Before the
UNITED STATES COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of:

Technological Upgrades to Registration   Docket No. 2013–2
And Recordation Functions

The International Federation of the Phonographic Industry ("IFPI") acting as the International ISRC Agency and the Recording Industry Association of America ("RIAA") acting as the National ISRC Agency for the US (hereinafter the "ISRC Agencies") respectfully submit this response to the Notice of Inquiry ("NOI") issued by the Copyright Office on March 22, 2013 concerning Technological Upgrades to Registration and Recordation Functions.

Introduction

The NOI was issued in connection with an ongoing effort by the Copyright Office (the "Office") to identify and evaluate "potential improvements and technical enhancements to the information technology platforms that support its registration and recordation functions, including its online registration system." 78 Fed. Reg. 17722. The NOI seeks comments from stakeholders regarding how they use the current online offerings of the Copyright Office and how they would like to interact with the Copyright Office electronically in the future. Id. According to the NOI, some stakeholders use the registration and recordation systems primarily to protect their intellectual property while others use them primarily to "identify copyright owners, investigate the copyright status of works and the public domain . . . ." Id. These comments address both the registration/ recordation process and the ability of users to search the registration/ recordation database[s] for the various purposes described.

The NOI identifies six questions that the Office specifically would like comments to address. The ISRC Agencies are filing these comments to address the three specific questions listed below:

- Question #2, which asks about "the nature and scope of information captured during the course of the registration and recordation processes, including that which could be captured through user input, or through metadata harvesting." 78 Fed. Reg. at 17724.
- Question #3, which asks about "metadata standards in particular industries that the Copyright Office might adopt or incorporate into its systems (e.g., IPTC for photography; ISRC for sound recordings; ONIX for books)."
- Question #6, which asks about "the integration of third-party databases of copyright ownership and licensing information (such as those maintained

by collective management organizations) and related technologies with data maintained by the Copyright Office." Id.

In addition to the questions listed above, these comments offer our thoughts regarding the adoption of industry standards that support data exchange between the Office and different groups of users, a subject that is specifically addressed in the NOI. 78 Fed. Reg. at 17723.

We commend the Office for raising these timely and important questions, for investing the resources necessary to develop and deploy a state-of-the-art electronic registration and recordation system and for adopting a forward-looking perspective in the development of that system. As described more fully below, in this era of electronic commerce and digital distribution of copyrighted works, the ISRC Agencies believe it is critical that the Office's updated copyright registration and recordation systems become interoperable with systems operated by other parties. By including standard identifiers in the records held by the Office, all users (including rightsowners, licensees, other users of copyright and public domain works, rights management organizations and other commercial intermediaries) will be able to cross-reference their searches of the Office's database with results from third-party databases, thereby increasing the utility to all parties of the data in each database.

Background

As distribution of music becomes increasingly digital, the ability of owners and users to research and track information about copyrighted works using standard identifying codes will become increasingly important and valuable. Private commerce has already moved far down this path. To remain relevant, it is essential that the Copyright Office follow suit.

The benefit of standardized identifying codes – which can be easily captured during the registration and recordation process – is the ability to simply and unambiguously identify things, such as a specific creative work or a specific party. In addition, the use of standardized identifiers provides a more accurate way to specify and search for information than does text matching, which frequently fails because of transcription and spelling errors, different transliterations of foreign words and names, the use of non-roman scripts, different marketing names for the same things and other similar reasons. The use of standard identifiers for sound recordings is important because frequently there are multiple recorded versions of a single song, sometimes by more than one artist, sometimes by a single artist. For example, the song *I Will Always Love You* has been recorded by Dolly Parton and Whitney Houston, among others, and Whitney Houston has herself recorded both live and studio versions of that song. Each of those recordings has a distinct identifying code that unambiguously distinguishes it from other recordings of the same song and other recordings by the same artist.

Further, standard identifiers allow databases to interoperate without sharing each other's data: for example where the same standard identifying code for a particular recording is used, the records held by the Copyright Office, a rights owner, SoundExchange, crowd-sourced databases like MusicBrainz and Discogs, and commercial databases held by (for instance) Nielsen, Rovi and Gracenote can be easily cross-referenced by third parties and/or the databases themselves if each contains that code. Each database operator remains responsible for the contents of their own record though.

The International Standard Recording Code (ISRC) is an international standard published by the International Organization for Standardization (ISO) as ISO 3901. The standard is administered by the International ISRC Agency (IFPI Secretariat) and one of its principal functions is to appoint a national agency where appropriate. In the United States this is the RIAA, which acts as the National ISRC Agency.

An ISRC identifies a single recording (a sound recording or a music video recording) and is currently assigned by the owner pursuant to the rules contained in the ISO standard. ISRCs are assigned at the track, not the album, level.

It is inexpensive to assign an ISRC to a sound recording. In the US, a one-time fee of $80 is currently charged for the allocation of a prefix (called a registrant code), which allows the registrant to assign up to 100,000 track-level identifiers (i.e., individual ISRC codes) per year.[1] Whereas the major record labels assign these codes themselves, many small producers of sound recordings and/or music video recordings use the services of an ISRC Manager (typically their distributor) that assigns ISRCs at a very low cost or bundles the cost into their distribution charges. It is not necessary to be a member of any trade association to be allocated a registrant code; indeed many registrants are self-releasing artists and they are nevertheless fully supported by the ISRC Agencies. ISRC numbers are widely used to identify sound recordings for rights management purposes. Owners/distributors are now required to supply them to some large online music services. In addition, collective management organizations such as SoundExchange (in the US) and PPL (in the UK) expect copyright owners to provide ISRCs when submitting their repertoire. For that reason, they are currently assigned to virtually all commercially important new tracks and have been assigned to many older tracks as well. It is not yet possible to quantify the precise number of ISRCs assigned in a year but the ISRC Agencies estimate that approximately 12 million are assigned worldwide every year.

The ISRC standard is currently being revised by ISO with the support of the ISRC Agencies. We expect that ISO will require the implementation of a registry (an authoritative database which stores and is able to automatically assign identifying codes) in the near future. This will substantially reduce the potential for error (such as the accidental assignment of multiple codes to a single sound recording) within the ISRC system. The registry – which, due to its importance

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[1] The fee is used to cover the costs of running the non-profit National ISRC Agency for the US.

to the industry, may be established even before the ISO mandate is finalized – will be global in scope though initial implementation is likely to focus on US repertoire.

There are other standardized codes that relate to other information that is relevant to the registration and recordation of sound recordings. In particular, we note that the International Standard Musical Work Code (ISWC) is standardized by ISO as ISO 15707 and the International Standard Name Identifier (ISNI) is similarly standardized as ISO27729. The ISWC is widely used within collective management organizations dealing with musical compositions and is managed on behalf of the International Confederation of Societies of Authors and Composers (CISAC). The International Standard Name Identifier (ISNI) is used to uniquely identify parties[2] – natural and legal persons (incorporated or not) and groups of the same. The ISNI is particularly useful in connection with common names that are apt to appear multiple times as owners of copyrighted works (e.g., John Williams (the classical guitarist) and John Williams (the film composer)). The ISNI was published in 2012 and is managed by the ISNI International Agency (ISNI-IA), which was formed by an international consortium of rights management organizations and library groups. ISNIs are assigned through a centralized database, which is accessed by an international network of registration agencies. At the time of writing, over 6.4 million identifiers have been assigned at low unit cost to the representative organizations involved in obtaining them for their members, based on information from libraries, collective management organizations and other sources.

<u>Recommendations</u>

1. <u>Enable capture of standardized identifier codes.</u>

The ISRC Agencies urge the Copyright Office to enable capture of explicitly named[3] standardized identifiers as part of its updated electronic registration and recordation functions. This process should be implemented in conjunction with the relevant experts from the managing agencies in the US and ensure that high quality data is both captured and made available to users when the Office's databases are searched. 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.

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[2] In fact, ISNI identifies public identities of parties – so that pseudonyms have separate identifiers, but this distinction does not affect its utility in copyright registration.

[3] The ISRC Agencies note that current electronic application form includes a field for an "international standard number" and a drop-down menu that references the ISRC (for those who bother to access the drop-down menu) but believe that this somewhat vague reference may, paradoxically, act as a deterrent to registrants, who generally do not recognize this as a request for a standardized identifier such as an ISRC, ISWC, etc. Further, the current system appears to restrict the provision of an international identifier to "published works." There is no restriction on assigning an ISRC to an unpublished work and indeed such assignment is encouraged.

<u>Enable capture of ISRC codes.</u>

In particular, we urge the Copyright Office to request, but not require, that all rightsowners provide an ISRC when submitting an application to register a sound recording or music video recording. This should be independent of whether the application is submitted through an updated Copyright Office portal or through any legacy systems that may be retained.[4] The ISRC Agencies strongly recommend that the Copyright Office develop a basic mechanism that can validate the ISRC for syntax and obvious errors, such as the inclusion of an invalid country code, and that the system prompt registrants when errors are suspected.

Because most sound recordings are currently registered with the Office at the album, not the track, level we note that it will be necessary to devise a mechanism for capturing multiple ISRCs in connection with a single application for a sound recording registration. Once captured, ISRCs relating to each individual track should be associated with the other data associated with that track and the album level registration data in the Office's systems.
The inclusion of an ISRC field in the Copyright Office database will serve multiple, important purposes:

- It will enhance confidence among users of the Office's database that the sound recording referenced in a particular registration is the precise sound recording the user is looking for (e.g., the Dolly Parton version of *I Will Always Love You* as distinguished from Whitney Houston's studio version of *I Will Always Love You* as distinguished from Whitney Houston's live version of *I Will Always Love You*, each of which will have been assigned a unique ISRC);
- It will enhance the value of the Copyright Office database to stakeholders, including owners, licensees and consumers, which will, in turn, encourage more owners to register their works and record their transfers of ownership;
- It will encourage the small percentage of sound recording creators/producers that do not currently use ISRCs to begin doing so, which will enhance the utility of the ISRC as an identifier to both the industry and the Copyright Office;
- It will position the Copyright Office database to be interoperable with other important industry databases (e.g., the forthcoming ISRC Registry, the SoundExchange database, crowd-sourced databases like MusicBrainz and Discogs, etc.);
- It will help address the orphan works problem by reducing uncertainty concerning the identity of registered works and

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[4] It is possible that several ISRCs may be associated with a single copyrighted sound recording (e.g., where changes such as remastering of a recording may require the assignment of a new ISRC even where new copyright registration is required). In those cases, the ISRC that is provided with the registration should be regarded as an exemplar or reference code. Industry databases will "cluster" the registered ISRC and others referencing the same copyrighted recording.

(particularly if the Copyright Office captures ISNIs) making it easier to identify and locate copyright owners;

- Clearly distinguishing different recorded versions of the same underlying musical works and thereby allowing users of the Copyright Office's database to confidently access the correct registration (with all the attendant information about the recording) will enhance the ability of users to determine when specific recordings enter the public domain; and
- To the extent that the Office's registration system is revised so as to capture both ISRC numbers and ISWC numbers in applications to register sound recordings, the use of the two identifiers will help users determine whether both the sound recording and the underlying musical work have entered the public domain and, if not, the identifiers will simplify the task of identifying (for payment purposes) the copyright owner of the work that has not yet entered the public domain.

3. The Copyright Office registration portal should validate the ISRC supplied by a registrant.

For registrants who supply an ISRC, the Copyright Office registration portal should be designed to perform various validity checks (beyond the basic syntax checks mentioned above) on the ISRC supplied. In the first instance, the portal should be designed to run a check of existing registration and recordation records to ensure that the ISRC supplied by the registrant is not the subject of an existing copyright registration. As a second step, the ISRC Agencies encourage the Copyright Office to design the registration portal so that it is capable of using the public interface that will be a part of the forthcoming ISRC Registry to check (i.e., resolve) ISRCs supplied by registrants to ensure that they are actually valid and associated with the sound recording(s) that are the subject of the application for registration.

4. ISRCs should be actively sought during the electronic registration process.

An updated registration system should be able to recognize when a sound recording is being registered and automatically prompt the registrant to supply the relevant ISRC or ISRCs (referring to "ISRC" by name). Likewise, if a registrant fails to provide an ISRC, the system should generate a prompt before the application is accepted to confirm that the ISRC field has been intentionally left blank.

Although the ISRC Agencies are not proposing to *require* the submission of ISRCs for the sound recordings in a registration, it is possible that the industry could become so dependent on the ISRC in the future that it may eventually become commercially necessary to require it in a copyright registration. As such, we recommend that the Copyright Office registration portal be designed now in a manner that would allow such a requirement to be implemented in the future.

5. The Copyright Office should consider enabling the registration portal to
   act as an ISRC Manager.

If the system prompts a registrant to supply an ISRC and the registrant indicates that sound recording or music video recording in question does not have one assigned, the Copyright Office registration portal should supply the registrant with an additional prompt that explains what an ISRC is, describes its benefits and offers the registrant the ability to instantly obtain an ISRC code (which might then automatically become part of the registration application). Initially, this could be accomplished by enabling the Copyright Office portal to assign ISRCs, acting as an ISRC Manager in the same way as many distributors do. The Copyright Office registration portal would need to ensure that the registrant was very sure that an ISRC had not already been assigned to the sound recording. Once the ISRC Registry is up and running, the Copyright Office registration portal could be linked to the ISRC Registry, so that registrants could obtain an ISRC as part of their copyright registration application.

6. The Copyright Office should investigate the adoption of ISNI as a party
   identifier for sound recordings and other types of copyrighted works.

The ISRC Agencies endorse the comments submitted by ISNI-IA with respect to the adoption of the ISNI in connection with sound recordings and other types of copyrighted works. The use of ISNI to identify copyright owners and registrants will allow a rapid and automatic distinction to be made between otherwise similarly named parties. It will also allow efficient automated searches of the Copyright Office databases to be made, even if owners and registrants use different name variants (e.g., George Washington vs. G. Washington). The ISRC Agencies encourage the Copyright Office to investigate the adoption of ISNI in its copyright registration portal in conjunction with the managing agency, ISNI-IA.

7. The Copyright Office should investigate the adoption of ISWC as an
   identifier for musical works.

The ISRC Agencies believe that the adoption of ISWC as an identifier for registered musical works would, for all the reasons set out with respect to recordings, increase the value of the Copyright Office's registration database to all its users. They encourage the Copyright Office to investigate the adoption of ISWC in its copyright registration portal in conjunction with managing agency CISAC.

8. The Copyright Office should investigate the adoption of registration
   protocols based on DDEX, the music industry's standard messaging
   mechanism.

As mentioned in the NOI, Digital Data Exchange (DDEX) has developed specific digital supply chain messaging formats and protocols for use in the music industry. DDEX is an international consortium of interested parties from the music industry including producers (large and small), rights societies, publishers, online music services and technology providers that was formed in

2006. Since then, the DDEX messages have been widely adopted because they offer an efficient way of transferring information between these parties. Implementation of DDEX standards is free of charge although the organization has a membership fee for those wishing to be involved in their development.

The information required for a sound recording copyright registration is a subset of the information included in the "Electronic Release Notification" message, a specified DDEX format that is widely used to communicate new release information from record labels to digital music services. To make copyright registration as efficient as possible (both from a record label and a Copyright Office perspective), we urge the Copyright Office to design its updated registration portal in a manner that will allow it to accept registration applications in a close variant of this DDEX format. Of course, registrants of sound recordings preferring to complete a registration application manually should still be permitted to do so.

Conclusion

The ISRC Agencies urge the Copyright Office to promote the use of standardized identifiers – in particular ISRC – in its updated registration and recordation functions. We recommend inclusion of explicitly labeled fields for each such identifier in any new registration and recordation forms or user interfaces, a function that prompts registrants to populate those fields, a function that validates ISRCs supplied by registrants and an ability to obtain an ISRC during the registration process. In addition, the ISRC Agencies recommend that the Copyright Office investigate the adoption of ISNI (and ISWC), and the use of DDEX-derived protocols to allow record labels to submit copyright registration applications using data already in their electronic systems.

The ISRC Agencies would welcome further discussions with the Copyright Office regarding implementation of these important recommendations and would be happy to assist the Office as the process moves forward.

Respectfully submitted,

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