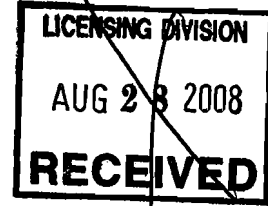


Comment Letter

RM 2000 7

No. 5

Before the
 COPYRIGHT OFFICE
 LIBRARY OF CONGRESS
 Washington, D.C.



In the Matter of)

Compulsory License for Making and)
 Distributing Phonorecords, Including)
 Digital Phonorecord Deliveries)

Docket No. RM 2000-7



AUG 28 2008

GENERAL COUNSEL
 OF COPYRIGHT

COMMENTS OF SESAC, INC.

SESAC, Inc. (“SESAC”) hereby submits its comments in response to the Notice of Proposed Rulemaking issued by the Copyright Office (“Office”) on July 10, 2008 concerning the Office’s proposal to amend its regulations “to clarify the scope and application of the Section 115 compulsory license to make and distribute phonorecords of a musical work by means of digital phonorecord deliveries.” 73 Fed. Reg. 40802 (July 16, 2008), as amended by Notice dated August 8, 2008, 73 Fed. Reg. 47113 (August 13, 2008)(collectively, the “Notice”).

SESAC, the second oldest and fastest growing United States performing rights organization (“PRO”), was founded in 1930. SESAC represents thousands of American songwriters, composers, lyricists and music publishers and more than a quarter of a million musical works. It licenses the nondramatic public performance of such musical works in its repertory within the United States, and distributes to its affiliates royalties from the license fees paid by music users, including, for example, television and radio stations, online services,

nightclubs, and live concert venues. Through reciprocal agreements with various foreign PROs, SESAC also represents the rights of foreign songwriters and music publishers whose musical works are publicly performed in the United States.

Although SESAC has had on-going involvement in congressional and administrative proceedings concerning the Section 115 compulsory license to reproduce and distribute musical works (so-called “mechanical rights”), it does not seek to comment substantively here regarding the licensing of mechanical rights. Rather, SESAC’s paramount concern here is to ensure that the separate and independent right of public performance in such works is not adversely affected—or, for that matter, substantively discussed to any extent—in the course of this proceeding, the narrowly stated focus of which is the Section 115 compulsory license for digital phonorecord deliveries (“DPDs”).

Section 115(d) states that a digital transmission of a sound recording constitutes a DPD “regardless of whether the digital transmission is also a public performance of . . . any nondramatic musical work embodied therein.” The Office has promulgated 37 C.F.R. § 255.8, which states that “nothing in this part annuls or limits the exclusive right to publicly perform a . . . musical work . . . , including by means of a digital transmission, under 17 U.S.C. 106(4).” Thus, current law clearly allows for the fact that a given digital transmission can implicate both the mechanical rights in a DPD and the public performance rights in an underlying musical work.

SESAC understands that, in the course of previous discussions concerning the Section 115 compulsory mechanical license for DPDs, the topic of the legal and economic relationship between mechanical rights, on the one hand, and public performance rights, on the other hand, has been raised. The Office, however, should not undertake in this or any other proceeding to go beyond its statutory authority and opine on the relative values of these separate and independent rights

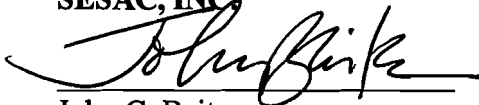
implicated in a given transmission. Rather, the marketplace should be allowed to make that determination without governmental direction.

The Office has correctly acknowledged in the Notice the specific and limited scope of its authority here under Section 115: “to administer the compulsory license . . . insofar as the Register is to prescribe by regulation requirements for the compulsory licensee’s Notice of Intent to Obtain a Compulsory License . . . , and to issue regulations establishing requirements for the payment of royalties and governing statement of account submitted by compulsory licensees.” Notice at 40806. SESAC appreciates the Office’s determination to limit the ambit of this proceeding accordingly.

SESAC also appreciates the opportunity to submit these comments and respectfully reserves the right to submit reply comments in this proceeding.

Respectfully submitted,

SESAC, INC.



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Dated: August 28, 2008