



22 May 2001

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RECEIVED

MAY 23 2001

**GENERAL COUNSEL
OF COPYRIGHT**

To: The Copyright Office of the Library of Congress: Office of the Copyright General Counsel, James Madison, Memorial Building, Room LM-403, First And Independence Avenue, SE, Washington DC 20559-6000

From: Dr. Edison M. Amos, President, Sword And Stone Publishing, Inc.
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Reference: Before the Copyright Office Library of Congress IN the Matter of Mechanical And Digital Phonorecord Delivery Compulsory License: Docket No. RM 2000-7

This is a cover letter by Dr. Edison M. Amos for comments related to Section 17 U.S.C. 115 as it relates to the Mechanical and Digital phonorecord compulsory license.

Pages of the comments with cover letter are five.

Dr. Edison M. Amos
Dr. Edison M. Amos, President,

22 May 2001

TO: The Copyright Office Of the Library of Congress c/o Of Mr. David O. Carson, General Counsel: PO Box 70977, Southwest Station, Washington, DC 20024: Office of the Copyright General Counsel, James Madison Memorial Building, Room LM-403, First And Independence Avenue, SE, Washington, DC 20559-6000

From: Dr. Edison M. Amos, President, Sword And Stone Publishing, Inc.
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MECHANICAL AND DIGITAL PHONORECORD DELIVERY
COMPULSORY LICENSE : Docket No. RM 2000-7

Sword And Stone Publishing, Inc. is a registered S Corporation in the State of Florida which whole purpose is to protect and promote the songwriter of lyrics and music, M. Ellen Amos, AKA, Tori Amos
Sword And Stone Publishing Inc. is a member of The Harry Fox Agency as well as several World Wide Mechanical Organizations for the purpose of protecting and collecting royalties due to the publisher and the writer.
Moreover, Sword And Stone Publishing, and M. Ellen Amos, AKA, Tori Amos are members of the ASCAP organization to protect and collect for the performing rights of artists.

I. The problem before the Copyright Office of the Library Of Congress is to clarify if possible without additional legislation by the Congress The Copyright Laws as it relates to the Mechanical and Digital phonorecord compulsory license, 17 U.S.C. 115, to certain digital music service.

II. The background of the Copyright Laws of the United States are reviewed in the Federal Register/Vo. 66. No. 47/Friday, March 9, 2001/ Proposed Rules.

1. The background review by The Library of Congress shows that the copyright law was to protect the Original Copyright holder's interest and protect the royalty for the Copyright holder under section 115 even when a third party invokes their authority to distribute a phonorecord under section

17 U.S.C. 115(a)(1).

Your review further notes the 1995 Law passed by Congress _” The Digital Performance Act.” Public Law 104-39, 109 Stat. 336 which act took account of technological changes which were beginning to enable digital transmission of sound recordings. The description and interpretation of what constitutes a “ digital phonorecord delivery” - is in 17 U.S.C. 115(c)(3)(A.)

Furthermore your review by the Library of Congress focuses in on the problem in stating that the “ Digital Performance Act, the mechanical license applies to two kinds of disseminations of nondramatic musical works: (1.) The traditional making and distribution of physical, hard copy phonorecords: and (2.) digital phonorecord deliveries, commonly referred to as DPDs within section 115. However, as you have stated Congress created a subset of DPDs commonly referred to as “ incidental DPDs” Hence, Congress did not define incidental DPD and that is the impasse confronted by The Library Of Congress.

III. The question of authority has been raised by “ NMPA” which states that rulemaking on this issue would exceed the authority and others such as “ RIAA” believes that the Copyright Office does have the authority. The position of Sword And Stone Publishing is to make certain that the right of the songwriter is protected all through the process.

IV. It is important that the Copyright Office make a very distinct difference of the primary and secondary interested parties in coming to any decision about what constitutes a digital phonorecord delivery in general and what constitutes an incidental DPD.

1. The primary interest group is the holder of the copyright. Hence, it has been and is now the absolute responsibility of the Office of The Library of Congress to protect the integrity of the primary group, namely, The legitimate Copyright owner or designated entity to act on behalf of the Copyright holder.

The Primary group of authors and composers is represented in large but not exclusively by “ NMPA And “SAG”.

2. The secondary groups are many, among those requesting favorable ruling on their behalf are “ RIAA” MP3.com , DiMA among many other groups which offer digital music services . It is their position that they want

incidental DPDs to be exempt from any Compulsory License .

3. Apparently the secondary groups desire to use this incidental DPD as a means to circumvent the Copyright Law that requires payment of the statutory rate of royalties for a Copyrighted song or any part of that song to be used.

Hence, The Office of The Library of Congress should not be a part of promotion of marketing of companies digital phonorecord delivery.

All evidence would indicate that the Congress did not anticipate the new technology which copyright material could be used without compensation to the copyright holder.

Hence, whatever ruling the Office of the Library of Congress gives ; it should not leave a loophole where the secondary groups could use Copyright material in part or in whole in digital music services by means of limited (i.e. non-permanent) downloads and interactive an/or non-interactive streaming (individually and collectively Service) or any other means of use without a compulsory license from the Copyright holder or the designated entity to issue such a license as Harry Fox to make sure the Copyright is protected completely through the process.

To do otherwise would surrender the authority Congress has designated to the Office of the Library of Congress to be the trustee on behalf of all musical writers and composers who put their faith in the Library of Congress by receiving a Registered Copyright for a musical work or works.

All of the arguments stated about how difficult it would be to get permission from the Copyright Holder, and that our use is only non-permanent and that the streaming is only an incidental DPD are secondary arguments to the primary purpose of the Office Of the Library of Congress to protect any use of a copyright material and to make sure that this use is protected by the statutory rate in part or in whole which is as of this year 7.55 cents, or 1.45 cents per minute or fraction thereof, whichever amount is larger, subject to further adjustment for future years.

Please note that the compensation uses per song or per minute and the phrase “ or fraction thereof” is listed.

Hence, in any use of a song in a digital manner there would be some part of the song which would encompass a minute or a fraction and therefore be subject to compulsory license.

Nevertheless, if The Office of The Library Of Congress interprets the Incidentals as an open exploitation of a copyright material as temporary or as a part of the song which can be used in part; The Library Of Congress would become a part of the secondary parties and would have capitulated their responsibility to the primary party which is the Copyright Holder. In that event the Office of The Library of Congress should pass on making any ruling and defer it back to the Congress.

Thank you very much for receiving these comments, I am

Cordially yours,

Dr. Edison M. Amos
Dr. Edison M. Amos, President