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Difficult questions arise in the balancing of parties wanting to exploit songs (musical works) and the rights of the creators.

No other industry is treated the way that the songwriting industry is treated. Songwriters are denied to right to approve how the fruit of their labor is used, and at what terms and conditions. Imagine if the author of a book was told that any publisher could sell copies of his book as long as fees were paid to him according to a legal mandate. And imagine further, that he had no direct say in determining those fees, or any right to withhold the right to reproduce his book if the terms weren't satisfactory to him.

This is exactly what is happening to songwriters. Huge businesses are being built on the backs of these songwriters, who have no ability to approve the use of their songs, and at what terms. The approvals are being given by government entities, and the rates are set either by government or by organizations controlled by government via vastly outdated consent decrees which do not accurately reflect the value of the songs as would be determined by an open arms-length negotiation between the creators and the users.

Neither the government nor the courts determine what an automobile maker must charge for a car, or what a store must charge for a shirt. Not all cars and not all shirts are created equally, and the sellers are afforded the opportunity to determine who they sell their products to and at what prices and terms.

More specifically (with numbers corresponding to the requested commentary):

1 and 2. The current effectiveness of Section 115 statutory licenses is in bad need of repair. Companies want to exploit songs as a product offered to the public as easily and cheaply as possible. But the current status quo is that songwriters are completely denied a say in the process. Further, they have unequal political clout compared with the huge corporations that would exploit their work. America's intellectual property is one of its greatest assets and used to be one of the greatest contributors to its Gross Domestic Product. The interests of a few companies wanting to use songs at the expense of songwriters' moral right to self-determination takes away the incentive to create and comes at great cost to the country and a worldwide devaluation of one of our country's great exports.

3. Much has been made of the prohibitive cost of licensing works on a song-by-song basis, and it is true that it would be far easier for prospective users to continue to just use whatever they wanted and pay the rates they successfully lobbied for. This, however, is contrary to our founding principles and denies the creator the right to determine and value the use of his works. The entire industry of recorded

music was built on song-by-song licenses, and true, the costs of obtaining licenses for the entire repertoire of known songs would be a rather substantial start-up cost. But since when do songwriters need to sacrifice the fruit of their labor so another company can build a new and speculative business and enjoy profits on their backs? If such a compulsory system were to be deemed to be desirable both to songwriters and music distribution services, it ought to be based on fair market rates negotiated by a willing seller and willing buyer over a substantial period of time for market forces to fully arrive at fair norms.

4. The simultaneous licensing of other necessary or desired rights other than performing rights could be handled in a unified manner provided that:

- a. Such rates were determined by market forces over a period of years; and
- b. Such rights holder was not completely and totally shackled by an unreasonable and dysfunctional consent decree.
- c. The writer had the right to decline the creation of derivative works embodying his creation.

5., 6. and 7. Because of the current dysfunction under which both ASCAP and BMI are forced to operate, while there is great efficiency in the license process, the rates that are collected and paid bear no reasonable resemblance to the value of the rights being granted. To have two judges determine what an entire industry is entitled to charge for their product is imbuing two parties possessing too little understanding with too much power. A writer, a car maker, a clothing manufacturer-- all should be allowed to decide how to exploit, and at what price, their own products. The market should determine the worth of the product.

Sincerely,

Randall Wixen