

COPY

1 WHITE O'CONNOR CURRY LLP  
 2 Michael J. O'Connor (STATE BAR NO. 90017)  
 3 Lee S. Brenner (STATE BAR NO. 180235)  
 4 Edward E. Weiman (STATE BAR NO. 193290)  
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 lbrenner@whiteo.com  
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2007 APR 18 PM 10:30  
 RECEIVED  
 U.S. DISTRICT COURT  
 EASTERN DISTRICT OF CALIFORNIA  
 BY

FILED

7 Attorneys for Plaintiff CBS Radio East Inc.

8 UNITED STATES DISTRICT COURT  
 9 CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION  
 10 ED CV 07 - 00453

VAPUCR0

11 CBS RADIO EAST INC., a Delaware corporation,

CASE NO.

12 Plaintiff,

COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF FOR  
COPYRIGHT INFRINGEMENT

13 v.

DEMAND FOR JURY TRIAL

14 BROADCAST MANAGEMENT  
 15 SERVICES INC., a Texas corporation,  
 16 KCAA 1050 AM Radio, a California  
 17 entity, and DOE 1 through DOE 10,  
 inclusive,

18 Defendants.

1 Plaintiff CBS Radio East Inc. ("CBS Radio") for its complaint against  
2 Defendants Broadcast Management Services Inc. ("BMS") and KCAA 1050 AM  
3 Radio ("KCAA") and Does 1 through 10, inclusive (collectively "Defendants"),  
4 alleges as follows.

5 **JURISDICTION AND VENUE**

6 1. This Court has original jurisdiction over this action under 28  
7 U.S.C. § 1331 in that this Complaint raises federal questions under the federal  
8 Copyright Act and decisions thereunder.

9 2. Upon information and belief, venue is proper in this district  
10 under 28 U.S.C. § 1391(b)-(c) in that substantial injury occurred in this district, a  
11 substantial number of the events on which the claims in this Complaint are based  
12 took place in this district, and Defendants are subject to personal jurisdiction in this  
13 district.

14 **NATURE OF THE CASE**

15 3. CBS Radio is the sole and exclusive owner of all copyright  
16 interests and other rights in the "Imus in the Morning" radio program (the "Imus  
17 Program") featuring radio personality Don Imus. On or around April 12, 2007, CBS  
18 Radio canceled the Imus Program, effective immediately. As a result, syndication  
19 of the Imus Program to affiliates, including KCAA, ceased, with the last Imus  
20 Program produced and lawfully broadcast on April 13, 2007. Up to and including  
21 April 13, 2007, a company called Westwood One Radio Networks, Inc. ("Westwood  
22 One") had the limited contractual right to distribute and license the Imus Program to  
23 radio stations around the country. After April 13, 2007, Westwood One did not  
24 have any right to distribute the Imus Program to radio stations and, accordingly,  
25 Westwood One ceased distributing the radio program to Defendants and others on  
26 that date.

27 4. On or about April 13, 2007, the Los Angeles Times and other  
28 news outlets reported that, notwithstanding the cancellation of the Imus Program,

205791.1.doc





1 reproduction, and distribution by third parties. Defendants also distributed prior  
2 episodes over the Internet via streaming on a real-time basis.

3 **CBS Radio Demands that Defendants Cease and Desist**

4 16. After learning of Defendants' infringing activities, on April 17,  
5 2007, CBS Radio contacted Defendants and demanded that Defendants immediately  
6 cease and desist their infringement of CBS Radio's copyrights in the Imus Program.  
7 In so doing, CBS Radio demanded that Defendants "immediately cease all  
8 rebroadcasts of the Imus Program in any manner."

9 17. In response, Fred Lundgren, CEO and Chairman of BMS,  
10 indicated that the rebroadcasts of the Imus Program would continue at least through  
11 April 27, 2007, although Lundgren publicly bragged that the rebroadcasts would  
12 continue until Don Imus was hired by a new employer - *i.e.*, until some  
13 indeterminate time in the future.

14 **The Threat of Irreparable Harm to CBS Radio**

15 18. Defendants' willful infringement of CBS Radio's copyright  
16 interests in the Imus Program has caused and continues to threaten CBS Radio with  
17 significant, irreparable injury for which CBS Radio will have no adequate legal  
18 remedy. As a result of the infringement of its copyrights, irreparable injury to CBS  
19 Radio is also presumed as a matter of law.

20 19. Time is of the essence with respect to the enforcement of CBS  
21 Radio's rights and remedies herein because Defendants have posted on the Internet  
22 approximately 272 unauthorized copies of the Imus Program, including but not  
23 limited to episodes dating from April 2 to April 4, 2007, thereby making copies of  
24 those programs available for unauthorized public performance, and unauthorized  
25 and illegal use, download, reproduction, and distribution by third parties.  
26 Accordingly, the greatest amount of harm to CBS Radio is occurring now, and the  
27 more time passes, the greater the number of unauthorized copies of the Imus  
28 Program that will be illegally distributed to the public.



1 and distribute the Imus Program, for the specific purpose of infringing CBS Radio's  
2 copyrights. Such acts of infringement have occurred and will occur without CBS  
3 Radio's consent, and are not otherwise permissible under the Copyright Act.

4           28. Defendants' public performances of, and copying and/or  
5 distribution of, CBS Radio's copyrighted works without authorization is a violation  
6 of CBS Radio's exclusive rights under Section 106 of the Copyright Act, 17 U.S.C.  
7 § 106. Among other things, and without limitation, this conduct amounts to (a) the  
8 unauthorized public performance of CBS Radio's copyrighted works, (b) the  
9 unauthorized reproduction of CBS Radio's copyrighted works, and (c) the  
10 unauthorized distribution of copies of CBS Radio's copyrighted works to the public.

11           29. Defendants, through their own conduct, have engaged in,  
12 induced, caused, encouraged, assisted and/or materially contributed to these  
13 infringing activities.

14           30. The unauthorized public performances of, copying, and  
15 distribution of CBS Radio's copyrighted works that Defendants enable, encourage,  
16 and facilitate through the schemes described above are without CBS Radio's  
17 consent and is not otherwise permissible under the Copyright Act.

18           31. Upon information and belief, third parties have already infringed,  
19 and will continue to infringe, CBS Radio's exclusive rights under 17 U.S.C. § 106 in  
20 the Imus Program.

21           32. The foregoing acts of infringement by Defendants have been,  
22 and continue to be, willful, intentional and purposeful, in disregard of and with  
23 indifference to the rights of CBS Radio.

24           33. The natural, probable and foreseeable result of Defendants'  
25 wrongful conduct has been (and will continue to be) to deprive CBS Radio of its  
26 exclusive rights under the Copyright Act.

27 ///

28 ///



1           b.     That the Court find a substantial likelihood that Defendants will  
2 continue to infringe CBS Radio's copyrights in the Imus Program unless enjoined  
3 from doing so.

4           c.     That Defendants and Defendants' affiliates, parents, subsidiaries,  
5 officers, agents, representatives, servants, employees, attorneys, and all other  
6 persons in active concert or privity or in participation with them, be temporarily,  
7 preliminary, and permanently enjoined from directly or indirectly infringing CBS  
8 Radio's copyrights in the Imus Program.

9           d.     That judgment be entered for CBS Radio and against Defendants  
10 for CBS Radio's actual and consequential damages, and for any profits attributable  
11 to infringements of CBS Radio's copyrights, in an amount to be proven at trial.

12          e.     That judgment be entered for CBS Radio and against Defendants  
13 for enhanced statutory damages in the minimum amount of one hundred  
14 fifty thousand dollars (\$150,000.00) for each infringing and unlawful use of  
15 copyrighted materials.

16          f.     That Defendants be required to account for all gains, profits, and  
17 advantages derived from their acts of infringement.

18          g.     That CBS Radio have judgment against Defendants for CBS  
19 Radio's costs and attorneys' fees.

20          h.     For pre-judgment interest on any amounts awarded at the  
21 maximum legal rate as permitted by law and equity.

22          i.     For costs incurred in this action, including reasonable attorneys'  
23 fees to the extent permitted by law and equity.

24          j.     For such other and further relief as the Court deems just and  
25 proper.

1 DATED: April 19, 2007

WHITE O'CONNOR CURRY LLP  
Michael J. O'Connor  
Lee S. Brenner  
Edward E. Weiman

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5  
6 By Lee S. Brenner  
7 Lee S. Brenner  
8 Attorneys for Plaintiff CBS Radio East Inc.  
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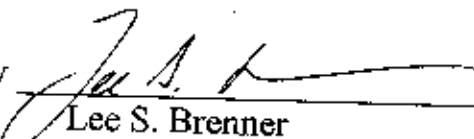
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**DEMAND FOR TRIAL BY JURY**

Plaintiff CBS Radio East Inc. hereby demands a trial by jury on all issues triable by jury.

DATED: April 19, 2007

WHITE O'CONNOR CURRY LLP  
Michael J. O'Connor  
Lee S. Brenner  
Edward E. Weiman

By   
Lee S. Brenner  
Attorneys for Plaintiff CBS Radio East Inc.

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge Virginia A. Phillips and the assigned discovery Magistrate Judge is John Charles Jr. Rayburn.

The case number on all documents filed with the Court should read as follows:

**EDCV07- 453 VAP (JCRx)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

**Western Division**  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

**Southern Division**  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4518

**Eastern Division**  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

# United States District Court

Central District of California

CBS RADIO EAST INC., a Delaware corporation

## SUMMONS IN A CIVIL CASE

CASE NUMBER:

v.

**ED CV 07 - 00453**

BROADCASTING MANAGEMENT SERVICES INC., a Texas corporation, KCAA 1050 AM Radio, a California entity, and DOE 1 through DOE 10, inclusive

**VAP(JCRx)**

TO: (Name and address of Defendant)

KCAA 1050 AM Radio  
254 Carousel Mall  
San Bernardino, California 92401

**YOU ARE HEREBY SUMMONED** and required to serve on **PLAINTIFF'S ATTORNEY** (name and address)

Michael O'Connor, Esq.  
Lee S. Brenner, Esq.  
Edward E. Weiman, Esq.  
White O'Connor Curry LLP  
10100 Santa Monica Boulevard  
Suite 2300  
Los Angeles, California 90067

an answer to the complaint which is served on you with this summons, within twenty (20) days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

SHERRI R. CARTER

4/19/07

CLERK

DATE

(By) DEPUTY CLERK



888 KCAA  
5 222  
AD44D

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET**

**COPY**

**(I) (a) PLAINTIFFS** (Check box if you are representing yourself)   
CBS RADIO EAST INC. a Delaware Corporation

**DEFENDANTS**  
BROADCAST MANAGEMENT SERVICES, INC., a Texas corporation, KCAA 1050 AM Radio, a California entity, and DOE 1 through DOE  
County of Residence of First Listed Defendant (in U.S. Plaintiff Cases Only):

**(b)** County of Residence of First Listed Plaintiff (Except in U.S. Plaintiff Cases):

**(c)** Attorneys (Firm Name, Address and Telephone Number, if you are representing yourself, provide same.)  
Michael J. O'Connor  
WHITE O'CONNOR CURRY LLP  
10100 Santa Monica Boulevard  
Twenty-Third Floor  
Los Angeles, California 90067-4008  
(310) 712-6100

Attorneys (if known)

**II. BASIS OF JURISDICTION** (Place an X in one box only.)

**III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only**  
(Place an X in one box for plaintiff and one for defendant.)

- 1 U.S. Government Plaintiff  3 Federal Question (U.S. Government Not a Party)  
 2 U.S. Government Defendant  4 Diversity (Indicate Citizenship of Parties in Item III)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PTF                        | DEF                        |   | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. ORIGIN** (Place an X in one box only.)

- 1 Original Proceeding  2 Removed from State Court  3 Remanded from Appellate Court  4 Reinstated or Reopened  5 Transferred from another district (specify):  6 Multi-District Litigation  7 Appeal to District Judge from Magistrate Judge

**V. REQUESTED IN COMPLAINT: JURY DEMAND:**  Yes  No (Check Yes only if demanded in complaint.)

**CLASS ACTION** under F.R.C.P. 23:  Yes  No **MONEY DEMANDED IN COMPLAINT:** \$ in excess \$150,000

**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Copyright Act, 17 U.S.C. §§ 106 and 501 - Unauthorized public performance, reproduction and distribution of a radio program, infringing Plaintiff's interests and copyright in the radio program.

**VII. NATURE OF SUIT** (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS - PERSONAL INJURY	TORTS - PERSONAL PROPERTY	PRISONER/PENALTIES	LABOR
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 530 Habeas Corpus	<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 540 Death Penalty	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 560 Mandamus/Other	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 585 Prison Condition	<input type="checkbox"/> 750 Other Labor Litig.
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 167	<input type="checkbox"/> 610 Civil Rights	<input type="checkbox"/> 761 Empl. Ret. Inc. Security Act
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 620 Agriculture	<input checked="" type="checkbox"/> 820 Copyrights
<input checked="" type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 625 Other Food & Drug	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 510 Selective Service	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 628 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 550 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 382 Personal Injury-Med Malpractice	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 861 HIA (1985ff)
<input type="checkbox"/> 575 Customer Challenge 12 USC 3410	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 862 Back Lung (923)
<input type="checkbox"/> 580 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 650 Arbitration	<input type="checkbox"/> 863 DIWC/DIWWW (405(g))
<input type="checkbox"/> 591 Agricultural Act	<b>REAL PROPERTY</b>		<input type="checkbox"/> 640 Other Civil Rights	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 592 Economic Stabilization Act	<input type="checkbox"/> 210 Land Condemnation			<input type="checkbox"/> 690 Other	<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 593 Environmental Matters	<input type="checkbox"/> 220 Foreclosure				<b>FEDERAL TAX SUITS:</b>
<input type="checkbox"/> 594 Energy Allocation Act	<input type="checkbox"/> 230 Rent Lease & Ejectment				<input type="checkbox"/> 670 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 595 Freedom of Info. Act	<input type="checkbox"/> 240 Torts to Land				<input type="checkbox"/> 671 IRS - Third Party 26 USC 7606
<input type="checkbox"/> 600 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 248 Tort Product Liability				
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 280 All Other Real Property				

**VIII(a). IDENTICAL CASES:** Has this action been previously filed and dismissed, remanded or closed?  No  Yes  
If yes, list case number(s):

**FOR OFFICE USE ONLY:** Case Number: **ED CV 07 - 00453 VAP (JCR)**

CV-71 (07/05)

CIVIL COVER SHEET

COPY

1 WHITE O'CONNOR CURRY LLP  
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Edward E. Weiman (STATE BAR NO. 193290)  
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Facsimile: (310) 712-6199  
5 moconnor@whiteo.com  
lbrenner@whiteo.com  
6 eweiman@whiteo.com

7 Attorneys for Plaintiff CBS Radio East Inc.

8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION  
10 ED CV 07 - 00453

2007 APR 18 PM 10:31  
CLERK OF COURT  
EASTERN DISTRICT OF CALIF.  
STREETS

FILED

11 CBS RADIO EAST INC. a Delaware  
corporation,

12 Plaintiff,

13 v.

14 BROADCAST MANAGEMENT  
15 SERVICES INC., a Texas corporation,  
KCAA 1050 AM Radio, a California  
16 entity, and DOE 1 through DOE 10,  
inclusive,

17 Defendants.  
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CASE NO.

CERTIFICATION AS TO  
INTERESTED PARTIES

[Local Rule No. 7.1-1]

(ICRX)

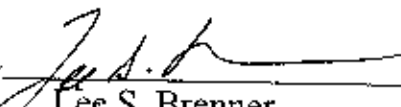
1 TO THE COURT, ALL PARTIES, AND THEIR RESPECTIVE ATTORNEYS OF  
2 RECORD:

3 The undersigned, counsel of record for Plaintiff CBS Radio East Inc.  
4 certify, pursuant to Local Rule 7.1-1, that the following listed parties may have a  
5 pecuniary interest in the outcome of this case. These representations are made to  
6 enable the Court to evaluate possible disqualification or recusal.

- 7 1. CBS Radio East Inc. Plaintiff
- 8
- 9 2. Broadcast Management Services Inc. Defendant
- 10
- 11 3. KCAA 1050 AM Radio Defendant
- 12

13 DATED: April 19, 2007

WHITE O'CONNOR CURRY LLP  
Michael J. O'Connor  
Lee S. Brenner  
Edward E. Weiman

17  
18 By   
19 Lee S. Brenner  
20 Attorneys for Plaintiff CBS Radio East Inc.



TO:  <b>Register of Copyrights          Copyright Office          Library of Congress          Washington, D.C. 20559</b>	<b>REPORT ON THE          FILING OR DETERMINATION OF AN          ACTION OR APPEAL          REGARDING A COPYRIGHT</b>
---	--

In compliance with the provisions of 17 U.S.C. 508, you are hereby advised that a court action or appeal has been filed on the following copyright(s):

<input checked="" type="checkbox"/> ACTION <input type="checkbox"/> APPEAL		COURT NAME AND LOCATION	
DOCKET NO. EDCV-07453VAP(JCRx)		United States District Court for the Central District of California, Eastern Division	
DATE FILED April 19, 2007			
PLAINTIFF		DEFENDANT	
CBS Radio East Inc.		Broadcast Management Services Inc. and KCAA 1050 AM Radio	
COPYRIGHT REGISTRATION NO.	TITLE OF WORK	AUTHOR OR WORK	
1	Pending	Imus in the Morning, programs which aired April 2-6	
2		and April 9-13, 2007	
3			
4			
5			

In the above-entitled case, the following copyright(s) have been included:

DATE INCLUDED	INCLUDED BY		
	<input type="checkbox"/> Amendment	<input type="checkbox"/> Answer	<input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading
COPYRIGHT REGISTRATION NO.	TITLE OF WORK	AUTHOR OF WORK	
1			
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3			

In the above-entitled case, a final decision was rendered on the date entered below. A copy of the order or judgment together with the written opinion, if any, of the court is attached.

COPY ATTACHED		WRITTEN OPINION ATTACHED		DATE RENDERED
<input type="checkbox"/> Order	<input type="checkbox"/> Judgment	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
CLERK		(BY) DEPUTY CLERK	DATE	

## DISTRIBUTION:

- 1) Upon initiation of action, mail copy to Register of Copyrights
- 2) Upon filing of document adding copyright(s), mail copy to Register of Copyrights
- 3) Upon termination of action, mail copy to Register of Copyrights
- 4) In the event of an appeal, forward copy to Appellate Court
- 5) Case File Copy

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7 Attorneys for Plaintiff CBS Radio East Inc.

8 UNITED STATES DISTRICT COURT  
 9 CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION

10 ED CV 07 - 00453 VAP (JCRX)

11 CBS RADIO EAST INC. a Delaware corporation,

12 Plaintiff,

13 v.

14 BROADCAST MANAGEMENT  
 15 SERVICES INC., a Texas corporation,  
 16 KCAA 1050 AM Radio, a California  
 entity, and DOE 1 through DOE 10,  
 17 inclusive,

18 Defendants.

CASE NO.

NOTICE OF RELATED CASES

[Local Rule No. 83-1.3.1]

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 2007 APR 18 PM 10:40  
 CLERK OF DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA  
 EASTERN DIVISION  
 BY

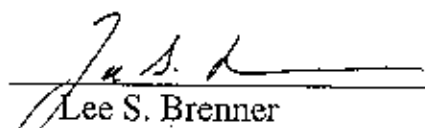
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1 TO THE COURT, ALL PARTIES, AND THEIR RESPECTIVE ATTORNEYS OF  
2 RECORD:

3           The undersigned, counsel of record for Plaintiff CBS Radio East Inc.  
4 certifies, pursuant to Local Rule 83-1.3.1, that there are no actions previously filed  
5 or currently pending in the Central District which are related to the above-captioned  
6 matter.

7 DATED: April 19, 2007

WHITE O'CONNOR CURRY LLP  
Michael J. O'Connor  
Lee S. Brenner  
Edward E. Weiman

11  
12 By   
13 Lee S. Brenner  
14 Attorneys for Plaintiff CBS Radio East Inc.



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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION

10  
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12 Plaintiff,

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15 SERVICES INC., a Texas corporation,  
KCAA 1050 AM Radio, a California  
16 entity, and DOE 1 through DOE 10,  
inclusive,

17 Defendants.

CASE NO. EDCV-07-453 VAP(JLR)

**DECLARATION OF DAVID  
HILLMAN IN SUPPORT OF  
PLAINTIFF CBS RADIO EAST  
INC.'S EX PARTE APPLICATION  
FOR A TEMPORARY  
RESTRAINING ORDER AND  
ORDER TO SHOW CAUSE RE:  
PRELIMINARY INJUNCTION**

*[Ex Parte Application; Declarations of  
Edward Weiman and Linda Feldmann,  
and [Proposed] Order filed  
concurrently herewith]*

Date: TBD  
Time: TBD  
Courtroom: TBD

Action Filed: April 19, 2007



1 I, David Hillman, declare and state as follows:

2 1. I am the Executive Vice-President, Business Affairs and General  
3 Counsel of Westwood One, Inc., the parent company of Westwood One Radio  
4 Networks, Inc. ("Westwood One"). I have personal knowledge of the following,  
5 and, if called as a witness, could and would competently testify thereto.

6 2. Westwood One supplies radio and television stations with  
7 programming and information services.

8 **Relationship Between CBS Radio and Westwood One**

9 3. Westwood One and plaintiff CBS Radio East Inc. ("CBS Radio")  
10 are separate companies, with separate boards of directors, separate payrolls, separate  
11 offices, etc. CBS Radio and Westwood One, however, have a contractual business  
12 relationship that involves radio programming, among other things. As part of this  
13 relationship, Westwood One has the contractual right to sublicense or "syndicate"  
14 certain CBS Radio programs to radio stations across the nation so that, in turn, the  
15 radio stations can broadcast such programs on their station.

16 4. In connection with the contractual right granted to Westwood  
17 One by CBS Radio, until and including April 13, 2007, Westwood One had the right  
18 to sublicense the radio program entitled "Imus Radio Program" (the "Imus Radio  
19 Program"), which was performed by radio personality Don Imus. This agreement  
20 provided Westwood One with the right to syndicate the Imus Radio Program to  
21 radio stations which, in turn, would broadcast such programs over the air.

22 Westwood One is not the copyright owner of the Imus Radio Program. Rather, it is  
23 a licensee of the program. All copyright interests in the Imus Radio Program are  
24 held solely by CBS Radio.

25 5. After April 13, 2007, Westwood One stopped distributing the  
26 Imus Radio Program.

27 ////

28 ////

1                                    **Relationship Between Westwood One and Defendants**

2                    6.        Westwood One entered into a written program license agreement  
3 (the "License Agreement") with defendant Broadcast Management Services Inc.  
4 ("Broadcast Management") with respect to the Imus Radio Program. Attached  
5 hereto as Exhibit A is a true and correct copy of the License Agreement.

6                    7.        Until and including Friday, April 13, 2007, Westwood One  
7 provided Broadcast Management with the actual Imus Radio Program to be  
8 broadcast on KCAA 1050 AM Radio ("KCAA") in the following manner. The  
9 Imus Radio Program was physically produced by CBS Radio in a studio in the New  
10 York City metropolitan area. Simultaneous with its production of the program, CBS  
11 Radio transmitted the Imus Radio Program to Westwood One which, in turn,  
12 transmitted the radio program to its sublicensee radio stations via satellite. KCAA,  
13 like other radio station sublicensees, had a satellite receiver which enabled it to  
14 receive Westwood One's satellite transmission of the Imus Radio Program. KCAA  
15 would then broadcast the radio program over the air via traditional "terrestrial"  
16 radio. Simply put, KCAA was permitted only to broadcast the Imus Radio Program  
17 at the same time it received Westwood One's satellite transmission of the program.

18                    8.        Westwood One never provided either of the defendants with any  
19 right to make a copy of the Imus Radio Program. Defendants were permitted only  
20 to broadcast the program only at the very same time that Westwood One transmitted  
21 the program to KCAA.

22                    9.        Westwood One never provided either of the defendants with any  
23 right to rebroadcast the Imus Radio Program after its initial transmission from  
24 Westwood One.

25                    10.       Westwood One never provided either of the defendants with any  
26 right to transmit the Imus Radio Program over the Internet.

27                    11.       Indeed, lest there be any misunderstanding, defendant Broadcast  
28 Management expressly acknowledged that:



1 • Defendants had no right to copy or rebroadcast the Imus Radio  
2 Program;

3 • Defendants could use the Imus Radio Program only by over the air,  
4 terrestrial radio broadcast; and

5 • Defendants could not broadcast or otherwise transmit the Imus Radio  
6 Program over the Internet. See Ex. A, License Agreement, ¶ 7.

7 **Defendants Improperly Copy And Broadcast The Imus Radio Program**

8 12. The last day that Westwood One provided Defendants with the  
9 Imus Radio Program was Friday, April 13, 2007. Later that same day, I learned that  
10 KCAA intended to keep airing copies of the radio program thereafter. Accordingly,  
11 on April 14, 2007, I telephoned Fred Lundgren, the Chairman and CEO of  
12 Defendant Broadcast Management, at his telephone number. After leaving a  
13 voicemail, Mr. Lundgren immediately returned my call. Mr. Lundgren informed me  
14 that KCAA had made copies of the Imus Radio Program, and that he planned to  
15 have KCAA broadcast re-runs of the program commencing on Monday, April 16,  
16 2007, and thereafter. He also informed me that KCAA would transmit the Imus  
17 Radio Program over the Internet as well. I told him that neither he, his company nor  
18 KCAA ever had the right to make copies of the Imus Radio Program, or to broadcast  
19 a re-run of the program, or to transmit the program over the Internet. I further told  
20 him that he was infringing upon CBS Radio's copyright in the radio program. I then  
21 asked Mr. Lundgren to not broadcast or transmit via the Internet the Imus Radio  
22 Program in any way. Mr. Lundgren refused to agree to do so.

23 I declare under penalty of perjury of the law of the United States that  
24 the foregoing is true and correct.

25 Executed on April 19, 2007 at New York, New York.

26   
27 \_\_\_\_\_  
28 DAVID HILLMAN



# PROGRAM LICENSE AGREEMENT



## WESTWOOD ONE RADIO NETWORKS, INC

This Program is subject to prior clearance and broadcast authorization from Westwood One Radio Networks, Inc ("Westwood") and all terms and conditions below and attached to this License.

Sign and return this License to Westwood One Radio Networks, Inc, Valenola, Ca. for countersignature. You will receive a countersigned copy once clearance is approved.

Broadcast of this program is not authorized without a countersigned License Agreement from Westwood.

25088 West Avenue Stanford, Suite 100  
Valenola, Ca 91385 Telephone: 881-294-6227  
FAX # - 881-294-9382

#00254603100675010\*



KCAA AM Agrees to Broadcast Program and all Network Commercial Inventory within Program.

PROGRAM(S): IMJIS IN THE MORNING:

IMJIS IN MORN	1	12/26/94
IMJIS IN MORN	2	12/28/94
IMJIS IN MORN	3	12/26/94

LENGTH: 4 HOURS  
MONDAY THRU FRIDAY

NETWORK INVENTORY: (1) COMMERCIAL MINUTE(S) PER HOUR

LOCAL INVENTORY: (19) COMMERCIAL MINUTE(S) PER HOUR

START DATE/AIR TIME: OCT. 13, 2003 / 08:00 AM

Approved for Broadcaster by Legally Authorized Individual

I have read and agree to the items of this Agreement and the attached Standard Provisions:

SIGN HERE *[Signature]* *[Signature]* 10/16/03  
 SIGNATURE OF OFFICIAL TITLE DATE

Approved and Accepted for Westwood:

SIGNATURE OF OFFICIAL *[Signature]*

Station Address	Station Data
Title: <u>GENERAL MANAGER</u>	Station: <u>KCAA</u> <u>AM</u> (STATION#)
Name: <u>Mr Gary Nize</u>	Power: <u>Dev 1500</u> Night
Station: <u>KCAA</u> <u>AM</u>	Frequency: <u>1050.0</u> P.M. - <u>214-886-3834</u>
Address: <u>14605 N. AIRPORT DR., #312</u>	City of License: <u>LOMA LINDA</u> <u>CA</u>
<u>SCOTTSDALE, AZ 85260</u>	Owned: <u>GROUP ONE BROADCASTING INC LICENSEE</u> <u>BROADCAST MANAGEMENT SERVICES</u>

Licensee

Standard Provisions

1. **BROADCASTING:** Broadcaster shall broadcast the Program in its committed entirety on Station, as set forth in the Program License Agreement, without deletions or alterations, including the Network Commercials, Program ID's, Program promotional material and credits in the specified time period.

It is the essence of this Agreement that Broadcaster broadcast the Network Commercials over Station precisely as furnished and instructed by Westwood. All Network Commercials will be at such points in the Program as designated by Westwood. Westwood, in its discretion, may provide multiple commercial spots back to back in any one 160 second time period. Station shall, prior to the commencement of the Agreement, be required, at its expense, to obtain necessary equipment in order to receive satellite transmission of the Program and Network Commercials, unless an alternative delivery method is designated by Westwood. Broadcaster acknowledges that actual damages resulting from a failure by Station to broadcast the Network Commercials as set forth herein are difficult or impossible to ascertain, therefore both Broadcaster and Westwood agree that Broadcaster shall pay liquidated damages as a result of any such failure to broadcast and that said liquidated damages are not deemed a penalty hereunder. As liquidated damages Broadcaster shall pay Westwood an amount equal to five times Station's highest one minute commercial rate for each minute of Network Commercials not aired or aired incorrectly. Payment by Broadcaster pursuant to this paragraph shall be without prejudice to any rights Westwood may have against Broadcaster under this Agreement as the result of Broadcaster's failure to broadcast Program and/or Network Commercials. Broadcaster agrees that the Station is not authorized to broadcast any program or broadcast materials which may be transmitted or distributed by Westwood except as expressly herein provided or as Westwood may consent in writing.

2. **PROOF OF BROADCASTING:** Immediately following the last day of each standard broadcast week, and in no event later than ten working days following the close of each standard broadcast month, Broadcaster agrees to deliver to Westwood, via the Internet on electronic form provided by Westwood and/or in accordance with any substitute system provided by Westwood, as Westwood may require in its sole discretion, complete, accurate, duly captioned reports and certificates ("Proof of Broadcasting") with respect to Station's broadcasting of the Program and Network Commercials. Broadcaster further acknowledges that Westwood at its sole discretion may immediately terminate the Agreement upon determining that the Proof of Broadcasting was falsified, incorrect or incomplete as it pertains to broadcast of Westwood's Program or Network Commercials.

3. **LICENSE AND RIGHTS:** Broadcaster shall pay all taxes levied on its possession, broadcast use or right to use the material to be supplied hereunder. Broadcaster acknowledges that it is hereby requesting Westwood to make an overhead recording for purposes of transmission by a broadcasting organization legally entitled to transmit the works encompassed in the Program and that Westwood's reproduction of the performance and the works are solely for the purpose of facilitating broadcaster's transmission and not for public performance by Westwood. Broadcaster is solely responsible for payment of any public performance music license fees or royalties fee, for


example, to ASCAP, BMI, or SESAC) and Broadcaster agrees to and does hereby indemnify Westwood against all claims, costs and expenses which may incur as a result of Broadcaster's failure to keep such music licenses in effect or to make any requisite payments referred to herein.

4. **MEDIA INSURANCE:** Broadcaster represents and warrants that it has in force Media Errors and Omission insurance for at least \$1,000,000, but no less than the Broadcaster carries for its other programs, which covers the broadcast of the Program supplied by Westwood hereunder.

5. **TERM:** The term ("Term") of this Agreement shall be two (2) years. The Term shall thereafter be renewed automatically for successive terms of one (1) year each, unless and until terminated by either party hereto as herein provided. Broadcaster shall have the right and option to terminate this Agreement not less than 90 days following written notice of such termination to Westwood, effective only at the end of the original Term or any renewal thereof. Westwood may terminate this Agreement immediately if it no longer distributes the Program. Westwood shall have the right to terminate this Agreement not less than 90 days following written notice of termination to Broadcaster, effective on the date designated in such notice. Either party may terminate this Agreement prior to the normal expiration of the Term upon the other's failure to cure any breach or violation hereof within ten (10) days following written notice specifying such breach or violation.

6. **INDEMNIFICATION:** Broadcaster shall indemnify and hold harmless Westwood and its related entities, and such entities officers, directors, shareholders, agents and affiliates from and against any and all actions, suits, claims, liabilities, damages, costs (including reasonable attorneys' fees and expenses) arising from any breach of any of the representations, warranties and agreements contained in this Agreement by Broadcaster, or Broadcaster's officers, directors, agents, or employees, in connection with the transactions contemplated by this Agreement. Further, Broadcaster shall indemnify and hold harmless Westwood and its related entities, and such entities officers, directors, shareholders, agents, and affiliates from and against any expenses reasonably incurred by such parties in responding to, or defending against, any complaint filed by or with the Federal Communications Commission ("FCC") against Westwood or its related entities, or such entities officers, directors, shareholders or affiliates where such complaint arises directly or indirectly from the broadcast of the Program on the Station; or where the FCC solicits comments, information or a response from Westwood in connection with such a complaint against Broadcaster or Station; or where Westwood reasonably concludes that a submission to the FCC in connection with such a complaint against Station or Broadcaster is necessary or appropriate to protect its interest. Notwithstanding anything to the contrary, in no event shall Westwood be liable to Station or Broadcaster for any FCC violation, penalty, or sanction and Station and Broadcaster shall be solely responsible for its FCC compliance.

Westwood Initial 

Broadcaster Initial 

**7. PROGRAM OWNERSHIP AND RE-BROADCAST RIGHTS:** Subject to the terms of this Agreement, Broadcaster acknowledges that all rights and interest in and to the Program are and shall remain the exclusive property of Westwood. Broadcaster shall not, except as provided herein, without written authorization from Westwood, copy, duplicate, retransmit or reproduce any Program or Network Commercials furnished hereunder. Use of the Program by Broadcaster is for over the air, terrestrial radio broadcast on Station only. Broadcaster acknowledges that it has no right to broadcast or otherwise transmit the Program, or any part thereof, by any means other than over the air, terrestrial radio broadcast, and Broadcaster agrees that any unauthorized use or transmission, including but not limited to re-transmission through the Internet, will be deemed a material breach of this Agreement and an infringement on Westwood's proprietary rights in the Program. In the event of such an unauthorized transmission or broadcast, Westwood shall be entitled to all remedies, legal and/or equitable, against Broadcaster. Broadcaster will not authorize, cause, permit or enable anything to be done whereby any Program or segment thereof may be recorded, duplicated, sold, transferred, retransmitted or otherwise transmitted or used for any purpose other than broadcasting by Station as specifically provided in this Agreement. If any Program or segment is furnished on disc or tape, the discs or tapes shall remain the property of Westwood, and shall be destroyed by Broadcaster following broadcast of such segment on the Station.

**8. EFFECT OF BREACH:** Should Station breach any term or condition of this Agreement, Westwood may, in addition to all other rights it may have, immediately, without further notice, terminate this Agreement and have no further obligations to Broadcaster and Broadcaster's right to broadcast the Program will terminate forthwith.

**9. CHANGE OF OWNERSHIP AND ASSIGNMENTS:** Westwood may assign this Agreement to any party and Broadcaster shall have the right to assign this Agreement to any party acquiring all of the Station's assets or stock, but in such event Broadcaster shall not be relieved of its obligations hereunder. Broadcaster shall immediately notify Westwood at such time as application may be made to the FCC for the transfer of any interest in the Station or any assignment of the license to operate the Station. Should such assignment or transfer occur, such assignment or transfer shall expressly state that the assignee or transferee assumes all obligations contained in this Agreement. Notice of such assignment or transfer shall be provided to Westwood within ten days of consummation. Notwithstanding such assumption, Westwood may terminate this Agreement 10 days after notice of such assignment or transfer.

**10. TECHNICAL MODIFICATION BY STATION:** If Station makes a technical modification which changes the Station's coverage area in any respect Station shall notify Westwood prior to the effective date of any such modification and Westwood may, upon ten (10) days notice, terminate this Agreement.

**11. FORCE MAJEURE, SUBSTITUTIONS:** Neither Broadcaster nor Westwood will incur any liability to the other hereunder if performance by such party shall be prevented, interfered with or omitted due to (i) failure of facilities, (ii) labor disputes, (iii) Act of God, (iv) governmental action, or any other similar cause beyond the control of the party so failing to perform. Neither Broadcaster nor Westwood shall be liable to the other for claims by third parties for failure to operate facilities or supply programs for broadcasting. Westwood may

substitute a program which it deems of public importance for the scheduled Program.

**12. RESOLUTION OF CLAIMS AND DISPUTES:** New York law shall govern and shall be applied without regard to the principles of conflicts of laws. The parties agree that the rule requiring an agreement to be construed against the drafter or the drafter's client shall not apply. Any disputes arising out of or relating to this Agreement or the interpretation thereof shall be resolved only by arbitration in New York County, New York, pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Any award shall be entered by the arbitrators in form to be entered as a judgment in the Supreme Court of the State of New York in and for the County of New York, or in the United States District Court for the Southern District of New York, or in any other court having jurisdiction.

**13. NOTICES:** All notices and other communications which are permitted or required to be given hereunder shall be given in writing, either by overnight delivery with receipt signature requested, certified mail with return receipt requested or by registered mail with return receipt requested to the parties at the respective addresses set forth on the Program License Agreement, or at such other substitute address as either may designate by notice given in the same manner. Notice by mail shall be deemed given on the second business day following mailing thereof. Copies of all notices to Westwood shall be sent to Westwood at 40 West 57<sup>th</sup> Street, 5<sup>th</sup> Floor, New York, New York 10019, Attention: Legal Department.

**14. ENTIRETY:** The Agreement of which these Standard Provisions are a part, constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection therewith. No covenant, representation or condition not expressed in the Agreement shall be binding upon the parties hereto or shall be effective to interpret, change or restrict the provisions of the Agreement. No change, modification, amendment, termination or attempted waiver of any of the provisions hereof shall be binding unless in writing and signed by both parties. Captions are for convenience only and shall have no legal effect. The Agreement shall be binding upon, and shall inure to the benefit of the parties hereto and their respective successors and assigns. Each provision in the Agreement is intended to be several. If any term or provision is held to be unenforceable, or invalid for whatsoever, such term or provision held unenforceable or invalid shall not affect the validity of the remainder of the Agreement.

Westwood Initial

Page 2 of 2

Broadcaster Initial

**GROUP ONE BROADCASTING, INC. ADDENDUM TO WESTWOOD ONE  
RADIO NETWORKS, INC. PROGRAM LICENSE AGREEMENT WITH  
STATION KCAA-AM FOR IMUS IN THE MORNING  
START DATE OCTOBER 13, 2003**

1. Section 5 of the Standard Provisions ("Term") is amended by: (i) deleting the penultimate sentence in its entirety and replacing it with the following: "Westwood shall have the right and option to terminate this Agreement not less than 90 days following written notice to Broadcaster, effective at the end of the original term or any renewal thereof."
2. Section 11 of the Standard Provisions ("Force Majeure Substitutions") is amended by inserting the following at the conclusion thereof: "Broadcaster may substitute a program which it reasonably deems to be of special state or national significance for the scheduled Program on a non-routine occasional basis. Notwithstanding the foregoing, Station shall be required to provide a make good with respect to any missed Network Commercial within one business day of and within the same daypart as the missed Network Commercial."

Westwood: Initials AB; date 10/27/03  
Broadcaster: Initials RO; date 10/26/03

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7 Attorneys for Plaintiff CBS Radio East Inc.

8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION**

10  
11 CBS RADIO EAST INC. a Delaware  
corporation,

12 Plaintiff,

13 v.

14 BROADCAST MANAGEMENT  
15 SERVICES INC., a Texas corporation,  
KCAA 1050 AM Radio, a California  
16 entity, and DOE 1 through DOE 10,  
inclusive,

17 Defendants.

CASE NO. EDCV-07-453 VAP(JCRx)

**PLAINTIFF CBS RADIO EAST  
INC.'S EX PARTE APPLICATION  
FOR TEMPORARY RESTRAINING  
ORDER AND ORDER TO SHOW  
CAUSE RE: PRELIMINARY  
INJUNCTION; MEMORANDUM  
OF POINTS AND AUTHORITIES  
IN SUPPORT THEREOF**

*[Declarations of David Hillman, Linda  
Feldmann, and Edward Weiman and  
[Proposed] Order filed concurrently  
herewith]*

Date: TBD  
Time: TBD  
Courtroom: TBD

Action Filed: April 19, 2007

1 **TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:**

2 Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Plaintiff  
3 CBS Radio East Inc. ("CBS Radio"), will and does hereby does apply to the United  
4 States District Court for the Central District of California, Eastern Division, located  
5 at 3470 Twelfth Street, Riverside, California 92501, for a temporary restraining  
6 order enjoining defendants Broadcast Management Services Inc. ("BMS") and  
7 KCAA 1050 AM Radio ("KCAA") (collectively, "Defendants"), and their affiliates,  
8 parents, subsidiaries, officers, agents, representatives, servants, employees, attorneys  
9 and anyone acting on their behalf, or in concert with them, from broadcasting and/or  
10 re-broadcasting programs of the "Imus in the Morning" radio program (the "Imus  
11 Program") on their terrestrial radio signal through KCAA, Loma Linda, California,  
12 through Internet streaming at KCAA's website located at [www.kcaaradio.com](http://www.kcaaradio.com) or at  
13 any other website owned, operated, or controlled by Defendants, by making the  
14 Imus Program available for download from the KCAA website or at any other  
15 website owned, operated, or controlled by Defendants, and/or by any other means.  
16 In addition, CBS Radio requests that the Court set an Order to Show Cause why  
17 Defendants should not be restrained and enjoined from engaging in the  
18 aforementioned conduct.

19 CBS Radio is entitled to the relief that this application seeks, on the  
20 grounds that:

21 1. CBS Radio will succeed on the merits of its claim that  
22 Defendants' acts constitute copyright infringement. Defendants unlawfully made  
23 copies of the Imus Program, have been re-broadcasting the copied programs, and  
24 have indicated their intention to continue to re-broadcast the programs in willful  
25 infringement of CBS Radio's rights. Defendants have also made copies of the Imus  
26 Programs available through Internet streaming and/or downloading on the KCAA  
27 website without any authorization from CBS.

28 ///

1           2.     As CBS Radio will be able to demonstrate a likelihood of  
2 success on the merits of its claim for copyright infringement, CBS Radio is entitled  
3 to a presumption of irreparable harm resulting from Defendants' infringement.  
4 Further, if a temporary restraining order is not issued immediately, CBS Radio risks  
5 losing control over the right *not* to reproduce and broadcast the Imus Program.  
6 Accordingly, urgent circumstances exist which preclude CBS Radio from obtaining  
7 adequate relief through a regularly-noticed motion for preliminary injunction.

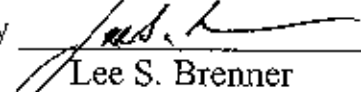
8           3.     The balance of hardships weighs decisively in favor of CBS  
9 Radio. While a temporary restraining order is necessary to prevent CBS Radio from  
10 losing control over the exploitation of the works in which it owns a copyright,  
11 Defendants stand to lose virtually nothing if prevented from continuing to re-  
12 broadcast the unlawfully reproduced Imus Program until this matter is resolved.

13           4.     The public interest, particularly the public policy favoring the  
14 creation of new works, strongly favors the relief that CBS Radio seeks.

15           As set forth in the Declaration of Edward E. Weiman, filed  
16 concurrently herewith, CBS Radio gave notice to Defendants of its intention to  
17 bring this application (*see* Weiman Decl. ¶¶ 2-3), and even prior to that, requested  
18 that Defendants cease and desist their re-broadcasts of the Imus Program (Feldmann  
19 Decl. ¶ 9, Ex. D; *see also* Hillman Decl. ¶ 12).

20  
21 DATED: April 19, 2007

WHITE O'CONNOR CURRY LLP  
Michael J. O'Connor  
Lee S. Brenner  
Edward E. Weiman

22  
23  
24  
25 By   
26     Lee S. Brenner  
27     Attorneys for Plaintiff CBS Radio East Inc.  
28

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 I

3 **INTRODUCTION**

4 *"Unless we get a court order to cease and desist, we're going to run it."*

5 *– Fred Lundgren, Chairman and CEO of Defendant*  
6 *Broadcast Management Services Inc.*

7 By this application, Plaintiff CBS Radio East Inc. ("CBS Radio") seeks  
8 to put a stop to the willful infringement of its copyright in the "Imus in the  
9 Morning" radio program featuring Don Imus (the "Imus Program") by defendants  
10 Broadcast Management Services Inc. ("BMS") and KCAA 1050 AM Radio  
11 ("KCAA") (collectively, "Defendants"). BMS owns and operates radio station  
12 KCAA, which has been broadcasting copies of the Imus Program that it unlawfully  
13 reproduced without authorization from CBS Radio, and has made the unlawful  
14 copies of the Imus Program available for download and Internet "streaming" from  
15 KCAA's website located at [www.kcaaradio.com](http://www.kcaaradio.com).

16 Despite CBS Radio's repeated objections to Defendants that their  
17 unlawful reproductions and broadcasts of prior episodes of the Imus Program violate  
18 CBS Radio's exclusive rights to reproduce, distribute and publicly perform the Imus  
19 Program, Defendants have repeatedly and publicly expressed their intention to  
20 continue their broadcasts for the foreseeable future. Defendants have offered no  
21 legal excuse for their willful copyright infringement, and have made it clear (as the  
22 opening quotation from BMS Chairman and CEO Fred Lundgren makes blatantly  
23 obvious) that only a judicial decree will prevent them from persisting in their  
24 actions. CBS Radio's application seeks such a decree.

25 Because CBS Radio has been left with no choice but to seek emergency  
26 relief from this Court for Defendants' willful copyright infringement, CBS Radio  
27 has filed this application for a temporary restraining order to enjoin Defendants from  
28 broadcasting and/or re-broadcasting the Imus Program on their terrestrial radio

1 signal through KCAA (AM), Loma Linda, California, through Internet streaming at  
2 KCAA's website located at [www.kcaaradio.com](http://www.kcaaradio.com) or at any other website owned,  
3 operated, or controlled by Defendants, by making the Imus Program available for  
4 download from the KCAA website or at any other website owned, operated, or  
5 controlled by Defendants, and/or by any other means.

6 As discussed in detail below, the Court should issue a temporary  
7 restraining order because CBS Radio easily satisfies the legal standard for injunctive  
8 relief. CBS Radio can demonstrate probable success on the merits of its claim for  
9 copyright infringement: (1) it is the valid owner of all copyrights in the Imus  
10 Program; and (2) Defendants have violated CBS Radio's exclusive rights to refrain  
11 from reproducing, distributing and performing the Imus Program; and (3) there is a  
12 presumption of irreparable harm resulting from copyright infringement where a  
13 plaintiff demonstrates a likelihood of success on the merits.

14 Moreover, the balance of hardships tips sharply in favor of CBS Radio  
15 because Defendants' willful infringement threatens to irremediably deprive CBS of  
16 exclusive control over the right to refrain from reproducing, distributing and  
17 performing the Imus Program. Indeed, Defendants currently offer for download  
18 approximately 272 previously broadcast episodes of the Imus Program. In addition,  
19 Defendants will not suffer any financial hardship as a result of the injunctive relief  
20 sought herein, since they are not "entitled" to any profits they have gained or may  
21 gain in the future as a result of their infringement of CBS Radio's copyright.  
22 Finally, granting CBS Radio the relief that it seeks will only advance the public  
23 interest in favor of the creation of new works by bolstering the incentive to create  
24 and disseminate such works.

25 For all of these reasons, CBS Radio respectfully requests that the Court  
26 grant its application.

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II

FACTUAL BACKGROUND

**A. CBS Radio Is The Copyright Owner Of The Imus Radio Program**

CBS Radio is the sole and exclusive owner of all copyright interests and other rights in and to the Imus Program. (Feldmann Decl. ¶ 2.) On April 19, 2007, CBS Radio filed an application with the United States Copyright Office in order to obtain a copyright registration for the Imus Program. (*Id.* ¶ 2, Ex. A.)<sup>1</sup>

**B. Relationship Between CBS Radio And Westwood One**

Westwood One supplies radio and television stations with programming and information services.<sup>2</sup> (Hillman Decl. ¶ 2.) CBS Radio and Westwood One have a contractual business relationship that involves, among other things, radio programming. (*Id.* ¶ 3; Feldmann Decl. ¶ 3.) As part of this relationship, Westwood One has the limited contractual right to distribute and license certain CBS Radio programming to radio stations around the country. (Feldmann Decl. ¶ 3.)

In connection with the contractual right granted to Westwood One by CBS Radio, until and including April 13, 2007, Westwood One had the right to sublicense the Imus Program. (Hillman Decl. ¶ 4.) This agreement provided Westwood One with the right to syndicate the Imus Program to radio stations which, in turn, would broadcast such programs over the air. (*Id.*) Westwood One is not the copyright owner of the Imus Program. (Hillman Decl ¶ 4.)

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<sup>1</sup> An action for infringement may be brought, and an injunction may issue, when an application for registration has been filed. 17 U.S.C.A. §411(a); *Action Tapes, Inc. v. Mattson*, 462 F.3d 1010, 1013 (8th Cir. 2006); see also 2 Melville B. Nimmer and David Nimmer, *Nimmer on Copyright*, §716[B][1][a].

<sup>2</sup> CBS Radio and Westwood One are separate companies, with separate boards of directors, separate payrolls and separate offices. (Hillman Decl. ¶ 3.)

1           The Imus Program was cancelled by CBS Radio on April 12, 2007, and  
2 the last day it was produced and distributed to Westwood One for use by Westwood  
3 One and its licensees was Friday, April 13, 2007. (Feldmann Decl. ¶ 5.)  
4 Accordingly, after April 13, 2007, Westwood One did not have any right to  
5 distribute the Imus Radio Program to radio stations, and Westwood One ceased  
6 distributing the radio program on that date. (*Id.*, Hillman Decl. ¶ 5.)

7 **C.    Relationship Between Westwood One And Defendants**

8           Westwood One entered into a written program license agreement (the  
9 “License Agreement”) with BMS with respect to the Imus Program.<sup>3</sup> (Hillman  
10 Decl. ¶ 6 , Ex. A.) Until and including Friday, April 13, 2007, Westwood One  
11 provided BMS with the actual Imus Program to be broadcast on KCAA in the  
12 following manner: The Imus Program was physically produced in a studio in New  
13 Jersey or New York. (*Id.* ¶ 7.) Generally, simultaneously with its production, CBS  
14 Radio transmitted the Imus Program to Westwood One. (*Id.*) In turn, at the same  
15 time, Westwood One transmitted the radio program to its satellite. (*Id.*) Finally,  
16 KCAA had a satellite receiver which enabled it to receive Westwood One’s  
17 transmission of the Imus Program. (*Id.*) At the same time it received the  
18 transmission, KCAA broadcast the radio program over the air via terrestrial radio  
19 broadcast. KCAA was permitted only to broadcast the Imus Program at the very  
20 same time that Westwood One transmitted the program to it. (*Id.*)

21 \_\_\_\_\_  
22 <sup>3</sup> The license agreement contains an arbitration provision which does not apply to  
23 CBS Radio as a non-party to the agreement. *Textile Unlimited, Inc. v. A. BMH and*  
24 *Co., Inc.*, 240 F.3d 781, 786 (9th Cir. 2001). Even if this were not so, CBS Radio  
25 would be permitted to elect not to sue on the contract, but to proceed against  
26 Defendants, as here, for copyright infringement. 3 Melville B. Nimmer and David  
27 Nimmer, *Nimmer on Copyright*, § 10.15 (citations omitted). Finally, even if *this*  
28 were not the case (it is), the Court would still be empowered to issue injunctive  
relief regardless. See 2 Thomas H. Oehmke, *Commercial Arbitration* § 60:6  
(Thomson/West 2007) (majority rule among federal circuits).

1 For its part, CBS Radio has no agreement – and never had any  
2 agreement – of any kind with BMS with respect to the Imus Program. (Feldmann  
3 Decl. ¶ 4.) Similarly, CBS Radio has no agreement – and never had any agreement  
4 – with *KCAA* with respect to the Imus Radio Program. (*Id.*)

5 Westwood One never provided Defendants with any right to make a  
6 copy of the Imus Program. Defendants were permitted only to broadcast the  
7 program at the very same time that Westwood transmitted the program to *KCAA*.  
8 (Hillman Decl. ¶ 8.) Westwood One never provided Defendants with any right to  
9 rebroadcast the Imus Program after its initial transmission from Westwood One.  
10 (*Id.* ¶ 9.) Westwood One never provided either of the defendants with any right to  
11 transmit the Imus Program over the Internet. (*Id.* ¶ 10.) Indeed, lest there be any  
12 misunderstanding, BMS expressly acknowledged that:

- 13 • Defendants had no right to copy or rebroadcast the Imus  
14 Program;
- 15 • Defendants could use the Imus Program only by over the air,  
16 terrestrial radio broadcast; and
- 17 • Defendants could not broadcast or otherwise transmit the Imus  
18 Program over the Internet. (*Id.* ¶ 11, Ex. A, ¶ 7.)

19  
20 **D. Defendants Improperly Copy and Threaten To Broadcast The Imus**  
21 **Radio Program**

22 The last day that Westwood One provided Defendants with the Imus  
23 Program was Friday, April 13, 2007. (Hillman Decl. ¶ 12.) Later that same day,  
24 David Hillman, Executive Vice-President, Business Affairs and General Counsel of  
25 Westwood One, learned that *KCAA* intended to keep airing copies of the radio  
26 program thereafter. (*Id.*) Accordingly, on April 14, 2007, Mr. Hillman spoke with  
27 Fred Lundgren, the Chairman and CEO of BMS, on the telephone. (*Id.*) During  
28 that call, Mr. Lundgren admitted that *KCAA* had made copies of the Imus Program,

1 and that he planned to have KCAA air prior broadcasts of the program commencing  
2 on Monday April 16, 2007, and thereafter. (*Id.*) Mr. Lundgren also informed Mr.  
3 Hillman that KCAA would transmit the Imus Program over the Internet as well.  
4 (*Id.*) Mr. Hillman told Mr. Lundgren that neither Mr. Lundgren, his company nor  
5 KCAA ever had the right to make copies of the Imus Program, or to broadcast a  
6 repeat of the program, or to transmit the program over the Internet. (*Id.*)

7 Mr. Hillman then asked Mr. Lundgren not to broadcast or transmit via  
8 the Internet the Imus Program in any way; however, Mr. Lundgren refused to agree  
9 to do so. (*Id.*)

10 **E. Defendants Follow Through With Their Promise To Infringe CBS**  
11 **Radio's Copyright Interests And Refuse To Stop**

12 On Monday, April 16, 2007, and every day thereafter, KCAA *re-*  
13 *broadcast* prior episodes of the Imus Program over the air by terrestrial radio  
14 broadcast – without any authorization from CBS Radio or Westwood One.  
15 (Feldmann Decl. ¶ 6.) In addition, on Monday, April 16, 2007, and every day  
16 thereafter, KCAA also simultaneously streamed – on a real-time basis – its  
17 broadcast of prior episodes of the Imus Program, also without any authorization  
18 from CBS Radio or Westwood One. (*Id.* ¶ 7.) Separately, on or about April 16,  
19 2007, KCAA's website, located at [www.kcaaradio.com](http://www.kcaaradio.com), made available for  
20 downloading numerous episodes of the Imus Program over the Internet (commonly  
21 referred to as podcasting), once again without any authorization from CBS Radio or  
22 Westwood One. (*Id.* ¶ 8, Ex. B.) Indeed, KCAA's website lists and makes 272  
23 episodes of Imus Program available for download. (*Id.* Ex C.)

24 On April 17, 2007, CBS Radio's counsel wrote a cease and desist letter  
25 to Defendants. (Feldmann Decl. ¶ 9, Ex. D.) The next day, on April 18, 2007, Mr.  
26 Lundgren wrote to CBS Radio's counsel and stated that KCAA has chosen "to air  
27 re-runs for a two-week period." (*Id.* ¶ 10.) Mr. Lundgren further wrote that he

28 ///

1 intends to continue airing re-broadcasts of the Imus Program on KCAA through  
2 April 27, 2007. (*Id.* Ex. E.)

3 **F. Defendants' Public Statements That They Intend To Continue To**  
4 **Infringe Plaintiff CBS Radio's Copyright Interests**

5 Defendants have publicly announced their intention to continue to air  
6 the Imus Program, *without authorization*. (*See* Feldmann Decl. ¶ 11, Ex. F.) In a  
7 Los Angeles Times article dated April 13, 2007, Mr. Lundgren stated, "Unless we  
8 get a court order to cease and desist, we're going to run it . . . I'm not going to let  
9 networks dictate to me who I run on my station." (*Id.*) Further, KCAA's employees  
10 Dennis Baxter and Daren Lane have indicated that KCAA will rerun the Imus  
11 Program "indefinitely." (*See* Feldmann Decl. ¶ 12, Ex. G.) In response to  
12 Westwood One's notification that KCAA has no right to air re-runs of the Imus  
13 Program, KCAA General Manager responded, "We're going to run it anyway."  
14 (*See Id.*) An article from UPI Entertainment News, dated April 15, 2007 notes that  
15 Fred Lundgren has been interviewed and that KCAA intends to play "Best of Imus"  
16 reruns *from now on*." (Feldmann Decl. ¶ 13, Ex. H) (emphasis added). An article  
17 from AFX UK Focus, dated April 13, 2007 quotes Mr. Lundgren as stating that  
18 KCAA will air re-runs of the Imus Radio Program. (*See* Feldmann Decl. ¶ 14, Ex.  
19 I.) In the same article, Mr. Lundgren is reported as having admitted that his motive  
20 for broadcasting reruns of the Imus Radio Program is in part financial. (*Id.*)

21 **III**

22 **THE COURT SHOULD ISSUE A TEMPORARY RESTRAINING ORDER**

23 **A. Legal Standard For Injunctive Relief**

24 CBS Radio seeks a temporary restraining order enjoining Defendants  
25 from re-broadcasting the Imus Program and from making the Imus Program  
26 available via Internet streaming and/or download from the KCAA website or at any  
27 other website owned, operated, or controlled by Defendants, and/or by any other  
28 means.

1           The Ninth Circuit's traditional four-prong test for injunctive relief  
2 entitles a moving party to an injunction where, as here, the record establishes (1) a  
3 probability of success on the merits; (2) a threat of irreparable injury if the  
4 injunction is not granted; (3) a balance of hardships favoring the movant; and (4) the  
5 public interest favoring issuance of the injunction. *See, e.g., Dollar Rent A Car of*  
6 *Washington, Inc. v. Travelers Indem. Co.*, 774 F.2d 1371, 1374 (9th Cir. 1985).<sup>4</sup>

7           In order to establish a probability of success on the merits, the moving  
8 party need not prove its entire case to secure an injunction. *Sierra On-line, Inc. v.*  
9 *Phoenix Software, Inc.*, 739 F.2d 1415, 1423 (9th Cir. 1984) (injunction is not a  
10 preliminary adjudication of the ultimate merits, but is "an equitable device for  
11 preserving rights pending final resolution of the dispute" such that district court  
12 need only find "probabilities that the necessary facts can be proved"); *Republic of*  
13 *the Philippines v. Marcos*, 862 F.2d 1355, 1362 (9th Cir. 1988) (to obtain injunctive  
14 relief, moving party "need not promise a certainty of success" but need only  
15 demonstrate "fair chance of success on the merits"). As demonstrated in this  
16 application, the evidence in this case far exceeds the showing required for the  
17 issuance of a temporary restraining order and order to show cause re: preliminary  
18 injunction, under the foregoing standards.

19 \_\_\_\_\_  
20 <sup>4</sup> The Ninth Circuit also recognizes an "alternative test," under which injunctive  
21 relief will issue where the moving party demonstrates either (1) a likelihood of  
22 success on the merits and the possibility of irreparable injury, or (2) the existence of  
23 serious questions pertaining to the merits and the balance of hardships tipping in  
24 favor of the moving party. *Brookfield Commc'ns, Inc. v. W. Coast Entm't Corp.*,  
25 174 F.3d 1036, 1046 (9th Cir. 1999). This test posits "a continuum" of equitable  
26 discretion where the greater the relative hardship to the moving party, the less  
27 probability of success must be shown. *Regents of the Univ. of Cal. v. ABC, Inc.*, 747  
28 F.2d 511, 515 (9th Cir. 1984). Here, the balance of hardships clearly weighs in  
favor of CBS Radio because there would be little, if any, harm to Defendants if  
injunctive relief is granted, but the denial of such relief will allow Defendants to  
continue willfully infringing CBS Radio's copyright.

1 **B. CBS Radio Will Succeed On The Merits Of Its Claim For Copyright**  
2 **Infringement**

3 In order to establish a claim for copyright infringement, CBS Radio  
4 must prove by a preponderance of the evidence that (1) it is the owner of a valid  
5 copyright; and (2) Defendants misappropriated one or more of CBS Radio's  
6 exclusive rights in its copyrighted work (e.g., reproduction, performance and  
7 distribution). *Johnson Controls, Inc. v. Phoenix Control Systems, Inc.*, 886 F.2d  
8 1173, 1175 (9th Cir. 1989). Under section 501(a) of the Copyright Act, "[a]nyone  
9 who violates any of the exclusive rights of the copyright owner ... is an infringer of  
10 the copyright." 17 U.S.C. §501(a).

11 As set forth in Section 106 of the Copyright Act, the owner of a  
12 copyright enjoys five fundamental and exclusive rights: (1) reproduction; (2)  
13 adaptation; (3) distribution; (4) performance; and (5) display. 17 U.S.C. §106.  
14 Here, Defendants have violated CBS Radio's exclusive rights to reproduce,  
15 distribute and perform the Imus Program by making unlawful copies of the Imus  
16 Program, by re-broadcasting the Imus Program on KCAA radio and by making the  
17 Imus Program available for download and "streaming" the content from the KCAA  
18 website.

19 CBS Radio is the sole owner of all copyright interests and other rights  
20 in and to the Imus Program. (Feldmann Decl. ¶2.) By unlawfully making copies of  
21 the Imus Program, by re-broadcasting the infringing copies of the Imus Program,  
22 and by making the copied broadcasts available via Internet streaming and for  
23 download from the KCAA website, Defendants have violated a number of CBS  
24 Radio's exclusive rights. From the outset of this legal dispute, Defendants have  
25 intentionally disregarded CBS Radio's assertion of their exclusive rights, insisting  
26 that they will continue to air the Imus Program absent a Court Order. (Feldmann  
27 Decl. ¶ 11, Ex. F; ¶ 12, Ex. G.)

28 ///



1 First, by surreptitiously reproducing the Imus Program broadcasts  
2 without any legal right to do so (Hillman Decl. ¶ 12), Defendants violated CBS  
3 Radio's right to copy the broadcasts. See 17 U.S.C. §106(1). Defendants had only  
4 the right – until and including April 13, 2007 – to broadcast the Imus Program  
5 simultaneously with Westwood One's transmission of the broadcast to its satellite  
6 receiver. (*Id.* ¶¶ 4, 7.)

7 Second, by re-broadcasting the unlawful reproductions of the Imus  
8 Program (Feldmann Decl. ¶ 8), Defendants have violated CBS Radio's exclusive  
9 right to perform (or to not perform) the program. See 17 U.S.C. §106(4). There can  
10 be no dispute that Defendant's transmission of the Imus Program over the airwaves  
11 constitutes a "public performance" of the copyrighted work. See *Broadcast Music,*  
12 *Inc. v. Claire's Boutiques, Inc.*, 949 F.2d 1482 (7th Cir. 1991) (retail store chain,  
13 through actions of its store managers in playing radios during normal business  
14 hours, engaged in "public performance" of copyrighted works within meaning of  
15 Copyright Act).

16 Third, by allowing visitors of the KCAA website to "stream" the  
17 content and download copies of the program (Feldmann Decl. ¶ 8), Defendants have  
18 violated CBS Radio's exclusive rights to reproduce, distribute and perform the  
19 program, and/or to refrain from doing so. See 17 U.S.C. §§ 106(1), (3), (6).

20 Finally, Defendants' infringement violated CBS Radio's right *not* to  
21 further publish the Imus Program if CBS Radio so chose – a right that is implicit in  
22 the copyright holder's exclusive right to distribute copies of its work to the public.  
23 See *Seshadri v. Kasraian*, 130 F.3d 798 (1997).

24 CBS Radio anticipates that Defendants' purported defense of its  
25 infringing actions will be that their willful copyright violations are somehow  
26 protected by the First Amendment. This is not the law, however. Copyright  
27 infringement is *not* protected by the First Amendment. *Los Angeles News Serv. v.*  
28 *Tullo*, 973 F.2d 791 (9th Cir. 1992); *Cable/Home Communication Corp. v. Network*



1 *Productions*, 902 F.2d 829, 849 (11th Cir. 1990) (“[t]he First Amendment is not a  
2 license to trammel on legally recognized rights in intellectual property”).

3 **C. CBS Radio Will Suffer Irreparable Harm Absent Immediate Relief, And**  
4 **The Balance of Hardships Favors CBS Radio**

5 For purposes of an injunction, the Ninth Circuit recognizes a  
6 presumption of irreparable harm resulting from the infringement where a plaintiff  
7 demonstrates a likelihood of success on the merits. *Sun Microsystems Inc. v.*  
8 *Microsoft Corp.*, 188 F.3d 1115, 1119 (9th Cir. 1999). The court in *Sun*  
9 *Microsystems* noted:

10 That presumption means that “the balance of hardships  
11 issue cannot be accorded significant” – if any – “weight in  
12 determining whether a court should enter a preliminary  
13 injunction to prevent the use of infringing material in cases  
14 where ... the plaintiff has made a strong showing of likely  
15 success on the merits.”

16 *Id.* (citing *Cadence Design Sys., Inc. v. Avant! Corp.*, 125 F.3d 824, 829 (9th Cir.  
17 1997)).

18 Where the presumption of irreparable harm arises, courts will not give  
19 great weight to the hardship that an alleged infringer may suffer if an injunction is  
20 granted. *Triad Systems Corp. v. Southeastern Express Co.*, 64 F.3d 1330, 1338 (9th  
21 Cir. 1995) (quoting *Concrete Mach. Co. v. Classic Lawn Ornaments, Inc.*, 843 F.2d  
22 600, 612 (1st Cir. 1988); see also *Apple Computer Inc. v. Franklin Computer Corp.*,  
23 714 F.2d 1240, 1255 (3d Cir. 1983) (in motion for preliminary injunction, district  
24 court should not consider the “devastating effect” of the injunction on the infringer’s  
25 business)).

26 Here, CBS Radio has demonstrated a probability of success on the  
27 merits of its copyright infringement claim. Defendants have been re-broadcasting –  
28 and threaten to continue to re-broadcast – the Imus Program, have made the Imus  
Program available via Internet streaming, and have made hundreds of copies  
available for download from the KCAA website. In doing so, Defendants have

1 violated CBS Radio's rights to refrain from copying, distributing and performing the  
2 Imus Program. Despite CBS Radio's repeated demands that they cease and desist,  
3 Defendants have continued to infringe on CBS Radio's rights. There is simply *no*  
4 legal justification for Defendants' actions. Accordingly, CBS Radio has established  
5 a strong likelihood of success on the merits of its infringement claim, and, therefore,  
6 is entitled to a presumption of irreparable harm. Moreover, the threat that CBS  
7 Radio will lose control over the exclusive rights that it has over its copyrighted  
8 material only further establishes irreparable harm.

9           As the court in *Sun Microsystems* noted, the question of the balance of  
10 hardships is of little significance where a plaintiff establishes a probability of  
11 success on the merits. Even if Defendants assert that they will suffer financially if  
12 they are enjoined from re-broadcasting or otherwise disseminating the Imus  
13 Program, such an argument is meritless. The Ninth Circuit directly addressed this  
14 issue in *Triad*, where the Court wrote:

15           [Defendant] ... argues that the injunction will cause it to  
16 suffer extensive harm as a result. Nonetheless, the  
17 argument fails. [Defendant] cannot complain of the harm  
18 that will befall it when properly forced to desist from its  
19 infringing activities. "Where the only hardship that the  
20 defendant will suffer is lost profits from an activity which  
21 has been shown likely to be infringing, such an argument  
22 in defense 'merits little equitable consideration [on an  
23 appeal from a preliminary injunction].'" *Concrete Mach.  
24 Co. v. Classic Lawn Ornaments, Inc.*, 843 F.2d 600, 612  
25 (1st Cir. 1988); accord *Apple Computer*, 714 F.2d at 1255.

26 *Id.*, 64 F.3d at 1338.

27           Here, Defendants will not suffer financial harm as a result of the  
28 Court's granting CBS Radio's application, because the law clearly provides that  
29 Defendants are not "entitled" to the profits that they gain as a result of violating  
30 CBS Radio's exclusive rights.

#### 31 **D. Injunctive Relief Will Serve The Public Interest**

32           The injunctive relief that CBS Radio seeks would not only protect CBS  
33 Radio from sustaining further irreparable harm, but would also advance the public

1 interest, particularly in light of the strong public policy favoring the creation of new  
2 works. See, e.g., *Harper & Row, Publishers, Inc. v. Nation Enters.*, 471 U.S. 539,  
3 558 (1985) (copyright is intended to be the engine of free expression); *Zacchini v.*  
4 *Scripps-Howard Broad. Co.*, 433 U.S. 562, 576 (1977). As the Court recognized in  
5 *Zacchini*, the public welfare is advanced “through the talents of authors and  
6 inventors in ‘Science and useful Arts.’” *Id.* (quoting *Mazer v. Stein*, 347 U.S. 201,  
7 219 (1954)). Similarly, the court acknowledged in *Harper & Row* that copyright  
8 offers the proper incentive “to create and disseminate ideas.” *Harper & Row*, 471  
9 U.S. at 558.

10           Conversely, it is beyond serious dispute that the public interest would  
11 *not* be served by Defendants’ continued infringement of CBS Radio’s copyright.  
12 Indeed, the denial of injunctive relief would send a strong signal to the consuming  
13 public that state and federal laws prohibiting copyright infringement can be thwarted  
14 without consequence.

15 **E. A Temporary Restraining Order Should Issue To Preserve CBS Radio’s**  
16 **Rights Pending A Hearing On A Preliminary Injunction**

17           The irreparable injury to CBS Radio that underlies this application  
18 justifies the immediate issuance of a temporary restraining order pending a hearing  
19 on the issuance of a preliminary injunction. Defendants’ infringement of CBS  
20 Radio’s copyright interests diminishes their purpose and utility every time that  
21 Defendants re-broadcast the Imus Program, and each time that the Imus Program is  
22 downloaded from the KCAA website.

23           If CBS Radio were required to proceed by way of a regularly noticed  
24 motion, CBS Radio’s motion for preliminary injunction would not be heard for at  
25 least several weeks, which means that Defendants will have succeeded in their  
26 campaign to disseminate the Imus Program as widely as possible in a brief period of  
27 time.

28 ///

1 Defendants have no right to exploit the Imus Program in the manner in  
2 which they are doing, and they certainly should not be rewarded for their  
3 infringement by way of a "built-in" delay that would result from proceeding with a  
4 formal noticed motion for preliminary injunction. Accordingly, CBS Radio  
5 respectfully requests that the Court issue a temporary restraining order immediately  
6 to put a stop to the irreparable harm that Defendants' infringement causes with each  
7 broadcast and download of the Imus Program.

8 IV

9 CONCLUSION

10 For all of the foregoing reasons, CBS Radio respectfully requests that  
11 the Court grant its application for a temporary restraining order and order to show  
12 cause re: preliminary injunction.

13 DATED: April 19, 2007

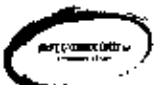
Respectfully submitted,

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17 Edward E. Weiman

18  
19 By 

Lee S. Brenner

20 Attorneys for Plaintiff CBS Radio East Inc.  
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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION

10  
11 CBS RADIO EAST INC. a Delaware  
corporation,

12 Plaintiff,

13 v.

14 BROADCAST MANAGEMENT  
15 SERVICES INC., a Texas corporation,  
KCAA 1050 AM Radio, a California  
16 entity, and DOE 1 through DOE 10,  
inclusive,

17 Defendants.  
18  
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20  
21

CASE NO. EDCV-07-453 VAP(JCRx)

**[PROPOSED] TEMPORARY  
RESTRAINING ORDER AND  
ORDER TO SHOW CAUSE RE:  
PRELIMINARY INJUNCTION**

*[Ex Parte Application; Declarations of  
David Hillman, Linda Feldmann, and  
Edward Weiman filed concurrently  
herewith]*

Date: TBD  
Time: TBD  
Courtroom: TBD

Action Filed: April 19, 2007

1 **TO DEFENDANTS BROADCAST MANAGEMENT SERVICES INC. AND**  
2 **KCAA 1050 AM RADIO:**

3 YOU ARE HEREBY ORDERED TO SHOW CAUSE at  
4 \_\_\_\_\_ on \_\_\_\_\_, 2007, or as soon thereafter as  
5 counsel may be heard in the courtroom of the Honorable \_\_\_\_\_  
6 of the United States District Court for the Central District of California, Eastern  
7 Division, located at 3470 Twelfth Street, Riverside California 92501, why you, your  
8 affiliates, parents, subsidiaries, officers, agents, representatives, servants,  
9 employees, attorneys and anyone else acting on your behalf, or in concert or  
10 participation with you, should not be restrained and enjoined by a preliminary  
11 injunction from broadcasting and/or re-broadcasting programs of the "Imus in the  
12 Morning" radio program ("Imus Program") on your terrestrial radio signal through  
13 KCAA (AM), Loma Linda, California, through Internet streaming at KCAA's  
14 website located at www.kcaaradio.com, by making the Imus Program available for  
15 download from your website and/or by any other means.

16 PENDING HEARING on the above Order to Show Cause, you, your  
17 affiliates, parents, subsidiaries, officers, agents, representatives, servants,  
18 employees, attorneys and anyone else acting on your behalf, or in concert or  
19 participation with you, ARE HEREBY RESTRAINED AND ENJOINED FROM  
20 broadcasting and/or re-broadcasting programs of the Imus Program on your  
21 terrestrial radio signal through KCAA (AM), Loma Linda, California, through  
22 Internet streaming at KCAA's website located at www.kcaaradio.com, by making  
23 the Imus Program available for download from your website and/or by any other  
24 means.

25 This Order to Show Cause and supporting papers must be served on  
26 Defendants no later than \_\_\_ days before the date set for hearing, and proof of  
27 service shall be filed no later than \_\_\_ court days before the hearing. Any response  
28 or opposition to this Order to Show Cause must be filed and personally served on

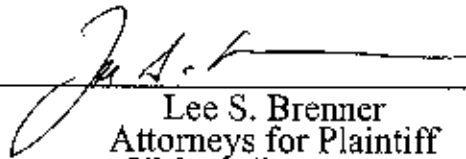
1 Plaintiff's counsel no later than \_\_\_ court days before the hearing, and proof of  
2 service shall be filed no later than \_\_\_ court days before the hearing. Any reply in  
3 support of this Order to Show Cause must be filed and personally served on  
4 Defendants no later than \_\_\_ court days before the date set for hearing, and proof of  
5 service shall be filed no later than \_\_\_ court days before the hearing.

6  
7 DATED: \_\_\_\_\_  
8  
9

10 UNITED STATES DISTRICT JUDGE

11  
12 Presented by:

13 WHITE O'CONNOR CURRY LLP  
14 Michael J. O'Connor  
15 Lee S. Brenner  
16 Edward E. Weiman

17 By  \_\_\_\_\_  
18 Lee S. Brenner  
19 Attorneys for Plaintiff  
20 CBS Radio East Inc.  
21  
22  
23  
24  
25  
26  
27  
28

1 WHITE O'CONNOR CURRY LLP  
Michael J. O'Connor (STATE BAR NO. 90017)  
2 Lee S. Brenner (STATE BAR NO. 180235)  
Edward E. Weiman (STATE BAR NO. 193290)  
3 10100 Santa Monica Boulevard, Twenty-Third Floor  
Los Angeles, California 90067-4008  
4 Telephone: (310) 712-6100  
Facsimile: (310) 712-6199  
5 moconnor@whiteo.com  
lbrenner@whiteo.com  
6 eweiman@whiteo.com

7 Attorneys for Plaintiff CBS Radio East Inc.

8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION**

10  
11 CBS RADIO EAST INC. a Delaware  
corporation,

12 Plaintiff,

13 v.

14 BROADCAST MANAGEMENT  
15 SERVICES INC., a Texas corporation,  
KCAA 1050 AM Radio, a California  
16 entity, and DOE 1 through DOE 10,  
inclusive,

17 Defendants.  
18  
19  
20  
21

CASE NO. EDW-07-453VAP(JCR)

**DECLARATION OF EDWARD E.  
WEIMAN IN SUPPORT OF  
PLAINTIFF CBS RADIO EAST  
INC.'S EX PARTE APPLICATION  
FOR TEMPORARY RESTRAINING  
ORDER AND OSC RE:  
PRELIMINARY INJUNCTION**

*[Ex Parte Application; Declarations of  
David Hillman and Linda Feldmann,  
and [Proposed] Order filed  
concurrently herewith]*

Date: TBD  
Time: TBD  
Courtroom: TBD

Action Filed: April 19, 2007

DECLARATION OF EDWARD E. WEIMAN

I, Edward E. Weiman, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am a partner with White O'Connor Curry LLP, attorneys of record for Plaintiff CBS Radio East Inc. ("CBS Radio") in the above-captioned matter. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

2. On April 18, 2007, our office transmitted correspondence by facsimile, e-mail, and United States mail to Fred Lundgren, the CEO and Chairman of Defendant Broadcast Management Services Inc. ("BMS"), and Dennis Baxter, the News Director for Defendant KCAA 1050 AM Radio ("KCAA"), notifying them of the intent of CBS Radio to file an *ex parte* application for a temporary restraining order and order to show cause re: preliminary injunction on April 19, 2006 in the United States District Court for the Central District of California, Eastern Division, located at 3470 Twelfth Street, Riverside, California 92501. A true and correct copy of our correspondence in this regard is attached hereto as Exhibit 1, and is incorporated herein by this reference.


3. Our correspondence specifically indicated that CBS Radio would seek a temporary restraining order enjoining BMS and KCAA and their affiliates, parents, subsidiaries, agents, representatives, employees and anyone acting on their behalf, or in concert with them, from re-broadcasting prior programs of the "Imus in the Morning" radio program (the "Imus Program") on their terrestrial radio signal through KCAA (AM), Loma Linda, California, through internet streaming at KCAA's website located at [www.kcaaradio.com](http://www.kcaaradio.com), and/or by any other means.

4. In our correspondence, we requested that Messrs. Lundgren and Baxter let us know as soon as possible whether they would oppose CBS Radio's *ex parte* application. We subsequently spoke by telephone with Mr. Lundgren and,

1 later, his counsel – Brian Oxman. Mr. Lundgren indicated that the he would oppose  
2 the application, while Mr. Oxman was noncommittal (at Mr. Oxman's request  
3 forwarded our *ex parte* notice by e-mail to him as well). We have not yet heard  
4 from Mr. Baxter with regard to whether KCAA will similarly oppose CBS Radio's  
5 application. However, we believe that KCAA will indeed oppose the application.

6  
7 I declare under penalty of perjury under the laws of the United States of  
8 America that the foregoing is true and correct.

9 Executed April 19, 2007, at Los Angeles, California.

10  
11   
12 \_\_\_\_\_  
13 Edward E. Weiman

24  
25  
26  
27  
28







WHITE O'CONNOR CURRY LLP  
ATTORNEYS AT LAW

10100 Santa Monica Boulevard  
Los Angeles, California 90067-4008  
Telephone (310) 712-6100  
Facsimile (310) 712-6199

**FACSIMILE COVER PAGE**

Date: April 18, 2007

Pages: 3

File No.: 3393-003

NAME/COMPANY	TELEPHONE	FACSIMILE
Mr. Dennis Baxter KCAA 1050 AM Radio / <i>Mr. Fred Lundgren BNS Inc.</i>		909.381.8935 281.599.9804

From: Michael J. O'Connor Direct Dial: 310.712.6120

email: moconnor@whiteo.com

Message:

THE INFORMATION CONTAINED IN THIS TRANSMISSION IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER IS NOT THE INTENDED RECIPIENT OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR THE DELIVERING OF THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL TRANSMISSION TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

WHITE O'CONNOR CURRY LLP  
ATTORNEYS AT LAW

10100 SANTA MONICA BOULEVARD  
TWENTY-THIRD FLOOR  
LOS ANGELES, CALIFORNIA 90067-4008  
TELEPHONE (310) 712-6100  
FACSIMILE (310) 712-6120

April 18, 2007

MICHAEL J. O'CONNOR  
310.712.6120  
mjoconnor@whiteo.com

Via Facsimile, E-Mail, & U.S. Mail

Mr. Fred Lundgren  
Chairman and CEO  
Broadcast Management Services Inc.  
19939 Gatling Court  
Katy, TX 77449

Mr. Dennis Baxter  
News Director  
KCAA 1050 AM Radio  
254 Carousel Mall  
San Bernardino, CA 92401

Re: CBS Radio East Inc. v. Broadcast Mgmt. Svs. Inc. and KCAA 1050 AM Radio

Dear Mr. Lundgren and Mr. Baxter:

This law firm is litigation counsel for Plaintiff CBS Radio East Inc. ("CBS Radio") with respect to the above-referenced matter.

Please be advised that, pursuant to Rule 65 of the Federal Rules of Civil Procedure, on April 19, 2007, CBS Radio will apply *ex parte* for a temporary restraining order and order to show cause re: preliminary injunction in the United States District Court for the Central District of California, Eastern Division, which court is located at 3470 Twelfth Street, Riverside, California 92501.

CBS Radio's application will seek a temporary restraining order enjoining Defendants Broadcast Management Services Inc. and KCAA 1050 AM Radio (collectively "Defendants"), and their affiliates, parents, subsidiaries, agents, representatives, employees and anyone acting on their behalf, or in concert with them, from re-broadcasting prior programs of the "Imus in the Morning" radio program (the "Imus Program") on their terrestrial radio signal through KCAA (AM), Loma Linda, California, through internet streaming at KCAA's website located at [www.kcaaradio.com](http://www.kcaaradio.com), and/or by any other means.

In addition, CBS Radio will file a Complaint for copyright infringement in which CBS Radio will seek its attorneys' fees, along with actual damages, Defendants' profits, and/or statutory damages pursuant to 17 U.S.C. §§ 504(b) & (c)(2), 505. As you are, or should be, aware, the Copyright Act provides for damages in the amount of \$150,000 *per infringement*, for willful infringements. 17 U.S.C. §§ 504(c)(2). In this case, CBS Radio will have no difficulty demonstrating that Defendants' infringement is willful given their public statements to this effect, and their otherwise flagrant infringement of CBS Radio's copyrights in the Imus Program. You proceed at your peril.

WHITE O'CONNOR CURRY LLP

Mr. Fred Lundgren

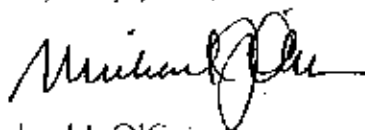
Mr. Dennis Baxter

April 18, 2007

Page 2

Please let us know whether you intend to oppose CBS Radio's *ex parte* application.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael J. O'Connor", with a stylized flourish at the end.

Michael J. O'Connor  
of WHITE O'CONNOR CURRY LLP

MJO:dd

\*\*\*\*\*  
 \*\*\* TX REPORT \*\*\*  
 \*\*\*\*\*

TRANSMISSION OK

TX/RX NO 4828  
 CONNECTION TEL 362#9999#022#19093818935  
 CONNECTION ID  
 ST. TIME 04/18 18:43  
 USAGE T 01'00  
 PGS. SENT 3  
 RESULT OK



10100 Santa Monica Boulevard  
 Los Angeles, California 90067-4008  
 Telephone (310) 712-6100  
 Facsimile (310) 712-6199

**FACSIMILE COVER PAGE**

Date: April 18, 2007

Pages: 3

File No.: 3393-003

NAME/COMPANY	TELEPHONE	FACSIMILE
Mr. Dennis Baxter KCAA 1050 AM Radio	Mr. Fred Lundgren BMS Inc.	909.381.8935 281.599.9804

From: Michael J. O'Connor Direct Dial: 310.712.6120

email: moconnor@whiteo.com

Message:

\*\*\*\*\*  
\*\*\* TX REPORT \*\*\*  
\*\*\*\*\*

TRANSMISSION OK

TX/RX NO 4477  
CONNECTION TEL 114#9999#000#12815998804  
CONNECTION ID  
ST. TIME 04/18 17:55  
USAGE T 01'35  
PGS. SENT 3  
RESULT OK



10100 Santa Monica Boulevard  
Los Angeles, California 90067-4008  
Telephone (310) 712-6100  
Facsimile (310) 712-6199

FACSIMILE COVER PAGE

Date: April 18, 2007

Pages: 3

File No.: 3393-003

NAME/COMPANY	TELEPHONE	FACSIMILE
Mr. Dennis Baxter / Mr. Fred Lundgren KCAA 1050 AM Radio / BMS Inc.		909.381.8934 281.599.9804

From: Michael J. O'Connor  
email: moconnor@whiteo.com

Direct Dial: 310.712.6120

Message:

1 WHITE O'CONNOR CURRY LLP  
Michael J. O'Connor (STATE BAR NO. 90017)  
2 Lee S. Brenner (STATE BAR NO. 180235)  
Edward E. Weiman (STATE BAR NO. 193290)  
3 10100 Santa Monica Boulevard, Twenty-Third Floor  
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4 Telephone: (310) 712-6100  
Facsimile: (310) 712-6199  
5 moconnor@whiteo.com  
lbrenner@whiteo.com  
6 eweiman@whiteo.com

7 Attorneys for Plaintiff CBS Radio East Inc.

8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION**

10  
11 CBS RADIO EAST INC. a Delaware  
Corporation,

12 Plaintiff,

13 v.

14 BROADCAST MANAGEMENT  
15 SERVICES INC., a Texas corporation,  
KCAA 1050 AM Radio, a California  
16 entity, and DOE 1 through DOE 10,  
inclusive,

17 Defendants.  
18

CASE NO. EDCV-07-453 VAP (JCL+)

**DECLARATION OF LINDA D.  
FELDMANN IN SUPPORT OF  
PLAINTIFF CBS RADIO EAST  
INC.'S *EX PARTE* APPLICATION  
FOR A TEMPORARY  
RESTRAINING ORDER AND  
ORDER TO SHOW CAUSE RE:  
PRELIMINARY INJUNCTION**

*[Ex Parte Application; Declarations of  
Edward Weiman and David Hillman,  
and [Proposed] Order filed  
concurrently herewith]*

Date: TBD  
Time: TBD  
Courtroom: TBD

Action Filed: April 19, 2007

1 I, Linda D. Feldmann, declare and state as follows:

2 1. I am member of the law firm Leventhal Senter & Lerman PLLC.  
3 As part of the firm, which serves as general counsel to plaintiff CBS Radio East Inc.  
4 ("CBS Radio") and its parent company, CBS Radio Inc., I perform various legal  
5 services to CBS Radio which customarily are provided by an "in-house counsel." I  
6 have personal knowledge of the following, and, if called as a witness, could  
7 competently testify thereto.

8 **CBS Radio Is The Sole Owner Of All Copyright Interests in The Imus Radio**  
9 **Program**

10 2. CBS Radio is the sole owner of all copyright interests and other  
11 rights in and to the radio program entitled "Imus in the Morning" (the "Imus Radio  
12 Program"), which was performed by radio personality Don Imus. On April 19,  
13 2007, on behalf of CBS Radio, I caused applications to be filed with the United  
14 States Copyright Office in order to obtain copyright registrations for episodes the  
15 Imus Radio Program. Attached hereto as Exhibit A is a true and correct copy of  
16 those applications.

17 3. Pursuant to a contract with CBS Radio, Westwood One Radio  
18 Networks, Inc. ("Westwood One") has the limited right to distribute and license  
19 certain CBS Radio programming to radio stations around the country. Up to and  
20 including April 13, 2007, Westwood One had the contractual right to so distribute  
21 and license the Imus Radio Program.

22 4. CBS Radio has no agreement – and never had any agreement –  
23 of any kind with defendant Broadcast Management Services Inc. ("Broadcast  
24 Management") with respect to the Imus Radio Program. In addition, CBS Radio has  
25 no agreement – and never had any agreement – with Broadcast Management's  
26 owned and operated radio station, defendant KCAA 1050 AM Radio ("KCAA")  
27 with respect to the Imus Radio Program.

28 ////



1           5.     The Imus Radio Program was cancelled by CBS on April 12,  
2 2007, and the last day it was produced and distributed to Westwood One for use by  
3 Westwood One and its licensees was Friday, April 13, 2007. Accordingly, after  
4 April 13, 2007, Westwood One did not have any right to distribute the Imus Radio  
5 Program to radio stations, and Westwood One ceased distributing the radio program  
6 on that date.

7           **Defendants Infringe CBS Radio's Copyright Interests And Refuse To Stop**

8           6.     On Monday, April 16, 2007, and every day thereafter, defendant  
9 KCAA re-broadcast prior episodes of the Imus Radio Program over the air by  
10 terrestrial radio broadcast— without any authorization from CBS or Westwood One.

11           7.     In addition, on Monday, April 16, 2007, and every day  
12 thereafter, defendant KCAA also simultaneously streamed – on a real-time basis –  
13 its re-broadcast of prior episodes of the Imus Radio Program without any  
14 authorization from CBS or Westwood One.

15           8.     Separately, on or about April 16, 2007, defendant KCAA's  
16 website, located at [www.kcaaradio.com](http://www.kcaaradio.com), made available for downloading numerous  
17 episodes of the Imus Radio Program over the Internet without any authorization  
18 from CBS or Westwood One. This is commonly referred to as "podcasting."  
19 Attached hereto as Exhibit B is a true and correct copy of KCAA's website page,  
20 which provides for downloading of numerous prior episodes of the Imus Radio  
21 Program. Indeed, defendant KCAA's website lists and makes 272 episodes of Imus  
22 Radio Program available for download. See Exhibit B.

23           (a) For example, on the KCAA website, under the item listed  
24 "April 18th," KCAA offers for downloading a copy/repeat of the Imus Radio  
25 Program that originally aired on Monday, April 2, 2007. Attached hereto as Exhibit  
26 C is a true and correct copy of the Imus Radio Program which KCAA broadcast on  
27 April 18, 2007. As that copy specifically states (at approximately 5:20 minutes into  
28 ////



1 the program as set forth in Exhibit C), on April 18, 2007, KCAA re-aired the Imus  
2 Radio Program which had originally aired on April 2, 2007.

3 (b) By way of another example, on the KCAA website, under the  
4 item listed "April 17<sup>th</sup>," it contains the re-broadcast of the Imus Radio Program  
5 which originally aired on April 3, 2007.

6 (c) By way of yet another example, on the KCAA website, under  
7 the item listed "April 16<sup>th</sup>," it contains the re-broadcast of Imus Radio Program  
8 which originally aired on April 4, 2007.

9 9. On April 17, 2007, I wrote a cease and desist letter to defendants  
10 Broadcast Management and KCAA. Attached hereto as Exhibit D is a true and  
11 correct copy of my initial cease and desist letter.

12 10. The next day, on April 18, 2007, I received an email response to  
13 my cease and desist letter from Fred Lundgren, the Chairman and CEO of Broadcast  
14 Management. In his email, Mr. Lundgren stated that KCAA has chosen "to air re-  
15 runs for a two-week period." In addition, his email makes clear that KCAA intends  
16 to continue to air re-runs of the Imus Radio Program through April 27, 2007.

17 Attached hereto as Exhibit E is a true and correct copy of the email I received from  
18 Mr. Lundgren.

19 **Defendants' Public Statements That They Intend To Continue To Infringe**  
20 **Plaintiff CBS Radio's Copyright Interests**

21 11. Defendants publicly have stated that they will continue to air the  
22 Imus Radio Program, even without authorization. Attached hereto as Exhibit F is a  
23 true and correct copy of an article from the Los Angeles Times website,  
24 www.latimes.com, which cites Mr. Lundgren's statement, "Unless we get a court  
25 order to cease and desist, we're going to run it . . . I'm not going to let networks  
26 dictate to me who I run on my station."

27 12. Attached hereto as Exhibit G is a true and correct copy of an  
28 article from PE.com, which cites to KCAA's employees Dennis Baxter and Daren

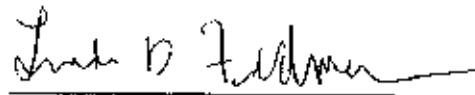
1 Lane statements about how KCAA will rerun the IMUS Radio Program  
2 "indefinitely." As reported in the article, in response to Westwood One's  
3 notification that KCAA has no right to air re-runs of the Imus Program, KCAA  
4 General Manager responded, "We're going to run it anyway."

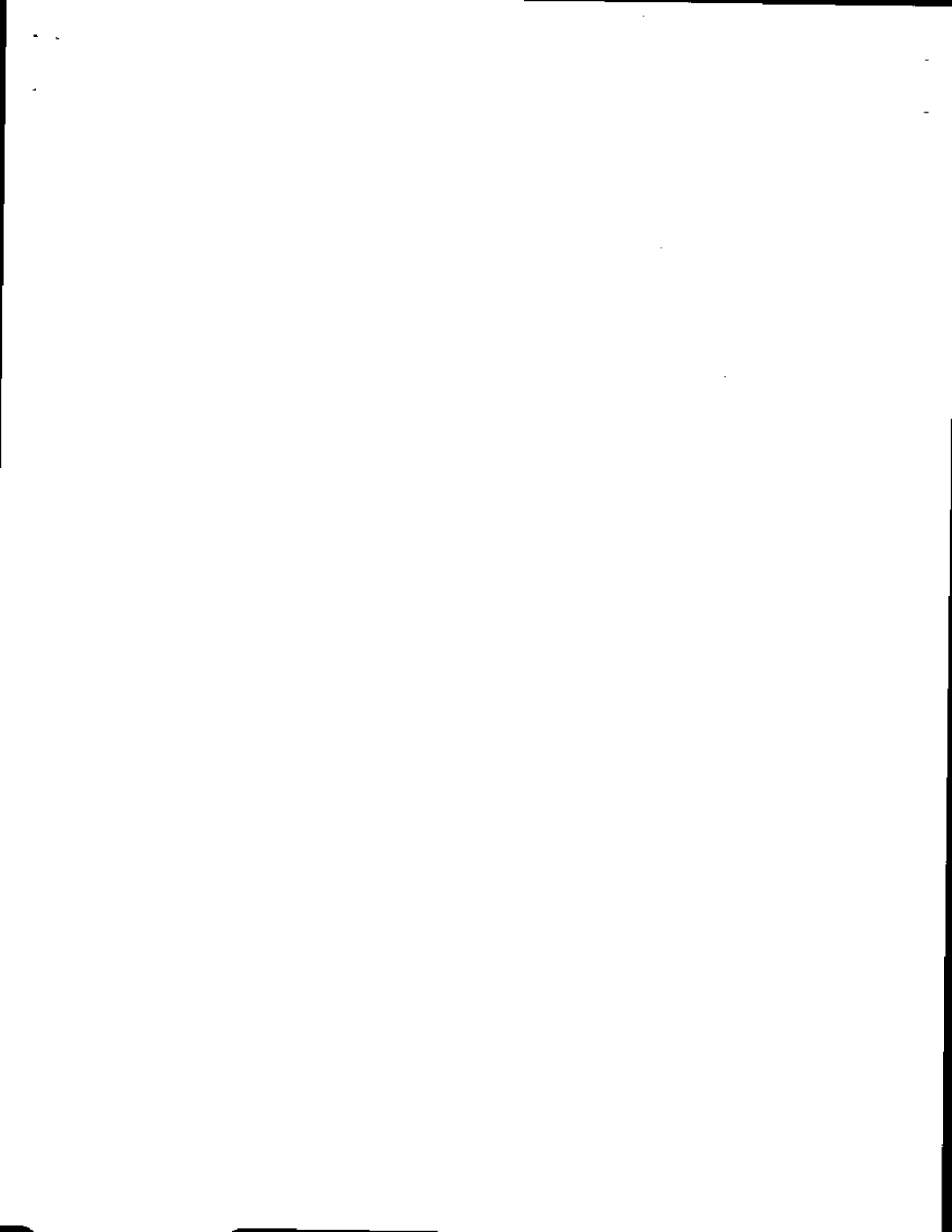
5 13. Attached hereto as Exhibit H is a true and correct copy of an  
6 article from UPI Entertainment News, dated April 15, 2007. In that article, it notes  
7 that Fred Lundgren has been interviewed and that KCAA intends to play "'Best of  
8 Imus' reruns from now on".

9 14. Attached hereto as Exhibit I is a true and correct copy of an  
10 article from AFX UK Focus, dated April 13, 2007. In that article, Mr. Lundgren is  
11 quoted as stating that KCAA will air re-runs of the Imus Radio Program. In that  
12 article, Mr. Lundgren is reported as having admitted that his motive for broadcasting  
13 reruns of the Imus Radio Program is in part financial.

14 I declare under penalty of perjury of the law of the United States that  
15 the foregoing is true and correct.

16 Executed on April 19, 2007 at Washington, DC.

17  
18   
19 LINDA FELDMANN





LEVENTHAL SENTER & LERMAN PLLC

April 19, 2007

SUZANNE E. HEAD  
(202) 416-1082

E-MAIL  
SHEAD@LSL-LAW.COM

**VIA HAND-DELIVERY**

Library of Congress  
Copyright Office  
101 Independence Avenue, S.E.  
Washington, D.C. 20559-6000

**Re: Copyright Registration of *Imus in the Morning***

Dear Sir or Madam:

Enclosed please find 10 application forms for 10 episodes of the radio show *Imus in the Morning*, owned by CBS Radio East Inc. The programs aired April 2-6 and April 9-13, 2007. Also enclosed are corresponding deposit copies, in the form of 20 compact discs, and the related registration fees.

If you have any questions regarding the enclosed materials, please do not hesitate to contact me directly at (202) 416-1082. Thank you for your assistance with this matter.

Sincerely,

Suzanne E. Head

Enclosures: 10 Applications  
20 CDs  
10 Checks

cc: Rebecca Borden  
Linda Feldmann

243797

**RECEIVED**

APR 19 2007  
COPYRIGHT OFFICE  
PUBLIC OFFICE



# Receipt

Library of Congress  
Copyright Office  
101 Independence Avenue SE  
Washington, DC 20559-6000

No. 187755

Date April 19, 2007

### Received

Not examined in information section

Form(s) 10 SR

Number of copies 20

Type of deposit copies dup

Document(s)

Cover letter me

Other enclosures

Refer to

### Services

Search

Photocopies

Additional certificates

Certifications

Secure text exam

Transfer to photoduplication

Other (specify)

### Method of Payment

Cash

Check 10 checks

Money order

Deposit acct #: \_\_\_\_\_

Credit card Type: \_\_\_\_\_ Auth #: \_\_\_\_\_

Amount: \_\_\_\_\_

Amount: \_\_\_\_\_

No Fee

Fee to be determined

For connection

ETN: \_\_\_\_\_

Total Payment: \$ 450.00

Received from

Leventhal Senter & Lerman

Phone

Address

2000 K St. NW Ste. 600

DC 20006

Representing

Phone

Received for the Register of Copyrights by

Page mlb

Title

Amos in the Morning

April 3, 3, 4, 5, 6, 9, 10, 11, 12, 13, 2007

...and 9 others

Notes

SEE REVERSE FOR IMPORTANT INFORMATION

REGISTRATION NUMBER

SR SRU  
EFFECTIVE DATE OF REGISTRATION

Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

**TITLE OF THIS WORK** ▼

Inus in the Morning

**PREVIOUS, ALTERNATIVE, OR CONTENTS TITLES (CIRCLE ONE)** ▼

**NAME OF AUTHOR** ▼

CBS Radio East Inc.

**DATES OF BIRTH AND DEATH**

Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?  
 Yes  
 No

**AUTHOR'S NATIONALITY OR DOMICILE**

Name of Country  
OR Citizen of USA  
Domiciled in

**WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK**

Anonymous?  Yes  No  
Pseudonymous?  Yes  No

If the answer to either of these questions is "Yes," see detailed instructions.

**NATURE OF AUTHORSHIP** Briefly describe nature of material created by this author in which copyright is claimed. ▼  
Entire Work

**NAME OF AUTHOR** ▼

N/A

**DATES OF BIRTH AND DEATH**

Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?  
 Yes  
 No

**AUTHOR'S NATIONALITY OR DOMICILE**

Name of Country  
OR Citizen of  
Domiciled in

**WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK**

Anonymous?  Yes  No  
Pseudonymous?  Yes  No

If the answer to either of these questions is "Yes," see detailed instructions.

**NATURE OF AUTHORSHIP** Briefly describe nature of material created by this author in which copyright is claimed. ▼

**NAME OF AUTHOR** ▼

N/A

**DATES OF BIRTH AND DEATH**

Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?  
 Yes  
 No

**AUTHOR'S NATIONALITY OR DOMICILE**

Name of Country  
OR Citizen of  
Domiciled in

**WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK**

Anonymous?  Yes  No  
Pseudonymous?  Yes  No

If the answer to either of these questions is "Yes," see detailed instructions.

**NATURE OF AUTHORSHIP** Briefly describe nature of material created by this author in which copyright is claimed. ▼

**YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED**

2007

This information must be given in all cases.

**DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK**

Complete this information ONLY if this work has been published.

Month April

Day 2

Year 2007

Nation USA

**COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼**

CBS Radio East Inc.  
51 West 52nd Street  
New York, NY 10019

**APPLICATION RECEIVED**

ONE DEPOSIT RECEIVED

TWO DEPOSITS RECEIVED

FUNDS RECEIVED

**TRANSFER** If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

N/A

**MORE ON BACK** ▶ - Complete on applicable spaces (numbers 3-9) on the reverse side of this page.  
- See detailed instructions. - Sign the form at line 8.

DO NOT WRITE HERE

Page 1 of \_\_\_\_\_ pages  
Exhibit A - 3 of 22

**NOTE**

Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire," check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

See instructions before completing this space.

DO NOT WRITE HERE OFFICE USE ONLY

EXAMINED BY

FORM SR

CHECKED BY

CORRESPONDENCE

Yes

FOR  
COPYRIGHT  
OFFICE  
USE  
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

Yes  No If your answer is "Yes," why is another registration being sought? (Check appropriate box) ▼

a.  This work was previously registered in unpublished form and now has been published for the first time.

b.  This is the first application submitted by this author as copyright claimant.

c.  This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▼

Year of Registration ▼

DERIVATIVE WORK OR COMPILATION

Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼

N/A

See instructions  
before completing  
this space.

Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

DEPOSIT ACCOUNT If the registration fee is to be charged to a deposit account established in the Copyright Office, give name and number of Account.

Name ▼

Account Number ▼

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name / Address / Apt / City / State / Zip ▼

Linda Feldmann, Esq. c/o Leventhal Senter & Lerman PLLC

2000 K Street, NW, Suite 600

Washington, DC 20006-1809

Area code and daytime telephone number (202)429-8970

Fax number (202)293-7783

Email lfeldmann@lsl-law.com

CERTIFICATION\* I, the undersigned, hereby certify that I am the

Check only one ▼

author

owner of exclusive right(s)

other copyright claimant

authorized agent of CBS Radio East Inc.

Name of author or other copyright claimant, or owner of exclusive right(s) &

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Linda Feldmann, Esq.

Date 4/19/2007

Handwritten signature ▼

*Linda K. Feldmann*

Certificate  
will be  
mailed in  
window  
envelope  
to this  
address

Name ▼	Linda Feldmann, Esq. c/o Leventhal Senter & Lerman PLLC
Number/Street/Apt ▼	2000 K Street, NW, Suite 600
City/State/Zip ▼	Washington, DC 20006-1809

YOU MUST  
- Complete all necessary spaces  
- Sign your application in space 8

SEND ALL ELEMENTS  
IN THE SAME PACKAGE

1. Application form
2. Nonrefundable filing fee in check or money order payable to Register of Copyrights
3. Deposit material

MAIL TO  
Library of Congress  
Copyright Office  
101 Independence Avenue SE  
Washington, DC 20559-6000

\*17 USC §506(a): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 405, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

REGISTRATION NUMBER

SR \_\_\_\_\_ SRU \_\_\_\_\_  
EFFECTIVE DATE OF REGISTRATION  
Month \_\_\_\_\_ Day \_\_\_\_\_ Year \_\_\_\_\_

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1

**TITLE OF THIS WORK** ▼

Imus in the Morning

**PREVIOUS, ALTERNATIVE, OR CONTENTS TITLES (CIRCLE ONE)** ▼

2

**NAME OF AUTHOR** ▼

CBS Radio East Inc.

**DATES OF BIRTH AND DEATH**

Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?

Yes  
 No

**AUTHOR'S NATIONALITY OR DOMICILE**  
Name of Country

OR { Citizen of ▶ USA  
Domiciled in ▶

**WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK**

Anonymous?  Yes  No  
Pseudonymous?  Yes  No

If the answer to either of these questions is "Yes," see detailed instructions.

**NATURE OF AUTHORSHIP** Briefly describe nature of material created by this author in which copyright is claimed. ▼

Entire Work

**NOTE**

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**NAME OF AUTHOR** ▼

N/A

**DATES OF BIRTH AND DEATH**

Year Born ▼ Year Died ▼

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Yes  
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Name of Country

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Domiciled in ▶

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3

**YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED**

2007

This information must be given in all cases.

**DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK**

Complete this information ONLY if this work has been published.

Month ▶ April Day ▶ 3 Year ▶ 2007  
USA

**COPYRIGHT CLAIMANT(S)** Name and address must be given even if the claimant is the same as the author given in space 2. ▼

CBS Radio East Inc.  
51 West 52nd Street  
New York, NY 10019

**APPLICATION RECEIVED**

ONE DEPOSIT RECEIVED

TWO DEPOSITS RECEIVED

FUNDS RECEIVED

DO NOT WRITE HERE OFFICE USE ONLY

**TRANSFER** If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

N/A

**MORE ON BACK** ▶ - Complete all applicable spaces (numbers 5-9) on the reverse side of this page.  
- See detailed instructions. - Sign the form at line 6.

DO NOT WRITE HERE

Page 1 of \_\_\_\_\_ pages

Exhibit A - 5 of 22

EXAMINED BY

FORM 5R

CHECKED BY

CORRESPONDENCE

Yes

FOR  
COPYRIGHT  
OFFICE  
USE  
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

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before completing  
this space.

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b

DEPOSIT ACCOUNT If the registration fee is to be charged to a deposit account established in the Copyright Office, give name and number of Account.

Name ▼

Account Number ▼

a

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/Zip ▼

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author

owner of exclusive right(s)

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authorized agent of CBS Radio East Inc.

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

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Linda Feldmann, Esq.

Date 4/19/2007

Handwritten signature ▼

*Linda D. Feldmann*

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to this  
address

Name ▼	Linda Feldmann, Esq. c/o Leventhal Senter & Lerman PLLC
Number/Street/Apt ▼	2000 K Street, NW, Suite 6000
City/State/Zip ▼	Washington, DC 20006-1809

**YOU MUST**

- Complete all necessary spaces
- Sign your application in space 8

**SEND ALL DOCUMENTS IN THE SAME PACKAGE**

1. Application form
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Washington, DC 20559-6000

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REGISTRATION NUMBER

SR SRU  
EFFECTIVE DATE OF REGISTRATION  
Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

**TITLE OF THIS WORK ▼**

Imus in the Morning

**PREVIOUS, ALTERNATIVE, OR CONTENTS TITLES (CIRCLE ONE) ▼**

**NAME OF AUTHOR ▼**

CBS Radio East Inc.

**DATES OF BIRTH AND DEATH**

Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?  
 Yes  
 No

**AUTHOR'S NATIONALITY OR DOMICILE**

Name of Country  
**OR** Citizen of USA  
Domiciled in \_\_\_\_\_

**WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK**

Anonymous?  Yes  No  
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Entire Work

**NAME OF AUTHOR ▼**

N/A

**DATES OF BIRTH AND DEATH**

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USA

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CBS Radio East Inc.  
51 West 52nd Street  
New York, NY 10019

**APPLICATION RECEIVED**

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TWO DEPOSITS RECEIVED

FUNDS RECEIVED

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**MORE ON BACK ▶**

• Complete all applicable spaces (numbers 5-9) on the reverse side of this page.  
• See detailed instructions. Sign the form at line 8.

DO NOT WRITE HERE

Page 1 of \_\_\_\_\_ pages

Exhibit A - 7 of 22

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DO NOT WRITE HERE OFFICE USE ONLY

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FORM SR

CHECKED BY

CORRESPONDENCE

Yes

FOR  
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USE  
ONLY

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Area code and daytime telephone number (202)429-8970

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E-mail lfeldmann@lsj-law.com

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Check only one ▼

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Linda Feldmann, Esq.

Date 4/19/2007

Handwritten signature ▼

*Linda K. Feldmann*

Certificate  
will be  
mailed in  
window  
envelope  
to this  
address

Name ▼

Linda Feldmann, Esq. c/o Leventhal Senter & Lerman PLLC

Number/Street/Apt. ▼

2000 K Street, NW, Suite 600

City/State/Zip ▼

Washington, DC 20006-1809

YOU MUST:

- Complete all necessary spaces
- Sign your application in space 6

SEND ALL 3 ELEMENTS  
IN THE SAME PACKAGE

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REGISTRATION NUMBER

SR \_\_\_\_\_ SR# \_\_\_\_\_  
EFFECTIVE DATE OF REGISTRATION  
Month \_\_\_\_\_ Day \_\_\_\_\_ Year \_\_\_\_\_

**DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.**

**TITLE OF THIS WORK ▼**

Inus in the Morning

**PREVIOUS, ALTERNATIVE, OR CONTENTS TITLES (CIRCLE ONE) ▼**

**1 NAME OF AUTHOR ▼**

CBS Radio East Inc.

**DATES OF BIRTH AND DEATH**  
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?  
 Yes  
 No

**AUTHOR'S NATIONALITY OR DOMICILE**  
Name of Country  
**OR** Citizen of USA  
Domiciled in \_\_\_\_\_

**WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK**  
Anonymous?  Yes  No  
Pseudonymous?  Yes  No  
If the answer to either of these questions is "Yes," see detailed instructions.

**NATURE OF AUTHORSHIP** Briefly describe nature of material created by this author in which copyright is claimed. ▼  
Entire Work

**2 NAME OF AUTHOR ▼**

N/A

**DATES OF BIRTH AND DEATH**  
Year Born ▼ Year Died ▼

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 No

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Name of Country  
**OR** Citizen of \_\_\_\_\_  
Domiciled in \_\_\_\_\_

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**DATES OF BIRTH AND DEATH**  
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**4 YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED**

2007

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**DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK**

Month April Day 5 Year 2007  
Nation USA

Complete this information ONLY if this work has been published.

**COPYRIGHT CLAIMANT(S)** Name and address must be given even if the claimant is the same as the author given in space 2. ▼  
CBS Radio East Inc.  
51 West 52nd Street  
New York, NY 10019

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N/A

**APPLICATION RECEIVED**  
**ONE DEPOSIT RECEIVED**  
**TWO DEPOSITS RECEIVED**  
**FUNDS RECEIVED**

DO NOT WRITE HERE OFFICE USE ONLY

**MORE ON BACK ▶** • Complete all applicable spaces (numbers 5-9) on the reverse side of this page.  
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**DO NOT WRITE HERE**

Page 1 of \_\_\_\_\_ pages

Exhibit A - 9 of 22

Page 13

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CORRESPONDENCE

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Area code and daytime telephone number

Fax number

Email

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Check only one ▼

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owner of exclusive rights)

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*Linda Feldmann*

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**1 TITLE OF THIS WORK ▼**

Inus in the Morning

**PREVIOUS, ALTERNATIVE, OR CONTENTS TITLES (CIRCLE ONE) ▼**

**2**

**NAME OF AUTHOR ▼**

CBS Radio East Inc.

**DATES OF BIRTH AND DEATH**  
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?  
 Yes  
 No

**AUTHOR'S NATIONALITY OR DOMICILE**  
Name of Country  
OR { Citizen of USA  
Domiciled in \_\_\_\_\_

**WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK**  
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**DATES OF BIRTH AND DEATH**  
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See detailed instructions. Sign the form at line B.

**DO NOT WRITE HERE**

Page 1 of \_\_\_\_\_ pages

Exhibit A - 11 of 22

EXAMINED BY \_\_\_\_\_

FORM SR

CHECKED BY \_\_\_\_\_

CORRESPONDENCE

Yes

FOR  
COPYRIGHT  
OFFICE  
USE  
ONLY

**DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.**

**PREVIOUS REGISTRATION** Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

Yes  No If your answer is "Yes," why is another registration being sought? (Check appropriate box) ▼

a.  This work was previously registered in unpublished form and now has been published for the first time.

b.  This is the first application submitted by this author as copyright claimant.

c.  This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▼

Year of Registration ▼

**DERIVATIVE WORK OR COMPILATION**

**Preexisting Material** Identify any preexisting work or works that this work is based on or incorporates. ▼

N/A

See instructions  
before completing  
this space.

**Material Added to This Work** Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

**DEPOSIT ACCOUNT** If the registration fee is to be charged to a deposit account established in the Copyright Office, give name and number of Account.

Name ▼

Account Number ▼

**CORRESPONDENCE** Give name and address to which correspondence about this application should be sent. Name/Address/Apt./City/State/Zip ▼

Linda Feldmann, Esq. c/o Leventhal Senter & Lerman PLLC

2000 K Street, NW, Suite 600

Washington, DC 20006-1809

Area code and daytime telephone number (202)429-8970

Fax number (202)293-7783

Email lfeldmann@lsl-law.com

**CERTIFICATION\*** I, the undersigned, hereby certify that I am the

Check only one ▼

author

owner of exclusive right(s)

other copyright claimant

authorized agent of CBS Radio East Inc.

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Linda Feldmann, Esq.

Date 4/19/2007

Handwritten signature ▼

*Linda B. Feldmann*

Certificate  
will be  
mailed in  
window  
envelope  
to this  
address

Name ▼

Linda Feldmann, Esq. c/o Leventhal Senter & Lerman PLLC

Number/Street/Apt. ▼

2000 K Street, NW, Suite 600

City/State/Zip ▼

Washington, DC 20006-1809

**YOU MUST**

- Complete all necessary spaces
- Sign your application in space 8

**SEND ALL ELEMENTS IN THE SAME PACKAGE.**

1. Application form
2. Nonrefundable filing fee in check or money order payable to Register of Copyrights
3. Deposit material

**SEND TO**

Library of Congress  
Copyright Office  
101 Independence Avenue SE  
Washington, DC 20559-6000

\*17 USC §506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 408, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

REGISTRATION NUMBER

SR SRU  
EFFECTIVE DATE OF REGISTRATION  
Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

**1** TITLE OF THIS WORK ▼

Inus in the Morning

PREVIOUS, ALTERNATIVE, OR CONTENTS TITLES (CIRCLE ONE) ▼

**2** NAME OF AUTHOR ▼

CBS Radio East Inc.

DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?  
 Yes  
 No

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country  
OR Citizen of USA  
Domiciled in \_\_\_\_\_

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous?  Yes  No  
Pseudonymous?  Yes  No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

Entire Work

**NOTE**

Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire," check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

NAME OF AUTHOR ▼

N/A

DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼

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N/A

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**3** YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED

2007

This information must be given in all cases.

DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK

Complete this information ONLY if this work has been published.

Month April Day 9 Year 2007

USA

Nation

**4** COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

CBS Radio East Inc.  
51 West 52nd Street  
New York, NY 10019

APPLICATION RECEIVED

ONE DEPOSIT RECEIVED

TWO DEPOSITS RECEIVED

FUNDS RECEIVED

TRANSFER If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright: ▼

N/A

DO NOT WRITE HERE OFFICE USE ONLY

**MORE ON BACK** ▶ - Complete all applicable spaces (numbers 5-9) on the reverse side of this page.  
- See detailed instructions. - Sign the form at line 6.

DO NOT WRITE HERE

Page 1 of \_\_\_\_\_ pages

EXAMINED BY

FORM SR

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CORRESPONDENCE

Yes

FOR  
COPYRIGHT  
OFFICE  
USE  
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before completing  
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Name ▼

Account Number ▼

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author

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Name of author or other copyright claimant, or owner of exclusive right(s) &

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Linda Feldmann, Esq.

Date 4/19/2007

Handwritten signature ▼

*Linda Feldmann*

Certificate  
will be  
mailed in  
window  
envelope  
to this  
address

Name ▼	Linda Feldmann, Esq. c/o Leventhal Senter & Lerman PLLC
Number/Street/Apt ▼	2000 K Street, NW, Suite 600
City/State/Zip ▼	Washington, DC 20006-1809

WITH TRUST

- Complete all necessary spaces
- Sign your application in space 8

SEND ALL ELEMENTS  
IN THE SAME PACKAGE:

- Application form
- Nonrefundable filing fee in check or money order payable to Registrar of Copyrights
- Deposit material

MAIL TO:

Library of Congress  
Copyright Office  
101 Independence Avenue SE  
Washington, DC 20540-8000

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REGISTRATION NUMBER

SR \_\_\_\_\_ SRU \_\_\_\_\_  
EFFECTIVE DATE OF REGISTRATION

Month \_\_\_\_\_ Day \_\_\_\_\_ Year \_\_\_\_\_

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

**1** TITLE OF THIS WORK ▼

Inns in the Morning

PREVIOUS, ALTERNATIVE, OR CONTENTS TITLES (CIRCLE ONE) ▼

**2**

**a** NAME OF AUTHOR ▼  
CBS Radio East Inc.

DATES OF BIRTH AND DEATH  
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?  
 Yes  
 No

AUTHOR'S NATIONALITY OR DOMICILE  
Name of Country  
OR { Citizen of ► USA  
Domiciled in ►

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK  
Anonymous?  Yes  No  
Pseudonymous?  Yes  No  
If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼  
Entire Work

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**b** NAME OF AUTHOR ▼  
N/A

DATES OF BIRTH AND DEATH  
Year Born ▼ Year Died ▼

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 No

AUTHOR'S NATIONALITY OR DOMICILE  
Name of Country  
OR { Citizen of ►  
Domiciled in ►

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Anonymous?  Yes  No  
Pseudonymous?  Yes  No  
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**c** NAME OF AUTHOR ▼  
N/A

DATES OF BIRTH AND DEATH  
Year Born ▼ Year Died ▼

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Name of Country  
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Domiciled in ►

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**3**

YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED  
2007  
This information must be given in all cases.

DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK  
Month ► April Day ► 10 Year ► 2007  
USA  
Complete this information ONLY if this work has been published. Country

**4**

See instructions before completing this space.

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼  
CBS Radio East Inc.  
51 West 52nd Street  
New York, NY 10019

TRANSFER (If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼  
N/A

APPLICATION RECEIVED  
ONE DEPOSIT RECEIVED  
TWO DEPOSITS RECEIVED  
FUNDS RECEIVED  
DO NOT WRITE HERE OFFICE USE ONLY

**MORE ON BACK ►** Complete all applicable spaces (numbers 3-9) on the reverse side of this page. See detailed instructions. Sign the form at line 9.

DO NOT WRITE HERE

Page 1 of \_\_\_\_\_ pages

Exhibit A - 15 of 22

EXAMINED BY

FORM SR

CHECKED BY

CORRESPONDENCE

Yes

FOR  
COPYRIGHT  
OFFICE  
USE  
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

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- b.  This is the first application submitted by this author as copyright claimant.
- c.  This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▼ Year of Registration ▼

DERIVATIVE WORK OR COMPILATION Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼

N/A

See instructions before completing this space.

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DEPOSIT ACCOUNT If the registration fee is to be charged to a deposit account established in the Copyright Office, give name and number of Account. Name ▼ Account Number ▼

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/ City/State/Zip ▼

Linda Feldmann, Esq. c/o Leventhal Senter & Lerman PLLC  
2000 K Street, NW, Suite 600  
Washington, DC 20006-1809

Area code and daytime telephone number (202)429-8970

Fax number (202)293-7783

Email lfeldmann@lsl-law.com

CERTIFICATION\* I, the undersigned, hereby certify that I am the

Check only one ▼

- author
- owner of exclusive right(s)
- other copyright claimant
- authorized agent of CBS Radio East Inc.  
Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Linda Feldmann, Esq.

Date 4/19/2007

Handwritten signature ▼

*Linda D. Feldmann*

Certificate will be mailed in window envelope to this address

Name ▼	Linda Feldmann, Esq. c/o Leventhal Senter & Lerman PLLC
Number/Street/Apt. ▼	2000 K Street, NW, Suite 600
City/State/Zip ▼	Washington, DC 20006-1809

- Complete all necessary spaces
- Sign your application in space 6
- SEND ALL ELEMENTS IN THE SAME PACKAGE!
- 1. Application form
- 2. Nonrefundable filing fee in check or money order payable to Register of Copyrights
- 3. Deposit material
- MAIL TO
- Library of Congress  
Copyright Office  
101 Independence Avenue SE  
Washington, DC 20559-6000

\*17 USC §204(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 405, or in any written statement filed in connection with the application, shall be fined not more than \$2,500

REGISTRATION NUMBER

SR SRU  
EFFECTIVE DATE OF REGISTRATION

Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

TITLE OF THIS WORK ▼

Imus in the Morning

PREVIOUS, ALTERNATIVE, OR CONTENTS TITLES (CIRCLE ONE) ▼

2 NAME OF AUTHOR ▼

CBS Radio East Inc.

DATES OF BIRTH AND DEATH  
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?  
 Yes  
 No

AUTHOR'S NATIONALITY OR DOMICILE  
Name of Country  
OR { Citizen of ► USA  
Domiciled in ►

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK  
Anonymous?  Yes  No  
Pseudonymous?  Yes  No  
If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

Entire Work

**NOTE**

Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire," check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

NAME OF AUTHOR ▼

N/A

DATES OF BIRTH AND DEATH  
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?  
 Yes  
 No

AUTHOR'S NATIONALITY OR DOMICILE  
Name of Country  
OR { Citizen of ►  
Domiciled in ►

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N/A

DATES OF BIRTH AND DEATH  
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?  
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 No

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Name of Country  
OR { Citizen of ►  
Domiciled in ►

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3 YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED  
2007

This information must be given in all cases.

DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK

Complete this information ONLY if this work has been published. Month ► April Day ► 11 Year ► 2007  
USA

4 COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

CBS Radio East Inc.  
51 West 52nd Street  
New York, NY 10019

APPLICATION RECEIVED

ONE DEPOSIT RECEIVED

TWO DEPOSITS RECEIVED

FUNDS RECEIVED

TRANSFER If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

N/A

DO NOT WRITE HERE OFFICE USE ONLY

MORE ON BACK ► • Complete all applicable spaces (numbers 5-8) on the reverse side of this page.  
• See detailed instructions. • Sign the form at line 8.

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Page 1 of \_\_\_\_\_ pages

Exhibit A - 17 of 22

EXAMINED BY \_\_\_\_\_

FORM SR

CHECKED BY \_\_\_\_\_

CORRESPONDENCE

Yes

FOR  
COPYRIGHT  
OFFICE  
USE  
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

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Year of Registration ▼

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N/A

See instructions  
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Name ▼

Account Number ▼

a

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Linda Feldmann, Esq.

Date 4/19/2007

Handwritten signature ▼

Certificate  
will be  
mailed in  
window  
envelope  
to this  
address

Name ▼	Linda Feldmann, Esq. c/o Leventhal Senter & Lerman PLLC
Number/Street/Apt ▼	2000 K Street, NW, Suite 600
City/State/Zip ▼	Washington, DC 20006-1809

**YOU MUST:**

- Complete all necessary spaces
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1. Application form
2. Notice/Undelable filing fee in check or money order payable to Register of Copyrights
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**MAIL TO:**  
Library of Congress  
Copyright Office  
101 Independence Avenue SE  
Washington, DC 20559-6006

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Month Day Year

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TITLE OF THIS WORK ▼

Imus in the Morning

PREVIOUS, ALTERNATIVE, OR CONTENTS TITLES (CIRCLE ONE) ▼

NAME OF AUTHOR ▼

CBS Radio East Inc.

DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?

Yes  
 No

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country  
OR Citizen of USA  
Domiciled in \_\_\_\_\_

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

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Domiciled in \_\_\_\_\_

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NAME OF AUTHOR ▼

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DATES OF BIRTH AND DEATH

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YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED

2007

This information must be given in all cases.

DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK

Month April Day 12 Year 2007  
USA Nation

Complete this information ONLY if this work has been published.

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

CBS Radio East Inc.  
51 West 52nd Street  
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FUNDS RECEIVED

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N/A

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• See detailed instructions. • Sign the form at line 8.

DO NOT WRITE HERE

Page 1 of \_\_\_\_\_ pages

Exhibit A - 19 of 22

EXAMINED BY \_\_\_\_\_

FORM 5R

CHECKED BY \_\_\_\_\_

CORRESPONDENCE

Yes

FOR  
COPYRIGHT  
OFFICE  
USE  
ONLY

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Year of Registration ▼

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2000 K Street, NW, Suite 600  
Washington, DC 20006-1809

Area code and daytime telephone number (202)429-8970

Fax number (202)293-7783

Email lfeldmann@lst-law.com

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owner of exclusive right(s)

other copyright claimant

authorized agent of CBS Radio East Inc.

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

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Linda Feldmann, Esq.

Date 4/19/2007

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**NAME OF AUTHOR** ▼

2 CBS Radio East Inc.

**DATES OF BIRTH AND DEATH**  
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?  
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 No

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Name of Country

OR { Citizen of USA  
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Pseudonymous?  Yes  No

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Exhibit A - 21 of 22

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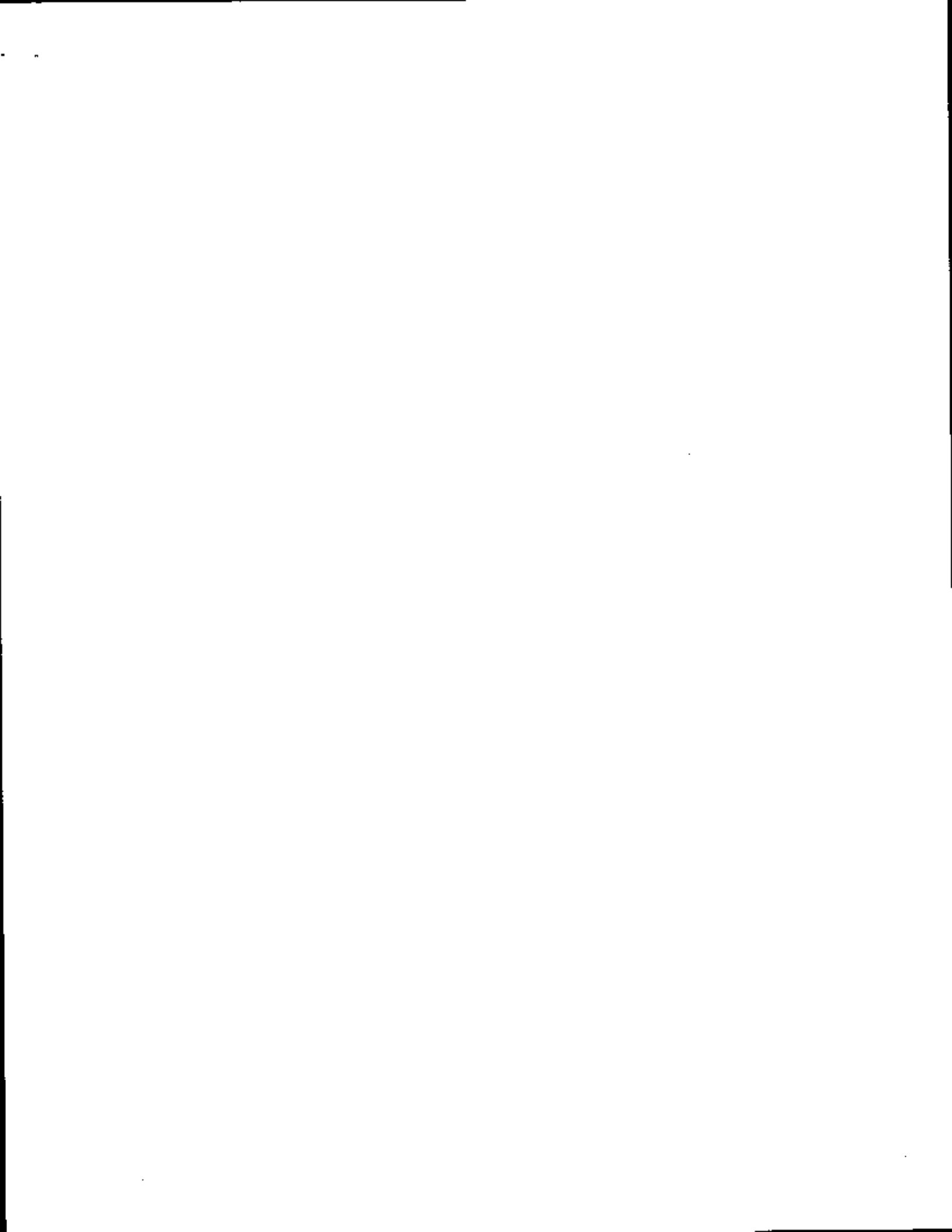
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LEVENTHAL SENTER & LERMAN PLLC

April 17, 2007

LINDA D. FELDMANN  
(202) 416-6771

E-MAIL  
LFELDMANN@LSL-LAW.COM

**Via Facsimile (281) 599-9804 and (909) 381-8935  
and Federal Express**

Mr. Fred Lundgren  
Chairman and CEO  
Broadcast Management Services Inc.  
19939 Gatling Court  
Katy, TX 77449

Mr. Dennis Baxter  
News Director  
KCAA 1050 AM Radio  
254 Carousel Mall  
San Bernardino, CA 92401

**Re: Unauthorized Rebroadcast of "Imus in the Morning" Program**

Dear Mr. Lundgren and Mr. Baxter:

I am writing to you as counsel for CBS Radio Inc. and its relevant subsidiaries ("*CBS Radio*").

It has come to the attention of CBS Radio that Broadcast Management Services Inc.'s ("*BMS*") owned and operated radio station KCAA(AM), Loma Linda, California (collectively "*KCAA*") is re-broadcasting prior programs of the "Imus in the Morning" radio program ("*Imus Program*") without authorization from CBS Radio or Westwood One, and apparently intends to continue such rebroadcasts for at least a two week time period, on both the terrestrial radio signal of KCAA and through internet streaming on KCAA's website located at [www.kcaaradio.com](http://www.kcaaradio.com).

As you are aware, on Thursday, April 12, 2007, CBS Radio announced its decision to cancel the Imus Program effective immediately and as a result of such decision, syndication of the Imus Program to affiliates, including KCAA, by Westwood One was also suspended as of that date. It is my understanding that on April 13<sup>th</sup>, in discussions with Westwood One regarding substitute programming to be provided to Imus Program affiliates, Mr. Lundgren notified Westwood One General Counsel David Hillman that KCAA intended to air unauthorized re-broadcasts of prior Imus Programs commencing April 16th, notwithstanding Mr. Hillman's express notification that such re-broadcasts would violate both the terms of KCAA's Program License Agreement ("*License Agreement*") with Westwood One and constitute willful infringement of CBS Radio's copyright in the Imus Program. It now appears that both



Mr. Fred Lundgren  
April 17, 2007  
Page -2-

yesterday, April 16<sup>th</sup>, and today, KCAA in fact aired an unauthorized broadcast of the Imus Program and streamed this broadcast over its website. In addition, news reports yesterday on CNN.com, including a CNN interview with Mr. Baxter, indicate that KCAA plans to continue such unauthorized broadcasts of the Imus Program for at least two weeks.

Please be advised that based on the foregoing, KCAA is violating CBS Radio's copyrights in the Imus Program under Section 501 of the U.S. Copyright Act, 17 USC § 501, and relevant state law. Moreover, in view of Mr. Lundgren's conversation with Mr. Hillman and other public comments Mr. Baxter has made, this infringement is willful.

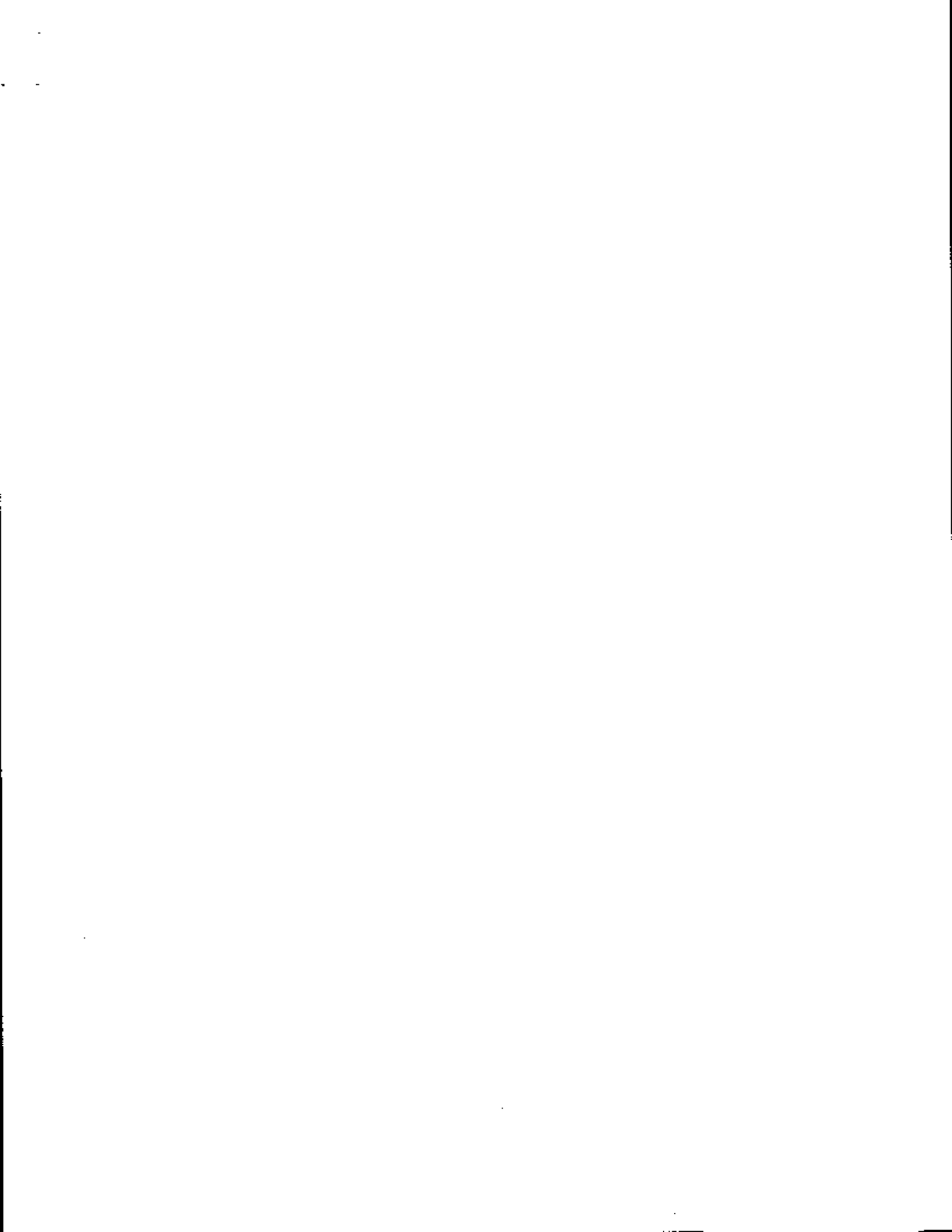
For all of the foregoing reasons, CBS Radio demands that KCAA immediately cease all rebroadcasts of the Imus Program in any manner. CBS Radio would prefer to resolve this matter amicably; however if we do not receive immediate written confirmation of KCAA's compliance with this demand, please be advised that CBS Radio is prepared to take whatever legal measures are required to protect its rights.

Nothing in this letter shall be deemed a waiver or relinquishment of any right or remedy CBS Radio or Westwood One, or any of their parents, subsidiaries or affiliates may have, all of which are expressly reserved.

Sincerely,

Linda D. Feldmann

cc: Louis Briskman, Esq.  
Mr. Dan Mason  
Mr. Peter Kosann



From: Fred Lundgren [mailto:ceo@houston.r.com]  
Sent: Wednesday, April 18, 2007 3:51 AM  
To: Linda D. Feldmann  
Cc: dflickinger@earthlink.net; ray@kcaaradio.com;  
kcaanewspaper@yahoo.com  
Subject: Message from Fred Lundgren

Linda,

Your facsimile arrived here at my home at 6:17 p.m. Central Time.

I tried unsuccessfully to contact my attorney by phone so, I left him a message about our situation and I faxed a copy of your letter to his office so, I'm sure he will call me when he arrives at his office in the morning.

As I told Mr. Hillman, although I've had a number of grievances and unresolved issues with Westwood One prior to this episode, I have no desire to engage CBS or Westwood One. Clearly, my actions don't stem from my concern about Mr. IMUS. His association with CBS has made him wealthy beyond his dreams.

Instead, like countless others, I feel the actions by CBS were so unreasonable that it raises first amendment questions from several points of view, certainly starting with the rights of Mr. Imus but extending to the rights and reasonable expectations of local stations to earn revenue, the rights and reasonable expectations of local advertisers to air their ads on Imus In The Morning, and most of all, the rights and reasonable expectations of local listeners to start their day with Imus in The Morning.

The unreasonable firing of IMUS eliminated any expectation for the return to the status quo and it left the Imus affiliates, advertisers and listeners holding an empty bag.

It is my responsibility as a licensee to operate in the public interest, convenience and necessity, something CBS has cleverly attempted to insulate itself from by employing Westwood One's "third party" distribution system between WFAN and Imus affiliates.

With CBS insulated, and Westwood one silent, the responsibility landed right on top of Imus affiliates to find some meaningful way to interact with the ten of thousands of thoughtful and reasonable Americans who have called and written to voice their objection to the firing of Don IMUS.

KCAA chose to air re-runs for a two-week period. We have established this forum in order to cool down the anger and frustration of our listeners and to allow non-listeners who had never heard anything about Imus (except the awful thing he said on April 4th) to listen to his show in it's entirety.

In the past two days, we have found that his most ardent listeners and fans were beginning to find some closure and some of his detractors who listened for the first time were being neutralized. From my perspective as a licensee, a time for re-run should have been provided to the affiliates.

Instead, CBS left us all to die on the battle field.

From my viewpoint, every Imus affiliate should be offered this two week forum as a cool down period for listeners to air and discuss the social ramifications of his firing.

Thus far, we have discovered that an overwhelming percentage of listeners to IMUS IN THE MORNING and a clear majority of non-listeners have concluded that CBS should have suspended and fined Don Imus but allowed him to return after two to four weeks. Most agree that firing Imus it was a profound mistake by CBS and it sets the stage for larger curtailments of free expression in the future.

With all due respect, my compliance with your letter will sever a nationwide forum that CBS should encourage on the issue of abridging the freedom of speech. As licensee of KCAA Radio, I have determined that this forum will continue as presently established through April 27, 2007, including the airing of Imus in the Morning re-runs, as it is in the public interest, convenience and necessity.

At the conclusion of the open forum, all Imus materials will be destroyed, including archives of previous shows that aired through April 6th 2007.

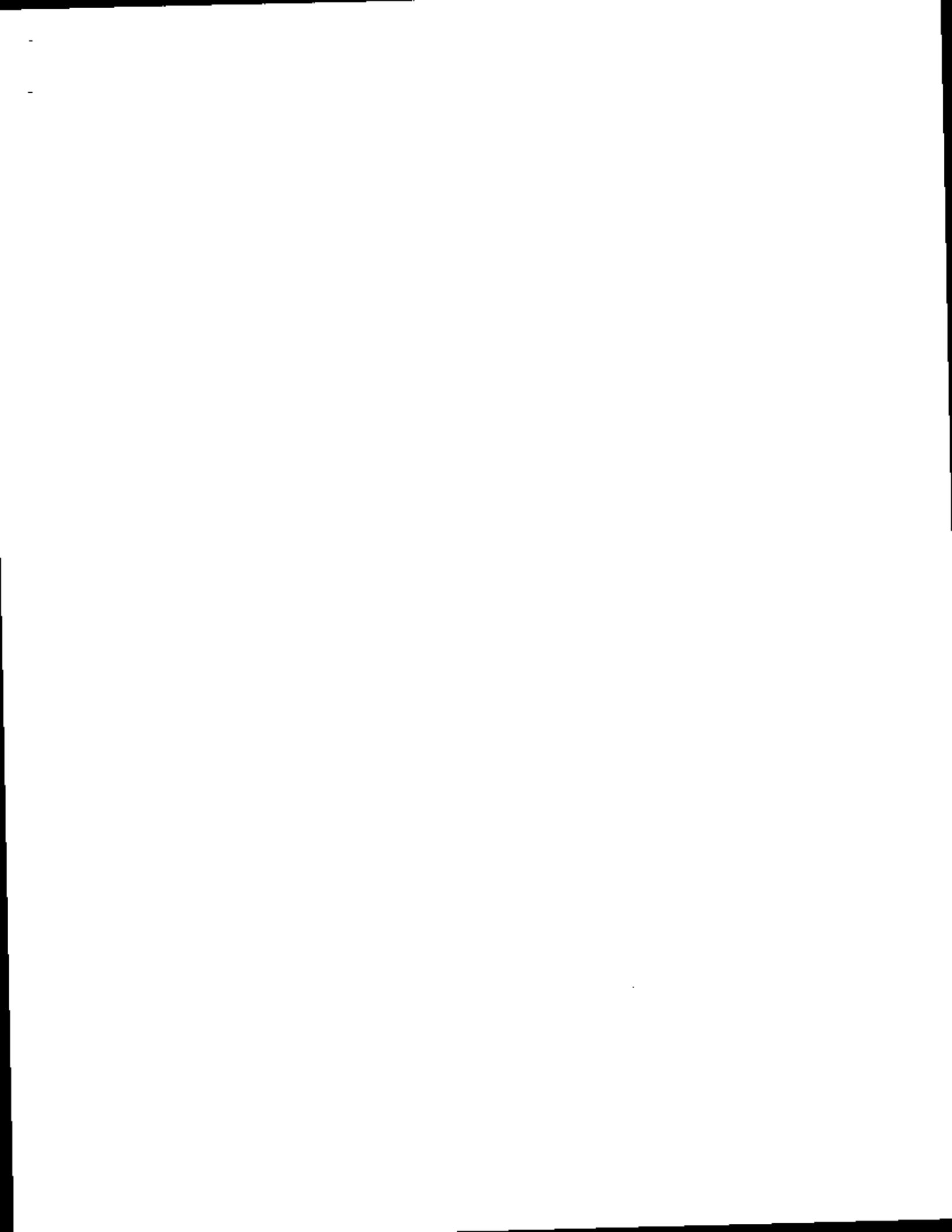
Shows recorded during the two week forum will be placed on CDs and stored in the KCAA public file along with printed and electronic copies of all email we have recieved surrounding this issue.

To avoid litigation, I am prepared to enter into an agreement consistent with the above terms and conditions.

Respectfully,

Fred Lundgren

NOTE: This e-mail and any attachments or prior e-mails may contain confidential information that is legally privileged or otherwise protected from disclosure, even if received in error. Do not read, retain or distribute this e-mail if you are not a named recipient.





## THE IMUS SCANDAL: CHRONOLOGY AND AFTERMATH

### San Bernardino station KCAA to replay Imus shows

The program with the remark that cost the shock jock his job will air Monday morning.

By Martin Miller  
Times Staff Writer

April 13, 2007

KCAA-AM (1050) in San Bernardino used to be the only station in Southern California that aired Don Imus' morning radio program. Next week, it may be the only one in the nation.

In the wake of CBS' dismissal of the shock jock for what has been criticized as a racist and sexist remark, officials with the small, 1,400-watt station said they would kick off an ongoing "Best of Imus" series next week — beginning with the program that has destroyed the 40-year radio veteran's career.

"Unless we get a court order to cease and desist, we're going to run it," said Fred Lundgren, KCAA's chairman. "I'm not going to let networks dictate to me who I run on my station."

The news-talk-formatted station, which has aired Imus' morning show since 2003, intends to broadcast the entire show in which the controversial disc jockey denigrates the Rutgers University women's basketball team at 6 a.m. Monday. It plans to intersperse the program with listener mail and e-mail about the weeklong furor — almost all supportive of Imus.

The station's modest signal reaches mostly into San Bernardino and Riverside counties, though it does cut into Orange County and small parts of eastern Los Angeles County as well. The Imus material will also be available on the station's website, <http://www.kcaaradio.com> Monday morning.

Calls late Thursday to Westwood One Inc., which syndicates Imus' morning program, were not immediately returned.

The loss of Imus is a big blow to the station, which, according to its website schedule, typically follows the firebrand host with a daily hourlong show called "The Truth About Nutrition."

"I hate to say it, but without Imus, we're pretty much toast," Lundgren said.

But Lundgren doesn't believe he'll have to air old Imus broadcasts indefinitely.

"He won't be gone long," Lundgren said. "Somebody else will hire him, and I'll follow him to his next outlet."

[martin.miller@latimes.com](mailto:martin.miller@latimes.com)



# Inland News

## Inland radio station to broadcast reruns of fired talk-show host Imus

Download story podcast

08:59 AM PDT on Saturday, April 14, 2007

By VANESSA FRANKO and DOUGLAS QUAN  
The Press-Enterprise

**Survey:** Do you agree with KCAA-AM's decision to rebroadcast Imus?

Don Imus stares out at an empty Avon storefront in San Bernardino's Carousel Mall. A framed color promotional picture of the controversial radio host hangs in the control room of KCAA 1050 AM's studio at the shopping center.

Even after CBS Radio and MSNBC fired the Riverside-born host and at least one sponsor withdrew its support, the station on Friday said it will broadcast reruns of Imus' show -- a move the distributor of the program says is not permitted.

On Monday, the station plans to re-air the infamous April 4 show, during which Imus called the members of the Rutgers women's basketball team, which has eight black players, "nappy-headed hos" while talking about the team's loss to Tennessee in the NCAA championship game.

"I think it's important people listen to it in totality and see what it is he does and what he doesn't do," said Dennis Baxter, the station's news director and a San Bernardino city councilman.

After Monday, the station plans to rerun other Imus shows in the 6 to 9 a.m. slot indefinitely, even though Westwood One, the company that syndicated Imus' show, said KCAA does not have permission to do so. The Inland station was the only one broadcasting "Imus in the Morning" in Southern California.

KCAA General Manager Daren Lane said that to his knowledge KCAA is the only station in the country that will be running Imus' show, although one in Utica, N.Y., expressed interest in using some of KCAA's Imus podcasts.

Story continues below.



Carrie Rosema / The Press-Enterprise  
Ray Peyton, program director at KCAA 1050 AM in San Bernardino, takes a call from someone at KEDU in New Mexico who once worked with Don Imus, thanking KCAA for planning to keep Imus on the air by rebroadcasting old programs.

Dennis Green, executive vice president of affiliate sales at Westwood One, said KCAA was the only one of the company's affiliates that has declared it plans to run repeat broadcasts of the show.

"Unfortunately, I can't cut the lines to the transmitters," he said.

Green said he called Fred Lundgren, president and CEO of Broadcast Management Services of Katy, Texas, which holds the license for KCAA, to tell him the station was not allowed to run the repeat shows. The company does not hold licenses for other stations.

"We said, 'We're going to run it anyway,'" Lane said.

KCAA has rebroadcast Imus shows before without any problem, according to Lane.

"My position is that they unilaterally broke our contract when they fired Imus without any input from the affiliates and licensees," Lundgren said by phone. "I'm not going to back down."

Despite Lundgren's resolve, the station has lost a sponsor.

Story continues below



• The weekly newspaper Black Voice News, which is based in Riverside, withdrew its sponsorship on Friday.

• **The Last Straw**

Publisher Hardy Brown said he had contemplated breaking off the relationship earlier this week. The station's decision to run repeat broadcasts of Imus' show "was the straw that broke that camel's back," Brown said.

For the past year, the station got ad space in the newspaper in return for mentioning the newspaper on the air.

Some sponsors are supporting the station's decision to continue airing Imus' show.

Frank Montes, owner of Inland Body and Paint in Fontana, said he doesn't condone what Imus said, but "I've heard a lot worse in my life. We do have a first amendment here in the U.S. ... People make mistakes."

Story continues below

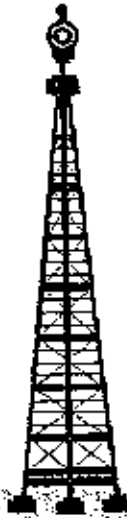
# POWER:

How Southern California talk stations compare

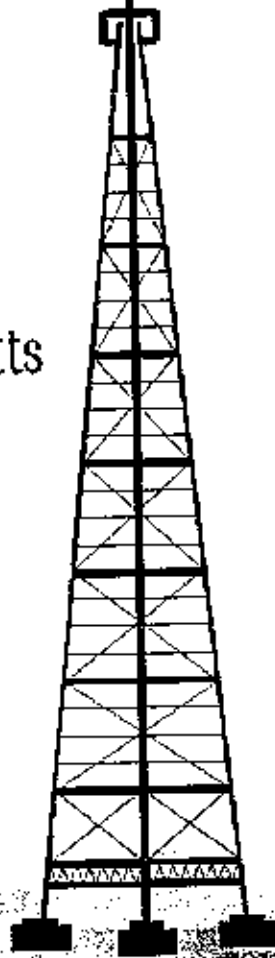
**KFI**  
**KRLA**  
**KNX**  
50,000 watts



**KLSX**  
20,900 watts



**KCAA**  
1,400 watts



**BLAKE DOUGLAS/THE PRESS-ENTERPRISE**

The 1,400-watt station has received more than 1,000 e-mails of support, Lane said.

"Imus in the Morning" is the station's most popular program, and in the aftermath of his firing, KCAA offered to become his flagship station. The station, which employs nine people, is housed in a former clothing store. In a window likely designed for mannequins stands a microphone with headphones, giving way to the control room with Imus' photo.

The station, which used to be located on a ranch in Temescal Canyon, prides itself on being a voice for all people and for its diversity of programming, which ranges from a Saturday morning show on the ins and outs of coffee to the "Rockin' Real Estate Show."

Exhibit G - 4 of 6

"I will never defend what he said but; at the same time we're in a country that gives second chances. We have to be tolerant. What I saw was intolerance in its most aggressive form. It was putting Don Imus in front of a firing squad," Lundgren said.

Todd Rowan, KCAA's sales director, noted the station has shows hosted by blacks, such as clothing designer Wendell James and weekly community newspaper publisher Wallace Allen.

"Everybody has the right to free speech," Rowan said. "You can tune in or turn off."

But Brown, the Black Voice News publisher, said the issue is not about the first amendment.

"I don't think that fits under the free speech banner. It's an attack on people. We don't have the right to be in a public building and holler fire because of the harm and danger that will be presented to other people. And for this kind of statement to fall under the freedom of speech statement has the same impact," he said.

Carl Dameron, a San Bernardino-based public relations consultant, said KCAA's argument that it is defending freedom-of-speech is a valid one. However, he said the station was also probably motivated by a desire to boost ratings.

"Love Imus or hate Imus, people will be talking about (KCAA)," said Dameron, who is black. "They'll get a high profile. They're going to get free media coverage. It's absolutely brilliant from a marketing standpoint."

Rowan and Ray Peyton, the station's program director, chatted about the number of media outlets that had come through the station Friday afternoon.

"We really do believe in the small voice," Baxter said after an interview with CNN and before heading to Los Angeles for interviews with Fox and another with CNN's Paula Zahn.

### **Apology Accepted**

The Rutgers team has decided to accept the apology Imus offered during a three-hour meeting Thursday.

"We, the Rutgers University Scarlet Knights basketball team, accept Mr. Imus' apology, and we are now in the process of forgiving," head coach C. Vivian Stringer said in a statement released Friday. "We still find his statements unacceptable, and this experience is one that we will never forget."

McClatchy-Tribune Information Services contributed to this report.

Reach Vanessa Franko at 951-368-9575 or at [vfranko@PE.com](mailto:vfranko@PE.com)

Reach Douglas Quan at 951-368-9479 or at [dquan@PE.com](mailto:dquan@PE.com)

**LOCATION:** Carousel Mall, San Bernardino

**Transmitter power:** 1,400 watts

**Number of towers:** Two

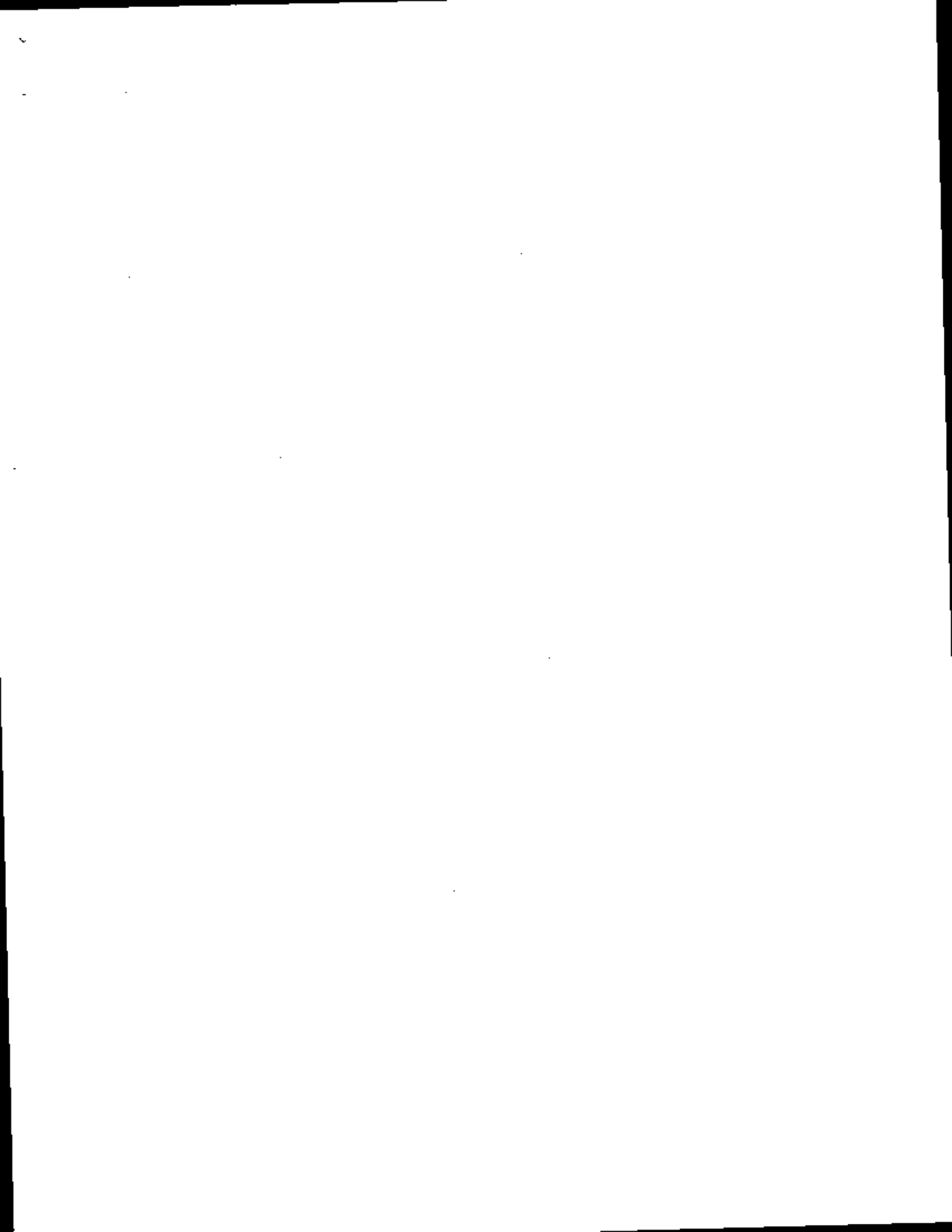
**Owner:** Broadcast Management Services, Inc., Katy, Texas

**Slogan:** "The station that leaves no listener behind."

**Coverage:** 6,481,000 people, 2,375,308 housing units (based on 2000 Census).

Range: From Pomona to Hemet and Bear Lake to Laguna Niguel.

Source: KCAA



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4/15/07 UPI Ent. News 00:00:00

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April 15, 2007

Radio station plans to air Imus reruns

Don Imus may have been taken off the air, but radio station KCAA in San Bernadino, Calif., refuses to stop airing the shock jock's shows.

KCAA plans to play "Best of Imus" reruns from now on, kicking off the program with the controversial show that got Imus fired in the first place, the New York Post reported Sunday.

"I believe this is an important enough issue with regard to free speech, free expression," the station's owner, Fred Lundgren, told the Post.

The company that owns the syndication to Imus' show, Westwood One, has warned him not to go forward with the plan.

"Hopefully, the suits upstairs can work it all out," he said.

Lundgren is not the only one who wants the show to continue.

"I would do it in a minute," said Mindy Barstein, owner of WXUR in Utica, N.Y. "They're brave to do it and face the repercussions."

## ---- INDEX REFERENCES ----

INDUSTRY: (Entertainment (1EN06); Traditional Media (1TR30); Radio (1RA81); Radio Stations (1RA51))

REGION: (USA (1US73); Americas (1AM92); North America (1NO39); New York (1NE72))

Language: EN

OTHER INDEXING: (IMUS; KCAA; WXUR) (Fred Lundgren; Lundgren; Mindy Barstein; Westwood)

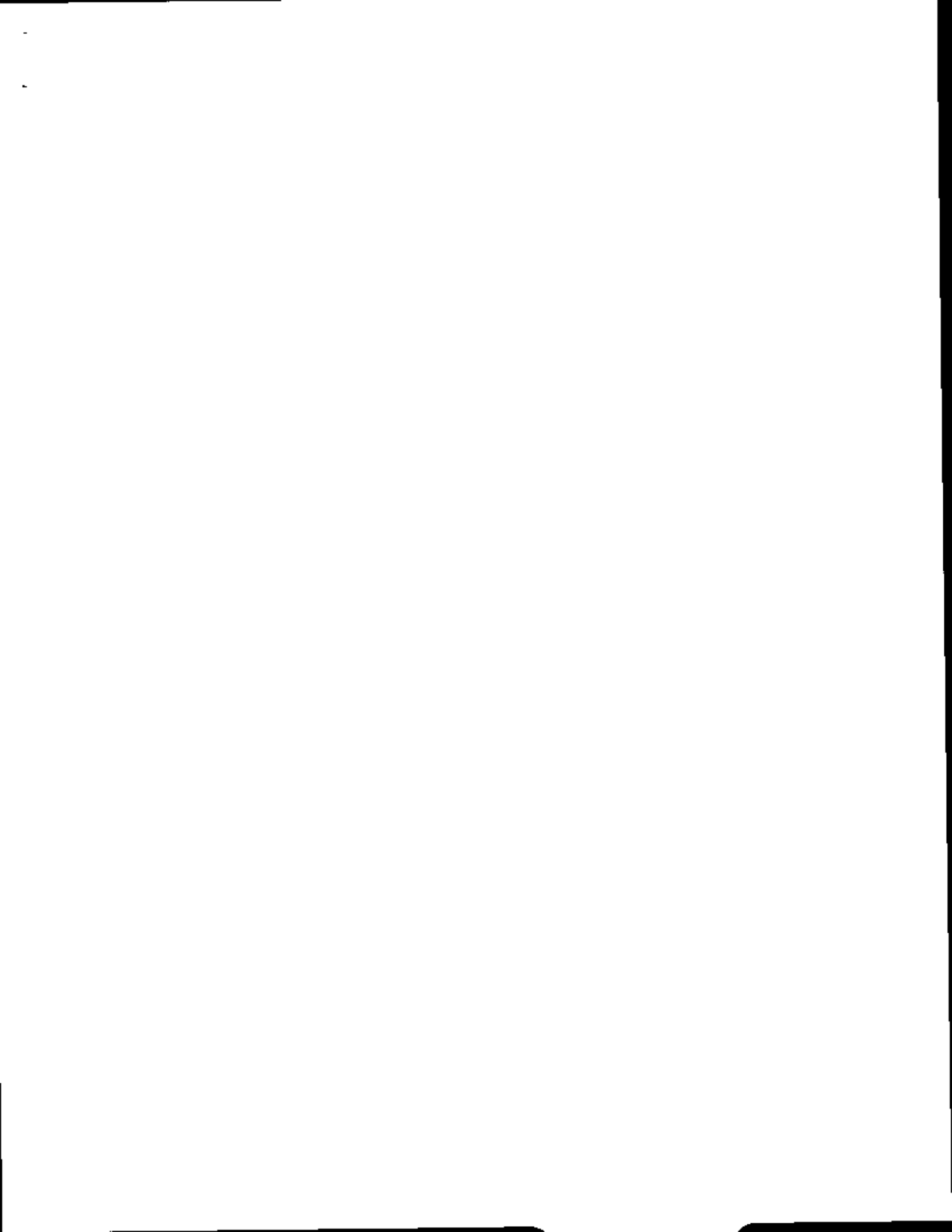
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Word Count: 165

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4/13/07 AFX UK Focus 00:00:00

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April 13, 2007

Defiant station to air Imus reruns

SAN BERNARDINO, Calif. (AP) - A small radio station intends to run the 'Best of Imus' next week in defiance of Don Imus' firing.

Fred Lundgren, chairman of 1,400-watt KCAA (1050 AM), said the station would start the series Monday with the program that wound up getting Imus cashiered.

'I'm not going to let networks dictate to me who I run on my station,' said Lundgren.

The station, which has broadcast the shock jock's morning show since 2003, also plans to air mostly supportive listener mail and e-mail reacting to the controversy.

The station can be heard in communities east and south of Los Angeles. The Imus material also will be available on the station's Web site Monday.

Calls late Thursday to Westwood One Inc., which syndicated Imus' morning program, were not immediately returned.

Lundgren said the motive for broadcasting the Imus reruns is in part financial.

'I hate to say it, but without Imus, we're pretty much toast,' said Lundgren, adding: 'What Imus did was deplorable, inexcusable, but it shouldn't end the career of a man who has done so much good. This is an overreaction beyond anything I've ever seen in radio.'

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---- INDEX REFERENCES ----

INDUSTRY: (Entertainment (1EN08); Traditional Media (1TR30); Radio (1RA81); Radio

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Stations (1RA51))

REGION: (USA (1US73); Americas (1AM92); North America (1NO39); California (1CA98))

Language: EN

OTHER INDEXING: (IMUS) (Defiant; Fred Lundgren; Lundgren)

KEYWORDS: (USA); (MED); (PRD); (JAB)

Word Count: 257

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