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GENERAL COUNSEL  
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Before the  
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Washington, D.C.

In the Matter of

Mechanical and Digital Phonorecord  
Delivery Compulsory License

Docket No. RM 2000-7

**COMMENTS OF MP3.COM, INC.**

MP3.com, Inc. ("MP3.com"), by its attorneys, hereby submits comments in response to the Copyright Office's Notice of Inquiry in the above-captioned proceeding.<sup>1</sup> As discussed below, MP3.com submits that it is both necessary and appropriate for the Copyright Office to conduct a rulemaking proceeding with regard to the application of the Section 115 "mechanical" compulsory license to on-demand streaming of sound recordings embodying musical works. Moreover, rather than leave the existing state of regulatory uncertainty and stalemate unresolved during its consideration of final rules, the Office can and should immediately adopt "interim" regulations. Such regulations should clarify the meaning of 37 CFR Section 255.6 (the "deferral" provision) and establish "safe harbor" provisions that will permit on-line music service providers that deliver on-demand streams to consumers to rely on the amendments to Section 115 of the Copyright Act enacted by Congress in 1995 while protecting the interests of copyright owners.<sup>2</sup>

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<sup>1</sup> 66 Fed. Reg. 14099 (March 9, 2001). The Notice of Inquiry seeks comments on issues arising from the application of Section 115 of the Copyright Act to "on-demand streams" of music and to "limited downloads." MP3.com's comments will address only the application of Section 115 to "on-demand streams."

<sup>2</sup> The Office has recognized its power to adopt "interim" regulations on several occasions. For example, noting the "developing nature of the digital transmission service industry and of the technology which will be employed in

## INTRODUCTION AND BACKGROUND

The Internet music industry is at a critical juncture. Millions of consumers have signaled their interest in using on-line tools and services to access recorded music. However, the ability of innovative companies to meet this consumer demand is being frustrated as the result of legal uncertainty – uncertainty both as to the application of copyright law principles to Internet-based tools and services and as to the rights of music purchasers with regard to their use of these tools and services.

MP3.com's own experience in offering music consumers the benefits of Internet-based technology is illustrative of the problems that the Copyright Office can and should address. MP3.com is a premier, worldwide, Internet music service provider.<sup>3</sup> In January 2000, MP3.com launched a new service called My.MP3.com. My.MP3.com is a digital music "locker" service that enables people to use Internet-connected devices to listen to compressed "MP3" format audio streams of the music on the CDs that they purchase at their local record stores or from on-line retailers. Today, the primary playback devices for My.MP3.com users are their personal computers. But in the not too distant future, My.MP3.com's users will be able to use a variety of Internet-connected devices (including wireless hand-held players and Internet-enabled car "radios") to listen to audio streams of the songs on the CDs that they purchase.

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accommodating the reporting requirements," the Office adopted interim regulations regarding the notice and recordkeeping requirements for use of copyrighted works by digital subscription transmission services. *See Notice and Recordkeeping for Digital Subscription Transmissions*, Interim Regulations, Docket No. RM 96-3B, 63 Fed. Reg. 34289, 34290 (June 24, 1998) ("Digital Subscription Transmissions Interim Regulations Order").

<sup>3</sup>In addition to developing the My.MP3.com service described in the text, MP3.com gives up-and-coming musicians access to a market and marketing that would otherwise be closed to them; assists new entrepreneurs to use the management tools MP3.com has developed and refined to create their own services and businesses; teams with radio stations to bring the music of their local artists to on-line listeners; provides unique music and management services to retailers; sells CDs; recommends and assists with hardware and software; and provides free musical greeting cards. MP3.com has a children's music channel, too.

