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# Music streaming demands new wave of licensing rules



Usher, Rihanna, Nicki Minaj, Madonna, Deadmau5, Kanye West, JAY Z, and J. Cole onstage at the Tidal launch event in New York City. (Jamie McCarthy, Getty Images)

By [Aloe Blacc](#), [Irina D. Manta](#), [David S. Olson](#)

APRIL 3, 2015, 3:05 PM

**W**hy would Jay Z spend \$54 million to buy music streaming service Tidal, which will allow fellow artists to serve as equity holders? Because he, like others, is fed up with the lack of control that

artists have over the music business.

One prime example of this phenomenon is that even though Avicii and Aloe Blacc's hit song "Wake Me Up" had more than 168 million streams on Pandora since its release in 2013, its three songwriters were paid only \$12,359. How is that possible? Because the government-mandated compulsory music licensing system forces songwriters to let others use their works at very low, fixed rates. It is high time to end this scheme and allow artists to negotiate freely instead.

The system was never fair, but it worked well enough to give us a lot of music in the analog age when listeners mostly bought the music they enjoyed. In the age of music streaming, the U.S. Congress tried to adapt the law. The unfortunate result is a broken system that pays songwriters almost nothing from streaming services. Lawmakers and regulators know that this has to change. Just last month, Congress introduced reform legislation entitled the Songwriter Equity Act. Likewise, the U.S. Copyright Office published proposed reforms last month.

Unfortunately, all these proposals fall short. By continuing to tinker with the existing system, they miss an opportunity to truly give equity to songwriters, and they fail to capitalize on modern technology to transform music licensing. We believe that the current regime should be eliminated altogether. If we fail to solve this problem, the public will suffer as the incentives for great songwriting dwindle.

Under the Copyright Act, songwriters are treated differently from all other copyright holders, including authors, playwrights and the musicians who make sound recordings of music compositions. These other copyright holders get to decide who copies and sells their works, and for how much. Songwriters do not. Instead, Congress, the Copyright Office, and the Department of Justice, in conjunction with large performing rights organizations, set the prices for many types of music licenses.

This overlapping framework of compulsory and blanket licenses is rooted in the 1909 Copyright Act. At that time, Congress was concerned that the dominant player piano company would monopolize the sales of player piano rolls. So Congress enacted a compulsory license scheme that allowed anyone to sell copies of a songwriter's music without permission, so long as they paid the composer a fee of 2 cents per copy. While this began as a way of ensuring competition in the sales of sheet music and piano rolls, the compulsory license was broad enough to include making and selling new recordings of a song. Thus, anyone can "cover" a song if he pays the compulsory license fee — which has gone up only 7 cents in the last century to 9.1 cents per copy sold. Under this regime, John Lennon's song "Imagine" gets the same rate as a completely unknown song.

Nor do songwriters get much of a say when it comes to being paid for public performances of their music. To

have a decent chance of getting paid for these uses, almost all songwriters sign up with performing rights organizations (PROs) like ASCAP (American Society of Composers, Authors and Publishers) and BMI (Broadcast Music Inc.). Radio stations, restaurants, bars and the like buy annual blanket licenses from PROs allowing use of all the songs in the PROs' catalog. Because blanket licenses eliminate competition, prices are set by negotiation between the PROs and the Department of Justice, pursuant to its antitrust enforcement authority. This means that songwriters get almost no say in what they are paid for performances of their works — they simply get to opt in to this blanket-licensing regime.

The situation is far worse when it comes to digital streaming services. The compulsory license rates for radio and non-interactive streaming are very low — in the range of thousandths of a cent per play. The traditional thinking was that radio exposure encouraged listeners to buy music. But as more and more listeners substitute streaming for buying music, the result is that songwriters go virtually unpaid. This is how Pandora gets to pay the songwriters of "Wake Me Up" a pittance while collecting advertising revenue for each subscriber.

Among the reform proposals suggested are setting compulsory license rates closer to market levels and giving songwriters more control over some streaming of their works. The problem with these proposals, however, is that they keep the government central in setting rates and allocating use. The proposals assume that the transaction costs of licensing music must necessarily be as high today as they were in the days of the telegraph, and that only government rate setting can give us a working music industry.

We reject this notion. If we treat songwriters like other copyright holders and let them negotiate how their work is used, they will collaborate with technologists and entrepreneurs to build a music licensing system for the digital age. Indeed, this is the goal of Tidal, and investors responded quickly: within just days of Jay Z's acquisition, shares spiked 938 percent. To allow artists to take full advantage of these services, however, Congress must get rid of the compulsory licensing scheme, and the [Justice Department](#) must stop exempting blanket licensing regimes from antitrust scrutiny.

Imagine a future with website services that list songs, their available uses and prices, all available to commercial users at a mouse click. Imagine platforms enabling easy online negotiations of licenses. The result will be a more efficient music licensing system, while listeners will have the same ease of streaming and buying music. Imagine the benefit to music lovers when songwriters are finally treated fairly so that the next generation of songwriters does not disappear. It's easy if you try.

*Aloe Blacc is a Grammy-nominated singer, songwriter and artist best known for the hit singles "I Need a Dollar" and "The Man." He sings on and co-wrote the hit song "Wake Me Up" by Avicii.*

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