

Published in the April 27, 2004 issue of [Southeast Tech Wire](#).

Webcasting Notice and Recordkeeping Requirements Now In Effect

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Date: April 26, 2004

The United States Copyright Office has finally published regulations specifying notice and recordkeeping requirements for use of sound recordings under statutory licenses under Sections 112 and 114 of the Copyright Act. The new regulations require two types of filings - a notice that is due July 1 and quarterly reports of use.

These requirements apply to both simultaneous and delayed Internet transmissions of over-the-air AM or FM broadcasts. Other services covered by the regulations include subscription services, preexisting satellite digital audio radio services, such as XM and SIRIUS Satellite Radio, and business establishment services. The regulations became effective on April 12, 2004. However, noncommercial stations that rebroadcast their signals over the Internet are only required to submit the notice and are not subject to reporting usage - at least through the end of this year.

The Office pointedly drew attention to the fact that the new regulations are only interim in nature. More comprehensive regulations are expected in the future. Signaling that the final regulations may be more onerous, the Office stated that the interim regulations represent the minimum reporting requirements. The good news for broadcasters is that the Office rejected many of the burdensome recordkeeping requirements urged by the Record Industry Association of America ("RIAA") and the performers' unions.

The regulations only apply prospectively. Still to be addressed are the types of information to be reported for prior uses between October 28, 1998 and March 31, 2004. More significantly, future regulations will also address the format in which records of use must be maintained and the means of delivering the information to copyright owners. In other words, for most broadcasters the recordkeeping provisions only specify what records to keep, but not the form in which records must be stored nor the manner in which they are to be reported. Accordingly, it would be prudent to maintain records in a flexible format that can be easily converted to an alternative format for delivery once appropriate regulations are announced.

Notice of Intent - The new regulations require that all music webcasters file a Notice of Intent to Use Sound Recordings under Statutory License. For your convenience, a copy of the Notice is included with this Memorandum. You may also download copies directly from the Office [web site](#).

Services already engaged in digital transmissions before April 12, 2004 must file the Notice before July 1, 2004 together with a filing fee of \$20. Note that a new notice and fee is required even if a notice was previously filed under the former regulations. Services must file an original of the form and three copies. An amendment is required within 45 days after any change in the information contained on the Notice. The Copyright Office does not currently accept electronic filings for the Notices, so they must be mailed or otherwise delivered to the address on the form.

Quarterly Use Reports - Instead of requiring year-round census reporting (as probably will be required at some point in the future), the current regulations authorize reports for two seven-day periods per calendar quarter, starting with the quarter that began April 1, 2004. The periods need not run from Sunday to Saturday, but can be any seven consecutive days. Similarly, the two periods are not required to run consecutively, although they may. The two weeks chosen should represent the programming typically offered during the quarter.

A Report of Use is required to contain the following data fields in the following order for each sound recording transmitted during the applicable reporting period. Bear in mind that for purposes of the regulation, performances to be reported exclude the following: a) sound recordings that are not copyrighted, b) performances for which the service has a license, and c) incidental performances. (Incidental performances include most musical transitions, commercial beds and excerpts of 30 seconds or less.)

Field	Explanation
Name of service	The full legal name of the service
Transmission category	Transmission categories are assigned letter codes from A through K. For example, web simulcasts of music programming are Category B. News, sports, talk or business programming is Category C.
Featured artist	If the featured artist is an individual or an entity such as a band, the full name must be reported. Where the sound recording performed is taken from an album that contains various featured artists, it is not acceptable to report the artist as "Various." Rather, the featured artist of the particular track must be reported.
Sound recording title	In the case of an album, this is the song title, not the album title.
Sound recording identification	This field may contain either the International Standard Recording Code ("ISRC"), or the Album Title and Marketing Label. The ISRC should be embedded in each digital cut, including both promotional and commercial releases. The Marketing Label is the name of the company that markets the album.
Total performances	This field may be determined in one of two ways. The first method is Actual Total Performances (i.e.: the number of times a listener hears a song - 10 plays heard by each of 5 listeners equals 50 Actual Total Performances). These may be reported separately for each time the sound recording is transmitted during the reporting period, or all at once for the sum of all Actual Total Performances of the sound recording during the relevant reporting period. For the second method, in lieu of reporting Actual Total Performances a service may report three data elements: Aggregate Tuning Hours, Channel or Program Name, and Play Frequency. Aggregate Tuning Hours measure the total number of listener hours by all who have accessed the service during a given period of time. The regulations specify that the FCC facility identification number should be entered for the Channel or Program Name. Unfortunately, the Office's explanation uses the call sign WABC as an example of a facility identification number, so it may be prudent to enter both. Also, note that Play Frequency is different from Performance data. Performance data takes into account both the number of times

	played and the number of listeners, whereas Play Frequency only reports the number of times played.
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Reports of Use must include a signed statement by the appropriate officer or representative of the service attesting, under penalty of perjury, that the information contained in the Report is believed to be accurate and is maintained by the service in its ordinary course of business. Services must retain copies of the Reports of Use for at least three years from the date of filing or posting of the Report.

Please let us know if you would like to discuss any aspect of the copyright regulations governing digital transmissions.

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