

DOCKET NO.
RM 2002-1 21 Before the
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Washington, D.C.

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GENERAL COUNSEL
OF COPYRIGHT

In the Matter of:

Notice and Recordkeeping for
Use of Sound Recordings
Under Statutory License

Docket No. RM 2002-1

REPLY COMMENTS OF ROYALTY LOGIC, INC.

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

ROYALTY LOGIC, INC.
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Dated: April 26, 2002

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Royalty Logic, Inc. ("RLI"), designated by the Copyright Arbitration Royalty Panel ("CARP") in Docket Number 2001-9 CARP DTRA 1 & 2 to receive and distribute royalties pursuant to the statutory licenses contained in 17 U.S.C. §§ 112 and 114, hereby submits reply comments in the above-captioned proceeding with respect to issues raised in the initial round of comments.

I. SAMPLE REPORTING

While many commenters support some form of sampling,¹ RIAA did not.² Based on RLI's experience, sample reporting can be a cost-effective and time-saving means of accurately calculating music royalty payments and allocating that money to copyright owners where

¹ See Comments of Joshua Wattles at 2; Comments of Mayflower Hill Broadcasting Corp. at 2; Comments of Collegiate Broadcasters, Inc. at 4; Comments of the National Federation of Community Broadcasters, Inc. at 3-4; Joint Comments of College and University Radio Broadcasters Webcasting Under Statutory License at 25-26; Comments of the Adventist Radio Broadcasters Association at 3-4; Joint Comments of Sirius Satellite Radio Inc. and XM Satellite Radio, Inc. at 2; Joint Comments of Radio Broadcasters at 35-40; Comments of Intercollegiate Broadcasting System at 4; Comments of Harvard Radio Broadcasting Company at 13-14 & att. 2 at 3.

² See RIAA Comments at 12-15.

voluminous amounts of data are involved. Given the number of services that may be submitting reports in this proceeding and the huge amounts of music use data they will generate, reporting on the basis of scientifically constructed samples can be superior to a system of reporting on a census. This is particularly so with respect to the simulcasting and retransmission of broadcast radio signals.

RLI is a wholly owned subsidiary of Music Reports Inc. ("MRI"), which has more than ten years of experience in calculating, paying, reporting, and administering royalty payments for the use of musical compositions and sound recordings. MRI currently administers over \$50 million per year in music license royalties. MRI and RLI have a long history of applying sampling techniques in order to determine the amount and extent of the use of musical compositions and sound recordings in various media including subscription music, broadcast television and broadcast radio.

The use of sample reporting to calculate and distribute royalties is a longstanding and well-accepted practice in the music licensing world. Both ASCAP and BMI have long allowed radio broadcasters to submit music use reports based on a small proportion of the reporting year rather than for all 365 days. It is RLI's understanding that BMI, for example, only requires radio stations to file reports for a 72-hour period for the entire year. In a similar vein, ASCAP conducts its own music survey of a small percentage of programming hours in order to calculate its royalty distribution to its members. Further, the Copyright Office's recordkeeping regulations for the Section 118 statutory license for musical works performances by noncommercial broadcast stations require reports from only a sample of all noncommercial broadcast stations, and for only up to week per reporting year. *See* 37 C.F.R. §§ 253.3(e)(4), 253.5(e), 253.6(e).

Sampling is also heavily used in other contexts. Pollsters such as the Gallup Organization, for example, use sampling to assess public opinion on various issues in the United States as a whole.

In RLI's view, sample reporting, especially with regard to the transmission of broadcast radio signals, provides an efficient means for ensuring accurate payments and distributions for all parties involved, while minimizing the very substantial burdens on copyright owners, distribution agents, and transmission services alike. Sampling benefits the services by relieving them of the very substantial burden of having to report each and every sound recording they transmit, 24 hours a day, 7 days a week, 365 days a year. Sampling also benefits the collection and distribution agents by minimizing their costs and their time spent allocating and distributing royalties. Instead of number crunching the millions and millions of music use records that would be generated if census reporting were required, collective agents can instead base their distributions on sample music reports that will enable them to calculate royalty distributions with reasonable accuracy, yet with nowhere near the administrative costs that census reporting entails.

Most importantly, sampling benefits the copyright owners themselves. Less money spent by the collection and distribution agents equates to more money in the copyright owners' pockets. Therefore, I strongly recommend that the Copyright Office adopt some form of sampling in its final regulations.

II. THE ADDITION OF NON-FEATURED PERFORMER INFORMATION TO RIAA'S PROPOSED UNIFORM REPORT OF PERFORMANCES.

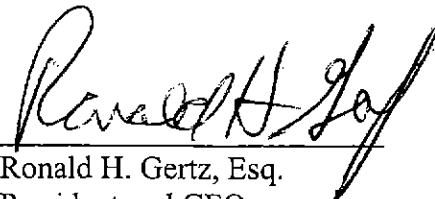
The American Federation of Musicians and the American Federation of Television and Radio Artists have proposed that RIAA's newly conceived "Uniform Report of Performances" include an additional field in which to list the names of all non-featured singers and musicians.

Further, the unions have proposed that the services be required to provide this information to the extent that it is available.

RLI believes that the limited information that could realistically be provided by the services at the time of reporting would be incomplete, of highly suspect accuracy and of limited use. Moreover, such information is not useful for identifying the recording and is simply not available to the services and, therefore, should not be required of them. The compilation of such information, to the extent necessary to distribute funds, should instead, and in all fairness, be the responsibility of the copyright owners and the unions because the copyright owner/producer usually hires and pays the non-featured performers (or their unions) in the first place. Also, the copyright owners/producers and the unions are or should be in possession of "session" reports which identify the non-featured performers whose services were utilized and paid for. Perhaps the fact that the copyright owner hires and thus knows the identity of the non-featured performers is the reason why the language of the statute requires the copyright owner to allocate fees among the recording artists.

Respectfully submitted,

ROYALTY LOGIC, INC.

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