

117TH CONGRESS  
1ST SESSION

# H. R. 5713

To empower independent music creator owners to collectively negotiate with dominant online platforms regarding the terms on which their music may be distributed.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 25, 2021

Mr. DEUTCH introduced the following bill; which was referred to the  
Committee on the Judiciary

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## A BILL

To empower independent music creator owners to collectively negotiate with dominant online platforms regarding the terms on which their music may be distributed.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protect Working Musi-  
5 cians Act of 2021”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Music is a cultural treasure and a unique  
9 source of spiritual inspiration, emotional comfort,

1 community connection, and joy. It is also a powerful  
2 economic driver that directly and indirectly supports  
3 nearly 2 million American jobs and almost \$150 bil-  
4 lion in annual economic activity.

5 (2) A healthy music ecosystem is a fundamental  
6 bedrock for a healthy society.

7 (3) Fair and competitive markets for the use  
8 and licensing of recorded music are integral to a  
9 healthy music ecosystem.

10 (4) As music distribution has moved online, the  
11 market for use and licensing has become distorted  
12 and imbalanced. The largest Dominant Online Music  
13 Distribution Platforms use their market power to  
14 distort legal requirements and force music creators  
15 into licensing agreements that do not reflect market  
16 value. Those agreements essentially dictate a price  
17 to music creators. If music creators do not agree to  
18 licensing terms, the online platforms profit from un-  
19 licensed uploads of music anyway.

20 (5) These platforms game the system created  
21 by the Digital Millennium Copyright Act, which al-  
22 lows dominant online platforms to ignore and profit  
23 from unlicensed use of music and places the respon-  
24 sibility for finding each and every instance of unli-  
25 censed use of music on music creators. This “notice

1 and takedown” scheme has been described as a gig-  
2 abit-speed game of whack-a-mole.

3 (6) The trade association for the major record  
4 labels spends millions of dollars engaged in this ef-  
5 fort which it says has grown to be “largely useless.”  
6 The trade association for the independent record la-  
7 bels agrees, calling it a “dysfunctional relic”.

8 (7) An effort that is largely useless for major  
9 and independent record labels is an exercise in futil-  
10 ity for Independent Music Creator Owners—those  
11 who own the copyrights and market their work  
12 themselves. Independent Music Creator Owners lack  
13 the economic, legal, and political resources to stand  
14 up to the Dominant Online Music Distribution Plat-  
15 forms and have no way to meaningfully negotiate  
16 fair licensing rates for their work.

17 (8) That power imbalance means that Inde-  
18 pendent Music Creator Owners are forced to take  
19 whatever terms dominant online platforms offer for  
20 their work. If they decline, the platforms simply ig-  
21 nore them since in most cases lacking access to any  
22 single artists’ work does not present a threat to the  
23 platforms’ overall attractiveness to consumers.

24 (9) This imbalance has decimated careers in  
25 music at an untold cost to our society and culture.

1 Multi Grammy-award winning musician Rosanne  
2 Cash recently lamented: “I see young musicians give  
3 up their missions and dreams all the time because  
4 they can’t make a living.”

5 (10) The antitrust laws were intended to and  
6 do provide important economic and civic benefits.

7 (11) A central purpose of these laws is to pro-  
8 mote, protect, and strengthen fair and open mar-  
9 kets, including those for music.

10 (12) While antitrust exemptions are generally  
11 disfavored, should the application of the antitrust  
12 laws ever be applied in a manner that conflicts with  
13 their purpose—such as protecting the online market-  
14 place for creative works—it is the duty and preroga-  
15 tive of the Congress to resolve the conflict.

16 **SEC. 3. SAFE HARBOR FOR CERTAIN COLLECTIVE NEGOTIATIONS.**  
17

18 (a) **DEFINITIONS.**—For purposes of this section:

19 (1) The term “Individual Music Creator  
20 Owner” means any musician or group of musician,  
21 producers, mixers, and sound engineers that—

22 (A) owns the copyrights to one or more  
23 sound recordings created by the musician or  
24 group of musicians, producers, and sound engi-  
25 neers; and

1 (B) either:

2 (i) has earned less than \$1 million in  
3 licensing revenues associated with these  
4 copyrights in the prior year; or

5 (ii) qualifies as a small business under  
6 the Office of Management and Budget  
7 North American Industry Classification  
8 System (NAICS) code 512250.

9 (2) The term “Dominant Online Music Dis-  
10 tribution Platform” means any entity that—

11 (A) operates an app, website or other on-  
12 line service that is used by members of the pub-  
13 lic to listen to sound recordings, whether via a  
14 digital audio transmission, an audio-visual pres-  
15 entation, or any other means;

16 (B) has annual revenues related to the dis-  
17 tribution of music of more than \$100 million;  
18 and

19 (C) is not eligible for a license under sec-  
20 tion 114(d)(2) of title 17 of the United States  
21 Code.

22 (3) The term “antitrust laws” has the meaning  
23 given such term in subsection (a) of the first section  
24 of the Clayton Act (15 U.S.C. 12), and includes—

1 (A) section 5 of the Federal Trade Com-  
2 mission Act (15 U.S.C. 45) to the extent that  
3 such section applies to unfair methods of com-  
4 petition; and

5 (B) any State law, rule, or regulation that  
6 prohibits or penalizes the conduct described in,  
7 or is otherwise inconsistent with, subsection (b)  
8 of this section.

9 (b) LIMITATION OF LIABILITY.—An Individual Music  
10 Creator Owner shall not be held liable under the antitrust  
11 laws for agreeing with other Individual Music Creator  
12 Owners to collectively negotiate music licensing terms with  
13 a Dominant Online Music Distribution Platform or agree-  
14 ing with other Individual Music Creator Owners to collec-  
15 tively refuse to license their music to a Dominant Online  
16 Music Distribution Platform, if—

17 (1) the negotiations are not limited to price, are  
18 nondiscriminatory as to similarly situated inde-  
19 pendent creator/owners;

20 (2) the coordination among Independent Music  
21 Creator Owners is directly related to and reasonably  
22 necessary for negotiations with a Dominant Online  
23 Music Distribution Platform that are otherwise con-  
24 sistent with the operation of the Antitrust laws; and

1           (3) the negotiations do not involve any person  
2           that is not an Independent Music Creator Owner or  
3           a Dominant Online Music Distribution Platform.

4           (c) RULE OF CONSTRUCTION.—Except as provided in  
5 this Act, this Act shall not be construed to modify, impair,  
6 or supersede the operation of the antitrust laws.

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