



Statement for the Record of the Songwriters Guild of America, Inc.

Before the House Small Business Committee Hearing on “Intellectual Property 101: How Small Business Owners Can Utilize Intellectual Property Protections in Their Businesses”

5/14/2018

Chairman Chabot, Ranking Member Velazquez and Members of the Committee, the Songwriters Guild of America (SGA) thank you for this opportunity to submit a statement for the record on the importance of intellectual property protection, particularly strong copyright laws, to small businesses. Independent songwriters—just like grocery store owners, electricians and florists—are small business people who rely on the clear and effective enforcement of U.S. law in order to succeed. Unfortunately, just as grocery store owners couldn't prosper if prospective customers were allowed to exploit legal loopholes to loot their shelves, the songwriting profession will cease to exist if the U.S. continues to inadequately enforce copyright laws on the internet and to limit the ability of music creators to otherwise independently protect their rights.

My name is Rick Carnes and I am the President of the Songwriters Guild of America. SGA is the nation's oldest and largest organization run exclusively by and for songwriters, with over 5,000 members throughout the United States. I am a working songwriter and have lived in Nashville since 1978. I have been fortunate enough to enjoy a moderately successful career, including co-writing number one songs for Reba McEntire (“I Can't Even Get the Blues”), and Garth Brooks (“Longneck Bottle”), along with songs for Steve Wariner, Alabama, Pam Tillis, Conway Twitty and Dean Martin among others. Yet despite this success, I am reminded constantly of the perilous existence that all of us who have chosen songwriting as a small business profession labor under on a daily basis.

How Songwriters Use Copyright—101

A strong copyright system is absolutely essential to the long-term health of the songwriting profession. In fact, it was the decision more than two centuries ago to enshrine copyright protection in the Constitution that has allowed the U.S. to become, and so far to remain, the world's commercial and artistic leader in the creative industries. But every generation or so, the Government has had to address whether or not those protections are actually continuing to work effectively for creators. For instance, in the mid-19th century British and Irish music was not yet covered under US copyright, so protected American songwriters were counter-intuitively

forced to compete with free music from abroad. During those difficult times, one of our first and greatest American songwriters, Mr. Stephen Foster, died bankrupt on the Bowery in New York City with 38 cents and two song titles in his pocket.

As a result of such unintended commercial inequities and tragic cultural losses, the U.S. now respects foreign copyrights, and our own songs are, in turn, recognized by international treaty as valid in other countries. It was the enactment of such effective global copyright protections which led to astonishing cultural and financial success for American creators and small businesses on a level playing field. That lesson must not be forgotten.

The 21st Century's digital age has brought forth new challenges, and exposed serious flaws in what has today become an antiquated copyright system badly in need to revision to protect us against piracy and to guarantee fair remuneration for the marketplace use of our music. It is up to us to make sure that our laws keep pace, or we will most certainly fall behind as a nation and a culture.

Most Songwriters Are Self-Employed Small Businessmen and Women

You have to remember that unlike recording artists, songwriters don't make money from live shows or merchandise sales because we generally don't perform. We just sit in a room alone with a guitar or a piano, a coffee- stained blank page, and a burning desire to tell a story through music. We don't sell tickets or t-shirts. What we do is create the copyrights that serve as the driving force behind the global music industry. So it doesn't necessarily "all start with a song," as we are often told. It all starts with *the songwriter*, the small business person that creates those songs, and who is the bedrock of the music community and always will be.

So how do songwriters survive in the digital age? The answer is, just as it was for Stephen Foster back before the full development of U.S. copyright law, "quite precariously."

Songwriters primarily make our money from three sources: rare audio-visual uses of our works such as in films and commercials, airplay performance money when the song is performed on radio or TV if we are lucky enough to write a hit, and more commonly, physical and digital distribution of our songs through sales and streams of audio recordings. It is this latter stream that has for decades been under siege by pirates, and which has recently driven the profession of songwriting to the brink of economic ruin.

The Old Songwriting Business Model Has Been Broken By Piracy

It is well established that songwriters often share their copyrights with a publisher, whose jobs it is to administrate licensing and collection activities, to promote the songs to record companies and other prospective users, and to protect those songs against infringers. The publisher and songwriter share the resulting earnings under the terms of their agreement, with most independent creators receiving on average about two-thirds to three-quarters of such income.

Unfortunately, music publishers are not signing and protecting songwriters and new works in anywhere near the numbers they once did. It has become simply too risky to advance money

for songs in a market that doesn't protect those songs from massive Internet theft. And so a very significant portion of the once-vibrant US songwriter community has simply disappeared, victimized by its inability to promote and protect even the most popular musical works.

Of course, the SGA supports the development of content delivery networks that give consumers better, safer access to music online at fair rates of remuneration for creators. But absent greater help from the Government in protecting songwriters through higher royalty rates, elimination of unnecessary safe harbors for giant, multi-national digital music distributors, and enforcement of anti-piracy laws, our last, best hope is self-help. Towards those ends, SGA is pleased to see that *some* of these issues are being addressed by Congress through the Music Modernization Act (MMA) package that recently passed in the House. We hope that the Senate moves expeditiously to pass this crucial legislation, perhaps with certain additional improvements and clarifications in music creator protections still being considered, that would finally bring music copyright law in line with the 21st century. But there is one other practical and crucially important legislative fix that we need, immediately if possible.

The CASE Act

The single greatest issue of importance to the songwriter community, yet which remains fully unaddressed under the Copyright Act, is the following: in order to enforce our rights against infringers, songwriters literally need to “make a Federal case out of it,” at an average cost of about \$350,000 to bring a lawsuit in federal court. Since only a precious few songs ever earn that much money in their entire existence, songwriters are left with no practical way to combat the theft of our works. We have a right with no remedy in the most classic sense. We simply cannot afford access to enforcement in a world of rampant infringement.

If my neighbor borrows my 60 dollar lawnmower and wrecks it, I can take him to small claims court and make him pay for the damage. But if he steals my entire life's work and posts it online for free, he can just thumb his nose at me and laugh—reposting it as many times as I can ask the infringer's network that it be taken down. Towards that end, SGA has worked for more than a decade—both with the U.S. Copyright Office and Congress—to craft legislation establishing a small claims venue in which to address such copyright infringement problems.

The bipartisan Copyright Alternative in Small-Claims Enforcement Act of 2017, introduced in October 2017, provides just such a venue and would make the American copyright system more accountable, responsive, affordable, and efficient. Individual creators would benefit from the small-claims process, as it would allow them to resolve copyright infringement disputes and other related claims remotely, while representing themselves. Furthermore, since both the filing fees and statutory damages in such cases would be far lower than in federal court, the small-claims court would actually be attractive and beneficial to both plaintiffs and potential defendants, who would also have the right to opt out of the small claims process without prejudice if they would prefer to do so.

It is for these reasons that SGA respectfully requests that members of the House Small Business Committee co-sponsor the CASE Act—long overdue legislation that would provide the small-business owners who devote their lives to creating music with a remedy to protect their

works. I thank you for allowing me to share my concerns and suggestions on behalf of SGA, and I look forward to answering any questions that you may have.