

## NATIONAL MUSIC PUBLISHERS' ASSOCIATION

# The Note

SPRING 2008

## Rate Setting Battle Underway

### NMPA Fighting for Songwriters and Publishers in Historic Proceeding

The financial livelihood of every songwriter and music publisher in America is at stake this year as the Copyright Royalty Board (CRB) examines and sets mechanical royalty rates for songs.

This rate proceeding is crucial to the future of the songwriting and music publishing industry because the three-judge panel will set rates for the first time for digital products such as limited downloads and subscription services, in addition to setting rates for physical products and permanent downloads. These rates will govern the compulsory use of musical works under Section 115 of the Copyright Act through the end of 2012.

NMPA, along with the Nashville Songwriters Association International (NSAI) and the Songwriters Guild of America (SGA), worked vigorously throughout the initial hearing in February to make the case for fair rates. The Recording Industry Association of America (RIAA) and the Digital Music Association (DiMA), on the other side of the fight, both argued at the initial hearing that significant reductions in mechanical royalty rates are necessary. NMPA countered strongly that such reductions would be disastrous for songwriters and music publishers.

An example of what is at stake: the current rate for physical phonorecords is 9.1 cents per song. The NMPA is proposing an increase to 12.5 cents, but

- the RIAA has proposed a rate that is significantly lower than what songwriters and music publishers make now.

- Even more alarming was action taken by DiMA, who filed a motion on the eve of opening arguments challenging whether music publishers and songwriters should be compensated at all for online streaming services. The position is outrageous. DiMA members have been profiting for years because publishers generously agreed to “rateless” licenses, enabling the services to get up and running until the CRB set such rates. Importantly, the CRB denied DiMA’s motion. But the ultimate outcome will not be known until the judges issue their findings this fall.

- Most recently, the parties filed written rebuttal statements with the CRB and are presenting their rebuttal cases to the judges at hearings throughout May. Notably, RIAA and DiMA both revised their rate proposals in light of the compelling case presented by NMPA, NSAI and SGA in February. These new proposals, while a step in the right direction, still would not fairly compensate creators and publishers for their songs. Our efforts thus continue in the rebuttal hearing to ensure that the judges understand the critical impact the rates set will have on songwriters and music publishers.

- Our message is supported by an underlying fact: the contributions of songwriters and music publishers make to the creation of songs, and to the music industry overall, are significant – indeed critical – to the success of the industry. The results of these efforts have been consistently innovative, exciting and attractive to music consumers.

- We have been facing an enormous fight, but we are on the right side of the debate. We will keep you apprised of developments.



### INSIDE

**PRESIDENT'S CORNER ~ 2**

**Q&A ~ 3**

**WASHINGTON UPDATE ~ 4**

**NMPA SPOTLIGHT ~ 6**

**IN THE NEWS ~ 7**

**CALENDAR OF EVENTS ~ 8**

# President's Corner

## DAVID ISRAELITE



Greetings,

The NMPA is working hard this year on numerous proceedings that will have long-term consequences for every songwriter and music publisher in America.

The Copyright Royalty Board in Washington, DC, opened its regular review of mechanical royalty rates in late January. This year's rate setting trial is indeed historic because for the first time the Board will set rates for digital, as well as physical, products. With business models evolving and technology developing, the financial survival of songwriters and music publishers will depend on the decisions made during this process. Our cover story provides all the details.

NMPA also continues to advance the interests of music publishers and songwriters with its groundbreaking litigation efforts. Notably, NMPA and several of its music publisher members recently joined a copyright infringement class action lawsuit against YouTube and its parent company, Google. Copyrighted music is a huge draw for YouTube's users. This music can be found in many of YouTube's clips; however, YouTube has failed to license many music publishers' and songwriters' works. NMPA seeks with this and other matters pending before the Court to end such willful and massive copyright infringement occurring on the Internet.

Clearly digital distribution is the wave of the future - whether for single song downloads or streaming or other innovative methods as yet unknown. It is therefore critical that songwriters and music publishers fight on all fronts for fair compensation in the digital space.

Other Washington-centered activity is highlighted in our Washington Update. Among other things, an important bill to improve enforcement of copyright law, the PRO-IP Act, is making its way through Congress.

Since the announcement in our last issue of the new NMPA Gold and Platinum Awards Program, the NMPA has awarded notes to songwriters including Daniel Powter for the Platinum single "Bad Day"; Josh Kear and Chris Tompkins, who penned "Before He Cheats" performed by Carrie Underwood; and C. Tricky Stewart for the multi-platinum "Umbrella" performed by Rhianna. Some recent recipients are highlighted in this issue.

Finally, the NMPA Board elected one new member and its officers at our February meeting. Neil Gillis, President of S1 Songs America, joined the Board, filling the vacancy left by the passing of Arnold Broido. Neil answers some questions for us in this issue's Q&A. And Irwin Z. Robinson was re-elected as Chairman of the Board.

Speaking of Irwin Robinson, I would close by making sure all of you know that our esteemed Chairman was awarded the first ever Visionary Award by the NYU Steinhardt Music Business Program earlier this month. Irwin has served with distinction on our board since 1974. On behalf of NMPA and all its members, I offer warm congratulations and thanks to Irwin for his many years of leadership.

Until next time,

A handwritten signature in black ink, appearing to read "Dmba".

David Israelite  
President & CEO, NMPA

**This year's rate setting trial is indeed historic because for the first time the Board will set rates for digital, as well as physical, products.**



## *Neil Gillis is President of S1 Songs America and one of NMPA's newest Board members*

### **What led you to a career in music publishing?**

NEIL: I've been a musician (Guitar and French horn) most of my life and during the formative years, learning amazing songs brought real joy to my life. I'm also one of those crazy people who loved to read all the album credits on every new record I bought as I was fascinated by who these mysterious players and business people were behind the scenes of the music itself. I originally went to University to be a music teacher and quickly switched to a music and business track and found my way into publishing. It seems I was somehow destined to be a publisher.

### **What has been the highlight of your career so far?**

NEIL: On a business level, I'd have to say coming on board at S1 Songs America and helping to shape the future of this new company with Steve McMellon, Peter Bennett and our amazing worldwide team as well as my recent appointment to the NMPA Board which has been a career long goal. On a creative level, I'd have to say it has been the simple and fortunate ability to work with and help the careers of so many divergent artists and writers. I still cannot believe that I do what I do for a living. I am blessed for sure.

### **What is the philosophy and goal behind S1 Songs America?**

NEIL: Our collective philosophy is simple. We want to be a smart and thoughtful eclectic publisher similar to some of the best of those that came out of the Brill Building era and also be the forward thinking place where creative people feel comfortable that they are in the absolute best creative and business partnership they have ever entered into. To a certain degree, we are in a service environment by the fact that we need to service our writers as internal clients as well as potential music users in the external environment. If we do that in an honest and creative way, the quality of the relationships and the work will hopefully speak for themselves.

### **Tell us about some of the songwriters who work with S1.**

NEIL: We're fortunate to have many talented writers and artists. We've had wonderful success

with Jason Wade and his band Lifehouse. We've had great success with an eclectic group of artists that our "A team" writer/producer Sam Hollander has written for. The Hold Steady had an amazing release with Boys and Girls in America. Our colleagues in Nashville are rocking with our incredibly talented family of writers and JV partners there. We're also very excited about our new relationships with the writers that came over in our purchase of the Wind Up Music Publishing catalog. Via that deal, we're fortunate to get the amazing talents of current chart hits with bands like Finger Eleven and Seether as well as the vast catalog of songs penned by the likes of Evanescence and Creed and all of the other amazing Wind Up artists. Finally, we have the absolute pleasure of getting to work with incredible creative talents of Amy Lee and Ben Moody.

### **What are the biggest challenges to the music publishing industry today?**

NEIL: Obviously, finding a way through negotiation, legislation and education to put fair and equitable financial metrics around the variety of commercial usages of a song is one of the keys to our future. The NMPA with the incredible David Israelite and his team along with the passion and commitment of the NMPA Board members is doing that heavy lifting right now.

### **Why is it important for the music publishing industry to have an effective, unified voice in Washington, D.C.?**

NEIL: Every music publisher is different in scope and size and would most likely have somewhat divergent agendas if asked. That being said, a powerful voice comes from unifying as an industry behind common goals. It would appear to be a more effective approach rather than an "every man for himself" route. The future is brighter because of that unity.

### **What is your favorite song and why?**

NEIL: If pushed to name but one (quite frankly impossible to do), I would say "Yesterday" by Lennon and McCartney. I have heard it sung in every language all over the world. Now that's the power and connection of music!



Neil Gillis - President,  
S1 Songs America





BERKLEY SCHWARZ

## ANTI-PIRACY ENFORCEMENT

**...The PRO IP Act goes a long way towards making sure law enforcement agencies have what they need to get the job done on both domestic and international fronts.**

NMPA is committed to strengthening copyright protections in the law. In the House of Representatives, the Prioritizing Resources and Organization for Intellectual Property Act (PRO IP Act) of 2007 (H.R. 4279) was introduced by Chairman of the House Judiciary Committee, Congressman John Conyers (D-MI). The PRO IP Act would improve federal govern-

ment enforcement of copyright laws and protect creator's rights, as well as provide more funding to investigate and prosecute infringers. The PRO IP Act passed the House Judiciary Committee on April 30 and passed the House of Representatives on May 8, 2008.

The PRO IP Act goes a long way towards making sure law enforcement agencies have what they need to get the job done on both domestic and international fronts. For these reasons, NMPA supports this bill.

In the Senate, Senate Judiciary Chairman Patrick Leahy (D-VT) introduced the Intellectual Property Enforcement Act of 2007 (S. 2317). This legislation gives the Department of Justice the ability to bring civil lawsuits against copyright infringers and authorizes additional resources for federal agents to combat infringement.

### **NMPA ON CAPITOL HILL**

**Berkley Schwarz, Vice President & Counsel**  
Ms. Schwarz is the NMPA's chief liaison to Capitol Hill and the federal agencies. A former Congressional aide and Department of Justice attorney, Ms. Schwarz works to educate Members and their staff about the value of copyright and the role of music publishers. She is in constant communication with key decision-makers involved in legislation and regulation that directly affect the music publishing industry.



NMPA supports the Intellectual Property Enforcement Act and is working with the Senate Judiciary Committee to pass this legislation soon.

## ORPHAN WORKS

**...Of course this leaves uses outside of Section 115 (synch licenses, samples, etc) subject to the orphan works law if passed, which concerns us.**

Orphan Works are purported to be copyrighted works whose owners cannot be identified or located.

Congressman Howard Berman (D-CA) and Senator Patrick Leahy (D-VT) have introduced in the House and Senate respectively orphan works legislation that would create new guidelines for use of copyrighted material when the original owner

cannot be located. The bills require users of copyrighted material to perform and document a good faith, diligent search for the copyright owner before enjoying the benefit of limitations on the remedies that a copyright owner could obtain against him if the owner sues for infringement at a later date. The bills provide that the U.S. Copyright Office will maintain and make public current best practices for conducting and documenting a search.

The bills include language that we requested that will make users of the musical work copyright avail themselves of the Section 115 compulsory license before relying on the more general orphan works provision.

Of course this leaves uses outside of Section 115 (synch licenses, samples, etc) subject to the orphan works law if passed, which concerns us. NMPA has expressed to both the House and the Senate that it is our preference that music be excluded from orphan works legislation, and if it is not excluded, that use of music orphan works be limited to libraries, universities, archives, and other non-profit organizations, so long as the work is used for non-commercial purposes.

We asked the House and the Senate to include mandatory minimum standards in the Best Practices section of the legislation and to delay the effective date until the Best Practices are in place. The Senate agreed and included this



protective language in the version of S. 2913 that passed the Senate Judiciary Committee on May 15, 2008. The next step is consideration by the entire Senate. We are still working to include this language in the House bill, which has only passed the House Judiciary Committee Subcommittee on Courts, the Internet and Intellectual Property.

## SOUND RECORDING PERFORMANCE RIGHT

...It is imperative that Congress must ensure that legislation creating a new sound recording performance right for broadcasts contains enforceable language protecting the songwriters and music publishers' performance right.

The Recording Industry of America (RIAA) has launched a campaign to pass legislation that would establish a performance right for sound recordings in broadcast radio.

NMPA believes creators in the music industry should be compensated fairly for the use of their intellectual property, and we believe the entire music industry should be supportive of each other as we enter the new digital era. It is imperative that Congress must ensure that legislation creating a new

sound recording performance right for broadcasts contains enforceable language protecting the songwriters and music publishers' performance right. NMPA worked with the RIAA and the songwriter and performing rights groups to make sure songwriter protection language is included.

## FAIR USE

...NMPA strongly opposes legislation such as H.R. 1201.

NMPA is constantly working to stop those people who work tirelessly to erode our copyright protections. NMPA strongly opposes legislation

such as H.R. 1201, introduced by Congressman Rick Boucher (D-VA), that would limit the availability of statutory damages in infringement actions.

## MUSIC LICENSING

...we anticipate that the committees will focus on music licensing after the CRJs render their decision.

No music licensing legislation has been introduced into Congress this session. The House and Senate Judiciary Committees are following the rate proceedings before the Copyright Royalty Judges (CRJ) very closely, and we anticipate

that the committees will focus on music licensing after the CRJs render their decision. We are in constant communication with Congress on the latest developments in the rate proceeding and look forward to working on legislation in the future.



## NMPA Online

To stay on top of the latest legal issues and copyright matters facing the industry, visit us online at [www.nmpa.org](http://www.nmpa.org).

On the website you will find press releases and updates about recent victories in the courts and on Capitol Hill.

# NMPA Spotlight:

## The Gold & Platinum Award Program

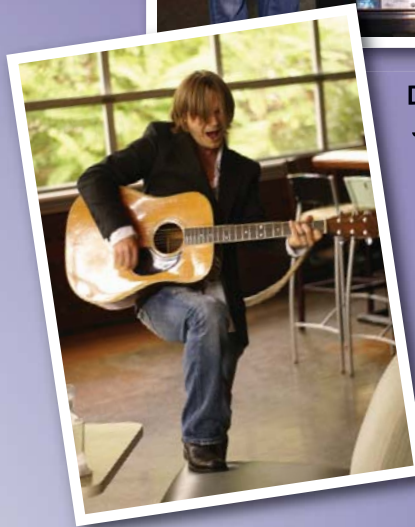
NMPA late last year launched a new program to honor the songwriters behind Gold and Platinum records. Now in its first full year, our Gold and Platinum Composition Awards program has recognized 70 Gold Note songs, 44 Platinum Note songs and 13 Multi Platinum Note songs since the launch in October, 2007. We congratulate all the honorees, and recognize some of our Platinum winners below:



Pictured at an award presentation in Nashville's Bluebird Café are NMPA CEO David Israelite, Hillary Lindsey and Brett James, Platinum winners for "Jesus Take the Wheel", and Lionel Conway, President, Stage Three Music.



David Israelite, Josh Kear, and RIAA Chairman and CEO Mitch Bainwol in Nashville in October. Kear's "Before He Cheats" went Platinum for Carrie Underwood.



Daniel Powter joins David Israelite and NMPA Board members Irwin Robinson and Marty Bandier at the Four Seasons in Los Angeles in October. Powter's single "Bad Day" scored on the charts.

Pictured at an award ceremony in Los Angeles are NMPA CEO David Israelite, peermusic's VP of A&R Sam Kling and President Kathy Spanberger; Mark Stewart, manager; C. Tricky Stewart, who went Platinum for "Umbrella", and Ralph Peer, Chairman and CEO, peermusic.



# In The News...

## MARK YOUR CALENDAR

### NMPA Annual Meeting June 18

The NMPA Annual Meeting will take place on June 18 at the Marriott Marquis Hotel in New York City.

Marriott Marquis Hotel  
1535 Broadway • New York, NY  
3-5 p.m. Meeting • 5 p.m. Cocktail Reception

If you are interested in attending, please contact NMPA's Director of Member Relations, Jamie Marotta, at [jmarotta@nmpa.org](mailto:jmarotta@nmpa.org).

## Join Us!

## Board Chairman Irwin Robinson, Honored With First NYU Visionary Award

Chairman of the Board Irwin Z. Robinson in April became the first recipient of the New York University Steinhardt Music Business Program Visionary Award.

The award honors a business figure of note for his or her lasting and positive impact on the music industry through innovative, effective, and creative business leadership.

Robinson, who is Chairman of Paramount Allegra Music, has served as NMPA Board Chairman since 1985. He was first elected to the Board in 1974.

NMPA President and CEO David Israelite noted, "NYU could not have made a better choice for its inaugural presentation of the Visionary Award. Irwin has had a profound impact on virtually every aspect of the music world."

Mr. Robinson formerly served as Chairman and Chief Executive Officer of Famous Music Publishing; President and Chief Executive of EMI Music Publishing Worldwide; President of Chappell/Intersong Music Group; and General Counsel, and then Vice President and General Manager of Screen Gems-Columbia Music/Screen Gems-EMI Music, Inc.

Mr. Robinson also serves on the Board of Directors of both ASCAP and the Songwriters Hall of Fame.



Irwin Z. Robinson,  
NMPA Chairman

## In case you missed it...

Recent NMPA coverage and quotes from President and CEO David Israelite

### CRAIN'S BUSINESS

January 28, 2008 - Digital music gets hearing; DC Board to decide on royalty payments for songwriters and publishers

"This is of enormous importance to songwriters. Their financial survival depends on the outcome of this proceeding."

— David Israelite

### WIRED

February 4, 2008 - What Better Music? Don't Stiff the Songwriters

"If you're a music fan, the worst thing in the world that could happen is if great songwriters stop writing music because they can't make a living."

— David Israelite

### Billboard

February 16, 2008  
Publishers Score Early at CRB

"Music publishers notched a victory during the second week of a rate-setting trial at the U.S. Copyright Royalty Board... While the decision isn't necessarily the final word on the subject, many publishers are reinvigorated by the decision."

### VARIETY

March 7, 2008  
House passes antipiracy act;  
New bill lacks key industry provision

"Today's action represents important progress for everyone concerned about better enforcement of America's intellectual property rights."

— David Israelite



# Who, What, Where...

## Calendar of Events

### May 18, 2008 • 43rd Annual Academy of Country Music Awards MGM Grand Hotel • Las Vegas, Nevada • [www.acmcountry.com](http://www.acmcountry.com)

The Academy of Country Music, an artist and industry-driven organization, exists to produce a world-class network television awards show, and its associated events, to provide the financial resources to ensure the ongoing charitable work of its Charitable Fund.

### June 5-8, 2008 • CMA Music Festival Nashville, TN • [www.cmafest.com/2008](http://www.cmafest.com/2008)

Unique among music festivals, the CMA Music Festival is a four-day celebration of that features artist/fan interaction, autograph signings, photo opportunities, more than 70 hours of concerts, family activities and much more.

### June 18, 2008 • AIMP Lunch New York, NY • [www.aimp.org](http://www.aimp.org)

The primary focus of the Association of Independent Music Publishers (AIMP) is to educate and inform local music publishers about current industry trends and practices by providing a forum for the discussion of the issues confronting the music publishing industry.

### June 18, 2008 • NMPA's Annual Meeting Marriott Marquis Hotel • New York, NY • [www.nmpa.org](http://www.nmpa.org)

The National Music Publishers' Association's annual meeting is an excellent opportunity to learn about the latest developments crucial to the music publishing industry. Please check our website or contact Jamie Marotta at [jmarotta@nmpa.org](mailto:jmarotta@nmpa.org) for information.

### June 19, 2008 • Songwriters Hall of Fame [www.songwritershalloffame.org](http://www.songwritershalloffame.org) • New York, NY

SHOF has come to represent the legacy of the great popular song in all its richness and variety. The honor roll of inductees spans distinctions of gender, race, and musical genre, and includes music creators as diverse as Dorothy Fields, Hank Williams, Henry Mancini, Otis Redding, Victor Herbert, Bob Dylan, Stevie Wonder, Diane Warren, Buddy Holly, and many other greats.

### August 1-3, 2008 • Lollapalooza Chicago, IL • [www.lollapalooza.com](http://www.lollapalooza.com)

The Lollapalooza music festival features alternative rock, hip hop, and punk rock bands, dance and comedy performances, and crafts. It also provides a platform for non-profit and political groups. Conceived and created in 1991 by "Jane's Addiction" singer Perry Farrell as a farewell tour for his band, Lollapalooza ran annually until 1997, and was revived in 2003.

### August 25-28, 2008 • Democratic National Convention

### September 1-4, 2008 • Republican National Convention

#### NMPA & HFA Board Meetings

June 18-19 • New York, NY

September 15-16 • New York, NY

October 20-21 • Los Angeles, CA

December 8-9 • New York, NY

## Inside the NMPA

David Israelite  
President and CEO

Berkley Schwarz  
Vice President and Counsel

Kathryn E. Wagner  
Vice President and Counsel

Jamie R. Marotta  
Director of Member Relations  
and Gold & Platinum Program

Elizabeth Young  
Executive Assistant

## NMPA Board

Irwin Z. Robinson  
Chairman

Martin Bandier  
Caroline Bienstock

Helene Blue  
Lionel Conway

Bob Doyle  
John Eastman

Roger Faxon  
Neil Gillis

Dave Johnson  
Dean Kay

Maxyne Lang  
Leeds Levy

Evan Medow  
Ralph Peer, II

Peter Primont  
David Renzer

John Rudolph

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## About the NMPA

The National Music Publishers' Association is committed to promoting and advancing the interests of music publishers and their songwriting partners. As the trade association for the music publishing industry, NMPA's goal is to foster a business climate that allows its members to thrive creatively and financially. Founded in 1917, NMPA battles for domestic and global protection of copyrights.

**WHAT'S ON YOUR PLATE?** If you have an event to list on the NMPA Calendar, please submit the details to Jamie Marotta at [jmarotta@nmpa.org](mailto:jmarotta@nmpa.org).

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