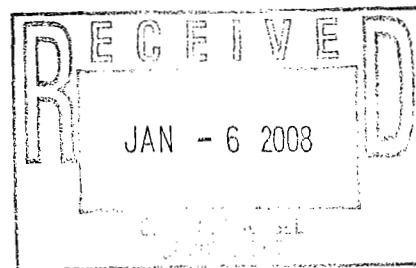


DOCKET NO.

RM 2000-7

COMMENT NO. 2

Before the
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Washington, D.C.



In the Matter of)

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

Docket No. RM 2000-7

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

The Recording Industry Association of America, Inc. ("RIAA") submits these comments in response to the Copyright Office's Interim Rule and Request for Comments regarding the application of the mechanical compulsory license set forth in 17 U.S.C. § 115 to certain digital phonorecord deliveries ("DPDs"). *See* 73 Fed. Reg. 66,173 (Nov. 7, 2008).

As the party that filed the petition for the rulemaking that led to the Office's Interim Rule, RIAA appreciates the Office's efforts to make the Section 115 compulsory license more useful for distribution of DPDs, both through this rulemaking and by seeking to facilitate Section 115 legislation. By clarifying the status of limited downloads and server copies, the Interim Rule marks an important and helpful step toward clarifying the application of Section 115 to DPDs.

As the Office knows well, the interim rule neither answers all questions concerning the application of Section 115 to DPDs nor solves all the other practical problems in making effective use of Section 115 for DPDs. For the reasons given in RIAA's previous comments in this proceeding, RIAA believes that the Office would have been justified as a matter of law

in doing more than the Interim Rule does.¹ However, RIAA agrees with the Office that it is appropriate to adopt the Interim Rule at this time, and then to consider in light of future legislative, judicial and marketplace developments whether further rulemaking is warranted.²

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¹ For example, RIAA believes that the Office could have addressed the status of streaming, including recognizing a distinction between interactive and noninteractive streaming, and RIAA reserves all its arguments in that regard.

² RIAA notes that the second sentence of the definition proposed in the Interim Rule does not precisely track the statutory definition of the term “fixed.” RIAA reads the Federal Register notice announcing the Interim Rule as indicating that no substantive change was intended, but RIAA encourages the Office to clarify that result at an appropriate time.