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Mechanical and Digital Phonorecord  
Delivery Compulsory License

[Docket No. RM 2000-7]

**GENERAL COUNSEL  
OF COPYRIGHT**  
*Received in mail room  
4/20/01 jfg*

**Comments of Supertracks.com, Inc.**

Supertracks.com, Inc. ("Supertracks"), an Oregon Company involved in delivery of various types of digital content utilizing the Internet, is pleased to take this opportunity to submit comments in response to the notice of inquiry published in 66 Federal Register 14099 on March 9, 2001 by the Copyright Office of the Library of Congress to address the interpretation and application of the mechanical and digital phonorecord compulsory license to certain digital music services under 17 U.S.C. 115.

**Testimony**

**Introduction**

Supertracks is a member of the Digital Media Association (DiMA), and as such defers addressing many of the questions raised in the call for comments, to the comments which are being provided by DiMA. Nevertheless, we do feel it is important that we provide comment to some of the issues raised in order to bring specific market examples to industry-wide concerns.

In the conclusion of the call for comments published in the Federal Register, the statement is made that some of the means of digitally delivering music to consumers have been brought to the awareness of the Copyright Office, and yet there may be others existing or contemplated. The statement concludes by inviting comment on these other technologies or services whose existence might have an effect on the interpretation of section 115. To this end we provide the following comments.

**The Rise of Digitally Delivered Entertainment**

Technology stock plunges and the rise of Napster dominated the press coverage of the Internet in the last year, but quietly, another major Web phenomenon was taking shape and resolutely gaining ground: Internet radio. Last year more and more U.S. Internet users began listening to music online, and listening online for longer periods. Arbitron reports that aggregate tuning hours for webcasting and Internet radio grew from 5 million in July 2000 to 7.4 million in August—a 48 percent increase in one month!<sup>1</sup> As Microsoft's Steve Ballmer proudly proclaimed at the Streaming Media West conference in December 2000, more people now listen to Internet radio than watch Monday Night

<sup>1</sup> "The Broadband Revolution," Arbitron, 2000

Football (35 million listened to online streaming in November, 2000, according to Nielsen Net Ratings—a 65 percent increase in one year).

Napster, the revolutionary music file-sharing system, not only stunned the music industry in the last year by building a registered user base of over 50 million fans,<sup>2</sup> but also, according to a recent Jupiter Communications report, signaled that “online music has become a mass-market phenomenon.”<sup>3</sup> Listeners of all ages are using the Internet to gain access to their favorite music:

26 percent are 18 to 24 years old  
25 percent are 35 to 44 years old  
22 percent are 24 to 34 years old  
20 percent are 45 to 54 years old  
8 percent are 55 years old and over.<sup>4</sup>

In November 2000, 47 percent of U.S. home computer users used a media player, while 40 percent used a streaming media player.<sup>5</sup> Music and other forms of rich media are increasingly in great demand by online consumers. Hardware manufacturers, network builders, wireless providers, content delivery and digital storage vendors and a host of other companies are investing feverishly to bring ever more digital delivery and storage capacity to the home and office.

Consumers, for their part, are continuing to invest in a variety of new digital devices and services supplied by such vendors. They are becoming more and more network-savvy, and are demanding interesting and compelling new content, and new models of access, for their new devices.

Despite the innovations and technical achievements which have made it possible to deliver high-quality, in-demand music over the Internet, there remain questions of legal interpretations regarding whether the mechanical and digital phonorecord compulsory license under 17 USC 115 can be applied to a service or enabling technology. These questions put any business engaging in the distribution of content over the Internet in a potentially perilous position, and have a direct dampening affect on its business efforts.

### **Supertracks**

Early in 2000, Supertracks began exploring a novel streaming concept that synthesized existing digital rights management (DRM) technologies, conventional file downloading systems, local desktop caching, and a new proprietary rules engine that embodies the Digital Millennium Copyright Act (DMCA) to assure legal compliance.

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<sup>2</sup> Napster, Inc. *Response to Ninth Circuit Court of Appeals Ruling on the U.S. District Court Injunction in A&M Inc v. Napster*, February 12, 2001

<sup>3</sup> Jupiter, *Online Music Radio*, December 2000

<sup>4</sup> Harris Interactive, August 2000

<sup>5</sup> Media Matrix, January 22, 2001

