musiclicensingstudy
http://www.copyright.gov/docs/search.cfm

The Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The form and face of the comments must include both the name of the submitter and organization. The Office will post the comments publicly on the Office’s Web site in the form that they are received, along with associated names and organizations. If electronic submission of comments is not feasible, please contact the Office at 202–707–8350 for special instructions.

FOR FURTHER INFORMATION CONTACT: Jacqueline C. Charlesworth, General Counsel and Associate Register of Copyrights, by email at jcharlesworth@loc.gov or by telephone at 202–707–8350; or Sarang V. Damle, Special Advisor to the General Counsel, by email at sdam@loc.gov or by telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION:

[FR Doc. 2014–05758 Filed 3–14–14; 8:45 am]
BILLING CODE 4510–FN–P

LIBRARY OF CONGRESS
Copyright Office
[Docket No. 2014–03]
Music Licensing Study: Notice and Request for Public Comment

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of Inquiry.

SUMMARY: The United States Copyright Office announces the initiation of a study to evaluate the effectiveness of existing methods of licensing music. To aid this effort, the Office is seeking public input on this topic. The Office will use the information it gathers to report to Congress. Congress is currently conducting a review of the U.S. Copyright Act, 17 U.S.C. 101 et seq., to evaluate potential revisions of the law in light of technological and other developments that impact the creation, dissemination, and use of copyrighted works.

DATES: Written comments are due on or before May 16, 2014. The Office will be announcing one or more public meetings to address music licensing issues, to take place after written comments are received, by separate notice in the future.

ADDRESSES: All comments shall be submitted electronically. A comment page containing a comment form is posted on the Office Web site at http://www.copyright.gov/docs/musiclicensingstudy. The Web site interface requires commenting parties to complete a form specifying their name and organization, as applicable, and to upload comments as an attachment via a browser button. To meet accessibility standards, commenting parties must upload comments in a single file not to exceed six megabytes (MB) in one of the following formats: The Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The form and face of the comments must include both the name of the submitter and organization. The Office will post the comments publicly on the Office’s Web site in the form that they are received, along with associated names and organizations. If electronic submission of comments is not feasible, please contact the Office at 202–707–8350 for special instructions.

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SUPPLEMENTARY INFORMATION:
I. Background

Congress is currently engaged in a comprehensive review of the U.S. Copyright Act, 17 U.S.C. 101 et seq., to evaluate potential revisions to the law in light of technological and other developments that impact the creation, dissemination, and use of copyrighted works. The last general revision of the Copyright Act took place in 1976 (“Copyright Act” or “Act”) following a lengthy and comprehensive review process carried out by Congress, the Copyright Office, and interested parties. In 1998, Congress significantly amended the Act with the passage of the Digital Millennium Copyright Act (“DMCA”) to address emerging issues of the digital age. Public Law 105–304, 112 Stat. 2860 (1998). While the Copyright Act reflects many sound and enduring principles, and has enabled the internet to flourish, Congress could not have foreseen all of today’s technologies and the myriad ways consumers and others engage with creative works in the digital environment. Perhaps nowhere has the landscape been as significantly altered as in the realm of music.

Music is more available now than it has ever been. Today, music is delivered to consumers not only in physical formats, such as compact discs and vinyl records, but is available on demand, both by download and streaming, as well as through smartphones, computers, and other devices. At the same time, the public continues to consume music through terrestrial and satellite radio, and more recently, internet-based radio. Music continues to enhance films, television, and advertising, and is a key component of many apps and video games. Such uses of music require licenses from copyright owners. The mechanisms for obtaining such licenses are largely shaped by our copyright law, including the statutory licenses under Sections 112, 114, and 115 of the Copyright Act, which provide government-regulated licensing regimes for certain uses of sound recordings and musical works. A musical recording encompasses two distinct works of authorship: the musical work, which is the underlying composition created by the songwriter or composer, along with any accompanying lyrics; and the sound recording, that is, the particular performance of the musical work that has been fixed in a recording medium such as CD or digital file. The methods for obtaining licenses differ with respect to these two types of works, which can be—and frequently are—owned or managed by different entities.

Songwriters and composers often assign rights in their musical works to music publishers and, in addition, affiliate themselves with performing rights organizations (“PROs”). These intermediaries, in turn, assume responsibility for licensing the works. By contrast, the licensing of sound recordings is typically handled directly by record labels, except in the case of certain types of digital uses, as described below.

Musical Works—Reproduction and Distribution. Under the Copyright Act, the owner of a musical work has the exclusive right to make and distribute phonorecords of the work (i.e., copies in which the work is embodied, such as CDs or digital files), as well as the exclusive right to perform the work publicly. 17 U.S.C. 106(1), (3). The copyright owner can also authorize others to engage in these acts. Id. These rights, however, are typically licensed in different ways.

The right to make and distribute phonorecords of musical works (often referred to as the “mechanical” right) is subject to a compulsory statutory license under Section 115 of the Act. See generally 17 U.S.C. 115. That license—instituted by Congress over a century ago with the passage of the 1909 Copyright Act—provides that, once a phonorecord of a musical work has been distributed to the public in the United States under the authority of the copyright owner, any person can obtain a license to make and distribute phonorecords of that work by serving a statutorily compliant notice and paying the applicable royalties. Id.

In 1995, Congress created a copyright owner’s exclusive right to reproduce and distribute phonorecords of a musical work, and the Section 115 license, extend to the making of “digital phonorecord deliveries” (“DPDs”)—that is, the transmission of digital files embodying musical works. See Digital Performance Right in Sound Recordings Act of 1995 (‘‘DPRSRA’’), Public Law 104–39, sec. 4, 109 Stat. 336, 344–48; 17 U.S.C. 115(c)(3)(A). The Copyright Office has thus interpreted the Section 115 license to cover music downloads (including ringtones), as well as the server and other reproductions necessary to engage in streaming activities. See In the Matter of Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding, Docket No. RF 2006–1 (Oct. 16, 2006), http://www.copyright.gov/docs/ringtone-decision.pdf; Compulsory License for Making and Distributing Phonorecords, Including Digital Phonorecord Deliveries, 73 FR 66173 (Nov. 7, 2008).

Licenses under Section 115 are obtained on a song-by-song basis. Because a typical online music service needs to offer access to millions of songs to compete in the marketplace, obtaining the licenses on an individual basis can present administrative challenges. Many music publishers have designated the Harry Fox Agency, Inc. as an agent to handle such song-by-song mechanical licensing on their behalf.

The royalty rates and terms for the Section 115 license are established by an administrative tribunal—the Copyright Royalty Board (“CRB”)—which applies a standard set forth in Section 801(b) of the Act that considers four different factors, which include: The availability of creative works to the public; economic return to the owners and users of musical works; the respective contributions of owners and users in making works available; and the industry impact of the rates.

The Section 115 license applies to audio-only reproductions that are primarily made and distributed for private use. See 17 U.S.C. 101, 115. Reproductions and distribution of musical works that fall outside of the Section 115 license—including “synch” uses in audiovisual media like

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1 Under the terms of Section 115, a record company or other entity that obtains a statutory license for a musical work can, in turn, authorize third parties to make DPDs of that work. See 17 U.S.C. 115(c)(3). In such a “pass-through” situation, the statutory licensee is then responsible for reporting and paying royalties for such third-party uses to the musical work owner.

2 Concerns about the efficiency of the Section 115 licensing process are not new. For instance, in 2005, then-Register of Copyrights Marybeth Peters testified before Congress that Section 115 had become “outdated,” and made several proposals to reform the license. See Copyright Office Views on Music Licensing Reform: Hearing Before the Subcomm. on Courts, the Internet, and Intellectual Property forwarded the Section 115 Reform Act (“SIRA”) to the full Judiciary Committee by unanimous voice vote. See H.R. 5553, 109th Cong. (2006). This bill would have updated Section 115 to create a blanket-style license. The proposed legislation was not reported out by the full Judiciary Committee, however.


television, film, and videos; advertising and other types of commercial uses; and derivative uses such as “sampling”—are licensed directly from the copyright owner according to negotiated rates and terms.

Musical Works—Public Performance. The method for licensing public performances of musical works differs significantly from the statutory mechanical license provided under Section 115. Licensing fees for such performances are generally collected on behalf of music publishers, songwriters, and composers by the three major PROs: the American Society of Composers, Authors and Publishers (“ASCAP”), Broadcast Music, Inc. (“BMI”), and SESAC. Songwriters and composers, as well as their publishers, commonly affiliate with one of the three for purposes of receiving public performance income. Rather than song-by-song licenses, the PROs typically offer “blanket” licenses for the full range of music in their repertoires. These licenses are available for a wide variety of uses, including terrestrial, satellite, and internet radio, on-demand music streaming services, Web site and television uses, and performance of music in bars, restaurants, and other commercial establishments. The PROs monitor the use of musical works by these various entities and apportion and distribute collected royalties to their publisher, songwriter, and composer members.

Unlike the mechanical right, the public performance of musical works is not subject to compulsory licensing under the Copyright Act. Since 1941, however, ASCAP and BMI’s licensing practices have been subject to antitrust consent decrees overseen by the Department of Justice. These consent decrees were designed to protect licensees from price discrimination or other anti-competitive behavior by the two PROs. Under the decrees, ASCAP and BMI administer the public performance right for their members’ musical works on a non-exclusive basis. They are required to provide a license to any person who seeks to perform copyrighted musical works publicly, and must offer the same terms to similarly situated licensees. In addition, ASCAP’s consent decree expressly bars it from offering mechanical licenses. Since 1950, prospective licensees that are unable to agree to a royalty rate with ASCAP or BMI have been able to seek a determination of a reasonable license fee in the federal district court for the Southern District of New York.

The two PRO consent decrees were last amended well before the proliferation of digital music: The BMI decree in 1994, and the ASCAP decree in 2001. The consent decrees have been the subject of much litigation over the years, including, most recently, suits over whether ASCAP publishers can withdraw digital licensing rights from the PROs and negotiate public performance licenses directly with digital music services.

Sound Recordings—Reproduction and Distribution. Congress extended federal copyright protection to sound recordings in 1972. That law, however, did not provide retroactive protection for sound recordings fixed prior to February 15, 1972, and such works therefore have no federal copyright status. They are, however, subject to the protection of applicable state laws until 2067. See 17 U.S.C. 301(c).

Sound Recordings—Public Performance. Unlike musical works, a sound recording owner’s public performance right does not extend to all manner of public performances. Traditionally, the public performance of sound recordings was not subject to protection at all under the Copyright Act. In 1995, however, Congress enacted the DPRRSA, which provided for a limited right when sound recordings are publicly performed “by means of a digital audio transmission.” Public Law 104–39, 109 Stat. 336; 17 U.S.C. 106(6), 114(a). This right extends, for example, to satellite radio and internet-based music services. Significantly, however, the public performance of sound recordings by broadcast radio stations remains exempt under the Act. 17 U.S.C. 114(d)(1). Instead obtain a license directly from the owner of the sound recording copyright. See Determination of Rates and Terms for Preexisting Subscription Services and Satellite Digital Audio Radio Services, 78 FR 23054, 23073 (Apr. 17, 2013) (determination of the CRB finding that “[t]he performance right granted by the copyright laws for sound recordings applies only to those recordings created on or after February 15, 1972” and adopting provisions allowing exclusion of performances of pre-1972 sound recordings from certain statutory royalties).

In 1998, as part of the DMCA, Congress amended Sections 112 and 114 of the Copyright Act to clarify that the digital sound recording performance right applies to services like terrestrial See Public Law 105–304, secs. 402, 405, 112 Stat. 2660, 2888, 2890.

The owner of a copyright in a sound recording fixed on or after February 15, 1972, like the owner of a musical work copyright, enjoys the exclusive right to reproduce and distribute phonorecords embodying the sound recording, including by means of digital transmission, and to authorize others to do the same. 17 U.S.C. 106(1), (3), 301(c). Except in the limited circumstances where statutory licensing applies, as described below, licenses to reproduce and distribute sound recordings—such as those necessary to make and distribute CDs, transmit DPDs, and operate online music services, as well as to use sound recordings in a television shows, films, video games, etc.—are negotiated directly between the licensee and sound recording owner (typically a record label). Thus, while in the case of musical works, the royalty rates and terms applicable to the making and distribution of CDs, DPDs, and the operation of interactive music services are subject to government oversight, with respect to sound recordings, licensing for those same uses takes place without government supervision.

Sound Recordings—Public Performance. Unlike musical works, a sound recording owner’s public performance right does not extend to all manner of public performances.
For certain uses, including those by satellite and internet radio, the digital public performance right for sound recordings is subject to statutory licensing in accordance with Sections 112 and 114 of the Act. Section 112 provides for a license to reproduce the phonorecords (sometimes referred to as “ephemeral recordings”) necessary to facilitate a service’s transmissions to subscribers, while Section 114 licenses the public performances of sound recordings resulting from those transmissions. This statutory licensing framework applies only to noninteractive (i.e., radio-style) services as defined under Section 114; interactive (or on-demand services) are not covered. See 17 U.S.C. 112(o); 17 U.S.C. 114(d)(2), (f). For interactive services, sound recording owners negotiate licenses directly with users.

The rates and terms applicable to the public performance of sound recordings under the Section 112 and 114 licenses are established by the CRB. See 17 U.S.C. 801 et seq. The royalties due under these licenses are paid to an entity designated by the CRB—currently SoundExchange, Inc.—which collects, processes, and distributes payments on behalf of right holders. 15

Notably, under Section 114, the rate standard applicable to those satellite radio and music subscription services that existed as of July 31, 1998 (i.e., “preexisting” services 16) differs from recordings to broadcast radio. See Internet Streaming of Radio Broadcasts: Balancing the Interests of Sound Recording Copyright Owners With Those of Broadcasters: Hearing Before the Subcommittee on Courts, the Internet, and Intellectual Property of the H. Comm. on the Judiciary, 108th Cong. 6–7 (2004) (statement of David Carson, General Counsel, U.S. Copyright Office), available at http://www.copyright.gov/docs/carson071504.pdf. Only a handful of countries lack such a right; in addition to the United States, the list includes Korea, and Iran. This gap in copyright protection has the effect of depriving American performers and labels of foreign royalties to which they would otherwise be entitled, because even countries that recognize a public performance right in sound recordings impose a reciprocity requirement. According to one estimate, U.S. right holders lose approximately $70 million each year in royalties for performances in foreign broadcasts. See generally Mary LaFrance, From Whether to How: The Challenge of Implementing a Full Public Performance Right in Sound Recordings, 2 Harv. J. of Sports & Ent. L. 221, 226 (2011).

The Act requires that receipts under the Section 114 statutory license be divided in the following manner: 50 percent to the owner of the digital public performance right in the sound recording, 2 1/2 percent to nonfeatured musicians, 2 1/2 percent to nonfeatured vocalists, and 45 percent to the recording artists. 17 U.S.C. 114(g)(2).

15 17 U.S.C. 114(d)(10), (11). Today, SiriusXM is the only preexisting satellite service that seeks statutory licenses under Section 114. See Determination of Rates and Terms for Preexisting Subscription Services and Satellite Digital Audio Radio Services, 78 FR 23054, 23055 (Apr. 17, 2013). There are two preexisting subscription services: Music Choice and Muzak. Id.


18 17 U.S.C. 114(f)(2)(B) instructs the CRB to “establish and terms that most clearly represent the rates and terms that would have been negotiated in the marketplace between a willing buyer and willing seller.” The provision further requires the CRB to consider “whether use of the service may substitute for or may promote the sales recording copyright owner’s other streams of revenue from its sound recordings,” and “the relative roles of the copyright owner and the transmitting entity in the copyrighted work and the service made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, and risk.” Id.

19 For all types of services eligible for a Section 114 statutory license, the rates for the phonorecords (ephemeral recordings) used to operate the service are to be established by the CRB under Section 112 according to a “willing buyer/willing seller” standard. 17 U.S.C. 112(e). In general, the Section 112 rates have been a relatively insignificant part of the CRB’s rate setting proceedings, and have been established as a subset of the 114 rate. See, e.g., Determination of Rates and Terms for Preexisting Subscription Services and Satellite Digital Audio Radio Services, 78 FR 23054, 23055–56 (Apr. 17, 2013).
Changes in Music Licensing Practices

14. How prevalent is direct licensing by musical work owners in lieu of licensing through a common agent or PRO? How does direct licensing impact the music marketplace, including the major record labels and music publishers, smaller entities, individual creators, and licensees?

15. Could the government play a role in encouraging the development of alternative licensing models, such as micro-licensing platforms? If so, how and for what types of uses?

16. In general, what innovations have been or are being developed by copyright owners and users to make the process of music licensing more effective?

17. Would the music marketplace benefit from modifying the scope of the existing statutory licenses? Revenues and Investment

18. How have developments in the music marketplace affected the income of songwriters, composers, and recording artists?

19. Are revenues attributable to the performance and sale of music fairly divided between creators and distributors of musical works and sound recordings?

20. In what ways are investment decisions by creators, music publishers, and record labels, including the investment in the development of new projects and talent, impacted by music licensing issues?

21. How do licensing concerns impact the ability to invest in new distribution models?

Data Standards

22. Are there ways the federal government could encourage the adoption of universal standards for the identification of musical works and sound recordings to facilitate the music licensing process?

Other Issues

23. Please supply or identify data or economic studies that measure or quantify the effect of technological or other developments on the music licensing marketplace, including the revenues attributable to the consumption of music in different formats and through different distribution channels, and the income earned by copyright owners.

24. Please identify any pertinent issues not referenced above that the Copyright Office should consider in conducting its study.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[FR Doc. 2014–05711 Filed 3–14–14; 8:45 am]
BILLING CODE 1410–30–P

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before April 16, 2014. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepares appraisal memoranda that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments on the schedule.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

MAIL: NARA (ACNR), 8601 Adelphi Road, College Park, MD 20740–6001
Email: request.schedule@nara.gov
FAX: 301–837–3698

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT:
Margaret Hawkins, Director, Records Management Services (ACNR), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1799. Email: request.schedule@nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA’s approval. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media-neutral unless specified otherwise. An item in a schedule is media-neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media-neutral unless the item is specifically limited to a specific medium. (See 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government’s activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-specific applicability in the case of schedules that cover records that may be accumulated throughout an