

Music Publishers Reach Settlements with Gaming Platforms Regarding the Use of Copyrighted Music

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On September 21, 2021, the National Music Publishers' Association (NMPA)^[1] and Twitch^[2] announced a partnership to permit music rights holders to opt-in to license their music on the popular gaming platform. The partnership “paves the way for the economics of new gaming models to increase visibility and revenue for songwriters. . . . [It] will connect the Twitch community in many ways to the music they enjoy.” It also created a new process which permits music rights holders to report unauthorized reproductions of their songs on the platform. The announcement comes nearly a year after the NMPA wrote a letter to Twitch in which it alleged that the platform was permitting its creators to use copyrighted music without authorization.^[3] Sources familiar with the partnership claim the NMPA and Twitch also settled any claims the NMPA's publishers could have brought against Twitch for past copyright infringement.^[4] It is unclear the extent to which the partnership will impact how Twitch content creators use copyrighted music because the partnership does not grant licenses.⁵

Less than a week later, the NMPA entered into a similar agreement with Roblox on September 27, 2021.⁶ The agreement settled copyright infringement claims arising from a complaint that the NMPA's publishers had filed against Roblox on June 9, 2021. The complaint alleged that Roblox profited from copyrighted songs being uploaded and shared by users on its platform. It further alleged that Roblox was a “safe haven” for copyright infringement because it failed to sufficiently “reduce the infringement on its platform,” for example, by implementing “a policy to terminate users” who repeatedly uploaded copyrighted songs. The NMPA claimed that it was entitled to \$200 million in damages for the alleged violations.

In addition to the settlement, the NMPA-Roblox agreement “offers an industry-wide opt-in open to all eligible NMPA publishers and opens a negotiation period for members to engage individually in new go-forward licensing deals.” Like its agreement with Twitch, NMPA's deal with Roblox is intended to create “new ways” for music publishers “to monetize their songs and catalogues.”

The NMPA “has been busy in recent years” enforcing its members' rights against internet platforms that permit users to upload and share copyrighted songs.⁷ Notably, in February 2020, the NMPA settled similar litigation it had initiated against Peloton with a “joint collaboration agreement” to integrate the publishers' songs onto the popular fitness platform.^[8]

Companies that operate platforms permitting users to share or upload music should consider the risk that such activity may lead to liability for copyright infringement. Companies electing to include such features on their platforms should comply with the safe harbor provisions of the Digital Millennium Copyright Act (“DMCA”) at a minimum. However, they may also consider negotiating with copyright owners to license their copyrighted music.

¹³ The NMPA “is the trade association representing all American music publishers and their songwriting partners.” It advances music publishers’ rights arising under the United States’ copyright laws. Press Release, *NMPA and Twitch Announce Agreement*, NMPA.org (Sept. 21, 2021), <https://www.nmpa.org/nmpa-and-twitch-announce-agreement/>.

¹⁴ “Twitch is an interactive livestreaming service and global community that comes together every day to create unique, live, and unpredictable experiences from the interactions of millions.” Press Release, *NMPA and Twitch Announce Agreement*, NMPA.org (Sept. 21, 2021), <https://www.nmpa.org/nmpa-and-twitch-announce-agreement/>.

¹⁵ Jem Aswad, *Twitch, Amazon Slammed by RIAA and Major Industry Groups for Using Unlicensed Music; Twitch Disputes Claim*, *Variety* (Oct. 26, 2020), <https://variety.com/2020/digital/news/twitch-amazon-unlicensed-music-riaa-recording-academy-1234815503/>.

¹⁶ Tatiana Cirisano, *Twitch Reaches Long-Awaited Pact With Music Publishers, But It’s Not a Licensing Deal*, *Billboard* (Sept. 21, 2021), <https://www.billboard.com/articles/business/9633425/twitch-nmpa-music-publishers-agreement>.

¹⁷ Jay Peters, *Twitch is finally making some friends in the music industry*, *The Verge* (Sept. 21, 2021), <https://www.theverge.com/2021/9/21/22686404/twitch-national-music-publishers-association-nmpa-agreement-music>.

¹⁸ Roblox is a gaming platform that permits its users to create multiplayer experiences that can be shared and played on the platform. Roblox’s [website](#) advertises that “[a]ny experience imaginable can be created on Roblox,” which is illustrated by the 24 million experiences users may enjoy on the platform as of this writing.

¹⁹ Steve Brachmann, *Roblox is Latest Online Platform to Settle NMPA Copyright Claims with Collaborative Music Licensing Agreement*, *IP Watchdog* (Sept. 30, 2021), https://www.ipwatchdog.com/2021/09/30/roblox-latest-online-platform-settle-nmpa-copyright-claims-collaborative-music-licensing-agreement/id=138238/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+Ipwatchdog+%28IPWatchdog.com%29.

²⁰ Todd Spangler, *Peloton Settles Legal Fight With Music Publishers*, *Variety* (Feb. 27, 2020), <https://variety.com/2020/digital/news/peloton-settles-music-publishers-lawsuit-1203517495/>.

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Author

[Eric T. Straka](#)

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