Inetprogramming Incorporated
United States Canada Jamaica
http://inetprogramming.com

March 5, 2002

Root Music For Your Soul!

Broadcast Operations:
15 Radio Stations
1 TV Station

11 Music Formats:
Bluegrass
Reggae
Chinese Classical
Smooth Soul
Digital Dance
Americana
FemXtreme
Celtic
Blues
Golden
Hardcore Rock

Facilities:
Seattle, WA USA
Victoria, BC Canada
Moses Lake, WA USA
Covington, KY, USA
Atlanta, GA, USA
Portmore, JA, WI

Office of the General Counsel,
Copyright Office,
James Madison Building, Room LM-403,
First and Independence Avenue, SE,
Washington, DC;
RE: Comments Original and Ten Copies for
Copyright Office 37 CFR Part 201
[Docket No. RM 2002] Notice and Recordkeeping for Use of Sound Recordings Under Statutory License
AGENCY: Copyright Office, Library of Congress.
ACTION: Notice of proposed rulemaking.

Find attached our comments regarding this proposed action. We have embedded our comments after the appropriate section throughout the attached pages of this document. Our response can be identified by the word **Comment: Followed by our statement in bold text like this.**

We have also included an Appendix illustrating the current state of the art in data collection, the weaknesses and the potential violation of United States privacy laws.

These proposals are ill thought out, not technically possible nor achievable, and show a tremendous lack of even the most basic understanding of computer systems. Furthermore the proposals call for collection of data with no regard to the fact that it is illegal to collect information on minors in this country. Rates proposed are higher than any other media operation – a proposal of $200 per person per stream per year in addition to the other licensing and operating costs of a business is ludicrous. The proposals call for tasks that are not acceptable in any business, nor are they allowed in countries around the world.

These proposals have only one goal in mind and that is to eliminate streaming broadcasts on the internet from any source except the very largest corporations, and threatens to cause the loss of thousands of jobs. The economic downturn from the lack of the independent movement that has been built successfully over the past 7 years over the internet, will drop this country into a huge economic depression. It will leave the United States in the dark ages of technological growth as the rest of the world embraces and moves forward with webcasting and all the related areas yet to be implemented. There will be no incentive in the US to move forward.

These proposals doom the freedom of speech, growth and expression that drive this country and they do so under the guise of royalty distribution. There is no accountability of the mechanism that is to monitor these proposals thus allowing for huge abuses to continue in an industry that for 80 years has had a rotten reputation.

We strongly recommend that these proposals be completely rejected in their entirety.

Robert Pullman
President
Inetprogramming Incorporated

Copyright Office

37 CFR Part 201

[Docket No. RM 2002]

Notice and Recordkeeping for Use of Sound Recordings Under Statutory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office of the Library of Congress is issuing a notice of proposed rulemaking on the requirements for giving copyright owners reasonable notice of the use of their works for sound recordings under statutory license and for how records of such use shall be kept and made available to copyright owners. The Digital Performance Right in Sound Recordings Act of 1995 and the Digital Millennium Copyright Act enacted in 1998 require the Office to adopt these regulations.

Comment: The definition of "reasonable notice" is a value based judgement and is not subjective nor can it be. Rulemaking by definition must be exact and specific. The assumption that "reasonable notice" is acceptable for interpretation by the parties involved in this rulemaking is not acceptable nor would it be in a court of law.

DATES: Comments are due by March 11, 2002. Reply comments are due by April 8, 2002.

Comment: The deadline for comments is unreasonably short and does not allow the proper dissemination of information to all the parties involved; it has obviously been set to such a short period to ensure limited response. No regular periodical can publish an issue and distribute the contents to its readers in the time frame specified.

ADDRESSES: An original and ten copies of any comment shall be delivered to: Office of the General Counsel, Copyright Office, James Madison Building, Room LM-403, First and Independence Avenue, SE, Washington, DC; or mailed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024-0977.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024-0977. Telephone: (202) 707-8380. Telefax: (202) 252-3423.

SUPPLEMENTARY INFORMATION:

Background

The Digital Performance Right in Sound Recordings Act of 1995 (DPRA) amended 17 U.S.C. 114 to give sound recording copyright owners an exclusive right to perform their works publicly by means of a digital audio transmission, subject to certain limitations and exemptions. Pub. L. No. 104-39, 109 Stat. 336 (1995). Among the limitations placed on the performance of a sound recording was the creation of a statutory license that permits certain subscription digital audio Services to publicly perform those sound recordings through digital audio transmission. In order to operate under the license, eligible subscription digital audio Services must pay the statutorily required fees and comply with certain other conditions, such as adherence to notice and recordkeeping requirements.

In 1998, Congress passed the Digital Millennium Copyright Act (DMCA), which expanded the scope of the section 114 license. It amended section 114 by adding three new categories of Services that may operate under the license, and by redesignating the subscription Services covered by the DPRA statutory license as ``preexisting subscription Services.'' Pub. L. No. 105-304, 112 Stat. 2860, 2887 (1998). The three new service categories are: (1) Preexisting satellite digital audio radio Services, (2) new subscription Services and (3) eligible nonsubscription transmission Services. The DMCA also amended 17 U.S.C. 112 to add another new license that is available to permit Services to make ephemeral recordings of a sound recording to facilitate the transmissions permitted under section 114.

Comment: The DMCA is based on assumptions in technologies, delivery systems, and the overall nature of the internet itself. The technologies described in the DMCA are obsolete and there is no provision for changes in technology that invalidate the entire structure the DMCA was built on. Technologies today can transmit programming material directly to listeners utilizing standard broadcast equipment without the need for any mechanism to make any ephemeral recordings. Java transmission is no different than a standard broadcast transmitter. Java transmission converts audio analog input or digital input to output that is understood by a receiving device. It converts the information into readable electrical patterns exactly the same way a radio transmitter converts audio input into readable electrical patterns. There is no need to use a recording other than the material supply by the recording label. These proposals completely fail to realize

that there is technology already being used for broadcasting that renders the crux of the proposals obsolete, yet are in full compliance with the DMCA in areas of music selection and programming.

Both the DPRA and the DMCA direct the Librarian of Congress to establish regulations to require eligible Services to give copyright owners reasonable notice that their sound recordings are being used under one or both of the licenses and create and maintain records of use and make them available to copyright owners. See Secs. 112(e)(4) and 114(f)(4)(A).

Interim Rule for Digital Audio Subscription Transmissions

On May 13, 1996, the Copyright Office published a Notice of Proposed Rulemaking (NPRM) in the Federal Register requesting comments on the requirements by which copyright owners should receive reasonable notice of the use of their works from subscription digital transmission Services and how records of such use should be kept and made available to copyright owners. The Office asked commentators to consider both the adequacy of notice to sound recording copyright owners and the administrative burdens placed on digital transmission Services in providing notice and maintaining records of use. 61 FR 22004 (May 13, 1996).

On November 14, 1996, and again on January 27, 1999, the Copyright Office met with the parties to facilitate agreement on the notice and recordkeeping requirements under section 114, and to discuss the proper regulatory and recordkeeping role of the Office.\1\

\1\ The comments, meeting summaries, and meeting handouts are available in the Public Information Office of the Copyright Office, James Madison Memorial Building, Room LM-401, First and Independence Ave., SE., Washington, DC.

Based on the comments filed in response to the first NPRM and the information gleaned from the subsequent meetings, the Copyright Office published a second NPRM on June 24, 1997, presenting certain

preliminary decisions and asking the parties for further comments.\2\ 62 FR 34035 (June 24, 1997). In 1998, after extensive study, the Copyright Office issued Interim Regulations to implement the notice and recordkeeping requirements for section 114 that were enacted in 1995 as part of the DPRA. 63 FR 34289 (June 24, 1998). 37 CFR 201.35-201.37. The interim rules took effect on June 28, 1998. The rules were issued on an interim basis in light of the rapidly developing nature of the digital transmission Service industry and the possibility that new technology might be developed which would allow the reporting requirements to be either

[[Page 5762]]

expanded or reduced, depending upon the needs of the industries.

\2\ The version that was published in the Federal Register on June 24, 1998 is a synopsis of the Interim Regulation in Docket No. RM 96-3B, adopted June 15, 1998. The full text is available for inspection and copying during normal business hours in the Public Information Office of the Copyright Office, Room LM-401, and in the Public Records Office of the Licensing Division of the Copyright Office, Room LM-458, James Madison Memorial Building, First and Independence Avenue, SE, Washington, DC 20559-6000. The full text is also available via the Copyright Office home page at http://www.loc.gov/copyright/fedreg/1998/96-3b.html.

Since that time, the subscription digital audio Services (now known as the ``preexisting subscription Services'') have filed notices of use and maintained records of use in accordance with these rules. These rules, however, were not adapted to cover the new categories of Services that operate under the licenses in sections 112 and 114, as amended by the DMCA.

Current Rulemaking Proceeding

The purpose of this proposed rulemaking is to provide interested parties with an opportunity to comment on the Interim regulations and to amend these same rules to include the requirements of the 1998 DMCA amendments that expanded the section 114 license and created the new section 112 license. For a full discussion of the issues underpinning the Interim regulations, please refer to the earlier NPRMs, 61 FR 22004 (May 13, 1996) and 62 FR 34035 (June 24, 1997), and the notice announcing the interim rules. 63 FR 34289 (June 24, 1998).

1. Preliminary Considerations

On May 24, 2001, the Copyright Office received a petition from the Recording Industry Association of America (RIAA) and its SoundExchange division requesting that the Office conduct rulemaking proceedings to develop notice and recordkeeping requirements that substantively address the 1998 DMCA amendments. RIAA, however, advised against establishing any notice or recordkeeping requirements for pre-existing satellite digital audio radio Services, as defined in 17 U.S.C. 114(j)(10), or for pre-existing subscription Services employing transmission media other than those used by such Services on July 31, 1998. RIAA petition at 1-2. This suggestion was based on the fact that RIAA and identified Services were engaged in negotiation discussions regarding notice and recordkeeping issues for these Services which they hoped would result in agreement that would be jointly proposed to the Office for adoption in a second rulemaking proceeding. RIAA petition at 2.

The Office agrees that there is a need to adopt additional notice and recordkeeping requirements for eligible nonsubscription Services at this time in order to have them in place when the current CARP proceeding is concluded. Adoption of such rules will enable copyright owners to receive their royalty payments as expeditiously as possible. See U.S. Copyright Office, Order in Docket No. 99-6 CARP DTRA 1 & 2, Docket No. 2000-3 CARP DTRA2 (December 4, 2000 Order.)

The scope of the rules proposed by the Office, however, covers all Services that operate under the section 112 and 114 licenses. The

Office takes this approach because preexisting digital audio satellite Services and new types of subscription Services are already in operation and should have the benefit of knowing what record keeping requirements they must use so that they can structure their businesses accordingly. Moreover, it is likely that the basic requirements for notice and recordkeeping will be similar for all Services. For this reason, the proposed rule is an amended version of the interim rule and addresses the notice and record keeping requirements for all categories of Services.

2. Elements of Proposed Regulations

To make it explicit that the provisions of 37 CFR 201.35-201.37 apply to the Services added by the DMCA, statutory references to them have been inserted as appropriate throughout. Also, the statutory definition for each Service has been added to the definition sections of 37 CFR 201.35-201.37, either expressly or by a cross reference. A definition of ``AM/FM Webcast'' has also been included in the recordkeeping provisions for section 201.36.

The Office also proposes amending 37 CFR 201.35-201.37 throughout to make those provisions applicable to section 112 licenses in the same way that they apply to section 114 licenses, although differences in the statutory requirements have been taken into account where appropriate. Therefore, statutory references to section 112 licenses have been incorporated along with references to section 114 licenses.

This approach follows RIAA's recommendation with regard to the recordkeeping requirements for section 112 licenses. However, while RIAA recommended that 37 CFR 201.35 be used as a model for section 112 notice requirements, it advocated putting the section 112 notice requirements in a separate section because ``the existing notice regulations are so replete with references to the subject matter of the statutory license as to make it confusing to integrate the two notice provisions.'' RIAA petition at 11. However, the Copyright Office has decided not to follow that approach at this time and proposes to amend 37 CFR 201.35 to apply its notice provisions to both section 112 and 114 licenses. The Office does not believe that such an approach is confusing, and believes that such an approach is more efficient and

will result in less paperwork for the Office and for Services operating under the statutory license. For example, the proposed rule provides that a Service may file a single initial notice stating the Service's intention to use either the section 114 statutory license, or the section 112 statutory license, or both.

Initial Notice. The proposed changes to the notice requirements of 37 CFR 201.35 are intended to apply to situations in which a Service is operating under only one license and those in which a Service is operating under both. Consistent with that approach, the amended rules propose use of a single standard form for both the section 114 license and the section 112 license. A Service will be required to expressly indicate on a standard form Notice of Use of Sound Recordings under Statutory License the license(s) for which the notice is being filed.\3\ The form will also require that the Service indicate the categories of license (e.g., preexisting subscription service, non-subscription transmission service, etc.) for which it seeks the license. In addition, the Service must provide the date or the expected date of the initial digital transmission of a sound recording made under section 114 and the date of creation of an ephemeral phonorecord made under section 112.

\3\ The Notice of Use of Sound Recordings under Statutory License would replace the Initial Notice of Digital Transmission of Sound Recordings under Statutory License found in the current version of section 201.35.

The Office proposes to require all Services, including those which have previously filed a general Notice of Use for the section 114 license, to file a new Notice of Use. It is the Office's impression that many Services that have filed Initial Notices under the current regulation have ceased using the statutory license and, in many cases, have gone out of business altogether. Requiring all Services to refile a Notice of Use will make the Office's records more reliable, retiring records identifying Services that are no longer using the statutory license. The Office invites comments on this proposal.

Moreover, the Office proposes that all Notices of Use be prepared using a standard form developed for this purpose. In this way, there will be an accurate uniform record currently identifying all Services using these statutory licenses, indicating which licenses are to be used, the type of transmissions to be made under the section 114 license, and information concerning the date of first transmission or the date for making an ephemeral recording of a sound recording. Under current practice, in which parties may submit a notice based on a suggested,

[[Page 5763]]

but nonmandatory, format, a Notice is more likely to be misfiled and the information in the Notice is less likely to be easily recognized. Parties may comment on the elements required as part of the notice, on when the updated notice should be filed, and on the layout and utility of the proposed standard form. A prototype of the proposed form has been posted on the Copyright Office website at: http://www.loc.gov/copyright/forms/form112-114nou.pdf.

In general, Services transmitting sound recordings under statutory license will be required to file an initial notice with the Copyright Office as before, including the Service name, address, telephone number, and information on how to gain access to the online website or home page of the Service or entity, where information may be posted under these regulations concerning the use of sound recordings under statutory license. If the proposed rules are adopted, the notices will be placed in the public file in the Licensing Division of the Copyright Office, where copyright owners may go to access the information concerning use of sound recordings under the licenses. The Office proposes to discontinue its current practice of posting copies of all notices on its website. The Office questions the continued utility of making this information available on the website, which requires the expenditure of substantial resources. It does not appear that removing the notices from the website would be likely to deprive interested parties of the information found in the notices. The Office proposes to provide copies of all notices of use to the Collective or Collectives designated through the CARP process to receive and distribute royalties

under the statutory license, and believes that this, combined with the availability of the notices for inspection and copying in the Licensing Division, adequately makes the information in the notices available to all interested parties.

Moreover, the Office seeks comment on a possible change to the requirement that all notices be filed in the Copyright Office. Would it be more efficient for a Service to file its Notice of Use directly with the designated collection entity, rather than with the Copyright Office? What would be the propriety and efficiencies of having Services file Notices of Use not with the Office, but directly with the Collective designated to receive royalties from the statutory licensees, and requiring the Collective to make the notices available to the public for inspection and copying?

Moreover, the Office is seeking comment on the advisability of requiring periodic filings of the notices of use in order to establish a continually current and updated file of Services operating under either the section 114 and section 112 licenses. If the Office finds there is a need for maintaining an updated file, the final rule will specify that each Service must file a new Notice of Use with the Office every year (or other time period to be determined).

In any event, a new Service will still be required to file its Notice of Use prior to the date of first transmission or the making of an ephemeral recording, and a Service will continue to be required to update its filing within 45 days of a change in the information reported. If notices are to be filed with the Copyright Office, all notices shall be accompanied by the filing fee (currently $20) specified in section 201.3(c) of title 37 of the Code of Federal Regulations. On the other hand, if the Office adopts a rule requiring Services to file the Notices of Use directly with the designated collective, there is an open question on whether there should be a filing fee and how much that fee should be. Interested parties should address this issue in their comments to the Office.

Reports of Use. Where appropriate, the existing recordkeeping requirements have been revised to reflect the changes introduced by the DMCA by inserting the appropriate statutory references. The proposed amendment sets forth specific reporting requirements for each Service category. In fashioning the proposed new regulations, the Office is

adopting RIAA's recommended changes for recordkeeping requirements for new subscription Services and for Services making eligible nonsubscription transmissions under section 114 and applies the same rules to the preexisting satellite digital audio radio Services. In addition, the proposed regulations incorporate RIAA's recommendation for section 112 recordkeeping requirements. The Office is taking this approach because the required information seems designed to accomplish the basic reporting objective of providing information with which copyright owners can generally monitor compliance with the terms of the licenses.

As before, a preexisting subscription Service making digital transmissions in the same transmission medium used by such Service on July 31, 1998, would be required to submit reports of use with an Intended Playlist containing all the elements required in the Interim regulations. No changes have been made to the requirements for those Services' Intended Playlists. The amended rules, however, require other types of Services to submit Intended Playlists that provide additional information, such as the type of program and the time zone from which the transmission originated.

In addition to the information in the Intended Playlists, RIAA has made additional requests for information in two instances. In the case of eligible nonsubscription transmissions and transmissions made by a new subscription Service, RIAA has requested that these Services include a ``Listener's Log'' in the Report of Use. The ``Listener's Log'' will identify the name of the Service, the channel or program accessed, information on the user, such as date and time the user logged in and out, the time zone of the place at which the user received the transmission, the user identifier, and the country in which the user received the transmission. RIAA has also requested that a Service making ephemeral phonorecords of sound recordings under section 112(e) include an ``Ephemeral Phonorecord Log'' in its record of use. The ``Ephemeral Phonorecord Log'' would, among other things, include the name of the Service, the date the phonorecord was made or destroyed, and specific information about the sound recording from which the ephemeral phonorecord was made. Commenters should discuss in detail the reasons for including or excluding specific elements of the Listener's Log and the Ephemeral Phonorecord Log.

On its face, the request for the Intended Playlists, Listener's Log, and Ephemeral Phonorecord Log seems reasonably based on the premise that the copyright owners need certain specific information to monitor compliance and use by the Services. In support of its request for the detailed information, RIAA argues that the information it seeks from the Services is ``easily provided, [] not burdensome, and in fact, is currently provided by a number of licensees who have obtained licenses through negotiations with the RIAA and/or Sound Exchange.'' RIAA Petition at 10-11. RIAA further justifies the need for the additional reporting requirements on the basis of differences in statutory requirements for the different licenses and on the basis of the different business models used within the different categories of Services. RIAA petition at 9. Other interested parties, however, may find the requirements too stringent and burdensome in spite of RIAA's assertions. Such parties should 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.

[[Page 5764]]

3. Final Rules vs. Interim Rules

The Copyright Office issued regulations governing notice and record keeping for the preexisting Services operating under the section 114 statutory licenses as interim regulations because the industry was young and there was a reasonable expectation that the rules would need revision in a short period of time. The Office, however, intends to issue final rules at the conclusion of this proceeding which shall govern all Services operating under both the section 112 and section 114 statutory licenses. Of course, an affected party can always seek revision of the rules at a future time if and when the need for change arises.

List of Subjects in 37 CFR Part 201

Copyright, Recordings.

Proposed Regulation

In consideration of the foregoing, the Copyright Office proposes amending part 201 of 37 CFR to read as follows:

PART 201--GENERAL PROVISIONS

1. The authority citation for Part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

2. Sections 201.35 and 201.36 are revised to read as follows:

Sec. 201.35 Notice of Use of Sound Recordings under Statutory License.

(a) General. This section prescribes rules under which copyright owners shall receive notice of use of their sound recordings when used under either sections 112(e) or 114(d)(2) of title 17 of the United States Code, or both.

(b) Definitions. (1) A Notice of Use of Sound Recordings under Statutory License is a written notice to sound recording copyright owners of the use of their works under section 114(d)(2) or section 112(e) of title 17 of the United States Code, or both, and is required under this section to be filed by a Service in the Copyright Office.

(2) A Service is an entity engaged in either the digital transmission of sound recordings pursuant to section 114(d)(2) of title 17 of the United States Code or making ephemeral phonorecords of sound recordings pursuant to section 112(e) of title 17 of the United States Code or both. For purposes of this section, the definition of a service includes an entity that transmits an AM/FM broadcast signal over a digital communications network such as the Internet, regardless of

whether the transmission is made by the broadcaster that originates the AM/FM signal or by a third party, provided that such transmission meets the applicable requirements of the statutory license set forth in 17 U.S.C. 114(d)(2). A Service may be further characterized as either a preexisting subscription service, preexisting satellite digital audio radio service, new subscription service, non-subscription transmission service or a combination of those:

(i) A preexisting subscription service is a service that performs sound recordings by means of noninteractive audio-only subscription digital audio transmissions, which was in existence and was making such transmissions to the public for a fee on or before July 31, 1998, and may include a limited number of sample channels representative of the subscription service that are made available on a nonsubscription basis in order to promote the subscription service.

(ii) A preexisting satellite digital audio radio service is a subscription satellite digital audio radio service provided pursuant to a satellite digital audio radio service license issued by the Federal Communications Commission on or before July 31, 1998, and any renewal of such license to the extent of the scope of the original license, and may include a limited number of sample channels representative of the subscription service that are made available on a nonsubscription basis in order to promote the subscription service.

(iii) A new subscription service is a service that performs sound recordings by means of noninteractive subscription digital audio transmissions and that is not a preexisting subscription service or a preexisting satellite digital audio radio service.

(iv) A non-subscription transmission service is a service that makes noninteractive nonsubscription digital audio transmissions that are not exempt under subsection 114(d)(1) and are made as part of a service that provides audio programming consisting, in whole or in part, of performances of sound recordings, including transmissions of broadcast transmissions, if the primary purpose of the service is to provide to the public such audio or other entertainment programming, and the primary purpose of the service is not to sell, advertise, or promote particular products or services other than sound recordings, live concerts, or other music-related events.

(c) Forms and content. A Notice of Use of Sound Recordings under

Statutory License shall be prepared on a form that may be obtained from the Copyright Office website or from the Licensing Division, and shall include the following information:

(1) The full legal name of the Service that is either commencing digital transmission of sound recordings or making ephemeral phonorecords of sound recordings under statutory license or doing both.

(2) The full address, including a specific number and street name or rural route, of the place of business of the Service. A post office box or similar designation will not be sufficient except where it is the only address that can be used in that geographic location.

(3) The telephone number and facsimile number of the Service.

(4) Information on how to gain access to the online website or home page of the Service, or where information may be posted under this section concerning the use of sound recordings under statutory license.

(5) Identification of each license under which the Service intends to operate, including the identification of each of the following categories under which the Service will be making digital transmissions of sound recordings: preexisting subscription service, preexisting digital audio radio service, new subscription service and non-subscription transmission service.

(6) The date or expected date of the initial digital transmission of a sound recording to be made under the section 114 statutory license and/or the date or the expected date of the initial use of the section 112(e) license for the purpose of making ephemeral recordings of the sound recordings.

(7) Identification of any amendments required by paragraph (f) of this section.

(d) Signature. The Notice shall include the signature of the appropriate officer or representative of the Service that is either transmitting sound recordings or making ephemeral phonorecords of sound recordings under statutory license or doing both. The signature shall be accompanied by the printed or typewritten name and the title of the person signing the Notice, and by the date of the signature.

(e) Filing notices; Fees. The original Notice and three copies shall be filed with the Licensing Division of the Copyright Office, and shall be accompanied by the filing fee set forth in Sec. 201.3(c) of this part. Notices shall be placed in the public records of the

Licensing Division. The address of the Licensing Division is: Library of Congress, Copyright Office, Licensing Division, 101 Independence Avenue, SE., Washington, DC 20557-6400.

(1) A Service that, prior to [the effective date of the final rule], has already commenced making digital transmissions of sound recordings pursuant to section 114(d)(2) of title 17

[[Page 5765]]

of the United States Code or making ephemeral phonorecords of sound recordings pursuant to section 112(e) of title 17 of the United States Code, or both, and that has already filed an Initial Notice of Digital Transmission of Sound Recordings under Statutory License, and that intends to continue to make digital transmissions or ephemeral phonorecords following [the effective date of the final rule], shall file a Notice of Use of Sound Recordings under Statutory License with the Licensing Division of the Copyright Office no later than 60 days following [the effective date of the final rule].

(2) A Service that, on or after [the effective date of the final rule], commences making digital transmissions and ephemeral phonorecords of sound recordings under statutory license shall file a Notice of Use of Sound Recordings under Statutory License with the Licensing Division of the Copyright Office prior to the making of the first ephemeral phonorecord of the sound recording and prior to the first digital transmission of the sound recording.

(3) A Service that, on or after [the effective date of the final rule], commences making only ephemeral phonorecords of sound recordings, shall file a Notice of Use of Sound Recordings under Statutory License with the Licensing Division of the Copyright Office prior to the making of the first ephemeral recording under the statutory license.

(f) Amendment. A Service shall file a new Notice of Use of Sound Recordings under Statutory License within 45 days after any of the information contained in the Notice on file with the Licensing Division has changed, and shall indicate in the space provided on the form provided by the Copyright Office that the Notice is an amended filing. The Licensing Division shall retain copies of all prior Notices filed by the Service.

Sec. 201.36 Report of Use of Sound Recordings under Statutory License.

(a) General. This section prescribes rules under which Services shall serve copyright owners with reports of use of their sound recordings under either section 112(e) or section 114(d)(2) of title 17 of the United States Code, or both.

(b) Definitions. (1) A Report of Use of Sound Recordings under Statutory License is a report required under this section to be provided by a Service that is either transmitting sound recordings or making ephemeral phonorecords of sound recordings under statutory license or both.

(2) A Service shall have the same definition as provided in Sec. 201.35(b)(2) of this part.

(3) An AM/FM Webcast is a transmission made by an entity that transmits an AM/FM broadcast signal over a digital communications network such as the Internet, regardless of whether the transmission is made by the broadcaster that originates the AM/FM signal or by a third party, provided that such transmission meets the applicable requirements of the statutory license set forth in 17 U.S.C. 114(d)(2).

(4) A Collective is a collection and distribution organization that is designated under one or both of the statutory licenses, either by settlement agreement reached under section 112(e)(3), section 112(e)(6), section 114(f)(1)(A), section 114(f)(1)(C)(i), section 114(f)(2)(A), or section 114(f)(2)(C)(i) and adopted pursuant to 37 CFR 251.63(b), or by an order of the Librarian pursuant to 17 U.S.C. 802(f).

(c) Service. Reports of Use shall be served upon Collectives designated under the applicable statutory license that are identified in the records of the Licensing Division of the Copyright Office as having been designated under the statutory license, either by settlement agreement reached under section 112(e)(3), section 112(e)(6), section 114(f)(1)(A), section 114(f)(1)(C)(i), section 114(f)(2)(A), or section 114(f)(2)(C)(i) and adopted pursuant to 37 CFR 251.63(b), or by decision of a Copyright Arbitration Royalty Panel (CARP) under section 112(e)(4), section 112(e)(6), section 114(f)(1)(B), section 114(f)(1)(C)(ii), section 114(f)(2)(B), or section 114(f)(2)(C)(ii) or by an order of the Librarian pursuant to 17

U.S.C. 802(f). Reports of Use shall be served, by certified or registered mail, or by other means if agreed upon by the respective Service and Collective, on or before the twentieth day after the close of each month, commencing with [the month succeeding the month in which the final rule becomes effective].

(d) Posting. In the event that no Collective is designated under the applicable statutory license, or if all designated Collectives have terminated collection and distribution operations, a Service transmitting sound recordings under statutory license shall post and make available online its Reports of Use. Services shall post their Reports of Use online on or before the 20th day after the close of each month, and make them available to all sound recording copyright owners for a period of 90 days. Services may require use of passwords for access to posted Reports of Use, but must make passwords available in a timely manner and free of charge or other restrictions. Services may predicate provision of a password upon:

(1) Information relating to identity, location and status as a sound recording copyright owner; and

Comment: This assumes that the information exists and is publicly available. Many artist for security reasons do not allow the information to be public knowledge. There is no one database that this information exists in – if the copyright office doesn't have the information it is not accessible without extensive research and huge applicable costs. There are many artists that write, produce, and record their own works so this information will never been available to the RIAA. In fact for the RIAA to be involved in a private contract is a violation of United States law if the parties involved in the contract do not wish to deal with a third party. The United States Constitution protects the right to privacy of the copyright owner.

(2) A ``click-wrap'' agreement not to use information in the Report of Use for purposes other than royalty collection, royalty distribution, and determining compliance with statutory license requirements, without the express consent of the Service providing the Report of Use.

Comment: Royalty collection which is enforced by a government law must be collected by a government department and this task cannot be handed to a private corporation based on the laws of the Unites States. Royalty collection is a tax for usage, and tax collection is the responsibility of the IRS. Distribution of revenue collected by a government agency and then disseminated must be through a government department. Compliance to government regulations must be measured and enforced by a government department and this task cannot be handed to a

private corporation based on the laws of the United States. Enforcement of compliance against misuse is the responsibility of the government department that proposed a need for enforcement under the laws of the United States. Enforcement of compliance to rules is also subject to public disclosure and accountability subject to audit by other government departments to ensure complicity.

(e) Content. (1) Heading. A ``Report of Use of Sound Recordings under Statutory License'' shall be identified as such by prominent caption or heading,

Comment: This is a subjective request undefined – prominent to one individual is not necessarily prominent to another. If you are going to specify presentation then you must specify exactly that presentation.

(2) Intended Playlists. For a Service making digital transmissions of sound recordings pursuant to a statutory license under 17 U.S.C. 114(d)(2), each report of use shall include a Service's ``Intended Playlists'' for each channel on each day of the reported month.

Comment: "Intended Playlists" are company confidential in the broadcast world as the ability to increase readership is dependent up secrecy. Telling what music is to be played or what the programming will entail is the equivalent of selling your soul to the enemy – its called Treason under United States law when its related to sensitive information that compromises the successful operation of a military assignment. Nobody is going to release what they are going to play in advance. The only reason anybody would want this information is to use it to run a competing operation and gain more listeners in the course of the time period. Even the most advanced programming in any operation commercial or public does not have a definitive playlist nor would they ever reveal that information. An attempt to gain such information in this manner is nothing less than information theft. The United States laws protect security of company confidential information.

(i) In the case of transmissions of sound recordings made pursuant to a statutory license under 17 U.S.C. 114(d)(2) by a Service that is a preexisting subscription service in the same transmission medium used by such Service on July 31, 1998, the ``Intended Playlists'' shall include a consecutive listing of every recording scheduled to be transmitted, and shall contain the following information in the following order:

(A) The name of the Service or entity;

Comment: Is this the trade name, the operation name, the official corporate name, the assigned government call letters? If you are going to specify a requirement then you must define the requirement to avoid ambiguity.

(B) The channel;

Comment: Is this the frequency, the music genre, the name, the ip address, the trade name, or an officially assigned call letter? If you are going to specify a requirement then you must define the requirement to avoid ambiguity.

(C) The sound recording title;

Comment: Is this the actual musical selection title or a category tag? Is this the name of the song or a program? If you are going to specify a requirement then you must define the requirement to avoid ambiguity.

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

Comment: Is this the trade name, or an officially recorded name under registration with the business department of a state, or a common abbreviation of a longer name? If you are going to specify a requirement then you must define the requirement to avoid ambiguity.

(E) 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);

Comment: This assumes that the material being played is part of a collection of material. It does not presuppose the fact that the selection may in fact be nothing more than a single entity. It is legal to play music that is a single entity. You have made no provision for that. Information cannot be supplied that does not exist.

(E) The recording label;

Comment: Is this the trade name, or an officially recorded name under registration with the business department of a state, or a common abbreviation of a longer name? If you are going to specify a requirement then you must define the requirement to avoid ambiguity.

(F) The catalog number;

Comment: This assumes that the material being played has been assigned a number but nowhere do you define what a catalog number is. Is it the copyright owners catalog assign to a recording? Is it a number assigned by the artists or is it a number that has been assigned for sales purposes? One company may in fact have a completely different catalog number. Which edition of the release is to be used to define a catalog number? If you are going to specify a requirement then you must define the requirement to avoid ambiguity.

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

Comment: This assumes that a technology is going to be used or has been used or is acceptable to the parties involved producing the recording in question. There is no requirement that a ISRC be used by any party, and as such it is voluntary. To request its use is to condone behavior and acceptance. Government regulation is not allowed to utilize such activity in order to avoid liability. As such it should not be requested under the guise of acceptable behavior.

(I) The date of transmission; and

Comment: Since we are still in the "Intended Playlists" to request when a musical selection is going to run,is a violation of freedom of expression as defined and protected by the United States Constitution.

(J) The time of transmission.

Comment: Nobody is going to release what they are going to play in advance. The only reason anybody would want this information is to use it to run a competing operation and gain more listeners in the course of the time period. To quote directly from the DMCA "the transmitting entity identifies in textual data the sound recording during, but not before". The above steps are in violation of the current law. While the information is not supposed to be used for other than royalty purposes there is no provision for enforcing that requirement nor is there a requirement to ensure that the information is protected from outside interests. Since this is all computer data and inputted into electronic storage it will be subject to the same security risks that exist with the technology. You are requesting information that is critical to the successful operation of a business without ensuring its safety. As such you leave the government liable.

(ii) In the case of all other Services not covered by paragraph (e)(2)(i) of this section, that are transmitting sound recordings pursuant to a statutory license under 17 U.S.C. 114(d)(2), the ``Intended Playlists'' shall include a consecutive listing of every recording scheduled to be transmitted,

Comment: Violation of the law as written.

or if transmissions are not scheduled in advance, every recording actually transmitted, and shall contain the following information in the following order:

[[Page 5766]]

(A) The name of the Service or entity;

Comment: Is this the trade name, the operation name, the official corporate name, the assigned government call letters? If you are going to specify a requirement then you must define the requirement to avoid ambiguity.

(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;

Comment: This shows a total lack of knowledge of the definition of the word "random". If a playlist is significantly large it will meet the requirements regarding content as defined in the time periods specified in the DMCA with a random playing of music indefinitely yet still be in compliance. The term "predetermined list" is undefined. What constitutes a predetermined list? Is it the number of selections loaded on to a playing apparatus like a Sony Megachanger CD Player or is it the number of files loaded onto a machine in general? Or is it the number of selections as defined by the owner of the station? Is it the interpretation of the owners file structure that determines the definition of a list? If you are going to specify a requirement then you must define the requirement to avoid ambiguity.

The term unique identifier is undefined as well. Is there a numerical designation of the player mechanism, the file identifier of the storage, or a name of a program? Is it the random "predetermined list" name or does it simply mean to identify when new material is added to a playlist? If you are going to specify a requirement then you must define the requirement to avoid ambiguity.

If you are expecting that the playing mechanism can record each random playing of selections and assign a beginning and an end with applicable identifying factors you totally are unaware that there is NO software program available to provide that information. The whole point of random is not even the random selection of the music is known to the machine running the music. That would defeat the concept of random generation mechanisms built into the equipment. You would have to define in advance what the start time was and calculate a finish time, manually, But that would not be a random program – it would be a predefined program entity. There is no software available anywhere than can bridge that conceptual philosophy – that would require a machine with artificial intelligence and they do not exist and are not likely to exist in the near future. If you are going to specify a requirement then you must define the requirement to avoid ambiguity.

Does channel mean musical genre or an ip designation or a port designation? This is not defined. Furthermore the terms " programs", "predetermined list", "unique

identifier" are not defined in the DMCA. If you are going to specify a requirement then you must define the requirement to avoid ambiguity.

(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;

Comment: Due to the lack of information of the originating musical composition there is no way to automatically identify when a re selection starts and stops – the standard current measurement technology available can only register information if the musical composition is a digital recording on a hard drive. There is no technology known to man that can register an audio feed into a computer and assign a start and finish time. Furthermore even the current technology only samples a playlist in a segmented time interval in order to show that information to the player – that information being required to show artist information, etc – but as the DMCA states that is only required if the technology is available. It is not available on a live analog feed. In addition the requirements for electronic logging of information strains the ability of a computer system to function. Since streaming can be done on low cost servers as slow as 133mhz and still meet the requirements of the DMCA for presentation of information if available, by requesting even more information you are in fact stating that a machine must be minimum specification in order to do its job. As such the government is not allowed to require a level of technology as part of any legislation package so you are placing the government in a position it is not legally entitled to hold. Because the government would be requiring a particular level of technology as part of compliance it would be liable for failures in its ability to foresee security flaws and ensuring the protection of data- it also places the government in the position of demanding a particular level of expertise. None of these are legally allowed – they are in violation of the laws of the United States.

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

Comment: The only reason anybody would want demographic information is to use it to run a competing operation and gain more listeners in the course of the time period or to sell that information to a third party for the purposes of identifying the

habits of a listener for the purposes of marketing products and services to that individual.

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

Comment: There is absolutely no reason anyone would care about the numerical designation of a selection in the course of a program unless they were to place value weights on the material. If a selection was played at the beginning of a program on ten stations as an example, the RIAA would be able to interpret that information for future program and music generation. It sets the field for copycat or imitation selection generation of the material that does well. This information would only be of value for demographic purposes in order to market products or services to outside third parties. It has absolutely no justification for royalty payments.

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

Comment: This information would not be available on programs using a non digital input. Furthermore if the selection is copyrighted and in a major database this information would already be available. The only reason anyone would want this information would be if they did not have the information. It would appear that this information is required to build a major database which would mean that the RIAA does not have ownership of the copyrighted material nor would it appear that they would be licensed to have the musical selection as an agent. In other words they are trying to effect control over selections that they are not entitled to or that they figure is under hazy definition, especially traditional or public property material.

(I) The sound recording title;

Comment: Is this the actual musical selection title or a category tag? Is this the name of the song or a program? If you are going to specify a requirement then you must define the requirement to avoid ambiguity.

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

Comment: This assumes that a technology is going to be used or has been used or is acceptable to the parties involved producing the recording in question. There is no requirement that a ISRC be used by any party, and as such it is voluntary. To request its use is to condone behavior and acceptance. Government regulation is not allowed to utilize such activity in order to avoid liability. As such it should not be requested under the guise of acceptable behavior.

(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;

Comment: This assumes that material had a formal registration process when it was released. The term Album is undefined and is differentiated from the use of the term CD in sections preceding this section. You have no provision for material that is of traditional nature and in the public domain. Since there have been multiple changes in the definition of what is a valid copyright and copyright expiration you are requesting textual information that may no longer be valid. As such the requirement for that information on expired material would provide a tremendous database for an artist or company to provide new material that would address old material – then as such with a new release they could say they owned the arrangement and charge anyone using the selection – even if the individual was doing so totally isolated from a new recording.

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

Comment: Is this the trade name, or an officially recorded name under registration with the business department of a state, or a common abbreviation of a longer name? If you are going to specify a requirement then you must define the requirement to avoid ambiguity.

(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);

Comment: This assumes that the material being played is part of a collection of material. It does not presuppose the fact that the selection may in fact be nothing more than a single entity. It is legal to play music that is a single entity. You have made no provision for that. Information cannot be supplied that does not exist.

(N) The recording label;

Comment: Is this the trade name, the official corporate name, or just a name? What qualifies the definition of label? If you are going to specify a requirement then you must define the requirement to avoid ambiguity.

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

Comment: This assumes that the material being played is part of a collection of material. It does not presuppose the fact that the selection may in fact be nothing more than a single entity. It is legal to play music that is a single entity. You have made no provision for that. Information cannot be supplied that does not exist.

(P) The catalog number;

Comment: This assumes that the material being played has been assigned a number but nowhere do you define that a catalog number is. Is it the copyright owners catalog assign to a recording? Is it a number assigned by the artists or is it a number that has been assigned for sales purposes? One company may in fact have a completely different catalog number. Which edition of the release is to be used to define a catalog number? If you are going to specify a requirement then you must define the requirement to avoid ambiguity.

(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

Comment: This assumes that material had a formal registration process when it was released. The term Album is undefined and is differentiated from the use of the term CD in sections preceding this section. You have no provision for material that is of traditional nature and in the public domain. Since there have been multiple changes in the definition of what is a valid copyright and copyright expiration you are requesting textual information that may no longer be valid. As such the requirement for that information on expired material would provide a tremendous database for an artists or company to provide new material that would address old material – then as such with a new release they could say they owned the arrangement and charge anyone using the selection – even if the individual was doing so totally isolated from a new recording.

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

Comment: This is a subjective term and any answer is a broad judgment at best. This has nothing to do with royalty collection. Its only purpose is for demographic information collection to be used for some process other than standard royalty collection and dissemination.

(3) Listener's Log. Except for a preexisting subscription Service, a Service that transmits sound recordings pursuant to a statutory license under 17 U.S.C. 114(d)(2) shall also include such Service's ``Listener Log.'' The ``Listener Log'' shall contain the following information in the following order for each session during which a user is logged in to receive transmissions as part of the Service:

Comment: The collection of private information is prohibited under laws of the United States and violates the constitutional protection afforded individuals.

(i) The name of the Service or entity;

Comment: Is this the trade name, the operation name, the official corporate name, the assigned government call letters? If you are going to specify a requirement then you must define the requirement to avoid ambiguity.

(ii) The channel or program, using an identifier corresponding to that in the Intended Playlist;

Comment: Is this the frequency, the music genre, the name, the ip address, the trade name, or an officially assigned call letter? If you are going to specify a requirement then you must define the requirement to avoid ambiguity.

(iii) The date and time that the user logged in (local time at user's location);

Comment: The collection of private information is prohibited under laws of the United States and violates the constitutional protection afforded individuals. Furthermore the deliberate dissemination of telecommunication connectivity is illegal and strongly regulated by current legislation.

(iv) The date and time that the user logged out (local time at the user's location);

Comment: The collection of private information is prohibited under laws of the United States and violates the constitutional protection afforded individuals. Furthermore the deliberate dissemination of telecommunication connectivity is illegal and strongly regulated by current legislation.

(v) The time zone of the place at which the user received transmissions (as an offset from Greenwich Mean Time);

Comment: The collection of private information is prohibited under laws of the United States and violates the constitutional protection afforded individuals. Furthermore the deliberate dissemination of telecommunication connectivity is illegal and strongly regulated by current legislation. The only reason anybody would want demographic information is to use it to run a competing operation and gain more listeners in the course of the time period or to sell that information to a third party for the purposes of identifying the habits of a listener for the purposes of marketing products and services to that individual.

(vi) The unique user identifier assigned to a particular user or session; and

Comment: The only reason anybody would want demographic information is to use it to run a competing operation and gain more listeners in the course of the time period or to sell that information to a third party for the purposes of identifying the

habits of a listener for the purposes of marketing products and services to that individual.

(vii) The country in which the user received transmissions.

Comment: The only reason anybody would want demographic information is to use it to run a competing operation and gain more listeners in the course of the time period or to sell that information to a third party for the purposes of identifying the habits of a listener for the purposes of marketing products and services to that individual.

(4) Ephemeral Phonorecord Log. In the case of a Service that has made ephemeral phonorecords of sound recordings pursuant to a statutory license under 17 U.S.C. 112(e), the Service shall include an ``Ephemeral Phonorecord Log.'' The ``Ephemeral Phonorecord Log'' shall contain the following information in the following order for each act of creation or destruction of ephemeral phonorecords of sound recordings under statutory license:

(i) The name of the Service or entity;

Comment: Is this the trade name, the operation name, the official corporate name, the assigned government call letters? If you are going to specify a requirement then you must define the requirement to avoid ambiguity.

(ii) Whether the ephemeral phonorecord was created or destroyed;

Comment: The DMCA is based on assumptions in technologies, delivery systems, and the overall nature of the internet itself. The technologies described in the DMCA are obsolete and there is no provision for changes in technology that invalidate the entire structure the DMCA was built on. Technologies today can transmit programming material directly to listeners utilizing standard broadcast equipment without the need for any mechanism to make any ephemeral recordings. Java transmission is no different than a standard broadcast transmitter. Java transmission converts audio analog input or digital input to output that is understood by a receiving device. It converts the information into readable electrical patterns exactly the same way a radio transmitter converts audio input into readable electrical patterns. There is no need to use a recording other than the material supply by the recording label. These proposals completely fail to realize that there is technology already being used for broadcasting that renders the crux of the proposals obsolete, yet are in full compliance with the DMCA in areas of music selection and programming. You have no provision with a lack of an ephemeral recording (you also use different terminology from earlier in this document to this point – the DMCA defines phonorecord not recording so you need to be consistent with the definition. Otherwise it will be considered as two different entities. While written into the DMCA this requirement is totally unenforceable. Its intent is to ensure that libraries are not kept. Since only one ephemeral recording can be made

of an original cd this is intended to either spur a broadcasting operation to go out and buy another copy of the cd or to put new material online. Obviously the intent is to force a new cd purchase whether old or new in order to comply. This had nothing to do with royalty collection.

(iii) The date the ephemeral phonorecord was created or destroyed;

Comment: The DMCA is based on assumptions in technologies, delivery systems, and the overall nature of the internet itself. The technologies described in the DMCA are obsolete and there is no provision for changes in technology that invalidate the entire structure the DMCA was built on. Technologies today can transmit programming material directly to listeners utilizing standard broadcast equipment without the need for any mechanism to make any ephemeral recordings. Java transmission is no different than a standard broadcast transmitter. Java transmission converts audio analog input or digital input to output that is understood by a receiving device. It converts the information into readable electrical patterns exactly the same way a radio transmitter converts audio input into readable electrical patterns. There is no need to use a recording other than the material supply by the recording label. These proposals completely fail to realize that there is technology already being used for broadcasting that renders the crux of the proposals obsolete, yet are in full compliance with the DMCA in areas of music selection and programming. You have no provision with a lack of an ephemeral recording (you also use different terminology from earlier in this document to this point – the DMCA defines phonorecord not recording so you need to be consistent with the definition. Otherwise it will be considered as two different entities. While written into the DMCA this requirement is totally unenforceable. Its intent is to ensure that libraries are not kept. Since only one ephemeral recording can be made of an original cd this is intended to either spur a broadcasting operation to go out and buy another copy of the cd or to put new material online. Obviously the intent is to force a new cd purchase whether old or new in order to comply. This had nothing to do with royalty collection.

(iv) The sound recording title;

Comment: Is this the actual musical selection title or a category tag? Is this the name of the song or a program? If you are going to specify a requirement then you must define the requirement to avoid ambiguity.

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

Comment: This assumes that a technology is going to be used or has been used or is acceptable to the parties involved producing the recording in question. There is no requirement that a ISRC be used by any party, and as such it is voluntary. To request its use is to condone behavior and acceptance. Government regulation is not allowed to utilize such activity in order to avoid liability. As such it should not be requested under the guise of acceptable behavior.

(vi) 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;

Comment: This assumes that material had a formal registration process when it was released. The term Album is undefined and is differentiated from the use of the term CD in sections preceding this section. You have no provision for material that is of traditional nature and in the public domain. Since there have been multiple changes in the definition of what is a valid copyright and copyright expiration you are requesting textual information that may no longer be valid. As such the requirement for that information on expired material would provide a tremendous database for an artists or company to provide new material that would address old material – then as such with a new release they could say they owned the arrangement and charge anyone using the selection – even if the individual was doing so totally isolated from a new recording.

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

Comment: Is this the trade name, or an officially recorded name under registration with the business department of a state, or a common abbreviation of a longer name? If you are going to specify a requirement then you must define the requirement to avoid ambiguity.

(viii) 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);

Comment: This assumes that the material being played is part of a collection of material. It does not presuppose the fact that the selection may in fact be nothing more than a single entity. It is legal to play music that is a single entity. You have made no provision for that. Information cannot be supplied that doesn't exist.

(ix) The recording label;

Comment: Is this the trade name, the official corporate name, or just a name? What qualifies the definition of label? If you are going to specify a requirement then you must define the requirement to avoid ambiguity.

(x) The catalog number;

Comment: This assumes that the material being played has been assigned a number but no where do you define that a catalog number is. Is it the copyright owners catalog assign to a recording? Is it a number assigned by the artists or is it a number that has been assigned for sales purposes? One company may in fact have a

completely different catalog number. Which edition of the release is to be used to define a catalog number? If you are going to specify a requirement then you must define the requirement to avoid ambiguity.

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

Comment: This assumes that the material being played is part of a collection of material. It does not presuppose the fact that the selection may in fact be nothing more than a single entity. It is legal to play music that is a single entity. You have made no provision for that. Information cannot be supplied that doesn't exist.

(xii) The copyright owner information provided in the copyright notice of 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

Comment: This assumes that material had a formal registration process when it was released. The term Album is undefined and is differentiated from the use of the term CD in sections preceding this section. You have no provision for material that is of traditional nature and in the public domain. Since there have been multiple changes in the definition of what is a valid copyright and copyright expiration you are requesting textual information that may no longer be valid. As such the requirement for that information on expired material would provide a tremendous database for an artists or company to provide new material that would address old material – then as such with a new release they could say they owned the arrangement and charge anyone using the selection – even if the individual was doing so totally isolated from a new recording.

(xiii) The number of ephemeral phonorecords that were created or destroyed.

Comment: The DMCA is based on assumptions in technologies, delivery systems, and the overall nature of the internet itself. The technologies described in the DMCA are obsolete and there is no provision for changes in technology that invalidate the entire structure the DMCA was built on. Technologies today can transmit programming material directly to listeners utilizing standard broadcast equipment without the need for any mechanism to make any ephemeral recordings. Java transmission is no different than a standard broadcast transmitter. Java transmission converts audio analog input or digital input to output that is understood by a receiving device. It converts the information into readable electrical patterns exactly the same way a radio transmitter converts audio input into readable electrical patterns. There is no need to use a recording other than the material supply by the recording label. These proposals completely fail to realize that there is technology already being used for broadcasting that renders the crux of the proposals obsolete, yet are in full compliance with the DMCA in areas of music selection and programming. You have no provision with a lack of an ephemeral

recording (you also use different terminology from earlier in this document to this point – the DMCA defines phonorecord not recording so you need to be consistent with the definition. Otherwise it will be considered as two different entities. While written into the DMCA this requirement is totally unenforceable. Its intent is to ensure that libraries are not kept. Since only one ephemeral recording can be made of an original cd this is intended to either spur a broadcasting operation to go out and buy another copy of the cd or to put new material online. Obviously the intent is to force a new cd purchase whether old or new in order to comply. This had nothing to do with royalty collection. Tracking the number of ephemeral phonorecords that were created or destroyed is to monitor how successful this requirement was in the sale of new cds. It's nothing more than statistical analysis to be used by a third party for the purposes of improving sales and policy direction in the future. It has nothing to do with royalty collection in the slightest.

(5) System failure. The Report of Use shall include a report of any system failure resulting in a deviation from the Intended Playlists of scheduled sound recordings. Such report shall include the date, time and duration of any system failure.

Comment: Its obvious that the RIAA wants to be the equivalent of the FCC which governs on air broadcasts. System failures can be a result of software errors that are outside of the realm of a broadcasters control. Hack attacks or denial of service attacks can bring down systems or affect statistics collected on users. A denial of service attack can register as 100,000 listeners inside of a very short time period. You have no provision that even remotely addresses the issues. Technically a third party could be paid to attack a system resulting in exorbitant fees to be paid by a broadcaster. What is a listener and how long before that is listener is to be counted? You can't use every hit on a system as a count – isp connections or probes from countries around the world attempting to disrupt broadcasts are not listeners. You've made absolutely no provision in these areas. Nor have you any plans to protect broadcasters from false data. Under the constitution of the United States accuracy of accusation is essential. Failures in broadcast equipment in on air radio are reported to the FCC the licensing agency of the government. This provision is intended for the reception of the RIAA which is not the licensing agency. By suggesting that a waver from an intended playlist and an actual playlist is a reportable issue is a severe violation of freedom of expression, and free speech. If the RIAA is interested in reporting the usage of selections then it needs to work with selections from actual logs. The only intent here by the RIAA is to build demographic data. It has nothing to do with Royalty collection.

(f) Signature. Reports of Use shall include a signed statement by the appropriate officer or representative of the Service attesting, under penalty of perjury, that the information contained in the Report is believed to be accurate and is maintained by the Service in its ordinary course of business. The signature shall be accompanied by the

printed or typewritten name and title of the person signing the Report, and by the date of signature.

Comment: If you are going to be electronic then be electronic. To have a manual paper trail in addition to electronic is absolutely absurd. The current administration has been pushing for electronic signatures so follow the administration policies on this subject.

(g) Format. Reports of Use should be provided on a standard machine-readable medium, such as diskette, optical disc, or magneto-optical disc, and should conform as closely as possible to the following specifications:

Comment: It is most obvious that there is a complete and total lack of understanding of electronic media and its limitations and capacity. The failure to even be aware of the basics of computer technology dooms these requirements because they are inadequate for the purposes being requested. By stating machine-readable you are using a term that is totally meaningless. There must be specifications and a properly defined criterion in place before you can read material in a machine. You must have a system that is compatible in both hardware and software and you must define that prior to any attempt in collection of electronic data, otherwise any data you receive is meaningless. You must take into consideration multiple operating system platforms, as well as the cpu processing power of a unit and hard drive storage amounts. It is most obvious that the Board has no concept of even the most elementary basics of data collection and processing of information.

(1) In the case of transmissions made as part of a Service that is a preexisting subscription Service in the same transmission medium used by such Service on July 31, 1998:

(i) ASCII delimited format, using pipe characters as delimiter, with no headers or footers;

Comment: The purpose behind electronic data collection is to simplify operations and free resources, as well as speeding up processes. The proposals in this document request data before broadcast and after broadcast. In order to supply the information for before broadcast ("Intended Playlist") only scheduling by hand can achieve the result. The person hours that would be involved to predict each play slot is prohibitive and impossible in any broadcast operation including a commercial operation unless there is tremendous resources available. The cost would be staggering. The actual scheduling of the information requires that each time period of each selection, each field dealing with the requested information all be entered manually. There is no database that houses the information required and it is not the job of webcasters to build that information for the RIAA. Yet you've asked for specific formatted fields to be presented. If we only assume data for after presentation of a selection log (as opposed to Intended Playlist) you are asking for

1,036,800 entries every 24 hours if only one person is listening. If in the course of one day if a broadcaster has 40,000 listeners you would be requesting 41, 472, 000,000 entries of data. Since these regulations are designed to be a reasonable payment of services then you would be expecting webcasters to be staying in business so that would mean data from 10,000 stations daily. So in the course of one day you would receive 414,720,000,000,000 entries of information or in the course of one month you would have 4,161,600,000,000,000 entries of data. First there is no computer system built on the planet that could handle that information in a way you could process. Second the cost of building a facility that could house the computer system to process the data would be so prohibitively expensive that the RIAA could not afford the expense without going bankrupt. Furthermore the services and personnel needed to maintain and process the data would be in the same demand level as the Internal Revenue Service. The RIAA cannot process this data and it could not afford the costs of storing the information, nor the tremendous cost of securing the information. There is no question that the RIAA is counting on webcasters closing up shop so that this will not be exposed. Even the most sophisticated logging software that is in use today cannot address the requirements requested and any request to supply information in ASCII format shows no knowledge of current computer technology. ASCII format is 1960's technology and is not acceptable in today's society as a workable and applicable application output. Obviously nobody in the RIAA nor the board has considered the information systems costs or even the technology necessary to process information. This shows that these concepts have not been properly researched nor addressed.

(ii) Carats (caret) should surround strings;

Comment: This would be a manual task. It is not possible using the entire population of the planet earth and it cannot be done automatically. This shows that these concepts have not been properly researched nor addressed.

(iii) No carats (caret) should surround dates and numbers;

Comment: This would be a manual task. It is not possible using the entire population of the planet earth and it cannot be done automatically. This shows that these concepts have not been properly researched nor addressed.

(iii) Dates should be indicated by: MM/DD/YYYY;

Comment: This information format would be dictated by the software package that would be used to log the Playlist selections. To specify a particular layout of data as in these fields is reminiscent of IBM punch card technology used in the 1960's. While this is not a unique presentation of the date field, it does dictate that a software package can address the request. As such the Copyright office is demanding that a software package meets this criteria, which means it is telling a broadcaster to purchase a particular software package. As such the Copyright office would be showing favoritism for a particular software vendor and that is illegal

under the laws of the United States. This shows that these concepts have not been properly researched nor addressed.

(iv) Times should be based on a 24-hour clock: HH:MM:SS;

Comment: This information format would be dictated by the software package that would be used to log the Playlist selections. To specify a particular layout of data as in these fields is reminiscent of IBM punch card technology used in the 1960's. While this is not a unique presentation of the date field, it does dictate that a software package can address the request. As such the Copyright office is demanding that a software package meets this criteria, which means it is telling a broadcaster to purchase a particular software package. As such the Copyright office would be showing favoritism for a particular software vendor and that is illegal under the laws of the United States. This shows that these concepts have not been properly researched nor addressed. Furthermore the collection of this information has nothing to do with royalty payments – while the event and the frequency of events is of relative use for royalty payment, to actual specify the time of the song delivery is to create demographic information of use to a third party. This has nothing to do with royalty collection.

(v) A carriage return should be at the end of each line; and

Comment: This information format would be dictated by the software package that would be used to log the Playlist selections. To specify a particular layout of data as in these fields is reminiscent of IBM punch card technology used in the 1960's. Since you are requesting data by field definition, this request as nothing to do with modern computing technology. This shows that these concepts have not been properly researched nor addressed.

(vi) All data for one record should be on a single line.

Comment: This information format would be dictated by the software package that would be used to log the Playlist selections. To specify a particular layout of data as in these fields is reminiscent of IBM punch card technology used in the 1960's. Since you are requesting data by field definition, this request as nothing to do with modern computing technology. If we only assume data for after presentation of a selection log (as opposed to Intended Playlist) you are asking for 1,036,800 entries every 24 hours if only one person is listening. If in the course of one day if a broadcaster has 40,000 listeners you would be requesting 41, 472, 000,000 entries of data. Since these regulations are designed to be a reasonable payment of services then you would be expecting webcasters to be staying in business so that would mean data from 10,000 stations daily. So in the course of one day you would receive 414,720,000,000,000 entries of information or in the course of one month you would have 4,161,600,000,000,000 entries of data. In this case you would have 4,161,600,000,000,000 lines of data per month. First there is no computer system built on the planet that could handle that information in a way you could process. Second the cost of building a facility that could house the computer system to process the data would be so prohibitively expensive that the RIAA could not afford

the expense without going bankrupt. Furthermore the services and personnel needed to maintain and process the data would be in the same demand level as the Internal Revenue Service. The RIAA cannot process this data and it could not afford the costs of storing the information, nor the tremendous cost of securing the information. There is no question that the RIAA is counting on webcasters closing up shop so that this will not be exposed. Even the most sophisticated logging software that is in use today cannot address the requirements requested and any request to supply information in ASCII format shows no knowledge of current computer technology. ASCII format is 1960's technology and is not acceptable in today's society as a workable and applicable application output. Obviously nobody in the RIAA nor the board has considered the information systems costs or even the technology necessary to process information. This shows that these concepts have not been properly researched nor addressed.

(2) In the case of all other Services not covered by paragraph (g)(1) of this section that are transmitting sound recordings pursuant to a statutory license under 17 U.S.C. 114(d)(2) and in the case of Ephemeral Phonorecord Logs:

(i) ASCII delimited format, using pipe characters as delimiter, with no headers or footers;

Comment: The purpose behind electronic data collection is to simplify operations and free resources, as well as speeding up processes. The proposals in this document request data before broadcast and after broadcast. In order to supply the information for before broadcast ("Intended Playlist") only scheduling by hand can achieve the result. The person hours that would be involved to predict each play slot is prohibitive and impossible in any broadcast operation including a commercial operation unless there is tremendous resources available. The cost would be staggering. The actual scheduling of the information requires that each time period of each selection, each field dealing with the requested information all be entered manually. There is no database that houses the information required and it is not the job of webcasters to build that information for the RIAA. Yet you've asked for specific formatted fields to be presented. If we only assume data for after presentation of a selection log (as opposed to Intended Playlist) you are asking for 1,036,800 entries every 24 hours if only one person is listening. If in the course of one day if a broadcaster has 40,000 listeners you would be requesting 41, 472, 000,000 entries of data. Since these regulations are designed to be a reasonable payment of services then you would be expecting webcasters to be staying in business so that would mean data from 10,000 stations daily. So in the course of one day you would receive 414,720,000,000,000 entries of information or in the course of one month you would have 4,161,600,000,000,000 entries of data. First there is no computer system built on the planet that could handle that information in a way you could process. Second the cost of building a facility that could house the computer system to process the data would be so prohibitively expensive that the RIAA could not afford the expense without going bankrupt. Furthermore the services and personnel needed to maintain and process the data would be in the same demand

level as the Internal Revenue Service. The RIAA cannot process this data and it could not afford the costs of storing the information, nor the tremendous cost of securing the information. There is no question that the RIAA is counting on webcasters closing up shop so that this will not be exposed. Even the most sophisticated logging software that is in use today cannot address the requirements requested and any request to supply information in ASCII format shows no knowledge of current computer technology. ASCII format is 1960's technology and is not acceptable in today's society as a workable and applicable application output. Obviously nobody in the RIAA nor the board has considered the information systems costs or even the technology necessary to process information. This shows that these concepts have not been properly researched nor addressed.

(ii) Field names should not be included as the first row of the file;

Comment: This information format would be dictated by the software package that would be used to log the Playlist selections. To specify a particular layout of data as in these fields is reminiscent of IBM punch card technology used in the 1960's. This dictates that a software package can address the request. As such the Copyright office is demanding that a software package meets this criteria, which means it is telling a broadcaster to purchase a particular software package. As such the Copyright office would be showing favoritism for a particular software vendor and that is illegal under the laws of the United States. This shows that these concepts have not been properly researched nor addressed.

[[Page 5767]]

(iii) Carats (caret) should surround strings;

Comment: This would be a manual task. It is not possible using the entire population of the planet earth and it cannot be done automatically. This shows that these concepts have not been properly researched nor addressed.

(iv) No carats (caret) should surround dates and numbers;

Comment: This would be a manual task. It is not possible using the entire population of the planet earth and it cannot be done automatically. This shows that these concepts have not been properly researched nor addressed.

(v) Dates and times should be indicated by: DDMMYYYYhhmmss, where DD is the two-digit day of the log period; MM is the two-digit month of the log period; YYYY is the four-digit year of the log period; hh is the two-digit hour of the log period; mm is the two-digit minute of the log period; ss is the two-digit second of the log period; single digit

days, months, hours, minutes and second should be prepended with a

zero; and times are local times using a 24-hour clock;

Comment: This information format would be dictated by the software package that would be used to log the Playlist selections. To specify a particular layout of data as in these fields is reminiscent of IBM punch card technology used in the 1960's. This is a unique presentation of the date and time fields. It does dictate that a software package can address the request. As such the Copyright office is demanding that a software package meets this criteria, which means it is telling a broadcaster to purchase a particular software package. As such the Copyright office would be showing favoritism for a particular software vendor and that is illegal under the laws of the United States. This shows that these concepts have not been properly researched nor addressed. Furthermore the collection of this information has nothing to do with royalty payments – while the event and the frequency of events is of relative use for royalty payment, to actual specify the time of the song delivery is to create demographic information of use to a third party. This has nothing to do with royalty collection.

(vii) A carriage return should be at the end of each line;

Comment: This information format would be dictated by the software package that would be used to log the Playlist selections. To specify a particular layout of data as in these fields is reminiscent of IBM punch card technology used in the 1960's. Since you are requesting data by field definition, this request as nothing to do with modern computing technology. This shows that these concepts have not been properly researched nor addressed.

(viii) All data for one record should be on a single line;

Comment: This information format would be dictated by the software package that would be used to log the Playlist selections. To specify a particular layout of data as in these fields is reminiscent of IBM punch card technology used in the 1960's. Since you are requesting data by field definition, this request as nothing to do with modern computing technology. If we only assume data for after presentation of a selection log (as opposed to Intended Playlist) you are asking for 1,036,800 entries every 24 hours if only one person is listening. If in the course of one day if a broadcaster has 40,000 listeners you would be requesting 41, 472, 000,000 entries of data. Since these regulations are designed to be a reasonable payment of services then you would be expecting webcasters to be staying in business so that would mean data from 10,000 stations daily. So in the course of one day you would receive 414,720,000,000,000 entries of information or in the course of one month you would have 4,161,600,000,000,000 entries of data. In this case you would have 4,161,600,000,000,000 lines of data per month. First there is no computer system built on the planet that could handle that information in a way you could process. Second the cost of building a facility that could house the computer system to process the data would be so prohibitively expensive that the RIAA could not afford the expense without going bankrupt. Furthermore the services and personnel needed to maintain and process the data would be in the same demand level as the

Internal Revenue Service. The RIAA cannot process this data and it could not afford the costs of storing the information, nor the tremendous cost of securing the information. There is no question that the RIAA is counting on webcasters closing up shop so that this will not be exposed. Even the most sophisticated logging software that is in use today cannot address the requirements requested and any request to supply information in ASCII format shows no knowledge of current computer technology. ASCII format is 1960's technology and is not acceptable in today's society as a workable and applicable application output. Obviously nobody in the RIAA nor the board has considered the information systems costs or even the technology necessary to process information. This shows that these concepts have not been properly researched nor addressed.

(viii) All data for each month and each log type should be contained in a single file;

Comment: There is no computer operating system on the planet that has a file structure that can handle the requested amount of the data in a single file. There is no computer system on the planet that could process that amount of data in a single file. The requests defeats all known design criteria in the history of computers. Obviously nobody in the RIAA nor the board has considered the information systems costs or even the technology necessary to process information. This shows that these concepts have not been properly researched nor addressed.

(ix) Files may be compressed in ZIP or GZ format; and

Comment: There is no computer operating system on the planet that has a file structure that can handle the requested amount of the data in a single file and compress it. There is no computer system on the planet that could process that amount of data in a single file. The requests defeats all known design criteria in the history of computers. Obviously nobody in the RIAA nor the board has considered the information systems costs or even the technology necessary to process information. This shows that these concepts have not been properly researched nor addressed and this particular entry is so blatant proof. A child in elementary school has a better grasp of the technology involved.

(x) Files should be named Service Name_Log Type_MMYYYY, where Log Type should be Play List, Listener or Ephemeral.

Comment: This information format would be dictated by the software package that would be used to log the Playlist selections. To specify a particular layout of data as in these fields is reminiscent of IBM punch card technology used in the 1960's. Since you are requesting data by field definition, this request as nothing to do with modern computing technology or data presentation as the parameters for data output are seldom configurable in a package outside of those menu selections built into the GUI by the software programmers. This shows that these concepts have not been properly researched nor addressed.

(h) Confidentiality. Copyright owners, their agents and Collectives shall not disseminate information in the Reports of Use to any persons not entitled to it, nor utilize 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.

Comment: This is how the information collected will be distributed to third parties – under the guise of entitled persons. If you supply demographic information, as most of the collection of data requested in this document is, a copyright owner may in fact be a recording company with numerous musical selections in its collection. Since there is little differentiation between sections of large multi-media operations information could flow between the different areas easily under the guise of entitled and with consent of the Service. Since the service providing this report will be the RIAA, as the RIAA is collecting the information and the revenue and has been previously assigned as the service, all the RIAA has to do is give consent for the information to go out the door. This section confirms that the collection of demographic information is for the soul purpose of having that information available for purposes other than royalty collection. This section is so undefined as to leave numerous legal loopholes that you could drive a bulldozer through.

(i) Documentation. All statutory licensees shall, for a period of at least three years from the date of service or posting of the Report of Use, keep and retain a copy of the Report of Use. For reporting periods from February 1, 1996, through August 31, 1998, the Service shall serve upon all designated Collectives and retain for a period of three years from the date of transmission records of use indicating which sound recordings were performed and the number of times each recording was performed, but is not required to produce full Reports of Use or Intended Playlists for those periods.

Comment: This section is exceedingly burdensome to a webcaster as the request for file storage exceeds anything in commercial over the air broadcasting. Furthermore once the Service (the RIAA) has received the report and proven compliance by the webcaster, it becomes the responsibility of the RIAA to maintain proper library storage of the information in its possession. By requesting that the webcaster maintain a report shows that the RIAA does not have the confidence in its record keeping ability to ensure that the report will be available for audit purpose of the Service. An Audit of the RIAA can take place by a member of the organization as provided for in the their bylaws so it is essential that the RIAA be forced to ensure document and data security.

3. Section 201.37 (a) and (b) are revised to read as follows:

Sec. 201.37 Designated Collective.

(a) General. This section prescribes rules governing a Collective designated to collect and distribute statutory royalties for use of the statutory licenses set forth in sections 112(e) and 114(d)(2) of title 17 of the United States Code.

(b) Definitions. (1) A Collective shall have the same definition as provided in Sec. 201.36(b)(4) of this part.

(2) A Service shall have the same definition as provided in Sec. 201.35(b)(2) of this part.

Comment: These changes seem to defeat the intent behind the logic decisions of the original writers of the sections.

* * * * *

Dated: February 1, 2002.

David O. Carson,

General Counsel.

[FR Doc. 02-2842 Filed 2-6-02; 8:45 am]

BILLING CODE 1410-31-P

APPENDIX
Understanding the Immediate Lack of Privacy & Security Afforded Americans

The purpose of this appendix is to put a visual face on the data that the RIAA is requesting for royalty collection. When you have finished examining the real data which is used in this section you will understand that the request by the RIAA for this information is solely for the purpose of demographics and has nothing to do with royalty distribution. There is no question the RIAA intends to market this information to third parties sources. The information revealed in this appendix will also leave you with a very stark awareness of how dangerous this information can be to the security and well being of individuals. The possibilities of abuse are astronomical. Furthermore, the information here, is from state of the art software and is only a minute fraction of the information requested by these proposals. There is no technical possibility of achieving the data collection proposed nor has there been any consideration of the ramifications involved in storing such huge amounts of information and providing satisfactory security.

Current Stream Information

Server Status:	Server is currently up and public.
Stream Status:	Stream is up at 24 kbps with 36 of 150 listeners (35 unique)
Listener Peak:	130
Average Listen Time:	3h 32m 19s
Stream Title:	Inetprogramming3 - Bluegrass - Covington, KY, USA - Root Music For Your Soul
Stream Genre:	BluegrassCountryFolk
Stream URL:	
Stream AIM:	
Stream IRC:	
Current Song:	Dry Branch Fire Squad - Touch The Hem Of His Garment

The above data is from Shoutcast Server Software which is a primary webcasting package with Mp3 streaming output. The information is a summary of a stream, in this case the Inetprogramming Bluegrass stream. Server status illustrates that the stream is available to the public and listed on a public list of stations (in this case the Shoutcast website – the presentation of stations on the Shoutcast website is the closest comparison available to a normal radio dial). Stream Status shows data that has never been available to commercial radio – accurate listener size – no longer a guess as broadcast ratings have been since day one. In this case there are 36 listeners out of a 150. What determines the 150? Computer processing power and bandwidth usage. Unlike traditional radio where any number of people can listen within range of a transmitter, broadcasting on the net is entirely dependent on the finances of the webcaster. If a listener has a phone line they can pick up data at a maximum speed of 56kps (theoretical). In actual fact most phone lines are half that. So Inetprogramming broadcasts a stream speed that someone with a phone can receive – in this case 24kps. One listener one phone line – ten listeners ten separate phone lines – for the broadcaster he has to pay for the equivalent of ten phone lines (240,000k). Now 24kps output is only 11K in frequency response coming out of Inetprogramming. To transmit a full 128k at 44 or in simple English regular CD quality, and ten listeners, the webcaster has to have bandwidth equivalent to 1,280,000kps or about $800 per month for a burstable T1 line from the phone company. The proposed fees do not take into account the tremendous difference in quality of streams, nor does it take into consideration the logic of different streams. Differences in streams are for providing easier access – data flow, not reproductions or multiple performances. **In fact the entire notion that the delivery of a recorded selection is a performance is pure poppycock. A recording is nothing more than a historical record of a performance that happened at a particular time and place. Transmission of a recording is no different than the delivery of a newspaper to the front door of a house. Nobody ever calls the delivery of a newspaper a performance.**

35 unique means that of the 36 listeners there are 35 unique ip connections – meaning one ip is sharing a connection – two computers? Two listeners? One person listening in quad? Who knows?....whose business is it to know? There is nothing in the proposals to deal with the statistical variables – in fact the way these proposals are written, a webcaster cannot listen to his or her own system without being penalized for listening. There has been no thought to the mechanics of webcasting. All these proposals have been driven by the greed and selfishness that money might be escaping somewhere and that all webcasters and listeners are crooks. This reeks from the very fabric of the proposals, the lack of thought, and the terminology used. Average Listen Time shows a figure that is based on connect time – not listen time. The listener peak shows that the most number of listeners at one time was 130. But both the listener peak and the average listen time are only relevant to the last start of the server software – that could have been yesterday or two weeks earlier. In order to tweak a server or make an adjustment, server software must be shut off and restarted after the changes have been completed. Or possibly a computer needs a reboot after a crash – either way there is no continuance of the data analysis from the period before – its one of the laws of basic computing.

Listener List							
Address	Connect Time	Underruns	Kick IP	Ban IP	Ban Subnet	Reserve IP	Buffer Position
155.201.35.50	13h 13m 26s	0					0
130.99.108.149	12h 32m 20s	0					0
165.201.169.2	11h 49m 45s	0					0
165.201.169.2	11h 21m 41s	0					0
12.230.134.203	10h 58m 09s	0					463875
208.57.0.76	10h 47m 07s	0					0
66.13.17.46	9h 47m 18s	0					0
17.203.13.31	9h 17m 32s	0					0
139.102.62.37	6h 14m 27s	36					220154
66.28.176.252	5h 47m 42s	0					0
208.57.19.67	5h 44m 42s	0					67918
199.172.188.9	3h 27m 56s	0					21760
12.230.230.32	2h 48m 12s	0					102216
64.252.10.244	2h 03m 43s	0					0
65.80.15.231	2h 02m 06s	0					74502
66.28.176.253	1h 46m 31s	0					0
24.186.87.102	1h 43m 47s	0					0
66.28.42.139	1h 37m 34s	0					0
64.216.33.217	1h 18m 43s	0					29357
63.192.77.95	1h 07m 22s	0					139485
66.26.216.129	1h 04m 30s	0					164397
24.48.87.131	1h 04m 06s	0					48805

Listeners leave their computers running just like you leave your radio or tv on at your home. Maybe you go to out for the evening and leave music playing for security reasons. The 0 on the right hand column indicates that the music player is idling or they are recording or they are on a system that rotates ips and hides the data flow output (like our military overseas listeners). It is not illegal to leave a radio on, nor is it illegal to leave a computer on, nor has any commercial broadcaster in the history of radio if had to pay a fee because someone has done so. Yet according to these new proposals that is exactly what the RIAA wants to do – they propose that a log entry is a performance even if there are no listeners – they want money for the "performance". They have not thought this through, or the RIAA simply doesn't care. In order to see if the entries were recording or idling in this case, a number were booted off the system – or as the log indicates "kicked".

65.163.68.155	10m 09s		192488
207.109.212.17	4m 46s		0
24.118.168.38	4m 10s		56221
131.122.30.172	4m 08s		0
141.211.17.211	2m 11s		202013
207.194.142.177	2m 03s		0
66.13.17.46	1m 16s		218550
66.188.137.132	0m 55s		0
61.211.25.65	0m 15s		86892

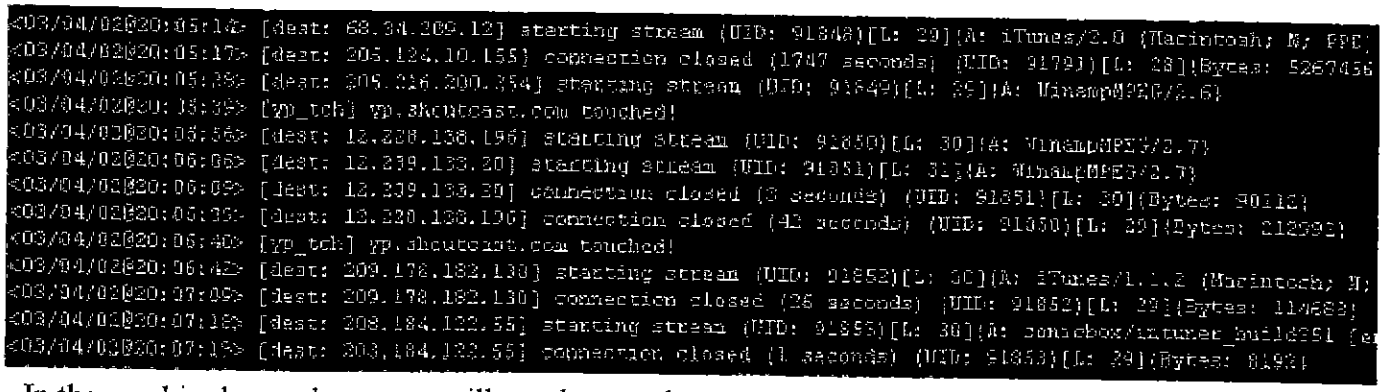
As it happens, several of the ips immediately logged back on – but that is the software doing that in this case. Music players work with a buffer – that is they store up, a portion of the incoming stream, so that when the data is distributed to the audio card of the computer it is smooth – this makes up for the continuous up and down speed of the internet data flow – something that commercial on air broadcasters have never had to deal with.

Because the internet constantly varies, music players are designed to reconnect automatically if the flow is interrupted - interruptions can be due to the bandwidth being full somewhere between the listener and the webcaster. So what we have on this log is a player in the idle or pause mode (probably in an office where they don't want the music to play all night) that continues to keep the connection active – it might be that someone went to lunch (it's a global audience), or it might be overnight. It might be to reserve a connection on a very busy station where it is hard to get on. Its legal no matter how one looks at it. The idea of broadcasting is to keep your listeners coming back; the same reason that one designs a website – to keep them coming back. If they come back then you have a product that you can approach an advertiser with. However the RIAA thinks its money going down the drain. The RIAA wants to penalize a webcaster for building a larger audience because they feel that this is a "performance". Utter nonsense. It's a computer connected to another computer – the whole purpose of the internet – connectivity. Without connectivity there is no internet. To penalize connectivity is to penalize the internet and everything it stands for. These proposals are intended to do exactly that – eliminate streaming and webcasting off of the internet.

<12/29/01@18:36:03> [dest: 24.253.42.62] starting stream (UID: 490)[L: 7]{A: WinampMPEG/2.7}
<12/29/01@18:36:12> [yp_tch] yp.shoutcast.com touched!
<12/29/01@18:36:16> [dest: 24.253.42.62] connection closed (12 seconds) (UID: 490)[L: 6]{Bytes: 81920}
<12/29/01@18:37:13> [yp_tch] yp.shoutcast.com touched!
<12/29/01@18:38:11> [dest: 24.53.50.27] starting stream (UID: 491)[L: 7]{A: iTunes/1.1 (Macintosh; N; PPC)}
<12/29/01@18:38:14> [yp_tch] yp.shoutcast.com touched!
<12/29/01@18:39:05> [dest: 218.132.156.114] starting stream (UID: 492)[L: 8]{A: iTunes/1.1 (Macintosh; N; PPC)}
<12/29/01@18:39:18> [yp_tch] yp.shoutcast.com touched!
<12/29/01@18:39:42> [dest: 218.132.156.114] connection closed (36 seconds) (UID: 492)[L: 7]{Bytes: 262144}
<12/29/01@18:40:19> [yp_tch] yp.shoutcast.com touched!
<12/29/01@18:40:24> [dest: 66.1.101.83] starting stream (UID: 493)[L: 8]{A: sonicbox/imtuner_build361 [en] (Win32)}
<12/29/01@18:41:17> [dest: 66.1.101.83] connection closed (53 seconds) (UID: 493)[L: 7]{Bytes: 415162}
<12/29/01@18:41:20> [yp_tch] yp.shoutcast.com touched!
<12/29/01@18:42:07> [dest: 202.156.129.62] starting stream (UID: 494)[L: 8]{A: WinampMPEG/2.7}
<12/29/01@18:42:21> [yp_tch] yp.shoutcast.com touched!
<12/29/01@18:43:21> [yp_tch] yp.shoutcast.com touched!
<12/29/01@18:44:04> [dest: 219.5.0.62] starting stream (UID: 495)[L: 9]{A: iTunes/1.0 (Macintosh; N; PPC)}
<12/29/01@18:44:14> [dest: 140.247.41.134] starting stream (UID: 496)[L: 10]{A: iTunes/1.1.2 (Macintosh; N; PPC)}
<12/29/01@18:44:15> [dest: 219.5.0.62] connection closed (10 seconds) (UID: 495)[L: 9]{Bytes: 212992}
<12/29/01@18:44:22> [yp_tch] yp.shoutcast.com touched!
<12/29/01@18:44:32> [dest: 209.245.3.107] starting stream (UID: 497)[L: 10]{A: iTunes/2.0.2 (Macintosh; N; PPC)}
<12/29/01@18:44:40> [dest: 140.247.41.134] connection closed (26 seconds) (UID: 496)[L: 9]{Bytes: 98304}
<12/29/01@18:45:12> [dest: 209.245.3.107] connection closed (41 seconds) (UID: 497)[L: 8]{Bytes: 122880}
<12/29/01@18:45:16> [dest: 202.214.108.2] starting stream (UID: 498)[L: 9]{A: iTunes/2.0.3 (Macintosh; N; PPC)}
<12/29/01@18:45:23> [yp_tch] yp.shoutcast.com touched!
<12/29/01@18:45:28> [dest: 209.83.88.48] starting stream (UID: 499)[L: 10]{A: sonicbox/imtuner_build213 [en] (Win32)}
<12/29/01@18:45:46> [dest: 207.237.212.133] connection closed (1022 seconds) (UID: 486)[L: 9]{Bytes: 3203072}
<12/29/01@18:46:02> [dest: 209.83.88.48] connection closed (35 seconds) (UID: 499)[L: 8]{Bytes: 122880}

So above, we have a log of connectivity. The log output of the software shows the date and time of an event – it does not sort data into a particular layout – its purpose is to simply make a record of the event sequencing. Note the above log output is in text only format, the closest approach to a request – you will see immediately that the task of adjusting code into a particular structure is a manual task – and is impossible to accomplish with anything short of an army of individuals. Note the UID – a unique identifier assigned by this software. On this software it nothing more than a number count. The (L:9) number or (L:8) number, etc. that follows the UID number indicates the number of listeners online at a particular time and the sequence of the logging on and off of the individual. Coordinate this information with the music Playlist log which appears below and you can see exactly what that particular listener was listening to at any given minute. If a computer crashes or is rebooted the sequencing numbers revert to 0. However since the ip number of the user is still getting logged, reverse engineering can match up a listeners entire habits. Now in the log that appeared earlier, you will have noted that next to the kick ip was a ban ip and ban subnet. With this server package it is possible to ban an ip – as in the case of a denial of service attack which would show on this log as a hit every second. In reverse engineering it is possible to collect demographic data on a region by collecting similar ips, or a subnet. Usually a subnet represents a geographical area so by collecting all ips in that subnet you would be able to tell the listener tastes of music in that region and with this information you could then market music sales to that region. This information collection process is therefore intended for third party usage, and has nothing to do with royalty collection. Furthermore, as indicated a denial of service attack will clog a log, however there is no provision in logging requirements proposals to deal with this situation. In fact a mal functioning music player can simulate a denial of service attack when it is just trying to log back on to a music stream – it the player is asking faster than the server can respond (and response time increases with more activity or listeners (cpu activity) then it will appear as an attack. These proposals however do not even address the issue of attacks. In the summer of 2001, webcasters were experiencing 175 attacks per hour per server – but nowhere in all these proposals is there any provision for accurate logging processes. Based on the current proposals each entry would be considered a process and billed accordingly. Below indicates a music play log from the Shoutcast software. Note that it does not address the exact start or finish of a selection – it samples to see what is playing – there is no method to know the exact sequence of start and finish – the software doesn't exist, nor would it even be applicable in random music selection. Also note that this is a completely different ouput of the software. There is no software package that can assemble both the log information and the music play sequence and give a coordinated output – it does not exist. So under these proposals it would need to be done manually. It cannot be done by any broadcaster. There fore these proposals are intended to drive webcasting off of the internet.

```
01/17/02 11:11:36 1 Lester Flatt And Earl Scruggs - I'm Waiting for You to Call Me Darlin'
01/17/02 11:12:06 1 Lester Flatt And Earl Scruggs - I'm Waiting for You to Call Me Darlin'
01/17/02 11:12:36 1 Lester Flatt And Earl Scruggs - I'm Waiting for You to Call Me Darlin'
01/17/02 11:13:06 1 Various Artists - Black Mountain Rag
01/17/02 11:13:36 1 Various Artists - Black Mountain Rag
01/17/02 11:14:06 1 Various Artists - Black Mountain Rag
01/17/02 11:14:36 1 Various Artists - Black Mountain Rag
01/17/02 11:15:06 1 Various Artists - Black Mountain Rag
01/17/02 11:15:36 1 Various Artists - Black Mountain Rag
01/17/02 11:16:06 1 Dolly Parton - I Wonder Where You Are Tonight
01/17/02 11:16:36 1 Dolly Parton - I Wonder Where You Are Tonight
01/17/02 11:17:06 1 Dolly Parton - I Wonder Where You Are Tonight
01/17/02 11:17:36 2 Dolly Parton - I Wonder Where You Are Tonight
01/17/02 11:18:06 1 Dolly Parton - I Wonder Where You Are Tonight
01/17/02 11:18:36 1 Dolly Parton - I Wonder Where You Are Tonight
01/17/02 11:19:06 1 Lost Highway - I wish I Had A Nickel
01/17/02 11:19:36 1 Lost Highway - I wish I Had A Nickel
01/17/02 11:20:07 1 Lost Highway - I wish I Had A Nickel
01/17/02 11:20:37 1 Lost Highway - I wish I Had A Nickel
01/17/02 11:21:07 1 Lost Highway - I wish I Had A Nickel
01/17/02 11:21:37 1 Lost Highway - I wish I Had A Nickel
01/17/02 11:22:07 2 Norman Blake & Tut Taylor - Weave and Way
01/17/02 11:22:37 1 Norman Blake & Tut Taylor - Weave and Way
01/17/02 11:23:07 1 Norman Blake & Tut Taylor - Weave and Way
01/17/02 11:23:37 1 Norman Blake & Tut Taylor - Weave and Way
01/17/02 11:24:07 1 Norman Blake & Tut Taylor - Weave and Way
01/17/02 11:24:37 1 Norman Blake & Tut Taylor - Weave and Way
01/17/02 11:25:07 1 Rural Delivery - The Lifeguard
```



In the graphic shown above, you will see the actual on screen output of Shoutcast. You will note that in addition to the above areas discussed on the output, are areas indicating the music player in use. So, not only do we have the ability to identify a particular users habits for listening, the music they listen to, and their geographical area, we can determine how they are listening and the operating system of their computer or listening device. We know they are a MAC, PC or AM/FM/Internet combo listener. We know there preference in software as each music player has different features that appeal to different users – much like different models of cars have different "customizable" features. Therefore by collecting this demographic information a third party could market directly to the listener – talk about direct marketing techniques! The only reason for collection of this information is to market this information to a third party. It has nothing to do with royalty collection.

24.186.109.239

Cablevision Systems Corp (NETBLK-OOL-1ISLPNY2-0110)
111 New South Road
Hicksville, NY 11801
US

Netname: OOL-1ISLPNY2-0110
Netblock: 24.186.108.0 - 24.186.111.255

Coordinator:
OOL Hostmaster (OH4-ORG-ARIN) hostmaster@CV.NET
(516)393-3281

OOL Hostmaster (OH4-ORG-ARIN)
hostmaster@CV.NET
Cablevision Systems
111 Crossways Park West Drive
Woodbury, NY 11797
US

Take the ip number of any entry on the database, and go to Arin.net or specifically http://www.arin.net/whois and then type in that ip number into the input field. The current assigned owner of that ip will show up as in this case shown on the list. So now we start to put a face on the user. Not only do we know all about the users habits but we can physically track them down. Ip addresses when they are assigned to a particular user on a permanent basis are the equivalent of a street address on a house. But you may ask how would one find this information out? If a large conglomerate owns both cable or internet distribution networks, and a recording label, then according to the clause in the proposals "Entitled User", this information can be released to the label.

Then it becomes a simple matter of taking two databases and merging the information together – all legal under these proposed regulation if they are implemented. Also in tracking information it is not impossible that a subsidiary corporation may release the data to the parent company. This information in the wrong hands leaves security of home and person in jeopardy. The information could be used by a burglar who knows when you are home and when you are not; it could be used by an individual that is stalking somebody to identify when they are alone; or it could be used by an individual that has been banned from contact with another individual (especially in domestic situations of abuse.)

So, now not only do we have the potential for third party marketing, we have the ability to place a simple listening exercise on the front page of tomorrows newspapers. Privacy and the sanctuary of the home is protected under the laws of the United States. These proposals violate those laws.

There are two ways of collecting data – the listener stream and website monitoring. All data and connectivity on the internet is recorded, contrary to many claims by companies. This is especially apparent with cookies – those tags that are loaded into your web browser on your computer that track your moves and frequency of visits. Website data is a much more accurate method of analyzing a visitor. Data collected allows for better marketing and website design – efficiency is improved and the ability to make sales to that visitor is enhanced. Sales are a revenue source for a website. On air revenue comes from advertising – however a webcaster has a miniscule audience compared to even the smallest broadcast station. Potential advertising rates are much smaller. There is no possibility of a webcaster competing with a commercial broadcast radio station.

VISITS

Total	155,803
Average per Day	206
Average Visit Length	2:15
Last Hour	13
Today	357
This Week	4,149

PAGE VIEWS

Total	241,641
Average per Day	320
Average per Visit	1.6
Last Hour	20
Today	488
This Week	5,864

Website logs tack who is online and the data can be summarized to the length of the visit and even the pages examined. Visits are the number of individuals that visit a website. Page Views represent the website pages actually viewed. This information is used by every website to monitor the success of the design of the website. Poor design means poor numbers and poor numbers translates in to low revenue. Web design methodology is new, only having been around since 1993 so a lot is unknown.

1	direcpc.com	Mar 04 2002 8:09:44 pm	5	44:29
2	home.com	8:07:31 pm	1	0:00
3	COMPUTER	8:05:11 pm	1	0:00
4	i-legal.com	7:54:43 pm	1	0:00
5	com.sg	7:44:41 pm	2	2:38
6	charterpipeline.com	7:36:36 pm	3	1:26
7	bresnanlink.net	7:31:47 pm	1	0:00
8	mindspring.com	7:28:49 pm	1	0:00
9	home.com	7:26:50 pm	1	0:00
10	home.com	7:25:29 pm	1	0:00

Website logging tracks where the visitor originates. It can record how long the visitor stays on the site – unfortunately it doesn't have the ability to determine if the individual got up and left the room for a period. However loggers can track every single move of the individual.

Who's On Your Site?				
Detail	Domain Name	Last Page View	Page Views	Visit Length
1	attbi.com http://inetprogramming.com/default.html	Mar 04 2002 8:37:41 pm	2	0:22
2	SECONDARY http://www.inetprogramming.com/default.html	8:36:33 pm	1	0:00
3	zvan.com http://www.inetprogramming.com/default.html	8:35:49 pm	1	0:00
4	216.228.10.# http://www.inetprogramming.com/default.html	8:34:58 pm	1	0:00
5	bresnanlink.net http://www.inetprogramming.com/default.html	8:31:52 pm	1	0:00

Website logs track who's on, the pages viewed, the length of their visit, where they came from, and where they went. There is a trail of usage. That trail of usage information can be used in many ways, some legal and some illegal by those who can obtain that information. It is a severe risk to ensuring privacy and the ability to protect that information is of constant concern.

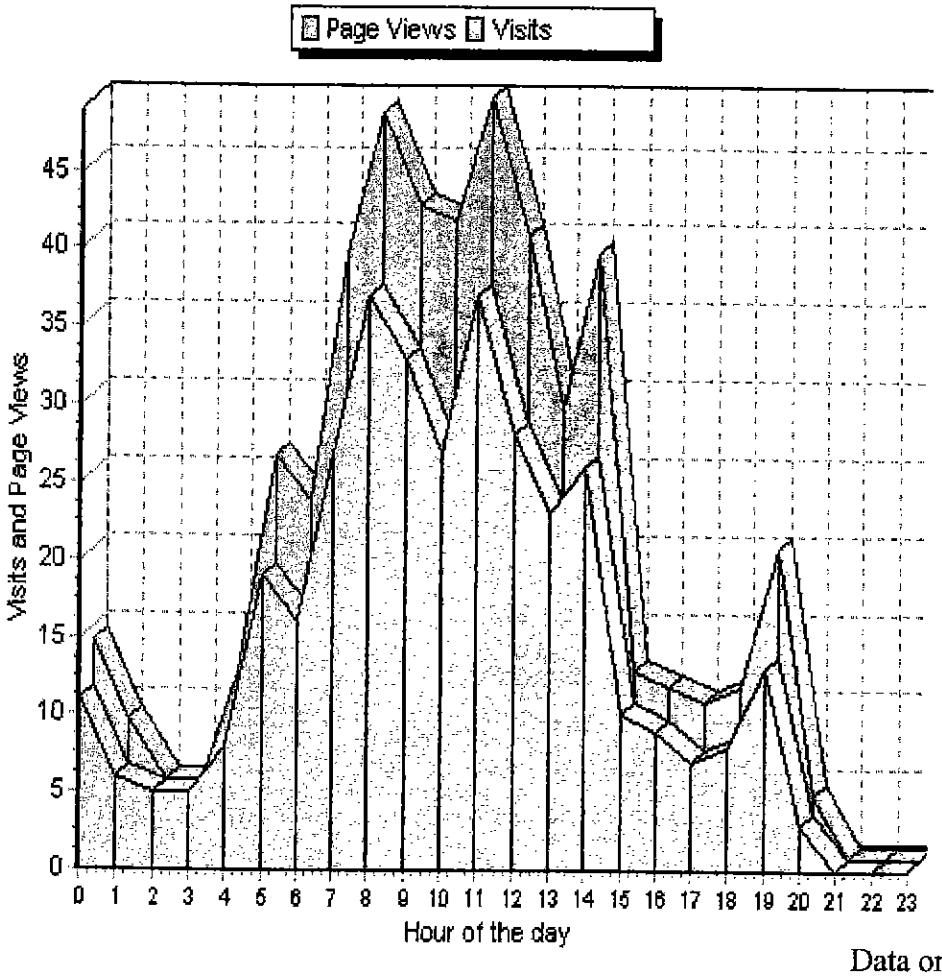
It may be a doctor's confidential information that's at risk, or something as simple as credit card information. Nowhere in all the proposals is there any mention of how the RIAA is going to be held accountable for the security of the information it collects. Since the information would be collected under the requirements of law, it is subject to the laws of disclosure and accountability that are in place for any government entity or contractor. The RIAA would be a contractor to the government. As in all contracts with the government, bids must be put out for tender. This has not been done. No private company can be assigned a government task unless bids have been tendered. This makes this entire proposal arbitration in violation of United States laws.

direcpc.com @ 3/4/2002 8:09:44 PM

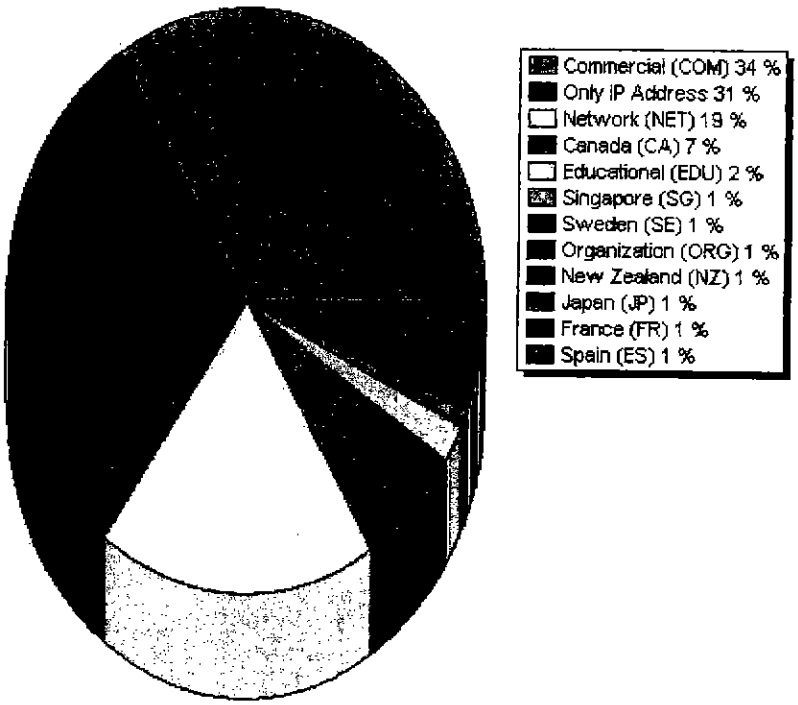
[>>]

Domain Name	direcpc.com ? (Commercial)
IP Address	66.82.51.# (ARIN)
Browser	Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.0; T312461; Q312461)
Time of Visit	Mar 04 2002 7:25:15 pm
Last Page View	Mar 04 2002 8:09:44 pm
Visit Length	44 minutes and 29 seconds
Page Views	5
Referring URL	http://www.inetprogramming.com/
Visit Entry Page	http://www.inetprogr...ing.com/default.html
Visit Exit Page	http://www.inetprogr...ing.com/default.html
Time Zone	UTC-8:00 PST - Pacific Standard Time PDT - Pacific Daylight Saving Time
Visitor's Time	Mar 04 2002 7:25:15 pm

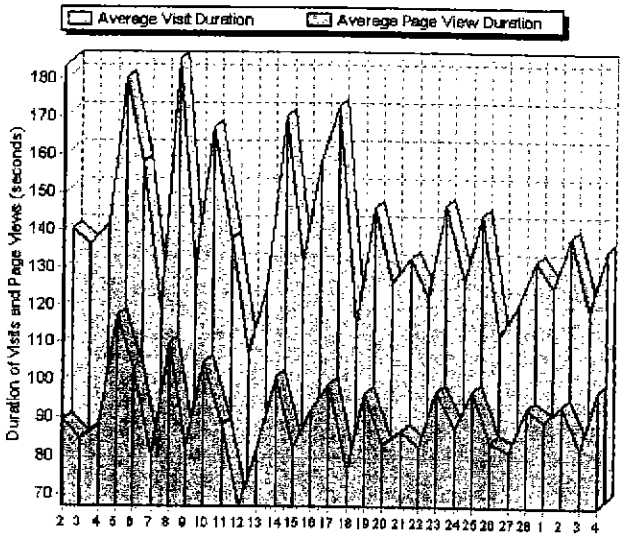
Logs reveal source isp, the ip of connectivity (many of which are fixed on cable and dsl), the browser in use and the operating system of the computer being uses to access the website. The exact viewing habits of the user are recorded. The demographics of the users in relation to the websites location are revealed. Most user of the internet are not aware of how much data can be collected on them with a simple visit to a website. If they were aware of this loss of privacy they would immediately call for protective measures to be implemented to ensure some minimum level of confidentiality.

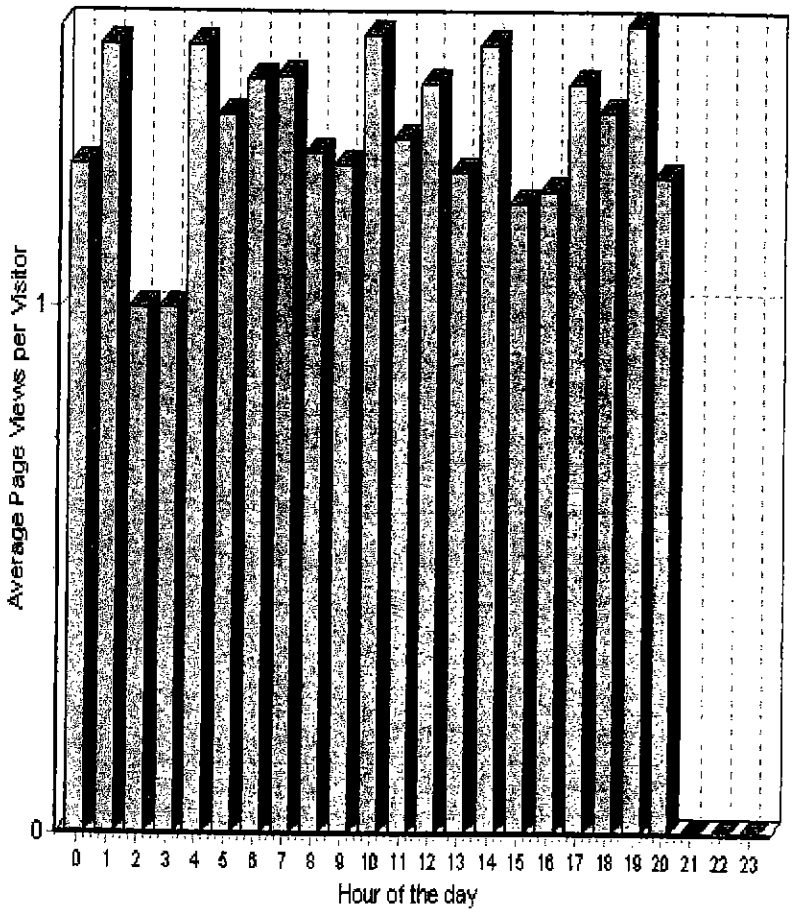


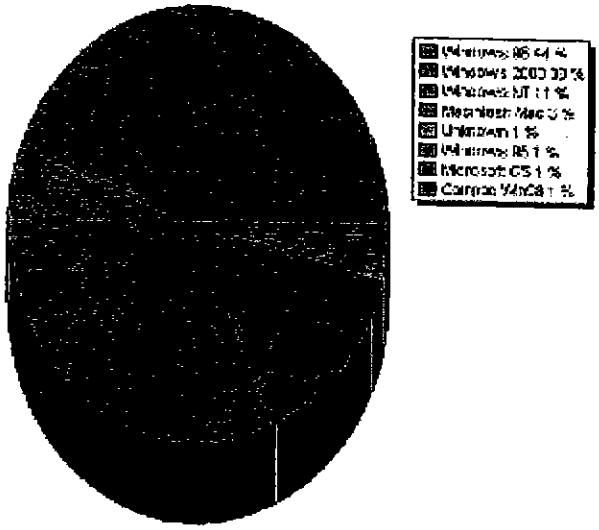
The proposed requirements for data logging do not illustrate the blatant invasion of privacy, as do graphics. The chart on the left illustrates the number of visits and the page views and the time of day. Collection of data is for one purpose – to analyze. Once the information has been assembled into a useable format, decisions can be made on marketing. But his has nothing to do with royalty collection.

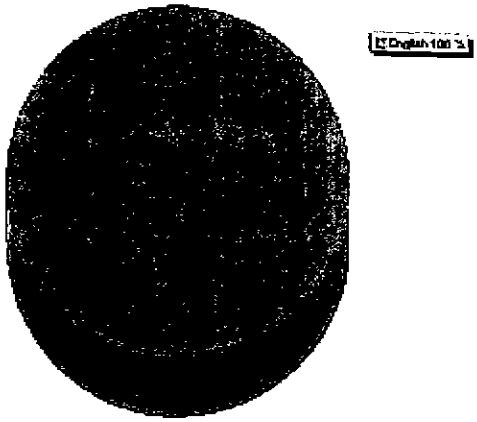


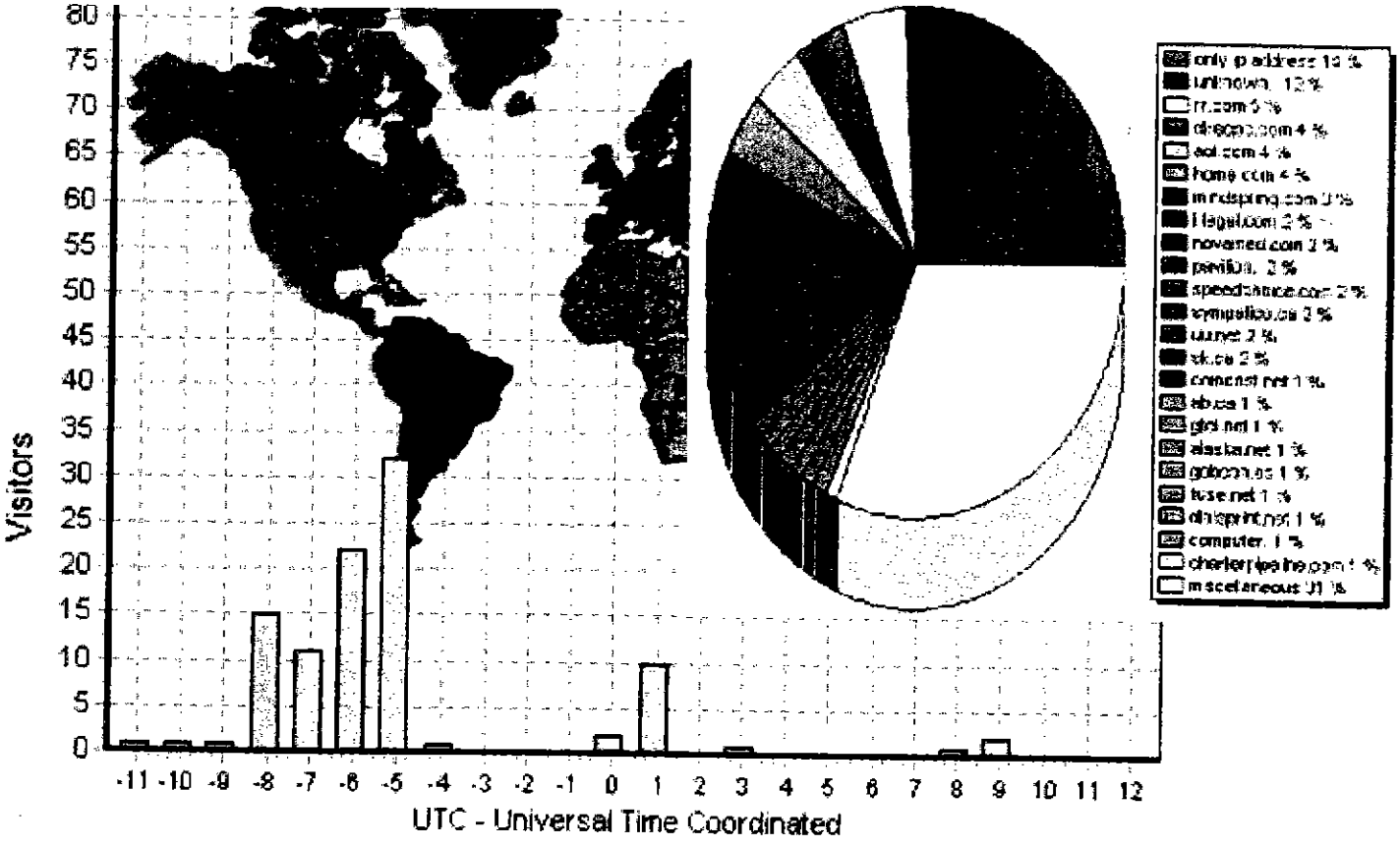
Data on the country of the visitor can be identified. The percentage of visitors from a particular geographic region is easy to calculate and the data is easy to present in this fashion. Data can be assembled in a periodical record as well. Once the information has been assembled into a useable format, decisions can be made on marketing. But his has nothing to do with royalty collection.




Average Page Views per Visitor
0
1
0 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23
Hour of the day






Visitors
80
75
70
65
60
55
50
45
40
35
30
25
20
15
10
5
0
-11 -10 -9 -8 -7 -6 -5 -4 -3 -2 -1 0 1 2 3 4 5 6 7 8 9 10 11 12
UTC - Universal Time Coordinated

Data can be assembled by page views on a per hour basis, or by web browser software brand usage, the language of the user, and the percentage of users from a particular source (like AOL for example). The data can be assembled to show a geographical distribution – in this case the spread of our listeners around the world. Remember this is only a portion of the data that the RIAA wants to collect. This does not even touch the problems of identifying copyright holders, or a dozen other issues described in the proposals.

The philosophy behind the justification of these proposals is severely flawed and has no practical ability to be implemented in neither technology nor man-hours available. This is a push for business as usual by an industry that has a rotten reputation for ripping off artists, publishers, and everyone they can lay their hands on. The industry itself has made movies on how bad the industry is.

This is not about royalty distribution to artists. It is about shutting down an independent industry that has been growing and evolving – about shutting it down with the traditional machinery of theft and deception. This is about conning the public and elected officials into the belief that this is good for America. This is not good for artists. This is not good for recording labels. This is not good for songwriters. This is not good for music publishers. This is not good for the computer industry. This is not good for the broadcast industry. This is not good for the webcasting industry. This is not good for the music industry. This is not good for the people of the United States. This is not good for America.

These proposals threaten our Freedom of Speech, our Freedom of Expression, and our Freedom of Movement. They are a threat to everything this county is built upon and stands for – freedom itself. These proposals must never be implemented!