

COMMENT: THE CURRENT STATE OF THE MUSIC LICENSING MARKETPLACE

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I remain puzzled why the Copyright Office is choosing to parse Copyright in to industry's rather than addressing it head on as a Model of Copyright which is core to many industries, differing only in the Industry it is being applied to rather than the process or application which is Contract.

A deal is a deal is a deal. A copyright is a copyright be it publishing, music, film, dance or writing. What none of these industries needs is Government interfering in what is the artist's responsibility. What an Artist demands for their ARTS is individual more reflected in esteem of the artist and their sophistication. And their gut for gamble. Individual.

The failure is in Artists refusing to take responsibility for being in business. It isn't rocket science to learn these lessons. It is personal priority. Access for education is at fingertips these days and times with the Internet and with Social Media. Gaggles of ARTS creators meet on Forums like LinkedIn, ,chat rooms, TedTalks or through Meetups.com, starting initiatives and sharing information. These forums succeed because human nature is to share, without interference of Government... YET!!!!

The failure begins, with Artists that go to schools, in the schools not teaching the business of the business and the business of being in business. This is not just a failure of the ARTS schools. This is a failure of ALL schools to teach students, from the getgo, how to manage money and debt. Students are taught how to sign school agreements, payment plans. Students are not taught what it takes to stay afloat and out of debt. Part of that lesson is a simple one page agreement that says, simplified, "You give me money, I give you (a) my art (b) rights to my art (c ) no rights to my art (d) you sell my arts at a profit you give me more money (e) you will pay me "X" amount for each copy of my Arts you sell and (f) touch my art rights without our signing on the dotted line or fail to pay me my royalties timely I will sue your backside off in this stated court", along with maybe a few more simple enough phrases to craft for guidance. Is this governments role?

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Not at all. Government has enough it cant get right. Don't step in here. There are enough agents out there and courses online and off, that ARTS creators can learn through. If YET ANOTHER book on the topic needs to be written, I will step up to the plate but another book is not needed. What is needed is to let artists grow up and man up and make mistakes and journey on the learning curve of experience.

Government should not step in to peer 2 peer business dealings. Interfering in Peer 2 Peer business dealings is Un-American. In the ARTS? Government interference stifles creativity.

If government feels a need to mind this business too, don't. Knowing that wont happen, let government step in to forcing schools to teach students the THE DUMMIES GUIDE TO BEING IN BUSINESS. Government has better things to do, like rewriting Title XVII to be compliant with President Obamas Plain Writing Act of 2010 and enforcing Music License issues under violations of Contract Law and Under the Criminal Code for violations.

The difference between the state of music today and when Man first hit two stones together making sound in rhythm? We have Government messing in our lives rather than letting Artists do our job- innovate and percolate.

Cordially

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# GOVERNMENT HAS NO ROLE IN REGULATING ARTS LICENSING IS A COURSE THAT SHOULDA HAVE BEEN TAUGHT IN SCHOOL

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The question of licensing music is a conversation that should be held in tandem with licensing Art, Photography, Authors works. There is one wheel and many variations thereof.

That said, there should be NO conversation of Government in running a private business which is what Content creating is. The second the dollar crosses the counter is the second someone is in business. Moreso, that regulating the ins & outs of private business what the Copyright Office should step deeply into is teaching courses on Copyright in high school, college, academies etc.

As someone who has sat through the classes given ie at the USPTO to staff in Alexandria to facilitate staff understanding changes in law that have been written, so should these classes be taught in schools. The goal should not be to create more laws. The goal should be reducing the number of infringers. Ideally that could be achieved by making The-Business-Of-The-Biz classes taught at a younger age before someone sets on to a trajectory of Content and Crime, the reality of Mankind is now and forever that Human Nature is unpredictable and that some people will always choose the Crooked path rather than the straight and narrow.

Business is basically the same industry to industry. And no, "The mechanisms for obtaining such licenses are largely shaped by our copyright law" are shaped by Contract Law. There should be no "government-regulated licensing regimes for certain uses of sound recordings and musical works." The alert here should have been that Government thinking it had a role in regulating music would spill over in to Government thinking it had a role in regulating Art, Photography and so on. You don't. The number one most active gripe on College graduates lips is wishing they had been taught business, as referenced before. That said, wryly, had/if Colleges taught students about business most likely the students would figure out sooner than later that College is not necessarily the best investment one makes with their money, that success can be achieved without investing thousands if not hundreds of thousands in to, yes, another piece of paper to no where.

Justin Bieber. Bill Gates. Steve Jobs..... Made their fortunes without college degrees and commencement speeches.

What differs are the individuals, their choices and sophistications, and yes, esteem to ask for what they want. Most artists cave to the Sally Field's model of "they like me, they

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really like me” just happy to get recognition and that is how and why Industry model’s are torpedoed. There is a difference between the needs of a Sunday Artist, someone with a day job who sings, paints, dances, performs to feel good versus the needs of a real artist who invests their life in to making their talent their career.

It is impossible to mandate and regulate music licensing because their needs are different. The real artist wants cash and ownership. The Sunday artist will be happy for a hug.

The bottom line fact is life will get easier for the ARTS if Legislators, the Copyright Office back off Creative Content Property management. That is up to the individual to take responsibility for their ARTS, grow up and learn, yes at times the hard way, the good and bad of being talented. That is where the logic is that Congress leave the larnin’ to schools, collecting pretty pennies for teaching talented kids to sing, dance, paint, perform but fail to teach them the real skills of balancing checkbooks, contracts, hiring lawyers (or not hiring lawyers) and teaching that if they are talented enough to tap in to their intuition to create, then it isn’t that much harder to learn early on to define Territory, time, advances, percentages, terminations, renewals et al. Anything other than that from Congress is more debt and burden on the ARTS community which Congress and the Copyrights & USPTO Office have been doing a good job of messing up.

Let’s be real here. Congress makes the law. The Copyright Office sells pieces of paper with no value other than stating details on it. Blunt? Yes. Off the mark, no. It’s the dirty little secret whispered in the halls of Capitol Hill. If there is a problem, all the money invested in to owning that piece of paper is wasted unless there is a lawyer willing to take this problem on which the lawyer will do only under one of two circumstances, make that three (i) contingency (ii) paying by the hour or (iii) pro bono. The hard cold truth is that just because a lawyer has ESQ behind his name does not mean he or she is going to win the matter or as just happened, screw it all up.

Unless one is blessed to make it big time in the Arts, the bucks aren’t there. Blind faith too often is. Blind faith and lawyers do not a good cocktail make. A photographer who called me yesterday found that out the hard way. The ‘good case’ lawyer cost him \$70K out of pocket along with now being sued for \$1 million dollars. At fault? I will put the system, in a heart beat.

The laws are written badly. They are not written in plain English in violation of President Obama’s mandated Plain Writing Communication Act of 2010. Moreso, when the lawyer screws up the ARTS content creator is left holding the bag.

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So no.... walk away Copyright office and focus on doing your job, manage Copyrights not Licensing Rights. Set up educational courses using handbooks written simply by industry people. Your goal should be mitigating opportunities

Copyrights and Licensing is not rocket science. It is, on the base level, Contracts & Crime. But if the Copyright Office really wants something for busy time, how about regulating the Agents that manage or mismanage the Artists being licensed. I know, I know, when hell freezes over.

Lesson one I had when I hired an agent before eventually becoming my own was the definition of the relationship between Artist and Agent being likened to that of a Pimp/Whore relationship in that if the Agents had talent they would not need the Artist to Sell. But, in that the Agent does need the Artist, they will tell them whatever sweetness the Artist needs to be told to open up and give in to the Agent.

So regulate that.... Agents not licensing and teach the Artist the basic to manage their own skills and how to pick good lawyers and accountants. The rest? Well not everyone can be winners. Pitch in to mitigate the number of losers waiting to be preyed upon.

Oh, yeah. And teach the Artist to make sure to leave the loop hole for advancements in technology.... Hmmmm.... My recommended language "up to and including any and all variations of emerging technologies even unknown as the date of the signing of this agreement, there shall be no use of the ARTS content creators image, likeness, Right of Publicity, content without a re-application above and beyond the license stated and granted herein. Anything further is and will be considered a known intention crime that is being committed that will be addressed and/or litigated in the home state jurisdiction of the Artist, with no exception, preceded with a mediation that will be entered in to in good faith and not as a fact finding opportunity before moving the matter in a court of law. Any deception will be pursued in a separate and different matter knowing there are/may be criminal charges that may apply..." Rewriting that to comply with the President's Plain Writing Communication Act of 2010.... Stay out of the business of our Copyrights. If the Copyright Office really needs to feel like doing something to help the ARTS? Go after the criminals abusing Fair Use and Safe Harbor not paying any fees at all. Better yet, claw back our Profits offshored by the Private Companies owning the internet who don't pay the license fees you are investing/wasting time to create laws to regulate. This isn't a world of laws for us and laws for them. Get our licensing fees they circumvent paying.

Then the Arts World will be filled with happy campers. Well, maybe after getting rid of the Lawyers, Lobbyists and Wonks who pushed these agendas through leaving the Arts World wondering what the heck happened and who has been talking for our livelihoods.