

Before
The Copyright Office
Library of Congress

In the Matter of)	
)	
Electronic Filing in the Copyright Office)	Docket No. RM 2012-4
of Notices of Intention to Obtain a)	
Section 115 Compulsory License)	

Comments of Public Knowledge

Kara Novak
Jodie Griffin

PUBLIC KNOWLEDGE
1818 N St. NW
Suite 410
Washington, DC 20036
(202) 861-0020

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INTRODUCTION AND SUMMARY

The compulsory licensing provisions codified in 17 U.S.C. §115 allow copyright owners to benefit from their nondramatic musical works while helping parties who wish to use the works to receive licenses with minimal transaction costs. Public Knowledge (PK) applauds the Copyright Office (the Office) for implementing an electronic filing system for Notices of Intention (Notices) to license multiple nondramatic musical works by unknown copyright owners. In this digital age, electronic processes eliminate the burdens and expense of paper filings, further minimizing transaction costs of potential licensees and the Office, in addition to decreasing processing times and increasing public access to records.

The Register of Copyrights has acknowledged that there is no debate that the Section 115 process needs reforming for the music industry to flourish in the digital age.¹ Therefore, the Office should take additional steps to modernize and improve the functionality of the Section 115 Notice process. First, the Office should also allow electronically filed Notices for one nondramatic musical work. In addition, upgrading the electronic payment system to authenticate licensee and payment information without requiring licensees to maintain a deposit account will further simplify the compulsory license process and enable less-frequent users to benefit from the electronic process. Finally, implementing a searchable Notice database as soon as possible will benefit both copyright owners and the Office by minimizing transaction costs in accord with Congressional intent.

¹ The Register of Copyrights before the Subcomm. on Intellectual Property, Comm. on the Judiciary, 109th Cong. (2005) (statement of Marybeth Peters, Register of Copyrights), *available at* <http://www.copyright.gov/docs/regstat071205.html>.

DISCUSSION

I. Allowing Prospective Licensees to Electronically File Notices of Intention for Multiple Nondramatic Musical Works is an Important Step Toward Improving the Compulsory Licensing Process Under Section 115.

Public Knowledge applauds the Copyright Office for realizing the ever-growing need for an electronic filing system and implementing such a system to file certain Notices of Intention with the Office under Section 115. The Office recognizes the need for an electronic filing system because of the “large number” of works with unknown copyright owners.² Over time, it may not be possible to contact copyright owners of older works—meaning that more licensees could be filing with the Office than ever before. The compulsory licensing provisions allow copyright owners “to enjoy the fruits of their [works], but not to fence them off from the world at large.”³ Congress also implemented the provisions to grant users access to nondramatic musical works without lengthy negotiations or unreasonable costs.⁴ One of the best ways to ensure that copyright owners receive royalties and licensees are able to use musical works is to modernize and simplify the Section 115 compulsory license notice and payment process.

² Electronic Filing in the Copyright Office of Notices of Intention To Obtain a Section 115 Compulsory License, 77 Fed. Reg. 102, 31238 (proposed May 25, 2012), available at <http://www.gpo.gov/fdsys/pkg/FR-2012-05-25/pdf/2012-12652.pdf> (hereinafter Proposed Rules).

³ *Bridgeport Music, Inc. v. Dimension Films*, 410 F.3d 792, 800 (6th Cir. 2005).

⁴ Record producers, who seek numerous nondramatic musical work licenses, explained that “records today are the principal means of disseminating music, and this creates special problems, since performers need unhampered access to musical material on nondiscriminatory terms. Historically, the record producers pointed out, there were no recording rights before 1909 and the 1909 statute adopted the compulsory license as a deliberate anti-monopoly condition on the grant of these rights.” H.R. REP. NO. 90-83, at 66 (1967).

As PK has explained before,⁵ allowing licensees to submit electronic notices will be easier, more efficient, and more affordable than using paper copies for both the licensees and the Copyright Office. Licensees that file Notices regarding multiple nondramatic musical works with the Office will no longer face the time and expense associated with submitting paper notices and will no longer need to specially contact the Office to make special arrangements when paper notices are not practicable.⁶ Instead, those licensees will now benefit from the simplicity of electronic filing that, until recently, only licensees who filed Notices electronically at the discretion of known copyright owners or agents experienced.⁷ PK applauds the implementation of the electronic filing system for Notices because this move will make it easier and more cost effective for licensees of multiple nondramatic musical works with unknown copyright owners to file with the Office—hopefully promoting additional use of, and fruits from, musical works.

II. The Copyright Office Should Also Permit Electronically-Filed Notices of Intention for One Nondramatic Musical Work and Upgrade Payment Options to Bring the Benefits of Electronic Filing to All Prospective Licensees.

Prospective licensees may wish—and have the right—to acquire a compulsory license for only one nondramatic musical work under Section 115.⁸ For this reason and because of the efficiency of online processing, the Office should allow licensees requesting a license for a single nondramatic musical work with an unknown copyright owner to electronically file Notices.

⁵ See MICHAEL WEINBERG ET AL., PUBLIC KNOWLEDGE, A COPYRIGHT OFFICE FOR THE 21ST CENTURY: RECOMMENDATIONS TO THE NEW REGISTER OF COPYRIGHTS (2010), available at http://www.publicknowledge.org/copyright-office-21st-century#_ftnref (hereinafter A COPYRIGHT OFFICE FOR THE 21ST CENTURY).

⁶ Proposed Rules at 31238.

⁷ 37 C.F.R. §201.18(a)(7).

⁸ See, e.g., 17 U.S.C. §§115(a)(1), (b)(1), (c)(4).

It seems that one of the reasons why the Office will not currently allow licensees to electronically file Notices for one work stems from the Office's insufficient online payment system, which cannot receive electronic signatures or credit card payments.⁹ As a result, licensees must maintain a deposit account with the Office to file electronically, while deposit accounts are only available for licensees who have twelve or more transactions per year and are willing to maintain a minimum balance of \$450.00 in the account.¹⁰

The Copyright Office should hasten to build the capacity to authenticate licensees and receive payment information without deposit accounts. Many government agencies, and indeed, small businesses and other organizations bring in revenue by maintaining online payment systems that have the capacity to require electronic signatures and accept credit card payments. PK therefore urges the Office to work quickly to update its electronic payment system so that electronic filers of Notices for multiple nondramatic musical works may make payments more easily and so filers of Notices for only one (or a few) nondramatic musical works may file and pay electronically as well. Long-term reduced transaction costs will easily outweigh whatever expense the Office may encounter in modernizing its online systems.¹¹

III. The Public Should be Able to Search the Notices Database.

Maintaining electronically submitted Notices in a searchable database will help carry out Congressional intent to allow copyright owners to benefit from licensed uses of their works. Allowing the public to view and search Notices provides the unknown copyright owners the opportunity to come forward and claim the royalties for their works. Therefore,

⁹ Proposed Rules at 31239.

¹⁰ 37 C.F.R. § 201.6(b)(1). *See also* United States Copyright Office, Circular 5: How to Open and Maintain a Copyright Office Deposit Account 1-2, *available at* <http://www.copyright.gov/circs/circ05.pdf>.

¹¹ *See* A COPYRIGHT OFFICE FOR THE 21ST CENTURY at 10.

the Office should aim to build the technical capacity to allow the public to search the Notices database as soon as possible. In the interim, a search request to the Licensing Division¹² may get extremely, and unnecessarily, expensive. For example, the Office charges an hourly search fee of \$165.00; the search might result in a net loss for a copyright owner seeking to collect royalties for the use of a single work.¹³ Therefore, the Office should promptly implement a searchable, electronic Notice database for public use that will benefit both copyright owners and the Office by minimizing transaction costs.

CONCLUSION

For the reasons above, Public Knowledge commends the Copyright Office for proposing amendments to allow electronically filed notices for multiple nondramatic musical works in the digital age and urges the Office to further improve the functionality of its electronic system to simplify the Section 115 process for licensees, copyright owners, and the Office itself.

Respectfully submitted,

/s

Jodie Griffin
Staff Attorney
PUBLIC KNOWLEDGE
1818 N St. NW
Suite 410
Washington, DC 20036
(202) 861-0020

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¹² Proposed Rules at 31239.

¹³ See Circular 4, Copyright Office Fees, at 3, available at <http://www.copyright.gov/circs/circ04.pdf>.