

NATIONAL MUSIC PUBLISHERS' ASSOCIATION

The Note

SPRING 2007

The Rate-Setting Battle

Music Publishers and Songwriters Fight for Fair Compensation

This year, music publishers and songwriters face the challenge of a generation: Convince three judges in Washington, D.C. to set royalty rates that accurately reflect the worth of their songs.

The arena for this battle is the rate-setting proceeding before the Copyright Royalty Judges. By the end of 2007, after a complex series of hearings, the judges will set the royalty rates for physical products, digital downloads, digital subscription services and certain ringtones. These new rates will go into effect January 1, 2008 and will remain in effect through 2012.

Industry experts say that lowered royalty rates could significantly erode music publishers' bottom line and damage their ability to support new writers and songs.

The National Music Publishers' Association (NMPA), advocating on behalf of music publishers and songwriters, is fighting for a rate increase to bring the system into the modern age.

"Songwriters and music publishers are already forced to conduct their businesses under a compulsory license system," said NMPA President and CEO David Israelite. "At the very least, they should not be penalized more by rates that do not reflect the true value of their contributions."

The NMPA, along with its partners the Nashville Songwriters Association International (NSAI) and the Songwriters Guild of America (SGA), are pitted against

the record labels, represented by the Recording Industry Association of America (RIAA), and the digital media companies, represented by the Digital Media Association (DiMA).

The various parties have already submitted their written cases. Hearings are expected to be held later this year.

The current statutory rate for both CDs and permanent downloads is 9.1 cents — a mere 7.1 cents above the 2-cent rate set nearly a century ago, at the time of the enactment of the compulsory license. Music publishers and songwriters agreed to the current rate structure a decade ago, when the CD market was thriving and the digital market did not exist.

Record labels and digital music companies will argue for even lower rates, saying that illegal downloading has cut into their profits. But the NMPA and its partners say that this is no justification for lowering payments to songwriters and publishers, who have also very much felt the effects of theft.

The NMPA's proposal increases, but preserves, the penny rate royalty system for physical products and permanent downloads. For limited downloads and interactive streams, the NMPA and its partners argue for a flexible, percentage-based approach.

In October, the Register of Copyrights determined that ringtones are subject to the compulsory license under Section 115 and therefore part of the rate proceeding.

"We are disappointed in the decision. For years, copyright owners have negotiated ringtone licenses in the free market," said Jacqueline Charlesworth, counsel for NMPA. "However, we'll continue to fight for a fair royalty rate for ringtones, along with all other other uses, in our proceedings before the Copyright Royalty Judges."

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President's Corner

DAVID ISRAELITE



Greetings,

As President and CEO of the National Music Publishers' Association, I welcome you to the inaugural issue of *The Note*, a twice-yearly magazine for music publishers and songwriters. We've included plenty of articles we think you will find to be relevant to your lives.

As you may already know, the NMPA is the leading association advocating on behalf of music publishers and their songwriting partners. Established in 1917, our goal is to foster a business climate that allows our members to thrive financially and creatively. We are on the forefront of the battle to protect your most important asset — your songs.

We at NMPA felt we needed a better vehicle for getting information to you, the music publishers and songwriters who are the backbone of the music industry. So we put together *The Note* with the intention of having a dynamic forum for discussing issues that matter to you. The magazine will have valuable regular features, such as a newsmaker profile in a Q&A format: snapshots of key individuals in the music publishing and songwriting industries. Each issue will also have a column written by a music publisher and an in-depth look at legislative developments to keep you up-to-date on crucial bills that could affect your bottom line.

The lead news story in this inaugural issue focuses on a matter of critical importance to music publishers and songwriters: the rate-setting proceeding before the Copyright Royalty Judges (CRJs) in Washington, D.C. By the end of 2007, the CRJs are expected to announce new statutory royalty rates for digital downloads and subscription services. At the same time, they will also set rates for physical products for the first time in ten years. The new rates are to go into effect January 1, 2008.

The NMPA, the Nashville Songwriters Association International (NSAI) and the Songwriters Guild of America (SGA) have joined together in this fight to ensure that music publishers and songwriters receive fair compensation for copyrighted songs. Our adversaries in the proceeding are those who use your musical works — the record labels, represented by the Recording Industry Association of America (RIAA), and the digital media companies, represented by the Digital Media Association (DiMA). While we often work with these members of the creative family on other issues, like all families, we have our occasional differences.

There's no question about it — the rates set in this proceeding will affect your viability. If you are like most of your counterparts in the industry, your income stream is in large part dependent on compensation from mechanical licenses. The NMPA is battling for rates that accurately reflect your contribution to the world of music. We are fighting on your behalf for fair compensation for your hard work.

The NMPA needs your voice to make us even stronger. If you haven't already joined, **now is the time**. We've included an easy-to-use form in the magazine for that purpose. As you can see from the pages of this magazine, there are many benefits to being part of the leading association for your industry.

Until next time,

A handwritten signature in black ink that reads "Dmb".

David Israelite
President & CEO, NMPA

**The NMPA is
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Martin Bandier is Chairman and Co-Chief Executive Officer of EMI Music Publishing.

How did you get your start in music publishing?

I was working for a law firm back in the late 1960s and they represented a company which was acquiring a music publisher. Because I had long hair and listened to music, I was the associate chosen to handle the transaction. It was love at first sight.

What has been the highlight of your career so far?

So far, the highlight has been being in business with Berry Gordy, Jr. and acquiring what I consider to be the greatest body of work created in the 20th century; namely the Jobete (Motown) catalog.

What's next for you?

I will be leaving EMI at the end of March, and begin the next phase of my career at that time.

What's the biggest lesson you've learned that you would like to pass along?

Never underestimate the value of a song. When I first entered the business, I couldn't possibly have dreamed of all the ways in which music is being licensed today, and the possibilities are endless for the future. Great songwriters and songs never go out of style — when Henry Mancini wrote the theme for *The Pink Panther*, he had no idea that decades later it would be one of the most popular

ringtones played. Songwriters and their songs are an integral part of the value chain of music.

What do you think has helped with the success of EMI Music Publishing?

I attribute our success to having a creative team and a business team which together brought to EMI MP an unrivalled body of songs and, further, to having staff who understood the value of those songs and built a support network around them to grow those songs in value.

What's your favorite song and why?

I love anything from the Jobete (Motown) catalog. I believe Motown was the single greatest musical influence on the world, from both a social as well as a cultural perspective.

What are the biggest challenges to the music publishing industry?

We must make sure that, as digital becomes the predominant delivery platform, the songwriter's piece of the pie does not get diminished or even overlooked.

Why is it important for the music publishing industry to speak with a unified voice in Washington, D.C.?

Songwriters and music publishers have often been overlooked and their value diminished by the users, both in the physical world and the digital world. The NMPA enables us to voice our concerns as a unified industry to the legislators.



Martin Bandier



“Because I had long hair and listened to music, I was the associate chosen to handle the transaction. It was love at first sight.”





BERKLEY SCHWARZ

The National Music Publishers' Association (NMPA) is facing several critically important battles before Congress in 2007. The 110th Congress will likely consider legislation affecting music licensing, digital radio, anti-piracy and orphan works, just to name a few. The NMPA continues to work with members of Congress, as well as others in the music industry, to ensure that music publishers' intellectual property rights are not diminished.

The next year is shaping up to be a critical time for the music publishing industry in Washington. Now, more than ever, music publishers and their songwriting partners must unite to protect their rights.

MUSIC LICENSING REFORM

It is crucial that legislation reforming the music licensing system respect creators' property rights.

The NMPA is dedicated to promoting the reform of Section 115 of the Copyright Act, which governs the compulsory mechanical license.

The compulsory mechanical license allows for the reproduction and distribution of any commercially released non-dramatic musical work. Section 115 governs the terms and conditions for these activities, including the royalty payments. However, many in the music industry and Congress recognize that the current antiquated system of collecting royalties does not work well in the digital world. It is crucial that legislation reforming the music licensing system respect creators' property rights.

Thanks to our efforts, creators have already begun to band together to discuss music licensing and other issues that will be considered by Congress in the year ahead. The NMPA has held meetings with artists, songwriters and performing rights organizations to facilitate discussions for a united front in approaching the 110th Congress.

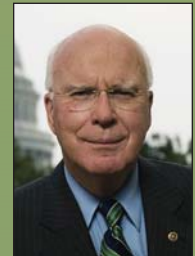
In January, the House and Senate finalized their committee assignments for the new Congress. Congressman John Conyers (D-MI) is the new Chairman of the

House Judiciary Committee, and Congressman Lamar Smith (R-TX) is Ranking Member. Congressman Howard Berman (D-CA) was named Chairman of the House Judiciary Subcommittee on Courts, the Internet and Intellectual Property; Congressman Howard Coble (R-NC) is Ranking Member.

In the Senate, Senator Pat Leahy (D-VT) was named Chairman of the Senate Judiciary Committee, and Senator Arlen Specter (R-PA) is Ranking Member. Chairman Leahy



Rep. Howard Berman (D-CA)



Sen. Pat Leahy (D-VT)

has decided to consider intellectual property issues at the full Judiciary Committee level.

The NMPA looks forward to continuing to work closely with the new chairmen of the House and the Senate Judiciary committees.

DIGITAL RADIO/SATELLITE RADIO

Without reasonable content protection, consumers could easily become the owners of perfect copies of any song they choose without proper payment.

With the onset of high-quality digital radio signals transmitted through satellite, cable or Internet radio, it is vital that Congress pass legislation to protect the songs that are being transmitted. Without reasonable content protection, consumers could easily become

the owners of perfect copies of any song they choose without proper payment. The result would be devastating for music publishers and songwriters.

The NMPA has joined together with a coalition in the music industry to ask Congress to draft legislation to protect our content. We are pursuing legislation through both the Commerce and the Judiciary committees in the House and the Senate.

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.





On January 11, 2007, Senator Dianne Feinstein (D-CA), introduced the PERFORM Act, legislation to protect songwriters and music publishers while encouraging the growth of digital radio. Platforms like high definition and satellite radio should be able to thrive and expand, but not at the expense of those who have worked so hard to create the music that fans crave. Ultimately, this bill would allow the consumer more ways than ever to get high-quality digital music, while fostering an environment that ensures songwriters, music publishers and other members of the music community are compensated for their intellectual property. The PERFORM Act has been referred to the Senate Judiciary Committee, and the NMPA will continue to work toward the goal of passing this important legislation.

The PERFORM Act: "Platform Equality and Remedies for Rights Holders in Music Act"
This important legislation would prohibit unauthorized copying of digital radio broadcasts.

very closely with the House and Senate Judiciary Committees on this important issue. The NMPA anticipates that an orphan works bill will be reintroduced in the 110th Congress to give all the affected parties more time to weigh in and work with Congress on any provision of concern in the bill.

FAIR USE

The NMPA strongly opposes any legislation that would do away with the technological protections for intellectual property in the guise of expanding the "fair use" doctrine.

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Over the last few sessions of Congress, legislation has been introduced that would erode the protections included in the

Digital Millennium Copyright Act and would inevitably harm consumers as well as music copyright holders. Legislation promoting the hacking of technology-protected copyrights ultimately would damage the economic incentives for new online works, and would thereby reduce the new creative products available to consumers.

ANTI-PIRACY ENFORCEMENT

...a comprehensive piece of anti-piracy legislation.

The NMPA is concerned about the theft of intellectual property and will work with members of

Congress and others in the entertainment industry to pass a comprehensive piece of anti-piracy legislation. Proposed legislation includes increasing the number of FBI agents dedicated to anti-piracy investigations and providing federal funds to several key local police departments for the purpose of hiring additional anti-piracy investigators.

ORPHAN WORKS

Protecting music in orphan works legislation continues to be a top priority for NMPA.

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

In January 2006, the Copyright Office issued a report outlining the problems surrounding orphan works and recommending a legislative fix. For more information, visit: www.copyright.gov/orphan.

Protecting music in this legislation continues to be a top priority for the NMPA, and we plan to work

The Rate-Setting Battle – Continued from page 1

Given the ruling, the NMPA is proposing a pricing structure similar to that of private agreements. In the meantime, the NMPA has filed a notice to appeal the October decision.

All in all, music publishers following the proceedings remain hopeful that the judges will understand that fair royalty rates are vital to a flourishing music industry.

"We are pulling out all the stops to convince the Copyright Royalty Judges that our livelihoods depend upon a fair rate," said Irwin Z. Robinson, NMPA Chairman.



Irwin Z. Robinson, NMPA Chairman

To see the NMPA's case filing, please visit: www.nmpa.org/music101/legal.asp.

Rate-Setting in a Global Environment

The shape of the songwriting and music publishing industries for decades to come may well be determined in the next 24 months. Through a confluence of circumstances, rate-setting proceedings in a number of major music markets will reach conclusions during that period. While no national procedure is dependent upon the results in other countries, there can be little doubt that outcomes in foreign territories will inform rate deliberations in the United States and in other jurisdictions.

Publishers and their songwriters face an exciting, but complicated new environment. For the first time, digital commerce, both wired and wireless, is seen as an important platform for rates. One of our biggest challenges in establishing rates is that bundling music with other services makes the task of assigning value more difficult. Additionally, to succeed in the years to come, we also must interface with important new players, most notably online music service providers and telecoms. These forces are much more powerful than the traditional record industry, making the publishing/songwriting community even more of an underdog than in years gone by.

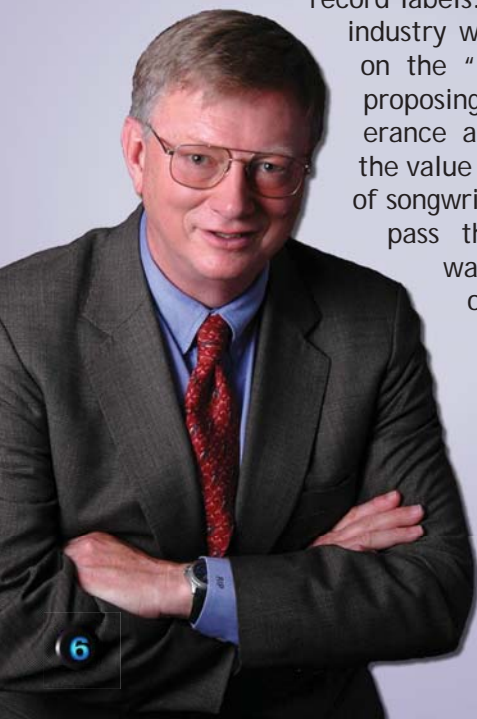
Songwriters and their publishers have always shared in the recording risk — receiving royalties only after the bona fide sale of a recording — and thus have suffered downturns proportionately to the record labels. Nonetheless, the record industry will certainly seek to rely on the “bad times” argument in proposing rate reductions. Perseverance and a steadfast belief in the value of a song will be required of songwriters and publishers as we pass through these uncharted waters. Here is a summary of some of the more important foreign rate-setting proceedings:

The focus in continental Europe is Germany, as that country, unlike most, has a

specified arbitration court process. Therefore it is not unusual for the rest of Europe to broadly follow the German outcome. There has been a series of German decisions over recent years, but the most significant for the digital realm was just issued in January in a reference regarding digital downloads brought by T-Mobile, CTS-Eventim and AOL. The arbitration court decided on a tariff of 11% of direct and indirect (e.g., advertising) consumer costs, importantly with a minimum of €0.1278 (US\$0.166) and a requirement of standardized electronic reporting. Both sides have appealed, with a decision months away. There is also pending a decision for on-demand streaming which is expected later in the year.

In the United Kingdom, the main part of the pending rate-setting proceeding before the UK Copyright Tribunal was settled in late September among the Alliance, BPI and music service providers on the courthouse steps. The agreement provides for a headline rate of 8% of consumer price for digital uses and for the first time introduces some minima into a UK royalty scheme. Two issues remain open: the rate for certain broadcasters of non-interactive streams and the revenue base to which the 8% rate will be applied in, for example, advertising-supported models.

The Canadian body CSI — a joint undertaking of the Anglophone CMRRA and the Francophone SODRAC — participated in a September hearing before the Copyright Board of Canada on the licensing of songs for permanent downloads, subscription-based limited download services and subscription-based interactive streaming services. CSI has proposed mechanical rates of the greater of 15% of retail or C\$0.10 (US\$ 0.085) per song for permanent downloads, the greater of 10% of the monthly subscription fee or one dollar per subscriber per month (US\$0.085) for unlimited download subscription services and the greater of 7.5% or C\$0.75 (US\$0.64) per subscriber per month for subscription-based interactive streaming services. A decision is expected this spring.



Ralph Peer, II, is Chairman and CEO of peermusic.

www.peermusic.com



In The News...

The National Music Publishers' Annual Meeting

June 6, 2007 • New York, NY

Get ready to spend a few music-filled days in the Big Apple.

The NMPA announces that it will from now on schedule its annual meeting to coordinate with the Songwriters Hall of Fame, so that you can enjoy both events together every year.

This year, the NMPA annual meeting is set for June 6, the day before the Songwriters Hall of Fame annual affair.

You won't want to miss this year's bigger-than-ever NMPA meeting:

- More Publisher Participation
- More Entertainment
- More Information

The NMPA will unveil the location in a few weeks on its Web site,

www.nmpa.org



Check it out.



NMPA General Counsel Honored

Jacqueline C. Charlesworth, Senior Vice President and General Counsel of the National Music Publishers' Association (NMPA), recently received a prestigious Association of Media & Entertainment Counsel of the Year award. Ms. Charlesworth won the Public Service Counsel award for her contribution at a critical time in the history of the music industry.

Ms. Charlesworth serves as the primary legal advisor for legislative and legal initiatives for NMPA. She has been instrumental in helping to craft the Section 115 Reform Act, passed by the U.S. House Subcommittee on the Courts, the Internet and Intellectual Property in 2006, to amend the U.S. Copyright Act by creating a blanket licensing system for digital services. Ms. Charlesworth also oversees NMPA's ground-breaking litigation efforts, including the music publishers' cases against illegal peer-to-peer services.

The Media and Entertainment Counsel of the Year Awards is an annual series to honor the top general counsel and business affairs attorneys at media, entertainment and communications companies.

What's Your Big News?

Attention NMPA members! We want to hear from you. Have you attended or hosted a charity event recently? Has your company experienced significant business developments or hired noteworthy personnel? We will have a section in every issue for your news items. Please send your information, including photos, to Jamie Rozecki at jrozecki@nmpa.org.

Please put "THE NOTE: In The News" in the subject line.

Working For You

Jamie Rozecki is the Director of Member Relations for the NMPA, as well as the Executive Assistant to David Israelite, President & CEO of NMPA. Ms. Rozecki ensures that all members are kept up-to-date on current events in the music publishing industry, manages the NMPA election process and plans the annual meeting.





Who, What, Where...

CALENDAR OF EVENTS

March 12 • Rock and Roll Hall of Fame • Waldorf Astoria Hotel • New York, NY
www.rockhall.com

The Rock and Roll Hall of Fame Foundation will honor five new inductees: Grandmaster Flash and the Furious Five, R.E.M., The Ronettes, Patti Smith and Van Halen. The RRHF will also honor Ahmet Ertegun, legendary founder of Atlantic Records.

March 9-18 • SXSW Conference & Festival • Austin, TX • www.sxsw.com

South by Southwest (SXSW) is an interactive, film and music festival and conference. SXSW showcases hundreds of musical acts from around the globe on over 60 stages and screens the best in independent films. The three conferences and festivals attract industry people from the world over.

March 27-29 • CTIA Wireless • OC Convention Ctr. • Orlando, FL • www.ctiawireless.com

CTIA WIRELESS is the world's largest telecommunications event dedicated to wireless, broadband convergence and mobile computing technologies, covering the entire industry from network infrastructure to microprocessors to content to end-user hardware. The event includes tens of thousands of attendees and 400,000 square feet of exhibits.

March 27-31 • Regions Bank presents NSAI's 15th Annual Tin Pan South Songwriters Festival • Music Row • Nashville, TN • www.tinpanosouth.com

Tin Pan South is the largest songwriters festival in the world and includes 250+ top songwriters, 70+ shows and five nights of stellar entertainment.

March 30-31 • NSAI's Songwriter's Symposium • Millennium Maxwell House Hotel • Nashville, TN • www.nashvillesongwriters.com

NSAI's Songwriter's Symposium gives attendees the opportunity to learn from and network with hit songwriters and top music industry professionals.

April 19-21 • ASCAP "I Create Music" Expo • Renaissance Hollywood Hotel Los Angeles, CA • www.ascap.com

The ASCAP EXPO is the only national conference dedicated to songwriting and composing. The EXPO provides attendees an opportunity to receive feedback and advice on their music with special Song Listening Panels. Registrants will have the chance to have their music discussed by a panel of experts who write, listen to or select music for a living. The panels will illuminate how industry professionals, such as A&R executives, publishers, songwriters and producers, choose the music they do — and why. All EXPO registrants are invited to submit songs.

April 23-26 • Billboard Latin Awards • Miami, FL • www.billboardevents.com

The Billboard Latin Music Conference & Awards is attended by more than a thousand sponsors, press and music industry executives. It features performances by over 20 artists and panel discussions on important industry issues.

June 6 • NMPA's Annual Meeting • New York, NY • 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 and take part in the association's election process. This year promises more entertainment, excitement and music publisher participation.

June 7 • Songwriters Hall of Fame • New York, NY • www.songhall.org

The Songwriters Hall of Fame (SHOF) was founded in 1969 by songwriter Johnny Mercer and publishers Abe Olman and Howie Richmond. Along with SHOF's mission to promote and preserve the legacy of popular music, the organization is devoted to the development of new songwriting talent through workshops, showcases and scholarships. The 2007 inductees will join the ranks of such music greats as Hank Williams, Henry Mancini, Otis Redding and Buddy Holly.

June 7-10 • CMA Music Festival • LP Field • Nashville, TN • www.cmafest.com

The CMA Music Festival, produced by the Country Music Association, is a celebration of America's music that features more than 70 hours of concerts, artist/fan interaction events (including autograph signing and photo opportunities), family activities, celebrity sporting competitions and much more.

WHAT'S ON YOUR PLATE? If you have an event to list on the NMPA Calendar, please submit the details to Jamie Rozecki at jrozecki@nmpa.org.

Inside the NMPA

David Israelite
President & CEO

Jacqueline Charlesworth
Senior V.P. and General Counsel

Berkley Schwarz
Vice President and Counsel

Jamie Rozecki
Director of Member Relations

NMPA Board

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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.

WWW • NMPA • ORG