Before the
COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of	)	
Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies	)	Docket No. RM 99-7

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

The Recording Industry Association of America, Inc. ("RIAA") submits these reply comments in response to the Notice of Inquiry published by the Copyright Office at 64 Fed. Reg. 66,139 (Nov. 24, 1999) (the "Notice"). The Notice seeks comments from interested parties concerning the Copyright Office's rulemaking on whether noninfringing uses of certain classes of works have been or are likely to be affected adversely by the prohibition on circumvention in 17 U.S.C. § 1201(a)(1).

RIAA is the principal trade association representing recording companies in the United States. Its members are responsible for the creation of over 90 percent of all legitimate sound recordings sold in this country. RIAA joins other copyright owners in support of the comprehensive Reply Comments filed by the International Intellectual Property Alliance, but submits these separate reply comments to provide the Office with background on the Secure Digital Music Initiative ("SDMI").

SDMI was referenced in some of the opening comments, as if to suggest that the purpose or effect of SDMI will be to restrict access to music. Nothing could be further from the truth. Recording artists and record companies earn their livelihoods by achieving the widest possible distribution of their music. That is why consumers right now can get access to their favorite music through sources such as compact discs and cassette tapes (whether purchased or borrowed from a library), music videos, cable audio services, radio airplay, and, more recently, from Internet-based sources like webcasting. But while pirated copies of popular music are currently available over the Internet, record companies have been reluctant to offer legitimate downloads of music from the world's favorite artists. This lack of access to legitimate digital music distribution has not been due to an excess of security or Section 1201(a)(1)'s prohibition on hacking. To the contrary, it has been the lack of widely-supported security standards and the legal means to back them up that has led to this result. The goal of SDMI is to develop such security standards and thereby make it even easier for consumers to access the music they love, in ways that simply are not possible today.

SDMI is truly a ground-breaking effort. Over 160 companies representing a broad spectrum of information technology and consumer electronics businesses, Internet service providers, security technology companies and members of the worldwide recording industry have come together in SDMI to develop open technological standards for digital music distribution. SDMI is not an effort by record companies to lock up their music so that it will be unavailable to consumers. The reason there has been such widespread participation in SDMI from such a diverse group is because they all see in SDMI the promise of increased availability of music in digital form. Congress expressed its approval of – and indeed encouraged – multi-

industry standard setting processes like SDMI in various provisions of the Digital Millennium Copyright Act. *See* 17 U.S.C. §§ 114(d)(2)(C)(viii), 512(i).

SDMI began its work by developing a specification for portable devices that record and play digital music. Its ultimate goal is to develop a framework for playing, storing and distributing secure digital music to enable the emergence of a new market that meets consumer demand for high-quality digital music. SDMI standards are open and voluntary, and SDMI does not require the use of protection technology or exclude unprotected formats.[1] That is, copyright owners are free to distribute their music in an unprotected format if they so choose, and both protected and unprotected music will play on SDMI-compliant devices. SDMI also seeks to provide consumers the access and uses to which they have become accustomed with traditional media. For example, the SDMI Portable Device Specification permits a user to make an unlimited number of copies from an original CD for personal use on his or her PC, portable device or portable media.

However, SDMI participants recognize that if electronic music delivery is to succeed, they must create new business models that are simply not possible with the consumer experience currently provided by a CD. That is, those who distribute music electronically need to be able to offer consumers entirely new ways to enjoy even more convenient access to music delivered in SDMI-compliant formats. For example, distributors may offer consumers a "try before you buy" program that gives access to music for free for a limited time while the

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[1] Although some commenters mentioned SDMI along with the DVD copy protection scheme known as CSS, the two are fundamentally different. CSS is a specific security

consumer decides whether to purchase a permanent copy. This new consumer experience is made possible by delivering a protected digital version of a recording, but would be made impossible if the Office were to authorize consumers to hack SDMI-compliant security systems to keep promotional copies without paying for permanent retention.

Similarly, many recording companies have huge back catalogs of music that cannot be promoted and sold cost-effectively through traditional retail channels. Digital distribution, with no limits on shelf space or inventory and the ability to target niche markets, can open access to this music as well.

These are just the kinds of developments that Congress directed the Office to consider on the positive side of the equation in this proceeding:

> In assessing the impact of the implementation of technological measures, and of the law against their circumvention, the rulemaking proceedings should consider the positive as well as the adverse effect of these technologies on the availability of copyrighted materials. The technological measures ... that this bill protects can be deployed, not only to prevent piracy and other economically harmful unauthorized uses of copyrighted materials, but also to support new ways of disseminating copyrighted materials to users, and to safeguard the availability of legitimate uses of those materials by individuals. These technological measures may make more works more widely available ....

House of Representatives Committee on the Judiciary, 105th Cong., 2d Sess., *Section-by-Section Analysis of H.R. 2281 as Passed by the United States House of Representatives on August 4, 1998*, at 6 (Comm. Print, Serial No. 6, 1998). *reprinted in* 46 J. Copr. Society 631 (1999).

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technology, while SDMI is an organization to develop certain voluntary minimum security

However, access only can be achieved if technological protections that respect the copyright in these works are available and effective. Thus, Section 1201(a) promotes new forms of access to digital music, and delaying its effectiveness would hamper such access. Indeed, a number of record companies have announced plans to begin electronic music distribution services. Nothing would have a greater chilling effect on those plans than a decision by the Office excluding sound recordings from the protection of Section 1201(a)(1).

We would pleased to provide any further information the Copyright Office requests, including testimony at any hearings on this matter.

Respectfully submitted,

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standards that may be implemented in any number of specific technologies or products.