

**crb - REPLY COMMENTS OF JAMES CANNINGS, JC RECORDS, CAN CAN MUSIC CO.,  
OUR OWN PERFORMANCE SOCIETY, INC. Docket No. RM 2008-7**

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**From:** "James Cannings" <jcrec10@jamescannings.com>  
**To:** "CRB" <crb@loc.gov>  
**Date:** 6/8/2009 10:37 PM  
**Subject:** REPLY COMMENTS OF JAMES CANNINGS, JC RECORDS, CAN CAN MUSIC CO.,  
OUR OWN PERFORMANCE SOCIETY, INC. Docket No. RM 2008-7

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**Before the  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
Washington, D.C.**

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**In the Matter of**

**NOTICE AND RECORDKEEPING FOR  
USE OF SOUND RECORDINGS UNDER  
STATUTORY LICENSE**

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**Docket No. RM 2008-7**

**REPLY COMMENTS OF JAMES CANNINGS, JC RECORDS, CAN CAN MUSIC CO., OUR  
OWN PERFORMANCE SOCIETY, INC.**

James Cannings et. al., respectfully submit these Comments in response to the Copyright Royalty Judges' Notice of Inquiry published in the Federal Register on April 8, 2009 (NOI). 74 Fed. Reg. 15,901 (Apr. 8, 2009).

As a copyright owner, songwriter, composer, publisher and now performing rights organization, I do advocate and support the census reporting method. I am a licensor that by definition of the SBA and FCC, is a small entity and/or small business, See NAB comments at 2 Docket No. RM 2008-7.

There are costs associated with my level of operation - supplier of music - that must be fairly compensated. Title 17 U.S.C guarantees this. Licensees - users of music - must not complain about the costs associated with their choice of enterprise. By the nature of their choice, the Copyright Act obligates licensees as "users" of music to compensate licensors - suppliers of music - fairly for the use of their intellectual property.

In this light, it is heartening to see that the Copyright Royalty Board is contemplating, entertaining and considering a census rather than sample reporting method. It is also heartening to see

that SoundExchange also advocates this position <sup>[1]</sup> and that NAB has offered its cooperation.

Personal experience has led me to **know** that the sample reporting method is **not** fair. I have for a long period of time - since 1975 - felt that the census reporting methodology is fair. Consequently, I did advocate the census reporting method to BMI, when I was an associate with that company. **See** (Reply Comments to the Copyright Office and attachments). In order for you to fully understand this issue, it is important that all documents and attachments contained in the below link of the Copyright Office, be read and digested in their entirety: -

<http://www.copyright.gov/docs/section109/replies/our-own-performance-society-reply.pdf>

and the below link to an American Arbitration Association decision which led me to elect to represent self before the Copyright Office.

[https://www.jamescannings.com/Press\\_Releases/Published/published.html](https://www.jamescannings.com/Press_Releases/Published/published.html)

I have had, and do maintain the opinion that computers are the solution to the problem of non-payment of royalties to copyright owners, composers, songwriters and publishers.

The basis of non-payment of royalties to the creative community is founded upon the sample reporting method.

The advent of the computer and the resulting digitization of data is the key solution to the issues raised in the NOI.

The burden of record keeping by music users is lessened through the advent of computers and compact discs.

Why - metatags are entered into all music contained on compact discs, which contain music. Most current software players/recorders such as, MusicMatch, RealAudio Player, Windows Media Player, Winamp etc. automatically read these metatags. By using these metatags, playlists can easily be saved and compiled by, and in these softwares. This can be achieved, as a song is played by any of these softwares. Therefore, manual data entry of details is minimized - record keeping.

These softwares read the database entry of the song as its played. Data fields for the input of, such as, song title, copyright owner, composer, songwriter, publisher and copyright information are provided in these software programs. The manufacturer of the music, embodied in compact discs, usually includes this database information. - metatags

Even independent music producers, who produce compact discs on computers, must use any of the foregoing software player/recorders to record their music to CDs. These software recorders provide the metatag entry fields that create the database - known as metatags.

The above is possible, provided the supplier of music imputes this information into the master CD prior to duplication and distribution.

Over and above the player/recorder software, at least two of the above software manufacturers - Microsoft and RealAudio - provide, hardware for streaming content over the Internet - servers. These two entities are dominant manufactures in software and hardware used for streaming over the Internet. Both components are more than likely used by most, if not all, licensees who stream content over the Internet. Therefore, as stated above, through the use of these available technologies - anyone can get a basic online version for free - census reporting is accurate, inexpensive, efficient, and less labor intensive

NAB argues that some artists and companies that use a single - one song - to promote an album may not provide enough information for effective census reporting. That argument is belied by the fact that such promotional products are full of promotional information that is directly linked to a soon to be released album. Actually, that is the purpose of such promotion. Such is the custom and usage of the record industry.

It is the responsibility of any licensee organization, however diversified by regions, formats etc., [\[2\]](#) to set standardized policies that comply with the Copyright Act. It is the responsibility of **all** licensees, irrespective of their diversity, to provide **accurate notice and recordkeeping for use of sound recordings under the current statutory license**. Therefore, lawfully standardizing recordkeeping policies is in the best interest of those entities, and for that matter; it is in the best interest of all interested parties.

If any organization contracts and offers syndicated programming or provides other services to

third parties, it is expedient, and the lawful duty of that organization, to negotiate and put into its contracts, compliance with the Copyright Act. It is also the lawful duty of any contracting organization to enforce compliance with the Copyright Act. Ultimately, it is the contracting party and the contracted party that will be held liable for copyright infringement, should such an event take place.

All syndicated programmers et. al., must be made to comply with a standardized policy that complies with the Copyright Act, in general, and moreover, specifically, insofar as that standardized policy of compliance pertains to this subject matter: i.e. **accurate notice and recordkeeping for use of sound recordings under the current statutory license**, ,

In regard to compliance by all services - payees, licensees, it is my belief that regulations such as that of the Cable and Satellite Statutory Licenses should be incorporated and implemented into Title 17 U.S.C. Sections 112 and 114. . So far to the best of my knowledge and belief the regulations for these two statutory licenses, over the years, are and have proven to yield very accurate, efficient and effective recordkeeping and reporting.

Respectfully Submitted,



James Cannings  
JC Records, Can Can Music Co.,  
Our Own Performance Society, Inc.  
June 8, 2009

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[1]

The fact that census reporting allows for the most accurate royalty allocation and distribution possible – and is significantly more accurate than the current sample-based reporting system – has led to SoundExchange’s consistent support for that methodology. But we should be clear that SoundExchange supports census reporting because of its accuracy, not because of any clear cost savings or efficiency improvement. Because SoundExchange distributes royalties “based upon the information provided under the reports of use requirements,” 37 C.F.R. §§ 380.4(g)(1), 382.3(c)(1), 382.13(f)(1), SoundExchange’s processing of more data likely would not cost less (assuming a comparable data quality, distribution methodology, and other circumstances). Comments of SoundExchange Docket No. RM 2008-7 at 7.

[2]

Section 112 and 114 licensees are a diverse group – including not only webcasters, but also satellite digital audio radio services (“SDARS”), preexisting cable/satellite TV services, cable/satellite TV new subscription services, and business establishment services. In addition, licensees differ widely in the size of the corporation providing the service (traditionally viewed in terms of revenues or employees) and in the intensity of their music use and size of the associated royalty payments. Importantly, the intensity of the music use is not always directly related to the number of employees that a service has or the revenues that the service generates – a fact that reflects the relatively low barriers to entry for webcasters. Because revenues and employees are often poor proxies for the actual use of the music, SoundExchange believes that actual usage is the more meaningful statistic for purposes of this proceeding. Comments of SoundExchange Docket No. RM 2008-7 at 8.