

## **FMC Remarks at the International Copyright Institute Symposium**

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My name is Casey Rae and I'm the VP of policy and education for Future of Music Coalition, a Washington, DC-based national nonprofit organization for musicians. Future of Music works in three areas: research, education and advocacy. We came together back in 2000, right around the time of the initial digital disruption. Over the course of the last 14 years, we have analyzed and documented trends in the music sector, translated complex policy and legal issues for our musician and composer constituency, and produced original research on everything from artists' access to healthcare to commercial radio consolidation to our most recent study on artist revenue streams.

My work finds me doing a lot of thinking about how the marketplace for music intersects with federal laws and what that means for musicians and composers.

Back in the beginning of the previous decade, the founders of our organization—including independent musicians, label owners, legal experts and technologists—made the observation that imminent shifts brought on by technology would shake up existing business models and hopefully create new opportunities. We are, and have always been, a pragmatic organization, but we also like to look over the horizon to identify possible solutions to persistent issues in the music community. That's why the word "future" is in our organization's name. Many of the concepts that we have explored over the years have become common practice; some—such as streamlined licensing for our globally networked world—remain elusive.

I am encouraged that the US government—including federal agencies like the Copyright Office, as well as the legislative branch and the administration—are taking a closer look at the current state of music licensing, and seeking input to achieve what I hope will eventually become a rising tide that can lift many, if not all, boats. I am also pleased that there is the recognition that solutions must be global, and crafted with respect to the unique values and traditions of cultures around the world.

The United States Patent and Trademark Office recently issued a "green paper" that includes some important reflections on the state of global music licensing, as well as an endorsement of comprehensive ownership registries, which they describe as "the most basic prerequisite for obtaining licenses is reliable, up-to-date information about who owns what rights in what territories."

FMC and our colleagues—including Jim Griffin, who is with us today—have long maintained the need for inclusive, publicly searchable informational databases that allow for the uniform entering of relevant data about ownership.

While there are a number of existing databases, many are either lacking in accuracy or depth of information or are to one or another extent proprietary. The Copyright

Office offers one example of a publicly searchable rights database, but as the Green Paper notes, its records are incomplete and not always available online.

Proprietary databases serve some purposes, particularly to the members or clients of the companies and organizations who operate them. Examples include YouTube's Content ID system or databases maintained Performing Rights Societies and the Harry Fox Agency. Although these systems may pave the way in establishing a technological framework that is efficient for input and access, it is likely that stakeholders across the board will have more confidence in systems overseen by public or nonprofit entities rather than businesses with highly specific interests. An example of a nonprofit organization deeply involved in database management is SoundExchange, which was established to collect and distribute money generated by the digital public performance right for sound recordings. While SoundExchange was not designed to provide publicly searchable information on who owns what specific piece of music, the organization may have valuable insights into how to organize and maintain rightsholder data in a digital context.

The United States Congress or the administration might also consider authorizing the creation of a body to work in cooperation with international participants in a global registry project. With the right investment and technological assistance, the Copyright Office may alternatively be able to fulfill this role, or a portion thereof.

While FMC recognizes that copyright registration cannot be compelled due to international treaty obligations, we see benefit in aligning incentives so that such a resource is something a majority of stakeholders find worthwhile. Government can and should play a role in encouraging various parties to understand the economic and organizational benefits of good-faith involvement in such systems.

On the data entry side, there is much work to be done in standardizing musical metadata. As you are probably aware, metadata is the information that accompanies a sound recording file and is delivered to online stores like iTunes and streaming platforms like Spotify. Metadata includes things like performer, composer, record label, and release date. My colleague Jean Cook presented research on this topic at a conference last year, demonstrating how inconsistencies in metadata have particularly impacted artists in the classical and jazz genres: Here's a snippet:

"Spotify, Pandora, Google Play, Rhapsody and iTunes do not make a clear or consistent distinction between composer and performer when delivering classical music to fans. Nor do they list sidemen on any jazz albums. These are infrastructure issues. These are metadata issues. These are deal-breakers for classical and jazz fans. And they make classical and jazz undiscoverable for new fans, contributing to the bigger problem of these genres' 'invisibility' in the marketplace."

Better data on the input side and enhanced functionality and interoperability on the output side may alleviate some of the frictions in the music licensing space while pointing the way towards potential solutions for other sectors.

I would now like to make a few comments on the topic of collective licensing. Since the arrival of the Internet, many industry experts and observers have put forward concepts for collective licensing to reduce transactional frictions and achieve a wide-scale alternative to unauthorized file sharing. Proposals exist (and continue to be introduced) that describe collective licensing mechanisms for both the sound recording and the composition copyrights. These include—but are not limited to—ISP surcharges immunizing users against infringement, a flat fee for all online music transactions, a tax on certain consumer computing and electronics devices, and the creation of a voluntary or compulsory blanket licenses for music distribution beyond that which exists for radio-like uses.

Although none of these proposals have been wholly embraced by a critical mass of rightsholders, it is important to note that collective licenses already exist in the music business. In fact, public performance licenses for AM/FM broadcasts were key to the growth of one of the most historically significant sectors of the industry: over-the-air radio. It is safe to say that without the establishment of a performance right for the underlying musical work, radio would not have been able to play such a pivotal role in the development of the recorded music industry.

In the US, the establishment in 1995 of a digital performance right for sound recordings can be seen as an important step in artist compensation, although there is frequent debate regarding appropriate rates. The benefits may offset any friction: if webcasters were required to individually negotiate licenses for sound recordings, that sector is unlikely to have experienced such remarkable growth.

There are, of course, administrative and other considerations when collective license schemes are enacted, but history of the public performance license at least offers guidelines for how to balance efficiencies with compensation obligations. We believe that governments can and should play a role in setting marketplace guidelines where collective license propositions make sense.

The bottom line is that extended collective licensing or direct licensing schemes are unlikely to work to their full potential absent better mechanisms to track ownership. The enumeration of ownership rights is the key to transparency and shared equity in today and tomorrow's music industries.

One of our board members, who is very much a future-forward individual, had the idea that ownership information could be tracked using decentralized architecture, similar to Bitcoin or other digital currency. This wouldn't necessarily be a place where the actual financial transaction took place, but rather a mechanism to capture ownership information throughout the life of a copyright. This is the kind of thing we should be thinking about. I was at a proceeding at the Copyright Office on Orphan Works not long ago, and it struck me that policymakers should not only be considering ways to address works where ownership is difficult to determine, but how to prevent future orphans. Likewise, when we think about licensing standards

and rates, we should also envision better systems for tracking ownership, and how to make that scale.

I should add that it isn't just about corporate ownership. The music business of the future may involve partnerships between artists and outside entities that are not predicated on the transfer of copyrights. That doesn't eliminate the desirability of comprehensive databases. In fact, this makes such systems more important. Because artists need to be paid for the use of their work, and that compensation must occur as transparently and efficiently as possible.

I'm very pleased that our friends at the agencies and in Congress are starting to ask the right questions, and I'm honored to be part of the discussion with you all today.