

**Ed Christian, Chairman, Radio Music  
License Committee, Inc. (RMLC)  
Wednesday, June 25, 2014  
Music Licensing Under Title 17: Part Two**

**Hearing on “Music Licensing Under Title 17: Part Two”  
Before the House Subcommittee on Courts, Intellectual Property and the Internet  
Chairman, Bob Goodlatte  
Statement of Ed Christian scheduled for June 25, 2014**

Mr. Chairman, Ranking Member Nadler, and members of the Subcommittee, my name is Ed Christian and I am the Chairman of the Radio Music License Committee, Inc. (“RMLC”). I have been a broadcaster for over 50 years now. The RMLC, which has also been in existence for well over 50 years, is a non-profit that represents the collective interests of some 10,000 local commercial radio stations in the United States in connection with music licensing matters. During the decades of its existence, the RMLC has been involved in extensive music license negotiations with primarily the two largest U.S. Performing Rights Organizations (“PROs”) – the American Society of Composers, Authors and Publishers (“ASCAP”) and Broadcast Music, Inc. (“BMI”).

The longstanding mission of the RMLC has been and continues to be to provide a competitive market for music licensing in which local radio stations pay a fair price for performance rights and copyright owners receive equitable compensation associated with these rights payments. The RMLC has historically achieved fair and reasonable licenses for the radio industry with ASCAP and BMI through a combination of industry-wide negotiations and, as necessary, federal “rate court” litigation. More recently, the RMLC has found itself involved in antitrust litigation involving the smallest of the PROs in the U.S. – SESAC – in order to curb this company’s anti-competitive licensing practices.

***No question about it.*** The digital era has resulted in a sea change for the music industry generally, and the music licensing process in particular. When taking stock of where we are, today does not look like yesterday and tomorrow will not look like today. Regarding reforms, stakeholders in this process should seize the opportunity to develop a music licensing process that allows creators a fair chance to reap their just reward by, *first*, insuring that existing license fees paid by music users are not disproportionately diminished in their journey from licensee to the copyright owner. **Before we simply attribute the perceived economic injustices ascribed to creators of musical works to the level of fees paid by music users, we need to carefully scrutinize the royalty distribution process that dictates how and what creators are paid relative to incoming license fees.** Until we are satisfied that the current royalty distribution process works efficiently and fairly for creators, the conversation should not turn at all to level of payments made by music users generally, and the radio industry in particular.

Any licensing redistribution concepts that rely upon the radio industry for funding are misguided. With particular reference to the recurring demand by the recording industry for a sound recording performance right to be imposed upon terrestrial radio, please understand that the radio industry is not some vast pot of riches that can be tapped as a bailout for a recording industry that has failed to execute a digital strategy that addresses a decline in its own brick and mortar income. Congress *unambiguously* intended that, in exchange for unique promotional support afforded record labels and artists, terrestrial radio should be treated differently from other transmission platforms. That premise has not changed and the RMLC strongly supports our industry trade organization, the National Association of Broadcasters, in

its efforts to oppose imposition of this licensing obligation that would cripple a radio industry that has been financially treading water for years now. We also thank those representatives in Congress who have expressed support for our industry position on this issue by signing on as co-sponsors of The Local Radio Freedom Act resolution.

The hypocrisy does not end with the recording industry seeking a new fee tied to the sound recording right that, if imposed on radio, would effectively bite the promotional hand that feeds the recording industry. We have recently witnessed the PROs pushing for passage of a bill dubbed the Songwriter Equity Act. If passed, this legislation would eliminate the existing firewall provision in the Copyright Act that prohibits, for instance, ASCAP and BMI rate court judges from taking note of rate precedents tied to the sound recording performance right. The dirty little secret here is that it was these same PROs that insisted on this firewall in the first instance. Why? Because they feared that, over time, their slice of the license fee pie tied to the musical composition performance right might be diluted if license fees tied to the newly-established sound recording performance right continued to grow. Now that the PROs see that the grass is literally “greener” on the other side of the fence, where a pure webcaster like Pandora pays a reported 50% or more of revenue to the SoundExchange, the PROs salivate at the prospect of gaining parity with respect to the musical composition rights that they administer. One has to believe that the representatives in Congress who support this legislation are unaware of the history that frames the issue and the hypocrisy that dominates it.

It's important to distinguish here between pure webcasters (or internet radio), satellite radio, and terrestrial radio. Internet radio does not represent a "free" platform to consumers who need to pay an internet service provider (or "ISP") for access, and who often pay a subscription fee. Satellite radio generally requires the consumer to pay an excess fee as well. Terrestrial radio, on the other hand, is free to the consumer and prides itself on local service to the community. It's critical that Congress judge the local radio industry upon its particular merits alone and not as a comparable to other transmission platforms. It's ironic that within the context of the digital "perfect storm", local radio, which utilizes primarily *analog* transmissions as the basis for its platform, has been broadly tagged as the problem by stakeholders in the music industry. To be clear -- the only crime that terrestrial radio has committed is to continue to represent the most important promotional tool for artists and the recording industry. Otherwise, why would labels and artists continue to place a premium on securing terrestrial radio airplay?

Local radio station operators are responsible for obtaining licenses for the public performance of copyrighted musical works used in the programming and commercials they broadcast. For the vast majority of radio broadcasters, this equates to a blanket license fee that permits a station to air any and all music from a particular PRO's repertory without having to account for actual music usage; this, despite the fact that a typical radio station may, at any given time, rely upon a library of only 400-500 songs for its playlist. Traditionally, the administrative ease associated with the blanket license has outweighed antitrust aspects associated with a one-size

fits all structure that permits PROs to aggregate musical works in a way that has the hallmarks of a monopoly.

In considering the scale of the radio industry, with some 10,000 stations, the RMLC believes that collective licensing in some form is efficient and advisable. In this regard, the ASCAP and BMI rate courts, coupled with their independent and experienced federal judges, have historically been able to deliver appropriate rate-setting oversight. A purely free market approach to music licensing, coupled with the absence of consent decrees monitored by the Department of Justice, Antitrust Division, would wreak havoc upon a system that has served us well for decades. Any reforms that weaken the existing consent decree/rate court system will represent a step backward and invite market abuse. The fact that there are currently two antitrust cases against SESAC in federal court is a testament to what happens in the absence of government supervision of entities that wield the leverage of aggregated musical works combined with the “club” of serious statutory penalties for copyright infringement. In this regard, Congress [as well as the DOJ] must remain cognizant of the fact that there are new PRO players on the scene that also need to be placed under a consent decree regimen in order to preempt marketplace abuse.

Now, if Congress is dedicated to bold reform of the music licensing process, it may want to explore the prospect of a supra licensing collective along the lines of what has already been proposed by other stakeholders in this process. Outside of Brazil, it is hard to identify another country in the world that supports multiple licensing entities that administer a single right such

as the public performance right in the musical composition. The fact that the U.S. continues to maintain three organizations for this purpose – ASCAP, BMI, and SESAC – sets up an enormously complicated and burdensome music licensing structure and likely guarantees that precious royalty payments due creators are being diluted due to PRO administrative redundancies, not to mention the difficulty encountered by foreign licensing agencies in attempting to identify entitled parties of U.S.-controlled works. Indeed, this example doesn't even address the role of other licensing agencies such as The SoundExchange and The Harry Fox Agency that further contribute to the music licensing morass. A supra licensing entity could represent a paradigm shift that results in both process and monetary efficiencies that might well result in enhanced royalty payments to creators. In this regard, the RMLC brings longstanding professional expertise to the table and we stand ready to work with other stakeholders in fashioning a pragmatic music licensing regime that is fair to all and preferential to none.

Of course, in order to facilitate music licensing transactions and competition, particularly as to digital transactions, transparency of rights control is vital. Unfortunately, to date, the PROs have chosen to obfuscate control of particular musical works and this makes it very difficult for music users to attempt new licensing alternatives geared to direct licensing with copyright owners. Congress must appreciate that there is no reason whatsoever for the PROs to evade transparency by continuing to deprive music users of access to a real-time, comprehensive works database of their respective repertory offerings.

In conclusion, the RMLC has and always will recognize the contributions of musical creators who wish to be fairly compensated for their efforts. The RMLC's goal is to participate in the fashioning of "win-win" music licensing reforms that ensure sustainable and workable economic conditions for creators and broadcasters alike.

Thank you.