

**IN THE MATTER OF NOTICE OF INQUIRY
OF THE COPYRIGHT OFFICE, LIBRARY OF CONGRESS
REGARDING TECHNOLOGICAL UPGRADES TO
REGISTRATION AND RECORDATION
FUNCTIONS**

Docket No. 2013–2

COMMENTS OF SOUNDEXCHANGE, INC.

SoundExchange, Inc. welcomes this opportunity to respond to the Notice of Inquiry by the Copyright Office for comments regarding Technological Upgrades to Registration and Recordation Functions, Docket No. 2013-2, published March 18, 2013 (“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 non-interactive 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.

While the scope of this Notice of Inquiry is broad, SoundExchange would like to focus its comments on two specific areas:

- I.** The critical role of *unique identifiers*, such as ISRCs and ISNIs, as well as other metadata for sound recordings, and the possibility of collecting this information as part of the copyright registration process; and
- II.** The importance of *interoperability* and *accessibility*, ensuring that the Copyright Office’s records of registration and recordation are easily accessible by the public and managed and stored in databases that are interoperable with third parties’ databases.

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. Sound recording metadata – the information about the sound recording – has always been important, but it is now an essential component of the ecosystem.

The Copyright Office has an opportunity to ensure that its registration and recordation platform serves a critical function in this ecosystem. Specifically, SoundExchange urges the

Copyright Office to collect more data than it currently does as part of the registration process, including in particular unique identifiers as well as certain factual information about sound recordings. SoundExchange also believes the Copyright Office should develop a platform based on principles of access and interoperability and provide the tools to allow third parties to integrate the Office's systems and data with their own. In particular, it would be ideal for the Office to make it simple for third party databases to draw on, and connect to, the Office's records; and to permit third parties to facilitate registration, recordation, and other procedures.

I. Unique Identifiers and Other Factual Information: ISRCs, ISNIs, and Other Metadata

To ensure that its records are of maximum value, the Copyright Office should incorporate industry-standard unique identifiers, such as International Standard Recording Codes (ISRCs) and International Standard Name Identifiers (ISNIs), as well as other factual metadata about sound recordings. While we are not asking the Copyright Office to make the provision of ISRCs and ISNIs a requirement of registration, we do think it should be an option for those copyright owners who wish to associate their registrations with these unique identifiers. We also believe that by incorporating these standards into its system, the Copyright Office will aid in their widespread adoption.

i. Enable collection of ISRCs in order to identify sound recordings

What is an ISRC? One of the most meaningful enhancements that the Copyright Office can make to its registration forms for sound recordings is to collect ISRCs. ISRC is an International Organization for Standardization (ISO) standard administered by the International Federation of the Phonographic Industry (IFPI). IFPI has designated national agencies in 50 countries worldwide to administer the ISRC regime in those territories (in territories where no such agency exists, the standard is administered by IFPI directly). In the United States, that designated agency is the Recording Industry Association of America. Each territorial body can authorize so-called *ISRC Managers* to distribute ISRCs for use by copyright owners. The Orchard, TuneCore and CD Baby are some of the ISRC Managers in the United States. Major record labels and other copyright owners may also receive ISRC registrant codes from their national agency, giving them the ability to handle the creation, distribution and registration of ISRCs for their own catalogs.

An ISRC is a unique identifier, capable of disambiguating sound recordings even when various recordings may have the same or similar titles, or even when various recordings of the same song exist as "studio," "live" or "radio edit" versions. ISRCs are persistent in that they stay with a recording through its lifespan. ISRCs are format-indifferent, so that a recording used on compact disc, vinyl and MP3 products will carry the same ISRC across all usages, regardless of the medium of conveyance. As a unique identifier, an ISRC can be used by the public to retrieve associated reference metadata from other third-party databases, such as the names of featured artists on a track, the title of the track, the version of the track, and the duration of the track. In a world of tens of millions of recordings, it is critical that each recording be associated with a unique identifier that is used as a worldwide standard. Frequently, searching by title, or even by title and artist, for a specific recording will yield ambiguous results. In many instances, a single song will be the subject of multiple recorded versions by different artists, or even by the same

artist who records live and studio versions of a song. For example, Bill Withers's "Ain't No Sunshine," in addition to having many recorded versions of his own, was also recorded by Michael Jackson, Paul McCartney, Marvin Gaye, DMX, Sting, Van Morrison, Tom Petty, and many others. In these instances, it is much easier to identify a recording by using a unique identifier. ISRCs fulfill that role, facilitating the flow of information between and among organizations within the sound recording ecosystem.

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.

Why should the Copyright Office collect ISRC information? The Copyright Office should collect ISRCs at the point of registration for sound recordings because it will make the Copyright Office's records more useful, and it will be an additional step toward making ISRC numbers known more widely, thus enabling accurate use and greater reliance on ISRCs within the copyright community.

In its Notice of Inquiry, the Copyright Office has shown an interest in understanding how its records may benefit the copyright community. If the Copyright Office collects ISRCs at the point of registration, 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. As with any field, cross referencing data from multiple sources will facilitate new insights and spur more innovations than can be imagined. On the other hand, if the Copyright Office does not collect ISRC information, the public will have difficulty engaging in the productive and efficient utilization of the Copyright Office's records regarding sound recordings.

Collection of ISRC information by the Copyright Office will also encourage accurate use of ISRCs. While the recording industry has made ISRCs the standard for uniquely identifying recordings, their use by others within the copyright ecosystem should be expanded. As an example of the critical importance of ISRCs, digital music services that rely on the statutory licenses that SoundExchange administers are required under federal regulations to identify the tracks that they perform each month, so that SoundExchange may distribute their royalty payments to the proper artists and record labels. The track identification rules require services to provide the sound recording title and the ISRC for that recording or, alternatively to the ISRC, the album title and marketing label. ISRCs, if provided correctly, would be a much more efficient means for identifying a track, given that services generally do not report album titles and marketing labels in a consistent manner and that there are many similar sound recording titles that

have been released. However, the percentage of tracks reported to SoundExchange for which the services provide correct ISRCs is woefully low. When SoundExchange receives faulty reporting information from services, it must take time to clean and complete that data so that the royalties are distributed to the proper parties. This expenditure of time and resources can cause delays and increase costs in royalty distribution. Accurate and complete reporting information, buttressed by correct ISRCs that properly identify sound recordings, allows SoundExchange to move royalty payments from digital music services into the hands of artists and copyright owners more efficiently, which in turn facilitates the continued efforts of artists to develop their creative works.

ISRCs have become a critical standard for the proper identification of sound recordings. In an industry where tens of millions of recordings have been produced, millions of which retain material commercial value, it is imperative that copyright owners and copyright users can use ISRCs to refer with confidence to specific recordings. Collecting ISRCs would allow the Copyright Office to participate meaningfully in that environment, making its records easily accessible by third parties, which in turn will facilitate the creation, distribution and consumption of creative works that are a critical component of the culture and economy of the United States.

ii. Enable collection of ISNIs in order to identify performing artists and other parties

As with ISRCs, the Copyright Office should collect at the point of copyright registration the names and International Standard Name Identifier (ISNI) codes of the parties who contributed to the creation of the work. 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. ISNIs uniquely and authoritatively identify the public identities of the parties to a work, helping both to consolidate the variations in spelling of a person's or entity's name and to disambiguate the identities of persons or entities with the same or similarly spelled name. ISNIs also serve a vital role as a public layer above proprietary party identification systems. That is, an ISNI allows entities within a creative ecosystem to exchange information about a party without having to disclose confidential information about that party.

Collecting ISNIs at the point of copyright registration would have value for both copyright owners and users. ISNIs are a standardized means for identifying those who participate in the creation of sound recordings, including those who might have an ongoing interest in the sound recording even if they no longer own (or never owned) the copyright in the sound recording. In the United States and many other jurisdictions, performers and producers are afforded rights of remuneration that are independent from the bundle of rights within copyright. For example, under the statutory license that SoundExchange administers for the digital audio transmission of sound recordings, artists receive 50 percent of the royalties that digital music services pay, compensation that is distinct from the royalties accorded to copyright owners for those transmissions. Collecting ISNIs on the copyright registration will help to identify all the stakeholders in a standardized format and will ensure that royalties accrue to the correct parties. Further, as with ISRCs, ISNIs will serve as another defined connection point that will allow the Office's database to work with other databases based on the identification of performers.

For copyright users, ISNIs can be useful in identifying whom to contact in order to obtain permission to use a work. Indeed, license management is touted by the International ISNI Agency (“ISNI-IA”) as a fundamental purpose of ISNIs. ISNI-IA notes that ISNIs will “facilitate reliable royalty management services across all repertoires and throughout the value chain.” See <http://isni.org/about>. As the Copyright Office grapples with the problems associated with orphan works, ISNIs can help prevent those problems from arising with future works.

iii. Enable collection of additional metadata for sound recordings

In addition to ISRCs and ISNIs, the Copyright Office should collect additional data elements for sound recordings at the point of registration. In particular, 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 (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 protection of sound recordings, both in the United States and particularly abroad. The Copyright Office should encourage those with an economic interest in sound recordings to gather and report that information in their copyright registrations, so that there is maximum clarity about the rights attached to each sound recording.

In the case of the territory of fixation, identity and country of residence of the performers, and the year of the recording, those elements will help to facilitate the flow of royalties among content users, collecting societies, and artists and copyright owners, both domestically and abroad. It is also important to note the difference between identifying the performers and producers, on the one hand, and the copyright owner on the other hand. Whereas the copyright owner of a recording can change over time as catalogs are bought and sold, the names of the performers and producers do not. As with ISNIs, including performer and producer information would help to ensure that royalties accrue to the correct parties under the rights of remuneration that are available to performers and producers and that are independent from the bundle of rights within copyright in the United States and many other jurisdictions.

II. Interoperability and Accessibility of Copyright Office Records

As we note above, accurate identification of works is not fully meaningful without the public’s ability to access that identifying information. Accordingly, we recommend incorporating user-friendly application program interfaces (APIs) and automated submissions into the platform, and we recommend following the Digital Data Exchange (DDEX) standard for the exchange of metadata about sound recordings. We also emphasize the importance of increasing public access to the Copyright Office by making it easier for registrants to provide data about their works. This may be done, in part, by allowing third parties to funnel copyright registration applications to the Copyright Office.

i. Increase interoperability of registration and recordation platform for public use

As the Copyright Office considers the design of its new platform, it should 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/APIs 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 registrations and deliver the identifiers and reference metadata the Copyright Office would collect when registering a work (as well as any necessary information about the registrants themselves). These interfaces would allow the Copyright Office to alert registrants of any inconsistencies, missing or invalid data elements, and other potential issues with their submissions that would prevent their acceptance, and also provide updates on changes in the status of a particular registration. Copyright owners could also use these tools to query the registration system for the current status of previously submitted 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 newly 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 works 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.

SoundExchange does not make any specific recommendations here regarding technology choices or implementation-specific activities for increasing interoperability. Instead we wish to emphasize the importance of facilitating the public's ability to use the Copyright Office's records, including supporting the automated registration of works 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 ultimately encourage innovation in accessibility and licensing of copyrighted works, for and by actors both large and small.

ii. Adopt DDEX standards in order to exchange information between databases

As the Copyright Office develops its new platform, it should ensure that its databases are compatible with the applicable Digital Data Exchange (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. In particular, DDEX has developed a series of XML-based standards for the communication of sound recording and audio/visual asset metadata between record companies, music rights societies and online retailers. Among these standards is the Electronic Release Notification (ERN) Message Suite Standard, which enables the communication by record labels of metadata about releases (e.g. artist name, album name, track names, ISRCs, release dates, etc.).

DDEX's ERN standard is currently the standard most widely used by the sound recording copyright community for the exchange of metadata information. It benefits from substantial

adoption already by the copyright community, and this standard is expected to be used even more widely in the future. While the ERN standard currently provides for the transfer of more information than is needed for the purposes of copyright registration (such as licensing deal terms in certain instances), the DDEX working group could define a profile for use with the Copyright Office's databases that would limit the standard to those fields that the 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 ERN 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. Because the ERN standard supports the use of web services to transmit messages between parties, this could be one application of the interoperability capabilities described above (though it should be noted that the Copyright Office would likely also need to implement the FTP transmission model, in order to serve those copyright owners who are unable to support the use of this service-oriented approach).

Regardless of the means by which the messages are conveyed, it is the adoption of the standard by the Copyright Office that will yield the most immediate benefit to participants in the copyright value chain. The DDEX standard not only provides a syntactically robust framework for representing sound recording metadata, it also defines a semantic treatment of the various data elements. This clear, shared understanding of the intent of each of the message elements (as captured by the DDEX data dictionary and comprehensive schema documentation) ensures that users can apply their metadata to the standard in a uniform fashion, and that organizations undertaking DDEX implementations with a large number of partners can streamline their integrations and avoid costly and time-consuming customization work. The value derived from the combination of robust structure, consistent treatment of data elements, and widespread usage throughout the sound recording and audio/visual copyright community should encourage the Copyright Office's adoption of the DDEX standards.

iii. Expand the methods and channels for registrants to provide data about their works.

As another general principle, the Copyright Office should consider making it easier for registrants to register their works and to provide data about their works. This means that not all data fields that we propose here should be required in order to obtain copyright registrations, because supplying such information may be easier for parties with greater resources than for others. It also means that the Copyright Office should embrace an "open arms" policy for all, and allow for a broad range of technical capabilities among interested parties. For example, the Copyright Office should provide alternatives for parties to submit data, such as accepting data submissions via XML web services from larger entities, supporting the use of flat file templates submitted via FTP or other direct upload, and providing an online portal for manual input by smaller entities and individuals.

The Copyright Office should also design its registration and recordation platform to allow third parties to submit applications for registration 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 obtain copyright registrations at the same time they are submitting their

repertoire data to third parties would make the registration process substantially easier and would therefore increase the number of registrations. This would further the aims of the Copyright Office to develop the most comprehensive repository of copyrighted works possible. It would also particularly benefit the segment of the creative industry that has limited resources to seek copyright registrations of their works, such as smaller labels, independent artists and other entities that do not have formal registration procedures in place. Ultimately, as registration becomes easier, the records of the Copyright Office would become more comprehensive and therefore more valuable to the public.

III. Conclusion

SoundExchange would welcome the opportunity to discuss these comments further and to provide any assistance that we can. Metadata is a critical part of the music industry today, and the Office can play a core role in encouraging creators to collect and publish critical identification information about their recordings. In developing its systems, we urge the Copyright Office to focus on the following principles: improving access to standardized data, encouraging the collection of data that identifies the sound recording as well as those involved in its creation, ensuring interoperability with third party databases and registries, and making it easier for copyright owners to register. Collectively, developing a platform based on these principles will increase the use and value of the Copyright Office's records, spur innovation in how the public utilizes registration information, and ensure that copyright in general continues to fuel the creation, dissemination and use of creative works.

Respectfully submitted,

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