



January 31, 2017

The Honorable Bob Goodlatte  
Chairman  
House Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable John Conyers, Jr.  
Ranking Member  
House Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C. 20515

Re: Reform of the U.S. Copyright Office

Dear Chairman Goodlatte and Ranking Member Conyers:

We write on behalf of the American Society of Composers, Authors and Publishers (“ASCAP”) and Broadcast Music, Inc. (“BMI”), the two largest U.S. performing rights organizations (“PROs”) that represent the musical composition performing rights of nearly one and a half-million American songwriters, composers, lyricists and music publishers, to provide our thoughts regarding the Judiciary Committee’s recent white paper proposal to reform the U.S. Copyright Office.

At the outset, we wish to thank you and the Committee for your attention to copyright issues, dedication towards modernizing the U.S. Copyright Act and support for our nation’s creative community. It is only through a strong copyright system that respects and protects the rights of creators that our nation has become a leader in the fields of music, entertainment and media. We thank you for that understanding and recognition. However, a copyright system can only be as strong as its supporting and managing foundation. For that reason, it is critical that the U.S. Copyright Office and the office of the Register be modernized in order to be afforded the independence, budget and operability necessary to ensure that they, and our country’s copyright system by extension, can meet the needs of creators in the 21<sup>st</sup> century.

#### Importance of Copyright Office Independence

The Copyright Office is more than an administrative repository, and its Register is more than its managerial chief. The Office is instrumental in shaping our country’s copyright policies, interpreting our copyright laws and ensuring that creators and the creative process are respected, valued and protected. We believe this is a core principal in shaping the Office of the future. We have worked with the Office for many decades and have been duly impressed with the support and

devotion to advancing the cause of copyright and the admiration for the creative process displayed by the past Registers of Copyright and their staff. We were therefore very surprised by the recent removal of the most recent Register, who embodied all the qualities a Register of Copyright should possess: erudite in copyright law, respected as a leader, passionate for the musicians, authors and artists whose creative labor built the Library of Congress, and respectful of the needs of all affected by our copyright system. We hope the new Register will embody those same qualities.

We therefore support the Committee's intention to provide the Register with the independence necessary to fulfill the goals of the Office. It is the Register and Office expertise upon which Congress relies for copyright law advice, and it is crucial that the incoming Register be in a position to provide independently that copyright expertise to the Committee, without influence from those who lack the substantive copyright background necessary to provide that advice. Likewise, we strongly agree that the Office must possess autonomy over its own budget and technology needs, so it can properly service its core constituents of copyright owners.

We understand that modernizing the Copyright Office is not an inexpensive endeavor. In today's digital age, the number of creative works being produced is growing at a dizzying pace. Under law, a copyright owner may only enforce its rights if it registers that work with the Office. It is paramount, therefore, that the registration, search and delivery systems of the Office meet current and future user expectations, with the ability to evolve with technological improvements, and not function as a patchwork of outdated hardware and technology. We hope that the Office will be able to meet its IT modernization plan as it sees fit. However, it is important that the Office not raise the necessary funding to do so through increased costs and charges to its copyright owner customers, many of whom are individuals and small business owners who struggle to make ends meet.

#### Digital Database of Works

As such a modernization plan is complex and expensive, we believe that it is crucial for the Office to focus and expend its resources wisely. We support initiatives that will permit the Office to make publicly available past and current registration information via a technologically-advanced, searchable digital database, which would be of immense assistance to those who require registration information. However, we believe that the proposal for the Office to build and maintain a new searchable, digital database that provides information concerning copyrighted musical works beyond what the Office has traditionally collected is not in the best interests of either the Office or the music industry at large. For one thing, this proposal would not further the Committee's desire to improve the copyright system immediately, and not in the distant future, and, more importantly, would be a drain on the resources of both the government and our songwriter and music publisher members and affiliates.

The proposal, as we understand it, has been vocalized mainly by user groups who have imputed certain music licensing issues on a perceived lack of available transparent music song ownership information. These groups have posited that a centralized database of musical works and sound recording ownership information, replete with metadata such as standardized identifiers, preferably managed by the government or certain private interests, is necessary to permit them to operate in compliance with copyright licensing requirements. While we wholeheartedly support

the ability for users to have efficient access to correct and complete copyrighted works ownership information, we do not believe that the government should focus its modernization efforts on building a new government-run centralized system, but rather we support allowing the affected industries to better develop the system that we have spent many years building at great expense. At this juncture, we believe the Committee would be better served focusing its attention on modernizing the laws protecting copyright owners from expropriation of the value of their works through antiquated legal regimes rather than advancing a data goal that can better be achieved by the industries it ultimately serves. We believe ASCAP and BMI are uniquely positioned, working with the greater music creator and user industry, to provide the data solutions to the problems that the users claim to be facing, without requiring the federal government to do their work for them. We stand ready to work with any and all users who want to help improve the availability of music ownership data.

To that end, ASCAP and BMI each strives to provide to the public transparent ownership information regarding the interests in our respective repertoires via our respective websites that offer free searchable 24-7 access to musical composition ownership information. Each of our online databases permits a user to search by song title, writer name, publisher name or by performer of the work. Additionally, the databases provide the ISWC -- the international standard musical work identification code -- for most works and permits searching by ISWC. A search result in either database will provide all the writers of the work, their PRO affiliation and their unique international identification number (the "IPI"). The result will also display the identity and contact information for the ASCAP or BMI (depending on the database searched) copyright owners (e.g., music publishers), and the total ownership percentage belonging to that PRO's members. Furthermore, the performing artist information will also be shown in most instances, helping a user to confirm the version of the song title being searched. Altogether, the ASCAP and BMI systems provide ownership information for over 20 million compositions.

Our systems provide current information for a very substantial majority of the marketplace, but even we cannot provide complete information for every work. Large music users on the Internet may desire a single authoritative database system that provides current and accurate ownership information for all interests. However, we believe it would be a monumental task for the Office to build such a system and an almost inconceivable undertaking to maintain it. Let us explain why.

All the song data that ASCAP and BMI maintain is submitted to us by, or on behalf of, songwriters and music publishers. Most songs are written by numerous co-writers (in some cases over a dozen or more), each of whom is generally in contract with a music publisher or other entity that retains the actual copyright in the work. However, the actual interests held by each party respectively are generally the result of contract or agreement and are not necessarily settled by those parties at the time of creation -- often not when the song is registered with the Office (if it is registered at all). And, the parties-in-interest change often, particularly when final shares are determined, as well as when there are bequests, assignments, ownership claims or other matters relevant to interest transfer or adjustment. As co-writers often choose to join or affiliate with different PROs for personal or business reasons, ASCAP and BMI each maintain membership and affiliate services departments dedicated to liaise with our respective songwriters and publishers in order to track and update this information: who owns what interests in a particular work, which

entities have the rights to license, and the contact information for the interested parties. Furthermore, as co-writers (or their publishers) generally each register their work information with their own PRO, including non-U.S. co-writers affiliated with foreign PROs, ASCAP and BMI must work in concert with all the other PROs around the world in order to reconcile any conflicts in the information received by any individual PRO via processes and protocols we have developed that would be inordinately difficult and expensive, at best, for the Office to manage.

It has been suggested that the Office could simply add certain fields and identification codes (such as ISWC) to the current copyright registration process and institute information update processes that would culminate with the same data currently gathered by the PROs. Apart from the hurdles described above, that suggestion would require that songwriters and publishers register their works in the first place, which we know unfortunately frequently does not occur. While we strongly advocate that creators register their works and assignments with the Office, registration is costly and is not a legal necessity. And, whereas creators have a royalty payment incentive to maintain and update information with the PROs (which is why our databases are as robust as they are), such an incentive is not inherent in an Office registration system. To the extent it is suggested that copyright protection itself be the quid pro quo for our members and affiliates to update this information, we believe this would likely run afoul of our international treaties that prohibit the imposition of formalities for the basis of copyright ownership. And, of course, if the Committee envisions that the Office would take on the responsibility of harmonizing legacy data and maintaining this information, we estimate that it would take years to construct the system at considerable expense, and require large staff and processes to resolve data or authorship inconsistencies and mismatches, handle ownership claims and disputes that are constant in the music industry, and coordinate with foreign societies, a necessary requirement in ensuring a correct picture of the data. This is a far cry from a registration system that simply intakes information and records it as submitted.

To be sure, we fully support working with the Committee to resolve the problems in our copyright system for the betterment of the entire copyright community. We understand that the system is imperfect. And while almost all users obtain blanket licenses from ASCAP and BMI, thereby obviating data issues surrounding the licensing of our repertoires, the complaints levied from time to time that it is difficult to ascertain the ownership information for non-ASCAP and BMI music (a small percentage) has some veracity. However, the solution to these concerns is not the wholesale replacement of a data system that is not broken, but rather the standardization of data transparency and processing for the entire industry – copyright owners and users alike, who must both bear the burdens and expense of furthering a workable data solution, a goal towards which ASCAP and BMI, who have developed the systems to process and match the data regarding hundreds of billions of performances annually, have made great strides.

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In sum, we are in full support of the Committee's intention to modernize the U.S. copyright system and thank you for your leadership in this effort. Indeed, it has been our intention to likewise ensure that the music industry is modernized in tandem, and we thank the Committee for their interest and support in that effort. We believe that this process is a team effort. ASCAP and BMI are doing our part, and to the extent the Committee believes that the transparency and data

availability issues that ASCAP and BMI continuously address should be set out in guidelines applicable to the entire industry, with a goal towards improving public access to complete and current work ownership data, we are happy to be an important part of that process. And, as always, we stand ready to help educate those affected by our copyright system as to the importance of our copyright laws and of the need to ensure that their copyright information is timely registered and updated for the benefit of creators and users alike.

Sincerely,

American Society of Composers, Authors and Publishers

Broadcast Music, Inc.