

**IN THE MATTER OF NOTICE OF INQUIRY
OF THE COPYRIGHT OFFICE, LIBRARY OF CONGRESS
REGARDING STRATEGIC PLAN FOR RECORDATION OF DOCUMENTS**

Docket No. 2014-1

COMMENTS OF SOUNDEXCHANGE, INC.

SoundExchange, Inc. welcomes this opportunity to respond to the Copyright Office's Notice of Inquiry Regarding Strategic Plan for Recordation of Documents, Docket No. 2014-1, published January 15, 2014 ("NOI").

SoundExchange is the non-profit entity designated by the U.S. Copyright Royalty Board to collect royalties owed under the statutory licenses for the public performance of sound recordings via certain noninteractive digital audio transmissions (e.g., "webcasting") and the making of certain ephemeral phonorecords. See 17 U.S.C. §§ 112(e), 114; 37 C.F.R. Parts 370, 380. SoundExchange, in turn, distributes the royalties it collects to the performing artists and copyright owners of such sound recordings. SoundExchange is at the center of the ongoing digital revolution that continues to transform the music industry and is committed to working with all stakeholders, including digital audio services, recording artists, copyright owners, and the Copyright Office, to ensure that the industry continues to grow and thrive.

As the Copyright Office knows well, the music industry has been transformed like no other by the digital age. Whereas the recorded music industry once depended almost entirely on the distribution of physical products, it now depends on diverse streams of revenue from a multitude of different sources and business models: digital downloads, on-demand subscription streaming, noninteractive digital radio, and so forth. At the same time, the number of recordings being created, and generating value, is exploding, and music is being consumed more than ever before. Rights owner information and other sound recording metadata have always been important, but it is now an essential component of the ecosystem. Identifying the correct copyright owner of a track is as critical as identifying the track itself.

SoundExchange encourages the Copyright Office's efforts to re-engineer its recordation platform. The Copyright Office has an opportunity to ensure that its recordation platform plays an important part in this ecosystem, for copyright owners and users, both large and small. Specifically, the Copyright Office should (1) adopt a guided remitter responsibility model for recording documents while providing other options for recordation, (2) develop a recordation platform that is capable of accepting structured electronic documents but preserves submission options for remitters that have limited resources, (3) encourage the use of standardized registration numbers, and ISRCs for sound recordings, in recordation documents so that recordation documents may be linked easily with registration information, (4) accommodate the use of unique identifiers such as ISRCs in recordation documents so that the public can identify relevant recordation documents easily, and design a recordation platform that is compatible with Digital Data Exchange (DDEX) standards, and (5) allow third parties to facilitate the recordation process, so that content creators and owners can file recordation documents more easily. Taken together, these steps will allow the public to submit documents easily, regularly and in a more standardized manner, and to search the Copyright Office's recordation documents for the most

up-to-date and complete information about the copyright ownership of and interests in copyrighted works.

In response to the NOI's five areas of inquiry, SoundExchange makes the following comments:

I. A Guided Remitter Responsibility Model of Electronic Recordation

SoundExchange encourages the Copyright Office to develop a recordation system that is based on a guided remitter responsibility model. The types of documents subject to recordation at the Copyright Office – assignments, licenses, and security interests – generally include certain fields consistently, such as grantors, licensors, grantees, licensees, recipients, dates of grant, dates of execution, termination dates (if any), and rights at issue. Other data elements on recordation documents can also be standardized, such as the forms of corporate entities, date formats, and address formats, for example. A guided remitter model will help standardize the information provided on recordation documents. Furthermore, imposing the responsibility for accuracy on remitters (as opposed to Copyright Office staff) represents a reasonable accommodation between perfect accuracy and cost containment. In order for the repository of recordation documents to be valuable to the public, the efficiencies derived from a guided remitter model should reduce the fees for recordation so that parties are encouraged to submit documents for recordation.

The Copyright Office should consider the input format for ingesting recordation documents and the manner in which it can validate the remitter's information at the point of submission. If the Copyright Office implements a user portal through which users can input the guided remitter data, then the Copyright Office should provide a validation response that allows the user to confirm that any changes made by the Copyright Office's system for the purpose of standardization are correct. If the user uploads documents, the system should provide immediate feedback on whether it contains the expected data elements.

When developing a guided remitter responsibility model for recordation, the Copyright Office should have plans to address false or otherwise incorrect recordations by third parties and inadvertent mistakes made by legitimate remitters. The Copyright Office should collect electronic email information of copyright owners at the time of registration (and provide copyright owners a mechanism to update email addresses as needed) in order to notify them as soon as possible that documents pertaining to their works have been submitted for recordation. Furthermore, the Copyright Office should allow copyright owners to make corrections to their recordation documents both before the Copyright Office processes the recordation and afterwards (in order to maintain a simple, clean chain of title), and to alert Copyright Office recordation staff of incorrectly recorded documents, for which staff specialists can rectify the matter quickly and efficiently. The NOI notes that staff specialists will continue to perform targeted spot checks of documents, which should be directed to instances in which false or otherwise incorrect recordations seem possible.

Not all parties will have the volume of recordation submissions or resources to submit documents electronically via a guided remitter model. While a guided remitter model will bring significant improvements over the existing process of recordation, the Copyright Office should

nevertheless continue to provide other options for recordation that make it available to all interested parties.

II. Structured Electronic Documents

The Copyright Office should be capable of accepting (but should not require) structured electronic documents. These are documents whose logical structure adheres to a defined schema, and which utilize an embedded markup language (like HTML or XML) that can be interpreted and presented in various ways across a variety of platforms. These documents not only can contain metadata about the work that is subject to recordation, but also carry metadata about the parties to the recordation action, as well as the action itself. Such documents increase the likelihood that parties will submit key recordation information in a standardized format. As the use in private industry of structured electronic documents increases, the Copyright Office should be prepared to accept those documents and draw out the indexed information so that the public can perform searches using that information easily and effectively. The Copyright Office may wish to consider a system that automatically assigns a unique identifier to each party that submits recordation documents so that the party can embed that same identifier in subsequent documents that it submits to the Copyright Office. Such identifiers would ensure that a party's name is standard across all documents, notwithstanding occasional deviations in how the party's name is represented in documents.

If the Copyright Office decides to adopt structured electronic document standards, it should make these standards voluntary. Many copyright owners simply do not have the resources or IT infrastructure to submit structured electronic documents, and while we applaud the Copyright Office's interest in developing a state-of-the-art recordation system, it is equally important that the improved system be accessible to all types of copyright owners.

III. Linking of Document Records to Registration Records

The Copyright Office specifically asks whether it should require by regulation that document remitters provide registration numbers in a standardized format for all registered works to which their documents pertain. SoundExchange encourages the Copyright Office's interest in collecting standardized registration numbers in recordation documents¹; and as discussed further below in Section IV, using International Standard Recording Codes (ISRCs) may also facilitate the linking of recordation documents to registration records. Linking recordation documents to registration records would clearly help identify the current owner of copyrighted works in order to obtain licenses or pay royalties to the correct owner. For example, under the statutory license, SoundExchange distributes royalties to the copyright owners for the digital audio transmission of sound recordings, so it is vital that SoundExchange has current data of copyright ownership in sound recordings. Linking registration and recordation documents would facilitate that purpose and have additional benefits to the public.

¹ SoundExchange does not recommend that the Copyright Office require that all recorded documents refer to a registration number. Copyright owners may wish to record a document against a copyrighted work that has not been registered with the Copyright Office, or some works may not have registration numbers that are readily available.

Linking registration and recordation documents will also allow the public to connect current ownership information with other metadata about sound recordings that copyright owners submitted at the point of registration. As SoundExchange discussed in its comments to last year's Notice of Inquiry Regarding Technological Upgrades to Registration and Recordation Functions (Docket No. 2013-2), the Copyright Office should collect at the point of copyright registration, on a voluntary basis, the names and International Standard Name Identifier (ISNI) codes of the parties who contributed to the creation of the work.² The Copyright Office should also collect additional data elements for sound recordings at the point of registration. As SoundExchange stated in its previous comments, the Copyright Office should make it possible for copyright owners to input on the registration certain factual information about the creation of the recording, including, for example, (i) the territory of fixation, (ii) the performers on the recording and their country of residence, and (iii) the producer who facilitated the production of the recording. In addition to the elements currently collected at the point of registration (such as the year of the recording's creation and the copyright claimants), each of these elements helps to identify the recording and the parties to the recording and is critical to the identification and protection of sound recordings, both in the United States and particularly abroad. Connecting recordation documents to the metadata collected at the point of copyright registration would have value for both copyright owners and users.

IV. Use of Standard Identifiers and Other Metadata Standards

To ensure that its records are of maximum value, the Copyright Office should facilitate the collection of industry-standard unique identifiers, such as ISRCs, and should ensure that its recordation platform is compatible with the applicable Digital Data Exchange (DDEX) standards for exchanging information between databases. ISRCs have become the standard within the recording industry to identify tracks. Record labels use ISRCs to identify their recordings and incorporate them into the metadata of their recordings that they provide to their digital partners. As examples, Apple's iTunes store requires an ISRC for each sound recording in order to make that recording available for sale to the public, and SoundExchange collects ISRCs from sound recording copyright owners in order to identify accurately their recordings for the purposes of distributing streaming royalties properly. Likewise, digital music services frequently report ISRC information to sound recording copyright owners when they report their usage under direct licenses in order to identify the sound recordings they have streamed.

The Copyright Office should be able to collect, but not require,³ ISRCs at the point of recordation of documents related to sound recordings because it will make the Copyright Office's

² ISNI is an ISO standard that provides for the unique identification of parties to the creation of sound recordings as well as other works, whether those parties are individuals, music groups, record labels, or the like. Compared to ISRC, it is a relatively new standard, but it will become increasingly useful as it is adopted, not only for sound recordings but for a wide cross-section of copyrightable works. Although there are other identifier regimes for performers and other artists, ISNI is the only standard sanctioned by the ISO for identifying such persons and entities.

³ As SoundExchange noted with respect to registration in its comments to last year's Notice of Inquiry Regarding Technological Upgrades to Registration and Recordation Functions (Docket No. 2013-2), the Office should not require ISRCs when remitters record documents relating to sound recordings. Rather, the use of ISRCs during recordation should be voluntary. In the record industry today, many versions of a

records more useful. Collecting ISRCs at the point of recordation will allow the public to identify the current owners of specific sound recordings even when registration numbers are not available for searching or when searching sound recording titles yields ambiguous results. Collecting and incorporating ISRCs would also be an additional step toward making ISRC numbers known and used more widely, thus enabling accurate use and greater reliance on ISRCs within the copyright community. If the Copyright Office collects ISRCs at the point of recordation, then the public can use ISRCs as a defined connection point between third party databases and the Copyright Office's records. The public will be able to search the Copyright Office's databases more easily for the specific records they are seeking, connecting information in the marketplace with information available in the Copyright Office's records. This, in turn, strengthens the public's trust in and reliance on the Copyright Office as a repository of valuable information.

The Copyright Office should also ensure that its recordation platform is compatible with applicable DDEX standards for exchanging information between databases. DDEX is a standards-setting organization that was formed to design standardized message formats for the exchange of metadata. While DDEX's Electronic Release Notification (ERN) Message Suite Standard (which enables the communication by record labels of metadata about releases, such as artist name, album name, track names, ISRCs, release dates, etc.), is not designed for the purposes of copyright recordation, the DDEX working group could define a profile for use with the Copyright Office's databases that would communicate those data fields that the Copyright Office needs. The Copyright Office would not be charged with the task of developing this new protocol. Instead, the Copyright Office need only make plans for its platform to be capable of receiving and processing the data that flows through the messages, which may entail implementing support of the choreography of message delivery and receipt acknowledgement as described by the ERN standard protocol, or whichever standard is deemed appropriate by the DDEX community in consultation with the Copyright Office.

V. Incentives for Recordation

The Notice of Inquiry also invites comments on how to encourage the recordation of documents with the Copyright Office. While SoundExchange does not suggest any statutory changes, we emphasize the importance of increasing public access to the Copyright Office by making it easier for copyright owners to provide data about their works. This may be done, in part, by allowing third parties to funnel copyright recordation documents to the Copyright Office.

As with its registration platform, the Copyright Office should design its recordation platform to allow third parties to submit recordation documents on behalf of copyright owners. Copyright owners are already conditioned to provide information about their works to third parties such as performance rights organizations, licensing collectives and other commercial databases. Enabling copyright owners to submit documents for recordation at the same time they are submitting their rights ownership data to third parties would make the recordation process substantially easier and would therefore increase the number of recorded documents. This would further the aims of the Copyright Office to develop a more comprehensive repository of

particular sound recording can be released; as a result, the number of ISRC codes associated with a sound recording can be quite large and can change over time, both before and after a transfer in copyright ownership of a particular sound recording.

information about copyrighted works. It would also particularly benefit the segment of the creative industry that has limited resources to submit recordation documents for their works, such as smaller labels, independent artists and other entities that do not have formal recordation procedures in place. Ultimately, as recordation becomes easier, the records of the Copyright Office would become more comprehensive and therefore more valuable to the public.

SoundExchange is mindful of the risks of false or otherwise incorrect recordations that may arise as third parties facilitate the submission of recordation documents. As discussed in Section I above, safeguards should be in place to address those risks, including electronic notifications to copyright owners when documents pertaining to their works have been submitted for recordation, data validation sequences at the point of submission, and account registration of third parties that submit recordation documents on behalf of copyright owners.

As the Copyright Office considers the design of its new platform, it should also strive for an architecture that yields the greatest feasible degree of interoperability with third party systems. To this end, the Copyright Office should strongly consider the implementation of well-defined web services/APIs⁴ to facilitate the automated flow of data between the Copyright Office and external users. Such an implementation would have a number of benefits, both to copyright owners and those who utilize copyrighted works. Copyright owners could use these methods to notify the Copyright Office of new recordation documents and deliver the identifiers and reference metadata the Copyright Office would collect when recording a document (as well as any necessary information about the registrants themselves). These interfaces would allow the Copyright Office to alert copyright owners of any inconsistencies, missing or invalid data elements, and other potential issues with their submissions. Copyright owners could also use these tools to query the recordation system for the current status of the ownership of copyrighted works and any other information that the Copyright Office sees fit to expose.

A greater degree of interoperability also benefits other entities within the copyright ecosystem. Rights management organizations and other data aggregators could utilize APIs in order to learn about the ownership of copyrighted works, either by generating a request to the Copyright Office that initiates a response containing the relevant information, or by subscribing to a data feed maintained by the Copyright Office that notifies subscribers when new recordation documents are successfully ingested into its systems. Finally, third party developers and other services could utilize these APIs in support of new and innovative applications for collecting and disseminating information regarding copyrighted content across the supply chain.

Fundamentally, we wish to emphasize the importance of facilitating the public's ability to use the Copyright Office's records, including supporting the automated recordation of documents and subsequent feedback, performing one-off data requests, and using such records to build comprehensive third party databases that address the needs of the community of copyright owners and users. Allowing information to move more easily through the copyright community will

⁴ An API is a set of protocols that specify how software components should interact with one another. These interactions can include ways in which data is transmitted between systems, methods by which information is provided to a user interface, and how user actions should be handled and processed.

ultimately encourage innovation in accessibility and licensing of copyrighted works, for and by actors both large and small.

VI. Conclusion

SoundExchange would welcome the opportunity to discuss these comments further and to provide any assistance that we can. Rights owner information and other metadata is a critical part of the music industry today, and the Copyright Office can play a core role in encouraging creators to collect and publish critical identification information about the ownership of their recordings. In developing its recordation system, we urge the Copyright Office to (1) adopt a guided remitter responsibility model for recording documents while providing other options for recordation, (2) develop a recordation platform that is capable of accepting structured electronic documents but preserves submission options for remitters that have limited resources, (3) encourage the use of standardized registration numbers, and ISRCs for sound recordings, in recordation documents so that recordation documents may be linked easily with registration information, (4) accommodate the use of unique identifiers such as ISRCs in recordation documents so that the public can identify relevant recordation documents easily, and design a recordation platform that is compatible with DDEX standards, and (5) allow third parties to facilitate the recordation process, so that content creators and owners can file recordation documents more easily. Collectively, developing a platform based on these principles will increase the use and value of the Copyright Office's records.

Respectfully submitted,

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