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February 3<sup>rd</sup>, 2022

Nydia M. Velázquez, Chair  
House Small Business Committee  
2302 Rayburn House Office Building  
Washington, DC 20515

Blaine Luetkemeyer, Ranking Member  
House Small Business Committee  
2230 Rayburn HOB  
Washington, D.C. 20515

**Re: The Power, Peril and Promise of the Creative Economy**

Dear Chair Velázquez and Ranking Member Luetkemeyer:

The **Society of Composers & Lyricists (SCL)** is the premier US organization for music creators working in all forms of visual media, including film, television, video games, and musical theatre. It has a membership of over 2,400 professional composers and lyricists and is a founding co-member— along with Songwriters Guild of America (SGA) and other independent music creator groups -- of Music Creators North America (MCNA).

At the outset, we would like to thank the House Small Business Committee for holding the January 19<sup>th</sup>, 2022 hearing titled: The Power, Peril, and Promise of the Creative Economy. We appreciate how the hearing focused on the dire impact of the COVID-19 pandemic on the arts sector and creative economy, and we support the many bills that were discussed during that hearing, specifically the Shuttered Venue Operators Grant Program (SVOG), the Performing Arts Tax Parity Act, the HITS Act, the Arts Education for All Act, the Creative Economy and Revitalization Act, and the 21st Century Federal Writers Project.

Operating as independent contractors, audio-visual music creators are essentially small businesses. To “manufacture” our product, we need thousands of dollars of equipment housed in a specifically designed space, and the product we manufacture (i.e., the “Music”) contains copyright, which then gets folded into yet another copyright (i.e., the “Program”). In the process, we engage musicians, music preparation staff, singers, recording engineers, software programmers and more.

As mentioned in the hearing, the creative economy generated approximately 4.3% of the United States' gross domestic product (\$919.7 billion) in 2019, and prior to the pandemic employed almost 5.2 million workers (about 3.3% of the US workforce). As was also discussed in the hearing, with the onset of Covid-19 virtually all entertainment production of film, TV and live theatre was cancelled. As a result, our profession was decimated with employment falling by as much as 25%.

Thus, we stand in solidarity with our creative colleagues who testified January 19 and applaud them for raising critical issues. There is an important distinction, however, that we believe warrants further attention from Congress – and that is that unlike those distinguished witnesses – audio-visual music creators do not have the benefit of being members of labor unions or guilds. We believe our voices, and the unique issues we face, warrant consideration by Congress.

For this reason, we respectfully request a follow up hearing where creators of artistic works and source material presented by venues and performers alike, can elucidate how the imbalance of power negatively impacts independent contractors operating as small businesses within the entertainment industry.

Let me provide some background: since the 1976 ruling in which the National Labor Relations Board (NLRB) deregistered the Composers & Lyricists Guild of America (CLGA), removing any right to collective bargaining, US audio-visual composers' musical creations have been deemed "Works For Hire" (WFH). This action means that as a condition of engagement, composers are forced to grant producers (the Film and Television studios) ownership of the copyrights in their works. While foregoing ownership in exchange for benefits such as collective bargaining (salary, working conditions, etc.), retirement and healthcare plans, may be typical of employee status, audio-visual composers are instead classified as Independent Contractors and therefore access none of these benefits. We lose ownership of our works and lose the right to any of the standard benefits accorded to every other crew and cast member working in the audio-visual industry.

This state of affairs is fundamentally due to the imbalance in bargaining power and the legal prohibitions denying audio-visual music creators the ability to collectively ensure better treatment and terms for our work. Creative workers are the original "gig" workers—we work on a freelance basis for a defined set of employers that provide standard contracts and low pay, with no ability to negotiate better terms. Under current antitrust laws, we are prohibited from acting together, in concert, to say "no" to certain terms, secure better remuneration, or highlight bad actors. Current labor laws treat audio-visual music creators as though we are independent businesses with the ability to negotiate with the buyers of their services. But that is far from reality. The fact is that there is no meaningful two-way bargaining. The specifics may differ, but audio-visual music creators and many other creative professionals share one thing in common: we are workers with no employee protections, no benefits, no minimum wages, no ability to collect unemployment, and yet no ability to negotiate our contracts or to collectively bargain for better terms. Many do not make minimum wage and have seen massive decreases in their pay in recent years, while more and more rights are extracted so that they cannot sell them separately.

As the US transitions to more of a "gig" economy, there is an opportunity to correct practices that continue to severely impact the livelihoods of audio-visual music creators. Accordingly, the Society of Composers & Lyricists thanks the House Small Business Committee for the opportunity to submit these comments as a follow up to the January 19<sup>th</sup> hearing on the creative economy with the hope they may serve to shine some light on the audio-visual music creators'

unenviable position of having neither traditional employee rights or benefits, nor any bargaining power.

As a sector of an industry that contributes immeasurably to the cultural and economic well-being of the US, we request that the Committee continue to seek ways to assist all of those in the US creative industries, including those of us who are not able to take unified action to address unfair wages or working conditions.

Sincerely,

A handwritten signature in black ink, enclosed in a dashed rectangular border. The signature is cursive and appears to read "Ashley Irwin".

Ashley Irwin  
President