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

GENERAL COUNSEL  
OF COPYRIGHT

Docket No. RM 2000-7

**REPLY COMMENTS OF THE RECORDING INDUSTRY  
ASSOCIATION OF AMERICA, INC.**

The members of the Recording Industry Association of America, Inc. (“RIAA,” “we” or “our”) and digital music services want to meet the huge consumer demand for legitimate digital music services. Unfortunately, uncertainty regarding the issues raised by the Copyright Office in its Notice of Inquiry (“Notice”), and the cumbersome procedures embodied in the Office’s regulations implementing Section 115, are primary obstacles to efforts to meet that demand. RIAA firmly believes it is critically important that the Copyright Office follow through on its Notice by acting in the very near term to clear the way for the introduction of legitimate digital music services.

The consistent theme of all the comments submitted in response to the Notice was that an established set of rules is necessary for legitimate online digital music services to go forward. Indeed, all of the parties submitting comments except for the National Music Publishers Association (“NMPA”)<sup>1</sup> supported a rulemaking regarding the Section 115 mechanical license. And even the NMPA’s comments acknowledge the necessity of an

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<sup>1</sup> NMPA filed its comments jointly with the Songwriters’ Guild of America (“SGA”). References herein to those comments, and to NMPA’s positions therein, are intended to refer to SGA as well.

established set of rules for the online music community to prosper. *See* NMPA Comments at 12. NMPA simply would prefer that set of rules to emerge later, through negotiations or litigation rather than a rulemaking proceeding, a position that, with all respect, we believe to be ill-advised for the numerous reasons described below.

Accordingly, RIAA submits that there is substantial support for a Copyright Office rulemaking that would determine whether and how On-Demand Streams and Limited Downloads fall within the ambit of Section 115. Indeed, there seems to be a growing consensus – expressed by those filing comments and by members of Congress<sup>2</sup> – that an expeditious rulemaking by the Copyright Office would materially advance the introduction of legitimate digital music services to satisfy the exploding consumer demand for music on the Internet. The Office has the power to issue rules necessary for the administration of the Section 115 license, including the rules we have requested concerning the treatment of On-Demand Streams and Limited Downloads and interim procedural rules to enable the launch of services. The Office should exercise that power to make Congress’ and consumers’ dream of a “celestial jukebox” a reality. *See* S. Rep. No. 104-128 at 14 (1995).

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<sup>2</sup> *See, e.g.*, Statement of the Honorable Howard Hyde before the House Judiciary Subcommittee on the Courts, the Internet and Intellectual Property, May 17, 2001 (attached as Exhibit 1) (“I support action by the Copyright Office to effectuate the intent of the DPRA to enable electronic music delivery, and I hope that the Office will take such action quickly, to help meet the consumer demand for digital music that exists today.”); Statement of the Honorable Rick Boucher before the House Judiciary Subcommittee on the Courts, the Internet and Intellectual Property, May 17, 2001 (“It is also appropriate that we use the hearing this afternoon as a means of urging the Copyright Office to put in place a temporary safe harbor arrangement for the Section 115 license until the Copyright Office completes its process for deciding the full scope of the license and establishes a rate under the compulsory license which would be associated with licensing of the music.”) (available online at <http://www.mp3.com/ThePhoRecordings>).

