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**Congress of the United States  
House of Representatives**

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Government Reform

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GENERAL COUNSEL  
OF COPYRIGHT

Mr. David O. Carson  
General Counsel  
U.S. Copyright Office  
101 Independence Ave SE #LM403  
Washington, D.C. 20055

DOCKET NO.
RM 2002.1
COMMENT NO. 34

Docket No. RM 2002-1A

Dear Mr. Carson:

This is in response to the Federal Register notices of February 7 and March 8, 2002, regarding Notice and Recordkeeping for Use of Sound Recordings Under Statutory License. I appreciate the opportunity to make these comments on behalf of the people of Ohio's 10th Congressional District and others from around the country who would be unduly burdened by provisions of the rules being developed pursuant to the Digital Millennium Copyright Act of 1998 (DMCA).

My constituents are served by several such radio stations, including but not limited to WBWC/88.3-FM Berea (Baldwin Wallace College), WRUW/91.1-FM Cleveland (Case Western Reserve University), WCSB/89.3-FM (Cleveland State University), and WUJC/88.7-FM University Heights (John Carroll University). Specifically, the rules should relieve these and other educational and community media from burdensome recordkeeping, fee structures, and content restrictions.

HISTORICAL PRECEDENT

Webcasting is a new medium for the public dissemination of recorded material. Issues similar to those raised by copyright holders were previously raised with respect the radio broadcast. Congress recognized and balanced the rights of copyright holders and nonprofit educational and community radio stations. The legislative history of the Copyright Act provides that recognition:

The Committee is cognizant of the intent of Congress, in enacting the Public Broadcasting Act on November 7, 1967 (47 U.S.C. 390 et seq.), that encouragement and support of noncommercial broadcasting is in the public interest. It is also aware that public broadcasting may encounter problems not confronted by commercial broadcasting enterprises, due to such factors as the

special nature of programming, repeated use of programs, and, of course, limited financial resources.

See 17 U.S.C. § 118 Historical and Revision Notes. See also 37 C.F.R. § 253.5 (establishing a reasonable royalty rate for nonprofit public radio stations for payment of royalties to composer organizations such as ASCAP and BMI).

### RECORD-KEEPING

The record keeping requirement proposed in the report by Copyright Arbitration Royalty Panel (CARP) would be unduly burdensome for college radio stations. College radio stations generally do not have budgets for automated reporting systems. And unlike commercial radio stations which stick with one general format, college stations tend to have enormous libraries acquired over several decades and are not catalogued in computer databases. The cost or volunteer time requirements would be prohibitive.

A more reasonable reporting alternative would be for college radio programmers to keep a record of the songs played, the album or CD the song is from, and the artist performing the song. Such a record would be kept for a two or three year period and stations could furnish royalty recipients, upon request, with a music-use report during one week of each calendar year. Recipients should be restricted to request such reports from no more than 10 stations in any one calendar year. The reduced reporting requirement would also reduce the processing costs of royalty recipients. A precedent for such a reporting requirement can be found in 37 C.F.R. § 253.5.

### FEES

The per song, per listener fees proposed will be unduly burdensome to college radio stations exploring the emerging webcasting technologies. If such a station has an average of 25 listeners per hour, which is typical of college radio stations, that station will be subjected to annual fees of approximately \$13,000, which exceeds the budgets of many college radio stations.

Unlike commercial radio, and even public radio which competes with commercial radio, has large signals and audiences, and is subsidized by the Corporation for Public Broadcasting (CPB), college radio stations tend to have very small budgets, signals, audiences, and budgets. While commercial radio and public radio stations are able to pay these fees, college radio stations do not have the ability to raise such funding requirements. College, educational, and community radio stations with webcasts or are contemplating webcasts should either be exempt from such fees or alternatively be charged a reasonable annual licensing fee similar to the royalty rates established for composers' works transmitted by public radio stations. See 37 C.F.R. § 253.5.

### CONTENT RESTRICTIONS

College radio and similar nonprofit educational and community radio formats specialize in diversity and innovation. The DMCA, however, restricts content by instituting a maximum number of selections by a given artist during a given period of time. This restriction would have a chilling effect on the creative and educational missions of many college radio stations. Such a restriction would put an end to programs which explore the musical and historical legacies of given artists or shows which address racial frontiers or interpret the works of historical figures. Nonprofit college, educational, and community webcasters should be exempt from numerical or other content restrictions.


### CONCLUSION

Educational institutions such as those which serve my Congressional District are among the most innovative users of the new internet media. Students and other constituents who participate in these radio stations are creating innovative uses of these media through webcasting. They are able to learn emerging technology through their participation in college radio and apply their education to the actual market-place and the market-place of ideas. The historic recognition of the problem of nonprofit educational and community institutions with respect to radio technology must also be applied to the emerging webcasting technology.

Special considerations must be made for such stations. Webcasting is a new technology. College stations have limited audiences. The programmers on such stations are volunteers and make no money from their efforts. They provide a crucial service through their educational missions and by providing alternatives to commercial radio and even public radio which competes with commercial radio. They also provide a service to independent artists excluded from mainstream media.

College radio should be exempted from the onerous requirements of recordkeeping, fees, and content restrictions being developed for webcasts. Please consider these issues as you develop rules pursuant to the DMCA.

Sincerely,



Dennis J. Kucinich  
Member of Congress

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