

November 8, 2013

**VIA WEB FORM**

www.copyright.gov

Attn: U.S. Copyright Office

**Re: Copyright Office Notice of Inquiry Regarding Fees**

To Whom It May Concern:

Music Reports, Inc. ("Music Reports") offers the following comments in response to the Copyright Office's Notice of Inquiry Regarding Fees, published at 77 Fed. Reg. 3506 (January 24, 2012). In particular, Music Reports is responding to the second part of the Inquiry, namely, "[W]hether there are any special services and corresponding fees the Office should expand, improve or add to its offerings...." Specifically, Music Reports would like to reiterate its previous request that the fee for recordation in the Licensing Division of a Notice of Intention to Make and Distribute Phonorecords ("NOIs") pursuant to 17 U.S.C. §115 be capped at \$20,105.00 per filing

**I. Music Reports' Interest in the Structure of Section 115 Fees**

Music Reports is the leading provider of music licensing and royalty accounting services to digital music services in the United States. An area of increasing activity at Music Reports is the high volume invocation of Section 115 licenses through delivery of NOIs to tens of thousands of individual owners and administrators of musical works (pursuant to 37 CFR §201.18) and the management of monthly accountings for such licenses (pursuant to 37 CFR §201.19). Music Reports' clients have invoked the Section 115 license for millions of musical works. The full potential utility of the Section 115 license, however, has not been realized due to the excessive filing fees digital services must pay in order to invoke it in relation to copyright owners that have not bothered to register their works.

While the Copyright Office has recognized the burden this places on licensees and has already once lowered the fees for recordation of multiple titles in a single filing, the lack of a cap on such fees continues to render them excessive and cost prohibitive given the sheer volume of unregistered works sought for licensing by Music Reports' clients.<sup>1</sup> Unregistered musical works remain the most expensive to license and digital music services seeking to safely offer consumers a robust musical experience still face a Hobson's Choice: pay excessive fees or accept excessive risk for lack of Section 115's "safe harbor".

**II. Recommendation: Cap the Fee for High Volume Filings**

We are mindful that the Copyright Office's goal in structuring its fees is to recover the full cost of providing a statutory service, unless that cost would be excessive. The Copyright

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<sup>1</sup> For example, the current recordation fee is \$200,105 per hundred thousand titles.

Cost Study ("Study") recommended superseding the old \$12-per-title fee structure with a fee of \$105.00 for filing a single NOI, and \$20.00 for each additional group of ten titles, which recommendation the Copyright Office subsequently adopted. But the Study provided no detail as to the component tasks the Copyright Office is required to perform in administering the Section 115 license, nor its variable costs or how those costs scale (or don't) in relation to high-volume filings.

Even with a paper filing system, the marginal cost of administering an additional piece of paper listing ten unregistered titles eventually approaches zero in a high-volume context. Moreover, on an interim basis (prior to establishing a full system for electronic delivery of NOIs to the Copyright Office), Licensing Division costs could be dramatically reduced by requiring licensees to deliver high-volume NOIs in the form of a CD-ROM containing an Excel or similar format file. Among other benefits, such files would make it easier in the future for copyright owners to search those files for their works.

We respectfully submit that capping the filing fee for multiple titles is consistent with 17 USC §708(b)(4), in that it will promote fairness and equity, and will give due consideration to the objectives of the copyright system, including realizing the full potential of the Section 115 license. We suggest that the fee for high volume filings of more than 10,000 titles be capped at \$20,105.00 per filing.

Thank you for your consideration.

/s/ William B. Colitre  
Vice President, Business & Legal Affairs