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2022 ELI Writing Contest Essay written by Chelsea Cohen

WELCOME TO THE METAVERSE: SOLVING OLD-WORLD LICENSING IN A WHOLE NEW UNIVERSE

I. INTRODUCTION

The metaverse can be defined relatively broadly as the next iteration of the internet – a shared virtual space where people can interact with one another as avatars navigating a three-dimensional environment.¹ While the metaverse is still a work in progress, the opportunities for the music industry are huge, with some already being taken advantage of. Music can be streamed and concerts viewable to an international audience in a single place, giving rise to a new ecosystem for traditional revenue streams to grow.² For example, artists can make large profits via non-fungible tokens (NFTs) as shown by Kings of Leon being the first band to fully release an album as an NFT which quickly grossed over two million dollars in its first week.³

The continued growth of music publishing's revenue streams is now primarily driven by the popularity of interactive streaming as the impact of COVID-19 can still be felt in other areas like live concerts.⁴ Recent reports from the better half of 2021 show that ticketholder attendance for concerts for larger name artists such as George Strait and The Eagles dropped significantly with “no-shows” rising about five percent from the previous year.⁵ The no-show percentages rise even higher for smaller venues and artists, hitting the indie side much harder as they often rely

¹ Micah Singleton, *What's the Metaverse and What's in It for Music?*, BILLBOARD.COM (Nov. 5, 2021), <https://www.billboard.com/business/tech/what-the-metaverse-music-explainer-9655992/>.

² *Id.*

³ Samantha Hissong, *Music NFTs Have Gone Mainstream. Who's In?*, ROLLING STONE (Mar. 9, 2021), <https://www.rollingstone.com/pro/features/music-nfts-timeline-kings-of-leon-grimes-3lau-1138437/>. See generally Andrew Chow, *Independent Musicians Are Making Big Money From NFTs. Can They Challenge the Music Industry?*, TIME (Dec. 2, 2021), <https://time.com/6124814/music-industry-nft/> (Musicians are seeing NFTs as an alternative to the current system of major music labels, giving them more creative control and larger share of profits.).

⁴ Todd Spangler, *Roblox Hit With \$200 Million-Plus Lawsuit by Music Publishers Alleging Unauthorized Song Use*, VARIETY (June 9, 2021), <https://variety.com/2021/digital/news/roblox-sued-music-publishers-nmpa-1234992976/> (“Delving into annual numbers, Israelite announced the music publishing industry’s 2020’s total revenue as \$4,076,829,040, a 9.6% increase from 2019. ‘Mechanicals grew once again to 20.2% despite the fact that you have some mechanical categories that are shrinking rapidly. It’s because of the growth of the mechanical part of interactive streaming that the category overall grew,’ he added.”).

⁵ Dylan Smith, *Live Concerts May Have a Serious No-Show Problem — Ticketholder Attendance Dips Reported For Both Large Performances and Club Gigs*, DIGITAL MUSIC NEWS (Dec. 17, 2021), <https://www.digitalmusicnews.com/2021/12/17/live-concerts-no-show-problem/>.

on food and merchandise sales for generating revenue.⁶ The metaverse has now become a new method to stream and deliver music from one's own home with current predictions showing that the market opportunity for the metaverse reaching \$800 billion by 2024.⁷ But while this new age of tech allows us to interact in ways that were currently thought impossible, a similar issue still remains – how songwriters and publishers will get paid in a world still under construction and attributed for its lack of regulation.

This paper proposes a possible solution to the problem of licensing music in the metaverse. Part II will discuss the current state of licensing for streaming, how the Music Modernization Act (MMA) has begun to tackle the royalties and licenses associated with digital service providers (DSPs), and how music has begun its shift into the metaverse. Part III proposes both a legislative and administrative solution to better enforce and regulate fair rates for publishers and songwriters in Web 3.0.⁸ Finally, Part IV will discuss a practical way to implement the solution with a comparison of the MMA and Mechanical Licensing Collective (MLC) as related to streaming.

II. CURRENT STATE OF INTERACTIVE MUSIC STREAMING

In the first half of 2021, the revenues for recorded music in the U.S. grew by 27% with streaming (YouTube, Spotify, etc.) making up 84% of that revenue and contributing most to its growth from 2020.⁹ Of course, this should not be news to anyone, especially with the impact of COVID-19 on the industry causing concert cancellations, store closures, and other interferences continuing from the prior year.¹⁰ Moreover, purely owning rights and monetizing through subscription streaming channels will no longer deliver a worthwhile profit margin as they become more commoditized.¹¹ However, the commercial opportunities available to those prepared to use all of the available technology to engage and create is immense. For instance, the biggest arena tours cannot match anything close to the instant, one-time global audiences found in a metaverse performance.¹² While most of the recorded music industry's revenue can be attributed to DSPs for now, it is important to acknowledge the rise of a new digital ecosystem.

⁶ *Id.*

⁷ Matthew Kanterman & Nathan Naidu, *Metaverse may be \$800 billion market, next tech platform*, BLOOMBERG INTELLIGENCE (Dec. 1, 2021), <https://www.bloomberg.com/professional/blog/metaverse-may-be-800-billion-market-next-tech-platform/>.

⁸ “Web 3.0” and the “metaverse” are used interchangeably.

⁹ Joshua P. Friedlander, *Mid-Year 2021 RIAA Revenue Statistics*, RIAA.COM (Sept. 13, 2021), <https://www.riaa.com/wp-content/uploads/2021/09/Mid-Year-2021-RIAA-Music-Revenue-Report.pdf>.

¹⁰ See Dylan Smith, *Fan No-Shows Surge to an Estimated 40% Ahead of Packed 2022 Concert Schedule*, DIGITAL MUSIC NEWS (Dec. 13, 2021), <https://www.digitalmusicnews.com/2021/12/13/ticket-sales-concert-no-shows/>.

¹¹ Gregor Pryor ET AL., *Guide to the Metaverse*, REED SMITH (May 1, 2021), <https://www.reedsmith.com/-/media/files/perspectives/2021/metaversewhitepaperv2.pdf>.

¹² *Id.*; see generally Elizabeth Aubrey, *Lil Nas X in-game gig is one of the most viewed concerts of all time*, NME.COM (Nov. 18, 2020), <https://www.nme.com/news/music/lil-nas-x-in-game->

a. THE MUSIC MODERNIZATION ACT

Interactive streamers such as Spotify and Apple Music have to pay both mechanical and public performance royalties for every song in their systems but massive repertoires of music readily available at the click of a user's fingertips made paying out the compulsory and statutory licenses for each individual song more complex and costly than ever.¹³ To meet the technological advances of streaming and to allow songwriters and publishers a more efficient administrative system to collect royalties from it, the Music Modernization Act (MMA), specifically *Title I*, was enacted in 2018 which replaced the existing "song-by-song compulsory licensing structure for making and distributing musical works" with a blanket licensing system for DSPs.¹⁴ The blanket license is administered by the Mechanical Licensing Collective (MLC) as of January 1, 2021, and controlled by music publishers and songwriters while funded by the digital service providers as a form of compromise.¹⁵

Pre-MMA, the compulsory rate for mechanical licenses under Section 115 of the Copyright Act was set by the Copyright Royalty Board (CRB) based on a reasonableness standard defined in Section 801(b).¹⁶ With the implementation of the MMA however, 801(b) was replaced by a new rate-setting standard reflecting a "willing buyer/willing seller" model that would match, or attempt to match, the fair market value.¹⁷ The CRB must now consider "economic, competitive, and programming information presented by the parties."¹⁸ This is accomplished by two main elements: the extent to which the use may "substitute for or may promote" recorded music sales or otherwise affect revenue that the copyright owner may earn from other uses and the CRB, much like in 801(b), must assess "the relative roles of the copyright owner and the compulsory licensee in the copyrighted work and the service made available to the public with respect to the relative creative contribution, technological contribution, capital investment, cost, and risk."¹⁹ This new standard hopefully increases royalties to songwriters and publishers for their mechanical licenses as it rids the pre-existing rate-setting discrepancies that generally meant

gig-is-one-of-the-most-viewed-concerts-of-all-time-2819981 ("As reported in IQ Magazine, the [Lil Nas X] performances achieved over 35 million visits from fans around the world.").

¹³ *Mechanical Royalties Guide / 2021*, ROYALTY EXCHANGE (Feb. 2, 2021), <https://www.royaltyexchange.com/blog/mechanical-royalties>; *see also Spotify settles \$1.6bn lawsuit over songwriters' rights*, BBC.COM (Dec. 21, 2018), <https://www.bbc.com/news/business-46646918>.

¹⁴ *Musical Works Modernization Act*, U.S. COPYRIGHT OFFICE, <https://www.copyright.gov/music-modernization/115/> (last visited Dec. 30, 2021).

¹⁵ *Id.*

¹⁶ 17 U.S.C. § 801(b)(1)(A)-(D) (prior to 2018 amendment) (Factors under the 801(b) standard included maximizing the public availability of the work, ensuring a fair return to the copyright owner and a fair income to the licensee, transparency in the copyright owner and licensee's roles in making the work public, and minimizing disruption of the industry and its prevailing practices.).

¹⁷ Chris Marple, Article, *The Times They Are A-Changin': How Music's Mechanical Licensing System May Have Finally Moved into the 21st Century*, 26 RICH. J.L. & TECH. 1 (2020).

¹⁸ 17 U.S.C. § 115(c)(1)(F).

¹⁹ *See id.* § 115.

lower rates for songwriters and publishers as opposed to their counterparts (labels and recording artists) and in some instances, even their own income from performance licenses.²⁰ Yet, when the license is imposed by statute and rate determined by a few judges, the extent that fair market value will be reflected is unlikely.²¹

Thus, the more significant change by the MMA is the establishment of the MLC and its administration of licenses and royalties.²² The MLC, operating as an independent non-profit, issues the blanket licenses to DSPs, collects the mechanical royalties for those licenses, and then distributes to the correct copyright owners.²³ Moreover, the MLC establishes and maintains a centralized database that tracks the musical compositions in individual sound recordings, the copyright owners of those compositions, the respective ownership shares, and the contact information for each owner.²⁴ Additionally, licensees must serve Notices of Intent (NOIs) to the MLC instead of individual copyright owners or the Copyright Office, likely ending the use of third-party copyright administrators like the Harry Fox Agency (HFA),²⁵ and unburdening the Copyright Office from trying to locate the copyright owners for the DSPs.²⁶ So far, the MLC's first calculation of royalties, totaling over \$53 million, had \$13 million from matched royalties covered by preexisting voluntary licensing agreements.²⁷ In addition to the \$40 million collected in direct payments on behalf of the registered songwriters and composers, \$24 million was disbursed to members, with \$11 million unmatched and around \$5 million unclaimed.²⁸ While an impressive feat for its beginning, money is still left on the table and only time will tell how effective this new system can be as streaming booms.

²⁰ David Israelite, *What the Metaverse Means for Music Creators*, BILLBOARD.COM (Nov. 30, 2021), <https://www.billboard.com/pro/metaverse-music-creators-guest-column-nmpa/>.

²¹ *See generally* *Web IV*, 81 Fed. Reg. 26316, 26330 (May 2016) (The first iteration of the CRB taking on this approach can be illustrated by *Web IV*, where the Judges held that the Copyright Act permitted them “to set a rate that reflects a market that is effectively competitive,” within their discretion.); *Web V*, 86 FR 59452, 59456 (October 2021) (*Web V* expanded on *Web IV* by noting that the *Web IV* Court was limited by price competition in its determination but if such “competition is lacking,” the Court must consider “other forms of market behavior [that] either substitute for price competition or otherwise generate prices consonant with those that would be established through price competition in an effectively competitive market.”).

²² Orrin G. Hatch-Bob Goodlatte Music Modernization Act, § 102(d), 132 Stat. at 3684.

²³ *See id.* at § 102(d)(3)(A)-(C).

²⁴ *See id.* at § 102(d)(2)-(3).

²⁵ *History of HFA*, HARRY FOX AGENCY, <https://www.harryfox.com/#/history> (Last visited Jan. 1, 2022) (HFA is “America’s premiere mechanical licensing institution and has led the industry with innovative mechanical rights management solutions for music creators and publishers... with nearly 50,000 affiliated publishers, more than 2,500 record labels and several top-tier digital service providers operating within the U.S.”).

²⁶ *See* Orrin G. Hatch-Bob Goodlatte Music Modernization Act § 102(d)(2)-(3).

²⁷ Morgan Enos, *Mechanical Licensing Collective Distributes First Music Royalty Payments & You Can Collect Your Share Today*, GRAMMY.COM (Apr. 23, 2021), <https://www.grammy.com/advocacy/news/2021-mechanical-licensing-collective-distributes-first-music-royalty-payments>.

²⁸ *Id.*

Moreover, while mechanical royalties have traditionally comprised a significant portion of songwriters' incomes, they declined dramatically where songwriters barely generate \$1 in mechanical royalties for every \$3 in performance income despite the rise of streaming.²⁹ The MMA also addresses how the performing rights royalty's, initiated whenever a song is performed publicly, rates are set.³⁰ Performance rights organizations ("PROs") are the groups that negotiate and collect on performance licenses for musical compositions on behalf of songwriters and publishers.³¹ There are four major PROs within the U.S. but the majority of songwriters belong to the two oldest: ASCAP and BMI.³²

However, due to the 1941 antitrust suit from the DOJ against ASCAP and BMI, both organizations are now under the strong arm of consent decrees that essentially ensure that the performance royalty rates that could be negotiated remain well under market value.³³ Moreover, the restrictions under the consent decrees include the rate-setting provisions that allow a prospective licensee to seek a determination of a license fee from a federal judge in the Southern District of New York if the two PROs cannot agree to an equal rate.³⁴ The MMA reformed the rate court by assigning each new rate dispute a different judge on a rotating basis instead of all disputes being handled by the same judge.³⁵ It also partially repealed Section 114(i) (mirrored in Section 115) of the Copyright Act which now allows the rate court to consider royalties paid to recording artists in its rate-setting determination for the public performance of musical works.³⁶ Currently, recording artists can make up to ten times more than songwriters for the exact same performance due to the imbalance of royalty rates.³⁷ Considering labels and recording artists have more freedom to negotiate rates without government intervention, it remains to be seen how the MMA evens the playing field and how its implications can be applied in the metaverse.

b. MUSIC IN THE METAVERSE

²⁹ Tim Ingham, *US Publishers Pulled in \$3.7BN During 2019 – Just Over Half What Record Labels Made*, MUSIC BUSINESS WORLDWIDE (June 11, 2020), <https://www.musicbusinessworldwide.com/us-publishers-pulled-in-3-7bn-during-2019-just-over-half-what-record-labels-made/>.

³⁰ *Mechanical Royalties vs. Performance Royalties: What's the Difference?*, ROYALTY EXCHANGE (Jan. 31, 2019), <https://www.royaltyexchange.com/blog/mechanical-and-performance-royalties-whats-the-difference>.

³¹ *Id.*

³² *Id.*

³³ REG. OF COPYRIGHTS, *Copyright and the Music Marketplace*, U.S. COPYRIGHT OFF., at 35-36 (Feb. 2015), <https://www.copyright.gov/policy/musiclicensingstudy/copyright-and-the-music-marketplace.pdf>.

³⁴ *Id.*

³⁵ See Adam Candeub, *Keep the BMI-ASCAP Consent Decrees: Despite New Technology, Their Licensing Duopoly Endures*, FORBES (Jan. 13, 2020), <https://www.forbes.com/sites/washingtonbytes/2020/01/13/keep-the-bmi-ascap-consent-decrees-despite-new-technology-their-licensing-duopoly-endures/?sh=1b30c60616a6>.

³⁶ *Musical Works Modernization Act*, *supra* note 14.

³⁷ *The Music Modernization Act*, ASCAP, <https://www.ascap.com/about-us/stand-with-songwriters> (last visited Dec. 30, 2021).

As the MMA addressed interactive streaming with valiant efforts, technology has already advanced. The metaverse, in its endless possibilities for music, allows not only interactive streaming, but also live performances, downloads, and transfers of digital property that can be bought and resold, in a single location.³⁸ Many artists are already taking advantage of the new medium from Ariana Grande and Justin Bieber hosting massive concerts set in virtual reality³⁹ to Meek Mill releasing his final *Dreamchasers* mixtape as an NFT.⁴⁰ However, unlike DSPs, the metaverse is not controlled by a single entity.⁴¹ The metaverse's draw is its community ownership where no single authority can control what users can or cannot do (not entirely new).⁴² What is unique about this decentralized universe is the introduction of digital property rights.⁴³ Much like selling a vinyl record to a fan, artists can sell a digital song as an NFT which can earn more money for the artist quicker than releasing on a DSP with most of the revenue going directly to the artist.⁴⁴ Moreover, while streaming does not allow fans to own the song, NFTs give fans something to hold onto, a memento that is entirely theirs.⁴⁵ The artist retains the copyright whereas the buyer holds a digital copy that can be limited or even a single edition.⁴⁶ Dropping music digitally in Web 3.0 allows secondary market royalties to be added to smart contracts which govern the exchange of digital items, ensuring the artists get compensated indefinitely every time their work is resold.⁴⁷

Yet, while on its face the metaverse seems to fill the gaps the MMA left, licensing issues remain unaddressed. For the most part, traditional licensing rules applicable to online

³⁸ Singleton, *supra* note 1.

³⁹ J. Clara Chan, *Justin Bieber to Perform Live Metaverse Concert*, THE HOLLYWOOD REPORTER (Nov. 9, 2021), <https://www.hollywoodreporter.com/business/digital/justin-bieber-virtual-concert-wave-1235044308/>.

⁴⁰ Brenton Blanchet, *Meek Mill Will Drop Final 'Dreamchasers' Tape As NFT*, COMPLEX (Nov. 27, 2021), <https://www.complex.com/music/meek-mill-dreamchasers-nft-tape>.

⁴¹ Eric Elliott, *Welcome to the Music Metaverse*, MEDIUM (Oct. 27, 2021), <https://medium.com/the-challenge/welcome-to-the-music-metaverse-14c8b7f92ca6>.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *See id.* (“Amon Tobin is dropping his new album as 1/1 songs on Catalog, earning him \$15k so far, with each buyer paying at least \$2k per song. That’s about the equivalent of 3.75m streams on Spotify, coming from just a handful of supporters.”).

⁴⁵ Mitchell Clark, *NFTs, explained*, THE VERGE (Aug. 18, 2021), <https://www.theverge.com/22310188/nft-explainer-what-is-blockchain-crypto-art-faq>.

⁴⁶ Eric Elliott, *State of the Music Metaverse 2022*, MEDIUM (Dec. 22, 2021), <https://medium.com/the-challenge/state-of-the-music-metaverse-2022-549185b8dcba>.

⁴⁷ Elliott, *supra* note 41. *See generally* John deVadoss, *Programming Smart Contracts in C#*, MICROSOFT (Nov. 1, 2019), <https://docs.microsoft.com/en-us/archive/msdn-magazine/2019/november/blockchain-programming-smart-contracts-in-csharp> (Smart contract capabilities include: “the ability to authenticate parties and counterparties, ownership of assets and claims of right, the ability to access and refer to information and data both on the blockchain platform and outside of the smart contract (and the blockchain) to trigger transactions, [and] the ability to automate the execution of transactions and (economic) protocols on the blockchain platform.”).

exploitation would apply equally in the metaverse.⁴⁸ However, the proliferation of music performance and exploitation in new, closed, or open online environments adds another layer to an already complex chain in music licensing.⁴⁹ For example, Ariana Grande’s Fortnite concert still required a public performance license, but the major PROs who pay the royalties remain governed by WWII-era consent decrees that continue to devalue this space.⁵⁰ Additionally, each time copyrighted music is synchronized with an audiovisual medium like a recorded Roblox performance, functional synchronization licenses are required.⁵¹ With no compulsory license requirement nor consent decrees to regulate the rates for synchronization licenses, songwriters and publishers can level the playing field to match their label and recording artist counterparts.⁵²

However, the age-old problems of copyright infringement persist. As evidenced by the National Music Publishers’ Association’s (NMPA) suit against Roblox that settled earlier this year (reasonably assumed to be nine figures), infringement is still alive and well in the metaverse.⁵³ As metaverse worlds continue to develop, it is critical that the tech companies behind them license musical work before released into their platforms. With music as the drawing force to the metaverse,⁵⁴ tech companies cannot disregard existing licensing standards only to give in to after damages are incurred.⁵⁵

III. PROPOSED SOLUTION FOR MUSIC’S TRANSITION INTO THE METAVERSE

With the decentralization of the metaverse, protecting songwriter and publisher copyrights and ensuring proper licenses are paid to the correct owners becomes a bit more complex than in the physical world. Not only will tracking the metadata be a feat, but the

⁴⁸ Pryor ET AL., *supra* note 11.

⁴⁹ *Id.*

⁵⁰ Israelite, *supra* note 20.

⁵¹ Sidney Fohrman & Hayley Silvertown, *The convergence of music and gaming — Sheppard Mullin*, ESPORTS INSIDER (Aug. 24, 2021), <https://esportsinsider.com/2021/08/the-convergence-of-music-and-gaming-sheppard-mullin/> (“licenses can be costly and challenging to obtain, especially in the event that there are several writers on a particular composition and a license is required from multiple music publishers...”).

⁵² Israelite, *supra* note 20.

⁵³ See Todd Spangler, *Roblox Hit With \$200 Million-Plus Lawsuit by Music Publishers Alleging Unauthorized Song Use*, VARIETY (June 9, 2021), <https://variety.com/2021/digital/news/roblox-sued-music-publishers-nmpa-1234992976/>; see also Kriss Thakrar, *The Opportunity Behind the Roblox Lawsuit*, MIDIA (June 14, 2021), <https://midiaresearch.com/blog/the-opportunity-behind-the-roblox-lawsuit>.

⁵⁴ See generally Tim Ingham, *Warner Music Group Joins \$520M Investment Round in Video Game Platform Roblox*, MUSIC BUSINESS WORLDWIDE (Jan. 7, 2021), <https://www.musicbusinessworldwide.com/warner-music-group-joins-520m-investment-round-in-video-game-platform-roblox/> (Warner Music Group invests over \$5 million in Roblox while Sony Music Group acquired a \$250 million stake in Epic Games, maker of Fortnite.); Glenn Peoples, *Streaming Is Reliable Revenue, So What’s Next for Warner Music and Other Labels?*, BILLBOARD.COM (Nov. 15, 2021), <https://www.billboard.com/business/record-labels/streaming-is-reliable-revenue-so-whats-next-for-warner-music-and-other-labels-9660355/>.

⁵⁵ Israelite, *supra* note 20.

metaverse offers an environment where music can be streamed, downloaded, purchased, and performed in one “event”, implicating performance, mechanical, and synchronization rights simultaneously.⁵⁶ Subsequently, this new unregulated environment where market value reigns supreme produces a similar problem: tracking, collecting, and distributing royalties on a massive scale – especially with no oversight – can be costly to both artists and the platforms.⁵⁷ Thus, the solution I propose involves legislative and administrative action that can have a similar structure as the MMA and MLC.

The first step is to amend Section 106 of the Copyright Act to reflect the creation of digital property rights for creators in the metaverse. This new digital right would function specifically for the metaverse and run on blockchain. The imposition of such amendment could also alter music licensing to where another reevaluation of the consent decrees governing the PROs can be eliminated allowing fandoms within the metaverse to set fair market rates.⁵⁸ Next, much like the MMA created the MLC, similar legislation should be enacted to create an independent, non-profit body that would effectively have a similar function but expanded to the new digital property right, along with the capability to manage the metadata for performance, mechanical, and synchronization licenses to be discussed in more detail in Part IV.

IV. IMPLEMENTATION AS STRUCTURED AGAINST THE MMA

This new body, termed the Digital Rights Collective (DRC), like the MLC, will function in an administrative capacity not only to track, collect, and distribute royalties across separate metaverse worlds (i.e., Fortnite, Roblox, and Decentraland),⁵⁹ but will also act as an enforcement mechanism via blockchain and smart contracts to ensure security and transparency. However, the DRC will extend farther than the MLC by maintaining the metadata for digital, mechanical, synchronization, and performance rights much like the MLC does for mechanical rights regarding DSPs. A major problem facing the metaverse mirrors the issue DSPs had before the MMA: paying out royalties and obtaining licenses from the correct people.⁶⁰ By running on blockchain, the DRC will have the capacity and bandwidth that the MLC, PROs, and third

⁵⁶ Elliott, *supra* note 46.

⁵⁷ Pryor ET AL., *supra* note 11.

⁵⁸ The recent decision leaving the consent decrees to govern the PROs angered many. The Justice Department cited one of the reasons that they would not overturn the decrees was in due part to the fact that although music technology was advancing, the licensing structure remained the same (unlike its earlier decision claiming the film industry did in fact change enough for Paramount to lose its consent decree for vertical integration). With the creation of a new digital property right in addition to the establishment of a universe where many rights will be implicated at once, the argument that the licensing structure remains the same will be turned on its head. *See generally* Anousha Sakoui, *Justice Department Leaves Decades-old Music Industry Decrees Unchanged*, LA TIMES (Jan. 15, 2021), <https://www.latimes.com/entertainment-arts/business/story/2021-01-15/justice-dept-consent-decrees-music-industry-ascap>; David Israelite, *America’s Songwriters Deserve Better Than This*, BILLBOARD.COM (July 7, 2016), <https://www.billboard.com/music/music-news/nmpa-op-ed-david-israelite-consent-decrees-americas-songwriters-deserve-better-7430930/>.

⁵⁹ Elliott, *supra* note 41.

⁶⁰ *See* Israelite, *supra* note 20.

parties like the HFA do not, making it the prime candidate for oversight in the metaverse.⁶¹ Of course, collaboration is necessary for success. Unlike typical streaming, the metaverse offers a wide array of possibilities from interactive streaming, to downloads, to concerts. Because of this, digital property rights in conjunction with mechanical, performance, and synchronization licenses will concurrently be triggered, implicating each of the above organizations and the interests they represent.

Moreover, because synchronization rights are not currently under any body like PROs or the HFA, the DRC would act as such for the metaverse. To prevent indie artists slipping through the gaps much like they did with streaming,⁶² the DRC functioning as an administrative body for synchronization and digital rights would create some stability for smaller artists to get a share of the pot.⁶³ The DRC would allow the market to set rates but give structure as to how they are collected and disbursed. Additionally, the creation of a digital property right will give songwriters and publishers more leverage in negotiating rates as the metaverse continues construction.⁶⁴ Such metaverse platforms would need negotiated deals with the DRC upfront before musical works can be streamed, sold, or performed in their worlds. For this to be effective, the DRC would mirror the MLC in requiring songwriters and publishers to become members of the body to benefit from the system and ensure payment in the metaverse.⁶⁵

Furthermore, companies like Roblox and Epic Games (organizations that create their own metaverse worlds) would fund the DRC like DSPs fund the MLC under the MMA. With songwriters and publishers as mandatory members of the DRC, these companies would have the incentive to fund, not only to have music in their respective worlds, but also to lessen infringement liability as experienced in streaming early on with the Spotify and Wixen settlement.⁶⁶ Additionally, many labels are already investing heavily in such companies,⁶⁷ incentivizing the label side to favor this funding structure.

⁶¹ See Sam Mire, *Blockchain For The Music Industry: 9 Possible Use Cases*, DISRUPTOR DAILY (Nov. 6, 2018), <https://www.disruptordaily.com/blockchain-use-cases-music/>.

⁶² See Emily Blake, *Data Shows 90 Percent of Streams Go to the Top 1 Percent of Artists*, ROLLING STONE (Sept. 9, 2020), <https://www.rollingstone.com/pro/news/top-1-percent-streaming-1055005/>; see also Paul Resnikoff, *The Top 1% of Artists Earn 77% of Recorded Music Income, Study Finds...*, DIGITAL MUSIC NEWS (Mar. 5, 2014), <https://www.digitalmusicnews.com/2014/03/05/toponepercent/>.

⁶³ Since digital rights and synchronization rights are not compulsory nor under consent decrees, the DRC could also negotiate rates with platforms at fair market value.

⁶⁴ Israelite, *supra* note 20 (noting the NMPA has already completed deals with Facebook and Roblox to compensate songwriters as they grow their platforms in Web 3.0 with Twitch and TikTok beginning to enter the conversation).

⁶⁵ *How It Works*, THE MECHANICAL LICENSING COLLECTIVE, <https://www.themlc.com/how-it-works> (last visited Dec. 30, 2021).

⁶⁶ See Dani Deahl, *Spotify and Wixen settle the music publishing company's \$1.6 billion lawsuit*, THE VERGE (Dec. 20, 2018), <https://www.theverge.com/2018/12/20/18150197/spotify-wixen-lawsuit-settlement-dismissal-music-publishing> (“Spotify and music publishing company Wixen have mutually agreed to dismiss the \$1.6 billion lawsuit Wixen filed back in 2017... Wixen also claimed that Spotify was failing to pay out songwriter royalties about 21 percent of the time.”).

⁶⁷ See Tim Ingham, *Warner Music Group Joins \$520M Investment Round in Video Game Platform Roblox*, MUSIC BUSINESS WORLDWIDE (Jan. 7, 2021),

Lastly, blockchain possesses the ability to track transactions in smart contracts, which govern how goods are bought and digital property is transferred in the metaverse.⁶⁸ Therefore, the DRC ensures licenses from streaming in Twitch to performances in Fortnite to festival merch sales in Decentraland have the proper ownership splits attached to each work.⁶⁹ Moreover, the complexity of the chain of rights would be made easier to follow with smart contracts acting as authenticators, especially when NFT disputes inevitably arise.⁷⁰ Under the umbrella of the DRC, digital property rights can be secured and traced, songwriters will have a common structure for synchronization rights reflecting market value, and metadata for copyright owners across platforms can know their rights will be efficiently monitored to ensure proper payment. With this, songwriters and publishers might just have a level playing field as this decentralized medium develops.

V. CONCLUSION

With the metaverse growing in popularity and funding, it is essential for plans to be put in place to ensure songwriters and publishers are not left out of the equation. The metaverse is the perfect environment for the pay disparities between recording artists and songwriters to be eliminated but proper administration is necessary to enforce both fair rates and prevent infringement. As we enter this next stage of technology, the traditional methods of licensing need to be reconsidered and legislation cannot be based on laws that could never predict where we are now. By establishing a digital property right and a suitable oversight body, songwriters and publishers may just make it big in the metaverse.

<https://www.musicbusinessworldwide.com/warner-music-group-joins-520m-investment-round-in-video-game-platform-roblox/> (Warner Music Group invests over \$5 million in Roblox while Sony Music Group acquired a \$250 million stake in Epic Games, maker of Fortnite.).

⁶⁸ See Elliott, *supra* note 46.

⁶⁹ See generally Elliott, *supra* note 41 (“We own the stuff we collect in Decentraland. Now that we have the merch in our wallets, we can go to any supporting 3rd party platform and sell it. You can buy and sell land in Decentraland as well...”).

⁷⁰ Casey Newton, *Is the music industry’s future on the blockchain?*, THE VERGE (Nov. 24, 2021), <https://www.theverge.com/22800746/music-industry-royalties-blockchain-crypto-royal-paradigm>.