

MUSIC POLICY ISSUES: A PERSPECTIVE FROM THOSE WHO MAKE IT

HEARING BEFORE THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES ONE HUNDRED FIFTEENTH CONGRESS SECOND SESSION

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MUSIC POLICY ISSUES: A PERSPECTIVE FROM THOSE WHO MAKE IT

FRIDAY, JANUARY 26, 2018

HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
Washington, DC.

The committee met, pursuant to call, at 2:00 p.m., in Constantino Room, Fordham University School of Law, 150 West 62nd Street, New York, New York, Hon. Bob Goodlatte [chairman of the committee] presiding.

Present: Representatives Goodlatte, Issa, Gohmert, Marino, Farenthold, Collins, Gaetz, Nadler, Cohen, Johnson of Georgia, Deutch, Jeffries, Cicilline, Lieu, Raskin, and Demings.

Staff Present: Shelley Husband, Staff Director; Branden Ritchie, Deputy Staff Director; Joe Keeley, Chief Counsel; Kathryn Rexrode, Communications Director; Carlee Tousman, Clerk; Jason Everett, Minority Counsel; David Greengrass, Minority Counsel; and Perry Apfelbaum, Minority Chief Counsel and Staff Director.

CHAIRMAN GOODLATTE. The Judiciary Committee will come to order. Without objection, the chair is authorized to declare recesses of the committee at any time.

We welcome everyone to this afternoon's hearing on "Music Policy Issues: A Perspective from Those Who Make It." I will begin by recognizing myself for an opening statement.

Our Nation's copyright laws, and the exclusive rights they grant to artists and creators, have made the United States the world leader in creativity. We must ensure that status continues in the digital age.

It requires courage for individuals to take a risk and transform the ideas in their minds into works of art, musical works, literature, software, and other creative forms. Creators willing to do so expose themselves to criticism and rejection if others do not appreciate their efforts, and they face theft if their work is appreciated. We must continue to provide our Nation's creators with strong incentives to take these risks, so that we can continue to reap the rich benefits our Nation's creators provide to our citizens and Nation and the rest of the world.

Today, we focus on music creators on a major weekend for the music world. The statutory framework that governs the music industry has long been the subject of a number of legitimate complaints that it fails to properly recognize and reward American music creators. Today's witnesses will highlight how the music

business has changed over the past decade, resulting in a number of policy issues of concern.

Most, if not all, of these policy issues are the subject of pending legislation. These issues include the distinction in copyright law between sound recordings fixed prior to February 15, 1972, and those fixed afterward; the convoluted mechanical licensing system that seems to create more litigation and paperwork than actual royalties for songwriters; the ability for producers, sound engineers, and mixers to be paid for their efforts when their works are webcast; and the appropriate rate-setting mechanisms for the uses of music that are subject to compulsory licenses.

A number of interested parties have worked with the Judiciary Committee and its members to draft legislation to address these issues and more, most notably, in their order of introduction this year, the AMP Act, the Fair Play Fair Pay Act, the CLASSICS Act, and the Music Modernization Act.

I am sure that the witnesses will have thoughts on all of these bills, which have been the subject of a number of recent letters of support across the music industry.

Before I turn to our witness panel today, I would like to highlight the music industry's unique status as one of the last industries subject to Federal rate-setting mechanisms. It is an obvious and long-term question whether such overregulation is truly necessary. Hopefully, the legislation pending before Congress currently will modernize the system while paving the way for a day when American music creators can do what virtually every other American creator is able to do: set their price for the usage of their creations.

Now it is my pleasure to recognize our host member and the ranking member of the Judiciary Committee, the gentleman from New York, Mr. Nadler, for his opening statement.

[Applause.]

Mr. NADLER. Thank you, Mr. Chairman.

Let me begin by stating how good it is to be back at my alma mater, Fordham Law School. I graduated here a number of years ago, I think two buildings ago. [Laughter.]

Mr. NADLER. This large of a building wasn't here then. But it was a great education and a great opportunity for me, and I want to thank the school for that.

And thank you, Mr. Chairman, for holding this hearing in New York on music policy issues.

I would like to welcome everyone to my district, which includes virtually every aspect of the music industry. New York City is home to thousands of creators, including songwriters, performers, and musicians, as well as broadcasters and some of the Nation's leading technology companies.

The issues we are considering today are of great concern to the people of the city, and I am glad the committee is here, because I firmly believe that this is a place where we can have an open dialogue, confront the issues, and forge consensus. And I hope that we can have a productive dialogue, because music licensing issues are ripe for reform.

The Judiciary Committee, under Chairman Goodlatte's leadership, has been conducting comprehensive review of the Copyright

Act, and we have heard a lot from music industry stakeholders and all sides about the need for change.

Thankfully, there appears to be growing agreement around a number of issues that give us reason to hope that Congress may be able to move toward a legislative solution. I have long argued that we need to create a uniform system that levels the playing field for all radio services and ensures fair payment for all artists regardless of when the music was recorded or on what medium it is played.

To that end, I introduced the bipartisan Fair Play Fair Pay Act, H.R. 1836, in case anyone is interested, along with several of my colleagues who are here today. The bill establishes a performance right for AM/FM radio, and it sets down a clear marker on the need to resolve the dispute over pre-1972 music, which does not currently have protection under the Federal copyright laws.

Under the bill, Internet radio would continue to pay fair market value, but now its competitors would, too, since satellite radio would no longer be granted a below-market rate. And it simplifies the allocation of royalty payments to producers and engineers, similar to the AMP Act, H.R. 831, introduced by my colleagues Mr. Crowley and Mr. Rooney.

Since we introduced the Fair Play Fair Pay Act, there have been a number of encouraging developments. The National Association of Broadcasters and the musicFIRST Coalition are engaged in discussions on performance rights, and I am hopeful that the parties will continue to negotiate in good faith toward a solution that benefits both sides.

Chairman Issa and I introduced the CLASSICS Act, H.R. 3301, an updated pre-1972 provision, to bring these recordings into the Federal copyright system. The bill grants equal treatment for pre- and post-'72 recordings, guaranteeing fair compensation for iconic legacy artists while providing legal certainty for digital services.

This bill is the product of a consensus reached among a wide range of stakeholders, including digital services like Pandora, SAG-AFTRA, and the American Federation of Musicians, the Internet Association, major and independent record labels, and multiple artist rights organizations.

Last month, Congressman Doug Collins and Congressman Hakeem Jeffries introduced the Music Modernization Act, H.R. 4706, otherwise known as the MMA, to address a number of issues governing the licensing of musical works. The bill reforms Section 115 of the Copyright Act to create a blanket license for mechanical reproduction royalties administered by a single entity, which will help ensure proper payments to songwriters and publishers. It also establishes a fair market rate standard for musical compositions under Section 115 and would repeal Section 114(i), which prohibits rate court judges from considering sound recording royalty rates as evidence in setting performance royalty rates for songwriters and composers.

In addition, it would require judges to be randomly assigned for ASCAP and BMI rate-setting proceedings in the Southern District of New York.

The Music Modernization Act is also supported by a wide range of stakeholders, including the Digital Media Association rep-

representing companies such as Spotify and Amazon; the National Music Publishers; the PROs; and a number of songwriter advocacy organizations, such as NSAI and SONA.

For the last few years, I have been imploring the music community to come together in support of a common policy agenda, so it was music to my ears to see—to hear, I suppose—the unified statement of support for a package of reforms issued by key music industry leaders earlier this month. Many of these measures, such as the CLASSICS Act and the Music Modernization Act, are supported by stakeholders on both sides, by digital service providers as well as by music creators. This emerging consensus gives us hope that this committee can start to move beyond the review stage toward legislative action.

Now is the time for all parties to come together so that we can finally pass meaningful reform. We have a number of witnesses here today who will help us in this endeavor. I look forward to their testimony, and I yield back the balance of my time.

Chairman GOODLATTE. Thank you, Mr. Nadler.

We now welcome our very distinguished witnesses. As is the practice of this committee, if you would please rise, I will begin by swearing you all in.

If you would raise your right hand, do you and each of you solemnly swear that the testimony that you are about to give shall be the truth, the whole truth, and nothing but the truth, so help you God?

Thank you very much. You may be seated. Let the record reflect that all of the witnesses answered in the affirmative.

Now, let me introduce our witnesses.

First is Neil Portnow. Mr. Portnow is the president of the National Academy of Recording Arts and Sciences.

Our second witness is Booker T. Jones. Mr. Jones is an American multi-instrumentalist, songwriter, record producer, and arranger best known as the front man of the band Booker T. & the M.G.'s.

Our third witness is Aloe Blacc. Mr. Blacc is an American musician, singer-songwriter, record producer, actor, businessman, and philanthropist.

Our fourth witness is Tom Douglas. Mr. Douglas is an American country music songwriter.

Our fifth witness is Mike Clink. Mr. Clink is an American record producer.

And our sixth and final witness is Dionne Warwick. Ms. Warwick is an American singer, actress, and television show host, and a United Nations Global Ambassador for the Food and Agriculture Organization, and United States ambassador of health.

Welcome to each and every one of you. And we will begin our testimony with Mr. Portnow. And I will just advise each of you that your written testimony will be entered into the record in its entirety, and we ask that you summarize your testimony in 5 minutes.

To help you stay within that time, there is a timing light on the table. When the light switches from green to yellow, you have 1 minute to conclude your testimony. When the light turns red, that is it. Time is up.

Mr. Portnow, we also know that you can't stay for the entire hearing, so we understand that and excuse you for other activities that you have to engage in, but you may begin. Welcome.

TESTIMONY OF NEIL PORTNOW, PRESIDENT, THE RECORDING ACADEMY; BOOKER JONES, SONGWRITER, RECORD PRODUCER, ARTIST, AND ARRANGER; ALOE BLACC, MUSICIAN, SINGER, SONGWRITER; TOM DOUGLAS, SONGWRITER; MIKE CLINK, RECORD PRODUCER; AND DIONNE WARWICK, RECORDING ARTIST

TESTIMONY OF NEIL PORTNOW

Mr. PORTNOW. Thank you so much. Chairman Goodlatte, Ranking Member Nadler, members of the committee, my name is Neil Portnow. As president and CEO of the Recording Academy, I have the privilege of speaking today on behalf of the talented songwriters, artists, and studio professionals who comprise our membership.

I want to welcome you all to GRAMMY Week. I also want to thank you for holding this hearing during music's biggest week and for inviting me to speak today. I am also grateful for your understanding of the hectic calendar this week presents and my need to perhaps depart a little bit early.

Three and a half years ago, I had the honor of testifying before this committee as the opening witness in the first hearing on music licensing. As I speak to you today, I come to you with a very different and more hopeful message. It is a message that our industry is ready to work with you in a unified manner to pass comprehensive music legislation.

During the 15 years I have been coming to Washington for music creators, one constant I have heard from our friends on both sides of the aisle is that our industry needs to be united. Members of the committee, we listened.

The march toward consensus reached a historic marker this month when more than 20 music organizations supported resolving a number of music licensing issues, including those embodied in the Fair Play Fair Pay Act, the Music Modernization Act, the AMP Act, and the CLASSICS Act. You will hear more about those endorsed proposals today from the actual creators who are affected.

And the unity goes far beyond the music industry. Thanks to tireless work by Representatives Collins and Jeffries, the Music Modernization Act is endorsed not just by songwriters and publishers but by digital music services. Thanks to Representatives Issa and Nadler, the CLASSICS Act is supported not just by artists and labels but by Pandora and the Internet Association. And thanks to Chairman Goodlatte and Ranking Member Nadler, we are, as has been widely reported in the press, having discussions with the broadcasters over the issue of radio performance rights for artists.

The lack of a radio performance royalty in the U.S. discredits our commitment to intellectual property. We are the only Nation in the developed world where radio can use an artist's work without permission or compensation. We know that this untenable inequity must change. Congress knows that this must change. But here is

what is different today: Many in the broadcast community also know that this must change. As radio transitions to new business models, they know their future depends on working with, not against, the artist community.

I believe the solution to the performance right issue can be resolved if both sides work in good faith, and if Congress continues to demonstrate its commitment to fix this issue once and for all. This is an issue that artists will never stop fighting for until it is resolved.

With this historic consensus on so many issues, what is next? Well, today's hearing is called, "Music Policy Issues: A Perspective from Those Who Make It." But to understand the creator's perspective, you must understand the creators themselves.

In Washington, we often put music makers into categories: songwriter, artist, producer, engineer. But in the real world, as on this panel, it rarely works that way. Booker T. Jones started his career as a studio musician but is also a recording artist, a songwriter, and a producer. Aloe Blacc is a chart-topping singer, but he is also a songwriter, musician, and record producer. Tom Douglas is a hit national songwriter, but you will hear Tom's voice and keyboards backing some of his tracks. And Mike Clink has been a producer, engineer, and mixer for the biggest rock bands in the world, but he is also a songwriter and a vocalist.

Just as creators cannot be compartmentalized, neither should music legislation. There are issues of consensus that would help all creators, and they are ready now to be marked up by this committee.

When included in one unified package, you will have a unified core of songwriters, artists, and producers working every day to pass it. I urge this committee to mark up one comprehensive music licensing package of the consensus issues. Dividing the issues will divide our community. Uniting the issues will create an advocacy force so powerful that passage will be all but guaranteed.

Now, in 2 days and a few blocks from here, music creators will recognize their peers with music's highest honor, this coveted award, the GRAMMY. [Laughter.]

Mr. PORTNOW. Pass it down, please.

Although this gramophone was invented more than 100 years ago, the GRAMMY today represents the pinnacle of music of our time. Similarly, some of our music laws were also established more than 100 years ago, but you can make those laws reflect our time as well.

I urge this committee to seize this unique moment of consensus and pass comprehensive music licensing reform that will benefit all music creators.

Thank you very much.

[Applause.]

Chairman GOODLATTE. Thank you, Mr. Portnow.

Mr. Nadler was hoping that that was for him. [Laughter.]

Mr. PORTNOW. Well, it is not too late. [Laughter.]

Chairman GOODLATTE. We now welcome Mr. Jones. Thank you for being with us.

TESTIMONY OF BOOKER JONES

Mr. JONES. Chairman Goodlatte, Ranking Member Nadler, and distinguished members of the committee, thank you for allowing me to testify before you today along with my fellow esteemed creators and my friend, Neil Portnow. My name is Booker T. Jones, and I am an artist, songwriter, and producer who has worked professionally in music for nearly 60 years.

That seems like a long time, and on some days, it certainly feels that way. But many aspects of our music laws date back to an even earlier time—the player piano era. So I am gratified that this committee is making the effort to update music laws.

I have been privileged to record some of the most iconic R&B and soul records that defined the genre, working with artists like Otis Redding and Bill Withers and, of course, my own band, Booker T. & the M.G.'s. Our single “Green Onions” was one of the biggest hits of 1962. That track has been called “iconic,” “groundbreaking,” even, “classic.” But some music services have a less dignified name for it: “pre-’72.”

Because of a quirk in the law, many of our most timeless treasures are dismissed and disrespected as not meriting compensation to the featured artists, nonfeatured artists, and producers.

You see, when Congress created the digital performance right, artists of my generation celebrated that we would now be paid for our classic works. But because sound recordings were not protected by Federal copyright law until 1972, some digital radio services believe they can play my recordings from the 1960s and early 1970s without paying me.

SiriusXM offers dozens of music channels where you can hear recordings made before 1972. So Sirius uses this catalog of great music to bring in billions of dollars, but they don’t pay anything for the privilege of using the recorded tracks.

This injustice is especially cruel for some of our great legacy artists. I am fortunate to have my good health, and I continue to make recordings and tour. In fact, tomorrow, I will be playing in Southwest Virginia, no doubt to some of Chairman Goodlatte’s constituents.

But not all my peers are so fortunate. Other artists and their labels have been fighting to correct this, filing lawsuits at the State level. This uncertainty is bad for artists, and it is bad for the digital music services.

In this Congress, the CLASSICS Act, introduced by Congressman Darrell Issa and Congressman Jerry Nadler, and cosponsored by other members of this committee, would fix this problem once and for all. The legislation will also ensure that digital services are protected from future litigation. It is a win-win for everyone.

I am especially excited that the CLASSICS Act has been introduced with support from Pandora and the Internet Association. Digital radio services don’t want the legal uncertainty that comes from fighting lawsuits State to State. They just want to provide great music to their listeners.

CLASSICS demonstrates that stakeholders can work together to solve the issues to update our music licensing laws.

It is the same spirit of cooperation that led stakeholders to work together to create the AMP Act and the Music Modernization Act.

All of these bills are important and should become law, and creators like myself have been actively lobbying for them.

But our attention has been divided by different creators being asked to support differing and sometimes even competing approaches to solving these issues. What we creators need is to focus our combined efforts on a single package that resolves all of these issues.

As a songwriter, producer, and artist, I can tell you that creators know we are all in this together. Give us this bill, and we will all work hard to pass it.

And in this same spirit of cooperation, it is long past time for music creators and broadcasters to finally resolve the lack of a performance right for sound recordings on AM/FM radio. So I ask the members of this committee to continue to ensure that the NAB and their members work with us to resolve the performance rights issue, just as we have worked with the digital services to resolve other issues.

From the Memphis sound of the 1960s to the sounds we will celebrate in Madison Square Garden on Sunday, American music is America's gift to the world. But it will only remain so if creators are incentivized to continue to create.

That is why the Founding Fathers put copyright in our Constitution. Fixing music licensing isn't just about legacy artists like myself. It is about the next generation of music makers who dream about a career in music.

This committee, under the leadership of Chairman Goodlatte, has done the hard work over the past 5 years. You have identified the problems, and now, you have the solutions, with buy-in from the relevant players.

Don't let this opportunity to bring music into the 21st century slip away. Correct the law now so that all music creators, whether they write, play, sing, produce, or engineer, can make a living from the work they do that enriches all our lives.

Thank you.

[Applause.]

Chairman GOODLATTE. Thank you, Mr. Jones.

Mr. Blacc, welcome.

TESTIMONY OF ALOE BLACC

Mr. BLACC. Good afternoon, Chairman Goodlatte, Ranking Member Nadler, and members of the committee.

My name is Aloe Blacc, and I am a songwriter. I am a member of ASCAP. And I am happy to be here today representing my colleagues and friends in the songwriting community.

I know the Judiciary Committee has been hearing pretty regularly from songwriters over the past few years about our issues and struggles with the consent decrees, below-market rates, and our ideas for reform. And I am proud that, today, we actually have a bill that addresses some of these issues.

Legislation was recently introduced in both Houses of Congress called the Music Modernization Act, and I want to thank Representative Collins and Representative Jeffries and all that you have done and that you have chosen to sponsor this bill.

The Music Modernization Act is an important bill for songwriters, because it finally brings our laws into the digital age. It includes key provisions that will help solve some of our challenges to getting a fair deal.

The first is rate court reform—dun, dun, dun. [Laughter.]

I just wanted to put an exclamation on rate court reform.

This legislation would change ASCAP and BMI rate court procedures to make the rate-setting process for performance rights consistent with other Federal litigation by randomly assigning a Federal judge using a lottery wheel system. We are just trying to make it consistent with the other systems. That is all. That is all.

The second is repealing Section 114(i) of the Copyright Act so that a judge could consider all relevant evidence when determining songwriter compensation, including what record labels and artists make for the exact same performance, rather than just making this decision in a vacuum. Real world, let's use real-world information to see how people are making their livings.

With these two provisions, the legislation will enable judges representing a variety of perspectives to consider a broader set of relevant evidence when determining rates songwriters can earn from the use of their music.

Right now, the cards are stacked against us when it comes to rate court. These changes will help level the playing field for us, so we can at least hope for compensation for our music that better reflects its value to the people who listen to it.

In addition to reforming how performance rights are considered, the MMA greatly improves how mechanical royalty rates are determined by the Copyright Royalty Board every 5 years by updating the standard used by the judges. The MMA changes the rate standard to a willing seller, willing buyer, which reflects rates negotiated in a free market.

This will dramatically improve fairness for songwriters in terms of how their work is valued and helps us get fair royalties from the massive interactive streaming companies who rely on, wouldn't exist without, absolutely need, are dependent on, don't have a chance in hell without our rights, without our music, and who currently pay a below-market rate.

The bill also eliminates the bulk NOI loophole, which has allowed streaming companies to hold onto millions of dollars that they should be paying out to songwriters and publishers.

Unlike many things in Washington, D.C., these days, this legislation actually has bipartisan support. And further defying the odds, the music and technology industries have also come together in support of it.

You asked us for a consensus bill. We are delivering a consensus bill. And now it is time to move forward.

I have been fortunate to find some success in making music, and that is because I am a recording artist. I also have the revenue stream from touring and endorsement deals. But for some of my friends who are just songwriters, the majority of their money is from the performance of a song, collected by their performing rights organization, like when it is played in a bar or streamed on a service.

These performance royalties are what enable songwriters to put food on their table. That would make songwriters the smallest business you can think of in America. These are small-business men and women.

An example I can give you, “Wake Me Up” was my biggest hit. It was streamed by two leading interactive services for a combined 136 million times in the past four quarters alone. Yet, as one of three co-writers, which is the trend nowadays—we get in a room with other writers. We are collaborative. You know, we do things together.

I only received about 2,400 bucks, and that is only 1.8 cents for every 1,000 streams. It is hard for a songwriter to earn a living when counting pennies.

Now, this is a defining time for music licensing reform, and I can tell you we are all in desperate need of change. If we are going to protect what is arguably America’s greatest export—personally, I would say it is America’s greatest export—which is music, we need to make some changes.

And I applaud all of you for taking the time to understand our issues and, hopefully, advocate on our behalf. Now is the time to take action, and I urge you to move this legislation through quickly. Songwriters need the relief.

Thank you.

[Applause.]

Chairman GOODLATTE. Thank you, Mr. Blacc.

Mr. Douglas, welcome.

TESTIMONY OF TOM DOUGLAS

Mr. DOUGLAS. Thank you. Chairman Goodlatte, Ranking Member Nadler, and members of the House Committee on the Judiciary, thank you for the opportunity to testify about the Music Modernization Act of 2017, which I will refer to today as the MMA.

This legislation is critically important for songwriters. It addresses multiple areas of the music licensing ecosystem and is a bipartisan bill supported by an unprecedented collection of songwriter groups, other music industry groups, and the digital services themselves.

My story is similar to that of most American songwriters. I began writing songs at an early age while I was still in school. After graduation, I moved to Nashville to make my profession in songwriting. After a few years with little success at songwriting and wanting to marry and raise a family, I moved to Dallas to work in the real estate business.

Attending a songwriting seminar in Austin 6 years later, I handed a cassette tape copy of one of my songs to a noted music producer, Paul Worley. Thankfully, he listened to that song when he returned to Nashville, and that song, “Little Rock,” became a number one hit for Collin Raye in 1994.

It was about a man in recovery, and it still serves as an anthem for individuals and their families dealing with substance abuse. And while I was not dealing with substance abuse, I guess part of the song was really about me adapting to life without songwriting as my job.

People don't know the songwriter Tom Douglas, but their lives have been enriched by my songs, such as "The House That Built Me," "I Run to You," "Raise 'Em Up," "Grown Men Don't Cry," and "Southern Voice."

This is true of all songwriters, especially those who are not artists. Our songs identify American culture and move hearts and minds across the globe. Our songs have value.

That is why adoption of the MMA is critical. The Music Modernization Act includes a new rate standard for songwriters' digital mechanical streaming royalties. The Copyright Royalty Board will be able to utilize the willing buyer, willing seller rate standard that should result in more equitable rates, because it is based on what my song is worth in the free market.

Song ownership issues are addressed through a new blanket licensing entity called the Music Licensing Collective. Governed by music publishers and songwriters, the collective will assume responsibility for finding owners and keeping track of the ownership data.

Digital services will be relieved from copyright infringement liability if they adhere to best practices. The U.S. Copyright Office mass Notice of Intent program that created many burdens on songwriters and resulted in millions of dollars of unpaid royalties will be eliminated.

Songwriters will, for the first time, be legally entitled to at least half of all unclaimed funds from digital mechanicals to be equitably distributed based on songwriter activity.

And ASCAP and BMI rate court judges will be randomly selected instead of being appointed for life. By eliminating Section 114(i) of the Copyright Act, those judges will be able to consider market factors like what record labels and artists earn for performances on the songs I wrote.

When my first hit song, "Little Rock," was climbing the charts, artists sold millions of albums and broadcast radio was not being challenged by streaming companies yet to exist. My royalties for record sales or terrestrial radio broadcasts were counted in pennies. When my song is streamed, royalties are counted in micropennies. For songwriters, it is not uncommon for millions of streams to equal only hundreds of dollars in royalty payments.

For many years, songwriters have begged Congress for relief. The entire American music songwriter community is hopeful we will begin finding that relief in the Music Modernization Act. The MMA won't immediately or completely solve all the songwriters' digital rate woes, but it sets us on the right path.

The present standard of evidence to set my mechanical royalty rates was established by Congress in 1909 for player piano rolls. Why so long? Because reaching agreements between songwriters, music publishers, performing rights societies, record labels, streaming companies, and their representative organizations is Herculean. But the MMA represents precisely such a compromise.

Congressman Doug Collins should be commended for his ability to navigate the differences these groups held. He and Congressman Hakeem Jeffries have led our industry into a new era of cooperation with the introduction of the Music Modernization Act of 2017.

On behalf of songwriters, I ask the House Committee on the Judiciary to swiftly adopt this historic legislation.

Thank you.

[Applause.]

Chairman GOODLATTE. Thank you, Mr. Douglas.

Mr. Clink, welcome.

TESTIMONY OF MIKE CLINK

Mr. CLINK. Chairman Goodlatte, Ranking Member Nadler, and members of the committee, it is an honor to be here in New York during GRAMMY Week to discuss issues affecting music creators, specifically those——

Chairman GOODLATTE. I think you might want to pull that microphone a little closer to you.

Mr. CLINK. You would think I would do better, being a producer/engineer here, you know? [Laughter.]

Chairman GOODLATTE. I can give you tips any time.

Mr. CLINK. Okay. Should I start over or just——

Chairman GOODLATTE. No, go ahead.

Mr. CLINK. Okay. I was going to say, specifically those affecting my fellow producers and engineers.

Now you may be wondering what is a guy who produced Guns N' Roses, Megadeth, and Motley Crue records doing in a suit testifying at a congressional hearing. Well, it is actually not as strange as it seems. I have had the good fortune of making successful records that sold millions of copies, and now I want to make sure that the next generation of creators who do not have the benefit of that antiquated concept, record sales, can make a fair wage.

As proud as I am of my work in the studio, I am equally proud of the work I am able to do in the Producers & Engineers Wing of the Recording Academy. The wing works hard with other stakeholders to ensure that there is a future for professional producers and engineers. But for that, we need your help.

Despite playing an indispensable role in the creation of sound recordings, music producers have never been mentioned in any part of Federal copyright law. Our fingerprints are all over the creation and direction of a sound recording, and our creativity is reflected in what we listen to. There is no Sgt. Pepper's without George Martin, no Thriller without Quincy Jones, and, if I may, no Appetite for Destruction without Mike Clink.

[Applause.]

Mr. CLINK. The studio professionals are integral to the creation of the final track, just as the songwriters and musicians are so integral.

When it comes to compensation, producers currently have no legislative way to collect royalties. Since 1995, when Congress created a performance right for digital services, performers and labels have been entitled to a statutory performance royalty. Producers were not mentioned. Thus, the producers must indirectly collect their share from the artist. This is an ineffective and unnecessary process that can result in a months' long delay before we get paid. And in some cases, for older recordings, it is impossible to even reach the artist or the heirs.

SoundExchange has established a voluntary system of letters of direction to pay producers directly. We are very grateful to SoundExchange for establishing this system, but they and we believe it should be codified into law.

That is why I was so heartened by the efforts from Congressman Joe Crowley and Tom Rooney in 2015, and again last year, to introduce the Allocation for Music Producers Act, or the AMP Act. The AMP Act codifies the producer's right to collect the royalties we are owed, extending for the first time copyright protections to studio professionals.

It would codify the letter of direction process used by SoundExchange so that producers can be paid directly, quickly, and accurately. And it also includes a provision that would allow producers to collect a small percentage of royalties from older works, subject to the determination of the artist or heir.

The AMP Act does not change the artist's statutory rights but just improves the efficiency of payments determined by the artist. It is a common-sense approach that is the result of 2 years of negotiation between all affected parties. It has the endorsement of SoundExchange, the Recording Academy, and nearly 20 other music organizations, and the bipartisan support of more than 50 cosponsors.

Now, with such wide consensus and no opposition to the AMP Act, this should be easy to pass as a stand-alone bill, but that is not what the producer community is asking of you today. Creators are all in this together, and we want our friends in the songwriting and artist communities to achieve the necessary changes to laws that will help all creators.

Thus, we ask Congress to include the AMP Act in comprehensive music licensing reform that also includes the consensus provisions of the Fair Play Fair Pay Act, the Music Modernization Act, and the CLASSICS Act. The artists, songwriters, producers, and engineers I work with are ready to roll up our sleeves and work hard to pass a comprehensive bill. And I can promise the thousands of members of the Producers & Engineers Wing of the Recording Academy will be your frontline troops.

I applaud the efforts of this committee for undertaking this endeavor to help hundreds of thousands of American creators make a living doing the work so valued by our country and the world. I know that these reforms will create a better future for tomorrow's producers, songwriters, and artists. Thank you.

[Applause.]

[The statement of Mr. Clink follows:]

Chairman GOODLATTE. Mr. Clink, thank you very much.

Ms. Warwick, we are honored to have you with us today.

TESTIMONY OF DIONNE WARWICK

Ms. WARWICK. I am pleased to be here. Thank you so very much.

Well, Chairman Goodlatte, Ranking Member Nadler, and members of the committee, I want to, first of all, thank you for giving me the opportunity to again testify with regard to this very same issue.

It is also an honor for me to join my esteemed colleagues in sharing our experience as music creators and the need for Congress to protect our craft.

Music has always been a part of my life. I have been fortunate enough to have a career spanning more than half a century. I have been honored to record and perform with some of the most talented, iconic artists and musicians of our time. We all get to do what we love for fans who love what we do.

It is particularly gratifying to know how my work and the work of my contemporaries has endured. On any given day, you can hear our music belting from speakers, lifting spirits, fueling memories, and inspiring new generations of creators.

Yes, clearly, our recordings still have value. You might even say, like all of us, they get better with age. [Laughter.]

Ms. WARWICK. After all, there are entire channels on SiriusXM dedicated to music of the '60s and '70s. But here is something strange: Artist labels get paid for music played on the 1970s channel that was recorded after February 15, 1972, but we get absolutely nothing for the music played on the '60s and '70s channels recorded before that date. Now I think that is completely ridiculous, but then, who am I?

How could it be that 1979's recording of "I Know I Will Never Love This Way Again" receives compensation but 1969's "I'll Never Fall in Love Again" or my exceptional co-panelist Booker T. Jones' 1962 hit "Green Onions" does not? Why? It can't be because the '60s songs have no value or they wouldn't offer that channel. Is our music and are we simply experiencing a form of digital ageism? In a way, yes.

Due to a quirk in history of copyright law, February 15, 1972, effectively serves as the benchmark of my value. We are essentially being told that we are too old to be compensated for our work.

I know it was never intended to be this way. It is just a fluke of timing. But services like SiriusXM have embraced this legal loophole to help make billions without sharing a cent of it with those who made the music. That is not only inappropriate from a business standpoint, it is morally inexcusable. After all, many of these legacy artists are no longer able to record, to tour, or to make appearances. It is precisely these older recordings that provide the funding for their growing medical bills, their well-deserved retirement.

Withholding compensation for the product of their labor simply because of an arbitrary date makes no sense. It is just not right, and it must be fixed.

That is why I was thrilled to hear that Congress has finally taken up the cause this year and is poised to include this important issue in a package of needed reforms that will help artists, producers, and songwriters.

I spoke out in support of the RESPECT Act and the Fair Play Fair Pay Act when they were introduced, and now I want to give special thanks to Representatives Issa and Nadler for introducing the CLASSICS Act, which protect pre-1972 recordings.

The one little thing about the bill is that it enjoys the support of not only legacy artists but services like Pandora and organizations like the Internet Association that understand the legal cer-

tainty, licensing convenience, and ethical decency it provides. The entire community has joined together in support of this change.

I want to raise one other issue. To this day, terrestrial, I can hardly say the word, AM/FM radio uses our recordings without any compensation at all. For nearly a century, an entire industry has made a very lucrative business generating advertising off of our music. Our attention to this issue has spanned generations, unfortunately, without positive outcome.

Now, I understand that productive negotiations are going on now between broadcasters and the music community, and I ask you all to call—I ask that you call on the parties to successfully resolve this issue once and for all, so that our parties can finally be paid fairly for their work.

I know that I am out of time, almost.

Recording artists have never been more optimistic about the prospects for legislation that will allow music to flourish. As I said, the entire music community supports the CLASSICS Act to finally compensate our country's celebrated legacy artists. It supports the AMP Act, which will ensure that music producers receive their royalties. It supports a royalty rate standard for both artists and songwriters that will provide market-based compensation for those creators. It also supports the Music Modernization Act, which establishes a licensing system for songwriters better suited for a digital age.

We hope that the committee will quickly move through this comprehensive legislative package together as one, just like we have come together as one community.

Chairman Goodlatte, Ranking Member Nadler, we greatly appreciate your leadership on this multiyear copyright and music licensing review. They are not easy issues, but this committee has worked hard to bring the parties together to identify points of common interest and to help find acceptable and effective solutions.

So let's go make it happen together. After all, that's what friends are for. [Laughter.]

[Applause.]

Ms. WARWICK. As I once sang, notably in 1967, I will say a little prayer for you, and hope that this year is when all those who write, sing, record, and produce the songs we love are recognized and appropriately compensated for their work.

I also wanted to ask you, can we do this retrospectively? [Laughter.]

Ms. WARWICK. You know what I mean? Take me back to 1962 when I first recorded—how about that?—when all these things were continuing, to sustain itself.

I am out of time, aren't I? Okay, sorry.

[Applause.]

Chairman GOODLATTE. Thank you, Ms. Warwick.

We will now proceed with questions under the 5-minute rule. I will begin by recognizing myself, and I will start with Mr. Douglas and Mr. Blacc.

How has the ability of a songwriter to make a living changed over the past several decades? Has the total number of songwriters increased or decreased? And what would you tell a young songwriter about their chances for success in 2018 and beyond?

Mr. Douglas.

Mr. DOUGLAS. Well, the number of songwriters in Nashville has been greatly diminished, really because the ability to make a living, which is primarily from performance income and digital income, I mean both those two income sources have been really eviscerated as the distribution of music has gone almost completely to streaming. And in streaming, we are getting paid micropennies instead of pennies.

So, I mean, the ability to make an income is really just disappearing as technology has outpaced creativity. So as we say, there is blood in the streets in Nashville, metaphorically speaking, just because it has gotten so hard to make a living.

Chairman GOODLATTE. Mr. Blacc.

Mr. BLACC. Yes, I would agree with Mr. Douglas, and I would say, if we just look at the math, the numbers that I presented, in a quarter, 3 months, for one of the biggest hits that I have made, and it comes out to about \$800 a month as a songwriter. And I would be pressed as a songwriter, without the extra income—a lot of the folks I know in Nashville are just songwriters. Nine o'clock in the morning, they are in; 5 o'clock, they are out. That is how they feed their families.

At 800 bucks a month, it doesn't work. And you have to make a hit to get the 800 bucks a month, not just an album cut. Then you have to make multiple hits in order to just cover rent. And then to pay your family, I don't know how many hits you have to do. And in a market where you are competing against everyone else, it is just not tenable.

So the idea is that there can be a free-market system where we can decide, with the help of our performing rights organizations, on the value of our songs.

Chairman GOODLATTE. Ms. Warwick, I think I know your answer to this question, but is there any reason that you can imagine that the law should make your works from the late 1960s and early 1970s less worthy of compensation than your works and the works of others from the mid-1970s to now?

Ms. WARWICK. Absolutely. I think, first of all, I am entitled to it. My career is based on recorded music played on radio constantly. And over the past 57 years now, my recordings have been played, and I have not been paid. And I don't think it is fair, simply.

Chairman GOODLATTE. Thank you.

Mr. Jones.

Mr. JONES. Yes, sir, I just wanted to—

Chairman GOODLATTE. I want to ask you a question, and then you can answer two.

Mr. JONES. Oh, sorry.

Chairman GOODLATTE. Where do you see the music industry changing over the next several decades? And how has the Internet enabled artists to be more connected to their fans?

Mr. JONES. Chairman Goodlatte, before this young man came along, people were selling records over the counter, 45s and albums, and there were mechanical royalties. And that is where the songwriter got his pennies, was when those sales transacted.

Fast-forward to about 2002, 2012, when all the CDs stopped crossing counters, those mechanicals disappeared. And there lies the difficulty of making a living as a songwriter with only the streaming income.

So the industry completely changed, turned on its head, and that is just gone. It is gone probably forever. I don't know if we will ever go back to vinyl sales being what they were.

But that is how we made our money. We looked forward to it, and it was a quarterly income. And my income dropped in the 2000s by about half, when people stopped buying the CDs. So it was just a quirk. That is how we did it. It was the mechanicals. And we were paid a fairly decent, fair rate on mechanicals, but it is gone.

Chairman GOODLATTE. And my second question—

Mr. JONES. Sorry.

Chairman GOODLATTE [continuing]. How the Internet has enabled artists to connect with their fans, because we have to look ahead, too.

Mr. JONES. Absolutely. Great enabler, a great enabler. But that is dependent on what we are doing here today, actually.

Chairman GOODLATTE. Absolutely. Thank you.

My time is about to expire. I will recognize the gentleman from New York, Mr. Nadler, for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman.

I want to ask this question of, first of all, Mr. Jones, and after that, Ms. Warwick.

In your testimony, Mr. Jones, you state that many of the most timeless treasures, including “(Sittin’ On) The Dock of the Bay,” “Soul Man,” and “Time Is Tight” are dismissed and disrespected as not meriting compensation to the featured artists and nonfeatured artists and producers.

How does this impact you and the artists you have worked with over the years?

Mr. JONES. Would you like that answer in an estimation of dollars and cents, sir? I don't know the value. I think that the impact is not really quantifiable. It is just so huge, because those companies rely on those songs.

I am subscriber. I am a subscriber. I have Sirius radio in my Jeep, and I have it in my other Jeep.

Mr. NADLER. You have to pay to listen to your own music, for which you don't get paid.

Mr. JONES. Yes, sir. I pay. [Laughter.]

[Applause.]

Mr. JONES. Yes, sir. I pay, and I don't even get the benefit. But those are my favorite channels, and they are the reason that I subscribe to those services, because I listen to '50s and '60s. I like the big bands, and, of course, the '60s music is my favorite.

But I can't give you a quantifiable answer. I could get back to you on that.

Mr. NADLER. Ms. Warwick, I will ask you the same question, but I don't need a quantity. Basically, how does it impact?

Ms. WARWICK. Would you repeat the question?

Mr. NADLER. The pre-'72 lack of compensation, how does that impact?

Ms. WARWICK. Oh, heavens, for any artist that recorded in that period of time, prior to the '70s, most of my peers, and I am sure that Booker T. can attest to this, a lot of them are no longer with us. Their estates are nil, because of lack of payment. A lot of them are not able to perform any longer.

It is a major impact on financial stability, just being able to live today. To be compensated for the work that has been done is primarily what we should be. I mean, it should not be just overlooked.

Mr. NADLER. Thank you.

Ms. Warwick, you suggested, I don't know how seriously, that—

Ms. WARWICK. Oh, I was serious about retroactive.

Mr. NADLER [continuing]. We pay pre-'72 royalties retroactively or retrospectively. I am not going to comment on that. I am just going to say that some people, many people, look to the Bible as a source of moral guidance, and it says in the Bible, you shall not cause the wages of a worker to remain with you overnight.

We have caused the wages of workers to remain with us since 1972, so maybe that should guide us a little as we consider some of this legislation.

I was going to ask Mr. Portnow, but I will ask whoever wants to answer this question. Everyone has talked about, we should get together, obviously. I have been telling people we should get together for a long time. But how important is it that we consider one unified package of bills that will unite songwriters, artists, and producers? And is the music industry ready to work together with Congress to pass a broad set of reforms?

Who wants to take that?

Ms. WARWICK. I think it is absolutely necessary, based on the fact—I was brought into this particular entity by Frank Sinatra many, many years ago when he decided that he wanted his band to be paid for producing the music that you were listening to. And they finally said, Dionne, you know, you are not getting a cent every time your record is played, and you should be. And I totally agreed with them.

This is why I said retroactively. We would love to get paid for 1962 up to now. But this is something that just morally should be thought about.

Mr. NADLER. Thank you.

Mr. Jones, I have one more question. My time is going to run out.

In your testimony, you state that the CLASSICS Act is supported by Pandora and the Internet Association. Why do you think digital services support the bill?

Mr. JONES. I think they have a very valid business reason, to be honest with you, to support it. As I said in my testimony, defending yourself State to State doesn't really make sense for something that is eventually going to become a Federal law.

And as Ms. Warwick said, it is the right thing to do. It is the right thing to do. It is absolutely inevitable. There has been a convergence of consensus, of cooperation, that we are all in this together. The digital services and the creators, we really should all be on the same side. We shouldn't be differing on these issues, and I think they realize this.

Mr. NADLER. In other words, you are saying two reasons: one, the moral reason; two, the uncertainty of litigation State by State.

Mr. JONES. Yes, sir.

Mr. NADLER. Thank you very much. My time has expired.

Chairman GOODLATTE. Thank you.

The chair is now pleased to recognize the gentleman from California, Mr. Issa, the chairman of the Intellectual Property Subcommittee, for 5 minutes.

Mr. ISSA. Thank you, Mr. Chairman.

First of all, I would like to ask unanimous consent that a policy essay, which has been accepted by the Harvard Journal of Litigation, be placed in the record.

Chairman GOODLATTE. Without objection, it will be made part of the record.

Mr. ISSA. Thank you, Mr. Chairman.

Second of all, I want to take a moment to thank you. The suggestions that are being heard here today that individual pieces of legislation that have been spawned, if you will, from these many, many hearings that you have put yourself and your family through as you have gone around to hear it wouldn't have happened without your leadership.

Obviously, part of that is to break a rule, which is, in Washington, there is an old expression that there is no limit to how far you can go if you don't worry about who gets the credit. Now, that was said by somebody who wanted the credit for saying it. [Laughter.]

And, actually, at least two presidents have taken credit for the same announcement.

Mr. Chairman, I want to ask that you very much succumb to the request by the many members of your committee who have worked on the various pieces and do just that, to put together the combined consensus bill, because I think you have heard here today, and I have heard before this, that this is the only way that we are going to move this kind of legislation.

Each of these pieces has broad bipartisan support and has support within many aspects of the industry. But it is now a unique time, and your leadership and your work creates that opportunity.

And when we look at, and I will just briefly say, 115 or blanket licensing and the other reforms, CLASSICS Act, AMP, and so on, the work of each of the members here has been the result of your leadership and guidance. So as I do something that I have never been known for, which is suck up, Mr. Chairman—

[Laughter.]

Mr. ISSA [continuing]. I want you to know that is the commitment I make to you, that it is that time.

Now, I would like to get back to my piece of this pie.

And, Ms. Warwick.

Ms. WARWICK. Yes.

Mr. ISSA. I grew up—we are closer to the same age than I would care to admit.

Ms. WARWICK. Okay.

Mr. ISSA. But the fact is, I grew up on your music, and I share with you this challenge. But I would like to put into the record,

with your answering a question, you do get paid some right now for your pre-'72 work, right, by some companies?

Ms. WARWICK. As has been, I think, iterated, pennies, yes.

Mr. ISSA. But those pennies, wouldn't you say, and Mr. Jones, I will ask you the same question, that one of the greatest inequities we are dealing with in the particular of the classics is that, if some pay, whether it is pennies, nickels, or dimes, if some pay and others don't, we truly have an unfair competition problem by those who don't.

In other words, I am sympathetic to you, all of you, as creative artists, in the desire to get you your fair compensation and to come up with a method for it. But this committee has pretty broad jurisdiction, and beyond copyright, we have a great interest in making sure that there is not, if you will, antitrust, unfair competition in all the other laws we put into place so that businesses can, in fact, have a business model that is not stifled by somebody else's business advantage.

So, Ms. Warwick, you mentioned terrestrial radio, which is not here. But obviously, I listen to your music. Any time I turn on AM or FM, I do tend to listen to the stations——

Ms. WARWICK. Good.

Mr. ISSA [continuing]. That have your music. And your lovely, angelic voice coming across for no money has always bothered me.

How do you feel about just that narrow question of the fact that you do get some compensation from some, and those companies are working against free, aren't they?

Ms. WARWICK. Yes, they are. You know, I personally have always said, once I got involved with this particular issue, if it were not for artists such as us, there would be no radio stations, and there would be no radio stations because they depend upon their access to——what is it called?——advertising. The advertisers——

Mr. ISSA. I have never seen a station that plays only advertising. [Laughter.]

Ms. WARWICK. Well, guess what? If it were not for the music, the advertisers wouldn't have an interest in the radio station. So that is where I stand.

Mr. ISSA. Very true.

Mr. Jones.

Mr. JONES. If I may clarify, before 1972, we do receive some income from our recordings if it is transmitted digitally.

Mr. ISSA. Right.

Mr. JONES. However, aside from the digital transmission, there is no payment.

Ms. WARWICK. That is right.

Mr. JONES. There is nothing over analog radio. We don't receive any money at all for that and never have.

Mr. ISSA. Exactly.

And just in closing, but when you are sitting there looking at all the various facilities and technologies that are presenting your music, how do you feel about the fact that some are paying you some money, and some aren't? And as a result, you are not getting an equal opportunity for some of these emerging technologies that do pay you to succeed, aren't they?

Mr. JONES. Absolutely. Actually, I think it lacks a spirit of co-operation. I think it does benefit us to have our music played over the radio. However, it is property. It is property that is being used, and there should be some right for the ownership of that property. And it just does not exist pre-1972, unless it is transmitted over a digital medium.

So that is the problem. That is the quirk. And it is intellectual property. It belongs to the people that create it, and they have no right. There is no right on paper. They have no right.

Mr. ISSA. Thank you.

Thank you, Mr. Chairman.

Chairman GOODLATTE. Thank you.

The chair is now pleased to recognize the gentleman from the music-loving State of Tennessee, Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chair. I am also from the music really origins of the world, Memphis, Tennessee, and that is where music was really given birth.

And I would like to ask Tom a question. Your song that you wrote that is kind of your most famous song is called "Little Rock." I heard that more songs are written about leaving Nashville and going to Memphis than any other two cities. [Laughter.]

John Hiatt had "Memphis in the Meantime," and there are lots of others.

Mr. DOUGLAS. Right.

Mr. COHEN. Why are all the songs written about leaving Nashville and going to Memphis? [Laughter.]

Mr. DOUGLAS. I think you have to leave home to find home. Maybe that is it.

[Applause.]

Mr. COHEN. I didn't know so much about your career, but I read a little bit about it here. I was a college friend of Paul Worley.

Mr. DOUGLAS. Oh, yes, sir.

Mr. COHEN. He was a Beta, and I was close to them. We were at Vandy. And Paul is a great guy. And you were inducted into the Hall of Fame with Paul Craft, who is a Memphian—

Mr. DOUGLAS. Yes.

Mr. COHEN [continuing]. And a friend, and wrote some crazy songs, too.

Mr. DOUGLAS. I would not have a career without Paul Worley, and we dearly miss Paul Craft.

Mr. COHEN. You seem, from reading, that you are the Don Schlitz of this generation.

Mr. DOUGLAS. Well, I think that is a high standard. I am not sure anybody could quite reach Don's standard, but thank you.

Mr. COHEN. It is a high standard. It seems like you have made it.

Ms. Warwick, I am a big fan of yours as well. I guess we all are.

And I appreciate the fact that, when Isaac Hayes passed, you sent a special notice and memorialized Isaac, who I know you did some music with. Isaac was just a star, and I appreciate that more than anything you have done, to remember him when he passed. That meant a lot to me. It meant a lot to people in Memphis.

Ms. WARWICK. Thank you. He meant a lot to me.

Mr. COHEN. I get your music. See, I drive a '76 Peugeot and a '86 Cadillac. When I turn on the AM radio, it goes straight to your music. [Laughter.]

Ms. WARWICK. See, even your car knows. He will tell you.

Mr. COHEN. Thank you.

Is there anybody who has anything to say, anybody that is against these bills? Do you know of anybody against the bills or anything in the bills that is not something you would like? I know legislation is compromise. Is there something you would like to tell us that we ought to change?

Ms. WARWICK. Yes.

Mr. COHEN. Thank you. Retroactivity, I know.

Ms. WARWICK. It has to be almost 10 years now ago, we had a forum that was held in Indiana, and it was to discuss exactly what we are discussing today, pay for play. Radio stations thought that we were gouging them, and how can you dare ask us to pay you for playing your music?

How can we not ask them to pay me for playing my music?

We found that their only argument was mom-and-pop stations. Well, wait a minute. Mom-and-pop stations exist exactly the way that any other radio station does: advertising costs. Money, money, money, money. Greed became the issue.

We also found that the audience that was there, very much like this, was totally surprised to find that we were not being paid every time they heard my records on the radio. "You mean you don't get paid?" "No, we don't."

Mr. COHEN. I agree that you should get paid when your songs are played. I know that Burt Bacharach was a great songwriter.

Ms. WARWICK. And Hal David.

Mr. COHEN. Him, too. Him, too. Without you singing them, they might not have gone anywhere.

Ms. WARWICK. There you go.

Mr. COHEN. And all the people that wrote Elvis's music—

Ms. WARWICK. You are absolutely right.

Mr. COHEN [continuing]. If it wasn't Elvis singing, it wouldn't have gone nowhere. [Laughter.]

So, I mean, you have to have the singer. And Sinatra did it for all those other people.

Ms. WARWICK. That is right.

Mr. COHEN. They were great songwriters.

Who represents the performers, if anybody? Songwriters have got a crew, and producers apparently all have somebody now. Does anybody represent the performers as a group?

Ms. WARWICK. When you say represent the performers, yes, SAG-AFTRA.

Mr. COHEN. They represent you all?

Ms. WARWICK. Yes.

Mr. COHEN. Okay, great.

And what was the song you were saying that maybe who produced this song maybe shouldn't be here? What was it called? Something like "Destruction"?

Mr. CLINK. That was the album called Appetite for Destruction, which had "Sweet Child O' Mine," "Welcome to the Jungle."

Mr. COHEN. You foresaw President Trump, didn't you? [Laughter.]

Mr. Blacc, you wrote a song called "Dystopia." Until this year and Donald Trump, I didn't know much about dystopia. [Laughter.]

It kind of has become the word now. What is your song about?

Mr. BLACC. It is an entire album, actually, called Dystopia, and it speaks really to social issues, the disparity between the rich and the poor, the issues that are facing some of the marginalized communities in society, in the inner cities.

My goal with music is to make positive social change, but part of that is also speaking truth to power and just saying what I see, as so many of my heroes in music have done, like Marvin Gaye with "What's Going On," Eugene McDaniels with "Headless Hero of the Apocalypse," and so forth.

Mr. COHEN. Thank you. I will have to buy it and listen to it. I am sure I will appreciate it.

And I appreciate what you are trying to do for malaria, and we will work on that, too.

I yield back the balance. Thank you.

Chairman GOODLATTE. The chair is now pleased to recognize the gentleman from Texas and a musical family, Mr. Louie Gohmert.

Mr. GOHMERT. It is great to be with you. After hearing your songs back in the late '60s, I didn't think I would ever fall in love again.

But anyway, you all have brought so much joy and added so much to our lives, and we want people to be able to make a living doing that.

Before I came along, though, I read about something called payola, where people that recorded songs or wrote songs knew, if they could just get the radio station to play them, then they could be a big hit. And that is why, back in those days, nobody thought of having the radio stations pay other people. It was hard enough to prevent the bribes going to DJs. But obviously, things have changed over the years.

But I am curious, does anybody know the state of negotiations with the terrestrial broadcast radio? Anyone know how things stand?

Because I was under the impression that everybody was on board with the MMA. Do you know?

Mr. COLLINS. Mr. Chairman, that is something that is going on, the chairman may have mentioned. It has been mentioned before. That is something that I am very proud to say, that the artists and the NAB are sitting down. They have been meeting almost for a year now, and I am very proud of what they are doing.

They are getting a lot closer than where they have been on this issue, and it is something that I think everybody wants to see solved, and I am proud of the work that is being done there. We set that on a different track, and that track is working, and it will continue to work.

Mr. GOHMERT. Good. Thank you.

Reclaiming my time, let me just ask, since I have been in Congress, we have also been getting lobbied by musicians that play for songs, and also producers, saying, hey, we should be able to have it legislated so that we get a percentage of whatever comes about.

I would just like your impression on that. I am concerned that there will be more and more people asking for a percentage as the pennies have gotten smaller and smaller. My goodness, when you make 1/100 to 2/100 of a cent on a play, it is hard for anybody to buy a mansion, as I have heard others say it. "This was hit. I wrote it, and I was able to buy a mansion." You don't buy mansions on 2/100 of a cent.

But what is your thought on percentages for musicians and producers?

Mr. CLINK. I can talk about the producers. I can tell you that nothing changes for the artist. I mean, nothing changes. I mean, that is what is so great about it. I mean, all producers are looking for is clarity in the law to make it easier to get the royalties that we are already entitled to get.

I mean, when you look at a producer, when they talk about the Beatles, they say George Martin was the fifth Beatle. His fingerprints were all over the Beatles. I don't think that they would have been able to do what they could do without his input. And I think that anybody who is a producer is a partner with the artist.

And it has been already negotiated that we have that royalty, and we are just looking for a bit of clarity in the law and making it easier to be recognized.

Mr. GOHMERT. Anybody else? I know this has been negotiated with streaming sources and also satellite radio, but what are your thoughts on what has been agreed to with regard to payment through satellite radio and streaming? It seems like you are still getting a pretty small amount.

Mr. BLACC. Streaming is still extremely low. The main issue is the rate court, when it comes to PROs being able to negotiate without having to do—in a scenario where a judge is making decisions that don't take into account all of the relevant information on what the rates should be.

The recording labels are getting paid for the master side of the recording, which is the actual audio that you hear. But on the songwriting side, the intellectual property, this is where we are stuck behind these antiquated rules that I believe can be changed with the Music Modernization Act.

Mr. GOHMERT. My time has expired, so let me just say, I hope we get it done this time, because I can't imagine anything that is better, the world is ours whenever we are together. So thank you.

[Applause.]

Chairman GOODLATTE. I thank the gentleman.

And the chair is now pleased to recognize the brand-new ranking member of the Intellectual Property Subcommittee, the gentleman from Georgia, Mr. Johnson, for 5 minutes.

Mr. JOHNSON of Georgia. Thank you, Mr. Chairman.

And thank you all for being panelists today and telling us your experiences.

Mr. Blacc, in your testimony, you state that, right now, the cards are stacked against songwriters in rate court, so you are in favor of the Music Modernization Act, which would change the standard that is used to determine royalty rates, and it would also do away with the current set up with the judges and install a board, a me-

chanical licensing collective, that would give songwriters a seat at the table.

Can you explain to us how important that is to a fair royalty rate?

Mr. BLACC. Sure. Mechanical license, as the name implies, is the mechanical performance of a song, a payment for a mechanical performance of a song. And it is antiquated. As Mr. Jones had mentioned, it comes from the playing of piano players, scroll piano players.

Today, we have new systems and new ways to play music. The mechanical licensing system and pay is even antiquated because it hasn't grown with inflation. I think when it started, from the time it started to today, it should be at about \$0.50 to \$0.60 per song sold. Instead, it is only hovering around \$0.09.

So not only are we undercompensated just with the concept of inflation over the years, the digital streaming of our music is sitting behind this rate court on the mechanical side, not allowing for real negotiation to happen for the value of the music. And this is why I feel like MMA is going to really make a dramatic impact on the income of songwriters.

Mr. JOHNSON of Georgia. Does anyone want to add anything to that?

Mr. JONES. I think the ratio is quite different, quite a bit lower, is maybe the essence of what he is saying. The songwriters are paid a much lower ratio compared to the mechanicals that we were paid. The payment is lower, at a lesser rate. The rate has not been accelerated to what it should be.

Mr. JOHNSON of Georgia. Yes. What we have is a situation where we don't have, nowadays, the physical embodiment of the sound being sold, but we have the streaming process taking place, so no physical copies being sold. Of course, you do have some being sold, but that part of the market is shrinking.

Mr. BLACC. I think, at the end of the day, the copyright owners should have the right to decide what the value of the transaction is, because they own the copyright. In any other business, a creator gets to decide what the value of their product is, and they can say yes or no, based on who is willing to buy in that transaction.

Unfortunately, as a songwriter and with our representative organizations—BMI, ASCAP, SESAC—we don't have that ability.

Mr. JOHNSON of Georgia. Thank you.

Mr. CLINK, from your perspective as a producer, you state that, despite the indispensable role in the creation of sound recordings, music producers have never been mentioned in Federal copyright law, and that diminishes the ability to collect royalties.

Would you comment about that?

Mr. CLINK. It is something that the Producers & Engineers Wing of the Academy has been working on for 10 years. I just think, we play such an integral part in every song. As I said, our fingerprints are all over every song, and our input is there.

It was just such a glaring omission, to me, the fact that we were not represented. We couldn't find anything to say this is what we—we already had a contract. I wanted it put into law, so people could look at it, and we could say, this is what we deserve. We are not

taking anything away from the artists. We are not taking anything away from the label.

It just makes the process for us to be able to get our compensation more easily, something that we can point to, something that we can say: Here it is. It is written. It is in the law. It is nothing nebulous. And it is not anything that we can't substantiate with a contract.

Mr. JOHNSON of Georgia. Thank you. And I am out of time, and I yield back.

Chairman GOODLATTE. The chair thanks that the gentleman and is pleased to recognize the gentleman from Pennsylvania, Mr. Marino, for 5 minutes.

Mr. MARINO. Thank you, Chairman. I apologize. My voice is headed the very south. I have a cold, and I am just trying to shake it. But I just really have one point that I would like you to square me away on.

I chair the Subcommittee on Regulatory Reform, Commercial Law, and Antitrust. And the Department of Justice consent decrees with ASCAP and BMI are of particular interest to me. Do any of you, and anyone can speak up to this, have a view of how these consent decrees affect creators of music and the future of these consent decrees? Anyone?

Mr. DOUGLAS. The consent decrees, as I understand it, of ASCAP and BMI, they are under World War II-era consent decrees. So that just seems, in this day and age, it just seems ridiculous.

So anything that moves the rate forward is just going to be a net positive for us, because we are dealing under such antiquated laws from such a long time ago.

Mr. MARINO. Is there going to be equity in that moving forward? Do you see equity to where you would like to see it?

Mr. DOUGLAS. Well, I mean, from a songwriter's standpoint, this is the first time that we will actually have representation on the collective, so this is a huge step forward for songwriters. We are going to have two songwriters on the music collective along with—everybody will be at the table, but this will be the first time that we actually have had an active voice, so it is very positive for us.

Mr. MARINO. Anyone else?

Mr. BLACC. I would just like to say, it has always baffled me how, as a membership organization, as a member of ASCAP, there is a question of antitrust. We are not a corporation in the same way as Microsoft or a Google. We are a membership of colleagues, friends who write songs. And I think because we have this gift that we use to make our living, we should be able to hawk our wares as anyone in a marketplace is able to.

Mr. MARINO. And my last question is, does radio do today in promoting what it did 30 or 40 years ago?

Ms. WARWICK. No, in a word. I am sorry, no, radio doesn't. Radio, I don't think it is the same any longer. I really do not. Whatever it is, I don't know what it is. It is very ethereal.

Radio stations were created for disco. Radio stations were created for rap music. Radio stations were created for everything in the world. Playing me, Dionne Warwick, on radio is a rarity these days unless you are listening to '60s, '70s radio stations that were created specifically to play those particular recordings.

So as I said, in a word, no.

Mr. BLACC. Largely today, Internet companies are being used for discovery and for promoting music. So an organization like YouTube, a company like YouTube, is where a vast majority of youth are discovering music, listening to music, and streaming music. Their rates are the smallest of all the big companies, and probably of all the companies anyway.

And terrestrial radio still has relevance in many ways for breaking artists, depending on where you are from. But it all comes down to how is the copyright that is being distributed over the airwaves benefiting the creator.

And on all sides with these businesses that we deal with as artists, we are not getting a fair deal. And it comes down to, I think, laws that can change, that can help us actually stand in the ring and fight with a chance.

Mr. MARINO. Thank you. It was a pleasure discussing this with you today. Thank you.

I yield back.

Mr. ISSA [presiding]. I thank the gentleman.

We now go to the gentleman from Florida, Mr. Deutch.

Mr. DEUTCH. Thank you, Mr. Chairman.

First, thanks to all of you for being here. This is a really important discussion.

Mr. Clink, I want to thank you for taking four Members of Congress into the studio and producing a track that sounded like Guns N' Roses, or at least like passable music. That was a great experience.

And, Mr. Jones, some 30-plus years ago, my parents dropped me off at the University of Michigan, and I started unpacking. And there was a DJ in Detroit who ended every one of his shows with "Green Onions." I had never heard it before. I heard it that day and hundreds of more times throughout my days in college.

You weren't compensated even once for the times that he played it, but it brought enormous joy to me, and I want to thank you for that.

Mr. Chairman, I think this is a really important hearing. The committee has been engaged in review of copyright music licensing for a number of years. I am grateful to the chairman for taking up this process, and especially grateful that we are so near consensus on so many issues.

As we celebrate the hard work and progress, it is really important to hear from a panel like this and, frankly, to hear from a panel like this in a room full of so many people who have dedicated good parts of their lives to helping this industry succeed.

It is too easy for us to wade through these debates, however, without thinking about how our proposals so often impact the lives of artists and creators every single day. And I think that is because music is different. I think it is because music is personal for everyone.

I, like so many others, and have moments that I think back to listening to a song in a car, going to a concert with my family, sitting alone in a room and discovering a song, a songwriter, an artist, a sound that I had never heard before, and finding such joy in it, and those moments where songs gave me comfort or turned

around a day that I was certain would end as badly as it started were it not for the work that you do.

So that is the core of what we are talking about today. And how we in Congress can improve the music ecosystem that will then touch the lives of millions of Americans and people all around the world is thanks to the power of the work that the people in this room do.

As the testimonies of our witnesses have shown, these are complex issues. There is a wide variety of potential improvements to the 100-year patchwork of music licensing. The question is, how do we incorporate changes to keep the music ecosystem thriving for tomorrow?

I think, over the past few years, we have all had moments where we considered what we would do if we were starting over, if we were designing a system from scratch. How simple it would seem to start from a blank slate here to develop a system to compensate songwriters and producers, publishers, record labels, streaming services, other key stakeholders, and to do it fairly.

But we have had many conversations with people over the years and across the industry about what it would look like for them. And predictably, each often had very different answers based upon their experiences. But this has been a really important learning process, and we realize we have this really complex legacy system that we have to be realistic and, frankly, surgical about as we attempt to change it.

So I just wanted to highlight again, I am so grateful for the effort that led us to this moment, but the issues going forward here and beyond that we just have to remember, first, maintaining a different performance rate standard for terrestrial radio than for digital competitors is just simply unfair. It is unfair, frankly, to the innovative digital services, but it is especially unfair to the performers whose music is no less valuable when played over the air.

In the same vein, holding that music recorded before 1972 should be treated differently than more recent music is disrespectful to the classic artists, two of whom we are blessed to have here today, who have contributed so much to America's musical legacy.

February 15, 1972, Ms. Warwick, is not the benchmark of your value. You should never think that it is. And I am thrilled that we are close to rectifying that.

As the cochair of the Songwriter Caucus, I have to mention how unfair we have been to the songwriters, the songwriting community, our Nation's great storytellers, who have produced these great stories that have meant so much to us emotionally.

And finally, I just want to point out that reforming the Copyright Office for the 21st century can't be forgotten. We have to have flexibility and freedom for the office to fulfill its duties to creators and to the American public.

I am really grateful for this hearing and for the moment that we have reached.

And I would just end by making a point that I have made in committee multiple times. This is a really incredible device that we all have and that through which we are able to enjoy a lot. But every one of the great technologies that has provided access to us, every new innovation that gives us ways to explore and discover,

could not be possible without giving us the ability to discover the music that all of you have created and continue to create, and we are so grateful for it.

And I yield back, Mr. Chairman.

[Applause.]

Mr. ISSA. I thank the gentleman.

We now get to recognize the gentleman from Texas, a man who is no stranger to a radio station presence, with his experience, Mr. Farenthold.

Mr. FARENTHOLD. Thank you very much, Mr. Chairman. I did start working as a DJ in radio at 15 years old, so I am a little bit more sympathetic to terrestrial radio than probably some of the folks here.

They are facing a lot of the same challenges that you are. Their audience is moving away to streaming services and satellite radio as well. And I worry, from time to time, what is going to happen without that local radio station when there is something like a hurricane that we had in South Texas. Where are the venues now for our local advertisers to affordably reach people?

I have a subscription to Netflix. I have a subscription to a streaming music service. I have done a pretty good job at avoiding all commercials, if we could now just block some of the pop-ups on the Internet. So there is an issue there, and I urge you to be sympathetic.

But I want to talk a little bit, and I will let anybody on the panel who wants to address this take it, you get complete sympathy from me that I believe songwriters, in particular, are underpaid. I think the performers, I used to say, well, get out and play some more concerts, and you can make some more money. But I want to come up with a fair solution for everybody, and I really do like some of the bills that are out here.

But let's just take me for an example. I have a \$120 subscription a year to a streaming music service. I have a \$120 a year subscription to satellite radio. I go to two or three concerts a year. I will buy maybe five or six CDs a year. And I burn \$500 a year on music.

Where is this extra money going to come from? Who is making the money that we are going to redistribute here? Or am I going to end up spending \$600 or \$700 a year on my music?

Mr. JONES. Yes, sir. Your point is so well-taken, and I so identify with it. And that is why I really wanted to emphasize today, I keep talking about the spirit of cooperation, for us to reach a place where we are not competing, a place where we are all on the same team, where we are all creating together.

I would not be here if it weren't for the radio stations that played my music, and they played it for free and it benefited me. Yes, sir, your point is so well-taken. We all so benefited from that.

However, as I said before, it is property. That is why I think that it is just a matter of us getting out of the competitive frame of mind and getting into the creative frame of mind together. That is why I said the National Association of Broadcasters and the songwriters and the creators are really on the same team. We do this thing together. Those stations couldn't exist without these great

Guns N' Roses records. But the Guns N' Roses benefited from the stations playing that.

Mr. FARENTHOLD. Absolutely. It was a symbiotic relationship.

Ms. Warwick, I do want to address your question. I mean, you were kind of joking about making it retroactive. Just so everybody knows, it would be an ex post facto law to go change the rules for something that has already been done.

Mr. JONES. That has become a dirty word, but I think I heard something about 36 months or 3 years or something, in the spirit of cooperation.

Mr. FARENTHOLD. Again, I think we made a huge mistake when we set it up, where the older material was not covered in digital. I do think that is wrong. And I do think it certainly needs to be fixed going forward.

Finally, I wanted to talk a little bit, and you all mentioned YouTube and how little they pay, but they also offer a service. If I were to want to produce a video about anything and put some music behind it, I couldn't for the life of me figure out who I needed to pay, the songwriters, the performers. There is no comprehensive database.

Mr. Sensenbrenner has introduced legislation to fix that and is part of this ongoing conversation.

Does anybody object to having a comprehensive database of who owns what, so we can legally figure out who to pay?

Ms. WARWICK. Wouldn't you feel that all component parts of the music that you think that you want to play should be paid?

[Applause.]

Mr. FARENTHOLD. I do, but if I were to, say, want to play one of your songs in a video, how would I figure out who all to compensate?

Ms. WARWICK. Well, there is a name of whoever wrote it. There is a name of whoever sung it. There is the name of whoever played on it. That is how.

[Applause.]

Mr. FARENTHOLD. So how do I find them?

I am out of time.

Mr. ISSA. You may answer.

Mr. DOUGLAS. I was going to say, part of the Music Modernization Act is this collective that is going to be set up. It is going to become, in a sense, a clearinghouse for all songwriters and publishers. That is where this information will come from.

Believe me, songwriters, if we knew that we had a place to go to find ourselves, we will go find ourselves.

And also, there is millions and millions of dollars that are not being paid that are being held by the streaming services now that this act, it will set up the clearinghouse so that we can finally be paid these unpaid royalties. So there are many, many benefits about that.

Mr. BLACC. The answer to your question is the Music Modernization Act. It is in there, and we are trying to get that legislation passed so that we can have a Music Licensing Collective that does this work. SoundExchange worked extremely well in the digital age to collect performance royalties for digital streams. It is a beautiful

system. It was something that has benefited me and all of the other artists and performers and even producers.

So as long as we can get the Music Modernization Act through, the answer to your question is in there.

Mr. ISSA. I believe the ranking member has a quick question.

Mr. NADLER. Yes. I would like to ask if the gentleman from Texas would yield for a quick question.

Mr. FARENTHOLD. Sure.

Mr. NADLER. Thank you. I appreciate your concern for the financial viability of small radio stations. Were you aware that the Fair Play Fair Pay Act has a provision limiting liability or responsibility for payment of royalties for performing artists for radio stations under \$1 million revenue a year to \$500 a year? And would that satisfy your concern in this respect?

Mr. FARENTHOLD. It is certainly a good start. I do believe that. Again, I am generally supportive of all the legislation that we are discussing here today. It is just a matter of, the devil is always in the details.

And I appreciate all the work everybody is doing on it and want to continue to be a part of it.

Mr. NADLER. Thank you. I yield back.

Mr. ISSA. Thank you.

I now have to get to the detail of recognizing the gentleman from Brooklyn, Mr. Jeffries.

Mr. JEFFRIES. Thank you, Mr. Chairman.

I thank all of the witnesses for your illuminating testimony here today.

I think I will just to begin by pointing out that what I think we are charged to do as members of the Judiciary Committee, who have responsibility for all things constitutional, in the context of the music space is really just to bring to life at this moment in time Article I, Section 8, clause 8 of the United States Constitution, which is a provision designed to give Congress the power to develop and maintain a robust intellectual property system in order "To promote the Progress of Science and useful Arts."

Those aren't my words. Those aren't Collins' words or anyone's words. Those were the words of the Founders of this great country, who recognized it was important that the creative community deserved to be able to benefit from the fruits of their labor and, in doing so, would continue to share your brilliance with the entire world.

[Applause.]

Mr. JEFFRIES. So I would say that, with all the technological changes that are in place that we are working our way through, all of these bills, at the end of the day, are really just designed to be consistent with a vision for this Nation that was present at the very founding of the Republic.

So with that, let me start with Mr. Blacc. The music ecosystem includes, as I understand it, songwriters, recording artists, producers, engineers, publishers, labels, among others. Is that right?

Mr. BLACC. Yes. The music ecosystem is many different parts, and so I understand the importance in putting forth bills and legislation that is comprehensive, because from your seat, you see many

issues—gun control, a lot of things that you guys have to vote on in Congress.

When it comes to music, you want to see music as a package. You don't want to see songwriters screaming in your right ear, producers screaming in your left ear, the recording industry screaming at the front of you, and then the publishers behind you attacking you.

We are coming together to find a way to make legislation that is housed in one bill that works for all of us, and this is what we found. We found it in the Music Modernization Act.

Mr. JEFFRIES. Thank you.

And, Mr. Douglas, so music consumption over time has gone from I guess vinyl records to eight tracks, eight tracks to cassette tapes, cassette tapes to CDs, CDs to downloads, downloads to streaming. And it is my understanding, I think, that as of 2 years ago in 2016, streaming has now overtaken all other forms of music consumption. Is that right?

Mr. DOUGLAS. Yes, sir.

Mr. JEFFRIES. And you testified that our copyright law has not kept up with changes in society in the context of technology. Is that right?

Mr. DOUGLAS. Yes, sir.

Mr. JEFFRIES. And how has the failure of our copyright laws to keep up with these technological changes and the way in which music is consumed impacted the creative middle class, not the superstars, but the creative middle class, the songwriters and recording artists who in the past have been able to make a middle-class living by participating in this wonderful thing we call music but appear to be threatened at this moment? I would be interested in your perspective on that.

Mr. DOUGLAS. Yes, sir. That is a good question.

I mean, that is the reality. The middle class of songwriters has just been eliminated, and that is frightening. But really, the most frightening thing is it is the next generation of creators and songwriters, those are the ones who are going to be wiped out, because there won't be a viable business model for them to make a living if these changes aren't made.

So I mean, honestly, we all have been very blessed in our time to make a living in music. The middle class is gone, but it is the next generation of the people to make great American music in their teens and their 20s that are going to be the next great export of America. They are just going to be wiped out.

Mr. JEFFRIES. My time is expiring, so I think I will just make the observation that, if music has the power to bring together a conservative Republican from rural Georgia with a progressive Democrat from Brooklyn, New York, and someone on the left like Jerry Nadler and someone on the right like Darrell Issa, we should have the power to get something done on behalf of the music community.

I yield back.

[Applause.]

Mr. ISSA. I guess that is not just because he is local. [Laughter.]

And with that, the gentleman from far away, from Georgia, who has done so much to move this agenda, Mr. Collins?

[Applause.]

Mr. COLLINS. Thank you, Mr. Chairman.

I came to Congress 5 years ago this month. Shortly after that, the chairman of this committee, Mr. Goodlatte, gave a speech and said he wanted to deal with copyright. And just as the clarion call went out in previous generations to do something, I took him at his word.

I didn't know a lot about it at the time, but I said something is not fair here, as I began to dig. I began to look at my own life, and I began to look at my own background. And I began to look at what changed my life, the songs, the music, the motion pictures, the things, the sights, and the sounds that come from the people's hearts, their minds, out of their mouths, out of their hands that touched generations, as valuable.

Intellectual property, in its biggest sense, brought down to words and notes. And even from an old pastor, it is that song of the spirit. It is that constant vibration from the beginning of time that vibrates and fills what we feel every day.

I took off on this trip. My staff thought me crazy many times. And I still am, because I am crazy about fairness, crazy about what is right. And when we can find partners to do this, like my friend Hakeem—we have been doing this a while, haven't we?

Mr. JEFFRIES. That is right.

Mr. COLLINS. Going from coast to coast, literally, seeing Aloe along the way, Tom along the way, Mike. We have seen you all.

But let me tell you where we are at right now. An amazing thing that I have now come to be more and more settled on is that what we are on the cusp of after the leadership of the chairman moving forward is that we are on the cusp of making major music history, because of what we have in the bills that have been talked about today, starting with the Music Modernization Act.

The Music Modernization Act is truly a defining moment, because it spans really the diversity of what we have.

You may have had a song, Mike, that had "Welcome to the Jungle." Welcome to the jungle of trying to negotiate these parties.
[Laughter.]

Mr. COLLINS. When you come along and you have the digital associations, Spotify, the others that are part of this that have done such work, and I will do them all, the Songwriters Association, NSAI, NMPA, BMI, ASCAP, SONA, the Recording Academy, SAG-AFTRA, CMI, the Internet Association, the Copyright Alliance, RIAA, SoundExchange, and the list goes on and on.

This is the tool. This is the vehicle, if you would, to make the changes that we can see forward, so that this industry can change. The CLASSICS Act can be included. The AMP Act can be included. We are looking at that.

But now is the time. The hearings have brought us to the point of understanding.

And I have one more little announcement to make. We have talked about this, and I made mention earlier that I was so proud that the artists and the broadcasters went and for the last year have been discussing, but they also have been discussing on this one.

And over the last little bit, I am extremely happy to announce that NAB, ASCAP, and BMI have reached an agreement regarding the Music Modernization Act. Their agreement resolves NAB's concern with potential introduction of new evidence in the rate-setting process while preserving ASCAP's and BMI's ability to seek meaningful compensation.

[Applause.]

Mr. COLLINS. I was told one time the only way you are going to get this done is to find consensus, and I told everyone, and many in this room will stand up and say amen, I said, go find me consensus, we will find a bill. And over the past year, we found consensus, with the hard work of this committee and the work of the chairman.

I could ask you a lot of questions, Booker, Aloe, Tom, Mike, Dionne, but there is no sense in asking you questions. You have already answered them. It is your life's work. It is what has been put out here. Your life's work of touching people is what matters.

So now we have the vehicle. Now we have a bill that you have been doing so well in talking about that addresses many concerns, where you can find out who owns something, where you can find out how people can get paid, where the system now finally comes together with every party working it.

I cannot say enough about how the digital sphere and the songwriter sphere and the publisher sphere and the broadcasters have worked tirelessly on this. No one has said no. They said maybe. They said, I will try.

And the Music Modernization Act, along with my friend Hakeem Jeffries and many who have signed on already, and also with our partners, our two Senator songwriters Mr. Hatch and Mr. Alexander, along with Mr. Coons and Mr. Whitehouse and many others, have said now is the time.

So to this community that I have testified before many times, that I have heard from, and I have went and spoke to you, my heart for a kid from North Georgia, a trooper's kid who, when his dad went to work, he had a radio and a TV and books, when you read, you listen, you hear your songs. "The House That Built Me" is also the house that built this message, and this bill is ready to move.

With that, all I ask is that, when we come together, Mr. Chairman, let's mark this up. Let's make history. And I yield back.

[Applause.]

Mr. ISSA. Hear, hear.

You know, Reverend, I think you have topped some of your Sunday services. [Laughter.]

Mr. ISSA. With that, we go to the gentleman from Rhode Island, Mr. Cicilline.

Mr. CICILLINE. Thank you, Mr. Chairman.

Thank you to our witnesses not only for the work that you have created that has enriched our lives and nourished our souls, but also for the work of the artists and songwriters and producers that you represent that have done that for people all over the world.

So I think that we are all here, hopefully, committed to making sure that we fix this ecosystem that Mr. Deutch spoke about, and really fulfill our responsibilities that Mr. Jeffries spoke about that

are in the founding documents of this country, because our Founders recognized that creating a system that protects artists and art and values, and fairly compensates art and artistic creations, matters to our humanity. It matters to our democracy and is our ultimate serious responsibility as Members of Congress.

I am really thankful for all of the work that has gone into helping craft this legislation. When I think of the incredible talent that is spent—and I am not talking about Members of Congress. I am talking about artists and songwriters and performers that have devoted hours and hours and hours over many, many years. And when I think of what songs could have been written, what songs could have been produced, we are cheating the American people every day we don't get this done, because we are occupying you with things where you should be using your creative talent and doing that work.

[Applause.]

Mr. CICILLINE. So I hope that we are going to move these bills today in front of you. I don't know if that is our plan, but I think it would be wonderful.

But I think this is an example, sadly, where the technology and music is changing so quickly, and Congress is a kind of slow-moving entity, and I think we are catching up with these bills in a good way. But I would be interested to know from any of the panelists, as we think about kind of the next 10 years, the next 15 years, and I know that is hard to project, what are the likely things we should be thinking about, so that we don't find ourselves 10 and 20 years behind, because we can't afford to not have a system that compensates people for what they create.

This is sort of a basic, simple idea. If someone creates something, it belongs to them. They should be paid for it, and they should get to decide how it is used, who gets to hear it, when they do, and under what circumstances. And we do that with every other creation, apparently except music right now. And I think that is a very basic idea that we need to recognize.

But I am particularly interested to hear your thoughts about, when you look at some of the platforms where music is heard, and some of the incredible dominance of just a few companies, and the kind of market power that those companies have, those technology companies, is a willing buyer, willing seller going to work in an environment where there is a lot of power on one side of the negotiating table in these instances? And are there some issues we need to be thinking about, because even if we arrive at a solution, if the negotiations are really imbalanced, maybe it is still not going to result in fairness to artists and producers and songwriters?

So my real point is, thank you. I think we are all committed to getting this done. Certainly, I am. But are there issues that we should be thinking about as we look forward to prepare ourselves to be more responsive as the technology and the industry changes?

Mr. DOUGLAS. Well, from a songwriter's standpoint, almost 100 percent of our income is government-regulated, which I cannot think of another industry were that is the case. The more that we can, with all due respect, get the government out of our business and be able to take it to the marketplace, willing buyer, willing seller, just to negotiate, the better off we are going to be.

We just want to detangle ourselves from all the regulation and just allow us to negotiate in the free market, just like any other kind of business.

[Applause.]

Mr. BLACC. I agree with what Mr. Douglas is saying. I totally recognize and understand the comment that you are making about the tension between really big, behemoth companies that could potentially make a willing buyer, willing seller situation impossible for a small songwriter. However, I believe it should be the power in the hand of the creator, as with every other industry.

And then in addition, to close the loopholes that protect these big companies for Notice of Intent to remove where they are using our content but not paying for it because of, say, the Digital Millennium Copyright Act, where they are saying that we have people uploading it, and we cannot control it all. I don't know if I believe that, but if it is there, you can at least count it. And if you can count it, then you should be distributing the income that is made from it.

One more comment is that, if the money is in the hands of the songwriters, we will pay taxes on it. When it is in the hands of the big guys, we don't know where that tax money is going. And some of them aren't even registered in the U.S. anymore. They moved other countries, so I would—

Mr. CICILLINE. That would be a great invitation to comment on the recent Republican tax bill. I will decline, in the spirit of bipartisanship, and yield back, Mr. Chairman. Thank you.

Chairman GOODLATTE [presiding]. The chair is pleased to recognize the gentleman from Florida, Mr. Gaetz, for 5 minutes.

Mr. GAETZ. Thank you, Mr. Chairman.

The democratization of music has never been without controversy. When FM radio first began, there were some in the creative community who were incensed that they weren't being compensated for each and every play. Several of you have acknowledged that FM radio did a lot to ensure that creative people were able to achieve great prosperity as a consequence of their creations. Why is this different?

Ms. WARWICK. Why is what different?

Mr. GAETZ. Why is the digitization of music and creating greater access, greater enjoyment, building bigger audiences, creating greater demand for performances, why is that a different circumstance than the circumstance that we saw when music first went on to terrestrial radio?

Mr. DOUGLAS. We embrace technology. This is not against technology. We love all the technological revolution that is happening. But the technological companies are exploiting a loophole in which they are not paying us our fair share for using our product, so that is the difference. I mean, AM radio and FM radio—

Mr. GAETZ. You weren't getting paid on FM radio, right? I mean, when FM radio first began, as I believe was stated by Mr. Jones, FM radio was playing music for free.

Mr. DOUGLAS. Well, our performance income, and particularly in country music, performance income, when we get a song played on the radio, that is a performance royalty, and that is a very substantial part of a songwriter's income, in country music particularly. So

the performance income is not really what is in question here. It is the mechanical digital income that really is what we are talking about.

All the distribution of music is going to streaming by 2020. There won't be any downloads and there won't be any hard CD sales. You won't even be able to buy it. It is all going to be digital. So we have to be able to get our fair share when the songs are all going to be streamed. We are not going to be compensated, and that is what this act goes to accomplishing.

Mr. GAETZ. Mr. Blacc, you made mention in your earlier testimony of the legal proceedings and the limitation on the inclusion of evidence that could lead to more just outcomes. Could you enlighten me as to the type of evidence that is being excluded now that you think, if it were included in those decisions, would yield better outcomes?

Mr. BLACC. Yes, the royalty rate for the master side of the recording is a major part of it because the record labels who own the master recordings have had the opportunity to negotiate for a larger share of the pie of income made at the streaming company. If the rate courts were able to see what the size of the pie was, and then to consider what the value of the copyright is, master and intellectual property, underlying intellectual property, they could have the opportunity to say, well, without the underlying intellectual property, this master recording wouldn't exist. As a matter of fact, this master recording doesn't have the same merit as the intellectual property.

When I write a song, lyric and melody, I can create 100 different master recordings off of that lyric and melody, but the lyric and melody is the undeniable morsel, the atom, of the creation.

This is, to me, the indelible value. And that is the one that I believe—the reason why I believe the rate court should be able to see what money is being made from this atom and why it is so valuable.

Mr. GAETZ. That is an incredibly helpful explanation. Thank you very much.

And your description of 136 million spins for pittance is consistent with what I have heard from many others in the creative community.

And those of us who enjoy the consumption of music and would trade just about anything in our lives to continue to be able to consume music ought to have, I think, a greater awareness of that fact. That is why I am so grateful that Mr. Collins, Mr. Jeffries, Mr. Issa, and Mr. Nadler have undertaken that endeavor.

I would conclude by again highlighting the point I believe my colleague Mr. Jeffries made. These are constitutional principles that are foundational to the United States of America. And what makes us special is that we value those who can create things that then become our great exports, but also a great sense of enjoyment and intellectual stimulation, emotional stimulation, within our country. So I am eager and hopeful that we will be able to have this legislation up for a mark soon.

And I yield back.

Chairman GOODLATTE. The chair thanks the gentleman and is pleased to recognize the gentleman from California, Mr. Lieu, for 5 minutes.

Mr. LIEU. Thank you. I want to thank Chairman Goodlatte and Ranking Member Nadler for holding this field hearing. It is incredibly informative.

I also agree with Representative Cicilline that we should just move and pass these bills today, mostly because I am a Democrat and I would just be super-excited to be able to vote yes on legislation in this committee. [Laughter.]

Mr. LIEU. And I want to thank the witnesses today. Not only does your work make the world a funner place, but it is an important part of our economy.

My view is, we compete in America, emphasizing our competitive advantages. We are not going to compete making socks. I hope nobody in the audience actually does that.

And if you look at our different sectors of the economy, we can do very well in various sectors such as high-tech or agriculture, biotech, tourism. And one of those sectors is the creative economy.

In California, where I am from, one in 10 jobs are related to the creative economy. One of our largest exports are royalties. And it doesn't just happen. You need a legal framework to protect creators and also to create incentives for all this to happen.

In fact, when I was in the California State Legislature, one of my first laws that I ever wrote and passed allowed prosecutors to use nuisance statutes to go after people who were pirating CDs at a time when people were selling CDs. And it struck me at how much time has changed the ways that songs are being consumed.

So I have a question for you, Mr. Blacc. You had mentioned earlier that, out of over 130 million streams over four quarters, you received \$2,400. If a song is downloaded, do you get a different rate, or does that \$2,400 include downloaded songs in addition to streaming?

Mr. BLACC. Yes, downloading songs is a different rate because it enacts the mechanical royalty, the payment that is made to the record label, and then the royalty as an artist that I would make from the record label. But as a songwriter, the mechanical royalty only.

Mr. LIEU. And it is a higher rate you would get for a downloaded song than a streaming?

Mr. BLACC. The answer is yes.

Mr. LIEU. And you get a higher rate to the extent people are still buying CDs with your song on it, correct?

Mr. BLACC. I think the download and the CD would be—

Mr. LIEU. The same rate. And as the projections show that streaming continues to get more and more of the ways that people consume music—

Mr. BLACC. Yes, the only way.

Mr. LIEU. Your income will be very dependent, solely, essentially, on streaming in the future. Is that correct?

Mr. BLACC. So in the past, we weren't able to decide what the mechanical rate was. It was just set by the government. And in the future, we won't be able to decide, unless the MMA or some legislation is passed, we won't be able to decide what the rate is. It is

just going to keep dropping, as things move further into the digital age.

Mr. LIEU. Great. Thank you.

As you sort of look at how music is changing, do you see anything beyond streaming? Or do you think that is just where we are going to end up, essentially, 5 years from now?

Mr. BLACC. It is really hard to project what technologists are going to create in the future, but I can foresee that there may be some system that is going to come later.

And there is a lot of discussion around blockchain and how it helps to record a ledger of how information is distributed. I have a feeling that this could be one of the saving graces for a lot of parts of the music industry and other artist communities.

Mr. LIEU. Thank you.

And I yield back.

Chairman GOODLATTE. Thank you, Mr. Lieu.

The chair is now recognizing the gentleman from Maryland, Mr. Raskin, for 5 minutes.

Mr. RASKIN. Mr. Chairman, thank you very much. I want to just add my voice to the chorus of people saying that we should vote on this today. I love the idea of combining the Music Modernization Act and the CLASSICS Act and the Fair Play Fair Pay Act into a comprehensive statutory bill of rights for musical artists and songwriters and other people in the music industry.

And we have the power under the Constitution to promote the progress of science and useful arts, and we should exercise that power, because, today, our regime stifles musical creativity. It is driving people out of the business because they are unable to support themselves and to make a living.

I wanted to go back to a question that Mr. Deutch had mentioned earlier. Are there any arguments really on the other side that artists and others involved in the creative process shouldn't be compensated?

The only one that I have ever heard, and I only heard it once from someone who came to my office who said, well, music should be free. And I thought about it for a second, and I said, you know, housing should be free, and utilities should be free, and groceries should be free. But as long as they are not, musicians have to make a livelihood like everybody else.

[Applause.]

Mr. RASKIN. So, Ms. Warwick, I wanted to come back to you, because you had an interesting colloquy with one of our colleagues before. I think it ended on a false note, where he said that the idea of getting restitutionary payment, compensation for music that was made before 1962 should be paid today, that that somehow would violate the ex post facto clause.

So I don't know as much about music as you do, but I do know something about the Constitution. The ex post facto clause applies only to the institution of criminal charges and penalties, new statutory offenses in the criminal field. It has nothing to do with the civil field. And I know that robbing musicians of their fair payment has been a crime, but, presumably, you are not suggesting criminal punishment for the people who did this to you, right?

Ms. WARWICK. Well—

[Laughter.]

Mr. RASKIN. All right, I take it you are talking about getting people paid, not putting anybody in prison.

Ms. WARWICK. Absolutely, absolutely.

Mr. RASKIN. I want to ask this question, which is that, as Mr. Blacc suggested, this has been kind of a model coalition that has been put together to bring this cause to this point, and I do want to salute Mr. Collins and Mr. Jeffries and all of the members of the committee. Unfortunately, some of us just got here this year, so we cannot claim any credit for it. But I am thrilled that you have been able to bring it to this point.

And one of the things that you mentioned about your music is you are trying to raise questions of social justice, fair payment and compensation for everybody in society, really. And I just want to give you the opportunity to say something about that, because I wouldn't want anyone to leave with the idea that this is just a situation that affects either the top musicians in the country, as opposed to all musicians and people in the music industry, or just this industry, because there are lots of people across the economy who are not getting the fair fruits of their labor and their participation in the economy.

Mr. BLACC. Yes, very true. The digital age is not just affecting music. It is affecting the film industry, photographers, visual artists. And there is a lot that can be done as we move forward with copyright to protect their rights as well. But outside of the artist community, I find myself with my colleagues in L.A. at rallies fighting for the \$15 minimum wage and just trying to fight for a living wage for people who work at jobs where their managers are making hundreds of thousands of dollars, the bosses and owners of the company and the company itself is making billions, and they are just unable to make it on a daily basis. But they are putting their heart and blood, sweat, and tears into the job that they do.

I think the purpose of the government is to protect the weakest among us.

[Applause.]

Mr. BLACC. So we all are the government, so I don't have to be a Senator or a Representative to exercise my executive power of being a protector of my citizen family.

Mr. RASKIN. I will just close by thanking you for your excellent citizenship and activism, and for expressing solidarity with people across the country who just want an economy that works for everybody.

I yield back, Mr. Chairman.

[Applause.]

Chairman GOODLATTE. The chair thanks the gentleman, and is pleased to welcome last, but certainly not least, the newest member of the House Judiciary Committee, the gentlewoman from Florida, Mrs. Demings, who has experienced, along with her colleagues Mr. Deutch and Mr. Gaetz, about a 35-degree drop in temperature coming from Florida to New York today. [Laughter.]

Chairman GOODLATTE. So welcome.

Mrs. DEMINGS. Thank you so much, Mr. Chairman.

I just want to comment, first of all, or make a comment to what my colleague from Maryland said. As a former police chief, I think

we should reconsider those criminal penalties for people who robbed folks of what they rightfully deserve. [Laughter.]

Mrs. DEMINGS. The time has been well-spent, but I do want to just ask a few questions, a couple questions.

Mr. Blacc, I will start with you. In your written testimony, you said that the MMA certainly won't fix all of the problems, but it is a significant step in the right direction. If you and also Mr. Douglas could just comment on, what are the issues where the MMA doesn't go quite far enough?

Mr. BLACC. Within our organizations between songwriters, producers, engineers, there are other issues.

When songs are uploaded to the Internet, the distributors can distribute that music. There is a movement within our communities to get proper credit for the work that is being done. So Mr. Clink, who has put his hand in many songs, will not be represented in the digital stream or download because the distributor didn't add his name.

Now, there is metadata. All of these files can hold a lot of information, especially just a few letters, C, L, I, N, K. They can hold that, for sure.

So these are the kind of things. We are not going to put all of these little issues into the MMA. We will figure this out later. Really, these are the broader strokes that matter right now.

Mrs. DEMINGS. Mr. Douglas.

Mr. DOUGLAS. Well, this is just a wonderful first step for us. I mean, we realize it is a process. It has been a process, an ongoing process. But we have to crawl before we walk, and walk before we run. So this is crawling, but we have just been motionless, and we have been paralyzed for such a long time, the fact that there is some movement, that is why we think this is a great first step. And once we kind of break this logjam, then we can reach out and probably collect some other technologies where there needs to be that issue addressed.

But that is why we think this is just a great first step.

Ms. WARWICK. Can I say something please?

Mrs. DEMINGS. Yes.

Ms. WARWICK. I am sitting here, and I have a tremendous amount of respect for the songwriter, the publisher. I haven't heard one word said about the recording artist, me, not one word. And I have to address that.

I am going to take you back to my very first contract with Scepter Records, where I was getting a 3.5 cent royalty.

We are now in an age of whatever this is called. I hate this. I am ready to throw it in the garbage every day.

Mrs. DEMINGS. I feel your pain on that one.

Ms. WARWICK. I try to leave it everywhere I go. I really do. That and that thing, the computer, which has taken away the ability for songwriters and musicians to be what they are destined to be.

I feel that although everybody that is sitting on this panel has said some incredible things about our industry, don't leave me out, okay? And I appreciate everything that Mr. Blacc, Mr. Clink, Mr. Douglas, and my dear, dear friend Mr. Jones have said. I have two sons who are also songwriters and producers, so I understand the plight of that.

However, do not forget about me as the one that brings all of that to you, okay?

That is all I have to say about that.

[Applause.]

Mr. NADLER. Will the gentlelady yield?

Mrs. DEMINGS. I yield to Mr. Nadler.

Mr. NADLER. Thank you. I just want to comment on the last comment by Ms. Warwick.

That is why, precisely the reasons you stated, why we have the Fair Play Fair Pay Act and the pre-'72 provisions of the CLASSICS Act and the Fair Play Fair Pay Act, and we are not forgetting them.

[Applause.]

Ms. WARWICK. Okay.

Mrs. DEMINGS. And I will just close by saying thank you. Thank you all for what you have done to just make life better and what you continue to do. When I think about music and everybody in this room, it plays a major role in every significant thing and sometimes not so significant thing, everything that we do. Music brings hope to some of the most hopeless people, children. Children who are involved in the arts, for example, just do better.

So thank you so very much.

[Applause.]

Mrs. DEMINGS. And, Ms. Warwick, it would be damn near impossible to forget the artists. Thank you so much.

[Applause.]

Ms. WARWICK. Thank you.

Chairman GOODLATTE. Thank you very much. This has been an excellent hearing and a great cause that all of you have represented here today. I want to thank each and every one of you.

I want to thank everyone who is here to participate in this hearing with us.

I want to thank all the members coming from as far away as California and Texas and Florida for being here.

And that concludes our hearing. We have a lot of work to do. Let's go out and do it. Thank you.

[Applause.]

Chairman GOODLATTE. I have some magic words, though.

Without objection, all members will have 5 legislative days to submit additional written questions for the witnesses or additional materials for the record.

Chairman GOODLATTE. The hearing is adjourned.

[Whereupon, at 4:39 p.m., the committee was adjourned.]