

Before the
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GENERAL COUNSEL
OF COPYRIGHT

In the Matter of:)

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

Docket No. RM 2002-1

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RM 2002-1
COMMENT NO. 38

COMMENTS OF ROYALTY LOGIC, INC.

ROYALTY LOGIC, INC.
Ronald H. Gertz, Esq.

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Dated: April 4, 2002

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COMMENTS OF ROYALTY LOGIC, INC.

Royalty Logic, Inc. ("RLI"), designated through the Copyright Arbitration Royalty Panel ("CARP") process to receive and distribute royalties pursuant to the statutory licenses contained in 17 U.S.C. §§ 112 and 114, is submitting the following comments in response to the Copyright Office's Notice of Proposed Rulemaking regarding the applicable notice and recordkeeping requirements. The comments refer to the specific sections of the proposed final regulations.

201.35(c) Notice of Use: Forms and Content

1. Check boxes should be provided on each Notice of Use required to be submitted to indicate whether the filing is the initial, amended or yearly filing (as further discussed below).
2. In both proposed section 201.35(c)(4) and in item # 5 of the draft Notice of Use proposed by the Copyright Office the words "or where information may be posted under the regulations concerning the use of sound recordings" should be eliminated. The regulations (201.36(c)) require the services to deliver Reports of Use to the collectives unless none exist. Thus, this language may be confusing to the services and it should be clearly stated that the services are under no obligation to post such information unless no Designated Agent exists.

201.35(e) Notice of Use: Filing Notices

1. The proposed regulations require Notices of Use to be sent to the Copyright Office. The Copyright Office proposes to provide copies of the Notices of Use to each of the Designated Agents. In order to perform monitoring and licensing functions, each of the Designated Agents should receive the Notices of Use from the Copyright Office in a timely manner.

2. In the alternative, the Copyright Office has requested comments as to whether it would be more efficient for services to be required to file notices with each Designated Agent. Given the potential number of transmission services that may take advantage of the statutory licenses this option seems impractical and costly. Furthermore, requiring Designated Agents to make Notices of Use available for public inspection at their offices would also prove to be an administrative burden.

However, were the Copyright Office to implement such a change, this specific regulation should identify the names of the Designated Agents and their websites to which the services could refer for filing instructions. In addition, a filing fee payable to the Designated Agents would be appropriate.

3. The Copyright Office has requested comment on the advisability of requiring periodic filings of Notices of Use in order to establish current and updated lists of services utilizing the statutory licenses. Current information is necessary in order for the Designated Agents to properly fulfill their monitoring functions. Services may simply overlook the obligation to provide amended information within forty-five (45) days as currently provided for in the proposed rules unless filings were required to be a recurring and ongoing obligation. Therefore,

RLI believes that yearly filing as of a date certain (e.g., January 1 of each year) is necessary and reasonable.

201.35(f) Notice of Use: Amendment

Where general information has changed, it is reasonable and appropriate to require the service to file an amended Notice of Use within forty-five (45) days. However, if the amended information consists of notice of the launch of an additional service (e.g., where, for example, a non-interactive subscription service is to begin a webcasting service) the filing of such amended information should be required before the launch of the new service consistent with the requirement in 201.35(e)(2).

201.36(c) Report of Use: Service

This regulation should identify the names of the Designated Agents and their websites to which the services could refer for delivery instructions.

201.36(e)(2) Report of Use: Content: Intended Play Lists

In order to satisfy the Copyright Act's mandate that copyright owners receive reasonable notice of use,¹ the proposed regulations recognize, correctly, that a method for the identification of recording titles as between transmission services and the collectives designated to represent copyright owners is necessary. Unfortunately, there is currently no standard publicly available and widely used electronic identification system (e.g., common numbering system, electronic watermark, digital fingerprint, etc.) and no commonly available reference database for additional identification, copyright ownership and other relevant business information.²

¹ See 17 U.S.C. §§ 112(e)(4), 114 (f)(4)(A) (1998).

² We are not aware of any existing publicly available database that contains the totality of the identifying data currently required in the proposed regulations. Moreover, the technology behind watermarks, digital fingerprints

[Footnote is continued on next page]

The data initially available to the services for identification and reporting purposes is likely to emanate from several sources. Some data may be contained on the physical medium (e.g., CD) used by a service to create an encoded file (and keyed into a services internal programming systems), some services may utilize data supplied by third party encoding vendors (e.g., "Encode This", "Loudeye", etc.) or third party marketing databases (e.g., AMG, Muse, Gracenote, etc.). Such sources may only include subsets of the necessary identifying data and may raise accuracy and completeness issues. In addition, encoding and marketing databases are designed for purposes other than royalty distribution and high speed / high accuracy electronic data record matching. Furthermore, the practical reality is that certain data, regardless of the source, will be missing (at least initially) or not available to a service at the time of encoding or transmission (e.g., such information may not be contained on promotional CDs, legally downloaded song files, etc.). In other cases, the totality of data simply may never exist with regard to certain sound recordings. For example: some independent recording companies may not use the ISRC; unsigned artists may have no "recording label" and thus no associated catalog number; and these unsigned artists may have never obtained a UPC.³

The rational approach, given the current limitations of identifying data and systems, is to define a core data set likely to be available for identification, in most cases, (i.e., track title, artist, album) and further specify additional data fields helpful for identification (e.g., catalogue

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and other digital identification methodologies is still developing and accordingly these technologies may not be in wide use for many years to come.

³ Given the internet's potential for expanding the availability of non-mainstream and niche music through new webcasting genre formats, a significant number of recordings will not be owned by major recording companies and therefore the medium of delivery (CD, cassette, MP3 file, etc.) may not contain such industry-standard data as an ISRC, a catalog number or UPC (e.g., independent artists on MP3.com).

number, ISRC⁴, UPC, record label, copyright owner, release year, etc.) that should be required to be provided by the services where “applicable” and/or where “available and feasible.”⁵

Additionally, since some portion of the data will likely be unavailable to or from the services when the regulations become effective, and certain types of services may not have a history of collecting this information, a transitional period during which services, in good faith, supply information currently on hand is appropriate.

For the reasons cited above, the following data fields (wherever they occur in the intended playlist and ephemeral log) should be required where “applicable” and/or where “available and feasible”:

1. The retail album title
2. The recording label
3. The catalog number
4. The ISRC
5. The release year identified in the Copyright Notice
6. The UPC of the retail album
7. The copyright owner information provided in the Copyright Notice of the retail album

⁴ Some have referred to the ISRC as a “magic bullet” for identifying content. Unfortunately, the ISRC is not utilized by a significant number of content owners and may never be utilized by many independent labels and independent artists. Moreover, a compiled database of ISRC numbers and associated product is not publicly available.

⁵ Generally, the more data provided by the transmitting service (even though redundant and possibly inaccurate) the better – as the collectives could use additional data fields (absent a match on title, album and artist) to help in the identification process.

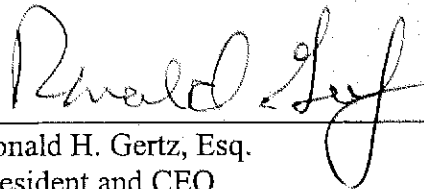
The following data fields (wherever they occur in the intended playlist and ephemeral log) should be optional:

1. Duration of the transmission (irrelevant to the calculation of the royalty as currently calculated)
2. The musical genre of the channel (not defined and therefore meaningless)

Thank you for the opportunity to submit these comments. We are available to discuss the proposed regulations and these comments at any time.

Respectfully submitted,

ROYALTY LOGIC, INC.

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