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

In the Matter of: Mechanical and Digital Phonorecord Delivery Compulsory License	Docket No. 2012-7

REPLY COMMENTS OF THE RECORDING INDUSTRY ASSOCIATION OF AMERICA, INC.

The Recording Industry Association of America, Inc. ("RIAA") submits these Reply Comments in response to the Copyright Office's Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding. The purpose of these Reply Comments is to address certification of statements (Section 3.C of the NPRM) and to respond to the initial comments of the National Music Publishers' Association, The Harry Fox Agency, Inc., the Songwriters' Guild of America, Inc. and the Nashville Songwriters Association International (collectively, the "publisher/writer groups") concerning treatment of negative reserve balances (Section 1.B of the NPRM) and identification of third-party distributors of permanent digital downloads and ringtones (Section 3.B of the NPRM).

I. Certification

The subject of certification is addressed at length in the Joint Reply Comments that RIAA is filing with the Digital Media Association, National Music Publishers' Association, Inc., The Harry Fox Agency, Inc. and Music Reports, Inc. (collectively, the "Joint Commenters"), so we address it only briefly here.

RIAA (like the other Joint Commenters) believes that fixing the certification provisions of the current regulations is an important aspect of this proceeding. RIAA and its member

companies have a general desire to have a workable compulsory license system, and that requires a certification process that both is workable for licensees and provides copyright owners reasonable assurance that they are receiving accurate statements.

The certification issue has proven challenging to resolve. However, most of the issues have involved what the Joint Comments refer to as certification for large-scale use of the compulsory license. At this time, RIAA takes no position concerning certification requirements for large-scale use of the compulsory license beyond what is described in the Joint Reply Comments. While RIAA and its member companies would like to see viable alternative certifications for both large- and small-scale use of the compulsory license, RIAA and its member companies are most directly interested in the latter, because at present record companies generally have only a relatively small number of active compulsory licenses. When that is the case, obtaining CPA certification based on examination of individual statements is likely to be the most efficient approach. Thus, at least in the foreseeable future, the small-scale certification option is the one most likely to be used by record companies for their own royalty accounting purposes.

In our discussions with the other Joint Commenters, certification for small-scale use of the compulsory license proved less complicated and controversial than certification for large-scale use. Indeed, the Joint Commenters agreed concerning small-scale certification of monthly statements, and their proposal is included in Section 210.16(f)(1) of the proposed regulations attached to the Joint Commenters' initial Joint Comments (the "Proposed Regulations").

With respect to certification of annual statements for small-scale use of the compulsory license, the Joint Commenters agree in principle that there should be a certification option contemplating CPA examination of specific annual statements (like the current certification), and leading to a professional opinion of a CPA that is equivalent to the current certification (except

without the technical problems described in the Joint Reply Comments). The principal problem we encountered seemed to be that, all other things being equal, it would be desirable to have general parallelism between the large-scale and small-scale certification approaches (e.g., as to applicable accounting standards). As a result, it was impossible to come to closure on the small-scale certification while there remained unresolved issues in the large-scale certification.

As the Office moves toward adoption of certification requirements, RIAA urges the Office to adopt a certification option for small-scale use of the compulsory license that is roughly equivalent to the current annual statement certification and makes sense within the overall context of the Office's resolution of the certification issues. In this regard, RIAA would be prepared to support a certification approach as set forth in Exhibit A.

II. Negative Reserve Balances

The publisher/writer groups' comments concerning negative reserve balances are telling. While acknowledging on page 5 of their comments that the Office inquired concerning the Office's statutory authority to allow application of negative reserve balances to digital phonorecord deliveries ("DPDs"), they do not even try to answer that question. Instead, they merely quote a sentence of the existing regulations that they believe currently prohibits recovering a negative reserve balance by applying it to DPD distributions, and offer weak policy justifications for their view that their interpretations of the current regulations should be continued.

A. The Office Has Authority to Permit Offsetting a Negative Reserve Balance Against Subsequent DPD Distributions

The reason the publisher/writer groups ducked the authority question is because nothing in Section 115 prevents the Office from permitting recovery of a negative reserve balance by offsetting it against DPD distributions. Indeed, because a negative reserve balance represents a

payment in excess of the amount provided by the statute, Section 115 suggests that the accounting regulations should permit reduction of negative reserve balances as quickly as practicable.

Section 115(c)(5) identifies various subjects that the Office must address in the mechanical royalty accounting regulations, and it does so in broad terms. As to the Office's authority here, the relevant provision is that "[e]ach monthly payment . . . shall comply with requirements that the Register of Copyrights shall prescribe by regulation." 17 U.S.C. § 115(c)(5). In devising requirements for payments, the Office's task is to implement Section 115's payment provision, Section 115(c)(2). It provides that statutory royalties are to be paid only for phonorecords "made and distributed," and that a phonorecord is considered distributed only when "the compulsory license has voluntarily and permanently parted with its possession." 17 U.S.C. § 115(c)(2).[1] The negative reserve balance construct is one of the methods long ago adopted by the Office to implement this statutory requirement. It does so by allowing a licensee to recover an overpayment where, as a result of returns, a licensee's aggregate payments are greater than required based on the number of phonorecords distributed.

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[1] This definition of the term distributed is qualified by the phrase "other than as provided in paragraph (3)" (referring to Section 115(c)(3)). That limitation is irrelevant to the question of whether a negative reserve balance can be recovered by applying it to DPD distributions. Here, there is no disagreement as to when physical phonorecords and DPDs should be considered distributed. The issue is whether an overpayment of royalties resulting from a physical product return (a phonorecord not distributed) can be offset against royalties that otherwise would be payable for a subsequent DPD that is distributed. That question cannot logically be answered by the definition of the term distributed. Moreover, it is not even evident what aspects of Section 115(c)(3) were perceived to be inconsistent with the definition of "distributed" in Section 115(c)(2). Legislative history of this phrase explains it as simply "mak[ing] clear that the compulsory license for making and distributing phonorecords is not limited to the making and distribution of physical phonorecords, but that a compulsory license is also available for the making of digital phonorecord deliveries." S. Rep. No. 104-128, at 37 (1995).

In 1995, Section 115 was amended to address DPDs, and specifically to "clarify" that DPDs are a form of distribution covered by the Section 115 compulsory license.[2] Nothing in that clarification changed the basic principle that licensees should only pay royalties for phonorecords actually distributed. Nothing in that clarification requires or even suggests that accounting for physical phonorecords and DPDs must be hermetically sealed from each other. Indeed, the Office has since 1999 treated DPDs as just another phonorecord configuration integrated into the same accounting regulations with other configurations (subject only to a handful of clarifications). *See* 37 C.F.R. § 201.19(a)(7), (9).

The closest the publisher/writer groups come to answering the Office's authority question is a statement that the current regulations "clearly indicate that negative reserve balances only apply to physical phonorecords" (citing 37 C.F.R. § 201.19(a)(9)). Publisher/Writer Groups Comments, at 6. However, the current regulations are entirely irrelevant to whether the Office has the power, in new regulations, to permit recovery of a negative reserve balance by offsetting it against DPD distributions. The Office's statutory authority, and any limitations on it, must be determined from the provisions of the Copyright Act rather than the current regulations.[3]

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[2] S. Rep. No. 104-128, at 36-37 (1995) "[t]his section amends section 115 . . . to clarify how the compulsory license . . . applies in the context of certain types of digital transmissions . . . ."; "this section is intended to confirm and clarify the right of musical work and sound recording copyright owners . . . .").

[3] Moreover, as described in RIAA's initial comments, Section 201.19(a)(9) was added to the regulations in 1999 to reflect the Office's decision concerning a different question than presented here – the question of whether reserves may be taken for DPD distributions. That question is not an issue in this proceeding. We disagree with the publisher/writer groups as to whether, by adopting Section 201.19(a)(9), the Office, without any apparent attention to the question, precluded recovery of a negative reserve balance by offsetting it against DPD distributions. However, the purpose of this proceeding is to adopt new accounting regulations, not to interpret the current regulations. In adopting new regulations, the Office is not encumbered by whatever the current regulations may say about negative reserve balances. *See Notice and Recordkeeping for Making and Distributing Phonorecords*, 64 Fed. Reg. 41,286 (July 30, 1999) (current regulations intended to be "without prejudice to the parties who, at the appropriate time, may

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Neither the Office nor the publisher/writer groups have pointed to any statutory provision that would preclude recovery of a negative reserve balance by offsetting it against DPD distributions, and we have searched in vain for any such provision. Accordingly, it seems clear that nothing in the statute precludes offsetting negative reserve balances against DPD distributions.

B. The Office Should Permit Offsetting a Negative Reserve Balance Against Subsequent DPD Distributions and Against All Distributions at the Statement Level

Turning to the questions of whether the accounting regulations should permit offsetting negative reserve balances against DPD distributions, and whether negative reserve balances should be recoverable at the song, writer or statement level, the analysis ought to begin with the statute. As explained in RIAA's initial comments and noted above, Section 115 could not be clearer that musical work copyright owners are to be paid mechanical royalties on product units that are actually distributed and are not to be paid mechanical royalties on product units that are not actually distributed. The statutory provision reflects a clear congressional determination that "[i]t is unjustified to require a compulsory licensee to pay license fees on records which merely go into inventory, which may later be destroyed, and from which the record producer gains no economic benefit." H.R. 94-1476, at 110 (1976).

For more than 30 years, the Office's regulations have specified that the negative reserve balance construct is to be used to keep aggregate payments in line with actual distributions. The question presented here is whether, as distribution increasingly shifts away from physical products and toward DPDs, and the music publishing industry increasingly consolidates, the

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propose final regulations that may differ significantly from the interim rules based on the developing business trends in the industry").

negative reserve balance construct should be employed in a way that allows music publishers to retain the windfall represented by a negative reserve balance for a shorter or longer time (or maybe forever). The answer to that question implied by statute is clear: aggregate payments should be brought into line with actual distributions as soon as practicable. That means that negative reserve balances should be permitted to be applied to other product distributions as broadly as practicable.

In arguing against the answer clearly implied by the statute, the publisher/writer groups' initial comments offer only weak explanations for why they should be permitted to retain the windfall represented by a negative reserve balance.

First, they observe that DPDs "are not sold on a returns basis and, therefore, should not be subject to reserve accounting." Publisher/Writer Groups Comments, at 6. RIAA is not proposing that licensees be permitted to establish reserves for DPD distributions, so in that sense there is no disagreement. However, the fact that reserves cannot be established for DPD distributions in no way suggests that when there are physical product returns in excess of physical product reserves, publishers should be permitted to keep the overpayment while they continue to receive royalties for current DPD distributions.

Second, the publisher/writer groups argue that precluding application of a negative reserve balance to DPD distributions is necessary to discourage "over-shipping." Publisher/Writer Groups Comments, at 6. As explained at length in RIAA's initial reply comments, "over-shipping" is not a bad business practice that needs to be discouraged by the Office. It is the unfortunate result of record companies and their distributor customers misjudging consumer demand, and vastly preferable to the alternative of having insufficient product units in the manufacturing/distribution pipeline to meet consumer demand. Surely nobody thinks if a record company has a distributor customer that wants to buy a product, the

record company should encourage its customer to buy less to avoid the perceived evil of "over-shipping." In any event, when consumer demand for a product is significantly misjudged, the financial impact for a record company is significant. To the extent that record companies rather than their customers have a hand in determining initial shipments, they do not need an unrecoverable negative reserve balance as further incentive to manage their distribution channels responsibly. The specter of "over-shipping" is not sufficient to overcome the statutory implication that negative reserve balances should be eliminated as soon as practicable.

Third, the publisher/writer groups express concern that permitting negative reserve balances to be applied to DPD distributions would have significant near to medium term financial effects. However, RIAA understands that negative reserve balances are commonly applied to permanent digital download distributions today, so RIAA does not understand that confirming that negative reserve balances may be offset against DPD distributions would materially affect payment flows.

Fourth, the publisher/writer groups argue that accounting for application of negative reserve balances to DPD distributions would be "exceedingly complex." Publisher/Writer Groups Comments, at 6. This is belied by the fact that it is done today. Moreover, record companies commonly account to publishers for use of songs in various physical product configurations, as contemplated by the existing regulations. *See* 37 C.F.R. § 201.19(e)(3)(ii)(D). Nobody suggests that a negative reserve balance resulting from returns of one physical configuration (e.g., LP, DVD or CD single) cannot be recovered from distributions of another physical configuration (e.g., CD album). While this may be less common today than it once was, because the CD album is such a dominant configuration today, it is well within the capability of record companies and publishers to process such transactions – as they do regularly. Applying a

negative reserve balance to a DPD configuration is the same exercise, and as noted above, it is commonly done today.

Fifth, the publisher/writer groups suggest that rate differences between physical and DPD configurations would complicate the accounting. For purposes of this proceeding, it is sufficient to note that all but a small amount of DPD usage accounted for by record companies consists of the permanent digital download configuration, and the statutory rate for permanent digital downloads is the same as for physical configurations. 37 C.F.R. § 385.3(a). Moreover, record company and publisher royalty accounting systems handle rate differences all the time. On actual royalty statements, accounting for usage at the full statutory rate per unit sold is the exception rather than the rule. Statements overwhelmingly are rendered at the share level. Thus, for example, where a publisher owns 25% of a work and the 9.1¢ statutory rate applies, that publisher's payments commonly would be set up in a record company's royalty accounting system at 2.275¢ per unit sold. Moreover, negotiated rates are common, either under so-called controlled composition clauses or under direct licenses from publishers. It is thus the norm that both physical and DPD tracks are set up in record company royalty accounting systems and reflected on statements at various rates. Music publishers ingest and process record company royalty statements today and would continue to be able to do so if RIAA's proposals were adopted.

Sixth, the publisher/writer groups suggest that publishers who represent multiple songwriters would have particular difficulties tracking broader application of negative reserve balances. Publisher/Writer Groups Comments, at 6-7. Because they do not really develop this argument, it is difficult to respond. Their suggestion appears to be related to the Office's question of whether negative reserve balances should apply only on a per work basis or more broadly across payments to the relevant copyright owner. Current experience suggests that

music publishers are capable of ingesting and processing lines of data on royalty statements reflecting negative balances. Royalty statements commonly include many lines of data corresponding to particular uses, broken out as the regulations contemplate by song, recording and configuration. *See* 37 C.F.R. § 201.19(e)(3)(ii)(D). For each line, a royalty amount is calculated. These are generally positive, but sometimes, due to returns, they are negative. The negative balances are commonly netted out against positive balances at the song level. The publisher/writer groups' comments provide no reason to believe that processing of royalty statements would be any more difficult if the netting out occurred at the writer or statement level.

Finally, the publisher/writer groups express concern that permitting broad recovery of negative reserve balances may have implications for voluntary licensing. Publisher/Writer Groups Comments, at 7. It is sufficient for purposes of this proceeding to note that voluntary licenses are voluntary. In deciding rules for compulsory licenses, the Office cannot, and should not try to, prescribe terms for voluntary agreements. Once an agreement is entered into, its terms obviously would need to be complied with whatever the Office decides in this proceeding.

The comments of Gear Publishing Company also address this issue. Gear Comments, at 4-6. Gear primarily takes exception to the streaming royalty rate structure, which is not a matter in the Office's jurisdiction. The Office's task in this proceeding is to prescribe rules for calculating payments in accordance with Section 115(c)(2) based on the rates determined by the Copyright Royalty Judges. To the extent Gear addresses the equities of the treatment of negative reserve balances, we agree that copyright owners and licenses should be treated evenhandedly. We believe that evenhanded treatment means that a publisher should not be able to retain an overpayment longer than necessary. When Gear says "no advances," it appears Gear might agree. Other than for its own financial interest, it is not evident why Gear ultimately believes that it should be able to retain what amounts to an unearned advance for longer than necessary.

Because none of the publisher/writer groups' arguments is sufficient to overcome the general statutory direction that royalties only should be paid for products actually distributed, and that payment for units not distributed is "unjustified," the Office should conclude that negative reserve balances may be offset against DPD distributions and at the statement level and adopt the proposals concerning these issues in RIAA's initial comments.

III. Identification of Third Party Distributors

The publisher/writer groups' proposal to report DPD distributions by distributor, when that has never been required for physical product distributions, would very significantly change the nature of mechanical royalty accounting. Their comments concerning identification of third party distributors obscure the practical issues associated with their proposal. To put this issue in context, it is important to understand that with few exceptions, the world of digital music services and mechanical licensing therefor can be broken down into two distinct categories of activity:

- Numerous services sell permanent digital downloads and ringtones, which are subject to cents rate statutory mechanical royalties. Mechanical licensing for such services is almost exclusively handled by record companies.
- Numerous other services provide streaming, cloud or other options covered by the various percentage royalty rate structures. Mechanical licensing for such services is almost exclusively handled by the services, often with the help of a licensing agent.

There is no issue with respect to reporting distributors for the second of these categories of activity. The percentage rate calculations are specific to particular service offerings (e.g., a particular provider's particular rate plan, as described in the definition of "offering" in 37 C.F.R. § 385.11). It is thus only natural that the offering would be identified in applicable statements. And identification of the service provider is trivial, because the service provider is almost always

the licensee. Accordingly, Section 210.16(c)(2)(ii)(H) of the proposed regulations attached to the Joint Comments previously filed in this proceeding implement identification of the distributor for percentage rate uses. Thus, the sole issue here is whether record companies that handle mechanical licensing for permanent digital downloads and ringtones of their recordings should be required to break down the reporting on their royalty statements by distributor.

The publisher/writer groups' comments assert that if the reporting on royalty statements is not broken down by distributor publishers and songwriters will not know who is distributing their music. However, they do not need to study their royalty statements to figure out who the players in the digital music business are. The principal sellers of downloads and ringtones are well known. Whymusicmatters.com, a resource to help identify the authorized digital music services in the marketplace, lists the following 28 download service providers (including multiple service offerings from some of them):

- 7digital
- Amazon MP3 Store
- Ariama
- Arkiv Music
- BearShare
- Beatport
- ChristianBook.com
- Classical Archives
- eMusic
- Freegal Music
- Google Play
- Guvera
- Hastings
- HDtracks
- iMesh
- Insound
- iTunes® Store
- Liquid Spins
- MetroPCS
- Moontaxi
- Music Hub
- Myxer
- Nokia Music MP3 Store
- Rhapsody MP3 Store
- ScatterTunes
- Sprint
- T-Mobile
- Xbox Music

It lists the following 12 services selling ringtones:

- Alltel Wireless
- AT&T Wireless
- Cricket
- iTunes® Store
- MetroPCS
- Motime
- Muve Music
- Myxer
- Sprint
- T-Mobile
- Verizon Wireless
- Virgin Mobile

Some of these services are specialized, but most provide access to broad catalogs of works across all genres. The typical agreement between any particular record company and any such service covers a broad catalog of the record company's works. Thus, copyright owners of songs in relevant genres that are in distribution as commercial recordings generally should expect to find their songs available for distribution through most of these services.

Returning to the subject of mechanical royalty accounting, the publisher/writer groups' proposal would, for songs with low usage, communicate the information set forth above only incompletely. When a track sells only a small number of units per month, as many do, no royalty statement would provide a complete list of the services authorized to distribute the track.[4]

The publisher/writer groups' proposal also would be an expensive and highly disruptive way of communicating the information set forth above. Most record companies have not designed their royalty accounting business processes or systems to break down their reporting for each track by distributor. Thus, all permanent downloads of a particular recording of a particular song through all distributors generally are aggregated, sometimes by pre-processing of sales reports outside the royalty system itself, and the same is true for ringtones. The publisher/writer groups' proposal asks that data concerning one track that is currently presented on one line of a royalty statement instead be broken out into up to 28 lines of data in the case of downloads and 12 lines of data in the case of ringtones. Thus, royalty statements, which already can be massive, would multiply. Record companies that chose to design their systems to aggregate reporting not only would need to redesign their reporting processes and the functionality of their systems, but

[4] For example, if downloads of a particular track were authorized to be distributed through all 28 of the download stores identified above, but in any given month, only 10 downloads of the track were sold across all services, the monthly statement would not report sales through more than 10 of the 28 services, and probably well less than 10 of the services (assuming that most of the 10 sales were made through the services with the largest market share).

acquire equipment to increase the capacity of their systems. Publishers would need to do the same to be able to ingest and process royalty statements that, in the case of downloads for example, were up to 28 times larger than statements have been. To the extent that publishers have received paper statements, as Gear Music Publishing said at page 8 of its comments is its preference, printing and mailing costs would multiply by a similar factor. The publisher/writer groups' proposal, if adopted, would entail substantial short and long term costs, and require a substantial time to implement.[5]

While it is obvious that the publisher/writer groups' proposal represents a substantial burden and disruption for most record companies, they suggest no advantages of their proposal that withstand minimal scrutiny:

- On page three of their comments they suggest an antipiracy purpose – determining whether services are licensed or infringing. However, record companies and music publishers have a history of cooperating on antipiracy matters. If a music publisher had questions about whether a newly-launched service had secured licenses from record companies or was an infringer, that information could be had with a phone call or an email. Antipiracy activities don't require reengineering the royalty accounting systems of the whole music industry.
- They assert on pages 3-4 that distributor-level sales data is available to compulsory licensees. That is sometimes true and sometimes not (e.g., when the licensee distributes through an aggregator). Even when the data is available, it does not

[5] RIAA has previously tried to engage the music publishing industry in discussions of possible cooperative development of licensing databases and systems that might have provided publishers greater visibility into licensing of their works. However, the publishers declined. The present proposal would make record companies alone bear the systems development cost of delivering data the publishers want.

necessarily follow that breaking it out rather than consolidating it makes sense. Aggregating the huge volumes of usage data being reported by services into manageable royalty statements promotes efficiency and reduces complexity and costs. Record companies know the identities of their physical product distributors too, but everyone has accepted that the complexity of reporting on a distributor basis is not justified. In 1980, the Office rejected a proposal to do mechanical royalty accounting on that basis. 45 Fed. Reg. 79,039. Nothing is different here.

- They say on page 4 that their proposal will promote transparency, but they never say to what end. Suppose 100 downloads of a particular track are sold in a month. Today the publisher would receive a statement with a line showing that. Under the publisher/writer groups' proposal, they might hypothetically receive a statement showing that 70 downloads were sold through iTunes, 10 downloads through Amazon and a download or two each through another 15 services. At considerable cost that report would be more transparent, but the publisher/writer groups never explain – and it is not evident to us – how that information "bear[s] on their business decisions" or allows them to better assess the "impact of their music." Publisher/Writer Groups Comments, at 5. Far from being "critical," *id.* at 4, we don't see how this more granular reporting would allow them to do anything of consequence that they could not do without it. The mere fact that some publishers are curious to have this information is not a sufficient reason to require record companies to reengineer their systems to provide it.
- They suggest on page 4 that more granular reporting might help them "assess whether payment for their works seems reasonable." This seems similar to the suggestion in the NPRM that more granular reporting might help "assess whether their accounting

statements are accurate." 77 Fed. Reg. at 44,183. However, neither the NPRM nor the publisher/writer groups' comments explain why that might be the case. Publishers sometimes try to check whether royalty statements are generally consistent with the sales estimates reported by SoundScan. However, SoundScan data is reported on an aggregate basis (not broken out by distributor), so more granular reporting would frustrate and not help that kind of sanity check. As the illustration above shows, more granular data might show whether or not sales volumes are distributed roughly in proportion to service market share (to the extent that is knowable), but it can't be that any deviation from an estimated market share distribution is presumed inaccurate, since individual track sales are a function of many factors other than traffic to a service in general. Ultimately, the mechanism Section 115 contemplates for assuring accuracy of accounting statements is annual statement certification, and that is the only way to know that a record company is reporting accurately the data it has.

- The remainder of the publisher/writer groups' discussion of this issue is just hyperbole. Commercial publishers and others who care to be engaged in "development of the digital music industry" are well aware of the services in the marketplace. They do not act "isolated" or seem not "informed." We have seen no evidence that current reporting practices make them "not . . . able to interact with" digital music services, that the market is "dysfunctional and inefficient" in a way that would be solved by more granular royalty reporting, or that the constitutional goal of copyright – the creation of new creative works – would be advanced by adopting this proposal.

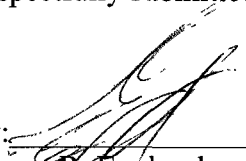
The Office should not adopt a burdensome new requirement to report downloads and ringtones by distributor.

CONCLUSION

For the reasons set forth above, RIAA urges the Office to adopt a certification option for small-scale use of the compulsory license that is roughly equivalent to the current annual statement certification and makes sense within the overall context of the Office's resolution of the certification issues. RIAA also urges the Office to confirm that negative reserve balances are broadly applicable to DPDs and payments to the relevant copyright owner, and to refrain from imposing a new requirement of reporting distributors of downloads and ringtones.

Dated: December 10, 2012

Respectfully submitted,



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Of Counsel

Exhibit A
Possible Annual Statement Certification Approach
for Small-Scale Use of the Compulsory License

As described above, RIAA would be prepared to support an approach to annual statement certification for small-scale use of the compulsory license as set forth in this Exhibit A.

Note: The following is intended as the first part of a replacement for Section 210.17(f)(2) of the Proposed Regulations. Section 210.17(f)(2)(i) (set forth below) would set forth annual statement certification requirements for small-scale use of the compulsory license. Section 210.17(f)(2)(ii) (not provided below) would set forth annual statement certification requirements for large-scale use of the compulsory license.

(2) Each Annual Statement of Account shall also be accompanied by the certification of one or more licensed Certified Public Accountants ("CPA"), as applicable. Each such CPA shall certify that they have conducted an examination and rendered an opinion in accordance with the requirements of paragraph (f)(2)(i) or (ii), as applicable. Such certification shall state in substance:

(i)(A) that the CPA has conducted an examination, in accordance with the Attestation Standards issued by the American Institute of Certified Public Accountants, as amended or superseded from time to time, of the accompanying Annual Statement prepared by the compulsory licensee; and

(B) an opinion based on such examination that the accompanying Annual Statement presents fairly, in all material respects, the compulsory licensee's usage of musical works identified in the Annual Statement and the royalties applicable thereto in accordance with 17 USC 115 and 37 CFR parts 210 and 385, as amended or superseded from time to time; or

(ii) . . . .