



**Statement of Dennis Kooker**  
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**Senate AI Insight Forum: Transparency, Explainability, Intellectual Property & Copyright**  
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**Introduction**

Senate Majority Leader Schumer, and Senators Rounds, Henrich and Young, thank you for inviting me to participate in the AI Insight Forum. I am Dennis Kooker and I am the President of the Global Digital Business for Sony Music Entertainment (SME), the recorded music division of Sony Music Group. SME has a storied history of creating music for over 125 years with some of the greatest artists that ever lived. I have been in this role for over a decade and in the recorded music industry for over 25 years. My team is responsible for the commercial growth of our business globally. We oversee all digital deal making and licensing, and we drive strategy and development of all areas of new technology and commercial innovation. In this leadership position I witnessed the successful transition of recorded music's business model from the catastrophic decline of our product sales model to a period of significant growth driven by paid subscription. I know firsthand both the opportunities and challenges that technology brings to the music industry. I also know what is critical to nurture a healthy ecosystem for both the music and technology industries, which ultimately benefits consumers and artists, allowing them both to thrive.

Music brings society, family and friends together in the best and the worst of times, to celebrate and to mourn. It connects us emotionally and heals us mentally. It is vital to human existence which is why it is protected through copyright laws. Music is art. Art drives culture. Art IS innovation. No one industry owns or deserves a monopoly on innovation. A balanced ecosystem allows for diversity, freedom, choice and a thriving society. Foundational principles to who we are as Americans.

Music is also a strong American industry supporting 2.5 million jobs and \$170 billion of GDP. The US remains the number one export market of music globally which ensures the world gets to experience a piece of American culture every single day. Recorded music companies like SME are the primary investors in artists, taking risks through financial investment every day so that artists have the opportunity to realize their creative vision and reach new fans. Our investment is highly dependent on a healthy business environment in order to continue to invest both in artists today but more importantly in those artists of the future that may not be born today. Complimenting this role of investor, we are also the primary protector of the artist in the marketplace. We invest in both people and technology to protect artists from piracy and infringements, and from violations of their name and likeness rights. This blocking and tackling creates the fertile landscape for artists to develop a career and protects the very essence of what makes an artist unique.

Music tends to be at the forefront in entertainment and media when it comes to disruption and innovation...the proverbial canary in the coal mine. We fully expect that to play out again in the next chapter of generational technology change that AI is likely to drive. When Spotify approached us over 15 years ago, our entire business was about selling physical goods and digital downloads. Spotify's idea was to make music free to consumers in an effort to entice them to pay a monthly fee for an ad-free music experience, but without offering to sell the consumer a song or album. This was incredibly disruptive to our existing business model,

but we knew consumers were interested in this new way of engaging with music, so we found a way to support this new model. Since then, we have licensed hundreds of companies all around the world to create competition and a healthy, growing music market. The current consumer offering is an incredible consumer value proposition . . . every song ever created today and tomorrow for the price of a couple of cups of coffee per month. The growing music market inures to the benefit of both creators and technology platforms. Music leads the way in developing a pro-competitive and pro-consumer marketplace. In fact, the primary objective of my role at SME is to license more and different services, build more products and grow the revenue model to the benefit of our digital platform partners and artist partners. To put some numbers behind this, SME has close to 300 active catalog licenses in the market currently, we negotiate on average 600 new agreements per year and have on average about 100 active negotiations going on at any moment. We have zero interest or motivation to stifle innovation around music as long as the business model works.

Based on recent Copyright Office filings it is clear that the technology industry and speculative financial investors would like governments to believe in a very distorted view of copyright. One in which music is considered fair use for training purposes and in which certain companies are permitted to appropriate the entire value produced by the creative sector without permission, and to build huge businesses based on it without paying anything to the creators concerned. In that view, Artist name and likeness rights should be extremely limited. And consumers should be held personally liable for content generated by the AI platforms, absolving the platforms of any liability or obligation to police for bad behavior. They also put forward that record keeping and transparency within generative AI technologies is impossible or too burdensome. They suggest that the enforcement of copyright stifles innovation. It is ironic and important to note that, most likely, the technology industry itself will most influence the future competitive environment in AI, including whether new start-ups will be able to effectively compete. My description of SME's active licensing business highlights that strong copyright regimes are not an impediment to innovation.

### **AI Technology and Music in its early stage**

The music industry sees great potential with various forms of AI technology to enhance creativity, design new music products and develop new business models that expand the business while giving music consumers more choice and value and rewarding human artists. Artists have a long history of embracing technological advancements to enhance and improve the quality of their work. We have every reason to believe that various elements of AI will become routine in the creative process. We also find benefits of AI technology in other aspects of our business including marketing, data science and analytics, workplace productivity tools and royalty reporting to artists, amongst other things.

However, in this early period, the available generative AI products are not delivering on the expected promise of new products in creative industries . . . that is, they are not expanding the business model or enhancing human creativity. For example, we are seeing a deluge of 100,000 new recordings delivered to DSP's every day on average. Many products generated using generative AI content creation tools are among these songs. These works flood the current music ecosystem and compete directly with human artists. These AI-generated products do not create entirely new categories of consumer products or expand current business models. In fact, they reduce and diminish the earnings of human artists.

The even more dire outputs of early generative AI technology are deep fakes and unauthorized voice clones of existing artists. An artist literally makes their livelihood from their voice. Deep fakes intentionally exploit an artist's talent and reputation to steal that income stream. Every stream of a deep fake takes streams and royalty payments away from the legitimate artist. Deepfakes are also misleading and confusing to consumers and music fans who are not typically interested in supporting fake versions of their favorite artist.

In the US, artists are not adequately protected from these deepfakes. To date, SME has sent close to 10,000 takedowns to a variety of platforms hosting unauthorized deepfakes that SME artists asked us to take down. In

this context, platforms are quick to point to the loopholes in the law as an excuse to drag their feet or to not take the deepfakes down when requested. That is why we commend and express sincere gratitude to Senators Coons, Blackburn, Klobuchar and Tillis for releasing the No FAKES Act discussion draft, which would create a federal property right in one's voice or visual likeness and protect against unauthorized AI-generated replicas. Existing state right of publicity laws are inconsistent, and many are not sufficient to protect Americans against AI clones. Creators and consumers need a clear unified right that sets a floor across all fifty states. The discussion draft is an important first step, and a recognition that an artist's voice, image, and likeness need and deserve federal protection. We look forward to working with the Senators and their colleagues in the House to ensure the appropriate rights are in place for ethical AI practices.

Despite the deep fakes and high volumes of low-quality generative AI recordings, there are many positive and optimistic developments to highlight. First, there are already many AI start-up companies with music ideas that want to partner with the industry. We currently have roughly 200 active conversations taking place with start-ups and established players about building new products and developing new tools. These discussions range from tools for creative or marketing assistance, to tools that potentially give us the ability to better protect artist content or find it when used in an unauthorized fashion, to brand new products that have never been launched before. They also include potential equity investments which would accelerate the development of these companies.

One current example is a project that we will publicly launch very soon. An artist team approached us about working with generative AI around a reissue and remix of a previously released album. These artists are known for their cutting-edge experimentation in music. About the time that we started the discussion with this artist, we had begun informal talks with a generative AI start-up company whose business model focused on working with IP rightsholders the "right way." In other words, they respect intellectual property rights and want to work with rights holders in ways that enhance and protect the copyrighted works.

The product that we are releasing is very much an experiment and a first of its kind. It will have a visual element and a separate audio element. The consumer can combine both experiences to create a new visual and audio experience. The training model for the visual element has been developed, with the artists' enthusiastic blessing, using the artwork and other graphics from the album project. The audio is developed from excerpts of the music from the album. Fans will be able to input prompts while listening to the music that will transform the visual experience. They will also be able to play with aspects of the audio to create a new remixed excerpt of the music. Consumers will be able to download the visuals and 30 second clips of the music. Eventually, they will be able to purchase a longer version of the song they remixed.

This is an example of how this revolutionary technology can be used in cooperation with human artists to create a truly unique consumer experience. It is also an example of how technology start-ups can work in partnership with music rightsholders to develop innovative new products that respect and reinforce copyright and accentuate the artists' creative works while also enhancing value for the start-up company. It also demonstrates how training, control, protection and attribution can work together in support of copyright without stifling technology innovation. Finally, this was a very expensive experiment that SME is pleased to lead in our continuing position as primary investor in the artist. It may not turn out to be the next great business model for music, but it is an attempt to expand the business model that SME and hopefully many others will build on top of as we move forward.

### **AI and Music – The Future – Consent, Credit and Compensation**

If copyrights are protected and enforced appropriately, we are at the beginning of a multi-decade marathon that will change the creative and commercial landscape for music. Innovation does not require that we burn down the past to race to the future. With that in mind, SME has established a set of principles to guide our decision making around generative AI, allowing us to effectively communicate our position on key AI-related

topics with our stakeholders, most importantly our artists. First, we believe that AI technology is a tremendous opportunity for the creative development of our business. But that opportunity will be led by humans with machines in a supporting role. The machine does not replace the human artist.

Next, new products and businesses built with music must reward artists and rightsholders for their creative work and related investment. If a generative AI model is trained on music for the purpose of creating new musical works that compete in the music market, then the training is not a fair use. Training in that case, cannot be without consent, credit and compensation to the artists and rightsholders.

Next, we cannot allow the artist's voice to be cloned for use without the express permission of the artist. This is a very personal decision for the artist and ties into their right to speak or to choose not to speak. Hence, the need for federal protection of voice, name and likeness.

Next, correct attribution will be a critical element to artists being paid fairly and correctly for new works that are created from AI systems trained on their recordings. This requires strong and accurate record keeping by the generative AI platforms, a requirement that urgently needs legislative support to ensure it happens consistently and correctly. For a technology company to capture and retain records of training data is trivially simple in the context of AI models and systems those companies are developing with tens or hundreds of billions of parameters. Without clear guardrails, training data cannot be known and will be lost forever. That will invariably inhibit fair market licensing.

Next, we strongly support transparency in relation to human created works versus entirely AI created works. When listening to music, the public should know whether the music was created by a human being or a machine.

These principles represent our shared goal of encouraging trustworthy AI. Consumers cannot truly have safe and trustworthy AI if system developers have no meaningful responsibility to keep records of the inputs that were copied into their models and no transparency around how those inputs are used and maintained. It is particularly critical for the millions of American jobs that rely on copyright – and the ability to enforce it -- that companies be required to keep records of what copyrighted works they use to train their systems. Copyrights cannot be enforced without evidence as to whether and how creators' works were used. Congress and the Administration should develop guardrails for generative AI on transparency and recordkeeping or else the technology becomes a tool of mass infringement and IP theft that will harm American creators and our economy.

### **What Can Congress and the Agencies Do to Assure a Thriving Marketplace for AI and Music?**

Music is a tremendous driver for AI technology, and AI technology presents a tremendous opportunity for the creative development of music. But these opportunities must be grounded by the human creators' vision with the machine assisting, not with the machine replacing the human creator. To achieve this, we ask for Congress and the agencies to embrace the following:

1. **Assure Consent, Compensation, and Credit.** New products and businesses built with music must be developed with the consent of the owner and appropriate compensation and credit. It is essential to understand why the training of AI models is being done, what products will be developed as a result, and what the business model is that will monetize the use of the artist's work. Congress and the agencies should assure that creators' rights are recognized and respected.
2. **Confirm That Copying Music to Train AI Models is Not Fair Use.** Even worse are those that argue that copyrighted content should automatically be considered fair use so that protected works are never

compensated for usage and creators have no say in the products or business models that are developed around them and their work. Congress should assure and agencies should presume that reproducing music to train AI models, in itself, is not a fair use.

3. **Prevent the Cloning of Artists' Voices and Likenesses Without Express Permission.** We cannot allow an artist's voice or likeness to be cloned for use without the express permission of the artist. This is a very personal decision for the artist. Congress should pass into law effective federal protections for name, image, and likeness.
4. **Incentivize Accurate Recordkeeping.** Correct attribution will be a critical element to artists being paid fairly and correctly for new works that are created. In addition, rights can only be enforced around the training of AI when there are accurate records about what is being copied. Otherwise, the inability to enforce rights in the AI marketplace equates to a lack of rights at all, producing a dangerous imbalance that prevents a thriving ecosystem. This requires strong and accurate record keeping by the generative AI platforms, a requirement that urgently needs legislative support to ensure incentives are in place so that it happens consistently and correctly.
5. **Assure Transparency for Consumers and Artists.** Transparency is necessary to clearly distinguish human-created works from AI-created works. The public should know, when they are listening to music, whether that music was created by a human being or a machine.

While these principles are simple and basic, they require a new level of commitment and investment from generative AI platforms. If established early on, they will result in an even playing field for all participants so there will not be an unfair competitive advantage for a few at the expense of future innovators. The principles will ensure that intellectual property businesses can succeed in this new world alongside tech partners, further advancing investment and expanding economic opportunities.

### **Conclusion**

We appreciate the opportunity to explain our position on this vitally important topic and look forward to participating in the in-person roundtable on November 29. We believe that a vibrant and growing music and creative industry is vital and essential for America's position in the world. We equally believe that of the technology industry and are optimistic that we will continue to also be a world leader in technology development. We have demonstrated over the past two decades that music and technology can work together. And when we do, great products that consumers love will be developed. And both creative and tech industries will benefit.

However, Congress has a critical role to play as that balanced scenario can only be achieved if copyright continues to have strong protection and enforcement. If it does, the free market will operate effectively and efficiently as music will agree to license its product and build new products while technology companies will secure rights and develop ecosystems that recognize all the value contributors. Delay in firming up this landscape will create uncertainty that will negatively impact innovation and make it challenging for responsible and ethical generative AI companies to compete with rogue players that disregard intellectual property rights.

Thank you for your leadership on these critical issues, and for inviting me to participate in this important conversation.