

Before the  
COPYRIGHT OFFICE  
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**GENERAL COUNSEL  
OF COPYRIGHT**

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In the Matter of :  
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Mechanical and Digital Phonorecord :  
Delivery Compulsory Licenses :  
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Docket No. RM 2000-7

**REPLY COMMENTS OF THE AMERICAN SOCIETY OF COMPOSERS, AUTHORS  
AND PUBLISHERS REGARDING THE INTERPRETATION AND APPLICATION OF THE  
MECHANICAL AND DIGITAL PHONORECORD COMPULSORY LICENSE TO CERTAIN  
DIGITAL MUSIC SERVICES**

The American Society of Composers, Authors and Publishers (“ASCAP”) hereby submits these reply comments in response to the Notice of Inquiry (“NOI”) of the Copyright Office (the “Office”) of March 6, 2001, 66 Fed. Reg. 14099 (March 9, 2001) requesting public comment on the interpretation and application of the mechanical and digital mechanical phonorecord compulsory license, 17 U.S.C. §115, to certain digital music services.

**ASCAP’s Interest**

ASCAP is the oldest and largest musical performing rights society in the United States with a repertory of millions of copyrighted works and more than 115,000 songwriter and publisher members. ASCAP is also affiliated with over 60 foreign performing rights organizations around the world and licenses the repertories of those organizations in the United States.

ASCAP members, as creators and owners of copyrighted musical works, enjoy exclusive rights in those works as are granted under section 106 of the Copyright Act. These rights include the right to perform the works publicly, the right to reproduce the works in copies and phonorecords and the right to distribute such copies and phonorecords. On behalf of its members and affiliated foreign performing rights societies, ASCAP licenses only their non-dramatic public performance rights.

The types of users to whom ASCAP grants public performance licenses are wide and varying, and include, for example, television and radio broadcasters, hotels, nightclubs and college and universities. As new means of technology have been created to transmit music, ASCAP has taken the lead in offering new forms of licenses appropriate to these mediums. Thus, as digital transmission of copyrighted musical works became possible over the Internet, ASCAP became the first performing rights organization to license these transmissions and now licenses thousands of sites.

The web sites that ASCAP licenses are likewise wide and varying and representative of the full diversity of sites performing music, including commercial and non-commercial web sites ~~[[FCC licensed and non-FCC licensed webcasting sites]]~~ offering webcasting, on-demand streams and music downloads.

ASCAP's successful Internet licensing practices demonstrate that free-market negotiations do not inhibit the growth of digital music services. In fact, ASCAP's endeavors show that private licensing works and can readily evolve and adapt to meet the licensing needs of the myriad and growing number of web sites publicly performing copyrighted musical compositions.

ASCAP respectfully submits these reply comments for the sole purpose of urging the Office to focus on the single issue at hand – the interpretation and application of

Section 115 – the mechanical license – to certain Internet transmissions of copyrighted music.<sup>1</sup> Much as some commentators seek otherwise, the licensing of the right to publicly perform music is not the subject matter of the NOI and the Copyright Office should reject any and all such efforts to improperly broaden the scope of this proceeding.

**The Copyright Office Should Limit This Proceeding To The Section 115 Mechanical Right.**

ASCAP submits that the issues inherent in the licensing of digital music are complex. With the passage of the Digital Performance Right in Sound Recording Act (“DPRA”), Pub. L. No. 104-39, 109 Stat. 336 and the Digital Millennium Copyright Act (“DMCA”), Pub. L. No. 105-304, 112 Stat. 2860, new rights were created in, and existing rights were extended to, the transmissions of copyrighted sound recordings and musical works in digital form. Due to the complexity of applying these new rights, not surprisingly, many of these issues have been at the forefront of Office proceedings and recent headline legal battles. See, e.g., In the Matter of Public Performance of Sound Recordings Definition of a Service, Docket No. RM 2000-3, 65, Fed. Reg. 77330 (December 11, 2000); A&M Records, Inc. v. Napster, 239 F.3d 1009 (9<sup>th</sup> Cir. 2001).

The Office issued the NOI in response to the petition and replies thereto filed by the Recording Industry Association of America (“RIAA”) and certain Internet music users and copyright owners on the specific issue of the application of Section 115 to certain music transmissions, i.e., to on-demand streaming and limited downloads. Despite the limited scope of the NOI, certain commentators have decided to use their filings to campaign for the fusion of the public performance right with the rights of the mechanical license, a campaign that did not succeed and which Congress rejected when the DPRA was enacted.

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<sup>1</sup> As discussed more fully below, ASCAP does not maintain that the Copyright Office should, or can,

