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Congressman Doug Collins
1504 Longworth House Office Building
Washington, DC 20515

COPY:

Ambassador David O'Sullivan
Delegation of the European Union
to the United States
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Crispin Hunt
Chair
British Academy of Songwriters, Composers & Authors
2 Pancras Rd, Kings Cross, London
United Kingdom

VIA EMAIL

Stockholm, Brussels, 30 January 2018

SUBJECT: Music Modernisation act

Dear Representative Collins,

We write you from the European Composer and Songwriter Alliance, Europe's largest songwriter's organisation representing creators from 27 European countries. Our British member BASCA, copied to this letter, who represents songwriters such as Sir Paul McCartney, Coldplay or Annie Lennox encouraged us to contact you in a matter of mutual concern.

We learnt that you proposed a new bill – the Music Modernization Act – which shall, in essence, establish a new collective licensing entity providing a blanket license for the mechanical right for online streaming services operating in the US. We are advised that whilst your bill does not expressly authorize the new collective from also licensing the performing right, it also does not expressly prohibit the collective from doing so.

As you may know, European repertoire accounts for up to 25% of the Top 100 songs played on US radio stations.[1] We therefore follow with great attention copyright legislation in the US, being one of the biggest markets for European songwriters and we understand that the new collective licensing entity will also govern all foreign repertoires, including the European one.

We join our US colleagues in believing that the reform of the music licensing process is and must continue to be an exceptionally high legislative priority – especially the need to raise music royalty rates to equitable levels to sustain the songwriter community.

[1] PMP Study: Losses incurred by European copyright holders due to the US bars, restaurants and retail establishments' exemption. 4.5. American and European share identification. GESAC, 2016

Whilst there are many good points about the draft bill, we also join the views voiced by the Songwriters Guild of America (SGA) in an open letter to you dated 21 December 2017: there are a number of very serious problems set forth in the bill and in general we believe, that the bill rather favours the interests of the multi-national publishers, rather than those of individual, hardworking songwriters. Please allow me to respectfully remind you that the latter are the very justification of copyright law to exist as legal institution. In turn, publishers mainly represent their own interests, which are not necessarily congruent with those of contracted songwriters.

Just by way of example, in Europe, collective management entities are governed by songwriters, who hold a 70% majority on boards of those entities. We cannot accept a concept that sets out that a board of directors of a new collective rights management entity, providing blanket licenses of mechanical rights for the entire US territory, which is governed by eight publishers versus only two songwriters who must be "self-published" at that. How can such an arbitrary governance structure ensure that the legitimate and vital interests of individual creators are well represented by vis-a-vis multi-billion publishing companies, particularly when there is no other oversight?

Respectfully, there are many other problems with the essential lack of fairness in the bill, which are too numerous to detail in a short letter. By example, one other obvious flaw is the distributing of unidentified monies on a market share basis. How can the market share, which in too many historical instances is acquired on dubious grounds in the first place, justify a blanket pay-out of un-matched royalties? Because the bill establishes a two-tiered system allowing major publishers to essentially opt-out of the collective with a direct license, the bill inexplicably distributes unidentified monies using the market share of those publishers who will not otherwise be administered by the collective and will not likely be included in the pool of unidentified monies.

A few other questions that are of concern to songwriters: Where is the business plan for the collective? A century of practice is to be changed without even a business plan that the governed have a chance to review? And what justifies the denial of statutory damages? And how is the board of directors elected? Finally, why should companies directly licensing online music service providers be eligible for membership on those boards? And how will cooperation with foreign CMO's be handled, also in terms of data exchange?

We appreciate that the introduction of a bill is simply a first step. We trust that you will carefully review the bill and take our views into account. We will do our best to provide you with a more detailed comment in the coming weeks. Meanwhile, should you have any questions, please don't hesitate to get back to us.

Thank you for your kind consideration.

Alfons Karabuda
President

Patrick Ager
Secretary General