



"SERVING MID-ILLINOIS"

PLEASE ADDRESS REPLY TO:

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DOCKET NO.
RM 2002.1
COMMENT NO. 12

March 8, 2002

Office of General Counsel
Copyright Office
James Madison Building
Room LM-403
First and Independence Avenue, SE
Washington, DC 20024

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GENERAL COUNSEL
OF COPYRIGHT

Dear Sirs,

The following comment is submitted regarding the February 20, 2002 Copyright Arbitration Royalty Panel ("CARP") report delivered to the Copyright Office and open for comment by April 11, 2002.

I am writing on behalf of WSMI radio station, a 1,000 watt AM daytime only station, licensed to Litchfield, IL population 7,200. The station along with two others, with collocated studios, employ 25 full time employees including myself, my brother, and my mother. WSMI has been broadcasting and serving our area for over 51 years.

Broadcasters have a great understanding of the webcasting business model of non subscription advertising supported distribution of program content (including music), because of the many years of operating over the air broadcast businesses. Music licensing is only one of the many component costs that comprise the expenses of such an operation. Other costs include payroll for talent, engineering, sales, administration, and office staff; technical equipment costs; office expenses; licensing for other program content; utilities; power, light and water, telephone, Internet connectivity; taxes; buildings; and many others. The rates and terms for performance rights of sound recordings must be fair.

I urge the Copyright Office to recommend that the Library of Congress reject the rates and terms set forth in the February 20, 2002 CARP report.

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The rate structure proposed by CARP is not a fair one. The fee structure proposed by CARP far exceeds the license fees paid to ASCAP, BMI, and SESAC for the "musical work" licenses that pay the creators of the musical work. Historically, in broadcasting rates for such licenses are based on a percentage of gross revenue from broadcasting. If we apply the CARP rate recommendation to the current radio model, the license fee for the performance license would be many times the license fees paid to ASCAP, BMI and SESAC for "musical work" licenses. That's true even at the lower .07 cent per listener per record rate. I believe that CARP greatly overestimated the net value of each listener for the webcaster. I believe the CARP recommendation is 10 to 20 times too high. Ultimately I believe that a minimum fee with a percentage of revenue cap not to exceed 5 percent of actual webcasting revenue is a much better and much more fair approach. The current rate recommendations are so high I question whether anyone will consider webcasting, if they plan to have a listening audience.

There should be only one much lower rate structure for commercial broadcast radio stations. Simulcasting the over the air signal on the webcast may not be desirable or possible. Consider our daytime only station. Simulcasting would limit our webcast to daytime only hours as well. The broadcast license is limited due to the interference that would be created to others station on the AM band if all stations stayed on at night. This limitation does not exist on the internet and our station should not be penalized for the laws of physics. Our radio programming consists of non music elements: news, information, and commercials. We may be prohibited, due to program and content licensing, from webcasting some or much of this programming. I also understand that technologies exist that could customize each listeners news, commercial, and information content to the listeners taste. For all of these reasons commercial broadcast stations should be able to have a webcast presence at the lowest rate regardless of whether it's a simulcast or a product created specifically for the webcast.

The ephemeral recording exemption in Section 112 of the Copyright Act "grants an exemption for the making of "ephemeral recordings"....made in order to facilitate a transmission" and should apply to Appendix A, 1. Webcaster, (a) simultaneous Internet retransmissions of over-the-air AM or FM radio broadcasts as well. There should be no 9% ephemeral license fee for this service. I further urge that the ephemeral exemption be applied to all webcasts were the recordings are "...made in order to facilitate a transmission" on a webcast.

Reporting requirements based on the per listener per song basis will create many Gigabytes of data, creating problems in recordkeeping for the webcaster and the streaming provider. My understanding of webcasting is based on the model of the station streaming one stream to a streaming service provider who would then distribute streams to multiple streaming servers. The streaming servers would then be located near the listener to improve performance and the listening experience for the user. This distribution model would mean that the information required by the reporting requirements would also be accumulated on many servers requiring consolidation somewhere. Also this information

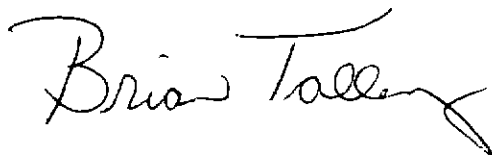
is not managed or in the hands of the webcaster. The streaming service provider would have this information. If this data is lost what would be the resulting license fee or penalty to the webcaster? The amount of information requested by the RIAA seems excessive. Many recordings at our radio station lack the required information. I suggest that the RIAA must maintain a database of every song ever recorded and licensed by them and searchable by any of the required fields to allow licensees a resource to access the required information. Today pennies are too small an increment for consumers to worry about. Pennies are left in containers at every retail establishment. Yet the reporting requirements require many pieces of information for each .07 cent listener. Reporting based on actual airplay makes more sense coupled with fees based on revenue and not number of listeners.

Summarizing:

Statutory performance license fees for sound recordings should have a very minimal fee with further fees capped at a percentage of gross webcasting revenue, not to exceed 5%. Ephemeral recordings should be exempt as per the exemption in Section 112 of the Copyright Act "grants an exemption for the making of "ephemeral recordings"....made in order to facilitate a transmission" and should apply to all webcasting licensed under the statutory license for webcasting. Reporting should be limited to information about what was webcast, a playlist.

I urge the Copyright Office to recommend that the Library of Congress reject the rates and terms set forth in the February 20, 2002 CARP report.

Sincerely,

A handwritten signature in cursive script that reads "Brian Talley". The signature is written in black ink and is positioned above the typed name.

Brian Talley
V.P. Operations
WSMI Radio Station
Talley Broadcasting Corporation