

January 29, 2009

VIA EMAIL: crb@loc.gov

Copyright Royalty Board
Library of Congress
James Madison Memorial Building, LM-403
101 Independence Avenue, SE.
Washington DC 20559-6000

Re: Docket No. RM 2008-7, Notice and Recordkeeping for Use of Sound Recordings Under Statutory License – Comments of Royalty Logic, LLC

Royalty Logic, LLC (“Royalty Logic”) hereby submits the following comments in response to the Notice of Proposed Rulemaking (Docket No. RM 2008-7) published by the Copyright Royalty Board (“CRB”) at 73 Fed. Reg. 79727 (December 30, 2008) regarding Notice and Recordkeeping for the Use of Sound Recordings Under Statutory License (the “NPRM”).

I. Royalty Logic’s Interest in the NPRM

Royalty Logic is an agent designated by affiliated copyright owners and performers pursuant to 17 U.S.C. §112(e)(2) and §114(e)(1) to collect, verify and distribute royalty payments and monitor compliance pursuant to the relevant statutory licenses addressed by the NPRM.

II. The NPRM’s Proposed Section 370.5(d) Improperly Limits Copyright Owners’ Right To Reasonable Notice of the Use of Their Sound Recordings.

Proposed Section 370.5(d) (*Inspection of Reports of Use by copyright owners*), improperly limits a copyright owner to mere inspection of copies of Records of Use at the offices of the Collective during normal business hours. The practical result of this limitation is to foreclose any meaningful ability of a copyright owner or its designated agent to effectively verify royalty payments and monitor compliance with statutory requirements. The regulations must require the Collective¹ to provide access to complete Reports of Use (as described in

¹ Royalty Logic notes that a previous determination of the CRB, currently under review by the DC Circuit Court of Appeals (Docket No. 07-1168), established a sole “Collective” (a term which is defined and utilized throughout Part 370) for the collection and distribution of royalties under the section 112 and 114 statutory licenses. Docket No. 2005-1 CRB DTRA (“Webcaster II”). One of the issues on appeal is whether the CRB exceeded its statutory authority by promulgating terms of payment requiring that all copyright owners or their common agents must receive statutory royalty payments (and accompanying statements of account and records of use) through a private “Collective” appointed by the CRB, rather than directly from statutory licensees.

sections 370.3 and 370.4) via email or file transfer protocol to any copyright owner or designated agent requesting such files, subject to the confidentiality provisions of Section 370.5(e), for the reasons set forth in this Section II.

A. Copyright Owners are Entitled to Reports of Use by Statute.

Section 114(f)(4)(A) of the Copyright Act entitles copyright owners and their agents to receive such Reports of Use directly from statutory licensees:

“The Copyright Royalty Judges shall also establish requirements **by which copyright owners may receive reasonable notice of the use of their sound recordings** under this section, and under which **records of such use shall be kept and made available by entities performing sound recordings.**”

17 U.S.C. 114(f)(4)(A) (emphasis added).

B. Inspection of Reports of Use at the Office of the Collective is Impossible.

Reports of Use of sound recordings are critical to the ability of copyright owners and their agents to verify collected royalty payments, distribute royalty payments among copyright owners, and monitor licensees’ compliance with requirements of the statutory license (e.g., compliance with playlist restrictions of the sound recording performance complement). The CRB has recognized the importance of Records of Use to copyright owners and their agents stating: “Before the Collective, **or any other agents designated to receive royalties from the Collective**, can make a royalty payment to an individual copyright owner, they must know the use the eligible digital audio service has made of the sound recording.” NPRM at 79727-3 (emphasis added).

Given the importance of such Records of Use as recognized by the CRB, the proposed Section 370.5(d) is an obvious anachronism, applying outmoded and limiting analog concepts only suited to random inspection of printed reports. The proposed section is ill suited to the requirements of computer analysis and processing of voluminous digital data records. The process of verifying compliance requires examination of millions of lines of detailed information in thousands of Reports of Use made by multiple transmission services. Such reports cannot be effectively inspected or analyzed without the use of sophisticated and robust computer processing software and systems, requiring complete access to the same files as are received by the Collective. An examination of such scale and scope cannot reasonably be limited to the offices of the Collective during the Collective’s normal business hours. The only practical and cost effective way for a copyright owner or its agent to determine compliance with statutory license terms is to require the Collective to provide

copyright owners or their agents with full and complete off-site access to the Reports of Use in the format described in sections 370.3 and 370.4.

C. The NPRM's Proposed Section 370.5(d) Improperly Disrupts the Functions of a Designated Agent.

Prior regulations required SoundExchange to provide copies of Reports of Use to Royalty Logic. See 37 CFR 370.4(c). The Copyright Act's section 114(f)(4)(A) directs the CRB to adopt regulations that foster and enable the verification and monitoring functions of an agent (i.e., Royalty Logic) designated by copyright owners.

"If new regulations are promulgated under this subparagraph, the Copyright Royalty Judges shall take into account the substance and effect of the rules in effect on the day before the effective date of the Copyright Royalty and Distribution Reform Act of 2004 and shall, to the extent practicable, **avoid significant disruption of the functions of any designated agent authorized to collect and distribute royalty fees.**"

17 U.S.C. 114(f)(4)(A)(emphasis added).

The NPRM's proposed Section 370.5(d) would therefore improperly disrupt the ability of Royalty Logic to perform the functions of a designated agent on behalf of its affiliates by depriving it of the right to be provided copies of Reports of Use.

D. The CRB's Prior Decisions Recognize the Importance of Full Access to Accounting Information.

Full access to complete Records of Use is consistent with regulations adopted by the CRB providing copyright owners and their designated agents with access to confidential information including **statements of account** and any information contained therein. See, 37 CFR 380.5(d)(3). Without such information, the CRB has determined that "...a copyright owner and/or performer cannot begin to make an informed judgment as to whether a Service is complying with its statutory obligations and making the correct payment."² In providing such access the CRB was troubled by "...how the denial of information to copyright owners and performers impacts their substantive rights under the section 112 and 114 licenses."³ Moreover, in determining that copyright owners and their agents were entitled to access confidential information, the CRB found no support in the statute for "an arrangement that effectively imbues only the Collective, or any other agent, with the information necessary to pursue an infringement action."⁴

² Webcaster II at page 93.

³ Id.

⁴ Id.

The CRB reasoning allowing copyright owners or their agents full access to **statements of account** is fully applicable to **Reports of Use**. Moreover, that reasoning is doubly applicable where the amount or allocation of royalties due and verification of a service's compliance with the statutory requirements is dependant on a thorough analysis of the voluminous information contained in Reports of Use, which requires a full panoply of data processing tools.

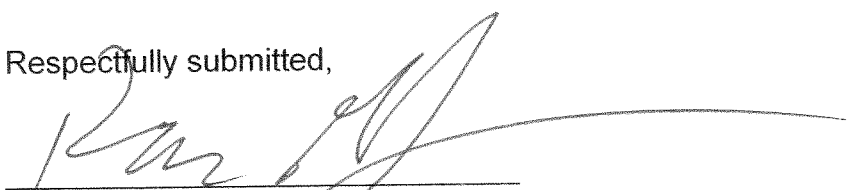
E. Providing Records of Use to Copyright Owners or Their Agents Presents No Burden Whatsoever.

No significant burden would be placed on the Collective by requiring access to Reports of Use by copyright owners or their agents. Subject to the confidentiality provisions of Section 370.5(e), the Collective could merely email Reports of Use to a distribution list of requesting parties, or provide the information necessary for requesting parties to download Reports of Use by file transfer protocol, i.e., in the same ways the Collective receives such Reports of Use pursuant to Section 370.4(e)(3). Furthermore, voluminous electronic Reports of Use would be of very little value to any party which does not maintain highly technical systems and databases necessary to process reports of Use and verify their accuracy, as Royalty Logic does. Therefore, as a practical matter, requests for Reports of Use are likely to be made by only a handful of copyright owners or agents.

III. Conclusion

For the above reasons, Royalty Logic respectfully submits that the proposed regulation must require the Collective to make complete Reports of Use available in digital format to any copyright owner or designated agent requesting such files through email or file transfer protocol, subject to the confidentiality provisions of Section 370.5(e). Royalty Logic further proposes that the regulations as modified and adopted remain interim pending final resolution of issues currently on appeal relating to the authority of the CRB.

Respectfully submitted,



Ronald H. Gertz, Esq.
Chairman of the Board