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 and Sy Damle, 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 ONE

PAUL ANTHONY, Rumblefish
ED ARROW, Universal Music Publishing
JOHN BARKER, IPAC
KEITH BERNSTEIN, Crunch Digital
ERIC D. BULL, Create Law
ILENE GOLDBERG, Attorney
ERIC HARBESON, Music Library Association
ASHLEY IRWIN, The Society of Composers & Lyricists
SHAWN LEMONE, ASCAP
LEONARDO LIPSZTEIN, YouTube/Google
DENNIS LORD, SESAC
STEVEN MARKS, RIAA
JENNIFER MILLER, Audio Socket
HÉL NE MUDDIMAN, Composer/CEO Hollywood
Elite Composers
VICKIE NAUMAN, CrossBorderWorks
JOHN RUDOLPH, Music Analytics

SESSION TWO

PAUL ANTHONY, Rumblefish LAWRENCE J. BLAKE, Concord Music ERIC D. BULL, Create Law
JOHN CATE, American Music Partners 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
ASHLEY IRWIN, The Society of Composers & Lyricists
TEGAN KOSSOWICZ, Universal Music Group
STEVEN MARKS, RIAA
HÉL NE MUDDIMAN, Composer/CEO Hollywood
Elite Composers
BRAD PRENDERGAST, SoundExchange, Inc.
LES WATKINS, Music Reports
SESSION THREE

ED ARROW, Universal Music Publishing
JOHN BARKER, IPAC
KEITH BERNSTEIN, Crunch Digital
LAWRENCE J. BLAKE, Concord Music
TIMOTHY A. COHAN, PeerMusic
GARY R. GREENSTEIN, Wilson Sonsini Goodrich & Rosati
RUSSELL HAUTH, National Religious Broadcasters
Music License Committee
DINA LAPOLT, Dina LaPolt P.C.
LEONARDO LIPSZTEIN, YouTube/Google
STEVEN MARKS, RIAA
JENNIFER MILLER, Audio Socket
JOHN RUDOLPH, Music Analytics
JASON RYS, Wixen Music Publishing
GARRY SCHYMAN, The Society of Composers & Lyricists
LES WATKINS, Music Reports

SESSION FOUR

ED ARROW, Universal Music Publishing
JOHN BARKER, IPAC
TIMOTHY A. COHAN, PeerMusic
ILENE GOLDBERG, Attorney
DEBORAH GREA/VES, Label Law Inc.
GARY R. GREENSTEIN, Wilson Sonsini Goodrich & Rosati
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HÉL NE MUDDIMAN, Composer/CEO Hollywood Elite Composers
JOHN RUDOLPH, Music Analytics
JASON RYS, Wixen Music Publishing
CHARLES J. SANDERS, SGA
SESSION FIVE

PAUL ANTHONY, Rumblefish
KEITH BERNSTEIN, Crunch Digital
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9:08 a.m.

MS. CHARLESWORTH: All right. I think we'll begin. Good morning, everyone, and welcome to the second of three roundtables to discuss the music licensing marketplace and how it might be improved. I'm very grateful to see that we have some repeat customers here, but also many new faces.

I think I speak for most, if not all of the national attendees and participants there when I say that we had a series of very productive discussions there, and I think the emphasis there is the fact there really was a discussion, and there was a healthy exchange of ideas.

Certainly not everyone agreed on everything, but I really felt that people were talking in a candid way about ways that we might improve our music licensing structure, which many think is in need of substantial improvement. Of course, Nashville is a lot
more civilized than Los Angeles, let alone New
York. So we're working our way up the ladder,
but we really hope we can maintain, you know,
the type of discussion we had in Nashville,
because ultimately I think it's in everyone's
interest -- not to mention the interest of the
public and everyone who loves music, to try
and do what we can to fix what's broken in our
system.

As I noted earlier in Nashville,
we at the Copyright Office have been very
impressed with the level of written commentary
we received. I mean, some of the papers were
long. They were carefully researched and even
footnoted. They did kill a couple of my
weekends, but I really felt they were
extremely valuable to read through. They
certainly offered a variety of perspectives,
but I think they were all -- all the comments
were done very carefully and we really
appreciate that, and we'll certainly be taking
them into consideration as we move forward, as
well as what develops in these roundtables.

I wanted to highlight a few of the themes that emerged in the Nashville sessions, for the benefit of those who weren't there. First, it seems, based on the discussions there, that many believe that our system of music licensing is not working very well, either for creators or users.

Although the century-old Section 115 license and 75 year-old consent decrees have performed important functions over time, and have also been amended to some extent, many believe that they haven't kept pace with the current needs of the marketplace, where users may need to license millions of work at a time, and a range of different product offerings to compete.

Many perceive inequities in the rates and rate-setting processes that are attached to these proceedings, and the fact that the rates are set through different forums and under different standards. But I
think the question before us then is assuming we were to modify this system in some way, or even reinvent it entirely, what should take its place?

On the one hand, songwriters and music publishers seem to be saying that free market negotiation is at least part of the answer, and record labels largely operate today in that space already, although not entirely. But at the same time, there are many who think there may be a need for some -- there's still an ongoing need for collective licensing, for reasons of efficiency and to meet the needs of smaller market participants.

So the question is, or one question I think that we should be thinking as we talk through these issues is can -- is there some way to reconcile those two, those two approaches, or should one take precedence over the other?

Second, there seems to be a fair amount of interest in bundling rights and in
licensing, for example, mechanical and
performance rights together, and perhaps along
with the corresponding sound recording rights.
I think a question there is, is this something
we could achieve?

Third, there was general
agreement, at least in principle, to the
concept that music creators deserve fair
compensation for their work. So the question
in that regard is what legal or structural
changes would be necessary to accomplish this
if any, and how can you ensure sufficient
transparency in the processes, the
distribution processes and in ownership of
copyrighted works?

And finally, and the reason I'm
sitting here today, is what should the role of
government be in all this or not? What was
especially encouraging about the Nashville
sessions was the fact that the discussion, as
I mentioned, was truly a dialogue, and at the
conclusion, at least some of those in
attendance reported a glimmer of hope, a
rather rare outcome in any discussion of
copyright law these days.

I attend many of them, so I know.
I hope we can build on that initial experience
in the two days ahead of us here. Before we
begin, I want to express our gratitude to the
UCLA School of Law and in particular
Professors David Nimmer, over there, and Neil
Netanel.

Did I pronounce your name
correctly?

Okay. As well as Ms. Cassie Reyes,
who I think was floating around here earlier
and really did a lot of the coordination on
the room. We're very grateful for them, that
they were able to give us this very nice
setting to have this discussion.

You know, the fate of the music
industry is in your hands, at least for a
couple of days. I also want to introduce my
staff, who have traveled out here with me. Sy
Damle, Special Advisor to the General Counsel and Steve Ruwe, Senior Attorney-Advisor in our office, who has spent many years working on many of these music issues at the Copyright Office, and they will be helping me moderate some of the panel discussions.

A few housekeeping matters. You each have a table tent. If you wish to speak, if you can just turn it over on its side, and we will try to call on you roughly in the order that you turn them over. If for some reason I'm overlooking you, you know, waive your hand, do something noticeable.

This is being transcribed. So please speak into the microphone and one at a time. The transcripts will eventually be posted on our website. It takes a while to do that, though, because we allow people to read them and make corrections and so forth.

At the end of tomorrow, we'll provide an opportunity for observers who wish to offer comments for the record, to do so.
Steve will have a sign-up sheet for that tomorrow or maybe even today. If that's something you want to do, see Steve and we'll make arrangements for you to speak at the end of the day tomorrow.

Most importantly, I hope you use this as an opportunity to listen and respond to each other and each other's thoughts, and to think creatively about the future, because this is really a very important discussion, and I think we have an opportunity to get some things right.

So without further ado, we'll begin the first panel, which is addressed to the Current Licensing Landscape. If people could go around the room, introduce themselves and explain their affiliation or their interest in the subject matter, that would be great. I'll start with you, Mr. Rudolph.

MR. RUDOLPH: John Rudolph, Music Analytics. First panel, licensing and investment in the market, current state of the
copyright law, current -- what's happening currently in the market, regardless of what the copyright law is. Those are of interest.

MS. CHARLESWORTH: Okay. Dennis.

MR. LORD: I'm Dennis Lord, SESAC, and this is fundamental to our existence. So that's why we're interested.

MS. CHARLESWORTH: Can't get much bigger than that. Okay, Mr. Marks.

MR. MARKS: Steven Marks for the Recording Industry Association, representing our membership.

MS. CHARLESWORTH: Okay. Mr. Lipsztein.

MR. LIPSZTEIN: Leo Lipsztein. I am a product attorney at Google. I work on issues relating to Google's use of music and across its product, and obviously Google is a large consumer of music and licensor of music. So I'm interested in how we operationalize all that awesome stuff.

MS. CHARLESWORTH: Great. Mr.
Mr. Irwin.

MR. IRWIN: Ashley Irwin. I am the president of the Society of Composers and Lyricists. Our organization is over a thousand of A/V composers in the film, television, video game, and most recently theater industries, and we primarily work in a work for hire situation.

So I'm interested in making sure there's some sort of control of our copyrights in the writer's share aspect of that.

MS. CHARLESWORTH: Mr. Harbeson.

MR. HARBESON: I'm Eric Harbeson from the Music Library Association. Our principle interest here is to ensure that any licensing regime that moves forward is one in which libraries can operate, and that's what we're -- our principle interest is.

MS. CHARLESWORTH: Mr. Bull.

MR. BULL: Good morning, Eric Bull. I have a small entertainment law practice in Minneapolis, and I believe I'm here
representing the -- what were known as flyover
countries in smaller markets and independent
artists as they are impacted by the decisions
and their ability to participate in the market
as it exists.

MS. CHARLESWORTH: Okay. Ms.
Goldberg.

MS. GOLDBERG: Hi. I'm Ilene
Goldberg, and I'm at IMG Consulting, and I
represent copyright owners. That's
my interest.

MS. CHARLESWORTH: Okay. Mr.
Bernstein.

MR. BERNSTEIN: I'm Keith
Bernstein, founder of Crunch Digital. I'm here
because I'm interested to learn about what
reporting considerations are going to be made,
as it relates to the successful business
model.

MS. CHARLESWORTH: Okay. Mr.
Barker.

MR. BARKER: John Barker, ClearBox
Rights, which is an independent administration company. I'm really here representing a newly-formed group in Nashville of independent publishers called IPAC.

MS. CHARLESWORTH: Okay, Mr. Arrow.

MR. ARROW: Hi. Ed Arrow, Universal Music Publishing, and we represent the rights of songwriters, and are interested in making sure that they're fairly compensated for their creativity.

MS. CHARLESWORTH: Okay, great.

Well, this sounds like a very good group of people to discuss sort of the first broad topic, the current music licensing landscape, and I think I'd like to sort of go around the room and get your thoughts on if there's one thing that is most in need of fixing, what is it and why? No volunteers. Mr. Barker.

MR. BARKER: You know I wouldn't --

MS. CHARLESWORTH: There you go.

You wouldn't let me down, okay.
MR. BARKER: Well as you've heard me say before, and this is one small part of this, but in our opinion, independent publishers or really any publisher's music composition owners are not being served correctly by Section 115 and the compulsory licenses under that.

As we know, Section 115 came about in 1909 for reasons totally different than they're being used today. There are a lot of holes we could shoot in 115, such as notices not being done correctly for compulsory licenses; only one owner being served that notice or being paid and other owners being responsible to make those payments.

So our group is interested in looking at alternatives to 115, and actually getting rid of 115, which is today primarily being used as a rate-setting mechanism, as well as a process for licensing. We think we can come up with a better process, and we think free market is better for a setting.
MS. CHARLESWORTH: Okay. Mr. Harbeson.

MR. HARBESON: So if the question is one thing that needs to be changed above all others, from our perspective the most serious problem with music licensing today is the services that offer music that is being offered only as digital download using end user license agreements, to which libraries are incapable of entering into, and which even if we were able to enter into, then would foreclose any traditional library uses, such as lending and preservation and things like that.

There are models out there which do not use very restrictive end user license agreements, but the dominant players, your iTunes, your Amazon, make music available in ways that libraries can't use them. When the music is only available through these services, and we have lists of music which is made available only through these services,
then libraries can't acquire them, libraries can't do the good work that they are doing in selecting, making music available for their patrons, preserving it for the future and the like.

I think that there is a solution to this. There are probably many solutions to that. I don't know what the best solution is, but I would be interested in exploring that.

MS. CHARLESWORTH: Okay. Mr. Arrow.

MR. IRWIN: Yes. I just want to follow up on what John was saying about 115, and I agree with him, that there's no need for 115 anymore. It is, you know, archaic or even unnecessary, may never have been necessary. We think free market solutions will serve better, and there's precedent for that in Canada.

They had a compulsory license rate, and about 15 years ago they abolished it, and the record companies and publishers got together and created a rate structure and a framework that still works today. There's
also precedent in the United States for record companies and publishers negotiating.

There's the late fee MOU, among others, and also the negotiation between record companies, publishers and digital services for interactive streaming rights. So we think there's a lot of precedent that negotiation between the stakeholders works better than government regulation.

MS. CHARLESWORTH: Okay. Mr. Lipsztein.

MR. LIPSZTEIN: All right. So this responds in part to what Mr. Arrow and Mr. Barker said. From the digital service provider perspective, I think the main issue that we're seeing is the absence of comprehensive and accurate ownership information, particularly with respect to compositions.

In the space where legitimate visual services are operating, the same services who want to pay license fees, we absolutely need the Section 115 license in
order to operate at scale and to be able to license at scale.

But what we ultimately need is information about who owns what, so that we can actually operationalize that license and make sure that folks get paid. We don't think that getting rid of the license is the right approach.

We want services, the new services to be able to come into the market and offer music to end users quickly and effectively, and the Section 115 licensing framework, I think, helps accomplish that.

But what we need is the right data to operationalize those licenses and make them real.

MS. CHARLESWORTH: Okay. Mr. Marks.

MR. MARKS: I would follow up on those comments of Mr. Arrow, Mr. Barker and Mr. Lipsztein, as well as the opening comments about Section 115 and the musical work
licensing regime in general. There does seem
to be some consensus that what we have now
doesn't work and it needs to be fixed in some
way, shape or form.

I agree that some of the themes
that came out of Nashville were, you know,
bundling of rights, the need for collective
licensing on some level, but ensuring fair
market value. As was said, I think the trick
is to try and figure out how to reconcile
those, to ensure that all of them are goals
that are achieved in any new system that we
might develop.

We obviously put out an idea that
we can expound upon, you know, later to do
this. It's just an idea. Consistent with what
Mr. Arrow said, it's really an idea for all of
us, the stakeholders to get together, to try
and figure this out, and then propose
something to policymakers that would work and
that could be operationalized, so that
services can get the licenses they need.
Consumers get access to more services through hopefully more funding and therefore the innovation that occurs from that, and creators are all getting paid fair market value and hopefully more is available to them as a result of the licensing efficiencies that take place.

MS. CHARLESWORTH: Okay. We haven't -- Ms. Nauman has joined us. Do you want to just explain who you are?

MS. NAUMAN: Sure, yeah. Hi. I'm Vickie Nauman, and I most recently was leading the U.S. business for 7Digital in the UK. I've since left the company, but it's a music platform that enables companies to come to market with legally licensed music services, and I have a long history in music, worked in a lot of different digital services, worked in a SONOS device manufacturing company and terrestrial radio.

So I've worked in music from many, many different angles, and my interest in
being here is I spent the last four and a half years trying to get music services licensed, and it's, you know, it's really, really complicated, and I feel like there's a lot more money for the industry, if we can find a better path and a simpler path with the rights into the marketplace.

So I'm really interested in this and very, very pleased that these roundtables are happening. MS. CHARLESWORTH: Okay, thank you, and I think you -- maybe I'm -- what we were talking about is what's our biggest concern about the current licensing process, and I think you may have alluded to that. But if you want to add to that, since you know, you mentioned the difficulty of licensing and what is your -- in your view, what is the --

Sort of if you had to name one issue, what's the biggest issue?

MS. NAUMAN: I think the biggest issue is that right now, and I have -- you
know, when I worked in radio -- there was --
it was a much simpler mix of companies that
wanted to do things with music. In the
industry now, the distribution is largely in
the hands of technology companies.

So technology companies, while we
all know Google, Amazon, Apple, the really big
ones who stuff up for this, there's a really,
really wide swath of application developers,
mid-size companies and what they want to do is
in order for them to decide whether to do
something with music, they -- or any media
type -- they need to be able to put it in a
spreadsheet, and they need to be able to
understand their costs, their risks and their
time to market.

You can't do that. You absolutely
can't do that. So there's a -- I feel like the
whole industry is at a risk, because a lot of
companies are just bypassing music, and
they're just choosing to do other media types.

I live here in LA and I can't
count the number of companies that have said oh, we've decided to skip music. I know we talked to you a few years ago, but we did a deal with Paramount, because it was easier. So I think there's -- I think that there is a risk when technology companies that are very linear, have to try to make a decision on whether to go down a path of doing a legally licensed music service before they understand what their costs are, what their risks are, or when they might be able to take it to market. So that's a bottleneck that I really feel like is -- needs to be addressed, and I think there's more money there for the industry.

MS. CHARLESWORTH: Thank you, we've also been joined by Ms. Muddiman. Did I say that correctly?

(Off mic comment.)

MS. CHARLESWORTH: I'm sorry.

MS. MUDDIMAN: I'm sorry I was
late.

MS. CHARLESWORTH: No. You're not.

We started actually the panel a few minutes ahead of time, because my remarks, my opening remarks were shorter. So thank you for joining us.

We're just -- if you want to explain your interest in the subject matter, and your, you know, who you represent at the table, that would be great, and then feel free to comment on sort of what you see the biggest issue confronting the music licensing process is today.

MS. MUDDIMAN: I'm Helene Muddiman. I'm a songwriter and a composer, and I'm on the board for the SCL, and I have a company called Hollywood Elite Composers. I guess the problem with copyright, is when we feel as artists and copyright owners that we're often compromised into forcing to sell our copyright.

That's one of our major issues.
When I was in England working, we were protected, as we weren't able to sell the whole of our copyrights, whereas here, work for hire means that we're often compromised by being forced to sell our copyright.

That's one of my major issues.

Sorry. I'm sort of just getting up to speed.

MS. CHARLESWORTH: No, no, no, no. I didn't mean to put you -- you can, you'll have plenty of time to comment later if you want. But I didn't mean to put you overly on the spot. But I'm interested to know, when you say "sell your copyright," can you explain to people what that means and what the implications are for you as a composer?

MS. MUDDIMAN: Well, having come from England, we were protected, so that we were not allowed to sell more than 50 percent of our copyright to a publisher, and it was against the law, more or less, to be able to -- nobody was allowed to force you to sell more than 50 percent.
So you always had a cushion, that even if you were in a very compromised situation where you had no power and were being coerced by a third party -- whether it be a TV company or a film company or a publisher, at least you knew that worse case scenario you're still going to have 50 percent. MS. CHARLESWORTH: Okay. But here in the U.S., you're suggesting it's a different system?

MS. MUDDIMAN: Yeah. Here in the U.S., work for hire means that you can actually be forced to have the other company, like a studio like Paramount or Disney, can sometimes, you know, force you to just do a work for hire situation. I mean Ashley knows more about the ins and outs of that.

MS. CHARLESWORTH: Okay. I'm going to -- Mr. Irwin, if you want to comment, and then we'll welcome Ms. Miller, just since you want to have a follow-up to Ms. Muddiman, to perhaps explain the concern a little bit more.
MR. IRWIN: Yeah, I was just going to explain it a little better. I'm originally from Australia, and we have a similar situation there. I've been here 24 years now. Work for hire only exists in America. It doesn't exist anywhere else in the world in law.

In practice, however, in some other countries, they are trying to use it as a means to capture copyright from the creator, and I guess anything's enforceable if you want it to be, except the European countries is where they have moral rights going on. It's illegal.

Our biggest problem with the situation as it exists here, and maybe I might be getting a little ahead of myself, so I'll just touch on it.

We can come back to it later, is that if the licensing model changes to direct license for the audiovisual composers, and the publishers do move from the PROs, which are
essentially the audiovisual composers' greatest source of income and greatest source of transparency in terms of how the money's collected, we will have no way of knowing what that money is, because we'll then be accounted to by the publisher, on whatever basis they see fit. We consider that to be a real danger.

MS. CHARLESWORTH: Thank you for elaborating. Ms. Miller, do you want to tell us who you are and also you can feel free to add your biggest music licensing concern.

MS. MILLER: Sure. So my name is Jen Miller. I'm with a company called Audio Socket. We do music licensing and we just launched a technology that essentially is working to battle the copyright infringement issues in digital media.

I guess from my perspective, we have an interesting role, where we both represent tens of thousands of copyrights, and at the same time we are tasked to police and enforce those copyrights. Our greatest issue
that we found is that the laws don't actually
for --

While there's innovation and we
want to respect those use of copyrights in
innovation and derivative works, we don't
really have access to the platforms in a way
that is the most effective for us to get into
the platforms and police our own work.

So currently most terms of service
in these digital media platforms say that you
can't crawl, scrape, scan for the instance of
your works, and that's exactly what we're
trying to do. We want to be able to do that,
you know, based on some sort of merit, and
then allow our technologies to find those
works so that we can effectively police those
works.

So I guess we're taking the stance
of innovation. We do want derivative works to
be more streamlined. But then we also want the
ability in technology to build out systems
that effectively monitor, police and ensure
copyright compliance.

MS. CHARLESWORTH: Mr. Bernstein.

MR. BERNSTEIN: Thank you. Going back about ten minutes ago --

MS. CHARLESWORTH: That often happens in these roundtables, so it's perfectly fine.

MR. BERNSTEIN: The question was what's broken, what would you want to fix.

Just taking a step back, I'm somebody that I think is unique, in that I've been a part of conducting more digital audits as part of another company than probably in anybody in the world.

I'd say we've conducted over 100 digital service provider audits, and we have a unique view into the issues and reporting of a lot of these different services. That is why Crunch Digital was born, as to try to fix what's wrong.

What I think needs to be fixed is incorporating reporting that's just not
limited to the benefit of the user. I often hear about problems of matching. I think it was mentioned it's hard to identify works, hard to pay people, and a lot of complaints about reporting's difficult.

So I think that a solution needs to consider taking the reporting out of the hands of those who license the music, and put that reporting with a couple of designated companies, who can actually do that math and calculation as a trusted independent third party, rather than have every digital service that has a new idea build systems.

They all underestimate what's involved when you want to do reporting, that you effectively have to create a system that's robust enough to handle all the music copyrights and all the sound recordings, and many of these digital services do not have the funds, and a lot of things don't get reported through.

So I think there needs to be
consideration with saying you can do your licensing all you want, but under the terms of the license, you have to agree to use one of these parties to handle your reporting.

MS. CHARLESWORTH: Okay. Mr. Harbeson and then Mr. Lipsztein.

MR. HARBESON: Yeah. I'd also like to go back maybe ten or so minutes ago, to Mr. Lipsztein's comment earlier about ownership and ownership databases. One of the things that music libraries work with a lot that maybe most of -- all even of the people in this room are not -- do not see as often are the non-commercial recordings, the recordings that are made by people that, you know, family recordings, recordings from recitals, things like this, where there are no contracts involved and nothing that establishes ownership.

The law is not clear on who owns these recordings. Some clarity in that could be useful.
MS. CHARLESWORTH: Okay. Mr. Lipsztein.

MR. LIPSZTEIN: Thanks, and to build on that point a little bit in response to Mr. Bernstein, I would at least proffer that there should be a choice by digital service providers, depending on the types of businesses that they operate and their relative technical abilities, as to whether they go through some sort of blunderbuss and intermediary who can license in a streamlined, blanket manner, in a way that absolves the licensee from reporting requirements.

But there is a major concern, I think, around transparency, if that data -- if ownership information is just completely absent from the industry, authoritative and complete ownership information. I think our folks in the library and other non-commercial spaces would benefit greatly from understanding who owns what and from
understanding just exactly how rights are allocated across the landscape.

Certainly, I think artists and composers and service providers would be able to better understand what exactly is being used on digital platforms, if that information is widely disseminated as opposed to kept in -- with just a few intermediaries. Outside of that information, it's just a black box essentially.

MS. CHARLESWORTH: Mr. Bernstein, do you want to respond?

MR. BERNSTEIN: Outside of looking at the mechanics, obviously, there's confidentiality issues with respect to what would get disseminated. I think that any company that would qualify to continue to do in-house reporting, I think there would need to be rules set, that if they breach those obligations under audit and they're incapable of reporting accurately, they lose that right, and then they do then have to use a third
party. You can add something like that in.

MS. CHARLESWORTH: Okay. I think --

well before I get to Mr. Barker, I think we

have Mr. Lemone just joined us, thank you, and
do you want to introduce yourself and I'm

putting people -- newcomers, people a little

bit on the spot and asking them to suggest one

sort of -- what's the biggest concern that you

see in music licensing, if you want to add

that after you introduce yourself.

MR. LEMONE: I run the TV and film

area at ASCAP out here in LA, and the biggest

area that I see as far as -- in concern of

licensing -- is the reduction and up front fees

as far as composers, when they're all working

on shows and on films, that puts a burden on

ASCAP and BMI and SESAC, to make sure that

they're compensated in a way that's like

meaningful and that they can sustain

themselves.

I'm sure that Ashley can speak to

this as well, and the fact that ASCAP is under
strain on a number of fronts, and under a possible threat to reduce or remove those licenses and that source of revenue for them is a source of anxiety for those who work in that industry.

And we're hoping that the DOJ responds to the request that ASCAP and BMI have in the marketplace, so that we can adjust our license fees in the area of new media, and so that we can, you know, maintain a healthy place as far as ASCAP's role in the licensing landscape.

You know, we have licenses in place with Netflix and Hulu and Amazon. There hasn't been as much of an issue as far as A/V works as there has been on the streaming radio side. But there's always that concern that if all the majors withdraw from ASCAP and BMI because of their concern for not getting the rates that they want on streaming radio, that it could eventually have an impact on A/V.

We're under threat from, you know,
other organizations, possibly like entering
into the marketplace as well. I would like to
hear more about, Ashley, about the role that
ASCAP has in the lives of SCL composer-

MR. IRWIN: You want me to respond?

MS. CHARLESWORTH: Yes. Why don't
you -- since follow that train of thought, and
then we'll start --

MR. IRWIN: Yeah. What Shawn was
pointing out there in terms of up front fees
has become very much a bone of contention for
us. We're being sort of hit from two
directions. One, the up front fees have become
less and less as a creative component, and
have changed drastically over the last I guess
maybe 20 years.

Initially, it used to -- the
common way of employing a composer in an A/V
situation would be to pay him a creative fee,
him or her a creative fee, and then there
would be a budget to record that music. That
over time has changed drastically and become a lump sum fee, production and creative lumped together as one fee.

Of course what's happened is production costs have gone up, and the creative aspect of a portion of that fee has gone down in a ratio. So we're being told by the producers who employ us that the back end money is where we'll make most of our living, and that may or may not be the case depending on what happens going forward from here.

So that's why we rely very heavily on the performing rights organizations, not just here but the reciprocal agreements they have with the foreign societies as well. One of the great differences between this country and the foreign territories is that in most of the foreign territories, there is only one performing rights society.

And in the majority of countries, that society is linked with -- that performance society or performance collection
is linked with the mechanical licensing aspect of that country as well. Here you have at the moment three, two that are controlled by consent decree and SESAC, that's a separate entity.

But there are more individual companies coming up all the time, and making their own models, like the Irving Azoff model that's come. It's really changing the landscape in a way that's not really fair in the marketplace. So that's, I think, what Shawn was talking about in terms of consent decrees. And just letting the market decide, if the market decides that, you know, one way or the other then, that's fine. But whatever way -- as A/V composers will work for our situation, whatever way a performing rights society we know our -- we can work as a collective.

We can make sure our money is being collected from all the territories around the world, and we can -- it's quite
transparent. As I said before, if the publishers pull out and take our copyrights with them, we'll have no way of really knowing, other than to audit them, what's going on.

MS. CHARLESWORTH: Okay, and just for the record, you're referring the writer's share?

MR. IRWIN: I'm referring to the writer's share, and one of the issues with the writer's share, of course, is that it's in our contracts commonly known as. It's not actually in the copyright law that there is a writer's share.

MS. CHARLESWORTH: Right. So just again to make sure I understand, so you sign a contract up front, but the writer's share is collected through --

MR. IRWIN: The writer's share -- both shares are collected by the -- at the moment, both shares, the writer's and the publisher's share are collected. But if the
publisher were to take their share, our share would go with them, because at the moment there's no bifurcation of the copyright.

MS. CHARLESWORTH: Okay.

MR. IRWIN: We would like to see in the copyright law some way to bifurcate that right, so that if the -- if the publisher does decide to withdraw, that the writer has the ability to say who can collect his or her share on behalf of, you know.

It may very well be we want to go with the publisher. But in most cases, I would tend to think that we would want to stay with the performing rights society, to collect our money.

MS. CHARLESWORTH: Okay. Now I think I've lost a little bit track of the order. I think Mr. Barker may have been next, and I think we should go over to Mr. Rudolph who's been waiting, and then we'll continue.

MR. BARKER: I know we have a few different topics going on. I'm going to go
back to the 115 topic that we talked about.

First of all, I think the quick discussion between Mr. Bernstein and Mr. Lipsztein was healthy, because there were problems pointed out in these, and they were making those known.

So I think that kind of dialogue is very positive. I would like to challenge the comment, Mr. Lipsztein that you had made, that your business is dependent on Section 115 for licensing, because in my opinion, again 115 came around as one thing to prevent monopolies in 1909.

We are using 115 now as a process, but that's not what the intent was. In fact, 115 is really not a process. 115 simply allows a user to serve notice to license a song. I just want to make sure that we don't mistaken 115 as a process from actually what could be a better process.

At the last roundtable, somebody suggested -- I think a couple of times people
said, you know, if 100 years ago we tried to
determine then what the proper licensing
structure would be, and we looked what we have
today, we would all realize that's nowhere
close to what it needs to be.

Yet we have 115 and it's been in
place for over 100 years. I would like to
challenge us to pull back from that and say
okay, if we can indeed do away with 115 can't
we, with that kind of conversation, come up
with a better process.

But then the outcome of that
better process, in my opinion, would get rid
of limitations that are in 115 right now,
which are rate-setting, because right now 115
does not allow licenses to be negotiated at
fair market value, and 115 also does not allow
the core right of the copyright owner which is
to control their copyright.

There's no way under 115 that a
particular writer or owner of the song can say
no to the song being used. The music
compositions are about one of the only
copyrights that exists, where the authors do
not have that right.

So doing away with 115, we could
define a better process; we could then
determine -- let the free market determine the
right, as well as give the authors the
original rights that they were supposed to get
in the original Copyright Act.

MS. CHARLESWORTH: Okay. Mr. Rudolph.

MR. RUDOLPH: So I'm going to try
to bring it a little bit back for a second.

MS. CHARLESWORTH: Well, we're
constantly going back in time here.

MR. RUDOLPH: The current licensing
landscape, the topic kind of at hand. I just
wanted to make one statement, that I have a
fundamental belief, whether it's right, wrong
or indifferent, having been raised in a music
family and having grown up in a town that was
largely supported by music as a child in
Nashville, just actually outside of Nashville.

But the biggest thing is that I believe that if we take care of the fundamental rights of the underlying creators, that at that point we will actually as an industry be able to survive and survive prosperously.

I want to kind of go back to the separation of copyright from licensing. Those are two different, in my opinion, those are two very different topics which we're going to discuss in different parts later today.

Protection of the copyright on the creative level, where that's a private citizen or a corporation.

It doesn't matter to me. The contract between the creator, the individual creator who may be then part of a corporate entity. Those protections should be the same. The optionality of the creator to participate or not. It's something that seems to get lost in every conversation that I've been in for
really the last ten years, as running with the
largest independent music publishing companies
in the world, advising other people, having
sat on the trade boards as well.

It seems that it would be
something that's lost in every conversation,
whether you have to be in or you don't have to be in. I don't think anybody in this room has that kind of situation, where they have to actually go and do some work for somebody.

Currently, independent creators again, just I want to make sure that I stress that creators are, you know, whether that's a corporation or a private citizen, whether a writer, artist, publisher or record company cannot negotiate in a free market scenario, and are hampered by the copyright statutes.

Historically, the negotiation process has rested with the master holders, and I've seen it time in and time out, particularly the major master holders, and songwriters and publishers have had pushed
into rates, reduced often mandated by statute, or some kind of reduced most favored nations.

Whether the creator again, you know, a wide brush of what the creator is, what they don't have is the ability to negotiate. Even when using a model agreement, I gave several scenarios on where that's the case, where we have seen because of the situation where the publishing or if you would the underlying song writing rights are not allowed the same ability to negotiate, where you have a disparity in what those rates are.

Now I'm not necessarily talking about 50-50, because I don't necessarily believe that's going to be a case in a free market scenario. We have seen it in other places. I know it's commonly said in the sync market, where there is a split that way. But you can -- I can argue contrary to that, under the mechanical right now, under the minimum statutory rate, if somebody wants to charge a higher rate they can.
But market forces actually come into effect at that point, because if you're writing a song for a big artist, and that artist is not happy with the fact they're charging more, you have to be at a certain level to be able to have that impact apply.

So there are elements that start to happen. Only when you have that ability to negotiate, you only have that ability to negotiate the first time, right? So that is a variation of an open market scenario, and it does come into play.

So the question is what happens? I mean this is dramatic but yet serious, in the sense that I could be wrong. I don't think I'm wrong. They're first with the Beat scenario, an equity that was owned not through -- not through an investment, a cash investment in a company, but through an equity that was given as part of a negotiation.

That is not passed down to the underlying creators. The same thing is going
to happen in this modified situation. We're
talking about billions of dollars that are
going to accrue up at the corporate level. Now
again, there's underlying contracts that occur
with it, but that is not something that
anybody else can negotiate in a free market
scenario.

They could if they're allowed to
actually -- to enforce their right, if they're
in a free market scenario, which meant that
they didn't have to license to that. That's a
choice that they can make. But they can't make
that choice at this point.

I do want to comment. So on the
larger versus smaller market participants,
this is also going to take into account with
the PRO scenario. It's already happened. It
happened in Europe. It's no mistake that EMI,
now Sony as well on the publishing side has
partnered with GAMA, that SECAM and Universal
are together, and the Warner model that they
went through, I'm not going to go into what
they did.

But they essentially and everybody frankly was fed up with the European rates that were being charged. I won't even call it rates. I'm talking about the cost and what was actually pushed through at the end of the day to the U.S. domestic right holders.

So they essentially played a card similar to what later is then playing out now in the U.S., to go in and get themselves the lower rate that wasn't getting all these cultural deductions and all these other things.

Now that is -- that aligned everybody, but that left every other independent creator out in the wind, and caused a scenario where there is an advantageous situation that's happened. Now part of that's a market rate issue, but I'm not trying to point out whether that's right or wrong in an open market.

What I'm trying to point out is
larger versus smaller market participants, and what happens in that. We have a section of the joint works which is something I think is being used in certain scenarios and not in other scenarios, and what equitable distribution is out of the joint works part of the copyright statutes.

But what's interesting is I'm not happy. I don't think Leonardo was there at this time maybe, but other members in this room, when we were negotiating the YouTube for the independents. We were multiple years behind. Monies had already been flowing to the majors, who were able to negotiate in a pseudo open market, because the label side was actually -- the master holders are able to negotiate, but the publishers couldn't.

By the time all the independents caught up, I mean they were years and years behind. There's no advances, really. I mean there was something that was announced into public record of what that was. But that
folded into a future not any kind of penalty
for the past, no equity, nothing, not that the
majors got equity.

But I'm not happy how we got
there, but I think it's a really interesting
model towards the licensing, and how the
bigger picture on what happens behind the
scenes. Like it, don't like it, and we're
going to have a negotiation coming up on the
YouTube side.

What's interesting is that every
rights holder than has the ability to make a
choice. That choice is block, so no one can
see it; monetize or do nothing. So in other
words display, don't get paid; get paid or
take it down. And that is like the fundamental
to me situation here, where it's if I'm a
creator, whether I'm the corporation who owns
those rights or not, I should have those three
choices at a minimum, and I have to take
responsibility into that process now.

That's the age we live in. I would
have rather it had been the other way where we come in, and you have to say you have to come to me to get that license. I still think that is the proactive way that it should work. But we have to facilitate the use of that.

So in the YouTube model, what's interesting is you have to go in. You pout your reference files in. You make those claims, you do those things. The burden is pushed down again. I don't like that, but what I like is the fact that there is a place where those decisions can be made, in a bit of an open market scenario. So I just wanted to address the concerns you've got on there.

MS. CHARLESWORTH: Thank you, Mr. Rudolph. I think that I'll go to Mr. Lord.

MR. LORD: Okay, thank you. I think first, I think you can see that the underlying theme, regardless of from what direction we're coming, the underlying theme is that composers, creators, publishers are being put to the bottom of the food chain, and I mean
you'll see next week in New York, the Television Music Licensing Committee, the Radio Music Licensing Committee, the digital users of music, the production companies, everybody wants to not have to pay the composers and music publishers as much as the market would allow.

There has to be some protection.

There has to be free market ability for a composer to say no, Mr. YouTube, I'm not going to use. I'm not going to allow you to put my music up there. There's nothing like that. All the composers have to do is go along with the flow, and that has a lot to do with what 115 is and they have very little power.

ASCAP, BMI, SESAC all have the same issues in the marketplace, and we have to do the best we can to protect the composers. I would like to see something happen, that gives the composers and music publishers some authority with respect to their works.
The other thing I'd like to ask is of Mr. Lipsztein, we keep talking or you keep talking about needing to have the data of -- from of all the creators, whatever's attached to a song, who created it, who's the rights holders and so forth.

You have ASCAP, BMI, the NMPA, the various major labels whose job it has traditionally been to aggregate that data, so that you can deal with them in a simpler manner. Why do you need -- just curiously, why do you need to have all that data?

MS. CHARLESWORTH: Mr. Lipsztein, do you want to respond?

MR. LIPSZTEIN: Sure. Mr. Marks, do you want to build on that or respond for me?

(Simultaneous speaking.)

MS. CHARLESWORTH: We're going to get to -- Mr. Marks will have at least equal time, if not more.

MR. LIPSZTEIN: Sure. So when I originally put my card up, I had this very
ambitious thought to like try to synthesize all the different topics that we had started with, but then I got a question directly asked to me. But I'll try to do both.

So to start on the specific question about why does the digital service provider need that. So there are a couple of things. First, not all digital services rely on compulsory licensing. For some services like YouTube, for example, we have had to go out directly to all the publishers and all of the labels and do direct deals with them, to understand how to pay them best.

On a granular level, we simply need that information. If you think about it, just at a technical operational level, if you're going to do a deal that involves paying on usage of a particular sound recording, for example, you have to be able to identify that sound recording and with compositions, the process is frustrated by the fact that the composition isn't in itself a tangible thing.
It's written but then it's embodied in very specific sound recordings, including those often uploaded by end users as covers, and we have to be able to identify those compositions.

MR. LORD: But we have the blanket license. We have the blanket license. You don't need to identify those compositions.

MR. LIPSZTEIN: So again, I don't want to get too much into YouTube's specific business practices and needs. I would offer that for any service provider that wants to appropriately value the license that it's paying, it's very important to be able to identify what it's actually using.

I don't know of too many other spaces where someone would pay for a license for a thing, but then not actually be able to understand under that license how much of the thing they've used, or what that thing looked like, what its size was relative to the whole market.
It's really unique in the music licensing space that I think we have these sort of blanket licensing structures. But I think they also deprive service providers and ultimately the creators, whose content is being used on those services, with true insight into what was used, what was the value of each individual instance of a use.

MR. LORD: Can I record all that? Can I record all the usage, every single usage? Could you, would you do that?

MR. LIPSZTEIN: I think that if there were accurate, comprehensive, authoritative data available out on the market, digital service providers would be able to integrate with those systems and report on that, yes. I don't see any -- I mean I don't want to speak too much to YouTube and Google, simply because I mean for one, I don't want to be hyper-focused on my own personal business interests here.

But I think in general, if there
are systems available that DSPs can plug into
and data that's normalized and readily
available, we will use it, report on it. I
think it's more a matter of how rather than
whether.

MR. LORD: Thank you.

MS. CHARLESWORTH: Okay. Mr. Marks.

MR. MARKS: Thanks. So there have
been a couple of different conversations going
on, and a couple of people noted that they're
really distinct with each other. But I think
they're really all related to each other.

So for example, Mr. Irwin was
talking about certain concerns as a result of
the fact that publishers may leave PROs, not
because there is a dissatisfaction necessarily
with the licensing for TV or whatever it is.
I'm not saying, you know, the rates are
perfect there.

But what's driving the withdrawal
is very -- right now a small but the future
for the industry, in terms of certain digital
uses. So I think actually that is very, you
know, very directly related to the broader
conversation here of trying to fix the overall
system.

The same thing with the
conversation we just had. One of the big
problems we've got is that there isn't
authoritative data. So there is no -- and we
all know that compositions are, you know,
racked up in a lot of different shares or a
lot of different songwriters.

So even if you know the owner from
one, you may not do the other. We put, you
know, an example in our comments about how it
took 1,500 licenses to get a single release
out. There were 27 songs, 51 songwriters, 89
shares, two publishers controlling 1.5
percent.

This is a system that just can't
work the way it's working right now, and when
you have individual services that have to
build redundant databases that aren't even
built off of anything authoritative, you get
what Vickie was talking about earlier, which
is that there's no -- there's not any
certainty and there's no willingness of people
to fund.

If you're a VC, why would you ever
put your money into a system like that, when
you could put it to work, you know, in another
media space, where the licensing is more
rational. So I think all of these things are
related.

I also agree with much of what
John and Ed and John Rudolph were saying as
well, about you know, you've got to find a way
to have fair market value, and ensure that
there is meaningful participation, to be able
to say, you know, yes or no.

What we tried to do, and again,
we've thrown out an idea. But we've tried to
address all of these things in the idea by
getting, and I think we were the only third
party, meaning non-songwriter or publisher
group, that proposed getting rid of the CRB and getting rid of the rate courts so that the rates are not determined by regulatory bodies, but fair market value rates are set instead, through negotiations that would happen between labels and writers and publishers, to figure out what the appropriate percentage, whether it was, you know, whatever the ratio is and for whatever the use is.

At the same time, we try to have a blanket license, so that once that negotiation was done, there was a way with authoritative data for the services to be able to get the licenses they need, so that VCs could then be able to fund, you know, other services, and then there was more money flowing not just to the services as a result of that, but to the creators themselves, because you've taken a lot of friction out of the system.

All the while, we've tried to preserve the ability to say no by preserving the first use right that exists today. There's
a market right now, there's a first use right.
Set aside 115, which comes after creation. But
at the time of creation of the composition,
the composer can say yes, I authorize this
recording, but only for this use or that use.
They have a free market to do that.

They can do that at that time. So
that -- we've tried to preserve that in our
system, so that the blanket license kind of
only comes into play after that assent is
given. But I think we should recognize that
that is part of the current system. I mean
there is a free market to be able to say
sorry, I don't want my recording used in this,
this, or this, or only I want -- or my
composition rather -- I only want it used in
this or this.

You know, a record label, if they
were the ones that were creating the recording
at that point, would have to make a decision.
Well, am I going to invest a certain amount of
money into creating this recording, based on
the fact that I know I can only exploit the
recording in these -- through the services, or
am I not?

Or as John pointed out, the artist
may say "you know, I don't really want my work
to be, you know, stopped in that way. Maybe
I'll find a different songwriter or a
different composer who's more willing to have
their work."

That would be the marketplace at
work. It would determine price, it would
determine, you know, opt-in/opt-out kind of
things and control over the work, all while
still, you know, having a more efficient
system.

You know, I can go through how our
proposal works, but I don't want to take too
much time at this point, but would be happy to
go through those details at some point if
you'd like.

MS. CHARLESWORTH: Yeah, no. I
think we should spend some more time with
that. I just want to make sure we get to --
and perhaps on the Sound Recording panel or
other panels. But I want to get to, I think
Ms. Goldberg, Mr. Arrow, Mr. Bull and Ms.
Miller, in that order.

Ms. Goldberg.

MS. GOLDBERG: I think
unfortunately the system is broken, and there
are so many areas that could be fixed. So you
asked to identify one area. I can't
specifically say one, but there are going to
be panels on each of the areas that I think
really need fixing, and one area is fair
market value.

For example like Mr. Arrow said,
Section 115 really needs to be abolished or
changed. If you look at the rates, in 100
years the statutory rate went from two cents
to 9.1 cents for mechanicals. If you look at
postage for mailing a letter, in 1900 it was
two cents to mail a first class letter. But
right now it costs 49 cents. So you can see
it's not really keeping step with the market.

I agree with Mr. Lipsztein, that there really do need to be better databases. As far as Mr. Lord, I actually looked up a song the other day in the NMPA database, the ASCAP database, BMI database, and they all had different data.

So if I wanted correct data and I wanted to license a song and know who the proper parties were, it's really difficult.

So I think that would really benefit the entire industry, copyright owners as well as people who want to license music. Then thirdly, I think that the consent decrees unduly restrict ASCAP and BMI, and really need to be either abolished or changed.

But there are panels on each one of these topics so I'll stop here for now.

MS. CHARLESWORTH: And we'll welcome your further thoughts on each of those topics. Mr. Arrow.

MR. ARROW: First on the data
issue, Google chooses to manage their data
themselves. But there are third party services
that also manage data like Crunch Digital, Mr.
Bernstein's company, MRI, Harry Fox's
Slingshot service.

So it's not necessary for a
digital service to have all the data. They can
contract with a third party service and we --
and other publishers voluntarily give our data
to those third party licensing services, so
they can have a complete database of our
mechanical and performance rights.

In addition, there's an initiative
underway in Europe called the GRD, which is an
attempt to get a really global picture of all
copyright data relating to ownership of songs
and sound recordings. It's, you know, early
days yet, but it's -- this is an attempt by
the -- by music publishers to be able to give
that kind of a view of our rights to anyone
who wishes to use music.

Everyone here benefits in some way
from what songwriters do, whether a music publisher is a partnership with songwriters, or a record company recording the songs of songwriters, or where a third party service who's an intermediary in the transaction of licenses based on songs, we all benefit.

Ninety percent of a songwriter's income is derived from mechanical and performances, and both of those types of licenses are regulated. Neither of them is a free market license. Is there any other creator of intellectual property whose licensing rights are so restricted? It has to end.

MS. CHARLESWORTH: Okay. Mr. Bull, I think you were next.

MR. BULL: Okay. It's a fascinating collection of people and the topics are broad and different groups, trade groups and things. But to me it's sort of -- if you're addressing the Copyright Office and copyright law in general, I see that the role
of copyright music needs to shift to education
to, you know, the creator groups, which are,
you know, I taught at a for-profit college
that was just kicking out thousands of
creators that are releasing material faster
than anybody can provide data on it, and at
the same time.

So educating them about taking
time to you know, it doesn't need to go back
to a registration system necessarily, but
manage the data so it's available in a
meaningful way.

Then I think that the Copyright
Office's role can be how to foster that
education and second, how do you oversee just
the transparency of the data, because it seems
to me that Crunch Digital absolutely has a
great point of maybe one or two companies
can't manage all of the data and provide it in
a way that it's being booked.

But why would Google ever trust
that and decide that -- how they're using
their information is -- so I think that level of trust between these competing interests is something that it's the Copyright Office's job to try and say sort of like having say that this meat is good enough to go into a grocery store.

You've got a federal -- I want to see where it comes from. But if the government says it's okay for me to buy it in a grocery store, then I guess I'll buy it.

MS. CHARLESWORTH: You're very trusting, Mr. Bull.

MR. BULL: But it's sort of the role of the government, then, to come in and rather than legislate the free market and use the copyright law and it's been used for hundreds of years and different groups that want it to last longer and things, there's always things that have been competing.

But the education of all these new creators and then the transparency being enforced and overseen in a way that these
distrusting groups say okay, if this is the
data we have to use and are going to use, then
that's what we'll use. There's just no
streamlining, considering the new supply.

The demand stays consistent with
suppliers out of this world, and so nobody
knows how much Google uses actual music versus
somebody talking in a commercial that
shouldn't be licensed, and I mean I can
appreciate that, you know, position.

But I think that if we're really
going to come up with a solution, it's not
about how this group gets what it wants and
this group gets what it wants, but what can
the Copyright Office do to sort of move
forward and get ahead of the issue, rather
than trying to catch up with the issues and
make small steps to do that.

So that's just more of a global
position of how I think it could be overseen
better.

MS. CHARLESWORTH: So you would
favor some -- it sounds, and let me see if I
can get it, some sort of perhaps regulatory
framework for the data, for data standards or
--

MR. BULL: Yeah, because I think
the technology exists to pretty much collect
the data, particularly if you've got creators
entering it accurately and they know what to
enter and, you know, because an engineer can
program most of that data before it ever gets
put to master and it can pop up on your
screen, and that's what Grace Note and these
other companies have been doing for years.
So I think the data and the
technology exists to be fairly accurate, but
it's the distrust of the competing interests
that do that. So if the government says here's
the data we're going to use, rather than Mr.
Bernstein's idea, which is this company or
this company, a small number of companies are
who we should use.

It's kind of how the PRO model has
developed in the consent decrees. We will allow ASCAP and BMI to be the collection agent, and probably SoundExchange in some regard as well. There's nothing stopping other entities from trying to get into that market, other than nobody knows what the hell they do and how to get into that market.

So rather than having the government say these people can play, these people can't play, you know, there does have to be standard of here is standardized data and we'll allow to be put into the grocery store and the citizens to buy, versus that.

So I think that technology exists, but there's such distrust because of the amount of the money that is going to be exchanged at some level, which is why it's free market, you know.

I just think that marrying the technology that the data can provide and allowing people to have to move forward under that model gives a larger framework, and at
least puts us in the 21st century, rather than
the 19th and early 20th century.

MS. CHARLESWORTH: Okay. Thank you,
Mr. Bull. Ms. Miller, you've been very
patient.

MS. MILLER: So I think if we just
look at the landscape, I think for the most
part we can agree that it's sort of out of our
hands at this point, where copyrights get put.
Whether it's TV or TV is far more regulated,
but specifically with land.

I think probably right next door
to me he would say that it's just
uncontrolled. There's over 100 hours of
content posted online every single minute, and
I think part of what -- I'm sorry, Eric --

MR. BULL: Yes.

MS. MILLER: Was just talking about
is the critical transparency. I do absolutely
agree that part of the, you know, if there's
revisions made, it needs to be around that
critical transparency, into those ecosystems.
I've actually been seeking for that critical transparency, trying to find companies that do have the ability to sort of do what John was talking about, the take down, publish, monetize, and I can't get access to that.

I'm not able to access, with my own technology, something that gives me the visibility into all of those 60,000 copyrights that I'm representing. So I do think there needs to be reform and review around just data standards, who can access those.

I don't think it necessarily has to be a completely removed third party, to Keith's point, or just a few. I think if you meet requirements that are deemed by the Act, then I think that it could be that you then can build a model that lasts for critical transparency.

What I think would be interesting about that is I think if we just set up some sort of a flatlined, streamlined rights
platform, which are happening now out of lawsuits. They're not happening because anybody's making decisions.

What happens is YouTube gets mass traction. I don't think anybody had a clue YouTube was going to get mass traction. All of the sudden, people are throwing things up left and right. They're in a success story, and they're trying to manage, and I think literally it was the lawsuits that required action to happen.

So when lawsuits happen and that's a reaction, there aren't good laws being put in place. It's just reactionary. So if we can actually think about what doesn't prohibit innovation in streamlining some sort of a flat rate, but then allow individual interests in a free market by allowing critical transparency.

I'll give you an example just so you can follow what I'm saying here. We have a system that basically right now it embeds
the user's data, the actual data around both
the copyright owner as well as the person who
downloaded the track.

When we find those, which we're
doing in a very manual way right now because
we can't get access to the automation, to that
critical transparency I'm talking about, we
basically can see who downloaded that, and
then we call them up and we say hey, you're
using this out of contract.

Well, there is a way to automate
that process and, furthermore, to get fair
market values when those processes are
happening. Whether it be my creation is used
without my permission, or I'm required by law
that my content is up here, but I actually
want to negotiate for my behalf.

I mean some models I realize
that's impossible for. But I think there are
a lot of models where individuals' interests
can be better served by privatizing that
exchange, and then a flat rate basically
covers the basis for people who just want to
give their music away for free.

Because I know a lot of people who
care more about exposure and they're fine with
their music being anywhere, and they're going
to -- there's a lot of models that we know
that can give this away for free, not even
charging up front. So we don't want to stifle
them, if that's their own mechanism to get the
music out there.

But we also don't want to say that
music is free. So I think there's got to be
sort of -- like I said, if it was two steps,
it's regulating the critical transparency, so
we can actually invest in tech innovation,
because there's where we've gotten our butts
kicked in the music industry is the music
industry has not invested in technology
innovation for itself.

It's relied on the interests of
the YouTubes, which actually I think have done
a really good job, considering interests are
not aligned. Their interest does not necessarily go to the rights holders. So again, out of reaction, they built something that they thought was going to work.

But now all of the rights holders say it doesn't work because it's not what I paid or I didn't want my music, or this is going to slide, because of course it is, because they aren't music people in the first place. So yeah. Sorry that was long-winded.

MS. CHARLESWORTH: Okay, no, no. Thank you. All right. So we have a few minutes left and there are a lot of speakers with their cards up. So if we could go -- I'm just going to go around the room in this direction, and if everyone could sort of limit themselves to a couple of minutes, then we'll wrap up this panel.

I promise you there will be a lot of additional opportunity to discuss each of these topics, and I think this has been a really great opening discussion, because we've
sort of raised the key issues that we'll be focusing on for the rest of the two days. So Mr. Rudolph.

MR. RUDOLPH: Just as kind of a statement and a note. I implore the Copyright Office to realize and evaluate who the stakeholders are in this, and they're different. Meaning their needs or concerns are different.

One is what I would say are the catalogue, whether that's master or writers, artists and I'm sorry, publishing or masters. Writers or artists who are no longer active. Maybe their assets or their compositions or their masters have passed to their estates, whatever it might be.

They have a very different evaluation of this. It's more economic and preservation of assets, probably, than anything else. The writers and artists who are in current agreement usually are with a corporation. They have a very different drive.
A lot of that has to do with their market share at any one time. But they will fall into that catalogue kind of category at a later date.

Some of the licensing regimes that exist now actually, from a market perspective, take those two things into account. Then one of the most important things that Mr. Bull kind of referred to are what I called the working creators today who are not involved in any corporate agreements.

Those folks, a lot of them don't have any desire to be in agreements unless something happens dramatically in their career, that they can actually change the leverage or the economic terms in their agreements.

Otherwise, they're going directly into technology and distribution and uses and licensing, usually on their own. Or making a choice to opt-in. There's three different groups, in my opinion, that are the
stakeholders in each of those things.

I think it's really important when we start thinking about whether licensing exists or doesn't exist and what happens under the copyright law, that all those are taken into account.

MS. CHARLESWORTH: Thank you. Mr. Lemone.

MR. LEMONE: Yes. This will be fast. I'm hearing a lot about a need for integration of data, and I just want to make sure that like everyone, that everyone understands that ASCAP and BMI have been working on that, having been working on that like over the past year.

Our goals is to have a form or standard available, a set of data that would match all the registrations, and in fact a central place where registrations would be apply towards ASCAP and BMI. So can perhaps your organization as well.

So the issue of -- that Ilene had
of going on the web and seeing different sets
of data for the same work won't exist, and
we're on a fast track to get that to happen.

MS. CHARLESWORTH: And that would
be -- that's as been ASCAP, BMI, and SOCAN?

MR. LEMONE: Yes.

MS. CHARLESWORTH: Okay. So for the
three of you, you would have some --

MR. LEMONE: An integrated set of
data.

MS. CHARLESWORTH: Okay, and how
public would that data be? Is it just
individual manual searching, or is it some --
or do you anticipate a broader --

MR. LEMONE: I anticipate that it's
going to very broad, in light of the DOJ's
request to make that data more readily
available. I mean right now it's on the ASCAP
and BMI sites. There's going to be an
integrated site. I don't know exactly how the
information is going to be made available to
music licensees, but that's the plan.
MS. CHARLESWORTH: And are you integrating ISRCs, ISWCs, and ISNIs or any other standard identifiers into that database?

MR. LEMONE: Yes. We're integrating -- I don't know about the ISRCs, but I know that we're integrating the other ones that are linked to a work code. The ISRCs are not necessarily linked to the registration of the underlying work. It's a recording, and they may or may not have one at that point.

MS. CHARLESWORTH: Right, right.

But for the ISWC --

MR. LEMONE: That's going to be integrated, yeah.

MS. CHARLESWORTH: Okay, thank you.

MR. LEMONE: Okay. I think Mr. Harbeson.

MR. HARBESON: Yeah. So most of this discussion has been, you know, a discussion between the industry and the industry, and I'm kind of trying to stay out of that, because that's really not something
that we have a stake in.

    But we do have a stake in the --

in our patrons, in the public, and I'd like to
at least hear a little bit for restricting the
right to say no.

    I can think, without revealing my
personal musical tastes too much or without
getting into a musical argument, I can think
of a lot of people who have written songs
which did not benefit from their own recording
of the song, but which have -- where the
ability to record the song, where other people
who have recorded much better versions of the
song, in some cases many versions of the song,
which may not be -- may not have happened had
the copyright holder had the right to say "no,
you cannot record this song."

    So I think that the public has
gained tremendously from that, and I think
that to some extent that is a valuable thing
to keep in mind.

    MS. CHARLESWORTH: Thank you. Mr.
Bernstein.

MR. BERNSTEIN: Sorry. I'm going to hold until the third session.

MS. CHARLESWORTH: You're going to --

MR. BERNSTEIN: I'm going to -- the comments are better served for the third session.

MS. CHARLESWORTH: Oh, okay, and Mr. Anthony, I'm sorry. I didn't see you come in. If you want to introduce -- no, no, no. Well, ten demerits for you. But no. If you want to just introduce yourself briefly, explain what Rumblefish is, and then obviously offer any comments you have, I think we'd be grateful to hear them.

MR. ANTHONY: (off mic) Sorry about being late. I thought I was done with being late to class, but I guess I'm not done yet.

MS. CHARLESWORTH: You're never too late for the roundtable.
MR. ANTHONY: My name's Paul Anthony. I'm the founder and CEO of Rumblefish, and we focus on microlicensing, high volume, low dollar amount licenses, mostly for social video. Our definition of social video includes animated gifs, business presentations, slide shows, et cetera, et cetera.

So what I wanted to mention is a lot of what we're concerned about at Rumblefish has already been mentioned. But the combination of free market rates, artists working on an opt-in basis and easy access to licensing has been very successful for us.

We've developed five million copyrights that were pretty easy to clear in a database and make available to licensees, mainly because the infrastructure of the copyrights was very simple.

Many independent artists own both sides worldwide, masters and publishing. So the first five million were a lot easier than
what we anticipate the next five million to be. So we've had to invest heavily in building a lot of infrastructure, and I really do think that there's a big opportunity to provide an infrastructure just generally that fosters a lot of innovation and healthy competition amongst businesses, especially in the microlicensing space, which would be very simple, data standards and some sort of certification.

So despite, you know, all the different databases that have gathered all sorts of different data, like -- and I'm sorry, I can't remember your name, you mentioned looking up songs in three different databases, and all the information's different.

So if there was some sort of certification or data standards that could be agreed upon, it would make things a lot easier, and linking things, linking some of the key pieces, because although the PROs have
very sensitive databases, that missing link
between publishing the masters for most viable
commercial services is very important.

So the Commission has big
opportunity there, especially because the
higher value copyrights tend to be more
fragmented.

MS. CHARLESWORTH: Thank you, Mr. Anthony, and I guess Mr. Rudolph, do you want
to close out this session?

MR. RUDOLPH: No, no. I didn't put
my sign down.

MS. CHARLESWORTH: That's your
final comment? All right. Well, thank you.
We'll be taking a 15 minute break. We really
appreciate all your comments, and we'll see
the next panel back in 15 minutes.

(Whereupon, a short recess was
taken.)

MR. DAMLE: All right. Let's get
the -- let's start with the next panel. Our
next panel is on Sound Recordings, principally
about the statutory licensing regime under Section 112 and 114. I know we have a few new panel members, so what I'm going to do is start with you Mr. Blake, and then we'll go around to introduce yourself, who you're representing here at the roundtable. Mr. Blake.

MR. BLAKE: Hi. I'm Larry Blake. I'm with Concord Music Group. Concord is an independent record label formed in 1973, so about 40 years old.

We own about 8,000 album masters and a much smaller collection of musical compositions, but still significant. We have about a one percent share of the marketplace on recordings and about a sixth of that in publishing.

We're members of both A2IM, the Association of Independent Labels, and the RIAA. We are distributed worldwide by Universal Music Group, including for our digital recordings. So we kind of sit in the
middle between the small indies and the majors, and that's our background.


MS. GREAVES: I'm Deborah Greaves. I'm here today representing the California State Bar IP Section. I'm its vice chair, and mostly in an observatory capacity.

Any opinions I state today are my opinions and not the opinion of the State Bar. That's my disclaimer, and I also represent the estate of a deceased composer pre-1972 works. So everything that's going on is of personal interest as well.

MR. DAMLE: Mr. Hauth.

MR. HAUTH: Good morning. I'm Senior Vice President with Salem Communications, which is a media company operating radio stations and various websites and publishing houses. We serve the audience interested in Christian and conservative media.
My sideline is to executive direct the National Religious Broadcasters Music License Committee. We represent in that committee approximately 1,000 radio stations, both commercial and non-commercial, which are specialty license, religious, classical and spoken word.

MR. DAMLE: Okay. Let's see. Mr. Prendergast, I think you're the next up.

MR. PRENDERGAST: I'm Brad Prendergast. I'm senior counsel for Licensing Enforcement at SoundExchange.

MR. DAMLE: Great. Ms. Kossowicz.

MS. KOSSOWICZ: My name is Tegan Kossowicz. I'm with Universal Music Group. I'm the attorney in the Royalties and Copyright Division, where we do a lot of licensing and clearance work for our recordings.

MR. DAMLE: Okay, Mr. Watkins.

MR. WATKINS: I'm Les Watkins. I'm with Music Reports. We are an independent rights management organization and technology
platform. So we handle license administration and royalty accounting for really any large institutional music user, a lot of digital music services, broadcasters and increasingly copyright owners, record labels and even music publishers.

MR. DAMLE: Great, and Mr. Greenstein.

MR. GREENSTEIN: My name is Gary Greenstein. I'm a partner with the law firm of Wilson Sonsini Goodrich & Rosati, and I represent a wide range of companies that are licensees of different rights. So interactive and non-interactive streaming services, user-generated content services, broadcasters, some trade associations and I'm speaking my own behalf, and the statement is not to be attributed to any one particular client.

I am also a former Vice President of Business and Legal Affairs at the RIAA and the first General Counsel of SoundExchange. So
I've been on both sides of these issues.

MR. DAMLE: Great. So I think what we -- in that filament, in a lot of the comments, there was discussion of the rate setting process before the Copyright Royalty Board, and how that could be improved.

So I wanted to open today's discussion by getting your views about ways we could make that -- starting from the premise that we've got a CRB, how we could make that CRB process more effective and work for all of the various participants in sort of a general way.

If you had a magic wand, what would you do to improve the process before the -- for rate-setting before the Copyright Royalty Board. Anyone want to take that on?

MR. PRENDERGAST: I'll take it.

MR. DAMLE: Sure, Mr. Prendergast.

MR. PRENDERGAST: So SoundExchange represents the copyright owners and artists in the Section 112 and 114 rate settings in front
of the Copyright Royalty Board, and I think
one thing -- it's a two year cycle.

It's a long process. We're
currently in the rate-setting for webcasting
for 2016 through 2020, and there are a lot of
different interested parties in that
proceeding.

I think one way that the CRB
process could be improved upon is facilitating
settlements more easily. As we saw in Web II
and Web III, settlements in the past have not
been acted on quickly by the judges, and that
leaves a lot of parties still in the
litigation proceeding, when they'd rather not
be.

It also leaves open a lot of
cconcerns on both sides, not the least of which
for SoundExchange is that if we -- if we enter
-- it deters us from moving quickly on
settling with the various parties, because
we're concerned that those rates that we
settle at might have an adverse impact on the
evidence in the case and how the rates might
be set for other commercial webcasters in
particular.

We're encouraged by what the
judges have said in their notice that
initiated the Web IV proceeding, that they're
looking at issues of segmentation, and they're
looking -- because they're looking at issues
of segmentation, we're encouraged that we can
reach settlement with certain parties that
won't have an adverse impact on other rates.

But right now, more could be done
to make sure that that happens in the future,
and that would be very helpful in helping to
simplify a lot of the issues that we have in
front of the Copyright Royalty Board.

MR. DAMLE: Thanks, great. Mr.
Greenstein.

MR. GREENSTEIN: So I think there
are several issues with the rate-setting
process for the CRB and I was involved, along
with Mr. Marks, when I was at the RIAA, when
the Copyright Royalty and Distribution Reform Act was passed.

It was very intentional, trying to correct the then-current CARP system. But notwithstanding the efforts that we made, I think that there are still significant problems. First and foremost, I think is the standard itself under which the rates are established, and there's been a lot of discussion, both today and in the comments, about fair market value.

I want to correct something about the 801(b) standard that people talk about, as not providing for fair market value. 801(b) on its face does not prohibit fair market value rates. It does not require them, but it does not prohibit them.

What's important is it's supposed to establish a fair rate and a reasonable rate, which is also what you would find under the consent decrees.

So I think it's very important
that if we look at the history of the rate-setting process under Sections 112 and 114, litigation has followed those decisions, and it has taken extraordinary acts of Congress to intervene, and essentially fix or undo the rates that have been established by originally the CARP arbitrators, and now the Copyright Royalty Judges.

There are statements about how no business is owed success, if you go back to the Web I decision, that they don't have to set a rate that would keep anyone in business. But in fact if you wipe out an entire industry, then I think you've got a problem with the standard.

Pandora's a public company, and you can look at the royalties that they have paid as a percentage of their revenue, and under the CRB rates, Pandora, I think, would not have survived.

You are talking about rates just for the sound recording that would have been
more than 100 percent of the company's revenues, at the pure play rates, which are non-precedential and cannot be admitted into evidence or used for any purpose, they've only recently gone below 50 percent.

When you gross those up to the CRB rate, you're grossing up approximately 175 or 176 percent. So you're talking maybe 80 or 90 percent of the revenue of the most successful company, and from what I've heard, it may be the most successful company as monetizing mobile traffic behind Google and Facebook, and that would be Pandora.

So if you're having the most successful company, under the CRB rates would not have been able to survive, and out of the 2,200 services that I think SoundExchange may cite, to talk about a vibrant market other than broadcast radio stations who can subsidize their online streaming because of their over-the-air business, I think the webcasting industry disappears.
I don't think that's beneficial to songwriters, to music publishers, to recording artists, to record labels. So I think the standard itself has led to this situation where people have had to run to Congress and Congress has had to step in to change the rates, but to give special relief. That just doesn't seem to be working, and it may happen again in Web IV.

In terms of the process itself once you get into the proceeding, I think one of the major problems is the lack of information that the litigants having going into the proceeding when they prepare what are called their direct cases.

So for those who don't know, when you participate in the CRB process under 112 and 114, you start your case by having witness statements, both experts and fact witnesses, and they tell the story in the narrative and the legal theory and then economists reply upon that.
But when you're the non-
interactive services, and you know that the
record industry is very likely or
SoundExchange is very likely to rely upon the
interactive rates that have been negotiated
between the major labels and the interactive
services, that information does not come into
the proceeding unless the major labels choose
to put it in through their witnesses.

When they do put it in, it's after
the non-interactive services have already put
in their case. So I think when we work on it,
and Steve and I -- Mr. Marks and I worked on
it together, on the same side at that time, we
were addressing particular problems that came
out of the CARP process.

But now I think we're still
depriving the judges, the fact-finders of all
of the information that they need, and I think
that not having it be federal-type litigation
or what you have in the rate courts, where
there's an opportunity to have discovery
before you put in the case, is very detrimental to the entire process.

MS.: Just a quick follow-up. Does anyone know why -- was anyone there in the drafting who can explain what the theory was about that particular feature of the statute, which was, you know, discovery follows your direct cases?

MR. GREENSTEIN: I could, but that was for a different client. So I will let --

MS. CHARLESWORTH: Yeah, no I would, you know, because we saw a lot of comments complaining about it, and it is a little counterintuitive to federal litigators especially. So I was just curious to know if there was some philosophy or theory behind it.

MR. MARKS: Yeah. I think Gary's right, in the sense that when we -- in 2002, we were focused on, you know, you have an existing system and how do you fix the existing system, and the CARP, where you have the ad hoc panel of arbitrators or arbitration
panels, that was the way the system had worked there, the process had worked.

You put in a direct case. There was some limited discovery on what you put in. The idea was to have a more streamlined arbitration that didn't last as long and, you know, was not as onerous, smaller parties could participate, et cetera. So when we modified that in the --

MR. GREENSTEIN: CRDRA.

MR. MARKS: CRDRA, right. I was missing one letter. I couldn't figure out what it was, CRDRA. We essentially took that template and added in some more discovery to it. But we left the basic structure of direct case, discovery, rebuttal, intact.

I would agree that, you know, that's something worth revisiting, you know. As we discussed in Nashville, one of the things that might be helpful is to have just one case instead of, you know, this tripartite kind of thing, where you've got, you know,
those three parts, you know.

Maybe you have discovery up front
like you do in federal court, and then you
just have a trial and arguments, et cetera,
after that. So that would streamline, because
you wouldn't have this rebuttal phase, that if
you look at a calendar, for example, in Web IV
it's very compressed.

It is going to be difficult, I
think, to really put in a lot of substantive
testimony or get a lot of discovery out of it.
You have one main hearing and you have some
discovery before that. I think I depart with
Gary in --

I think we can go on a first name
basis, given that we worked together -- in
terms of how much to expand that, because it's
just not clear to me that expanding it to
full-blown federal court discovery rules and
rules of evidence and things like that
necessarily lends itself to a better outcome
or process.
It certainly is very good for the lawyers that are being paid on the case, because it will take a lot longer to do, but not necessarily better for the litigants. So and I had one other point on the first point that was made, but if you have a follow-up question, I'll pause.

MS. CHARLESWORTH: No continue. Then I have, you know, I have a follow-up. But you should finish up.

MR. MARKS: Okay, all right. On the rate standard, I think the last comment said it all. It doesn't prohibit it, but it doesn't require a fair market value, and we should have a standard that requires on.

Whether that's willing buyer, wiling seller or fair market value or something else that very clearly is intended to produce a fair market rate, that is what we should have.

And as we talked about on the last panel, that's what songwriters and publishers
have suffered from under the consent decree,
and in some cases we feel we have very
demonstrably suffered from, given that the
three services that exist, you know, that are
still under that old rate got -- the court
said, you know, the market place rate would
have been in a much higher range, but instead
cut it roughly in half.

And so, you know, that just in our
view should not be the outcome in those cases.

MS. CHARLESWORTH: Yeah, okay. So
my quick sort of follow-up, and this is just
almost like a polling question, is there were
quite a few written comments that suggested
that there should -- the discovery rules
perhaps should be changed in the CRB process,
and that the bifurcated trial process was
almost inefficient.

I was just wondering if there was
anyone who sees, you know, takes the other
opposite view in the room. I mean I know not
all of you are involved in litigating these
cases.

But if there are people who feel differently, I didn't see a lot of disagreement in the written comments on those particular points, and maybe some of the other procedures that the CRB followed.

So there seemed to be a fairly -- a fair amount of consensus around the view that perhaps some of those rules should be changed and brought at least closer to the federal rules or the federal system. So I wanted to make sure they weren't competing -- it wasn't a competing point of view or points of view in the room.

MR. DAMLE: Remarkable consensus.

MR. GREENSTEIN: Can I add one thing to, following up on Steve's point. In talking about a hesitancy to adopt the federal rules, I think we need to keep in mind the fact that one company alone is going to pay over $400 million under the 114 license. That would be Pandora again from public statements.
SoundExchange, I think, has announced that they have distributed $2 billion already. This is a marketplace that is, for the time being, very significant in terms of dollar amounts, with zero government oversight.

There's no government oversight of SoundExchange. It's a private organization controlled, as they describe it, with an equal board of artists and labels, self-perpetuating, not subject to vote or full transparency, and you've got these organizations that are subject to these rates if they want to avail themselves of something that Congress has determined is appropriate, which is making non-interactive radio available to the American public.

I mean my view is Congress created the statutory license for non-interactive, non-subscription radio, so that that would be something that the American people could have, they wouldn't have to pay for it. My concern
is under the current regime and under the
current process for setting rates, you would
not have had non-interactive radio.

From the artist's standpoint, that
means no direct payment of royalties to
artists. If you do away with either the non-
interactive license or you make it all subject
to the free market, and there's no free market
here, then what you'll have is services having
to do deals with the record companies, the
record companies recouping.

We know just from looking at the
litigation of artist against record companies
about the issues in that marketplace, and
artists will not get paid or will not get paid
certainly the 50 percent that exists under the
statute. I think it's not a better environment
if you start throwing up the plan that this
should all be free market. We should not have
a compulsory license.

I think that would be disastrous
and very harmful to many participants,
artists, services and ultimately the American people.

MR. MARKS: Just to clarify, when I was talking about the standard, I was talking about the standard that should govern, not eliminating the compulsory licenses.

MS. CHARLESWORTH: Okay. I just -- also, I was just -- I'm sorry. But when you say there's no government oversight of SoundExchange, I was a little confused by that, because there are regulations. It's designated by the government. It's subject to the CRB process.

MR. GREENSTEIN: The regulations give no authority over the CRB to inquire as to what SoundExchange does. The regulations talk about their definitions, there's rates, there are payment terms. There's what happens if SoundExchange disappears.

There's audit rights of the services. There's audit rights of SoundExchange by an artist but not by the CRB,
and then there's provisions for unclaimed phones. There's nothing that says what are SoundExchange's distribution policies? What happens if SoundExchange has a dispute among competing claimants?

There are determinations by SoundExchange's board or public committees, and this is all based upon testimony. I'm not going to get into anything from when I worked at SoundExchange. But if you look at that, there's no oversight.

For an organization that's distributed $2 billion, it's amazing how different that is versus say the U.S. Copyright Office, when it administered the Section 111 and 119 royalties, where the Copyright Office can put its money, subject to Congressional hearings or reports to the extent you have to provide them.

It's very good to be a monopolist, and SoundExchange is in a very favorable position right now.
MS. CHARLESWORTH: Okay.

MR. PRENDERGAST: May I respond?

(Laughter.)

MR. DAMLE: Yeah. Mr. Prendergast, why don't you respond, and then we'll go to Mr. Hauth. He's been waiting very patiently.

MR. PRENDERGAST: All right, thank you. So it is important to stress the fact that SoundExchange does need to be designated by the CRB within each rate setting, and there are five different rate settings going on.

So for each of those various rate settings, SoundExchange needs to be designated every five years. So if SoundExchange is doing a bad job, then there is a way for SoundExchange to no longer be designated as the collective.

The audit rights that Gary refers to in the regulations of SoundExchange by artists and labels are real. Those audits do happen, and in terms of transparency, one thing that I want to hit here and it might be
in contrast to what was the subject of
discussion in the first panel, on the terms of
transparency, the royalty rates, the prices,
they are -- they're public, and they're in the
Federal Register and the CFR.

And in terms of what's covered by
the statutory license, well all know it's
anything that's been released under the
authority of the copyright owner. So in other
words, everything. So those are two components
of transparency that should give people faith
and comfort in how the statutory license is
currently working.

MR. DAMLE: Mr. Hauth.

MR. HAUTH: Thank you. We've been
at this a long time, this committee, and we
got baptized by fire in the first CARP. By
that I mean the radio industry, Salem, my
company, is represented by NAB as well as NRB,
and NAB was totally blind-sided when, in the
first CARP, that realized that radio stations
that stream would be under the Section 114
Be that as it may, we ventured into that proceeding under the first CARP and basically had our heads handed to us, that is webcasters and radio stations that streamed. I'm not a lawyer, I'm a businessman. But I have associations with some pretty good lawyers, and so I have to use some notes here, if you'll forgive me.

But the question of standards is one that is a very tender issue with the radio industry, and I'm sure the webcasting industry as well, because the fee-setting standard, as well as the procedure, which has already been discussed, have caused years, now we're talking 2002 to 2014. We've got a proceeding going on as we speak.

So this fee-setting standard of willing buyer/willing seller has resulted, in our opinion, in supra-competitive fees that were established by the prior, and I emphasized CRJs, Copyright Royalty Judges.
In the CARP, which was the first proceeding in which you had an arbitration board, which was a very cumbersome and ineffective way to set the fee, radio broadcaster were really on their heels, not really knowing what was going on.

So the RIAA was able to show the Panel, the CRJs, 26 benchmark agreements that they had -- they had negotiated with services, and they had obviously a lot of experience in doing this. The Board, or I should say the Panel, rejected 25 of those 26 agreements, but for some reason they adopted as a benchmark the 26th agreement, which was the agreement that RIAA negotiated with Yahoo.

Yahoo, as we all know, was one of the first to enter the radio simulcasting business. But Yahoo was forward-looking enough to realize that participating in litigation was going to cost them over $2 million.

So they quickly settled with the RIAA. I don't know how quick it was, but they
settled for an amount that was not really willing buyer/willing seller.

It was an amount that enabled them to avoid being in the proceeding. Well, a very short time after the CARP had announced its rates, Yahoo got out of the business. The rest of us were stuck with a rate based on that agreement. So it got the -- it got the industry, the services off to a very difficult start.

That was a willing buyer/willing seller. I'm not saying it's faulty in and of itself. A willing buyer/willing seller agreement sounds pretty good to me. 801(b), Gary or Steve are much more qualified to speak on that. But our side has said yeah, we want 12 an 801(b).

But we've got to have something in place to undo what has already been set, and I am very pessimistic that the CRJs are going to come back and -- I hope that they will, but review how the rates got to be where they
were. In the second proceeding, which was in 2005, I believe, we now have the Copyright Royalty Board, which was a great improvement.

First of all, the litigants did not have to pay the arbitrators, which was very helpful. So thank you Copyright Office, if you had anything to do with that. However, again in 2005, the CRB essentially gave the recording industry exactly what it wanted, and this time they were fees based on license agreements reached between the then-four major labels.

Now there are three majors, and the five on-demand streaming services, and that's the very kind of service that Congress had determined in '95 would pose the greatest risk of disrupting the record company's core business of record sales.

But nevertheless, the CRB reached its decision on those agreements, despite clear evidence that the major record companies did not compete in entering those licenses.
The testimony was undisputed that the on-demand services believed that they needed licenses from all four major labels to have a viable business.

So in short, the willing buyer/willing seller standard has not led to rates that would prevail in an effective, competitive market, as Congress intended. So that's enough for right now. I think we've got the past to deal with, if we're ever going to get to where webcasters and radio stations that stream.

Gary said that the radio industry subsidizes its streams and that's true. If it were in a pure business model sense, Clear Channel-Salem, nobody would be streaming. It would be a ridiculous business model, because the rates are quite high, and I might add that they're about twice as much as the Pandora rates. So I'll leave it at that. Thank you.

MR. DAMLE: Thank you. I think Mr. Watkins was next, and then we'll come back to
you, Mr. Blake, and go around.

MR. WATKINS: Thank you. Our company doesn't take any position on rate standards. We try to position ourselves as a neutral, independent processing platform. We certainly sympathize with the content owners, you know, the phenomena of analog dollars for digital pennies is very real when it comes to music.

On the other hand we process a lot of revenue files for digital services and broadcasters and, you know, we don't see them making any money either. Amazon and Google, Apple make money while using music, but they make the money obviously on other things.

But we do believe, consistent with what Gary was saying, that it's very important that when it comes to administration of the statutory licenses, that there be transparency and efficiency, and we think the best way to get to that is by enabling entities in the market to compete to provide those services
well.

So when it comes to SoundExchange in particular, you know, our company, in one of the webcasting proceedings, tried to establish an affiliated entity, Royalty Logic, to compete on an even-handed basis with SoundExchange. We affiliated artists and labels for that purpose.

The ruling that we got from the board at that time basically established a bifurcated system, where SoundExchange could be the receiving agent, and then any number of other entities could be designated agents and go to the receiving agent.

You would not have as -- one of these lesser designated agents, you would not have direct auditing of the services. You would not have direct reporting from the services, payment from the services, accounting from the services.

We determined that it was going to be very hard to attract membership, when we
were simply going to be in the position of having to go to SoundExchange to try to get our money, as any attorney or manager would. So I do think that that is a flaw and it's bad policy, to create a single entity that is given essentially a quasi-governmental monopoly over administration.

This is not to speak poorly of anyone at SoundExchange. They're very good people there. They're very well-intentioned, but the bottom line is there's a lot of undistributed money there, a tremendous amount. But you mentioned the audit right that you might have as a label owner or an artist. Of course, that is very restricted. The audits are binding, I think, on anyone who would choose to audit, right. One audit is binding on anyone who would choose to audit, and then of course the membership agreements which exist at SoundExchange otherwise limit the audit rights.
These membership agreements are very important, because you know, what happens is an organization like SoundExchange basically becomes a policy organization advocating the positions of the owners and the artists, and these membership agreements allow them to do that by converting statutory royalties over to funds that are available for purposes like, you know, lobbying and other purposes.

So we think it's really important to keep the policy activities, if you will, separate from the administrative activities. We think that, you know, all sides benefit when that's the case.

We also think that direct licensing is something which is supposed to be protected vis-a-vis SoundExchange, and that the antitrust exemption that they enjoy is contingent upon the authority of licensing being non-exclusive.

But what we've seen in the past is
they've basically tried to thwart direct licensing when copyright owners have wanted to do it, and largely that's just, you know, to preserve their own institutional interests. So I think those kinds of things need to be looked at very carefully. Copyright owners clearly are looking to do more direct licensing, both sound recording owners and musical work owners.

With ASCAP and BMI, of course, the right to directly license is written into the consent decrees. The direct licensing is an important competitive check of the operations of SoundExchange, where there otherwise really isn't any meaningful competition.

MR. DAMLE: Okay. We'll start Mr. Blake and we'll go around and catch everyone that has their card up.

MR. BLAKE: So I am not a litigator. I'm a transactional lawyer by nature and business affairs representative. So I'm not going to get into the specifics. I'm
not really qualified to talk about the specifics of those procedures, other than to say that I agree with the thought that as much as possible, settlement among the constituencies in the business world ought to be encouraged and facilitated, and the whole process where Copyright Royalty Judges or some other system has to step in where resolution is not able to achieved - ought to be streamlined, because the costs of that litigation affect all companies, including small companies such as ourselves. A large portion of the budget of an institution like the RIAA goes to these kind of things, and it's a necessary expense, but our mantra is that we need to -- in order to survive, we have to -- minimize expense at every level, and that's certainly one of them. With respect to Mr. Watkins' comments, I would like to say that as an independent music company, we've been involved in direct licensing negotiations, and we've had conversations with
SoundExchange and other organizations, and no one has ever tried to pressure us to not do a direct license.

So for what that's worth as one example, I think we're a pretty good target for direct licensing. But we've never felt that pressure. Also I would say that as an individual company, we definitely do support the statutory license for non-interactive services.

The A2IM, I know -- an organization that represents us -- supports that. To me the issue really is that division between non-interactive and interactive. How do you make that decision? I think it's a very tough call. I'm not sure that Pandora is actually on the right side of that presently.

In my view, it's absolutely undeniable that these services that give consumers easy access to content at very low prices compared to what it was years ago, do supplant the market for buying records. I
don't think there's any question about it.

Spotify supplants it to a greater degree than
Pandora, but SiriusXM and Pandora, things like
that that are in the car, that offer a wide
variety of music, I think, have overall tended
to depress the market for the buying and
selling of recorded music.

So I support the expansion, by the
way, of those sections if you want to call it,
to include pre-'72 copyrights, which we'll get
into in another section, to include
terrestrial broadcasts, which I think also
should be subject to a statutory license.

But there is that critical
distinction, I think, between what's
interactive and what's non-interactive. I
certainly believe that SiriusXM has gotten way
past the point where they deserve a standard
that seems to have come up with a lower than
fair rate.

I don't know what the right
standard is, how to put it into words, other
than I think fair needs to be a part of it.

MS. CHARLESWORTH: Just a quick follow-up. So if say there were another tier, I think some people have suggested that, for let's call it customized radio, not as interactive as Spotify but not just lean back. Should that be in the statutory license or out?

MR. BLAKE: I think that's a tough question, but that was something that I was thinking of myself, as I call it "semi-interactive."

But clearly it seems like the technology is going to continue to grow and expand, as it should, which is great. Whether the statute, a statute that's written at a point in time can accommodate that, I'm not certain.

But I think that somehow there needs to be, whether it's explicit or implicit, some kind of a sliding scale in terms of that interactivity that determines
the rates. I'm not saying, by the way, that I
think Pandora is not paying a high enough
rate. Not at all.

I would say that from what I've
read, their owners are not suffering, and they
have a market value much higher than the
companies whose content they use to make a
profit.

MR. DAMLE: Thank you. Mr. Anthony.

MR. ANTHONY: I just have a very
quick comment. I wanted to echo what Les said,
about keeping policy separate from
administration. That principle is, I think,
very important and keyed to -- a key value to
a member. Rumblefish has had a lot of success,
as have some of our counterparts in the space
with direct licensing.

I think this is very important.

It's an important element that benefits
creators and the licensees.

MR. DAMLE: Thank you. Mr. Bull.

MR. BULL: Yes thanks. Another -- a
similar quick comment is simply that in my
spare time, I had the privilege to read some
of the CRB decisions, and you know, it's that
I don't think that there are enough
stakeholders that even have a clue what's
going on, how it's going on, you know.

So a small room of people with
three or four interested parties that are
actively bringing a case before the CRB,
rather than, you know, inviting sort of like
the administrative law process to, you know.
Announce it, get the word out to as many
people as possible that we're going to have a
proceeding, rather than having three or four
really interested parties fighting.

I mean it's sort of sympathy for
Mr. Hauth's position, of walking into a buzz
saw not knowing how that process was going to
impact. His isn't a substantial trade
organization by any means, you know, the two
that he said he's been involved with.

But to walk into that proceeding
and feel like you, you know, don't have a say and can't possibly impact it in a way. I read some of how those decisions came out. I just think that there's too few stakeholders involved in the discussion, and I don't have any idea, because my 16 year-old son doesn't care from either side whether he's making music, selling music, listening to music, streaming, interacting.

I mean there's -- I don't know any way to get more people interested, but I do feel like the few stakeholders that are making the rate settings and competing for those, you know, values that they're going to be, I mean that's as far from fair market as possible. It's a very small segment of interested people.

MR. DAMLE: Thanks. Thank you.

Mr. Prendergast, I assume you have some things to say.

MR. PRENDERGAST: Yeah thanks, thank you. Well, I want to start I agree with
Les, that direct licenses are an important competitive aspect to the music licensing landscape, and I think the direct license field is very robust. I think direct licenses happen a lot, and as Mr. Blake said, they enter into direct licenses, many of the labels are too small to enter into direct licenses.

That's not a change, you know, to respond to Les' point about thwarting direct licenses. We haven't thwarted any direct licenses. We don't thwart any direct licenses. We couldn't thwart any direct licenses.

Our constituents are labels and artists, and labels have an interest in doing more direct licensing. So that's not anything that we -- we live in a world that works where there's co-existence between direct licenses on the one hand and the statutory license on the other hand.

My last point is we used the word "monopoly" with respect to SoundExchange, but I just want to clarify that. It's not
SoundExchange that's setting the prices for -- or the rates for the use of sound recordings on these statutory services. Those are set by the judges, or if they're not set by the judges, they're set as a result of agreements.

So to say that -- to use that word "monopoly," I just want to add that point of clarification to it.

MR. DAMLE: Mr. Prendergast, could I ask you to just comment on two points made by Mr. Anthony and Mr. Watkins about this policy/administration sort of practices, and where the money for the policy comes from?

MR. PRENDERGAST: Sure, yeah. So as to where the money comes from, the membership agreement allows -- when somebody registers with SoundExchange, that is simply an act that allows SoundExchange to send the royalties to the right spot.

The next level up from that is to be a member of SoundExchange. A member of SoundExchange is a situation in which an
artist or a label says yes SoundExchange, you can do additional things for us, collecting foreign royalties on our behalf, for example, or allowing us to use -- allowing SoundExchange to use some of those royalties to do additional things, such as lobbying or other enforcement measures that we undertake.

That is -- to give you an example, it's as if we paid the money out to the members, and the member says you can hold back a little bit because I want you to do these certain things. It's a purely contractual relationship. It's purely transparent. It's purely in the membership agreement.

As to the overall question of whether a service, an entity involved in the administration of a license should also be involved in advocacy, I don't see a problem with that.

I think it's a good -- SoundExchange or any other collective that would be similarly situated, is in a position
to know the interest of their constituents, to
know the interest of the artist, to know the
interest of the labels, to have developed
expertise on those interest and those interest
issues, and therefore to be proactive on those
interests and issues.

MR. DAMLE: So membership is
optional? Is that --

MR. PRENDERGAST: Membership is
optional, yes.

MR. DAMLE: And so someone
registers and they don't want to be a member,
you're just paying them royalties?

MR. PRENDERGAST: That's right,
that's right.

MR. DAMLE: So just to follow up on
one other point that Mr. Watkins made, I'd be
curious to know what your response is. But the
question of unclaimed funds, unclaimed
royalties. Could you just comment on that? Do
you have a sense of how big that is? What is
SoundExchange doing to get that paid out?
MR. PRENDERGAST: Yeah. So to say it's unclaimed, there's a lot of steps in the process, from the time that SoundExchange collects royalty to the time that they're paid out to the artists and labels, and what complicates things as well is that SoundExchange operates, keeps its books on an accrual basis as opposed to a cash basis.

So we are stating that we have royalties, let's say, for the month of December, when transmissions were made in December, but those royalties won't be due until 45 days later, in the middle of February. So that complicates the discussion.

And when we collect royalties from services, we take those royalties, we take the reported use logs, and we match them together. There are inevitably errors in the data that we receive from the services, and we have a data management group that works to clean those errors as much as possible.

That will delay the movement of
the funds through the pipeline, so to speak, and then at the next step, we need to make sure that we have the right information to pay out to the right recipients.

On the artist side, that could be complicated. New artists are starting all the time. Old artists, everybody needs to register with SoundExchange, simply so that we know where to send the money. A fair number of artists have not registered with us for various reasons.

We have an entire department, dedicated outreach to reach out to as many of these unregistered parties as possible. We do matching exercises with other organizations within the music industry, to gather contact information and reach out to people, and have them be registered. But there will always be money in the pipeline that has not yet been distributed. That's just the nature of any collective organization. We pay out -- on the first run through our processing system, we
pay out between 85 and 90 percent of the money
on the first instance.

That improves over time as we
match more data accurately, and as more people
register with us. But there will always be
some amount of money that's just taking its
time, working its way through the pipeline.

MR. DAMLE: Okay, thank you. Ms.
Kossowicz.

MS. KOSSOWICZ: I'm much more
familiar with the 115 side than I am with the
112 and 114, so I leave a lot of the details
to other more experienced panelists on this --
in this session. But I did want to make a
couple of comments.

With respect to an earlier mention
of the implementation of CRB settlements, they
should be expedited when possible, and that
doesn't just pertain to both these sections,
but as well as other proceedings that we may
have in the future on licensing.

Also, 114 may benefit from some
more teeth with respect to compliance and reporting.

I don't know whether it would be termination provisions or something to that effect, you know, some sort of teeth that would apply to when accounting and reporting isn't done on time or correctly or per the provisions.

And thirdly, finally, I know terrestrial performance rights were mentioned earlier. I just wanted to mention that leaves us in, you know, a very small company of countries that doesn't have a terrestrial radio performance right, and it basically clouds the flow of royalties internationally. Also prevents U.S. artists and U.S. labels without foreign infrastructures from being able to collect possible royalties from other countries. So that is something that we'd like to see considered in these proceedings.

MR. DAMLE: Thank you. Mr. Marks.
MR. MARKS: I think this is a good time, now that Mr. Hauth has left the room, to see if anybody disagrees on the terrestrial rights.

(Laughter.)

MR. MARKS: I won't belabor that point any more. I would like to offer a little bit of a different perspective on some of the things that have been talked about with regard to the history and SoundExchange, and how these proceedings work.

So the statute, when you look at it, does not require artists and record companies, as royalty recipients, to create SoundExchange or any other organization. In fact, if you read the statute, the statute puts that burden on the services, to pay out to individual copyright owners and artists what is due.

At the request of the service that were in existence at the time back in '95, to have an organization to pay to, the recording
industry took upon itself the burden of
creating an organization, which eventually
became SoundExchange, first as part of RIAA
and then spun out separately as an independent
organization.

We paid for the establishment of
it. We paid for all the costs associated with
it, the personnel, everything else. That was
something that was done at the request of the
services. So I think when we talk about
SoundExchange as some monopoly or
SoundExchange as this or SoundExchange as
that, we need to step back and look at how
SoundExchange come into existence, and that
was the first step.

As you get into the rate
proceedings, I can only tell you what the
perspective is on our side of the fence, which
is that we are one kind of group, with
SoundExchange representing us, facing -- you
know, this time around, there are 27 different
organizations or companies that have filed in
the web proceeding.

Some of them include organizations like the NAB, which represent, you know, hundreds if not thousands of these statutory licensees. So there is, in terms of participation, there is not only wide participation that exists and representation of the individual licensees, but in many cases those participants hire their own lawyers and do their own work, and SoundExchange is on the receiving end of, you know, fighting a number of different battles with a number of different parties.

That's the same thing that's coming up in this proceeding right now. So the notion that, you know, you've got big bad SoundExchange on one side and all these, you know, small parties who are either unrepresented or a few parties, you know, just a paltry number of parties on the other side that are completely outgunned is just -- it just bears no relationship to reality, in
terms of how these cases have been -- have
gone forward.

On the policy front, I would just
add to what's already been said with regard to
SoundExchange's policy activities. It is
completely voluntary, because any monies that
are spent on policy efforts come from
membership agreements and not from anybody who
just wants to have their royalties, and
there's no hoop that needs to be jumped
through just to get your royalties and not be
a member.

There are also rules regarding
what -- SoundExchange cannot just go off on
its own. It needs board approval and a certain
level of board approval that's greater than
majority to even get into the advocacy space.
So its activities in that space have been very
limited.

Probably on one hand you could
count them, the pre-'72 is something that's
most recent. I think if you look at the broad
support of the label community and the artist community, it's no doubt but they're representing the interests of the industry. The same thing with regard to what happened a couple of years when Pandora and Clear Channel and others tried to get the rate standard changed, same kind of broad support.

You know, hundreds of artists who had never signed letters before signing letters of support, you know, for those activities. So as a board member, I would just say that there are very strict rules that exist, and the activities that have been engaged in so far are very representative of industry interests.

MR. DAMLE: Mr. Watkins.

MR. WATKINS: I just wanted to speak first to what I said about interference with direct licensing, because it's a matter of public record. There's a lawsuit pending right now involving one of our clients, SiriusXM, coming out of a set of events.
Basically on the very same day,

Following the start of their direct licensing campaign, which we administered, a number of industry groups came out with public statements touting the desirability, if you will, of blanket licensing, including SoundExchange, A2IM, NARAS and I forget who else.

So that's the basis of the factual assertion that there's been interference with direct licensing and it's the subject of a lawsuit, and if I remember correctly, the answer that SoundExchange made in that lawsuit didn't deny that it had partaken in orchestrating that anti-publicity campaign.

So you know, be that as it may, I think the historical perspective that Steve offered is really important, and I'd forgotten about that. It's very much true. But you should know that when SoundExchange goes to artists and labels to bring in members, you know, it doesn't go to them and say "provide
us your tax identification information and get
your money, and oh by the way get it absent a
lot of deductions that you would otherwise
authorize if you sign up."

Because remember, instead they
have a lot of young people and they're out
there in the market with the artists and with
the managers, and you know, they're passing
around the membership agreement. Most of the
young, creative community thinks that's
exactly what you're supposed to do, sign the
membership agreement.

So the result of that is in fact
to convert essentially, you know, statutory
royalties over to monies available for
policymaking. The pre-'72 issue is, I think,
exactly the one. I mean our organization,
again, has no position on that. I could easily
argue that we benefit either way.

I certainly understand why owners
of sound recordings, pre-'72 sound recordings
want them to be payable. I understand why
digital music services do not.

But say what you will, federal performance royalties are not payable for the performance of pre-'72 recordings, and we have an organization that was set up to collect and distribute federal performance royalties, lobbying Congress, using monies which could be spent and resources which could be spent trying to reduce the unidentified on policymaking. That's really the only point that I want to make.

The unidentified, just to speak to that really quickly, I am very sympathetic to some of the things that Brad said. The data quality, which is something we're going to talk about later on, you know, is really bad in some cases. There are tremendous impediments to trying to solve that through some sort of collaborative action.

But we know as an organization involved in matching data, the more resources you throw at it, the more money, the more
people in some cases, the better you do at reducing it. It's that simple. So every dollar spent on policymaking is not being spent on reducing the unmatched.

MR. GREENSTEIN: I'll be very quick. I realize that we're --

MR. DAMLE: Yes, and then I'll let Mr. Prendergast and Mr. Marks answer.

MS. CHARLESWORTH: Yeah we're --

MR. DAMLE: We're running a little bit behind.

MS. CHARLESWORTH: We're running behind. So but we want to hear from everyone quickly.

MR. GREENSTEIN: I'll keep it very quick. So I want to address points that have been made at various times. There was a comment made about the high market value of some of the webcasters.

Maybe alluding specifically to Pandora, and I would point out that the market value, as reflected by Wall Street, is not an
issue of profitability, and the profitability
of the services operating under the statutory
license is much poorer than their market
valuation, and we shouldn't confuse Wall
Street market value with whether or not the
rates are appropriately set.

Ms. Charlesworth, you asked about
whether or not there should be an additional
tier for webcasting, partial user influence.
That was something that the RIAA sought to
have a higher rate applied in Web I.

That was rejected by the CARP in
Web I. There's nothing that would prohibit
SoundExchange from seeking different rates for
different types of services, which is what the
current statute provides for, and I think also
would be permitted under 801(b).

So I'm not sure that has to be a
statutory fix, and anything that creates more
confusion about interactive/non-interactive
will result in more litigation, and I think it
will harm artists if you kick Pandora, for
example, outside the statutory license.

In terms of displacement, the non-
interactive services, I think there's probably
a lot of information that could be sought for
the Office to request, information on
promotion or substitution. That will also be
litigated in Web IV, as to whether or not the
non-interactive services are harming the
marketplace or in fact they're drawing more
people in, who are then subscribing to the
interactive services and leading to new
revenue streams, or people are buying more
music because they're listening to non-
interactive services.

With respect to the unclaimed
royalties, I think one issue that could be
addressed is that you just have that money
escheat to the states, instead of to the
private parties that control SoundExchange.
I'm not clear whether or not there's even
authority to give SoundExchange and its
representatives that money.
In terms of lots of people participating in the CRB, in the last litigated CRB proceeding, the one with the rights where Congress had to step in again, you had one non-interactive service, Live 365 litigating.

This is the first proceeding that Pandora is participating in, arguably the most successful. So it's not the case that the prior proceedings have had equal numbers of parties that went through the litigation. Many of the parties have ultimately dropped out.

Then in terms of Steve's comment about or Steve and Brad about the board having strict rules in what activities they follow, I'll take them on their word it's true. I won't true to recollect what I may have been involved in.

The question is what are those rules, and what are the policy determinations? Where are they published? Where are they available on the SoundExchange Board? How do
people find out about them? I would posit that
you can't.

MR. DAMLE: Mr. Harbeson.

MR. HARBESON: So I probably should
wait until the very end actually, because this
is a dramatic change in topic. But since the
subject of the session does include discussion
of interactive licenses, I would just like to
point out that there are -- is an argument to
be made to having -- to expanding the
statutory licenses for sound recordings to
interactive, fully interactive services.

There are a lot of libraries who
would like to be able to make use of licenses
like this for a variety of purposes. Some
libraries are actually doing it now under fair
use doctrine. I suspect that there are people
in the room who don't agree that it's fair
use. There are many librarians that agree.
There are many librarians who would rather
license the content, and this is for things
like for audio-visual reserves, for
distributing curated content, online exhibits
or other kinds of library outreach activities.

If -- I think that if we could
have a statutory license for sound recordings,
and I don't know that you're going to get to
this in the next panel, but also clarify with
respect to the 115 license, whether when
you're streaming something, you have a
performance or a distribution.

The courts seem to not agree on
this topic. You might see a lot of very
interesting services out there that are not
only valuable to the public but paid for, and
sending money to context creators.

MR. DAMLE: Thank you. Mr.
Prendergast and Mr. Marks, and then with Mr.
Marks we can -- then we'll wrap it up.

MR. PRENDERGAST: Thanks. Yeah, I
just wanted to respond real quickly to what
was said. With regard to the lawsuit,
absolutely we deny the allegations. With
regard to what we did in that situation,
absolutely we would do it again.

We think it's important to get the message out about the context of the direct license initiative that SiriusXM was engaging in, and we want to make it clear to the label and artist community that those direct licenses had terms in them that they needed to be aware, and that artists would receive payments differently in that type of environment.

So absolutely we deny the allegations in the lawsuit, and absolutely we would continue to get that message out.

MR. DAMLE: Mr. Marks.

MR. MARKS: Yeah, and I would just say on this issue of expanding the compulsory license, you know, we've heard from a number of parties about how people ran to Congress and are using that as an example of why everything needs to be fixed.

This is exactly why compulsory licenses are not good necessarily for
copyright owners, because they become politicized. You can have parties after -- this is what's happened in every one of our proceedings.

On the other side, the parties view they've got two bites at the apple, one with the CRB or the CARP before it, and then another afterward with Congress, to try and put pressure to get the rates lower.

That's the way it's been in every proceeding, and the mere fact that they run and do that and have that as a strategy doesn't say anything about whether there's anything wrong with the system or the standard or anything else.

The one point I would just close out with, that I failed to mention before, but that's relevant to this in terms of the antitrust exemptions and how these proceedings work, we had a situation where the other side was essentially in one of the prior proceedings boycotting doing any licenses, a
head an organization basically saying don't do any licenses with SoundExchange or the RIAA, because it will just undermine our position in the CRB.

This is the kind of thing that we're routinely up against, and it only exists because of the compulsory license. So expanding it to other services, especially interactive services, and especially under the current circumstances where certain services have already gotten the benefit of bad legal decisions that do not mirror the intent of what was written back in 1998, would be something that we think is not appropriate.

MS. CHARLESWORTH: And just for the record, I mean do the labels -- are you suggesting that 114 should be done away with or what is the official --

MR. MARKS: No, no. Just not expand it, you know, beyond what exists today.

MS. CHARLESWORTH: Okay.

MR. DAMLE: Okay. Thank you very
much. Yeah. So why don't we take a -- it's about noon right now. Why don't we plan on starting the next panel at 12:10? Is that fine?

MS. CHARLESWORTH: Yes.

MR. DAMLE: Yes, okay.

MS. CHARLESWORTH: So we're running ten minutes behind.

MR. DAMLE: Yeah, ten minutes behind.

MS. CHARLESWORTH: We'll try and catch up during the lunch hour.

MR. DAMLE: Right, thank you.

(Whereupon, a short recess was taken.)

MS. CHARLESWORTH: All right.

Order, order in the court. No one's listening. Yes, I need a gavel. Could the panelists please take their seats? Thank you. I always like hearing lively discussion in the room, and this is our last panel before lunch.

Now that we've solved all the
problems of the 114 license, we'll move on to
115. Obviously, many of you have many things
to say about the 115 license. Based on the
written comments in Nashville, I think it's
perhaps the area that's viewed as being most
in need of something, and what that something
is is hopefully what we'll be addressing
today.

So I guess, you know, the overall
question here -- well first of all, is there
anything who thinks that the system -- maybe
we'll pick on Leo, Mr. Lipsztein that is.

MR. LIPSZTEIN: We used to work
together when you were a partner and I was an
associate. This feels very familiar.

MS. CHARLESWORTH: Sorry, okay. All
right. Now enough of that. But you know what?
I'm reminded I didn't welcome the new
panelists, and we should go around the room
for anyone who wasn't here before, so they can
introduce themselves. Can you turn your tag a
little bit?
MR. RYS: My name's Jason Rys. I'm Vice President at Wixen Music Publishing. We handle songwriters George Harrison and Tom Petty and a number of really great songwriters.

MS. CHARLESWORTH: Okay, and can you put your tag up?

MR. RYS: You know, this is Ashley's tag and I don't know --

(Simultaneous speaking.)

MR. SCHYMAN: Should we just call you Ashley? We'll give you -- we can give you a tag. Gary Schyman.

MS. CHARLESWORTH: Okay.

MR. SCHYMAN: My name is Gary Schyman. I'm a composer. I actually write music, and I won a (name) for my music for a video game, but I've written music for films, television.

I've had video -- had bits on YouTube actually, 50 million and one of them from the bits. But I've also -- I've been long
time chair for the Performing Rights, now
called the Music Rights Committee of the
Society of Composers and Lyricists.

MS. CHARLESWORTH: Okay. Well
welcome, and I think that's it. Okay.

(Off mic comments.)

MS. CHARLESWORTH: Oh yes, no. Last
but certainly not least.

MS. LAPOLT: Sorry. Dina LaPolt.
I'm a music lawyer in West Hollywood. I
represent music creators, songwriters,
recording artists, authors, actors and
producers.

MS. CHARLESWORTH: Okay. Mr. Cohan.

MR. COHAN: I'm Tim Cohan. I'm the
in-house counsel for PeerMusic, one of the
larger independent publishers.

MS. CHARLESWORTH: Okay. Well, I
think we have a really distinguished group to
discuss 115 with us here today. So I was just
about to pick on Mr. Lipsztein. Now I won't do
that. I think I heard you say in an earlier
panel that you thought that 115 should be retained, and there may be others around the table who share that view.

So would you care to elaborate on that a little bit, and anyone else who thinks that the current system is working well or well enough?

MR. LIPSZTEIN: Sure, and so I approach this question from the somewhat biased perspective of a service provider, operating in the interactive music service space, in particular Google Play, but obviously I look at this from the perspective of YouTube and other digital services out there.

So from my point of view, the Section 115 license is absolutely necessary, but it does have some components that need to be revamped. In particular, I think it needs to be revised to reflect the operational realities of service providers and creators today.
In particular, so this came up in this morning's session. The main feature of the Section 115 license that I think needs to be addressed is the question of ownership and the availability of data under that license, so that service providers can actually pay to the individuals whose content they are licensing.

The license, I know the compulsory nature of the license in particular, I think, are extremely important, just given the sheer scale of publishing, the sheer scale of compositions out there.

It is simply unrealistic to expect a new market entrant to do deals with every single publisher, and clear every single composition before using it on a service, for that service to have meaningful value to consumers, I think.

We've seen that it's difficult for new services to come in with partial catalogue with not the entirety of the market cleared.
Consumers just don't want that, and to make sure that these new services can still appear and that existing services can continue to use new content the moment it becomes available and get it to consumers, I think we need appropriate information available, so that we know who to pay, so we can pay it quickly and see that as a operational reality.

MS. CHARLESWORTH: Okay. Just for the record, I mean does it need to be 115 or do you -- are you just advocating for some kind of collective licensing? In other words, could there be something else that would replace 115, but would satisfy your needs, or are you particularly attached to 115?

MR. LIPSZTEIN: Sure. I don't know that there's anything magic about 115. I think a licensing mechanism that allows music service providers to make the full breadth of music content that's out there in the world available quickly and pay appropriately for it, and be able to value those payments
appropriately, if that makes, are the sort of key features of any licensing framework that we're looking for.

MS. CHARLESWORTH: Okay, thank you.

I think I see Mr. Watkins.

MR. WATKINS: Well, I just wanted to say that, you know, leaving aside -- well I think actually, to talk about eliminating it, given the large number of digital music services at least, who are relying on it, is -- it's kind of hard to fathom how that would work.

Our company's been administering the Section 115 license en masse since 2001. I mean at this point, we represent I'd say most of the interactive streaming services in the United States, for purposes of administering the 115 license, and paying royalties under the license.

In some cases, the clients have voluntary licenses, but to license the independent content that can be identified,
you know, we do use the statutory license, and
there are a number of services relying on it.

MS. CHARLESWORTH: Okay. The same
question for you. I mean does it have to be
115 as it's currently configured, or are you
just suggesting there should be some kind of,
you know, government somehow regulated or
sponsored license?

MR. WATKINS: Well, I mean
generally we, you know, as it was pretty clear
from our comments, I think we think the
private market is really well-positioned to
solve licensing problems, if there's an
economic incentive to do that. So leaving it
as is, and there are some things that can be
fixed on the margins that we've talked about.

I think making it easier to file
electronic notices with the office for
unidentified works, and making it cost
effective to do that en masse would be
extremely helpful, and would eliminate
actually the problem of exposure on the
margins, if you will, because we can identify
and license 90 percent or more of the typical
digital music service usage through the
statutory license.

So I also think that if it's going
to be altered, it needs to be altered in a way
that preserves song by song licensing on some
level. I think history has proven that
whenever there is single application licensing
to one entity, that's where the problem of
unliquidated royalties tends to come up.

If you think about it, at the
moment the service is using the 115 license,
you have to create a tie first between the
recordings and the musical works, and that's
both for licensing purposes and for payment
purposes.

So the services needing the
licensing coverage have an incentive to create
that tie, which carries all the way through to
the royalty payment process, and then it
ensures that the royalties go, you know, to
the publisher.

MS. CHARLESWORTH: Okay. Thank you, Mr. Watkins. I think Mr. Blake is next.

MR. BLAKE: So just to repeat a little bit of background, as I mentioned, Concord is a music publisher, although frankly our music publishing holdings are much less significant than our recorded music holdings. So really, it's our perspective as a user that I'm talking about.

I favor the compulsory license after the first use, and I think that it has -- it would be a big mistake for publishers and songwriters to abolish that.

I think it's been tremendously helpful for people to know that they can basically record every song that they want. They can go in and make those decisions, and we as a record company know that we'll have a license at a rate.

My experience has been that first use licenses have never really been
negotiated. They don't command a higher rate, because everybody I think just understands the efficiency of being able to go and get that license.

But the whole system does need to be reformed greatly, and having read the RIAA's submissions on this and not having been involved with the discussions before, I have to say that I think it's a bold suggestion, that basically the publishers and the record companies sit down and come up with a blended rate that will cover use of songs in all recorded music products that are strictly records, including both audiovisual records and audio only records.

Leave the system alone as it is with respect to sync licensing in non-record products, but we need that simplicity. Even for a company like ours -- thank God I never had to do 1,500 licenses or anything close to it for an album -- but the process of having to go through and get licenses at other than
the established rate, when you simply -- when
prices in the marketplace are forcing more
content to be delivered to consumers, to even
entice them possibly to buy it, and
particularly audiovisual products.

The amount of overhead that's
devoted and the amount of difficulty of paying
those licenses is tremendous. We absolutely
have to have a system where the difficulty of
getting licenses and administering them does
not result in royalties not being paid, and it
definitely happens that way. It is just much
too complicated.

MS. CHARLESWORTH: Okay. Thank you,
Mr. Blake, and before -- I know Mr. Cohan has
his card up. But since you alluded to the
RIAA's proposal, I thought it might be helpful
if Mr. Marks, do you want to explain that, for
anyone who hasn't read it?

MR. MARKS: Sure. I brought a cheat
sheet, so I don't forget anything. All right.
I won't repeat any of the reasons why we think
it's necessary, given we've had a pretty robust discussion on that already.

In terms of what we were seeking to achieve, I'll just reiterate the three things we had in mind. One is fair market value for royalties, for songwriters and publishers. Two, simplifying licensing by aggregating rights, such as ASCAP and BMI or asking for in their proposed modifications a consent degree, through a blanket license, and covering all the rights, as Larry was just saying, needed for what we've been terming a modern music release, which is something that today does include audiovisual works, just because that's what consumers are demanding.

I think all of us around the tables realize if we don't answer to consumers, we won't -- none of us will have a business. We would leave out of this completely, or I should say it's not intended to cover, traditional sync uses or any uses
where the sound recording isn't involved.

So you know, for everything where
we -- either we don't have a right or things
like uses in television or movies, where there
are other issues at play, it's not really a
consumer release so much but a business use
that would be outside.

So the first thing would be that,
as I said earlier, you would replace the CRB
and the rate court, so that they no longer had
oversight of setting rates for performances
and mechanicals. Again, these would be bundled
together on kind of a transactional basis,
which is the way that, you know, labels
negotiate rights in the marketplace as well.

So you no longer have these
multiple expensive rate proceedings be
necessary, you know, and that go on forever
with uncertainty and people not knowing what
the rates are, and then the rates being below
market et cetera.

Instead, you'd have publishers and
songwriters negotiating their own percentage rate with sound recording owners, to determine a single or multiple agreed upon rates for compositions for different uses. It could be one rate across everything, it could be multiple rates, depending on the uses. That would be left for the parties to figure out.

Those would not be something overseen by government or with a backdrop of a rate court. The whole proposal is premised on the parties being able to reach an agreement on what is appropriate. If that doesn't happen, then it just doesn't work. But if it does, there's something that we can bring to policymakers as a suggestion for how to move forward.

I would just note that, you know, we've heard a lot recently. But even in the past, publishers and songwriters talking about how their compensation should bear a relationship to labels compensation recently in the drafting of the Songwriter Equity Act.
So we're trying to pick up on things that we've heard from the publishing and songwriter community, and also what we've negotiated in the context of the current mechanical rate. So a number of categories of uses for the mechanical rates include, as a minimum, some percentage of what the label is getting.

So it's a concept that we've already talked about, and a concept that we've also refined over time. You know, this is something -- a lot of people have said well, would you have this in place like one time forever, or would you revisit it every so often. You know, how would you deal with that?

What we've said is that's for discussion. That would be for the parties to discuss. I certainly could see a lot of benefit to having every -- you know, so many years, another discussion about, you know, whether a certain ratio is right or, you know, new uses that have come along, whether that
ratio that was agreed to earlier should still be applied.

As I also said earlier, publishers and songwriters would still control what the artist -- what the first use would be of their songs. So only if a recording is made with the assent of the relevant writer/publisher would the song even be covered by the system.

So it retains the first use element that exists today, so that the control still exists for a songwriter and/or the publishers to say sorry, I don't want to have this song used in a recording that's distribute by X, Y or Z. They can, you know, that system would still exist and the marketplace would take care of that.

Sound recording owners would then go negotiate market-based licenses like they do today, and they would do it individually. It's not collectively. No change to how they do it today, and based upon those licenses, there would be a knowable rate for the
publishing rights, based on what had been agreed to in the market.

So we kind of view the marketplace element of this being twofold. One is you have publishers and songwriters sitting down and figuring out what the percentage should be, and then second, that percentage is based off of a marketplace negotiation or a negotiation rather that takes place in a marketplace later on. So that's why you don't need the rate court or the CRB.

So then the other thing is that the services -- so once the rate is established, the services have a direct relationship with the publishers and songwriters. So the money doesn't flow through record companies. The services take the license. The services pay the money out to whomever the, you know, publishers and songwriters designate as the collective to do this.

But there's a direct relationship
and they have direct input obviously over who
that is that's collecting, and to determine
the identity of that organization, the
governance of it. As a result of this, there's
an audit right directly with the service.
There's transparency directly with the
service.

There's no payment delay that
exists today as a result of rate proceedings,
and to the extent that there are issues about
advances or equity or some of the other things
that have come up, I would suggest we build on
concepts that we discussed in the last
mechanical negotiations which -- where we
changed the definition of what we call TCC,
total content cost, which was this minimum for
the record company.

So that should be a discussion
that we have, to ensure that, you know, money
is flowing and to the extent that there's a
question about the kinds of deals that are
being done today, that that's captured as part
of what is agreed to with the ratio.

And yeah. I think that's pretty much it. So just to clarify, it would not include sync rights for movies, television, traditional television broadcasting, Internet performance of television programming, performances at live venues, stand-alone lyrics, sheet music or any new use or compositions used without a recording. We're not talking about any of that.

MS. CHARLESWORTH: That's the fine print.

MR. MARKS: So that's -- you know, that's outside of what we're talking about when we talk about releasing new products.

MS. CHARLESWORTH: Thank you for outlining that. I think I promised Mr. Cohan that before Mr. Marks described that. So I don't know if your comments are going to respond to him or something earlier. But go ahead.

MR. COHAN: That's right. I
actually didn't notice that Mr. Arrow's card was up before mine, and I --

MS. CHARLESWORTH: Oh, I'm sorry, and I apologize. I can't keep track of all the cards.

MR. COHAN: This doesn't speak directly to Mr. Marks' proposal, which you know, we look forward to reviewing and perhaps responding to in the reply comments.

I would just say, take a step back generally and say that PeerMusic, in its role as sort of a major independent, shares a lot of the concerns of the majors, but also wants to make sure that perhaps concerns that might be of really specific to smaller independent, even much smaller than peer music publishers, are taken into consideration.

So there's been a lot of discussion about the abolition or elimination of the Section 115 license, and based on what we think are very, you know, sound principles of, we sort of agree with Register Peter's
point that was cited in a number of comments
that as it's an abrogation of an exclusive
property right, it should be done very
carefully and very narrowly.

I think we'd like to have more
information or to know a little more, or to
have the parties investigate the extent to
which the elimination of the license might
have an impact on publishers and songwriters
with less leverage in the marketplace.

It may be that the elimination
would wind up creating a situation that looks
a lot like it does today, and it would not
have an effect. But we're not sure at this
point.

But I think given that a lot of
the discussion, a lot of time was probably
going to be required before any elimination
could be implemented, we think it would be
extremely important to focus in the short term
on the fixes that have been proposed,
particularly in the Songwriter Equity Act, and
particularly the elimination of the 801(b)
standard, which there's been some discussion
about already.

But the move to a willing buyer
and willing seller standard and 115 for us
would be particularly the main focus at this
point.

MS. CHARLESWORTH: Okay, and I
guess Mr. Arrow. I'm sorry if I took you out
of order.

MR. ARROW: So just a brief
statement, and then I'd like to respond to Mr.
Marks.

MS. CHARLESWORTH: I'm sure you
have something to say.

MR. ARROW: So first, just as I
stated before, we're ideally for the
elimination of the compulsory license. We
think it's completely unnecessary. We think
that the free market solution would work
better, just in terms of establishing a rate,
and also in terms of establishing a licensing
process that is a lot less complicated and
cumbersome than it is today.

If 115 must remain in some form,
we think there must be an audit right for
publishers and songwriters, so they can go and
find out whether they're being accounted to
properly.

Right now, I think there's a
complex attestations that some accountant has
to sign, that says oh yes, my client paid you
correctly.

But obviously they don't trust
that.

And also we also believe that the
rates should be set by the willing
seller/willing buyer standard. Responding to
Mr. Marks. So really what he's saying is the
labels seek to take over our digital licensing
business for us. Obviously that's something
that we can't support.

For years, record companies have
been licensing music from publishers. I
remember from the beginning of the compulsory license, and at least over the last 30 years, it's the time that I've been in the business, we don't feel that they've done the best possible job of licensing or paying royalties to us.

    In addition, they've tried to reduce the amount of royalties paid to us through things like the control compositions clause. So why would we want to give our licensing business over to them?

    Having said that, we would be happy to sit down with them, and with the additional music providers, and talk to everyone about a process that would work, and you know, I think Steve just jumps to a particular proposal.

    It's really overreaching, but fair enough. It's something to start with, and we'll be wanting to entertain that discussion.

    MS. CHARLESWORTH: Do you have a response to the specific idea of coming up
with a share, you know, like a publisher label share, or is that something you can't -- you haven't been able to formulate a response?

MR. ARROW: Yeah. But we're open to any suggestion. I think we go in with a blank slate, and we say look, well here's the landscape.

Look, we're absolutely in favor of making it as easy as possible for digital services to license our music, and when they license our music, we make money. Songwriters make money. That's a great thing.

The question is how do we do it? What's fair compensation to songwriters and publishers, what's fair compensation to record companies, and how do we create a process that works really smoothly, enables them to launch quickly and effectively, and not have a huge cost of administration that they do have now.

MS. CHARLESWORTH: Ms. LaPolt.

MS. LAPOLT: I'd like to mirror the comments that Mr. Arrow said. I feel the same
way. My practice represents a number of --

MS. CHARLESWORTH: Can you speak

into the mic? I just want to make sure we can

hear.

MS. LAPOLT: I'd like to mirror the

comments of Mr. Arrow from Universal Music

Publishing. My law firm represents a lot of

songwriters, a lot of A-list songwriters, and

the concerns that Mr. Arrow has we also have.

We believe that a willing buyer/willing seller

standard should be applied to the mechanical

license.

It's severely outdated. It was

enacted in 1909. Things were very different in

1909, as David Israelite, president and CEO,

just testified under the House Subcommittee

for Intellectual Property and the Internet on

Tuesday. He made a point to say when the

license was enacted, there was maybe 100,000

songs in the marketplace.

A player piano company had all but

monopolized the market by exclusively
licensing a large portion of all existing music, thus enacted to promote competition. However, there's now over 25 million songs in the marketplace.

Certainly, with the advent of Pandora and all these fabulous services, which we all, you know, we embrace technology, my clients, songwriters and music creators in general.

But we do have to sit down and work about how it's going to be fairly applied. I mean the fact that Pandora pays the record companies 50 percent of its income and the music publishers make four percent was precisely why the Songwriter Equity Act was introduced.

I really like this idea that the music publishers and the labels would sit down and come up with something. No bullying, don't bring your lobbyists. Stephen, you can come but you know, here's the thing. All sit down and work it out and figure out what could
work, because 50 percent-4 percent doesn't work.

A lot of my clients are recording artists and songwriters, so they participate each way. But I could tell you honestly, for any one of my clients that's a songwriter and a record artist, the one thing that is like their mantra, you know, like their vuh, the chutzpa, the thing that gets them up in the morning, is to be able to say I'm a songwriter.

Like that is the end-all be-all for any music creator we represent, you know, and I just want to -- I love this idea about the audit rights. I'm glad that you brought that up, because the pass-through licensing also doesn't work. I mirror Mr. Arrow's comments on that as well.

We can't have a situation where the record company is controlling the licensing of all these rights, and then we have to wait for the record company to account
to us and, you know, that doesn't work as well. We need to have direct relationships with these services, so we can ask them questions and have an audit right to begin with.

The other thing I want to say is the free market is preferable, but I understand getting rid of 115 right now. Everybody says it's very scary being in the free market. It is scary, or as my son would say "scawey." It's scary, but you know the world is scary, you know, and I think that we all have to work together to find a solution. The infighting has to stop.

That's the part that's destructive. I have to tell you, being involved with a lot of legislative matters over the past year, and having to educate a lot of Congress members, it's very difficult to understand copyright to begin with, very difficult.

And then coupled with the fact
that we all fight with each other. The sound recordings fight with the musical compositions and the songwriters fight with the record companies and so on and so forth. It just exacerbates the fact that we can't get anything done, and it's very counterproductive.

I think that these types of roundtables that the Copyright Office is hosting is a very good start for all of us getting together, working together to try to figure out a solution that benefits all of us. Because at the bottom line, you know what? This is bipartisan issue. Music brings together the worst of enemies, and they can be friends, and we can all work together.

As long we keep the creator, the music creator at the forefront of our minds, and know that any law that doesn't protect them is no law at all, to quote Register Pallante, who I just love. So thank you for your time.
MS. CHARLESWORTH: All right. Well, we'll just take lunch now. No. That was very inspiring. Thank you, Ms. LaPolt. I think Mr. Greenstein.

MR. GREENSTEIN: So this roundtable makes strange bedfellows, because on the last panel, Steve and I were adverse to one another, and I think on the one hand now, there will be some support in the digital services community for the RIAA proposal to some extent.

What I think some of what Dina just said has to be kept in mind. 25 million songs in the marketplace. I think it is unrealistic to expect that if you do away with 115, you will have the vibrant, digital music marketplace that we have now and that has been growing for many years.

If you do away with this, I think you basically put the brakes on full stop. I also find it surprising that a lot of the fights that are going on between publishers
and sound recording copyright owners over the allocation, and this is a money issue, I think, to a very large degree, are by companies that are under common ownership.

So I just learned recently Warner Publishing does not have its own board of directors. It's part of Warner Music Group. The head of Universal Music Publishing Group is the former head, I forget what Zack's title was at Universal Music. You've got commonly owned entities that can't figure out or agree upon how to split up the money, and the people who get lost in the crossfire are the DSPs.

A solution, I think, would be not only to go where the RIAA is going, but to follow an existing structure that exists in the Copyright Act under Sections 111 and 119, which is there's music. To the consumer, there's music. There may be a sound recording, there may be a musical work. Maybe they know the songwriter. Maybe they know the different performer.
But from a DSP that's building a technology, trying to bring something to the consumer, they want to pay for music and say you all, the rest of you in this room who represent publishers, record labels, PROs, mechanical rights administration companies, you figure out how to allocate that money.

Under Sections 111 and 119 of the Copyright Act, that's what essentially happens. You retransmit a broadcast signal, a distant signal and there's money that's paid in. Phase 1, you allocate money between the different core groups, whether it's sports, Hollywood, local broadcasters, religious broadcasters, the PROs, et cetera, and then in Phase 2, you allocate the money amongst those different groups.

So for sports who I used to represent, baseball, the NFL, the NHL, et cetera, figure out how to do it. For music, ASCAP, BMI and SESAC, figure out how to do it. The services should not be forced to negotiate
with the record labels and be held up, or to deal with the publishers without the safety valve and government oversight of this collective action, and figure out how much is going to go to different parties.

I also think that the findings of the federal court judge in the ASCAP Pandora litigation is very important. When it was talked about, transparency of information and what would be made available, it was anything but transparent at the end of 2013. When publishers were withdrawing from ASCAP and trying to withdraw from BMI, and Pandora was trying to get information about who owned what works, and the information was there.

Both the PRO had it and the publisher presumably had it, although there's a separate issue. If anyone's tried to do a deal with the publisher, they don't tell you what they own. They don't keep track of what they own. They indemnify you against a third party claim.
The marketplace is not going to solve this problem. If the problem is the -- I forget, Dina, the number you've quoted, 50 percent versus 4 percent for the allocation, and Mr. Van Deere of Sony/ATV talks about how he wants parity.

Going back to my earlier comment, when Pandora's paying upwards of, you know, 70 or 80 percent if they were paying under the CRB rates and the publishers want parity, at 150 percent of revenue, there's no business here.

The way that this works for the benefit of everybody is for there to be less friction, not more friction, so that more money could be paid in, and then the companies under common ownership, two of which are foreign-owned entities, they should figure out how to split up that money.

If the publishers don't like that they get four percent and Pandora's getting 50, let them figure it out amongst themselves.
Figure out what the value is of music. Not for a reproduction, distribution or public performance for a musical work or a sound recording.

So six data points. Figure out with one body what is the value of the music. Have the services pay for the value of the music, and then have the rights owners figure it out.

So in the first instance, what's the value of the sound recording versus the musical work, and then what's the value of the performance versus the mechanical or the distribution rate?

Any other effort to get rid of is going to just create a nightmare, and it's already incredibly challenging advising companies as to how to get these rights. We haven't talked at all about MFNs, and how that is destructive in the marketplace to drive up rates.

It is very complicated, and it
will not be solved, in my view, by doing away
with 115 or government oversight or DOJ
consent decrees. You will have holdups, you
will have problems, and you will have less
music and less services making its way to the
American consumer, which is something that
needs to be taken account of.

It's not just the creators that
have to be top of mind. I think the public,
the American people need to be considered
here, and I'm just afraid that talking about
doing away with 115 is going to completely
forget about them and just throw sand into the
gears of this whole process.

MR. MARKS: Can I ask a follow-up
question, Gary just --

MS. CHARLESWORTH: Yes, and then I
do want to get to this side of the room.

MR. MARKS: Just very quickly. As
much as it's great to have you agree with us,
I'm not sure we're in complete agreement. So
it sounded like what you were saying is let's
just throw everything under some kind of government regulation, where some rate court or some body is determining what the pie is worth.

Whereas our proposal is premised on getting songwriters and publishers out from under CRBs and rate courts and, you know, having everything based on market rates. It's just a clarification, not a debate. I just want to --

MR. GREENSTEIN: So to clarify, a lot of this would have to be fleshed out. I agree with many of Steve's points about what would not be covered by the statutory license. So Steve, you went through a list, whether it was television, non-sound recording uses of musical works.

I think a lot of that would stay outside. I think for non-interactive services and interactive services, the Spotifys, Rhapsodys, Beats Musics of the world, where there's already very active MFNs that ensure
the same payment to different copyright owners, and that you're dealing with how to allocate that money, that's what I think would benefit from being placed under the system, where you have a statutory license, a payment for music and then the rights owners figuring out how to allocate that.

So we were both with the RIAA when the argument was made why is the sound recording more valuable than the musical work. It's the risk, different markets, different inputs.

Publishers don't like that. But let the publishers and the labels at their board level figure out okay, how much goes into the pocket of Universal Music Group, the record label; how much goes into Universal Music Publishing.

But why should the services be grasses these elephants fight amongst themselves? Because if they're each given their own exclusive right, they're all just
going to hold up the services.

If publishers really want parity,
and you have a service like Pandora that's paying, or would have been paying over 100 percent of its revenue, you can't make it up on volume in the digital space.

There's no service that continues to exist when they're paying confiscatory amounts to publishers and labels. That's what I -- I'm convinced that that's what would happen if you removed DOJ oversight and the 115 compulsory license.

MALE PARTICIPANT: Was that a yes or a no?

MS. CHARLESWORTH: All right. You guys can talk over lunch. I'm going to go over here to Mr. Rys, if you're ready. Okay, Mr. Rys.

MR. RYS: Sure. I'd just like to start to say that, you know, I think we need to take a step back and realize that we're talking about art and music and these are
people, and it's not just about content and
it's not just about, you know, the public
wants and consumers and metadata.

You know, this is people's
expression of, you know, their feelings. I
think it's important going forward that we
keep that in mind. You know, not every song is
the same. Sure, there are advantages of
collective licensing and, you know, there's
certain efficiencies in going that route.

But not every song is the same,
and it shouldn't be treated the same. So I
think when we're talking about, you know,
looking at the Section 115 license, I don't
think it works.

I would be in favor of getting rid
of it altogether, allowing a free market, you
know, and publishers and songwriters to
negotiate fair royalty rates, and giving them
the unrestricted ability to say no, you know.

As a songwriter, under the
compulsory license, they're forced to do
business with whoever wants to use their music. They can't say no, and you know, copyright, it's a property right, and you know, the creator of these copyrights should be allowed to decide how to exploit them and with whom to do business with.

So I would be in favor of letting the free market decide how to license and what rates are fair. But to the extent that that's not possible, I think there are three major things that should be looked at in the 115 license.

The first, echoing some comments earlier, would be an audit right. I think it's unconscionable that, you know, songwriters have to accept, you know, sort of self-certification from these companies who are using their music and paying them royalties that they didn't even negotiate or agree to.

I would say that there should be an ability to opt out. If there is a Section 115 license and some sort of government
framework for licensing, allow someone to say no, to do it on their own, you know, to license at rates that feel are fair, to say no to, you know, undesirable business partners. That's pretty much it.

MS. CHARLESWORTH: Thank you, thank you. I don't know who was next, but was Mr. Bernstein next?

MR. BERNSTEIN: I would like to do John first.

MR. RUDOLPH: Thank you. To the 115, in the last CRB negotiation, it was I think at one point I'm going to say 16 different ideas or combinations of items it would fall under as far as combinations of plays. One thing that's real interesting about all this is the development of technology, right.

I think we all remember having very heated discussions around ringtones, for example, which have become something no one's even mentioned in the last, you know, or you
didn't hear anything in the testimony or
anything else, right.

So the idea that we could create a
moment in time under some statutory license,
if you would, and that's going to apply to
whatever may happen after that. I think those
days are over. The evolution of timing is not
going to allow that.

Technological solutions to allow
what essentially is a clearinghouse, which has
happened -- I mean there's entrepreneurs in
this room, MRI, Keith's business, Jen Miller
was here earlier, Rumblefish, who are
operating -- are creating solutions-based
platforms outside of, and people are actually
applying them and using them.

So this ability to actually have a
market negotiation in some real time, and then
if a group or a section choose to apply kind
of a blanket license idea on top of that, I
mean we're not -- we're actually not far away
at all.
I think what we need is actually
the legislative efforts and the Copyright
Office efforts, which has already been said.

I think the Copyright Office has
certainly stated to promote this idea, whether
it's transparency, audit, and it's not even
about a database so much as it is a
clearinghouse is what I would call it,
concept, because the applications are what are
going to come through and how they're going to
be applied are one, it helps stimulate
innovation.

The other one it does is we can't
imagine what's going to happen next in this
room. I alluded to it earlier that the, again,
I don't like how we got into what YouTube
created on the back end, but what YouTube
created on the back end is actually a market
solution, and it works.

There's issues, it doesn't catch
everything. There's audio recognition, but
there's layers of technology that are built in
there that are highly supportive and a while
essentially for a market rate negotiation
that's going to happen again fairly soon.

So from that standpoint, because
of all the variations, knowing where we were
just, you know, four or five years ago and how
half of the discussions we have aren't even
applicable really anymore when it comes to
market base.

A/V works do concern me, but in
this concept where there's an audit right and
the passthrough is eliminated and there's
transparency, I think you get to that same
place.

One point that Gary made, and this
is going to like -- you know, this is going to
be a little bit of a table thumper, but it's
like I don't think the American people suffer
from the delivery of music to them.

I think what the American people
truly suffer from is the ability to ever hear
music because the creator makes a choice of
how to make a living, and they're not able to
to make a living under the way that we're talking
about licensing now.

Just as a company or an investor
chooses whether they can build a business
based on the cost that it is to them, then
that's the decision that the creators are
having to make. If we don't support that lower
level that they can actually make a living,
then delivery systems won't mean anything
because there won't be anything interesting to
listen to in the first place.

MS. CHARLESWORTH: Thank you, Mr.
Rudolph. Mr. Bernstein.

MR. BERNSTEIN: Thank you. One
comment before what I'd like to speak about a
moment is back to Gary. I don't think there's
25 million sound recording titles out there
that are in the marketplace.

I think these databases you speak
of have a lot of duplications, and that what
we're really talking about here, I believe
somebody submitted to the Copyright Office, in their writing there was maybe up to 300,000 songs that make up 90 -- Les is taking credit -- 300,000 songs that make up 90 percent of the earnings.

I don't know if that's accurate, but even if we called it a million tracks, it's a lot more manageable than 25 million, in terms of the efforts towards licensing. But I didn't want to speak about that part, so I make the comment about 25 million.

I want to talk about the audits. I said earlier that I probably do, can completely say I have more experience auditing digital services than anybody, and I've seen a lot. Earlier today, we talked about trust. It was brought up, and it's trust but you can't verify. You know, we've got to rely on the kindness of strangers that they're going to report accurately to us is a phrase I've often heard.

I've seen situations of data
conducting audits under direct licenses, where
the data's gone. That data was too big is what
we were told, or it was summarized. The
granularity is gone. Recordkeeping is
terrible, and you don't hear about it, because
it's under these direct licenses.

What's so ironic is we're talking
about ownership databases that are necessary,
because I think what I'm hearing is because
we're not sure who to pay. Okay, hold on. So
if you're not sure who to pay, shouldn't we be
entitled to audit you, to figure out what's
sitting there.

So you need this audit right. I
don't know of any other industries where
there's not an audit right. But it would kind
of be like what if all the mobile carriers, if
the users reported their usage to the mobile
carriers and they relied on that usage to do
their reporting. I mean it's so backwards.

So this audit, as I've said from
my experience, I've seen transactions
disappear. I've seen intentional conduct, where people have literally taken transactions, moved them this way to a financial reporting system and moved them over here, just never to be seen again, and our clients would never even know that happened until we did the audit.

Because when you do the statement, it's really easy to manipulate numbers and make them work on a statement to give the appearance that they're accurate. You have to go upstream, and now with advertising revenue being really more core in some of the revenue, you have to go even further upstream to see if that's accurate.

I can't imagine a space operating effectively without an audit right, and I've heard comments about services saying we're not going to be audited by 10,000 people. That's too much of an intrusion. Well, record labels and publishers have left audit rights in their agreements for years, and I know there's not
10,000 people auditing them. It's just a basic right to have.

So I would encourage if 115 stays in place, it's almost mandatory to get an audit right in there. Otherwise, you could expect there's going to be plenty of money sitting in different places where it just doesn't get paid through.

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

MR. BARKER: Thank you. Wow, with my card up and wow, there's so much to say. So let me see. I won't try to get it all out. I will say some of the comments I'm hearing that I've written down, Les had said it's hard to imagine today without 115, I think. Dina had said her girl would say it was scary and I agree with that. It would be scary. Gary said it would be a nightmare without 115.

The thing that my group of independent publishers is going to differ a lot from what's been said around the table is...
when comments are made to get rid of 115, but
if we don't, then here's how to change it. I
have to believe that if we today started with
a blank piece of paper and 115 did not exist
and we were trying to come up with a solution,
that solution would look nothing like 115.

So if that's the case, what are we
afraid of, of just getting rid of that in the
appropriate way, so that the industry doesn't
go crazy. There are a lot of different options
we can take, but come up with and create a
real solution that covers a lot of the things
that are being talked about.

I will say that with Mr. Marks, he
and I have disagreed on a number of things in
the past. I will say I agree now with so many
of the things that you just said about your
proposal, and I would to go on record just on
a few things that we don't agree with, and a
few things that I think an alternative to 115
would need to include.

First of all, 115 needs to include
a fair market value, and actually that's what Mr. Marks said. He also said simplified rights and aggregated rights. I totally agree with that. It needs -- we need to have the audit transparency as Keith was talking about.

That's something we don't have under 115, but rather than change 115, let's let this operate in a free market environment, where those audit rights are a part of the commerce. I think we don't want to go with what Mr. Marks said on one thing about the publishers receiving a percentage of what the recordings get.

We do not as publishers and rights owners want to have our songs and our rights tethered to other rights. Many times as an administrator, I have received requests from record companies who are giving away their records in order to promote something, and asking me to do the same.

Whereas the song rights owners, it's not benefitting us to give away product
to market necessarily, and there are a lot of ways that by giving up that control, we would be giving up certain rights.

One thing that Mr. Marks said, which again I agree with and appreciate is we would not include synchronization rights in the proposal. The interesting thing is synchronization rights are about the only rights we have that have been free market value for over 105 years.

So that appears to be working. So if that’s working, why don’t we try to pull everything back to that, rather than regulating so many other things. Another basic right is, and I think Jason brought this up a bit as well, is the right to say no.

Owners should have the right to say, with musical compositions, the same as recording owners have the right to say no today, as well as book owners.

To Kill a Mockingbird is not available on any electronic book form, and
there's nobody yelling and screaming that the commerce is not working, because perhaps one of the most popular books of our time, some have rated it second to the Bible, is not available in an electronic form.

Now it is available in three weeks. I think the author has decided let's go with that. But that's her right to keep it off the marketplace for a decade or more, and now include it.

As song owners, we should have the right not just to say no for the first use, but we should have the right to say no forever, to not, as Jason said, maybe partner with certain people that we would prefer not to partner with.

That's a central issue. Now how do we deal with that in the digital industry? I've had a conversation offline with another person who said, you know what? We don't have to have 100 percent of the music to go to business. We just need a high percentage, but
we need to clearly know the ones that we cannot use, so there's no liability or risk there.

We can get there from here. As John Rudolph was saying, I think with the technology that we have today or could have tomorrow, we can figure that out. So I just want us to -- I want to kind of pull back and say there's a lot that RIAA and the music publishers I think agree with.

There are a few things that we would need to have discussions over. But the idea of trying to fix 115, which is being used today, clearly outside of its original purpose, is not necessary. Let's start with a blank piece of paper and do it again.

Now I can say this later and I said this in the last session or in the last roundtable. I would throw out the idea of if we sunset 115, if we pick a period in time, if that's two years or whatever period of time is, to say hey, we are going to let the free
market establish this new process, so that we
can know that it's coming and in a two-year
period of time, we sunset 115.

Now maybe at the end of that two-
year period of time, we even keep the rates in
place for another two years. We allow the
licenses that existed as of that time to
continue to exist and operate under, and then
for another two years we let this new process
that's been built use these old rates that we
have established.

After four years, we then let the
new process work in the free market. I just
think we need to look for opportunity in
today's difficulties, rather than just be
paralyzed by the difficulty in what we're
seeing in this opportunity. I think we can do
better than 115, and so I don't want -- so
were going to stop short of saying let's fix
it. We're going to say let's get rid of it and
replace it with something better.

MS. CHARLESWORTH: Thank you, Mr.
Barker. Mr. Arrow.

MR. ARROW: All right. Well John said some of -- much of what I wanted to say, but I'll say it anyway. When I listen to Mr. Greenstein and Mr. Lipsztein talk about Pandora and Google Music, it seems that they seem to have some idea that they have some special privilege to be able to use all of the music in the world on their service, and I know that's good for their services.

But I don't think they have that privilege. I think that it is the right of the copyright owners and the songwriters to determine who they want to license their music to. Now having said that, I can tell you that for our company, we have licensed voluntarily Google Music and YouTube and Pandora, and many, many other services.

So obviously, the goal is to license all of our music. But if there's a writer who doesn't want to, there's a publisher who doesn't want to, that should be
their right, and it doesn't kill the service. I subscribe to Spotify. You can't listen to the Beatles on Spotify. There's a lot of stuff I can't listen to Spotify.

But you know what? For $10 a month, I still love it. It's great. It's a ton of music and it's enough. So I'm listening to Pandora and it just so happens that they can't play Led Zeppelin. It's not the end of the world. I might not even notice it.

So I don't think they need to have everything. They just need to have a certain amount that is a critical mass, that is enough to attract consumers their services, and then let the rights owners decide who they want to listen their music to.

MS. CHARLESWORTH: Okay, and I just want to -- and just for the record, Mr. Lipsztein for YouTube, people can opt out, right, of the licensing regime?

MR. LIPSZTEIN: So no one has to do a license with YouTube, and once on YouTube,
they can use our content management system to manage their content on the platform.

(Simultaneous speaking.)

MS. CHARLESWORTH: That was like a little tiny question. All right, all right. We're running in -- you know, Mr. Watkins and then the two, yes, people who just put their flags up.

MR. WATKINS: I just want to reiterate that it's not something that is often brought to your attention, when things are actually working well. One thing that actually is working pretty well, and it is due to the efforts of, as John pointed out, entrepreneurial companies that saw an opportunity, is this process of tying the sound recording metadata to the musical work metadata, and that is extremely complex for digital music services.

The data is voluminous. It's not a static data set. You have new recordings being added all the time that relate back to a pre-
existing musical work. But you know, I'll speak for what we're doing in our company. I'm very proud of what we've accomplished in this area.

We are able to match a substantial, a very high percentage of the digital music service usage. We've worked very hard to cultivate relationships with the publishers to get them paid on the usage, how they want to be paid.

So no matter what you do with the 115 license, we'll adapt, John. I would say don't take what I said as advocating the status quo. You know that's -- in our nature, we will adapt. But don't throw out the things that actually are working, and that is actually working pretty well.

I think if you create an environment in which entrepreneurs can continue to solve that problem, they will. But don't be mistaken. There is a cost to that. The services would like to eliminate that
cost, you know. Traditionally record distributors have borne that cost.

You could transfer that cost, I guess, to the users, or you can transfer it to the government. But there is a cost, and there's no way of getting around that. MS.

CHARLESWORTH: Thank you. So I think the final three on this, Mr. Blake, and again I apologize if I'm out of order, but Mr. Blake, Mr. Rys and Mr. Burke.

MR. BLAKE: I'd just like to reiterate comments earlier about the benefits of the compulsory license system, and maybe what I'm hearing is that there's a little bit of difference, because I'm not sure what the publishers' objections are, the ones who were saying well, we should have the right to say no.

In over 35 years of practice as a music lawyer representing some of the biggest songwriters in the world and their publishing companies, I frankly can't think of a single
instance in which a songwriter or a user/publisher said I don't want that artist to cover my song.

Now maybe Ed can think of a few, because there's some out-there artists. But basically, cover versions, it's like great, you know. Anybody that loves my song and within the limits of what you're allowed to do with it under 115, in my experience publishers have loved that.

To contrast, you know, the sound recordings alone with the fixed mechanical rate, there are problems with that, but you know what you're getting and you know what you're going to have to pay for. We don't have that for audiovisual uses. It's a free market negotiation, and what I can tell you is in my experience now on the record company side of things, which is only the last nine years or so of my life, it is just so much more difficult, and the profit margin for record companies has just gotten crunched, because
you now have many great projects that you
would love to be involved with, such as an
artist going and doing a concert and putting
it out on DVD.

Well, the public would like to
have it on DVD. They'd like to have it on CD.
You could charge $18.98 for the CD list price
before all of the discounting and so on. You
can charge about $14.98 for the DVD. If you
put them together, you can probably charge
$19.98, so maybe you get a buck more.

But your costs to make that disc
eat up that dollar, and then your increased,
I'll call it "mechanical sync," however you
want to call them, costs for doing that, can
be much, much more, and you're left to the
good graces and the mercy and good
relationships that you may have with the
publishers, in order to get a rate that you
can survive on.

All it takes is one publisher who
doesn't want to go along, because they've only
got one song or just, you know, if they think it's, you know, it's a very important song and it may very well be that it is. Hey, it's a great song. But that throws everything out due to MFN licensing.

So you know, from our perspective, what I like about the RIAA process suggestion is that it's not saying what that relationship should be, and it doesn't necessarily have to be the same with respect to everything if you're uncomfortable about doing a blend, and it doesn't have to say fixed forever.

But I think it's an idea that really merits attention, to have the parties really sit down and see how we can streamline it, because the record companies, they're spending money to make money for publishers, not solely to make money.

They want to make money for themselves, but I can tell you. I could look at a bunch of projects we've done over the last few years, where the publishers made good
money and we made nothing, or we lost money.

That's something that I think is just is problematic, and we ought to try to find a way to solve that.

MS. CHARLESWORTH: Okay, thank you.

Mr. Rys.

MR. RYS: Yeah. To respond to some of the things that were brought up about some songwriters not wanting to approve different covers, absolutely it does happen. I am personally aware of a number of our clients that don't like cover recordings. They made their art the way that they made it, and that's the way that they want it presented to the world.

I think that's an important right to preserve, and I think that that should be their right. You know further, there's a lot of instances where there are knock-off recordings, you know.

So and so's song in the style of Dan, that are really confusing the public and
causing the public to purchase the wrong song
or the wrong recording of that song, and I
don't think it's beneficial to the public or
to the copyright owners when that happens.

To respond to Mr. Lipsztein's
point about opting out of YouTube,
realistically you can just opt out of being
paid or not. You can't -- due to the DMCA,
there's nothing you can realistically do to
stop your songs from appearing on YouTube.

You can say okay, I don't want to
be paid for these, or you can say I want to be
paid. So the reality is you really can't opt
out because of the DMCA.

MS. CHARLESWORTH: Mr. Barker.

MR. BARKER: I can make this very
quick. Yeah, just to respond to a couple of
things. One is just to continue with what
Jason was saying about YouTube. You cannot opt
out. There's no license.

However, there are -- in my
understanding, I knew that there was a
conglomerate license through Harry Fox Agency, that you could be a part of that and give that agency your rights to license with YouTube, and your rights to control that.

There's a direct publisher agreement with YouTube, where I would have an option as a publisher to license direct and then control and monitor the site myself. My problem with that is the direct publisher agreement appears to be much weaker than the conglomerate at Harry Fox.

If I give my rights away, I get more rights. If I go direct, for instance, I get no audit rights. There are no audit rights in any kind of direct relationship with YouTube, which is fundamental and basic to the rights of an owner to have. As we talked about earlier, I can't just trust you. I want to be able to look at that and see.

Now the reality is 115 would not cover YouTube. So a lot of what we're talking about wouldn't be settled or resolved under
115 anyway.

However, this blank piece of paper and this machinery, this concept of this licensing thing that we're talking about could include licenses such as YouTube. So it doesn't have to necessarily even be limited to uses under 115 mechanicals.

It can be broader and cover other synchronization type uses like YouTube has.

One other thing just to throw out, and as I had mentioned casually, this proposal of sunsetting 115 and then after two years getting rid of the rates totally, an idea that was just kind of brought up, not necessarily the same thing, but there's always a fear of if a copyright has let's say five or multiple owners, can a minority owner then hold hostage the license of that use, which at this point yes, that is the case, if it's a license outside of 115.

What I would propose there is something along the lines of what the
Copyright Office has done in terminations, and that is an agreement that the majority of song owners could allow a license, and if I'm a minority owner in a song, I can be overridden. Therefore, I cannot hijack a specific use.

Now I only do that because I think I get in partnership -- I knowingly get in partnership with the other owners of a song this right, and I realize I'm a minority. I'm not trying to give up rights for each owner, but just in a situation in a particular song, if I'm a minority owner, I might be able to be overridden in this licensing scheme that we're talking about.

MS. CHARLESWORTH: Okay. Well thank you all so very much, because this is such a compelling issue, we've run 20 minutes. I'm sorry, past 1:15, yes. That was good, Steve. That was too good, all right.

(Simultaneous speaking.)

MS. CHARLESWORTH: Fortunately we've scheduled a fairly long lunch hour. So
I think we probably can make it back, I hope, by 2:30. I know there's a -- that gives you more than an hour, and we can get back on track, so to speak. I know there's like a student café nearby if you sort of cut through the courtyard.

I don't know if other people are aware of other easy places for lunch. Does anyone have any -- that's probably the easiest if you want to buy some food there, and we'll see you back at 2:30.

(Whereupon, at 1:23 p.m., a luncheon recess was taken.)
AFTERNOON SESSION

2:32 p.m.

MS. CHARLESWORTH: Okay. Welcome back everyone, and I hope you all had a nice lunch break. This next session, as you can see from your agenda, is addressed to Fair Royalty Rates and Platform Parity, and some of these issues, you know, we've heard comments on some of them over the course of the morning.

But we thought it would be worth devoting a discussion specifically to these issues, and what kinds of principles or mechanisms people think could or should be adopted, or perhaps even left in place, I mean depending on your point of view, in relation to royalty rates.

We've heard many, particularly in the creator community, for example, believe that the streaming rates are too low, that they can't sustain the livelihoods of songwriters. We've certainly seen many comments on the other side of the coin, from
people who license music in, that the rates are too high.

I guess this panel is really probably a little bit more philosophical than some of the other ones, in terms of trying to see if we can reach some areas of agreement or at least highlight some ideas, in terms of what we should be thinking about to achieve what you or stakeholders, and I recognize there's variation in the views, would believe or believe to be fair rates, and across different types of platforms.

So I guess the first question I have is, you know -- I mean we've heard some of this, but I mean just to throw it out there to elicit any additional points of view. Are the current rates that are in effect, say looking at the 115 license, the public performance license for musical works, sound recordings and so forth, are they unfair? Are they inequitable, or are they just, the product of particular sets of negotiations or
rate-setting processes that we should accept.

So with that sort of very broad question, I'll open up the floor. Okay. Mr. Greenstein.

MR. GREENSTEIN: So one of the problems I see with the different rate-setting standards or the rates that are established for the musical work and the sound recording is that they're established separately, without being taken into account of, as I talked about earlier, as a fee for music.

So if you've got the PRO performance fee being set and not taking into account the sound recording fee, because of the limitation of 114, I can understand how publishers get upset because of the disparity. But the publishers were the parties that had sought that provision, where they thought that the sound recording fee could be lower and drag things down.

If we're going to have multiple entities evaluating the marketplace to
establish rates in the event of whether it's anti-competitive behavior or to prevent anti-competitive behavior, I think it's critical that the rates be considered together, because if you have publishers talking about parity, and the CRB is going to establish a rate of 50 to 70 percent of revenue hypothetically on an effective per performance basis, you can't give publishers parity.

And what Steve talked about, if you have some agreement among the publishers and the labels as to what the split is, maybe that does away with some of the concerns that the publishers have.

But if you're going to do this all separately, I don't see it coming out where any party's going to be happy, other than maybe the labels, who are currently now getting the lion's share of the pie, and they still think that the rates are too low, from some of the non-interactive services.

So it's very problematic to do
this piece, you know, which is why I think this concept of fee for music makes sense. MS.
CHARLESWORTH: Okay, and so am I hearing you correctly? Are you suggesting it needs to be done sort of in a single forum, or just that there needs to be some interaction in the rate-setting process?

MR. GREENSTEIN: There are probably multiple ways to do it, and the rate-setting body should probably be able to take into account the different rates. But if they're set at different times, how do you adjust? So if the sound recording copyright owner is getting a value of X, and the publishers are getting some lesser amount on the performance side, or is that rate-setter trying to get them to parity with the sound recording copyright owners?

If you're doing it at different times in different fora, I think it leads to problems. The easiest is to actually do it all at once, but there's a lot of opposition. I'm
probably the only voice in the room supporting that right now, at least around the table.

MS. CHARLESWORTH: Ms. LaPolt.

MS. LAPOLT: Well again, any new licensing scheme needs to first and foremost address adequately and compensate music creators. There's two fundamental issues right now that don't do that, and the first is the songwriters and publishers are under-compensated for digital transmissions, gross under-compensated, and recording artists and record companies are not getting paid for terrestrial radio, and they're not getting paid for pre-1972.

These things must happen. I'm not so opposed by Mr. Greenstein's position of having it done at one time. Neal Portnow just testified at the House Judiciary that maybe we consider an omnibus bill, which I'm not opposed to that as well either. However, the current legislation that's pending right now should not be compromised, if we are to
consider any type of music omnibus bill, where we would sell all these issues in fell swoop.

We first would need to pass the Songwriter Equity Act and we'd still have to pass the RESPECT Act as well. That would be my position on that.

MS. CHARLESWORTH: So I think I heard you say earlier that you really want to see more of a free market negotiation for musical works.

MS. LAPOLT: Correct.

MS. CHARLESWORTH: But at the same time, as a secondary or second alternative, would you -- are you open to the idea that you would have some sort of global rate-setting with appropriate splits between --

MS. LAPOLT: If all parties could be represented equally, and music creators are not put under the rug. The problem with these types of hearings is that you have the big groups, the RIAA, the NMPA, you know, Google, Pandora. They can all get in a room and
decide, you know. But who's going to represent the artist?

Unfortunately, you know, the only -- the great group we do have is NARAS. They're the ones that represent music creators, but they don't have the resources to be in every single one of these roundtables all across the country simultaneously with four different branches of government, you know.

So that would have to be a consideration, that the music creators have a set at that table when those issues are happening, so they can weigh in on how that affects them. Listen, I'm not going to sit here and argue with anybody in the room, maybe Gary, but no. As far as like what our objectives are, is trying to get to the same thing.

But at the end of the day, the musicians and the artists and the songwriters must be happy. They must feel as though they
are not content, that they're not some after-
thought, you know, that money comes first.

Certainly in my practice, I can tell you the
truth.

When I get a sync license, which
again someone said in the last hearing, which
is a beautiful way of how the free market
works, this synchronization license, and that
ends up being 50-50, and ironically we make a
lot of our monies now that way, because it's
not compulsory and it's something that we can
negotiate.

We could say no if we don't want.

But whenever I get a sync you send for one of
my clients, I can't even get out the words
what the money part is. I would call up a
client and say oh, we just got this huge movie
use for this Jennifer Anniston movie and it's
great and it's for this song, and they stop me
and they're like well what is the scene about,
how is it being used, send me the script, you
know. I can't even get out what the deal
points are, because in a music creator's mind, you know, the approvals really are the first and foremost, and then equal amount of money is also, that's the thing that we have to talk about, the equity, equal.

MS. CHARLESWORTH: Okay. I think why don't I just turn over here. Mr. Sanders, do you want to comment? Oh, and do you want to introduce yourself?

MR. SANDERS: Yeah. I'm Charlie Sanders. I'm outside counsel to the Songwriters Guild of America. I think it may be a trifle bit of an exaggeration to say that NARAS is the only group in the United States representing the rights of creators.

One of the problems that we face in the music industry is that of vertical integration, and it's very difficult to tell at this point who represents who's rights, when you have distributors owning record labels, owning music publishers, owning the rights of creators.
We really need to pay close attention to that issue, as we go forward in this, because certain solutions that are proposed can be quite illusory when we make assumptions that the rights of creators will be adequately represented by groups whose let's say real financial interest run counter to those creators, even though they purport to represent them.

So that's something that we need to keep in mind. Ashley and I are members of a group called Music Creators North America, which has embarked on a study, and I'm sure Ashley intends to talk about that as well. So I'll just mention it.

But creators have taken it upon themselves to define what their compensation is independently, and we should have that report ready soon, and we think and hope that it will make a large impact on the people in this room, in understanding that if you want to make music creation a pursuit that's
engaged in only by amateurs, we're well down
the road toward that, and if we want to do
away with the professional class of creators,
that has for 100 years provided the soundtrack
of the world, and every place I go in the
world they hear almost nothing but American
music.

You know, we can do that and we
are doing it. If we really want to protect
these people, if we want to have a cultural
export that we're proud of in this country,
we're going to have to pay the people who
create. You know, I think that aside from the
vertical integration issue, we need to be very
cognizant of the need for transparency.

I don't want to go on for any
longer, but I think that that's something that
we need to get back to quickly in this
discussion, is what constitutes transparency,
and regardless of what the rates are, and they
are obviously too low, if the creators do not
have a way to judge that they're getting 100
percent of what they're supposed to be paid,
because obfuscation by the companies on the
distribution side and the representation side
refuse to disclose that adequate and accurate
information, we're spinning our wheels and I
dare say wasting our time here.

These are issues that must be
taken into account on behalf of creators, or
no matter what we say or do here, it's not
going to matter in the end, to the people who
are actually doing the work of creation.

MS. LAPOLT: May I clarify the
record for one minute?

MS. CHARLESWORTH: Sure.

MS. LAPOLT: Because I didn't mean
to offend you sir. What I meant is that NARAS
represents recording artists, producers,
engineers, recording artists that are also
songwriters. They have that interest. I did
not have --

MR. SANDERS: NARAS is deeply
compromised by being a television show that
relies on the labels to support it, and to fail to point that out. It's a great organization. I love it. I've been a member for 30 years, but it is not the independent voice of creators.

MS. CHARLESWORTH: Mr. Sanders, just quickly. The report, what is the report about, and when you expect it?

MR. SANDERS: Can I defer to Ashley?

MS. CHARLESWORTH: I just want to make sure I --

MR. IRWIN: Full disclosure. I haven't read this yet. It arrived this morning. It's been in the works for what, six months, something like that, and it's called a study concerning fair compensation for music creators in the digital age.

I hope to have read it by tomorrow morning, so I feel more comfortable talking about it then. But essentially, the five groups that are in the Music Creators of North
America, which is the SCL, Songwriters Guild
of America, the Screen Composers of Canada,
French Canadian Screen Composers and the
Songwriters of Canada, Songwriters Association
of Canada.

They put this study together.
SOCAN got behind it, and it's been put
together by a fellow by the name of Pierre
LaLonde, who is an economist, not from the
music industry at all, purely economics. It's
the first stage. This is the song -- there's
a little bit of A/V in here, not a whole lot.

The second stage will include a
lot more about audiovisual, and it's being
funded by SESAC, because the European
composers organizations are all going to get
in on it as well, because it's --

MS. CHARLESWORTH: It's addressed
to compensation for creators or --

MR. IRWIN: It's addressed to what
the value of music is in all areas. So in
other words, I mean there's been certain
things not mentioned here today, in terms of like metadata and things like that. But using music as a means to collect information on customer bases, there's a value to that. There's a value to that information, and that's not mentioned anywhere here today.

So there's things like that in there, in the same way that, you know, rates are based on -- in television, for example, the performance royalty rights are based on revenue advertising. So maybe that model doesn't work for streaming services, but I'm sure there's a model that does work when they're collecting all this other information, metadata information.

MS. CHARLESWORTH: Okay.

MR. IRWIN: So that's a lot of what it's about. I can't speak to much more until I've read the thing.

MS. CHARLESWORTH: No, well thank you. I just wanted to --

MR. IRWIN: Okay, and it will be
available publicly once it's been -- you know, we still have to do an executive summary and a few other bits and pieces.

MS. CHARLESWORTH: Okay. We'll keep our eye out for that. Mr. Hauth.

MR. HAUTH: Thank you. I want to make sure that I heard you correctly.

MR. DAMLE: Excuse me. Could you just make sure you speak into the microphone.

MR. HAUTH: I'm sorry. The question that's before us is are the current rates inequitable. Now were you speaking from the point of view of between the various music interests, because I want to speak from the vantage point of a broadcaster or webcaster. Is that --

MS. CHARLESWORTH: It was purposely broad and ambiguous, my question, to allow -- to invite all sorts of comments.

MR. HAUTH: So was music licensing. So let me just say this, that from the standpoint of radio broadcasting, radio
simulcasting which means streaming, and
webcasting, which my company is involved in
all of them, the musical work rates have
developed over a long history to be more like
a willing buyer/willing seller result than
currently in the sound recording world.

The reason for that is that radio,
as you probably have observed, over the last
20 years has become the -- a place where large
corporations have settled in. But prior to 20
years ago, radio was a mom and pop operation,
and even, you know, some of the large
stations, RKO and so forth, they were not all
that big in terms of corporate muscle power.

And the consent decrees came in in
the 40's, and I'm not sure of the genesis of
those consent decrees, the ASCAP consent
decree in 1941, brought by the Justice
Department. I don't know who the plaintiffs
were in that -- I mean who brought that about.

But prior to 20 years ago, it was
exceedingly difficult for a radio broadcaster
to achieve a reasonable license from
ASCAP/BMI, and to this day SESAC is still a
problem, but we won't go there right now. The
reason that what happened is that radio
finally figured it out, that unless you have
strength in numbers, you're not going to get
anywhere with ASCAP, because it's impossible
for a small group of broadcasters to go to the
ASCAP rate court.

The Southern District of New York,
two week trial, and then ASCAP's got all the
information. So they -- I remember back in the
-- probably in the early 80's, when the Radio
Committee when to rate court against ASCAP,
ASCAP launched into a discovery battle with
them that, you know, send them into apoplexy,
because they wanted financial reports from all
the radio stations.

Well, ASCAP had all those. ASCAP
gets financial reports. So anyway my point is
that finally radio figured it out, and now
there are two fairly large and well-funded
committees in the radio industry. If you look
in the last ten years, you will see that radio
and ASCAP and radio and BMI have come to
agreements, outside of the rate court. There
was a rate court proceeding that began by the
RMLC, the sister committee to ours, but they
settled outside.

That was because they had strength
in numbers. They had some finances, and they
were able to get a decent rate from ASCAP and
BMI followed suit, which they usually do. And
so right now, there's peace. There's a fair
amount of peace I think the radio broadcast
industry between ASCAP and us, okay, on the
rate.

I don't see a lot written about
how bad that rate is by ASCAP and BMI. So
anyway. Now if you look at the sound recording
rates, and as I said earlier, the first CARP,
the CARP was a disaster. Web I was a disaster,
and now it's getting to the point where the
broadcasters and webcasters have finally
figured out what they need to do.

It's extremely expensive, but they finally -- I'll just speak from the perspective of the National Association of Broadcasters, which represents a lot of radio stations and radio stations that stream, for this proceeding they started a year before the proceeding.

They had counsel, you know, decided upon; expert witnesses; they had funding, all this sort of thing. That's never happened before in the history of this proceeding. We were always dead broke. We were handling it on our own, and we prayed for peace in the end because we never could muster that kind of a thing.

Now this will be interesting to see, where the rates go now, whether it will be somewhat approaching a willing buyer/willing seller kind of a negotiation, or will it continue to be that the labels are able to pull off these supra-competitive
rates. I think it's going to be more like the
former, where we get finally a rate, a rate
that we can live with, if the CRJs will make
themselves independent from prior decisions
and look at the record objectively.

Now when I see the Songwriters
Equity Act come forward, and I don't know all
the ins and outs of that Act, when I see that
the musical -- the composers and the
publishers want equity with the sound -- with
sound recordings, when in the -- when was part
of the DMCA they built a firewall to separate
the two, I find that hypocritical.

I find that -- I mean you can't
have it both ways. Now that the sound
recording industry has got a great rate, the
musical works want the same, and they want to
not be separated any longer. You know, I've
got to say that's fairly hypocritical, and I
think that that bill is destined to have some
problems. Thank you.

MS. CHARLESWORTH: Mr. Rys.
MR. RYS: Sure. To respond a little bit to that, the reason why the sound recordings have the great rate is because of the differing rate-setting standards. You have the willing buyer/willing seller standard on one hand, and the 801(b) on the other, you know. What the song writing community and publishing community are pushing for is yes, equitable payment, and that doesn't happen under an 801(b) rate-setting standard.

So we're looking for appropriate compensation for the use of our rights and, you know, we think that the 801(b) standard is not a good standard to use. It doesn't take into account, you know, the market conditions and a host of other things.

And more generally, I would say that I don't believe that it's the government's place to dictate what a song's worth. You know, you have the Section 115 compulsory license, the statutory rate, you know, 9.1 cents. It's been that way since
2006. It hasn't been adjusted, you know.

The frequency in which the
Copyright Royalty Board reviews this, I think
it's every five years. It's not quick enough
to, you know, keep up with the ever-changing
market, and under an 801(b) standard, it's
never, ever going to come close to what a
real, true value is.

So I think that it would be good
to open it up, you know, make it a free market
where, you know, publishers and music users
and content or music creators can actually
negotiate at arms length, and actually find
out what a fair market rate is, because that's
something that's never happened before in the
mechanical space or in the performance space.

You know, you have consent
decrees, you know. There's no statutory rate
but the consent decrees, you know, put an
artificial limit on what, you know, a
songwriter can make.

MS. CHARLESWORTH: And just a
follow-up question on that. I mean when you say "negotiate," do you mean individually or do you mean collectively through some different means? I think we hear Mr. Hauth say that when the radio industry, they thought they did better. I'm paraphrasing here, but in other words, I guess one question is, you know, for the major players in the market, they obviously would have probably more market power in a negotiation, whereas smaller self-represented creators might be in a different boat. I'm just wondering if you have any thoughts on that.

MR. RYS: I think that's a good question, and I think that that's something that ultimately, you know, the community should decide amongst themselves. I think that there is a good argument for collective licensing. Obviously, there's efficiency gains and it makes the transaction costs a lot smaller for, you know, licensing a lot of music.
But on the other hand, you know, each song's different, and I think that's something that the compulsory license acknowledges, you know, to give it some credit there. It's a song by song license, and I think that there should be a balance, you know. Maybe the market decides hey, collective licensing is good. If you want to opt-in, you know, maybe it's an ASCAP, maybe it's a SESAC, maybe it's a Harry Fox.

You can opt in and let an organization collectively license, or you can reserve those rights to yourself and negotiate individually. Ultimately, I think it's, you know, the songwriter and the creator's decision.

MS. CHARLESWORTH: Thank you for that. Mr. Arrow.

MR. ARROW: When ASCAP negotiates a license with radio, with the RMLC, they negotiate with one hand tied behind their back, because they can't say no. Their
situation is they're either going to make a deal with the RMLC, and if they can't make a deal then it's going to go to a rate court, and a single judge in that court, after hearing testimony, is going to determine the rate.

If ASCAP knows, particularly if they know that that judge is a judge that has not made decisions that are not favorable to ASCAP, because of whatever bias that judge may have against ASCAP, they'll be more inclined to agree to a rate that they may not believe is a fair rate, but they'd rather do that than roll the dice in court. That just doesn't seem fair to me.

I just want to talk just a little bit about 801(b) and Pandora. It's interesting that the reason primarily that the labels receive so much more money from Pandora than publishers is well yes, it's the rate-setting standard, but that resulted in a very different rate structure for labels than for
publishers.

   The labels received the greater of
3 a percentage of revenue or a per play minimum.
4 The publishers are not -- don't have that.
5 They just get a percentage of revenue. So if
6 Pandora's revenue is low, because they don't
7 advertise a lot, which is the case, then
8 publishers receive very little.
9
   If Pandora did not advertise at
10 all, publishers will receive zero, but the
11 labels would still receive a good royalty
12 based on the per play minimum. So whatever
13 standard is used, they must result in a
14 royalty rate or a royalty structure, where
15 both record companies and publishers and
16 songwriters are paid on the same basis.
17
   MS. CHARLESWORTH: And Mr. Arrow,
18 I'm going to ask you the same question. I mean
19 do you think that in order to achieve that,
20 there has to be sort of a unified process for
21 --
22
   MR. ARROW: Not necessarily a
unified rate. Not necessarily a unified rate.

MS. CHARLESWORTH: Not a unified rate necessarily, but in other words, I mean throughout the comments, you know, well at least some commenters said well, and I think we've heard it here today, you know, if a rate-setting process that happens three years before another one and it's in a different court.

I mean obviously there's some legal impediments currently in terms of what you can consider as benchmarks and so forth, that you're just inherently you're going to end up with inconsistent rates.

I was just wondering if you had any views on that, and whether you would need to do a major overhaul or whether -- to correct that, or this system can somehow be adjusted to account for the various different rate-setting mechanisms?

MR. ARROW: Well, as you might guess, we're in favor of getting rid of the
consent decrees. So if we do that, then we
have an opportunity to negotiate with Pandora
directly, or possibly to have a joint
negotiation between all the parties to set a
rate. So I don't know exactly what would
happen, and I don't want to sit here today and
try to predict the future.

But I think the first thing you
have to do is get rid of the consent decrees,
so that at least we can have some kind of a
free market negotiation, and it would probably
result in -- I guess all the parties would
probably get together.

MS. CHARLESWORTH: Mr. Marks.

MR. MARKS: So I won't repeat our
proposal on the musical works side, but I
obviously favor --

MS. CHARLESWORTH: I think Ed would
really enjoy hearing about that.

(Simultaneous speaking.)

(Laughter.)

MR. MARKS: We're going to spend
some time later together. On the musical works side, we propose something to get rid of the rate court and CRB, and to get fair market value, we think for songwriters and publishers. You know, in terms of platform parity, we think that everybody should be paid according to the rate standard, same rate standard, which we think should be a willing buyer/willing seller standard or something similar, not something like 801(b) or something else.

And for in our world, that obviously means getting rid of a grandfather for three companies that was put in place in 1998 for political reasons, and don't bear, you know, don't have any reason for continuing today.

And then of course I'd just reiterate what others have said and what I said earlier about terrestrial radio, you know, right there and having them pay just like other services. I would say that just
because everybody is paying and everybody is paying according to the same standard doesn't mean the rates are all going to be the same.

I mean different services have different economics and are in different markets, and you may have different rates. But as long as the determinations are based on the same criteria, there's you know, a certain uniformity and fairness to everyone involved.

MR. ARROW: Can I just throw one thing in there? I'm sorry. In the one area where you really do have an absolute free market in music licensing for both labels and publishers, it's sync licensing. And so while Steve suggests that, you know, the rates may not be equal, I just want to point out in that marketplace, as Dina pointed out, the rates are equal.

Publishers and record companies generally receive equal amounts of money for the licensing of a use in an audiovisual realm.
MS. CHARLESWORTH: Okay. Just before I get to you, Ms. Goldberg, I mean you mentioned the terrestrial performance right. Do you think that has any impact on other rates in the marketplace today or business models? In other words, the lack of a terrestrial right for sound recordings. How is that impacting the rest of the marketplace today, if at all? I mean is that --

MR. MARKS: Oh, it's a tough question.

MS. CHARLESWORTH: Because you raised it, so I just wanted to follow up.

MR. MARKS: Yeah. You know, I don't -- I don't necessarily think other services are directly competing with, you know, terrestrial. Some maybe a little more than others. I think it's just an issue of fundamental fairness. I mean not so much one of, you know, competition. But it is fair to the other services who are paying as well, that others who are using music, you know,
different medium but still using music for the
same kind of offering, should be paying. But
it's fair to the creators to have the payment
made.

MS. CHARLESWORTH: Thank you. Ms.
Goldberg.

MS. GOLDBERG: I want to say that I
agree. Some people have said that fair market
pay should be paid for all music creators
across all platforms, and we all have
different views as to what that is. But I just
want to touch upon three areas where I think
it's really essential.

The first would be musical works
versus sound recordings, which Ed and Dina
mentioned that the only area where it really
is fair market is in sync licensing, where
it's 50-50. But when you look at, for example,
an iTunes download of $1.29, it's a 9 to 1
royalty split in favor of the sound recording.

Basically, iTunes gets 40 cents,
the publisher receives 9.1 cents, which is
split with however many songwriters there are, as well as the publisher, and then the remaining 80 cents is split between the label and the recording artist. That just doesn't seem to be fair.

Another area Dina actually mentioned was with Pandora. It's a 13 to 1 split. So I think the Songwriter Equity Act might level the playing field a little bit there. But I also wanted to discuss terrestrial radio versus digital broadcast. You asked what the impact was.

Well, the Copyright Office already observed that this gap in protection has actually had the effect of depriving American performers and labels of foreign royalties, possibly to the tune of $70 million, because in countries that recognize a public performance right in sound recordings, they also impose a reciprocity requirement. So basically, we're losing $70 million.

Then the third area which most
people didn't comment on at all in their NOI comments, except for the SCL, which maybe Ashley can get into more of a discussion of this. There are no performance royalties paid by theatrical exhibition in U.S. cinemas. That's very different in Europe, and again, it's a reciprocity issue. So we're losing a ton of money that way as well.

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

MR. COHAN: Thank you. I just want to clarify what might seem to be a mischaracterization or a misimpression of the Songwriter Equity Act and the requested change in 114(i) in particular.

The aim of 114(i) when it was enacted was to try to ensure that this new performance right in sound recordings didn't cannibalize performance royalties payable for the musical composition. So that was the intent, and so all the -- in fact, the aim was so that the -- to try to prevent licensees
from saying look, we have to pay this for -- 
we have to pay these rates for the new sound 
recordings. So we should pay less in these 
public -- rates should be determined as lower 
under these proceedings in the rate court. 

So in effect that -- the 
correction here is just to allow the rate 
court to consider the evidence. It doesn't 
force the court to adopt, you know, any 
particular standard. It just tells them that 
they can look at those rates. It just removes 
an artificial barrier. But the ultimate aim 
was simply to avoid cannibalization of those 
rates.

MS. CHARLESWORTH: Okay, thank you.

Mr. Greenstein.

MR. GREENSTEIN: So I'm going to -- 
the issue of fair market rates. I think one 
thing that we should take into account is what 
would happen in a free market negotiation and 
what typically does happen? It's not as though 
everyone is going to get more money, and I'm
not aware of markets where when you go to free
market rates, everyone gets paid more.

I think that if you're Mr. Arrow,
you probably do get a rate as -- well, you're
not the biggest publisher but Sony/ATV is.
They will be able to exercise -- likely be
able -- you've got your work cut out for you.
Likely be able to exercise power.

But if you're a digital music
service, and you have to pay X increase for
Sony/ATV and Warner Chappell and Universal
Music Publishing, I suspect that there are
going to be many publishers who are going to
be told if you want to be on this service,
you're either going to pay us, because we
don't need you, or we're going to pay you
zero, or we're going to pay you a lot less.

It's not as though all tide, the
tide is going to raise all boats. There are
going to be some winners, and those winners
will likely be the people with significant
market power to begin with, and the losers
will be those people who have what I would call substitutable works, that we may not need you. We will only put you in rotation on a non-interactive service if you're willing to make it more attractive.

So if you are talking or reforming the system, then you need to be able to ensure that that marketplace transaction can occur, and what would that mean? I think you have to prohibit MFNs, so that you can't have a licensor both demand a certain rate and a guaranteed market share.

One thing that I'm not sure that the Copyright Office would be aware of is when a licensor says "I want X rate. I want MFN protection against anybody else," and my market share is 32 percent, but you're going to guarantee me 35 percent pro rata for whatever the allocation of revenue is.

So you have revenues times the royalty rate times the pro rata share, you know, the number of spins if your music
overall spins. It is not uncommon that copyright owners try to protect themselves by demanding that they get a minimum pro rata share that is not tied to the actual usage in the marketplace.

I think that's anti-competitive, and doesn't allow the market to adjust. Because it simply is not the case in economics that every publisher is going to get more money and get the same amount as the record labels. The services have to be able to tell some people we don't want your music unless you drop your price dramatically.

I also think we have to look at what happened at the end of December, when publishers withdrew from the PROs, or tried to withdraw. Judge Stanton said if you're out from BMI, you're out for all purposes. So we found some publishers unexpectedly head of the PRO landscape, and what did they do?

I was representing different digital music services at that time, and you
could not get a publisher to return your phone call over the holidays. They would talk to you, but I think it was widely known, widely reported in Billboard that the focus was on Pandora, to try to get a higher rate.

Then the story was that there were agreements with Pandora, and then all of the sudden the publishers that withdrew immediately went back in. I think that's a manipulation of the system, to get the benefits of the PRO license, where you get collective enforcement, collection, distribution.

But you want it to be outside of the consent decree to set your own rate. But if you're going to do that, I think you've got to let the market take care of it. You can't call for certain reforms. So Mr. Barker talked about this transition for some period of time in two years, and then two years after.

I haven't wrapped my head around what that proposal is. It sounds potentially
interesting. I'd be interested in hearing more about that. But I don't think you can say if it doesn't work for some, we've got to change it all again. I think if you're going to go down this path, you're going to have to let the market operate, and that's going to have winners and losers, and it may mean that some major labels are going to get more money, and lots of other labels are not going to be played at all. Artists may find themselves without royalties. Songwriters may find themselves without royalties. But if that's what people want, I think you've got to be prepared for that. What you can't allow is the smallest publisher gets the same rate as Universal Music Publishing Group, because that's not the way that a free market would operate.

Free markets also have volume discounts. We don't see any volume discounts in this marketplace. So it's not a normal market. It's not this right that people have.
It's a right granted by Congress to promote the progress of science and useful arts. If we're doing some of this, we've got to, I think, keep that in mind, and there will be consequences that I hope the Office will consider. How do you protect that?

So maybe there are winners and losers, and the Office has to be prepared.

MS. CHARLESWORTH: Okay. Mr. Lord.

MR. LORD: Thank you. I've just been sitting here concerned over the last few minutes that we are in some ways trying to craft a solution in our minds that is some kind of government regulation or government rate-setting protocol, at least people are thinking about it.

I want to diffuse them of thinking about that. I think my company operates in the free market. There may be a problem with Mr. Hauth because we aren't under the thumb of a consent decree, and all we have seen is that ASCAP and BMI have suffered. ASCAP lost $90
million a year for the next five years or I think we're in the middle of it now, because of the negotiation with the radio folks.

And you know, they did well. They did what they intended to do. But I think that what it's done, let me say this. In the 90's, when I tried to find office space on Music Row in Nashville, I couldn't find office space anywhere. It was robust, it was a vibrant economy. People were making money. Songwriters were making money because they could sell records through the artists, because they were making performance dollars.

Now many of those same songwriters that I know have gone back to teaching school, pumping gas, whatever they do, working in grocery stores because there have been such a force from all sides, as I said this morning, pushing down on the money these folks are trying to make, you know, to earn a living, that they haven't been able to.

And I just -- I would like to
reiterate that I think that somehow I agree
with Gary. I mean Gary, yes. In a free market,
some people are going to make more, some
people are going to make less. But that's the
way it goes. If somebody's got a very strong
song that the radio stations and the services
have to have, they'll pay for it. If they
don't need to have it, they won't pay for it,
you know.

But that's -- we have to get -- we
have to find a solution for the creators.
Otherwise we are, and you all may think that
Charlie was overstating what he was saying
about going to reducing the quality of music
to amateurs. But ladies and gentlemen, we are
on our way, and you don't realize that.

Business folks maybe don't
understand that, and that's fine. You don't
understand it. But we are on our way to a
situation where creators are not incentivized
to work. They must be taken care of. The best
we can figure out to do is have a pre-market
negotiation so their value is truly recognized. Thank you.


MS. MUDDIMAN: Hélène Muddiman. I'd like to agree, and I want you to put in context the people who need protecting, authors, composers, songwriters, artists who, you know, it's not their big thrill to come to somewhere like this, to advocate on their own behalf. It's very difficult to get people who are artists to come and stick up for themselves, because it's a case of two extremes.

Either they're so famous that they feel a little bit disingenuous as they're like well you know, we're doing so well out of it, you know, that they're not going to be very sympathetic. Or, alternatively, you know, they're struggling and they literally can't get time off during the day from the job they're doing (to come and speak to you).
I just implore you to think about those people as I know (this guy's absolutely right). So many people are not in music anymore, they're driving cabs or whatever they're doing, and you're losing a lot of revenue from the music industry by not giving the revenue equitably to that small businessperson, i.e., the composer or the songwriter or the artist, but giving it to large corporations.

There's tax -- you get less revenue if you give all that money to these corporations, who don't reinvest in the music industry, and then you lose all the tax revenue.

MS. CHARLESWORTH: Thank you. Mr. Sanders and then Mr. Rudolph and then Mr. Hauth.

MR. SANDERS: Russell, for the record I would hope that you could answer this question for me, because as a representative of the religious broadcasting community, with
all due respect I would consider you to be a preeminent expert on hypocrisy. Tell me 20 years ago, in 1995, there were many people in this room who worked on legislation to establish the performance right for sound recordings, and you mentioned DMCA, which was almost 15 years ago. During that period, the broadcasters made it fairly well known that one of the reasons why they were not objecting that strenuously, especially the digital side, was that hell, we'll use this to drive down the rates that we're going to pay to songwriters. So one of the sine qua nons of getting that legislation passed was to make sure that that didn't happen. Can you really sit there with a straight face and say to me, a decade and a half later, with songwriters losing money hand over fist, that's hypocrisy to want to change a system that is basically cheating them, to benefit an organization that basically makes truckloads of money playing
their music? I'm just curious, for the record.

MS. CHARLESWORTH: Okay. Mr. Hauth,
would you like to respond, and then we'll go
to Mr. Rudolph after you speak.

MR. HAUTH: First of all, I want to
respond to Mr. Lord. When you say ASCAP lost
90 million in its last proceeding with the
RMLC, you failed to mention that in the prior
proceeding, ASCAP did pretty well and so did
BMI.

MR. LORD: They did.

MR. HAUTH: And that part of the
reason they gave up some of that money was it
was more of an arms-length negotiation with
the RMLC, rather than a gun to the head
negotiation. Speaking of SESAC, and I wasn't
going to bring this up, but SESAC is a pure
monopoly. SESAC has engineered a system
whereby every broadcaster, TV and radio, must
have a SESAC license, even though SESAC
represents on a good day approximately five
percent of the spins in radio.
That is because you were smart enough, I guess you'd say, to go out and get the Dylans and Diamonds, a few of their songs in your catalogue, and enough incidental music, which broadcasters, TV and radio, cannot avoid. So they must have your license, and that is a problem and that is why there needs to be oversight of a situation like this, because it is a pure monopoly.

Concerning my friend on my left, Charlie, I don't know about the back room negotiations in the music industry or the radio industry, along with -- at the time of the DMCA. I do know that radio did not block that bill, because they were assured by the labels that they would be exempt from sound recordings.

Congress recognized that due to the unique history of radio and records, that it was the right thing to do, to exempt radio from sound recording royalties. Radio was not exempted, we found out, from their simulcasts
having exposure to sound recording royalties,
and at this point in time, radio is paying its
fair share, not on a revenue basis but on a
performance basis, for our streams to sound
recordings.

As far as you guys, the musical
work side, I don't know the history there. But
I kind of doubt that what you say is accurate.
But if you can -- if you're pretty sure of
what you say, then I take your word for it.
The sound recording side, as I said earlier,
has come to a more even kind of negotiation on
rates, and radio pays a ton of money for
musical works. But it was in a negotiation
that that took place, and it took years for
radio.

First of all, our friend from
Universal says that ASCAP negotiates with one
hand tied behind its back. Well for 30 years,
ASCAP had the same judge in the ASCAP rate
court, Judge William Connor. We went before
that judge, and I have nothing against him.
But now there's a new judge in tow, who is not -- doesn't have quite the relationship with ASCAP. That's the difference, and so it's more -- a more equitable rate-setting trial, in our opinion.

Thank you.

MS. CHARLESWORTH: Okay. Mr. Rudolph.

MR. RUDOLPH: One of the things I thought would be interesting is to understand a little bit about the open market, and what's called the fair market, and Gary alluded a little bit to this. First, one of Gary's comments, saying that the publishers kind of want it both ways, by saying that the performance, being able to negotiate the rates and then still use the collective powers of the PRO.

I mean that's like saying the equivalent that the DSPs can't negotiate -- can negotiate their ad rates, but they can't negotiate their storage rates. It's a free
market. They're going out. That's the purpose
of it. They're using the services that those
provide, and they're going out and negotiating
rates, and there's market deals between those
two.

But there's a market that's
happening outside the statutes now, that's
happening on a contract level. It's happening
within the biggest publishers, it's happening
further down, and part of it's the way the
contracts are written, to not necessarily say
that the statutes don't apply, but to
essentially just pave past what might be
issues.

So you're seeing contracts that
are being written with, and I'm sure Gary's
seen some of these -- with services where it's
a contract and there's a right to do certain
things, and it's not saying it's mechanical or
performance or sync, saying you can do this
thick.

That's an interesting idea,
because it's just taking apart the whole idea of having these rates, or not the rates but the licenses, if you would, necessary for each individual segments. One of the things that disclosure on the chairman of a company called Elias Arts. We're one of the leading custom music companies in the country, and have a library as well.

It's been interesting to watch in that market, which really does operate in a true free market, with the exception of the performance royalties that come from the backside of that market, with after the use. There's been immense competition that's come into that market in just the last ten years, in particularly the last five years.

Part of that has to do with the fact that the cost of actually recording is way down. So I would say in a free market you're saying heightened competition. Now I will also say that that is putting pressure on rates or fees. But if somebody's good, you're
seeing them actually take off.

So you've got more people having
an opportunity, frankly probably less on an
average than any one particular company. But
at the same time, you're seeing more folks
being able to participate, and you're seeing
new companies actually that in the last, say
five years, have taken off and are in a good
place.

But one of the things that you do
have to realize, and it's going to get more
complicated, is almost in every one of the
cases now, when it comes to either custom
music for TV or film, well not for film but
for TV in particular, it used to be that you
would place a song.

I'm not talking about sync music
on a commercial level. I'm talking about what
I would call production music. High quality.
I mean if anybody were to argue with me that
the quality of production music being done at
a professional level, I think you have to
understand that it's happening at a very, very high level, is that the major companies, the networks, even what I call secondary and third level production companies and networks existing on the cable tier or satellite, are asking for a piece of the copyright at the same time.

So now you're seeing a joint, an interesting situation where if I'm the composer or if I'm the company, and I want my music to be played, or actually synced, where I'm getting a fee for that, they want part of the publishing for that. This is not a rare or once every now and then situation. This is pretty much becoming the standard, and it's growing every day.

So when you're thinking about this, and this may seem counterintuitive and what you may think my position is, I think when you think about the market, you have to realize it's not just when you open it up.

There are more players coming into
effect, and they're finding that spot, that
sweet spot if you would, and it's "I want this
right and I'll pay you this much for it," and
then we're going to split what's on the back
end on the performance rights income.

So understanding, I think, what's
happened already outside of what we're talking
about is pretty interesting and important to
understand, because frankly it's probably put
more people to work. At the same time, the
average has come down, but then you've seen
the companies come in as well and taking part
of that income and/or rights. So I want the
Copyright Office to understand what's
happening.

MS. CHARLESWORTH: Just a quick
follow-up question now. When you say -- you
said something like license past the rights
for the thing or you were kind of just --

MR. RUDOLPH: I'm sorry.

MS. CHARLESWORTH: No, no, no.

Don't apologize. I just wanted to make sure I
understood what you were saying there.

MR. RUDOLPH: Let's take a use of a piece of production music that's in a library, okay, and even to the point where without naming the exact networks, there are several networks now that require your production music library to actually -- they require you to hand that over to them. They will retitle it, in that they can actually then place that same music themselves, either inside or outside, right.

So you've got this kind of -- does that make sense? Meaning internal to productions that are happening on their network, or they can actually go out and pitch those to third parties as well. Is that clear?

MS. CHARLESWORTH: Yeah. I think that's -- so you're saying you're basically doing a transaction where you're handing over the library for them to use in -- either internal or --

MR. RUDOLPH: Correct. It's
happened just with one of the global top three advertising agencies in the world as well. They've basically said everybody needs to be on this one platform, which is a platform we control. We're going to actually charge you a fee off the top of that before it can be placed, and you have to -- I say have to -- they're highly encouraging you to be part of this platform, right.

Being part of that platform is -- there's a question mark on whether that's positive or not, but there's rate-setting within that platform as well, and of course they're going to license outside third party music. That's going to go for a higher rate, because if you want Led Zeppelin or you want Iggy Pop or you want Bruno, whoever, that's going to be different.

But they're basically trying to improve their mechanisms and efficiencies inside of one, have an understanding of what their cost basis is, and not necessarily
happy, if you would, with the idea of a rate being charged against it. But you are able to negotiate, if you would.

When I say "negotiate," meaning you can opt to be in or out of that, if you want to. So these little markets are popping up, are existing outside of their rate settings, and my feeling is -- or not rate settings, but within the like Section 115, that's actually hampering what could be the growth of those individual markets.

So while I can't tell you necessarily the direct impact of that, I'm watching it, these things happen daily, outside, and I'm sure everybody else, a lot of people in this room are aware of those same developments.

MS. CHARLESWORTH: Thank you very much. I think we have time for one more person, and that would be you, Mr. Lord.

MR. LORD: Just 30 seconds, thank you. I just have to respond, forgive me. But
SESAC went through a two plus year investigation by the Department of Justice that found we were not a monopoly. One of the beauties of the free market is that Mr. Hauth's broadcasters can choose to use Bob Dylan and Neil Diamond and the people that do their advertising, you know. Maybe McDonald's will take a local composer to do the music for their ads and find somebody who will direct license. You don't have to use SESAC music. If Mr. Arrow's company wants to do the same thing, he should be free to license to radio broadcasters. Sony should be able to license to radio broadcasters, television music broadcasters, and let us all come to an equitable rate for the use of the music that we represent. Thank you.

MR. GREENSTEIN: Jacqueline,

there's one point --

MS. CHARLESWORTH: I'm sorry, and I didn't mean to exclude you. I just didn't notice your card.
MR. GREENSTEIN: That's okay. I guess Jason or Mister, I don't know how you pronounce your last name and we don't know each other --

MR. RYS: Rys.

MR. GREENSTEIN: He made a point about the time period for setting new rates, that five years was too long. I just want to remind the Office that prior to the Copyright Royalty and Distribution Reform Act, the CARP process was a two year rate cycle, and that created lots of issues, and you had -- The first webcasting proceeding was 1998 through 2002, and then by the time you got that decision, the parties negotiated to push forward 2003-2004, which was then extended to 2005. Two years is a very rapid time period.

So if the Office is looking at the compulsory license regime, and how frequently things should take place, five years may be too long; two years is almost certainly too short. I would question if the RIAA disagrees
with that. But the only winners, if you go to a two year cycle, may be the outside law firms, or it may actually force people to negotiate, like the satellite and cable distribution proceedings.

Those are annual, and they seem to figure out you take your chance. You win or lose, and then maybe you're forced to negotiate. So you could look at it either way. But there is precedent for more rapid proceedings.

MS. CHARLESWORTH: Okay. Thank you very much. We will resume -- at what time do you want to come back?

(Simultaneous speaking.)

MS. CHARLESWORTH: All right 3:50, since we're again running a little bit behind. So ten to 4:00.

(Whereupon, a recess was taken.)

MR. DAMLE: Okay, why don't we gather in? I think we're missing a couple of people.
(Off mic comments.)

MR. DAMLE: All right. This is our last panel of the day, and it's on Data Standards, and I think a lot of the discussion up until this point, particularly in the first panel, centered around the problem of data and the fact that it's difficult to identify the sound recording and the underlying musical work, and to figure out who owns the copyrights in those works.

So I don't think we have any new people. So one question. A lot of the discussion in Nashville sort of centered around the idea that if you have ISRCs and ISWCs associated with the digital files, that that makes the matching process run a lot more smoothly.

So to open the panel, I just wanted to have a discussion of how we can encourage companies to include that information, that metadata, with the files, so that the services can give the PROs and
SoundExchange the information they need to match everything up, and so that payment can be run more smoothly, rather than having to do semantic matching or things that are perhaps less accurate than having a unique code associated with the actual work that's been played.

So I just want to open it up for ideas, for how we can make that process -- get that information into the files, and make it more readily accessible to people. Anyone want to take that on? Mr. Anthony.

MR. ANTHONY: The easiest way to make that happen is just for us all to start doing it. I found that with Rumblefish, it's been very difficult to gather that data, as I'm sure many of you have had that same experience.

But it's simply because the content owners, many content owners or third party services don't have an incentive. They have an opposite incentive, a disincentive to
provide that data, in their opinion. So and it's our perspective, you know, our ethos really is at Rumblefish to help artists make more art.

That's why we exist. That's what we're all about, and it's really hard to do that when we're not really sure who to pay for what. We exist specifically in the microlicensing world, and we deal with a significant volume of transactions. We've done almost 80 million transactions. We do about 50 to 70 thousand a day, putting sound tracks into social videos.

So you can imagine with that type of volume, it's very challenging to know who to pay what to, and what the licensees really need to know is very simple.

It's who owns what, what are the business rules and where do I send the money. We've collected that information from numerous sources, some public, many from other content owners, some from the services.
Some services force you to rent; others will allow you to actually license that data. But it's become a very valuable resource to us, and I would encourage everyone to data share with each other, and to provide that information to each other, because we do believe in this situation, that a rising tide raises all ships.

If the licensees know who to pay for what, then it's much more likely that the revenue will find its way to those parties. So for the record, we'll make an open offer, Rumblefish with our five million copyrights to this group, with anyone to data share. We've already started to do so with numerous parties with a lot of success, to patch the different holes.

We're doing that data sharing unencumbered. So I think that's possibly a system.

MS. CHARLESWORTH: Do you include any standard identifiers in your data?
MR. ANTHONY: Whatever we have, we include.

MS. CHARLESWORTH: Okay, and so what would -- can you share with us sort of in your experience, how typical is it to have say the ISRC, how typical to have the ISWC or the ISNI?

MR. ANTHONY: I'm not sure if there is a typical situation, because it varies on the quality going out, what's coming in. So what is consistent is that it's inconsistent. So we find certain labels, certain publishers do have that information. It's very rare, though, that it's complete.

So we go through great effort, as do some of the other services here, to do a lot of research and patch those holes. But we think that the key link is three pieces of data, not two. It's the ISRC, the ISWC and a related fingerprint or audio file, because even with ISRC and WC, sometimes it's still hard to tell what you're dealing with, because
many times sound recordings have multiple ISRCs, information entered improperly.

We also work hard to wait for the source of the information that's sent into us. So we can collect everything and not use any of it as the definitive truth. But redundant data from multiple services, you know, provides you good context to say this is more reliable information than not.

MR. DAMLE: I mean a general question also when we're talking about this is what is the role of government, in encouraging, perhaps mandating the use of these types of identifiers, and to -- and be on that mandating sort of open access to data, so that data can be shared among the various players, to encourage sort of -- the reduce the transaction costs.

So maybe some of the others, and if you have thoughts about that, that would be, I think, interesting for us to know, given our position.
MR. ANTHONY: I'm not quite -- I'm not sure.

MR. DAMLE: I think Mr. Watkins, I think you were next.

MR. WATKINS: I would endorse, you know, a lot of Paul's observations about ISRC in particular. I really think that we have to accept that as long as ISRC is the sound recording identifier, that it will necessarily only be one part of music identification, meaning that any entity that wants to be in this business of identifying music and processing royalties, will need to employ a variety of different tools, including syntax-based matching, which I actually take issue with what you said.

I think it can be fairly accurate, given enough experience and time with it. There's also manual review, which goes into matching data. At our company at least, we've got I think 35 people in our research department, and largely what they do is in
addition to collecting data from publishers and labels and processing letters of direction and others, they sit in front of terminals all day and match data.

So you know, ISRC is a flawed identifier. It's flawed because it's not controlled in the way in which it's deployed, if you will.

My favorite example about that is a digital aggregator TuneCore, which sort of decided to usurp the Turks and Caicos identifier, the prefix before the Turks and Caicos identifiers, and literally just started attaching TC with a string of numbers to their recordings.

I think that that example is actually indicative of something that a lot of independent rights owners do. Also to the extent that we begin to insist on something like ISRC or ISWC, effectively it's becoming a condition of payment.

I think you have to appreciate
where that leads to right away, which is the truly independent rights owners pre-record company or pre-music publisher, will not qualify, because they're just not professional yet, if you will. I think we're seeing more and more music produced in exactly that way by independent rights owners.

You know, one of our clients, Soundcloud, we're dealing with challenges there that are beyond what we've ever dealt with, hundreds of millions of self-publishing, self-producing artists. So that's really a modern trend, and I think it's inescapable.

To the extent we start mandating, you know, from the top down, at this point in history with what's happening the music market, that as a condition of getting paid, you know, you have to have an ISRC attached to your recording or an ISWC, whatever it may be.

The result is going to be that you have pools of royalties that largely go to the larger rights owners who are better at doing
that kind of thing.


MS. GOLDBERG: Hi, thank you. I do not think that government should mandate a certain specific standard, but I definitely think it should be encouraged. I want to qualify that. I was in-house counsel at a major publisher for ten years, and getting the information from songwriters and artists is so difficult in terms of splits and who actually owns what.

Sometimes the only way I would get that information is by withholding the advance. So I don't think it should be mandated, but it should be encouraged, and I think there are initiatives right now that are going on to have databases, which I think are essential to have with the correct information, the correct splits.

But it's difficult. That's why I don't think it should be mandated. But Shawn
Lemone, who is right here, he mentioned earlier that ASCAP, BMI, and SOCAN are working on an integrated system. It's actually called Music Mark, and he could better discuss that. But that I think is something that is really important.

Ed Arrow earlier almost mentioned the GRD, which I think is great, although during lunch we had a discussion. I thought it was dead, that it cost millions of millions of dollars and it failed. He said that it was still going on. I was not aware of that, but I think that's something that would be a great database if it still is going on.

I also thought what Mr. Griffin announced at the House Judiciary Committee hearing on June 10th was very interesting. He talked about GUIDs, globally unique identifiers like a VIN number on a car. I thought that was very interesting. He thought it would be only about a year to create such a database, which I think is overly
optimistic. I think it's beyond overly
optimistic.

But I also liked the suggestion in
SoundExchange's NOI comments, where they
talked about having a system like EDGAR for
the SEC. Whenever I need to go and get a
report, I go on EDGAR, and it completely works
with the SEC system.

So maybe the Copyright Office
could do something like that, where
information is more accessible to parties. But
I definitely think there's a need for one or
more databases that have accurate information.

MR. DAMLE: Ms. Kossowicz.

MS. KOSSOWICZ: I echo Ilene's
thought, that there should be one or possibly
more more databases that contain all of the
rights information, and I'm not sure that
government is the right party to be
responsible for this. I think as part of our
registrations that we file, you might be able
to provide fields that could be filled out on
a voluntary basis, that would provide some of this information to you, so that people could look it up.

I also wanted to address something that Paul said. I think it's, you know, it's great that you're sharing the data, but my question is how accurate is the data that you're actually sharing? I think was it you Ilene or somebody else brought up the other day that somebody looked up ownership information on the ASCAP and BMI and SESAC or HFA websites, and the information is not consistent.

Then you also have to add to that that the splits might be different, mechanical versus sync. The sync splits are, you know, not really housed anywhere except for maybe with the publisher. So you have a lot of redundancy here. You have the PROs. You have the major labels such as Universal. You have the major publishers and all the rest of the labels and publishers, you know, constantly
As far as Universal goes, we call to make sure that we know who the current claimants are. Catalogues change hands all the time. Letters of direction are sent out, but not all the right parties get the letters of direction. In fact, I'm dealing with an issue right now, where one of our recording artists received a claim, and their attorney settled with the claimant.

The claimant received a publishing share and an ownership share in the song. The settlement was signed by both publishers, you know. The T's were crossed, the I's were dotted. There was an LOD. They had a whole list of participants that they copied. They copied the PROs, they copied HFA, they copied everybody, all the claimants and participants. The one party they forgot to copy was the record label, who's paying the royalties. So I mean it's hard to blame these people, because there's just so many parties to think
about in these cases, and I think, you know, the solution to this problem seems to be one central place where all of this data goes and gets, you know, updated and, you know, somehow compiled and other than that, I mean I don't know how it's going to be done. But it needs to get done, so that all of this redundancy isn't happening across the industry.

Because you know from our perspective, and I think Les mentioned this too, on his end he's got a whole staff of people doing verifications.

We have a hundred people or so doing verifications and related support work? I mean this is just us trying to figure out who the owners are, and this is happening across the board at all these different companies, and you know there's just -- there needs to be some sort of a change there.

MR. DAMLE: Ms. Muddiman.

MS. MUDDIMAN: I think what I want to say is that we have such a freedom with the
Internet that we've not experienced in the real world for a long time, and in the real world, we did create -- our forefathers created a very complex licensing system, which if we were to look back now and imagine doing that without the technology that we have today, we'd think that was pretty impossible to do, and yet they did it.

I think sometimes we're inhibited by some of the people who say it would be very difficult and you know, it's very complicated. We've got so much stuff. We've got 10,000 YouTube videos going up every day and how do you keep track of everything.

I think part of the problem is that we get -- you know, you get given some lobbying by people like Google and YouTube, who make out that it is going to be way too difficult to police this, and to set any system in place.

But I have to say it's inevitable that you have to do it. I don't think you have
a choice. I think you have to legislate and
you have to create a licensing system that not
just protects music, but all IP, not just
music, everything, because this is the tip of
the iceberg.

If you don't do it for music,
you've seen what's happened with music. You
don't need a crystal ball. It's happened, and
if you don't legislate to protect IP of all
c kinds, I don't know what's going to happen. I
fear. I fear for all kinds of intellectual
property of, you know, not just music.

MR. DAMLE: Thank you. Mr.

Bernstein.

MR. BERNSTEIN: I agree with the
problems with some missing data, but I think
what you need to be aware of is that there's
many companies out there who make music
available, that do so before they even have
rights to the music, and that these problems
of missing ISRCs or missing information or the
need to do matching whatever types is
occurring, to a large extent, because people are using this music before they even know if they can.

Then what happens is they eventually strike a license with the copyright owners, and they've got a problem. They have a bunch of data going back for however long that they've been accumulating, where they didn't get the information direct from the copyright owner.

Therefore, they don't know the ISRCs, and maybe they've got the track title and who knows what they have. But a lot of problems when people say they're missing data, a lot of them it's systemic in that it's because they were operating their services before they were given the rights to do so, and they don't have it.

So they engage others to actually help them, because I've had people come to us, help them and try and figure out what is it that was used, and perhaps an ISRC seems good
to match it. There's some credibility, yes, but we know there are issues with the ISRC. ISWC I don't see as in practice as much, because a lot of the publisher data doesn't always contain it.

But the point I want to make to you is whatever you might be hearing about missing data, a lot of it stems from the fact that the music was used before anybody had the rights, and now they're trying to catch up.

MR. DAMLE: Mr. Irwin.

MR. IRWIN: I just wanted to go back, and I know we're going back to a previous panel, but I think it's kind of applicable to this panel, to what Mr. Rudolph said about the retitling of production music.

This is -- I know because I've had conversations with Shawn Lemone from ASCAP about this. With the watermarking and fingerprinting and all that stuff in some of these titles, when they retitle them, what happens is you'll get a writer. Some of our
writers will say I didn’t see this on my statement.

I know it was played in Germany, I know it was played somewhere here, and then it will come through another service that's tracking these fingerprints and watermarks and everything. That because it's got a different title now, it will have -- you'll have BMI or SESAC or ASCAP looking at these things, trying to track where the payment came from, and the payment has already been made.

Because it's got a different title, it's got the same marking. So what's happening is that a lot of these resources have been used up tracking down things that have already been paid. So I would love to see this retitling thing actually go away altogether.

It would make it a whole lot easier for a lot of people, streamline the whole system. I mean first of all, it's dishonest. Let's begin with that. It may not
be illegal, but it's dishonest, you know.
You're creating one copyright and calling it
ten different names.

So I just thought when we're
talking about data standards, these are the
sort of things that get confused around the
world with the reciprocity thing with other
societies.

The other one that we have a lot
to do with is the retitling -- I mean this is
not illegal, but in a lot of cases when
television shows and films and such go
overseas, they retitle quite often, you know,
to be more appropriate to the market that it's
in, and quite often, the cue sheets that go
with them do not necessarily get retitled.

Therefore, that income ends up
going into a black box somewhere in Europe,
and not coming back to us. That's something
that's been getting better as societies have
-- the American society is more aware of that
now than they have been in the past.
But there's been times, I mean
I've personally had some of my own films that
I've had to track. It's taken four or five
years, particularly out of South America, to
get the right, you know, whatever the foreign
language cue sheet is. So that's all I want to
say there.

MR. DAMLE: Okay, thank you. Mr.
Lord.

MR. LORD: Yes. With respect to the
single database, there's -- or the example
that Ms. Goldberg gave earlier, that she
checked on a song and there was different
splits at every station.

A lot of that is inherent or comes
from the composers themselves, who may not
agree on what the splits are, and one goes to
ASCAP and registers it his way, and the other
one comes to SESAC and registers it her way.

We all do the best we can to sort
that out. We don't pay royalties under they're
sorted out, you know, what the splits are. But
that kind of thing is always going to exist. Also, you may have a composer who gets a
divorce, and his wife gets the rights to his
works and the income streams, or you may have
-- and they don't know who to report to.

Or you may have a publisher who
licenses a song for a specific purpose, and
for that purpose only, they share the
publisher income or the copyright, you know --
well, they wouldn't share the copyright, but
the income for that particular usage.

So you know, Mr. Watkins or Harry
Fox or ASCAP or BMI or SESAC may have problems
with their databases, but it's always going to
be -- there's always going to be that. If
there was the GRD, if there was the Copyright
Office who undertook to create the database,
it's going to still have problems.

We all got to get used to that.

There's not going to be an 100 percent
database anywhere, because of human nature if
nothing else. So I think the solution, again,
is let the marketplace find its equilibrium. Let the ASCAPs of the world and the BMIs of the world get out from under their consent decrees, and create their databases and let MRI do their work, let SESAC do their work. And whoever has the best and the best customer service will win, and maybe there's space for three or four or five such databases. But to think that we're going to have one that's perfect all the time is utter nonsense.

MS. CHARLESWORTH: I just wanted to interject. This is the question. I mean we've been hearing this probably for 10, 15, 20 years, that the music industry needs a definitive -- acknowledging that it may not be perfect, but needs, let's say, universal standards that everyone can agree to, and yet it has not come about.

I mean in other words, I think that there -- everyone acknowledges there's huge incentives really, and everyone would
probably gain from having improved standards, having shared data, having -- not having to have 30 people in a research department, you know, tracking down matches or whatever.

But the problem is for whatever reason, it really hasn't come about in the private sector in the way that at least -- I mean the services, listening to them and others around the table, find useful.

So I think that's the question, is sort of how -- at what point does there need to be some incentive, perhaps from the government, to nudge the industry or really move the process along, because every single roundtable we've had so far, but many, many -- I mean every single conference I've attended in the last three years. This is like in many ways people see this as the most important issue, the most significant thing that's actually affecting the licensing system.

So if that's the truth, and maybe it is, maybe it isn't. But if it's a huge --
it's at least a huge gating factor, you know,
why hasn't there -- why haven't we seen more
of a private solution? I guess that's not just
for you, Mr. Lord; I mean it's really directed
around the table.

MR. LORD: Well, if you'll give me
$100 million and force all the other companies
to give me their data, I'll have it for you
very quickly. But I don't think there has been
enough -- first of all, ASCAP and BMI, again,
are hindered in what they can do.

They've taken this initiative
without us, but they've taken this initiative
to build this database and that's at least a
start. The marketplace, these people want
data. They need to be able to -- I disagree
with some of them, but they need to be able to
understand what they're using.

We need to have good database, and
I think the marketplace is just evolving to
that point, where it can. I don't think ten
years ago anybody could have done it,
technologically. I think -- and people didn't
have the incentive. I think now, as Ed Arrow
said earlier, they give their data away,
because they want to receive the income.

I think the income levels now, the
revenue levels now are getting to a point
where people have to create that database.

MS. GOLDBERG: Can I just say
something, since my name was used?

MS. CHARLESWORTH: No. No response
from you.

(Laughter.)

MS. CHARLESWORTH: No. I think you
have the quote of the day, in terms of your
comparison of the databases. Of course.

MR. DAMLE: Yes.

MS. GOLDBERG: First of all, I
agree with some of the things that you said,
but I never said that any system is going to
be perfect. But I did not say there were
different splits in the systems.

In fact, ASCAP and BMI, to my
knowledge, don't include split information.
But there were --

MR. LORD: Different composers?

MS. GOLDBERG: But there were different publishers, different songwriters, different addresses.

MR. LORD: It could be any number of those things, yeah. I'm sorry, yes. That's fine.

MS. GOLDBERG: Yeah. I just wanted to clarify. I know it's difficult to do this, but I think it really needs to be done.

MR. DAMLE: Okay, thank you. We'll finish off up here and then I'll come back. Mister -- I don't know who was next. Mr. Hauth, were you next?

MR. HAUTH: Thank you. I'm sympathetic, particularly to the recording industry, about these standards and the reporting of data. But -- and I think we all need to work, services as well as stakeholders, on this problem. I think it
affects all of us.

In the mid-90's, when we had our
ASCAP proceeding, the Religious Broadcaster
Music License Committee took ASCAP to its rate
court and went all the way through it, came
away with a mixed decision from Judge Connor.

But one of the things that we came
away with, ASCAP had been requiring radio
stations who were split or mixed license, in
other words, they played music and they played
talk, and in those days, there were a lot of
them, and they needed a special license called
a per program license.

ASCAP was requiring those stations
to provide census data 24-7, with all of the
song data. Not just title and artist, but
album label and ISRC I believe, and probably
one other data point. This was impossible to
achieve, and we -- it was one of our
complaints. The courts -- in discovery, we
found that ASCAP depended on two data points
in order to distribute, and that was title and
artist.

Now and so the radio industry has been used to reporting those two data points, title and artist. Now fast forward to the sound recording proceeding, I'm not sure which one it was, that set the reporting requirements. We not only are required -- this is for radio simulcasting over the web.

We report to SoundExchange a ton of stuff. It requires special software, requires special companies. We are using Ando Media now, but you've got Liquid Audio and Stream Audio and it's become an industry, this reporting of data, because we have to report not only music information; we have to report performances, the number of performances that each song played receives, how many computers were listening to it.

Okay. So we have these requirements that are -- everybody knows they're very difficult, and the way that radio stations receive their music is that the
labels downloaded to the, you know, the music
director of a radio station. It's not -- it
doesn't come in the form of a CD obviously. It
comes as a download.

Oftentimes, those songs are not
part of an album, and the data on them, and we
did, in response to the CRB's rulemaking on
this, the NAB is filing comments, and we
helped with that to some extent. In some
fairly exhaustive research, we found that
stations are only getting title and artist
data.

In other situations, we found, I
called one of Salem's large stations in Los
Angeles to find out what's going on there, and
he said "Yeah, yeah, yeah. It's available, but
you've got to hunt for it. The ISRC code you
can find it, but you've got to hunt for it."

Now I suggest this, that you do
not want SoundExchange or a record label does
not want the lowest common denominator in a
radio station doing research for it. That's
what's going to happen and that's what
happens. You put a junior board operator on
this project, and you've got to look
everywhere for this data.

We're going to -- this is a
disservice to the record industry. It's not
because we're lazy. It's not because we refuse
to get it. I'm under the gun with
SoundExchange now.

One of my assistants who handles
all of our 100 stations, who reports to
SoundExchange, got an email the other day
saying that we're not in compliance.

We take that seriously. We don't
want to be not in compliance. But if we do our
own research, that is to say if our radio
stations do their own research, it's bound to
come back very faulty. So you deliver that to
SoundExchange. Does it help them? I don't
think it helps them a lot. I think it's got to
come with the download, and it's got to be
clearly delineated, and you know, we're
willing to help where we can, because it's a lot of work for us too.

So that's why I say we're all in this together. But I don't think you want, you know, 100 different researchers trying to find that data for you. It's going to be a mess.

MR. DAMLE: So I just wanted to clarify one thing. So you're saying when the music director gets the digital files from the record labels, the only metadata associated with it is the title of the song and the artist?

MR. HAUTH: Title and artist. Typically, it's not assigned to an album yet. In some cases, it is, but sometimes -- I guess sometimes it's not part of an album yet. It's a new song, and so you don't get a lot of data on that. But they sure want you to play it, so anyway that's a problem, I think, that needs to be dealt with. Thank you.

MR. DAMLE: Okay, thank you. Mr. Rudolph.
MR. RUDOLPH: As far as the
government encouragement of universal
standards, I think one of the things that we
should again try to continue to reinforce,
because we're at a point in time, okay, and
you guys are spending a lot of time. The
Copyright Office is spending a lot of time.

We have legislative interest in
paying attention to this. It's not based on
the rates, you know. It's actually on some
kind of reform. So we have a moment in time,
and at this moment in time we should actually
use technology to solve a lot of these
problems.

So far we've talked about a lot of
numbers, and I actually think in -- and there
are certainly issues with this. But an audio
reference file is the strongest way to go, and
one of the reasons I say that is because we're
talking about all music, and certainly from a
composition standpoint, it's a composition
until it's embedded in some form, shape or
form, or embodied, if you would, in a recording.

The questions around variations, but there's technology that could help with that. There's a lot of things that can solve it. But the reason I bring it up is because the ability to solve frankly that problem, being able to listen, if you would, and do it in a fairly -- and there's technology. There's companies out there who are doing this, particularly on the TV side. One of the companies that I work with has probably, I don't know, five or six thousand library tracks. Over a year, we have 40,000 plus detections. Someone else was handling that for us. We matched actually all those detections against it, and the miss rate was less than five percent. It was pretty amazing.

This production music doesn't have ISRCs. So how is that going to get accounted for in a copyright situation? So I think when -- you know, this is just a suggestion.
But a way that an encouragement would be almost thinking about it, and there's a term in the kind of developing in the technology space right now called accreditation, and essentially it is a come cleanness.

That's very similar to what YouTube frankly did too. But create a reference file. That reference file is then can be matched, can be scanned, it could -- all kinds of things could happen to it. You can come in and make those claims.

I'm not saying this is the exact format, but trying to find technology solutions that have a fairly low overhead, and put the responsibility on to the rights holders then, of keeping those in a -- keeping those maintained, I think, is a really, really important part. There's four companies that I'm aware of, four private companies in the U.S. that are already providing services, and their businesses are much more important than
this.

But I'll call it ADP. Some of them are here today, and you know, the TSPs could complain about well, it adds another layer of cost. But I don't think that's what it is. It's like you make a choice whether you want to do your payroll internally or not. It's kind of the same idea, and that cost will get better and more efficient as it goes.

It lends itself to what we've all been talking about, which is essentially an open source culture, where businesses can build off of a set of data, and I think businesses will flourish off of this, both providers to retail, B&B business providers, content creators.

There's people fulfilling -- there's companies out there that are filling each piece of that pipeline right now and they're nascent. But what I've seen is the major rights holders actually being more open than they've ever been, I would say even in
the last six months, realizing that they're having to address problems.

I think a lot of that's driven, frankly, by the nature of video platforms and what's so -- what's the right word? What's so prevalent in the way people are interacting with technology and music buying, for example, six-second clips.

I mean there's not many audio recognition technologies that can actually know what six seconds are. That's a problem. But if both sides come together, and this is isn't pie in the sky. But there are discussions between the technology companies and content owners on how we actually do that, and that's a good precedent move forward. Then I think we have to look at technological solutions, not what I would say, you know, library control and authority control and things that are very -- which are very, very solid professional standards, that have been like -- I think somebody probably heard me say
this before -- it's been around since, you
know, the libraries created in Alexandria.

But we're in a place now where we
can make a bold move, and with the Copyright
Office I think really promoting that, and
understanding there's a cost behind that, but
having both the industry and government, I
think you could probably see actually an
efficiency, based on what's happening today,
lowering the cost, as we were talking about.

Les was saying hey, the cost of
actually having to file. You can bring all
those different things down. Not just the
copyright, but also the licensing element of
it.

MS. CHARLESWORTH: So I just had a
follow-up on that.

MR. RUDOLPH: Sure.

MS. CHARLESWORTH: So if you have
sort of a claiming system, and you don't -- I
mean I guess the question is where you have
competing claims, how do you handle that?
MR. RUDOLPH: Is this like a softball? You did it. I mean you were part of the -- half the people in this room, not half, but several of the people in this room were involved in the RIAA settlement, and it was when money was involved, it was unbelievable how quick the resolution happened between rights holders who had disputes.

Basically what happened is everything went in a pot, shook out. Everybody got their piece and then it's like wait a second. Somebody's claiming this, I'm claiming this, and really complex problems came around.

It was like did that income relate to a period when I had that copyright, or did that income relate to a period when you had that copyright?

And so in those cases, they settled it between each other and then moved forward, right.

MS. CHARLESWORTH: Right, right.

No, I was just sort of -- I think I was going
less to the sort of mechanics of it, and sort
of more to the idea of you said you didn't --
you were sort of the resistant to the idea of
having a single authority or whatever. But I
mean, you know, who's the decision maker and
how do you --

MR. RUDOLPH: No, no, no. I'm not
resistant to that. What I'm resistant to is
using a current conventional -- it can be part
of the data, the metadata. But using something
that is -- we had to use in the past because
we couldn't identify. We had to put a number,
a unique identifier to it.

Well, we kind of have the most
unique identifier you could have, and that's
the actual recording itself, and yes. I mean
that doesn't solve sheet music problems and
everything else, but that's not embodied in a
recording itself. But we have that ability and
we can talk about all day long that one audio
recognition software. We'll use a different,
you know. Zeroes and ones will look different
than the other.

But that recording, if you would, that matching is -- exists now and it's only getting better, and other people are doing it. That's the thing. Like think about what, you know, how deep the match must be on Grace Note's side. I mean they're playing deep blue grass cuts, and they're actually serving up the right art work with that.

I mean so if all these solutions already exist and people are doing it, and as fast as they're doing it. I mean I heard -- I think this is absolutely true. The number one most called service in the world is actually Google on a day to day basis, I mean API dot calls, right? Does anybody know what that is?

So the second is actually Grace Note. So the ability to serve that quick and that many that matching it's there, and we actually have it inside our industry. So in the GRD, you know, that's an interesting solution. But I think if the Copyright Office
really got behind a solution, and something that the creators could be involved in, almost think a Wikipedia type accreditation and policing and monitoring, I think the industry and the rights holders between themselves.

This isn't about licensing. This isn't about what's fair market. This is about having an understanding of what the rights are that people have.

MS. CHARLESWORTH: Thank you.

MR. DAMLE: We'll go over here.

Let's start with you, Ms. Miller.

MS. MILLER: So I guess I'll start by saying that I think if we don't streamline things, basically the independents fail. I think that when things have been sort of blanket decided in the past, it's basically because the majors step up to negotiate on behalf of everybody. So that's what gets generally applied to everybody else, because they're the major stakeholders, at least in organized power.
I think a single authoritative and recognized source is definitely something that's needed. I think that that's an area that should be a core focus to solving a problem. I think that some piece of data should in fact be exchanged for money, for any time. I mean we do it with taxes and all kinds of different systems.

So if there is a universal database that again back to data exchange, everybody's calling upon the same universal database to inform their data needs. Then we're going to have a lot more harmony in the industry. But then, you know, take it or leave it. I mean if the indies can't get in there or the majors or whoever can't get their act together to actually provide one universal, and it doesn't need to be an ISRC code. It can be a whole new thing that is created with this data, you know, this single authoritative source.

But one piece of data should be
the piece that triggers monetization, and even
matching like what you're talking about. The
technology exists to data share. The
technology exists to have industry-encoded
standards. I mean Dolby is a great example,
where the government has stepped in to
regulate the encoding of, you know, media.

I think that that actually exists
technology-wise today, except that not for the
specific purpose. But the technology exists,
so that each track could in fact have an
underlying, you know, unique piece of data
that's carried along with it.

Then if you set time parameters,
where basically within a certain amount of
time, same as patents are done, rights holders
have to collectively come together and report
into the system, and basically that window,
you know, it closes for the initial filing. So
it kind of delves with, you know, where
somebody was talking about well, maybe there's
a dispute between rights holders.
Well maybe there is, but as long as there's sort of a time window where everybody comes to the table, and then it's sort of the window closes when everybody agrees, and now that is the universal code for it, that moves forward with the file.

That code is relying on technology. So there's sort of a hub where the data is being served from, so it can be modified. So whether somebody changes from ASCAP to BMI, or from the rights get sold or whatever, the hub is the master of the data. So that can be dynamic.

Yeah, and I mean I'm with these guys. Like I think data sharing is essential. But I think that the roadblock to data sharing has been that there is just this the building block that's critical to it is that single authoritative source, and then the agreement upon what is that one piece of data that is unique.

I think the only way to enforce a
piece of data that's unique is that's how you
get paid, same as your social security number.
So that's my solution.

MR. DAMLE: Thank you. Mr. Watkins.

MR. WATKINS: You know, when we
talk about databases, I always think, you
know, what we're really talking about are
organizations. Databases are one tool that
organizations use to identify music and pay
royalties and license music.

Organizations, of course, have to
be funded, governed, owned and controlled, and
that's largely why some of the industry
initiatives in this area in the past --
certainly many have kind of fallen apart. For
us, you know, we think we've made great
strides in this area, simply because there's
a commercial incentive to do that.

When I mentioned the 35 people
earlier, it's not my favorite part of our
business, I assure you, and it's certainly not
what makes us profitable. But we're able to
hire those people and still be profitable, and we think using them in the way in which we do gives us a competitive advantage.

We operate in an environment, you know, where we compete with other rights administrators, I mean particularly with regard to Section 115 administration, you know. We compete with Keith's company, we compete with the Harry Fox Agency.

I will not be surprised hear BMI say they want to be in this business very soon, ASCAP and, you know, we meet with publishers these days who tell us SoundExchange is coming by to talk about how they can administer musical work rights.

So we welcome that competition. We think that the cream rises to the top in that area, if there's a competitive commercial incentive to be better at it as an organization. If you create one entity to be the definitive data source, then you remove that incentive. You've got fewer players.
I suggest if you've got one
monopolistic entity that is supposed to be
doing that well, inevitably they will not.
Let's never forget that, you know, music
rights information, like I mentioned earlier,
is simply not -- it's not a static data set.

I mean catalogues revert. There's
a very dynamic secondary market, particularly
with regard to music publishing rights. There
are disputes that get settled, result in
changes. There's reversionary things to
consider. None of that will change, nor will
the collaborative way in which music is
created change.

So you know, for all those
reasons, we think really ultimately the best
thing the government can do is allow
commercial incentives to continue to operate,
for there to continue to be innovation in this
area.

You might consider, to the extent
this doesn't -- it's not working for the
services, and I was surprised to hear that --
you say that, because I think, you know, for
a lot of our clients, I know very well that it
is working, you know.

We're able to license a very high
percentage of the music that they use. We're
able to pay the royalties. In some cases if
we're not able to identify the music
immediately we go back. When we get the data,
we pay retroactively, you know.

But you may consider addressing
the problems that services may face in other
ways, like for example, addressing
infringement remedies or something like that.

MR. DAMLE: I mean what about the
idea that Ms. Miller suggested, of you know,
the government not being the sort of source of
the data or the holder of the data, but
providing a standard, perhaps a standard
identifier or something like that, that all
the people that are competing in the
marketplace for the kind of work that your
company does, can then at least rely on that as being sort of uniform across the industry?

MR. WATKINS: Well, a good analogy would be the DDEX standard, which I'm sure you're all familiar with to some extent. What has happened there is, you know, DDEX is from where we sit perfectly fine. If a publisher or a record company wants to give us a DDEX feed of their data for purposes of licensing or paying, we're happy to work with that.

If they want us to provide one back to them for purposes of accounting to them, we're happy to do that. But what we've seen is not surprisingly what happens is the standard that gets implemented at the big companies, that becomes their version of the standard.

So now you've got the Warner DDEX standard and you've got the Universal DDEX standard, you know, and I would not expect those companies to go back and try to keep up with the standard or harmonize amongst
themselves. They're competitive entities with one another, and it's really difficult for them.

So you know, we see them looking outside now for more help in this area, choosing essentially to outsource some of these functions. There is a cost to that, like I mentioned before. So many of these things that we're talking about really ultimately boil down to who bears the cost.

MR. DAMLE: Good, thank you. Now Mr. Greenstein.

MR. GREENSTEIN: Thank you, and I may disagree with some of what Les says. But we're usually aligned. So I think an overarching point in my mind and for many of the companies I represent is that data is power, and it's wielded as a sword against licensees in many respects. So that the absence of data, meaning ownership information, either results in someone being forced to take a blanket license and maybe
paying more for that, or gives a copyright owner leverage for a claim of infringement, and saying if you don't get it right, if you use one work and you don't have a license for it, there will be crushing damages.

I can tell you that those conversations do happen in the free market, that people say go ahead and remove our content. If you get it wrong, we're going to get our money one way or another. Tell us what you own. We're not going to tell you anything.

We don't have an obligation to tell you anything is often the response from a copyright owner. I think there's also data that goes to payment, which is different than data for ownership from a licensor to a licensee, and then from the licensee back to an owner or an agent, for the ability to distribute.

There are concepts of black boxes for money, where money goes in and doesn't get distributed, and I know that that is an issue.
So I think one of the things for the Office to consider is how do you address or think about all of these issues? Are there carrots and sticks that can be employed?

So in the licensor/licensee relationship, can you condition an entitlement to payment based upon a copyright owner making their repertoire public? Right now, I think it's only the ASCAP consent decree that requires that ASCAP make the information available, and it's not easy to get.

BMI, I believe, takes the position that it does not have the same obligation, and with all due respect to Dennis, who I adore, getting that information from SESAC is not easy, and in one instance, I've been offered it in paper, which would be hundreds of boxes, because it's not electronically available.

I think it's also useful to look at, again, Judge Cote's decision, where what did Universal Music Publishing do when Pandora was faced with having to take a license to
Universal's works? In that decision, Judge Cote talks about the fact that UMTG demanded an NDA entered into with Pandora, and it said that you cannot use the information to remove our content or shape the amount of content you use.

You could only use that information to evaluate whether or not to enter into a detail. I find that shocking and preposterous and offensive, that a copyright owner is withdrawing from a PRO, and you're saying okay, tell us what rights are withdrawn, so that we can remove all of your content.

Or you do a deal with a rights owner, and you say give us a list of all of your work, so that I can decide how much I want to pay or how much I want to play of your music or how much I know. Very frequently, all too frequently, copyright owners say no, it's too complicated. You're just going to take a license. You're going to pay us, and you just
have to live with that fact pattern.

I think that if you're talking and coming back again to this free market concept, you cannot allow there to be a market where a licensee is going to be subject to crushing statutory damages, even when they're acting in good faith and operating a legitimate business, if the copyright owners don't tell them what works are owned by whom.

I do think that a central repository is possible, although not easy to get to, and I don't pretend to have all of the solutions. But the Patent and Trademark Office does it for patents, they do it for trademarks, and there's no reason, notwithstanding all of these problems, and I'm sensitive to Dennis' point, that publishers or songwriters may disagree with splits; publishers may have conflicts.

When I was the general counsel of SoundExchange and there were conflicts among sound recording copyright owners, because a
major label distributes the works of an independent label and the licensee reports it, you don't want to be in the middle of that fight. You put it in a suspense account.

But that doesn't mean that there can't be obligations for people to be transparent, and transparency is very important in this space, because it will enable songwriters and recording artists to get paid; it will prevent copyright owners from playing games with the licensees, to threaten them; and it will prevent money from disappearing into the system.

I think that if again, and I forget who suggested, Mr. Barker, maybe about a clean slate, think about what will allow the most money to go in efficiently and to come out efficiently. It's not a very significant burden to tell a copyright owner to identify what it is that they own and have to do so promptly.

I can tell you that in a license
agreement, if a music publisher or record label does a deal with a service, they will often include a standard provision that is a work by work takedown right. They say that if I have a dispute or a publisher or a songwriter raises an objection or an artist raises an objection, we have the right to tell you to remove that work from what you're licensed to operate or use.

You'll have an argument, is it two business days, five business days, seven business days, et cetera. But the licensor expects you to do that. I don't see why the regulations or the Copyright Act cannot require copyright owners to have that same kind of obligation for prompt notification and to do so electronically.

I mean there are many, many standards and many people around this room, Keith and Les' company, and John, who deal with electronic exchange of information, and to require people to do that, so it is
immediate, it is transparent, and you can
query a database. You can find out whose works
they are, without these delays.

If songwriters can't agree, well
then a pox upon them. Don't entitle them to
money, and don't allow someone to bring an
infringement action. Once you figure it out,
then that work can be used and without
authorization maybe it's subject to liability
for infringement.

But don't penalize people because
the rights owners can't agree as to how to
allocate, or they want to withhold that
information to increase leverage. I think
that's an improper exercise of a copyright
owner's exclusive grant that's given to them
under the Copyright Act.

MR. WATKINS: Could I just respond?

MR. DAMLE: Sure, Mr. Watkins.

MR. WATKINS: And I'll shut up.

MR. DAMLE: Then I'll come back to
you.
MR. WATKINS: Umm, you know, I
don't want it to be said that I was suggesting
that users should be left to their own devices
and effectively exposed to infringement
exposure in the circumstance that you have
articulated, Gary.

You know, there are just
commercially available solutions to help users
avoid music as much as we're available to help
them license it. In the Pandora litigation,
for example, had Pandora come to us to help
them avoid the Sony ATV catalogue, we would
gladly have charged them for that service.

That's what it is. It's not a one-
time event. It is an ongoing process, because
they're constantly adding recordings, which
relate back to that Sony ATV data, and by the
way, that's why Sony ATV just giving them that
data would not actually get them to where they
need to be, which is to tie that information
to their recordings, and then pull down those
recordings.
That's something we do. We've done it in other contexts. We've done it with societies. I do acknowledge that there certainly have been other instances like what you're describing. I think given Judge Cote's finding in the Pandora case, and the judge's findings either -- and forgive me for not remembering in the television or radio case with SESAC.

They're not looking very favorably on the unwillingness of the rights owners and the societies, to you know, help the users avoid the music at issue. So I think we've seen already some evolution in their thinking about that, and you know, where this may ultimately lead is services may no longer have access to all the music.

But that may be a necessary sort of byproduct of a dynamic market for music rights.

MR. DAMLE: Okay, thank you. We're running out of time, so I'll get these last
two comments in, Mr. Rudolph and then Ms. Muddiman. Oh Mr. Bernstein, yes.

MR. RUDOLPH: I would say one thing too, and that is the -- while we've certainly operated under a different set of laws, we can't not pay attention to two things that have happened. One's a market action and the other is what I call a government action.

One is Pan-European licensing, and what has happened as a result of that. Primarily, the ability for foreign societies and/or players to participate, and I don't think it's -- if you don't think that a foreign society, several different foreign societies are looking at the U.S. market from a licensing perspective, then that's wrong. They are. Then you go to what APRA AMCOS has done in Southeast Asia, and they've kind of -- partially because of just the total disarray of the licensing regime within some of the lesser countries, I would say, of Southeast Asia, they've gone into each of the societies
and said we'll just handle it all for you. They say okay.

So now the Australian -- and they did this with the help of Universal Publishing actually, and they got their catalogues. They've got other catalogues now, and on a market basis, have gone in now and are able to issues licenses across I don't know how many countries it's up to, but I think it's six or seven, on a pan-Asian Southeast Asia basis.

So I think A, I would say please help facilitate an answer, and the -- because if not, we're going to start running into what I'd say are even third party foreign, who may have different initiatives than ours, or I should say incentives than ours, but yet the cost is there. So we always thought hey, we'll do the worldwide license out of the U.S. Well, the service may decide and the rights holders may decide as well that well, it's actually more beneficial for us to do a worldwide license out of a third party country, which we
do for sync already.

If somebody in the UK from a
publishing perspective or from a master
perspective puts a recording or uses
publishing in a movie, for example, and gets
a worldwide license for it, they get a
worldwide license.

So I think we need to kind of pay
attention to that as well, because it's
happening. There is movement afoot. Take
Merlin and the collective. It's something that
we have to suffer. It's something you guys
should consider, the Copyright Office should
consider as well when it comes to antitrust
exemption collective outside of what the
consent decrees kind of allow, because they
don't have that same set of issues. So thank
you.

MR. DAMLE: Great, thanks. Ms.
Muddiman and then Mr. Bernstein.

MS. MUDDIMAN: I was wondering if
we're trying to decide who makes the system,
and if we do agree that there should be one system, why should it not be the burden of the expense of that system fall to those people who have benefitted from intellectual property and, you know, the ISPs, you know, the gateways, the pipelines like Google and YouTube and, you know, the intellectual property owners.

You know all of them -- if they were to pool their resources, and including the government as well. If everybody was to pay for this system to be put in place, and there'd be representatives from those organizations to set the standard, you know, to create the system, I mean it wouldn't take us long.

I think we're full of creative ideas, and I think it's a very complex issue that could easily be resolved if the manpower and the brains put on it as soon as possible.

MR. LIPSZTEIN: I don't know if that was directly targeting me, but I mean if
everyone in this room who has data and intellectual property rights wants to give their ownership information to Google, like I'll be outside at the end of the day.

(Laughter.)

MR. LIPSTEIN: I think we would -- but in all seriousness, it's interesting. I mean I was expecting to be a little more active during this discussion.

But what impressed me from the very beginning of the discussion was that everyone seems to agree that there does need to be some authoritative source of this information, and I don't think anyone is questioning that at this point, digital services do want to pay.

That's -- we not only have to under our licenses, we ultimately want to create good products and good services for end users who are going to consume these and who are going to enjoy it, and the only way for that to happen is if the sources from which
that music comes are appropriately compensated.

We can't compensate those sources without knowing who they are with specificity. That's -- I'm amazed at the amount of agreement and I'm sort of flabbergasted. But what -- so to Jacqueline's, I think, to Ms. Charlesworth's, sorry, one of her first questions, what is the role of government in all this, what surprises me is that despite the availability of money and the willingness of licensees to pay, and the willingness these days of consumers to start signing up for paid services and money that can go to creators, there still seems to be a massive logjam with getting information to service providers, to pay appropriately.

I don't know what the right form of incentivization is. I don't know if it's making receipt of money contingent on the provision of data. As was said earlier, that seems to be the one thing that truly motivates
folks to even engage in what are otherwise seen as very slow and difficult processes, like resolving ownership disputes.

But there does need to be something to facilitate that process. Otherwise, I think we're going to be having this exact same conversation year over year, which I'm happy to have. But so yeah, the offer to me outside, that's totally open. I'm serious.

MR. DAMLE: Mr. Bernstein.

MR. BERNSTEIN: I actually think a lot of the problems with the data, and this is not why I flipped my card over, is there's a lack of trust. I don't think it's a good place to start, to suggest holding money hostage unless you deliver the data.

That's not even a starter, and that's why there's problems, because when you conceptualize something like that, you begin to wonder why people would want to work with you.
MR. LIPSTEIN: I guess I would ask what else to do if we don't know who to pay.

MR. BERNSTEIN: Well, that's where the audit rights come in as well. But that's another conversation. But to suggest that you would hold money until such time that people give you their information or they won't get money? I mean that's a non-starter.

MR. LIPSTEIN: Yeah. I think we ultimately don't want to hold any money. But I don't want to throw it into a black box either.

MR. BERNSTEIN: As long as that black box, I think, can be reviewed by anybody who wants to review it, maybe that's an idea that you could throw out there.

MR. LIPSTEIN: Yeah, and to that, I think we would look to the government to -- other folks here to help us understand where can the money go. If not to the person or persons who rightfully are entitled to that, whom? I would much rather --
MR. BERNSTEIN: I had flipped my card up.

MS. CHARLESWORTH: Well I think the question is, you know, partly what I hear going back and forth here is sort of like an ex-ante solution, you know, where you have data. So it's clear who to pay, and maybe you're suggesting something where you go in and claim stuff after the fact.

MR. BERNSTEIN: Well no. That wasn't what I was looking to suggest. In response to hearing that it sounded like money was being held hostage until you get data, and he suggested well, we also have the black box and want to pay it, then perhaps as part of these licensing requirements, should there be a black box or unidentified or unallocated, that somehow it gets posted somewhere.

With anybody who wants to have access to it, anybody, and then they can rightfully go into it and review it, and then submit their claims, representing that they
own or control exactly what they're claiming,
and then that money can come off the books.

To me, that's a real simple thing,
because that's probably one system of
transaction data that, you know, certain
information can be masked.

As long as you see the title and
you can say or determine that it's yours and
you can claim it, then perhaps there's a
mechanism you could start clearing out some of
this unidentified a little faster.

MS. CHARLESWORTH: Right. But I
think what's -- if you supplied a unique
identifier when you did that, and that unique
identifier somehow became available to the
industry, that would be enormously helpful
than having claims processes all over the
place, based on name and title.

MR. BERNSTEIN: Oh, absolutely.

MS. CHARLESWORTH: Because as we
all know, everyone in this room knows, you
have title -- you know, songs have the same
title. Names are spelled differently, and so
the question is how to get to a place where
you don't have to have that kind of -- or you
can cut way down on that kind of claiming
system.

MR. BERNSTEIN: Understood, and I
was referring more to the existing
unallocated, and then hopefully that will get
diminished.

MS. CHARLESWORTH: Yeah, no.

MR. BERNSTEIN: But just one reason
I flipped the card over is to address
something that you had mentioned earlier,
about it's been 10 or 15 years and why isn't
there a database at this point. I think it was
Mr. Lord who said give him a $100 million and
he'll do it. You could probably give less, 50
million and he'll do it.

(Laughter.)

(Off mic comments.)

MR. BERNSTEIN: But what I'd like
to say though in response to that is I think
we're recognizing the value associated with
that kind of work, and if someone's going to
do that, whether it's the government who
mandates that and has somebody put it
together, or through a private interest group,
whether it's us.

Whether Les already has something
or we're building whatever it might be, you
have to consider that if you're going to look
to the private market to build it, and then
say give it all away, then you're going to
demotivate us to build it.

So you have to have a balance for
when you decide you're going to do this, as to
exactly how that information is shared and
what is shared, because the effort and the
time, and maybe it will take $100 million to
build it. I don't think we're going to want to
-- I know we're not going to want to build it
for $100 million, and then open up the pipe to
everybody to suck out all the data, and we
have nothing to show for it.
So I just think you need to balance it when you decide, you know, how it's being built, how it's going to be regulated, what it is you're going to deliver to somebody to balance it out with the investment that comes with it.

MS. CHARLESWORTH: Yeah.

MR. DAMLE: Okay. That was a very lively discussion on Data Standards.

(Laughter.)

MS. CHARLESWORTH: At five o'clock in the afternoon no less.

MR. DAMLE: Yes, yes. Can we get a check on the score in --

MALE PARTICIPANT: 2 to 1 U.S.

MR. DAMLE: Excellent. U-S-A.

(Simultaneous speaking.)

MALE PARTICIPANT: And there was a goal -- while I was talking, two more goals were scored. I didn't interrupt --

MALE PARTICIPANT: And he didn't interrupt you.
MR. DAMLE: Great. Okay well, keep talking. That wraps it up for our last panel. I don't know if you had any wrap-up comments.

MS. CHARLESWORTH: No. Just I hope to see many, if not all of you here tomorrow. We have several other very important topics, and I think this has been a very productive day. I thank all of you for your time and attention.

(Whereupon, at 5:04 p.m., the meeting was recessed, to reconvene on Tuesday, June 17, 2014 at 9:00 a.m.)
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CERTIFICATE

This is to certify that the foregoing transcript

In the matter of: Music Licensing Study Public Roundtable

Before: U.S. Copyright Office

Date: June 16, 2014

Place: Los Angeles, California

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

[Signature]

Court Reporter

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