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**GENERAL COUNSEL  
OF COPYRIGHT**

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

**DOCKET NO.  
RM 2002.1  
COMMENT NO. 20**

In The Matter Of:

Notice and Recordkeeping for  
Use of Sound Recordings  
Under Statutory License

Docket No. RM 2002-1

**JOINT REPLY COMMENTS OF RADIO BROADCASTERS BONNEVILLE  
INTERNATIONAL CORPORATION, CLEAR CHANNEL COMMUNICATIONS, INC.,  
COX RADIO, INC., NATIONAL ASSOCIATION OF BROADCASTERS, NATIONAL  
RELIGIOUS BROADCASTERS MUSIC LICENSE COMMITTEE,  
SALEM COMMUNICATIONS CORP., AND SUSQUEHANNA RADIO CORP.**

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## INTRODUCTION

RIAA's and AFM/AFTRA's comments make clear that they either (i) have no conception of how radio broadcasters operate their businesses, (ii) seek to drive radio broadcasters off of the Internet, or both. The record companies and performers ask the Copyright Office to obligate digital transmission services to provide every bit of data that may conceivably assist them in their authorized distribution function (regardless of how marginal the benefit) and a great many more that RIAA now admits are relevant only to a function not authorized by Section 114<sup>1</sup> – compliance with license conditions. They casually ignore the burden that their proposed requirements would impose, arguing that broadcasters should create new systems and procedures and embark on a scavenger hunt for information that may or may not exist, rather than placing the task where it most logically exists, on the record companies that produced the records and have the information in the first place, or their designated agents.

The vast majority of the comments filed in this rulemaking strongly oppose the reporting requirements proposed by RIAA and the Copyright Office as unnecessary and impossibly burdensome. Indeed, many emphasized that the scope of the proposed requirements were literally a “make or break” issue for their companies and that if they went into effect as is, many webcasters would be forced to cease streaming.

A diverse cross-section of radio broadcasters joined in the chorus against the proposed reporting requirements. In addition to the Joint Radio Broadcaster Opening Comments (the “Joint Broadcaster Opening Comments”) filed on behalf of the National Association of Broadcasters, Bonneville International Corporation, Clear Channel Communications, Inc., Cox Radio, Inc., the National Religious Broadcasters Music License Committee (“NRBMLC”),

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<sup>1</sup> Unless otherwise noted, all section references are to Title 17 of the United States Code.

Salem Communications Corp., and Susquehanna Radio Corp. (“Broadcasters”), ten other comments were submitted on behalf of radio broadcasters, in large part from noncommercial, smaller broadcasters. These comments made clear that unless the Copyright Office dramatically reduces its proposed notice and recordkeeping requirements, many broadcasters will cease streaming altogether.

Although RIAA’s proposed deletion of the full-fledged listener log requirements is a small step in the right direction, it was more than negated by (a) RIAA’s substitute proposal that services report the total number of listeners per performance – information that is even more onerous to provide – and (b) RIAA’s incredible addition of even more proposed reporting elements to their wide-ranging wish list. No basis has been provided for either RIAA’s original or revised requests. The new data requests should be rejected and, as described more fully in the Joint Broadcaster Opening Comments, many other requirements also must be scaled back or deleted entirely before the reporting requirements approach even a remotely reasonable burden.

As discussed more fully below:

- RIAA’s suggestion that comprehensive, extensive reporting is inherent in the grant of a statutory license is simply wrong, as conclusively demonstrated by the reporting requirements adopted by the Copyright Office pursuant to an essentially identical reporting provision under an essentially identical statutory license in Section 118.
- The subscription services rulemaking, in which broadcasters did not participate and which was decided based on the specific business practices of the three services involved, provides no support for RIAA’s position here.
- RIAA’s own arguments demonstrate that sample, rather than census, reporting is appropriate for radio broadcast simulcasts.
- RIAA has provided no demonstration that it needs more than title and artist information in order to provide reasonably accurate identifications of sound recordings. Album, ISRC, UPC, record label, release year, copyright owner information, duration, catalog number, and genre all are duplicative, extremely burdensome, have at most marginal value, and should be deleted as required elements.

- Now that RIAA has abandoned its request for a listener log, broadcasters should be permitted to report reasonable averages for the number of listeners to their Internet transmissions.
- RIAA's speculation that it may, someday, possibly, want to distribute ephemeral recording royalties on a basis that is wholly unrelated to the basis on which payments are received, demonstrates the absurdity of imposing this burden on broadcasters and other services.
- AFM/AFTRA's proposal to obligate services to identify nonfeatured artists would multiply the burden on broadcasters, provide no meaningful benefit, and is not supported by any reading of Section 114.

The Copyright Office should adopt the proposals discussed in these comments and in the Joint Broadcaster Opening Comments. In so doing, it will ensure that the statutory license does not become illusory and completely unworkable for broadcasters that wish to stream their programs on the Internet. For the Copyright Office's convenience, Broadcasters attach as Tabs A and B hereto proposed regulations and a red-line comparing Broadcasters' proposal to the Copyright Office's proposed regulations.<sup>2</sup>

### DISCUSSION

RIAA offers two basic premises for its proposal to burden services with the extensive reporting obligations that it seeks from the Copyright Office – (i) such a reporting obligation is inherent in the grant of the Section 114 statutory license; and (ii) the Copyright Office already decided the relevant principles in the so-called “Original Determination.” Broadcasters first show that neither of these assertions supports RIAA's request for so much detail. Broadcasters then respond to RIAA's objection to sampling and its insistence on unnecessarily burdensome census reporting and demonstrate why RIAA's own argument demonstrates that sampling is

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<sup>2</sup> As Broadcasters stated in their initial comments (at 1 n.1), Broadcasters continue to maintain that their participation in this rulemaking should not be construed as a waiver of their position that they are exempt from the digital sound recording performance right for their simultaneous transmission over the Internet of their over-the-air broadcast programming. The Broadcasters' appeal on the exemption issue is currently pending before the United States Court of Appeals for the Third Circuit. *See Bonneville Int'l Corp. v. Peters*, 153 F. Supp. 2d 763 (E.D. Pa. 2001), *appeal docketed*, No. 01-3720 (3d Cir. Oct. 1, 2001).

especially suited for radio broadcast simulcasts. Broadcasters next refute RIAA's assertions that its reporting proposal will not burden broadcasters and comment on RIAA's utter failure to demonstrate any need for the extensive reporting obligations it seeks. Broadcasters then discuss why RIAA's substitution of per song listener counts for a proposed listener log is unworkable and RIAA's complete failure to provide any valid justification for its request for an ephemeral log. Next, Broadcasters point out why AFM/AFTRA's request for reporting of nonfeatured artists is unadministrable and will benefit no one. Finally, Broadcasters weigh in on the comments received by the Copyright Office concerning its proposed notice of use requirements and on other issues presented by various comments.

**I. NEITHER OF RIAA'S BASIC PREMISES FOR ITS PROPOSAL SUPPORTS BURDENING SERVICES WITH THE EXTENSIVE REPORTING OBLIGATIONS RIAA SEEKS.**

**A. Nothing in the Language of Section 114 Supports RIAA's Request for Detailed Census Reports; the Regulations Adopted Under Section 118 Demonstrate That RIAA Is Not Entitled to the Information It Seeks.**

RIAA argues that the services should feel blessed to have been granted the statutory license contained in Section 114, and that inherent in the grant of the statutory license is a duty to provide extensive reports. However, nothing in the language or history of Section 114 imposes such an obligation. The statute requires only "reasonable" notice of the sound recordings performed under the statutory license.

Although RIAA claims (at 5) that "reasonable" means "detailed" and complete reports, RIAA ignores the fact that Congress modeled the reporting and recordkeeping requirements of Sections 112 and 114 after nearly identical language in the Section 118 statutory license covering the performance of musical works by noncommercial broadcasters, which imposes far less

burdensome reporting requirements than those RIAA now seeks.<sup>3</sup> Congress, in choosing to enact a reporting mandate *in pari materia* with the Section 118 license in connection with Sections 112 and 114, endorsed the Copyright Office's prior determinations of reasonableness. *See, e.g., Lorillard v. Pons*, 434 U.S. 575, 581 (1978) (holding that where Congress adopts a new law incorporating sections of a prior law, Congress is "presumed to have had knowledge of the interpretation given to the incorporated law," and to have incorporated prior agency interpretation); *Sullivan v. Strop*, 496 U.S. 478 (1990) (applying the "normal rule of statutory construction" that "identical words used in different parts of the same act are intended to have the same meaning").

The "reasonable" recordkeeping requirements of the Section 118 statutory license – which involved the same copyrighted use (performance) and one of the same industries (radio) at issue here – are in keeping with Congress' intent that reporting requirements "shall not impose undue hardships" on statutory licensees. H. Rep. No. 94-1476, at 118 (1976). Those requirements contain a number of significant limitations that effectuate Congress's intent not to burden radio broadcasters unduly. For example:

- Only *one week per year* of sample airplay data is required.
- Only a portion of each category of noncommercial radio broadcasters – no more than 50% of NPR stations, ten college stations, and five non-NPR-affiliated, non-college, noncommercial ("other noncommercial") stations – are required to submit reports at all.
- NPR stations with five or fewer full-time employees are exempt from reporting altogether unless such an exemption would result in fewer than 25% of all NPR stations reporting.

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<sup>3</sup> Section § 118(b)(3) requires that "[t]he Librarian of Congress shall also establish requirements by which copyright owners may receive reasonable notice of the use of their works under this section, and under which records of such use shall be kept." 17 U.S.C. § 118(b)(3).



- NPR stations need report only three data elements about each song – title, artist, and composer – and only to the extent such information is “reasonably obtainable” based on the stations’ “good faith effort[s].” College and other noncommercial stations appear to have no specified reporting elements required at all.
- Submission of music use reports is not automatic but rather “upon request.”
- Stations are not required by regulation to provide performance data in a specific form, and certainly not in the elaborate and highly technical computerized format requested by RIAA’s proposed regulations.

*See* 37 C.F.R. § 253.3(e)(4) (NPR stations); *id.* § 253.5 (e) (college and university public broadcasters); 37 C.F.R. § 253.6(e) (other noncommercial stations). Obviously, RIAA can take no comfort from the fact that the Sections 112 and 114 recordkeeping provisions track the parallel Section 118 provision nearly word for word; rather, that fact demonstrates that the “reasonable” reporting standard previously adopted by the Copyright Office bears no resemblance to the crushing reporting burden that RIAA now seeks to impose.

**B. RIAA’s Reliance on the Subscription Services Rulemaking Is Misplaced; that Rulemaking Involved Only Three Services and Specifically Relied Upon Those Services’ Particular Business Models and Reporting Capabilities, Which Are Vastly Different From Those of the Many Affected Services Here.**

Having ignored the Copyright Office’s construction of relevant statutory language in Section 118, RIAA attempts to justify much of its reporting proposal on the basis of another alleged precedent – the subscription services recordkeeping rulemaking. RIAA somewhat misleadingly characterizes the Copyright Office’s interim rules in that proceeding as its “Original Determination” and claims that “neither the Copyright Office nor those entitled to royalties should be required to expend precious time and money in this rulemaking revisiting issues that the Copyright Office decided nearly four years ago, after an in-depth rulemaking proceeding.” RIAA Comments at 8.

Of course, RIAA’s argument ignores the true character of that proceeding. Unlike the present rulemaking, which will impact literally thousands of services, only three services

provided comments in the earlier proceeding. *See* Interim Regulations on Notice and Recordkeeping for Digital Subscription Transmissions, Docket No. RM 96-3B, at 3 (July 1, 1998). Also unlike the present rulemaking, which involves services of many different types – including a wide variety of Internet-only nonsubscription webcasters, radio broadcast simulcasters, preexisting subscription music services, new subscription music services, and satellite digital audio radio services<sup>4</sup> – only a single type of service – *i.e.*, preexisting subscription services – provided comments in the earlier proceeding. Further, Broadcasters’ business models, which focus on their core over-the-air business rather than their ancillary streaming operations, are based on free, advertiser-supported programming consisting of largely mainstream music peppered with DJ chatter. This stands in sharp contrast to the multi-channelled, commercial-free, subscription-based programming of the three preexisting subscription services, which consists of more music and more diverse music than is generally heard on broadcast radio.

When the Copyright Office issued its Notice of Proposed Rulemaking, it specifically requested that the commenters focus on “the administrative burdens placed on the digital transmission services in providing notice and maintaining records of use. *See* Notice and Recordkeeping for Subscription Digital Transmissions, Docket No. RM 96-3, 61 Fed. Reg. 22004 (May 13, 1996). Of necessity, the “administrative burdens” considered by the Office

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<sup>4</sup> For this reason, RIAA’s proposed “one size fits all” approach inappropriately attempts to fit not just the proverbial square peg into a round hole, but pegs of all different shapes and sizes. The services eligible for the Section 112 and 114 statutory licenses are a diverse group, with widely varying business models, transmission types, music usage, and reporting capabilities. While RIAA would have the services for which certain reporting elements do not apply report meaningless data in those fields, this is a totally unnecessary waste of services’ limited resources. *See* RIAA Comments at 54 (suggesting that “preexisting subscription services making broadcast-type transmissions” report a “1” in RIAA proposed field for total number of performances). Instead of uniform reporting requirements, the Copyright Office should consider the business models and reporting capabilities of each distinct type of service individually and establish reporting requirements that better track the models and capabilities of each.

were only those incurred by the three services before it – the Office did *not* have before it evidence concerning the burdens that those regulations might impose on other services not involved in that proceeding, including radio broadcasters. Indeed, the Office conducted roundtable meetings to consider the specific reporting capabilities of the three services at issue, and portions of the Office’s interim regulations are based on express agreements reached by the parties at issue in that proceeding. *See, e.g.*, Interim Regulations on Notice and Recordkeeping for Digital Subscription Transmissions, Docket No. RM 96-3B, at 11 (July 1, 1998) (“In correspondence among themselves ... after the facilitated meetings, the commenting parties had agreed that Services should provide quarterly reports of use consisting of their ‘intended playlist’ for the preceding quarter ... .”); *id.* at 20 (“The commenting parties agreed that reports of use should consist of the Intended Playlists.”).

Moreover, reliance on the subscription services rulemaking would result in a fundamental unfairness to broadcasters and the other services involved in this proceeding. While RIAA may have participated in the subscription services proceeding, Broadcasters and many of the other services in this proceeding did not. The Copyright Office did not have before it factual information concerning the unique challenges that Broadcasters face in reporting sound recording usage (including the limited information that record labels provide in giving them promotional CDs), nor did it consider that Broadcasters’ business models and reporting practices justifiably revolve around their primary over-the-air operations rather than their wholly ancillary streaming operations. Indeed, Broadcasters were not even subject to the sound recording performance right at the time of the subscription services rulemaking. There is simply no way that RIAA reasonably can claim that that rulemaking demonstrates that RIAA’s proposed reporting requirements are reasonable for Broadcasters or that it should have put Broadcasters on

notice as to the types of reports they would be required to submit. *See* RIAA Comments at 3-4. Nor can RIAA claim, based on that proceeding, that it is appropriate to require Broadcasters to provide data sufficient to verify compliance with statutory license conditions. *Id.* at 40. Binding Broadcasters to any determination made in that proceeding – in which Broadcasters did not and could not participate – would deny Broadcasters of their fundamental due process right to be heard.

In any event, the Copyright Office's findings were issued on an interim basis only, with a further opportunity for parties to comment on them in two years, in recognition of the fact that digital transmission services and reporting technologies were still developing and it was therefore not clear what type of reporting requirements were most appropriate. *See* Interim Regulations on Notice and Recordkeeping for Digital Subscription Transmissions, Docket No. RM 96-3B, at 1 (July 1, 1998). To rely on the subscription proceeding as persuasive precedent for any of RIAA's proposals is plainly inappropriate given the vastly different and more diverse types of services at issue here.

The only useful lesson that may be drawn from the subscription services CARP is that even so-called perfect information will not yield a perfect distribution, and the additional transaction costs required to obtain perfection far outweigh the marginal benefits. RIAA itself admits that even when dealing with data from only three services, over the course of 18 full months, and even if it had its entire wish list of data fields, it would not have been able to identify with absolute certainty about 10% of the copyright owners entitled to royalties. RIAA Comments at 39. The negligible marginal benefits of RIAA's extensive requests simply do not justify the enormous additional cost to each and every licensee of thoroughly researching copyright ownership information that is not available on the media from which the performance is drawn.

**II. RIAA'S ARGUMENT AGAINST SAMPLE REPORTING DEMONSTRATES THAT SAMPLING IS PARTICULARLY APPROPRIATE FOR RADIO BROADCAST SIMULCASTERS.**

As Broadcasters demonstrated in their initial comments, sample reporting is a longstanding, widespread, and eminently reasonable means of balancing burden and accuracy in the reporting of performances. ASCAP and BMI routinely rely on sampling to determine their distribution to their members, and even RIAA has supported sample reporting in the past. Joint Broadcaster Opening Comments at 37-39. The mechanics of sampling are well-known and sampling is widely used for a host of purposes. In fact, SoundExchange itself commissioned an expert study to examine the possibility of distributing based upon sampling methods -- a study that has not been shared with Services and the results of which SoundExchange and RIAA have chosen to keep to themselves. See *In re Digital Performance Right in Sound Recordings and Ephemeral Recordings*, Docket No. 2000-9, CARP DTRA 1 & 2, Tr. at 11808 (Kessler).

Despite this overwhelming acceptance of sampling, RIAA now insists upon census reporting. RIAA's principal argument, however, actually supports the use of sampling for simulcast transmissions of over-the-air radio. RIAA argues (at 12-15) that sampling is inappropriate for programming that contains a greater diversity of music than is found on over-the-air radio because performances by lesser known artists may not get picked up in the sample -- "It is this very practice of offering such a varied range of music on an infinite number of channels that complicates the distribution of royalties, especially with regard to lesser known performers and copyright owners." RIAA Comments at 13. RIAA specifically contrasts "this very practice" with over-the-air radio. *Id.*

In so arguing, RIAA ignores that the sound recordings that Broadcasters broadcast over-the-air are the very same ones that they stream. Thus, whatever the merits of RIAA's position

for Internet-only webcasters,<sup>5</sup> RIAA's argument provides no basis to distinguish over-the-air radio from the simultaneous transmission of that same over-the-air radio programming on the Internet. In short, RIAA has provided no reason that reporting for Broadcasters should be other than sample reporting.

If anything, Broadcasters were overly generous in suggesting a sample size of four weeks per year – two weeks per year appears to be more than sufficient. As previously observed in Part I.A *supra*, noncommercial broadcasters operating under Section 118 – which contains a virtually identical recordkeeping provision to that found in Sections 112 and 114 – requires music use reports for no more than *one* week per year, and for only a portion of each category of stations eligible for that license. *See* 17 U.S.C. § 118(b)(3); 37 C.F.R. § 253.3(e)(4) (NPR stations); *id.* § 253.5(e) (noncommercial college stations); *id.* § 253.6(e) (other noncommercial stations). BMI is satisfied with an even smaller sample. That performing rights organization states on its website that it only requires commercial radio station licensees to “log performances for a *two or three day period each year*, with different stations logging each day of the year.” *See* <http://www.bmi.com/songwriter/resources/pubs/royaltyradio.asp> (emphasis added). BMI further states that it creates from that music use data “a statistically reliable projection of all feature performances on all commercial music format radio stations throughout the country.” *See id.* (emphasis added). Surely if BMI is able to create a statistically reliable projection of feature performances based on less than 1% of all performance data, collective agents under the Sections 112 and 114 statutory licenses can do the same.

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<sup>5</sup> Broadcasters by no means agree with RIAA that the alleged breadth of programming found on Internet-only websites justifies the enormous burden of census reporting.

**III. RIAA'S PROPOSED REPORTING REQUIREMENTS ARE UNREASONABLE AND TOTALLY IGNORE THE BURDENS THEY WOULD PLACE ON BROADCASTERS AND OTHER SERVICES.**

As Broadcasters pointed out in their initial comments, the proposed regulations do not remotely strike the requisite balance between providing reasonable notice of use and preventing unreasonable reporting burdens. See Joint Broadcaster Opening Comments at 6-10. Rather, RIAA's Comments confirm Broadcasters' view that RIAA is seeking to obtain every bit of detail that might give its affiliated collection and distribution agent some benefit, no matter how marginal, in performing what it views as its functions, without regard to the costs and burdens that it might impose on broadcasters and other services. In RIAA's own words, it is seeking "comprehensive data" to "ensure the ability to distribute to *all* entitled copyright owners and performers, not just those for whom information is readily available," "in *all* instances." RIAA Comments at 30-31 (emphasis added).

RIAA argues that the burden it would impose on broadcasters is "minimal" because, theoretically, the services "control the specific identifying information" about the sound recordings they play. RIAA Comments at 5, 31, 46. Conversely, RIAA asserts that gathering the relevant information, if imposed on the designated agents, would be a "tremendous, additional burden," "especially since it might not have access to the source product of the sound recordings used by the service." RIAA Comments at 31.

Of course, RIAA's arguments ignore the realities of the relationship between Broadcasters and RIAA's record company members. In fact, for reasons similar to those advanced by RIAA, it would be far easier for RIAA to gather complete information about the sound recordings of the labels it represents than it is for Broadcasters to provide information they do not have from systems that were developed for over-the-air broadcasting. As demonstrated in Joint Broadcasters' Opening Comments, Broadcasters typically perform sound recordings

obtained on promotional CDs provided by RIAA's members and on compilations from commercial services that contain minimal information. They typically use systems developed for a purpose other than the statutory license. They simply do not have the information RIAA seeks.

RIAA, on the other hand, claims to represent members who collectively own 90% of all sound recordings legitimately distributed in the United States. SoundExchange will be an agent of additional sound recordings. It would be far simpler for these copyright owners to provide the information sought by RIAA directly to Sound Exchange. It simply defies credulity for RIAA to argue that any information-gathering burden imposed on it would be "tremendous" but that any burden on Broadcasters would be "minimal." RIAA could just as soon argue that a restaurant patron who orders and consumes a meal is in a better position to know the ingredients in that meal than the chef who prepared it.

RIAA also claims that it is "more economical" for each service to research each new song added than for the collecting entity "to research *all* sound recordings added by *all* statutory services during each reporting period." RIAA Comments at 45. Of course, it might be "more economical" for RIAA. But it certainly will be more expensive for society in the aggregate, and will impose far greater transaction and administrative costs on the system as a whole. One of the purposes of a centralized collection and distribution agent is to take advantage of economies of scale. RIAA would need only research each individual sound recording once – based upon information supplied to it by its own principals – in order to have complete information at its fingertips for every future performance of that sound recording.<sup>6</sup> By contrast, each individual

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<sup>6</sup> To capture this gain, RIAA's record label members and other principals should provide the collective agents access to their databases so that collective agents can create a master sound recording database with the data elements requested by RIAA. Broadcasters support DiMA's proposal to require the record labels to do precisely that. See Comments of the Digital Media Association ("DiMA") at 3 (Apr. 5, 2002). As DiMA observed, imposing



broadcaster would have to expend more time and money to research each sound recording from information not provided to it (even assuming that it had the system to record and report that information). A rule requiring each individual service to take on this burden would multiply the transaction costs of performing each sound recording more than a thousandfold. For any given new release, potentially thousands of individual broadcasters and webcasters would have to go to the expense and effort of researching obscure legal information that has not been historically provided to them by the record companies, or of hiring a third-party service to provide them with the data. The cost of such a task across the broadcast industry alone would far outweigh both the performance royalty paid and the value of the performance to the broadcasters.

**IV. RIAA FAILS TO JUSTIFY ITS DEMAND FOR ELEVEN DIFFERENT DATA ELEMENTS TO IDENTIFY A SOUND RECORDING WHEN SONG TITLE AND FEATURED ARTIST ALONE WILL PROVIDE REASONABLE ACCURACY.**

Based solely on the theory that more information is better, RIAA requests Broadcasters to report every possible datum of information about each and every sound recording in excruciating detail -- without abbreviation and without omission -- even though RIAA provides no evidence indicating how frequently this added information will be useful. Based on the demonstration made in the Joint Broadcaster Opening Comments, these additional data likely will be used, if at all, only in a small percentage of outlying cases. For the vast majority of sound recordings, song title and featured artist alone will provide any collective with the information it needs to match a sound recording to ownership data that the collective already possesses. *See* Joint Broadcaster Opening Comments at 41-44.

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such a requirement "would significantly enhance the efficient and cost-effective operation of the statutory license."  
*Id.*

**A. RIAA Fails To Show Why It Needs the Name of the Retail Album in Order To Identify Sound Recordings and Distribute Royalties.**

RIAA argues that the services should be required to report album title because the statute allegedly already requires them to track the information and because the interim regulations in the preexisting subscription services proceeding required certain services to report such information. However, RIAA does not meet the most basic burden of showing why album title is reasonable or necessary to administer royalty payments. As the Broadcasters demonstrated in their initial comments (at 41-44), the vast majority of sound recordings are easily identified by song title and featured artist alone; after all, the royalty is paid for performance of the sound recording, not the phonorecord on which it appears. RIAA does not provide any factual basis for determining how often information beyond title and artist would be useful, but based on the testimony of its own witness, Ms. Kessler, it would likely be rare. *See In re Digital Performance Right in Sound Recordings and Ephemeral Recordings*, Docket No. 2000-9, CARP DTRA 1 & 2, Tr. 11828-30 (Kessler).

The only possible justification for requiring provision of album title is to distinguish the rare instances where a single artist performs the same song for two different copyright owners.<sup>7</sup> RIAA provides no basis for believing this is common. Even various live versions are often owned by either the same copyright owner or by perhaps one additional copyright owner. RIAA provides one example, ostensibly to demonstrate how its life can be complicated by different versions of the same song – the Chicago song “Does Anybody Really Know What Time It Is?” RIAA Comments at 59. However, it appears from the Chicago website that all recordings by the band are owned either by the band itself, through Chicago Records Inc., or by Warner Bros. *See*

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<sup>7</sup> Broadcasters address the issue of background musicians in Part VI, *infra*.

<http://www.chicagotheband.com/historychap13.htm>. Versions of the song by different artists, of course, are easily separated from the Chicago versions.<sup>8</sup>

In any event, the burden of providing “album” title *would* be significant for Broadcasters. Despite RIAA’s misstatement to the contrary (at 46), Broadcasters generally do not currently have, nor are they currently required to track, the retail album title. The statutory provision cited by RIAA only requires the contemporaneous display of “title of the sound recording, the title of the phonorecord embodying such sound recording, *if any*, and the featured recording artist.” 17 U.S.C. § 114(d)(2)(C)(ix) (emphasis added). A phonorecord, as defined by the Copyright Act, is the “material object in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, whether directly or with the aid of a machine or device.” 17 U.S.C. § 101. In the case of most radio broadcasts and corresponding simulcasts, the “phonorecord embodying such sound recording” is not a retail album, but rather an untitled promotional single provided by the record label, or a compilation provided by a commercial service.

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<sup>8</sup> RIAA’s other theory of relevance is that it needs album information to enforce the sound recording performance complement. RIAA Comments at 55. For the reasons discussed in the Joint Broadcaster Opening Comments, this is not a valid basis for imposing a reporting requirement. Further, album information is not relevant to even misguided efforts to enforce the sound recording performance complement. The Act defines the relevant provisions of the complement in terms of phonorecords – specifically, it prohibits transmission of no more than “3 different selections of sound recordings *from any one phonorecord* lawfully distributed for public performance or sale in the United States.” 17 U.S.C. § 114(j)(13) (emphasis added). When the phonorecords performed are promotional singles, “retail album title” does not figure into the complement calculus at all. The legislative history of Section 114(j)(13) confirms that, in determining how to program in accordance with the complement, services should rely on the data in connection “with the phonorecord *actually being performed*.” S. Rep. No. 104-128 at 36 (Aug. 4, 1995) (emphasis added) (explaining how to determine which artist should be considered the featured performance artist for complement purposes).

**B. RIAA's Remaining Requested Data Elements Are Both Unnecessary and Unavailable Even on RIAA's Handpicked Examples.**

If requiring reporting of retail album title is burdensome on its face, requiring the reporting of additional unnecessary data found on retail albums transcends the absurd. RIAA's revised proposed regulations would require no fewer than six data points to be reported as they appear in the "retail album," "album" or "commercially available album or product." See RIAA Comments Exh. A, at A-7 to A-8. Short of purchasing the retail album itself, Broadcasters have no way of determining whether the limited information that they do have (from, e.g., a promotion single) is the same as that provided on the retail or commercially available album or product. Thus, as described in more detail below, RIAA's Exhibit G, which purports to provide samples of the required reporting information as found on a promotional phonorecord, does not actually provide the album-based information required by the proposed regulations. The promos may provide a catalog number, or copyright release year, or P-line owner, for example, but there is no reason to believe that this information matches that of the retail album.

Nor does RIAA provide any satisfactory justification for demanding any data elements other than featured artist and song title.<sup>9</sup> RIAA merely asserts that "all of this information on performances or reproductions is in the control of the services," and thus should be tracked and reported. RIAA Comments at 8. As explained in the Joint Broadcasters' Opening Comments, RIAA's assertion is patently false. Indeed, RIAA itself recognizes that "promotional, pre-release product supplied by record label distributors" only have "some (but not necessarily all) of the requested information." *Id.* at 43. Putting aside the very real fact that Broadcasters simply do

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<sup>9</sup> Indeed, as Broadcasters pointed out in their opening statement, the Rate Court governing ASCAP's operations rejected similar reporting requirements for musical works as "excessive" and required instead that radio station applicants only report (a) song title and (b) artist, composer, or publisher of the songs they perform. See Joint Broadcaster Opening Comments at 43-44 (citing *United States v. ASCAP (In re Application of Salem Media et al.)*, 981 F. Supp. 199 (S.D.N.Y. 1997)).

not have the technology in place to track the requested data in any event, most broadcasters get most, if not all, of their music from the very promotional sources that RIAA admits do not provide complete information. Joint Broadcaster Opening Comments at 26-31.

As Brian Parsons of Clear Channel explains in his Reply Statement, RIAA did its best to “cherry pick” prime examples of promo CDs that provided the most possible information about a given track and completely ignored the fact that much of the music that Broadcasters receive from the labels comes on CD-Rs or in raw electronic files, with often only title and artist information provided. . See Tab C ¶¶ 2-3, 5 hereto. Even so, the very examples proffered by RIAA belie RIAA’s spurious assertion that “[t]he information requested for the uniform report of performances is readily available to the services.” RIAA Comments at 43. For example:

- The promo for the Kaci song “Intervention Divine” does not provide an album title or a UPC code, and there is no way to know with certainty whether the release year and copyright owner as listed will be the same as that on the “retail album.” See RIAA Comments Exh. G-1. Despite RIAA’s assertions that the retail album will “generally be available within 6-8 weeks,” the next Kaci retail album, “Paradise,” is not due to be released until June 12th, nine-and-a-half weeks after the promotional single was submitted as evidence, according to the artist’s official website. See Tab F hereto. Neither the marketing label website nor the artist’s official website provide catalog, UPC, release year or “Track Label P-Line” information – the sites do not even confirm whether “Intervention Divine” will actually appear on “Paradise.” See Tab P hereto. If the song were performed by a broadcaster and simultaneously streamed on April 5, 2002, the reporting elements requested by RIAA would still not even be public knowledge by May 20, 2002, the date the report would be due under proposed 37 C.F.R. § 201.36(c).
- The Clark Family Experience (G-8) similarly does not yet have an album out, and the label website merely indicates that an album is “coming soon.”
- The catalog number for the promo single “I’d Rather” by Luther Vandross, J1DJ-21146-2, does not in any way resemble the catalog number on the self-titled retail album, which bears the number 80813-20007-2. Compare RIAA Comments Exh. G-9 with Tab G hereto. The promo is also missing the UPC code, as well as the album title. The promo contains two different mixes of the song, and each are reported to be the same exact length, so reporting the track length will do nothing to help the collective identify the version of the song. In any event, the two different mixes apparently have the same copyright owner, so there is no need to differentiate by use of track length.

- The promo for Alicia Keys' "Fallin' the Remix" similarly does not bear an album name or a UPC code. RIAA Comments Exh. G-6. The catalog number is illegible on the example provided, but does not appear to be as long as the eleven-digit number that appears on the retail album, and likely follows a similar pattern to the Vandross promo because it is by the same label. Once again, the reported track length on two of the three mixes is identical, so time information will not aid in distinguishing various versions of songs. *See* Tab H hereto.
- The back cover of the Mindy McCready CD that RIAA touts as a "Promotional CD" is identical in all respects to the retail album. *See* Tab I hereto. If the disc is in fact a "Promotional CD" – and unlike most promo CDs, it is not marked "not for sale" or "for promotional use only" – it is the very rare case where the record company is conducting its promotion using the retail album. *See* Joint Broadcaster Opening Comments Tab E Exhs. 1-3 (promos labeled as such); RIAA Comments Exh. G (most promos labeled as such); Joint Broadcaster Opening Comments Tab K, ¶ 8 (only rarely receive retail album as promo).
- Despite best efforts, counsel could not even test whether the information on the BlackHawk promo "One Night In New Orleans" matched the data on the unnamed album. Black Hawk is not even listed as an artist on the ColumbiaRecords.com website, and the Sony.com website refers visitors seeking music information to the ColumbiaRecords.com website, and the website relied upon by RIAA – allmusic.com – does not have a listing for the song "One Night in New Orleans." *See* Tab J hereto.

As RIAA's own examples demonstrate, the information RIAA seeks is not readily available to Broadcasters.

RIAA repeatedly justifies its request for duplicative information on the notion that additional types of identifiers will help distinguish amongst outlying close cases. It does not, however, provide any evidence from which the Copyright Office can determine how often such information is needed or even useful.

For example, RIAA asks that the Services provide genre information solely to assist in distinguishing among copyright owners with the same name, noting for example that there are two different "Spring Hill Music" record labels that focus on different genres. RIAA Comments at 51. But RIAA does not provide any facts from which to determine the likelihood that each of these labels would independently produce songs bearing the same name and performed by either the same featured artist or different featured artists with the same name, such that reporting title

and artist information would not suffice to differentiate these two works. The likelihood is no doubt quite small indeed. In any event, the effort and expense to reconfigure computer systems to provide 100% failsafe information to distinguish songs in these rare instances would far exceed any benefit to the collective agents' distribution as a result of those cases.

Similarly, RIAA insists that it needs song length data to distinguish between different versions of the same track. In the first place, even different re-mixes are often the same length, so track length often is an ultimately unhelpful tool. *See* RIAA Comments Exh. G (Keys, Vandross both have more than one mix with same length). Second, different versions – such as a radio re-mix of a commercial release – will generally have the same copyright owner as the studio album version. *See, e.g.*, RIAA Comments Exh. G (no separate copyright owners listed for different mixer on single promo). Third, the broadcasters who do record and rely upon track length data do not just blindly accept the track length as provided on promo CDs. Instead, they code the track length based upon their own judgment and preferences. *See, e.g.*, Joint Broadcaster Opening Comments Tab I ¶ 15. Thus, short of creating a separate field to record track length as reported by the phonorecord, the track length reported by Broadcasters would not necessarily bear any resemblance to the track length recorded in SoundExchange's master database.

To add insult to injury, RIAA has even thrown in two *additional* intended playlist elements beyond those already requested by the Copyright Office – “category of service” and “influence indicator.” *See* RIAA Comments at 33. Apart from the fact that these elements have nothing whatsoever to do with calculating Broadcasters' performance royalties, both of these elements should be apparent from the mere identity of the Broadcaster itself. There is no justification for requiring simulcasters to create a data field in their sound recording data

programs solely so that they can report along with each song that it is not a user-influenced service. Similarly, the service category – like other service-specific identifying information – need only be reported one time, in some fashion, somewhere on the report, rather than as a separate data element tied to each song reported.

**C. RIAA's Claim That All Broadcasters Possess Magical Systems To Report All the Requested Data at the Touch of a Button and Can Readily Find Missing Data Elements Is False and Ignores Both the Lack of Necessity for the Requested Data and the Enormous Burden of Locating and Maintaining Such Data.**

RIAA completely fails to acknowledge that even where some of the requested information is provided on promotional CDs, even the most sophisticated broadcasters do not have the software or hardware in place to track the information requested. To the extent that Internet-only webcasters may have developed “proprietary technologies” that might easily allow for such reporting, as RIAA claims (at 40), these technologies are by definition not available to Broadcasters. Broadcasters – when they use scheduling or digital automation software at all, *see, e.g.,* Comments of Harvard Radio Broadcasting Company – generally use off-the-shelf solutions designed specifically to support long established industry practices. Scheduling software allows a more sophisticated version of the age-old index card rotation system, but it does not generally allow for tracking of comprehensive sound recording owner and related information. *See* Joint Broadcaster Opening Comments Tab I ¶ 13. Digital Automation Systems perform music based upon abbreviated data from the scheduling software. To Broadcasters' knowledge, *none* of the software systems used by broadcasters today are capable of reading and recording much of the data requested by RIAA.

RIAA's only support for the notion that the entire broadcast industry already has software in place to handle the enormous load RIAA would put on each station is a single article from the Wall Street Journal about the nation's largest broadcaster. RIAA Comments at 42. As Clear



Channel's Brian Parsons explains at length in his reply comments, the software most radio stations do employ does not even approach the level of sophistication that RIAA would have the Copyright Office believe:

As to radio stations' use of sophisticated software and hardware, RIAA flatters us. Most of the technology it speaks of is provided by partnerships with other companies that are treading water to stay afloat. The push of the broadcasters is just for the basic clearance to put our AM/FM signals over the Internet to our listeners who may be in buildings and unable to get a good radio signal. It is a difficult and expensive process, especially since last year's AFTRA problems, and revenue specifically from streaming has been meager and hard to come by. Any additional burden of expense or procedures will certainly give us pause and cause us to reconsider the business worth of continuing to stream our stations. RIAA's comments paint a picture of a radio station's systems as if they were a high-tech clean room with lights and buttons. In reality, most radio stations have older computers and older technologies spliced together by a skillful, and sometimes even unconventional, engineering and/or technical staff.

See Tab C ¶¶ 6-8 hereto.

As addressed fully in Joint Broadcasters' Opening Comments, Broadcasters would incur enormous start-up costs if required to backfill every single one of the hundreds or even thousands of songs already in their libraries – an issue RIAA completely ignores in its own opening comments. In the first place, the promo CDs do not contain all of the requested information. Secondly, even if their packaging did contain the requested information, not all broadcasters retain the original packaging. *See, e.g.*, Joint Broadcaster Opening Comments Tab K ¶ 17 (CD packaging discarded and CDs placed into CD cartridges). Third, the alternative sources recommended by RIAA – such as “new release catalogs,” label websites, direct contact with the labels, or the ever-vague “research” – are also likely to come up dry on many of the elements RIAA would have broadcasters report.

For example, new release catalogs cannot assist Broadcasters in filling in the “Track Label P-Line” and release year *as it appears on the P-line*. Indeed, by statute, the © symbol can

only be placed on phonorecords or their packaging. *See* 17 U.S.C. § 402. Not one of the catalogs provided as samples by RIAA contains this information. *See* RIAA Comments Exh. H. If the information does not appear directly on the phonorecord, *see, e.g.*, Joint Broadcaster Opening Comments Tab B Exhs, 1-3, short of a phone call to the label or an actual trip to the store to examine album packaging, there does not appear to be any way to find the sound recording P-line information, much less the P-line as it appears on the retail album.

Moreover, Broadcasters do not generally even receive the “new release catalogs” RIAA claims are distributed by the labels. As Rick McDonald of Susquehanna Radio Corp. observes in his reply statement attached to these comments, despite his 36 years in the broadcast industry and his informal poll of Susquehanna’s music and program directors covering many cities and many formats, neither he nor any of the persons whom he polled had ever seen or heard of new release catalogs like the ones RIAA references, and none of them ever rely on such catalogs in their businesses. *See* Tab D ¶¶ 3-5 hereto. The cost to the record labels of sending all radio stations these new release catalogs – when they do not already systematically do so – would no doubt outweigh the benefit of receiving some data back in the form of the reports that would be required under the proposed regulations. *See* Tab D ¶ 5 hereto (Mc Donald). Thus, New Release Catalogs thus will not be of use for either supplementing the information on promo albums or for backfilling databases.

The record labels use their websites as marketing tools, not repositories for legalistic copyright-related information. As described in Part IV.B, *supra*, the label websites often do not provide any more information than the fact that an album might be “coming soon.” For example, for CURB artist Tim McGraw, the curb.com website merely lists album title and sound recording title. The most detailed information is provided on the “buy now” page for each album – that

page lists a release date (which would not necessarily correspond to the P-line date), the album title, the artist, and the titles of each sound recording. The label itself does not bore its readers with catalog number, UPC, ISRC, duration, or copyright owner information from the P-line.

Most importantly, RIAA's insistence that services chase down elusive legalistic data misses the point – Broadcasters are not equipped to do such research, and the labels themselves do not make the information public in any way. Even from the label perspective, RIAA's proposal that services call labels directly to track down reporting information is absurd. Do record labels really want to be receiving thousands of telephone calls from thousands of Broadcasters and other services, for each of the thousands of songs released each year, when a single phone call between the label and the collection and distribution agent can obtain the same end result? Whatever savings to the collective for putting this enormous burden on the services will be lost on the labels as they staff the phones to answer those inquiries.

Even if the requested information were at Broadcasters' fingertips, the sheer burden imposed on Broadcasters to backfill their databases would be enormous. *See, e.g.,* Joint Broadcaster Opening Comments at 51-52 & Tab B ¶ 36. There is no reason whatsoever why radio stations should have to incur this huge expense merely in order to stream when their databases have served their core over-the-air broadcast operations so well for years.

**D. RIAA's Insistence Upon Compliance Monitoring Data Is Unjustified.**

As Broadcasters demonstrated in their initial comments, copyright owners are not entitled to receive data whose sole purpose is to enable them to monitor compliance with the terms of the statutory license. *See* Joint Broadcaster Opening Comments at 17-21. RIAA, however, demands precisely such data, insisting that it is "the only way to give meaning" to the sound recording performance complement. RIAA Comments at 16.

RIAA's argument is offensive – it presumes that Broadcasters and other services will be deliberate and habitual lawbreakers merely because their risk of getting caught is reduced. The comment is also flatly incorrect. Broadcasters' streams are available free on the Internet to anyone who wants to listen to check compliance with the sound recording performance complement, for example. In fact, RIAA's label members already monitor closely many radio stations' playlists through use of outside monitoring companies such as BDS Spin. *See* Joint Broadcaster Opening Comments Tab B ¶ 43. There is no need to duplicate efforts here.

**V. THE COPYRIGHT OFFICE SHOULD ABANDON NOT ONLY THE LISTENER LOG REQUIREMENT THAT RIAA WITHDREW BUT THE EPHEMERAL LOG REQUIREMENT AS WELL.**

RIAA has taken a small step in the right direction by abandoning their demand that services submit listener logs that were an invasion of listener privacy, highly duplicative of the playlist data, and technologically impossible to achieve. *See* RIAA Comments at 32-33. Its replacement suggestion (at 32-33, 53-54) that the services report the precise number of performances made of a given song at a given moment, however, does not cure the most pressing problem with reporting listenership. In fact, RIAA's proposed cure is worse than the disease: it is nearly impossible for Broadcasters to accurately tie each song to a specific number of total performances. Most Broadcasters utilize outside stream providers to bring their over-the-air signal to the Internet, as streaming is ancillary to their over-the-air broadcasting business. Most of these services can provide aggregate data about average listenership, but they are not able to provide a report of every single log-in and log-out of every single listener who joins a stream, at least not without incurring (and passing on to broadcasters) substantial development costs. Even if such logs could be created, radio stations do not have the data matching capabilities to integrate log-ins and log-outs with playlist logs to discern the number sought by RIAA. Creating a program to manage and manipulate such data would be far beyond the core competency of any

broadcaster. Indeed, radio stations that do not use automation systems would not even have the precise start and end time of the songs played, much less the capability to match those times with log-ins and log-outs. The pointlessness of even trying to report with such precision is highlighted by the fact that Aggregate Tuning Hours (ATH) – a standard measure of listenership – can be so easily obtained, and reliably used to estimate total performances. The Copyright Office should reject RIAA’s proposed non-solution and instead permit Broadcasters to report ATH listenership averages separately, in the format that they receive those figures from their streaming service providers.

Even if RIAA had resolved this problem in a reasonable, workable manner, this incremental change is only one of many that need to be made to the proposed reporting requirements before they approach a standard of reasonableness. In addition to winnowing down the sound recording data elements discussed in Part IV above and allowing Broadcasters to report based on a reasonable sample of their performances, RIAA also should abandon its request for ephemeral phonorecord logs.

As Broadcasters explained in their initial comments, no CARP determination to date has based an ephemeral phonorecord fee on the number of ephemeral copies made and destroyed. To the contrary, the only CARP to propose an ephemeral recording fee proposed a fee based on the percentage of the *performance* royalty paid. See Joint Broadcaster Opening Comments at 57; In re Digital Performance Right in Sound Recordings and Ephemeral Recordings, Docket No. 2000-9, CARP DTRA 1 & 2, Report of the Copyright Arbitration Royalty Panel at 104 (Feb. 20, 2002) (“CARP Report”). RIAA, however, continues to press its demand for such logs, claiming that “copyright owners *may* decide to allocate royalties based upon the number of reproductions

made by a service rather than using the proxy of performances made by a service.” RIAA Comments at 61 (emphasis added).

Broadcasters and other services should not be subjected to huge additional reporting burdens – where the additional records have nothing to do with the royalties they pay – merely to provide RIAA a menu of distribution options that it may never exercise. ASCAP, by analogy, has undertaken the burden of determining its own distributions by conducting sample surveys. If copyright owners choose to distribute royalties on a different basis than how they are collected, they should bear the burden of gathering data to support those alternative distributions.

In any event, RIAA has made no showing that there would be any difference in distribution if it were based on the number of ephemeral phonorecords made rather than on the sound recordings performed. Logically speaking, quite the opposite would appear to be true – Broadcasters and other services would have no reason to create a different number of ephemeral phonorecords depending upon the particular sound recording performed. In such circumstances, whether services create two ephemeral recordings or five for each sound recording performed, the distribution would be the same. There is no reason whatsoever to force Broadcasters to incur this substantial additional reporting burden when the data is useless to verify royalty payments, unwarranted to satisfy RIAA’s distribution whims, and likely superfluous at any rate in effectuating a reproduction-based Section 112 distribution.<sup>10</sup>

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<sup>10</sup> For the reasons discussed in Broadcasters’ initial comments, RIAA cannot insist on receiving ephemeral phonorecord logs to monitor compliance with the terms of the Section 112 license, particularly given that the logs serve no purpose whatsoever in calculating royalties. *See infra* Part IV.E; Joint Broadcaster Opening Comments at 17-21. Moreover, the Section 112(a) exemption also contains the six-month destruction requirements found in Section 112(e), yet no services operating under that exemption have had to report the creation and destruction date of those copies. There is no reason to impose such a requirement for Section 112(e) when it is not required under Section 112(a).

**VI. AFM/AFTRA'S PROPOSAL THAT SERVICES IDENTIFY NONFEATURED ARTISTS IN ADDITION TO THE ELEVEN OTHER SOUND RECORDING IDENTIFYING FIELDS PROPOSED BY RIAA IS WHOLLY UNWORKABLE AND WILL BENEFIT NO ONE.**

Even if RIAA's deluge of information requests were not enough to drown the services in bookkeeping, AFM and AFTRA would seek to finish the job. AFM/AFTRA request that in addition to the numerous fields requested by RIAA, service should also be required to identify each and every nonfeatured musician and vocalist for each and every sound recording transmitted. *See* AFM/AFTRA Comments at 17-20. For a number of reasons, AFM/AFTRA's fantasy is wholly unworkable for either the Broadcasters or the performing artists.

First, the Broadcasters simply do not have this information for much of the music they play. *See, e.g.*, Tab C ¶ 4; Joint Broadcaster Opening Comments Tab B Exhs. 1-4. Requiring Broadcasters to see if they have the information would itself impose a burden that outweighs any possible benefit derived from such incomplete reports. Where they do have the information, requiring them to report it would multiply the already overbearing reporting burden sought by RIAA. While sound recordings typically feature only one artist, multiple nonfeatured artists usually are involved. For example, on an album extensively cited in AFTRA's own direct case in the nonsubscription services CARP proceeding – Jennifer Warnes' "Famous Blue Raincoat" – the songs "Bird on a Wire" and "A Singer Must Die" each list eleven nonfeatured artists. *See* Tab K hereto. Thus, instead of reporting the already staggering eleven data points proposed by RIAA for each of those sound recordings, Broadcasters would have to report a ludicrous twenty-two.

Similarly, for the famous song "Memory" from the "CATS" Broadway show, the liner notes list fully 23 background musicians, which would triple Broadcasters' reporting burden. And this does not even include the many background vocalists who sang on the soundtrack – if

Broadcasters performed a song with full orchestration and the show's company, such as "The Rum Tug Tugger," AFM/AFTRA's proposal would force them to report fully 52 data elements! See Tab L hereto.

Moreover, Broadcasters that have computerized systems would need to bear the expense of creating a field for this information capable of holding not one, but several different names. Many programs that Broadcasters use have field length limitations, and it is highly questionable whether a field capable of holding eleven or more names could even be created.

Nor is there any reason to believe that this huge potential reporting burden would confer any benefit upon nonfeatured vocalists and musicians ("nonfeatured performers"), even if services were able to report identities with relative completeness and accuracy. The relative value of the share paid to any individual nonfeatured performer for appearance on a particular recording that is performed, is likely to be small in comparison to the burden that would be imposed on the independent administrator for AFTRA, AFM, and the copyright owners to make a distribution based on actual performances. AFM/AFTRA themselves have acknowledged "the extremely small size of the non-featured artists' share in relation to the extremely large population of potentially entitled non-featured artists." See AFM/AFTRA Comments at 19-20. Taking the song "Bird on a Wire" as an example, there are eleven nonfeatured artists entitled to receive a performance royalty. The amount of money that these artists collectively will receive is only 5% of the performance royalty paid – or nine times less than the 45% share that Ms. Warnes herself will receive as the sole featured artist. When allocated among the eleven nonfeatured artists, each will receive only 1/99 of the royalty paid to Ms. Warnes for her feature



performance.<sup>11</sup> Similar calculations for "Memory" and "The Rum Tug Tugger" yield ratios of 1/207 and 1/468, respectively.<sup>12</sup>

Under these circumstances, AFTRA and AFM cannot rationally represent that their independent administrator will make payments based on actual performances. The only practical way for this pool of money to be distributed is on some other basis than precise identification of the nonfeatured artists with respect to each sound recording. This concept is not a new one. AFM, for example, has long employed a "Special Payments Fund" to award recording musicians "delayed compensation through which they benefit from the success of record sales." *See In Re Digital Performance Right in Sound Recordings and Ephemeral Recordings*, Docket No. 2001-9 CARP DTRA 1 & 2, Written Direct Testimony of Harold Ray Bradley at 12 (Apr. 6, 2001). As AFM's Vice-President in U.S. and Canada, Harold Ray Bradley, stated, "a musician does not receive payments tied to the particular success (or lack of it) of his or her own recordings. Rather, the benefits of the Fund are spread out among all musicians who have been active in the industry within the past five years, in accordance with a negotiated formula." *Id.* at 13.

AFM and AFTRA's independent administrator should devise a similar negotiated formula by which reasonably to distribute royalties to nonfeatured artists under the Sections 112 and 114 royalty schemes. Whatever the proxy chosen, it will certainly be a more cost-effective means of distributing royalties than achieving a perfect, one-to-one correspondence between non-featured artists and sound recordings transmitted. By dramatically reducing the administrative costs, AFM and AFTRA's independent administrator will benefit nonfeatured

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<sup>11</sup> Each nonfeatured artist would receive  $1/11 * 5\%$ , or .4545% of the royalties. That figure divided by 45% is .0101, or 1/99.

<sup>12</sup> For "Memory," each nonfeatured artist would receive  $1/23 * 5\%$ , or .2174% of the royalties. That figure divided by 45% is .00483, or 1/207. For "The Rum Tug Tugger," each nonfeatured artist would receive  $1/52 * 5\%$ , or .09615% of the royalties. That figure divided by 45% is .002137, or 1/468.

artists as a whole by maximizing the total available distribution amount, thereby fulfilling its fiduciary duties to those artists.<sup>13</sup>

Finally, AFM/AFTRA argue that imposing this huge additional burden on the services is fair because the copyright owners and performers already have relieved the services of a significant burden by designating a centralized collection and distribution agent, which they were not required to do under Section 114(e), and that without such an agent, the services would have been required pursuant to Section 114(g)(2) to submit records of use “to *each copyright owner of each sound recording* that they perform” pursuant to Section 114(g)(2). *See* AFM/AFTRA Comments at 11 (emphasis added). AFM/AFTRA misread the law. Section 114(g) has nothing to do with the services’ reporting burden but rather imposes a burden on *copyright owners* to allocate 50% of their statutory license performance royalties to nonfeatured musicians (2.5%), nonfeatured vocalists (2.5%), and featured artists (45%). *See* 17 U.S.C. § 114(g)(2). Moreover, Section 114(e) deals only with designating common agents in connection with *negotiated* Section 114 statutory licenses and non-statutory licenses – not with statutory licenses established by a CARP. *See id.* § 114(e). For those licenses, designation of common agents is handled by the CARP itself, which is charged with setting *reasonable* rates and terms. *See id.* § 114(f)(2). Under any commonsense definition of “reasonable,” license terms would *not* include a requirement that services undertake the unmanageable burden of identifying, locating, and paying the thousands of copyright owners whose recordings they perform. Indeed, in the two Section 114 arbitration proceedings that have been held, both CARPs have designated common

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<sup>13</sup> If AFM and AFTRA believe it is necessary to identify each nonfeatured performer on a sound recording, they remain free to develop their own database of released sound recordings working with RIAA or the record companies. Once the performers on a given recording are identified, identification by a service of featured artist and title, which permits identification of the sound recording, will, in the great majority of cases, permit identification of the nonfeatured artists.

agents to collect and distribute statutory license royalties to ensure that the efficiencies commonly associated with a statutory license would be achieved. *See In re Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings*, Docket No. 96-5 CARP DSTR, 63 Fed. Reg. 25,394, 25,414 (1998); *In re Rate Setting for Digital Performance Right in Sound Recordings and Ephemeral Recordings*, Docket No. 2000-9 CARP DTRA 1 & 2, at 32-33 (Feb. 20, 2002).

In short, AFM/AFTRA's request to require services to report nonfeatured artist information is totally unworkable for both the services and the performing artists. AFM/AFTRA should devise a reasonable distribution alternative, perhaps similar to the manner in which AFM distributes its "Special Payments Fund" to ensure that nonfeatured artists actually receive their share of the performance royalties. To borrow from AFTRA's National Executive Director, "the non-featured artist shares are already so small, and the administrative burdens in distributing them are so extraordinary, that it is manifestly unfair" to require services to incur the huge administrative burdens to report this data when even if they did, the entire fund likely would get eaten up in the unions' administrative costs. *See In re Digital Performance Right in Sound Recordings and Ephemeral Recordings*, Docket No. 2000-9, AFM/AFTRA Rebuttal Case, Gregory J. Hessinger Written Rebuttal Test. at 9 (Oct. 4, 2001).

## **VII. PROPOSED NOTICE OF USE REQUIREMENTS**

Broadcasters agree with many of the comments the Copyright Office received concerning appropriate requirements by which services provide copyright owners with "reasonable notice" of their use of copyrighted works. For example, Broadcasters agree with College and University Radio Broadcasters that "reasonable notice" does not signify a series of administrative hurdles that serve as traps for unwary services. *See Joint Comments of College and University Radio Broadcasters Webcasting Under Statutory License* at 5-6 (Apr. 5, 2002) ("Joint College Radio

Comments”). Very few broadcast entities are large enough to have the benefit of retained copyright counsel. Thus, the hurdles to be met should be just as navigable by volunteer station managers as they are by Washington lawyers. For this reason, Broadcasters emphatically support the following simplified requirements:

- There should be a single standard form for both the Section 114 license and the Section 112 license, as the Copyright Office has proposed and the College and University Radio Broadcasters have supported. 67 Fed. Reg. at 5762; Joint College Radio Comments at 5-6. The form should indicate the license(s) sought by the service – Section 114 and/or Section 112 – and the types of transmissions for which the service seeks a license, as the Copyright Office has proposed. 67 Fed. Reg. at 5762.
- The form should be accompanied by an explanation containing both the actual statutory definitions of the various license types and a plain English explanation of how those definitions are applied to the services, to allow unrepresented services to comply with ease. See Joint College Radio Comments at 6; see also Comments of Collegiate Broadcasters, Inc. at 6 (Apr. 4, 2002).
- Services should be allowed the alternative to file the Notice and any subsequent updates via the Internet, as Collegiate Broadcasters, Inc. and the Joint College Radio group have proposed, and the Copyright Office should generate an automated return receipt as proof of filing. See *id.* at 6-7; Joint College Radio Comments at 8. As the administrative burden is greatly lessened with electronic filing, and to encourage the most efficient methods of filing, any filing fee should be waived for Services that take advantage of electronic filing.
- The form should be directly filed with the Copyright Office, which unquestionably should continue the practice of posting the Notices on the Internet so that all copyright owners have access to them – this is one of the few points on which Broadcasters and RIAA agree. See RIAA Comments at 20-21. As RIAA points out, the information on the forms should be readily available to all copyright owners, not just those represented that have a Washington, DC presence. RIAA Comments at 20.

Related to this last point, Broadcasters oppose transferring the governmental function of maintaining Notices of Use to private parties, again in accord with RIAA’s and many others’ view. See, e.g., RIAA Comments at 22-23. Broadcasters disagree with RIAA, however, that they also should be required simultaneously to serve Notices of Use on the collection and distribution agents in addition to the Copyright Office. Requiring such service by certified or

registered mail to additional entities serves as just another red tape trap and will just make it more difficult for average Broadcasters who are not Washington insiders to navigate this proposed requirement successfully. See RIAA Exh. A at proposed § 201.35(e). Moreover, if the Copyright Office makes the notices available in electronic form through the Internet, there are no efficiencies created by having services file duplicate forms with additional entities. Rather, the collection and distribution agents can simply visit the Copyright Office's website to view those forms.

Broadcasters disagree even more strongly with RIAA's proposal to have the services foot the bill – including “rent, utilities, cleaning services, taxes, filing expenses, security and equipment rental” – if the Copyright Office does require the collection and distribution agents to collect and make available to the public the Notice of Use. RIAA Comments at 26-27. There is no reason and no authority whatsoever to force *services* to pay for the costs of making forms available whose primary purpose is to benefit *copyright owners*.

Finally, Broadcasters do not object to re-filing Notices of Use to update the Copyright Office's records, as the Copyright Office has proposed, or to filing Notices of Use every two years, on dates coincident with the renewal of the Sections 112 and 114 statutory licenses, so long as there is no recurring filing fee. See, e.g., Comments of Collegiate Broadcasters, Inc. at 6-7 (Apr. 4, 2002). Nor do Broadcasters object to updating these Notices 45 days after material changes to information listed on the form, as the Copyright Office has proposed. See 67 Fed. Reg. at 5762.

#### **VIII. BROADCASTERS' POSITIONS ON ADDITIONAL ISSUES RAISED BY OTHER COMMENTERS**

Based on Broadcasters' review of other comments submitted in this proceeding, Broadcasters also would like to direct the Copyright Office's attention to their position on a

number of other issues not previously covered in these comments or in Broadcasters' initial comments:

- Broadcasters support the inclusion of an express provision in the reporting requirements making clear that services are only responsible for reporting transmissions that are made pursuant to a statutory license. *See* DiMA Comments at 5. Services should *not* be responsible for submitting reports concerning performances that are exempt from the right or directly licensed – such performances are outside the scope of the license.
- Broadcasters support exempting noncommercial webcasters and broadcasters from the reporting requirements entirely if they have fewer than ten full-time employees, consistent with the apparent terms of the NPR agreement with RIAA. *See* Comments of Collegiate Broadcasters, Inc. at 3; Comments of the National Federation of Community Broadcasters, Inc. at 3 (Apr. 2, 2002); Comments of the Adventist Radio Broadcasters Association at 4 (Apr. 5, 2002).
- Broadcasters support an exemption from the reporting requirements altogether, or at least greatly reduced reporting requirements as described in their initial comments (at 61), for programming provided by third parties, which Broadcasters do not have the right or ability to control. *See* DiMA Comments at 7. As DiMA points out, such an exemption is consistent with the exemption that retransmitters receive from having to report textual information identifying particular sound recordings transmitted set forth in Section 114(d)(2)(C)(ix). *See id.*
- Broadcasters oppose RIAA's request that the Office require services to submit actual, rather than intended, playlists. *See* RIAA Comments at 36-38. Due to the huge variety of broadcasting practices described in Broadcasters' and others' initial comments, services should have the option to report based on either intended or actual performances.
- Broadcasters oppose RIAA's demand that no abbreviations be allowed in reporting. *See* RIAA Comments Exh. B at B-9. RIAA's request ignores that broadcasters have music information databases that have existed for years, many of which have limitations on the number of characters that can be entered into particular fields, which necessitated the use of abbreviations. Broadcasters should not be required to incur the substantial expenses of revamping their databases that have served them well for years to remove these abbreviations merely for the collecting and distribution agents' convenience.
- Broadcasters oppose RIAA's demand that service name should be provided on each and every line item just in case a collection and distribution agent splits up a services' data file into pieces. RIAA Comments at 47. Services should not have to incur the burden of reporting their name for each and every song transmitted – thousands of times per month – merely for the collecting entity's data processing convenience. If the collecting entity wants this as a line item, it can reformat the data itself. Although

RIAA claims (at 47) that Sound Exchange distributes royalties "on a service-by-service basis," a service's *name* has nothing to do with royalty collection or distribution for funds collected from Broadcasters, which are calculated on a per listener per song basis – only the transmission type determines the performance fee payable. There are only a handful of transmission types, and if a collection and distribution agent feels compelled to combine reports, then it can simply create a separate file for each transmission type.

CONCLUSION

For the foregoing reasons, the Copyright Office should replace its proposed recordkeeping requirements with those proposed by Broadcasters and attached as Exhibit A hereto.

Respectfully submitted,

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April 26, 2002

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A

## TAB A

### Proposed Amended Regulations

#### PART 201—GENERAL PROVISIONS

1. The authority citation for Part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

2. Sections 201.35 and 201.36 are revised to read as follows:

#### **§ 201.35 Notice of Use of Sound Recordings under Statutory License.**

(a) *General.* This section prescribes rules under which copyright owners shall receive reasonable notice of use of their sound recordings when used under either sections 112(e) or 114(d)(2) of title 17 of the United States Code, or both.

(b) *Definitions.*

(1) A *Notice of Use of Sound Recordings under Statutory License* is a written notice to sound recording copyright owners of the use of their works under section 114(d)(2) or section 112(e) of title 17 of the United States Code, or both, and is required under this section to be filed by a Service in the Copyright Office.

(2) A *Service* is an entity engaged in either the digital transmission of sound recordings pursuant to section 114(d)(2) of title 17 of the United States Code or making ephemeral phonorecords of sound recordings pursuant to section 112(e) of title 17 of the United States Code or both. [For purposes of this section, the definition of a service includes an entity that transmits an AM/FM broadcast signal over a digital communications network such as the Internet, regardless of whether the transmission is made by the broadcaster that originates the AM/FM signal or by a third party, provided that such transmission meets the applicable requirements of the statutory license set forth in 17 U.S.C. 114(d)(2).]<sup>1</sup> A Service may be further characterized as either a preexisting subscription service, preexisting satellite digital audio radio service, new subscription service, non-subscription transmission service or a combination of those:

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<sup>1</sup> A dispute on this issue is pending in the United States Court of Appeals for the Third Circuit. See *Bonneville Int'l Corp. v. Peters*, 153 F. Supp. 2d 763 (E.D. Pa. 2001), *appeal docketed*, No. 01-3720 (3d Cir. Oct. 1, 2001). Broadcasters maintain their view that the bracketed sentence and other provisions relating to AM/FM webcasts should be deleted. These proposed regulations are submitted without prejudice to their position on that issue.

- (i) *A preexisting subscription service* is a service that performs sound recordings by means of noninteractive audio-only subscription digital audio transmissions, which was in existence and was making such transmissions to the public for a fee on or before July 31, 1998, and may include a limited number of sample channels representative of the subscription service that are made available on a nonsubscription basis in order to promote the subscription service.
- (ii) *A preexisting satellite digital audio radio service* is a subscription satellite digital audio radio service provided pursuant to a satellite digital audio radio service license issued by the Federal Communications Commission on or before July 31, 1998, and any renewal of such license to the extent of the scope of the original license, and may include a limited number of sample channels representative of the subscription service that are made available on a nonsubscription basis in order to promote the subscription service.
- (iii) *A new subscription service* is a service that performs sound recordings by means of noninteractive subscription digital audio transmissions and that is not a preexisting subscription service or a preexisting satellite digital audio radio service.
- (iv) *A non-subscription transmission service* is a service that makes noninteractive nonsubscription digital audio transmissions that are not exempt under subsection 114(d)(1) and are made as part of a service that provides audio programming consisting, in whole or in part, of performances of sound recordings, including transmissions of broadcast transmissions, if the primary purpose of the service is to provide to the public such audio or other entertainment programming, and the primary purpose of the service is not to sell, advertise, or promote particular products or services other than sound recordings, live concerts, or other music-related events.

(c) *Forms and content.* A Notice of Use of Sound Recordings under Statutory License shall be prepared on a form that may be obtained from the Copyright Office website or from the Licensing Division, and shall include the following information:

- (1) The full legal name of the Service that is either commencing digital transmission of sound recordings or making ephemeral phonorecords of sound recordings under statutory license or doing both.
- (2) The full address, including a specific number and street name or rural route, of the place of business of the Service. A post office box or similar designation will not be sufficient except where it is the only address that can be used in that geographic location.

- (3) The telephone number and facsimile number of the Service.
- (4) Information on how to gain access to the online website or home page of the Service, or where information may be posted under this section concerning the use of sound recordings under statutory license.
- (5) Identification of each license under which the Service intends to operate, including the identification of each of the following categories under which the Service will be making digital transmissions of sound recordings: preexisting subscription service, preexisting satellite digital audio radio service, new subscription service and non-subscription transmission service.
- (6) The date or expected date of the initial digital transmission of a sound recording to be made under the section 114 statutory license and/or the date or the expected date of the initial use of the section 112(e) license for the purpose of making ephemeral recordings of the sound recordings.
- (7) Identification of any amendments required by paragraph (f) of this section.

(d) *Signature.* The Notice shall include the signature of the appropriate officer or representative of the Service that is either transmitting sound recordings or making ephemeral phonorecords of sound recordings under statutory license or doing both. The signature shall be accompanied by the printed or typewritten name and the title of the person signing the Notice, and by the date of the signature. For Notices filed via the Internet pursuant to subsection (e), electronic signatures are permissible.

(e) *Filing notices; Fees.* The original Notice and three copies shall be filed with the Licensing Division of the Copyright Office, and shall be accompanied by the filing fee set forth in § 201.3(c) of this part. The Copyright Office will also post a form of Notice on its website, which Services may complete and submit via the Copyright Office website. The Copyright Office will generate an automated receipt for website submissions. For Notices filed via the Copyright Office website, only one submission need be made, and the filing fee shall be waived. Notices will be placed in the public records of the Licensing Division and posted online where they will be accessible through the Copyright Office website. The address of the Licensing Division is: Library of Congress, Copyright Office, Licensing Division, 101 Independence Avenue, SE., Washington, DC 20557-6400.

- (1) A Service that, prior to [the effective date of the final rule], has already commenced making digital transmissions of sound recordings pursuant to section 114(d)(2) of title 17 of the United States Code or making ephemeral phonorecords of sound recordings pursuant to section 112(e) of title 17 of the United States Code, or both, and that has already filed an Initial Notice of Digital Transmission of Sound Recordings under Statutory License, and that intends to continue to make digital transmissions or ephemeral phonorecords following [the effective date of the final rule], shall file a Notice of Use of Sound Recordings under Statutory License either on-line at the Copyright Office website or with the

Licensing Division of the Copyright Office no later than 60 days following [the effective date of the final rule].

- (2) A Service that, on or after [the effective date of the final rule], commences making digital transmissions and ephemeral phonorecords of sound recordings under statutory license shall file a Notice of Use of Sound Recordings under Statutory License either on-line at the Copyright Office website or with the Licensing Division of the Copyright Office no later than 60 days after the making of the first ephemeral phonorecord of the sound recording and no later than 60 days after the first digital transmission of the sound recording.
- (3) A Service that, on or after [the effective date of the final rule], commences making only ephemeral phonorecords of sound recordings, shall file a Notice of Use of Sound Recordings under Statutory License either on-line at the Copyright Office website or with the Licensing Division of the Copyright Office no later than 60 days after the making of the first ephemeral recording under the statutory license.

(f) *Amendment.* A Service shall file a new Notice of Use of Sound Recordings under Statutory License within 45 days after any of the information contained in the Notice on file with the Licensing Division has changed materially, and shall indicate in the space provided on the form provided by the Copyright Office that the Notice is an amended filing. The Licensing Division shall retain copies of all prior Notices filed by the Service.

#### **§ 201.36 Report of Use of Sound Recordings under Statutory License.**

(a) *General.* This section prescribes rules under which Services shall provide copyright owners with reports of use of their sound recordings under either section 112(e) or section 114(d)(2) of title 17 of the United States Code, or both.

(b) *Definitions.*

- (1) A *Report of Use of Sound Recordings under Statutory License* ("Report of Use") is a report required under this section to be provided by a Service that is transmitting sound recordings under statutory license.
- (2) A *Service* shall have the same definition as provided in § 201.35(b)(2) of this part.
- (3) An *AM/FM Webcast* is a transmission made by an entity that transmits an AM/FM broadcast signal over a digital communications network such as the Internet, regardless of whether the transmission is made by the broadcaster that originates the AM/FM signal or by a third party.
- (4) A *Collective* is a collection and distribution organization that is designated under one or both of the statutory licenses, either by settlement agreement reached under section 112(e)(3), section 112(e)(6), section 114(f)(1)(A), section 114(f)(1)(C)(i),

section 114(f)(2)(A), or section 114(f)(2)(C)(i) and adopted pursuant to 37 CFR 251.63(b), or by an order of the Librarian pursuant to 17 U.S.C. 802(f).

- (5) An *Incidental Performance* is a performance that both (i) makes no more than incidental use of sound recordings including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey announcements, brief performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events and (ii) other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording for more than thirty seconds (as in the case of a sound recording used as a theme song).

(c) *Delivery.* Reports of Use shall be delivered to Collectives designated under the applicable statutory license that are identified in the records of the Licensing Division of the Copyright Office as having been designated under the statutory license, either by settlement agreement reached under section 112(e)(3), section 112(e)(6), section 114(f)(1)(A), section 114(f)(1)(C)(i), section 114(f)(2)(A), or section 114(f)(2)(C)(i) and adopted pursuant to 37 CFR 251.63(b), or by decision of a Copyright Arbitration Royalty Panel (CARP) under section 112(e)(4), section 112(e)(6), section 114(f)(1)(B), section 114(f)(1)(C)(ii), section 114(f)(2)(B), or section 114(f)(2)(C)(ii) or by an order of the Librarian pursuant to 17 U.S.C. 802(f). Reports of Use shall be delivered, by certified or registered mail, by e-mail, or by other means if agreed upon by the respective Service and Collective, on or before the twentieth day after the close of each month, commencing with [the month succeeding the month in which the final rule becomes effective].

(d) *Posting.* In the event that no Collective is designated under the applicable statutory license, or if all designated Collectives have terminated collection and distribution operations, a Service transmitting sound recordings under statutory license shall post and make available online its Reports of Use. Services shall post their Reports of Use online on or before the 20th day after the close of each month, and make them available to all sound recording copyright owners for a period of 90 days. Services may limit a sound recording copyright owner's access to the Reports of Use solely to those portions that report transmissions of sound recordings in which that owner owns copyright. Services may require use of passwords for access to posted Reports of Use, but must make passwords available in a timely manner and free of charge or other restrictions. Services may predicate provision of a password upon:

- (1) Information relating to identity, location and status as a sound recording copyright owner; and
- (2) A "click-wrap" agreement (A) not to use information in the Report of Use for purposes other than royalty collection and royalty distribution, (B) not to disclose such information to any person, both without the express consent of the Service providing the Report of Use, and (C) to be bound by subsection (h) of this section.

(e) *Content.*

- (1) *Heading.* A "Report of Use of Sound Recordings under Statutory License" shall be identified as such by prominent caption or heading.
- (2) *Playlists.* For a Service making digital transmissions of sound recordings pursuant to a statutory license under 17 U.S.C. 114(d)(2), each report of use shall include either a Service's "Intended Playlist" or "Actual Playlist" for each channel on each day of the reported month.
  - (i) In the case of transmissions of sound recordings made pursuant to a statutory license under 17 U.S.C. 114(d)(2) by a Service that is a preexisting subscription service . . . [insert playlist requirements]
  - (ii) In the case of transmissions of sound recordings made pursuant to a statutory license under 17 U.S.C. 114(d)(2) by a Service that is a preexisting satellite digital audio radio service in the same transmission medium used by such Service on July 31, 1998, and any transmission, in whole or in part, of such transmission in any other medium . . . [insert playlist requirements].
  - (iii) In the case of transmissions of sound recordings made pursuant to a statutory license under 17 U.S.C. 114(d)(2) by a Service that is a new subscription service . . . [insert playlist requirements].
  - (iv) In the case of AM/FM webcasts, the Service shall provide an Intended or Actual Playlist, at the Service's option, for a period of no more than two weeks per calendar year. The Playlist shall identify the name of the Service or entity and the call letters of the broadcaster that originates the AM/FM signal. The Playlist shall also include a consecutive listing of every transmission (other than an Incidental Performance) of a recording during the reporting period and shall contain the following information:
    - (A)
      - (1) the sound recording title;
      - (2) the featured recording artist, group, or orchestra; and
      - (3) the date of transmission.
    - (B) In the case of programming provided by third parties to a Service transmitting AM/FM Webcasts, the Service shall make good faith efforts to cause such third parties to furnish the information provided in paragraphs (e)(2)(iv)(A)(1)-(2) of this section; however, the Service may provide the Collectives with such information without review or modification, and such delivery

shall constitute performance by the Service of their reporting obligations hereunder with respect to that programming.

(C) In the case of AM/FM Webcasts of news, talk, and sports-formatted stations and other similarly formatted stations, no Playlist requirements shall apply. Rather, the Service and the Collective(s) shall agree upon commercially reasonable estimates of the sound recordings performed in those webcasts.

(v) In the case of all other Services not covered by paragraphs (e)(2)(i)-(iv) of this section . . . .

(3) *Listenership Data.*

(i) In the case of transmissions of sound recordings made pursuant to a statutory license under 17 U.S.C. 114(d)(2) by a Service that is a preexisting subscription service . . . [insert listenership reporting requirements, if any]

(ii) In the case of transmissions of sound recordings made pursuant to a statutory license under 17 U.S.C. 114(d)(2) by a Service that is a preexisting satellite digital audio radio service in the same transmission medium used by such Service on July 31, 1998, and any transmission, in whole or in part, of such transmission in any other medium . . . [insert listenership reporting requirements, if any].

(iii) In the case of transmissions of sound recordings made pursuant to a statutory license under 17 U.S.C. 114(d)(2) by a Service that is a new subscription service . . . [insert listenership reporting requirements, if any].

(iv) In the case of AM/FM webcasts, a Service shall report its average number of concurrent listeners during the two weeks for which the Service is required to submit a Playlist under subsection (e)(2)(iv) of this section using any measure reasonably calculated to provide such measure of average concurrent listeners. Such methods may include, without limitation, a direct measure of average concurrent listeners or a measure of aggregate tuning hours ("ATH") combined with the number of hours during such reporting period that such transmissions were available.

(v) In the case of all other Services not covered by subsections (e)(3)(i)-(iv) of this section . . . [insert listenership reporting requirements, if any].

(f) *Signature.* Reports of Use shall include a signed statement by the appropriate officer or representative of the Service attesting, under penalty of perjury, that the information contained in the Report is believed to be accurate and is maintained by the Service in its ordinary course of business. The signature shall be accompanied by the printed or typewritten name and title of the



person signing the Report, and by the date of signature. For Reports of Use filed via e-mail pursuant to paragraph (c) of this section, electronic signatures are permissible.

(g) *Format.* Reports of Use should be provided on a standard machine-readable medium, such as diskette, optical disc, or magneto-optical disc if the Service is reasonably technologically capable of doing so. For Services without the technical capability to submit machine-readable reports, manual Reports of Use shall be permissible.

(h) *Confidentiality.*

(i) *Access.* If one or more Collectives have been designated under the applicable statutory license, access to information in the Reports of Use shall be restricted to (1) those employees, agents, consultants and independent contractors of the Collectives, subject to an appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder, who are not also employees or officers of a copyright owner or performer, and who, for the purpose of performing such duties during the ordinary course of employment, require access to the information; (2) independent and qualified auditors, subject to an appropriate confidentiality agreement; and (3) in connection with a *bona fide* fee dispute, subject to an appropriate confidentiality agreement, outside counsel, consultants, and other authorized agents of the parties to the dispute, and the courts. In the event that no Collective is designated under the applicable statutory license, or if all designated Collectives have terminated collection and distribution operations, a sound recording copyright owner, subject to an appropriate confidentiality agreement, also may have access to (a) those portions of the Reports of Use that report transmissions of sound recordings in which that owner owns copyright or (b) at the Service's option, in lieu of providing partial access, the complete Reports of Use.

(ii) *Use.* Copyright owners their Collectives and all other persons entitled to access Reports of Use pursuant to subsection (i) of this section shall not disseminate information in the Reports of Use to any persons not entitled to it. Copyright owners and their Collectives shall not utilize the information for purposes other than royalty collection and distribution, without express consent of the Service providing the Report of Use. Copyright owners and their Collectives shall implement procedures to safeguard all confidential information in the Reports of Use using a reasonable standard of care, but no less than the same degree of security used to protect confidential information belonging to such copyright owners or Collectives.

(i) *Documentation.* All statutory licensees shall, for a period of at least three months from the date of service or posting of the Report of Use, keep and retain a copy of the Report of Use. For reporting periods from February 1, 1996, through the effective date of the final rule, the Service shall serve upon all designated Collectives and retain for a period of six months from the effective date of the final rule records of use to the extent available, indicating which sound recordings were performed and ATH data for those transmissions, but is not required to produce full Reports of Use or Intended Playlists for those periods.

(j) *Good Faith Errors.* Good faith reporting errors or inadequacies will not deprive a Service of a statutory license nor subject the Service to other penalties. In the event of a good faith reporting error identified by a Collective, the Service and the Collective shall cooperate to resolve such error.

(k) *Transition Period.* During the one-year period commencing on [the effective date of the final rule], the reporting obligation on a Service shall be limited to making commercially reasonable efforts to provide the information required in this Section.

3. Section 201.37 (a) and (b) are revised to read as follows:

**§ 201.37 Designated Collective.**

(a) *General.* This section prescribes rules governing a Collective designated to collect and distribute statutory royalties for use of the statutory licenses set forth in sections 112(e) and 114(d)(2) of title 17 of the United States Code.

(b) *Definitions.* (1) A Collective shall have the same definition as provided in § 201.36(b)(4) of this part.

(2) A Service shall have the same definition as provided in § 201.35(b)(2) of this part.

**B**

## TAB B

### Redline of Proposed Amended Regulations

#### PART 201—GENERAL PROVISIONS

1. The authority citation for Part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

2. Sections 201.35 and 201.36 are revised to read as follows:

#### § 201.35 Notice of Use of Sound Recordings under Statutory License.

(a) *General.* This section prescribes rules under which copyright owners shall receive reasonable notice of use of their sound recordings when used under either sections 112(e) or 114(d)(2) of title 17 of the United States Code, or both.

(b) *Definitions.*

(1) A *Notice of Use of Sound Recordings under Statutory License* is a written notice to sound recording copyright owners of the use of their works under section 114(d)(2) or section 112(e) of title 17 of the United States Code, or both, and is required under this section to be filed by a Service in the Copyright Office.

(2) A *Service* is an entity engaged in either the digital transmission of sound recordings pursuant to section 114(d)(2) of title 17 of the United States Code or making ephemeral phonorecords of sound recordings pursuant to section 112(e) of title 17 of the United States Code or both. [For purposes of this section, the definition of a service includes an entity that transmits an AM/FM broadcast signal over a digital communications network such as the Internet, regardless of whether the transmission is made by the broadcaster that originates the AM/FM signal or by a third party, provided that such transmission meets the applicable requirements of the statutory license set forth in 17 U.S.C. 114(d)(2).]<sup>1</sup> A Service may be further characterized as either a preexisting subscription service, preexisting satellite digital audio radio service, new subscription service, non-subscription transmission service or a combination of those:

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<sup>1</sup> A dispute on this issue is pending in the United States Court of Appeals for the Third Circuit. See *Bonneville Int'l Corp. v. Peters*, 153 F. Supp. 2d 763 (E.D. Pa. 2001), appeal docketed, No. 01-3720 (3d Cir. Oct. 1, 2001). Broadcasters maintain their view that the bracketed sentence and other provisions relating to AM/FM webcasts should be deleted. These proposed regulations are submitted without prejudice to their position on that issue.

(i) A *preexisting subscription service* is a service that performs sound recordings by means of noninteractive audio-only subscription digital audio transmissions, which was in existence and was making such transmissions to the public for a fee on or before July 31, 1998, and may include a limited number of sample channels representative of the subscription service that are made available on a nonsubscription basis in order to promote the subscription service.

(ii) A *preexisting satellite digital audio radio service* is a subscription satellite digital audio radio service provided pursuant to a satellite digital audio radio service license issued by the Federal Communications Commission on or before July 31, 1998, and any renewal of such license to the extent of the scope of the original license, and may include a limited number of sample channels representative of the subscription service that are made available on a nonsubscription basis in order to promote the subscription service.

(iii) A *new subscription service* is a service that performs sound recordings by means of noninteractive subscription digital audio transmissions and that is not a preexisting subscription service or a preexisting satellite digital audio radio service.

(iv) A *non-subscription transmission service* is a service that makes noninteractive nonsubscription digital audio transmissions that are not exempt under subsection 114(d)(1) and are made as part of a service that provides audio programming consisting, in whole or in part, of performances of sound recordings, including transmissions of broadcast transmissions, if the primary purpose of the service is to provide to the public such audio or other entertainment programming, and the primary purpose of the service is not to sell, advertise, or promote particular products or services other than sound recordings, live concerts, or other music-related events.

(c) *Forms and content.* A Notice of Use of Sound Recordings under Statutory License shall be prepared on a form that may be obtained from the Copyright Office website or from the Licensing Division, and shall include the following information:

(1) The full legal name of the Service that is either commencing digital transmission of sound recordings or making ephemeral phonorecords of sound recordings under statutory license or doing both.

(2) The full address, including a specific number and street name or rural route, of the place of business of the Service. A post office box or similar designation will not be sufficient except where it is the only address that can be used in that geographic location.

- (3) The telephone number and facsimile number of the Service.
- (4) Information on how to gain access to the online website or home page of the Service, or where information may be posted under this section concerning the use of sound recordings under statutory license.
- (5) Identification of each license under which the Service intends to operate, including the identification of each of the following categories under which the Service will be making digital transmissions of sound recordings: preexisting subscription service, preexisting satellite digital audio radio service, new subscription service and non-subscription transmission service.
- (6) The date or expected date of the initial digital transmission of a sound recording to be made under the section 114 statutory license and/or the date or the expected date of the initial use of the section 112(e) license for the purpose of making ephemeral recordings of the sound recordings.
- (7) Identification of any amendments required by paragraph (f) of this section.

(d) *Signature.* The Notice shall include the signature of the appropriate officer or representative of the Service that is either transmitting sound recordings or making ephemeral phonorecords of sound recordings under statutory license or doing both. The signature shall be accompanied by the printed or typewritten name and the title of the person signing the Notice, and by the date of the signature. For Notices filed via the Internet pursuant to subsection (e), electronic signatures are permissible.

(e) *Filing notices; Fees.* The original Notice and three copies shall be filed with the Licensing Division of the Copyright Office, and shall be accompanied by the filing fee set forth in § 201.3(c) of this part. The Copyright Office will also post a form of Notice on its website, which Services may complete and submit via the Copyright Office website. The Copyright Office will generate an automated receipt for website submissions. For Notices filed via the Copyright Office website, only one submission need be made, and the filing fee shall be waived. Notices will be placed in the public records of the Licensing Division and posted online where they will be accessible through the Copyright Office website. The address of the Licensing Division is: Library of Congress, Copyright Office, Licensing Division, 101 Independence Avenue, SE., Washington, DC 20557-6400.

(1) A Service that, prior to [the effective date of the final rule], has already commenced making digital transmissions of sound recordings pursuant to section 114(d)(2) of title 17 of the United States Code or making ephemeral phonorecords of sound recordings pursuant to section 112(e) of title 17 of the United States Code, or both, and that has already filed an Initial Notice of Digital Transmission of Sound Recordings under Statutory License, and that intends to continue to make digital transmissions or ephemeral phonorecords following [the effective date of the final rule], shall file a Notice of Use of Sound Recordings under Statutory License either on-line at the Copyright Office website or with the

Licensing Division of the Copyright Office no later than 60 days following [the effective date of the final rule].

(2) A Service that, on or after [the effective date of the final rule], commences making digital transmissions and ephemeral phonorecords of sound recordings under statutory license shall file a Notice of Use of Sound Recordings under Statutory License either on-line at the Copyright Office website or with the Licensing Division of the Copyright Office ~~prior to~~ no later than 60 days after the making of the first ephemeral phonorecord of the sound recording and ~~prior to~~ no later than 60 days after the first digital transmission of the sound recording.

(3) A Service that, on or after [the effective date of the final rule], commences making only ephemeral phonorecords of sound recordings, shall file a Notice of Use of Sound Recordings under Statutory License either on-line at the Copyright Office website or with the Licensing Division of the Copyright Office ~~prior to~~ no later than 60 days after the making of the first ephemeral recording under the statutory license.

(f) *Amendment.* A Service shall file a new Notice of Use of Sound Recordings under Statutory License within 45 days after any of the information contained in the Notice on file with the Licensing Division has changed materially, and shall indicate in the space provided on the form provided by the Copyright Office that the Notice is an amended filing. The Licensing Division shall retain copies of all prior Notices filed by the Service.

#### **§ 201.36 Report of Use of Sound Recordings under Statutory License.**

(a) *General.* This section prescribes rules under which Services shall ~~serve~~ provide copyright owners with reports of use of their sound recordings under either section 112(e) or section 114(d)(2) of title 17 of the United States Code, or both.

(b) Definitions.

(1) A *Report of Use of Sound Recordings under Statutory License* ("Report of Use") is a report required under this section to be provided by a Service that is ~~either transmitting sound recordings or making ephemeral phonorecords of sound recordings under statutory license or both.~~

(2) A *Service* shall have the same definition as provided in § 201.35(b)(2) of this part.

(3) An *AM/FM Webcast* is a transmission made by an entity that transmits an AM/FM broadcast signal over a digital communications network such as the Internet, regardless of whether the transmission is made by the broadcaster that originates the AM/FM signal or by a third party, ~~provided that such transmission meets the applicable requirements of the statutory license set forth in 17 U.S.C. 114(d)(2).~~

(4) A *Collective* is a collection and distribution organization that is designated under one or both of the statutory licenses, either by settlement agreement reached under section 112(e)(3), section 112(e)(6), section 114(f)(1)(A), section 114(f)(1)(C)(i), section 114(f)(2)(A), or section 114(f)(2)(C)(i) and adopted pursuant to 37 CFR 251.63(b), or by an order of the Librarian pursuant to 17 U.S.C. 802(f).

(5) An *Incidental Performance* is a performance that both (i) makes no more than incidental use of sound recordings including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey announcements, brief performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events and (ii) other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording for more than thirty seconds (as in the case of a sound recording used as a theme song).

(c) *Service Delivery*. Reports of Use shall be serve~~delivered~~ delivered ~~upon~~ to Collectives designated under the applicable statutory license that are identified in the records of the Licensing Division of the Copyright Office as having been designated under the statutory license, either by settlement agreement reached under section 112(e)(3), section 112(e)(6), section 114(f)(1)(A), section 114(f)(1)(C)(i), section 114(f)(2)(A), or section 114(f)(2)(C)(i) and adopted pursuant to 37 CFR 251.63(b), or by decision of a Copyright Arbitration Royalty Panel (CARP) under section 112(e)(4), section 112(e)(6), section 114(f)(1)(B), section 114(f)(1)(C)(ii), section 114(f)(2)(B), or section 114(f)(2)(C)(ii) or by an order of the Librarian pursuant to 17 U.S.C. 802(f). Reports of Use shall be serve~~delivered~~ delivered, by certified or registered mail, by e-mail, or by other means if agreed upon by the respective Service and Collective, on or before the twentieth day after the close of each month, commencing with [the month succeeding the month in which the final rule becomes effective].

(d) *Posting*. In the event that no Collective is designated under the applicable statutory license, or if all designated Collectives have terminated collection and distribution operations, a Service transmitting sound recordings under statutory license shall post and make available online its Reports of Use. Services shall post their Reports of Use online on or before the 20th day after the close of each month, and make them available to all sound recording copyright owners for a period of 90 days. Services may limit a sound recording copyright owner's access to the Reports of Use solely to those portions that report transmissions of sound recordings in which that owner owns copyright. Services may require use of passwords for access to posted Reports of Use, but must make passwords available in a timely manner and free of charge or other restrictions. Services may predicate provision of a password upon:

(1) Information relating to identity, location and status as a sound recording copyright owner; and



(2) A “click-wrap” agreement (A) not to use information in the Report of Use for purposes other than royalty collection, and royalty distribution, and determining compliance with statutory license requirements (B) not to disclose such information to any person, both without the express consent of the Service providing the Report of Use, and (C) to be bound by subsection (h) of this section.

(e) *Content.*

(1) *Heading.* A “Report of Use of Sound Recordings under Statutory License” shall be identified as such by prominent caption or heading.

(2) *Intended Playlists.* For a Service making digital transmissions of sound recordings pursuant to a statutory license under 17 U.S.C. 114(d)(2), each report of use shall include either a Service’s “Intended Playlists” Playlist or “Actual Playlist” for each channel on each day of the reported month.

(i) In the case of transmissions of sound recordings made pursuant to a statutory license under 17 U.S.C. 114(d)(2) by a Service that is a preexisting subscription service . . . [insert playlist requirements]

(ii) In the case of transmissions of sound recordings made pursuant to a statutory license under 17 U.S.C. 114(d)(2) by a Service that is a preexisting satellite digital audio radio service in the same transmission medium used by such Service on July 31, 1998, and any transmission, in whole or in part, of such transmission in any other medium . . . [insert playlist requirements].

(iii) In the case of transmissions of sound recordings made pursuant to a statutory license under 17 U.S.C. 114(d)(2) by a Service that is a new subscription service . . . [insert playlist requirements].

(iv) In the case of AM/FM webcasts, the Service shall provide an Intended or Actual Playlist, at the Service’s option, for a period of no more than two weeks per calendar year. The Playlist shall identify the name of the Service or entity and the call letters of the broadcaster that originates the AM/FM signal. The Playlist shall also include a consecutive listing of every transmission (other than an Incidental Performance) of a recording during the reporting period and shall contain the following information:

(A) (1) the sound recording title;

(2) the featured recording artist, group, or orchestra; and

(3) the date of transmission.

(B) In the case of programming provided by third parties to a Service transmitting AM/FM Webcasts, the Service shall make good faith efforts to cause such third parties to furnish the information provided in paragraphs (e)(2)(iv)(A)(1)-(2) of this section; however, the Service may provide the Collectives with such information without review or modification, and such delivery shall constitute performance by the Service of their reporting obligations hereunder with respect to that programming.

(C) In the case of AM/FM Webcasts of news, talk, and sports-formatted stations and other similarly formatted stations, no Playlist requirements shall apply. Rather, the Service and the Collective(s) shall agree upon commercially reasonable estimates of the sound recordings performed in those webcasts.

(v) In the case of all other Services not covered by paragraphs (e)(2)(i)-(iv) of this section . . . .

(3) *Listenership Data.*

(i) In the case of transmissions of sound recordings made pursuant to a statutory license under 17 U.S.C. 114(d)(2) by a Service that is a preexisting subscription service . . . [insert listenership reporting requirements, if any]

(ii) In the case of transmissions of sound recordings made pursuant to a statutory license under 17 U.S.C. 114(d)(2) by a Service that is a preexisting satellite digital audio radio service in the same transmission medium used by such Service on July 31, 1998, the "Intended Playlists" shall include a consecutive listing of every recording scheduled to be transmitted, and shall contain the following information in the following order: any transmission, in whole or in part, of such transmission in any other medium . . . [insert listenership reporting requirements, if any].

\_\_\_\_\_ (A) The name of the Service or entity;

\_\_\_\_\_ (B) The channel;

\_\_\_\_\_ (C) The sound recording title;

\_\_\_\_\_ (D) The featured recording artist, group, or orchestra;

\_\_\_\_\_ (E) The retail album title (or, in the case of compilation albums created for commercial purposes, the name of the retail album identified by the Service for purchase of the sound recording);

\_\_\_\_\_ (F) The recording label;

\_\_\_\_\_ (G) The catalog number;

\_\_\_\_\_ (H) The International Standard Recording Code (ISRC) embedded in the sound recording, where available and feasible;

(I) ~~The date of transmission; and~~ iii) In the case of transmissions of sound recordings made pursuant to a statutory license under 17 U.S.C. 114(d)(2) by a Service that is a new subscription service . . . [insert listenership reporting requirements, if any].

(J) ~~The time of transmission.~~ iv) In the case of AM/FM webcasts, a Service shall report its average number of concurrent listeners during the two weeks for which the Service is required to submit a Playlist under subsection (e)(2)(iv) of this section using any measure reasonably calculated to provide such measure of average concurrent listeners. Such methods may include, without limitation, a direct measure of average concurrent listeners or a measure of aggregate tuning hours ("ATH") combined with the number of hours during such reporting period that such transmissions were available.

(iiy) In the case of all other Services not covered by paragraph subsections (e)(2)(i)-(iv) of this section, that are transmitting sound recordings pursuant to a statutory license under 17 U.S.C. 114(d)(2), the "Intended Playlists" shall include a consecutive listing of every recording scheduled to be transmitted, or [insert listenership reporting requirements, if transmissions are not scheduled in advance, every recording actually transmitted, and shall contain the following information in the following order: [[Page 5766 any]].

\_\_\_\_\_ (A) The name of the Service or entity;

\_\_\_\_\_ (B) The channel or program; or in the case of an AM/FM Webcast, the station identifier used by the Service, including the band designation and the FCC facility identification number of the broadcast station that is transmitted; provided that if a program is generated as a random list of sound recordings from a predetermined list, the channel or program must be a unique identifier differentiating each user's randomized playlist from all other users' randomized playlists;

\_\_\_\_\_ (C) The type of program: "A" (for an "archived program" as defined section 114(j)(2)), "L" (for "looped" if the program is a "continuous program" as defined in section 114(j)(4)), "V" (for "live" if the program is transmitted substantially at the

time it is first performed in its entirety), or "PS" (for "prescheduled" if the program is an identifiable program transmitted at times that have been publicly announced in advance);

\_\_\_\_\_ (D) For programs other than archived programs, the date of transmission;

\_\_\_\_\_ (E) For programs other than archived programs, the time of transmission of the sound recording;

\_\_\_\_\_ (F) The time zone of the place from which the transmission originated (as an offset from Greenwich Mean Time);

\_\_\_\_\_ (G) For archived programs, the numeric designation of the place of the sound recording within the order of the program;

\_\_\_\_\_ (H) The duration of the transmission of the sound recording (to the nearest second);

\_\_\_\_\_ (I) The sound recording title;

\_\_\_\_\_ (J) The International Standard Recording Code (ISRC) embedded in the sound recording, where available and feasible;

\_\_\_\_\_ (K) The release year identified in the copyright notice on the album and, in the case of compilation albums created for commercial purposes, the release year identified in the copyright notice for the individual track;

\_\_\_\_\_ (L) The featured recording artist, group, or orchestra;

\_\_\_\_\_ (M) The retail album title (or, in the case of compilation albums created for commercial purposes, the name of the retail album identified by the Service for purchase of the sound recording);

\_\_\_\_\_ (N) The recording label;

\_\_\_\_\_ (O) The Universal Product Code of the retail album;

\_\_\_\_\_ (P) The catalog number;

\_\_\_\_\_ (Q) The copyright owner information provided in the copyright notice on the retail album (e.g., following the symbol "©")\* or, in the case of compilation albums created for commercial purposes, in the copyright notice for the individual track; and

\_\_\_\_\_ (R) The musical genre of the channel or program, or in the case of AM/FM-Webcast, the broadcast station format.

(3) *Listener's Log.* Except for a preexisting subscription Service, a Service that transmits sound recordings pursuant to a statutory license under 17 U.S.C. 114(d)(2) shall also include such Service's "Listener Log." The "Listener Log" shall contain the following information in the following order for each session during which a user is logged in to receive transmissions as part of the Service:

- (i) The name of the Service or entity;
- (ii) The channel or program, using an identifier corresponding to that in the Intended Playlist;
- (iii) The date and time that the user logged in (local time at user's location);
- (iv) The date and time that the user logged out (local time at the user's location);
- (v) The time zone of the place at which the user received transmissions (as an offset from Greenwich Mean Time);
- (vi) The unique user identifier assigned to a particular user or session; and
- (vii) The country in which the user received transmissions.

(4) *Ephemeral Phonorecord Log.* In the case of a Service that has made ephemeral phonorecords of sound recordings pursuant to a statutory license under 17 U.S.C. 112(e), the Service shall include an "Ephemeral Phonorecord Log." The "Ephemeral Phonorecord Log" shall contain the following information in the following order for each act of creation or destruction of ephemeral phonorecords of sound recordings under statutory license:

- (i) The name of the Service or entity;
- (ii) Whether the ephemeral phonorecord was created or destroyed;
- (iii) The date the ephemeral phonorecord was created or destroyed;
- (iv) The sound recording title;
- (v) The International Standard Recording Code (ISRC) embedded in the sound recording, where available and feasible;
- (vi) The release year identified in the copyright notice on the album and, in the case of compilation albums created for commercial purposes, the release year identified in the copyright notice for the individual track;

- \_\_\_\_\_ (vii) \_\_\_\_\_ The featured recording artist, group or orchestra;
- \_\_\_\_\_ (viii) \_\_\_\_\_ The retail album title (or, in the case of compilation albums created for commercial purposes, the name of the retail album identified by the Service for purchase of the sound recording);
- \_\_\_\_\_ (ix) \_\_\_\_\_ The recording label;
- \_\_\_\_\_ (x) \_\_\_\_\_ The catalog number;
- \_\_\_\_\_ (xi) \_\_\_\_\_ The Universal Product Code of the retail album;
- \_\_\_\_\_ (xii) \_\_\_\_\_ The copyright owner information provided in the copyright notice of the retail album (e.g. following the symbol "©")<sup>\*</sup> or, in the case of compilation albums created for commercial purposes, in the copyright notice for the individual track; and
- \_\_\_\_\_ (xiii) \_\_\_\_\_ The number of ephemeral phonorecords that were created or destroyed.

\_\_\_\_\_ (5) \_\_\_\_\_ *System failure.* The Report of Use shall include a report of any system failure resulting in a deviation from the Intended Playlists of scheduled sound recordings. Such report shall include the date, time and duration of any system failure.

(f) *Signature.* Reports of Use shall include a signed statement by the appropriate officer or representative of the Service attesting, under penalty of perjury, that the information contained in the Report is believed to be accurate and is maintained by the Service in its ordinary course of business. The signature shall be accompanied by the printed or typewritten name and title of the person signing the Report, and by the date of signature. For Reports of Use filed via e-mail pursuant to paragraph (c) of this section, electronic signatures are permissible.

(g) *Format.* Reports of Use should be provided on a standard machine-readable medium, such as diskette, optical disc, or magneto-optical disc, and should conform as closely as possible to if the following specifications: Service is reasonably technologically capable of doing so. For Services without the technical capability to submit machine-readable reports, manual Reports of Use shall be permissible.

\_\_\_\_\_ (1) \_\_\_\_\_ In the case of transmissions made as part of a Service that is a preexisting subscription Service in the same transmission medium used by such Service on July 31, 1998:

\_\_\_\_\_ (i) \_\_\_\_\_ ASCII delimited format, using pipe characters as delimiter, with no headers or footers;

\_\_\_\_\_ (ii) \_\_\_\_\_ Carats (<sup>carat</sup>) should surround strings;

\_\_\_\_\_ (iii) \_\_\_\_\_ No carats (<sup>carat</sup>) should surround dates and numbers;

~~(iv) Dates should be indicated by: MM/DD/YYYY;~~

~~(v) Times should be based on a 24-hour clock: HH:MM:SS;~~

~~(vi) A carriage return should be at the end of each line; and~~

~~(vii) All data for one record should be on a single line.~~

~~(2) In the case of all other Services not covered by paragraph (g)(1) of this section that are transmitting sound recordings pursuant to a statutory license under 17 U.S.C. 114(d)(2) and in the case of Ephemeral Phonorecord Logs:~~

~~(i) ASCII delimited format, using pipe characters as delimiter, with no headers or footers;~~

~~(ii) Field names should not be included as the first row of the file;[[Page 5767]]~~

~~(iii) Carats (<sup>caret</sup>) should surround strings;~~

~~(iv) No carats (<sup>caret</sup>) should surround dates and numbers;~~

~~(v) Dates and times should be indicated by: DMMYYYYhhmmss, where DD is the two-digit day of the log period; MM is the two-digit month of the log period; YYYY is the four-digit year of the log period; hh is the two-digit hour of the log period; mm is the two-digit minute of the log period; ss is the two-digit second of the log period; single-digit days, months, hours, minutes and second should be prepended with a zero; and times are local times using a 24-hour clock;~~

~~(vi) A carriage return should be at the end of each line;~~

~~(vii) All data for one record should be on a single line;~~

~~(viii) All data for each month and each log type should be contained in a single file;~~

~~(ix) Files may be compressed in ZIP or GZ format; and~~

~~(x) Files should be named Service Name\_Log Type\_MMYYYY, where Log Type should be Play List, Listener or Ephemeral.~~

(h) *Confidentiality.*

(i) Access. If one or more Collectives have been designated under the applicable statutory license, access to information in the Reports of Use shall be restricted to (1) those employees, agents, consultants and independent contractors of the Collectives, subject to an

appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder, who are not also employees or officers of a copyright owner or performer, and who, for the purpose of performing such duties during the ordinary course of employment, require access to the information; (2) independent and qualified auditors, subject to an appropriate confidentiality agreement; and (3) in connection with a bona fide fee dispute, subject to an appropriate confidentiality agreement, outside counsel, consultants, and other authorized agents of the parties to the dispute, and the courts. In the event that no Collective is designated under the applicable statutory license, or if all designated Collectives have terminated collection and distribution operations, a sound recording copyright owner, subject to an appropriate confidentiality agreement, also may have access to (a) those portions of the Reports of Use that report transmissions of sound recordings in which that owner owns copyright or (b) at the Service's option, in lieu of providing partial access, the complete Reports of Use.

(ii) Use. Copyright owners; their agents and Collectives and all other persons entitled to access Reports of Use pursuant to subsection (i) of this section shall not disseminate information in the Reports of Use to any persons not entitled to it. Copyright owners and their Collectives shall not utilize the information for purposes other than royalty collection and distribution, and determining compliance with statutory license requirements, without express consent of the Service providing the Report of Use. Copyright owners and their Collectives shall implement procedures to safeguard all confidential information in the Reports of Use using a reasonable standard of care, but no less than the same degree of security used to protect confidential information belonging to such copyright owners or Collectives.

~~(i)~~(i) Documentation. All statutory licensees shall, for a period of at least three years~~months~~ from the date of service or posting of the Report of Use, keep and retain a copy of the Report of Use. For reporting periods from February 1, 1996, through August 31, 1998, the effective date of the final rule, the Service shall serve upon all designated Collectives and retain for a period of three~~six~~ years~~months~~ from the effective date of transmission~~the final rule~~ records of use to the extent available, indicating which sound recordings were performed and the number of times each recording was performed~~ATH data for those transmissions, but is not required to produce full Reports of Use or Intended Playlists for those periods.~~

(j) Good Faith Errors. Good faith reporting errors or inadequacies will not deprive a Service of a statutory license nor subject the Service to other penalties. In the event of a good faith reporting error identified by a Collective, the Service and the Collective shall cooperate to resolve such error.

(k) Transition Period. During the one-year period commencing on [the effective date of the final rule], the reporting obligation on a Service shall be limited to making commercially reasonable efforts to provide the information required in this Section.

3. Section 201.37 (a) and (b) are revised to read as follows:



**§ 201.37 Designated Collective.**

(a) *General.* This section prescribes rules governing a Collective designated to collect and distribute statutory royalties for use of the statutory licenses set forth in sections 112(e) and 114(d)(2) of title 17 of the United States Code.

(b) *Definitions.* (1) A Collective shall have the same definition as provided in § 201.36(b)(4) of this part.

(2) A Service shall have the same definition as provided in § 201.35(b)(2) of this part.

**C**

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

In The Matter Of:	:	Docket No. RM 2002-1
Notice and Recordkeeping for	:	
Use of Sound Recordings	:	
Under Statutory License	:	

**Reply Statement of Brian Parsons, Clear Channel Communications, Inc.**

1. My name is Brian Parsons, and I am the Director of Technology for Clear Channel Radio Interactive, a division of Clear Channel Communications, Inc. ("Clear Channel"), headquartered in San Antonio, Texas. My background and experience, as well as information concerning Clear Channel, are described in the statement that I submitted in connection with Joint Radio Broadcasters' Comments to the above-captioned proceeding, which were filed on April 5, 2002. This statement is based on my personal knowledge and my discussions with other Clear Channel employees.

**RIAA's Sample Promotional CDs**

2. I have reviewed the ten promotional CDs that RIAA attached to its comments as Exhibit G. It is obvious that RIAA picked examples that contain more information than most of the promotional CDs that we receive from the labels. For example, each of those CDs identifies the catalog number – as I explained in my opening statement (¶ 8), the promotional CDs that we receive generally do not. Similarly, two of RIAA's examples contain UPC information, yet we almost never receive UPCs because RIAA does not want the promotional CDs sold. In addition, even though we often receive promotional CDs with as little information as title, artist, duration, and label information, such as Exhibits 2 and 3 to my original statement, not a single one of RIAA's sample promotional CDs contains as few pieces of information as that. The CDs provided by RIAA are extremely misleading. Very few promo CDs look like released CD singles.

3. RIAA does not even mention the many songs that its label members send to radio stations on CD-Rs. As I said in my original statement, about 50% of the music that we receive comes in this form, and these CD-Rs typically contain only title and artist information. If RIAA is implying that record labels generally send radio stations at least as much information concerning the music they are promoting as is shown in the promotional CDs attached to its comments, that has absolutely *not* been Clear Channel's experience. Rather, the only information that we receive 100% of the time is the song title and the featured artist(s).

4. I find AFM and AFTRA's proposal that stations identify nonfeatured vocalists and musicians particularly unbelievable. We virtually *never* receive this information on the promo CDs that the labels provide us, and we certainly don't receive it on the CD-Rs. And as far as I can tell from the difficult-to-read printouts of even RIAA's hand-picked, unrealistic sample promo CDs, only one out of the ten provided appears to identify nonfeatured artists. There is simply no way that radio stations will be able to hunt for this information, modify their software to include a field large enough to hold two, ten, twenty, or even more nonfeatured artist names, input these names into their systems in the rare cases where they are supplied, and report them. This would be a huge amount of wasteful, disruptive effort, particularly when the information necessarily will be nowhere near complete.

5. At any rate, use of professionally packaged promo CDs with lots of information is not where the radio and record industries are headed. The wave of the future is for record labels to provide music to radio stations in raw digital files, as at least one major label is already doing with us on an experimental basis. As I explained in my original statement (¶¶ 9-10), those files contain only song title and featured artist information. I expect that this will become the norm in the next few years. It is a natural evolution of business practices to streamline themselves.

#### **Burden of Inputting Available Information**

6. I was astonished to read that RIAA believes that "the requested information is almost always in the sole possession of the services, can be recorded by the services in the regular course of business, and will not create a material burden for the services." RIAA Comments at 65. I was even more surprised by RIAA's claim that "[d]etailed reporting would ... not appear to be a problem for many terrestrial broadcasters" because "many stations already use software and hardware that could be utilized to provide the data set forth in the proposed regulations." RIAA Comments at 42.

7. Even if the labels were to do a better job at getting us the information, it would still be a major undertaking and disruption to our regular business operations for us to track and report it. These requirements would affect almost every business unit within Clear Channel – that's what causes such a huge impact. Starting from the time that we receive a song from the labels, the employees that encode it and put it into the system, the station people that put it into their local system, the programming director that schedules the music, the production staff that plays the music, the business manager that would have to report on the music, and the accounting department that would have to audit and keep the records – all these units are affected and would have to staff up on people and build new information management systems – and that's just at the station level for each and every radio station. Despite RIAA's claims, its proposed recordkeeping requirements would have a tremendous impact to a business that despite its reputation doesn't have the substantial additional resources that it would take to give RIAA the data bonanza it seeks. Radio station budgets have been squeezed tighter and tighter since consolidation began in the mid-1990s.

8. As to radio stations' use of sophisticated software and hardware, RIAA flatters us. Most of the technology it speaks of is provided by partnerships with other companies that are treading water to stay afloat. The push of the broadcasters is just for the basic clearance to put our AM/FM signals over the Internet to our listeners who may be in buildings and unable to get a good radio signal. It is a difficult and expensive process, especially since last year's AFTRA problems, and revenue specifically from streaming has been meager and hard to come by. Any additional burden of expense or procedures will certainly give us pause and cause us to reconsider the business worth of continuing to stream our stations. RIAA's comments paint a picture of a radio station's systems as if they were a high-tech clean room with lights and buttons. In reality, most radio stations have older computers and older technologies spliced together by a skillful, and sometimes even unconventional, engineering and/or technical staff.

9. In short, RIAA's recordkeeping comments repeatedly illustrate either ignorance or deliberate disregard of the longstanding relationship that AM/FM broadcasters have with record labels as well as the business methods in practice between the two industries. Most broadcast radio stations are saddled with old technology, regulations, and a business paradigm that give us a major disadvantage on the Internet already. RIAA's proposed reporting requirements appear calculated to drive us off the Internet so RIAA's members can control not only music distribution but performance and media choices as well. Online music space needs to be protected now with regulations and legislation that support its development and fosters

competition. The Copyright Office should not support regulations that will have such anticompétitive results.

Date: April 26, 2002

A handwritten signature in cursive script that reads "Brian C. Parsons". The signature is written in black ink and is positioned above a horizontal line.

Brian Parsons

**D**

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

In The Matter Of:

Docket No. RM 2002-1

Notice and Recordkeeping for  
Use of Sound Recordings  
Under Statutory License

**Reply Statement of Rick McDonald, Susquehanna Radio Corp.**

1. My name is Rick McDonald, and I am the Senior Vice President of Programming for Susquehanna Radio Corp. My colleague, Dan Halyburton, explained in detail the operations of our radio group in his initial comments in this recordkeeping.

2. I oversee the programming for all of Susquehanna's radio stations, in every format, and review the selections made by the program directors of each station. I have worked in various positions with Susquehanna for 30 years, and the last 10 of those years were spent in my current position. I have also taught college-level courses in broadcasting. In all, I have worked in the broadcast industry for 36 years. I make this statement based upon my own personal knowledge and upon conversations I have had with several of my colleagues in various positions within Susquehanna.

3. I have reviewed the photocopied "New Release Catalogs" that RIAA attached as Exhibit H to its initial comments. In my 36 years in the radio industry, I have never seen new release catalogs like the ones RIAA references. In my experience as a Program Director, I do not recall ever receiving such catalogs at our stations. I am sure that if we ever did receive them, we did not retain them and they quickly found their way into the trash.

4. I do not know of any music directors or program directors who receive or rely upon new release catalogs. Our music directors are not using such catalogs to determine what music they play, and they are not using them to enter information about songs into their scheduling or automation software.



5. In response to RIAA's comments, Dan Halyburton and I informally polled several of our music directors and program directors to confirm our understanding. At KPLX – our Dallas country music station and the most-listened to country station in the United States – the music director (who was recently named Billboard's Music Director of the Year for country music) reported that he had never seen such a catalog. I received similar reports through conversations with our director of programming for all of Susquehanna Atlanta, the program director of WNNX in Atlanta, and program directors and music directors at our stations in Houston and San Francisco. Combined, these individuals have dozens of years of experience in the radio industry, in many cities, over many formats, and with many other radio station owners besides Susquehanna. To a person, none had ever heard of new release catalogs.

6. Because the radio industry does not currently receive these catalogs as far as I can determine, I believe it is unrealistic and unreasonable to expect radio stations to rely upon them to obtain information about the songs we play for reporting purposes. Dan Halyburton's statement has already explained the technical and practical reasons why tracking the information requested by RIAA is impossible in any event. The cost to the record labels of sending all of our stations these new release catalogs – when they do not already systematically do so – would no doubt outweigh the benefit of receiving some data back in the form of the reports that would be required under the proposed regulations. In my opinion, RIAA and the labels would better spend their money ensuring that their own – and in turn, the distribution agents' – databases are complete.

Date: \_\_\_\_\_

4/24/02



Rick McDonald  
Susquehanna Radio Corp.

**E**

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

In The Matter Of:

Notice and Recordkeeping for  
Use of Sound Recordings  
Under Statutory License

Docket No. RM 2002-1

**STATEMENT OF DAVID GRAUPNER, TM CENTURY, INC.**

1. My name is David Graupner, and I am President and Chief Executive Officer of TM Century, Inc. Among other services, TM Century provides music compilation discs to radio stations, television stations, Sirius Satellite Radio, and most major webcasters in the form of custom compilation compact discs. Our service reaches about 6,000 radio stations directly or indirectly; we have about 3,000 subscribers, many of which in turn syndicate their programming to other stations. More information about our company can be found at our website, [www.tmcentury.com](http://www.tmcentury.com).

2. Based upon promotional discs sent to us by the record labels and our own judgment about what the next hot new song will be, we create HitDisc weekly compilation CDs in several genres to send to our clients. We also make older songs available through our GoldDisc service. Over the more than 20 years that we have been providing compilation services, we have amassed a catalog of tens of thousands of songs. A sample HitDisc is attached as Exhibit 1 to this statement.

3. Our current song databases do not have the capability to track many of the fields in the proposed regulations, including catalog numbers, UPCs, ISRCs, or the copyright owner names or release years from a "P-line." Even for the fields we do track – i.e., artist, title, composer, music publisher, album title, marketing label, and performing rights organization – we can only enter the data the labels provide on the promotional discs. Those discs generally do not contain complete information. As a result, we often end up leaving fields blank or entering "Info not provided by record label." Album title in particular is a field that often is not populated. The promo CDs that we receive often do not identify the retail album title, and until recently we did

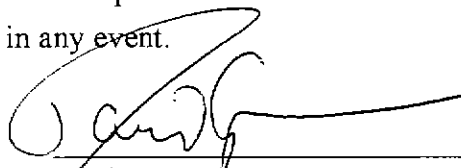
not track this information at all. To illustrate this point, I am attaching as Exhibit 2 to this statement two sample HitDisc compilation album lists. I have never seen or used a new release catalog, and we do not use such catalogs when entering song data.

4. While TM Century is not directly subject to the Notice and Recordkeeping requirements that have been proposed, our thousands of clients will be affected by the proposed rules. In turn, they will expect us to provide them with the information that they will be required to report about the songs that we send them. As I mentioned earlier, our present systems are not equipped to track or provide our clients with much of the information about each sound recording we distribute that they would need to report under the Copyright Office's current proposal.

5. We use custom software unique to TM Century to manage our data and, after some deliberation, have decided to make the necessary investment on a going-forward basis to alter our software to allow us to track additional fields in order to serve the needs of our clients more effectively. Still, for new songs, we can only populate those fields with data that is provided on the promotional CD. The tens of thousands of songs already entered into our system are a more difficult issue. We would be willing to populate the newly added fields in an electronic form with information the record labels provide us, so that we can import it directly into our database and so as to avoid errors from hand-keying data. But the burden would be too great to gather and enter so many different data items about songs we have had in our catalogs for many years, particularly because much of our promotional source material, in some cases vinyl LPs, does not have the information in any event.

Date: \_\_\_\_\_

4/25/02



David Graupner  
President & CEO  
TM Century, Inc.  
2002 Academy  
Dallas, TX 75234-9220

**1**



2. Do [unclear] on]
3. Pat [unclear]
4. Pres [unclear]
5. Home [unclear] Version]
6. No [unclear] Home [Edit]
7. St [unclear]
8. Cy [unclear] Of The West
9. N [unclear] [Edit]

AAA 11-19

by artist, title or keyword at  
[www.tmcenury.com](http://www.tmcenury.com)

10. Live [unclear] You So [Album Version]
11. Ru [unclear] The Unvers [unclear]
12. Sh [unclear] Gladrag [unclear]
13. G [unclear] The Sun
14. Black [unclear] Burns
15. Bob [unclear] [Edit]
16. Ru [unclear]
17. B [unclear]
18. [unclear]
19. [unclear]

More artist info at:  
www.tmcenury.com



453B  
3•22•02

HitDisc® 453B

AAA  
Alternative  
Mainstream Rock

- 2. Dokken .....Sunless Days [Radio Edit Version] .....:07/3:39/C/148  
CMC International • D.Dokken, J.Norman, K.Keeling • CMC International
- ✓ ✓ 3. Paul McCartney .....Lonely Road .....:09/3:12/C/120  
Capitol • P.McCartney • MPL Communications
- ✓ ✓ 4. Pressure 4-5 .....Melt Me Down .....:11/2:43/C/173  
DreamWorks • Pressure 4-5 • New Cell/EMI April • A
- ✓ ✓ 5. Home Town Hero .....Questions [Album Version] .....:19/2:10/C/137  
Maverick/Reprise • Home Town Hero • Favorite Time Of The Year/Don't Steal Mine/Big Bad Guy/Christians To The Lions/WB • A
- ✓ ✓ 6. Neil Young & Crazy Horse .....Goin' Home [Edit] .....:17/4:55/F/112  
Reprise • N.Young • Silver Fiddle • A
- ✓ 7. Strokes .....Hard To Explain .....:32/3:44/C/147  
Rough Trade • J. Casablancas • Warner Chappell
- ✓ 8. Cypress Hill & Roni Size .....Child Of The West [Amended Album Version] .....:25/4:07/C/149  
Immortal
- ✓ 9. N\*E\*R\*D .....Rockstar [Radio Edit] .....:00/3:46/C/095  
Virgin • P.Williams, C.Hugo • EMI Blackwood/EMI April/Chase Chad • AB
- ✓ 10. Hives .....Hate To Say I Told You So [Album Version] .....:35/3:19/C/133  
Gearhead Records RPM 024
- ✓ 11. Rufus Wainwright .....Across The Universe [Remix] .....:10/4:05/C/074  
V2 • J.Lennon, P.McCartney • Sony/ATV Songs LLC • B
- ✓ 12. Stereophonics .....Handbags And Gladraggs [Radio Edit] .....:22/4:15/C/068  
V2
- ✓ 13. Course Of Nature .....Caught In The Sun .....:24/4:40/C/081  
Atlantic • Mark Wilkerson • Copyright Control
- ✓ 14. Black Rebel Motorcycle Club .....Love Burns .....:24/3:18/F/060  
Virgin Records
- ✓ 15. Bob Mould .....SoundOnSound [Radio Edit] .....:18/3:14/C/110  
Red Ink • Granary
- ✓ 16. Rusted Root .....Welcome To My Party .....:21/3:45/C/097  
Island
- ✓ 17. Bob Dylan .....Honest With Me .....:07/5:35/F/137  
Columbia • B.Dylan • Sony • S
- ✓ 18. Tim Finn .....I'll Never Know .....:23/4:40/C/136  
Periscope • T.Finn • Rebel Larynx/Mushroom • B
- ✓ 19. Brendan Benson .....Tiny Spark .....:24/3:08/C/113  
Star Time • B.Benson, J.Falkner • Gladsad/Arthur Unknown • A

3  
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22  
•  
02



For broadcast only. Resale of this disc is illegal.



- 2. Dokk [Album Version]
- 3. Paul [Album Version]
- 4. Pressure [Album Version]
- 5. Home To [Album Version]
- 6. New York [Album Version]
- 7. Strong [Album Version]
- 8. Cypress [Album Version]
- 9. N.Y.C. [Album Version]

Artist: All: 3-10  
AAA 11-19

HitDisc and GoldDisc are available by artist title or keyword at [www.tmculture.com](http://www.tmculture.com)

[www.tmculture.com](http://www.tmculture.com)

- 10. Live [Album Version]
- 11. Run [Album Version]
- 12. Run [Album Version]
- 13. Run [Album Version]
- 14. Run [Album Version]
- 15. Run [Album Version]
- 16. Run [Album Version]
- 17. Run [Album Version]
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- 97. Run [Album Version]
- 98. Run [Album Version]
- 99. Run [Album Version]
- 100. Run [Album Version]



**2**

## HitDisc® 458A - released on 4/26/02

#	TITLE	ARTIST	ALBUM	IN	TIME	END	BPM
1	A Mother's Day	Brickman, Jim	Simple Things	:11	3:48	C	122
2	Star	Zoo Story	Info not provided by record label	:10	3:51	C	94
3	Inflatable [Radio Remix]	Bush	Info not provided by record label	:09	4:00	C	120
4	Steal My Heart Away	Morrison, Van	Down The Road	:10	4:18	C	123
5	I've Got You [Edit]	Anthony, Marc	Info not provided by record label	:19	3:54	C	117
6	Everybody's Got A Story [Radio Remix]	Marshall, Amanda	Everybody's Got A Story	:28	4:03	F	88
7	Days Go By	Dirty Vegas	Allstars 2002	:01	3:34	C	128
8	Hero [Radio Version]	Kroeger, Chad Feat. Josey Scott	O.S.T. Spiderman	:03	3:08	C	145
9	Gotta Get Thru This [D'N'D Radio Edit]	Bedingfield, Daniel	Info not provided by record label	:13	2:37	F	73
10	What We're All About [The Original Version]	Sum 41	O.S.T. Spider-Man	:12	3:31	C	107
11	Real Fonky Time [Original Radio Edit]	Dax Riders	Backintown	:17	3:32	C	108
12	Back Clap [Remix - Super Clean w/ Juvenile]	Project Pat Feat. Juvenile	Info not provided by record label	:00	3:46	C	113
13	Call Me [Album Version]	Tweet	Info not provided by record label	:01	2:55	C	82
14	Just A Friend [Radio Edit]	Mario	Info not provided by record label	:00	3:31	C	125
15	2 Way [Main]	Lil' Romeo Feat. Master P	Game Time	:02	3:41	C	113
16	The First Time	Corey	I'm Just Corey	:31	5:16	C	61
17	The What If's [Radio Edit]	Wright, Jaguar	Denials Delusions & Decisions	:11	3:32	F	86
18	Across The Stars [With Dialogue And Movie Clips]	Williams, John & London Symphony Orch.	Star Wars Ep. II: Attack Of The Clones	:03	4:31	C	0


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## HitDisc® 453B - released on 3/22/02

#	TITLE	ARTIST	ALBUM	IN	TIME	END	BPM
2	Sunless Days [Radio Edit Version]	<u>Dokken</u>	Long Way Home	:07	3:39	C	148
3	Lonely Road	<u>McCartney, Paul</u>	Driving Rain	:09	3:12	C	120
4	Melt Me Down	Pressure 4-5	Burning The Process	:11	2:43	C	173
5	Questions [Album Version]	Home Town Hero	Home Town Hero	:19	2:10	C	137
6	Goin' Home [Edit]	Young, Neil & Crazy Horse	Are You Passionate?	:17	4:55	F	112
7	Hard To Explain	<u>Strokes</u>		:32	3:44	C	147
8	Child Of The West [Amended Album Version]	Cypress Hill & Roni Size	O.S.T. Blade 2	:25	4:07	C	149
9	Rockstar [Radio Edit]	N*E*R*D	In Serach Of...	:00	3:46	C	95
10	Hate To Say I Told You So [Album Version]	Hives	Veni Vidi vicious	:35	3:19	C	133
11	Across The Universe [Remix]	Wainwright, Rufus	O.S.T. I Am Sam	:10	4:05	C	74
12	Handbags And Gladrags [Radio Edit]	<u>Stereophonics</u>		:22	4:15	C	68
13	Caught In The Sun	Course Of Nature	Superkala	:24	4:40	C	81
14	Love Burns	Black Rebel Motorcycle Club	B.R.M.C.	:24	3:18	F	60
15	SoundOnSound [Radio Edit]	Mould, Bob	Modulate	:18	3:14	C	110
16	Welcome To My Party	Rusted Root	Welcome To My Party	:21	3:45	C	97
17	Honest With Me	<u>Dylan, Bob</u>	Love And Theft	:07	5:35	F	137
18	I'll Never Know	Finn, Tim	Feeding The Gods	:23	4:40	C	136
19	Tiny Spark	Benson, Brendan	Lapalco	:24	3:08	C	113

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**F**



**Look for Kaci's Debut Album  
IN STORES JUNE 12<sup>th</sup>**

**Click here for tracks and release info.**  
**Click here to watch the video for "Paradise" NOW!**

**HOME ABOUT KACI EVENTS GAMES VIDEO LINKS MUSIC FROM KACI JOIN STREET TEAM INTERACT**


**music**

- "Paradise" Album
- Radio Request Line

**album release info**

**Events Schedule**

Want to know if Kaci's going to be in your area? Check out her tour & appearance schedule!



**Fun & Games**

Check out our on-line games and play soccer or karate with Kaci!



**Go! >**

**Kaci Diaries!**

Click here to read excerpts from Kaci's tour diary as she travels across the country!



**Go! >**




**2.12.02**

*Kaci*

[www.kaci.tv](http://www.kaci.tv)





**Look for Kaci's Debut Album  
IN STORES JUNE 12<sup>th</sup>**

**Click here for tracks and release info.**  
**Click here to watch the video for "Paradise" NOW!**

HOME ABOUT KACI EVENTS GAMES VIDEO LINKS MUSIC FROM KACI JOIN STREET TEAM INTERACT

## about Kaci!

- Biography
- Photo Gallery

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Click here to request Kaci on your favorite radio station!

### Events Schedule

Want to know if Kaci's going to be in your area? Check out her tour & appearance schedule!

### Street Team

Join the Kaci online street team & help us spread the word! Find out more **HERE!**

## biography

"Smash! Kaci's first single will be huge, and she is the first signing of the Millennium for Curb Records." -Mike Curb

KACI, Curb Records 13-year-old International Singing Sensation is a talent to watch. Her voice is so mature and so powerful it transcends her youth. Her first single "Paradise" has just been released here in the U.S. In Europe "Paradise" was a top ten hit and remained in the top 40 for 11 weeks! Greece, Spain, Japan, Germany, & Australia feel this song (scheduled for release in Aug.) will be the hit of the summer! In Ireland, Paradise is certified Gold. Kaci not only recorded "Paradise" in English, which was produced/mixed by Brian Rawlings and Walter Turblitt (Cher's Believe, Enrique's - I Just Want To Be With You) but she also recorded it in Spanish with #1 Spanish Producer Rudy Perez (who has worked with Christina, Faith Hill, Oscar DeLaHoya).

Kaci is currently working on her album, "I feel so fortunate that at my age and on my first album I am given the opportunity to write and produce on my album. Not many people get that opportunity but I'm with a record label that respects my opinion and values me as an artist". So what can you expect from her album? "Well, expect the unexpected! It's going to have songs like "Paradise" with an upbeat Latin feel along with songs that are very pop and R&B, not many ballads, I like music that I can dance to".

Kaci's new U.S. Single "Intervention Divine" hits radio stations on November 12. This song, Kaci says " is one of my favorites on the album. I recorded it (April, 2001) because I really loved the message and how it relates to the world today, especially from a teen's perspective."

On television, Kaci has recently been featured on CNN, Entertainment Tonight, Extra Extra, Fox & Friends National News, CBS Saturday Morning News, Channel 1 News, KTLA News, and forthcoming the Jerry Lewis Telethon (Sept. 3), and the Teen Choice Awards (Aug. 20 at 8pm on FOX), where Kaci will be recognized as a break-out artist for the coming year, presenting the break-out artist of this past year!

In Magazines, you'll find her in Teen, Teen People, Bop, Popstars, YM, Cosmo Girl, Sixteen, Teen Beat, Tiger Beat, Blast, Kidsday (Newsday), Scholastic Magazine, Launch.com, and on the cover of Network 40 (June issue).

Paradise Music Video recently won best music video on Nickelodeon, top 5 on the Disney Channel, #1 on The Box in Europe, and was featured at the 2001 Super Bowl in Tampa!!

Kaci has recently supported several dates with the BackStreet Boys and is the opening act for the summer O-Town tour. You will also find her on several Radio Disney tour dates.

Kaci has been singing since she was three years old. "I used to beg my dad to take me to this restaurant to sing karaoke". I would sing "Twinkle Twinkle Little Star and Part Of Your World". Then at age eight she joined a local singing group of girls who appeared at various events around the local Tampa/St.Petersburg area. Kaci soon did solo performances, including singing the National Anthem for the Florida Governor, Florida Congressman, and the New York Yankees. She mastered other styles of music, including Jazz, Country, Broadway and Pop and sang such classic songs as Over The Rainbow and Zing Went The Strings Of My Heart.

At nine, she recorded a Christmas album for her family and friends and at 10 she recorded a CD, A THOUSAND STARS, produced by her mother. Singer/songwriter Bobby Goldsboro gave her five songs for that CD and a portion of the proceeds from the sales of A THOUSAND STARS

went to a local housing project for the homeless. At the same time, Kaci pursued her acting career which includes several commercials, a Disney Christmas Special, and appeared in a movie for home video, Camp Tanglefoot where she played the lead child role.

In school Kaci maintains an "A" average. "School is very important to me. I'm home-schooled now and I just recently tested out of high school. I plan on taking some college classes next semester and just start working towards my AA degree. I'm not sure what I want to major in yet, but I want to minor in business." While Kaci did attend school, she was very active in sports. "I played Basketball, AAU Basketball, Volleyball, and I actually lettered in Track while in the 6th grade!" She's also a brown belt in karate!

Kaci's musical influences include Gloria Estefan, Celine Dion and Judy Garland. "I have 13 Judy Garland CDs and eight of her movies on video," Kaci says. "Judy Garland puts all of her feelings into her songs. She's mesmerizing."

Her first album, also titled PARADISE, combines her many musical influences. Kaci believes she knows why young people are so excited about the teen pop movement. "The people who are listening are teenagers," she says. "They like hearing people their own age, people they can relate to." As for her future ambitions, Kaci wants to do it all. "I want to make records, make movies and be on the cover of magazines," she says. With her drive and talent, she can certainly go Over The Rainbow.

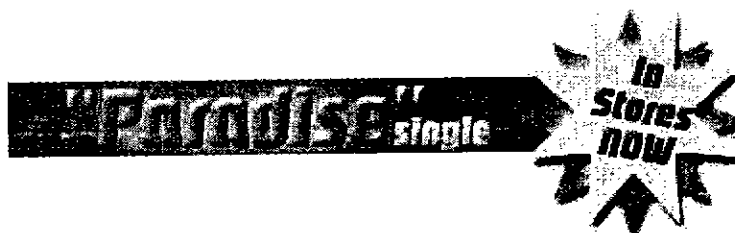
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**G**

Digital Stereo 80813-20007-2

Luther Vandross



1. Take You Out
2. Grown Things
3. Bring Your Heart To Mine
4. Can Heaven Wait
5. Say It Now
6. Hearts Get Broken All The Time  
(But The Problem Is, This Time It's Mine)
7. I'd Rather
8. How Do I Tell Her
9. Any Day Now
10. If I Was The One
11. Let's Make Tonight The Night
12. Like I'm Invisible
13. Are You There (With Another Guy)
14. Love Forgot

Album Producers: Clive Davis and Luther Vandross

A&R: Peter Edge and Ron Gillyard

Mastered by Herb Powers, Jr. at The Hit Factory, NYC for P.M. Entertainment

Digital Stereo 80813-20007-2

[www.j-records.com](http://www.j-records.com)

[www.luthervandross.com](http://www.luthervandross.com)

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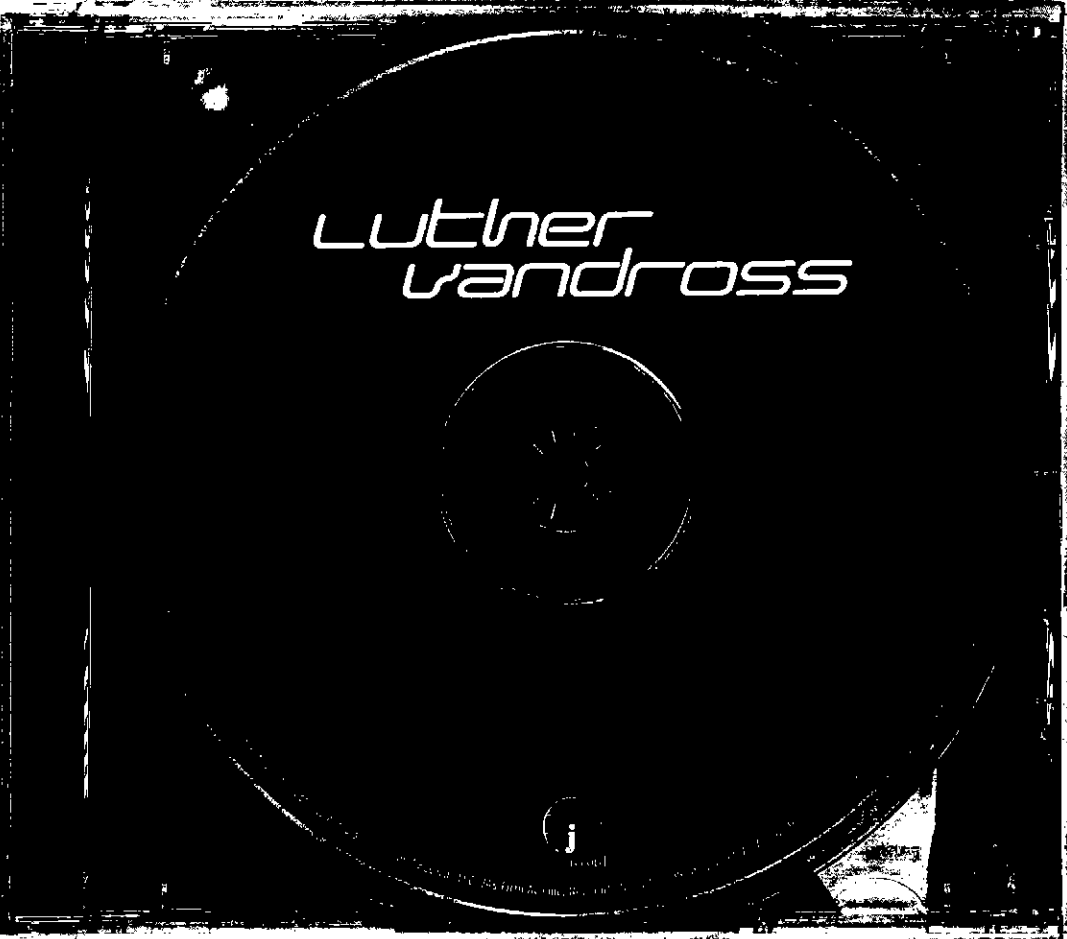
Luther Vandross

Digital Stereo 80813-20007-2

Luther Vandross







**H**

J records

# ALICIA KEYS

songs in A minor

- 1 Piano & I • 2 Girlfriend
- 3 How Come You Don't Call Me
- 4 Fallin' • 5 Troubles • 6 Rock Wit U
- 7 A Woman's Worth • 8 Jane Doe
- 9 Goodbye • 10 The Life • 11 Mr. Man
- (duet with Jimmy Cozier) • 12 Never Felt This
- Way (interlude) • 13 Butterflyz • 14 Why
- Do I Feel So Sad • 15 Caged Bird

Executive Producers: Clive Davis,

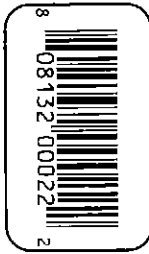
Barry Reid, Jeff Robinson and

Alicia Keys for J&R Entertainment

Management: Jeff Robinson

for J&R Management

Mastered by Herb Powers, Jr. at The Hit Factory, NYC for J&R Entertainment



records



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digital stereo  
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ALICIA KEYS songs in A minor

J records



# ALICIA KEYS

songs in A minor

ALICIA KEYS

digital stereo  
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All songs written and arranged  
by Alicia Keys  
except where noted.

All songs written and arranged  
by Alicia Keys  
except where noted.





**I**



PRICE

\$17.99

MINDY MCCREADY



500

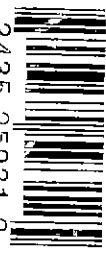
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6868567 CD 1 40202 # C2MZ 2  
705 - 15A 8050709 259312

cready

- 
- 1 Maybe, Maybe Not™ 3:35
  - 2 Lips Like Yours 3:52
  - 3 Lovin' Your Man 3:55
  - 4 Be with Me\* 3:51
  - 5 The Fire 3:11
  - 6 Scream 3:40
  - 7 I Just Want Love 3:44
  - 8 Don't Speak 4:14
  - 9 If I Feel Your Hand 4:00
  - 10 You Get To Me 3:35
  - 11 Tremble 3:48

Produced by Billy Joe Walker, Jr.  
Produced by Michael D. Cate and  
Bobby Hull for Chump Productions

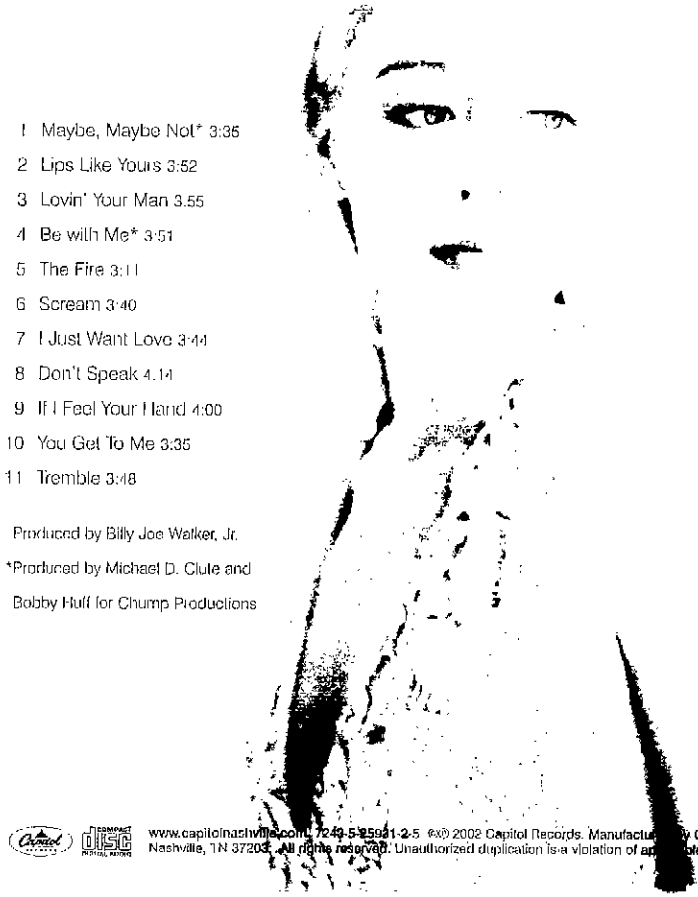
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Mindy McCready

7243-5-25931-2-5



- 1 Maybe, Maybe Not\* 3:35
- 2 Lips Like Yours 3:52
- 3 Lovin' Your Man 3:55
- 4 Be with Me\* 3:51
- 5 The Fire 3:11
- 6 Scream 3:40
- 7 I Just Want Love 3:44
- 8 Don't Speak 4:14
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- 10 You Get To Me 3:35
- 11 Tremble 3:48

Produced by Billy Joe Walker, Jr.

\*Produced by Michael D. Clute and Bobby Huff for Chump Productions



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Mindy McCready



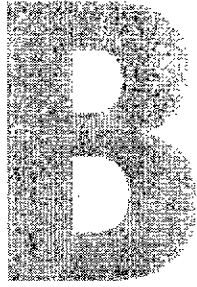
Mindy McCready

**J**

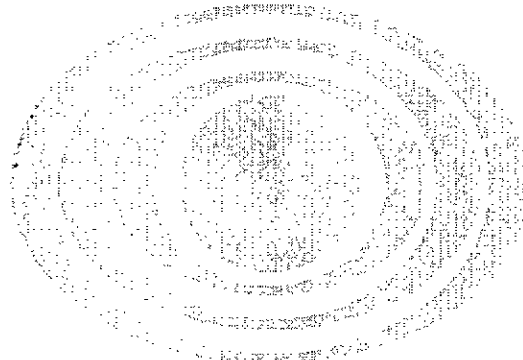
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**soundtracks compilations full artist listing coming soon**



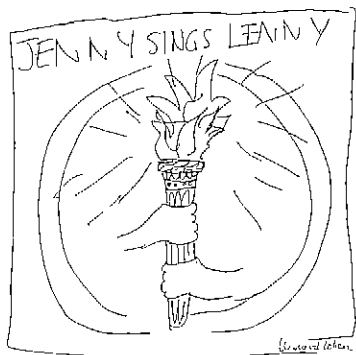
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**K**







ALL SONGS WRITTEN BY LEONARD COHEN  
 except **CAME SO FAR FOR BEAUTY:**  
 Lyrics by Leonard Cohen:  
 Music by Leonard Cohen, John Lissauer  
 Stranger Music, Inc., BMI  
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 and **SONG OF BERNADETTE:**  
 Lyrics by Jennifer Warnes, Leonard Cohen  
 Music by Jennifer Warnes, Bill Elliott  
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 Stevie Ray Vaughn appears courtesy of Epic Records  
 Russell Ferrante appears courtesy of MCA Records, Inc.

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Produced by G. Pascoe Beck and  
 Jennifer Warnes  
 Guardian Angel, Henry Lewy  
 Chief Recording Engineer: Bill Youdelman  
 AIR-TN INKURE FOR LOVE recorded by  
 Frank Wolf and Coiba Petreoz  
 SONG OF BERNADETTE recorded by  
 Steven Swarcman, Bill Youdelman and  
 Paul Brown  
 Additional recording by Larry Brown,  
 Frank Wolf and Tim Boyle  
 Mixed by Frank Wolf  
 BIRD ON A WIRE and  
 FAMOUS BLUE RAINCOAT mixed by  
 George Massenberg  
 SONG OF BERNADETTE mixed by  
 Frank Wolf and Henry Lewy  
 DAN OF ARC mixed by Larry Brown  
 Mastered by  
 Bernie Grundman Mastering  
 Project Coordinator: Lori Nafchin

Studios: The Complex, Amigo Studios,  
 Hollywood Sound, The Enterprise,  
 Mama Jo's, Sully Dog Recording, and  
 The Record Plant  
 Associate Engineers: Sharon Rice,  
 Denise Soykora, Garth Richertman,  
 Dan Reed, Russell Brooker,  
 Terry Bannan, Ken Fowler, Olyve Taylor,  
 Joel Steiner, Jeff Park, Nyia Link  
 and Steven Bradley Ford  
 Programmers: Rudi Yengo, Clark Barth  
 Recorded on Sony Digital Equipment  
 Raincoat provided by Durberry  
 Sketch by Leonard Cohen  
 Representation  
 GARRY GEORGE MANAGEMENT,  
 8370 Wilshire Boulevard, Suite 310,  
 Beverly Hills, CA 90211  
 (310) 856-5788  
 Business Management: Pam Wilson

WE OWE OUR THANKS TO  
 Moby Salento, Harry Grossman, Robert  
 Spada, Jon Tuzen and everyone at the  
 Complex, without whose generosity,  
 this record could not have been made.  
 Barry Wilson, Paul Brown, Chris Himes,  
 Steven Swarcman and our many  
 friends at Amigo Studios  
 Bobel and Kiser, Brian, Kaji/Mark Cherry,  
 Helena Cheliff, Ted Cahon,  
 Dan DeSouza at Rowlight,  
 Howard Dumble, Mary Dorfman,  
 G. Ray Hawkins, Rachel Kaplan,  
 Mark Lantz, Martin Machic,  
 George Musserburg, Steve Meador,  
 Rob Meyer, Mike Novicki, Jim Pato  
 and all at Audio Intervisual Design,  
 Sally and Van Dyke Parks for the use  
 of their name, Choby Scales at Nike,  
 Todd Urbanek, and Mick Watkins

TO ALL THE FINE MUSICIANS WHO  
 CONTRIBUTED SUCH INSPIRED  
 PERFORMANCES THIS ALBUM IS  
 GRATEFULLY DEDICATED.

SPECIAL THANKS TO CRAIG SUSSMAN  
 FOR HAVING THE VISION

**FIRST WE TAKE MANHATTAN**  
 they sentenced me to twenty years of boredom  
 for trying to change the system from within  
 I'm coming now

I'm coming to reward them

first we take Manhattan  
 then we take Berlin

I'm guided by a signal in the heavens  
 I'm guided by the birthmark on my skin  
 I'm guided by the beauty of our weapons

first we take Manhattan  
 then we take Berlin

I'd really like to live beside you baby  
 I love your body and your spirit and your clothes  
 but you see that line that's moving through the station

I told you  
 I told you

I told you I was one of those

I don't like your fashion business mister  
 I don't like those drugs that keep you thin  
 I don't like what happened to my sister

first we take Manhattan  
 then we take Berlin

~\*~

Stevie Ray Vaughn—guitar

Robben Ford—guitar

Gary Chang—synthesizers and programming

Russell Ferrante—synthesizer

Roscoe Beck—bass and guitar

Vinnie Colaiuta—drums

Lenny Castro—percussion

Jennifer Warnes—vocal harmonies

**BIRD ON A WIRE**

like a bird on a wire

like a drunk in a midnight choir

I have tried in my way

to be free

like a fish on a hook

like a knight from an old fashioned book

I have saved all my ribbons

for thee

if I have been unkind  
 I hope that you'll just let it go by

if I have been untrue

I hope you know  
 it was never to you  
 like a baby stillborn

like a beast with his horns  
 I have torn everyone  
 who reached out for me  
 but I swear by this song  
 by all that I've done wrong  
 I'll make it all

up to you

I saw a beggar leaning on his wooden crutch

he cried out to me

don't ask for so much

and a young man leaning in his darkened door

he called out to me

why not ask for more

like a bird on a wire

like a drunk in a midnight choir

I have tried in my way

to be free

~\*~

Robben Ford—guitar

William "Smitty" Smith—synthesizer

Jorge Calderon—bass

Vinnie Colaiuta—drums

Lenny Castro—percussion

"Reverend" Dave Boruff—saxophone

Bill Ginn—synthesizer

Larry Brown—shaker

Singers:

Kal David

Willie Greene Jr.

Jennifer Warnes

### FAMOUS BLUE RAINCOAT

it's four in the morning  
the end of December  
I'm writing you now just to see if you're better  
New York is cold  
but I like where I'm living  
there's music on Clinton Street all through the evening  
I hear that you're building your house deep in the desert  
are you living for nothing now  
hope you're keeping some kind of record  
Jane came by with a lock of your hair  
she said that you gave it to her  
the night that you planned to go clear  
did you ever go clear  
the last time we saw you  
you looked so much older  
your famous blue raincoat was torn at the shoulder  
you'd been to the station  
to meet every train  
but she never turned up, I mean Lili Marlene  
so you created some woman to a flake of your life  
and when she got home she was nobody's wife  
I see you there with a rose in your teeth  
one more thin gypsy thief  
well, I see Jane's awake  
she sends her regards  
what can I tell you  
what can I tell you  
what can I possibly say  
I guess that I miss you  
I guess I forgive you  
I'm glad that you stood in my way  
and if you ever come by here  
be it for Jane or for me  
I want you to know your enemy is sleeping  
I want you to know your woman is free  
thanks for the trouble you took from her eyes  
I thought it was there for good  
so I never really tried  
and Jane came by with a lock of your hair  
she said that you gave it to her  
the night that you planned to go clear

Sincerely,  
A FRIEND

Paul Ostermayer—tenor sax  
Bill Ginn—piano  
Roscoe Beck—string bass  
STRINGS ARRANGED AND CONDUCTED BY BILL GINN  
Sid Page—first violin  
Barbara Porter—violin  
Novi Novog—viola  
Larry Corbett—cello  
Suzie Katayama—cello

### JOAN OF ARC

now the flames they followed Joan of Arc  
as she came riding through the dark  
no moon to keep her armor bright  
no man to get her through this dark and smoky night  
she said "I'm tired of the war  
I want the kind of work I had before  
a wedding dress or something white  
to wear upon my swollen appetite"  
la la la . . . .  
"well I'm glad to hear you talk this way  
I've watched you riding every day  
and something in me yearns to win  
such a cold, such a lonesome heroine"  
"and who are you?" she sternly spoke  
to the one beneath the smoke  
"why, I'm fire," he replied  
"and I love your solitude, I love your pride!"  
la la la . . . .  
"well then fire, make your body cold  
I'm going to give you mine to hold!"  
and saying this, she climbed inside  
to be his one, to be his only bride  
it was deep into his fiery heart  
he took the dust of Joan of Arc  
and then she clearly understood  
if he was fire, oh she must be wood  
it was deep into his fiery heart  
he took the dust of Joan of Arc  
and high above the wedding guests

he hung the ashes of her lovely wedding dress  
la la la . . . .

Leonard Cohen—vocal duet  
Roscoe Beck—guitars, basses, and additional synthesizer  
Bill Ginn—piano and synthesizer  
Russell Ferrante—synthesizer  
Vinnie Colaiuta—drums  
Larry Brown—tambourine  
The Angel Choir:  
Greg Prestopino  
Jennifer Warnes

### AIN'T NO CURE FOR LOVE

I've loved you for a long long time  
I know this love is real  
don't matter how it all went wrong  
that don't change the way I feel  
I don't believe  
that time can heal this wound I'm speaking of  
there ain't no cure  
there ain't no cure  
there ain't no cure for love  
I'm aching for you baby  
I can't pretend I'm not  
I'd love to see you naked in your body and your thought  
I've got you like a habit  
I'll never get enough  
there ain't no cure  
there ain't no cure  
there ain't no cure for love  
there ain't no cure for love  
there ain't no cure for love  
no pill no drug  
it's all been cut with stuff  
I can't get nothing done  
can't be with anyone  
I don't want your brother love  
I want that other love  
ain't no cure for love  
I don't expect a medal

just because the scene got rough  
and I see you've been so careful to forget how good it was  
but I'm never giving in  
I'm never giving up  
there ain't no cure  
there ain't no cure for love  
there ain't no cure for love  
there ain't no cure for love  
no pill no drug  
ain't nothing pure enough  
I can't get nothing done  
I can't be with anyone  
There ain't no cure  
there ain't no cure for love  
-!-

### SYNTHESIZERS ARRANGED AND PERFORMED BY BILL PAYNE

Michael Landau—guitar  
Vinnie Colaiuta—drums  
Steve Forman—percussion  
Jennifer Warnes—vocal harmonies

### COMING BACK TO YOU

maybe I'm still hurting  
I can't turn the other cheek  
but you know that I still love you  
it's just that I can't speak  
I looked for you in everyone  
and they called me on that too  
I lived alone  
but I was only coming back to you  
they're shutting down the factory now  
just when all the bills are due  
and the fields are under lock and key  
though the rain and the sun come through  
and springtime starts  
but then it stops  
in the name of something new  
and all my senses rise  
against this coming back to you

and they're handing down my sentence now  
 I know what I must do  
 another mile of silence  
 while I'm coming back to you  
 there are many in your life  
 and many still to be  
 since you are a shining light  
 there's many that you'll see  
 so I've got to deal with envy  
 when you choose the precious few  
 who've left their pride  
 on the other side  
 of coming back to you  
 even in your arms  
 I know I'll never get it right  
 even when you bend to give me comfort in the night  
 so I gotta have your word on this  
 or none of it is true  
 and all I've said  
 was just instead of coming back to you  
 coming back to you

David Lindley—lap steel guitar  
 Fred Tackett—guitar  
 William "Smitty" Smith—Hammond organ  
 Bill Ginn—piano  
 Russell Ferrante—synthesizer  
 Jorge Calderon—bass  
 Vinnie Colaiuta—drums  
 Singers:  
 Bobby King  
 Terry Evans  
 Willie Greene Jr.  
 Jennifer Warnes

**SONG OF BERNADETTE**  
 there was a child named Bernadette  
 I heard the story long ago  
 she saw the queen of heaven once  
 and kept the vision in her soul  
 no one believed what she had seen

no one believed what she heard  
 that there were sorrows to be healed  
 and mercy, mercy in this world  
 so many hearts I find  
 broke like yours and mine  
 torn by what we've done and can't undo  
 I just want to hold you  
 won't you let me hold you  
 like Bernadette would do  
 we've been around, we fall, we fly  
 we mostly fall, we mostly run  
 and every now and then we try  
 to mend the damage that we've done  
 tonight, tonight I cannot rest  
 I've got this joy here inside my breast  
 to think that I did not forget  
 that child, that song of Bernadette  
 so many hearts I find  
 broke like yours and mine  
 torn by what we've done and can't undo  
 I just want to hold you  
 come on let me hold you  
 like Bernadette would do  
 I just want to hold you  
 won't you let me hold you  
 like Bernadette would do

Bill Ginn—piano  
 Roscoe Beck—string bass  
**STRINGS ARRANGED BY JEREMY LUBBOCK**  
**CONDUCTED BY BILL GINN**  
 Sid Page—first violin  
 Barbara Porter—violin  
 Novi Novog—viola  
 Larry Corbett—cello  
 Richard Feves—bass

**A SINGER MUST DIE**  
 now the courtroom is quiet  
 but who will confess  
 is it true you betrayed us  
 the answer is yes  
 then read me the list of the crimes that are mine

I will ask for the mercy  
 that you love to decline  
 and all the ladies go moist  
 and the judge has no choice  
 a singer must die for the lie in his voice  
 and I thank you  
 I thank you for doing your duty  
 you keepers of truth  
 you guardians of beauty  
 your vision was right  
 my vision was wrong  
 I'm sorry for smudging the air with my song  
 oh la la la la la  
 oh, the night it is thick  
 my defenses are hid  
 in the clothes of a man I would like to forgive  
 in the folds of his leather  
 the shade of his eyes  
 where I have to go begging in beauty's disguise  
 oh goodnight goodnight  
 my night after night  
 my night after night after night after night after . . .  
 so save me a place  
 in the ten dollar grave  
 with those who took money for the pleasure they gave  
 with those always ready  
 with those who undressed  
 so you could lay down with your head on their breast  
 and the ladies go moist  
 and the judge has no choice  
 a singer must die for the lie in his voice  
 oh la la la la la la

**ARRANGEMENT BY VAN DYKE PARKS AND**  
**BILL GINN**  
**CONDUCTED BY BILL GINN**  
 The Singers:  
 David Lasley  
 Greg Prestopino  
 Sharon Robinson  
 Arnold McCuller  
 Kal David  
 Josef Powell  
 Tim Stone

George Ball  
 Willie Greene Jr.  
 Jennifer Warnes  
 Bill Ginn—percussion  
**CAME SO FAR FOR BEAUTY**  
 I came so far for beauty  
 I left so much behind  
 my patience and my family  
 my masterpiece unsigned  
 I thought I'd be rewarded  
 for such a lonely choice  
 and he would answer  
 to such a hopeless voice  
 I practiced on my sainthood  
 I gave to one and all  
 but the rumours of my virtue  
 they moved him not at all  
 I changed my style to silver  
 I changed my clothes to black  
 and where I would surrender  
 now I would attack  
 I stormed the old casino  
 for the money and for the flesh  
 and I myself decided  
 what was rotten and what was fresh  
 and men to do my bidding  
 and broken bones to teach  
 the value of my pardon  
 the shadow of my reach  
 but no, I could not touch him  
 with such a heavy hand  
 his star beyond my order  
 his nakedness unmened  
 I came so far for beauty  
 I left so much behind  
 my patience and my family  
 my masterpiece unsigned

**SYNTHESIZERS ARRANGED, PROGRAMMED AND**  
**PERFORMED BY GARY CHANG**  
 Bill Ginn—electric piano  
 Van Dyke Parks—synthesizer and accordion  
 Roscoe Beck—fretless bass  
 Jennifer Warnes—vocal harmonies

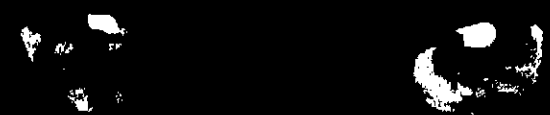
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0301



CATS

# CATS

## ACT ONE

- 1 THE OVERTURE
- 2 PROLOGUE: JELICLE SONGS FOR JELICLE CATS
- 3 THE NAMING OF CATS
- 4 THE INVITATION TO THE JELICLE BALL
- 5 THE OLD GUMBIE CAT
- 6 THE RUM TUM TUGGER
- 7 GRIZABELLA: THE GLAMOUR CAT
- 8 BUSTOPHER JONES
- 9 MUNGO, JERRIE AND RUMPEL TEAZER
- 10 OLD DEUTERONOMY
- 11 THE JELICLE BALL
- 12 GRIZABELLA

## ACT TWO

- 1 THE MOMENTS OF HAPPINESS
- 2 GUS: THE THEATRE CAT
- 3 "GROWLTIGER'S LAST STAND"  
INCLUDING "THE BALLAD OF BILLY McCRAW"
- 4 SKIMBLESHANKS: THE RAILWAY CAT
- 5 MACAVITY: THE MYSTERY CAT
- 6 MR. MISTOFFELEES
- 7 MEMORY
- 8 THE JOURNEY TO THE HEAVISIDE LAYER
- 9 THE AD-DRESSING OF CATS

PRODUCED BY ANDREW LLOYD WEBBER AND MARTIN LEVAN NEW YORK, NEW YORK, OCTOBER, 1982

MUSIC BY ANDREW LLOYD WEBBER BASED ON 'OLD  
POSSUM'S BOOK OF PRACTICAL CATS' BY T. S. ELIOT

PRESENTED BY CAMERON MACKINTOSH, THE  
REALLY USEFUL GROUP LIMITED, DAVID GEFFEN  
AND THE SHUBERT ORGANIZATION

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HARRY GROENER, STEVEN HACK, STEPHEN HANAN,  
ROBERT HOSHOUR, JANET L. HUBERT, REED JONES,  
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ONRUBIA, KEN PAGE, SUSAN POWERS, CAROL  
RICHARDS, JOEL ROBERTSON, TIMOTHY SCOTT, HERMAN  
W. SEBEK, BONNIE SIMMONS

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ANDREW LLOYD WEBBER, PRODUCTION MUSICAL  
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LIGHTING DESIGN BY DAVID HERSEY, DESIGNED BY  
JOHN NAPIER, ASSOCIATE DIRECTOR AND CHOREOGRAPHER  
GILLIAN LYNNE, DIRECTED BY TREVOR NUNN.

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ORCHESTRA MANAGER KEITH HERRMANN PIANO/PROPHET  
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5 SYNTHESIZER DAVE KATZENBERG ELECTRIC BASS  
ETHAN FEIN ELECTRIC & ACOUSTIC GUITAR PAUL PIZZUTI  
DRUMS JACK JENNINGS PERCUSSION JIM OGDEN  
PERCUSSION VICTOR PAZ TRUMPET/PICCOLO TRUMPET/  
FLUGELHORN ROSS KONIKOFF TRUMPET/FLUGELHORN  
RON TOOLEY TRUMPET/FLUGELHORN GERRY  
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AL REGNI PICCOLO/FLUTE/TENOR SAX RAY SHANFELD  
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CELLO EDITH WINT CELLO JEFF ZAHN CELLO

RECORD PRODUCED BY ANDREW LLOYD WEBBER  
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ACT ONE  
"WHEN CATS ARE MADDENED BY THE MIDNIGHT DANCE"

PROLOGUE:  
JELLICLE SONGS FOR JELLICLE CATS  
THE NAMING OF CATS  
THE INVITATION TO THE  
JELLICLE BALL  
THE OLD GUMBIE CAT

Victoria  
Mistoffelees  
Jennyanydots  
Cassandra  
Bombalurina  
Jellylorum  
The Company  
The Company  
Cynthia Onrubia  
Timothy Scott  
Anna McNeely  
René Ceballos  
Donna King  
Bonnie Simmons  
Terrence V. Mann  
Betty Buckley  
Wendy Edmond  
Donna King  
Stephen Hanan  
Anna McNeely  
Bonnie Simmons  
Donna King  
Timothy Scott  
René Clemente  
Christine Langner  
Harry Groener  
Terrence V. Mann  
Ken Page  
The Company  
Betty Buckley

THE RUM TUM TUGGER  
GRIZABELLA: THE GLAMOUR CAT

Grizabella  
Demeter  
Bombalurina  
Bustopher  
Jennyanydots  
Jellylorum  
Bombalurina  
Mistoffelees  
Mungojerrie  
Rumpelteazer  
Munkustrap  
The Rum Tum Tugger  
Old Deuteronomy  
Grizabella

BUSTOPHER JONES

MUNGOJERRIE AND  
RUMPELTEAZER

OLD DEUTERONOMY

THE JELLICLE BALL  
GRIZABELLA

OVERTURE

'PROLOGUE: JELLICLE SONGS FOR JELLICLE CATS

ARE YOU BLIND WHEN YOU'RE BORN? CAN YOU SEE IN THE DARK?  
DARE YOU LOOK LOOK AT A KING? WOULD YOU SIT ON HIS THRONE?  
CAN YOU SAY OF YOUR BITE THAT IT'S WORSE THAN YOUR BARK?  
ARE YOU COCK OF THE WALK WHEN YOU'RE WALKING ALONE?

BECAUSE JELLICLES ARE AND JELLICLES DO  
JELLICLES DO AND JELLICLES WOULD  
JELLICLES WOULD AND JELLICLES CAN  
JELLICLES CAN AND JELLICLES DO

WHEN YOU FALL ON YOUR HEAD DO YOU LAND ON YOUR FEET?  
ARE YOU TENSE WHEN YOU SENSE THERE'S A STORM IN THE AIR?  
CAN YOU FIND YOUR WAY BLIND WHEN YOU'RE LOST IN THE STREET?  
DO YOU KNOW HOW TO GO TO THE HEAVISIDE LAYER?

BECAUSE JELLICLES CAN AND JELLICLES DO  
JELLICLES DO AND JELLICLES CAN  
JELLICLES CAN AND JELLICLES DO  
JELLICLES DO AND JELLICLES CAN  
JELLICLES CAN AND JELLICLES DO

ACT TWO  
"WHY WILL THE SUMMER DAY DELAY - WHEN WILL TIME FLOW AWAY"

THE MOMENTS OF HAPPINESS

GUS: THE THEATRE CAT

"GROWLTIGER'S LAST STAND"  
INCLUDING "THE BALLAD OF BILLY McCAW"

Old Deuteronomy	Ken Page
Tanlomia	Janet L. Hubert
Jellylorum	Bonnie Simmons
Asparagus	Stephen Harnan
Growltiger	Stephen Harnan
Griddlebone	Bonnie Simmons
The Crew	Harry Groener
	Reed Jones
	Terrence V. Mann
	Hector Jaime Mercado
	Timothy Scott
	Steven Gelfer
	Reed Jones

SKIMBLESHANKS: THE RAILWAY CAT

Genghis Skimbleshanks
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MACAVITY: THE MYSTERY CAT

Demeter	Wendy Edmead
Bombalurina	Donna King
Alonzo	Hector Jaime Mercado
Macavity	Kenneth Ard
Munkustrap	Harry Groener
Mistoffelees	Timothy Scott
The Rum Tum Tugger	Terrence V. Mann
Victoria	Cynthia Onnubia
Grizabella	Betty Buckley

MR. MISTOFFELEES

\*\*MEMORY

THE JOURNEY TO THE  
HEAVISIDE LAYER  
THE AD-DRESSING OF CATS

Old Deuteronomy	The Company
	Ken Page

THE MOMENTS OF HAPPINESS

THE MOMENTS OF HAPPINESS

WE HAD THE EXPERIENCE BUT MISSED THE MEANING  
AND APPROACH TO THE MEANING RESTORES THE EXPERIENCE  
IN A DIFFERENT FORM BEYOND ANY MEANING WE CAN ASSIGN TO HAPPINESS  
THE PAST EXPERIENCE REVIVED IN THE MEANING  
IS NOT THE EXPERIENCE OF ONE LIFE ONLY  
BUT OF MANY GENERATIONS  
NOT FORGETTING SOMETHING THAT IS PROBABLY QUITE INEFFABLE

MOONLIGHT

TURN YOUR FACE TO THE MOONLIGHT  
LET YOUR MEMORY LEAD YOU  
OPEN UP ENTER IN  
IF YOU FIND THERE THE MEANING OF WHAT HAPPINESS IS  
THEN A NEW LIFE WILL BEGIN

GUS: THE THEATRE CAT

GUS IS THE CAT AT THE THEATRE DOOR  
HIS NAME, AS I OUGHT TO HAVE TOLD YOU BEFORE  
IS REALLY ASPARAGUS, AND THAT'S SUCH A FUSS TO PRONOUNCE  
THAT WE USUALLY CALL HIM JUST GUS  
HIS COAT'S VERY SHABBY HE'S THIN AS A RAKE  
AND HE SUFFERS FROM PALSY THAT MAKES HIS PAW SHAKE  
YET HE WAS IN HIS YOUTH QUITE THE SMARTEST OF CATS  
BUT NO LONGER A TERROR TO MICE OR TO RATS

FOR HE ISN'T THE CAT THAT HE WAS IN HIS PRIME  
THOUGH HIS NAME WAS QUITE FAMOUS, HE SAYS, IN HIS TIME  
AND WHENEVER HE JOINS HIS FRIENDS AT THEIR CLUB  
(WHICH TAKES PLACE AT THE BACK OF THE NEIGHBORING PUB)  
HE LOVES TO REGALE THEM, IF SOMEONE ELSE PAYS  
WITH ANECDOTES DRAWN FROM HIS PALMIEST DAYS  
FOR HE ONCE WAS A STAR OF THE HIGHEST DEGREE  
HE HAS ACTED WITH IRVING, HE'S ACTED WITH TREE  
AND HE LIKES TO RELATE HIS SUCCESS ON THE HALLS  
WHERE THE GALLERY ONCE GAVE HIM SEVEN CAT CALLS  
BUT HIS GREATEST CREATION AS HE LOVES TO TELL  
WAS FIREFRORFIDDLE, THE FIEND OF THE FELL

I HAVE PLAYED IN MY TIME EVERY POSSIBLE PART  
AND I USED TO KNOW SEVENTY SPEECHES BY HEART  
I'D EXTemporize BACKCHAT, I KNEW HOW TO GAG  
AND I KNEW HOW TO LET THE CAT OUT OF THE BAG  
I KNEW HOW TO ACT WITH MY BACK AND MY TAIL  
WITH AN HOUR OF REHEARSAL, I NEVER COULD FAIL  
I'D A VOICE THAT WOULD SOFTEN THE HARDEST OF HEARTS  
WHETHER I TOOK THE LEAD, OR IN CHARACTER PARTS  
I HAVE SAT BY THE BEDSIDE OF POOR LITTLE NELL  
WHEN THE CURFEW WAS RUNG THEN I SWUNG ON THE BELL  
IN THE PANTOMIME SEASON I NEVER FELL FLAT  
AND I ONCE UNDERSTOOD DICK WHITTINGTON'S CAT  
BUT MY GRANDEST CREATION, AS HISTORY WILL TELL  
WAS FIREFRORFIDDLE, THE FIEND OF THE FELL

THEN, IF SOMEONE WILL GIVE HIM A TOOTHFUL OF GIN  
HE WILL TELL HOW HE ONCE PLAYED A PART IN EAST LYNNE  
AT A SHAKESPEARE PERFORMANCE HE ONCE WALKED ON PAT  
WHEN SOME ACTOR SUGGESTED THE NEED FOR A CAT

AND I SAY NOW THESE KITTENS, THEY DO NOT GET TRAINED  
AS WE DID IN THE DAYS WHEN VICTORIA REIGNED  
THEY NEVER GET DRILLED IN A REGULAR TROUPE  
AND THEY THINK THEY ARE SMART JUST TO JUMP THROUGH A HOOP

AND HE SAYS AS HE SCRATCHES HIMSELF WITH HIS CLAWS  
WELL THE THEATRE IS CERTAINLY NOT WHAT IT WAS  
THESE MODERN PRODUCTIONS ARE ALL VERY WELL  
BUT THERE'S NOTHING TO EQUAL FROM WHAT I HEAR TELL  
THAT MOMENT OF MYSTERY WHEN I MADE HISTORY  
AS FIREFRORFIDDLE, THE FIEND OF THE FELL



## THE AD-DRESSING OF CATS

YOU'VE HEARD OF SEVERAL KINDS OF CAT  
 AND MY OPINION NOW IS THAT  
 YOU SHOULD NEED NO INTERPRETER TO UNDERSTAND OUR CHARACTER  
 YOU'VE LEARNED ENOUGH TO TAKE THE VIEW  
 THAT CATS ARE VERY MUCH LIKE YOU  
 YOU'VE SEEN US BOTH AT WORK AND GAMES  
 AND LEARNED ABOUT OUR PROPER NAMES  
 OUR HABITS AND OUR HABITAT  
 BUT HOW WOULD YOU AD-DRESS A CAT

SO FIRST, YOUR MEMORY I'LL JOG  
 AND SAY: A CAT IS NOT A DOG  
 SO FIRST, YOUR MEMORY I'LL JOG  
 AND SAY: A CAT IS NOT A DOG

WITH CATS, SOME SAY, ONE RULE IS TRUE  
 DON'T SPEAK 'TILL YOU ARE SPOKEN TO  
 MYSELF I DO NOT HOLD WITH THAT  
 I SAY, YOU SHOULD AD-DRESS A CAT  
 BUT ALWAYS BEAR IN MIND THAT HE RESENTS FAMILIARITY  
 YOU BOW, AND TAKING OFF YOUR HAT, AD-DRESS HIM IN THIS FORM "O CAT!"

BEFORE A CAT WILL CONDESCEND  
 TO TREAT YOU AS A TRUSTED FRIEND  
 SOME LITTLE TOKEN OF ESTEEM IS NEEDED, LIKE A DISH OF CREAM  
 AND YOU MIGHT NOW AND THEN SUPPLY  
 SOME CAVAR OR STRASSBURG PIE  
 SOME POTTED GROUSE OR SALMON PASTE  
 HE'S SURE TO HAVE HIS PERSONAL TASTE

AND SO IN TIME YOU REACH YOUR AIM  
 AND CALL HIM BY HIS NAME

A CAT'S ENTITLED TO EXPECT  
 THESE EVIDENCES OF RESPECT  
 SO THIS IS THIS AND THAT IS THAT  
 AND THERE'S HOW YOU AD-DRESS A CAT

A CAT'S ENTITLED TO EXPECT THESE EVIDENCES OF RESPECT  
 SO THIS IS THIS, AND THAT IS THAT  
 AND THERE'S HOW YOU AD-DRESS A CAT

## CAST (in alphabetical order)

Alonzo	HECTOR JAIME MERCADO
Asparagus/Growltiger	STEPHEN HANAN
Bombalurina	DONNA KING
Carbucketty	STEVEN GELFER
Cassandra	RENÉ CEBALLOS
Coricopat/Mungojerrie	RENÉ CLEMENTE
Demeter	WENDY EDMOND
Elcester/Rumpelstiltskin	CHRISTINE LANGNER
Grizabella	BETTY BUCKLEY
Jellicore/Jellicolebone	BONNIE SIMMONS
Jemmydots	ANA MCNEELY
Mistoffelees	TIMOTHY SCOTT
Munkustrap	HARRY GROENER
Old Deuteronomy	KEN PAGE
Plato/Macavity	KENNETH ARD
Pouncival	HERMAN W. SEBEK
Rum Tum Tugger	TERRENCE V. MANN
Sillabub	WHITNEY KERSHAW
Skimbleshanks	REED JONES
Tantomile	JANET L. HUBERT
Tumblebrutus	ROBERT HOSEHOUR
Victoria	CYNTHIA ONRUBIA
The Cats Chorus	WALTER CHARLES SUSAN POWERS CAROL RICHARDS JOEL ROBERTSON

## A NOTE ON THE TEXT

Most of the poems comprising 'Old Possum's Book of Practical Cats' (1939) have been set to music complete and in their originally published form, a few have been subject to a minor revision of tense or pronoun, and eight lines have been added to 'The Song of the Jellicles'.

However, some of our lyrics, notably 'The Marching Song of The Pollicle Dogs' and the story of 'Grizabella' were discovered among the unpublished writings of Eliot.

The prologue is based on ideas and incorporates lines from another unpublished poem, entitled 'Pollicle Dogs and Jellicle Cats.'

'Memory' includes lines from and is suggested by 'Rhapsody On A Windy Night' and other poems of the 'Pruttock' period. All other words in the show are taken from the Collected Poems.

TREVOR NUNN

This recording of "Cats" contains most of the music of the Broadway production of the musical which opened at the Winter Garden Theatre on October 7th 1982. There are some small alterations and cuts for recording purposes principally in the longer dance sections and the narrative poem "The Pokes and The Pollicles."

T.S. Eliot wrote "Old Possum's Book of Practical Cats" in a series of letters to his godchildren and it's almost certain that their parents were just as much the intended recipients of the poems as those children.

I hope that the music in this recording of "Cats" achieves the sense of fun that abounds in Eliot's verse.

ANDREW LLOYD WEBBER