By direction of the Commission.

Donald S. Clark,

Secretary.

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LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Parts 201 and 210

[Docket No. 2012–7]

Mechanical and Digital Phonorecord Delivery Compulsory License

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Request for additional comments.

SUMMARY: The U.S. Copyright Office (''Office'' or ''Copyright Office'') of the Library of Congress requests additional public comments on clarifying the terms in the Monthly and Annual Statements of Account for the making and distribution of phonorecords.

DATES: Additional comments on the proposed rule published July 27, 2012 (77 FR 44179), must be received in the Office of the General Counsel of the Copyright Office no later than 5 p.m. Eastern Daylight Time (EDT) on January 30, 2014. Reply comments must be received no later than 5 p.m. EDT on February 14, 2014.

ADDRESSES: The Copyright Office strongly prefers that comments be submitted electronically. A comment submission page is posted on the Copyright Office Web site at *http://www.copyright.gov/docs/section115/soa/comments/.* The Web site interface requires submitters to complete a form specifying name and other required information, and to upload comments as an attachment. To meet accessibility standards, all comments must be uploaded in a single file in either the Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The maximum file size is 6 megabytes (MB). The name of the submitter and organization should appear on both the form and the face of the comments. All comments will be posted publicly on the Copyright Office Web site exactly as they are received, along with names and organizations if provided. If electronic submission of comments is not feasible, please contact the Copyright Office at (202) 707–8380 for special instructions.

FOR FURTHER INFORMATION CONTACT: William Roberts, Senior Counsel to the Register of Copyrights, or Stephen Ruwe, Attorney Advisor, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. *Telephone:* (202) 707–8380. *Telefax:* (202) 707–8366.

SUPPLEMENTARY INFORMATION: On July 27, 2012, the Copyright Office published a notice of proposed rulemaking (''NPRM'') and request for comments concerning new regulations that would amend the requirements for reporting Monthly and Annual Statements of Account for the making and distribution of phonorecords under the compulsory license, 17 U.S.C. 115, to bring the regulations up to date to accommodate certain rates and terms proposed by the Copyright Royalty Judges (''Judges'') that provided for a multi-step process for calculating royalties for certain new services, including limited offerings, mixed service bundles, paid locker services and purchased content locker services. *Mechanical and Digital Phonorecord Delivery Compulsory License; Notice of proposed rulemaking,* 77 FR 44179, July 27, 2012.

The NPRM noted that the existing regulations addressing Statements of Account are designed to address flat penny rates, such as those that are still applicable for the making and distribution of physical phonorecords, permanent digital downloads and ringtones. The Office also observed that the current regulations do not specifically accommodate the more complex methods for calculating the royalties contained in the Judges' May 17, 2012 proposed rule, announced in the context of the Judges' royalty rate adjustment proceeding in Docket No. 2011–3 CRB Phonorecords II. *See,* 77 FR 29259, May 17, 2012. In order to address this concern, the Copyright Office, acting under the authority set forth in 17 U.S.C. 115(c)(5), initiated a rulemaking to amend the Statement of Account provisions. In large part, the proposed regulations incorporate by reference the methodology adopted by the Judges in their 2009 determination, which are mirrored in the regulations adopting new rates and terms for the current licensing period. However, the NPRM identified a number of issues associated with the new rate structure that require careful consideration before adoption. *See,* 77 FR at 44181–185.

In response to joint motions by several parties requesting more time to provide input, the Office decided to extend the comment and reply comment periods. *Mechanical and Digital Phonorecord Delivery Compulsory License; Notice of proposed rulemaking: Extension of comment and reply comment periods.* 77 FR 55783, Sept. 11, 2012; *Mechanical and Digital Phonorecord Delivery Compulsory License; Extension of reply comment periods.* 77 FR 68075, Nov. 15, 2012. The Office withheld further action in this rulemaking pending the Judges' adoption of final rates and terms.

On November 13, 2013, the Judges issued final rates and terms for the section 115 license. *Adjustment of Determination of Compulsory License Rates for Mechanical and Digital Phonorecord, Final rule.* 78 FR 67938, Nov. 13, 2013. The final rates and terms differed from the 2012 proposed rates and terms in certain respects, due in part to actions taken by the Judges. Specifically, the Judges referred material questions of law to the Register of Copyrights concerning their authority to adopt certain terms relating to statements of account. *Order Referring Material Questions of Law and Setting Briefing Schedule* (March 27, 2013). The Judges also referred novel material questions of substantive law to the Register concerning their authority to adopt certain terms. *Order Referring Novel Questions of Law and Setting Briefing Schedule* (May 17, 2013). In light of the Register's timely responses to these referred questions, the Judges declined to adopt certain terms contained in the May 17, 2012 proposed rule. *Adjustment of Determination of Compulsory License Rates for Mechanical and Digital Phonorecord. Final rule.* 78 FR 67938, Nov. 13, 2013.

The Office finds that the conclusion of the recent proceeding and adoption of new rates and terms for the current licensing period may be pertinent to the issues raised in this rulemaking. Likewise, due to the passage of time since the issuance of the NPRM, marketplace developments and changes in business models may be relevant to the amendment of the regulations. Consequently, the Office has decided to extend an opportunity for such additional comments and supporting information. Interested parties are strongly encouraged to offer information and/or documentation to support arguments or conclusions offered in their comments. Any additional comments must be received in the Office of the General Counsel of the Copyright Office no later than January 30, 2014, and reply comments no later than February 14, 2014.

Dated: December 17, 2013.

Maria A. Pallante,

Register of Copyrights.

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