United States Copyright Office
Library of Congress
Washington, D.C.

In the Notice of Proposed Rulemaking concerning Notice and Recordkeeping for Use of Sound Recordings under Statutory License	)))))	Docket RM 2002-1

Reply Comments of Yahoo! Inc.

Yahoo! Inc. is pleased, pursuant to the above-referenced Notice of Proposed Rulemaking, 67 Fed. Reg. 5761 (February 7, 2002), to respond to the April 5 comments upon proposed regulations for notice and recordkeeping by services operating under the statutory sound recording digital public performance license and the multiple ephemeral recordings license, 17 U.S.C. §§ 114(d) and 112(e), respectively.[1]

Yahoo is among the largest Internet webcasting services. For the period covering October 28, 1998 through December 31, 2001, Yahoo operated webcasting services pursuant to a license agreement with the Recording Industry Association of America ("RIAA"), which agreement incorporated particular requirements relating to the reporting of sound recording performances and the making of ephemeral recordings.[2] In addition, Yahoo has entered into sound recording performance licenses with two major recording companies (both of which are RIAA members), pursuant to which we have been reporting data that they deem necessary in order to identify performed recordings and allocate payments. We hope that Yahoo's experience with these recordkeeping and reporting obligations will be of particular value to the Copyright Office in understanding the unreasonableness of particular RIAA-proposed notice and recordkeeping provisions, and the extreme, unmanageable and unfair burden that many of the regulatory requirements advocated by the RIAA would impose.

To summarize the points made below:

- Yahoo webcasts two different types of statutorily-licensed services, each with particular attributes and data collection limitations. The regulations must recognize and account for real-world differences between different types of services offered by Yahoo and others, and not require any particular type of service to undertake impossible or onerous reporting requirements.

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[1] For simplicity of reference, Yahoo! Inc. and Launch Media, Inc. are jointly referred to in this Reply as Yahoo.

[2] On December 31, 2001, Yahoo elected not to renew its license agreement with the RIAA.

- Certain of the proposed information is impossible for Yahoo to obtain, collect and provide to a designated agent. Much of the information is not maintained or used by Yahoo in the ordinary course of its business. It would be extraordinarily burdensome and expensive for Yahoo to revise its ordinary business practices, for example, to provide (e.g., via manually entering into its databases) 12 separate pieces of information concerning tens of thousands of sound recordings, or to produce millions of records per month reflecting each individual listening session.

- Regulations should require services to provide only the amount and type of data necessary to accomplish royalty allocation. Performance data has substantial commercial value to the services and to copyright owners. Requiring the services to disclose any information over and above that which is strictly necessary to comply with the statutory requirements confers economic benefits that, in the marketplace for voluntary licenses, would be bargained-for between services and recording companies.

- The most logical approach, consistent with information processing industry standards, is for SoundExchange to provide the services with a database of accurate information concerning the sound recordings, which the services then can supplement with relevant data concerning the service and the number of performances made. As a matter of information processing science, the premise of RIAA's request for additional redundant data is fundamentally flawed. The cure for "imprecise" or "ambiguous" data is not to collect additional information that suffers from the same imprecision and ambiguities.

- Yahoo agrees with the comments of the Radio Broadcasters that there is no statutory requirement that a service must provide data to affirmatively demonstrate compliance with the section 114 or 112(e) criteria. Reporting data's sole legitimate purpose is in connection with royalty payments; it should not be a means for the RIAA to obtain commercially valuable user-specific data. Any requirement to provide data beyond that necessary for royalty purposes would be ultra vires.

Compliance with the RIAA-proposed regulations would require Yahoo alone to provide massive amounts of information each month, in the range of several gigabytes of data. Collecting and producing this mountain of information is extraordinarily burdensome and expensive and, in truth, is unnecessary. As described below, data reporting requirements should be limited to information that is feasible and reasonable to produce, and to only such information as is necessary to calculate and allocate royalty payments.

I. Yahoo! Radio Retransmissions of AM and FM Terrestrial Broadcasts Cannot and Should Not be Required to Satisfy RIAA's Proposed Regulations.

Yahoo retransmits via the Yahoo! Radio service, http://www.radio.yahoo.com, the signals of 238 AM and FM terrestrial broadcast stations. Generally, a server at the station will encode the signals into the appropriate media format (i.e., RealPlayer or Windows Media Player) and will send the encoded signals via telephone line to Yahoo's broadcast services. Yahoo servers then will initiate the transmission of these signals onto the Internet, to be accessed via the

pages of the Yahoo website. These Internet retransmissions occur substantially simultaneously with the terrestrial broadcasts themselves.

All programming and production work for these retransmitted signals is performed by the stations themselves. All of the music files reside with the stations themselves. All information relating to this programming resides solely with the stations themselves. Yahoo therefore has no actual knowledge or information concerning any sound recordings being performed by the radio stations whose signals Yahoo retransmits.

Most, if not all, of Yahoo's contracts to retransmit these stations were entered into before the publication of the Notice by the Copyright Office. Many of these agreements (particularly those contracts issued by broadcast.com, which Yahoo acquired in 1999) predate the DMCA. Typically, these contracts do not entitle Yahoo to obtain data identifying the sound recordings performed by these stations. Moreover, Yahoo has no means to verify whether any information concerning sound recordings that a station might maintain, for any reason, is complete, compliant or accurate.

In enacting the section 114 license, Congress recognized that third party retransmitters of radio station programming lack the ability to control the programming of the radio stations or the compliance of such programming with certain statutory requirements that otherwise would apply to the programmers themselves. Congress similarly recognized that third party retransmitting entities could not assure compliance with the sound recording performance complement. 17 U.S.C. §114(d)(2)(c)(1). Similarly, although Congress required in §114(d)(2)(C)(ix) that the transmitting entity identify in textual data the sound recording, including the title of the sound recording, the title of the phonorecord embodying such sound recording, if any, and the featured recording artist, in a manner to permit it to be displayed to the transmission recipient, Congress stated that this requirement also should not apply in the case of a retransmission of a broadcast transmission by a transmitting entity that does not have the right or ability to control the programming of the broadcast transmission. Therefore, Congress has recognized that retransmitting entities do not create or control data otherwise required to be produced under section 114 and, thus, should not be subject to the same data production requirements as may be required of the broadcasters themselves.

Moreover, these provisions do not render third party retransmitting entities liable for any noncompliance with statutory requirements, where the reasons for the noncompliance are the result of actions or omissions by the broadcasters whose signals are being retransmitted and, hence, beyond their control. Thus, Congress provided that retransmitting entities are not liable for the failure of a broadcaster to comply with the sound recording performance complement. Instead, Congress enacted a "notice and takedown" provision whereby a retransmitting entity that receives notice from a copyright owner of regular noncompliance with the complement can cease further noncompliant retransmissions of that station without being held liable for the actions of the programmer. 17 U.S.C. §114(d)(2)(C)(ix).

These sections demonstrate Congressional intent to permit retransmission services to continue to do business under the statutory license, while accommodating in the law the inability of these services to compel compliance by the retransmitted stations themselves. Accordingly,

any regulations promulgated by the Copyright Office should not compel retransmission services that cannot comply with reporting obligations to cease operations. Such regulations instead must take into account the limitations imposed upon such services by traditional business practices. Therefore, any regulations imposed upon retransmission services should include, at most, reporting of only the following elements:

- The call letters of each retransmitted station
- The format of each station (e.g., music or talk-based)
- The genre of the music station (e.g., Top-40, smooth jazz, country, oldies, adult contemporary)
- The cumulative number of listening hours to each retransmitted station during the reporting period

From this information, SoundExchange can allocate royalties based on the presumed number of performances per hour, and the sound recordings performed by other stations having similar formats. Given the generally homogenous programming of commercial radio, this allocation should result in a fair and reasonable allocation of the royalty payments in circumstances where it otherwise is impossible or unreasonable to render more precise performance data.

Finally, the regulations should do nothing to alter Congress' intent to insulate retransmission services from any liability for the actions or omissions of the retransmitted stations.

II. Yahoo's Internet-Only Webcasting Services under the Section 114 License, and the Burden or Impossibility of Providing the Data Requested by RIAA

Yahoo also offers under the section 114 statutory license the LAUNCHcast Internet-only webcasting service at http://launch.yahoo.com. "LAUNCH, Your Yahoo! Music Experience" is an online music destination for consumers, which resulted from our acquisition of Launch Media, Inc. in 2001. Launch provides music consumers with access to downloadable music, music videos, concert webcasts and artist interviews, access to music news, album reviews, and artist biographies. Launch also provides an Internet-only webcast service under the statutory license, known as LAUNCHcast.

All programming on the LAUNCHcast service is selected and scheduled by computer software. When the user selects a LAUNCHcast station, the scheduling software selects songs from the "library" to create a program to be heard by that user at that particular time. The scheduling software embodies rules that enforce the programming criteria set forth in section 114, including those requirements under the sound recording performance complement and prohibitions against advance announcements. Each song in a LAUNCHcast station is performed from an individual song file stored on Yahoo's computer servers. The user may request that a song be skipped on that station, and certain of this input may cause a "recalibration" of the

programming in progress, such that the software may alter the programming going forward in light of the information provided by the user. If this occurs, the software also will recalibrate compliance with the sound recording performance complement so as to ensure that the revised program schedule, including the programming already performed, will continue to satisfy the statutory criteria for the section 114 webcast license.

A. Entering Additional Data into a Sound Recordings Database is Extraordinarily Burdensome and Expensive for Yahoo.

LAUNCHcast currently selects and schedules its programming from among a large number of recordings in Yahoo's database. The information in Yahoo's databases is sufficient to comply with the requirements of the section 114 statutory license, which requires only that the service display to the user the title of the sound recording, the name of the featured recording artist, and the name of the album on which the sound recording appears, 17 U.S.C. §114(d)(2)(C)(ix). Additional information in our databases also has been sufficient to provide sound recording performance information to sound recording copyright owners and agents pursuant to our past and current performance license agreements since August 2000. RIAA's proposed regulations would require significantly more. Indeed, certain of the data requested by the proposed regulations are not readily available to Yahoo and are not currently stored in Yahoo's databases.

Yahoo estimates that to rekey the additional data into Yahoo's databases and to redesign the databases to track the data requested by RIAA's proposed regulations would require approximately eight (8) months of work by six (6) skilled full-time employees, and would cost Yahoo approximately $360,000. Data entry and database costs would continue on a going forward basis, inasmuch as the database would need to be continuously updated to include newly-released and additional catalog sound recordings. This colossal expense is unjustified and unnecessary, insofar as the RIAA already has compiled a database that will adequately and accurately identify the sound recordings that LAUNCHcast performs.

B. The Expense of Complying with RIAA's Proposed Regulations Contravenes the Statutory Standard of "Reasonableness."

As noted in the comments of DiMA and the Radio Broadcasters, among others, section 114(f)(4)(A) provides that, "[t]he Librarian of Congress shall also establish requirements by which copyright owners may receive reasonable notice of the use of their sound recordings under this section, and under which records of such use shall be kept and made available by entities performing sound recordings." Yahoo respectfully submits that any regulations that would require the LAUNCHcast service to provide detailed records of performances on a listener-by-listener basis, as RIAA proposes, cannot be deemed to be requiring "reasonable" notice.

On a typical recent day, the LAUNCHcast service may have as many as 23,000 simultaneous listeners to individual LAUNCHcast streams during the peak hours of the day; and approximately 3 to 6 million listener sessions per month. This number has been growing steadily over time. Consequently, providing detailed playlist reports on a per stream basis, as RIAA proposes, would require Yahoo to produce more than 6 million records, per month, each with the

18 data fields per record requested by RIAA. Some records would be as short as one song; others might record sessions several hours long. These files would comprise many gigabytes of information each month, which would have to be taken from multiple servers, and burned onto scores of CD-R data disks. Based on our past experience, and extrapolating into even the very near future, Yahoo believes that any data reporting obligation that required Yahoo to produce specific and complete playlist data (e.g., including the date, time and order of performances) would impose upon Yahoo excessive and unacceptable efforts and expense – in the range of $150,000 per year (and 2-3 times as much during the initial, start-up year) for this purpose alone.

One may usefully contrast the extent of administrative costs and burdens requested by the RIAA with the level of burden and expense required under licenses with ASCAP, BMI and SESAC, all of whom perform common reporting and distribution functions as does SoundExchange. Typically, those societies request no reporting from Internet entities, or reporting for very short periods of time such as one week per year, and rely on sampling techniques and on information from other sources to estimate reasonable and appropriate payments to their respective members.

It is critical to note here that the most significant burdens and expenses are not being imposed by the requirement to identify with precision the sound recordings performed and the number of performances. With far less burden than proposed here by RIAA,[3] Yahoo can provide a database showing the number of times that each particular sound recording file was "called" by users (and therefore, under the Panel's ruling, was publicly performed) during that month. Rather, the bulk of the burdensome proposed requirements relate solely to the RIAA's request for playlist data that serves only the wholly-improper purpose of demonstrating compliance with the sound recording performance complement. Yahoo strongly urges the Copyright Office to reject any proposed regulations that would impose such extraordinary and improper burdens and expense for this limited purpose.

III. The Regulations Should Not Require Production of Superfluous or Redundant Data.

A. The RIAA Comments Propose to Collect Excessive Data that are Unnecessary to Royalty Allocation.

Yahoo understands and appreciates that the primary purpose of the regulation is to provide sufficient information to identify the performed sound recordings so as to facilitate allocation and payment of royalties to the copyright owners and performing artists. The flip-side of that purpose, however, is that services should be required to provide only the minimum information sufficient to identify the performed recordings and the number of performances. There are two primary reasons for this.

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[3] This presumes that, as described *infra* at Section III.B, Yahoo is provided by the RIAA or SoundExchange with a database for use in identification of sound recordings.

First, database creation and data entry are extraordinarily expensive and time-consuming. As noted above, providing the full panoply of data proposed by RIAA would inflict undue costs and burdens upon Yahoo.[4]

Second, Yahoo and other webcasters should not be required to divulge information that is not necessary to allocate payments, but that has commercial value to copyright owners. Our license negotiations experience to date has taught us that copyright owners recognize the value of our detailed playlist and performance information. Such data educates copyright owners in how to craft more effective advertising and promotion campaigns to market their sound recordings, and how to program more compelling Internet music services that ultimately will compete with independent services like Yahoo. This information is particularly valuable inasmuch as methods of programming, promotion and marketing for the web are in their early evolutionary stages.

The information set proposed by RIAA would require production of multiple data fields beyond those necessary to identify the sound recordings and allocate payments. In particular, Yahoo strongly objects to the production of user based playlist information as a commercial windfall for recording companies. Requiring webcasting services to provide playlist information for each consumer skews the balance in negotiations toward copyright owners, by requiring Internet services to produce for free assets that they otherwise would sell at a premium price.

Thus, services should be required to provide only a minimum data set sufficient to identify the number of performances made in order to enable SoundExchange to make the statutorily mandated allocation of royalties. Information disclosing methods and user-specific information should not be required to be disclosed at all. And, as set forth in the next section, standard efficient data sciences practice dictates that information identifying the sound recordings themselves should be provided to the services by SoundExchange.

B. SoundExchange Should Provide the Services with a Database of Sound Recording and Copyright Information that can be Augmented by Performance Data.

Yahoo supports the comments of the Digital Media Association that copyright owners, the RIAA and the designated agents should share database information concerning these sound recordings. These parties have far better access to accurate information concerning each sound recording. It is far more efficient within the overall process for the designated agent to enter the information correctly once, than it would be for each service to enter the same information hundreds of times. Moreover, any minute deviation among these hundreds of entries will cause entries for the same sound recording to be read as separate sound recordings, which would require extensive data clean-up by the designated agent. By using a common database, the

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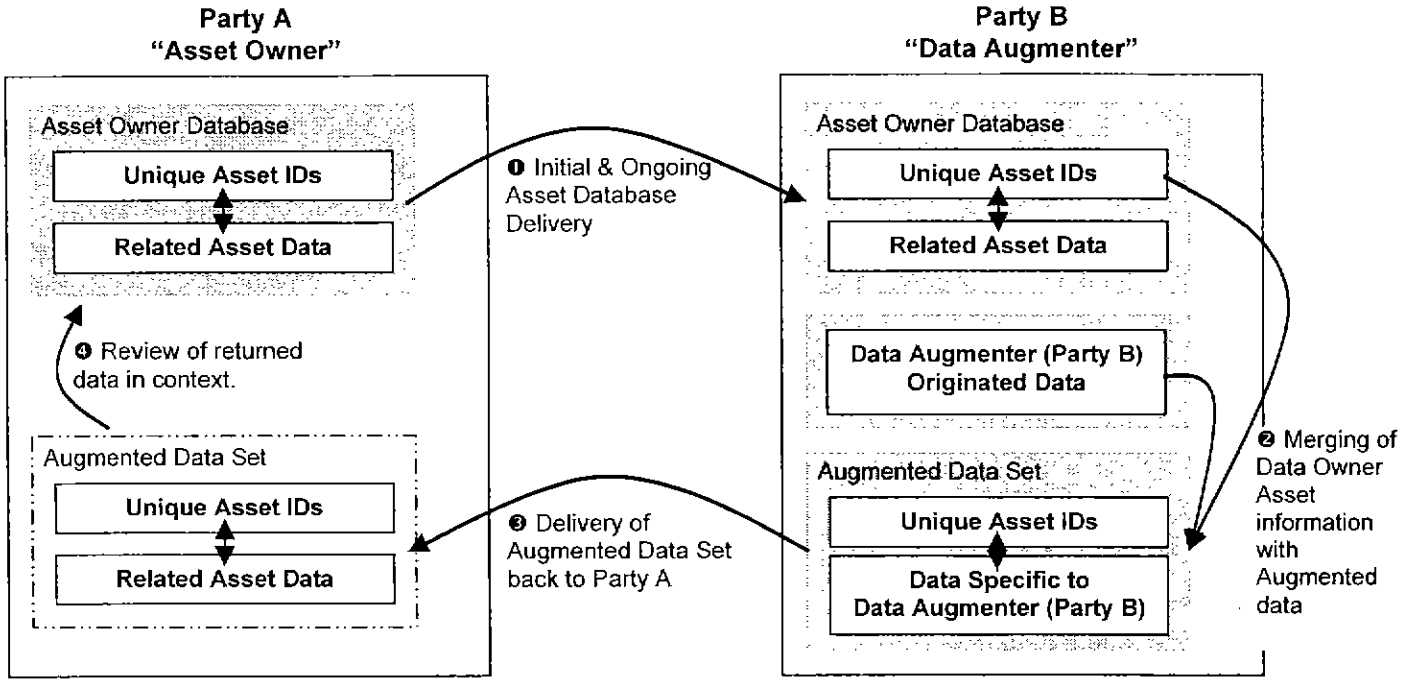
[4] These expenses and burdens would not be substantially different for Yahoo or smaller webcasters; for although their salary range and requisite level of experience might be lower than Yahoo's, the time and effort required to manually enter data for each and every sound recording remains the same regardless of whether one works for LAUNCHcast or an unknown start-up.

information provided will be more accurate -- consequently reducing the clean-up burden required for the designated agent, and the data collection burden required for the services.

In order for any music programmer to deliver meaningful data to SoundExchange, SoundExchange must first – and on an ongoing basis – deliver updated data that will be used to identify data entities used as the bases for reporting on usage. If, for example, the RIAA wants reports which identify each time a given song is played and for that song, its Song Title, Album Title, Artist Title, ISRC Code, etc., then SoundExchange should be responsible for delivering the "Music Library Meta Data" portion of that information *to* the music programmer *prior* to the period for which the reporting occurs.

It is well-established in the world of electronic data exchange that if Party A wishes to receive data from Party B which addresses assets belonging to Party A, then Party A should *originate* all data which uniquely and clearly identifies those assets. Party B then attaches its pertinent data to the assets provided by Party A and returns its data to Party A along with the unique identifiers of the associated assets originally provided by Party A. In this way, a "loop" effect is achieved whereby the reports by Party B reflect back the same base information known to Party A and is therefore far more useful to Party A. An abstract illustration of this concept is provided below:



In the specific case of reporting on Music/Song Usage, actual Reporting Data can be divided into 2 sections: "Music Library Meta Data" and "Usage-Based Data." The following table presents the relationship between the abstract description above and this specific case:

Abstract Concept Terms	Music Usage Reporting Terms
Party A – "Asset Owner"	SoundExchange
Asset Owner Database	Music Library Meta Data
Unique Asset Ids	Examples: ISRC, UPC, etc.
Related Asset Data	Examples: Song Title, Album Title, Featured Artist, Copyright Owner
Party B – "Data Augmenter"	Music Programmer (LAUNCH/Yahoo!)
Data Augmenter-Originated Data	Examples: Service Name, Channel Name, Number of Performances for each Sound Recording
Augmented Data Set	Music Usage Report for Delivery to SoundExchange

The purpose of this information sciences exercise is to demonstrate that, if SoundExchange requires any level of detailed reports it logically is incumbent upon them to maintain and deliver, on an ongoing basis, the foundation data (Music Library Meta Data) which would be used by all music services in order to produce meaningful reports. If SoundExchange does not produce this data, music services cannot reasonably be expected to produce accurate reports with specific details. Indeed, if SoundExchange does not share its database with all statutory licensees, then every service will shoulder great expense and effort only to provide SoundExchange with inaccurate and imprecise data that would require substantial clean-up – at an expense that is likely to exceed the cost of making accurate information available in the first instance.

Therefore, Yahoo respectfully suggests that the regulations should require SoundExchange to provide all statutory licensees with a database of sound recordings to be augmented with reporting data and returned to the designated agents.[5]

C. Alternatively, the Regulations Should Require No More than a Minimum Set of Identification Data for Each Sound Recording.

Yahoo recognizes that there may be particular sound recordings performed by a service but that are not yet entered into the SoundExchange database. Of course, sound recording copyright owners could be required to provide relevant information concerning their releases[6]

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[5] For the reasons set forth in section II and III(A), and even if RIAA were to provide the services with the database of information concerning the sound recordings, under no circumstances should the regulations require the production of detailed playlist data from services such as Yahoo. Summary data showing the number of times the sound recording was performed is sufficient to permit the allocation of royalties.

[6] For example, the RIAA Comments include at Exhibit H a copy of a New Release Catalog from Warner-Elektra-Atlantic records. It would be a trivial matter for the recording companies to send a copy of such catalogs to a single entity such as SoundExchange, so that performances of their recordings, and royalties to be paid thereupon, can be correctly tracked. We respectfully submit that it is far simpler, and less expensive, for a recording company

pursuant to regulation. Or, the designated agents could be ordered as a condition of their designation to impose such a requirement in their contractual arrangements with sound recording copyright owners. Although Yahoo strongly believes that the Copyright Office should impose such requirements, if the Copyright Office determines not to do so, then, for the reasons set forth above in section II, the regulations should require only that a service provide the minimum data necessary to identify a sound recording.

The RIAA Comments propose to require the services to enter and produce, in each record representing a single sound recording, six data fields describing each service, and 12 separate data fields identifying each sound recording, copyright owner, and data on listening sessions on a per-user basis. Yahoo respectfully submits that this request is outrageously burdensome, and wholly unnecessary. The regulations should deem it sufficient for a service to provide only a minimum set of information sufficient to identify the performers, the sound recordings and, where known, the copyright owners. All that is needed to identify the service is the name of the service itself. All that is needed to identify the sound recording is the song title, the featured artist name, the album name, and the so-called "P-line" identification of the copyright owner. Any other fields that the Copyright Office recommends for inclusion in the SoundExchange database should, at most, be deemed optional.

IV. Ephemeral Recording Logs Should Not Be Required.

The Copyright Office noted in its Section 104 Report that ephemeral recordings used to make licensed transmissions have no economic value independent of the performance itself. Report of the Copyright Office under Section 104 of the DMCA (August 2001) at 144 n. 434. Yahoo therefore submits that there is no purpose to requiring the submission of an ephemeral recordings log. By contrast, the burden of creating and maintaining the log as proposed by the RIAA – by entering into a database of tens of thousands of sound recordings the dates of creation and deletion for each individual recording – could likely exceed even the unreasonably high section 112(e) royalty payments recommended in the CARP Report. As such, Yahoo submits that the requested log is per se not "reasonable" notice under the statutory standard.

V. Services Should Not be Required to Provide Playlist Information to Verify Compliance with the Sound Recording Performance Complement.

Yahoo agrees with the comments of the Broadcasters, DiMA and others that no affirmative duty is imposed under the statute for services to provide data so as to affirmatively demonstrate compliance with the sound recording performance complement. Should the Copyright Office believe, notwithstanding, that some affirmative showing of compliance is appropriate, Yahoo respectfully submits that RIAA's suggestion that the services should provide complete user based playlist data to SoundExchange – is far too extreme and utterly unreasonable. As noted in section II.B, above, a requirement to produce complete playlist data imposes astronomical data management costs both at start-up and for every year thereafter. Perhaps such burdens were acceptable for the pre-existing cable and satellite services, which

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to provide a single catalog to a single entity than to respond to requests from hundreds of services for such catalog information.

typically offered a single playlist for each of only 30 to 100 channels of programming per month. Such a burden is not acceptable for webcast services that can generate millions of different program streams per month.

Yahoo believes that it should be sufficient for the service to provide along with its reports of use an affirmative statement, made under penalty of perjury, certifying that the service has complied with the statutory requirements, and specifying the method used to fulfill its obligation (e.g., by stating that the service is using programming software that implements the sound recording performance complement rules). This is similar to procedures currently required by the Copyright Office under analogous regimes, such as the compulsory mechanical license, 37 C.F.R. § 201.20, or the DART payments, 37 C.F.R. § 201.29.[7]

In the event of a bona fide dispute over a service's eligibility for the statutory license, there is a better alternative. Services such as LAUNCHcast are entirely programmed by software, without human intervention. The software that schedules the performances of the sound recordings therefore must embody the statutory criteria for eligibility under the section 114 license; e.g., the sound recording performance complement rules and the requirement not to pre-announce song identification information. These rules are set forth in computer source code that can be read by persons skilled in the art of software programming. Therefore, if the designated agent discovered evidence that a service was not in compliance with the sound recording complement, it could present such evidence to the Copyright Office and request that such service provide to the designated agent a certification by an independent software auditor verifying that the scheduling software used by that service accurately and reliably embodies the programming rules of the sound recording performance complement and other license requirements. In this way, if a bona fide question arises as to a service's compliance, sound recording copyright owners can receive meaningful and reliable assurance that the complement rules are implemented by the services consistently and correctly.[8]

This alternative make sense not only for the services, but for the designated agent and the copyright owners as well. The RIAA draft regulations appear to contemplate that SoundExchange would parse monthly through millions of records produced by the services looking for substantial numbers of instances of noncompliance with the sound recording performance complement. Clearly, such a procedure would impose high processing burdens and costs upon SoundExchange (ultimately to be borne by the royalty recipients). Yet, if necessary, a software audit, can rebut assertions of non-compliance. An independent audit will verify the proper functionality and behavior of the software. Thus, the RIAA proposal will provide no greater assurances to the copyright owners than, if demonstrably warranted, the software audit verification, that Yahoo proposes.

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[7] Even this option is not cost-free to the services. Certification would require ongoing work by a senior programmer, estimated to be equivalent to one day of effort per month.

[8] These software audits will prove accurate and reliable even despite the possibility that the software may contain certain "bugs." The audit will review the scheduling algorithm, with a detailed focus upon implementation of the statutory rules. Thus, any bugs or glitches in the programming software that escape the auditor's attention would likely affect other aspects of the scheduling software; and any impact would result in a generalized failure of the scheduling functions themselves, and not a failure of the limited complement compliance features of the programming that are subject to the closest analysis in the audit.

Yahoo respectfully submits that there is no just cause for requiring the services to produce voluminous playlist data on a listener by listener basis. The proposed certification procedure more than meets the statutory requirement of "reasonableness." Therefore, Yahoo urges the Copyright Office to reject the RIAA-proposed regulations, and to adopt by regulation the certification alternative proposed herein by Yahoo.

VI. Conclusion

Notice and recordkeeping requirements are of major concern to Yahoo and other webcasters. Information processing imposes very substantial burdens in terms of time, labor, software design, database design and maintenance, hardware expense and storage capacity. The nature of the requirements directly dictates whether those burdens are reasonable or insupportable. For many webcasters, including Yahoo, the extent of those burdens will determine whether webcasting is an economically viable enterprise in a particular programming model or on a particular scale or, for some webcasters, at all.

Therefore, Yahoo urges the Copyright Office to adopt regulations appropriate to webcast services such as LAUNCHcast and Yahoo! Radio that would embody the following five (5) elements:

1. Require the designated agent to provide all services with a common database of sound recordings, which database should be augmented by the services with data identifying their service and the number of performances made during the relevant time period.

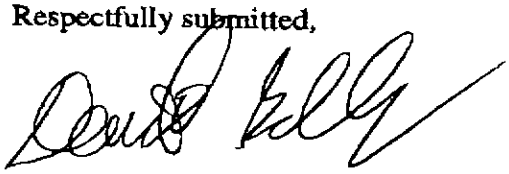
2. Require the services to disclose no more information than that strictly necessary to calculate and allocate the royalties to be paid; and that would not require services to relinquish detailed playlist information.

3. Adopt reasonable regulations that recognize the inability of third party retransmission services to provide precise sound recording performance data, and that permit a fair allocation of royalties based upon the number of hours of programming delivered.

4. Allow allocation of any royalties paid upon Ephemeral Recordings in accordance with the number of performances made by those services that utilize the multiple ephemeral recordings license.

5. Permit a signed certification of compliance with the statutory criteria, stating any specific methods used to satisfy the sound recording performance complement.

Respectfully submitted,



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