

# LET IT BE? THE CHALLENGES OF USING OLD DEFINITIONS FOR ONLINE MUSIC PRACTICES

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## I. INTRODUCTION

The music industry, once robust and profitable, is in the midst of a crisis. Its prevailing business model struggles to keep up with changing technology in a world in which the Internet has become music's central medium. More consumers are listening to music on the web than ever before, mostly in the form of streaming web radio stations and digital downloads of their favorite artists. For example, about fifty-five million Americans listen to internet radio every week, up twenty-six percent from last year alone.<sup>1</sup> This shift away from traditional music channels, such as radio stations and record stores, has forced the industry to completely re-conceptualize its business model. Record labels, publishers, and artists are struggling to earn a profit in the music industry's new online age.

The intellectual property rights attached to music have always been complex because every song actually contains two separate protectable works: the underlying musical composition and the sound recording. Consequently, various separate and distinct rights organizations have formed to collect royalties and licensing fees for each of the rights embodied in a single song. These organizations formed with generally shared understandings of the various ways music could be used and the rights that those uses implicated. As the Internet becomes music's primary medium, however, new uses have arisen for which the old definitions do not so directly apply. Consequently, this system of rights administration has become ever more complex.

This Note offers an understanding of the current system of internet music-rights administration in light of recent case law and developments in industry practices in the digital space. Part II will serve as a primer on the basics of music copyright, explaining the divergent rights involved in a piece of music and tracing the development of the collective rights organizations that formed to administer these rights. Part III will provide a background on two major points of controversy in the area of digital rights for music: 1) the problem of "double dipping" as it has arisen in the context of downloads and online streaming and 2) the issue of how much the licenses