January 24, 2002

Wixen Music Publishing, Inc.

David O. Carson, Esq.
Office of the Copyright General Counsel
P.O. Box 70977
Southwest Station
Washington, DC 20024

Re: Mechanical and Digital Phonorecord Delivery Compulsory License
Docket No. RM 2000-7B

Dear Mr. Carson:

Our company provides music publishing administration for such well-known songwriters as Neil Young, Jackson Browne, the Doors, Tom Petty, Styx, Michael McDonald, Richard Marx, Weezer, Journey, Barry Mann, and Cynthia Weil. We would like to take this opportunity to respond to the Copyright Office's request for additional public comment on its Notice of Inquiry in light of the RIAA/NMPA/HFA agreement.

We have already commented on several issues regarding this matter in our letter to the Register of Copyrights dated September 26, 2001 (a copy of which is included here for your easy reference). I will refer you to that letter for our comments concerning those issues raised by paragraph 9.2 of the RIAA/NMPA/HFA agreement. We also object to several other provisions of the agreement as follows:

- Paragraph 3.3 of the RIAA/NMPA/HFA agreement provides that if a license is requested for a HFA member publisher's composition, that HFA will also issue such licenses on behalf of the share of such composition controlled by a non-member publisher, regardless of the non-HFA publisher's desire.

- Paragraph 3.5 extends paragraph 3.3 to included compositions which are not controlled whatsoever by a HFA member publisher. It also establishes incentive fees payable to HFA by the particular RIAA member for HFA recruiting non-members to participate under the terms of the agreement.

- Paragraph 8 provides that NMPA and HFA agree to recognize On-Demand streaming downloads and Limited Downloads as subject to the compulsory license provisions of the U.S. Copyright Act, that they are bound to publically support this position, and that they are forbidden from

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forbidden from commencing, supporting, or in any way condoning legal actions to the contrary.

The RIAA/NMPA/HFA agreement also raises several other issues. First, we are appalled that the agreement was made without any agreement as to the actual rate that will be paid for the use of compositions on so-called digital subscription services. We do not necessarily agree that a digital phonorecord delivery (DPD) or the use of such through a subscription service constitutes a mechanical usage or that it should be subject to a compulsory license provision. However, if it is determined that such is the case, a download is a download. The license rate for a so-called temporary download should be just as much as that for a permanent download. Record companies would like to build into U.S. copyright law the provision for a reduced rate on temporary downloads. This is a similar situation to when record companies re-release phonorecords on their so-called 'budget' or 'mid-line' series. However, the reduced rate for these products is negotiated in the market place. There is no need to mandate these rates in Federal legislation.

Second, compulsory mechanical license provisions are not appropriate for these uses. It seems to us that the limits applied to copyright ownership under U.S. copyright law (e.g., the compulsory mechanical license provisions, the "fair use" doctrine, copyright ownership expiration) were established in order to offset the potential negative effects that monopoly ownership of copyrights might cause to the economy and/or the dissemination of information. These concerns might have been valid at the beginning of the twentieth century when songwriters were on a more equal footing with entertainment companies. However, in this day of the Internet and rapid entertainment industry consolidation, it is the oligopoly of the big five record companies (BMG, EMI, Universal, Sony, and Warner) wielding monopolistic power over intellectual property that is of greater concern.

Finally, neither the NMPA nor HFA can truly claim to represent songwriters' or music publishers' interests in this matter. With the blurring of the boundaries between these companies' record divisions and their publishing divisions, so that arm-length dealings between the two becomes subjugated to the bottom line interests of the corporate whole, it is ludicrous for the multi-national publishing companies to propose that they represent the best interests of music publishing or songwriters. So what we have is the NMPA/HFA representing the interests of a few major publishing companies owned by entertainment conglomerates that also own the records companies represented by

the RIAA. In light of foregoing, the RIAA/HFA agreement is like having the left hand shake the right hand.

Thank you for providing us this opportunity to provide our comments. Please do not hesitate to contact me you should have any questions about or wish to discuss the foregoing.

Sincerely,

Eric Polin
Partner

cc: Randall Wixen
Erik Szabo

September 26, 2001

Wixen Music Publishing, Inc.

Marybeth Peters
Register Of Copyrights
c/o Copyright Arbitration Royalty Panel (CARP)
P.O. Box 70977
Southwest Station
Washington, DC 20024-0977

Re: Proposed amendments to the regulations governing the content and service of certain notices on the copyright owner of a musical work

Dear Ms. Peters:

Our company provides music publishing administration for such well-known songwriters as Neil Young, Jackson Browne, the Doors, Tom Petty, Styx, Michael McDonald, Richard Marx, Barry Mann, and Cynthia Weil. We would like to take this opportunity to provide our comments in regard to the above-noted proposed amendments.

First and foremost, it appears that the primary purpose of these proposed changes is to make it easier for licensees to obtain compulsory mechanical licenses. We do not believe this to be desirable goal. To the contrary, we believe it should be more difficult for licensees to obtain compulsory mechanical licenses. Record clubs, as a matter of practice, already skirt the entire mechanical licensing process. We are opposed to any rule changes that would serve to further erode the copyright owner's intellectual property rights.

Second, the proposed amendments would allow songs with the same copyright owner to be combined onto one notice of intention. We are opposed to this change. In addition to the reasons previously mentioned, we have found that as a matter of practice, licensees are often unable to distinguish between the agent of the copyright owner and the actual copyright owner. We often receive royalty statements and checks combining multiple copyright owners who we represent. This creates reduced efficiency and more work, since we must either return the statements and checks to the licensee for correction or else manually correct the statements and re-issue checks ourselves. We see the proposed rule change as further contributing to this problem. Licensees should be required to determine the actual copyright owner of each song and send out a separate notice of intention of each song.

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Third, the proposed amendment would allow the licensee's agent to sign the notice. If this is permitted, then it should also be mentioned in the notice that the licensee shall remain primarily liable for fulfillment of the compulsory license provisions of the U.S. Copyright Act. Further, the licensee's direct contact information (e.g., street address, phone number, fax number) should be provided in the notice.

Finally, the proposed amendment would provide that certain so-called "harmless errors" should not cause potential licensees to be denied the use of the license if such errors do not affect the legal sufficiency of the notice. To this end, the Copyright Office is proposing to add a new section to the statute which would clarify that such errors will be considered harmless and will not affect the validity of the notice. We are opposed to this change in its entirety. It is the job of the judiciary to determine legal sufficiency. Such a modification would encourage the filing of inaccurate notices and lead to licensees' false complacency that by merely filing a notice (no matter the accuracy) they were immune to any legal action.

Thank you for providing us this opportunity to provide our comments. Please do not hesitate to contact me should you have any questions about or wish to discuss the foregoing.

Sincerely,

Eric Polin
Partner

cc: Randall Wixen
Erik Szabo