KEEP THE "CLASSICS" ACT AND THE MUSIC PACKAGE NON-CONTROVERSIAL

- Sound recordings did not receive federal protection until February 15, 1972. "Pre-72" recordings made before that date remain under state law. Litigation in the states regarding the use of "pre-72" recordings by digital music services has put at risk the existence of state rights for streaming, creating the very real possibility that legacy artists could "fall through the cracks" and have no streaming rights at all. The litigation has also resulted in uncertainty for digital music services.

- To resolve this issue, the CLASSICS Act (S. 2393/H.R. 3301) is a bipartisan, narrowly-tailored, bill that does one thing: it grants "pre-72" recordings the same protections and limitations for streaming as their contemporaries, without extending their term of protection. It does not tackle larger controversial copyright issues, nor does it affect them.

- Because of that, CLASSICS is supported by the entire music community (artists, independent and major labels, producers and engineers, songwriters, music publishers, and performing rights organizations), as well as the technology community (Pandora, Internet Association). CLASSICS is also unopposed by broadcasters. It has garnered 27 cosponsors of the 40 members on the Judiciary Committee.

- The consensus on CLASSICS that has taken years to develop has made it a target by some organizations who want to use it as an opportunity to change other unrelated copyright provisions previously passed by Congress, such as copyright term, "termination" of rights, limitations on states' rights, and other highly complex and divisive issues that would stop CLASSICS and the entire music bill from passing.

- CLASSICS is being moved in the House as part of an important bill that protects songwriters, producers, legacy artists and digital music services, called the "Music Modernization Act." This consensus- oriented bill will make ground-breaking improvements for the music industry and digital services. Using MMA as a vehicle to resolve highly controversial issues places the whole bill at risk. Those issues should be debated outside of MMA.

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Below are explanations and responses to some of the specific issues that have been raised as potential amendments to CLASSICS/MMA that would break apart the historic consensus achieved on this bill:

CLASSICS does not affect the "term" of copyright.
With or without the CLASSICS Act, federal law dictates that the copyright term for pre-72 sound recordings lasts until 2067; the bill makes no change to that term which was set by Congress in 1976 and 1998. Some organizations have misrepresented that CLASSICS would "grant over 200 years of term" to older works or that it would "grant a new term of protection" to pre-72 works. That is not the case. CLASSICS does not affect term. Cutting back the term that Congress granted years ago would pose legislative takings issues and would be highly controversial. That issue is not raised and should not be addressed in CLASSICS, part of a consensus package.

CLASSICS does not affect "termination" rights.
In copyright law, termination "cuts off" a transfer of rights and gives those rights back to the original author for the remainder of a new term or extension of term. CLASSICS does not grant any new term nor does it extend the term of copyright. It leaves the current termination provisions of the Copyright Act intact. Some organizations are also using the concept of "termination" to propose that the contractual agreement

between rights owners and artists be arbitrarily set aside many decades after the contract. That is not copyright termination. It is a taking.

Proposed amendments to cut the current term or terminate rights without allowing the term to end would present an unconstitutional "taking."
Congress previously created termination rights only when it created a new term or extended the term of copyright so the rights owner did not receive a "windfall" at the expense of the original author. There is no extension of term in CLASSICS. There is no windfall to rights owners. They are not receiving a term beyond the one set by Congress. "Pre-72" sound recording owners and licensees contracted for their rights with the understanding and expectation of the term applicable at the time they entered into their contract. Without an extension of term, terminating those rights or stripping compensation related to those rights, after the fact, would present an unconstitutional "taking" under the Fifth Amendment.

An amendment calling itself "termination" that merely redirects payment is unconstitutional, unworkable and bad for artists.
Besides presenting a takings issue, if a pre-72 rights owner would suddenly receive no compensation for licensing pre-72 sound recordings to interactive digital services, what incentive would they have to negotiate such a license and assume responsibility for and administer complicated payment systems? The likely result would be no licenses for pre-72 recordings, less availability of music to the public, and no income for artists.

Artists do not support an amendment to CLASSICS regarding termination or compensation stripping.
All parties to the CLASSICS Act are focused on expeditiously securing a right for legacy artists – who, in many cases, do not have too much longer to enjoy that right – and in providing legal certainty and marketplace efficiency for everyone. Artist and musician groups support the CLASSICS Act as introduced. Digital services also understand the severe complications that would arise from shoehorning a new termination right here, threatening the very point of the bill to compensate legacy artists. If the supposed beneficiaries of these proposed controversial amendments and the tech companies playing their music are not supporting them being added to CLASSICS, for whom are they being offered? The organizations pushing them "to protect artists" do not represent artists.

CLASSICS provides extra benefits to legacy artists.
Because the CLASSICS Act aligns pre- and post-72 streaming rights, it guarantees pre-72 legacy artists half of all digital radio revenue, which is not offered under state law. Sinking the CLASSICS Act by using it for unrelated legislative fights and casting aside industry consensus would benefit no one.

Applying federal limitations to state rights makes no sense.
Some groups are also seeking to use CLASSICS as a "Christmas Tree" by imposing federal limitations on existing states' rights. A federal limitation to a right cannot exist without an underlying federal right. Since CLASSICS was drafted to be as narrow and non-controversial as possible, it avoids affecting any other rights or limitations. Since state reproduction and distribution rights are not at risk, they remain under state law.

Debate unrelated issues outside of CLASSICS and MMA
The CLASSICS Act is limited to consensus, common-ground provisions that tackle the specific issue of legacy artists being left without any rights. It is supported by creators and technology companies. Using it to tackle other controversial issues will prevent passage of the entire music package. Debates on those issues should be had outside of CLASSICS.

OPPOSE AMENDMENTS THAT MAKE "CLASSICS" AND MMA CONTROVERSIAL OR UNCONSTITUTIONAL