A SUSTAINABLE MUSIC INDUSTRY FOR THE 21ST CENTURY

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INTRODUCTION

Jay Z and other musicians recently made headlines for purchasing the streaming service Tidal for $54 million so that musicians could run it themselves.[1] Why have celebrities like Jay Z, Madonna, and Alicia Keys decided to become involved in music distribution?[2] One clue is the fact that the songwriters who created Avicii's 2013 megahit "Wake Me Up!" made shockingly little money from the over 168 million times that the song was streamed on Pandora in

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1 James Cook, *Jay Z Is Buying One of Spotify's Biggest Rivals for $56 Million*, BUSINESS INSIDER (Jan. 30, 2015, 5:35 AM), http://www.businessinsider.com/jay-z-buys-wimp-and-tidal-streaming-services-2015-1 [http://perma.cc/JM8F-T8VE]. One way in which Tidal seeks to distinguish itself is by offering high fidelity recordings, dividing consumers into segments based on their willingness to pay for sound quality. *See* Tidal, *High Fidelity Music Streaming*, http://tidal.com [http://perma.cc/37QE-KLBA] (advertising this feature).

2 *Jay Z, Alicia Keys, Madonna and Others Align for New Streaming Service*, YAHOO MUSIC (Mar. 30, 2015), https://music.yahoo.com/blogs/live-nation/jay-z-to-make-waves-with-new-tidal-streaming-service-165038504.html [https://perma.cc/2KMG-DDHZ].

the U.S. alone.[3] Indeed, the three songwriters and their publishers earned just $12,359 total from Pandora plays.[4] John Legend's "All of Me" was streamed 55 million times in the first quarter of 2014 but generated only $3,400 in songwriter royalties.[5] During the same period, Pharrell Williams's "Happy" had 43 million Pandora streams and produced $2,700 in songwriter royalties.[6] If hit songs result in streaming profits that are this low, what is to become of the average songwriter in a world that relies increasingly on streaming services for music distribution?[7]

With the pay so low, why don't songwriters just remove their music from streaming services like Taylor Swift did?[8] For that matter, why did Taylor Swift's music remain on Pandora? Did Pandora provide her with a better deal than Spotify and Apple?[9] The answer is that copyright law gives Taylor Swift—as owner of the rights in her sound recordings—the power to remove her sound recordings from interactive streaming services like Spotify, but not from

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3 Aloe Blacc, *Aloe Blacc: Streaming Services Need to Pay Songwriters Fairly*, WIRED (Nov. 5, 2014, 6:30 AM), http://www.wired.com/2014/11/aloe-blacc-pay-songwriters/ [http://perma.cc/3LCG-KM9K].

4 *Id.*

5 Ed Christman, *Sony/ATV Chairman Blasts Payouts From Internet Radio*, BILLBOARD (Dec. 11, 2014), https://www.billboard.com/articles/6405565/sony-atv-chairman-pandora-payouts [http://perma.cc/JNL9-7XFS].

6 *Id.*

7 While this piece focuses on the music industry, other industries have experienced tensions regarding licensing as a result of modern technologies. *See, e.g.*, Anita Singh, *Amazon to Pay Kindle Authors Only for Pages Read*, TELEGRAPH (June 22, 2015, 5:20 PM), http://www.telegraph.co.uk/technology/amazon/11692026/Amazons-to-pay-Kindle-authors-only-for-pages-read.html?utm_content=buffer749ff&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer [https://perma.cc/CJZ4-UDVE]. For a general discussion of the financial landscape of the music industry, see Marc Hogan, *How Much Is Music Really Worth?*, PITCHFORK (Apr. 16, 2015), http://pitchfork.com/features/articles/9628-how-much-is-music-really-worth/ [https://perma.cc/675G-SDL2].

8 *See* Jack Linshi, *Here's Why Taylor Swift Pulled Her Music From Spotify*, TIME (Nov. 3, 2014), http://time.com/3554468/why-taylor-swift-spotify/ [http://perma.cc/A29K-PRBJ]; Taylor Swift, *To Apple, Love Taylor*, TUMBLR (June 21, 2015) http://taylorswift.tumblr.com/post/122071902085/to-apple-love-taylor [http://perma.cc/65N8-P5RB].

9 When Taylor Swift announced that she would withhold her music from Apple Music, Apple actually decided to change its policies as a result. *See* Lisa Respers France, *The Power of Taylor Swift*, CNN (last updated June 25, 2015, 4:42 PM), http://www.cnn.com/2015/06/22/entertainment/taylor-swift-apple-feat/index.html [http://perma.cc/3SWN-KU5E]. Of course, few songwriters have this kind of clout.

"non-interactive" services like Pandora.[10] Those who own the copyright in the underlying music compositions, but not in the sound recordings, do not get to remove their work from either type of service.[11] Both music composers and performers sometimes have very little control over their copyrighted works because—unlike for any other art form covered by copyright law—music copyrights are governed by a bizarrely complex scheme that often lets others use a copyright owner's works without permission or price negotiation.[12] This scheme is not fair and, even worse, it warps nearly every aspect of the music industry, often to the detriment of artists and fans alike.

I
MUSIC COPYRIGHTS AND COMPULSORY LICENSING

The holders of music copyrights are treated differently from the holders of every other type of copyright even though there is nothing distinctive about music that necessitates the government's compelling music copyright holders to share their works. The historical evolution of copyright law itself is the reason that the control afforded to music copyright holders is severely limited.[13] There are two types of federal music copyrights: a composition copyright, which belongs to the songwriter (but is often transferred to a music publisher), and a sound recording copyright, which belongs to the performer who recorded the song (this latter copyright is often transferred to the record label).[14] A combination of three elements governing these two types of music copyrights have combined to create a modern music industry that is struggling to survive and evolve without the benefit of free market forces.

The first factor that helped to create today's complex music distribution system is the compulsory license, designed by Congress in response to the player piano

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10 For a discussion of the legal landscape surrounding the different streaming services, see Peter DiCola & David Touve, *Licensing in the Shadow of Copyright*, 17 STAN. TECH. L. REV. 397 (2014). *See also* Sofia Ritala, *Pandora & Spotify: Legal Issues and Licensing Requirements for Interactive and Non-Interactive Internet Radio Broadcasters*, 54 IDEA 23 (2014).

11 *See id.*

12 Lydia Pallas Loren, *Untangling the Web of Music Copyrights*, 53 CASE W. RES. L. REV. 673, 679–97 (2003).

13 *See generally id.*

14 *See* 17 U.S.C § 102 (2012); *id.* § 114. *See also* William Bee Ravanel Lewis, *The Next Big Hit: Protecting and Exploiting (In a Good Way) Your Musician-Client's Intellectual Property*, S.C. LAW., July 2014, at 46, 52.

industry.[15] In the early 20th century, the Supreme Court held that player piano rolls did not count as copies of a musical composition, because they were not readable by humans.[16] In 1909, Congress overruled the Court by amending copyright law to define copies as any reproductions of the copyrighted work.[17] Yet, because Congress was worried that a then-dominant player piano manufacturer would buy up all the composition rights and monopolize the player piano market, Congress put in place a compulsory license for composition copyrights.[18] By the terms of the compulsory license, anyone can make a copy of a composition, whether by creating a "mechanical" copy of the composition readable by player pianos, by recording a new "cover" version of a song, or by recording the song on CDs or mp3 files.[19] The copyist is simply required to pay the composition copyright owner an amount per copy that is determined by the judges appointed to the Copyright Royalty Board (currently 9.1¢ per song for songs under five minutes).[20] In other words, for every CD sold, or album downloaded, the songwriter gets 9.1¢ per song. If a songwriter creates an incredible song and would like to charge more, she cannot. If a songwriter writes a deeply personal song, and does not want someone else recording a cover version, there is nothing he can do to stop it. The compulsory license strips away from songwriters the control over their creations that every other artist and author takes for granted.

A second factor affecting music creation and dissemination is the separate legal protection that the Copyright Act gives to songwriters for public performances of their compositions. When a song is performed at a concert, in a bar, or over the radio, this is considered a "public performance," which songwriters have separate rights to control.[21] Thus, to perform a song publicly, the performer must get permission from the copyright owner of the composition.[22] Because it is burdensome to license every

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15 LAWRENCE LESSIG, THE FUTURE OF IDEAS: THE FATE OF THE COMMONS IN A CONNECTED WORLD 109 (2001).

16 White-Smith Music Pub. Co. v. Apollo Co., 209 U.S. 1 (1908).

17 Copyright Act of Mar. 4, 1909, ch. 320, 35 Stat. 1075.

18 *Id.*

19 17 U.S.C. § 115 (2012).

20 37 C.F.R §§ 380–86 (2015).

21 17 U.S.C. § 106(4) (2012).

22 *Id.*

song that a radio or TV station might want to play, a system of blanket licenses arose.[23] The vast majority of songwriters give non-exclusive licenses to their composition copyrights to the American Society of Composers, Authors and Publishers (ASCAP) and/or Broadcast Music, Inc. (BMI).[24] These royalty-collecting organizations in turn sell blanket licenses to the compositions in their catalogs. The licenses allow, say, CBS to pay a single fee and then use any music in the collecting organizations' catalogs in a national news show.[25]

In the 1970s, CBS challenged these blanket licenses as anticompetitive price fixing, but the Supreme Court ruled that they were not anticompetitive because (a) they were non-exclusive licenses and thus did not foreclose negotiating directly with the copyright holder, and (b) they massively reduced bargaining costs because music users did not have to negotiate individually every time they wanted to use a song.[26] Over the years, the Department of Justice (DOJ) has negotiated consent decrees with ASCAP and BMI with respect to blanket licenses in an effort to ensure moderate pricing.[27]

The DOJ's concern about ASCAP and BMI potentially using blanket licenses as a way to drive up prices is understandable.[28] The blanket licenses inherently fix song prices because when an entity buys a blanket license for a set fee per month, it can use any song in the collecting organizations' catalogs.[29] The marginal cost of each song is zero once a blanket license is purchased. Thus, there is no difference in price whether songs are good or bad, popular or

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23 Lydia Pallas Loren, *The Dual Narratives in the Landscape of Music Copyright*, 52 HOUS. L. REV. 537, 560 (2014).

24 Peter DiCola & Matthew Sag, *An Information-Gathering Approach to Copyright Policy*, 34 CARDOZO L. REV. 173, 222 n.267 (2012).

25 Loren, *supra* note 23.

26 Broad. Music, Inc. v. Columbia Broad. Sys. Inc., 441 U.S. 1, 21, 34 (1979).

27 Loren, *supra* note 23, at 561–62. The DOJ currently is considering modifications to these consent decrees to update them for the age of digital downloads and streaming music. *See* U.S. Dep't of Justice, *Antitrust Consent Decree Review: American Society of Composers, Authors and Publishers/Broadcast Music, Inc.*, http://www.justice.gov/atr/cases/ascap-bmi-decree-review.html[https://perma.cc/G6DA-VRML].

28 Jay M. Fujitani, Comment, *Controlling the Market Power of Performing Rights Societies: An Administrative Substitute for Antitrust Regulation*, 72 CAL. L. REV. 103, 113–14 (1984) (discussing DOJ lawsuits against ASCAP and BMI).

29 Neil Weinstock Netanel, *Copyright and a Democratic Civil Society*, 106 YALE L.J. 283, 375 (1996).

unpopular. This fixing of the public performance price of songs destroys any real price competition. Even if a songwriter decided not to allow ASCAP and BMI to license her compositions and instead negotiated performance rights directly, once a radio station, television station, or dance club has paid for a blanket license, this purchaser is unlikely to be willing to negotiate directly for higher-priced songs that are not part of the license. And once an entity has a blanket license, it has very little incentive to license additional songs individually, even if the composition copyright holder offers a very low price.

The third factor affecting the complex scheme of music distribution originates from a law that Congress passed in 1995 in an effort to account for digital distribution of music.[30] Congress decided that the compulsory license for public performances of songwriters' compositions should apply to streaming services.[31] At the same time, Congress chose to grant sound recording copyright owners and performers a public performance right for digitally streamed music, and to make this right subject to a compulsory license as well.[32] The sound recording compulsory license covers only "noninteractive" Internet radio and "noninteractive" streaming services like Pandora.[33] It does not cover interactive services such as Spotify.[34] This is why Taylor Swift was able to pull her music from Spotify but not Pandora. The digital public performance right and accompanying compulsory license carry the consequence that sound recording copyright owners are now also paid for streaming of their performances, while composition copyright owners are paid for the underlying composition (digital downloads are considered sales rather than public performances and are paid separately).[35] To track the

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30 *See* Digital Performance Right in Sound Recordings Act of 1995, Pub. L. No. 104-39, 109 Stat. 336.

31 *See id.*

32 *See id.*

33 *See* Mary LaFrance, *From Whether to How: The Challenge of Implementing a Full Public Performance Right in Sound Recordings*, 2 HARV. J. SPORTS & ENT. L. 221, 231 (2011).

34 Neil S. Tyler, Comment, *Music Piracy and Diminishing Revenues: How Compulsory Licensing for Interactive Webcasters Can Lead the Recording Industry Back to Prominence*, 161 U. PA. L. REV. 2101, 2122–23 (2013) (discussing how this state of matters affects interactive services).

35 Joshua Keesan, Note, *Let It Be? The Challenges of Using Old Definitions for Online Music Practices*, 23 BERKELEY TECH. L.J. 353, 361–62 (2008) (explaining how this question has been settled).

relevant numbers and provide payments to performers and sound recording copyright owners, an entity called SoundExchange was created.[36] Because Congress seemed to envision streaming services as closer to a substitute for terrestrial radio, it fashioned the related compulsory license fee scheme in a way that results in very low payments, such that artists are paid in the range of thousandths of a cent per stream.[37] Congress failed to account for the fact that, for many listeners, streaming services would do more than simply replace terrestrial radio—these services would supplant the purchase of music.[38] Had Congress thought of streaming services as the way that listeners would "buy" the music they want to hear, including by creating "channels" or even playlists, it presumably would have made the compulsory license rates higher to compensate musicians adequately.

Hence, one sees how the evolution of copyright law, and the three factors of compulsory composition licenses, blanket licenses, and compulsory public performance licenses act to restrict the rights of musicians to negotiate the terms under which they share their works with the world. This lack of control has led to a market imbalance that is threatening the sustainability of music creation and distribution. It also singles out songwriters and musicians from other copyright owners by not letting them control the dissemination of their works.

II
THE MUSIC INDUSTRY TODAY AND THE NEED FOR LEGAL CHANGE

The music industry is increasingly focused on these sustainability and fairness issues. At the end of 2014, Sony/ATV Music Publishing chairman and CEO Marty

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36 *Id.* at 356, 367.

37 *See* Paul Resnikoff, *A Quick Summary of What Streaming Services Are Paying Artists*, DIGITAL MUSIC NEWS (Dec. 13, 2013), http://www.digitalmusicnews.com/permalink/2013/12/13/quicksummarystreaming [http://perma.cc/4KS9-AXZ7]. We previously discussed this issue in Aloe Blacc, Irina D. Manta & David S. Olson, *Music Streaming Demands New Wave of Licensing Rules*, CHI. TRIB., Apr. 6, 2015, at 13. Pandora is part of an ongoing lawsuit involving how much of its revenue it has to pay to BMI for streaming songs from BMI's catalog. *See* Broad. Music Inc. v. Pandora Media Inc., No. 13 Civ. 04037 (LLS), 2015 WL 3526105 (S.D.N.Y. May 28, 2015) (ruling that Pandora must pay 2.5% of its revenue to BMI).

38 Eva E. Subotnik & June M. Besek, *Constitutional Obstacles? Reconsidering Copyright Protection for Pre-1972 Sound Recordings*, 37 COLUM. J.L. & ARTS 327, 338 n.62 (2014) (noting this possibility).

Bandier issued a memorandum to employees that called the streaming payments from providers like Pandora and Spotify a "totally unacceptable situation and one that cannot be allowed to continue."[39] He went on to say, "I will not rest until the present system is reformed."[40] The government itself recognizes that the existing music distribution model is unsustainable and unfair. The DOJ is looking into revising the current consent decrees with ASCAP and BMI.[41] The Copyright Office issued a report in February, 2015, detailing the problems with music licensing and recommending reforms.[42] Congress is also considering other proposals in various stages of development.[43]

What is not being discussed, but should be, is whether it is time for Congress, the DOJ, and collecting organizations to withdraw and let the market determine the future landscape of the music industry. There was never a good economic reason to treat music copyrights differently from other copyrights. And with the current state of technology and innovation, there is probably no longer a need for the blanket licenses that fix prices for all songs. Now that computerized, networked systems can be built to license, distribute, and collect payments for music copyrights, the blanket license system is most likely no longer necessary or beneficial for artists and consumers.[44]

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39 Christman, *supra* note 5.

40 *Id.* Not that Bandier is in favor of just any change. Recently, he spoke out against the prospect of a change from fractional to 100% licensing. Ed Christman, *Martin Bandier Writes Letter to Songwriters Warning of Justice Dept. Changes*, BILLBOARD (Sept. 8, 2015), http://www.billboard.com/articles/business/6686022/martin-bandier-sony-atv-warning-letter [http://perma.cc/5PVH-YNA7].

41 *See* U.S. Dep't of Justice, *supra* note 27.

42 *See* U.S. Copyright Office, *Copyright and the Music Marketplace: A Report of the Register of Copyrights* (Feb. 2015), http://copyright.gov/docs/musiclicensingstudy/copyright-and-the-music-marketplace.pdf [http://perma.cc/KA5Q-XDZW].

43 The most prominent of these is the proposal to adopt the Songwriter Equity Act. *See* Ed Christman, *Songwriters Equity Act Re-Introduced to Congress*, BILLBOARD (Mar. 4, 2015), https://www.billboard.com/articles/business/6487798/songwriter-equity-act-introduced-to-congress [http://perma.cc/UDN8-GEGR]. For the text of the bill, see H.R. 1283, 114th Cong. (2015).

44 For a discussion on increasing transparency in the music industry, some of which would facilitate the model that we propose, see Rethink Music, *Fair Music: Transparency and Payment Flows in the Music Industry* (July 13, 2015), http://www.rethink-music.com/download-page [http://perma.cc/HJQ5-7R23]. For corrections to the charts in the report, see Faza, *Fun with Digital Royalties*, CYNICAL MUSICIAN (Aug. 8, 2015), http://thecynicalmusician.com/2015/08/fun-with-digital-royalties/

It is true that if copyright owners set their own prices, this will lead to higher prices for some popular songs and perhaps even for streaming as a whole. There is, however, no fundamental right to stream all the songs one wants for any specific fee.[45] We let owners of every other kind of copyrighted work negotiate their own market prices. Allowing music copyright owners to control pricing should also lead to lower fees for some songs that are not mega hits, and will facilitate the creation of niche services that distribute desired music to consumers more efficiently. Right now, independent music producers are handicapped in competing with Top-40 music because of blanket licenses and compulsory licenses, so these producers cannot effectively differentiate on price. If we remove such constraints, consumers are likely to benefit in all sorts of ways, some of which we can foresee, and others of which we have yet to imagine. Moreover, market solutions will be based on free negotiations between the parties, with supply and demand—rather than government boards and lawyers—determining prices. Music and its distribution would not disappear. Nor is there evidence that the majority of music fans would switch to illegal file sharing rather than pay a bit more. The downloading and streaming services have proved that many people prefer paying for music to obtaining it illicitly.[46] At the end of the day, artists want their music to be widely enjoyed. They just wish to have a say in what price they are paid for it. If we do not enable songwriters to earn a living from writing songs, then consumers will ultimately get less of what they are not paying for.[47]

Some will argue that the existence of all the composition and sound recording rights, added to the intricacy of the

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[http://perma.cc/2MVF-THQM]. *See also* David Byrne, *Open the Music Industry's Black Box*, N.Y. TIMES (July 31, 2015), http://www.nytimes.com/2015/08/02/opinion/sunday/open-the-music-industrys-black-box.html [https://perma.cc/D3GU-GMMT].

45 *See generally* Theresa Bevilacqua, Note, *Time to Say Good-Bye to Madonna's American Pie: Why Mechanical Compulsory Licensing Should Be Put to Rest*, 19 CARDOZO ARTS & ENT. L.J. 285 (2001) (critiquing the existence of compulsory licenses); Jeffrey A. Wakolbinger, Note, *Compositions Are Being Sold for a Song: Proposed Legislation and New Licensing Opportunities Demonstrate the Unfairness of Compulsory Licensing to Owners of Musical Compositions*, 2008 U. ILL. L. REV. 803 (providing the same criticism).

46 Joe Karaganis & Lennart Renkema, *Copy Culture in the US & Germany*, AM. ASSEMBLY, http://americanassembly.org/sites/default/files/download/publication/copy_culture.pdf [http://perma.cc/39KN-NLKQ] (last visited Feb. 17, 2016).

47 *See* Blacc, *supra* note 3.

music business, means that we need compulsory licenses.[48] This lack of trust in the market's ability to negotiate complexity, however, is not borne out in the neighboring area of patents. In some situations, patents overlap vastly more than copyrights do. For example, manufacturers of smartphones and computers may have to obtain licenses to *thousands* of patents.[49] But Congress never mandated a compulsory licensing system for patents. Instead, the market has managed to solve the problem of clearing patent rights using various methods such as cross-licensing, patent pools, licensing through standard-setting organizations, and simple marketplace negotiation.[50] If makers of innovative goods and services can clear thousands of patent rights and continuously provide better and cheaper products to consumers, there is no reason that participants in the music industry cannot negotiate the relevant copyright licenses so as to ensure better and cheaper distribution of music.

Imagine an iTunes- or Spotify-type interface through which music programmers could look up songs and specific prices for various uses. Or songs could be searched by price, among other features. Commercial music purchasers may select songs and know individual prices with virtually the same ease that they currently enjoy in making their programming selections. This would allow for much more variety of music use and distribution than we currently have. Members of the industry are very interested in building transformative business models for delivering music. Lucian Grainge, chairman and CEO of Universal Music Group, stated in his 2014 year-end memorandum to

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48 *See, e.g.*, Neil S. Tyler, Comment, *Music Piracy and Diminishing Revenues: How Compulsory Licensing for Interactive Webcasters Can Lead the Recording Industry Back to Prominence*, 161 U. PA. L. REV. 2101 (2013) (arguing that compulsory licenses would be a positive for the recording industry as a whole).

49 *See* Tun-Jen Chiang, *The Reciprocity of Search*, 66 VAND. L. REV. 1, 13 (2013).

50 *See* Carl Shapiro, *Navigating the Patent Thicket: Cross Licenses, Patent Pools, and Standard Setting*, 1 INNOVATION POL'Y & ECON. 119 (2001); Angela Chen & Ryan Knutson, *Google Cuts Patent Deal With Verizon*, WALL ST. J. (Dec. 16, 2014, 4:34 PM), http://www.wsj.com/articles/google-verizon-enter-patent-cross-license-agreement-1418744777 [http://perma.cc/FU9K-AYPD]. *But see* Kirk Hamilton, *The Sad Story Behind a Dead PC Game That Can't Come Back*, KOTAKU (Feb. 27, 2015, 3:30 PM), http://kotaku.com/the-sad-story-behind-a-dead-pc-game-that-cant-come-back-1688358811 [http://perma.cc/C5TK-R233] (describing a failed re-release of a PC game due to licensing complications). A difference that should be noted is that patent licenses can be negotiated once by a manufacturer, while radio and television stations are repeat players that must purchase music on a regular basis.

employees that his major goal for 2015 was to "transform the business itself . . . for our artists' benefit, as well as for our own."[51] Citing the need to create a sustainable future for musicians, Grainge set out the goal "to be a formative player in shaping and developing the music platforms of tomorrow."[52] The interest is there to innovate in the music industry via technology and business models. It is time for copyright law and compulsory streaming licenses to stop handcuffing that innovation. While allowing the free market to function would eliminate the price fixing inherent in blanket and compulsory licenses, it does not mean that ASCAP, BMI, Pandora, or Spotify would necessarily go away. They might be the ones to build the new, individually priced platforms. Or a start-up company may spring up and revolutionize the music distribution market in a way no one currently conceives. We have seen this type of thing happen time and again in other areas, such as movie and television distribution.

CONCLUSION

It is time for Congress to move music licensing laws into the digital age and for the collecting organizations and the DOJ to stop setting rates through antiquated compulsory and blanket licensing schemes. Allowing the market to function freely will incentivize musicians to invest efforts in providing us with their best work, armed with the knowledge that they will control later uses of—and compensation levels for—their creations. Sometimes, this will result in higher prices, but it will help successful artists make enough money to survive, thrive, and provide the music that is so meaningful to so many. At other times, supply and demand mechanisms will lower the cost of music distribution, especially for independent and niche music markets. We should respect musicians' rights to control and individually price their works so as to create a sustainable music business that will continue to provide a wide variety of music. It is only by modifying the outdated policies and regulations currently in place that we can prevent both further damage to the artistic process and the

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51 Andrew Flanagan, *Lucian Grainge's End-of-Year Memo to Employees: 'It's No Longer Enough to Outperform'*, BILLBOARD (Dec. 19, 2014), https://www.billboard.com/articles/business/6414007/lucian-grainge-umg-end-of-year-memo [http://perma.cc/Q5M2-ABJE].

52 *See id.*

discouragement of the next generation of musicians. No one expects change to happen overnight, but songwriters cannot afford for lawmakers to remain asleep on the issue. It is time for Congress and the music industry to wake up.