

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

In the Matter of:

Technological Upgrades to Registration  
And Recordation Functions

Docket No. 2013–2

The Recording Industry Association of American (“RIAA”) respectfully submits this response to the Notice of Inquiry (“NOI”) issued by the Copyright Office on March 22, 2013 concerning Technological Upgrades to Registration and Recordation Functions. The RIAA is the trade organization that supports and promotes the creative and financial vitality of the major music companies. Its members are the music labels that comprise the most vibrant record industry in the world. RIAA members create, manufacture and/or distribute approximately 85% of all legitimate recorded music produced and sold in the United States.

**Introduction**

The NOI was issued in connection with an ongoing effort by the Copyright Office (the “Office”) to identify and evaluate “potential improvements and technical enhancements to the information technology platforms that support its registration and recordation functions, including its online registration system.” 78 Fed. Reg. 17722. The NOI seeks comments from stakeholders regarding how they use the current online offerings of the Copyright Office and how they would like to interact with the Copyright Office electronically in the future. *Id.* The NOI indicates that comments are welcome on any topic germane to the inquiry and lists six questions of particular interest to the Office. These comments touch on the first four specific questions listed in the NOI and make an additional point related to fees that we believe is germane to the inquiry.

RIAA’s member companies are frequent users of the Copyright Office’s electronic registration system and, to a lesser degree, its paper recordation system. As such, they have a vested interest in changes to those systems that would increase efficiency, enhance the usefulness of the Copyright Office’s database and avoid changes to the fee structure that would put a strain on their registration budgets.

**Recommendations**

1. Allow applicants for sound recording copyright registrations to provide electronic deposit copies.
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The recording industry is undergoing a transformation from one that is primarily based on sales of physical products to one that is primarily based on digital distribution of our products. Indeed, digital sources accounted for 59% of industry revenues in 2012. Given this shift in the way music is delivered to consumers, we believe the time has come to permit (but not require) all

sound recording registration applications to be accompanied by electronic deposit copies. We recognize that this is currently permitted for recordings that are released solely in digital form (i.e., e-releases) and for registrations of pre-release recordings, but those sorts of releases are not the bread and butter of the applications filed by record labels. For all other registrations, record labels still must submit two copies of the best edition of the physical release and must do so separately from their online registration application. Permitting – but not requiring – electronic deposit copies would not only increase efficiency on the label side (i.e., by permitting label staff to complete a copyright registration application directly from their computer and to do so in one sitting), it would ease the burden on the Copyright Office, which now is required to provide storage facilities for all of the physical phonorecords submitted as deposit copies.

We note that any shift to electronic deposit copies must encompass not only the sound recordings covered by a Form SR but must also permit the simultaneous electronic submission (presumably in different electronic formats) of any text, artwork or photographs (e.g., album artwork, album booklets) published with physical phonorecords, which materials are routinely registered with sound recordings using a single application (and are the subject of a single resulting registration). To the extent that this recommendation raises logistical or other issues for the Office, the RIAA and its member labels stand ready to assist the Office in devising an appropriate protocol and drafting appropriate regulations to enable the electronic submission of deposit copies of sound recordings along with any musical works and/or any printed or visually perceptible materials covered by the same registration application.

## 2. Implement an online, electronic system for the Office’s recordation services.

As noted in the NOI, the Office’s recordation services were dropped from the initial reengineering plan for budgetary reasons. As a result, recordation processes are still paper-based, a situation the Office acknowledges is of “top concern.” 78 Fed. Reg. at 17722. At a time when virtually all business-to-business communications are carried out electronically, the inability of registrants to file transfers of copyright ownership, license agreements and other relevant documents with the Office electronically deters copyright owners from filing relevant documents with the Office. According to 17 U.S.C. 205(a), “[a]ny transfer of copyright ownership or other document pertaining to a copyright may be recorded in the Copyright Office if the document filed for recordation bears the actual signature of the person who executed it, or if it is accompanied by a sworn or official certification that it is a true copy of the original, signed document.” Given the range of documents that can be recorded with the Copyright Office (and the range of information contained in such documents), it is essential that the antiquated paper system be replaced as soon as possible with an electronic system, lest the inconvenience associated with paper filings cause important information about copyrighted works to be unavailable to the public. We recognize that it is not possible to electronically submit documents for recordation that bear actual signatures but believe that Section 205(a) already provides an acceptable alternative that will facilitate electronic submission of documents for recordation, namely inclusion of a sworn or official certification that the copy submitted is a true copy of the original, signed document.

Many different stakeholders use the Office’s database to perform research regarding the status of copyrighted works (e.g., to determine the current owner of a copyrighted work in order to seek a

license, to determine if a particular work is in the public domain). One type of research that is frequently performed using the Office's records is chain of title research. Such research may be performed by would-be purchasers of copyrighted works (whether the purchase involves a single work or a catalog of works) as part of their commercial due diligence; would-be licensees of copyrighted works may also research a work's chain of title (e.g., to ensure that there are no conflicting licenses on record).

Given the importance of the Office's records to different stakeholders for different purposes, anything that deters owners and users of copyrighted from recording relevant documents with the Office will have a negative impact on all manner of copyright-related businesses and copyright-related transactions. Unrecorded ownership transfers also contribute to the orphan works problem. To limit the number of works that end up "orphaned," the Office should be devoting whatever resources are necessary to facilitate and encourage recordation of ownership transfers, including creating a system that permits such documents to be filed with the Office electronically.

3. Adopt registration protocols based on DDEX, the music industry's standard messaging mechanism.

We agree with the comments submitted by the ISRC Agencies with respect to Copyright Office adoption of Digital Data Exchange (DDEX) messaging formats and protocols. As noted in the ISRC Agencies' comments, in order to make copyright registration as efficient as possible for RIAA's member companies and other frequent registrants of sound recordings, the Copyright Office should design its updated registration portal in a manner that will give registrants of sound recordings the option to submit registration applications in a DDEX format that would be developed for this purpose.

4. Enable capture of ISRC codes.

The RIAA endorses the detailed comments on this subject that are being filed by the ISRC Agencies.

5. Avoid changes to the way fees are structured that would put a strain on record labels' copyright registration budgets.

Although record labels have historically registered most sound recordings at the album, not the individual track, level, that practice is beginning to shift. As record distribution continues to evolve towards a singles-based business, it is likely that in the future record labels will seek to register an even larger number of sound recordings at the track level. One significant impediment to widespread track level registration of sound recordings is the financial burden it would place on registrants. Given that the average album released today includes approximately 14 tracks, the cost of registration would skyrocket if the labels were forced to pay a separate filing fee in connection with each individual track. With all of the financial pressures facing record labels today, they are simply unable to absorb an increase to their copyright registration budgets of anywhere near this magnitude.

To make track level registration of sound recordings feasible in the future, we recommend that the Office consider various options for addressing the significant financial burden this would place on sound recording registrants. Such options might include a group registration protocol modeled on those currently in place for photographs and contributions to periodicals that would make it possible to register groups of sound recordings along with any underlying musical works and any accompanying text, artwork or photographs for a single fee. However, because the nature of authorship covered by a sound recording registration is generally broader than the nature of authorship covered by most other group registration protocols, the development of an appropriate group registration protocol applicable to individual tracks (as opposed to albums) will likely require further study and thought. Other, more feasible options might include a bulk rate for high volume registrants or a discounted fee schedule applicable to track level sound recording registration applications.

In offering these suggestions, we note that a system that makes it easy to identify the specific registration number associated with a particular track (as opposed to a system where large numbers of individual recordings are covered by a single copyright registration, as would appear to be the case with a group registration option) would be far more useful for copyright owners and copyright users alike. Both groups need to be able to easily locate information included in a registration certificate and determine whether a particular recording is registered. To the extent that identifying and implementing a cost effective solution that would permit registration of large volumes of individual sound recordings requires further investigation, the RIAA and its member labels stand ready to assist the Copyright Office in such an effort.

### **Conclusion**

RIAA and its member companies thank the Copyright Office in advance for its consideration of the recommendations listed above. We would be happy to answer any follow-up questions raised by these recommendations and to participate in any working groups or advisory panels that may be formed to address these or other issues relevant to our business.

Respectfully submitted,

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/s/

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