

June 09, 2016, 01:30 pm

Bring fairness to music licensing

By Rep. Jim Sensenbrenner (R-Wis.)

Intellectual property rights are critical to our nation's unsurpassed creativity and cultural development. I've long been an advocate for intellectual property rights because individuals deserve to be compensated for their work. However, the process in which these artists receive payment has become opaque. This is largely due to performing rights organizations (PROs), which operate in a convoluted fashion. The music licensing system in which artists are compensated must be clear and transparent for the good of artists, consumers and bar and restaurant owners.

Fairness in music licensing was brought to my attention in the early 1990s, when Wisconsin bar and restaurant owners from my district contacted me about being harassed in their places of business by representatives from the American Society of Composers, Authors and Publishers (ASCAP) — one of the three PROs in the U.S. While seeking payments from the small-business owners, ASCAP representatives were unnecessarily aggressive and combative.

Bar and restaurant owners frequently complained that these organizations exploited bureaucratic complexities to demand increasingly high payments. Worse, small businesses were often unclear about what exactly they were paying for.

I became involved to enact meaningful reforms, and as I dove deeper into the complexities of the issue, the extent of the problems became clear.

The Copyright Act of 1976 granted copyright owners the exclusive right to perform or to authorize others to perform publicly their works. When establishments, such as restaurants or bars, turn on a radio or television for the benefit of customers, or feature live music, that constitutes a public performance of copyrighted works under current law. Unless an exemption applies, the copyright owner of a work publicly performed has the right to receive compensation for that work.

To comply with the law, business owners pay licensing fees to PROs. However, each PRO represents different intellectual property, essentially forcing businesses to pay fees to every PRO to ensure compliance.

The Copyright Act of 1976 contained narrow exemptions, however, including an ambiguous home-style exemption that allowed a single receiving apparatus — such as a television or radio — to be used if there was no direct charge to a customer collected by a business owner.

This vagueness created the opportunity for PROs to go after unsuspecting establishments, often anonymously. That threatened everything from sports bars to barbershops, which would frequently find themselves in legal limbo if an investigation yielded evidence that a radio broadcast was being played on multiple devices or that charges for goods or services had the economic value of the intellectual property factored into them.

In response to this problem, I introduced the Fairness in Music Licensing Act.

The legislation expanded the home-style exemption and increased the number of bars and restaurants exempted from needing a public performance license to play music on television during business hours. It also created a dispute resolution mechanism available to small- and medium-sized businesses through the federal courts.

Despite strong opposition from PROs, the legislation was signed into law after having been attached as an amendment to the Copyright Term Extension Act. The new provision kept the home-style exemption of the original provision but added specific exemptions based on the type and size of establishment, as well as the type of equipment used to play music.

Studies have concluded that the act exempts roughly 70 percent of eating and drinking establishments, making it easier for small-business owners to operate and serve consumers. The Copyright Act of 1976 has helped; yet problems still exist, including the tactics used by PROs and the method in which they determine which spaces within small businesses are determined public or private — an important distinction when considering where music licensing is necessary.

Establishment owners should not be forced to conduct business with every licensing society demanding a fee. There needs to be transparency in how establishments are billed, and we need to ensure that when a business pays a music licensing fee, it knows what it is buying. There can be no fair long-term marketplace outcomes when the playing field is weighted in favor of performance rights groups.

Music, film, literature and all other forms of intellectual property represent the soul of the American people. It's vital we protect them, but there needs to be balance and fairness in the process. When that balance is lopsided, it's the duty of Congress to take legislative action to ensure it is restored for the benefit of both the creators and consumers of intellectual property.

Sensenbrenner has served the state of Wisconsin since 1979. He is chairman of the House Judiciary Committee's Crime, Terrorism, Homeland Security and Oversight Subcommittee and sits on the Subcommittee on Courts, Intellectual Property, and Internet. He's also a member of the House Science Committee's Environment and Oversight subpanels.