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Cincinnati OH  
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Copyright Arbitration Royalty Panel (CARP)  
P.O. Box 70977  
Southwest Station  
Washington, DC 20024-0977

GENERAL COUNSEL  
OF COPYRIGHT

DOCKET NO.
RM 2002.1
COMMENT NO. <u>2</u>

Re: Notice of proposed rulemaking  
37 CFR Part 201 [Docket No. RM 2002]  
Notice and Recordkeeping for Use of Sound Recordings Under Statutory License

This is to provide the Copyright Office with my comments on the proposed regulations. An original and ten copies of this letter are enclosed. I am commenting as a member of the public who purchases sound recordings, and who uses the Internet and listens to "internet radio" or to an "AM/FM Webcast" as the proposed regulations define it. I listen to internet transmission of sound recordings, as well as other material; and I listen to broadcast radio.

Webcasts offer me an opportunity to hear music that I cannot hear on commercial broadcast radio. I am concerned that the regulations may increase the cost of webcasts and ultimately restrict what I can hear from U.S. based webcasts. However, my main concern is the privacy issues raised by the "Listener's Log" section of the proposed regulations.

Sec. 201.36(e)(3) of the proposed regulations calls for Services (other than preexisting subscription services) to maintain and report a "Listener's Log" including detailed information, user login and logout time, location, etc. and a "unique user identifier". This would require the covered Services to collect data on the listening habits of each individual user and to send those reports to Collectives or to post those reports online. (The form of "unique user identifier" is not specified in the proposed regulations, but this appears to be something such as a name, email address, computer machine ID, etc., which would identify the individual person.)

Sec. 201.36(e)(3) thus requires Services to collect data on individual personal listening habits and transmit that personal data, with the "unique user identifiers", to third parties (copyright owners) or to post it on the Internet with no individual privacy protection whatever.

If the Services were required to report the "Listener's Log" and "unique user identifier" data to the Copyright Office, instead of to the copyright owners/Collectives, the data would apparently be subject to the use restrictions and privacy safeguards of 5 USC 552. The draft Sec. 201.36(e)(3) appears to require Services to treat personal information in a quite different way, with no safeguards.

Sec. 201.36 (d) requires online postings of the Reports of Use under certain circumstances. The proposal would thus require online posting of the "unique user identifiers". This makes the data and "unique user identifiers" available to almost anyone.

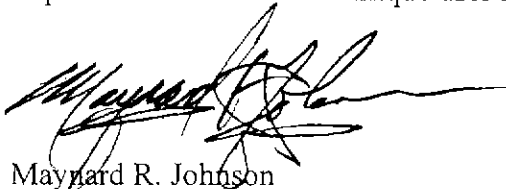
The optional allowance for a "click wrap" agreement in Sec. 201.36(d)(2) is no help. First, it is not mandatory that a "click wrap" be used. Second, persons seeking access to such lists for purposes of internet spamming or less honorable purposes are not likely to pay any attention to a "click wrap" agreement.

Although the "click wrap" language in (d)(2) mentions restrictions on use of information, there is no requirement applied to copyright owners and Collectives not to use information for purposes other than royalty collection, etc., and no restriction against copyright owners and Collectives themselves posting "unique user identifiers" on-line, or using them for any purposes whatever.

Sec 201.36(d) provides no assurance of privacy directly to any individual user whose information would be collected and passed about. No individual user would have any assurance that such information would not be misused for email or regular mail junk mailings, or sold to others for other purposes not authorized by the individual.

To the extent that other Federal or State privacy laws are applicable to the Services, a Service may be prohibited from providing "unique user identifiers" information to copyright owners and Collectives or posting them online without express prior consent of the unique users. E.g., to the extent that a Service is within 47 USC 551's broad definition of "cable operator", disclosure of personally identifiable information without prior written or electronic consent may be prohibited. Other privacy laws may be more inclusive and more protective of individual privacy rights to the extent that compliance with proposed Sec. 201.36(e)(3) would be impossible.

Sec. 201.36(e)(3) should be stricken. If not, at the very least, Sec. 201.36(e)(3)(vi), the requirement to include a "unique user identifier" should be eliminated.



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