

CMCNY

Council of Music Creators of New York

Perspective on Pandora

Many music creators are celebrating Pandora's decision to end its efforts to push Congress to enact legislation that would cut the royalty it pays to some holders of musical copyrights. While there are certainly positive aspects of this development, we believe that the situation is far more complicated than it may appear and that the core issues remain unresolved.

Simply put, the recent news is that Pandora has not backed down in its fight to pay less to music creators, the company has merely changed the battleground.

When a song is played on Pandora (or any other similar internet music service), there are two copyrights involved, and therefore two groups of people who are entitled to receive compensation:

1- Writers (the people who created the songs in the first place) and the publishers of their work, who own and/or administer the copyrights in those songs. These folks are paid through their Performing Rights Organization, or "PRO" (in the US, ASCAP, BMI, and SESAC). The applicable royalty rate is negotiated between internet music services, like Pandora, and the PROs, or, when they can't agree, decided by a federal "rate court." The current total royalties paid by internet music services to all writers and publishers are about 4.3 % of Pandora's income.

2- Recording artists and record labels, who own the copyright in the sound recording. These folks are paid through SoundExchange, the quasi-governmental group established for this purpose in 1998 by the Digital Millennium Copyright Act. This royalty rate is established by a panel of three judges known as the Copyright Royalty Board, or "CRB." In 2010, the CRB established a royalty rate of \$0.00102 cents per stream. Last year, the royalties paid to this group amounted to about 56% of Pandora's income.

CMCNY: **Perspective on Pandora** – 2/2

This means that there is a tremendous disparity between the royalties the two groups earn: while the artists and labels split up a 56% slice of the Pandora pie, writers and publishers split up a 4.5% slice of the pie.

Still, Pandora wants to pay less for the music it uses. The company has been in Washington, quietly lobbying to get Congress to act to lower the rate paid to labels and artists, which expires in 2015. It is this action they have recently abandoned. As time begins to run out, they have concluded that their best shot to achieve this goal is not to lobby Congress, but, rather, to focus their resources on their next presentation to the CRB.

Here's what's important and why: Internet music services like Pandora represent the future for everyone—creators, artists, publishers, labels and the public—because they provide a valuable service and help to discourage piracy.

But making this a reality requires solving two thorny issues:

1. **Services like Pandora need to charge their customers more.** Their business model relies on paying almost nothing for music—the only “product” they offer!—and that won't work for the creative community in the long term. So we need a deal that gradually steps up the amount these services pay—and charge—for music.
2. **The royalties that are paid to the two groups of copyright holder must be more equitably split.** It's not that artists and labels are paid too much; it's that writers and publishers are paid too little. Yet given the cost of operating an internet music service, if 56% is going to one group, that doesn't leave much for anyone else.

Ultimately, a grand bargain will have to be brokered that recognizes that the common interests of music makers and music users demand a solution that pays creators, artists, and copyright owners fairly, while providing an economic environment in which companies like Pandora can flourish.