

## Developing a Copyright System that Works for Songwriters

by Rick Carnes\*

The organization that I head, the Songwriters Guild of America (SGA), is the oldest and largest national organization in the world run exclusively by and for the creators of musical compositions and their heirs. SGA has approximately five thousand members nationwide and over eighty years of experience in advocating for music creator rights on the federal, state and local levels.<sup>1</sup> SGA's membership comprises songwriters, lyricists, composers and the estates of deceased members. SGA provides a variety of administrative services to its members—including contract analysis, copyright registration and renewal filings, termination rights notices, and royalty collection and auditing—to ensure that songwriters receive fair and accurate compensation for the use of their works.<sup>2</sup> SGA takes great pride in its unique position as the sole untainted representative of the interests of American and international music creators, uncompromised by the frequently conflicting views and “vertically integrated” interests of other copyright users and assignees.

Now, I want to stress that I am not a lawyer. What I am is a professional songwriter who has been lucky enough to have had some modest success over a period of years, including having my songs on over forty platinum albums. And one thing we songwriters know about—and frequently write about—is right and wrong, good and bad. So, as Congress is reviewing the state of copyright in the United States, I would like to use this opportunity to discuss what is right and what needs fixing.<sup>3</sup>

First and foremost, I want to point out that the bedrock principles that a creator has the right to control the use of something he or she has created, and to receive attribution and fair compensation for such use, are rights that I have personally noted are widely embraced—or at least given lip service—by the American public. SGA applauds this fact, but also notes its strong and longstanding support for the incorporation of various free speech concepts into the United States Copyright Act through the fair use doctrine.<sup>4</sup> On that very important point, I simply want to stress the importance of balance. Just as we never want to inhibit the free exchange of

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1. See *SGA Provides 75 Years of Advocacy, Education to Songwriters*, SONGWRITERS GUILD OF AM., <http://perma.cc/PY8C-8CY6> (last visited Jan. 24, 2015).

2. See *id.*

3. See Press Release, H. Judiciary Comm., Chairman Goodlatte Announces Comprehensive Review of Copyright Law (Apr. 24, 2013), <http://perma.cc/5QBL-GUNB>; see also *Copyright Review Process Will Continue into 2015; Education and Circumvention Will Be Next Issues Examined*, BLOOMBERG BNA (Aug. 20, 2014), <http://perma.cc/78PQ-4R8R>.

4. See 17 U.S.C. § 107 (2012) (codification of the fair use doctrine).

ideas and opinions in our society, we similarly should never allow the fair use doctrine to threaten or overwhelm the control and economic rights of creators, such that the exception swallows the very rules of protection meant to support creative motivation. Any discussion of fair use must be viewed in light of the consideration that an exception to copyright protection drawn too broadly will inevitably serve to inhibit and diminish the marketplace of ideas by destroying professional creators' ability to earn a living through the creation of works that richly contribute to public debate.

Moreover, SGA maintains that the current fair use guidelines set forth § 107 of the Copyright Act establish an excellent, flexible framework for courts to settle questions concerning the adequacy of a fair use defense in any copyright infringement action.<sup>5</sup> Expanding or contracting the application of the fair use doctrine by anticipating the presence or absence of various specific facts or conditions in infringement suits would not fix anything. Attempting to do so would not only constitute a fruitless exercise in clairvoyance; it would threaten the very delicate balance that has taken more than three centuries to develop between the rights and interests of creators and the overall public good.<sup>6</sup> The fair use doctrine, in other words, needs to be left alone.

Further in that same vein, it is axiomatic that, in order to avoid creating upset and unfairness in the marketplace, Congress must move carefully in evaluating any proposals for expanding compulsory licensing of musical works to include, say, the use of compositions and sound recordings in compilation works known as "mash-ups." The current system combining creators' rights of control with rights under the fair use doctrine has been more than adequate in creating a licensing marketplace that addresses and satisfies the needs of copyright users (including the creators of derivative works and compilations). That system does not need to be and should not be disturbed.

Similarly, suggestions that the United States should reduce the current term of copyright protection (designed specifically to allow creators to address the economic welfare of their families for a time period limited basically to the lives of their grandchildren<sup>7</sup>) in order to stimulate "faster growth of the public domain" should be rejected outright.<sup>8</sup> The U.S. Copyright Office, Congress and the U.S. Supreme Court have considered this issue on numerous occasions and determined that the current term of copyright protection is not only constitutionally permissible, but serves the dual purpose of supporting the marketplace of ideas by encouraging professional creativity and bolstering the U.S. economy and balance of trade.<sup>9</sup> To reconsider this issue yet again would be an unfortunate waste of

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5. *See id.*

6. *See* Pierre N. Leval, *Toward A Fair Use Standard*, 103 HARV. L. REV. 1105, 1105 (1990).

7. *See* S. REP. NO. 104-315, at 10 (1996).

8. *See, e.g.,* Krista Cox, *Copyright Term Extension and the Public Domain*, ASS'N RESEARCH LIBRARIES POLICY NOTES BLOG (Jan. 24, 2015), <http://perma.cc/GJU3-2BQ6>.

9. *See, e.g.,* Copyright Term Extension Act (CTEA), Pub. L. No. 105-298, 112 Stat. 2827 (1998) (codified at 17 U.S.C. §§ 108, 203(a)(2), 301(c), 302, 303, 304(c)(2) (2012)); *Eldred v. Ashcroft*, 537 U.S. 186 (2003) (holding that Congress' extension of copyright in new and existing works does not violate the "limited times" provision of Art. I, § 8 of the Constitution); *Annual Report 2002: Litigation*,

valuable legislative time far better spent on other issues critical to improving the U.S. copyright system.

Having commented on several principles about which SGA asks Congress not to act, I would now like to turn to those issues of enormous importance to the U.S. music creator community on which positive action by Congress would be enormously helpful and productive. SGA has identified six principles that are necessary for a copyright system that treats songwriters with dignity and respect, which will each be addressed in turn. These are the critical needs for:

- Fair market value compensation for the use of musical works, including the right to terminate transfers of works after a term of years;
- Complete transparency throughout the licensing, use and payment process, including the right of a music creator to affiliate and remain with the performing rights society of his or her choice;
- Full and equal representation of music creator interests in the management of any organization(s) created as so-called “centralized licensing” agents;
- The establishment of a stable and secure digital marketplace in which the theft of musical works is diminished to a level at which commercial interests no longer have to compete against free, stolen goods;
- The establishment of a small claims venue so songwriters have a real and workable remedy when our work is stolen and
- Legislation ensuring same-sex couples have equal rights under the Copyright Act, such as the Copyright and Marriage Equality Act.

#### I. FAIR MARKET VALUE COMPENSATION FOR THE USE OF MUSICAL WORKS

SGA is in accord with the views of the performing rights organizations (PROs) and others expressing the idea that all music creators deserve fair market value compensation for use of their works on all platforms.<sup>10</sup> Fair pay for one’s labor is a basic tenet of a just society. SGA is also in agreement with the PROs and others that the government-imposed consent decrees to which the PROs remain subject are severely outdated. As they are, these consent decrees cripple the ability of the PROs to establish fair market value rates for the performance of musical compositions in digital environments on behalf of music creators.<sup>11</sup>

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U.S. COPYRIGHT OFFICE, <http://perma.cc/K34S-2ZNX> (last visited Jan. 24, 2015) (noting the Copyright Office’s assistance to the Solicitor General in defending the CTEA’s constitutional validity in *Eldred v. Ashcroft*); see also 144 CONG. REC. H1458 (daily ed. Mar. 25, 1998) (statement of Rep. Coble), available at <https://perma.cc/2UHM-MP4X> (noting the CTEA’s benefit to the U.S. economy and trade surplus, as well as its potential to incentivize creation and exploitation of copyrighted works).

10. The PROs are the American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music, Inc. (BMI).

11. See, e.g., ASCAP, *Public Comments of the American Society of Composers, Authors and*

SGA is pleased with the recent announcement that the U.S. Department of Justice Antitrust Division is opening up a review of the ASCAP and BMI consent decrees.<sup>12</sup> SGA strongly believes the consent decrees need to be overhauled in ways that make it possible for American and international music creators to realize fair market compensation for the use of their works, free from the artificial devaluation of royalty rates that results from strict judicial interpretation of decades-old decrees formulated for the pre-Internet and digital distribution era.

One example of this is the untenable results of recent rate-setting decisions concerning the digital music streaming company Pandora.<sup>13</sup> Pandora's entire business model is built upon the exploitation and distribution of musical compositions at rates far below market value, and these decisions stand as a stark example of the need to address the market inequities that flow from the consent decrees before further, irreparable harm is caused to the American music creator community and to American culture.

Moreover, SGA also stands side by side with its music community colleagues in support of the Songwriter Equity Act which was pending in both houses of Congress at the time this Article went to print.<sup>14</sup> This Act would direct the Copyright Royalty Board to utilize the "willing buyer-willing seller" (WBWS) standard in setting future royalty rates pursuant to its oversight mandate under the Copyright Act.<sup>15</sup> SGA believes that the WBWS formula would likely lead to far more equitable results in rate setting for the use of musical compositions, including a long overdue increase in the current statutory mechanical royalty rate. That rate has for a decade stagnated at the level of 9.1 cents per physical or digital copy made and distributed even as inflation and other devaluing factors have advanced at alarming rates.<sup>16</sup>

However, we would also add that we believe that the owners of sound recordings, as well as the creators and owners of musical compositions, deserve to receive fair market value for their works. The pitting of the owners of sound recordings against the creators and owners of musical compositions is based on a false presumption that allows music distributors to avoid paying fair market rates

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*Publishers Regarding Review of the ASCAP and BMI Consent Decrees*, in U.S. DEP'T OF JUSTICE ANTITRUST DIV., ASCAP AND BMI CONSENT DECREE REVIEW PUBLIC COMMENTS (2014), available at <http://perma.cc/VSB5-HALL>; BMI, *Public Comments of Broadcast Music, Inc.*, in U.S. DEP'T OF JUSTICE ANTITRUST DIV., ASCAP AND BMI CONSENT DECREE REVIEW PUBLIC COMMENTS (2014), available at <http://perma.cc/5L8E-JYCJ>.

12. *Antitrust Consent Decree Review: American Society of Composers, Authors and Publishers/Broadcast Music, Inc.*, U.S. DEP'T OF JUSTICE ANTITRUST DIV. (June 4, 2014), <http://perma.cc/93XY-D7UT>.

13. See *In re Pandora Media, Inc.*, 6 F. Supp. 3d 317 (S.D.N.Y. 2014); see also Press Release, American Society of Composers, Authors and Publishers, ASCAP Statement on Pandora Rate Court Decision (Mar. 14, 2014), <http://perma.cc/YS2C-47K8>.

14. See Songwriter Equity Act of 2015, H.R. 1283, 114th Cong. (2015); Songwriter Equity Act of 2015, S. 662, 114th Cong. (2015).

15. See Songwriter Equity Act of 2015, H.R. 1283, 114th Cong. § 5 (2015); Songwriter Equity Act of 2015, S. 662, 114th Cong. § 5 (2015).

16. See COPYRIGHT ROYALTY BD., U.S. COPYRIGHT OFFICE, MECHANICAL LICENSE ROYALTY RATES (Jan. 2010), available at <https://perma.cc/C2ZF-R5VE?type=pdf>.

for both, with songwriters and composers suffering deeply unfair financial discrimination as a result. Further in that regard, SGA is a founding member of the Music Creators North America coalition (MCNA), and as such, is pleased to announce that MCNA's *Study Concerning Fair Compensation for Music Creators in the Digital Age* has recently been published.<sup>17</sup> This study is widely available on the Internet and in printed form, and expands on the views I am expressing here in a much more detailed fashion.

As a closing thought on the issue of fair remuneration, I want to take this opportunity reiterate my past statements in staunch support of the right of termination already enshrined in U.S. copyright law.<sup>18</sup> SGA was the foremost proponent for incorporation of the termination right into the Copyright Act of 1976 and continues to believe that it is one of the most important reflections of moral rights that Congress has ever incorporated into American law. Congress has recognized that the value of copyrighted works cannot be adequately determined at the time of their creation.<sup>19</sup> Therefore, fairness and morality dictate that there must be a right of termination for creators to ensure that they have the opportunity to realize the true value of their works—a concept that SGA believes, moreover, is on the verge of global recognition. With that in mind, SGA would like to express its active support for the principle that the rights of recording artists to terminate grants of rights in sound recordings to recording corporations (which SGA believes are not the proper subject of work-for-hire agreements under the Copyright Act<sup>20</sup>) must be recognized as sacrosanct under law. SGA also supports exploration by Congress of a change in the termination provisions of the U.S. Copyright Act, especially § 203, that would make termination automatic and not subject to the myriad, complex formalities that creators and their heirs are now forced to satisfy in order to exercise such rights.

## II. COMPLETE TRANSPARENCY THROUGHOUT THE LICENSING, USE AND PAYMENT PROCESS

For close to two decades, American music creators have been assured again and again by leaders of the technology community, by members of the marketplace of copyright licensees and by its own music publisher partners, that the great benefit of the digital age for songwriters and composers is the promise of “transparency.”

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17. PIERRE-E. LALONDE, MUSIC CREATORS NORTH AMERICA, *STUDY CONCERNING FAIR COMPENSATION FOR MUSIC CREATORS IN THE DIGITAL AGE* (2014).

18. See *Moral Rights, Termination Rights, Resale Royalty, and Copyright Term: Hearing Before the Subcomm. on Courts, Intellectual Prop. & the Internet of the H. Comm. on the Judiciary*, 113th Cong. 19 (2015) (statement of Rick Carnes, President, Songwriters Guild of America). See generally 17 U.S.C. § 203 (2012) (termination of transfer provision).

19. See H.R. REP. NO. 94-1976, at 124 (1976) (stating that a termination provision “is needed because of the unequal bargaining position of authors, resulting in part from the impossibility of determining a work’s value until it has been exploited.”).

20. See 17 U.S.C. § 101 (2012) (defining “work made for hire”). For an overview of the legal status of sound recordings as works made for hire, see Devon Spencer, *Sound Recordings in 2013: A Legal Brief*, MUSIC BUS. J., Nov. 2011, at 4.

The brave new world of immutable ones and zeros, it has been pledged to creators, will at last put an end to decades of obfuscation and uncertainty concerning the accurate payment and distribution of royalties. Unfortunately, these promises of full disclosure and access for creators in the tracking of copyright uses and the concomitant payment of royalties have so far gone largely, if not completely, unfulfilled. The issue of mandatory transparency concerning intellectual property licensing and transactions, in fact, is one that Congress should consider as part of its review of music licensing issues. Any new or modified licensing system without a requirement of complete transparency will still leave songwriters at an impossible disadvantage.

Further on that subject, I wish to point out two areas of music licensing activity in the digital marketplace that currently require especially intense scrutiny if promised levels of transparency are ever to be realized.

The first category of activity concerns the so-called “pass-through” mechanical license established under § 115 of the Copyright Act (through provisions of the Digital Millennium Copyright Act).<sup>21</sup> By holding licenses permitting the manufacture and distribution of physical copies of sound recordings embodying musical compositions, mechanical licensees of music (such as record companies) may “pass through” such licenses to digital distributors of the sound recordings.<sup>22</sup> This creates a situation in which the creators and owners of musical compositions have no privity of contract with online music distribution giants such as iTunes. Therefore, they must rely on sometimes adversarial record company “intermediaries” for the monitoring and payment of royalties earned via online download usage. To the knowledge of SGA, not a single royalty audit of online distributors of music by the creators and owners of musical compositions has ever taken place due to this licensing anomaly. Under such circumstances, music creators simply do not have a mechanism through which they can verify that proper monitoring and payment of royalties by online music download distributors is taking place. This manifestly unfair and opaque system should be quickly and decisively rectified.

The second category of licensing activity evidencing a lack of transparency is even more troubling to the music creator community: it concerns a movement away from the important tradition of collective performing rights licensing through the PROs that has protected and benefited the community of American music creators for over one hundred years. The trend toward music publishers directly licensing performing rights in musical compositions to copyright users causes grave concern to the music creator community because of the utter lack of transparency in the direct licensing process.

Since the establishment of ASCAP in 1914, music creators in the United States have been able to rely upon the PROs for licensing, collection and distribution services in the performing rights context, pursuant to a one-on-one relationship

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21. *See* 17 U.S.C. § 115 (2012).

22. *See id.*

between each creator and his or her chosen PRO.<sup>23</sup> This system has not only provided music creators with the crucial assurance that an important source of revenue will be paid directly to them by the PRO, but it has also fostered the development of a robust partnership of advocacy for music creator rights between SGA and the PROs over the past eight decades.

Music publishers, however—citing the unfairly stifling effects of the consent decrees on the ability of PROs to negotiate fair market royalty rates for the performance of musical works in the digital era—have recently begun in earnest to consider following through on their announced intentions to withdraw their catalogs from the PROs and to license performing rights directly.<sup>24</sup> As noted above, SGA fully supports efforts to revamp the consent decrees in ways that will solve the fair market royalty rate-setting problem. But SGA cannot and does not support a solution that will allow music publishers to partially or fully withdraw their catalogs—including the rights of both American and foreign music creators from the PROs—without a formal commitment to complete transparency as well as to granting music creators the full value of their rights.

Some major music publishers have announced that they may continue to utilize the services of the PROs to distribute royalties to music creators directly, even following the withdrawal of their catalogs from the PROs.<sup>25</sup> Yet not a single such publisher has announced that it intends to share with those PROs full and complete data concerning the terms of its licensing arrangements, including fees, advances and related contractual benefits. This lack of transparency will inevitably result in music creators being denied the full value of their rights. This is an issue where we may part ways with our PRO friends, in that we do not consider the “partial withdrawal” of publisher catalogs to be in the best interests of songwriters, especially given the very significant problem of lack of upstream transparency.

Finally, in this regard, SGA would like to express its belief that one of the most important rights of any music creator is the right to affiliate and remain with the performing rights society of his or her choice. No transferee of copyright (whose rights are generally subject to termination by law or to other stipulations by contract) should have the unilateral right to disassociate a music creator from his or her performing rights society without specific authority of such creator.

### III. EQUAL REPRESENTATION OF MUSIC CREATOR INTERESTS IN THE MANAGEMENT OF “CENTRALIZED LICENSING” ORGANIZATIONS

SGA looks forward to the opportunity to consider and comment on any

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23. Press Release, ASCAP, ASCAP Celebrates 100th Birthday with Top Songs Lists; NYC and Tennessee Proclaim February 13th “ASCAP Day” (Feb. 13, 2014), <http://perma.cc/9CGX-FCNV>.

24. See, e.g., Nate Rau, *Sony/ATV Threatens Withdrawal from ASCAP*, BMI, TENNESSEAN (July 15, 2014, 12:14 AM), <http://perma.cc/ZK3W-6WCW>.

25. See *In re Pandora Media, Inc.*, No. 12 Civ. 8035(DLC), 2013 WL 5211927, at \*3 (S.D.N.Y. Sept. 17, 2013) (noting that ASCAP “continue[d] to perform administrative royalty distribution services even with respect to withdrawn rights for at least one of the withdrawing publishers on a contractual basis”).

proposals that may be forthcoming from Congress and/or the music and recording communities for the establishment of a more streamlined, centralized and potentially combined music and sound recording licensing system. SGA can state with certainty that, in considering the merits of any such proposals, it shall be guided by many of the same essential principles that it expressed in 2006 regarding the consideration of the Section 115 Reform Act (SIRA) legislation.<sup>26</sup> These include the sine qua non for music creator community support, namely the need for equal creator representation on the governing boards and any dispute resolution bodies of any designated licensing agent or agents. In addition, SGA will insist that prohibitions against the surrender of rights of creators through “letters of direction” will be included in any proposals. This will ensure that the rights granted to creators are not easily vitiated by the imposition of marketplace pressures by copyright administrators in inevitably superior bargaining positions. There are also other essential components of any licensing systems, including: (1) a bar against unchecked spending authority by any designated agent or agents; (2) transparency in providing data (at no or minimal cost) to songwriters about collections and disbursements; (3) timely distribution of royalties; (4) fair distribution to creators of unclaimed funds and (5) mechanisms to communicate those thoughts and conditions in the future.

#### **IV. ESTABLISHMENT OF A STABLE AND SECURE DIGITAL MARKETPLACE WHERE THE THEFT OF MUSICAL WORKS IS DIMINISHED TO A LEVEL AT WHICH COMMERCIAL INTERESTS NO LONGER HAVE TO COMPETE AGAINST “FREE”**

The looting of musical works on the Internet has continued nearly unabated over almost two decades, during which time the income of the music and recording industries (and especially of individual music creators and recording artists) have been severely diminished.<sup>27</sup> A basic sense of justice, as well as the intrinsic rights that connect a creator to his or her work, require addressing the drastic need to curtail online digital theft of musical works.

Moreover, accepting the notion that licensed music distributors and services must be permitted to artificially depress royalty payments because they must compete against black market free goods stands the principles of fairness and the sanctity of property ownership on their heads. In any evaluation of the viability of any potential licensing solutions considered by Congress, there must be a recognition that no licensing scheme can possibly address the royalty needs of the music creator community unless additional systems and laws are put in place to control or eliminate theft.

On a related issue, the § 512 notice-and-takedown provisions of the Copyright

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26. See *Discussion Draft of the Section 115 Reform Act (SIRA) of 2006: Hearing Before the Subcomm. on Courts, the Internet & Intellectual Prop. of the H. Comm. on the Judiciary*, 109th Cong. 20–29 (2006) (statement of Rick Carnes, President, Songwriters Guild of America).

27. See Joshua P. Friedlander, *Nobody Stole the Pie*, RECORDING INDUS. ASS'N OF AM. (Mar. 3, 2010), <http://perma.cc/YUN6-GK5Q>.



Act are in dire need of review and revision.<sup>28</sup> In an unfortunate quirk of legislative history, the Digital Millennium Copyright Act at the last moment placed the entire burden of policing the Internet against infringement on the creators and owners of copyright. The Act went so far as to establish a “safe harbor” for online service providers and websites through the notice and takedown provisions, even if, in many cases, those distributors of music are well aware that their services are being used to abet massive infringement.<sup>29</sup> Moreover, the “whack-a-mole” problem of infringers posting and reposting infringing material on a site that has already received valid notifications of infringement was raised in recent Congressional hearings, further evidencing the enormous time and expense creators are forced to spend attempting in vain to protect their rights against unscrupulous repeat offenders.<sup>30</sup>

In short, the notice and takedown provisions as they are currently constituted place an enormously unfair burden on creators and copyright owners, who frequently end up not being able to adequately enforce their rights even when they *are* able to afford the time and expense of monitoring the unlicensed use of their works on the Internet. That must change.

#### V. THE ESTABLISHMENT OF A SMALL CLAIMS VENUE SO SONGWRITERS HAVE A REAL AND WORKABLE REMEDY WHEN OUR WORK IS STOLEN

The right to a remedy when wronged is an essential element of our legal system and the ability of a creator to have some control over the fate of his or her work. Thus, SGA urges Congress to establish a small claims venue so songwriters actually have a real and workable remedy when our work is stolen. A right without a remedy is, after all, no real right at all. And a system that perpetuates such an amoral result is one that is severely in need of adjustment.

Such small claims and random infringements may seem unimportant to some of the larger stakeholders in the copyright community, but taken in the aggregate, they have an effect on the livelihoods of individual creators akin to the infamous torture “death by a thousand cuts.”

It is an all too common complaint among individual songwriters that they have no effective remedy for infringement under the current system. That is not to say that a remedy does not exist; it is simply a recognition of the fact that the challenges and expense of bringing an action in federal district court put the remedy out of reach for most songwriters, particularly when a small claim is involved.

SGA would like to emphasize its support of the work of the Copyright Office regarding the potential development of a small claims court system to address the

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28. See 17 U.S.C. § 512(b)–(d) (2012).

29. See *id.* § 512(a)–(d).

30. Section 17 of Title 17: *Hearing Before the Subcomm. on Courts, Intellectual Prop., & the Internet of the H. Comm. on the Judiciary*, 113th Cong. 3 (2014) (statement of Rep. Jerrold Nadler, Ranking Member, Subcomm. on Courts, Intellectual Prop., & the Internet).

needs of individual music creators for an affordable means of rights enforcement.<sup>31</sup> SGA looks forward to working with Congress and the Copyright Office to further the discussion of the small claims issue as an important component of curbing rampant online infringement of musical works.

## VI. THE COPYRIGHT AND MARRIAGE EQUALITY ACT

SGA supports the efforts of Representative Derek Kilmer in the House of Representatives and Senator Patrick Leahy in the Senate to ensure same-sex couples have equal rights under the Copyright Act. The Copyright and Marriage Equality Act would update the Copyright Act to ensure that when a copyright holder in a same-sex marriage dies, his or her rights to original works (including the crucial rights of termination) are passed along to the surviving spouse along with other descendants.<sup>32</sup> Nearly every music creator and organization in the United States stands behind this legislation as a long overdue expression of fairness for creators.

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31. See U.S. COPYRIGHT OFFICE, *COPYRIGHT SMALL CLAIMS* (2013), available at <http://perma.cc/35EW-LJ5C>.

32. Copyright and Marriage Equality Act, S. 23, 114th Cong. (2015); Copyright and Marriage Equality Act, H.R. 238, 114th Cong. (2015).