

# CMCNY

## Council of Music Creators of New York

### Issues of Importance: Collective vs. Direct Licensing

Two models for the licensing of performances (terrestrial radio, satellite radio, broadcast TV, cable TV, etc.) of musical works have emerged:

- **Collective Licensing** - the performing rights organization ("PRO") model, in which ASCAP, BMI, SESAC, and international PROs (usually, one per country) represent writers and publishers. This model has been in place for nearly a century;
- **Direct Licensing** – a relatively new model in which publishers represent their own interests and those of writers under contract to them.

### A Comparison of Key Features of Performance Licensing

#### **Collective Licensing**

- Rights-based system: all writers of a composition receive the same royalties
- PRO collects, accounts, and pays only performance royalties
- No recoupment of advances or other fees; no cross-collateralization; no bundling with other rights
- Rules-based royalties; transparent accounting; known administrative fees; transactions are a matter of public record
- Well-established procedures for administrative or accounting grievances
- No problem for writers with Work For Hire agreements
- Well-established, consistent working relationships with foreign PROs
- ASCAP and BMI, the two leading PROs have no profit motive

#### **Direct Licensing**

- Market-based system: royalties are based on writers' "market value"
- Publisher collects, accounts, and pays performance royalties, along with royalties and fees for other uses
- Recoupable costs deducted from royalties; cross-collateralization is possible; bundling with other rights can obscure actual performance income
- Reduces transparency; removes accountability: no way to know if a writer is being paid fairly; no public record of any transactions
- No grievance procedure short of auditing and lawsuits
- Work For Hire agreements in jeopardy; writers may not be paid
- Foreign royalties subject to publisher's contractual relationships with sub-publishers and administrators
- Publishers are in business to generate profits and will act accordingly

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### **Realities to keep in mind:**

- As huge corporations that control as much as 50% of all exploited music copyrights and up to 80% of the songs on the charts (plus, a good percentage of the recordings of those copyrights) arrive at Direct Licensing agreements with the largest broadcasters, like Clear Channel, the rates they negotiate will dictate the rates that smaller and/or independent owners are able to command.
- If large broadcasters only or mostly play music for which they have Direct Licensing agreements, it is likely to have a chilling effect on smaller and independent artists and, eventually, the nature of creative expression.
- Most small publishers support the PRO model
  - They need PRO/collective licensing leverage to negotiate with big users
  - They lack the infrastructure to handle payments themselves
- The music publishing industry is a complex world of interwoven interests
  - Most small publishers have existing business relationships with mega publishers
  - Many have agreements with mega publishers for foreign management
  - All have relationships with record companies owned by the same huge corporations that own the largest record companies

### **MCNY believes:**

- Collective Licensing has served music creators well for nearly a century
- Direct Licensing will negatively impact:
  - the way we interact as colleagues and collaborators;
  - the way we do business with those who administer our rights and use our work\*;
  - our ability to protect our rights;
  - any chance that we can help preserve a future that will give our successors the opportunity to enjoy what we and our predecessors have worked so hard to secure
- PROs and many publishers remain our allies, but it's important that we recognize that our interests are not always completely in line;
- PROs are counting on their writer members to speak up – loudly!
  - Writers can say things PROs can't
  - Writers have credibility and influence within and without their community

### **What can music creators do?**

- Band together to establish a united voice that speaks solely for songwriters and composers
- Issue a strong public statement supporting collective licensing, PROs, and independent publishers
- Get our story out. Hold press conferences, issue position papers, and become a source for press comment
- Write blogs, posts, tweets, and talk with your peers and elected officials
- Show up in Washington, and anywhere else these crucial issues are discussed, to fight to protect, preserve, and promote our rights.