May 23, 2014

Library of Congress
U.S. Copyright Office
101 Independence Ave. S.E.
Washington, D.C. 20559-6000
Attn: Maria Pallante, Register of Copyrights
Jacqueline Charlesworth, General Counsel and Associate Register of Copyrights

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

Thank you for this opportunity to submit my comments in response to the Music Licensing Study: Notice and Request for Public Comment.[1] I am submitting this paper to argue that, as we discuss revising the laws surrounding music licensing practices, the Copyright Office and Congress must keep the goal of providing fair compensation for music creators—recording artists, songwriters, and music producers—at the forefront of their minds.

I. Introduction

My name is Dina LaPolt and I am a transactional music attorney in West Hollywood, California, with the law firm of LaPolt Law, P.C. For more than 16 years, I have represented recording artists, songwriters, producers, actors, and other owners and controllers of intellectual property. In addition, I started in the entertainment industry as a musician and songwriter. Thus, I have built my practice from the music creator's perspective. I have also taught a course entitled "Legal and Practical Aspects of the Music Business" for the UCLA Extension Program since 2001, and I teach and lecture all over the United States, Canada, and Europe on issues that affect creators' rights. Protecting creators and representing their interests has always been my main focus and my passion. I frequently take part in legislative and advocacy efforts relating to issues that impact my clients and the broader music creator community. Further, I am well-qualified to discuss music licensing practices because my firm handles countless licensing-related agreements on behalf of our clients and we encounter these agreements in our practice on a daily basis.

I am submitting this paper to represent the music creator's perspective on licensing reform issues. While I quoted Register of Copyrights Maria A. Pallante in a previous comment paper to the Department of Commerce Internet Policy Task Force,[2] her words from "The Next Great Copyright Act" bear repeating:

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[1] 79 FR 14739.
[2] Dina LaPolt and Steven Tyler, *Public Comments on the Green Paper*, Feb. 10, 2014, http://www.uspto.gov/ip/global/copyrights/lapolt_and_tyler_comment_paper_02-10-14.pdf.

"Congress has a duty to keep authors in its mind's eye, including songwriters, book authors, filmmakers, photographers, and visual artists. Indeed, '[a] rich culture demands contributions from authors and artists who devote thousands of hours to a work and a lifetime to their craft.' A law that does not provide for authors would be illogical — hardly a copyright law at all. And it would not deserve the respect of the public."

The interests of creators, the lifeblood of the entertainment industry, must be at the forefront of our minds as we discuss potential changes to the Copyright Act.

II. Fair Compensation to Music Creators is the Most Important Consideration

Before we discuss licensing, it is essential that we take a step back and look at the state of the music industry from the music creator's perspective. Currently, inequalities in payment structures impose a heavy burden on both songwriters and recording artists. Songwriters are grossly undercompensated for the digital transmission of their works, receiving a fraction of the fees paid to recording artists in this medium. Meanwhile, American recording artists still do not receive performance royalties from terrestrial radio, thus missing out on a large revenue stream, including substantial revenues from foreign countries, which artists in nearly every other industrialized country receive. Older recording artists also must deal with a lack of federal copyright protection for pre-1972 recordings, preventing them from effectively monetizing their works.

Any new licensing framework should first and foremost address how to adequately compensate music creators so that they can continue creating their art for the benefit of our culture. This comment paper will address licensing issues by first discussing the issues that shape the music industry landscape for creators. These are vital problems that Congress must address before we even discuss minor issues in current music licensing practices. It is first and foremost a question of fairness. Topics such as facilitating licensing for third parties should be a secondary consideration. Otherwise, we are putting the cart before the horse, or trying to run a race in a cast. A new licensing framework that tries to work within a broken system does not fix anything. There would be no music industry without the music itself so we need to give music creators the rights they need and deserve.

III. We Must Grant Performance Royalties for Terrestrial Radio Broadcasts of Music

In the realm of radio, there's one thing that the United States shares in common with North Korea, Iran, China, and Rwanda: unlike nearly every other industrialized country in the world, the United States does not require AM and FM broadcasters to pay sound recording performance

royalties for music they play.[3] The average person would probably be surprised to know that, for example, Aretha Franklin, whose recording of the classic song "Respect" has played countless times every day on American radio for decades, has never received a single penny from radio broadcasters for the song.[4] As a more modern example, recording artist Idina Menzel does not receive compensation from radio for her Academy Award-winning performance of "Let It Go," a song that, at the time of this writing, is number five on the Billboard Hot 100 after twenty weeks on the chart.[5]

Not only does this deny recording artists substantial domestic income, but the lack of a performance royalty for sound recordings costs recording artists and the U.S. economy as much as $100 million or more every year.[6] Foreign broadcasters collect sound recording performance royalties earned by American recording artists but do not pay it to our artists because we do not pay foreign artists. The countries either put the money earned by American recording artists into a "black box" pool of unclaimed royalties to distribute to their own recording artists or pay it straight to their country's recording companies. This is especially troublesome considering American music often dominates the charts in foreign countries. For example, at the time of this writing, American recording artists such as Pharrell Williams, John Legend, Katy Perry, Idina Menzel, and Justin Timberlake hold top 10 hits in the United Kingdom, France, Australia, Japan, and many other countries as shown by the Billboard "Hits of the World" Charts, attached to this paper as ***Exhibit A***. We are leaving hundreds of millions of dollars on the table by failing to bring ourselves up to speed with the rest of the world.

A. Our Lack of a Sound Recording Performance Royalty Grievously Harms Recording Artists

This lack of a sound recording performance royalty has a very real and harmful effect on American recording artists who cannot obtain proper compensation for their performances. This doesn't just affect big name artists; performance royalties are also paid to session musicians,

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[3] Philippa Thomas, *US Musicians Demand Radio Royalties*, BBC NEWS, Jun. 30, 2009, http://news.bbc.co.uk/2/hi/americas/8108379.stm.

[4] David Byrne, *Performance Royalties on Commercial Radio*, VLOGGERHEADS, Jan. 8, 2014, http://www.vloggerheads.com/profiles/blogs/performance-royalties-on-commercial-radio.

[5] *The Hot 100*, BILLBOARD, Apr. 26, 2014, http://www.billboard.com/charts/2014-04-26/hot-100.

[6] Mark L. Goldstein, *The Proposed Performance Rights Act Would Result in Additional Costs for Broadcast Radio Stations and Additional Revenue for Record Companies, Musicians, and Performers*, UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, Aug 2010, http://www.gao.gov/assets/310/308569.pdf; U.S. House, Committee on the Judiciary, *Performance Rights Act*, Hearing, Mar. 10, 2009 (Serial No. 111-8), http://judiciary.house.gov/_files/hearings/printers/111th/111-8_47922.PDF; *musicFIRST on Clear Channel/WMG Deal: Way To Be 'Supportive of Each Other's Needs' Is To Establish a Real Performance Right*, MUSICFIRST, Sep. 12, 2013, http://musicfirstcoalition.org/press?page=press_item&NewsID=376564761363&last_page=press.

background vocalists, and other artists that play an essential role in the creation of radio hits.[7] These artists often struggle to make a living wage as musicians and would greatly benefit from even a small percentage of potential performance royalties. Additionally, this forces many older artists with classic recordings from decades ago to maintain a grueling tour schedule well past the age of retirement just to earn enough money to pay their bills. The heartbreaking effect that the lack of a performance royalty has on artists is well illustrated by this statement by Wendy Oxenhorn, Executive Director of the Jazz Foundation of America, an organization dedicated to providing aid to elderly jazz and blues musician who have fallen on hard times:

> *"For nearly 14 years, I've been working to save jazz and blues musicians from eviction, homelessness and hunger. On a daily basis, legends who recorded with Billie Holiday, Duke Ellington, Chet Baker, [and] Miles Davis are having to be saved. Even the legends themselves; including Odetta, Abbey Lincoln, Hank Jones, Elvin Jones, Ruth Brown, Etta James and so many others have been touched by the Jazz Foundation of America. Had there been radio royalties all these years, I can guarantee that many of the crises these great talents have had to face in their old age would never have had to exist."*[8]

One of the legends mentioned by Ms. Oxenhorn, Etta James—one of the most influential and critically acclaimed female singers of all time—famously had to tour through rapidly declining physical health in her later years because of her financial struggles. Other artists have spoken out about their struggles caused by the lack of a performance royalty as well. At a 2007 hearing before the House Subcommittee on Courts, Intellectual Property, and the Internet, soul and R&B singer and Rock & Roll Hall of Fame inductee Sam Moore stated, "at 71, I am still forced to go out on the road to support my family and myself...I would rather be at home spending time with my grandchildren...If broadcast shared any of the money they earned from playing my records, I would not have to continue to spend so much of my life running up and down the road."[9] In his written testimony, Mr. Moore told several heartbreaking stories about his fellow recording artists:

> *"I remember Mary Wells coming to my house after she was diagnosed with cancer. Mary brought so many great songs to life, including the number one hit 'My Guy.' And yet, she told my wife and me that she didn't know what would happen to her little girl Sugar after she died. In 1992, with no income earned from decades of radio airplay, Mary died without being able to provide for her daughter...I think about the late Junior*

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[7] Owen J. Sloane and Rachel Stilwell, *The Quest for Royalties for the Use of Sound Recordings on AM/FM Radio: In Full Swing*, GLADSTONE MICHEL WEISBERG WILLNER & SLOANE, ALC, http://gladstonemichel.com/quest-for-royalties.shtml.

[8] David Byrne, *supra* note 4.

[9] U.S. House, Committee on the Judiciary, *Ensuring Artists Fair Compensation: Updating the Performance Right and Platform Parity for the 21st Century*, Hearing, Jul. 31, 2007 (Serial No. 110-49), http://www.gpo.gov/fdsys/pkg/CHRG-110hhrg37011/pdf/CHRG-110hhrg37011.pdf.

Walker...going out on tour sick with cancer, needing to earn income. Bo Diddley today is still recovering from a stroke he suffered last year while performing—at nearly 80 years old. As frail as he was, he needed to work. Many of our greatest artists, who created the recordings that are the soundtracks of our lives, must tour until they die because they are not fully or fairly compensated for the performances of their work. They're not compensated at all for their radio airings in our great country."[10]

At the same hearing, recording artist Judy Collins spoke about how a performance right would promote fairness for all artists:

"[Y]ou remember a little song that Stephen Sondheim wrote. I recorded 'Send in the Clowns' in 1975, and shortly after the record's release, it became a top hit. Unfortunately, I did not earn a cent from radio when that song was played time and time again. In fact, I just came across a letter the other day...It says March 2, 1976. 'Dear Judy: And thank you for giving me my first hit song. Gratefully, Stephen Sondheim.'...I have recorded songs of many, many artists—Joni Mitchell, Ian & Sylvia, Stephen Sondheim—and never been paid a cent. It is a privilege to have helped them make a living. I would like to do the same for myself with your help...We simply believe that broadcasters should share the profit they earn at the expense of artists...Songs have value. Singers have value. Musicians have value. We are asking for recognition of that value and urging you to change the law to right this long overdue injustice."[11]

B. There is No Good Rationale for Continuing to Deny Recording Artists This Right

We absolutely must implement a sound recording performance royalty in the U.S. as soon as possible. It would greatly benefit our recording artists and our economy with no downside. In fact, it seems the only group opposing this new income stream for artists is broadcasters, whose rationale for maintaining the status quo does not hold up under scrutiny. Broadcasters, despite paying rightsholders for use of musical compositions, argue that they are entitled to free use of master recordings because of radio's "promotional value" for artists. However, many other companies that publicly perform sound recordings, such as streaming services, satellite radio, and cable radio, must pay for the use of masters. Additionally, artists are paid for most of their activities that are heavily promotional in nature, including live performances, TV appearances, sponsorships, etc.[12]

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[10] *Id.*
[11] *Id.*
[12] Michael Huppe once gave the following analogy:

Not to mention, the promotional value of radio play has significantly decreased. Radio used to help sell albums, driving album sales well into the millions, but that is just not the case anymore. Modern, major label artists are lucky to sell even 100,000 copies of their album. Selling over a million copies is almost unheard of. Younger fans will hear a song on the radio and then stream it on YouTube instead of purchasing the track. Further, any promotional value that radio might provide can really only help new recordings. Radio is unlikely to benefit older artists who, as discussed above, are much more vulnerable and in need of this income stream. According to Sam Moore, quoted above, radio actually detracts from his record sales. In his 2007 testimony, he stated, "I say, in no uncertain terms, radio does absolutely nothing to promote me or sales of my recording[s]...People hear the bulk of my recordings so frequently on oldies stations that they don't have to buy my records at all."[13]

Finally, the argument that radio promotes music ignores the fact that the relationship is mutual: music promotes radio, and stations could not survive without it. Radio stations are able to sell advertisements because the music they play draws listeners. As explained by John Villasenor of *Forbes*, "[i]t's a well-recognized symbiosis in which the benefits flow in both directions. Exposure drives sales, and good music attracts listeners."[14] Simply put, radio stations profit from using music, so why should they be exempt from paying for it? As Judy Collins said in 2007, "no one turns on the radio to listen to commercials."[15]

On this issue, artists are in a very vulnerable position. In D.C., Broadcasters are represented by the National Association of Broadcasters (the "NAB"), a massive trade association and lobbying group with a large office building in the heart of the city. Artists have fantastic support from the National Academy of Recording Arts and Sciences ("NARAS"), but unfortunately, NARAS just does not have the extensive resources necessary to compete with the NAB. Thus, broadcasters command a much larger political presence than artists. However, their power is even greater because radio is one of our country's main vehicles for public speech, including political speech. Politicians, who are well aware of the NAB's clout in D.C., are reluctant to oppose the group for fear that, for example, local stations in their voting districts will decline to run support ads for their next reelection campaigns. Also, every Senator or Congressperson has a radio station in his or her district, but the Senator or Congressperson is not likely to be acquainted with the artists

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> If I wrote a blockbuster novel and you wanted to make a movie out of it, it would be beyond dispute that it will promote my book, but nobody would ever suggest that you take my entire storyline for free and use it in your movie.

Stacy Anderson, *Putting a Price on Radio Play*, NEWSWEEK, Feb 21, 2014, http://www.newsweek.com/2014/02/21/putting-price-radio-play-245542.html.

[13] U.S. House, *supra* note 9.

[14] John Villasenor, *Why Artists Should Always Get Paid By Broadcasters Who Play Their Songs*, FORBES, Jul. 2, 2012, http://www.forbes.com/sites/johnvillasenor/2012/07/02/why-artists-should-always-get-paid-by-broadcasters-who-play-their-songs/.

[15] U.S. House, *supra* note 9.

residing in the district. It is also true that there are several "artistic capitols" in the United States: Los Angeles, New York, Nashville, and Miami, to name a few. This disparity also gives the radio stations undue influence in the Capitol.

We must be highly cognizant of situations where those who control free speech have a stake in an issue such as performance royalties, and cannot let them overpower artists' voices. Congress must protect artists who, in this situation, cannot protect themselves because of their relatively miniscule resources. Radio broadcasters have a duty to serve the public interest,[16] yet their refusal to implement a performance royalty leaves so many recording artists whose work they exploit without enough money to support themselves or their families.

C. Radio Stations Can Afford to Pay Recording Artists

Clearly, radio stations can afford to pay a performance royalty for sound recordings. While domestic sales revenue from recorded music has been in steady decline over the past several years, radio revenues are actually *increasing*. The National Association of Broadcasters executive vice president of communications, Dennis Wharton, stated that radio industry annual revenues have increased from $14 billion to $17 billion since the 2007-2009 recession.[17] Meanwhile, radio stations only pay 1.7% of their gross revenues (minus certain deductions) to each of the American Society of Composers, Authors and Publishers ("ASCAP")[18] and Broadcast Music, Inc. ("BMI")[19] as well as a smaller fee to SESAC, Inc.[20] for the right to broadcast musical compositions. Some have raised the concern that an additional royalty would harm smaller broadcasters who have less money and negotiating power than the large radio conglomerates. This issue can be solved by taking each station's resources into account when negotiating rates with broadcasters. For example, one previous attempt at implementing a performance royalty, the 2009 Performance Rights Act, would have required smaller stations only to pay flat, revenue-dependent annual fees between $500 and $5,000.[21]

In light of the immense benefit that artists and the U.S. economy stand to gain by implementing a sound recording performance royalty, it just doesn't make sense to retain the outdated exception allowing broadcasters to play recordings for free. There is no reason to continue to hold out on

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[16] 47 U.S.C. § 309.

[17] Jeff Swiatek, *Emmis Rolls Dice with FM Radio on Smartphones*, THE INDIANAPOLIS STAR, Dec. 23, 2013, http://www.indystar.com/story/money/2013/12/20/emmis-rolls-dice-with-fm-radio-on-smartphones/4140987/.

[18] *Get an ASCAP License: Radio*, ASCAP.COM, http://www.ascap.com/licensing/types/radio.

[19] *Music Licensing for Radio*, BMI.COM, http://www.bmi.com/licensing/entry/radio.

[20] SESAC's fee for each radio station is determined pursuant to its Schedule of Annual Performance License Fees for Radio. *SESEAC, Inc. Radio Broadcasting Performance License*, SESAC.COM, http://www.sesac.com/pdf/Radio_License_2012.pdf.

[21] Mark L. Goldstein, *Preliminary Observations on the Potential Effects of the Proposed Performance Rights Act on the Recording and Broadcast Radio Industries*, UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, Feb. 26, 2010, http://www.gao.gov/new.items/d10428r.pdf.

granting this right that artists in so many other countries have enjoyed for years—and quite frankly, the company our country keeps on our no-royalty policy is embarrassing.

IV. Extending Federal Copyright Protection to Pre-1972 Sound Recordings Must Support Creators' Rights

Another important issue raised by the Copyright Office is whether we should grant federal copyright protection to sound recordings created before 1972. In contrast to musical compositions, which have enjoyed copyright protection since the Copyright Act of 1831, sound recordings were first given federal copyright protection on February 15, 1972. This means that pre-1972 recordings are not necessarily owned by anyone under federal law,[22] and third parties must pay owners of musical compositions but not recording artists for the right to use them.

Granting these recordings copyright protection would be highly beneficial to the affected artists. It would give them the full rights to their work and ensure they are properly paid for their art. Allowing them to capture these rights will open up a huge revenue stream that is especially important for older artists who, as discussed above, are most in need of fair compensation for their work.

A. Recording Artists Must Be Able to Claim Ownership of Newly Federalized Recordings

As beneficial as federalization could prove for artists, the law must be carefully crafted to avoid inadvertently detracting from artists' rights by, for example, making these recordings "works made for hire" for recording companies. This is a big concern in the area of copyright termination rights, the copyright doctrine that allows creators to reclaim ownership of previously assigned works after a certain time period (generally, 56 years after assignment for songs published before 1978, and 35 years for songs published in 1978 or later) unless the works were created as "works made for hire," a very specifically defined term under the U.S. Copyright Act. There has been extensive litigation in recent years over whether or not recording companies can deny the termination of federally-protected sound recordings under this doctrine. Although recording contracts uniformly state that recordings made under contract are works made for hire, sound recordings are not listed in the Copyright Act's list of works that can qualify as works

[22] Many pre-1972 recordings are protected under a confusing patchwork of state copyright laws. This does not do much for recording artists, however. As explained by the Copyright Office, "the scope of protection and of exceptions and limitations to that protection is unclear." *A Study on the Desirability of and Means for Bringing Sound Recordings Fixed Before February 15, 1972, Under Federal Jurisdiction: Background*, THE U.S. COPYRIGHT OFFICE, Dec. 2011, http://www.copyright.gov/docs/sound/.

made for hire,[23] and artists have started successfully reclaiming their works from recording companies.[24]

Thus, extending copyright protection to pre-1972 recordings would raise the important question of who would own these recordings. Federalizing the recordings could grant copyrights straight to creators (whether recording artists, producers, or both), or ownership could depend on how the law addresses termination rights, subjecting it to either the 35- or 56-year standard. The 35-year standard would be the more just approach. The termination right was enacted to protect artists who are often, if not always, in a position of less power than recording companies during recording contract negotiations. Applying the 35-year provision to pre-1972 recordings would allow artists to immediately give notice of termination of their previous assignments of these rights to recording companies. Companies would have to strike new, more equitable deals with artists if they want to maintain the right to exploit these recordings, and artists would be able to obtain compensation that reflects their work's true value.

But even if the 56-year standard is applied, we absolutely cannot let record companies claim pre-1972 recordings as works made for hire and deny the termination right altogether. Any law federalizing these recordings must contain safeguards to ensure that recording companies cannot strip artists of their ownership rights. A good compromise would be to grant recording companies a limited right to continue exploiting the recordings that they already are at the time of federalization, while granting ownership to artists or applying a certain termination right standard giving them the right to reclaim ownership in the future. This would give the companies ample time to negotiate fair deals with artists enabling them to exploit the works after this limited time expires, and ensure that artist are able to obtain fair compensation for their work.

Giving artists an explicit right to ownership of their pre-1972 recordings is critical because we are unfortunately working within a bifurcated music industry. The business as a whole is struggling to survive in the digital age and recapture its previous prominence, but a huge obstacle to this goal is that the industry is poisoned with internal fighting between its subsets. Recording companies have historically clashed with artists because of the companies' attempts to take larger and larger portions of artists' incomes. It should not work this way; it is in everyone's best interest to work together to address a problem that affects us all. And it is in everyone's best interest to support artists' rights.

The bottom line is that artists cannot compromise on issues that affect their rights. Artists have always been far too low in the music industry hierarchy considering their essential role in the

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[23] 17 U.S.C. § 101.

[24] Larry Rohter, *A Copyright Victory, 35 Years Later*, THE NEW YORK TIMES, Sep. 10, 2013, http://www.nytimes.com/2013/09/11/arts/music/a-copyright-victory-35-years-later.html?_r=0.

business. If federalizing pre-1972 recordings detracts from artists' rights elsewhere, forget about it. We need to give artists their full rights so that recording companies cannot immediately grab ownership of newly-federalized recordings and nullify all benefit such a law would provide to artists. Most artists, because they are underpaid, would not be able to afford to bring litigation against recording companies to challenge this rights grab. Thus, Congress needs to step in and ensure artists' rights are protected. There is absolutely nothing more important in this debate than ensuring that artists' interests come first.

As discussed in the Copyright Office's 2011 report on this subject,[25] it is true that federalization raises potential constitutional takings clause concerns if federal protection were to last for a shorter length than existing state law protections for these recordings. However, I am confident that Congress can draft the legislation in a way that adequately addresses these concerns, as was done with the enacting legislation for the Copyright Act of 1976 and the Uruguay Round Agreements Act in 1994.

B. Digital Streaming Services Should Pay Royalties for Pre-1972 Recordings

Whether or not pre-1972 recordings are given copyright protection, there is another huge disparity here that needs immediate attention. Digital streaming services, where recording artists do enjoy the right to receive royalties, do not pay performance royalties for pre-1972 recordings. Thus, services such as SiriusXM Radio, who are required by law to pay sound recording performance royalties for music they broadcast, do not pay a single penny in performance royalties for pre-1972 recordings. SiriusXM is especially flagrant in abusing this perceived loophole in the Copyright Act. They have entire stations dedicated to the 1920s, 1940s, 1950s, and 1960s[26] which play pre-1972 music 24/7 without paying any performance royalties whatsoever for the music used on these channels.

It is not difficult to see that this is unfair to recording artists. Recording artists with pre-1972 recordings were denied an estimated $60 million in royalties in 2013 alone. As pointed out by Michael Huppe, president and CEO of SoundExchange, half of this year's Rock & Roll Hall of Fame inductees have pre-1972 work that does not receive digital streaming performance royalties, as well as 22 of this year's 27 GRAMMY Hall of Fame inductees.[27] These are classic artists that paved the way for modern music, and they are not receiving their just due. Federalizing pre-1972 recordings would clarify that digital streaming services must pay this

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[25] *Federal Copyright Protection for Pre-1972 Sound Recordings*, THE U.S. COPYRIGHT OFFICE, Dec. 2011, http://www.copyright.gov/docs/sound/pre-72-report.pdf.
[26] SiriusXM Satellite Radio, *Channel Lineup*, http://www.siriusxm.com/channellineup/.
[27] Michael Huppe, *Why Rock Hall Inductees Are Not Getting The Royalties They Deserve (Guest Post)*, BILLBOARD, Apr. 10, 2014, http://www.billboard.com/biz/articles/news/digital-and-mobile/6042278/why-rock-hall-inductees-are-not-getting-the-royalties.

royalty. But if federalization is not granted, Congress must independently address this royalty disparity.

V. The Free Market is the Best Option for Music Licensing

So far, this paper has discussed the inequalities and hardships faced by recording artists in the modern music industry. In this section, I will explain the hardships faced by songwriters, the broader lessons this teaches us about the dangers of compulsory rate-setting for the use of music, and how the free marketplace would obtain a more just result for songwriters.

A. The Consent Decrees Governing Performing Rights Organizations Must Be Abolished or Heavily Modified to Reflect the Modern Licensing Landscape

Songwriters are severely prejudiced by the antiquated consent decrees governing ASCAP and BMI, which mandate that "rate courts" set license rates for performance licenses. The United States Department of Justice entered into the consent decrees with the two performing rights organizations ("PROs") in 1941 due to antitrust concerns and to protect the songwriters whose rights were at stake. This made sense at the time, when performing rights licenses were required for a very limited range of media, most of the licenses granted by the PROs were for small, unsophisticated businesses, and ASCAP and BMI were the only two organizations administering these rights.

However, these rationales are no longer relevant. Nowadays, performing rights licenses are needed for a multitude of music consumption methods, from traditional broadcast to online streaming and other methods, which the one-size-fits-all approach of a rate court cannot affectively address. Further, the PROs are dealing with a range of licensees from small businesses to huge, sophisticated, technologically-savvy organizations that certainly can negotiate for themselves. Meanwhile, competition has increased exponentially, from the independent, for-profit American PRO SESAC, Inc. to hundreds of foreign PROs and many other administrators and organizations representing these types of licenses—none of which are governed by consent decrees.

Most importantly, it is clear that the consent decrees are harming the very songwriters they were designed to protect. The compulsory rates set by the rate courts for licenses are severely lower than their true market value. The consent decrees do not allow these courts to consider all relevant market data as evidence when setting rates, resulting in an absurdly low payout for songwriters.[28] For example, the compulsory royalty rates for streaming musical compositions is

[28] *See* ASCAP, *Pre-Meeting Public Comments on the Green Paper*, http://www.uspto.gov/ip/global/copyrights/comments/ASCAP_Comments.pdf.

one twelfth of the royalty rates paid to record labels for the same exact uses.[29] The inadequacy of the consent decrees and rate court system is clearly illustrated by the recent rate court decision which ruled that Pandora must pay merely 1.85% of its annual revenue to ASCAP.[30] Meanwhile, the service paid 49% of its revenue to record companies for the use of master recordings in 2013.[31] The Songwriter Equity Act, introduced in the House of Representatives in February, is a great step towards remedying this inequality. The bill would allow the ASCAP and BMI rate courts to consider other royalty rates when setting the rates paid to songwriters by digital services. This would level the royalty playing field and enable the rate courts to reach fair market value when setting license fees.

However, this is only a partial fix because it maintains the rate court system. It has become clear that rate courts are not the most effective way to set licensing rates. Rate courts are far too cumbersome, expensive, and antiquated, and cannot keep up with the pace set by the new digital marketplace. For example, under their consent decrees, ASCAP and BMI must immediately grant a performance license to any person or organization who applies for one, even if the parties have not agreed on a rate and even if the user performs a substantial amount of music. If the parties cannot reach an agreement and must take the case to the rate court, proceedings often take more than a year, during which a PRO and its songwriters are not compensated for the licensee's use of the PRO's music. Additionally, having separate rate courts for both ASCAP and BMI is creating even more confusion among songwriters and publishers. Nothing obligates the rate courts to reach similar results on rate-setting or other issues. This could lead to vastly different treatment of two songwriters of the exact same composition if those writers are affiliated with different PROs.

Another issue with the consent decrees is that publishers must grant PROs the right to administer either all or none of their performance rights. This is becoming a bigger problem because of the huge disparity between payments to songwriters and recording artists from digital streaming services. In recent years, major publishers have started considering withdrawing their catalogues from the PROs because they feel they can negotiate better rates independently, outside the rate court system. To address this concern, ASCAP granted its members a limited withdrawal right allowing publishers to independently license their works for digital streaming services while keeping the rest of their rights with ASCAP. However, the Pandora decision held that their consent decree requires ASCAP to maintain an all-or-nothing licensing system. As a result, it is

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[29] Ed Christman, *New Legislation Seeks to Modernize Copyright Act to Benefit Songwriters*, BILLBOARD, Feb. 25, 2014, http://www.billboard.com/biz/articles/news/publishing/5915717/new-legislation-seeks-to-modernize-copyright-act-to-benefit.

[30] Ed Christman, *Rate Court Judge Rules Pandora Will Pay ASCAP 1.85 Percent Annual Revenue*, THE HOLLYWOOD REPORTER, Mar. 17, 2014, http://www.hollywoodreporter.com/news/rate-court-judge-rules-pandora-689221.

[31] Ben Sisario, *Pandora Suit May Upend Century-Old Royalty Plan*, THE NEW YORK TIMES, Feb. 13, 2014, http://www.nytimes.com/2014/02/14/business/media/pandora-suit-may-upend-century-old-royalty-plan.html.

very possible that publishers might withdraw entirely from the organization. This hurts the other songwriters represented by ASCAP, because its revenues decrease while its operating costs do not. Because ASCAP and BMI are nonprofit organizations, less revenue directly results in less payout for its member songwriters and composers.

It just does not make sense to maintain the consent decrees governing ASCAP and BMI's licensing practices. The consent decrees, both over 70 years old, cannot possibly adequately address licensing issues in the modern licensing landscape. There is no expiration date on the consent decrees and no system in place to regularly review their terms. Maybe the best solution would be to eliminate the consent decrees entirely.

B. The Mechanical Royalty Rate-Setting Process is Severely Outdated

A mechanical license is required for a third party to record or reproduce a musical composition. The licenses are compulsory, meaning anyone can obtain one by paying the statutory royalty rate set by the Copyright Royalty Board (the "CRB"). Songwriters are heavily dependent on mechanical license royalties, which make up a large portion of their income.

The current statutory mechanical royalty rate is 9.1 cents per reproduction for songs five minutes long or less. This is a pretty low rate considering that the statutory royalty rate was first set in 1909 at 2 cents—the equivalent of 51 cents today.[32] However, because the CRB is not allowed to consider the fair market value of these licenses when setting the mechanical license rate, the current rate-setting system risks the possibility of an even lower royalty rate, which would severely harm American songwriters. Recording companies and online retailers have tried to exploit this in the past, such as in 2008 when Apple argued for a 4 cent rate for digital downloads.[33]

The Songwriter Equity Act would help address this concern. The bill seeks to require the CRB to set rates that reflect a willing buyer, willing seller standard. This could provide an invaluable safeguard to prevent a reduction of the mechanical royalty rate to the detriment of our artists, and hopefully provide them with the fair compensation they deserve. However, because this still maintains a compulsory rate-setting process under CRB review, this solution still falls short of the most desirable outcome of free negotiation to determine license rates.

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[32] Inflation Calculator, *1909 Dollars in 2014 Dollars*, IN2013DOLLARS.COM, http://www.in2013dollars.com/1909-dollars-in-2014?amount=0.02

[33] Mark Shafer, *Copyright Royalty Board Unveils New Royalty Rates*, THE MUSIC BUSINESS JOURNAL, Dec. 2008, http://www.thembj.org/2008/12/copyright-royalty-board-unveils-new-royalty-rates/.

C. Free Negotiation Would Result in Fair Rates for Songwriters

When it comes to license fees, the most important consideration for artists is that we absolutely do not expand the reach of compulsory rate-setting. Compulsory rates gravely harm artists by taking away their power of approval, and are often grossly unfair and do not reflect the true market value of a use. The free marketplace is much more effective. It is quicker, more efficient, and more equitable. Simply allowing parties to freely negotiate, rather than tying them to a slow administrative process, reaches a more just result that reflects a licensed use's true market value.

This is shown by the licensing practices for synchronization licenses, the type of license needed to play music in a film, television show, or any other visual media. These uses customarily pay the same amount for the use of both the musical composition and the master recording. Without the hindrance of a compulsory rate-setting system, industry custom for these licenses recognizes that songwriters and recording artists are equally integral to music and deserve equal compensation.

It is time that we turn performance rights and mechanical licenses over to the free market as well so that our songwriters can obtain just compensation for their work. While the Songwriter Equity Act would make great strides towards obtaining fair licensing rates for songwriters, this is only a partial fix—free negotiation is the only way to obtain the full value of a license.

VI. Any Efforts to Streamline Licensing Must Maintain the Music Creator's Right of Approval

Only once we address the critical issues discussed above is it appropriate to consider secondary, if not tertiary, concerns such as facilitating licensing for third parties. On this issue, music creators' biggest concern is that we do not expand compulsory licensing. I am categorically opposed to any change to the licensing system that reduces the creator's right of approval. Any new licensing system must maintain this right.

In general, I am in favor of allowing creators to grant any organization the rights to administer any or all of their rights, so long as creators have the choice whether or not to participate. The key consideration is that creators voluntarily enter these arrangements, and are not forced into a compulsory licensing scheme. And importantly, creators must be able to grant third parties these rights on a platform-by-platform basis. For example, if a songwriter wants to use ASCAP or BMI to collect his or her performance royalties from radio, but prefers to independently negotiate with digital streaming services, the songwriter should be free to do so. But it is important to note that organizations administering various rights would have to obtain antitrust

exceptions allowing them to negotiate on behalf of their members without it being deemed price-fixing or anti-competitive.

On the other hand, I am very concerned by the suggestion that Congress should create a mandatory third party intermediary to serve as a "one-stop shop" to license all music-related rights. It would be far too difficult to set up such a system that maintains a creator's right to approval and avoids setting harmful precedent for future negotiations. Precedent is a creator's biggest bargaining chip and potentially biggest adversary in a negotiation because deal terms from previous agreements set the stage for future deals. A third party intermediately could not possibly adequately address the nuances of negotiations on behalf of creators who they have no direct relationship with, and would severely compromise creators' approval rights over their works. Deal terms that seem great in a vacuum might actually work adversely to a creator's interests. For example, an intermediary might prioritize a higher fee for a license, while the creator would actually prefer a shorter term for the use, which may pay less money. Creators need a decentralized, non-mandatory licensing system so they can keep a close eye on their works and hire representatives that know what is important to them. They must be able to control the conditions under which their work is used.

Again, a voluntary intermediary system would be fine, as long as creators can elect to participate by their own choice and are not forced into the system. So long as such a system is non-compulsory, then facilitating these transactions could benefit all parties. But we must be careful that, if we streamline the licensing process for musical compositions, this does not snowball into a scenario where creators lose more control over their work by, for example, losing the right to approve derivative works. As I explained in depth in my previous comment paper to the Department of Commerce Internet Policy Task Force, creators are deeply concerned with any potential uses of their work that would compromise the moral integrity of their music.[34] Thus, any streamlined licensing system must be narrowly tailored to prevent further expansion of any compulsory license-granting and to maintain the creator's right to freely negotiate rates.

I am not convinced that the issue with current licensing practices is that it is too hard to acquire rights from rightsholders, necessitating a third party intermediary to speed up transactions. The real issue for third parties is that it is often difficult to find rightsholders in the first place. Thus, the real solution to this issue is to create a centralized data system that would enable third parties to more easily reach rightsholders to acquire licenses. The music industry could pool its resources to facilitate licensing simply by making information more accessible. This is a much more practical and effective solution than creating an intermediary or taking other drastic steps which would implicate much greater resources.

[34] *See* LaPolt and Tyler, *supra* note 2.

VII. Conclusion

The laws governing the music business are broken because they do not fairly compensate recording artists, songwriters, or producers. In the digital age, as music industry revenues continue to decline, this matters more now than ever before. Although music is a labor of love and most music creators make their art because of passion rather than the promise of financial reward, creators deserve better compensation so that they are able to support themselves and continue making their art that enriches our culture and lives. More than anything, this is an issue of fairness.

It is imperative that we address the inequalities and unfair payment structures that severely weigh down the present-day industry. For recording artists, we must come up to speed with nearly every other industrialized country by implementing a sound recording performance royalty for terrestrial radio broadcasts and help our elder artists by federalizing pre-1972 recordings. For songwriters, we must allow the free negotiation to govern licensing rates for digital transmissions and achieve fair market value for these uses of musical compositions. Finally, it is essential that we remember that any other changes to the music licensing system, including attempts to streamline licensing for third parties, should come second to the most important goal of fair compensation for music creators.

Thank you for your time and consideration.

Respectfully submitted,

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cc: Chairman Bob Goodlatte, House Judiciary Committee
Ranking Member John Conyers, Jr., House Judiciary Committee
Ranking Member Jerrold Nadler, House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet

Exhibit A: Billboard "Hits of the World" Charts for April 26, 2014

billboard April 26 2014

Hits of the World

EURO

DIGITAL SONGS — COMPILED BY NIELSEN SOUNDSCAN INTERNATIONAL

LAST WEEK	THIS WEEK	TITLE / IMPRINT/LABEL	Artist
9	1	NOBODY TO LOVE / BREAT/ALL AROUND THE WORLD	Sigma
3	2	HAPPY / BACK LOT/COLUMBIA	Pharrell Williams
2	3	RATHER BE / ATLANTIC	Clean Bandit Feat. Jess Glynne
1	4	THE MAN / ALOE BLACC/RCA/INTERSCOPE	Aloe Blacc
NEW	5	HIDEAWAY / KOKAL LEGEND/CHRONICLES	Kiesza
4	6	ALL OF ME / G.O.O.D./COLUMBIA	John Legend
6	7	MY LOVE / AMMUNITION/RINSE/UMO	Route 94 Feat. Jess Glynne
7	8	DARK HORSE / CAPITOL/VIRGIN	Katy Perry Feat. Juicy J
5	9	I GOT U / BLASE BOYS CLUB/VIRGIN	Duke Dumont Feat. Jax Jones
10	10	ADDICTED TO YOU / POSITIVA/PRMD/ISLAND	Avicii

JAPAN

JAPAN HOT 100 — COMPILED BY MANSMIN/SOUNDSCAN JAPAN/PLANTECH

LAST WEEK	THIS WEEK	TITLE / IMPRINT/LABEL	Artist
7	1	YES WE ARE / VICTOR	SMAP
24	2	HONO TO MORI NO CARNIVAL / TOY'S FACTORY	SEKAI NO OWARI
3	3	LET IT GO (ARI NO MAMADE) / AVEX/MORE	Takako Matsu
1	4	KIDUITARA KATAOMOI / SONY	Nogizaka 46
4	5	GROTESQUE / AKIOLA	Ken Hirai Feat. Namie Amuro
11	6	LET IT GO / AVEX/MORE	Idina Menzel
12	7	PARALLEL SPEC / WARNER	Gesu No Kiwami Otome.
14	8	HAPPY / BACK LOT	Pharrell Williams
15	9	YOU CAN DO IT! / UNIVERSAL	Suzu
29	10	KAKUMEI / LASTRUM	Kuroki Nagisa

DENMARK

DIGITAL SONGS — COMPILED BY NIELSEN SOUNDSCAN INTERNATIONAL

LAST WEEK	THIS WEEK	TITLE / IMPRINT/LABEL	Artist
3	1	HAPPY HOME / COPENHAGEN/UNIVERSAL	Hedegaard
1	2	JALOUSI / LABELMADE/A.LARM	Medina
6	3	WAVES / LEFT LANE/SONY MUSIC	Mr. Probz
5	4	HAPPY / BACK LOT/COLUMBIA	Pharrell Williams
8	5	JULIA / RCA/SKUNIVERSAL	Liga
10	6	I SEE FIRE / WATERTOWER/DECCA	Ed Sheeran
9	7	RATHER BE / ATLANTIC	Clean Bandit Feat. Jess Glynne
2	8	DO YA / SONY MUSIC	Anthony & Jasmin
4	9	STRIP, PT. 1 / LABELMADE/A.LARM	Medina Feat. Kidd
RE	10	CLICHE LOVE SONG / GL/DISSCOLWAX	Basim

UNITED KINGDOM

SINGLES — COMPILED BY THE OFFICIAL UK CHART CO.

LAST WEEK	THIS WEEK	TITLE / IMPRINT/LABEL	Artist
NEW	1	NOBODY TO LOVE / BREAT/ALL AROUND THE WORLD	Sigma
NEW	2	LAST NIGHT / VIRGIN/EMI	The Vamps
1	3	THE MAN / ALOE BLACC/RCA/INTERSCOPE	Aloe Blacc
2	4	ALL OF ME / G.O.O.D./COLUMBIA	John Legend
NEW	5	FANCY / VIRGIN/EMI	Iggy Azalea Feat. Charli XCX
3	6	I GOT U / BLASE BOYS CLUB/VIRGIN	Duke Dumont Feat. Jax Jones
6	7	HAPPY / BACK LOT/COLUMBIA	Pharrell Williams
4	8	MY LOVE / AMMUNITION/RINSE/UMO	Route 94 Feat. Jess Glynne
8	9	RATHER BE / ATLANTIC	Clean Bandit Feat. Jess Glynne
RE	10	DARK HORSE / CAPITOL/VIRGIN	Katy Perry Feat. Juicy J

GERMANY

SINGLES — COMPILED BY MEDIA CONTROL

LAST WEEK	THIS WEEK	TITLE / IMPRINT/LABEL	Artist
1	1	RATHER BE / ATLANTIC	Clean Bandit Feat. Jess Glynne
2	2	WAVES / LEFT LANE/SONY MUSIC	Mr. Probz
3	3	HAPPY / BACK LOT/COLUMBIA	Pharrell Williams
4	4	ATEMLOS DURCH DIE NACHT / JEAN FRANK/UFER/POLYDOR/ISLAND	Helene Fischer
5	5	AM I WRONG / 9 STAR/WARNER BROS.	Nico & Vinz
7	6	ADDICTED TO YOU / POSITIVA/PRMD/ISLAND	Avicii
8	7	DARK HORSE / CAPITOL/VIRGIN	Katy Perry Feat. Juicy J
10	8	MY LOVE / AMMUNITION/RINSE/UMO	Route 94 Feat. Jess Glynne
NEW	9	RIPTIDE / LIBERATION/ATLANTIC	Vance Joy
9	10	IS IT RIGHT / HEART OF BERLIN/MUSICSTARTER	Elaiza

FINLAND

DIGITAL SONGS — COMPILED BY NIELSEN SOUNDSCAN INTERNATIONAL

LAST WEEK	THIS WEEK	TITLE / IMPRINT/LABEL	Artist
1	1	HAPPY / BACK LOT/COLUMBIA	Pharrell Williams
2	2	LUPAAN OLLA / KUULUUS/SONY MUSIC	Nopsajalka
3	3	FROZEN GROUND / 4ORDER	4Order
4	4	HUOMINEN ON HUOMENNA / PME/WARNER	JVG Feat. Anna Abreu
6	5	SUMMER / FLY EYE/COLUMBIA	Calvin Harris
NEW	6	[illegible] / MR. 305/POLO GROUNDS/RCA	[illegible]
NEW	7	RA-TA TA-TA / WARNER	Anna Abreu
5	8	RATHER BE / ATLANTIC	Clean Bandit Feat. Jess Glynne
NEW	9	VADELMAVENE / UNIVERSAL	Kasmir
7	10	DARK HORSE / CAPITOL/VIRGIN	Katy Perry Feat. Juicy J

FRANCE

DIGITAL SONGS — COMPILED BY NIELSEN SOUNDSCAN INTERNATIONAL

LAST WEEK	THIS WEEK	TITLE / IMPRINT/LABEL	Artist
1	1	HAPPY / BACK LOT/COLUMBIA	Pharrell Williams
4	2	YOU & ME / METHOD/PMR/ISLAND	Disclosure Feat. Eliza Doolittle
2	3	STOLEN DANCE / UCHERSMITH/ARISTA	Milky Chance
3	4	RATHER BE / ATLANTIC	Clean Bandit Feat. Jess Glynne
5	5	BLACK PEARL (HE'S A PIRATE) / HAPPY MUSIC/EMI	Rebel Feat. Sidney Housen
NEW	6	BAD / WHAT A MUS C/PARLOPHONE/WARNER	David Guetta & Showtek Feat. Vassy
7	7	ADDICTED TO YOU / POSITIVA/PRMD/ISLAND	Avicii
8	8	LIAR LIAR / MERCURY	Cris Cab
10	9	DERNIERE DANSE / CAPITOL	Indila
9	10	CHANGES / WEPLAY/CO. KO/RELENTLESS/FOUR	Faul & Wad Ad vs. PNAU

CANADA

BILLBOARD CANADIAN HOT 100 — COMPILED BY NIELSEN SOUNDSCAN/NIELSEN BDS

LAST WEEK	THIS WEEK	TITLE / IMPRINT/LABEL	Artist
1	1	HAPPY / BACK LOT/COLUMBIA/SONY MUSIC	Pharrell Williams
2	2	ALL OF ME / G.O.O.D./COLUMBIA/SONY MUSIC	John Legend
3	3	DARK HORSE / CAPITOL/UNIVERSAL	Katy Perry Feat. Juicy J
5	4	TALK DIRTY / BELUGA HEIGHTS/WARNER BROS./WARNER	Jason Derulo Feat. 2 Chainz
8	5	BEST DAY OF MY LIFE / DIRTY CANVAS/ISLAND/UNIVERSAL	American Authors
6	6	POMPEII / VIRGIN/UNIVERSAL	Bastille
9	7	CRAZY FOR YOU / UNIVERSAL	Hedley
10	8	RUDE / LATIUM/RCA/SONY MUSIC	MAGIC!
7	9	TEAM / LAVA/REPUBL./UNIVERSAL	Lorde
4	10	COUNTING STARS / MOSLEY/INTERSCOPE/UNIVERSAL	OneRepublic

SPAIN

DIGITAL SONGS — COMPILED BY NIELSEN SOUNDSCAN INTERNATIONAL

LAST WEEK	THIS WEEK	TITLE / IMPRINT/LABEL	Artist
1	1	HAPPY / BACK LOT/COLUMBIA	Pharrell Williams
8	2	BAILANDO / REPUBLIC/UNIVERSAL	Enrique Iglesias Feat. Descemer Bueno & Gente de Zona
2	3	CHANGES / WEPLAY/CO. KO/RELENTLESS/FOUR	Faul & Wad Ad vs. PNAU
9	4	WINGS / 14TH FLOOR/WARNER	Birdy
4	5	RATHER BE / ATLANTIC	Clean Bandit Feat. Jess Glynne
5	6	DIEZ MIL MANERAS / UNIVERSAL	David Bisbal
10	7	CAN'T REMEMBER TO FORGET YOU / RCA	Shakira Feat. Rihanna
7	8	ADRENALINA / SONY MUSIC	Wisin Feat. Jennifer Lopez & Ricky Martin
NEW	9	DARK HORSE / CAPITOL/VIRGIN	Katy Perry Feat. Juicy J
3	10	BOIG PER TU / SONY MUSIC LATIN/RCA	Shakira

AUSTRALIA

DIGITAL SONGS — COMPILED BY NIELSEN SOUNDSCAN INTERNATIONAL

LAST WEEK	THIS WEEK	TITLE / IMPRINT/LABEL	Artist
10	1	GERONIMO / EMPIRE OF SONG	Sheppard
5	2	CHANDELIER / MERCURY	Sia
3	3	HIGH / VICIOUS	Peking Duk
1	4	HAPPY / BACK LOT/COLUMBIA	Pharrell Williams
4	5	SUMMER / FLY EYE/COLUMBIA	Calvin Harris
2	6	RATHER BE / ATLANTIC	Clean Bandit Feat. Jess Glynne
NEW	7	REPLAY / HOLLYWOOD	Zendaya
NEW	8	NEVER BE THE SAME / SONY MUSIC	Jessica Mauboy
6	9	THE POWER OF LOVE / NEVER FADE/PARLOPHONE/WARNER	Gabrielle Aplin
7	10	SHOT ME DOWN / WHAT A MUSIC/PARLOPHONE/WARNER	David Guetta Feat. Skylar Grey

KOREA

KOREA K-POP HOT 100 — COMPILED BY BILLBOARD KOREA

LAST WEEK	THIS WEEK	TITLE / IMPRINT/LABEL	Artist
17	1	2009% / YG ENTERTAINMENT	Akdong Musician (AKMU)
NEW	2	NOT SPRING, LOVE OR CHERRY BLOSSOMS / NAP ENTERTAINMENT, CJDEN ENTERTAINMENT	Right With It
31	3	GIVE LOVE / YG ENTERTAINMENT	Akdong Musician (AKMU)
12	4	RELATIONSHIP / YAHOO ENTERPRISE, HAPPYFACE ENTERTAINMENT	Yoon Min Soo & Shin Yong Jae
2	5	MR. CHU / A CUBE ENTERTAINMENT	Apink
1	6	WILDFLOWERS / JELLYFISH ENTERTAINMENT	Park Hyo Shin
3	7	DURING THAT MEET YOUR / HOOK ENTERTAINMENT	Lee Sun Hee
29	8	MELTED / YG ENTERTAINMENT	Akdong Musician (AKMU)
5	9	WITHOUT YOU / STARSHIP ENTERTAINMENT	Mad Clown (Feat.Hyorin Of Sistar)
4	10	SOME / STARSHIP X	Junggigo & Soyou (Feat. Lil Boi of Geeks)

NEW ZEALAND

DIGITAL SONGS — COMPILED BY NIELSEN SOUNDSCAN INTERNATIONAL

LAST WEEK	THIS WEEK	TITLE / IMPRINT/LABEL	Artist
2	1	HOLDING YOU / SONY MUSIC	Ginny Blackmore & Stan Walker
NEW	2	SING / ASYLUM	Ed Sheeran
1	3	HAPPY / BACK LOT/COLUMBIA	Pharrell Williams
3	4	RATHER BE / ATLANTIC	Clean Bandit Feat. Jess Glynne
4	5	ALL OF ME / G.O.O.D./COLUMBIA	John Legend
5	6	NOT A BAD THING / RCA	Justin Timberlake
10	7	FANCY / VIRGIN/EMI	Iggy Azalea Feat. Charli XCX
6	8	FREE / BLACK BUTTER/ASYLUM	Rudimental Feat. Emeli Sande
7	9	ADDICTED TO YOU / POSITIVA/PRMD/ISLAND	Avicii
8	10	SHE LOOKS SO PERFECT / HEY DR NY/CAPITOL	5 Seconds Of Summer