

The Need for a Singular Real-time Rights Clearing System for Music

OVERVIEW

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A *singular* rights-clearing platform is essential to conform to current consumer behavior and online distribution methods.

A system based on single-packet data derived from major (US) rightsholder organizations and societies, including the performing rights organizations (“PRO’s”) and SoundExchange, would be the most effective and efficient means of clearing and monetizing myriad rightsholder interests in music copyrights in the context of the varieties of online delivery.

The existing methods and schemes of pricing, administering and monetizing music are rapidly becoming outdated, and the legacy systems that support these methods and schemes are no longer able to capture whatever value is ascribed to music in many new delivery methods.

For example, YouTube has become an enormous (if not the predominant) worldwide music distributor as a result of user synchronization of music with video in the context of what is known as user-generated content (“UGC”). By some estimates YouTube accounts for 85% of all streams of music currently delivered online. In conventional terms, these uses represent the right of synchronization under existing copyright law and require *pre-use* permission and license negotiation. There are currently 600 *hours* of video uploaded every *minute* on YouTube; the administration required to comply with this aspect of existing copyright law is virtually impossible. However, if there was a *singular real-time rights clearance system* that used the ownership data of the *existing rightsholder organizations*, a scheme could be implemented to match consumer behavior, meet the requirements of existing copyright law and remunerate rightsholders.

The reason this is not possible today is because the key rights in music copyrights are fragmented and administered separately, by various rightsholder organizations and entities, some of which are constrained by existing laws and administrative oversight.

Using the YouTube example, a recent random survey of 22 “classic rock” videos (from the Beatles and Neil Young to Jeanne C. Riley singing “Harper Valley PTA”) of UGC were reviewed and *none* of these videos included advertising, which is the primary way YouTube compensates rightsholders. At a conservative estimate, over \$135,000 of advertising had been foregone in these instances. It is likely that most of these instances will be addressed by “takedown notices” once discovered by record companies or publishers, but why not look at a scheme to capture potential value rather than prevent use? The current bifurcated rights administration environment is wholly inappropriate for practical use cases, *particularly for mass-synchronized, “user-generated” (non-commercial) content.* **There is significant (\$3M+ per day) un-monetized activity, even for legacy artists (eg, Bob Dylan).**

It is important that the system outlined above is distinguished from other services, as the key to this system is that it is built from existing data from rightsholder organizations, not individual rightsholder data. This distinction is critical, as rapid scaling and concentrated ownership data is essential for success.

A worldwide system has been proposed as the Global Repertory Database, but implementation is years away.

A US-based system could be implemented more rapidly and later combined with a global system if appropriate. In fact this has been proposed to the PRO’s and others but a number of legal hurdles must be overcome before such a scheme can be considered and implemented, including but not limited to Section 114 and 115 of the existing Copyright law.

The music industry needs governmental assistance and support in the form of recognition of rampant copyright abuse by new media entities (including omission), relaxation of anti-trust laws applied to an industry with *gross annual revenues less than Apple Inc's net income*, and an acknowledgement that the effect of stringent and outdated applications of law and rate court valuations as well as unaddressed copyright violation has economically marginalized most music creators. Income disparity has become an enormous problem for all stakeholders in music.

John Cate is a new media entrepreneur (eMusic, TuneCore, Audiam) and widely published songwriter. John also specialized in private equity as a CPA with PricewaterhouseCoopers. John advises numerous music-related companies in strategic, financial and operational matters. John currently works with MIT's Communications Futures Program on matters related to copyright futures.

For additional information:

617-312-3335

johncatemusic@gmail.com