

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

In the Matter of:

Mechanical and Digital Phonorecord Delivery
Compulsory License

Docket No. 2012-7

ADDITIONAL JOINT COMMENTS

The Digital Media Association, National Music Publishers' Association, Inc. ("NMPA"), Recording Industry Association of America, Inc., The Harry Fox Agency, Inc. and Music Reports, Inc. ("Music Reports") (collectively, the "Joint Commenters") submit these Additional Joint Comments in response to the Copyright Office's Request for Additional Comments in the above-captioned proceeding. *See* 78 Fed. Reg. 78,309 (Dec. 26, 2013). The Joint Commenters appreciate the Office's determination to move forward promptly with the above-captioned proceeding now that the Copyright Royalty Judges have concluded the recent Section 115 rate-setting proceeding. *See* 78 Fed. Reg. 67,938 (Nov. 13, 2013); 78 Fed. Reg. 76,987 (Dec. 20, 2013).

The Joint Commenters filed two extensive sets of joint comments in response to the Office's original Notice of Proposed Rulemaking ("NPRM"). The Joint Commenters continue to believe that the Office should adopt the proposals made in their Joint Comments of October 25, 2012 ("Initial Comments") and Joint Reply Comments of December 10, 2012 ("Reply

Comments”),¹ except that one technical adjustment is required by subsequent developments in the Section 115 rate proceeding.

Section 210.16(c)(2)(i) of the proposed regulations attached to the Initial Comments assumed that the provision formerly included in 37 C.F.R. § 385.12(e) would remain there, and that essentially the same language would be added as 37 C.F.R. § 385.22(d) as contemplated by the settlement in the rate proceeding. By Order dated May 1, 2013, the Register concluded that those provisions, which the Office has referred to as the “Detail Requirements,” if included in the Copyright Royalty Judges’ rate determination, would impermissibly encroach upon the Register’s authority over statements of account. *See* 78 Fed. Reg. 28,770 (May 16, 2013). As a result, the Detail Requirements were omitted from the final determination in the rate proceeding, and existing Section 385.12(e) was repealed. *See* 78 Fed. Reg. at 67,940; 78 Fed. Reg. 76,987. Instead, “the Judges recommend[ed] that the Register include these provisions in the amendments to the regulations regarding statements of account currently being considered in the Copyright Office’s ongoing rulemaking.” 78 Fed. Reg. at 67,940; *see also* Division of Authority between the Copyright Royalty Judges and the Register of Copyrights under the Section 115 Statutory License, 73 Fed. Reg. 48,396, 48,398 (Aug. 19, 2008) (“a recommendation by the CRJs to the Register to amend the regulations governing statements of account to include additional information presumably would meet with a favorable response”).

The Detail Requirements have never been substantively controversial, and the NPRM indicated the Office’s inclination to incorporate their substance in its statement of account regulations. 77 Fed. Reg. at 44,185 n.1. At this time, the Joint Commenters ask the Office to

¹ Various of the Joint Commenters also commented separately concerning certain specific issues. Those Joint Commenters reaffirm their respective separate positions, and these Additional Joint Comments neither negate nor support the positions stated in the various separate comments.


include in the regulations to be adopted in this proceeding the aspects of the Detail Requirements that were not previously addressed by the Joint Commenters' proposed regulations except by reference to the Detail Requirements. The Joint Commenters have attached as Exhibit A a modification of the proposed regulations attached to their Initial Comments to implement this request.

We note that various third parties submitted reply comments to the NPRM. The issues raised by those parties were addressed sufficiently in our Initial Comments and Reply Comments that we do not respond in detail here. To the extent those comments address rates or make general allegations of noncompliance with the statute or existing regulations, they cannot be addressed in this proceeding. To the extent those comments seek audits of licensees by copyright owners, that is not the process contemplated by Section 115(c)(5). However, concerns with the reliability of statements would be addressed by a certification process along the lines described in our Reply Comments. To the extent those comments express dissatisfaction with particular details of how some electronic statements have been delivered, those concerns would be addressed by the availability of paper-based statements as the Joint Commenters have proposed.

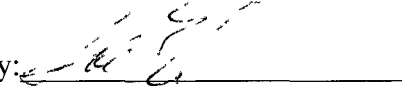
The Joint Commenters believe that the issues to be addressed in this proceeding have been thoroughly illuminated by the previous comments. However, if it would facilitate the Office's resolution of any of the issues in this proceeding, the Joint Commenters would be pleased to participate in a meeting concerning these issues or any further process that the Office might find helpful to bring this proceeding to a prompt conclusion.

Dated: January 30, 2014

Respectfully submitted,

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Exhibit A
Modifications to Proposed Regulations to Incorporate Detail Requirements

To incorporate the Detail Requirements in the Office's statement of account regulations, the Joint Commenters propose as follows:

1. Section 210.16(c)(2)(i) of the proposed regulations attached to the Joint Commenters' Initial Comments should be modified as follows:

(i) The information called for by paragraph (b)(4) of this section shall, with respect to each nondramatic musical work as to which the compulsory licensee has made and distributed phonorecords subject to Part 385 Subpart B or C or any other applicable royalties computed on a percentage-rate basis, include ~~a separate listing of the information required by § 385.12(e), § 385.22(d), or other provisions of Part 385 as applicable~~ each step of the royalty calculations with sufficient information to allow the copyright owner to assess the accuracy and manner in which the licensee determined the payable royalty pool and per-play allocations (including information sufficient to demonstrate whether and how any applicable minimum royalty or subscriber-based royalty floor does or does not apply). Statements of Account need not reflect phonorecords subject to the promotional royalty rate provided in section 385.14 or 385.24 or any similar promotional royalty rate of zero that may be provided in Part 385.

2. The preamble of Section 210.16(d)(3) of the proposed regulations attached to the Joint Commenters' Initial Comments should be modified as follows:

(3) *Phonorecords subject to a percentage rate royalty structure.* For phonorecords subject to Part 385 Subpart B or C or any other applicable royalties computed on a percentage-rate basis, the amount of the royalty payment shall be calculated as provided in § 385.12, § 385.22, or other provisions of Part 385 as applicable. The calculations shall be made in good faith and on the basis of the best knowledge, information and belief of the licensee at the time payment is due, and subject to the additional accounting and certification requirements of 17 U.S.C. 115(c)(5) and this section. The following additional provisions shall also apply: