

General Counsel -- Copyright Arbitration Royalty Panel
 Copyright Office
 James Madison Building
 Room LM-403
 First and Independence Avenue SE
 Washington, DC 20024-0977

DOCKET NO.

RM 2002.1

COMMENT NO. 14

7 March 2002

RE: Comment on Notice and Recordkeeping for Use of Sound
 Recordings Under Statutory License; 37 CFR Part 201
 [Docket No. RM 2002]

Dear Sir:

We have read with interest the above Notice. Overall, Andante believes that while the intention may be admirable, CARP is overly idealistic in its attempts to impose a user log and play list specification that for practical purposes is impossible to implement and manage. Specifically:

- 1) Listener's Log (3.iv,v,vii) Users very often impossible to identify. Here is why:
 - a) Most log files that are created by the most common streaming servers (e.g., Real, Microsoft Windows Media, Shoutcast) cannot identify users, but only the IP addresses in which the user originates and terminates the stream.
 - b) When users access streams through large ISPs, such as America Online, all user identity as well as their geographic location is lost.
 - c) For many IP addresses, it becomes a difficult and computer-intensive task to resolve these addresses to determine the geographic location of the user.

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- d) IP addresses can change for a given user over a period of a few minutes or months, thereby further confounding any correlation between a user's identity and the IP address. e) For non-subscriber Streaming Services, session information on the user is NOT kept simply by nature of the service, nor can such information be obtained. This is especially true when users stream programs through non-PC devices (e.g., Turtle Beach, Philips).
- 2) Playlist requirements. There is no provision for separating copyrighted materials from other materials in which the copyright fees, if applicable, have been negotiated separately or materials are included that are owned outright by the Streaming Service.
- 3) Given our current level of experience in streaming, we can unequivocally state that the proposed data collection and management requirements for play lists and user logs is NOT realistic when viewed at a practical level, despite statements to the contrary (Paragraph 1 of the proposed rulemaking):
- a) Our monthly logs alone easily approach hundreds of Megabytes. We cannot imagine any organization who will endeavor to process this amount of data from all Streaming Services.
 - b) Standardization on how the data will be formatted and transmitted will take a long time through debate and standardization committees.
 - c) A large staff and facility will be required collect and process the data. Who pays for this? The Streaming Services? The Copyright Holders?

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4) Given that the RIAA, by its nature, is effectively controlled by the Major Record Labels of the United States, and given that the Major Record Labels have engaged in streaming activities and ventures that compete directly with the Streaming Services, under no circumstance should the RIAA be permitted to have access to any streaming data from the Streaming Services. Therefore, an independent third party will be essential to collect and analyze Streaming Service data.

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