9A. Music Licensing

Moderator:
Jacqueline C. Charlesworth, USCO

Speakers:
Irina D. Manta, Maurice A. Deane School of Law
Richard Reimer, ASCAP
Joseph R. Wetzel, King & Spaulding

Panelists:
David O. Carson, USPTO
Richard Pfohl, CONNECT

April 1, 2016
“[The report contains] some bold proposals. It’s not beach reading season, though, so it’s understandable why the tome hasn’t triggered a mass frenzy just yet.”

– Billboard

“The horribly dull government report could change music forever.”

– VOX
Issues Covered

- Fair compensation for creators
  - Market trends
  - Disparate treatment of rights and uses
- Musical works
  - PRO consent decrees
  - Section 115 license
- Licensing parity
  - Regulated vs. nonregulated
  - Ratesetting standards
- Sound recordings
  - Section 112/114 license
  - Terrestrial performance right
  - Pre-72 sound recordings
- Data issues
- Reporting transparency
## Regulatory Overview

<table>
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<tr>
<th></th>
<th>Sound recording</th>
<th>Musical work</th>
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<tbody>
<tr>
<td>Reproduction/distribution</td>
<td>Freely negotiated</td>
<td>Regulated – CRB</td>
</tr>
<tr>
<td>Digital interactive performance</td>
<td>Freely negotiated</td>
<td>Regulated – rate courts (ASCAP &amp; BMI)</td>
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<tr>
<td>Digital noninteractive performance</td>
<td>Regulated – CRB</td>
<td>Freely negotiated (other PROs)</td>
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<tr>
<td>Terrestrial performance (e.g., AM/FM radio)</td>
<td>No right</td>
<td>Regulated – rate courts (ASCAP &amp; BMI)</td>
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<tr>
<td>Synch</td>
<td>Freely negotiated</td>
<td>Freely negotiated</td>
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## Ratesetting Standards

<table>
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<tr>
<th>Use</th>
<th>Ratesetting body</th>
<th>Authority</th>
<th>Standard</th>
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<tr>
<td>§115 mechanical (musical works)</td>
<td>Copyright Royalty Board</td>
<td>§801(b)(1)</td>
<td>Multifactor policy-oriented approach</td>
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<td>§114 satellite radio (sound recordings)</td>
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<td>§114 internet radio (sound recordings)</td>
<td>Copyright Royalty Board</td>
<td>§114(f)</td>
<td>“Willing buyer/willing seller”</td>
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<tr>
<td>ASCAP/BMI public performance (musical works)</td>
<td>Federal “rate courts” in New York</td>
<td>Consent decrees</td>
<td>“Reasonable fee” (or “fair market value” considering antitrust concerns)</td>
</tr>
</tbody>
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The Current System

“From a copyright perspective, we are trying to deliver bits and bytes through a Victrola.”
Key Recommendations

- Treat sound recordings and musical works more alike in digital realm
  - Musical work owners should be able to opt out of government-regulated licensing for interactive streaming and downloads
  - All noninteractive (including terrestrial radio) under section 112 and 114 licenses

- Move PRO ratesetting to CRB
  - Antitrust oversight to remain with federal courts

- Enact complete sound recording performance right
  - Include under section 112 and 114 licenses
Key Recommendations

- Protect pre-72 sound recordings under federal law
  - Adopt Office’s 2011 recommendations for full federalization
  - Would promote licensing parity and eliminate need for state-by-state compliance

- Modernize section 115
  - Change to blanket license
  - Allow bundling with performance rights

- Maintain section 112 and 114 licenses with adjustments
  - Should also cover noninteractive streaming of musical works (internet radio) and broadcast radio
Key Recommendations

- **Music rights organizations (MROs)**
  - Would administer collective blanket licenses
  - Could bundle mechanical and performance rights
  - Musical work owners could opt out of MRO and license directly
  - Would supply work and ownership data (including opt-out information) to general music rights organization (GMRO)

- **General music rights organization (GMRO)**
  - Non-profit that would maintain central public database of works
  - Would also collect royalties and administer claims system for unidentified works
Since the report was issued ....

- PRO consent decree review continues
  - Partial withdrawal of rights
  - New “fractional licensing” issue
- Continuing litigation against over pre-72 recordings
  - California and New York courts recognize state law performance right
  - Florida rejects right
  - Major labels settle; other suits remain pending
- Spotify and other services sued in class action lawsuits
  - Suits allege failure to obtain mechanical licenses
  - NMPA negotiates opt-in settlement with Spotify; other actions continue
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