



RECEIVED

APR 2 2002

DOCKET NO.

RM 2002.1

COMMENT NO. 39

OFFICE OF REGISTER OF COPYRIGHTS

US Library of Congress Washington, D.C.

Tuesday, April 2, 2002

\*rec'd in mailroom 4/4/02 SNG

3WK Comments on the CARP proposed Recordkeeping for Use of Sound Recordings Under Statutory License (37 CFR Part 201 [Docket No. RM 2002])

To the Librarian of Congress,

It is the position of 3WK, one of the most listened to internet-only radio stations (#7 webcaster in 2001 according to Internet Radio ratings service Measurecast.com.), that the CARP proposed Recordkeeping for Use of Sound Recordings Under Statutory License (37 CFR Part 201 [Docket No. RM 2002]) has many reporting requirements that are not only "unworkable", "unduly burdensome", and "exceed the need of copyright owners", but will also severely limit the growth of the nascent webcasting industry, and thus runs contrary to Congress' intentions of a free and open marketplace as set by the DMCA of 1998. In addition, the proposed "listener log" information required is of such personal nature that we believe it to be a violation of listeners' privacy. Since this information has no use to the copyright holder other than for marketing purposes, we consider collection of this personal information to be a blatant misuse of copyright information recordkeeping.

Below we've outlined foreseeable problems with specific Recordkeeping requirements, and will also show how the Recordkeeping requirements, if unchanged, will have a severe detrimental financial effect on the entire webcasting industry.

I. Specific Recordkeeping Problems

INTENDED PLAYLISTS

We support collection of points A, B, C, D, E, F, H, I, L, M, N, and R. This information is already available and collection could begin immediately. Items G, J, K, O, P, and Q are in some cases duplicate forms of information already collected, but if required in slightly different forms, would be difficult to collect, if not impossible, in our current financial situation.

- A) The name of the Service or entity;
- B) The channel or program;
- C) The type of program;
- D) The date of transmission;
- E) The time of transmission;
- F) The time zone of the place from which the transmission originated;

*No reporting problem on these points.*

- G) Numeric designation of the place of the sound recording within the program;

*Problem - financially "unduly burdensome":*

- 1. Our current automation and scheduling software does not supply a numeric designation other than a time, so 3WK would have to buy the supporting software, something we can't afford in our current financial situation.



- H) The duration of the transmission of the sound recording (to the nearest second);  
I) The sound recording title;  
*No reporting problem on these points.*
- J) The International Standard Recording Code (ISRC) embedded in the sound recording;  
*Problems – financially “unduly burdensome”, and “exceed(s) the need of copyright owners”:*
1. 3WK consists of 2 full-time people who would not have time to find and enter the 12 digit ISRC code for every one of the approximately 5000 songs we play. We would have to hire a full-time person and buy an additional computer to enter this information, which would be difficult, if not impossible, in our current financial situation.
  2. We also ask why report an ISRC code, a UPC code, AND a catalogue number? The copyright holder doesn't need the same information in so many different forms.
- K) The release year identified in the copyright notice on the album, and in the case of compilation albums, the release year of the album and copyright date of the track;  
*Problems - “unworkable” and financially “unduly burdensome”:*
1. Again, we would have to hire a full-time person and buy an additional computer to enter this information, which would be difficult, if not impossible, in our current financial situation.
  2. In many cases, compilation discs do not list release copyright dates for specific songs, and many older albums do not list copyright dates at all (pre-1970).
- L) The featured recording artist, group or orchestra;  
M) The retail album title;  
N) The recording label;  
*No reporting problem on these points.*
- O) The Universal Product Code (UPC) of the retail album;  
P) The catalogue number;  
Q) The copyright owner information;  
*Problems: “unworkable”, financially “unduly burdensome”, and “exceed(s) the need of copyright owners”:*
1. We do not have access to UPC information. 3WK receives its music free from artists and labels who do not want their promotional cds to be resold, so the UPC code is always punched or lined out.
  2. Again, we would have to hire a full-time person and buy an additional computer to enter this information, which would be difficult, if not impossible, in our current financial situation.
  3. We also ask why report an ISRC code, a UPC code, AND a catalogue number? The copyright holder doesn't need the same information in so many different forms.
- R) The musical genre of the channel or program (station format);  
*No reporting problem.*



### LISTENER LOGS

We feel the entire concept of "Listener Logs" should be thrown out. Not only is the collection of such copyright data an invasion of listener's privacy, but there is no precedent in any copyright reporting procedure where the participants are tracked second by second WITHOUT THEIR EXPLICIT APPROVAL (Nielson/Arbitron reports). Tracking of this magnitude is currently only done for marketing purposes, and then this information is SOLD to companies for large amounts of money. We can't think of any other reason a copyright holder would use this personal information other than for marketing, and therefore we consider these logs to be a blatant misuse of copyright information recordkeeping.

Even if the Librarian should consider this personal information necessary to the copyright holder, 3WK currently does not have any way of collecting some of this information short of updating our current software, or buying new statistical software. Unfortunately, in our present financial position we would find it difficult, if not impossible, to find the money to pay for expensive updates or new software.

- A) The name of the service or entity;
- B) The channel or program;

*The information from A and B are already being collected for the "Intended Playlists" and is unnecessary.*

- C) The date and time that the user logged in (the user's time zone);
- D) The date and time that the user logged out (the user's time zone);
- E) The time zone where the signal was received (user);
- F) Unique user identifier;
- G) The country in which the user received the transmissions;

*Problems for C, D, E, F, and G: "unworkable", financially "unduly burdensome", and since the information can only be used for marketing, a blatant misuse of copyright information:*

1. Our current statistics software does not measure any of this information, and in our present financial position we would find it difficult, if not impossible, to find the money to pay for expensive updates or new software.
2. We have serious concerns that our listeners would consider tracking of this sort to be an invasion of their privacy. Since there can be no use for information this personal other than marketing, we consider this to be a blatant misuse of copyright information recordkeeping.

## II. Combined Effect of Recordkeeping Requirements

We feel that full implementation of the above Recordkeeping requirements will severely limit the growth of the nascent webcasting industry, and thus runs contrary to Congress's intentions of a free and open webcasting marketplace as set by the DMCA of 1998.

### FINANCIAL PROBLEMS

- A) Reporting technology nonexistent;

www.3wk.com

3wk@3wk.com

314.481.4711

5217 Lansdowne

St. Louis, MO 63109



Currently the reporting technology to support the CARP proposed 25 pieces of information per song per listener doesn't exist. Even if software were written to provide this information it would be both cost prohibitive and probably incompatible with most webcasters' current software for playing music. Whereas some stations do use off-the-shelf automation software to play music, many stations like 3WK have developed proprietary software that plays music and displays song titles. Therefore, a generic solution could not be implemented across the board, and updating proprietary software to fulfill these reporting requirements would be cost prohibitive for the already cash strapped internet radio industry.

- B) Loss of advertising revenue;  
The business model of the majority of the webcasting industry is based on advertising sales. Listenership has steadily grown to a critical mass large enough to finally interest advertising agencies. A reporting system requiring each and every listener to register with every webcaster would reverse this trend. As webcasters are just now beginning to see advertising dollars, if this necessary critical mass were to be reversed, projected positive ad sale revenues could be put off for years. To succeed, Internet radio, just like land-based radio, needs to be as simple to access as turning on a station and listening.
- C) Loss of investment;  
An additional burden to the webcasting industry would be the non-ability to project budgets. Individual station audiences differ drastically each month. If the proposed CARP pay-per-play-per-listener rate schedule were to go into effect, amounts paid to performers on a month to month basis would resemble a veritable rollercoaster. With the inability to accurately project a budget, possible investment to companies like 3WK would be virtually lost.

#### **ADDITIONAL PROBLEMS**

- A) Inaccurate reporting methods;  
There are extreme differences between the results of current internet streaming traffic measurement systems monitoring the same webcast at the same time. Basing a copyright rate structure on such inexact measurement would be at best unfair, and at worst theft.
- B) "Unduly Burdensome" registration requirements;  
In order for each webcaster to assign a unique ID #, each listener would have to register personal information with every webcaster. Webcasters would then have to use this unique identifier to track when each person listens and where they listen from every time they listen. Since the majority of this personal data gathering would be achieved using "cookies" which more and more people object to, many computer users would not register. For those who do, each time they clear their "temporary internet files", these cookies would be lost, making the listener re-register, resulting in an endless registration process and a nightmare in trying to actually identify unique individuals.
- C) No precedent for the proposed CARP pay-per-play-per-listener model;  
There is no other copyright measurement system that measures every single user every single time they interact with the measured entity without the user's explicit approval. All other current radio royalty fees (ASCAP/BMI/SESAC) are based solely on revenue.



For all the above reasons, we feel the Librarian should support collection of only A, B, C, D, E, F, H, I, L, M, N, and R for the Recordkeeping for Use of Sound Recordings Under Statutory License (37 CFR Part 201 [Docket No. RM 2002]). This information is immediately available, is supported by precedent in other current copyright agreements (ASCAP, BMI, SESAC), will fulfill enough information to generate a legitimate and legal copyright collection, will not be financially "unduly burdensome" to the webcasting industry, and will fulfill Congress's intentions of a free and open marketplace as set by the DMCA of 1998.

Thank you for your consideration.

Jim Atkinson  
Co-Owner 3WK

A handwritten signature of Jim Atkinson in black ink, written over a horizontal line.

Wanda Atkinson  
Co-Owner 3WK

A handwritten signature of Wanda Atkinson in black ink, written over a horizontal line.