

From: [REDACTED]
To: [FN-OMB-IntellectualProperty](#)
Subject: RE: President Obama's IP Coordinator is Requesting your Comments - Deadline is March 24.
Date: Wednesday, March 24, 2010 3:58:30 PM
Importance: High

Dear Ms. Espinel,

Thank you for giving us the opportunity to be heard by the Obama Administration. It's very important for artists (and especially younger and/or less established artists) to know that their government is interested in their intellectual property concerns. I have been playing music for nearly 20 years and working in the music industry for almost 10 years and I can say without any hesitation that it is now harder than ever for musicians and songwriters to make a living from or even be compensated fairly for their labor. There are many factors that have made this happen but a major factor that has affected me personally is the unrestricted availability of recorded music. It has affected me as an artist and as an employee of the music industry.

Technology has done wonderful things for music. Web sites such as Myspace, Youtube, Twitter, Facebook, PureVolume, ReverbNation and CD Baby have given independent artists a level of market visibility that seemed not just unlikely but impossible less than a decade ago. On the flip side, the explosion of file-sharing software and torrents have created a massive hurdle for musicians and songwriters to overcome because their recorded music is now available to anyone with a computer and an internet connection at no charge and very little if any consequence. The availability of recorded music to the public for no charge has had an effect on the intrinsic value of recorded music and created a sense of entitlement to recorded music among consumers. Recorded music sales have decreased across the entire music industry for over 10 years and that has affected other areas of the business such as concert promotion, publicity, radio promotion, touring, business innovation and the hiring of new employees. However, the major labels, pop stars and industry veterans aren't the ones who are hurting the most because of these changes.

People like me have been affected by these technological changes in two ways. First, as an independent musician, I have seen a considerable drop in both revenue and opportunity for professional advancement among America's budding musicians, songwriters and recording artists. Bands like mine, that must finance our own recordings, book our own live performances and tours, pay for the production and manufacturing costs of our own merchandise, shoulder the costs of our business expenses such as advertising, professional photographs, mailing supplies, business cards, postage, gasoline, web site hosting fees, hard drives, sound and lighting gear, stage props, video equipment, etc. with money from our own pockets PLUS invest an uncountable number of labor hours in making all of these things happen are the ones that have felt the impact of the changes in technology that make our recordings available for no charge and at no consequence to music consumers. Revenue earned from CD and MP3 sales can only cover a fraction of our music costs (nevermind our living costs) at best and that income stream is significantly reduced for bands that don't have the time, resources or professionals on staff to help them make sales while also creating and performing music (and of course, working another job to support themselves while taking on this endeavor).

In the beginning of any band's career, sales of your recorded music are essential to your continued professional growth. As a band's career advances, unit sales are used as a benchmark to determine your investors and your tour support. In short, if your album isn't selling, you won't go on tour. Paying customers are much more likely to attend a band's live performances and attorneys, booking agents, managers and sponsors only get involved with an artist's career when the artist is already making money or reaching a large audience without them. Anyone that has ever tried to book live performances, secure endorsements or get their songs placed in a commercial, film, television show or video game will tell you that having professional business people involved makes that process not just easier, but far more likely to actually happen.

The second way I've been affected by the unrestricted availability of recorded music is as a full-time employee of the music industry. I have been fortunate enough to work for some of the most successful record labels and licensing agencies in the world and I'm still working for one now. However, the decrease in revenue across the industry due to the issues with piracy became obvious from the time I started my career in the year 2000 up to the present day. Every year, I saw a decrease in benefits by working full-time in this industry. First the perks went, which is to be expected during hard times so most people were annoyed but accepted it.

However, then medical insurance went from being a cost-free benefit of full-time music industry employment to being one that required a pre-tax dollar contribution. At first, it was no worse than any other industry in America so again, this was to be expected and accepted. The costs of these contributions have rose steadily every year for the past five years. The co-pays and co-insurance premiums have also increased while certain types of coverage has decreased. The insurance companies being used to provide these benefits have changed multiple times as well and I know for a fact that this was a cost issue for employers. Company holidays, personal days and vacation policies have become more stringent across the board as well.

Also, there have been a significant number of mergers over the past couple of years in the music industry and each time those mergers were followed by an alarming number of layoffs. This hurt the economies of Los Angeles, New York, Nashville and many other cities across America and while there were less people on the music industry payroll, the amount of work to keep these companies and this industry alive remained the same or even increased! Despite all these necessary survival tactics, music companies are still continuously forced to cut their perks, alter their benefits packages, merge with other companies and downsize their personnel to adjust to the revenue being lost by the piracy of recorded music. Record companies, music publishers, music managers, booking agents, record producers, songwriters and recording artists have been feeling these effects for years and their employees have felt it as well.

It is undeniable that the formats of intellectual property have changed and will continue to change. However, there needs to be a way to (1) control public access to and distribution of intellectual property, (2) reward businesses and individuals that distribute this intellectual property legally and (3) create new revenue streams for music as an intellectual property. Music subscription services such as rhapsody are a step in the right direction. iTunes, amazon.com and similar licensed online retailers of recorded music are also steps in the right direction. Continued prosecution of companies and individuals that provide unrestricted access to copyrighted materials

online seems necessary at this time. Also, as technology develops, the safeguards that prevent music and video files from being downloaded need to be developed as well. Please note that I am not against streaming music services. It is the issue of permanent downloads that concerns me as a musician and as a music industry employee.

Would the government consider offering some tax incentives to new businesses that legally distribute music? I assure you that with the affordability of home recording software there is NO shortage of artists looking to get their music into the market. Many of us are willing to pay initial set-up fees and percentages of sales to such businesses as long as they are affordable and consistent in their reporting. CD baby and Tunecore are good examples of that business model.

Other arenas where music is a profitable intellectual property is in film, TV and video game placements. However, every placement is different in terms of pay structure to the artists and songwriters. The film and television worlds have become increasingly important for the exposure and synchronization fees they provide, but at this time songwriters are not given performance royalties for the use of their songs in motion pictures. Television compensates songwriters this way but motion pictures do not. Not every song used in a motion picture is included on their soundtracks either (which pay royalties based on unit sales). I believe this situation should be amended. If musicians and songwriters aren't being paid a performance royalty, the song should get onto the movie soundtrack. If the song doesn't get onto the soundtrack but gets used in the film, a performance royalty is fair. The length of use or the context of the song in the film could be subject to different rate structures the way that playing times affect mechanical licensing royalties now.

Also, the video game world at this time typically does not pay a mechanical or synchronization royalty to songwriters based on unit sales. The one-time, all-inclusive buyout rates that are paid are considerable, but those rates are insignificant compared to what an artist and songwriter could be earning. This is a situation that seems ripe for change as well. The Guitar Hero and Rock Band franchises have a system of payment based on an advance, MFN status and unit sales rather than a buyout. I would like to see all video game companies compensate their artists and songwriters in this way. The royalty rate would of course be open for negotiation, just like artist and mechanical royalty rates are on record deals.

Thank you so much for your time and consideration. I believe that music is worth investing in and that America's musicians and songwriters are continuing to create valuable art. I hope that this administration can make good on its campaign slogan of "change" and lend its support to America's musicians, recording artists and songwriters. As you've read, we certainly need it.

Very Truly Yours,

Dan Hegarty
Los Angeles, CA
Musician & Music Industry Employee

From: The Harry Fox Agency [mailto:]
Sent: Monday, March 22, 2010 9:49 AM

To: Daniel Hegarty

Subject: President Obama's IP Coordinator is Requesting your Comments - Deadline is March 24.

Dear Client,

The Obama Administration is asking to hear from creators, including songwriters and recording artists, about how intellectual property infringement affects your livelihood. The Administration is also seeking advice on what the government could be doing to better protect the rights of artists and creators in our country. All comments must be submitted by Wednesday, March 24 by 5:00 p.m. EST.

BACKGROUND :

Last year President Obama appointed and the U.S. Senate confirmed Victoria Espinel to be the first U.S. Intellectual Property Enforcement Coordinator. Her job is “to help protect the creativity of the American public” by coordinating with all the federal agencies that fight the infringement of intellectual property, which includes pirating music, video games, and books; creating and selling counterfeit goods; and infringing upon the many other creative works that are produced by artists in this country.

As you know, the unauthorized copying, sale, and distribution of artists' intellectual property directly impacts the ability of artists and creators to control the use of their own creativity, not to mention their ability to receive income they have earned from their labor. This impacts U.S. employment and the economy, and our ability to globally compete.

As required by an Act of Congress (The PROIP Act of 2008), Ms. Espinel and her White House team are preparing a Joint Strategic Plan that will include YOUR FEEDBACK on the costs and risks that intellectual property infringement has on the American public.

HERE'S HOW TO MAKE YOURSELF HEARD:

1. Send an email to Ms. Espinel and the Obama Administration:
intellectualproperty@omb.eop.gov .
2. Include in your email: your story, why intellectual property rights are important to you, how piracy and infringement affect you, and what the U.S. government can do to better protect the rights of creative Americans.
3. Also include in your email: your name, city, state, and what type of artist you are
4. **DO NOT INCLUDE ANY PERSONAL OR PRIVATE INFORMATION AS ALL COMMENTS WILL BE POSTED PUBLICALLY ON THE WHITE HOUSE WEBSITE.**
5. All comments must be submitted by Wednesday, **March 24 by 5:00 p.m. EDT** .

The entire call for comments is available here

www.whitehouse.gov/omb/assets/fedreg_2010/02232010_ipi.pdf .

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