Future of Music Coalition

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Music Licensing and Innovation: Building Bridges for Mutual Benefit

The transformation from an analog to a digital music marketplace has been breathtaking in its speed and scope. A generation of artists can now take advantage of global distribution with a click of a button; meanwhile, fans enjoy unprecedented access to music through a myriad of legal, licensed services and applications. The challenge, however, is to build off these successes and achieve a highly functioning copyright and licensing regime that strikes the right balance between compensating creators, protecting innovation and facilitating access to creative expression.

Aforementioned progress aside, tremendous challenges remain in the digital music space. Artists often complain about a lack of transparency and uniformity in compensation; labels pursue aggressive and potentially damaging enforcement policies; new entrants are unable to enter the marketplace due to high costs and investment risks.

We are at a moment of great opportunity. In the aftermath of the SOPA/PIPA debate, stakeholders across the spectrum of interests understand the importance of engaging in the policy discussion. No matter where people stood on the specifics of SOPA/PIPA, there is an awareness that "something" needs to be done to proactively address the challenges in the industry. To do so, we need a focused effort to unite stakeholders behind a broad set of principles and, ideally, consensus around significant licensing and digital copyright issues. Some of these issues will require market-oriented solutions, others can be mitigated by technology, others may necessitate adjustments to existing law. This process is meant to ascertain which approaches could prove the most productive across various sectors, including the innovation and creative communities.

The Future of Music Coalition intends to manage this work as part of their emerging partnership with Fractured Atlas, an organization with tremendous standing in the arts community. Beyond engaging their membership of over 20,000 local arts organizations, Fractured Atlas will be able to bridge between the music industry and other arts disciplines. Clearly, any proposed solutions that do not take into account the intellectual property concerns of other disciplines will be much harder to enact.

FMC and Fractured Atlas intend to structure this work as a multi-tiered process, with the first stage containing the following elements:

1. A white paper that identifies specific issues that can/should be addressed;

2. Interviews and conversations with 25-30 key stakeholders to receive their input on how to address the issues and to assess their interest/willingness to engage in

an ongoing stakeholder process;

3. Commission of four distinct working groups to address each of the issue sets we have identified;

4. A series of virtual and face-to-face meetings;

5. Honest assessment of the viability of finding solutions on each of these issues sets and identification of other issues that should be considered;

6. Drafting of a multi-year strategy to outline how these theoretical issues can become enacted as any combination of market solutions or policy, including identification of a long-term leadership team.

In a post-SOPA/PIPA world, it is clear that policymakers and stakeholders are eager to understand what proactive steps can and should be taken to address digital intellectual property issues. FMC has identified four distinct sets of issues that can serve as a starting point for building consensus. While there obviously is significant overlap on all these issues, the ability to reach consensus will require high levels of expertise in the specific issue areas. We have identified a range of stakeholders representing different subject matter expertise and assume these stakeholders will choose to engage on some or all of these issue areas.

Remix Culture: Longtime FMC Board member Peter DiCola of Northwestern University has done tremendous research on this complex and often counter-intuitive subject. Peter's book with Kembrew McLeod on sampling culture and law, *Creative License*, contains not only an elegant history of the art of sampling and remixing, but also points to several potential ways forward. This solution-oriented approach can work as a model for resolving issues around remixing and sampling as well as other areas of friction in tech/content.

International Copyright Registries: Several longtime FMC affiliates are working to bring stakeholders together to establish global databases for music. This would make it much easier to know who owns which rights, and hopefully streamline licensing and put more money in more coffers (including those of artists). We see rights databases as a necessary prerequisite to an efficient, global licensing system. We believe that the US policymaker community — from IPEC to Congress to the Copyright Office to the USTR — should examine current registry efforts and spur US rightsholders to play an active part in their realization.

Tailored Solutions for Digital Services: We often hear complaints from artists and independent labels about the lack of transparency in payments on emerging digital services. Some of this could because the market for streaming on-demand is not yet mature. Regardless, there is more to be done to ensure transparent, equitable compensation for creators. Due to the contours of current copyright law, and depending on the platform or use, there are roadblocks to clear and direct artist compensation. A close examination of sections 114 and 115 of the Copyright Act should be undertaken to ensure that the statutory framework enables rather than inhibits artist compensation and the development of more legal, licensed services.

Orphan Works: This is often called the "low hanging fruit" of copyright reform. But if it's so low-hanging, how come we haven't reached it in a decade of effort? The issue at hand is the legality of using works whose copyright owners cannot be located. We believe in the ability of the public and other parties to be able to use works that are essentially abandoned, but seek to include authors in the process. Our belief is that by aligning interests in a meaningful capacity, this low hanging fruit will finally end up it the basket.

We see our efforts around licensing to advance the following goals:

1. Comprehension of the state of play in these four arenas (innovation and licensing; authentication database[s]; sampling/remix culture; orphan works). We anticipate this to provide an essential overview of current conditions, which can be used to spur further stakeholder participation towards achieving solutions.

2. Focused stakeholder engagement to identify where common ground exists on these areas, including a basic agreement that licensing is not optimized for mutual benefit.

3. A greater understanding among policymakers that these issues implicate more than just the trade industry groups — the ambitions of musicians, creative entrepreneurs and innovators are also frustrated by a lack of coherence in digital copyright.

4. The implementation of targeted solutions to alleviate marketplace tensions, inspire greater innovation and compensate creators transparently and equitably.

Leadership Team

This initial work will be managed by combined staff of Future of Music Coalition and Fractured Atlas and is split into two distinct tracks. The PROCESS will be overseen by FMC co-founder Michael Bracy with Fractured Atlas founder Adam Huttler serving as a senior advisor. They will be responsible for identification of stakeholders, initial outreach, facilitation of working groups, interaction with policymakers and the drafting of a long-range implementation strategy. The SUBSTANCE will be managed by FMC Deputy Director Casey Rae, who will be the lead author of our framing document, will manage stakeholder interviews and will synthesize stakeholder feedback into consensus proposals organized around the four areas of interest. The leadership team will be supported as needed with legal and administrative assistance.

Initial Stakeholder Group

The criteria for being invited to the stakeholder process is fairly straightforward. We will pursue individuals and organizations that:

1. Have real standing in their area of expertise
2. Are willing to commit their resources toward positive, collaborative solutions
3. Are well respected by their peers
4. Have actual marketplace and/or academic knowledge

FMC and Fractured Atlas have a unique ability to put together and manage this stakeholder group because of our long history and reputation in the field. We have direct relationships with all of these individuals and organizations and the ability to fully engage them in the process. Because these individuals are so respected in their field, their participation will give the process significant weight with policymakers and other interested observers.

An initial list of individuals and organizations that we will pursue include:

Artists
OK GO
Erin McKeown
Hank Shocklee
Rebecca Gates
Ed O'Brien
Billy Bragg
Vijay Iyer

Managers/Lawyers
Bertis Downs
Jordan Kurland
Peter Jenner
Brian Message
Mark Kates
John Strohm
Ashlye Keaton

Tech/Innovation Sector
Google
Union Square Ventures
Twitter
Tumblr
CASH Music
Rhapsody, MOG, Rdio,
Eric Garland
Sandy Pearlman
Jim Griffin
Sprint

Industry
Merge
Secretly Canadian/Jagjaguar
Bloodshot
Topspin/Ian Rogers
Jeff Price
A2IM

Public interest/Academics
Peter DiCola
Public Knowledge
Samuelson Clinic
Jessica Litman
Kembrew McCloud
Berkman Center

Work Plan

The first stage of work will take nine months and will focus on multiple deliverables:

- framing white paper that outlines all of the issues at stake;
- identification of and engagement with stakeholders;
- ongoing communication with policymakers and;
- development of a long-range strategic plan.

The budget to execute this stage of work ranges from $180,000 to $300,000, with the higher budget level allowing for increased staffing to support in-person interviews, working groups and other convenings.

August through November 2012

- Research and identify current licensing structures and copyright frameworks
- Identify 20-30 individuals and/or groups in the field that should be part of a collaborative process — drawing from industry, managers, artists, innovators, labels and publishers and potentially others
- Assess the willingness of these stakeholders to participate in an ongoing process and ensure the credibility and viability of the group
- Briefings with at least 10 key policymakers to alert them to the existence of the process
- Identification of market and technology approaches to ease friction in licensing
- Publish initial framing white paper in advance of FMC summit, issue to 500 participants at Summit and 8,000 web cast participants.

December 2012 through May 2013

- Interview stakeholders working in relevant issue areas
- Synthesize interview material and research data into report to be used as an entry point for consensus-building
- Core committee established and draft overview paper completed with buy-in from core committee
- Deliberate and sustained media engagement to affirm the narrative that licensing is currently not optimized to benefit creators and innovation with goal of placement in at least 3 targeted key outlets
- Development of multi-year strategic plan including long-term leadership structure (steering committee, advisory committee, executive director model likely)

Spring/summer 2013 (dependent on strategic plan)

- In-person working group meetings
- Collaboration with a university clinic to produce reference material for convenings
- Identification of potential market and technical solutions
- Issue-specific action plans for expanded stakeholder and policymaker outreach

Fall 2014

- Stakeholder meeting at the Future of Music Summit with draft principles/solutions paper and discussion
- Ongoing check-ins in with legislative/administration/agency contacts to provide updates on collaboration

Summit 2014:

- Present principles/solutions paper
- Convene industry, tech, creator and policymakers for public roundtable to include 500 participants at Summit and 8,000 web cast participants.

2014 (ongoing):

- Rollout to media and the public, with additional placements in 10-12 outlets and blogs
- Expanded musician/creator buy-in, including public endorsements from at least six key artists in FMC network
- Cultivation of an additional 10 policymakers for potential implementation of solutions

Staffing requirements

As founders and leaders of FMC and Fractured Atlas, Michael Bracy and Adam Huttler understand how to launch and manage this kind of ongoing multi-lateral stakeholder process. Their ongoing participation and leadership will affirm to the community the importance of this endeavor to FMC and Fractured Atlas. In addition, they will serve as primary bridge to the policy community and project funders.

FMC's Casey Rae has, over the past several years, established relationships with groups and individuals across the music and tech industries whose participation is vital to achieve meaningful licensing reform. With additional capacity, we believe that Casey, FMC and our partners can make an impact where there has been a lack of forward motion. To accomplish these goals, we will require additional staff, including increased staff capacity and consultants and partners.

Staff requirements:

- Coalition management, strategic planning and policymaker engagement (Michael Bracy, Adam Huttler and Casey Rae)
- Project direction (Casey Rae)
- Legal counsel/research assistant
- Admin support (to help with travel and logistics for FMC staff and convening bodies)

Consultants and partners:

- Potential long-term Executive Director or other full-time executive
- We envision a small group of 2-5 trusted industry experts with real-world experience in licensing and entertainment law to advise on approaches to any/all aspects of the previously described work plan
- University support (potential partners: Northwestern; Berkman Center; Samuelson Clinic)
- Future of Music Coalition Board and Advisory Board