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

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In the Matter of :
Docket No. 96-4 CARP DPRA

DIGITAL PHONORECORD DELIVERY :
RATE ADJUSTMENT PROCEEDING :

..... X

**AMENDED JOINT PETITION FOR ADJUSTMENT OF
DIGITAL PHONORECORD DELIVERY ROYALTY RATES
SUBMITTED BY
NATIONAL MUSIC PUBLISHERS' ASSOCIATION, INC.,
THE SONGWRITERS GUILD OF AMERICA AND
RECORDING INDUSTRY ASSOCIATION OF AMERICA, INC.**

This amended petition for adjustment of digital phonorecord delivery ("DPD") royalty rates is submitted jointly at the request of the Copyright Office and pursuant to 17 U.S.C. §§ 115(c) and 803(a) and 37 C.F.R. § 251.63(b) by the National Music Publishers' Association, Inc., The Songwriters Guild of America and the Recording Industry Association of America, Inc. (the "Petitioners").

The Petitioners submit the accompanying Amended Proposal Concerning Digital Phonorecord Delivery Royalty Rate Adjustments (the "Amended Proposal") and hereby request that the Copyright Office, pursuant to 17 U.S.C. § 803(a) and 37 C.F.R. § 251.63(b), promulgate regulations effecting an adjustment of the royalty rates in the manner set forth in the Amended Proposal. This Amended Proposal follows and supersedes paragraphs 3 through 6 of the original proposal (the

"Original Proposal") accompanying the Joint Petition for Adjustment of Physical Phonorecord and Digital Phonorecord Delivery Royalty Rates submitted by the Petitioners on November 5, 1997 ("Original Petition"), and resolves concerns raised in comments on the Original Proposal and the Memorandum of NMPA, SGA and RIAA Regarding Adoption of Rates for General Digital Phonorecord Deliveries by the Coalition of Internet Webcasters, Broadcast Music, Inc., the United States Telephone Association, the American Society of Authors, Composers, and Publishers and SESAC, Inc (the "Commenting Parties").

The Amended Proposal was formulated after the Petitioners and the Commenting Parties held discussions for the purpose of arriving at a mutually agreeable proposal respecting the DPD royalty rates. Based upon representations made by the Commenting Parties, the Petitioners understand that the Commenting Parties have no objection to the accompanying Amended Proposal. Petitioners believe that the promulgation of rates and terms for DPDs as provided in the Amended Proposal as soon as possible will facilitate the licensing of copyrighted musical works for the benefit of copyright owners and users and the general public. Accordingly, Petitioners suggest that if a notice and comment period for the Amended Proposal is necessary, that period should be thirty (30) days.

As set forth in the Original Petition, the Petitioners have a "significant interest" in the royalty rates to be adjusted, within the meaning of section 803(a)(1) of the Copyright Act. National Music Publishers' Association, Inc. ("NMPA") is an association of over 600 commercially active American music publishers, whose

interests NMPA represents through a variety of legislative, legal, and public relations initiatives. NMPA's wholly owned subsidiary, The Harry Fox Agency, Inc., acts as a licensing agent for over 17,000 music publishers.

The Songwriters Guild of America ("SGA") is a national organization of over 4,500 songwriters. Its primary functions are to promote the interests of authors and composers in their dealings with those who market and use their creative works, and in legislative matters. Like NMPA, SGA represents the interests of those who receive royalties for the use of copyrighted musical works.

Recording Industry Association of America, Inc. ("RIAA") is an association of approximately 350 recording companies. Its members are the leading manufacturers of the records, tapes and compact discs sold in the United States, and are engaged in the distribution of music through DPD systems. RIAA thus represents the interests of those who must pay royalties for use of copyrighted musical works in DPDs.

The accompanying Amended Proposal is submitted on the understanding that its various provisions are not severable. The Amended Proposal is without prejudice to any position, contention or argument that the Petitioners may take in any proceeding or litigation, and is not intended to be, and should not constitute, a precedent in any future rate adjustment proceeding.

Dated: December 4, 1998

Respectfully submitted,

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**Amended Proposal Concerning Digital
Phonorecord Delivery Royalty Rate Adjustments**

Amendments to 37 C.F.R. Part 255

1. The title of section 255.5 is revised to read "Royalty rate for digital phonorecord deliveries in general." and the present paragraph of section 255.5 is designated as paragraph (a).

Section 255.5 is further revised by adding the following new paragraph:

(b) For every digital phonorecord delivery made on or after January 1, 1998, except for digital phonorecord deliveries where the reproduction or distribution of a phonorecord is incidental to the transmission which constitutes the digital phonorecord delivery, as specified in 17 U.S.C. § 115(c)(3)(C) and (D), the royalty rate payable with respect to each work embodied in the phonorecord shall be the royalty rate prescribed in section 255.3 for the making and distribution of a phonorecord made and distributed on the date of the digital phonorecord delivery (the "Physical Rate"). In any future proceeding under 17 U.S.C. § 115(c)(3)(C) or (D), the royalty rates payable for a compulsory license for digital phonorecord deliveries in general shall be established de novo, and no precedential effect shall be given to the royalty rate payable under this paragraph for any period prior to the period as to which the royalty rates are to be established in such future proceeding.

2. A new section 255.6 is added, which reads as follows:

§ 255.6 Royalty rate for incidental digital phonorecord deliveries.

The royalty rate for digital phonorecord deliveries where the reproduction or distribution of a phonorecord is incidental to the transmission which constitutes a digital phonorecord delivery, as specified in 17 U.S.C. § 115(c)(3)(C) and (D), is deferred for consideration until the next digital phonorecord delivery rate adjustment proceeding pursuant to the schedule set forth in section 255.7; provided, however, that any owner or user of a copyrighted work with a significant interest in such royalty rate, as provided in 17 U.S.C. § 803(a)(1), may petition the Librarian of Congress to establish a rate prior to the commencement of the next digital phonorecord delivery rate adjustment proceeding. In the event such a petition is filed, the Librarian of

Congress shall proceed in accordance with 17 U.S.C. § 115(c)(3)(D), and all applicable regulations, as though the petition had been filed in accordance with 17 U.S.C. § 803(a)(1).

3. A new section 255.7 is added, which reads as follows:

255.7 Future proceedings.

The procedures specified in 17 U.S.C. § 115(c)(3)(C) shall be repeated in 1999, 2001, 2003 and 2006 so as to determine the applicable rates and terms for the making of digital phonorecord deliveries during the periods beginning January 1, 2001, 2003, 2005 and 2008. The procedures specified in 17 U.S.C. § 115(c)(3)(D) shall be repeated, in the absence of license agreements negotiated under 17 U.S.C. § 115(c)(3)(B) and (C), upon the filing of a petition in accordance with 17 U.S.C. § 803(a)(1), in 2000, 2002, 2004 and 2007 so as to determine new rates and terms for the making of digital phonorecord deliveries during the periods beginning January 1, 2001, 2003, 2005 and 2008. Thereafter, the procedures specified in 17 U.S.C. § 115(c)(3)(C) and (D) shall be repeated in each fifth calendar year. Notwithstanding the foregoing, different years for the repeating of such proceedings may be determined in accordance with 17 U.S.C. § 115(c)(3)(C) and (D).

4. A new section 255.8 is added, which reads as follows:

255.8 Public performances of sound recordings and musical works.

Nothing in Part 255 annuls or limits the exclusive right to publicly perform a sound recording or the musical work embodied therein, including by means of a digital transmission, under 17 U.S.C. §§ 106(4) and 106(6).

CERTIFICATE OF SERVICE

I hereby certify that I have this 4th day of December, 1998, served the foregoing Amended Joint Petition for Adjustment of Digital Phonorecord Delivery Royalty Rates Submitted by National Music Publishers' Association, Inc., The Songwriters Guild of America and Recording Industry Association of America, Inc., by mail to the following counsel.



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December 4, 1998

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Re: Digital Phonorecord Delivery Rate Adjustment Proceeding

Dear David:

As discussed last week, enclosed is the Amended Joint Petition for Adjustment of Digital Phonorecord Delivery Royalty Rates Submitted by National Music Publishers' Association, Inc., The Songwriters Guild of America and Recording Industry Association of America, Inc.

Best regards.

Sincerely,



Steve Englund

Enclosure