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Washington, D.C.

SEP 22 2005

GENERAL COUNSEL
OF COPYRIGHT

In the Matter of :
: :
Satellite Home Viewer Extension and :
Reauthorization Act of 2004 :

Docket No. RM 2005-7

DOCKET NO.
RM 2005-7
Reply
COMMENT NO. 1

**REPLY COMMENTS OF
BROADCAST MUSIC, INC.; THE AMERICAN SOCIETY OF COMPOSERS,
AUTHORS, AND PUBLISHERS; AND SESAC, INC.**

Broadcast Music, Inc. ("BMI"); the American Society of Composers, Authors, and Publishers ("ASCAP"); and SESAC, Inc. ("SESAC") (collectively, "Music Claimants") hereby submit their reply comments in the above captioned docket pursuant to the notice of inquiry issued by the U.S. Copyright Office ("Office") on June 30, 2005, 70 Fed. Reg. 39343-45 (July 7, 2005). The notice of inquiry is authorized by the Satellite Home Viewer Extension and Reauthorization Act of 2004 ("SHVERA"), Pub. L. No. 108-447, which requires the Office to conduct a two-pronged study, due by December 31, 2005, first on the unserved household limitation, and second on the general matter of harm to copyright owners.

The Music Claimants collectively represent hundreds of thousands of composer, songwriter and music publisher members and affiliates with combined repertoires of millions of copyrighted musical works. On behalf of their respective members and affiliates, the Music Claimants license the public performance rights granted to them by their respective members and affiliates as copyright owners under section 106(4) of the Copyright Act. ASCAP and BMI are also each affiliated with about 70 foreign performing rights societies around the world and

license the repertories of those societies in the United States. On behalf of their members and affiliates, each of the Music Claimants annually files claims for cable compulsory license royalties under 17 U.S.C. § 111, satellite carrier compulsory license royalties under 17 U.S.C. § 119 and DART royalties pursuant to 17 U.S.C. §§ 1001 *et seq.* The Music Claimants each separately file joint claims covering their respective membership and affiliates.

I. The Section 122 License

The Music Claimants have consistently taken the position that statutory compulsory licenses should generally be avoided and, at a minimum, copyright owners subjected to a compulsory license should be compensated with payments equivalent to the fair market value of the copyrighted materials utilized on a signal subject to a compulsory license. The section 122 license is a royalty-free license under which no payments are made to the Music Claimants or in fact to other copyright holders. When a satellite carrier retransmits a local signal, it makes a separate public performance of the copyrighted works on that signal under the Copyright Act and charges a subscription fee for such local signal. It is grossly inequitable for such a retransmission to carry a zero royalty. See Comments of Joint Sports Claimants, p. 13, and Comments of Program Suppliers, p. 12. The Music Claimants are entitled to a payment of a royalty on such retransmissions and have no way of recouping the unpaid royalties from another source. Royalty-free licenses are unsound from a public policy perspective; they amount to nothing more than an exemption from liability and a free ride on copyright owners' rights.

II. The Section 119 License

The Music Claimants generally support the Joint Reply Comments of Copyright Owners filed in this docket that the current payment schedule under the satellite license does not represent the "fair market value" for carriage of the signals.

Respectfully submitted,

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