



August 7, 2008

Honorable Marybeth Peters
Register of Copyrights
U.S. Copyright Office
101 Independence Ave., S.E.
Washington, D.C. 20559-6000

*Re: Docket No. RM 2000-7, Compulsory License for Making and Distributing
Phonorecord, Including Digital Phonorecord Deliveries*

Dear Register Peters:

We write on behalf of our members, America's leading digital media companies. Our members will be materially affected by the above-referenced proposed rulemaking ("NPRM"), which addresses complex issues that have been under consideration by the Copyright Office for more than seven years. Given the issues' inherent complexity, and especially due to the recent Second Circuit decision in the *Cablevision* case, we respectfully request a 60-day extension of time for the submission of comments.

As the Copyright Office is aware, the NPRM addresses extremely important issues of copyright law. The proposed rulemaking has significant implications for any entity involved in the digital transmission of sound recordings and musical works, including all our associations' member companies. Further, the proposed rule has potential ramifications that go far beyond the boundaries of Section 115 of the Copyright Act, and in these respects the proposed rule potentially has quite dramatic implications.

For example, the NPRM impacts – and potentially undermines completely – the Section 114 statutory sound recording performance license in ways that our organizations never contemplated throughout the seven years this rule was under consideration. Addressing those issues thoughtfully and comprehensively will be essentially impossible in 30 days.

Additionally, the Copyright Office's proposed interpretation of the term "Digital Phonorecord Delivery" (DPD), as it relates to the broader application of the terms "reproduction" and "distribution", potentially creates liability in association with digital transmissions of all works by every digital transmitter, including virtually all broadcasters and webcasters and all digital video companies (online, cable, satellite and broadcast), as well as companies that historically have been in the business of performing works but now may require reproduction and distribution licenses (and not solely for music, but arguably for every type of work and for every component, including every sample, in every work).



digital media association
The online audio and video
association

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Just this week the United States Court of Appeals for the Second Circuit, in deciding *The Cartoon Network LP v. CSC Holdings, Inc.*, 07-1480-CV (2d. Cir. Aug. 4, 2008) (slip. op.), reversed the District Court's application of these same Copyright Act terms with regard to buffer copies. The district court case was expressly relied upon by the Copyright Office NPRM; this alone suggests that perhaps the NPRM should be withdrawn and reconsidered.

The Copyright Office's final rule will have broad and important implications for a wide range of entities engaged in digital commerce. It could upset established business practice and significantly change the dynamics of long-settled business relationships. All of these questions, and certainly others that we have not had ample time to consider, require detailed analysis by many interested parties. Proceedings of this import – and proposed rules of this breadth and importance – justify a process that is designed to allow all interested parties to fully analyze and comment on all the issues.

In view of these concerns, we request the Copyright Office extend the deadline for submitting comments by 60 days.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Jonathan Potter". The signature is fluid and cursive, with a large initial "J" and "P".

Jonathan Potter
Executive Director