

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

In the Matter of

PROMOTION OF DISTANCE  
EDUCATION THROUGH DIGITAL  
TECHNOLOGIES

Docket No. 98-12A

COMMENTS OF RIAA CONCERNING PROMOTION OF  
DISTANCE EDUCATION THROUGH DIGITAL TECHNOLOGIES

The Recording Industry Association of America, Inc. (RIAA) hereby submits comments in reply to the Copyright Office's Request for Comments in connection with its study of the promotion of distance education through digital technologies.

The RIAA is a trade association whose member companies create, manufacture or distribute approximately 90 percent of all legitimate sound recordings sold in the United States. The RIAA has approximately 350 member companies.

Background

The Digital Millennium Copyright Act (the "Act") was enacted on October 28, 1998. Pub. L. No. 105-304, 112 Stat. 2860 (1998). Section 403 of the Act requires the Register of Copyrights to submit recommendations to Congress on the appropriate means "to promote distance education through digital technologies . . . while maintaining an appropriate balance between the rights of copyright owners and the needs of users of copyrighted works." On December 23, 1998, the Copyright Office published its Request for Comments and Notice of Public Hearing, seeking written comments "in order to elicit views and information to assist the Office in its analysis of the relevant issues preparatory to making its report and recommendations." 63 Fed. Reg. 71167 (1998).

The objective of promoting distance education through digital technologies is important. Through distance education programs, students literally have a world of opportunities and options for fitting education into their lives. In some cases, these programs make education more accessible to students in remote locations. It also may give students more course selections or opportunities to take courses at times when they otherwise could not by providing them access to educational institutions and programs throughout the United States and the world.

On January 26, 1999, the RIAA participated in the Copyright Office's public hearings held in Washington, D.C. In our comments herein, we will highlight our oral testimony and address a solution raised by other hearing witnesses. By these comments, we reaffirm the following positions:

- (1) no substantive changes to the Copyright Act are necessary to promote distance education through digital technologies; and
- (2) changes should not be made to existing copyright law without ensuring that technological safeguards are in place to prevent the unauthorized reproduction and distribution of copyrighted works.

No substantive changes to the Copyright Act are necessary to promote distance education through digital technologies.

Among the issues that Congress asked the Register of Copyrights to consider was the "need for an exemption from exclusive rights of copyright owners for distance education through digital networks." See 63 Fed. Reg. at 71167. Outside of providing appropriate fair use guidelines, the RIAA urges the Copyright Office to maintain current law. Any enlargement of Section 110 in the name of promoting distance education could diminish the opportunity for copyright owners to exercise control over the dissemination of their creative works and to receive fair compensation for the use of their works thereby lessening copyright owners' incentives to create new works.

At the Washington, D.C. hearings, it was revealed that the majority of educators (including the University of Maryland, the University of Delaware and the University of Nebraska) do not believe that the promotion of distance education requires a substantive change to current copyright law. Rather, the majority indicated that distance education programs would be well-served by a clarification of the fair use provisions in Section 107, such as through appropriate fair use guidelines. The RIAA agrees with the proposal to provide appropriate fair use guidelines and, as in the past, would welcome participating in such discussions.

Changes should not be made to existing copyright law without ensuring that technological safeguards are in place to prevent the unauthorized reproduction and distribution of copyright works.

As we indicated at the Washington, D.C. public hearing, although we may not be experts on the issue of distance education, the RIAA has considerable experience dealing with unauthorized music sites on the Internet. Over the past three years, we have seen a proliferation of pirate music sites on the Internet, many offering hundreds or thousands of full-length sound recordings for users to download. University and college students operate the majority of these sites. Although the RIAA manages to stop a large number of infringing Internet sites, we can only imagine what is happening on networks we cannot access, such as university and college intranets. Without appropriate security measures, any enlargement of the Section 110 exemptions in the name of distance

education could potentially, even if inadvertently, lead to or encourage additional abuses of copyright works.

In the Copyright Office's Request for Comments, interested parties were asked to comment on the technologies available for protecting the security of digital distance education. For sound recordings, technological security measures are vital. The current reality is that once a copyrighted sound recording is "ripped" from a CD and finds its way onto a network, it is easily and quickly reproduced and distributed among the network's users. Without proper security measures, there is no way to prevent unauthorized reproductions and distributions. Rather, in most cases, copyright owners are faced with the daunting task of finding and addressing each infringement, often times after the harm is already done. Thus, in the absence of security features, an enlargement of the current copyright exemptions to permit the unrestricted reproduction and/or distribution of copyright works for the purposes of distance education could very likely result in an increase in the unauthorized reproduction and distribution of those works outside of the educational process.

The development of an open specification for securing digital music in all formats is the objective of a recently launched initiative – the Secure Digital Music Initiative, or SDMI. Once a specification is fully defined, products and services that are compliant with the specification will be identified with an SDMI certification mark. This mark will be a seal of approval that indicates a product or service meets widely accepted requirements for security. When it comes to the security of distance education programs, these are the kind of standards that ought to be required.

### Conclusion

The RIAA appreciates the opportunity to participate in these proceedings. We look forward to our further participation with the hope that the Copyright Office will reach recommendations that promote distance education through digital technologies in a manner consistent with the interests of copyright owners and the public.

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Respectfully Submitted,

The Recording Industry Association of America

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