



ANNOUNCEMENT

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

REQUEST FOR COMMENTS.

PUBLIC PERFORMANCE OF SOUND RECORDINGS: DEFINITION OF A SERVICE

The following excerpt is taken from Volume 65, Number 66 of the
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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2000-3A]

Public Performance of Sound Recordings: Definition of a Service

AGENCY: Copyright Office, Library of Congress

ACTION: Request for comments.

SUMMARY: The Copyright Office is seeking comments on a motion to suspend the rulemaking proceeding which would determine whether transmissions of a broadcast signal over a digital communications system, such as the Internet, are exempt from copyright liability.

DATES: Written comments are due on April 17, 2000. Reply comments are due May 1, 2000.

ADDRESSES: If sent by mail, an original and ten copies of comments and reply comments should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. If hand delivered, they should be brought to: Office of the 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, Senior Attorney, Copyright Arbitration Royalty Panel, PO Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707-8380. Telefax: (202) 252-3423.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2000, the Recording Industry

Association of America, Inc. ("RIAA") filed a petition with the Copyright Office, requesting that it initiate a rulemaking proceeding to determine whether over-the-air broadcast radio transmissions that are transmitted over the Internet are exempt from copyright liability pursuant to section 114 of the Copyright Act, title 17 of the United States Code. On March 16, 2000, the Office published a notice of proposed rulemaking in which it requested comments on the scope of the section 114(a) exemption and whether the Office should decide this question through a notice and comment proceeding. 65 FR 14227 (March 16, 2000).

In response to that notice, the National Association of Broadcasters ("NAB") filed, on behalf of its members, a complaint against the RIAA in the U.S. District Court for the Southern District of New York seeking a declaratory ruling that a simultaneous transmission of an over-the-air broadcast of an FCC-licensed radio station over the Internet is exempt from the digital performance right in sound recordings and, consequently, is not subject to compulsory licensing under section 114 of the Act, or to discretionary licensing by individual copyright holders. Subsequently, NAB and ABC, Inc., AMFM, Inc., Bonneville International Corporation, CBS Corporation, Clear Channel Communications, Inc., Cox Radio, Inc., Emmis Communications Corporation and the Walt Disney Company (collectively "Movants") filed a motion with the Copyright Office on March 29, 2000, requesting a suspension of the rulemaking proceeding regarding the Digital Performance Right in Sound Recordings.

In the motion, Movants suggest that the resolution of a fundamental question involving nothing more than the interpretation of a statutory provision is best left to a court of competent jurisdiction. Motion at 5. They intimate that an agency

need not involve itself in such issues, at least in the first instance, unless the question raises regulatory policy concerns or falls within the unique expertise of the agency. They also argue that a rulemaking proceeding is an inadequate means for resolving such a "fundamental" issue, and for that reason such questions should be decided by a court.

Since the issues raised in the motion merely respond to the Office's request for comment on whether the Office should proceed to decide the question concerning the scope of the section 114(a) exemption through a notice and comment proceedings, the Office cannot address the merits of the motion until those parties with an interest in the proceeding have an opportunity to comment. Because the motion sets forth concrete arguments urging the Office to defer addressing the scope of the section 114(a) exemption in a notice and comment proceeding in order to allow a court--in this instance, the U.S. District Court for the Southern District of New York--the opportunity to resolve the issue, the Office is making the motion available at this time in order to give all interested parties notice of the motion and an opportunity to comment on the arguments set forth therein.

Copies of the motion are available from the Office of the General Counsel of Copyright at the address listed in this notice. The motion has also been posted

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to the Copyright Office website (<http://www.loc.gov/copyright/licensing/motion-suspend.pdf>). Comments on the motion to suspend are to be included in the comments a party submits on the substantive issues set forth in the initial notice of proposed rulemaking. Comments are due on April 17, 2000, and reply comments are due on May 1,

2000, the dates specified in the initial notice of proposed rulemaking, and should be included as part of any comments interested parties submit in response to the initial notice of proposed rulemaking.

Dated: March 31, 2000.
Marilyn J. Kretsinger,
Assistant General Counsel.

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