

Before the
COPYRIGHT ROYALTY BOARD
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of)

**Notice and Recordkeeping for Use of
Sound Recordings Under Statutory
License**)

Docket No. 14-CRB-0005 (RM)

REPLY COMMENTS OF SIRIUS XM RADIO INC.

Sirius XM Radio Inc. (“Sirius XM”) offers the following brief Reply Comments in response to the June 30, 2014 comments filed by other interested parties.

A. ISRC Reporting

Sirius XM’s initial comments stated that it was not opposed to reporting ISRC codes in instances where such codes were actually available to the licensee. Sirius XM also expressed its support for a regulation that would require SoundExchange to provide ISRC codes to licensees, who might have difficulty obtaining them otherwise (a problem confirmed by the joint submission of the NAB and RMLC). SoundExchange’s comments appear to support this approach, suggesting that its ISRC proposal is limited to requiring ISRC reporting where “available and feasible.” This standard, and the terms “available” and “feasible,” however, are not defined by SoundExchange, which introduces some ambiguity to the proposal. If a regulation is adopted, it should make clear that an ISRC must be reported only where the licensee has the ISRC “available” *in its possession*. “Available and feasible” should not be interpreted so broadly as to suggest that just because a given recording has been commercially released (meaning the ISRC is *publicly* available), then reporting it necessarily is “feasible” (*i.e.*, the service might be able to obtain it with some investigation). In short, if the copy of the

recording in the possession of the licensee service does not contain the ISRC – a very common occurrence – the licensee service should not be required to try to hunt it down, especially when SoundExchange may seek to hold the service liable for a non-compliant report (subject to late fees) for failing to do so.

B. Late Fees for Reports of Use

SoundExchange suggests its proposal for late fees for reports of use is reasonable by making the obvious point that services can avoid late fees by turning in their reports on time. That justification is a non sequitur: the issue is the propriety of a late fee when a service does *not* turn in a report on time. SoundExchange’s justification is also limitless in its reasoning: it could justify late fees of 20% as easily as late fees of .5%, and says nothing about whether the actual fee proposed by SoundExchange is reasonable. (It is not.) Nor does SoundExchange respond to the concern expressed by Sirius XM and other commenters that late fees for payments, statements of account, and (now) reports of use should not be stacked on top of one another – a result which could amount to combined late fees of 4.5% per month (54% per year!) for a single reporting period. In short, SoundExchange has failed to justify its punitive proposal, and Sirius XM stands by its original comments on this subject.

C. SoundExchange’s Comments

Along the same lines, Sirius XM offers a final procedural comment. As a general matter, SoundExchange’s comments only “briefly address a few points” (p. 1), and do not defend or supported its proposals in other than the most general terms. Instead, SoundExchange candidly explains that it is relying on its original petition, and “anticipates providing more extensive reply comments after considering the initial comments provided by other interested parties.” (p. 1.) Respectfully, that is not how the process should work. Regulations should not be adopted without the party proposing them actually justifying their adoption, and the parties affected by

the proposals having to opportunity to understand and respond to those purported justifications. This is especially important given the highly punitive nature of some of SoundExchange's proposals (for example, the right to flag reports of use as not fully compliant reports and to assess late fees for such reports) – although it is entirely possible that the licensee services might support the proposals as well.

Because SoundExchange has chosen to rely on its petition, because that petition was not published, and because SoundExchange has only “briefly address[ed] a few points” in its original comments, the rulemaking process is compromised in at least two ways. First, SoundExchange has not actually defended or supported its proposed changes to the regulations on the public record in any fully developed fashion. Second, Sirius XM and other licensees have been left with little or nothing to reply to. We therefore request right to respond to SoundExchange's reply comments, which in most cases will be the first time SoundExchange actually supports its proposed changes on the public record.

New York, New York
August 11, 2014

Respectfully submitted,

By: /s/ Cynthia Greer
Cynthia Greer
Sirius XM Radio Inc.
1221 Avenue of the Americas
New York, New York 10020
Tel: (202) 380-4000
cynthia.greer@siriusxm.com

Counsel for Sirius XM Radio Inc.