



# NEWSLETTER

An Entertainment Industry Organization

## Copyright Reform: We need to be Pragmatic

By Dina LaPolt, Esq.

### The President's Corner

What an honor and privilege it has been to serve as your president this year. Thanks to the CCC's Officers, Board, Past Presidents, and to all the panelists throughout this entertaining & informative season. Thanks to our members for all your support during the year – much appreciated. (And yes, thank you for laughing at some of my better jokes).

Despite my penchant to inject a bit of humor into the proceedings, you'd be hard-pressed to find someone more passionate about the protection of copyrights than I, and therefore I can think of no better way to conclude this season than with tonight's subject matter and star-studded panel. As I wrote in the President's message this year, the importance of the protection of intellectual property goes beyond our economic concerns (as important as they are), and impacts the very core of our society. We find ourselves in a time where making sure your voice is heard, and industry unity are the most important tools we have – let's not let them go to waste.

All the best,

**Eric Palmquist**  
President, California Copyright Conference.

We all know that the music industry is operating under an antiquated copyright system but what do we do about it? Originally, music was built as a product-based business, where the focus was on selling physical records. The Copyright Act, as is, works reasonably well with that model. However, certainly over the past ten years, we have moved into a service-based business, and our copyright law does not effectively address many of the issues we face on a daily basis. The last major overhaul of our copyright was the Digital Millennium Copyright Act in 1998, which, in and of itself, took several years to negotiate and pass into law. Fifteen years later, technology has outstripped what was in existence in 1998. Despite several smaller amendments since the DMCA, we are still leaps and bounds from where we need to be. This age of perpetual innovation demands a new Copyright Act that protects the interests of creators and content owners without stifling technological advances or disenchanting potential consumers.

Against that backdrop, I applaud Register of Copyrights Maria Pallante's call for reform. Whether you agree or disagree with her propositions, it is imperative to acknowledge that she would come under attack no matter what she suggested. If Register Pallante aligned herself with creators, the technology companies would rebel. If she suggested curtailing creators' rights in favor of the technology companies, the artistic community would be up in arms against her. Knowing that her head would be on the proverbial chopping block no matter what, Register Pallante recognized several problems with current

legislation and prepared solutions for each. Instead of criticizing the minute details of her proposals, we should be grateful that we have a Register who is taking this initiative, and be encouraging our legislators in Congress to do the same.

This brings us to the crux of the stagnation of copyright reform in general. From time out of mind, the music industry has cannibalized itself. At the outset, managers, agents and record companies made their fortunes on the backs of recording artists, many of whom could not afford to support themselves despite their success. Then, with the introduction of the sound recording copyright under the 1976 Act, the music publishers and the record companies began their battle. This trend has continued all the way down to individual band members, producers, and songwriters, arguing about copyright splits and controlled composition clauses. If we cannot even settle disputes amongst ourselves, how can we possibly hope to accomplish anything on a larger playing field?

Register Pallante recognizes this constant barrier to progress in her report. She notes that, taking into account the *“intensity with which interested parties across the copyright spectrum sometimes make their views known, and the public’s confusion if not aversion when it comes to copyright issues, and it is little wonder that Congress has moved slowly in the copyright space.”* Pallante further notes that *“...if one needs an army of lawyers to understand the basic concepts of the law, then it is time for a new law.”* She is absolutely right. Anyone who deals in intellectual property can vouch for the fact that copyright is an incredibly intricate and complex area of law, with countless interested parties. Copyright touches the lay consumer’s life on a daily basis. How can people be expected to obey the law when they do not even know what the law says? On top of the complexity, by virtue of the entertainment industry being what it is, issues in copyright reform are frequently litigated in the press. The combination of the two makes it nearly impossible for legislators to wade through the differing agendas and for the public at large to truly understand proposed changes to an Act that affects so many aspects of their lives.

We are also hindered by over-negotiation. Register Pallante states in her report that the 1976 Act negotiation was made infinitely more difficult than it had to be by over-negotiation. While the “big picture” may be clear, when it comes time to put pen to paper, the minutia gets in the way of moving forward. As a transactional attorney, I can attest to the frequency of this problem. “Over lawyering” is a big problem in our business. As a transactional attorney, I tend to focus on those provisions of a contract that help create an artist’s career rather than those provisions that mean nothing unless a career is created. It is time for all of us to take a few big steps back and focus on the forest as a whole rather than the individual trees.

As an industry, we must stand up against these assumptions. And that means that every person working in the music business must be involved in the process, from songwriters to publishers, managers, lawyers, business managers, technologists, interns to executives, recording artists to record companies. There are issues of critical importance in front of us right now. The United States is alone with China, Iran, North Korea, and Rwanda in its refusal to recognize a public performance right for sound recordings. In the wake of the district court decision in *Capitol Records v. ReDigi*, parties are questioning a right of first sale for digital files. Will orphan works be left to molder because their authors are unknown, or will we find a way to license them? All of these changes will be very slow coming, if they resolve at all, if we cannot come together, decide what is important, and fight for it.

I ask you all now to approach the upcoming debate as pragmatists and intellectuals. We must set aside our emotions and fiery passion – traits that make the entertainment industry so special and unique – and look at the cold, hard facts. The current Copyright Act is like shoving a square peg in a round hole. It needs to change, and it cannot do so unless we are all engaged in the process. Have healthy, productive debates and discussions with your peers. Contact your local senators and representatives. Introduce them to your artists, and explain why things have to change.

It may take compromise, but if we win even one more income stream for creators, isn’t the trade off worth it? I think so. @dinalapolt @lapoltlaw

# PANELIST BIOS

## JAY L. COOPER, ESQ.

Jay L. Cooper's practice focuses on music industry, motion picture, television, multimedia and intellectual property issues. He represents individuals and companies on intellectual property matters including recording and publishing agreements for individual artists and composers; actor, director, producer and writer agreements in film and television; executive employment agreements; complex acquisitions and sales of entertainment catalogs; production agreements on behalf of music, television and motion picture companies, and all entertainment issues relative to the Internet.

Jay has guest lectured at Harvard Law School, UCLA Law School, USC Law School, USC Music School, Stanford Law School, Boalt Hall, Tulane Law School, the Florida Bar Association, the Texas Bar Association, the Practicing Law Institute, the California Copyright Conference, MIDEM, the American Film Market, the Cannes Film Festival, the American Intellectual Property Law Association, the U.S. Copyright Society, and the American Bar Association. He is also a former adjunct professor of Entertainment Law at Loyola Law School.

## MARK GOLDSTEIN

Mark Goldstein until August 2004 was senior vice president, Business and Legal Affairs at Warner Bros Records Inc., when he retired to continue his full-time teaching at USC together with his work as a consultant in the entertainment industry.

After his graduation from Harvard in 1975 and from the USC Law School in 1978, Mr. Goldstein was an entertainment lawyer in private practice until 1983 when he moved to CBS Records in Los Angeles. In 1987 he went to Warner Bros Records, where he eventually headed up the Business and Legal Affairs department for over a decade.

Complementing his work as an attorney and executive, Mr. Goldstein maintained a busy teaching schedule. In addition to his teaching at USC, he has lectured at Loyola Law School in Los Angeles and at Southwestern Law School. He has been a member of the faculty of the ALI-ABA Entertainment and Sports Law Program in Los Angeles and of the Professional Law Institute in Los Angeles in the Entertainment and Sports Law area. He has spoken regularly as a panelist for organizations ranging from the Beverly Hills Bar Association to the Songwriters Resource Service as well as at conclaves such as Comdex and the California Copyright Conference.

Mr. Goldstein is the author of "Record Label Tour Support" in *Business and Legal Aspects of Live Concerts and Touring*, co-author of "Contracts in the Music Industry" in *Counseling Clients in the Entertainment Industry* and was a participant in the "Roundtable on Technology Issues in Music Law" symposium, a transcription of which was published in 2000 in the Loyola Law School Law Review.

In 1996 Mr. Goldstein was the Honoree at the Zafiris Distinguished Lecture Series, Berklee College Of Music.

## DINA LAPOLT, ESQ.

When Dina became an attorney she immediately focused her attention on representing music clients, her area of greatest interest. Her passion for music began over thirty years ago having studied music in high school and college and teaching guitar lessons to children. Prior to becoming an attorney, she was a music artist, a talent buyer/concert promoter, a booking agent, and a personal manager; all of which have allowed her to bring a unique insight to the practice of law. Dina is a rarity in the world of entertainment law; a talented attorney whose insightful approach to deal-making and incomparable care for each of her individual client's needs has put her at the top of her field. Dina is an expert at solving complex and sophisticated legal issues, whether relating to contracts, copyrights or royalty audits and analyses and with her background in both the law and the music business, she combines a fresh perspective to problem solving with extraordinary organizational skills. In addition to her expertise in the music business and her representation of multi-platinum Grammy award winning recording artists, songwriters, and music producers, Dina also handles matters relating to the merchandising, radio, book publishing, motion picture and television industries. Specifically, she was the head of business affairs for a major television syndication and she has developed and negotiated production deals for feature films, made for television movies, and Broadway plays.

Dina is regularly asked to speak all over the world on music business and entertainment law panels which have included SXSW and the Sports and Entertainment Law Initiative in Austin, Texas; seminars and lectures for the National Association of Recording Industry Professionals in Los Angeles, San Francisco, and New York; Future of Music in Washington, DC; Cutting Edge Music Business Conference in New Orleans; NEMO Music Business Conference in Boston, CMJ in New York; Atlantis Music Business Conference in Atlanta; and MIDEM, the annual International Music Business Conference in Cannes, France. Dina has also been featured on numerous talk radio and television shows across the country and has authored numerous articles on the music business, which have been published in the Entertainment Publishing and the Arts Handbook, Mathew Bender Entertainment Industry Contracts: Negotiating and Drafting Guides, publications for the International Association of Entertainment Lawyers, A&R Registry, California Lawyers for the Arts Music Business Seminar and various music business publications. She has been quoted in national magazines including Billboard, Rolling Stone and Music Connection. In addition to all her speaking engagements, Dina has been teaching "Legal and Practical Aspects of the Music Business" in the Entertainment Studies Department at the UCLA Extension Program since 2001. She lives a balanced life by combining her passion for fitness and health by working out regularly and practicing yoga in each city she travels to.