

NATIONAL MUSIC PUBLISHERS' ASSOCIATION

The Note

FALL 2008

Historic Rate Setting

Industry Settlement Foundation for Publishing Industry in Digital Marketplace

American songwriters and music publishers scored important victories this month in a historic series of events that will collectively serve to bring more certainty to the marketplace and provide a guaranteed ongoing source of income.

The Copyright Royalty Board (CRB) convened in January to set the rates and terms for five mechanical uses of songs, including – for the first time – digital products as well as physical products. The NMPA, along with the Nashville Songwriters Association International (NSAI) and the Songwriters Guild of America (SGA), have fought on behalf of songwriters and publishers throughout the 10-month proceedings.

The obstacles for songwriters and music publishers cannot be overstated. With overall music sales continuing to decline, digital media companies and record labels argued that songwriters' and publishers' share should shrink as well. Further, they pushed for changing the rate structure from the current penny-per-song rate to a rate based on percentage-of-revenue.

This would have been a disastrous conclusion for songwriters and publishers. Digital media services and labels determine business models and pricing structure without input from the copyright holders, and frequently do so based

on ancillary revenue sources that songwriters and publishers don't share. Thus, maintaining a per-song rate was critical.

Despite the hyperbole from the other side, the CRB rejected their efforts. The Board maintained the penny rate and denied the push to slash payments. Songwriters and music publishers will be paid a rate of 9.1 cents for digital downloads and physical products. Each will be subject to an overtime rate. The CRB judges also established a rate of 24 cents for each ringtone subject to the Section 115 mechanical license. Furthermore, music publishers will have the right to seek a 1.5 percent late fee, calculated monthly.

Meanwhile, NMPA led an effort that culminated in industry agreement on interactive streaming and limited downloads. Details of that agreement between NMPA, NSAI, SGA, RIAA and DIMA were announced in September.

Limited download and interactive streaming services will generally pay a mechanical royalty of 10.5 percent of revenue, less any amounts owed for performance royalties, with a floor based on a per subscriber, per month calculation.

These events will bring clarity and order to an environment that for the past decade has been hampered by litigation and uncertainty on all sides. In the end, songwriters and music publishers will have incentive to create and market music, and music fans will reap the rewards.



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RATES AT A GLANCE

PHYSICAL	9.1 cents/song
PERMANENT DOWNLOADS	9.1 cents/song
INTERACTIVE STREAMING	Approx 10.5% of revenue
LIMITED DOWNLOADS	Approx 10.5% of revenue
RINGTONES	24 cents/song
LATE FEE	1.5 percent

President's Corner

DAVID ISRAELITE



Greetings,

A close is coming to what has been an extraordinarily eventful and successful year for the songwriting and publishing community we at the NMPA are so fortunate to serve.

Our top priority of the year, the Copyright Royalty Board proceedings in Washington, concluded this month with a positive result for songwriters and publishers.

It came on the heels of a historic industry agreement on two digital services models that will be an important revenue source in years to come.

Taken together, these developments represent an important milestone for the music industry and the foundation for a new generation of music distribution, ensuring that songwriters and publishers continue to thrive in the digital age. Details are presented in our Cover Story.

These achievements were the culmination of months and months of tireless work by staff and outside counsel on behalf of music publishers and songwriters, and I thank them for their commitment.

In other Washington news, our Washington Update focuses on an important legislative victory – congressional passage of a bill to improve enforcement of copyright law. I am pleased to report the President signed this important legislation into law on October 13.

As well, NMPA participated in an annual expo this fall on Capitol Hill hosted by the Copyright Alliance. We were pleased to present Senate Judiciary Chairman Patrick Leahy with the NMPA 2008 President's Award at that event. We were also honored to be joined at our booth by Washington, DC-based songwriter Rich Morel, who represented our industry with an articulate and passionate voice regarding the importance of copyright protection.

In this issue's Spotlight, we offer an overview of events at this year's annual meeting in New York City, which was capped off with a riveting performance by Songwriter Icon Award recipient, Amy Lee of Evanescence. We hope it will provide incentive for those of you who were unable to make it this year to mark you calendars for 2009.

We are pleased to showcase Bug Music's John Rudolph in this issue's Q&A. I am also happy to note that the NMPA team has expanded with the addition of Jay Rosenthal as our new General Counsel.

Finally, a word about the upcoming election. We in the content industry are blessed that issues of primary importance to us typically fall outside the partisan political firestorm. We have friends on both sides of the aisle in both the House and the Senate. No matter the outcome in a few short days, the NMPA will be ready to go to work with the new Administration and new Congress to represent our industry effectively on your behalf.

With warm wishes,

Until next time,

A handwritten signature in black ink that reads "D Israelite".

David Israelite
President & CEO, NMPA

...these developments represent an important milestone for the music industry and the foundation for a new generation of music distribution...



John Rudolph is President of Bug Music and one of NMPA's Board members

What led you to a career in music publishing?

JOHN: It was a “long and winding road” heading toward music publishing, except I didn’t know it. Growing up in Nashville the son of a union musician, five years working in a record store, playing guitar (badly) in a band as a kid, working in corporate finance at IBM, getting a CPA, discovering music publishing through a client, loving music and writers.

What has been the highlight of your career so far?

JOHN: Selling Windswept to EMI in 1999 as CFO and buying the new Windswept at Bug in 2007 as CEO, and taking Bug to #5 on the 2007 Billboard Hot 100 Publishing Corporations chart after the major publishers. Of course, being elected by the writers and publishers in the 2007 NMPA open election is a career highlight.

What is the philosophy and goal behind Bug Music?

JOHN: Our company creed is “To help creators create and live.” Our goal is to be the publisher that everyone, writers and publishers alike, want to work with – the first call they make to be part of something very special.

Tell us about some of the songwriters who work with Bug Music.

JOHN: We have an amazing array of writers. Let me tell you about one week recently: in the studio with Kings of Leon, discussing a songwriter with Kara Dioguardi (07 BMI songwriter of the year), hanging with 36 Mafia, talking to the music supervisor for the new Chess Records about the estate of Muddy Waters and the family of Willie Dixon, celebrating with Tim Owens and Ashley Gorley their recent #1s in Nashville, listening to the new Johnny Cash remixes, meeting East Bay Ray from the Dead Kennedys at the office for a creative meeting. That week moved at the highest levels of rock, pop, urban, blues, country, and punk - that is what makes it fun.

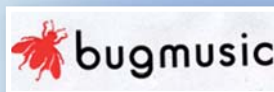
What are the biggest challenges to the music publishing industry today?

JOHN: Organizations having little to no respect for the artistic and monetary value of an individual’s creations. The value is understood, it is simply that

the other industries want the majority or all of this value for themselves and disingenuously hide behind philosophies, whether through simple stealing or proposed legislation, that don’t honor the rights and value of the ‘property’ creator - it should be the same whether I build a house, create the better mousetrap, whatever - if a creator wants to sell, license, or rent their work, then make a deal, but no one has to make a deal nor should a deal be forced upon anyone. The idea that an organization would propose legislation that limits or removes the rights of the creator to further the organization’s commercial purposes seems contrary to the spirit and respect of American innovation.



John Rudolph –
President, Bug Music



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

JOHN: Not just the music publishing industry, but the songwriters and frankly the musical artists must be united. The level of attack on songwriters and publishers is unprecedented. Today we are battling many fundamental issues, such as the statutory mechanical rate, rates for digital technologies, piracy, foreign trade laws, that are being pushed to the legislative level or need to be addressed by the legislature to ensure

that songwriting and music copyrights in America are protected. We need the financial and critical mass of a concentrated voice to be successful. It is hard enough to compete against the money interests of the digital industries, but divided it is “fait accompli.” For perspective, Apple has a market capitalization of \$150 billion, the music industry less than half of that – whose voice is going to get heard?

What is your favorite song and why?

JOHN: For some unexplained reason, maybe the onset of summer, Nightswimming by REM has really been in my head lately. Reminds me of peaceful, calm summer nights in Tennessee when things seemed less contentious and were relaxed. It is such a sweet and soft song that renders an immediate physical calm in its tonality and its melody. Maybe it is a southern thing, maybe you had to have the experience to feel it, but it really connects for me.



BERKLEY SCHWARZ

2008 was a successful legislative year for songwriters and music publishers.

Congress has finished the bulk of its legislative work for the year. This also marks the end of the 110th Congress, which means that the slate will be wiped clean in 2009. In that regard, all legislation will have to be introduced for the first time in the new 111th Congress.

ANTI-PIRACY ENFORCEMENT

...The new Coordinator will chair an inter-agency committee that will produce a Joint Strategic Plan to combat piracy and counterfeiting and will identify duplicative or inefficient efforts.

The House and Senate passed the Prioritizing Resources and Organization for Intellectual Property Act (PRO-IP Act) of 2008 (S. 3325) this year. The PRO-IP Act gives law enforcement the resources and the tools it needs to combat piracy and counterfeiting, and will improve coordination among the many agencies that deal

with intellectual property enforcement. One of the most promising provisions is the creation of an Intellectual Property Enforcement Coordinator within the Executive Office of the President. The Coordinator will chair an inter-agency committee that will produce a Joint Strategic Plan to combat piracy and counterfeiting and will identify duplicative or inefficient efforts. This coordinator is a much-needed addition to the Administration and will bring more attention to combating intellectual property theft.

Additionally,

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.



S. 3325 will increase the resources available to both Federal and local law enforcement.

This is the most important and comprehensive intellectual property enforcement legislation adopted by Congress in years. This bill will protect copyrights by providing a well coordinated and funded government strategy to address the epidemic of intellectual property theft in this country and around the world.

ORPHAN WORKS

...If the missing owner emerges after the new user exploits the original work, the missing owner will have the right to enter into a license with the new user or will have the right to seek a prospective injunction...

The Shawn Bentley Orphan Works Act (S. 2913), which would create new guidelines for use of copyrighted material when the owner cannot be located, passed the Senate on September 26, 2008. The House Orphan Works Act (H.R. 5889) passed the House Judiciary Committee Subcommittee on Courts, the Internet and Intellectual Property.

Both bills provide that a work is "orphaned" when a new user, identified as

an "infringer" in the bills, cannot find the original copyright owner of the work after engaging in and documenting a good faith reasonably diligent search. If the missing owner emerges after the new user exploits the original work, the missing owner will have the right to enter into a license with the new user or will have the right to seek a prospective injunction against continued use of the work by the new user, but the remedies afforded the missing owner will be limited if a court determines, as a matter of fact and law, that the work is actually "orphaned." The bills also provide that the U.S. Copyright Office will maintain and make public current best practices for conducting and documenting a search.

NMPA has been and will continue to work with Congressional staff to add more protections to orphan works legislation.



SOUND RECORDING PERFORMANCE RIGHT

...But the large amount of cosponsors of the broadcasters' resolution shows how tough this fight will be.

The Performance Right Act (H.R. 4789), which would establish a performance right for sound recordings in broadcast radio, passed the House Judiciary Committee Subcommittee on Courts, the Internet and Intellectual Property but was not consid-

ered by the full Judiciary Committee this Congress. In the Senate, the Sound Performance Right Act (S. 2500) was referred to the Senate Judiciary Committee but was not considered by the committee.

Additionally, broadcasters introduced legislation in the form of a nonbinding resolution – The Local Radio Freedom Act (H.Con.Res 244 and S.Con.Res 82) which had 225 cosponsors in the House and 13 cosponsors in the Senate. The bill states that Congress should not impose any new sound recording performance fees on local radio stations. No action was taken on the bills. But the large amount of cosponsors of the broadcasters' resolution shows how tough this fight will be.

ILLEGAL FILE SHARING ON COLLEGE CAMPUSES

...to withhold federal financial aid money to schools that do not develop and implement solutions to reduce the amount of illegal downloading.

President Bush signed into law H.R. 4137, which extends the Higher Education Act of 1965 and also authorizes the Secretary of Education to withhold federal financial aid money to schools that do not develop and implement solutions to reduce the amount of illegal downloading. Universities will be required to

make certain disclosures to students, as well as develop technology-based antipiracy programs and provide legal alternatives to illegal downloading. As an incentive, the new law also creates a federal grant program. This is an enormous step forward

in addressing the problem of illegal downloading on campus networks through education and encouraging use of legal alternatives.

WEBCASTING

...authorizes SoundExchange, on behalf of copyright owners and performers, to negotiate...

In March 2007, the Copyright Royalty Board issued a decision on the digital performance right royalty paid by Internet radio services. Since that decision, the Digital Media Association (DiMA), National

Public Radio (NPR), the Recording Industry Association of America (RIAA) and SoundExchange have been negotiating alternative royalty rates that will address the different business and political circumstances. These negotiations have made progress. Because Internet radio royalties operate under a statutory license, Congressional authority is required to allow any negotiated settlement to take effect; therefore, the Webcaster Settlement Act (HR 7084) was introduced. H.R. 7084 authorizes SoundExchange, on behalf of copyright owners and performers, to negotiate an alternative royalty agreement before February 15, 2009, with DiMA, NPR, and any other Internet radio service. This bill passed the House and Senate and has been sent to the President for signature.



NMPA President and CEO David Israelite presents the 2008 President's Award to Senate Judiciary Chairman Patrick Leahy on Capitol Hill in September. The NMPA participated in the Copyright Alliance's annual fall expo and was also joined by songwriter Rich Morel.

More than 400 music publishers and songwriters attended the NMPA's 2008 Annual Meeting, which once again provided a great opportunity for songwriters and music publishers to learn more about the NMPA's work during the past year and to plan for the future.

Chairman of the Board Irwin Robinson opened the meeting, calling the event "a great opportunity for songwriters and music publishers to understand how the NMPA is working for you - to protect the rights of creators and promote fair and equitable business practices between music publishers and the users of music."

NMPA President and CEO David Israelite focused his annual State of the Industry remarks on continuing efforts to strengthen copyright protection and navigate the digital transition. He announced to members that industry trade groups had submitted a proposed settlement to the Copyright Royalty Board on mechanical royalties for interactive streaming and limited downloads.

Israelite presented NMPA's Gold and Platinum Composition Awards. Receiving awards were Toby Gad for "Big Girls Don't Cry"; Taylor Swift for "Our Song" and "Teardrops on My Guitar"; Mikkel Eriksen and Tor Hermansen for "Unfaithful", "Tattoo", "With You", and "Wait for You"; Amanda Ghost for "Tattoo"; Philip Lamont Jackson for "Wait for You"; Carl Sturken and Evan Rogers for "Pon de Replay".

Amy Lee, the co-founder and lead singer of Wind-Up Records recording artist Evanescence, was the 2008 recipient of the NMPA's Songwriter Icon Award, which recognizes outstanding songwriters for personal achievement and who personify the vision of NMPA and its members' goals. A talented singer-songwriter and classically trained pianist, Lee and Evanescence won two Grammy Awards in 2004 for Best New Artist and Best Hard Rock Performance.

Her first public performance of a brand new song, "Your Love", was the breathtaking highlight of the gathering.

Senator Patrick Leahy was named the 2008 recipient of the President's Award, and was presented with the award at the 2008 Copyright Alliance EXPOntial in Washington, D.C. (See photograph on page five.)

The President's Award recognizes an individual who has been a leader on issues of importance to music publishers and songwriters, and who works diligently to strengthen intellectual property protection. Senator Leahy is an avid music fan whose tastes range from opera to the Grateful Dead and has proved to be a tireless friend of the music industry and a champion in the Senate of performance rights and a champion in the Senate of performance rights protections for artists. Senator Leahy is a lead sponsor of legislation to implement patent reforms as well as improved intellectual property rights protections and anti-piracy enforcement.

"The NMPA is making sure that songwriters and music publishers receive proper credit and compensation for their hard work and creativity."

Irwin Robinson,
Chairman of the Board



2008 Songwriter Icon Amy Lee with, from left, Neil Gillis, President of S1 Songs America, Steve McMellon, CEO of S1 Songs/State One Songs, and David Israelite, President and CEO of the National Music Publishers' Association.

In The News...

NMPA's Gold and Platinum Songwriting Awards a Hit Among Songwriters

"We are very honored to have been among the first recipients of NMPA's Gold & Platinum Award. In an industry that generally focuses its accolades on recording artists, we truly appreciate NMPA's decision to turn the spotlight on those of us who write the songs."

— **Jerry Leiber & Mike Stoller (Lifetime Achievement Awards)**

"The songwriter is where every hit record begins. It's great that the NMPA is recognizing that fact! The Gold and Platinum Awards are a step toward making sure hit songwriters receive the recognition they so richly deserve. I could not feel more honored or grateful to be a recipient of this prestigious award."

— **Josh Kear**

As a professional songwriter, I am humbled to be among the first honored by NMPA in the new Gold and Platinum Program. Since digital downloads are growing at such a significant rate and record sales are declining at an even greater rate, what better time to introduce this platform of recognition.

I can't thank NMPA enough for their efforts in supporting the rights of songwriters and publishers.

— **Chris Tompkins**

NMPA Welcomes New Senior Vice President and General Counsel

In July of this year, Jay Rosenthal joined the National Music Publishers Association as Senior Vice President and General Counsel.

Prior to joining the NMPA, Mr. Rosenthal was with Washington, D.C. law firm Berliner, Corcoran & Rowe, LLP where he served as General Counsel of the Recording Artists' Coalition (RAC), and represented other music industry organizations including SoundExchange, The Washington Area Music Association, and the American Federation of Television and Radio Artists (AFTRA).

NMPA President and CEO David Israelite noted, "Jay's music credentials are impeccable. With so many of the questions that will determine the future financial success of music publishers and songwriters being answered in the legal system, NMPA is fortunate to have a seasoned legal veteran join our team."

In addition to his duties with the NMPA, Mr. Rosenthal is a Professorial Lecturer in Entertainment Law at the George Washington University Law School and an Adjunct Professor of Entertainment Law at the Washington College of Law at The American University.

Mr. Rosenthal is also a Contributing Editor with Entertainment, Law & Finance, and is a periodic contributor to Billboard, among other industry publications.

In case you missed it...

Recent NMPA coverage and quotes from President and CEO David Israelite

Paste Magazine

September 23, 2008

Industry Groups Reach Agreement on Internet Royalties

In an agreement that ends some cases of litigation and encourages new ways for consumers to listen to music online, a number of key industry groups have reached an agreement on digital royalties and have sent the recommendations to the Copyright Royalty judges. The RIAA's Mitch Bainwol called the agreement "flexible" while the NMPA's David Israelite called it "historic."

Billboard

October 2, 2008

Copyright Royalty Board Issues Decision

"Coupled with the historic agreement announced two weeks ago, this decision represents an important milestone for the music industry," said David Israelite, NMPA President and CEO.

Los Angeles Times

October 2, 2008

Digital music royalties for songwriters left unchanged

"These events will bring clarity and order to an environment that for the past decade has been hampered by litigation and uncertainty on all sides," said David Israelite, president and chief executive of the publishers group. "In the end, songwriters and music publishers will have incentive to create and market music, and music fans will reap the rewards."



Who, What, Where...

Calendar of Events

October 21-25, 2008 • CMJ Music Marathon

New York, NY • www.cmj.com/marathon

For one week in September, New York City becomes more of the indie taste-making capital of the world than it already is. The CMJ Music Marathon sports hundreds of bands and draws thousands of insiders, outsiders and just plain fans looking to hear the next big thing. NMPA President and CEO David Israelite will participate in a panel discussion on music licensing.

October 28, 2008 • TJ Martell Award Gala

New York, NY • www.tjmartellfoundation.org

Each year the T.J. Martell Foundation hosts its signature event, the Annual Awards Gala, in New York City. This spectacular evening celebrates the remarkable work made possible by the T.J. Martell Foundation and all of its supporters. This formal affair is attended by over 1,200 people, including many artists and executives from the music/entertainment arena as well as executives from many other industries.

November 12, 2008 • CMA Awards

Nashville, TN • www.cmaworld.com

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

January 8-11, 2009 • International CES

Las Vegas, NV • 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 18-22, 2009 • 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.

February 8, 2009 • 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 13-22, 2009 • 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.

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.

Inside the NMPA

David Israelite
President and CEO

Jay Rosenthal
Sr. Vice President & General Counsel

Berkley Schwarz
Vice President and Counsel

Kathryn E. Wagner
Vice President and Counsel

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

Patty Shama
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

National Music
Publishers' Association
WASHINGTON, D.C. OFFICE
101 Constitution Ave. NW
Suite 705 East
Washington, D.C. 20001
(202) 742-4375

NEW YORK OFFICE
601 West 26th Street
5th Floor
New York, NY 10001
(212) 834-0100

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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