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Copyright Royalty Board Increases Music Streaming Royalty Rate

Tiffany Kernen*

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Music streaming is becoming increasingly popular as more and more people are turning to music streaming services to listen to their favorite songs. Needless to say, sales of physical copies and digital downloads of music are decreasing. This shift in the way music is consumed is causing songwriters and music publishers to lose out on mechanical royalties while they are receiving more revenue from public performance royalties. However, the income generated from music streaming services is significantly less than the income generated from physical album sales and digital downloads, resulting in songwriters being paid less for their work.

Songs have two copyrightable parts: the musical work, which consists of the underlying musical composition and lyrics, and the sound recording. Therefore, interactive streaming services are required to obtain mechanical licenses as well as public performance licenses. The mechanical license is for the reproduction and distribution of a song while the public performance license is for the public performance of the song, which includes digital audio transmissions (e.g., internet radio).

Recently, as a result of a March 2017 Copyright Royalty Board ("CRB") rate hearing, interactive streaming services must pay more in mechanical royalties over the course of the next five years. Docket No. 16-CBR-0003-PR (2018-2022) (Phonorecords III). This means that interactive music streaming services, such as Spotify and Apple Music, must pay more money to songwriters and music publishers when songs are streamed.

Currently, streaming services are paying 10.5 percent of revenue. The new rate will be based on either (1) a percentage of revenue or (2) a percent of total content costs, whichever is greater. Over the next five years, the royalty for use of musical works in the making and distributing of phonorecords will gradually increase to 15.1 percent of revenue or 26.2 percent of total content costs by 2022. Additionally, caps and limitations to which the songwriter rates had been subject are now eliminated.

This ruling, which would result in over a 40 percent increase, is the largest increase in the history of the board according to David Israelite, president and CEO of the Nashville Songwriters' Association International. Israelite also stated that "the decision also allows songwriters to benefit from deals done by record labels in the free market. The ratio of what labels are paid by services versus what publishers are paid has significantly improved, resulting in the most favorable balance in the history of the music industry." The CRB's ruling simplifies and strengthens the manner in which songwriters are paid mechanical royalties and the terms are modified in a way that offers a somewhat free market by allowing songwriters to benefit from deals by record labels in the free market.

Songwriters and music publishers will receive $1.00 for every $3.82 the record label receives. Israelite stated that an "effective ratio of 3.82 to 1 is still not a fair split that we might achieve in free market," however, these terms are among the best songwriters have ever had under the compulsory license. Israelite further stated that "[t]he bottom line is this is the best mechanical rate scenario for songwriters in U.S. history, which is critically important as interactive streaming continues to dominate the market."

While this may seem like a huge increase, music publishers might not consider this a win. Publishers initially asked the CRB for a royalty rate calculated based on the number of streams, arguing that it would be a fairer system than a percentage of the digital streaming service's revenue. This proposal was rejected.

However, although music publishers did not get a per-stream rate, the plan for rate increases is a step in the right direction to fairly compensate music creators because music streaming services wanted to reduce royalty rates. Music publishers believe that this is a positive decision for songwriters because this ruling is unprecedented. For the past ten years, songwriter royalties have been strictly based on a percentage of music streaming service's revenue, which forced songwriters to be subject to corporate decision-making. With this new ruling, songwriters are able to receive fairer compensation.

Music publishers have been continuously complaining that they are underpaid by digital streaming services. Since 2015, streaming services have more than doubled in revenue and now account for more than 60 percent of the music market. Because music is widely consumed via streaming services, it is important that the royalty rates are changed so that songwriters can be fairly compensated for their work—this ruling is definitely the step in the right direction. Although the CRB made this ruling, the decision can be challenged at the U.S. Court of Appeals for the D.C. Circuit.

* I am a second year law student at Penn State Law. I graduated from the University of New Haven in May 2016 with a BA in Music Industry. While studying music I discovered my passion for creative person's intellectual property rights.