

DOCKET NO.

RM 2002.1

COMMENT NO. 3

March 6, 2002

Copyright Arbitration Royalty Panel (CARP)
P.O. Box 70977
Southwest Station
Washington, DC 20024-0977

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GENERAL COUNSEL
OF COPYRIGHT

**Re: Notice of proposed rulemaking
37 CFR Part 201 [Docket No. RM 2002]
Notice and Recordkeeping for Use of Sound Recordings Under Statutory
License**

This is to provide the Copyright Office with my comments on the proposed regulations. An original and ten copies of this letter are enclosed. I am commenting as a technical professional and as a member of the public who purchases sound recordings, and who uses the internet and listens to "internet radio" or an "AM/FM Webcast" as the proposed regulations define it. I listen to internet transmission of sound recordings, as well as other material; and I listen to broadcast radio. I also purchase records and CD's.

Webcasts offer me a chance to listen to music that I cannot hear on regular radio. This is partially at least due to fact that a small-scale Webcasting operation is enjoys lower operating costs than a radio station, primarily absent the cost of running a transmitting site. The cost of the hardware and bandwidth to stream even reduced-fidelity audio on the Internet is at present actually higher on a per-listener basis, but this can be offset by potential access to enough listeners from around the world to assemble a modest but sufficient audience for more esoteric types of material. I am concerned that anything that increases the cost of webcasts will ultimately restrict what I can hear from U.S. Based webcasts. However, my main concern is my privacy, and that of my fellow citizens.

Sec. 201.36(e)(3) would call for Services (other than preexisting subscription services) to maintain and report a "Listener's Log" including detailed information, user login and logout time, location, etc. and a "unique user identifier". In other words, this would require the covered Services to collect data on the listening habits of each individual

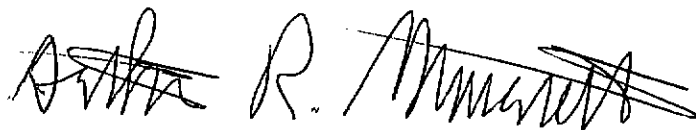
user and to send those reports to Collectives or to post those reports online. This requirement for a collecting and reporting a "unique user identifier" with other data appears to be an attempt to collect data on individual personal listening habits – including my personal listening habits.

This is a mandate for an unacceptable invasion of individual privacy and the entire subsection 201.36(e)(3) should be stricken. The optional allowance for a "click wrap" agreement in Sec. 201.36(d)(2) is no help. First, it is not mandatory. Second, there is no such requirement applied to Collectives. Third, and most important, it provides no assurance of privacy directly to any individual user, whose information would be collected and passed about.

No individual user would have any assurance that such information would not be misused for email or regular mail junk mailings, or sold to others for other purposes not authorized by the individual.

It is unclear what intended use would be made of this information other than marketing, since the royalties paid by operators would be based simply on numbers of listeners, not on their individual identities. If Webcasting does indeed provide a significant opportunity to enhance sales of recordings, there seems to be a conflict with the premise that recording companies and performers must be compensated for their hardship due to loss of sales caused by the medium.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Arthur R. Marriott". The signature is stylized and somewhat cursive, with a prominent "A" and "M".

Arthur R. Marriott
7254-28th Ave NE
Seattle, WA 98115