

Performance Rights Organizations

"This song is Copyrighted in U.S., under Seal of Copyright # 154085, for a period of 28 years, and anybody caught singin it without our permission, will be mighty good friends of ourn, cause we don't give a darn. Publish it. Write it. Sing it. Swing to it. Yodel it. We wrote it, that's all we wanted to do.

Woody Guthrie

Performance rights organizations (PROs) ostensibly provide a couple of services within the music industry. First, they provide convenience for anyone who wants to purchase the rights to perform or broadcast someone else's music, a sort of 'one stop shopping' clearinghouse if you like. Second, they police the music industry for copyright infringement on behalf of the owners of copyrights, presumably ensuring that people who author music get paid their due by those who use their "intellectual property," typically musicians or business concerns that broadcast the music or employ musicians. This story line sounds good if you say it fast enough, but there are some details that tend to be overlooked.

It's important to remember here that the vast majority of musicians will never have any famous music that would benefit from this kind of service. So the all too familiar 'get big or get out' undercurrent runs strong here. And let's face it, it's not as if the system selects for talent first and foremost, as evidenced by the fact that so much amazing talent can often be found in small venues and on the streets.

The primary clients of PROs are the big publishers, multinational corporations which have nothing whatsoever to do with the creation of music but have the money to purchase the rights to it. The big ones, not so affectionately known as “the big four,” include Warner, Universal, EMI, and Sony. They buy these rights from musicians who need cash and are willing to part with the rights to their own music - forever - in order to get that cash. These multinational publishers (and a few other large interests like the Michael Jackson estate which purchased the rights to the music of the Beatles) then enjoy the enforcement of copyright laws, which done by PROs. PROs then are little more than glorified collection agencies policing copyright infringement on behalf of the big corporations atop the industry pyramid. Sound familiar?

ASCAP is the largest and oldest (1914) American PRO, followed by BMI, and then SESAC. Predictably, ASCAP's mission is a noble and equitable one. But then why would they be targeting small scale music venues, taverns, coffee shops, farmer's markets ... with threats of law suits and demands for costly licenses, which often results in music being cut from the venue's budget? Is it really for the public good that ASCAP would go after the Girl Scouts because they were singing some ASCAP copyrighted material? (1) What was the net benefit to society of Pacific Coast Farmer's Market Association, a non-profit, having to eliminate live music at half of it's 69 farmer's markets, because ASCAP told them, on behalf of their multi-national client, they owed "tens of thousands of dollars" for past performances? (2) And where is society headed if restaurants are forbidden to play legally purchased cds (without purchasing the requisite licenses from ASCAP) just because nice music could theoretically contribute to a restaurant's bottom line? (3) Shouldn't a restaurant be able to play a legally purchased cd on their premises without having to purchase additional licenses? How can this even be assessed accurately? And how trustworthy is ASCAP's magical formula (and notoriously secretive) for determining how much they may rightly collect? ASCAP even harasses entities like non-commercial, educational (NCE) college radio stations, most of which rely solely upon

student/listener support for funding, and entities like Creative Commons, a non-profit "*devoted to expanding the range of creative works available for others to build upon legally and to share.*" (4)

Not that ASCAP only targets the little guys. They're more savvy than that. They have gone after Amazon and iTunes for royalties on 30 second streaming previews and Youtube for audio embedded in videos. But would we expect any different from a company that considers ringtones to be a public performance? (5) If you really look at the guts of this regulatory apparatus, it's clear it fails in its ostensible mission revolving around social equity and succeeds in doing the exact opposite. Who knew?

If you're a musician, and you cover songs not in the public domain, you must purchase a mechanical license to sell your CDs. Moreover, the venues that employ you must also purchase a special license so that you can play covers there and so they can broadcast music that has copyright protection. And where do those monies actually go? Take George Gershwin's classic, "Summertime," for example, a standard today in the idioms of folk, blues and jazz. If you cover that song, the money you pay will go to one very fortunate Warner/Chappell Music Inc., a subsidiary of Warner Music Group, one of the "big four" publisher behemoths and a multinational operating in some 50 countries worldwide.

But the problem extends beyond the "big four" to the legal apparatus itself. Certain Gershwin "heirs" also claim they are "*owed \$4.5 million in royalties and interest from works of the late composer*" (6) plus another \$10 million for good measure (7). It probably comes as little surprise that "*A spokeswoman for Warner Music Group, parent of Warner/Chappell, declined to comment*" when asked about the royalty dispute. (8) It's hard to know who to root for on this one: the multinational with revenues in the billions per annum, or the so-called "heirs," none of which are actually direct descendants of Gershwin

(nephews and grand nephews in this case) who claim they've been shorted to the tune of \$15 million. Tough call.

Gershwin never had any children. And what if he had? How much sense would it make to endow them with 8 million a year in royalties? What is the motivation behind laws that would ignore the true architects of that beautiful song we know as "Summertime," people like Billie Holladay, Ella Fitzgerald, Charlie Parker, Miles Davis, Doc Watson, Janis Joplin, and many others? Where would the song be today if such musicians had never helped to immortalize it, something that is every bit their doing as Gershwin's and probably (far) more? What a tremendous service to Warner and the Gershwin "heirs" that those musician's have done, contributing to the song's evolution and helping to generate such a nice royalty stream. Why does the law see it as such a one-sided affair? What is the motivation behind such one sidedness? Then on top of that our laws allow enormous corporate conglomerates to purchase the rights to this music, a creation of which they had nothing to do with. How does that solve anything or promote any sort of social justice? It sounds more like a system designed to disempower the majority.

The only sane solution is to stop keeping track altogether and let music be the intrinsically shared, open source continuity of art and culture that it is. At least then scores of ordinary musicians wouldn't have to worry about paying bills to collectors like ASCAP, BMI, and SESAC, who police the music industry on behalf of multinational labels. Funny how this particular brand of justice and equity can be passed off as such a noble cause while at the same time resulting in fewer small venues employing ordinary musicians, fewer musicians covering songs, adapting them and passing them on to the next generation so that music can continue to evolve the way it always has, reminiscent of biotech firms that patent human genes which they've modified so that doctors cannot look at a person's DNA without being concerned with patent infringement (9), once again placing all the power on the laps of a few big interests. ASCAP's working relationship with the Justice

Department, an ever relaxing, age old, "consent decree" (10), allows them to extort money from anyone deemed in violation, and on their say so alone. Is it any wonder they tend to win their court battles?

Shouldn't we be looking a lot less at royalty streams and so-called "intellectual property," especially for something like music? Shouldn't we be looking a lot less at the authorship of music, which is a logistical train wreck anyway, and a lot more at the authorship of our legal apparatus? While we probably cannot change the fact that industry elites control the legislative process and are steering society ever deeper into oppressive tyranny and oligarchy, we can however change how we choose to respond to such obscene laws. No matter what you think should be done, I hope we can all at least agree that any sane response has to begin with acknowledging the true motives behind our laws. At least then our response, no matter what it might be, is based in reality and not in story lines that smack of pep rallies and fairy tales.

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## Notes:

- 1 - Ascap Asks Royalties From Girl Scouts, and Regrets It - <http://www.nytimes.com/1996/12/17/nyregion/ascap-asks-royalties-from-girl-scouts-and-regrets-it.html?pagewanted=all&src=pm>
- 2 - ASCAP Targets Farmers' Markets and House Venues - <http://www.eastbayexpress.com/oakland/ascap-targets-farmers-markets-and-house-venues/Content?oid=3151285>
- 3 - Licensing groups crack down on restaurants and bars that present music - <http://www.unionleader.com/article/20120903/NEWS02/709039935>
- 4 - ASCAP Members Pissed Off At ASCAP's Attack On Creative Commons - <http://www.techdirt.com/articles/20100627/0142469971.shtml>
- 5 - Sorry ASCAP, A Ringtone is Not a Public Performance - <http://www.techdirt.com/articles/20091015/1502486549.shtml>
- 6 - Warner Music Group Sued by Gershwin Heirs Over Royalties - <http://www.bloomberg.com/news/2013-01-15/warner-music-group-sued-by-gershwin-heirs-over-royalties.html>
- 7 - Warner Music Sued For At Least \$15 million By George Gershwin Heirs - [http://www.huffingtonpost.com/2013/01/15/warner-music-sued-by-gershwin-heirs-15-million\\_n\\_2478689.html](http://www.huffingtonpost.com/2013/01/15/warner-music-sued-by-gershwin-heirs-15-million_n_2478689.html)
- 8 - A rare rift in George and Ira Gershwin's harmony - <http://www.latimes.com/entertainment/news/arts/la-ca-gershwin1-2009nov01,0,6051370.story>
- 9 - US Supreme Court wants to Patent human genes like Monsanto patents seeds - <http://theunhivemind.com/wordpress2/?p=21187->
- 10 - ASCAP, Justice Department Agree On New Consent Decree - <http://www.mtv.com/news/articles/1123855/ascap-justice-department-strike-deal.jhtml>