NMPA
National
Music Publishers'
Association

Wednesday, June 26, 2024

The Honorable Bryan Steil
Chairman, Committee on House Administration
United States House of Representatives
Washington, D.C. 20515

The Honorable Joseph Morelle
Ranking Member, Committee on House Administration
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Steil and Ranking Member Morelle:

We appreciate the Committee holding today's hearing on "The Copyright Office: Customers, Communities, and Modernization Efforts." The entire music industry, but especially songwriters and music publishers, depends on our nation's world class copyright protections. Copyrights for musical compositions, however, are subject to an unfair regulatory regime that robs American songwriters of the value of their creations and subsidizes big, foreign-owned tech companies, like Spotify. We hope members of this Committee support legislative solutions to allow songwriters and publishers the same freedom to compete in the market like everyone else.

First, we are grateful for strong leadership at the Copyright Office under Register Shira Perlmutter. She has built her career on a commitment to protecting intellectual property and is well-suited to lead the office in an age of digital transformation and artificial intelligence. Congress is fortunate to have in Register Perlmutter a chief copyright policy adviser to help navigate difficult policy questions on the horizon.

Among those difficult policy questions is the ongoing administration of copyright protections in an era of digital music streaming. The Music Modernization Act (MMA), passed unanimously by Congress in 2018, took enormous strides forward by offering unprecedented benefits not only to songwriters and music publishers, but also to digital service providers

(DSPs) that stream music. However, the bill also amplified the need for corrections to the century-old compulsory license governing their work.

This past March, Spotify took unfair, aggressive, and illegitimate steps to game regulations established by the Copyright Royalty Board (CRB) in an effort to slash royalty payments Spotify legally owes to songwriters and music publishers. As a result, songwriters and publishers are set to lose an estimated $150 million in royalties this year alone. Large, foreign-owned companies, like Spotify, should not enjoy unfair advantages over American songwriters because of outdated federal policy. By making one simple change, Congress can fix a more than 100-year old mistake in the compulsory license, and ensure songwriters and music creators continue to benefit from their creative efforts.

How did we get here? Almost six years ago, Congress passed the MMA, a landmark piece of copyright legislation for the age of digital music streaming. The MMA took important steps forward in improving the compulsory license imposed on songwriters and music publishers by creating the Mechanical Licensing Collective (MLC) to administer a blanket license under Section 115 of the Copyright Act, which is taken by DSPs.

The MLC increased transparency through a public database, furthered licensing efficiency through a central administrator, and improved the process for distributing musical work royalties. However, the benefits did not extend to, or remedy, the ongoing issues faced by rightsholders subject to the government rate-setting process.

The continued abuse of the statutory system by DSPs, most recently by Spotify, has made clear that additional action by Congress is needed. The royalty rates paid to musical work copyright owners for uses of those works under the Section 115 blanket license are established in a proceeding before the CRB, within the Library of Congress, once every five years. During these proceedings, music publishers and songwriters must face off against some of the biggest tech companies in the world: Spotify, Apple, Amazon, Google, among others, to establish rates for the use of musical works.

Many members may not be aware that, by law, publishers and songwriters are required to license their works if the royalty rates set by the CRB are paid by licensees. Because the law prevents rightsholders from negotiating proper protections and rates in the free-market, songwriters and music publishers have been subject to ongoing abuse of the statutory compulsory licensing system and CRB rate-setting process with little ability for recourse.

In March, Spotify took actions that manipulated the compulsory licensing regulations by reclassifying its premium subscription music service, along with almost 44 million subscribers, into what it is calling a “bundle.” The benefit to taking this action is, under the compulsory

royalty rates, bundles attribute less revenue – and therefore pay less in royalties – to the music rightsholders than a premium subscription music service. Spotify has taken a part of its music service that was previously offered to consumers for free, audiobooks, and it is now calling audiobooks a bundle with its music service to substantially reduce the musical work royalties owed to songwriters and music publishers.

Those who do operate in a free market, such as record labels and music publishing organizations outside of the United States, have negotiated protections against these bad faith tactics. However, songwriters and music publishers have no such leverage under the CRB to do so.

Fortunately, there are solutions Congress can enact that would preserve the benefits of the MMA and the MLC while providing songwriters and publishers a better chance to compete on a level playing field with Big Tech companies like Spotify.

First, prior to the next CRB Phonorecords proceeding in 2027, Congress should consider simple, common-sense reforms to the government rate-setting process. The goal of which is to ensure CRB proceedings and decisions cannot be easily gamed by deep-pocketed DSPs like Spotify. This requires limiting the use of dilatory motions and delay tactics, providing additional budget and staff resources for CRB judges, and permitting interim rate settlements.

Second, rather than picking who wins and who loses, Congress should allow rightsholders the *choice* to license through the MLC using the statutorily set royalty rates or to withdraw from the MLC and operate in a free market if they meet certain conditions.

If copyright owners chose to withdraw their copyrights from the blanket license, currently administered by the MLC, they would be required to do the following:

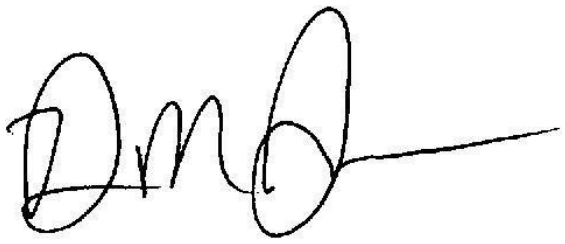
- Require all rightsholders who exercise this option to provide 6 months' notice to the Register of Copyrights and the MLC;
- Require that the withdrawing rightsholders ensure their musical work copyrights and ownership interests are registered in the MLC's public database;
- Require the MLC to flag those rightsholders and their catalogues as withdrawn from the MLC blanket license and subject to voluntary license negotiations; and
- Require copyright holders to maintain with the MLC database current, up-to-date contact information, which would be used to contact for licensing.

This would give rightsholders the option to stay within the current compulsory system or to operate within a free market. It would also restore basic principles of fairness to the market by requiring streaming platforms to deal with music makers as partners. Finally, it would provide a

needed point of leverage for songwriters and music publishers to negotiate with DSPs, like Spotify, who can otherwise use their power to bend government regulations to their advantage. All of this could be accomplished by building on the successful infrastructure created by the MMA and the MLC.

Thank you again for the opportunity to provide testimony to the Committee during this important hearing. NMPA stands ready to work with you on these legislative reforms.

Sincerely,



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