Virginia Association of Broadcasters
Legal Review

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UPDATE **UPDATE**

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MISSION RENEWED:
AN UPDATE ON MISSION ABSTRACT DATA

Over the last few years, many radio stations have been contacted by Mission Abstract Data (MAD) with an "opportunity" to license patents relating to digital music storage and playback technologies. Having already sued many of the nation's largest radio group owners, MAD has targeted smaller radio station owners.

These communications may step up again in response to recent activity in both the United States Patent and Trademark Office (USPTO) and in ongoing litigation.

The purpose of this Legal Review is to revisit MAD's claims in light of these recent proceedings. As we stated in earlier bulletins on this issue, whether and how to respond to MAD depends on each station's individual circumstances. If your station has been contacted by MAD, you should promptly consult with patent counsel so that your individual circumstances can be evaluated.

I.
What Are The MAD Patents?

MAD claims that its patents cover digital music storage and playback technologies and processes commonly used by radio stations. The first of these patents was filed in January 1994 and was granted in May 1997. MAD has additional patents that are generally based on the same technology described in the 1997 patent. The patents will start expiring in early 2014.

The MAD patents each contain multiple claims. The principle claims at issue generally purport to cover the process of (a) storing hundreds songs in a local database to play on the air and (b) retrieving additional songs, not stored in the local database, to broadcast from a remote database connected over local and wide area networks.

After doing business as Digimedia for some time, MAD formally transferred ownership of the patents to Digimedia Holdings Group LLC. For consistency and to avoid confusion, this Legal Review will use "MAD" to refer to both Mission Abstract Data and Digimedia Holding Group.

Before deciding how to respond to any contact from MAD, stations should be aware that MAD is embroiled in a legal battle, both in the United States District Court in Delaware and at the United States Patent and Trademark Office (PTO), over the validity of the patents.

II.
What Is The Status Of The Legal Proceedings?

MAD began suing broadcasters in Delaware in March 2011. Patent infringement claims were asserted against numerous defendants, including CBS, Cox, and other broadcasters and media companies. In February of 2013, MAD also sued four FM stations in Texas. The Texas cases have all been either dismissed or transferred to federal court in Delaware.

The Delaware litigation has been stayed since November 2011 while the USPTO reexamined the MAD patents. The latest of these reexaminations has now concluded. In July, the USPTO issued a reexamination certificate, which is basically an updated version of the patent. The parties to the lawsuit agree that the stay should be lifted and the court proceedings will likely resume soon.

When contacting radio stations this summer following the reexaminations, MAD has emphasized that its patents "survived" reexamination. Not surprisingly, the radio companies in the Delaware action have offered a different perspective. They note that of the six claims asserted in litigation, two were canceled and the remaining were either narrowed through formal amendment or through arguments made by MAD's attorneys during reexamination.

The narrower scope of the MAD patents is important for two reasons. First, some music storage and retrieval equipment and software may no longer infringe the patents. One claim that was canceled in reexamination applied to broadcasting songs stored on a local hard drive formatted in the common RAID configuration to provide data redundancy. This broad claim, which had been amended in an earlier reexamination, is no longer part of the patent.

Second, products covered by the reexamined patents may be eligible for certain protections under U.S. patent laws that apply when patent claims change through

reexamination. For example, the concept of "intervening rights" bars patent holders from recovering damages on products that were purchased before the reexamination certificate issues. This doctrine applies to "amended or new" claims in reexamination proceedings where claims have been substantively changed. The radio stations in the Delaware action claim that intervening rights apply to the MAD patent claims that were amended through reexamination. If so, this could limit MAD's recovery on these claims to infringing equipment purchased between July of 2012 and when the patent expires in early 2014. This is an important issue that will likely be resolved through litigation.

III.
What Should My Station Do?

With so many moving parts, it is now more important than ever for stations to discuss their individual circumstances with their legal counsel when deciding how to respond to demands from MAD.

If you have been contacted by MAD, you should promptly consult with your legal counsel to help you assess your station's potential liability, if any, based on your station's particular circumstances and in light of recent developments.

In addition, if contacted by MAD you should consider (1) contacting the seller or manufacture of the music storage and retrieval equipment and software used by your station; and (2) notifying your liability insurance carrier of MAD's claims. In both cases, the failure to provide timely notice may potentially limit your rights to indemnification or insurance coverage. These parties, and in particular the equipment vendors, are likely already familiar with MAD's claims and may be able to offer further assistance or guidance.

We are continuing to monitor this situation and will provide additional updates of any material developments.

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If you should have any questions concerning the information discussed in this memorandum, please contact your legal counsel or any of the undersigned.

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This Legal Review should in no way be construed as legal advice or a legal opinion on any specific set of facts or circumstances. Therefore, you should consult with legal counsel concerning any specific set of facts or circumstances.

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