

Re: Section 512 Study: Notice and Request for Public Comment

**COMMENTS OF DON HENLEY: RECORDING ARTIST, SONGWRITER AND MUSIC PUBLISHER**

My father was a farmer/shopkeeper with an eighth-grade education. He served in Europe and Greenland in WW II. My mother, who earned a college degree, was a school teacher in rural Northeast Texas. They both loved music and books.

I have made my living writing and performing music since the late 1960's, both as a member of the Eagles and in my solo career. I am grateful that, through hard work and good fortune, my songs have become well known across America and around the world.

In December, I was proud to become a Kennedy Center Honoree, along with my band mates from the Eagles. But, as honored as I was to receive this award from President Obama, I received it with mixed emotions. Despite the existence of institutions like the Kennedy Center – organizations that nurture and promote the arts -- I am gravely concerned about our next generation of artists and writers. The protections – and promise – of our copyright system that were so essential to my ability to pursue a career in music have been deeply eroded. Today, much of the value that artists and songwriters produce flows not to creators, as it should, but to giant Internet companies such as Google/YouTube and Facebook. The amazing technological advancements these companies and others have introduced into our lives have dramatically out-paced the laws written to provide protection, balance and fairness for creators.

In my view, much of the problem lies with the Digital Millennium Copyright Act (DMCA). Simply put, the DMCA – and in particular, the 'safe harbor' immunity it provides for Internet-based companies – does not adequately protect creators from the unauthorized use of their works. It imposes an impossible burden on copyright owners to monitor the Internet for infringements, and not enough incentive for online companies to truly address infringement. If there is no balance between technological innovation and the ability of songwriters and artists to earn a living, the future of music will be gloomy indeed. We are well past that tipping point, and we are in dire need of your help.

Well-intentioned though the DMCA may have been at the time of its enactment, its framers could never have imagined how the then-nascent Internet platforms would come to dominate our cultural and political landscape. No one could have anticipated how online companies on the scale of Google/YouTube and Facebook would come to profit from the massive, unauthorized use of copyrighted works. While it is clear that Congress understood that music, movies and other creative works would be vulnerable in the online world, it was legislating in the quaint era of Web 1.0, when the Internet was little more than a bulletin board – not the current paradigm of ultra-powerful digital 'gatekeepers.' Congress imagined a world where

online providers would cooperate with creators to mitigate infringement. The reality is that the DMCA, especially as it has been interpreted by the courts, allows large Internet companies to profit from the infringement they facilitate, and, under the current system, there is little copyright owners can do about it.

The fact is that there is no effective method or mechanism for creators to manage the exploitation of their work under the existing framework of the DMCA. I am more fortunate than many of my fellow artists in that I am able to invest in resources to monitor YouTube and other sites for misappropriations of my work. Yet, even I am stymied by the endless stream of infringements of my work that continue daily, despite my best efforts to use filtering systems like Content ID, manual searches, and employing outside vendors to identify and notify the Internet platforms. It is an unwinnable game of “whack-a-mole,” that allows continuous infringement because videos can be, and are, re-posted even after a takedown notice has been filed. The DMCA safe harbor system in its current form is, as Einstein said, the very definition of insanity – doing the same thing over and over again and expecting different results. This gives rise to a logical question:

*How is it that tech giants, like Google, can write algorithms that so accurately track and anticipate our individual lifestyle trends, yet not be able to devise a system that effectively filters out infringing content on their platforms?*

Moreover, this absurdly unbalanced system devalues music and other artistic works. Music copyright owners have little choice but to agree to substandard license terms with YouTube and others because their creative efforts will be on these platforms whether they like it or not. Safe harbor has become a shield that has permitted Internet giants to continue to embrace infringement and profit from it at the creators' expense.

As an artist who has spent a lifetime perfecting my craft and cares deeply how my work is presented to the public, I would like to have some say in the matter. In theory, that is my rights as a creator and copyright owner. But that right has become illusory. The plethora of online postings of poor quality reproductions of my songs and performances diminishes my creative integrity and damages my professional standing. Bootleg audio and audio-visual products that are inferior copies of my work unfairly compete with my own work and deceive the public into believing that they are purchasing products that I have created.

It's time to revisit and rebalance the DMCA. At a minimum, I ask the Copyright Office and Congress to require that online providers prevent the reposting of content for which they have received a takedown notice as a condition of safe harbor protection – that is, to require not just “notice and takedown,” but “notice and **staydown**.” The tech companies need to be held to a higher standard in combating copyright infringement and they need to be made to negotiate a fair market value share of their billions of dollars of ad revenues with creators.

A business model that is based on - and thrives because *of* - the work of creators shouldn't starve the source of its success.

Thank you for your time and attention,

Don Henley