

September 12, 2014

Jacqueline C. Charlesworth
General Counsel and Associate Register of Copyrights
Library of Congress
Copyright Office
101 Independence Avenue, S.E.
Washington, D.C. 20559-6000



JEFFREY BOXER

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Re: Music Licensing Study, Docket No. 2014-03

Dear Jacqueline C. Charlesworth:

The Content Creators Coalition, an artist rights organization made up of people who create content—including recording artists, songwriters, filmmakers, writers, photographers, visual artists, performers, producers—is responding to the request for additional comments following the series of public roundtables on music licensing held in June 2014.

The Content Creators Coalition participated in the public roundtable in New York on June 23-24, 2014 and previously submitted comments supporting the right of all creative people to be compensated for their work and supporting a full public performance right for sound recordings to extend to terrestrial radio. This submission supplements previous written comments.

The most important objective in reform of music licensing should be the most obvious: to ensure that creative people receive adequate economic incentives under copyright law to create for the benefit of all society. The need to reinforce this principle has never been greater. The music licensing framework must be recalibrated to fulfill the purpose of the copyright system to recognize and reward creators for their contributions to society.

CURRENT LICENSING LANDSCAPE

Reform of the current licensing landscape needs to fully acknowledge and address digital piracy. Digital piracy creates a market failure that mocks the very notion of a music licensing landscape. Technology corporations, relying on strategies of disruption, organize their businesses on user-generated content piracy and ad-based piracy against the interests of creative people and face little or no sanction. Our organization exists because a growing number of creative individuals— creative citizens— feel this should no longer be tolerated. We urge Congress to end illegal trafficking in music as it seeks ways to create a fair music licensing system.

We propose that Congress see the digital landscape for what it is: an international black market in music, where vast sums of money are made on unlicensed music. This method of value creation is no more worthy of support than any other trafficking trade.

We also suggest that, because this topic was not addressed specifically in the roundtables or in the Notice of Inquiry, the Copyright Office might conduct a new study of music trafficking with the aim of identifying the means to end this practice that for too long has been tolerated at the expense of our livelihoods and well-being. We support measures that will be effective against illegal and illegitimate uses of music that may be developed alongside innovative ways to share music legally to benefit everyone in our society— including songwriters, composers, musicians, and performers.

MUSICAL WORKS: REPRODUCTION AND DISTRIBUTION

The Content Creators Coalition believes that a “willing buyer/willing seller” standard should be used when setting royalty rates and that those setting the rates should consider all pertinent information available. To that end, we support the proposals envisioned in the Songwriter Equity Act (H.R. 4079) which would require Copyright Royalty Judges to use that standard when setting rates and would require Copyright Royalty Judges to base decisions on marketplace, economic, and use information presented by the participants. Our preference, however, is for legislation that addresses a wider range of related concerns, including other legislation referenced below, within a single bill.

MUSICAL WORKS: PUBLIC PERFORMANCE

The consent decrees that govern public performance licenses of music works have not been sufficiently flexible in adapting to changes in market conditions effected by digital technology. Creators are operating in a new environment that was not contemplated even when the most recent iterations of the consent decrees were put in place, i.e., before streaming companies or digital radio services.

The Content Creators Coalition recognizes that a music licensing system cannot function well without some regulatory oversight. But we believe that a “willing buyer/willing seller” standard should be used to accurately reflect the market dynamic because, as it is widely understood, currently the returns received by most musicians are unreasonably low.

We support a limited rights grant for PRO members that would authorize publishing companies to withdraw their digital rights and allow for negotiation of licensing fees with streaming services. We support replacing the federal rate court with binding arbitration

that expressly includes fair market valuation for rate setting.

SOUND RECORDINGS

The members of the Content Creators Coalition have been impressed by the PRO model adopted by SoundExchange and believe it can profitably replicated in other areas. We believe that expanding the mandate of SoundExchange from non-interactive digital services to interactive digital services, or utilizing or creating organizations with a similar governance and disbursement structure, will promote fair commercial exchange within markets available to creators.

INDUSTRY INCENTIVES AND INVESTMENT

The impact of the outdated music licensing system on artists has been devastating. Incentives to creators have shrunk to the point of non-existence. Music delivery services such as Spotify are now garnering valuations in the billions, while the unit of calculation for the return to copyright creators has become the thousandth part of a penny. Many artists, including some of the most popular, have found it necessary to take a pause from recording or to cease recording entirely.

The foundation of the entire music licensing system is the creator's work—the song, the composition, the lyrics, and the vocal and instrumental performance of those elements. But the current system does not work for creators. The disparity between the value that music creates and the amount of that value that accrues to creators is untenable. Investment in creation by the businesses that exploit musical copyrights has dried up, and investment in developing musical talent by these same entities is failing. It is now common for artists on all levels of the business to fund production of their recording themselves— either entirely with their own money or in collaboration with their fans. The state of the business has forced artists to become producers, contributing to the cost of developing song and sound recording copyrights either directly out-of-pocket, in collaboration with fans, or by financing the new business model of major labels through “360” deals.

Although musicians and songwriters provide the materials that form the basis of such musical innovations as remixing and user-generated content based on copyrighted music, and although copyrighted materials are the backbone of new business models that generate revenues for digital entrepreneurs, copyright creators derive little or no money from these innovations. Our music has become the fuel that sustains multi-million dollar businesses that generate no return to musical creators, either in the form of licensing fees or in ad revenues generated by the fact that our fans want to hear our music, and will visit and frequent the ad-supported file-sharing sites and will listen to the radio stations that supply it.

Payment from digital music services to copyright creators should properly reflect changes in the market dynamic and in technology. We urge Congress to see the inequity in the current copyright and licensing system and to act decisively to restructure it to fulfill its fundamental obligation to creators.

PRE-1972 SOUND RECORDINGS

The Content Creators Coalition does not support federalization of pre-1972 sound recordings, in part because we believe that it would be premature to place further works under a federal law that is in need of substantial reform. The solution to the issue of pre-1972 sound recordings is the Respecting Senior Performers as Essential Cultural Treasures Act (The RESPECT Act) (H.R. 4772) which we fully support.

POTENTIAL FUTURE DEVELOPMENTS

We identify three fundamental issues of concern to our members that should guide future development of the music licensing system.

First, we support a licensing regime that will return artistic and monetary value to creators. We need a system that works across musical genres and songwriting practices, that is based on the reality of how musicians create, recognizing that that music will always be created in ways unavailable to it previously. The methods of rate calculation must reflect more fairly the market value of licenses and the impact on the artist must be in first position when the needs and impacts of the relative players are considered.

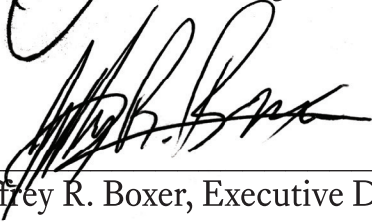
Second, transparency is a key concern for creators. The ability to track our copyrights and the value they generate through every step of the value chain and the ability to view that process in a timely manner is essential. Each step in the chain of value creation affords the possibility of re-directing the value properly due to an individual creator to other participants in the chain. The ability to properly review this chain is crucial for the continued financial viability of the musical creation process. An artist should be able to demand an accounting of all the uses of her work and the technology must be available to make that happen, at no or at minimal cost to the creator. An audit right modeled on the one provided in Section 114 should be required in all music licensing transactions.

Third, we sincerely urge Congress to address more firmly the trafficking in illegal music which more than any other factor hinders creators from their purpose, aligned with the purpose of the copyright system itself, to promote the progress of useful arts.

Respectfully submitted,
The Content Creators Coalition



Melvin Gibbs, At-Large Vice-President/Policy Committee



Jeffrey R. Boxer, Executive Director