

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

In the Matter of

Adjustment or Determination of  
Compulsory License Rates for Making and  
Distributing Phonorecords

Docket No. 2011-3 CRB Phonorecords II

**Comments of the Settling Parties**

The undersigned parties (collectively, the “Parties”) are participants in the above-referenced proceeding who support adoption of the settlement that was published by the Copyright Royalty Judges on May 17, 2012 at 77 Fed. Reg. 29,259 (the “Proposed Rule”).

In their description of the Proposed Rule, the Judges inquire concerning language in proposed § 385.12(e) and § 385.22(d) that addresses accounting. Substantially the same language was previously adopted by the Judges at § 385.12(e) without negative comment from the Register of Copyrights. The Parties believe it would be reasonable and appropriate to provide for the continuation of this language as proposed.

The Parties also observed that the Proposed Rule, as published, differs in certain respects from the proposed regulations submitted by the Parties on April 11, 2012. Some of those differences were highlighted by the Judges in their description of the proposed rule, and others were clearly stylistic or formatting changes. However, changes to certain of the terms defined in the regulations make the regulations unwieldy. In addition, other of the differences appear to be inadvertent transcription errors, and some of those arguably might have substantive effects. To address these matters, the Parties

respectfully request that the Judges make the changes identified on Exhibit A when adopting a final rule based on the settlement.

Dated: June 18, 2012

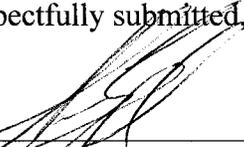
By:  /s/ JC  
Jay Cohen (NY 1712462)  
Lynn B. Bayard (NY 2775179)  
Aidan Synnott (NY 2281509)  
David W. Brown  
1285 Avenue of the Americas  
New York, NY 10019  
Telephone: (212) 373-3000  
Fax: (212) 757-3990  
Email: jaycohen@paulweiss.com  
lbayard@paulweiss.com  
asynnott@paulweiss.com  
dbrown@paulweiss.com

*Counsel for National Music Publishers' Association, Inc., the Songwriters Guild of America, the Nashville Songwriters Association International, and the Church Music Publishers Association*

By:  /s/ LK  
Lee Knife  
Digital Media Association  
1050 17th Street, N.W.  
Suite 220  
Washington, DC 20036  
Telephone: (202) 639-9508  
Fax: (202) 639-9504  
Email: LKnife@digmedia.org

*Counsel for Digital Media Association*

Respectfully submitted,

By:  /s/ SE  
Steven R. Englund  
Jenner & Block LLP  
1099 New York Ave., N.W.  
Washington, D.C. 20005  
Telephone: (202) 639-6000  
Fax: (202) 639-6066  
Email: senglund@jenner.com

*Counsel for Recording Industry Association of America, Inc.*

By:  /s/ BJ  
Bruce G. Joseph  
Karyn K. Ablin  
Wiley Rein LLP  
1776 K Street, N.W.  
Washington, DC 20006  
Telephone: (202) 719-7000  
Fax: (202) 719-7049  
Email: bjooseph@wileyrein.com  
kablin@wileyrein.com

*Counsel for CTIA – The Wireless Association*

## Exhibit A

### Subpart B

Make the following changes to current Subpart B that are in addition to the changes identified in the Proposed Rule:

1. In § 385.11, definition of “limited download”, paragraph (1), strike “service” and insert “service provider”.
2. In § 385.11, definition of “relevant page”, strike “service” and insert “service provider”.
3. In § 385.12(b)(4), strike “service for making” and insert “service provider for making”.
4. In § 385.13(a)(4), strike “subscription service separate” and insert “subscription service providing licensed activity separate”; strike “subscription service for a single price” and insert “subscription service providing licensed activity for a single price”.
5. In § 385.14(a)(3), strike “service does not provide” and insert “service provider does not provide”.

### Subpart C

Make the following changes to Subpart C as set forth in the Proposed Rule:

1. In the table of sections at the beginning of the subpart, strike “325.26 Effect of rates.” and insert “385.26 Effect of rates.”.
2. In each place in which the defined term “licensed subpart C of this part activity” appears, strike “licensed subpart C of this part activity” and insert “licensed subpart C activity”.
3. In each place in which the defined term “subpart C of this part offering” appears, strike “subpart C of this part offering” and insert “subpart C offering”.
4. In each place in which the defined term “subpart C of this part relevant page” appears, strike “subpart C of this part relevant page” and insert “subpart C relevant page”.
5. In each place in which the defined term “subpart C of this part service revenue” appears, strike “subpart C of this part service revenue” and insert “subpart C service revenue”.
6. In § 385.20(b), strike “that sections” and insert “that section”.

7. In § 385.21, definition of “locker service”, strike “possession of the end use” and insert “possession of the end user”; strike “term service locker” and insert “term locker service”.

8. In § 385.21, definition of “music bundle”, paragraph (2), strike “digital phonorecords” and insert “digital phonorecord”.

9. In § 385.22(e), strike “provided a licensee” and insert “provided by a licensee”; strike “confidence of any copyright owner” and insert “confidence by any copyright owner”.