

**Before the
UNITED STATES COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.**

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In the Matter of:)	Docket No. 2017-2
)	
Study on the Moral Rights of)	Submitted May 15, 2017
Attribution and Integrity)	
_____)	

**REPLY COMMENTS OF
THE RECORDING ACADEMY**

I. Introduction

The Recording Academy is pleased to submit reply comments in response to the Copyright Office’s Notice of Inquiry, “Study on the Moral Rights of Attribution and Integrity.” The Recording Academy represents 23,000 individual music creators and professionals—songwriters, performers, studio professionals, and others creatively involved in making music—across 12 domestic chapters, with a focus on protecting the rights of music creators and advancing their interests on important policy matters. The Recording Academy has no company or institutional members and is the only organization that represents and advocates for all individual music creators.

The right of attribution is a cornerstone of the creative industry, and needs to remain enshrined in both the spirit and the application of copyright law and enforcement. Presently, federal copyright law does not explicitly extend or establish moral rights to recording artists, songwriters, studio professionals or any other individual involved in the creation of a musical work. Instead, music creators have had their moral rights protected through existing case and state laws—a patchwork no longer adequate in the digital age.

In 2016, for the first time, online streaming of music accounted for 50 percent of total industry revenue—a milestone forecasted only to grow in the future¹. The rise in music streaming has come at the cost of physical media; CDs and downloads are no longer prevalent forms of music distribution, and even with a recent resurgence, vinyl record sales fail to reach their past peak.

¹ Janko Roettgers, *Streaming Services Generated More Than 50% of All U.S. Music Industry Revenue in 2016*, Variety, March 30, 2017 <http://variety.com/2017/digital/news/streaming-services-us-music-revenue-2016-1202019504/>

And with this shift has come a decrease in the preponderance of credits—a listing of who wrote, produced and played on a certain track. When music fans would buy a CD, an album, or download a track they would also receive liner notes or other forms of credit that identified all of the creators involved in the work’s creation. Digital streaming services, on the other hand, predominately only give attribution to the featured artist.

The Academy believes that the songwriters, musicians, performers, producers and engineers all deserve recognition for their work in the digital age. Accordingly, the Copyright Office, in its review of the existing moral rights within the United States, should take steps to ensure that the right of attribution is extended to all music creators involved in the creation of any sound recording regardless of distribution platform.

II. Subject of Inquiry

1. Please comment on the means by which the United States protects the moral rights of authors, specifically the rights of integrity and attribution. Should additional moral rights protection be considered? If so, what specific changes should be considered by Congress?

With respect to the first part of the question, the United States has not established comprehensive moral rights at the federal level for musical works or sound recordings, requiring music creators to rely on a patchwork of state laws and judicial rulings. With respect to the latter questions, The Academy believes that the right of attribution could be strengthened in the United States, and that all individuals involved in the creation of music receive attribution for their involvement.

Such a principle already exists in Section 106(a) of the U.S. Copyright Act; however it applies only to creators of visual works. The Academy believes that similar protections, with respect to the right of attribution, should be extended to the creators of musical works and sound recordings to ensure that credit is also granted to the songwriters, producers, engineers and non-featured artists, regardless of who holds the copyright or license—a needed change as a result of the growth of streaming music platforms.

3. How have section 1202's provisions on copyright management information been used to support authors' moral rights? Should Congress consider updates to section 1202 to strengthen moral rights protections? If so, in what ways?

Section 1202 of the Digital Millennium Copyright Act defines copyright management information (CMI) to include identification of the author of the work, the copyright holder of the work, and the performer of the work—establishing a framework to enforce the right of attribution for music creators. However, with regard to phonorecords or sound recordings, Sec. 1202(c) only includes the name of the performer (the featured artist) when defining the kind of information that is considered CMI for purposes of the section. The definition of CMI could be expanded in a way that allows for the inclusion of information about additional individuals involved in the making of a sound recording and thus strengthen the right of attribution for all

music creators, including the songwriters, the non-featured performers, and the producers and engineers.

9. How does, or could, technology be used to address, facilitate, or resolve challenges and problems faced by authors who want to protect the attribution and integrity of their works?

Through a combination of database enhancements, metadata, and digital displays, technology could be used to give music creators better protections of their right of attribution. The Academy acknowledges the value of a searchable, digital database of historical and current copyright ownership. The Recording Academy's Producers and Engineers Wing has been an industry leader in promoting the standardization, recordation, collection, and preservation of reliable metadata for sound recordings. Reliable metadata is critical for transparency among copyright owners, licensees, artists, and songwriters. Congress and the Copyright Office may have an appropriate role to play in the creation of a permanent database. But a dialogue for establishing best practices for using data and promoting the adoption of those practices is ongoing among stakeholders. The private sector should be given the opportunity to succeed in providing a solution to this challenge before Congress decides to step in.

The next step is to ensure that this metadata is readily transferable, cross-compatible, and integrated into digital music services. Including the data on who wrote, recorded, produced and performed on any given track within the track's metadata would mitigate any authorship concerns and/or questions about who was involved in the track's creation.

And finally, existing digital displays, which currently identify items such as the track title, the featured artist, the album, album art, and lyrics, can easily be expanded to translate metadata to credits for all music creators.

10. Are there any voluntary initiatives that could be developed and taken by interested parties in the private sector to improve authors' means to secure and enforce their rights of attribution and integrity? If so, how could the government facilitate these initiatives?

As demonstrated in 2013 by Rhapsody, the private sector has the means and capability to incorporate expanded credits to their existing streaming digital services.² Digital platforms already display information such as song title, featured artist, album, and artwork; the inclusion of expanded credits would enhance, not detract from, the user experience and can be implemented throughout the private sector.³

² James C. McKinley, Jr., *Digital Credit Where It's Due*, N.Y. Times, May 17, 2013, <http://www.nytimes.com/2013/05/18/arts/music/rhapsodys-move-to-liner-notes-for-digital-tunes-may-set-trend.html>.

³ *Id.* (“This is the one place on the Internet where the consumer is getting less information than in the physical world,” said Daryl P. Friedman”).

In 2012, The Recording Academy launched a public campaign called “Give Fans the Credit” to engage music fans and encourage digital music services to provide credits for all music creators on digitally released songs.⁴ The campaign’s online petition has attracted thousands of signatures calling for expanded credits on digital music platforms—showing a clear demand for this kind of information. The Copyright Office should consider the consumer demand and facilitate initiatives that strengthen the right of attribution for musical works and sound recordings.

III. Conclusion

The Recording Academy appreciates the opportunity to provide the Copyright Office with comments on moral rights in the United States. Moral rights give our members value; the right of attribution allows music creators to use their name, their identity and their creative works to earn a living. These rights should be protected.

However, recent changes within the music industry—the shift to a digital ecosystem where streaming, not physical ownership, of musical works is predominant—has created a need to strengthen the right of attribution at the federal level. The existing patchwork of state laws, judicial interpretations and contract laws do not adequately protect the right of attribution of all music creators in this digital age. The songwriters, producers, engineers and non-featured performers are not receiving the credit they deserve, and depend on, across digital platforms. Thus, we encourage the Copyright Office and Congress to take the necessary steps to ensure that the right of attribution is afforded to all creators involved in the creation of music.

Respectfully Submitted,



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⁴ Additional information about the Give Fans the Credit campaign can be found at www.givefansthecredit.com.