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Before the
United States Copyright Office
Library of Congress

APR 4 2002
GENERAL COUNSEL
OF COPYRIGHT

In the Matter of)
)
Notice and Recordkeeping for) Docket No. RM-2002
Use of Sound Recordings)
Under Statutory License)

To: Copyright Arbitration Royalty Panel

Comments of Mayflower Hill Broadcasting Corporation

Mayflower Hill Broadcasting Corporation ("Mayflower"), a non-profit organization, by counsel, hereby respectfully submits its comments in response to the *Notice of Proposed Rulemaking* (the "Notice"), published in the Federal Register on February 7, 2002. The Notice seeks comment from the public on the statutory license for eligible subscription digital audio under Section 114 of the Copyright Act, including proposed notice and recordkeeping requirements for licensees.

Mayflower is the licensee of a Non-Commercial Educational FM Broadcast Station WMHB, in Waterville, Maine on the campus of Colby College. WMHB is run by volunteers and has no paid employees. The station provides the small college community an outlet for alternative music, events and news, as well as collegiate sporting events.

These comments address the reporting requirements in the Notice and explain that the recordkeeping requirements are overly burdensome to the resources of a small, non-commercial radio station. Mayflower believes the reporting requirements will cause certain webcasting operations to cease altogether. Additionally, the proposed fee of .02 cents per song per listener is also likely to increase costs to a level that Mayflower cannot afford.

Reporting Requirements

The reporting requirements are so onerous to non-profit entities like Mayflower that they could cause stations such as WMHB to cease to exist. Stations like WMHB struggle greatly to achieve a large audience due the extremely limited potential audience (essentially those that live on campus). The success of webcasting has made WMHB much more widely viable in terms of recruiting volunteers and recognition within the community, thus enhancing the opportunities for larger potential audiences and in turn additional and enhanced educational experiences.

WMHB does not have the computerized systems generally found in many

commercial and CPB-funded public radio stations that would allow for the automation of recordkeeping tasks required under the Digital Millennium Copyright Act ("DMCA"). Also, Mayflower's station is multi-formatted and the number of recordings played on the air is larger compared to those of tightly formatted commercial stations. The libraries accumulated over many years includes thousands of compact discs and albums that continue to receive airplay, while most commercial stations program from but a few recordings (600-1000 songs).

Further, the music collections of WMHB is not cataloged in computer databases, and the cost of inputting the data required by the DMCA would be enormous and extremely time consuming. The amount of data required to be reported to the Collective in the Notice demands a computerized operation. Even then, it is highly unlikely that the limited resources of our station would allow them to comply with the reporting requirements.

Another problem is the cost of the computer hardware acquisition and software (still undeveloped) necessary to comply with the reporting requirements specified in the Notice. The volunteers at WMHB are already donating their time, energy -- and in some cases, fiscal resources -- to produce their programs. To expect volunteers to contribute many additional hours to input the data needed to comply with the DMCA would be unreasonable and an insurmountable task.

The Copyright Office is afforded a means to amend the proposed rules to allow WMHB and other similarly situated stations to be exempted from the "intended playlist" requirements.

First, §114(f)(2)(A) of the Copyright Act states, "In establishing such rates and terms, the Copyright Arbitration Royalty Panel may consider the rates and terms for comparable types of digital audio transmission services and comparable circumstances under voluntary license agreements negotiated under subparagraph (A)." This section gives the Copyright Office considerable discretion. Given the foregoing, it would be permissible and consistent with the intent of Congress to eliminate or substantially reduce the reporting requirements of non-commercial radio stations.

As an alternative, many educational stations such as ours meet their reporting requirements for their broadcast operations by completing handwritten logs once a week for BMI over a one-week period. These logs require much less information and allow the organization to fairly distribute copyright fees due to sampling. Similar (or concurrent) reporting would allow reasonable access to the Collective in this proceeding.

Mayflower acknowledges that it may be necessary to collect data concerning the use of copyrighted material, in order to fairly compensate the artists, to the extent that fees are collected. Therefore, reporting requirements for webcasting that would replicate those recently practiced by BMI would provide relief to Mayflower and other non-profit entities that is reasonable, equitable, and most importantly, possible.

Fee Increases

Mayflower acknowledges that this proceeding is separate from the rate proceeding, but the issues are interrelated. However, Mayflower did not participate in the arbitration, due to its limited resources. In fact, the CARP noted on page 89 that,

Unfortunately, determination of the willing buyer/willing seller fees for non-CPB affiliated, non-commercial radio stations ("non-CPB broadcasters") presents an extraordinary challenge. Despite admonitions to all counsel from the Panel as early as September 7, 2001 (well prior to the rebuttal phase), the record remains virtually barren respecting such broadcasters. *See* Tr. 9009-13. The record tells little about those non-CPB broadcasters that are represented by the NRBMLC, and virtually nothing about those that are not.

This discussion of the reporting requirements allows an opportunity to express the need to reexamine the rates, particularly since the changes needed to insure the viability of these stations are so extensive.

The .02 cents per song per listener assessment for webcasting acts as a detriment to a successful webcasting operation run by a small station like WMHB. Moreover, the \$500 dollar minimum fee is not a small amount for WMHB. Mayflower already pays BMI, ASCAP and SESAC to broadcast on the air and on its webcast. Mayflower also pays a third party to host its webcast. WMHB is on a fixed budget and any increase in costs, even \$500, will force it to cut out some other service that will surely have an adverse effect on the radio service provided to the local community.

With respect to webcasting, the separate ephemeral recording fees and reporting requirements are redundant and burdensome on all parties. Ephemeral recordings are required to webcast and destroyed as they are created. There is no accessible or retrievable copy available after transmission, unless the file is intentionally archived. Unless the material is archived, the reporting requirement and associated fees are burdensome, costly, detrimental and unfair. Thus, these fees and reporting requirements should be eliminated.

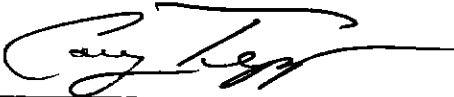
Conclusion

Mayflower is a non-profit, non-commercial operation operating solely for the benefit of its audiences, educational benefit of the students and volunteers, and educational programs at Universities. WMHB has extremely limited resources in comparison to commercial broadcasters and CPB-funded stations. The reporting requirements, as proposed, are unmanageable for all but a select few stations. Coupled with the proposed increases in fees, the Copyright Office stands to shut down Mayflower's webcasting operation and seriously hamper its broadcast service. If the

Copyright Office codifies these reporting requirements, without reconciling the effects on these stations and their audiences, it will have a chilling effect on creativity, learning, education, research and society.

Respectfully submitted,

**Mayflower Hill Broadcasting
Corporation**

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