
**Before the
U.S. Copyright Office
Library of Congress**

In the Matter of:

Section 512 Study: Notice and
Request for Public Comment

Docket No. 2015 -7

**JOINT SUPPLEMENTAL COMMENTS OF THE AMERICAN ASSOCIATION
OF INDEPENDENT MUSIC AND FUTURE OF MUSIC COALITION IN
RESPONSE TO REQUEST FOR EMPIRICAL RESEARCH**

The American Association of Independent Music (“A2IM”) and the Future of Music Coalition (“FMC”) are pleased to provide the following study results in response to the Copyright Office’s request for empirical research in connection with the Office’s Section 512 Study, submitted by Kevin Erickson of FMC.

EXECUTIVE SUMMARY

A2IM and FMC asked independent record labels to respond to a survey asking about their experiences with unauthorized online uses of their sound recordings and their experience with the DMCA. Based on the responses to that survey:

- 87% of the respondents knew of online infringements of their works, even though 30% did not actively search for infringements of their works.
 - 65% of the respondents who took action to have the infringing works removed from an online source reported that either it took longer than 24 hours for the infringing work to be removed or that the infringing work was never removed.
 - 68% of the respondents reported that an infringing copy of their music reappeared on the same service even after that music had previously been taken down—the so-called “whack-a-mole” problem.
 - 65% of those that did not actively search for unauthorized use attributed the reason to not having enough resources to search for infringing activity. In addition, 30% of the respondents also stated that they did not continue searching for infringements because previous enforcement efforts had been unsuccessful.
 - The three most frequently cited obstacles faced by the respondents in enforcing their rights online include that (i) they don’t have enough resources to pursue infringement of their works. (ii) they can’t find the contact information to request takedown, (iii) the sites ignore notices or other complaints.
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Survey Methodology

The survey consisted of 10 questions, which were either in the form of multiple choice, or “check all that apply.” (See appendix for survey questions). Participants provided anonymous information about their companies’ experiences and typical practices. Data collection via Survey Monkey began on March 8, 2017 and closed March 16, 2017.

Invitations were distributed to A2IM’s independent label members and additional independent labels from FMC’s networks. In all, 73 companies responded to the survey; all but one identified themselves as from a company that derives income from sound recordings. Because a single company can release recordings under multiple label names, or house multiple label divisions, this survey does not attempt to quantify just how many labels are represented in the dataset.

Risks and Limitations

Research that uses web-based surveys can be implemented quickly, and allows for the automation of much of the data processing. We do, however, recognize the inherent limitations of such surveys. We recognize the problem of defining our population of study, as companies that comprise the independent label sector are very diverse in their scale, operations, goals, and business models. Some labels operate as master rights owners, others as licensees, and many are operated by artists themselves. There can be no complete and accurate count of precisely how many independent labels exist in the US. Between our two organizations, we are able to access insights from a very broad array of companies, from tiny businesses focused on documenting local music communities to large and internationally recognized firms with broad commercial appeal. Yet because this survey does not include collection of detailed demographic information, we are unable to examine differences between different kinds of labels.

Additionally, we recognize the risk of self-selection bias in a survey like this. It is possible that labels who face perennial frustrations with the DMCA may be most likely to feel compelled to respond to surveys about their notice and takedown practices. Alternatively, it is possible that companies who feel most invested in leaving the DMCA untouched might feel especially motivated to respond. We made it clear in our communications to potential participants that we wanted to hear from as many labels as possible.

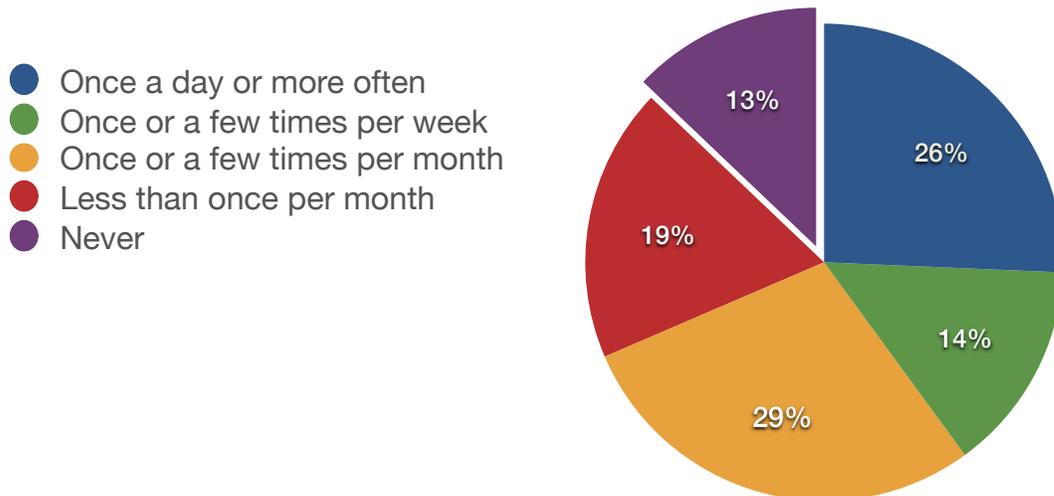
Finally, more study is needed to fully assess practices of services that use proprietary audio identification technologies, how well independent labels are served by this, and the terms under which independent labels are allowed to access such systems. This survey focuses on unlicensed content; it does not speak directly to certain issues with platforms where content is licensed, but these licenses may be procured from reluctant rightsholders at below-market rates because of the shortcomings of current §512 implementation.

FINDINGS

Awareness of Online Infringing Activities

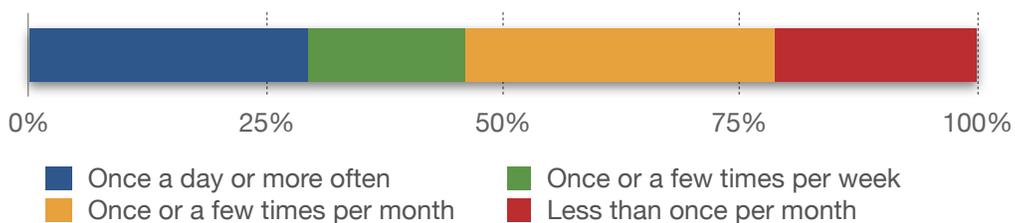
A supermajority of companies surveyed are aware that their music is being infringed online. 87% of the respondents (61/70) reported that they knew of unauthorized uses of their works in any typical 3 month period.

FREQUENCY WITH WHICH YOU FIND OR LEARN OF RECORDINGS YOUR COMPANY OWNS OR ADMINISTERS AVAILABLE FROM ONLINE SOURCES YOU BELIEVE TO BE UNAUTHORIZED? (N=70)



Of those aware of online infringement of their works 46% (28/61) knew their works were being infringed at least weekly.

FREQUENCY OF KNOWN UNAUTHORIZED USE (N=61)



This awareness existed even though 30% of the companies surveyed (21/69) report that they do not proactively search for online infringements of their works.

Impact of Take Down Requests

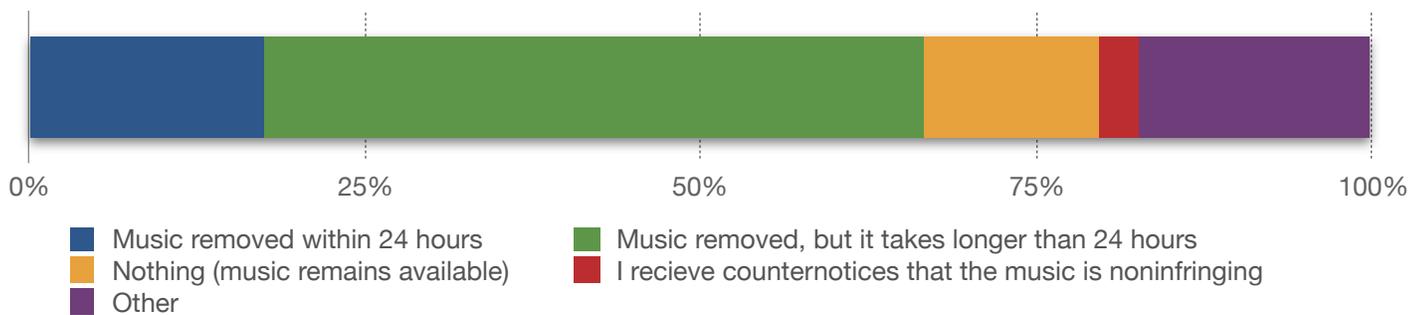
Upon discovering an unauthorized use, different companies may choose from a range of possible responses based on a variety of factors. (Answers do not add to 100% because a company may have more than one typical response.)

WHAT DO YOU OR THOSE SEARCHING ON YOUR BEHALF TYPICALLY DO WHEN THEY FIND YOUR MUSIC AVAILABLE FROM UNAUTHORIZED SOURCES? (N=67)



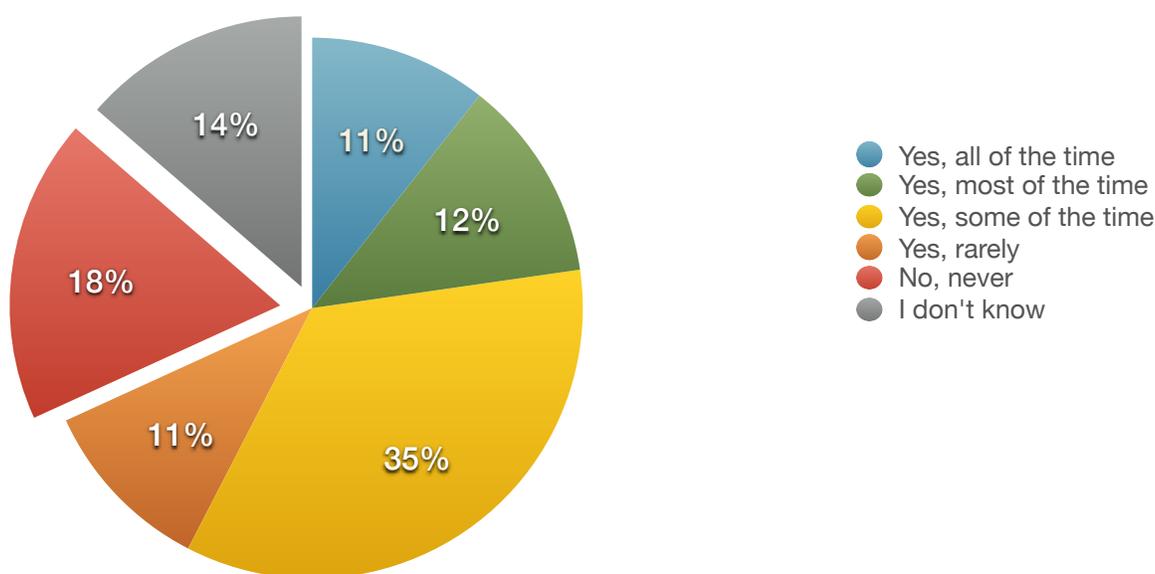
18% of those surveyed (12/66) reported an infringing work was removed within 24 hours of sending a takedown notice or taking similar action. Conversely, a majority (51.5% - 34/66) reported that it took over 24 hours for the infringing work to be removed from the service after notice, and an additional 13.6% (9/66) reported that the infringing work was never removed.

WHAT RESULTS MOST TYPICALLY OCCUR AFTER YOU TAKE STEPS REGARDING THE UNAUTHORIZED MUSIC AVAILABLE? (N=66)



In addition, 68% of the respondents (45/66) reported seeing infringing copy of their work reappear on the same service.

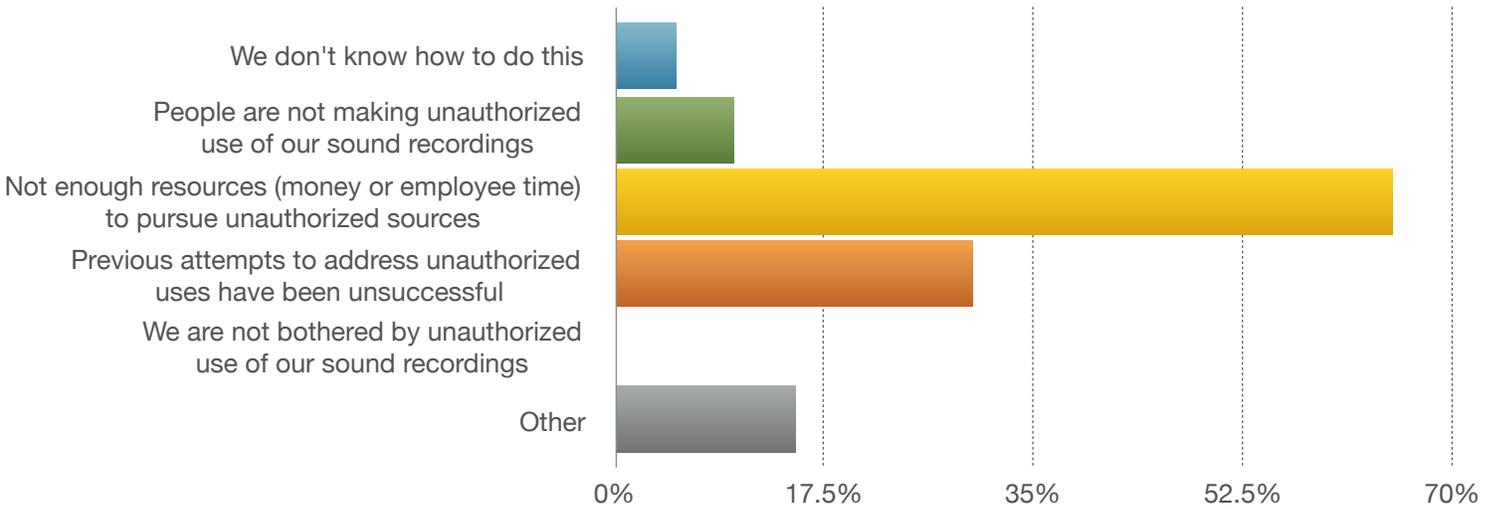
HAVE YOU HAD MUSIC THAT WAS TAKEN DOWN, BUT THEN REAPPEARS ON THE SAME SOURCE (WEBSITE, APP, ETC)? (N=66)



Obstacles Faced by Companies in Using DMCA Take Down Processes

Of those companies surveyed that do not actively search for unauthorized uses of their works, the most frequent reasons cited for not doing so included not having enough resources to engage in such enforcement activities (65% - 13/20) and that previous attempts to address unauthorized uses had been had been unsuccessful (30% - 6/20). No companies selected the response “we are not bothered by unauthorized uses of our sound recordings”, though one respondent used the “other” response box to draw a more subtle distinction: “as long as they’re not monetizing it (or using it to sell products), we’re not particularly concerned.” (Values do not add to 100% because multiple answers were permitted.)

WHY DOES YOUR COMPANY NOT ACTIVELY SEARCH FOR UNAUTHORIZED USES? (N=20)



Among all respondents, the three most frequently cited obstacles faced by companies in their attempts to remove their music from unauthorized services include that (i) they don't have enough resources to pursue infringement of their works (77% - 51/66) (ii) they can't find the contact information to request takedown (51% 34/66) and (iii) sites ignore their takedown notices or other complaints (45% 30/66).

WHAT ARE THE MOST COMMON OBSTACLES YOU FACE IN TRYING TO REMOVE YOUR COMPANY'S MUSIC FROM UNAUTHORIZED SITES? (N=66)



Analysis and Recommendations

These results confirm that independent labels face significant practical challenges in using the notice and takedown system to exercise meaningful control over where and how their sound recordings are used. When they use the process, they may encounter frustrations not only with the near term results but also with the ineffectiveness of the notice and takedown process to significantly deter infringing activity. As we have seen, a significant portion of independent labels surveyed have abandoned enforcement online, but generally not because they don't view unauthorized use as a problem.

As FMC noted in its additional comments previously submitted, care should be taken in developing copyright policy to align the interests of those engaged in cultural production and those that listen and engage with that music, as ultimately both are interested in stimulating artistic creativity for the public good. However, these results suggest that current implementation of DMCA has fallen short of that goal.

Several non-legislative and legislative solutions have been proposed by various actors within the music community to help address these challenges. In particular, we encourage you to consider possible solutions referenced in both the FMC and A2IM filings that address the unique needs of the independent music sector, which is responsible for sustaining and advancing so many of America's precious musical traditions.

Appendix: Survey Questions

1.Does your company derive income from sound recordings, such as through sales of physical products like CDs, through digital downloads, or through ad-supported or paid streaming services?

Yes

No (end survey)

I don't know. (end survey)

2.During a typical 3-month period, which of the following best describes the frequency with which you find or learn of recordings your company owns or administers available from online sources you believe to be unauthorized (i.e. they do not pay you or your designated agents for use of your recordings)

Never

Less than once per month

Once or a few times per month

Once or a few times per week

Once a day or more often

3.Do you actively try to find (on the internet) unauthorized uses of sound recordings that your company owns or administers? (Check all that apply)

Yes, my company does this directly

My company directly employs, relies on or otherwise engage other people, vendors, programs or organizations to do this on our behalf

No

I don't know

**4. Why does your company not actively search for unauthorized uses? (Please check all that apply)
(asked only of those who answered “No” on question 3)**

We don't know how to do this.

People are not making unauthorized use of our sound recordings

We are not bothered by unauthorized use of our sound recordings

Not enough resources (money or employee time) to pursue unauthorized sources

Previous attempts to address unauthorized uses have been unsuccessful

Other (please specify)

5. How many hours per week does your company spend searching for unauthorized uses of your sound recordings?

0

<5

6-10

11-15

My company employs at least one full-time employee to devote to anti-theft efforts

6. On an annual basis, how much money does your company spend on anti-theft efforts?

\$0

\$1-\$5000

\$5,001-\$10,000

\$10,000-\$50,000

>\$50,001

7. What do you or those searching on your behalf typically do when they find your music available from unauthorized sources? (Check all that typically apply)

Send DMCA notice to service where that music was found

Contact distributing label or entity (if distributed by another company)

Contact the unauthorized site but not with a standard DMCA takedown request

Nothing

Other (please specify)

8. What results most typically occur after you take steps regarding the unauthorized music available?

Nothing (music remains available)

The unauthorized music is removed promptly (within 24 hours)

The unauthorized music is removed, but takes longer than 24 hours

I receive counterclaims that the music is non-infringing

Other (please specify)

9. Have you had music that was taken down, but then reappears on the same source (website, app, etc)

No

Yes, rarely.

Yes, some of the time.

Yes, most of the time.

Yes, all of the time.

I don't know

10. In your recent experience, what are the most common obstacles you face in trying to remove your company's music from unauthorized sites?

Can't find where to contact site to request takedown

Can't determine where sites are located

Sites ignore notices or other complaints

Not enough resources (money or employee time) to pursue unauthorized sources

Music reappears nearly immediately after it has been removed

Other (please specify)