

G A R V E Y S C H U B E R T B A R E R

PRPD 2009

Music Licensing

John Crigler

Garvey Schubert Barer



# The Statutory License

The license conferred by Section 114 of the Copyright Act is “compulsory”

- (i) It applies only to “sound recordings”
- (ii) It licenses only the right to perform sound recordings by means of a non-subscription, non-interactive digital audio transmission

# The Statutory License (Cont'd)

## What it doesn't cover

- Podcasts
- Interactive services
- Video
- Creating CDs
- Live Music

# Statutory License Content Restrictions

Within 3 hours, play no more than

- 4 songs by a particular artist
- 3 songs from a particular album
- 2 songs consecutively from a particular album
- 4 songs from a boxed set
- 3 songs consecutively from a boxed set



# Statutory License Content Restrictions (cont'd)

No prior announcements on the air or in advance written schedules

Identify song, artist and album in text on web site during song



DMCA Basics:

## Performance Defined

Each instance in which any portion of a sound recording is publicly performed *except* a sound recording:

- Directly licensed from the copyright owner
- In the public domain
- Whose performance is permitted under "Fair Use" Doctrine



# Performance Defined (cont.)

- An **incidental** performance that **both**:
  - makes no more than incidental use of the music
    - brief musical transitions in or out of commercials or program segments
    - brief performances during news, talk or sports programming
    - brief background performances during disk jockey announcements
    - brief performances during commercials of *sixty* seconds or less in duration
    - brief performances during sporting or other public events

**and**



## Performance Defined (cont.)

- Does not contain an entire sound recording, and
  - Does not **feature** a particular sound recording of more than *thirty* seconds (as in the case of theme song)
- 
- Ambient music that is background at a public event is not counted

# Public Domain

- Federal copyright for sound recordings after 2/15/1972, but
- Possible common law copyright for sound recordings before 2/15/1972
- Chart on determining works in the public domain:  
<http://copyright.cornell.edu/resources/publicdomain.cfm>



# Scope of SX Agreement

- (1) No limit on listeners
- (2) No limit on number of channels
- (3) Subject to limits of statutory license
- (4) Subject to limits on number of stations and amount of listening
- (3) Subject to reporting requirements

