

on a quantitative or qualitative basis.<sup>2</sup> The Office received seventy-nine written comments and nine empirical studies in response. Information about the study, including the Notices of Inquiry, public comments, and transcripts of the public roundtables, may be accessed on the Copyright Office website at <https://www.copyright.gov/policy/section512/>.

The Office is now announcing that it will convene an additional roundtable to enable interested members of the public to address relevant domestic and foreign developments that have occurred since the close of the written comment period on February 6, 2017. Specifically, the roundtable will consider the following topics: (1) Recent domestic case law interpreting provisions of the DMCA safe harbor framework and (2) recent international legal and policy developments related to addressing liability for infringing content online.

Recent domestic case law has addressed various aspects of section 512. For example, in *BMG Rights Management (US) LLC v. Cox Communications, Inc.*, the U.S. Court of Appeals for the Fourth Circuit considered whether Cox reasonably implemented its repeat infringer policy for purposes of section 512(a). The court held that Cox failed to implement its policy in “any consistent or meaningful way—leaving it essentially with no policy”—and thus could not qualify for the section 512(a) safe harbor.<sup>3</sup> Additionally, the U.S. Court of Appeals for the Ninth Circuit in *Mavrix Photographs LLC v. LiveJournal Inc.* held that there were genuine issues of material fact as to whether volunteer moderators who reviewed user-submitted content were agents of the service provider—an issue relevant to the provider’s eligibility for the safe harbor protection under section 512(c).<sup>4</sup> Participants may discuss these cases as well as other recent domestic case law developments during the roundtable. The Office previously identified case law as a key issue in this study and is interested in stakeholder views as to whether recent cases indicate any emerging trends.

Since 2017, several other countries also have addressed issues of copyright infringement and online service provider liability. For example, in Europe, work towards a possible new Directive on Copyright in the Digital

Single Market has been underway since 2016.<sup>5</sup> In September 2018, the European Parliament voted to approve a proposed Directive on Copyright in the Digital Single Market that, among other changes, would establish new obligations for online service providers that store and give public access to copyrighted works uploaded by users and that optimize and promote such works for profit-making purposes.<sup>6</sup> Further negotiations on the text via a “trilogue” process of negotiations between the European Commission, the European Parliament, and the Council of the European Union, are underway.<sup>7</sup> In addition, the Australian Parliament recently passed an amendment to its copyright law that provides copyright owners with additional tools to enforce their rights regarding infringing content online, including injunctions to block domain names.<sup>8</sup> The Office is aware that such proposals have generated widespread debate, with stakeholders expressing a variety of views concerning the potential implications for copyright owners, online service providers, and members of the public. At the roundtable, participants are invited to identify and discuss recent law and policy developments in other countries that bear on issues related to the effectiveness, ineffectiveness, and/or other impacts on online service provider liability.

## II. Roundtable Subjects of Inquiry

The public roundtable will consist of two sessions: (1) Domestic case law developments since 2017 interpreting the section 512 safe harbors and (2) international legal and policy developments since 2017 relating to online service provider liability. The roundtable is not intended as an opportunity to supplement the written record with respect to matters outside

these categories, and discussion will be limited to developments that have occurred after the close of the written comment period on February 6, 2017. The Copyright Office will not accept any written materials prior to or on the day of the roundtable. The sessions will be video recorded and transcribed, and copies of the recording and transcript will be made available on the Copyright Office website.

Members of the public who seek to participate in the roundtable should complete and submit the form available on the Copyright Office website at <https://www.copyright.gov/policy/section512/> no later than March 15, 2019. If you are unable to access a computer or the internet, please contact the Office using the contact information above for special instructions. Individuals selected for participation will be notified directly by the Office not later than March 29, 2019. In order to accommodate the expected level of interest, the Office expects to assign no more than one representative per organization to each session.

The roundtable hearing room will have a limited number of seats for participants and observers. For persons who wish to observe one or more of the roundtable sessions, the Office will provide public seating on a first-come, first-served basis on the day of the roundtable.

Dated: January 28, 2019.

**Regan A. Smith,**

*General Counsel and Associate Register of Copyrights.*

[FR Doc. 2019–00573 Filed 1–31–19; 8:45 am]

**BILLING CODE 1410–30–P**

## LIBRARY OF CONGRESS

### Copyright Royalty Board

**[Docket No. 18–CRB–0015–AU (Educational Media Foundation)]**

### Notice of Intent To Audit

**AGENCY:** Copyright Royalty Board (CRB), Library of Congress.

**ACTION:** Public notice.

**SUMMARY:** The Copyright Royalty Judges announce receipt of a notice of intent to audit the 2015, 2016, and 2017 statements of account submitted by noncommercial webcaster Educational Media Foundation concerning royalty payments it made pursuant to a statutory license.

**ADDRESSES: Docket:** For access to the docket to read background documents, go to eCRB, the Copyright Royalty Board’s electronic filing and case

<sup>2</sup> See Section 512 Study: Request for Additional Comments, 81 FR 78636 (Nov. 8, 2016).

<sup>3</sup> *BMG Rights Mgmt. (US) LLC v. Cox Commc’ns, Inc.*, 881 F.3d 293, 303–05 (4th Cir. 2018).

<sup>4</sup> *Mavrix Photographs LLC v. LiveJournal Inc.*, 873 F.3d 1045, 1054–57 (9th Cir. 2017).

<sup>5</sup> *Proposal for a Directive of the European Parliament and of the Council on Copyright in the Digital Single Market*, COM(2016) 593 final (Sept. 14, 2016).

<sup>6</sup> Amendments Adopted by the European Parliament on 12 September 2018 on the Proposal for a Directive of the European Parliament and of the Council on Copyright in the Digital Single Market, P8\_TA–PROV(2018)0337, art. 2, ¶ 1, pt. 4b; art. 13 (Sept. 12, 2018).

<sup>7</sup> A trilogue meeting scheduled for January 21, 2019 was postponed as proposed compromise text was rejected by several countries. See, e.g., Samuel Stolton, *Copyright directive faces further setback as final trilogue postponed*, EURACTIV (Jan. 21, 2019) <https://www.euractiv.com/section/digital/news/copyright-directive-faces-further-setback-as-final-trilogue-cancelled/>.

<sup>8</sup> Explanatory Memorandum, Copyright Amendment (Online Infringement) Bill 2018. (Austl.), [https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22legislation/ems/r6209\\_ems\\_b5e338b6-e85c-4cf7-8037-35f13166ebd4%22](https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22legislation/ems/r6209_ems_b5e338b6-e85c-4cf7-8037-35f13166ebd4%22).

management system, at <https://app.crb.gov/> and search for docket number 18–CRB–0015–AU (Educational Media Foundation).

**FOR FURTHER INFORMATION CONTACT:**

Anita Blaine, CRB Program Specialist, by telephone at (202) 707–7658 or email at [crb@loc.gov](mailto:crb@loc.gov).

**SUPPLEMENTARY INFORMATION:** The Copyright Act, title 17 of the United States Code, grants to sound recordings copyright owners the exclusive right to publicly perform sound recordings by means of certain digital audio transmissions, subject to limitations. Specifically, the performance right is limited by the statutory license in section 114, which allows nonexempt noninteractive digital subscription services, eligible nonsubscription services, pre-existing subscription services, and preexisting satellite digital audio radio services to perform publicly sound recordings by means of digital audio transmissions. 17 U.S.C. 114(f). In addition, a statutory license in section 112 allows a service to make necessary ephemeral reproductions to facilitate the digital transmission of the sound recording. 17 U.S.C. 112(e).

Licensees may operate under these licenses provided they pay the royalty fees and comply with the terms set by the Copyright Royalty Judges. The rates and terms for the section 112 and 114 licenses are set forth in 37 CFR parts 380 and 382–84.

As part of the terms for these licenses, the Judges designated SoundExchange, Inc., as the Collective, *i.e.*, the organization charged with collecting royalty payments and statements of account submitted by eligible licensees and with distributing royalties to the copyright owners and performers entitled to receive them under the section 112 and 114 licenses. *See, e.g.*, 37 CFR 380.2(a).<sup>1</sup>

As the Collective, SoundExchange may, only once a year, conduct an audit of a licensee for any or all of the prior three calendar years in order to verify royalty payments. SoundExchange must first file with the Judges a notice of intent to audit a licensee and deliver the notice to the licensee. *See, e.g.*, 37 CFR 380.6(c).

On December 20, 2018, SoundExchange filed with the Judges a notice of intent to audit licensee Educational Media Foundation for its transmissions terminating in the United States for the years 2015, 2016, and 2017. The Judges must publish notice in the **Federal Register** within 30 days of receipt of a notice announcing the

Collective's intent to conduct an audit. *See id.* Today's notice fulfills this requirement with respect to SoundExchange's notice of intent to audit filed December 20, 2018.

Dated: January 10, 2019.

**Suzanne M. Barnett,**  
Chief Copyright Royalty Judge.

[FR Doc. 2019–00654 Filed 1–31–19; 8:45 am]

**BILLING CODE 1410–72–P**

## LIBRARY OF CONGRESS

### Copyright Royalty Board

**[Docket Nos. 18–CRB–00014–AU (Entercom Communications Corp.) and 18–CRB–0013–AU (iHeartMedia)]**

#### Notice of Intent To Audit

**AGENCY:** Copyright Royalty Board (CRB), Library of Congress.

**ACTION:** Public notice.

**SUMMARY:** The Copyright Royalty Judges announce receipt of two notices of intent to audit the 2015, 2016, and 2017 statements of account submitted by commercial webcasters and broadcasters Entercom Communications Corp. and iHeartMedia concerning royalty payments each made pursuant to two statutory licenses.

**ADDRESSES:** *Docket:* For access to the docket to read background documents, go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at <https://app.crb.gov/> and search for docket numbers 18–CRB–0014–AU (Entercom Communications Corp.) and 18–CRB–0013–AU (iHeartMedia).

**FOR FURTHER INFORMATION CONTACT:**

Anita Blaine, CRB Program Specialist, by telephone at (202) 707–7658 or email at [crb@loc.gov](mailto:crb@loc.gov).

**SUPPLEMENTARY INFORMATION:** The Copyright Act, title 17 of the United States Code, grants to sound recordings copyright owners the exclusive right to publicly perform sound recordings by means of certain digital audio transmissions, subject to limitations. Specifically, the performance right is limited by the statutory license in section 114, which allows nonexempt noninteractive digital subscription services, eligible nonsubscription services, pre-existing subscription services, and preexisting satellite digital audio radio services to perform publicly sound recordings by means of digital audio transmissions. 17 U.S.C. 114(f). In addition, a statutory license in section 112 allows a service to make necessary ephemeral reproductions to facilitate

the digital transmission of the sound recording. 17 U.S.C. 112(e).

Licensees may operate under these licenses provided they pay the royalty fees and comply with the terms set by the Copyright Royalty Judges. The rates and terms for the section 112 and 114 licenses are set forth in 37 CFR parts 380 and 382–84.

As part of the terms for these licenses, the Judges designated SoundExchange, Inc., as the Collective, *i.e.*, the organization charged with collecting royalty payments and statements of account submitted by eligible licensees and with distributing royalties to the copyright owners and performers entitled to receive them under the section 112 and 114 licenses. *See, e.g.*, 37 CFR 380.2(a).<sup>1</sup>

As the Collective, SoundExchange may, only once a year, conduct an audit of a licensee for any or all of the prior three calendar years in order to verify royalty payments. SoundExchange must first file with the Judges a notice of intent to audit a licensee and deliver the notice to the licensee. *See, e.g.*, 37 CFR 380.6(c).

On December 20, 2018, SoundExchange filed with the Judges notices of intent to audit licensees Entercom Communications Corp. and iHeartMedia for their transmissions terminating in the United States for the years 2015, 2016, and 2017. The Judges must publish notice in the **Federal Register** within 30 days of receipt of a notice announcing the Collective's intent to conduct an audit. *See id.* Today's notice fulfills this requirement with respect to SoundExchange's notices of intent to audit filed December 20, 2018.

Dated: January 10, 2019.

**Suzanne M. Barnett,**  
Chief Copyright Royalty Judge.

[FR Doc. 2019–00653 Filed 1–31–19; 8:45 am]

**BILLING CODE 1410–72–P**

## LIBRARY OF CONGRESS

### Copyright Royalty Board

**[Docket No. 18–CRB–0016–AU (AccuRadio, LLC)]**

#### Notice of Intent To Audit

**AGENCY:** Copyright Royalty Board (CRB), Library of Congress.

**ACTION:** Public notice.

**SUMMARY:** The Copyright Royalty Judges announce receipt of a notice of intent to audit the 2015, 2016, and 2017 statements of account submitted by

<sup>1</sup> Citations are to current sections of the CFR.

<sup>1</sup> Citations are to current sections of the CFR.