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Before the  
United States Copyright Office  
Library of Congress

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GENERAL COUNSEL  
OF COPYRIGHT

In the Matter of )  
Notice and Record Keeping for )  
Use of Sound Recordings )  
Under Statutory License for )  
Community Radio Stations )

Docket No. RM 2002

**Comments of the National Federation of Community Broadcasters, Inc.**

The National Federation of Community Broadcasters (NFCB) is a 27-year old grassroots organization of non-commercial, educational, public radio stations which are distinguished by their community support, control and programming. The NFCB is the sole national membership and service organization for community radio, providing advocacy on the national level and a variety of direct services at the station level. NFCB's 150 member stations come from across the United States, from Alaska to Florida; from every major market to the smallest Native American reservation. NFCB's membership reflects the true diversity of the American population: 41% of the members serve rural communities and 46% are minority radio services. Our members are mostly small, and all are non-profit stations, rooted in their communities. The fees and recordkeeping requirements proposed will force many of these stations to stop providing a webcasting service.

NFCB represents over 150 non-commercial community radio stations in the United States. In addition, we are working with the new class of Low Power FM stations that have just been authorized by the FCC which may be as many as 1,000 new radio broadcasters. Although some of our 150 members are covered by the agreement reached between the Corporation for Public Broadcasting and the RIAA, over a third of them are not. We also have a number of independent radio producers among our membership who create radio pieces for one or more broadcasters and who also make their work available on their individual websites.

The stations that will be affected by this rulemaking are the smallest of our members—often with few or no paid staff. They are community stations where all the programming is done by local volunteers often from their personal record collections. These stations have diverse and eclectic formats which may encompass a variety of musical genres and musical cultures. There are often 100 to 150 programmers who each do a program once a week, at the most. The music played on these stations is frequently from independent labels and is not heard on the commercial stations. There are no playlists and no automation and often the records are not catalogued except to be sorted by musical genre using different colored tape on each album jacket. These stations, along with college

stations, are effectively the only place one can hear independent labels and less mainstream music—much of it completely unavailable from other outlets.

For the most part, these stations are not selling advertising. They are using the Internet to get their signal to people who can't receive it over the air. They are providing a public service.

NFCB submits these comments on behalf of its members not covered by the CPB/RIAA agreement and on behalf of independent producers, Low Power FM stations, and American Indian Radio on Satellite (AIROS) and Radio Bilingüe Satélite (RBS), networks who distribute programming to Native American and Latino stations in the United States, Puerto Rico and Mexico, and who use the Internet to serve listeners who cannot receive a minority-controlled public radio station over the air.

NFCB did not participate in the CARP because we do not have the necessary resources. One of our members, WCPE in Wake Forest, NC, did try to participate in a limited way by requesting that they, along with a number of other small entities, be represented by a focused pleading of an *amicus* nature. This was denied because of an objection from the RIAA. As a result, small, non-commercial broadcasters were not represented in this proceeding.

### **Impact of Proposed Copyright Fee**

The proposed fee of .02¢ per song per listener for non-CPB non-commercial broadcasters would seem to be out of line with what stations are paying publishers for their broadcast rights. This is particularly true for stations that broadcast mostly talk programming, and would still have to pay the \$500 minimum—a fee that is much higher than they pay to a publisher for broadcasting music that is heard by probably 100 times more listeners.

The total cost for streaming rights for a small non-commercial station that is deriving no direct profit from webcasting would be a minimum of \$1,173 per year (\$500 minimum to RIAA; \$264 to ASCAP; \$259 to BMI; and \$150 to SESAC) in addition to the actual costs of streaming their signal. This is compared to \$550 paid to the music publishers for rights to broadcast the same program to many more listeners. These costs would be enough to make many of the small, community radio stations decide not to make their programming available on the Internet. This would result in a loss of much independent music and local issues coverage through this technology.

In addition, these stations are not generally tracking listening either to their broadcast signal or to their websites. Requiring them to do the calculations necessary to pay a fee based on the number of listeners is unrealistic.

**NFCB would like to see non-commercial broadcasters who are not selling advertising on their websites, as defined by Section 399B(a) of the Communications**

**Act (47 C. F.R. Section 399b(a), exempt from any fee. If the fee cannot be waived entirely, these stations should not be required to pay more than a flat annual fee of \$250.**

### **Impact of Proposed Recordkeeping Requirements**

Far worse than the fees that these broadcasters would have to pay are the recordkeeping requirements that are proposed. As mentioned above, the small community radio stations that would be covered by this agreement generally have few or no paid staff. The programming is done by community volunteers—often 100–150 people doing shows once a week at the most. The music programmers are frequently programming their shows largely from their own record libraries supplemented by the station's music library. These stations do not have playlists. At most, programmers are asked to keep a log of what recordings were played so that listener questions can be answered and reports can be made to the record companies about which records got the most play. This helps stations get promotional copies of new recordings in certain genres. But many of these stations are not even able to collect this kind of information. There are certainly no "Intended Playlists."

The amount of work that would be required to collect and report all the information proposed in the Notice of Proposed Rulemaking would be prohibitive for the stations that NFCB represents.

To start with, some of this information is unavailable. Promotional copies of recordings that are provided to stations by the record companies generally have their Universal Product Code obliterated. Many of the older LPs that are played don't contain much of the requested information.

But the primary problem for these stations would be gathering such a large quantity of information. As discussed above, these stations are playing thousands of different songs from many different genres, and it is impossible to reliably collect even more limited information consistently. It would require enlisting volunteers to try to collect the information from the DJs, and it would be nearly impossible to find people willing to do this. (We know this because of the difficulty stations have in finding volunteers to maintain their record libraries, which directly benefits the music programmers.) Many of these stations are still not using computers to catalog the record libraries or keep track of what music is played.

We understand that the RIAA has recognized the difficulty for small non-commercial stations to compile these kinds of reports by exempting non-commercial stations with fewer than 10 employees from the reporting requirement altogether in agreements already negotiated. Another model with which stations are currently complying is the reporting that is done for the music publishers. On a randomly selected basis, stations keep a log of music played for not more than one week each year. This requires only artist, piece of music, and the name of the album be submitted. It seems like the record companies

would have an easier time ascertaining the rest of the information proposed in this NPRM than would the stations themselves. If the reporting requirements for webcasting are more onerous than for broadcasting, in effect, the Copyright Office is inhibiting the development of this new medium.

Finally, requiring separate logs and payment for ephemeral use of the music when this is an inherent part of streaming is burdensome and duplicative. If the stream is not available except as broadcast, there should be no additional payment or reporting requirement.

**NFCB proposes that non-commercial stations with fewer than 10 employees be exempt from the reporting requirement. In the worst case, they should only have to report one week per year, as required by the music publishers.**

### **Impact of Proposed Information About Listeners**

Many stations do not track or have access to the listener information that is proposed to be collected in the "Listener Logs." Even if they have this information, sharing it with the record companies raises very serious privacy issues. Congress has felt so strongly about privacy rights that it passed legislation a year ago that requires that all donors to stations receiving CPB funding give their permission before their names and contact information is shared with another party. This proposed requirement would appear to do just the opposite. One wonders what use the record companies would have for this information.

Also, this would create additional work for these understaffed stations. This is unrealistic and would drive many of these stations from the Internet. This would constitute a loss of diversity and public service.

**NFCB proposes that no listener information be shared with record companies.**

### **Conclusion**

NFCB supports the rights of artists to be paid for their work. However, the reporting requirements as proposed would be so burdensome for small community radio stations that all but a few would be forced to stop streaming their broadcast signal. The information on listeners would be a violation of their privacy, as Congress has recognized. And, the fees recommended by the CARP are out of line with those paid to publishing companies for broadcast rights and would be calculated in too complicated a way for most of our members.

NFCB recommends that:

- Non-commercial broadcasters who are not selling advertising on their websites be exempt from the fee but certainly not required to pay more than a flat annual fee of \$250.
- Non-commercial stations with fewer than 10 employees be exempt from the reporting requirement. In the worst case, they should only have to report one week per year, as required by the music publishers.
- No listener information be shared with record companies.

March 29, 2002

Respectfully submitted,



Carol Pierson  
President and CEO  
National Federation of Community Broadcasters  
Fort Mason Center, Building D, Suite 210  
San Francisco, CA 94123  
415-771-1160  
cpnfcbaol.com