

Statement of

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Record Producer, Sound Engineer, and Mixer

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Chairman Goodlatte, Ranking Member Nadler, and Members of the Committee: My name is Mike Clink, I am an American studio professional—record producer, sound engineer and mixer—who has been in the music industry for the better part of four decades. In my career I have produced records for acts such as Guns N’ Roses, Megadeth and Mötley Crüe, as well as collaborating on scores of other industry-related projects and performances including producing the Super Bowl XXXV halftime show. I am honored to be here today to testify to the Committee on issues affecting music creators, including thousands of studio professionals like myself.

Understanding the Producer’s Role

Unlike recording artists, the role of the producer is less understood by the public—a sentiment reflected in copyright law, or lack thereof. Producers and other studio professionals, like sound engineers and mixers, work behind the scenes, but they are an integral part of the creative process for any sound recording. Their names might not be as well-known as the stars on stage, but it is safe to say there would be no stars without a producer behind them. As the industry gathers this weekend for the 60th annual GRAMMY Awards to celebrate the best in music, the importance and value of a producer is indicated by the sheer number of categories awarded for which the producer is one of the awardees—nearly 50, including Producer of the Year, Record of the Year and Album of the Year.

Producers consistently bring sound recordings to life for artists across all genres. Music producers, much like the director of a film, provide the overall creative direction for the project, as well as the overall sound of the recording. Their fingerprints can be found in every element of the recording, from organizing and overseeing the recording sessions, to adding their own creative elements through post production, including the audio mixing. The producer’s creativity and individuality are reflected in the final track, just as the songwriter who wrote the composition, the musicians that played on the sessions and the featured artist performing the song.

While some producers—George Martin, Quincy Jones, Pharrell Williams—have become stars in their own right, there are a legion of studio professionals who do not receive fame and fortune, yet are still indispensable in the creation of music across every genre. The Recording Academy has a dedicated membership category for Producers and Engineers that represents over 5,500 music professionals, and that number is just a fraction of the total in America alone. The music industry would not exist without these professionals and their immense creativity should not be overlooked—not by the public, and certainly not by federal copyright law.

Problems in Today’s System

The core tenet of copyright law, embodied by Article 1 of the Constitution, is that creators of art, and their works, shall be protected. For centuries, copyright law has been extended to countless creators—architects, authors, choreographers, directors, painters, photographers—and rights holders, allowing the United States’ culture to flourish. Many of the nation’s most revered

individuals are American creators who benefitted from American copyright law: Walt Disney, Harper Lee, and Norman Rockwell to name a fraction of the iconic creators who have shaped American society.

In the music industry, copyright is extended to songwriters for the creation of a musical composition and to the musicians for their performance on a sound recording. Yet, despite their indispensable role in the creation of sound recordings, music producers have never been mentioned in federal copyright law. In fact, they are the only individuals directly involved in the creation of music to lack copyright protections. The omission of copyright protections diminishes their role as music makers and hinders their ability to directly collect royalties.

Per industry standards, producers are entitled to compensation for their work on sound recordings through contracts negotiated with artists or record labels. In 1995, with the passage of the Digital Performance Right in Sound Recordings Act, a new stream of royalties was introduced for sound recordings. Since then, featured performers have had a statutory right to 45 percent of the performance royalties collected from non-interactive, digital music services such as satellite radio, online radio (including Pandora), and AM/FM broadcasts that are simulcast online. Subject to their contract with the performer, producers are entitled to a portion of these royalties for their involvement in the creation of the recording. However, since they were not explicitly included in the Digital Performance Right in Sound Recordings Act, the producer cannot collect their percentage directly.

In some cases, the producer can enter into a voluntary arrangement, at the direction of the artist, to receive their portion through SoundExchange—a non-profit performance rights organization that administers royalties for sound recordings. However, producers are often forced to indirectly collect their royalty share from the artist—the artist collects their statutory 45 percent and then pays the producer out of that portion. This indirect method is inefficient, with payments delayed for months. As walking examples of small businesses, producers depend on reliable payments to continue to invest in their craft.

Producers, like all artists and creators, deserve the ability to permanently collect direct payment for their role in the creation of music. Moreover, their undeniable role as an artist and creator merits recognition in copyright law. As true stakeholders in the creative process, producers deserve fair protection and acknowledgement at the federal level.

The AMP Act

After two years of negotiations between affected stakeholders, including studio professionals, artist representatives and many others, Congressmen Joseph Crowley and Tom Rooney introduced the Allocation for Music Producers Act (AMP Act) in 2015 to recognize the producer's role in the creation of music. The AMP Act was re-introduced at the start of the 115th Congress, and would extend rights to producers, codifying into law their right to collect the royalties they are due. The bill now has the bipartisan support of 50 House members.

The AMP Act is a much-needed solution that will immediately benefit many talented studio professionals. It is a simple step that would ensure producers have a consistent, universal and permanent process to receive earned royalties. If enacted, the AMP Act would formalize SoundExchange’s voluntary process so that the organization, upon direction by the featured artist, will provide direct payment of royalties owed to producers and engineers. For older recordings released before 1995 that are still played on non-interactive, digital platforms, the act would establish a procedure for producers and engineers to seek permission from featured artists, or their heirs, to receive appropriate royalty payments.

The AMP Act is a common-sense approach that does not require a change in the current allocation to artists—the statutory right to 45 percent does not increase nor decrease; all the AMP Act does is enable SoundExchange to process the producer’s share on a more permanent basis. It facilitates payment to creators while ensuring that artists maintain all of their current statutory rights. It is also a solution echoed by the U.S. Copyright Office, which, in its 2015 music licensing study, agreed that formalizing producer payments through statute merits consideration:

The [Copyright] Office notes the further concern of some that the section 112 and 114 royalty allocations do not recognize the contributions of sound recording producers, who in many instances not only supervise, but also have significant creative input into, finished recordings...[Copyright] Office agrees that [the] proposal to confirm the existing practice through a technical amendment of the statute merits consideration¹.

In addition to the Copyright Office, the AMP Act is supported by all major music organizations including the Recording Academy, the Recording Industry Association of America, the National Music Publishers Association, the American Federation of Musicians, SAG-AFTRA, the Nashville Songwriters Association International, the Songwriters of North America, the American Society of Composers, Authors, and Publishers, and Broadcast Music Inc. In other words, the affected artists and producers support the legislation, as do the record labels, publishers, musician unions, songwriter groups, performing rights organizations and SoundExchange, the collective agency tasked with administering the payments. Moreover, no stakeholder group opposes such a solution—making the AMP Act a true consensus measure.

Beyond the technical and financial implications, the AMP Act would formally recognize the producer’s indispensable role in the creation of music. Producers provide an immense artistic and creative value to sound recordings, and their work justifiably merits copyright treatment on par with their songwriter and recording artist peers.

As such, any effort by the 115th Congress to modernize copyright law should include the AMP Act. It is a much-needed, common-sense and widely supported solution that will directly benefit

¹ “Copyright and the Music Marketplace.” U.S. Copyright Office 2015 (p. 180).

studio professionals across the United States while ensuring future generations are able to continue to contribute artistic value to the American cultural fabric.

A Comprehensive Approach

While passing the AMP Act is an important reform for music producers, it alone does not sufficiently address the outstanding copyright issues affecting the broader music creator community—a community that is increasingly intertwined, with producers often playing the role of songwriter and musician and vice versa. Thus, in order to adequately address the copyright concerns of producers and their collaborators, Congress should institute comprehensive music licensing reform that strengthens protections and promotes fair market pay for all music creators across all platforms.

Too many laws affecting music creators are rooted in the distant past, failing to adequately reflect today's digital era and hindering creators' abilities to earn fair value for their work. For sound recordings, passing the Fair Play Fair Pay Act (H.R. 1836), introduced by Ranking Member Jerry Nadler and Congresswoman Marsha Blackburn, would immediately benefit thousands of American performers, musicians, recording artists and studio professionals. Fair Play Fair Pay includes the AMP Act, while also ushering in much needed reforms that close outdated loopholes and level unlevel playing fields. Likewise, the CLASSICS Act (H.R. 3301), introduced by Congressman Issa and Ranking Member Nadler, would address sound recordings released before 1972 and help clarify that they too would have federal copyright protections. Similarly, the Music Modernization Act (H.R. 4706), introduced by Congressmen Doug Collins and Hakeem Jeffries, would address antiquated laws affecting songwriters. The Music Modernization Act reforms Section 115 of U.S. Copyright Law for the digital age and ensures that a song is properly valued, while also establishing the first publicly-accessible musical works database that will also include credits for producers.

Together, the AMP Act, the Fair Play Fair Pay Act, the CLASSICS Act and the Music Modernization Act ensure a more effective path forward for the greater music community. Provisions of these bills have already been endorsed by more than 20 music organizations articulating the music community's vision for licensing reform. Pulling together these consensus provisions will create a new and robust licensing framework for the betterment of countless producers and studio professionals, songwriters and performers. And it will lead to a future where music is properly valued and protected.

Congress has an opportunity to solve multiple decades-long problems and inherent inequities in the law by ushering in solutions that are more reflective of the digital era. This is an opportunity for Congress to not only ensure a better present for today's music makers, but to safeguard that the music makers of tomorrow can still enter this industry with the confidence and comfort to know that their work will be valued and protected.

Thank you.