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AUG 06 2008

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August 6, 2008

BY HAND DELIVERY

Tanya M. Sandros, Esq.
General Counsel
Office of the General Counsel
U.S. Copyright Office, Room 401
101 Independence Avenue, SE
Washington, DC 20559

Re: Docket No. RM 2000-7, Compulsory License for Making and
Distributing Phonorecords, Request for Extension of Time To File
Comments

Dear Ms. Sandros:

I have been asked to coordinate the submission of the attached request for an extension of time to file comments in the above referenced docket. The request is being made by a broad and diverse collection of nineteen interested parties. Because of the impending deadline, we would appreciate the Office's earliest possible favorable response to the request. Please do not hesitate to call if you have any questions.

Very truly yours,

Bruce G. Joseph

BGJ/cet

Enclosure

August 6, 2008

The Honorable Marybeth Peters
Register of Copyrights
U.S. Copyright Office
101 Independence Ave. S.E.
Washington, D.C. 20559-6000
(202) 707-3000

*Re: Docket No. RM 2000-7, Compulsory License for Making and Distributing
Phonorecords, Including Digital Phonorecord Deliveries*

Dear Register Peters:

The undersigned organizations request an extension of time to file comments in the above-referenced proceeding. The issues raised by this proceeding are complex and require considerable time and attention to reach a reasonable solution, especially since the conclusions reached in this proceeding would have an impact on fundamental principles of copyright law and could affect a broad and diverse collection of industries including but not limited to, cable television, Internet movie rentals, HD broadcast and digital satellite radio, digital device manufacturers, broadband and other Internet Service Providers, and wireless telecommunication companies. Exacerbating this problem is the fact that the Notice of Proposed Rulemaking has been issued in the middle of the summer, at the cusp of the Congressional recess and at a time when many parties affected by the rulemaking are not able to devote the necessary resources to ensuring a complete and balanced process.

The Office's proposed interpretation of the term "Digital Phonorecord Delivery" (DPD) to include buffers could set the precedent that temporary, even fragmentary, buffers implicate the reproduction and distribution rights, affecting all digital transmission services that require buffering for their transmissions to be perceptible. The proposed rule also appears, on preliminary review, to be contrary to law in numerous respects, including general inconsistency with the structure of the Copyright Act, inconsistency with the careful, detailed structure of the section 114 statutory license—exposing digital music streaming services to demands for a mechanical royalty in addition to a performance royalty, and inconsistency with chapter 10 of the Act, creating an argument that digital receiving devices are actually digital audio recording devices, requiring additional royalties and the implementation of content protection technology. The proposed rule also appears, at first blush, to be contrary to the "specifically identifiable" and "primary purpose" provisions of section 115. The recent ruling by the Second Circuit in *Cartoon Network v. Cablevision* also calls into question the status of buffer and other transitory copies as interpreted by the Rulemaking. These and other questions require subtle and detailed analysis, and the Copyright Office would be well served not to preclude the ability of interested parties to provide that analysis.

Further, the proposed rule raises significant policy issues, including issues related to the ability to administer section 115, and the possible creation of a new right and

empowering of rights holders who can stall ongoing licensing negotiations and call into question the validity of settled contracts.

There is no need to rush this critical rulemaking. The record of the pending section 115 case before the Copyright Royalty Board is set and the Judges' decision is due on or before October 2, 2008. Even under the current unduly cramped schedule, a final rule could not have a meaningful effect on that decision.

In view of these complexities, the undersigned request the Copyright Office to extend the deadline for submitting comments by 30 days, with an additional 30 days for reply comments.

Thank you for considering our request.

Sincerely,

AT&T Inc.
Bonneville International
Center for Democracy and Technology
Clear Channel Communications, Inc.
Computer and Communications Industry
Association
Consumer Electronics Association
Cox Radio, Inc.
CTIA – The Wireless Association
Electronic Frontier Foundation
Entercom Communications Corp.
Home Recording Rights Coalition
Internet Commerce Coalition
National Association of Broadcasters
National Public Radio, Inc.
Public Knowledge
Salem Communications Corp.
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Clinic, UC Berkeley School of Law
Sirius XM Radio Inc.
US Telecommunications Association
Verizon Communications