

Statement of Mitch Glazier, President
Recording Industry Association of America
before the
Committee on the Judiciary, United States Senate
on
The Music Modernization Act, S. 2823

May 15, 2018

Good morning Chairman Grassley, Senator Feinstein, and Members of the Committee. My name is Mitch Glazier and I am President of the Recording Industry Association of America, the trade body that represents America's major record labels. S. 2823, the Music Modernization Act, is a bill of monumental importance to the music community, the likes of which we have not seen in decades.

What an honor it is today to be testifying alongside the great Smokey Robinson, who has contributed so much to our culture, along with Mary Wilson, Dionne Warwick, Darlene Love and Karla Redding. The presence of these iconic artists, songwriters and family members demonstrates the historic nature of this bill. The Music Modernization Act is comprised of three titles: The Musical Works Modernization Act, the CLASSICS Act, and the AMP Act. It's a consensus bill that has been debated and refined over the course of several years and has garnered widespread support from both the music and technology industries.

This bill passed the House Judiciary Committee unopposed, by a vote of 32-0, and then passed the House with a remarkable 415-0 vote. That resounding approval confirms its common-sense, just terms. It modernizes the licensing system for songwriters and music publishers,

provides our cherished legacy artists with fair compensation for their music, provides certainty to digital services, grants user exceptions, establishes an effective royalty and payment system for music producers, and ensures that all creators are compensated at market-based rates across all digital platforms in both statutory licenses. Each of this bill's reforms will strengthen the music community and our culture for years to come and encourage partnerships between creators and digital service providers.

I have been asked to focus on two parts of the bill: Title II, the CLASSICS Act, and the provisions for a market-based rate standard in Title I, the Musical Works Modernization Act.

The CLASSICS Act fixes a problem that arose from a conflict between old laws and new technologies, creating uncertainty that has resulted in discriminatory treatment against older artists for digital performances of recordings made before February 15, 1972. Records made before that date are protected under state law, because Congress did not grant federal protection to sound recordings until 1972, and that protection was prospective. In 1995, Congress created a blanket statutory license for the digital performance of sound recordings, intending that services who use the license would pay one fee for all the music they play. While most digital music services do pay under that license for all the music they play, including pre-72 recordings, some companies have targeted classic recordings. They argue they don't have to pay to digitally perform classics because those recordings are subject to state protection and the license is a federal creature. They also argue, however, that state law does not apply to

digital performances of pre-72 works. It's a circular argument that creates a windfall for digital services at the expense of legacy artists and their labels.

Artists sued these services to protect themselves in several states so they could receive just compensation for the use of their music, which should not depend on what platform is used to deliver it. The results have been mixed, causing uncertainty for digital services who may have to face dozens of lawsuits for several causes of actions in different states, with no uniform exceptions and limitations, potential punitive damages, and unclear rules on secondary liability. Out of this uncertainty on both sides, the CLASSICS provisions of the Music Modernization Act were born. It is a practical, narrowly-tailored solution, supported by both digital services and creators, that provides certainty and protection to both creators and users. Because of that, it has overwhelming support.

To illustrate the need for this new, forward-looking solution, look how the current law has led to nonsensical results: Some digital services refuse to pay to digitally perform Frank Sinatra's recording of "My Way," made in 1969, but they do pay when they play the versions of that song recorded by Elvis Presley in 1973, Sid Vicious in 1978, and Seth McFarlane in 2016. They pay for "What a Wonderful World" as recorded by Rod Stewart in 2004 but refuse to pay for the instantly recognizable Louis Armstrong recording from 1967. They pay for "Stand by Me" as recorded by John Lennon in 1975 and Florence + the Machine in 2016 but refuse to pay for the classic Ben E. King original 1961 version.

And then we have Smokey Robinson, who recorded songs that defined an era – among them, “You’ve Really Got a Hold on Me,” recorded in 1962, and “The Tracks of My Tears,” recorded in 1965. He inspired generations to follow with music that still resonates. And yet, because of this odd unintended legal uncertainty and for no other justifiable reason, he and his children and grandchildren may not be guaranteed royalty payments for the fruits of his labor and genius.

It’s time to modernize music law to assure that the artists who created these works, which are some of the most popular on streaming services, receive the compensation intended, while protecting the services that deliver them to fans on national and global digital platforms who desire business certainty, licensing efficiency and clear rules on liability. That’s what CLASSICS does.

The Music Modernization Act also includes a provision important not only in the context of pre-72 sound recordings, but with respect to all compositions and sound recordings: it applies the well-established “willing buyer-willing seller” rate standard to both songwriters and artists in both music licensing sections of the Copyright Act. This provision ensures platform parity and a market-based rate standard, which all creators deserve for their work.

The statutory licensing rates for music should seek to reflect a true competitive market to the greatest extent possible; continuing to apply a subsidized standard to a handful of older services that allow for below-market rates is antithetical to a fair and efficient marketplace.

That standard is a vestige of the past, and this package finally brings the music licensing system into the modern age, recognizing the vibrant competitive marketplace for music.

The willing buyer-willing seller standard is not only the right thing to do for creators, it also finally unshackles the digital music market from the patchwork of provisions applied to different technologies developed at different times. That has led to unfair competition between platforms based on the technology they use to deliver music and the year they were created. The Music Modernization Act finally, after years in the making, moves the industry forward, favors no platform or company over another, does not discriminate based on the year a company came into existence, encourages robust competition, looks to the market as a benchmark to pay creators fairly, and allows the music and technology industries to move forward together as partners.

This bill has brought together an astounding array of support from across the political spectrum. From Americans for Tax Reform to the NAACP, from the American Conservative Union to the AFL-CIO. This is a package that contains common sense solutions to several glaring and obvious problems, and its time has come. This bill reflects common ground that has been identified by both the music community and our digital partners after years of discussion and debate.

While there are some who want to use the momentum behind this bill as leverage to attach controversial provisions that reduce artist protections, and while there are always going to be a

few outliers on any piece of legislation, there has never been as much consensus on a copyright bill. It took years to get us here and we could not have done it without the support and cooperation of numerous parties. To that end, I would like to thank Senators Hatch, Grassley, Feinstein, Kennedy, Coons, Tillis, Booker, Corker, Alexander, Graham, and Harris, along with many others on this Committee, who have, along with their House counterparts, authored provisions in this music package. This bill is cosponsored by a majority of Senators on this Committee, and for that we are very grateful. I also want to thank our digital music partners including Pandora, the Internet Association, and the songwriter, music publisher, artist and label groups who all came together to allow for this historic consensus that will lead the way to a more cooperative and dynamic music ecosystem going forward.

We have an opportunity with this package to right wrongs, to update our practices, and to catch up legislatively to technological developments that have fundamentally altered our world. With your help, we are hopeful that we will turn S. 2823 into law and ensure that the brilliant creators of pre-72 sound recordings are rewarded for their genius, and that their indispensable value to our culture is appropriately recognized.

Thank you.