THE DAY THE MUSIC DIED: DIGITAL INHERITANCE AND THE MUSIC INDUSTRY

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“I can still remember how that music used to make me smile.”

I. INTRODUCTION

No-One But You (Only the Good Die Young), is a tribute to Freddie Mercury’s life and talent, and a melody too often sung in the music industry—an industry that is no stranger to early and tragic loss. Death also has a paradoxical relationship with the music industry, though, because death can beget great success. For instance, Michael Jackson, Janis Joplin, Jimi Hendrix, and many others have reached new heights after their untimely demise.

Death has a paradoxical relationship with consumers, too. Record collections are common staples of estates. Record collections are also time capsules—they offer glimpses of the tastes, interests, and experiences of their owners. They can have monetary value, too, if an estate chooses to sell the collection.

But the music industry has changed dramatically over the last two decades, and the music industry’s relationship with death has changed too. The biggest change involves digital music and the legal challenges of applying old law to a new medium. One new question related to digital music is what happens to digital music when the owner dies? This question confronts musicians and consumers alike. Independent musicians who use websites to sell and promote their music may lose access to those songs and money from sales after death. Consumers may

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1 DON MCLEAN, AMERICAN PIE (United Artists Records 1971).
2 QUEEN, NO-ONE BUT YOU (ONLY THE GOOD DIE YOUNG) (Parlophone 1997).
3 How Michael Jackson Made $1 Billion Since His Death, BILLBOARD,
6 Nick Hornby best summed up his relationship with his record collection:

   Is it so wrong, wanting to be at home with your record collection? It’s not like collecting records is like collecting stamps, or beer mats, or ancient thimbles. There’s a whole world in here, a nicer, dirtier, more violent, more peaceful, more colorful, sleazier, more dangerous, more loving world than the world I live in; there is history, and geography, and poetry, and countless other things I should have studied at school, including music.

http://www.marketwatch.com/story/who-inherits-your-itunes-library-2012-08-23. Also, some records can have considerable value. For instance, Jimi Hendrix’s The Cry of Love, can be valued at upwards of £1000. Their Word is Vinyl, EVENING NEWS (EDINBURGHH), Sept. 19, 2000. These records can be sold as part of the estate to settle any outstanding liabilities, or if no liabilities exist, can be distributed to heirs and beneficiaries.
lose access to digital record collections stored on services like iTunes. Thus, there is a digital inheritance problem in the music industry.

The Stored Communications Act (SCA) is the primary culprit of the digital inheritance problem. The SCA was originally adopted to regulate federal wiretaps during criminal investigations. Today, it regulates internet user policies. This Paper explores the SCA and its role in interfering with estates and digital music. Part Two proceeds by outlining the SCA’s history and how it came to regulate user policies. Part Three then addresses how the SCA frustrates digital inheritance in the music industry for artists and consumers alike. Finally, Part Four suggests an amendment to the SCA so that estates may be guaranteed the right to control musicians’ content and so that heirs and beneficiaries may enjoy lost ones’ digital record collections.

II. “I’VE BEEN A MOONSHINER:*”9 THE STORED COMMUNICATIONS ACT’S HISTORY

The SCA has its roots in Prohibition bootlegging, but now serves as a barrier to digital inheritance. In 1923, federal agents installed wiretaps on telephone poles outside the houses of suspected bootleggers in Seattle, Wash.10 The investigation produced more than 775 pages of transcripts and led to several convictions.11 Roy Olmstead, the chief bootlegger, appealed his conviction on the grounds that government agents had impermissibly tapped his phone, thereby violating the Fourth Amendment.12 The Supreme Court disagreed on spatial grounds, holding that because the government had not trespassed on Olmstead’s land, they had not violated the Fourth Amendment.13

The Court again took up the issue of government wiretaps forty years later, after the FBI tapped a phone booth that was commonly used by a suspected gambling ring leader.14 Charles Katz was convicted with the information that the FBI collected and subsequently challenged his conviction on Fourth Amendment grounds.15 The Court reversed his conviction, holding that because a warrant could have easily been secured from a magistrate, the wiretap was unjustifiable.16

Realizing the need for federal wiretap regulation, Congress adopted the Wiretap Act in 1968.17 The Wiretap Act soon became outdated, though, as new forms of digital technology

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8 See infra Part II.
10 United States v. Olmstead, 5 F.2d 712, 712 (W.D. Wash. 1923). The bootlegging ring produced more than $176,000 of revenue in a bad month (nearly $2.4 million in 2013 dollars). Id.
12 Id. at 456.
13 Id. at 457.
15 Id.
16 Id. at 354. Justice Harlan had a different perspective on the Fourth Amendment, noting that the Fourth Amendment was implicated when individuals manifest a reasonable expectation of privacy. Id. at 361 (Harlan, J., concurring) (“Fourth Amendment expectations of privacy [are] reliant on first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as ‘reasonable.’”). Justice Harlan’s concurrence has since become the prevailing understanding of the Fourth Amendment. See Kyllo v. United States, 533 U.S. 27, 32–33 (2001).
17 See Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No.90-351, 82 Stat. 197 (1968). In particular, the Act made it illegal for anyone to “willfully intercept[], endeavor[] to intercept, or procure[] any other person to intercept or endeavor to intercept any wire or oral communication.” Id. See also S. REP. NO. 1097 (1968), reprinted
evolved outside the Act’s reach. Accordingly, in 1986, Congress passed the Electronic Communications Privacy Act (ECPA) to bring the Wiretap Act’s protections in line with new forms of electronic communications. Title II of ECPA, commonly known as the Stored Communications Act, specifically deals with computer communications. Section 2702 of the SCA, known as the voluntary disclosure provision, most affects the digital inheritance problem. Specifically, section 2702 prohibits internet services, including digital music providers such as iTunes, from disclosing account content and information to unauthorized individuals and prohibits anyone other than the user from accessing accounts without authorization.

III. “WE ALL RECOGNIZE THAT I’M THE PROBLEM HERE”: THE SCA’S INTERFERENCE WITH DIGITAL INHERITANCE

In general, internet sites, including digital music providers, prohibit anyone other than the registered account holder from accessing the account and prohibit online music providers from turning over any content on accounts to anyone except the account holder. These user policies limit account access because providers have strictly interpreted the SCA to avoid liability, even though the SCA’s requirements are unclear as they relate to estates. The end result is that estates are generally precluded from account access or receiving account content because of the way that providers have interpreted the SCA.

Even though providers make accounts non-transferable and inaccessible, some content stored on online accounts can be transferred under an estate. In particular, music uploaded to music provider websites by independent artists and some digital music purchased by consumers can be transferred after death. Since estates cannot access accounts, though, they are in effect segregated from assets stored on music websites. This has several ramifications. First, independent artists’ estates may lose the ability to control their copyrighted material uploaded to music provider websites and any profits produced by those songs. Second, consumers’ estates may lose the ability to distribute or sell any unrestricted songs purchased through music

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websites. Accordingly, the SCA, by way of its influence on music provider user policies, prevents the effective administration of digital music assets that are lawfully owned by estates and heirs.

A. “I Spend My Bread Making Demos All Day:” Independent Musicians and the Digital Inheritance Problem

The Raspberries sing about the dream of making it big in the music industry. In *Overnight Sensation*, the band describes the dream—hearing their songs on the radio and making a hit record. In attempting to reach their dream, the band also depicts the struggles of making it big by highlighting the struggles of gaining wider exposure and the time spent making and sending demo tapes to potential distributors.

In the forty years since the Raspberries sang about making it big, the dream has not changed, but the way independent artists gain new fans and exposure to the music industry has. Today, artists often utilize the internet to gain exposure to new audiences and to the wider music industry. To this end, several websites have recently sprung up to help independent musicians gain more notoriety and new audiences. For instance, one site, Bandcamp, allows independent artists to upload their music and sell to individual consumers. Bandvista, a rival site, hosts independent band websites and song sales. Even more established sites such as Amazon and iTunes have options for independent musicians to upload their music for sale.

The user policies of Bandcamp, BandVista, Amazon, and Apple each restrict access to the account holder only. For instance, Bandcamp’s privacy policy allows only the registered user to access the account. Apple’s and Amazon’s terms of service are equally restrictive and state that the account is non-transferable. As mentioned, these user policies reflect provider worries about liability under the SCA. Accordingly, estates are precluded from accessing user accounts and content stored on these accounts, which has several consequences.

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28 See infra Part III.B.
29 *OVERNIGHT SENSATION, THE RASPBERRIES* (Capitol Records 1974).
30 Id.
31 Id. (“I just want a hit record, yeah / Wanna hear it on the radio / Want a big hit record, yeah / One that everybody’s got to know.”).
32 Id. (“I use my bread making demos all day / Writing in the night while in my head I hear / The record play / Hear it play”).
37 See Howitson, supra note 25.
The first consequence of the way that providers have interpreted the SCA in their user policies is that estates of independent artists lose the ability to control the copyrighted content on provider websites. Musicians do not surrender the copyright to songs that they upload to music websites. 40 Accordingly, musicians do not surrender any of the exclusive rights of copyright, either. Therefore, musicians retain the right to control the distribution of their uploaded music. 41

Copyrights and their commensurate rights transfer at death. 42 When estates are prohibited from accessing accounts after death, they effectively lose the ability to control the song’s distribution. 43 Accordingly, the way that providers interpret the SCA’s requirements in their user policies effectively prevents estates from exercising their rights to control copyrighted music stored on music provider websites and accounts.

The second consequence of the way that providers have interpreted the SCA’s requirements is that estates may lose access to the profits that songs generate. Account access is often required to distribute profits and to control where profits are distributed. Because estates cannot access accounts, they cannot control or change profit distribution. This can have financial consequences for the estate because song profits may not be distributed to the proper parties and may not be used by the estate to settle any outstanding liabilities. Thus, the music industry’s digital inheritance problem effectively prevents musicians’ estates from controlling song distribution and any profits that those songs produce.

B. “Pay[ing] Homage to the Man Who Long Ago Collected all the Songs the Singers Know:”44 Inheriting Digital Music Collections

The Song Collector tells the story of a man who builds his record collection over many years. 45 He does so by recording the sung stories of people in his community. 46 By the end of the song, the song collector amasses a sizeable record collection. The song shows us what a record collection embodies: the sound and memory of a person and of a culture. 47

Like the protagonist in The Song Collector, individuals invest a lot of time and money in their record collections. 48 Although traditional record collections are easily transferrable because of their tangibility, online music collections have raised questions about how they transfer at

40 See BandCamp Terms of Use, supra note 36 (“Company will not have any ownership rights in any elements of a Band’s Music.”).
41 17 U.S.C. § 106 (2012). The six exclusive rights of copyright are: 1) to reproduce the copyrighted work; 2) to prepare derivative works; 3) to distribute copies of the copyrighted work; 4) to perform the copyrighted work publicly; 5) to display the copyrighted work publicly; and 6) to perform the copyrighted work publicly by means of a digital audio transmission. Id.
42 See 17 U.S.C. § 201(d)(1) (2012) (“The ownership of a copyright may be transferred in whole or in part by any means of conveyance or by operation of law, and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession.”).
43 Account access is generally required in order to control content on the account. Since estates cannot access the account, they cannot control the distribution of the music on the account, including the ability to remove the music from the account if the estate chooses.
44 THE SONG COLLECTOR, CHUMBAWAMBA (No Masters 2010).
45 Id.
46 Id.
47 Id. (“And now the old Society sing the songs / Word for word, and kept where they belong / As once again, they eulogize the past / You can hear the ghosts of history laughing last.”).
48 As of 2011, the average American has $2,000 worth of entertainment files as part of their digital estate, including digital music files. Jamie P. Hopkins, Afterlife in the Cloud: Managing a Digital Estate, 5 HASTINGS SCI & TECH. L.J. 209, 221 (2013).
death. To this end, Bruce Willis was rumored to be preparing to sue Apple over the right to pass on his record collection to his children.\(^\text{49}\)

Some have argued that no digital music transfers via estates because the music bought online is subject to a license that terminates at death.\(^\text{50}\) This assumption may not hold, though. Apple, the largest digital music retailer,\(^\text{51}\) arguably sells an unrestricted copy of the song itself, rather than a license. If this is so, songs purchased on iTunes would be transferrable at death. Accordingly, there is an argument in favor of accommodating digital music inheritance for digital music collections.

Apple’s user agreement states that users purchase unrestricted song copies.\(^\text{52}\) Because it is an unrestricted purchase, the user should thus be subject to the same rights in using and dispensing with the song as if she had purchased it at a record store on a tangible medium.\(^\text{53}\) Among other things, the user would be subject to the first sale doctrine and would be allowed to use, sell, or transfer the copy of the song that they purchased within copyright restrictions.\(^\text{54}\)

Apple does restrict the usage of the song in some notable ways, but these restrictions do not create a license. For instance, Apple’s user policy limits the number of devices that are permitted to access any iTunes account and restricts the number of times that a user may burn a song or playlist to another medium such as a CD.\(^\text{55}\) Copyright law prohibits unauthorized copying and distribution.\(^\text{56}\) Apple’s provisions restricting account access and burning reinforce the law’s requirement, but go no further. Accordingly, Apple’s Terms and Conditions, when read as a whole, grant users unrestricted songs when those songs are purchased on iTunes.\(^\text{57}\).


\(^{50}\) See Fottrell, supra note 7.


\(^{52}\) Apple Terms and Conditions, supra note 36 (“Apple is the provider of the iTunes Service, which permits you to purchase or rent digital content (“iTunes Products”) for end user use only under the terms and conditions set forth in this Agreement.”) (emphasis added). Other aspects of the Apple EULA, such as the section covering e-books, clearly state that Apple is granting a license to use those products. Id. (“Apple is the provider of the App and Book Services that permit you to license software products and digital content”) (emphasis added). Since Apple clearly shows that it can create a license for the use of some of its products and because that language is noticeably absent from the section covering music, it suggests that Apple sells unrestricted copies of music. Id. See also Claudine Wong, Can Bruce Willis Leave His iTunes Collection to His Children?: Inheritability of Digital Media in the Face of EULA’s, 29 SANTA CLARA COMPUTER & HIGH TECH. L.J. 703, 739–40 (2013).

\(^{53}\) See Brilliance Audio, Inc. v. Haights Cross Communications, Inc., 474 F.3d 365, 373 (6th Cir. 2007).

\(^{54}\) See 17 U.S.C. §109(a) (2012); see also Bobbs-Merrill Co. v. Straus, 210 U.S. 339, 350 (1908) (holding that purchasers of books did not need the permission of the copyright holder to sell or otherwise use the copy of the book after purchase); Capitol Records, LLC v. ReDigi, Inc., 934 F. Supp. 2d 640, 654–55 (S.D.N.Y. 2013) (holding that copies made by the purchaser of copyrighted material are not subject to the first sale doctrine).

\(^{55}\) See Apple Terms and Conditions, supra note 36.


\(^{57}\) For a more in-depth analysis of the Apple terms of service as it relates to song purchases, see id. at 718–25.
Even with the lack of enforcement and the problems associated with the transferability of used digital music, there has been an attempt to profit off of used digital music sales. Estates could utilize such services to sell unrestricted digital music collections and use the money to settle liabilities, or, if no liabilities exist, could distribute the proceeds to appropriate heirs and beneficiaries. Because estates cannot access accounts, though, they cannot transfer song ownership or otherwise sell the digital music.

The SCA and providers’ user policies would prevent estates from taking advantage of such a service. Estates could utilize such services to sell unrestricted digital music collections and use the money to settle liabilities, or, if no liabilities exist, could distribute the proceeds of any used digital music sales to appropriate heirs and beneficiaries. Because estates cannot access accounts, though, they cannot transfer song ownership or otherwise sell the digital music.

Other online music stores are more restrictive in the rights that they give to song purchasers. For instance, Google unambiguously outlines that anything purchased through the Google Play store, including music, is subject to a license. Amazon’s music store contains an equally restrictive clause. Thus, the end situation is that digital music transferability depends on where the music is bought.

Because most digital music sold today is unrestricted, the first sale doctrine would apply to many digital music libraries. The first sale doctrine allows purchasers of lawfully purchased copies to sell or transfer that copy without the copyright holder’s further permission. Applied to digital music, this means that if a user purchases an unrestricted copy of digital music, they would be able to transfer or sell that copy of the music without further permission from the copyright holder. Importantly, this right is transferrable after death. To this end, several websites have sprung up recently in an attempt to profit off of used digital music sales.

These sites have yet to perfect a model that conforms to copyright requirements and the first sale doctrine because of difficulties of ensuring that only the originally purchased copy of the digital music is transferred. Given the number of parties tackling the problem, as well as the potential value of the used digital music market, a system that conforms to copyright law requirements may soon exist, though. To this end, even Apple and Amazon have anticipated the used digital music market and received patents for possible digital music exchanges.

The Institute of Electrical and Electronic Engineers has been working on a platform that guarantees the transmission of the original copy of the purchased music only, thereby keeping the sale in line with the requirements of the first sale doctrine. IEEE Standards Assn, IEEE P1817 Standard for Consumer-Ownable Digital Personal Property, IEEE, http://grouper.ieee.org/groups/1817/ (last modified Feb. 25, 2011).

Google states that the user “will have the non-exclusive right . . . to view, use, and display the [music] . . . for your personal, non-commercial use only.” Google Play Terms of Service, GOOGLE PLAY, https://play.google.com/intl/en_us/about/play-terms.html (last updated Nov. 20, 2013).

Amazon’s user agreement grants the user “a non-exclusive, non-transferable right to use the Music Content only for [their] personal, non-commercial, entertainment use.” Conditions of Use, AMAZON, http://www.amazon.com/gp/help/customer/display.html/ref=footer_cou?%20ie=UTF8&nodeId=508088 (last updated Dec. 5, 2012).

Because estates cannot access accounts, though, they cannot transfer song ownership or otherwise sell the digital music.

Since Apple is by far the biggest music retailer in the world, more than half of all digital music sales would be of unrestricted songs. See NDP GROUP, supra note 51. Accordingly, the digital inheritance problem is especially relevant to consumers.

To conform to the First Sale Doctrine, supra note 47. The Institute of Electrical and Electronic Engineers has been working on a platform that guarantees the transmission of the original copy of the purchased music only, thereby keeping the sale in line with the requirements of the first sale doctrine. IEEE Standards Assn, IEEE P1817 Standard for Consumer-Ownable Digital Personal Property, IEEE, http://grouper.ieee.org/groups/1817/ (last modified Feb. 25, 2011).

stored on music websites. Therefore, the SCA effectively prevents estates from distributing consumers’ music, which, as demonstrated, can have clear financial consequences.

IV. “PROBLEMS THAT WAIT NEVER GET SOLVED:” AMEND THE SCA

The problem with the SCA is that it is unclear how the Act applies to digital estates. Thus, providers have adopted strict user policies to protect themselves against potential liability under the Act, which in turn precludes estates from accessing various accounts and digital assets. The SCA presently outlines three exceptions to the Act. Adding a fourth exception where heirs, beneficiaries, and executors are also exempted under the Act would resolve the ambiguity around how the SCA applies to digital inheritance and would thus encourage music providers to adopt friendlier user policies.

Amending the SCA is not the final step, though. Following an SCA amendment, music providers should reevaluate their user policies to ensure that they are in line with the Act’s new requirements and so that they resolve any ambiguity as to whether estates can access music stored on accounts.

Few music websites have considered how to handle digital death. In fact, one Apple representative stated that Apple had no policy about inheriting iTunes accounts. Moreover, there are no court cases that have forced digital music providers to address digital inheritance issues. Other social media platforms have faced legal challenges regarding digital asset inheritance, though, which means that Apple and other online music providers may soon have to grapple with the digital inheritance problem.

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68 PROBLEMS, JOE WALSH (Full Moon 1985).
70 The model Act could follow the following model:

   (c) Exceptions.— Subsection (a) of this section does not apply with respect to conduct authorized—
   (1) by the person or entity providing a wire or electronic communications service;
   (2) by a user of that service with respect to a communication of or intended for that user; or
   (3) in section 2703, 2704 or 2518 of this title.
   (4) by any heir, beneficiary, or fiduciary of an estate of a deceased user of an electronic computing service or a remote computing service.

72 See Wong, supra note 52, at 716 (noting that the reason that digital music providers had not addressed digital inheritance in their user policies is because the right person to challenge the issue had not died yet.).
73 Yahoo has seen the most attention surrounding digital inheritance. The most discussed case involved the family of a fallen Marine who sought to gain access to the soldier’s email account after he was killed in Iraq. See Jim Hu, Yahoo Denies Family Access to Dead Marine’s E-mail, CNET (Dec. 21, 2004, 2:49 PM), http://news.cnet.com/Yahoo-denies-family-access-to-dead-marines-e-mail/2100-1038_3-5500057.html. An Oakland County, Michigan court eventually granted a court order requiring Yahoo! to turn the account contents over to the family. See In re Ellsworth, No. 2005-296, 651-DE (Mich. Prob. Ct. 2005); Jennifer Chambers, They Win Right to See Late Son’s Messages, DETROIT NEWS, Apr. 21, 2005, at A1. Facebook has also been a target of digital inheritance cases. See, e.g., In re Request for Order Requiring FACEBOOK, INC. to Produce Documents and Things, 923 F.Supp.2d 1204, 1206 (N.D. Cal. 2012) (affirming Facebook’s refusal to provide account content for the estate of a British supermodel who committed suicide in 2008).
In particular, digital music providers should clearly outline a policy that considers digital assets in their terms of use. The policy should outline what rights, if any, an estate has in the account and the digital content contained in the account. If estates have an interest in content on provider accounts, the terms of use should also outline a policy and process whereby estates can prove the death or incapacity of the user and who may access the account and its contents and for what reasons. This way, providers can accommodate estates and ensure that they themselves are still meeting the SCA’s requirements by not disclosing account information or contents to unauthorized individuals.

Consumers have responsibility in digital estate reform, too. Currently, few individuals have digital estate plans. The result is that even if the federal government and online music providers were to allow estates to have access to accounts and content, it could be unclear how a decedent would have distributed their digital assets, including their digital music. To resolve this, consumers should outline who should receive which aspects of their digital estates and how their digital assets, including their digital music, should be disposed of in the case of death or incapacity.

Following an SCA amendment, consumers should do three things in particular to ensure that their digital music transfers after death. First, users should account for their digital assets in their estate plans because digital assets are becoming more varied and greater in number and value. Moreover, the list containing account information and passwords should be separate from a will because of the privacy and identity theft risks associated with listing such information in a public document like a will or a trust. Second, estate plans should clearly outline who should receive which digital assets because decedents may have different wishes for who receives their Facebook or email accounts versus who receives their digital record collection. Clearly listing who receives what would also lessen liability for providers because there would be clear guidelines for who has consent to access which accounts. Finally, consumers should regularly update their estate plans because digital accounts are often and easily opened or closed. This way, estates could clear up any confusion surrounding digital asset inheritance and how it applies to digital record collections.

V. CONCLUSION

74 Only thirty-one percent of Americans have wills. See Alyssa A. DiRusso, Testacy and Intestacy: The Dynamics of Wills and Demographic Status, 23 QUINNIPLAC PROB. L.J. 36, 52 (2009). Of these, very few have incorporated digital estates into their wills. See id. at 53.

75 Individuals do not fully think through their digital estate plans because they do not think of their assets when formulating estate plans, because they become frustrated compiling a list of their digital assets, and because they sometimes are over-confident that they have covered all their bases in planning their digital estate. See Gerry W. Beyer & Naomi Cahn, When You Pass On, Don’t Leave the Passwords Behind: Planning for Digital Assets, PROB. & PROP, Feb. 2012, at 40, 43.

76 Id.

77 Jessica Hopper, Digital Afterlife: What Happens to Your Online Accounts When you Die?, ROCK CENTER (June 1, 2012, 10:53 AM), http://rockcenter.nbcnews.com/_news/2012/06/01/11995859-digital-afterlife-what-happens-to-your-online-accounts-when-you-die?lite. Naomi Cahn, Professor of Law at George Washington University noted that people would generally treat digital assets such as online bank accounts different than social media accounts. Id.

78 Providers would still be liable under the SCA if they granted access to someone other than the estate under the proposed amendment. See supra note 70.

The SCA stands in the way of digital music inheritance to the detriment of musicians and consumers. The problem is that the SCA’s lack of clarity around how it applies to digital estates causes providers to err on the side of caution when crafting user policies. Accordingly, musicians’ estates may lose the ability to control the distribution of some aspects of the musician’s collection stored on music websites. Additionally, consumers’ estates may lose access to digital record collections which has both economic and emotional costs for heirs and beneficiaries. An SCA Amendment would allow heirs and beneficiaries access to digital music and to enjoy or sell the music as each heir sees fit. It would also allow estates to control the distribution of songs and control profits generated by song sales in accordance with copyright law. Beyond an SCA amendment, providers and consumers have responsibilities in digital estate reform, too. Providers should reevaluate their terms of service and consumers should make clear how their digital assets should be distributed. This way, heirs and beneficiaries can enjoy the digital music, even after the day that it dies.