

**Before the
OFFICE OF MANAGEMENT AND BUDGET
EXECUTIVE OFFICE OF THE PRESIDENT
Washington, DC**

In the Matter of)
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COORDINATION AND STRATEGIC)
PLANNING OF THE FEDERAL EFFORT)
AGAINST INTELLECTUAL PROPERTY)
INFRINGEMENT: REQUEST OF THE)
INTELLECTUAL PROPERTY)
ENFORCEMENT COORDINATOR FOR)
PUBLIC COMMENTS REGARDING THE)
JOINT STRATEGIC PLAN)

SUBMISSION OF BROADCAST MUSIC, INC.

On February 18, 2010, the Office of Intellectual Property Enforcement Coordinator (“IPEC”), through a Federal Register notice (“Notice”), invited public comment and participation in shaping an effective intellectual property enforcement strategy. 75 Fed. Reg. 8137 (Feb. 23, 2010). Broadcast Music, Inc. (“BMI”) hereby avails itself of the opportunity to submit comments. BMI is also a signatory to comments filed by the Copyright Alliance. The Copyright Alliance filing provides a global view of the issues facing copyright. BMI’s individual comments will complement the Copyright Alliance filing by focusing on the more specific public performing right in musical works as recognized under U.S. copyright law and BMI’s real world, marketplace experience in benefitting the U.S. economy from the perspectives of jobs creation, revenue and a positive international trade balance through intellectual property.

BMI addresses both prongs of the Joint Strategic Plan, the preparation of which is one of IPEC's statutory responsibilities under the PRO-IP Act.

I. Background on BMI

America's copyright laws have provided a firm foundation to support a vibrant creative community of songwriters and composers whose works fuel a robust and growing entertainment industry. BMI operates at the nexus where creativity, law and commerce converge. By creating and maintaining viable marketplace structures, BMI translates copyright law into real opportunity for America's songwriters and composers. The global markets BMI creates and nurtures for the public performing right create economic incentive for creativity, stimulate our country's artistic and cultural output, support small business, and positively impact international trade.

BMI was created in 1939 to provide viable competition and choice for America's songwriters and businesses in the licensing of the public performing right in musical works. This competition among the American performing right organizations provides benefits to creators and music users alike. This has been a win-win success story for the American enterprise system. The performing right organizations enjoy statutory recognition in the Copyright Act.¹

By providing representation to songwriters and music publishers and generating real value in the form of royalty income, BMI has played a key role in nurturing genres of music ranging from Folk and Country to Rhythm and Blues, Gospel, Bluegrass and Jazz. This benefit would never have occurred absent the commercial incentives of the U.S. copyright law.

¹A "performing rights society" is defined as "an association, corporation, or other entity that licenses the public performance of nondramatic musical works on behalf of copyright owners of such works, such as the American Society of Composers, Authors, and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc." 17 U.S.C. § 101.

BMI is proud to represent the public performing rights in over 6.5 million musical works of approximately 400,000 affiliated songwriters, composers and music publishers, more affiliates than any other performing right licensing organization in the world. BMI also represents the performing rights in the works of thousands of foreign composers and songwriters when those works are publicly performed in the United States. Every quarter, BMI provides cost efficient copyright valuation, licensing and clearance services to the more than 3.5 billion musical performances tracked in the United States alone.

BMI's services are available to any writer or publisher wishing to affiliate with us. In 2009, more than 30,000 new aspiring songwriters and music publishers chose BMI as their representative and launching pad into the music business, and more than 370,000 musical works were added to the BMI repertoire. By affiliating with BMI, each of these writers and publishers has an opportunity to participate in the entertainment economy when their works are performed.

For its licensees, BMI offers an easy and friction-free solution to clear the public performing rights to more than 6 million musical works with one simple license and one payment. This business model of blanket licensing has been endorsed by virtually all parties across the copyright licensing spectrum.

Legendary songwriter/composer, the late Isaac Hayes, said this of the unique role that BMI plays in the creative community: “[i]t is very important to have someone who is strong and has good ethics. BMI exemplifies all of that. They’ve been fighting my battles for years and years.” Speaking of BMI’s support for classical music, Pulitzer Prize winner John Adams said, “[t]he support of BMI has been absolutely essential for me. American classical music is . . . a great tradition. It is high art, representing what is best about our culture. BMI, as a champion of

American composers, understands this and continues to do the right thing to make the tradition persevere.”

When the Federal government thinks of BMI’s affiliates, and BMI is aware of President Obama’s love for music, one should not only think about the superstars. The typical songwriter is a small business person who does not receive the majority of his or her income from sales of recordings of his or her own songs. Instead, most songwriters rely on their public performing rights to generate the majority of their income. BMI represents the livelihood of more than 400,000 of these small family businesses. The typical songwriter is working out of a home studio, often borrowing money when necessary, sometimes working two jobs. The typical songwriter receives a modest income stream for his or her creative efforts. You may not know their names, but you see them in the supermarket pushing a grocery cart or on the soccer field with their kids. They may be your neighbors. When you consider BMI and the music industry, please think of these songwriters and composers. And think of American jobs.

II. BMI’s Role in Informing Public Policy

Since its inception, BMI has played an active role in the evolution of U.S. copyright law. For more than six decades, BMI has worked with the U.S. Congress and the Executive Branch of government to promote the efficacy and fairness of this nation’s copyright law. BMI recognizes the importance of inter-branch cooperation in ensuring the effectiveness of the laws and their administration. A great benefit of the blanket licensing model that is offered by the U.S. performing right organizations is that it makes it easy to comply with copyright law. BMI’s focus has always been on education and enabling legitimate markets – making it easy for those seeking licensing to obtain it. We urge IPEC to consider the success of the blanket licensing model and the ideology of enabling markets and commerce as it formulates its recommendations.

Domestically, BMI has always worked closely with congressional leadership and the Copyright Office. Internationally, BMI contributed to the process of joining the Berne Convention in 1988 as well as the negotiation and ratification of the recent WIPO Copyright Treaties. In the digital era, copyright enforcement not only depends on the law, but also relies on an informed citizenry to respect property rights of owners and authors, increasingly the intangible property of copyright. BMI works with a wide variety of organizations representing the creative community and music licensees to help create a greater understanding of the public performing right in copyright and to help foster an environment of copyright protection. In this context, we support educators through organizations such as the American Council on Education and the National Association for Music Education.

The BMI Foundation, Inc., a not-for-profit corporation founded by BMI in 1985, is devoted to encouraging the creation, performance and study of music through awards, scholarships, internships and grants. In the spirit of “giving back,” support for the Foundation comes primarily from BMI-affiliated songwriters, composers and publishers, BMI employees, and members of the public with a special interest in music.

III. Quantifying Economic Benefit: Revenue and Jobs Creation

America’s music, created by our songwriters, is an essential building block for the entertainment and information economy. Data from the U.S. Census Bureau projects that more than 84% of total annual hours of media consumption per person per year in 2010 will be from media outlets that perform music (<https://www.census.gov/compendia/statab/2010/tables/10s1094.pdf>). In terms of per capita spending for the same 2010 estimate, the agency projects that more than 76% of per capital media spending will be dedicated to media outlets that use

music as an essential building block of their content (<https://www.census.gov/compendia/statab/2010/tables/10s1094.pdf>).

The public performing right is the primary source of support for America's songwriters – the individuals who create this music. The explosion of new uses of music across the entertainment landscape has created opportunity for America's songwriters. In the five fiscal years ending June 30, 2008, BMI grew revenues by more than 43% to more than \$901 million in FY 2008. During the same period, The National Arts Index estimates that total distributions made by BMI and ASCAP to songwriters and publishers total nearly \$8 billion (National Arts Index 2009 – Page 21).

America's music is one of its most important exports, and the public performing rights market bears this out. Over the last five fiscal years, ending June 30, 2009, BMI's receipts from international exploitations of its repertoire have grown by 32%. In the 2010 calendar year, BMI estimates that total U.S. receipts for performing rights royalties from overseas will surpass \$550 million. With the continued international popularity of the U.S. repertoire, the intellectual property of U.S. songwriters and music publishers will be a valuable component in reaching President Obama's goal of doubling U.S. exports over the next five years, as recently expressed at the Export Import Bank's March 12, 2009, conference (<http://www.whitehouse.gov/the-press-office/remarks-president-export-import-banks-annual-conference>).

The revenues and creative output generated through the licensing of the public performing right supports American jobs in the music business and related industries. In 2008, the United States Department of Labor Bureau of Labor Statistics reported more than 240,000 U.S. jobs in the "Musicians, Singers and Related Categories" sector. This sector includes full-time composers (<http://www.bls.gov/oco/ocos095.htm>). The Bureau forecasts that the sector will

grow by 8% in the 2008 to 2018 decade, creating nearly 20,000 new U.S. jobs. These jobs are just the tip of the iceberg. The industries that rely on the building blocks of musical compositions as a key part of their businesses include the “Motion Picture and Video and Sound Recordings” sector which supported 382,000 jobs in 2008 and is projected to grow 12.3%, adding 45,000 additional jobs to our economy by 2018. *See* <http://www.bls.gov/emp/ep_table_108.htm>. Similarly, the broadcasting industry that relies on BMI represented songs to fuel its content is projected to grow by 7.4% from 316,000 jobs in 2008 to 339,000 U.S. jobs, adding 23,500 jobs to our economy by 2018. The Cable Television industry is also forecast to add 20,000 jobs growing to 104,800 jobs by 2018. Lastly, the Performing Arts, Spectator Sports and related Industries category supports 406,000 U.S. jobs as of 2008 and is forecast by the Bureau of Labor Statistics to add another 61,700 jobs by 2018.

In total these industries represent nearly 1.5 million U.S. jobs as of 2008 and they are projected to add 170,000 new jobs for Americans in the next decade. Importantly, these are just the industries with a direct correlation to America’s songs; a multitude of additional jobs in the financial, legal services, and manufacturing and service sectors also benefit from the creative output of America’s songwriters. More extensive statistics are available about the significant contributions of the copyright industries to the U.S. economy. Salient statistics are provided to IPEC in the statement of the Copyright Alliance (of which BMI is a member).

IV. Technology and Copyright

In BMI’s experience, technology and copyright are not inherent enemies. Indeed, by embracing new forms of distribution and harnessing the power of technology to manage technology, the creators, owners and users of copyright can all flourish. We urge that IPEC encourage the marketplace to tap into the power of technology to help build new markets for

intellectual property. Our experience in the marketplace has borne this out. BMI was the first entertainment industry organization with a website, launched in September 1994 when there were only a handful of websites, mostly run by governmental entities or institutions of higher education. BMI.com® now serves more than 10,000,000 visitors each year on a network of 20 different sites, encompassing over 10,000 web pages.

The online presence has been expanded to offer instant on-demand services to songwriters, music publishers and licensees alike. BMI first offered end-to-end online licensing solutions to its licensees in 2001. Today this online licensing utility helps hundreds of small websites every year, offering licensing, account maintenance, payment, and music use reporting services. For songwriters, new online affiliation modules have minimized cost and made it possible to affiliate with BMI virtually at the click of a mouse button.

We also encourage the formation of international technical alliances to help reduce administrative and transaction cost. Interoperability of the administrative systems of the owners and agents of intellectual property around the world is an ongoing challenge. To help improve data quality and the accuracy of international administration, BMI teamed up with four European rights agencies to found FastTrack™, an international technical alliance. FastTrack delivers unprecedented efficiency and a mechanism to link international ownership and payment data for virtually all of the world's most active repertoires by combining the computing power of 12 of the world's largest copyright representatives.

Landmark Digital Services LLC (“Landmark”), a wholly-owned technology subsidiary created by BMI, offers cutting-edge digital fingerprinting technology that identifies the myriad uses of music in the broadcast, cable, satellite and online worlds. In 2005, BMI acquired the patent portfolio from Britain's Shazam Entertainment Ltd. This portfolio included patents

covering award-winning BlueArrow digital audio recognition technology. BlueArrow is a passive pattern recognition algorithm capable of identifying recorded music from any audio source by matching a short sample against a massive database of audio “fingerprints” or signature files. The technology’s accuracy and unique ability to identify recorded music within 1-2 seconds even through high noise, signal interference or compression makes it particularly effective in monitoring broadcast performances of music on radio, television and the Internet. Landmark offers licenses to this patented technology.

Using BlueArrow as a springboard, Landmark continues to develop groundbreaking new audio recognition products and services. Landmark’s technology is the backbone of the internationally successful Shazam mobile music service. Landmark was honored as “Innovator of the Year” at the Nashville Music Awards in October 2009. Landmark is only one example of the opportunities that technology can spark in finding new solutions to identifying the use of copyrighted property in both the analog and digital worlds.

V. Recommendations

Blanket licensing by collective copyright licensing organizations is an effective response to the blizzard of copyright piracy brought about by the broadband Internet revolution. The performing right organizations have received recognition by legal scholars and economists for their role in minimizing transaction costs by aggregating control of a multitude of bits of property (individual songs) as a single offering under one management: BMI, ASCAP and SESAC and their counterparts in other countries “are efficient market responses to copyright problems caused by high transaction costs.” William M. Landes & Richard A. Posner, *The Economic Structure of Intellectual Property Law* 116 (2003). As observed by Professor Robert Merges,

The basic rationale of the music PRO – to permit songwriters to make a living at their chosen specialty – makes as much sense today as it always has. The new models of music distribution have not changed this basic truth. Indeed ... the later music landscape is becoming ever more transaction-intensive, as new platforms and music markets proliferate. In this setting, it makes sense to *increase* rather than decrease the functional reach of PROs today. No other established organizations with a long track record of effectively monitoring music use and distributing royalties are in place today.

Robert P. Merges, The Continuing Vitality of Music Performance Rights Organizations, 26 Univ. of Cal., Berkeley Sch. of Law, Pub. Law & Legal Theory Research Paper Series, Paper No. 1266870, 2008, available at <<http://ssrn.com/abstract=1266870>>.

By way of a general recommendation, BMI therefore suggests that IPEC avail itself of evidence of the beneficial role played by the performing right organizations and their business model in enforcing copyright rights in an uncertain and oft-changing environment. Their successes have a beneficial effect on enforcement and complement government efforts to do the same. BMI urges IPEC to keep collective licensing in the forefront of mind when considering methods to address digital copyright piracy.

The request for comments and recommendations for an improved enforcement strategy is divided into two parts: (1) an analysis of threats posed and challenges to the enforcement of intellectual property rights; and (2) specific recommendations for accomplishing objectives in the Strategic Plan.

Part I: Threats and Challenges.

1. The digital environment. Advances in digital technologies, including transmission media and storage means, have fundamentally changed how people work, learn, communicate and live in their homes. The so-called “Information Age” has brought the United

States (and the world) more than just the Internet. It has become a series of components, including public and private high-speed, interactive and broadband networks. Its boundaries are global. It is the satellite, terrestrial and wireless technologies that deliver content, including copyrighted works, to homes, businesses and educational institutions. It is computers, radios, televisions, and hand-held devices used by people to access information. The availability of new technologies to receive, transmit and store information offer exciting new options for consumers and the creative community alike. We must avoid the pitfall, however, of allowing any real or alleged ambiguity in current law and policy to create wedges that could be used to eviscerate the value of copyright by users seeking to minimize their costs at the expense of America's creative output.

2. Uncertainties of enforcement. The Information Age clearly poses new legal and practical changes in enforcing intellectual property rights. Adequate levels of protection must be provided so that copyright owners make their works available. Piracy, which breeds uncontrollably if enforcement tools are lacking or ineffective, is a drain on creativity. Uncertainties in the marketplace affect different industries, and different exclusive rights, in different ways. A challenge will confront IPEC in its development of an enforcement plan to avoid strategies that may advantage one group of copyright owners over another.

3. International issues. It is beyond cavil that U.S. copyright law should be consistent with, and adhere, to U.S. treaty obligations. And the U.S. must strive to have other countries accept similar fundamental principles. Furthermore, consistent with U.S. interests, the U.S. should seek harmonization of U.S. copyright law and should continue to support the principle of national treatment for all rights granted by copyright law. Currently, there are areas of U.S. copyright law that are not in sync with the Berne Convention, the WIPO Copyright

Treaties, and the GATT Trade-Related Aspects of Intellectual Property Rights (“TRIPS”) agreement. U.S. failure to respect multilateral treaty responsibilities chills enforcement and serves as an incentive for foreign countries to violate (or not enforce) their own treaty responsibilities.

4. Technological protections. Pursuant to the Digital Millennium Copyright Act (“DMCA”) and the WIPO Internet Treaties, copyright owners may protect their works through technological means, and users are prohibited, except in narrow circumstances, from circumventing technology protections. Furthermore, to promote the identification, monitoring and payment for the use of works, copyright owners may also mark works with copyright management information. Agencies of the Federal Government, including the Federal Communications Commission, have engaged in rulemaking proceedings that, if improperly drafted and incorporated in final rules, would prevent the technology protections from being an effective tool for legitimate and lawful licensing activities, like those engaged in by the performing right organizations.

5. The battles within industry groups. In an uncertain technological age, coupled with an economy in distress, inevitable economic battles occur over the divisibility of royalties within industry groups. America’s songwriters have enjoyed a constant positive growth rate, which serves as a reflection of a successful licensing model. Nonetheless, BMI is constantly challenged by arguments from users of music and/or owners of other copyright interests that royalty rates are too high or that fees should be shared disproportionately with other copyright owners. As rights holders for royalties collected pursuant to statutory licenses, which themselves distort the marketplace and artificially suppress value, the performing right organizations must often incur litigation costs to obtain their rightful royalty shares. As the

representative of hundreds of thousands of small businesses, BMI must regularly battle large, multinational goliaths. Therefore, in the marketplace, a constant challenge exists to maintain, and build upon, business success. We respectfully request that IPEC, in its intra-agency dealings regarding copyright, be mindful of preserving the value of the public performing right.

6. Civil versus criminal law enforcement. The performing right organizations depend almost entirely on civil law tools to protect rights. Criminal law penalties currently in place in the Copyright Act essentially apply to the reproduction and distribution rights, not the public performance or public display rights. *See* 17 U.S.C. § 506(a). The Notice specifically speaks of “intellectual property crimes” as relevant to the development of the Strategic Plan. The Notice also speaks in terms of “products.” For performing right organizations, a challenge manifests itself daily to enforce the rights of songwriters, composers and music publishers by using the civil law to deter unauthorized “activities” (that is, the public performance of musical works) and not infringing “products.” A key element of civil law enforcement is to obtain accurate information especially in the on-line environment, and to have access to information about infringers. One of the key tools is the Whois database. A challenge that exists for the U.S. Government, and one that has been effectively addressed in the past, is to maintain public access to and ensure the completeness and accuracy of Whois data so that rights holders can enforce their rights.

7. Property rights versus the public interest. Indisputably, copyright rights are a form of property. The right to own property is as old as humankind. The framers of the U.S. Constitution textually used the word “Right” in the Intellectual Property Clause. Art. I, section 8, clause 8. At the same time, the Clause “is both a grant of power and a limitation.” *Graham v. John Deere Co.*, 383 U.S. 1, 5 (1966). For example, terms of protection are

restricted. Even without constitutional limitations, copyright law contains many privileges and exceptions. For example, users are provided a “fair use” privilege to excuse copyright infringements. An idea-expression dichotomy and the fair use doctrine both serve First Amendment goals. Nonetheless, a threat (or challenge) exists from those who would use exceptions and privileges to swallow the bedrock principles of protecting copyright exclusive rights.

Part II: Recommendations for Achieving Objectives.

With the above threats and challenges in mind, BMI makes the following recommendations for IPEC to consider in developing a Strategic Plan to improve intellectual property enforcement both domestically and worldwide.

1. Assessment of problems that have occurred with the safe harbor provisions of the DMCA. Enacted in 1998, the safe harbor provisions of the DMCA were intended by Congress to have a beneficial effect on intellectual property enforcement. The intent of Congress was to forge a partnership between copyright owners and Internet service providers (“ISPs”), crafting a fine balance of responsibilities for enforcement. However, from BMI’s perspective, that balance has been upset in the past ten years, and the DMCA is currently suffering from stresses and strains. The notice and take-down procedures are transactionally inefficient and are being misconstrued (at best) or subverted (at worst) by Federal court decisions. The courts have narrowly construed the ISPs’ roles under the safe harbors, inconsistently with Congressional intent, and paved the way for a lawless landscape.

Many services such as social networks have used the safe harbors as an excuse for failing to license copyrighted content that is obviously contained all over their offerings. The DMCA was designed to create a reasonable working relationship between rights holders and service

providers. Instead, as currently construed, the DMCA thrusts the copyright owner (or agent) into an enforcer role as compared to an enabler of beneficial market activities. In addition, some service providers are using “safe harbor” protection as a shield to delay licensing and the payment of royalties. The Strategic Plan should assess the enforcement efficacies of the DMCA and make recommendations for statutory changes, with a mind’s eye on whether the United States should make stronger sanctions available against someone who repeatedly violates copyright online.

2. International issues. The performing right licensing marketplace is an international marketplace. In an attempt to create an international virtual rights clearance solution, several European rights organizations and BMI worked together reach agreements with foreign performing right organizations on how to handle the licensing of global transmissions that implicate more than one country’s copyright; however, the European Commission (“EC”) found fault with certain of the provisions of those agreements.² The EC left in its wake a troubled licensing landscape that does not serve the needs of either creators or users and has succeeded in forestalling successful licensing efforts. International enforcement issues abound. Other developed countries are examining the merits, from an enforcement perspective, of “three strikes” laws. The Strategic Plan should thoughtfully do the same. BMI urges IPEC to consider thoughtfully the international impact of U.S. government policy on this intensely global market for America’s intellectual property.

Other international enforcement issues should also be addressed in the Strategic Plan: for example, address (1) governing law confusion (identification of territory of origin versus

² It is interesting to note that the EC did not find fault with the concept of global licensing.

territory of receipt issues); and (2) how to reduce the flow of infringing intellectual property via transmissions from foreign countries. Because the distribution and performance of music is an international marketplace, rights holders need American intellectual property to be protected when it is played around the world. The Strategic Plan should reflect that protection.

3. Promotion of civil copyright enforcement. Rule 1 of the Federal Rules of Civil Procedure promises a civil justice system that secures the “just, speedy, and inexpensive determination of every action and proceeding.” The TRIPS agreement requires “adequate and effective” protection of intellectual property rights worldwide. From an enforcement perspective, today these promises ring somewhat hollow, especially for collective rights organizations than depend on the civil law as a dispute resolution mechanism. Costs and delays have an especially deleterious effect on individuals and small businesses, which comprise almost the entirety of the affiliates and members of performing right organizations. The Strategic Plan should therefore give equal attention to civil law enforcement and to criminal law enforcement. In this regard, IPEC may wish to coordinate with the Judicial Branch of the Federal Government.

4. Cloud computing. It is widely expected that cloud computing, or off-site storage services, will become a popular way to deliver copyrighted content in the future. The recent Cablevision decision of the Second Circuit in *Cartoon Network LP, LLLP v. CSC Holdings, Inc.*, 536 F.3d 121 (2d Cir. 2008) cast a damper on this new potential market by ruling that in some circumstances, transmissions can be considered “private,” *i.e.*, not covered by copyright, when initiated by a consumer from a “personal” storage device. This ill-considered decision is not supported by the text of the Copyright Act. The Department of Justice’s brief noted its concern with this incorrect aspect of the Second Circuit’s decision in its amicus brief to the United States Supreme Court, stating only that the Court should await the outcome of more litigation before

acting to ascertain the scope of the decision's practical impact. There is no need to await a torrent of litigation to correct this loophole.

5. Promotion of a federal regulatory policy of “non-discrimination” by ISPs. The FCC has engaged in an extensive inquiry on “net neutrality.” BMI filed comments stating that its principal concern is to ensure that any net neutrality rules adopted by the Federal Government do not have any unintended adverse impact on the ability of copyright licensing organizations to protect the copyright interests of the songwriting and publishing communities. Specifically, BMI believes that the Federal Government should not adopt any non-discrimination rules for ISPs that have the effect of preventing Internet services from assisting copyright owners to monitor and police the rampant infringement of music copyrights on the Internet. If federal law overly favors users' access rights at the expense of the economic rights of content creators, the Internet will not reach its full potential because there will eventually be little high-quality, creative material for users to seek to “access” at all. The Strategic Plan should address the need for a cooperative enforcement strategy between service providers and content owners. BMI also believes that IPEC should evaluate technological solutions to network-level monitoring and enforcement, including the potential for content screening protocols. BMI stands ready to assist in any way on this front, including making our own technological and business resources available to help define solutions.

6. Public Access to Whois data. The U.S. Government has consistently advocated for maintaining unfettered public access to Whois data. BMI is a member of the Coalition for Online Accountability (“COA”), which has made a separate submission in this matter. BMI concurs with the COA comments and recommends that the Strategic Plan focus on

ensuring that public access to Whois data be available for the purpose of enforcement of copyright and trademark laws by the private sector.

7. Education. All levels of the Federal Government should promote ongoing public education about the importance and meaning of intellectual property, including copyrights. Our country's cultural heritage and future creativity is at stake. The private sector should cooperate with Government educational activities. BMI stands ready to work with the Department of Education, our country's public broadcasting system, and any other government agency appropriate to help communicate this important message.

Conclusion

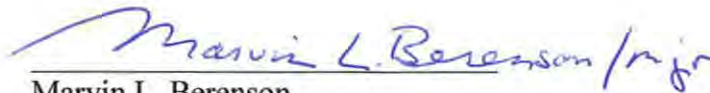
In a challenging period for the music industry, one where violations of the law seem to be the norm rather than the exception, BMI remains a bulwark of support for songwriters, composers and publishers, and an ever more valuable supplier of essential rights to music users. The thousands of BMI affiliates are being accurately and quickly compensated for the public performance of their musical works. BMI offers licensees non-exclusive collective licenses for millions of copyrighted works. BMI serves both creators and music users by finding solutions that facilitate the use of copyrighted works, at reasonable and competitive prices, while growing the world's most vibrant and diverse musical catalog for licensees and their audiences. Increasingly, the BMI licensing model is being copied and touted by rights-clearance and royalty-payment systems beyond the public performing right in musical works. Finally, BMI plays the role of leader in the use of technology to identify performances of music and collect and distribute royalties.

In short, an analysis of the digital technology-enabled music electronic marketplace shows how the performing right organizations are a prime example of enforcement efficiencies


in a competitive environment. As explained by the Register of Copyrights (Marybeth Peters) during congressional testimony, “[i]n the world of music licensing itself we have a model that works very well. The performing rights organizations manage to offer licenses to perform publicly virtually all nondramatic musical works that anyone might want to license for public performance.” Hearing on Copyright Office Views on Music Licensing Reform Before the House Comm. on the Judiciary Subcomm. on Courts, the Internet, and Intellectual Property, 109th Cong., 1st Sess. 20 (2005). Moreover, the organizations’ “core competencies may be applicable to the management of other forms of copyright expressions and digital content.” Ralph Oman, Michael P. Ryan & Bhamati Viswanathan, “The Songwriters’ Performing Rights Organization Imperative and Copyright Law for the Music Electronic Marketplace” (June 18, 2008), available at <http://www.newcopyrightera.org/assets/files/paper_2.pdf>.

In closing, BMI commends IPEC for its leadership on developing a Strategic Plan for enforcement of intellectual property rights. Please do not neglect the salutary role that licensing plays in rechanneling infringing activities into being in conformity with the law. Licensing is at the forefront of efforts to confront piracy domestically and internationally.

Respectfully yours,



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