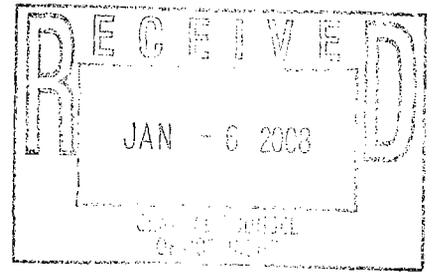


DOCKET NO.
RM 2000-7
COMMENT NO. 3

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



In the Matter of)
)

Compulsory License for Making and)
Distributing Phonorecords, Including)
Digital Phonorecord Deliveries)
)

Docket No. RM 2000-7

COMMENTS OF SESAC, INC.

SESAC, Inc. ("SESAC") hereby submits its comments in response to the announcement dated October 22, 2008, by the Copyright Office (the "Office") of an interim regulation, effective December 8, 2008, "to clarify the scope and application of the Section 115 compulsory license to make and distribute phonorecords of a musical work by means of digital phonorecord deliveries." 73 Fed. Reg. 66173 (November 7, 2008).

Founded in 1930, SESAC is the second oldest and fastest growing United States performing rights organization ("PRO"). It represents thousands of American songwriters, composers, lyricists and music publishers and more than a quarter of a million musical works. SESAC licenses the nondramatic public performance of such musical works in its repertory within the United States, and distributes to its affiliates royalties from the license fees paid by music users, including, for example, television and radio stations, online services, nightclubs, and live concert venues. Through reciprocal agreements with various foreign PROs, SESAC also

represents the rights of foreign songwriters and music publishers whose musical works are publicly performed in the United States.

SESAC noted initially in its Comments to the Copyright Office's Notice of Proposed Rulemaking (the "Notice"), submitted August 28, 2008, that its paramount concern here is to ensure that the separate and independent right of public performance in such works is not adversely affected in the course of this proceeding, which addresses only the Section 115 compulsory mechanical license as it relates to digital phonorecord deliveries ("DPDs"). The Office acknowledged in the Notice the specific and limited scope of its authority here under Section 115: "to administer the compulsory license . . . insofar as the Register is to prescribe by regulation requirements for the compulsory licensee's Notice of Intent to Obtain a Compulsory License . . . , and to issue regulations establishing requirements for the payment of royalties and governing statement of account submitted by compulsory licensees." SESAC appreciates the Office's determination to limit the ambit of this proceeding accordingly, and not opine on the relative values of these separate and independent rights implicated in a given transmission, a determination that the marketplace should be allowed to make without governmental direction.

Current law clearly allows for the fact that a given digital transmission can implicate both the mechanical rights in a DPD and the public performance rights in an underlying musical work. Section 115(d) states that a digital transmission of a sound recording constitutes a DPD "regardless of whether the digital transmission is also a public performance of . . . any nondramatic musical work embodied therein." Moreover, the Office has promulgated 37 C.F.R. § 255.8, which states that "nothing in this part annuls or limits the exclusive right to publicly perform a . . . musical work . . . , including by means of a digital transmission, under 17 U.S.C. 106(4)."

SESAC appreciates the Copyright Office's reiteration of this critical point by incorporating the above-referenced statutory language of Section 115(d) into the interim regulation's new paragraphs 37 C.F.R. §§ 201.18(a)(3) and 201.19(a)(3), and by maintaining that language in 37 C.F.R. § 255.4.

Respectfully submitted,

SESAC, INC.



John C. Beiter
Zumwalt, Almon & Hayes, PLLC
1014 16th Avenue South
Nashville, Tennessee 37212
Phone: (615) 256-7200
Fax: (615) 256-7106

Dated: January 5, 2009