

Testimony of

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Recording Artist, Songwriter, Producer

on

"Music Policy Issues: A Perspective from Those Who Make It"

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Committee on the Judiciary

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Chairman Goodlatte, Ranking Member Nadler, and members of the committee. Thank you for allowing me to testify before you today, along with my esteemed fellow creators and my friend Neil Portnow.

My name is Booker T. Jones and I'm an artist, songwriter and producer who has worked professionally in music for nearly 60 years. That seems like a long time, and on some days it certainly *feels* that way. But many aspects of our music laws date back to an even earlier time – literally from the player piano era. So I am gratified that this Committee is making the effort to update music licensing laws for the 21st century.

In my career, I've been privileged to record some of the most iconic R&B and Soul records that defined the genre, working with artists like Wilson Pickett, Otis Redding, Bill Withers, Sam & Dave, and of course my own band Booker T. & the MG's, which included legendary guitarist Steve Cropper.

Our instrumental single "Green Onions" was one of the biggest hits of 1962. It received a GRAMMY Hall of Fame Award in 1999 and was added to the National Recording Registry of the Library of Congress in 2012. That track has been called "iconic," "ground-breaking," even, "classic." But some music services have a less dignified name for it: "Pre-72."

That's right, because of a quirk in the law, many of our most timeless treasures, including "Sittin' on the Dock of the Bay," "Soul Man," and "Time Is Tight," are dismissed and disrespected as not meriting compensation to the featured artists, non-featured artists, and producers.

You see, when Congress created the digital performance right in 1995, artists of my generation celebrated the fact that we would now be paid for our classic works. But because sound recordings were not protected by federal copyright law until 1972, some digital radio services still believe they can play my recordings from the 60s and early 70s without paying me any compensation.

Let's look at just one example. SiriusXM offers dozens of music channels where you can hear recordings made before 1972. They have a dedicated 40s channel, a 50s channel, a 60s channel, and many others that profit from classic works created before 1972. The availability of all of that classic rock, blues, jazz, and soul music is a key selling point for SiriusXM's customers and has helped the company attract over 32 million subscribers. So SiriusXM uses this catalog of great music to bring

in billions of dollars in revenue, but they don't pay anything for the privilege of using the recorded track.

This injustice is especially cruel for some of our great legacy artists. *I'm* fortunate to have my good health, and I continue to make and release new recordings today and to tour the world. In fact, I flew to New York to attend this hearing from a London gig, and tomorrow, I'll be playing in southwestern Virginia, no doubt to some of Chairman Goodlatte's constituents. But not all my peers are so fortunate.

Other artists and their labels have been fighting to correct this, filing lawsuits at the state level to try to secure the protection we deserve. Just last week in California, artists like Carole King, Melissa Etheridge, Grace Slick, and companies like the Beatles' Apple Corps., Grateful Dead Productions and Experience Hendrix, joined together to file a legal brief supporting a lawsuit from the Turtle's Flo & Eddie about this issue. Artists are trying to protect their rights at the state level because of the lack of clarity at the federal level. But time is running out for many of these legacy artists and we shouldn't have to fight state by state to get the compensation we deserve. This uncertainty is bad for artists, *and* it's bad for the digital music services.

In 2011, the U.S. Copyright Office released a detailed report recommending that sound recordings made before 1972 should be protected by federal copyright law. The Copyright Office repeated this recommendation in its 2015 Music Licensing Study. And Congress has listened, offering legislative responses in the past like the RESPECT Act and the Fair Play Fair Pay Act.

In this Congress, the CLASSICS Act, introduced by Congressman Darrell Issa and Congressman Jerry Nadler, and co-sponsored by many other members of this committee, would fix this problem once and for all. The CLASSICS Act would clarify that all pre-1972 sound recordings have protection under the federal copyright system. This would ensure that all sound recordings – no matter when they were released – would use the same licensing system, with the artists getting paid directly from SoundExchange. The legislation will also ensure that digital services that play by the rules are protected from future litigation. It's a win-win for everyone.

I'm especially excited that the CLASSICS Act has been introduced with support from Pandora and the Internet Association. Digital radio services don't want the legal uncertainty that comes from fighting lawsuits state-to-state. They just want to

provide great music to their listeners. CLASSICS demonstrates that stakeholders can work together to solve the issues to update our music licensing laws.

It's the same spirit of cooperation that led stakeholders to work together to create the AMP Act, which will help music producers collect their royalties, and the Music Modernization Act, which will reform the way songwriters license their work and get paid. These bills were each drafted with the input of relevant stakeholders to ensure consensus. All of these bills are important and should become law. And creators like myself have been actively lobbying for them. I personally have been to GRAMMYs on the Hill in Washington, and I know my fellow witnesses have been passionate advocates as well. But our attention has been divided, by different creators being asked to support differing – and sometimes even competing – approaches to solving these issues. What we creators need is to focus our combined efforts on a single package that resolves *all* of these issues. As a songwriter, producer and artist, I can tell you that creators know we're all in this together. Give us this bill, and we'll all work hard to pass it.

And in this same spirit of cooperation and consensus, it is long past time for music creators and broadcasters to finally resolve the lack of a performance right for sound recordings on AM/FM radio. The music community and digital services have demonstrated that people of good faith can find a way to keep the music playing so that creators get the compensation that they are due....and new services can keep providing great music to fans. With help from Congress, I am confident we can find a way forward with the radio broadcast industry. So, I ask the members of this committee to continue to ensure that the NAB and their members work with us to resolve the performance rights issue, just as we have worked with the digital services to resolve other issues.

From the Memphis Sound of the 1960s to the new sounds we will celebrate in Madison Square Garden on Sunday, American music is America's gift to the world. But it will only remain so if creators are incentivized to continue to create. That's why the Founding Fathers put copyright in our Constitution. Fixing music licensing isn't just about legacy artists like myself, it's about the next generation of music makers who dream about making a career in music.

This committee, under the leadership of Chairman Goodlatte, has done the hard work over the past five years. You've identified the problems that need to be fixed. And now, you have the solutions, with buy-in from the relevant players. Don't let another opportunity to bring music into the 21st century slip away. Correct the law

now so that all music creators – whether they write, play, sing, produce, or engineer – can make a living from the work they do that enriches all our lives.

Thank you.