



American Association
of Independent Music

Copyright Royalty Board
Library of Congress
Washington D.C. 20024-0977
Docket # 14-CRB-0005 (RM)

Response to Request for Comments: Notice and Recordkeeping for Use of Sound Recordings Under Statutory License: Comments by the American Association of Independent Music (“A2IM”) – June 30, 2014

The American Association of Independent Music (“A2IM”) thanks the Copyright Royalty Board (“CRB”) for this opportunity to offer comments on the “Notice and Recordkeeping for Use of Sound Recordings Under Statutory License”.

A2IM is a 501(c)(6) not-for-profit trade organization representing a broad coalition of over 330 independently owned U.S. music labels. Billboard Magazine, using Nielsen SoundScan data, identified the Independent music label sector as 34.6 percent of the music industry’s U.S. recorded music sales market in 2013 (and using the same source data by our computation approximately 40 percent of digital recorded music revenues). Independent music labels release over 90 percent of all music released by music labels in the U.S. so related to this request for comments our segment of the music industry will be heavily impacted. Our Independent music label community is the big tent as, while all of our members are small and medium-sized music enterprises (SMEs), it is a very diverse group. A2IM’s independent community includes music labels of all sizes and staffing levels across the United States, from Hawaii to Florida, representing musical genres as diverse as our membership. All of our label members have one thing in common; they are small and medium business people with a love for music who are trying to make a living. A2IM members also share the core conviction that the independent music community plays a vital role in the continued advancement of cultural diversity and innovation in music both at home and abroad.

For our members, whose livelihoods depend on the ability to invest in and create music and distribute and license copyrights in a free market, it is essential to have government partners helping to advance a worldwide enforceable regime for the protection of intellectual property and accurate reporting. A reporting regime that enhances accountability at all levels of the distribution chain and that deals effectively with any unauthorized usages is essential for our community. Without accurate comprehensive reporting, A2IM’s members, as SME’s, a key economic growth engine, will be unable to continue investing in the process of musical intellectual property investment.

In preparing this request for comments, the A2IM staff held discussions with the A2IM board of directors and other A2IM member companies, of varying business sizes with varying levels of staffing and business models, so as to properly represent our diverse community. Our views presented herein are based upon a consensus of our members thoughts with varying views noted.

A2IM supports SoundExchange as “the sole collective designated by the Judges to collect and distribute sound recording royalties under the section 112(e) and 114 licenses.” as the most efficient and cost effective basis of reporting to and paying sound recording owners and their artists, both featured and supporting artists. A2IM has a SoundExchange Bylaws designated seat on the

SoundExchange board of directors and A2IM and two of its members occupy three of the nine SoundExchange seats designated for music labels on the SoundExchange board of directors. As a result independent music labels have a voice on the SoundExchange board.

We thank the CRB for the improvements in reporting that the CRB has instituted over the years, especially the full census actual total performance requirement (ATP) which ensures that all creators should be reported the correct amounts for each stream of their artists' music, as opposed to payments being based upon a sampling process.

The notice and recordkeeping regulations that the SoundExchange petition for rule making proposes to amend will increase the efficiency of reporting and distributions by SoundExchange. The changes to the current requirements proposed in SoundExchange's petition for rulemaking are critically important to A2IM's constituents and their artists to ensure that the correct copyright owners are compensated for their investments in the music creation process. Let us also stress that as a resource challenged community we understand the concept of a cost-benefit analysis. We stress those reporting requirements most essential to our community be adopted, although pragmatically all of the SoundExchange requested changes would benefit all creators at a reasonably low cost to service providers. In general we are in support of almost all of SoundExchange's petition requests; herein we will focus on just one that is the most important to our community.

A major concern for Independent music labels is not just contractually getting their correct proportionate share of revenues based upon actual copyright ownership. A second challenge is ensuring that the metadata and accounting received by SoundExchange is correct and that Independents are actually getting paid for their entire copyright repertoire. The CRB must ensure that all digital services using sound recordings be required to use an International Standard Recording Code (i.e. "ISRC" codes) and/or an International Standard Name Identifier (i.e. "ISNI" codes) to identify all recordings, and such services should also be required to incorporate these codes into the metadata of the recordings they use in order to achieve more accurate accounting and distribution of sound recording royalties.

In our role as SoundExchange board members and in serving on SoundExchange committees we have found that some of the data reported by digital services using the SoundExchange compulsory statutory license is not complete. As representatives on both the SoundExchange data committee and licensing committee we note that the matching process between the reports of use ("ROU"), statements of account ("SOU") and payment data often do not match up with each other and are often incomplete resulting in either the wrong sound recording owner and artists, or no sound recording owner and artists, getting paid. This is especially problematic for our community which releases and owns the largest group of sound recordings. Everyone knows who Bruce Springsteen is and that he records for Columbia Records. Not everyone knows who all of our members artists are and, as artists move from one music label to another music label, which labels own which songs rights for an individual artist. Even for artists who remain on one music label for their entire career the release of compilations and soundtracks, and who owns those rights, complicates reporting and payments to the proper parties.

The primary solution to getting the correct copyright attribution for every digital track streamed (including tracks for which no payments are being made so they can be researched) is to require an ISRC code (or ISNI where a ISRC is not available) to be reported for every track a service uses and have this unique identifier included on every SOU, MOU and statement of payment.

Currently most digital services, other than preexisting subscription services, ("PSS") are allowed to report either the ISRC or the album title and marketing label for a recording. This is in contrast to the PSS, which are required to report all three data elements. Because these alternatives are available to services other than PSS, SoundExchange receives a bare minimum of information for matching even

when all the required elements are reported, which is frequently insufficient to report and pay the correct party. In addition many services often omit or make errors in one or more of the required data elements. A2IM believes the change that likely would be easiest for services to implement and that would have the greatest positive effect on correct artist and label matching would be to require all services to report the ISRC where available, as well as album title, copyright ownership label and marketing label, as the PSS are required to do. We add the ownership label requirement because, depending on the music label-artist contract, certain digital rights sometimes belong to the copyright ownership label and not the marketing label and sometimes a third party distributor maybe designated to be the recipient of the royalties.

It must be understood that while ISRC and album/label are positioned in the current regulations as alternatives, they are by no means equally desirable alternatives. ISRC is a unique identifier for sound recordings. When an ISRC is reported accurately, it clearly identifies the relevant recording in a way that no other single data element can. By contrast, use of album/label alone is especially a problem for compilations, as we note above, as well for multiple recordings of the same song by an artist.

ISRCs are widely available to digital services. ISRCs are widely used by record companies and most digital distribution companies for purposes of rights administration, and are used for reporting purposes in direct license arrangements between record companies and webcasting and on-demand services. Larger services that receive electronic copies of recordings from record companies and digital distribution companies should typically receive ISRCs as part of the accompanying metadata. To the extent services obtain recordings from commercial products, the ISRC generally should be encoded therein, and when present, easily can be extracted with widely-available software tools.

Use of the ISRC will significantly reduce the number of tracks that remain unidentified and where then the funds received from digital services will need to be allocated via a proxy process, a process which we believe short-changes the A2IM independent music label community as we believe a larger proportion of those funds belong to our constituents than to the “so called” major labels.

For our community of like-minded investors in and creators of music, the key issue is getting our proper compensation for ourselves and our artists. This will enable us to be able to continue the music investment process in recording and marketing the music of our members label artists.. It will also aid in the very important areas of maintaining musical culture and diversity and the preservation of America’s musical heritage for consumer use. A2IM is dedicated to these goals and protecting creators from those entities simply looking to exploit our musical works solely for commerce and profit without payment to creators. Without this ISRC requirement and aligned reporting as described above, A2IM’s members, as SME’s, a key economic growth engine, may be unable to continue investing in the process of musical intellectual property development, investment that creates easily exportable Intellectual Property products that improve the U.S. balance of trade, thus improving the U.S. economy and creating jobs at home in the U.S.

We thank the Copyright Royalty Board for the opportunity to comment on this “Notice of Proposed Rulemaking on Notice and Recordkeeping for Use of Sound Recordings Under Statutory License” which is of great importance to our Independent music label community and our artists. Please do not hesitate to contact me with any questions you may have about our position.



Respectfully,
Rich Bengloff, President
American Association of Independent Music (“A2IM”)