



ANNOUNCEMENT

from the Copyright Office, Library of Congress,
101 Independence Avenue, S.E., Washington, D.C. 20559-6000

NOTICE REQUESTING WRITTEN PROPOSALS AND ANNOUNCING STATUS CONFERENCE

NOTICE AND RECORDKEEPING FOR USE OF SOUND RECORDINGS UNDER STATUTORY LICENSES

The following excerpt is taken from Volume 67, Number 184 of the *Federal Register* of Monday, September 23, 2002 (pp. 59573-59576)

LIBRARY OF CONGRESS

Copyright Office
[Docket No. RM 2002-1B]

Notice and Recordkeeping for Use of Sound Recordings Under Statutory Licenses

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice requesting written proposals and announcing status conference.

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SUMMARY: The Copyright Office of the Library of Congress is requesting interested parties to submit written proposals governing data format and delivery for recordkeeping requirements to be established by the Copyright Office, under the authority of the Librarian of Congress, for the section 112 and section 114 statutory licenses. The Office will also conduct a status conference to discuss the formatting requirements.

DATES: Written proposals must be received in the Copyright Office by September 30, 2002. A status conference will be held on October 8, 2002 at 10 a.m.

ADDRESSES: An original and ten copies of written proposals should be brought to: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room LM-403, First and Independence Avenue, SE., Washington, DC; or mailed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024-0977. The October 8, 2002, status conference will be held in the CARP Hearing Room, Room LM-414, located on the fourth floor of the James Madison Memorial Building of the Library of Congress, First Street and Independence Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Wil-

liam J. Roberts, Jr., Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024-0977. Telephone: (202) 707-8380. Telefax: (202) 252-3423.

SUPPLEMENTARY INFORMATION:

Background

The Copyright Act grants copyright owners of sound recordings the exclusive right to perform their works publicly by means of digital audio transmissions subject to certain limitations and exceptions. Among the limitations placed on the performance of sound recordings is a statutory license that permits certain eligible subscription, nonsubscription and satellite digital audio services to perform those sound recordings publicly by means of digital audio transmissions. 17 U.S.C. 114.

Similarly, copyright owners of sound recordings are granted the exclusive right to make copies of their works subject to certain limitations and exceptions. Among the limitations placed on the reproduction of sound recordings is a statutory license that permits certain eligible subscription, nonsubscription and satellite digital audio services to make ephemeral copies of those sound recordings to facilitate their digital transmission under the section 114 license. 17 U.S.C. 112(e).

Both the section 114 and 112 licenses require services to, among other things, report to copyright owners of sound recordings on the use of their works. Both licenses direct the Librarian of Congress to establish regulations to give copyright owners reasonable notice of the use of their works and create and maintain records of the use for delivery to copyright owners. 17 U.S.C. 114(f)(4)(A) and 17 U.S.C. 112(e)(4). The purpose of the exchange of data is to enable copyright owners of sound recordings to distribute royalties collected under the statutory licenses to the correct recipients.

In 1998, the Copyright Office issued interim notice and recordkeeping regulations for subscription digital audio transmission services that, at the time, were the only services eligible for the statutory licenses. The

Digital Millennium Copyright Act, Pub. L. No. 105-304, 112 Stat. 2860 (1998), expanded the pool of digital audio services eligible for the licenses making additional notice and recordkeeping regulations necessary. On February 7, 2002, the Office published a Notice of Proposed Rulemaking ("NPRM") using the 1998 interim regulations as the guidepost. The Office received public comments and, on May 10, 2002, the Office held a public meeting with representatives of copyright owners and users of the statutory licenses to assist in the formulation of regulations for notice and recordkeeping. Subsequently, the Office announced on the Copyright Office website that it would be announcing interim notice and recordkeeping regulations to establish transitional reporting requirements for services using the section 114 statutory license to perform sound recordings publicly by means of digital audio transmissions and the section 112 statutory license to make ephemeral recordings of sound recordings.

As the announcement on the Copyright Office website stated, these transitional requirements will require services using the statutory licenses to report the following information for a certain period of time during each calendar quarter:

1. The name of the service submitting the report;
2. The transmission category of the service [upon further analysis, the Office believes that the following categories need* be designated: eligible nonsubscription services; preexisting satellite digital audio radio services; new subscription services; non-Corporation for Public Broadcasting, noncommercial broadcasters making transmissions covered by 37 CFR 261.3(a)(2)(i) and (ii); non-Corporation for Public Broadcasting, noncommercial broadcasters making transmissions covered by 37 CFR 261.3(a)(2)(iii);² and business establishment services making ephemeral phonore-

*Corrected text should read "need to be"

cords];³ and

3. For each sound recording transmitted by the service during the relevant period:

- a. The featured recording artist;
- b. The sound recording title;
- c. The name of the record album containing the sound recording, if in the possession of the service, or supplied to the service, at or before the time of the performance;
- d. The marketing label of the sound recording, if in the possession of the service, or supplied to the service, at or before the time of the performance; and
- e. The total number of performances of the sound recording (i.e., the number of times the sound recording is performed multiplied by the number of recipients of each performance) during the relevant reporting period.

The transitional requirements will apply prospectively to reporting by qualified nonsubscription services (e.g., webcasters), preexisting satellite digital audio radio services, new subscription services, and business establishment services making ephemeral phonorecords. Preexisting subscription services will continue to be governed by the existing reporting requirements found at 37 CFR 201.36.

It is anticipated that these interim requirements will be replaced after several months by final requirements, which are likely to require more comprehensive reporting. Moreover,

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reporting requirements for the period commencing October 28, 1998 until the effective date of these interim regulations will be announced in the future. Until that announcement, services are cautioned that they should retain all records pertaining to performances of sound recordings during that period.

One of the issues that must be addressed in the interim regulations—and is the subject of today's request for written proposals—is the format in which recordkeeping data must be maintained by services using the statutory licenses, and the method or methods for de-

¹ Transmissions covered by these provisions include simultaneous Internet retransmission by non-Corporation for Public Broadcasting, noncommercial broadcasters of over-the-air AM or FM broadcasts by the same radio station and other Internet transmission of non-Corporation for Public Broadcasting, noncommercial broadcasters, including up to two side channels of programming consistent with the mission of the station, and are subject to a section 114 royalty of 0.02[cent] per performance.

² Transmission covered by this provision include Internet transmissions on other side channels of programming by non-CPB, noncommercial broadcasters, and are subject to a section 114 royalty of 0.07[cent] per performance.

³ The transmission categories noted here are not identical to the categories set forth in the announcement on the Copyright Office website. The current list of categories has been revised to take into account the various rates for different kinds of services established by the Order of the Librarian of Congress establishing rates and terms for the statutory license for eligible nonsubscription services. See 67 FR 45239 (July 8, 2002).

livery of the data to SoundExchange, which is the officially designated Receiving Agent for receiving section 114 and 112 royalty fees. See 37 CFR 261.4(b). As a preliminary matter, the Office has determined that data must be maintained in electronic format for delivery to SoundExchange; data in hard copy format is not acceptable. The issue, then, is the technical specifications of the electronic reports that will make the data stored therein usable.

By way of illustration, in the NPRM, the Office proposed the following format requirements, which included some data fields that are no longer being considered:

Format. Reports of Use should be provided on a standard machine-readable medium, such as a diskette, optical disc, or magneto-optical disc, and should conform as closely as possible to the following specifications:

- (1) * * *⁴
- (2) * * *
- (i) ASCII delimited format, using pipe characters as delimiter, with no headers or footers;
- (ii) Field names should not be included as the first row of the file;
- (iii) Carats (^) should surround strings;
- (iv) No carats (^) should surround dates and numbers;
- (v) Dates and times should be indicated by: DDMMYYYYhhmmss, where DD is the two-digit day of the log period; MM is the two-digit month of the log period; YYYY is the four-digit year of the log period; hh is the two-digit hour of the log period; mm is the two-digit minute of the log period; ss is the two-digit second of the period; single digit days, months, hours, minutes and seconds should be prepended with a zero; and times are local using a 24-hour clock;
- (vi) A carriage return should be at the end of each line;
- (vii) All data for one record should be on a single line;
- (viii) All data for each month and each log type should be contained in a single file;
- (ix) Files may be compressed in ZIP or GZ format; and
- (x) Files should be named Service Name—Log Type—MMYYYY, where Log Type should be Play List, Listener or Ephemeral. 67 FR at 5766-5767. The Office received virtually no public comment on the proposed format requirements in either the written comments or the reply comments.

Formatting of recordkeeping data was addressed periodically at the May 10, 2002, public meeting, although mostly in the context of whether records have been maintained in electronic or hard copy format. The specifics of the proposed format regulation in the NPRM were not discussed.

Subsequent to the May 10 public meeting, the Office met with representatives of RIAA

⁴ The provisions of this subsection apply to pre-existing subscription services and remain in effect. See 63 Fr 34289 (June 24, 1998).

and SoundExchange and with representatives of broadcasters and webcasters to discuss format requirements in an effort to speed the process for issuing interim regulations that will begin reporting of data required by the section 114 and 112 licenses. It was apparent from both these meetings that the requirements proposed in the NPRM are not sufficiently detailed and will likely cause confusion and error in the reporting of recordkeeping data. Unfortunately, there was no consensus as to the specifics for formatting data.

Request for Written Proposals

In the interest of crafting data format regulations that are efficient, cost effective and reduce the incidences of reporting error, the Copyright Office is requesting both copyright owners and users of the section 114 and 112 licenses for digital audio transmissions to submit their written proposals for specifications to be included in regulations adopting the electronic format for recordkeeping data. Such proposals should include specific regulatory language along with a brief explanation of the reasons for adopting such language. Interested parties should also include in their written proposals acceptable means of data delivery (such as via e-mail attachment, delivery to an ftp site, physical delivery of a diskette, etc.) as well as any other technical requirements necessary to facilitate the effective exchange of data. The proposals should assume that the substantive reporting requirements will be the requirements outlined above (name of service, transmission category of service, and the five categories of information identifying each sound recording performed).

Proposals should include requirements that are or can be compatible with software used by webcasters in connection with programming or reporting of performances of sound recordings. The interim regulations will also provide that webcasters be able to report on the use of sound recordings by recording the required information in spreadsheets in formats compatible with commonly used spreadsheet software. The Office intends to require that SoundExchange make templates for such spreadsheets available for downloading on its website and on the Copyright Office website. Proposals for formatting requirements should be compatible with this requirement and ideally should include samples of compatible spreadsheets.

Comments are also solicited on whether the reporting on the transmission category of the service should include only the categories set forth above,⁵ and whether there is any reason why the reports by services should identify whether the services are using only the section 114 statutory licence or are also using the section 112 statutory license. Proponents of a requirement to identify whether a service is using the section 112 statutory license should take account of such a requirement in their proposals regarding formatting.

The Office encourages copyright owners, broadcasters and webcasters to work together

to agree on formatting requirements that will serve all of their needs, and to submit joint proposals or comments if possible.

Written proposals are due by September 30, 2002.

Status Conference

The Office will hold a status conference on October 8, 2002, at 10:00 a.m. in the CARP Hearing Room, Room LM-414, located on the fourth floor of the James Madison Memorial Building of the Library of Congress, First Street and Independence Avenue, SE, Washington, DC. The purpose of the status conference will be to discuss the formatting requirements for the notice and recordkeeping regulations.

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Dated: September 17, 2002.

David O. Carson,
General Counsel.

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⁵ See the text accompanying footnote 3.