



copyright alliance

Connecting creators · Protecting creative work

**BEFORE THE
U.S. COPYRIGHT OFFICE**

**Music Licensing Study: Notice and
Request for Public Comment**

Docket No. 2014-03

COMMENTS OF THE COPYRIGHT ALLIANCE

The Copyright Alliance is a non-profit, public interest and educational organization that is supported by nearly forty entities comprised of individual artists and creators, as well as the associations, guilds, and corporations that invest in and support them. These members include many participants in the music space, including songwriters, record labels, recording artists, Performing Rights Organizations (PROs), music publishers, and others. Besides these institutional members, we represent more than 13,000 individual artists of varying backgrounds. The Copyright Alliance is committed to promoting the cultural and economic benefits of copyright, providing information and resources on the contributions of copyright, and upholding the contributions of copyright to the fiscal health of the nation and for the good of creators, owners, and consumers around the world. Among other principles, we seek to promote appropriate copyright protection and enforcement to encourage the creation and lawful distribution of works, with fair compensation to the authors of creative works. While many of the entities we represent are small businesses and individual creators, all who participate in the copyright ecosystem have an interest in effective mechanisms for licensing copyrighted work.

The Copyright Alliance welcomes the March 17, 2014 Notice of Inquiry, regarding the effectiveness of current methods for licensing music. We write to underscore two points. As an organization dedicated to promoting and protecting the ability of creative people to earn a living from their creativity, we see certain legal obstacles in the music licensing marketplace that currently hinder many music creators from being fairly compensated for the use of their work. Despite these challenges, members of the Copyright Alliance across the creative spectrum are engaged in ensuring that their music is available to fans using established and emerging platforms and services for enjoying music. As a result, more music is available to audiences now than ever before, via myriad platforms to suit a variety of interests. We highlight below a few examples of the many services our members license.

Among the obstacles hindering equitable compensation of musicians and others involved in the creation and delivery of musical works and sound recordings are the lack of a full public performance right in sound recordings and the issues sought to be addressed by Congressmen Collins and Jeffries through introduction of the Songwriter Equity Act.¹ Consistent with our belief that creative workers deserve fair compensation for their work, we recently issued a statement commending the introduction of the Songwriter Equity Act, which would permit the introduction of evidence and usage of a new rate standard to ensure fair market value for songwriters and music publishers, as an important step toward ensuring that incentives to create and disseminate music are strengthened for all sectors of the music community.² We take this opportunity to additionally voice our support for the long held views of the Copyright Office and the Administration in favor of extension of the public performance right for sound recordings as a way of removing further barriers to compensating creators.³

¹ Other obstacles also exist and will be thoroughly briefed by members of the Copyright Alliance most directly affected in their individual filings. We restrict our comments to these issues directed primarily at achieving fair compensation for all creative workers only because we are a broad-based coalition with membership spanning the entirety of the creative sector, and therefore our members outside the music industry do not feel it appropriate to intervene in the more nuanced and complex questions posed in the Notice.

² SANDRA AISTARS, STATEMENT REGARDING THE SONGWRITER EQUITY ACT (Apr. 9, 2014).

³ The National Association of Broadcasters, an Associate Member of the Copyright Alliance, does not join in these comments and has taken no role in preparing them.

Licensed Music Services

The marketplace for legal music services is thriving, despite the many challenges faced by artists, songwriters and other music creators. Listeners have never before had access to such a variety of music through so many avenues. We highlight just a few of the platforms actively licensed by Copyright Alliance members below, and provide a snapshot of the scope of their reported audience reach:

Interactive and Non-interactive Services

Copyright Alliance members license all the major interactive and non-interactive music services in the marketplace. Billions of hours of songs are available to millions of active users for streaming and download from a variety of popular services.

- **Amazon's mp3** service accounted for 22% of all paid music downloads in the last quarter of 2012.
- **Apple's iTunes** service hit the sales milestone of 25 billion songs sold in February of 2013. As of May 2013, just after its tenth anniversary, iTunes had over 26 million songs available for download. In its first five days on the market **iTunes Radio** attracted 11 million unique listeners. By early 2014, iTunes Radio had already grown to reach between 20 and 21 million users.
- In May of 2013, Google released **Google Play Music All Access** a service where subscribers can stream more than 18 million songs and download up to 20,000 songs.
- As of March 2013, **Spotify** had over 24 million registered users, including 6 million paying subscribers. As of April 2013, Spotify has licensed over 20 million songs, with an average of more than 20,000 new songs added per day.
- In 2013, **Pandora** users listened to more than 15 billion hours of music, one million songs, and 100,000 artists. Pandora's April 2014 metrics revealed that users listened to 1.70 billion hours of music. Pandora's share of total U.S. radio listening was 9.11% with 76 million active users.
- **TuneIn** currently has over 40 million active listeners, 2 million of whom listen in their cars via dashboard integrations and car-mode listening. In the first four months of 2013, TuneIn listeners streamed more than 1 billion hours of music.

Specialized/targeted services

- Copyright Alliance members also support mobile music services like **Muse** from mobile phone company Cricket. Muse is a mobile music service, packaged with talk,

text and web browsing services that allows unlimited downloads of music, and promotes sharing and music discovery via social networking with other Muse users and DJ playlists.

- **Christian Copyright Licensing International (CCLI)** provides churches with simple, affordable solutions to copyright licensing issues. Among the various services offered by CCLI are licenses to facilitate choral performances and congregational singing (including transmission and display of musical performances), the use of commercial music in rehearsals, licenses to stream and podcast public performances of a church choir's singing, clip and movie licenses to use motion pictures in ministry-related activities and sermons, and on line resources for churches and ministries to find copyrighted works appropriate for use in worship.

Multimedia and remix services

- Members of the Copyright Alliance license lyrics and rich information such as artist biographies, album cover art, reviews, and pictures on over 4 million tracks and artists to music recognition services such as **Shazam**. Using this information, music lovers can discover, purchase and interact with music using the Shazam applications on their mobile phones. Shazam also enables users to manage their historical discoveries, access track charts, purchase follow-on products and share their musical findings with their friends.
- **The Echo Nest**, a music intelligence company, has partnered with Getty Images to make high-quality photographs of recording artists available to customers using its Dynamic Music Data solution. Tens of thousands of high-resolution, curated Getty images will be available from The Echo Nest, helping music sites and apps build image-rich, real-time music experiences that delight fans and increase engagement.
- **Indiloop.com** is an online remix site currently in beta form. It offers licensed "stems" (compilations of audio inputs like vocals, bass, drum etc.) for remixing and sharing. The service is licensed by or in negotiations with various Copyright Alliance members who wish to make their works available to users through it.
- In addition to its free videos, **YouTube** launched paid subscription channels in May 2013, and currently offers over 125 channels with fees starting at \$0.99/month. A variety of these channels include videos with strong music components.

The diversity and breadth of services licensed demonstrates that the music licensing marketplace is thriving. However, it is likely that further advances could be achieved through addressing marketplace inefficiencies, including re-examining the outdated consent decrees under which ASCAP and BMI operate, and tackling other challenges identified by Copyright Alliance members. We urge a close examination of such individual recommendations by the Copyright Office.

Extending the Public Performance Right for Sound Recordings

Congress as well as the Copyright Office and the United States Patent and Trademark Office are currently engaged in inquiries and other proceedings to examine various issues facing creators, distributors and users of copyrighted works in the digital age.

Legislation that we anticipate will be helpful in addressing some of the challenges faced by songwriters and publishers has already been introduced by Representatives Collins and Jeffries.⁴ Other constraints and challenges faced by music creators remain to be addressed.

One such challenge relates specifically to the scope of copyright protection for sound recordings. In its study on *Copyright Policy, Creativity, And Innovation in the Digital Economy*, issued July 2013, the Department of Commerce Internet Policy Task Force noted:

For over thirty years, the Administration and Copyright Office have made repeated calls to create a public performance right for the broadcasting of sound recordings. Apart from the inability to obtain compensation in the United States, this omission has had a real impact on the balance of payments from abroad. While broad public performance rights are enjoyed by owners of sound recordings in most other countries, U.S. sound recording owners and performers have been unable to collect remuneration for the broadcasting of their works in those countries, due to the lack of reciprocal protection here.⁵

Similarly, in this Notice of Inquiry, the Copyright Office has observed:

The Copyright Office has long supported the extension of the public performance right in sound recordings to broadcast radio. Only a handful of countries lack such a right: in addition to the United States, the list includes China, North Korea and Iran. This gap in copyright protection has the effect of depriving American performers and labels of foreign royalties to which they would otherwise be entitled, because even countries that recognize a public performance right in sound recordings impose a reciprocity requirement. According to one estimate, U.S. rights holders lose approximately \$70 million each year in royalties for

⁴ See Songwriter Equity Act of 2014, H.R. 4079, 113th Cong. (2014), available at <http://beta.congress.gov/bill/113th-congress/house-bill/4079/text>.

⁵ INTERNET POLICY TASKFORCE, DEP'T OF COMMERCE, COPYRIGHT POLICY, CREATIVITY, AND INNOVATION IN THE DIGITAL ECONOMY 100 (2013).

performances in foreign broadcasts.⁶

The creation and delivery of music to audiences requires collaboration between a variety of creative individuals and businesses, including songwriters, music publishers, performers, producers and record labels. All of these creative individuals play an important role in crafting and bringing the final work to audiences. We file these comments simply to reaffirm the principles upon which our organization was founded:

- We are dedicated to promoting and protecting the ability of creative professionals to earn a living from their creativity; and
- We believe all authors and creators are entitled to fair compensation for their creative work.

Accordingly, we join the Copyright Office and the Administration in supporting their call for an effective public performance right for sound recordings.

Respectfully submitted,

Sandra Aistars

Chief Executive Officer
Copyright Alliance
1224 M St. NW, Ste. 101
Washington DC 20005
202-540-2243

⁶ Music Licensing Study: Notice and Request for Public Comment, 78 Fed. Reg. 14742 n.14 (Mar. 17, 2014).