BEFORE THE
LIBRARY OF CONGRESS
UNITED STATES COPYRIGHT OFFICE
WASHINGTON, D.C.

ORPHAN WORKS NOTICE OF INQUIRY	:

INITIAL COMMENTS OF BROADCAST MUSIC, INC. ON ORPHAN WORKS

In response to the Notice of Inquiry published by the U.S. Copyright Office ("Office") on January 26, 2005 concerning so-called "Orphan Works", 70 Fed. Reg. 3739 ("Notice"), Broadcast Music, Inc. ("BMI") hereby submits its comments, as follows:

I. Orphan Works and Licensing of Musical Works.

At the outset, BMI would like to point out that any alleged problems of licensing "orphan works" are not likely to occur with musical works when compared with other categories of copyrighted works. The reason for this is that performing right licensing organizations (including BMI, ASCAP and SESAC) and mechanical rights licensing agencies (e.g., the Harry Fox Agency) have existed for many years to facilitate licensing. Both individually and together, these licensing organizations have extensive databases of information identifying musical works and their copyright owners, and they can offer licenses to anyone who wants to use music either as a contribution to a collective work or otherwise.

Importantly, BMI and ASCAP have the right to and do license the public performing right in musical works to music users even if the author (or copyright owner) is temporarily

listed as "address unknown" on their databases. Fortunately, orphan works issues do not need to be the concern of users of musical works within the BMI, ASCAP or SESAC repertoires, because users know the works they wish to use can be licensed for public performance by BMI, ASCAP or SESAC, respectively.

II. BMI's Internet Song Title Database.

The BMI.com Internet Repertoire Song Title Database ("BMI online repertoire") contains all musical compositions licensed by BMI in the U.S., including copyrighted arrangements of public domain works and foreign works licensed by BMI in the United States. The BMI online repertoire was the first expansive database of musical works to be made publicly available online in the United States. For each title, BMI lists the BMI writers of the work, the BMI publishers and the contact information that they have provided to BMI for such purpose, and the names of many of the artists who have recorded the works.

This database has been available electronically to the public for many years. If a title or contact information is not listed in the online repertoire, users of the database can contact BMI's Music Works Department by telephone, e-mail or mail to obtain the information, if available.

BMI believes that in any regime that the Congress or Copyright Office may contemplate to address alleged problems of licensing orphan works, users should be required to research these works through the databases of BMI, ASCAP, SESAC and the Harry Fox Agency, and that any work licensed through those entities should not qualify as an "orphan work".

Notwithstanding the foregoing observations, BMI agrees that it is reasonable for the Office to consider the question of orphan works if only for its impact on the licensing of non-music works. BMI reserves its right to comment and/or reply to the initial comments and proposals that may be submitted by other parties on the questions and issues raised by the Office in the Notice.

Respectfully submitted,

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