

UNITED STATES COPYRIGHT ROYALTY BOARD  
LIBRARY OF CONGRESS

*In re:* )  
 ) Docket No. 18-CRB-0012-RM  
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 ) **Notification of Inquiry Regarding**  
 ) **Modification and Amendment of**  
 ) **Regulations to Conform to the MMA**  
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**JOINT MOTION FOR EXTENSION OF TIME FOR SUBMISSION OF COMMENTS  
AND PROPOSALS IN RESPONSE TO THE COPYRIGHT ROYALTY JUDGES’  
NOTIFICATION OF INQUIRY REGARDING MODIFICATION  
AND AMENDMENT OF REGULATIONS TO CONFORM TO THE MMA**

On November 5, 2018, the Copyright Royalty Judges (“CRJs”) published a Notification of Inquiry (“NOI”) in the *Federal Register*, seeking comments and proposals regarding the modification and/or amendment of regulations to conform to the Music Modernization Act (“MMA”). *See* 83 Fed. Reg. 55334 (Nov. 5, 2018). The NOI sets the deadline for submission of comments and proposals for November 26, 2018.

As the NOI explicitly acknowledges, the MMA “implements changes in administration of copyright royalties relating to the music industry” and contains “sweeping changes” to prior law. 83 Fed. Reg. 55334. Through the NOI, the CRJs seek responses to several broad, non-exhaustive questions and furthermore “solicit proposed new or modified regulatory language,” with interested parties required to “support each legal conclusion and each proposed regulatory change with appropriate legal analysis and citation to authority.” *See id.*

The Digital Media Association (“DiMA”)<sup>1</sup> and the National Music Publishers’ Association

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<sup>1</sup> DiMA represents a number of parties with a significant interest in the subject matter of the NOI, including Amazon, Apple, Google, Pandora, and Spotify.

(“NMPA”) appreciate the opportunity provided by the NOI to answer the CRJs’ questions and to propose regulatory language that is needed to implement the MMA and harmonize it with the most current version of the regulations. DiMA and NMPA believe, however, that a modest extension of the current November 26 deadline is needed to provide the most meaningful and useful comments and proposals. DiMA and NMPA therefore, for the reasons stated in this Motion, jointly and respectfully request a twenty-one (21) day extension of time, to and including December 17, 2018, to submit such comments and proposals.

#### **I. THE QUESTIONS RAISED BY THE NOI REQUIRE CAREFUL AND THOUGHTFUL REVIEW**

The requested extension of time is necessary for DiMA and NMPA to provide the CRJs with carefully considered responses to each of the CRJs’ questions and to craft proposed regulatory language. In order to provide their comments and proposals, DiMA and NMPA need to review, compare, and analyze in detail Chapter III, Title 37 of the C.F.R., as recently amended, the newly-enacted MMA, and other provisions of the U.S. Copyright Act, all of which are lengthy and complex statutes and regulations. DiMA and NMPA also need to determine the required and suggested changes that should be made to the regulations and whether any additional regulations might be necessary or advisable (including regulations relating to the proceedings that will establish the “administrative assessment” provided for in the MMA (17 U.S.C. § 115 (d)(7)(D)), all the while taking into consideration the interaction of numerous statutory and regulatory provisions to ensure harmony among them all.

After conducting the analyses and making the determinations discussed above, DiMA and NMPA then need to consider and frame proposed changes and additions to the existing regulatory structure. The current deadline provides a mere twenty-one days from the issuance of the NOI to

conduct all of the necessary analyses, and that already brief period is shortened by the intervening Thanksgiving holiday (with comments and proposals due on the Monday after the holiday).<sup>2</sup>

Of equal importance, this modest extension of time – if granted – would also allow DiMA and NMPA to work together collaboratively in an effort to provide the CRJs with jointly considered responses to their questions and proposed regulatory language, combining and harmonizing input from the parties with the most significant interest in the subject matter of the NOI.

## **II. THE REQUESTED EXTENSION WOULD NOT BE PREJUDICIAL OR DELAY THE FULFILLMENT OF STATUTORY REQUIREMENTS**

The MMA provides that the CRJs must, within 270 days of enactment, (1) “commence a proceeding to establish the initial administrative assessment by publishing a notice in the *Federal Register* seeking petitions to participate” and (2) implement technical and conforming amendments to Part 385 of Title 37 of the C.F.R. *See* 17 U.S.C. § 115(d)(7)(D)(iii)(I), *as set forth in* § 102(a)(4) of the MMA. Because the MMA was enacted into law on October 11, 2018, the CRJs have until July 8, 2019 to fulfill these requirements.

If the requested twenty-one (21) day extension of time is granted, the CRJs would receive comments and proposals from all interested parties by December 17, 2018, more than six months prior to the deadline under the MMA. Moreover, because the extension of time would apply to all interested parties, the extension should not result in any prejudice or impose a burden on any other party who may wish to submit comments and/or proposals in response to the NOI.

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<sup>2</sup> A grant of the requested extension would be consistent with prior precedent. *See, e.g., In re Rulemaking Regarding Notice and Recordkeeping for Use of Sound Recordings Under Statutory License*, Dkt. No. 14-CRB-0005 (RM) (May 22, 2014).

### III. CONCLUSION

For each of the foregoing reasons, DiMA and NMPA jointly and respectfully request a twenty-one (21) day extension of time, to and including December 17, 2018, to submit their comments and proposals regarding the modification and/or amendment of regulations to conform to the MMA.

Respectfully submitted this 14th day of November, 2018.

*/s/ Erich C. Carey*

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