

STATEMENT OF DAVID PORTER
BEFORE THE
SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY, AND THE INTERNET
COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES
ON
“FIVE YEARS LATER – THE MUSIC MODERNIZATION ACT”
JUNE 27, 2023

Chairman Issa, Ranking Member Johnson, and Members of the Subcommittee:

Thank you for inviting me to speak to you today. I am David Porter, a songwriter, musician, producer, and entrepreneur. I have over 1700 songwriting credits for songs performed by artists from John Belushi & Dan Ackroyd (The Blue Brothers) to the Wu-Tang Clan, and many more across all styles and genres. I was named one of the 100 Greatest Songwriters of All Time by Rolling Stone magazine in 2015. And I was honored to be inducted into the Songwriters Hall of Fame in 2005. And I’m still recording, producing, songwriting, and working on the next generation of superstars.

Thank you for coming to Nashville for this important field hearing. It’s a great place, Music City, to hear firsthand what’s happening in music from songwriters, musicians, executives, and experts. I’d like you to check out my hometown, Memphis, TN as well!

I understand one purpose of your visit is to learn more about the impact of the Music Modernization Act. Thank you for passing that landmark bill. Like a great song, the MMA benefits so many people in so many unique ways – many of whom have no idea just how much work it took to create. But whether you’re a music creator or a legislator, the goal is to make something worthwhile, that will endure and change lives. And that’s exactly what the MMA has done.

For recording artists, including many of the greats I’ve worked with early in my career at Stax Records, the key provision is found in Title 2 of the MMA, also known as the CLASSICS Act.

Because of a quirk in copyright law, recording artists were generally denied streaming royalties for music recorded before February 15, 1972. That includes some of the classic music of all time – Motown greats like Smokey Robinson, Stax greats like Otis Redding; Al Green of Hi Records; Country giants like Johnny Cash and Patsy Cline and Rock n Roll legends like Chuck Berry and Wilson Pickett. It was totally arbitrary and unfair.

In the mid-60s, I wrote a song called “Soul Man.” Sam and Dave recorded it and won a GRAMMY in 1968. But when that classic recording was streamed before the MMA passed, neither Sam Moore nor Dave Prater’s estate received any royalties. Even crazier: when later covers of that song “soul Man” – like the John Belushi/Dan Ackroyd Blues Brothers recording of made in 1978 – when that was streamed, there was a royalty payment for those performers. The CLASSICS Act section of the MMA changed that, protecting legacy artists and ensuring they get paid when their timeless music is streamed.

MMA made other changes benefiting artists and songwriters. It created the Mechanical Licensing Collective that is streamlining digital royalties for songwriters – and making life a lot easier for streaming services too. It brought more music under fair market rate standards, replacing outdated standards that paid below market royalties for satellite radio and other uses of music. Though that was needed, more still needs to be done. It certainly paved the way for producers to get their fair share of royalties, creating a process for artists to instruct SoundExchange to pay them directly.

I don’t have to tell you that the MMA’s success was in no way assured. As we all know, copyright law, when not looked into, becomes permanent. It took the entire industry – artists, songwriters, labels, publishers, producers, collecting societies, digital platforms, and others – working together to make this historic change. It is testament to the fact that, when the music community comes together and Congress acts with certainty and strength, it can make a real difference.

That experience may serve us all well facing the upcoming challenges of artificial intelligence.

Today, huge AI computer models are copying and analyzing virtually all of the music ever made to generate what they are calling “new” songs from the music of yesterday. Hopefully, courts will see that copyright law does not allow this. AI platforms and services must get permission before rightsholders’ work can be copied and used in this way though. So far, very few have done so. No one at any AI company has spoken to me, my label, or my publishing company. This is wrong.

But our concerns extend beyond copyright. There’s no greater honor than to have an audience enjoy my music. But key to that appreciation is that it’s MY music. To have someone – or something – take my voice, my sound, my persona without permission and manipulate it or mimic my work is a personal violation and a threat to the good I’ve built up over the years. How can this be “new” when this has been taken from songs written years ago? How is that new? I know I speak for a great many songwriters who feel this way.

I do believe there is a place for AI. But we appear to be going down a path of appropriation, exploitation, and dehumanization. I have been the benefactor of a great number of people who have taken my songs and sampled them. They have my permission; they pay a royalty; and they create something that adds a fresh intention of my original work. This is not currently the case for the majority of AI-generated songs. It’s not just a threat to existing works but to future generations of artists and to culture itself. If all we have is machine-made music copied from existing works, there will be less and less creativity, artistry, and soul to go around. What a penalty to put on future generations. What a penalty.

Congress and the courts must assure that guardrails are in place to protect creators’ rights and their control over their own work. But if AI moves too fast, it will leave today’s laws in the dust.

You have a model in the MMA process to make things right, bringing the music family together with your own policy and legal expertise to shape strong rules for healthy uses of AI.

Just like writing a great song, it’s hard work that will pay off for generations to come.

And I thank you so very much for your time.