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GENERAL COUNSEL
OF COPYRIGHT

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COMMENT NO. 18

April 3, 2002

The Librarian of Congress
Library of Congress
101 Independence Avenue, S.E.
Washington, D.C. 20559

RE: RECORD KEEPING REQUIREMENTS FOR WEBCASTERS

Dear Librarian of Congress:

My name is David Landis, and I am the founder of Ultimate-80s (www.ultimate80s.com), an all 1980s music format internet based radio station / webcast which streams live twenty four hours a day, seven days a week. We have been in business for just over fifteen months, and, within that time, we have ranked on both the Weekly Top 25 and the Monthly Top 50 of all internet radio stations rated by Measurecast. We have also charted in Arbitron's Monthly Top 75 of the internet radio stations they measure. Both Measurecast and Arbitron are considered the foremost authorities in ranking the success of internet radio stations, and they individually monitor over 1,500 stations.

I am writing you about the recent ruling on the record keeping and reporting standards which webcasters will be required to submit. The categories of these standards are:

- music played on webcasts / internet radio stations,
- the people who listen to that streamed music.

These requirements, which are based upon the terms of both the Digital Performance Right Act of 1995 (DPRA) and the Digital Millennium Copyright Act of 1998 (DMCA), were established by the U.S. Copyright Office's Copyright Arbitration Royalty Panel (CARP).

CARP is proposing each webcaster report 25 pieces of record keeping information for each song. I am sure you are already quite familiar with these requirements, however, I have listed them below for your reference:

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1. **The name of the service**
2. **The channel of the program (AM/FM stations use station ID)**
3. **The type of program (archived / looped / live)**
4. **Date of transmission**
5. **Time of transmission**
6. **Time zone of origination of transmission**
7. **Numeric designation of the place of the sound recording within the program**
8. **Duration of transmission (to nearest second)**
9. **Sound recording title**
10. **The International Standard Recording Code (ISRC) code of the recording**
11. **The release year of the album per copyright notice and in the case of compilation albums, the release year of the album and copyright date of the track**
12. **Featured recording artist**
13. **Retail album title**
14. **The recording label**
15. **The Universal Product Code (UPC) code of the retail album**
16. **The catalog number**
17. **The copyright owner information**
18. **The musical genre of the channel or program**

In addition to these, there are 7 other pieces which are designed to inform about our listeners:

19. **The name of the service or entity**
20. **The channel or program**
21. **The date and time that the user logged in (the user's time zone)**
22. **The date and time the user logged out (the user's time zone)**
23. **The time zone where the signal was received (user)**
24. **Unique User Identifier**
25. **The country in which the user received the transmissions**

INFORMATION ABOUT THE MUSIC PLAYED

About half of CARP's above listed requests are very reasonable and easy to fulfill: *the name of the service; the channel of the program (AM/FM stations use station ID); the type of program (archived/looped/live); date of transmission; time of transmission; time zone of origination of transmission; duration of transmission (to nearest second); sound recording title; featured recording artist; the musical genre of the channel or program.*

However, the other half is either extremely difficult, cost prohibitive, and/or simply impossible to attain. These include: *numeric designation of the place of the sound recording within the program; the International Standard Recording Code (ISRC) of the recording; the release year of the album per copyright notice and in the case of compilation albums, the release year of the*

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album and copyright date of the track; retail album title; the recording label; the Universal Product Code (UPC) of the retail album; the catalog number; the copyright owner information.

Please note it has become customary practice for both webcasters and traditional broadcasters alike to "burn" copies of songs they broadcast into their station's hard drives so the station's automation system can pick whichever song is desired. While many terrestrial broadcast stations might still have the sources of those recordings (the original CDs), many webcasters, who were able to purchase the automation software that is equivalent to that of corporate owned terrestrial broadcast radio stations, did not and do not have the financial resources to purchase all of the source CDs for the music the various webcasting stations stream. Thus, the owners of the independent webcast stations often borrowed CDs from friends and family and/or asked these people to "burn" various compilations from the CD collections that these friends and family members may possess. Unfortunately, the independent webcasters, whose library consists of several thousand songs, are usually no larger than a three person operation with neither the time nor the financial resources to devote to researching all of this background material including the release year of the recording, the retail album title, the ISRC code, the catalog number, and the copyright owner information. While the business model for the majority of webcasters is based on advertising, due to the dot-com bust and the fledgling economy of the last two years, the advertising dollars have been, for the most part, non-existent, especially for webcasters. In order to fulfill these problematic requirements, webcasters will be forced to hire another full time person and/or purchase additional equipment which would be financially prohibitive. The inevitable result will be the demise of a nascent industry leaving many people out of work and 80 million listeners without their favorite station(s).

Some other difficulties that will arise have to deal with compilation albums and Universal Product Codes (UPC) for CDs. Many compilation albums released by both major and minor recording labels often list only the year of that particular album's copyright but do not list the years of copyright for the individual tracks.

Also, many CDs which webcasters use are forwarded to them by the labels or artists themselves, and therefore, the UPC codes are either hole punched or lined out, making it impossible to fulfill that record keeping requirement.

LISTENER LOG

In addition to the above, the record keeping requirements demand webcasters submit 7 pieces of information about the individual listeners also be reported. Like many of the first 18 rules, most of the 7 regarding listeners are also very difficult/ to acquire. The first two items are easy, and they are actually a repeat of the first 2 requirements in the above list: *the name of the service or entity; the channel or program.* However, it is the rest of the list which we, at Ultimate-80s, and many other webcasters, have a problem with: *The date and time that the user logged in (the user's time zone); the date and time the user logged out (the user's time zone); the time zone*

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where the signal was received (user); unique user identifier; the country in which the user received the transmissions.

WHERE ARE THE LISTENERS LOCATED AND WHEN DID THEY LISTEN? This issue has two problems: technical impossibility and possible invasion of privacy. To accurately report information on where listeners to webcasts are located and establish a unique user identifier is nearly impossible. Many stations, Ultimate-80s included, have a registration form in which every first time listener is asked to inform that station of their zip-code. However, this registration process is not mandatory, it is not compatible with all computer systems, and there is no way to force a listener to comply. If the listener does not want to give out their information, they can opt out of the registration process and still listen to the station. Furthermore, audience members who are listening through America On Line (AOL) and do not register with the various stations will all appear to be listening from Virginia. AOL's servers block all user information from the end webcast the audience is listening to so as not to violate the privacy of those listeners. This causes the appearance that all of the listeners are located in Virginia regardless of the listeners' actual geographic location. Therefore, no matter where a listener is hearing a stream anywhere around the world, it will appear to a station like Ultimate-80s, that they are listening from Virginia.

Please note, most to all of the individual Webcasting stations have at least two sources to measure certain important aspects of their audience on either a daily to monthly level, including Measurecast, Arbitron, and/or the station's bandwidth provider. Even though these sources are monitoring the exact same stream simultaneously for the same information, the statistics that each source detects DIFFER GREATLY from each other, and to date, none of these sources have been close to matching. There is no way to ask webcasters to report information about the listeners when the information provided to the webcaster is inaccurate.

Furthermore, as mentioned previously, our listeners may opt to not register with a station, because the listeners may feel registering is a violation of their privacy. They may believe, which will actually be true, they are being tracked every time they listen to a particular station. In addition, every time listeners clear out their "temporary internet files," the registrations are lost and the listeners are forced to reregister on each and every station they listen to, causing nothing but frustration for them.

OTHER TECHNICAL IMPOSSIBILITIES! Most Webcasting stations utilize some sort of automation software to play the music which usually lists the song title and even the artist. While many of these automation systems are "off the shelf" and accessible to anybody who is willing to purchase them, many of the webcasters have developed their own proprietary automation technology. It is therefore impossible to create an across the board system that can be successfully implemented to accurately fulfill the twenty five pieces of record keeping information that CARP is demanding.

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WHAT ARE WE PROPOSING?

I mentioned earlier that webcasters are able to easily supply some of the twenty five pieces of information that CARP is requiring. I have spoken with many of my fellow webcasters, and I have listed the requirements below which we are all able to fulfill:

- Name of the service
- Channel of the program
- Type of program (archived / looped / live)
- Date of transmission
- Time of transmission
- Time zone of origination of transmission
- Duration of transmission (to the nearest second)
- Sound recording title
- Featured recording artist
- The musical genre of the channel or program (station format)

To summarize, we, the webcasters, believe the record keeping requirements need to be minimized to that which is technically feasible and non-intrusive to our listeners. If this occurs, both the record labels will come out ahead with an increase in sales, and the webcasters will be able to grow their businesses into viable entities and a dominant choice in people's selection of entertainment!

Thank you for considering our proposal.

Sincerely,

David Landis
Founder
Ultimate-80s / Discombobulated, LLC

Cc: Jeremy Law: General Manager – Ultimate-80s

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