



# ANNOUNCEMENT

from the Copyright Office, Library of Congress,  
101 Independence Avenue, S.E., Washington, D.C. 20559-6000

NOTICE OF INQUIRY.

## NOTICE AND RECORDKEEPING FOR MAKING AND DISTRIBUTING PHONORECORDS

The following excerpt is taken from Volume 63, Number 172 of the  
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### LIBRARY OF CONGRESS

#### Copyright Office

37 CFR part 201

[Docket No. RM 98-7]

#### Notice and Recordkeeping for Making and Distributing Phonorecords

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Notice of inquiry.

**SUMMARY:** The Copyright Office of the Library of Congress is requesting comments on the requirements by which copyright owners shall receive reasonable notice of the use of their works in the making and distribution of phonorecords. The Digital Performance Right in Sound Recordings Act of 1995 requires the Librarian of Congress to establish these regulations to ensure proper payment to copyright owners for the use of their works.

**DATES:** Comments are due October 19, 1998. Reply comments are due November 18, 1998.

**ADDRESSES:** If sent by mail, an original and ten copies of the comments, or the reply comments, should be addressed to: David Carson, General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. If hand delivered, an original and ten copies of the comments, or the reply comments, should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room LM-403, First and Independence Avenue, S.E., Washington, D.C. 20559-6000.

#### FOR FURTHER INFORMATION

**CONTACT:** David O. Carson, General Counsel, or Tanya M. Sandros, Attorney

Advisor, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone (202) 707-8380 or Telefax (202) 707-8366.

#### SUPPLEMENTARY INFORMATION:

##### Background

*What is the Digital Performance Right in Sound Recordings Act of 1995?*

On November 1, 1995, Congress enacted the Digital Performance Right in Sound Recordings Act of 1995 (DPRSRA). Public Law 104-39 (1995). Among other things, this law clarified that the compulsory license for making and distributing phonorecords includes the distribution of a phonorecord of a nondramatic musical work by means of a digital phonorecord delivery. 17 U.S.C. 115(c)(3). A "digital phonorecord delivery" is each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient. 17 U.S.C. 115(d), 37 CFR 255.4.

*Why has the Copyright Office initiated this rulemaking proceeding?*

The DPRSRA directs the Librarian of Congress to establish regulations by which the entities availing themselves of this new license would keep records of their use, make the records available to the copyright owners, and give notice to the copyright owners of the use of their works. 17 U.S.C. 115(c)(3)(D). Specifically, sec. 115(c)(3)(D) requires "The Librarian of Congress [to] establish requirements by which copyright owners may receive reasonable notice of the use of their works under this section, and under which records of use shall be kept and made available by persons making digital phonorecord deliveries."

*Are there currently regulations governing the use of the section 115 compulsory license?*

Sections 201.18 and 201.19 of title 37 of the Code of Federal Regulations, detail how potential compulsory licensees must file a notice of intention to obtain a compulsory license for making and distributing phonorecords of nondramatic musical works, how to make royalty payments to the copyright owners, and how to file statements of account in compliance with the terms of the sec. 115 license. Although these rules were promulgated before the passage of the DPRSRA to govern the making and distribution of physical phonorecords, these regulations apply equally to compulsory licensees who make digital phonorecord deliveries.

*Can the regulations in 37 CFR 201.18 and 201.19 be amended to accommodate the delivery of digital phonorecords and meet the additional notice and recordkeeping requirements in 17 U.S.C. 115(c)(3)(D)?*

Section 115(b)(1) of the Copyright Act, 17 United States Code, requires "any person who wishes to obtain a compulsory license under this section ... [to] serve notice of intention to do so on the Copyright Owner." The section also requires the Copyright Office to prescribe regulations specifying the form, content, and manner of service of the notice of intention. Section 201.18 of title 37 of the Federal Code of Regulations meets this requirement. Similarly, the regulations in §201.19 address the requirement that each compulsory licensee file monthly and annual statements of account for each sec. 115 compulsory license as required under 17 U.S.C. 115(c)(5).

These rules, however, were conceived before the dawn of the digital age, and consequently, may not serve those compulsory licensees who intend to use the license to make digital phonorecord

deliveries. For instance, 37 CFR 201.19 uses the terms, "voluntarily distributed," and "phonorecord reserve," which, on their face, do not seem to apply to the delivery of digital phonorecords. Nevertheless, their purpose is to provide notice to the copyright owner of the use of his or her work by a compulsory licensee and to ensure proper payment of royalties -- the same purpose underlying the new notice and recordkeeping provision found in 17 U.S.C. 115(c)(3)(D).

Therefore, the Copyright Office is requesting that interested parties consider how to amend 37 CFR 201.18 and 201.19 in order to accommodate the delivery of digital phonorecords, and whether these rules, if amended to accommodate the delivery of digital phonorecords, would fulfill the notice and recordkeeping requirements specified in 17 U.S.C. 115(c)(3)(D), in addition to the requirements to file a notice of intention and monthly as well as annual statements of accounts. Furthermore, the Office seeks comment on the specific requirement in sec. 115(c)(3)(D) that the "persons making digital phonorecord deliveries" must keep and make available records of use. Interested parties who do not believe that §§201.18 and 201.19 can serve as an appropriate model for the requirements of sec. 115(c)(3)(D) are invited to propose alternative means of notice and recordkeeping.

Dated: September 1, 1998

**David Carson,**  
*General Counsel.*

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