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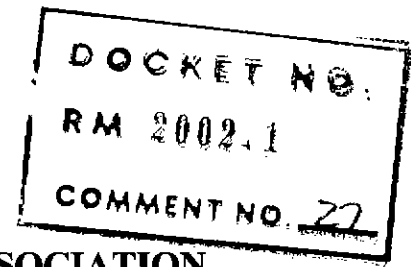
APR 5 2002

GENERAL COUNSEL
OF COPYRIGHT

In the Matter of)
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NOTICE AND RECORDKEEPING)
FOR USE OF SOUND RECORDINGS)
UNDER STATUTORY LICENSE)
)
)
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Docket No. RM 2002



COMMENTS OF THE
ADVENTIST RADIO BROADCASTERS ASSOCIATION

The Adventist Radio Broadcasters Association (ARBA), by counsel, submits the following comments in response to the Copyright Office's *Notice of Proposed Rulemaking* (the NPRM) in Docket No. RM-2002, published at 67 *Federal Register* 5761 (February 7, 2002). ARBA is an association of radio broadcast stations owned and/or operated by Seventh-day Adventist institutions, or by individuals who are members of the Seventh-day Adventist Church.

The Association includes 31 radio broadcast stations located throughout the United States, most of which are licensed by the Federal Communications Commission to operate noncommercially. Most of these stations operate with small staffs of fewer than five paid professionals, supplemented by volunteers.

Many ARBA members operate internet websites, some of which include the streaming of audio. In most cases, the audio streamed is the simultaneous transmission on the internet of the station's over-the-air broadcast signal. At least one member also produces and transmits an audio

stream that is separate and apart from its over-the-air broadcast signal. In all cases, it appears that these streaming activities qualify for the statutory copyright license of 17 U.S.C. 114 as eligible nonsubscription transmission Services. As copyright licensees under the statutory license, these Services will be subject to whatever requirements are established in this rulemaking proceeding.

In the NPRM the Copyright Office proposes rules to implement certain aspects of the statutory license. Specifically, procedures are proposed for gathering detailed information from licensees under the statutory license about copyrighted works that are included in the audio programming streamed by the licensees, and about works of which ephemeral copies are produced in the streaming process. These proposals are based largely upon suggestions posed by the Recording Industry Association of America (RIAA). The Copyright Office acknowledged that "Other interested parties . . . may find the [proposed] requirements too stringent and burdensome . . ." NPRM, 67 Fed.Reg., at 5763. Such other parties were invited to identify the problems they perceive with the proposals.

The proposed regulations would impose a substantial new recordkeeping burden on website operators that appears to ARBA to be well beyond that necessary to provide copyright holders with information adequate to calculate royalties. Collecting and collating the detailed information requested for each covered work manually is clearly out of the question. The alternative is to collect the data with a software program. An informal pole of the software venders for computer programs used by ARBA members to schedule music on the air found that no such software appears to be readily available now. For the time being then, there is a substantial technical obstacle to collecting the proposed data in a reasonable manner.

If and when an appropriate software program is available, there remains the question of whether its cost will be reasonable and affordable for small noncommercial radio stations. Of course, the actual monetary price to purchase the right to use such a program is presently unknown. However, there will also be the costs involved in implementing and operating such a system. An informal review of the possible programmatic scenarios by ARBA members leads to the conclusion that the initial input of requested data on all of the works in a radio station's library may require up to 250 hours of skilled station staff time. That equals more than six weeks of the time of a full-time staffer devoted exclusively to systems start-up and implementation. Such an imposition would be a substantial burden for a radio station with a paid staff of five to ten people. It would be crippling for a station with a staff of only two or three.

The burden that such a recordkeeping requirement would impose on small radio stations is not in proportion to the public interest benefit that would result. Other methodologies could be used to calculate the usage of copyrighted works for the purposes of royalty calculations that would yield adequate information. Rather than collecting the detailed data for each copyrighted work that is ever performed, data could be collected for a small but representative sample of the works. For instance, data could be collected for all performances on one day per month, or one week per calendar quarter, or per a similar formula. Totals could be extrapolated from that sample to calculate reasonably accurate estimates for the total number and identity of copyrighted works performed over longer periods of time. Such systems are used satisfactorily to calculate royalties for the broadcast and internet streaming performances involving other types of copyrights, such as those held by authors and composers. RIAA has not proffered any reasonable

explanation for why similar uses of approximation would not be sufficient for the copyrights in question here.

The Copyright Office should consider also whether it is necessary to burden smaller radio stations with the proposed recordkeeping. The distraction and redeployment of resources associated with the proposed recordkeeping would substantially reduce the quality and quantity of the services that smaller radio stations are able to provide to their communities and audiences now. The absolute precision that might be achieved with voluminous recordkeeping about works performed would not produce royalty calculations with a public benefit that could offset the loss in the benefits no longer provided by small radio stations with small staffs. Radio stations with ten or fewer full-time employees should be exempt from these recordkeeping obligations. Royalties to be owed by such stations with qualifying transmission Services could be calculated on the basis of gross estimates. Copyright holders would continue to be protected while small radio stations would be able to continue to devote their resources to serving their audiences.

Sufficient information can be gathered to form a fair basis for the calculation of copyright royalties without the onerous burdens proposed in the NPRM. ARBA urges the Copyright Office to adopt regulations that would include data collection techniques and methodologies that substantially reduce the burden on the recordkeepers, with exemptions for smaller entities from this unnecessary paperwork burden altogether.

Respectfully submitted,

ADVENTIST RADIO
BROADCASTERS ASSOCIATION

By: Donald E. Martin
Donald E. Martin *DM*

DONALD E. MARTIN, P.C.
P. O. Box 8433
Falls Church, Virginia 22041
(703) 671-8887

Its Attorney

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