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DOCKET NO.  
RM 2000.7B  
COMMENT NO. 6

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GENERAL COUNSEL  
OF COPYRIGHT

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In the Matter of )  
 )  
Mechanical and Digital Phonorecord )  
Delivery Compulsory License )  
\_\_\_\_\_ )

Docket No. RM 2000-7A

**JOINT 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 comments in response to the Copyright Office's Request for Comment dated December 14, 2001.

On December 6, 2001, RIAA, NMPA and HFA submitted a joint statement to the Copyright Office summarizing the principal terms and benefits of their recent agreement dated as of October 5, 2001, regarding online music subscription services (the "Agreement"). The Agreement provides a framework for the immediate issuance of compulsory licenses for subscription services offering on-demand streams and limited downloads.<sup>1</sup> In addition, in November 2001, HFA entered into substantially the same agreement with Listen.com. As a direct result of the Agreement and the Listen.com agreement, several subscription digital

<sup>1</sup> Aside from full downloads, for which a statutory rate already exists and compulsory licenses are clearly available, on-demand streams and limited downloads are the principal types of digital phonorecord deliveries ("DPDs") currently being offered on the Internet. Accordingly, there is an immediate need to provide a clear mechanism for obtaining statutory compulsory licenses for these types of DPDs.

music services have been able to launch, offering consumers legitimate access to a broad array of musical works and diverse methods of online delivery, by obtaining licenses now on the understanding that they will pay royalties for the use of copyrighted musical works retroactively, once rates are set. While these agreements have made the vast majority of musical works available to licensed services, they have not provided access to songs owned or controlled by music publishers not represented by HFA, or otherwise not participating in the licensing mechanism created under the Agreement.

In order to make available to consumers the full range of music they wish to enjoy online, as Congress intended when it clarified the application of the mechanical compulsory license to digital delivery,<sup>2</sup> RIAA, NMPA, HFA and SGA believe it is important that mechanical compulsory licenses for subscription services offering on-demand streams and limited downloads be available to all digital music services and for all musical works by regulation pursuant to 17 U.S.C. § 115. Thus, we respectfully request that the Copyright Office expeditiously conduct a rulemaking to adopt regulations providing for the availability of statutory compulsory licenses for digital delivery of all copyrighted musical works on substantially the same basis as licenses are available under the Agreement.<sup>3</sup>

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<sup>2</sup> See Digital Performance Right in Sound Recordings Act of 1995, Pub. L. No. 104-39, § 4, 109 Stat. 336 (1995); *see also* S. Rep. 104-128, at 14 (1995); 141 Cong. Rec. S11,945-967, at 11,959 (1995) (statement of Sen. Feinstein); 141 Cong. Rec. H10,098-108, at 10,102 (1995) (statement of Rep. Moorhead).

<sup>3</sup> The proposed regulations will complement the procedural amendments that RIAA, NMPA and HFA proposed in their joint comments dated October 12, 2001, regarding the "Notice of Intention" regulations in 37 C.F.R. § 201.18 (and certain conforming changes in 37 C.F.R. § 201.19). *See* In the Matter of Compulsory License for Making and Distributing Phonorecords, Including Digital Phonorecord Deliveries, Docket No. RM 2001-6. The amendments previously proposed will also facilitate the launch and operation of subscription digital music services and should thus be adopted as soon as possible.

