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A reevaluation of the current laws and regulations affecting the songwriting community is both welcome and necessary. The framework surrounding the licensing of songs is outdated, ineffective and is jeopardizing songwriters' ability to make an honest, fair living from their creations, which in turn inhibits the development of the songwriting craft due to diminished economic incentives to continue creating.

An exclusive right, such as the rights enjoyed by copyright owners, at its most fundamental level, is the right to say "no" - to say "no" to someone else using your copyrighted work without your permission or for an unfair fee. Sadly, the "limited monopoly" given to songwriters under copyright law is so further "limited" by government regulation that songwriters do not have the full ability to say "no" to the public's use of their songs. This inability to say "no" has a devastating effect on songwriters' ability to control the use of their songs and ensure fair compensation for their use. Meanwhile writers, painters, filmmakers, photographers and a myriad of other types of creators of copyrighted works are all freely allowed to decide how to exploit their own works.

As further outlined below, each of songwriters' three main income sources is adversely affected by unnecessary government regulation and an inability to say "no": mechanical royalties from CD sales, downloads and streams are affected by the Section 115 statutory license, performance royalties are affected by the Department of Justice's consent decrees, and synchronization fees are affected by the DMCA safe harbor protections.

[Inquiry #1] **The Section 115 Statutory License** is a relic from a simpler time – a time when piano rolls were commonplace and before recorded music became commercially available to the public. Since its introduction in 1909, the statutory license went largely unused as the vast majority of music users and songwriters preferred to enter into their own negotiated licenses for the use of copyrighted songs. These negotiated licenses adequately balanced the needs and concerns of each party for decades and continue to do so today. Only recently has the statutory license become commonly exploited by digital music companies seeking to license all or a large part of all available recorded music. This exploitation of the statutory license causes a number of critical issues which do not occur under a freely negotiated license:

1. Notice of Intent Provisions: The statutory license allows a single notice of intent to be effective for all co-owners of a song, even if the notice is only sent to one co-owner. This creates an enormous degree of uncertainty about whether or not a particular recording of a song is properly licensed. The inability to readily and conclusively answer the question "is this licensed?" undermines transparency and

accountability, two concepts which should be part of the foundation of the modern music licensing marketplace.

2. **Improper Accountings:** The statutory license allows a music user to pay 100% of the statutory royalties to one co-owner of song, even if they only co-own 1% of the song. This causes major accounting inaccuracies as co-owners rarely have complete or accurate payee and tax information for the other co-owners. Paying the proper owners of the song should be the responsibility of the person using the song, not the song's co-owners.

3. *[Inquiry #24]* **Lack of Audit:** There are no audit rights under a statutory license. Songwriters instead must rely on the music user to essentially promise that they're paying properly. In other words, someone can use a song without a songwriter's permission, pay the songwriter a royalty he didn't agree to, and prevent the songwriter from inspecting their books to see if they're paying correctly. An audit right is particularly necessary in the music industry which has an admittedly long and storied history of dubious accounting practices and exploiting songwriters. Every songwriter deserves and should be entitled to a straight count; self-certification by highly impartial CFOs is not sufficient.

4. *[Inquiry #2]* **Royalty Rates:** The statutory *minimum* royalty rate set by the government under a statutory license has unsurprisingly become the *de facto maximum* royalty. Why would a music user pay more than the minimum royalty if they can obtain a license for the statutory rate that the songwriter can't refuse? This government mandated statutory rate leads to the bizarre conclusion that every song is of equal economic value. Does J.D. Salinger's novel Catcher in the Rye have the same economic value as my awful sci-fi novel Attack of the Bellybuttons From Planet Nepton? Of course not. But the one-size-fits-all statutory rate implies that a download of a Bob Dylan song has the exact same value as a download my insignificant song, "I Love My Kazoo (And You Will Too)." Just as all books (or any other type of copyrighted work) are not created equal, all songs are not created equal and should not be treated as such.

Further, the royalty rates set by the Copyright Royalty Board are not reflective of the current music environment. The Board has not increased a songwriter's royalty for a CD sale or permanent download since 2006, the second longest period without a rate increase since the 68 year increase-free period (!) following the introduction of the statutory rate in 1909. A statutory royalty is not and can never be truly indicative of the real market value of a song – a value that can only be found through unencumbered arms' length negotiation between a songwriter and a music user. It's bad enough that songwriters and song owners can't understand the convoluted statutory music streaming royalties, but it's worse still that they don't really need to because they aren't permitted to review streaming services' books for accuracy anyway.

[Inquiry #5 and #6] **The Consent Decrees** imposed upon ASCAP and BMI by the Department of Justice also impair songwriters' ability to negotiate fair, free-market rates for the public performance of their songs by allowing songs to be exploited for profit without songwriters' consent for rates they didn't agree to. The extremity and inequity of this situation caused much of the industry to attempt to withdraw their "new media rights" from ASCAP and BMI, an unprecedented move that was necessary simply because these organizations cannot sufficiently represent songwriters' interests while operating under the outdated consent decrees. Further, the outdated and extraordinarily expensive rate court process which determines these royalties is unnecessary and is being exploited by music users at the expense of songwriters and taxpayers. Music users and songwriters are completely capable of negotiating fair, market rates for the uses of songs without consent decrees and rate courts.

[Inquiry #24] **The DMCA** is also in dire need of reexamination. The DMCA safe harbor protections (or "DMCA License" as it's tellingly known in some circles) absolve internet service providers from copyright infringement liability on an enormous scale that could not have been fully realized in a pre-Napster and pre-YouTube era when the DMCA went into effect. The safe harbor protections are extremely one-sided in favor of service providers who exploit them by pretending to have no "red flag" or "actual" knowledge of the rampant infringements occurring on their services so they can build billion dollar companies on the backs of songwriters without paying them a dime. This practice significantly devalues music and provides companies which exploit the DMCA "license" with an unfair advantage over companies doing the right thing and licensing the necessary rights from songwriters.

It is also impossible for a songwriter to enforce their rights due to the DMCA. Not only does the DMCA place the incalculable burden of identifying and sending takedown notices for infringing uses on songwriters and copyright owners, the broken DMCA notice and counternotice process allows infringing users to mount absurd legal defenses at the click of a button. We've seen infringing users bring public domain defenses for original songs created within the last year. We've seen "no license is required" defenses because "I put this song in a video that I made myself so I own all rights to your song." We've even seen "fair use" defenses with nothing more than "s;ldfjka;sdf2" as an explanation. Upon receipt of a DMCA counternotice, however ridiculous it may be, the DMCA gives songwriters exactly two options: file a cost-prohibitive formal legal action against the user or do nothing and allow the infringing content to stay up.

Lastly, once infringing content has been identified and taken down, it should stay down. Audio and video "fingerprinting" and recognition technology exists today to make this an automated process and the responsibility must be placed on the internet service providers to ensure that known infringing content is not simply re-uploaded.

Much has been made about changing distribution models (the relatively quick shift from CD sales to permanent downloads to streams) as being the cause behind songwriters' dwindling income, and to a certain extent, it's true. But digging deeper, one finds that it's not changing distribution models that poses the greatest threat to songwriters (after all, the industry weathered a number of distribution and format changes over the last 100+ years) and the future of music, it's unnecessary and outdated government regulation which is preventing songwriters and music users from reaching equitable and efficient "willing buyer willing seller" solutions on their own accord. Sure, a forced, automatic license is very efficient at conveying rights to a music user, but a freely negotiated license can be just as efficient and far more functional in practice. In fact, almost every nation besides the US does not have a compulsory license. Even here in the US, digital music services are required to negotiate and license master recordings directly from their owners. Why not songs? Why are songs so different that they need additional government regulation? Why are songwriters forced to allow the public to freely use their creations for profit so long as the public pays royalties the songwriters didn't even agree to?

Please, Congress, deregulate songwriters' rights. Allow songwriters to have real, meaningful control over how and by whom their songs are used - a freedom that all other types of authors and creators enjoy. Allow songwriters to say "no" to mandatory licensing of their works. To say "no" to license fees that they have no direct say in determining. To say "no" to infringing uses of their songs on the internet. If you allow songwriters to say "no," you empower them to say "yes" to a sustainable, fair, free-market, modern music business in which both music users and songwriters can flourish. Only when songwriters can sit across a table from music users, unencumbered by government regulation, and negotiate fair fees for the use of their songs will we ensure that future generations of songwriters have enough economic incentive to continue creating music.

Songwriters entertain, tell stories, inspire and motivate billions of people around the world. They make us laugh, dance, and cry. They give us hope and heal our pain. Their powerful words and melodies enhance countless moments in our lives - from our weddings, to our funerals, to our workouts, to our nights out with friends and family, and to our rainy Sunday mornings. Songwriters create one of humankind's oldest, richest, diverse and most unifying cultural treasures: **MUSIC**. And they desperately need your help.