

Greetings,

My name is Jerrod Simpson, and I have worked in the music business for almost 5 years now. I have released 2 full-length albums via the CD Baby distribution service, which for a small fee and a 10 percent commission, places my music onto numerous digital platforms including: iTunes, Amazon mp3, Spotify, Google Play, etc...

Additionally, I am a 3rd year law student at Thomas Cooley Law School, where I focus on Intellectual Property Issues such as Copyright and Music Licensing.

I am what you would consider the "little guy" in the music industry. The *vast* majority of my musical income is derived from live performances at local bars, restaurants and special events. This income has allowed me to pursue my education in law and further my own personal American dream. The amount of money that I receive from streaming plays and digital downloads is laughable and would hardly be enough to pay for strings on my guitar for the year.

I don't ask for much here because I understand the need to balance both the advancement of technology through incentives to developers providing these new and exciting platforms. I also think that music consumers benefit from these new technologies, and artists can potentially benefit from the exposure that they could offer. But I think that those potential benefits are more theories than reality.

I would like to put it to you like this: according to my last royalty statement, I'm paid 0.0066 cents each time a song is streamed from my album on Spotify. That means that in order for a song to generate enough revenue to pay off the \$35 dollar copyright office registration fee, it needs to be streamed over 5,300 times.

Of course, the \$35 copyright registration fee is a drop in the bucket to what it costs to write, record, and produce a quality composition. The result is that it is virtually impossible for a "little guy" to generate enough revenue from a recorded song to break even on it. We are told that our efforts at creating recorded music should be looked at as investments into our future career, and that these efforts advance our potential for other possible revenue streams like live performance and other merchandise. But I believe that this is a devious rationale that devalues and subjugates the work of artists.

For one, there would be no demand for these platforms without the content creators. And without new emerging artists, these online radio services would become stale and dominated by large corporate music-machines that put out lowest common denominator music for the purpose of generating the most profits. New artists are the ones who challenge the status quo and move art forms forward. Ultimately, new artists offer the most benefit in content creation for society by challenging pre-existing notions and encouraging experimentation. Furthermore, many people use the services of

streaming online radio in hopes of discovering new artists.

Secondly, this rationale preys upon the aspirations of artists who are not usually the most business savvy group. Artists are dreamers and are typically in a vulnerable position when it comes to business negotiations. This fact has been recognized at law already through many states' Talent Agency Acts, which place fiduciary duties onto people that play the role of managers to artists. The benefit of "exposure" is often used as a mechanism to derive free labor from naive and hopeful young artists. In the end, "exposure" will not pay the bills.

Finally, as I stated before, the majority of my income is derived from local bars and clubs that pay me to perform live. Occasionally, I perform a cover song of a popular artist in order to appease the audience and to give an overall more enjoyable performance. I am aware of the existing copyright law, and that my performance of another person's music without license, under the black letter of the law, is a violation that could subject me to fines of \$100,000 or more for each public performance.

The letter of the law is circumvented by Performance Rights Organizations (PRO) that offer blanket licenses to venues, which allow for artists to perform cover music in these places without working out any licensing agreements directly. In theory, this is supposed to help artists by allowing them to get paid for public performances of their work by others, without negotiating 1000s of deals across the country with innumerable players.

However, the reality is that PRO's extort small venues for 1000's of dollars annually, and copyright law enables them to do so through its extreme fines on infringers. The fact of the matter is that it is the lesser known artists like myself that are committing the actual act of infringement, but if the PRO came after lesser known artists like myself, they would have a public relations fiasco. So, they go after the small venues instead forcing them to pay large fees, or subject themselves to harassment or potential litigation.

The PRO's are subject to little oversight, so it is virtually impossible to know how they distribute these fees on live music venues, which means that lesser known artists are getting the short end of the stick again. They do not track the set-lists of live music performances at the venues that they harass for these license fees, and so there is no way of knowing whose songs are being performed and thus, which artists should get paid.

A PRO has the ability to exact death by litigation over a small restaurant or bar that refuses to pay them off, which could eliminate potential revenue for a lesser known artist who is dependent on that income to merely survive as a professional.

Furthermore, there is not a logical argument that a lesser known artist's performance of a cover song has a negative market affect on the more popular artist. In fact, I'm sure that you could argue that it enhances the market potential of the song by bringing it to

new audiences. However, under current copyright law this inquiry is irrelevant because there is a presumption that if any profit is generated from the performance, fair use analysis does not apply.

This is short sighted. The seminal American musical genres of Blues, Country and Jazz would not have been invented under such a Draconian paradigm of copyright law.

Musical invention and innovation throughout history has been dependent upon sharing, elaborating and collaborating. The Constitutional purpose of Copyright law is to incentivize creation in such a way that will encourage *more* creation - not to incentivize creation in order to prop up a plutocratic regime at the expense of those on the bottom.

So, my suggestion for you goes like this, offer flexibility to the little guys. Lower the registration fee for copyrights on digital files, or return to the system of public notice on the work itself. A Copyright system like the one proposed by Creative Commons would allow artists to encrypt the use and reuse rights onto the digital file itself and provide notice to the end user or consumer of what rights the artist wishes to extend.

Developers do not rely on the Copyright office registrations currently anyway to pay out what little fees they do. They pay out based on registrations through other services like CD Baby, which has virtually rendered Copyright registration obsolete for many people in my situation.

Furthermore, the amount of money that Developers pay out should be directly related to the income that they derive from the use of the music, and it should be split evenly between the people that provide the platform and those that supply it with content.

If developers make less on ads that play during a lesser known artist's video stream then they should pay less. But I'm doubtful that this is the case in streaming radio, where new artists are often played side-by-side with more popular ones. In fact, in many cases as I mentioned before, users employ these services in hopes of discovering new artists, which means that arguably the emerging artists bring more value than the already known ones. In that such case, I believe there should be no difference in pay-out since each artist is contributing to the value of the service itself.

Finally, in the case of live music performance, PRO's should be subjected to more public oversight as to how they distribute the fees that they collect from venues. The fees that they charge should be correlated to the pay-outs that they make, which should be accounted for. Fines on infringers should not be of the extent that puts a PRO in the position of negotiating with others using the threat of destroying a small business. This is an unfair advantage that only hurts the small artists that depend on live performance income from these small venues.

The principle of the matter is simple: Artists should get paid for their work, but not to the extent that it destroys other industries and not through a system that is designed to

prop up the folks on top.

Thank you for taking the time to read my thoughts on this matter.

Sincerely,

Jerrod Simpson