

**Testimony of David M. Israelite
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Before the House Energy & Commerce
Subcommittee on Communications and Technology**

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Good morning Chairman Walden, Ranking Member Eshoo, and Members of the Subcommittee. Thank you for the opportunity to appear before you today to talk about the future of audio as it pertains to music publishers and songwriters.

I serve as President and CEO of the National Music Publishers' Association ("NMPA"), the principal trade association representing music publishers and songwriters in the United States. Now in our 95th year, the NMPA represents over 2,800 member companies with the goal of protecting and advancing their property rights on the legislative, litigation, and regulatory fronts. Prior to this position, I also had the honor of serving at the Department of Justice where I chaired the Department's Task Force on Intellectual Property.

The Role of Music Publishers

Issues involving the music industry are complicated, in part because there are two separate and distinct copyrights involved in music.

The first copyright is for the underlying musical composition created by one or more songwriters, and often owned or represented by a music publisher. I am here representing that half of the music industry. The second copyright is for any recording of that song – commonly known as the sound recording copyright – and represented by record labels. It is crucial to understand that these two different copyrights are controlled and represented by different interests, and are often treated very differently under the law and in business practices.

If that were not complicated enough, the different uses of the musical composition copyright are also treated differently under the law and through government regulation.

Songwriters and music publishers attempt to earn a living through three primary means of utilizing their separate copyright – mechanical reproductions, public performances, and audio-visual synchronizations. Each type of income represents roughly a third of their revenue.

First, there is the mechanical reproduction right. An example is when a consumer downloads a song from iTunes or streams music through a service like Spotify. For songwriters, this right is regulated by Section 115 of the Copyright Act which imposes a compulsory license system on the songwriter/publisher community. Songwriters and music publishers do not get to negotiate the value of our intellectual property in a free market. For record labels, this is a free market right and not regulated by law. The compulsory license dates back to 1909 – before the existence of recorded music – when Congress decided to regulate the mechanical reproduction of musical compositions embodied on piano rolls for player pianos.

Second, there is a public performance right. An example is when music is performed on the radio. While this right is inherently unregulated by law, the vast majority of the market is regulated by consent decrees with the Department of Justice. Again, under these consent decrees, songwriters and music publishers do not generally get to negotiate the value of their intellectual property in a free market. In addition, there are situations where the rights of songwriters and music publishers are utilized using the consent decrees, but there is no compensation for vast lengths of time due to provisions of the consent decree allowing for temporary free-rate licensing.

Third, there is the use of music synchronized with video. Traditionally this has included using music in movies, television, and commercials. For songwriters and music publishers, this is a free market right not regulated by law. Newer forms of this right include music videos and the use of music in user-generated content such as in YouTube.

The Future of Audio

For songwriters and music publishers, the future of audio presents both opportunities and challenges. New technologies allow us to deliver music through innovative legal channels that give fans what they want. For example, the iPhone -- introduced just five years ago -- has revolutionized how consumers access and listen to music. And services such as Spotify -- just recently introduced in the U.S. -- give music fans unprecedented access to large music

catalogues. We have embraced all of these developments and are looking forward to the next new services that will enhance the culture of music.

However, there are also three challenges music publishers and songwriters face as we move toward the future.

First, we must do a better job of protecting music from theft. While there can be legitimate debate on how best to deal with new technologies, it can never be right to steal the intellectual property of songwriters. It also cannot be right for parties to facilitate or turn a blind eye to such theft while profiting from that theft.

Second, we must find efficient ways to license our copyrights and empower new business models. Much of the current licensing system is outdated and inefficient. It was built to service outdated business models.

Finally, we must ensure that future business models fairly compensate songwriters. Licensing new business models efficiently does no good if such new business models do not allow a songwriter to earn a living.

THEFT

The impact of theft on the music world is a familiar subject to all of you. It is important to consider that it is significantly more difficult for songwriters to police the internet for

infringement than it is for large corporations. Most songwriters simply do not have the resources or capacity to find the ever-increasing number of unauthorized uses of their works on the Internet, and to engage in the process of sending numerous take-down notices for each new unauthorized posting. Take-down notices to infringing websites now number in the thousands and even millions for some internet service providers. Many corporations are barely able to keep up. Songwriters have, to a large extent, simply stopped trying.

Songwriters are particularly reliant on receiving fair compensation for the use of their works online and through digital music services because unlike recording artists, many songwriters do not have the ability to generate income in other ways, such as through touring or merchandise sales. Alternative income streams are simply not available for most songwriters, which makes the theft of their music that much more devastating.

LICENSING

Just a few months ago, 25 parties completed a year-long negotiation over rates for five new categories of music services to allow flexibility in creating new services that enable consumers to access, use and purchase music in previously impossible ways. These new categories cover things like mixed service bundles that bundle music products with non-music products, and cloud based locker services that allow consumers to store and access their own music across almost every electronic device. And, parties representing digital services, record labels, and songwriters and publishers are currently involved in discussions on how to work together to improve our licensing system.

COMPENSATION

Right now, interactive streaming music services comprise a fairly small percentage of the income that songwriters collect. However, I believe the streaming market is one of the significant growth areas for music in the future. As this area of the market grows, we need to ensure that songwriters are fairly compensated for their work. It is also crucial that new services like Vevo properly license and compensate songwriters.

CONCLUSION

The marketplace for music is constantly evolving in ways that are both beneficial and potentially detrimental for music's creators. Songwriters and music publishers will continue to embrace new delivery models and technology, but as the future of audio develops Congress and the music community must ensure that laws protect intellectual property while providing fans the music they want in the manner they want.