Dear All: The copyright office is conducting a study on licensing and its effects. Due to our unique perspective, we should participate and gather our thoughts for submission. Comments are due on or before May 16. Here is a link to the study critieria:
http://www.copyright.gov/fedreg/2014/79fr14739.pdf

Please send me your responses to the following questions by May 5 so that we can schedule a discussion and compile for response. The questions are:

Musical Works:

1. Please assess the current need for and effectiveness of the Section 115 statutory license for the reproduction and distribution of musical works.

The current system of compulsory licensing is no longer effective. Copyright owners and content purchasers are skilled at negotiating equitable deals in a variety of circumstances and that option should be afforded to licenses of all types. The free market is stifled under Section 115 licensing requirements with government controlling rates which thereby limits and inhibits sector growth and innovation.

Negotiated licenses will allow for an accurate reflection of market conditions with respect to royalties and can provide economies of scope. Such economies of scope (especially with respect to smaller copyright owners) could be effectuated by the establishment of authorized Designated Agents ("DA") which meet criteria determined by the Copyright Office. One DA could be selected as a catchall for all copyright owners; however the copyright owner would have the prerogative to "opt-in" and also to determine whether or not a license should be fulfilled through the DA or directly with itself.

The Copyright Office should be involved in managing the registration and record keeping of copyrights and their ownership. It should be resource for potential copyright users and the definitive source for accurate ownership information on copyrights.

2. Please assess the effectiveness of the royalty rate setting process and standards under Section 115.

The current rate setting process does not take into account the value of copyright and considers all content to be valued the same. All copyrights are not the same – historical data determines the value of a copyright, and the needs of users should also effect that value. We currently place too much emphasis on mass and volume rather than quality and content. If the rate setting process was to continue, it must use all information available for a variety of IP in order to determine rates; as well as the intended exploitation and value of the copyrights to that proposed exploitation. In the best of cases, royalty rates should be negotiated between the copyright owner and content user on a willing buyer, willing seller format.

3. Would the music marketplace benefit if the Section 115 license were updated to permit licensing of musical works on a blanket basis by one or more collective licensing entities, rather than on a song-by-song basis? If so, what would be the key elements of any such system?

Copyright Owners in the music marketplace would benefit greatly from blanket licensing by a collective or DA in that they would have the ability to expand their licensing opportunities and create economies of scope. Blanket license agreements would create ease of use of music in the marketplace and would help Licensees minimize notification and reporting issues that currently exist under Section 115.

Blanket licensing must be done on an opt-in basis to ensure that if the Copyright Owner wanted to do deals directly with a Licensee this would be an option. Additionally, Copyright Owners, DA's or collectives, should have the ability to restrict individual works from its blanket agreements, and set guidelines and standards for reporting, auditing, etc.

4. For uses under the Section 115 statutory license that also require a public performance license, could the licensing process be facilitated by enabling the licensing of performance rights along with reproduction and distribution rights in a unified manner? How might such a unified process be effectuated?

It could be effectuated but not to the benefit of all. It will require compelling all to comply which in some cases will overwrite existing agreements in which the songwriters have continued to hold such rights for themselves and their associated PRO's (whether domestic or foreign). Thereby, actually taking away some writers autonomy. Additionally, it will require making an arbitrary decision on the division of the income of these rights as in some cases, royalty obligations are different.

Unless there is a DA created, the overall benefit will only be to the largest copyright owners who have the ability to negotiate in strength. Smaller copyright owners and writers, will lose out a larger portion of this income and will not have the ability to compete.

5. Please assess the effectiveness of the current process for licensing the public performances of musical works.

It is basically non-effective given the consent decrees and the criteria used in determining rates. The performing rights societies need the ability to negotiate willing buyer and willing seller rates based on the entirety of the market place.

6. Please assess the effectiveness of the royalty ratesetting process and standards applicable under the consent decrees governing ASCAP and BMI, as well as the impact, if any, of 17 U.S.C. 114(i), which provides that ''[l]icense fees payable for the public performance of sound recordings under Section 106(6) shall not be taken into account in any administrative, judicial, or other governmental proceeding to set or adjust the royalties payable to copyright owners of musical works for the public performance of their works.''

This is non-effective and does not allow for equity to songwriters and publishers. The value of copyrights should be based on market conditions which can only be determined by considering ALL rates and royalties paid for similar intellectual property (i.e. master recordings).

7. Are the consent decrees serving their intended purpose? Are the concerns that motivated the entry of these decrees still present given modern market conditions and legal developments? Are there alternatives that might be adopted?

No, they are no longer needed or serving their initial purpose. There are enough market variables and additional players to ensure that anti-trust measures are met. Additionally, by allowing publishers to directly license their performing rights preserves market rates and conditions.

Sound Recordings

8. Please assess the current need for and effectiveness of the Section 112 and Section 114 statutory licensing process.

While obtaining a statutory 112/114 license is a fairly easy process, as there is only one entity authorized by Congress to handle them – Sound Exchange – the process could be streamlined by including metadata and the use of ISRCs in order to provide vital data to partners involved in the process, have more complete reporting, and allow for faster payments out to stakeholders. Also, the statute should include a termination provision as an alternate resolution for when payments are not being made.

9. Please assess the effectiveness of the royalty rate-setting process and standards applicable to the various types of services subject to statutory licensing under Section 114.

The Copyright Royalty Board is made up of 3 appointed judges who serve staggered 6 year terms; however there is a disconnect between the board and the fluidity of the music business. The delayed rulings of the CRB make it difficult for new businesses to move forward legally, which inhibits innovation and progress in the music industry. Please refer to the response in #12 with respect to rate-setting standards.

10. Do any recent developments suggest that the music marketplace might benefit by extending federal copyright protection to pre-1972 sound recordings? Are there reasons to continue to withhold such protection? Should pre-1972 sound recordings be included within the Section 112 and 114 statutory licenses?

Pre-1972 sound recordings do not necessarily need federal copyright protection – there would be many issues arising relating to ownership and copyright termination. This does not mean, however, that pre-1972 recordings should not receive similar if not more extensive protection via state and common law. Pre-72 recordings should absolutely be included under Sec. 112 and 114; services like SiriusXM should have to pay to play particularly when they have entire stations on their service dedicated to artists and songs in the pre-72 timeframe, as should webcasters who play pre-72 recordings only.

11. Is the distinction between interactive and noninteractive services adequately defined for purposes of eligibility for the Section 114 license?

The distinction could be further served by allowing for an additional middle tier for non-interactive *personalized* services (where the service caters specifically to the listening habits of the user) that would be required to pay a higher rate than non-interactive *non-personalized* services.

12. What is the impact of the varying rate-setting standards applicable to the Section 112, 114, and 115 statutory licenses, including across different music delivery platforms. Do these differences make sense?

No, the varying rate-setting standards do not make sense. For clarity and uniformity, all rates, including for satellite radio and music subscription services, should be based on a willing buyer / willing seller standard and a compulsory option to opt-out of SoundExchange.

13. How do differences in the applicability of the sound recording public performance right impact music licensing?

Terrestrial radio should start paying out on sound recordings, including pre-1972 sound recordings, because the idea that radio drives music sales, thereby excluding radio from the requirement to pay for use, is an extremely dated reasoning. Also, webcasters and satellite radio services now compete directly with terrestrial radio, so terrestrial radio should not get to benefit from an unfair economic advantage. Broadcasters should have an obligation to get a license from the Sound Recording copyright holder for broadcasting purposes.

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?

It is extremely prevalent. Direct licensing affords the owner the ability to leverage their assets and create innovative licensing schemes. The impact on the music marketplace with respect to direct licensing offers new technology or exploitation methods an opportunity to flourish and affords each partner the ability to generate revenue which is commensurate with the use of their property.

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?

No, government should allow content owners and users to do what they do best, negotiate fair and equitable terms to bring products to market.

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?

Innovations are limited as there is no one place to gather the correct copyright information. The Copyright Office should develop a database which keeps not only the registrations but shares and contact information of all Copyright Owners. A global system – like the GRD – should be established for both the compositions and master recordings with uniform guidelines and data requirements.

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

Yes.

Revenues and Investment

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

While certain income streams have increased, market conditions have dramatically affected our overall performance downward and prevented the benefits of developments from reaching songwriters and artists. With respect to both artists and songwriters the downward spiral of record sales and therefore artist and mechanical royalties has not yet been compensated by the increase in streaming revenue. While we believe that the future lies in the development of exploitation methods, there needs to be an opportunity to equally compete in the market place and allow record companies, music publishers, recording artists and songwriters to benefit from risk and success of new developments.

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

Although digital services have built their businesses through making musical works and sound recordings more easily accessible to the public, the percentage of customer revenue allocated to the content that allows that business to exist is far below what is fair. If creators and content owners were able to negotiate collectively, this split would be much more in balance.

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?

Considering the popularity of streaming services and the cannibalizing affect that it most likely will continue to have on both the physical and permanent digital download markets, it means that music publishers and record labels will be less willing to invest in creators. This discrepancy between the volume of work created versus the profit related to that increased volume has also made companies more risk adverse and less willing to invest in talent that has not yet been established.

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

We want to invest in new models but with each new model we must make a risk assessment for our writers and artists. Creative licensing (and independent negotiation) would give us an opportunity to make deals which expand development and minimize risk. Licensing which is dictated by governmental regulations puts small businesses in an awkward position of playing catch up and reduces revenue thereby eliminating jobs.

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?

Yes. We should determine the minimum standards (i.e. ISRC, ISWC, etc.) and requirements for all licensing and reporting.

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.