Department of Commerce
United States Patent and Trademark Office
National Telecommunications and Information Administration

Request for Comments on Department of Commerce Green Paper "Copyright Policy, Creativity, and Innovation in the Digital Economy"

Docket No. 130927852-3852-01

Reply Comments of ASCAP, BMI, NMPA, CMPA, NSAI, RIAA, and SESAC

The American Society of Composers, Authors & Publishers ("ASCAP"), Broadcast Music, Inc. ("BMI"), National Music Publishers' Association ("NMPA"), Church Music Publishers Association ("CMPA"), Nashville Songwriters Association International ("NSAI"), the Recording Industry Association of America, Inc. ("RIAA"), and SESAC, Inc. ("SESAC", and together with ASCAP, BMI, NMPA, CMPA, NSAI, and the RIAA, the "Coalition") appreciate the opportunity to submit these reply comments in response to the above-referenced request for comments (the "Request for Comments") concerning the Green Paper, "Copyright Policy, Creativity, and Innovation in the Digital Economy" ("Green Paper").

The Coalition collectively represents songwriters, music publishers, record labels, and performing rights societies. Our members represent the people that write, sing, record, distribute and/or license in one way or another nearly every piece of the music distributed and/or performed in the United States.

As previously noted, the U.S. music industry has seen massive transformation in the past decade due in part to the rise in broadband connectivity and the industry's adoption of various digital delivery and engagement models.[1] Today, consumers enjoy legitimate, digital platforms to discover, enjoy and engage with their favorite music that range from digital radio such as iHeartRadio to downloading on Amazon or iTunes and on-demand streaming via Spotify and others, as well as use in user-generated content via YouTube.

Our ability to continue to invest in new music and creators, and to engage in innovative methods to offer music to consumers, primarily relies on our copyrights.[2]

As such, we are key stakeholders on the issues raised by the Green Paper and the Request for Comments. We take this opportunity to highlight issues from the initial comments, and look forward to a continued dialog with the Task Force.

[1] *See, e.g.*, Comments of the RIAA dated November 15, 2013, filed in response to the Request for Comments, available at http://www.ntia.doc.gov/files/ntia/recording_industry_association_of_america_comments.pdf ("RIAA Comments").

[2] As the Department of Commerce properly stated, copyright "has been a vital contributor to U.S. cultural and economic development for more than two hundred years." See "U.S. Department of Commerce Produced Comprehensive Analysis Addressing Copyright Policy, Creativity, and Innovation in the Digital Economy," Press Release No. 13-22, July 31, 2013, available at http://www.uspto.gov/news/pr/2013/13-22.jsp ("Press Release").

1. Guiding Principles

In its ongoing review of copyright policy in the digital economy, the Task Force should be guided by the following principles:

- As noted in the Green Paper, protecting the creation of, and investment in, copyrighted works serves to further the Constitution's mandate of promoting the progress of science and useful arts and our shared goals of fostering an efficient, legitimate, digital marketplace. This necessarily requires viewing copyright as property right and not merely as an economic utility.
- The inquiry should be data driven, and focus on the core issues. It shouldn't be overly distracted by anecdotes, exceptions or outliers.
- The Task Force should continue to seek the view of a variety of participants, including mainstream academia and small creators and business owners, as well as the views of larger stakeholders and advocates.
- The Task Force should stay mindful of the interdependencies between the creation of the cultural content, the demand created by that valuable content, and the digital distribution vehicles that deliver the content.

Our goal should be to develop a digital environment where "the rights of creators and copyright owners are appropriately protected, creative industries continue to make their substantial contributions to the nation's economic competitiveness, digital service providers continue to expand the variety and quality of their offerings, technological innovation continues to thrive, and consumers have access to the broadest possible range of creative content."[3]

2. On Legal Framework for Remixes

The initial comments filed by music industry stakeholders almost uniformly recommend that there is no need for any new governmental involvement or reform in this area because a functioning legal framework and marketplace for licensing of pre-existing works already exists.[4] No testimony or comment submitted by any party contradicts this original assessment or presents a compelling reason for the Task Force to recommend the government or music stakeholders intervene in or reform this market. Moreover, the agreements entered into in the thriving marketplace for licensing of pre-existing works support the constitutional goal of promoting progress by facilitating and promoting collaboration between the original authors who use material created by others as the building blocks of their work.

Commentators who believe the market for remixes is not working well make essentially two proposals. Their first proposal is to expand fair use. The second is to create a compulsory license of one form or another. Such proposals unnecessarily disrupt the licensing regime already in place, and would severely impact the property interests and income potential of composers, artists and copyright owners. Implicit in the submissions supporting an expansion of fair use or a compulsory license is an assumption that a work assembled by a secondary user out of pieces taken from an author of an original work created from scratch is somehow more valuable to society than the underlying original work. Such submissions suggest that they are either championing the free speech "rights" of secondary users embodied in the

[3] Press Release, quoting Assistant Secretary of Commerce for Communications and Information and NTIA Administrator Lawrence E. Strickling.

[4] Comments of NMPA, NSAI, SESAC, CMPA (Nov. 15, 2013), at *6, http://www.ntia.doc.gov/files/ntia/national_music_publishers_association_et._al._comments.pdf (hereinafter "NMPA Comments").

fair use defense or promoting the idea that a new and great form of artistic expression is being stifled by copyright law. Neither view is supportable.

Music industry stakeholders representing artists, songwriters, record labels, and music publishers, of course, support the continued application of the fair use defense under Section 107 to protect critical expression for which use of the underlying works is necessary, such as occurs in a parody. Authors choose whether and how to avail themselves of the protections afforded by copyright. It is difficult to argue that granting protection to private authors is politically motivated suppression of speech in general or of a particular message. Every author, regardless of the content of their message, is free to write and try their hand at making a living through their creative output. Rhetoric regarding how copyright law is an existential threat to free speech obscures the simple fact that copyright laws encourage individuals to speak in imaginative and creative ways and, in so doing, advance the First Amendment values of deliberation and debate.

Clearly it would be much easier for "remixers," "mash-up artists," or "fandom groups" to use samples or other pre-existing material without asking the original author or owner, without paying them, and without providing attribution. However, making it easier for this type of activity does not support the constitutional goal of promoting progress by facilitating and promoting collaboration between original and new authors.[5] Instead, legalizing the unauthorized use of preexisting material triggers a form of class warfare between appropriation artists and original artists. And as a matter of public policy, this should be avoided.

Instead, public policy should incentivize and promote collaboration between appropriation and original artists, including the voluntary licensing requirement that is at the core of the free marketplace collaborative relationship.[6] This is the essence of constitutional "progress" and should be the overarching goal guiding the copyright community when considering whether a fundamental change to our copyright system to accommodate "remixers" is actually necessary or desirable.

As a practical matter, the digital licensing ecosystem in place today is much better than in the past and will only continue to improve going forward. The contractual deal points in digital sample licenses have become standardized and are relatively easy to negotiate.[7] It is also easier than ever to find authorship and ownership contact information with the vastly improved databases of the Public Performance Organizations like ASCAP, BMI, and SESAC, as well as the databases of the Harry Fox Agency (administering mechanical music composition licensing), and SoundExchange (administering sound recording public performance compulsory licensing).

The cost of samples has also never been relatively lower. In fact, because of the downturn in the music industry since the onset of the age of piracy, there is a buyer's market for digital samples. Many sample

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[5] Karen A. Skretkowicz, *Unauthorized Annexing of an Artist's World: An Argument for Creator-Assignee Standing to Sue for Copyright Infringement,* 30 Seattle U.L. Rev. 437, 467-68 (2007) (emphasizing the proprietary rights established by copyright and their importance in promoting progress).

[6] Jacobsen v. Katzer, 535 F.3d 1373, 1382 (Fed. Cir. 2008) (noting that copyright exists, in part, to allow licensing and secure the right to exclude for copyright owners, thereby ensuring collaboration through notice between owners and licensees).

[7] *See* Alex Holz, *How You Can Clear Cover Songs, Samples, and Handle Public Domain Works*, ASCAP (Jan. 26, 2011), http://www.ascap.com/playback/2011/01/features/limelight.aspx.

deals turn today not on the payment of exorbitant flat fees or advances – but simply on a sharing of the copyright interest in the new work between the new and original author/owner.

It is also disingenuous for those in favor of change to promote the idea that a great form of artistic expression is being stifled, and a generation of recording artists and producers, especially those in the hip hop community, are being harmed by this copyright limitation.

While some hip hop producers and artists lament the "old days" when unauthorized samples were used with impunity, the truth is that many hip hop artists and producers ultimately concluded that unauthorized digital sampling was and still is morally, as well as legally, wrong. This would apply just as much to the newer form of "mash-up" collage work by artists like Girl Talk. Certainly not enough so to warrant making dramatic changes in the copyright law.

We also believe there is no compelling reason to change the broad framework of copyright by claiming that some sampled works are *de minimis*, that some do not constitute copyrightable authorship, or that the Bridgeport[8] decision should be overturned. It is the antithesis of progress to promote a free music remix culture by adopting copyright loopholes for a generation of remixers who believe they are entitled to use another artist's music for free.

There are, however, market-based alternatives that could offer better solutions and should be considered. For example, the NMPA YouTube license agreement is a very promising model, which provides publishers with revenue from user-generated Youtube videos.[9] Another option to address both the issues raised by those promoting "mash-ups" or "fandom" is a creative commons approach wherein an original author – like a JK Rowling – grants the right for others to create non-commercial derivative works for free and without requiring approval.[10] Using this model, the original author or owner is directly involved in the collaborative process because it is the original author or owner deciding how to fashion the use license or in the context of music, which tracks would be available for use. "Mash-up" artists like Girl Talk would know that they may use samples – both sound recording and musical composition samples – in their new work in a way that has been pre-approved by the original artist or owner.

Likewise, with "fandom," if an author grants the rights to create derivative works to a creative commons type of organization or even a commercial enterprise offering a creative commons type of user experience, then those engaged in "fandom" will be respectful of the property interest of the original author or owner – and at the same time they will be able to engage in this innovative hobby.

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[8] Bridgeport Music, Inc. v. Dimension Films, 410 F.3d 792 (6th Cir. 2005).

[9] *See* Ed Christman, *YouTube, NMPA Reach 'Unprecedented' Deal to Pay Independent Music Publishers*, Billboard (November 17, 2011), http://www.billboard.com/biz/articles/news/publishing/1160146/youtube-nmpa-reach-unprecedented-deal-to-pay-independent-music. Record labels also have similar deals with YouTube to permit use of most sound recordings within user-generated content videos posted on YouTube.

[10] Jacobson, 535 F.3d at 1378 (discussing the Creative Commons licensing and similar voluntary licensing structures used to allow collaboration while still allowing copyright owners to "protect and control their copyrights").

Another marketplace solution may be the development of micro-licensing approaches. A number of the music industry stakeholders are already fully engaged in developing answers to the need for smaller value, higher use licenses.[11]

It is important to understand that we are not disparaging the artistic expression of remixers or "fandom" adherents. But we are stressing that the innovation at the heart of these forms of artistic expression is less important when comparing it to protecting the professional original authors and owners of pre-existing copyrighted material. The latter group has experienced a devastating era of devaluation of their property and their rights in this age of piracy.

As a matter of public policy, it is much better for the copyright ecosystem if the Commerce Department and the Administration adopt an approach promoting collaboration between new and original artists – rather than an approach whereby new artists do not ask permission, do not pay, and do not provide attribution.

We should not lose sight that the copyright law is essentially about encouraging authors and owners to create and disseminate their works for the public by granting them limited exclusive rights in their creations.[12] While it is important to provide exceptions to copyright that will allow for new users to incorporate old works into their new works, this does not mandate a total abdication of the original goal of protecting the property interest of the original author or providing incentive for original authors to create original works. The technology of sampling or the innovation of "fandom" must take a back seat to the primacy of the original author.

3. On First Sale in the Digital Environment

The Coalition firmly agrees with several of the comments that the first sale doctrine should not be extended to digital sales and is only appropriate in the physical realm.[13] The Task Force itself has stated that the purpose of the first sale doctrine was originally "to ensure a consumer's control over her *tangible physical property*."[14] The Copyright Office has further determined that extending the first sale doctrine to digital sales is not advisable due to "fundamental differences between the transfer of a single physical copy and a transmission over online networks."[15] While the first sale doctrine secures the right to transfer ownership of a physical copy, the application of this doctrine to the digital realm, where inherent limitations on durability, possession, and transfer stemming from a tangible item do not exist, would have significant negative consequences for rights holders.

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[11] *See* Ed Christman, *RIAA & NMPA Eyeing Simplified Music Licensing System, Could Unlock 'Millions' in New Revenue*, Billboard (June 13, 2013), http://www.billboard.com/biz/articles/news/record-labels/1566550/riaa-nmpa-eyeing-simplified-music-licensing-system-could.

[12] Maria A. Pallante, *The Next Great Copyright Act*, 36 Colum. J.L. & Arts 315, 340 (2013) ("A law that does not provide for authors would be illogical–hardly a copyright law at all.").

[13] *See*, *e.g.*, Comments submitted on or about November 15, 2013 in response to the Request for Comments by the American Association of Independent Music ("A2IM Comments"), Association of American Publishers ("AAP Comments"), ASCAP ("ASCAP Comments"), Independent Film and Television Alliance ("IFTA Comments"), the Global Intellectual Property Center ("GIPC Comments"), the Motion Picture association of America ("MPAA Comments"), NMPA Comments, RIAA Comments, and the Songwriters Guild of America ("SGA Comments"), all available via the following link http://www.ntia.doc.gov/federal-register-notice/2013/comments-received-department-commerce-green-paper-11132013.

[14] Green Paper at 35 (emphasis added).

[15] Id.

Those commentators that support extending first sale to the digital environment[16] fail to take into account the unique aspects of the digital environment and the consumer benefits and price differentiation it provides.[17] Furthermore, they fail to adequately address how to ensure there is a complete alienation and sole transfer of the digital item without implicating privacy, security and other concerns that do not exist in the physical realm.[18]

The Coalition agrees with the 2001 Copyright Office's report that the extension of the first sale doctrine "to the online environment has significantly greater negative impact on copyright owners' legitimate interests than does the traditional first sale doctrine in the realm of tangible copies."[19] The expansion of this doctrine would limit copyright owners' ability to control licensed distribution of their content online after the initial sale, which would also likely have a significant negative impact on copyright owners' fight against online piracy. We continue to believe that "a digital first sale exception would allow users to create perfect replicas of the original work and distribute these replicas to others without the creator receiving any compensation, while obscuring piracy and stifling the thriving online music marketplace on which so many stakeholders have worked tirelessly."[20]

4. <u>On Statutory Damages</u>

Purpose and Need for Statutory Damages Generally. We believe that both Congress and the courts have already addressed the question of statutory damages in the copyright context, and the Task Force should be guided by their expressed intention and rulings. To summarize:

- With respect to statutory damages, "Congress's protection of copyrights is not a 'special private benefit,' but is meant to achieve an important public interest: 'to motivate the creative activity of authors and inventors by the provision of a special reward, and to allow the public access to the products of their genius after the limited period of exclusive control has expired.'"[21] "By establishing a marketable right to the use of one's expression, copyright supplies the economic incentive to create and disseminate ideas."[22]
- The copyright statutory damages provisions are designed to ensure that "the cost of infringing substantially exceeds the costs of compliance, so that persons who use or distribute intellectual property have a strong incentive to abide by copyright laws."[23]
- "A rule of liability which merely takes away the profits from an infringement would offer little discouragement to infringers … [and] fall short of an effective sanction for enforcement of the copyright policy."[24]

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[16] *See*, *e.g.*, Comments submitted on or about November 15, 2013 in response to the Request for Comments by Consumer Electronics Association ("CEA") and Public Knowledge.

[17] We further note that CEA's argument that users should be able to transfer digital purchases to successive formats under a digital first sale doctrine is misdirected. The first sale doctrine addresses the transfer of the exact same good, not a different format of the good or a transformation or adaptation of the good.

[18] *See* RIAA Comments for an explanation of the differences of the digital environment, and some of the complexities created in that environment.

[19] U.S. Copyright Office, A Report of the Register of Copyrights Pursuant to the § 104 of the Digital Millennium Copyright Act, 108 (2001) at 91, available at http://www.copyright.gov/reports/studies/dmca/sec-104-report-vol-1.pdf.

[20] NMPA Comments, page 9.

[21] *Capitol Records, Inc. v. Thomas-Rasset*, 692 F.3d 899, 908 (8th Cir. 2012), quoting *Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417, 429 (1984).

[22] Harper & Row, Publishers, Inc. v. Nation Enterprises, 471 US 539, 558 (1985).

[23] H.R. Rep. 106-216, at 6.

Individual File Sharers. Some commentators claim that statutory damages for individual file sharers have to be recalibrated, suggesting that the awards in the *Thomas* and *Tenenbaum* were too high for "mere downloading."[25] This is a gross mischaracterization of the facts in those cases. In both cases, the infringing activity at issue was mass distribution of the copyrighted works, and some of the determining factors were the egregious activity by both defendants in lying about their activity and continuing to engage in distribution after receiving notice of their illegal behavior. In addition, both the juries and appellate courts in those cases felt that the statutory damages awarded were appropriate, justified and well within the law. The determination of those triers of fact and law should be given due deference.

Online Services. Commentators criticizing the current statutory award scheme for online services have failed to show that statutory damages deter new services or interfere with the marketplace in any meaningful respect. The study cited namely *The Impact of U.S. Internet Copyright Regulations on Early-Stage Investment: A Quantitative Study,*[26] which refers mainly to the impact of uncertainty caused by changes to existing legislation. But statutory damages are not new in copyright law – they have been part of U.S. jurisprudence since before the 1790 Copyright Act. The study also noted that 89% of investors would prefer investing in digital content intermediaries operating under the current U.S. copyright regime, which includes statutory damages, versus those operating under a European copyright regime, which generally do not include statutory damages. This suggests that, contrary to some commentators' interpretations, the statutory award scheme does not materially affect investor's decisions to invest in innovative technologies.

Furthermore, the RIAA Comments provide evidence suggesting that recent years have seen a robust development of the digital music marketplace and continued investment in new music services.[27] For example, we have seen an explosion of innovative streaming services announced in just the last few months.[28]

The Task Force should not be distracted by those that argue that the current statutory damages regime will unduly deter innovative, legal offerings. They have made these "predictions" in the past,[29] and they have yet to come true. It is doubtful such predictions have any more validity today.

5. <u>On the Government's Role in Improving the Digital Deal-Making Environment</u>

In response to some claims of concern about improving licensing for high volume / low value uses,[30] we note that promoting licensing in this arena through voluntary, marketplace initiatives will help provide certainty to users of the content, ensure copyrights are respected, and help to provide adequate compensation to creators. The criticism that such licensing schemes would unduly inhibit fair use are unfounded. Fair use is different and separate from some of the uses contemplated in such initiatives, such as to license synchronization of songs to wedding videos, and they should not be conflated.

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[24] *F.W. Woolworth Co. v. Contemporary Arts, Inc.*, 344 U.S. 228, 233 (1952).
[25] *Thomas*, 692 F.3d 899; *Sony BMG Music Entm't v. Tenenbaum*, 719 F.3d 67 (1st Cir. 2013).
[26] Matthew Le Merle *et al*., Booz & Company, *The Impact of U.S. Internet Copyright Regulations on Early-Stage Investment: A Quantitative Study* (2011), *available at* http://www.booz.com/media/file/BoozCo-Impact-US-Internet-Copyright-Regulations-Early-Stage-Investment.pdf.
[27] *See* RIAA Comments.
[28] Id.
[29] *See* Reply Comments of the Copyright Alliance.
[30] *See*, *e.g.*, Comments of the Library Copyright Alliance.

6. On the Operation of DMCA Notice and Takedown

When the notice and takedown provisions of the DMCA were enacted, Congress intended to "preserve the strong incentives for service providers and copyright owners to detect and deal with copyright infringements that take place in the digital networked environment." [31] It was not intended to "discourage the service provider from monitoring its service for infringing material." [32]

However, as several of the creative content and IP industries have stated,[33] the notice and takedown system of the DMCA for today's Internet is simply antiquated, deficient, ineffective and, as judicially interpreted,[34] so weakened that it no longer strikes the careful balance sought by Congress. As evidenced by data in various filings and studies, the current system is resource intensive, doesn't result in meaningful protection, doesn't keep down infringing material in any meaningful respect, and has resulted in unintended consequences.[35] To reiterate, locking both creators and intermediaries into an old, ineffective system creates inefficiencies, squelches innovation and stunts the growth of new Internet services that consumers demand, while also limiting the ability to properly address the potential abuse that the current system may inadvertently incentivize.

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[31] Report of House Commerce Committee on H.R. 2281, the Digital Millennium Copyright Act, H.R. Rep. No. 105-551, pt. 2, 49 (1998).

[32] Conference Report on H.R. 2281, the Digital Millennium Copyright Act, H.R. Rep. No. 105-796, 73 (1998).

[33] *See*, *e.g.*, Comments submitted on or about November 15, 2013 in response to the Request for Comments by the American Association of Independent Music ("A2IM Comments"), Association of American Publishers ("AAP Comments"), ASCAP ("ASCAP Comments"), BMI ("BMI Comments"), Independent Film and Television Alliance ("IFTA Comments"), the Global Intellectual Property Center ("GIPC Comments"), the Motion Picture association of America ("MPAA Comments"), NMPA ("NMPA Comments"), RIAA ("RIAA Comments"), and the Songwriters Guild of America ("SGA Comments"), all available via the following link http://www.ntia.doc.gov/federal-register-notice/2013/comments-received-department-commerce-green-paper-11132013.

[34] *See, e.g.*, UMG Recordings. Inc. v. Veoh Networks Inc., 665 F. Supp. 2d 1099 (CD. Cal. 2009), *aff'd*, UMG Recordings, Inc. v. Shelter Capital Partners LLC, 667 F.3d 1022 (9th Cir. 2011); Capitol Records, Inc. v. MP3Tunes, LLC, 611 F. Supp. 2d 342 (S.D.N.Y. 2009). The district court decision in *Viacom, Inc. v. YouTube, Inc.*, 718 F. Supp. 2d 514 (S.D.N.Y. 2010), *aff'd in part, rev'd in part, and remanded*, 676 F.3d 19 (2d Cir. 2012), reaffirmed, 107 USPQ 2d BNA 1157 (S.D.N.Y. 2013), currently on appeal to the Second Circuit, is another example of misinterpretation of the statute, although that decision was reversed in part on appeal. See joint filing with several creative content organizations dated December 10, 2010 in response to the Department of Commerce Notice of Inquiry on Copyright Policy, Innovation and the Internet Economy in 75 Fed. Reg. 61419 (October 5, 2010). The joint filing is available at http://www.ntia.doc.gov/files/ntia/comments/100910448-0448-01/attachments/Copyright%20NOI%20(revised)%20-%20121310%20(3334319).pdf ("Joint DOC Submission").

[35] For filings, *see*, *e.g.*, the joint filing with NMPA, RIAA and the Motion Picture Association of America ("MPAA") dated August 10, 2012 ("Joint IPEC Submission"), in response to the request for written submissions issued by the office of the Intellectual Property Enforcement Coordinator (IPEC) in 77 Fed. Reg. 38,088 (June 26, 2012), the Joint DOC Submission, RIAA Comments, MPAA Comments. For academic papers and third party studies, *see*, *e.g.*, Boyden, Bruce, *The Failure of the DMCA Notice and Takedown System: A Twentieth Century Solution to a Twenty-First Century Problem,* December 2013, available at http://cpip.gmu.edu/wp-content/uploads/2013/08/Bruce-Boyden-The-Failure-of-the-DMCA-Notice-and-Takedown-System1.pdf; Lauinger, Tobias et al., *Clickonomics: Determining the Effect of Anti-Piracy Measures for One-Click Hosting,* available at http://www.iseclab.org/papers/clickonomics.pdf; Millard Brown Digital for the MPAA, *Understanding the Role of Search in Online Piracy,* September 2013, available at http://www.mpaa.org/Resources/38bc8dba-fe31-4a93-a867-97955ab8a357.pdf.

As the Department has recommended, relevant parties should develop and implement voluntary best practices to address these concerns. Although we may disagree with commentators on the scope of what should be addressed or what is working and what is not, we note that most commentators agree that we should invest in developing and implementing enforceable and practical best practices to address the deficiencies.[36] Therefore, we should give marketplace solutions encouragement and a chance to work.

We stand ready to have these discussions in a practical, productive and balanced manner. However, if marketplace solutions cannot be reached or if they prove ineffective, other solutions should be explored and discussed by relevant stakeholders.

7. Conclusion

We would like to thank the Department again for a thoughtfully drafted Green Paper. We appreciate the Department's recommendations, and its leadership in exploring the issues noted above. We look forward to continuing the discussion.

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on behalf of

American Society of Composers, Authors & Publishers
Broadcast Music, Inc.
Church Music Publishers Association
Nashville Songwriters Association International
National Music Publishers' Association
Recording Industry Association of America, Inc.
SESAC, Inc.

[36] *See*, *e.g.*, comments noted in footnote 33 as well comments filed in response to the Request for Comments by the Center for Democracy and Technology; CEA; American Commitment et. al; National Cable & Telecommunications Association; the Information Technology and Innovation Foundation; Institute for Policy Innovation; etc.