UNITED STATES COPYRIGHT OFFICE MUSIC LICENSING STUDY

PUBLIC ROUNDTABLE

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Belmont University
Mike Curb College of Entertainment & Music Business
34 Music Square East
Nashville, Tennessee 37203

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AGENDA

TOPIC                                           PAGE:

Introduction/Opening Remarks                      5

Session 1:                                        16
  Current Licensing Landscape

Session 2:                                        93
  Sound Recordings

Session 3:                                        146
  Musical Works - Reproduction
  and Distribution

Session 4:                                        201
  Fair Royalty Rates and
  Platform Parity

Session 5:                                        261
  Data Standards
PROCEDINGS

(9:00 a.m.)

MS. CHARLESWORTH: I'm Jackie Charlesworth; I'm General Counsel of the Copyright Office. Welcome, and thank you so much for being here. To my left is Sy Damle of the Office of General Counsel of the Copyright Office, and to my far left is Rick Marshall, also in my unit, and together we'll be leading our roundtable today on music licensing issues. We're pleased to have so many people and such a high level of interest in these important issues. And I have to say I can think of no better inspiration to lead us to answers than this historic setting.

And I want to thank Belmont so very much for arranging to have us here, particularly Rush Hicks, Luke Gilfeather, and Wes Bulla and their colleagues here at Mike Curb for arranging for this space. I understand tables were procured as part of the process, and we really appreciate it and
appreciate the school's interest and
Nashville's interest in these issues. And we
look forward to hearing what you have to say.
Thanks too to the copyright Society of the
South and John Barker for leading us here.
And to all of our friends down here who are so
gracious in hosting us and sharing their views
from Nashville.

As many of you know, Register
Maria Pallante, the Register of Copyrights and
Director of the U.S. Copyright Office, has
identified music licensing issues as a very
critical priority, I would say, in terms of
the review, the ongoing review of our
copyright laws. I think there is a widespread
view in the industry, although not shared
necessarily by all based on the comments I've
read, that much of the system could be
improved, and that's what we're here to
discuss today. Many of you here today and
others who aren't in the room submitted
lengthy, sometimes lengthy but always
thoughtful written with the level of thought, detail, the number of footnotes in some of them. But they were very thoughtful and I think honest responses to our inquiries, the many questions we posed in our notice. And we really appreciate that, that helps us so much. Because it helps us to sort of understand where the fault lines are and what areas we really need to tackle in order to make progress in this area.

Some of our music licensing systems, as you all well know, date back over a century, and the systems are complex and can be very difficult to navigate. And they're not always perceived as equitable, I think is fair to say. Some for different reasons. And while they're deeply embedded in the marketplace and have played an important role, I think it's fair to say that the music market has been shaped and, in some people's view, it may be constrained by the traditional structures on which we continue to rely. And
that's why we're looking at these issues right now. So the questions before us really are in some sense simple as a base, which is, what is working and what is not, and for the stuff that's not working how might the government assist in helping to fix it.

And I'm hoping that as a result of this study and your comments and participation we'll be able to at least think about charting a course or a path forward that will solve some of the issues or resolve some of the issues that have been identified, and also, very importantly, protect the livelihoods of music creators without whom we wouldn't even be having this discussion.

That's of paramount concern and one of the reasons we've come to Nashville, because it generates so much incredible music. And now before I turn to some housekeeping matters I'm honored to turn this podium over to Dr. Bob Fisher, president of Belmont, who's going to make a few remarks. Thank you
so much for joining us this morning.

DR. FISHER: Thank you so much for coming. We're excited to have you at one part of Belmont. Belmont's kind of spread all over Music Row. And if you head all the way south to where Music Row eventually ends you run into Belmont University. Hope you get a chance to get down there before you leave. But we welcome you. This is a very important topic to us. Your work matters to Belmont, it matters to our students.

We have about 1700 going on 2,000 students in the Curb College of Entertainment and Music Business who are counting on you to make sure that their property gets protected. We have in addition to that in the School of Music about 800 more performers. So out of our 7,000 students almost 3,000 of them are in music. So you know Belmont rocks and twangs and boops and every sound you can imagine, all sorts of music, and we're very -- we find this is very, very important to us.
You're in Columbia Studio A, a place where great country legends recorded. And in fact a place where music historians here in Nashville say Nashville got transformed when Bob Dylan came to town and recorded "Nashville Skyline." And when his friends in L.A. said why are you going to Nashville, he said the musicians. And there are incredible musicians that live here in Nashville. Sometimes called the backup, but they're not, they're the deal.

The amazing musicians who are here populated this studio for -- starting then not only continue to be the home of great country hits but then, you know, Boz Scaggs came to town and Simon and Garfunkel came to town and all that exciting stuff. And we also own and operate Oceanway Studio just down the street where I met Bob Seger, my hero, and he said, you own the finest music studio in the world. I love that. Met Gwyneth Paltrow and Chris Martin in happier times.
I met Paul Simon and Edie Brickell, always happy times for them. All who come to record in our studios, and we're just -- and our students sometimes, not always but sometimes we have to keep them away. But most of the time they get to touch those experiences. And what an incredibly rich experience they have here at Belmont. So I could go on and on about that.

I'll point to you a group of what's going to be the best-behaved and the most attractive people in this room. And that's not a sexist statement, You guys look good too, both women and men. Those are our pipeline students who have the assignment this summer of saving the industry. We picked nine of our very, very, very best students who -- and it's a mix of all kinds of skills that they bring and interests that they bring. And we tell them -- and we hire them, we pay them. They're on the clock.

I shouldn't talk about being on
the clock. I mean I have the most fun job of all. But they are here to learn from you. Because at the end of the summer they're to present their ideas to their sponsors, the music industry here in Nashville that funds them, and so we're really excited that they're here.

And they're going to get a rare opportunity. I'm so glad they didn't come and say we need to buy tickets to fly to Washington for this. That's good. And, finally, and I'll make it quick but I notice there's a few attorneys in the room. Belmont graduated their first class of the Belmont Law School. In a very, very tough time we started a law school.

We're having great success. We've graduated I think about 120 folks. And we have an intellectual property track, no surprise, in our law school and find it an opportunity for people to come and learn about the law and preserve the law. So thank you
all for being here. Thank you for the opportunity to stand up here and brag about Belmont. I can feel my wife's presence. She's not here but I still feel it. Thank you.

MS. CHARLESWORTH: Thank you so much, Dr. Fisher. And thank you, students on the clock. And please do solve the problems of the music industry. You should be at the table instead of all these other people. Just a quick commercial announcement. For those of you who haven't heard, the DOJ we just learned is opening a study or an investigation into the consent decrees.

It's my understanding comments are due in early August, August 6th. So for those of you who are interested in that particular issue, and I know there are many among you, that process is underway. Just to make sure that you do not have one free moment from thinking about these issues. But, you know, other parts of the government will chime in if
it looks like there's a break and keep you busy writing comments. But obviously a very important development, and we're glad that they are taking a look at the consent decrees. You can see their questions I think -- where can information be found?

On the DOJ web site? Okay. So if you consult their web site you'll see what they're asking. Okay. So today our goal is to focus on the most critical issues before us and try to move the discussion forward if possible. Being ever the optimist, I'm hoping we can find some points of common ground. There are clearly many points of disagreement, but there may be areas where compromise is possible, where we can think about tradeoffs that might benefit both users of music and the creators and the intermediaries in this sector and see if we can think creatively about some solutions.

The problems are many, they're interconnected. This is based on reading the
14 comments. There are economic issues about
rates and then there are administrative issues
about licensing, and I think the two often get
kind of tangled up together. But I look
forward to the discussion. We have -- we call
this a roundtable, but we actually have a
rectangular table and the reason we set it up
this way is so that you actually really can
try and engage with each other a little bit.
Because that's what I find most useful about
the roundtables.

It's not so much restating things
that you said in the comments but trying to
sort of join the issues or flesh out some of
the issues and really make us aware of your
key concerns. So I look forward to a very
lively discussion. If the people sitting
around the table could just turn their
placards a little bit toward the front so I
can see them, yeah, okay, when I'm sitting
there.

And I think we're going to use the
system that we've been using recently. If you want to speak, just turn your table tent up and we'll see that you have it up, and then we'll call on you hopefully in order but, you know, we'll try and get the remarks, all remarks in. If you could limit your comments to a couple minutes, we have a lot to cover and obviously quite a bit of interest and a number of participants.

We will be -- we have eight or, excuse me, four sessions today and we'll be taking breaks in between and a lunch break, obviously, after a couple of them. So it will be a long and I think very engaging day. And thank you again for joining us. So without further ado, I'm going to sit down and we'll start the first session.

Session 1 - Current Licensing Landscape

MS. CHARLESWORTH: Okay. So if everyone could just go around and introduce themselves and explain their affiliation for the record, that would be helpful.
MR. JOHNSON:  George Johnson.
I've been in Nashville about 16 years.
Singer, songwriter, and I record my own stuff
and have my own publishing. I'm just
interested from that standpoint - sound
recording publishing and songwriting.

MR. OXENFORD:  David Oxenford from
Wilkinson Barker Knauer law firm in
Washington, D.C. I'm here on behalf of
several state broadcast associations who
represent the interest of broadcasters in
their states and nationally on all sorts of
issues including copyright issues.

MS. SCHAFFER:  I'm Brittany
Schaffer, I'm an attorney with Loeb & Loeb
here in Nashville. We are here to represent
the interests of the NMPA and other
independent music publishers in Nashville and
outside of Nashville as well.

MR. SELLWOOD:  Good morning. My
name is Scott Sellwood. I'm the head of music
publishing at YouTube for the Americas. My
focus is licensing, music publishing for
YouTube's music products. Prior to that I was
the general counsel for a New York-based music
licensing company called Rightsflow that's
sole job was to license music publishing and
pay songwriters. And prior to that I was a
touring musician, had the opportunity to tour
the United States, Canada, and Europe several
times over. So have an artist side as well.

MR. MARKS: I'm Steven Marks.
Head of digital business and general counsel
for the Recording Industry Association of
America, representing RIAA and its members.

MR. KNIFE: Lee Knife, I'm the
executive director of Digital Media
Association. We represent consumer-facing
digital media companies like YouTube, Google,
iTunes and those types of entities.

MR. KIMES: I'm Royal Wade Kimes.
I'm a touring artist, and I own a record
label, Wonderment Records, and two publishing
companies, BMI ASCAP writer. And from the
looks of things, I'm the last cowboy on the row.

MR. HERBISON: I'm Bart Herbison, executive director of the Nashville Songwriters Association. We have a 165 chapters and the advisory group of songwriters called the California Songwriters Association.

MR. EARLS: I'm Kent Earls. I'm the head of Universal Music Publishing Group here in Nashville. I've been here with them for 17 years.

MR. DRISKILL: I'm Marc Driskill. I'm the head of Sea Gayle Music here in Nashville and also the executive director of the Association of Independent Music Publishers, the Nashville chapter.

MR. COLEMAN: Hi. My name is Dan Coleman, and I'm the managing partner of Modern Works Music Publishing, which is an administrative publisher representing over 30,000 copyrights with an office in New York, an office here in Nashville, and now in Los
And we have a particular interest in the perspective of small firms and individual artists in the music publishing community.

MR. WALTZ: I'm Reid Waltz. I'm in-house counsel at SESAC, which is a performing rights organization here in the United States.

MR. BARKER: I'm John Barker, president of ClearBox Rights, an independent administration company. But I'm really today representing a new group formed, IPAC, Interested Parties Advancing Copyright, which right now is made up of a little over 50 entities in Nashville, and we're looking to quickly spread to L.A. and New York.

MS. CHARLESWORTH: Okay, great. And I forgot say, you probably know this, but your remarks are being recorded and will be transcribed and made part of the public record and available on the Copyright Office web site. So here is -- I thought we'd start off with a very broad question, and if we can, if
everyone can kind of go around or anyone who wants to comment on this. Tell me about if you had to pick one thing that is most in need of fixing in this space, what would it be. What would your first priority be. I guess starting with Mr. Johnson and then going around for anyone who wants to comment.

MR. JOHNSON: Well, obviously the consent decree. But if that's working out and it's going to happen this year, that would be great. To me, I think the price fixing of the Copyright Royalty Board and the rate courts and setting them at nano-royalties for streams or even pennies for mechanicals. I think that price fixing causes the problem in the low rate that we have now.

MS. CHARLESWORTH: By price fixing you mean just the rate setting process.

MR. JOHNSON: Setting the rates, you know, below market rates but they're really below market rates. But just them setting them and not letting the free market,
the individual price points set the rate is
the problem.

MS. CHARLESWORTH: Okay. Who --
turn your cards up if you want to comment.

MS. SCHAFFER: The biggest issue
that we see is the licensing rates and the
complicated licensing structures that have
been created with Section 115 attached to our
license. And we feel strongly that, just as
Marybeth Peters said 10 years ago, that it
should be repealed and that we should have a
free market licensing system for mechanical
rights.

MS. CHARLESWORTH: Okay. Mr.
Sellwood?

MR. SELLWOOD: There's one thing
we've noticed that I think is the biggest
challenge is the availability of ownership
information about who owns copyrights. It's
impossible to value licenses when we don't
know what is being licensed. It's impossible
for us to manage our risk when we don't
understand what our licenses cover. And so for us I think it's crucial that out of this process we establish some way to create some type of registry or some process by which we can understand who owns what copyrights and what copyrights are covered by which licenses, no matter which right or side of the copyright, musical copyright we're talking about.

MS. CHARLESWORTH: Okay. Mr. Marks?

MR. MARKS: First of all, thanks for having us all here. I think this is an important discussion to have at a very critical time in the industry. And on behalf of RIAA and our members we're really looking forward to this conversation and the ones that follow and hoping to find, you know, areas of consensus, as you pointed out, to address the many problems. Sticking with the theme so far on musical works, I guess the way I would frame it is, you know, the world is changing.
You know, if you look back 20 years ago or 30 years ago or even 15 years ago the label acquired all the rights that were necessary to put out a finished product. After working with an artist, that product usually resulted in a disk and some liner notes. And, you know, much like a movie studio would do in getting the rights necessary to put out a film and then create the film and market it and everything else, it would make the film available and distribute it too so that consumers could get it from the outlets.

Today things are much more complicated. The releases themselves are more complicated. We were trying actually to come up with some kind of way to describe releases today, and I think we used the term modern music release in our comments but that's by no means -- there might be a much better way to describe it. But, you know, these releases are not just a disk with, you know, some liner notes. They're multiple physical disks, they're multiple digital
formats. You know, we now have 17 rate
categories for mechanicals whereas, you know,
10 years ago we only had two. Everything
today in terms of the way consumers consume
music includes a screen of some sort. Whether
they're looking at lyrics or a video or
something static, they're looking at it on a
device that's not just coming through speakers
in stereo like it was many years ago but with
a screen, and therefore video is a very
important part. One of our members just
released a very successful album, and had to
obtain for that album 1481 licenses for the
release of the three physical products, the 92
digital products, the 27 songs across the 51
songwriters. There were 89 shares. There was
even a share that represented 1.5 percent
interest in a song, and there were two
publishers for that. So you had -- you know,
the notion that you need to release -- have to
get 1500 licenses today. It's just a much
more complicated world as a result of all
those products than it was years ago. And that complication I think is compounded by the fact that things are moving at a much quicker rate. So whereas there may have been time to kind of sort out some of the complexities with regard to the licensing years ago as you move maybe from format to format or if you had, you know, a release that had a lot of different songwriters, today you have digital music services like, you know, all of Lee's members that are engaging in something of an iterative process of improving on services, coming up with new services. And two weeks from now there might be a completely new service that we know nothing about. And the current licensing system for musical works is just not very flexible or nimble right now to handle that. And so those things combined and the fact that the digital music services themselves, you need to get licenses in addition to the record companies for some of these uses just make things much more
difficult. We set forth a proposal, I can wait in terms of going through that proposal later 26 on so others can speak. But I just want to say that we had three kind of overarching objectives for that proposal, and we don't -- we're very clear in our comments, we don't pretend to have all the answers. You know, we view this as an open-ended discussion and figure this out all together. But we thought that objective number one should be that publishers and songwriters should be getting market rates. What's happening at the rate court especially, you know, needs to be addressed. And so whatever systems should develop should be based on market rates. Second, there needs to be, because of all the reasons that we were just going through, more aggregation of rights in the music work field. ASCAP and BMI and SESAC have done a wonderful job providing blanket licenses, aggregating rights, making things more efficient. We need to do that in the 115 area too for the reasons
I was just going through. And last we need to address all of the products that are today's modern music release. Because having one system for, you know, audio and one for video, just to pick one example, doesn't make a lot of sense when you need to get something out to consumers all at once in a variety of different ways to meet consumer choice. So I'll hold off on going through the specifics of what we proposed for later so others can speak.

MS. CHARLESWORTH: Okay. Thank you, Mr. Marks. Mr. Knife.

MR. KNIFE: Just kind of not really building on but just amplifying what Mr. Sellwood and what Mr. Marks just said, I think probably the biggest problem is -- and going up another thousand feet there, is the striation, the different types of licenses that we had. When you look at the Copyright Act as it exists now in 2014 it's obviously this kind of cobbled-together set of different
licenses, different rates, different rights
that are applicable depending on what type of
media you're using, whether or not it's a
song, it's a recording, it's being broadcast
over analog, it's being broadcast digitally,
as Mr. Marks said, whether it's got a video
compONENT attached to it or not. But that to
me is probably the single biggest problem is
that the licensing landscape that we have is
completely striated and there is no single way
to navigate your way through it. And probably
the biggest thing that we could do or the
best, most beneficial thing we could move
towards is something that Mr. Marks was
talking about, which is some kind of unified
licensing. And as Mr. Sellwood said, some
type of data base where we could know what all
of the rights were that were attendant to a
particularly musical work and be able to license
all of the potential uses and potential
exploitations that 29 would be best for
songwriters, best for their agents, best for
consumers, and best for services that are
trying to serve both of them.

MS. CHARLESWORTH: Okay. Thank
you. Mr. Herbison.

MR. HERBISON: I would agree with
the two previous panelists. There are so many
uses of music on so many platforms in the
digital era. But there's one we really need
to point out, and I think if I took this
placard and made it a little rounder it might
look like a player piano roll. So the number
one concern for us is fairness and a level
playing field and a market. So we --
Songwriters' Equity Act as a good start but we
need to really consider eliminating the
compulsory license and either eliminating or
radically altering the consent decrees. It's
way past time.

MS. CHARLESWORTH: Okay. Thank
you. Mr. Earls.

MR. EARLS: Thank you. And I
wanted to let everybody know that I'm not here
presenting a reconciled universal music group opinion or position, and I certainly don't want to do that today. But I'm participating in a publisher capacity and because of the importance of this work, and I appreciate you guys being here. And going on with Bart and Brittany and other people have said the important thing is either phasing out over time Section 115 or definitely improving it dramatically with several things that we can get into later.

MS. CHARLESWORTH: Okay. Mr. Driscoll.

MR. DRISKILL: At this point it's just kind of reiterating, but I think the point that it is a complex system, it doesn't make sense anymore, but the system seems to have been set up to where the musical work gets penalized for the complicated system. And that doesn't make any sense. No other rights have the rate setting, have the compulsory license, and it just doesn't make
sense that the musical work is the one that is discriminated against because of the complicated licensing system. Let's make it easy, let's make it fair.

MS. CHARLESWORTH: Okay. Thank you. I guess Mr. Barker. Oh, I'm sorry.

Mr. Coleman.

MR. COLEMAN: Thanks. We feel strongly that the collective right societies have a special mandate that's been sanctioned for many decades by Congress and the Supreme Court, and that can serve a special role in reconciling all of the comments that were made prior. Transparency of data, the efficiency of rights licensing, and most important from my perspective as a representative of individual composers and artists is the fair distribution of payments to them. The rights of large firms are different than the rights of individual creators, and I believe that Congress should expand the mandate of collective rights societies in the model of
Europe, in fact, as quasi-public cartels. And that will be a big step in the improvement of licensing in the country.

MS. CHARLESWORTH: Okay. And now Mr. Barker.

MR. BARKER: Thank you. You know, we've heard a lot already of issues that are coming up, some more specific than others. I think what we look at is as a general idea -- we're hearing about a lot of things. There's a quote that says for every thousand people hacking at the leaves there's one hacking at the root. The root of the problem to me for song owners is the license process and the rates. Section 115 we think right now addresses both of those in an incorrect way simply in that the process is not as fair as other processes that other rights owners can use, and the rates are limited. So I think IPAC's position is as independent publishers and interested parties, which we would line up with a lot of the opinions around the table,
is let's just simply address the process
system for licensing, a simplified system that
is clear. It may not be easy but it should be
clear, and there's a difference between the
two. So if we can figure out what that is,
and I wish I knew what that answer was, a
clear and concise licensing process, and then
one in which rates can truly be fair market
value and not limited like the rates are now.

MS. CHARLESWORTH: Okay. Thank
you. Mr. Oxenford.

MR. OXENFORD: I just didn't want
you to think that broadcasters had no problems
with any of the licensing.

MS. CHARLESWORTH: Broadcasters
are known to speak up from time to time, so.

MR. OXENFORD: And I don't want to
take the position that's contrary to, for
instance, my next-door neighbor here, Mr
Johnson, to say that the -- everything that
the Copyright Royalty Board does is -- should
be thrown out entirely. Because I think
broadcasters believe in simplicity, like the
RIAA, and Steve and I, I think we're always
amazed when we're on the same side of issues
on these sorts of roundtables. We believe in
simplicity too. We believe in collective
licensing where necessary to address
marketplace inequalities. We're concerned
about what's happening on the public
performance side, with some concerns about
ASCAP, BMI, and SESAC not being available to
represent the entire universe of publishers in
the public performance side. We are concerned
about the rates being too high on the licenses for streaming. But, you know,
generally I think broadcasters with minor
tweaks, you know, have a system that is
relatively well-working for them. We don't
have the issues for the most part on the side where there does, obviously I think
around the table, seem to be lots of
controversy. So these other issues will be
ones I'm sure we'll be discussing during the
rest of the next two days.

MS. CHARLESWORTH: Okay. Thank you. Okay. So I have a question. For those who are interested in phasing out the 115 license entirely, and we received -- I mean some have commented this morning and obviously there are written comments to that effect. And assuming, let's assume it just went away -- let's do a hypothetical, it's gone tomorrow. Okay? I think a lot of comments suggested that major, larger companies could engage in direct licensing activities. How do we address the issue of the thousands of smaller entities and self-represented creators and so forth who rely, say, on maybe today Harry Fox or other intermediaries for sort of a collective licensing framework? I mean how would these companies get licenses in that system, get full coverage, assuming they want to use the full -- you know, the 30 million works that are currently out there in the world? Ms. Schaffer. A brave soul is going
to answer my question.

MS. SCHAFFER: I think some of this gets back to what John was saying about getting at the root of the problem. And the current 115 licensing structure was set up in 1909 to avoid a monopoly of the Aeolian Company. And the marketplace has never had an opportunity to create these collective societies or to really come up with efficient licensing schemes. And I think if you add in with that the consent decrees that ASCAP, BMI and SESAC are under, it's created an environment that has placed a lot of constraints on music publishers and has created an environment that has made it difficult for us to figure out how do we work within the confines of Section 115 and the consent decrees and everything that kind of comes within that culture. And if we can take out the government price controls and the rate setting actions, I think what you will see is a marketplace that very much does want their
works to be used and wants to make it easy and
efficient. And I think a lot of the concerns
that Scott and Steven have made about making
things efficient are things that we recognizes
and we want to have happen. We would like to
see, you know, a database where we know the
rights just like they know who we need rights
from. Because frequently as publishers we're
placed in the exact same position where we
want something licensed and, you know, we
would also like to find the other party to
that license. And I think what you'll see
happen if 115 is eliminated and we end up with
a free market system is that you'll see
collective license agencies evolve. We
already have Harry Fox, which represents, you
know, the vast majority of publishers when it
comes to granting these mechanical licenses,
despite the compulsory license. And I think
you'll see additional companies start to
develop in that way. I think you will also
see a lot of collaborative licensing that will
come about with -- and maybe also address the concerns with granting, you know, lyric video rights and other rights that come with that mechanical license. But what I don't understand is why we want to put a band-aid on the current licensing structure that we have. And say, okay, right now the rights that we have are -- or the issues that we have are we need -- these are lyric video licenses and we need licenses for music videos and things like that. Well, I'm sure Scott would be the first to admit that Google is constantly trying to develop new technologies and change the way that we see -- that we engage in music and that we share music with each other. And I think what we do is if we keep a licensing system in place that is structured around current technology, all we're asking for is to keep ourselves locked in the same structure for another 105 years. And it's taken us this long to realize that the system is broken, let's try to fix it. When technology is
changing faster and faster, why don't we leave it as there's a reproduction right, let the music publishers collectively figure out how do we make licensing efficient. And that way as new technologies develop it's much easier for private parties to enter into negotiations to address the new technologies than it is to wait 105 years for Congress to reform the Copyright Act. I mean it just doesn't make sense to me why we would be trying to limit ourselves to the current technologies. Let the music publishers have the chance that they've never been given, which is to form a collective society where they can license these works. I don't think there's a single music publisher or administrator around this table that doesn't want efficiency, that doesn't want as much money coming in as possible. But we've never been given the opportunity to make that system happen.

MS. CHARLESWORTH: Okay, just a quick -- I'm sorry. I know there are others
waiting but I want to just enter a specific question for you in light of that view. The question is let's assume, you know, publishers were given that opportunity and they got together and formed a new collective society or the right -- you know, maybe the PROs mandate will be broadened. But does that still require any kind of government regulation in your view? There are many comments who --

MS. SCHAFFER: Sure.

MS. CHARLESWORTH: There are many commentators who believe that that still would be a necessary ingredient, so that's why I'm asking.

MS. SCHAFFER: The position of the NMPA and my personal view is that we're better to limit government involvement as much as possible, and to allow the free market to create some societies. At the same time I do recognize that there are those who are interested in some type of minimal government
oversight whether it is a number of designated agents that would be able to engage in the collective licensing or whatever the case -- whatever, you know, extent we choose to have government involvement, even looking at anti-trust issues. Now, on the anti-trust issues to me that's not something that the Copyright Office is doing. That's a Justice Department issue. So I think we try to keep it out as much as possible, but if we get to that step where we're talking about do we have government oversight or do we not have government oversight, then we've made huge progress in this discussion. Because I think that's something amongst publishers that we can start to discuss amongst ourself as to what we think would be most efficient in this process. I think that that question is a little premature until we get to the step where we've all agreed and come to the conclusion that 115 should be eliminated.

MS. CHARLESWORTH: Okay. Thank
you, Ms. Schaffer. I'm sorry to pick on you
a little bit, but I was curious for your
views. Mr. Marks I guess, just going around.

MR. MARKS: I want to go back to
one of the points that was made earlier about
rights versus rates. Because I agree they
sometimes get very confused or thrown
together. And this is where I would like to
throw out at least the idea we threw out in
our comments. Because what we tried to do,
and as I was saying before about our
objectives, was to ensure that there was
market value flowing to songwriters and
publishers. But not at the expense of doing
away with what I think many people around the
table have recognized is a very good thing
right now in musical work licensing, which is
the aggregation of rights. And we see that on
the ASCAP and BMI side in the transparency
issues and the distribution issues that exist
there that enure to the benefit of
songwriters, for example. And so what we
tried to do was to take these things together
and see what we can come up with with all of
them, and here's what we came up with. We
would eliminate the rate court and the CRB
completely, so for songwriters and publishers,
at least as it relates to, you know, the
consumer uses of sound recordings. If there
were other uses that songwriters and
publishers wanted to keep under those, that
would be up to them, but we would say do away
with them. That way you don't have any of
these issues of a rate court or a CRB
potentially suppressing what would otherwise
be fair market rates. But at the same time
provide a blanket license for all of the
rights for the kinds of uses that are needed.
And this is where 44 I part company with the
last comments. Because I think if you
eliminate 115 it makes things more chaotic,
not less chaotic. You're retaining the
complexities of work-by-work, right-by-right,
use-by-use licenses that lead to somebody
needing 1500 licenses to get a release out.

Whereas if you have a blanket license that aggregates the rights in a way that still ensures a market value for songwriters and publishers, you know, it helps with the ease of licensing and you still have the market rates. And we would say you would achieve that market rate by having a free market negotiation between songwriters and publishers on the one hand and sound recording copyright with owners on the other as to a percentage of what the sound recording copyright owner gets. Very similar to the way things work in other industries for all other copyrights where you have one that's -- one company that's putting together the finished product, delivering that to consumers. You don't have, for example, Netflix negotiating with the screenplay writer for a movie. The movie company has all the rights, whatever deal is cut between -- in the free market between the screenplay writer and the movie is kind of incorporated into that,
and that's delivered out to the market to
these companies and others so that consumers
can enjoy the product. And we think there are
a number of advantages to this. You've got
the market rates, as mentioned. More consumer
choice because it's easier for companies to
get to market. There's going to be more
revenue for both services and creators, we
think. Because the current system where -- I
mean you've got this fragmentation of rights.
There's been a cottage industry of services
that's developed to help companies actually
clear the rights. That's sapping, you know,
revenue, potential profit for those companies,
potential additional revenues for creators.
I mean I don't know how much any given service
has to pay for that. It might be 2 percent,
it might be 5 percent of their revenues. But
that's meaningful money that could be going to
invest in their services for their profit and
for the creators. The viability of the PROs
given what's happening right now with the
potential withdrawal we think our proposal
would address in ensuring that ASCAP and BMI
continue to play a vital part. So -- and I
guess the last thing I would just mention is
there's nothing today or for the past 10 or
however many years that has stopped publishers
or anybody operating as rights owners under
115 from putting together the kinds of
collectives that Ms. Schaffer was just
talking about. So you don't have to eliminate
115. You know, those designated agents, those
collectives, they could've been created, but
they haven't been. And given where we are and
the time where things are moving very quickly
in the music marketplace, we think having an
aggregated blanket license but ensuring market
rates is the way to go.

MS. CHARLESWORTH: Okay. And
we'll have a lot of opportunity later on to
sort of flesh out some of the -- further your
concept. I'm looking at my watch, I want to
make sure everyone can get their two cents in.
Mr. Knife, you're -- I just want to go around quickly and then I have one final question I'd like to -- it's already about -- you know, we may run a few minutes over, but.

MR. KNIFE: I'll try to be brief.

I want to start out by saying I think it's very difficult to talk about these concepts, you know, the way we have the agenda set up today. You know, when you talk about something like, oh, should the 115 compulsory license be eliminated, it's very difficult to talk about that in a vacuum without thinking about that impact on all other types of music licensing and the marketplace in general and rates and terms and how it goes. But I think -- and I'd be interested to hear what the songwriter representatives here think of this. I think the idea of some type of -- kind of what Steve was saying. I think the idea of some type of collective licensing, whether or not that's actually compulsory or blanket or whether it's statutorily set or it's
voluntarily set, I think that a blanket
license, a collective license has to happen.
And I think there's a problem in talking
about, say, in today's day and age just
eliminating Section 115 whereas Steve pointed
out there's always existed the possibility for
music publishers, both large and small, to
collectivize, to try to build efficiency into
their own licensing regimes. But HFA seems to
be the only entity that's doing that today,
and they're the only ones that have been doing
it for, I don't know, whatever it is, 50 or 75
years now. And so I think if you're going to
talk about moving away from the 115 compulsory
license specifically, that has to be, that
would have to be replaced by some type of
collective licensing regime. Going back to
the point that you originally asked about,
which is what happens to the small individual
songwriter. Again I'd be interested to hear
from the songwriter representatives here
whether or not individual songwriters are
truly upset about the rates and the rate
setting process and the licensing process
versus the ability to literally not license
their works.

MS. CHARLESWORTH: Okay. Mr.

MR. KIMES: I'll answer that. We
are upset, and that's why we're all here
today. This is the first year that I can
remember that the general public has actually
addressed what is going on with the music
industry. Because they ignore copyrights.
The 115 is eliminating itself. Nobody else is
-- we're not backing it, we're not backing our
own industry. That's a general blanket of
everything from everybody said here. Yeah,
we're upset. When I can look down off of a
two-story building and see a songwriter get
out of his truck and he's barely got enough
money to get there and write that song that
day, something's bad wrong and we've got to
fix it. We can spit out all the fancy words
we want to but we got a big old problem. As the general public has come to that, surely to goodness today we'll fix this, and I know that's why we're all here. Yeah, the rates are too low. I mean if you had to eliminate something to get them up, do it. We got to do something. If we don't, we're going to have mediocre music, mediocre writers. Anybody can write one, anybody can record one. They're doing it right now on their couch with a laptop. And what kind of gets to the point, we're getting to -- it's like pouring Kool-aid in the ocean. If the music's no good, the people are not going to buy it they don't want to hear it. And why would they buy it if it's not real good, and it's not real good because we're not supporting our writers. When I -- I was a top songwriter in this town for a while until I started recording at Warner Brothers. And I feel that once you take that step, you know, you just let that go some to record I can tell you that we had more
songwriters then than we do now. We had great
songwriters. And a lot of those guys have
left town. And all I can say is yes, we are
upset and we got to fix it.

MS. CHARLESWORTH: Okay.

MR. HERBISON: Short answer for
you. I think the marketplace can figure that
out. I think there's reasons the publishers
haven't done that. We've been frozen by
Section 115 Reform Act and looking at consent
decrees, but that's a long involved discussion
for later. There are some points I want to
make on behalf of songwriters on this topic.
Depending on what Congress does and how future
licensing collection agencies are incarnated,
important to us is representation on the
boards of the governing bodies of those
organizations. Fair dispute resolution bodies
with songwriter and a majority songwriter
representation. I think we need to be careful
about allowing people that want to get into
that business to be able to compete with those
with larger market shares. And we need true transparency from the bottom down and from the top up. Those are important to American songwriters, those issues.

MS. CHARLESWORTH: Okay. Mr. Coleman?

MR. COLEMAN: I want to say that I believe that compulsory licensing and consent decrees are reasonable restraints on copyright monopolies, and that I respectfully disagree with the NMPA position. I believe that the government should preserve a compulsory license for reproduction. But that when we talk about fair market rates in the context of large firms and blanket licensing for large firms, it means something very different than blanket licensing from a collective copyright society. When a large firm takes in a blanket license they're leveraging the most valuable copyrights they have to take in a lot of cash flow. And how they pay out that cash flow to individual songwriters is a matter of
contract. Why we need government intervention and strengthening of copyright collectives is a distribution system for songwriters that allows blanket licensing but that also has a much more transparent and much more pro composer method of distribution that's not bound by recording contracts and music publishing contracts.

MS. CHARLESWORTH: Okay. Mr. Waltz?

MR. WALTZ: I just wanted to point out -- my comments aren't specific with respect to Section 115, but SESAC has never been under a consent decree. However, we do believe that the consent decree has the effect of suppressing the value of the public performance, and in turn suppresses the value of copyright. And so obviously -- and we're very, you know, pro free market solutions to these issues. And we believe that given the chance the free market will determine those.

MS. CHARLESWORTH: Okay. Mr.
Barker?

MR. BARKER: Ms. Charlesworth,
you started off by saying if 115 was repealed
tomorrow what would that look like. I think
Mr. Marks said it would be chaotic, which I
agree with, because I think it would. I think
though the elimination of 115, as Ms.
Schaffer said, is ultimately where we should
go. And if we approach that more as a sunset
type situation of a period over time, then
like Mr. Herbison said, we'd figure it out.
We'd get there from here. We'd figure out
what to do. I think -- you know, what I'm
hearing and it seems like what the industry
has done is we are so ramped up in trying to
get additional income from new services and
from new types of services that the industry
as a whole is trying to figure out a way to
simplify licenses for those services in lieu
of protecting the original rights that the
Constitution gave the copyright holders, which
is to have exclusive rights to those works.
So we want to protect those. I think getting rid of 115 will help protect that because it will then give us the ability for more fair market negotiations. So I think if we look at sunsetting the 115 and say our primary goals are to come up with a simple license -- or a clear license system, one that will allow services to survive. That may not allow them exclusive rights on blanket licenses of 30,000 works at one time, because there could be certain owners who choose to not have their works on a certain service, and those owners should have that right, in my opinion. Yet if we keep in mind we want to make the licensing landscape more clear as well as make the licensing landscape available for copyright holders to always fairly negotiate their rates, and with a period of time marked to get there, I think we could get there.

MS. CHARLESWORTH: Okay. And now we have just a couple more minutes. I'm going to run over a speed round, which is of your
view -- oh, Mr. Johnson. I'm sorry, I missed you. Well, you can be first on the speed round. If you had to pick something that's working the best today, okay, the best part of the system, just in a sentence or two, what would that be? If anything. If you have a part of the system that you think is functioning well.

MR. JOHNSON: Honestly, I don't think there's a part of it that is functioning well. I think the good thing about it is it shows collectivism never really works. I mean it can work in some situations, and it's great for group effort and all that. But collectivism always ends bad and especially economic collectivism. And I think what we're seeing is just that, just like a comet entering the atmosphere, just the whole system breaking apart, and the free market rearing its "ugly head" and taking over. And to answer your question before about what if you got rid of 115 tomorrow, I think that when you
look at Universal Publishing and Sony Publishing and major publishers being 100 percent out of BMI this year as of January 1st, that's incredible. That's historic. And what do they do, these publishers? Well, they can't negotiate for their songwriters, and that's why they got out because of the consent decree. But within this window of January or so they all made deals or at least some made deals with the streamers like Pandora and Spotify and others. So that's the free market taking over. And I think that it wouldn't matter if there was a 115 or 114, Because Universal and Sony Publishing, they have these huge catalogs. And they're going to negotiate what they want for their sound recording and what they want for the underlying composition. And so I think that part of me does want to get rid of 115. It's something I have to study a little more. But when you look at the term mechanical, it's a great term, and maybe served us well, but maybe it is outdated. And
when I look at it there is a sound recording

and there is a composition. And if you look

at the rate courts and the CRB, the hearings

and all that, everybody's arguing over what

the definition of mechanical is or what the

definition of performance is. And you spent

all this time arguing that, and really it's

just a sound recording and a composition. I

think that those are the two underlying

copyrights, whether you have 115 or not. And

that's what Universal and the big guys are

going to negotiate with anyway. And Pandora

and these other groups do not want to pay for

songs or pay for a rate that Universal and the

big guys think is acceptable. And they don't

get the songs, and then Pandora goes out of

business, that's fine. They're one company.

One company taking millions of songwriters' songs. And you think of all the tax revenues

that are gone because of these big companies,

one or two, they don't pay any taxes. So I

just think that in a way it really wouldn't
matter but I'd like to -- I just think that
Universal and even independents like me, we're
going to do what we want to do. And some
people want to be in a collective license,
that's great. But I think we should have a
balance of both. And that's it.

MS. CHARLESWORTH: Okay. I stand
corrected a little bit, I misread my watch.
I didn't have my glasses on. So we have a
little bit more time. But I'm looking for
models of things that are working well today,
if anything. Ms. Schaffer.

MS. SCHAFFER: Just to I guess
kind of combine your last question and the
original way that you phrased it in terms of
what is something that -- a type of licensing
structure that's working well. I think the
synchronization market is a perfect example.
There's parity of power and not --
synchronization licenses are generally divided
in terms of income 50/50 between sound
recording and the musical composition. And
even when we get down to smaller uses, and
we're not talking about commercials or
television uses, I think a great example would
be of the settlement agreement that YouTube
and Google entered into with approximately
3,000 music publishers where -- is it a
perfect arrangement? I'm sure there are those
who will say it's not perfect. But I think
it's a wonderful example of how licensing in
the synchronization market has resulted in an
outcome where -- I think even Google themself
said it's a win-win-win. Google and YouTube
were able to put up user-generated content
with musical compositions. Copyright owners
were compensated based on the income from the
advertising that's coming in. And YouTube
users get to enjoy watching YouTube videos,
and I will include myself amongst them. I'm
glad that there's a system where that works.
That's a great model example for where the
system is working.

MS. CHARLESWORTH: Okay. And next
Mr. Sellwood, maybe you have some further thoughts on the YouTube license.

MR. SELLWOOD: Not at this point.

I was going to comment in a different direction.

MS. CHARLESWORTH: Sure.

MR. SELLWOOD: If that's okay.

But I do agree. I do appreciate those comments from Ms. Schaffer. What I was going to say is to your question of, speed round, what is working, the thing that I do think is really working is that there's a sense among all of the stakeholders that we really do need each other, and that innovation in the digital music space is stabilizing the music industry not only in the United States but globally. And that we do have to find solutions, and I feel like that's a really important thing for us all to recognize. There are things that I think that are part of the existing system that have really contributed to that, and I depart from a lot of the earlier comments. I
was going to say based on my days at
Rightsflow I do think that the compulsory
license under Section 115 is very important,
and I do think it works for a couple of
reasons. YouTube doesn't rely on Section 115
for our licensing. We may at some point in
the future but today we don't. So this steps
back a little bit to working with record
labels and music services and Rightsflow where
there wasn't a collective on the publishing
side other than HFA. And record labels and
music services as well as small creators and
artists that need a mechanical licenses came
together and hired Rightsflow where we could
license for them all at once and send one
license request to a publisher on behalf of
thousands and thousands of artists and labels.
The publisher could respond to one license
request at scale, get one report, and the
system there really worked. We would not be
able to put that system in place if there
wasn't a set parameter for what that license
looked like under Section 115. And so we were able to put licenses in place because the rules were set. I think that's crucial, and I think without that and the set of parameters, then it becomes very chaotic and we would have to find some other way to replace that type of infrastructure. I also really like the compulsory license because it does establish a one-to-one relationship in many ways between the licensor and the licensee. You know, even if it's just a notice of intent, it's still one-to-one. I am licensing works and I'm sending reports and I'm paying directly to that rights holder. And I get concerned with collectives. I like the idea of collective licensing, but I don't like the struggle for transparency when there are more middle men added into the chain of licensing. So that's always a concern of mine. The compulsory license in general in the market for Rightsflow, if we relied on it, it was usually very quickly replaced with an
arms-length negotiated mechanical license that was on more friendly terms for either party that worked in the business. And I don't think without the structure of a compulsory license and without the process and the parameters that were defined by it we could reach those types of agreements.

MS. CHARLESWORTH: Okay. Mr. Kimes.

MR. KIMES: Thank you. I'm with you on that. I'm totally with you. And one thing is I think that works pretty good is the aggregators. That works pretty good. For the smaller guys it really works pretty good. And the 115, what I was saying a minute ago is that it's not much use if there's not somebody over it watching it. You understand what I'm saying? It's like we have it but you can take Amazon who can make a deal with all these big players and tell the little guy we're just going to give you whatever we want to give you. Somebody's got to watch that. Even if
you've got the 115, somebody's got to watch that. And that's what going on right now. I
don't know if you all know that or not. You
probably do. But Amazon's cutting a deal
where they're going to have their own stream,
their own music section, and they can give me,
because I'm not Sony or EMI they can give me
what they want to give me. So that needs to
be watched. But I do think that's a thing
that works well, the aggregators, and it's
been successful for us and helped us a lot.
But that little problem is still out there.

MS. CHARLESWORTH: Okay. Mr.

MR. DRISKILL: It's interesting.

I think the simple fact that all of these
businesses want to get into the distribution
of music says that there's tremendous value in
music to the consumer. We've got to line up
the value of music to the current system. We
just have to. I think that historically
everyone has looked at the PROs as that's a
model that works, not perfectly but it works, possibly the best model within licensing. You have three organizations that you can go to and generally get blanket licenses and be indemnified and covered for everything. I think we have to -- as we look at this and as we go through what this may be, I think there's even the possibility of going further than what we're talking about. And I think Mr. Marks had mentioned earlier establishing licensing through the record labels while the PROs remain separate. You know, we still have streaming that has all the performance rights included. Is there even a reason to go beyond that and include all of the rights together to establish something else. You know, it doesn't take a lot to see that a system that provides clarity and -- you know, I do hate to use the word ease but something that makes this thing a lot more simpler for all of us to operate. We do have common interests. All of us around this table have common interests,
and that is the creating of music and getting that music to consumers. We've got to figure out what that is. I think it's the collective system. I don't know that you'll find anybody that says across the board that's the thing that's going to cover everything, but it certainly seems to be a way that gets us to that place where we can all figure out how to work within it. If you don't have that, if you do away with 115, if you don't have that, I don't know how the digital companies, I don't know how anybody really works -- I don't know how licensing works. I don't know how you could expect them to go to 300,000 music publishers, independent copyright owners and get licenses. It doesn't make sense for them and it doesn't make sense for us. So I would be certainly in favor of more discussion around the collective entities, agencies, whatever they may be considered. Preferably as a copyright owner, I would like to see that agency be a not-for-profit. I don't want more
money being taken off the top for the
administration of that. PROs are again a
model for that.

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

MR. BARKER: I'll address a couple
of things and ultimately get to your final
question. I think I just want to address on
115 again why in my opinion it doesn't work
currently. That hasn't been addressed.
Number one, these notices of intent are really
being abused. They're not happening
correctly. As an administrator, I see those
every day, and I see that if I challenged many
of them, I could legally, and they would not
be valid. And the law is very clear to say if
you don't follow the steps you cannot get one
of these licenses, period. Another issue with
115, compulsory licenses, is only one
publisher of many may be notified and paid.
That puts me or my co-publishers at a great
disadvantage. Because I'm either going to
receive 100 percent and I have to pay it out
to them or I'm not going to get anything and
not know about it. And that's a problem.
Plus with 115, I get no audit rights. And
there are other things that plague the 115,
but those are some of the ones that to me rise
to the top. Ms. Schaffer talked about the
YouTube license as a good example, which I
agree with that. She said it's not a perfect
example. I would definitely agree with that.
Because in the YouTube license -- and Mr.
Sellwood and I have had these conversations
before. To me an audit right is incredibly
important to my work. And unless with my
YouTube license I have an intermediary person
or party involved in that, I have no such
rights. So there are things that have been
built around 115 or attempted to be built
around 115 that while there is a lot of
positive things they're just not working
correctly. I think to answer your question on
what is working, again Ms. Schaffer said
synchronization. I would open that up to say if we think about it, any licenses that have no government regulations are working. The PRO, performance licenses with consent decrees is a regulation. Mechanical licenses for -- compulsory licenses for mechanical uses are regulations. Everything outside of that, print, synchronization or any other kind of direct licenses seems to be working. Now, is the process as clear and simple as it should be? No, it's not. But again I think if -- I would venture to say if everybody around this table was asked the question do you agree that we need -- the following two statements. Number one, we need a more clear and efficient system for licensing. We would all say yes. Would we want a system that provides fair market value for all copyright holders, we would also say yes. 115 has not done that for us. So in my opinion let's don't try to correct something that's out there that's been here for over a century and clearly has not
worked. Because I think the stat rates some
have calculated would be over 40 cents today
as opposed to 2 cents when it first came into
place. It's obviously not working for the
copyright owners. So if we would agree that
we need a new system and start with a blank
piece of paper, we could get very creative and
figure out what that was, given an amount of
time in order to have that system in place.

MS. CHARLESWORTH: Okay. Mr. Marks, then Mr. Knife.

MR. MARKS: Just a couple quick
comments. One, I wanted to just clarify
following Mr. Driskill's comments that our
proposal actually would include performance.
So it wasn't -- it would be --

MR. DRISKILL: You said earlier
that it -- what you had said was that it would
keep the PROs intact.

MR. MARKS: It would keep the PROs
intact by having them be able to -- so if a
digital service, they could pay the sound
recording owner under this -- you know, the 
rates that were set, their piece, and then pay 
through the PROs or whatever organization -- 

MR. DRISKILL: So the packaging of 
materials.

MR. MARKS: Yeah, the -- you know, 
the money that's owed. So it would -- but the 
key is to dispense with this right-by-right 
kind of thing where you have one organization 
doing this right and one that right when most 
of the uses need all of the rights. And so I 
just wanted to clarify that it would include 
performance there. And, you know, the sync 
license, the sync is an interesting thing, but 
I don't know whether it works for the kind of 
volume that we're talking about. So it works 
today because, you know, it's a relatively 
small number of transactions compared to the 
number of transactions that we're talking 
about for a new service needing to clear 30 
million works, you know, to get off the 
ground, for example. So I agree with you that
115 doesn't work, which is why we proposed something else, and there seems to be a lot of consensus around that fact alone. So anyway, just a couple of quick comments.

MR. KNIFE: Yeah, I was going to say the same thing, remarking on what Ms. Schaffer and what Mr. Barker had said about the synchronization license. And going back to something that you pointed out before that I think we're going to have to keep bringing up to remind ourselves that there's a distinction between whether a licensing regime in and of itself works as an administrative kind of function versus whether or not the rates that are set, you know, that are applied to it by any particular entity are attractive. And those are different ideas. I mean the fact of the matter is that the synchronization license process, as Mr. Marks just pointed out, on anything larger than a single license for a single product doesn't work. I haven't done one in a while but the last time I did a
sync license I think my request sat at the music publisher for three and a half or four weeks before they got back to me. And indeed that process included the music publisher getting back to me and saying what's the sound recording going to get, and then I'll get back to you on that. That's not an efficient licensing process. It works on a one-to-one, as Steve was pointing out, but it doesn't work when consumers are demanding that services have, as he pointed out, 30 million songs available at once. So again I understand the concerns about the rates and the fact that within that licensing structure it's a free market. But that's a different issue than whether or not as a licensing process administratively it's efficient. It's not efficient.

MS. SCHAFFER: Can I pose a question maybe for --

MS. CHARLESWORTH: I'm sorry, just for the record it's Ms. Schaffer.
MS. SCHAFFER: And this may be a question for future rounds, and it probably is kind of we're at the end of this. But my question to that proposal is, how do you define a market rate when you have eliminated the market. And that -- and I don't mean that for discussion now but maybe for future rounds, that is the concern, I think.

MR. KNIFE: Well, I think we all have those concerns. We may come out on them on different sides.

MS. CHARLESWORTH: I'm sorry, one at a time. Mr. Knife, then --

MR. MARKS: I just wanted to highlight it.

MR. KNIFE: Yeah, right, exactly.

MR. MARKS: Possibly to the fact that --

MS. SCHAFFER: The proposal that we need to create market rates for musical sound recording or, I'm sorry, for musical compositions, and the idea that that can be
done through some type of compulsory system
where all the rights are bundled. If you're
taking out the ability to negotiate a rate in
a free market, how is it possible to know what
the market rate would be when there is no
marketplace for an individual license for that
musical composition?

MS. CHARLESWORTH: Okay. Now, Mr.
Knife, were you done? Actually I don't --

VOICE: Steve --

MS. CHARLESWORTH: Okay. And so

Mr. Marks.

MR. MARKS: Yeah. So, and this
gets back to the trying to thread the needle
of finding a way to get a market rate, get out
from under this rate court and CRB system that
we have now while taking advantage, as I think
most people have recognized. I think your
comments before were also recognizing. I mean
YouTube is essentially a blanket license.

It's -- I'm not sure it works because it
started with litigation and, you know, was a
product of that, and that's not going to work for every service. But what we thought was we've heard a lot recently about -- from songwriters and publishers saying that the valuation between the recording and the composition has gotten skewed and using the rates that were set by the CRB for Pandora, for example, and what the rate court has set for the musical work for Pandora as, you know, even though they're different kinds of rates but setting all that aside. So, and a desire to have, you know, a percentage or a ratio that, you know, better reflects what, you know, each brings to the table in getting this final product to the market and looking at the investments that are made and everything else that you would do in that kind of discussion. So what we were proposing is you have a marketplace discussion, no government involved, no Congress involved, we sit down as an industry and figure out what is that ratio, what should that be. And then that in and of
itself is a market discussion, it's out of
everything. And then the percentage is a
percentage of what the sound recording
copyright owners are getting from the market.
And so by definition you would be getting a
market rate that is unencumbered by any kind
of government regulation or rate courts or
anything else. Admittedly, it's under a
blanket license and not a one-by-one. But for
the other reasons that, you know, I discussed
earlier and others have discussed, the one-by-
one, right-by-right, use-by-use, format-by-
format, share-by-share just doesn't work
today. So it's a way of moving away from 115
and getting out from under that but taking
advantage of the benefits and having a
transparency, the audits, you know, a not-for-
profit, et cetera, administer that once the
ratio is set.

MS. CHARLESWORTH: I'm going to
just -- I'm sorry, Mr. Coleman's been waiting
for a while, and then Mr. Barker, and then,
Ms. Schaffer, we can get back to you.

MR. COLEMAN: Thank you. I just wanted to quickly say, because I wasn't on record on one topic about what's not working well in licensing that may not have another spot in the agenda, which is the Digital Millennium Copyright Act safe harbor provision. That has been the single biggest disaster for songwriters and small publishers in that it is -- it has done away with the concept of contributory infringement and vicarious liability in licensing. That's something that needs to be addressed by Congress and by the Copyright Office and reevaluated in the context of the Copyright Act. Compulsory licensing is a good context to bring into that conversation, because it is possible for licensees to be brought to the table to negotiate licenses through a compulsory scheme, but avoiding the liability has made it impossible for small publishers and composers to pursue infringing actions.
And there's never a sword of Damocles being held over licensees to negotiate.

MS. CHARLESWORTH: Okay. Thank you for that. For those of you, I think probably many of you are aware that USPTO, which is also looking at copyright and the internet, issues of copyright on the internet is studying the DMCA process. And I would encourage you to, if you haven't, to participate in that discussion if it's a topic of concern. It certainly is something that we hear about very frequently at the Copyright Office as well. Mr. Barker.

MR. BARKER: Thank you. Let me first say to Mr. Marks, number one, I appreciate the ideas and the attitude I think of trying to consider, get together and consider a lot of different options and discussions and things. And not to be combative to that, but the example that you just gave of publishers or copyright song owners maybe getting a percentage of revenue
of record, the issue as song owners that we have with that is we're giving control to the record companies. While there may be a percentage, a percentage of a greatly reduced rate or even free, you know, could be less. I mean record companies can say we'll give you X percent of what we sell but we're going to put it on the market at 25 percent rate instead of 100 percent. We're granting you those rights, and that's not comfortable. That's kind of giving away the rights that we as copyright owners should have. I would also then pose the idea of how comfortable would record companies be in giving those same rights to the publishers as we're negotiating synchronization deals? I have a feeling you wouldn't be comfortable with that, even if we said we'll give you exactly what we negotiate for our own rights. So I appreciate the idea of coming together for ideas. That particular one is one that's not comfortable as owners of copyrights. Let me then say, kind of changing
back again to your question of what's working,
and through some creative hand signals across
the room I was reminded of one. There's an
entity called CCLI, Christian Copyright
Licensing, Inc., that started in the early
'80s, I think, primarily to license churches
for, not performances as many think, but for
fixations of songs within churches, and it's
working. It's created a new market that has
generated a lot of income that would not
otherwise have taken place. The interesting
thing was when that was created, and I was
around in the days where that was created,
there was a blank piece of paper and they said
here's a need, there's no government
regulations, there's no marketplace that they
have to try to look at as limiting them. It
was simply a need where they created something
without any other filters, if you will, or
stipulations added to it, and it works. So
again they took a blank piece of paper,
created something, and it's worked. And I
think we as an industry could do that, throw away the things that are getting in the way and muddling things up and making things complicated, and come together and create that simple clear licensing system.

MS. CHARLESWORTH: Okay. Thank you. And now back to Ms. Schaffer.

MS. SCHAFFER: I don't think any music publisher disagrees with the idea that there can be an efficient licensing process. Speaking from a personal standpoint, not representing anyone, I don't know that there isn't a place for that negotiation to occur with a record company. The problem that we get into if there is a regulated blanket license is that you remove any negotiation power of the music publishers when they are in this negotiation, those private negotiations with the record companies. If we cannot go out independently and say, you know what, if you can't come to a reasonable agreement on a percentage rate, we'll license it ourselves,
then we lose all bargaining power in being able to negotiate what that rate is. Why not eliminate the statutory license and still come together? We can have -- we don't disagree with the principles that the RIAA has talked about today and in the comments that it submitted. I mean the principle of coming together and having these negotiations is an excellent idea. It's the solution of how do we get to that room. What's stopping us in a free marketplace from having those exact same discussions but where there's a parity of power and we can say if we can't come to a reasonable solution on what the split would be, we're not here saying it needs to be 50/50. But if we can't separately go out and negotiate that rate, then we have no bargaining power and we're essentially put in the position where we have to accept what the record companies or the sound recording owners dictate as the percentage that they're willing to provide. And I think that gets back to
another point where there's a lack of trust between the record companies and the publishers. And I think that if there were -- and let's say that we end up in a system where there is essentially a passthrough license, the only thing that would even get anyone anywhere close to being comfortable with that situation, which I think is a stretch, but would have to be a complete audit right. And maybe it's not every music publisher having their own independent auditor, but at least one auditor representing the music publishers who can go in there and know that we are being compensated. And I think that there's a lot of issues that we'll flesh out over the course of the next few days, but I think that's where we're coming at is that it's not that we disagree with any of the principles, it's the solution to get to those ultimate goals.

MS. CHARLESWORTH: Mr. Marks and then --

MR. MARKS: I'll be quick.
MS.MS. CHARLESWORTH: Yeah.

MR. MARKS: Just to answer that last couple of comments. We have -- you know, in the current mechanical -- I completely understand the issue of, you know, what if a record company were to give something away for free because they thought they were getting some other benefit. We tried to tackle that issue in the last mechanical negotiation, and we came up with something that we called TCCI. Okay? TCC is total content cost, which was part of the negotiations. We actually had to figure out the rates, which was that -- part of the rate structure was that publishers would get no less than a certain amount that the recording owners have. So this is already kind of something we've discussed a lot. And we added this I part to it, which stood for integrity, to ensure that things like that didn't happen. And I think we should further -- we're completely open to fleshing that out so that that kind of thing doesn't end up
happening where, you know, the right value
doesn't flow back. Audit right, part of our
proposal. We completely agree that that
should exist and the transparency. And also
I just wanted to clarify, we're not proposing
a regulated blanket license. What we're
proposing is set aside -- let's get together
and have the conversation. If we're able to
reach an agreement, we can then be in a
position to propose something to policymakers
to see if they agree that it's a good
solution. And at that point, you know, it
would be -- it wouldn't be regulated in any
way because we'll have agreed to it up front.
So we're not looking to impose a certain
percentage or not. The idea is let's come
together, figure out what that is, figure out
ways to build in protection and many of the
other complexities around it. This is not --
there's no perfect solution here. I mean I
think we all recognize that this is
complicated. And as I said before, we were --
it's just one idea and we're somewhat trying
to thread a needle given the two objectives of
getting to fairer rates and having aggregated
licensing with healthy efficiency.

MS. CHARLESWORTH: Steve, just to
clarify, it seems like we'll be talking more
about this proposal in later sessions. Under
the proposal, what the publishers say on a
rate -- or a split as between --

MR. MARKS: And the songwriters.

MS. CHARLESWORTH: Yes. But the
participation in the blanket license, would
that be compulsory? -- in other words, once
you came to an agreement on that split, the
law would need to provide that you could then
go out and deliver your products to the
marketplace and you would have a blanket
license as needed for the types of products
that were covered under this proposal.

MR. MARKS: You'd modify 115 so
you got rid of the rate court and the CRB, and
--
MS. CHARLESWORTH: So you --

MR. MARKS: -- have instead a

blanket license with the percentage that we'd
agreed upon in the marketplace separate and
apart from any rate courts or government or
anybody else.

MS. CHARLESWORTH: So yes. So it

would still be in a sense -- you know, the
term compulsory is loaded but a mandatory
license, a statutory license, you know, for
everything that was covered under it. But
there would be no rate setting process other
than there would be a legally defined split.

MR. MARKS: Yes.

MS. CHARLESWORTH: And then you

would go out and negotiate based on what you
described as the finished products.

MR. MARKS: Yeah. As record

companies have done for years and all other
copyright owners like, you know, movie studios
do with the product that they have.

MS. CHARLESWORTH: Okay. Just so
-- thank you for clarifying that. I just want
to make sure we all understand what that
proposal is. Any final thoughts as we wrap up
this panel on -- what, where are we at --
what's working and what is not. And give us
maybe -- I think there have been some -- it's
been an interesting discussion. We'll be
talking a lot more about these issues in more
deepth. And at the same time, you know, I'm
looking for rays of hope in all this. So
maybe you can help us out here. Mr. Barker.

MR. BARKER: I don't know that
this is a ray of hope, it's just a quick
comment on the discussion that you and Mr.
Marks had. Which again the idea that I just
want to throw out here is as a owner of a
song, wouldn't it be nice and seem to be fair
if the owner of a song, that is a classic song
that's known by everybody, be valued at a
higher rate than a brand new song that's not
proven itself. Now, the system that you were
talking about would not allow that, that you
were talking about with Mr. Marks.

MR. MARKS: No, not true.

MR. BARKER: Okay.

MR. MARKS: Because your -- publishers and songwriters can determine on their own without any input from anybody else or any compulsion from anybody else how the money is distributed. So if you all, for example, believe that, you know, certain songs should be valued more than other songs, that's part of the distribution process that you all can figure out on your own.

MR. DRISKILL: Which publishers
get to decide that? Which publishers get to decide that?

MS. CHARLESWORTH: Okay. All right. This is not a ray of hope. This is not what I -- I was looking for someone to kind of sum this up and give us a rousing final comment. I think -- actually I am encouraged because I feel like if we're talking about these things, you know, we may,
as I said earlier, make some progress. And we will continue the discussion. I think our time for this panel is up. I really appreciate sort of the fact that people kind of put it out there and laid out their biggest concerns and maybe some ideas that we can focus on as the roundtable progresses. And we'll have a quick break now and reconvene at 10:45. Thank you all.

(Break taken from 10:30 a.m. to 10:45 a.m.)

Session 2: Sound Recordings:

MR. DAMLE: Let's get started. If I could have the people who have joined our panel, the new panel members just -- if we could start going around and introducing ourselves, starting with, I think Mr. Kass is the first new person. And just introduce yourself and tell us where you're from.

MR. KASS: Sure. It's Fritz Kass. I'm the CEO of an all-volunteer organization, the Intercollegiate Broadcasting System, that
represents hundreds and hundreds, perhaps a thousand public school, college radio stations, which essentially are the entities of the 50 states. So our issues broadcasting and webcasting are issues of the states. So David represents the state broadcasters. We represent the actual states as far as education. I appreciate your inviting us. I'm reminded 12 years ago I was sitting on this same type of roundtable with Steve Marks over these same issues, and I was reviewing the transcript and it hasn't changed much in 12 years.

MR. DAMLE: Great. Thank you.

Ms. Soled?

MS. SOLED: Oh, good. I'm Janice Soled. I have a company called My Music Screen. I pitch songs to film and TV, and I handle sync licensing and clearances and mechanicals on behalf of a lot of independent rights holders. So I'm sort of here on behalf of a lot of the little people.
MR. DAMLE: Great.

MR. TURLEY-TREJO: My name is Ty Turley-Trejo. I'm from Brigham Young University Copyright Licensing Office. I'm a license administrator who deals primarily with music licensing in a university setting with performing rights and obtaining those rights, other outside-of-the-classroom uses. Prior to that I actually owned a rights clearance company as well where I cleared music for film, television, and live stage. And then prior to that I was or I am a musician and currently getting my master's in music also. A couple of different angles.

MR. DAMLE: Great.

MR. STOLLMAN: My name is Marc Stollman. I'm a entertainment attorney from Boca Raton, Florida, south Florida, a small firm. I own the practice, fully transactional, and I'm representing probably 80 percent music and 70 percent of that is in the publishing area, but I also represent a
lot of small independent record companies and
writers. And excuse me for sounding like the
lawyer in the room, but I know my card
mentions that I'm here on behalf of the State
Bar of Florida, but since it's on the record
I just need to say that I am not taking any
positions on behalf of the State Bar of
Florida. This is all just personal on behalf
of myself and my clients.

MR. MEITUS: My name is Robert
Meitus. I'm an adjunct professor of law at
Indiana Maurer School of Law. I also have a
small firm and we represent many music
clients. We have five lawyers, we represent
everybody from the Alan Parsons Project to
Joshua Bell to Wes Montgomery's estate to a
lot of independent artists like Sufjan Stevens
and Foxygen, and a few independent labels that
are allied or distributed by the Secretly
Canadian Group out of Bloomington. I also
represent my wife as a manager, Carrie
Newcomer, 12 albums on Rounder Records, and
recorded down here with Allison Krause and Nickel Creek. Gave us a gold record in our house recording one of her songs. So I know it very personally. Formerly a touring musician. And I will be trying to focus on the purpose of the Copyright Act today, which I didn't hear much about in that first session. And that's to incentivize the creators and trying to think about how the artists can really share in the gross income that's going to become a hundred billion dollar industry according to Marc Geiger. We've seen his keynote at Midem and I love that. But I just don't want 99 billion of that to go to the Googles and the Universals, et cetera, and my artist to share in a tiny part of that.

MR. DAMLE: Great. Well, the topic of this panel is sound recordings, and I think specifically about the statutory licenses 112 and 114 for digital performances of sound recordings and ephemeral copies. And
so obviously a lot of the attention so far has been on the musical work side of things, so this is a bit of a shift. So one question I had to sort of kick things off is just a general question about the effectiveness of the 112 and 114 licenses and the rate setting process. And I don't know if any of you have general comments about how the licenses work, whether they're working effectively, whether there are ways of improving it. And so we can go around the table, I don't know. Do you want to start, Mr. Oxenford?

MR. OXENFORD: Sure. I guess I'll start. Conceptually the 112/114 licenses, the 114 license I think makes a lot of sense. It's like the PROs in that it's a one-stop shop where anybody who's doing a noninteractive stream can pay one price, one royalty, and obtain the rights that they need to operate their service. Simplicity is great. I think practically there have been problems in the administration. Obviously
beyond my representation of broadcasters I've worked with a number of webcasters throughout the proceedings, and it seems like every time we come to a decision we come to post-decision decisions, alternate rates through deals afterwards. Because, practically speaking, the rates that have been set have not been rates that will allow businesses to operate and survive. So we've had to come to the post-decisions through the various webcaster settlement agreements after the rate setting proceedings have taken place. And why is that the case? You know, partially I think we're concerned about the standards. While I'm sure that I'm going to get a lot of pushback, in fact I thought I should wear the black hat when I came in here. You know, we think that the rates that have been arrived at for the 114 license in many cases have just been too high. We don't think that the willing buyer/willing seller standard the way it's been administered has properly set the rates,
and I'm sure we can get into more discussion going forward. You know, I think another subsidiary issue is the 112 issue. I think we get to the end of all these proceedings setting a rate for streaming for the public performance of sound recording and then say, well, we'll give X percent to the 112 license, not because it really has any independent meaning, not because there's been any evidence presented during the course of the CRB hearings about a 112, just because that's the way the statute's been written. You got to get a 112 license to go with a 114 license. You know, based on some prior decisions or prior studies that you all have done in the context of the public performance right for streaming in a noninteractive service, that 112 really doesn't have any independent significance. And, you know, we really I think question whether there should be a separate 112 license here. It ends up getting into arguments and complications that simply
aren't necessary when really what we're
talking about is the public performance.

MR. DAMLE:  Great. Thank you.

Mr. Marks?

MR. MARKS:  Yeah, I would say as a
general matter that I think they've been
working well. We've got a blanket license
approach which makes administering -- you
know, obtaining the license easy.

SoundExchange and all its members on the
record company side and the artist side have
taken on the burden of administering that
license going back, you know, 15, 17, almost
20 years now. A couple of things that we
think could make it more effective and be
improved. One is we have a rate -- two
different rate standards. You know, one
willing buyer/willing seller, which is
designed to give fair market value to
creators. And then an 801(b)(1) standard,
which is this policy-oriented hodgepodge of
factors that has led in the past to below
market rates, which only apply to three services that were grandfathered 17 years ago or 16 years ago when the DMCA was passed with no good reason today for that same grandfather to continue to exist vis-à-vis all the other services that they are competing with. So we think there should be platform parity with regard to the rate standard that exists. We also think that the license has -- now includes more functionality kind of by default than was envisioned at the time that the license was established. In our view, the launch decision was wrongly decided. And as a result there is a lot of customization and other features that have found their way into Section 114 and yet there's been no recognition of the difference in value that a service like -- you know, a customized service has versus a truly preprogrammed radio service. And so we think that at the very least there should be some differentiation where there are higher rates paid for that
additional functionality. So and, you know, there's a Pre 72 issue which I'm sure we'll get to later, so I'll --

MR. DAMLE: Yeah, there's going to be a separate panel presented too, right. Mr. Knife?

MR. KNIFE: I just want to pick up on and echo a bit of what Mr. Oxenford said, and also make the point that I'm beginning to fear is going to have to be reiterated several times during the day, that I'm trying to address the distinction between the actual licensing regime itself and any rates. And we can talk for a minute about the rate setting process. Those seem to be -- while they're obviously related, they're not necessarily the same issue. And so just like Mr. Oxenford said and Mr. Marks said, I think the 114 and 112 license works again as an administrative function well because it is blanket license. It's easy, it's one-stop shopping as other commentors had said. The rate setting process
itself has a lot of issues attendant to it that are problematic. Not surprisingly, I disagree with Mr. Marks on some of those issues and why they're problematic. I think it's interesting that the 801(b) standard that leads to, quote, below market rates has never had to be adjusted by Congress or anybody else after a rate was set under it. Yet the willing buyer/willing seller standard continuously needs to be adjusted after rate setting proceedings have concluded. So again I think as a particular -- in the silo of licensing I think it works well. I think there are things that we can adjust with respect to the way the rates are set, the way those rates are applied. And finally I also agree with Mr. Oxenford that the distinction between -- or I should say the incorporation of the 112 license within the 114 license seems to be completely vestigial, it doesn't really seem to serve much of a purpose and certainly will serve less and less of a
purpose as time goes on.

MR. DAMLE: Mr. Kass.

MR. KASS: I think the
intercollegiate broadcasting system, the folks
that brought you the decision the CRB was
unconstitutional because it was --

MR. DAMLE: I know that one well.

MR. KASS: -- improperly appointed
kind of reflects our view of the problems with
The rate becomes not a problem in the rate but
the way the rate's administered in the fact
that there's a minimum which is -- blocks the
buyer and seller. The terms of the rate are
ridiculous. For instance, a college
broadcaster that perhaps wants to support
George Johnson's works is not allowed under
114 to play his works more than three times or
four times in a three-hour period. Now,
that's obviously a violation of the free
speech of that college broadcaster. For
instance, if somebody calls in to a college
webcaster or a public high school webcaster
and says, I'd like to hear Mr. Johnson's work, under 114 we're prohibited from doing that. Now, the platform between the broadcasting part of the intercollegiate broadcasting system and the webcasting part is certainly something that's been talked about. But the reality is that copyright law as it applies to broadcasters is old, it goes back to the 1930s, and it's been fleshed out. And we've determined that you can't regulate free speech. We've determined that you can't have forced program logs or programming on a broadcaster, particularly a public broadcaster. Yet 114 does exactly that. For instance, in its implementation it says you have to have 100 percent census reporting of use. And that just makes no sense. The students don't keep programming logs, they don't have it. The basic section, Article 1, Section 8 says for the progress of science, and arguably the greatest scientific achievement that's affecting our students and
our society is the internet. Yet 114 puts
limits on the progress of science as it's
practiced by students that are just simply
using music as a catalyst to learn how to
digitally stream and to exercise their rights.
There's another very subtle issue, and that is
under recent Supreme Court decisions it's been
determined that in the case of states, and
that's what we are, are basically representing
state entities, that the federal government,
if they're going to propose a rate, it's a
tax. And so what you're doing is you're
having a statutory license, let's say paying
the minimum of $500 for a college webcaster to
SoundExchange by a state taxpayer entity using
state taxpayer money. Yet SoundExchange, as
part of its component, has a lobby, supports
a lobbying group, Music First, which is
lobbying to increase the rates on the states
by taxing the broadcast component. So clearly
you have a conflict there. Because most of
our 50 states actually have laws on the books
that says that you can't use taxpayer money to
support lobbyists, particularly lobbyists that
are going to work against the state. Yet
that's in effect what 114 does, it forces
through a statutory compulsory license for
state taxpayers to pay major music companies,
most of which are foreign-based, a tax.

MR. DAMLE: Thank you. We'll go
to you, Mr. Meitus.

MR. MEITUS: Okay. So I do
support 114 in general because of the way it
compensates the performers and creators. I'm
not really sure about the rate setting
process, whether 801(b) or the willing
buyer/willing seller process is best, but I
would make a few comments. I'd say the result
with regard to satellite radio, paying 9
percent of gross revenue, I think personally
is way too low. I think there's a convergence
of technologies today. So I'm driving in my
car and my house and I'm listening to the
radio on my handheld pumped through my stereo
or I'm listening to SiriusXM. Is there really
the difference that we thought there was years
ago, over a decade ago? No. I think that
needs to be looked at and there needs to be
platform parity, and probably a unification of
the rate setting standards. I will make one
point outside of that that I think is
important. And I think that 114 has been and
is being manipulated by major labels with
regard to the distinction between
noninteractive and interactive. And I would
rather see on behalf of my artist clients an
expansion of 114's statutory license for sound
recordings for interactive services so there
was clear and transparent creator splits and
direct payments. Because, frankly, it is
impossible for us to know through the
contracting process and to get to it even with
leveraged well-known clients what is going on
between the majors and the streaming services
with regard to ownership, and when they go
public these services will put a lot of money
in the pockets of major labels and in deals that are struck outside of the statutory licenses. I think it would benefit the creators -- I'm going to stay on point here -- if we saw an expansion of 114 in some way.

MR. DAMLE: Mr. Johnson.

MR. JOHNSON: Pretty much agree with everything you said there. And I think as an independent artist, you spend money, at least in my case, to write songs, to demo them, to get the players. And then you go and you do your album, and that costs even more money. My first album cost maybe 50 grand or so, my second album I just did cost about 30 grand. So, unless you're on the radio, which is basically impossible unless you're a major artist, there's no money out there. And so I look at the sound recording side of it and I like SoundExchange as far as the people who work there have been extremely nice to me, Michael Huppe and all their attorneys, and they've really got some great people running
My problem is that they were given a monopoly to exclusively collect all the digital sound recording royalties. And to me that's incredible. They have a government monopoly to collect all sound recording royalties. And I got involved in the recent CRB digital sound recording rate setting process, and it's a nightmare. And, you know, just the first two months were just the NMPA fighting with Pandora over who got a copy of the Apple license. I mean that's incredible. No wonder it's so screwed up and no wonder it's .00000012 for the song and, in some cases, the sound recording. So no offense to the RIAA but it's incredible that they own SoundExchange, that they lobbied to create SoundExchange, and that I have to go through SoundExchange in the CRB rate setting process. And if I do it on my own it will cost me two, three million dollars, which of course is ridiculous. So I think that the force that's used -- we come back to whether it's a
voluntary system or forced, and all it is, is all force, with your sound recording and the consent decree, and you have to go through the consent decree, through all of the compulsory licenses it's force, force, force, and everybody wants one thing, one collective license, one blanket license. And there's no option really. Even though SoundExchange is nonexclusive, BMI are nonexclusive, there really is no option to go outside that system. So I just wanted to say that I don't think the lobbyists should be controlling my individual copyright. I think that NMPA, RIAA, and even the Grammys are involved in transactions, direct transactions they have no business being involved in. And I hate to be harsh, but, you know, that's my opinion as an independent person. But copyright is an individual thing. You know, your performance or whether it's a sound recording or ASCAP or anything, it's per-performance. Your rights are individual. Copyright is a right and it
is individual. But everybody's obsessed with
collective, collective, blanket. And I
understand the problem, you've got 30,000
crazy songwriters and artists, and you can't
do a deal with all of them if you're Pandora,
or whomever. But you see Pandora and other
companies offering direct licenses. And I'm
negotiating with five different streamer right
now, out of nowhere. And so it's coming
apart, it's happening — direct licensing. And
there should be a balance between them, but
this forced collective licensing by lobbyists
who won an exclusive government monopoly to
price fix rates is just, I think it's
ridiculous. I think it's killing us. That's it.

MR. DAMLE: Okay. Mr. Marks.

MR. MARKS: I'd just like to
respond to a couple points and then make one
or two that I forgot earlier. Just picking up
on the last point, so if we go back in time,
SoundExchange started out as something that
RIAA invested in at the request of the licensees. So the way the statute is written is that the licensees have the obligation to find every single copyright owner, and artist for that matter, and pay them directly. And they requested -- they raised an issue about how are we going to find all these people, this is -- you know, we're willing to pay and we'll figure out what the rate is, but we just -- we've got no -- forget the resources, we just don't have the ability to even find out who that is. RIAA invested millions and millions of dollars to create an organization that was internal to RIAA at the time in response to that request to the licensees, to help the process work. So that's how it came about at the beginning. It was a request from the licensees. The organization was eventually spun off so that it was, you know, independent and 50/50 with an artist board and a label board equally represented. The lobbying that's been discussed is not done.
with, you know, taxpayer money or any
nonmember money. To the extent that
SoundExchange lobbies an issue it is only with
the approval of its members' money. So
there's no use of nonmembers money to engage
in things outside of administering the
statutory license or trying to get a license,
you know, the license rates or things like
that. And there's nothing -- it doesn't have
any exclusive right to represent sound
recording operators/owners or artists in CRB
proceedings. Anybody can do it. The only
thing that SoundExchange has is its been
designated as the agent to collect. You know,
that's because it's shown itself to be the
best organization to do that. But you, any
record company, any group of record companies,
any group of artists can participate in the
CRB proceeding. And it is no doubt complex
and expensive. And licensees have been
calling for it to be more complex and more
expensive. And SoundExchange and RIAA, maybe
others, have fought against that. Because we
don't think it should be like federal court
litigation where you have open-ended discovery
that goes on for years and things like that.
It's unnecessary, it's inefficient, and
there's no -- nothing demonstrable that it
leads to better or different rates. I mean
it's just not. So I hope that answers some of
the questions or issues that you had and,
Fritz, that you raised about how the funds are
used. The two things I wanted to mention in
terms of improving the license that I forgot
the first time around. One is there's no
termination right for noncompliance. So
Section 115, for example, you know, we talked
about the warts of that compulsory license in
the last panel. But one thing it's got is if
you're not complying with it you get to
terminate it. In 114 that's not the case.
And in order to deal with noncompliance, which
I have just some stats here. Last year 25
percent of all payments were late. Two-thirds
of all licensees required to provide reports of use missed at least one report and at least 25 percent hadn't provided any reports. So there's a tremendous amount of noncompliance, and yet the burden on SoundExchange would be to bring a federal court case against every single one of these, which I don't think is good for anybody in terms of, you know, the use of money that otherwise should be flowing to the recipients under the statute for it, so.

MR. DAMLE: Mr. Kass, did you want to add something?

MR. KASS: First of all, I completely agree that SoundExchange is one of the best managed and most efficient, and I think Mike Huppe earns his $700,000 in salary and benefits in making that work. And I certainly sympathize with the labels, primarily the three large primarily foreign labels, because they have the unenviable task of trying to have a worldwide copyright system
that works for the copyright holders as they are in the United Kingdom or Europe or Japan. The problem is that we are a constitutional republic, and we have a Constitution, specifically Article 1, what Congress can pass, and Section 8, which says for the progress in science that writers will possess their writings and inventors will possess their inventions. And that's dramatically different than what happens in Europe. So if we take the first part of Article 1, which says writers will have their writings, that's very clear. And certainly the intercollegiate broadcasting system has absolutely no problem with ASCAP, BMI, and SESAC. In fact, we are not part of the consent decree because we negotiated a rate in 1976 and we're happy with the rate, so are they, and we're still paying that rate for our broadcast stations. And we have a negotiated rate for our webcasting stations with them, no problem. Somehow, perhaps through the lobbying, whatever, the
idea that performing that writer's work was
copyrightable under the Constitution is very
interesting. Because if you take the second
part of Article 1 Section 8, the inventor will
hold the patent, that would mean I, for
instance as a certificate pilot, sometimes
working for an airline, using pilot equivalent
to artist and airline equivalent to label,
would be entitled to a statutory license to
collect on the patents that I'm flying this
aircraft with 10,000 patents. So yet the
label says no, we can have a statutory license
under the Constitution for performance of the
writing, yet the performance of the patents,
say by a pilot or a race car driver or
something else, no, they can't have it. And
that kind of causes a problem. Again I can
see why the labels would want to do that.
Because worldwide they don't have the
Constitution, they don't have Article 1
Section 8 —

MS. CHARLESWORTH: Excuse me, Mr.
Kass, we're get a little afield of the topic here. Just to cut to the chase, is your contention that you do not want a statutory license, you'd rather see college broadcasters go out and have to enter into direct licenses with all the sound recording owners to perform their works? Is that --

MR. KASS: We feel that we're doing that under Section 118 and 801(b).

MS. CHARLESWORTH: But you're not a --

MR. KASS: For our broadcast stations. And that in reality our webcast stations should mirror the licenses that the broadcast stations have.

MS. CHARLESWORTH: Meaning you just object to paying for a sound recording performance rate when it -- for webcasting? Is that what you're saying? I'm trying to understand what your position is.

MR. KASS: Essentially that's correct, but primarily because of the terms
and not because of the rate.

MS. CHARLESWORTH: Okay.

MR. DAMLE: Mr. Stollman.

MR. STOLLMAN: If I can for just a second take a step back from prior to what Fritz was saying and just comment that, A, in general I agree that SoundExchange is a navigable and manageable and useful and helpful organization doing a good job. And I'm speaking about it now more for small and independent either labels or writers. They're small, they're manage- -- they're useful, they're manageable, they're -- they do a good job. I think though there is a problem between theory and reality in a lot of cases, and a lot of what we're talking about, including on behalf of RIAA, is easier said than done. And I think that what you do, George, I wanted to -- I don't know much about it, just hearing you speak. I think is the exception, not the rule. I think speaking for the -- you're very active it sounds like, and
you're really hands on and you're in there doing it. And I think more of the independent labels and writers do not feel -- and I'm speaking for my clients -- do not feel like they have a seat at the table, do not feel like they have -- and that's why this forum is good, of course -- do not feel like they have a seat at the table and do not feel like they have the resources to take a seat at the table, honestly, to have their voice heard and come in and argue for themselves. They don't speak the language in some cases, and they don't have the money.

MR. JOHNSON: Can I say one thing real quick? And I appreciate that and I agree with you. And I've only been at this for about a year and a half. I've been in Nashville writing songs for 16 years with my head down writing songs. And a lot of songwriters are starting to pick their heads up and they're starting to learn all this stuff. And I am the exception to the rule,
but then again I'm kind of the example of
let's say the old guy who never made it. And
I want to be an old jazz guy. I can't even be
an old jazz guy anymore. And then you take
the person who goes to Belmont, they're first
year at Belmont and they want to make it, they
want to be a recording star, a writer. We're
both in the exact same boat. So I'm really
trying to represent just the voice of the
independent. But I agree with you that -- the
only reason I have a seat at the table is
because I asked, and I'm literally across the
street so it isn't a big deal for me to walk
across the street. But, it's a problem that
the independent just kind of gets cut out of
the entire process and they get left behind.
And I think that's wrong and if you worry
about the individual person like me, or the
new person coming to Belmont, their individual
copyrights, then you start to solve the
problem. But if we're all worried about this,
well. I spoke to a major record guy who runs
a major company in town last night and I asked him what he thought. And just in general, whether it's for the sound recording or for the mechanical side, what the CRB is really interested in when you go there is, oh, Pandora, they didn't break even. Okay, we're going to still keep the songwriter rate at .00000012. Oh, Spotify didn't -- they didn't break even, even though they're a billion dollar company. And even though Tim Westergren's taking out $15 million a year he still thinks that songwriters should be paid less than .00000012. So, that's why I think we should get rid of the Copyright Royalty Board altogether is because, there's all these crazy, stupid rules that lets Pandora walk away because, oh, you didn't break even this year. Are you kidding me? And one thing real quick is what I say all the time is you've got to be kidding me. I say it three or four times a day just --

MS. CHARLESWORTH: Okay. Well,
and so do I, by the way. I'm going to interrupt you. It sounds like, in a nutshell, you're very frustrated with the CRB process, and I think for different, perhaps different or maybe overlapping or the same reasons there are many others who think it could be improved. But I want to make sure that we cover all the sort of topics that are on Sy's list here. So including there were a couple comments about the necessity of the 112 license, and as sort of an add-on, although it does cover the reproductions that are used to stream the recordings. So I was wondering why since it's rolled into the proceeding, sort of what the more -- the specific concerns were about that part of the licensing structure.

It's Mr. Oxenford. I think you raised it first. I'm just trying to understand, you know, assuming, if you assume that a license for those uses is necessary, for the reproductions is necessary. Or maybe you're questioning that premise, I don't know.
MR. OXENFORD: I guess my question is really is it necessary or should it be necessary. Because really it's one process, it's one process of performing to the public, and those reproductions that are made in that process are not made for any independent purpose. It's not like, hey, charge admission to come see my ephemeral copies. I mean they're just there to facilitate the public performance, and that's really all that they're being paid for. They have no independent value, they have no stand-alone value, but there are additional rules that apply. For instance, you know, technically you're not supposed to keep a copy around for more than six months. You're not supposed to make more than one ephemeral copy. And part of the question is what exactly are we talking about. If we're talking about the copies that are made in the transmission process that reside on different servers during the process, you know, there's going to be more
than one just as a matter of process. So it doesn't make sense if we're talking about the copies that are kept in the service's music library to be called on to be served to the public, it doesn't make any sense to have to expunge all those every six months and rerecord exactly the same thing. So the whole concept of the 112 license in connection with the public performance just adds a layer of bureaucracy that doesn't seem to serve anybody's real interest. And I think that's why we brought the issue up in the first place.

MR. DAMLE: Mr. Marks, do you want to?

MR. MARKS: Yeah, it's not a mere technicality. So I think the main point here is copies plural. There is a right to make one. The issue here is having a statutory license, unexclusive right but having our right subject to a statutory license for however many additional copies need to be
made. And those copies are consequential. Because they can be the difference between the consumer experience that one site offers and the consumer experience that another site offers. If you are able to populate edge servers with additional copies so that the stream is able to get to the person sooner, you may very well have a more attractive service to the consumer than somebody who's just drawing upon, you know, one copy per codec from their own servers. So there is real value, it's been something that's been talked about in the CRB proceedings in the past, and that's the value that's supposed to be recognized by 112. What I would say is to the licensee's benefit it's gotten kind of all rolled into one transaction. Which actually is fine because, you know, record companies as a general matter, when they license a transaction they put all rights in and, you know, whatever's necessary for that transaction should happen. So it's good that
the two are together and there's one rate set
for both of them. But that rate should
recognize the value of those copies that are
being made. Because services can
differentiate each other -- differentiate one
from another based on the making of those
copies.

MR. DAMLE: Mr. Knife.

MR. KNIFE: While I certainly
agree with the idea that, again as Mr.
Oxenford said, the value of the copy should be
inherent in the overall 114 license and right
to perform, I disagree with what Mr. Marks
said. I don't think the 112 license actually
is intended to address the efficiencies of one
process versus another. It's pretty specific.
It says you can use these copies in order to
engage in your performances. And as Mr.
Oxenford was saying, you have to get rid of
them after a certain amount of time and you
can only make one copy, et cetera, et cetera.
So again I respectfully disagree. I
understand his concern about the value but I
still think you can roll all of this into a
single license under 114 and say it's a
license for the performance and all of the
copies necessary to engage in that performance
as opposed to, again sticking with all these
vestigial rights that conjure up analog
performances where you recorded an actual
performance hours before it was broadcast.

MR. DAMLE: Mr. Oxenford, you
wanted to make a --

MR. OXENFORD: Well, actually, one
of the issues that Steve brought up earlier I
think ties into what he just said here too,
the differentiation between services based on
what they offer, whether it be interactive or
noninteractive or other types of
differentiation. I think that can be handled
under the 114 process as there is. There is
a provision in the Section 114 that allows for
distinguishing between different types of
services. And the Copyright Royalty Board in
the most recent proceeding, current proceeding has indicated some interest in looking at different types of services and whether different rates should apply to those services. And I think there may be advantages to doing that. There may be services that are totally noninteractive, like broadcasters who are merely simulcasting what they're doing over the air that have a different value than someone that is a more interactive service that allows users to pick what songs are being played or even to somehow be more efficient in their service, although I'm not sure that that's really a concern that's been recognized. But that's something that could be worked out through the process that already exists.

MR. DAMLE: So that raises the question of differentiation and whether does the statute have this line between interactive and noninteractive, and whether there should be another tier in the middle perhaps for
personalized radio, that sort of thing. Is that something that needs legislation? Is that something that may be of interest to people? Is that something that can be built into the current CRB process? Mr. Knife.

MR. KNIFE: I don't think we need to add any more layers to a Copyright Act that we're all here for the purposes of talking about how to simplify it and how to break it down. I'm sure it will come as no surprise to at least Steve and I and probably most of the people in the room that I would disagree that the LAUNCHcast decision is a bad decision and whatever undermines the statute. DiMA as a trade organization is happy with the outcome of the LAUNCHcast decision, and as a result, the statute as interpreted by that decision. I'm not sure that it gets us anywhere to add even another layer of complexity that's going to result in another seven and a half year long federal lawsuit to determine whether or not a particular feature set that one internet
broadcaster or one internet radio station might be applying is sufficiently distinguished from another so that it's -- well, now it's personalized but it's not interactive but -- it's noninteractive but it's still personalized. I just don't think we should really be talking here about complicating the issue

MR. DAMLE: I'll go to Mr. Marks and then Mr. Johnson has been waiting.

MR. MARKS: Yeah, I guess I'd just ask the question, setting aside the issue of whether Congress should step in or not, what the words specially created for the recipient mean. Because those are the words in the statute that are supposed to provide a line between what is under the statutory license and what is not. Radio-like programming, under the statutory license. Specially created for the recipient or on demand, not under the license. And I just -- I'm at a loss for what actually qualifies as specially
created for the recipient. I think the LAUNCHcast decision read those words out of the statute. And so whether it's Lee or David or anybody else, I'd love to hear, you know, what do those words mean? What kind of service would qualify for that, you know, in light of what we're talking about today?

MR. DAMLE: Mr. Johnson.

MR. JOHNSON: I'm not going to answer that, but just real quick when they were talking about the ephemeral license, and I agree with all those comments, even though they're kind of contradictory. You know, sometimes it's just needed, it's there to be there to help facilitate the process and other times it's abused. And to me one of the main points that I forgot to put in my paper, I was looking at just the other day Spotify, and now announces that you can download your playlist. Okay. So it seems like all these streamers are going, and Beats has done it too, we can download. And it just seems like we should be
paid for mechanical. But it's just an
ephemeral copy, whatever, but it makes it
easier to take your songs, you push one button
Spotify and that whole playlist downloads.
And in the past, as you know, the actual
recording, the files go in your cache. And so
it seems like Spotify starts over at
noninteractive streamer or interactive
streamer, and now all of a sudden we're
letting you download it and we're not paying.
And I think that's kind of ridiculous.

MS. CHARLESWORTH: Mr. Knife, if
you want to -- I know Spotify is not at the
table, so if you're familiar with this --

MR. KNIFE: I just want to
clarify, that's the second time that we've
heard that Spotify is paying under the
statutory license. My understanding is --
and, by the way, Spotify is not a DiMA member.
But my understanding is that Spotify is not
statutorily licensed -- it's not the DMCA-
compliant noninteractive radio. So they pay
based on a private deal struck with sound
recording owners whose works are on their
service. So that's not a CRB issue, it's not
a Section 114 issue.

MR. OXENFORD: And presumably
publishers as well.

MR. KNIFE: Yeah.

MR. JOHNSON: I would just say one
point to that but also to the interactive and
noninteractive. To me as a copyright owner it
doesn't matter whether it's interactive, you
know, active, whatever. It's a copyright. A
song is a song is a song, and a copyright is
a copyright. And I think even the word
mechanical, performance, now noninteractive,
interactive, subscription, nonsubscription,
these are all necessary terms for the
technology, let's say, for internal accounting
but now that they're in the Copyright Act it
just separates copyright and turns it into all
these different things. We really need to go
back just to copyright. And I understand that
broadcasters, you know, they're set up
differently for interactive and
noninteractive. I understand that. But I'm
saying as a content creator, as a copyright
owner, that individual copyright, I don't care
if it's interactive or not.

MS. CHARLESWORTH: Okay.

MR. MARKS: To clarify, you don't
careBecause you think they should both be --
there shouldn't be any compulsory license, you
should have the right to negotiate what you
think is fair --

MR. JOHNSON: Well, I think --

MR. MARKS: -- whether it's
interactive, noninteractive, or whatever the
use is.

MR. JOHNSON: Well, I think the
compulsory license, if you're going to have
one, should apply to everything. And then in
-- you know, I'm noninteractive so I get out
of paying a whole bunch of different things.

Everybody should pay for the sound recording
and everybody should pay for the underlying work, period, no matter what the definition of, you know, interactive is.

MS. CHARLESWORTH: Mr. Knife, and then I have a new topic to introduce.

MR. KNIFE: Okay. I'll try to be very brief. At the risk of kind of throwing a larger net over the whole thing, I would wonder if the idea of encompassing both interactive and noninteractive with respect to performances, the idea of grouping those together and having a single license for both of those could actually be expanded to have a single music use license that would actually incorporate the mechanical. Right? The actual delivery of a physical or a digital copy. That's something that has been attractive from my side, from the licensee's side for a long time. The idea that we have to go to all of these different people, depending on whether you're interactive, you're noninteractive, whether you're downloading, whether you're
streaming it and the download is available to be heard while it's downloading, et cetera, et cetera. We would love to be able to simply say -- as Mr. Marks pointed out, most of my services want to do or do engage in all of those different activities at once. We'd love to be able to just get a license for music and simply report what the type of use was and pay for it.

MS. CHARLESWORTH: Okay.

MR. JOHNSON: Well, you can from the sound recording copyright owners.

MS. CHARLESWORTH: Well, you're talking about -- Lee, just to clarify, you're talking about essentially expanding 114 to cover interactive? Or --

MR. KNIFE: Well, I think that's where it started. That's where Mr. Johnson started, and that I think is an interesting concept. All I was saying is adding on to that could you then say expand 114 to engulf what is 115 activity now or, from the other
side, expand 115 to subsume what is 114-type performance activity now. I was just making the point that while we're talking about kind of -- again the thing that I think is attractive about what Mr. Johnson was talking about is it's breaking down those barriers, which are largely artificial, certainly they appear artificial to the end user, as to what actually is happening on the rights owner side of any particular user activity with respect to music. They just, consumers just want access to music, and they're very uninterested in whether or not the activity that they engage in requires one license, two licenses, three licenses, different rate, whatever.

MR. MEITUS: Very quick question?

MS. CHARLESWORTH: Mr. Meitus.

MR. MEITUS: Yeah. I'd like to throw a question out to the advocates of the free market as opposed to statutory licenses. In the last panel that was talked about a lot. Why hasn't there been an organization that has
come about for interactive streaming in the last decade that acts like an ASCAP or BMI or SESAC on behalf of sound recording owners in the interactive stream? Why has this been piecemeal with the different label groups, with the large labels, now three groups, holding most of the power?

MR. MARKS: Is the DOJ attorney still in the room?

MS. CHARLESWORTH: No, I think --

MR. MARKS: That's the answer, is there are anti-trust and competition limitations on, when you have an exclusive right, copyright owners coming together. So BMI exists, ASCAP exists, but they do so under consent decrees as a result of them aggregating licenses. There are --

MR. MEITUS: So is it necessary --

MR. MARKS: -- organizations representing independents, like Merlin that represent smaller segments of the market, but --
MR. MEITUS: So for the free market plan to work in pulling back the copyright regulations, is it a predicate that the DOJ has to pull back on anti-trust regulations as well for that to work? If the anti-trust law stays as it is, can the free market plan work, that we heard so much about in the last session?

MR. MARKS: Well, it --

MS. CHARLESWORTH: That is a very big question. Yeah, I mean I think it's sort of hovering over a lot of these discussions. I don't want to put -- I mean, Mr. Marks, if you're comfortable addressing it, you can. But I actually don't want to --

MR. MARKS: Well, there's a lot of this to say that's in a question --

MS. CHARLESWORTH: Yeah, yeah, yeah, yeah.

MR. MARKS: -- and not the answer. But that's --

MS. CHARLESWORTH: The question is
MR. MARKS: -- a huge question, yeah.

MS. CHARLESWORTH: I think, yes, I mean to -- that is really in some sense, if you're talking about collective licensing, you always have to consider our anti-trust regime and how the two would interact together. And so it really is a very important question. And as I mentioned earlier, at least in the case of the PROs the Department of Justice is looking at that question, which is I think really vital at this moment in time, and I'm very glad they're looking into it. Okay. We have

MR. TURLEY-TREJO: Turley-Trejo.

MS. CHARLESWORTH: Yes. I'm sorry I didn't pronounce your name very well.

MR. TURLEY-TREJO: No, you're fine. I actually wanted to comment on what George was saying earlier. Just from a creative standpoint, I actually respectfully
disagree. I think there is a difference in
value of an interactive service and
noninteractive service. And specifically
the Spotify, I mean my playlist at being able
to choose a song to listen to as many times as
I want and put it in as many playlists as I
would like is different than Pandora and is
different than traditional terrestrial radio.
So I -- just to put another viewpoint out
there, I think that it is good that there are
different rates or that interactive is not
included in Section 114 and that it's -- I
mean you have two models here, you have direct
licensing mechanism, which Spotify has done,
and then you have Pandora and iHeartRadio
operating under 114. And I think 114 allows
services like that to actually be creative,
which I think is exciting and innovative. And
I think -- it's a difficult situation because
then are the owners being compensated fairly,
I know. But the balance of the two does I
think allow for some exciting ideas.
MR. DAMLE: Do you have a quick comment? I think we're running out of time.

MR. JOHNSON: No, I'll -- oh, sorry.

MR. DAMLE: Okay. Do you have a quick comment?

MR. JOHNSON: Yield the floor.

MR. MARKS: I'll beat him up during the break.

MR. JOHNSON: I understand what you're saying, and I get it, you know. But to me a performance is a performance. I don't care if you requested it or if it played. And you don't request what happens on terrestrial radio, but they still have to pay for those performances. So a copyright's a copyright. And just because you think you can use it free -- and this whole attitude of willful ignorance and permissionless innovation and all he's worried about Pandora's permissionless innovation, Sean Parker's permissionless innovation, that is way more
important than the millions of copyright
owners, those individual copyright owners.
What matters is Sean Parker can let you
download something and I think that's just
ridiculous.

MR. DAMLE: Okay. Well, this was
a very interesting discussion, and I thank you
all for your participation. I think we've run
out of time, unfortunately. So we're going to
take a quick break. It's now about 11:50. So
our next panel is scheduled to start at noon.
So if you could all be, the participants in
that could all be back by then that would be
very helpful to us in keeping on schedule.
Thank you very much again.

(Break taken from 11:50 a.m. to
12:05 p.m.)

Session 3: Musical Works - Reproduction and
Distribution

MS. CHARLESWORTH: All right.
Welcome back, everyone. We're up to Session
3, which I think will be a continuation of
some of the thoughts and ideas that were raised in the first session. Because this session is to discuss musical works and specially the reproduction and distribution thereof. Currently much of that activity falls under the Section 115 license, which many have raised concerns with. And I think this panel will give us an opportunity to maybe dig in to the current frustrations in the system but also, more importantly, maybe explore some of the ideas that were starting to develop earlier about ways in which we might completely change the system or modify the existing terms of 115 to make it more functional. And sort of again to me a lot of the questions are how to deal with the collective licensing if we decide that's something that remains important for at least some part of the music community and reconcile that with this issue of rates, which have gotten so caught up in the licensing structures. And I think we'll -- I anticipate
a lively discussion. I see some new people around the table, I think some new ones. No, maybe not. No, everyone's already been introduced. So without further ado, I think what I'd like to do is basically ask -- you know, I think we've heard sort of the outline of one proposal from the RIAA. I don't know, Steve, if you want to represent that or if you feel people understand it well enough, but I'd like to hear some other proposals as well. If people have ideas about ways to move forward, new structures, how if we get rid of the 115 license, more specifically what might fill, you know, occupy that space in terms of allowing people to access music for and use it on digital services. I think this could be a very productive panel. So, Steve, just not to put you on the hot seat but if you want to just sort of outline your proposal again, and then other people, if they have ideas, should join in.

MR. MARKS: Sure. And just
quickly again, the objectives that we were --
that we set out and that we were trying to
achieve were, are market rates for songwriters
and publishers, aggregating works in a way
that makes the system more efficient and
therefore easier to obtain licenses, and
hopefully provides not only more consumer
choices but also more money to the creators
and to those services. And then, three,
covering all of the products and the nature of
what the modern releases and not having
artificial distinctions between audio and
video, for example, when consumers don't
really view those as distinctions. And so the
proposal was to aggregate -- first of all,
eliminate the CRB and the rate court as it
applies to those kinds of products that are
released by record companies. And if
songwriters and publishers want to extend that
to other kinds of things, that's up to them.
We wouldn't -- we don't have a say in that or
wouldn't have a say in that. Second, to
aggregate -- and to do that by having a -- and
this is one thing that's probably worth
clarifying. The idea was to have a
marketplace negotiation over what the proper
split should be between labels and publishers,
both being part of the necessary components
and part of the end -- the creative product
that results, the sound recording that
consumers enjoy. And we thought that might be
attractive for a couple of reasons. One is in
our last two mechanical negotiations where we
avoided CRB rulings on issues and negotiated
something, we agreed on percentage rates that
had as a component of that a percentage of
what the label gets from, you know, whatever
the service is. And so it's not a new
concept. It's a concept we've discussed, it's
a concept that we refined the second time
around through this TCCI that I was referring
to earlier. And second, we've heard from the
songwriter and publishing community a lot
about the relative values and getting those
more in line with what they think is appropriate given what's happened with Pandora and some other services. And actually some early versions of the Songwriter Equity Act included having the rate court establish that relationship. And so we thought, well, why have the rate court establish that relationship when the parties can just do it themselves. Instead of their putting in a rate court that has been I think relatively hostile to publishers and songwriters, at least in terms of how the rates have come out, you know, let's have that discussion ourselves with the music community. And let's do that not with, with all due respect to all of you here, not in a room like this, not in a room in Washington on the Hill or anywhere else but just with ourselves to try and figure out whether that kind of agreement can be reached among ourselves, not with any regulation or any oversight. And if it could, then, you know, we could move forward with the third
component, which is a blanket license that helps address the fragmentation of rights, shares, and everything else for the kinds of products that we're talking about.

MS. CHARLESWORTH: And if you reached an agreement is it -- would you envision that somehow being memorialized in a statutory form or --

MR. MARKS: Yes.

MS. CHARLESWORTH: -- would that just be a -- okay.

MR. MARKS: Yeah. Yeah.

MS. CHARLESWORTH: Because otherwise --

MR. MARKS: We would bring to policymakers and, you know --

MS. CHARLESWORTH: So eventually you would have to --

MR. MARKS: Yes.

MS. CHARLESWORTH: -- sit in a government room.

MR. MARKS: Eventually. But it
would be after --

MS. CHARLESWORTH: I'm sorry to say.

MR. MARKS: Yes. It would be after having reached a consensus and coming together as a music community to say here is something that we think is a good solution and, you know, would have achieved consensus on that. And one of the questions that came up, somebody asked me during one of the breaks was, okay, this percentage gets set. So how does it -- does it ever change? How does it change? That's one of the things that we would just say let's talk about. We don't have a specific proposal on that. It may be something that we agree to revisit every so many years, you know, just to ensure that something in the market isn't changing in a way that should change the agreement we had. So that certainly could be an open part of the discussion as far as we're concerned. So and we thought that there were many advantages to
this as I outlined earlier for both -- for consumers, digital services, labels, songwriters, publishers, PROs, et cetera.

MS. CHARLESWORTH: Okay. Mr.

MR. MEITUS: I'd like to clarify why is it there is an arbitrary distinction between audio/visual and audio only? To me one is clearly -- if we can say this in copyright law -- more of a derivative work. We know that a recording, granted a recording is a derivative work of a composition. We've kind of gotten beyond that in the last hundred or so years, and we look at it differently and we say that's fine to have a compulsory right to record another song for reasons of public policy. But a video, that's a whole different thing. Where do you stop? Is a sample different, is the use of a sample different than the use of a video with an underlying song or an underlying sound recording? Why is it arbitrary?
MR. MARKS: Well, what I meant was today consumers -- and I'm not talking about all audio/visual. So uses of musical works in television commercials, movies, you know, typical sync categories, for those kinds of uses, not included in this at all.

MR. MEITUS: Direct licensing.

MR. MARKS: Direct licensing. Samples, direct licensing. I'm just talking about the kinds of products that are part of kind of the bundle that's released as part of an album. I mean today consumers really don't see a distinction between the two. YouTube is the place where most people go to listen to music but there's some audio/visual component to it even though it's probably the largest service in terms of listening to music. Every -- you know, most devices that people are listening to music on have some kind of screen where there's a visual component. So I was just saying as it relates to releasing an album project where you've got all of these
different things that are released together,
you know, the physical products, the down- --
the digital products, and the video products
that are part of it, let's treat those all the
same but set aside the things that are
traditionally then then sync and aren't
related to that, so, and leave those, you
know, as they are today.

MS. CHARLESWORTH: Okay. I think

Mr. Barker may be next.

MR. BARKER: Sure. I think Steven
and I probably agree on a lot of things, one
of which I think is the approach of how we try
to resolve the issues. And that is maybe
outside of this table or outside of official
rooms and discussions, which he and I have
already talked about. Just to respond to a
couple of things that Steven has said. One is
you ended your last comment by using the term
blanket license. And I'm going to try to back
things up to a core idea or core principle, I
guess. When I hear blanket license -- and
that may or may not be what you meant, so
maybe there's a term difference here, a
definition — but a blanket license is a
license that is for all copyrights that are
under that license. Each individual owner is
stripped of their individual rights. Now, I'm
making that sound maybe more harsh than it is.
There's a difference in blanket licenses as
opposed to aggregated rights or a centralized
licensing agency or something like that where
the model may be more clear and simple, yet an
individual owner has the ability to withhold
their rights on an individual type of service.
For instance, record labels have the ability
to withhold their recordings from Spotify.
Songwriters cannot. Why would we not want to
look at a fair platform where the rights
owners in recordings and the rights owners in
songs have comparable rights in what they can
control? A panelist in the -- a member from
the last panel quoted part of the Constitution
in Section 1.8 I think it was. I may not --
clause 8, I think. That is the core idea of what we as rights holders are given the right to exclusivity in holding our rights. So a blanket license does not allow that. A centralized license kind of a situation would allow that. So again you're going to hear me kind of pulling back to the core values and saying rather than try to build on something that's already faulty, maybe we as an industry can build on -- go back and see what it is we really want, what is fair, and build a platform from that. And I know, you know, the Copyright Office is looking for solutions and for hope, as you mentioned last time, and hopefully that will -- maybe we'll see some of that today, maybe we'll see some of that outside the session. But in building that hope and in building those things I want to make sure we're building it on the right foundation rather than something that does not line up with the core principles that the Constitution offers.
MR. MARKS: And I think that's another thing we should be talking about. And, you know, all of these have trade-offs, there's no perfect solution. I think if there were we wouldn't be here today. So, you know, one of -- on that, you know, we get into the, all right, how big is the organization that has the centralized licensing and does it need government oversight. And so, you know, all right, the idea was just to like get the government out so you didn't have that. But that's certainly something that we should talk about as an alternative, you know, if the right to opt out of something is more important than having some government oversight as to the rates.

MS. CHARLESWORTH: Okay. Mr. Coleman and then Ms. Schaffer.

MR. COLEMAN: I think that a lot of the ideas that you're putting forth, Steve, are compatible with the ideas that composers and publishers would like to see. Where I
think we get myopically off on the wrong foot
is that we're using a model of reproduction
and distribution that comes from the era, the
pre-digital era of what record labels used to
do. You mentioned the rates based on the end
service that the record labels are
distributing to, and John mentioned Spotify.
I think we're out of step with other major
Berne convention music markets in that we
don't have a collective society that is
actually collecting the mechanical at
effectively the point of sale. And that's
what we need. We need -- no matter what the
rates are, we don't want the passthrough right
anymore.

MR. MARKS: And our -- just to
clarify, that's not part -- our proposal is
that the service would send the money not
through the record company but directly to
whatever organization or organizations
songwriters and publishers wanted to receive
and distribute those royalties.
MR. COLEMAN: And I think that's a very key component to the future of mechanical licensing.

MR. MARKS: Yeah.

MS. CHARLESWORTH: Okay. I think it was Ms. Schaffer and then Mr. Turley-Trejo, and then Mr. Knife.

MS. SCHAFFER: I have two primary concerns with the RIAA's proposal, and I think they are both points that we're kind of getting at and touching on and working our way through to some sort of a solution. I think the first fundamental concern that a lot of music publishers and songwriters have is the loss of control and, just like John was saying, the loss of the ability to opt in or opt out. But I think even more basic than that, the recognition and understanding that it's an equal right. It is a separate right to musical compositions just as there's a separate right to the sound recording. And I do not envy your situation in being the one
record company representative here, but I think that may be indicative of the culture nationally, possibly why the Copyright Office decided to come to Nashville. You notice that there are no record company representatives from the city of Nashville participating in any panel.

MR. JOHNSON: Yes, there are.

MS. SCHAFFER: Well, I'm sorry. A small one. I do apologize. I'm sorry. Any major record company or major independent. And I do recognize that many of their interests are represented through the RIAA.

MR. MARKS: Well, that means they either hate me or love me, I don't which one it is. think --

MR. JOHNSON: I'll let you know during the break.

MR. MARKS: All right.

MS. SCHAFFER: But I think that brings up a really important point here in that it was publicly known that the point of
the discussions today were going to be about

115. And I think in Nashville you have a
culture of -- a music industry culture that
truly appreciates the value of a musical
composition separate and apart from the value
of a sound recording. And yes, they do work
together in conjunction, and we do need each
other. But they are separate and independent
rights that people take very close ownership
of in this town especially. And I can say
that living here, I'll, you know, speak for
the town in that we value those rights as very
separate and independent rights. And there's
a true respect for the songwriter as opposed
to the respect that an artist receives. And
I think that that's an important distinction
to make when we start talking about creating
some type of blanket license or licensing
system that flows, by government mandates
flows only through the sound recording owner.
Because I think that truly devalues the
musical composition itself, and that we
completely lose the ability to control that distribution. And as I mentioned before, and I won't go back into this, these are questions of how do you evaluate the market value if you're taking away that market. But the other big concern I have with the RIAA's proposal -- and Mr. Marks said it himself, that today's consumers and today's technology. The problem is that by the time we actually get to passing any type of new legislation or somehow revising 115, there's going to be a new service, there's going to be a new technology, there's going to be someone else that says I didn't get a seat at the table and back up, hold off, we need to revisit how we decided to structure 115 if we're reforming it. And I really have to I think ask everyone at this table why are we restricting a licensing system to today's technology when we know that two years, three years, 10 years down the road it's going to look different. The bundle of rights that we look to in sound recordings
today when we release the record, yes,
everyone wants the lyric rights to make a
lyric video, everyone wants the ability to
make their music video and put it up on
YouTube and put it up on Vivo. And we want
all of those things to occur, but the record
companies and the publishers can amongst
themselves negotiate that bundle of rights
license amongst themselves independently of
the government being involved in that
licensing process. If Sony Records and
Sony/ATV Publishing want to negotiate what
that bundle of rights look like, they can
grant those rights as can all of the other
publishers involved in this process. Now, I
agree that 1400 mechanical licenses for one
album is a lot, and I think that there's a
recognition amongst everyone at this table
that that's unrealistic for a record company
when it comes to the many digital services
that are out there, it's unrealistic for
digital companies. And there is going to have
to be some type of a collective licensing.

But I would like to see our proposed solution take a step back from saying here's the government-mandated license to go back to just saying here are your bundle of rights that you have as a copyright owner. You have the right of reproduction, you have the right to create derivative works. Here are your basic rights.

And I recognize that -- I think John made a great point of saying maybe we have to phase out 115 gradually. But give us the opportunity to create those societies so that in two years from now when there's a new type of a service we can go to that service -- or I'm sorry, the digital service can come to these collection societies, whether it's one or five or I don't know the perfect number, but why not make that an individual discussion that they can have amongst themself instead of it taking us decades to do it through government control. And I think that we're all on the same page in terms of the general
idea of what needs to happen, but I think we've seen from history that government-imposed controls are not the most efficient way of dealing with changing technologies and dealing with music licensing. So --

MR. MARKS: Can I ask you just what --

MS. SCHAFFER: Sure.

MR. MARKS: -- what kind of technology change you think wouldn't -- because we had envisioned this with technology neutral. You wouldn't have a situation where what we had put together suddenly was outdated by a new technology. Because by covering lyrics and -- covering all the rights and all the pieces of the composition you'd be including it, so you wouldn't have to update it later in if there was a new type of service that came along into the market.

MS. SCHAFFER: And I think that's the idea though is that right now maybe we can't contemplate that. I didn't contemplate
that Google would have a self-driving vehicle,
but they do. You know, I think that that's
the idea is that 10 years ago we couldn't
contemplate what we would think of today as
being standard distribution methods in the
music industry. But I think that we're
getting ahead of -- well. By trying to create
a licensing system that is government-imposed,
you place yourself in a box. So if it ever
changes, which we know it does change
throughout history. Starting with the piano
rolls up through what we have today it's
consistently changed. And it's going to
continue to change. So why not put everything
on a level playing field with your basic
rights and then let us amongst each other have
these discussions. So that if a record
company suddenly decides that part of its
standard record release includes a sponsorship
and that every album is sponsored by some
major sponsor. Well, we know today that the
sponsorship rights with music creates
different types -- there are different negotiations that go on when we're dealing with a song and a sponsorship of a particular product. So if that became the norm, somehow we would have to address how do we deal with this situation. And I think that we're placing ourselves in a box like we did in 1909 today by doing the exact same thing. And I agree completely with the idea of us having these discussions outside of this room and figuring out, you know, maybe this is this private deal. You mentioned earlier the screenwriters and how Netflix doesn't have to go to the screenwriters. Well, that's because of private contract negotiations, not because of government-mandated regulations on how screenwriters need to license their works. That's done when the movie company's negotiating with the screenwriter to begin with. We can do the same thing.

MR. MARKS: Well, that's what is part of our proposal.
MS. CHARLESWORTH: I want to break in here because I heard you say earlier -- I mean a movie may be a multimillion dollar investment typically. So the relationship of the transaction costs of negotiating individual licenses for that film is quite different from, I think, digital service that has 30 million tracks, many of which may never even be streamed or maybe streamed once or twice. And you did mention -- I heard you acknowledge that even if some publishers and songwriters even could negotiate direct licenses with services there would still maybe be a need for collective licensing. And then I heard you sort of I think suggest that the publishing and songwriting community should be allowed to develop their own versions or --

MS. SCHAFFER: Collecting agencies.

MS. CHARLESWORTH: -- collective -- okay. So the question is how would the rate setting process or the rates charged by those
collecting agencies be accomplished. In other words, if you -- you know, and this gets into another area of government regulation, because when you have collective action like that, there are competition concerns that come up. And so in your view, though, what I'm hearing is there's no government regulation at all. So I'm just wondering how you reconcile the competing interests of sort of the concern about competition on the one hand and control over this collective licensing process on the other.

MS. SCHAFFER: I don't think it makes sense to have one collective agency setting the rates. I think that naturally the marketplace will work itself into a relative number of collective agencies that is manageable. And I think that that happens by the fact that, as you said, digital services can only go to so many people to negotiate. And I think that you reach the rate by determining what the marketplace will allow
for. And also by meeting with the members that you represent through the collective, which is why it's important not to have one agency but to allow there to be a few so that members feel they can go to a place where their opinions are being heard. And I think in some ways we see that with the BMI, ASCAP, and SESAC in that those three entities have developed the PRO licensing, and people can make decisions about how they feel the operations are within each of those entities to determine which of the PROs they would like to have their public performance licenses granted through and who is paying out. So I'm not saying there's a perfect solution here and that there may not be a need to have certain designated entities that -- you know, where -- you know, I don't know whether it's the Copyright Office through copyright access if there are five designated agents for collective licensing and bundling the rights together. But I think that if we can remove
115 and revise the consent decrees, I think --
and I won't speak for BMI, SESAC or ASCAP but
I would assume that at least a couple of those
PROs would probably expand and go with their
licensing if they were able to do so.

MS. CHARLESWORTH: Okay. And
thank you for that. I think, Mr. Turley-
Trejo, were you -- I think you were next on my
list of long ago. I'm sorry.

MR. TURLEY-TREJO: All right.
Thank you. No. I would like to submit that
I do not think we should repeal Section 115.
I think we can amend it but I do not think
there's a current model in the industry that
-- I think the ASCAP, BMI, SESAC model is
flawed as far as transparency and as far as --
I mean a lot of songwriters aren't even
getting paid. And it's impossible. I
understand the challenge of the PROs to -- you
can't track all those performances. And to
directly track my song was played this much
and this person's song was played this many
times and pay -- it's just -- it's impossible
with how large a scope that is. So I think if
we move to a collective licensing law with
this, we're going to run into the same
problems. And I think the compulsory license,
while antiquated in its original intent,
works. And I think some amendments to help
with certain bundling of rights by like
including public performance rights in Section
115 and maybe getting rid of the notice of
intent and having it mirror more Section 114
where you just have to do one notice of intent
rather than individual notice of intent to
creators. I think things like that can help
amend it to make it more efficient, but I do
not believe we should get rid of it. And from
a licensee standpoint, because I know -- I
mean so far the panel has been pretty heavily
biased from the creator standpoint. From the
licensee standpoint, we love the compulsory
position. It is one of the only straight
forward parts of music licensing. I mean in
my job if somebody comes to me with mechanical licensing questions I just gladly say go to Harry Fox and figure it out yourself because you don't need my help. There's a statutory rate, there's a process, and they go and they do it. If it's any sort of sync licensing or marketplace licensing, then it requires my expertise or other people's expertise. So I affirm that that is what's working. But that's also from a smaller standpoint, but I think that voice needs to be heard. And I think if in relation to this issue of technology, I think freeing up the statute or the compulsory license to allow for more flexibility would help a piece -- and it would help adapt as we move forward and things like I mentioned, like removing certain restrictions. And I do have a question I just want to throw out there. I've always wondered this. The synchronization rights, which that term exists nowhere within the code as far as I've read it, but yet it is the most
frequently thrown-around word in our industry. And I cannot find a very clear definition of what exclusive right the sync right is derived from. MALE VOICE: Derivative work.

MR. TURLEY-TREJO: No. MALE VOICE: And reproduction.

MS. CHARLESWORTH: And reproduction.

MR. TURLEY-TREJO: And I don't think it derives from derivative work. Because you're not recasting or transforming the work, you are --

MR. MARKS: It's in any medium.

MR. TURLEY-TREJO: Well, see, that's subject to interpretation. But I mean Kohn on Music Licensing, which is sort of the music licensing bible for a lot of people, including the Supreme Court, says that it is derived from the reproduction and distribution rights, and it's an electrical transcription license. Because you are synchronizing a musical work to a visual image. But, for
instance, these bundling of rights is adding
a visual. That doesn't sound to me like an
electrical transcription license in the same
sense of synchronizing a song to a film or to
an ad or any sort of -- where you're creating
a product that has both the visual and the
audio intertwined as opposed to just
incidental visuals while you're listening.
You know, YouTube, for instance.

MR. MARKS: Right. I think there
is, you know, there are some open questions
about how much visual content or the nature of
the visual content has to exist for there to
be a -- for it to be, you know, synched, so to
speak. But setting that aside, I think most
of what you see on YouTube is clearly that,
and therefore the reproduction rights are
implicated.

MR. TURLEY-TREJO: Well, see, I --

MR. MARKS: We were thinking of it
more from a market perspective than, you know,
sync uses. Sync uses especially in commercial
and television, you know, a writer or an artist, you know, they have feelings about how their work wants to be -- how they want their work to be associated or whether they want their work to be associated with a certain type of product or whatever it is. And that's why we wanted to sweep that completely out. Because it's just a different animal in that regard, and those kinds of -- you know, we don't have moral rights here. But to the extent that we exercise them in the free market, in that respect they should be, continue to be respected and kept outside of what we were proposing.

MR. TURLEY-TREJO: But I mean would you say that YouTube cover of a song is a sync?

MR. MARKS: A YouTube -- you mean --

MR. TURLEY-TREJO: A guy in his living room with a video on him performing a cover, is that a sync?
MR. MARKS: Yes.

MR. TURLEY–TREJO: I would disagree.

MS. CHARLESWORTH: Okay.

MR. TURLEY–TREJO: But I --

MS. CHARLESWORTH: I'm going to send you guys off, because we're getting a little off track. I think the basic point is even if you --

MR. MARKS: What does YouTube --

MS. CHARLESWORTH: -- perceive of it as a reproduction or some- -- you know, you need a license, I think. And so the question is 115 is limited to audio only as we all know. So I think one of -- you know, as I understand Steve's proposal is expanding it to cover certain types of audio/visual content, let's call it that, whether -- you know, regardless of how you define sync. So, I'm sorry, if you want to say a couple words in closing. Then I want to go to Mr. Knife and some of the others.
MR. TURLEY-TREJO: I just think that that would be helpful to clarify that. I mean because otherwise you're going to have talking heads about what sync is, so.

MS. CHARLESWORTH: I think clarification is always in the interest of -- you know, it's a good point. And we will certainly think about that. I know the register -- there's a lot of interest in simplifying and clarifying the law, so point well taken. Okay. Mr. Knife.

MR. KNIFE: Thanks. This will appear to be going in a different direction but it's because my remarks are based off comments that were made a while ago. So kind of two facets of what at least I conceive of as a central point. The first one is -- And, Jacqueline, you kind of touched on this. We should all remember that there needs to be a balance between whatever kind of collective licensing regime we're talking about and potential anti-trust issues. And especially
when we talk about things like possibly, as
you said when we started out this morning, you
know, taking as a theoretical throwing out the
115 license, if you were to do that tomorrow
given the type of -- the way the marketplace
has grown up underneath the regulation that
we've had, I don't think you could really just
take 115 away. And indeed even phasing it out
would take an awful lot of effort and a long
time. We'd have to wrestle with the concerns
regarding large aggregators of rights, their
bargaining power in a marketplace, how they
behave in that marketplace both towards their
licensees and towards each other in that
marketplace. And those are all concerns that
are very, very real when you talk about a
music licensing environment that has 30
million songs in it. The other, kind of
pivoting off of that for a second, I had heard
Mr. Barker and Ms. Schaffer both talk about
the idea that, going off of the RIAA's
proposal, that their concerns were that it
feels as though it might be stripping individual artists from their ability to essentially saying no. And I was wondering if we're talking about a collective licensing regime, as I think Mr. Marks has laid it out, that would result in kind of basically an industrywide rate that would have a percentage split between, say, songwriters and sound recording owners. And individual songwriters as represented by Mr. Barker and Ms. Schaffer would want the ability to opt out. I'd ask the question are you asking for the ability to completely opt out or opt in to the rate as agreed? Or are you saying what we want to do is opt out and negotiate on our own behalf? Because, let's say, we found the rate that either the National Music Publishers Association or my music publisher or whatever or the overall retail rate that the RIAA company agreed to is unacceptable to you. Because if it's the latter, then you really just undermine the whole process and we're
just back to square one. Which means my
constituency has to negotiate with every
single songwriter and sound recording owner
for their individual rights. So that's the
question I'm wondering. To kind of further
the RIAA proposal, are we talking about being
able to either accept the rate that was agreed
or back out and not have your works licensed,
or are you saying no, I want the free
marketability to negotiate a rate regardless
of this collectively agreed rate.

MR. BARKER: Can I --

MS. CHARLESWORTH: Yes. Well, I
think Mr. Barker.

MR. BARKER: Yeah. Sure, let me
give you my perspective on that. Let me just
first preface that by one quick thing. And I
appreciate, number one, what Ty is saying and
Ty being here representing Brigham Young.
Because I think it's important that an
organization like that be part of the process.
You and I probably think differently on some
things. One thing that I did read in your comments though, which I think I want to bring up in order to answer your question, is the statement was made that Brigham Young likes Section 115 Because it's about the only thing that gives leverage to you to use song copyrights. Well, the fact that there is leverage to be used against song owners is the very reason that we're trying to open this thing up so that there's fair negotiations. So that's something that -- I would say 115, we can talk all day, I'm sure we could talk all day about the things that are wrong with We've mentioned some, I have others. I won't go through go into them now. I don't like 115, but -- and Steven says, to go to your point, and then I'll eventually, Lee, get to yours, because this kind of builds up to that. I agree with Ms. Schaffer in that just the fact of being tethered, if you will, songwriters and publishers being tethered to a rate that the record companies set, it is
again not opening up the free market. Why
would we not want to -- I think as Brittany
said -- look at records and songs equally in
the rights that they are afforded, meaning we
can both negotiate rates and we can opt in or
opt out. Which then gets to your answer, Lee,
to say in my opinion all of the above of what
you said is what we're looking for. Why would
we not want and be afforded the ability to opt
in or opt out, and in the event that we opt
out to be able to negotiate a rate? Now, how
would that work? As you said, that's then
going to create a lot of problems and maybe
stick us back into this 105 years ago. Well,
105 years we've had 115 or whatever it is, and
this rope has built up to where it looks like
we can't cut this thing. Yet it's made up of
individual strands that if we can just attack
each strand at a time, at some point we can
get rid of that big rope. It's not going to
be a quick process. That's why I would
propose a sunset formula or sunset period to
say, hey, we want to get to a place where 115 goes away and replace it with -- and perhaps this helps to answer your question as well -- replace it with a centralized entity that gives the ability of the owners to belong to it and give the ability to the owners to opt in or opt out and even to accept certain rates. This morning I saw an article, and many of you may have seen it, "Amazon Caves to Independent Music Publishers." Amazon has been trying to get individual music publishers to agree to rates that are supposedly less the compulsory rates. They've caved on that now, and Amazon is now going after the compulsory statutory rates. Well, if we didn't have the stat rate, if Amazon was trying to enter in here, we didn't have the rates, then Amazon would not just move up to that rate and know that that's as far up as they need to go. Perhaps Amazon or other entities, a Spotify, could go to a central agency and say I want to start up and I'm offering this. And in a
perfect world if that entity or those few
entities, whatever those are, and I don't have
any answer to that, then have the ability for
each of their members to say, you know what,
I like that rate, I'm in. I don't like that
rate, I'm not in. And if that entity only
received 20 percent positive approval, then
obviously the entity knows they need to offer
more. So at that point the free market begins
to take over as an aggregate of information so
that those copyright holders can then opt in.
And for those who may still choose not to,
sure, they have the right to then negotiate on
their own.

MS. CHARLESWORTH: Okay. Just I
have a really quick question. Is your
proposal, would it cover first use or is that
outside of what you're talking about, Steve?

MR. MARKS: Are you asking --

MS. CHARLESWORTH: Yeah, I just
want to make sure. Because in terms of opting
out --
MR. MARKS: Yeah, it would cover first use but as a -- in the course of a dealing kind of way. So, I mean today -- and I think we noted this in our comments -- there's a certain assent, you know, that's expressed as part of the recording process. And so as long as that assent is expressed and somebody doesn't say something else that's not --

MS. CHARLESWORTH: But the point is, for the first use, the first recording, the owner, you know, the songwriter could opt -- wouldn't be -- wouldn't necessarily have to license on a label. In other words, as the system is today. So that's an important reservation of right --

MR. MARKS: Right.

MS. CHARLESWORTH: -- on the part of a creator today that would continue under your proposal.

MR. MARKS: Yes.

MS. CHARLESWORTH: Okay. Mr.
Coleman has been -- and Mr. Johnson have been
ever patient, so I'm going to go to them. I
know you and Ms. Schaffer have more to say
but I want to get to these guys.

MR. COLEMAN: I'll try to loop
back to what I was thinking about.

MS. CHARLESWORTH: I'm sorry.

MR. COLEMAN: That's okay. Some
of the free market discussion grates to the
ear of an independent publisher or a
songwriter. Because you have to think about
who the actors are in that negotiation, if
there are large firms negotiating in the free
market. The other thing that grates is that
if we take away some kind of statute for
licensing the reproduction right, and we say
that's because it's government intervention,
well, then we can also take out the government
intervention which is copyright in the first
place. These are two sides of the same coin.
And I think that we do need a baseline of rate
setting. And I think there's a fundamental
and well-established idea in copyright that
once the first use of reproduction has taken
place then copyright owners can cry all the
way to the bank if they don't like another
version of their copyright out in the world.
But at least they're guaranteed a payment on
the basis of that. And what I hear as a
subtext in the RIAA and large firm discussions
here is this notion that the rate is all
important. I would submit that the -- that we
are talking about copies and uses, and that we
need a floor rate in a statute. Because what
we're interested in is the number of uses of
our compositions. And if you have a firm that
comes along with a lot of negotiating leverage
that says we want to negotiate a rate for a
large number of copyrights on the basis of a
few copyrights that are important, that
doesn't leave room for risk taking on the part
of an individual songwriter who may have an
opportunity to do very well with a single
copyright and is not part of that system.
MS. CHARLESWORTH: Okay. Mr. Johnson.

MR. JOHNSON: There's so many subjects.

MS. CHARLESWORTH: We have to be a little --

MR. JOHNSON: I'm trying to be quick.

MS. CHARLESWORTH: Yeah.

MR. JOHNSON: Well, just the first use, as a creator somethings -- even Prince has said there's how many versions of the song "Kiss" but there's only one version of "Law and Order." So on TV you don't do the same copy of the same show. But his copyright, he owns it. And if he doesn't want someone else to do it, that's his prerogative. And I think that we should kind of rid of the first use. Or if we keep it, make it an opt-in or opt-out type of thing. But as far as the basic 115 and 114, just thinking about it, first of all if you keep 115 you should have an audit
right. I think that should be put in there, I think Chris Castle is right on that. But the more I think about it if you have 115, it should just be a composition with an audit. And the only statutory part about it should be that you have to pay for it, whatever the rate is. And I think we should separate, get rid of the Copyright Royalty Board and whatever the rate should be. And the problem is that -- you know, the 9.1 cents is a perfect example, just to cap it, and that's what the minimum is, it's just a cap. And it's abused. And I have a little chart here, which isn't too big, I'm getting some more made up. But just a basic inflation chart for one dollar over 100 years. And you see it right there.

MS. CHARLESWORTH: Yes. Let the record reflect Mr. Johnson's holding up the chart; that it's hard to see if you're more than a few feet away. Maybe he will submit it with his reply comments.

MR. JOHNSON: Anyway the point is
if you can see it -- I'll be quick -- is that
here's the dollar. The dollar's dropped 96
percent of value, just it's worth nothing for
a hundred years. But you have the two cents
right here, it stayed at two cents, went up
here, and then it just dropped down pretty
much overnight to .0000 nothing. If you take
regular CPI inflation two cents is about 52
cents, what mechanicals should be these days.
So, anyway, I just think that if there's going
to be a statutory part, it should say yes, we
have a composition copyright and we have a
sound recording copyright. We can audit, if
we want to, SoundExchange, we can audit ASCAP
and BMI. That's pretty much it.

MS. CHARLESWORTH: Okay. Thank
you. Mr. Sellwood, I think you've also been
very patient.

MR. SELLWOOD: Thank you. I
thought as a company like YouTube that has
licensed millions and millions of musical
copyrights over the last couple years, maybe
I would weigh in just quickly. I think so much of what has been said I agree with, the company would agree with direct payments to publishers. I think that's very important. I certainly like the idea of an all-in valuation of the music copyright. Our concerns about license fragmentation between labels and publishers between the various rights, mechanical and performance, the main concern for us that comes from fragmentation is an incremental creep in total content cost from which we can't really sustain the business. So if there could be some agreement between publishers and labels as to total content cost, we don't -- we're very agnostic, we don't care whether it's a performance or a reproduction, tell us how much it costs. So I really like that idea. I also agree that there needs to be certainty in the definition of what rights are covered by whatever it is. So whether we're excluding things from the future or whether the reproduction right that
occurs on YouTube is covered or not, that's something that needs to be defined. Where we start struggling is with the idea of opt-outs for all the reasons that Mr. Knife described and I think that I tried to comment on a little bit earlier today. And also I really struggle with the idea of transparency with collectives. Publishers are just collectives of songwriters, really, we don't have much transparency of what happens once money gets to a publisher. I would be concerned and would hope that there would be some real meat and teeth to transparency and to what the collective is doing and how that works. And understanding again of what rights are common to somebody like us. But for the ray of hope, YouTube exists outside of Section 115. We've licensed the vast majority of the publishing market in the U.S., well over 90 percent. It has been painful, costly. It has been horribly inefficient. And, frankly, I don't know of that many other companies in the world
that could do what we've done. We're grateful
to have had a license and agreement that has
been negotiated and approved by the NMPA as
wind in our sails on the work to go license
all this. I don't know if we would have been
able to do it without the NMPA. So it's just
-- I hope that the Office would consider how
painful, how inefficient, how costly it is to
license a competitive repertoire of catalog
without the umbrella of something in Section
115. Thank you.

MS. CHARLESWORTH: Okay. We're
going to run a couple minutes over but I just
want to get in Mr. Driskill and then if you
can be brief, Mr. Marks and Ms. Schaffer.
Then I think we'll be out of time at that
point.

MR. DRISKILL: I would just urge
us to understand what we're talking about
here. We're talking about property rights.
We're talking about if -- I would daresay that
if a movie production company said, hey, I
want to come and use your house for free to make a movie to give to the public for the public good, you know, you're going to let me do that. Right? I mean you're not going to give up your property. But that's what we're asking copyright owners to do in a lot of ways is give up their rights to their property. And I think that's where we have to try to meet here is having an acknowledgment and an understanding that it is in fact a property right. The property right can be used in a collective manner to make things easier, but just to make it easier doesn't mean that we have to abandon the right. And I think that's the main point that I think as copyright owners that we need to make here, is that this right is a right for a reason. It is a property right. Let's don't abandon that for ease of licensing. Let's do find a simple way to do this. Let's reduce cost, let's reduce everything, efforts and everything else, but let's don't abandon this right.
MS. CHARLESWORTH: Okay. Mr. Marks.

MR. MARKS: Yeah. I agree completely and, you know, whatever discussions we have should reflect that fundamental right. You know, I completely understand all of the things that you are saying about the opt out and things like that, and we should discuss these going forward. I would just note, you know, we have something of an odd market here. Because an opt-out, just taking an opt-out as an example, you've got one song that’s got eight different writers and maybe 15 different publishers. So what happens if the one that owns 5 percent opts out but the rest don't? What if their representative -- I'm assuming they will be represented by different designated agents. Very complicated things to think through and things we should think about moving forward. The other thing is that the market is just kind of odd here too. Because the normal time I think that the owner -- a
songwriter or a publisher as the owner of a musical work would license that work is at the creation of the work, you know, to the -- for example, to the label when they're creating a recording before the recording is done. And what we're talking about here is something very different. It's constructing a marketplace where that negotiation happens after the recordings have all been made, which introduce just a variety of some things to think about in terms of how the normal market would work that we should think about some more and think through. But I think this has been a great conversation and hopefully just the start of a good dialogue.

MS. CHARLESWORTH: Okay. And I think that leaves Ms. Schaffer with the last word unless anyone else has a burning need to comment rather than eat lunch, which personally is where I'm headed.

MS. SCHAFFER: I will not keep everyone from lunch but for a minute. Just to
address Mr. Coleman's point about rates not being the only thing, and I think that most of the publishers and songwriters would agree that transparency and having an audit right is essential to any revision or any collective agency that comes about is having that transparency, especially that audit right. And then just to answer the question that I was asked by Mr. Knife about if there's a collective in the opt-out right. I will not speak for any particular organization, but personally I understand where you're coming from and I think that you are right, that at some point there has to be a way for at least the most basic licenses for music services to know either if someone is in or out, and for the negotiations to have some ending point. And I think that that is something that we all have to address. Where that line is, I think is part of the discussion, but I think we would acknowledge that you're on the right track of that concern.
MS. CHARLESWORTH: Okay. Well, thank you. And I think this was a really good discussion and where people engaged with one another, and I appreciate that. I'm going to turn this over to my colleague, Rick Marshall, who can explain the lunch options, I guess.

(Lunch process explained by Rick Marshall)

MS. CHARLESWORTH: And we're reconvening at 2:30.

MR. MARSHALL: Yes, 2:30.

MS. CHARLESWORTH: 2:30.

(Break taken from 1:05 to 2:30 p.m.)

Session 4: Fair Royalty Rates and Platform Parity

MS. CHARLESWORTH: We have a couple more panels to go. The next one is on fair royalty rates and platform parity. We've heard something about these issues already. A lot of these panels, as I'm sure you've noticed, overlap to some degree. And that is,
frankly, because the issues are certainly interrelated. But on this particular panel we want to look at sort of what are some of the principles we might be able to agree on in terms of setting royalty rates in terms of either standards or should the standards be uniform. And also I'd like to -- you know, we talked a little bit about I think the CRJ process and maybe the 115 process. We haven't talked so much about the PRO rate setting process. But if people want to share their views about the actual judicial or administrative processes and things -- I think we've heard a bit about that but it will be interesting to hear more about ways in which those might be refined, assuming they're retained. And we have -- I guess before we start we have one new member of the panel. Which is Mr. McIntosh. And, Mr. McIntosh, would you like to introduce yourself and explain your affiliation.

MR. MCINTOSH: Sure. I'm Bruce
McIntosh from Codigo Music/Fania Records. We're a Latin music -- actually a legacy label out of Miami. We're in our fiftieth year this year. It all began in '64 in New York. And we've got a catalog of about 3,000 albums, about 21,000 tracks, so it's pretty much the largest independent Latin label out there. Also representing A2IM, and we are part of a coalition of about 300 plus independent labels. As you guys know, in the United States there's no collective bargaining in that sense, so it makes it tough. And a lot of what I've heard in the earlier panels, there's really -- with direct licensing it's very difficult and really almost impossible for an independent label to go in on the same footing and have a level playing field as the majors do when doing direct licensing. So that's one of the big points and one of the things we would like to advocate for is a statutory compulsory rate that provides equal pay for equal creation of works.
MS. CHARLESWORTH: Okay. Thank you. And welcome. So I think maybe it might help to start this panel off with a general question, which I alluded to just a moment ago, which is in thinking about this issue and assuming, let's say -- I know there's some who are of the view that all this should be done in the free market, and I'm going to set that aside for a moment. But let's just assume that there's some sort of government-defined rate setting process. What principles do you think should guide that process? What should -- you know, if we were writing it from scratch, what should it look like? Should rates be set jointly for different copyright interests or for different uses, or should they continue to remain in separate proceedings? And so I'm going to open the floor with that very broad question. Yes.

MR. KASS: I think the number one thing that you need to do or Congress needs to do is segment the markets. Because as we went
around there were so many different markets and there were so many different interests that needed to be protected that it's very hard to put in the same pool a high school radio station with CBS radio or even with XM/Sirius or all the different things. So it's quite possible that a rate is going to be entirely different for one segment of the market than another. The other thing I would encourage you to do, and that is at least make the statute, the new 114 simple enough that somebody like the CRB or CRJs could actually make a rate decision. One of the interesting things that came out of the July 6th ruling by the D.C. Circuit that the CRB was improperly appointed, when they looked back and saw what impact this would have they determined that actually the CRB didn't set any rates except for the $500 minimum, that all the rates were negotiated because people just didn't want to use that CRB process. And again the judges are encumbered by the law, apparently, so it's
so complicated that they're not able to make rate decisions properly.

    MS. CHARLESWORTH: Well, just a little bit in defense of the CRB. I mean they do often arrive at actual decisions or not infrequently at rate decisions, but many, as you suggest many of the rates are actually determined through a settlement that's then adopted by the Copyright Royalty Board. And the statute actually encourages, to some extent, the settlement. So I guess that's another sort of subissue is you're suggesting maybe, I think that maybe more should be litigated, perhaps, I don't know.

    MR. KASS: No. I think it should be so simple that the CRB can hear evidence where there's a dispute. Obviously everybody wants 209 an open negotiation period and -- which was just completed with Web.4, and then if there is arguments to be had, to work those out again between the copyright holder and the user of the copyright. But there's
potentially going to be disputes. And back in the olden days with the CRT, the Copyright Royalty Tribunal, it was a process that worked itself through under the direction of the librarian and the Copyright Office who could review the decisions and change them. Mr. Billington certainly changed the CARP decision dramatically on that. At this point I think you all can only review the decisions of the CRB for matters of law, and Billington can just fire the judge if that's what he wants, but he can't do anything. Well, that's really not good arbitration, that's really not good law, at least in the intercollegiate broadcasting system.

MS. CHARLESWORTH: Okay. Mr. Knife?

MR. KNIFE: Oh, I thought Steve was going to go.

MS. CHARLESWORTH: No, I'm shaking things up, I'm going to, I'm trying to go counterclockwise.
(All speak at once)

MR. KNIFE: So I apologize, ma'am.

Dispensing with the levity for a minute, I think there are a lot of issues with the disparate rate setting standards and the rate setting processes. As a kind of an overarching concern, I think that whoever is setting the rates for whatever activity we're talking about, whether it's a federal judge sitting in the Eastern or Southern District of New York or it's a copyright royalty adjudicator, they should have available to them all information about the marketplace that they can possibly get their hands on. I think evidentiary restrictions about what deals they can look at, what deals they're allowed to weigh in on and consider as they come up with their decisions just don't make a whole lot of sense. Moving a little bit forward from that, you know, we have this kind of accelerated process in the CRB right now, which I think a lot of people initially
thought might be a cost benefit in that it --
you know, the idea was that you get in and out
very, very quickly. There's a very compressed
time frame for the overall proceeding,
including discovery, et cetera. And I think
that ultimately that has led to actually a
more costly process, quite possibly. Because
it's kind of like how many people are you
going to throw at a man hour problem. Right?
And the point is you can pay so many lawyers
to work on a case that's going to take a year
and a half or you can tell them you've only
got six months to do it. And your bill isn't
going to be any lower because they're just
going to throw more lawyers at it. And that's
a little bit of a problem. And then that
leads to the last point that I want to make,
which is, you know, Fritz was talking about
the idea of making it very, very simple.
There are -- that's a double-edged sword. The
idea of making these proceedings very, very
simple is -- could possibly be problematic.
While it's attractive on one side because it might make it available to greater number of potential users in the public to be able to come into these types of proceedings, as we have kind of just touched upon a little bit today these are very, very thorny issues, they're very -- they contain a lot of subtlety. There's a lot of -- there's many, many interests involved, all with individual perspectives that don't necessarily line up. And on that front I think that having very, very learned judges to preside over these types of rates and proceedings is probably the better way to go. And the idea of doing things like having kind of an accelerated process or maybe even a small claims type of process, while it seems attractive on first blush it is probably not as attractive when you really kind of game it out as it might appear initially.

MS. CHARLESWORTH: Okay. Mr. Marks.
MR. MARKS: You want to team back and forth?

MS. CHARLESWORTH: Well, he -- okay. No, well, he put his sign up after yours though. I have a secret -- there is a logic to this in my head.

MR. MARKS: First I would just state that in terms of the standard, something that represents market value is we think critical. If you're going to subject rights to a compulsory license, there should be market value as the rate standard. You know, I've heard a lot of -- there are a lot of different opinions about the willing buyer/willing seller standard. We think it's working. We offer it at different standards. There were others that we would have been fine with that were considered at the time, including fair market value, you know. So I think we remain open so long as it's very clear that the goal is to provide market value. I do think, you know, getting to some
of the issues that Lee and Fritz were talking
about, there -- certainly one way to simplify
the proceedings, right now we have a direct
case and then a rebuttal case in a fairly
compressed time frame. And rolling those two
together so that you have -- maybe you're
moving more of the discovery up front and then
just having one hearing may be something that
should be explored. Or maybe it's something
that at the option of the parties, if the
parties to a particular proceeding agree that
they want to do it that way, they should be
able to do so. Because it does get very
difficult when you get to the rebuttal stage
to try and get discovery and get through that
process, and it might work a little better
just having one there. I think -- you know,
the statute right now says that the CRB should
set different rates for different types of
services. So they should be doing that,
they're directed to do it. I think the fact
that negotiations often occur or settlements
often occur is a good thing. Because the idea
behind the statutory license is to encourage
it and to have this available as a backstop in
the event that you don't have an agreement.
I will say, unfortunately, you know, for us we
do feel like there's always at least one large
party on the other side who just wants to roll
the dice again. And that's why we end up in
a lot of -- you know, we've ended up
litigating virtually every webcasting
proceeding. And that unfortunately appears to
be the case again this time. So those
comments I had.

MS. CHARLESWORTH: Okay. Mr.

MR. OXENFORD: Oh. I thought you
were going over there first.

MS. CHARLESWORTH: I told you I'm
shaking it up.

MR. OXENFORD: You really are. I
was falling asleep here.

MS. CHARLESWORTH: This is so no
one falls asleep. It's like law school.

MR. OXENFORD: While Steve is talking, you're right, I couldn't have possibly fallen asleep. I think that the process, while certainly having to look at fair market value, also needs to take into account business realities. I think that's one of the biggest problems in the 114 proceedings, it hasn't really looked at the business realities of the services. I mean somebody's got to be able to pay these royalties and continue to operate a business in order to afford to pay the royalties that are demanded by the copyright holders. I think also I agree with Fritz that there are different proceedings with different parties that have different interests. And to try to roll everybody into one proceeding I think is going to be just about impossible. I mean if you look at the satellite radio folks, it's a whole different business really than webcasting with different costs involved, with
different abilities to pay. Even broadcasters and certain webcasters have different aspects that have been accommodated in the 114 proceedings but even that has created some problems. I think looking at the differences between those sorts of services, and certainly noncommercial folks have a whole different set of circumstances that are often overlooked.

As to Steve's comments about the process, I don't have any problems about an idea of rolling all of the hearings into one as long as there's the opportunity to prepare a rebuttal exhibit before you prepare a -- after you've seen the direct case exhibit. I think one of the issues is being able to prepare that direct case exhibit. Being able to get the information necessary to have a sufficient fact base in order to prepare the direct case exhibit. In the current proceeding, for instance, the Web.4 proceeding, Pandora had requested predirect case discovery so that they could actually
have some numbers from which to derive a rate
to be proposed. And what a concept to
actually know what the world is before you
propose the rates that are out there in the
universe. And that was rejected by the CRB
because the statute doesn't seem to provide
it. It talks about discovery after the direct
case exhibits and then amending the direct
case exhibits, which seems awful inefficient
to me. So maybe we should look at moving the
discovery to prior to the direct case exhibit
so that we have a basis for preparing complete
direct case exhibits.

MS. CHARLESWORTH: Okay. Ms.
Schaffer. Are you going to comment on 115 or
--

MS. SCHAFFER: Yes, 115.

MS. CHARLESWORTH: Okay.

MS. SCHAFFER: My comments are
more directed to 115.

MS. CHARLESWORTH: All right.

Before we move to 115, do other people want to
comment on the 114 process?

(No response.)

MS. CHARLESWORTH: Okay.

MS. SCHAFFER: With respect to parity and fair rates and 115, I think a lot of it has been addressed in this morning's proceedings, with the first issue being that if we are going to keep 115, there has to be I think a fair market base rate for how we set the 115 compulsory licensing rate. Currently it's on the 801(b) standard. And I know the Songwriter Equity Act has proposed moving that to a willing seller/willing buyer model, and I think that that's a good direction that everyone would like to see us head in if 115 does remain, so setting those rates to a fair standard. I think you also -- I guess this does get to 114 a little bit in that with 114(i) and the fact that it prohibits ASCAP and BMI in those rate setting proceedings and from considering sound recording rates, you know, I think has dramatically undervalued
both licenses. And I think Pandora's a good example where I believe it's -- NMPA's comments point this out, but 48 percent of the revenue from Pandora is going to artists and labels where 4 percent is going to publishers and songwriters. So obviously there's a great disparity there. And while SESAC is not under the consent decrees, the fact that ASCAP and BMI are restricted to certain rates obviously undermines their negotiation ability even more significantly as well. So I think that's one part of it. Also with these proceedings I think you have the problem that you get the parties together to agree to a settlement and then it takes two years to approve, and then the board doesn't end up approving all aspects of it, which everyone had bargained for in kind of coming to the agreement that they had concerning what the rates would be. You know, I think that there were things that the digital services thought that they were going to get out of that settlement that weren't
approved and vice-versa. So I think that
there needs to be a consideration if we do
have a settlement agreement and the parties
can come to an agreement, allowing that to
stand. Then I think you also get into again
just the fact that there's not an audit right
under 115. And that's that point that I --
we've been speaking about this morning and
will continue to, but there's no transparency
and ability to determine whether the monies
actually being paid correspond to the uses of
the music composition. So I think if 115
stays in place, those are the types of reforms
that we will need to take a look at.

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

MR. BARKER: Did I look like I was
going to sleep?

MS. CHARLESWORTH: Yes.

MR. BARKER: Thank you. Yeah, I
agree with what Brittany just said. And I
think -- I kind of wanted to look at this.
You started this out to say there are some
that want fair market value. Of course I am
one of those. And to say but if we do keep
115 how do we do that and 115 and 114, and I'm
going to say let's get as close as we can to
the fair market value. That's going to be my
bottom line theme. But I did -- just so that
I could better understand all of what we're
talking about when it comes to 114 and 115
issues and the different sources, I drew out
a few weeks ago a diagram for me, which I'm
not going to hold up because I know we're on
radio so it doesn't matter to anybody. For me
I'll look at this. But I broke down uses into
eight different categories. Phonorecords,
DVDs, ringtones, interactive streaming,
noninteractive, terrestrial radio,
synchronization, and then what I call print
and other. Out of these eight categories I
drew columns to say which of them -- how are
they licensed under 115 and how are they
licensed under 114. Or, I'm sorry, how are
the publishers licensed and how are the
masters licensed. I realized that the
publishing on every one of those have
restricted licenses other than, as we talked
earlier in another session, the sync and the
print/other. What's interesting though is on
the sound recording side there was one of
those eight categories that have any
restrictions whatsoever, which is the
noninteractive streaming, which falls under
114. So out of those eight, only one
category, as I just read, has any restrictions
whatsoever. Now, record companies would come
and say, yeah, but we don't even have all
eight. We don't have terrestrial radio, and
I agree with that. And I think you should.

MR. MARKS: Or print.

MR. BARKER: Pardon me? Yes, there
you go. So I think you should have eight.
But the point I want to make is I think as
rates are determined, whether it's the CRJ,
whether it's the industry as a whole, whether
it's the rate courts, is that each of these eight uses be looked at equally on both sides, for both the publishing and the record. For instance, noninteractive streaming for publishers is licensed through the PROs which are limited by consent decrees. Yet sound recordings, while you do have a blanket license under 114, it does have a willing seller/willing buyer aspect to it so that there is a more free rate for that. 225 You know, if we look at phono records, DVDs, ringtones, and interactive streaming, compulsory licenses on publishing, the record companies are free market. So and then if we look at terrestrial radio, ASCAP and BMI have consent decrees, you get nothing. I think you should get something, but I think what you get should take into account what publishers get so that we can look across similar uses on both sides and determine a more fair market value. The Songwriter Equity Act I think tries to, attempts to, and I think does a good
job, in addressing a few of these but I think it doesn't obviously address all of them. So my suggestion is that we look at a per use and we look across on the sound recordings and the publishings, use that information, and whatever the rate setting body is, if we have to have one, they consider all of the above.

MS. CHARLESWORTH: Okay. Mr. Marks.

MR. MARKS: Just one clarification. So on the noninteractive streaming we have a compulsory license. You have an exclusive right where you have collective bodies, but the ability to get out, as we're seeing right now. So I think your rights are broader in that category than ours are, I would say.

MR. BARKER: They may be broader. They're restricted in the rate setting process if you choose to participate. But I --

MR. MARKS: Yeah.

MR. BARKER: -- would agree that
they could be broader in a sense.

MR. MARKS: You're certainly

suffering from a court that is not valuing the

work as it should, I would agree with that.

MS. CHARLESWORTH: So we have

several different rate setting standards which

have been alluded to. The 801(b) standard,

there's willing buyer, willing seller, and

then the PROs. The consent decrees basically

say a reasonable rate although that's been

interpreted to be some semblance of a market

rate. Does it make sense, I mean is there a

justification to have different rate setting

standards for different types of uses? I know

no one has an opinion on this. Okay. Oh, I'm

sorry, Mr. Johnson.

MR. JOHNSON: In a way, yes.

Because Sirius is different from Pandora's

different from Spotify or terrestrial radio.

But I go back to again it's that basic

copyright. And part of me -- you know,

obviously the reason why we have a cap and
things are so bad is because in a way the minimum statutory rate. They paid more back then for a temporary period. But just like SoundExchange or just like if we're setting a new rate, it's always going to dwindle into nothing, really, I think, just because of the nature of it. And I also think that just like ASCAP and BMI are starting to do, that they should be able to collect from whatever they want. There's a mechanical side of the stream, which I think is a big point for me, that that 9.1 cents, which was your minimum statutory rate, and a stream is a mechanical and a performance at the same time. So when we lost that, the whole thing fell apart for us, because we depended on that 9.1 cents. And so I think the reason why, back to your question with regard to set rates, that the reason why we're in this mess is everybody's trying to avoid the CRB board or consent decree, from Universal to me and everybody in between. And so those rates, you know, that
-- if we didn't lose that mechanical for the
stream, that would have helped a lot. We
wouldn't be in as big a mess as we are now.
For songwriters just the whole thing. So I
think that if you price fixed the rate,
temporarily, and to wait five years for the
SEA-bill, the next CRB hearing for mechanical
is in three years, then it's two years to
complete. So we're going to wait five years
to possibly consider a couple pennies on a 9.1
cents mechanical for a CD that won't even
exist anymore? And so it's kind of insane, the
SEA-bill, in that sense, and I understand,
it's great to have a free market provision and
inside the CRB or you know, consider free
market rates or fair market rates, whatever
that means. And, you know, what is a fair
market rate? Is it 52 cents, is it 20 cents,
is it arbitrary? And that's why that free
market, those thousands of little points are
so important. So when she was talking I just
had a question just thinking what happens if
the SEA-bill passes, but the Copyright Office
gets rid of 115? You know, it doesn't even
make sense --

MS. CHARLESWORTH: We couldn't do
that on our own. I wish we had the power to
change the Title XVII, but that will be up to
Congress.

MR. JOHNSON: What I'm saying
we're here arguing whether we're going to get
rid of 115 or not. And the biggest part of
the SEA-bill is 115, it's mechanical license,
which we don't really have mechanicals
anymore. Download's on the way out. And so
we don't really have downloads really anymore,
CDs, they're going by the wayside, and the
future is streaming. And we were talking
before about what's going to be the next
format. I really have no idea, and I've
thought about it. You know, they may put a
chip in your head or something. But wireless
streaming is it, I think. It's just going to
get faster and better. And so, anyway, if
you're going to set rates, one of my ideas is
to have a "streaming account" just like a
download account for iTunes. And really
copyrights are going to have to go up as far
as paying for the sound recording, paying for
the performer, just like SoundExchange
collects for, and then the split for the
songwriter and the music publisher, that may
be two or three dollars, that may be five
dollars per song. And I know that scares the
hell out of some people, but you look at
costs, I was talking to this guy who ran a
record company before last night, and he says
you look at cable, and we're paying $129 for
the package for Comcast. But he has a house
somewhere else where he's got to get DirecTV
for certain other things and Netflix for these
programs or whatever. But he's spending $400
or $500 a month just on cable. And you go to
-- I want to get a song. Oh, it's free on
Pandora, it's free on Amazon, it's free on
Facebook, and Spotify it's free on everything.
And that just is insane. And I think we're going to really have to start paying for songs, and I think an upfront "streaming account" per-song, per-customer and per-streamer is the way to do it. And maybe have to have the customer pay for it, maybe more ad dollars, maybe more investment, maybe higher subscriptions.

MS. CHARLESWORTH: Okay. Mr. Kass?

MR. KASS: I think the devil is always in the details, and in 114 we technically have a willing buyer/willing seller. But as Lee pointed out, because you can't enter some willing buyer/willing seller agreements into evidence, you have, for instance, a much lower per stream rate for National Public Radio than you do for a high school webcaster. The high school webcaster pays $500 per stream, and National Public Radio through Corporation for Public Broadcasting pays between $50 and $100 per
stream, depending on how you allocate it. So
in reality it's willing buyer/willing seller
after political considerations. And I think
if you're going to have a marketplace or a
willing buyer/willing seller you have to have
what Lee talked about, and that's where
everybody gets into the pie. And if a good
deal agreement is made on one party, then it's
going to be applicable to all.

MS. CHARLESWORTH: Mr. Knife.

MR. KNIFE: I was just going to
say to answer the question that you originally
posited, I think it does make sense to have a
unified rate standard. I think any reasonable
adjudicating body that we empower with the
authority to engage in that type of rate
setting ought to be able to distinguish
between all of the types of activities that
we've been talking about here, i.e.
interactive streaming, noninteractive
streaming, something in between, you know,
user preferred streaming, whatever you want to
call it, mechanicals, sound recording, reproduction rights. I think we ought to aspire to the idea that there could be a single definition that accurately encompasses the idea that copyright owners ought to be adequately compensated for the use of their copyrighted works in whatever context that occurs, and then leave it up to the adjudicating body to determine. Just because you have the same rate setting standard does not mean that the rate that comes out of it is necessarily the same rate, depending on a whole bunch of circumstances, including, you know, market inputs and pricing, et cetera. I'm sure it's going to come as a shock to Steve that I think that rate setting standard ought to be something like 801(b) or perhaps even something higher, like what we have in the -- or I shouldn't say higher, I should say something that empowers the adjudicating body more, like what we have under the ASCAP and BMI consent decrees. But that being what it
is, and I'm sure Steve will take me to task for that in just a moment, I do think it's certainly attainable, and we should aspire to having the same rate setting standard and just make sure that it is actually applied. And as Fritz echoed, that the adjudicating body be able to see all of the relevant evidence for any particular market segment and any particular marketplace, and thereby come up with the appropriate rate under a fairly defined standard.

MS. CHARLESWORTH: Mr. Marks.

MR. MARKS: I would agree with Lee that you -- that one standard across all services is the way to go. And I do agree that that doesn't mean you're going to get the same rate, because different types of services are different and you're going to have to look at those differently, and therefore you might have one rate for one kind of service and another for another but at least you're operating under the same standard. As I've
said before, I think it should be market value. I find some of the comments interesting because it almost sounds like those that have lobbied for and are benefitting from a compulsory license, which is an incursion on the exclusive rights of the copyright owner, are complaining about being disadvantaged by it in some way whereas the politicization of it I think has enured to their benefit dramatically in at least two instances. After the first webcasting proceeding when the rate was cut in half and after the second webcasting proceeding when we were essentially forced by Congress to do a deal with Pandora and other services as a result of congressional pressure that these companies and other companies brought to bear. So I think that compulsory licenses kind of suffer from that political pressure, unfortunately, but it certainly hasn't been to our benefit at all.

MS. CHARLESWORTH: Okay. I see
you leaning in, Mr. Oxenford.

MR. OXENFORD: Well, I was just going to say that Steve is talking about one aspect I think of the whole purpose of copyright to fairly compensate the artist. But there is the second aspect of copyright, and that's to make available copyrighted works to the public so that the public can benefit from it. And I think that that aspect also needs to be taken into account in any analysis, which is why, like Lee, I think the 801(b) standard is the standard that should be used in any rate setting decision. Because you do have to look at more than just what is the best possible rate that somebody's willing to pay, in one individual circumstance to pay a copyright holder. But also look at how can you encourage the distribution of the copyrighted works without diminishing the incentive of the creators to create. And I think there's a balancing that takes place there using something like the 801(b) standard
where if you're just looking at a market rate
or just looking at what two particular parties
have agreed to in some transactions, you don't
get that balancing.

MR. MARKS: We have over 2,000

services operating under the 114 license. Two

thousand. So it seems like there's very

little impediment to getting into the market

and making works available.

MR. OXENFORD: But how many of

those 2,000 services are actually operating

under the rates set by the CRB? Most of those

services are operating under deals that have

been set -- MALE VOICE: Agreements.

MR. OXENFORD: -- after -- MALE

VOICE: That's right.

MR. OXENFORD: -- the CRB
decision, not based on the decision that was

reached on the record using willing

buyer/willing seller standard.

MR. MARKS: I don't think that's

the case, actually. Because most of those are
broadcasters, and the broadcasters are paying

MR. OXENFORD: Right, the

broadcasters are paying the broadcaster rate,

which was set --

MR. MARKS: Which is --

MR. OXENFORD: -- in a willing

buyer -- in a negotiation after the Web.2
decision.

MR. MARKS: Right, but those rates

are essentially the same as what the CRB said.

There's no difference. Pandora has a lower

rate because it exercised, you know, in our

view, its influence to try and get a lower

rate from Congress. And you do have some

instances where there are negotiated deals

with noncoms and some others like that. But

the vast majority are paying I think under the

rate set by the CRB.

MR. OXENFORD: But those rates

were set by the CRB relying on the broadcaster
deal, which was a negotiated deal after Web.2.
MR. KNIFE: I think Mike Huppe even testified to that. Right? I think he actually said that the preponderance of payments that SoundExchange gets --

MR. MARKS: Uh-uh, it's different.

MR. KNIFE: -- are from --

MR. MARKS: That's because --

that's --

MS. CHARLESWORTH: Wait, wait, let -- can Lee just finish his thought before --

MR. KNIFE: Yeah. I think the majority of the payments that they get are the result of private deals. And whether or not those private deals, as we sit here now, have a rate that equals the CRB rate, that's not the same thing as saying that they are paying under the CRB rate. They're paying under deals that they arrived at. And I think that's a distinction that's not just a -- you know, I don't think that's equivocation.

MR. MARKS: Well, the payment issue is -- I mean, look at the market.
Pandora has 70 percent or more of the market. So we know that, because we did a deal with -- or SoundExchange did a deal with Pandora that most of the payments are going to be from deals.

MR. KNIFE: Yeah, okay.

MR. MARKS: That's one service that dominates --

MR. KNIFE: Right, no, no, I wasn't talking about --

MR. MARKS: That's what Mike said.

MR. KNIFE: Okay. Well, I thought he said -- I mean, I don't know, do you remember, David? I thought he said --

MR. OXENFORD: But it seems to me, Steve, if you're considering broadcasters -- because the CRB eventually did adopt the broadcaster rate that was agreed to in negotiation after Web.2. They later adopted that as the broadcaster rate because it was the rate that had been negotiated, was already
in existence, and there was nobody to object to that. So yes, they may be paying under rates that the CRB set --

MR. KNIFE: Eventually.

MR. OXENFORD: -- but it's based on a deal that was negotiated after the CRB through a decision that actually lowered in the initial years all the rates that the CRB had set in Web.2.

MR. MARKS: And that's my point. The political pressure that was brought by the broadcasters and others forced us to do deals that were at rates that were lower than what the CRB set after looking for two years at millions of documents and tens of witnesses and longer proceedings than you have in any high-profile trials that are covered by the media. So --

MR. KNIFE: So are we agreeing not to try to influence the political process? I just want to be clear.

MS. CHARLESWORTH: I think that's
what you're doing here today.

    MR. KNIFE: Right. My point is --

    MR. MARKS: We've never run to

Congress about any rate that was set in the
CRB.

    MR. KNIFE: Oh. Well, that's an
interesting -- that's a very, very specific
point.

    MS. CHARLESWORTH: Okay. I think
we're going to --

    MR. MARKS: That's what we're
talking about. Right?

    MS. CHARLESWORTH: We're going to
go to Ms. Schaffer. Unless you've something
further, Lee?

    MR. KNIFE: No, I'm good. Thanks.

    MS. CHARLESWORTH: Okay.

    MR. KASS: A couple things again,
it's a finding of fact by the U.S. Court of
Appeals in the D.C. Circuit that as of July
6, 2012, when they found that the CRB was
improperly appointed, that the CRB had not in
effect set any rates. Because when a court is improperly appointed or judges, they have to vacate all the rates that were prior to July 6th. So I mean that's just a finding of fact that the CRB did not make any rate decisions prior to July 6th. But back to the point of how we can improve the law or 114. I think one of the challenges for all of the stakeholders is that it's not a transparent process. For instance, normally public funds -- and that would certainly be the Corporation for Public Broadcasting at one or $2 million, and certainly all IBS members, which pay with public funds -- you could go onto the FOIL, Freedom of Information law, and find out what happened to that money or where it went or whatever. But in reality if you make those kinds of requests from SoundExchange it's a business secret. So I think you need to have transparency, all the stakeholders need to know where the money goes, and what's happening to it.
MS. CHARLESWORTH: Yeah, well, there is an audit right under 114, if I'm not mistaken. So I mean that is one area where 114 differs from 115 in terms of the ability of --

MR. KASS: But it's very expensive. To give you an idea, SoundExchange in the year ending December 31st, 2012, paid Jenner & Block $8 million. And that wasn't a rate setting year. So it's enormously expensive to go through any of these audits or challenges or anything else. Eight million dollars is a lot of billable hours.

MS. CHARLESWORTH: Yeah. Well, that actually raises a very interesting question I saw in some of the comments, which is does the cost and burden of these proceedings inhibit people from using the processes where if the process were cheaper and more efficient, they might well try to set a rate or get a rate set. In other words, is the cost and burden of the process itself
impeding the marketplace.

MR. KASS: And I think the answer to that is clearly yes. At least in the case of college and high school broadcasters. For instance, the cost of just doing census reporting would be enormous for a volunteer student station.

MS. CHARLESWORTH: Okay. Mr. Knife?

MR. KNIFE: Yeah, I was going to say even for some of my member companies, which are large ostensibly for-profit and some of them publicly traded companies, the cost and the expense both in time and money of engaging in these proceedings is, in many instances, seen as prohibitive. I mean I've been involved in a handful of them, both in Section 114 and 115. And I can tell you that when I poll my member companies as to whether or not they have an appetite to engage in any one of these proceedings, it's very often the decision is driven by whether or not they're
going to see a benefit that equals or will outweigh the cost of engaging in the proceeding itself.

MS. CHARLESWORTH: Okay.

MR. KNIFE: I'm not sure that I have a better answer, and I apologize for that. But I just -- I do know that they are cumbersome, they're lengthy, and they're very, very expensive to engage in.

MS. CHARLESWORTH: Okay. Mr. Oxenford.

MR. OXENFORD: I agree with Lee that plenty of webcasters, plenty of broadcasters can't individually participate in the process. It just economically doesn't make sense for the minimal amounts of streaming that they do to participate in the process. But, unfortunately, I don't see a better way to set the rates. So many of these groups have to participate through the NAB, through DiMA, through other organizations, and litigate over whether the rates -- what the
rate should be. If there was an easier way to come to a decision, I wish somebody would volunteer it, as I'm sure you do as well.

Part of the benefit perhaps of the high cost of getting into these proceedings though is that it should encourage settlement. And perhaps once these proceedings have reached some sort of equilibrium where parties feel that they are reaching more or less fair rates, and I'm not sure that we're there, in fact I'm sure we're not there yet on the 114 side, but maybe after time you'll see more settlements like you have in the 115 side of things.

MS. CHARLESWORTH: Okay. Here's sort of a philosophical question. Is it possible to set really a market type rate when you have a compulsory or a statutory license in effect? In other words, I mean there really are -- having the license, say a Section 115 in effect already changes sort of the playing field, if you will, or creates -- I think
someone quoted -- actually it was the CRB who
called it the ghost in the attic. You know,
even though no one actually or few people
actually use the literal compulsory license,
it kind of serves as a ceiling on the rates.
So when you enter into a proceeding the
question is -- and this gets into benchmarks
and evidence and what you can look at, I mean
what do people see as the best way to get to
the fairest rate in terms of what a rate
setting body should be looking at? I mean
sometimes you see decisions that are fairly
constrained in terms of the consideration of
benchmarks. I think Lee may have suggested
that -- or I can't remember who suggested that
courts should cast the net more broadly or
widely to look at other actual marketplace
rates. So I'm curious to know whether people
have thoughts sort of in terms of what the
basic approach should be if you're trying to
set a rate where there is a statutory license
in effect. Mr. Marks.
MR. MARKS: I think that you have to look at marketplace agreements, just as the CRB has been doing, and find the market that you believe is closest to -- if there are none that exist under the compulsory licences, and even if there were because of things that you were just saying about they're obviously influenced by the fact that there is a license, you have to look at something outside of it that's close. And I think -- you know, we've heard a lot today about, oh, well, let's throw interactive in with noninteractive, it's not that different, let's just have them all together. And it's been the interactive marketplace that the CRB's been looking at. So I would hazard to say that if there's really not that much difference between those, and those are really the closest markets, and that's what the CRB's been looking at in the 114 proceedings, it's probably the right thing that they've been doing in that regard. I don't know of other markets that would be
closer given that those are companies that are similar in nature.

MS. CHARLESWORTH: So that's something that the CRJ's have done in the context of 114.

MR. MARKS: Right.

MS. CHARLESWORTH: Because under the interactive, the interactive rates are set in the --

MR. MARKS: Right.

MS. CHARLESWORTH: -- so-called free market, so they have that available. But turning to say 115, you don't have quite the same situation. So I guess the question is again just sort of -- maybe Ms. Schaffer wants to address this or someone else. But how do you -- what do you look at when the entire market is sort of covered by a statutory license that's been in effect for, say, a hundred years or so.

MR. MARKS: I'll just make a quick note to finish this.
MS. CHARLESWORTH: Yeah, yeah, no, no. I wasn't trying to exclude you, I just --

MR. MARKS: No, no.

MS. CHARLESWORTH: -- didn't want to put you particularly on the spot.

MR. MARKS: I mean 115 is a weird animal. Right? Because nobody really uses the 115 license. I mean they're all individual licenses that are issued.

MS. CHARLESWORTH: Well, there -- but in fair- -- I mean people say that but really like the Harry Fox license is essentially, for the most part, a 115 license unless it's negotiated downward. Right? It has the same -- essentially it incorporates all the same terms, so.

MR. MARKS: But there's a first use right.

MS. CHARLESWORTH: Yes.

MR. MARKS: So if there was evidence that certain songs or there was a market that 50 cents instead of nine, that
evidence presumably would come into the proceeding or be introduced. But the fact of the matter is that the first use, which is a free market rate, is generally done at the same rate at the 9.1 cents. So is there some influence there? Maybe. But it is a free market right, and that's the rate that's negotiated at.

MS. CHARLESWORTH: Okay. Ms. Schaffer, respond to that?

MS. SCHAFFER: Sure. To go back slightly, and Lee was talking about should there be a set rate. As I said before, I think there should be a fair market rate for everyone and across the board. And I think we see the negative impact of the 801(b) standard in looking at the current statutory license and the fact that if you look at inflation rates we should be around 40 or 50 percent at this point in time if you look at where it started at 2 cents in 1909. And so I think in getting to your question about what do you
look at to set a fair market rate, obviously
we're at the perspective that it's hard to do
that, which is why we'd like to get rid of
115. But if you're keeping it, I think
inflation rates are one of the things that you
have to look at, the government inflation
rates. I think that you have to consider --
Mr. Marks made the comment of a first use
license and what -- that no one is paying any
more than 9.1 cents for that first use anyway.
That may be true, but then I think you also
have to look at the recording agreement and
the fact that many recording artists at least
co-write some of their first songs and they're
bound by compulsory -- not compulsory but by
a controlled composition clause in their 254
record deals. And so it's all being tied up
in this culture that the statutory rate is
being set, even if you could negotiate a
higher rate. So I think those type of just
practical marketplace transactions are
important to consider in looking at where
current rates are. But then I think you also
have to look at other private deals that have
taken place, even if they're not in this
specific context. Looking at the
synchronization deals that take place and the
fact that frequently they are split 50/50.
Looking at the deals that we mentioned before,
through the NMPA, 3,000 music publishers did
with YouTube and how were they able to set
market rates and what seemed fair. And being
allowed to compare the rates for musical
compositions with what sound recordings are
getting for those same types of services. I
think all of those things have to be brought
into consideration when trying to determine
what is a fair rate for collective use --

MS. CHARLESWORTH: Okay. Mr.

Knife, and then Mr. Johnson.

MR. KNIFE: Yeah, I just wanted to
say a couple of things. The first one is I
think it's interesting, you know, your
original question was that there's this kind
of philosophical conundrum about the fact that we're trying to set a market rate within a market that never actually existed because it was created under a statute that said please apply market rate. And as Mr. Oxenford pointed out, in Section 114 it's very, very early days there. I don't think you have a marketplace that has settled out in terms of webcasting. You know, as Mr. Marks pointed out with some chagrin, there's been a lot of legislative activity regarding -- you know, surrounding the rates that have come out of the last two proceedings. It's a very tumultuous area. And I think at the very least we could get some guidance from looking at the distinction between the 115 process and the 114 process. Right? I think I participated in the first 115 process that had occurred in I think it was 27 years about five years ago or six years ago. Right? So you had a marketplace there that even though you had a statutory rate the marketplace was for half
a century, right, or a quarter of a century was taking care of itself. Right? There were rates that were being set. And indeed ultimately when enough of my member companies influences. Right? When the world changed enough and became digital enough that everybody saw fit to maybe, as Steve said before, kind of roll the dice again, the rates they came up with were pretty close to the voluntarily negotiated rates in the preceding period, which did not have a proceeding. Right? It was just the rate setting period wherein everybody voluntarily agreed. And again I think that's at least instructive and informative that on some level the rate setting body should be looking at the marketplace. And hopefully -- I'm not sure about how this could happen, but to allow almost in effect a little breathing room, to allow that marketplace to kind of settle out on its own outside the context of the rate setting proceeding itself. And I think the
way to do that or at least one way to move
towards doing that is again to let those rate
setting bodies, like again in particular
talking about 114, let them look at as many
pieces of evidence as possible. Let them look
at marketplace deals both for interactive
streaming and noninteractive streaming, let
them look at everything that could possibly
inform them, and direct them to take into
account all of those considerations and all of
those pieces of evidence, and to try to set
their rate. And hopefully under Section 114
we'll get into kind of a smooth running like
we have with 115 now where it's just every
once in a while when there's a new
technological development the parties that
have a stake in it say, well, this might be
new enough and important enough for us to kind
of try to get a level set again.

MS. CHARLESWORTH: Okay.

Interesting perspective. Mr. Johnson. And
we have only a couple minutes, but I want to
get to you and Mr. Kass.

MR. JOHNSON: I just want to pass that around. This is a blown-up inflation chart for everyone.

MS. CHARLESWORTH: Thank you.

Thank you for the larger chart, Mr. Johnson.

MR. JOHNSON: My pleasure. You'll note that it's, you know, it's interesting that the 2 cents stayed there for 68 years but 9.1 cents has been there since 2006. We're going on 10 years of just keeping it right here. You know, it doesn't go up 13 cents, and I think that's ridiculous. But I think the way to solve this, if you want to stay within the CRB system, is -- you know, I'm in this new rate proceeding here. And if you think this works? This is the first two months of everybody fighting over, "oh, somebody got the Apple license." Are you kidding me? That's ridiculous, you know. And now we're on email, thank God, or it would be this high. Okay? So this is the problem here also. But the other
problem is that what Mr. Oxenford talked about we got to look at the business realities. And we're always concerned about the business realities and the model of Pandora. We're never ever concerned about the business realities of a basic music publisher. And then Pandora's thing is "go out and tour."

Well, I don't know about any of you, but I don't want to see my music publisher out on tour. But he's in the same boat as I am. But what if you're supposed to be just a songwriter? "Oh, you're a songwriter, you go out on tour." Well, what if I don't go out and tour? You know, I'm a songwriter. That's what I do. And just because I'm an artist also, it's all bundled together in these phony words - you're a "musician," you're a "rights-holder," all this other stuff. It's not about paying that individual songwriter. And there's always excuses, go tour, go tour. I'm so sick of streamers telling me to go tour.

But the real solution is, like in the CRB
process, and this is important, because we're way because we just went through a "voluntary negotiation" period. Well, it's not really a voluntary negotiation period. And it's "a willing buyer and a willing seller," and a "hypothetical marketplace" in a "fair market" and a "free market" "value."
And it's just like it's Alice in Wonderland, all these words inside a three-judge federal price fixing central economic planning panel. And you're going, "but that's an insult to the free market?" So, my point is: the real easy solution is if you're Pandora and I'm Universal or I'm ASCAP or I'm George, I say, "here's what I want, here's my sound recording side, right here." It's real simple. Here's all the streamers, Pandora, Google. Here's my song. I thought of it, it's my idea, it's my property. This is the songwriter publisher split, your PA, this is the whole song, and here's your sound recording that's owned by the artist and master with the record label.
And we give you the song, the streamer gives it to the customer, the customer gives them the money, the money comes back to us. But what we have is this, which is fine for a lot of people, and that's great. There you go.

MS. CHARLESWORTH: Yeah, I'm just going to for the record, Mr. Johnson is holding up various charts that he created.

MR. JOHNSON: And I will enter into the record. This one's called -- MALE VOICE: Very colorful charts.

MS. CHARLESWORTH: They are colorful.

MR. JOHNSON: I'll pass it around.

But they're actually pretty good charts, I have to say. This is A to B and C to D -- current collective licensing. So, the song side is the PA, and I have the same thing on my album right here as an independent. So my PA, my SR, goes down here to Sirius. I include Sirius and Clear Channel because I consider them the same, they're just another
licensee. So, but let's just say it goes to
Pandora, just streamers, it goes to the
customer right here, and then the money goes
over to ASCAP and BMI. But it starts out at
.0012 or .00012 by the CRB or whoever sets the
rate. By the time BMI and ASCAP get done with
it it's .00000012, six zeroes. And then you
go over here, the streamer gets the money for
the sound recording. It goes to
SoundExchange, and it's split, which is fine.
But this is just nonsense when you think about
the "voluntary negotiation" period, the
"willing buyer/willing seller," there are none
anymore. There are no willing sellers,
willing buyers because nobody wants to pay for
my music, and I don't want to sell it at
.00000012.

MS. CHARLESWORTH: Okay. Well,
thank you, Mr. Johnson. We've run over
several minutes. Mr. Kass, I think you get
the last brief word, if you would.

MR. KASS: In answer to your
original question is it possible, I think at least from the intercollegiate broadcasting point of view is absolutely yes. But you need to segment it, you need to look at what the use is, and you need to put a value and a cost on each individual use and each individual segment of the market. For instance, webcasting might be segmented down differently from the public use to the commercial use. But the answer to your question is yes, you definitely can develop rates.

MS. CHARLESWORTH: Okay. Well, thank you, everyone. We're going to take another probably -- yeah, we're due to recommence at 3:45. So we'll see you back shortly.

(Break taken from 3:35 to 3:45 p.m.)

Session 5: Data Standards

MR. DAMLE: So the topic for this panel is data standards, and I think of what we're interested in is the current state of
industry music data. Obviously it's a big topic. It's a way for people to know but to be able to identify what music is being played and used and also a way of figuring out who owns the music. So data is obviously a very big issue right now. And so I think before I ask my -- start with some questions I think we have a few new panel members. So Susan, why don't we start with you. You can introduce yourself.

MS. CHERTKOF: I'm Susan Chertkof. I'm with RIAA, and I deal with music licensing and all of its variations.

MR. DAMLE: Tony, why don't --

MR. GOTTLIEB: I'm Tony Gottlieb. I'm management partner at Get Songs Direct. I have a good deal of background in independent music publishing, small label stuff, artist management, and most recently participated in DDEX Consortium discussion.

MR. DAMLE: Great. Ms. Buresh.

MS. BURESH: Hi. I'm Heather
Buresh. I run the Music Row Administrators Group and I run Big Loud Bucks, which is affiliated with Big Loud Shirt industry, one of the biggest independent publishing companies and administration companies. Well, we're a small admin company, but I do all the licensing, copyright registration, distribution protect, everything for a lot of -- very renowned songwriters and artists as well.

MR. DAMLE: Great. So the question of data really breaks down, as I suggested, into two sort of, as I see it, two sort of issues. One is identifying the music and one is figuring out who owns the music. So maybe we'll start with the first issue, which is, is there an efficient method for matching sound recording tracks when they're played to underlying musical works, for matching sound recordings to figure out how -- what is being played by the services. What are the ways that music -- the use of music is
being identified today? Are there improvements that are in the works? What is sort of the goal in ending up with efficient data going forward? Where are things headed right now?

Mr. Johnson?

MR. JOHNSON: Currently I think the most efficient tracking obviously is Nielsen BDS, as far as tracking terrestrial radio. And, of course, they pick it up in two to 15 seconds -- any play on any stations that they track. But I also think part of your question is should we have a database for all copyrights that contain the sound recording owner, various publishers splits, and the various songwriter splits, and I think that's a great idea. Actually I would argue it's a constitutional function possibly, you know. So I think that the Copyright Office itself should have a, through the registration process and other methods, compiled, like Gracenote does or those kind of things, all the different songs. And I really think that
so I like that idea. And it's the licensees, for example, or whatever can look and say, oh, I can license this person's catalog or these songs or, you know, certain artists or whatever. So I think it's a great idea. And I also think that in general the computer has kind of ruined the music industry. Primarily because you can copy a WAV file and you have the master recording, send it all over the world. And obviously through streaming in the internet and that kind of thing, the value of a song has just tanked. And so I think through 100 percent transparency for the PROs, and I'm actually serious about this, because BMI has always -- and ASCAP, BMI's got rid of the process, but two week samples. And they only -- they have 200 reporting stations, they take two weeks out of each three month quarter, and meanwhile they've had this computer system to track thousands of other secondary radio stations. So it's like they're committing piracy and
copyright fraud, frankly, and they're the ones who are supposed to be protecting it. And ASCAP still two week samples, and they both buy data. BMI buys data from Mediabase. They cover 2200 stations, about 2,000 of those are secondary stations and 200 of the 40 stations, which report to the charts. And so it's very important, you know. And so ASCAP buys 1700 stations, 200 reporting, from Nielsen BDS, and they don't pay on the other 1500 stations where they have 100 percent data. So my whole thing is that -- and I've actually talked to Nielsen about this -- is that really the royalty collection process should be a simple computer program almost. And ASCAP could have theirs, SoundExchange could have theirs, BMI, and new start-up. But you have the performance, you have the mechanical side that was ignored or below the minimum. Then you have the performer, the Aretha royalty I call it to pay Aretha Franklin for her singing, and plus you have the songwriter and publisher,
and then you have the sound recorder. So you have them already bundled together, they're on the same songs. You track your database through the Copyright Office, I think that's great. And I think that the PROs and all of them competing in the free market could collect the best of all three or four of those copyrights at the same time.

MR. DAMLE: And so if the Copyright Office were to do that, what are the sort of standards we should be looking to? And obviously there's a lot of comment discussed ISRC, ISWC, ISNI. Are those the ones, the principal ones we should be looking at? Are there others that we should be considering when we're thinking about standards for music identification? Ms. Schaffer, do you --

MS. SCHAFFER: Sure. I definitely think this is a set of discussions that we've had, I know, in Nashville collectively, recently about some of these topics. And I think that in looking at the ISWC, if I'm
saying that correctly, code would be helpful
for identifying musical works and tying that
in with the recordation system. I know
that comments on recordation systems have been
asked for and I know that ASCAP filed comments
suggesting this as a possible way to update
the recordation system. And I think that that
really ties into our discussion about data in
the context as well in providing a more easily
identifiable way, an easier way to identify
musical compositions that are recorded within
the United States. So you could use that to
create a database, potentially an independent
database if the music industry comes together
to form, and to be able to link that code with
the recording code. And I think right now the
problem we have is, if I understand the way
that they're assigned currently, is ASCAP is
the designated agent to assign the initial
code. The problem is, if you're not an ASCAP
member, most people aren't getting that code.
And so you have some musical compositions that
have the code, some that don't. And I think that is an essential step in this process that the Copyright Office could play a very important role in, helping us to streamline how we identify data and connect the musical composition with the sound recordings. And I think that that's definitely a good place to start.

MS. CHARLESWORTH: Is there a master database of ISWC codes? Is that maintained by ASCAP or?

MS. SCHAFFER: My understanding is that ASCAP is the designated agent for assigning them in the United States. Now, that may be --

MR. COLEMAN: I was under the impression that SUISA holds the master database.

MS. SCHAFFER: Correct. But the international body holds that, but that for the United States that ASCAP is the entity who is obtaining those codes. Like I said, I'm
not sure that that's the exact, precise
process but -- and Ms. Buresh can probably
speak to this more because I know that she's
looked into what the experience statements say
and where this comes up.

MS. BURESH: Dealing with my
foreign publishers from the admin.
perspective, the ISWC code is that individual
unique code that should be assigned to that
musical composition, not the sound recording.
The musical composition has a value of its
own, and it creates value as it gets recorded
more and more and more. You sell a catalog
based on one song sometimes with the
publishers. You can value your whole catalog
based on that one song. So if the ISWC code
is accurately assigned to that musical
composition, I don't see how any -- how you
could get that mixed up with that's the wrong
song performed by this person or these
songwriters aren't on this song. If I'm
going paid for the same song title but it's
not my song from a lot of places, the compulsory license -- we get paid all the time from sources that are -- for songs that are not ours. So to have that administration burden on us, we don't have the time and the resources to pay them back their .02 cents that came in on a monthly statement from one of the compulsory licensing agents right now. It's administratively burdening.

MS. CHARLESWORTH: So do you -- I mean but I think implicit in what you're saying is ISWC code is not included in the reporting.

MS. BURESH: Correct. And this is where -- because I also register the copyrights with the Copyright Office, it's where I think the Copyright Office should be the one who is, well, managing the ISWC code instead of -- or is the agency in the United States instead of ASCAP. Because I mean you look on ASCAP, you can see the ISWC code once its assigned when someone has registered the
song. If you're a BMI writer there is no ISWC code assigned to it. There's three BMI writers on a song. It's not linked to an ASCAP registration so there's no ISWC code. So foreign, our sub publishers or if we're doing a direct, however publishers are doing it, they go by the ISWC code. PRS is how we can track those songs. And I mean music is a huge export for the United States. We need to be able to track it worldwide, not just in the United States. But if our office can be the regulator of that, I think it would be a great idea. And furthermore, because we have to register the copyright with the Copyright Office or register the musical composition, so registering for a Form PA, I have to do it for all the songs that we -- that someone has written that's published. Now, you can register a nonpublished work, you can register a published work, you can register a sound recording. In some cases right now you can register a sound recording and a published
work at the same time. Which creates a lot of confusion, mass confusion when you're going to court because there was an infringement, which your song has to be filed with the Copyright Office in order to go to court anyway. Then I'm finding out in our case, from the administrative side, two songs in our catalog we have had to defend these settlements or these lawsuits that came against us, they were thrown out in summary judgment, we did not get the attorney fees that we were supposed to get per our registration with the Copyright Office. That's the perk of registering that song, and we didn't even get it. And we're -- those songs were very lucrative Tim McGraw songs.

MS. CHARLESWORTH: You mean the judge didn't award the attorney fees.

MS. BURESH: Yes. They didn't even look at it. So why am I registering a copyright with the Office. I'm wasting a lot of time doing it if I'm not getting -- even
reap any of the benefits of what the laws say
I'm supposed to reap. And that's where I
think if the ISWC code and the data is
maintained within the Copyright Office
correctly and there's not multiple song titles
of "Live Like You Were Dying," you could find
15 of those on there, and it's frustrating.
Especially as a lawyer you're trying to do
your due diligence to prepare for your case
what song is what, who wrote what, who are the
claimant on it. It's not linked to an ISWC
code. You have 15 PA numbers behind it. And
I just don't think it's an effective way of
organizing our musical compositions. And I
can continue.

MR. DAMLE: I know, that's very
interesting. Mr. Gottlieb, I think you were
next.

MR. GOTTLIEB: You know, there's
part of this, that discussion, that is
primarily addressing the retroactive
application of identifiers to existing works
that's creating a lot of use problems. Going forward we have probably more viable solutions of how to address these. But much of this discussion even so far today has been how to sort of put a hundred pounds into a 50 pound bag in terms of what we're doing with the industry. Because there is not a lot of incentive to retroactively apply unique identifiers to these works. A lot of the discussion at the DDEX Consortiums surrounds the application of a GRid, a Global Release Identifier, which I would best describe as a unit of publication. And it's my suggestion that we take a serious look at the Copyright Office administering a GRid, G-R-I-D. I know the global repertoire database, there's huge resources going into it now to assemble it. I don't know what the status of it is now. But I think that by anyone's assessment the standard by which we must look at identifiers and metadata assignments. Is can you establish through a database query, the
participation, of the lowliest composer or musician or participant in perhaps a sound recording (or a music work composition) and can you query that all the way up to the ultimate licensee or end user to perform an audit trail all the way through it. And if you can assemble a query, a database query of that chain of title all the way through, we have a successful unique identifier system. And it's my position that although there is not a lot of incentive for these big catalog holders to apply retroactively these GRids, that that should be the mandate of the Copyright Office. And that public notification and perfection, legal perfection of a GRid is the best way to straighten out the system prospectively and to apply it retroactively.

MR. DAMLE: I have two questions, one technical, one broader. So the technical question is if you could explain sort of for the record and for us the sort of differences
between a GRid and a ISWC, what --

MR. GOTTLIEB: Well, a GRid is a unit of publication. Now, that may just be a ISWC, that sub identifier or a primary identifier or a foreign key --

MR. DAMLE: Got it.

MR. GOTTLIEB: -- would be the ISWC or an ISRC associated with that ISWC or any of the approved data standards that are being developed under the auspices of these various organizations. But it is the unit of publication that everybody is seeking. What is -- you know, we've got artists that are releasing 17 different versions of the same sound recording with different musicians on each one. You know, you've got -- these are not one-to-one identifiers. Okay? These are one-to-many identifiers or many-to-many identifiers. So what I'm suggesting here is that if we can define what the unit of publication is for purposes of exploitation, for purposes of
functioning in the business, that is an appropriate use of government authority in this case, and it would be an easy way to apply these standards both prospectively and retroactively.

MR. DAMLE: I do have a second question but I'll let a few other people sort of get in before I ask it. Susan, I think you were next.

MS. CHERTKOF: Well, I was going to answer your question about what the government should look at in terms of --

MR. DAMLE: Sure.

MS. CHERTKOF: -- getting into this. And on the sound recording side, the equivalent to the ISWC is the ISRC, and there's a couple issues with that. And you were just sort of touching on this, which is the 17 versions of the same recording. And it's not just necessarily different recordings but then you have a radio version that's five minutes long and you have a dance club version
that's 10 minutes long and so on and so forth. And as I understand it, each of those different versions gets a different ISRC code. And so you have -- it's one song, so the underlying song is the same, and the artist is the same. And many of them might not be all that distinguishable to, you know, a lay person but the difference between the versions are. So you have all these different versions of a recording of an underlying song that all have different ISRC numbers. And some of them get made further on down the road and aren't even made at the time of release. And so when you start looking at questions like should sound recording copyright owners be required to include ISRC numbers when they register, some of them don't even exist at the time of registration. And so you certainly can't say they all have to be there or somehow you're dinged for something because it didn't exist at the time of registration. And beyond that our members feel very strongly that there's a
lot of just legwork that's involved in tracking all this, and that making ISRC numbers mandatory in either registration or recordation documents would be burdensome. And that this is something that sort of the Office should be following the industry and not making the industry follow the Office. And on the ISWC front, my understanding, and it's already sort of been said, is that they're not widely used. Record labels would love them to be more widely used. Because it makes it possible in their system to correctly link a recording to one of those versions of -- what was the name of the song you gave?

MS. BURESH: "Live Life Like You Were Dying."

MS. CHERTKOF: Right. So if there's 16 versions of the same song, if you have an ISWC code you can link it correctly. But the last thing I wanted to say is where I think the data is most lacking in terms of any kind of existing publicly available database
is databases that match sound recordings to musical works. So there are sound recording databases and I assume there's musical work databases, but the matching is where it's very complicated. And then you have the fact that on the musical work side catalogs change hands very frequently. And so keeping the matched data up-to-date is a very cumbersome job.

MR. DAMLE: Susan, are you talking about the ownership of the musical works, not necessarily identification of the musical work.

MS. CHERTKOF: Right, right, the ownership.

MR. DAMLE: Right, right.

MS. CHERTKOF: So the identification shouldn't change.

MR. DAMLE: Right, exactly.

MS. CHERTKOF: But you need -- for each owner of a particular share, you need to -- if that owner changes, you need to update the owner name and the contact information and
all that sort of thing. And I don't even know, how does ISWC account for different sub owners of a single work? I don't -- do you know?

MR. DAMLE: I don't think that's a function --

MS. CHARLESWORTH: I think you just identify the work.

MR. DAMLE: It identifies the work, not the owners.

MS. CHARLESWORTH: But I have a question actually, and maybe -- I don't know that you'll know the answer to this, but assuming that you have a record label that's supplying digital tracks to a music service, are they also supplying the ISRC codes when they send the master copies through to say a streaming service?

MR. GOTTLIEB: Yes.

MS. BURESH: Yes.

MS. CHERTKOF: Yes, I believe they are. Well, I'm pretty certain that iTunes
will not put anything into its store unless it
has an ISRC code, which is why ISRC
registrations are way up. Because in order to
get into the iTunes ecosystem, you have to
have an ISRC code.

MR. DAMLE: Is that true -- that's
ture of the other streaming services? MALE
VOICE: I believe so, yeah. We required
ISRCs.

MR. DAMLE: Okay.

MR. OXENFORD: Actually I don't
think it's true in terms of the services like
streaming internet radio services or
broadcasters. A lot of times they get
recordings from different sources, and they
have no idea who the -- what the codes are,
they have no idea even what the album is that
the track came from. Because it just comes in
from some promoter someplace saying play this.

MS. CHARLESWORTH: So the solution
would be just to take a license from the
record labels, and then you'll get their ISRC
codes. That will solve a lot of problems all at once. That's a joke for the record. But the ISWC, I assume that is not generally required up front by, say, streaming services in people's experience.

MS. BURESH: No.

MS. CHARLESWORTH: Okay.

MR. DAMLE: But, yeah, definitely the record labels could ask for it as part of their --

MS. BURESH: I think upon the request of label copy when they're asking us to confirm our publishing, hey, your song's been cut, it's on this album, we need label copy, how's it supposed to read, at that time is when we submit our label copy with the ISWC code. Then within their system they can track exactly which song that is. But at that time, that's a ticker for us, the publishers, the administrators, all right, go to the Copyright Office, register the song, here's your ISWC code once you find it on line. Send it to the
record labels, they have a tracking system.

So when they go to register the SR, they can
do a little dropdown box of which song is
actually on this product that you're
registering right now that rings to that ISWC
code that that publisher or administrator had
submitted to you upon your request.

MS. CHARLESWORTH: Okay. So

because some of the issue has to be that the
data has to move around. Right? It's not just
sitting statically in some database but to be
useful it kind of needs to be passed through
these ecosystems, because someone used that
word. So if you have a track and it's got an
ISRC and an ISWC, it may not identify the
current ownership in terms of the publishers
or -- but you would at least link the
recording to the underlying composition.

MS. BURESH: Correct.

MS. CHARLESWORTH: Okay.

MR. DAMLE: I think Scott, he's

been waiting very patiently over there.
MR. SELLWOOD: If I understood your first question right, it was you were drawing a distinction between ownership information and the linking of the sound recording to the composition.

MR. DAMLE: Right.

MR. SELLWOOD: And you're asking what's the best way to link.

MR. DAMLE: Right.

MR. SELLWOOD: I can tell you what we do. I don't -- we don't pretend it's the best way. But we collect from our label partners ISRCs and as much information as they have about their releases. We collect from our publishing partners ISWCs, titles, splits, as much information as they have. And we really rely on the ISRC as a way to link a sound recording to a composition. So for us the kind of holy grail is for a publisher to be able to tell us, here's an ISRC or here are many ISRCs that embody my composition. I know that from my royalty statements or from my
relationships with the link. So the ISRC is the best thing for us. For reasons that other people could comment on more and some people have talked about, the ISRC is not always a unique identifier, even though it's supposed to be. ISWC is certainly not always a unique identifier. If you go to the SUISA database and search for a particular ISWC, you're likely to find multiple compositions under that ISWC. So it's a problem.

MS. CHARLESWORTH: You don't have any insight into why that would be or maybe it's just a fact that you're aware of?

MS. BURESH: You're not allowed to revise your initial submission and everyone's able to submit on their behalf. Every copyright claimant -- I can submit a registration right now, he can submit a registration for the same song just with his publishing information and not my publishing information. So a lot of --

MS. CHARLESWORTH: That would be
the same song.

MS. BURESH: Exactly. So you're getting duplicate registrations throughout the world because no one has stopped it but there's a big unique underlying copyright.

MS. CHARLESWORTH: But I thought --

MS. BURESH: And we can make revisions upon that.

MS. CHARLESWORTH: I'm sorry. I thought he was saying the opposite, that one number could have multiple titles associated.

MR. SELLWOOD: That's all right.

MS. BURESH: ISRC can.

MS. CHARLESWORTH: I thought you said ISWC.

MR. SELLWOOD: I said ISWC as well. It's not as unique as the industry would like.

MS. CHARLESWORTH: I mean do you think it's just due to mistakes or just --

MR. GOTTLIEB: Well --
MALE VOICE: You can't copyright a song --

MR. GOTTLIEB: -- you know,

there's been discussion about this data
mismatch problem in the DDEX Consortium
because it is a serious problem with all the
DSRs and the labels. Getting consistent
standards that would create a unique
identifier is an ongoing effort that requires
multiple iterations of review and updating of
the standard. So it should not come as any
surprise to anybody with ten dollar an hour or
less interns typing data into databases that
we have a lot of data problems throughout the
system. The real question is I think any
database engineer -- and this is really a
massive database engineering architecture
problem of dealing with metadata -- will tell
you that, you know, everybody's just got to
gerget together and agree on what the standard
is. And the great thing about standards, the
big joke is, there are so many of them. And
these mismatching problems will start to cull
and get rid of themselves as long as we get
everybody centered on one particular standard.
And I would propose -- I would put forward
that the Digital Data Exchange Consortium has
done about six or seven years worth of work
that is now being adopted by the three major
labels. Many of the DSRs are adopting the
standard. It is a massive undertaking, and it
is the subject of three or four preliminary
sessions where there's 60 or 70 people every
time coming to refine it. So there is serious
efforts, and the Global Release -- the global
repertoire database, if it is ultimately
successful, will be a place we can all ping
this. But our creators need ISNIs, they all
need their unique identifiers. Our
aggregators at every step at the level need
their unique identifiers. And as we go up the
chain to the vendors and to the ultimate users
we have to perfect these data structures. And
that's how we will ultimately solve these
problems, it will be through the very
technology that has brought us to our knees.

MR. DAMLE: Mr. Coleman, I

apologize. I didn't see your sign up before,

so I'll be calling you next.

MR. COLEMAN: I think there's a

way possibly to merge the Section 115
discussion with the data discussion, which is

-- first of all, I don't think that the

Copyright Office needs to invest in its own
database. But I do think that part of the
statutory requirements for getting a license
to distribute a sound recording digitally
could be to file a link between the work and
the recording. That would be very, very
helpful. And to create an incentive, as Mr.
Gottlieb says, SoundExchange (and hopefully
competing collective rights organizations for
digital performance rights for master
recording owners) would not pay out unless
that link were there. So it would be an -- so
and then back to the idea of the Copyright
Office not needing a database. The PRO
databases, because of their historical mandate, are very good. They do have problems of multiple work titles that need to be merged occasionally, but they're constantly working to make that data correct. And for publishers, that's their first stop. Because despite the recent Sturm und Drang with major publishers withdrawing certain kinds of rights, it's still the primary way that the publishers get paid on performing rights. So they're excellent databases, and those could be used as the primary repositories for this kind of linkage to the work title.

MR. DAMLE: How would -- just thinking of building on that, how would that be opened up to the public, those databases? I mean is there a way to open them up to the public so people could easily see, well, here's the work, here's the unique identifier, and maybe even ownership information? Right now those are a bit locked up, but so what are ideas for making those more easily accessible
to the broader public and to services?

MR. COLEMAN: I can speak to that just briefly.

MR. DAMLE: Sure.

MR. COLEMAN: I mean I think that the SoundExchange database needs a tremendous amount of work. It's not as transparent as other public databases. And so as the statutes become more sophisticated there could be a requirement that the -- that a web site display these linkages, and that if you see a code, whether it's an ISWC code on the SoundExchange site or whether it's some other -- or it's a BMI work code or an ASCAP work code, those linkages could be on the web site and allow clearance professionals to go and cross-reference.

MR. DAMLE: Mr. Gottlieb.

MR. GOTTLIEB: Well, I think there's a overarching question as well about what does the rights holder -- what right does 297 the rights holder have to know where his
work is. And is there a -- when you have a
perfected copyright in the Copyright Office do
you have a right to know who's using it. Is
that a breach of the Fourth Amendment that I
can't know who's using my work? And similarly
do we have the right to publish our
compositions and whatever intellectual
property we want without using copyright, or
do we have common law copyright? But I think
that people who have to make their living in
this industry we have to utilize the benefits
of government interaction. And in doing that
they have to have a public record. And the
reason for the public record is to be able to
enforce these rights. And I think the only
question that really ultimately comes up, and
to answer your question, is, okay, if I'm
willing to disclose everything, can I find out
from her that she's used it? And those are
some pretty fundamental issues in terms of
disclosures, because a lot of people don't
like to disclose their ownership information.
But I think the more important question is do they have to disclose (cough) information in the exploitation --

MR. DAMLE: Ms. Schaffer.

MS. SCHAFFER: One thing going back to the use of any kind of unique identifier, whether it's the ISWC code or the ISNI code, which I believe is what you referred to, would be that some type of unique identifier for in particular a sound recording, the ones we talked about today, there are frequently multiple co-owners of that composition that could help. And I think this becomes a technical matter, a matter of developing enough technology that I have no doubt is available is we utilize it, is to cross-reference people's registration. Because a lot of times one of the things that we have happen is for one musical composition there may be six different registrations that all look a little difference. One may have a misspelling, one may add a co-owner.
Sometimes they don't all add up. And I think that by providing a unique, some type of unique identifier and when you go to submit a registration being able to run the different information that you have submitted, you submit the owners or you submit the date of creation, the date of publication, all that information, that it cross-references the system to be able to determine whether there's another registration that's very similar, that meets a certain number of points. So that maybe at that point notifications, emails are sent to the prior registrant, and a discussion can be had at that point as to are we talking about the same song, are we talking about different songs, and you can start to address it on the front end. Because I do think that the Copyright Office, while I don't think they should be required to maintain the ultimate database, is a good starting point and a good place to be able to provide that information and to streamline that process. Because then
I think you could take the information and
ASCAP, BMI, and SESAC can use that information
to help coordinate their own databases. And
to answer one of your questions, a lot of that
information is available on their web site if
you just go and search their records that they
have registered. You can find out a lot of
the details on which song is registered with
them, who the publishers are, what the contact
information is. The problem is that not
everything is in one location. And so I think
using the Copyright Office maybe not as the
central database for linking this information
but using it as a tool so that we can
streamline the information and identify the
compositions from the sound recordings or
provide the rest of the industry with at least
a baseline from which we can start matching
that information.

MR. DAMLE: Mr. Coleman.

MR. COLEMAN: To speak to what Ms.
Schaffer is saying, I've been talking about
amplifying and increasing the mandate of the PROs. And the PROs actually do already exactly what you just said. As a publisher I receive emails every day saying the submission the PRO has received is similar to another submission, and we need to merge things. There's also a current project by ASCAP, BMI, and SOCAN in Canada to create one unified system for registration. So from the publishing standpoint I think the PROs are well-situated to take care of exactly this kind of issue. And on the Copyright Office, I would be afraid that if the Copyright Office got into the business of registration that there would be sort of a Berne Convention issue of whether that new database constituted the prima facie evidence of copyright as the registrations -- because we're not required under the Berne Convention to submit those. So I could see those turning into a Pandora's box that I think the Copyright Office probably wants to stay out of.
MR. DAMLE: Ms. Buresh.

MS. BURESH: That's why I think it gives incentive for publishers and songwriters to register their works if it's going to be assigned a unique and really a unique one, a unique code, so there's not multiple registration. People want to search for that one musical composition, figure out who they need to pay. If they can't find it on the Copyright Office -- and it's going to be a living library where you can go and make your revisions to it once there's a catalog purchase. Once somebody else -- if there's a co-ownership between this new publishing company. That kind of information could be public record unless somebody can argue that. I would like to have a public record where I can go and see this song was written by these people, this writer had this contribution share. I don't need to know the ownership of the publishing, I just need to know that that writer had 50 percent. Just dealing with sync
licensing people and anyone in the willing buyer/willing seller module that's licensing, they need to figure out who has that 4.17 percent, who's administering that, who's collecting that. I don't think the Copyright Office needs to portray that on line, but that's 4.1 cents for this writer who has 25 percent of the song. So if they cleared this amount over here but they need to clear that last remaining percentage, as long as they know it's for that writer, they can at least do the due diligence and do the research on their own to figure that out.

MR. DAMLE: I guess I raised the question of what sort of activities are taking place to start tracking ownership, like DDEX. Maybe, Mr. Gottlieb, you can talk a little bit about where DDEX is in terms of --

MR. GOTTLIEB: I wish I was a really good spokesman for them, because I'm not. But they have developed an electronic release notification standard. They have
developed a sales reporting standard. They have developed through collaboration with CMRRA a music works licensing standard, and that includes the choreographies that are needed to put those standards into play. But the concern that I have here, and really the thread of what I'm saying is is that as the industry, particularly the music industry progresses, the lines between the song composition and the sound recording are starting to blur. And the authors of sound recordings are arbitrarily being assigned as music work composition creators as well. And who is and who isn't, is starting to become very complicated and very cumbersome for administrators to deal with. And that is why I want to try to focus attention on this unit of publication concept may be a better way to look at things. Because the stakeholders and the participants are so varied in their descriptions and their nature. I mean what is a producer? Just that question as a piece of
rhetoric is a real problem. Is that a creator? Is that an engineer? And so assembling some kind of unit. So it uses this song composition with this ISRC, that's a unit. Can we assign that a global release identifier? The new version of it gets another release identifier. Some means by which people can do commerce and they can understand from the top down and from the bottom up what we're talking about. Because we're all talking about something different, and we're all registering something different. And I'm very pro DDEX because I know they are working on this problem. But as far as the Copyright Office is concerned they can't get involved in all that detail. They (the Copyright Office) and it seems to me that they are better capable of dealing with it on unit of publication standards.

MS. CHARLESWORTH: Can you just flesh out what you mean exactly by unit of publication?
MR. GOTTLIEB: I'm talking about what defines the publication.

MS. CHARLESWORTH: So are you saying like this was on iTunes as a single and this was the title, this was the label, and this was --

MR. DAMLE: Like a release?

MR. GOTTLIEB: What comprises the release.

MS. CHARLESWORTH: Maybe it would help if you could give some like a concrete example, like just --

MR. GOTTLIEB: Okay. Well, so she and I write a song together and he records it and she puts it out on her label. That's a unit of publication.

MS. CHARLESWORTH: So it's the product.

MR. GOTTLIEB: The product. Well, yes, but we use UPC codes in physical product, but we need one for digital product. And some of -- but then all of a sudden we write
another version of the same tune. Okay? And a very similar situation comes up, when you want to go track it -- because he played on the second version but he didn't play on the first version. But he's a stakeholder because he played the bass on it or something -- he wants to know how much money he got from his digital performance right all the way at RA royalties. He can't track through because he's got no way to find out what the unit of publication was, because he wasn't on the first version but he was on the second.

MS. CHARLESWORTH: But theoretically might the second version have a different ISRC or am I mistaken?

MR. GOTTLIEB: Well, it absolutely does. But it might be two different people putting it out. There's just -- the unit of publication as the standard would create a way to put together the bundle of rights and unbundle it too. And so when Kanye West wants to put 17 different versions of his same song
with 40 different musicians on it, each one of those 17 will get a different Grid and will be required to be perfected through the Copyright Office. That's what I'm suggesting.

MS. CHARLESWORTH: Ms. Chertkof, do you want to?

MS. CHERTKOF: Well, I was going to respond. I was going to go back to what you were saying on DDEX. My understanding is that the most relevant standard that they have is the musical work licensing method suite. And DDEX put in their comments here that describe it, and they certainly know more about it than I do. But as I understand it, the musical work licensing method suite covers musical work, sound recording, and product and release-related information. And so that's what I think was the standard most relevant to this. And then there was just another issue that I wanted to touch on, which --

MR. DAMLE: Sure.

MS. CHARLESWORTH: Although before...
we move on, I mean my understanding of the
DDEX, that is a messaging standard. Right?

MR. GOTTLIEB: Yep.

MS. CHARLESWORTH: That's not
really a data standard in the sense of what
you would find in -- it's a way to -- so that
data -- I assume so you can transmit messages
to enhance interoperability, and so you have
a standardized like some fields and
information that you include, say, to announce
a new release. And I think Mr. Gottlieb
suggested that three major labels have --

MR. GOTTLIEB: Are adopting it.

MS. CHARLESWORTH: -- are adopting
it as a messaging standard. Which is very --
so that would be very useful but it's a little
different, I think, from the unit of
publication --

MR. GOTTLIEB: Yes.

MS. BURESH: It's not an
identifier, it's --

MS. CHARLESWORTH: Right.
MS. BURESH: -- not a unique identifier.

MR. GOTTLIEB: But the unit of publication is a hotly debated topic in DDEX. I'm told, unit of publication obviously --

MS. CHARLESWORTH: Apparently so.

MR. GOTTLIEB: But there are labels that are not because the retroactive application of it is so costly and have so few benefits to owners, existing owners of existing works. Because to track everything down and to assign it unique identifiers is not really worth it in the long tail. It only makes sense for the high value stuff. So, you know, the DDEX is a huge message. The music works licensing standard printed out is like 600 pages. It's a lot of stuff. But it is the unique identifier system which is the value.

MS. CHERTKOF: Okay. So on the topic of the database I just wanted to make sure that it's not out there. So this is
something that the record industry has thought about a lot and we very much think that there needs to be some sort of authoritative database that has sound recordings and musical works in them, and that they're mapped to each other. And that would facilitate many of the licensing issues that we've been talking about here today. And I think the real question is how do we get this to happen when it's easier said than done. And I just wanted to talk for a minute or so about just who should do it and where it should reside. But just listening to all these comments, even if you figure that out then whoever's going to do it and wherever it's going to reside, there's all kinds of complicated questions about how you're going to do it. But our thought is that it should be a private database and it should be done in the marketplace through a consortium that would include major labels and independent labels, you know, big and small, and major publishers and independent publishers. And it
should be done as a marketplace initiative where it's not being run by the government or housed by the government. And for one thing we just think it makes it more nimble. I mean the whole digital marketplace for music is changing so quickly, and business models change quickly, and other people have noted the Copyright Act and copyright regulations change slowly. And so it just seems to make more sense to have it be outside the government.

MS. CHARLESWORTH: So the question is why hasn't it happened already then. I mean and I guess the related question is even if it's managed by private actors, you know, with say fairly minimal regulation, how might the government incentivize it so it does happen. I think what -- are there ways that we can encourage the marketplace to build this. Because everyone seems -- on this issue there seems to be very little disagreement that it would be incredibly useful for the
industry. So sort of the classic problem, you know, who's going to pay for it, how do you get people to coordinate, how do you get sort of vested interest to kind of back off from trying to control -- you know. So it seems some have suggested that the government could play a role in it. And I guess the question is assuming it does reside outside of the Copyright Office somewhere, how could government encourage this thing to be built? And what kinds of incentives would be required?

MS. BURESH: I think those are really good questions, and I don't have any ready answers to those.

MR. SELLWOOD: Well, that was a question I was going to ask, encourage. I think that's the right place for the Office to be thinking is how -- you know, data availability is necessary for licensing, for reporting usage, and for paying the right people. And from the music service
perspective, it's also crucial to assess how far we've licensed and how much infringement liability exists. So how do we incentivize the industry to do it. It seems like I can say in the last two years working at YouTube and working with music publishers to understand their ownership and the links between their compositions and sound recordings, things have drastically improved. By and large, music publishers are far better at collecting that information, delivering it to YouTube. And there's economic incentives associated with that that get paid. And so that is always there. But I think there's more that the office can do, and I certainly don't have the answers. But one thing you could -- delivering data to someplace as a necessary prerequisite before participating in copyright infringement suits or something like that that says that as a copyright owner you're going to participate in the ecosystem by reviewing your works before you're able to
pursue some type of litigation. I think there
are steps like that that the Office could do.

MS. BURESH: And that's why I
think the Office already has the base set up
with the registration process that's already
in place.

MS. CHARLESWORTH: Well, the
problem is registration is sort of a one-time
event at the beginning of the creation of the
work, but then works change hands and -- I
mean a lot can happen to a work after
registration. So I'm sure you know this
better than I do. When you look, do a chain
of title you'll see, you know, obviously it's
-- the song is not necessarily owned by the
same person, it may have changed hands 10
times. There may be --

MS. BURESH: That's why there's
copyright assignments on file as well. That
should also be on file with the Copyright
Office from once there's a sale, a recordation
of documentation.
MR. DAMLE: But they're optional.

MS. BURESHER: I know.

MS. CHARLESWORTH: It's not required though as we all know. So --

MS. BURESHER: I know.

MS. CHARLESWORTH: -- you know, the problem is people who I think tend to have very commercially valuable works and they're responsible to take that step of recordation, and wisely so, but others don't. And as the Copyright Office acknowledged, our database is certainly not really 21st century. Right?

We're dealing with our own set of technical issues, which the register, you know, we're working hard to take a look at to see what we can do to improve them. So that's why this is 317 a very valuable conversation. But I guess -- I mean I guess the one fundamental question is is this public database, and we've heard one opinion I think from Ms. Chertkof, you know, should it reside at the Copyright Office, would the government be curating the
database or would it be better off in the hands of industry participants.

MS. BURESH: Personally from the independent admin standpoint, I think the database -- not -- well, just regulated by the government would be better. I'd rather want to give my data to the Register at the Copyright Office instead of to an outside company. Because those outside companies are going to make money off it. We're in a data hungry world. Everyone needs the data in order to create their new digital service. These new digital service providers need the data in order to license and actually release these songs and use the songs to display their product and their new service. Being a publisher and small administrator, I don't think I'm going to get any cut of the chunk that they're -- that these outside firms and third parties are paying them. And then they're not going to distribute that to us as the actual copyright owners of those tracks.
that they're using.

MR. DAMLE: Mr. Coleman, to you.

MR. COLEMAN: Yeah, I think I may be at risk of reiterating something I said earlier and maybe this is too simplistic. But I do think that the -- it's not -- it shouldn't be a service of the Copyright Office to keep track of the data. I think it should be an aspect of compulsory licensing and the statutes, and the evolution of the statutes that say that this data has to be part of a valid license. If we continue to have compulsory license procedures, then this data has to be recorded at the organization that has congressional mandates, like SoundExchange and the PROs. I think that's the direction that will create incentives. And also what Mr. Sellwood said, there may be a way to create a provision in the Act that says that you won't get the advantages if this information isn't included in the registrations.
MR. DAMLE: Mr. Johnson.

MR. JOHNSON: I just wanted to say that it is a complicated question, and I kind of agree with Heather. But you guys do have these registrations, and that's a core thing. And at the same time it would be great if the industry got together, ASCAP, BMI, SESAC, and the three majors, and they took all their catalogs and developed some kind of database. And I think he has a great idea, if they were doing a separate worldwide catalog with a GRID, particular number for worldwide, you know, that's great. But if there's any way where you could have a server at each place and the Copyright Office, and that ASCAP, BMI, and Universe put all of their catalogs, everything set up, and should use all the numbers. And, see, the problem comes because you can't copyright a title as a songwriter, so you have the same titles, and that's why that gets messed up. But if you had your BMI registration, your ISRC code. When I'm doing
these things, when I load up to streamers in

the past, but I have since taken them down,

but ReverbNation or CD Baby or TuneCore you're

required to put in your ISRC and your UPC/EAN.

So does the album as a whole with UPC and

ISRC, which is tracked also. So it would be

nice if you could, but I don't want to add any

expense to that. I'm a guy that doesn't want

to add anymore government expense. But I also

think it's a constitutional function to

protect my private property, which is my song,

my sound recording, and my underlying work.

So it would be nice if everybody could get

together and use all the numbers and that

there were some system that if your UPC code

comes up with pings on that system, and then

it starts to add whether or not you have the

BMI registration on it. Then you can really

start to tell what that song is and not just

go, oh, this is the title and it's mixed up

with 12 other songs at the same time.

MR. DAMLE: Ms. Schaffer.
MS. SCHAPPER: This goes back to,

I think, the theme that I've had throughout
the day, which is the less government
involved, the better. And that, with all
respect to the Copyright Office, I don't know
that it needs any additional burdens on it in
terms of collecting data and information and
having to update information. I know that
even when you need copies of registrations
that were pre-'78, you know, I think it's a
process, and there's a delay and it takes time
to get that information. And I think having
this database reside at the Copyright Office
doesn't create the kind of efficiency and
nimbleness that we probably need in the
database in terms of the contact information
for who owns these compositions and these
musical works and that chain of title and who
actually owns it now. So I do think that a
private entity better serves the interests of
the industry being able to accomplish all of
those things. And when I say industry, I also
mean the digital services as well and being able to identify who it is that they need to contact. But I do think that there may be a role for the Copyright Office, as I mentioned before, in terms of providing certain identification numbers and helping to streamline the registration process to make sure that -- in many ways to me it forces copyright co-owners to speak with each other through the registration process if nothing else to figure out, okay, who owns what. And, yes, we have that through the PROs now, but I think it provides an additional incentive for people to keep their information updated and for us to track that. And perhaps there are other incentives, whether it's with respect to infringement matters or -- you know, I think those are all things that we should be looking at. But I think keeping as much out of the Copyright Office is a good thing for all parties.

MS. CHARLESWORTH: We're trying
not to take that personally. But I understand your point.

MR. JOHNSON: One quick?

MR. DAMLE: Yeah.

MR. JOHNSON: Just that I mean maybe there should be some kind of private/public partnership between the Copyright Office and the private database. And, number two, as a practical matter I've signed up with SoundExchange, and I don't mean to pick on them but I've signed up all my ISRC codes and everything for three or four years and I haven't got a dime, they can't find my songs. And they've asked me again to provide all my individual ISRC codes, and I've done it like two or three times in the past three years and they still can't find them. So I think there's something to be said for that.

MR. DAMLE: Susan.

MS. CHERTKOF: I just wanted to add on the subject of incentives that I think it would be great if we could all put our
heads together and think of ways that the Copyright Office could actually incentivize this. Because I think you made a very good point, which is that everyone knows this is needed but somehow there hasn’t been the wherewithal to kind of make it happen. That said, we feel very strongly that incentives should be incentives and not penalties disguised as incentives. And so things like barring people from bringing infringement litigation or given statutory damages related to data issues, we would view that as a penalty and not an incentive.

MR. DAMLE: Mr. Gottlieb.

MR. GOTTLIEB: Addressing the master database, there is a very heavily funded effort among some BMI and SESAC and I think maybe Google, too, in assembling this GRD is what they call it. It is under way, and I think it will be successful.

MS. CHARLESWORTH: Yeah, I’ve heard mixed things about that recently, that
maybe it was on hold. I don't know if anyone here -- does anyone have information about the current status?

MR. SELLWOOD: A little bit. My understanding is that it is on hold and that there's significant doubts about whether it will be successful. One thing that's really interesting about the GRD is that the initial phases of it are just identifying ownership information. The GRD has nothing to do with linking that underlying composition information to the sound recordings. So its utility, in my personal opinion, was somewhat diluted from the beginning.

MS. CHARLESWORTH: I -- oh, yeah.

MR. DAMLE: Yes.

MR. GOTTLIEB: Mr. Coleman had suggested that we have significant benefits by some kind of mandatory registration. I would agree with that.

MS. CHARLESWORTH: One thing I read in the comments in someone, I think it
may have been NMPA's comments is that people speak about the 30 million songs that you need to license for -- you know, to achieve full coverage for a current digital service. But the assertion was that only one to two million of those really have -- are economically significant and that many of them are not maybe -- I think it was a third are not streamed at all and another third maybe had one or two streams, which is probably less than a stamp, you know. So I guess one question sort of baked into this a little bit is in terms of the cost and the effort, I mean, should there be sort of a tiered approach where we're looking at the songs that are sort of used a lot, are they higher priority? I mean should we go through the whole 30 million others? How does that analysis impact this analysis in terms of the undertaking and what should -- or should we really be looking at the whole -- all the entire 30 million? And I say that without
prejudice to any particular song, but it's just sort of the reality that the cost of administering -- you know, the administration costs vary greatly depending on the usage as a percentage of royalties and so forth.

MR. JOHNSON: I think it's the same problem that ASCAP and BMI have traditionally had. Look at some numbers where they say that ASCAP only pays the top 24 percent of their writers, that 76 percent of the writers don't get any! And a lot of it has to do with the two week sampling but a lot of it has to do with songs they just can't afford to go to track. And I had a Linked-In discussion with Dean Kay who wrote "That's Life," he's an ASCAP Board member, and he told me that, "George, if you and I both have a song on the charts and we're outside the two week sample -- if we're within we get paid, if we're outside we both get zero." So he says also that it takes ASCAP a buck 25 to go after a dollar, and we're just not going to do it.
And they're legally allowed to get away with that and it's because of the fingerprinting, it's hard to go get that. But still, it's kind of like copyright infringement. So I think, sure, you're tracking all those hit songs, and that's all ASCAP and BMI are about, those hit songs. And that's all they worry about. So I think you really should take -- you know, take a look at that individual copyright even though it's a pain in the rear end. I think it's important to respect the individual copyright and track it, and I think the computer can help us do that easily.

MR. DAMLE: Mr. Sellwood.

MR. SELLWOOD: As someone who cares about licensing comprehensively and paying correctly all the way down the tail, I would hope that the aspiration would be everything. But I think as a practical matter the correct approach is always to kind of go from the top down when talking about applying resources to create data availability and
transparency. I think that that would be a reasonable thing to do. And certainly what we do is look at these each on the site and work our way down. I think just as a practical matter it makes a lot of sense.

MR. DAMLE: Mr. Coleman, did you --

MR. COLEMAN: That's on the licensee side. I would say that I don't know if this is the answer, but if these kinds of -- if we had -- if we advanced the statute to the point where this kind of data needed to be registered, the most practical solution would probably be to pick a point a time when this became a requirement for certain licensing organizations and then the older copyrights would somehow slowly catch up. But the reason why I wouldn't advocate a top down approach from a theoretical perspective is because a song that gets streamed twice may get one synchronization license that pays for 100,000 streams. And that's one of the beauties of
having different exclusive rights under copyright is that we see as publishers different kinds of income from the same copyright, and the top down approach doesn't -- wouldn't work for us.

MR. JOHNSON: Just to argue real quick that the top down approach doesn't work, I mean you have Universal and Sony and all the biggest top downs at ASCAP, which is all they're worried about is the top down approach, and they're all leaving. So, you say, but I'm leaving, the small guy, then the top guys are leaving ASCAP, and all they care about are their top 1 or 2 percent writers, because that's where all their plays are. And 331 so I just think there's maybe a philosophical problem there or practical problem just concentrating on just the top writers, and that's it.

MR. DAMLE: Okay. I think we've far exceeded our allotted time for this topic. So I thank you all for your participation.
It's very interesting and informative for us, obviously. So I think you want to do a brief?

MS. CHARLESWORTH: Yeah. Just quickly, we hope we will see many if not all of you back here tomorrow for more fun. I can't thank you enough for spending day one with us, and really appreciate the remarks and the insight.

We're scheduled to start tomorrow at 9:00, and I think we have three panels followed by a general session where observers will be allowed to comment for the record. So until then, have a good evening and we'll see you tomorrow.

(Whereupon, at 4:57 p.m., the panel was concluded.)
CERTIFICATE

This is to certify that the foregoing transcript

In the matter of: Public Roundtable

Before: US Copyright Office Music Licensing Study

Date: 06-04-2014

Place: Nashville, Tennessee

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