

NATIONAL MUSIC PUBLISHERS' ASSOCIATION

The Note

FALL 2009

Publishers win deal to speed up royalty payments from labels

\$260 million in back payments to be distributed

The National Music Publishers' Association has reached agreement with the Recording Industry Association of America that will result in distribution of millions of dollars in old mechanical royalties and improve the mechanical licensing process for the future.

The agreement results from the Copyright Royalty Board ruling last fall to require late fees on late mechanical royalty payments. It results in the distribution of approximately \$260 million in back royalty payments and sets out new payment procedures that will be adopted by NMPA and RIAA.

The agreement requires record labels to pay what are known as "pending and unmatched" mechanical royalties totaling approximately \$260 million in two phases over the next year. Pending and unmatched accounts exist in many cases where a publisher has not been located by a record label, or when there are disputes over ownership shares of a song.

The first phase of payments, covering approximately \$160 million in pending and unmatched accounts before 2007, will occur over the next several months. Disbursement of these funds will be overseen by Ken Feinberg, Special Settlement Master who administered the September 11 Victim Compensation Fund and is currently administering TARP bailout funds for the U.S. Department of the Treasury.

The second group of payments covers the period 2007-08 and represents an additional amount of approximately \$105 million, which will be paid out in about one year after newly hammered out procedures for publishers and record companies are instituted.

Those same procedures, which labels and publishers will continue to refine over time, will apply to future mechanical royalty payments to ensure that licenses are obtained expeditiously and payments to publishers and songwriters are made more quickly.

Participation in the distribution process is voluntary for publishers. Publishers who enroll with Special Master Feinberg will be notified of their share of the funds based on a formula, and can decide whether to opt in or not.

Importantly, going forward, this agreement will change the way labels do business, requiring better communication, faster royalty payments and more accurate royalty payments.

More information will be provided at nmpa.org and through the NMPA system of Member Alerts as the process unfolds.

Music publishers pursue illegal lyric sites

NMPA members filed copyright infringement lawsuits late this summer against two businesses exploiting unlicensed lyrics for profit through their operation of four web sites and as the source of unauthorized content for numerous web applications. (More on page 7)

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President's Corner

DAVID ISRAELITE



Dear NMPA Membership,

We have had an exceptionally active summer and fall and have a lot of news to share in this issue of *The Note*.

I urge everyone to read closely the information in our cover story about the settlement reached with the recording industry. This agreement resolves issues stemming from the Copyright Royalty Board's recent ruling imposing a late fee if mechanical royalties are not paid in a timely manner.

The agreement will result in distribution of millions of dollars in old mechanical royalties in conjunction with efforts to improve the mechanical licensing process for the future. This is an enormous benefit to music publishers — not only in terms of the back payments that will be distributed in the coming months. Over the long term, the best practices established will help ensure that licenses are entered into expeditiously, and payments to publishers and songwriters are made much more quickly than the present day system.

I will provide regular updates and information on our web site and through our system of Member Alerts as the process unfolds. I cannot emphasize enough my commitment to making this process transparent and fair.

In other important news, music publishers filed lawsuits against two illegal lyric site providers this summer. A summary of this action, as well as a myriad of other policy issues, can be reviewed in this issue's Legal & Policy update.

Finally, I hope everyone has had a few minutes to look at our new web site — nmpa.org — which was recently updated to provide a platform for more current communications. I hope you find it to be a useful resource.

On behalf of the entire NMPA team, I wish everyone a safe and joyous holiday season.

Until next time,

A handwritten signature in black ink, appearing to read "D Israelite". The signature is fluid and cursive.

David Israelite
President & CEO, NMPA

... nmpa.org was recently updated to provide a platform for more current communications ...



What sparked your interest in a career in music publishing?

As a teenager, I always wanted to be involved with music, but more on the artist side. During a school break, my life long friend, Songwriter Hall of Fame inductee Don Black, introduced me to a publisher, Dick James, who offered me an English version of an internship at his company, (I made a good cup of tea!) I remember delivering a song to my favorite singer at the time, Dickie Valentine, and he actually opened his own front door. That was it... I never went back to school again. I became a publisher overnight.

You are originally from the U.K. and started your career there. How would you compare the music industry, music publishers and artists in the U.S. versus the U.K.?

I left the U.K. to start a U.S. subsidiary of my company, Island Music, in 1975. At that time, music was changing in the U.K. — lots of unmusical bands and lots of punk. Meanwhile, the U.S. was teaming with a wealth of great writers — Billy Joel, James Taylor, Carole King, and Carly Simon to name but a few. I wanted to be part of that scene; musically, the U.K. had no special meaning to me. However, I must say that there is much more interesting music coming out of the U.K. now than there had been for many years.

Describe your past experiences working with some of the world's finest talent such as Cat Stevens, Tom Waits, and U2?

I remember the first time I met each artist; each one of them made a profound impression on me— U2 playing at a pub in West London; watching Bono at seventeen outdoing Bowie in style and theatrics; Cat Stevens playing his new songs like "Wild World" and "Lady D'Arbanville" on acoustic guitar for me in my office; meeting Tom Waits and his wife/collaborator, Kathleen, in a downtown L.A. breakfast dinerette; Paul McCartney playing me an early version of "Yesterday," (he actually called it "Scrambled Eggs" at the time,) on Harpsichord in my office. The experience of those encounters will stay with me forever.

Who are some new artists you are working with that you are excited about?

I'm working with some great talented writers— Colin Meloy of the Decemberists, Brett James, Bobby Pinson, Jon Mabe, Matt Nathanson, indie band Jukebox the Ghost, and we recently signed songwriters Andrew Frampton, Heather Bright and Mike Shimshack. This year we will have twenty charted songs, which for a small company like ours, is a statement to our talented writers.

The music industry is somewhat of a mystery to most people. What is the one thing you would want consumers and music fans to know about the music publishing business?

The Music Publishing Industry has always suffered bad press; we never get the accolades of breaking new talent. But times are a' changing. We are doing much more development with new acts than the record companies. Our administration is becoming more transparent, our income streams have increased dramatically and we have become much more attractive to investors than ever before.



Lionel Conway,
President,
Stage Three Music

With a new administration in the White House, why is it important for music publishers to maintain an active presence in Washington, DC?

With the advent of new technology, new distributors of music and new income streams, it is vital that we keep a strong presence in Washington. We have to make sure that our industry maintains the value of its copyrights. No one knows that better than our President of the NMPA, David Israelite.

If you were asked to make a playlist for President Obama from your past and present catalogs, what songs would you include?

- "Peace Train" — Cat Stevens
- "I Still Haven't Found What I'm Looking For" — U2
(actually, this one might be better suited for Bush)
- "Dream On" — Aerosmith
- "Time" — Tom Waits
- "She Makes My Day" — Robert Palmer
- "I Just Wanna See You So Bad" — Lucinda Williams
- "Come On Get Higher" — Matt Nathanson
- "The Climb" — Miley Cyrus



BERKLEY SCHWARZ

Constitutionality of the Copyright Royalty Board

... an aggregator of digital radio stations and a participant in the webcasting royalty proceedings, filed a Complaint for Declaratory and Injunctive Relief ...

The constitutional standing of the CRB has been under attack. On May 13, 2008, Royalty Logic, LLC, filed a supplemental brief with the D.C. Court of Appeals in *Intercollegiate Broadcast System v. Copyright Royalty Board* alleging that the appointment of the CRB is a

violation of the Appointments Clause of the Constitution.

On July 10, 2009, the Court of Appeals declined to rule on the constitutionality question "on the basis of hasty, inadequate and untimely briefing." While the court also expressed an ongoing concern regarding the appointment of the CRB Judges, the court's decision was a short reprieve and allowed the affected parties a chance to resolve the issue through legislation.

However, on August 31, 2009, LIVE365, an aggregator of digital radio stations and a participant in the webcasting royalty proceedings, filed a Complaint for Declaratory and Injunctive Relief with the United States District Court for the District of Columbia challenging the constitutionality of the CRB. LIVE365 argues that the appointment of the CRB judges by the Librarian of Congress violates the Appointments Clause because either the judges are principal officers who must be appointed by the President; or the judges are inferior officers who must be appointed by the Head of a Department, and the Librarian of Congress is not the Head of a Department.

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 has been working with key Congressional staff about introducing legislation to make it clear that the CRB is constitutional and to codify the CRB's past determinations. We will continue working to find the best solution and the best time to introduce the legislation.

Google Book Settlement

... songwriters and music publishers' works will be implicated since the definitions of "Book" and "Insert" include certain bootstrapping references to and definitions of music and lyrics.

In 2004, Google entered into agreements to digitize books and other writings in the collections of some of the most prominent libraries in the United States. Known as the "Google Library Project" (or, GLP), Google digitized more than 7 million books. In response, the Authors Guild and the Association of American Publishers

filed a copyright infringement class action lawsuit against Google. The parties to the lawsuit agreed to settle the case in October, 2008. The settlement, if approved, will bind a Class consisting of all persons who have a U.S. copyright interest in a Book or Insert (as defined in the agreement), whether currently in print or not, prior to January 5, 2009.

Although the settlement specifically excludes "Sheet music and other works that are used primarily for the playing of music," songwriters and music publishers' works will be implicated since the definitions of "Book" and "Insert" include certain bootstrapping references to and definitions of music and lyrics.

Both the Department of Justice and the Registrar of Copyrights have raised concerns about the settlement. Specifically, DOJ's position is that the settlement does not satisfy Rule 23, regarding class action lawsuits, and the settlement may be inconsistent with Antitrust Law. The U.S. District Court has agreed to postpone the previously scheduled fairness hearing, so that the parties can work on the settlement and address DOJ's concerns.

Per NMPA's request, the Judiciary committee submitted a question for the record to all of the witnesses asking them why they didn't consult with songwriters and music publishers in their negotiations and asking them how they think the settlement will affect songwriters and music publishers.



Sound Recording Performance Right

NMPA worked... to include important songwriter protection language in the bill ...

Performing artists and record labels have asked Congress to enact legislation that will establish a performance right for sound recordings in terrestrial radio. On May 13, 2009, the House Judiciary Committee passed the Performance Rights Act, H.R. 848. NMPA worked with Congressman John Conyers (D-MI), Chairman of the House Judiciary Committee and sponsor of the bill, and his staff to include important songwriter protection language, ensuring that songwriters are not harmed in the process of creating this new performance right for performers and record labels. The next step is consideration by the full House of Representatives.

On September 15, 2009, the Senate Judiciary Committee passed the Performance Rights Act. The Digital Media Association (DiMA) expressed concern with the proposed songwriter protection amendments, that were included in the House bill and that we asked to be included in the Senate version. NMPA, ASCAP, BMI, SESAC, SGA, and NSAI worked with Senate Judiciary staff to ensure that comprehensive, enforceable songwriter protection language was included in the Senate version of the bill.

The next step for the bill is consideration on the floor of the House and Senate respectively.

Public Performance in an AV Download

Songwriters and composers collect a public performance royalty any time their music is included in any audiovisual work, including movies, television, videos or video games. However, when the audiovisual work is digitally distributed as a download, no public performance royalty is paid. NMPA is working with the Performing Rights Organizations — ASCAP, BMI, SESAC, and the Songwriter Groups — NSAI, and SGA to ask Congress to clarify the law that a musical work public performance royalty should be paid on Audiovisual downloads. No legislation has been introduced.

Net Neutrality

... Internet service providers be permitted, and indeed encouraged, to implement reasonable network management techniques to protect against the theft of creative works and other unlawful activity.

NMPA's position on Net Neutrality is as follows:

Rampant theft of creative works on the Internet diminishes creativity, costs American jobs, weakens our economy, and clogs broadband networks. Unless carefully managed, an increase in broadband penetration may simply increase the scope of the problem, with no corresponding benefit for Internet users.

As federal policymakers consider whether to establish nondiscrimination rules governing the Internet, we believe it is essential that Internet service providers be permitted, and indeed encouraged, to implement reasonable network management techniques to protect against the theft of creative works and other unlawful activity.

FCC Chairman Julius Genachowski recently announced that he will issue a notice of proposed rulemaking on network neutrality with the "goal of ensur[ing] the Internet remains a free and open platform that promotes innovation, investment, competition, and users' interests." NMPA looks forward to continuing to make the FCC and legislators aware of our position on network neutrality.

What They're Singing on the Hill

The NMPA asked Members of Congress to tell us their favorite song. Here are a few:

Rep. John Conyers — Any song by Miles Davis or John Coltrane

Rep. Howard Coble — "Farther Down the Line" by Lyle Lovett and "Take Me Back to Tulsa" by Tommy Duncan and Bob Wills

Sen. Lindsey Graham — "What Becomes of the Broken Hearted" performed by Jimmy Ruffin, written by William Witherspoon, James Dean and Paul Riser

Rep. Paul Hodes — "What a Wonderful World" performed by Louis Armstrong, written by George Weiss and Robert Thiele

NMPA Spotlight

Copyright and the U.S. Economy

NMPA President and CEO David Israelite in July joined U.S. Secretary of Commerce Gary Locke and other industry leaders to release the International Intellectual Property Alliance's (IIPA) report on the economic impact and contributions of U.S. copyright industries. The findings in the report show that the creative industries continue to be a leader in jobs and economic growth.

Copyright Industries in the U.S. Economy: The 2003-2007 Report, written by Stephen Siwek of Economists Incorporated, was completed for the IIPA and updates 11 previous studies detailing the economic impact and contributions of U.S. copyright industries — including theatrical films, TV programs, home video, DVDs, business software, entertainment software, books, music and sound recording — on the U.S. economy.

"The U.S. copyright industries continue to pair their exceptional artistry with unmatched productivity," Israelite said. "The music publishing and songwriting community generates good jobs, economic activity and strong sales abroad and we are proud of our contributions to the nation's economy." Israelite continued by noting that the biggest threat to the U.S. copyright industries continues to be the unlawful use of copyrighted works.

"Music was the first hit and hit hardest. Now the bandwidth is improving and more people are getting access to broadband, we're seeing that spread to other industries as well," Israelite told the gathering.

According to the report, the U.S. core copyright industries accounted for nearly 23 percent of the U.S. economy's growth in 2006-2007. Further, they grew at a rate more than twice that of the U.S. economy as a whole in each of the years 2004-2007. In 2007 alone, U.S. copyright industries added \$889 billion to the U.S. economy, accounting for approximately 6.4 percent of GDP, and employed 5.6 million workers, or more than 4 percent of the U.S. workforce.

The entire report can be reviewed at www.iipa.com.



NMPA President and CEO David Israelite (second from right) onstage at the U.S. Department of Commerce with Secretary of Commerce Gary Locke (far left) and leaders of other copyright industry trade groups.



Israelite (third from right) and other copyright industry leaders meet with Secretary Locke (back to camera) prior to the event.



In The News...



The NMPA held its annual membership meeting June 17 in New York. Kara DioGuardi was honored with the 2009 Songwriter Icon Award. Pictured with Kara are, from left: Stephen Finfer, COO of Arthouse Entertainment, John Rudolph, CEO of Bug Music Inc. and David Israelite, NMPA President and CEO.

Music publishers pursue illegal lyric sites

Peermusic, Warner/Chappell and Bug Music filed an action against LiveUniverse, Inc. and its owner Brad Greenspan in the Federal Court of the Central District of California for willful copyright infringement on a vast scale. These publishers also filed a similar action against Motive Force LLC and its owner Sean Colombo in the Federal Court of the Western District of Pennsylvania. The Music Publishers seek both equitable relief and damages for these infringing companies' knowing and unlicensed use of the lyrics from musical compositions on their respective web sites and in conjunction with certain web applications.

"Unlicensed web sites exploiting song lyrics for profit have become a significant problem," said David Israelite, NMPA President and CEO. "These sites are profiting on the backs of songwriters. It is unfortunate that copyright holders must so frequently divert energies to protect their rights to license and distribute their works. However, the demand for music prompts a seemingly endless stream of illegal business models."

For the past three years, the NMPA has sent cease and desist notices to hundreds of illegal sites, providing multiple warnings and opportunities for the site operators to license the content and operate legally. These efforts have resulted in a significant reduction of illegal sites, as the majority of those contacted have either ceased operation or taken licenses. Unfortunately, Live Universe and Motive Force ignored these notices, resulting in the court filing.

In case you missed it...

Recent NMPA coverage and quotes from President and CEO David Israelite

Billboard

JUNE 17, 2009

NMPA Vows to Continue YouTube Fight

"The National Music Publishers of America's top legislative initiative for this year is to get law written that will clarify that there is a performance right for audio-visual downloads, the organization's president and CEO David Israelite said at its annual meeting, held in New York City at the Marriott Hotel on June 17. Israelite said the organization would continue to take on YouTube for its ongoing facilitation of copyright infringement online."

Congress Daily

JUNE 29, 2009

Conyers Asked to Uphold Royalty Board

"National Music Publishers' Association President David Israelite urged House Judiciary Chairman John Conyers and ranking member Lamar Smith late Friday to consider introducing legislation that would clear up any confusion surrounding the constitutionality of a federal panel that sets copyright royalties."

The Wall Street Journal

AUGUST 24, 2009

Music Publishers Group Files Copyright Suit?

"The National Music Publishers Association filed copyright-infringement suits against two businesses, including one owned by MySpace cofounder Brad Greenspan, that publish lyrics online for profit.

'These sites are profiting on the backs of songwriters. It is unfortunate that copyright holders must so frequently divert energies to protect their rights to license and distribute their works,' said David Israelite, NMPA president and chief executive. 'However, the demand for music prompts a seemingly endless stream of illegal business models.'"

THE TENNESSEAN

AUGUST 25, 2009

Song publishers sue web sites over lyrics use

"'We have been seeing an effort by many companies to provide a legal market for lyrics,' said David Israelite, NMPA president. 'We're going after illegal sites that are trying to profit without sharing it with songwriters and publishers.'"



Who, What, Where...

Calendar of Events

November 11, 2009 • CMA Awards

Nashville, TN • www.cmaawards.com

Country's biggest night featuring awards, presentations, and performances honoring country music's hottest stars.

January 7-10, 2010 • International CES

Las Vegas • www.cesweb.org

The International CES is produced by the Consumer Electronics Association (CEA), the preeminent trade association promoting growth in the consumer technology industry. CEA represents more than 2,100 corporate members involved in the design, development, manufacturing, distribution and integration of consumer electronics products. All profits from CES are reinvested into industry services, including technical training and education, industry promotion, engineering standards development, market research and legislative advocacy.

January 24-27, 2010 • MIDEM

Cannes, France • www.midem.com

MIDEM is the world's music market, where nearly 9,000 international music (labels, publishers, artist managers and many more), digital and mobile professionals gather to do business.

January 31, 2010 • Grammy Awards

Los Angeles, CA • www.grammy.com

The Grammy Awards are presented annually by the National Academy of Recording Arts and Sciences of the United States for outstanding achievements in the record industry.

March 12-21, 2010 • SXSW Music & Media Conference

Austin, TX • www.sxsw.com

The SXSW Music and Media Conference features a legendary festival showcasing more than 1,800 musical acts of all genres from around the globe on over eighty stages in downtown Austin. By day, the Austin Convention Center comes alive with conference registrants doing business in the Trade Show and partaking of a full agenda of informative, provocative panel discussions featuring hundreds of speakers of international stature.

March 15, 2010 • Rock & Roll Hall of Fame Induction

New York City • www.rockhall.com

Ballots will be sent to more than 500 voters, who will select artists to be inducted into the Rock and Roll Hall of Fame at the 25th Annual Induction Ceremony on March 15, 2010 at the Waldorf Astoria in New York City.

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.

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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.

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