

Comment re:

U.S. Copyright Office Second Request for Comments

Citation: "79 FR 42833"

Document Number: "Docket No. 2014-03"

Page Number: "42833"

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Comment submitted via:

<http://www.copyright.gov/docs/musiclicensingstudy/comment-submission/>

I am a composer of instrumental and vocal music, and a current composer member of ASCAP.

First of all, I would observe that ASCAP's claim to represent the interests of songwriters and the general public is highly suspect. From the letter they submitted to the Second Court of Appeals regarding the Pandora licensing ruling (Case: 14-1158, Document: 143, 08/04/2014, page 10):

"These two decisions, taken together, effectively re-write the consent decree, and arbitrarily depress ASCAP license rates below the rates that would be obtained in a competitive market, leaving ASCAP members who seek competitive market rates from new media services, such as Pandora, no alternative but to resign from ASCAP."

In other words, ASCAP's principal argument against the decision is that even though it might well benefit their current members, it would harm *ASCAP*. For this reason, I submit that ASCAP's arguments should be considered self-serving and not representative of the interests of the communities for which they claim to advocate.

My comments will be limited to a very few of the Subjects of Inquiry listed at the end of the request for comments.

Data and Transparency

Whatever identifiers for sound works are adopted, they must not be used to further increase the power of organizations such as the RIAA to unilaterally and mechanically enforce their extremely restrictive interpretations of copyright law against allowable unlicensed users of copyrighted material.

In particular, any legislation or regulation with respect to such identifiers must state explicitly that deletion of such identifiers from an otherwise permissible ("permissible", not "licensed") copy of a copyrighted work is not a violation of copyright.

Musical Works

Regarding item 6, "PROs have announced record-high revenues and distributions. At the same time, many songwriters report significant declines in income." There is no possible conclusion to be drawn from this other than that PROs and publishers are keeping too large a fraction of the revenue. Since PROs have not increased their fees, it is clear that the publishers are the major source of the problem.

Publishers in general have been failing to cope with the realities of extremely low-cost digital reproduction and distribution. These realities would naturally lead to a dramatic reduction in the size and profitability of the publishers, with likely consequent reductions in costs to the public without corresponding reductions (and in fact possible increases) of revenue to the creators of the artistic material. The publishers are fighting this tooth and nail, by using the cudgel of copyright and the power of legislation to maintain their position. I submit that the appropriate response is disregard any consideration of the publishers' profitability in formulating policy. There is no "right to make a profit," especially for middlemen such as publishers.

Respectfully submitted,

L Peter Deutsch