

Before the
NATIONAL TELECOMMUNICATIONS AND
INFORMATION ADMINISTRATION OF THE
UNITED STATES DEPARTMENT OF COMMERCE AND
THE UNITED STATES COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.

In The Matter Of)	
)	
Request for Comments on)	Docket No. 990428110-9110-01
Section 1201(g) of the Digital Millennium)	
Copyright Act of 1998)	
)	

INITIAL COMMENTS OF BROADCAST MUSIC, INC.

On May 26, 1999, the National Telecommunications and Information Administration, United States Department of Commerce (“NTIA”) and the United States Copyright Office, Library of Congress (“Copyright Office), acting pursuant to Section 1201(g) of the Digital Millennium Copyright Act of 1998 (the “DMCA” or “Act”), issued a request for public comment on certain issues concerning the role of technology in protecting the transmission of copyrighted works on the Internet. 64 Fed. Reg. 28802 (the “Notice”). The Copyright Office and the NTIA are directed by the Act to prepare a report specifically examining the impact of Section 1201(g) of the Act on encryption research no later than one year after enactment of the DMCA (that is, on or before October 28, 1999).

As explained in the Notice:

The objective of Title I of the [DMCA] was to revise U.S. copyright law to comply with two recent World Intellectual Property Organization (WIPO) Treaties and to strengthen copyright protection for motion pictures, sound recordings, computer software and other copyrighted works in electronic formats. The DMCA establishes a prohibition on the act of circumventing technological measures that effectively control access to a copyrighted work protected under the U.S. Copyright Act. The prohibition, found in Section 1201 of Title 17, U.S. Code, takes effect October 28, 2000....”

Notice at 28803. The Notice further states that comments are requested specifically on the exemption from this prohibition contained in Section 1201(g) for “encryption research”. In addition, the Notice also broadly requests comments on “the adequacy and effectiveness of technological measures designed to protect copyrighted works. . . .” Id.

Broadcast Music, Inc. (BMI) is a United States music performing rights organization (“PRO”), representing a repertoire of approximately three million musical works by over 200,000 affiliated songwriters, composers and music publishers as well as by thousands of foreign songwriters affiliated with over 60 sister PROs around the world. BMI licenses its repertoire to music users in a wide variety of fields, including broadcast television and radio stations, restaurants, stores, concerts, musical attractions, the Internet, cable television networks and systems, background music services and numerous other classes of music users.

While BMI is not engaged in encryption research, BMI is nevertheless very involved in inter-industry efforts to create technological solutions to protect copyrighted works from piracy on the Internet and in other digital electronic formats. Therefore, BMI has an interest in this

Notice in order to ensure that the rights of music songwriters, composers and publishers are safeguarded as these technologies develop. Moreover, the Berne Convention for the Protection of Literacy and Artistic Works, to which the WIPO treaties and the DMCA are firmly moored, is based on the need to promote authorship and to protect intellectual property.

During the past five years, BMI has been at the forefront of the digital revolution and the protection of intellectual property. BMI's President and CEO, Frances W. Preston, was a member of the Administration's task force known as the National Information Infrastructure Advisory Committee, which consisted of leading players in the entertainment, communications and information technology industries. BMI representatives participated in negotiations leading up to the WIPO treaty process that culminated in late 1996 in the adoption of two WIPO treaties. BMI also negotiated with a wide spectrum of copyright owners and users to create consensus legislation leading to the enactment of the DMCA, including complex negotiations concerning the scope of the prohibition on circumventing technological measures that effectively control access to copyrighted works.

BMI recently announced a strategic two-year initiative called "The Horizon Project," the aim of which is to incorporate the advantages of digital technologies in numerous ways to improve the speed and efficiency of performing rights licensing and royalty distribution. It is the intention of this project to enable BMI to streamline licensing for the benefit of users and to improve both the speed and accuracy of royalty distributions to BMI's affiliated songwriters, composers and music publishers.

BMI is a participant in the inter-industry standards setting effort called the Secure Digital Music Initiative (SDMI), created and led by members of the sound recording industry through its principal trade association, the Recording Industry Association of America. The goal of the SDMI has been to create technological standards to stem the flood of unauthorized digital transmissions of music being witnessed today. BMI believes that any such technological standards for adoption of copyright management information and encryption should accommodate the needs of all copyright owners in the music field. For example, standards should not be adopted that incorporate protection and/or licensing measures addressing information about only one group of copyright owners while omitting pertinent information about other groups of copyright owners. With regard to audiovisual works, BMI is aware of the negotiations currently underway between the motion picture industry, through its principal trade association the Motion Picture Association of America, and the consumer electronics manufacturers and cable system operators about copy protection standards for digital set-top boxes.

BMI is following both of these standard setting processes in an attempt to ensure that they facilitate the efforts of copyright owners of the public performing right to license digital transmissions of their work on the Internet and digital television and to protect owners against unauthorized access to their works. While BMI supports the exemption currently contained in the DMCA for “encryption research,” any such exemption should be narrowly construed so that loopholes in the law are not created to make licensing impractical. For example, the Copyright Office and NTIA should pay careful attention to downstream activities that occur after files are decrypted or descrambled.

BMI plans to review the comments filed by others and to reply as appropriate to issues affecting the licensing of public performing rights to music.

Respectfully submitted,

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