

*Before the*  
**Library of Congress**  
**U.S. Copyright Office**  
Washington, DC

*In re*

Music Licensing Study: Second  
Request for Comments

Docket No. 2014-03

**COMMENTS OF**  
**COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION**

Pursuant to the notice of inquiry published by the Copyright Office in the Federal Register at 79 Fed. Reg. 42,833 (July 23, 2014), and extended at 79 Fed. Reg. 44,871 (Aug. 1, 2014), the Computer & Communications Industry Association (CCIA) submits the following comments on selected questions from the notice regarding the subject of music licensing.<sup>1</sup>

**I. Please address possible methods for ensuring the development and dissemination of comprehensive and authoritative public data related to the identity and ownership of musical works and sound recordings, including how best to incentivize private actors to gather, assimilate and share reliable data.**

One of the easiest ways to facilitate the assimilation and availability of data by private actors is to encourage the creation of such data through Copyright Office processes. The Commerce Department's 2012 Green Paper<sup>2</sup> and 2013 public meeting<sup>3</sup> addressed rights

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<sup>1</sup> CCIA represents large, medium and small companies in the high technology products and services sectors, including computer hardware and software, electronic commerce, telecommunications and Internet products and services. CCIA members employ more than 600,000 workers and generate annual revenues in excess of \$465 billion. A list of CCIA members is available at <http://www.cciagnet.org/members>.

<sup>2</sup> Department of Commerce Internet Policy Task Force, *Copyright Policy, Creativity and Innovation in the Digital Economy* (July 2013), available at <http://www.uspto.gov/news/publications/copyrightgreenpaper.pdf> (hereinafter "Green Paper"), at 97.

<sup>3</sup> Transcript of United States Patent & Trademark Office, Department of Commerce, *Public Meeting: Copyright Policy, Creativity and Innovation in the Digital Economy*, Dec. 12, 2013, available at

management information and elicited useful feedback on this issue. A diverse group of participants on the panel entitled “The Government’s Role in a More Efficient Online Marketplace: Access to Rights Information” agreed with the value of standardizing codes. As CCIA explained, we already have international standards for datasets associated with certain classes of works, like ISBN and ISRC.<sup>4</sup> OneHouse pointed out that although Industry Standard Recording Codes (ISRCs) have existed for more than two decades, there is still not a recorded database of them.<sup>5</sup> SoundExchange’s representative reiterated these concerns, and suggested that the government has the opportunity to incorporate ISRC standards into recordation or registration, and in statutory licensing for the Copyright Royalty Board.<sup>6</sup> Several comments filed in response to the Green Paper spoke favorably about standardizing codes as well,<sup>7</sup> indicating that there is substantial consensus on the benefits associated with standardized identifier codes, but that the lack of universally accessible data impedes greater adoption. Comments filed with the Office last year on technical upgrades<sup>8</sup> are also instructive, recommending that the Office implement standardized codes into its registration process, as Forms SR and PR do not presently require an ISRC or ISWC code.<sup>9</sup>

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[http://www.uspto.gov/ip/global/copyrights/121213-USPTO-Green\\_Paper\\_Hearing-Transcript.pdf](http://www.uspto.gov/ip/global/copyrights/121213-USPTO-Green_Paper_Hearing-Transcript.pdf) (hereinafter “Green Paper Transcript”), at 316-74.

<sup>4</sup> Green Paper Transcript at 342 (“ISBN and ISRC were actually associated with ISO standards... [W]e actually do have some international standards for datasets associated with certain classes of works.”).

<sup>5</sup> Green Paper Transcript at 355-56 (“[F]or over two decades, the music industry has been giving out ISRC codes, Industry Standard Recording Codes. And we still don’t have a database of them. Literally, we did not record a single code that we handed out.”).

<sup>6</sup> Green Paper Transcript at 338-41 (noting filings to Copyright Office suggesting that ISRCs be part of copyright registration; “that that actually be a field, and so that you can actually have this way to connect copyright records seamlessly with record company and digital service records of what sound recordings are associated with ISRC”).

<sup>7</sup> SoundExchange Green Paper Comments at 5-6; RIAA Green Paper Comments at 11 (suggesting USG collection of ISWC and ISRC numbers for sound recordings as part of copyright registrations to help build awareness and adoption; promoting awareness and use of standard identifiers); CEA Green Paper Comments at 8.

<sup>8</sup> Copyright Office, Technical Upgrades Comments, U.S. Copyright Office (Mar. 2013), *available at* [http://www.copyright.gov/docs/technical\\_upgrades/](http://www.copyright.gov/docs/technical_upgrades/).

<sup>9</sup> A2IM Technical Upgrades Comments at 1 (“We believe that the Copyright Office database should become a key searchable source for copyright information so that the creators’ works are easily identifiable and do not become

Thus, the Office can lead by example on the issue of improving data reliability by incorporating standardized identifiers into registration and recordation forms on a pilot basis. Once the Office has established that it can routinely ingest such data, it may eventually choose to require the use of standard identifiers. Therefore, the Copyright Office should create optional fields for these codes or similar universal identifier systems on its own registration forms. Over time, the Office could phase in mandatory universal identifiers as a requirement for registration or recordation. In the long run, such efforts would help ensure that various standardized identifiers might achieve the widespread adoption associated with ISBNs, which would facilitate the development of comprehensive and authoritative public data related to the identity and ownership of various types of works.<sup>10</sup>

**II. What are the most widely embraced identifiers used in connection with musical works, sound recordings, songwriters, composers, and artists? How and by whom are they issued and managed? How might the government incentivize more universal availability and adoption?**

As discussed above, there are several widely embraced standards, including ISRC, ISBNs, and to a lesser degree, ISWCs, the likes of which the Office should endeavor to promote. While other stakeholders may furnish more specific information, a pilot effort should treat identifiers inclusively, without choosing one over the other. Naturally, identifiers that are based

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Orphan Works... The key data would include the album/track name, artist/author, owning label, data of release and UPC/ISRC code, with latter data the most important as the unique identifier.”); SoundExchange Technical Upgrades Comments at 2 (“One of the most meaningful enhancements that the Copyright Office can make to its registration forms for sound recordings is to collect ISRCs.”), 3 (“[I]t is critical that each recording be associated with a unique identifier that is used as a worldwide standard.”); ISRC Agencies Technical Upgrades Comments at 4 (“The ISRC Agencies urge the Copyright Office to enable capture of explicitly named standardized identifiers as part of its updated electronic registration and recordation functions... Given the increasing importance of both digital distribution and electronic recordkeeping with respect to all manner of copyrighted works, we believe the Office would be remiss if it failed to position itself now to collect information that will be of increasing importance in the digital age.”).

<sup>10</sup> AAP Technical Upgrades Comments at 8; Author Services Technical Upgrades Comments at 5; County Analytics, Inc. Technical Upgrades Comments at 7.

upon the work of consensus-based international standards bodies such as the ISO would be a logical starting point.

**IV. Please provide your views on the logistics and consequences of potential publisher withdrawals from ASCAP and/or BMI, including how such withdrawals would be governed by the PROs; whether such withdrawals are compatible with existing publisher agreements with songwriters and composers; whether the PROs might still play a role in administering licenses issued directly by the publishers, and if so, how; the effect of any such withdrawals on PRO cost structures and commissions; licensees' access to definitive data concerning individual works subject to withdrawal; and related issues.**

Publisher withdrawal from the PROs poses a significant threat to competition. Because the demands of the marketplace effectively compel many licensees to negotiate with all PROs, the consequences of licensee-specific withdrawal of rights may be tantamount to forbidding that licensee from operating in the marketplace. Insofar as PROs under Department of Justice consent decrees operate as a form of supervised cartel, a licensor that partially withdraws from a PRO with respect to some licensees, works, or uses, but not others receives the benefits of coordinated action in the marketplace without submitting to the obligations that DOJ has attached to the privilege of coordination. As described in Judge Cote's opinion in the *Pandora* case,<sup>11</sup> Sony's attempts to withdraw so-called "digital" rights<sup>12</sup> from ASCAP, while refusing to reveal which songs that withdrawal affected, meant that it could prevent ASCAP from licensing to one user – and use its "partial withdrawal" to drive an above-market fee – while still obtaining the transaction costs savings of coordination vis-à-vis other users. Accordingly, while a rights-holder should not be compelled to license through a PRO, it must also not be permitted to selectively benefit from coordinated action in the marketplace where it chooses. This "all-in or

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<sup>11</sup> *In re Petition of Pandora Media, Inc.*, 2014 WL 1088101 (S.D.N.Y. Mar. 18, 2014), at \*24.

<sup>12</sup> Notably, there is no so-called "digital" right under Section 106; Congress provided a public performance right. 17 U.S.C. § 106(4). That the public performance may occur via a digital medium does not change the fact that §106(4) is what is being licensed.

all-out” obligation should apply equally to uses (*i.e.*, ‘digital’) and works (*i.e.*, works in the publishers’ portfolios).

**IX. International licensing models for the reproduction, distribution, and public performance of musical works differ from the current regimes for licensing musical works in the United States. Are there international music licensing models the Office should look to as it continues to review the U.S. system?**

The experience in Europe offers an instructive example of what happens when collecting societies are empowered with broader mandates and less oversight. A 2012 impact assessment issued in a European Commission review of collective rights management stated that “the ability of CS [collecting societies] to efficiently deliver their services is increasingly being questioned, leading to a loss of trust and confidence in their services. The issue is often raised by national parliaments, the European Parliament and national competition authorities. It is the subject of complaints from rightholders and users.”<sup>13</sup> It also observed that European societies could sit on undistributed sums for years; as of “2010 major societies had accumulated €3.6 billions worth of liabilities to rightholders.”<sup>14</sup> A survey of collective licensing organizations in more than 30 countries found that “many unfortunately share the characteristic of serving their own interests at the expense of artists and the public,” and that there was “a long history of corruption, mismanagement, confiscation of funds, and lack of transparency that has deprived artists of the revenues they earned. At the same time, CROs [collective rights organizations] have often

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<sup>13</sup> Impact Assessment accompanying Proposal for a Directive of the European Parliament and of the Council on collective management of copyright and related rights and multi-territorial licensing, July 11, 2012, *available at* <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012SC0204&from=EN>.

<sup>14</sup> *Id.* at 19-20 (Box 6; “Overall, between 5 and 10% of collections are not distributed to rightholders for as many as three years after they were collected – a delay which is significant”; delays in distribution may be to “giv[e] an impression of low operating expenses”).

aggressively sought fees to which they were not legally entitled or in a manner that discredited the copyright system.”<sup>15</sup>

For these reasons, overseas models that rely heavily on collective licensing models should be regarded with an appropriate measure of skepticism.

September 12, 2014

Respectfully submitted,

Matt Schruers  
VP, Law & Policy  
Ali Sternburg  
Public Policy & Regulatory Counsel  
Computer & Communications  
Industry Association  
900 Seventeenth Street NW, 11th Floor  
Washington, D.C. 20006  
(202) 783-0070

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<sup>15</sup> Jonathan Band & Brandon Butler, *Some Cautionary Tales about Collective Licensing*, 21 MICH. ST. INT’L L. REV. 687, 689-90 (2013), available at [http://msuilr.org/wp-content/uploads/2013/12/516973-Michigan-State-Jnl-of-Intl-Law-21.3\\_R2-2.pdf](http://msuilr.org/wp-content/uploads/2013/12/516973-Michigan-State-Jnl-of-Intl-Law-21.3_R2-2.pdf).