

SONGPRENEUR

Songpreneur Community
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VIA ELECTRONIC MAIL

Chief, Litigation III Section
Antitrust Division
U.S. Department of Justice
450 5th Street NW, Suite 4000
Washington, DC 20001

Dear Sirs and Madams:

Thank you for the opportunity to offer a statement concerning the ASCAP and BMI Consent Decrees. I write to you on behalf of my organization founded as Hillbilly Culture LLC in 2010 to support the efforts of Nashville Songwriters Association International (NSAI) to empower individual copyright creators to employ their works in a fair marketplace.

Unfortunately, as the years have passed, the marketplace has become less and less of what songwriters would call "fair" and more and more about how loudly one can shout over the rest of the people shouting to be heard.

A little background: I am daughter of Kim Williams, songwriter on over 140 million units sold (in the '90s mainly) with artists including Garth Brooks, Reba McEntire, George Strait and others. As a result of my father's activities, our family moved from rural East Tennessee to Nashville for him to pursue his craft, and thankfully, as a result, he went on to write some of country music fans' favorite songs including "Papa Loved Mama" and "Three Wooden Crosses."

Also as a result of his activities, I was able to attend one of the top private schools in the state and go on to earn a magna cum laude Bachelor of Music degree from Berklee College in Music Business/Management before returning to Nashville to pursue my own professional songwriting career in the early 2000s. Unfortunately for me, but perhaps fortunately for those seeking informed comment, I signed with Sony/ATV at about the time Napster began its informal education of consumers about the value of music (or lack thereof).

My organization, informally known as the Songpreneurs, is a membership community comprised of mainly hobbyist writers who are seriously pursuing opportunities in the music industry as songwriters, and who seek to employ¹ their copyrights in a sustainable way. This has become, as you know, increasingly difficult due to a number of factors, and has required that songwriters become more informed of the business aspects of the music industry, as well as to embrace the entrepreneurial mindset in order to eek out a living.

In preparation for submitting these comments, I have held a series of closed discussions and workshops with our Community members and have requested input from many sources, including mainly people who make their living solely from the employment of copyright. Too often, well-meaning representatives of our ilk take it upon themselves to speak on our behalf without fully realizing the implication of what they say. And on behalf of them, I apologize for any miscommunications or harshness in their approach to dealing with this most inflammatory of subjects.

In the Subcommittee Hearings on March 20, 2013², Mr. Goodlatte and others noted the need for finding those “shy with their views,” and our group has been guilty of this up to now, due not only to “shyness” but also to fear, a common theme in today’s music licensing marketplace.

For the sake of brevity, I will focus on the questions specifically asked, but would like to also state that the scope of what I say is limited due to the detailed nature of what is being asked. I request the opportunity to speak more at length with interested parties in order to flesh out these ideas, especially with Ms. Pallante with whom I have been promised an introduction, but have not yet received.

With regards to the Performing Rights Societies, the independent songwriting community comprises the majority³, however, as is often the case, the majority,

¹ Our organization Hillbilly Culture LLC. established a legal precedent in 2011 changing the industry standard term “exploit” the copyright to “employ” in our administration and collection agreements with Bluewater Music Services, Corp.

² The Register’s Call for Updates to U.S. Copyright Law: Hearing Before the Subcomm. on Courts, Intellectual Property, and the Internet of the H. Comm. on the Judiciary, 113th Cong. (2013) (testimony of Maria A. Pallante, Register of Copyrights, U.S. Copyright Office) available at <http://www.gpo.gov/fdsys/pkg/CHRG-113hhr80067/html/CHRG-113hhr80067.htm> (last visited November 19, 2015)

³ “Most of ASCAP’s members are individual songwriters and small music publishing businesses” from ASCAP Public Comments <http://www.justice.gov/sites/default/files/atr/legacy/2014/08/14/307803.pdf> (last accessed November 18, 2015)

lacking proper organization, is unable to express itself as well as the organized moneyed interests, namely the large publishers.

Because of this, there are many ways that the societies can improve their activities related to independents now that there is opportunity to do so, should those in leadership become willing to discuss proposed changes.

Namely, the changes requested relate to the same challenges that face small businesses who seek to navigate the music licensing systems provided by the PROs as an interface between copyright creators and venues or establishments that provide music for their patrons, and also the growing number of technology companies and webcasters who seek to use copyrighted music for their business activities.

The problem is lack of transparency on all sides, lack of truthfulness on all sides, and lack of responsibility to our mutual interests in providing for the public good.

Specifically:

“Have the licenses ASCAP and BMI historically sold to users provided the right to play all the works in each organization’s respective repertory (whether wholly or partially owned)?”

Venue owners think so, yes. That’s why they get the licenses in the first place, so that they can feel more secure in their use of copyrighted music. They are afraid of litigation.

The blanket licenses provide some security, but little room for negotiation with small players, both individual copyright owners and individual business owners. It’s take it or leave it, as is also the case with many of the large distribution services in our industry.

In regards to other forms of licensing, for example, mechanical licensing when someone wants to record a song belonging to someone else and distribute copies for sale, just one license provides the right to record and distribute when the work is a joint creation.

So, if I want to record a song written by Tom Douglas and Allen Shamblin, I only need a license from one of those parties to make my recording and sell it. However, I am obligated to pay the other copyright owner and honor the same terms and conditions in the absence of a license from both parties spelling out their separate rights and compliance policies.⁴

⁴ I am not an attorney and am not stating this as legal fact. This is simply the practice of the real day to day operations of working musicians and songwriters in the industry right now.

If one of the PROs is allowed to collect money for all parties, the question arises, how do individual copyright owners expect to get paid from the competing rights organization when they already have enough challenge collecting all their money from the one to whom they are already signatory?

This comment is not to disparage the PROs, but merely to point out the fact that many independent songwriters and publishers complain that their works are not as well monitored and monetized as those of the writers belonging to the large powerful publishers.

The United States is one of the few countries in which the performing rights organizations still use a sample survey method for radio airplay. Other countries use a census survey, which more accurately represents the diversity of the compositions performed on radio and in other media.

Here, with all the technological savvy and innovation, somehow we still utilize an antiquated sample survey system, which has the effect of weighting the collections toward the powerful moneyed interests leveraged by the record companies and large publishers.

To put it bluntly, independents' radio airplay doesn't count because it doesn't get counted.

What it boils down to is that, as many including Ms. Pallante have commented, the music licensing system is broken. Completely.

I would like to offer my insight and Community resources to help fix it, with the help and guidance of those who have been working for much longer than I on this very important issue.

I have many specific ideas that could be implemented quickly with little cost in order to help reform the current status of music licensing in the United States as it operates in a global music community.

To begin with, for example, as a small business in the State of Tennessee, I have to pay sales and use tax on a quarterly basis. Every quarter, the State sends me a big scary bill for what they think I owe in taxes. And every quarter, I provide an itemized accounting of what I actually sell, calculate the tax owed and remit that amount in good faith to the State Government. It is always hundreds of dollars less than the estimate sent to me by the State.

I propose that a similar system be enacted for small businesses wishing to better account for their music consumption. They can keep track of their playlists for the month, and report the exact compositions to a centralized (perhaps via the

Copyright Office) database, and from there the individual PROs could process the funds and send them directly to the appropriate copyright owner.

Businesses who wish to avoid huge music consumption expenses could more easily do so, while feeling good about the money they're spending on music actually getting into the pockets of those who actually created it, and not to a large, nameless, faceless pool of resources from which it may never reach its rightful owners.

This would help the small businesses tremendously, both venues (or webcasters) and songwriter/publishers. Far from impossible, as some state, this is actually a simple process of accounting that could be implemented using existing technologies such as Shazam for example.

Another suggestion I have is related to solving the underlying problem of educating the consumer about the value of the music and other intellectual property. In order to do this properly, I request an audience with the Subcommittee in order to provide a workshop. The workshop has been offered free of charge to k12 schools and foster homes to 1000s of youth, and our surveys show that our method is both effective and compelling in creating lasting respect for intellectual property and its creators.

Time and time again testimony reveals the power of youth, of the Congressmen and Women's kids, to make an impact on their consumer behaviors and understanding of intellectual property. As noted by Mr. Watt, Mr. Marino, Mr. Conyers, Mr. Goodlatte, Ms. Pallante, Mr. Deutch, and others, the role of education to turn things around is paramount and should not be pushed aside.

Also, as noted by Mr. DeSantis and Ms. DelBene, the reforms to copyright and to these Consent Decrees needs to be simple enough for the average person to understand, and it must be based on principle⁵ so that regardless of future technological changes, copyright can remain simple, understandable, and in compliance with the requirement that it meets the needs of the public good both now and in the future.

I would also like to state that I am a publisher member with all three US based PROs (ASCAP, BMI and SESAC) and am a writer member with ASCAP and in no way do I mean any harm or disrespect to any of these organizations by submitting these formal comments. We are in this together, along with the Spotifys and Pandoras of today and the future, and the quicker we can resolve these differences in a mutually beneficial way, the better off our music economy, and indeed, our greater economy will be as a result.

⁵ Principle according to Stephen R. Covey is timeless and self evident – applies in every time and in every instance.

Thank you again for the opportunity to submit these comments on behalf of the Songpreneur Community.

Respectfully submitted by,

Songpreneur Community
Hillbilly Culture LLC.

Amanda Colleen Williams
Founder