

March 5, 2002

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Copyright Arbitration Royalty Panel (CARP)

P.O. Box 70977

Southwest Station

Washington, DC 20024-0977

DOCKET NO.
RM 2002.1
COMMENT NO. <u>6</u>

MAR 11 2002

GENERAL COUNSEL
OF COPYRIGHT

In the Matter of

Notice and Recordkeeping for Use of
Sound Recordings Under Statutory License

Websound, Inc. submits these comments, pursuant to the request for comments of the Copyright Office published in the Federal Register, Vol. 67, No. 26 5761 February 7, 2002.

Websound has reviewed the Notice and Recordkeeping for Use of Sound Recordings Under Statutory License. Regarding the Reports of Use, in particular, the additional requests made by the RIAA that services include a "Listeners Log" in the Report of Use. Providing this information is unnecessary, and in some cases, technically impossible to provide with any degree of accuracy. We strongly disagree with the assertion that this information is easily provided, and not burdensome.

Websound negotiated a license with the RIAA in 2000. We also routinely contact copyright holders directly for license to use their material in a webcast. We have been providing performance information and fees to all interested parties since 2000. No party has ever requested listener specific information to ensure the accurate distribution of the fees collected. There has never been a need for listener specific information and there still is no need for listener specific information.

We agree that providing the following is reasonable and necessary for ensuring that the basic reporting objective of providing information with which copyright owners can generally monitor compliance with the terms of the licenses is maintained.

- (A) The name of the Service or entity;
- (B) The channel or program; or in the case of an AM/FM Webcast, the station identifier used by the Service, including the band designation and the FCC facility identification number of the broadcast station that is transmitted;

provided that if a program is generated as a random list of sound recordings from a predetermined list, the channel or program must be a unique identifier differentiating each user's randomized playlist from all other users' randomized playlists;

(C) The type of program: "A" (for an "archived program" as defined section 114(j)(2)), "L" (for "looped" if the program is a "continuous program" as defined in section 114(j)(4)), "V" (for "live" if the program is transmitted substantially at the time it is first performed in its entirety), or "PS" (for "prescheduled" if the program is an identifiable program transmitted at times that have been publicly announced in advance);

(D) For programs other than archived programs, the date of transmission;

(E) For programs other than archived programs; the time of transmission of the sound recording;

(F) The time zone of the place from which the transmission originated (as an offset from Greenwich Mean Time);

(G) For archived programs, the numeric designation of the place of the sound recording within the order of the program;

(H) The duration of the transmission of the sound recording (to the nearest second);

(I) The sound recording title;

(J) The International Standard Recording Code (ISRC) embedded in the sound recording, where available and feasible;

(K) The release year identified in the copyright notice on the album and, in the case of compilation albums created for commercial purposes, the release year identified in the copyright notice for the individual track;

(L) The featured recording artist, group, or orchestra;

(M) The retail album title (or, in the case of compilation albums created for commercial purposes, the name of the retail album identified by the Service for purchase of the sound recording);

(N) The recording label;

(O) The Universal Product Code of the retail album;

(P) The catalog number;

(Q) The copyright owner information provided in the copyright notice on the retail album (e.g., following the symbol "P") or, in the case of compilation albums created for commercial purposes, in the copyright notice for the individual track; and

(R) The musical genre of the channel or program, or in the case of AM/FM Webcast, the broadcast station format.

Providing listener specific information to copyright holders, such as unique user identifiers, does nothing to support the fair distribution of fees collected from services for the performance of their works. Indeed, it may be an infringement

on the rights of privacy of the listener.

The ability to accurately gather meaningful user information such as is requested is technically impossible. If a service implements a system that requires a listener to provide information to the service before accessing streamed content, it is unreasonable to expect the service to verify that the information provided is accurate before granting access to the streamed content. Indeed, there are many preexisting services which gather information such as age, gender, and zip code prior to content delivery, yet false and inaccurate information is routinely entered by listeners. Additionally, collecting IP address information yields only marginal accuracy. Most Internet Service Providers use Dynamic IP assignment. Different listeners may, from time to time, originate from the same IP address because of Dynamic IP assignment. Also, many listeners access the Internet from within private networks either at their place of work or at home. The home or office network may have a single IP address and utilize network address translation (NAT) to distribute data from the Internet. To the service using IP address logging it will appear that there is a single listener with multiple, simultaneous, identical performances. In either case, "Listener Logs" are voluminous and will contribute no meaningful data that can be used toward ensuring fair compensation and distribution of fees collected for the performance of their works.

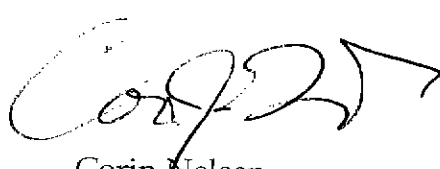
Respectfully Submitted,



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