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Subject:

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creators community thoughts

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The Copyright Alliance and A2IM (the U.S. independent music label trade organization) have informed me of this welcome invitation from the Obama Administration to share my thoughts on my rights as a creator.

I am a musician. I am also a music lawyer with a lot of musician clients. Regardless of the hat I am wearing, I am concerned that so few people value intellectual property (especially copyright) in today's society. Somehow people got it into their heads that creators (especially musicians) are rich and it simply won't matter if their works are snatched on some P2P site. After all, the creators are already rich...what's another few bucks to them? What they don't understand is that it's already near impossible for someone to be "rich" based simply on their songs. Most of the "rich" artists they're talking about are probably signed to labels to which the artists are seriously indebted (a word used lightly, since it's not really "debt" in the normal sense of the word).

Traditionally, the only way that the artists could get out of "debt" to their labels (i.e., recoup) is by selling records. When record sales drop (and I think everyone's agreed that piracy has a lot to do with record sales dropping), artists are less likely to recoup. Recoupment is necessary before artists see record royalties under their label deals. Therefore, most artists aren't earning ANY money from their label deals.

Also, this other nasty thing started happening when record sales dropped. Record companies started requesting that they get cut in on other streams of artist income -- like gig money, merch money, publishing. Keep in mind this is the money that artists traditionally had to live on while trying to "recoup." Plus, these streams of money usually already have other hands in the pot such as managers, booking agents, etc. If an artist has a full team (or, worse, an ex-manager who still draws a commission and a current manager with a commission), it's not hard to see that the bulk of the artist's income is eaten up before it even gets to the artist.

Now I know that I went into a profession where a lot of my clients won't make a lot of money, and therefore I won't make a lot of money. That's fine. But it breaks my heart to see that their hard work is likely to pay off less and less over time. With the Googles of the world out there trying everything to grab as much "free" copyrighted content to exploit as possible (without paying the creators at all or very minimally assuming the creator even finds out that Google is using their works), I can see a point in time where some creators are going to say "what's the point? why am i still writing? or why i am still playing shows at midnight on a Tuesday and working three crappy part-time jobs and eating peanut butter and jelly sandwiches for every meal? why would i ever put one of my new tracks online if it can immediately be captured and replicated a million times without me seeing a dime?"

Bottom line: If people don't see their creations as capable of generating income, then I believe they are less likely to create... or, at the very least, less likely to share their creations.

And wasn't copyright law in the United States developed in large part to ensure that the public had a diverse body of creative works that people felt comfortable sharing? that other people could then build upon? If people simply don't create or don't share their creative works, the primary aim of copyright law will not be met.

So what to do? I wish I knew. And I wish I started writing this more than an hour before the deadline.

The main remedy that pops into mind is to make it easier for creators to enforce their rights against infringers. It is currently too expensive for most creators to file for relief from copyright infringement. There's also such a serious backlog at the Copyright Office on processing copyright registration applications that creators can't even count on getting the requisite copyright registration certificates in hand to legally file an infringement case without paying \$600+ PER APPLICATION to the Copyright Office in special handling fees.

If there was a financially feasible way for a copyright owner to get in front of a judge or some other reputable decisionmaker and make their case for why they believe their work was infringed and actually get paid for that infringement, then I think that would go a long way towards fixing some of these problems. The creator would be able to fight for monies owed them (and would be more willing to share their creative works), and the infringer would presumably be more deterred from infringing if they knew it was feasible for the copyright owner to fight the infringement. Because the fact of the matter is that most people know when they're infringing. They just keep on infringing because they know it's too expensive for someone to go after them. Or perhaps the infringer is too gargantuan for any person of even moderate means to go after. (Ahem. Google.)

Again, wish I had more time to write this up rather than go free form, but, in any event, I'm getting this in just under the deadline.

Thanks for listening.

Amy, Austin, Texas, Musician and Lawyer