



Internet Policy Taskforce  
Office of Policy and External Affairs  
United States Patent and Trademark Office  
Mail Stop External Affairs  
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To The Taskforce:

Thank you for this opportunity to comment on The Department of Commerce Internet Policy Taskforce's "Copyright Policy, Creativity, and Innovation in the Digital Economy" Green Paper. We agree, as the Green Paper suggests, that "the core principles of U.S. copyright remain fundamentally sound," however there are ample opportunities for us to modernize and mold the regulatory frameworks that support the foundations we agree on so as to allow for increased creativity and commerce.

We believe that the work started in the DPRA and that has been shepherded in this country should be expanded to cover the public performance of recordings for over-the-air broadcasters within this country, as hundreds of other countries have supported. It creates a level playing field for internet streaming radio services, and furthermore, will create a more free flowing stream of international royalties, which are accrued but not passed along due to the lack of a mutual right, for the performers on sound recordings which are publicly performed in the United States. We strongly support the Administration and Copyright Office's positions in support of the same and reject the claims of the National Association of Broadcasters and others that it is a tax, when it is patently clear that broadcasters, some of whom are international, and some of whom maintain broadcast operations in these other countries, are able to thrive. The institution of this right would allow the United States to fulfill its obligations under the WPPT.

As it pertains to the Right of Reproduction In Temporary Copies, we express our support for the consideration that an over-adjudication of this issue does not serve to simplify the process for creators or technologists. It seems, to us, that the intent of the founders seems to look past this and focus more on the delivery of the final content to the end consumer, and consider the action of pass-along as a methodology of delivery, and not necessarily a storage of a copyrighted work. In short, we believe that the copy should be considered when stationary, or when delivered to an end user, and that the process of trying to manage the payment for and consideration of temporary copies by multitudes of thru-put services (for example, the many internet service providers that it may take to pass along a file from a server in New York to a household in Hawaii) would be a detriment to the advancement of technology in the United States.



Regarding fair use, we believe that further clarification and simplification of the standards and applicability of this protection will do well to protect not only creators but those intending to use a fair use provision, in that the result and applicability will be more predictable for both parties in all cases where fair use may be applied.

We, however, are most interested in commenting on some of the provisions relating to other uses, specifically remixes or “mashups” as they are colloquially called. We have advocated previously for, and will continue to advocate for making the process of licensing these remixed works simpler and more straight-forward, advancing the business case that the simplification of the methodology of licensing pre-existing works could be covered by a few small changes to mechanical copyright law, and the application of a similar methodology to the licensing of master recordings.

The first solution, which is applicable to the composition, is to remove the minimum per song mechanical copyright fee, and apply the per-minute current statutory rate in a pro-rata fashion to the new composition. Though it may not be the only solution, we would propose a methodology as follows (essentially under the guiding principle of paying for only what you actually use):

(Where

**A** is the remixed composition;

**B, C, D, E, etc.** are the original compositions;

**r** is the currently applied statutory mechanical rate

**t** is the actual amount of time that each **B, etc.** is used within **A**;

**x** is the amount due from **A** to each **B, C, D, E, etc.**

**y** is the total length of **A**; and

**z** is the sum of all of the **t** values for **B, C, D, E, etc.**)

1. Calculating  $r * y$  will create a total pool of royalties, based upon the current applicable mechanical royalty rate, without any minimum, which is generated from the new work **A** to be paid to **B, C, D, E, etc.**;
2. For each **B, C, D, E, etc.** used, the respective **n** will be kept track of;
3. A royalty **x** will be paid by the creator or owner of **A** to each of **B, C, D, E, etc.** based upon the **t** value for each **B, C, D, E, etc.**, calculated as:

$$x = (r * y) * (t / z)$$

In the methodology proposed above, for each original song within a remixed work, the current per minute (and fractions thereof) mechanical royalty rate shall be paid to the original songwriter of the songs used based upon the amount of time the original composition is actually used in the new work, not an unpredictable, emotion based calculation. In this manner, a regulatory option is made simple for the original artists or



their assigns to be paid for remixes and mashups, creates a predictable cost and outcome for the remixer of the original work and their assigns.

We feel that this does not harm the rights of the original creator in the derivative work. In fact, it allows for a commercialization of those original works at a scale that is not currently possible given the unpredictability of a licensing fee serves two purposes: to either depress creativity by preventing the work from being presented to the public, or for the work to brazenly flaunt that it is not respecting copyright. It also takes the process of figuring out these rights and an artificial roadblock to creativity out of the hands of lawyers and consultants whose fees are out of reach for budding creative. In the current model, it is well known that only a small portion of these remixes are appropriately licensed.

However, to fully implement a change such as the above, the process of licensing master recordings would need to be addressed as well for remixed or mashed up uses. We feel, strongly, that the second solution would be to implement the same exact model proposed to create a methodology to license the master recording in which the composition is embedded. An appropriate, time based, royalty rate similar to that for mechanicals could be appropriate. We don't go so far to suggest that the currently applicable mechanical royalty rate should be implemented for master recordings as well, but in any case, an applicable rate in the same format and style (inclusive of the same methodology of update) would be appropriate. Again, we advocate for the above in the hopes of creating an equitable methodology of compensating original creators, while not creating an overly litigious atmosphere that serves only to stifle the growth of all but the most well resourced creatives. We argue this is an issues of fairness toward all parties, and a methodology that is not only predictable, but fair to all involved. In short, remixers pay for what they've used, and original rightsholders are compensated for the works they've spent considerable time honing and creating. The added bonus to all of the above is an increased amount of commerce in this sphere where a now-leveled playing field would, in short, bring more revenue from a much larger pool of creative who would be legally licensing works.

We reject, however, any notion of a *de minimis* or transformative use argument as it pertains to the master recording or composition.

Finally, we hope that there is opportunity to learn and implement the legal frameworks that the Creative Commons coalition has developed and provide them as regulatory frameworks for the licensing of the rights of synchronization of both the master recording and composition, and for the reuse of copyrighted works, in general. Again here, we advocate for the simplicity created, and the respect for compensated and non-compensated options. By implementing these frameworks, the United States would have a regulatory system of licensing that would be more easily understood by end users, who don't have backgrounds in copyright law, and would create a marketplace between creators and end users that was less adversary, simpler, and more prone to generating commerce for creators.



I am happy to provide further commentary as may be of interest as pertains to any of the above, and am highly appreciative of the significant effort put forth in the creation of this document and the continuing discussion of how we may be able to modernize these protections for the real-world situations that present themselves.

Sincerely,

A handwritten signature in black ink, which appears to be "Jeremy Peters", is written over the word "Sincerely,". The signature is fluid and cursive, with a long horizontal line extending to the right.

Jeremy Peters  
Director, Creative Licensing and Business Affairs  
Ghostly International and Ghostly Songs