

U.S. COPYRIGHT OFFICE

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MUSIC LICENSING STUDY PUBLIC ROUNDTABLE

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MONDAY
JUNE 16, 2014

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The Music Licensing Study Public Roundtable was held at the UCLA School of Law, Conference Room 1314, 385 Charles E. Young East, Los Angeles, California, at 9:00 a.m., Jacqueline C. Charlesworth 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 GREAVES, Label Law Inc.
GARY R. GREENSTEIN, Wilson Sonsini Goodrich
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JOHN RUDOLPH, Music Analytics
JASON RYS, Wixen Music Publishing
CHARLES J. SANDERS, SGA

SESSION FIVE

PAUL ANTHONY, Rumblefish
KEITH BERNSTEIN, Crunch Digital
ERIC D. BULL, Create Law

ILENE GOLDBERG, Attorney

DEBORAH GREAVES, Label Law Inc.

GARY R. GREENSTEIN, Wilson Sonsini Goodrich
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1 P-R-O-C-E-E-D-I-N-G-S

2 9:08 a.m.

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

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

17 Certainly not everyone agreed on
18 everything, but I really felt that people were
19 talking in a candid way about ways that we
20 might improve our music licensing structure,
21 which many think is in need of substantial
22 improvement. Of course, Nashville is a lot

1 more civilized than Los Angeles, let alone New
2 York. So we're working our way up the ladder,
3 but we really hope we can maintain, you know,
4 the type of discussion we had in Nashville,
5 because ultimately I think it's in everyone's
6 interest -- not to mention the interest of the
7 public and everyone who loves music, to try
8 and do what we can to fix what's broken in our
9 system.

10 As I noted earlier in Nashville,
11 we at the Copyright Office have been very
12 impressed with the level of written commentary
13 we received. I mean, some of the papers were
14 long. They were carefully researched and even
15 footnoted. They did kill a couple of my
16 weekends, but I really felt they were
17 extremely valuable to read through. They
18 certainly offered a variety of perspectives,
19 but I think they were all -- all the comments
20 were done very carefully and we really
21 appreciate that, and we'll certainly be taking
22 them into consideration as we move forward, as

1 well as what develops in these roundtables.

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

9 Although the century-old Section
10 115 license and 75 year-old consent decrees
11 have performed important functions over time,
12 and have also been amended to some extent,
13 many believe that they haven't kept pace with
14 the current needs of the marketplace, where
15 users may need to license millions of work at
16 a time, and a range of different product
17 offerings to compete.

18 Many perceive inequities in the
19 rates and rate-setting processes that are
20 attached to these proceedings, and the fact
21 that the rates are set through different
22 forums and under different standards. But I

1 think the question before us then is assuming
2 we were to modify this system in some way, or
3 even reinvent it entirely, what should take
4 its place?

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

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

21 Second, there seems to be a fair
22 amount of interest in bundling rights and in

1 licensing, for example, mechanical and
2 performance rights together, and perhaps along
3 with the corresponding sound recording rights.
4 I think a question there is, is this something
5 we could achieve?

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

16 And finally, and the reason I'm
17 sitting here today, is what should the role of
18 government be in all this or not? What was
19 especially encouraging about the Nashville
20 sessions was the fact that the discussion, as
21 I mentioned, was truly a dialogue, and at the
22 conclusion, at least some of those in

1 attendance reported a glimmer of hope, a
2 rather rare outcome in any discussion of
3 copyright law these days.

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

11 Did I pronounce your name
12 correctly?

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

19 You know, the fate of the music
20 industry is in your hands, at least for a
21 couple of days. I also want to introduce my
22 staff, who have traveled out here with me. Sy

1 Damle, Special Advisor to the General Counsel
2 and Steve Ruwe, Senior Attorney-Advisor in our
3 office, who has spent many years working on
4 many of these music issues at the Copyright
5 Office, and they will be helping me moderate
6 some of the panel discussions.

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

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

20 At the end of tomorrow, we'll
21 provide an opportunity for observers who wish
22 to offer comments for the record, to do so.

1 Steve will have a sign-up sheet for that
2 tomorrow or maybe even today. If that's
3 something you want to do, see Steve and we'll
4 make arrangements for you to speak at the end
5 of the day tomorrow.

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

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

20 MR. RUDOLPH: John Rudolph, Music
21 Analytics. First panel, licensing and
22 investment in the market, current state of the

1 copyright law, current -- what's happening
2 currently in the market, regardless of what
3 the copyright law is. Those are of interest.

4 MS. CHARLESWORTH: Okay. Dennis.

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

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

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

13 MS. CHARLESWORTH: Okay. Mr.
14 Lipsztein.

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

22 MS. CHARLESWORTH: Great. Mr.

1 Irwin.

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

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

12 MS. CHARLESWORTH: Mr. Harbeson.

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

19 MS. CHARLESWORTH: Mr. Bull.

20 MR. BULL: Good morning, Eric Bull.
21 I have a small entertainment law practice in
22 Minneapolis, and I believe I'm here

1 representing the -- what were known as flyover
2 countries in smaller markets and independent
3 artists as they are impacted by the decisions
4 and their ability to participate in the market
5 as it exists.

6 MS. CHARLESWORTH: Okay. Ms.
7 Goldberg.

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

12 MS. CHARLESWORTH: Okay. Mr.
13 Bernstein.

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

20 MS. CHARLESWORTH: Okay. Mr.
21 Barker.

22 MR. BARKER: John Barker, ClearBox

1 Rights, which is an independent administration
2 company. I'm really here representing a newly-
3 formed group in Nashville of independent
4 publishers called IPAC.

5 MS. CHARLESWORTH: Okay, Mr. Arrow.

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

11 MS. CHARLESWORTH: Okay, great.

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

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

21 MS. CHARLESWORTH: There you go.

22 You wouldn't let me down, okay.

1 MR. BARKER: Well as you've heard
2 me say before, and this is one small part of
3 this, but in our opinion, independent
4 publishers or really any publisher's music
5 composition owners are not being served
6 correctly by Section 115 and the compulsory
7 licenses under that.

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

16 So our group is interested in
17 looking at alternatives to 115, and actually
18 getting rid of 115, which is today primarily
19 being used as a rate-setting mechanism, as
20 well as a process for licensing. We think we
21 can come up with a better process, and we
22 think free market is better for a setting.

1 MS. CHARLESWORTH: Okay. Mr.
2 Harbeson.

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

15 There are models out there which
16 do not use very restrictive end user license
17 agreements, but the dominant players, your
18 iTunes, your Amazon, make music available in
19 ways that libraries can't use them. When the
20 music is only available through these
21 services, and we have lists of music which is
22 made available only through these services,

1 then libraries can't acquire them, libraries
2 can't do the good work that they are doing in
3 selecting, making music available for their
4 patrons, preserving it for the future and the
5 like.

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

10 MS. CHARLESWORTH: Okay. Mr. Arrow.

11 MR. IRWIN: Yes. I just want to
12 follow up on what John was saying about 115,
13 and I agree with him, that there's no need for
14 115 anymore. It is, you know, archaic or even
15 unnecessary, may never have been necessary. We
16 think free market solutions will serve better,
17 and there's precedent for that in Canada.

18 They had a compulsory license
19 rate, and about 15 years ago they abolished
20 it, and the record companies and publishers
21 got together and created a rate structure and
22 a framework that still works today. There's

1 also precedent in the United States for record
2 companies and publishers negotiating.

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

10 MS. CHARLESWORTH: Okay. Mr.
11 Lipsztein.

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

19 In the space where legitimate
20 visual services are operating, the same
21 services who want to pay license fees, we
22 absolutely need the Section 115 license in

1 order to operate at scale and to be able to
2 license at scale.

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

9 We want services, the new services
10 to be able to come into the market and offer
11 music to end users quickly and effectively,
12 and the Section 115 licensing framework, I
13 think, helps

14 accomplish that.

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

18 MS. CHARLESWORTH: Okay. Mr. Marks.

19 MR. MARKS: I would follow up on
20 those comments of Mr. Arrow, Mr. Barker and
21 Mr. Lipsztein, as well as the opening comments
22 about Section 115 and the musical work

1 licensing regime in general. There does seem
2 to be some consensus that what we have now
3 doesn't work and it needs to be fixed in some
4 way, shape or form.

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

14 We obviously put out an idea that
15 we can expound upon, you know, later to do
16 this. It's just an idea. Consistent with what
17 Mr. Arrow said, it's really an idea for all of
18 us, the stakeholders to get together, to try
19 and figure this out, and then propose
20 something to policymakers that would work and
21 that could be operationalized, so that
22 services can get the licenses they need.

1 Consumers get access to more
2 services through hopefully more funding and
3 therefore the innovation that occurs from
4 that, and creators are all getting paid fair
5 market value and hopefully more is available
6 to them as a result of the licensing
7 efficiencies that take place.

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

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

21 So I've worked in music from many,
22 many different angles, and my interest in

1 being here is I spent the last four and a half
2 years trying to get music services licensed,
3 and it's, you know, it's really, really
4 complicated, and I feel like there's a lot
5 more money for the industry, if we can find a
6 better path and a simpler path with the rights
7 into the marketplace.

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

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

21 MS. NAUMAN: I think the biggest
22 issue is that right now, and I have -- you

1 know, when I worked in radio -- there was --
2 it was a much simpler mix of companies that
3 wanted to do things with music. In the
4 industry now, the distribution is largely in
5 the hands of technology companies.

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

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

22 I live here in LA and I can't

1 count the number of companies that have said
2 oh, we've decided to skip music. I know we
3 talked to you a few years ago, but we did a
4 deal with Paramount, because it was easier.

5 So I think there's -- I think that
6 there is a risk when technology companies that
7 are very linear, have to try to make a
8 decision on whether to go down a path of doing
9 a legally licensed music service before they
10 understand what their costs are, what their
11 risks are, or when they might be able to take
12 it to market.

13 So that's a bottleneck that I
14 really feel like is -- needs to be addressed,
15 and I think there's more money there for the
16 industry.

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

20 (Off mic comment.)

21 MS. CHARLESWORTH: I'm sorry.

22 MS. MUDDIMAN: I'm sorry I was

1 late.

2 MS. CHARLESWORTH: No. You're not.
3 We started actually the panel a few minutes
4 ahead of time, because my remarks, my opening
5 remarks were shorter. So thank you for joining
6 us.

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

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

22 That's one of our major issues.

1 When I was in England working, we
2 were protected, as we weren't able to sell the
3 whole of our copyrights, whereas here, work
4 for hire means that we're often compromised by
5 being forced to sell our copyright.

6 That's one of my major issues.
7 Sorry. I'm sort of just getting up to speed.

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

16 MS. MUDDIMAN: Well, having come
17 from England, we were protected, so that we
18 were not allowed to sell more than 50 percent
19 of our copyright to a publisher, and it was
20 against the law, more or less, to be able to
21 -- nobody was allowed to force you to sell
22 more than 50 percent.

1 So you always had a cushion, that
2 even if you were in a very compromised
3 situation where you had no power and were
4 being coerced by a third party -- whether it
5 be a TV company or a film company or a
6 publisher, at least you knew that worse case
7 scenario you're still going to have 50
8 percent. MS. CHARLESWORTH: Okay. But here in
9 the U.S., you're suggesting it's a different
10 system?

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

18 MS. CHARLESWORTH: Okay. I'm going
19 to -- Mr. Irwin, if you want to comment, and
20 then we'll welcome Ms. Miller, just since you
21 want to have a follow-up to Ms. Muddiman, to
22 perhaps explain the concern a little bit more.

1 MR. IRWIN: Yeah, I was just going
2 to explain it a little better. I'm originally
3 from Australia, and we have a similar
4 situation there. I've been here 24 years now.
5 Work for hire only exists in America. It
6 doesn't exist anywhere else in the world in
7 law.

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

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

19 We can come back to it later, is
20 that if the licensing model changes to direct
21 license for the audiovisual composers, and the
22 publishers do move from the PROs, which are

1 essentially the audiovisual composers'
2 greatest source of income and greatest source
3 of transparency in terms of how the money's
4 collected, we will have no way of knowing what
5 that money is, because we'll then be accounted
6 to by the publisher, on whatever basis they
7 see fit. We consider that to be a real danger.

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

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

18 I guess from my perspective, we
19 have an interesting role, where we both
20 represent tens of thousands of copyrights, and
21 at the same time we are tasked to police and
22 enforce those copyrights. Our greatest issue

1 that we found is that the laws don't actually
2 for --

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

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

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

1 copyright compliance.

2 MS. CHARLESWORTH: Mr. Bernstein.

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

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

8 MR. BERNSTEIN: The question was
9 what's broken, what would you want to fix.
10 Just taking a step back, I'm somebody that I
11 think is unique, in that I've been a part of
12 conducting more digital audits as part of
13 another company than probably in anybody in
14 the world.

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

21 What I think needs to be fixed is
22 incorporating reporting that's just not

1 limited to the benefit of the user. I often
2 hear about problems of matching. I think it
3 was mentioned it's hard to identify works,
4 hard to pay people, and a lot of complaints
5 about reporting's difficult.

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

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

22 So I think there needs to be

1 consideration with saying you can do your
2 licensing all you want, but under the terms of
3 the license, you have to agree to use one of
4 these parties to handle your reporting.

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

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

20 The law is not clear on who owns
21 these recordings. Some clarity in that could
22 be useful.

1 MS. CHARLESWORTH: Okay. Mr.
2 Lipsztein.

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

15 But there is a major concern, I
16 think, around transparency, if that data -- if
17 ownership information is just completely
18 absent from the industry, authoritative and
19 complete ownership information. I think our
20 folks in the library and other non-commercial
21 spaces would benefit greatly from
22 understanding who owns what and from

1 understanding just exactly how rights are
2 allocated across the landscape.

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

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

13 MR. BERNSTEIN: Outside of looking
14 at the mechanics, obviously, there's
15 confidentiality issues with respect to what
16 would get disseminated. I think that any
17 company that would qualify to continue to do
18 in-house reporting, I think there would need
19 to be rules set, that if they breach those
20 obligations under audit and they're incapable
21 of reporting accurately, they lose that right,
22 and then they do then have to use a third

1 party. You can add something like that in.

2 MS. CHARLESWORTH: Okay. I think --
3 well before I get to Mr. Barker, I think we
4 have Mr. Lemone just joined us, thank you, and
5 do you want to introduce yourself and I'm
6 putting people -- newcomers, people a little
7 bit on the spot and asking them to suggest one
8 sort of -- what's the biggest concern that you
9 see in music licensing, if you want to add
10 that after you introduce yourself.

11 MR. LEMONE: I run the TV and film
12 area at ASCAP out here in LA, and the biggest
13 area that I see as far as -- in concern of
14 licensing --is the reduction and up front fees
15 as far as composers, when they're all working
16 on shows and on films, that puts a burden on
17 ASCAP and BMI and SESAC, to make sure that
18 they're compensated in a way that's like
19 meaningful and that they can sustain
20 themselves.

21 I'm sure that Ashley can speak to
22 this as well, and the fact that ASCAP is under

1 strain on a number of fronts, and under a
2 possible threat to reduce or remove those
3 licenses and that source of revenue for them
4 is a source of anxiety for those who work in
5 that industry.

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

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

22 We're under threat from, you know,

1 other organizations, possibly like entering
2 into the marketplace as well. I would like to
3 hear more about, Ashley, about the role that
4 ASCAP has in the lives of SCL composer-
5 members.

6 MR. IRWIN: You want me to respond?

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

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

18 Initially, it used to -- the
19 common way of employing a composer in an A/V
20 situation would be to pay him a creative fee,
21 him or her a creative fee, and then there
22 would be a budget to record that music. That

1 over time has changed drastically and become
2 a lump sum fee, production and creative lumped
3 together as one fee.

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

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

20 And in the majority of countries,
21 that society is linked with -- that
22 performance society or performance collection

1 is linked with the mechanical licensing aspect
2 of that country as well. Here you have at the
3 moment three, two that are controlled by
4 consent decree and SESAC, that's a separate
5 entity.

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

20 We can make sure our money is
21 being collected from all the territories
22 around the world, and we can -- it's quite

1 transparent. As I said before, if the
2 publishers pull out and take our copyrights
3 with them, we'll have no way of really
4 knowing, other than to audit them, what's
5 going on.

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

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

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

19 MR. IRWIN: The writer's share --
20 both shares are collected by the -- at the
21 moment, both shares, the writer's and the
22 publisher's share are collected. But if the

1 publisher were to take their share, our share
2 would go with them, because at the moment
3 there's no bifurcation of the copyright.

4 MS. CHARLESWORTH: Okay.

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

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

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

21 MR. BARKER: I know we have a few
22 different topics going on. I'm going to go

1 back to the 115 topic that we talked about.
2 First of all, I think the quick discussion
3 between Mr. Bernstein and Mr. Lipsztein was
4 healthy, because there were problems pointed
5 out in these, and they were making those
6 known.

7 So I think that kind of dialogue
8 is very positive. I would like to challenge
9 the comment, Mr. Lipsztein that you had made,
10 that your business is dependent on Section 115
11 for licensing, because in my opinion, again
12 115 came around as one thing to prevent
13 monopolies 4 in 1909.

14 We are using 115 now as a process,
15 but that's not what the intent was. In fact,
16 115 is really not a process. 115 simply allows
17 a user to serve notice to license a song. I
18 just want to make sure that we don't mistaken
19 115 as a process from actually what could be
20 a better process.

21 At the last roundtable, somebody
22 suggested -- I think a couple of times people

1 said, you know, if 100 years ago we tried to
2 determine then what the proper licensing
3 structure would be, and we looked what we have
4 today, we would all realize that's nowhere
5 close to what it needs to be.

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

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

20 There's no way under 115 that a
21 particular writer or owner of the song can say
22 no to the song being used. The music

1 compositions are about one of the only
2 copyrights that exists, where the authors do
3 not have that right.

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

10 MS. CHARLESWORTH: Okay. Mr.
11 Rudolph.

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

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

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

1 Nashville, just actually outside of Nashville.

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

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

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

16 It doesn't matter to me. The
17 contract between the creator, the individual
18 creator who may be then part of a corporate
19 entity. Those protections should be the same.
20 The optionality of the creator to participate
21 or not. It's something that seems to get lost
22 in every conversation that I've been in for

1 really the last ten years, as running with the
2 largest independent music publishing companies
3 in the world, advising other people, having
4 sat on the trade boards as well.

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

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

18 Historically, the negotiation
19 process has rested with the master holders,
20 and I've seen it time in and time out,
21 particularly the major master holders, and
22 songwriters and publishers have had pushed

1 into rates, reduced often mandated by statute,
2 or some kind of reduced most favored nations.

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

13 Now I'm not necessarily talking
14 about 50-50, because I don't necessarily
15 believe that's going to be a case in a free
16 market scenario. We have seen it in other
17 places. I know it's commonly said in the sync
18 market, where there is a split that way. But
19 you can -- I can argue contrary to that, under
20 the mechanical right now, under the minimum
21 statutory rate, if somebody wants to charge a
22 higher rate they can.

1 But market forces actually come
2 into effect at that point, because if you're
3 writing a song for a big artist, and that
4 artist is not happy with the fact they're
5 charging more, you have to be at a certain
6 level to be able to have that impact apply.

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

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

21 That is not passed down to the
22 underlying creators. The same thing is going

1 to happen in this modified situation. We're
2 talking about billions of dollars that are
3 going to accrue up at the corporate level. Now
4 again, there's underlying contracts that occur
5 with it, but that is not something that
6 anybody else can negotiate in a free market
7 scenario.

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

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

1 they did.

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

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

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

22 What I'm trying to point out is

1 larger versus smaller market participants, and
2 what happens in that. We have a section of the
3 joint works which is something I think is
4 being used in certain scenarios and not in
5 other scenarios, and what equitable
6 distribution is out of the joint works part of
7 the copyright statutes.

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

18 By the time all the independents
19 caught up, I mean they were years and years
20 behind. There's no advances, really. I mean
21 there was something that was announced into
22 public record of what that was. But that

1 folded into a future not any kind of penalty
2 for the past, no equity, nothing, not that the
3 majors got equity.

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

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

22 That's the age we live in. I would

1 have rather it had been the other way where we
2 come in, and you have to say you have to come
3 to me to get that license. I still think that
4 is the proactive way that it should work. But
5 we have to facilitate the use of that.

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

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

17 MR. LORD: Okay, thank you. I think
18 first, I think you can see that the underlying
19 theme, regardless of from what direction we're
20 coming, the underlying theme is that
21 composers, creators, publishers are being put
22 to the bottom of the food chain, and I mean

1 you'll see next week in New York, the
2 Television Music Licensing Committee, the
3 Radio Music Licensing Committee, the digital
4 users of music, the production companies,
5 everybody wants to not have to pay the
6 composers and music publishers as much as the
7 market would allow.

8 There has to be some protection.

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

17 ASCAP, BMI, SESAC all have the
18 same issues in the marketplace, and we have to
19 do the best we can to protect the composers.
20 I would like to see something happen, that
21 gives the composers and music publishers some
22 authority with respect to their works.

1 The other thing I'd like to ask is
2 of Mr. Lipsztein, we keep talking or you keep
3 talking about needing to have the data of --
4 from of all the creators, whatever's attached
5 to a song, who created it, who's the rights
6 holders and so forth.

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

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

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

17 (Simultaneous speaking.)

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

21 MR. LIPSZTEIN: Sure. So when I
22 originally put my card up, I had this very

1 ambitious thought to like try to synthesize
2 all the different topics that we had started
3 with, but then I got a question directly asked
4 to me. But I'll try to do both.

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

14 On a granular level, we simply
15 need that information. If you think about it,
16 just at a technical operational level, if
17 you're going to do a deal that involves paying
18 on usage of a particular sound recording, for
19 example, you have to be able to identify that
20 sound recording and with compositions, the
21 process is frustrated by the fact that the
22 composition isn't in itself a tangible thing.

1 It's written but then it's
2 embodied in very specific sound recordings,
3 including those often uploaded by end users as
4 covers, and we have to be able to identify
5 those compositions.

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

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

16 I don't know of too many other
17 spaces where someone would pay for a license
18 for a thing, but then not actually be able to
19 understand under that license how much of the
20 thing they've used, or what that thing looked
21 like, what its size was relative to the whole
22 market.

1 It's really unique in the music
2 licensing space that I think we have these
3 sort of blanket licensing structures. But I
4 think they also deprive service providers and
5 ultimately the creators, whose content is
6 being used on those services, with true
7 insight into what was used, what was the value
8 of each individual instance of a use.

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

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

22 But I think in general, if there

1 are systems available that DSPs can plug into
2 and data that's normalized and readily
3 available, we will use it, report on it. I
4 think it's more a matter of how rather than
5 whether.

6 MR. LORD: Thank you.

7 MS. CHARLESWORTH: Okay. Mr. Marks.

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

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

20 But what's driving the withdrawal
21 is very -- right now a small but the future
22 for the industry, in terms of certain digital

1 uses. So I think actually that is very, you
2 know, very directly related to the broader
3 conversation here of trying to fix the overall
4 system.

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

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

19 This is a system that just can't
20 work the way it's working right now, and when
21 you have individual services that have to
22 build redundant databases that aren't even

1 built off of anything authoritative, you get
2 what Vickie was talking about earlier, which
3 is that there's no -- there's not any
4 certainty and there's no willingness of people
5 to fund.

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

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

18 What we tried to do, and again,
19 we've thrown out an idea. But we've tried to
20 address all of these things in the idea by
21 getting, and I think we were the only third
22 party, meaning non-songwriter or publisher

1 group, that proposed getting rid of the CRB
2 and getting rid of the rate courts so that the
3 rates are not determined by regulatory bodies,
4 but fair market value rates are set instead,
5 through negotiations that would happen between
6 labels and writers and publishers, to figure
7 out what the appropriate percentage, whether
8 it was, you know, whatever the ratio is and
9 for whatever the use is.

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

20 All the while, we've tried to
21 preserve the ability to say no by preserving
22 the first use right that exists today. There's

1 a market right now, there's a first use right.
2 Set aside 115, which comes after creation. But
3 at the time of creation of the composition,
4 the composer can say yes, I authorize this
5 recording, but only for this use or that use.
6 They have a free market to do that.

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

18 You know, a record label, if they
19 were the ones that were creating the recording
20 at that point, would have to make a decision.
21 Well, am I going to invest a certain amount of
22 money into creating this recording, based on

1 the fact that I know I can only exploit the
2 recording in these -- through the services, or
3 am I not?

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

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

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

21 MS. CHARLESWORTH: Yeah, no. I
22 think we should spend some more time with

1 that. I just want to make sure we get to --
2 and perhaps on the Sound Recording panel or
3 other panels. But I want to get to, I think
4 Ms. Goldberg, Mr. Arrow, Mr. Bull and Ms.
5 Miller, in that order.

6 Ms. Goldberg.

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

15 For example like Mr. Arrow said,
16 Section 115 really needs to be abolished or
17 changed. If you look at the rates, in 100
18 years the statutory rate went from two cents
19 to 9.1 cents for mechanicals. If you look at
20 postage for mailing a letter, in 1900 it was
21 two cents to mail a first class letter. But
22 right now it costs 49 cents. So you can see

1 it's not really keeping step with the market.

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

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

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

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

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

22 MR. ARROW: First on the data

1 issue, Google chooses to manage their data
2 themselves. But there are third party services
3 that also manage data like Crunch Digital, Mr.
4 Bernstein's company, MRI, Harry Fox's
5 Slingshot service.

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

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

22 Everyone here benefits in some way

1 from what songwriters do, whether a music
2 publisher is a partnership with songwriters,
3 or a record company recording the songs of
4 songwriters, or where a third party service
5 who's an intermediary in the transaction of
6 licenses based on songs, we all benefit.

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

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

17 MR. BULL: Okay. It's a fascinating
18 collection of people and the topics are broad
19 and different groups, trade groups and things.

20 But to me it's sort of -- if
21 you're addressing the Copyright Office and
22 copyright law in general, I see that the role

1 of copyright music needs to shift to education
2 to, you know, the creator groups, which are,
3 you know, I taught at a for-profit college
4 that was just kicking out thousands of
5 creators that are releasing material faster
6 than anybody can provide data on it, and at
7 the same time.

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

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

21 But why would Google ever trust
22 that and decide that -- how they're using

1 their information is -- so I think that level
2 of trust between these competing interests is
3 something that it's the Copyright Office's job
4 to try and say sort of like having say that
5 this meat is good enough to go into a grocery
6 store.

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

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

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

20 But the education of all these new
21 creators and then the transparency being
22 enforced and overseen in a way that these

1 distrusting groups say okay, if this is the
2 data we have to use and are going to use, then
3 that's what we'll use. There's just no
4 streamlining, considering the new supply.

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

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

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

22 MS. CHARLESWORTH: So you would

1 favor some -- it sounds, and let me see if I
2 can get it, some sort of perhaps regulatory
3 framework for the data, for data standards or
4 --

5 MR. BULL: Yeah, because I think
6 the technology exists to pretty much collect
7 the data, particularly if you've got creators
8 entering it accurately and they know what to
9 enter and, you know, because an engineer can
10 program most of that data before it ever gets
11 put to master and it can pop up on your
12 screen, and that's what Grace Note and these
13 other companies have been doing for years.

14 So I think the data and the
15 technology exists to be fairly accurate, but
16 it's the distrust of the competing interests
17 that do that. So if the government says here's
18 the data we're going to use, rather than Mr.
19 Bernstein's idea, which is this company or
20 this company, a small number of companies are
21 who we should use.

22 It's kind of how the PRO model has

1 developed in the consent decrees. We will
2 allow ASCAP and BMI to be the collection
3 agent, and probably SoundExchange in some
4 regard as well. There's nothing stopping other
5 entities from trying to get into that market,
6 other than nobody knows what the hell they do
7 and how to get into that market.

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

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

19 I just think that marrying the
20 technology that the data can provide and
21 allowing people to have to move forward under
22 that model gives a larger framework, and at

1 least puts us in the 21st century, rather than
2 the 19th and early 20th century.

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

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

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

17 MR. BULL: Yes.

18 MS. MILLER: Was just talking about
19 is the critical transparency. I do absolutely
20 agree that part of the, you know, if there's
21 revisions made, it needs to be around that
22 critical transparency, into those ecosystems.

1 I've actually been seeking for
2 that critical transparency, trying to find
3 companies that do have the ability to sort of
4 do what John was talking about, the take down,
5 publish, monetize, and I can't get access to
6 that.

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

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

20 What I think would be interesting
21 about that is I think if we just set up some
22 sort of a flatlined, streamlined rights

1 platform, which are happening now out of
2 lawsuits. They're not happening because
3 anybody's making decisions.

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

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

20 I'll give you an example just so
21 you can follow what I'm saying here. We have
22 a system that basically right now it embeds

1 the user's data, the actual data around both
2 the copyright owner as well as the person who
3 downloaded the track.

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

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

18 I mean some models I realize
19 that's impossible for. But I think there are
20 a lot of models where individuals' interests
21 can be better served by privatizing that
22 exchange, and then a flat rate basically

1 covers the basis for people who just want to
2 give their music away for free.

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

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

20 It's relied on the interests of
21 the YouTubes, which actually I think have done
22 a really good job, considering interests are

1 not aligned. Their interest does not
2 necessarily go to the rights holders. So
3 again, out of reaction, they built something
4 that they thought was going to work.

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

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

19 I promise you there will be a lot
20 of additional opportunity to discuss each of
21 these topics, and I think this has been a
22 really great opening discussion, because we've

1 sort of raised the key issues that we'll be
2 focusing on for the rest of the two days. So
3 Mr. Rudolph.

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

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

17 They have a very different
18 evaluation of this. It's more economic and
19 preservation of assets, probably, than
20 anything else. The writers and artists who are
21 in current agreement usually are with a
22 corporation. They have a very different drive.

1 A lot of that has to do with their market
2 share at any one time. But they will fall into
3 that catalogue kind of category at a later
4 date.

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

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

18 Otherwise, they're going directly
19 into technology and distribution and uses and
20 licensing, usually on their own. Or making a
21 choice to opt-in. There's three different
22 groups, in my opinion, that are the

1 stakeholders in each of those things.

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

7 MS. CHARLESWORTH: Thank you. Mr.
8 Lemone.

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

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

22 So the issue of -- that Ilene had

1 of going on the web and seeing different sets
2 of data for the same work won't exist, and
3 we're on a fast track to get that to happen.

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

6 MR. LEMONE: Yes.

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

9 MR. LEMONE: An integrated set of
10 data.

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

15 MR. LEMONE: I anticipate that it's
16 going to very broad, in light of the DOJ's
17 request to make that data more readily
18 available. I mean right now it's on the ASCAP
19 and BMI sites. There's going to be an
20 integrated site. I don't know exactly how the
21 information is going to be made available to
22 music licensees, but that's the plan.

1 MS. CHARLESWORTH: And are you
2 integrating ISRCs, ISWCs, and ISNIs or any
3 other standard identifiers into that database?

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

11 MS. CHARLESWORTH: Right, right.
12 But for the ISWC --

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

15 MS. CHARLESWORTH: Okay, thank you.

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

18 MR. HARBESON: Yeah. So most of
19 this discussion has been, you know, a
20 discussion between the industry and the
21 industry, and I'm kind of trying to stay out
22 of that, because that's really not something

1 that we have a stake in.

2 But we do have a stake in the --
3 in our patrons, in the public, and I'd like to
4 at least hear a little bit for restricting the
5 right to say no.

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

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

22 MS. CHARLESWORTH: Thank you. Mr.

1 Bernstein.

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

4 MS. CHARLESWORTH: You're going to
5 --

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

9 MS. CHARLESWORTH: Oh, okay, and
10 Mr. Anthony, I'm sorry. I didn't see you come
11 in. If you want to introduce -- no, no, no.

12 Well, ten demerits for you.

13 But no. If you want to just
14 introduce yourself briefly, explain what
15 Rumblefish is, and then obviously offer any
16 comments you have, I think we'd be grateful to
17 hear them.

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

21 MS. CHARLESWORTH: You're never too
22 late for the roundtable.

1 MR. ANTHONY: My name's Paul
2 Anthony. I'm the founder and CEO of
3 Rumblefish, and we focus on microlicensing,
4 high volume, low dollar amount licenses,
5 mostly for social video. Our definition of
6 social video includes animated gifs, business
7 presentations, slide shows, et cetera, et
8 cetera.

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

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

20 Many independent artists own both
21 sides worldwide, masters and publishing. So
22 the first five million were a lot easier than

1 what we anticipate the next five million to
2 be. So we've had to invest heavily in building
3 a lot of infrastructure, and I really do think
4 that there's a big opportunity to provide an
5 infrastructure just generally that fosters a
6 lot of innovation and healthy competition
7 amongst businesses, especially in the
8 microlicensing space, which would be very
9 simple, data standards and some sort of
10 certification.

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

18 So if there was some sort of
19 certification or data standards that could be
20 agreed upon, it would make things a lot
21 easier, and linking things, linking some of
22 the key pieces, because although the PROs have

1 very sensitive databases, that missing link
2 between publishing the masters for most viable
3 commercial services is very important.

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

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

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

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

18 (Whereupon, a short recess was
19 taken.)

20 MR. DAMLE: All right. Let's get
21 the -- let's start with the next panel. Our
22 next panel is on Sound Recordings, principally

1 about the statutory licensing regime under
2 Section 112 and 114. I know we have a few new
3 panel members, so what I'm going to do is
4 start with you Mr. Blake, and then we'll go
5 around to introduce yourself, who you're
6 representing here at the roundtable. Mr.
7 Blake.

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

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

18 We're members of both A2IM, the
19 Association of Independent Labels, and the
20 RIAA. We are distributed worldwide by
21 Universal Music Group, including for our
22 digital recordings. So we kind of sit in the

1 middle between the small indies and the
2 majors, and that's our background.

3 MR. DAMLE: Great, great. Now Ms.
4 Greaves.

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

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

15 MR. DAMLE: Mr. Hauth.

16 MR. HAUTH: Good morning. I'm
17 Senior Vice President with Salem
18 Communications, which is a media company
19 operating radio stations and various websites
20 and publishing houses. We serve the audience
21 interested in Christian and conservative
22 media.

1 My sideline is to executive direct
2 the National Religious Broadcasters Music
3 License Committee. We represent in that
4 committee approximately 1,000 radio stations,
5 both commercial and non-commercial, which are
6 specialty license, religious, classical and
7 spoken word.

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

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

13 MR. DAMLE: Great. Ms. Kossowicz.

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

19 MR. DAMLE: Okay, Mr. Watkins.

20 MR. WATKINS: I'm Les Watkins. I'm
21 with Music Reports. We are an independent
22 rights management organization and technology

1 platform. So we handle license administration
2 and royalty accounting for really any large
3 institutional music user, a lot of digital
4 music services, broadcasters and increasingly
5 copyright owners, record labels and even music
6 publishers.

7 MR. DAMLE: Great, and Mr.
8 Greenstein.

9 MR. GREENSTEIN: My name is Gary
10 Greenstein. I'm a partner with the law firm of
11 Wilson Sonsini Goodrich & Rosati, and I
12 represent a wide range of companies that are
13 licensees of different rights.

14 So interactive and non-interactive
15 streaming services, user-generated content
16 services, broadcasters, some trade
17 associations and I'm speaking my own behalf,
18 and the statement is not to be attributed to
19 any one particular client.

20 I am also a former Vice President
21 of Business and Legal Affairs at the RIAA and
22 the first General Counsel of SoundExchange. So

1 I've been on both sides of these issues.

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

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

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

18 MR. PRENDERGAST: I'll take it.

19 MR. DAMLE: Sure, Mr. Prendergast.

20 MR. PRENDERGAST: So SoundExchange
21 represents the copyright owners and artists in
22 the Section 112 and 114 rate settings in front

1 of the Copyright Royalty Board, and I think
2 one thing -- it's a two year cycle.

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

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

16 It also leaves open a lot of
17 concerns on both sides, not the least of which
18 for SoundExchange is that if we -- if we enter
19 -- it deters us from moving quickly on
20 settling with the various parties, because
21 we're concerned that those rates that we
22 settle at might have an adverse impact on the

1 evidence in the case and how the rates might
2 be set for other commercial webcasters in
3 particular.

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

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

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

19 MR. GREENSTEIN: So I think there
20 are several issues with the rate-setting
21 process for the CRB and I was involved, along
22 with Mr. Marks, when I was at the RIAA, when

1 the Copyright Royalty and Distribution Reform
2 Act was passed.

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

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

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

22 So I think it's very important

1 that if we look at the history of the rate-
2 setting process under Sections 112 and 114,
3 litigation has followed those decisions, and
4 it has taken extraordinary acts of Congress to
5 intervene, and essentially fix or undo the
6 rates that have been established by originally
7 the CARP arbitrators, and now the Copyright
8 Royalty Judges.

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

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

21 You are talking about rates just
22 for the sound recording that would have been

1 more than 100 percent of the company's
2 revenues, at the pure play rates, which are
3 non-precedential and cannot be admitted into
4 evidence or used for any purpose, they've only
5 recently gone below 50 percent.

6 When you gross those up to the CRB
7 rate, you're grossing up approximately 175 or
8 176 percent. So you're talking maybe 80 or 90
9 percent of the revenue of the most successful
10 company, and from what I've heard, it may be
11 the most successful company as monetizing
12 mobile traffic behind Google and Facebook, and
13 that would be Pandora.

14 So if you're having the most
15 successful company, under the CRB rates would
16 not have been able to survive, and out of the
17 2,200 services that I think SoundExchange may
18 cite, to talk about a vibrant market other
19 than broadcast radio stations who can
20 subsidize their online streaming because of
21 their over-the-air business, I think the
22 webcasting industry disappears.

1 I don't think that's beneficial to
2 songwriters, to music publishers, to recording
3 artists, to record labels. So I think the
4 standard itself has led to this situation
5 where people have had to run to Congress and
6 Congress has had to step in to change the
7 rates, but to give special relief. That just
8 doesn't seem to be working, and it may happen
9 again in Web IV.

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

16 So for those who don't know, when
17 you participate in the CRB process under 112
18 and 114, you start your case by having witness
19 statements, both experts and fact witnesses,
20 and they tell the story in the narrative and
21 the legal theory and then economists reply
22 upon that.

1 But when you're the non-
2 interactive services, and you know that the
3 record industry is very likely or
4 SoundExchange is very likely to rely upon the
5 interactive rates that have been negotiated
6 between the major labels and the interactive
7 services, that information does not come into
8 the proceeding unless the major labels choose
9 to put it in through their witnesses.

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

17 But now I think we're still
18 depriving the judges, the fact-finders of all
19 of the information that they need, and I think
20 that not having it be federal-type litigation
21 or what you have in the rate courts, where
22 there's an opportunity to have discovery

1 before you put in the case, is very
2 detrimental to the entire process.

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

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

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

17 MR. MARKS: Yeah. I think Gary's
18 right, in the sense that when we -- in 2002,
19 we were focused on, you know, you have an
20 existing system and how do you fix the
21 existing system, and the CARP, where you have
22 the ad hoc panel of arbitrators or arbitration

1 panels, that was the way the system had worked
2 there, the process had worked.

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

10 MR. GREENSTEIN: CRDRA.

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

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

1 those three parts, you know.

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

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

15 I think we can go on a first name
16 basis, given that we worked together -- in
17 terms of how much to expand that, because it's
18 just not clear to me that expanding it to
19 full-blown federal court discovery rules and
20 rules of evidence and things like that
21 necessarily lends itself to a better outcome
22 or process.

1 It certainly is very good for the
2 lawyers that are being paid on the case,
3 because it will take a lot longer to do, but
4 not necessarily better for the litigants. So
5 and I had one other point on the first point
6 that was made, but if you have a follow-up
7 question, I'll pause.

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

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

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

21 And as we talked about on the last
22 panel, that's what songwriters and publishers

1 have suffered from under the consent decree,
2 and in some cases we feel we have very
3 demonstrably suffered from, given that the
4 three services that exist, you know, that are
5 still under that old rate got -- the court
6 said, you know, the market place rate would
7 have been in a much higher range, but instead
8 cut it roughly in half.

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

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

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

1 cases.

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

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

15 MR. DAMLE: Remarkable consensus.

16 MR. GREENSTEIN: Can I add one
17 thing to, following up on Steve's point. In
18 talking about a hesitancy to adopt the federal
19 rules, I think we need to keep in mind the
20 fact that one company alone is going to pay
21 over \$400 million under the 114 license. That
22 would be Pandora again from public statements.

1 SoundExchange, I think, has
2 announced that they have distributed \$2
3 billion already. This is a marketplace that
4 is, for the time being, very significant in
5 terms of dollar amounts, with zero government
6 oversight.

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

18 I mean my view is Congress created
19 the statutory license for non-interactive,
20 non-subscription radio, so that that would be
21 something that the American people could have,
22 they wouldn't have to pay for it. My concern

1 is under the current regime and under the
2 current process for setting rates, you would
3 not have had non-interactive radio.

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

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

21 I think that would be disastrous
22 and very harmful to many participants,

1 artists, services and ultimately the American
2 people.

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

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

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

20 There's audit rights of the
21 services. There's audit rights of
22 SoundExchange by an artist but not by the CRB,

1 and then there's provisions for unclaimed
2 phones. There's nothing that says what are
3 SoundExchange's distribution policies? What
4 happens if SoundExchange has a dispute among
5 competing claimants?

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

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

20 It's very good to be a monopolist,
21 and SoundExchange is in a very favorable
22 position right now.

1 MS. CHARLESWORTH: Okay.

2 MR. PRENDERGAST: May I respond?

3 (Laughter.)

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

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

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

18 The audit rights that Gary refers
19 to in the regulations of SoundExchange by
20 artists and labels are real. Those audits do
21 happen, and in terms of transparency, one
22 thing that I want to hit here and it might be

1 in contrast to what was the subject of
2 discussion in the first panel, on the terms of
3 transparency, the royalty rates, the prices,
4 they are -- they're public, and they're in the
5 Federal Register and the CFR.

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

14 MR. DAMLE: Mr. Hauth.

15 MR. HAUTH: Thank you. We've been
16 at this a long time, this committee, and we
17 got baptized by fire in the first CARP. By
18 that I mean the radio industry, Salem, my
19 company, is represented by NAB as well as NRB,
20 and NAB was totally blind-sided when, in the
21 first CARP, that realized that radio stations
22 that stream would be under the Section 114

1 royalties.

2 Be that as it may, we ventured
3 into that proceeding under the first CARP and
4 basically had our heads handed to us, that is
5 webcasters and radio stations that streamed.
6 I'm not a lawyer, I'm a businessman. But I
7 have associations with some pretty good
8 lawyers, and so I have to use some notes here,
9 if you'll forgive me.

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

18 So this fee-setting standard of
19 willing buyer/willing seller has resulted, in
20 our opinion, in supra-competitive fees that
21 were established by the prior, and I
22 emphasized CRJs, Copyright Royalty Judges.

1 In the CARP, which was the first
2 proceeding in which you had an arbitration
3 board, which was a very cumbersome and
4 ineffective way to set the fee, radio
5 broadcaster were really on their heels, not
6 really knowing what was going on.

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

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

21 So they quickly settled with the
22 RIAA. I don't know how quick it was, but they

1 settled for an amount that was not really
2 willing buyer/willing seller.

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

11 That was a willing buyer/willing
12 seller. I'm not saying it's faulty in and of
13 itself. A willing buyer/willing seller
14 agreement sounds pretty good to me. 801(b),
15 Gary or Steve are much more qualified to speak
16 on that. But our side has said yeah, we want
17 12 an 801(b).

18 But we've got to have something in
19 place to undo what has already been set, and
20 I am very pessimistic that the CRJs are going
21 to come back and -- I hope that they will, but
22 review how the rates got to be where they

1 were. In the second proceeding, which was in
2 2005, I believe, we now have the Copyright
3 Royalty Board, which was a great improvement.

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

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

19 But nevertheless, the CRB reached
20 its decision on those agreements, despite
21 clear evidence that the major record companies
22 did not compete in entering those licenses.

1 The testimony was undisputed that the on-
2 demand services believed that they needed
3 licenses from all four major labels to have a
4 viable business.

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

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

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

1 you, Mr. Blake, and go around.

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

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

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

1 well.

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

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

15 You would not have as -- one of
16 these lesser designated agents, you would not
17 have direct auditing of the services. You
18 would not have direct reporting from the
19 services, payment from the services,
20 accounting from the services.

21 We determined that it was going to
22 be very hard to attract membership, when we

1 were simply going to be in the position of
2 having to go to SoundExchange to try to get
3 our money, as any attorney or manager would.
4 So I do think that that is a flaw and it's bad
5 policy, to create a single entity that is
6 given essentially a quasi-governmental
7 monopoly over administration.

8 This is not to speak poorly of
9 anyone at SoundExchange. They're very good
10 people there. They're very well-intentioned,
11 but the bottom line is there's a lot of
12 undistributed money there, a tremendous
13 amount. But you mentioned the audit right that
14 you might have as a label owner or an artist.

15 Of course, that is very
16 restricted. The audits are binding, I think,
17 on anyone who would choose to audit, right.
18 One audit is binding on anyone who would
19 choose to audit, and then of course the
20 membership agreements which exist at
21 SoundExchange otherwise limit the audit
22 rights.

1 These membership agreements are
2 very important, because you know, what happens
3 is an organization like SoundExchange
4 basically becomes a policy organization
5 advocating the positions of the owners and the
6 artists, and these membership agreements allow
7 them to do that by converting statutory
8 royalties over to funds that are available for
9 purposes like, you know, lobbying and other
10 purposes.

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

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

22 But what we've seen in the past is

1 they've basically tried to thwart direct
2 licensing when copyright owners have wanted to
3 do it, and largely that's just, you know, to
4 preserve their own institutional interests. So
5 I think those kinds of things need to be
6 looked at very carefully. Copyright owners
7 clearly are looking to do more direct
8 licensing, both sound recording owners and
9 musical work owners.

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

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

19 MR. BLAKE: So I am not a
20 litigator. I'm a transactional lawyer by
21 nature and business affairs representative. So
22 I'm not going to get into the specifics. I'm

1 not really qualified to talk about the
2 specifics of those procedures, other than to
3 say that I agree with the thought that as much
4 as possible, settlement among the
5 constituencies in the business world ought to
6 be encouraged and facilitated, and the whole
7 process where Copyright Royalty Judges or some
8 other system has to step in where resolution
9 is not able to achieved - ought to be
10 streamlined, because the costs of that
11 litigation affect all companies, including
12 small companies such as ourselves. A large
13 portion of the budget of an institution like
14 the RIAA goes to these kind of things, and
15 it's a necessary expense, but our mantra is
16 that we need to -- in order to survive, we
17 have to -- minimize expense at every level,
18 and that's certainly one of them. With respect
19 to Mr. Watkins' comments, I would like to say
20 that as an independent music company, we've
21 been involved in direct licensing
22 negotiations, and we've had conversations with

1 SoundExchange and other organizations, and no
2 one has ever tried to pressure us to not do a
3 direct license.

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

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

18 In my view, it's absolutely
19 undeniable that these services that give
20 consumers easy access to content at very low
21 prices compared to what it was years ago, do
22 supplant the market for buying records. I

1 don't think there's any question about it.
2 Spotify supplants it to a greater degree than
3 Pandora, but SiriusXM and Pandora, things like
4 that that are in the car, that offer a wide
5 variety of music, I think, have overall tended
6 to depress the market for the buying and
7 selling of recorded music.

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

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

21 I don't know what the right
22 standard is, how to put it into words, other

1 than I think fair needs to be a part of it.

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

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

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

19 But I think that somehow there
20 needs to be, whether it's explicit or
21 implicit, some kind of a sliding scale in
22 terms of that interactivity that determines

1 the rates. I'm not saying, by the way, that I
2 think Pandora is not paying a high enough
3 rate. Not at all.

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

9 MR. DAMLE: Thank you. Mr. Anthony.

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

18 I think this is very important.
19 It's an important element that benefits
20 creators and the licensees.

21 MR. DAMLE: Thank you. Mr. Bull.

22 MR. BULL: Yes thanks. Another -- a

1 similar quick comment is simply that in my
2 spare time, I had the privilege to read some
3 of the CRB decisions, and you know, it's that
4 I don't think that there are enough
5 stakeholders that even have a clue what's
6 going on, how it's going on, you know.

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

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

22 But to walk into that proceeding

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

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

18 MR. DAMLE: Thanks. Thank you.

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

21 MR. PRENDERGAST: Yeah thanks,
22 thank you. Well, I want to start I agree with

1 Les, that direct licenses are an important
2 competitive aspect to the music licensing
3 landscape, and I think the direct license
4 field is very robust. I think direct licenses
5 happen a lot, and as Mr. Blake said, they
6 enter into direct licenses, many of the labels
7 are too small to enter into direct licenses.

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

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

20 My last point is we used the word
21 "monopoly" with respect to SoundExchange, but
22 I just want to clarify that. It's not

1 SoundExchange that's setting the prices for --
2 or the rates for the use of sound recordings
3 on these statutory services. Those are set by
4 the judges, or if they're not set by the
5 judges, they're set as a result of agreements.

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

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

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

20 The next level up from that is to
21 be a member of SoundExchange. A member of
22 SoundExchange is a situation in which an

1 artist or a label says yes SoundExchange, you
2 can do additional things for us, collecting
3 foreign royalties on our behalf, for example,
4 or allowing us to use -- allowing
5 SoundExchange to use some of those royalties
6 to do additional things, such as lobbying or
7 other enforcement measures that we undertake.

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

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

20 I think it's a good --
21 SoundExchange or any other collective that
22 would be similarly situated, is in a position

1 to know the interest of their constituents, to
2 know the interest of the artist, to know the
3 interest of the labels, to have developed
4 expertise on those interest and those interest
5 issues, and therefore to be proactive on those
6 interests and issues.

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

9 MR. PRENDERGAST: Membership is
10 optional, yes.

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

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

16 MR. DAMLE: So just to follow up on
17 one other point that Mr. Watkins made, I'd be
18 curious to know what your response is. But the
19 question of unclaimed funds, unclaimed
20 royalties. Could you just comment on that? Do
21 you have a sense of how big that is? What is
22 SoundExchange doing to get that paid out?

1 MR. PRENDERGAST: Yeah. So to say
2 it's unclaimed, there's a lot of steps in the
3 process, from the time that SoundExchange
4 collects royalty to the time that they're paid
5 out to the artists and labels, and what
6 complicates things as well is that
7 SoundExchange operates, keeps its books on an
8 accrual basis as opposed to a cash basis.

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

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

22 That will delay the movement of

1 the funds through the pipeline, so to speak,
2 and then at the next step, we need to make
3 sure that we have the right information to pay
4 out to the right recipients.

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

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

1 pay out between 85 and 90 percent of the money
2 on the first instance.

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

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

10 MS. KOSSOWICZ: I'm much more
11 familiar with the 115 side than I am with the
12 112 and 114, so I leave a lot of the details
13 to other more experienced panelists on this --
14 in this session. But I did want to make a
15 couple of comments.

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

22 Also, 114 may benefit from some

1 more teeth with respect to compliance and
2 reporting.

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

9 And thirdly, finally, I know
10 terrestrial performance rights were mentioned
11 earlier. I just wanted to mention that leaves
12 us in, you know, a very small company of
13 countries that doesn't have a terrestrial
14 radio performance right, and it basically
15 clouds the flow of royalties internationally.

16 Also prevents U.S. artists and
17 U.S. labels without foreign infrastructures
18 from being able to collect possible royalties
19 from other countries. So that is something
20 that we'd like to see considered in these
21 proceedings.

22 MR. DAMLE: Thank you. Mr. Marks.

1 MR. MARKS: I think this is a good
2 time, now that Mr. Hauth has left the room, to
3 see if anybody disagrees on the terrestrial
4 rights.

5 (Laughter.)

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

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

20 At the request of the service that
21 were in existence at the time back in '95, to
22 have an organization to pay to, the recording

1 industry took upon itself the burden of
2 creating an organization, which eventually
3 became SoundExchange, first as part of RIAA
4 and then spun out separately as an independent
5 organization.

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

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

1 the web proceeding.

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

14 That's the same thing that's
15 coming up in this proceeding right now. So the
16 notion that, you know, you've got big bad
17 SoundExchange on one side and all these, you
18 know, small parties who are either
19 unrepresented or a few parties, you know, just
20 a paltry number of parties on the other side
21 that are completely outgunned is just -- it
22 just bears no relationship to reality, in

1 terms of how these cases have been -- have
2 gone forward.

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

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

20 Probably on one hand you could
21 count them, the pre-'72 is something that's
22 most recent. I think if you look at the broad

1 support of the label community and the artist
2 community, it's no doubt but they're
3 representing the interests of the industry.
4 The same thing with regard to what happened a
5 couple of years when Pandora and Clear Channel
6 and others tried to get the rate standard
7 changed, same kind of broad support.

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

16 MR. DAMLE: Mr. Watkins.

17 MR. WATKINS: I just wanted to
18 speak first to what I said about interference
19 with direct licensing, because it's a matter
20 of public record. There's a lawsuit pending
21 right now involving one of our clients,
22 SiriusXM, coming out of a set of events.

1 Basically on the very same day,
2 Following the start of their direct licensing
3 campaign, which we administered, a number of
4 industry groups came out with public
5 statements touting the desirability, if you
6 will, of blanket licensing, including
7 SoundExchange, A2IM, NARAS and I forget who
8 else.

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

16 So you know, be that as it may, I
17 think the historical perspective that Steve
18 offered is really important, and I'd forgotten
19 about that. It's very much true. But you
20 should know that when SoundExchange goes to
21 artists and labels to bring in members, you
22 know, it doesn't go to them and say "provide

1 us your tax identification information and get
2 your money, and oh by the way get it absent a
3 lot of deductions that you would otherwise
4 authorize if you sign up."

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

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

20 I certainly understand why owners
21 of sound recordings, pre-'72 sound recordings
22 want them to be payable. I understand why

1 digital music services do not.

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

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

20 But we know as an organization
21 involved in matching data, the more resources
22 you throw at it, the more money, the more

1 people in some cases, the better you do at
2 reducing it. It's that simple. So every dollar
3 spent on policymaking is not being spent on
4 reducing the unmatched.

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

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

9 MS. CHARLESWORTH: Yeah we're --

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

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

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

20 Maybe alluding specifically to
21 Pandora, and I would point out that the market
22 value, as reflected by Wall Street, is not an

1 issue of profitability, and the profitability
2 of the services operating under the statutory
3 license is much poorer than their market
4 valuation, and we shouldn't confuse Wall
5 Street market value with whether or not the
6 rates are appropriately set.

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

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

18 So I'm not sure that has to be a
19 statutory fix, and anything that creates more
20 confusion about interactive/non-interactive
21 will result in more litigation, and I think it
22 will harm artists if you kick Pandora, for

1 example, outside the statutory license.

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

15 With respect to the unclaimed
16 royalties, I think one issue that could be
17 addressed is that you just have that money
18 escheat to the states, instead of to the
19 private parties that control SoundExchange.
20 I'm not clear whether or not there's even
21 authority to give SoundExchange and its
22 representatives that money.

1 In terms of lots of people
2 participating in the CRB, in the last
3 litigated CRB proceeding, the one with the
4 rights where Congress had to step in again,
5 you had one non-interactive service, Live 365
6 litigating.

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

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

19 The question is what are those
20 rules, and what are the policy determinations?
21 Where are they published? Where are they
22 available on the SoundExchange Board? How do

1 people find out about them? I would posit that
2 you can't.

3 MR. DAMLE: Mr. Harbeson.

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

13 There are a lot of libraries who
14 would like to be able to make use of licenses
15 like this for a variety of purposes. Some
16 libraries are actually doing it now under fair
17 use doctrine. I suspect that there are people
18 in the room who don't agree that it's fair
19 use. There are many librarians that agree.
20 There are many librarians who would rather
21 license the content, and this is for things
22 like for audio-visual reserves, for

1 distributing curated content, online exhibits
2 or other kinds of library outreach activities.

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

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

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

18 MR. PRENDERGAST: Thanks. Yeah, I
19 just wanted to respond real quickly to what
20 was said. With regard to the lawsuit,
21 absolutely we deny the allegations. With
22 regard to what we did in that situation,

1 absolutely we would do it again.

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

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

14 MR. DAMLE: Mr. Marks.

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

21 This is exactly why compulsory
22 licenses are not good necessarily for

1 copyright owners, because they become
2 politicized. You can have parties after --
3 this is what's happened in every one of our
4 proceedings.

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

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

16 The one point I would just close
17 out with, that I failed to mention before, but
18 that's relevant to this in terms of the
19 antitrust exemptions and how these proceedings
20 work, we had a situation where the other side
21 was essentially in one of the prior
22 proceedings boycotting doing any licenses, a

1 head an organization basically saying don't do
2 any licenses with SoundExchange or the RIAA,
3 because it will just undermine our position in
4 the CRB.

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

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

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

21 MS. CHARLESWORTH: Okay.

22 MR. DAMLE: Okay. Thank you very

1 much. Yeah. So why don't we take a -- it's
2 about noon right now. Why don't we plan on
3 starting the next panel at 12:10? Is that
4 fine?

5 MS. CHARLESWORTH: Yes.

6 MR. DAMLE: Yes, okay.

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

9 MR. DAMLE: Yeah, ten minutes
10 behind.

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

13 MR. DAMLE: Right, thank you.

14 (Whereupon, a short recess was
15 taken.)

16 MS. CHARLESWORTH: All right.
17 Order, order in the court. No one's listening.
18 Yes, I need a gavel. Could the panelists
19 please take their seats? Thank you. I always
20 like hearing lively discussion in the room,
21 and this is our last panel before lunch.

22 Now that we've solved all the

1 problems of the 114 license, we'll move on to
2 115. Obviously, many of you have many things
3 to say about the 115 license. Based on the
4 written comments in Nashville, I think it's
5 perhaps the area that's viewed as being most
6 in need of something, and what that something
7 is is hopefully what we'll be addressing
8 today.

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

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

16 MS. CHARLESWORTH: Sorry, okay. All
17 right. Now enough of that. But you know what?
18 I'm reminded I didn't welcome the new
19 panelists, and we should go around the room
20 for anyone who wasn't here before, so they can
21 introduce themselves. Can you turn your tag a
22 little bit?

1 MR. RYS: My name's Jason Rys. I'm
2 Vice President at Wixen Music Publishing. We
3 handle songwriters George Harrison and Tom
4 Petty and a number of really great
5 songwriters.

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

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

10 (Simultaneous speaking.)

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

14 MS. CHARLESWORTH: Okay.

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

20 I've had video -- had bits on
21 YouTube actually, 50 million and one of them
22 from the bits. But I've also -- I've been long

1 time chair for the Performing Rights, now
2 called the Music Rights Committee of the
3 Society of Composers and Lyricists.

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

6 (Off mic comments.)

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

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

14 MS. CHARLESWORTH: Okay. Mr. Cohan.

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

18 MS. CHARLESWORTH: Okay. Well, I
19 think we have a really distinguished group to
20 discuss 115 with us here today. So I was just
21 about to pick on Mr. Lipsztein. Now I won't do
22 that. I think I heard you say in an earlier

1 panel that you thought that 115 should be
2 retained, and there may be others around the
3 table who share that view.

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

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

16 So from my point of view, the
17 Section 115 license is absolutely necessary,
18 but it does have some components that need to
19 be revamped. In particular, I think it needs
20 to be revised to reflect the operational
21 realities of service providers and creators
22 today.

1 In particular, so this came up in
2 this morning's session. The main feature of
3 the Section 115 license that I think needs to
4 be addressed is the question of ownership and
5 the availability of data under that license,
6 so that service providers can actually pay to
7 the individuals whose content they are
8 licensing.

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

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

20 We've seen that it's difficult for
21 new services to come in with partial catalogue
22 with not the entirety of the market cleared.

1 Consumers just don't want that, and to make
2 sure that these new services can still appear
3 and that existing services can continue to use
4 new content the moment it becomes available
5 and get it to consumers, I think we need
6 appropriate information available, so that we
7 know who to pay, so we can pay it quickly and
8 see that as a operational reality.

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

16 MR. LIPSZTEIN: Sure. I don't know
17 that there's anything magic about 115. I think
18 a licensing mechanism that allows music
19 service providers to make the full breadth of
20 music content that's out there in the world
21 available quickly and pay appropriately for
22 it, and be able to value those payments

1 appropriately, if that makes, are the sort of
2 key features of any licensing framework that
3 we're looking for.

4 MS. CHARLESWORTH: Okay, thank you.
5 I think I see Mr. Watkins.

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

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

20 In some cases, the clients have
21 voluntary licenses, but to license the
22 independent content that can be identified,

1 you know, we do use the statutory license, and
2 there are a number of services relying on it.

3 MS. CHARLESWORTH: Okay. The same
4 question for you. I mean does it have to be
5 115 as it's currently configured, or are you
6 just suggesting there should be some kind of,
7 you know, government somehow regulated or
8 sponsored license?

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

17 I think making it easier to file
18 electronic notices with the office for
19 unidentified works, and making it cost
20 effective to do that en masse would be
21 extremely helpful, and would eliminate
22 actually the problem of exposure on the

1 margins, if you will, because we can identify
2 and license 90 percent or more of the typical
3 digital music service usage through the
4 statutory license.

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

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

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

1 the publisher.

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

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

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

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

21 My experience has been that first
22 use licenses have never really been

1 negotiated. They don't command a higher rate,
2 because everybody I think just understands the
3 efficiency of being able to go and get that
4 license.

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

16 Leave the system alone as it is
17 with respect to sync licensing in non-record
18 products, but we need that simplicity. Even
19 for a company like ours -- thank God I never
20 had to do 1,500 licenses or anything close to
21 it for an album -- but the process of having
22 to go through and get licenses at other than

1 the established rate, when you simply -- when
2 prices in the marketplace are forcing more
3 content to be delivered to consumers, to even
4 entice them possibly to buy it, and
5 particularly audiovisual products.

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

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

20 MR. MARKS: Sure. I brought a cheat
21 sheet, so I don't forget anything. All right.
22 I won't repeat any of the reasons why we think

1 it's necessary, given we've had a pretty
2 robust discussion on that already.

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

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

1 where the sound recording isn't involved.

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

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

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

22 Instead, you'd have publishers and

1 songwriters negotiating their own percentage
2 rate with sound recording owners, to determine
3 a single or multiple agreed upon rates for
4 compositions for different uses. It could be
5 one rate across everything, it could be
6 multiple rates, depending on the uses. That
7 would be left for the parties to figure out.

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

17 I would just note that, you know,
18 we've heard a lot recently. But even in the
19 past, publishers and songwriters talking about
20 how their compensation should bear a
21 relationship to labels compensation recently
22 in the drafting of the Songwriter Equity Act.

1 So we're trying to pick up on
2 things that we've heard from the publishing
3 and songwriter community, and also what we've
4 negotiated in the context of the current
5 mechanical rate. So a number of categories of
6 uses for the mechanical rates include, as a
7 minimum, some percentage of what the label is
8 getting.

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

16 What we've said is that's for
17 discussion. That would be for the parties to
18 discuss. I certainly could see a lot of
19 benefit to having every -- you know, so many
20 years, another discussion about, you know,
21 whether a certain ratio is right or, you know,
22 new uses that have come along, whether that

1 ratio that was agreed to earlier should still
2 be applied.

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

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

17 Sound recording owners would then
18 go negotiate market-based licenses like they
19 do today, and they would do it individually.
20 It's not collectively. No change to how they
21 do it today, and based upon those licenses,
22 there would be a knowable rate for the

1 publishing rights, based on what had been
2 agreed to in the market.

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

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

22 But there's a direct relationship

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

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

18 So that should be a discussion
19 that we have, to ensure that, you know, money
20 is flowing and to the extent that there's a
21 question about the kinds of deals that are
22 being done today, that that's captured as part

1 of what is agreed to with the ratio.

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

11 MS. CHARLESWORTH: That's the fine
12 print.

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

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

22 MR. COHAN: That's right. I

1 actually didn't notice that Mr. Arrow's card
2 was up before mine, and I --

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

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

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

18 So there's been a lot of
19 discussion about the abolition or elimination
20 of the Section 115 license, and based on what
21 we think are very, you know, sound principles
22 of, we sort of agree with Register Peter's

1 point that was cited in a number of comments
2 that as it's an abrogation of an exclusive
3 property right, it should be done very
4 carefully and very narrowly.

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

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

16 But I think given that a lot of
17 the discussion, a lot of time was probably
18 going to be required before any elimination
19 could be implemented, we think it would be
20 extremely important to focus in the short term
21 on the fixes that have been proposed,
22 particularly in the Songwriter Equity Act, and

1 particularly the elimination of the 801(b)
2 standard, which there's been some discussion
3 about already.

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

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

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

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

16 MR. ARROW: So first, just as I
17 stated before, we're ideally for the
18 elimination of the compulsory license. We
19 think it's completely unnecessary. We think
20 that the free market solution would work
21 better, just in terms of establishing a rate,
22 and also in terms of establishing a licensing

1 process that is a lot less complicated and
2 cumbersome than it is today.

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

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

12 But obviously they don't trust
13 that.

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

21 For years, record companies have
22 been licensing music from publishers. I

1 remember from the beginning of the compulsory
2 license, and at least over the last 30 years,
3 it's the time that I've been in the business,
4 we don't feel that they've done the best
5 possible job of licensing or paying royalties
6 to us.

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

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

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

21 MS. CHARLESWORTH: Do you have a
22 response to the specific idea of coming up

1 with a share, you know, like a publisher label
2 share, or is that something you can't -- you
3 haven't been able to formulate a response?

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

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

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

20 MS. CHARLESWORTH: Ms. LaPolt.

21 MS. LAPOLT: I'd like to mirror the
22 comments that Mr. Arrow said. I feel the same

1 way. My practice represents a number of --

2 MS. CHARLESWORTH: Can you speak
3 into the mic? I just want to make sure we can
4 hear.

5 MS. LAPOLT: I'd like to mirror the
6 comments of Mr. Arrow from Universal Music
7 Publishing. My law firm represents a lot of
8 songwriters, a lot of A-list songwriters, and
9 the concerns that Mr. Arrow has we also have.
10 We believe that a willing buyer/willing seller
11 standard should be applied to the mechanical
12 license.

13 It's severely outdated. It was
14 enacted in 1909. Things were very different in
15 1909, as David Israelite, president and CEO,
16 just testified under the House Subcommittee
17 for Intellectual Property and the Internet on
18 Tuesday. He made a point to say when the
19 license was enacted, there was maybe 100,000
20 songs in the marketplace.

21 A player piano company had all but
22 monopolized the market by exclusively

1 licensing a large portion of all existing
2 music, thus enacted to promote competition.
3 However, there's now over 25 million songs in
4 the marketplace.

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

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

17 I really like this idea that the
18 music publishers and the labels would sit down
19 and come up with something. No bullying, don't
20 bring your lobbyists. Stephen, you can come
21 but you know, here's the thing. All sit down
22 and work it out and figure out what could

1 work, because 50 percent-4 percent doesn't
2 work.

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

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

19 We can't have a situation where
20 the record company is controlling the
21 licensing of all these rights, and then we
22 have to wait for the record company to account

1 to us and, you know, that doesn't work as
2 well. We need to have direct relationships
3 with these services, so we can ask them
4 questions and have an audit right to begin
5 with.

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

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

22 And then coupled with the fact

1 that we all fight with each other. The sound
2 recordings fight with the musical compositions
3 and the songwriters fight with the record
4 companies and so on and so forth. It just
5 exacerbates the fact that we can't get
6 anything done, and it's very
7 counterproductive.

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

17 As long we keep the creator, the
18 music creator at the forefront of our minds,
19 and know that any law that doesn't protect
20 them is no law at all, to quote Register
21 Pallante, who I just love. So thank you for
22 your time.

1 MS. CHARLESWORTH: All right. Well,
2 we'll just take lunch now. No. That was very
3 inspiring. Thank you, Ms. LaPolt. I think Mr.
4 Greenstein.

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

12 What I think some of what Dina
13 just said has to be kept in mind. 25 million
14 songs in the marketplace. I think it is
15 unrealistic to expect that if you do away with
16 115, you will have the vibrant, digital music
17 marketplace that we have now and that has been
18 growing for many years.

19 If you do away with this, I think
20 you basically put the brakes on full stop. I
21 also find it surprising that a lot of the
22 fights that are going on between publishers

1 and sound recording copyright owners over the
2 allocation, and this is a money issue, I
3 think, to a very large degree, are by
4 companies that are under common ownership.

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

14 A solution, I think, would be not
15 only to go where the RIAA is going, but to
16 follow an existing structure that exists in
17 the Copyright Act under Sections 111 and 119,
18 which is there's music. To the consumer,
19 there's music. There may be a sound recording,
20 there may be a musical work. Maybe they know
21 the songwriter. Maybe they know the different
22 performer.

1 But from a DSP that's building a
2 technology, trying to bring something to the
3 consumer, they want to pay for music and say
4 you all, the rest of you in this room who
5 represent publishers, record labels, PROs,
6 mechanical rights administration companies,
7 you figure out how to allocate that money.

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

18 So for sports who I used to
19 represent, baseball, the NFL, the NHL, et
20 cetera, figure out how to do it. For music,
21 ASCAP, BMI and SESAC, figure out how to do it.
22 The services should not be forced to negotiate

1 with the record labels and be held up, or to
2 deal with the publishers without the safety
3 valve and government oversight of this
4 collective action, and figure out how much is
5 going to go to different parties.

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

16 Both the PRO had it and the
17 publisher presumably had it, although there's
18 a separate issue. If anyone's tried to do a
19 deal with the publisher, they don't tell you
20 what they own. They don't keep track of what
21 they own. They indemnify you against a third
22 party claim.

1 The marketplace is not going to
2 solve this problem. If the problem is the --
3 I forget, Dina, the number you've quoted, 50
4 percent versus 4 percent for the allocation,
5 and Mr. Van Deere of Sony/ATV talks about how
6 he wants parity.

7 Going back to my earlier comment,
8 when Pandora's paying upwards of, you know, 70
9 or 80 percent if they were paying under the
10 CRB rates and the publishers want parity, at
11 150 percent of revenue, there's no business
12 here.

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

20 If the publishers don't like that
21 they get four percent and Pandora's getting
22 50, let them figure it out amongst themselves.

1 Figure out what the value is of music. Not for
2 a reproduction, distribution or public
3 performance for a musical work or a sound
4 recording.

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

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

15 Any other effort to get rid of 115
16 is going to just create a nightmare, and it's
17 already incredibly challenging advising
18 companies as to how to get these rights. We
19 haven't talked at all about MFNs, and how that
20 is destructive in the marketplace to drive up
21 rates.

22 It is very complicated, and it

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

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

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

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

19 MR. MARKS: Just very quickly. As
20 much as it's great to have you agree with us,
21 I'm not sure we're in complete agreement. So
22 it sounded like what you were saying is let's

1 just throw everything under some kind of
2 government regulation, where some rate court
3 or some body is determining what the pie is
4 worth.

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

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

18 I think a lot of that would stay
19 outside. I think for non-interactive services
20 and interactive services, the Spotifys,
21 Rhapsodys, Beats Musics of the world, where
22 there's already very active MFNs that ensure

1 the same payment to different copyright
2 owners, and that you're dealing with how to
3 allocate that money, that's what I think would
4 benefit from being placed under the system,
5 where you have a statutory license, a payment
6 for music and then the rights owners figuring
7 out how to allocate that.

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

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

19 But why should the services be
20 grasses these elephants fight amongst
21 themselves? Because if they're each given
22 their own exclusive right, they're all just

1 going to hold up the services.

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

7 There's no service that continues
8 to exist when they're paying confiscatory
9 amounts to publishers and labels. That's what
10 I -- I'm convinced that that's what would
11 happen if you removed DOJ oversight and the
12 115 compulsory license.

13 MALE PARTICIPANT: Was that a yes
14 or a no?

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

19 MR. RYS: Sure. I'd just like to
20 start to say that, you know, I think we need
21 to take a step back and realize that we're
22 talking about art and music and these are

1 people, and it's not just about content and
2 it's not just about, you know, the public
3 wants and consumers and metadata.

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

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

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

21 As a songwriter, under the
22 compulsory license, they're forced to do

1 business with whoever wants to use their
2 music. They can't say no, and you know,
3 copyright, it's a property right, and you
4 know, the creator of these copyrights should
5 be allowed to decide how to exploit them and
6 with whom to do business with.

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

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

20 I would say that there should be
21 an ability to opt out. If there is a Section
22 115 license and some sort of government

1 framework for licensing, allow someone to say
2 no, to do it on their own, you know, to
3 license at rates that feel are fair, to say no
4 to, you know, undesirable business partners.
5 That's pretty much it.

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

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

11 MR. RUDOLPH: Thank you. To the
12 115, in the last CRB negotiation, it was I
13 think at one point I'm going to say 16
14 different ideas or combinations of items it
15 would fall under as far as combinations of
16 plays. One thing that's real interesting about
17 all this is the development of technology,
18 right.

19 I think we all remember having
20 very heated discussions around ringtones, for
21 example, which have become something no one's
22 even mentioned in the last, you know, or you

1 didn't hear anything in the testimony or
2 anything else, right.

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

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

17 So this ability to actually have a
18 market negotiation in some real time, and then
19 if a group or a section choose to apply kind
20 of a blanket license idea on top of that, I
21 mean we're not -- we're actually not far away
22 at all.

1 I think what we need is actually
2 the legislative efforts and the Copyright
3 Office efforts, which has already been said.

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

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

20 There's issues, it doesn't catch
21 everything. There's audio recognition, but
22 there's layers of technology that are built in

1 there that are highly supportive and a while
2 essentially for a market rate negotiation
3 that's going to happen again fairly soon.

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

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

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

20 I think what the American people
21 truly suffer from is the ability to ever hear
22 music because the creator makes a choice of

1 how to make a living, and they're not able to
2 make a living under the way that we're talking
3 about licensing now.

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

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

15 MR. BERNSTEIN: Thank you. One
16 comment before what I'd like to speak about a
17 moment is back to Gary. I don't think there's
18 25 million sound recording titles out there
19 that are in the marketplace.

20 I think these databases you speak
21 of have a lot of duplications, and that what
22 we're really talking about here, I believe

1 somebody submitted to the Copyright Office, in
2 their writing there was maybe up to 300,000
3 songs that make up 90 -- Les is taking credit
4 -- 300,000 songs that make up 90 percent of
5 the earnings.

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

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

22 I've seen situations of data

1 conducting audits under direct licenses, where
2 the data's gone. That data was too big is what
3 we were told, or it was summarized. The
4 granularity is gone. Recordkeeping is
5 terrible, and you don't hear about it, because
6 it's under these direct licenses.

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

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

21 So this audit, as I've said from
22 my experience, I've seen transactions

1 disappear. I've seen intentional conduct,
2 where people have literally taken
3 transactions, moved them this way to a
4 financial reporting system and moved them over
5 here, just never to be seen again, and our
6 clients would never even know that happened
7 until we did the audit.

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

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

1 10,000 people auditing them. It's just a basic
2 right to have.

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

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

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

20 The thing that my group of
21 independent publishers is going to differ a
22 lot from what's been said around the table is

1 when comments are made to get rid of 115, but
2 if we don't, then here's how to change it. I
3 have to believe that if we today started with
4 a blank piece of paper and 115 did not exist
5 and we were trying to come up with a solution,
6 that solution would look nothing like 115.

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

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

22 First of all, 115 needs to include

1 a fair market value, and actually that's what
2 Mr. Marks said. He also said simplified rights
3 and aggregated rights. I totally agree with
4 that. It needs -- we need to have the audit
5 transparency as Keith was talking about.

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

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

21 Whereas the song rights owners,
22 it's not benefitting us to give away product

1 to market necessarily, and there are a lot of
2 ways that by giving up that control, we would
3 be giving up certain rights.

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

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

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

21 To Kill a Mockingbird is not
22 available on any electronic book form, and

1 there's nobody yelling and screaming that the
2 commerce is not working, because perhaps one
3 of the most popular books of our time, some
4 have rated it second to the Bible, is not
5 available in an electronic form.

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

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

17 That's a central issue. Now how do
18 we deal with that in the digital industry?
19 I've had a conversation offline with another
20 person who said, you know what? We don't have
21 to have 100 percent of the music to go to
22 business. We just need a high percentage, but

1 we need to clearly know the ones that we
2 cannot use, so there's no liability or risk
3 there.

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

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

17 Now I can say this later and I
18 said this in the last session or in the last
19 roundtable. I would throw out the idea of if
20 we sunset 115, if we pick a period in time, if
21 that's two years or whatever period of time
22 is, to say hey, we are going to let the free

1 market establish this new process, so that we
2 can know that it's coming and in a two-year
3 period of time, we sunset 115.

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

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

22 MS. CHARLESWORTH: Thank you, Mr.

1 Barker. Mr. Arrow.

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

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

19 So obviously, the goal is to
20 license all of our music. But if there's a
21 writer who doesn't want to, there's a
22 publisher who doesn't want to, that should be

1 their right, and it doesn't kill the service.
2 I subscribe to Spotify. You can't listen to
3 the Beatles on Spotify. There's a lot of stuff
4 I can't listen to Spotify.

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

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

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

21 MR. LIPSZTEIN: So no one has to do
22 a license with YouTube, and once on YouTube,

1 they can use our content management system to
2 manage their content on the platform.

3 (Simultaneous speaking.)

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

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

20 The data is voluminous. It's not a
21 static data set. You have new recordings being
22 added all the time that relate back to a pre-

1 existing musical work. But you know, I'll
2 speak for what we're doing in our company. I'm
3 very proud of what we've accomplished in this
4 area.

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

11 So no matter what you do with the
12 115 license, we'll adapt, John. I would say
13 don't take what I said as advocating the
14 status quo. You know that's -- in our nature,
15 we will adapt. But don't throw out the things
16 that actually are working, and that is
17 actually working pretty well.

18 I think if you create an
19 environment in which entrepreneurs can
20 continue to solve that problem, they will. But
21 don't be mistaken. There is a cost to that.
22 The services would like to eliminate that

1 cost, you know. Traditionally record
2 distributors have borne that cost.

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

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

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

19 In over 35 years of practice as a
20 music lawyer representing some of the biggest
21 songwriters in the world and their publishing
22 companies, I frankly can't think of a single

1 instance in which a songwriter or a
2 user/publisher said I don't want that artist
3 to cover my song.

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

11 To contrast, you know, the sound
12 recordings alone with the fixed mechanical
13 rate, there are problems with that, but you
14 know what you're getting and you know what
15 you're going to have to pay for. We don't have
16 that for audiovisual uses. It's a free market
17 negotiation, and what I can tell you is in my
18 experience now on the record company side of
19 things, which is only the last nine years or
20 so of my life, it is just so much more
21 difficult, and the profit margin for record
22 companies has just gotten crunched, because

1 you now have many great projects that you
2 would love to be involved with, such as an
3 artist going and doing a concert and putting
4 it out on DVD.

5 Well, the public would like to
6 have it on DVD. They'd like to have it on CD.
7 You could charge \$18.98 for the CD list price
8 before all of the discounting and so on. You
9 can charge about \$14.98 for the DVD. If you
10 put them together, you can probably charge
11 \$19.98, so maybe you get a buck more.

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

21 All it takes is one publisher who
22 doesn't want to go along, because they've only

1 got one song or just, you know, if they think
2 it's, you know, it's a very important song and
3 it may very well be that it is. Hey, it's a
4 great song. But that throws everything out due
5 to MFN licensing.

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

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

19 They want to make money for
20 themselves, but I can tell you. I could look
21 at a bunch of projects we've done over the
22 last few years, where the publishers made good

1 money and we made nothing, or we lost money.

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

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

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

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

21 So and so's song in the style of
22 Dan, that are really confusing the public and

1 causing the public to purchase the wrong song
2 or the wrong recording of that song, and I
3 don't think it's beneficial to the public or
4 to the copyright owners when that happens.

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

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

15 MS. CHARLESWORTH: Mr. Barker.

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

21 However, there are -- in my
22 understanding, I knew that there was a

1 conglomerate license through Harry Fox Agency,
2 that you could be a part of that and give that
3 agency your rights to license with YouTube,
4 and your rights to control that.

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

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

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

1 115 anyway.

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

8 It can be broader and cover other
9 synchronization type uses like YouTube has.
10 One other thing just to throw out, and as I
11 had mentioned casually, this proposal of
12 sunsetting 115 and then after two years
13 getting rid of the rates totally, an idea that
14 was just kind of brought up, not necessarily
15 the same thing, but there's always a fear of
16 if a copyright has let's say five or multiple
17 owners, can a minority owner then hold hostage
18 the license of that use, which at this point
19 yes, that is the case, if it's a license
20 outside of 115.

21 What I would propose there is
22 something along the lines of what the

1 Copyright Office has done in terminations, and
2 that is an agreement that the majority of song
3 owners could allow a license, and if I'm a
4 minority owner in a song, I can be overridden.
5 Therefore, I cannot hijack a specific use.

6 Now I only do that because I think
7 I get in partnership -- I knowingly get in
8 partnership with the other owners of a song
9 this right, and I realize I'm a minority.

10 I'm not trying to give up rights
11 for each owner, but just in a situation in a
12 particular song, if I'm a minority owner, I
13 might be able to be overridden in this
14 licensing scheme that we're talking about.

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

20 (Simultaneous speaking.)

21 MS. CHARLESWORTH: Fortunately
22 we've scheduled a fairly long lunch hour. So

1 I think we probably can make it back, I hope,
2 by 2:30. I know there's a -- that gives you
3 more than an hour, and we can get back on
4 track, so to speak. I know there's like a
5 student café nearby if you sort of cut through
6 the courtyard.

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

12 (Whereupon, at 1:23 p.m., a
13 luncheon recess was taken.)
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1 people who license music in, that the rates
2 are too high.

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

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

1 rate-setting processes that we should accept.

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

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

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

21 If we're going to have multiple
22 entities evaluating the marketplace to

1 establish rates in the event of whether it's
2 anti-competitive behavior or to prevent anti-
3 competitive behavior, I think it's critical
4 that the rates be considered together, because
5 if you have publishers talking about parity,
6 and the CRB is going to establish a rate of 50
7 to 70 percent of revenue hypothetically on an
8 effective per performance basis, you can't
9 give publishers parity.

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

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

22 So it's very problematic to do

1 this piece, you know, which is why I think
2 this concept of fee for music makes sense. MS.
3 CHARLESWORTH: Okay, and so am I hearing you
4 correctly? Are you suggesting it needs to be
5 done sort of in a single forum, or just that
6 there needs to be some interaction in the
7 rate-setting process?

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

19 If you're doing it at different
20 times in different fora, I think it leads to
21 problems. The easiest is to actually do it all
22 at once, but there's a lot of opposition. I'm

1 probably the only voice in the room supporting
2 that right now, at least around the table.

3 MS. CHARLESWORTH: Ms. LaPolt.

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

15 These things must happen. I'm not
16 so opposed by Mr. Greenstein's position of
17 having it done at one time. Neal Portnow just
18 testified at the House Judiciary that maybe we
19 consider an omnibus bill, which I'm not
20 opposed to that as well either. However, the
21 current legislation that's pending right now
22 should not be compromised, if we are to

1 consider any type of music omnibus bill, where
2 we would sell all these issues in fell swoop.

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

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

11 MS. LAPOLT: Correct.

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

17 MS. LAPOLT: If all parties could
18 be represented equally, and music creators are
19 not put under the rug. The problem with these
20 types of hearings is that you have the big
21 groups, the RIAA, the NMPA, you know, Google,
22 Pandora. They can all get in a room and

1 decide, you know. But who's going to represent
2 the artist?

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

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

20 But at the end of the day, the
21 musicians and the artists and the songwriters
22 must be happy. They must feel as though they

1 are not content, that they're not some after-
2 thought, you know, that money comes first.
3 Certainly in my practice, I can tell you the
4 truth.

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

13 We could say no if we don't want.
14 But whenever I get a sync you send for one of
15 my clients, I can't even get out the words
16 what the money part is. I would call up a
17 client and say oh, we just got this huge movie
18 use for this Jennifer Anniston movie and it's
19 great and it's for this song, and they stop me
20 and they're like well what is the scene about,
21 how is it being used, send me the script, you
22 know. I can't even get out what the deal

1 points are, because in a music creator's mind,
2 you know, the approvals really are the first
3 and foremost, and then equal amount of money
4 is also, that's the thing that we have to talk
5 about, the equity, equal.

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

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

16 One of the problems that we face
17 in the music industry is that of vertical
18 integration, and it's very difficult to tell
19 at this point who represents who's rights,
20 when you have distributors owning record
21 labels, owning music publishers, owning the
22 rights of creators.

1 We really need to pay close
2 attention to that issue, as we go forward in
3 this, because certain solutions that are
4 proposed can be quite illusory when we make
5 assumptions that the rights of creators will
6 be adequately represented by groups whose
7 let's say real financial interest run counter
8 to those creators, even though they purport to
9 represent them.

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

16 But creators have taken it upon
17 themselves to define what their compensation
18 is independently, and we should have that
19 report ready soon, and we think and hope that
20 it will make a large impact on the people in
21 this room, in understanding that if you want
22 to make music creation a pursuit that's

1 engaged in only by amateurs, we're well down
2 the road toward that, and if we want to do
3 away with the professional class of creators,
4 that has for 100 years provided the soundtrack
5 of the world, and every place I go in the
6 world they hear almost nothing but American
7 music.

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

16 I don't want to go on for any
17 longer, but I think that that's something that
18 we need to get back to quickly in this
19 discussion, is what constitutes transparency,
20 and regardless of what the rates are, and they
21 are obviously too low, if the creators do not
22 have a way to judge that they're getting 100

1 percent of what they're supposed to be paid,
2 because obfuscation by the companies on the
3 distribution side and the representation side
4 refuse to disclose that adequate and accurate
5 information, we're spinning our wheels and I
6 dare say wasting our time here.

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

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

14 MS. CHARLESWORTH: Sure.

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

21 MR. SANDERS: NARAS is deeply
22 compromised by being a television show that

1 relies on the labels to support it, and to
2 fail to point that out. It's a great
3 organization. I love it. I've been a member
4 for 30 years, but it is not the independent
5 voice of creators.

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

9 MR. SANDERS: Can I defer to
10 Ashley?

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

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

19 I hope to have read it by tomorrow
20 morning, so I feel more comfortable talking
21 about it then. But essentially, the five
22 groups that are in the Music Creators of North

1 America, which is the SCL, Songwriters Guild
2 of America, the Screen Composers of Canada,
3 French Canadian Screen Composers and the
4 Songwriters of Canada, Songwriters Association
5 of Canada.

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

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

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

20 MR. IRWIN: It's addressed to what
21 the value of music is in all areas. So in
22 other words, I mean there's been certain

1 things not mentioned here today, in terms of
2 like metadata and things like that. But using
3 music as a means to collect information on
4 customer bases, there's a value to that.
5 There's a value to that information, and
6 that's not mentioned anywhere here today.

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

16 MS. CHARLESWORTH: Okay.

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

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

22 MR. IRWIN: Okay, and it will be

1 available publicly once it's been -- you know,
2 we still have to do an executive summary and
3 a few other bits and pieces.

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

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

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

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

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

20 MR. HAUTH: So was music licensing.
21 So let me just say this, that from the
22 standpoint of radio broadcasting, radio

1 simulcasting which means streaming, and
2 webcasting, which my company is involved in
3 all of them, the musical work rates have
4 developed over a long history to be more like
5 a willing buyer/willing seller result than
6 currently in the sound recording world.

7 The reason for that is that radio,
8 as you probably have observed, over the last
9 20 years has become the -- a place where large
10 corporations have settled in. But prior to 20
11 years ago, radio was a mom and pop operation,
12 and even, you know, some of the large
13 stations, RKO and so forth, they were not all
14 that big in terms of corporate muscle power.

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

21 But prior to 20 years ago, it was
22 exceedingly difficult for a radio broadcaster

1 to achieve a reasonable license from
2 ASCAP/BMI, and to this day SESAC is still a
3 problem, but we won't go there right now. The
4 reason that what happened is that radio
5 finally figured it out, that unless you have
6 strength in numbers, you're not going to get
7 anywhere with ASCAP, because it's impossible
8 for a small group of broadcasters to go to the
9 ASCAP rate court.

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

19 Well, ASCAP had all those. ASCAP
20 gets financial reports. So anyway my point is
21 that finally radio figured it out, and now
22 there are two fairly large and well-funded

1 committees in the radio industry. If you look
2 in the last ten years, you will see that radio
3 and ASCAP and radio and BMI have come to
4 agreements, outside of the rate court. There
5 was a rate court proceeding that began by the
6 RMLC, the sister committee to ours, but they
7 settled outside.

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

16 I don't see a lot written about
17 how bad that rate is by ASCAP and BMI. So
18 anyway. Now if you look at the sound recording
19 rates, and as I said earlier, the first CARP,
20 the CARP was a disaster. Web I was a disaster,
21 and now it's getting to the point where the
22 broadcasters and webcasters have finally

1 figured out what they need to do.

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

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

17 Now this will be interesting to
18 see, where the rates go now, whether it will
19 be somewhat approaching a willing
20 buyer/willing seller kind of a negotiation, or
21 will it continue to be that the labels are
22 able to pull off these supra-competitive

1 rates. I think it's going to be more like the
2 former, where we get finally a rate, a rate
3 that we can live with, if the CRJs will make
4 themselves independent from prior decisions
5 and look at the record objectively.

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

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

22 MS. CHARLESWORTH: Mr. Rys.

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

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

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

1 2006. It hasn't been adjusted, you know.

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

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

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

22 MS. CHARLESWORTH: And just a

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

14 MR. RYS: I think that's a good
15 question, and I think that that's something
16 that ultimately, you know, the community
17 should decide amongst themselves. I think that
18 there is a good argument for collective
19 licensing. Obviously, there's efficiency gains
20 and it makes the transaction costs a lot
21 smaller for, you know, licensing a lot of
22 music.

1 But on the other hand, you know,
2 each song's different, and I think that's
3 something that the compulsory license
4 acknowledges, you know, to give it some credit
5 there. It's a song by song license, and I
6 think that there should be a balance, you
7 know. Maybe the market decides hey, collective
8 licensing is good. If you want to opt-in, you
9 know, maybe it's an ASCAP, maybe it's a SESAC,
10 maybe it's a Harry Fox.

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

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

19 MR. ARROW: When ASCAP negotiates a
20 license with radio, with the RMLC, they
21 negotiate with one hand tied behind their
22 back, because they can't say no. Their

1 situation is they're either going to make a
2 deal with the RMLC, and if they can't make a
3 deal then it's going to go to a rate court,
4 and a single judge in that court, after
5 hearing testimony, is going to determine the
6 rate.

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

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

1 publishers.

2 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

1 unified rate. Not necessarily a unified rate.

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

10 I mean obviously there's some
11 legal impediments currently in terms of what
12 you can consider as benchmarks and so forth,
13 that you're just inherently you're going to
14 end up with inconsistent rates.

15 I was just wondering if you had
16 any views on that, and whether you would need
17 to do a major overhaul or whether -- to
18 correct that, or this system can somehow be
19 adjusted to account for the various different
20 rate-setting mechanisms?

21 MR. ARROW: Well, as you might
22 guess, we're in favor of getting rid of the

1 consent decrees. So if we do that, then we
2 have an opportunity to negotiate with Pandora
3 directly, or possibly to have a joint
4 negotiation between all the parties to set a
5 rate. So I don't know exactly what would
6 happen, and I don't want to sit here today and
7 try to predict the future.

8 But I think the first thing you
9 have to do is get rid of the consent decrees,
10 so that at least we can have some kind of a
11 free market negotiation, and it would probably
12 result in -- I guess all the parties would
13 probably get together.

14 MS. CHARLESWORTH: Mr. Marks.

15 MR. MARKS: So I won't repeat our
16 proposal on the musical works side, but I
17 obviously favor --

18 MS. CHARLESWORTH: I think Ed would
19 really enjoy hearing about that.

20 (Simultaneous speaking.)

21 (Laughter.)

22 MR. MARKS: We're going to spend

1 some time later together. On the musical works
2 side, we propose something to get rid of the
3 rate court and CRB, and to get fair market
4 value, we think for songwriters and
5 publishers. You know, in terms of platform
6 parity, we think that everybody should be paid
7 according to the rate standard, same rate
8 standard, which we think should be a willing
9 buyer/willing seller standard or something
10 similar, not something like 801(b) or
11 something else.

12 And for in our world, that
13 obviously means getting rid of a grandfather
14 for three companies that was put in place in
15 1998 for political reasons, and don't bear,
16 you know, don't have any reason for continuing
17 today.

18 And then of course I'd just
19 reiterate what others have said and what I
20 said earlier about terrestrial radio, you
21 know, right there and having them pay just
22 like other services. I would say that just

1 because everybody is paying and everybody is
2 paying according to the same standard doesn't
3 mean the rates are all going to be the same.

4 I mean different services have
5 different economics and are in different
6 markets, and you may have different rates. But
7 as long as the determinations are based on the
8 same criteria, there's you know, a certain
9 uniformity and fairness to everyone involved.

10 MR. ARROW: Can I just throw one
11 thing in there? I'm sorry. In the one area
12 where you really do have an absolute free
13 market in music licensing for both labels and
14 publishers, it's sync licensing. And so while
15 Steve suggests that, you know, the rates may
16 not be equal, I just want to point out in that
17 marketplace, as Dina pointed out, the rates
18 are equal.

19 Publishers and record companies
20 generally receive equal amounts of money for
21 the licensing of a use in an audiovisual
22 realm.

1 MS. CHARLESWORTH: Okay. Just
2 before I get to you, Ms. Goldberg, I mean you
3 mentioned the terrestrial performance right.
4 Do you think that has any impact on other
5 rates in the marketplace today or business
6 models? In other words, the lack of a
7 terrestrial right for sound recordings. How is
8 that impacting the rest of the marketplace
9 today, if at all? I mean is that --

10 MR. MARKS: Oh, it's a tough
11 question.

12 MS. CHARLESWORTH: Because you
13 raised it, so I just wanted to follow up.

14 MR. MARKS: Yeah. You know, I don't
15 -- I don't necessarily think other services
16 are directly competing with, you know,
17 terrestrial. Some maybe a little more than
18 others. I think it's just an issue of
19 fundamental fairness. I mean not so much one
20 of, you know, competition. But it is fair to
21 the other services who are paying as well,
22 that others who are using music, you know,

1 different medium but still using music for the
2 same kind of offering, should be paying. But
3 it's fair to the creators to have the payment
4 made.

5 MS. CHARLESWORTH: Thank you. Ms.
6 Goldberg.

7 MS. GOLDBERG: I want to say that I
8 agree. Some people have said that fair market
9 pay should be paid for all music creators
10 across all platforms, and we all have
11 different views as to what that is. But I just
12 want to touch upon three areas where I think
13 it's really essential.

14 The first would be musical works
15 versus sound recordings, which Ed and Dina
16 mentioned that the only area where it really
17 is fair market is in sync licensing, where
18 it's 50-50. But when you look at, for example,
19 an iTunes download of \$1.29, it's a 9 to 1
20 royalty split in favor of the sound recording.

21 Basically, iTunes gets 40 cents,
22 the publisher receives 9.1 cents, which is

1 split with however many songwriters there are,
2 as well as the publisher, and then the
3 remaining 80 cents is split between the label
4 and the recording artist. That just doesn't
5 seem to be fair.

6 Another area Dina actually
7 mentioned was with Pandora. It's a 13 to 1
8 split. So I think the Songwriter Equity Act
9 might level the playing field a little bit
10 there. But I also wanted to discuss
11 terrestrial radio versus digital broadcast.
12 You asked what the impact was.

13 Well, the Copyright Office already
14 observed that this gap in protection has
15 actually had the effect of depriving American
16 performers and labels of foreign royalties,
17 possibly to the tune of \$70 million, because
18 in countries that recognize a public
19 performance right in sound recordings, they
20 also impose a reciprocity requirement. So
21 basically, we're losing \$70 million.

22 Then the third area which most

1 people didn't comment on at all in their NOI
2 comments, except for the SCL, which maybe
3 Ashley can get into more of a discussion of
4 this. There are no performance royalties paid
5 by theatrical exhibition in U.S. cinemas.
6 That's very different in Europe, and again,
7 it's a reciprocity issue. So we're losing a
8 ton of money that way as well.

9 MS. CHARLESWORTH: Okay. Thank you,
10 Ms. Goldberg. Mr. Cohan.

11 MR. COHAN: Thank you. I just want
12 to clarify what might seem to be a
13 mischaracterization or a misimpression of the
14 Songwriter Equity Act and the requested change
15 in 114(i) in particular.

16 The aim of 114(i) when it was
17 enacted was to try to ensure that this new
18 performance right in sound recordings didn't
19 cannibalize performance royalties payable for
20 the musical composition. So that was the
21 intent, and so all the -- in fact, the aim was
22 so that the -- to try to prevent licensees

1 from saying look, we have to pay this for --
2 we have to pay these rates for the new sound
3 recordings. So we should pay less in these
4 public -- rates should be determined as lower
5 under these proceedings in the rate court.

6 So in effect that -- the
7 correction here is just to allow the rate
8 court to consider the evidence. It doesn't
9 force the court to adopt, you know, any
10 particular standard. It just tells them that
11 they can look at those rates. It just removes
12 an artificial barrier. But the ultimate aim
13 was simply to avoid cannibalization of those
14 rates.

15 MS. CHARLESWORTH: Okay, thank you.
16 Mr. Greenstein.

17 MR. GREENSTEIN: So I'm going to --
18 the issue of fair market rates. I think one
19 thing that we should take into account is what
20 would happen in a free market negotiation and
21 what typically does happen? It's not as though
22 everyone is going to get more money, and I'm

1 not aware of markets where when you go to free
2 market rates, everyone gets paid more.

3 I think that if you're Mr. Arrow,
4 you probably do get a rate as -- well, you're
5 not the biggest publisher but Sony/ATV is.
6 They will be able to exercise -- likely be
7 able -- you've got your work cut out for you.
8 Likely be able to exercise power.

9 But if you're a digital music
10 service, and you have to pay X increase for
11 Sony/ATV and Warner Chappell and Universal
12 Music Publishing, I suspect that there are
13 going to be many publishers who are going to
14 be told if you want to be on this service,
15 you're either going to pay us, because we
16 don't need you, or we're going to pay you
17 zero, or we're going to pay you a lot less.

18 It's not as though all tide, the
19 tide is going to raise all boats. There are
20 going to be some winners, and those winners
21 will likely be the people with significant
22 market power to begin with, and the losers

1 will be those people who have what I would
2 call substitutable works, that we may not need
3 you. We will only put you in rotation on a
4 non-interactive service if you're willing to
5 make it more attractive.

6 So if you are talking or reforming
7 the system, then you need to be able to ensure
8 that that marketplace transaction can occur,
9 and what would that mean? I think you have to
10 prohibit MFNs, so that you can't have a
11 licensor both demand a certain rate and a
12 guaranteed market share.

13 One thing that I'm not sure that
14 the Copyright Office would be aware of is when
15 a licensor says "I want X rate. I want MFN
16 protection against anybody else," and my
17 market share is 32 percent, but you're going
18 to guarantee me 35 percent pro rata for
19 whatever the allocation of revenue is.

20 So you have revenues times the
21 royalty rate times the pro rata share, you
22 know, the number of spins if your music

1 overall spins. It is not uncommon that
2 copyright owners try to protect themselves by
3 demanding that they get a minimum pro rata
4 share that is not tied to the actual usage in
5 the marketplace.

6 I think that's anti-competitive,
7 and doesn't allow the market to adjust.
8 Because it simply is not the case in economics
9 that every publisher is going to get more
10 money and get the same amount as the record
11 labels. The services have to be able to tell
12 some people we don't want your music unless
13 you drop your price dramatically.

14 I also think we have to look at
15 what happened at the end of December, when
16 publishers withdrew from the PROs, or tried to
17 withdraw. Judge Stanton said if you're out
18 from BMI, you're out for all purposes. So we
19 found some publishers unexpectedly head of the
20 PRO landscape, and what did they do?

21 I was representing different
22 digital music services at that time, and you

1 could not get a publisher to return your phone
2 call over the holidays. They would talk to
3 you, but I think it was widely known, widely
4 reported in Billboard that the focus was on
5 Pandora, to try to get a higher rate.

6 Then the story was that there were
7 agreements with Pandora, and then all of the
8 sudden the publishers that withdrew
9 immediately went back in. I think that's a
10 manipulation of the system, to get the
11 benefits of the PRO license, where you get
12 collective enforcement, collection,
13 distribution.

14 But you want it to be outside of
15 the consent decree to set your own rate. But
16 if you're going to do that, I think you've got
17 to let the market take care of it. You can't
18 call for certain reforms. So Mr. Barker talked
19 about this transition for some period of time
20 in two years, and then two years after.

21 I haven't wrapped my head around
22 what that proposal is. It sounds potentially

1 interesting. I'd be interested in hearing more
2 about that. But I don't think you can say if
3 it doesn't work for some, we've got to change
4 it all again. I think if you're going to go
5 down this path, you're going to have to let
6 the market operate, and that's going to have
7 winners and losers, and it may mean that some
8 major labels are going to get more money, and
9 lots of other labels are not going to be
10 played at all. Artists may find themselves
11 without royalties. Songwriters may find
12 themselves without royalties. But if that's
13 what people want, I think you've got to be
14 prepared for that. What you can't allow is the
15 smallest publisher gets the same rate as
16 Universal Music Publishing Group, because
17 that's not the way that a free market would
18 operate.

19 Free markets also have volume
20 discounts. We don't see any volume discounts
21 in this marketplace. So it's not a normal
22 market. It's not this right that people have.

1 It's a right granted by Congress to promote
2 the progress of science and useful arts. If
3 we're doing some of this, we've got to, I
4 think, keep that in mind, and there will be
5 consequences that I hope the Office will
6 consider. How do you protect that?

7 So maybe there are winners and
8 losers, and the Office has to be prepared.

9 MS. CHARLESWORTH: Okay. Mr. Lord.

10 MR. LORD: Thank you. I've just
11 been sitting here concerned over the last few
12 minutes that we are in some ways trying to
13 craft a solution in our minds that is some
14 kind of government regulation or government
15 rate-setting protocol, at least people are
16 thinking about it.

17 I want to diffuse them of thinking
18 about that. I think my company operates in the
19 free market. There may be a problem with Mr.
20 Hauth because we aren't under the thumb of a
21 consent decree, and all we have seen is that
22 ASCAP and BMI have suffered. ASCAP lost \$90

1 million a year for the next five years or I
2 think we're in the middle of it now, because
3 of the negotiation with the radio folks.

4 And you know, they did well. They
5 did what they intended to do. But I think that
6 what it's done, let me say this. In the 90's,
7 when I tried to find office space on Music Row
8 in Nashville, I couldn't find office space
9 anywhere. It was robust, it was a vibrant
10 economy. People were making money. Songwriters
11 were making money because they could sell
12 records through the artists, because they were
13 making performance dollars.

14 Now many of those same songwriters
15 that I know have gone back to teaching school,
16 pumping gas, whatever they do, working in
17 grocery stores because there have been such a
18 force from all sides, as I said this morning,
19 pushing down on the money these folks are
20 trying to make, you know, to earn a living,
21 that they haven't been able to.

22 And I just -- I would like to

1 reiterate that I think that somehow I agree
2 with Gary. I mean Gary, yes. In a free market,
3 some people are going to make more, some
4 people are going to make less. But that's the
5 way it goes. If somebody's got a very strong
6 song that the radio stations and the services
7 have to have, they'll pay for it. If they
8 don't need to have it, they won't pay for it,
9 you know.

10 But that's -- we have to get -- we
11 have to find a solution for the creators.
12 Otherwise we are, and you all may think that
13 Charlie was overstating what he was saying
14 about going to reducing the quality of music
15 to amateurs. But ladies and gentlemen, we are
16 on our way, and you don't realize that.

17 Business folks maybe don't
18 understand that, and that's fine. You don't
19 understand it. But we are on our way to a
20 situation where creators are not incentivized
21 to work. They must be taken care of. The best
22 we can figure out to do is have a pre-market

1 negotiation so their value is truly
2 recognized. Thank you.

3 MS. CHARLESWORTH: Thank you. Ms.
4 Muddiman.

5 MS. MUDDIMAN: H el ene Muddiman. I'd
6 like to agree, and I want you to put in
7 context the people who need protecting,
8 authors, composers, songwriters, artists who,
9 you know, it's not their big thrill to come to
10 somewhere like this, to advocate on their own
11 behalf. It's very difficult to get people who
12 are artists to come and stick up for
13 themselves, because it's a case of two
14 extremes.

15 Either they're so famous that they
16 feel a little bit disingenuous as they're like
17 well you know, we're doing so well out of it,
18 you know, that they're not going to be very
19 sympathetic. Or, alternatively, you know,
20 they're struggling and they literally can't
21 get time off during the day from the job
22 they're doing (to come and speak to you).

1 I just implore you to think about
2 those people as I know (this guy's absolutely
3 right). So many people are not in music
4 anymore, they're driving cabs or whatever
5 they're doing, and you're losing a lot of
6 revenue from the music industry by not giving
7 the revenue equitably to that small
8 businessperson, i.e., the composer or the
9 songwriter or the artist, but giving it to
10 large corporations.

11 There's tax -- you get less
12 revenue if you give all that money to these
13 corporations, who don't reinvest in the music
14 industry, and then you lose all the tax
15 revenue.

16 MS. CHARLESWORTH: Thank you. Mr.
17 Sanders and then Mr. Rudolph and then Mr.
18 Hauth.

19 MR. SANDERS: Russell, for the
20 record I would hope that you could answer this
21 question for me, because as a representative
22 of the religious broadcasting community, with

1 all due respect I would consider you to be a
2 preeminent expert on hypocrisy.

3 Tell me 20 years ago, in 1995,
4 there were many people in this room who worked
5 on legislation to establish the performance
6 right for sound recordings, and you mentioned
7 DMCA, which was almost 15 years ago. During
8 that period, the broadcasters made it fairly
9 well known that one of the reasons why they
10 were not objecting that strenuously,
11 especially the digital side, was that hell,
12 we'll use this to drive down the rates that
13 we're going to pay to songwriters.

14 So one of the sine quo nons of
15 getting that legislation passed was to make
16 sure that that didn't happen. Can you really
17 sit there with a straight face and say to me,
18 a decade and a half later, with songwriters
19 losing money hand over fist, that's hypocrisy
20 to want to change a system that is basically
21 cheating them, to benefit an organization that
22 basically makes truckloads of money playing

1 their music? I'm just curious, for the record.

2 MS. CHARLESWORTH: Okay. Mr. Hauth,
3 would you like to respond, and then we'll go
4 to Mr. Rudolph after you speak.

5 MR. HAUTH: First of all, I want to
6 respond to Mr. Lord. When you say ASCAP lost
7 90 million in its last proceeding with the
8 RMLC, you failed to mention that in the prior
9 proceeding, ASCAP did pretty well and so did
10 BMI.

11 MR. LORD: They did.

12 MR. HAUTH: And that part of the
13 reason they gave up some of that money was it
14 was more of an arms-length negotiation with
15 the RMLC, rather than a gun to the head
16 negotiation. Speaking of SESAC, and I wasn't
17 going to bring this up, but SESAC is a pure
18 monopoly. SESAC has engineered a system
19 whereby every broadcaster, TV and radio, must
20 have a SESAC license, even though SESAC
21 represents on a good day approximately five
22 percent of the spins in radio.

1 That is because you were smart
2 enough, I guess you'd say, to go out and get
3 the Dylans and Diamonds, a few of their songs
4 in your catalogue, and enough incidental
5 music, which broadcasters, TV and radio,
6 cannot avoid. So they must have your license,
7 and that is a problem and that is why there
8 needs to be oversight of a situation like
9 this, because it is a pure monopoly.

10 Concerning my friend on my left,
11 Charlie, I don't know about the back room
12 negotiations in the music industry or the
13 radio industry, along with -- at the time of
14 the DMCA. I do know that radio did not block
15 that bill, because they were assured by the
16 labels that they would be exempt from sound
17 recordings.

18 Congress recognized that due to
19 the unique history of radio and records, that
20 it was the right thing to do, to exempt radio
21 from sound recording royalties. Radio was not
22 exempted, we found out, from their simulcasts

1 having exposure to sound recording royalties,
2 and at this point in time, radio is paying its
3 fair share, not on a revenue basis but on a
4 performance basis, for our streams to sound
5 recordings.

6 As far as you guys, the musical
7 work side, I don't know the history there. But
8 I kind of doubt that what you say is accurate.
9 But if you can -- if you're pretty sure of
10 what you say, then I take your word for it.
11 The sound recording side, as I said earlier,
12 has come to a more even kind of negotiation on
13 rates, and radio pays a ton of money for
14 musical works. But it was in a negotiation
15 that that took place, and it took years for
16 radio.

17 First of all, our friend from
18 Universal says that ASCAP negotiates with one
19 hand tied behind its back. Well for 30 years,
20 ASCAP had the same judge in the ASCAP rate
21 court, Judge William Connor. We went before
22 that judge, and I have nothing against him.

1 But now there's a new judge in
2 tow, who is not -- doesn't have quite the
3 relationship with ASCAP. That's the
4 difference, and so it's more -- a more
5 equitable rate-setting trial, in our opinion.
6 Thank you.

7 MS. CHARLESWORTH: Okay. Mr.
8 Rudolph.

9 MR. RUDOLPH: One of the things I
10 thought would be interesting is to understand
11 a little bit about the open market, and what's
12 called the fair market, and Gary alluded a
13 little bit to this. First, one of Gary's
14 comments, saying that the publishers kind of
15 want it both ways, by saying that the
16 performance, being able to negotiate the rates
17 and then still use the collective powers of
18 the PRO.

19 I mean that's like saying the
20 equivalent that the DSPs can't negotiate --
21 can negotiate their ad rates, but they can't
22 negotiate their storage rates. It's a free

1 market. They're going out. That's the purpose
2 of it. They're using the services that those
3 provide, and they're going out and negotiating
4 rates, and there's market deals between those
5 two.

6 But there's a market that's
7 happening outside the statutes now, that's
8 happening on a contract level. It's happening
9 within the biggest publishers, it's happening
10 further down, and part of it's the way the
11 contracts are written, to not necessarily say
12 that the statutes don't apply, but to
13 essentially just pave past what might be
14 issues.

15 So you're seeing contracts that
16 are being written with, and I'm sure Gary's
17 seen some of these -- with services where it's
18 a contract and there's a right to do certain
19 things, and it's not saying it's mechanical or
20 performance or sync, saying you can do this
21 thick.

22 That's an interesting idea,

1 because it's just taking apart the whole idea
2 of having these rates, or not the rates but
3 the licenses, if you would, necessary for each
4 individual segments. One of the things that
5 disclosure on the chairman of a company called
6 Elias Arts. We're one of the leading custom
7 music companies in the country, and have a
8 library as well.

9 It's been interesting to watch in
10 that market, which really does operate in a
11 true free market, with the exception of the
12 performance royalties that come from the
13 backside of that market, with after the use.
14 There's been immense competition that's come
15 into that market in just the last ten years,
16 in particularly the last five years.

17 Part of that has to do with the
18 fact that the cost of actually recording is
19 way down. So I would say in a free market
20 you're saying heightened competition. Now I
21 will also say that that is putting pressure on
22 rates or fees. But if somebody's good, you're

1 seeing them actually take off.

2 So you've got more people having
3 an opportunity, frankly probably less on an
4 average than any one particular company. But
5 at the same time, you're seeing more folks
6 being able to participate, and you're seeing
7 new companies actually that in the last, say
8 five years, have taken off and are in a good
9 place.

10 But one of the things that you do
11 have to realize, and it's going to get more
12 complicated, is almost in every one of the
13 cases now, when it comes to either custom
14 music for TV or film, well not for film but
15 for TV in particular, it used to be that you
16 would place a song.

17 I'm not talking about sync music
18 on a commercial level. I'm talking about what
19 I would call production music. High quality.
20 I mean if anybody were to argue with me that
21 the quality of production music being done at
22 a professional level, I think you have to

1 understand that it's happening at a very, very
2 high level, is that the major companies, the
3 networks, even what I call secondary and third
4 level production companies and networks
5 existing on the cable tier or satellite, are
6 asking for a piece of the copyright at the
7 same time.

8 So now you're seeing a joint, an
9 interesting situation where if I'm the
10 composer or if I'm the company, and I want my
11 music to be played, or actually synced, where
12 I'm getting a fee for that, they want part of
13 the publishing for that. This is not a rare or
14 once every now and then situation. This is
15 pretty much becoming the standard, and it's
16 growing every day.

17 So when you're thinking about
18 this, and this may seem counterintuitive and
19 what you may think my position is, I think
20 when you think about the market, you have to
21 realize it's not just when you open it up.

22 There are more players coming into

1 effect, and they're finding that spot, that
2 sweet spot if you would, and it's "I want this
3 right and I'll pay you this much for it," and
4 then we're going to split what's on the back
5 end on the performance rights income.

6 So understanding, I think, what's
7 happened already outside of what we're talking
8 about is pretty interesting and important to
9 understand, because frankly it's probably put
10 more people to work. At the same time, the
11 average has come down, but then you've seen
12 the companies come in as well and taking part
13 of that income and/or rights. So I want the
14 Copyright Office to understand what's
15 happening.

16 MS. CHARLESWORTH: Just a quick
17 follow-up question now. When you say -- you
18 said something like license past the rights
19 for the thing or you were kind of just --

20 MR. RUDOLPH: I'm sorry.

21 MS. CHARLESWORTH: No, no, no.
22 Don't apologize. I just wanted to make sure I

1 understood what you were saying there.

2 MR. RUDOLPH: Let's take a use of a
3 piece of production music that's in a library,
4 okay, and even to the point where without
5 naming the exact networks, there are several
6 networks now that require your production
7 music library to actually -- they require you
8 to hand that over to them. They will retitle
9 it, in that they can actually then place that
10 same music themselves, either inside or
11 outside, right.

12 So you've got this kind of -- does
13 that make sense? Meaning internal to
14 productions that are happening on their
15 network, or they can actually go out and pitch
16 those to third parties as well. Is that clear?

17 MS. CHARLESWORTH: Yeah. I think
18 that's -- so you're saying you're basically
19 doing a transaction where you're handing over
20 the library for them to use in -- either
21 internal or --

22 MR. RUDOLPH: Correct. It's

1 happened just with one of the global top three
2 advertising agencies in the world as well.
3 They've basically said everybody needs to be
4 on this one platform, which is a platform we
5 control. We're going to actually charge you a
6 fee off the top of that before it can be
7 placed, and you have to -- I say have to --
8 they're highly encouraging you to be part of
9 this platform, right.

10 Being part of that platform is --
11 there's a question mark on whether that's
12 positive or not, but there's rate-setting
13 within that platform as well, and of course
14 they're going to license outside third party
15 music. That's going to go for a higher rate,
16 because if you want Led Zeppelin or you want
17 Iggy Pop or you want Bruno, whoever, that's
18 going to be different.

19 But they're basically trying to
20 improve their mechanisms and efficiencies
21 inside of one, have an understanding of what
22 their cost basis is, and not necessarily

1 happy, if you would, with the idea of a rate
2 being charged against it. But you are able to
3 negotiate, if you would.

4 When I say "negotiate," meaning
5 you can opt to be in or out of that, if you
6 want to. So these little markets are popping
7 up, are existing outside of their rate
8 settings, and my feeling is -- or not rate
9 settings, but within the like Section 115,
10 that's actually hampering what could be the
11 growth of those individual markets.

12 So while I can't tell you
13 necessarily the direct impact of that, I'm
14 watching it, these things happen daily,
15 outside, and I'm sure everybody else, a lot of
16 people in this room are aware of those same
17 developments.

18 MS. CHARLESWORTH: Thank you very
19 much. I think we have time for one more
20 person, and that would be you, Mr. Lord.

21 MR. LORD: Just 30 seconds, thank
22 you. I just have to respond, forgive me. But

1 SESAC went through a two plus year
2 investigation by the Department of Justice
3 that found we were not a monopoly. One of the
4 beauties of the free market is that Mr.
5 Hauth's broadcasters can choose to use Bob
6 Dylan and Neil Diamond and the people that do
7 their advertising, you know. Maybe McDonald's
8 will take a local composer to do the music for
9 their ads and find somebody who will direct
10 license. You don't have to use SESAC music.

11 If Mr. Arrow's company wants to do
12 the same thing, he should be free to license
13 to radio broadcasters. Sony should be able to
14 license to radio broadcasters, television
15 music broadcasters, and let us all come to an
16 equitable rate for the use of the music that
17 we represent. Thank you.

18 MR. GREENSTEIN: Jacqueline,
19 there's one point --

20 MS. CHARLESWORTH: I'm sorry, and I
21 didn't mean to exclude you. I just didn't
22 notice your card.

1 MR. GREENSTEIN: That's okay. I
2 guess Jason or Mister, I don't know how you
3 pronounce your last name and we don't know
4 each other --

5 MR. RYS: Rys.

6 MR. GREENSTEIN: He made a point
7 about the time period for setting new rates,
8 that five years was too long. I just want to
9 remind the Office that prior to the Copyright
10 Royalty and Distribution Reform Act, the CARP
11 process was a two year rate cycle, and that
12 created lots of issues, and you had -- The
13 first webcasting proceeding was 1998 through
14 2002, and then by the time you got that
15 decision, the parties negotiated to push
16 forward 2003-2004, which was then extended to
17 2005. Two years is a very rapid time period.

18 So if the Office is looking at the
19 compulsory license regime, and how frequently
20 things should take place, five years may be
21 too long; two years is almost certainly too
22 short. I would question if the RIAA disagrees

1 with that. But the only winners, if you go to
2 a two year cycle, may be the outside law
3 firms, or it may actually force people to
4 negotiate, like the satellite and cable
5 distribution proceedings.

6 Those are annual, and they seem to
7 figure out you take your chance. You win or
8 lose, and then maybe you're forced to
9 negotiate. So you could look at it either way.
10 But there is precedent for more rapid
11 proceedings.

12 MS. CHARLESWORTH: Okay. Thank you
13 very much. We will resume -- at what time do
14 you want to come back?

15 (Simultaneous speaking.)

16 MS. CHARLESWORTH: All right 3:50,
17 since we're again running a little bit behind.
18 So ten to 4:00.

19 (Whereupon, a recess was taken.)

20 MR. DAMLE: Okay, why don't we
21 gather in? I think we're missing a couple of
22 people.

1 (Off mic comments.)

2 MR. DAMLE: All right. This is our
3 last panel of the day, and it's on Data
4 Standards, and I think a lot of the discussion
5 up until this point, particularly in the first
6 panel, centered around the problem of data and
7 the fact that it's difficult to identify the
8 sound recording and the underlying musical
9 work, and to figure out who owns the
10 copyrights in those works.

11 So I don't think we have any new
12 people. So one question. A lot of the
13 discussion in Nashville sort of centered
14 around the idea that if you have ISRCs and
15 ISWCs associated with the digital files, that
16 that makes the matching process run a lot more
17 smoothly.

18 So to open the panel, I just
19 wanted to have a discussion of how we can
20 encourage companies to include that
21 information, that metadata, with the files, so
22 that the services can give the PROs and

1 SoundExchange the information they need to
2 match everything up, and so that payment can
3 be run more smoothly, rather than having to do
4 semantic matching or things that are perhaps
5 less accurate than having a unique code
6 associated with the actual work that's been
7 played.

8 So I just want to open it up for
9 ideas, for how we can make that process -- get
10 that information into the files, and make it
11 more readily accessible to people. Anyone want
12 to take that on? Mr. Anthony.

13 MR. ANTHONY: The easiest way to
14 make that happen is just for us all to start
15 doing it. I found that with Rumblefish, it's
16 been very difficult to gather that data, as
17 I'm sure many of you have had that same
18 experience.

19 But it's simply because the
20 content owners, many content owners or third
21 party services don't have an incentive. They
22 have an opposite incentive, a disincentive to

1 provide that data, in their opinion. So and
2 it's our perspective, you know, our ethos
3 really is at Rumblefish to help artists make
4 more art.

5 That's why we exist. That's what
6 we're all about, and it's really hard to do
7 that when we're not really sure who to pay for
8 what. We exist specifically in the
9 microlicensing world, and we deal with a
10 significant volume of transactions. We've done
11 almost 80 million transactions. We do about 50
12 to 70 thousand a day, putting sound tracks
13 into social videos.

14 So you can imagine with that type
15 of volume, it's very challenging to know who
16 to pay what to, and what the licensees really
17 need to know is very simple.

18 It's who owns what, what are the
19 business rules and where do I send the money.
20 We've collected that information from numerous
21 sources, some public, many from other content
22 owners, some from the services.

1 Some services force you to rent;
2 others will allow you to actually license that
3 data. But it's become a very valuable resource
4 to us, and I would encourage everyone to data
5 share with each other, and to provide that
6 information to each other, because we do
7 believe in this situation, that a rising tide
8 raises all ships.

9 If the licensees know who to pay
10 for what, then it's much more likely that the
11 revenue will find its way to those parties. So
12 for the record, we'll make an open offer,
13 Rumblefish with our five million copyrights to
14 this group, with anyone to data share. We've
15 already started to do so with numerous parties
16 with a lot of success, to patch the different
17 holes.

18 We're doing that data sharing
19 unencumbered. So I think that's possibly a
20 system.

21 MS. CHARLESWORTH: Do you include
22 any standard identifiers in your data?

1 MR. ANTHONY: Whatever we have, we
2 include.

3 MS. CHARLESWORTH: Okay, and so
4 what would -- can you share with us sort of in
5 your experience, how typical is it to have say
6 the ISRC, how typical to have the ISWC or the
7 ISNI?

8 MR. ANTHONY: I'm not sure if there
9 is a typical situation, because it varies on
10 the quality going out, what's coming in. So
11 what is consistent is that it's inconsistent.
12 So we find certain labels, certain publishers
13 do have that information. It's very rare,
14 though, that it's complete.

15 So we go through great effort, as
16 do some of the other services here, to do a
17 lot of research and patch those holes. But we
18 think that the key link is three pieces of
19 data, not two. It's the ISRC, the ISWC and a
20 related fingerprint or audio file, because
21 even with ISRC and WC, sometimes it's still
22 hard to tell what you're dealing with, because

1 many times sound recordings have multiple
2 ISRCs, information entered improperly.

3 We also work hard to wait for the
4 source of the information that's sent into us.
5 So we can collect everything and not use any
6 of it as the definitive truth. But redundant
7 data from multiple services, you know,
8 provides you good context to say this is more
9 reliable information than not.

10 MR. DAMLE: I mean a general
11 question also when we're talking about this is
12 what is the role of government, in
13 encouraging, perhaps mandating the use of
14 these types of identifiers, and to -- and be
15 on that mandating sort of open access to data,
16 so that data can be shared among the various
17 players, to encourage sort of -- the reduce
18 the transaction costs.

19 So maybe some of the others, and
20 if you have thoughts about that, that would
21 be, I think, interesting for us to know, given
22 our position.

1 MR. ANTHONY: I'm not quite -- I'm
2 not sure.

3 MR. DAMLE: I think Mr. Watkins, I
4 think you were next.

5 MR. WATKINS: I would endorse, you
6 know, a lot of Paul's observations about ISRC
7 in particular. I really think that we have to
8 accept that as long as ISRC is the sound
9 recording identifier, that it will necessarily
10 only be one part of music identification,
11 meaning that any entity that wants to be in
12 this business of identifying music and
13 processing royalties, will need to employ a
14 variety of different tools, including syntax-
15 based matching, which I actually take issue
16 with what you said.

17 I think it can be fairly accurate,
18 given enough experience and time with it.
19 There's also manual review, which goes into
20 matching data. At our company at least, we've
21 got I think 35 people in our research
22 department, and largely what they do is in

1 addition to collecting data from publishers
2 and labels and processing letters of direction
3 and others, they sit in front of terminals all
4 day and match data.

5 So you know, ISRC is a flawed
6 identifier. It's flawed because it's not
7 controlled in the way in which it's deployed,
8 if you will.

9 My favorite example about that is
10 a digital aggregator TuneCore, which sort of
11 decided to usurp the Turks and Caicos
12 identifier, the prefix before the Turks and
13 Caicos identifiers, and literally just started
14 attaching TC with a string of numbers to their
15 recordings.

16 I think that that example is
17 actually indicative of something that a lot of
18 independent rights owners do. Also to the
19 extent that we begin to insist on something
20 like ISRC or ISWC, effectively it's becoming
21 a condition of payment.

22 I think you have to appreciate

1 where that leads to right away, which is the
2 truly independent rights owners pre-record
3 company or pre-music publisher, will not
4 qualify, because they're just not professional
5 yet, if you will. I think we're seeing more
6 and more music produced in exactly that way by
7 independent rights owners.

8 You know, one of our clients,
9 Soundcloud, we're dealing with challenges
10 there that are beyond what we've ever dealt
11 with, hundreds of millions of self-publishing,
12 self-producing artists. So that's really a
13 modern trend, and I think it's inescapable.

14 To the extent we start mandating,
15 you know, from the top down, at this point in
16 history with what's happening the music
17 market, that as a condition of getting paid,
18 you know, you have to have an ISRC attached to
19 your recording or an ISWC, whatever it may be.

20 The result is going to be that you
21 have pools of royalties that largely go to the
22 larger rights owners who are better at doing

1 that kind of thing.

2 MR. DAMLE: Thank you. Ms.
3 Goldberg.

4 MS. GOLDBERG: Hi, thank you. I do
5 not think that government should mandate a
6 certain specific standard, but I definitely
7 think it should be encouraged. I want to
8 qualify that. I was in-house counsel at a
9 major publisher for ten years, and getting the
10 information from songwriters and artists is so
11 difficult in terms of splits and who actually
12 owns what.

13 Sometimes the only way I would get
14 that information is by withholding the
15 advance. So I don't think it should be
16 mandated, but it should be encouraged, and I
17 think there are initiatives right now that are
18 going on to have databases, which I think are
19 essential to have with the correct
20 information, the correct splits.

21 But it's difficult. That's why I
22 don't think it should be mandated. But Shawn

1 Lemone, who is right here, he mentioned
2 earlier that ASCAP, BMI, and SOCAN are working
3 on an integrated system. It's actually called
4 Music Mark, and he could better discuss that.
5 But that I think is something that is really
6 important.

7 Ed Arrow earlier almost mentioned
8 the GRD, which I think is great, although
9 during lunch we had a discussion. I thought it
10 was dead, that it cost millions of millions of
11 dollars and it failed. He said that it was
12 still going on. I was not aware of that, but
13 I think that's something that would be a great
14 database if it still is going on.

15 I also thought what Mr. Griffin
16 announced at the House Judiciary Committee
17 hearing on June 10th was very interesting. He
18 talked about GUIDs, globally unique
19 identifiers like a VIN number on a car. I
20 thought that was very interesting. He thought
21 it would be only about a year to create such
22 a database, which I think is overly

1 optimistic. I think it's beyond overly
2 optimistic.

3 But I also liked the suggestion in
4 SoundExchange's NOI comments, where they
5 talked about having a system like EDGAR for
6 the SEC. Whenever I need to go and get a
7 report, I go on EDGAR, and it completely works
8 with the SEC system.

9 So maybe the Copyright Office
10 could do something like that, where
11 information is more accessible to parties. But
12 I definitely think there's a need for one or
13 more databases that have accurate information.

14 MR. DAMLE: Ms. Kossowicz.

15 MS. KOSSOWICZ: I echo Ilene's
16 thought, that there should be one or possibly
17 more more databases that contain all of the
18 rights information, and I'm not sure that
19 government is the right party to be
20 responsible for this. I think as part of our
21 registrations that we file, you might be able
22 to provide fields that could be filled out on

1 a voluntary basis, that would provide some of
2 this information to you, so that people could
3 look it up.

4 I also wanted to address something
5 that Paul said. I think it's, you know, it's
6 great that you're sharing the data, but my
7 question is how accurate is the data that
8 you're actually sharing? I think was it you
9 Ilene or somebody else brought up the other
10 day that somebody looked up ownership
11 information on the ASCAP and BMI and SESAC or
12 HFA websites, and the information is not
13 consistent.

14 Then you also have to add to that
15 that the splits might be different, mechanical
16 versus sync. The sync splits are, you know,
17 not really housed anywhere except for maybe
18 with the publisher. So you have a lot of
19 redundancy here. You have the PROs. You have
20 the major labels such as Universal. You have
21 the major publishers and all the rest of the
22 labels and publishers, you know, constantly

1 updating their information.

2 As far as Universal goes, we call
3 to make sure that we know who the current
4 claimants are. Catalogues change hands all the
5 time. Letters of direction are sent out, but
6 not all the right parties get the letters of
7 direction. In fact, I'm dealing with an issue
8 right now, where one of our recording artists
9 received a claim, and their attorney settled
10 with the claimant.

11 The claimant received a publishing
12 share and an ownership share in the song. The
13 settlement was signed by both publishers, you
14 know. The T's were crossed, the I's were
15 dotted. There was an LOD. They had a whole
16 list of participants that they copied. They
17 copied the PROs, they copied HFA, they copied
18 everybody, all the claimants and participants.
19 The one party they forgot to copy was the
20 record label, who's paying the royalties. So
21 I mean it's hard to blame these people,
22 because there's just so many parties to think

1 about in these cases, and I think, you know,
2 the solution to this problem seems to be one
3 central place where all of this data goes and
4 gets, you know, updated and, you know, somehow
5 compiled and other than that, I mean I don't
6 know how it's going to be done. But it needs
7 to get done, so that all of this redundancy
8 isn't happening across the industry.

9 Because you know from our
10 perspective, and I think Les mentioned this
11 too, on his end he's got a whole staff of
12 people doing verifications.

13 We have a hundred people or so
14 doing verifications and related support work?
15 I mean this is just us trying to figure out
16 who the owners are, and this is happening
17 across the board at all these different
18 companies, and you know there's just -- there
19 needs to be some sort of a change there.

20 MR. DAMLE: Ms. Muddiman.

21 MS. MUDDIMAN: I think what I want
22 to say is that we have such a freedom with the

1 Internet that we've not experienced in the
2 real world for a long time, and in the real
3 world, we did create -- our forefathers
4 created a very complex licensing system, which
5 if we were to look back now and imagine doing
6 that without the technology that we have
7 today, we'd think that was pretty impossible
8 to do, and yet they did it.

9 I think sometimes we're inhibited
10 by some of the people who say it would be very
11 difficult and you know, it's very complicated.
12 We've got so much stuff. We've got 10,000
13 YouTube videos going up every day and how do
14 you keep track of everything.

15 I think part of the problem is
16 that we get -- you know, you get given some
17 lobbying by people like Google and YouTube,
18 who make out that it is going to be way too
19 difficult to police this, and to set any
20 system in place.

21 But I have to say it's inevitable
22 that you have to do it. I don't think you have

1 a choice. I think you have to legislate and
2 you have to create a licensing system that not
3 just protects music, but all IP, not just
4 music, everything, because this is the tip of
5 the iceberg.

6 If you don't do it for music,
7 you've seen what's happened with music. You
8 don't need a crystal ball. It's happened, and
9 if you don't legislate to protect IP of all
10 kinds, I don't know what's going to happen. I
11 fear. I fear for all kinds of intellectual
12 property of, you know, not just music.

13 MR. DAMLE: Thank you. Mr.
14 Bernstein.

15 MR. BERNSTEIN: I agree with the
16 problems with some missing data, but I think
17 what you need to be aware of is that there's
18 many companies out there who make music
19 available, that do so before they even have
20 rights to the music, and that these problems
21 of missing ISRCs or missing information or the
22 need to do matching whatever types is

1 occurring, to a large extent, because people
2 are using this music before they even know if
3 they can.

4 Then what happens is they
5 eventually strike a license with the copyright
6 owners, and they've got a problem. They have
7 a bunch of data going back for however long
8 that they've been accumulating, where they
9 didn't get the information direct from the
10 copyright owner.

11 Therefore, they don't know the
12 ISRCs, and maybe they've got the track title
13 and who knows what they have. But a lot of
14 problems when people say they're missing data,
15 a lot of them it's systemic in that it's
16 because they were operating their services
17 before they were given the rights to do so,
18 and they don't have it.

19 So they engage others to actually
20 help them, because I've had people come to us,
21 help them and try and figure out what is it
22 that was used, and perhaps an ISRC seems good

1 to match it. There's some credibility, yes,
2 but we know there are issues with the ISRC.
3 ISWC I don't see as in practice as much,
4 because a lot of the publisher data doesn't
5 always contain it.

6 But the point I want to make to
7 you is whatever you might be hearing about
8 missing data, a lot of it stems from the fact
9 that the music was used before anybody had the
10 rights, and now they're trying to catch up.

11 MR. DAMLE: Mr. Irwin.

12 MR. IRWIN: I just wanted to go
13 back, and I know we're going back to a
14 previous panel, but I think it's kind of
15 applicable to this panel, to what Mr. Rudolph
16 said about the retitling of production music.

17 This is -- I know because I've had
18 conversations with Shawn Lemone from ASCAP
19 about this. With the watermarking and
20 fingerprinting and all that stuff in some of
21 these titles, when they retitle them, what
22 happens is you'll get a writer. Some of our

1 writers will say I didn't see this on my
2 statement.

3 I know it was played in Germany, I
4 know it was played somewhere here, and then it
5 will come through another service that's
6 tracking these fingerprints and watermarks and
7 everything. That because it's got a different
8 title now, it will have -- you'll have BMI or
9 SESAC or ASCAP looking at these things, trying
10 to track where the payment came from, and the
11 payment has already been made.

12 Because it's got a different
13 title, it's got the same marking. So what's
14 happening is that a lot of these resources
15 have been used up tracking down things that
16 have already been paid. So I would love to see
17 this retitling

18 thing actually go away altogether.
19 It would make it a whole lot easier for a lot
20 of people, streamline the whole system.

21 I mean first of all, it's
22 dishonest. Let's begin with that. It may not

1 be illegal, but it's dishonest, you know.
2 You're creating one copyright and calling it
3 ten different names.

4 So I just thought when we're
5 talking about data standards, these are the
6 sort of things that get confused around the
7 world with the reciprocity thing with other
8 societies.

9 The other one that we have a lot
10 to do with is the retitling -- I mean this is
11 not illegal, but in a lot of cases when
12 television shows and films and such go
13 overseas, they retitle quite often, you know,
14 to be more appropriate to the market that it's
15 in, and quite often, the cue sheets that go
16 with them do not necessarily get retitled.

17 Therefore, that income ends up
18 going into a black box somewhere in Europe,
19 and not coming back to us. That's something
20 that's been getting better as societies have
21 -- the American society is more aware of that
22 now than they have been in the past.

1 But there's been times, I mean
2 I've personally had some of my own films that
3 I've had to track. It's taken four or five
4 years, particularly out of South America, to
5 get the right, you know, whatever the foreign
6 language cue sheet is. So that's all I want to
7 say there.

8 MR. DAMLE: Okay, thank you. Mr.
9 Lord.

10 MR. LORD: Yes. With respect to the
11 single database, there's -- or the example
12 that Ms. Goldberg gave earlier, that she
13 checked on a song and there was different
14 splits at every station.

15 A lot of that is inherent or comes
16 from the composers themselves, who may not
17 agree on what the splits are, and one goes to
18 ASCAP and registers it his way, and the other
19 one comes to SESAC and registers it her way.

20 We all do the best we can to sort
21 that out. We don't pay royalties under they're
22 sorted out, you know, what the splits are. But

1 that kind of thing is always going to exist.

2 Also, you may have a composer who gets a
3 divorce, and his wife gets the rights to his
4 works and the income streams, or you may have
5 -- and they don't know who to report to.

6 Or you may have a publisher who
7 licenses a song for a specific purpose, and
8 for that purpose only, they share the
9 publisher income or the copyright, you know --
10 well, they wouldn't share the copyright, but
11 the income for that particular usage.

12 So you know, Mr. Watkins or Harry
13 Fox or ASCAP or BMI or SESAC may have problems
14 with their databases, but it's always going to
15 be -- there's always going to be that. If
16 there was the GRD, if there was the Copyright
17 Office who undertook to create the database,
18 it's going to still have problems.

19 We all got to get used to that.
20 There's not going to be an 100 percent
21 database anywhere, because of human nature if
22 nothing else. So I think the solution, again,

1 is let the marketplace find its equilibrium.
2 Let the ASCAPs of the world and the BMIs of
3 the world get out from under their consent
4 decrees, and create their databases and let
5 MRI do their work, let SESAC do their work.

6 And whoever has the best and the
7 best customer service will win, and maybe
8 there's space for three or four or five such
9 databases. But to think that we're going to
10 have one that's perfect all the time is utter
11 nonsense.

12 MS. CHARLESWORTH: I just wanted to
13 interject. This is the question. I mean we've
14 been hearing this probably for 10, 15, 20
15 years, that the music industry needs a
16 definitive -- acknowledging that it may not be
17 perfect, but needs, let's say, universal
18 standards that everyone can agree to, and yet
19 it has not come about.

20 I mean in other words, I think
21 that there -- everyone acknowledges there's
22 huge incentives really, and everyone would

1 probably gain from having improved standards,
2 having shared data, having -- not having to
3 have 30 people in a research department, you
4 know, tracking down matches or whatever.

5 But the problem is for whatever
6 reason, it really hasn't come about in the
7 private sector in the way that at least -- I
8 mean the services, listening to them and
9 others around the table, find useful.

10 So I think that's the question, is
11 sort of how -- at what point does there need
12 to be some incentive, perhaps from the
13 government, to nudge the industry or really
14 move the process along, because every single
15 roundtable we've had so far, but many, many --
16 I mean every single conference I've attended
17 in the last three years. This is like in many
18 ways people see this as the most important
19 issue, the most significant thing that's
20 actually affecting the licensing system.

21 So if that's the truth, and maybe
22 it is, maybe it isn't. But if it's a huge --

1 it's at least a huge gating factor, you know,
2 why hasn't there -- why haven't we seen more
3 of a private solution? I guess that's not just
4 for you, Mr. Lord; I mean it's really directed
5 around the table.

6 MR. LORD: Well, if you'll give me
7 \$100 million and force all the other companies
8 to give me their data, I'll have it for you
9 very quickly. But I don't think there has been
10 enough -- first of all, ASCAP and BMI, again,
11 are hindered in what they can do.

12 They've taken this initiative
13 without us, but they've taken this initiative
14 to build this database and that's at least a
15 start. The marketplace, these people want
16 data. They need to be able to -- I disagree
17 with some of them, but they need to be able to
18 understand what they're using.

19 We need to have good database, and
20 I think the marketplace is just evolving to
21 that point, where it can. I don't think ten
22 years ago anybody could have done it,

1 technologically. I think -- and people didn't
2 have the incentive. I think now, as Ed Arrow
3 said earlier, they give their data away,
4 because they want to receive the income.

5 I think the income levels now, the
6 revenue levels now are getting to a point
7 where people have to create that database.

8 MS. GOLDBERG: Can I just say
9 something, since my name was used?

10 MS. CHARLESWORTH: No. No response
11 from you.

12 (Laughter.)

13 MS. CHARLESWORTH: No. I think you
14 have the quote of the day, in terms of your
15 comparison of the databases. Of course.

16 MR. DAMLE: Yes.

17 MS. GOLDBERG: First of all, I
18 agree with some of the things that you said,
19 but I never said that any system is going to
20 be perfect. But I did not say there were
21 different splits in the systems.

22 In fact, ASCAP and BMI, to my

1 knowledge, don't include split information.

2 But there were --

3 MR. LORD: Different composers?

4 MS. GOLDBERG: But there were
5 different publishers, different songwriters,
6 different addresses.

7 MR. LORD: It could be any number
8 of those things, yeah. I'm sorry, yes. That's
9 fine.

10 MS. GOLDBERG: Yeah. I just wanted
11 to clarify. I know it's difficult to do this,
12 but I think it really needs to be done.

13 MR. DAMLE: Okay, thank you. We'll
14 finish off up here and then I'll come back.
15 Mister -- I don't know who was next. Mr.
16 Hauth, were you next?

17 MR. HAUTH: Thank you. I'm
18 sympathetic, particularly to the recording
19 industry, about these standards and the
20 reporting of data. But -- and I think we all
21 need to work, services as well as
22 stakeholders, on this problem. I think it

1 affects all of us.

2 In the mid-90's, when we had our
3 ASCAP proceeding, the Religious Broadcaster
4 Music License Committee took ASCAP to its rate
5 court and went all the way through it, came
6 away with a mixed decision from Judge Connor.

7 But one of the things that we came
8 away with, ASCAP had been requiring radio
9 stations who were split or mixed license, in
10 other words, they played music and they played
11 talk, and in those days, there were a lot of
12 them, and they needed a special license called
13 a per program license.

14 ASCAP was requiring those stations
15 to provide census data 24-7, with all of the
16 song data. Not just title and artist, but
17 album label and ISRC I believe, and probably
18 one other data point. This was impossible to
19 achieve, and we -- it was one of our
20 complaints. The courts -- in discovery, we
21 found that ASCAP depended on two data points
22 in order to distribute, and that was title and

1 artist.

2 Now and so the radio industry has
3 been used to reporting those two data points,
4 title and artist. Now fast forward to the
5 sound recording proceeding, I'm not sure which
6 one it was, that set the reporting
7 requirements. We not only are required -- this
8 is for radio simulcasting over the web.

9 We report to SoundExchange a ton
10 of stuff. It requires special software,
11 requires special companies. We are using Ando
12 Media now, but you've got Liquid Audio and
13 Stream Audio and it's become an industry, this
14 reporting of data, because we have to report
15 not only music information; we have to report
16 performances, the number of performances that
17 each song played receives, how many computers
18 were listening to it.

19 Okay. So we have these
20 requirements that are -- everybody knows
21 they're very difficult, and the way that radio
22 stations receive their music is that the

1 labels downloaded to the, you know, the music
2 director of a radio station. It's not -- it
3 doesn't come in the form of a CD obviously. It
4 comes as a download.

5 Oftentimes, those songs are not
6 part of an album, and the data on them, and we
7 did, in response to the CRB's rulemaking on
8 this, the NAB is filing comments, and we
9 helped with that to some extent. In some
10 fairly exhaustive research, we found that
11 stations are only getting title and artist
12 data.

13 In other situations, we found, I
14 called one of Salem's large stations in Los
15 Angeles to find out what's going on there, and
16 he said "Yeah, yeah, yeah. It's available, but
17 you've got to hunt for it. The ISRC code you
18 can find it, but you've got to hunt for it."

19 Now I suggest this, that you do
20 not want SoundExchange or a record label does
21 not want the lowest common denominator in a
22 radio station doing research for it. That's

1 what's going to happen and that's what
2 happens. You put a junior board operator on
3 this project, and you've got to look
4 everywhere for this data.

5 We're going to -- this is a
6 disservice to the record industry. It's not
7 because we're lazy. It's not because we refuse
8 to get it. I'm under the gun with
9 SoundExchange now.

10 One of my assistants who handles
11 all of our 100 stations, who reports to
12 SoundExchange, got an email the other day
13 saying that we're not in compliance.

14 We take that seriously. We don't
15 want to be not in compliance. But if we do our
16 own research, that is to say if our radio
17 stations do their own research, it's bound to
18 come back very faulty. So you deliver that to
19 SoundExchange. Does it help them? I don't
20 think it helps them a lot. I think it's got to
21 come with the download, and it's got to be
22 clearly delineated, and you know, we're

1 willing to help where we can, because it's a
2 lot of work for us too.

3 So that's why I say we're all in
4 this together. But I don't think you want, you
5 know, 100 different researchers trying to find
6 that data for you. It's going to be a mess.

7 MR. DAMLE: So I just wanted to
8 clarify one thing. So you're saying when the
9 music director gets the digital files from the
10 record labels, the only metadata associated
11 with it is the title of the song and the
12 artist?

13 MR. HAUTH: Title and artist.
14 Typically, it's not assigned to an album yet.
15 In some cases, it is, but sometimes -- I guess
16 sometimes it's not part of an album yet. It's
17 a new song, and so you don't get a lot of data
18 on that. But they sure want you to play it, so
19 anyway that's a problem, I think, that needs
20 to be dealt with. Thank you.

21 MR. DAMLE: Okay, thank you. Mr.
22 Rudolph.

1 MR. RUDOLPH: As far as the
2 government encouragement of universal
3 standards, I think one of the things that we
4 should again try to continue to reinforce,
5 because we're at a point in time, okay, and
6 you guys are spending a lot of time. The
7 Copyright Office is spending a lot of time.

8 We have legislative interest in
9 paying attention to this. It's not based on
10 the rates, you know. It's actually on some
11 kind of reform. So we have a moment in time,
12 and at this moment in time we should actually
13 use technology to solve a lot of these
14 problems.

15 So far we've talked about a lot of
16 numbers, and I actually think in -- and there
17 are certainly issues with this. But an audio
18 reference file is the strongest way to go, and
19 one of the reasons I say that is because we're
20 talking about all music, and certainly from a
21 composition standpoint, it's a composition
22 until it's embedded in some form, shape or

1 form, or embodied, if you would, in a
2 recording.

3 The questions around variations,
4 but there's technology that could help with
5 that. There's a lot of things that can solve
6 it. But the reason I bring it up is because
7 the ability to solve frankly that problem,
8 being able to listen, if you would, and do it
9 in a fairly -- and there's technology. There's
10 companies out there who are doing this,
11 particularly on the TV side. One of the
12 companies that I work with has probably, I
13 don't know, five or six thousand library
14 tracks. Over a year, we have 40,000 plus
15 detections. Someone else was handling that for
16 us. We matched actually all those detections
17 against it, and the miss rate was less than
18 five percent. It was pretty amazing.

19 This production music doesn't have
20 ISRCs. So how is that going to get accounted
21 for in a copyright situation? So I think when
22 -- you know, this is just a suggestion.

1 But a way that an encouragement
2 would be almost thinking about it, and there's
3 a term in the kind of developing in the
4 technology space right now called
5 accreditation, and essentially it is a come
6 cleanness.

7 That's very similar to what
8 YouTube frankly did too. But create a
9 reference file. That reference file is then
10 can be matched, can be scanned, it could --
11 all kinds of things could happen to it. You
12 can come in and make those claims.

13 I'm not saying this is the exact
14 format, but trying to find technology
15 solutions that have a fairly low overhead, and
16 put the responsibility on to the rights
17 holders then, of keeping those in a -- keeping
18 those maintained, I think, is a really, really
19 important part. There's four companies that
20 I'm aware of, four private companies in the
21 U.S. that are already providing services, and
22 their businesses are much more important than

1 this.

2 But I'll call it ADP. Some of them
3 are here today, and you know, the TSPs could
4 complain about well, it adds another layer of
5 cost. But I don't think that's what it is.
6 It's like you make a choice whether you want
7 to do your payroll internally or not. It's
8 kind of the same idea, and that cost will get
9 better and more efficient as it goes.

10 It lends itself to what we've all
11 been talking about, which is essentially an
12 open source culture, where businesses can
13 build off of a set of data, and I think
14 businesses will flourish off of this, both
15 providers to retail, B&B business providers,
16 content creators.

17 There's people fulfilling --
18 there's companies out there that are filling
19 each piece of that pipeline right now and
20 they're nascent. But what I've seen is the
21 major rights holders actually being more open
22 than they've ever been, I would say even in

1 the last six months, realizing that they're
2 having to address problems.

3 I think a lot of that's driven,
4 frankly, by the nature of video platforms and
5 what's so -- what's the right word? What's so
6 prevalent in the way people are interacting
7 with technology and music buying, for example,
8 six-second clips.

9 I mean there's not many audio
10 recognition technologies that can actually
11 know what six seconds are. That's a problem.
12 But if both sides come together, and this is
13 isn't pie in the sky. But there are
14 discussions between the technology companies
15 and content owners on how we actually do that,
16 and that's a good precedent move forward. Then
17 I think we have to look at technological
18 solutions, not what I would say, you know,
19 library control and authority control and
20 things that are very -- which are very, very
21 solid professional standards, that have been
22 like -- I think somebody probably heard me say

1 this before -- it's been around since, you
2 know, the libraries created in Alexandria.

3 But we're in a place now where we
4 can make a bold move, and with the Copyright
5 Office I think really promoting that, and
6 understanding there's a cost behind that, but
7 having both the industry and government, I
8 think you could probably see actually an
9 efficiency, based on what's happening today,
10 lowering the cost, as we were talking about.

11 Les was saying hey, the cost of
12 actually having to file. You can bring all
13 those different things down. Not just the
14 copyright, but also the licensing element of
15 it.

16 MS. CHARLESWORTH: So I just had a
17 follow-up on that.

18 MR. RUDOLPH: Sure.

19 MS. CHARLESWORTH: So if you have
20 sort of a claiming system, and you don't -- I
21 mean I guess the question is where you have
22 competing claims, how do you handle that?

1 MR. RUDOLPH: Is this like a
2 softball? You did it. I mean you were part of
3 the -- half the people in this room, not half,
4 but several of the people in this room were
5 involved in the RIAA settlement, and it was
6 when money was involved, it was unbelievable
7 how quick the resolution happened between
8 rights holders who had disputes.

9 Basically what happened is
10 everything went in a pot, shook out. Everybody
11 got their piece and then it's like wait a
12 second. Somebody's claiming this, I'm claiming
13 this, and really complex problems came around.

14 It was like did that income relate
15 to a period when I had that copyright, or did
16 that income relate to a period when you had
17 that copyright?

18 And so in those cases, they
19 settled it between each other and then moved
20 forward, right.

21 MS. CHARLESWORTH: Right, right.
22 No, I was just sort of -- I think I was going

1 less to the sort of mechanics of it, and sort
2 of more to the idea of you said you didn't --
3 you were sort of the resistant to the idea of
4 having a single authority or whatever. But I
5 mean, you know, who's the decision maker and
6 how do you --

7 MR. RUDOLPH: No, no, no. I'm not
8 resistant to that. What I'm resistant to is
9 using a current conventional -- it can be part
10 of the data, the metadata. But using something
11 that is -- we had to use in the past because
12 we couldn't identify. We had to put a number,
13 a unique identifier to it.

14 Well, we kind of have the most
15 unique identifier you could have, and that's
16 the actual recording itself, and yes. I mean
17 that doesn't solve sheet music problems and
18 everything else, but that's not embodied in a
19 recording itself. But we have that ability and
20 we can talk about all day long that one audio
21 recognition software. We'll use a different,
22 you know. Zeroes and ones will look different

1 than the other.

2 But that recording, if you would,
3 that matching is -- exists now and it's only
4 getting better, and other people are doing it.
5 That's the thing. Like think about what, you
6 know, how deep the match must be on Grace
7 Note's side. I mean they're playing deep blue
8 grass cuts, and they're actually serving up
9 the right art work with that.

10 I mean so if all these solutions
11 already exist and people are doing it, and as
12 fast as they're doing it. I mean I heard -- I
13 think this is absolutely true. The number one
14 most called service in the world is actually
15 Google on a day to day basis, I mean API dot
16 calls, right? Does anybody know what that is?

17 So the second is actually Grace
18 Note. So the ability to serve that quick and
19 that many that matching it's there, and we
20 actually have it inside our industry. So in
21 the GRD, you know, that's an interesting
22 solution. But I think if the Copyright Office

1 really got behind a solution, and something
2 that the creators could be involved in, almost
3 think a Wikopedia type accreditation and
4 policing and monitoring, I think the industry
5 and the rights holders between themselves.

6 This isn't about licensing. This
7 isn't about what's fair market. This is about
8 having an understanding of what the rights are
9 that people have.

10 MS. CHARLESWORTH: Thank you.

11 MR. DAMLE: We'll go over here.

12 Let's start with you, Ms. Miller.

13 MS. MILLER: So I guess I'll start
14 by saying that I think if we don't streamline
15 things, basically the independents fail. I
16 think that when things have been sort of
17 blanket decided in the past, it's basically
18 because the majors step up to negotiate on
19 behalf of everybody. So that's what gets
20 generally applied to everybody else, because
21 they're the major stakeholders, at least in
22 organized power.

1 I think a single authoritative and
2 recognized source is definitely something
3 that's needed. I think that that's an area
4 that should be a core focus to solving a
5 problem. I think that some piece of data
6 should in fact be exchanged for money, for any
7 time. I mean we do it with taxes and all kinds
8 of different systems.

9 So if there is a universal
10 database that again back to data exchange,
11 everybody's calling upon the same universal
12 database to inform their data needs. Then
13 we're going to have a lot more harmony in the
14 industry. But then, you know, take it or leave
15 it. I mean if the indies can't get in there or
16 the majors or whoever can't get their act
17 together to actually provide one universal,
18 and it doesn't need to be an ISRC code. It can
19 be a whole new thing that is created with this
20 data, you know, this single authoritative
21 source.

22 But one piece of data should be

1 the piece that triggers monetization, and even
2 matching like what you're talking about. The
3 technology exists to data share. The
4 technology exists to have industry-encoded
5 standards. I mean Dolby is a great example,
6 where the government has stepped in to
7 regulate the encoding of, you know, media.

8 I think that that actually exists
9 technology-wise today, except that not for the
10 specific purpose. But the technology exists,
11 so that each track could in fact have an
12 underlying, you know, unique piece of data
13 that's carried along with it.

14 Then if you set time parameters,
15 where basically within a certain amount of
16 time, same as patents are done, rights holders
17 have to collectively come together and report
18 into the system, and basically that window,
19 you know, it closes for the initial filing. So
20 it kind of delves with, you know, where
21 somebody was talking about well, maybe there's
22 a dispute between rights holders.

1 Well maybe there is, but as long
2 as there's sort of a time window where
3 everybody comes to the table, and then it's
4 sort of the window closes when everybody
5 agrees, and now that is the universal code for
6 it, that moves forward with the file.

7 That code is relying on
8 technology. So there's sort of a hub where the
9 data is being served from, so it can be
10 modified. So whether somebody changes from
11 ASCAP to BMI, or from the rights get sold or
12 whatever, the hub is the master of the data.
13 So that can be dynamic.

14 Yeah, and I mean I'm with these
15 guys. Like I think data sharing is essential.
16 But I think that the roadblock to data sharing
17 has been that there is just this the building
18 block that's critical to it is that single
19 authoritative source, and then the agreement
20 upon what is that one piece of data that is
21 unique.

22 I think the only way to enforce a

1 piece of data that's unique is that's how you
2 get paid, same as your social security number.
3 So that's my solution.

4 MR. DAMLE: Thank you. Mr. Watkins.

5 MR. WATKINS: You know, when we
6 talk about databases, I always think, you
7 know, what we're really talking about are
8 organizations. Databases are one tool that
9 organizations use to identify music and pay
10 royalties and license music.

11 Organizations, of course, have to
12 be funded, governed, owned and controlled, and
13 that's largely why some of the industry
14 initiatives in this area in the past --
15 certainly many have kind of fallen apart. For
16 us, you know, we think we've made great
17 strides in this area, simply because there's
18 a commercial incentive to do that.

19 When I mentioned the 35 people
20 earlier, it's not my favorite part of our
21 business, I assure you, and it's certainly not
22 what makes us profitable. But we're able to

1 hire those people and still be profitable, and
2 we think using them in the way in which we do
3 gives us a competitive advantage.

4 We operate in an environment, you
5 know, where we compete with other rights
6 administrators, I mean particularly with
7 regard to Section 115 administration, you
8 know. We compete with Keith's company, we
9 compete with the Harry Fox Agency.

10 I will not be surprised hear BMI
11 say they want to be in this business very
12 soon, ASCAP and, you know, we meet with
13 publishers these days who tell us
14 SoundExchange is coming by to talk about how
15 they can administer musical work rights.

16 So we welcome that competition. We
17 think that the cream rises to the top in that
18 area, if there's a competitive commercial
19 incentive to be better at it as an
20 organization. If you create one entity to be
21 the definitive data source, then you remove
22 that incentive. You've got fewer players.

1 I suggest if you've got one
2 monopolistic entity that is supposed to be
3 doing that well, inevitably they will not.
4 Let's never forget that, you know, music
5 rights information, like I mentioned earlier,
6 is simply not -- it's not a static data set.

7 I mean catalogues revert. There's
8 a very dynamic secondary market, particularly
9 with regard to music publishing rights. There
10 are disputes that get settled, result in
11 changes. There's reversionary things to
12 consider. None of that will change, nor will
13 the collaborative way in which music is
14 created change.

15 So you know, for all those
16 reasons, we think really ultimately the best
17 thing the government can do is allow
18 commercial incentives to continue to operate,
19 for there to continue to be innovation in this
20 area.

21 You might consider, to the extent
22 this doesn't -- it's not working for the

1 services, and I was surprised to hear that --
2 you say that, because I think, you know, for
3 a lot of our clients, I know very well that it
4 is working, you know.

5 We're able to license a very high
6 percentage of the music that they use. We're
7 able to pay the royalties. In some cases if
8 we're not able to identify the music
9 immediately we go back. When we get the data,
10 we pay retroactively, you know.

11 But you may consider addressing
12 the problems that services may face in other
13 ways, like for example, addressing
14 infringement remedies or something like that.

15 MR. DAMLE: I mean what about the
16 idea that Ms. Miller suggested, of you know,
17 the government not being the sort of source of
18 the data or the holder of the data, but
19 providing a standard, perhaps a standard
20 identifier or something like that, that all
21 the people that are competing in the
22 marketplace for the kind of work that your

1 company does, can then at least rely on that
2 as being sort of uniform across the industry?

3 MR. WATKINS: Well, a good analogy
4 would be the DDEX standard, which I'm sure
5 you're all familiar with to some extent. What
6 has happened there is, you know, DDEX is from
7 where we sit perfectly fine. If a publisher or
8 a record company wants to give us a DDEX feed
9 of their data for purposes of licensing or
10 paying, we're happy to work with that.

11 If they want us to provide one
12 back to them for purposes of accounting to
13 them, we're happy to do that. But what we've
14 seen is not surprisingly what happens is the
15 standard that gets implemented at the big
16 companies, that becomes their version of the
17 standard.

18 So now you've got the Warner DDEX
19 standard and you've got the Universal DDEX
20 standard, you know, and I would not expect
21 those companies to go back and try to keep up
22 with the standard or harmonize amongst

1 themselves. They're competitive entities with
2 one another, and it's really difficult for
3 them.

4 So you know, we see them looking
5 outside now for more help in this area,
6 choosing essentially to outsource some of
7 these functions. There is a cost to that, like
8 I mentioned before. So many of these things
9 that we're talking about really ultimately
10 boil down to who bears the cost.

11 MR. DAMLE: Good, thank you. Now
12 Mr. Greenstein.

13 MR. GREENSTEIN: Thank you, and I
14 may disagree with some of what Les says. But
15 we're usually aligned. So I think an
16 overarching point in my mind and for many of
17 the companies I represent is that data is
18 power, and it's wielded as a sword against
19 licensees in many respects. So that the
20 absence of data, meaning ownership
21 information, either results in someone being
22 forced to take a blanket license and maybe

1 paying more for that, or gives a copyright
2 owner leverage for a claim of infringement,
3 and saying if you don't get it right, if you
4 use one work and you don't have a license for
5 it, there will be crushing damages.

6 I can tell you that those
7 conversations do happen in the free market,
8 that people say go ahead and remove our
9 content. If you get it wrong, we're going to
10 get our money one way or another. Tell us what
11 you own. We're not going to tell you anything.

12 We don't have an obligation to
13 tell you anything is often the response from
14 a copyright owner. I think there's also data
15 that goes to payment, which is different than
16 data for ownership from a licensor to a
17 licensee, and then from the licensee back to
18 an owner or an agent, for the ability to
19 distribute.

20 There are concepts of black boxes
21 for money, where money goes in and doesn't get
22 distributed, and I know that that is an issue.

1 So I think one of the things for the Office to
2 consider is how do you address or think about
3 all of these issues? Are there carrots and
4 sticks that can be employed?

5 So in the licensor/licensee
6 relationship, can you condition an entitlement
7 to payment based upon a copyright owner making
8 their repertoire public? Right now, I think
9 it's only the ASCAP consent decree that
10 requires that ASCAP make the information
11 available, and it's not easy to get.

12 BMI, I believe, takes the position
13 that it does not have the same obligation, and
14 with all due respect to Dennis, who I adore,
15 getting that information from SESAC is not
16 easy, and in one instance, I've been offered
17 it in paper, which would be hundreds of boxes,
18 because it's not electronically available.

19 I think it's also useful to look
20 at, again, Judge Cote's decision, where what
21 did Universal Music Publishing do when Pandora
22 was faced with having to take a license to

1 Universal's works? In that decision, Judge
2 Cote talks about the fact that UMTG demanded
3 an NDA entered into with Pandora, and it said
4 that you cannot use the information to remove
5 our content or shape the amount of content you
6 use.

7 You could only use that
8 information to evaluate whether or not to
9 enter into a detail. I find that shocking and
10 preposterous and offensive, that a copyright
11 owner is withdrawing from a PRO, and you're
12 saying okay, tell us what rights are
13 withdrawn, so that we can remove all of your
14 content.

15 Or you do a deal with a rights
16 owner, and you say give us a list of all of
17 your work, so that I can decide how much I
18 want to pay or how much I want to play of your
19 music or how much I know. Very frequently, all
20 too frequently, copyright owners say no, it's
21 too complicated. You're just going to take a
22 license. You're going to pay us, and you just

1 have to live with that fact pattern.

2 I think that if you're talking and
3 coming back again to this free market concept,
4 you cannot allow there to be a market where a
5 licensee is going to be subject to crushing
6 statutory damages, even when they're acting in
7 good faith and operating a legitimate
8 business, if the copyright owners don't tell
9 them what works are owned by whom.

10 I do think that a central
11 repository is possible, although not easy to
12 get to, and I don't pretend to have all of the
13 solutions. But the Patent and Trademark Office
14 does it for patents, they do it for
15 trademarks, and there's no reason,
16 notwithstanding all of these problems, and I'm
17 sensitive to Dennis' point, that publishers or
18 songwriters may disagree with splits;
19 publishers may have conflicts.

20 When I was the general counsel of
21 SoundExchange and there were conflicts among
22 sound recording copyright owners, because a

1 major label distributes the works of an
2 independent label and the licensee reports it,
3 you don't want to be in the middle of that
4 fight. You put it in a suspense account.

5 But that doesn't mean that there
6 can't be obligations for people to be
7 transparent, and transparency is very
8 important in this space, because it will
9 enable songwriters and recording artists to
10 get paid; it will prevent copyright owners
11 from playing games with the licensees, to
12 threaten them; and it will prevent money from
13 disappearing into the system.

14 I think that if again, and I
15 forget who suggested, Mr. Barker, maybe about
16 a clean slate, think about what will allow the
17 most money to go in efficiently and to come
18 out efficiently. It's not a very significant
19 burden to tell a copyright owner to identify
20 what it is that they own and have to do so
21 promptly.

22 I can tell you that in a license

1 agreement, if a music publisher or record
2 label does a deal with a service, they will
3 often include a standard provision that is a
4 work by work takedown right. They say that if
5 I have a dispute or a publisher or a
6 songwriter raises an objection or an artist
7 raises an objection, we have the right to tell
8 you to remove that work from what you're
9 licensed to operate or use.

10 You'll have an argument, is it two
11 business days, five business days, seven
12 business days, et cetera. But the licensor
13 expects you to do that. I don't see why the
14 regulations or the Copyright Act cannot
15 require copyright owners to have that same
16 kind of obligation for prompt notification and
17 to do so electronically.

18 I mean there are many, many
19 standards and many people around this room,
20 Keith and Les' company, and John, who deal
21 with electronic exchange of information, and
22 to require people to do that, so it is

1 immediate, it is transparent, and you can
2 query a database. You can find out whose works
3 they are, without these delays.

4 If songwriters can't agree, well
5 then a pox upon them. Don't entitle them to
6 money, and don't allow someone to bring an
7 infringement action. Once you figure it out,
8 then that work can be used and without
9 authorization maybe it's subject to liability
10 for infringement.

11 But don't penalize people because
12 the rights owners can't agree as to how to
13 allocate, or they want to withhold that
14 information to increase leverage. I think
15 that's an improper exercise of a copyright
16 owner's exclusive grant that's given to them
17 under the Copyright Act.

18 MR. WATKINS: Could I just respond?

19 MR. DAMLE: Sure, Mr. Watkins.

20 MR. WATKINS: And I'll shut up.

21 MR. DAMLE: Then I'll come back to
22 you.

1 MR. WATKINS: Umm, you know, I
2 don't want it to be said that I was suggesting
3 that users should be left to their own devices
4 and effectively exposed to infringement
5 exposure in the circumstance that you have
6 articulated, Gary.

7 You know, there are just
8 commercially available solutions to help users
9 avoid music as much as we're available to help
10 them license it. In the Pandora litigation,
11 for example, had Pandora come to us to help
12 them avoid the Sony ATV catalogue, we would
13 gladly have charged them for that service.

14 That's what it is. It's not a one-
15 time event. It is an ongoing process, because
16 they're constantly adding recordings, which
17 relate back to that Sony ATV data, and by the
18 way, that's why Sony ATV just giving them that
19 data would not actually get them to where they
20 need to be, which is to tie that information
21 to their recordings, and then pull down those
22 recordings.

1 That's something we do. We've done
2 it in other contexts. We've done it with
3 societies. I do acknowledge that there
4 certainly have been other instances like what
5 you're describing. I think given Judge Cote's
6 finding in the Pandora case, and the judge's
7 findings either -- and forgive me for not
8 remembering in the television or radio case
9 with SESAC.

10 They're not looking very favorably
11 on the unwillingness of the rights owners and
12 the societies, to you know, help the users
13 avoid the music at issue. So I think we've
14 seen already some evolution in their thinking
15 about that, and you know, where this may
16 ultimately lead is services may no longer have
17 access to all the music.

18 But that may be a necessary sort
19 of byproduct of a dynamic market for music
20 rights.

21 MR. DAMLE: Okay, thank you. We're
22 running out of time, so I'll get these last

1 two comments in, Mr. Rudolph and then Ms.
2 Muddiman. Oh Mr. Bernstein, yes.

3 MR. RUDOLPH: I would say one thing
4 too, and that is the -- while we've certainly
5 operated under a different set of laws, we
6 can't not pay attention to two things that
7 have happened. One's a market action and the
8 other is what I call a government action.

9 One is Pan-European licensing, and
10 what has happened as a result of that.
11 Primarily, the ability for foreign societies
12 and/or players to participate, and I don't
13 think it's -- if you don't think that a
14 foreign society, several different foreign
15 societies are looking at the U.S. market from
16 a licensing perspective, then that's wrong.
17 They are. Then you go to what APRA AMCOS has
18 done in Southeast Asia, and they've kind of --
19 partially because of just the total disarray
20 of the licensing regime within some of the
21 lesser countries, I would say, of Southeast
22 Asia, they've gone into each of the societies

1 and said we'll just handle it all for you.

2 They say okay.

3 So now the Australian -- and they
4 did this with the help of Universal Publishing
5 actually, and they got their catalogues.

6 They've got other catalogues now, and on a
7 market basis, have gone in now and are able to
8 issues licenses across I don't know how many
9 countries it's up to, but I think it's six or
10 seven, on a pan-Asian Southeast Asia basis.

11 So I think A, I would say please
12 help facilitate an answer, and the -- because
13 if not, we're going to start running into what
14 I'd say are even third party foreign, who may
15 have different initiatives than ours, or I
16 should say incentives than ours, but yet the
17 cost is there. So we always thought hey, we'll
18 do the worldwide license out of the U.S. Well,
19 the service may decide and the rights holders
20 may decide as well that well, it's actually
21 more beneficial for us to do a worldwide
22 license out of a third party country, which we

1 do for sync already.

2 If somebody in the UK from a
3 publishing perspective or from a master
4 perspective puts a recording or uses
5 publishing in a movie, for example, and gets
6 a worldwide license for it, they get a
7 worldwide license.

8 So I think we need to kind of pay
9 attention to that as well, because it's
10 happening. There is movement afoot. Take
11 Merlin and the collective. It's something that
12 we have to suffer. It's something you guys
13 should consider, the Copyright Office should
14 consider as well when it comes to antitrust
15 exemption collective outside of what the
16 consent decrees kind of allow, because they
17 don't have that same set of issues. So thank
18 you.

19 MR. DAMLE: Great, thanks. Ms.
20 Muddiman and then Mr. Bernstein.

21 MS. MUDDIMAN: I was wondering if
22 we're trying to decide who makes the system,

1 and if we do agree that there should be one
2 system, why should it not be the burden of the
3 expense of that system fall to those people
4 who have benefitted from intellectual property
5 and, you know, the ISPs, you know, the
6 gateways, the pipelines like Google and
7 YouTube and, you know, the intellectual
8 property owners.

9 You know all of them -- if they
10 were to pool their resources, and including
11 the government as well. If everybody was to
12 pay for this system to be put in place, and
13 there'd be representatives from those
14 organizations to set the standard, you know,
15 to create the system, I mean it wouldn't take
16 us long.

17 I think we're full of creative
18 ideas, and I think it's a very complex issue
19 that could easily be resolved if the manpower
20 and the brains put on it as soon as possible.

21 MR. LIPSZTEIN: I don't know if
22 that was directly targeting me, but I mean if

1 everyone in this room who has data and
2 intellectual property rights wants to give
3 their ownership information to Google, like
4 I'll be outside at the end of the day.

5 (Laughter.)

6 MR. LIPSZTEIN: I think we would --
7 but in all seriousness, it's interesting. I
8 mean I was expecting to be a little more
9 active during this discussion.

10 But what impressed me from the
11 very beginning of the discussion was that
12 everyone seems to agree that there does need
13 to be some authoritative source of this
14 information, and I don't think anyone is
15 questioning that at this point, digital
16 services do want to pay.

17 That's -- we not only have to
18 under our licenses, we ultimately want to
19 create good products and good services for end
20 users who are going to consume these and who
21 are going to enjoy it, and the only way for
22 that to happen is if the sources from which

1 that music comes are appropriately
2 compensated.

3 We can't compensate those sources
4 without knowing who they are with specificity.
5 That's -- I'm amazed at the amount of
6 agreement and I'm sort of flabbergasted. But
7 what -- so to Jacqueline's, I think, to Ms.
8 Charlesworth's, sorry, one of her first
9 questions, what is the role of government in
10 all this, what surprises me is that despite
11 the availability of money and the willingness
12 of licensees to pay, and the willingness these
13 days of consumers to start signing up for paid
14 services and money that can go to creators,
15 there still seems to be a massive logjam with
16 getting information to service providers, to
17 pay appropriately.

18 I don't know what the right form
19 of incentivization is. I don't know if it's
20 making receipt of money contingent on the
21 provision of data. As was said earlier, that
22 seems to be the one thing that truly motivates

1 folks to even engage in what are otherwise
2 seen as very slow and difficult processes,
3 like resolving ownership disputes.

4 But there does need to be
5 something to facilitate that process.
6 Otherwise, I think we're going to be having
7 this exact same conversation year over year,
8 which I'm happy to have. But so yeah, the
9 offer to me outside, that's totally open. I'm
10 serious.

11 MR. DAMLE: Mr. Bernstein.

12 MR. BERNSTEIN: I actually think a
13 lot of the problems with the data, and this is
14 not why I flipped my card over, is there's a
15 lack of trust. I don't think it's a good place
16 to start, to suggest holding money hostage
17 unless you deliver the data.

18 That's not even a starter, and
19 that's why there's problems, because when you
20 conceptualize something like that, you begin
21 to wonder why people would want to work with
22 you.

1 MR. LIPSZTEIN: I guess I would ask
2 what else to do if we don't know who to pay.

3 MR. BERNSTEIN: Well, that's where
4 the audit rights come in as well. But that's
5 another conversation. But to suggest that you
6 would hold money until such time that people
7 give you their information or they won't get
8 money? I mean that's a non-starter.

9 MR. LIPSZTEIN: Yeah. I think we
10 ultimately don't want to hold any money. But
11 I don't want to throw it into a black box
12 either.

13 MR. BERNSTEIN: As long as that
14 black box, I think, can be reviewed by anybody
15 who wants to review it, maybe that's an idea
16 that you could throw out there.

17 MR. LIPSZTEIN: Yeah, and to that,
18 I think we would look to the government to --
19 other folks here to help us understand where
20 can the money go. If not to the person or
21 persons who rightfully are entitled to that,
22 whom? I would much rather --

1 MR. BERNSTEIN: I had flipped my
2 card up.

3 MS. CHARLESWORTH: Well I think the
4 question is, you know, partly what I hear
5 going back and forth here is sort of like an
6 ex-ante solution, you know, where you have
7 data. So it's clear who to pay, and maybe
8 you're suggesting something where you go in
9 and claim stuff after the fact.

10 MR. BERNSTEIN: Well no. That
11 wasn't what I was looking to suggest. In
12 response to hearing that it sounded like money
13 was being held hostage until you get data, and
14 he suggested well, we also have the black box
15 and want to pay it, then perhaps as part of
16 these licensing requirements, should there be
17 a black box or unidentified or unallocated,
18 that somehow it gets posted somewhere.

19 With anybody who wants to have
20 access to it, anybody, and then they can
21 rightfully go into it and review it, and then
22 submit their claims, representing that they

1 own or control exactly what they're claiming,
2 and then that money can come off the books.

3 To me, that's a real simple thing,
4 because that's probably one system of
5 transaction data that, you know, certain
6 information can be masked.

7 As long as you see the title and
8 you can say or determine that it's yours and
9 you can claim it, then perhaps there's a
10 mechanism you could start clearing out some of
11 this unidentified a little faster.

12 MS. CHARLESWORTH: Right. But I
13 think what's -- if you supplied a unique
14 identifier when you did that, and that unique
15 identifier somehow became available to the
16 industry, that would be enormously helpful
17 than having claims processes all over the
18 place, based on name and title.

19 MR. BERNSTEIN: Oh, absolutely.

20 MS. CHARLESWORTH: Because as we
21 all know, everyone in this room knows, you
22 have title -- you know, songs have the same

1 title. Names are spelled differently, and so
2 the question is how to get to a place where
3 you don't have to have that kind of -- or you
4 can cut way down on that kind of claiming
5 system.

6 MR. BERNSTEIN: Understood, and I
7 was referring more to the existing
8 unallocated, and then hopefully that will get
9 diminished.

10 MS. CHARLESWORTH: Yeah, no.

11 MR. BERNSTEIN: But just one reason
12 I flipped the card over is to address
13 something that you had mentioned earlier,
14 about it's been 10 or 15 years and why isn't
15 there a database at this point. I think it was
16 Mr. Lord who said give him a \$100 million and
17 he'll do it. You could probably give less, 50
18 million and he'll do it.

19 (Laughter.)

20 (Off mic comments.)

21 MR. BERNSTEIN: But what I'd like
22 to say though in response to that is I think

1 we're recognizing the value associated with
2 that kind of work, and if someone's going to
3 do that, whether it's the government who
4 mandates that and has somebody put it
5 together, or through a private interest group,
6 whether it's us.

7 Whether Les already has something
8 or we're building whatever it might be, you
9 have to consider that if you're going to look
10 to the private market to build it, and then
11 say give it all away, then you're going to
12 demotivate us to build it.

13 So you have to have a balance for
14 when you decide you're going to do this, as to
15 exactly how that information is shared and
16 what is shared, because the effort and the
17 time, and maybe it will take \$100 million to
18 build it. I don't think we're going to want to
19 -- I know we're not going to want to build it
20 for \$100 million, and then open up the pipe to
21 everybody to suck out all the data, and we
22 have nothing to show for it.

1 So I just think you need to
2 balance it when you decide, you know, how it's
3 being built, how it's going to be regulated,
4 what it is you're going to deliver to somebody
5 to balance it out with the investment that
6 comes with it.

7 MS. CHARLESWORTH: Yeah.

8 MR. DAMLE: Okay. That was a very
9 lively discussion on Data Standards.

10 (Laughter.)

11 MS. CHARLESWORTH: At five o'clock
12 in the afternoon no less.

13 MR. DAMLE: Yes, yes. Can we get a
14 check on the score in --

15 MALE PARTICIPANT: 2 to 1 U.S.

16 MR. DAMLE: Excellent. U-S-A.

17 (Simultaneous speaking.)

18 MALE PARTICIPANT: And there was a
19 goal -- while I was talking, two more goals
20 were scored. I didn't interrupt --

21 MALE PARTICIPANT: And he didn't
22 interrupt you.

1 MR. DAMLE: Great. Okay well, keep
2 talking. That wraps it up for our last panel.
3 I don't know if you had any wrap-up comments.

4 MS. CHARLESWORTH: No. Just I hope
5 to see many, if not all of you here tomorrow.
6 We have several other very important topics,
7 and I think this has been a very productive
8 day. I thank all of you for your time and
9 attention.

10 (Whereupon, at 5:04 p.m., the
11 meeting was recessed, to reconvene on Tuesday,
12 June 17, 2014 at 9:00 a.m.)

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Before: U.S. Copyright Office

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