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Before the
COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.

**GENERAL COUNSEL
OF COPYRIGHT**

_____)	
In the Matter of)	
)	
Mechanical and Digital Phonorecord)	Docket No. RM 2000-7
Delivery Compulsory License)	
)	
_____)	

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

The Recording Industry Association of America, Inc. ("RIAA") is pleased that the Copyright Office has issued a Notice of Inquiry ("NOI") regarding the application of the mechanical compulsory license of 17 U.S.C. § 115 to certain digital music services. The NOI seeks public comment on the advisability of conducting a rulemaking proceeding concerning that issue. RIAA believes that it is not only advisable that the Copyright Office conduct such a rulemaking proceeding, but critically important that the Office conduct such a proceeding. In addition, we urge the Copyright Office immediately to promulgate interim rules during the pendency of the proceeding that would allow legitimate services to obtain a mechanical compulsory license by means of a practicable procedure, even before the Copyright Office expresses any view as to the proper classification of On-Demand Streams or Limited Downloads.¹

There is a pressing need in the marketplace for legitimate digital music services, driven by the dual forces of exploding consumer demand and a proliferation of digital

¹ In these comments, we use the terms "On-Demand Stream" and "Limited Download" as defined in the NOI and our petition.

music services that either infringe or facilitate the infringement of copyrights in musical works and sound recordings. Indeed, the very demand consumers have for digital music seems to be the driving force behind the massive infringements of copyrights that continue to occur through various services. The relative popularity of these infringing services and the widely publicized litigation necessitated by their trespass into the marketplace have caught the attention of Congress, which has recently conducted hearings inquiring into the market for digital music.

The swelling consumer demand for digital music and the need for legitimate digital music services to meet that demand necessitates swift action on the part of all those with interests in digital music, as well as the Copyright Office. RIAA's members and their business partners are working hard to bring services to the market to meet consumers' demand. Unfortunately, the lack of clarity as to the application of the mechanical compulsory license to various types of services and the lack of a regulatory framework to implement whatever statutory provisions may be applicable to these services has slowed the efforts of RIAA members and other legitimate digital music providers to bring these services to consumers. RIAA and its members have diligently pursued discussions with music publishers and others to try to reach a consensus concerning these issues among the affected industries. However, those negotiations have not yet been successful. The Copyright Office uniquely possesses the expertise and power to resolve these issues now. Accordingly, we urge the Copyright Office to move forward on every front as expeditiously as possible, to do everything in its power to allow legitimate digital music services to flourish.

The Copyright Office would be well within its regulatory authority should it both commence a rulemaking concerning the questions addressed in the NOI and promulgate the interim rules we request during the pendency of that rulemaking. The Copyright Office's rulemaking authority with regard to the compulsory licenses of the Copyright Act is well established. Congress has recognized the long-standing role of the Copyright Office in making and administering rules with regard to compulsory licenses, and the Copyright Office has a long history of doing so. Furthermore, the Copyright Office has recently recognized that it has the specific authority to determine whether certain activities fall within or outside the scope of a compulsory license. Accordingly, the Copyright Office's rulemaking authority undoubtedly encompasses the power to determine whether On-Demand Streams are iDPDs, and whether Limited Downloads should be considered iDPDs or "rentals" for the purpose of the compulsory license.

I. BACKGROUND

A. RIAA

RIAA is the trade association that represents the U.S. recording industry. Its mission is to foster a business and legal climate that supports and promotes its members' creative and financial vitality. RIAA members create, manufacture and/or distribute approximately 90% of all legitimate sound recordings produced and sold in the United States. RIAA represents its members in a variety of forums, including before the Copyright Office and through testimony before Congress.

B. THE DEMAND FOR DIGITAL MUSIC

New transmission technologies and music listening devices have allowed consumers to obtain access to their favorite sound recordings with an ease and speed, and

