November 17, 2015 - What's App in Music?

NEWSLETTER

An Entertainment Industry Organization

Politicians: Respect and Protect Copyright

By Steven Tyler

This week, I sent a letter* to Donald Trump's campaign asking to not use my music at political rallies. My intent was not to make a political statement, but to make one about the rights of my fellow music creators. But I've been singing this song for a while now.

In February, I became a founding member of the GRAMMY Creators' Alliance. The Alliance joined many big names in the music business, not for ourselves, but for the up-and-coming songwriters and artists. To bring hope. To try and change laws that are hindering the music biz. To make sure that songwriters and artists can practice their art without threat of extinction. To make sure those who practice their craft get paid fairly when others use their work.

I'm not alone in my efforts to bring change. Today, more than 1,650 musicians and songwriters will be visiting their local congress members in their home offices as part of our grassroots program, GRAMMYs in my District.

Big changes are happening right now in copyright reform as a result of massive technology changes and with the way fans pay for music and consume music. These changes can be a good thing for songwriters and up-and-coming artists, if we are paid fairly by those who make money using our work. Everyone deserves to be able to pay their bills, support their families, and do the work they love. Too many can't because we are being shortchanged by new and old technology companies.

Now, I don't blame all the new technologies, some are really cool. You can listen to music wherever you are, make up your own playlists, and hear what you want when you want. That's powerful, and at least they are paying creators something! The old technology companies do not pay artists; not one penny! And they are paying songwriters the minimum that the law says they should pay.

The laws need to change. We have so many laws in America that control how we get paid for our music. Seventy-five percent of songwriters' income in the U.S. is regulated by the government? Too much government intervention in art and music is a bad thing.

The President's Corner

Some experts say that apps will replace websites in the future. With music being a big part of many entertainment based apps, if all parties involved don't figure out how to license and report content efficiently with the ways apps use music now, will what comes next be any easier? Will the difficulty of licensing music in apps prevent them from being a significant source of income for the music industry? I'm curious to hear what our panel of experts will say about this tricky landscape.

We've seen many public disputes between politicians and artist over the years from Springsteen/Reagan to the more recent Aerosmith/ Trump battles. When it comes to using music in various aspects of political campaigns, there are many different ways music is used and many different rules that apply. CCC Past President Michael Morris will be shedding some light on this often misunderstood area of music use in our copyright update.

Next month we will be having the CCC holiday party on WEDNESDAY December 16th at the lovely Cucina Bene in Sherman Oaks (note this is not our usual Tuesday date.) Please join us for our annual silent auction (benefitting the CCC Scholarship Fund) and a fun filled dinner. I understand we have some really cool stuff being auctioned this year. January will bring on our annual Film and TV panel moderated by CCC Past President Eric Polin. Hope to see you all there!

Diane Snyder-Ramirez
President, California Copyright Conference

Just as my record label sister, Taylor Swift, wrote her letter to Apple in June, this is my open letter to everyone. We need change. Songwriters, producers and artists can't survive on what they are being paid.

I received a real lesson on this a couple years ago when I started to look into laws surrounding copyright. I found out that there was an effort underway in Washington to strip certain important approval rights of artists and songwriters for derivative use of their work. When I heard about this crazy idea, I submitted an official comment paper to the folks in Washington D.C. along with a few of my friends like Don Henley and Joe Walsh of the Eagles, deadmau5, Britney, Dr. Dre and Sting explaining why this was a bad idea. It's not about Wall Street derivatives; it's about artists and songwriters losing control of their work and not getting paid fairly when it is used. More of the same, I thought. It taught me that creators have to be vigilant and fight for their rights.

After that, I took a trip to D.C. where I met with a lot of important Congress members to let them know that that any time artists and songwriters lose the right over how their music is used, it is devastating to them. Many of these Congress people I spoke to were shocked to learn that this really bothered musicians and songwriters and some even changed their views, all because we made the effort to let them know how we feel.

In D.C., I met with Congressman Bob Goodlatte from Virginia. This guy really gets it! His district in the Blue Ridge Mountains is home to some great songwriters and artists. He really believes that the laws need to change so that songwriters and artists are paid fairly, and he is doing something about it. Goodlatte has personally overseen 20 hearings on copyright reform over the past two years, creating forum so that creators' voices can be heard.

On Wednesday, our voice will ring out again. Three hundred and fifty members of Congress will get a knock on their door from their music making constituents. They will be there to deliver a very clear message of themselves and creators all over America. It's time for change.

We know you love our music. Now is the time to show us some love by supporting the effort to reform outdated copyright laws, do away with government standard for artist compensation, and make sure creators are paid fairly when other business use our work.

Steven Tyler is an American singer-songwriter and the frontman for the band Aerosmith. Reprinted with permission.

***See pages 3-4 for the above referenced letter, from LaPolt Law on behalf of Steven Tyler to the Donald Trump presidential campaign.*

Additional Resources on Music in Political Campaigns:

ASCAP guidelines: ascap.com/~/media/files/pdf/advocacy-legislation/political_campaign.pdf

RIAA guidelines: riaa.com/media/C9B22669-7B46-3AA9-8F59-2EDA23416AA8.pdf

NPR Music In Political Campaigns 101: npr.org/sections/therecord/2012/02/29/147592568/music-in-political-campaigns-101

Related Articles:

Rockers vs. candidates: 11 times campaign songs went off-key:
cnn.com/2015/06/19/politics/musicians-politicians/

Stop Using My Song: 34 Artists Who Fought Politicians Over Their Music:
rollingstone.com/music/lists/stop-using-my-song-34-artists-who-fought-politicians-over-their-music-20150708

Trump to Steven Tyler: I found a better song than 'Dream On':
cnn.com/2015/10/12/politics/donald-trump-steven-tyler-dream-on/

The above links can also be accessed via the emailed newsletter.

LAPOLT LAW

www.LaPoltLaw.com

9000 Sunset Blvd, Suite 800
West Hollywood, CA 90069
tel:310.858.0922
fax:310.858.0933

Dina LaPolt
Sabrina Ment
John Meller
Josh Love

October 10, 2015

VIA EMAIL
rgraff@trumporg.com

Donald J. Trump for President, Inc.
725 Fifth Avenue
New York, New York 10022
Attn: Rhona Graff

Re: Steven Tyler / Infringements

Dear Gentlepersons:

As you know, this office represents Steven Tyler. Reference is made herein to the cease and desist letter sent by our office to you dated August 28, 2015 (the "Previous Letter").

In August, it came to our attention that Donald J. Trump for President, Inc. ("Trump for President") had been using our client's song "Dream On" in connection with campaign events (the "Campaign"), including at an August 21, 2015 event at Ladd-Peebles Stadium in Mobile, Alabama. However, Trump for President does not have our client's permission to use "Dream On" or any of our client's other music in connection with the Campaign because it gives the false impression that he is connected with or endorses Mr. Trump's presidential bid. In response, we sent the Previous Letter, respectfully explaining that such usage of "Dream On" was impermissible, and that our client does not consent to same.

Despite your receipt of the Previous Letter, it was again brought to our attention that Trump for President is continuing its unauthorized use of "Dream On" in connection with the Campaign, including today at a Campaign event at the North Atlanta Trade Center in Norcross, Georgia. We are unaware of any public performance license granting Trump for President the right to perform "Dream On" in connection with the Campaign. If Trump for President has any such license, please forward it to our attention immediately. Further, by using "Dream On" without our client's permission, Trump for President is falsely implying our client's endorsement of the Campaign, in violation of Section 43 of the Lanham Act, and is infringing our client's right of publicity. Due to your receipt of the Previous Letter, such conduct is clearly willful, subjecting you to the maximum penalty under the law.

Additionally, please note that Trump for President does not have any right to use the name, image or likeness of our client, without his express written permission, in connection with the Campaign or otherwise under state and federal laws, including, but not limited to California Civil Code §3344 and Section 43(a)(1)(A) of the Lanham Act. Any such actions would constitute interference with economic relations, trademark infringement, and a violation of our client's right of privacy, among other causes of action.

Accordingly, please confirm Trump for President's receipt of the Previous Letter and this letter, and confirm your compliance with our demands, in writing within **twenty-four (24) hours** of your receipt of this letter. If Trump for President does not comply with our demands, our client will be forced to pursue any and all legal or equitable remedies which our client may have against you.

Please be advised that nothing contained herein or omitted herefrom shall be deemed to be an admission by our client of any fact as to any matter or a waiver or full explication of any of our clients' rights, remedies, contentions, damages or defenses with respect to the subject matter hereof, in law, in equity or otherwise, all of which are hereby expressly reserved.

Sincerely,

Dina LaPolt

cc: Steven Tyler (via email)
Larry Rudolph, Manager (via email)
Rebecca Lambrecht-Warfield, Manager (via email)
Amanda Ruisi (via email)
Sabrina Ment, Esq. (via email)
John Meller, Esq. (via email)

Key Points from "An Analysis of the Implications of Consent Decree Changes Governing ASCAP and BMI"*

Summarized by Cheryl Hodgson

In recent months there has been increasing chatter within the industry of the need to revisit the Consent Decrees under which ASCAP and BMI operate as a result of Anti-Trust actions filed against them back in the 1940s. AIMP and Belmont University undertook a study, conducting anonymous interviews with 31 industry attorneys, publishers, labels and music creatives. The results of *Pipeline Project 5.0*, "An Analysis of the Implications of Consent Decree Changes Governing ASCAP and BMI" were released in August 2015.

Some of the key findings are summarized below:

1. **Potential for Independent Collective**: Independent publishers collectively account for 35% of the entire publishing marketplace, larger than any one of the three majors. A collective of independents could have significant impact upon the ability of independents to effectively and competitively license in the digital marketplace. Finding common ground among the independents to launch such a collective, not to mention anti-trust concerns, makes this lofty notion a bit of a pipedream under the current market conditions.

2. **Partial Rights Withdrawal:** The hotbed of controversy is the notion of partial rights withdrawals from the PROs, i.e., the ability of a publisher to license some of its own rights directly. Sixty-three percent of those surveyed favor this ability and seventy-four percent would withdraw rights under certain circumstances.

   While there are arguments on both sides, the major concern is the inability of the PROs to license such rights on a market value basis. If the majors negotiate higher rates upon withdrawal, are the independents left with lower rates where there are no industry benchmarks established, and the PROs cannot establish rates?

3. **The Department of Justice Will Decide:** The DOJ will ultimately rule on whether partial withdrawal is to be permitted. If partial withdrawals are to permitted, the majors will likely withdraw all rights. If the DOJ allows partial withdrawals, can the PROs use these deals to support establishing a benchmark on behalf of the remaining independents to prevent the independents from being squeezed out? Stay tuned…

4. **Disparity of Rates between Labels and Publishers for Digital:** Many stakeholders claim that streaming revenues to record labels outmatch publishing revenues 13:1. In claiming transparency, Spotify asserts that out of the seventy percent of revenues they pay rights holders, about twenty-one percent goes to publishers, making this ration closer to 4:1. History proves that the splits between publishers and record labels have always been quite unequal. For instance, consider a single iTunes download, priced at $0.99, with iTunes charging around thirty percent commission for overhead and profit. Out of the remaining seventy percent paid to rights holders, the publishing share is only 9.1 cents; this amounts to only thirteen percent, as compared to the purported twenty-one percent paid out by digital service providers like Spotify.

5. **Streamline Licensing:** There is a huge need to streamline licensing for users of music, such as restaurants and venues who must obtain licenses from three separate PROs. This would reduce overhead and result in more payments to members.

6. **Bundled Licensing and MROs:** Currently licensing methods require digital services to negotiate separately for mechanical and performance rights, at great cost both in time and expense. Negotiation of "bundled rights" for digital music services by Music Rights Organizations would likely encourage more licensing and greater publishing revenues.

   Music Right Organizations, where both mechanical and performance rights can be licenses are not a viable option for ASCAP or BMI because of the outdated Consent Degrees under which they must currently operate. In light of SESAC's recent acquisition of HFA, it is unfair to prevent BMI and SESAC from issuing bundled licenses for Interactive Services.

   Larger independents prefer to license on their own, and support an MRO model, as long as they have the option to opt out and directly license should they so choose. Publishers and writers should have the right to decide which rights the PROs would be allowed to administer.

7. **Bundling of Master and Song:** Bundling of these rights into a single license through an MRO, while favored by ISPs, is less likely to ever find traction within the music community. Asking publishers and labels to give away licensing rights to a third party MRO is far and away out of the comfort zone for most copyright owners.

8. **The Authoritative Database:** Everyone agrees for the need for a database that is the place to go for finding owner information for licensing purposes.

   The obstacles to creation are: 1) cooperation among the stakeholders; 2) proprietary concerns of majors over sharing data they have collected; 3) the depth of information to be included; 4) how data from incompatible databases can talk to each other; 5) need for standardization around the globe with unique identifiers for each song.

9. **Greater Transparency from the PROs:** Are sampling models outdated and unfair to less popular music? Publishers and writers expect transparency and to know what they will be paid for what uses.

*Excerpts and paraphrasing from the AIMP/Belmont University Report, *Pipeline Project 5.0*, "An Analysis of the Implications of Consent Decree Changes Governing ASCAP and BMI" reprinted courtesy of the AIMP.

PANELIST BIOS

KEITH BERNSTEIN

Keith Bernstein is the founder of Crunch Digital™ and CEO of Royalty Review Council. As founder of Crunch Digital™, Keith has created a new business model that facilitates more licensed content in the media & entertainment space, fueling more revenue opportunities for content owners (e.g., record labels, music publishers, and film companies) and licensees, improved business intelligence, more accurate accounting to rights holders, and reduced operating costs. Crunch Digital™ manages data flow for content licensees – app developers, digital service providers, multi-channel networks, game companies, and mobile carriers – including royalty reporting for direct licenses. Crunch Digital™ has been recognized as one the first to develop an independent private music rights database solution for licensing and reporting.

Keith has over 20 years of experience managing the complexities of royalty accounting, reporting requirements, label and publishing operations, and copyrights. In his years prior to Crunch Digital™ and Royalty Review Council, Keith was Vice President of Operations for Napster, Senior Director of Operations for Universal Global e, the e-commerce division of the Universal Music Group, and Director of Operations for A&M Records.

GREGORY BUTLER

Greg has served as an executive at Harman Music Group, Native Instruments and PCAudioLabs. While on the executive track, Greg also maintained his individual career in music production and composing, working with artists as varied as Daniel Lanois, Bob Forrest and Ashlee Simpson. He has composed music for shows such as Project Runway, Top Chef and Jim Henson's Creature Shop Challenge.

JODI CHALL

Jodi began her career as a litigator/trial lawyer at the top rated Minneapolis firm Meagher and Geer. She moved to California, (took another bar exam) and spent a year learning the Silicon Valley ways of the world at iManage. She returned to the practice of law and for the next ten years represented a variety of small business owners, musicians, artists, music managers, small record labels, film producers and start-ups. She left in 2010 to move in-house with GridMob, a client of hers at the firm and a company innovating in the mobile music space. After successfully completing catalog sync licensing deals with all the major labels and publishers and branding deals with artists and helping to launch three mobile karaoke apps (iOki, Lady Gaga iOki and Jason Derulo iOki), Jodi moved on to the software world. Jodi became legal counsel and eventually Director of Legal and Operations for Conduit, an Israeli-based billion dollar software company.

Jodi co-founded SongLily to make licensing music easier for game and app developers and to give labels and publishers a way of exposing and monetizing their vast catalogues of great music. The SongLily platform makes it simple and affordable for developers to obtain licensed music content for use in games and apps.

CHERYL HODGSON, ESQ.

Cheryl Hodgson offers a unique combination of legal expertise and practical business experience based upon years of experience in the music industry as a manager, agent, and music publisher. Cheryl's expertise in music publishing was tapped by the late Bill Graham, when Cheryl joined the Bill Graham management team where she worked with Eddie Money, Joe Satriani, and the Neville Brothers and oversaw the Bill Graham music publishing catalog.

Years in the courtroom provide her clients with strong advocacy for in business transactions, calculated to seal the deal, while minimizing future risks. Cheryl has extensive experience in litigating record and publishing contracts, collection of royalties, as well as trademark and copyright infringement. Cheryl has championed the rights of artists and independent labels and publishers for years. She was the first attorney to rescind a recording agreement, recovering title to the famous Kingsmen's recording of "Louie Louie." She also took on Fonovisa and Univision in a hard fought battle over willful theft of the BANDA ZETA music group name, resulting in a large financial settlement.

Cheryl was one of the first music attorneys to advocate strong brand protection for musical artist names and lyrics. In the late 90's, she won an important legal decision granting protection for the song title "Louie Louie" as a trademark. She presently serves trademark counsel to artists such as The Cure, Gregg Allman, Black Flag and Miguel as well as a number of music libraries and music technology companies in Los Angeles. When it comes to protection for artistic brand names, Cheryl has become the "lawyer's lawyer" to whom other entertainment attorneys turn for advice for their clients.

Cheryl is licensed in California, New York, and Tennessee and has served as Professor of Music Law at Loyola University School of Law. Cheryl has served as President of the California Copyright Conference, a 65 year old music industry group in the Los Angeles area. Her most recent panel on Branded Entertainment in March 2015 featured a panel of experts from Creative Artists, Red Bull Media, and Gap Brands. Cheryl Hodgson is the founder of Hodgson Legal and an entrepreneur in her own right, founding the successful online publication BrandAide.com, focused on providing brand owners with expert insights and advice in brand building. She is the author of the book Brandaide and has been a featured speaker in many professional groups including the California Copyright Conference, eMarketing Association, the ABA Sports & Entertainment Forum, and the Beverly Hills Bar Association. Cheryl is a certified yoga instructor and devoted scuba diver in warm climates.

DAVID RING

David Ring is a Los Angeles based Media and Technology Executive who previously served as Executive Vice President, Global Digital Business at Universal Music Group.

DEAN SERLETIC

Over the course of a 20 year career, Dean Serletic has specialized in entrepreneurial and corporate roles in brand development, talent management, marketing, licensing, and strategic partnerships. At Zya, a company that empowers music creation and expression through interactive games and apps, he serves as the Head of Marketing and Licensing. In his role, Dean has spearheaded the promotion of Ditty, a Top 10 music app in sixty-six countries that earned the Appy Award for Music App of the Year. Dean got his start in the music business when he discovered Matchbox Twenty, helping them achieve breakthrough success and sell 15 million copies of their debut album.

Next month, please join us for the CCC Holiday Party: Wednesday December 16th at Cucina Bene!

Visit our website and check your inbox for more information soon.