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## Welcome to Web 3.0: A Reevaluation of Music Licensing and Consumption to Level the Payment Imbalance for Songwriters

Chelsea Cohen

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# Welcome to Web 3.0: A Reevaluation of Music Licensing and Consumption to Level the Payment Imbalance for Songwriters

CHELSEA COHEN\*

## ABSTRACT

*For decades, songwriters have been short changed in their music royalties and copyright splits. This Note explores the historical inequity between songwriters and their counterparts—labels and recording artists—in royalty receipts, and potential methods by which this wrong may be righted in the next iteration of the internet, Web 3.0. Battles of the past can serve as a frame of reference in evaluating how songwriters will be compensated in Web 3.0. Tech companies cannot have a free pass to disregard licensing laws in the name of fast profits. This Note analyzes how music will be consumed and profited off of in Web 3.0. It compares and contrasts issues that songwriters have been confronted with in the past in an effort to prevent history repeating itself. Rather, songwriters need to embrace Web 3.0 and the digital age of interactive music. The possibilities to level the playing field in music licensing are more likely than ever. Blockchain possesses the ability to track the data that current organizations and regulatory bodies lack the bandwidth to accomplish, and thus give hope to streamlining music licensing and collection of royalties. Moreover, with the decentralization of Web 3.0, more autonomy is given to the individual user as opposed to single corporate entities, offering advantages to songwriters trying to profit from their work. However, despite the developing opportunities, necessary government intervention and oversight will be necessary for songwriters to truly be protected in this new digital landscape. This Note offers a means by which blockchain can best be put to work to benefit songwriters in Web 3.0.*

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## I. INTRODUCTION

Web 3.0 is making headlines—and for good reason. It is an unprecedented time in history as a brand-new world is developing and generating innovative revenue streams ready to be capitalized on. Web 3.0 can be defined relatively broadly as the next iteration of the internet. Unlike Web1 (the worldwide web) and Web2 (user generated like social media), Web3<sup>1</sup> is founded on distributed technologies such as blockchain and decentralized autonomous organizations (DAO).<sup>2</sup> With Web 3.0, the servers and networks where data is stored, and applications run from are owned by the users themselves. This democratizes the internet and gives individuals control as to what rules and regulations are in place.<sup>3</sup> Creators can now develop their own metaverses: shared virtual spaces where people can interact with one another in a three-dimensional environment.<sup>4</sup> In real time, users can interact with objects and experiences from the physical world in these virtual spaces.<sup>5</sup> While Web 3.0 is still a work in progress, the opportunities it poses for the music industry are huge. The metaverse is one such way that artistic creativity can be expressed and consumed.

In a metaverse, much like the physical world, fans can attend concerts and festivals, purchase merchandise and music from their favorite artists, stream and download new releases, and even interact with the artists themselves—but without ever leaving their homes.<sup>6</sup> Artists have numerous advantages as well. For example, a simple concert is now viewable to an international audience in a single place, giving rise to a new ecosystem for traditional revenue streams to grow.<sup>7</sup> What one artist could earn in a night at a physical venue could be multiplied by the thousands, if not millions, as larger audiences are reached.<sup>8</sup> Another revenue stream comes in the form of non-fungible tokens (NFTs). NFTs create a way for artists to sell virtual merchandise, album posters, tickets to exclusive virtual shows, and songs as

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1. “Web3” and “Web 3.0” are one and the same.

2. Bernard Marr, *The Important Difference Between Web3 and the Metaverse*, FORBES (Feb. 22, 2022, 2:06 AM), <https://www.forbes.com/sites/bernardmarr/2022/02/22/the-important-difference-between-web3-and-the-metaverse/?sh=15a763a5af33>.

3. *Id.*

4. Micah Singleton, *What’s the Metaverse and What’s in It for Music?*, BILLBOARD (Nov. 5, 2021), <https://www.billboard.com/business/tech/what-the-metaverse-music-explainer-9655992/>.

5. See Gregor Pryor & Nick Breen, *Music*, in REED SMITH GUIDE TO THE METAVERSE 33 (Reed Smith, 2d ed. 2022), <https://www.reedsmith.com/-/media/files/metaverse/guidetothemetaverse2ndedition.pdf>; see also Tom K. Ara et al., *Exploring the Metaverse: What Laws Will Apply?*, DLA PIPER (June 22, 2022), <https://www.dlapiper.com/en/us/insights/publications/2022/06/exploring-the-metaverse-ipt-news-june-2022/>.

6. Singleton, *supra* note 4.

7. *Id.*

8. *Id.*

digital tokens.<sup>9</sup> The potential profits that can be generated from this new evolution of music and the internet are huge. This is evidenced by Kings of Leon, who became the first band to fully release an album as an NFT which grossed over two million dollars in its first week.<sup>10</sup>

Despite the overwhelming potential for artists in Web 3.0, a deeper look is required to determine how songwriters can benefit without recreating the financial inequities of the past. Songs have two separate copyrights embodied therein: the sound recording and the composition.<sup>11</sup> Songwriters hold the copyright to the lyrics and melody of a musical work (the composition) while recording artists hold the rights to the recording of the song, also referred to as the master recording.<sup>12</sup> While both parties earn performance royalties from their songs publicly played,<sup>13</sup> songwriters generally receive around five times less than their recording artist counterparts.<sup>14</sup> This reality is the result of current regulations leaving royalty rate calculations to rate courts as opposed to the free market for songwriters.<sup>15</sup> Furthermore, the Copyright Royalty Board (CRB) implemented only the second meaningful mechanical royalty rate increase in 110 years,<sup>16</sup> increasing the royalty rates from compulsory mechanical licenses paid to songwriters by 43.8% for the years 2018 through 2022.<sup>17</sup>

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9. See Samantha Hissong, *Music NFTs Have Gone Mainstream. Who's in?*, ROLLING STONE (Mar. 9, 2021), <https://www.rollingstone.com/pro/features/music-nfts-timeline-kings-of-leon-grimes-3lau-1138437/>; see generally Andrew Chow, *Independent Musicians Are Making Big Money from NFTs. Can They Challenge the Music Industry?*, TIME (Dec. 2, 2021, 4:45 AM), <https://time.com/6124814/music-industry-nft/>.

10. See Hissong, *supra* note 9.

11. See Daniel Abowd, Comment, *Something Old, Something New: Forecasting Willing Buyer/Willing Seller's Impact on Songwriter Royalties*, 31 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 574, 578 (2021).

12. *Mechanical Royalties vs. Performance Royalties: What's the Difference?*, ROYALTY EXCH. (Jan. 31, 2019), <https://www.royaltyexchange.com/blog/mechanical-and-performance-royalties-whats-the-difference> [hereinafter *Mechanical Royalties*].

13. See *id.* (defining performance royalties as “the fees music users pay when music is performed publicly. Music played over the radio, in a restaurant or bar, or over a service like Spotify or Pandora is considered a public performance.”).

14. This is in reference to music played digitally (streamed on Apple Music, for example).

15. See *Mechanical Royalties*, *supra* note 12.

16. “[M]echanical royalties are generated each time a musical composition is reproduced and distributed to the public for profit, generally through sound recordings. They are paid to the songwriter for the ‘mechanical reproduction’ of their music.” *How Much Do Songwriters Make from Mechanical Royalties?*, ROYALTY EXCH. (Apr. 3, 2019), <https://www.royaltyexchange.com/blog/how-much-do-songwriters-make-from-mechanical-royalties#sthash.O3te1o9o.dpbs>.

17. Tim Ingham, *Songwriters, Rejoice: Spotify Appeal Fails to Stop Composers Getting Improved 15.1% Streaming Royalty Rate in the US*, MUSIC BUS. WORLDWIDE (July 1, 2022), <https://www.musicbusinessworldwide.com/songwriters-rejoice-spotify-appeal-fails-to-stop-composers-getting-improved-15-1-streaming-royalty-rate-in-the-us/>; Paul Resnikoff, *Songwriters, Publishers Win a Landmark 43.8% Royalty Increase from Streaming Music Platforms — Spotify, Google, and Amazon Are Still Fighting Back*, DIGIT. MUSIC NEWS (July 2, 2022), <https://www.digitalmusicnews.com/2022/07/02/songwriters-publishers-crb-streaming-royalty/>.

Yet, even with this recent win for songwriters, streaming companies have yet to pay the new increased rates as the appeals process continues to delay the payment and justice owed to songwriters. Whether songwriters will receive their retroactive royalty payment increases from streaming services like Spotify<sup>18</sup> is yet to be seen.

With all of the hype and speculation surrounding Web 3.0, the payment imbalances currently affecting songwriters cannot be overlooked. The continued growth of music publishing's revenue streams—and thus, songwriter's revenue streams—is primarily being driven by the popularity of interactive streaming, as the impact of COVID-19 is still felt in areas, like live concerts.<sup>19</sup> Metaverses emerged as a new method to stream and deliver music from one's own home.<sup>20</sup> Current predictions show the market opportunity for the metaverse reaching \$800 billion by 2024.<sup>21</sup> Yet, the problem still remains: how will songwriters get paid in a world attributed for its lack of regulation and ongoing development?

This Note proposes possible solutions to the imbalance of payments plaguing songwriters in the hope of leveling the playing field in music licensing in Web 3.0. Part II will discuss the current state of streaming, how the Music Modernization Act (MMA) came to be, and how it is beginning to tackle the royalties and licenses associated with digital service providers (DSPs). Part III delves into how people can interact with music in Web 3.0 from music festivals to NFTs along with the legal issues that arise in the new digital landscape. Part IV proposes both legislative and administrative solutions for better enforcement and regulation of fair rates for songwriters in Web 3.0. Finally, Part V discusses a practical way to implement the solutions, including a comparison of the Mechanical Licensing Collective (MLC) as related to streaming.

## II. THE CURRENT STATE OF MUSIC STREAMING

In the first half of 2021, the revenues for recorded music in the United States grew by 27%— with streaming services (YouTube, Spotify, etc.)

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18. Resnikoff, *supra* note 17.

19. Todd Spangler, *Roblox Hit with \$200 Million-Plus Lawsuit by Music Publishers Alleging Unauthorized Song Use*, VARIETY (June 9, 2021, 3:12 PM), <https://variety.com/2021/digital/news/roblox-sued-music-publishers-nmpa-1234992976/> (“Israelite announced the music publishing industry’s 2020’s total revenue as \$4,076,829,040, a 9.6% increase from 2019. ‘Mechanicals grew . . . to 20.2% despite the fact that . . . some mechanical categories that are shrinking rapidly. It’s because of the growth of the mechanical part of interactive streaming that the category overall grew,’ he added.”).

20. See generally Matthew Kanterman & Nathan Naidu, *Metaverse May Be \$800 Billion Market, Next Tech Platform*, BLOOMBERG INTEL. (Dec. 1, 2021), <https://www.bloomberg.com/professional/blog/metaverse-may-be-800-billion-market-next-tech-platform/>.

21. *Id.*

making up 84% of that revenue.<sup>22</sup> However, as streaming services become more commoditized, purely owning rights and monetizing through subscriptions no longer delivers a worthwhile profit margin.<sup>23</sup> Web 3.0 takes interactive streaming to another level, ranging from concerts, to digital sales of merchandising, limited edition NFTs, and much more.<sup>24</sup> The commercial opportunities available to creators willing to explore and engage with all the available technology is immense.

Even the biggest arena tours struggle to match the size of the instant, global audiences found in a metaverse performance.<sup>25</sup> For instance, in 2018, Taylor Swift broke the concert attendance record in Indianapolis with 67,000 attendees, with her total arena tour reaching close to three million fans over the course of a few months.<sup>26</sup> For comparison, Travis Scott amassed 12.3 million views with a single virtual Fortnite concert, leading Fortnite to launch an entire concert series for different artists to create their own digital experiences to interact and perform for fans.<sup>27</sup> While a majority of the current recorded music industry's revenue can be attributed to DSPs the rise of a new digital ecosystem could change the dynamic. Creators and songwriters can take their power back.

#### A. A LOOK AT WIXEN—LITIGATION DRIVING LEGISLATION

Nowadays, it is hard to remember a time without interactive streaming platforms like Apple Music or Spotify.<sup>28</sup> Streamers now fill the music consumption market, enabling a favorite artist to be accessible at one's fingertips.<sup>29</sup> Users can share top-streamed songs easily and directly to any

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22. Joshua P. Friedlander, *Mid-Year 2021 RIAA Revenue Statistics*, RECORDING INDUS. ASS'N OF AM. (Sept. 13, 2021), <https://www.riaa.com/wp-content/uploads/2021/09/Mid-Year-2021-RIAA-Music-Revenue-Report.pdf>.

23. Pryor & Breen, *supra* note 5, at 29.

24. *Id.*

25. *Id.* at 28; *see generally* Elizabeth Aubrey, *Lil Nas X In-Game Gig Is One of the Most Viewed Concerts of All Time*, NME (Nov. 18, 2020), <https://www.nme.com/news/music/lil-nas-x-in-game-gig-is-one-of-the-most-viewed-concerts-of-all-time-2819981> (“As reported in IQ Magazine, the [Lil Nas X] performances achieved over 35 million visits from fans around the world.”).

26. Ashley Iasimone, *Taylor Swift Breaks Concert Attendance Record, Hangs Out with Kelsea Ballerini in Indianapolis*, BILLBOARD (Sept. 16, 2018), <https://www.billboard.com/music/pop/taylor-swift-indianapolis-concert-record-kelsea-ballerini-photo-8475340/>.

27. Kimberlee Speakman, *Justin Bieber to Stage Virtual Concert*, FORBES (Nov. 9, 2021, 2:22 PM), <https://www.forbes.com/sites/kimberleespeakman/2021/11/09/justin-bieber-to-stage-virtual-concert/?sh=5abec526566a>.

28. “Spotify, according to its numbers, controls just under a third (31%) of the global market, more than double that of Apple Music (15%), its nearest rival. Spotify has a bigger share of the market than Apple Music and Amazon Music (in third place with a share of 13%) combined.” Eamonn Forde, *Spotify Comfortably Remains the Biggest Streaming Service Despite Its Market Share Being Eaten into*, FORBES (Jan. 19, 2022, 12:01 PM), <https://www.forbes.com/sites/eamonnforde/2022/01/19/spotify-comfortably-remains-the-biggest-streaming-service-despite-its-market-share-being-eaten-into/?sh=4242bb133474>.

29. “Streamers” refers to the music streaming platforms such as Apple Music.

social media platform.<sup>30</sup> This new technology gives streaming platforms the ability to catalog millions of songs at a time. However, the tech world continues to ignore the legal standards already in place while the legal industry lags in its regulation, especially when it comes to copyright infringement. As emerging technology continues to evolve, the laws governing such innovation are becoming redundant, leaving tech giants and copyright owners stuck footing the bill for the inevitable litigation.<sup>31</sup>

*Wixen Music Publishing, Inc. v. Spotify USA Inc.* offers the perfect example of just how costly such litigation can be. In December 2017, Wixen Music Publishing sued Spotify for willful copyright infringement in the musical compositions of over 10,000 songs, claiming it failed to obtain the proper mechanical licenses for the digital distribution and reproduction rights of those songs.<sup>32</sup> Wixen, a California-based publishing company, licenses catalogs for over 2,000 artists, ranging from Neil Young to Missy Elliot.<sup>33</sup> From Spotify's inception in 2014 to the time of the case, Wixen estimated that its artists represented up to five percent of Spotify's streamed music.<sup>34</sup> To put that into better perspective, Spotify featured approximately thirty million songs from Wixen's catalogue, with Wixen discovering that "Spotify failed to pay songwriter royalties to a publishing company approximately 21% of the time."<sup>35</sup>

In formulating its argument, Wixen acknowledged *Ferrick et al. v. Spotify USA Inc. et al.*<sup>36</sup> In *Ferrick*, Spotify settled a similar systemic copyright infringement claim with publishers, songwriters, and associations for \$43 million; but the publishing group found the settlement grossly inadequate given the size and scope of Spotify's infringement.<sup>37</sup> Additionally, after Congress passed the Music Modernization Act (MMA), any infringement lawsuit filed by a copyright owner against a DSP after January 1, 2018 would be denied "important legal remedies."<sup>38</sup> The new MMA legislation would give Spotify a "free pass" for its infringement on

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30. For example, "[t]here were 523.9 million paying subscribers on music streaming services globally in the second quarter of 2021, an increase of 26.4% from the same period in 2020." Forde, *supra* note 28.

31. See generally Pryor & Breen, *supra* note 5, at 29.

32. Complaint for Copyright Infringement & Demand for Jury Trial at 3, *Wixen Music Publ'g, Inc. v. Spotify USA Inc.*, No. 2:17-cv-09288 (C.D. Cal. Dec. 29, 2017) [hereinafter *Wixen Complaint*]; see also Chris Marple, *The Times They Are A-Changin': How Music's Mechanical Licensing System May Have Finally Moved into the 21st Century*, 26 RICH. J. L. & TECH 1, 20 (2020).

33. Daniel Kreps, *Wixen's \$1.6 Billion Spotify Lawsuit: What You Need to Know*, ROLLING STONE (Jan. 3, 2018), <https://www.rollingstone.com/music/music-news/wixens-1-6-billion-spotify-lawsuit-what-you-need-to-know-202532/>.

34. *Id.*

35. *Wixen Complaint*, *supra* note 32, at 8.

36. *Id.* at 7; No. 16-cv-8412 (AJN), 2018 U.S. Dist. LEXIS 86083, at \*1 (S.D.N.Y. May 22, 2018).

37. *Wixen Complaint*, *supra* note 32, at 7-8.

38. Kreps, *supra* note 33.



Wixen's catalogue without justly compensating the publisher for its failure to adequately obtain the necessary licenses.<sup>39</sup> With this in mind, Wixen sought \$1.6 billion pursuant to 17 U.S.C. § 504(I), claiming approximately \$150,000—the maximum amount allowed by the statute—for each of the 10,784 musical compositions willfully infringed upon in its catalogue.<sup>40</sup> If Wixen failed to file suit prior to January 1, 2018, it would have lost access to damages since the MMA forgave retroactive infringement for DSPs if suits were filed after that date.<sup>41</sup>

The issues raised in *Wixen* foreshadow the need to protect songwriters from the blatant licensing violations found in new technology and music streaming.<sup>42</sup> New streaming platforms, like Spotify, are often run by tech companies that disregard the longstanding laws concerning the clearance and licensing of such music because of their rush to create massive music libraries.<sup>43</sup> Tracking who owns which song, how the copyrights in the song are split, and contacting each of those respective owners is an administrative nightmare—let alone a company like Spotify having to go through the process for millions of songs at a time.<sup>44</sup> In the race to be the first to market and boast the largest music library, Spotify blatantly ignored the established licensing rules and prioritized profits over the artists.<sup>45</sup>

As discussed below, the MMA attempts to resolve this issue by streamlining the licensing process for interactive streamers like Spotify and Apple Music. Only time will tell how effective it is in paying out royalties to copyright owners. *Wixen*, while the last of its kind in the DSP era, foreshadowed what is to come as the tech giants take over music licensing on a whole new digital platform within Web 3.0. History finds a way of repeating itself. If no preventative measures are taken, songwriters will again be left out of the financial equation while their works are infringed. However, this time, it will be much more difficult to track as technology continues to develop at a rapid pace.

## B. THE MUSIC MODERNIZATION ACT

Historically, interactive streamers like Spotify and Apple Music have had to pay both mechanical and public performance royalties for every song

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39. *Id.*

40. 17 U.S.C. § 504(c)(2) (2018); Wixen Complaint, *supra* note 32, at 9-10.

41. *See generally* Kreps, *supra* note 33.

42. Jem Aswad, *Spotify Settles \$1.6 Billion Lawsuit from Wixen Publishing*, VARIETY (Dec. 20, 2018, 9:16 AM), <https://variety.com/2018/biz/news/spotify-settles-1-6-billion-lawsuit-from-wixen-publishing-1203093990/>.

43. *Id.*

44. *See generally* Cherie Hu, *Why Music Streaming's Greatest Hopes Are Spotify's Toughest Challenges*, BILLBOARD (Mar. 8, 2018), <https://www.billboard.com/pro/spotify-biggest-challenges-music-streaming-greatest-hopes/>.

45. *See generally* Aswad, *supra* note 42.

in their libraries, but massive repertoires of readily-available music made paying out the compulsory and statutory licenses for each individual song more complex and costly than ever.<sup>46</sup> The MMA, specifically *Title I*, was enacted in 2018 to meet the technological advances of streaming and provide songwriters with a more efficient administrative system to collect royalties.<sup>47</sup> It replaced the existing “song-by-song compulsory licensing structure for making and distributing musical works” with a blanket licensing system for DSPs.<sup>48</sup> As of January 1, 2021, the blanket license is administered by the Mechanical Licensing Collective (MLC) which is controlled by music publishers and songwriters while funded by the DSPs as a form of compromise.<sup>49</sup> To prevent mass infringement, as seen with the *Wixen* settlement, the MLC made it easier for interactive streamers to obtain blanket licenses while allowing music publishers (and songwriters) greater ability to determine royalty rates and manage the process by which they are paid—circumventing litigation as the main source of remedying infringement.<sup>50</sup>

Pre-MMA, the Copyright Royalty Board (CRB) set the compulsory rate for mechanical licenses under Section 115 of the Copyright Act based on a reasonableness standard defined in Section 801(b) of the same Act.<sup>51</sup> With the implementation of the MMA, however, Section 801(b) was replaced by a new rate-setting standard reflecting a “willing buyer/willing seller” model that would match, or attempt to match, the fair market value.<sup>52</sup> The CRB must now consider “economic, competitive, and programming information presented by the parties.”<sup>53</sup> This is accomplished by two main elements: (1) the extent to which the use may “substitute for or may promote” recorded music sales or otherwise affect revenue that the copyright owner may earn from other uses, and (2) an assessment of “the relative roles of the copyright owner and the compulsory licensee in the copyrighted work and the service made available to the public with respect to the relative creative contribution,

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46. *Mechanical Royalties Guide 2021*, ROYALTY EXCH. (Feb. 2, 2021), <https://www.royaltyexchange.com/blog/mechanical-royalties>; see also *Spotify Settles \$1.6bn Lawsuit Over Songwriters’ Rights*, BBC (Dec. 21, 2018), <https://www.bbc.com/news/business-46646918>.

47. U.S. COPYRIGHT OFFICE, *Title I—Musical Works Modernization Act*, THE MUSIC MODERNIZATION ACT (2018), <https://www.copyright.gov/music-modernization/115/> [hereinafter *Title I*].

48. *Id.*

49. *Id.*

50. Daniel Hess, *The Waiting Is the Hardest Part: The Music Modernization Act’s Attempt to Fix Music Licensing*, 2019 U. ILL. J.L. TECH & POL’Y 187, 196 (2019).

51. 17 U.S.C. § 801(b)(1)(A)-(D) (West) (prior to 2018 amendment) (listing maximizing the public availability of the work, ensuring a fair return to the copyright owner and a fair income to the licensee, transparency in the copyright owner and licensee’s roles in making the work public, and minimizing disruption of the industry and its prevailing practices as factors under the § 801(b) standard).

52. Marple, *supra* note 32, at 41.

53. 17 U.S.C. § 115(e)(1)(F) (West).

technological contribution, capital investment, cost, and risk.”<sup>54</sup> This new standard aims to increase royalties to songwriters for their mechanical licenses.<sup>55</sup>

However, where the license is imposed by statute and its rate determined by judges, the extent that fair market value will be reflected is unlikely.<sup>56</sup> Thus, the MMA’s more significant change is the establishment of the MLC and its administration of licenses and royalties.<sup>57</sup> Operating as an independent non-profit entity, the MLC issues the blanket licenses to DSPs, collects the mechanical royalties for those licenses, and then distributes to the correct copyright owners.<sup>58</sup> Additionally, the MLC establishes and maintains a centralized database that tracks the musical compositions in individual sound recordings, the copyright owners of those compositions, the respective ownership shares, and the contact information for each owner.<sup>59</sup>

With the enactment of the MMA,<sup>60</sup> the Copyright Office is relieved of the burden of trying to locate copyright owners because the MLC tracks and maintains that information to streamline the licensing process.<sup>61</sup> The MLC’s first calculation of royalties totaled over \$53 million and included \$13 million from matched royalties covered by preexisting voluntary licensing agreements.<sup>62</sup> Of the \$40 million collected in direct payments on behalf of the registered songwriters and composers, the MLC disbursed \$24 million to members, leaving \$11 million unmatched and around \$5 million

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54. *Id.*

55. The pre-existing rate-setting discrepancies that generally meant lower rates as opposed to their counterparts (labels and recording artists) and, in some instances, even their own income from performance licenses was jettisoned. *See* Marple, *supra* note 32, at 43.

56. *See generally* Determination of Royalty Rates and Terms for Ephemeral Recording and Webcasting Digital Performance of Sound Recordings (Web IV), 81 Fed. Reg. 26316, 26330 (May 2, 2016) (to be codified at 37 C.F.R. pt. 380) (noting that the first iteration of the CRB taking on this approach can be illustrated by *Web IV*, where the Judges held that the Copyright Act permitted them “to set a rate that reflects a market that is effectively competitive,” within their discretion); Determination of Royalty Rates and Terms for Digital Performance of Sound Recordings and Making Ephemeral Copies to Facilitate Those Performances (Web V), 86 Fed. Reg. 59452, 59456 (Oct. 27, 2021) (to be codified at 37 C.F.R. pt. 380) (*Web V* expanded on *Web IV* by noting that the *Web IV* Court was limited by price competition in its determination but if such “competition is lacking,” the Court must consider “other forms of market behavior [that] either substitute for price competition or otherwise generate prices consonant with those that would be established through price competition in an effectively competitive market.”).

57. Orrin G. Hatch-Bob Goodlatte Music Modernization Act, H.R. 1551, 115th Cong. § 102(d) (2018).

58. *Id.* § 102(d)(3)(C)(i).

59. *Id.* § 102(d)(3)(C)(i)(III-IV).

60. The pre-MMA process required licensees to serve Notices of Intent (NOIs) to individual copyright owners or the Copyright Office.

61. H.R. 1551 § 102(d)(3)(A)-(C).

62. Morgan Enos, *Mechanical Licensing Collective Distributes First Music Royalty Payments & You Can Collect Your Share Today*, RECORDING ACADEMY (Apr. 23, 2021, 12:25 PM), <https://www.recordingacademy.com/advocacy/news/2021-mechanical-licensing-collective-distributes-first-music-royalty-payments>.

unclaimed.<sup>63</sup> Yet, despite the MLC's benefits so far, it is still premature to determine the true effectiveness of this new system.

While mechanical royalties have traditionally comprised a significant portion of songwriters' incomes, they still pale in comparison to the amount of money generated in performance royalties, as songwriters barely generate \$1 in mechanical royalties for every \$3 in performance income.<sup>64</sup> Performance rights organizations (PROs) are groups that negotiate and collect on performance licenses for musical compositions on behalf of songwriters and publishers.<sup>65</sup> There are four major PROs within the United States, including the American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music, Inc. (BMI).<sup>66</sup>

Both organizations operate under the strong arm of consent decrees that essentially ensure that the negotiable performance royalty rates paid out to songwriters remain well under market value.<sup>67</sup> Furthermore, the restrictions under the consent decrees subject the PROs to a "rate-court"<sup>68</sup> with a single judge in the Southern District of New York, severely limiting their ability to negotiate the performance royalty rate.<sup>69</sup> The MMA reformed the rate court by assigning a different judge to each new rate dispute on a rotating basis, versus the same judge handling all disputes.<sup>70</sup> It also partially repealed Section 114(i) (mirrored in Section 115) of the Copyright Act, allowing the rate court to consider royalties paid to recording artists in its rate-setting determination for the public performance of musical works.<sup>71</sup>

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63. *Id.*

64. Tim Ingham, *U.S. Publishers Pulled in \$3.7BN During 2019 – Just Over Half What Record Labels Made*, MUSIC BUS. WORLDWIDE (June 11, 2020), <https://www.musicbusinessworldwide.com/us-publishers-pulled-in-3-7bn-during-2019-just-over-half-what-record-labels-made/>.

65. *Mechanical Royalties*, *supra* note 12.

66. *Id.*

67. In the aftermath of the 1941 antitrust suit brought by the Department of Justice (DOJ) against ASCAP and BMI, both organizations are now under the strong arm of consent decrees. U.S. COPYRIGHT OFFICE, COPYRIGHT AND THE MUSIC MARKETPLACE 35-36 (2015), <https://www.copyright.gov/policy/musiclicensingstudy/copyright-and-the-music-marketplace.pdf>.

68. "Under the ASCAP and BMI Consent Decrees, if a music user (AM/FM radio stations, television broadcasters, physical venues, non-interactive streaming services like Pandora or Sirius XM, etc.) and ASCAP or BMI cannot come to an agreement as to what reasonable license fees should be, either party can petition for a court procedure to be held with a federal judge in the Southern District of New York. This judge hears arguments from both parties and sets the rates for a term." Alana Thomas, *What Are Music Industry Consent Decrees?*, EXPLORATION, <https://exploration.io/what-are-music-industry-consent-decrees/> (last visited Sept. 21, 2022).

69. COPYRIGHT AND THE MUSIC MARKETPLACE, *supra* note 67, at 41; *see also Mechanical Royalties*, *supra* note 12 (noting that prospective licensees can seek a determination of a license fee from a federal judge in the Southern District of New York if the two PROs cannot agree to an equal rate).

70. *See* Steven Tyler, *Steven Tyler & David Israelite: Congress, Fix How Songwriters Are Paid & Pass the Music Modernization Act*, BILLBOARD (Feb. 15, 2018), <https://www.billboard.com/pro/steven-tyler-david-israelite-music-modernization-act-guest-column/>.

71. *Title I*, *supra* note 47.

Currently, recording artists make up to ten times more than songwriters for the exact same performance due to the imbalance of royalty rates.<sup>72</sup> Recording artists have SoundExchange,<sup>73</sup> which, like BMI or ASCAP, collects recording performance royalties derived from digital public performances for recording artists and labels.<sup>74</sup> However, unlike BMI and ASCAP, SoundExchange is not governed by consent decrees (including rate courts) and thus retains massive negotiating power when it comes to setting performance royalty rates.<sup>75</sup> Considering labels and recording artists have more freedom to negotiate without government intervention, it remains to be seen how the MMA levels the playing field and how its implications can be applied in Web 3.0.

### III. MUSIC IN WEB 3.0

From NFT sales to virtual concerts to full scale festivals, music in Web 3.0 will be the next iteration of massive revenue streams for all parties involved.<sup>76</sup> For example, each metaverse performance offers a unique experience that enables artists (including songwriters) to interact with fans in ways never before thought possible.<sup>77</sup> Not only are there creative means to access music, but there are also new methods of owning and earning profits from it.<sup>78</sup> However, with so many benefits come legal issues that need to be addressed. While the technology is new and exciting, the laws have yet to change. After all, the mechanical royalty rate was originally created to cover the fees from compiling musical compositions into piano rolls and just recently reached streaming with the MMA.<sup>79</sup> Music may be going virtual, but remedying disputes still occur in the physical courtroom.

#### A. MUSIC INTERACTION ACROSS WEB 3.0

The MMA was a valiant effort at addressing interactive streaming. However, technology has already advanced beyond mere streaming. Web 3.0 allows not only interactive streaming, but also live performances, downloads, and transfers of digital property that can be bought and resold in

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72. *The Music Modernization Act*, ASCAP, <https://www.ascap.com/about-us/stand-with-songwriters> (last visited Dec. 30, 2021).

73. SoundExchange is the only collective rights management organization designated by Congress to collect and distribute digital performance royalties. *Who We Are*, SOUND EXCHANGE, <https://www.soundexchange.com/who-we-are/#about-us> (last visited Aug. 10, 2022).

74. See *Mechanical Royalties*, *supra* note 12.

75. *Id.*

76. Eric Elliott, *State of the Music Metaverse 2022*, MEDIUM (Dec. 22, 2021), <https://medium.com/the-challenge/state-of-the-music-metaverse-2022-549185b8dcba>.

77. *Id.*

78. Eric Elliott, *Welcome to the Music Metaverse*, MEDIUM (Oct. 27, 2021), <https://medium.com/the-challenge/welcome-to-the-music-metaverse-14c8b7f92ca6>.

79. *How Much Do Songwriters Make from Mechanical Royalties?*, *supra* note 16.

a single location or in millions of locations all at once.<sup>80</sup> Many artists are already taking advantage of the new medium, hosting massive metaverse concerts set in virtual reality<sup>81</sup> to Meek Mill releasing his final *Dreamchasers* mixtape as an NFT.<sup>82</sup> However, unlike DSPs, Web 3.0 is not controlled by a single corporation.<sup>83</sup> The main draw to Web 3.0 is its community ownership where no single authority can control what users can or cannot do.<sup>84</sup>

### 1. Metaverse Performances—From Concerts to Festivals

One of the ways artists are entering the metaverse is through performances either as a single performer or as part of a festival.<sup>85</sup> How the audience views the performance differs depending on not only the platform (e.g., Roblox versus Fortnite), but on the artist herself.<sup>86</sup> There are three main formats for a metaverse performance: avatars, video live-streams, and interactive gaming experiences.<sup>87</sup> Artists may elect to use a combination of these methods. For example, Ariana Grande’s Fortnite performance featured her avatar performing on the platform in addition to the opportunity for fans to follow her throughout the digital world (i.e., sliding down rainbows and collecting butterflies) on mini “quests” while collecting digitized objects like butterflies.<sup>88</sup> Such digitalized objects enabled users to either add collectibles to their accounts or open up new music, amongst other surprises.<sup>89</sup>

Travis Scott’s team created a similar experience for fans, with his avatar leading Fortnite gamers through underwater and outer space environments, taking on visual feats achievable only in virtual reality.<sup>90</sup> At the time of his ten-minute concert, Fortnite reported over twenty-seven million “unique

80. Singleton, *supra* note 4.

81. J. Clara Chan, *Justin Bieber to Perform Live Metaverse Concert*, HOLLYWOOD REP. (Nov. 9, 2021), <https://www.hollywoodreporter.com/business/digital/justin-bieber-virtual-concert-wave-1235044308/>.

82. Brenton Blanchet, *Meek Mill Will Drop Final ‘Dreamchasers’ Tape as NFT*, COMPLEX (Nov. 27, 2021, 7:44 PM), <https://www.complex.com/music/meek-mill-dreamchasers-nft-tape>.

83. *Welcome to the Music Metaverse*, *supra* note 78.

84. *Id.*

85. *Id.*

86. *Id.*

87. See generally Pryor & Breen, *supra* note 5, at 28; see generally *Ariana Grande Sings in Fortnite’s Metaverse*, BBC (Aug. 9, 2021), <https://www.bbc.com/news/av/technology-58146042> (play video).

88. The Fortnite Team, *Fortnite Presents... the Rift Tour Featuring Ariana Grande*, EPIC GAMES (Aug. 9, 2021), <https://www.epicgames.com/fortnite/en-US/news/fortnite-presents-the-rift-tour-featuring-ariana-grande>.

89. The Fortnite Team, *Fortnite Presents... the Rift Tour Featuring Ariana Grande*, EPIC GAMES (Aug. 7, 2021), <https://web.archive.org/web/20210808082220/https://www.epicgames.com/fortnite/en-US/news/fortnite-presents-the-rift-tour-featuring-ariana-grande>.

90. William E. Ketchum III, *Fortnite’s Travis Scott Concert Was Historic. But He’s Not the Only Artist Getting Creative.*, NBC NEWS (Apr. 30, 2020, 1:11 PM), <https://www.nbcnews.com/think/opinion/fortnite-s-travis-scott-concert-was-historic-he-s-not-nca1195686>.

players” live over the course of the event, reaching audiences over four hundred times the size of some of the largest physical arenas.<sup>91</sup> Others, like DJs Diplo and Marshmello, have taken the simpler approach of live-streaming themselves from the comfort of their homes or studios to fans interacting with another in the virtual space.<sup>92</sup>

Single-artist concerts are not the only performances taking hold in the metaverse. In October 2020, Decentraland hosted its first Metaverse Festival with eighty artists performing over the course of several days.<sup>93</sup> Much like one would expect from Coachella or Lollapalooza, the Metaverse Festival included typical festival amenities like food trucks, VIP sections, a Ferris wheel, and places to purchase festival merch that users could then wear on their Decentraland avatars in the world itself.<sup>94</sup> Unlike earlier metaverse festivals like the Secret Sky Festival, which included a full line up of performers in a digital landscape, Decentraland embraced the full scale of what a festival in Web 3.0 could be by creating the ability to buy and own merchandise and land, build up stages or galleries, and fully interact with other users.<sup>95</sup> Decentraland increased the value of its own cryptocurrency—the mana crypto token—by creating NFTs to act as not only mementos from the festival, but also as digital pieces that tracked who accessed the festival.<sup>96</sup>

The commercial impact of music exploited in the metaverse is just beginning, especially as more partnerships between virtual venues and event promoters form. For instance, Roblox and Insomniac—venue and event promoter, respectively—teamed up to bring the “world’s largest dance music festival, Electric Daisy Carnival (EDC), to the metaverse.”<sup>97</sup> With EDC happening both in-person and in the metaverse, people who would not otherwise be able to travel or afford tickets to the Las Vegas event now have the opportunity to partake in the music magic from home. Much like in Decentraland, users can collect unique accessories for their avatars, prizes will be thrown into the virtual crowds, and mini-games and quests will be available to users to interact with another, such as dance battles with friends or collecting different objects to add to their digital wallets and sell later.<sup>98</sup>

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91. *Id.*

92. See Ariana Grande Sings in Fortnite’s Metaverse, *supra* note 87.

93. *Welcome to the Music Metaverse*, *supra* note 78.

94. *Id.*

95. *Id.*

96. See Camomile Shumba, *Decentraland’s Four-day Metaverse Festival That Featured 80 Artists and Garnered 50,000 Virtual Attendees Is Happening Again Next Year*, MARKETS INSIDER (Nov. 30, 2021, 7:56 AM), <https://markets.businessinsider.com/news/currencies/metaverse-decentraland-festival-happening-again-next-year-nft-sandbox-2021-11>.

97. Dean Takahashi, *Roblox Unveils Electronic Music Festival in the Metaverse*, VENTURE BEAT (Oct. 20, 2021, 6:00 AM), <https://venturebeat.com/2021/10/20/roblox-unveils-electronic-music-festival-in-the-metaverse/>.

98. *Id.*

With growing investments and the introduction of NFT sales, discussed *infra*, it is clear that metaverse performances are here to stay, even with the return of in-person concert post-COVID. Such digital festivals enable smaller artists to reach larger crowds, allow larger artists to skip the months of global travel for touring, and democratize access to music for fans who would not otherwise be able to see their favorite artists.<sup>99</sup>

## 2. REVENUE STREAMS CREATED BY NFT SALES

The decentralized universe introduces the unique concept of digital property rights.<sup>100</sup> With the introduction of these rights, more opportunities open for songwriters and publishers to profit from downstream, second-market royalties.<sup>101</sup> While not all songwriters can perform their music, NFT sales are an additional way to profit in Web 3.0. NFTs can encompass several things, from artwork to collectibles to music videos.<sup>102</sup> However, this Note will focus on the sale of songs as NFTs as it is most relevant to how songwriters can profit. NFTs are non-fungible, which simply means that they are not interchangeable or replaceable like the U.S. Dollar; they are unique codes that lack a one-to-one value with other NFTs.<sup>103</sup> When an NFT is purchased, two things are bought: (1) the token itself, proving ownership in the metaverse, and (2) the intellectual property (the asset itself) associated with the token (e.g., a song).<sup>104</sup> The artist retains the copyright whereas the buyer holds a limited or single-edition digital copy.<sup>105</sup> The token aspect refers to the unit of currency as used on the blockchain.<sup>106</sup> NFTs offer a verifiable ownership of the token, which can be traded or sold across third party platforms.<sup>107</sup> Furthermore, royalties are paid out to the original creator each time a token is resold.<sup>108</sup> If a songwriter owned copyright in a song sold as an NFT, each time that NFT was resold, the songwriter would continue to

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99. Additional revenue streams on the label side can be noted as “these virtual events are driving meaningful results for the labels who are seeing 5% to 1000% increases in streaming numbers and social followers during the activation windows.” *Id.*

100. *Welcome to the Music Metaverse*, *supra* note 78.

101. Eric Elliott, *The Musician’s NFT & Metaverse Playbook*, MEDIUM (Jan. 21, 2022), <https://medium.com/the-challenge/the-musicians-nft-metaverse-playbook-fe97023eae2>.

102. Mitchell Clark, *NFTs, Explained*, THE VERGE (Aug. 18, 2021, 9:20 PM), <https://www.theverge.com/22310188/nft-explainer-what-is-blockchain-crypto-art-faq>.

103. *Id.*

104. Kevin Roose, *What Are NFTs?*, N.Y. TIMES, <https://www.nytimes.com/interactive/2022/03/18/technology/nft-guide.html> (last visited on May 25, 2022).

105. *See generally* Harrison Jordan, *No, NFTs Aren’t Copyrights*, TECHCRUNCH (June 16, 2021, 10:15 AM), <https://techcrunch.com/2021/06/16/no-nfts-arent-copyrights/>.

106. Mitchell, *supra* note 102.

107. *Id.*

108. *Id.*



make the same pre-determined royalty rate. These secondary market royalties give songwriters a leg up in earning profits.<sup>109</sup>

Much like selling a vinyl record to a fan, artists can sell a digital song as an NFT.<sup>110</sup> NFTs can generate more money for the artist faster than releasing on a DSP, with most of the revenue going directly to them.<sup>111</sup> Because of this, more rights—and thus royalties—can be reserved to the creators.<sup>112</sup> It is important to note that the landscape is continuously changing though. Streaming music does not entitle fans to ownership of the song. However, NFTs give fans something to hold onto, a memento that is entirely theirs.<sup>113</sup>

As an additional benefit, dropping music digitally in Web 3.0 allows secondary market royalties for songwriter. The royalties are tracked via smart contracts that govern the exchange of digital items, to ensure the artists get compensated indefinitely each time their work is resold.<sup>114</sup> Although, this is not always the case. A limitation of royalties earned from secondary transactions is that the royalty rate will only be paid if the work is sold on the same platform that the artists originally sold their work.<sup>115</sup> Because each NFT is created on specific blockchain platforms—Ethereum,<sup>116</sup> for example—it is difficult to resell the NFTs on another platform because the cryptocurrencies do not have the one-to-one value with one another.<sup>117</sup>

Nonetheless, songwriters can still profit on when on the same blockchain—and more importantly, the royalty rates can and will be set by the market rather than by regulatory bodies or statutes.<sup>118</sup> With the market

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109. See *The Musician's NFT & Metaverse Playbook*, *supra* note 101.

110. See *id.*

111. See *Welcome to the Music Metaverse*, *supra* note 78 (“Amon Tobin is dropping his new album as 1/1 songs on Catalog, earning him \$15k so far, with each buyer paying at least \$2k per song. That’s about the equivalent of 3.75m streams on Spotify, coming from just a handful of supporters.”).

112. See generally Michael Dore, *Legal Issues to Watch in Navigating the Secondary Market for NFTs*, DAILY JOURNAL (Apr. 27, 2021), <https://www.gibsondunn.com/wp-content/uploads/2021/05/Dore-Legal-issues-to-watch-in-navigating-the-secondary-market-for-NFTs-Daily-Journal-04-27-2021.pdf>.

113. Mitchell, *supra* note 102.

114. *Welcome to the Music Metaverse*, *supra* note 78; see generally John deVadoss, *Programming Smart Contracts in C#*, MICROSOFT (Nov. 1, 2019), <https://docs.microsoft.com/en-us/archive/msdn-magazine/2019/november/blockchain-programming-smart-contracts-in-csharp> (noting that smart contract capabilities include: “the ability to authenticate parties and counterparties, ownership of assets and claims of right, . . . to access and refer to information and data both on the blockchain platform and outside of the smart contract . . . to trigger transactions, . . . [and] to automate the execution of transactions and (economic) protocols on the blockchain platform.”).

115. Dore, *supra* note 112.

116. The most common ETH-based cryptocurrencies are built on the ERC-20 token standard; however, this Note simplifies the detail in which the technology can be described. *Key Use Cases for Ethereum and Blockchain*, GEMINI: CRYPTOPEDIA, <https://www.gemini.com/cryptopedia/ethereum-smart-contracts-tokens-use-cases> (last updated Dec. 23, 2021).

117. Cf. Roose, *supra* note 104 (“And if you get mad at OpenSea, you can easily take your NFTs (which live in your crypto wallet, not on OpenSea’s servers) and trade them on a different platform.”).

118. *Welcome to the Music Metaverse*, *supra* note 78.

driving prices of NFTs, smaller artists and songwriters can truly level the playing field in the payment inequities stemming from current licensing schemes in the physical world.

### 3. *The Rush for Label Investments in Web 3.0*

Artists are not the only ones taking advantage of Web 3.0. Massive labels, like Warner Music Group, are investing heavily in Web 3.0 and companies developing that are their own metaverses.<sup>119</sup> Take, for example, Warner Music's partnership with OneOf, a platform on the Tezos blockchain.<sup>120</sup> The partnership will enable the company to create "exclusive NFTs" for artists across Warner Music's well-established catalogue of music.<sup>121</sup> With labels entering the fold by purchasing land and creating NFTs, Web 3.0 is garnering even more attention in the music industry. It begs the question: will history repeat itself, or will songwriters manage to level the playing field in this new go-around of music consumption?<sup>122</sup>

Not only are labels and streaming services creating NFTs,<sup>123</sup> they are also investing in the platforms themselves.<sup>124</sup> For instance, Sony Music acquired a minority stake in Epic Games, the producer of Fortnite, while Warner Music Group invested heavily in Roblox—both of which are making waves by merging gaming with the virtual concert space.<sup>125</sup> By opening their catalogues to such platforms, the labels aim to make serious profits from music played in the respective digital worlds. Moreover, labels are not the only investors in Web 3.0; streaming platforms are entering the mix, with Spotify becoming the first music streamer to launch on Roblox.<sup>126</sup> The partnership includes Spotify having its own island within the game that

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119. Jem Aswad, *Warner Music Strikes Deal with OneOf for Artist and Music NFTs*, VARIETY (Jan. 21, 2022, 4:55 AM), <https://variety-com.cdn.ampproject.org/c/s/variety.com/2022/digital/news/warner-music-oneof-nft-1235167338/amp/>.

120. *Id.*

121. *Id.*

122. See generally Todd Spangler, *Universal Music Group Teams with Curio to Sell NFT Digital Collectibles for Music Artists, Labels*, VARIETY (Feb. 17, 2022, 6:44 AM), <https://variety-com.cdn.ampproject.org/c/s/variety.com/2022/digital/news/universal-music-group-curio-nft-1235184683/amp/>.

123. Aisha Malik, *Spotify Is Testing a New Profile Feature That Lets Select Artists Promote Their NFTs*, TECHCRUNCH (May 16, 2022, 8:18 AM), <https://techcrunch.com/2022/05/16/spotify-new-feature-artists-promote-nfts/> ("Users who are part of the test will be able to preview a select number of NFTs via an artist's profile page. Users can then learn more about a specific NFT and choose to purchase it through an external marketplace.")

124. Ben Gilbert, *OK Computer: Will the Next Phase of the Music Industry Take Place Inside the Metaverse?*, SYNCHTANK (Sept. 20, 2021), <https://www.synchtank.com/blog/will-the-next-phase-of-the-music-industry-take-place-inside-the-metaverse/>.

125. *Id.*

126. Sarah Perez, *Spotify Becomes First Music Streamer to Launch on Roblox*, TECHCRUNCH (May 3, 2022, 4:00 AM), <https://techcrunch-com.cdn.ampproject.org/c/s/techcrunch.com/2022/05/03/spotify-becomes-first-music-streamer-to-launch-on-roblox/amp/>.

allows users to interact with artists, join mini quests, and even purchase artists' merchandise, that can then be brought with them to other areas in the game.<sup>127</sup> The partnership will allegedly create additional revenue streams for the individual artists with the sales proceeds going back to the creators, and a cut of the profits going back to Roblox itself.<sup>128</sup> However, it is difficult to see how this benefits artists—songwriters especially—if they must share profits from merchandise and NFT sales in Web 3.0 rather than having it all to themselves if they work alone.

## B. LEGAL CONSIDERATIONS AND HURDLES FACING MUSIC CONSUMPTION IN WEB 3.0

With technology that is so new and everchanging, the response from legal community needs to match pace. One of the most notable obstacles to music in Web 3.0 rests with the licensing and clearing of said music.<sup>129</sup> Determining which licenses are required and how to go about clearing music on metaverse platforms where there is presently no regulation is an obstacle that must be addressed and conquered. Copyright infringement remains ripe in music, no matter the platform. Relying purely on new technology to regulate and track data may prove to be insufficient to protecting creators and solving disputes as they arise.<sup>130</sup> Yet, as aforementioned, no matter what legal disputes may arise in this digital landscape, all remedies and challenges take place in the real, physical world.<sup>131</sup>

### 1. *Licensing and Clearance Across Platforms and Transactions*

The traditional music licensing rules relevant to online and digital exploitation should apply equally in Web 3.0.<sup>132</sup> Still, “the proliferation of music, performance, and exploitation in new, closed, or open online environments adds yet another layer of complexity to an already complex chain of rights in the music licensing process.”<sup>133</sup> When an artist performs a concert at the Hollywood Bowl, the venue must pay the label to license the performance of that artist's music. However, metaverse performances complicate this dynamic as they are not traditional, physical venues. So, if the same artist performs a concert in the metaverse, it is unclear how that requisite license is paid.<sup>134</sup> Additional clearance issues arise if an artist pre-

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127. *Id.*

128. *Id.*

129. Pryor & Breen, *supra* note 5, at 29.

130. See Kristen Morrill, *Smart Contracts: The Future of Blockchain in the Entertainment Industry*, 11 ARIZ. ST. SPORTS & ENT. L.J. 43, 53 (2021).

131. Pryor & Breen, *supra* note 5, at 30.

132. *Id.* at 29.

133. *Id.*

134. *Id.*

records music and then has their “avatar” performing the songs, such as Travis Scott performing as his avatar in Fortnite.<sup>135</sup> In that case, a new master<sup>136</sup> would be created that the label would then need to consent to and negotiate a license fee for.<sup>137</sup> Additionally, the licensing fees and royalty rates are still governed by copyright law, with certain rates set by rate courts or legislation.<sup>138</sup> For instance, Ariana Grande’s Fortnite concert still required a public performance license, but the major PROs who paid the royalties remain governed by WWII-era consent decrees that continue to devalue the true market rate.<sup>139</sup>

Furthermore, policing piracy in Web 3.0 is not an easy task. Each metaverse acts as a “walled garden” in that each user is subject to the terms of service specific to that environment or platform.<sup>140</sup> Individuals looking to use someone else’s music in the metaverse must ensure that the terms by which they obtain a license, if they obtain one at all, align with the terms of the metaverse where the music is played.<sup>141</sup> While this could limit infringement, it could also foster infringement. Enforcement mechanisms, if ever developed, will have a more difficult time finding and regulating each new space as it is created because each metaverse runs on its own specific blockchain.<sup>142</sup> As metaverse worlds continue to develop, it is critical that the tech companies behind them license musical works before they are released onto their platforms. With music as the drawing force to the metaverse,<sup>143</sup> tech companies cannot mimic their DSP predecessors and disregard existing licensing standards only to give in after damages are incurred.<sup>144</sup>

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135. Emma Griffiths, *In the Clear(ance) – Deborah Mannis-Gardner on Licensing Music in the Metaverse*, SYNCHTANK (May 11, 2022), <https://www.synchtank.com/blog/in-the-clearance-deborah-mannis-gardner-on-licensing-music-in-the-metaverse/>.

136. A master recording, often referred to as “masters,” is the official original recording of a song, sound or performance, and is used as the source from which other copies can be made.

137. Griffiths, *supra* note 135 (“With performance deals, even if an artist is performing their song, usually the labels require a waiver or blocking rights. A lot of people on the production side don’t realize that.”).

138. *See generally* Pryor & Breen, *supra* note 5, at 29-31.

139. David Israelite, *What the Metaverse Means for Music Creators*, BILLBOARD (Nov. 30, 2021), <https://www.billboard.com/pro/metaverse-music-creators-guest-column-nmpa/>.

140. Pryor & Breen, *supra* note 5, at 30.

141. *See generally id.*

142. *See generally* PRIMAVERA DE FILIPPI & AARON WRIGHT, BLOCKCHAIN AND THE LAW: THE RULE OF CODE 123-25 (2018).

143. *See generally* Tim Ingham, *Warner Music Group Joins \$520M Investment Round in Video Game Platform Roblox*, MUSIC BUS. WORLDWIDE (Jan. 7, 2021), <https://www.musicbusinessworldwide.com/warner-music-group-joins-520m-investment-round-in-video-game-platform-roblox/> (noting that Warner Music Group invested over \$5 million in Roblox while Sony Music Group acquired a \$250 million stake in Epic Games, maker of Fortnite); Glenn Peoples, *Streaming Is Reliable Revenue, So What’s Next for Warner Music and Other Labels?*, BILLBOARD (Nov. 15, 2021), <https://www.billboard.com/business/record-labels/streaming-is-reliable-revenue-so-whats-next-for-warner-music-and-other-labels-9660355/>.

144. *What the Metaverse Means for Music Creators*, *supra* note 139.

Lastly, each time copyrighted music is synchronized with an audiovisual medium, like a Roblox performance, functional synchronization licenses are required.<sup>145</sup> With no compulsory license requirement or consent decrees to regulate the rates for synchronization licenses, songwriters can compete with their label and recording artist counterparts in setting fair market rates for those licenses.<sup>146</sup> However, issues surrounding who pays the licenses and to whom remain. As music is streamed and performed to worldwide audiences, different territories and their respective copyright owners and laws come into play.<sup>147</sup>

## 2. *The Pitfalls of Geo-Blocking and WIPO Considerations on International Copyright Regulation*

With international audiences, international copyright law must be considered. For example, Warner Music may own the North American rights for an artist's catalogue of music, but a different label may own the European rights. Thus, a single metaverse performance, without a tracking mechanism, would implicate several copyright owners from different territories, further complicating how licenses need to be paid and to whom the licenses need to be paid.<sup>148</sup> Tracking every individual that is owed either a royalty or license fee is no easy feat, and tech companies have yet to discover an efficient means of doing so. Beyond tracking the correct owners across multiple territories, because metaverses act as walled gardens with their own sets of terms of service, the licensing requirements could be vastly different depending on where in the world the metaverse was created.<sup>149</sup> For example, censorship and content standards affecting a live performance of an artist who takes rash political stances with their music will have vastly different reactions in the United States versus Russia or China.<sup>150</sup>

A possible answer addressing the international aspect of the metaverse can be found in television and film streaming. Geo-blocking is a tool by which internet service providers, content providers, and intellectual property

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145. Sidney Fohrman & Hayley Silvertown, *The Convergence of Music and Gaming – Sheppard Mullin*, ESPORTS INSIDER (Aug. 24, 2021), <https://esportsinsider.com/2021/08/the-convergence-of-music-and-gaming-sheppard-mullin/> (“These licenses can be costly and challenging to obtain, especially in the event that there are several writers on a particular composition and a license is required from multiple music publishers – which is often the case.”).

146. *What the Metaverse Means for Music Creators*, *supra* note 139.

147. See Pryor & Breen, *supra* note 5, at 30; see also Sabrina Earle, *The Battle Against Geo-Blocking: The Consumer Strikes Back*, 15 RICH. J. GLOB. L. & BUS. 1, 5 (2016).

148. See generally Earle, *supra* note 147, at 5, 10.

149. Pryor & Breen, *supra* note 5, at 30.

150. *Id.*

proprietors use to prevent copyright infringement.<sup>151</sup> The technology uses databases to map out IP addresses and their physical location to either grant or restrict access to content based on that physical location.<sup>152</sup> For example, someone watching local access television on PBS in New York at 3 P.M. would have a counterpart in California with a completely different show on the same network because the Californian would not have access to the New Yorker's content. Currently, content providers such as Netflix use geo-blocking to ensure users do not share passwords in other countries and that the company adheres to copyright laws across its territories, especially as governed by the Worldwide Intellectual Property Organization (WIPO).<sup>153</sup>

With over 180 countries as members, WIPO is dedicated to protecting copyright holders throughout the international market.<sup>154</sup> Notably, Article 11 of the WIPO Copyright Treaty prohibits "circumvention of technological measures that are used by authors" to maintain their respective rights, including the right to distribution.<sup>155</sup> Thus, if a copyright owner of a television show in Germany did not give Australia a license to exhibit his show, then it would breach the treaty for Netflix to allow Australian users to stream that German show. Geo-blocking provides the means for Netflix to protect itself from someone in Australia using its platform for infringement. This method could be a means for tech companies in the metaverse to then mitigate their liability of infringement.

An issue with geo-blocking, as it relates to the metaverse, is that it creates a form of regulation on a platform that is meant to have none. One of the main draws of the metaverse is that artists can reach much larger audiences than those of physical venues and live tours.<sup>156</sup> Geo-blocking could enable the platforms to reduce liability and lessen copyright infringement, at least geographically.<sup>157</sup> It is not a complete solution to infringement, however.<sup>158</sup> Moreover, many individuals have found ways to get around geo-blocking, especially through the use of virtual private networks (VPNs).<sup>159</sup> VPNs re-route a user's web traffic through another

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151. *Geoblocking*, TECHOPEDIA, <https://www.techopedia.com/definition/32362/geoblocking> (last visited May 27, 2022) ("Geoblocking often uses encryption in order to protect content that is intended only for specific regions.").

152. *Id.*

153. *See id.*; Earle, *supra* note 147, at 3, 14.

154. Convention Establishing the World Intellectual Property Organization art. 3, July 14, 1967, 21 U.T.S. 1749, 828 U.N.T.S. 11846.

155. Earle, *supra* note 147, at 5.

156. *See* Takahashi, *supra* note 97.

157. *See* Earle, *supra* note 147, at 3, 7.

158. *See id.* at 11.

159. Ian Garland, *How to Get Around Geo-Blocking with a VPN and Change Your Location*, COMPARITECH, <https://www.comparitech.com/blog/vpn-privacy/beat-geo-blocking-vpn/#:~:text=Luckily%2C%20there's%20an%20easy%20way,%2C%20country%2Dspecific%20IP%20address> (last updated Oct. 6, 2022).

country's servers so that the real physical IP address is replaced with a temporary and country-specific IP address.<sup>160</sup> To put into real-world terms, if the Australian from the earlier example connected to a VPN, their IP address will look as though they are logging into Netflix from Germany—thus accessing the previously inaccessible German show.

### 3. *The Limitations of Smart Contracts as Authenticators*

Ensuring transactions are authenticated with as much transparency as possible is another legal issue arising with the popularity of Web 3.0. Smart contracts are codes that automatically execute the terms of a contract on the blockchain and offer secure peer-to-peer transactions.<sup>161</sup> In essence, they can self-execute based on coding that waits for a conditional term to be met.<sup>162</sup> For example, if a songwriter were to sell a new song as an NFT for a certain amount of Bitcoin, the contract would not execute until the Bitcoin payment was transferred from the buyer to the seller.<sup>163</sup> With this peer-to-peer style transaction now available to artists, intermediaries are no longer needed to broker sales and distribution.<sup>164</sup>

Another benefit of smart contracts is their ability to authenticate transactions.<sup>165</sup> Some of the interesting capabilities of blockchain technology are its tracking of metadata and transparency in transactions.<sup>166</sup> Smart contracts are better equipped to track the metadata of specific songs such as the song title, singer(s), songwriters(s), producer names, the publishers, and labels attached—all of which is necessary to pay out the proper license fees and royalties.<sup>167</sup> Therefore, a smart contract could facilitate and calculate the distribution of fees and royalties between all of the parties involved.<sup>168</sup>

However, using smart contracts as the only authenticators in Web 3.0 does not come without its obstacles. First, they can only track data on the same blockchain as the original creation.<sup>169</sup> If a songwriter sold an NFT using Ethereum, and its original buyer then used a third-party platform to trade on another blockchain, the songwriter would not see those secondary market

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160. *Id.*

161. See Morrill, *supra* note 130; see also Andrew Rossow, *Blockchain Aims to Be the Biggest Stage for Empowering Music Artists*, FORBES (May 17, 2018, 8:39 PM), <https://www.forbes.com/sites/andrewrossow/2018/05/27/blockchain-aims-to-be-the-biggest-stage-for-empowering-music-artists/?sh=27f80d5a3e0b>.

162. See Morrill, *supra* note 130.

163. See generally *id.*

164. *Id.*

165. *Id.* at 67.

166. *Id.*

167. David Idokogi, Note, *Decentralizing Creativity: A Tenable Case for Blockchain Adoption in the Entertainment Industry*, 47 RUTGERS COMPUT. & TECH. L.J. 274, 293 (2021).

168. *Id.* at 292.

169. See, e.g., *Oracles*, ETHEREUM (Oct. 14, 2022), <https://ethereum.org/en/developers/docs/oracles/> (describing the limitations to tracking on Ethereum).

royalties.<sup>170</sup> The likely—if not only—result to solve such a dispute would be litigation. Second, with statutory and compulsory licenses, the rates are pre-set, making the self-execution aspect of smart contracts invaluable in Web 3.0.<sup>171</sup> However, when it comes to synchronization licenses and the selling of NFTs—fees that can be negotiated—smart contracts can get more complex, raising the transaction costs they were supposed to lower.<sup>172</sup> Of course, as the legal issues evolve with the development of Web 3.0, acknowledging possible solutions early is critical to ensuring songwriters are treated fairly.

#### IV. LESSENING THE ROYALTY IMBALANCE FOR SONGWRITERS

Protecting songwriter copyrights and ensuring proper licenses are paid to the correct owners is more complex in the decentralized metaverse than it is in the physical world. Not only is tracking the metadata a feat, but even a single metaverse concert offers an environment where music can be streamed, downloaded, purchased, and performed in one “event.” This simultaneously implicates performance, mechanical, and synchronization rights.<sup>173</sup> This new unregulated environment, where market value reigns supreme, produces a similar problem: tracking, collecting, and distributing royalties on a massive scale with no oversight is costly to both artists and the platforms.<sup>174</sup> Thus, the solutions proposed involves both legislative and administrative action that tackle music licensing’s hurdles in paying out royalties to the proper copyright holders, create a means by which songwriters are ensured that royalties and licenses are paid, and layout the possibility of a new intellectual property right that lives on in Web 3.0.

##### A. AMENDING THE COPYRIGHT ACT OF 1976 AND CREATING A PURELY DIGITAL PROPERTY RIGHT

The first step is to amend Section 106 of the Copyright Act of 1976 to reflect the creation of digital property rights for creators in the metaverse. Currently, Section 106 governs the exclusive rights that copyright owners reserve to either license out or keep to themselves, including distribution, reproduction, and performance rights.<sup>175</sup> Of course, Web 3.0 offers the opportunity for virtual environments to develop, where music—and thus its copyrightable elements—can exist solely in a metaverse and not in the

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170. Sadie Williamson, *NFTs Have a Royalty Problem: Here’s the Answer*, VENTURE BEAT (Apr. 29, 2022, 9:07 AM), <https://venturebeat.com/datadecisionmakers/nfts-have-a-royalty-problem-heres-the-answer/>.

171. Idokogi, *supra* note 167.

172. *Id.*

173. *See generally* Pryor & Breen, *supra* note 5, at 29.

174. *See generally id.* at 33.

175. 17 U.S.C. § 106.



physical world.<sup>176</sup> Further, Congress enacted the Copyright Act at a time where such considerations were impossible to foresee back in the 1970s.<sup>177</sup> With the advent of new technology, legislation needs to address ongoing innovation to prevent damages on a massive scale. To better protect songwriters who create and release music either by NFT sales, virtual performances, or the old-fashioned download, the exclusive rights should include some form of digital ownership. This new digital right would function specifically within Web 3.0 and run on blockchain.

The imposition of such an amendment could lead to another reevaluation of the consent decrees governing the PROs can be eliminated, allowing fandoms within their own metaverses to set fair market rates.<sup>178</sup> For instance, in 2020, the Paramount Consent Decrees were overturned, allowing vertical integration for studios to own their own theaters.<sup>179</sup> A driving rationale behind the decision to overturn the 1940s' era consent decrees on the studios was the “significant changes in the market” and the ways in which people today can watch films “did not exist in the 1930s and 40s” when the decrees took effect.<sup>180</sup> To that extent, a similar argument of market changes and methods of listening to music can be made on behalf of ASCAP and BMI, as evidenced by a legislative action to amend the Copyright Act.

## B. CREATION OF AN ADMINISTRATIVE OVERSIGHT BODY AND

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176. See *Welcome to the Music Metaverse*, *supra* note 78.

177. See Andrew Flanagan, *A Music Industry Peace Treaty Passes Unanimously Through Congress*, NPR (Sept. 19, 2018, 5:17 PM), <https://www.npr.org/2018/09/19/649611777/a-music-industry-peace-treaty-passes-unanimously-through-congress>; see generally Intellectual Property and Technology News, *The Music Modernization Act: Stronger Protections for Artists and Publishers*, DLA PIPER (Dec. 21, 2018), <https://www.dlapiper.com/en/us/insights/publications/2018/12/ipt-news-q4-2018/the-music-modernization-act/>.

178. The recent decision leaving the consent decrees to govern PROs angered many. The Justice Department cited one of the reasons that they would not overturn the decrees was in due part to the fact that although music technology was advancing, the licensing structure remained the same—unlike its earlier decision claiming the film industry did in fact change enough for Paramount to lose its consent decree for vertical integration. See generally Anousha Sakoui, *Justice Department Leaves Decades-Old Music Industry Decrees Unchanged*, L.A. TIMES (Jan. 15, 2021, 2:10 PM), <https://www.latimes.com/entertainment-arts/business/story/2021-01-15/justice-dept-consent-decrees-music-industry-ascap>. With the creation of a new digital property right in addition to the establishment of a universe where many rights will be implicated at once, the argument that the licensing structure remains the same will be turned on its head. *Id.*; David Israelite, *America's Songwriters Deserve Better Than This*, BILLBOARD (July 7, 2016), <https://www.billboard.com/music/music-news/nmpa-op-ed-david-israelite-consent-decrees-americas-songwriters-deserve-better-7430930/>.

179. Brent Lang, *Judge Approves Ending Paramount Antitrust Consent Decrees*, VARIETY (Aug. 7, 2020), <https://variety.com/2020/film/news/paramount-antitrust-consent-decrees-eliminated-1234728696/>.

180. *United States v. Paramount Pictures, Inc.*, No. 19-544 (AT), slip op. at \*8 (S.D.N.Y. Aug. 7, 2020); see Eriq Gardner, *Judge Agrees to End Paramount Consent Decrees*, HOLLYWOOD REP. (Aug. 7, 2020, 7:50 AM), <https://www.hollywoodreporter.com/business/business-news/judge-agrees-end-paramount-consent-decrees-1306387/>.

## MAINTAINING A PUBLIC VIRTUAL WALLET ON BLOCKCHAIN

Much like how the MMA created the MLC, similar legislation should be enacted to create an independent, non-profit body with similar functions, expanded to the new digital property right, along with the capability to manage the metadata for performance, mechanical, and synchronization licenses. This new body, termed the Digital Rights Collective (“DRC”), like the MLC, will function in an administrative capacity to track, collect, and distribute royalties across separate metaverse worlds (e.g., Fortnite, Roblox, and Decentraland).<sup>181</sup> More importantly, the DRC will act as an enforcement mechanism via blockchain<sup>182</sup> and smart contracts to ensure security and transparency.

For instance, blockchain can be utilized to run the organization as transparently as possible so that hierarchal structures no longer reign supreme.<sup>183</sup> From a high level, blockchains may provide the infrastructure to create the DRC organization so that it relies entirely on algorithmic systems and artificial intelligence—rendering human management moot as the organization would rely on code-based rules as a form of governance to structure operation.<sup>184</sup> Additionally, with the use of smart contracts self-executing code-based rules, utilizing blockchain as a central point of coordination for the DRC could decrease potential costs and perceived difficulties associated with running a large organization.<sup>185</sup>

The DRC could extend farther than the MLC by creating a virtual wallet that maintains the metadata for digital, mechanical, synchronization, and performance rights—much like the MLC does solely for mechanical rights regarding DSPs. Such metadata would include tracking all the necessary song information from copyright owners, their contact information, and even how the song is supposed to be split. This information would be widely accessible to not only tech companies needing to license music on a large scale but to anyone playing music in a metaverse, thereby streamlining a major problem plaguing mechanical licensing for years. The information would be secured<sup>186</sup> because blockchains can be widely replicated,<sup>187</sup> so the data stored in any one blockchain is highly resilient. In other words, if one

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181. *Welcome to the Music Metaverse*, *supra* note 78.

182. When this Note refers to the solution running on blockchain, it is referring to a publicly accessible blockchain.

183. DE FILIPPI & WRIGHT, *supra* note 142, at 4.

184. *Id.*

185. *Id.*

186. “To ensure the orderly recordation of information and to enhance a blockchain’s security, every blockchain incorporates a consensus mechanism — a set of strict rules with predefined incentives and cost structures — which makes it difficult and costly for any one party to unilaterally remove or modify data stored in a blockchain.” *Id.* at 2.

187. Blockchains can be replicated as needed since they run on peer-to-peer networks consisting of computers around the globe at one time. *Id.*

computer on the system is corrupted, it would only affect that single copy as opposed to corrupting all the data in the network.<sup>188</sup>

The issues facing Web 3.0 mirror the issues DSPs faced before the MMA with royalty payments and license procurement.<sup>189</sup> By running on blockchain,<sup>190</sup> the DRC has capacity and bandwidth that the MLC, PROs, and third parties like the Harry Fox Agency (HFA) do not, making it the prime candidate for oversight in Web 3.0.<sup>191</sup> Unlike typical streaming, Web 3.0 offers a wide array of possibilities. Digital property rights, in conjunction with mechanical, performance, and synchronization licenses will concurrently be triggered, implicating each of the above organizations and the interests they represent.

### V. REAL-WORLD APPLICATION AND IMPLEMENTATION OF AN ADMINISTRATIVE BODY IN WEB 3.0

Achieving participation from all parties involved is essential for any proposed solution to work. From the standpoint of songwriters and publishers, an oversight body would enable them to keep better track of the royalties they earn and prevent infringement by tech companies and their users. Songwriters and publishers also face the risk that such an administrative body would not be as efficient as letting the free market dictate royalty rates. Ensuring that license fees are tracked and paid out correctly is mutually beneficial. Yet, tech companies may have the strongest argument against government regulation. Regulation can be a burden on business, especially in the tech world where companies such as Meta tend to react harshly to regulation.<sup>192</sup> But much like how the DSPs invested in the MLC to prevent massive settlements from taking place and to streamline the ability to obtain blanket licenses on a large scale, it is also likely that the same compromise can be reached for tech platforms here. However, an oversight body seems to contradict the very nature of Web 3.0.

Because synchronization rights are not currently governed by entities like PROs or the HFA, the DRC would act as such for Web 3.0.<sup>193</sup> The DRC,

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188. *Id.*

189. See *What the Metaverse Means for Music Creators*, *supra* note 139.

190. Blockchains are not centrally maintained. They run on peer-to-peer interaction in which each computer, or node, “store exact or nearly exact copies of a blockchain and coordinate by using software protocol that precisely dictates how network participants store information, engage in transactions, and execute software code.” DE FILIPPI & WRIGHT, *supra* note 142, at 2.

191. See Sam Mire, *Blockchain for the Music Industry: 9 Possible Use Cases*, DISRUPTOR DAILY (Nov. 6, 2018), <https://www.disruptordaily.com/blockchain-use-cases-music/>.

192. See generally Sheera Frenkel, *Key Takeaways from Facebook’s Whistle-Blower Hearing*, N.Y. TIMES (Oct. 21, 2021), <https://www.nytimes.com/2021/10/05/technology/what-happened-at-facebook-whistleblower-hearing.html?smid=url-share>.

193. See Emily Blake, *Data Shows 90 Percent of Streams Go to the Top 1 Percent of Artists*, ROLLING STONE (Sept. 9, 2020), <https://www.rollingstone.com/pro/news/top-1-percent-streaming-1055005/>; see

in functioning as an administrative body for synchronization and digital rights, would ensure smaller artists get a better share of the pot, preventing them from slipping through the gaps like they did with streaming.<sup>194</sup> The DRC would allow the market to set rates, but structure how they are collected and disbursed. Additionally, the creation of a digital property right could give songwriters and publishers more leverage in negotiating rates as Web 3.0 continues to evolve.<sup>195</sup> Metaverse platforms would need negotiated deals with the DRC upfront before musical works can be streamed, sold, or performed in their worlds. For this to be effective, however, the DRC would have to mirror the MLC in requiring songwriters to become members of their body.<sup>196</sup>

Furthermore, companies such as Roblox and Epic Games (e.g., organizations that create their own metaverse worlds) would fund the DRC, much like how DSPs fund the MLC under the MMA. With songwriters as mandatory members of the DRC, these companies would have the incentive to provide funding—not only to have music in their respective worlds, but also to lessen infringement liability.<sup>197</sup> Considering many labels are already investing heavily in such companies,<sup>198</sup> labels are likely incentivized to favor this funding structure.

Lastly, blockchain creates the ability to track transactions in smart contracts, which can govern how goods are bought and how digital property is transferred.<sup>199</sup> The DRC would ensure licenses from streaming in Twitch, to performances in Fortnite, to festival merch sales in Decentraland, will have the proper ownership splits attached to each work with royalties flowing from each sale back to the original creator.<sup>200</sup> Moreover, the complexity of the chain of rights could be easier to follow with smart

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also Paul Resnikoff, *The Top 1% of Artists Earn 77% of Recorded Music Income, Study Finds...*, DIGIT. MUSIC NEWS (Mar. 5, 2014), <https://www.digitalmusicnews.com/2014/03/05/toponepercent/>.

194. Since digital rights and synchronization rights are not compulsory nor under consent decrees, the DRC could also negotiate rates with platforms at fair market value.

195. *What the Metaverse Means for Music Creators*, *supra* note 139 (noting the NMPA has already completed deals with Facebook and Roblox to compensate songwriters as they grow their platforms in Web 3.0 with Twitch and TikTok beginning to enter the conversation).

196. *How It Works*, MECH. LICENSING COLLECTIVE, <https://www.themlc.com/how-it-works> (last visited Dec. 30, 2021).

197. See Dani Deahl, *Spotify and Wixen Settle the Music Publishing Company's \$1.6 Billion Lawsuit*, THE VERGE (Dec. 20, 2018, 10:15 AM), <https://www.theverge.com/2018/12/20/18150197/spotify-wixen-lawsuit-settlement-dismissal-music-publishing> (“Spotify and music publishing company Wixen have mutually agreed to dismiss the \$1.6 billion lawsuit Wixen filed back in 2017. . . . Wixen also claimed that Spotify was failing to pay out songwriter royalties about 21 percent of the time.”).

198. See Ingham, *supra* note 143.

199. *What Is Blockchain Technology?*, IBM, <https://www.ibm.com/topics/what-is-blockchain> (last visited Nov. 1, 2022).

200. See generally *Welcome to the Music Metaverse*, *supra* note 78 (“We own the stuff we collect in Decentraland. Now that we have the merch in our wallets, we can go to any supporting 3rd party platform and sell it. You can buy and sell land in Decentraland as well . . .”).

contracts acting as authenticators, especially when infringement disputes inevitably arise.<sup>201</sup> It is unlikely that general regulations are a worthwhile venture for tech companies in Web 3.0 without a regulatory body to enforce such regulations. Without amending current copyright laws or even antitrust law, regulations alone will not hold up if litigation ensues. With the DRC, Web 3.0 can remain as autonomous as possible but with the necessary structure to protect creators and ensure payments.

It is important to note that the DRC will not fix every issue that songwriters face in Web 3.0, nor will it be a perfect system. As Web 3.0 develops, and more data on it is gathered on how people interact with this new landscape, more changes will be necessary. Future criticism may include how the DRC does not determine new royalty rates, or better rates for that matter. The consent decrees on the PROs will remain intact and the compulsory license structure will too, remain the same. Where songwriters can make up the difference is in digital property rights and synchronization licenses along with a comprehensive virtual wallet, ensuring that rates are paid to the correct people at the correct amount. Furthermore, while the DRC will not set rates, the DRC will be the starting point in gathering the information needed to calculate fair market rates because it can track the necessary metadata across artists and platforms.

For smart contracts to track transactions, they would need the ability to cross between blockchains. There are multiple blockchain platforms, each with their own cryptocurrencies, in which music can be released, downloaded, streamed, and sold.<sup>202</sup> The inability to cross from one platform to another raises a serious question as to how the DRC can reasonably function as an oversight body across Web 3.0 and the many metaverses created within it. However, with this technology is rapidly developing and the probability of tech companies cooperating in building their programs, the DRC can realistically function as an administrative body across platforms in the near future.

Under the umbrella of the DRC, digital property rights can be secured and traced, songwriters will have a common structure for synchronization rights reflecting market value, and copyright owners across platforms can know their rights will be efficiently monitored to ensure proper payment. With this, songwriters might just have a level playing field as this decentralized medium develops.

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201. Casey Newton, *Is the Music Industry's Future on the Blockchain?*, THE VERGE (Nov. 24, 2021, 11:45 AM), <https://www.theverge.com/22800746/music-industry-royalties-blockchain-crypto-royal-paradigm>.

202. See generally Morrill, *supra* note 130.

## VI. CONCLUSION

Web 3.0 is still incredibly new. Opportunities will continue to grow and expand for those willing to put in the effort. The heavy investment from tech companies into building metaverses and the like is similar to what DSPs such as Spotify did in creating interactive streaming platforms. These investments could have the same initial results: a disregard of the legal processes involved in music licensing, that leave songwriters without the compensation they have long been entitled to. While Web 3.0 is a very different medium for which music can be consumed, music licensing remains the same.<sup>203</sup> Legislation and collaboration are vital to solving licensing issues affecting the industry and ensuring songwriters receive equal opportunity to profit from Web 3.0.

With Web 3.0 growing in popularity and funding, it is essential to act now. With many new revenue streams, songwriters have more opportunities to profit than ever before.<sup>204</sup> The current legislation impedes royalty rates that can be earned by songwriters and fails to provide a streamlined solution to licensing music on a massive scale.<sup>205</sup> As society enters this next stage of technology, the traditional methods of licensing need to be reevaluated. Future legislation cannot base itself in antiquated laws that lack consideration as to how quickly technology is influencing how we interact with music. The music industry will continue to evolve as Web 3.0 becomes more widely accepted. If blockchain technologies are implemented, the process for tracking, paying royalties, and authenticating transactions will be streamlined and more accurate overall. Ultimately, establishing a digital property right and a suitable oversight body offers songwriters the potential to profit heavily in this new ecosystem. Although Web 3.0 is still in its infancy, the opportunities to improve the payment imbalances for songwriters are endless.

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203. See generally Pryor & Breen, *supra* note 5, at 29.

204. See generally *id.*

205. See generally COPYRIGHT AND THE MUSIC MARKETPLACE, *supra* note 67, at 69-83.

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