Making Music Work –

A Music Manager's Call to Reform the DMCA

As artist managers who guide the careers of our music creator clients, we have a front row seat to the many ways in which obsolete laws undermine artists, songwriters, and their fans. The rise of for-profit digital piracy and the collapse of the "notice- and-takedown" system contemplated by the Digital Millennium Copyright Act have brought us to a precipice – with the fate of tomorrow's music ecosystem hanging in the balance.

Already, thousands of artists, songwriters, musicians, and others in the music industry are no longer able to make an adequate living while remaining fully committed to their creative work. Many have quit making music altogether.

Meanwhile, fewer and fewer of the gifted young artists and songwriters rising in the business today genuinely believe in music as a sustainable long-term career. If this keeps up, we stand to lose an art form that uniquely represents the diversity of American culture and is one of our greatest exports.

The core problem is the utter failure of the notice-and-takedown system to keep up with technological innovation and change.

The current notice-and-takedown system was designed in an era of Internet connectivity characterized by screeching and hissing 56k dial-up connections. This was a time when downloading or uploading a song took minutes or hours, there were less than 2.5 million websites, and "user-generated content" meant postings on all-text bulletin boards.

In that context, a system that required music creators to police the entire Internet and give individualized notice to service providers of each link to unlicensed music might have had at least some logic to it.

But it makes no sense at all in an Internet ecosystem with gigabit connectivity and nearly a billion websites. No one can police that vastness – and anyone who tries to do so finds the universe online is growing faster than our ability to inspect it for illegal copies of our clients' work. Today, the instant an infringing link is taken down, it is replaced by many more. It's "whack-a-mole" on steroids in which every time the mole is knocked down, two more pop up, then four, then eight.

Adding to this injustice, the companies operating digital music services are incentivized to remain willfully blind to this mass infringement, in order to maximize the users of content on their services. Their key objective is to do

whatever it takes to get as many eyeballs as possible to boost advertising and subscription revenue. Unfortunately, some court decisions have attempted to justify this willful blindness, further boosting infringement-based services online.

Some providers go even further by leveraging the outdated nature of the notice-and-takedown system for commercial advantage. Music creators are presented with below-market "take it or leave it" deals. And if creators refuse to accept the miniscule rates offered, their work is devalued even more by the unchecked flood of unlicensed copies that remain online.

All the while, legitimate music services are forced to compete in a market distorted by rampant online piracy and against competitors benefitting from illegitimate below-market rates for music – a race to the bottom that puts the future of music at risk.

Under the auspices of the flawed DMCA, many technology giants post multi-billion dollar revenues while endangering the sustainability of the music industry. These companies are taking the value of music and grabbing it for their own benefit, turning the Constitutional directive to "promote the progress of science and the useful arts" on its head. And creators are forced to expend vast amounts of time and resources scouring the Internet and sending millions of fruitless takedown notices instead of focusing on what counts – creating their music.

The notice-and-takedown system needs to be updated to reflect current technology, and rebalanced to properly account for music creators' contributions.

Respectfully submitted to the U.S. Copyright Office, *(signed as of 2pm EST 3/31/2016)*

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