

November 22, 2000

VIA ELECTRONIC MAIL

Jesse M. Feder, Policy Planning Adviser
Office of Policy and International Affairs
U.S. Copyright Office
P.O. Box 70400
Southwest Station
Washington, D.C. 20024
email: 104study@loc.gov

Jeffrey E.M. Joyner
Senior Counsel, Office of Chief Counsel
National Telecommunications and Information
Administration
Room 4713
U.S. Department of Commerce
14th Street and Constitution Avenue, NW
Washington, D.C. 20230
email: 104study@ntia.doc.gov

Re: Public Hearings on Report to Congress Pursuant to Section 104 of the
Digital Millennium Copyright Act, Docket No. 000522150-0287-02

Dear Mr. Feder and Mr. Joyner:

Pursuant to the Copyright Office's notice at 65 Fed. Reg. 63626 (Oct. 24, 2000), the Recording Industry Association of America, Inc. ("RIAA") hereby requests to testify at the public hearings in the above-referenced proceeding scheduled for Washington, D.C. on November 29, 2000. The testimony will be presented by Cary Sherman, Senior Executive Vice President and General Counsel of RIAA. Attached is a one-page summary of Mr. Sherman's testimony.

Any questions regarding this request can be addressed to the following:

Steven R. Englund
Jule L. Sigall
Arnold & Porter
555 Twelfth Street, N.W.
Washington, D.C. 20004
(202) 942-5000
E-mail: Jule_Sigall@aporter.com

Jesse M. Feder and Jeffrey E.M. Joyner
November 22, 2000
Page 2

Mitch Glazier
Recording Industry Association of
America, Inc.
1330 Connecticut Avenue, N.W.
Suite 300
Washington, D.C. 20004
(202) 775-0101
E-mail: mglazier@riaa.com

Sincerely,

/s/

Steven R. Englund
Jule L. Sigall

Counsel for the Recording Industry
Association of America, Inc.

cc: Cary Sherman
Mitch Glazier

Attachment

**Summary of Proposed Testimony of Cary Sherman,
Senior Executive Vice President and General Counsel,
Recording Industry Association of America, Inc. (“RIAA”)**

November 29, 2000

RIAA is a trade association whose members are responsible for the creation of over 90 percent of all legitimate sound recordings sold in this country. RIAA’s members are actively engaged in the development of new business models for the delivery of music to consumers in digital format, and therefore have a significant interest in the subject of this public hearing and study – the relationship between the development of e-commerce and new technology and Section 109 of the Copyright Act.

RIAA’s testimony will be directed towards the first set of questions raised in the Notice for these public hearings, namely, whether any policy justifications exist for amendments to Section 109 to address digital transmissions. RIAA believes that not only are amendments to copyright law not warranted, tampering with Section 109 in the ways suggested by some commenters would harm the developing digital music marketplace.

Some fundamental principles have been overlooked by those advocating changes to Section 109. First, Section 109 and the “first sale doctrine” it embodies simply limit the distribution right afforded to copyright owners as it relates to particular physical copies. It does not, as many have asserted, establish “rights” regarding the use of copyrighted works nor exemptions from any other exclusive rights of copyright owners. While we agree that a copy in digital format is entitled to the privileges in Section 109 like any other physical copy, Section 109 does not and should not permit reproduction or any other activity that would implicate other rights of the copyright owner.

Second, copyright is a form of property, and copyright owners must be able to capture the value of that property through the use of licenses and other contracts. Indeed, rapid development of new digital music business models will require the flexibility of contractual arrangements to meet the expectations of all parties involved, including consumers, distributors, recording artists and record companies, all of which can change quickly in this new environment. Furthermore, the use of technological measures to support the contractual agreements of the parties is also essential to the deployment of new music delivery methods.

Thus, the suggestion that Section 109 should be amended to address speculative concerns about the use of restrictive licenses or technological measures is misplaced. Developments in new digital music delivery systems – which, first and foremost, are being designed to meet the demands of music consumers – would be stifled by blunt legislative action, and the incentive to create these consumer-friendly models would decrease if such action were taken. Moreover, concerns about allegedly restrictive licensing practices can and should be addressed in the context of other areas of law more relevant to the alleged problems. The marketplace should be given an opportunity to resolve these important issues.