Static Builds Over Music Club Accord

Publisher say a proposed settlement of a copyright lawsuit could hurt composers.

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Three years ago, when a couple of songwriters and the daughter of a famed jazz musician filed a lawsuit against the nation's two major record clubs, it seemed like just another skirmish in the continuing fight for artists' rights.

Today, however, as a settlement in the songwriters' suit against Columbia House Co. and BMG Direct Inc. nears court approval, what was once an isolated battle has turned into an industrywide war.

Since becoming a federal class action, the suit has quietly expanded to include thousands of songwriters and hundreds of millions of dollars in disputed revenue. Now a proposed settlement has many music publishers up in arms, claiming that it will permanently disadvantage composers.

If approved, the settlement will no longer require that Columbia House and BMG Direct — best known for sending listeners 12 CDs for the price of one — seek permission to distribute copyrighted songs. Instead, a new Internet-based system would give songwriters 30 days to object before the license is automatically granted.

"This settlement turns the law on its head," said Irwin Robinson, chief executive of Famous Music Publishing Cos. and chairman of the National Music Publishers' Assn. "When you create art, it should be yours to keep unless you give permission. It shouldn't be the artists' obligation to object."

Robinson is one of several publishers who say they plan to oppose the settlement when it is presented in a Los Angeles courtroom July 11. A federal judge has already granted it preliminary approval.

Representatives of BMG Direct — whose parent company, Bertelsmann, announced this month an agreement to acquire Columbia House pending regulatory approval — contend the proposed system would streamline the company's ability to solicit rights from songwriters on millions of albums that would otherwise go unsold.

"BMG Direct has always respected the rights of music publishers and their copyrights and will continue to do so," said BMG Direct spokeswoman Paula Batson in an e-mailed statement. "Publishers have the right to object to the use of their songs on a club release and now under the settlement will have additional technology to accomplish this quickly and easily."

Columbia House declined to comment.

The controversy dates to 2002, when songwriters William Griffin Jr., Leroy Preston and Babette Ory, daughter of famous New Orleans trombonist Edward "Kid" Ory, sued the two music clubs, alleging their copyrights had been violated.

Federal law says anyone may sell a previously distributed song if they pay the songwriters a license fee, which this year is about 8.5 cents an album. Record clubs, which automatically send members an album each month and charge them for the ones they keep, have historically paid songwriters, including the plaintiffs, 75% of what the law requires.

Songwriters consented to the diminished payment, industry insiders say, because the music clubs offered a way to extend the shelf life of an album long after its retail sales had begun to decline. By one estimate, the clubs send out as many as 8 million albums a month.

But in the last half a decade, record clubs have started distributing albums more quickly on the heels of their retail release, sometimes only three to six months after they first hit shelves, BMG representatives said.

Some publishers say those transactions have cut into album sales. Because clubs pay a lower copyright, the net effect is smaller paychecks for songwriters.

"We have considered suing the record companies to force them to pay us the full statutory rate," said Jacqueline Charlesworth, senior vice president at Harry Fox Agency Inc., one of the largest representatives of music publishers. "But we waited to watch this case. What happened, however, is that three people are agreeing to a settlement that might strip all publishers of their legal rights."
Charlesworth is among several publishers who contend that the proposed settlement is an attempt by the music clubs to alter the copyright system to their advantage by offering the three plaintiffs and their attorneys large sums.

Under the settlement, Griffin, Ory and Preston would each receive $15,000. Griffin and Preston declined to comment. When reached Monday by telephone, Ory said she did not initiate the suit but agreed to be part of it after she was approached by one of the three Los Angeles-based attorneys representing the plaintiffs.

Those attorneys, Maxwell Blecher and Alicia Rosenberg of Blecher & Collins and Neville Johnson of Johnson & Rishwain, would receive a combined $2.1 million in the settlement — what some in the industry regard as a whopping amount.

"These lawyers are acting in their own best interests, not the interests of songwriters," said Robinson of Famous Music Publishing.

Blecher dismissed the criticism: "The judge saw what we did and thought it was a lot of work and said our payment is fair."

The settlement would also create a pool, funded by the record clubs, of almost $4 million to be split among many of the tens of thousands of songwriters and publishers whose works appear on albums distributed by the music clubs on or after March 20, 1999. But they will lose their rights to sue for past copyright infringement.

What has really caused a fuss, however, is how the proposed settlement would change the permissions process. Instead of contacting a songwriter directly, the clubs would list the songs they intend to distribute — and the rate they intend to pay — on a website for 30 days. Hearing no objections, clubs would automatically receive a one-year license.

Lawyers for the plaintiffs say that because the music clubs rarely, if ever, formally asked permission in the past, this new system affords songwriters more control than they've ever had.

"For years, the only way composers knew the clubs had used their songs was they received a check in the mail," said Blecher. "Now composers have the ability to object. The settlement isn't perfect, but it's the best we could do and a lot better than what the publishers have let exist for decades."

But some music publishers disagreed.

"Its a huge burden to make me check a website every day and hope I catch the names of all of my artists," said Beebe Bourne, chief executive of music publisher Bourne Co. "What is to stop the music club from posting that they will pay only 15% of the legal rate? If I miss that listing, we'll be out of luck with no right to sue."

Representatives for BMG Direct said they intended to continue paying 75% of the statutory rate. But they acknowledged that the proposed settlement would not require them to do so.