

U.S. COPYRIGHT OFFICE

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MUSIC LICENSING STUDY PUBLIC ROUNDTABLE

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TUESDAY  
JUNE 17, 2014

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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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P-R-O-C-E-E-D-I-N-G-S

(9:12 a.m.)

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

1 a wide range of online service providers,  
2 whether they're interactive or non-interactive  
3 streaming services, user-generated content  
4 services, app developers, and many others.  
5 Prior to joining Wilson Sonsini, I was the  
6 first General Counsel of SoundExchange and  
7 also a Vice President of Business and Legal  
8 Affairs for Recording Industry Association of  
9 America.

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

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

1 copyright data, as well as the downloader's  
2 data.

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

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

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

20 MR. SCHYMAN: I'm Garry Schyman.  
21 I'm a composer. I've been a composer all my  
22 life. I've written music for films,

1 television. I've written songs that have  
2 actually had some success. I'm not a  
3 songwriter primarily, though. And a lot of  
4 video game music. I'm also chair of the Music  
5 Rights Committee of the Society of Composers  
6 and Lyricists.

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

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

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

22 MR. LORD: I'm Dennis Lord,

1 Executive Vice President of SESAC.

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

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

18 MR. COHAN: I'm Tim Cohan. I'm the  
19 head of Legal and Business Affairs for  
20 PeerMusic, a large independent music  
21 publishing company. I handle all of the U.S.  
22 transactional matters and also oversee and

1 coordinate the international digital  
2 licensing.

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

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

10 So the first panel addresses the  
11 public performance right in musical works. And  
12 as I'm sure perhaps everyone in this room is  
13 aware, there have been some recent  
14 developments in the PRO world. We have seen a  
15 couple of decisions from federal courts ruling  
16 or holding that major music publishers who  
17 wish to withdraw partial rights, meaning in  
18 this case digital rights, from their  
19 representation by the PROs, were not permitted  
20 to do that under the consent decrees, which I  
21 think has raised some questions about what the  
22 future might look like for ASCAP, BMI, and of

1 course we have one significant additional PRO,  
2 SESAC, that is not under a consent decree. And  
3 so the Copyright Office is very interested in  
4 hearing from the various parts and sectors of  
5 the music industry about, you know, what --  
6 let's assume that the major music publishers  
7 chose to withdraw entirely from the PROs,  
8 which is something that some people feel could  
9 happen.

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

21 MR. SCHYMAN: Yeah, I do, I have  
22 thoughts on it from the perspective of the

1 work-for-hire composer who, assuming A/V  
2 works, would also be potentially withdrawn  
3 from performing rights societies or PROs. The  
4 concern that we have is that if we don't  
5 collect through a performing rights society  
6 that we will cease to have any control over  
7 our income stream. We don't own the music. We  
8 only receive the writer's share, and that's  
9 contractual.

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

20           And then only one of those rights  
21 that they are then negotiating with would be  
22 the writer's share, which they wouldn't

1 obviously be receiving. They might decide  
2 instead of it being 25 percent of that bundle,  
3 it might only be .1 percent, and then give us  
4 half of .1 percent. Meanwhile, they are -- you  
5 know, and this is in the worst-case scenario  
6 obviously, under some -- there are some  
7 reputable publishers, but it would be very  
8 opaque, it would be very difficult for the  
9 composer to know what they are entitled to.  
10 They would be receiving money from various  
11 entities. So we really are concerned that if  
12 audio-visual works are withdrawn, that we will  
13 be highly disadvantaged, and we would like to  
14 -- we have made some proposals, actually, that  
15 I don't know if they're possible,  
16 but that if copyright law changes that some  
17 protection for the work-for-hire composer be  
18 included in any changes. And the one  
19 suggestion I made, which I don't know how  
20 practical it is, is that a new right be given  
21 to composers, the right to decide who  
22 collects our share of the performing right, or

1     some mechanism for us to choose, okay, we only  
2     want ASCAP, BMI, SESAC to collect for us, and  
3     we really don't trust a publisher who is not  
4     in a position to tell us what we are entitled  
5     to. I can't see them building, you know, the  
6     infrastructure to provide, you know, the  
7     clarity that we get from our performing rights  
8     organization. So we are very concerned about  
9     that.

10                   MS. CHARLESWORTH: Okay. And just  
11     to follow up on something you said, I mean, so  
12     you are -- you are suggesting that if  
13     withdrawals become a reality, or are  
14     permitted, or publishers take that road, that  
15     you would like to see copyright law somehow  
16     carve out the writer's share and preserve  
17     payment through a PRO-type structure, is that  
18     --

19                   MR. SCHYMAN: Well, permit the  
20     composer to decide, because I -- I do think if  
21     a publisher wanted -- came to a composer and  
22     said, "You know, we'll offer you 10 times the

1 money you could get at a PRO for 10 years.  
2 Would you go along with that?" You know, I  
3 mean, I think that some composers would, and  
4 that's a reasonable offer. But at least we  
5 would be in a negotiating position, if we have  
6 no say over it. So I would like the  
7 opportunity to -- to just determine who  
8 collects my performing rights. If that's  
9 impossible, then I think then we'd be in a  
10 better position if we could just keep our  
11 performing rights in a PRO.

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

19 MR. SCHYMAN: Right.

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

22 MR. SCHYMAN: Exactly. Because

1 otherwise I don't know how you'd protect the  
2 -- protect us.

3 MS. CHARLESWORTH: Okay. Thank  
4 you.

5 Mr. Rys?

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

19 There is efficiencies there that  
20 are just fantastic, but the publishers and  
21 songwriters are sort of being backed into a  
22 corner with the consent decrees. We are

1 essentially being forced to freely consider  
2 pulling out entirely, and it's not something  
3 that I would want to do, you know, but if --  
4 if the PROs can't negotiate, you know, fair  
5 rates for new media performances, it's  
6 something that we really have to consider.  
7 Public performances are our biggest income  
8 part of the -- you know, compared to  
9 mechanicals, compared to sync, public  
10 performance is the biggest.

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

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

22 MS. CHARLESWORTH: Okay. Thank

1       you.

2                       Mr. Hauth.

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

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

1 impossible.

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

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

17 So, and I'm not sure whether  
18 Universal has thought that through, but I'm  
19 sure that they would develop their own  
20 collective in some way. And then we have  
21 another problem, another collective that is  
22 not under a consent decree. So it would be --

1 it would create havoc for the radio industry,  
2 and I suggest that it would probably create  
3 havoc for the television industry and most of  
4 the services.

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

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

16 First of all, the RMLC, which is  
17 the largest music licensing committee, have  
18 that as a chip on the table in their  
19 negotiation with ASCAP and BMI, but they chose  
20 to trade it off for a better VOYKA license  
21 rate, which was a small thing to do. The  
22 NRBMLC, which I direct, is in negotiation

1 right now with ASCAP and BMI, and that is not  
2 on the table because it's -- it's very  
3 expensive to direct license.

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

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

22 MR. HAUTH: Yeah, that is. First of

1 all, if you direct license, you need to have  
2 a back end, which no broadcaster could afford.  
3 A back end would be like engaging MRI to  
4 identify the direct license music and remove  
5 that from your ASCAP reports. And that's very  
6 expensive to do, and there's not -- not a  
7 convenient model. And I suppose the radio  
8 industry would very quickly work towards one.  
9 There's not a convenient model right now to  
10 extract those songs from your playlist and  
11 identify them to ASCAP as direct license.

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

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

1 those rates with ASCAP.

2           Secondly, I would like to make  
3 sure that we have the information right here  
4 from Mr. Isrealite, who said that 52 percent  
5 of the income from -- or for publishers is  
6 from PRO income. So it's 52 percent, up from  
7 32 percent in 2012, so that's a, you know,  
8 huge increase over the last couple of years,  
9 showing the -- you know, the expanding  
10 importance of this source of income in the  
11 industry.

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

14           Mr. Cohan.

15           MR. COHAN: Thanks. I'd like to say  
16 that from the perspective of an independent  
17 publisher we would agree with -- there seems  
18 to be consensus that there would be universal  
19 havoc -- I think that's an apt term -- if  
20 total withdrawals were to happen. But even if  
21 the market were able to absorb that and  
22 somehow adapt, I think on a practical level we

1 would be concerned with the administrative  
2 costs that remained at ASCAP and the PROs and  
3 how much the publishers that remained would  
4 have to bear that, and what that would look  
5 like to the kinds of collections we would see  
6 in that case.

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

20 So, you know, I guess we'd have to  
21 survey contract by contract how to do that  
22 going all the way back, and that -- you know,

1 I guess we could do that. But on the positive  
2 side, I would say that transaction attorneys  
3 on the other side representing songwriters are  
4 aware of this issue now, and it's starting to  
5 be part of the discussion. So there is some  
6 negotiations and discussions as to what might  
7 happen, how we might handle it. So perhaps  
8 that might be a way forward.

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

13 MR. COHAN: Right. Right.

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

19 MR. COHAN: Sure. The PROs, they  
20 are -- I don't -- they can speak probably more  
21 directly to this, but I think that PROs, they  
22 are not going to see a corresponding decrease

1 in overhead and administrative costs, not  
2 sufficient to cover the losses of revenues  
3 that they are going to see. And someone is  
4 going to have to bear that burden if they are  
5 going to continue to operate and if we are  
6 going to continue to get the benefits of the  
7 collective licensing, the independent  
8 publishers that remain.

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

17 MR. COHAN: We do, definitely. I  
18 mean, we have experience in particular in  
19 Europe with -- where our European branches  
20 were faced with this issue and the choice of  
21 taking their digital rights and consolidating  
22 them, and that has worked quite well in

1 Europe, I would say to date. And I believe  
2 that we at PeerMusic have the structure now to  
3 handle that if we were to do that in the  
4 United States as well, too, to administer  
5 those digital rights separately.

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

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

10 MR. LORD: Sure.

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

13 MR. LORD: Well, first, at the risk  
14 of speaking on behalf of the music publishers  
15 -- and I'm not a music publisher -- but, you  
16 know, when the -- Judge Cote turned the  
17 industry on its ear in a very unfortunate way.  
18 Section 106 of the copyright law is a bundle  
19 of rights. And just like a bundle -- if I am  
20 a farmer and I've got a bundle of hay, and I  
21 want to give half of it to Shawn, and sell a  
22 quarter of it to Mr. Rys, I can do whatever I

1 want with my bundle of hay or my bundle of  
2 shirts or my five cars in my driveway, which  
3 I don't have.

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

16 Whether or not they want to  
17 withdraw on a partial basis or a full basis is  
18 up to them, but they need to be allowed to  
19 withdraw their separate rights and do what  
20 they want with them. Second of all, I'm not so  
21 -- and, remember, we come from a slightly  
22 different perspective than ASCAP and BMI. We

1 are not part -- we don't have a consent  
2 decree, so we're a little bit more unhindered  
3 I guess.

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

13 So, fine, direct license. If  
14 Universal or Sony wants to direct license  
15 their catalog to television, let them do it,  
16 you know. Why not? Let the broadcasters get --  
17 you know, maybe they can negotiate 10, 12, 15  
18 deals, instead of four or three, you know?  
19 Again, it's up to the publishers if they want  
20 to do it. And we are -- you know, if we lose,  
21 we lose. If SESAC loses, we lose. What else  
22 did I have? I think that's it.

1 MS. CHARLESWORTH: We can come back  
2 to you if you have another thought.

3 MR. LORD: That's fine. Okay.

4 MS. CHARLESWORTH: Mr. Irwin.

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

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

21 And that, in turn, means that a  
22 lot of monies are withheld in Europe for A/V

1 composers and possibly other composers as  
2 well, other songwriters. I'm not sure, but I  
3 just know what the A/V world because they have  
4 things in both France and SACEM -- sorry,  
5 SACEM in France and then GAMA in Germany  
6 called Broadcast Mechanicals, which I will let  
7 Mr. Schyman, who is an expert in this area,  
8 talk about in a moment.

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

21           So I don't know if anybody has  
22 considered what the foreign societies will do

1 if the publishers pull out here that are  
2 representing, once again, a reciprocity thing.  
3 I think it just all becomes unraveled. I don't  
4 think it can work. And that's about it for the  
5 moment.

6 MS. CHARLESWORTH: Thank you. Now,  
7 in terms of the reciprocity and the money,  
8 that would stop flowing as I understand it, or  
9 --

10 MR. IRWIN: Well, it's not so much  
11 that it will stop flowing; that it's just --  
12 at the moment, it's sort of held up because  
13 there are different -- as we touched on  
14 yesterday, work-for-hire is an American  
15 concept to begin with, so, you know, in the  
16 other countries the creators maintain the  
17 underlying copyright in their work, and the  
18 production company or the entity that  
19 contracts them to compose the music owns the  
20 master recording for the purpose of whatever  
21 it is, to synchronize it with their film or  
22 their television show, whatever. And they own

1 that, and it's, you know, a license in  
2 perpetuity as opposed to the entity becoming  
3 the author.

4 MS. CHARLESWORTH: Okay. Thank you  
5 very much.

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

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

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

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

22 We have multiple direct licenses

1 for performance rights with multiple  
2 licensees, many of whom are in the digital  
3 space, and some of whom are in the room today.  
4 It's working just fine. We are experts in data  
5 management, so we know how to match. We are  
6 experts in publishing administration and  
7 copyright administration, so we know how to  
8 handle these rights.

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

18           We could withdraw tomorrow, and it  
19 would be seamless. The landscape would not  
20 change that much. You're talking about  
21 introducing maybe a few additional players to  
22 the licensing process, Universal being one of

1       them. The societies don't go away. The  
2       societies continue to exist for those writers  
3       and publishers who don't have the resources  
4       that we're fortunate enough to have to create  
5       infrastructures to deal with licensing and  
6       data management, but there are several  
7       solutions, they are all workable, and they  
8       don't impact the industry or the writer  
9       community negatively.

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

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

1 you incorrectly on that?

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

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

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

21 MS. CHARLESWORTH: Okay.

22 MR. KOKAKIS: Okay. Publishers,

1 some of whom include Universal, have done  
2 extensive review of our writer agreements, so  
3 we know what rights we have and what we don't  
4 have and what we can do and what we can't do.  
5 Remember, we already have the right to issue  
6 direct performance licenses under current  
7 copyright law. It's a non-exclusive grant to  
8 the societies. So we are able to, and have, as  
9 I mentioned, already issued multiple direct  
10 performance licenses on a blanket basis to  
11 several licensees.

12 So this is already happening in  
13 practice. I'll mention a few scenarios for  
14 protecting the interests of the writers and  
15 minimizing the cost of withdrawal to the  
16 societies, and ultimately I imagine that would  
17 trickle down to the remaining publisher and  
18 writer members of those societies, which is a  
19 concern that everybody seems to have here. We  
20 already have in place administration  
21 agreements with the societies for those deals  
22 that we have done directly with services.

1                   So essentially it works like this  
2                   -- we issue direct performance licenses on a  
3                   blanket basis to a service, and then for the  
4                   administration of those rights, not the  
5                   negotiating, not the licensing or papering of  
6                   those deals, but the administration of those  
7                   rights collection rights, goes back to the  
8                   societies. They charge us a fee for that. I  
9                   can't disclose the amount, but I can tell you  
10                  it's fair. So there is no impact to the  
11                  societies in that regard as far as cost is  
12                  concerned, nor as far as increased cost to the  
13                  remaining members or the members whose rights  
14                  we did not license. We believe we are able to  
15                  extract greater value from the services that  
16                  we have licensed directly.

17                  So, at the end of the day, our  
18                  writers are receiving essentially a win-win,  
19                  because we are able to get higher rates than  
20                  we otherwise would under a consent decree. And  
21                  there is a cost savings to our writers,  
22                  because we are charged a lower administration

1 fee than what the effective administration fee  
2 would otherwise be if it were licensed through  
3 the societies. Benefit on two fronts.  
4 Publishers, from what I understand, Universal  
5 included, intend to flow-through the writer's  
6 share of that performance revenue to the  
7 writers because we have a contractual  
8 commitment to do so.

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

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

22 And as I said, we have existing

1 deals, and we have not done that, nor would  
2 we. So the data management problem, which  
3 Russell had mentioned, and the chaotic  
4 marketplace, which others had mentioned, don't  
5 exist today. They wouldn't exist tomorrow. The  
6 societies could admin on our behalf. Absent  
7 the societies doing so, we have the systems to  
8 do that ourselves. We already manage rights.  
9 We already account to thousands and thousands  
10 of writers. We are in the business of managing  
11 copyrights. Adding performance into the mix is  
12 not that difficult.

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

20           MS. CHARLESWORTH: Okay. And one  
21 more followup question. We have heard a lot of  
22 commentary, and you weren't -- I don't think

1 you were here yesterday, but there is -- a lot  
2 of people have raised the issue of  
3 transparency of what is being withdrawn, and  
4 it came up, obviously, in the Pandora case.  
5 Can you explain how that concern would be  
6 addressed?

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

17 Now, the aggregation of this data  
18 is a different story. We are in favor of the  
19 dissemination of information to anyone who  
20 wants it. We give data feeds to multiple  
21 digital companies. We give data feeds to HFA.  
22 We give data feeds to MRI, Crunch Digital,

1 foreign societies. Our data is out there. My  
2 understanding is that most publishers operate  
3 this way. The free exchange of information I  
4 think is good for everyone, and I've heard  
5 concerns about identifying who owns what.

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

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

21 We would be happy to provide  
22 detailed data feeds for anyone, really, to

1 maintain a database, a comprehensive database,  
2 so there's full transparency. I think it's a  
3 good thing. We support it. And we are already  
4 in the practice of doing this. I want to  
5 mention, if I may, the implication for foreign  
6 rights, because my colleague had mentioned  
7 this. There are reciprocal licensing  
8 arrangements among U.S. societies and foreign  
9 societies. We don't currently intend to  
10 disrupt that model. Your rights, you had  
11 mentioned, are through APRA. APRA has a  
12 reciprocal licensing arrangement with the  
13 societies here, and the societies would  
14 continue to collect on your behalf, because  
15 APRA has granted them, on your behalf, the  
16 right to do so.

17           So for the exploitation of foreign  
18 works in the United States, that would  
19 continue to run through the societies. If the  
20 foreign societies wished to grant us the right  
21 to collect on behalf of our writers who were  
22 APRA members, for instance, we would be happy

1 to do so. It's not something that we control,  
2 however. It's a right that you have and that  
3 the foreign societies maintain.

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

13 MR. KOKAKIS: I can only tell you  
14 how we prefer that it work. We would like to  
15 control the portion of copyright that we own,  
16 so we can issue a direct license. And the  
17 remaining interest by a co-publisher who  
18 remained in the society would license through  
19 the society. That's happening today. We have  
20 deals that we can point to that work that way.  
21 So we're not talking about all publishers  
22 withdrawing. We are talking about perhaps a

1 few that have, again, the resources and the  
2 desire to do so, to withdraw. The societies  
3 will continue to exist for the tens of  
4 thousands of other publishers and writers who  
5 wish to remain.

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

11 Keep in mind that for all of the  
12 types of rights we have multiple licensors.  
13 You're talking about synchronization  
14 licensing, mechanical licensing, whatever the  
15 case. So services and licensees are already  
16 accustomed to licensing from dozens and dozens  
17 of different parties to get the type of  
18 aggregation they need to operate a service or  
19 to use music in whatever media they are  
20 looking to exploit it in. We are not talking  
21 about things changing a whole lot, and I think  
22 that's perhaps what I would like to leave the

1 room with today, which is the doomsday  
2 scenario that is being talked about is not the  
3 way we envision it playing out.

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

7 MR. KOKAKIS: Sure.

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

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

13 MR. WATKINS: Okay. Thank you.

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

16 MR. WATKINS: I wanted to speak to  
17 the -- both the availability of the adjustable  
18 fee blanket license from the societies and the  
19 feasibility of the administration of  
20 adjustable fee blanket licenses. So, first, as  
21 to the availability of the license, meaning --  
22 and with an adjustable fee blanket license,

1 just for the benefit of anyone who is not  
2 familiar with it, this is a blanket license  
3 which offers the user the protection of the  
4 full blanket, with the ability to adjust the  
5 fees downward or, you know, upward, depending  
6 on the basis of your terms for the music that  
7 you have directly licensed in a direct  
8 transaction.

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

16           So I think as a matter of decree  
17 interpretation you can safely assume that it's  
18 available from both sides. I disagree with  
19 Dennis that SESAC has heretofore, at least in  
20 the case of the television industry, offered  
21 a viable alternative to the blanket license;  
22 that is, essentially the allegation of the

1 television industry in the antitrust  
2 litigation that is pending currently there.  
3 So, but where the AFBL is available, users can  
4 of course negotiate it away.

5           And in the wake of the Pandora  
6 decision, it is our understanding that the  
7 societies have been approaching the major user  
8 groups, and essentially offering them  
9 incentives to agree to full blankets, which  
10 are not adjustable, using the specter of  
11 withdrawal as an additional incentive to get  
12 the user groups to do that. In addition, from  
13 our understanding, the societies have been  
14 offering to provide a full blanket license to  
15 the user groups, then to indemnify them in the  
16 case of withdrawing catalog. So the Office  
17 should consider for itself where that money to  
18 indemnify user groups comes from. So, you  
19 know, I think the AFBL is clearly available to  
20 any user group. I think given the landscape  
21 any user group would be wise to take advantage  
22 of it when that opportunity presents itself.

1                   And as to the feasibility of the  
2                   administration, I disagree that it's not  
3                   feasible. Our company has demonstrated that  
4                   it's entirely feasible in the case of the  
5                   television industry where there is a very  
6                   mature direct licensing process. It is highly  
7                   automated with ASCAP and BMI. It certainly is  
8                   the case that there is a cost to that  
9                   activity, but I don't think anyone in the  
10                  television industry would say that that cost  
11                  has not been worth it, because what it has  
12                  allowed the television industry to do with  
13                  respect to the music publishers with whom it  
14                  directly negotiates licenses is to introduce  
15                  a level of competition into the pricing of the  
16                  rights that they need, which is something that  
17                  is not really present in the blanket licensing  
18                  context.

19                         So, you know, we are ready,  
20                         willing, and able to administer adjustable fee  
21                         blanket licenses and direct licenses. Our  
22                         experience in that area has been what has

1 enabled us to develop the databases that we  
2 rely on to administer direct licenses in other  
3 contexts. This has been the -- essentially the  
4 thing that has allowed us to administer the  
5 Section 115 license in the way in which we do,  
6 and I think it's very important to remember  
7 that users increasingly need both reproduction  
8 and performing rights, and the only way that  
9 they are going to be able to get that is to  
10 get it directly from the publisher.

11           You know, the last thing that I  
12 would say about the administration is that  
13 when user groups are on our platform for the  
14 direct license administration and the blanket  
15 license administration, it becomes possible  
16 not only to directly license potentially on  
17 lower terms, but where a publisher is offering  
18 terms that a user considers supra competitive,  
19 it becomes possible to avoid those catalogs.  
20 And so, really, the existence of the AFBL is  
21 what provides for and enables a really  
22 competitive marketplace for music rights, and

1 we just think it's very important and it's  
2 absolutely feasible.

3 MS. CHARLESWORTH: Thank you, Mr.  
4 Watkins.

5 Ms. LaPolt.

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

1 these things.

2 (Laughter)

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

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

21 You know, it's really, really,  
22 really sad. And I love what you said, Mr.

1 Lord, about the property right of copyright,  
2 because that is exactly the issue that we are  
3 facing. And when we are talking to a lot of  
4 Congress members, and we are talking to the  
5 digital service providers, some people don't  
6 believe that copyright is a property right.  
7 They believe it's an economic interest, and  
8 it's there for picking for everybody. Once  
9 it's created, it is there and you can just go  
10 and pick at it.

11 And that's a terrible way to  
12 think. And if we are going to be involved in  
13 helping to reshape the Copyright Act, which is  
14 highly antiquated, consent decrees that were  
15 developed in 1941, and, you know, amended in  
16 1966, this is crazy. And if we don't come up  
17 with ways to fix this, we all lose.

18 Having Universal Music Group  
19 withdraw 100 percent of its rights from BMI  
20 and ASCAP is not a solution. It helps my  
21 clients, so I'm grateful for that. But it  
22 harms our business. And the issue with

1 copyright being a property right, I think that  
2 we really have to educate people and pass this  
3 message on, because it's almost like buying a  
4 house. I tell my students at UCLA, I said, you  
5 know, if I owned a house, and you wanted to  
6 come and take a leak in my bathroom and I said  
7 no, that's my prerogative. However, if I want  
8 to rent you a room in my house for a certain  
9 amount of money, that's also my prerogative,  
10 or I can evict you. That's my prerogative,  
11 whether I have a reason or not, depending what  
12 our lease says. It's the same thing with  
13 copyright, and I think that the Songwriter  
14 Equity Act is a good step in the right  
15 direction for these types of things.

16           And I think that, you know, when  
17 we -- you know, the broadcasters -- Mr. Hauth  
18 complains that it is going to be complete  
19 pandemonium and it's going to be disastrous,  
20 and it's not, it's going to be exactly what  
21 David Kokakis said it's going to be --  
22 seamless. Seamless. And, you know, I'll look

1 at my royalty statements, and my clients all  
2 see that their performance rights income will  
3 have gone up, and my clients will be happy and  
4 I will be happy, but that's not the solution  
5 -- to run ASCAP and BMI out of business  
6 because of these antiquated laws. So thank  
7 you.

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

14 MS. LaPOLT: Correct.

15 MS. CHARLESWORTH: Okay.

16 MS. LaPOLT: Correct.

17 MS. CHARLESWORTH: And how --

18 MS. LaPOLT: We can't do --

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

21 MS. LaPOLT: I would like the  
22 abolition of the consent decrees 100 percent.

1 I think the entire business should operate in  
2 a free market, and a good example of a free  
3 market is synchronization licenses, because  
4 that has always been in a free market and it's  
5 a very healthy form of income. And you know  
6 what? If my clients want to say no, they say  
7 no, and people complain. I've been on the  
8 other end of that as well. I represented the  
9 Tupac Shakur estate for over a decade, and we  
10 would always get told no on certain things,  
11 and I had to live with that. I don't like  
12 being told no. Okay?

13 But when you are dealing in  
14 copyright, sometimes you're told no and  
15 sometimes you're told yes and you deal with  
16 it. Just like dealing in real estate, you deal  
17 with it, you know, and my position is is that  
18 I -- the consent decrees need to go. It's an  
19 antiquated business model that no longer  
20 works. We should operate in a free market. But  
21 as a Plan B, if that doesn't happen, then I  
22 support 100 percent what Mr. Kokakis has

1 described because it's going to help protect  
2 my clients, and that is a sad alternative.

3 MS. CHARLESWORTH: Thank you very  
4 much.

5 Mr. Greenstein, can you follow  
6 that?

7 (Laughter)

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

10 (Laughter)

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

1 of different copyright owners and supporters  
2 for lots of different business models.

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

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

22 I'm not sure if the issue is so

1 much that there are consent decree -- that the  
2 consent decree is the problem as to the amount  
3 of money that one arm of a commonly owned  
4 company is getting for the use of a sound  
5 recording, and that one arm of a commonly  
6 owned company is getting for the use of a  
7 musical work. And the three biggest record  
8 labels are affiliated with three of the  
9 biggest music publishers. And, again, if you  
10 go back to the comments yesterday, the  
11 internal scene battles among copyright owners  
12 are causing great harm and detriment to  
13 services because the copyright owners can't  
14 figure out the appropriate split.

15           And if monies are going to be paid  
16 to SoundExchange by a company, and it's going  
17 to range from 46 percent under a pure play  
18 non-precedential deal to 80, 90, or north of  
19 100 percent, and publishers feel that they're  
20 not get enough because they're at four  
21 percent, I'm not sure the issue is with the  
22 rate court or what the service is paying.

1                   Again, if you think about this,  
2                   what is the value of music? I think the  
3                   Copyright Office has to be very careful about  
4                   attacking or recommending a particular change  
5                   just to the consent decree because it may not  
6                   fix what is going to the sound recording  
7                   copyright owner, or just the mechanical  
8                   royalty versus reproduction, because it is a  
9                   very large tapestry, and you start pulling  
10                  apart one strand and I think there the law of  
11                  unintended consequences, that may have  
12                  significant ramifications.

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

19                  On the consent decrees, let's  
20                  remember what the consent decrees provide.  
21                  Under the Sherman Act, the antitrust laws of  
22                  the United States, competitors coming together

1 to fix prices for the sale of a good is a per  
2 se violation of the antitrust laws. The PROs  
3 allow publishers to come together, whether  
4 they're unaffiliated -- and by "unaffiliated"  
5 I mean they don't share a common ownership of  
6 work, or if they're affiliated because they've  
7 got overlapping ownership. But what you have  
8 is competitors coming together through a  
9 common agent, fixing prices, and that is a per  
10 se violation. The courts have held -- and the  
11 consent decrees were entered into -- because  
12 of the approval that there were competitive  
13 benefits from a blanket license.

14 And those competitive benefits,  
15 with oversight by a court to prevent certain  
16 behavior -- and I'll get into that in a minute  
17 -- was checked by the consent decree. If you  
18 do away with the consent decree, as some  
19 people are calling for, I think you have to  
20 consider whether or not the PROs can exist at  
21 all in light of the potential for antitrust  
22 violations.

1                   MS. CHARLESWORTH: I just want to  
2 interrupt. I know you have more to say, but  
3 you're going to be dealing with market actors  
4 who are probably going to have a larger market  
5 share than the remaining market share in the  
6 PROs potentially.

7                   MR. GREENSTEIN: And I believe that  
8 is a significant problem, because the recent  
9 acquisition -- so EMI, when it was split in  
10 two, so you had the record label go to  
11 Universal Music Group, and the publisher go to  
12 Sony/ATV, I think that is of significant  
13 concern, and the government probably got that  
14 wrong. And I think the hold-up value that now  
15 exists in some of these entities that have  
16 very significant market share, some of which  
17 is through administration agreements as well,  
18 I think that is stuff that the Department of  
19 Justice should be considering and looking at.  
20 Maybe not a copyright issue, but from a  
21 competition standpoint, something that needs  
22 to be taken into account.

1                   Now, on the AFBL -- and this may  
2                   not be in order -- I agree with Les that the  
3                   adjustable flexible blanket license is very  
4                   critical. There are many companies that  
5                   operate user-generated content websites, where  
6                   independent artists who are both the recording  
7                   artist and the songwriter, will upload their  
8                   content to a website for many different  
9                   purposes. And those people agree to a terms of  
10                  use that may include the granting of public  
11                  performance rights to an online service  
12                  provider. Any adjustments in the copyright law  
13                  I believe has to ensure that a service does  
14                  not double pay for taking out a blanket  
15                  license and then paying a second time for  
16                  content that has already been direct license.

17                  So I think on behalf of the OSP  
18                  community, preserving the adjustable flexible  
19                  blanket license is critical. In terms of  
20                  havoc, there has been disagreement as to  
21                  whether or not havoc would arise by doing away  
22                  with the consent decrees. My personal view

1 from having represented literally hundreds of  
2 different digital media companies at this  
3 point is that havoc would ensue, and that's  
4 for several reasons. I think that there is  
5 evidence that the publishers that are looking  
6 to withdraw, or attempting to withdraw from  
7 the PROs last year, were principally targeting  
8 one company.

9           And they were looking to withdraw,  
10 do a direct license with Pandora, and then  
11 were immediately looking to go back in. There  
12 was very little, if any, desire to license the  
13 unwashed masses of services, and certainly I  
14 think not a desire to license every bar,  
15 restaurant, doctor's office, hotel, physical  
16 establishment, et cetera. And that -- you then  
17 start to look at that issue, and you have this  
18 question from an economic standpoint, what  
19 happens if a publisher withdraws? Could  
20 Universal -- and I don't know if Universal is  
21 30 percent or 25 percent of \$2 billion, let's  
22 say, in publisher royalties, could they make

1 up that same amount of money they get from the  
2 PROs by just going to the top 20 entities that  
3 pay to the PROs?

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

18 I think that my experience in  
19 representing companies at the end of last year  
20 and trying to get licenses, the publishers who  
21 were withdrawing did not want to talk to you  
22 unless you were prepared to write a very

1 significant check. And I think you have to  
2 look at that. Actions speak louder than words,  
3 and I don't mean to impugn Mr. Kokakis at all.  
4 I've spoken with him a handful of times, and  
5 I don't question what he has said here today.

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

1 a copyright infringer?

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

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

1 and BMI.

2 So they're getting the benefits  
3 and efficiencies of collective action without  
4 the burden that the court and the Justice  
5 Department imposed upon them for that  
6 collective action. So I think it's really  
7 improper to allow an entity to have those  
8 benefits of ASCAP and BMI as an administrator,  
9 if you're not all-in for the purposes of what  
10 that consent decree is supposed to provide.

11 MS. CHARLESWORTH: Okay. If you  
12 can wrap it up, we're at the official stopping  
13 point. This is an extremely important topic.  
14 We're going to run a few minutes over.

15 MR. GREENSTEIN: I'll stop there.

16 MS. CHARLESWORTH: But I want to -  
17 - there are a lot of cards up around the  
18 table, and I do want to give everyone who has  
19 a card up an opportunity. So --

20 MR. GREENSTEIN: I'll stop. Yes.

21 MS. CHARLESWORTH: Okay. So I'm  
22 going to just go around the room in this

1 order. If you could try to limit yourself to  
2 maybe two to three minutes, I think it would  
3 be helpful because I do want to -- we are  
4 going to run over, but I don't want to run too  
5 far behind in our schedule. Mr. Anthony.

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

16 And I just wanted to point out the  
17 fact that for us it's a free market, and it  
18 works really well. Sometimes, like obviously  
19 YouTube is a large client of ours, we don't  
20 license performance to YouTube. The PROs have  
21 it handled. But for some of the smaller  
22 clients, especially social video apps or

1 smaller social video networks or UGC networks,  
2 we direct license performance rights either  
3 because of data issues, perhaps they only  
4 license music just from us, but there is a  
5 balance and it works out quite well.

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

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

17 MR. ANTHONY: Back to the content  
18 providers?

19 MS. CHARLESWORTH: Yes.

20 MR. ANTHONY: We pay quarterly. I  
21 mean, we just collect the royalties just like  
22 in the microlicensing royalties.

1 MS. CHARLESWORTH: Okay.

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

6 MS. CHARLESWORTH: Okay. Thank  
7 you.

8 Mr. Hauth.

9 MR. HAUTH: Thank you. I want to  
10 make two comments. One is to add to what Mr.  
11 Watkins said about the availability of -- and  
12 desirability of AFBLs. He said in his comments  
13 that groups negotiate licenses, and this is  
14 true. There is no way -- very seldom do you  
15 see an individual going to ASCAP or any of the  
16 PROs to negotiate a license. It so happens  
17 that right now the radio industry is in the  
18 middle of licenses, and those licenses --  
19 well, I'll speak for myself. Our licenses that  
20 we achieve with ASCAP and BMI for our group  
21 will be retroactive to 1/1/14 and last for  
22 five years. So that has no AFBL component in

1 it, and neither does the other radio committee  
2 have an AFBL component in it. So I would like  
3 to hear -- and then, following up on what Les  
4 said, when our licenses -- the term is over,  
5 then we can try to put an AFBL in there, and  
6 as a group go to MRI and get the work done.

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

18 MR. LEMONE: Okay. My  
19 understanding is that all of the works that  
20 are included in the licenses in effect are  
21 covered by the ASCAP license. So, and this is  
22 not my area of expertise. I work on the

1 membership area and not the licensing area.  
2 But I know that we are in talks with the radio  
3 industry about a new blanket license, and my  
4 understanding is that any works that are  
5 included in that would last for the length of  
6 the term. Is that an answer?

7 MR. HAUTH: Yeah.

8 MR. LEMONE: Okay.

9 MR. HAUTH: Yeah, it is. But beyond  
10 that, when we negotiate again, my sense is  
11 that ASCAP and BMI have fought tooth and nail  
12 against AFBLs, and that might be demonstrated  
13 in both the DMX proceedings as well as the  
14 negotiation with the RMLC. I think that that  
15 is what kept you guys from going into rate  
16 court. I think they removed the chip they had,  
17 a very considerable chip, within AFBL on the  
18 table, in favor of a better blanket license,  
19 and that kept you guys out of the rate court.  
20 And I think you have demonstrated that you  
21 will do about everything you can to avoid AFBL  
22 licenses.

1                   MR. LEMONE: Well, I think that if  
2 we reach a business decision where we realize  
3 that there's a value in getting the license  
4 that's available, that that's what ASCAP will  
5 do to always maximize the amount of licensing  
6 revenue that we can get on behalf of our ASCAP  
7 members. Again, I don't work on the licensing  
8 area, but I know that the strategy is to  
9 secure the long-term health of copyright  
10 royalties.

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

18                   And, again, I don't know if that  
19 competently answers the details of what you  
20 are looking for, but we're open to any kind of  
21 licenses that our members are interested in.  
22 I mean, obviously, under the current consent

1 decree any member can withdraw, or any member  
2 can directly license. And so if they see that  
3 ASCAP is not issuing the kind of licenses that  
4 are in its best interest, then it's free to go  
5 out into the open marketplace and secure those  
6 licenses on their own. That said, we are  
7 working with DOJ to remove the consent  
8 decrees, and I think that that would be a very  
9 valuable thing, not only for the life of ASCAP  
10 but for the health of the industry as a whole.

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

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

16 Mr. Lord.

17 MR. LORD: Yes. SESAC -- just to  
18 respond to you, Mr. Hauth, SESAC welcomes the  
19 other players into the marketplace, the major  
20 publishers. SESAC will always license on the  
21 basis of its catalog. We do not offer, nor do  
22 we intend to offer, an AFBL, but are happy to

1 negotiate in the free marketplace an  
2 appropriate fee for our catalog. We think the  
3 consent decrees must go. We think that ASCAP  
4 and BMI should be free to negotiate the same  
5 way that we believe that the major publishers  
6 and any other publishers who want to negotiate  
7 for the use of their catalog should be free to  
8 do that. And that's it, again.

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

11 Mr. Rys.

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

20 Universal, with 25, 30 percent of  
21 the market, what's to stop the Department of  
22 Justice from slapping another consent decree

1 on them? And then we're back in this room in  
2 five, ten years, talking about the same  
3 issues. So I think it's really important to  
4 really look hard at these consent decrees and,  
5 you know, get rid of them.

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

15 MS. CHARLESWORTH: Thank you, Mr.  
16 Rys.

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

20 MR. SCHYMAN: Thank you. What I  
21 find very often in conferences like this is  
22 that the work-for-hire composers and A/V works

1 are -- sometimes get confused with songwriters  
2 and -- because we don't control the underlying  
3 copyright. So it's important that that be  
4 understood.

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

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

22           We at the SCL believe that the

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

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

16 And then, finally, would -- if you  
17 do control a lot of the audio-visual works  
18 that work-for-hire composers are involved  
19 with, would you have any objection to the  
20 composers controlling who we -- who would  
21 collect our share? If we wanted ASCAP, BMI,  
22 SESAC to collect our share, would you have any

1 objection to our choosing that as an  
2 alternative to Universal collecting it for us?

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

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

11 (Laughter)

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

14 (Laughter)

15 But I appreciate that. Now, if --

16 MR. KOKAKIS: All right. Question  
17 1, Part A, yes, we would be withdrawing all  
18 rights if we were, again, forced to do so. 1B,  
19 yes, we publish many audio-visual works on  
20 behalf of large film studios, and  
21 televisionbroadcasters.

22 Question 2, if the consent decrees

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

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

16 MS. CHARLESWORTH: Okay. Thank  
17 you. And did you have anything else that you  
18 --

19 MR. KOKAKIS: Sure.

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

22 MR. KOKAKIS: If I may, there are

1 just a few quick things I'd like to address.  
2 The question was asked, what is the value of  
3 music? The answer, I believe, is whatever the  
4 market will bear. I don't believe we can  
5 succumb to inertia and complacency, and I feel  
6 like the preference to maintain the status quo  
7 and not amend the consent decrees is really  
8 just a result of those two things. We're  
9 entering -- have entered, really, a new age.  
10 You have to adapt. We have to look at more  
11 efficient ways of doing things.

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

22 I just said that all of the data,

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

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

18 MR. KOKAKIS: That is incorrect.

19 MS. CHARLESWORTH: I'm sorry.

20 Incorrect?

21 MR. KOKAKIS: Incorrect.

22 MS. CHARLESWORTH: Okay. So the

1 decision in that sense, from your point of  
2 view, that was -- the way I have interpreted  
3 the decision is not the actual situation?

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

15 MS. CHARLESWORTH: Okay. Thank  
16 you.

17 MR. KOKAKIS: Now, if I may mention  
18 this as well, the administration services that  
19 could be provided by the societies, I don't  
20 see why societies, MRI, Crunch Digital, HFA,  
21 foreign societies, new organizations that may  
22 emerge as a result of these discussions, can't

1 merely administer. There are no anti-  
2 competitive concerns there. There are no  
3 antitrust implications. They are merely  
4 administering licenses that we negotiate,  
5 that we pay for, and that's just a service  
6 that anyone could provide. I don't think it  
7 comes under the scope of any consent decree.  
8 And I just wanted to clarify that, because  
9 this could be a service that we pay anybody  
10 for. If not the societies, we could do it  
11 ourselves, and we're happy to do so. Thank you  
12 for your time.

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

17 MR. WATKINS: So I'll be really  
18 brief. I just wanted to respond to Mr. Hauth,  
19 and it's hard for me not to call you Russ. You  
20 know, I have a tremendous amount of respect  
21 for you and your organization. You're  
22 proactive thinkers in an otherwise very

1 reactive industry. And you are between a rock  
2 and a hard place as to your existing licenses.  
3 I agree with that.

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

19           The other thing I wanted to  
20 mention -- and I alluded to this yesterday --  
21 is that Universal, as David said, and other  
22 music publishers have made their catalogs

1 available to us on terms which would allow us  
2 to enable users to avoid the music controlled  
3 by publishers with whom they have not been  
4 able to reach satisfactory deal terms. I  
5 think, clearly, it is not the reason that  
6 they did that initially. They did it in order  
7 to maximize licenses and collections in their  
8 favor. But I think there has been some  
9 maturation in their thinking, given the  
10 experience that they have gone through in the  
11 Pandora case and in some other circumstances.

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

22 MS. CHARLESWORTH: Thank you, Mr.

1       Watkins.

2                       Mr. Greenstein.

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

11                      I don't think you would have ever  
12 had an environment if there were only direct  
13 licenses and no PRO license, that you would  
14 have 18 different entities owning a share of  
15 a song, or even five different entities owning  
16 a share of a song.  And under principles of  
17 copyright law, a non-exclusive license from  
18 one co-author of a work can license a service  
19 who would not be deemed subject to liability  
20 for copyright infringement for failing to get  
21 rights from the other parties.  If we are going  
22 to move to a world where you're still going to

1 have split ownership and not PRO licenses, I  
2 think there should be consideration as to  
3 whether or not the copyright law should  
4 supersede the ability of an individual  
5 publisher to say that "I only license my  
6 interest in a work."

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

16           And if they can't agree, well,  
17 tough luck, it's a non-exclusive license.  
18 Under general principles of copyright law,  
19 you're allowed to do it. And so I would  
20 encourage the Office to consider whether or  
21 not that would be a needed remedy. With  
22 respect to the withdrawal of works -- and I

1 did not negotiate the NDA, I have no reason to  
2 question Mr. Kokakis on the drafting of it, or  
3 what his intent is. I would point out, though,  
4 that Judge Cote -- and there have been lots of  
5 criticisms of the ASCAP rate court judge --  
6 found the University Music Publishing witness  
7 not credible on the point of the intent of  
8 that NDA.

9           And services should not have to go  
10 to Crunch Digital to get data. Crunch Digital  
11 is controlled by a gentleman who also has a  
12 company called Royalty Review Council, who  
13 audits digital music services. And to think  
14 that they should go to Crunch Digital to maybe  
15 get the rights, or not withstanding my love  
16 for MRI, you should not be required to  
17 contract with a party to get that information,  
18 I think if publishers withdraw from PROs they  
19 should have to make it known what works have  
20 been withdrawn and what they own. If a PRO has  
21 lost catalog, they should immediately, within  
22 -- you know, whether it's three business days,

1 five business days, it's all data, it's all  
2 efficient. Make that known. If you're going to  
3 allow this, you've got have transparency.

4 And I'm sorry, but it should not  
5 be this trade secret as to the compilation of  
6 all of the individual works. In today's day  
7 and age where Universal may own 200,000,  
8 500,000, I don't know how many works north of  
9 that, to expect someone to go work by work is  
10 a fantasy. It does not exist. It is not  
11 efficient. And the sole purpose is to say  
12 gotcha, and to go after someone for copyright  
13 infringement. So if you want to allow  
14 withdrawals, then I think there has to be,  
15 again, a burden if they are going to get that  
16 benefit. Thank you.

17 MS. CHARLESWORTH: Okay. Thank you  
18 very much.

19 This was an extremely informative  
20 discussion. We are well over our time. If  
21 people could come back by 10 of -- that gives  
22 you about seven minutes to take a quick break

1 -- we'd appreciate it. And we'll try to make  
2 up the time again at lunch. Thank you.

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

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

12 And so, we are trying here in this  
13 panel to get a sense of what are the issues  
14 with investment on both those fronts. Is money  
15 going to creators in an effective way to  
16 incentivize the creation of works? Is enough  
17 money going to the services to ensure that the  
18 distribution methods are being developed? So,  
19 I think I will start with just the general  
20 question of, you know, if you want to discuss  
21 how you are seeing the impact of the current  
22 licensing regime on the ability for the people

1 you represent to earn a living, I think that  
2 would be a good place to start.

3 Anyone want to take that one?

4 MR. ANTHONY: I'll comment on that.

5 MR. DAMLE: Yes, sure.

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

21 And so, we have our own systems.

22 We put substantial investment into our rights

1 tracking and clearance and royalty  
2 administration software. So, that is the route  
3 that we have taken.

4 MR. DAMLE: Okay. Great. Thank you.  
5 Professor --

6 MS. CHARLESWORTH: Can I just  
7 follow up?

8 MR. DAMLE: Sure.

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

15 MR. ANTHONY: Sure. So, Rumblefish  
16 does three things: music microlicensing,  
17 Content ID administration, and license  
18 verification. So, the two that are relevant,  
19 one is very common; most people know. YouTube  
20 Content ID administration. Lots of labels and  
21 publishers go through a third party to  
22 administer rights specifically on the YouTube

1 system and soon to be other social networks,  
2 where we are simply using the tools provided  
3 by the network to administer those rights and  
4 to set the business rules.

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

16 We recently just licensed  
17 Shutterstock, a very large business. They are  
18 just issuing licenses in an online  
19 marketplace. So, we aggregate rights, mainly  
20 for social video, and then, provide them as  
21 inventory to these services, where users can  
22 easily grab a song. And they are either a

1 direct license paid for by the user or the  
2 service itself subsidizes the license fees.

3 MS. CHARLESWORTH: Okay. Thank  
4 you.

5 MR. ANTHONY: Is that clear?

6 MS. CHARLESWORTH: Uh-hum.

7 MR. DAMLE: Yes. Thank you.

8 Professor Menell?

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

14 What I see is over decade-long  
15 periods the gradual erosion of the copyright  
16 system, the shift away from people paying for  
17 music and paying for other creative works, a  
18 shift towards advertising and advertising  
19 models as ways of supporting these industries.  
20 This I think is a very serious problem. I  
21 think the copyright system at its core is  
22 based on creators and consumers having some

1 market relationship. What we are seeing  
2 increasingly are what economists would call  
3 multi-sited markets.

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

11           And so, I worry that we are  
12 focused on sort of the trees, the nitty  
13 gritty, the current deals. Here's the group  
14 that isn't represented by anyone, just because  
15 they tend to fall outside. That is the  
16 audience, the demographic that has  
17 historically been most interested in the music  
18 industry, people between the ages of, say, 12  
19 and 30. A lot of them are in my class. I  
20 interact with that demographic and have  
21 watched that demographic change. And I don't  
22 mean just as consumers. I also mean as

1 artists, people who would pursue careers. And  
2 the reality is that the conditions for  
3 building careers are much different, and I  
4 would say much more problematic. Some  
5 things have gotten better. It is very easy to  
6 self-produce, but it is very difficult to earn  
7 money other than in some indirect ways through  
8 advertising or through live performance,  
9 direct -- well, live performance is very  
10 direct, but it is not going to sustain  
11 careers.

12           And so, we have always had some  
13 monetization of what I would call passive  
14 enjoyment of music. And now, that is shifting  
15 towards services that are largely free and  
16 commercial-supported. And I think the long-  
17 term interest would be in having a massive  
18 increase in the size of markets where people  
19 are paying fair prices, and that money gets to  
20 the artist. So, ultimately, what this whole  
21 discussion is about, it is about plumbing and  
22 how you get plumbing back to creators in ways

1 that they will make commitments and decide to  
2 pursue careers in those sort of positive ways.

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

14 One proposal I have, which is, I  
15 would say, a very provocative proposal, is  
16 that we would consider some kind of mash-up  
17 compulsory license, which goes against a lot  
18 of what I heard earlier today. But I would  
19 just ask the people opposing it to put  
20 yourself in the shoes of that 15-year-old who  
21 is in love with music. And just like rap and  
22 hip hop completely changed the industries, we

1 are seeing that right now. And I would say  
2 that that is largely outside of copyright  
3 unless we are willing to acknowledge that that  
4 is a legitimate form of art. And I don't have  
5 the formula, but I do think it is conceivable  
6 that there would be a discussion that could  
7 lead to formulas that no one would be happy  
8 with, but at the end of the day would bring  
9 more creators into the market and would  
10 potentially lead more consumers, more of the  
11 people who have rejected copyright, to say,  
12 you know, copyright is not so evil.

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

19           MS. CHARLESWORTH: I just had a  
20 followup question. You mentioned a compulsory  
21 license, and I think we will also have a panel  
22 later in the day to sort of the future. I

1 think you are on that panel and may bring this  
2 up again. But YouTube has built a platform  
3 that allows for a lot of the activity, I think  
4 -- I mean, correct me if I'm wrong -- that you  
5 are discussing in terms of user-generated  
6 content, obviously, in using music and user-  
7 generated content, and that is not a  
8 compulsory system. So, I am just wondering  
9 whether you think that the YouTube model is a  
10 useful one or why that couldn't be adapted to  
11 other sort of microlicensing transactions in  
12 a non-compulsory way.

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

19 But, when you look at how that  
20 money gets distributed and the extent to which  
21 it supports a really wide swathe of creators  
22 and monetizing what is the common use and

1 value of a lot of music, which is passive  
2 enjoyment -- when I see people with earbuds,  
3 I don't think they are listening to YouTube.  
4 They are listening to some other sources of  
5 music. Maybe they have been able to take  
6 streams out of YouTube.

7 But, in essence, there's large  
8 parts of the enjoyment of music that are no  
9 longer anywhere close to a market  
10 relationship, and the market relationships we  
11 have are usually these indirect ones, where it  
12 is based on advertising. So, I think that  
13 YouTube is kind of an interesting kind of  
14 band-aid. But if you could imagine 100 million  
15 kids on a service where they paid \$10 a month,  
16 and having everything available to them  
17 easily, and then, to the extent that mash-ups  
18 are increasingly a part of that mix, that  
19 there would be a way of sharing the value of  
20 mash-ups with the people who made the  
21 underlying works. And to say that you have to  
22 be able to block those deals if you don't want

1 your clients in those mash-ups is to  
2 essentially ignore the reality. It is being  
3 mashed-up; you're not participating in any  
4 economic return from it.

5 MR. DAMLE: Okay. Thank you.

6 Mr. Marks?

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

15 At the same time, we have heard  
16 and discussed a lot about the complexities  
17 regarding music licensing. And I guess what I  
18 would like to focus on initially is how we  
19 can, by simplifying the licensing process,  
20 bring some money back into the system that  
21 flows directly to creators, to the businesses  
22 that are distributing recordings, and the

1 musical works. So, if you just take a look  
2 back over the past decade, and you were to  
3 look at, you know, any record company P&L, you  
4 would see a trend of investment in marketing  
5 and A&R that, while the labels continue to be  
6 that engine of investment, the resources they  
7 have to invest have dropped off considerably.  
8 That is not a good thing for any creator.

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

15           And so, we need to find a way to  
16 get back to the point where there's more  
17 investment taking place. That is a longer  
18 discussion, obviously, than we have time for  
19 here today, but at least focusing on the  
20 issues that we have been discussing over the  
21 last day. One of the things that we have been  
22 very focused on is that -- and there was a lot

1 of talk on the last panel, "Well, you can just  
2 get this service from this company" or that  
3 company. "We don't need to provide this kind  
4 of data. It's available somewhere else." You  
5 know, these are the kinds of things that add  
6 friction into a system where that friction  
7 doesn't necessarily need to exist. And I don't  
8 know how much that friction adds up to  
9 overall, you know, what percentage it is. I  
10 imagine for any, you know, moving from one  
11 musical digital music provider to another, it  
12 is going to differ, you know, depending on  
13 what percentage it is of their balance sheet.

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

1 money flow to creators.

2 MR. DAMLE: Thank you, Mr. Marks.  
3 Ms. Miller?

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

13 There's prohibitive costs for  
14 startups oftentimes to get the rights that  
15 they need to actually invent, to create, to  
16 distribute. And furthermore, there is a huge  
17 lack of awareness. By the general public there  
18 is a lack of awareness, which is why the  
19 problem on YouTube that has been solved with  
20 Content ID is so prevalent. People just don't  
21 understand copyrights. They don't understand  
22 they can't take somebody's track, put it on

1 their video, and use it. So, there is just a  
2 massive lack of awareness out there.

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

20           So, I think we need systems around  
21 streamlining rights, which I think is  
22 underway. We need systems that promote

1 awareness. And then, we need systems that  
2 track. YouTube system actually for a while did  
3 this sort of copyright school. And if you got  
4 a strike on your account, they found material  
5 you used that hadn't been cleared, they sent  
6 you to copyright school and you had to learn.  
7 Well, that has since gone away, I think, but  
8 they had the right idea. I mean, I think some  
9 sessions that just educate the general public  
10 on how to do things properly would be great.  
11 And then, furthermore, to acknowledge that the  
12 general public is not going to pay \$500 for a  
13 piece of media in their video of their kids  
14 camping, but they will pay \$2.

15           And Paul and I have both seen  
16 this. I mean, literally, hundreds of thousands  
17 of transactions a month are happening where  
18 people are willing to pay \$1.99 to license a  
19 song for sync to their personal video. So, I  
20 think CID is a great building block, but I  
21 don't think it is the whole picture. Again, I  
22 spoke to this yesterday. Content ID is

1 something that really was initially a reaction  
2 to some lawsuits and just their acknowledgment  
3 that they wanted to pay rights' owners, and  
4 this is how they did it.

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

19 So, when you look at the economic  
20 loss, it is very significant. You know, CID  
21 did something that was very interesting.  
22 Indirectly, it made the majors come together

1 and streamline rights, which today they will  
2 tell you still hasn't happened, but it did,  
3 because they are accepting monies where a  
4 video is synced to an audio. And that is a  
5 sync license.

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

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

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

20 MS. NAUMAN: Yes, I would like to  
21 just take a slightly different angle on this.  
22 And the title of this is "Industry Incentives

1 and Investment". And just for everyone in the  
2 room, I am not representing anyone right now.  
3 For the last four-and-a-half years I was  
4 working at 7Digital, which is a music  
5 platform. And part of what we did is we wanted  
6 to enable new services to come to the market.  
7 And so, they could come to 7Digital and get  
8 rights and get technology, and be able to  
9 advance these things. Before that, I was at  
10 SONOS. I worked in Trust Real Radio. I worked  
11 on two of the very first legally-licensed  
12 services. So, I have been in the mix. I have  
13 been in the weeds for a long time. And I think  
14 that I would like to say two things. One is  
15 the incentives that live in our industry now  
16 with those who are creating applications  
17 around music, and the second thing is the  
18 trends and some observations that I have of  
19 where I think that is going. The incentives  
20 that live right now, not with the rights-  
21 holders, because I know the rights-holders,  
22 you know, you want to create music and you

1 want to get paid for that.

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

1 is understanding how much all the materials  
2 are that go into it.

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

18 So, everybody wants that. In the  
19 technology industry it is about scale and it  
20 is about consumer adoption and innovation and  
21 openness. And there really isn't anything  
22 better than music. This is why they just keep

1 coming. And it actually, to be very honest  
2 with you, it is like moths to a flame in many  
3 instances of young people who don't understand  
4 what they're doing and they want to do  
5 something with music. And not everyone should  
6 build a music application because it takes a  
7 lot to market it and to rise above the noise  
8 of the marketplace. But there are a tremendous  
9 number of companies who really, really  
10 genuinely want to do things with music. They  
11 want to pay a fair price. They don't know who  
12 needs to pay. They don't understand the way  
13 the copyright laws work. They don't want to  
14 understand all of this. They just want to do  
15 it right. So, that's I think the climate that  
16 we are in right now.

17                   And the trends, when you look at  
18 the way the industry works, from 1980 to 2000,  
19 I worked in radio in the mid-nineties into the  
20 early 2000s. You know, there were a lot of  
21 companies printing money in that era of 1980  
22 to 2000. There was a lot of money flowing, and

1 that was fantastic. And I worked in the public  
2 radio world, so I never got the envelopes of  
3 cocaine and money that were coming for payola  
4 that many others did in the radio industry.

5 (Laughter.)

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

21 But scarcity has gone away in the  
22 digital industry. There is no longer a limited

1 number of outlets. And we can talk about the  
2 P2P and people can find anything they want.  
3 But I think the important thing is that the  
4 companies that are building in the technology  
5 space, with the incentives that I just talked  
6 about, the companies that are building  
7 enterprise value in the industry now, they are  
8 upsetting legacy businesses that are built on  
9 scarcity.

10                   Look at what is happening with  
11 Uber and taxis. They are also built on  
12 openness and the open-source culture. Look  
13 what Tesla has done. Look at the electric car  
14 industry and how many times that has been shut  
15 down. And now, they have invested; they have  
16 built enough scale. And now, they have opened  
17 up their patents because they know that all  
18 boats will rise in openness, in innovation.  
19 That is the way technology works. You can  
20 still build a tremendous amount of value in an  
21 open environment by building great products,  
22 but it is about sharing; it is about openness;

1 it is about adaptability. And I think the  
2 biggest risk -- and I said this a little bit  
3 yesterday -- but I think the biggest risk with  
4 music right now is that even the services, the  
5 subscription services, those are siloed  
6 because, of course, they don't want you to  
7 port your playlist from Spotify to Rdio.

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

19 You know, I'm not here -- I think  
20 there are many, many lawyers in the room who  
21 have tremendous ideas about the way copyright  
22 law can be reformed, but I think that we have

1 to embrace the future and the trends of this  
2 economy right now around openness and  
3 collaboration. If you achieve scale, I think  
4 you will all find that there is a lot more  
5 money in this, but you have to have the  
6 plumbing that goes along with the openness.  
7 You can't just open it up and, then, have this  
8 clogged plumbing, because nobody will get  
9 paid. Thanks.

10 MR. DAMLE: Yes, thank you.

11 Mr. Rudolph?

12 MR. RUDOLPH: Good morning. I want  
13 to address the questions that we were asked in  
14 the agenda. First, just quickly, the impact of  
15 current licensing regimes on creators'  
16 incentives and their livelihoods. We have  
17 talked a lot about that. It has been kind of  
18 a theme woven through all the panels so far.  
19 But, just quickly, you know, it is a good  
20 catch phrase, but I believe it is true, there  
21 is no middle class in music anymore. It's gone  
22 as a result of the current licensing regimes.

1 Both the 115 and the current consent decrees  
2 artificially fix the prices of the content,  
3 which don't allow the revenue to creators to  
4 charge a living wage. The raw goods -- I'll  
5 call the songs "raw goods" in this case --  
6 should be charged at a market cost, and the  
7 buyers of those goods, as DSPs or services or  
8 whoever wants to build off of it, should  
9 charge a market price or simply not exist.

10           It is like any other business that  
11 exists in the world. I mean, to be super-  
12 elementary about it, if I want to open a  
13 restaurant, then I have to go lease a facility  
14 and buy equipment and get the food. I have to  
15 have credit. I have to pay for those things.  
16 Those things cost money upfront. There is a  
17 market cost to me. Based on that, I have to  
18 charge what the market will be. Nobody is  
19 going to work for me. No one is going to make  
20 that if I don't have the ability to charge or  
21 pay them a wage. It is a big theme, obviously,  
22 in America now, and there's a lot of things

1 that are happening positively about it. And I  
2 don't think we should ignore it when it comes  
3 to creators.

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

18           Usually, those people have done a  
19 lot of the groundwork on their selves at the  
20 beginning, but it is much more limited than it  
21 ever was before. The overall bars come down,  
22 which allows more competition among more of

1        what I would say the corporate players.  
2        Independent publishers, independent record  
3        companies can now participate in a way that  
4        they had never been able, part of that enabled  
5        by technology, certainly, from a  
6        marketing/distribution perspective. But from  
7        a creator's standpoint, there are less  
8        options.

9                    As a result of that, we have got  
10       kind of a funnel effect where you have got a  
11       very top level. You don't really have many  
12       people in the middle. And then, what you end  
13       up with is what I would call amateurs,  
14       hobbyists who are hoping to move, make that  
15       jump to the next level. There is no gradual  
16       climb to a certain extent. There are people  
17       that I admire tremendously who have put in  
18       years and years and finally do get their  
19       notice, which is great. But that is much, much  
20       harder, as the professor mentioned earlier, to  
21       allow that to happen. Coming back to the  
22       ability for new products and services to come

1 to market, one of the great things is there is  
2 no limitation for a music product to come to  
3 the market anymore. There used to be. That  
4 used to be a bottleneck when it came to  
5 distributors. You had to have a distributor.

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

22 First of all, from an investor's

1 standpoint, which I am an investor as well as  
2 advise venture capital and private equity as  
3 far as their investments go, I would not  
4 advise anybody to go into anything that has to  
5 do with direct-to-consumer application for  
6 delivery of music. And the reason simply for  
7 that is not because of the licensing regimes.  
8 It has to do with the fact of the amount of  
9 money that you need to be able to compete with  
10 the existing services. The idea that the  
11 content owners are the ones who are blocking  
12 this is not the idea. You will be able to get  
13 an OTT, over-the-top tile, on any smart TV  
14 installed. I mean, the reach that Pandora has,  
15 I mean, is tremendous. The ability to compete  
16 with them is them, Spotify. We have seen  
17 entities that have had tremendous investment  
18 in the past that are distributing musical  
19 works not be able to compete with the larger  
20 companies. We have seen a couple recently, in  
21 the last 18 months, who have taken more than  
22 \$10 million of investment, who have spent it

1 all on marketing to try to acquire customers.  
2 It didn't work. Now they have gone a different  
3 route and either merged or folded or dissolved  
4 or sold their assets.

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

17           So, there is a whole  
18 infrastructure market that is developing, and  
19 it is actually pretty healthy. And there are  
20 new startups in that who are making money,  
21 actually, cashflow-positive. Some of those  
22 have been bootstraps. Some of them have taken

1 money. They are not playing in the licensing  
2 world, but at the same time they are actually  
3 facilitating some of that activity. And to  
4 another point, too, on the licensing, one of  
5 the things that has been really interesting is  
6 to watch this idea of open source in APIs.

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

1 royalty payment.

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

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

1 understanding of what the system is and how it  
2 works.

3 MR. DAMLE: Thank you, Mr.  
4 Rudolph.

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

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

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

21 And so, when somebody first  
22 creates something that is entitled to

1 copyright protection, they are not giving it  
2 a thought. And rather than looking for the  
3 brass ring of a label deal that they used to,  
4 and the type of investment it took to get into  
5 a recording studio and have all of the  
6 trappings that go with that, what they look  
7 for now is an endorsement deal of some sort  
8 and some kind of licensing to help just move  
9 their career along and pay for something, or  
10 management deal because that allows them to go  
11 out on tour and have an independent, sort of  
12 objective third party help them find ways to  
13 make money. Because, really, they want to make  
14 enough money to continue to do what they do  
15 and continue to create new things.

16           So, the revenue streams that I  
17 have seen in the past five to ten years have  
18 shifted so dramatically. Nobody cares about  
19 selling a record at all. And I have got two  
20 very concrete examples. I do have clients.  
21 There were several people that said they don't  
22 have clients. I have clients that at the very

1 ground level will put their product out, not  
2 have any idea whether they are going to have  
3 an audience for it or not. And when they find  
4 one, it is shocking, the directions that they  
5 are taking. And the schism between starting  
6 here and getting to the level where we are  
7 talking about even a sustainable living, a  
8 five-figure living, is remarkable, that gap.  
9 And so, a client that I had, it was six  
10 innercity youth that were between the ages of  
11 6 and 12 years old that recorded a song at a  
12 YMCA, which being very forward-thinking, the  
13 YMCA built a gorgeous Pro Tools recording  
14 studio in the facility. And the kids could  
15 sign up and go in there.

16                   And some of them, you know, they  
17 got together and the song that they put out,  
18 they recorded a video, and it got over 10  
19 million views on YouTube. And obviously, then,  
20 people started to take notice. And so, the  
21 income that they got from YouTube wasn't  
22 enough to buy each of them a bag of chips,

1       which, you know, the song, some of you  
2       probably know it. "Hot Cheetos and Takis" was  
3       an absolute summer smash last year or two  
4       years ago.

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

22                       So, these kids are thrilled,

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

14 But what happened with this  
15 particular group was that the YMCA, then,  
16 wanted to know who should own the copyright,  
17 and they hired a lawyer. And I had to sit down  
18 with that lawyer and discuss who was going to  
19 own "Hot Cheetos and Takis" because it was  
20 recorded at the YMCA, and how that could  
21 benefit. And obviously, when you look at an  
22 organization such as a YMCA, I mean, it is not

1 a nonprofit in name only; it truly is a  
2 nonprofit, you know, where all of its income  
3 is distributed and there are no shareholders  
4 and anybody to make money.

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

17 What I was stressing is let's make  
18 sure that, you know, you keep them on the  
19 straight and narrow; they don't get pulled out  
20 of school, things like that. I am not sure  
21 where those lessons are being put into any of  
22 the discussions I have heard here over the

1 last two days. And that's fine, but those  
2 examples are where we are starting from and  
3 where we are getting to, and that is pretty  
4 scary because there is no middle class. There  
5 is the "have-nots," the "used-to-haves," and  
6 the very smaller and smaller groups of  
7 "haves".

8           And then, the other example I just  
9 wanted to present was a client that -- and  
10 this happened enough years ago, in about 2005  
11 or '6, when a client who was building their  
12 own career didn't want to sign on with a  
13 record label. They just did everything  
14 themselves, a very unique sound, and got to  
15 play, which is the preeminent sort of venue in  
16 Minneapolis -- it is called First Avenue. A  
17 little guy named Prince sort of got it put it  
18 on the map, and everybody wants to play First  
19 Avenue. And it holds 1500 people, so it is not  
20 a very large venue in the scheme of things.  
21 But to sell out First Avenue and to be from  
22 Minnesota is a good thing.

1                   So, this band consistently can  
2                   sell out First Avenue on multiple nights and  
3                   can tour internationally and make plenty of  
4                   money touring and live performance. Okay? But  
5                   they realized quickly that licensing is a good  
6                   way to make money, to continue to do their  
7                   craft. And so, they licensed a song to a large  
8                   insurance company and did it, essentially, for  
9                   the publicity. And their name and the name of  
10                  the song appeared scrolling at the bottom of  
11                  the insurance company commercial. And it was  
12                  aired during the Super Bowl. So, of course, it  
13                  had to have been worth six or seven figures,  
14                  no matter what. So, the song and the  
15                  commercial had actually aired. It wasn't one  
16                  of those let's only air it during the Super  
17                  Bowl. Let's premiere it during the Super Bowl.  
18                  It had actually been on. But the company spent  
19                  the money to air during the Super Bowl. And  
20                  shortly thereafter, I got a form letter from  
21                  a law firm in New York that said that the drum  
22                  beat was taken from a song from the fifties,

1 "The Amen Break," which is a very famous sort  
2 of hip hop drumbeat.

3           And litigation was started. They  
4 sent me a report that had to have cost  
5 \$100,000 to prepare from a music college, a  
6 university, saying, "Yes, this is probably  
7 stolen." And I brought it to a recording  
8 studio in Minneapolis to one of the best  
9 recording engineers I know, and he goes,  
10 "Absolutely, it's the same." I said, "Oh,  
11 great," you know, "it doesn't help my case  
12 any, but it is the same thing." And so, what  
13 we were looking at, though, was the only  
14 reason this became on someone's radar was the  
15 fact that it was played during the Super Bowl,  
16 that someone heard that song. I doubt that the  
17 original creators of that drumbeat were  
18 watching the Super Bowl and said, "That's my  
19 song." I think there are companies out there  
20 that try to find opportunities to litigate  
21 copyright. And once it gets to a certain level  
22 and they believe there is enough money

1 involved, then it is worth litigating. But  
2 those two examples of people that can make a  
3 living, but are shut down by their experience  
4 with copyright is a very dangerous place for  
5 us to live. I mean, that is kind of my only  
6 thing on that.

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

9 Ms. Muddiman?

10 MS. MUDDIMAN: I guess I want to  
11 compare the internet with the real world. I am  
12 talking about the impact of the current  
13 licensing regimes on the creators. In the real  
14 world, when we had CDs -- and I am not  
15 advocating going back to that; I am just  
16 comparing. Imagine, if you will, a company  
17 that was going into the fairground and giving  
18 away CDs, right? And we're saying, "Oh, that's  
19 fine because you own it, don't you?" They say,  
20 "oh, I don't really know. I don't know. Hmm,  
21 I don't know who owns it, but we're just  
22 giving them out because people like it, and

1 people are flocking towards it." And people  
2 come flocking towards it and then we're seeing  
3 hundreds and thousands of people queuing for  
4 these free CDs, right? "And the GREAT thing is  
5 that, while they are standing in line for the  
6 CDs, we are going to advertise to them."

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

20 And other people are saying,  
21 "Well, yes, it's going to be impossible to  
22 stop these people giving away these CDs

1       because we just don't have the police. We just  
2       can't stop them doing it," and in fact, people  
3       have got so used to have these free CDs, they  
4       don't even want to pay for them anymore. So,  
5       this is the situation that we're in. Are we  
6       really going to accept that there is no way to  
7       monetize music and to license it and to build  
8       a system like we have in the real world? Are  
9       you telling me that we cannot build a system  
10      in the virtual world when we have gateways,  
11      the ISPs, we have pipelines, YouTube? You're  
12      telling me that you can't stop YouTube  
13      uploading things that they do not own?

14                   I absolutely do not believe the  
15      government and YouTube do not have the  
16      technology because I have technology on my  
17      website that someone can drag and drop an MP3  
18      or any file, and it can be analyzed. And you  
19      can tell, I can tell you exactly what that  
20      piece of music is. So, if you allow someone to  
21      upload a file without having analyzed it using  
22      a computer -- it doesn't need to be someone

1 who sat there listening to it -- a computer  
2 could do it in the time it takes to analyze  
3 that data. And then, if you allow them to  
4 upload it without having any licenses, why is  
5 that legal?

6 MR. DAMLE: Thank you, Ms.  
7 Muddiman.

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

10 MR. BARKER: All right, thank you.

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

1 a lawsuit followed.

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

8 So, I respect what you say and I  
9 think there is a solution in there, but a  
10 compulsory, again, as those of you have heard  
11 me say, compulsory licenses are not my  
12 favorite things. Vickie, just a comment that  
13 you had made which a lot of I agree with. I  
14 think you made a comment that service  
15 providers, all service providers want to do  
16 the right thing. And I would change that and  
17 --

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

19 MR. BARKER: Okay.

20 MS. NAUMAN: But I think there is a  
21 trend, there is a distinct trend where  
22 companies are embracing --

1                   MR. BARKER: I think the correction  
2                   I would do is maybe most would, because there  
3                   are instances, and one in the last year, where  
4                   a new service -- it was a fairly-small service  
5                   -- was looking to license songs of ours for a  
6                   unique kind of a use. It was very small-scale,  
7                   but they were wanting a blanket license of our  
8                   catalog. And the problem was they were asking  
9                   for a rate that was less than our normal rate  
10                  for those kinds of uses, if we would just  
11                  license them.

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

1 just want to throw that out there in response  
2 to --

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

6 MR. BARKER: Right.

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

16 MR. BARKER: Yes. Which, then,  
17 brings me back to the original question maybe  
18 of the session. Okay, now I will get there, or  
19 I am here. Which is, what's the current impact  
20 or what's the impact of current licensing  
21 regimes? And I have said this before. Some of  
22 you have heard me say things like this. I did

1 hear a fact before that, since Napster, the  
2 music business has maybe decreased 50 percent,  
3 at least certain rights-holders. However, I'm  
4 an optimistic guy. I think there's more music  
5 available to more people than ever before. We  
6 just have to figure out how to do it right,  
7 how to license it right, and how to make the  
8 market come back up to where it should be. So,  
9 I am optimistic.

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

20                   So, we're competing with free.  
21 Let's at least make it almost free, but at  
22 least it's something." And we, as an industry,

1 seem to kind of step into that. Maybe we, as  
2 publishers or copyright owners, mistakenly  
3 allowed that, which now suddenly we're getting  
4 paid something, but it is nowhere near the  
5 value of what it should have been. I think now  
6 we have found ourselves today where it appears  
7 that a lot of the conversations around the  
8 table seem to be that, if a DSP is legitimate,  
9 they have the right to have access to all 25  
10 or 30 million songs before they launch. That  
11 is something that they should have access to.  
12 It is kind of the position of where we found  
13 ourselves.

14                   And I think there was one quote  
15 made. "Complexity in licensing chills the  
16 potential investment for digital services."  
17 And I agree with that. The complexity of  
18 licensing does chill that, but maybe the  
19 answer is simpler licensing, but it doesn't  
20 necessarily mean simpler licensing for all  
21 copyrights. Maybe the new paradigm or maybe  
22 the reality is, who are we trying to protect

1 here? Is it the copyright owners or is it the  
2 digital service providers? And I think the  
3 answer is, yes, both. We want to do that. So,  
4 I think maybe where we are today is music is  
5 not available to all services all the time,  
6 and we should be okay with that. That way, the  
7 free market can take over. And as I think  
8 somebody had said earlier, what's the value of  
9 music? It is whatever the market will bear.

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

21 So, today why don't we look at  
22 getting back and letting the value of music

1 rise to where it needs to be? Maybe the  
2 scarcity, as was talked about, is something  
3 that could help us create value. So, allow the  
4 free market to license at will without feeling  
5 like we have to support DSPs at 100 percent of  
6 the market.

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

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

11 (Laughter.)

12 It is very optimistic.

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

18 MS. MILLER: I could be passed or  
19 not.

20 MR. DAMLE: Okay.

21 MS. CHARLESWORTH: I mean, I think  
22 maybe it will be actually on the hour.

1 MR. DAMLE: Okay. Okay. Right.

2 MS. CHARLESWORTH: So, about 10  
3 more minutes.

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

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

11 MS. CHARLESWORTH: Mr. Greenstein?

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

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

22 In terms of the missing middle

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

16 But I hear people talk about a  
17 free market and, then, to preserve the middle  
18 class. And I am not sure that both of those go  
19 hand-in-hand. Again, I think there are going  
20 to be winners and losers. The winners may be  
21 the really big people, and you may have a lot  
22 of losers if you move away from that. In terms

1 of some information, though, that should be  
2 taken into account, BMI's revenues fiscal year  
3 2003, \$630 million, \$944 million by fiscal  
4 year 2013. I would think pretty significant  
5 growth over nearly a 10-year period or a 10-  
6 year period. ASCAP, \$587 million in 2002.  
7 That's revenue. By 2014, or 2013, \$851  
8 million.

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

20                   I mean, that is new money into the  
21 system. Under the old system, I don't know if  
22 people were getting paid for sales of record

1 or if it went to the labels. And then,  
2 specifically to the question about what is  
3 happening with companies in the marketplace  
4 and investment decisions, I think that with  
5 the companies that I represent it is very  
6 challenging to get investment money. I do a  
7 lot of calls with VCs where I am representing,  
8 I am company counsel, so talking with the  
9 investors. And the questions are, inevitably,  
10 what is to prevent the copyright owner or the  
11 record label from coming back next year and  
12 going from 50 percent to 60 percent, to 65 or  
13 70 or 80, or a publisher demanding parity if  
14 you are outside a statutory license or a  
15 consent decree?

16 And I think that there is a  
17 chilling effect on the marketplace. Companies  
18 are not getting follow-on investments. And the  
19 last thing, on recordkeeping, which is a  
20 component of licensing, I have experience  
21 where companies are or have announced that  
22 they are exiting the market due to the

1 obligation to provide, in their mind,  
2 burdensome reporting and the failure to do so  
3 could lead to copyright infringement.

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

13 MR. DAMLE: Thank you.

14 Ms. Kossowicz?

15 MS. KOSSOWICZ: Thank you. I'll be  
16 brief. I just wanted to say that I agree with  
17 what Steve said earlier. I will just breeze  
18 through my comments, so other people can have  
19 a chance to respond. Basically, I also wanted  
20 to touch base on some of the investment and  
21 improvements that the labels have had to make  
22 due to the digital world that we are in now.

1                   We are having to make massive  
2                   improvements and upgrades in our royalty  
3                   systems, digitizing all of our masters.  
4                   There's archival costs. There's all sorts of  
5                   things that go into getting our product made  
6                   and distributed to our partners. There is a  
7                   lot of complexities that come with delivery to  
8                   digital services.

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

19                  So, I am very sympathetic to the  
20                  folks that are saying that it is difficult to  
21                  get the licenses. On our end, we are impacted  
22                  because many times when we don't have a

1 license, we are bogged down by the increasing  
2 complexity of licensing. We used to just have  
3 to worry about physical product, you know,  
4 CDs, vinyl, tapes, and that moved on to DVDs  
5 at one point.

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

19 MR. DAMLE: Okay. Thank you very  
20 much.

21 We are going to hear from Mr.  
22 Schyman. And because we are running out of

1 time, I know Mr. Marks and Ms. Miller are on  
2 the last panel. And so, if it is okay with  
3 you, if you could save your thoughts for that  
4 panel, that would be helpful for us.

5 Okay, Mr. Schyman?

6 MR. SCHYMAN: Thank you very much.  
7 I have talked about my work as a composer. I  
8 work for hire. But I have had experience in  
9 writing songs. I wrote four songs for a  
10 gentleman who did four videos, in aggregate,  
11 over 90 million streams on YouTube. And I  
12 found really interesting ways -- it was a  
13 complete shock to me the success of  
14 particularly one had 47 million streams. And  
15 the income streams included licensing  
16 opportunities and sales of songs, mostly on  
17 iTunes. Over 100,000 MP3s sold on iTunes. I  
18 don't permit my music to go onto the streaming  
19 services because I believe it robs, because I  
20 continue to have sales of those songs.

21 So, I believe that that would not  
22 permit me to fully take advantage of that.

1 Performing rights, I have received money on  
2 performing rights, but YouTube is very, very  
3 difficult to deal with. They are not  
4 interested in communicating with individuals  
5 like myself. They will talk to record labels.  
6 They will talk to big publishers. No matter  
7 how many times you contact them, no matter how  
8 successful you think your video is -- 47  
9 million seems like a lot to me -- they don't  
10 call you back. They do not communicate with  
11 ASCAP, who is my performing rights society.

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

21 And for a creator, it is sort of  
22 overwhelming, the complexity of it all. The

1 marketplace is a brilliant system, but there  
2 has to be some -- I mean, if you go back 30 or  
3 40 years, at least you understood how to make  
4 money and there was maybe how fair it was or  
5 wasn't. And so, with this new marketplace,  
6 there's opportunities for me, who has no  
7 record label to make income from some surprise  
8 YouTube hit, which is like money, which is  
9 wonderful.

10                   And I am in the middle class. I am  
11 in the middle class and I am not wealthy, but  
12 I do well as a composer and writing some  
13 songs. So, it is so complex. It is so  
14 unfathomable, even for someone like myself who  
15 does have some understanding of copyright  
16 issues, not like some of the lawyers here and  
17 some of you folks who do this for a living,  
18 because my primary occupation is writing  
19 music. But I do, because of my work with the  
20 Society of Composers and Lyricists, I have  
21 some understanding, but it is pretty  
22 overwhelming.

1                   So, some simplicity, if laws  
2                   change, some way to simplify licensing. I  
3                   mean, this idea of microlicenses of \$2 --  
4                   because my song is on hundreds and hundreds  
5                   and hundreds of videos, some of which get  
6                   really, have like, you know, 6-700,000  
7                   streams. And I don't get any income from  
8                   those. So, that was interesting to me  
9                   personally. But I don't know how to access  
10                  this. There is no school. So, for people  
11                  coming up who are having opportunities in the  
12                  music business, it is bewildering. And so, if  
13                  there is some way to help with this complexity  
14                  and to simplify it, I think that would be very  
15                  advantageous to the creator.

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

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

1 to the next panel. So, we will swap out the  
2 placards.

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

6 MR. RUWE: Works fixed before  
7 February 15th, 1972 are not protected by  
8 federal copyright law but instead a patchwork  
9 of state laws to differing degrees. Following  
10 the questions posed in the NOI what recent  
11 developments suggest that we in the music  
12 marketplace might benefit from extending  
13 federal protection of pre-1972 works? Are  
14 there any reasons to withhold such protection  
15 and should the pre-1972s be included under a  
16 114-112 licensing regime? I'm going to call  
17 for input on the first one, recent  
18 developments that call for reconsideration of  
19 this - of the status quo, if anyone has any  
20 input.

21 Yes, Mr. Blake.

22 MR. BLAKE: The services, as I

1 understand it, particularly SiriusXM and  
2 Pandora, who are the two biggest payors into  
3 SoundExchange, originally were paying on pre-  
4 1972 sound recordings and at some point  
5 without - I mean it differed between them; I  
6 don't want to suggest any collusion - at some  
7 point that changed and they stopped paying on  
8 pre-1972 sound recordings and that is a  
9 tremendous concern to our company.

10 As I mentioned yesterday, Concord  
11 controls about 8,000 album-length masters. I  
12 would say about a third of them are pre-1972  
13 and in fact the most valuable ones we have in  
14 our catalog - the Creedence Clearwater Revival  
15 masters - are all pre-1972 and many of our  
16 other very valuable masters such as masters by  
17 John Coltrane and Miles Davis and many other  
18 jazz greats are obviously pre-1972 masters. So  
19 as the world turns more and more away from the  
20 purchase of recorded music, even digital  
21 downloads, and into a streaming model, whether  
22 it's purely noninteractive, semi-interactive

1 or custom or completely interactive, it is  
2 important that record companies get paid for  
3 those streams and it makes it more and more  
4 important that we get paid for terrestrial.

5 But in particular on the pre-1972  
6 copyrights I think we are probably more  
7 disproportionately hurt by this, the lack of  
8 a federal protection, than any other record  
9 label that I can think of, simply because of  
10 the percentage that it means to our bottom  
11 line. I want to say that Concord strongly  
12 supports the Copyright Office's  
13 recommendations that they made in December of  
14 2011, and we strongly believe that the pre-  
15 1972 copyrights ought to -- as a matter of  
16 fairness -- be brought under the federal  
17 regime. We think it's fine for music users,  
18 the DSPs, to pick which songs they want to  
19 play.

20 But I think the only determining  
21 factor really on how much revenue those  
22 generate is how frequently they're played and,

1 to the extent that their system allows it, the  
2 number of listeners to whom they are played.  
3 It shouldn't be that a class of recordings,  
4 including some of the greatest contributions  
5 to American culture that we know and the jazz  
6 market in particular, the most - some have  
7 said the greatest contribution of America to  
8 culture in the 20th century is jazz. Well, the  
9 vast majority of that would be prejudiced and  
10 completely left out if they remain outside of  
11 the federal scheme. You know, I don't want to  
12 get into the litigation. I think that's  
13 clearly not the way to resolve things. But I  
14 think, as a matter of fairness, they should be  
15 brought under the federal regime.

16 MR. RUWE: Ms. Kossowicz.

17 MS. KOSSOWICZ: The statutory  
18 license should be clarified to clearly include  
19 the pre-1972 sound recordings. Pre-1972 sounds  
20 recordings are currently sold and licensed by  
21 Universal on the same basis as more recent  
22 sound recordings. As examples, our interactive

1 partners account for pre-1972. Our masters  
2 sync licensing department licenses the pre-  
3 1972 recordings in the same manner as they  
4 would any other recording and most digital  
5 services are accounting for pre-1972  
6 recordings. So in our opinion, there's no  
7 reasonable justification for depriving artists  
8 and copyright owners of their royalties under  
9 the statute.

10 MR. RUWE: Ms. Goldberg.

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

19 One is legal certainty and  
20 consistency, two is fairness, three is  
21 preservation. As far as legal certainty, pre-  
22 1972 sound recordings are covered by a

1 patchwork of state laws - both statutory and  
2 common law and it is very difficult for  
3 somebody to comply with all of the individual  
4 state laws. And so I think as it stands now  
5 it's impractical and inefficient and would be  
6 made more efficient by providing federal  
7 protection for the recordings. As far as  
8 fairness, artists who created pre-1972  
9 recordings are especially dependent on this  
10 income because they are basically too old to  
11 tour or sell their products. And then I'm sure  
12 that the gentlemen from SoundExchange will be  
13 saying how much money has been lost.

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

21           And the third reason is  
22 preservation. The Library of Congress pointed

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

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

18 MR. HARBESON: I hope you all  
19 forgive me for this but I'm really glad to see  
20 the consensus in this and we could have saved  
21 a lot of time a few years ago if we had had  
22 this consensus a few years ago. Obviously, the

1 Music Library Association also supports  
2 federalization of pre-1972 sound recordings.

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

1 particular recordings.

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

16 According to the plan we have  
17 approximately 15 years or less to preserve all  
18 of our recordings or decide to consign them to  
19 the dustbin of history. So this is a serious  
20 problem. However, I am concerned about a  
21 couple of things in the recommendation and  
22 especially with the RESPECT Act which applies

1 pre-1972 sound recordings to federal law but  
2 does not do it across the board. It does not  
3 remove 301(c). It only applies it to certain  
4 provisions in the RESPECT Act, if I remember -  
5 in the Copyright Act, if I'm remembering  
6 correctly. I don't have it pulled up right  
7 here. We think that if pre-1972 sound  
8 recordings are going to be applied to federal  
9 law they should be done so across the board.  
10 There should be no exceptions to that  
11 application.

12 In other words, there should be  
13 exceptions to the application of copyright to  
14 the federal - to these recordings. One of the  
15 reasons for this is that as we made - as we  
16 explained in our comments in the pre-1972  
17 sound recordings hearings this is a compromise  
18 for us as well. In many cases, the state law  
19 favors us. In my own state I have a 56-year  
20 copyright term. I don't think that I'm going  
21 to have a 56-year copyright term after federal  
22 law is applied so I'm going - we're going to

1       lose something by moving these recordings into  
2       federal law.

3                       We don't think that it is fair for  
4       us to lose the benefits that we gained from  
5       the state laws and also not gain the  
6       exceptions - fair use, Section 108, et cetera.  
7       The - so one of the things that we were  
8       concerned about in the report is the  
9       transition period that's proposed where for -  
10      if a right holder is to - has a pre-1972 sound  
11      recording they can do - they can take certain  
12      steps and then gain copyright protection  
13      through, I think, 2067. I don't remember the  
14      exact nature of the transition period. But it  
15      was something like that where you have even  
16      perhaps even - I don't remember if it's pre-  
17      1923 recordings but certainly 1923 through  
18      1972 recordings. You follow certain steps, you  
19      get yourself under federal law but then you  
20      get an extension on your copyright that lasts  
21      even more than 95 years. We would prefer not  
22      to see that.

1                   If it is going to happen, though,  
2                   one of the things that the report details is  
3                   the idea that the right holder should make the  
4                   recording available during that time in order  
5                   to secure the extension. We agree with that  
6                   but the report does not detail how or for how  
7                   long the recording might be available.

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

17                  If it's going to be made  
18                  available, if you're going to gain this  
19                  extraordinary change in copyright term, you  
20                  should have to do more than just make it  
21                  available. You should make it available for  
22                  sale, not just as a digital download, and you

1 should make it - and you should have to - you  
2 should go through a proceeding to prove your  
3 ownership of the recording. So there should be  
4 an establishment.

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

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

13           MR. HARBESON: I apologize. I'll  
14 just say quickly that for the - how ownership  
15 is determined in the different states varies  
16 and we can't presume that ownership is  
17 determined under the rules of Colorado or the  
18 rules of Maryland. There have to be some  
19 standards for determining how the rule is  
20 applied. We have 13 states that essentially  
21 use the Pushman Doctrine to determine  
22 ownership. If people in those states are

1 making more use of the recording now perhaps  
2 they should - that rule should be favored. I'm  
3 sure I will have more to say later but I'll  
4 stop.

5 MR. RUWE: Thank you.

6 MR. HARBESON: Sorry to go on.

7 MR. GREENSTEIN: So first I think  
8 the RESPECT Act is an instance of brilliant  
9 marketing by those who came up with the bill.  
10 It's very hard to disagree that pre-72 works  
11 are not some of the greatest works, as I think  
12 Mr. Blake mentioned. Probably some of my  
13 favorite music falls into that category. I  
14 think though that copyright owners are the  
15 ones in many instances who have said that pre-  
16 1972 works are not covered by federal  
17 protection, do not fall within the statutory  
18 license and to the extent that is the position  
19 it should not surprise anybody that services  
20 are then not making - some services are not  
21 then making payments to SoundExchange. I think  
22 you can't say that it is outside of federal

1 copyright and that a statutory royalty under  
2 112 and 114 has to be paid.

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

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

1 payment for pre-1972 works but you're not  
2 going to make pre-1972 works subject to  
3 reversion.

4           You're not going to give the  
5 recording artists all of the rights that they  
6 may have had for other types of recordings. I  
7 think it's once again a mistake for a  
8 patchwork targeted special interest effort to  
9 fix the copyright law. You either start on a  
10 clean slate or you're doing this type of  
11 effort which I think is inconsistent. And if  
12 you're going to require payment you absolutely  
13 should include and make clear that the safe  
14 harbor provisions of the DMCA apply to those  
15 works as well because right now under the  
16 legislation it says they are not being granted  
17 copyright protection. And I want to - I also  
18 want to clarify that no one should assume that  
19 the statements that are being made by me on  
20 that last point - the DMCA safe harbor  
21 protections - apply to any clients of my firm,  
22 many of which are well known and our

1 representation of them is rather well known or  
2 any of the clients that I specifically  
3 represent because notwithstanding the position  
4 of the Copyright Office I'm not - I would not  
5 concede that safe harbor protection of the  
6 DMCA would not protect an online service  
7 provider for pre-1972 recordings stored at the  
8 direction of a user. Thank you.

9 MR. RUWE: Thanks. Mr. Hauth.

10 MR. HAUTH: Thank you. Just wanted  
11 to says that for a radio station operator,  
12 again, this is an administrative nightmare  
13 because we are in fact - we operate two oldies  
14 stations, one in Honolulu and one in  
15 Greenville, South Carolina - and we are in  
16 fact paying SoundExchange for those sound  
17 recordings performances because we cannot  
18 extract them from our reports. It's too much -  
19 you know, it takes a third party to do that,  
20 as far as I know. But that's not out of  
21 altruism. That's out of an administrative  
22 problem.

1                   So but as a novice about copyright  
2                   law, I have to say that the whole business of  
3                   pre-1972 flies in the face of the  
4                   Constitution, which says that copyright law  
5                   aims to promote the progress of science and  
6                   the useful arts by among other things inducing  
7                   authors to create new works of authorship. I  
8                   don't understand how that doesn't come up when  
9                   we're in discussions about this or when  
10                  Congress - also when Congress extends the  
11                  Copyright Act every 20 years. So that's  
12                  something that I guess I need edification on  
13                  that because it doesn't - it seems to be in  
14                  conflict. State laws that exist it's my  
15                  understanding that they do not deal with  
16                  public performance issues but rather such  
17                  things as piracy and things along those lines  
18                  to protect sound recordings from unauthorized  
19                  duplication and sale. So I don't know how  
20                  those laws are could be argument that the  
21                  federal law should cover a public performance  
22                  of sound recordings pre-1972. Those are pretty

1 much my thoughts on it.

2 MR. RUWE: Thank you.

3 Mr. Prendergast.

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

15 I don't know that the state laws  
16 that you're discussing are limited to the  
17 rights for reproduction or sale. That's an  
18 open question. Of course, litigation matters  
19 right now that are attempting to answer or at  
20 least address that question and so if you  
21 start from the premise that there is a  
22 performance right under state law then the

1 statutory license should be the one-stop shop  
2 that service this need in order to play  
3 whatever sound recordings they want. That's  
4 the purpose of a blanket license.

5 The comment was made that the  
6 RESPECT Act is a fix for a particular problem.  
7 We don't here at SoundExchange we don't have  
8 a view on whether federalization should be  
9 extended further. But I would say that what we  
10 are talking about here with respect to moving  
11 pre-1972 recordings within the scope of the  
12 statutory licenses is a problem that is  
13 solvable and as Mr. Hauth said a lot of  
14 services - Mr. Hauth mentioned that his  
15 constituents are already paying on pre-1972  
16 out of administrative need. Most services that  
17 rely on the statutory license are paying on  
18 pre-1972 and so there is - whether it's a  
19 matter of administration or a matter of  
20 expectation there is an expectation that the  
21 statutory license will cover all sound  
22 recordings that are available.

1 MR. RUWE: Mr. Marks.

2 MR. MARKS: Thank you. So a couple  
3 comments. First, I won't reiterate, you know,  
4 all of the positions that we've taken in the  
5 past on, you know, full federalization. You  
6 know, we supported subject to dealing with a  
7 lot of the complicated issues that the  
8 Copyright Office itself pointed out in its  
9 report regarding ownership term,  
10 termination, registration, et cetera. With  
11 regard to the conversation or most of the  
12 conversation that we've been having here about  
13 112, 114, et cetera, I would make one  
14 observation or a couple of observations and  
15 maybe just throw out a question.

16 One is that seems to be a problem  
17 uniquely with regard to services operating  
18 under the compulsory license, and I think this  
19 just demonstrates again what happens when you  
20 have a compulsory license that's a limitation  
21 on exclusive rights. I mean, that license was  
22 put in place for the administrative

1 convenience of a category of services to take  
2 advantage of and reduce their administrative  
3 fees and/or transaction fees and we now have  
4 a situation where they aren't paying whereas,  
5 you know, other services in the market this  
6 same problem doesn't exist for those that are  
7 operating in the market outside of the  
8 compulsory license.

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

14 MR. MARKS: Correct. That's my  
15 understanding. And I heard on the last panel  
16 that services just want to pay. They want to  
17 do the right thing. They want to pay royalties  
18 and here we have a very obvious situation  
19 where you have two large companies that are  
20 either not supporting that statement or, you  
21 know, think otherwise for some other reason.  
22 So I would like - I heard Mr. Greenstein talk

1 about, you know, clients supporting full  
2 federalization, some of them, or you talking  
3 about full federalization. I kind of - I would  
4 like to know whether your clients support  
5 that. You are probably on this panel in the  
6 best position to answer that and I understand  
7 the position on the RESPECT Act but would like  
8 to hear a position generally speaking on full  
9 federalization.

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

16 I do think though that it should  
17 either be all in or all out. I think that the  
18 general view, and that's also the position  
19 that was stated by Dina and was not  
20 representing Dina for those comments but I  
21 think it's a valid point. A few things - Brad  
22 - Mr. Prendergast's comment about if you start

1 from the premise that state law has a  
2 performance right I don't think state laws do  
3 have a performance right and this would be a  
4 new right and it would be an extension under  
5 federal law to something that has not existed.

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

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

19 MR. GREENSTEIN: So I wish, Steve,  
20 that I was in a position to be able to answer  
21 and to tick through and to disclose the  
22 positions of different companies but I've just

1 not undertaken that effort.

2 MR. RUWE: Thank you. Mr. Watkins.

3 MR. WATKINS: Thank you. I just  
4 wanted to speak to as usual the administrative  
5 issue when it comes to identification of pre-  
6 1972 recordings. You know, our company doesn't  
7 take a position on federalization. We  
8 certainly understand why copyright owners of  
9 pre-1972 recordings want to be compensated. I  
10 share the affinity that, you know, a lot of  
11 the panel members have for pre-1972 music.

12 But be all that as it may, at the  
13 moment I think it's fairly undeniable that,  
14 you know, federal performance royalties are  
15 simply not payable on these recordings and so  
16 certain companies use us to identify them and  
17 pull them out of reports of use and so that  
18 service is available to broadcasters, DSPs,  
19 whoever might need it. It does provide kind of  
20 an occasion to talk about something we haven't  
21 talked about so far which is it has been  
22 suggested to me by some of our clients that

1 SoundExchange at least has seen instances in  
2 which some of our identifications of pre-1972  
3 recordings, in their opinion, are not  
4 accurate, meaning they think they're, you  
5 know, it's a post-72 recording or maybe the  
6 position is that it's a remastered recording  
7 eligible for new copyright protection.

8 We don't know because  
9 SoundExchange won't engage with us on this  
10 issue and I've been told that that's because  
11 there is litigation between the parties, and  
12 what it highlights is the need for an  
13 adjustment process whenever there is an  
14 adjustable fee blanket license both for  
15 circumstances like this relating to  
16 identification of pre-1972 recordings or the  
17 identification of directly licensed  
18 recordings, whether or not the recording in  
19 particular - is actually directly licensed,  
20 whether or not it belongs to the rights holder  
21 who actually says that it does, whether that  
22 rights holder controls the performing right

1 versus just the distribution right. And that's  
2 a really necessary part of administration. I  
3 just want to take that opportunity to mention  
4 that.

5 MR. RUWE: Thank you. Mr. Blake.

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

12 I'm not an expert on the RESPECT  
13 Act but I think what I've urged is simplicity  
14 and I think that, to my limited understanding,  
15 in those CRB hearings the rates that were  
16 determined were really determined with the  
17 idea that it's payable for all of the music  
18 that's being played and that you may be able  
19 to carve out and not pay on premium services  
20 such as Howard Stern talk radio or something  
21 like that to the extent you've got a different  
22 price on it.

1                   But I don't think there was any  
2                   intention that users be able to separate out  
3                   works and not pay on some unless they were  
4                   clearly directly licensed. So I think the  
5                   answer is we need to get to a fair rate. I'm  
6                   not saying that the rates that exist now are  
7                   necessarily fair. That's what's good about the  
8                   RIAA proposal. It really does invite a  
9                   dialogue for all interested parties to sit  
10                  down, and it's very consistent with what Mr.  
11                  Greenstein has said. Let's get the rate right.  
12                  Let's figure out the allocations. But let's do  
13                  it in a sensible way so that the rate for  
14                  services that are either wholly or  
15                  predominantly music is the rate for all the  
16                  music that they choose to play and not have  
17                  those carve-outs subject, of course, to a  
18                  carve-out for the direct licensing to the  
19                  extent that that is legitimate.

20                         I will, you know, responding to  
21                         Mr. Watkins, go and say that I have a very  
22                         strong concern at the moment and I don't know

1 what the facts are really but we're seeing  
2 more and more that what is happening is that  
3 big services and I'll name SiriusXM in  
4 particular - will go and have artists come  
5 into their studio, and they're big enough to  
6 afford a little studio, and go and do a live  
7 in-studio performance and then they will play  
8 those live in-studio performances as  
9 exclusives. That sounds great. I mean, under  
10 the right circumstances we like that too. What  
11 they do is present at the last minute an  
12 artist waiver to an artist and say here, sign  
13 this. Some of them are clear. Some of them are  
14 not so clear as to what their effect is, and  
15 we're not yet able to tell.

16 But I have this really nagging  
17 suspicion because when I listen, and I'm a  
18 subscriber to Sirius, I keep hearing more and  
19 more exclusives being played instead of the  
20 original studio version that the record  
21 companies, clearly, own. And record companies  
22 are facing, you know, diminished profits

1 unlike the owner of a musical work who gets  
2 paid on every single recording of that. Every  
3 other recording is a potentially competitive  
4 recording that takes away from the investment  
5 that we've made. So we need to know that we're  
6 not being circumvented by these big,  
7 especially Sirius who is a dominant player in  
8 the marketplace for recorded music and  
9 delivery of it to consumers, that we are not  
10 being circumvented in our rights by going  
11 direct to artists and requiring them to sign  
12 waivers in order to get in essence performed  
13 over the radio.

14           And it's really an exploratory  
15 thing at this point because I don't know what  
16 the facts are. It's hard to tell and there  
17 will be some issues in going into what we  
18 talked about yesterday about data and then how  
19 you would report these because obviously they  
20 wouldn't have an ISRC on them. But when you go  
21 and you listen, and I remember driving into  
22 work one morning and I was on the Spectrum and

1 they had an exclusive concert on and then I  
2 went over to XMU and they had an exclusive of  
3 an artist track that had been a hit in the  
4 last month or so, and I was like, this is  
5 happening more and more. And if what their -  
6 what their goal - and I'm not saying it is -  
7 is to reduce the number of tracks on which  
8 they pay but in effect get the same kind of  
9 appeal, the value of those artists and the  
10 investment that's put into them, I think  
11 that's not right.

12 MR. RUWE: Thank you. Mr. Hauth.

13 MR. HAUTH: Just a quick question  
14 and perhaps Brad can help me with this, or  
15 Steve. Since this - since I understand that  
16 radio stations, perhaps some of the other  
17 services, are not removing the pre-1972  
18 recordings from their play lists that they  
19 report and that would be in all kinds of  
20 genres - classical and classic rock and so  
21 forth - what is SoundExchange doing with the  
22 collections and the money they're receiving

1 for this? Because we're paying it and we're  
2 not the largest - you know, we're not the  
3 Clear Channels of the world.

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

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

17 MR. RUWE: Please, go ahead.

18 MR. GREENSTEIN: So I wanted to  
19 just make a comment in response to what Mr.  
20 Blake said about the - or to address a  
21 regulation. The definition of a performance in  
22 the regulations that apply to webcasting not

1 to the satellite services, but the definition  
2 that applies to webcasting excludes  
3 performances of a sound recording that does  
4 not require a license, e.g, a sound recording  
5 that is not copyrighted. The regulations don't  
6 say if it's federal copyright law protection  
7 or under state law protection. But just to be  
8 clear, under the existing regulations that  
9 were adopted by the CRB and that are  
10 applicable if you're paying on a per  
11 performance basis a service would not have to  
12 pay on a work that is not copyrighted for  
13 which there has been a direct license or an  
14 incidental performance. So I just want to be  
15 clear on that.

16 The other thing about Mr. Blake's  
17 comment about services whether, it's a trust  
18 or radio station, Sirius satellite radio or  
19 other companies going to artists and having an  
20 artist create an exclusive, you know what?  
21 That's the free market. If the record  
22 companies are going to charge a very high

1 price for their fee and they've got old  
2 artists or artists who are no longer subject  
3 to their contract with a label and can now  
4 make a rerecord, I think what you're seeing  
5 there is evidence of the marketplace of  
6 someone saying I will reduce my liability by  
7 not having to pay Label X for playing this  
8 artist's song because I'll have them come in,  
9 play acoustically, I'll pay the performance  
10 royalty for the musical work but I don't have  
11 to pay the label.

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

19 MR. BLAKE: May I respond?

20 MR. RUWE: Please.

21 MR. BLAKE: On two points. So the  
22 first point is I'm not arguing what the law

1 is. I'm really not interested in that. I think  
2 this is really a policy discussion as to  
3 whether pre-1972s should be brought under the  
4 federal regime and I'm arguing that they  
5 should.

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

14 MR. GREENSTEIN: All I know is that  
15 when I prepare agreements for many different  
16 clients who have artists come in and do a live  
17 performance at X I walk them through - are  
18 they signed to a record label. So here's the  
19 agreement - the release - the personal release  
20 from the artist. Here's the draft agreement  
21 that you have to go to the label to get the  
22 permission.

1                   Here is the release from the  
2 publisher if you were doing a video  
3 synchronization, and if they're not, if  
4 they're unsigned, then they get a different  
5 agreement. So whether or not an artist is  
6 violating their agreement, when an artist  
7 signs a contract with someone you may think  
8 that people know they're under an exclusive  
9 agreement but I think that's an assumption and  
10 you can't assume that a service provider  
11 always knows the private contractual  
12 relationship between a recording artist and  
13 their label and what rights that person has to  
14 go do something outside of that. So it may be  
15 true in a lot of the cases but it's not like  
16 pornography. You don't always know it when you  
17 see it.

18                   MR. BLAKE: Yeah, I think you do.  
19 When that artist is signed worldwide and you  
20 see the ads and so on and they have a hit  
21 record and that's why you're bringing them  
22 into your studio to begin with, you know.

1 That's number one. The other thing I would say  
2 is that several years ago when the Digital  
3 Performance Rights Act was enacted, one of the  
4 concessions that the record companies had to  
5 make at the request of the publishers was in  
6 essence to limit their rights with respect to  
7 controlled compositions.

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

15           MR. RUWE: Mr. Watkins. Sorry. Go  
16 ahead.

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

21           In a free market, as we discussed  
22 yesterday, I think a service provider should

1 say to an artist or their label, you've got a  
2 new album out? You want promotion? You want to  
3 reach, you know, 2 million people in the New  
4 York DMA or you want to reach 70 million  
5 people across Pandora? You know what? Your  
6 label charges a very high fee and maybe that's  
7 warranted for the new release by the Rolling  
8 Stones or someone else or Van Morrison. But  
9 you know what? For this baby band, we're not  
10 going to pay you - either you're going to pay  
11 us or it's going to be free. If you want a  
12 free market you've got accept the free market.  
13 I don't think - I just -

14 (Simultaneous speaking)

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

22 MR. RUWE: Yes, Mr. Watkins.

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

11                   I just wanted to address, Larry,  
12 your observation about the Copyright Board and  
13 Sirius, which you made in passing. You know,  
14 I assure you Sirius as a company - I don't  
15 think they'd mind me saying this for them - is  
16 intent on paying all the royalties that are  
17 payable and those are hundreds of millions of  
18 dollars and we help them pay them to the best  
19 of their ability. If you have any doubt that  
20 the pre-1972 recordings should not be paid on  
21 by Sirius I think you only need to look at the  
22 copyright board ruling describing the formula

1 and the way in which royalties are to be paid  
2 by them under the statutory license. If you  
3 don't have access to that I'll be happy to  
4 play it to you - point you to it because it's  
5 pretty clear cut.

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

14 MR. RUWE: Thank you. Mr. Harbeson.

15 MR. HARBESON: I just want to  
16 quickly respond to a point that was made by  
17 Steve earlier which was that this is  
18 essentially a problem of a question of a  
19 statutory license - I don't remember exactly  
20 the wording that you used. But I just want to  
21 point out that there is a significant  
22 stakeholder group in users who wish to make

1 lawful uses under the Copyright Act that are  
2 important here. I realize that I'm kind of  
3 like the soccer team that showed up for the  
4 World Series in this hearing but I wanted to  
5 remind everyone that the users of content are  
6 an important stakeholder here. Thanks.

7 MR. RUWE: Thanks.

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

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

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

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

18 MR. GREENSTEIN: I'm saying that I  
19 would not concede that state law grants  
20 copyright owners a performance right under  
21 state law and if that was the case and there  
22 was no exemption for broadcast radio you've

1 got many decades of copyright owners sitting  
2 on their rights.

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

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

18           MR. GREENSTEIN: I understand that  
19 but a performance is not a distribution and  
20 the performance by terrestrial radio - so the  
21 exemption in the Copyright Act for the  
22 nonsubscription broadcast transmission is an

1 exemption to the 106(6) rights. So 106(6)  
2 provides for a public performance by the sound  
3 recording by means of a digital audio  
4 transmission and then you got a 114 (d)(2)(C)  
5 whatever or (d)(1) I guess for the exemptions  
6 and there was an exemption for a  
7 nonsubscription broadcast transmission. So -

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

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

21 MR. MARKS: That was the memo from  
22 you I was waiting for for that whole time we

1 worked together. I'll go back. Actually I  
2 don't have mine.

3 (Laughter)

4 MS. CHARLESWORTH: A little inside  
5 baseball there. Good. Good.

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

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

21 MS. CHARLESWORTH: Okay. Thank  
22 you.

1 MR. BLAKE: Since we do have -

2 MR. RUWE: Sure.

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

15 I don't believe that to be the  
16 case and what I'm suggesting is that as a  
17 matter of policy we ought to get it right now.  
18 I'm not going to argue with you about what the  
19 Copyright Royalty Judges said in the last  
20 proceeding but that we ought to get it to a  
21 simple thing where this is your rate and it's  
22 based on your paying for all the music that

1       you're playing that is not either out of  
2       copyright altogether or that was direct  
3       licensed.

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

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

9                   MS. GOLDBERG: Not right now.

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

12                  MR. RUWE: Brief opportunity for  
13       Mr. Harbeson.

14                  MR. HARBESON: I will interrupt  
15       lunch. I apologize. I just wanted to point out  
16       that in response to the question of  
17       performance rights and under state laws, my  
18       research suggests that the answer is sometimes  
19       they do. There are some states that explicitly  
20       give performance rights and others do not. And  
21       I also wanted to draw quickly attention to one  
22       of the recommendations of the National

1 Recording Preservation Plan which is to mimic  
2 the neighboring rights provisions in many  
3 other countries by extending Section 108(h) to  
4 apply to the last 45 years of a sound  
5 recordings term to bring it - bring parity so  
6 that we can start hopefully getting at some of  
7 preserving some of the recordings sooner.

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

22 (Whereupon, the above-entitled

1 went off the record at 12:55 p.m. and resumed  
2 at 2:15 p.m.)

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

20 But there are a few things I think  
21 that, you know, some people at least think  
22 should be preserved. So, we welcome your

1 thoughts and reflections and discussion on  
2 potential ways to move forward and help fix  
3 this system which I think, at a minimum, I  
4 think there really is agreement that some  
5 change at least is necessary. So, without  
6 further ado, I will open the floor to the  
7 first brave taker who -- oh, Professor Menell,  
8 okay. So, you know, if you want to give us  
9 some thoughts and I'm sure -- well don't --  
10 did you talk him into your point of view over  
11 lunch? We'll see what he says. Okay. All  
12 right, all right.

13 So Professor Menell, take it away.

14 MR. MENELL: Okay, so I'll just try  
15 to get the ball rolling and I really do look  
16 forward - - I feel we need to focus on a group  
17 that is not really represented in a room like  
18 this, and they are the most important people  
19 for a lot of reasons. And that's people who  
20 came of age after Napster because everyone is  
21 coming of age after Napster, but they are, in  
22 some ways, the best target because they are

1 now reaching maturity and their behaviors and  
2 their choices and the way they think about the  
3 copyright system will I think affect so much  
4 of how this system functions.

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

12           But we've also seen a lot of  
13 experimentation and there's a lot more people  
14 coming to some markets, YouTube being a good  
15 example and Pandora being a good example. But  
16 it strikes me as disturbing that we do not  
17 have people recognizing, I would say young  
18 people recognizing the intrinsic value of  
19 music, the intrinsic value of a system that  
20 would produce the next generation of artists  
21 and it's not as if they would have to  
22 contribute that much collectively or

1 individually in order to produce a tremendous  
2 amount of revenue. But we currently have not  
3 managed to do that.

4           The services that are successful  
5 by some measures that maybe a venture  
6 capitalist might consider good or not very  
7 good measures when you think about kind of the  
8 vast number of people enjoying music. I mean  
9 we're talking, you know, 20 million people  
10 subscribing to, you know, these services, 20,  
11 30 million people, yet we're talking about,  
12 you know, half a billion or a billion people  
13 worldwide who, you know, used to buy music at  
14 some level or potentially would be, I think,  
15 available given that they are enjoying the  
16 product.

17           And it's not as if the product's  
18 that expensive. The product, you know, for  
19 \$10.00 a month approximately, you can have  
20 everything on all your devices in a very  
21 enjoyable format. And it's not as if these  
22 people aren't paying that kind of money. They

1 have cell phone plans. They have all kinds of  
2 services that charge them a lot more. So when  
3 people here are talking about well, it's  
4 whatever the market will bear, well the market  
5 is this strange endogenous forest which is  
6 affected by free access as well as services  
7 that are competing with services that are  
8 expensive but perhaps offer some other tie in.  
9 So, I see that the goal, and perhaps the long  
10 term goal of channeling people into a robust  
11 marketplace that will serve, you know, the  
12 future creators and that's, you know,  
13 obviously far from where we are right now. A  
14 lot of things that I've heard, I consider to  
15 be counterproductive. I mean trying to make it  
16 hard to have universal access. You know,  
17 telling people, well you can go on a service,  
18 but you're not going to get the 25 most  
19 popular songs. I mean that, you know, you say  
20 that to a group of, you know, college students  
21 today, they would just snicker and laugh. They  
22 would say that's ridiculous. That's, you know,

1     like a Nancy Reagan trying to teach people not  
2     to steal, not to pirate something. I mean it  
3     just -- it doesn't connect. It's offensive to  
4     that generation. And the way I am able to see  
5     it is I go back in my own brain and thinking  
6     how would I feel as a 16-year-old if someone  
7     told me I couldn't have access to what I knew  
8     I could gain access to. And so I see it as an  
9     issue of creating the on-ramp. What was the  
10    on-ramp for many of us? For me it was record  
11    clubs and I now know that the record club  
12    deals were kind of unfair to artists, but I  
13    didn't know it at the time. But the record  
14    club got many of us addicted, right?

15                   I mean you got this thing in the  
16    mail. You immediately had a record collection  
17    and then you immediately quit as soon as you,  
18    you know, bought your five and then you did  
19    another one and you got your ten free ones and  
20    then you bought five more and the next thing  
21    you knew, you were addicted to music and it  
22    was a big part of who you are. We don't have

1 very good on-ramps right now.

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

20 And I've written about this, I  
21 think the history is pretty clear and, you  
22 know, we face a problem in that an independent

1 record company can't really negotiate with a  
2 Spotify because the whole Spotify structure is  
3 based on trying to maintain access to the  
4 legacy catalogue. And so, that and we could  
5 sort of look at versions of that relating to  
6 perhaps other collectives. But I think that at  
7 least in the core record industry, that is a  
8 reality and it's the power of the collective.  
9 It's not the power of the record company vis-  
10 a-vis any individual artist. It's the fact  
11 that the record company can negotiate on  
12 behalf of all of them. So I see competition  
13 policies as being quite central to resolving  
14 this issue. What I would like to see is some  
15 sort of grand compromise in which we were able  
16 to substantially improve the back end for  
17 artists while substantially growing the front  
18 end of participation in the marketplace.

19 Now that probably would hurt or  
20 help various entities represented at this  
21 table and other tables because there are  
22 companies who are succeeding in niche markets

1 today. But I feel that we're not going to get  
2 to sort of the promised land of a really  
3 robust market until we can say to, you know,  
4 the next generation of consumers and the next  
5 generation of artists that there will be a  
6 well plumbed system in which you'll get  
7 everything you want on all your devices at a  
8 reasonable price and that that money will make  
9 its way to the people who create the stuff and  
10 the people in the middle will be fairly  
11 compensated but not excessively so.

12 MS. CHARLESWORTH: I do have a  
13 follow-up question for you. And, I mean you  
14 talked about an on-ramp, a reasonably priced  
15 service. I mean, why isn't Spotify an on-ramp  
16 for your students? It's \$10.00 a month. It's  
17 near ubiquitous. I acknowledge I've heard at  
18 least around the table that there are a few  
19 things here and there that are missing. But I  
20 mean, isn't that part of what you're saying  
21 and if that's not the solution, I mean there's  
22 a lot of stuff on the back end that people are

1 complaining about. But from your students'  
2 perspective, for \$10.00 a month, they can have  
3 a streaming service.

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

22 I think that there's a lot of

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

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

17           MS. CHARLESWORTH: Okay, this is  
18 ambitious there.

19           MR. MENELL: I know, I know, but  
20 I'm calling out to them, this is my call out.  
21 And get them -- because I mean they, you know,  
22 their shows are very good at promoting music

1 and artistry. But I do feel that the artists  
2 are not really on board and I would like to  
3 see a much broader push to go out. People  
4 paying \$100.00 to go see a Springsteen ticket  
5 could have a year and if Bruce Springsteen  
6 said, I've built my career because people  
7 bought my records, being on these services  
8 will, if the services are fair, will produce  
9 the next generation of Springsteens.

10 So I, you know, I would like to  
11 believe this. I could be deluded. We have no  
12 market test of this hypothesis but I do think  
13 that it is the morally right thing to do is to  
14 get a groundswell for a much bigger pie with  
15 a somewhat smaller slice going to the people  
16 in the middle and clear understanding, easier  
17 access. Those are the kind of ideas. I talked  
18 earlier about the mash-up idea. I think that  
19 would be another branch. The two are not  
20 linked but I think both of them would signal  
21 to the next generation, we want you to  
22 participate in our copyright system.

1 MS. CHARLESWORTH: Okay, well that  
2 got Dina's sign up. No, thank you very much,  
3 Professor Menell, I appreciate your thoughts  
4 and also the extensive comments and article  
5 that you submitted.

6 Ms. Miller?

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

15 And essentially what they say to  
16 me is Jen, anything is possible. And so I  
17 truly believe that technology is sort of what  
18 got us into a lot of the messes and it's  
19 what's going to get us out of a lot of the  
20 messes. And I think my theme in the past two  
21 days has been the music industry needs to  
22 start investing in its own technologies and it

1 needs to invest in technology for its own  
2 interests and stop relying on the YouTubes of  
3 the world to build for their interests when  
4 their interests are underlying.

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

15           So that would be access to where  
16 content is being created and consumed and  
17 published. That would be data standards where  
18 data is collected. That would be the data  
19 repository that I think most people agreed  
20 yesterday needs to happen where there is  
21 really an authoritative source. And then a  
22 universal ID, sort of a Social Security number

1 per copyright. And so those are the systems  
2 that I think, you know, if I could say the  
3 U.S. Copyright Office should be contemplating  
4 that would be on the systems side. That kind  
5 of involves the transparency, trackability.  
6 The collaboration side is really where there  
7 free market comes into play. And I think in  
8 terms of regulation, there's kind of two sides  
9 to, in my opinion and some of it impacts me  
10 and some of it does not. There's a commercial  
11 side and then there's a UGC side. And I think  
12 pretty much everybody can agree that on a UGA  
13 side, again, to state a stat that, Leo, you  
14 know far better than I, but over 100 hours of  
15 content is published every single minute  
16 online.

17 And I believe it's actually  
18 probably north of that at this point. There is  
19 very little way to track all of those  
20 copyrights, to really put in place a system  
21 where you can go to copyright owners and try  
22 to get agreements across that. But I think

1 that in that system, in the UGC, it should be  
2 agreed that obviously the party monetizing the  
3 UGC systems are the parties that need to  
4 provide the data and need to adhere to  
5 tracking regulations.

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

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

22 MS. MILLER: I mean basically

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

13                   So, on UGC, I see the regulation  
14 as being more on the platforms themselves.  
15 Then on the commercial side of regulation,  
16 which is direct to client, I think that is  
17 really a place that can operate under free  
18 market principles and a rights holder, a one  
19 on one relationship which is I believe is what  
20 Dina was talking about earlier. So that's sort  
21 of I guess in terms of accountabilities, like  
22 I said, I mean I think innovation can thrive

1 under transparency, trackability,  
2 collaboration with systems somehow encouraged  
3 by or even created by the U.S. Copyright  
4 Office that offers sort of this, again, data  
5 standards and then the regulations for, you  
6 know, what is realistic in today's day where  
7 most of the content created is actually user  
8 generated content versus direct to client.

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

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

13 MR. HARBESON: So I'd like to  
14 remind the room that another important on-ramp  
15 to discovering content is libraries, public  
16 libraries, university libraries and the like.  
17 Libraries provide an on-ramp not just for  
18 current music, but for the -- and not just for  
19 current copyrighted works, too. This is a  
20 comment that's actually relevant to all  
21 copyrighted works but especially relevant now.  
22 And so, the libraries provide access to works

1 that are not only current but also long  
2 forgotten. We've seen a number of instances  
3 where people have discovered, and even made  
4 popular, old copyrighted content because they  
5 found it in the library. This is relevant to  
6 my first comment of the roundtable yesterday  
7 which is that to the extent that end user  
8 license agreements are for closing the  
9 possibility that a library can acquire the  
10 content in the first place, that is -- has the  
11 potential to create a very dire consequence  
12 for the study of music and recordings and  
13 possibly down the road, books and musical  
14 works and other copyrighted works and that's  
15 happening right now.

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

1 3rd Symphony by Gustavo Dudamel and the local  
2 band. That's a very serious problem down the  
3 road if libraries can't acquire the work, they  
4 can't preserve the work, they can't keep it  
5 available for future generations.

6 And you know, we've tried to  
7 negotiate licenses even, even though this is  
8 a nonnegotiable license, we've tried to  
9 contact the right holder to this particular  
10 recording. We were told that we could -- this  
11 was the University of Washington, I believe  
12 that pursued this, said that they traced the  
13 right holder, they tried iTunes and iTunes  
14 said contact Deutsche Gramophone, Deutsche  
15 Gramophone said to contact who else. They got  
16 to the end of the copyright chain, if you  
17 will, and discovered that the right holder  
18 would give them a license -- would not sell it  
19 to them outright but would give them a license  
20 to use the recording in their library for five  
21 years for some hundreds of dollars, which does  
22 not, to us, seem like a reasonable price

1 considering that if it had been available on  
2 CD we could have gotten it for conservatively  
3 \$20.00 and loaned it to our patrons  
4 indefinitely.

5           So we're very concerned about the  
6 trend that end user license agreements,  
7 iTunes, Amazon, et cetera not only are  
8 targeted only at end users which libraries are  
9 not, libraries can't even enter into this  
10 license agreement, but even if we were able to  
11 enter into it, the EULAs prohibit all of the  
12 traditional library activities, loaning,  
13 reformatting, et cetera that we do to provide  
14 a great public service. I'd like to point to  
15 recent legislation in the U.K. which may serve  
16 as a model, I don't think it's probably  
17 popular with anyone else in this room, but  
18 which with certain recently, I think recently,  
19 maybe not, certain exceptions to their  
20 Copyright Act added a clause that said to the  
21 extent that someone tries to restrict this  
22 particular exception to the Copyright Act

1 through a contractual arrangement, that  
2 contract is unenforceable. We would like to  
3 see something similar here where we can  
4 acquire and do otherwise legal things with the  
5 music for the purposes of our very special and  
6 I think important service to society.

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

21           MS. CHARLESWORTH: Thank you, Mr.  
22 Harbeson.

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

12                  MR. MARKS: Okay. I wanted to  
13                  respond to Professor Menell's points. I mean  
14                  some of which I agree with and some of which  
15                  I don't. So I think there's no question but  
16                  that the streaming model and the transition to  
17                  streaming and I'm speaking mostly about on  
18                  demand services, subscription services, hold  
19                  a tremendous amount of potential for all of  
20                  the creators that are, you know, and have been  
21                  represented in the discussion so far. And the  
22                  issue there is really scaling.

1           I mean you've got to get to, you  
2 know, some number of people where the dollars  
3 flowing in on a recurring basis can replace,  
4 you know, other models that are, you know,  
5 falling by the wayside or declining. We have  
6 not seen, I mean, I have I guess a hard  
7 time believing that that scalability is not  
8 happening as a result of consumers thinking  
9 that artists aren't getting paid enough. There  
10 are a handful of artists, about 15 out of all  
11 the artists that are out there that have  
12 spoken out about, you know, streaming payments  
13 and the amount they get, you know, from a  
14 particular -- Spotify or whoever it might be.

15           And you know, I don't even view  
16 that as really, you know, it hasn't even been  
17 that vocal. And in speaking with our  
18 companies, usually the discussions about  
19 streaming and when somebody raises an issue  
20 about whether they should go on to a streaming  
21 service, it's a concern that it's going to  
22 interfere potentially with download sales.

1                   And to the extent that the royalty  
2 rates equivalent for the artists there,  
3 there's certainly not a feeling that the  
4 artist is trying to, you know, keep something  
5 off of the streaming because they're going to  
6 get a higher royalty rate from another source.  
7 And this is more about educating on the artist  
8 side to the extent that there are concerns,  
9 the benefits of streaming like the fact that  
10 taking a longer term view, what is a recording  
11 I release today going to earn me over two  
12 years instead of looking just at the next  
13 month or two months based on sales which  
14 traditionally has been the time frame that  
15 most revenues will come in from sales.

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

22                   But on the consumer side, I guess

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

17 MS. CHARLESWORTH: Thank you, Mr.  
18 Marks.

19 Ms. LaPolt?

20 MS. LaPOLT: Hi. I'm not going to  
21 talk too much about the mash-up compulsory  
22 license that Professor Menell points out

1 should happen. I want to reserve a lot of that  
2 for the roundtable that the PTO is having here  
3 which, you know, is the subject of their green  
4 paper.

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

17 And some of those comments that  
18 you made I think are relevant but when you put  
19 in the mash-up argument, even though it's two  
20 separate arguments, when you advocate in the  
21 same paper or position that there should be a  
22 compulsory license in a mash-up sample and

1 remix, you automatically lose credibility with  
2 the music creator community. And I think that  
3 hurts you because I think a lot of your ideas  
4 are really viable ideas, it should be  
5 explored.

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

19           And I do want to, before I end  
20 want to read this very important part from  
21 Register Maria Pallante's next great Copyright  
22 Act which I think bears repeating here for the

1 record. Quote, Congress has a duty to keep  
2 authors in its mind's eye including  
3 songwriters, book authors, film makers,  
4 photographers and visual artists. Indeed, a  
5 rich culture demands contributions from  
6 authors and artists who devote thousands of  
7 hours of work and a lifetime to their craft.  
8 A law that does not provide for authors would  
9 be a illogical, hardly copyright law at all  
10 and it would not deserve the respect of the  
11 public, end quote. Thank you.

12 MS. CHARLESWORTH: Thank you, Ms.  
13 LaPolt.

14 Okay, I'm going to go over here. I  
15 think I'm just going to go down the row  
16 because I didn't see when you put your signs  
17 up, so Mr. Anthony?

18 MR. ANTHONY: Sure, this panel's  
19 called Potential Future Developments and what  
20 really informs that, I think very well is a  
21 lot of what's happening right now. And there's  
22 been lots of talk over the past couple of days

1 about streamlining the licensing process in  
2 the future but I don' believe we're putting  
3 ample weight on what's actually working right  
4 now at this very moment. There are a lot of  
5 functional current examples available, many of  
6 them built by the companies in this very room  
7 and they've solved many of the problems in the  
8 marketplace and we talk about it like it's  
9 some sort of magical unicorn, a system that  
10 actually works but there's a lot of unicorns  
11 out there.

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

22           So there's five attributes that we

1 see. The first is a significant number of  
2 willing content providers on an opt-in basis.  
3 And we say opt-in, I don't mean opt-in we're  
4 in for everything, we're out for everything.  
5 I mean opt-in to a specific service or have  
6 many rights available to one or all of those  
7 rights on a song by song basis. High quality  
8 metadata is the second attribute. Metadata  
9 needs to be gathered from all possible  
10 sources.

11           People talk about everything being  
12 open and available, I think they need to  
13 ingest, sort and prioritize all that data.  
14 Many of the organizations here with these  
15 systems that I'm talking about do that.  
16 Rumblefish uses the YouTube system on a  
17 regular basis to resolve disputes all the  
18 time. And this includes both objective  
19 metadata which is who owns what, subjective  
20 which is genre, mood, that type of thing and  
21 transactional data which is where things have  
22 actually been used.

1                   The third point is significant  
2 demand from licensees. There's no shortage of  
3 demand especially in social video.  
4 Everything's exploding, just what Rumblefish  
5 sees, 50,000 to 70,000 micro licenses a day.  
6 There's no reason why that can't be 250,000,  
7 500,000, a million micro licenses a day in the  
8 near future. It's not that there isn't demand,  
9 it's just that we haven't really gotten to the  
10 full scale with the license options.

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

15                   When you upload something, we can  
16 identify what that is and that's both through  
17 YouTube and also Audible Magic. Audible Magic  
18 provides Content ID for Vimeo, Facebook,  
19 SoundCloud, Daily Motion. And so the stick is  
20 the Content ID and the carrot is easy to  
21 access licenses. We do this every day in the  
22 micro licensing space. There's a number of

1 places you can get licensed music, WeVideo,  
2 Shutterstock, Socialcam, Animoto, Jumpcamp,  
3 Pixorial, the Music Bed.

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

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

20 So, just to recap the five  
21 attributes, significant number of online  
22 content providers, high quality metadata,

1 significant demand from licensees, carrot and  
2 stick incentives and rights to travel. So I  
3 would just encourage everyone when you're  
4 looking at solving a lot of these problems  
5 regardless of license type that you just look  
6 at what's already working.

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

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

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

16 Mr. Lipsztein?

17 MR. LIPSZTEIN: Thanks. So I will  
18 keep this very brief. I probably would like to  
19 echo I think some of Professor Menell's  
20 comments. In particular, I think the driving  
21 notion for us in the DSP community is that any  
22 reforms in the music licensing space need to

1 open up access to music online and in  
2 particular, needs to bridge the gap between  
3 creators of music, with whom all of this  
4 starts -- none of us would have a job here  
5 were it not for them -- with the people out  
6 there who love and want to listen to that  
7 music.

8 I think that any reforms that run  
9 counter to that are ultimately fruitless and  
10 defeat the point of this exercise. I've heard  
11 a lot today and yesterday about musicians how  
12 have no interest in being online and I think  
13 their interests are extremely important and  
14 need to be kept in front on mind, absolutely.  
15 But for my part at least -- and I think for  
16 Google and YouTube's part generally -- what  
17 we've seen is that the vast majority of music  
18 creators want to engage with end users and  
19 want to be part of that ecosystem. I don't  
20 know if Professor Menell's notion of a  
21 compulsory license for mash-ups is the right  
22 one or not.

1                   That's a novel idea and I  
2                   understand from Ms. LaPolt's perspective that  
3                   many musicians are going to find that "crazy"  
4                   to borrow her word from earlier today. But I  
5                   think it's that cultural bridge that does need  
6                   to be -- that cultural gap that does need to  
7                   be bridged. On YouTube, what we are seeing is  
8                   that fans want to engage with the content,  
9                   with the music that's out there and many  
10                  musicians, many music creators what that to  
11                  happen.

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

1 wants to see.

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

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

1 MS. CHARLESWORTH: Thank you, Mr.  
2 Lipsztein.

3 Ms. Muddiman?

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

13 But I think we have to look way  
14 beyond that to the bigger picture of how tiny  
15 the technology is right now and we know that  
16 every year the technology moves on and on and  
17 on and on and I don't think it will be very  
18 many years before the technology that  
19 Anthony's talking about, we've also developed  
20 similar systems and we should talk about  
21 creating licenses that you can do a kind of  
22 360. You have a barcode that is associated, an

1 ID like Jennifer was saying, with a copyright  
2 and you issue a license for that particular  
3 video, AV, whether it be a ringtone or  
4 whatever it is.

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

19           YouTube needs, I think, with all  
20 due respect, it needs to have a system whereby  
21 instead of allowing anybody to upload anything  
22 they want without accountability and

1 responsibility, it needs to actually provide  
2 a filtering system whereby people have to be  
3 accountable and responsible for what they  
4 upload. It's no good to go after the event and  
5 try and take things down. Go before the event,  
6 don't, you know, go initially, get people to  
7 show that they have that right license and  
8 that they have that ownership and that they're  
9 not embellishing whatever message they're  
10 trying to put on YouTube with somebody else's  
11 intellectual property, which I fundamentally  
12 feel is wrong. You shouldn't be able to use  
13 your, you know, give your message out using  
14 somebody else's intellectual property to  
15 embellish that message.

16 MS. CHARLESWORTH: Thank you, Ms.  
17 Muddiman.

18 Mr. Bernstein?

19 MR. BERNSTEIN: Thank you. I've  
20 been underscoring reporting and we've heard a  
21 number of ideas about licensing and rates and  
22 all I can tell you is whatever rate's

1 determined, whether it's statutory or whether  
2 it's market, it really doesn't matter if you  
3 can't get paid for what you licensed.

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

15           I believe the licensors should be  
16 the ones who dictate who does the accounting.  
17 I mean it's their asset. They should be  
18 entitled to do this. Now I want to move to  
19 something related and I'll keep it short, but  
20 I kind of want to put this toward Mr.  
21 Greenstein. He's smiling because he knows what  
22 I'm about to say.

1 MR. GREENSTEIN: I actually don't  
2 know what you're about to say. I've said so  
3 many things today you could criticize me on  
4 many things.

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

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

11 MR. GREENSTEIN: I hired this guy.

12 MS. CHARLESWORTH: Okay, all right.

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

15 MS. CHARLESWORTH: He said he hired  
16 you.

17 MR. GREENSTEIN: Years ago.

18 MS. CHARLESWORTH: But gentlemen --

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

21 MS. CHARLESWORTH: Okay.

22 MR. BERNSTEIN: So.

1                   MR. GREENSTEIN: Can't we all just  
2 get along?

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

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

21                   And that strikes me because when  
22 that is brought up, what's the message you're

1 sending to the licensor? I don't want you to  
2 use Crunch Digital because my client has a  
3 concern they're going to get it right.

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

14 MS. CHARLESWORTH: Thank you, Mr.  
15 Bernstein.

16 Ms. Goldberg?

17 MS. GOLDBERG: Thank you. I just  
18 want to talk about two issues. The first, I  
19 guess one of the subheadings was unified  
20 licensing models, so I know this has been  
21 discussed ad nauseam in terms of getting rid  
22 of the consent decrees but I believe ASCAP and

1 BMI should be able to bundle rights. Consent  
2 decrees basically when they are issued  
3 currently, they're for a maximum of ten years.

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

16 I think instead of saying because  
17 they're doing it we should allow it and make  
18 a license for it, I think you should educate  
19 your students better, and not just your  
20 students but all students. I think there's  
21 really a lack of education in terms of how  
22 music licensing works, and I think if you

1 asked ten people on the street they wouldn't  
2 even understand anything that was going on in  
3 this room at all. And I think we need better  
4 education.

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

7 Mr. Sanders?

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

20 So in that regard, I spoke  
21 yesterday about the possibility of best  
22 practices in terms of transparency. It goes

1 without saying that everybody wants fair  
2 rates. It goes without saying that we want  
3 accurate and robust metadata. But to creators  
4 themselves, without transparency, all of that  
5 is useless.

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

21           Yes, I mean obviously the  
22 independent songwriter community is eager,

1 able and excited to discuss streamlining  
2 licensing. However, I want as a historical  
3 footnote to state that one of the reasons why  
4 Sierra failed was that the industry itself and  
5 in the music community in particular failed to  
6 recognize the basic truth of the narrative of  
7 music creators and it's tied to the Federalist  
8 41 that James Madison wrote. And it's tied to  
9 Article 1, Section 8. Music creators speak for  
10 themselves.

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

18           So we would ask everybody please  
19 to take note of the fact that creators  
20 themselves need to be represented in these  
21 organizations on a 50/50 basis with corporate  
22 interests and others.

1                   Aside from that, you know, I think  
2                   that there's a lot of promise in terms of the  
3                   discussions that have taken place and we have  
4                   a lot to talk about. I would simply ask and I  
5                   guess looking to my right and Ashley, that you  
6                   pay attention to the actual creators  
7                   themselves. Thanks.

8                   MS. CHARLESWORTH: Thank you, Mr.  
9                   Sanders.

10                  Ms. Nauman?

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

1 a free marketplace for music and what would  
2 work.

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

1 what the availability is, what the price is,  
2 how that would work.

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

14 And I believe that there would be  
15 a lot of room for labels, publishers and PROs  
16 who manage the rights and manage the artists  
17 and the creators to still contribute a  
18 tremendous amount of value to the marketplace  
19 as well as enabling innovation in the  
20 marketplace on the front end. Because what's  
21 happening right now is there's reluctant  
22 innovation on the back end of redundant

1 replication of reporting and ingestion systems  
2 and really, really messy stuff. And that would  
3 enable for more user experiences, it would  
4 enable for more opportunity to create the next  
5 Instagram but having licensed music inside of  
6 it instead of the innovators going on and  
7 creating things separate from music.

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

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

1 and how it works.

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

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

14 Mr. Irwin?

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

19 I find it sort of curious that the  
20 consent decree supposedly was to stop  
21 collusion yet we're finding streaming services  
22 that have label zoning, part or all of them.

1 That's not considered collusion, they're  
2 negotiating with themselves for licenses,  
3 seems bizarre to me. And as an AV composer and  
4 representing that segment of the market, it's  
5 the fastest growing segment there is where  
6 over 50 percent of the income stream to ASCAP,  
7 yet we don't have a say in what happens to our  
8 works.

9           Now where is this going to really  
10 come back to haunt us if we're not at the  
11 table? I believe it's going to be in the  
12 bundling of rights. Now we're not against the  
13 bundling of rights, but it's the transparency  
14 that Charlie was talking about because if we  
15 get bundled in there at 50 percent of the  
16 revenues and then can't find out where our  
17 part of that pie is because we don't have  
18 ownership of our copyrights, we'll be  
19 negotiated away in a heartbeat at the expense  
20 of everyone else. I just want to make sure the  
21 Copyright Office understands to look out for  
22 that for us.

1 MS. CHARLESWORTH: Thank you very  
2 much, Mr. Irwin. I think I'm going to skip  
3 Professor Menell for now and just make sure we  
4 get everyone in first who hasn't had an  
5 opportunity to speak, so I think Mr. Barker,  
6 you haven't addressed us yet in this panel.

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

16 They realized that churches were  
17 not paying royalties and copyright holders  
18 would like for them to and there were  
19 permissions that were needed but they were so  
20 small scale CCLI came along and built a  
21 business that right now, is the biggest source  
22 of income for our gospel clients. So there's

1 a success model out there that was built in  
2 the free market that seems to be working and  
3 I think that's a good model as we're talking  
4 about a lot of these things that we could keep  
5 in mind.

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

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

22 At the same time, I would have the

1 right if my song is worth more maybe as a  
2 classic song worth more than a newer lesser  
3 known recording of that song, then I have the  
4 right to actually charge more than what the  
5 master owner is charging. So I think yes,  
6 there are dangers of ups and downs in the free  
7 market as we see in the synchronization  
8 market, but I think we can deal with that and  
9 I think the market will flesh itself out and  
10 define itself.

11 Let me go, if I can, as my last  
12 issue to talk about, as you know and you've  
13 heard me say many times, I think we should get  
14 rid of Section 115 and I'm just going to go  
15 back there and read something that Marybeth  
16 Peters wrote, prior Register of Copyrights in  
17 2004.

18 Actually she testified to the  
19 House Committee on the Judiciary in 2004 and  
20 she says the music industry adapted to the new  
21 license, meaning the compulsory license, and  
22 by and large sought its retention opposing the

1 position of the Register of Copyrights in 1961  
2 to sunset the compulsory license after  
3 enactment of the omnibus revisions of the  
4 copyright law. Music publishers and composers  
5 had grown accustomed to the license and they  
6 were concerned that the elimination of the  
7 license would cause unnecessary disruptions in  
8 the music industry.

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

17           Now, in my opinion, we the  
18 publishers, I wasn't at the table then, made  
19 a huge mistake and I think it's time for us as  
20 publishers to realize we don't need to fix  
21 115, we don't need to talk about rates under  
22 115, we need to do what's been talked about

1 around the table here and that is deal with  
2 the fair market as a fair market in these  
3 things.

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

15 Again, that echoes a lot of what  
16 we've just heard around the table and I won't  
17 repeat all of what Steven has said in RIAA's  
18 position because I think he and I agree on  
19 most everything except for probably two issues  
20 which are tethered rights, taking a percentage  
21 of the recording owners. We're not interested  
22 as copyright owners in tethering our rights to

1 that. And then the other is the control of the  
2 first use.

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

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

1 no.

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

22                   So I say all that and finish I

1 think as we go around the table, we've heard  
2 basically two, in my opinion, two categories  
3 of what we need, fairness and a new process.  
4 Now the new process can include transparency  
5 and auditability, a lot of the things that  
6 we've talked about here.

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

22           I think we need to do away with

1 115 totally, build a fresh foundation,  
2 understand all of these concerns that have  
3 been talked about around the table and then  
4 build it. I've said this before and I'll say  
5 it again, there's no one person in this room  
6 who is as smart as all of us in this room. I  
7 think we can come up with the solution as long  
8 as we begin to walk together, but I think part  
9 of that solution is getting rid of 115.

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

12 Mr. Lord?

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

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

19 MR. LORD: Right. In spite of the  
20 fact that the broadcasters have tried to sue  
21 us into oblivion, but you can strike that from  
22 the record. I will make this quick but I want

1 to sway this, I grew up in segregated Alabama  
2 and my mom and my dad loathed segregation and  
3 my mom always used to say we've got to start  
4 with the children. We've got to start with the  
5 children. We've got to put them together so  
6 they don't know discrimination.

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

22           So I think there's a role for the

1 Copyright Office, maybe, I don't know what  
2 your mandate is and if that's included, but to  
3 help the public understand what copyright is.

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

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

1 MS. CHARLESWORTH: Thank you very  
2 much, Mr. Lord.

3 Mr. Greenstein?

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

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

20 I think a lot of the proposals  
21 that have been made over the past few days  
22 will have unintended consequences and if you

1 don't think boldly and you're putting band  
2 aids on existing problems, I think we will  
3 have new problems whether they're identifiable  
4 or they come to the surface within two years  
5 or ten years, I think there will be problems.  
6 And now I'm about to make an admission against  
7 interest because I think a proposal that the  
8 Office should consider is one that maybe puts  
9 a lot of lawyers out of business and puts a  
10 lot of money back into the hands of creators  
11 and authors.

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

22                   And the Holy Grail for everyone,

1 artists, songwriters, publishers and record  
2 labels is that monthly recurring fee from a  
3 telephone subscription, a mobile phone  
4 subscription and pay television. You would be  
5 talking about numbers that would dwarf the \$14  
6 billion peak of the recorded music industry in  
7 1999, I believe is the metric.

8           If the Office were to get behind  
9 this proposal, I think you could do several  
10 things in terms of rate setting, I think you  
11 could give or Congress could give a period of  
12 time for interested parties to negotiate a  
13 rate to be codified in legislation. If the  
14 parties were not able to do that within some  
15 period of time, and I would recommend that  
16 there be mediators whether that would be  
17 former members of Congress, stakeholders that  
18 would be viewed as neutral or at least a  
19 balance of parties to help the parties get to  
20 an agreement, that would be a good start.  
21 Absent that, then some type of tribunal or a  
22 Federal Court that would set a rate. I would

1 then model that system after Sections 111 and  
2 119 of the Copyright Act. And under those two  
3 regimes, you have a Phase I and Phase II  
4 process.

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

22 Then you would move to Phase II.

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

15 If people believe, and I forget  
16 who made the comment, either Mr. Barker of  
17 others, if there is a song that has more value  
18 of the Beatles have more value or Justin  
19 Bieber has more value, let people figure that  
20 out in either Phase I or Phase II. I used to  
21 represent the Joint Sports Claimants. We  
22 litigated for many years against the MPAA and

1 the MPAA rate proposal for the allocation of  
2 royalties was based upon how much time people  
3 spent watching MPAA programming. The sports  
4 leagues focused not on tonnage, as it was  
5 called but on what attracts and retains  
6 subscribers. And the sports leagues went from  
7 less than one percent to nearly 40 percent  
8 based upon the value of that work.

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

18 So I don't know if you would need  
19 to do anything other than look at the  
20 agreements that the major record companies  
21 have with interactive services. It's been  
22 widely reported it's the greater of percentage

1 of revenue per subscriber fee or a per sub-  
2 minimum. You could adopt that in legislation  
3 to the extent MFNs are already protecting it.  
4 Make it statutory. Why have lawyers involved?  
5 Why have negotiations that take place? I think  
6 Vickie said 12 months to 36 months and eight  
7 figures.

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

17           Again, going back to that point  
18 I've made multiple times, let the jointly  
19 owned record label and publishers figure out  
20 how to do it. I think that you can preserve  
21 the efficiencies of the PROs. So if you're  
22 concerned about the writers getting the

1 writers share, the PROs could say out of the  
2 amount of money that is paid for non-  
3 interactive streaming, once you allocate two-  
4 thirds to the sound recording, one-third to  
5 the musical work, performances should be X and  
6 maybe mechanical's another, although actually  
7 I don't want to imply mechanicals are  
8 necessary for non-interactive services.

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

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

20           MR. GREENSTEIN: Yes.

21           MS. CHARLESWORTH: So would usage  
22 come into this at all and if so, how?

1 MR. GREENSTEIN: So, in terms of  
2 usage, do you mean the service reporting?

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

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

15 For something that's within 60  
16 days of street release, maybe those sound  
17 recording copyright owners would be willing to  
18 pay to get that music on terrestrial radio  
19 because they view it as promotion or someone  
20 who's going on tour. I think that in that  
21 proceeding, parties would be free to make the  
22 arguments as to how to allocate that money,

1 census reporting could be considered as one  
2 the factors for determining the allocation.

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

21 MS. CHARLESWORTH: Okay, it looks  
22 like we have three commenters left. Charlie is

1 waving his banner.

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

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

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

18 If we eliminate 115, what do we do  
19 when a corporation sits on both sides of the  
20 table as licensor and licensee as distributor  
21 and copyright owner? I mean how do we handle  
22 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

1 theirs.

2 MS. CHARLESWORTH: No, there's a  
3 lot of -- I just want to avoid any confusion  
4 because there has been some confusion out  
5 there and I know they have a separate series  
6 which has also been very engaging.

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

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

1 participate in markets.

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

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

19 And that goes to the issue of  
20 mash-ups. I have had an open mind about this.  
21 I learned about it through students through a  
22 younger generation and it's not from an era

1 that I necessarily related to, although I've  
2 come to appreciate and admire some of that  
3 work. But what I would say is that to creators  
4 who don't embrace that, first of all, they  
5 don't have control over it.

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

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

22 And that will have very, I think

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

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

20           And I think in a long term sense,  
21 that is really how copyright can promote  
22 careers and the kind of investments that we're

1 talking about. So to say that that isn't what  
2 effects whether people join a service or not,  
3 we've never tried the kind of mass marketing  
4 that could be possible in a world in which  
5 there was going to be true artist embrace.

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

17 So, I do think that we are living  
18 through a dramatic revolution and we ought to  
19 recognize that we have not yet tried having a  
20 concerted message that services could be the,  
21 you know, streaming services. And that's why,  
22 you know, I would say Gary has some great

1 ideas to think about because I do think that  
2 there's a tremendous amount of money that is  
3 not being brought in and we have opportunities  
4 through thinking about these markets a little  
5 differently.

6           So, one thing, so I am an  
7 economist by training. I try to use that  
8 knowledge. Many of the views expressed here  
9 are a view of economics that does not relate  
10 to the music industry but relate to other  
11 industries. I've heard about hay, I've heard  
12 about houses, I've heard about a lot of  
13 products, but no one's talking about network  
14 products and network economics. We live in a  
15 world in which people don't want to be  
16 thinking which 1,800 songs I have on my  
17 device. They want to have everything available  
18 in a seamless way and they can have it and the  
19 question is can we meet them half way? Can we  
20 come up with a licensing system that will  
21 really work for those sorts of folks? The idea  
22 that you would not have all the music you

1 wanted at your disposal is an affront because  
2 the people in the market know that it's  
3 possible. We have it, we can have it.

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

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

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

1 sentence?

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

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

21 I mean the \$14 billion is not that  
22 large a number when you think about the people

1 who are out there and who are enjoying this  
2 product. And I think it's a question of  
3 channeling them in in a way that they will  
4 accept. Once people get on the Spotify type  
5 services, they stick with it and we're  
6 starting to see some metrics that show us  
7 this. I think that there's a real potential to  
8 get more of those people in.

9 I think if you had all of the  
10 major recording artists going out in their  
11 concerts and in their other media and pushing  
12 people onto these services, people who pay  
13 \$100.00 to see an individual show, I think we  
14 would see a much more robust marketplace. So,  
15 I never said free. I teach in a public  
16 university so that may arguably make some of  
17 it free, but I am not working in markets where  
18 I charge, you know, I work -- a lot of my work  
19 is free.

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

1 to do it one at a time, but just --

2 MS. MUDDIMAN: No, I'm just saying  
3 you're making out that people can make money  
4 from other ways and that would be fine.

5 MR. MENELL: No, I want them to  
6 make it for exactly the ways you want them to  
7 make it because people are enjoying the  
8 product and they are using the product. I'm  
9 saying I don't want them to make it primarily  
10 on advertising. I want them to make it  
11 primarily because people have subscribed to  
12 the service that they like and the songs that  
13 they stream are accounted for and that the  
14 amount that the artists get paid is  
15 proportional to the number of people who  
16 listen to those streams.

17 MS. LaPOLT: Can I jump in one  
18 second then Steve can have the floor?

19 MS. CHARLESWORTH: I've lost  
20 control, clearly. That's okay because we're --  
21 yes, I find yes, and then, Steve.

22 MS. LaPOLT: All right, just three

1 things I want to respond to.

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

10 And I was like what part of the  
11 Copyright Act are you not getting? I actually  
12 ran into Weird Al at the Billboard Music  
13 Awards and I went up to him at the buffet  
14 table and I said, Weird Al, we're having this  
15 discussion in my class and I'd like to know,  
16 you know, your position on fair use. And he  
17 said, you know, I have six kids and I don't  
18 have \$200,000.00 to hire a lawyer so always  
19 get permission. And you know, here's the  
20 thing, I didn't say your credibility is  
21 jeopardized because you're very credible and  
22 I respect you greatly and I always have. I'm

1 saying the credibility of your position is  
2 compromised because on the one hand you want  
3 prominent recording artists who get the  
4 message out, I'm not going to lie, I mean when  
5 you bring Steven Tyler to Congress, people  
6 listen. They stop, you don't need an  
7 appointment, you just troll the halls of  
8 Congress and everybody stops and talks to him.

9           This is a very powerful message  
10 when you have the creative community that are  
11 spokes people for your platforms. But if you  
12 want the creative community to buy into some  
13 of your ideas which are good ideas like the  
14 all you can eat and the subscription service  
15 and these things, some of the things you  
16 talked about, I like some of these ideas. You  
17 know, you have to separate those two issues or  
18 not even talk about the one because any type  
19 of bastardization of their lyrics or music or  
20 compromise the integrity of what they're doing  
21 by changing or, you know, making into a  
22 derivative, you lose credibility on the

1 position. So and then the third thing I want  
2 to say is it's not the DJ community and the  
3 electronic music community, I represent a lot  
4 of electronic music artists including  
5 Deadmau5. And he's very against anybody  
6 mashing up or remixing his music without  
7 permission. And that's all I want to say,  
8 thank you.

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

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

21 I mean if consumers listen to  
22 artists, they don't, you know, listen to

1 lawyers and others like those of us in the  
2 room, so that would be great. And there is a  
3 lot of education I think that needs to be done  
4 in the artist community so that they  
5 understand the benefits of those services  
6 because when I speak to my companies who speak  
7 to those artists and their representatives  
8 every day, they don't, as a general matter,  
9 recognize the benefits of those things. So I  
10 think there's some education to be done first.

11 And if we can do that and then get  
12 them out there, fantastic. Second, I also  
13 agree with I think the general message you  
14 were trying to deliver about consumers have  
15 spoken with regard to what they want and how  
16 they want it. And I take your point to be not  
17 that, you know, compulsory license is  
18 definitely the solution for this or for that.  
19 But we need to respond in some way to what  
20 consumers want lest we really are just  
21 rearranging the decks on a ship that's going  
22 down.

1                   And I think we all do need to take  
2                   that to heart because we can talk about, you  
3                   know, I want final say over this or this or I  
4                   want whatever, but we need to do it within the  
5                   context of how consumers are demanding our  
6                   product and what they have available to them  
7                   and that requires, I think, thinking outside  
8                   of the box a little bit from what our  
9                   traditional, you know, perspectives have been.

10                   My final comment was just to ask  
11                   Gary, if the labels and the -- if the  
12                   songwriting community and the musical work  
13                   community, I'm sorry, sound recording musical  
14                   work community because I want to make sure  
15                   that, to Charlie's point, we include creators.  
16                   And it's not just about publishers and labels,  
17                   we're able to figure out what the right  
18                   relationship or whatever it is, and I don't  
19                   mean to express it as a ratio, just whatever  
20                   that is themselves. Would you be okay with  
21                   that occurring in the marketplace instead of  
22                   constructing this very convoluted, complicate,

1     you know, process that's going to go on for  
2     years with people fighting over, you know,  
3     money that's in a pool that doesn't get  
4     released for ten years later?

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

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

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

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

20                    MR. MARKS: It was rhetorical. It  
21    was rhetorical.

22                    MR. GREENSTEIN: You always want

1 the last word, Steve. What I would say is that  
2 if the creative community can come to that  
3 agreement, which I think would be a wonderful  
4 solution, that could be either codified in  
5 legislation, which I suspect having  
6 represented the record labels would not be  
7 something that they would want because I think  
8 that the labels over time might say, we  
9 deserve more, publishers deserve less, that it  
10 could be something that is presented --

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

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

19 MR. MARKS: But why have a body? In  
20 other words, I'm saying if you put it in  
21 legislation as the agreement, and our  
22 agreement was here's what it'll be and we'll

1       revisit it every five years or, you know,  
2       whatever the thought is.

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

13                   Every time you open up legislation  
14      again, it becomes a potential for a Christmas  
15      tree for lots of other changes and if you're  
16      doing this type of model, the parties, if they  
17      have a settlement, bring it to the tribunal or  
18      have Congress say, this shall be in effect for  
19      the first ten years or the first five years,  
20      thereafter the parties shall submit a proposal  
21      and if they're not able to, it will be settled  
22      through this proceeding. And then the parties

1 can negotiate again and since you're under  
2 common ownership, it should be very simple and  
3 easy for a solution to be reached. Right?

4 MR. SANDERS: So noted.

5 MS. CHARLESWORTH: All right.

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

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

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

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

19 (Whereupon, the above-entitled  
20 matter went off the record at 3:52 p.m.)  
21  
22

A				
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Before: US Copyright Office

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