, but nobody got paid.

So, I think that having interim regulations is very important to any issue that is before anybody in terms of copyright.

Then the last thing is the scrambling of the thing. I think that the lady raised a very good point. She said, "We don't want our format to be known because this is our competitive edge." They could scramble the data and present it. I mean, you know, you can. You can go into a program and just scramble it.

So, I am just suggesting that these things could probably be alleviated by minds coming together and be willing to work with each other and make this a positive result for copyright owners.

Thank you.

MS. PETERS: Thank you.

MR. MILES: I have four points to make. Hopefully, I'll remember all four by the time I get to them. I'll try to do it fast. You are fortunate that you are through with most of the lawyers by now.

One of the aspects that I think is important for you to understand, and I have been encouraged today to hear from the number of people who have broadcast experience at the college stations and so I have experienced a great deal of empathy, including from some of the people on the RIAA side of the table.

That's why I am somewhat surprised by their continuing lack of understanding. I think it's important particularly though for the copyright office to understand who we are and what we are. Part of what has been expressed about

who we are has to deal with some of the more recreational aspects of college broadcasting.

One of the points Will touched that I really need to emphasize more importantly, is the educational first and foremost. We are educational both for our student volunteers and for our audiences. There are a great variety of Webcasters in general, specifically in terms of college broadcasters there indeed is another great variety of can you broadcasters.

In my case, and I don't necessarily want to set myself out as the standard, but to express a different aspect, my particular station is associated with an academic program. It is very important to our academic program that our students understand broadcasting, but also the emerging technologies.

So, it is very important for us to be able to expose them to that. We can't have the full burden of the commercial broadcasters because, of course, we don't have the resources. So, we have to have an introductory way of dealing with that.

In our case, we are part of an academic program. Our academic program is individually accredited at the departmental level. For those of you who are not familiar with academe, it's very common for a university to be accredited. It is less common, it is a subset. We are accredited by the Accrediting Council of Education in Journalism and Mass Communications.

In our last site report, one of the very strong points that they cited our department was an excellent radio station, including what we do over the air and including what we do over the Web. So, it is a very important aspect for our students to have that access. It's not just fun and games. It is that in many cases, even for the students who are doing it as part of their education, but we don't want to lose out on the educational value because of this process.

We have talked a lot about the economics. I understand that the artists need to be paid and deserve to be paid. But I think there is some misunderstanding. We have been talking in a very general sense about what some of the economics are.

One of the things that we are a little bit unusual about in our case, for a college radio station, we do use some computer music scheduling software. We previously used RCS's Selector, when they sat right here. By the way, for comparison's sake, I will tell you that they gave that program to us for free for the educational value for our students. We continue to use a scheduling software.

One of the advantages it gives me is I can report some very real data. In fact, we use A-wire's Music Master which was revealed in some of the commercial broadcasters' comments.

We are also the only station that uses, the only station in the country that uses, in our particular application, the real time and NEXUS software, so that not only do we anticipate, but we have some real time feedback in terms of last minute changes, even in the control room.

But even at that, we still can't provide the sorts of information that you are requesting. We can't do it. It just can't be done. But, I can go through and I can analyze in fairly certain situations, I can tell what we do in terms of performance.

So, as an exercise, I went through and I looked at what we played last week to get an analysis and apply on an annual basis, what would this mean to our song in our database. The average song in our database, applying the rates

that were proposed under the CARP proceeding, would mean that a featured artist would receive on an annual basis for our average song 36 cents. A non-featured artist would receive four.

If we tie that back to the last panel that was talking about ephemeral copies, then let's move the decimal point over a point because here we talk about nine percent of that for the ephemeral copies. What kind of reporting can we do for nine percent of four cents? When we look at a cost-benefit analysis, it just doesn't make sense.

In our case we have, from a college station standpoint, a very limited play list. We run at any time about 1,000 titles. When I turn around and look at one of our other participating stations, for example, at KLAX, they are running 80,000. Many of those, because of the nature of that station, don't get repeated. That's one of the things they pride themselves on.

So, when we look at the numbers in my case, when you look at the other cases of college broadcasters, the numbers are tiny. So, yes, artists deserve some compensation, but even when you add all of this together, we are talking the price of a Big Mac. It just doesn't make sense from that perspective.

We are talking also about the issue of the eclectic. I think we have already established that from the economics standpoint we are not really talking about big dollars that, geez, we have got to have census reporting so that we get all of these outlying artists. Well, we are talking about fractions of a penny in the course of a year. Again, it just plan doesn't make sense.

We have also, from the eclectic standpoint rules out sampling. I will again point out, when you look at Section 353.5, that we have had sampling. It has already been established as reasonable in the specific context of non-commercial college broadcasters. There is no difference here. It was reasonable then and it still is.

And I got through all four of my points.

MS. PETERS: Thank you.

SPEAKER: Thank you. I also started off as college radio general manager, too many years ago than you can remember. I have been in radio and television and flipped over the Internet broadcasting in '95, '96 with the first demos at the NAB for audio, using Zing Technology and put on some of the first radio broadcasters.

So, I'm delighted to be here. I am part of the association, the IWA, International Webcasting Association. We only formed officially in '98. Been around since '96, but we have on our board real networks, Microsoft and Apple, and they don't agree a lot of the time on our board, but they are still there. We also have about five of the Webcasters that have been testifying today and Ken Dade, Mike Wonagem.

Why we are here today is we don't think that one size, perhaps, fits everybody. There are some wonderful opportunities and diversity within the universe of Internet broadcasters, from the 13-year old with a mike and a modem to this woman that's broadcasting language out of her house with the same music. It might go to ten people. It might go to 100 people. They might be lucky, it might go to 5,000 and they might get some sponsorship.

So, if you are looking at the record keeping requirements, perhaps a sophisticated webcaster may be able to afford to do so today, perhaps, I don't know, it's very complicated, and there are some things that can't be done today. I could go on and on about the panel before, about the technologies that you can't monitor today. But perhaps some of these smaller Webcasters just are in a position to be able to afford this. We found in the last year we have lost about

1,000 Webcasters through a report on BRS Media. In 2002, and most of these are terrestrial tracking, but if you want to check it, BRS Media.com.

We had in 2001, 5500 terrestrial radio stations. We are now down to 4600 radio stations. It is very hard to count those guys with a mike and a modem who shout cast and those Live 365 guys. That might be broadcasting to five to seven people.

But the point is, we were all talking about dogs earlier, there are lots of breeds of dogs. We don't want to lose any. We don't mind if they mutate. We don't mind if they go into all sorts of different breeds. You know, we will pay more for one and pay less for another. But the point is we would like to keep these Webcasters in business because we don't know what they are going to evolve into and what they are going to become, if they are going to merge with another company.

Each one of these represents one or two staff members themselves. Maybe they are paying their own way. Maybe they are paying the vendors in our business. I don't want them to go. I'm a consultant. If these guys go out of business, I go out of business.

So, one of the issues we would like to consider is that one size does not fit all. Please consider the college broadcasters, the educational, the small Webcasters and the big guys.

One other point that I would like to make, I am sort of in agreement with Alex. I'm not in agreement that he isn't a visionary. I think he is just a business person. If we don't share some of the data on some of the records between all of us, we are going to have to create this over and over again and the administrative costs are going to be so prohibitive.

So, if there is some way we can work together to share this data, not put any of the data companies or collection companies out of business, but to work together from both sides, I am so for that and anything we can do, we'll do it.

MS. PETERS: Thank you very much. Brian.

MR. ZISK: Hello. I thought I would go over a few things. When we were the Green Witch Internet Radio, we were a large webcaster. We were not a hobbyist. We were non non-commercial. We were not a small entrepreneur. Maybe we were, but I would call us corporate. We had eight people full time entering data about the CD's we were going to play. We were buying about 1,000 CD's a month, adding well over \$10,000 every month into the record industry. We were getting probably an equivalent number of CD's for free.

There was no centralized database we could sync up to. We had to put all the data in and we don't even know if that data synced up with the data that Sound Exchange has. So, that's the sort of scale, I mean it was just absurd.

Another side issue is the whole thing about reporting under penalty of perjury. It's like the record companies in exchange for taking the artist's copyrights are supposed to issue royalty statements that are fair. They are generally underpaying.

I think we should issue our statements under penalty of perjury when they start issuing their royalty statements under penalty of perjury.

(Applause)

MR. ZIK: In addition, I think we have a real basic problem here because Webcasters became Webcasters because they love music. They should be the best friends of the record labels. I mean the records give everyone CD's. We broadcast them. I promote the bands. We spend well over \$100,000 on CD's, yet when they come and are putting these reporting recommendations on which are actually impossible to do, you can't track ephemeral copies. There is no way.

We used a company at Darrow. You talk about, oh, your bandwidth cluster is so high, we were paying \$1,000 a month for unlimited streams. They don't offer that anymore, don't all run and call them. But it is impossible to track ephemeral copies like that.

Similarly, the listener logs, where you were supposed to, in the initial proposal, report the time zone of where the people were listening from, that's absolutely impossible. That was so clearly impossible to everyone, including the RIAA, that they had to back off a little, now only because they would have been run out of town on a rail if they had insisted on it continuing.

There really has to be a bit more. It can't just be take, take, take, take, take. It's got to be these are the people who are out there promoting the music and driving sales for the record industry and you shouldn't be trying to put them out of business.

(Applause)

MS. PETERS: Back to you, Mike Roe.

MR. ROE: I'm covered. Thank you.

MR. ROBEDEE: I just wanted to put up on a couple of points. I want to point out that what Joel is doing at KULX -- I always get it wrong. But what he is doing there is wonderful. He is in an academic program where he is teaching students about industry practices using industry software.

But that is not typical of the type of stations that we represent, along the lines of the comments that he never made before, too. Some of our stations out there are small stations that are student volunteer organizations that are funding with student activity fees, not all of them are licensed. We have a member, KAMP, that is webcast only. If these reporting requirements go through, the organization is history. It's not just a matter of losing their extension or their service, which most of these people think they are doing with webcasting is they are extending their service through webcasting. They are gone. They are history. The program is gone.

So, I just wanted to make sure that we covered that. We are not just talking about in college broadcasting about people who have a license. Not all of them do. We also have two instances in our membership, we have WFNT of the State University of New York and KVRX out of Austin which are share-time stations, which means they are in a market but there aren't any more frequencies left. So, two people applied for a frequency and "you get half of it and I get half of it."

But they wanted still to be able to offer a resource 24 hours a day, seven days a week, to the students and to the community. How do they do that? Webcasting. So, 50 percent, or in the case of WFNT, 80 percent of their time will be gone.

I wanted to just cover a little bit more about some of the membership that we represent. Also, Joel is very fortunate in the situation to be able to work with some of the resources that he has. If you look at the IBS report, \$9,000 annual operating budgets for an educational, student volunteer station.

If you are looking at what the cost is to implement the reporting requirements that are being proposed, that's why I need to highlight that these stations are history because they don't have the resources. Even if they took all \$9,000 to go out and buy the equipment, hire people to put the data in and whatever it took to get that done, the fact is that they couldn't sustain it. And you are talking about a volunteer staff again.

To give you an example, this is a play list for a college radio station. Computers don't exist in most of them. Again, Joel is very fortunate to be working with the resources to do that, but a piece of paper, pen, song title, artist, album.

MR. HIMELFARB: Why couldn't that be input at another time into a computer? You don't have a computer?

MR. SIMSON: A play list that is compiled weekly? Someone is obviously typing the information.

MR. ROBEDEE: But that's not a census report.

MR. SIMSON: Well, what information are they reporting in those?

MR. ROBEDEE: It's not a play list; it's a top 20. It is totally different.

MR. SIMSON: But what information are they reporting in those?

MR. KASS: You go out and pick a couple of these examples, but that is not representative of the universe.

MR. MARKS: A couple of things, if I may. First of all, as you know, we recognize that non-commercial stations are different and we engaged in negotiations with you about record keeping. Of course, you wanted it tied to a rate deal, but we did reach out and try to say, hey look, we recognize you are different on the non-commercial side of things, let's do something on these.

MR. KASS: First I'd like to correct you. We were never in negotiations.

MR. SIMSON: Well, I had a meeting with the head of the National Association of Community Broadcasters and we have reached out to a number of people in the non-commercial world to try to do those kinds of voluntary negotiations.

MR. CARSON: There is still time, but not much.

MS. PETERS: I've got a list that says, "Patricia, David, James, Martin, Deborah and Gary. So, we go to Patricia.

MS. POLACH: The small Webcasters really are incredibly important and the hobbyist Webcasters are incredibly important and the college Webcasters and broadcasters really are incredibly important and they are increasingly important now at a time when the over-the-air radio ownership is increasingly consolidated and the variety of music played and offered has increasingly shrunk. I think that's got to be recognized and John has said that there are efforts to recognize and a willingness to recognize that.

I have two concerns about it. One is that, you know, this is the panel of the special people. So, that's a great panel. We don't want the special people's issues and concerns to end up being bootstrapped upon. That is terribly inelegant. But there are also a lot of services out there that can't afford to do a fair amount of record keeping and would be eager to take advantage of any special arrangements made for the special people. And that's a real concern. So, if all dogs aren't the same, there are a lot of different breeds of dogs. Let's remember that going in all directions I guess is what I'm saying.

The other concern I have and the point I want to make is I want people to realize that sort of at the end, at the very end, at the total end of the line of all the reporting and the money and where it all goes, there is an entity at the very end of the line that is the AFM and AFTRA distribution fund that distributes to the non-featured musicians and the non-featured vocalists who are the last people to get anything. We are at the bitten end. We're the last people to get anything. We get the least amount. It's the five percent. We have the largest number of people to try to find and to distribute to.

So, when we are talking about the special people and we are talking about the small people, we are right in there in that category of the special people and the small people.

I don't want to be a broken record here today, but a couple of things, I think, result from that from our point of view. One is that if there is only the most minimal data reported by anyone, I mean we are talking about really minimal data reporting, it is not sufficient to identify the sound recordings, the result is going to be that there is going to be so much money spent at the collective to identify the sound recordings that the amount of money is going to shrink and shrink and shrink and our little five percent is going to get so tiny that it's going to become increasingly impossible for us to really distribute.

Again, as more and more and more costs are shifted to the collective and to the artist to bear, that is going to shrink the pot and our little five percent of it is going to get increasingly small. If there is only sampling and no attempt to really reach out to the deeper catalogue and to pay money to the artist that don't get play a lot and aren't the hugest commercial successes, then that is not going to promote the diversity that the Webcasting business is, you know, offering to us and that the college and educational radio and hobbyist folks are offering to us.

I do want to say that musicians and vocalists are masters at making little amounts of money go a long way. I know an incredible number of musicians and singers who make their whole livings, they spend all their energy putting together a living out of getting a little stream of income from here, a little stream of income from there and a stream of income there.

The fact that any one stream is small does not mean that we would spurn it.

(Laughter)

MR. ROBEDEE: If the steam isn't there, there is nothing to -- we agree that you need to be compensated and where possible you need to be identified. There is the magic key, the golden data symbol that we were talking about earlier today. Wonder, we give it to you as much as we could, but with what is proposed there will be no stream to put on the Web and no stream to go to you.

So, we want to get what needs to be done so you can get compensated.

MS. POLACH: I guess the Copyright Office gets to be the great alchemist here.

MR. ESHLEMAN: In all the testimony that I have heard here today, I have heard almost nothing representing small market radio stations across the country. Commercial radio stations, many that are struggling to survive financially, serving in small communities, where they do not have the resources that many of the large networks have.

I would like to speak just very briefly about a large group of broadcasters across the country. I have two stations, an AM and an FM station serving communities of less than 5,000. I do serve a larger city, but as far as the license is concerned those are small communities.

I have been in broadcasting for 30 years and I look at this technology as a new way in which I can expand my ministry and my area of service to the communities that I serve and way beyond. However, I do not have the resources. I do not have the manpower. I do not have the technology to be able to even begin to report what is being asked for.

I have a staff of five full time people, four part-time people. The FM station, which is a music station, is the one that I would plan to stream if I was to stream. But I'm not even going to consider it until there is some sort of reasonable reporting and reasonable fee structure.

I cannot afford it. It's not going to generate income for me. I'm doing it as a service to my community and I have to look at my bottom line. If it doesn't make sense financially, I can't even consider it. We have no music software. Everything is manually presented. I have representatives of cards here that my operators use. We do a lot of music research with our listeners. We have a very tightly formatted music format.

However, it is all done manually, so I have no way of telling you what I played last week. I have no way of telling you what is played. I have the basic cards, yes, I can tell you that. But as far as rotation, how often they got played, I cannot tell you that.

I have no way of doing it. I would have to do it all manually. I would propose that if we can satisfy the requirements of BMI with a three-day annual logging, which is done manually as far as we're concerned, why can't something like this also be done for small market radio stations?

I would also like to see the exemption as far as ten or less as far as employees are concerned. That is a possibility. If NPR can do that, why can't small market commercial radio stations?

These are people who in many cases are losing money, believe in the service to the community and are struggling financially to stay afloat. They want to be able to use the new technology to reach out to their communities and beyond. So, there has to be a way that these hundreds of commercial broadcasters in small communities across the country can reasonably do this service and yet still give to the performers what is rightly theirs.

MS. PETERS: Thank you, David. We're back to you, James.

MR. CANNINGS: I do agree with everyone, what they are saying. I would like to say that from the artistic point of view, you have to remember that we experience the same thing.

I, as a person and an individual, have a record company, okay, I have a Web site that I show CD's on. Okay? I have a performing rights organization. I perform. I have a publishing company. I have to do all my record keeping,

okay? Plus, I have to go to the studio to produce a record that you would need to be in business. I have to be detailed there, too, because I can't make a half step on that, okay?

That takes a lot of work. It takes a lot of time to polish this product up. It takes sometimes years before you can say to yourself, okay this is done; let me put this aside and send it out to the market. It's a lot of dedication.

Plus, educating yourself, studying to be a better musician than you are or a better singer than you are, going to music lessons. This is not like you see on television where everybody stands up on stage. It's a lot of hard work behind it. Practicing before you go on stage, knowing everything that's done on stage people practice, okay?

It's a lot of dedication. It takes commitment. If you are in the radio business then you should make the commitment to do what it takes to be there. I think that's a fair thing.

MS. PETERS: Thank you, James. Martin.

MR. GELFORD: Thank you. I think we have the means to solve this whole problem. I think that there's a lot of agreement in this room, based on the three panels we have heard. I think we are in agreement that musicians should receive royalties for their work. It's theirs.

I think we also agreed that we don't want to put people off the Internet. I think we have agreed on that. I hope we have agreed on that. So, I think what we need to do is find a way that small Internet users, small Webcasters, college radio stations who stream their broadcasts, can meet the requirements of information identification, but without some of these onerous penalizing rules in the draft. I don't think that's very difficult. I think that should be simple.

Earlier today, folks from the RIAA and some of the Webcasters were talking about sharing data, sharing software or whatever and they didn't want to do that or whatever. You know, it doesn't really matter. Maybe their software isn't appropriate anyway because the software they are talking about, you know, it has to be in ASCII and it has to give all kinds of information that isn't necessary to what the musicians need.

All the musicians need is to know that their music has been webcast a certain number of times at various radio stations. That is all you need. I think someone pretty much narrowed it down to they need to know the song, they need to know the artist and they need to know the album and maybe the label, maybe, because most labels know who their artists are so that probably wouldn't -- most, not all, not the really small ones. But then again, if you know who the artist is, you know who the album is and you can identify.

So, that's really all you need. I think the Library of Congress and the Copyright Office could easily develop some kind of software, whether the RIAA wants to participate or not, easily. Because all you really need are three, maybe four, data fields. That could be given away, kind of like Adobe Acrobat is given away to people who want to receive things that are transmitted in Adobe.

You could give this away. It's not rocket science. What the musicians need is not anything terribly complicated and what the small Webcasters need is not to be penalized or put out of business. They just need to report what they are playing in a way that's simple and they are doing it anyway. We just saw the list that Will showed us. It shows the artist, the song and the album. Isn't that right?

MR. ROBEDEE: Yes.

MR. GELFAND: Yes. They are doing it anyway. They are reporting to CMJ. There is nothing difficult about this.

MS. PETERS: Before I go to the next person, over here, did you want to respond at all?

MR. SIMSON: I thought Gary was on your list. I thought I'd let him talk first.

MS. PETERS: He is on my list but he follows Deborah. So, we could do Deborah and Gary.

MS. PROCTOR: Let me start out by saying we, a long time ago, started out as a two-watt radio station, so I understand where you are coming from because I was there. I understand where these Webcasters are coming from, because I was there, too.

They do just as much work as you do and just as much work as I did starting up our operation. So, we all should understand what the other guy is doing. The thing is, when you were a small, beginning, nascent business, any little bump on the road can throw you into the gutter.

You need to consider some phase-in periods so you can learn what is necessary to distribute these funds properly, learn how to do them, learn what works and what doesn't work. Does sampling work? Does it not work? When does it work? When does it not work? How do you do that?

You don't have to invent this wheel tomorrow. You can say over the next period of years we are going to have the target by the next time these negotiations come up we'll know what to do.

The thing you have to understand, with the webcasting being such a new business, it is very much akin to what is going on in college radio and community broadcasting. At this NCFB Conference or the National Federation of Community Broadcasters thing that you talked about, our radio station sponsored two seminars. One of them was how to do effective fundraising so your radio station can break even and cover its costs.

The average NCFB radio station is making in the vicinity of maybe \$30,000 or \$100,000 a year total. They are hiring just the first couple of people.

Another seminar we conducted for them was how to begin webcasting. There are a number of community radio stations who need to webcast because they like only have ten watts or 100 watts. The big station that we had a University of Virginia, they run 600 watts. They are trying to get their signal into Richmond. They can't do it yet. They are hoping that using the Internet, their little 100-watt or 500-watt transmitters can get in through the first steel wall or get into the basement. They are afraid to start because they don't know what their fees are going to be.

Now, yes, NCFB and RIAA have talked, but those are still proposals. They are still maybes. For a small public broadcaster, and let's talk about Mr. Eshleman here, my public radio station is larger than his and my long term security is better than his and I'm a non-profit. I remember where he was when he was worrying about how to pay the rent.

Let's gradually and logically and reasonably learn how to do this so that we don't have to go back and reinvent the wheel. Let's do it right so we don't put somebody out of business because if anything happened to our two-watt station back in 1978, we wouldn't have been here. But we got lucky and now we are doing a national service that literally close to a quarter a million people a week are listening to, enjoying and getting for free.

Let's not destroy webcasting five years from now. Let's do it right so that all of us can get together and say, you know what, we did pretty well.

(Applause)

MS. PETERS: Thank you.

MR. HIMELFARB: As a small label, too, I want to see a variety of different Webcasters on the air and I think we need to have slightly different rules and rates for the different types of Webcasters.

You know, I started my business, a record label, in about 1980. I had a very profitable seafood business at the time and I decided to follow my passion which was music, reggae music. So, in the basement of my house, my family, friends, everyone said, "You're crazy. You shouldn't be starting this business."

I started a business and followed my passion. You know, when I hear people say, "Well, I've started a commercial webcaster and I'm not making money" or "I work my ass off from 8 in the morning until 10 at night. You know, I've been there. Okay?"

I mean, nobody makes you start a business. You decide to. You can go into plumbing supplies or whatever you want to do. No one says, "You've got to get into the music business." So, although I like the idea that there should be lots of webcasters because as an independent label, we don't get our music played on major stations, I don't have lots of sympathy for the guy who's trying to have a commercial venture and say, "I cannot comply with these different payments and the different reporting that the Copyright Office and Sound Exchange is requiring."

I put out a record and had a song by Jose Feliciano, "Feliz Navidad." Eleven years later, I had not paid for it and was told by Harry Fox I owed them \$11,000. I couldn't go to Harry Fox and say, "I'm just a little guy. I'm not making any money. I'm in the basement of my house. I'm a two-man operation. I work hard all day. Instead of paying, you know, the 4.5 cents per song mechanical, let me pay two cents."

I couldn't do that. I had to pay it because it was determined that the guy who wrote that song deserved to get that much money. As an independent label now, where I'm seeing amongst my company and many of my other independent labels who I have known over the 20 years where we have had to lay off employees, you know, we are feeling the pinch of the record industry.

If you can get me a cheeseburger and you can get me some French fries, you know, and I can super size because of you, you know, we will take that money, you know, just like she said, you know, any stream, we need this right now to survive.

So, I'm in favor of seeing the college radio stations get a lot of levity in their reporting and in what they pay, even if it's an annual amount. But I would like them to report. I was a DJ before I started my label of WHFS. I had to fill out a log. If it means that the guy has to write a log and somebody who does accounting, or you say to the DJ you've got to go into a database and to a Word Perfect file and enter it in a computer, the four categories or the five that Sound Exchange needs, then part of his job -- because when the record was spinning, I wrote it in a log.

So, maybe there is a way to have a computer at the station where this stuff gets entered to the best of their ability. I think a lot of the start-up guys like Ultimate 80s or whatever, you know, maybe they are thinking like the dot-comers, you know, I can an operate at a loss for three or four years and Yahoo is going to think what I do is really

cool and they are going to come and give me \$5 million.

MS. MILES: They are past that point.

MR. MONAHAN: I think we are all past that point. If I may, since so many of your comments addressed my comments specifically, I would like to say if you indeed did start a business in your basement, as you suggest, you operated at a loss for a while, too. I mean we all do.

I think the thing that is really important here to note is that none of us, and when I say "us" I speak of the group of small commercial webcasters that I came here with and that I feel I represent in saying that none of us are in any way suggesting that we should not keep information.

We are small business people. We are very passionate about what we do, but we are also realists. We do understand that the RIAA and that the artists and label do require a certain amount of information in order to ensure that both the labels, the artist and the copyright holders in general are properly compensated.

We certainly are very sympathetic to the folks at the very end of the chain, as you suggested and would like to make sure that they are compensated as well. I would like to correct you on one point. We are not objecting to what you described as being the four or five pieces of information that the RIAA or Sound Exchange wants us to collect.

We are objecting to the 20-plus pieces of information that we are being asked to collect for Sound Exchange or indirectly the RIAA. Anyway, I would like to suggest that that really is at the heart of the matter of why I felt a need to be here to speak with this panel today. That was to say, in addition to making my rather impassioned plea to understand who we are, understand what we can do. We are more than happy to provide this information. There are several of us who have made proposals.

I will say it's important to note that none of us have been in any form of negotiation with the RIAA or with Sound Exchange. That really is another concern of mine, that while the many conversations have centered, you know, outside of this room, but there have been a number of conversations recently that college stations, there's rumblings that there's a deal in the wind or religious stations, rumblings of a deal in the wind or college stations, you know, a deal.

I want to make sure and I would like to ask the Copyright Office to do its part and I have certainly been doing my part in the past two months to make sure that the representatives both in the House and Senate, will make every effort to ensure that the small, commercial webcaster does not get lost in this, that we are not pushed out of the marketplace in such a way that would make room for the domination of the larger commercial players.

MS. PETERS: Thank you. I'm going to call on Kurt because he hasn't had a chance to speak.

MR. HANSON: What he said.

(Laughter)

MR. HANSON: It may seem as if the webcasting and most of what we think of it, it's the big guys like the Spinners and the Yahoos and the MSN's. There are obviously thousands of non-commercial and college stations there that are certainly worthy of attention.

But the in-between category, you might be surprised to know, is where all the action is in this field. When you look at ratings in Arbitron and Metrocast, those are only of the firms that choose to participate. In fact, the vast

majority of audience to Internet radio doesn't participate in either service.

The listening of Stations like 3WK and Radio IO And Digitally Imported and Ultimate 80s and Beethoven and people who couldn't afford to come here like Radio Paradise, I don't know that they couldn't afford it actually or Radio Margaritaville, that's where the bulk of the hours are.

It's smaller entrepreneurs who are not in this as a hobby. It's a business they got into because they love music. Typically, it's because they love a certain genre of music that they felt wasn't getting air play on AM and FM, and they thought they could serve two purposes. They could be involved in the music they love, support the music they love, give it air play for the first time in years, to the music they love, and at the same time, make a business out of it.

Martin pointed out that Gialo Biaffra doesn't get FM air play. Frank Sinatra doesn't get FM air play. There is a wide variety. The Old Brothers Perrerto doesn't get FM radio. So, it's not just fringe stuff. There is loads of extremely popular music that these mid-sized commercial entities are promoting and it's good for the record industry and it's good for those artists and it's good for those genres of music and everybody can win.

It's a very, very tough time. It's not 1999 when Yahoo, RIAA deal was cut. Right now, if you are really good at it, there is maybe a penny per listener hour in revenues billed. If you go to the rep firms and you try to find a deal where they tell you how much they can get you, no one can guarantee a penny an hour, per listener hour.

So, you've got to find a way, if you are a small commercial webcaster and you are not part of a conglomerate, you have to find a way to live within that penny an hour or go out of business. Assuming you have been doing it for a while, you've probably maxed out your credit cards and your family debt and things like that.

As you make your decisions, what do you need to give each side that has a reasonable cost-benefit relationship? I'm not familiar with your mandate to know if that's part of it. But I know reasonable is, and I know reasonable is, so hopefully that is.

MS. PETERS: Always reasonable. Some of the stuff like census versus sample. I think if we can remember back to our college days, a good sample is better than a census, typically speaking.

If a college station can spend a few days a year or a broadcast radio station doing a BMI log, they pay close attention to it for three days a year. Everybody does that and it spans across the -- you know, so that the whole year is covered across the ground, you get better data.

MR. CANNINGS: Excuse me, but I've been in this business 27 years. People drop out from the bottom.

MR. HANSON: Mathematically, that's not true.

MR. CANNINGS: does not quit being played on radio.

MR. HANSON: Well, if it's three days here, three days there, three days here, three days there and you cover everybody.

MR. CANNINGS: With respect to the point that people are not paid and their music is played. So, the point is how do we make that bottom come up to the top or be equalized? This has been happening in this industry for as long as it's been happening. People are paid millions of dollars in royalties and other people don't get anything.

MS. PETERS: Let me start by saying that it is now ten minutes of five. We have ten minutes left. We need to turn to the record industry. So, I'll let Kurt finish.

MR. HANSON: It could be we just having a semantic different of understanding this. But at any rate, the same thing applies in compliance. You can have people spend, to do what the reporting for compliance that is being asked for, would be billions of records of information per year.

You've got to think, well, what's the balance? How much better is that than if somebody does an all- Metallica Radio Station, the copyright holder notices, informs the RIAA. They listen, they find it and they take it off the air. It's not that hard. It doesn't require delivering the billions of pieces of data.

I'll cut it short. The main point is that the CARP process covered the really big guys. That was the billion dollar corporations were involved in that.

The college radio stations, I think, are pretty clear and the non-commercials deserve some special treatment.

The in-between ground, on the other hand, and the small market broadcasters, that's the vibrancy of the industry and the majority listening in the industry and what you can do to keep them alive would be something that would be very helpful.

MS. PETERS: Thank you. You haven't spoken either.

MR. DOBEK: I wanted to just ask Kurt, you touched on a couple of points without really zeroing in on them. Was your point that it would be better to simplify the reporting requirements or to adopt graded or tiered levels of reporting requirements or both?

MR. HANSON: I think simplify is what I would recommend, that artist, title and album will cover so much of the vast majority of music. The costs, you know, the cost involved in adding extra pieces of data and new software for everybody and the transmission of all that stuff will be plus or minus dollar checks to some people. Simplification in every area would at least for our first go-round seem like it would be a good thing to try for.

MR. DOBEK: You see, the reason I asked this question is that I heard an awful lot of argument directly and indirectly in statements and testimony today about exemptions graded and tiered.

My concern in the fact that digitally imported is structured as a business and we really need digitally imported to continue to grow and just to be able to serve the listenership that it has. We need to make it work as a business. I'm concerned that the graded and the tiered requirement, you know, adoption of requirements, could actually incentivize an industry where those who are fortunate enough to get the exemption would be favored, in which case it would actually encourage the small business to either get out, one, be acquired by somebody really big, or third, fall back to, let's say, a non-profit organization.

So, if we are looking at this from a commercial enterprise which says you are going to have money coming in the pipe and we want to direct the fair cut of that money back to the creators of the musical works as well as the composers, the performers.

I think that we need to be very careful once we go down the tiered road, especially if the steps are set too high because it may actually be, at least at this point in time, we may actually be encouraging people to step down. I'm not

sure if that in the long run is really going to serve anybody's interest.

MS. PETERS: Are you recommending a uniform handling of it but, back where Kurt is, but with reduced data?

MR. DOBEK: I would think if the concern is that I think the answer to your question is yes. I think that simplification is probably better than tiered. Now, my guess is that there are probably strong arguments for the tiering, but I just think they need to be treated carefully.

MS. PETERS: Thank you. We have to go over here.

MR. GREENSTEIN: I'm going to address a few quick points and then John is going to address sort of the general comments.

As for the CARP process not covering smaller players and it was only the billion dollar corporations, I am not addressing the value, but I want to correct a misperception because companies such as Everstream, EnCanta, Music Match, Univision. You have companies such as BET.com.

MR. ZISK: Music Match is a half billion-dollar company.

MR. GREENSTEIN: -- Echo Networks, My Play, Radioactive Media Partners, these are not the MTV's and Yahoos of the world.

MR. ROE: They are also not small commercial entities that are employed by one person and started on small budgets.

MR. CARSON: Folks, it's seven minutes until five. Let's talk about notice and record keeping rather than CARP, okay?

MR. GREENSTEIN: The point that I want to make though, is that there is a difference between someone who is a non-commercial broadcaster and someone who is operating a business. People have talked about hobbyists. If you are a photographer and that is your hobby, you spend money, you buy your film at fair market value. You pay the film processing lab fair market value.

If people are doing this as a business, as Gary pointed out, the artists and the labels deserve to get paid, and that is what Congress established. If you are asking for something that does not have the money flow to those people, in effect what you are asking for is for artists and copyright owners to subsidize your business.

MR. ROE: But I have a choice about which camera I buy, about which film I buy. I have a choice in that marketplace and other similar marketplaces. In this particular one, I have one choice.

MR. SIMSON: You have a choice that you can direct license with any copyright owner that you want.

MR. HIMELFARB: No, you have a choice of which music you play. You have a choice of what music to play.

MR. ROE: You know what? We sure do. We do.

MR. SIMSON: We represent 400 independent labels, as well as the five majors. We found over 20,000

artists in our first distribution. Most of these are small businesses, too. I think one of the things that we have to look at is that we are moving into a world, and record companies, especially small labels like Gary's, are looking at a universe where record sales may not be the future. It may be licensing little bits and pieces of information, revenue streams from your cell phone tones, whatever it might be.

They are looking at the world like music publishers have looked at the world forever, in looking at revenue streams from licensing. If people can tune to any station or lots of different stations, thousands of stations that stream lots of very specific music all of the time, people may have less need to buy it.

So, I think the whole notion of promotion.

MR. HANSON: This is not record keeping.

MR. SIMSON: Well, I'm just talking in general, you know, that this is an important issue.

MR. ROE: The fact that webcasting would exist, how could that possibly cannibalize record sales any more than terrestrial radio has cannibalized record sales?

MR. SIMSON: I guess where I was going with this is, I know on the small side, especially college, you guys play a very specific niche of music. Those independent labels and artists, I'd like to make sure that I can get the money to them. We have found a lot of niche artists in our first distribution from the satellite services.

So, if I don't get data from you, then I'm sort of at a loss and having to try to find a proxy to do it.

MR. ROE: We want to provide you data.

MR. SIMSON: If I get the data from you, obviously it will help me to make sure that the right artists get paid.

MR. ROE: We want to provide you with data, but we want to provide you with an amount of data that has some relationship to our abilities and our resources as small businesses. We want to provide you, and many of us have expressed repeatedly our willingness, our agreement in providing the artist, the title, the label and the album.

MR. SIMSON: Let me just say that under the interim regs that we were working with, that kind of data wasn't sufficient to find about 20 percent of the titles.

MS. ATKINSON: That's because it wasn't entered correctly into the system in the first place.

MR. ZISK: Right, because we didn't have a database to sync up against.

MS. ATKINSON: So you are asking for more information from us so there would be more chance to enter it incorrectly.

MR. ZISK: Which then goes into your database which you sell to other people based on the data these folks give you.

SPEAKER: The less data you give us and the more inaccurate those fewer data elements are, the harder it is for us to find the copyright owners and the artists that we want to pay. So, you are asking small businesses, rights owners and artists to subsidize your small business's inability to provide us with data for us to distribute.

MR. ROE: Listen, we are more than willing. It's very unlikely that any of us would get the artist, the title of the

track that we played, the label, I mean how could we possibly get that information wrong? We announce it.

SPEAKER: We processed 85 million performances in our first distribution. There was many cases where the artist was reported as "various," where the artist was reported as a composer. I am not saying your particular business would do that. But you are not the only one that will be supplying us with the data.

We need regulations that will cover all of you.

MR. MONAHAN: Do you mean like CDDDB wouldn't work? I haven't heard that mentioned all day.

MR. ROE: Why isn't this an enormous issue for the performance rights organizations? I mean this is information that we provided that industry with.

MS. PETERS: I don't want to get involved here, but there is a huge difference between a membership organization where part of the membership, part of it, is to give the data with regard to their songs. Remember, they have been around for a very long time.

MR. ROE: That's correct.

MS. PETERS: This is a new venture. So there's some bumps in the road in getting this started.

MR. SIMSON: I made that point earlier, that we have to pay non-members as well as members. It would be a lot simpler if all I had to do was, as they do in the UK, they only pay their members.

MR. ROE: This is a matter of, a point of clarification for me. It would be helpful. If I'm a non-member and you have collected monies for my performances, how do I collect that money from you?

MR. SIMSON: We do a lot of research to try to find out who you are and where you are. Obviously, we look at Web sites. Again, you can imagine how hard it is to find small artists in little niches.

MR. ROE: Would it be required, though, that I become a member prior to these funds being dispersed to me?

MR. SIMSON: No.

MR. CARSON: Can I make a suggestion? It's five o'clock. We need to end really promptly at five. But I would like to make sure we hear from Sound Exchange, what Sound Exchange has to say on the subject of this panel. Just because of time, I would like to be sure that John has said everything he wants to say uninterrupted from this point on, please.

MR. SIMSON: Again, we have reached out to non-commercial entities. We are hopeful we can reach an agreement with them. We recognize their differences. You know, in the perfect world we would like to get a census from everybody because obviously it's going to make our job of distributing that much easier.

We know if it's impractical based on, also, the royalties you are paying. There is a cost-benefit if you are paying much lower royalty rates. We will work with you.

But again, my caveat, I want to make sure it gets to the right people. So, whether it's play lists, whether it's some other proxy that we are going to have to come up with, we have to recognize that there is a trade-off here.

Again, we have looked at the non-commercial world differently than we have looked at the commercial world.

Again, I think we have been trying to figure out what's a hobbyist, what's a small business? Is there really a difference?

Should someone doing this as a hobby who wants to be in business but isn't making any money, should they be treated differently? I know when I was a lawyer practicing law I did a lot of pro bono work for people who never paid me, unintentionally, of course. But in any event, I think what we have to look at is can we make distinctions that actually have a difference?

I think Gary was sort of making that point, too. Is there a distinction between a hobbyist and a small webcaster? What are those differences? Come to us and tell us what those distinctions are.

I haven't had anybody come to us with a proposal from a group of people saying, okay, here's what defines us from the big players. Here's what defines us from the commercial world. It's a two-way street. I haven't got a lot of phone calls from any of you.

MR. ROE: Actually, many of us have received calls from you guys.

MR. SIMSON: Well, I'm pleased. Anyway, so I think that it's a two-way street. Let's see if we can't find solutions. I think that's what we ought to be trying to find.

MR. HIMELFARB: I would just like to say real briefly that in the spirit of compromise that for these smaller stations who have obviously expressed the difficulty in the large amounts of information you may be requiring, and I have not read the 20 or 21 items, that maybe we could curtail it and make it much less for them so they can do their job because it seems, you know, and as a small label, I need, we want webcasters of all sizes. Let's not put them out of business. Maybe in the spirit of compromise try to come up with a smaller number of items.

Again, I don't understand why, you know, artist, title, album, catalog number can't work. Maybe there is a way to make it work. I understand that it might mean more work on Sound Exchange's end initially, but maybe there is a way to make it work. If that helps, I think we should at least give that some consideration.

MR. DOBEK: And/or a transition timeframe for providing the data as an alternative to an interim regulation. My concern with an interim regulation is that we are in this boat right now where the manual procedures and the software updates that are necessary to collect and report this data can't begin for the reason that we can't agree on what data is essential to collect.

I think another set of interim regulations is going to cause a lot of revisiting of these same issues and the effort required further down the stream. So, perhaps what's really needed is not a three-month phase-in period but a significant phase in period during which available data can be provided and some timeframe for saying, okay, after this point, this is the essential data that's needed as we see it from here on out and from that point on, this is what you provide.

I don't know if I expressed that clearly. It's been a long day.

MS. PETERS: No, no. Actually, I understand what you are saying very well.

MS. POLACH: Could I say one sentence?

MS. PETERS: One sentence.

MS. POLACH: It really is. I just think it's important for people to remember that at the end of the day there are thousands of artists and groups that are the smallest businesses.

MS. PETERS: I think you made that point, but you have emphasized it again.

We really do need to wrap it up. We do want to offer the people in the audience an opportunity to be heard. I'm going to urge you to only speak if you believe that your point has not be made and if you do speak, to keep it as concise as you possibly can.

So, is there anyone who wants to speak? Now is your chance. Tell us who you are and who you represent.

MS. WASSON: Hi, my name is Sandra Wasson. I am with KLX, the Berkeley campus radio station. I just wanted to note, I know that you said that you have spoken to some people with regards to an agreement. But there are 1 394, I believe, college radio stations and there is no one organization like CPB or RIAA, I mean there aren't two organizations that get together to create an agreement.

You know, you may create an agreement with Will. He represents in a sense, I don't know that he can sign a contract, for 23 member stations. We have IBS which has a large number of stations, how many are actually current active members, you can't say.

So, I think that is why we rely on the Copyright Office to promulgate regulations that won't effect us onerously with regards to how we do our business.

The other thing is that play list that you were talking about and you showed a sample of a top 35, that play list is a paper play list. We hand tabulate to get a weekly top 35 so that people know what our most played songs are.

But we play thousands of songs a week, you know. I think if you took 12 times the number of hours you would get, what 1600, 1700 songs in a week that are played on the station.

If your top 335 is a couple hundred of those plays, that means there are a lot of individual songs that are played and we just could not do the record keeping that's required.

MS. PETERS: Anyone else? If not, I want to thank this panel. You made very important contributions, as did all of the panels and all of the people here today and those in the audience who came forward and spoke.

At this point I think we have a lot to digest.

SPEAKER: I have indigestion.

(Laughter)

MS. PETERS: We heard a lot and I think for the people who work in the Copyright Office, we really need to coalesce amongst ourselves and kind of take track of where we are.

Obviously, we have a regulation that we have to get out. It's kind of taking a winding road. But for those of you who participated, if we are able to or if we believe that there is any further coalescing of groups or meetings to try to come to grips with some issues, we will be in touch with everybody.

But we really do thank you and appreciate your participation.

(Applause)

(Whereupon, at 5:09 p.m., the PROCEEDINGS were adjourned.)

* * * * *