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Washington, D.C.

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GENERAL COUNSEL  
OF COPYRIGHT

In the Matter of	)	
	)	
Mechanical and Digital Phonorecord	)	Docket No. RM 2000-7A
Delivery Compulsory License	)	

**JOINT REPLY COMMENTS OF  
THE RECORDING INDUSTRY ASSOCIATION OF AMERICA, INC.,  
THE NATIONAL MUSIC PUBLISHERS' ASSOCIATION, INC.,  
THE HARRY FOX AGENCY, INC., AND  
THE SONGWRITERS GUILD OF AMERICA**

The Recording Industry Association of America, Inc. ("RIAA"), the National Music Publishers' Association, Inc. ("NMPA"), The Harry Fox Agency, Inc. ("HFA"), and the Songwriters Guild of America ("SGA") submit these joint reply comments in response to the Copyright Office's Request for Comment dated December 14, 2001. (RIAA, NMPA, HFA and SGA are referred to collectively herein as the "Commenters.")

On February 6, 2002, the Commenters submitted joint comments in this proceeding urging the Copyright Office expeditiously to conduct a rulemaking to adopt regulations providing for the availability of statutory mechanical compulsory licenses for digital delivery of all copyrighted musical works on substantially the same basis as licenses are available under the Agreement between RIAA and NMPA/HFA dated as of October 5,

2001 (the “Agreement”). The Commenters respectfully urge the Office to conduct a rulemaking to adopt rules (the “Proposed Regulations”) providing that:<sup>1</sup>

1. The process of making on-demand streams through subscription services (from the making of server reproductions to the transmission and local storage of the stream), viewed in its entirety, involves the making and distribution of a digital phonorecord delivery, for which process compulsory licenses are available pursuant to 17 U.S.C. § 115.
2. The process of making limited downloads through subscription services (from the making of server reproductions to the transmission and local storage of the limited download), viewed in its entirety, involves the making and distribution of a digital phonorecord delivery, for which process compulsory licenses are available pursuant to 17 U.S.C. § 115.
3. Compulsory licenses under Section 115 extend to the processes of making on-demand streams and limited downloads, viewed in their entirety, including the making of (a) server copies to enable the delivery of on-demand streams and limited downloads, (b) transient copies in the transmission of on-demand streams and limited downloads, and (c) local buffer copies of on-demand streams and limited downloads.
4. Prospective licensees that intend to make or authorize on-demand streams and/or limited downloads may avail themselves of the procedures for obtaining statutory compulsory licenses under Section 115 and the applicable regulations by serving or filing a notice of intention to obtain a compulsory license.
5. Licensees shall pay royalties for making on-demand streams and limited downloads on a retroactive basis once the

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<sup>1</sup> The Commenters are close to finalizing a draft of specific regulations embodying the Proposed Regulations. We expect to provide such draft to the Office within two weeks.

applicable rates and terms are finally determined by agreement or a CARP proceeding.

6. Licensees shall render timely statements of account pursuant to applicable law and regulations, including 37 C.F.R. § 201.19, which shall include certain other information relevant to the calculation of royalties (such as the specific DPD configurations made, e.g., full download, limited download, or on-demand stream), comparable to what is provided in Section 6.1 of the Agreement, so that the royalties to be paid on a retroactive basis may be determined when the applicable rates and terms are set.
7. The process of making streams that would qualify for a statutory license under Section 114(d)(2) of the Copyright Act does not involve the making or distribution of a digital phonorecord delivery and does not require a compulsory license under Section 115.

### **There Is A Compelling Need and Substantial Support for a Rulemaking Proceeding**

Infringing services have inflicted grave injury on songwriters, music publishers, recording artists and record companies alike. There thus is a compelling need for a framework within which legitimate services can enter the digital music market. By recognizing that the mechanical compulsory license applies to certain types of digital audio services, the Proposed Regulations are an important and, the Commenters believe, necessary first step toward that goal. Accordingly, in order to make available to consumers the full range of music they wish to enjoy online through legitimate services, and thereby help to stem the tide of Internet piracy, the Office should conduct a rulemaking proceeding to address issues within the general scope of, and adopt, the Proposed Regulations.

The initial round of comments in response to the Office's Request for Comment illustrates that there is substantial support for a rulemaking. Among the Commenters, NMPA, HFA and SGA represent the vast majority of creators and copyright owners of copyrighted

