

soundexchange

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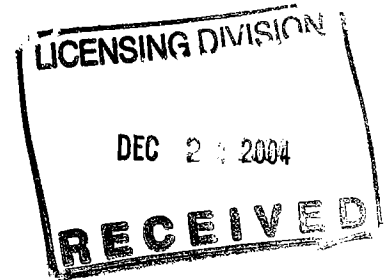


December 21, 2004

BY HAND

United States Copyright Office
Library of Congress
Office of the General Counsel
James Madison Building, Room 407
First and Independence Avenue, SE,
Washington, D.C. 20559-6000

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RECEIVED

DEC 21 2004

Re: Notice of Intent to Audit DMX Music, Inc.

**GENERAL COUNSEL
OF COPYRIGHT**

To Whom It May Concern:

Pursuant to Subsection 260.5(c) of the Copyright Office's regulations, 37 C.F.R. § 260.5(c), SoundExchange hereby notifies the Copyright Office of its intent to audit the preexisting subscription service DMX Music, Inc ("DMX").

SoundExchange, the sole collective designated by the Copyright Office to collect and distribute the statutory royalties paid by preexisting subscription services under 37 C.F.R. § 260.3(e), is an interested party entitled to audit DMX pursuant to Copyright Office regulation 260.5(g), which provides that an "interested part[y] [includes] the entity designated by the copyright arbitration royalty panel in 37 C.F.R. 260.3 to receive and to distribute the royalty fees." 37 C.F.R. § 260.5(g).

SoundExchange intends to audit DMX for the years 2001, 2002 and 2003. Although the Copyright Office's regulations governing preexisting subscription services do not specify the years that may be subject to audit pursuant to 37 C.F.R. § 260.5, SoundExchange will voluntarily limit its audit to the three years prior to the year in which this Notice of Intent to Audit is given in order to be consistent with existing Copyright Office regulations governing other statutory licenses. Cf. Statutory license for Eligible Nonsubscription and New Subscription Services, 37 C.F.R. § 262.6(b) ("The Designated Agent may conduct a single audit of a Licensee . . . during any given calendar year, for any or all of the prior 3 calendar years") (emphasis added); 37 C.F.R. § 201.30(d)(1) ("No sooner than three months *nor later than three years* after the filing deadline of the Annual Statement of Account to be verified, any interested copyright party shall notify the Register of Copyrights of its interest in instituting a verification procedure. . . . The *notification of interest may apply to more than one Annual Statement of Account.*") (emphasis added).

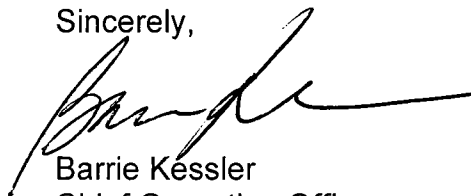
SoundExchange believes that common sense, efficiency and Copyright Office practice dictate the right of copyright owners and the Designated Agent to audit up to three years of records at one time. To interpret the rules otherwise would require an audit every year, increasing the costs to all affected parties and creating significant disruptions for the audited services.

If the Copyright Office determines that the audit right set forth in 37 C.F.R. § 260.3(e) does not permit sound recording copyright owners or the Designated Agent SoundExchange to audit a preexisting subscription service's records going back three years, then SoundExchange reserves the right to audit the records of DMX to the fullest extent permitted by Copyright Office regulations. SoundExchange reserves the right to seek such other remedies available to it at law or in equity.

SoundExchange shall commence its audit of DMX in a reasonable amount of time following the Copyright Office's publication of this Notice of Intent to Audit in the Federal Register.

Pursuant to 37 C.F.R. § 260.5(c), a copy of this Notice of Intent to Audit is being served contemporaneously upon DMX.

Sincerely,

A handwritten signature in black ink, appearing to read "Barrie Kessler", written over a horizontal line.

Barrie Kessler
Chief Operating Officer

cc: Mark D. Rozells, President and Chief Executive Officer, DMX Music, Inc.
(Via Facsimile and Federal Express)