

Executive Summary—Mass NOIs
By Chris Castle

NOI Table	
Top Three Services Filing NOIs April, 2016—January 2017 ¹	Number of NOIs Per Service
Amazon Digital Services LLC	19,421,902
Google, Inc.	4,625,521
Pandora Media, Inc.	1,193,346

Starting in April 2016, Amazon, Google, Pandora and other music services began serving “address unknown” NOIs with the Copyright Office on a grand scale. Rightscorp has determined that over 25 million NOIs have been filed as of January 2017 (see table above).

It is likely that given this scale a significant number of songs are subject to incorrect NOIs.

Some of the services have stated publicly or through their agent Music Reports, Inc. that they intend to pay royalties for the subject uses, presumably retroactively. However, the services do not appear to be filing monthly or annual statements of account as required by the Copyright Act. Statements will arguably become exceptionally important if there really is to be a retroactive payment to avoid “black box.”

Congress can play a role in providing immediate relief to songwriters by stopping the mass NOIs or requiring the Library of Congress and the Copyright Office to take steps to verify the NOIs are filed correctly.

At the moment, the government takes away property rights from the songwriters by means of the compulsory license without taking even rudimentary steps to assure the public that the NOI process is being implemented correctly.

1. Congress should instruct the Library of Congress to stop selling the post 1978 database until due diligence can be performed on the database to determine if it is even internally correct.

¹ Source: Rightscorp, Inc.

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Title:
Copyright Cataloging: Monographs, Documents, and Serials (database)

Format:
Computer file

Description:
The only information file available which contains such copyright information as author, title, copyright claimant name, and registration number. Represents cataloged registrations and relevant documents entered into the U.S. Copyright Office database since 1978. Available in MARC 21 and MARCXML formats.

Check the latest [Technical Notices](#) for MDS services.

2015 Subscription: Available weekly. Approximately 710,000 records; including 650,000 new records. Includes all Copyright Serials records.

2015 Price: \$28,700

Retrospective: 1978-2014: 26,400,000 records. File size: 17,176 MB. Avg. record length: 684 bytes.

2015 Price: \$50,225

[How to Order from CDS](#)

Introduction to MARC Distribution Services (databases)

Library of Congress cataloging records are available via FTP (File Transfer Protocol) delivery. Records are for materials in hundreds of languages, including non-roman alphabets in original scripts. MDS provides national level cataloging for almost all English-language imprints.

> [more about MARC Distribution Services \(databases\)](#)

Related Resources

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2. Congress should instruct the Library of Congress and the Copyright Office to immediately cease accepting NOIs with compressed files. These compressed files are so large in most cases that songwriter can never uncompress them to determine if their songs are subject to NOIs.

3. Congress should instruct the Copyright Office to require monthly and annual statements of account be filed with the Copyright Office for anyone wishing to rely on the current law, and that royalties be paid into a deposit account with the Copyright Office and held in perpetuity for any copyright owner to claim. All statements of account should be certified in the normal course, and made available to the public.

4. Congress should instruct the Library of Congress to create a single database maintained online that is maintained by an independent third party and is searchable by songwriters in a manner similar to a state unclaimed property office.
5. Congress should repeal Sections 115(b)(1) and 115(c)(1) to prohibit mass filings.
6. Congress should provide for retroactive payments for all NOIs previously filed.

This paper discusses certain actions that publishers may be able to take to protect their interests. By no means exhaustive, these are intended to be a starting place to protect the rights of songwriters.

There are a few ways that mass NOIs can be dealt with. As we review each potential course of action, the same themes will recur: Someone in the government needs to take responsibility for verifying these NOIs are filed as required by law, and the “address unknown” NOI process as currently practiced places an unfair burden on songwriters.

1. Recordation Filing: The Copyright Office will likely accept a simultaneous electronic and paper recordation of a certification of a song copyright owner with a list of song titles. The electronic filing should provide immediate notice to music users. This approach is costly, however, and may be ill suited to individual song copyright owners or independent publishers.

2. Dramatico Musical Works: It appears that the Copyright Office is accepting filings for dramatico-musical works which are not subject to compulsory licenses.² (Dramatico-musical works include musicals, for example.) Owners of dramatico-musical works may wish to take ameliorative action to stop the infringing use of their copyrights.

3. Pre-78 Songs: It appears that at least some music users may be ignoring the paper records of the Copyright Office and filing NOIs for song copyrights that may well be identifiable in the pre-78 public records.

4. Improper Filing: However cumbersome, songwriters have a reasonable expectation that the Copyright Office should be able to confirm if the NOIs comply with the statutory requirements. Noncompliant NOIs should be barred.

5. Failure to File and Certify Statements of Account: Regardless of whether royalties are due, music users are arguably required to file monthly and annual statements of account. This is particularly reasonable given the scale of the mass NOI filings, the likelihood of error and the statutory requirements. To my

² 17 U.S.C. § 115 (“In the case of *nondramatic* musical works, the exclusive rights provided by clauses (1) and (3) of section 106, to make and to distribute phonorecords of such works, are subject to compulsory licensing under the conditions specified by this section” emphasis added.)

knowledge, no statements of account have been filed as of this writing. This would indicate that all NOIs are subject to termination.

6. Direct Licenses: Based on a sample of songs that I consider likely to be subject to a direct license with a major publisher, it seems possible that “address unknown” NOIs may be getting filed on songs that are directly licensed. Publishers with direct licenses may wish to confirm if they are receiving payments for any directly licensed songs or if users are not paying based on the “address unknown” NOI.

7. Revenue Share Calculations: If songwriters or publishers receive a pro-rata revenue share based on the total number of songs performed during an accounting period, it would be well to determine if non-royalty bearing songs subject to an “address unknown” NOI are being included in the ratio.