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Dear Judges,

In response to your request for written comments, the following addresses regulations under the Copyright Act for statutory recording licenses. Specifically whether to adopt the Petitioners' preferred definition of "minimum fee broadcaster", which applies only to Educational Stations, or the broader, alternate definition. It is my opinion that the Judges should apply the Petitioners' preferred definition, rather than the alternative definition because it closely adheres to the goals of the final regulation.

The Petitioners' preferred definition for "Educational Station" is:

"any webcaster that (A) is directly operated by, or affiliated with and officially sanctioned by a domestically accredited primary or secondary school, college, university or other post-secondary degree-granting educational institution; and (B) the digital audio transmission operations of which are, during the course of the year, *staffed substantially by students* enrolled in such institution; and (C) is not a "public broadcasting entity" (as defined in 17 U.S.C. 118(g)) qualified to receive funding from the Corporation for Public Broadcasting pursuant to the criteria set forth in 47 U.S.C. 396; and (D) is exempt from taxation under section 501 of the Internal Revenue Code, has applied for such exemption, or is operated by a State or possession or any governmental entity or subordinate thereof, or by the United States or District of Columbia, for exclusively public purposes."

The Petitioner's alternative definition of a "minimum fee broadcaster" includes entities other than Educational Stations because Petitioners added 'noncommercial webcaster' as defined in 17 U.S.C. 114(f)(5)(E)(i) to the category of minimum fee broadcaster. "Noncommercial webcaster" means a webcaster that is exempt from taxation under section 501 of the Internal Revenue Code of 1986 (26 U.S.C. 501); has applied in good faith to the Internal Revenue Service for exemption from taxation under section 501 of the Internal Revenue Code and

has a commercially reasonable expectation that such exemption shall be granted; or is operated by a State or possession or any governmental entity or subordinate thereof, or by the United States or District of Columbia, for exclusively public purposes. Under 17 U.S.C. 114(f)(5)(E)(iii) the term "webcaster" means a person or entity that has obtained a compulsory license under section 112 or 114 and the implementing regulations therefor.

The Petitioners' preferred definition more closely adheres to the goal of the final regulation because the preferred definition of "minimum fee broadcaster" is narrowly defined. The goal of the final regulation is to move users of sound recordings away from reporting of sampled data. Applying the preferred definition limits the amount of users permitted to continue reporting sampled data because it conjunctively limits the category of users that satisfy section 501 of the Internal Revenue Code. It limits the categories of users to just Educational Stations. Applying the alternative definition would cause the number of exempt users to exceed the number of Educational Stations because section 501 of the internal revenue code contains a laundry list of organizations, like not for profit corporations, foundations, and civil leagues. Thus, it is my opinion that the Judges should apply the Petitioners' preferred definition, rather than the alternative definition.

This opinion is based exclusively on the information and circumstances described in your request and is given based on your representations, express or implied. Existence of any other information not contained in your request might require a conclusion different from the one expressed herein. This opinion is not for use by a party to pending private litigation concerning the issue addressed herein. Additionally this opinion shall not be used in connection with an investigation or litigation between a client or firm and the Copyright Royalty Board.

Thank You,

Andrea Baker