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In the Matter of:

Compulsory License for Making and Distributing Phonorecords, Including Digital Phonorecord Deliveries

Docket No. RM 2000-7

COMMENTS BY ON-DEMAND
BUSINESS TO BUSINESS MUSIC PROVIDERS
AMI Entertainment
Ecast Inc.
Touch Tunes Music Corporation

I. INTRODUCTION AND SUMMARY

As part of the Business-to-Business Music Providers Coalition ("B2B Music Providers"), AMI Entertainment, Ecast Inc. and TouchTunes Music Corporation have filed comments ("Comments") to the Copyright Office in Docket RM 2000-7. AMI Entertainment, Ecast Inc. and TouchTunes Music Corporation represent the entire legitimate digital jukebox industry, providing interactive on demand music to over 55,000 commercial venues including restaurants, nightclubs, bars, and retail stores. These tens of thousands of establishments, the large majority of which are small businesses, and thousands of service companies that deploy and service Digital Jukeboxes depend on the revenue our pay per use Digital Jukeboxes generate. We offer the following additional comments applicable to on-demand B2B Music providers ("On Demand B2B").

The B2B Music Providers comments in clause III B regarding streaming are not currently applicable to Digital Jukeboxes because we cache copies on the local hard drive residing

in the Digital Jukebox for on-demand public performance play. The On-Demand B2B Music Providers are not able to comment thereon, so we neither concur nor disagree.

We respectfully request the Copyright Office to reconsider going forward with the proposed rule set forth in the Notice of Proposed Rulemaking ("NPRM").[1]

If the rule is adopted it will cause substantial harm to the business music market and:

- Restrain Interactive B2B music libraries to a fraction of the music that services qualifying for Section 115 compulsory licenses will be able to use. Consumers are now accustomed to accessing millions of tracks and have the same expectation when out of the home. The result will be increasing redundancy of the B2B services and replacement by personal devices, digital lockers and the like, with no appropriate licensing and no income to content owners.
- Exacerbate harm as services licensed for "private use" increasingly penetrate the public market either indirectly via their private customers accessing their digital files purchased or licensed for private use, plugging in their personal devices with stored music or accessing digital lockers with their private use music stored) or directly by marketing venues and availing themselves of the Section 115 license "primary purpose ..... private use" language.

II. THE RULE WOULD EXACERBATE COMPETITION ISSUES EXISTING IN THE BUSINESS MUSIC MARKET

A. B2B Music Market is Being Cannibalized by Music Service Providers Who Are Primarily in the Consumer Market

Our primary comments on this issue are set forth in the B2B Music Provider's Comments. Further, the competitive landscape of the business music market has changed and will continue an extraordinary evolution blurring the distinction between private and public. Today, in addition to satellite radio and internet music services, employees and consumers in commercial venues bring and play playlists on personal Ipods, Iphones,

[1] 73 Fed. Reg. 40802 (July 16, 2008).

handheld devices and soon will stream playlists from consumer's digital lockers which can access music any time anywhere in the world. Today you can use a service such as Simplfy.com and allow 30 of your best friends to simultaneously listen to your playlist and they in turn can have 30 of their best friends listen to the same play list and so on. There are numerous examples of sharing music lists with many people at the one time and the number of these services increases daily.

These devices and services are nothing more than mini-jukeboxes which can be played without payment by the patron or payment to the copyright owner. The music variety that patrons and employees can enjoy from these devices is far greater than what can be offered by interactive B2B music services because the mechanical license is covered by Section 115 (although, ironically, in many cases, the music is likely downloaded illegally in the first place).

Additionally, music services offered to consumers as opposed to businesses are increasingly smart and extraordinary as are the expectations of the consumer. The natural evolution is for these consumer focused services to expand to the public market, but with the protection of Section 115 as they remain focused on and protected by the "primarily for" private use limitation. Even though these services remain intended "primarily" for private use, they have no control over where they are accessed and will be happy to pick up any extra income for uses in commercial locations. So long as they remain "primarily for private use", there does not seem to be any restriction on entry into the B2B market. These services are increasingly present in the B2B market place, and their presence will only continue to grow. Furthermore, the RIAA announced that it would not take any action against venues that allow patrons to play ipods. There is no

protection at all offered to the B2B Music Providers. Existing interactive and non-interactive B2B music services cannot begin to compete with consumer services who have this tremendous competitive advantage.

III. CONGRESS NEEDS TO PROVIDE A COMPLETE SOLUTION

A. This rule, if it were valid, would force the Copyright Office to pick winners and losers in the marketplace

We agree, if the rule is made it will have an unfair business effect, imposing liability on all music service providers, but offer relief to only some music service providers in the consumer market. Continuing to draw a distinction between music providers predominantly serving the consumer market (private use) and those serving the business market in a digital portable world are redundant. The genesis for Section 115 was the in-home pianola; today's held held devices, ipods and iphones and consumer locker services are as far removed from pianolas as playing the same devices in a public venue. Continuing the distinction in a world where consumers can take their music in a hand held device and play it any where any time will result in the demise of the B2B service providers if the licensing rules are different. The rule proposes a partial solution favorable to the music providers in the consumer market, leaving those services to penetrate our market with legislative protection, thus favoring the consumer music market at the expense of the business music market.

B. Only Congress Can Provide a Comprehensive Solution to All Music Providers

In light of the issues that will be created, the enormous interest of many in a solution, the multi millions of dollars invested in many and varied services and, now, in

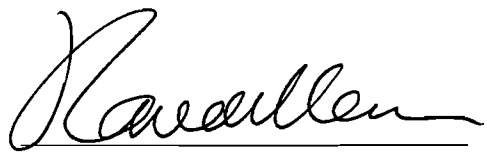
the balance we agree Congress is the only body that can offer the music industry a comprehensive solution. A partial and piecemeal approach is simply unfair and wrong.

V. Conclusion

We appreciate the Copyright Office seeking to develop momentum towards achieving a solution to this matter, which is so desperate for reform. But, for the reasons stated in the Comments of The Business to Business Music Providers and the additional reasons above, we urge the Copyright Office to return this matter to Congress for a comprehensive solution.

Respectfully submitted,

AMI ENTERTAINMENT
ECAST INC.
TOUCH TUNES MUSIC CORPORATE



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