The Music Licensing Study Public Roundtable was held at the UCLA School of Law, Conference Room 1314, 385 Charles E. Young East, Los Angeles, California, at 9:00 a.m., Jacqueline C. Charlesworth, Sy Damle, and Steve Ruwe, Moderators, presiding.

U.S. COPYRIGHT OFFICE STAFF PRESENT:

JACQUELINE C. CHARLESWORTH, General Counsel and Associate Register of Copyrights
SARANG "SY" DAMLE, Special Advisor, Office of the General Counsel
STEVE RUWE, Attorney-Advisor, Office of the General Counsel

SESSION SIX:

PAUL ANTHONY, Rumblefish
JOHN CATE, American Music Partners
TIMOTHY COHAN, PeerMusic
DEBORAH GREAVES, Label Law, Inc.
GARY R. GREENSTEIN, Wilson Sonsini Goodrich & Rosati
RUSSELL HAUTH, National Religious Broadcasters Music License Committee
ASHLEY IRWIN, The Society of Composers & Lyricists
DAVID KOKAKIS, Universal Music Publishing
DINA LaPOLT, Dina LaPolt P.C. SHAWN LEMONE, ASCAP
DENNIS LORD, SESAC
JENNIFER MILLER, Audio Socket
JASON RYS, Wixen Music Publishing
GARRY SCHYMAN, The Society of Composers & Lyricists
LES WATKINS, Music Reports

SESSION SEVEN:

PAUL ANTHONY, Rumblefish
JOHN BARKER, IPAC
ERIC D. BULL, Create Law
DEBORAH GREAVES, Label Law, Inc.
GARY R. GREENSTEIN, Wilson Sonsini Goodrich & Rosati
TEGAN KOSSOWICZ, Universal Music Group
DENNIS LORD, SESAC
STEVEN MARKS, RIAA
PETER MENELL, UC Berkeley School of Law
JENNIFER MILLER, Audio Socket
HÉL NE MUDDIMAN, Composer/CEO Hollywood Elite Composers
VICKIE NAUMAN, CrossBorderWorks
JOHN RUDOLPH, Music Analytics
GARRY SCHYMAN, The Society of Composers & Lyricists
LES WATKINS, Music Reports

SESSION EIGHT:

LAWRENCE J. BLAKE, Concord Music
ILENE GOLDBERG, Attorney
DEBORAH GREAVES, Label Law, Inc.
GARY R. GREENSTEIN, Wilson Sonsini Goodrich & Rosati
ERIC HARBESON, Music Library Association
RUSSELL HAUTH, National Religious Broadcasters Music License Committee
TEGAN KOSSOWICZ, Universal Music Group
DINA LaPOLT, Dina LaPolt P.C.
STEVEN MARKS, RIAA
HÉL NE MUDDIMAN, Composer/CEO Hollywood Elite Composers
BRAD PRENDERGAST, SoundExchange, Inc.
LES WATKINS, Music Reports
SESSION NINE:

PAUL ANTHONY, Rumblefish
JOHN BARKER, IPAC
KEITH BERNSTEIN, Crunch Digital
ILENE GOLDBERG, Attorney
GARY R. GREENSTEIN, Wilson Sonsini Goodrich & Rosati
ERIC HARBESON, Music Library Association
ASHLEY IRWIN, The Society of Composers & Lyricists
DINA LaPOLT, Dina LaPolt P.C.
LEONARDO LIPSZTEIN, YouTube/Google
DENNIS LORD, SESAC
STEVEN MARKS, RIAA
PETER MENELL, UC Berkeley School of Law
JENNIFER MILLER, Audio Socket
HÉL NE MUDDIMAN, Composer/CEO Hollywood Elite Composers
VICKIE NAUMAN, CrossBorderWorks
CHARLES J. SANDERS, SGA
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MS. CHARLESWORTH: Welcome back to day two of the Los Angeles Music Licensing Roundtable. Once again, we really appreciate your interest and participation in these discussions. We are very hopeful that they are going to lead to some positive changes in our music licensing structures.

I think because we have some new people in the audience and just to -- and as well as some new people at the table, I'm going to ask everyone sitting around the roundtable to introduce themselves, even if you did so yesterday, and briefly state your affiliation for the record, and then we will proceed with the first session.

We'll start with you, Mr. Greenstein.

MR. GREENSTEIN: So I'm Gary Greenstein, a partner with Wilson Sonsini Goodrich & Rosati, and I currently represent
a wide range of online service providers, whether they're interactive or non-interactive streaming services, user-generated content services, app developers, and many others. Prior to joining Wilson Sonsini, I was the first General Counsel of SoundExchange and also a Vice President of Business and Legal Affairs for Recording Industry Association of America.

MS. LaPOLT: I'm Dina LaPolt. I'm the President of LaPolt Law, P.C. We are a boutique entertainment law firm. We represent all music creators.

MS. MILLER: I'm Jen Miller, COO and Co-Founder of Audio Socket. We're a music licensing and technology company that has built one technology called Music as a Service to streamline music licensing for digital integration, and then a technology called License ID, which is -- it was launched about six months ago internally, and it actually embeds into the audio signal user and
copyright data, as well as the downloader's
data.

MS. CHARLESWORTH: If you could
speak into the mike, even -- that would --
yes, we have to share, but --

MR. KOKAKIS: Not a problem. My
name is David Kokakis. I'm the head of
Business and Legal Affairs and Business
Development for Universal Publishing. I also
oversee all of the digital deals for Universal
Publishing.

MR. WATKINS: I'm Les Watkins. I'm
with Music Reports. We're a music rights
management organization and technology
platform. We manage music licenses and pay
royalties for a number of digital music
services, broadcasters, and increasingly
content owners, record companies, and music
publishers.

MR. SCHYMAN: I'm Garry Schyman.
I'm a composer. I've been a composer all my
life. I've written music for films,
television. I've written songs that have actually had some success. I'm not a songwriter primarily, though. And a lot of video game music. I'm also chair of the Music Rights Committee of the Society of Composers and Lyricists.

MR. IRWIN: Ashley Irwin. I'm President of the Society of Composers and Lyricists. We represent -- we don't really represent. We have members, over 1,000 members, who work primarily in audio-visual, film, television, video games, and most recently theater.

MS. GREAVES: Deborah Greaves. I'm CEO of Label Law, and I'm here on behalf of the IP Section of the California State Bar.

MR. RYS: Jason Rys. I'm Vice President at Wixen Music Publishing. We are an independent music publishing administrator representing probably several thousand songwriters.

MR. LORD: I'm Dennis Lord,
Executive Vice President of SESAC.

MR. LEMONE: Shawn LeMone, VP at ASCAP. I run the film area for ASCAP, and I was on the board of the California Copyright Conference for 12 years.

MR. HAUTH: Good morning. Russell Hauth, Salem Communications Corporation. We're a media company with approximately 100 radio stations and several publishing imprints and quite a lot of activity on the web. As a sideline, as an industry diversion, I am the Executive Director of the National Religious Broadcasters Music License Committee, representing approximately a thousand radio stations with specialty formats, such as religious, classical music, news talk, and mixed format, other types of stations.

MR. COHAN: I'm Tim Cohan. I'm the head of Legal and Business Affairs for PeerMusic, a large independent music publishing company. I handle all of the U.S. transactional matters and also oversee and
coordinate the international digital
licensing.

MR. ANTHONY: I'm Paul Anthony, the
Founder and CEO of Rumblefish. We're a music
microlicensing business. We represent about
five million copyrights. And I'm glad to be
here.

MS. CHARLESWORTH: Okay. Well,
thank you all.

So the first panel addresses the
public performance right in musical works. And
as I'm sure perhaps everyone in this room is
aware, there have been some recent
developments in the PRO world. We have seen a
couple of decisions from federal courts ruling
or holding that major music publishers who
wish to withdraw partial rights, meaning in
this case digital rights, from their
representation by the PROs, were not permitted
to do that under the consent decrees, which I
think has raised some questions about what the
future might look like for ASCAP, BMI, and of
course we have one significant additional PRO, SESAC, that is not under a consent decree. And so the Copyright Office is very interested in hearing from the various parts and sectors of the music industry about, you know, what -- let's assume that the major music publishers chose to withdraw entirely from the PROs, which is something that some people feel could happen.

What would that look like? What would that world be like? How would it affect creators, songwriters, our payment structures? I think a lot of people view that as a -- well, it would be a significant development in the music licensing landscape, and it's important for us as we sit here and think about the future to try and understand what the impact of that might be. So if people have thoughts on that, we'd be very interested in hearing them. Okay. Mr. Schyman.

MR. SCHYMAN: Yeah, I do, I have thoughts on it from the perspective of the
work-for-hire composer who, assuming A/V works, would also be potentially withdrawn from performing rights societies or PROs. The concern that we have is that if we don't collect through a performing rights society that we will cease to have any control over our income stream. We don't own the music. We only receive the writer's share, and that's contractual.

And very often the contracts do not specify what would happen if the music is withdrawn from a PRO. It merely says if money is collected through your society, that you are entitled to receive your share. So, theoretically, a publisher would continue to pay you. Some might, some might not. And also, if that right were withdrawn, if it was withdrawn and the publisher would then be negotiating for perhaps a bundle of rights.

And then only one of those rights that they are then negotiating with would be the writer's share, which they wouldn't
obviously be receiving. They might decide
instead of it being 25 percent of that bundle,
it might only be .1 percent, and then give us
half of .1 percent. Meanwhile, they are -- you
know, and this is in the worst-case scenario
obviously, under some -- there are some
reputable publishers, but it would be very
opaque, it would be very difficult for the
composer to know what they are entitled to.
They would be receiving money from various
entities. So we really are concerned that if
audio-visual works are withdrawn, that we will
be highly disadvantaged, and we would like to
-- we have made some proposals, actually, that

I don't know if they're possible,
but that if copyright law changes that some
protection for the work-for-hire composer be
included in any changes. And the one
suggestion I made, which I don't know how
practical it is, is that a new right be given
to components, the right to decide who
collects our share of the performing right, or
some mechanism for us to choose, okay, we only
want ASCAP, BMI, SESAC to collect for us, and
we really don't trust a publisher who is not
in a position to tell us what we are entitled
to. I can't see them building, you know, the
infrastructure to provide, you know, the
clarity that we get from our performing rights
organization. So we are very concerned about
that.

MS. CHARLESWORTH: Okay. And just
to follow up on something you said, I mean, so
you are -- you are suggesting that if
withdrawals become a reality, or are
permitted, or publishers take that road, that
you would like to see copyright law somehow
carve out the writer's share and preserve
payment through a PRO-type structure, is that
--

MR. SCHYMAN: Well, permit the
composer to decide, because I -- I do think if
a publisher wanted -- came to a composer and
said, "You know, we'll offer you 10 times the
money you could get at a PRO for 10 years.
Would you go along with that?" You know, I
mean, I think that some composers would, and
that's a reasonable offer. But at least we
would be in a negotiating position, if we have
no say over it. So I would like the
opportunity to -- to just determine who
collects my performing rights. If that's
impossible, then I think then we'd be in a
better position if we could just keep our
performing rights in a PRO.

MS. CHARLESWORTH: Okay. So, and
under your scenario -- I'm just sort of
thinking through this -- so the user, the
person who was paying for the rights, might
end up paying in part to the PRO for the
writer's share, and then otherwise directly to
a publisher.

MR. SCHYMAN: Right.

MS. CHARLESWORTH: That's what
you're scenario envisions.

MR. SCHYMAN: Exactly. Because
otherwise I don't know how you'd protect the
-- protect us.

MS. CHARLESWORTH: Okay. Thank
you.

Mr. Rys?

MR. RYS: I think if publishers
are forced to pull out entirely from the PROs,
it is going to be bad for the industry and the
public in general. It is going to lead to
increased fragmentation. You know, the public
is going to have to negotiate not with one,
two, three, four PROs, but possibly hundreds,
you know, if every independent publisher pulls
out of the PROs and has to negotiate, you
know, a restaurant license on a case-by-case
basis. I think that's a really bad thing. The
PROs provide a great service for songwriters
and publishers, you know.

There is efficiencies there that
are just fantastic, but the publishers and
songwriters are sort of being backed into a
corner with the consent decrees. We are
essentially being forced to freely consider
pulling out entirely, and it's not something
that I would want to do, you know, but if --
if the PROs can't negotiate, you know, fair
rates for new media performances, it's
something that we really have to consider.
Public performances are our biggest income
part of the -- you know, compared to
mechanicals, compared to sync, public
performance is the biggest.

MS. CHARLESWORTH: Do you have a
percentage, or in your understanding roughly
what -- how that breaks down?

MR. RYS: David Isrealite testified
at the House Judiciary Committee,
Subcommittee, that I think it was around --
the publisher's share only, mind you, was
around 31, 33 percent of the income, and that
is just the publisher's share that the
publishers receive. The songwriters generally
receive an amount equal to that directly.

MS. CHARLESWORTH: Okay. Thank
you.

Mr. Hauth.

MR. HAUTH: Certainly, the radio industry has had its moments with the PROs, and we continue to -- we continue to negotiate with them every five years, and hopefully stay out of the rate courts. But I've got to say that the concept that ASCAP fostered in the early 20th century was nothing short of genius -- to develop a collective whereby individual rights for songs could be obtained relatively easy. The radio industry couldn't exist as it now exists, and has existed for close to 100 years, without collectives.

I contend, and most folks I know contend, that the withdrawal of rights from the PROs would create universal havoc. From the service side of the equation, if I'm a broadcaster and I'm operating under ASCAP, BMI, and SESAC licenses, which I would have to if I play any music at all, which is hard to get around as a broadcaster, it would be
impossible.

First of all, the PROs have no carveout, no workaround, in their licenses for direct license music. So if I'm paying -- if I'm paying ASCAP 1.77 percent of revenue, there is no diminishment of that number for direct license music. There is no carveout in the license.

Now, let's suppose that ASCAP lost Universal Music. They would probably make some sort of concession, but it would be chaotic for a broadcaster to be able to separate the direct license songs from its reports to ASCAP, because, as we have discussed around this table, there is no significantly reasonable way of identifying the music.

So, and I'm not sure whether Universal has thought that through, but I'm sure that they would develop their own collective in some way. And then we have another problem, another collective that is not under a consent decree. So it would be --
it would create havoc for the radio industry, and I suggest that it would probably create havoc for the television industry and most of the services.

MS. CHARLESWORTH: And this may -- I may be misdirecting this followup question to you as opposed to the gentleman sitting to your left. But what about the adjustable fee blanket license? How does -- does that solve some of the problem, or how does that work?

MR. HAUTH: That's a concept that DMX perfected, and DMX is now part of Muzak I believe, but that's useful in that background music industry. But for broadcasting it's very difficult.

First of all, the RMLC, which is the largest music licensing committee, have that as a chip on the table in their negotiation with ASCAP and BMI, but they chose to trade it off for a better VOYKA license rate, which was a small thing to do. The NRBMLC, which I direct, is in negotiation
right now with ASCAP and BMI, and that is not on the table because it's -- it's very expensive to direct license.

The AFBL is a license such as SoundExchange offers through its -- through the Copyright Act, in which there is a workaround for direct licensing. ASCAP and BMI have never offered that, nor have the committees demanded it in court cases in broadcasting. It would be very difficult and very time-consuming to direct license music outside of ASCAP. So it's not a possibility right now.

MS. CHARLESWORTH: So just to make sure I understand what you're saying is in theory it might be a structure that could be applied, but you're saying from your perspective logistically it would be too difficult to manage both the direct licensing process and the blanket licensing process? Is that a fair summary or --

MR. HAUTH: Yeah, that is. First of
all, if you direct license, you need to have a back end, which no broadcaster could afford. A back end would be like engaging MRI to identify the direct license music and remove that from your ASCAP reports. And that's very expensive to do, and there's not -- not a convenient model. And I suppose the radio industry would very quickly work towards one. There's not a convenient model right now to extract those songs from your playlist and identify them to ASCAP as direct license.

MS. CHARLESWORTH: Okay. Mr. Cohan, if I can go to Mr. LeMone first, who is representing ASCAP, to -- perhaps he wants to respond to some of that.

MR. LEMONE: Yes. I would say that that kind of highlights the value of the ASCAP blanket license, and that there is a value there as far as the ease of the administration of it, and that I think you said that it's been a good thing for you for years. It has been a reasonable experience to negotiate
those rates with ASCAP.

Secondly, I would like to make sure that we have the information right here from Mr. Isrealite, who said that 52 percent of the income from -- or for publishers is from PRO income. So it's 52 percent, up from 32 percent in 2012, so that's a, you know, huge increase over the last couple of years, showing the -- you know, the expanding importance of this source of income in the industry.

MS. CHARLESWORTH: Okay. Thank you, Mr. LeMone.

Mr. Cohan.

MR. COHAN: Thanks. I'd like to say that from the perspective of an independent publisher we would agree with -- there seems to be consensus that there would be universal havoc -- I think that's an apt term -- if total withdrawals were to happen. But even if the market were able to absorb that and somehow adapt, I think on a practical level we
would be concerned with the administrative costs that remained at ASCAP and the PROs and how much the publishers that remained would have to bear that, and what that would look like to the kinds of collections we would see in that case.

But I'd also like to return to Mr. Schyman's point, too. Transactionally, I think we -- I have the same concerns. How would we handle it under our composer contracts? How would we handle -- handle potentially having to deal with or license the writer's share? Contracts have mentioned the writer's share for a long, long time. They are not consistent. It is often negotiated from contract to contract. It is generally -- it used to be just pro forma. If in the event you happened to collect some of the writer's share, this is how you'll handle it.

So, you know, I guess we'd have to survey contract by contract how to do that going all the way back, and that -- you know,
I guess we could do that. But on the positive side, I would say that transaction attorneys on the other side representing songwriters are aware of this issue now, and it's starting to be part of the discussion. So there is some negotiations and discussions as to what might happen, how we might handle it. So perhaps that might be a way forward.

MS. CHARLESWORTH: Okay. So on going forward contracts, then, sometimes the parties are anticipating this possibility. Is that what you're saying?

MR. COHAN: Right. Right.

MS. CHARLESWORTH: And now you mentioned something about the cost of administration. Can you elaborate on that? In other words, if major catalogs leave the PROs --

MR. COHAN: Sure. The PROs, they are -- I don't -- they can speak probably more directly to this, but I think that PROs, they are not going to see a corresponding decrease
in overhead and administrative costs, not
sufficient to cover the losses of revenues
that they are going to see. And someone is
going to have to bear that burden if they are
going to continue to operate and if we are
going to continue to get the benefits of the
collective licensing, the independent
publishers that remain.

MS. CHARLESWORTH: Okay. And one
more question, a follow up. What about the
scenario of partial withdrawals? In other
words, that was actually was prompted the rate
court decisions was, you know, digital rights
only withdrawals. Do you see that as a
possibility that would not be as disruptive,
or do you see that as --

MR. COHAN: We do, definitely. I
mean, we have experience in particular in
Europe with -- where our European branches
were faced with this issue and the choice of
taking their digital rights and consolidating
them, and that has worked quite well in
Europe, I would say to date. And I believe that we at PeerMusic have the structure now to handle that if we were to do that in the United States as well, too, to administer those digital rights separately.

MS. CHARLESWORTH: Okay. Thank you, Mr. Cohan.

Let's see, I'm not sure who was next. Maybe Mr. -- Mr. Lord, are you --

MR. LORD: Sure.

MS. CHARLESWORTH: We'll get to everyone, so --

MR. LORD: Well, first, at the risk of speaking on behalf of the music publishers -- and I'm not a music publisher -- but, you know, when the -- Judge Cote turned the industry on its ear in a very unfortunate way. Section 106 of the copyright law is a bundle of rights. And just like a bundle -- if I am a farmer and I've got a bundle of hay, and I want to give half of it to Shawn, and sell a quarter of it to Mr. Rys, I can do whatever I
want with my bundle of hay or my bundle of shirts or my five cars in my driveway, which I don't have.

But I can't -- I mean, all of a sudden Judge Cote is saying you've got this bundle of separate rights that you can only move together. You can't separate one and do what you want with that and separate another one and do what you want with that, as has been the case throughout, at least since 1909, you know, with the copyright law. All of a sudden, they can't do what they want to do with their bundle of rights. So it's really necessary for the law to allow the publishers to do what they need to do.

Whether or not they want to withdraw on a partial basis or a full basis is up to them, but they need to be allowed to withdraw their separate rights and do what they want with them. Second of all, I'm not so -- and, remember, we come from a slightly different perspective than ASCAP and BMI. We
are not part -- we don't have a consent decree, so we're a little bit more unhindered I guess.

But, you know, in practice, I'm not so afraid of the direct licensing by the major publishers or others. I believe -- in fact, at least the television broadcast industry -- I don't know about Mr. Hauth, but the television broadcast industry for years has been saying, "We want to be able to direct license this. We want to direct license that. You need to let us direct license."

So, fine, direct license. If Universal or Sony wants to direct license their catalog to television, let them do it, you know. Why not? Let the broadcasters get -- you know, maybe they can negotiate 10, 12, 15 deals, instead of four or three, you know?

Again, it's up to the publishers if they want to do it. And we are -- you know, if we lose, we lose. If SESAC loses, we lose. What else did I have? I think that's it.
MS. CHARLESWORTH: We can come back to you if you have another thought.

MR. LORD: That's fine. Okay.

MS. CHARLESWORTH: Mr. Irwin.

MR. IRWIN: I also agree that it would be total havoc, but there is nothing -- a little bit over here -- Mr. Cohan mentioned about Europe. The reciprocity issue that would unfold, I believe, particularly from A/V composers working in film and television around the world would be immense.

It is already -- America is already out of step with virtually everywhere else in the world when it comes to performances and downloads and streaming and things like that. They sign on to the WIPO Treaty, and then, you know, a court decision means they pull out. So there is a lot of distrust from the foreign societies towards American practices here.

And that, in turn, means that a lot of monies are withheld in Europe for A/V
composers and possibly other composers as well, other songwriters. I'm not sure, but I just know what the A/V world because they have things in both France and SACEM -- sorry, SACEM in France and then GAMA in Germany called Broadcast Mechanicals, which I will let Mr. Schyman, who is an expert in this area, talk about in a moment.

But the protections for the A/V composer really are only there through the PROs. It is really that simple and, you know, the system will really break down. Another thing that I don't think has been considered -- for example, I'm a member of APRA AMCOS. So I'm not a member of an American society. You get a license through North America. Now, my deal with APRA AMCOS does not allow a sub-publisher to pull out of an American society. It contravenes my agreement with my local society.

So I don't know if anybody has considered what the foreign societies will do
if the publishers pull out here that are representing, once again, a reciprocity thing. I think it just all becomes unraveled. I don’t think it can work. And that’s about it for the moment.

MS. CHARLESWORTH: Thank you. Now, in terms of the reciprocity and the money, that would stop flowing as I understand it, or --

MR. IRWIN: Well, it’s not so much that it will stop flowing; that it’s just -- at the moment, it’s sort of held up because there are different -- as we touched on yesterday, work-for-hire is an American concept to begin with, so, you know, in the other countries the creators maintain the underlying copyright in their work, and the production company or the entity that contracts them to compose the music owns the master recording for the purpose of whatever it is, to synchronize it with their film or their television show, whatever. And they own
that, and it's, you know, a license in perpetuity as opposed to the entity becoming the author.

    MS. CHARLESWORTH: Okay. Thank you very much.

    Mr. Watkins? Or, yeah, was Mr. Kokakis -- did I say that correctly? Do you want to go before Mr. Watkins? Okay. Mr. Watkins is ceding.

    MR. KOKAKIS: Conspiracy theories and worst-case scenarios aside, I'll tell you how it's going to work.

    MS. CHARLESWORTH: Can you move your mike just a little bit closer?

    MR. KOKAKIS: I'll repeat myself. Conspiracy theories and worst-case scenarios aside, I will tell you how it is going to work, if there is a withdrawal. I don't have a crystal ball, but I do know how it's working today, so I can speak to what it's like to license directly.

    We have multiple direct licenses
for performance rights with multiple
licensees, many of whom are in the digital
space, and some of whom are in the room today.
It's working just fine. We are experts in data
management, so we know how to match. We are
experts in publishing administration and
copyright administration, so we know how to
handle these rights.

It is unfortunate that people are
so afraid of change. It's difficult to adapt,
but it's an inevitability. It's coming. We are
prepared for it. We have considered the
international implications. We have considered
the impact to the writers and their concerns.
We have considered the potential increase in
costs to the societies, and we believe we have
it all figured out.

We could withdraw tomorrow, and it
would be seamless. The landscape would not
change that much. You're talking about
introducing maybe a few additional players to
the licensing process, Universal being one of
them. The societies don't go away. The societies continue to exist for those writers and publishers who don't have the resources that we're fortunate enough to have to create infrastructures to deal with licensing and data management, but there are several solutions, they are all workable, and they don't impact the industry or the writer community negatively.

If anything, it increases the value for the publishing community and the writer community. That's the point of this -- to get out from under the thumb of oppressive consent decrees and an oppressive system that doesn't allow us to realize the true value of our copyrights. That is our intention, and we are prepared for that.

MS. CHARLESWORTH: Okay. So you raise a number of interesting points, and I just want to follow up on them. It sounds like your comments were addressed to a full withdrawal, or am I mistaken? Was I hearing
you incorrectly on that?

MR. KOKAKIS: We are prepared to do whatever is necessary to protect their songwriters and our interests. And if full withdrawal is the way we have to go, then we are prepared to do that, yes.

MS. CHARLESWORTH: Okay. And how would you address, for example, some of the contractual issues or, you know, the payment of songwriters that were raised on the other side of the table? I mean, if you want -- in other words, it would be helpful in general for you to -- to the extent you can share, and -- I don't know how much you can share -- but if you want to talk about how this would all work, it would be very helpful I think for us to understand.

MR. KOKAKIS: Okay. Well, I can't discuss Universal business strategy, but I can discuss things hypothetically.

MS. CHARLESWORTH: Okay.

MR. KOKAKIS: Okay. Publishers,
some of whom include Universal, have done
extensive review of our writer agreements, so
we know what rights we have and what we don't
have and what we can do and what we can't do.
Remember, we already have the right to issue
direct performance licenses under current
copyright law. It's a non-exclusive grant to
the societies. So we are able to, and have, as
I mentioned, already issued multiple direct
performance licenses on a blanket basis to
several licensees.

So this is already happening in
practice. I'll mention a few scenarios for
protecting the interests of the writers and
minimizing the cost of withdrawal to the
societies, and ultimately I imagine that would
trickle down to the remaining publisher and
writer members of those societies, which is a
concern that everybody seems to have here. We
already have in place administration
agreements with the societies for those deals
that we have done directly with services.
So essentially it works like this -- we issue direct performance licenses on a blanket basis to a service, and then for the administration of those rights, not the negotiating, not the licensing or papering of those deals, but the administration of those rights collection rights, goes back to the societies. They charge us a fee for that. I can't disclose the amount, but I can tell you it's fair. So there is no impact to the societies in that regard as far as cost is concerned, nor as far as increased cost to the remaining members or the members whose rights we did not license. We believe we are able to extract greater value from the services that we have licensed directly.

So, at the end of the day, our writers are receiving essentially a win-win, because we are able to get higher rates than we otherwise would under a consent decree. And there is a cost savings to our writers, because we are charged a lower administration
fee than what the effective administration fee
would otherwise be if it were licensed through
the societies. Benefit on two fronts.
Publishers, from what I understand, Universal
included, intend to flow-through the writer's
share of that performance revenue to the
writers because we have a contractual
commitment to do so.

MS. CHARLESWORTH: Flow -- I'm
sorry. Just to make sure, you would be paying
the writers, or the writers would be paid
through the PRO, through the --

MR. KOKAKIS: We would instruct the
PROs, as we have, to pay through the writer's
share directly to the writers to maintain the
status quo. It is without regard to
recoupment. So I have heard some people
express a concern that we would cross the
writer's share of performance revenue against
outstanding advances. That is not the case.
That is not our intention.

And as I said, we have existing
deals, and we have not done that, nor would we. So the data management problem, which Russell had mentioned, and the chaotic marketplace, which others had mentioned, don't exist today. They wouldn't exist tomorrow. The societies could admin on our behalf. Absent the societies doing so, we have the systems to do that ourselves. We already manage rights. We already account to thousands and thousands of writers. We are in the business of managing copyrights. Adding performance into the mix is not that difficult.

So I think there is understandably paranoia and there are legitimate concerns, but we are trying to extract the most value for our writers and to protect their interests. That's what we do every day. That's what we intend to do with respect to performance rights as well.

MS. CHARLESWORTH: Okay. And one more followup question. We have heard a lot of commentary, and you weren't -- I don't think
you were here yesterday, but there is -- a lot
of people have raised the issue of
transparency of what is being withdrawn, and
it came up, obviously, in the Pandora case.
Can you explain how that concern would be
addressed?

MR. KOKAKIS: Sure. I'll tell you
what the absurdity of it is. All of our
copyrights are listed on our website. If you
go to the ASCAP and BMI websites, you can do
title searches to see who the owners of those
songs are. The information is already out
there. So this notion that all of the
information is being withheld, that there is
this secrecy involved with respect to the
data, it is simply not true.

Now, the aggregation of this data
is a different story. We are in favor of the
dissemination of information to anyone who
wants it. We give data feeds to multiple
digital companies. We give data feeds to HFA.
We give data feeds to MRI, Crunch Digital,
foreign societies. Our data is out there. My understanding is that most publishers operate this way. The free exchange of information I think is good for everyone, and I've heard concerns about identifying who owns what.

Well, that's what we're in the business of doing. We identify who owns what, because that's how we track payments, and that's how we ensure that our writers get paid. This is not difficult to do. So, again, the information is out there. The aggregation of the information is tricky. I'm sure many of us are familiar with the GRD effort overseas, which has hit some difficult times.

There is an effort underway among the U.S. societies and the Canadian society to aggregate data, to create a North American hub for information. Perhaps the Copyright Office could act as a repository for all of the data that so many of us would like access to.

We would be happy to provide detailed data feeds for anyone, really, to
maintain a database, a comprehensive database, so there's full transparency. I think it's a good thing. We support it. And we are already in the practice of doing this. I want to mention, if I may, the implication for foreign rights, because my colleague had mentioned this. There are reciprocal licensing arrangements among U.S. societies and foreign societies. We don't currently intend to disrupt that model. Your rights, you had mentioned, are through APRA. APRA has a reciprocal licensing arrangement with the societies here, and the societies would continue to collect on your behalf, because APRA has granted them, on your behalf, the right to do so.

So for the exploitation of foreign works in the United States, that would continue to run through the societies. If the foreign societies wished to grant us the right to collect on behalf of our writers who were APRA members, for instance, we would be happy
to do so. It's not something that we control, however. It's a right that you have and that the foreign societies maintain.

MS. CHARLESWORTH: Okay. And I'm sorry to -- this is very helpful in terms of sort of as I -- in addressing my earlier question, my opening question, which is what might the future look like, for split copyrights, which are obviously very common, how -- let's say Universal withdrew and the co-owner was still with ASCAP. How would you -- how would that work?

MR. KOKAKIS: I can only tell you how we prefer that it work. We would like to control the portion of copyright that we own, so we can issue a direct license. And the remaining interest by a co-publisher who remained in the society would license through the society. That's happening today. We have deals that we can point to that work that way. So we're not talking about all publishers withdrawing. We are talking about perhaps a
few that have, again, the resources and the
desire to do so, to withdraw. The societies
will continue to exist for the tens of
thousands of other publishers and writers who
wish to remain.

So the licensing landscape would
essentially look like this. Right now you have
three primary U.S. societies that license to
services. You're talking about maybe that
number going up to six, perhaps seven.

Keep in mind that for all of the
types of rights we have multiple licensors.
You're talking about synchronization
licensing, mechanical licensing, whatever the
case. So services and licensees are already
accustomed to licensing from dozens and dozens
of different parties to get the type of
aggregation they need to operate a service or
to use music in whatever media they are
looking to exploit it in. We are not talking
about things changing a whole lot, and I think
that's perhaps what I would like to leave the
room with today, which is the doomsday scenario that is being talked about is not the way we envision it playing out.

MS. CHARLESWORTH: Okay. Thank you. And thank you for responding to all of my followup questions.

MR. KOKAKIS: Sure.

MS. CHARLESWORTH: I don't know if Mr. Watkins or Ms. LaLaPOLT were next. Do you guys know?

Mr. Watkins, Ms. LaPolt, and then Mr. Greenstein. How about that?

MR. WATKINS: Okay. Thank you.

MS. CHARLESWORTH: We'll just go in order.

MR. WATKINS: I wanted to speak to the -- both the availability of the adjustable fee blanket license from the societies and the feasibility of the administration of adjustable fee blanket licenses. So, first, as to the availability of the license, meaning -- and with an adjustable fee blanket license,
just for the benefit of anyone who is not familiar with it, this is a blanket license which offers the user the protection of the full blanket, with the ability to adjust the fees downward or, you know, upward, depending on the basis of your terms for the music that you have directly licensed in a direct transaction.

So it's indisputable I think at this point that by reason of the DMX litigation that the AFBL is available to any user. That was determined in the BMI part of the DMX litigation, but the licensing provisions of the ASCAP and BMI decrees in this area are identical.

So I think as a matter of decree interpretation you can safely assume that it's available from both sides. I disagree with Dennis that SESAC has heretofore, at least in the case of the television industry, offered a viable alternative to the blanket license; that is, essentially the allegation of the
television industry in the antitrust litigation that is pending currently there. So, but where the AFBL is available, users can of course negotiate it away.

And in the wake of the Pandora decision, it is our understanding that the societies have been approaching the major user groups, and essentially offering them incentives to agree to full blankets, which are not adjustable, using the specter of withdrawal as an additional incentive to get the user groups to do that. In addition, from our understanding, the societies have been offering to provide a full blanket license to the user groups, then to indemnify them in the case of withdrawing catalog. So the Office should consider for itself where that money to indemnify user groups comes from. So, you know, I think the AFBL is clearly available to any user group. I think given the landscape any user group would be wise to take advantage of it when that opportunity presents itself.
And as to the feasibility of the administration, I disagree that it's not feasible. Our company has demonstrated that it's entirely feasible in the case of the television industry where there is a very mature direct licensing process. It is highly automated with ASCAP and BMI. It certainly is the case that there is a cost to that activity, but I don't think anyone in the television industry would say that that cost has not been worth it, because what it has allowed the television industry to do with respect to the music publishers with whom it directly negotiates licenses is to introduce a level of competition into the pricing of the rights that they need, which is something that is not really present in the blanket licensing context.

So, you know, we are ready, willing, and able to administer adjustable fee blanket licenses and direct licenses. Our experience in that area has been what has
enabled us to develop the databases that we rely on to administer direct licenses in other contexts. This has been the -- essentially the thing that has allowed us to administer the Section 115 license in the way in which we do,

and I think it's very important to remember that users increasingly need both reproduction and performing rights, and the only way that they are going to be able to get that is to get it directly from the publisher.

You know, the last thing that I would say about the administration is that when user groups are on our platform for the direct license administration and the blanket license administration, it becomes possible not only to directly license potentially on lower terms, but where a publisher is offering terms that a user considers supra competitive, it becomes possible to avoid those catalogs. And so, really, the existence of the AFBL is what provides for and enables a really competitive marketplace for music rights, and
we just think it's very important and it's absolutely feasible.

MS. CHARLESWORTH: Thank you, Mr. Watkins.

Ms. LaPolt.

MS. LaPOLT: Thank you. How sad that because of these antiquated consent decrees that sit on the heads of ASCAP and BMI, okay, we have to have a major global power like Universal Music Publisher, who publishes a lot of my songwriters -- and thank you so much for looking to protect them -- you're going to withdraw all of your rights from the PROs that can protect my clients. That is what's coming, okay, because of these consent decrees. That is what is coming, so they are not working anymore. And what we're doing is the publishers now, to protect our songwriters, are working -- are going to come up with a way to go around this antiquated process, so we don't have to deal with these rate courts and Judge Cote [...] and all of
these things.

(Laughter)

It doesn't work. Okay? It doesn't work. The bottom line is whenever someone in a negotiation has the inability to say no, there is no negotiation. Okay? It's indentured servitude, and the problem is is where ASCAP and BMI are unable to say no, and we all know this -- Gary's clients -- Gary Greenstein's clients know the only way to move forward is go through this rate court, where we are going to spend millions and millions of dollars to get in front of judges who don't even understand what we do is ridiculous.

And compulsory rates take away the power of approval, an artist's most important right. And music publishers that have to figure out sophisticated strategies to withdraw 100 percent of their rights just so we can protect copyright is really sad.

You know, it's really, really, really sad. And I love what you said, Mr.
Lord, about the property right of copyright,
because that is exactly the issue that we are
facing. And when we are talking to a lot of
Congress members, and we are talking to the
digital service providers, some people don't
believe that copyright is a property right.
They believe it's an economic interest, and
it's there for picking for everybody. Once
it's created, it is there and you can just go
and pick at it.

And that's a terrible way to
think. And if we are going to be involved in
helping to reshape the Copyright Act, which is
highly antiquated, consent decrees that were
developed in 1941, and, you know, amended in
1966, this is crazy. And if we don't come up
with ways to fix this, we all lose.

Having Universal Music Group
withdraw 100 percent of its rights from BMI
and ASCAP is not a solution. It helps my
clients, so I'm grateful for that. But it
harms our business. And the issue with
copyright being a property right, I think that
we really have to educate people and pass this
message on, because it's almost like buying a
house. I tell my students at UCLA, I said, you
know, if I owned a house, and you wanted to
come and take a leak in my bathroom and I said
no, that's my prerogative. However, if I want
to rent you a room in my house for a certain
amount of money, that's also my prerogative,
or I can evict you. That's my prerogative,
whether I have a reason or not, depending what
our lease says. It's the same thing with
copyright, and I think that the Songwriter
Equity Act is a good step in the right
direction for these types of things.

And I think that, you know, when
we -- you know, the broadcasters -- Mr. Hauth
complains that it is going to be complete
pandemonium and it's going to be disastrous,
and it's not, it's going to be exactly what
David Kokakis said it's going to be --
seamless. Seamless. And, you know, I'll look
at my royalty statements, and my clients all see that their performance rights income will have gone up, and my clients will be happy and I will be happy, but that's not the solution -- to run ASCAP and BMI out of business because of these antiquated laws. So thank you.

MS. CHARLESWORTH: So, Ms. LaPolt, just to make sure I understand, I want to make sure I understand your position. Is your position that you'd like to preserve the PROs but change the structure under which they operate? Or --

MS. LaPOLT: Correct.

MS. CHARLESWORTH: Okay.

MS. LaPOLT: Correct.

MS. CHARLESWORTH: And how --

MS. LaPOLT: We can't do --

MS. CHARLESWORTH: And how would you -- like what --

MS. LaPOLT: I would like the abolition of the consent decrees 100 percent.
I think the entire business should operate in a free market, and a good example of a free market is synchronization licenses, because that has always been in a free market and it's a very healthy form of income. And you know what? If my clients want to say no, they say no, and people complain. I've been on the other end of that as well. I represented the Tupac Shakur estate for over a decade, and we would always get told no on certain things, and I had to live with that. I don't like being told no. Okay?

But when you are dealing in copyright, sometimes you're told no and sometimes you're told yes and you deal with it. Just like dealing in real estate, you deal with it, you know, and my position is is that I -- the consent decrees need to go. It's an antiquated business model that no longer works. We should operate in a free market. But as a Plan B, if that doesn't happen, then I support 100 percent what Mr. Kokakis has
described because it's going to help protect my clients, and that is a sad alternative.

MS. CHARLESWORTH: Thank you very much.

Mr. Greenstein, can you follow that?

(Laughter)

MR. GREENSTEIN: I feel very alone in this room right now.

(Laughter)

For the benefit of the recorder, I feel very alone in this room right now, notwithstanding Les and his helpful comments, and Russ. But there is a lot to comment on here, so my apologies if I take a bit of time. And if you feel that I've gone on too long, please feel free to cut me off because I do feel that -- I don't know how many people here, other than maybe Paul, are working for a DSP right now, and someone who has represented companies that have to go out and obtain licenses on behalf of clients from lots
of different copyright owners and supporters
for lots of different business models.

And let's look at -- I think it's
helpful to consider this market holistically.
Many of the problems and the hostility that
has arisen, that has given rise to a tax on
the consent decrees, are from the very high,
might I even say exorbitant rates imposed
under the statutory license, that non-
interactive services, principally Pandora,
pays to SoundExchange.

There are also criticisms of the
royalties that are paid by services such as
Spotify. But when you think about it, many of
the criticisms -- and there are statements in
the press from executives of major publishers
that talk about the nine to one disparity with
something thrown out by someone here
yesterday, or 14-to-1 fees to the sound
recording copyright owner versus the musical
work copyright owner.

I'm not sure if the issue is so
much that there are consent decree -- that the
consent decree is the problem as to the amount
of money that one arm of a commonly owned
company is getting for the use of a sound
recording, and that one arm of a commonly
owned company is getting for the use of a
musical work. And the three biggest record
labels are affiliated with three of the
biggest music publishers. And, again, if you
go back to the comments yesterday, the
internal scene battles among copyright owners
are causing great harm and detriment to
services because the copyright owners can't
figure out the appropriate split.

And if monies are going to be paid
to SoundExchange by a company, and it's going
to range from 46 percent under a pure play
non-precedential deal to 80, 90, or north of
100 percent, and publishers feel that they're
not get enough because they're at four
percent, I'm not sure the issue is with the
rate court or what the service is paying.
Again, if you think about this, what is the value of music? I think the Copyright Office has to be very careful about attacking or recommending a particular change just to the consent decree because it may not fix what is going to the sound recording copyright owner, or just the mechanical royalty versus reproduction, because it is a very large tapestry, and you start pulling apart one strand and I think there the law of unintended consequences, that may have significant ramifications.

I want to tick off a bunch of comments. I disagree with most of what Dina said and -- (Laughter) -- just want to go on record, since there was criticism of a federal district judge, and in following you I just want to be clear about that.

On the consent decrees, let's remember what the consent decrees provide. Under the Sherman Act, the antitrust laws of the United States, competitors coming together
to fix prices for the sale of a good is a per
se violation of the antitrust laws. The PROs
allow publishers to come together, whether
they're unaffiliated -- and by "unaffiliated"
I mean they don't share a common ownership of
work, or if they're affiliated because they've
got overlapping ownership. But what you have
is competitors coming together through a
common agent, fixing prices, and that is a per
se violation. The courts have held -- and the
consent decrees were entered into -- because
of the approval that there were competitive
benefits from a blanket license.

And those competitive benefits,
with oversight by a court to prevent certain
behavior -- and I'll get into that in a minute
-- was checked by the consent decree. If you
do away with the consent decree, as some
people are calling for, I think you have to
consider whether or not the PROs can exist at
all in light of the potential for antitrust
violations.
MS. CHARLESWORTH: I just want to interrupt. I know you have more to say, but you're going to be dealing with market actors who are probably going to have a larger market share than the remaining market share in the PROs potentially.

MR. GREENSTEIN: And I believe that is a significant problem, because the recent acquisition -- so EMI, when it was split in two, so you had the record label go to Universal Music Group, and the publisher go to Sony/ATV, I think that is of significant concern, and the government probably got that wrong. And I think the hold-up value that now exists in some of these entities that have very significant market share, some of which is through administration agreements as well, I think that is stuff that the Department of Justice should be considering and looking at. Maybe not a copyright issue, but from a competition standpoint, something that needs to be taken into account.
Now, on the AFBL -- and this may not be in order -- I agree with Les that the adjustable flexible blanket license is very critical. There are many companies that operate user-generated content websites, where independent artists who are both the recording artist and the songwriter, will upload their content to a website for many different purposes. And those people agree to a terms of use that may include the granting of public performance rights to an online service provider. Any adjustments in the copyright law I believe has to ensure that a service does not double pay for taking out a blanket license and then paying a second time for content that has already been direct license.

So I think on behalf of the OSP community, preserving the adjustable flexible blanket license is critical. In terms of havoc, there has been disagreement as to whether or not havoc would arise by doing away with the consent decrees. My personal view
from having represented literally hundreds of
different digital media companies at this
point is that havoc would ensue, and that's
for several reasons. I think that there is
evidence that the publishers that are looking
to withdraw, or attempting to withdraw from
the PROs last year, were principally targeting
one company.

And they were looking to withdraw,
do a direct license with Pandora, and then
were immediately looking to go back in. There
was very little, if any, desire to license the
unwashed masses of services, and certainly I
think not a desire to license every bar,
restaurant, doctor's office, hotel, physical
establishment, et cetera. And that -- you then
start to look at that issue, and you have this
question from an economic standpoint, what
happens if a publisher withdraws? Could
Universal -- and I don't know if Universal is
30 percent or 25 percent of $2 billion, let's
say, in publisher royalties, could they make
up that same amount of money they get from the PROs by just going to the top 20 entities that pay to the PROs?

So the Television Music Licensing Committee, the Radio Music Licensing Committee, Netflix, the four major networks, a couple of cable companies, Disney, et cetera, and then say, you know what? We're going to triple our fee for everybody at the very top, from those 20 percent, and we're going to get the same amount of money that we were getting through the PROs. But what about all of those people who were getting coverage through the PROs for their performances? The individual store that was able to get a license, and they weren't going through someone like Move Media.

I think that my experience in representing companies at the end of last year and trying to get licenses, the publishers who were withdrawing did not want to talk to you unless you were prepared to write a very
significant check. And I think you have to look at that. Actions speak louder than words, and I don't mean to impugn Mr. Kokakis at all. I've spoken with him a handful of times, and I don't question what he has said here today.

But what's on the public record from Judge Cote was that when Universal Music Publishing was trying to negotiate with Pandora, they demanded an NDA that would not allow Pandora to disclose that information or use it for any purpose to removal Universal content from their streams. I was working on an agreement last night for a client with a major publisher, and the major publisher has a provision that upon expiration of this agreement you have to delete all of our metadata, so that you could not -- at least under one interpretation, you could not know if that agreement expires and there is a gap of a week, you have an obligation to delete that data. How do you then know what music to take down? How do you ensure that you are not
a copyright infringer?

And I think that all of these
issues, they are an attempt to raise rates.
And I don't -- I don't disagree that copyright
owners have a right to try to maximize their
revenue.

What I disagree with is anti-
competitive behavior by large parties, very
significant negative consequences to the
marketplace, which I think would result; this
frictionless right to withdraw from a PRO,
extract a higher fee, and then immediately go
back in, which is something that is permitted
right now under both of the ASCAP and BMI
consent decrees. There was no harm for
withdrawing, doing a direct deal with someone
like a Pandora or Spotify or anyone else, and
then immediately going back in -- and Mr.
Kokakis talked about the fact that they are
still going to enjoy the benefits of the
compulsory -- of the consent decree, because
they are going to have the money paid to ASCAP
and BMI.

   So they're getting the benefits

and efficiencies of collective action without

the burden that the court and the Justice

Department imposed upon them for that

collective action. So I think it's really

improper to allow an entity to have those

benefits of ASCAP and BMI as an administrator,

if you're not all-in for the purposes of what

that consent decree is supposed to provide.

  MS. CHARLESWORTH: Okay. If you

  can wrap it up, we're at the official stopping

  point. This is an extremely important topic.

  We're going to run a few minutes over.

  MR. GREENSTEIN: I'll stop there.

  MS. CHARLESWORTH: But I want to -

  - there are a lot of cards up around the

  table, and I do want to give everyone who has

  a card up an opportunity. So --

  MR. GREENSTEIN: I'll stop. Yes.

  MS. CHARLESWORTH: Okay. So I'm

  going to just go around the room in this
order. If you could try to limit yourself to maybe two to three minutes, I think it would be helpful because I do want to -- we are going to run over, but I don't want to run too far behind in our schedule. Mr. Anthony.

MR. ANTHONY: Thanks. Just a quick comment. In the microlicensing space, which is based on sync licensing, obviously for our clients who we license music to, sync and performance go hand in hand. Almost all of our clients require a performance license. We have the benefit, for the two and a half million compositions that we have licensed, to have direct license performance rights from the copyright owners or administrators.

And I just wanted to point out the fact that for us it's a free market, and it works really well. Sometimes, like obviously YouTube is a large client of ours, we don't license performance to YouTube. The PROs have it handled. But for some of the smaller clients, especially social video apps or
smaller social video networks or UGC networks, we direct license performance rights either because of data issues, perhaps they only license music just from us, but there is a balance and it works out quite well.

And we are very mindful of licensing performance rights where we are extracting the maximum value for the copyrights that we represent either directly or we allow the PROs to go direct and do it if they are maximizing the value better than we can.

MS. CHARLESWORTH: Okay. And so how does -- and then, explain the payment -- how the payment process works when you do that, when you do a direct license.

MR. ANTHONY: Back to the content providers?

MS. CHARLESWORTH: Yes.

MR. ANTHONY: We pay quarterly. I mean, we just collect the royalties just like in the microlicensing royalties.
MS. CHARLESWORTH: Okay.

MR. ANTHONY: So we bundle all of those royalties together, identify what license set they are, and pay them back to the copyright owners.

MS. CHARLESWORTH: Okay. Thank you.

Mr. Hauth.

MR. HAUTH: Thank you. I want to make two comments. One is to add to what Mr. Watkins said about the availability of -- and desirability of AFBLs. He said in his comments that groups negotiate licenses, and this is true. There is no way -- very seldom do you see an individual going to ASCAP or any of the PROs to negotiate a license. It so happens that right now the radio industry is in the middle of licenses, and those licenses -- well, I'll speak for myself. Our licenses that we achieve with ASCAP and BMI for our group will be retroactive to 1/1/14 and last for five years. So that has no AFBL component in
it, and neither does the other radio committee have an AFBL component in it. So I would like to hear -- and then, following up on what Les said, when our licenses -- the term is over, then we can try to put an AFBL in there, and as a group go to MRI and get the work done.

But I, as an individual, cannot go to MRI and get work done if I have an AFBL. It's just cost prohibitive. I think Les would agree. Now, the second thing I would ask is my colleagues here on my right -- Shawn and Dennis -- I would like to hear what the PROs have in mind as they see this -- this earthquake coming to work with the radio industry. If we have existing licenses, and all of a sudden there are mass withdrawals, what are you doing to set that up?

MR. LEMONE: Okay. My understanding is that all of the works that are included in the licenses in effect are covered by the ASCAP license. So, and this is not my area of expertise. I work on the
membership area and not the licensing area.
But I know that we are in talks with the radio
industry about a new blanket license, and my
understanding is that any works that are
included in that would last for the length of
the term. Is that an answer?

MR. HAUTH: Yeah.

MR. LEMONE: Okay.

MR. HAUTH: Yeah, it is. But beyond
that, when we negotiate again, my sense is
that ASCAP and BMI have fought tooth and nail
against AFBLs, and that might be demonstrated
in both the DMX proceedings as well as the
negotiation with the RMLC. I think that that
is what kept you guys from going into rate
court. I think they removed the chip they had,
a very considerable chip, within AFBL on the
table, in favor of a better blanket license,
and that kept you guys out of the rate court.
And I think you have demonstrated that you
will do about everything you can to avoid AFBL
licenses.
MR. LEMONE: Well, I think that if we reach a business decision where we realize that there's a value in getting the license that's available, that that's what ASCAP will do to always maximize the amount of licensing revenue that we can get on behalf of our ASCAP members. Again, I don't work on the licensing area, but I know that the strategy is to secure the long-term health of copyright royalties.

And so a lot of our tactics and strategies had that in mind over and above perhaps a short-term again. I think there is a -- there is a strategy in place to make sure that over the life of the copyright of our members' works that we do the best to sustain that.

And, again, I don't know if that competently answers the details of what you are looking for, but we're open to any kind of licenses that our members are interested in. I mean, obviously, under the current consent
decree any member can withdraw, or any member can directly license. And so if they see that ASCAP is not issuing the kind of licenses that are in its best interest, then it's free to go out into the open marketplace and secure those licenses on their own. That said, we are working with DOJ to remove the consent decrees, and I think that that would be a very valuable thing, not only for the life of ASCAP but for the health of the industry as a whole.

MS. CHARLESWORTH: Okay. Thank you, Mr. Hauth and Mr. LeMone.

Just going -- again, if we can keep it to a couple of minutes, that would be great.

Mr. Lord.

MR. LORD: Yes. SESAC -- just to respond to you, Mr. Hauth, SESAC welcomes the other players into the marketplace, the major publishers. SESAC will always license on the basis of its catalog. We do not offer, nor do we intend to offer, an AFBL, but are happy to
negotiate in the free marketplace an
appropriate fee for our catalog. We think the
consent decrees must go. We think that ASCAP
and BMI should be free to negotiate the same
way that we believe that the major publishers
and any other publishers who want to negotiate
for the use of their catalog should be free to
do that. And that's it, again.

MS. CHARLESWORTH: Okay. Thank
you, Mr. Lord.

Mr. Rys.

MR. RYS: Just start off by saying
I agree that consent decrees need to go. It
doesn't work in -- you know, you have
situations like Universal prepared to pull out
entirely that are a direct result of this. And
what happens then? You know, you have pending
antitrust litigation against SESAC. ASCAP, BMI
are already under the consent decree.

Universal, with 25, 30 percent of
the market, what's to stop the Department of
Justice from slapping another consent decree
on them? And then we're back in this room in five, ten years, talking about the same issues. So I think it's really important to really look hard at these consent decrees and, you know, get rid of them.

And to respond briefly to Mr. Greenstein, I agree that the publishers and record labels do need to figure out who gets paid what and what is fair -- what is a fair split between both copyrights. And, you know, that's not the service provider's issue. It's between the publishers and the labels, and we'll figure it out. We're just asking for a chance to do it in a free market.

MS. CHARLESWORTH: Thank you, Mr. Rys.

Mr. Schyman, you have been very patient. Sorry it has taken so long to get to you.

MR. SCHYMAN: Thank you. What I find very often in conferences like this is that the work-for-hire composers and A/V works
are -- sometimes get confused with songwriters and -- because we don't control the underlying copyright. So it's important that that be understood.

And I have some questions for Mr. Kokakis, and I'll get to that in a second. And bear in mind that 50 percent -- over 50 percent of what I know ASCAP has reported of performing rights that they just -- that they distribute are from work-for-hire -- are for A/V works.

And so -- and I believe over half of that would be for the writer's share, because publishers usually collect their foreign performing rights from sub-publishers. So I don't know what percentage of it is, but a very large percentage of that -- 50 percent of what they distribute would be for the writer's share, and, thus, for composers who don't own the copyright or have any control of that whatsoever.

We at the SCL believe that the
consent decree is not working. We have this
Judge Cote who is -- who we feel is not being
fair with our -- for our works. And so I don't
know if the elimination of it or some major
modification of it we would support -- we do
support.

I'm wondering if Mr. Kokakis could
answer these questions. Were you talking about
withdrawing audio-visual works as well as your
song catalog? And do you control a lot of
publishing for audio-visual works? That's
question number one. Number two, would
Universal withdraw those works if the consent
decree went away or was significantly
modified?

And then, finally, would -- if you
do control a lot of the audio-visual works
that work-for-hire composers are involved
with, would you have any objection to the
composers controlling who we -- who would
collect our share? If we wanted ASCAP, BMI,
SESAC to collect our share, would you have any
objection to our choosing that as an alternative to Universal collecting it for us?

MS. CHARLESWORTH: Okay. I think I'm going to get back to you, Mr. Watkins. I'm going to let Mr. Kokakis -- I know you had some other remarks -- to respond to the extent you're able, and then we'll go back to Mr. Watkins.

MR. KOKAKIS: Yes. Yes. Maybe. And we're open to discussing it.

(Laughter)

MS. CHARLESWORTH: That may have been a little too brief for our purposes.

(Laughter)

But I appreciate that. Now, if --

MR. KOKAKIS: All right. Question 1, Part A, yes, we would be withdrawing all rights if we were, again, forced to do so. 1B, yes, we publish many audio-visual works on behalf of large film studios, and television broadcasters.

Question 2, if the consent decrees
were modified, would a complete withdrawal be necessary? The answer is it remains to be seen. It depends on what modifications there are, but we are open to whatever works. So if the DOJ would consider giving us greater flexibility under the existing consent decrees, it might make sense for us to stay in.

Three, regarding your question about collection, we are open to discussion. We are incredibly sensitive to the needs of our songwriters. We are there to represent them. We exist because of them. So your voice, your preferences, are incredibly important to us.

MS. CHARLESWORTH: Okay. Thank you. And did you have anything else that you --

MR. KOKAKIS: Sure.

MS. CHARLESWORTH: -- wanted to say as long as you're speaking now?

MR. KOKAKIS: If I may, there are
just a few quick things I'd like to address. The question was asked, what is the value of music? The answer, I believe, is whatever the market will bear. I don't believe we can succumb to inertia and complacency, and I feel like the preference to maintain the status quo and not amend the consent decrees is really just a result of those two things. We're entering -- have entered, really, a new age. You have to adapt. We have to look at more efficient ways of doing things.

I have heard some mention of concerns about corruption, unfair practices, things of that nature. If you want to see corruption and inefficiencies, look to the societies, not the publishers. And the NDA was mentioned; I have to respond to that -- a non-disclosure agreement exists to protect confidential information. What was confidential about the information that we provided to Pandora?

I just said that all of the data,
all of our song titles, the ownership
interests, are publicly available on websites
that anyone can access. It's a shell of a
document. That's all. There is no confidential
information that is subject to that NDA. What
is confidential is the aggregation of that
data, and the point of the NDA was so Pandora
would not sell the information to somebody
else who we didn't intend to have that
information.

MS. CHARLESWORTH: So on that
issue, I have only read the opinion. I don't
have any deeper insight, other than what
you're telling us. I mean, my understanding is
the NDA prohibited them from using the
aggregated information to take stuff off of
Pandora. Is that correct or incorrect?

MR. KOKAKIS: That is incorrect.

MS. CHARLESWORTH: I'm sorry.

Incorrect?

MR. KOKAKIS: Incorrect.

MS. CHARLESWORTH: Okay. So the
decision in that sense, from your point of
view, that was -- the way I have interpreted
the decision is not the actual situation?

MR. KOKAKIS: I respectfully
disagree with that court's decision. I drafted
that NDA. I know what the intent was. I know
what the discussions surrounding that document
were. And if anyone had asked if they could
use that data for purposes other than what
they thought they were able to use it for, we
would have gladly said yes. We always
understood that the data might be used to
remove our content, if that's where we wound
up.

MS. CHARLESWORTH: Okay. Thank
you.

MR. KOKAKIS: Now, if I may mention
this as well, the administration services that
could be provided by the societies, I don't
see why societies, MRI, Crunch Digital, HFA,
foreign societies, new organizations that may
emerge as a result of these discussions, can't
merely administer. There are no anti-competitive concerns there. There are no antitrust implications. They are merely administrating licenses that we negotiate, that we pay for, and that's just a service that anyone could provide. I don't think it comes under the scope of any consent decree. And I just wanted to clarify that, because this could be a service that we pay anybody for. If not the societies, we could do it ourselves, and we're happy to do so. Thank you for your time.

MS. CHARLESWORTH: Thank you for following up on those issues. Mr. Watkins, quickly, and then Ms. LaPolt and Mr. Greenstein.

MR. WATKINS: So I'll be really brief. I just wanted to respond to Mr. Hauth, and it's hard for me not to call you Russ. You know, I have a tremendous amount of respect for you and your organization. You're proactive thinkers in an otherwise very
reactive industry. And you are between a rock
and a hard place as to your existing licenses.
I agree with that.

With that said, I think this is
something that the DOJ could look at as part
of their review of the decrees. We have always
thought that the bargaining away of the
adjustable fee blanket license by the
societies is a perversion of the requirement
in the decrees that the societies offer
genuine choice and that the affiliation
between the publisher and the society is a
non-exclusive affiliation, which allows for
direct licensing. So I do think that those
existing licenses should be looked at. And I
haven't thought about it a lot, but I think
that it falls within the DOJ's oversight
mandate.

The other thing I wanted to
mention -- and I alluded to this yesterday --
is that Universal, as David said, and other
music publishers have made their catalogs
available to us on terms which would allow us to enable users to avoid the music controlled by publishers with whom they have not been able to reach satisfactory deal terms. I think, clearly, it is not the reason that they did that initially. They did it in order to maximize licenses and collections in their favor. But I think there has been some maturation in their thinking, given the experience that they have gone through in the Pandora case and in some other circumstances.

And I think now there is a common -- it's commonly known that we are available to do that. You know, what that will lead to is services may no longer have access to all of the music all of the time, and I think that's an assumption that a lot of the services operating have -- you know, have always had, and it's open for discussion whether or not, you know, that's a desirable result or not. But that is where it leads.

MS. CHARLESWORTH: Thank you, Mr.
Mr. Greenstein.

MR. GREENSTEIN: So, and I apologize, there's one thing I wanted to say on my first round of comments before addressing what Mr. Kokakis said. I think the music publishing industry has in part developed with the concept of split ownership in the shadow of the consent decree and the PRO licenses.

I don't think you would have ever had an environment if there were only direct licenses and no PRO license, that you would have 18 different entities owning a share of a song, or even five different entities owning a share of a song. And under principles of copyright law, a non-exclusive license from one co-author of a work can license a service who would not be deemed subject to liability for copyright infringement for failing to get rights from the other parties. If we are going to move to a world where you're still going to
have split ownership and not PRO licenses, I think there should be consideration as to whether or not the copyright law should supersede the ability of an individual publisher to say that "I only license my interest in a work."

It's bad enough that we have fights over how much should go to the sound recording copyright owner, and how much should go to a musical work copyright owner. If you're going to have split ownership, maybe it should be, okay, pay that one copyright owner who has an interest in a work, and they are licensing you, and then let them take that money and figure out with their co-authors.

And if they can't agree, well, tough luck, it's a non-exclusive license. Under general principles of copyright law, you're allowed to do it. And so I would encourage the Office to consider whether or not that would be a needed remedy. With respect to the withdrawal of works -- and I
did not negotiate the NDA, I have no reason to
question Mr. Kokakis on the drafting of it, or
what his intent is. I would point out, though,
that Judge Cote -- and there have been lots of
criticisms of the ASCAP rate court judge --
found the University Music Publishing witness
not credible on the point of the intent of
that NDA.

And services should not have to go
to Crunch Digital to get data. Crunch Digital
is controlled by a gentleman who also has a
company called Royalty Review Council, who
audits digital music services. And to think
that they should go to Crunch Digital to maybe
get the rights, or not withstanding my love
for MRI, you should not be required to
contract with a party to get that information,
I think if publishers withdraw from PROs they
should have to make it known what works have
been withdrawn and what they own. If a PRO has
lost catalog, they should immediately, within
-- you know, whether it's three business days,
five business days, it's all data, it's all efficient. Make that known. If you're going to allow this, you've got have transparency.

And I'm sorry, but it should not be this trade secret as to the compilation of all of the individual works. In today's day and age where Universal may own 200,000, 500,000, I don't know how many works north of that, to expect someone to go work by work is a fantasy. It does not exist. It is not efficient. And the sole purpose is to say gotcha, and to go after someone for copyright infringement. So if you want to allow withdrawals, then I think there has to be, again, a burden if they are going to get that benefit. Thank you.

MS. CHARLESWORTH: Okay. Thank you very much.

This was an extremely informative discussion. We are well over our time. If people could come back by 10 of -- that gives you about seven minutes to take a quick break
-- we'd appreciate it. And we'll try to make
up the time again at lunch. Thank you.

(Whereupon, the above-entitled
matter went off the record at 10:42 a.m. and
resumed at 10:55 a.m.)

MR. DAMLE: So, our next panel is
on the somewhat broad topic of industry
incentives and investments, the discussion
of both investments in creators and the
investments in the distribution methods for
getting music to the public.

And so, we are trying here in this
panel to get a sense of what are the issues
with investment on both those fronts. Is money
going to creators in an effective way to
incentivize the creation of works? Is enough
money going to the services to ensure that the
distribution methods are being developed? So,
I think I will start with just the general
question of, you know, if you want to discuss
how you are seeing the impact of the current
licensing regime on the ability for the people
you represent to earn a living, I think that would be a good place to start.

Anyone want to take that one?

MR. ANTHONY: I'll comment on that.

MR. DAMLE: Yes, sure.

MR. ANTHONY: So, our entire business model essentially sidesteps the current regime because it is too complicated for our market. So, we found that direct licensing rights from artists, administrators, others is really the only way to provide the microlicensing market with all the rights that they need. So, we don't think that it is fundamentally broken for many types of licenses, but the microlicensing market has such a unique, I guess, combination of rights that are needed and it moved very, very quickly in a high volume. So, it is automated. It can't be negotiated on a track-by-track basis. We have just gone direct.

And so, we have our own systems.

We put substantial investment into our rights
tracking and clearance and royalty
administration software. So, that is the route
that we have taken.

MR. DAMLE: Okay. Great. Thank you.

Professor --

MS. CHARLESWORTH: Can I just
follow up?

MR. DAMLE: Sure.

MS. CHARLESWORTH: Can you just
elaborate a little bit on your business model
and sort of how the creative process works and
at what point you were involved in licensing,
just for the record, so we understand a little
bit more about what Rumblefish does?

MR. ANTHONY: Sure. So, Rumblefish
does three things: music microlicensing,
Content ID administration, and license
verification. So, the two that are relevant,
one is very common; most people know. YouTube
Content ID administration. Lots of labels and
publishers go through a third party to
administer rights specifically on the YouTube
system and soon to be other social networks, where we are simply using the tools provided by the network to administer those rights and to set the business rules.

On YouTube, it is essentially block, track, and monetize. And we administer rights for social video for what we call music microlicensing or you can also call it microsync, where we preclear rights for both masters and publishing rights, so that users on any social video app can use songs and their videos. And so, this is where we are issuing licenses through services like Animoto, Socialcam, any number of social video apps, or large marketplaces.

We recently just licensed Shutterstock, a very large business. They are just issuing licenses in an online marketplace. So, we aggregate rights, mainly for social video, and then, provide them as inventory to these services, where users can easily grab a song. And they are either a
direct license paid for by the user or the
service itself subsidizes the license fees.

            MS. CHARLESWORTH: Okay. Thank
            you.

            MR. ANTHONY: Is that clear?

            MS. CHARLESWORTH: Uh-hum.

            MR. DAMLE: Yes. Thank you.

            Professor Menell?

            MR. MENELL: Good morning. I don't
have clients and I don't see the issues in the
sort of quarter-to-quarter way that I think a
lot of the discussion that I have heard
reflects.

            What I see is over decade-long
periods the gradual erosion of the copyright
system, the shift away from people paying for
music and paying for other creative works, a
shift towards advertising and advertising
models as ways of supporting these industries.
This I think is a very serious problem. I
think the copyright system at its core is
based on creators and consumers having some
market relationship. What we are seeing increasingly are what economists would call multi-sited markets.

And those have effects, some desired and some unintended. And we are all, I think, hoping that we will see beneficial turns in the trendlines. I worry that we are not seeing those trends stabilizing or shifting in the long-term sustainable ways that I had hoped.

And so, I worry that we are focused on sort of the trees, the nitty gritty, the current deals. Here's the group that isn't represented by anyone, just because they tend to fall outside. That is the audience, the demographic that has historically been most interested in the music industry, people between the ages of, say, 12 and 30. A lot of them are in my class. I interact with that demographic and have watched that demographic change. And I don't mean just as consumers. I also mean as
artists, people who would pursue careers. And
the reality is that the conditions for
building careers are much different, and I
would say much more problematic. Some
things have gotten better. It is very easy to
self-produce, but it is very difficult to earn
money other than in some indirect ways through
advertising or through live performance,
direct — well, live performance is very
direct, but it is not going to sustain
careers.

And so, we have always had some
monetization of what I would call passive
enjoyment of music. And now, that is shifting
towards services that are largely free and
commercial-supported. And I think the long-
term interest would be in having a massive
increase in the size of markets where people
are paying fair prices, and that money gets to
the artist. So, ultimately, what this whole
discussion is about, it is about plumbing and
how you get plumbing back to creators in ways
that they will make commitments and decide to pursue careers in those sort of positive ways.

So, I would just give as an example, a controversial example, a kid growing up today who loves this industry or loves music and has tools that will allow them to put together mash-ups. And I will just tell you that is happening on a massive basis. And you can go to SoundCloud and other places and find a lot of them, and much of it is gray market or outside of any market. And it will continue to be so until the copyright system provides an avenue for that to come in.

One proposal I have, which is, I would say, a very provocative proposal, is that we would consider some kind of mash-up compulsory license, which goes against a lot of what I heard earlier today. But I would just ask the people opposing it to put yourself in the shoes of that 15-year-old who is in love with music. And just like rap and hip hop completely changed the industries, we
are seeing that right now. And I would say that that is largely outside of copyright unless we are willing to acknowledge that that is a legitimate form of art. And I don't have the formula, but I do think it is conceivable that there would be a discussion that could lead to formulas that no one would be happy with, but at the end of the day would bring more creators into the market and would potentially lead more consumers, more of the people who have rejected copyright, to say, you know, copyright is not so evil.

So, I see the long-term goal as really bringing copyright back into society's good graces. And music I think is an essential part of that because music is really what captures people's imagination at this formative stage of life.

MS. CHARLESWORTH: I just had a followup question. You mentioned a compulsory license, and I think we will also have a panel later in the day to sort of the future. I
think you are on that panel and may bring this up again. But YouTube has built a platform that allows for a lot of the activity, I think -- I mean, correct me if I'm wrong -- that you are discussing in terms of user-generated content, obviously, in using music and user-generated content, and that is not a compulsory system. So, I am just wondering whether you think that the YouTube model is a useful one or why that couldn't be adapted to other sort of microlicensing transactions in a non-compulsory way.

MR. MENELL: Well, I think the YouTube experience shows that there are ways of making money even in this highly-rigidified and complex world. And the way Google has successfully done a lot of things is by harnessing advertising.

But, when you look at how that money gets distributed and the extent to which it supports a really wide swathe of creators and monetizing what is the common use and
value of a lot of music, which is passive enjoyment -- when I see people with earbuds, I don't think they are listening to YouTube. They are listening to some other sources of music. Maybe they have been able to take streams out of YouTube.

But, in essence, there's large parts of the enjoyment of music that are no longer anywhere close to a market relationship, and the market relationships we have are usually these indirect ones, where it is based on advertising. So, I think that YouTube is kind of an interesting kind of band-aid. But if you could imagine 100 million kids on a service where they paid $10 a month, and having everything available to them easily, and then, to the extent that mash-ups are increasingly a part of that mix, that there would be a way of sharing the value of mash-ups with the people who made the underlying works. And to say that you have to be able to block those deals if you don't want
your clients in those mash-ups is to essentially ignore the reality. It is being mashed-up; you’re not participating in any economic return from it.

MR. DAMLE: Okay. Thank you.

Mr. Marks?

MR. MARKS: Thanks. It has obviously been a very challenging 10 to 15 years for the industry, we have heard over the last day and in Nashville from all different parts of the industry, whether it be songwriters, publishers, labels, artists, et cetera, the kinds of challenges that they are facing today.

At the same time, we have heard and discussed a lot about the complexities regarding music licensing. And I guess what I would like to focus on initially is how we can, by simplifying the licensing process, bring some money back into the system that flows directly to creators, to the businesses that are distributing recordings, and the
musical works. So, if you just take a look back over the past decade, and you were to look at, you know, any record company P&L, you would see a trend of investment in marketing and A&R that, while the labels continue to be that engine of investment, the resources they have to invest have dropped off considerably. That is not a good thing for any creator.

We heard at the House Judiciary Committee Lee Miller talk very passionately about how he creates songs and what it means to him to be a songwriter, but also at the end of the day, if his song doesn't get recorded, he can't get remunerated for it.

And so, we need to find a way to get back to the point where there's more investment taking place. That is a longer discussion, obviously, than we have time for here today, but at least focusing on the issues that we have been discussing over the last day. One of the things that we have been very focused on is that -- and there was a lot
of talk on the last panel, "Well, you can just get this service from this company" or that company. "We don't need to provide this kind of data. It's available somewhere else." You know, these are the kinds of things that add friction into a system where that friction doesn't necessarily need to exist. And I don't know how much that friction adds up to overall, you know, what percentage it is. I imagine for any, you know, moving from one musical digital music provider to another, it is going to differ, you know, depending on what percentage it is of their balance sheet.

But, whatever it is, it is money that is, in our view, kind of falling through the cracks from the system, and therefore, not flowing to creators. And so, we can talk a little bit more about the numbers, et cetera, but I guess I would just finish off by saying the complexities of the licensing and making things simpler and easier are directly related to the question that you asked about having
money flow to creators.

MR. DAMLE: Thank you, Mr. Marks.

Ms. Miller?

MS. MILLER: So, I think in terms of identifying problems around current innovation and incentives, I think innovation is definitely hindered by just the lack of streamlining of rights, which is I know an initiative that RIAA and MPAA have actually put out there. And they are working to aggregate those rights in the same capacity in the microlicensing space.

There's prohibitive costs for startups oftentimes to get the rights that they need to actually invent, to create, to distribute. And furthermore, there is a huge lack of awareness. By the general public there is a lack of awareness, which is why the problem on YouTube that has been solved with Content ID is so prevalent. People just don't understand copyrights. They don't understand they can't take somebody's track, put it on
their video, and use it. So, there is just a massive lack of awareness out there.

So, those are sort of the two problems that I would identify that are hindering innovation right now, is lack awareness, both in terms of the general public as well as people in the startup space. I mean, I live in Silicon Valley. So, I hear a startup idea daily. And people don't know how to clear rights. I mean, they want to do the right thing. What we find in our business, where we do distribute rights for sync day-to-day, you know, high-volume, is that people want to do the right thing, and they often don't know how. Sometimes they will get far along in a production and, then, when they can't actually find out who even owns the rights, it just keeps going. And so now, they are an infringer.

So, I think we need systems around streamlining rights, which I think is underway. We need systems that promote
awareness. And then, we need systems that track. YouTube system actually for a while did this sort of copyright school. And if you got a strike on your account, they found material you used that hadn't been cleared, they sent you to copyright school and you had to learn. Well, that has since gone away, I think, but they had the right idea. I mean, I think some sessions that just educate the general public on how to do things properly would be great. And then, furthermore, to acknowledge that the general public is not going to pay $500 for a piece of media in their video of their kids camping, but they will pay $2.

And Paul and I have both seen this. I mean, literally, hundreds of thousands of transactions a month are happening where people are willing to pay $1.99 to license a song for sync to their personal video. So, I think CID is a great building block, but I don't think it is the whole picture. Again, I spoke to this yesterday. Content ID is
something that really was initially a reaction
to some lawsuits and just their acknowledgment
that they wanted to pay rights' owners, and
this is how they did it.

But the music industry wasn't
heavily involved in creating that. So, our
interests haven't been directly aligned with
those systems. So, if we look at CID as a
building block for what can be this free
market space, I think we can go really far,
but the components that have to be in place is
the willingness for the rights' owners to
streamline in some way. And this is the free
market area that we have been discussing
through all of these panels. Sync doesn't
have, it isn't hindered by the old, archaic
laws, but way more infringement happens in
sync than those that are regulated.

So, when you look at the economic
loss, it is very significant. You know, CID
did something that was very interesting.

Indirectly, it made the majors come together
and streamline rights, which today they will
tell you still hasn't happened, but it did,
because they are accepting monies where a
video is synced to an audio. And that is a
sync license.

So, they have accepted monies
which in effect creates a transaction that, in
effect, they've streamlined rights. So now,
let's take that, build upon it, and create a
system where people are aware of what they
need to do, you know, to just get a license.
Make it easy for them to get a license, and
then, allow everybody to flourish through sort
of that free market economy approach. Sorry.
That was longwinded.

MR. DAMLE: No, it was great. Thank
you. Thank you very much.

Ms. Nauman? And then, I am going
to go to Mr. Rudolph, who I think was next.

MS. NAUMAN: Yes, I would like to
just take a slightly different angle on this.
And the title of this is "Industry Incentives
and Investment". And just for everyone in the room, I am not representing anyone right now. For the last four-and-a-half years I was working at 7Digital, which is a music platform. And part of what we did is we wanted to enable new services to come to the market. And so, they could come to 7Digital and get rights and get technology, and be able to advance these things. Before that, I was at SONOS. I worked in Trust Real Radio. I worked on two of the very first legally-licensed services. So, I have been in the mix. I have been in the weeds for a long time. And I think that I would like to say two things. One is the incentives that live in our industry now with those who are creating applications around music, and the second thing is the trends and some observations that I have of where I think that is going. The incentives that live right now, not with the rights-holders, because I know the rights-holders, you know, you want to create music and you
I want to get paid for that.

And I think that is completely fair. But the incentives in third-party developers, these are everyone from bedroom developers to small startups who are seeking funding, to big companies that see music as a really important part of their portfolio. The things that they want, they want to understand -- they are software developers and hardware developers. And the way that it works in these businesses is you have to understand what you are building at the outset, what your risks are, what your costs are, what your time to market is. They can't do that with music. It is impossible to know. I can estimate that it is 12 to 36 months and upwards well into eight figures to build an on-demand subscription service. That is about as close to the ballpark as you can get. They don't understand at the outset what their costs of goods sold or the bill of materials are. This is a really fundamental part of the technology industry,
is understanding how much all the materials
are that go into it.

And their incentives are not to
solve the problems between the publishers and
the labels and the PROs, and not to understand
copyright law. I mean, they want to know that
they can come to a simple source and pay for
the rights. They want to pay for rights. I
really believe that there is a propensity to
pay. I think that that has changed. I think
five years or so ago, before some services
like YouTube and Spotify started achieving
scale, I think there was much more of a
willingness to try to get around. But I think
that that has really changed. And it is
because they have seen companies be able to
scale with music.

So, everybody wants that. In the
technology industry it is about scale and it
is about consumer adoption and innovation and
openness. And there really isn't anything
better than music. This is why they just keep
coming. And it actually, to be very honest
with you, it is like moths to a flame in many
instances of young people who don't understand
what they're doing and they want to do
something with music. And not everyone should
build a music application because it takes a
lot to market it and to rise above the noise
of the marketplace. But there are a tremendous
number of companies who really, really
genuinely want to do things with music. They
want to pay a fair price. They don't know who
needs to pay. They don't understand the way
the copyright laws work. They don't want to
understand all of this. They just want to do
it right. So, that's I think the climate that
we are in right now.

And the trends, when you look at
the way the industry works, from 1980 to 2000,
I worked in radio in the mid-nineties into the
early 2000s. You know, there were a lot of
companies printing money in that era of 1980
to 2000. There was a lot of money flowing, and
that was fantastic. And I worked in the public radio world, so I never got the envelopes of cocaine and money that were coming for payola that many others did in the radio industry.

(Laughter.)

I also didn't work at the record labels or anybody. You know, it was really in the boom years, and I wish I had because I think I would have had a completely different perspective. However, that industry -- and this is my second point, is about trends and where this is going -- is from 1982 to 2000, there was an industry built on scarcity, where there were only a handful of radio stations where you could hear music and there were only a handful of record stores where you could buy those CDs or the releases. And people lined up around the blocks like they do now for games. And when that record was shipping to the store, they wanted to be in line to buy it.

But scarcity has gone away in the digital industry. There is no longer a limited
number of outlets. And we can talk about the P2P and people can find anything they want. But I think the important thing is that the companies that are building in the technology space, with the incentives that I just talked about, the companies that are building enterprise value in the industry now, they are upsetting legacy businesses that are built on scarcity.

Look at what is happening with Uber and taxis. They are also built on openness and the open-source culture. Look what Tesla has done. Look at the electric car industry and how many times that has been shut down. And now, they have invested; they have built enough scale. And now, they have opened up their patents because they know that all boats will rise in openness, in innovation. That is the way technology works. You can still build a tremendous amount of value in an open environment by building great products, but it is about sharing; it is about openness;
it is about adaptability. And I think the
biggest risk -- and I said this a little bit
yesterday -- but I think the biggest risk with
music right now is that even the services, the
subscription services, those are siloed
because, of course, they don't want you to
port your playlist from Spotify to Rdio.

So, those are somewhat siloed. But
there is an interest in API. There is
capabilities in APIs around openness and
innovation with third parties, but it is not
based on scarcity. It is about scale. And you
achieve scale by having the plumbing -- and I
think I often talk about plumbing -- having
the plumbing in place to be able to settle,
but also having this open platform and this
open environment that enables technology
companies to innovate and achieve scale.

You know, I'm not here -- I think
there are many, many lawyers in the room who
have tremendous ideas about the way copyright
law can be reformed, but I think that we have
to embrace the future and the trends of this economy right now around openness and collaboration. If you achieve scale, I think you will all find that there is a lot more money in this, but you have to have the plumbing that goes along with the openness. You can't just open it up and, then, have this clogged plumbing, because nobody will get paid. Thanks.

MR. DAMLE: Yes, thank you.

Mr. Rudolph?

MR. RUDOLPH: Good morning. I want to address the questions that we were asked in the agenda. First, just quickly, the impact of current licensing regimes on creators' incentives and their livelihoods. We have talked a lot about that. It has been kind of a theme woven through all the panels so far. But, just quickly, you know, it is a good catch phrase, but I believe it is true, there is no middle class in music anymore. It's gone as a result of the current licensing regimes.
Both the 115 and the current consent decrees artificially fix the prices of the content, which don't allow the revenue to creators to charge a living wage. The raw goods -- I'll call the songs "raw goods" in this case -- should be charged at a market cost, and the buyers of those goods, as DSPs or services or whoever wants to build off of it, should charge a market price or simply not exist.

It is like any other business that exists in the world. I mean, to be super-elementary about it, if I want to open a restaurant, then I have to go lease a facility and buy equipment and get the food. I have to have credit. I have to pay for those things. Those things cost money upfront. There is a market cost to me. Based on that, I have to charge what the market will be. Nobody is going to work for me. No one is going to make that if I don't have the ability to charge or pay them a wage. It is a big theme, obviously, in America now, and there's a lot of things...
that are happening positively about it. And I don't think we should ignore it when it comes to creators.

You asked a question, the investment in creators and in distributors as well. I believe that distributions existed before technology really had a meaningful impact on it, and I think it will continue to exist after that. In regards to the state of investment in new projects and talents, this goes to the middle class as well. Investment is happening with significant competition, but it is a very concentrated level. I am seeing it every day. There are still deals that are a half million, million dollar deals for new bands -- people think those don't exist -- or new writers. They do exist.

Usually, those people have done a lot of the groundwork on their selves at the beginning, but it is much more limited than it ever was before. The overall bars come down, which allows more competition among more of
what I would say the corporate players.
Independent publishers, independent record companies can now participate in a way that they had never been able, part of that enabled by technology, certainly, from a marketing/distribution perspective. But from a creator's standpoint, there are less options.

As a result of that, we have got kind of a funnel effect where you have got a very top level. You don't really have many people in the middle. And then, what you end up with is what I would call amateurs, hobbyists who are hoping to move, make that jump to the next level. There is no gradual climb to a certain extent. There are people that I admire tremendously who have put in years and years and finally do get their notice, which is great. But that is much, much harder, as the professor mentioned earlier, to allow that to happen. Coming back to the ability for new products and services to come
to market, one of the great things is there is no limitation for a music product to come to the market anymore. There used to be. That used to be a bottleneck when it came to distributors. You had to have a distributor.

Frankly, from a market perspective, for a music product, a live music product, it is a booking agent. It is very difficult to get a booking agent for a band these days. It is not a topic for here, but if you are worrying about how a music product gets to market. I can make it available to most anywhere in the world for less than $50 through an aggregator or free in the case of YouTube. I can just post it. Or SoundCloud, for that matter. Tech investment/innovation is flourishing. We hear so much about the ability -- and I think Ms. Nauman's point is actually a nuanced point in that throughout the consumer app world really two things are happening there.

First of all, from an investor's
standpoint, which I am an investor as well as advise venture capital and private equity as far as their investments go, I would not advise anybody to go into anything that has to do with direct-to-consumer application for delivery of music. And the reason simply for that is not because of the licensing regimes. It has to do with the fact of the amount of money that you need to be able to compete with the existing services. The idea that the content owners are the ones who are blocking this is not the idea. You will be able to get an OTT, over-the-top tile, on any smart TV installed. I mean, the reach that Pandora has, I mean, is tremendous. The ability to compete with them is them, Spotify. We have seen entities that have had tremendous investment in the past that are distributing musical works not be able to compete with the larger companies. We have seen a couple recently, in the last 18 months, who have taken more than $10 million of investment, who have spent it
all on marketing to try to acquire customers. It didn't work. Now they have gone a different route and either merged or folded or dissolved or sold their assets.

Again, that's healthy. That is a healthy investment cycle because the market is speaking in what is happening to that. But on the infrastructure side, Paul Anthony's company, Jen Miller's company, we are seeing it in, I would say, the audio ad space. You may not think that is a technological development, but there are several companies that are doing very well that are providing the ads that you hear within the different services. And they are paid. They are actually paid by the DSPs or by other digital services.

So, there is a whole infrastructure market that is developing, and it is actually pretty healthy. And there are new startups in that who are making money, actually, cashflow-positive. Some of those have been bootstraps. Some of them have taken
money. They are not playing in the licensing world, but at the same time they are actually facilitating some of that activity. And to another point, too, on the licensing, one of the things that has been really interesting is to watch this idea of open source in APIs.

Now I am not going to call it an open source directly, but let's take the ability for a Spotify or YouTube or a SoundCloud to be embedded in something that I would like to create from an app perspective. It is not necessarily the most elegant. It is not necessarily the most direct. But you could actually do that, and there are a lot of what I would say consumer bootstrapped, garage-created apps and/or websites that exist out there that are actually making money in this way. If you are not familiar with what that means, essentially, it means that you are getting that stream directed towards you, and the underlying service is the one providing that, and they are providing the underlying
royalty payment.

And so, I think that we are actually, from an investment standpoint, I think we are seeing the dollars slowly shift. I think you hear a lot about it from the VCs, simply because the amount of actual pitches that you see is so dramatic. When it comes to music, I can't tell you how many people have sat in front of me and said, "We're going to create this new radio station and it's going to be great because of this."

And it is like, "Well, have you actually done your work?" And there's been six services like that that have closed down in the last two years, and there are six others that are in business right now. They just don't know. They haven't done their research a lot of times. But the folks who are getting investment and continue to get investment are the ones who have done a lot of critical research, have folks who are advising them, I would say, in a smart way, and also have an
understanding of what the system is and how it works.

MR. DAMLE: Thank you, Mr. Rudolph.

I don't know which of you was next. But why don't I start with Mr. Bull? Then, I will go down the line. I see Mr. Greenstein. I will come back to you.

MR. BULL: Thank you. Good morning. I am an attorney from Minneapolis, Minnesota, which is a very fertile music market and lots of people getting good licensing deals, label deals.

But having practiced there for 15 years, basically, in the trenches at the ground level and working for independent artists, I think it is important for the Copyright Office to understand from a topical standpoint how much it has changed at the artist level.

And so, when somebody first creates something that is entitled to
copyright protection, they are not giving it a thought. And rather than looking for the brass ring of a label deal that they used to, and the type of investment it took to get into a recording studio and have all of the trappings that go with that, what they look for now is an endorsement deal of some sort and some kind of licensing to help just move their career along and pay for something, or management deal because that allows them to go out on tour and have an independent, sort of objective third party help them find ways to make money. Because, really, they want to make enough money to continue to do what they do and continue to create new things.

So, the revenue streams that I have seen in the past five to ten years have shifted so dramatically. Nobody cares about selling a record at all. And I have got two very concrete examples. I do have clients. There were several people that said they don't have clients. I have clients that at the very
ground level will put their product out, not
have any idea whether they are going to have
an audience for it or not. And when they find
one, it is shocking, the directions that they
are taking. And the schism between starting
here and getting to the level where we are
talking about even a sustainable living, a
five-figure living, is remarkable, that gap.
And so, a client that I had, it was six
innercity youth that were between the ages of
6 and 12 years old that recorded a song at a
YMCA, which being very forward-thinking, the
YMCA built a gorgeous Pro Tools recording
studio in the facility. And the kids could
sign up and go in there.

And some of them, you know, they
got together and the song that they put out,
they recorded a video, and it got over 10
million views on YouTube. And obviously, then,
people started to take notice. And so, the
income that they got from YouTube wasn't
enough to buy each of them a bag of chips,
which, you know, the song, some of you
probably know it. "Hot Cheetos and Takis" was
an absolute summer smash last year or two
years ago.

And so, when they were looking for
ways to make revenue off of this thing, they
started playing at roller rinks and places
that 8- to 12-year-old kids can play and make
money. And when they got me involved to
negotiate some of these just performance
contracts, you know, the most striking thing
was that at the point when it became important
to find management and hire legal
representation, just because of the offers
that were being given to them from television
studios, from Nickelodeon to ABC and Disney
and things, it was remarkable at which the
creation and the copyright no longer mattered
and who made it. And that, to me, is a sad
commentary on the society that we have built
up around it.

So, these kids are thrilled,
having the time of their lives. All of their parents are thrilled. They think that their ship has come in and that there's going to be tens of millions of dollars rolling in their hands soon. I think that, 18 months hence, that has become the sad reality is that, wow, we've split $10,000 in a year and a half, rather than all of us having millions, even though we had all these people viewing our YouTube video. And so, I think that the reality of it and the investment dollars and things are still in flux. Nobody knows what they should go towards and why.

But what happened with this particular group was that the YMCA, then, wanted to know who should own the copyright, and they hired a lawyer. And I had to sit down with that lawyer and discuss who was going to own "Hot Cheetos and Takis" because it was recorded at the YMCA, and how that could benefit. And obviously, when you look at an organization such as a YMCA, I mean, it is not
a nonprofit in name only; it truly is a nonprofit, you know, where all of its income is distributed and there are no shareholders and anybody to make money.

But, even there, they were thinking of the copyright as something to exploit commercially, regardless of all of the good that came from recording this song in their studio that was paid for by nonprofit dollars donated from whichever source. And I think that that lesson to be learned, and then, once the kids did sign a management deal and they got a commercial with K-Mart almost immediately that they didn't make any money for, but, you know, they're having the time of their lives.

What I was stressing is let's make sure that, you know, you keep them on the straight and narrow; they don't get pulled out of school, things like that. I am not sure where those lessons are being put into any of the discussions I have heard here over the
last two days. And that's fine, but those examples are where we are starting from and where we are getting to, and that is pretty scary because there is no middle class. There is the "have-nots," the "used-to-haves," and the very smaller and smaller groups of "haves".

And then, the other example I just wanted to present was a client that -- and this happened enough years ago, in about 2005 or '06, when a client who was building their own career didn't want to sign on with a record label. They just did everything themselves, a very unique sound, and got to play, which is the preeminent sort of venue in Minneapolis -- it is called First Avenue. A little guy named Prince sort of got it put it on the map, and everybody wants to play First Avenue. And it holds 1500 people, so it is not a very large venue in the scheme of things. But to sell out First Avenue and to be from Minnesota is a good thing.
So, this band consistently can sell out First Avenue on multiple nights and can tour internationally and make plenty of money touring and live performance. Okay? But they realized quickly that licensing is a good way to make money, to continue to do their craft. And so, they licensed a song to a large insurance company and did it, essentially, for the publicity. And their name and the name of the song appeared scrolling at the bottom of the insurance company commercial. And it was aired during the Super Bowl. So, of course, it had to have been worth six or seven figures, no matter what. So, the song and the commercial had actually aired. It wasn't one of those let's only air it during the Super Bowl. Let's premiere it during the Super Bowl. It had actually been on. But the company spent the money to air during the Super Bowl. And shortly thereafter, I got a form letter from a law firm in New York that said that the drum beat was taken from a song from the fifties,
"The Amen Break," which is a very famous sort of hip hop drumbeat.

And litigation was started. They sent me a report that had to have cost $100,000 to prepare from a music college, a university, saying, "Yes, this is probably stolen." And I brought it to a recording studio in Minneapolis to one of the best recording engineers I know, and he goes, "Absolutely, it's the same." I said, "Oh, great," you know, "it doesn't help my case any, but it is the same thing." And so, what we were looking at, though, was the only reason this became on someone's radar was the fact that it was played during the Super Bowl, that someone heard that song. I doubt that the original creators of that drumbeat were watching the Super Bowl and said, "That's my song." I think there are companies out there that try to find opportunities to litigate copyright. And once it gets to a certain level and they believe there is enough money
involved, then it is worth litigating. But
those two examples of people that can make a
living, but are shut down by their experience
with copyright is a very dangerous place for
us to live. I mean, that is kind of my only
thing on that.

MR. DAMLE: Thank you. Thank you
for that.

Ms. Muddiman?

MS. MUDDIMAN: I guess I want to
compare the internet with the real world. I am
talking about the impact of the current
licensing regimes on the creators. In the real
world, when we had CDs -- and I am not
advocating going back to that; I am just
comparing. Imagine, if you will, a company
that was going into the fairground and giving
away CDs, right? And we're saying, "Oh, that's
fine because you own it, don't you?" They say,
"oh, I don't really know. I don't know. Hmm,
I don't know who owns it, but we're just
giving them out because people like it, and
people are flocking towards it." And people come flocking towards it and then we're seeing hundreds and thousands of people queuing for these free CDs, right? "And the GREAT thing is that, while they are standing in line for the CDs, we are going to advertise to them."

So, they are making money hand over fist. "This is great!" Okay, so you have got this scenario whereby you have got these masses of people getting free content. And sometimes the content providers are saying, "Well, actually, we do own it. Can we have share of this advertising revenue that YouTube sharing in?" And other times they're saying, "We don't own it, but we didn't know we didn't own it. And so, we're sorry." And they say, "Well, don't go giving out those CDs anymore." And they go, "Oh, okay, we won't." And then they start giving them away again, right?

And other people are saying, "Well, yes, it's going to be impossible to stop these people giving away these CDs
because we just don't have the police. We just can't stop them doing it," and in fact, people have got so used to have these free CDs, they don't even want to pay for them anymore. So, this is the situation that we're in. Are we really going to accept that there is no way to monetize music and to license it and to build a system like we have in the real world? Are you telling me that we cannot build a system in the virtual world when we have gateways, the ISPs, we have pipelines, YouTube? You're telling me that you can't stop YouTube uploading things that they do not own?

I absolutely do not believe the government and YouTube do not have the technology because I have technology on my website that someone can drag and drop an MP3 or any file, and it can be analyzed. And you can tell, I can tell you exactly what that piece of music is. So, if you allow someone to upload a file without having analyzed it using a computer -- it doesn't need to be someone
who sat there listening to it -- a computer
could do it in the time it takes to analyze
that data. And then, if you allow them to
upload it without having any licenses, why is
that legal?

MR. DAMLE: Thank you, Ms. Muddiman.

Mr. Barker? And then, I will come
back over here.

MR. BARKER: All right, thank you.

I would like to just address a
couple of comments that were made earlier, if
I can. And, Peter, you had just talked about
mash-ups, which I agree those are new works
and creative works, and they need to exist. I
think the issue, as a copyright-holder that we
are, we have come up in instances where we
represent a very famous gospel song. And we
have had requests numerous times, and one in
particular, that that gospel song be placed in
a song that was totally opposite of gospel.
And we said no, and they used it anyway. And
a lawsuit followed.

So, the scary thing to me about a compulsory or some type of automatic license for mash-ups could be the fact that these songs could get abused and mashed-up with something that is totally against the author's beliefs or wishes.

So, I respect what you say and I think there is a solution in there, but a compulsory, again, as those of you have heard me say, compulsory licenses are not my favorite things. Vickie, just a comment that you had made which a lot of I agree with. I think you made a comment that service providers, all service providers want to do the right thing. And I would change that and --

MS. NAUMAN: I wouldn't say "all".

MR. BARKER: Okay.

MS. NAUMAN: But I think there is a trend, there is a distinct trend where companies are embracing --
MR. BARKER: I think the correction I would do is maybe most would, because there are instances, and one in the last year, where a new service -- it was a fairly-small service -- was looking to license songs of ours for a unique kind of a use. It was very small-scale, but they were wanting a blanket license of our catalog. And the problem was they were asking for a rate that was less than our normal rate for those kinds of uses, if we would just license them.

Yet, when I said, "No, it has to at least be up to our normal rate. Why would we do that?", the response was, "Well, we can't create a business if you charge us more." And I am thinking, "Okay, then don't create the business." Because I shouldn't be the one that feels bad or guilty or responsible for a business not being created simply because I am being asked to grant a license that is less than market value. And I know that's not what you are saying, but I
just want to throw that out there in response
to --

MS. NAUMAN: But I think the point
that I would make is that you two are at the
table.

MR. BARKER: Right.

MS. NAUMAN: You're having a
discussion about it. You are having a
negotiation, and that everybody is talking
about a free market. You want a free market?
That's the way it works. You sit at the table.
You negotiate. You hash it out, and then, you
have your walkaway position. You either go or
you do the deal. And so, I think it is
completely fair that you said no.

MR. BARKER: Yes. Which, then,
brings me back to the original question maybe
of the session. Okay, now I will get there, or
I am here. Which is, what's the current impact
or what's the impact of current licensing
regimes? And I have said this before. Some of
you have heard me say things like this. I did
hear a fact before that, since Napster, the
music business has maybe decreased 50 percent,
at least certain rights-holders. However, I'm
an optimistic guy. I think there's more music
available to more people than ever before. We
just have to figure out how to do it right,
how to license it right, and how to make the
market come back up to where it should be. So,
I am optimistic.

When I look back, though,
historically, I kind of want to maybe bring us
back into a basic paradigm, if you will. When
Napster came along, suddenly, we were
competing with free. And then, when services
came along, they said, "We'll pay you `X'."
And publishers, amongst themselves and with
services, were having conversations of, "Well,
it's a very tiny rate, but at least it's
something.

So, we're competing with free.
Let's at least make it almost free, but at
least it's something." And we, as an industry,
seem to kind of step into that. Maybe we, as publishers or copyright owners, mistakenly allowed that, which now suddenly we're getting paid something, but it is nowhere near the value of what it should have been. I think now we have found ourselves today where it appears that a lot of the conversations around the table seem to be that, if a DSP is legitimate, they have the right to have access to all 25 or 30 million songs before they launch. That is something that they should have access to. It is kind of the position of where we found ourselves.

And I think there was one quote made. "Complexity in licensing chills the potential investment for digital services."
And I agree with that. The complexity of licensing does chill that, but maybe the answer is simpler licensing, but it doesn't necessarily mean simpler licensing for all copyrights. Maybe the new paradigm or maybe the reality is, who are we trying to protect
here? Is it the copyright owners or is it the
digital service providers? And I think the
answer is, yes, both. We want to do that. So,
I think maybe where we are today is music is
not available to all services all the time,
and we should be okay with that. That way, the
free market can take over. And as I think
somebody had said earlier, what's the value of
music? It is whatever the market will bear.

Well, let us allow DSPs to exist
without having access to all songs. Let song
owners be able to license as we will and say
no as we will. In the past -- and I will wrap
it up with this -- in the past, years ago,
decades ago, if we wanted a record and it
wasn't available at Wal-Mart, we would simply
drive to a place that it was available. And
there was never yelling and screaming to say
that record must be available everywhere the
consumer goes.

So, today why don't we look at
getting back and letting the value of music
rise to where it needs to be? Maybe the scarcity, as was talked about, is something that could help us create value. So, allow the free market to license at will without feeling like we have to support DSPs at 100 percent of the market.

MR. DAMLE: Okay. Thank you, Mr. Barker.

We are going to try to wrap this up, optimistically, at five of.

(Laughter.)

It is very optimistic.

So, I am going to go to you, Mr. Greenstein, and then, Ms. Kossowicz, who hasn't had a chance to speak yet. And then, Mr. Schyman. And you want another, Ms. Miller, are you --

MS. MILLER: I could be passed or not.

MR. DAMLE: Okay.

MS. CHARLESWORTH: I mean, I think maybe it will be actually on the hour.
MR. DAMLE: Okay. Okay. Right.

MS. CHARLESWORTH: So, about 10 more minutes.

MR. DAMLE: So, about 10 more minutes. Okay.

MS. CHARLESWORTH: We're sorry we are running late. I think it is really these have been great discussions. And as I said, we will try to make up the time at lunch. So, we appreciate your patience.

MS. CHARLESWORTH: Mr. Greenstein?

MR. GREENSTEIN: Thank you. I will try to be very quick.

So, first, I want to echo what Jen and Vickie said. I think that many companies -- and again, I am talking from a perspective of the clients I represent -- want to do the right thing, want to figure out how to get licensed, want to pay royalties, but they want to just pay and, then, move on and let the rights owners figure that out.

In terms of the missing middle
class or a disappearing middle class, as Mr. Rudolph had mentioned or Mr. Barker, I don't know how much of that is anecdotal. I don't know how much of that is just a function of the U.S. economy. You can look at Thomas Friedman, et cetera. There are lots of problems with the squeezing of the middle class. I am not sure people are entitled to be part of the middle class as a musician. And I don't mean that in an offensive way. I am just saying, economically, I am not sure that the musicians you're talking about or representing are entitled to a middle class existence as a musician. I just don't know, and I am not putting a value judgment on it.

But I hear people talk about a free market and, then, to preserve the middle class. And I am not sure that both of those go hand-in-hand. Again, I think there are going to be winners and losers. The winners may be the really big people, and you may have a lot of losers if you move away from that. In terms
of some information, though, that should be
taken into account, BMI's revenues fiscal year
2003, $630 million, $944 million by fiscal
year 2013. I would think pretty significant
growth over nearly a 10-year period or a 10-
year period. ASCAP, $587 million in 2002.
That's revenue. By 2014, or 2013, $851
million.

Again, healthy growth.

SoundExchange, $2 billion distributed. I don't
know what the number that has been collected,
and maybe Brad can provide that later on.
Fifty percent of that money after expenses
goes to performers. And that is why I don't
want to use just the $2 billion, because it is
easier to distribute to the record labels;
there could be money that has not been
distributed to performers. But let say it is
a billion in new money for recording artists.

I mean, that is new money into the
system. Under the old system, I don't know if
people were getting paid for sales of record
or if it went to the labels. And then, specifically to the question about what is happening with companies in the marketplace and investment decisions, I think that with the companies that I represent it is very challenging to get investment money. I do a lot of calls with VCs where I am representing, I am company counsel, so talking with the investors. And the questions are, inevitably, what is to prevent the copyright owner or the record label from coming back next year and going from 50 percent to 60 percent, to 65 or 70 or 80, or a publisher demanding parity if you are outside a statutory license or a consent decree?

And I think that there is a chilling effect on the marketplace. Companies are not getting follow-on investments. And the last thing, on recordkeeping, which is a component of licensing, I have experience where companies are or have announced that they are exiting the market due to the
obligation to provide, in their mind, burdensome reporting and the failure to do so could lead to copyright infringement.

It is more of a CRB issue right now than the Copyright Office, but I think in the broader landscape, the issue of the lack of data transparency and shifting the burden to the licensees is creating for many companies an untenable situation where the penalty could be copyright infringement, and that can be crushing. So, I think all of that is having a chilling effect. Thank you.

MR. DAMLE: Thank you.

Ms. Kossowicz?

MS. KOSSOWICZ: Thank you. I'll be brief. I just wanted to say that I agree with what Steve said earlier. I will just breeze through my comments, so other people can have a chance to respond. Basically, I also wanted to touch base on some of the investment and improvements that the labels have had to make due to the digital world that we are in now.
We are having to make massive improvements and upgrades in our royalty systems, digitizing all of our masters. There's archival costs. There's all sorts of things that go into getting our product made and distributed to our partners. There is a lot of complexities that come with delivery to digital services.

For example, there are partners that have various delivery systems. We can't just take one file and deliver it to everybody. There are different requirements across the board. So, there are a lot of costs associated with getting these products out. And I wanted to also quickly address the impact of the current licensing regimes. The labels are feeling it, too. And so, we work in the music industry, and it is complex for us.

So, I am very sympathetic to the folks that are saying that it is difficult to get the licenses. On our end, we are impacted because many times when we don't have a
license, we are bogged down by the increasing complexity of licensing. We used to just have to worry about physical product, you know, CDs, vinyl, tapes, and that moved on to DVDs at one point.

And now, we are into ringtones and sync uses, and that is a broad spectrum of digital video uses. There's long forms, and the list goes on and on. We have been fortunate enough to have good partnerships with our publishers and have agreements with many with respect to getting these products out into the marketplace in a timely fashion, but we look forward to continuing discussions on the simplification of licensing. I think the RIAA has introduced a very interesting proposal, and we look forward to continued discussions on that.

MR. DAMLE: Okay. Thank you very much.

We are going to hear from Mr. Schyman. And because we are running out of
time, I know Mr. Marks and Ms. Miller are on
the last panel. And so, if it is okay with
you, if you could save your thoughts for that
panel, that would be helpful for us.

Okay, Mr. Schyman?

MR. SCHYMAN: Thank you very much.

I have talked about my work as a composer. I
work for hire. But I have had experience in
writing songs. I wrote four songs for a
gentleman who did four videos, in aggregate,
over 90 million streams on YouTube. And I
found really interesting ways -- it was a
complete shock to me the success of
particularly one had 47 million streams. And
the income streams included licensing
opportunities and sales of songs, mostly on
iTunes. Over 100,000 MP3s sold on iTunes. I
don't permit my music to go onto the streaming
services because I believe it robs, because I
continue to have sales of those songs.

So, I believe that that would not
permit me to fully take advantage of that.
Performing rights, I have received money on performing rights, but YouTube is very, very difficult to deal with. They are not interested in communicating with individuals like myself. They will talk to record labels. They will talk to big publishers. No matter how many times you contact them, no matter how successful you think your video is -- 47 million seems like a lot to me -- they don't call you back. They do not communicate with ASCAP, who is my performing rights society.

So, the way I can collect from ASCAP is I know a lot of the players. I know people. I know Sean Lemon. I call Sean Lemon and I say, "Well, I have 47 million streams. How do I get compensated?" And I have gotten compensated, but they have to do that as a one-off compensation based upon that income stream. All this to say that it is a bewildering system. It is very complicated.

And for a creator, it is sort of overwhelming, the complexity of it all. The
marketplace is a brilliant system, but there has to be some -- I mean, if you go back 30 or 40 years, at least you understood how to make money and there was maybe how fair it was or wasn't. And so, with this new marketplace, there's opportunities for me, who has no record label to make income from some surprise YouTube hit, which is like money, which is wonderful.

And I am in the middle class. I am in the middle class and I am not wealthy, but I do well as a composer and writing some songs. So, it is so complex. It is so unfathomable, even for someone like myself who does have some understanding of copyright issues, not like some of the lawyers here and some of you folks who do this for a living, because my primary occupation is writing music. But I do, because of my work with the Society of Composers and Lyricists, I have some understanding, but it is pretty overwhelming.
So, some simplicity, if laws change, some way to simplify licensing. I mean, this idea of microllicenses of $2 -- because my song is on hundreds and hundreds and hundreds of videos, some of which get really, have like, you know, 6-700,000 streams. And I don't get any income from those. So, that was interesting to me personally. But I don't know how to access this. There is no school. So, for people coming up who are having opportunities in the music business, it is bewildering. And so, if there is some way to help with this complexity and to simplify it, I think that would be very advantageous to the creator.

MR. DAMLE: Okay. Thank you. Thank you very much for all of your participation.

Do people want a five-minute break? Or would you be fine with just moving straight to the next panel after giving a little bit of time to swap out? Yes, would it be fine? Yes. Okay, let's just move straight
to the next panel. So, we will swap out the placards.

(Whereupon, the foregoing matter went off the record at 12:01 p.m. and went back on the record at 12:06 p.m.)

MR. RUWE: Works fixed before February 15th, 1972 are not protected by federal copyright law but instead a patchwork of state laws to differing degrees. Following the questions posed in the NOI what recent developments suggest that we in the music marketplace might benefit from extending federal protection of pre-1972 works? Are there any reasons to withhold such protection and should the pre-1972s be included under a 114-112 licensing regime? I'm going to call for input on the first one, recent developments that call for reconsideration of this - of the status quo, if anyone has any input.

Yes, Mr. Blake.

MR. BLAKE: The services, as I
understand it, particularly SiriusXM and Pandora, who are the two biggest payors into SoundExchange, originally were paying on pre-1972 sound recordings and at some point without - I mean it differed between them; I don't want to suggest any collusion - at some point that changed and they stopped paying on pre-1972 sound recordings and that is a tremendous concern to our company.

As I mentioned yesterday, Concord controls about 8,000 album-length masters. I would say about a third of them are pre-1972 and in fact the most valuable ones we have in our catalog - the Creedence Clearwater Revival masters - are all pre-1972 and many of our other very valuable masters such as masters by John Coltrane and Miles Davis and many other jazz greats are obviously pre-1972 masters. So as the world turns more and more away from the purchase of recorded music, even digital downloads, and into a streaming model, whether it's purely noninteractive, semi-interactive
or custom or completely interactive, it is important that record companies get paid for those streams and it makes it more and more important that we get paid for terrestrial.

But in particular on the pre-1972 copyrights I think we are probably more disproportionately hurt by this, the lack of a federal protection, than any other record label that I can think of, simply because of the percentage that it means to our bottom line. I want to say that Concord strongly supports the Copyright Office's recommendations that they made in December of 2011, and we strongly believe that the pre-1972 copyrights ought to -- as a matter of fairness -- be brought under the federal regime. We think it's fine for music users, the DSPs, to pick which songs they want to play.

But I think the only determining factor really on how much revenue those generate is how frequently they're played and,
to the extent that their system allows it, the number of listeners to whom they are played. It shouldn't be that a class of recordings, including some of the greatest contributions to American culture that we know and the jazz market in particular, the most - some have said the greatest contribution of America to culture in the 20th century is jazz. Well, the vast majority of that would be prejudiced and completely left out if they remain outside of the federal scheme. You know, I don't want to get into the litigation. I think that's clearly not the way to resolve things. But I think, as a matter of fairness, they should be brought under the federal regime.

MR. RUWE: Ms. Kossowicz.

MS. KOSSOWICZ: The statutory license should be clarified to clearly include the pre-1972 sound recordings. Pre-1972 sounds recordings are currently sold and licensed by Universal on the same basis as more recent sound recordings. As examples, our interactive
partners account for pre-1972. Our masters sync licensing department licenses the pre-1972 recordings in the same manner as they would any other recording and most digital services are accounting for pre-1972 recordings. So in our opinion, there's no reasonable justification for depriving artists and copyright owners of their royalties under the statute.

MR. RUWE: Ms. Goldberg.

MS. GOLDBERG: Yes. I would like to also refer to the report that Mr. Blake referred to. It was a 223-page report from Maria Pallante that was really well thought out and concluded that federal copyright protection should be extended to pre-1972 sound recordings. I just want to state three of the reasons I completely agree.

One is legal certainty and consistency, two is fairness, three is preservation. As far as legal certainty, pre-1972 sound recordings are covered by a
patchwork of state laws - both statutory and common law and it is very difficult for somebody to comply with all of the individual state laws. And so I think as it stands now it's impractical and inefficient and would be made more efficient by providing federal protection for the recordings. As far as fairness, artists who created pre-1972 recordings are especially dependent on this income because they are basically too old to tour or sell their products. And then I'm sure that the gentlemen from SoundExchange will be saying how much money has been lost.

What I understand is they estimate that legacy artists and record labels have lost out on over $60 million in royalties for airplay on digital services in the past year alone despite the fact that these oldies make up 10 to 15 percent of digital services' total airplay.

And the third reason is preservation. The Library of Congress pointed
out in their NOI comments that Section 108 of Title 17 grants libraries and archives limited rights to copy federally protected post-1972 sound recordings for preservation and access purposes but it doesn't apply to pre-1972 recordings because they're not covered under federal law and many pre-1972 recordings might deteriorate if they're not preserved. And then I just want to say there is current legislation on this. The Respect Act. It's before Congress, and that would bring pre-1972 sound recordings under the federal statutory licensing scheme and I understand it has quite a bit of support, which I support as well.

MR. RUWE: Following on the preservation let me to go to Mr. Harbeson and then Mr. Greenstein and Mr. Hauth.

MR. HARBESON: I hope you all forgive me for this but I'm really glad to see the consensus in this and we could have saved a lot of time a few years ago if we had had this consensus a few years ago. Obviously, the
Music Library Association also supports federalization of pre-1972 sound recordings.

We were very pleased by the Copyright Office's report. We thought it was likewise very well written, well thought out. Kudos to you all. We are - this is not just an issue of whether to preserve federal - preserve - to move sound recordings under the federal law. It's a question of how to do it. There were some very good recommendations in the report. There were also some recommendations that were a little fuzzy and we would like to see clarified. Just to make clear, our interest in pre-1972 recordings includes not just commercial recordings but also non commercial recordings. As the Library of Congress is - as the National Recording Conservation plan detailed, libraries in this country hold - well, I don't remember the numbers but I'll just say a lot of recordings that are deteriorating, many of them - in many cases they are the only copies of these
particular recordings.

   In some cases they are unpublished recordings of - they are maybe oral histories or, as I mentioned yesterday, recital recordings, home recordings from, you know, where people are recording their grandfathers talking about their involvement in World War I. In many cases these recordings are on - are - I mean, as I say in many cases these are not just unique but they're also unknown. Without the work of the libraries and in the cases of almost all of the recordings they are deteriorating. It doesn't matter what format they're on. If they are not digitized they will die.

   According to the plan we have approximately 15 years or less to preserve all of our recordings or decide to consign them to the dustbin of history. So this is a serious problem. However, I am concerned about a couple of things in the recommendation and especially with the RESPECT Act which applies
pre-1972 sound recordings to federal law but
does not do it across the board. It does not
remove 301(c). It only applies it to certain
provisions in the RESPECT Act, if I remember -
in the Copyright Act, if I'm remembering
correctly. I don't have it pulled up right
here. We think that if pre-1972 sound
recordings are going to be applied to federal
law they should be done so across the board.
There should be no exceptions to that
application.

In other words, there should be
exceptions to the application of copyright to
the federal - to these recordings. One of the
reasons for this is that as we made - as we
explained in our comments in the pre-1972
sound recordings hearings this is a compromise
for us as well. In many cases, the state law
favors us. In my own state I have a 56-year
copyright term. I don't think that I'm going
to have a 56-year copyright term after federal
law is applied so I'm going - we're going to
lose something by moving these recordings into federal law.

We don't think that it is fair for us to lose the benefits that we gained from the state laws and also not gain the exceptions - fair use, Section 108, et cetera. The - so one of the things that we were concerned about in the report is the transition period that's proposed where for - if a right holder is to - has a pre-1972 sound recording they can do - they can take certain steps and then gain copyright protection through, I think, 2067. I don't remember the exact nature of the transition period. But it was something like that where you have even perhaps even - I don't remember if it's pre-1923 recordings but certainly 1923 through 1972 recordings. You follow certain steps, you get yourself under federal law but then you get an extension on your copyright that lasts even more than 95 years. We would prefer not to see that.
If it is going to happen, though, one of the things that the report details is the idea that the right holder should make the recording available during that time in order to secure the extension. We agree with that but the report does not detail how or for how long the recording might be available.

As I read the report, a right holder could simply make - there could be the so-called copyright term extension edition which we've seen in Europe where a right holder releases a limited edition, maybe - I don't know how many copies, but a very limited edition and then secures another, I don't know, 40 years worth of copyright protection. That is not acceptable.

If it's going to be made available, if you're going to gain this extraordinary change in copyright term, you should have to do more than just make it available. You should make it available for sale, not just as a digital download, and you
should make it - and you should have to - you
should go through a proceeding to prove your
ownership of the recording. So there should be
an establishment.

You should have to register before
you can get the ownership. Regardless of what
happens with the term - the term extension I
think that we would like to see some clarity
in how you determine the ownership. Do you
need me to stop?

MR. RUWE: Yes. I need you to wrap
up a little bit.

MR. HARBESON: I apologize. I'll
just say quickly that for the - how ownership
is determined in the different states varies
and we can't presume that ownership is
determined under the rules of Colorado or the
rules of Maryland. There have to be some
standards for determining how the rule is
applied. We have 13 states that essentially
use the Pushman Doctrine to determine
ownership. If people in those states are
making more use of the recording now perhaps
they should - that rule should be favored. I'm
sure I will have more to say later but I'll
stop.

MR. RUWE: Thank you.

MR. HARBESON: Sorry to go on.

MR. GREENSTEIN: So first I think
the RESPECT Act is an instance of brilliant
marketing by those who came up with the bill.
It's very hard to disagree that pre-72 works
are not some of the greatest works, as I think
Mr. Blake mentioned. Probably some of my
favorite music falls into that category. I
think though that copyright owners are the
ones in many instances who have said that pre-
1972 works are not covered by federal
protection, do not fall within the statutory
license and to the extent that is the position
it should not surprise anybody that services
are then not making - some services are not
then making payments to SoundExchange. I think
you can't say that it is outside of federal
copyright and that a statutory royalty under
112 and 114 has to be paid.

So I think it's inconsistent to
take that position from a copyright law
standpoint. From an economic standpoint, I can
understand that people may have an objection
that works are being used by a service and
money is being generated. But, frankly, again
that's the copyright law. There are many works
that fall into the public domain, many works
that are not protected by federal copyright.

If you're not protected by federal
copyright, the copyright owner, the artist,
the other royalty participants are not
entitled to payment. If you are going to or if
the Copyright Office is going to consider
taking a position on pre-1972 works, I would
encourage that it not be the RESPECT Act, that
the RESPECT Act is once again a fix for a
particular party without a holistic view of
the Copyright Act to just say if you look at
the language that you're just going to require
payment for pre-1972 works but you're not
going to make pre-1972 works subject to
reversion.

You're not going to give the
recording artists all of the rights that they
may have had for other types of recordings. I
think it's once again a mistake for a
patchwork targeted special interest effort to
fix the copyright law. You either start on a
clean slate or you're doing this type of
effort which I think is inconsistent. And if
you're going to require payment you absolutely
should include and make clear that the safe
harbor provisions of the DMCA apply to those
works as well because right now under the
legislation it says they are not being granted
copyright protection. And I want to - I also
want to clarify that no one should assume that
the statements that are being made by me on
that last point - the DMCA safe harbor
protections - apply to any clients of my firm,
many of which are well known and our
representation of them is rather well known or any of the clients that I specifically represent because notwithstanding the position of the Copyright Office I'm not - I would not concede that safe harbor protection of the DMCA would not protect an online service provider for pre-1972 recordings stored at the direction of a user. Thank you.

MR. RUWE: Thanks. Mr. Hauth.

MR. HAUTH: Thank you. Just wanted to say that for a radio station operator, again, this is an administrative nightmare because we are in fact - we operate two oldies stations, one in Honolulu and one in Greenville, South Carolina - and we are in fact paying SoundExchange for those sound recordings performances because we cannot extract them from our reports. It's too much - you know, it takes a third party to do that, as far as I know. But that's not out of altruism. That's out of an administrative problem.
So but as a novice about copyright law, I have to say that the whole business of pre-1972 flies in the face of the Constitution, which says that copyright law aims to promote the progress of science and the useful arts by among other things inducing authors to create new works of authorship. I don't understand how that doesn't come up when we're in discussions about this or when Congress - also when Congress extends the Copyright Act every 20 years. So that's something that I guess I need edification on that because it doesn't - it seems to be in conflict. State laws that exist it's my understanding that they do not deal with public performance issues but rather such things as piracy and things along those lines to protect sound recordings from unauthorized duplication and sale. So I don't know how those laws are could be argument that the federal law should cover a public performance of sound recordings pre-1972. Those are pretty
much my thoughts on it.

MR. RUWE: Thank you.

Mr. Prendergast.

MR. PRENDERGAST: I'll respond to a few of the comments but to start I do want to echo the principles of fairness that Tegan and Mr. Blake and Ms. Goldberg echoed. This is a critical issue for legacy artists. It is a question of fairness and it's also a question about the law. The statutory license was designed to be a one-stop shop for services to be able to use whatever sound recordings they wanted in the course of operating their digital service.

I don't know that the state laws that you're discussing are limited to the rights for reproduction or sale. That's an open question. Of course, litigation matters right now that are attempting to answer or at least address that question and so if you start from the premise that there is a performance right under state law then the
statutory license should be the one-stop shop
that service this need in order to play
whatever sound recordings they want. That's
the purpose of a blanket license.

The comment was made that the
RESPECT Act is a fix for a particular problem.
We don't here at SoundExchange we don't have
a view on whether federalization should be
extended further. But I would say that what we
are talking about here with respect to moving
pre-1972 recordings within the scope of the
statutory licenses is a problem that is
solvable and as Mr. Hauth said a lot of
services - Mr. Hauth mentioned that his
constituents are already paying on pre-1972
out of administrative need. Most services that
rely on the statutory license are paying on
pre-1972 and so there is - whether it's a
matter of administration or a matter of
expectation there is an expectation that the
statutory license will cover all sound
recordings that are available.
MR. RUWE: Mr. Marks.

MR. MARKS: Thank you. So a couple comments. First, I won't reiterate, you know, all of the positions that we've taken in the past on, you know, full federalization. You know, we supported subject to dealing with a lot of the complicated issues that the Copyright Office itself pointed out in its report regarding ownership term, termination, registration, et cetera. With regard to the conversation or most of the conversation that we've been having here about 112, 114, et cetera, I would make one observation or a couple of observations and maybe just throw out a question.

One is that seems to be a problem uniquely with regard to services operating under the compulsory license, and I think this just demonstrates again what happens when you have a compulsory license that's a limitation on exclusive rights. I mean, that license was put in place for the administrative
convenience of a category of services to take advantage of and reduce their administrative fees and/or transaction fees and we now have a situation where they aren't paying whereas, you know, other services in the market this same problem doesn't exist for those that are operating in the market outside of the compulsory license.

MS. CHARLESWORTH: Mr. Marks, could you just elaborate a little bit on that point you just made - meaning interactive services are paying on pre-1972 under their direct license agreements?

MR. MARKS: Correct. That's my understanding. And I heard on the last panel that services just want to pay. They want to do the right thing. They want to pay royalties and here we have a very obvious situation where you have two large companies that are either not supporting that statement or, you know, think otherwise for some other reason. So I would like - I heard Mr. Greenstein talk
about, you know, clients supporting full
federalization, some of them, or you talking
about full federalization. I kind of - I would
like to know whether your clients support
that. You are probably on this panel in the
best position to answer that and I understand
the position on the RESPECT Act but would like
to hear a position generally speaking on full
federalization.

MR. GREENSTEIN: Unfortunately, I
can't. I think that the number of companies I
represent it would be a very significant
undertaking to question all of them and to
figure out what their respective positions
are.

I do think though that it should
either be all in or all out. I think that the
general view, and that's also the position
that was stated by Dina and was not
representing Dina for those comments but I
think it's a valid point. A few things - Brad
- Mr. Prendergast's comment about if you start
from the premise that state law has a
performance right I don't think state laws do
have a performance right and this would be a
new right and it would be an extension under
federal law to something that has not existed.

And so if you're going to do
something I just encourage it to be viewed I
and make a decision it's either going to be in
for all purposes and if there are hard
problems - the hard problems for pre-1972 are
no more difficult than all of the other hard
problems that the Copyright Office has to deal
with and I don't envy what the Copyright
Office has to do after two days of hearings.
But giving them one more hard problem to deal
with probably the icing on the cake.

MS. CHARLESWORTH: No problem.
We're good. We'll get on it.

MR. GREENSTEIN: So I wish, Steve,
that I was in a position to be able to answer
and to tick through and to disclose the
positions of different companies but I've just
not undertaken that effort.

MR. RUWE: Thank you, Mr. Watkins.

MR. WATKINS: Thank you. I just wanted to speak to as usual the administrative issue when it comes to identification of pre-1972 recordings. You know, our company doesn't take a position on federalization. We certainly understand why copyright owners of pre-1972 recordings want to be compensated. I share the affinity that, you know, a lot of the panel members have for pre-1972 music.

But be all that as it may, at the moment I think it's fairly undeniable that, you know, federal performance royalties are simply not payable on these recordings and so certain companies use us to identify them and pull them out of reports of use and so that service is available to broadcasters, DSPs, whoever might need it. It does provide kind of an occasion to talk about something we haven't talked about so far which is it has been suggested to me by some of our clients that
SoundExchange at least has seen instances in which some of our identifications of pre-1972 recordings, in their opinion, are not accurate, meaning they think they're, you know, it's a post-72 recording or maybe the position is that it's a remastered recording eligible for new copyright protection.

We don't know because SoundExchange won't engage with us on this issue and I've been told that that's because there is litigation between the parties, and what it highlights is the need for an adjustment process whenever there is an adjustable fee blanket license both for circumstances like this relating to identification of pre-1972 recordings or the identification of directly licensed recordings, whether or not the recording in particular - is actually directly licensed, whether or not it belongs to the rights holder who actually says that it does, whether that rights holder controls the performing right
versus just the distribution right. And that's a really necessary part of administration. I just want to take that opportunity to mention that.

MR. RUWE: Thank you, Mr. Blake.

MR. BLAKE: Oh, that gives me another point then to respond on which I wasn't sure was in the course and scope of what we were talking about. But just to go back to an earlier one, and I'm speaking — I'm not a litigator as I said before.

I'm not an expert on the RESPECT Act but I think what I've urged is simplicity and I think that, to my limited understanding, in those CRB hearings the rates that were determined were really determined with the idea that it's payable for all of the music that's being played and that you may be able to carve out and not pay on premium services such as Howard Stern talk radio or something like that to the extent you've got a different price on it.
But I don't think there was any intention that users be able to separate out works and not pay on some unless they were clearly directly licensed. So I think the answer is we need to get to a fair rate. I'm not saying that the rates that exist now are necessarily fair. That's what's good about the RIAA proposal. It really does invite a dialogue for all interested parties to sit down, and it's very consistent with what Mr. Greenstein has said. Let's get the rate right. Let's figure out the allocations. But let's do it in a sensible way so that the rate for services that are either wholly or predominantly music is the rate for all the music that they choose to play and not have those carve-outs subject, of course, to a carve-out for the direct licensing to the extent that that is legitimate.

I will, you know, responding to Mr. Watkins, go and say that I have a very strong concern at the moment and I don't know
what the facts are really but we're seeing
more and more that what is happening is that
big services and I'll name SiriusXM in
particular - will go and have artists come
into their studio, and they're big enough to
afford a little studio, and go and do a live
in-studio performance and then they will play
those live in-studio performances as
exclusives. That sounds great. I mean, under
the right circumstances we like that too. What
they do is present at the last minute an
artist waiver to an artist and say here, sign
this. Some of them are clear. Some of them are
not so clear as to what their effect is, and
we're not yet able to tell.

But I have this really nagging
suspicion because when I listen, and I'm a
subscriber to Sirius, I keep hearing more and
more exclusives being played instead of the
original studio version that the record
companies, clearly, own. And record companies
are facing, you know, diminished profits
unlike the owner of a musical work who gets paid on every single recording of that. Every other recording is a potentially competitive recording that takes away from the investment that we've made. So we need to know that we're not being circumvented by these big, especially Sirius who is a dominant player in the marketplace for recorded music and delivery of it to consumers, that we are not being circumvented in our rights by going direct to artists and requiring them to sign waivers in order to get in essence performed over the radio.

And it's really an exploratory thing at this point because I don't know what the facts are. It's hard to tell and there will be some issues in going into what we talked about yesterday about data and then how you would report these because obviously they wouldn't have an ISRC on them. But when you go and you listen, and I remember driving into work one morning and I was on the Spectrum and
they had an exclusive concert on and then I went over to XMU and they had an exclusive of an artist track that had been a hit in the last month or so, and I was like, this is happening more and more. And if what their - what their goal - and I'm not saying it is - is to reduce the number of tracks on which they pay but in effect get the same kind of appeal, the value of those artists and the investment that's put into them, I think that's not right.

MR. RUWE: Thank you. Mr. Hauth.

MR. HAUTH: Just a quick question and perhaps Brad can help me with this, or Steve. Since this - since I understand that radio stations, perhaps some of the other services, are not removing the pre-1972 recordings from their play lists that they report and that would be in all kinds of genres - classical and classic rock and so forth - what is SoundExchange doing with the collections and the money they're receiving
for this? Because we're paying it and we're not the largest - you know, we're not the Clear Channels of the world.

Did I hear right, Brad, when you said that most services are not extracting those performances?

MR. PRENDERGAST: Yeah, that's right, and to your question about what happens to the royalties that we collect, we distribute them out the same way we distribute out post-1971 royalties. So if they're - the regulations had always said that we distribute according to the reports of use and so if a pre-1972 recording is listed on a report of use and the money is paid we distribute it out.

MR. RUWE: Please, go ahead.

MR. GREENSTEIN: So I wanted to just make a comment in response to what Mr. Blake said about the - or to address a regulation. The definition of a performance in the regulations that apply to webcasting not
to the satellite services, but the definition
that applies to webcasting excludes
performances of a sound recording that does
not require a license, e.g., a sound recording
that is not copyrighted. The regulations don't
say if it's federal copyright law protection
or under state law protection. But just to be
clear, under the existing regulations that
were adopted by the CRB and that are
applicable if you're paying on a per
performance basis a service would not have to
pay on a work that is not copyrighted for
which there has been a direct license or an
incidental performance. So I just want to be
clear on that.

The other thing about Mr. Blake's
comment about services whether, it's a trust
or radio station, Sirius satellite radio or
other companies going to artists and having an
artist create an exclusive, you know what?
That's the free market. If the record
companies are going to charge a very high
price for their fee and they've got old artists or artists who are no longer subject to their contract with a label and can now make a rerecord, I think what you're seeing there is evidence of the marketplace of someone saying I will reduce my liability by not having to pay Label X for playing this artist's song because I'll have them come in, play acoustically, I'll pay the performance royalty for the musical work but I don't have to pay the label.

And so I think that on the one hand that's a legitimate operation of the marketplace. As rates go up, as people charge more for their works, there's not always more money to pay everybody. Some people are going to get less and I think that's something that people just have to expect and live with.

MR. BLAKE: May I respond?

MR. RUWE: Please.

MR. BLAKE: On two points. So the first point is I'm not arguing what the law
is. I'm really not interested in that. I think this is really a policy discussion as to whether pre-1972s should be brought under the federal regime and I'm arguing that they should.

As to the second point, part of the issue too is that these stations know that these artists are under exclusive contract but yet they don't go to the record companies. They go to the artists and try to get them to sign something that they know good and well is inconsistent with their contracts with their record labels.

MR. GREENSTEIN: All I know is that when I prepare agreements for many different clients who have artists come in and do a live performance at X I walk them through - are they signed to a record label. So here's the agreement - the release - the personal release from the artist. Here's the draft agreement that you have to go to the label to get the permission.
Here is the release from the publisher if you were doing a video synchronization, and if they're not, if they're unsigned, then they get a different agreement. So whether or not an artist is violating their agreement, when an artist signs a contract with someone you may think that people know they're under an exclusive agreement but I think that's an assumption and you can't assume that a service provider always knows the private contractual relationship between a recording artist and their label and what rights that person has to go do something outside of that. So it may be true in a lot of the cases but it's not like pornography. You don't always know it when you see it.

MR. BLAKE: Yeah, I think you do. When that artist is signed worldwide and you see the ads and so on and they have a hit record and that's why you're bringing them into your studio to begin with, you know.
That's number one. The other thing I would say is that several years ago when the Digital Performance Rights Act was enacted, one of the concessions that the record companies had to make at the request of the publishers was in essence to limit their rights with respect to controlled compositions.

And I'm saying I think, depending on where this is going, if this is really becoming a pervasive practice, I think it ought to be considered whether there should be a similar prohibition against these big services from requiring in essence that artists waive their performance rights.


MR. GREENSTEIN: With all due respect, if you're going to demand a free market you cannot then say that artists can't waive their performance rights.

In a free market, as we discussed yesterday, I think a service provider should
say to an artist or their label, you've got a new album out? You want promotion? You want to reach, you know, 2 million people in the New York DMA or you want to reach 70 million people across Pandora? You know what? Your label charges a very high fee and maybe that's warranted for the new release by the Rolling Stones or someone else or Van Morrison. But you know what? For this baby band, we're not going to pay you - either you're going to pay us or it's going to be free. If you want a free market you've got accept the free market.

I don't think - I just -

(Simultaneous speaking)

MS. CHARLESWORTH: I will say I think this is an interesting sort of side conversation and I encourage you guys to maybe or maybe don't encourage you to take it up over lunch. But I think - yeah, I think we should maybe get back on track with sort of the broader issue.

MR. RUWE: Yes, Mr. Watkins.
MR. WATKINS: Thank you for that. I was going to observe that, you know, it seems very unrelated to the pre-1972 issue where we were talking about artists going in and signing waivers. It's going to be at least 62-year-old artists, 63-year-old artists. I think what it highlights is there's a tremendous amount of, you know, obvious frustration with the content companies when it comes to what's happened with digital royalties.

I just wanted to address, Larry, your observation about the Copyright Board and Sirius, which you made in passing. You know, I assure you Sirius as a company - I don't think they'd mind me saying this for them - is intent on paying all the royalties that are payable and those are hundreds of millions of dollars and we help them pay them to the best of their ability. If you have any doubt that the pre-1972 recordings should not be paid on by Sirius I think you only need to look at the copyright board ruling describing the formula
and the way in which royalties are to be paid by them under the statutory license. If you don't have access to that I'll be happy to play it to you - point you to it because it's pretty clear cut.

And so, you know, it's a public company. They are not going to pay royalties that aren't payable. There may be some other basis - state law basis to find them viable for infringement. I don't know. The courts will sort that out. But when it comes to the federal copyright royalties they are not payable so they're not paying them.

MR. RUWE: Thank you. Mr. Harbeson.

MR. HARBESON: I just want to quickly respond to a point that was made by Steve earlier which was that this is essentially a problem of a question of a statutory license - I don't remember exactly the wording that you used. But I just want to point out that there is a significant stakeholder group in users who wish to make
lawful uses under the Copyright Act that are important here. I realize that I'm kind of like the soccer team that showed up for the World Series in this hearing but I wanted to remind everyone that the users of content are an important stakeholder here. Thanks.

MR. RUWE: Thanks.

Anyone else? Or I think we may have discovered some of the time that we were going to look to make up at lunch because -

MS. CHARLESWORTH: Are there any other thoughts on pre-1972?

MS. GOLDBERG: Can I just ask you for clarification, Mr. Greenstein?

Did you actually say that pre-1972 sound recordings are not protected under state law at all? Because that's what I heard and -

MR. GREENSTEIN: I'm saying that I would not concede that state law grants copyright owners a performance right under state law and if that was the case and there was no exemption for broadcast radio you've
got many decades of copyright owners sitting on their rights.

So I think for people to say, and I was really talking in response to Brad from SoundExchange, that I think he made a statement that was an assumption. I think what Brad said was if you start from the assumption that state law provides a performance right and my response was really to Brad by saying I don't think we should assume that and I'm not prepared on behalf of my clients to concede that.

MS. GOLDBERG: But you know there is common law copyright and there are also state laws for unfair competition that cover this, as well as unauthorized distribution laws.

MR. GREENSTEIN: I understand that but a performance is not a distribution and the performance by terrestrial radio - so the exemption in the Copyright Act for the nonsubscription broadcast transmission is an
exemption to the 106(6) rights. So 106(6) provides for a public performance by the sound recording by means of a digital audio transmission and then you got a 114 (d)(2)(C) whatever or (d)(1) I guess for the exemptions and there was an exemption for a nonsubscription broadcast transmission. So -

MS. GOLDBERG: But you're talking about federal copyright law.

MR. GREENSTEIN: Right. But I'm saying that - right. But then where have copyright owners been for decades saying that broadcast radio doesn't have an exemption and they should have been paying under state common law for public performance right? I mean, no one has taken that position until very recently and in fact I believe the lawsuits were not filed until after the Copyright Office filed the NOI where there was a comment about the pre-1972 recordings.

MR. MARKS: That was the memo from you I was waiting for for that whole time we
worked together. I'll go back. Actually I don't have mine.

(Laughter)


Do people - does anyone want to comment, maybe Ms. Goldberg, or someone - Mr. Prendergast. Do you know the current status of the various litigations, how far along they are in the process? I know there are several of them.

MR. MARKS: Yeah. Their - the California action that we have there was a hearing in August on a unusual procedural - pursuant to an unusual procedural matter but that will raise the substantive issue and the hearing was supposed to be last month but was delayed until August. The New York case that we filed was filed later and it's just been assigned to a judge.

MS. CHARLESWORTH: Okay. Thank you.
MR. BLAKE: Since we do have -

MR. RUWE: Sure.

MR. BLAKE: I would just respond to Les' comment that my interpretation -- and you probably understand this and have followed it more closely than I have -- but my understanding was when arriving at these very, you know, broad rates such as 9.5 percent, 10 percent and so on when you come up with - try to settle on that rate it's not - it was not with a calculation that well, they're going to prorate that by this and therefore it'll really get down to an effective rate of 9 percent or 8.5 percent.

I don't believe that to be the case and what I'm suggesting is that as a matter of policy we ought to get it right now. I'm not going to argue with you about what the Copyright Royalty Judges said in the last proceeding but that we ought to get it to a simple thing where this is your rate and it's based on your paying for all the music that
you're playing that is not either out of copyright altogether or that was direct licensed.

MR. WATKINS: I am hungry so I will give you the last word.

MS. CHARLESWORTH: Maybe Ms. Goldberg, did you have something further to say?

MS. GOLDBERG: Not right now.

MS. CHARLESWORTH: You're not going to impede lunch. Okay.

MR. RUWE: Brief opportunity for Mr. Harbeson.

MR. HARBESON: I will interrupt lunch. I apologize. I just wanted to point out that in response to the question of performance rights and under state laws, my research suggests that the answer is sometimes they do. There are some states that explicitly give performance rights and others do not. And I also wanted to draw quickly attention to one of the recommendations of the National
Recording Preservation Plan which is to mimic the neighboring rights provisions in many other countries by extending Section 108(h) to apply to the last 45 years of a sound recordings term to bring it — bring parity so that we can start hopefully getting at some of preserving some of the recordings sooner.

MR. RUWE: All right. Before we leave for lunch, I do want to point out that the last session that we have at 3:30 to 4:30 for observer comments is going to be open for all. I know we had a lot of inquiries about how that's going to work. There is going to be a sign-up sheet that I'll place out by the inside of the door right behind Mr. Menell, and as well there for people who are not participants but are observers who want to participate in that section there is also a release form that we would ask you to fill out, okay. And we will return at 2:15 after lunch break.

(Whereupon, the above-entitled
went off the record at 12:55 p.m. and resumed at 2:15 p.m.)

MS. CHARLESWORTH: Okay, welcome back again. I'm happy to see that there are still so many people here. This is in some ways I think the most interesting panel of the day, at least based on our Nashville experience because it's really a time, frankly, to I think reflect on everything for those of you who sat, most of you have been here all two days and for you to reflect on what you've heard and really, frankly, offer some thoughts for the future. And particularly looking for areas we think we might see common ground, consensus, agreement, you know, agreements where change may be necessary, perhaps things that are working right, although we haven't heard too much about that over the past few days.

But there are a few things I think that, you know, some people at least think should be preserved. So, we welcome your
thoughts and reflections and discussion on potential ways to move forward and help fix this system which I think, at a minimum, I think there really is agreement that some change at least is necessary. So, without further ado, I will open the floor to the first brave taker who -- oh, Professor Menell, okay. So, you know, if you want to give us some thoughts and I'm sure -- well don't -- did you talk him into your point of view over lunch? We'll see what he says. Okay. All right, all right.

So Professor Menell, take it away.

MR. MENELL: Okay, so I'll just try to get the ball rolling and I really do look forward -- I feel we need to focus on a group that is not really represented in a room like this, and they are the most important people for a lot of reasons. And that's people who came of age after Napster because everyone is coming of age after Napster, but they are, in some ways, the best target because they are
now reaching maturity and their behaviors and
their choices and the way they think about the
copyright system will I think affect so much
of how this system functions.

And I've watched, just because I
was teaching students before Napster and after
Napster. And I sort of have seen the kinds of
roller coaster and we now live in a world in
which most of the core demographics that these
industries have traditionally targeted do not
think that they have to go to a market.

But we've also seen a lot of
experimentation and there's a lot more people
coming to some markets, YouTube being a good
example and Pandora being a good example. But
it strikes me as disturbing that we do not
have people recognizing, I would say young
people recognizing the intrinsic value of
music, the intrinsic value of a system that
would produce the next generation of artists
and it's not as if they would have to
contribute that much collectively or
individually in order to produce a tremendous amount of revenue. But we currently have not managed to do that.

The services that are successful by some measures that maybe a venture capitalist might consider good or not very good measures when you think about kind of the vast number of people enjoying music. I mean we're talking, you know, 20 million people subscribing to, you know, these services, 20, 30 million people, yet we're talking about, you know, half a billion or a billion people worldwide who, you know, used to buy music at some level or potentially would be, I think, available given that they are enjoying the product.

And it's not as if the product's that expensive. The product, you know, for $10.00 a month approximately, you can have everything on all your devices in a very enjoyable format. And it's not as if these people aren't paying that kind of money. They
have cell phone plans. They have all kinds of services that charge them a lot more. So when people here are talking about well, it's whatever the market will bear, well the market is this strange endogenous forest which is affected by free access as well as services that are competing with services that are expensive but perhaps offer some other tie in. So, I see that the goal, and perhaps the long term goal of channeling people into a robust marketplace that will serve, you know, the future creators and that's, you know, obviously far from where we are right now. A lot of things that I've heard, I consider to be counterproductive. I mean trying to make it hard to have universal access. You know, telling people, well you can go on a service, but you're not going to get the 25 most popular songs. I mean that, you know, you say that to a group of, you know, college students today, they would just snicker and laugh. They would say that's ridiculous. That's, you know,
like a Nancy Reagan trying to teach people not to steal, not to pirate something. I mean it just -- it doesn't connect. It's offensive to that generation. And the way I am able to see it is I go back in my own brain and thinking how would I feel as a 16-year-old if someone told me I couldn't have access to what I knew I could gain access to. And so I see it as an issue of creating the on-ramp. What was the on-ramp for many of us? For me it was record clubs and I now know that the record club deals were kind of unfair to artists, but I didn't know it at the time. But the record club got many of us addicted, right? I mean you got this thing in the mail. You immediately had a record collection and then you immediately quit as soon as you, you know, bought your five and then you did another one and you got your ten free ones and then you bought five more and the next thing you knew, you were addicted to music and it was a big part of who you are. We don't have
very good on-ramps right now.

I mean I think YouTube is an on-ramp. We have some on-ramps but the on-ramps aren't sending the message that participating in the market as, you know, as someone who actually invests and has access to a great catalogue. I mean that I think is what many of us believe. You know, I think all of us in the room think that would be a pretty good system. Now you have to fix the back end of the system as well. It's partly, you've got to bring in this vast unwashed. But you also have to fix the back end. And the back end, and I apologize to Steven for saying he's the back end, is largely dictated by a legacy catalogue and that legacy catalogue is essential to any service and the legacy catalogue is not really being allocated very effectively in terms of how the plumbing works.

And I've written about this, I think the history is pretty clear and, you know, we face a problem in that an independent
record company can't really negotiate with a Spotify because the whole Spotify structure is based on trying to maintain access to the legacy catalogue. And so, that and we could sort of look at versions of that relating to perhaps other collectives. But I think that at least in the core record industry, that is a reality and it's the power of the collective. It's not the power of the record company vis-
a-vis any individual artist. It's the fact that the record company can negotiate on behalf of all of them. So I see competition policies as being quite central to resolving this issue. What I would like to see is some sort of grand compromise in which we were able to substantially improve the back end for artists while substantially growing the front end of participation in the marketplace.

Now that probably would hurt or help various entities represented at this table and other tables because there are companies who are succeeding in niche markets
today. But I feel that we're not going to get to sort of the promised land of a really robust market until we can say to, you know, the next generation of consumers and the next generation of artists that there will be a well plumbed system in which you'll get everything you want on all your devices at a reasonable price and that that money will make its way to the people who create the stuff and the people in the middle will be fairly compensated but not excessively so.

MS. CHARLESWORTH: I do have a follow-up question for you. And, I mean you talked about an on-ramp, a reasonably priced service. I mean, why isn't Spotify an on-ramp for your students? It's $10.00 a month. It's near ubiquitous. I acknowledge I've heard at least around the table that there are a few things here and there that are missing. But I mean, isn't that part of what you're saying and if that's not the solution, I mean there's a lot of stuff on the back end that people are
complaining about. But from your students' perspective, for $10.00 a month, they can have a streaming service.

MR. MENELL: I agree with you that I think that Spotify and, you know, Beats and there will be other sort of services that I think meet this. I think Google, you know, will be if they're not there and Amazon is announcing something. And I think that we can provide on the front end in terms of what the consumer pays, this is now a pretty good deal. And so when I talk to young people about this and I ask them, you know, how they're getting their music, more and more of them -- I survey my students every year -- more and more of them are participating in that kind of marketplace but they don't perceive it to be fair to the artists and I don't hear artists going out and publically saying, hey, everyone should join these services because this is the future.

I think that there's a lot of
hesitancy because a lot of the artists, as
you've read, you know, have some resentments
and disappointments. I worked on this
litigation involving Eminem's production
company and I saw, you know, what happened in
this tumultuous era in which, you know, we
essentially pushed almost all in catalogue
artists to the low royalty rates.

And I understand from a business
standpoint why a short run company would want
to focus that way. But I would say in the long
run, if we could get the real sort of
influential people in society, including the
recording artists, including the Copyright
Office, including our President and Stephen
Colbert and Jon Stewart and --

MS. CHARLESWORTH: Okay, this is
ambitious there.

MR. MENELL: I know, I know, but
I'm calling out to them, this is my call out.
And get them -- because I mean they, you know,
their shows are very good at promoting music
and artistry. But I do feel that the artists
are not really on board and I would like to
see a much broader push to go out. People
paying $100.00 to go see a Springsteen ticket
could have a year and if Bruce Springsteen
said, I've built my career because people
bought my records, being on these services
will, if the services are fair, will produce
the next generation of Springsteens.

So I, you know, I would like to
believe this. I could be deluded. We have no
market test of this hypothesis but I do think
that it is the morally right thing to do is to
get a groundswell for a much bigger pie with
a somewhat smaller slice going to the people
in the middle and clear understanding, easier
access. Those are the kind of ideas. I talked
earlier about the mash-up idea. I think that
would be another branch. The two are not
linked but I think both of them would signal
to the next generation, we want you to
participate in our copyright system.
MS. CHARLESWORTH: Okay, well that got Dina's sign up. No, thank you very much, Professor Menell, I appreciate your thoughts and also the extensive comments and article that you submitted.

Ms. Miller?

MS. MILLER: So, Peter told me at lunch that he thinks I'm wildly optimistic, but actually, I think where I'm speaking from is where I see the light at the end of the tunnel and that light, in my opinion, is that I'm guided by scalable technology engineers that have really shown me the light at the end of the tunnel.

And essentially what they say to me is Jen, anything is possible. And so I truly believe that technology is sort of what got us into a lot of the messes and it's what's going to get us out of a lot of the messes. And I think my theme in the past two days has been the music industry needs to start investing in its own technologies and it
needs to invest in technology for its own interests and stop relying on the YouTubes of the world to build for their interests when their interests are underlying.

So just repeating that, but in an ideal world, in a system that I actually think would work, I think innovation can happen through, I'll abbreviate it, TTC and it's transparency, trackability and collaboration. And so in transparency, what I would be looking at in terms of systems from the U.S. Copyright Office is some sort of an initiative where there is a system that creates data standards.

So that would be access to where content is being created and consumed and published. That would be data standards where data is collected. That would be the data repository that I think most people agreed yesterday needs to happen where there is really an authoritative source. And then a universal ID, sort of a Social Security number
per copyright. And so those are the systems
that I think, you know, if I could say the
U.S. Copyright Office should be contemplating
that would be on the systems side. That kind
of involves the transparency, trackability.
The collaboration side is really where there
free market comes into play. And I think in
terms of regulation, there's kind of two sides
to, in my opinion and some of it impacts me
and some of it does not. There's a commercial
side and then there's a UGC side. And I think
pretty much everybody can agree that on a UGA
side, again, to state a stat that, Leo, you
know far better than I, but over 100 hours of
content is published every single minute
online.

And I believe it's actually
probably north of that at this point. There is
very little way to track all of those
copyrights, to really put in place a system
where you can go to copyright owners and try
to get agreements across that. But I think
that in that system, in the UGC, it should be agreed that obviously the party monetizing the UGC systems are the parties that need to provide the data and need to adhere to tracking regulations.

So some sort of transparency into those systems so that we can -- there's a checks and balances system. And I think the regulations for UGC should, in fact, streamline copyrights. I think that, you know, what RIAA and MPAA are working to do is streamline copyrights for what they call ancillary uses or micro licensing. So for UGC, those should be streamlined and that shouldn't be a process whereby it's, you know, any sort of phone calls to individual rights holders because it's just -- it's too much to police, it's too much.

MS. CHARLESWORTH: When you use the word streamline, can you tell me what you mean exactly?

MS. MILLER: I mean basically
agreements across all rights holders that in
a UGC environment, it is impossible to tell
people, you can't use that track because
they're going to. And yes, you can pull it
down, you know, there's got to be notification
systems for the rights holders to pull that
content down but to say that we can prevent it
from going up, we can't. I mean, I just don't
know how we prevent somebody in another
country from loading, you know, from actually
putting material up. There has to be some sort
of a format to identify it.

So, on UGC, I see the regulation
as being more on the platforms themselves.
Then on the commercial side of regulation,
which is direct to client, I think that is
really a place that can operate under free
market principles and a rights holder, a one
on one relationship which is I believe is what
Dina was talking about earlier. So that's sort
of I guess in terms of accountabilities, like
I said, I mean I think innovation can thrive
under transparency, trackability,
collaboration with systems somehow encouraged
by or even created by the U.S. Copyright
Office that offers sort of this, again, data
standards and then the regulations for, you
know, what is realistic in today's day where
most of the content created is actually user
generated content versus direct to client.

MS. CHARLESWORTH: Thank you very
much, Ms. Miller.

Mr. Harbeson, I think you may have
been next.

MR. HARBESON: So I'd like to
remind the room that another important on-ramp
to discovering content is libraries, public
libraries, university libraries and the like.
Libraries provide an on-ramp not just for
current music, but for the -- and not just for
current copyrighted works, too. This is a
comment that's actually relevant to all
copyrighted works but especially relevant now.
And so, the libraries provide access to works
that are not only current but also long
forgotten. We've seen a number of instances
where people have discovered, and even made
popular, old copyrighted content because they
found it in the library. This is relevant to
my first comment of the roundtable yesterday
which is that to the extent that end user
license agreements are for closing the
possibility that a library can acquire the
content in the first place, that is -- has the
potential to create a very dire consequence
for the study of music and recordings and
possibly down the road, books and musical
works and other copyrighted works and that's
happening right now.

There is, especially in the
classical music world, it's very, very
important to be able to study the works of not
just a composer, but of a performer. There is
not a library in the country or in the world
that has in its catalogue the Grammy Award
winning performance of Beethoven or Brahms'

3rd Symphony by Gustavo Dudamel and the local band. That's a very serious problem down the road if libraries can't acquire the work, they can't preserve the work, they can't keep it available for future generations.

And you know, we've tried to negotiate licenses even, even though this is a nonnegotiable license, we've tried to contact the right holder to this particular recording. We were told that we could -- this was the University of Washington, I believe that pursued this, said that they traced the right holder, they tried iTunes and iTunes said contact Deutsche Gramophone, Deutsche Gramophone said to contact who else. They got to the end of the copyright chain, if you will, and discovered that the right holder would give them a license -- would not sell it to them outright but would give them a license to use the recording in their library for five years for some hundreds of dollars, which does not, to us, seem like a reasonable price
considering that if it had been available on CD we could have gotten it for conservatively $20.00 and loaned it to our patrons indefinitely.

So we're very concerned about the trend that end user license agreements, iTunes, Amazon, et cetera not only are targeted only at end users which libraries are not, libraries can't even enter into this license agreement, but even if we were able to enter into it, the EULAs prohibit all of the traditional library activities, loaning, reformatting, et cetera that we do to provide a great public service. I'd like to point to recent legislation in the U.K. which may serve as a model, I don't think it's probably popular with anyone else in this room, but which with certain recently, I think recently, maybe not, certain exceptions to their Copyright Act added a clause that said to the extent that someone tries to restrict this particular exception to the Copyright Act
through a contractual arrangement, that contract is unenforceable. We would like to see something similar here where we can acquire and do otherwise legal things with the music for the purposes of our very special and I think important service to society.

The other thing I'd like to point out is that there are other license models that are active that do not run into this problem. Just a couple of days ago, I purchased a digital only copy of an album on CD Baby whose license terms actually transfer title to me. So not only do I get three different versions of the file, including uncompressed FLAC files, which is wonderful, but I also can put them on a CD, give them to my local library and the local library can loan them under the first sale doctrine. We'd like to be able to do something similar with all copyrighted content.

MS. CHARLESWORTH: Thank you, Mr. Harbeson.
And I guess I see a lot of signs up and since I know people, we are at the end of a very long two days, so if people could try and, you know, keep their remarks at say three to four minutes, in that neighborhood, I just want to make sure everyone has an opportunity to comment. I think Mr. Marks may have been next and them Ms. LaPolt and then I'll go over here and we'll get everyone in, assuming people can kind of keep their remarks in that range.

MR. MARKS: Okay. I wanted to respond to Professor Menell's points. I mean some of which I agree with and some of which I don't. So I think there's no question but that the streaming model and the transition to streaming and I'm speaking mostly about on demand services, subscription services, hold a tremendous amount of potential for all of the creators that are, you know, and have been represented in the discussion so far. And the issue there is really scaling.
I mean you've got to get to, you know, some number of people where the dollars flowing in on a recurring basis can replace, you know, other models that are, you know, falling by the wayside or declining. We have not seen, I mean, I have I guess a hard time believing that that scalability is not happening as a result of consumers thinking that artists aren't getting paid enough. There are a handful of artists, about 15 out of all the artists that are out there that have spoken out about, you know, streaming payments and the amount they get, you know, from a particular -- Spotify or whoever it might be.

And you know, I don't even view that as really, you know, it hasn't even been that vocal. And in speaking with our companies, usually the discussions about streaming and when somebody raises an issue about whether they should go on to a streaming service, it's a concern that it's going to interfere potentially with download sales.
And to the extent that the royalty rates equivalent for the artists there, there's certainly not a feeling that the artist is trying to, you know, keep something off of the streaming because they're going to get a higher royalty rate from another source. And this is more about educating on the artist side to the extent that there are concerns, the benefits of streaming like the fact that taking a longer term view, what is a recording I release today going to earn me over two years instead of looking just at the next month or two months based on sales which traditionally has been the time frame that most revenues will come in from sales.

And you know, ensuring that when you're album is released you're getting into playlists that are then going to continue to be listened to for many years, you know, to come. There are a lot of different ways to explain this proposition.

But on the consumer side, I guess
I just -- I have a hard time -- I think the issue is more about marketing and finding the right kinds of, you know, bundles and things like that than it is about educating people about, you know, an artist is getting to get, you know, more people to subscribe. I do think, getting back to the main discussion here about music licensing and how this impacts it, you know, making some of the licensing processes that we've discussed easier helps free up those services to spend more on marketing and to, you know, track more investment, et cetera so that you can reach that scale. So, I won't repeat our thoughts on how to do that since we've talked about that a lot already.

MS. CHARLESWORTH: Thank you, Mr. Marks.

Ms. LaPolt?

MS. LaPOLT: Hi. I'm not going to talk too much about the mash-up compulsory license that Professor Menell points out
should happen. I want to reserve a lot of that for the roundtable that the PTO is having here which, you know, is the subject of their green paper.

But I just want to point out a couple of things in response to what he said. I'm not opposed to this all you can eat type business model, you know. I don't feel as though that's something that is offensive to me or to the music creator community provided that there's equity in the royalty scheme and people are getting paid equally. The one thing that I think hurts your position there, okay, because I, like Steve, some of it I agree with and I enjoyed reading your 118-page paper with the Department of Commerce Internet Taskforce.

And some of those comments that you made I think are relevant but when you put in the mash-up argument, even though it's two separate arguments, when you advocate in the same paper or position that there should be a compulsory license in a mash-up sample and
remix, you automatically lose credibility with the music creator community. And I think that hurts you because I think a lot of your ideas are really viable ideas, it should be explored.

And I would definitely like to see you separately and a part from this roundtable and explore those issues because I think that you and I limited talking in the hallway have a very interesting take on how we can move forward in a collaborative way as Ms. Miller talked about. But when you talk about putting any type of relaxation on any type of derivative work is really where you lose everybody's eyes just glaze over. And, you know, I think that hurts us, you know? So just for the future maybe you should think about separating them.

And I do want to, before I end want to read this very important part from Register Maria Pallante's next great Copyright Act which I think bears repeating here for the
record. Quote, Congress has a duty to keep authors in its mind's eye including songwriters, book authors, film makers, photographers and visual artists. Indeed, a rich culture demands contributions from authors and artists who devote thousands of hours of work and a lifetime to their craft. A law that does not provide for authors would be a illogical, hardly copyright law at all and it would not deserve the respect of the public, end quote. Thank you.

MS. CHARLESWORTH: Thank you, Ms. LaPolt.
Okay, I'm going to go over here. I think I'm just going to go down the row because I didn't see when you put your signs up, so Mr. Anthony?

MR. ANTHONY: Sure, this panel's called Potential Future Developments and what really informs that, I think very well is a lot of what's happening right now. And there's been lots of talk over the past couple of days
about streamlining the licensing process in the future but I don't believe we're putting ample weight on what's actually working right now at this very moment. There are a lot of functional current examples available, many of them built by the companies in this very room and they've solved many of the problems in the marketplace and we talk about it like it's some sort of magical unicorn, a system that actually works but there's a lot of unicorns out there.

And I emphasize what's happening the social video in micro licensing space. What YouTube has done, MRI, Crunch Digital, Rumblefish, we've gone to great expense to build systems that organize rights and I wanted to highlight just a handful of the attributes of these successful systems just to call out what we've seen that's really worked and what a lot of people have already talked about today.

So there's five attributes that we
see. The first is a significant number of willing content providers on an opt-in basis. And we say opt-in, I don't mean opt-in we're in for everything, we're out for everything. I mean opt-in to a specific service or have many rights available to one or all of those rights on a song by song basis. High quality metadata is the second attribute. Metadata needs to be gathered from all possible sources.

People talk about everything being open and available, I think they need to ingest, sort and prioritize all that data. Many of the organizations here with these systems that I'm talking about do that. Rumblefish uses the YouTube system on a regular basis to resolve disputes all the time. And this includes both objective metadata which is who owns what, subjective which is genre, mood, that type of thing and transactional data which is where things have actually been used.
The third point is significant demand from licensees. There's no shortage of demand especially in social video. Everything's exploding, just what Rumblefish sees, 50,000 to 70,000 micro licenses a day. There's no reason why that can't be 250,000, 500,000, a million micro licenses a day in the near future. It's not that there isn't demand, it's just that we haven't really gotten to the full scale with the license options.

The fourth attribute is carrot and stick incentives. Again, in the micro licensing space, it has been very successful. The stick is Content ID. Right?

When you upload something, we can identify what that is and that's both through YouTube and also Audible Magic. Audible Magic provides Content ID for Vimeo, Facebook, SoundCloud, Daily Motion. And so the stick is the Content ID and the carrot is easy to access licenses. We do this every day in the micro licensing space. There's a number of
places you can get licensed music, WeVideo, Shutterstock, Socialcam, Animoto, Jumpcamp, Pixorial, the Music Bed.

And this works for both personal and commercial uses. And the fifth attribute and final attribute is rights that actually travel with the use. So it doesn't do you a lot of good to license rights especially in social video if when you show up somewhere, YouTube, or other networks, that the rights blow up as soon as Content ID finds your work. So you have to have an easy way to communicate those rights.

I know that Audio Socket has a technology to do that, Rumblefish also has one called the RAD key, it's a license verification system. It works kind of like a barcode. It's a quick way to say, here's what rights I've licensed legally.

So, just to recap the five attributes, significant number of online content providers, high quality metadata,
significant demand from licensees, carrot and stick incentives and rights to travel. So I would just encourage everyone when you're looking at solving a lot of these problems regardless of license type that you just look at what's already working.

MS. CHARLESWORTH: Okay, and thank you. And just a quick question, I assume that that barcode as you described it is imbedded in the file or a file or?

MR. ANTHONY: It's just a string of numbers like a license for a piece of software.

MS. CHARLESWORTH: A string of numbers, okay. Thank you.

Mr. Lipsztein?

MR. LIPSZTEIN: Thanks. So I will keep this very brief. I probably would like to echo I think some of Professor Menell's comments. In particular, I think the driving notion for us in the DSP community is that any reforms in the music licensing space need to
open up access to music online and in particular, needs to bridge the gap between creators of music, with whom all of this starts -- none of us would have a job here were it not for them -- with the people out there who love and want to listen to that music.

I think that any reforms that run counter to that are ultimately fruitless and defeat the point of this exercise. I've heard a lot today and yesterday about musicians how have no interest in being online and I think their interests are extremely important and need to be kept in front on mind, absolutely. But for my part at least -- and I think for Google and YouTube's part generally -- what we've seen is that the vast majority of music creators want to engage with end users and want to be part of that ecosystem. I don't know if Professor Menell's notion of a compulsory license for mash-ups is the right one or not.
That's a novel idea and I understand from Ms. LaPolt's perspective that many musicians are going to find that "crazy" to borrow her word from earlier today. But I think it's that cultural bridge that does need to be -- that cultural gap that does need to be bridged. On YouTube, what we are seeing is that fans want to engage with the content, with the music that's out there and many musicians, many music creators what that to happen.

And again, I don't know if a compulsory license is the right way, but YouTube has been able to build that ecosystem only by having an enormous licensing department, extensive licensing efforts and having devoted countless dollars and person hours towards building a content identification system, content taxonomy systems, and rights management systems -- it's an extremely expensive and costly endeavor to effectuate something that I think everyone
wants to see.

So to that end, I think the two main reforms, I will sound like a broken record now -- a pun totally intended -- but the two main reforms that I think we would want to see would be the availability of data so that online service providers can identify when music is being used on their platform, identify what music it is and get those creators paid, again, the folks with whom all of this starts.

And then the second reform that I think we'd like to see is just general facilitation of licensing through defragmentation. Today it is simply too difficult to go licensor by licensor and complete all of those licenses. We can do it at Google and YouTube because we have that scale, but not everyone has that scale and that is a huge barrier to entry. And frankly, it imposes costs on all sides that are unnecessary and excessive. Thank you.
MS. CHARLESWORTH: Thank you, Mr. Lipsztein.

Ms. Muddiman?

MS. MUDDIMAN: I think we really do need to work with Google and YouTube and look at the Internet in its infancy and it's actually embryonic and look at this. You know, in hundreds of years' time, we'll look at this time and it's people who are often thinking, you know, too much water has gone under the bridge, and too much stuff is out there and we'll never get it all back.

But I think we have to look way beyond that to the bigger picture of how tiny the technology is right now and we know that every year the technology moves on and on and on and on and I don't think it will be very many years before the technology that Anthony's talking about, we've also developed similar systems and we should talk about creating licenses that you can do a kind of 360. You have a barcode that is associated, an
ID like Jennifer was saying, with a copyright and you issue a license for that particular video, AV, whether it be a ringtone or whatever it is.

You issue a license which is a bit like a car registration. How do you know that that car is registered? How do you know that it has insurance? You know, it would be an enormous thing to think about doing that on that scale now a days, but we did it without any computers and now we have the technology, we have -- you know, Anthony has attested and I can attest myself, we have technology that allows us to fingerprint the music and be able to give it a barcode and be able to issue it not just with its own ID but with a license ID for when people go to upload things on YouTube.

YouTube needs, I think, with all due respect, it needs to have a system whereby instead of allowing anybody to upload anything they want without accountability and
responsibility, it needs to actually provide a filtering system whereby people have to be accountable and responsible for what they upload. It's no good to go after the event and try and take things down. Go before the event, don't, you know, go initially, get people to show that they have that right license and that they have that ownership and that they're not embellishing whatever message they're trying to put on YouTube with somebody else's intellectual property, which I fundamentally feel is wrong. You shouldn't be able to use your, you know, give your message out using somebody else's intellectual property to embellish that message.

MS. CHARLESWORTH: Thank you, Ms. Muddiman.

Mr. Bernstein?

MR. BERNSTEIN: Thank you. I've been underscoring reporting and we've heard a number of ideas about licensing and rates and all I can tell you is whatever rate's
determined, whether it's statutory or whether it's market, it really doesn't matter if you can't get paid for what you licensed.

So, I emphasize that there needs to be reporting requirements put in place that protect the copyright owner and less about reporting requirements that seem to protect the user. I want to see a requirement that perhaps there needs to be a qualification of a company that is licensing content and if you don't meet those qualifications, there's no alternative but to use a third-party in the marketplace that's approved. And when I say approved, approved by the content owner.

I believe the licensors should be the ones who dictate who does the accounting. I mean it's their asset. They should be entitled to do this. Now I want to move to something related and I'll keep it short, but I kind of want to put this toward Mr. Greenstein. He's smiling because he knows what I'm about to say.
MR. GREENSTEIN: I actually don't know what you're about to say. I've said so many things today you could criticize me on many things.

MS. CHARLESWORTH: Fortunately, Mr. Greenstein has yet to speak so he'll have an opportunity to respond to you down the line.

MR. BERNSTEIN: And I don't think we have enough time to cover everything he said. So --

MR. GREENSTEIN: I hired this guy.

MS. CHARLESWORTH: Okay, all right.

MR. BERNSTEIN: What's that? What did he say.

MS. CHARLESWORTH: He said he hired you.

MR. GREENSTEIN: Years ago.

MS. CHARLESWORTH: But gentlemen --

MR. BERNSTEIN: You know that's a great segue.

MS. CHARLESWORTH: Okay.

MR. BERNSTEIN: So.
MR. GREENSTEIN: Can't we all just get along?

MR. BERNSTEIN: No, we do get along. So Gary, a number of years ago chatted with me about the need to conduct examinations of webcasters. And Gary and I sat in a room on a white board as we meticulously charted out what we believed the approach should be to conducting the audits. And I know Gary knows how important it is to be able to conduct an audit to confirm the accuracy of the reportings.

So it's surprises me to hear that when I was out of the room today, that a comment was made that Crunch Digital, and you can correct me, and I would want you to, is really bad for business in a sense because we are affiliated with a company, Royalty Review Council, who's conducted more audits of digital services than anybody.

And that strikes me because when that is brought up, what's the message you're
sending to the licensor? I don't want you to use Crunch Digital because my client has a concern they're going to get it right.

So, from our experience, and from the audits we've conducted, we've spent the time and studied what needs to happen for copyright owners to get a straight count and I would simply encourage you to contemplate allowing third-parties who are competent to do the reporting, handle the reporting and take it out of the folks hands who really don't have an interest in getting it done right no matter what they say. Thank you.

MS. CHARLESWORTH: Thank you, Mr. Bernstein.

 Ms. Goldberg?

MS. GOLDBERG: Thank you. I just want to talk about two issues. The first, I guess one of the subheadings was unified licensing models, so I know this has been discussed ad nauseam in terms of getting rid of the consent decrees but I believe ASCAP and
BMI should be able to bundle rights. Consent decrees basically when they are issued currently, they're for a maximum of ten years.

The DOJ stopped doing perpetual ones in 1979 and ASCAP and BMI's consent decree was created in 1941. I think it's time to put them to rest and allow ASCAP and BMI to basically do one stop shops like foreign collective rights organizations do. That's my first point, and that would be on a non-exclusive basis. The second one is as far as statutory licenses, I echo Dina's comment about mash-ups. I don't think there should be a compulsory license for them and I'm going to agree with Jennifer Miller about education.

I think instead of saying because they're doing it we should allow it and make a license for it, I think you should educate your students better, and not just your students but all students. I think there's really a lack of education in terms of how music licensing works, and I think if you
asked ten people on the street they wouldn't even understand anything that was going on in this room at all. And I think we need better education.

MS. CHARLESWORTH: Okay, thank you, Ms. Goldberg.

Mr. Sanders?

MR. SANDERS: I want to start out with a platitude with a sincere thanks to the Copyright Office for sponsoring and holding these roundtables. I think that they really serve a very useful purpose to get ideas and discussions out in the open. And in that regard, Register Pallante and Jacqueline Charlesworth for working as she has on the issue with small claims. It's a great example of the kind of progress I think that we can make here in fleshing out the ideas that start out as simply ideas.

So in that regard, I spoke yesterday about the possibility of best practices in terms of transparency. It goes
without saying that everybody wants fair rates. It goes without saying that we want accurate and robust metadata. But to creators themselves, without transparency, all of that is useless.

If creators cannot know what they are owed, cannot see the uses that have been made of their music, it just doesn't matter how good the metadata is and how fair the rates are. Twenty-five percent of what you're supposed to get is still 25 percent of what you're supposed to get. And so if the Copyright Office can at all be helpful in starting and adding to the discussion about best practices and transparency, that would be absolutely terrific. In terms of the issue of, for lack of a better term, centralized licensing, which is the old ancient term for I think some of the things that we've been talking about.

Yes, I mean obviously the independent songwriter community is eager,
able and excited to discuss streamlining licensing. However, I want as a historical footnote to state that one of the reasons why Sierra failed was that the industry itself and in the music community in particular failed to recognize the basic truth of the narrative of music creators and it's tied to the Federalist 41 that James Madison wrote. And it's tied to Article 1, Section 8. Music creators speak for themselves.

And they must be represented on the Boards of any organization that is going to be doing centralized licensing in a 50/50 way. It is utterly unacceptable to do it any other way. And I know it's hard for you to believe that the response would be aggressive to that but it will be.

So we would ask everybody please to take note of the fact that creators themselves need to be represented in these organizations on a 50/50 basis with corporate interests and others.
Aside from that, you know, I think that there's a lot of promise in terms of the discussions that have taken place and we have a lot to talk about. I would simply ask and I guess looking to my right and Ashley, that you pay attention to the actual creators themselves. Thanks.

MS. CHARLESWORTH: Thank you, Mr. Sanders.

Ms. Nauman?

MS. NAUMAN: There's been a lot of discussion in the last few days and I've heard over in the industry over the last month or so about free market, you know, willing buyer/willing seller. And I think a lot times terms end up getting thrown around and it's a bit like the metaphor of nine blind men and an elephant and everybody's got a hold of a different part of the elephant and they imagine it's something completely different because they can't see the bigger picture. And so I actually spent some time thinking about
a free marketplace for music and what would work.

And most of this is based on the experience that I've had over the last four years of lots and lots of companies wanting to get licenses, some of who want small, some of who want everything. Some who might just want a handful of tracks in a particular genre. And I think that what would work is -- and that I think would have room for almost everyone who's in the industry to create value around it is if there was a licensed music marketplace and there was a unique song by song ID that had publishing, performance and sound recording rights ownership associated with it, that data can still be owned by all of the respective organizations. But it should be associated with a single song. The rates and prices and availability for different models could be built into this and associated with that song so that if you wanted to do something with sync licensing, you could see
what the availability is, what the price is, how that would work.

   But it would likely be in an API environment. It would not be something that would be closed and privately owned and that's where I think the Copyright Office can really play a role in creating this kind of a layer and it would open up, this could point to different services who provide different kinds of values, the MRIs and Crunch Digitals of the world, the companies that are actually hosting and serving media files, those that are enhancing metadata.

   And I believe that there would be a lot of room for labels, publishers and PROs who manage the rights and manage the artists and the creators to still contribute a tremendous amount of value to the marketplace as well as enabling innovation in the marketplace on the front end. Because what's happening right now is there's reluctant innovation on the back end of redundant
replication of reporting and ingestion systems
and really, really messy stuff. And that would
enable for more user experiences, it would
enable for more opportunity to create the next
Instagram but having licensed music inside of
it instead of the innovators going on and
creating things separate from music.

But, you know, and if you think
about it in this environment, you think well
if Jay-Z felt in a free market that his song
should have a $2.00 royalty for the sound
recording and $1.00 royalty for the publishing
royalty and $1.00 for the PR performance of
that and that would cost Google $4.00 per
stream in a free marketplace. If that's what
Jay-Z wants to try to charge, go for it. Go
for it.

And a really hungry artist who's
very young might say I want my music available
for everything and I'm going to charge a penny
for each of these things but I want it traced
and I want to know how my music is being used
and how it works.

That would create a free market environment and I think that everyone would be very surprised at how welcome this would be in the community that's looking to innovate. But none of this would be possible without a central ID and the associated rights that are a part of that identification of a song and that is what is needed and that's what I really encourage the Copyright Office to engage on.

MS. CHARLESWORTH: Thank you very much, Ms. Nauman.

Mr. Irwin?

MR. IRWIN: I want to echo what Charlie said too, but in a slightly different way about the creators being involved in any of these discussions.

I find it sort of curious that the consent decree supposedly was to stop collusion yet we're finding streaming services that have label zoning, part or all of them.
That's not considered collusion, they're negotiating with themselves for licenses, seems bizarre to me. And as an AV composer and representing that segment of the market, it's the fastest growing segment there is where over 50 percent of the income stream to ASCAP, yet we don't have a say in what happens to our works.

Now where is this going to really come back to haunt us if we're not at the table? I believe it's going to be in the bundling of rights. Now we're not against the bundling of rights, but it's the transparency that Charlie was talking about because if we get bundled in there at 50 percent of the revenues and then can't find out where our part of that pie is because we don't have ownership of our copyrights, we'll be negotiated away in a heartbeat at the expense of everyone else. I just want to make sure the Copyright Office understands to look out for that for us.
MS. CHARLESWORTH: Thank you very much, Mr. Irwin. I think I'm going to skip Professor Menell for now and just make sure we get everyone in first who hasn't had an opportunity to speak, so I think Mr. Barker, you haven't addressed us yet in this panel.

MR. BARKER: Yes. I appreciate -- let me just -- I want to mention a couple of things just to go on record that one is something that is working that we've not mentioned in this roundtable session. There's an entity called CCLI, Christian Copyright Licensing, Inc. I think that started about 20 years ago to license churches in a free market.

They realized that churches were not paying royalties and copyright holders would like for them to and there were permissions that were needed but they were so small scale CCLI came along and built a business that right now, is the biggest source of income for our gospel clients. So there's
a success model out there that was built in
the free market that seems to be working and
I think that's a good model as we're talking
about a lot of these things that we could keep
in mind.

Another thing that's been
mentioned was if a true free market does
exist, perhaps there would be dangers for
copyright owners in that free market. And yes,
there probably would. There very well may be
lower rates in some instances but I believe
that there could be higher rates in others. We
deal with that today in the synchronization
market.

For instance, I lose
synchronization deals because I don't go low
enough. If somebody comes in and says I only
have this budget, I say I'm sorry, my song is
worth more than that and I can choose to say
no and I lose that deal. That's not good for
me but I have that right.

At the same time, I would have the
right if my song is worth more maybe as a classic song worth more than a newer lesser known recording of that song, then I have the right to actually charge more than what the master owner is charging. So I think yes, there are dangers of ups and downs in the free market as we see in the synchronization market, but I think we can deal with that and I think the market will flesh itself out and define itself.

Let me go, if I can, as my last issue to talk about, as you know and you've heard me say may times, I think we should get rid of Section 115 and I'm just going to go back there and read something that Marybeth Peters wrote, prior Register of Copyrights in 2004.

Actually she testified to the House Committee on the Judiciary in 2004 and she says the music industry adapted to the new license, meaning the compulsory license, and by and large sought its retention opposing the
position of the Register of Copyrights in 1961 to sunset the compulsory license after enactment of the omnibus revisions of the copyright law. Music publishers and composers had grown accustomed to the license and they were concerned that the elimination of the license would cause unnecessary disruptions in the music industry.

Consequently, the argument shifted from that to more of a rate because the publishers then determined what's more important to me than getting rid of that was as long as we can increase the rate from two cents to four cents and then have a period of time where it increases after that, I'm okay with that.

Now, in my opinion, we the publishers, I wasn't at the table then, made a huge mistake and I think it's time for us as publishers to realize we don't need to fix 115, we don't need to talk about rates under 115, we need to do what's been talked about
around the table here and that is deal with
the fair market as a fair market in these
things.

DiMA, if I can, is not here to
talk themselves, but in their public comments,
they had listed six pillars of what they call
six pillars for modernizing the copyright law.
Those six pillars are continued governmental
oversight, I disagree, transparency and
centralized database, I agree, licensing
efficiencies and reduced transaction costs,
yes, clarification of rights, yes, reduction
of legal risks around license activity, yes,
level playing field, yes.

Again, that echoes a lot of what
we've just heard around the table and I won't
repeat all of what Steven has said in RIAA's
position because I think he and I agree on
most everything except for probably two issues
which are tethered rights, taking a percentage
of the recording owners. We're not interested
as copyright owners in tethering our rights to
that. And then the other is the control of the
first use.

Now again, I think we've had some
great offline discussions in these days that
have given even me some clarification and I
now look at the first use, and I would throw
this out there, the first use, I would almost
kind of break apart into two different
definitions. A first use is clearly when a
song is used for the first time by a
commercial artist. We could also just say a
first use is the first time that a song is
used with a new recording.

And if we set that as definition
one, definition two being a use -- and when
I'm saying this, I'm saying okay, how can we
as owners control a yes or no to have a song
used? In those instances, a first use, I just
mentioned where there's a first use ever
recorded or it's a first recording by a new
artist. I would say the copyright owners need
to have a little more control to say yes or
no.

However, if there is an additional license needed for a copyright that is used on an existing recording, let's say a recording was licensed last year and it's a big hit and now we have other streaming models or other licenses that may come up, perhaps that should be looked at by copyright owners differently so that maybe we don't have as strong a right to say no to the furtherance of the delivery method of that existing recording. So I throw that out there simply because that was a little bit of an ah-ha moment for me in that that is a critical issue with RIAA and while it is a basic issue of a copyright owner, it perhaps could be one that we could live with, and this is me speaking personally, not for an organization at this point, perhaps it could be one that we could live with as long as we have the right of refusal for new recording attachments and new recording licenses.

So I say all that and finish I
think as we go around the table, we've heard basically two, in my opinion, two categories of what we need, fairness and a new process. Now the new process can include transparency and auditability, a lot of the things that we've talked about here.

But I think those are the two key issues and I'm hearing that we're inching closer and closer to each other with this model. I just believe that that model has nothing to do with 115. If I'm building a new house, the contractor is not going to say, what color do you want or how many windows? He's going to first ask me what do you want to do with the house? What's important? A big kitchen, a huge bath and a workshop. Those are my three important factors. So I'm going to include those in the house. To me, if we try to say as we build this new house, let's make sure we keep 115 in the garage, I think we're doing ourselves a disservice.

I think we need to do away with
115 totally, build a fresh foundation,
understand all of these concerns that have
been talked about around the table and then
build it. I've said this before and I'll say
it again, there's no one person in this room
who is as smart as all of us in this room. I
think we can come up with the solution as long
as we begin to walk together, but I think part
of that solution is getting rid of 115.

MS. CHARLESWORTH: Thank you very
much, Mr. Barker.

Mr. Lord?

MR. LORD: Thank you, ma'am. By the
way, John, there's another company that's
thrived in the free market.

MS. CHARLESWORTH: Let the record
reflect Mr. Lord held up his sign. That will
be SESAC.

MR. LORD: Right. In spite of the
fact that the broadcasters have tried to sue
us into oblivion, but you can strike that from
the record. I will make this quick but I want
to sway this, I grew up in segregated Alabama
and my mom and my dad loathed segregation and
my mom always used to say we've got to start
with the children. We've got to start with the
children. We've got to put them together so
they don't know discrimination.

The place for the Copyright Office
to help is to educate the country on what
copyright is and you've got to start with the
children. You can put out the materials and
whatever else the teachers need to start
teaching our children to respect the rights of
authors, to respect the laws, to respect
copyright and then issues like Napster, which
we've got, what, two lost generations from my
perspective who have no respect for what these
creators do. They just think they can take it
and then they blame the record companies. It
will never go away completely but we will have
at least an educated public that some of whom
will respect copyright and respect creators.

So I think there's a role for the
Copyright Office, maybe, I don't know what
your mandate is and if that's included, but to
help the public understand what copyright is.

I also think that to echo what
several people said around the room, I think
that going forward that the intermediaries,
any one who wants to be an intermediary in the
delivery of copyright and the administration
of copyright, must understand, and I speak to
the PROs and to the record labels and to the
administrators and everyone else, must
understand that we have a tsunami of
technology and we have a tsunami of demand for
transparency.

By the way, I speak to you guys,
too. We must all become transparent. I know
that's shocking coming from a performing
rights organization but we must all be able to
show the creators and the users where the
music is being used and how much they're
getting paid for it. And that should be part
of the discussion as we go forward. Thank you.
MS. CHARLESWORTH: Thank you very much, Mr. Lord.

Mr. Greenstein?

MR. GREENSTEIN: Thank you very much. So the first comment I would like to make and no one's addressed it and it's a pet peeve, if you can do away with the six month destruction requirement for ephemeral phonorecords under 112, it is senseless, ridiculous, it's against the environment and just plain stupid and I think that should go. I also encourage the Office to think boldly.

I think that when I worked on the Copyright Royalty and Distribution Reform Act in 2004 with Steve and others, we thought we were fixing the then existing problems. I think ten years on we now see that there are new problems and I think we were tinkering around the edges.

I think a lot of the proposals that have been made over the past few days will have unintended consequences and if you
I don't think boldly and you're putting band aids on existing problems, I think we will have new problems whether they're identifiable or they come to the surface within two years or ten years, I think there will be problems. And now I'm about to make an admission against interest because I think a proposal that the Office should consider is one that maybe puts a lot of lawyers out of business and puts a lot of money back into the hands of creators and authors.

And that's for a regime of statutory licensing for interactive and non-interactive services. That is where an enormous sum of money exists today and an even larger sum of money likely exists over the next ten years. And a marketplace where you have a statutory license for interactive and non-interactive would likely be appealing to wireless carriers and the pay television industry.

And the Holy Grail for everyone,
artists, songwriters, publishers and record labels is that monthly recurring fee from a telephone subscription, a mobile phone subscription and pay television. You would be talking about numbers that would dwarf the $14 billion peak of the recorded music industry in 1999, I believe is the metric.

If the Office were to get behind this proposal, I think you could do several things in terms of rate setting, I think you could give or Congress could give a period of time for interested parties to negotiate a rate to be codified in legislation. If the parties were not able to do that within some period of time, and I would recommend that there be mediators whether that would be former members of Congress, stakeholders that would be viewed as neutral or at least a balance of parties to help the parties get to an agreement, that would be a good start. Absent that, then some type of tribunal or a Federal Court that would set a rate. I would
then model that system after Sections 111 and 119 of the Copyright Act. And under those two regimes, you have a Phase I and Phase II process.

Phase I would be an allocation between the musical work, the value of the musical work and the value of the sound recording for the different type of activity. It could either be global for all uses or it could be ringtones, interactive streaming, non-interactive streaming, I'm not talking about synchronization licenses and other services where there's music in use. I'm only talking about interactive and non-interactive streaming. So Phase I, you have the sound recording copyright owner or the sound recording interested parties and the music work interested parties would figure out or propose allocations. If they can't agree, then it's litigated and a decision is made by a third-party.

Then you would move to Phase II.
And in the Phase II proceedings, you would have a pool of money for the sound recordings and a pool of money for the musical works. On the sound recording side, you would have labels, artists, featured and non-featured. You would also include potentially engineers and other royalty participants. On the musical work side, you would have publishers, songwriters, composers, PROs and other interested parties that could be representing the entities. There is nothing that requires a pro rata allocation of money once you were to break it into let's say either Phase I or Phase II.

If people believe, and I forget who made the comment, either Mr. Barker of others, if there is a song that has more value of the Beatles have more value or Justin Bieber has more value, let people figure that out in either Phase I or Phase II. I used to represent the Joint Sports Claimants. We litigated for many years against the MPAA and
the MPAA rate proposal for the allocation of royalties was based upon how much time people spent watching MPAA programming. The sports leagues focused not on tonnage, as it was called but on what attracts and retains subscribers. And the sports leagues went from less than one percent to nearly 40 percent based upon the value of that work.

I think it should be up to musical work copyright owners or individual songwriters and their publishers who believe they have a more valuable catalogue than someone else to put on that case and allocate that money. I think the benefits of this process would be significant removal of friction. You have existing marketplace evidence of the interactive rates.

So I don't know if you would need to do anything other than look at the agreements that the major record companies have with interactive services. It's been widely reported it's the greater of percentage
of revenue per subscriber fee or a per sub-
minimum. You could adopt that in legislation
to the extent MFNs are already protecting it.
Make it statutory. Why have lawyers involved?
Why have negotiations that take place? I think
Vickie said 12 months to 36 months and eight
figures.

How does that benefit anybody? It
benefits me, and so that's -- I mean if you
don't adopt any of this, I still have work to
do. But in all seriousness, I think if you're
looking at fixing the system, this is a model
that should be taken into account. It prevents
the services and the consumer from being
caught in the tug of war between commonly
owned parties.

Again, going back to that point
I've made multiple times, let the jointly
owned record label and publishers figure out
how to do it. I think that you can preserve
the efficiencies of the PROs. So if you're
concerned about the writers getting the
writers share, the PROs could say out of the amount of money that is paid for non-interactive streaming, once you allocate two-thirds to the sound recording, one-third to the musical work, performances should be X and maybe mechanical's another, although actually I don't want to imply mechanicals are necessary for non-interactive services.

So let's talk about interactive services. And then have the PROs decide how you should allocate that money and then they can give their share to the songwriters or maybe the PROs only represent songwriters and the publishers like Universal Music Publishing or Warner/Chappell can participate as their own Phase II claimant for how that money would be allocated.

MS. CHARLESWORTH: Can I just interrupt you for one minute?

MR. GREENSTEIN: Yes.

MS. CHARLESWORTH: So would usage come into this at all and if so, how?
MR. GREENSTEIN: So, in terms of usage, do you mean the service reporting?

MS. CHARLESWORTH: Well, for example, census reporting which is common in the digital area today?

MR. GREENSTEIN: I think that census reporting would be likely to be advocated by certain parties. Census reporting likely benefits those parties who may have less valuable works and the parties with arguably more valuable works would want, you know, let's say they want A for X for pre-'72 sound recordings that are still being played today. Maybe that has tremendous value.

For something that's within 60 days of street release, maybe those sound recording copyright owners would be willing to pay to get that music on terrestrial radio because they view it as promotion or someone who's going on tour. I think that in that proceeding, parties would be free to make the arguments as to how to allocate that money,
census reporting could be considered as one
the factors for determining the allocation.

And I suspect a lot of people
would say let's just punt, it's the easiest
thing to do, but I wouldn't necessarily
mandate it. If the Office chooses to ignore
everything I've just said, which I suspect is
the likely outcome whether or not you're
ignoring the proposal, but politically, I
would recommend that there be continued
oversight of anti-competitive practices in
concentrated industries either on the record
label side or on the music publisher side, and
a hard look given to precluding the use of
MFNs and minimum market share for a pro rata
allocation that prevents a free market from
truly operating. If you are going free market,
then you've got to allow a free market and
allow there to be winners and losers. Thank
you.

MS. CHARLESWORTH: Okay, it looks
like we have three commenters left. Charlie is
waving his banner.

Mr. Sanders, do you want to go next and then Professor Menell and then Mr. Marks.

MR. SANDERS: Yes, I want to underline something that my friend and colleague John Barker said which is very relevant to the last speaker. And that is the notion of a level playing field.

We keep talking about the necessity for a level playing field for the free market to work and I think that that's exactly correct. When you are dealing with an industry that is as vertically integrated as the one that we are talking about, ensuring the leveling of that playing field is a tremendous challenge.

If we eliminate 115, what do we do when a corporation sits on both sides of the table as licensor and licensee as distributor and copyright owner? I mean how do we handle that? And that's the challenge that we face in
1 talking about all of these ideas that have
2 been put forward that way. I don't have the
3 answer to it and I'd love to discuss it, you
4 know, in another forum.

5 MS. CHARLESWORTH: Okay, thank you,
6 Mr. Sanders.

7 Professor Menell?

8 MR. MENELL: Well, I began the
9 discussion, so I feel since a number of people
10 have commented on things I said, I'll try to
11 perhaps explain, you know, in slightly
12 different ways some of the issues and also to
13 just reflect on some of the comments here. And
14 I do think that this roundtable process is
15 extremely valuable and we'll have the
16 Copyright Office and the PTO are hosting these
17 events.

18 MS. CHARLESWORTH: Well, just for
19 the record, this one is only the Copyright
20 Office.

21 MR. MENELL: I understand that
22 yours is separate but I'm also involved with
there's a lot of -- I just want to avoid any confusion because there has been some confusion out there and I know they have a separate series which has also been very engaging.

MR. MENELL: Yes, I'm just saying, you know, for those of use who have been trying to have policy discussions, this is very welcome.

So, one observation I'll make is that copyright is an ecosystem, it's not merely a law. And the extent to which the ecosystem factors are important have grown immensely in this last period. So when I describe the ecosystem, I say it's technology, markets, law/politics and social norms. And the biggest change, the biggest two changes are in technology and social norms. Because of changes in technology, a lot of the market equilibrium, the ecosystem equilibrium is determined by people who don't have to
participate in markets.

And that's where I was coming from in my opening remarks. We live in a world in which we will not be able to control the primary demographic marketplace through law. And in fact, things that we do through law could backfire and that has occurred during the last decade with efforts and enforcement.

And I will say, and this goes perhaps to Dina's comment about my credibility, I mean I'm one of the few copyright scholars that has really sort of pushed for enforceability of copyright laws and I do feel that we are in a very dire situation and, you know, we could be rearranging deck chairs, but, you know, there is serious concern about the viability of the ship.

And that goes to the issue of mash-ups. I have had an open mind about this. I learned about it through students through a younger generation and it's not from an era
that I necessarily related to, although I've come to appreciate and admire some of that work. But what I would say is that to creators who don't embrace that, first of all, they don't have control over it.

I mean it is happening. It's happening rampantly. I'm a messenger, I am not saying that this is necessarily the best and most optimal way to do it. But we now live in this post-digital revolution and we should at least be open and there may well be a compromise that would send signals because there is this whole new DJ culture.

And if you think that the law is going to solve this problem for you, I would suggest that you read the Second Circuit's opinion and the Carriou v. Prince case and apply that to music. There is, I think a relatively strong and increasingly strong argument that Courts will see all of this work as transformative.

And that will have very, I think
negative ramifications for many parts of the ecosystem. So, I see this as really an opportunity to create a more robust marketplace and the issue of, you know, I don't want to endorse people's comments, you know, their usage in ways that are offensive. We do have fair use. And in fact more offensive, might even be more defensible in your fair use.

So, I just think that, you know, this is a choice. I am not here as an advocate for anyone, I'm saying that there are potential gains from working out this issue because it is getting worked out, you know, whether we agree on it at all. Now, with regards to Steve's comments that, you know, that artists don't really see the problem as being the size of the market. Well, I think artists care about the size of the check.

And I think in a long term sense, that is really how copyright can promote careers and the kind of investments that we're
talking about. So to say that that isn't what
effects whether people join a service or not,
we've never tried the kind of mass marketing
that could be possible in a world in which
there was going to be true artist embrace.

It's true that a relatively small
number of artists have spoken out because I
don't think that's a good message to send your
fans or your label. But they're not embracing
it. They're not out there promoting these
services and I will say that they are going
indie. I mean there's been a dramatic change
in where new artists go and they're not going
to the old places. And the old labels aren't
able to give them the kind of contracts they
used to.

So, I do think that we are living
through a dramatic revolution and we ought to
recognize that we have not yet tried having a
concerted message that services could be the,
you know, streaming services. And that's why,
you know, I would say Gary has some great
ideas to think about because I do think that
there's a tremendous amount of money that is
not being brought in and we have opportunities
through thinking about these markets a little
differently.

So, one thing, so I am an
economist by training. I try to use that
knowledge. Many of the views expressed here
are a view of economics that does not relate
to the music industry but relate to other
industries. I've heard about hay, I've heard
about houses, I've heard about a lot of
products, but no one's talking about network
products and network economics. We live in a
world in which people don't want to be
thinking which 1,800 songs I have on my
device. They want to have everything available
in a seamless way and they can have it and the
question is can we meet them half way? Can we
come up with a licensing system that will
really work for those sorts of folks? The idea
that you would not have all the music you
wanted at your disposal is an affront because
the people in the market know that it's
possible. We have it, we can have it.

And so I would just say we can't
think about this type of good the same way we
think about physical objects or other types of
goods. There's a tremendous new economics
surrounding network industries and that's what
the music industry is really -- it's about
being able to get the ideal bundles and all of
the complexities that go along with that. So
simplification, transparency, all of the
things people are talking about are part of it
but don't use the metaphor of a house or hay
because that's not music.

MS. CHARLESWORTH: Okay, we're
running a little bit over again, but no, no,
no, it's okay, we're going to let you speak,
Mr. Marks, and as well as the others who put
up their placards.

I think and then we'll close it
up. Okay, yes, you want to deliver your
sentence?

MS. MUDDIMAN: Yes, I agree you can't make it similar to hay but how about you come and teach me for free because you're a professor. Can you come and teach me for free? I mean that's what I would love. I would love to have all your information for free and the fact is, you say that because people want music and they want all kinds of music they should have it and it's an affront not to have it. Well, I want all the things that you know for free. And I'm affronted that you charge people to get it.

MR. MENELL: Well, I don't think you really know how my business works, but aside from that, there's nothing that I said about free. In fact, I'm an advocate for creating a market that will be much more robust than any market we've known and I think Gary touched on this.

I mean the $14 billion is not that large a number when you think about the people
who are out there and who are enjoying this product. And I think it's a question of channeling them in in a way that they will accept. Once people get on the Spotify type services, they stick with it and we're starting to see some metrics that show us this. I think that there's a real potential to get more of those people in.

I think if you had all of the major recording artists going out in their concerts and in their other media and pushing people onto these services, people who pay $100.00 to see an individual show, I think we would see a much more robust marketplace. So, I never said free. I teach in a public university so that may arguably make some of it free, but I am not working in markets where I charge, you know, I work -- a lot of my work is free.

MS. CHARLESWORTH: Okay, one at a time. It's fine, you can respond. I just want to make sure for the Court Reporter, we need
to do it one at a time, but just --

MS. MUDDIMAN: No, I'm just saying

you're making out that people can make money

from other ways and that would be fine.

MR. MENELL: No, I want them to

make it for exactly the ways you want them to

make it because people are enjoying the

product and they are using the product. I'm

saying I don't want them to make it primarily

on advertising. I want them to make it

primarily because people have subscribed to

the service that they like and the songs that

ey they stream are accounted for and that the

amount that the artists get paid is

proportional to the number of people who

listen to those streams.

MS. LaPOLT: Can I jump in one

second then Steve can have the floor?

MS. CHARLESWORTH: I've lost

control, clearly. That's okay because we're --

yes, I find yes, and then, Steve.

MS. LaPOLT: All right, just three
things I want to respond to.

First of all, fair use as a
defense is not a privilege, you don't get it. Okay? Weird Al Yanokvich gets permission, all
right, so we have to remember that. And when
I was teaching years ago at the Musicians
Institute and I had this argument with one of
the teachers there that fair use, you just get
fair use.

And I was like what part of the
Copyright Act are you not getting? I actually
ran into Weird Al at the Billboard Music
Awards and I went up to him at the buffet
table and I said, Weird Al, we're having this
discussion in my class and I'd like to know,
you know, your position on fair use. And he
said, you know, I have six kids and I don't
have $200,000.00 to hire a lawyer so always
get permission. And you know, here's the
thing, I didn't say your credibility is
jeopardized because you're very credible and
I respect you greatly and I always have. I'm
saying the credibility of your position is compromised because on the one hand you want prominent recording artists who get the message out, I'm not going to lie, I mean when you bring Steven Tyler to Congress, people listen. They stop, you don't need an appointment, you just troll the halls of Congress and everybody stops and talks to him.

This is a very powerful message when you have the creative community that are spokes people for your platforms. But if you want the creative community to buy into some of your ideas which are good ideas like the all you can eat and the subscription service and these things, some of the things you talked about, I like some of these ideas. You know, you have to separate those two issues or not even talk about the one because any type of bastardization of their lyrics or music or compromise the integrity of what they're doing by changing or, you know, making into a derivative, you lose credibility on the
position. So and then the third thing I want
to say is it's not the DJ community and the
electronic music community, I represent a lot
of electronic music artists including
Deadmau5. And he's very against anybody
mashing up or remixing his music without
permission. And that's all I want to say,
thank you.

MS. CHARLESWORTH: Thank you, Ms.
LaPolt. All right, so that leaves to you, Mr.
Marks to bring this all to a stunning
conclusion. That's what -- our hopes are high.

MR. MARKS: I didn't really prepare
a stunning conclusion. I wanted to agree with
Peter on a couple of things. One is, I agree
completely that it would be fantastic if we
could get artists to essentially do some of
the marketing for these services so that
people became more aware of them. There's no
question about that.

I mean if consumers listen to
artists, they don't, you know, listen to
lawyers and others like those of us in the room, so that would be great. And there is a lot of education I think that needs to be done in the artist community so that they understand the benefits of those services because when I speak to my companies who speak to those artists and their representatives every day, they don't, as a general matter, recognize the benefits of those things. So I think there's some education to be done first.

And if we can do that and then get them out there, fantastic. Second, I also agree with I think the general message you were trying to deliver about consumers have spoken with regard to what they want and how they want it. And I take your point to be not that, you know, compulsory license is definitely the solution for this or for that. But we need to respond in some way to what consumers want lest we really are just rearranging the decks on a ship that's going down.
And I think we all do need to take that to heart because we can talk about, you know, I want final say over this or this or I want whatever, but we need to do it within the context of how consumers are demanding our product and what they have available to them and that requires, I think, thinking outside of the box a little bit from what our traditional, you know, perspectives have been.

My final comment was just to ask Gary, if the labels and the -- if the songwriting community and the musical work community, I'm sorry, sound recording musical work community because I want to make sure that, to Charlie's point, we include creators. And it's not just about publishers and labels, we're able to figure out what the right relationship or whatever it is, and I don't mean to express it as a ratio, just whatever that is themselves. Would you be okay with that occurring in the marketplace instead of constructing this very convoluted, complicate,
you know, process that's going to go on for years with people fighting over, you know, money that's in a pool that doesn't get released for ten years later?

In other words, it seems like if our community can come together and figure out what that, you know, how that pie should be carved up, you don't need to go through this, you know, a lot of the Phase I, Phase II kinds of things. So I was wondering whether if we were able to do that, instead of having, you know, a default be the government do it, you know, would you be okay with that?

MS. CHARLESWORTH: Okay, yes, you may respond Mr. Greenstein.

MR. MARKS: No, I thought you said I had the last word.

MS. CHARLESWORTH: Well, the problem is you asked a question.

MR. MARKS: It was rhetorical. It was rhetorical.

MR. GREENSTEIN: You always want
the last word, Steve. What I would say is that
if the creative community can come to that
agreement, which I think would be a wonderful
solution, that could be either codified in
legislation, which I suspect having
represented the record labels would not be
something that they would want because I think
that the labels over time might say, we
deserve more, publishers deserve less, that it
could be something that is presented --

MR. MARKS: We're the ones who
proposed to put it in legislation so just so
you --

MR. GREENSTEIN: I know. That it
would be something that could be submitted to
whatever tribunal or body would be evaluating
this and you would have a settlement and there
wouldn't need to be litigation.

MR. MARKS: But why have a body? In
other words, I'm saying if you put it in
legislation as the agreement, and our
agreement was here's what it'll be and we'll
revisit it every five years or, you know, whatever the thought is.

MR. GREENSTEIN: Well, then you have to -- so when it's revisited, what is the mechanism if the parties come to an impasse? I think I don't disagree that that would be a solution but in thinking ahead and having represented some of your member companies in the past, I think that you probably do want a mechanism or the Copyright Office, in evaluating this, would want the mechanism so you don't have to open up legislation.

Every time you open up legislation again, it becomes a potential for a Christmas tree for lots of other changes and if you're doing this type of model, the parties, if they have a settlement, bring it to the tribunal or have Congress say, this shall be in effect for the first ten years or the first five years, thereafter the parties shall submit a proposal and if they're not able to, it will be settled through this proceeding. And then the parties
can negotiate again and since you're under common ownership, it should be very simple and easy for a solution to be reached. Right?

MR. SANDERS: So noted.

MS. CHARLESWORTH: All right.

Well, I think that then concludes this panel. Thank you all very much for your thoughts over these last two days.

Is there anyone in the audience who is interested in making a comment for the public record?

I'm not seeing anyone which is okay. So that's fine. That means we all get to leave early. We're getting out of school early.

Thank you and we look forward to the next round in New York. Some of you may be there. Take care.

(Whereupon, the above-entitled matter went off the record at 3:52 p.m.)
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