**Recording Industry Association of America Response to Comment Request
on the World Intellectual Property Organization's draft Issues Paper on Intellectual Property
Policy and Artificial Intelligence dated December 13, 2019**

February 14, 2020

The Recording Industry Association of America ("RIAA") welcomes the opportunity to share these comments with the World Intellectual Property Organization ("WIPO") on WIPO's draft Issues Paper on Intellectual Property Policy and Artificial Intelligence dated December 13, 2019 ("Draft Issues Paper").

<u>Introduction</u>

The RIAA is the trade association that supports and promotes the vitality of the major record companies. Its members comprise the most vibrant record industry in the world. Nearly 85% of all legitimate recorded music produced and sold in the United States is created, manufactured or distributed by RIAA members. In support of its mission, the RIAA works to protect the intellectual property and First Amendment rights of artists and music labels; conducts consumer, industry and technical research; and monitors and reviews state and federal laws, regulations and policies.

In these comments, we limit our discussion to questions concerning how to address inputs into an artificial intelligence ("AI") process. We agree that the other areas of inquiry are also important, and we note others in the music industry have commented on other areas of the Draft Issues Paper.

<u>Issue 7: Infringement and Exceptions</u>

The set of questions raised in Issue 7 / Question 13 refer to benign "data subsisting in copyrighted works" for generic "learning" or "training." These terms do not accurately portray what is occurring, and obscure, rather than highlight, the issues that should be considered when copyrighted works are copied without authorization. For example, we hear arguments that that copying of copyrighted works without authorization for AI training is just like a person reading a book to learn from it. However, that line of argument fails to acknowledge that the person reading the book bought that copy of the book first before extracting data and learning from it. Also, generic questions about "data" and "learning" or "training" fail to consider what is done after the "learning" or "training" is complete, and whether copyrightable elements of the existing copyrighted work are copied into or expressed in the resulting output of the AI process. These questions should be clarified to better reflect the activity at issue, and not gloss over the unauthorized copying that is occurring as part of AI "training." We also recommend questions about record keeping as a means to track the inputs to an AI process to provide greater transparency and accountability about the process, and to help evaluate and guard against bias.

In addition, the tone of the questions appears to assume that the sole or overriding policy should be to promote AI innovation.   That assumption should be questioned. WIPO should seek input on what areas are impacted by AI development, such as impacts on fundamental human rights, creativity, the arts, competition, jobs, the economy, etc.; what policies or principles should govern AI development; if there is tension among those policies or principles; and if and where there may be tension, how to harmonize various policies or principles as they may be implicated by AI processes.[1]

<u>Conclusion</u>

We look forward to working with WIPO and other stakeholders as these discussions continue.

Submitted by:
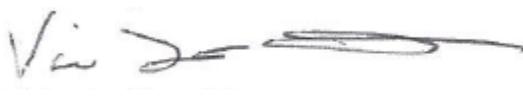
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[1] While we have focused our comments to issue 7 and question 13, WIPO should consider these comments in revising all of the questions, to avoid any bias in favoring any one policy over another at this stage. For example, with respect to Issue 8 – Deep Fakes, WIPO should seek input on the impact of deep fakes on the person being "faked" and questions concerning the public interest in the authenticity of the recording, photograph, or video, etc.