



NEWSLETTER

An Entertainment Industry Organization

Five things Congress could do for music creators that wouldn't cost taxpayers a dime

By Chris Castle

The President's Corner

Welcome to the 2013-2014 season of the California Copyright Conference! I'm honored to be serving as the President of our organization and look forward to an exciting slate of panels we have scheduled for this season.

I'd like to take the opportunity to thank our outgoing President Eric Palmquist for his strong leadership last season. Under Eric's guidance, the CCC presented thought-provoking panels with some of the leading experts in our industry, including the first-ever joint event with the Society of Composers and Lyricists (SCL), which we are planning to present again this year.

I would also like to take a moment to encourage all of you to sign up for CCC membership if you haven't already. In addition to helping support the organization, membership fees allow us to award an annual scholarship to a deserving music industry studies undergrad.

Finally, please join us next month for "An Evening With the Guild of Music Supervisors" that will be moderated by John Houlihan.

Here's to another successful season – see you soon!

Jeremy Blietz
President, California Copyright Conference

Rep. Bob Goodlatte (R-Va.), chairman of the House Judiciary Committee, is holding hearings on an overhaul of the Copyright Act. Goodlatte is getting a lot of advice requiring considerable bureaucratic resources. It would be a missed opportunity to focus on the complex and not see the relatively simple reforms to better the lot of creators. Here's a few ideas that not only could be quickly implemented but also could make a big difference in the lives of music artists and songwriters.

1. Create an Audit Right for Songwriters for Compulsory Licenses: One of the oldest compulsory licenses in the Copyright Act is the "mechanical license", the statutory mandate forcing songwriters to license songs that dates from 1909. The government mandates the license and also mandates the rate that songwriters are paid—from 1909 until 1977 that rate was set at 2¢ per recording. Although that rate was eventually indexed to inflation leading to the current 9.1¢ minimum, songwriters had to dig out of a deep hole.

Getting paid is another story. This statutory license requires songwriters be sent "statements of account" for royalties—but songwriters are not allowed to conduct a "royalty compliance" examination (called an "audit"). The law requires a company officer and a CPA to certify the company's statements—a practice rarely complied with. As recently demonstrated by Aimee Mann's lawsuit against Medianet, if songwriters don't get paid there's not much they can do except sue—a costly process.

Upcoming Events

October 15, 2013: *An Evening with the Guild of Music Supervisors* moderated by John Houlihan

The government tells the songwriter “trust—but don’t verify.” This is an easy fix. Congress could give songwriters an audit right as they did for stakeholders in the contemporary digital performance compulsory license for satellite radio and Internet radio.

2. Allow Artists and Songwriters to Opt Out of the Compulsory License: The recent blow-up regarding the so-called “Internet Radio Fairness Act” and the related ASCAP and BMI rate court proceedings should let the Congress know that there are many artists and songwriters who want to be able to decide who gets to license their songs. Again, the digital performance compulsory license allows copyright owners to control “interactive” uses of their works—why not at least do the same for the mechanical license as well?

3. Federalize pre-72 Sound Recordings for Digital Royalties: Sound recordings did not receive federal copyright protection until 1972. When the Congress established the digital performance royalty, it seemed to clearly apply to all recordings and did not arbitrarily exclude recordings prior to 1972. However, this “gotcha” is used by SiriusXM and others to avoid paying great American artists whose records were released before 1972—jazz, R&B and rock legends get nothing. Congress could fix this “gotcha” and secure a fair share of digital performance royalties to these authors of our musical heritage.

4. Require All Unpaid Statutory Mechanical Royalties Be Paid to the State Unclaimed Property Offices: As Aimee Mann’s alleged in her lawsuit against the white label provider Medianet, witnesses stated that 23 percent of the songs used by Medianet are unlicensed—which could easily be millions of songs if true. And there are likely a number of digital music services that are arbitrarily holding unpaid royalties in an unauthorized “escrow.”

It seems that there could be substantial royalties controlled by the very retailers who must pay songwriters under the law, a potentially significant moral hazard. Congress could require that any “escrowed” royalties be paid over under State unclaimed property laws—a lawful “escrow.”

5. Require that Online and Offline Videos Follow the Same Rules: As online video platforms become available through Internet enabled home televisions, attention should be paid to a frequently overlooked category of songwriter—the film and television music composers. Current reporting by online video platforms makes it difficult for score composers to be paid for their work. The Congress may well ask whether those who seek to replace television should be held to the same licensing standards as television.

These are but a few ideas the Congress could be addressing that might make a difference in the lives of artists and songwriters and would cost the taxpayer very little. All leverage existing structures and bureaucracies, eliminate “gotchas,” and help to reduce the unintended consequences of government mandated compulsory licensing.

Castle is managing partner of Christian L. Castle, Attorneys.

Source:

<http://thehill.com/blogs/congress-blog/technology/314113-five-things-congress-could-do-for-music-creators-that-wouldnt-cost-taxpayers-a-dime>

PANELIST BIOGRAPHIES

CHRIS CASTLE

Chris Castle is Managing Partner of Christian L. Castle, Attorneys a transactional law firm founded in Los Angeles and San Francisco in 2004 that moved to Austin in 2011 where it is now based. The firm represents a variety of music-related technology entrepreneurs, as well as creators in the traditional music, motion pictures and television businesses. Chris also consults on mergers and acquisitions in the music industry and advises leading international organizations on public policy matters relating to artist rights, copyright and the economic development of the Internet, including Arts+Labs. He is admitted to the bar in California and in Texas.

Chris is one of the few executives holding senior positions in both technology and music business companies. He was Senior Vice President, Business & Legal Affairs and General Counsel at SNOCAP, Inc., in San Francisco, Senior Vice President, Business Affairs at Sony Music Entertainment, Inc. in New York, and Vice President, Business & Legal Affairs at A&M Records, Inc. in Los Angeles. He was of counsel to Wilson Sonsini Goodrich & Rosati in Palo Alto and to Mitchell Silberberg & Knupp in Los Angeles.

While at A&M Records, Chris lead the label team in negotiating A&M's groundbreaking 1994 deal for an exclusive license for A&M's artists such as Soundgarden, Monster Magnet and Paw in Electronic Arts' Road Rash 3DO. This deal structure became a model for the use of music in games and established the video game soundtrack as a viable use of licensed music and music videos. He has a long history of representing early stage startups in the music technology space beginning with some of the first such as Liquid Audio, Napster, and Last.fm. The firm consistently represents music-related startups, particularly in the area of international music licensing.

Chris is a long-time guest of SXSW and has spoken at the UK Parliament, Congressional seminars at the U.S. House of Representatives, the Canadian-American Business Council, the Organization for Economic Cooperation and Development, the California Copyright Conference, bar association conferences of the American Bar Association, State Bar of California, State Bar of Minnesota, State Bar of Texas and the Beverly Hills Bar Association, and lectures at law schools, business schools and music schools in the U.S. and Canada. He has been an Adjunct Professor at the University of Texas School of Law and teaches the Four Nights of Rights seminars in Austin, sponsored by Texas Accountants and Lawyers for the Arts and the Austin Creative Alliance.

Chris edits the Music Tech Policy blog and is a regular contributor to the Huffington Post and The Trichordist. Recent articles are: A Bipartisan Offender: The Internet Radio Fairness Act (with David Lowery, The Hill Congress Blog); The Tide Has Risen: 5 Reasons to Worry About the Internet Radio Fairness Act (Huffington Post); Recording Tips for the Loudness Wars: An Interview with Mastering Great Bob Ludwig (Huffington Post); Artist Rights are Human Rights (The Trichordist); Can Creators Call 911? (The Hill Congress Blog); What is Innovation and What is Piracy? (San Francisco Chronicle); and What's Wrong With ISP Music Licensing? (with Amy Mitchell, ABA Ent. & Sports Lawyer).

Chris is an MBA/JD graduate of the Anderson Graduate School of Management and the UCLA School of Law where he was twice elected an Olin Fellow in Law and Economics and was a member of the UCLA Law Review. Chris graduated from UCLA with a B.A. in Political Science, magna cum laude.

JESSICA ETTMAN

Jessica Ettman is Senior Counsel at Maker Studios, a next-generation talent first media company. Jessica started the Business and Legal Affairs department in 2012 bringing experience in entertainment transactional practice to the company's diversified business portfolio.

Prior to Maker, Jessica worked in the Business and Legal Affairs Department at Rhino Entertainment, a division of Warner Music Group. She received her Jurist Doctorate from Brooklyn Law School and holds a B.A. in Philosophy, Politics and Law from SUNY Binghamton.

HENRY GRADSTEIN

A graduate of U.S.C. Law School where he served on the Law Review, Henry Gradstein is an AV-rated attorney with over 30 years of experience litigating and trying a wide variety of cases, including a top-ten jury verdict in California and numerous other multi-million dollar verdicts and settlements. Named by Los Angeles Magazine as a "Super Lawyer" for nine years, he has a proven track record litigating complex matters as lead trial counsel. He has extensive experience in all aspects of entertainment, intellectual property and complex business litigation.

Partners Maryann Marzano and Henry Gradstein, Robert Allen (former head of legal and business affairs at Universal Publishing Group) and other attorneys at Gradstein & Marzano, P.C. are currently handling numerous high profile cases including a suit against CBS for back-end profits to the new hit television series Hawaii Five-0, a suit on behalf of Scott Weiland against Stone Temple Pilots for being "fired" by the band, a claim on behalf of choreographer Wade Robson for childhood sexual abuse against the Estate of Michael Jackson, a claim for copyright infringement against Paramount Pictures on behalf of the writers of the original G.I Joe film, a claim for reversion of copyrights to the songs of rock legend Marc Bolan of T.Rex on behalf of his son, Rolan Bolan, a claim for copyright infringement on behalf of singer/song writer Aimee Mann against online music provider MediaNet Digital, and, most recently, class actions on behalf of The Turtles against Sirius XM for misappropriation of their pre-1972 recordings, among numerous other matters.

Among his many past matters, Gradstein:

- Won a \$10.3 million jury verdict against Los Angeles radio personality Rick Dees.
- Successfully defended movie producer Yoram Globus in the highly publicized MGM-Pathe case, and subsequently obtained an \$18 million result on his behalf.
- Won a unanimous multi-million dollar jury verdict including punitive damages against Coopers & Lybrand on behalf of 10CC rocker Lol Crème.
- Won California's fifth highest jury verdict of \$47 million in 1999 on a counter-claim in federal court defending former Monkee, Michael Nesmith, in a video distribution deal against PBS.
- Obtained a federal court injunction against AOL for copyright infringement, enjoining the manufacture and distribution of AOL's then current version of the AOL client software.
- Obtained a federal court injunction against Adobe Systems for copyright infringement enjoining the manufacture and distribution of a suite of software.
- Represented production company MPH Entertainment in its claim for a share of profits for the hit indie feature film My Big Fat Greek Wedding, a film which grossed over \$600 million.
- Successfully represented Death Row Records against Coopers & Lybrand, LLP.
- Obtained a \$65 million settlement with co-counsel in a class action case on behalf of music composers against ABC television for copyright infringement when ABC failed to obtain sync licenses for the re-airing of its soap operas.
- Obtained a unanimous jury verdict against the Estate of famed band leader Artie Shaw on behalf of actress Evelyn Keyes, winning the assets of his Estate based on her behalf.

STEVEN WINOGRADSKY

With over thirty years experience as an attorney in the music industry, Steven Winogradsky is a partner in Winogradsky/Sobel in Studio City, California, providing global media and music business affairs & legal support for composers, songwriters, music publishers, recording artists and television, film, video and multi-media producers. In addition to an entertainment law practice, the company handles music clearance and licensing in all media for many production companies, worldwide administration of the publishing catalogs for a number of clients and New Media strategies and Revenue Modeling.

Prior to being in solo practice with The Winogradsky Company from 1992 to 2009, Mr. Winogradsky had served as Director of Music Business Affairs for Hanna-Barbera Productions, Inc., Managing Director of Music, Legal & Business Affairs for MCA Home Entertainment, Director of Music Licensing and Administration for Universal Pictures and Universal Television and Vice President of Business Affairs for The Clearing House, Ltd.

He was twice elected President of the California Copyright Conference, after spending nine years on the Board of Directors, and also served for four years as President of The Association of Independent Music Publishers.

Mr. Winogradsky is the author of the book "Music Publishing: The Complete Guide" published in 2013. He was also awarded the 2012 Texas Star Award by the Texas State Bar Entertainment and Sports Law section for his contributions to legal education in the State of Texas. Mr. Winogradsky was also named as one of the Outstanding Instructors in Entertainment Studies and Performing Arts at UCLA Extension, where he has taught since 1997.

He has written numerous magazine articles on the subject of music for motion pictures and television and has lectured on a variety of music-related topics at MIDEM, University of Houston Law Foundation (1993, 1994, 1997), Texas State Bar Entertainment Law Seminar (1994 - 2012), American Bar Association Entertainment & Sports Law Conference, University of Southern California Entertainment Law Institute, The Hollywood Reporter Film and Television Music Conference (1997-2000), Billboard Film and Television Music Conference, NARAS, The Society of Composers and Lyricists, Loyola Law School, Southwestern School of Law, California Lawyers For The Arts, The American Film Institute, LMNOP (New Orleans), The Toronto Film Festival, Canadian Music Week, Musicians' Institute, McNally Smith College of Music, California State University, Northridge (CSUN), NARIP, The Copyright Society of the U.S.A. and various other symposia.

In addition, he is a guitarist, singer and songwriter who is both a composer and publisher member of ASCAP.