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Section 115 Copyright Reform

The world is changing quickly. New technologies are introduced, adapted, and spread like wildfire and they all have an impact on the credibility and enforcement of copyright law. One advancement in technology in particular has caused a lot of headaches, streaming, especially as it pertains to music. In this day and age, most users consume their music via streaming services such as (but not limited to) Spotify, Apple Music, and Tidal. But the way in which this technology works can be technically complicating and copyright law should require constant amending in order to keep up with the times (Pallante, Next Great Copyright Act, 334).

A significant amount of updating needs to be done to Section 115 Scope of exclusive rights in nondramatic musical works: Compulsory license for making and distributing phonorecords. Clarification of terms is required specifically in paragraph (D) of Section 115:

... (i) digital phonorecord deliveries where the reproduction or distribution of a phonorecord is incidental to the transmission which constitutes the digital phonorecord delivery, and (ii) digital phonorecord deliveries in general.

A definition of “digital phonorecord deliveries” or “DPDs” was enacted by the Digital Performance Right in Sound Recordings Act of 1995. It is provided at the end of Section 115:

A “digital phonorecord delivery” is each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction

by or for any transmission recipient of a phonorecord of that sound recording, regardless of whether the digital transmission is also a public performance of the sound recording or any nondramatic musical work embodied therein. A digital phonorecord delivery does not result from a real-time, non-interactive subscription transmission of a sound recording where no reproduction of the sound recording or the musical work embodied therein is made from the inception of the transmission through to its receipt by the transmission recipient in order to make the sound recording audible.

It seems as though the definition attempts to avoid the use of the word “stream” rather using the term “transmission”. Streaming has become such a prevalent technology that it needs to be directly addressed in the law. It’s absence will only cause more confusion about an already complex technical concept.

On June 8, 2006 the Section 115 Reform Act (SIRA) was introduced to Congress in an attempt to update copyright law for the digital age but it was never enacted. It proposed blanket licensing for digital music providers and considered the rights of music labels, artists, and users. Some opposers of the bill thought that it would make distributors liable for “incidental copies” made during the streaming process. But these copies are necessary for the process of streaming and most users are unaware that their computers are making a temporary copy in the first place. SIRA addresses this issue of DPD vs. Stream vs. Distribution:

A stream does not, however, constitute a “distribution,” the object of which is to deliver a usable copy of the work to the recipient; the buffer and other intermediate copies or portions of copies that may temporarily exist on a recipient’s computer to facilitate the stream and are for all practical purposes useless (apart from their role in facilitating the

single performance) and most likely unknown to the recipient simply do not qualify.

Similarly, a stream should not be considered a DPD as that term is presently defined by 17 U.S.C. 115(d), because it most likely does not result in “a specifically identifiable reproduction by or for any transmission recipient of a phonorecord.”

Education on how streaming works can be provided in the law. If more awareness is brought to how this technology operates through an amendment to Section 115, it will become less confusing to the courts and to the general public.

Opposers would probably argue that users will be able to make massive amounts of copies and attempt to actual distribute them to a wider audience that don't have streaming subscriptions, and that's true. That's happening and those users should be held accountable in court. But that actually only further proves my point. According to Maria Pallante's statement before Congress in 2011, “unauthorized streaming of copyrighted content is a significant problem that will only increase in severity if technology outpaces legal reforms.” There will undoubtedly always be offenders but if a clear definition and description of streaming is provided in the law, it will help prevent accidental infringement because of a misunderstanding of the law and protect rights holders from actual infringers with criminal intentions. At this point, potentially everyone is harmed by the unclear nature of Section 115.

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