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Copyright Royalty Board Boosts Songwriters' Streaming Pay Nearly 50%

By Paula Parisi

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The Copyright Royalty Board has ruled to increase songwriter rates for interactive streaming by nearly 50% over the next five years, in a ruling issued early Saturday. Equally important, the CRB simplified and strengthened the manner in which songwriters are paid mechanical royalties, modifying terms in a way that offers a foothold in the free-market.

The ruling, in favor of the National Music Publishers' Association and the Nashville Songwriters' Association International, amounts to what NMPA president and CEO David Israelite calls "the biggest rate increase granted in CRB history," with Amazon, Apple, Google, Pandora and Spotify compelled to pay more for the use of music.

Although the writers were looking for a per-stream rate, which they did not get, the digital services were fighting to reduce rates, so overall it's a significant victory for writers. Streamlined rate terms replace byzantine calculations with a simplified formula based on the "greater of" concept. What under previous conditions may have involved dozens of computations involving different offerings has been reduced to two variables with a floor.

The new rate will be based on the greater of either 1) a percentage of revenue or 2) total content costs. Content costs are payments to labels, which are negotiated without legal constraints, so the deal effectively affords writers – who are largely shackled to statutory rules – some free-market frisson. Additionally, caps and history," Israelite said. "Crucially, the decision also allows songwriters to benefit from deals done by record labels in the free market. The ratio of what labels are paid by the services versus what publishers are paid has significantly improved, resulting in the most favorable balance in the history of the industry." So for every $3.82 to the label, writer/publishers get $1.

While Israelite said an "effective ratio of 3.82 to 1 is still not a fair split that we might achieve in a free market," he said these terms are the best songwriters have ever had under the compulsory license. The court also decided in our favor regarding a late free which will force digital music services to pay songwriters faster or be subject to a significant penalty. "The bottom line is this is the best mechanical rate scenario for songwriters in U.S. history, which is critically important as interactive streaming continues to dominate the market."

Songwriters had asked the CRB to grant the greater of 15 cents per 100 streams or $1.06 per user per month, though they did gain ground. For the past 10 years – since the dawn of streaming – writer royalties had been strictly based on a percentage of each streaming service's revenue, putting them at the mercy of subjective corporate decision-making.

The songwriters made the case that the existing system was crafted to help boost a then-nascent industry but had outlived its usefulness to the point of becoming a conflict of interest. What in effect had largely become big box streaming services were using music as a loss leader to boost market share and sell other products.

While the change will be insignificant to the bottom lines of behemoths Apple, Amazon and Google, the smaller Spotify and Pandora may feel the pinch. Interestingly, while Amazon, Google, Pandora and Spotify argued to maintain the status quo, Apple broke ranks, conceding that the current royalty rate structure was "too complex" and "economically unsound" and advocating for "a single per-play rate that is the same for all services." That last did not come about, but the Cupertino tech firm signaled artistic sympathy that could play out in interesting ways going forward.

The ruling is the result of a March CRB rate hearing initiated by the NMPA and the NSAI after a breakdown in negotiations that began in November 2016. Such disputes are settled by a permanent panel of three royalty judges appointed by the Librarian of Congress to oversee terms and rates of writer royalty payments for sound recordings.

The ruling effects only the mechanical license, a term that literally references the rolls mechanically cranked through player pianos – arguably the first mass distribution media for recorded music. Albums, CDs and downloads also fall under the mechanical license (the thought being that like piano rolls, these are "physical copies," although the idea that a digital stream is concrete by virtue of being stored at various points (on a server, in a buffer) is somewhat specious; analog broadcast signals also collect at various points, and digital radio and TV in practical terms is distributed in the manner of a stream.

But broadcasts – digital or analog – are considered a public performance, and garner what is currently a higher "performance license" rate. Songwriter Rodney Jerkins illustrated the discrepancy in September at the Recording Academy's District Advocacy Day in Los Angeles by sharing an accounting statement for "As Long As You Love Me," a top 10 hit for Justin Bieber in 2012. By 2013, Jerkins' stake in the song generated $146,000 in performance royalties, while streaming revenue from the same period garnered $278 for 38 million Pandora plays and $218 for 34 million YouTube streams. "If I owned 100 of the song I would have made $1,100 from YouTube," Jerkins said, proclaiming, "Those numbers are criminal."

"The CRB was a long and difficult process but songwriters and music publishers together presented a powerful case for higher streaming royalty rates," Nashville Songwriters Association International (NSAI) Executive Director Bart Herbison said. "Songwriters desperately need and deserve [these] rate increases."

Sony/ATV chairman/CEO Martin Bandier said: "As the leading music publisher, we believe that overall this is a very positive ruling by the CRB as it will deliver an unprecedented topline rate increase for songwriters and publishers over the next five years. While we are disappointed not to get the per-stream rate that we wanted, the planned rate increases go a long way to fairly compensate our songwriters for the essential contribution they make to streaming's success story."

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