

RECEIVED

**Before the
LIBRARY OF CONGRESS
COPYRIGHT OFFICE
Washington, D.C.**

APR 05 2002
GENERAL COUNSEL
OF COPYRIGHT

In the Matter of)
)
Notice and Recordkeeping for Use of)
Sound Recordings Under Statutory License)
)

Docket No. RM 2002

DOCKET NO.
RM 2002.1
COMMENT NO. 25

COMMENTS OF ROYAL PROGRAMS, INC.

Royal Programs, Inc. ("Royal"), by its attorney, hereby respectfully submits its comments in the captioned matter.

By way of introduction, Royal produces KillerOldies.com, which webcasts a mix of music from the '50s, '60s, '70s, '80s, '90s and today.¹ Although not affiliated with a major label, broadcast group or other traditional leader, KillerOldies.com has become a major participant in the new industry of webcasting, and is currently ranked by Arbitron as the 14th most popular among all webcast channels.² We assume that the Copyright Office will be deluged with numerous and lengthy comments, and so we have intentionally kept ours quite short. Reflecting

¹ Royal is commonly owned with Original Sound Records, Inc., which markets compilations of "oldies" comprised mostly of masters leased from other labels. Their owner, Arthur Egnoian, known professionally as Art Laboe, is a broadcasting legend whose pioneering 60-year career includes hosting the number one radio show in Los Angeles in 1956, popularizing remotes and dedications, originating the oldies and other innovative formats, producing concerts, promoting new artists, publication, music licensing, syndication, radio station ownership and, most recently, satellite distribution. We note the depth of Mr. Laboe's involvement in all segments of the music industry in order to emphasize that he speaks from a far broader base of knowledge and experience than single-issue partisans or newcomers and therefore the views he is expressing herein should be entitled to particular deference.

² These ratings are available on the Internet at www.arbitron.com/webcast_ratings/home.htm.

the experience of a broad-based industry pioneer, they should not be taken lightly or dismissed on account of their brevity.

The Impracticality of the Proposed Reporting Requirements – As the licensor of a substantial catalogue of webcast music, Original Sound stands to benefit financially from the Copyright Office’s proposal. Nonetheless, we are constrained to note that compliance with the proposed requirements is impossible. For example, many of the tracks in the digital vault of music that feeds KillerOldies.com have gone through multiple sales and/or probate and have been issued and reissued so many times that identification of the origin and owner of a particular recording often is not possible. As a further example, identification of the geographic location of a subscriber is impossible since IP addresses are only traced back to the hub on a subscriber line; thus, any AOL dial-up listenership will show Virginia as the origination point regardless of the subscriber’s physical location. We further note that even though it would be to our advantage to obtain this information for marketing purposes³, the technology simply is not available to compile and record much of the information the Copyright Office seeks. We urge the Copyright Office to consider the impracticality, not to mention the disproportionate burden and expense, of the data keeping and reporting it has proposed.

The Undesired Effect of the Proposals – Simply put, the proposed recordkeeping and reporting requirements, when combined with the CARP royalty fee rulings, will kill all Internet radio except, perhaps, those channels run by multi-billion dollar broadcasting or producer

³ The KillerOldies.com Internet site solicits sales of the records it plays. Thus, the artists’ companies to whom royalties are paid on such sales stand to benefit from the site’s success. (This includes Original Sound, which licenses about 90% of its music from others.) For that reason, Original Sound would very much like to have the benefit of geographic and other types of demographic information concerning the site’s listeners, but has consistently found that no source or means for obtaining such information exists and it appears that none is likely to arise in the foreseeable future.

entities. That, in turn, will severely limit competition and consumer choice, thus destroying the Internet's promise to provide effective competition to existing media, which have become highly consolidated. It will also severely forestall much-needed diversity of expression by foreclosing the ability of new and independent artists and speakers to be heard by consumers, as it is only the pioneers and new technologies which are willing to take the risk of affording them needed exposure. The extreme expense of compiling and reporting all of the detailed information the Copyright Office seeks will only hasten the demise of most webcasting which has not yet found an appropriate model for being a profitable business.⁴

We respectfully note that this will disserve the very purpose which the proposals are designed to advance. The purpose of copyright is not to thwart but to "promote the Progress of Science and useful Arts..." and copyright arbitration royalty panels were convened by Congress to achieve the objectives of "... maximiz[ing] the availability of creative works to the public" and to "... contribut[e] to the opening of new markets for creative expression and media for their communication."⁵ By destroying competition in the nascent webcasting industry, the proposal will contravene its avowed purpose.

⁴ KillerOldies.com operates at a substantial loss but is willing to do so at this point in order to determine whether the business will develop into an economically feasible model which can assure its long-term survival. In that regard, although we recognize that it is not properly subject to the present round of comments, we are constrained to note the extreme burden which the CARP payments will impose upon KillerOldies.com. Assuming 2,000 listeners per hour and 15 tracks per hour for KillerOldies.com (a modest level of listenership compared to a typical radio station) would result in a royalty rate of \$42 per hour or over \$360,000 per year. Adding the enormous administrative expense of compiling and reporting the information sought by the Copyright Office to the royalty expense will destroy any hope that KillerOldies.com will ever become profitable. Had these proposed rates and requirements been known when KillerOldies.com originated, the site would never have been launched.

⁵ 17 USC Sections 801(b)(1)(A) and (C). This was to be achieved in a context of "... minimiz[ing] any disruptive impact on the structure of the industries involved and on generally prevailing industry practices" [17 USC Section 801(a)(1)(D)], which, by forcing webcasters into economic straits, the present proposals certainly will not advance.

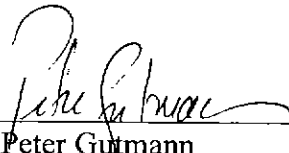
It will also help to destroy American leadership in this area, since the Copyright Office can only enforce actions originating in the U.S. We note that the largest Internet radio station in the world is RadioVirgin, which originates in the United Kingdom. Imposing a severe financial burden only upon American webcasters will severely impair their ability to compete in what is clearly an international marketplace.

Misperception of the Nature of Internet Radio – We respectfully submit that the entire approach of the Copyright Office toward burdensome recordkeeping and reporting requirements may reflect an underlying misunderstanding of the nature of Internet radio. The driving force behind the Digital Millennium Copyright Act was to defend against music piracy. Yet, by design, music webcast over Internet radio is not easily copied and even if the effort were made it would be of significantly reduced quality as compared to other readily-available means of music dissemination and transmission. Thus, KillerOldies.com is carried in a Windows media format in two bit rates – 20 kbps (mono) and 32 kbps (stereo). By comparison, the most prominent mass distribution of music is currently through .mp3s (Napster, MP3, etc.) which is encoded at 128 kbps – approximately four times the fidelity of even stereo webcast transmissions. Consumer replication of CDs via low cost CD burners involves encoding in a bit rate of approximately 1,411 kbps (*i.e.*: 44 times the data per second as KillerOldies.com’s highest bit rate feed). Therefore, it must be recognized that Internet radio simply is not of the same quality as mass file-sharing formats. Nor, without advance play lists, could listeners plan to copy streamed music even if the quality were acceptable. Thus, the rationale behind the DMCA simply does not apply to Internet radio – the music which comprises its content is far more readily accessible, and in a far more acceptable level of quality, in any number of other formats (including broadcast radio).

In conclusion, we urge the Copyright Office to consider that its proposals are both impractical and so unduly expensive and burdensome that they will effectively destroy any hope of viability of the infant webcasting industry, and will quash the advent of meaningful competition and diverse viewpoints which is its true promise. The only interests to be served by such an outcome would be of those who wish to stifle competition and kill an emerging industry which threatens their highly profitable and increasingly tight control over creators, distribution, consumers and opinion.

Respectfully submitted,

ROYAL PROGRAMS, INC.

By: 
Peter Gutmann
Its Attorney

Womble Carlyle Sandridge & Rice, PLLC
1401 Eye Street, NW
7th Floor
Washington, DC 20005
(202) 857-4532

April 5, 2002