



Subject:
Date:



Intellectual Property Anti-Piracy Initiative Letter
Wednesday, March 24, 2010 11:31:52 AM

Dear Ms. Espinel,

I am writing in my role as the President of the American Association of Independent Music (A2IM; www.a2im.org) the not-for-profit trade organization that represents a broad coalition of independent music labels, a sector that comprises more than 30 percent of the music industry's U.S. recorded music sales market, almost 40 percent of digital sales, and well over 90 percent of all music released in the U.S. A2IM's music community includes music companies of all sizes throughout United States, from Hawaii to Florida representing musical genres as diverse as our membership. During the past week you have received comments from a number of our members so the purpose of my comments is to give an overview of the plight of our independent music community.

This year, independently owned music labels scored a total of 43 Grammy awards, of the 109 awarded, in the Pop, Rock, Alternative, Country, New Age, Jazz, Gospel, Tropical Latin, Tejano, Norteno, Bando, Americana, Bluegrass, Blues, Folk, Hawaiian, Native American, Zydeco/Cajun, World, Spoken Word, Comedy, Surround Sound and Classical genres including the Album of the Year, but economic reward has not always followed critical success due to barriers to entry for independents in both promotion and commerce. A2IM members share the core conviction that the independent music community plays a vital role in the continued advancement of cultural diversity and innovation in music at home and abroad, but we need the assistance of the U.S. government in the areas of intellectual property and anti-piracy enforcement.

Over the course of the past decade, dramatic shifts in technology have impacted nearly every aspect of the music industry, from the recording and distribution of sound recordings to the cultivating of audiences for sound recordings via new distribution mediums. Many of these changes have been disruptive to traditional business models, but there have also been new opportunities fostered by technological developments. Independent labels have keenly felt these dual forces as we've sought to adapt to an increasingly digital, networked world.

Of all the technological developments in recent history, the Internet represents the most potent platform for entrepreneurship and expression our community has witnessed. Yet it also has produced tremendous uncertainty among those who earn their living from their copyrights ~ from artists to labels to songwriters to publishers and all of the businesses; distributor, aggregators, manufacturers, etc. that support our community and bring us to market. Again, the independent community has experienced all sides of the phenomenon. Yet despite the many unresolved

questions surrounding the protection of intellectual property online, we remain optimistic that open Internet structures are our best means through which to do business, reach listeners and innovate in the digital realm.

The Internet has allowed our sector to compete on a more level playing field and take fuller advantage of new means of reaching audiences and doing business, via internet based services like Pandora or Slacker, or the broader commerce opportunities presented by digital retailers such as eMusic, iTunes, Amazon and others. Additionally, we have developed Direct-To-Consumer relationships with our fans for both promotion of our music and sales. The ability to develop direct relationships with our customers by leveraging Internet-engendered technology has been a phenomenal development in our ability to bring more music to more people.

In this regard, we are encouraged that representatives from Obama administration have made statements and taken action recognizing the fundamental importance of preserving a dynamic and competitive commercial environment where small companies can set goals and achieve them without having to ask permission from Internet service providers.

Without the benefit of an open Internet, we may very well end up with another set of gatekeepers that determine who gets to play and at what cost. In such a scenario, entrepreneurs and innovators, among which independent labels must be counted, would be foreclosed from full participation in a legitimate digital music marketplace, and the marketplace itself would not benefit from the innovations that will ultimately help it reach its full commercial and cultural potential. The small business people we represent would also be able to expand the overall economy due to the economic multiplier effect as music helps promote games, films, advertisements and many forms of technology, both here in the U.S. and abroad.

Further, we are pleased that the recent FCC draft Net Neutrality rules for preserving an open Internet apply only to lawful content, applications and services. This distinction is important to maintain, as it has become increasingly clear that the music sector must be free to pursue any and all available means of combating the unlawful sharing of copyrighted content. A2IM respects the distinction between protecting intellectual property and maintaining an open and competitive marketplace, and we are encouraged that the Commission's draft rules reflect a similar understanding.

Still, we must reiterate the need for a proactive approach to intellectual property protection, as the rules that would preserve the many benefits of the Internet, commercial, cultural and otherwise are crafted. The U.S. government has and should have a role to play in maintaining a functional commercial environment online, and this means taking seriously the problem of piracy. One very important area A2IM would like to call attention to is certain loopholes that exist in the DMCA which currently considers it "legal" for sites to allow unlicensed but copyrighted user-generated content to be posted on their sites (e.g.. YouTube, Myxer, Grooveshark, and many others) while leaving the burden on the copyright owner to file "take down notices" to the sites for each unauthorized posting when they become aware of them. As the DMCA is currently written and interpreted, this could require music labels to become 24/7 take down notice servers pulling them from the work of running their

businesses and marketing their artists' music. The harm is compounded by the fact that a day after a copyright owner serves a take down notice for Song X by Recording Artist Y that very song by that very artist could be back up on the same website the next day (this time listed as Song Xy by Recording Yx) with the site still held blameless because they are not considered responsible for that which their users post. This is clearly a loophole that was unintended by those who wrote and passed the DMCA but is being abused by websites building user audiences and substantial businesses on the backs of copyrighted creative works without having to be granted permission for use nor compensating the copyright holders. Until and unless these types of loopholes are closed there will remain an avenue to "legal" piracy under the guise of "user generated" material.

A2IM member labels simply do not have the means to engage in copyright enforcement on the Internet. The time and capital investment required for our community of like-minded but proudly independent small business people to monitor the web for infringement and take subsequent legal action simply does not exist. It would be tremendously beneficial for those whose livelihood depends on the ability to exploit copyrights in a free market if we had a government partner helping to advance an enforceable regime for the protection of intellectual property online.

The recent announcement of a Department of Justice-based Task Force on Intellectual Property is also a welcome step in coordinating government efforts to deal with a pressing problem that compromises America's economic and cultural standing. These efforts, combined with strong but necessarily flexible Net Neutrality provisions, will help ensure that entrepreneurs and innovators can continue to make the Internet a vibrant domain for creativity and commerce.

Our Independent music community is struggling and has been severely damaged as a result of on-line piracy. Yet we remain hopeful that government action will help protect the interests of small businesses within the scope of a level playing field for legal activity on the Internet, which would allow all users to compete on an equal technological footing and give the independent music community the means to explore exciting and potentially rewarding platforms for music promotion and commerce. This "license to innovate" is the oxygen of the music ecosystem. Without it, A2IM and its culturally and economically significant members would not be able to contribute such a diverse array of music to listeners hungry for content outside of the narrow confines of traditional broadcast media. This would be a net loss not just to America, but also the world, where the desire to experience our culture and creative expression is ever-present and growing.

Thank you for your time and consideration.

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