You Gotta Pay to Play: An Analysis of Copyright Infringement Actions Brought by Performing Rights Organizations

Ben Thompson

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*Benjamin S. Thompson

I. Introduction

The Copyright Act of 1976 lends an enormous amount of discretion to the courts in assessing statutory damages where infringement is found.\(^1\) It serves “to provide the courts with reasonable latitude to adjust recovery to the circumstances of the case.”\(^2\) In an infringement action, the copyright owner elects to recover either actual damages, or statutory damages, before the judgment is rendered.\(^3\) If statutory damages are opted, they may be assessed anywhere from $750 to $30,000 per infringement.\(^4\) If the court finds the infringer acted willfully, the ceiling rises to $150,000 per infringement.\(^5\) Conversely, if the infringement was committed innocently, the floor lowers to $200 per violation.\(^6\)

For the sake of efficiency and convenience, many musical artists’ copyrights are protected and enforced by Performing Rights Organizations (PROs), such as ASCAP, BMI, and SESAC. These entities “collect[ ] license fees on behalf of songwriters, composers and music publishers and distribute[ ] them as royalties to those members whose works have been performed.”\(^7\) In addition, they possess the power to sue for copyright infringement on behalf of the artists they represent.\(^8\)

Naturally, many actions brought by PROs for copyright infringement are similar. They are preceded by numerous attempts to provide the infringing business with a license. The PRO

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\(^1\) See generally 17 U.S.C. § 504(c).
\(^3\) 17 U.S.C. § 504(c)(1).
\(^4\) Id.
\(^5\) Id. § 504(c)(2).
\(^6\) Id. Neither “willful” nor “innocent” is defined in the act, but determination standards have developed in common law, discussed infra.
\(^7\) BMI.com, bmi 101, http://www.bmi.com/about/?link=navbar (last visited Nov. 25, 2008).
will send an investigator to the business to make record of the songs played, and, when all else has failed, a complaint is filed. As a practical matter, the suit will often contain approximately ten instances of a violation. The plaintiff will usually opt for statutory damages, as the potential recovery is much greater. These damages determinations are thrown into the hands of the court, which then has the power to absolutely crush a business that has persistently frustrated the rights of musical artists. This was the case in Broadcast Music, Inc. v. H.S.I., Inc. d/b/a Buckaroo’s.

II. BMI v. H.S.I., Inc.

Buckaroo’s was a music venue located in Heath, Ohio, approximately 35 miles west of Columbus. They hosted live music, DJs, karaoke, and played a juke box, while never obtaining a license from BMI. Between March of 2002 and February of 2006, BMI sent over 33 letters to Buckaroo’s offering a license to play the copyrighted songs. In March of 2004, a cease and desist letter was sent to the owner, Charles Capuano. On September 8, 2005, BMI sent investigator Barry Siedel to the venue to document the songs played from BMI’s catalog of music; he recorded 13 that evening.

BMI filed suit for copyright infringement on June 19, 2006 against Buckaroo’s and Charles Capuano, individually. Nearly a year later, the plaintiffs submitted a request for admissions to which defendants never responded. They then “moved for summary judgment,
requesting an injunction, $39,000 in statutory damages, and reasonable attorney fees and costs.”

This case primarily discusses two aspects of copyright infringement: (1) vicarious liability of an individual owner, and (2) statutory damages calculation. These concepts are rich in both statutory and common law. Before exploring them more deeply, we must first discuss their role in this case. The determination methods applied were nothing new, but the opinion casts novel logic on them, and is an excellent commentary on the process.

A. Vicarious Liability of an Owner

Of course, before an owner of a business can be held vicariously liable for infringement, there must first be a finding of liability, in general. The BMI v. H.S.I., Inc. court used a common set of factors to establish this: “(1) the originality and authorship of a composition; (2) a valid copyright under the formalities of the Copyright Act; (3) claimant's ownership of the copyright at issue; (4) defendant's public performance of the composition; and (5) defendant's failure to obtain permission from the claimant for such performance.” The first three enumerations were easily satisfied; plaintiffs owned a valid copyright under the Copyright Act, and the originality nor authorship of any of the compositions were in dispute. Additionally, there was no question that Buckaroo’s had not obtained a license from BMI. The defendants argued that the plaintiffs did not proffer sufficient evidence that Buckaroo’s publicly performed any of BMI’s licensed music. However, this flew in the face of FRCP Rule 36(a)(3), which provides that an

21 Id.
22 Id.
unanswered matter in a request for admissions is plainly admitted. Defendants had failed to answer a request for admissions entirely, and had thus conceded public performance of the compositions in question by default admission. So, the general liability factors were satisfied, copyright infringement had taken place, and the court moved on to the question of vicarious liability of Buckaroo’s owner, Charles Capuano.

The Copyright Act is silent on liability for infringement committed by another. However, common law allows this vicarious action, and has established a simple, two-step test to determine its existence. A corporate officer may be jointly and severally liable for his corporation’s copyright infringement if he (1) has the right and ability to supervise infringing activity, and (2) has a direct financial interest in such activities. Capuano admitted he had the right and ability to supervise the music played and performed at Buckaroo’s, and that he had a direct financial interest in these activities.

The path to both general liability and vicarious liability was neatly cleared for the court. There was little to no difficulty in determining the answers to the questions, outlined by previous cases, that copyright infringement had taken place at Buckaroo’s, and that its owner was jointly and severally liable for this infringement. The greater question remained of how to determine the damages assessed against them.

23 FED. R. CIV. P. 36(a)(3). Defendants additionally asserted that requesting an admission that was core to the litigation was beyond the scope of the Rule, and that it was unrealistic to expect that defendant would “admit away her case.” This was wholly rejected, as it was not submitted in a motion to amend or withdraw under FRCP 60(b), but rather in a reply brief. As well, the argument was based on antiquated civil procedure doctrine that was revised in 1970, and clearly illustrates the proper way to amend or withdraw admissions.


25 MGM Studios v. Grokster, 545 U.S. 913 (2005) (holding that a peer-to-peer network distributing copyrighted music and causing third parties to infringe was vicariously liable for the infringement); but see Perfect 10 v. Google, 416 F.Supp.2d 828 (C.D. Cal. 2006) (providing limitations to vicarious liability through a “server test,” although they afforded no protection to Capuano).
B. Determination of Damages

The plaintiffs sought a permanent injunction against further infringement, $39,000 in statutory damages, and recovery of reasonable attorney fees and costs. The bulk of discussion in the case was dedicated to the calculation of statutory damages, but the additional recovery of injunctive relief and fees is quite important.

1. Injunctive Relief

A finding of past infringement, coupled with a substantial likelihood that the infringer will continue to do so, justifies the issuance of a permanent injunction. Having already determined past infringement, the recalcitrant conduct of the defendants was enough to persuade the court to issue a permanent injunction. “Awarding damages without injunctive relief would amount to a ‘forced license to use the creative work of another.’” Making this matter easy, the defendants conceded that injunctive relief was appropriate, and the court permanently enjoined them from playing BMI’s copyrighted music without a license.

2. Statutory Damages

In determining the appropriate amount of damages to be assessed, the courts are oftentimes working backwards. “They are looking at how much the defendant ought to pay, and then they find a calculation that gives them that result.” Although this may be the case, there are several determinants courts use to arrive at a figure, and oftentimes the method is very much the same. In *BMI v. H.S.I., Inc.*, the determination began by reviewing specific enumerations provided by common law: (1) whether defendants’ infringement was willful, knowing, or

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innocent; (2) defendants’ profit from the infringement; (3) plaintiffs’ loss from the infringement; and (4) deterring future copyright violations by these defendants and similarly situated businesses.\textsuperscript{31}

Willful infringement, having no true definition in the Copyright Act, is also rooted in common law. This court, as have others, relied on an excellent explanation given by \textit{Nimmer & Nimmer}:

\begin{quote}
‘[W]illfully’ means with knowledge that the defendant’s conduct constitutes copyright infringement. Otherwise, there would be no point in providing specially for the reduction of minimum awards in the case of innocent infringement, because any infringement that was nonwillful would necessarily be innocent. This seems to mean, then, that one who has been notified that his conduct constitutes copyright infringement, but who reasonably and in good faith believes the contrary, is not ‘willful’ for these purposes.\textsuperscript{32}
\end{quote}

This very clearly delineates the distinction among “willful,” “knowing,” and “innocent.” In addition to the 33 letters that BMI sent to Buckaroo’s, and the cease and desist letter sent to Capuano, BMI called Buckaroo’s some 55 times to communicate the same message.\textsuperscript{33} The defendants admitted that they received these communications, and the court held that their behavior constituted willful infringement.\textsuperscript{34}

The plaintiffs suggested that each of the 13 infringements be assessed a penalty of $3,000, amounting to a total of $39,000.\textsuperscript{35} This request was supported by cases that had done basically the same.\textsuperscript{36} The defendants sought an award of between two and five times the unpaid

\begin{itemize}
\item \textsuperscript{32} \textit{MELVILLE B. NIMMER & DAVID NIMMER, 3 NIMMER ON COPYRIGHT § 14.04(B)(3) (1996); see also Princeton Univ. Press v. Michigan Document Serv., Inc., 99 F.3d 1381, 1392 (6th Cir., 1996).}
\item \textsuperscript{33} \textit{BMI v. H.S.I., Inc.}, No. C2-06-482 at 5.
\item \textsuperscript{34} \textit{Id.}
\item \textsuperscript{35} \textit{Id.}
\item \textsuperscript{36} \textit{See Sailor Music}, 867 F.Supp. at 570 (awarding $2,000 per song played); \textit{see also Jobete Music Co., Inc.}, 285 F.Supp.2d 1077 (awarding $4,000 per song played).
\end{itemize}
licensing fees of $2,232, for total damages ranging from $4,464 to $11,160.\textsuperscript{37} The court drew from both of these, but denied the logic of each party in coming to its conclusion.

The plaintiffs’ mode of measurement was viewed as “arbitrary, flawed, and inconsistent with the underlying purpose of the Copyright Act.”\textsuperscript{38} This was based on two points asserted by the court. First, the band or DJ, along with the patrons’ taste in music, would influence the number of violating songs. The investigator, on the night that he visited, might have heard 100 infringing tunes, or he might have heard none.\textsuperscript{39} Second, this method is entirely dependant on how long BMI is willing to pay the investigator to sit at the bar and listen. If he had visited for multiple nights or weeks, he could document 100s or 1000s of infringing songs. In this instance, a per song assessment basis could result in millions of dollars, which would clearly be a windfall for the plaintiffs, disproportionate with the underlying harm.\textsuperscript{40}

The court said that “unpaid licensing fees ‘actually provide a superior yardstick than total infringements for measuring appropriate statutory damages.’”\textsuperscript{41} This more accurately represented the loss to plaintiffs, and many other courts have used this is as their basis for assessment. However, defendants’ suggestion of two to five times the license fee was insufficient. The court opined that the judgment must be more than just the cost of obtaining a license had they done so initially. It must “put [them] on notice that it costs less to obey the copyright laws than to violate them.”\textsuperscript{42} The defendants were on notice of their needed license for

\begin{itemize}
\item \textsuperscript{37} BMI v. H.S.I., Inc., No. C2-06-482 at 5.
\item \textsuperscript{38} Id.
\item \textsuperscript{39} Id.
\item \textsuperscript{40} Id. at 6.
\item \textsuperscript{41} Id. (quoting Broadcast Music, Inc. v. Star Amusements, 44 F.3d 485, 488 (7th Cir., 1995), a case involving a jukebox distributor that operated a volume of jukeboxes without a license, and suffered damages against them for $140,000).
\end{itemize}
four years, which would have cost them $8,928. The court multiplied this by three, totaling $26,784 in statutory damages.\(^{43}\)

3. Attorney Fees and Costs

The Copyright Act also gives the court discretion in awarding fees to the prevailing party.\(^{44}\) The Supreme Court established a list of relevant factors to determine whether such an award is appropriate.\(^{45}\) These factors include the frivolousness of the suit, the motivation of the litigants, the objective reasonableness of both the factual and legal components of the suit, and “the need in particular circumstances to advance considerations of compensation and deterrence.”\(^{46}\) Because of the defendants’ willful infringement, the court granted the motion for fees in the amount of $7,594 and $598.40 in costs.\(^{47}\)

In the end, BMI walked away with a permanent injunction against Buckaroo’s and a $34,976.40 judgment, including all damages, fees, and costs. Buckaroo’s was left staggering with only the possibility of spending more on licenses from BMI, ASCAP, and possibly SESAC before they could continue to operate. This would serve as a fatal blow to Buckaroo’s, which promptly shut its doors to all.

III. Discussion

Needless to say, there is often tension between the PROs and businesses that somehow incorporate copyrighted music into their business model. The public perception of this is not always in the PROs’ favor, and small businesses are often portrayed as being “victimized by a nationwide crusade for music licensing rights.”\(^{48}\) As well, the organizations are not always

\(^{44}\) 17 U.S.C. § 505.
\(^{46}\) Id. (quoting Lieb v. Topstone Industries, Inc., 788 F.2d 151, 156 (3d Cir., 1986)).
viewed as benefiting all musicians uniformly. There have also been antitrust suits brought against the blanket licensing practices of the PROs, although they have been unsuccessful.

It is important to note that any perceived badgering and litigation by the PROs is done on the behalf of artists, and is pursued solely for the purpose of collecting money from those already making money on copyrighted works. It is the equivalent of the classroom monitor, with a federal court acting as the principal’s office. And non-abiders have never liked the classroom monitor. Additionally, because ASCAP and BMI are non-profit organizations does not mean they operate as volunteers. To police and enforce even a small corner of the Copyright Act, protecting hundreds of thousands of musical artists, costs millions of dollars per year.

A comprehensive discussion of the benefits and maladies of the PROs would produce an epic-length treatise. Here, we will examine the instance of BMI v. H.S.I., Inc., assessing its methodology, effect and impact, and its role in the interplay among PROs, musical artists, businesses, and the law.

A. Vicarious Liability of an Owner

The nature of such an action, where a business is overseen by a small management team or even one owner, kindly welcomes the vicarious liability doctrine. There is no express

49 See Amanda Scales, Sola, Perduta, Abbandonata: Are the Copyright Act and Performing Rights Organizations Killing Classical Music?, 7 VAND J. ENT. L. & PRAC. 281 (Spring 2005) (arguing that classical composers subscribe to PROs with hope of royalties that are likely to never come to them); see also Bob Gray, BMI: Big Money in Broadcast Music, Inc., Texas Heritage Music Foundation, May 2005, http://www.texasheritagemusic.org/special_stories/BMI%20%20Solutions.pdf (presenting an extremely biased perspective on the struggle of less well-known musicians, while raising some interesting points, discussed infra).

50 See Broadcast Music, Inc. v. Columbia Broadcasting System, Inc., 441 U.S. 1 (1979) (holding that the blanket license practices of the PROs is not a per se antitrust nor price-fixing violation, as licensing alternatives, albeit more expensive and complex, are nonetheless available).

51 A search on Westlaw of actions since 1987 where BMI was the plaintiff resulted in over 100 cases.

52 See Matt Jackson, One Step Forward, Two Steps Back: An Historical Analysis of Copyright Liability, 20 CARDOZO ARTS & ENT. L. J. 367, 386–87 (2002) (quoting a SESAC representative, “I have never once met the so-called ‘innocent infringer’ who, when the matter was called to his attention, did not sign an appropriate license . . .”).

53 See Gray, supra note 49 (blatantly overlooking this simple fact in stating that “BMI claims that eighty-four cents of each dollar collected is forwarded to its membership. . . . If this is non-profit, break me off a chunk.”).
provision outlining vicarious liability in the Copyright Act. Yet, there are many common law
tests that are applied in piercing the corporate veil, and many of those would have produced the
same result. Here, the court followed a string of logic based in *MGM Studios v. Grokster*.

There, the defendant distributed software that enabled its users to infringe by transferring billions
of copyrighted files across peer-to-peer networks without a license. Although that court held
Grokster liable on an inducement theory, they noted MGM’s vicarious liability argument, which
was largely based on *Shapiro, Bernstein & Co. v. H.L. Green Co.*, (hereinafter *Shapiro*).

In *Shapiro*, the defendant was a record store that was selling bootleg copies of albums
containing copyrighted works owned by the plaintiffs. They too were made aware of their
violation prior to the lawsuit. In finding vicarious liability applied to them, the court stated that,
“in many cases, the party found strictly liable is in a position to police the conduct of the
‘primary’ infringer.” They foresaw the ability for a business to “shield[ ] their own eyes from
the possibility of copyright infringement, thus creating a buffer against liability while reaping the
proceeds of infringement.”

The *BMI v. H.S.I., Inc.* court was faced with a situation very similar to that predicted by
*Shapiro*. Charles Capuano, while operating through H.S.I., Inc. and Buckaroo’s, was in direct
control of their conduct. In order to avoid a damages assessment that could potentially fall on an

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54 See Van Dorn Co. v. Future Chemical and Oil Corp., 753 F.2d 565 (7th Cir., Jan. 23, 1985) (“it must be shown
that it is so controlled and its affairs so conducted that it is a mere instrumentality of another, and it must further
appear that observance of the fiction of separate existence would, under the circumstances, sanction a fraud or
promote injustice.”); see also Lowendahl v. Baltimore & O.R. Co., 247 A.D. 144 (N.Y.A.D. 1 Dept., 1936)
(establishing the “Lowendahl test,” which reviews if the corporation had “no separate mind, will or existence of its
own; and . . . [whether] [s]uch control [was] used by the defendant . . . to perpetrate the violation of a statutory or
other positive legal duty . . . in contravention of plaintiff's legal rights.”).
56 Id. at 923.
57 Id. at 931 n.9.
59 Id. at 309.
60 Id.
empty or bankrupt account, Capuano was personally tied to the infringement activity. This was appropriate under the circumstances, particularly considering Capuano’s willful disregard of the law. This better ensured full compensation to the injured plaintiffs, and will more effectively deter future violations by small businesses in a similarly situated environment.

B. Damages Assessment

It is best to review *BMI v. H.S.I., Inc.* strictly under its facts. Buckaroo’s handled the entire situation with perfect impropriety. “Sometimes, defendants think that if they don’t acknowledge anything, the action will simply go away.” 61 From beginning to end, this appears to have been the case with Buckaroo’s. Near the end of the trial, before the decision was rendered, defendants’ attorney withdrew from the case, citing his clients’ unresponsiveness as his primary reason. 62 But this is not the first action, nor will it be the last, where a defendant so irresponsibly neglects his duties under the Copyright Act. *BMI v. H.S.I., Inc.* serves as guidance for actions of this type.

1. Calculation

“It is important to remember that judges are people too, and are influenced by facts and circumstances.” 63 While the true amount that the defendant is able to pay may come into the picture, BMI believes that it has more “to do with the judge’s mental state, and how much you’ve been able to convince him that the defendant is a wrongdoer.” 64

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62 Id.
64 Id.
licensing fees is a common assessment method in awarding damages of this type.\textsuperscript{65} *BMI v. H.S.I., Inc.* has since been expressly followed in its reasoning.\textsuperscript{66}

The legislative history of the Copyright Act shows that the drafters may have fully contemplated the amount of leeway the courts would have in determining an appropriate damages award. Congress intended to give the courts “specific unambiguous directions concerning monetary awards.”\textsuperscript{67} While the mode of calculation may not be specific at all, directions as to when statutory damages are available is explicitly clear in the Copyright Act.\textsuperscript{68} This allows the courts “reasonable latitude” in determining the appropriate award based on the “circumstances of the case.”\textsuperscript{69}

All things considered, the circumstances of this case called for a statutory assessment that would set an example of the consequences of such willful misconduct. Buckaroo’s and Capuano clearly avoided taking any responsibility for the appropriate licensing payments of what constituted nearly their entire business model. Capuano would not even show up to scheduled depositions.\textsuperscript{70} It was quite easy to spell out that defendants were “wrongdoers.”

Still, the court had to carefully balance an appropriate award on top of many interests, several of which directly compete. While there is a strong desire to incentivize proper licensing, to punish willful wrongdoers, and to adequately compensate the copyright owners who are


\textsuperscript{66} See generally M.L.E. Music Sony/ATV Tunes, LLC v. Julie Ann’s, Inc., No. 8:06-cv-1902-T-17-EAJ (M.D. Fla., June 9, 2008). Interestingly, this case misstates the facts of *BMI v. H.S.I., Inc.*, citing a defense by Capuano that he thought the performers were responsible for the copyright licenses. Capuano never asserted this defense, and would have had trouble doing so, considering the 88 documented communication attempts made by BMI notifying him of his infringement.


\textsuperscript{68} See generally 17 U.S.C. § 504(c).


\textsuperscript{70} Memorandum of Plaintiffs in Support of Motion to Compel and for Sanctions, BMI v. H.S.I., Inc., No. C2-06-482 (S.D. Ohio, Nov. 26, 2007) (stating that Capuano later presented a doctor’s note which claimed that he was unavailable for his deposition, and was not likely to be available in the near future).
harmed; the award must be reasonable so that Congress does not scrutinize the power the courts are given, and it must also be a feasible amount which the plaintiffs are likely to actually recover.

This presents a segue into the implications that this decision, and many like it, have on society, the music industry, and businesses, in general. From the court’s perspective, this case was cleanly presented with an outcome that could have announced itself before the complaint was filed. But they are not always so simple.

2. Impact and Public Policy

“Paying for the right to play music is not something you think about when you start in this business.”71 Certainly, by now, all in the live music industry should be familiar with the PROs and the requirements for licenses if performance of copyrighted music is intended. Yet, it may not be so obvious to other businesses, where music serves only as an auxiliary component. For instance, a gym or fitness center might not conceive of paying for the songs it plays during workout times, or a doctor’s office may not consider the copyrighted performances that it pipes into its lobby. Justice Holmes gave us perfectly sound reasoning on this issue, “If music did not pay, it would be given up.”72 It is a “part of a total for which the public pays.”73

But small business owners do not often read Supreme Court cases. As well, while they look to save money, it is unlikely to even occur to them to speak to someone familiar with intellectual property law who might advise them accordingly. While ignorance is no excuse, particularly with law that has existed for well over a century, it doesn’t help to lessen the surprise of a PRO claiming you owe hundreds, possibly thousands, of dollars in copyright license fees.

71 Kruk, supra note 48 (quoting Neal Pascale, owner of the venue that was the subject of an ASCAP infringement suit).
73 Id.
BMI protects millions of compositions, and sometimes struggles to deflect the notion that they represent “the rich guys against the little guys in the middle of nowhere.”  

Bob Gray raises a valid point that PROs must be careful not to neglect the lesser-known artists. He warns of the damage that would come to music if smaller venues are put out of business by licensing fees, noting that these venues are often the sole income of smaller musicians who are paid to perform there.

The PROs, however, operate “to achieve economies of scale.” “Legally, there is no distinction” between a gym and a music venue. Practically, PROs generally distinguish among these types of organizations, and do not require the same license fee from each. As well, the recoveries they receive in infringement actions do not go to the plaintiffs that are named in the case, they are “representative infringements.” This means that a pro rata share of each recovery goes to the entire catalog of protected artists, based on a number of calculations that are run to determine the appropriate percentage payout to each artist. Just as the BMI v. H.S.I., Inc. court considered the number of documented infringements an arbitrary figure for damages assessment, so would it be arbitrary to assign recoveries solely to the plaintiffs listed in each case. PROs act as a station for copyright licenses that eases the burden of businesses to acquire them. Imagine a system where every business had to seek a license from each individual artist it sought to play over its speakers. Imagine the cost of policing the copyright of an artist if she had to do this herself. These are the rights and requirements of the Copyright Act, not of the PROs.

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74 Saffer, supra note 9.
75 See Gray, supra note 49.
76 Id.
78 Saffer, supra note 9.
79 Id.
80 Id.
The discretion afforded to the courts through the Copyright Act signifies the importance of art and music in our society. It provides the ability to deter future violations, to punish wrongdoers, and to compensate artists where their work has been exploited without permission. If courts awarded damages unreasonably, either in excess or de minimis, their actions would quickly be called into legislation, and appropriate revisions would be made. To date, this has not occurred. In fact, revisions made to the Act have only expanded the range of damages that can be awarded.\footnote{See S. REP. NO. 100-352, § 7(a), at 43 (1988), reprinted in 1988 U.S.C.C.A.N. 3706, 3741 (addressing the Berne Convention Implementation Act of 1988).} There are many nuances of public policy that are unresolved in this area. In the meantime, PROs may possess the most pragmatic way to meet the interests of businesses, musical artists, and the Copyright Act.

\textbf{IV. Conclusion}

\textit{BMI v. H.S.I., Inc.} does set an example for businesses to follow. The court acted well within the confines of reasonability in determining an appropriate damages amount, and deciding who should pay them. It does not address the scope of PROs activities, nor does it address a different set of factual circumstances, as it should not. Those issues, if not already determined, will surely come up on another day. This court responsibly followed the Copyright Act, and provided another foundation for all to rely on. Above all, the case teaches us this lesson: there may be “no business like show business,”\footnote{IRVING BERLIN, There’s No Business Like Show Business, in ANNIE GET YOUR GUN (1946).} but where there is show business without copyright license, quite simply, there will be no business.