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Background

Pex is a leading global music analytics and rights management service that enables music creators and rights holders to find, measure and leverage the value of their catalog across the Web. Pex uses proprietary fingerprinting technology to map the characteristic components of any given audio or video recording to transform it into a compact coded representation. Our robust audio and video fingerprinting algorithms enable identification beyond industry standard, even if the media has been compressed, cropped, recorded in a noisy environment, or otherwise modified. We work with music labels and other companies to help them find and manage the use and misuse of their copyrighted material across 40+ platforms.

The principle behind Pex's business is simple - copyright owners need to be able to enforce their copyrights and in a fractured media landscape technology is required to do this accurately and at scale. Supporting creativity and rights holders is central to our mission of putting the control of managing copyrights into the hands of the rights holders.

In addition to our clients using Pex technology to enforce the rights that exist in their copyrighted works, we also perform a vital role in helping them monitor use of their works across platforms. We have a unique perspective on the use of music across all of these platforms. Our monitoring services on YouTube for example have enabled us to identify that more than 84% of videos on YouTube contain at least 10 seconds of music.

Comments

This brief is being submitted on behalf of Pex in response to the Department of Justice's ("DOJ") requests for comments with respect to the specific review question as to what, if any, modifications to the Consent Decrees would enhance competition and efficiency?

The intersection of music and technology has long been fraught and complicated. The growth of the Internet has been the latest chapter in this relationship. The initial phase of mass copyright abuse has slowly been superseded by business models that wish to acknowledge and respect the rights of copyright holders and strive to allow rights holders to exploit their copyrights in new and potentially lucrative ways. Accurate, reliable ownership metadata is a foundational requirement for growth and innovation in the music industry. Without this ownership data there is no way for rights to be respected and fees to be paid in an accurate and timely manner. At the moment, if a new business or platform wishes to support music copyright holders in managing and exploiting their valuable copyrights, they are required to reach licensing deals with each and every rights holder. The complicated nature of

rights as it pertains to musical compositions makes this a very difficult, expensive and time consuming pursuit. It is our contention that the lack of a central database of rights holder information is thwarting competition and efficiency in the music space and limiting the ability of rights holders to exploit their copyrights with new business models and partners.

One of the unintended consequences of the consent decrees that both ASCAP and BMI operate under is that it has enabled both organizations to create valuable databases of music ownership information that has significant strategic value. The consent decrees as they have operated to date have put both ASCAP and BMI in a competitively advantageous position simply through the operation of the consent decrees. This is most evident in the metadata and usage information that the operation of the consent decrees has allowed them both to collect and manage.

The landscape around usage of copyrighted material and tracking this usage has altered significantly over the past 10 years. The explosion of User Generated Content (“UGC”) has led to an exponential increase in the unlicensed use of copyrighted material. The management of this societal phenomenon has added significant operational costs to the bottom line of both music labels and publishers. Despite this, the explosion in UGC has significant revenue opportunities for copyright owners who can track and identify usage of their works within UGC content. To be financially feasible, this needs to be done at scale and requires not only technology to identify the works, but also accurate, complete metadata of ownership information. As mentioned, the consent decree has given ASCAP and BMI a unique opportunity to collect, validate and update this ownership information. The nature of their businesses means that they do not have to share this information. In fact it is explicitly against the Terms of Service of both services:

ASCAP Terms of Service

“ASCAP owns all right, title and interest in and to ACE, and any copyrights, database rights and/or other intellectual property and/or proprietary rights therein. Except as expressly authorized by ASCAP or as specifically provided herein, you shall not, nor shall you allow any third party (whether or not for your benefit or otherwise) to, reproduce, modify, create derivative works from, publicly display, perform, publish, distribute, disseminate, broadcast or circulate to any third party (including, without limitation, on or via a third-party website or platform), ACE or any information contained therein.”

BMI Terms of Service

“You also agree that you will not copy, distribute, download, publish, modify, reformat, reconfigure, extract, incorporate into other software, databases or online material, or otherwise appropriate, the database in any way. You may not create, generate, or compile any source code version of the database or any part thereof, and you will not assist others in doing so. You will only run manual queries through the interface that BMI provides. You will not decompile or reverse-engineer the application(s) that provide access to the database or circumvent or attempt to circumvent any applications or processes that BMI may employ to track or limit access to the database. You will not create any direct links to query results from any other site or service. You will not develop or run scripts to automatically query the database, and you will not capture, scrape, download or otherwise copy and/or store any query results for any purpose whatsoever.”

We contend that the entire music market would benefit from requiring both ASCAP and BMI to make available to interested parties the content of their database and making the metadata that they have

been able to accumulate through the consent decree and make it available to these interested parties. We contend that significant new businesses could be developed and supported with orderly, defined access to this data. As a company, we could expand our services with scale and certainty and make sure that artists and composers are able to effectively generate income from their work in a manner that they identify as most appropriate for them (be it through licensing, advertising, blocking, etc.)

In line with this, we also highlight the recent passage of the Music Modernization Act and the obligations contained within to create a comprehensive database related to the ownership of musical compositions. We respectfully submit that the creation of this database is a significant undertaking from scratch, even with the support of music publishers. It is our contention that amending the consent decrees to require data disclosure is a path that would make the creation and implementation of this database more likely and timely, increase competition, and help foster the development of new businesses.

We contend that the consent decrees should be modified to require both ASCAP and BMI to make available the data contained in their databases to businesses that would benefit from access to the rights holder information contained therein.

We appreciate the opportunity to participate in the Justice Department's process as it reviews the ASCAP and BMI consent decrees. It is our hope that the DOJ will consider the above suggestions and the perspective of business that support copyright holders to exploit their copyrights in a legal and scalable way.

Respectfully submitted, Pex