

May 3, 2012

**Before the
UNITED STATES COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.**

In the Matter of:

Copyright Office Fees

Docket No. 2012-1

**COMMENTS OF THE AMERICAN ASSOCIATION OF INDEPENDENT MUSIC
(A2IM)**

The American Association of Independent Music (A2IM)¹ appreciates this opportunity to respond to the above-referenced Notice of Proposed Rulemaking (NPRM) regarding the Copyright Office's proposing the adoption of new fees for the registration of claims, recordation of documents, special services, Licensing Division services, and processing of FOIA requests.

We are writing in opposition to the proposed increases in copyright registration fees on behalf of our members. The A2IM independent music label members are small and medium sized enterprises (SME's) that create intellectual property, jobs and exports have been ravaged by changes in the economic landscape as it relates to music commerce, not the least of which has been the rampant unpaid, unlicensed acquisition of music. Related to this unlicensed unpaid acquisition of our community's music, registration of our member's artists' copyrights has become a de facto requirement as our members and their artists need to prove ownership in litigation, especially against unauthorized music services infringing upon the work of their label's artists'. Without copyright registration, a music label or artist has no standing with the courts and will be unable to sue for statutory damages until the copyright is registered and even then the damages will only be for prospective infringements. The combination of dedicated anti-piracy resources and regulatory/judicial resources now required of our members to defend their businesses are resources that our SMEs simply do not have the financial means or administrative means to meet.

¹ The American Association of Independent Music (A2IM) is a not-for-profit trade organization serving the independent music community as a unified voice representing a sector that comprises over 30% of the music industry's market share in the United States (and 38% of SoundScan digital sales). The organization represents the Independents' interests in the marketplace, in the media, on Capitol Hill, and as part of the global music community. A2IM is headquartered in New York City. Currently, the organization counts over 290 music label members and over 150 associate members (companies who don't own masters but rely upon, provide services for, or otherwise support independent music labels). A2IM members share the core conviction that the independent music community plays a vital role in the continued advancement of cultural diversity and innovation in music.

Another reason we oppose the proposed fee increases is the pending proposed U.S. Copyright Office changes regarding Pre-1972 sound recordings announced by the Copyright Office on December 28, 2011 as required in the Explanatory Statement to the Omnibus Appropriations Act of 2009. That report on pre-1972 sound recordings proposed the federalization of pre-1972 sound recordings. Under the Copyright Office proposal copyright ownership for pre-1972 sound recordings was a proposal to continue copyright protection under basically a ‘use it or lose it’ situation where a creator would need to keep their music “publicly available” to maintain copyright protection thru 2067 (easy enough in the digital age) with a transition period of six to ten years to ensure all materials are available. The onerous part of the Copyright Office proposal is the proposal to require an initial; and potential renewal, Copyright Office registration process to maintain copyright ownership, which requirement will be exacerbated by the new proposed fee increases. That proposed requirement for widespread re-registration of copyrights, if pre-1972 sound recordings are brought under federalization, would create a cost burden for A2IM’s members during already trying economic times. In addition many of the pre-1972 sound recordings owned by independent music labels are part of the “long tail” for commerce, some acquired and digitized during recent periods, and are certainly copyrights which bring historic and cultural diversity to our fans which will require a long period of time to recoup the investment in them.

In addition, the National Recording Preservation Board (NRPD) issued similar pre-Federalization of Pre-1972 sound recordings draft recommendations in November 2011 related to Pre-1972 sound recordings, including proposals 3.5 thru 3.7 related to items such as Orphan Works, Streaming and Fair Use with which we do not agree with in their present form, which would similarly put an undue financial burden on small copyright owner music labels to protect their rights. The time and capital investment required for our community of like-minded, but proudly independent, small business people to monitor the web for compliance with these types of provisions and take subsequent legal action simply does not exist.

Finally, our members on their own and on behalf of their artists are more financially astute than individual artists so we expect that the time the Copyright Office spends on reviewing our music label members’ filings to be significantly less time than for individual artists and other less sophisticated creators. As the Copyright Office notes in the NPRM “No author or copyright owner should be deterred from registering a copyright because the cost of registration is too high, and the Office is mindful that there is not endless elasticity in pricing; pricing is a factor in whether one chooses to register” and “The copyright law itself is designed to promote and protect authorship and this includes facilitating registration for the establishment of a public record of copyright claims and to enable the copyright owner to seek all the remedies available in the Copyright Act”. Given the needs of creator copyright owners and given the current state of the music industry, we respectfully request that the current Copyright Office fee structures be maintained.

Respectfully,

Richard Bengloff
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