

UNITED STATES COPYRIGHT OFFICE MUSIC
LICENSING STUDY

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PUBLIC ROUNDTABLE

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Business
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Session 6: Musical Works - Public Performance

MS. CHARLESWORTH: Welcome back to day two. This is the day where we actually come to a resolution of all the issues. Thank you so much again for all the great participation yesterday. I really felt it was a productive and meaningful discussion, and I look forward to more of the same today.

We have several panels, I think three today, and then we'll have at the end of the day an opportunity for those in the audience, if they wish to make brief comments for the public record, we'll be allowing that. Rick is there a process for signing up for that?

MR. MARSHALL: Sure. There's a sign-in sheet and a release form on the back table.

MS. CHARLESWORTH: So if that's something you're interested in doing at the end of the day, take a moment to add your name

1 to the list and then we'll call you up in the
2 order that you sign up.

3 This morning's first panel is on
4 public performance right for musical works and
5 the way that's licensed and current challenges
6 to that system. I think most of our panelists
7 were here yesterday but I think Mr. Mosenkis
8 may be a new addition to the panel. If you
9 want to just introduce yourself and explain
10 your affiliation.

11 MR. MOSENKIS: I am with ASCAP,
12 and I have the solution.

13 (General laughter)

14 MS. CHARLESWORTH: Excellent.
15 Obviously, many of you have submitted written
16 comments on this issue, but as I think
17 probably everyone in this room knows, there
18 have been some significant developments in the
19 way the PROs are operating. In recent
20 litigation involving Pandora, there were
21 efforts by large music publishers to withdraw
22 certain rights from those organizations. Two

1 different federal courts in New York City
2 found that that violated the consent decrees.
3 And so now I think what we're very interested
4 in hearing about is what's the current state
5 of play, what does the future potentially look
6 like, what is the perceived impact of the
7 consent decrees on the music licensing system.

8 So I guess the first question is
9 assuming the major publishers or any
10 publishers do go ahead and withdraw rights
11 entirely from the PROs, what impact would that
12 have on our current system of music licensing
13 for performance rights. That's a very broad
14 question, but obviously the concern here is if
15 it's an all-in or all-out system for
16 publishers under the current consent decrees
17 and the consent decrees remain in place, what
18 might the future look like and how might that
19 impact music licensing.

20 MR. MOSENKIS: Maybe I'll start
21 off.

22 MS. CHARLESWORTH: Yes, Mr.

1 Mosenkis.

2 MR. MOSENKIS: I think there was
3 some talk about efficiencies yesterday. ASCAP
4 distributes 88 cents on every dollar it
5 collects, and the Supreme Court recognized
6 that the beauty of the blanket and collective
7 licensing is in its efficiencies. The fact
8 that ASCAP can distribute 88 cents of every
9 dollar is because it represents half the
10 industry on a blanket basis. We haven't done
11 the calculations, although I think there might
12 be people thinking about this, but certainly
13 I think people are looking at majors being
14 around 60 percent of the market, we're looking
15 at an operating ratio, I would say, flip it,
16 instead of 12 cents being the operating
17 expenses, it would look like 88 cents.

18 I don't think we can support a PRO
19 representing solely what they call the long
20 tail, so it's something we're concerned about.
21 And I think if the PROs are obviously not
22 functioning, the entire system will break

1 down, clearly

2 MS. CHARLESWORTH: Can you flesh
3 out, just for the record and to make sure
4 people understand, why the operating costs
5 might increase if there were major withdrawals
6 from ASCAP.

7 MR. MOSENKIS: Well, there was
8 some discussion yesterday I heard about the
9 ability to monitor. ASCAP only looks at 1,700
10 or 2,000 radio stations. It's all about
11 efficiency in processing and monitoring and
12 enforcing. Our costs do not go down to
13 monitor radio stations if our membership
14 decreases. We still have to monitor all the
15 plays, we still have to take in thousands upon
16 thousands of cue sheets from television
17 producers, we still have to get the TV data,
18 match that stuff.

19 We're still going to get
20 membership applications every day and we're
21 still going to get title registrations every
22 day, and there was discussion about databases

1 and data synchronization. We still have to
2 have people that go through that, and we do
3 that. Someone mentioned yesterday that ASCAP
4 and BMI, they actually go through and dig
5 through the conflicting registration and make
6 sure that the song 'I Love You' is spelled the
7 same way and the same writers are on it and
8 the same publishers are on it. We have to
9 make sure our databases are clean, and if the
10 revenues coming in to support that operation
11 decreases by 60 percent, clearly operating
12 ratios are going to increase, possibly to a
13 point where we can't operate efficiently
14 enough and the whole concept of efficient
15 licensing really drops down the drain.

16 MS. CHARLESWORTH: Thank you.
17 That didn't sound like a solution, but I think
18 you outlined the problem very well.

19 MR. MOSENKIS: The solution is the
20 Justice Department opened a comment process
21 and hopefully there might be solutions to
22 adjust some of the problems that might deter

1 any of the publishers from leaving.
2 Publishers do not want to leave ASCAP. Our
3 revenues are increasing. We've collected
4 about a billion dollars this past year. We,
5 again, distribute about 88 cents of every
6 dollar. In a world where mechanicals are
7 decreasing, performance rights are the future,
8 and if the collective systems can't work to
9 ensure that those performance royalties are
10 collected and paid out, really the system will
11 collapse.

12 Some publishers, I don't know
13 what's going on in the back offices in
14 Universal or in Sony, but they can make their
15 own decisions and whether the decisions are
16 smart decisions or not, I don't know if they
17 can handle what ASCAP does. I don't think
18 they can. We don't just do Pandora, we do
19 tens of thousands, possibly even hundreds of
20 thousands of licensees every year, from tens
21 of thousands of radio stations to hundreds and
22 hundreds of television stations, to bars and

1 restaurants. I don't know if a major
2 publisher can do that, or whether they want to
3 trade off the couple of percentage points from
4 Pandora and Spotify, trade that off the for
5 the bar and restaurant license fees that they
6 won't be able to collect. That's up to them.

7 But I think they'd like to stay,
8 but if they feel that the consent decree, as
9 is, is constraining the process and devaluing
10 the performing rights -- which I believe they
11 are -- they will leave. So I think this
12 consent decree process that's starting, that
13 was announced yesterday, is really an
14 important key point for not just ASCAP but the
15 entire music licensing system.

16 MS. CHARLESWORTH: And does ASCAP
17 have any particular changes it would like to
18 see to the consent decree that you can share?

19 MR. MOSENKIS: I mean, there are
20 comments, we outlined a few. Let me explain
21 a little bit -- like the past and the current
22 system. The past hasn't changed that much.

1 The bulk of our revenues are still radio and
2 TV. Like 80 percent of our revenues are old
3 media, but no one ever heard about the rate
4 court 20 years ago, you didn't read in the New
5 York Times about the rate court. We've had
6 about 30 proceedings in the history of ASCAP's
7 rate court, about half of them since the late
8 '90s. We just never went to the rate court.

9 It was there as a gap stop measure
10 because ASCAP negotiated with industries. We
11 negotiated with a radio license committee, a
12 TV license committee, a hotel association, a
13 university association. We didn't have
14 individual license negotiations with users, we
15 had industry-wide rates, and we reached
16 industry-wide negotiated fees.

17 And to the extent that when those
18 licenses terminated and we had to renegotiate
19 because there might have been changes in the
20 industry, because the industries were, I guess
21 set, a radio station didn't stop paying fees
22 because the radio license terminated, they

1 just paid what they were paying on an interim
2 basis until we can reach a negotiated deal.
3 So the money kept on flowing in. There was no
4 situation where there was an applicant who
5 wanted a compulsory license under the consent
6 decree and didn't pay, it just really didn't
7 happen.

8 What we're dealing with today is
9 like -- this is the day in the life of ASCAP:
10 you come in and there's a letter from
11 musicboogie.com, this new wonderful service,
12 and they're sort of like a Pandora mixed with
13 a DMX background service and they want a
14 license. P.S. Rock on, we want a license.
15 So they're officially licensed.

16 But with that application, it's
17 not like you're applying to college, where you
18 have to have an essay and an application fee
19 and you have to have all this information.
20 It's just a two-sentence letter, and so
21 they're officially licensed. It's up to
22 ASCAP. There's no obligation to give us data,

1 what are your revenues, your business model,
2 there's no obligation to pay any fees with
3 your application. You're licensed.

4 ASCAP has to then, under the
5 decree, in a certain amount of days ask for
6 data: what are your revenues, what's your
7 business plan, how are you going to monetize,
8 how are you using the music, is it interactive
9 completely, what's going on. Because ASCAP,
10 under its decree, must offer similarly
11 situated users the same exact license fees and
12 terms, we can't discriminate. So if we have
13 a licensee that's just like you, we have to
14 offer you that license. But they don't give
15 us the data, or they don't have to, and if
16 they don't, what's our recourse? The rate
17 court; that's what the rate court is there
18 for.

19 And if they do give us the data
20 and we say: Okay, musicboogie, you're just
21 like Pandora, you get their rates, or you're
22 just like DMX, you get their rates; you're

1 similarly situated, we have to offer you that
2 rate. They may say: No, we're similarly
3 situated to DMX, we want DMX rates, that's
4 what we want, we're not paying what Pandora
5 pays, we're similarly situated to DMX and
6 that's what we want to pay. What's our
7 recourse? Either accept it or go to rate
8 court.

9 So we have this situation now
10 where we get these applications and often
11 we're not getting any fees, not even on an
12 interim basis, and if we want interim fees, we
13 have to go to rate court, we have this rate
14 court system now.

15 You know, you talked yesterday
16 about rate standards and fair market value and
17 it led me to think the idea of a compulsory
18 license, whether it's 115, 114, 118, 111, 119,
19 a compulsory license under the decree, there
20 are policy purposes for the compulsory
21 license, whether it's antitrust policy,
22 whether it's broadcast policy under 111, 119,

1 or even public policy under section 118 for
2 public broadcasting. It's a deal between the
3 licensee and Congress. Congress says: You
4 have the license but you have to pay for it;
5 now sit down like adults at the table and
6 reach a fee, and you have a period to
7 negotiate that fee. The reason for the rate
8 court or the CRB or over the CARP or whoever
9 is to set the fees in the absence of them
10 acting as adults and reaching that fee in the
11 free market.

12 That we have disparate fees -- and
13 I wasn't on the panel yesterday -- but in my
14 opinion, that we have disparate fees under all
15 the various sections is insane. The purpose
16 of the rate court or the CRB is to set what
17 should be fair market value rates. And I
18 think the Songwriter Equity Act is one step in
19 that direction. I think they should all be
20 fair market. But ASCAP's rate court has,
21 under the consent decree, a reasonable rate
22 fee, and I don't know really what that means

1 -- it's kind of unreasonable to me -- but it's
2 reasonable, and past rate court decisions have
3 interpreted that as fair market, try to
4 emulate the fair market value.

5 Yesterday, Jacqueline, you asked
6 how do you set a fair market value if the only
7 benchmarks are compulsory license rates, how
8 do you get that. And it was fascinating
9 because this year was the first time ever,
10 because in the past when we had those rate
11 court decisions we looked at other ASCAP
12 benchmarks, maybe a BMI license as a
13 benchmark, but those were all licenses agreed
14 upon under the constraints of the consent
15 decree, right, they were compulsory licenses.

16 For the first time we had licenses
17 actually negotiated in the free marketplace
18 outside of the constraints of the consent
19 decree. And this is not like 114 where they
20 looked at interactive rates that were set
21 outside the constraints of 114 as sort of
22 proxies, they were imperfect but they were

1 proxies. We actually had deals entered into
2 by Universal and Sony, real marketplace deals.
3 For the first time ever a rate court can
4 actually not just look at a proxy in the
5 marketplace but for the actual service and for
6 the actual transmissions.

7 Because if you look at split works
8 and Universal has half a share and then ABKCO
9 Publishing has half a share, shouldn't they be
10 paying on the same rate for each of the
11 shares? It sort of sounds like insanity that
12 the court rejected those fair market fees as
13 a proper benchmark. We believe, I mean, if
14 you read the decision it kind of seems that it
15 is impossible under the consent decree for a
16 rate court to set fair market fees. It is
17 impossible.

18 If you have a publisher that
19 doesn't join ASCAP or they leave completely
20 and they go to a YouTube and they sit down
21 with YouTube and they negotiate a fee that's
22 higher, to say that that's not a fair

1 benchmark, that that's not a willing
2 buyer/willing seller. They're not even part
3 of ASCAP, it's literally in the market, that's
4 exactly what a willing buyer/willing seller
5 fee is. But the rate court won't take it into
6 account. So we have this insanity now, we
7 have no way of setting fair fees. And so the
8 publishers don't want to leave, but they feel
9 like if that's the system, they'll have to
10 leave, and if they leave, as I said before, I
11 really think it breaks down.

12 MS. CHARLESWORTH: Well, Mr.
13 Mosenkis, thank you.

14 MR. MOSENKIS: You can shoot me or
15 not.

16 MS. CHARLESWORTH: Well, not
17 today. But thank you. You've given us a lot
18 of information to think about and discuss, so
19 I appreciate that.

20 I'm not sure, Mr. Driskill, were
21 you before Mr. Coleman? Mr. Driskill, would
22 you like to comment?

1 MR. DRISKILL: Sure. To reiterate
2 some of the things that he said, the concerns
3 of independent publishers are pretty clear in
4 that situation. We effectively need a
5 collective body. We don't have the resources,
6 nor, I think, YouTube wants to negotiate with
7 every single independent publisher or
8 songwriter or independent copyright
9 administrator. That's a system that can't
10 work, so we have to find a way to either
11 maintain some of the system that we have right
12 now, clearly update it to where it's going to
13 work, or find something else.

14 The finding something else part
15 is, I think, the big question. Is that
16 reasonable? When you have an infrastructure in
17 place, is it reasonable to invest millions and
18 millions into new infrastructure? I don't
19 know; we'll see where that discussion goes.
20 But from independents, we have to have that,
21 we just have to or we can't operate.

22 The other options are: we go

1 through Universal or Sony or Warner or someone
2 that's designated into that world, giving them
3 essentially, I guess, a hundred percent of the
4 market share, collectively, the three majors.
5 I don't know that that's a great system
6 either. I think we have to figure out really
7 what the benefits to us of the current system
8 are. You're dealing with two not-for-profit
9 companies. They do return 88 cents of every
10 dollar. I would say that we could probably do
11 better than that under certain circumstances,
12 but clearly that system is something that we
13 as independent publishers and songwriters have
14 to have, and we're just not going to be able
15 to survive without it.

16 We're the farm team for the
17 majors, in a lot of ways. You see Warner
18 Chappell here in town, the Combustion Music,
19 Disc Music, Cornman Music, these co-venture
20 companies that truly operate as independents
21 but are funded by the majors and the
22 copyrights are controlled by the majors,

1 that's where this creative cycle comes from,
2 and if we lose that, I'm just not sure where
3 we go.

4 So I would urge us to really look
5 at this strongly and make sure that our
6 support is put in the right place for a system
7 that is going to help songwriters and the
8 creativity and creation of songs thrive.

9 MS. CHARLESWORTH: Thank you.

10 Mr. Kimes.

11 MR. KIMES: You're right, we have
12 to have a collective system, and maybe you do
13 collect 88 cents and pay it out, Sam, like you
14 say, but who to? It wasn't me. I've been in
15 ASCAP and I saw that little screen that we've
16 got all those computers collecting every song
17 that's being played every second, ASCAP is
18 tracking it, yet they pay us on a survey. I
19 sat in a meeting with them and they admitted
20 to me that they see every song being paid, yet
21 they pay us on a survey. And I've got radio
22 stations out there that have sent in their

1 form where my song has been played but I never
2 got paid on it.

3 Now, you may have people doing all
4 that, but they're doing a poor job, if that's
5 the case, because we have a music industry
6 that has went on and ASCAP stayed here. Now
7 it's worse than that. You've got Clear
8 Channel Radio stations, your major networks,
9 you've got them collecting and you've got them
10 playing your music, you have rural stations,
11 mom-and-pop stations -- and trust me, they're
12 out there -- you've got all those stations out
13 there playing our music.

14 We put my songs out and we see
15 nothing from that. So that's \$15,000 a pop if
16 you want to hire them, and we do hire them,
17 promoters to promote our songs to rural radio,
18 wherever. So we weren't generating any money.
19 So I asked my gang at Wonderment Records if
20 they'd let me block off three months, I'll
21 call these radio stations. So they did, and
22 for twelve weeks I called those radio

1 stations, and, I mean, I called them from six
2 o'clock to six o'clock every day, and you
3 average five phone calls, if you get a station
4 to play your music you'll average five phone
5 calls on that station to get that station, and
6 we gave away free goods, signed autographs,
7 did interviews, did it all. I did that for
8 twelve weeks, daylight to six o'clock every
9 day, five days a week.

10 At the end of the day we received
11 300 bucks total for all that air play. And I
12 got those stations playing me.

13 I went and I sat down with ASCAP
14 and I talked to them for an hour and a half,
15 two hours, and I told them, I said, "You have
16 devaluated." Some of the guys in New York even
17 told me they didn't bother with rural
18 stations, collecting. I said, "Why?" It's not
19 enough money. What do you mean it's not
20 enough money? You're just collecting from the
21 majors and you're not worried about these
22 other guys out here? Well, I am because that's

1 where I'm getting my air play, that's where
2 I'm touring. So if that's the case, and trust
3 me, I believe you're doing a good job getting
4 all the PROs, but you're doing a poor job
5 getting the money to us, we're not getting it.

6 And this song that I'm talking
7 about, it gained a lot of notoriety, it was
8 picked as one of the top 30 songs of the year
9 by Roots Music Charts and those kind of guys,
10 because I'm not mainstream, I'm not going to
11 get played on Clear Channel Radio. But I am,
12 I knew where my market was at, so I went after
13 it. And here's why I did this, I didn't want
14 those promoters to tell me anything, I wanted
15 to know for sure because that way I didn't
16 have to take their word for it, I wanted to
17 know is this guy playing us. But I told
18 ASCAP: You have devaluated my copyright. And
19 they admitted that.

20 The other thing, you're collecting
21 money for overhead music. I never get none of
22 that, we don't receive any of that money. And

1 the fact is you've got a black box when you've
2 got some money that you don't even know what
3 it is, you just put it in there and give it to
4 the 1 or 2 percent top writers in Nashville
5 where they're at, and that's a fact because
6 you've admitted that to me too.

7 So those are the things that have
8 happened and that I know that have happened.

9 MS. CHARLESWORTH: Okay. I'm
10 going to give Mr. Mosenkis a very brief
11 opportunity to respond, but I just want to
12 clarify, Mr. Kimes, obviously you have some
13 concerns about the governance and distribution
14 at ASCAP, but I think you opened your comment
15 by saying you, nonetheless, think that we need
16 collective licensing systems? Perhaps they
17 need to be changed, in your view, but I just
18 wanted to make sure I understood in terms of
19 the music licensing issue.

20 MR. KIMES: We do need a
21 collective, ASCAP, BMI, somebody to collect
22 the stuff, but we also need it to be

1 distributed rightly.

2 MR. MOSENKIS: It's interesting.
3 I empathize with you. Someone, maybe Scott,
4 said yesterday, of course, the ideal would be
5 to monitor, collect information and pay out on
6 every single play everywhere, that would be a
7 dream, I think, for everyone. This sort of
8 relates to licensing. My wife and I were
9 actually at a restaurant in Brooklyn, like
10 hipster Brooklyn, and we have a very close
11 friend who is in a band, he's also a composer,
12 he does jingles, he works for a Music Library,
13 and you've never heard of him, he's one of you
14 guys, and he relies on his ASCAP checks.
15 Certainly for composers -- and there's no
16 composers in this room and I don't know how
17 many composers are on your panels -- they
18 truly rely on PROs for their livelihood.
19 Without the PROs, the composers would cease to
20 exist as an industry.

21 But we actually heard his music
22 being played on the radio. I'm sitting there,

1 I'm like: Oh, my God, they're playing Escort,
2 they're playing Eugene's song, that's amazing.
3 And I was sort of sad to think that, you know
4 what, he's probably not going to get a payment
5 for that one play in the restaurant, because
6 I'm thinking that restaurant, even if we could
7 monitor what restaurants and nightclubs play,
8 which is practically impossible -- if we do,
9 it would cost millions of dollars -- but the
10 restaurant pays 300 bucks a year.

11 And that's something that we have
12 to look at in licensing where the Clear
13 Channels and small guys, there are different
14 rates and different payments from different
15 licensees, and the distribution rules, at
16 least with ASCAP, are related to the dollars
17 that come in, we follow the dollar. So that
18 restaurant that pays in \$300, if we were to
19 monitor every song played throughout the year
20 at that little restaurant, Eugene's song would
21 be worth .00002 cents. So that's taken into
22 account in our distribution methodologies.

1 But ideally, yes, I wish everyone would get
2 paid for every performance.

3 MS. CHARLESWORTH: Okay. I think
4 we'll go to Mr. Coleman, then Mr. Knife, Mr.
5 Marks.

6 MR. COLEMAN: Thanks. I'm going
7 to back up to the consent decree. I think
8 there's an analogy that can be made to the
9 direct licensing world that may be beneficial
10 to think about in the context of the consent
11 decree. I see the consent decree as being the
12 opposite side of the coin of performing rights
13 societies mandate as public cartels, so I
14 think that amending the consent decree so that
15 licensees can get licenses is important. But
16 I also recognize Mr. Mosenkis's very funny
17 story about a new business model that is
18 coming to him with no information about how
19 it's going to work.

20 So the analogy in the direct
21 licensing world that publishers use all the
22 time is the option agreement, and we see it,

1 for example, in film. We issue film festival
2 licenses all the time, and the idea is that
3 it's not unlike buying the rights to a book if
4 you're a film producer, a publisher will give
5 the right to a song to a film maker just for
6 a limited period and for use in specific media
7 film festivals.

8 If the statutes reflected that
9 kind of interim licensing, the kind of interim
10 licensing that ASCAP was used to from major
11 licensees before the big disruptive
12 technologies took over where people were
13 paying for the right to have a placeholder
14 license, I think that would help ease the
15 friction that we're seeing now in licensing,
16 and that's a direction that we should consider

17 MS. CHARLESWORTH: Thank you.

18 Mr. Knife.

19 MR. KNIFE: A couple of
20 observations that pertain to the consent
21 decrees and the PROs in particular, but I
22 think are applicable to an awful lot of what

1 we've been talking about over the last couple
2 of days and will obviously continue to talk
3 about.

4 I think what we're hearing, both
5 from the creator side and from the licensee
6 side, and indeed, from the aggregator and
7 administrator middle position, is that we
8 desperately need an efficient licensing
9 landscape. Thirty million songs, or whatever,
10 with even multiple splits of those songs
11 underneath it, demands some type of collective
12 licensing. There's no other way to
13 efficiently license.

14 But collective licensing is, in
15 effect, an monopoly or in the sense of a few
16 actors within the marketplace, it's an
17 oligopoly, and those monopolies come with
18 certain requirements. Right? And one of those
19 requirements is some type of oversight,
20 whether it's a statutory license, it's a
21 consent decree, or whatever it is, we need to
22 move into more efficient licensing, that

1 requires collectivization. Collectivization
2 then requires some type of oversight. I think
3 if you're going to act in a collective way,
4 you've got to be willing to submit yourself to
5 some type of oversight, and by the way, I
6 think that works for 114, 115, PROs, these
7 principles, I think, are universally
8 applicable.

9 And there are a couple of things
10 that I think need to be a part of that type of
11 oversight. So the first one is that there has
12 to be a fair process to allow licensees to
13 enter into that marketplace. And Mr.
14 Mosenkis was talking about when parties come
15 to ASCAP and they just demand their license
16 and they don't give any kind of description
17 about it. I think you need a very, very low
18 friction way for anybody to get into a
19 marketplace as a licensee in order to maintain
20 competitiveness within that marketplace.

21 There has to be a fair process for
22 setting the rates, something we've talked

1 about for the last couple of days, and
2 obviously there's all kinds of views about the
3 words are that describe that, but that has to
4 happen. But also, I think one of the things
5 that has to come from that regulation, that
6 we're hearing, again, from both the creator
7 side, also from the licensee side, is there
8 has to be transparency. There has to be
9 transparency about what rights are being
10 administered by that collective, and there
11 has to be transparency for licensees, and
12 there has to be transparency about what
13 happens with those rights and how the
14 collection of those royalties is administered
15 and ultimately paid out on behalf of creators.

16 Again, I'm kind of just pointing
17 out what I think are, however you want to say
18 it, fundamental or overarching principles. I
19 think we're all kind of, in our own way,
20 moving toward these kind of core principles
21 which is why we need efficiency. Efficiency
22 really means collective licensing, but

1 collective licensing means there's got to be
2 some type of oversight and control. And I
3 think we should really, throughout these
4 discussions, start talking about what that
5 means, what exactly does a collective body
6 have to give up or submit to in order to
7 obtain the right to be in that collective
8 licensing posture. They owe things to their
9 creators, they owe things to their writers,
10 and they owe things to the marketplace in
11 order to make sure that it's fair and it's
12 efficient and it's transparent.

13 So moving off of that general
14 observation -- which, I'm sorry, I felt
15 compelled to make -- I wanted to ask
16 specifically about the consent decrees as one
17 of those kind of collective regulation
18 bargains that we have struck between the
19 government and licensors. Can Mr. Mosenkis
20 talk even just a little bit about what it is
21 about the consent decrees in particular that
22 ASCAP would be seeking to modify in the

1 process that's been recently announced?

2 MS. CHARLESWORTH: Mr. Mosenkis,
3 would you like to respond to that? Because I
4 think it's helpful to lay some of this out, it
5 helps to further the discussion, and then
6 we'll continue with the other commenters.

7 MR. MOSENKIS: In terms of
8 specific modifications, I think the rate
9 setting process, so we're looking at the
10 potential for an efficient and quick
11 arbitration type process. We understand that
12 if the department feels that there needs to be
13 some regulation with some sort of a compulsory
14 license and an overseeing body, we think a
15 quick arbitration would be the better process.
16 And we haven't fleshed out the details, but
17 that's something that we're looking at.

18 MS. CHARLESWORTH: Excuse me.

19 Would that be with private
20 arbitrators or government?

21 MR. MOSENKIS: We think private
22 arbitration. This is something that needs to

1 be negotiated and discussed, the idea that the
2 rate court will be abolished or sunset, but it
3 would be moving to some sort of arbitration,
4 and I think user groups would approve of this.

5 We are looking at bundling. I
6 mean, there was a lot of talk about 115 and
7 collective management. I think if I was a
8 betting man and Las Vegas had a music
9 licensing betting chart, I would probably put
10 my money on the future having some sort of
11 digital collective bundle option. I think
12 115, the reasons for it go back so long. I
13 think in this day and age, I'm not talking
14 about physical world, although I don't know
15 how much physical world there will be in the
16 future, but for the Spotifys of this world,
17 and even the syncs or the YouTube, I think
18 collective licensing is pretty much, I think,
19 a given, maybe not tomorrow but at some point.
20 I deal with Europe and it seems to be so
21 obvious. So we're going to be looking at the
22 ability to bundle rights.

1 MS. CHARLESWORTH: Meaning just
2 for the record?

3 MR. MOSENKIS: For the record, the
4 ability for ASCAP to license on a collective
5 basis the mechanicals, as well as
6 synchronizations. So if YouTube needs a
7 blanket license for the performances, for the
8 mechanicals, and for the tens of thousands of
9 syncs, we'd be able to do that with one
10 efficient, easy license. We can't do that
11 today and we're looking to see that change.

12 We are looking, also, to have some
13 flexibility, both from membership as well as
14 licensing. I know this is something that has
15 divided the membership, but there are many
16 members who wish to have the ability to grant
17 ASCAP limited rights, so if they want to
18 retain a new media for themselves, they can do
19 so and authorize ASCAP to go after radio and
20 bars and restaurants. The Pandora case is now
21 on appeal, I don't know exactly what's going
22 to happen with it, but should that decision be

1 affirmed and the decree is set in stone, as
2 the rate courts have interpreted it, that's
3 something we'll be seeking to change.

4 So those are some of the main
5 points that we are going to be looking at
6 discussing with the Justice Department.

7 MS. CHARLESWORTH: Thank you.

8 I think Mr. Marks was next, and
9 then Ms. Schaffer, and then we'll get back to
10 the other side of the table.

11 MR. MARKS: I think Sam, Mark, and
12 Wade have very eloquently pointed out the
13 problems that exist here, and you know, you've
14 got a PRO system with a rate court that is
15 setting rates that are under value,
16 unfortunately, for the publishers and the
17 songwriters that are represented, and that
18 clearly needs to be fixed.

19 You've got consensus, I think, to
20 some degree on collective licensing of some
21 sort, whether it's ASCAP or somebody else, or
22 whether there are changes that need to be

1 made, collective licensing is important, and
2 I think Lee would echo that on behalf of his
3 members.

4 It seems like you've also got some
5 consensus on efficiency in getting rid of the
6 right-by-right kind of licensing and having
7 the rights bundled in some way, which makes a
8 lot of economic sense. Mark, I think you said
9 this, you know, if you have this withdrawal
10 from the PROs, what might happen is you go
11 from three PROs to three majors. I don't know
12 what Lee's community or the Department of
13 Justice would do in terms of viewing that, but
14 you're just exchanging three different
15 entities for three different entities and the
16 ability to truly move into a marketplace, I'm
17 just not sure that that exists if that's the
18 way things are really going to go.

19 And then you've got issues about
20 the nonprofit and the transparency and things,
21 so it doesn't necessarily seem like that may
22 be the best way to go. And if you don't have

1 the rights bundled, you have this very odd
2 situation where we negotiated as part of the
3 last two mechanical proceedings -- which we're
4 very proud we were able to do with our music
5 publisher and songwriter partners to settle
6 those CRB proceedings to create new technical
7 categories, and we couldn't literally bundle
8 rights because we didn't have the right to do
9 that, that's only something that can be done
10 in another way. But what we did do is we set
11 up rate structures that took into account the
12 other royalties that are being paid.

13 If you had publishers coming out
14 of ASCAP or BMI and you still had this 115
15 regime of rate categories the way it existed,
16 they would essentially be wiping out all their
17 mechanicals by increasing their performance
18 rates, so that doesn't seem like a very good
19 solution. So I would come back to the idea,
20 and again, the one we threw out isn't perfect
21 and it doesn't have to be the solution, but it
22 has elements of, I think, a lot of the things

1 that were discussed here. Collective
2 licensing, bundling of rights, getting rid of
3 the rate court, and the CRB for that matter,
4 ensuring transparency, having an audit right,
5 all of those kinds of things seem to be
6 critical, and doing so in a way where you
7 construct a marketplace rate where you don't
8 have to have the kinds of things that Lee was
9 talking about that depress rates because
10 you're operating under a compulsory or pseudo-
11 compulsory kind of system.

12 MS. CHARLESWORTH: Just a quick
13 question. I think you alluded to the
14 possibility that perhaps all of this would
15 migrate to the majors, and as did, I think,
16 Mr. Driskill, that if the PROs somehow fail
17 to exist, that you would get a migration of
18 smaller publishers and songwriters, self-
19 represented writers to join majors to handle
20 their PRO licensing.

21 And I guess one question is, given
22 that some of the majors have, say, up to 30

1 percent market power -- maybe this is more for
2 Mr. Knife, I don't mean to pick on you but
3 you've clearly thought a lot about this -- you
4 said that you would still see a need for
5 government regulation but the PRO might
6 possibly have a smaller market share, I think,
7 than some of the majors in that situation --
8 in other words, if the majors withdrew. So I
9 was just wondering if you had given any
10 thought to that scenario, in other words,
11 where you had majors representing, say, 60
12 percent of the market and then two or three
13 PROs who had 10 or 15 percent amongst each,
14 and if you had any thoughts about rate-setting
15 in that context or how that might play out.

16 MR. KNIFE: I think I tried to
17 address that a little bit yesterday when we
18 were kind of talking about the pie in the sky
19 stuff, and we were talking about things like
20 what would happen if Section 115 were simply
21 abolished tomorrow, and I tried to make the
22 point that I don't think you can do that as a

1 practical concern. I know nobody thinks
2 that's actually going to happen, but I also
3 think based on some of the things that you're
4 talking about, you literally couldn't have
5 that happen because the marketplace, as it
6 exists now, has grown up and taken on the
7 contours that it has largely because it's
8 grown up in the shadow of a certain amount of
9 regulation.

10 In other words, I think some of
11 the mergers that have occurred, some of the
12 activities that have occurred, the application
13 of the consent decrees, various things that
14 have gone on over, let's say, just the last 10
15 or 15 years, have gone on entirely informed by
16 the processes that exist, that have been in
17 place, and that have existed over the last 20
18 or 25 years. So I think you're bringing up a
19 good point which is we have a marketplace that
20 is reflective of a half a century of
21 regulation and we're all complaining about the
22 fact that perhaps that regulation is in

1 various ways outdated and not necessarily
2 efficient.

3 So what do you do? I don't think
4 it's appropriate to say, well, we simply
5 dispense with the regulation and leave the
6 marketplace, having grown up into this
7 particular set of interests and oligopolies
8 and just get rid of the regulation because the
9 regulation seems to be inefficient or doesn't
10 seem to work.

11 MS. CHARLESWORTH: I didn't maybe
12 express this well, and this is really for
13 anyone who wants to comment on it. The
14 question really comes down to if you have
15 majors who have greater market share than a
16 particular PRO, then what's the justification
17 for regulating the PRO. That's really the
18 question I'm driving at.

19 MR. KNIFE: I think I understand
20 the question, and maybe I'm being whatever,
21 and I'm not trying to be. What I'm saying is,
22 again, I think whenever you have that type of

1 concentration of market power, that kind of
2 demands some type of oversight, again, whether
3 or not that's in the form of a compulsory
4 license, a statutory license, a consent
5 decree, or something like that. The DOJ looks
6 at all kinds of mergers and consolidations of
7 all types of industries all the time for
8 exactly this reason, and things like 60
9 percent market share in a very, very defined
10 market is a scary thing when you're a consumer
11 within that marketplace.

12 And so, yes, it raises some
13 concerns. I'm not offering a particular
14 answer, but I hope I'm responding to your
15 questions and saying, yes, it raises some
16 concerns.

17 MR. MOSENKIS: Jacqueline, let me
18 add just one thing.

19 MS. CHARLESWORTH: Mr. Mosenkis,
20 yes, if you want to respond.

21 MR. MOSENKIS: SESAC is a PRO, not
22 regulated, and seems to be working. We don't

1 have anyone here from the television and radio
2 community to rebut that, or maybe there will
3 be, but SESAC is not regulated currently.

4 MS. CHARLESWORTH: Okay. That's a
5 good point that we should keep in mind that is
6 also, I think pertinent to the question I
7 raised which is meant to be general and anyone
8 can comment on it. So we're going to have Ms.
9 Schaffer, and then I'll go over here, and then
10 I see you Mr. Oxenford.

11 MS. SCHAFFER: Regardless of
12 whether you are a major publisher or a small
13 independent publisher, I think there is an
14 agreement that we need the PROs and we need
15 the collective licensing of the PROs. And I
16 think that there is also a consensus amongst
17 the publishing community that the consent
18 decrees really do need to be either
19 substantially modified or done away with, or
20 there has to be some type of a change. And
21 kind of keeping with the same theme I think
22 I've had from yesterday, I think the more that

1 you can allow the free market to work and for
2 those negotiations to occur, whether that is
3 through I think an important part of any type
4 of revision, if it is a revision of the
5 consent decrees which would be allowing
6 whether it's a major publisher or an
7 independent publisher to pull certain rights
8 out and negotiate the marketplace is an
9 important aspect of any type of revision that
10 would occur.

11 And I think one thing that's
12 important about that is not that we
13 necessarily end up with let's say universal
14 licensing all digital rights independently,
15 but it's the idea that if you can have that
16 possibility and maybe that occur in a few
17 instances and you can take that into
18 consideration in setting various rates that
19 the PROs set, if the PROs can get their rates
20 up, there's an incentive for maybe those major
21 publishers to keep the rights and not to
22 separate them out from the PROs.

1 There being that ability and that
2 flexibility and that option, I think
3 encourages a robust licensing process that
4 adequately compensations all songwriters and
5 all publishers and allows them the resources
6 to hopefully be able to pay everyone, even if
7 it's 300 plays, allows them the resources to
8 be able to try to pay everyone that they
9 possibly can, and the way that the consent
10 decrees are set up right now, they can't do
11 that.

12 And I do think that another
13 important aspect of this goes back to what I
14 know I believe is very much a reality, I know
15 the NMPA believes is a reality, and the
16 majority of the publishers, at least from here
17 in Nashville think it's a reality, that if we
18 were to eliminate 115 -- which can happen --
19 that it allows the PROs to very easily step
20 into that position, if the consent decrees are
21 eliminated or modified, to be able to be one
22 of those collective agencies that we talked

1 about so much yesterday of how does that
2 happen. To be able to bundle those rights and
3 to be able to, especially when it comes to
4 micro licensing, provide those bundled public
5 performance and mechanical rights all in one,
6 that may be needed.

7 And I think it's very shortsighted
8 of anyone to say that the consent decrees and
9 the discussions that we're having with respect
10 to 115 and how we revise that don't work
11 together, because they do. I think they're
12 very much intertwined in this entire
13 conversation, and dealing with both of those
14 two issues I think is really where we find the
15 solution in all of this. And I don't think
16 that you can separate these two issues, I
17 think they are very much intertwined in
18 finding the solution.

19 And this likely goes into maybe
20 the next panel, but I think what it also does,
21 in talking about providing the additional
22 income to the PROs or any other organization,

1 is that the purpose of protecting copyrights
2 in the first place is to promote the progress
3 of arts and science, and is progress the
4 progress of distributing the works or is
5 progress actually encouraging the creation of
6 the work.

7 And if people like Mr. Kimes
8 feels like he can't be compensated because the
9 PROs don't have the income and the resources
10 to be able to compensate him, songwriters and
11 artists, writers like Mr. Kimes, will be
12 eliminated entirely. And I think all of this
13 discussion is intertwined in continuing to
14 keep a vibrant music community and allowing
15 all of the government controls on all of this
16 to either be eliminated or greatly reduced so
17 that we can allow the solutions.

18 I think this is very similar to
19 the late fees situation where a solution did
20 not arise until the Copyright Office took
21 action that forced everyone to come to a
22 resolution. Just like the record companies

1 and the publishers were able to deal with how
2 do we create a settlement agreement to deal
3 with the late fee situation and deal with the
4 pending and unattached funds, I think this is
5 similar, some action has to be taken by the
6 Copyright Office to allow us to find that
7 solution. And I think we've seen, through
8 various solutions that have arisen, that a
9 solution will arise if the consent decrees are
10 revised.

11 MS. CHARLESWORTH: Thank you, Ms.
12 Schaffer.

13 I think Mr. Turley-Trejo may be
14 next, and then I think I'll make the rounds
15 and hopefully we'll get everyone's additional
16 comments, I'm sure we will. Mr. Turley-
17 Trejo.

18 MR. TURLEY-TREJO: Another
19 perspective from the actual administration of
20 the PROs -- and I agree with Mr. Knife about
21 if we have the sort of collective agency,
22 there has got to be more transparency and more

1 oversight, because we pay, at a university
2 level, tens of thousands of dollars for
3 license fees to ASCAP, BMI and SESAC, and
4 we're not required to report anything. Now,
5 that's a problem from a creator's standpoint,
6 I think. And I'm speaking from both because
7 I am a creator myself, but I feel bad.

8 And I'm the point man for our
9 university for licensing, and I've called
10 ASCAP, BMI and SESAC, and we used to over the
11 years submit programs of all the concerts and
12 all the different music played, not
13 necessarily over the radio but particularly in
14 public performances, and it was part of our
15 agreement to do that. And we called them
16 because there was a problem of where to send
17 them, and the representatives at all three
18 institutions said: We no longer look at
19 those, we don't have the time, we don't have
20 the resources. Which makes sense. It is a
21 very difficult task to report all the public
22 performances of music, I think everyone

1 understands that.

2 But we're not talking about a \$300
3 restaurant fee, we're talking about a major,
4 major license fee, and we're just one
5 university. So that needs oversight somehow.
6 That has got to change in order to promote the
7 progress of the creation of arts.

8 That's all I want to say.

9 MS. CHARLESWORTH: Thank you for
10 that insight.

11 So I think Mr. Coleman has been
12 waiting, Mr. Driskill, Mr. Kimes, Mr.
13 Oxenford, and then Mr. Waltz

14 MR. COLEMAN: Since we're invoking
15 the copyright clause, I think it's important
16 that copyright rests in creators, not in
17 private firms or assignees and certainly not
18 in licensees, and one thing that the ASCAP,
19 BMI and SESAC system has done, that the PROs
20 have done very well, is create what looks very
21 arbitrary from the outside looking in but what
22 has been a very important service to the arts

1 which is that they divide payments between
2 writers and publishers. One of the great
3 fears of private firms taking over performing
4 rights licensing is that they would start to
5 pay publishers only and that they would,
6 cross-collateralize their income and never pay
7 writers, and the PROs do a very good public
8 service that way.

9 And I do sympathize very much with
10 Mr. Kimes's issue. I think, though, that the
11 PROs attempt to take the money that they can't
12 allocate to individual performances and do
13 things through their foundations to give back
14 to the music community, to give prizes to up
15 and coming songwriters so they do perform a
16 very important public service to the arts.

17 MS. CHARLESWORTH: I think it was
18 Mr. Driskill next.

19 MR. DRISKILL: I just wanted to
20 comment on just the fact that we always look
21 at the PROs as monopolistic. That was created
22 years and years and years ago. We have to be

1 realistic as we get into this. I'm not sure
2 how much market share the radio music
3 licensing committee represents; I would assume
4 it would be a large number. That's collective
5 licensing. Are they antitrust? Again, we're
6 talking about fair, we need to put everything
7 on a level playing field.

8 As the representatives of the
9 musical works, the PROs get looked at as
10 monopolistic and we have to regulate this and
11 we have to have oversight. But the collective
12 licensing on the other side, that's not even
13 part of the conversation. And I'm not
14 suggesting we do that, I'm suggesting we
15 deregulate the musical works side, the
16 composition side. But if we're going to have
17 that conversation, we really need to be honest
18 about what we're talking about. You can't
19 have collective licensing oversight on one
20 side and then the other side of the table
21 doesn't have it.

22 MS. CHARLESWORTH: Thank you.

1 Mr. Kimes.

2 MR. KIMES: I'm with Lee all the
3 way on this, but the oversight thing, it also
4 covers the fact that like yesterday I
5 mentioned Amazon, they're getting into the
6 streaming business. Well, two articles came
7 out right when they decided they were going to
8 do that, and that was that they would give the
9 majors, they would cut a deal with the majors,
10 but the small independent publishers and those
11 kind of guys would get whatever they wanted to
12 give us, we'd have no say in it. And so we
13 need to have our collective agencies go to
14 those guys and say: Wait a minute, why is
15 this? That needs to be corrected, that's
16 something we need to keep a close eye on.

17 Secondly, I see, because I see the
18 checks and I see all the data that comes in at
19 one of the records and publishers, I'm
20 starting to see decreases -- in fact, this is
21 the first dip we really had in digital
22 downloads, because streaming is taking over.

1 So with that said, that's a mechanical that's
2 going away, and I see mechanicals decreasing
3 as we go. So if we do come to this and we set
4 a new rate, we need to keep in mind that we
5 may not have mechanicals much longer that's
6 going to amount to anything so we better set
7 a rate for the streaming and for performance
8 that's going to keep us alive. As Mr.
9 Driskill said earlier, we won't be around, so
10 we need to keep that in mind.

11 MS. CHARLESWORTH: Thank you, Mr.
12 Kimes.

13 I think Mr. Oxenford was next,
14 and then Mr. Waltz, and then Mr. Knife.

15 MR. OXFENFORD: I guess first to
16 respond to Mr. Driskill, while I obviously
17 don't represent the RMLC, I do represent
18 broadcasters, and I think it's fairly obvious
19 that the whole context of the RMLC
20 negotiations with ASCAP and BMI is in the
21 context of the rate court oversight, so there
22 is oversight, just like there is oversight

1 over ASCAP. To the extent that there are
2 negotiations, to the extent that the positions
3 that the RMLC is taking are unreasonable, the
4 rate court is there to make that determination
5 as to whose positions are reasonable.

6 MS. CHARLESWORTH: Sorry. For the
7 record, they're not operating under a consent
8 decree.

9 MR. OXENFORD: Not the RMLC
10 itself, but the positions that it takes are
11 effectively regulated in that they're subject
12 to the oversight of the rate court. To the
13 extent that they're trying to get some sort of
14 super competitive ability to decrease rates
15 with ASCAP or BMI, it's subject to the rate
16 court determining whether that's a reasonable
17 rate that they're requesting or not.

18 MS. CHARLESWORTH: Right.

19 Although the question of whether
20 something is a reasonable rate is separate
21 from whether there's an antitrust violation.
22 Wouldn't you agree with that?

1 MR. OXFORD: I'm not an
2 antitrust lawyer.

3 MS. CHARLESWORTH: I don't mean to
4 put you on the spot. Continue. I'm sorry.

5 MR. OXFORD: No problem.

6 The other issue that I think is
7 very important is Lee talked about
8 transparency, and I think it's also very
9 important in the context of taking licenses
10 that there's transparency as to what the
11 licenses cover in terms of musical works.

12 There was the question about
13 whether there's a radio representative in the
14 room and whether there are concerns about the
15 way SESAC is operating, and certainly there
16 are, and one of those concerns is that it's
17 impossible to figure out what the PROs cover
18 in terms of the musical works. For radio
19 stations that have attempted to avoid SESAC
20 licenses, feeling that those licenses are too
21 high for whatever reason, it has been the case
22 in the past that it's just been impossible to

1 avoid all the SESAC works because there's just
2 not a comprehensive database to avoid those
3 issues, and I think that's part of the current
4 litigation between both the Radio Music
5 Licensing Committee and the TV Music Licensing
6 Committee and SESAC as to whether SESAC should
7 be brought under the consent decrees as well.

8 MS. CHARLESWORTH: Okay. Thank
9 you, Mr. Oxenford.

10 Mr. Waltz.

11 MR. WALTZ: Well, Mr. Mosenkis is
12 correct, obviously, that SESAC is not under a
13 consent decree. The DOJ has looked at us
14 several times with a fine-tooth comb and
15 failed to take action. And that brings me to
16 Mr. Knife's comments concerning oversight,
17 and that is that even without statutory or
18 compulsory licensing and without a consent
19 decree, we are subject to oversight. DOJ can
20 look at us at any time it chooses and other
21 actors in the industry have private causes of
22 action. So I think without enshrining that

1 oversight by statute or consent decree, the
2 oversight still exists.

3 Which brings us to the consent
4 decrees. Although we're not under a consent
5 decree, and some may perceive that as a
6 competitive benefit to SESAC, we disagree,
7 because similar to the 115 argument, the
8 industry has arose in a culture that assumes
9 that the rates set by the rate courts are
10 accurate, and thus, SESAC must also accept
11 those rates. And so we view it as a
12 disadvantage having to operate in an industry
13 where the overwhelming majority of the
14 industry is subject to these rates which we
15 believe are below market value.

16 MS. CHARLESWORTH: Thank you, Mr.
17 Waltz.

18 Mr. Knife.

19 MR. KNIFE: Yes. So just on the
20 order of a couple of responses. I appreciate
21 the point that you're making about SESAC and
22 I think it's important to understand in that

1 context that SESAC is the smallest, and, I
2 believe, the newest of the -- not the newest?

3 MR. WALTZ: We're older than BMI.

4 MR. KNIFE: But in terms of market
5 share, it's the smallest PRO. Correct? And
6 so, again, the points that I made I hope were
7 couched in and clearly made with the idea when
8 we talk about things like monopolistic power
9 and large market share and a need to have some
10 type of oversight there. But I appreciate the
11 comments about the idea that SESAC feels and
12 certainly behaves as if it is effectively
13 being controlled by the controls that exist in
14 some of its market competitors.

15 And then just one other responsive
16 comment to what Mr. Driskill said, and the
17 exchange that you had with Mr. Oxenford,
18 while it's true that entities like the Radio
19 Music Licensing Committee aren't subject to
20 something like a consent decree, number one,
21 as Mr. Oxenford pointed out, they operate
22 entirely within the context of a consent

1 decree being applicable to their behavior, and
2 if they ever do anything that rise to the
3 level of being anti-competitive, they'll be
4 subject to some type of control.

5 Entities who behave that way,
6 they're very well aware of the milieu that
7 they're moving through. They know that they
8 are engaged in negotiations that are regulated
9 and occur with oversight, and they run the
10 risk of being seen as being anti-competitive
11 as a result of their behavior. So the fact
12 that they don't have a consent decree
13 applicable to them right now doesn't have
14 anything to do with the fact that there's an
15 inherent unfairness in the marketplace and
16 they never would. It's the fact that they
17 haven't behaved in a way that requires them to
18 have one.

19 UNIDENTIFIED SPEAKER: The consent
20 decrees were entered into however many years
21 ago. Is it still the same today, that's the
22 discussion

1 MR. KNIFE: Well, we have a
2 decision that I think was handed down this
3 year that clearly indicates that at least
4 Judge Cote feels that anti-competitive
5 behavior is still occurring within the context
6 of ASCAP, even though they've been subject to
7 a consent decree for whatever it is, 50 years.
8 And this is an action that was just decided
9 earlier this year, and you have a judge
10 saying: Yep, this consent decree is clearly
11 necessary because we're still seeing the exact
12 same type of behavior for which the consent
13 decree was intended to regulate occurring. So
14 I get that they're 50 years old and they've
15 been modified a couple of times during their
16 tenure, but when you have a judge who's
17 charged with administering and overseeing that
18 consent decree saying: Yes, this year I've
19 reviewed the behavior of the parties here and
20 I still think this is necessary.

21 MS. CHARLESWORTH: For the record,
22 did Judge Cote actually make a finding that

1 the consent decree was still necessary? I
2 don't recall that.

3 MR. KNIFE: No. She didn't
4 specifically say the consent decree was
5 necessary. What I mean to say is there are
6 elements of her decision that indicate that
7 the type of behavior that the consent decrees
8 are intended to lend oversight to continue to
9 exist.

10 MS. CHARLESWORTH: Okay. I'm
11 going to go to Mr. Mosenkis, and then Mr.
12 Turley-Trejo.

13 MR. MOSENKIS: There was also a
14 Dred Scott decision, there are a lot of
15 decisions out there, and this is on appeal.

16 (General laughter)

17 MR. MOSENKIS: I'm saying it was a
18 case with certain findings of fact, which
19 taking my ASCAP hat off, someone that saw what
20 was going on, it defied reason that she ruled
21 the way she did, and the case is on appeal, I
22 don't want to necessarily talk about it.

1 But I think that's the very reason
2 why we're seeking an arbitration type of a
3 process, because to have one judge, and as
4 long as she retains the bench -- and we want
5 her to be bumped up to the Second Circuit now,
6 right? -- she's going to be literally viewing
7 the consent decree with that same mind frame.
8 An arbitration process would work a lot
9 different, and, I think, a lot better for
10 everyone.

11 One thing I did want to comment,
12 we were talking about the PROs, and Mr. Kimes
13 and Mr. Driskill both mentioned what they do
14 for songwriters and publishers, and I think I
15 need to really underscore that point. It is
16 really the songwriters and composers who will
17 be the big losers in this situation if the
18 majors decide to pull out. What ASCAP and BMI
19 do for them cannot be understated, er, can't
20 be overstated, it is extremely important.

21 And the last thing I would like to
22 say before we end the panel is you run the

1 Copyright Office and you are subject to the
2 copyright law, and I really think that the
3 public performance right -- and this is what
4 we're talking about, the public performance
5 right -- I think it will become practically a
6 nullity without the performing rights
7 organizations. If you look under Section 101,
8 there's a definition for performing rights
9 society, ASCAP and BMI, they're right there in
10 there. We are necessary for the system to
11 work, and really without it, performances
12 would be made with impunity without any
13 licenses and it would really make the
14 copyright law a joke.

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

17 And just before we turn to Mr.
18 Turley-Trejo, I just want to throw out one
19 other question. I didn't get to every
20 question on my list, but particularly since
21 we're in Nashville, if you want to comment,
22 and picking up on Mr. Mosenkis's point about

1 the PROs pay songwriters directly, and a
2 question is if the PROs go away and that
3 direct payment system disappears, how might
4 that impact songwriters and their ability to
5 -- not withstanding Mr. Kimes's comments --
6 receive payment without going through an
7 intermediary. Mr. Turley-Trejo.

8 MR. TURLEY-TREJO: You might want
9 to have them comment.

10 MS. CHARLESWORTH: I was just
11 saying for people, since we're running out of
12 time, to keep that in mind, but I know you had
13 a comment addressed to something else.

14 MR. TURLEY-TREJO: This is
15 something that's switching gears, but I just
16 wanted to state for the record that I think if
17 the collective agencies do bundle rights like
18 mechanical rights or the compulsory license,
19 that the Copyright Office -- I know a theme of
20 my comments has been clarification, but the
21 Copyright Office really needs to clarify the
22 difference between dramatic and non-dramatic

1 because the compulsory license talks about
2 licensing of non-dramatic musical works, and
3 that language is seen throughout the code but
4 there is no definition. And I deal with that
5 all the time.

6 MS. CHARLESWORTH: That sounds
7 like my job. People often ask questions but
8 it's because there are no answers. There is
9 an answer. Thank you for raising that.

10 MR. TURLEY-TREJO: There is?

11 MS. CHARLESWORTH: I didn't mean
12 to be overly facetious. There are many hard
13 questions in copyright law is what I'm saying,
14 so I appreciate your raising that question.

15 MR. TURLEY-TREJO: If we can keep
16 that in mind, that would be great. Thanks.

17 MS. CHARLESWORTH: I'm not sure
18 who was next. Mr. Coleman, and then Ms.
19 Schaffer

20 MR. COLEMAN: Thanks. I just
21 wanted to reiterate what I may have said which
22 may have been too abbreviated before but it

1 addresses your question about what would
2 happen if the PROs went away and songwriters
3 were not being paid directly which is that I
4 believe private firms would have very little
5 incentive to pay songwriters in the
6 transparent method that the PROs currently do.
7 And by transparent I mean there is a procedure
8 now in the PROs whereby 50 percent of every
9 distributable amount goes to a songwriter and
10 the other 50 percent goes to the publisher,
11 and the PROs have gone to great lengths to
12 prevent private dealing that interrupts that
13 arrangement. It's possible but it's
14 difficult. And I think that would go away
15 very, very quickly because firms have
16 different priorities and incentives and they
17 would be looking to pay the songwriters less
18 in order to recoup investments.

19 MS. CHARLESWORTH: Okay. Ms.
20 Schaffer.

21 MS. SCHAFFER: I'll make these
22 comments on a personal note as a lawyer in

1 Nashville who represents a lot of songwriters,
2 and I think that in kind of connection with
3 what Mr. Coleman said, one of the things that
4 has become a reality in contract negotiations
5 now is what happens if the PROs pull out and
6 how do you address those songwriter royalties,
7 and I think it's something that we're all
8 starting to address now in those agreements.

9 I think where the real problem
10 would lie is looking at agreements that
11 started anywhere from probably three or four
12 years ago and back where this situation is not
13 addressed. It's assumed in these agreements
14 that the PROs are paying through the 50
15 percent writer's share to the writers. And I
16 think you have an administration issue, as
17 well, that publishers would have to start
18 dealing with on their end in terms of how
19 their accounting, and even their own systems,
20 whether intentional or unintentional. I think
21 as a practical matter it's been a historic
22 assumption that the writer receives their 50

1 percent of public performance income from the
2 PROs and I think you have an administration
3 issue.

4 And then just in terms for their
5 interaction in the community, I think that
6 BMI, ASCAP and SESAC, especially here in
7 Nashville -- and I can speak to that -- play
8 a substantial role in artist development and
9 both artists as in artist-writers and in
10 individual songwriters in the development of
11 their career. This week, I believe starting
12 tonight, BMI has a stage outside of the arena
13 for CMA Fest where they are featuring all of
14 their up and coming writer-artists, and they
15 do things like Road to Bonaroo where it's all
16 about developing those artists.

17 And I think as publishers,
18 especially, and record companies have seen
19 their income going down and their ability to
20 engage in artist development really taking a
21 hit based on the economic hit that they've
22 taken, the PROs have really stepped up,

1 whether they have the income or not, to really
2 help foster that community. And I know
3 especially here in Nashville there is a great
4 amount of respect for the role that the PROs
5 play in the development and creation of
6 musical compositions here.

7 MR. DRISKILL: I will say they
8 have to go out and get sponsors.

9 MS. SCHAFFER: They do.

10 MR. DRISKILL: They try to not
11 spend their own money or spend their members'
12 money, they get sponsors to do that.

13 MS. CHARLESWORTH: Okay. Just to
14 put a finer point, so you're saying at this
15 point people are starting to negotiate
16 contracts which allow --

17 MS. SCHAFFER: Not to get into too
18 many details, I'm just saying that it's a
19 reality now that this discussion is going on
20 about things pulling out or not, so it's
21 something that, I think, as lawyers we're
22 having to start to consider what does that

1 look like or how do we address it.

2 Traditionally this wasn't even a thought
3 because we always assumed that the PROs would
4 always be paying out the writer's share of
5 public performance income, so I just think as
6 an administration matter it's not something
7 people have had to deal with.

8 MS. CHARLESWORTH: So just to be
9 clear, the idea would be if the PROs weren't
10 doing that, the money would be flowing through
11 the publisher.

12 MS. SCHAFFER: Correct. The
13 publishers directly collecting the public
14 performance income, then you deal with the
15 issues like Mr. Coleman was talking about --
16 or maybe it was Mr. Driskill, or whoever it
17 was saying are you cross-collateralizing
18 different income streams. And some of it is
19 just based on, I think, traditionally the way
20 they've collected and distributed the income
21 related to those compositions, and so I just
22 think it's a practical issue that will have to

1 be addressed if the PROs don't continue.

2 MS. CHARLESWORTH: And I have one
3 more question for you, and maybe Mr. Mosenkis
4 too. Assuming the PROs are still there but
5 there's direct licensing. Let's say the
6 digital rights are pulled out and there's
7 direct licensing by publishers, in your view
8 would the future be that those royalties still
9 went through the PRO, the writer's share with
10 the publisher's share going directly to the
11 publisher, or do you think everything would
12 flow through the publisher, or is there no
13 good answer to that question?

14 MS. SCHAFFER: You mean if the
15 majors are pulling out their digital rights?

16 MS. CHARLESWORTH: Right.

17 MS. SCHAFFER: I mean, I think at
18 that point it's all flowing through that
19 publisher that has pulled out -- I would
20 assume. Now, I do know that some of the PROs
21 have taken to the administration of those
22 rights; even if they are pulled out, they're

1 still administering them. So I think those
2 are getting into the details of -- and Mr.
3 Mosenkis can speak more to this -- what their
4 agreements are with those publishers.

5 MS. CHARLESWORTH: Okay. Thank
6 you, and I'm sorry, I do put people on the
7 spot, and I apologize. I'm just curious to
8 know, since you have been working in this
9 area.

10 And Mr. Mosenkis, maybe you can
11 comment further on this.

12 MR. MOSENKIS: It's not my milieu,
13 actually, the details of those administration
14 agreements, but because the majors couldn't
15 process it, they really did rely on ASCAP and
16 BMI just continue doing what you're doing.
17 Essentially, they went out and negotiated the
18 license and the back-end result was done in-
19 house. And I would actually foresee that
20 there might be other private companies, the
21 MRIs of this world, trying to get into that
22 business and compete, but that's what it's

1 about, it's about competition. If ASCAP and
2 BMI are great at it, ASCAP has been doing it
3 a hundred years, I'm confident that they can
4 continue doing it well for them, but that's
5 how it would work, I would think.

6 The one thing I did want to bring
7 up -- and maybe this is the wrong city -- is
8 film composers, and hopefully they'll be
9 represented in Los Angeles when you're out
10 there, but the one thing for them is they
11 negotiate contracts up front and they get paid
12 an up-front fee, it's usually very small,
13 particularly when there's a lot of competition
14 now with these film houses, jingle houses and
15 libraries, and in their contracts they're
16 expressly given their performance rights
17 through their PROs.

18 So they know, okay, I'll do a deal
19 up front, a hundred bucks or whatever -- if
20 it's a network, a thousand bucks -- to write
21 the compositions up front for the film, for
22 the TV show, but I know if that's a hit,

1 that's where I'll make my money and I know
2 that's where my income is coming from ASCAP
3 and BMI when that show is performed on first
4 run, on syndication, on airplanes, in China or
5 in France, that's where I'm making my living
6 and that's how I'm making my living. Without
7 the system of the PROs, there will be no film
8 composers, they will be driving cabs, becoming
9 lawyers, possibly. Unfortunately they will
10 not be composing, and that's a big problem.
11 Hopefully you'll get a little bit more
12 information in Los Angeles about that.

13 MS. CHARLESWORTH: I hope we will.

14 Mr. Kimes, you've been picking up
15 your placard and turning it down. I feel like
16 you want to say something. We're running out
17 of time, so please, if you have a final
18 thought, we'd welcome that.

19 MR. KIMES: Again, if you've got
20 majors wanting to pull out, I sat here for two
21 days and I'm wondering why somebody hasn't
22 asked the question why are they wanting to

1 pull out. They're not satisfied with what's
2 going on with the PROs. I'm telling you, we
3 had a meeting here on the Row a few weeks ago
4 and there was a lot of writers, some
5 publishers and some different people there; no
6 one is satisfied with what's going on with
7 ASCAP or BMI, they're just not satisfied, and
8 that's the problem.

9 And I understand that Sam acted a
10 little bit scared there, and I understand
11 that, that the big guys pull out and it's us
12 little guys, we're the ones that's going to be
13 taking the hit. We're already taking a hit.
14 I have people today say: How in the world is
15 Royal Wade Kimes still doing it? Well, I'm a
16 pretty good operator or I wouldn't be. And we
17 learn how to cut some corners and do some
18 things and fight the fights that need to be
19 fought, and the ones that we're not going to
20 win, like you guys, we usually don't fight
21 because we can't win it. But if we get a
22 chance to have our voice heard, we like to

1 have it heard.

2 But that's the problem, people are
3 not satisfied, the whole realm, and therein
4 lies our problem, the oversight is just not
5 there. I mean, I'm sitting here right now,
6 I've got a thing in front of me here, here's
7 where I've gotten paid one penny for my song,
8 several times. When you get a check that says
9 8 cents on it, that's not very good. Bette
10 Midler just put out a deal that she got paid,
11 for 4 million streams, \$114. I got paid \$101
12 this month. So somebody is not doing their
13 job and that's why the big guys are wanting to
14 pull out.

15 MS. CHARLESWORTH: We have run
16 officially quite over. Mr. Turley-Trejo, did
17 you have something very quick to say?

18 MR. TURLEY-TREJO: I just want to
19 say that I would hope we can figure out how to
20 keep it all under one blanket collective
21 organization, because from a licensee
22 standpoint, it would just create quite a bit

1 of chaos -- maybe not chaos, but it's already
2 difficult to try and get all the licenses that
3 you need. And so I think if there's some way
4 to help with the oversight or with changing
5 the system to get the rates up where there
6 could be more fair market rates so that way
7 people are happy. From a license standpoint,
8 I want to say I definitely would love to see
9 that.

10 MS. CHARLESWORTH: Okay. Well,
11 thank you all. I'm sorry we kept you more
12 than a few minutes late. This is a very, very
13 significant topic.

14 I guess we'll start our next panel
15 at 10:35, so we'll start the next panel five
16 minutes late so people have a little bit more
17 of a break. Thank you. See you soon.

18 Session 7 - Industry Incentives and Investment

19 MR. DAMLE: The next panel is on
20 sort of a broad topic which is industry
21 incentives and investment, and basically the
22 question of how current challenges in

1 licensing are affecting the ability of
2 creators to develop new projects and for
3 publishers and record companies to develop new
4 talent, and the challenges faced by services
5 in delivering music to the public. So because
6 it's a broad topic, I'll start with an
7 appropriately broad question which is how
8 licensing issues are affecting the ability to
9 bring music to the public, both on the creator
10 side, intermediary side, the music services
11 side. So who wants to be the first one to
12 take that on? Mr. Coleman.

13 MR. COLEMAN: Thank you. This is
14 a topic that's very dear to my heart, and I
15 think while I've been quite sympathetic to the
16 licensee position, probably more so than would
17 be expected for a lot of music publishers,
18 this is an area where I feel like the licensor
19 and licensee positions diverge considerably
20 and where the copyright statutes are very,
21 very important in protecting artists.

22 I'll start by saying I'm all for

1 bundling rights in the sense of allowing
2 licensees to quickly and efficiently get
3 rights for songs in the broad sense of that
4 term, whether it's a bundle of exclusive
5 rights to the underlying copyright and the
6 master in a one-stop shop. I think those are
7 all very, very important. What I think is
8 also equally important on the licensor side of
9 the business and in the copyright law is the
10 preservation of sub-economies, I would call
11 them, in the music business.

12 I'll start with the idea that an
13 artist cannot mitigate risk. An individual
14 songwriter, until they've written a thousand
15 songs, and even then, the act of writing music
16 is risky and they depend on firms, music
17 publishers and labels, to mitigate risk for
18 them, to aggregate a lot of rights, diversify,
19 and the practical way that happens is a music
20 publisher will pay an advance, a discounted
21 cash flow, to a writer on future earnings,
22 potential future earnings, and hope that they

1 make it back, like a venture capitalist. And
2 a record label does the same thing with a
3 master right.

4 But what's very important to
5 realize is that the business models and the
6 rewards for music publishers, the risks and
7 rewards are very different than a label. When
8 a music publisher pays a songwriter, they are
9 interested in the prototypical perennial
10 holiday song or love song, no matter who
11 performs it. When a record label invests in
12 an artist, they're investing in the artist's
13 public image, they're investing in a brand,
14 essentially, that's disconnected from the
15 song. And what copyright has done, I think
16 very, very well, is preserved different
17 revenue streams and different methods of
18 earning back an investment.

19 So what concerns me if the
20 discussion becomes too much about ease of
21 licensing is that we end up with the
22 possibility that licensing will be so

1 simplified that we'll have, at the other side
2 of the table from the licensee, a kind of
3 perpetual 360 deal, in the current parlance,
4 which is a company that is very broadly
5 investing in musicians but is not investing
6 specifically in songwriters or specifically in
7 performing artists and recording artists. I
8 think ultimately those kinds of risks, those
9 calculated risks are healthy for the industry
10 and make better art.

11 MR. DAMLE: Mr. Marks.

12 MR. MARKS: So we've obviously
13 been, all of us on the creator side have been
14 operating in a very challenging environment
15 over the last 15 years. I know that you asked
16 for some data so I'm going to try and throw
17 some data out as part of my response to the
18 question.

19 Revenues in the U.S. for the
20 industry have dropped over 50 percent since
21 Napster came along, so you've had a tremendous
22 amount of decrease in the investments that

1 labels make, and I can only really speak for
2 the labels, obviously. Artists have been
3 dropped, unfortunately, less amount of
4 available artists generally. And so your
5 question was about licensing. I think we've
6 heard a lot and we've talked a lot over the
7 last day and a half about the challenges in
8 the area of musical work licensing and there
9 seems to be a consensus that something needs
10 to be fixed, and how that gets fixed obviously
11 will take some time to figure out.

12 But if you talk to people in the
13 venture capital community, you will hear
14 things like: Getting the licenses, especially
15 on the publishing side, are just too complex,
16 I'm not going to put my money into something
17 where it takes two or three years because I've
18 got to go publisher by publisher, work by
19 work, right by right, share by share, to even
20 put something together to even launch the
21 business, when I can put my money somewhere
22 else.

1 So I think we need to continue to
2 have the conversation about how to improve the
3 licensing so we can get more investment into
4 services that bring the music that artists and
5 songwriters create to consumers in the way
6 that they want to do it.

7 As we discussed a little bit
8 yesterday, that's happening in much more of an
9 iterative quick process than it ever has in
10 the past. Format or product shifts in the
11 past have been every 10 or 15 years, whereas,
12 now they're every 10 or 15 weeks or months.
13 We've seen in our industry, on the label side
14 at least, we're now two-thirds digital in
15 terms of our revenue, we were zero digital
16 less than 10 years ago, and are now two-thirds
17 digital, and more than 20 percent of that is
18 from streaming models.

19 So we've gone through three
20 different transitions in a very short period
21 of time, the physical digital, then we had the
22 PC/mobile and now we're seeing download

1 streaming take place, and so we need to be
2 nimble enough to deal with those kinds of
3 changes that are going to continue to occur
4 over the next 5 and 10 years and on into the
5 future.

6 And I've got some other specific
7 data about what record companies do and what
8 they've invested and how much they've invested
9 and how their costs have continued to increase
10 without their operating margin continuing to
11 increase. But I'll save that later so others
12 have a chance to talk.

13 MR. DAMLE: Thanks. Mr. Knife.

14 MR. KNIFE: I appreciate a lot of
15 the things that Steve said. I think the data
16 points that his organization have issued
17 recently, and also, as well, music publishers
18 and the PROs, in particular, is that the music
19 industry as a whole is, if not actually on a
20 positive upswing, it is at least stabilized.
21 So we've had the effects of a lot of things,
22 the digital revolution, including also just a

1 general depression of the United States
2 economy over the last 5 to 7 years, and what
3 we're seeing, thankfully, is an increase in
4 revenues at the PROs, for the music
5 publishers, and in many respects, for the RIAA
6 -- I'll put on my PR hat for a minute --
7 thanks, in large part to my members and other
8 similarly situated companies.

9 But I agree with what Steve was
10 saying about the fact that the complexity of
11 the licensing absolutely chills investment.
12 Many of my companies can afford to be in this
13 business because it's an attractive business
14 to be in for a lot of reasons and they have
15 revenue from other endeavors that are not
16 music-related. And that's a good thing, I
17 think, both for creators and for consumers
18 because they continue to provide products that
19 consumers want and continue to generate
20 revenue for musicians, while it's largely an
21 unattractive business proposition as a stand-
22 alone.

1 And just as a final point to that,
2 I think it's important that as we have these
3 discussions about incentives, revenue,
4 industry data points in terms of what kind of
5 money is being made, we need to decouple the
6 vernacular about things like market share and
7 how much particular CEOs of digital companies
8 might make because Wall Street is going wild
9 on their stock, when their actual company has
10 never generated a profit.

11 So I think it's important to kind
12 of separate those ideas. There are a lot of
13 people in a lot of positions that make large
14 sums of money based on a whole bunch of
15 factors, not necessarily related specifically
16 to exactly how much money is flowing through
17 the music marketplace and these licensing
18 schemes that we've been talking about

19 MR. DAMLE: We'll go to Ms.
20 Schaffer, and then Mr. Johnson.

21 MS. SCHAFFER: I think we've all
22 acknowledged over the course of the last two

1 days that the current licensing system is not
2 working and that it's not efficient, and so I
3 think we can start with that baseline in that
4 we would all like to see more efficiency, we
5 would like to get the music to consumers, we
6 would like consumers to pay reasonable rates
7 for it or for there to be a compensation
8 through ad revenue, or whatever the case may
9 be. But we likewise can't separate that
10 discussion from the importance of
11 incentivizing creation itself of music.

12 I think it's the Nashville
13 Songwriters Association motto is that all
14 begins with a song, and I think, at least in
15 Nashville and in having these discussions with
16 current and former record company executives
17 and current and former executives in music
18 publishers, everyone seems to have that same
19 some of the songs are not the kind of songs
20 that we've traditionally had or wanted, and I
21 think some of that is that we're losing a lot
22 of the investment on the song side of

1 developing that songwriter and incentivizing
2 those great songwriters to stay in this
3 market.

4 And we've talked about that
5 arising for various reasons in terms of there
6 not being a fair market rate and we're setting
7 the compulsory license, or there not really
8 being a free market at all to determine what
9 that license should be. The fact that the
10 consent decrees are in place and PROs can't
11 adjust what they're asking for in terms for
12 streaming revenue to make up for the fact
13 that, like they said, downloads, for the first
14 time, off of iTunes are down, and so they're
15 seeing a decrease in mechanical income now and
16 so that has to be made up in some way.

17 There are no audit rights, so even
18 when we are going through and have a situation
19 where there's licensing, songwriters don't
20 even know that they're getting paid what they
21 should be getting paid because there's no way
22 to go back and double check and make sure that

1 the monies that should be paid are actually
2 coming through and that it's accurate.

3 And truthfully, what is occurring
4 is that we are impoverishing, essentially, a
5 whole generation of songwriters and a whole
6 community that has traditionally existed, and
7 those songwriters who used to make a living
8 writing great songs and living off of maybe
9 those advances and those regular payments
10 until they had several hits that really
11 started generating revenue are now going back
12 to being waiters or waitresses or moving to
13 other types of jobs and honestly moving out of
14 this industry.

15 Now, I personally will be the
16 first to acknowledge that I think everyone has
17 to look at what their business model is and
18 how it is that they are generating income,
19 just like publishers have started looking into
20 the production side of things and trying to
21 generate revenue on the production side of
22 things, just like record companies have looked

1 to 360 models which in many cases it likely
2 makes sense because of the investment that
3 goes into that brand.

4 But I think we can't forget, as I
5 pointed out yesterday, that we're talking
6 about two separate rights: sound recording
7 and the musical composition. And without that
8 musical composition and someone there to
9 create a great song, who may not be a good-
10 looking, great singer to be able to go out and
11 perform that song, you're losing an entire
12 creative community if you don't compensate
13 them and make them feel like their works are
14 valued.

15 And so just like I think we all
16 have to look ourselves, as a publishing
17 industry and as a songwriting industry, what
18 are other ways that we can supplement our
19 income or bring value to that, I think that
20 some of the digital companies likewise have to
21 take a look at what their models are and does
22 it make sense, if they want to distribute

1 music, is their model one that can support
2 licensing music and paying a fair rate for
3 music.

4 And yes, I think there is a
5 balance for those startups and how do we find
6 that balance between getting a company off the
7 ground, but I think it's really important in
8 looking at those incentives that we have to
9 have rates that keep that creative content
10 going, because without the songs you don't
11 have the sound recordings, and without the
12 sound recordings Pandora is an empty box with
13 advertisements, and probably not even
14 advertisements because who wants to look at
15 ads when you're not looking at content.

16 And I think if you look at it in
17 that most basic sense of without the song none
18 of this comes in, then I think you could
19 really start to evaluate the value of the
20 underlying copyright to figure out how do you
21 incentivize the people who are creating the
22 most fundamental aspect of this industry.

1 MR. DAMLE: Mr. Johnson.

2 MR. JOHNSON: I could not agree
3 more with what she just said, and that is the
4 best talk I've heard, it really is, and it's
5 the most important thing that you can
6 concentrate on.

7 I moved here in 1996 when the Row
8 was happening, there were thousands of
9 songwriters, publishers occupying all these
10 buildings, and over the past 15 years it has
11 died and it's a carcass of what it was. And
12 what she's saying is absolutely true. I wrote
13 a song called "Still Pissed at Yoko" with a
14 guy named John Colgin: he's one of the
15 greatest writers I've ever heard in my life.
16 I write with Dewayne Blackwell who wrote
17 "Friends in Low Places" and "Mr. Blue" and
18 Dewayne says my favorite lyric writer -- and
19 Dewayne's a genius -- is John Colgin. John
20 Colgin just moved back to Texas where he's
21 from and he's selling magazines to hotels, and
22 he's a genius songwriters. All because of

1 streaming, all because of YouTube, all because
2 of Sean Parker and Spotify, and all because
3 copyright really doesn't work, quite frankly.
4 So you're just killing us, you're killing
5 songwriters.

6 And I told you I spoke to a major
7 record CEO the other day, and his topic was
8 the whole industry killed not one, but several
9 generations of songwriters, just wiped them
10 out, and there's nothing we can do. Unless,
11 we get some kind of "streaming account" where
12 we pay \$2, \$3, \$4 for each song. People are
13 going to have to start to have to pay for
14 songs, period.

15 So here's the music industry, the
16 collective whole, this is the shiny Grammy
17 lobbyist version.

18 MS. CHARLESWORTH: Once again I'll
19 note for the record that Mr. Johnson is
20 holding up another -- it's not a chart, it's
21 a graphic, we're going to call it a graphic.
22 It is also colorful.

1 MR. JOHNSON: It's a Russian
2 nesting doll, if you're not familiar with it.
3 Here are the little pieces inside the Russian
4 nesting doll. See this little guy here, he's
5 the songwriter, he's holding up all of this.
6 So here's Google, here's Spotify or Pandora,
7 so forth and so on, here's the songwriter,
8 here's the federal government right here.

9 MS. CHARLESWORTH: Are we the
10 biggest one there? Just want to make sure.

11 (General talking and laughter)

12 MR. JOHNSON: Here's the PROs over
13 here, here's SoundExchange which calls itself
14 a PRO, and ASCAP and BMI and so forth. But
15 here's the little songwriter and we hold all
16 this up, we support all of you, and it does
17 begin with a song. And right now we've got
18 some of the worst songs I've ever heard on the
19 radio, they're horrible, they are mind-
20 numbing, and you watch the show "Nashville"
21 and you go: Wow, why can't those songs be on
22 the radio. "Nashville" is a TV show that's

1 got some incredible songs. So back to your
2 thing about incentives, and when we first met
3 last year at the Grammys on the Hill, I asked
4 you, "where is our 9.1 cent mechanical?" And
5 you gave me a great answer, I still don't
6 understand it, but when you told me at the
7 time, I had no idea about a lot of things you
8 were saying just because I didn't know. But
9 one thing I said was, "I copyright my songs
10 and I spend \$35, \$60, then the CRB sells my
11 song out the back door. How can you do this
12 when you're supposed to protect my private
13 property?" The CRB sells my song out the back
14 door for .00000012 cents, in effect, once it
15 goes through the BMI laundry machine.

16 I actually went down to go get
17 some other charts than the ones I gave you
18 yesterday but I have the one where it's a
19 million plays for BMI you make a million
20 bucks, according to Michael O'Neil, you make
21 91,000 downloads from a million downloads for
22 the songwriter's split, and then you make \$60

1 for Pandora for a million plays, individual
2 performances. And that is what we must focus
3 on. So I can't copyright this song and then
4 get a million plays on Pandora for nothing.

5 And I'd like to say one more
6 thing. So, I did my two albums, and I was
7 lucky enough to work with the legendary
8 Jordanaires, and I've kept basically what it
9 took for each album, and I want to just show
10 you real quick that there is no incentive to
11 do anything anymore. And when George D.
12 Johnson has to go to Grammys on the Hill last
13 year or has to come to this and beg the
14 federal government, whether as it be my
15 representative's office, Congress or you guys,
16 we're in trouble, because I'm the last guy who
17 wants to do this.

18 So here I spent \$1,900 in 2010
19 paying Ray Walker, who worked with Elvis,
20 along with, God rest his soul, Gordon Stoker,
21 of the Jordanaires, it cost me \$1,900. How am
22 I ever going to pay that royalty back. And

1 then I had to sign an agreement with AFTRA
2 because they're background singers, and of
3 course, AFTRA gets 5 percent, from
4 SoundExchange and all that, but AFTRA lowered
5 their rate for streaming. So after 500,000
6 records I would sell, I'm supposed to pay them
7 another \$1,900 or pay their heirs and assigns
8 or Gordon's widow, and now they've lowered
9 streaming low now I'm going to have to pay
10 another royalty, and that's just garbage.

11 But I want to show you it cost me
12 that much. Here's the thing for the AFTRA
13 sound recording of the session. And then you
14 have the studio.

15 MS. CHARLESWORTH: Mr. Johnson,
16 what I would suggest, at this point it might
17 be appropriate to say I think we will be
18 having a reply comment period for those of you
19 who might be interested, and so what I would
20 suggest, Mr. Johnson, since I think a lot of
21 this is not in the written record, is that you
22 consider submitting it with reply comments if

1 you'd like it to be in the record. Because we
2 don't really have an ability to take it into
3 the written record as we sit here today, but
4 there will be a future opportunity. And
5 adding to that, we've heard some sort of
6 anecdotal descriptions of the change in
7 songwriters, the decrease in songwriters. If
8 anyone has empirical or statistical
9 information that they could submit, I have
10 seen a little bit here and there, but it would
11 be extremely useful, I think. We often hear
12 this anecdotally, but if there's a way to get
13 some documentation of that into the record
14 through the reply comment process --
15 particularly, I think, I hear this most often
16 in Nashville -- it would be very helpful to us
17 as we analyze this problem.

18 So Mr. Johnson, if you want to
19 wrap up your comments, and then we'll move on.

20 MR. JOHNSON: I appreciate that
21 and I definitely will enter it into the
22 record. And I just wanted to add there's

1 singers, background singers, and of course,
2 there's the players that go through the music
3 union, and that's probably four, five, six,
4 seven grand, and then, of course, you have
5 studio costs, whether you go to Quad or
6 Blackbird. But you have all these ancillary
7 costs -- and I'll shut up after this -- you
8 really have the catering, the second engineers
9 or the engineers, and you have these costs
10 that go on just to support demos.

11 I'd like to enter into the record,
12 and just for everybody to know, it's a pitch
13 sheet, and there's a great quote by Stanley
14 Gortikov -- I can't pronounce his last name --
15 who was head of the RIAA, and he had a quote
16 in 1971 about, "The pirate skims the cream of
17 what artists and record companies offer except
18 for one particular ingredient, which he avoids
19 like the plague our risks." Testimony to House
20 Committee on the Judiciary in 1971. We go and
21 do demos, spend all this money, get a pitch
22 sheet, and it doesn't cost the labels a dime,

1 and now we're getting paid nothing, have no
2 say in our negotiation. So I'm just trying to
3 get you guys to understand all the stuff we've
4 got to go through. It's unbelievable the
5 amount of work that goes into it, and you
6 think, oh, he wrote that song in ten minutes
7 and recorded and it was a hit. No.

8 So anyway, I appreciate that, and
9 that's it.

10 I don't know who was next, Mr.
11 Meitus or Mr. Stollman.

12 MR. STOLLMAN: I'll go real
13 quickly. Thank you.

14 I just wanted to take us three
15 people backwards, and from my perspective and
16 from the Florida perspective, reconfirm and
17 reiterate what both Mr. Coleman and Ms.
18 Schaffer said. And I appreciate Dan using the
19 word "risk" at the beginning of his
20 conversation, because I think incentive is
21 largely about risk and there are two folks
22 that need to have incentive: one is the

1 songwriter that you're speaking about and one
2 is the other side of the songwriter's
3 equation, the publisher or the person that's
4 going to be investing in him.

5 And what I'm seeing on the street
6 sort of now, not at the highest levels but on
7 the street level from most of the clients --
8 I'll say, by the way, I'm not sure it's as
9 much a function in Nashville as it is in other
10 places what I'm about to say, and I'm also not
11 100 percent sure, I don't think you can
12 allocate it all to the licensing process, I
13 think it's also allocable to the state of the
14 industry process -- what I'm seeing on the
15 street is that the risk is just not being
16 taken, in a lot of places, on the part of the
17 companies that are investing in the writers
18 that are going to create the art. And they
19 are reducing their risk by investing in sure
20 things, as opposed to investing in developing,
21 as you said, writers or a good catalogue of
22 undiscovered songs.

1 Most of the deal-making that I'm
2 working on -- and that's what I do is deal-
3 making -- is just following the money, it's
4 just when there is some success you will have
5 somebody willing to invest in you. And until
6 you have what looks like some success, that
7 investment, that risk-taking on the part of
8 that publisher just isn't there. They only
9 want to pay you your money once it's partly in
10 great.

11 So it has to be chilling the
12 creative process on the writers. There's very
13 little an incentive, or less incentive,
14 anyway, to write great songs that only their
15 family will hear because the companies that
16 they're doing business with are just not
17 willing to take a shot at the development of
18 that writer, as much today. Now, maybe that's
19 not as true in Nashville as it is in other
20 places.

21 MR. COLEMAN: May I add just a
22 little corollary?

1 MR. DAMLE: Sure, Mr. Coleman.

2 MR. COLEMAN: That's a fantastic
3 point, and I would say that that's also the
4 essence of where licensees and licensors
5 diverge in their business models. Licensees
6 have the luxury of backing winners all the
7 time. We talked to Mr. Sellwood yesterday
8 about the idea that if you're a large firm
9 licensing a lot of music, you want to go to
10 large licensors and start there and do as good
11 a deal as you can.

12 From our position as investors in
13 art, we have to take risk on the unknown, and
14 the Copyright Act, in some sense the statutes
15 have to protect our ability to do that. So
16 this is what I see as the danger in bundling
17 of rights is that we blur the kinds of risks
18 that different firms take in the industry.

19 MR. DAMLE: Thanks. Mr. Meitus.

20 MR. MEITUS: So I'll remain
21 consistent in voicing support for the original
22 creators to go back to the Copyright Act. We

1 know that that's what copyright law is
2 initially concerned with, not so much looking
3 at new digital platforms and such but looking
4 at supporting the creators of songs and sound
5 recordings in the original instance, the
6 performers and the producers. So if you look
7 at all of copyright law, you'll see that there
8 are certain equities built into it to support
9 the creators, and we know that 114 and
10 SoundExchange and the outgrowth of that, is a
11 very real income stream for the feature
12 performers and the unions. That is something
13 that I think should be taken very seriously in
14 the whole scheme of things to see what else in
15 copyright law, as it evolves, can support
16 creators at the initial phase.

17 ASCAP, SESAC and BMI we've seen
18 pay public performance royalties one-half to
19 the original creators, usually, the writers.
20 We also see the termination rights supporting
21 and incentivizing creation through 203 now
22 that is coming into play. We'll talk more

1 about that maybe more with pre-72 recordings
2 and how I think that should extend. So as
3 copyright law evolves and a full performance
4 right and sound recordings extends to
5 terrestrial radio, perhaps, we see ways in
6 which you can game the system for the creators
7 and not allow the major labels, and the
8 publishers to some extent, but the major
9 labels to create opaque systems that are
10 inequitable, largely. We don't know what
11 large payments are being received often by
12 labels in their deals with digital
13 distributors. We don't know exactly, although
14 in some cases we do know, the equity shares
15 that they own in these platforms and how they
16 will benefit when those platforms and those
17 companies go public. But we do know that
18 these contracts, the lawyers who work for the
19 artists, do know that there are clauses in
20 these artist contracts that state that the
21 artist will not share in any of those
22 earnings, and at every turn we will see in

1 those contracts those incomes being shared at
2 a 10 to 15 percent of wholesale rate rather
3 than a 50-50 net share.

4 There are the Performance Rights
5 Act of 2009 and such types of proposed
6 legislation that would move towards more of a
7 50-50 split of new revenue shares, but what
8 we're seeing is clearly it's going to be a \$50
9 billion or a \$100 billion industry, again,
10 like I said, Mark Geiger pointed out, I think
11 we all agree it's going to go back up, and
12 when that world happens and Beats and Spotify
13 and ten new services are streaming and the
14 gross revenues are equal or above what it used
15 to be are we going to see a world in which
16 artists, and songwriters for that matter, are
17 sharing in less and less of a share of that
18 net revenue. I hope not.

19 But my point I just want to say is
20 that copyright law revisions can support the
21 original creators, the artists and the
22 writers, so that the publishers and the labels

1 do not get an inequitable share of the new
2 money that's going to be coming in. And
3 statutory licensing and the consent decrees,
4 all of that, however it gets worked out, needs
5 to keep in mind, first and foremost, who are
6 creating these works.

7 MR. DAMLE: We'll go to Mr. Marks
8 next.

9 MR. MARKS: I actually have a
10 couple of responses, if you don't mind, just
11 to keep the train of thought.

12 So to get to some of my statistics
13 and talk a little bit about what labels have
14 been doing over the past decade, almost \$25
15 billion invested to create recordings, and
16 when you look at a P&L, if you took a P&L for
17 a current year, for example, or a year or two
18 ago, the talent-related expenses were 46
19 percent of the label's total revenue which are
20 well more than four times what the label gets
21 in operating revenue. As a percentage of
22 revenue, artist royalties have increased 36

1 percent over the last decade, publishing
2 royalties have increased about 44 percent over
3 the last decade. So the trend has certainly
4 not be that artist royalties are going down as
5 a percentage of what labels are getting, but
6 it's the opposite.

7 I'm not sure what deals you were
8 referring to. I know that our members share
9 advances and other things that come in that's
10 not traditional money with artists. I know
11 that there's also a lot of times where the
12 label itself is investing its own money in one
13 of those services, separate and apart from any
14 kind of deal that's done with regard to the
15 content. You know, these are all individually
16 negotiated deals, so they're not public
17 documents that we can all see, they're not
18 even private documents that I see.

19 I, therefore, don't think we
20 should base things on speculation or rumor or
21 whatever, but rather maybe looking at some of
22 the hard data that we've got in terms of

1 what's driving investment and who's putting up
2 dollars to drive investment for creation of
3 the sound recording which is ultimately the
4 finished product that consumers demand. Yes,
5 it starts with a song, but the song on a piece
6 of paper and lyrics, or as it's written, no
7 matter how great it is or how much genius has
8 gone into it, it's not going be heard unless
9 it's through the medium of a recording.

10 And labels don't even share in a
11 lot of that revenue when you look at the fact
12 that terrestrial radio, TV revenue, et cetera,
13 there's over a billion dollars that ASCAP and
14 BMI collect from sources that we get zero on,
15 even though what they're paying for is the
16 playing of the sound recording on the radio
17 station.

18 So there is no question but that
19 writers and publishers need to get fair value
20 for the work that they have, but I think we
21 should look at the role of everybody in the
22 system. And I don't think that defaulting to

1 compulsory license systems helps anybody. It
2 has a perverse incentive when it comes to
3 investment, because as we've all seen, they
4 tend to depress rates, not increase rates or
5 give fair value. And if that's what continues
6 to happen and you have 50-50 splits on
7 whatever money is coming through there, you're
8 going to have 50 percent of a lot less than
9 would otherwise be coming into the system as
10 a result of the fact that there's more
11 investment and more dollars to invest.

12 MR. COLEMAN: So are you saying
13 you don't like Section 115? Compulsory
14 licensing depressed rates so you should be
15 paying more in mechanicals?

16 MR. COLEMAN: But you'd like to
17 see more.

18 MR. MARKS: No. Think we've been
19 very clear that the rates, especially on the
20 performance side, that the rate court has set
21 are not fair, and we've proposed a solution
22 for giving a percentage of what we earn to

1 publishers so it's part of what's negotiated
2 in the marketplace and not what's driving by
3 a CRB or a rate court.

4 And finding that equitable share,
5 which is what publishers and songwriters have
6 been calling on certainly for the past year,
7 using Pandora as the example, is something
8 that we said, Okay, let's do it, let's figure
9 out what that is, let's ensure that all the
10 money is coming in from marketplace agreements
11 instead of compulsory licenses or rate courts,
12 and that pie will grow much faster and we'll
13 all make a lot more money. And we can deal
14 with the issues of equity and advances and
15 those kinds of things to make sure that it's
16 trickling down to everybody that it should in
17 a fair way, because that's important.

18 The other thing that I wanted to
19 just say here is as a general matter I think
20 we need to, as an industry, get away from this
21 creator versus technology dichotomy that tends
22 to exist and is perpetuated by a lot of the

1 comments, and sometimes just by the
2 frustration of how the current system is
3 working. But there is an interdependence
4 between technology and creators, and I would
5 say that technology companies are also
6 creative, and creators are also doing a lot
7 with technology, so even using those monikers
8 isn't a very good thing to do.

9 But these companies and all of the
10 labels and the publishers and the songwriters
11 and the artists, we should be figuring out how
12 to work together on this because their success
13 and our success are intertwined. And getting
14 back to the licensing, the first question you
15 said, that's one reason why we should be
16 taking the inefficiencies out of the system so
17 that there's more money left for everybody,
18 including the companies that are bringing
19 these services to consumers, as well as those
20 who create the compositions and the
21 recordings.

22 MR. DAMLE: Mr. Marks, could I

1 ask you to clarify one aspect of the RIAA's
2 proposal, which is when you talk about
3 eliminating the CRB, are you talking about
4 eliminating it for 112 and 114, as well?

5 MR. MARKS: No.

6 MR. DAMLE: So how would the
7 process work under your proposal for
8 compensating songwriters?

9 MR. MARKS: It would be a
10 percentage that would flow from that. You'd
11 have one license that would -- they would get
12 a percentage of whatever the ratio is of the
13 monies that come in from that. You'd have to
14 build in the fact that it's not just for the
15 recording but for the musical work as well

16 MS. CHARLESWORTH: But you would
17 maintain the 112 and 114 statutory licensing.

18 MR. MARKS: I guess you would have
19 to add to it that the musical work is being
20 paid for as part of it so that you're not
21 losing the value of that separate copyright.
22 But we didn't suggest to abolish 112 or 114.

1 MR. DAMLE: And just to follow up
2 on that, and so do you envision, just in terms
3 of the process, that the NMPA and the music
4 publishers would be involved in the rate-
5 setting process before the CRB, they'd be
6 participants in that process?

7 MR. MARKS: Something that we can
8 discuss. I haven't thought to that level,
9 that detail.

10 MR. DAMLE: I'm not sure who was
11 next. I'll go to Mr. Knife, and then maybe
12 we can come back around.

13 MR. KNIFE: I apologize, Steve,
14 but just a couple of points of clarification.
15 I'm just not entirely sure on where the RIAA
16 proposal goes on 115 in terms of the statutory
17 license. I think I get what you're saying
18 about the idea that there would be a privately
19 negotiated, whatever you want to call it,
20 ratio participation, but does the proposal
21 include still that there would be a compulsory
22 license? What happens if you don't arrive at

1 a ratio split and a rate agreement? I mean,
2 are compositions still compulsory available or
3 not?

4 MR. MARKS: The two parts of it
5 are, hopefully, we reach some kind of
6 agreement among our industries about what the
7 right ratio is, and we construct a system that
8 has a blanket license on the musical works
9 side that aggregates rights, aggregates
10 shares, aggregates works so that it works more
11 efficiently, like Sam was explaining the ASCAP
12 blanket license works, and songwriters and
13 publishers can pick whoever they want to have
14 that money. It would have flow directly from
15 your members, their piece of it to them, based
16 on whoever they choose to have collect and
17 distribute that.

18 MR. KNIFE: But ultimately no opt
19 out.

20 MR. MARKS: That's right. And we
21 recognize that's an imperfection in the
22 proposal, but there's a balancing, we think

1 it's better than the current compulsory
2 license which also doesn't allow an opt out,
3 and it will end up with making it easier, and
4 therefore, having more money flow in, to both
5 songwriters and publishers and getting them
6 out from under the CRB and the rate court
7 which is the biggest problem that exists, I
8 think, on their side.

9 MS. SCHAFFER: But the proposal is
10 to expand it. Correct?

11 MR. MARKS: To include, yes, what
12 we would call the modern music release which
13 does include video, yes, for certain types of
14 video products.

15 MR. KNIFE: One more question. I
16 think I heard you say when you were going
17 through some of your data points that the
18 total label costs, the percentage of your
19 revenue for artist costs is something like 44
20 percent or something like that.

21 MR. MARKS: Talent-related costs,
22 46 percent.

1 MR. KNIFE: Forty-six percent.

2 MS. CHARLESWORTH: Steve, that
3 statistic refers to the investment in talent
4 and not royalties, or does it include both?

5 MR. MARKS: It's advances and
6 royalties.

7 MR. DAMLE: So it includes
8 investment, meaning, typically, advances and
9 royalties.

10 MR. MEITUS: So just to be clear,
11 that's an all-in advance which, in almost
12 every record deal, is used almost entirely for
13 the recording of the product then. So you're
14 saying it's paid to the artist, but just to be
15 clear, it's actually creating the sound
16 recording.

17 MR. MARKS: Yes, but nine out of
18 ten times it's a failure

19 MR. MEITUS: That's fine, but
20 you're calling it an artist-related cost, but
21 the artist is not taking home but a small
22 slice of that as an advance, sometimes zero,

1 and sometimes more, but that's on a case-by-
2 case basis. But that is an investment in the
3 product which you claim to own as work for
4 hire -- you can debate that, but you do have
5 it for at least 35 years. And so it's not
6 going in the artist's pocket, just to be
7 clear, it's going to producers, to recording
8 studios, to all kinds of things to make the
9 product.

10 MR. MARKS: Some of that money,
11 yes, would be going to those things.

12 MR. MEITUS: Most of that money.

13 MR. MARKS: Well, depends on the
14 deal and what you're looking at in the
15 aggregate.

16 MR. MEITUS: But those of us who
17 see those deals and know on an intimate basis,
18 know that most of that money goes not in the
19 artist's pocket. I just want to be clear

20 MR. MARKS: Well, depends what
21 deals you're looking at. We did a study of
22 artist contracts that showed that every single

1 artist, every single artist signed to the
2 major labels in the 1990s, who had a gold
3 record, not a platinum record, not a multi-
4 platinum record, demanded a renegotiation of
5 their deal.

6 Now, imagine going to a VC and
7 saying to them we want to redo the deal we did
8 because we've hit some success and we don't
9 really like the equity share that we agreed
10 upon at the beginning, notwithstanding that
11 you've invested in nine other people that have
12 completely failed and lost money on those.
13 And we all know when things are renegotiated,
14 the advances, the aggregate amount of the
15 advances that are spent there are a lot of
16 money and do go to the artist.

17 So I don't have the breakdown for
18 you in terms of how much in dollars are
19 related to those, which are the higher money
20 advances versus the greater volume that are
21 the smaller dollar advances, but I think you
22 have to include both and look at it in that

1 perspective. And we don't have a right,
2 really, to enforce an artists saying: I'm
3 sorry, I'm just not going to deliver the next
4 album until you renegotiate my contract now
5 that I have a gold record.

6 MR. COLEMAN: It's a tough
7 business.

8 MR. MARKS: It's a very tough
9 business, which is why we need to figure out
10 a way together to maximize the revenues that
11 do exist.

12 MR. COLEMAN: Have you thought
13 about being a venture capitalist?

14 (General laughter)

15 MR. MARKS: Not in this industry.
16 But George was talking a lot about Spotify and
17 the streaming services, and I know Geiger says
18 \$100 billion business. God bless him if he's
19 right, but I don't see that around the corner
20 any time soon. And the best chance we have of
21 getting anywhere closer, and Lee said earlier,
22 yes, we've stabilized, we're not increasing,

1 we have stabilized, we were down a little bit
2 last year, but if you look over the past three
3 years it's relatively stable, although this
4 year, as some others have mentioned, downloads
5 are down precipitously. Streaming is up, but
6 if you can't get people to subscribe to
7 streaming services and move over in that
8 direction, we're not going to get an increase
9 at all, let alone to \$100 billion. And that's
10 not going to happen if we don't make the
11 licensing process easier.

12 MR. DAMLE: We're starting to run
13 a little low on time so we're going to do a
14 sort of speed round, and I'm going to let the
15 people who haven't had a chance to speak yet
16 speak first.

17 MR. KNIFE: Well, I got cut off.

18 MS. CHARLESWORTH: Put your
19 placard up, Lee.

20 MR. KNIFE: I'll try to be really
21 quick. I had a lot of things I was going to
22 say, but I'll be really quick. Number one, I

1 think a lot of this exchange, unfortunately,
2 while you raise a lot of important points that
3 need to be addressed, I'm not sure that this
4 is the right forum to address them, because
5 they have to do with individual artist
6 contracts and they don't really ultimately
7 relate to the Copyright Act and how it might
8 be amended or could ultimately be amended. I
9 take your point that perhaps there are ways to
10 consider these things but the points that were
11 just made over the last couple of minutes
12 really have to do with individual artist
13 agreements.

14 But I just wanted to point out
15 that I think Mr. Marks basically gave us a
16 percentage of their total content costs that's
17 lower than the total content costs that
18 virtually any of my member companies pay for
19 all of the rights that they need to acquire to
20 engage in this business. So when you take PRO
21 royalties, master recording royalties,
22 publishing royalties, most of my member

1 companies pay well over 46 percent of their
2 total revenue based on their music sales.

3 MR. MARKS: I didn't include
4 marketing or promotion or anything else that
5 relates to the creating of a recording. But
6 that's an industry issue.

7 MR. KNIFE: Right. I'm also not
8 including that, I'm not giving you server
9 costs or bandwidth costs, I'm saying total
10 creative input. My companies exploit creative
11 input, your companies exploit creative input.
12 My companies are paying more for that creative
13 input than your companies are.

14 MR. MARKS: But your other costs
15 may be lower.

16 MS. CHARLESWORTH: Are you two
17 both on the last panel about the future?

18 MR. MARKS: Yes.

19 MR. DAMLE: Perhaps we can save
20 this for the future.

21 (General talking and laughter)

22 MR. KNIFE: Anyway, I think my

1 point relates to the issue of investment and
2 industry incentives. When we talk about
3 things like total content costs, what
4 particular players in positions within this
5 marketplace have to pay for those inputs, as
6 an economic turn, I think it's important to
7 note that there is differences between what
8 we're paying for those inputs based on revenue
9 generation.

10 MS. CHARLESWORTH: And I think
11 this is a really important topic and the last
12 panel, I think, is broad enough to embrace
13 further development of some of these ideas, so
14 if people who are on that last panel have
15 further thoughts, we should certainly continue
16 this discussion.

17 Back to the speed round.

18 MR. DAMLE: Okay. So we'll start
19 with Mr. Gottlieb, Mr. Sellwood and Mr.
20 Barker, and then end with Ms. Buresh, with
21 really quick comments, because none of you
22 have had a chance to speak.

1 MR. GOTTLIEB: You know, I wanted
2 to raise a couple of issues, and sometimes
3 it's difficult to get a 10,000 foot overview
4 of things working in the trenches, and it's
5 been my perception over the years, because,
6 unfortunately, I have more of an affinity with
7 Mr. Johnson than I do with Mr. Marks in some
8 regard because I live on these streets and I
9 live with these people and support them, and
10 I have to make my living doing these things
11 too.

12 So I'm struck by the unfairness of
13 the Safe Harbor provision to small creators,
14 I'm struck by the fact that it renders the
15 copyright owner so impotent to protect their
16 work, and I think that it was perhaps a
17 necessary advantage for the cable companies
18 and the ISPs to develop the infrastructure,
19 but I think it's time that that needs to
20 change. And I think it has stalled innovation
21 at the private level to facilitate
22 intellectual property accounts at the

1 individual level where micro-transactions can
2 be aggregated at the private level and can be
3 marketed at the private level. And that is
4 ultimately where we are heading. We need all
5 these collective bargaining rate programs and
6 initiatives to set those rates but ultimately,
7 if the ISPs go into direct affiliation, as
8 something will need to, because as the
9 fractional shares develop from all these
10 statutory heirs and termination rights, as
11 they shake out, the ability to deal with these
12 smaller and smaller shares of these catalogues
13 which have provided the resources for all
14 these companies, these catalogues, is how we
15 have funded all this stuff. And though we are
16 trying to foster innovation, we forget that's
17 where the money came from, it came from these
18 old big catalogues that financed all this
19 stuff.

20 And I just would like to raise
21 that up as a concern that the safe harbor has
22 been damaging to a certain degree for all of

1 us to be able to protect and to monetize these
2 rights.

3 MS. CHARLESWORTH: And just for
4 the record, you're referring to the DMCA Safe
5 Harbor. Correct?

6 MR. GOTTLIEB: Yes.

7 MR. DAMLE: Thank you. Mr.
8 Sellwood.

9 MR. SELLWOOD: Thank you. Such a
10 target-rich topic, from Mr. Johnson's
11 comments to Mr. Gottlieb's comments,
12 streaming rates to DMCA, we've spanned a
13 million things.

14 Not to be mundane, but I'm going
15 to go back to the investment question. It
16 probably goes without saying that every dollar
17 spent building infrastructures to licenses is
18 a dollar that's not spent elsewhere, to
19 marketing or promotion or anything like that.
20 We all agree that we kind of all need each
21 other and we should be working to get more
22 consumers to subscribe or more advertisers to

1 participate. Then it would be helpful for
2 services like YouTube and any of our
3 competitors to be able to spend dollars
4 promoting marketing.

5 I think YouTube has done a very
6 good job of licensing and we've spent millions
7 of dollars creating staff, acquiring
8 companies, building infrastructures to put
9 licenses in place, and I think as a result of
10 that we're seeing a lot of investment in the
11 platform. It's really exciting to see all of
12 our label and publisher partners and
13 songwriter partners that really believe in and
14 invest in managing and monetizing their
15 copyrights on YouTube. It's really exciting.

16 There's an ROI in it and we're
17 seeing investment. We're seeing investment
18 from mainstream companies like Disney
19 investing in creators and companies on YouTube
20 that are working with creators in order to
21 encourage new songwriters, new musicians, new
22 creators on the platform. And I think a lot

1 of that comes from the fact that we've done a
2 pretty good job of licensing.

3 It's interesting to try to stay
4 out of the argument between labels and
5 publishers, really, as to who invests more and
6 whether it all comes from the song. We get
7 lost in the middle of that a lot and try to
8 stay out of it. I think I've been pretty
9 clear, we're focused mostly on total content
10 costs.

11 But I found some of the comments
12 interesting because on You Tube we're seeing
13 labels invest heavily in compositions and
14 we're managing compositions, and we've seen
15 publishers invest heavily in creating and
16 distributing sound recordings. And so from
17 our limited vantage point, the difference
18 between a label and publisher is really
19 becoming blurred, and if we're an indication
20 of the future of the market, I think the
21 makeup of label trade groups and publishing
22 trade groups might be a lot different a couple

1 of years from now, it might just not be such
2 a clear divided line.

3 And so I think we should all be
4 conscious of that because it's an interesting
5 development. I think it's a positive one.
6 Although, I'm going to follow up with Mr.
7 Coleman with his concerns about it because I
8 found those to be interesting. One other
9 thing is where we're seeing investment, I
10 think there was a press release from Cobalt
11 Music Publishing, they just raised another
12 140-odd million dollars. We're seeing a whole
13 lot of investment in companies that are
14 spending time managing data at a granular
15 level because that's really what is going to
16 drive the content industries a long ways. I
17 think it's exciting to see investment in that
18 area as well.

19 Thank you.

20 MR. DAMLE: Great. Thank you.

21 Mr. Barker.

22 MR. BARKER: Thanks, and I can

1 keep this short, I think.

2 Bottom line -- and I'm going to
3 kind of pull back from the weeds a little bit,
4 and maybe this is too simple of an approach,
5 and I apologize for that, that's the way my
6 mind thinks -- but I'm optimistic, there's
7 more music available than ever before to all
8 people, so I think that's a good thing. Now,
9 I go to what Mr. Marks said which is to say
10 the reality is since Napster came along the
11 music industry has dropped 50 percent -- I
12 think is what you said. Now, I've heard that
13 before. So I'm thinking: Okay, what has
14 happened. I realized that 10 years ago, or
15 when Napster came along, the saying was: How
16 do you compete with free? Well, the solution
17 seemed to become: Well, let's make it almost
18 free. We got a lot of license requests from
19 big services trying to fill that void to say:
20 "At least you're getting paid something; it's
21 small but at least you're getting paid
22 something." So as owners of content we seemed

1 to go along with that to say: "Hey, this is
2 the beginning, maybe, of something where we
3 can at least get something where we're
4 otherwise competing with free." Now we find
5 ourselves today, and what I'm hearing around
6 the table the last couple of days -- and I
7 don't fully disagree with this -- it seems
8 like we're talking about consumers having the
9 right to get 30 million songs at once and
10 we're building businesses based on that.
11 Whereas, 20 years ago if I wanted a record and
12 it wasn't available in a particular record
13 store, I would just have to drive to one and
14 find it; nobody said it was my right to pick
15 it up from that store.

16 I think a basic economic principle
17 is if you flood a market with something, it's
18 going to devalue it. If you flood the market
19 with diamonds, diamond value is going to go
20 down. I'm not saying we need to restrict
21 copyrights, but let's don't be afraid --
22 again, back to Section 115, changing things,

1 letting us negotiate things, letting us
2 withhold certain things -- that perhaps we
3 will eventually drive the value of copyrights
4 and recordings back up to where they need to
5 be, rather than at the present 50 percent of
6 where we were, maybe we can grow that.

7 One of the reports had a statistic
8 of a CISAC 2012 report that said that music
9 licensing growth rate did not keep up with the
10 gross domestic product growth rate in 2012.
11 Well, that's kind of sad that now we're
12 finding our industry not growing at the proper
13 rate or the rate it used to.

14 So I just kind of want to back up
15 and say, you know what, as we're talking about
16 these things and getting into the weeds of a
17 lot of these things, let's don't forget the
18 real value and how we can find that, and maybe
19 it's not making everything available at once.
20 Maybe as we determine what the next look of
21 copyright law is, it also is not competing
22 with free, maybe we focus on policing free --

1 which I know we all are in favor of that --
2 policing free and then understanding the true
3 value of the rights we have and then licensing
4 them accordingly.

5 MR. DAMLE: Thanks.

6 Ms. Buresh, I'm afraid that might
7 be all the time.

8 MS. CHARLESWORTH: Well, we can go
9 over. Are people okay if we go over and then
10 we'll delay a few minutes on the post-lunch
11 panel? Because I want to make sure that we get
12 all the remarks in. But as I said, I think a
13 lot of these issues will also come up in the
14 last panel and we can continue the discussion
15 there as well.

16 MS. BURESH: I'll try to be as
17 quick as possible.

18 As an administrator and
19 representing Big Loud Bucks, Florida Georgia
20 Line is our client. Craig Wiseman runs the
21 company. We've built that company off of the
22 song "Live Like You Were Dying" and many, many

1 others. He sold catalogues to invest in that.
2 I've been with him a very long time and seen
3 his hesitancy to invest in the administration
4 side for licensing which I need to pick up the
5 pace to get more digital and hire somebody to
6 actually make it a more functional licensing
7 system for people to get our songs quicker and
8 faster.

9 As a songwriter, he's built his
10 whole life, his whole career off of being a
11 great songwriter, is hesitant in investing in
12 that because he doesn't know what's going to
13 happen with this right here, what's going to
14 happen with the scope of the industry. He's
15 looking at his P&L sheets, how much am I going
16 to invest and get two cents in return, how
17 much am I going to spend on lawyer's fees, how
18 much am I going to spend on my admin staff.

19 We also have had to get -- well,
20 not had to, but as an administration companies
21 -- which most administration companies in
22 Nashville, a lot of people outsource their

1 admin because they don't want to deal with it
2 on the publishing side, they want the
3 creatives, they want to invest in the
4 creatives, they need to invest in the
5 creatives, they need to focus on those songs,
6 they need to nurture those songwriters.

7 Florida Georgia Line came to us.
8 They got whipped into shape in the studio and
9 look at them now, they're winning awards last
10 night at the CMT Awards, and they're happy as
11 can be. And their next album is going to come
12 out, we hope it has the same success as
13 before, but you don't know in the current
14 marketplace or what's going to happen in the
15 future.

16 I don't know if he's going to be
17 willing to invest in another act on our new
18 label that we have had to create for the 360
19 model. The 360 model was something he kind of
20 had to create with the Big Loud Shirt
21 Industries in order to continue to have a
22 sustainable business and support his

1 administration costs too.

2 So it's frustrating for me to see
3 how he has made his whole life off of
4 songwriting and the rates, we don't know what
5 to expect are going to come in the door, so I
6 can't really function as an administrator to
7 serve the purposes that I want to serve. We
8 need to invest, but I have a songwriter owner
9 who is just hesitant and he needs to see the
10 facts and figures, how much am I really going
11 to make from this, is it worth the time.

12 Thank you.

13 MR. DAMLE: Thanks. Mr. Coleman.

14 MR. COLEMAN: Just very briefly I
15 wanted to register my support for Mr.
16 Meitus's comment that goes against what Mr.
17 Knife was saying about this not being a
18 copyright issue of how artists are ultimately
19 paid. I think it can be very much a statutory
20 issue. I think that the Copyright Act itself
21 can protect artists because really some of the
22 arguments that we're having about risk and

1 reward are about who is out in front
2 collecting and how does a license ultimately
3 trickle down -- I think was the phrase that
4 Mr. Marks used -- to the artist.

5 And this is going against my own
6 best interest as a publisher to say this, but
7 I wouldn't mind seeing the statutes reflect
8 the ability for artists to be guaranteed a
9 share of gross revenue from licensing.

10 MR. DAMLE: Mr. Johnson, yes.

11 MR. JOHNSON: I thought what
12 Heather said was correct, I thought that was
13 great. Craig Wiseman is one of the greatest
14 songwriters of all time. And what we have
15 here is that YouTube, your business model is
16 the most important thing because it's very
17 exciting, we're doing all this, blah-blah-
18 blah, and we don't want to talk about it, or
19 we don't talk about the creative issue and
20 having to pay songwriters. But you're putting
21 me out of business and you're putting Craig
22 Wiseman out of business, straight out, not you

1 personally but YouTube in general because
2 you've not paid for songs.

3 And to what Mr. Gottlieb said is
4 the reason, it's because of that DMCA, it's
5 ridiculous these Safe Harbor provisions. It
6 allows Sean Parker to go into the supermarket
7 and put a steak right here in his jacket
8 because he's in a "grey area" where the camera
9 can't see him. That's still stealing. And it
10 just angers me to no end, between Pandora,
11 between Sean Parker and really YouTube who
12 decimated the Row, decimated it. So we've got
13 to get rid of this DMCA, we've got to get rid
14 of it, it's horrible.

15 And there's a great documentary
16 called "Downloaded" and I suggest you all
17 watch it. It's unbelievable. Hillary Rosen
18 from the RIAA absolutely dropped the ball for
19 all of us. It's got Sean Parker in it
20 explaining exactly how he hides behind the
21 DMCA, and it's chilling, it makes me sick to
22 my stomach. So we've got to get rid of that.

1 I was all for the RIAA proposal until I heard
2 -- which I think is great, let's get rid of
3 the CRB for 115, but why don't you want to get
4 rid of it for 114? It's such a horrible,
5 horrible process. We should be a free market
6 for a sound recording and our mechanical.
7 This is the whole issue, it's phony altruism,
8 phony, phony altruism.

9 MS. CHARLESWORTH: Okay. You know
10 what --

11 MR. JOHNSON: One more thing, let
12 me say one more thing. In 1998 Mitch Glazier
13 went down and they had a bill with the
14 satellite thing, and he was an intern at the
15 time and he snuck in there, that we're going
16 to make all the sound recording side for the
17 artists "work for hire". How great is that,
18 how great is the RIAA when you try to steal
19 our artist copyright? And Bill Clinton vetoed
20 it, Bill Clinton got rid of it, thank God.

21 This is why the RIAA, and
22 especially the Grammys too, should be nowhere

1 near my royalty process. If you want to argue
2 for the pre-72, for the sound recording for
3 radio, you want to argue for the Aretha rate,
4 great. Those were easy, no-brainers. Of
5 course we should have those; we've been
6 debating that for 50 years. But now we need
7 to take care of the songwriters, we really
8 need to, and you're destroying our entire
9 livelihood, and nobody cares. And that's the
10 number one rule of the music business, nobody
11 cares.

12 MS. CHARLESWORTH: Okay. Mr.
13 Johnson, first of all, we're all here today to
14 discuss those very issues.

15 MR. JOHNSON: I apologize.

16 MS. CHARLESWORTH: No, that's
17 okay. Steve, did you feel a need to respond?

18 MR. MARKS: It's that we like the
19 fact that we're under a compulsory license, I
20 think it's safe to say that it's the artist
21 community that wants the compulsory license
22 more than anybody and we are trying to be good

1 partners. We would much prefer, in a perfect
2 world, to get rid of all of that compulsory
3 license too. So there's no gotcha here.

4 MR. JOHNSON: You're always
5 arguing against songwriting, you're always
6 against that. That's why our rate is so low.

7 MR. MARKS: Well, 114 has nothing
8 to do with the songwriters.

9 MR. JOHNSON: I know that, but why
10 you're in a mechanical hearing three years ago
11 blows my mind. Get out of the way of my song,
12 my negotiation. Argue for the sound recording
13 which you're still arguing for me as an
14 independent artist

15 MS. CHARLESWORTH: Okay.

16 MR. JOHNSON: And there's so much
17 garbage involved in the lobbying process,
18 you've ruined it for everybody.

19 MS. CHARLESWORTH: All right.

20 MR. MARKS: By the way, we sued
21 and beat Napster.

22 MR. JOHNSON: I know, but you

1 should have put Sean Parker in jail like Gene
2 Simmons said. He should be in jail right now,
3 not starting another streaming company with
4 virtual piracy, which is what it is.

5 MS. CHARLESWORTH: You know, I
6 think it's probably time to take a break, and
7 that's what we're going to do. And I think
8 we're going to push the next panel 15 minutes
9 and start at noon to one and then we're going
10 to cut out like 15 minutes of our lunch
11 period, and get back on track.

12 Session 8: Pre-1972 Sound Recordings

13 MR. DAMLE: This panel is on a
14 more specific topic which is how to deal with
15 pre-72 sound recordings, and obviously, the
16 Copyright Office, not too long ago, issued a
17 fairly extensive report on the topic and had
18 recommendations, but given that this is a
19 music licensing study, I think one thing we'd
20 be interested in is learning currently what
21 challenges there are under the current law
22 with licensing pre-72 sound recordings, and

1 then also what challenges there might be given
2 under a partial or full federalization of pre-
3 72 recordings.

4 So that's a very broad question
5 and a very specific topic, so I don't know who
6 would like to start with that. Perhaps, Mr.
7 Marks, would you like to start?

8 MR. MARKS: Sure. Just generally?

9 MR. DAMLE: Well, generally, maybe
10 we can start with what the current challenges
11 are with licensing pre-72 recordings, how
12 that's done, what's going on. I know there's
13 state court lawsuits, and perhaps you can just
14 give us an overview of what the current
15 landscape is with respect to those recordings.

16 MR. MARKS: So I guess I would
17 start by saying I hope we all agree that pre-
18 72 recordings, the use of them, the
19 performance of them should be compensated in
20 some way, shape or form, and maybe most of the
21 discussion would be around how best to
22 accomplish that. I don't know whether we'll

1 have agreement on that or not, but these are
2 recordings just kind of arbitrary date that
3 sound recordings received federal copyright
4 protection not until 1972 and for performances
5 not until 1995, and even then very limited
6 performances. But the notion that one service
7 that's using recordings created after 1972 and
8 there's payment for it but there's not prior
9 to 1972 just seems fundamentally unfair and
10 something that should be fixed.

11 We have, as many probably know,
12 launched two litigations to clarify those
13 rights in the State of California and the
14 State of New York. We are also supportive of
15 a bill 114 that services using pre-72 should
16 pay for pre-72 at the same rate that they pay
17 for post-72 works. In terms of
18 federalization, there was a separate Copyright
19 Office proceeding on that, obviously, and our
20 take-away from that is that there are a lot of
21 very complicated issues that need to be
22 addressed, and we as an industry, or at least

1 we and our members are open to sitting down
2 and trying to work through those issues, but
3 we see that as something that's probably going
4 to take a fair amount of time to do, and
5 therefore, things like the bill that was
6 introduced last week, if it could be enacted
7 in a short term would at least address the
8 inequity of having pre-72 recordings go
9 uncompensated.

10 MS. CHARLESWORTH: For those in
11 the room who may not know, it's a short piece
12 of legislation, but do you want to describe a
13 little bit more particularly what it would
14 provide for?

15 MR. MARKS: It mainly adds,
16 Section 114 right now, as most compulsory
17 licenses, have a certain number of conditions,
18 certain conditions that you need to abide by
19 in order to be eligible for the compulsory
20 license, so what this would add as a
21 condition that if you are operating under that
22 compulsory license -- meaning that you're

1 using it for post-72 recordings, but you are
2 also using pre-72 recordings as part of that
3 service, that you would pay the same rate for
4 pre-72 recordings that you would for post-72
5 recordings. So it's a way to compensate the
6 use of pre-72 recordings in a rather simple
7 way within the confines of the structure of
8 Section 114.

9 For uses that are outside of
10 Section 114, those are generally addressed in
11 market agreements, so the need isn't quite as
12 necessary, although I understand that it may
13 be difficult for smaller companies, as opposed
14 to larger companies, to engage in those
15 individual discussions. But to the extent
16 that they're doing it with a company like a
17 Spotify that's already negotiating for a
18 license for the works of the catalogue that
19 that record label owns, it could be part of
20 that negotiation and presumably is part of
21 that negotiation.

22 MR. DAMLE: Is it your

1 understanding that those agreements outside of
2 112 and 114, that they're paying royalties for
3 pre-72 recordings?

4 MR. MARKS: I don't know the terms
5 of them because I haven't seen them and I'm
6 not privy to the negotiations, but my
7 understanding is that, yes, the pre-72
8 recordings are taken care of as part of those
9 agreements.

10 MR. DAMLE: Mr. McIntosh.

11 MR. McINTOSH: I can tell you from
12 a small company, independent perspective -- we
13 do have a large catalogue and I'd say about a
14 third of the recordings are pre-72 -- there's
15 just a huge difference in what we see coming
16 from SoundExchange, from Pandora and Sirius
17 where we're really missing the boat there
18 without having these. There's whole shows
19 built around styles and genres of music from
20 that time period, and it's vital to small
21 companies and large companies as well.

22 When we talk about the

1 marketplace, we have sync licensing we do for
2 film and TV, some of our best songs, some of
3 our biggest songs, "Wolf of Wall Street" used
4 "Bang-Bang" -- I don't know if you saw the
5 movie, but the song "Bang-Bang," that's one of
6 ours. "Chef" has "I Like it Like That."
7 That's another one of ours and they're top
8 rate sync fees that we get for these with big
9 productions like that. Yet, on the other
10 hand, with some of the non-interactive
11 services, we don't see a penny and it's mind-
12 boggling how it could be just because between
13 the federal and state copyright laws based on
14 that date. It's got a huge bearing on our
15 business and our overall revenue.

16 MR. DAMLE: Mr. Meitus.

17 MR. MEITUS: So on behalf of a
18 number of artists, including the Wes
19 Montgomery Estate, who have pre-72 recordings,
20 I think it's clear that we want full
21 federalization. I think that the Respect Act
22 and the application of 114 non-interactive is

1 a good stopgap measure, but do we need another
2 stopgap measure. It's sort of looking at a
3 lot of us who want nationalized health care,
4 is Obamacare better, I think we've accepted
5 that it's better than nothing, but is it going
6 to mean that we don't have good health care
7 for all, that will remain to be seen. If this
8 means that we're not going to get full
9 federalization, then I'd say wait for it, but
10 114 would be better than nothing.

11 But here's what we really want, we
12 want the right to terminate these copyrights,
13 we want the right, just as we're doing with
14 the song on the publishing side, to be able to
15 go in after 56 years and terminate the
16 transfers in these works for U.S. copyrights.
17 I understand that the Copyright Office has
18 expressed concerns and NARAS briefed it well,
19 a rebuttal to that, and I'd like to put that
20 on the record because I agree with that
21 analysis.

22 The Copyright Office concerns, I

1 believe, have to do with a takings clause
2 problem, whether it's constitutional. I think
3 it's clear that the Constitution doesn't
4 prohibit uniformly retroactive in the civil
5 realm, and it's not the fact that all
6 retroactive legislation is a violation of due
7 process. That's even if duties and
8 liabilities are created after the fact. So
9 this is all a question then of a balancing
10 test that was in a Supreme Court case, *Uery*
11 *v. Turner*, and I believe if you apply that
12 balancing test you'll find that a retroactive
13 law which gives federal copyright protection,
14 full federal copyright protection, including
15 the right of termination, comes out in favor
16 of the recapture of those rights.

17 argument -- we don't need to get
18 into the academic nature of why sound
19 recordings were different than songs back
20 then; we all agree, I think, now that there
21 should be some federal protection of some sort
22 in those sound recordings -- but those authors

1 deserve a second bite at the apple, just as
2 post-72 sound recording owners deserve a
3 second bite at the apple. And that's, to beat
4 my drum a little bit more, to incentivize the
5 original creators. So I believe that the
6 constitutional problem is not a deal-breaker,
7 I believe we can get around that in the
8 application of retroactive law.

9 I believe as a second best option,
10 the RIAA has briefed an option where there
11 would be perhaps not full federalization. If
12 I knew that's all we could get at a 50-50
13 split, if Congress stepped in and created this
14 50-50 split -- I'm sorry, NARAS proposed this
15 -- a 50-50 split rather than a full
16 federalization and right of termination --
17 some of you read that suggestion in the NARAS
18 report -- I think that would be a second best,
19 but I think there's not a problem with going
20 for full federalization with termination
21 rights. I think most artists who had 5
22 percent deals back then and certainly aren't

1 going to see much money at all from the state-
2 based litigation, I think uniformly would
3 support what I'm saying today.

4 MR. DAMLE: Thanks. Mr. Knife.

5 MR. KNIFE: First, I'll have to
6 start out by pointing out that as a trade
7 organization, DiMA is largely neutral on this
8 issue in that we really don't have a very
9 strong opinion one way or another whether pre-
10 72 sound recordings should come under federal
11 protection or not, but keying off of some of
12 the things that Mr. Meitus said and Mr.
13 Marks said, I think notions of fairness,
14 simply to the extent that the Copyright Office
15 and/or Congress is thinking about
16 incorporating pre-72 sound recordings and
17 bringing them under federal copyright
18 protection, it should be absolute and full.

19 I really don't understand the
20 arguments about that there are incremental
21 steps that we should be taking and that
22 perhaps maybe for some interim period there

1 could be payment, but that songwriters and
2 recording artists would somehow not benefit
3 from acquiring their termination rights and
4 other people wouldn't have things like fair
5 use and DMCA protection, I just don't see the
6 distinction. If we're going to make the lift
7 of changing copyright law to include pre-72
8 sound recordings within the aegis of copyright
9 protection, I don't understand why you
10 couldn't do it all at once.

11 And again, I think basic notions
12 of fairness dictate that, that you don't
13 create just select rights, that you don't
14 leave other people by the wayside to kind of
15 determine that their rights may or may not be
16 protected in some other context. The real
17 reason we're here today, and will be in
18 California and in New York, is because we have
19 problems with the Copyright Act that is this
20 patchwork quilt of certain rights for certain
21 people, certain obligations for certain people
22 depending on the medium being used, depending

1 on the creative work that was exploited,
2 depending on the way it is being exploited.
3 And those are all problems.

4 And I think incorporating pre-72
5 sound recordings on some partial basis would
6 only exacerbate that problem. I think it's
7 actually the opposite thing of what we should
8 be trying to do here. We've got to be clear,
9 either they're in or they're out.

10 MR. DAMLE: Mr. Marks, did you
11 want to respond to that?

12 MR. MARKS: I just think there are
13 practical considerations. I can understand
14 why Lee would rather go for full
15 federalization that's going to take several
16 more years, potentially, and have his members
17 continue potentially not to pay during that
18 time period, rather than at least getting
19 compensation going for the biggest swath of
20 things that are going uncompensated for at the
21 moment. But there's a practicality here: one
22 thing can be moved much quicker, one is going

1 to take a much longer period of time. So we
2 can try and solve part of the problem and get
3 the compensation issue addressed, and then
4 deal with all of the other issues afterward.
5 And I don't think that's prejudicing anybody's
6 rights.

7 MS. CHARLESWORTH: Mr. Knife, I
8 know you're going to respond to that, but I
9 just wanted to, for clarification, do you know
10 whether your companies are paying for pre-72
11 under the negotiated interactive licenses with
12 the labels?

13 MR. KNIFE: That's why I put my
14 placard up.

15 MS. CHARLESWORTH: Oh, good. I'm
16 reading your mind now; we've spent too much
17 time together.

18 MR. KNIFE: A couple of points in
19 response to Mr. Marks. First of all, it is
20 not at all true that we would care about
21 delaying the process. We don't care if it
22 happens tomorrow or if it happens next week,

1 we don't have an interest in that. Again, we
2 are essentially neutral on the issue and one
3 of the reasons that we are neutral on the
4 issue is across my membership some of my
5 members pay for pre-72 sound recordings, their
6 exploitation of them, and some of them don't,
7 based on individual business practices and
8 readings of the law and the way they run their
9 individual businesses.

10 Again, when we talk about things
11 like basic notions of fairness, I just don't
12 see, I don't know what the administrative
13 difficulties are, I don't know what the delay
14 would have to be. Again, I'm not advocating
15 for it, I don't see why we have to take
16 incremental steps towards doing it

17 MR. DAMLE: Mr. Sellwood.

18 MR. SELLWOOD: I can say that we
19 license pre-1972 sound recordings the same as
20 post-1972 sound recordings, license and
21 payment, no difference.

22 MR. DAMLE: Pay on the same terms

1 and same rates. Okay, thanks.

2 Mr. Turley-Trejo.

3 MR. TURLEY-TREJO: Yes. From my
4 standpoint, we definitely agree with the
5 Copyright Office's report about federalizing
6 pre-72 recordings, namely for our purposes,
7 and particularly with library and
8 preservation, so that exceptions and
9 exemptions like 108 and 107 and 110 would
10 apply to pre-72 recordings. So just to state
11 that for the record.

12 MR. DAMLE: Sort of building off
13 of that point, Mr. Marks, I'm sort of curious
14 to know what difficulties would arise from
15 incorporating -- maybe we could take another
16 step further and incorporate 107 and 108.
17 Obviously preservation was a big focus of the
18 report that we issued. I'm just sort of
19 wondering what your perspective is on those
20 provisions in particular.

21 MR. MARKS: I think we had, I
22 don't know, eight or ten very complicated

1 issues that are intertwined in many respects,
2 a lot of them, that came out of that Copyright
3 Office proceeding on pre-72, and I think we've
4 said we're committed to working to try and
5 figure them out, but it's just, as a practical
6 matter, going to take some time. I mean,
7 there's not even a process that's been set to
8 do that.

9 And I wasn't saying that, Lee,
10 your organization or your companies were going
11 to try and delay that process, I think it's
12 more just a matter of that process itself is
13 going to be lengthier than the Respect Act
14 because it's a rather straightforward bill,
15 and it's either something that can get passed
16 or it can't, I guess. Whereas, pre-72, all
17 the other issues that were raised, whether
18 it's termination, ownership, preservation
19 issues, just along the conversation to work
20 through those where there's no process set up
21 right now to do it.

22 MR. DAMLE: Does anyone else have

1 anything to say? I can go back to my
2 questions.

3 MS. CHARLESWORTH: You have Mr.
4 Oxenford.

5 MR. DAMLE: Mr. Oxenford.

6 MR. OXFORD: I'll just make a
7 couple -- actually, Steve, could I ask a
8 question? The statute of limitations -- not
9 statute of limitations but in terms of public
10 domain, when we're talking about pre-72 sound
11 recordings, how far back to do we go?

12 MR. MARKS: I mean, if you
13 federalize the federal laws.

14 MR. OXFORD: Except if we do the
15 interim step, do we have a concept of public
16 domain that's incorporated in the proposed
17 legislation?

18 MS. CHARLESWORTH: I think there's
19 an end date, isn't there? 2067, maybe? Am I
20 correct? I don't have the bill in front of me.

21 MR. MARKS: I think that's
22 correct, and I don't have it front of me.

1 MR. OXENFORD: But 2067 going
2 forward, but what about going back? I mean,
3 are we talking about every sound recording is
4 subject to compensation even if it's a Thomas
5 Edison cylinder from 1879?

6 MR. MEITUS: Federal copyright law
7 would apply, and you would use the same laws.
8 2067 is reached because 1972 plus 95 years
9 which is typically, up until 72, the duration
10 of copyrights, so you would backwards. I'm
11 not sure I could tell you this, but I would
12 say probably the same -- we've got three
13 people from the Copyright Office here --
14 probably the same public domain determinations
15 as any federal copyright. It's prior to 23
16 then it's definitely in the public domain, if
17 it's not, it depends whether it was registered
18 with notice properly. Correct?

19 MR. OXENFORD: But what I'm
20 talking about is just not if we're entirely
21 federalized.

22 MR. MEITUS: But that would be the

1 same determination of whether it was given
2 federal copyright protection for the purposes
3 of 114. If it's in the public domain, it's in
4 the public domain. That's as easy of a
5 determination as it always is -- which is not
6 that easy -- but it is determinable.

7 MR. OXFORD: I would be
8 concerned about the language, just to make
9 sure that if that's included in the 114, that
10 we're not extending essentially protections to
11 things that are already in the public domain.

12 MR. MARKS: I'm trying to pull up
13 the text to see if it's addressed, but if it's
14 not, I don't think there's going to be any.

15 MS. CHARLESWORTH: The bill may
16 have language that says if it would be
17 protected. But your point is taken that you
18 wouldn't want greater backward-looking
19 protection under the approach suggested. The
20 114 approach then would be applicable if they
21 were protected today under federal law.

22 MR. KNIFE: So the overarching

1 take-away there is that really, really
2 complicated issues regarding copyright,
3 interim can be addressed in a simple bill.

4 MR. MEITUS: I'll go on the record
5 as supporting Mr. Knife that, yes, it could
6 all be dealt with, it's not that simple but it
7 could all be dealt with.

8 But a question for Mr. Marks, in
9 those licenses -- which I doubt any artist
10 really are very clear on what they are for the
11 pre-72s -- do you know if your clients, your
12 member labels are traditionally sharing that
13 income on the third party license revenue
14 clause 50-50, or otherwise as it may be in the
15 contract, with the artists?

16 MR. MARKS: I don't know, and
17 specific contracts differ contract by
18 contract.

19 MR. MEITUS: What's the word on
20 the street? Are they sharing it 50-50 or are
21 they paying them the 5 percent?

22 MR. MARKS: All the words on my

1 street are privileged and confidential.

2 (General talking and laughter)

3 MR. MEITUS: Pre-72 record deals
4 and certainly '50s and '60s when the great
5 jazz recordings were made and does not share
6 federal protection right now, those were 5
7 percent contracts. It's a huge deal how those
8 license fees are being split, and especially
9 if they're recouped.

10 To go back to the last panel
11 really quickly, you had stated the 46 percent
12 statistic, that artists' costs are at 46
13 percent. We didn't make clear that when
14 you're recouping those costs it comes out the
15 artist royalty share and it's not a 50-50 net
16 split deal, like is the case with a lot of
17 independent labels we work with. It's really
18 the 12, 13, 14 percent of wholesale rate that
19 is going to be paying back that 46 percent of
20 costs that you have invested, no doubt

21 MR. MARKS: Those are net of any
22 recoupment. In other words, we're not double

1 counting, that's after the recoupment, those
2 numbers.

3 MR. MEITUS: Well, not to get tied
4 up in that, but I do think, to respond to Mr.
5 Knife, we talked after that panel and we feel
6 strongly that this is important to the
7 Copyright Office take into consideration in
8 the revisions to the Copyright Act how these
9 private transactions are occurring. And so I
10 think it's important to get on the record
11 points like this, that if there is pre-72
12 private deals being made, I'm not even clear
13 that the artists are sharing in that revenue
14 at all, maybe at a 5 or 10 percent rate, at
15 best, is my opinion.

16 MR. DAMLE: Mr. Oxenford.

17 MR. OXFENFORD: I think it also
18 should be expressed on the record that there
19 has been concerns raised about pre-72 sound
20 recordings under 114. We're taking about
21 incentivizing artists to create, and certainly
22 there's no incentive to an artist to create

1 for a pre-72 sound recording that was created
2 40 years ago with no expectation of any
3 royalty being paid. In effect, what the
4 federalization or the inclusion under 114 does
5 is has a transfer from users to perhaps the
6 record labels, perhaps to some extent the
7 artists, and whether that really facilitates
8 the underlying purpose of the Copyright Act is
9 a question that I know was raised in several
10 comments and at least, I think, bears
11 expressing on the record.

12 MR. DAMLE: Thank you. Mr.
13 Marks.

14 MR. MARKS: That's an interesting
15 test. So we're going to limit compensation to
16 what was expected at the time of the contract,
17 so if five years before Pandora came into
18 existence there was an artist contract and
19 there was a deal done and recordings created
20 and there was no expectation that Pandora
21 would be around, that somehow the artists and
22 labels shouldn't be compensated for that new

1 service? I mean, isn't that the same argument
2 about 1972, the fact that it's just 30 years
3 later as opposed to five years later?

4 MR. OXENFORD: The creation of a
5 new service doesn't change the expectations of
6 getting royalties for whatever was public
7 performance at the time of the creation of the
8 work. If a work was created after 1995 there
9 was an expectation of a 114 royalty; if work
10 was created in 1960 in the United States,
11 there wasn't.

12 MR. MARKS: There was also no
13 expectation of wide scale infringement and
14 people stealing the works either. I mean, if
15 you base things on expectations, I think
16 that's a very difficult thing to figure out
17 policy based on the subjective expectations or
18 intentions of parties 30 or 40 years ago when
19 creating a recording.

20 MR. OXENFORD: But we're talking
21 about the underlying policy of copyright, the
22 underlying policy of copyright being to

1 incentivize the creation and to facilitate the
2 distribution. And what I'm saying is that
3 clearly there is no incentive to create here,
4 at least under the arguments that have been
5 made and some of the comments in the record.
6 Clearly, though, there would be more of a
7 burden on the distribution if there are new
8 royalties that had not been imposed before.

9 MR. MARKS: I'm not familiar with
10 the specific comments. Did those commenters
11 say that there shouldn't be payment on
12 anything from '72 to '94 because during that
13 time there was no performance right either, or
14 are they just drawing the line arbitrarily at
15 '72? I mean, I don't know, but it seems like
16 the same logic would apply.

17 MR. OXENFORD: Except Congress has
18 already spoken to everything under federal
19 law.

20 MR. MARKS: But not '95, so if
21 something was created before '95, as you were
22 just saying, there would have been no

1 expectation that you would have received
2 performance royalties.

3 MR. OXENFORD: But again, Congress
4 has already made that decision to provide a
5 performance royalty on everything that's
6 covered under federal law, and right now pre-
7 72 has not been covered under federal law.

8 MS. CHARLESWORTH: Well, I think
9 the question on the table is whether -- and
10 your point which was made in the context of
11 copyright extension and considered, actually,
12 by the Supreme Court -- so you're suggesting
13 that there may not be a need to do this
14 because of your view of the incentives under
15 the copyright law. The Supreme Court has
16 said, in general terms, that Congress may have
17 more flexibility in sort of thinking about
18 incentives and also dissemination as part of
19 the Copyright Act in terms of what is good
20 policy, and so I think what we're here today
21 to discuss is whether there are good reasons
22 to pay creators and the owners of sound

1 recordings for pre-72 works that are being
2 exploited for profit. And it's a difficult
3 question, to the discussion that was going on
4 earlier, because of some of the constitutional
5 issues and some of the practical issues and
6 the contractual issues. So I think it's
7 important to weight all of these factors into
8 the discussion, so I appreciate all the
9 commentary. But the fact that Congress hasn't
10 spoken on this yet doesn't mean it could not,
11 in our view, in the view of the Copyright
12 Office.

13 MR. DAMLE: Mr. Meitus.

14 MR. MEITUS: You touched on
15 exactly where I was going. I think that it's
16 really important to look at Eldred and look at
17 what Justice Ginsberg's opinion said about the
18 extension of copyright. I think if Professor
19 Lawrence Lessig were here, then he would agree
20 with you wholeheartedly that there's no
21 incentive ex post facto to expand the rights.
22 But the Supreme Court was very clear about

1 that, that adding 20 years -- and I think that
2 is analogous to adding rights to pre-72 sound
3 recordings -- that adding the 20 years was
4 seen to be in the prerogative of Congress,
5 they could do that, and it was constitutional.

6 MR. OXFORD: And I'm not arguing
7 the constitutionality, I'm just arguing the
8 incentive and what the ultimate result is.

9 MR. MEITUS: Yes.

10 MR. DAMLE: So one question for
11 all of you is what do you see as the
12 advantages to the way that music is licensed
13 to extending federal rights to pre-72
14 recordings. Would it make it easier, would it
15 make it more complicated? What's sort of the
16 balance that we should consider in thinking
17 through, specifically on music licensing, on
18 this issue? Is it neutral, no effect at all?

19 MR. KNIFE: Everybody is looking
20 at me, so I will simply say I'll reiterate
21 that I started out by saying that as a trade
22 organization, DiMA is neutral on the issue.

1 We talked a little bit about whether we're
2 incentivized or not incentivized to have a
3 position on it based on whether we pay for
4 these or not. The answer is it's across the
5 board. I don't think one way or another it's
6 going to create an incredible amount of
7 difficulty or that it would resolve an
8 incredible amount of difficulty on behalf of
9 my member companies.

10 MR. DAMLE: Mr. Turley-Trejo.

11 MR. TURLEY-TREJO: I think it
12 would.

13 MR. DAMLE: It would simplify
14 things?

15 MR. TURLEY-TREJO: It would
16 simplify things, because it just depends on,
17 obviously, what kind of service or what you're
18 doing. If it's individually negotiated in the
19 free market, then that's already working for
20 interactive streaming and for other things.
21 But this SiriusXM and Turtles case, that's an
22 example of having to go back and just the

1 thought and the idea of having to track all of
2 the recordings and the state law and the state
3 jurisdiction and common law that it's under,
4 and then trying to understand each of those
5 laws, and then trying to be compliant with
6 each of those. I mean, that's massively
7 complicated and impractical. So I think the
8 federalization would most definitely simplify
9 that pre-1972 licensing.

10 And then I am not neutral at all
11 as far as that is concerned, because, as I
12 stated before, I think those very important
13 exceptions and exemptions in the law should
14 also apply to those pre-72 recordings because
15 that massively complicates things as well.

16 MR. DAMLE: Mr. Meitus.

17 MR. MEITUS: I'd like to actually
18 ask a question to the broadcast and streaming
19 industry folks. I'm not feeling a tremendous
20 amount of worry that this will cost more, and
21 I'm wondering is that because it's already
22 costing under the deals that are based on

1 state law rights, and that you'll think of
2 this just as a shift in who might be paid or
3 how it's being paid, not an additional cost

4 MR. KNIFE: Right. So I'll try to
5 answer that, but then also, I just wanted to
6 supplement my response of a moment ago.

7 Again, I think the issue is it's
8 not a hugely significant cost one way or the
9 other, and it is a cost for some people,
10 depending, as Mr. Turley-Trejo said, on way
11 they run their businesses or what type of
12 service they're engaging in and how they view
13 the status of pre-72 sound recordings. It
14 depends, it goes across the board.

15 But by way of clarifying the
16 position that I was talking about just a
17 moment ago, I did want to say as kind of an
18 adjunct to whether or not it complicates
19 things to incorporate or not incorporate,
20 again, as I said before, I think taking
21 interim steps and doing things like partial
22 incorporation are inherently complicating.

1 And the point that I made before I think needs
2 to be announced again, which is to the extent
3 that we're going to cut up these rights and
4 we're going to say there are elements of that
5 right that need to be addressed in a separate
6 forum and they may need to be addressed in a
7 different way and they may need to have
8 different rights, and we're only going to
9 apply certain obligations or certain rights to
10 pre-72 sound recordings, while leaving other
11 rights or obligations off the table, is that
12 inherently is a complicating issue that,
13 again, I don't think we should be
14 countenancing it.

15 Again, we're all here trying to
16 make things simpler. I don't know why this
17 particular issue contains so much drama and so
18 much complication that it can't just be
19 addressed wholly.

20 MR. MARKS: So are you opposed to
21 the Respect Act?

22 MR. MEITUS: I think as it's

1 drafted, yes.

2 MS. CHARLESWORTH: I just want to
3 play devil's advocate a little bit here, Lee.
4 Let's assume Mr. Marks is right and it would
5 be much more complicated to resolve like the
6 termination issues and other issues. We're
7 looking at a world where now we're seeing
8 litigation under state laws against companies
9 that are streaming, and streaming, from
10 listening to the comments around the table, is
11 what may well be the primary future business
12 model.

13 And so the question is does it
14 make sense to solve the problem? I mean, the
15 benefit to your companies is that then they
16 aren't subject to lawsuits if they're paying
17 through the royalties to SoundExchange.
18 Right? In other words, there's risk involved
19 in not paying those royalties because
20 potentially someone could sue you under state
21 law.

22 So I guess the question is, is

1 there value in a solution that maybe solves 80
2 percent of the problem. I'm just throwing out
3 a number, I don't mean to suggest that's how
4 much of the problem that it would solve. But
5 you know, is there some value in doing that if
6 it can get done much more quickly, again,
7 accepting Mr. Marks's characterization, or is
8 there some matter of principle or reason why
9 you think we have to solve the whole problem?

10 MR. KNIFE: So I think my response
11 is kind of at least two part. I'm not sure
12 that whether or not we subsume pre-72 sound
13 recordings under federal copyright that
14 protects entities who might be paying
15 otherwise anyway. Well, I guess if the
16 statute passes because there's an element to
17 the statute that says you are absolved from
18 potential state lawsuits if you pay under
19 Section 114.

20 Well, I'll just move on the second
21 point that I was going to make, which is yes,
22 there are other elements that are important to

1 my member companies, like the ability to use
2 a fair use defense, the ability to apply DMCA
3 standards. And again, I don't see why you can
4 address some very, very specific, and very
5 thorny, as we've talked about here this
6 afternoon, issues about the term, the
7 payments, what rights are being granted and
8 what absolution from potential liability is
9 being applied without addressing all of those
10 issues.

11 MR. MARKS: But for the companies
12 that the bill would apply to in practice,
13 there aren't any of those issues that exist
14 for them. I mean, I can understand that other
15 services may want to deal with 512 and get the
16 advantage of safe harbors, and others might
17 have fair use defenses or something. But for
18 a service like Pandora or SiriusXM, that's
19 just streaming or through satellite radio
20 service, those don't really exist. So by
21 passing this you'd solve that problem and
22 they're not giving anything up by not

1 addressing those, it's more dealing with the
2 other companies and libraries and archivists
3 and other parties. So given that, why object
4 to it?

5 MR. KNIFE: Again, I'll say as a
6 trade organization we have consistently sought
7 uniform, fair application of and modernization
8 of copyright, and regardless of whether some
9 of my member companies, whether they're
10 significant in the marketplace, significant
11 players within my organization, want it one
12 way or would benefit from it or would be
13 neutral about it, or others might not or might
14 see it as an important point based on their
15 business model, I just don't, as a fundamental
16 principle, see why anybody in this room today
17 addressing the issues that we're trying to
18 address would support an approach that says:
19 Yes, let's continue to slice that bologna even
20 thinner -- like that's a good approach.

21 What we want to do here while
22 we're trying to solve all the problems of this

1 incredibly fragmented marketplace that follows
2 the contours of an incredibly fragmented
3 Copyright Act, why we would support continuing
4 to entertain incremental band-aid type
5 adjustments of the Copyright Law.

6 MR. MARKS: It's going to be a lot
7 more fragmented if the lawsuits are
8 successful, which I think was the question.

9 MS. CHARLESWORTH: Well, I was
10 just saying right now the CRB can't accept the
11 royalties for the pre-72, so absent basically
12 private negotiations for non-interactive, if
13 you were being extremely risk-averse, you
14 would want to be paying the royalties and
15 limiting your liability.

16 MR. KNIFE: I think as a first
17 principle I understand the point that you're
18 making, and as a first principle and on first
19 impression, that is true, but again, I think
20 I'm trying to bring the conversation kind of
21 up to a higher level and I'm trying to explain
22 -- Steve pointed out -- that I do, in fact,

1 have individual companies who probably have a
2 very, very specific view about this based,
3 again, on their particular business model and
4 the way they handle pre-72 sound recordings.
5 But as a trade organization, again, and
6 certainly within this context, our point is we
7 really shouldn't be making incremental fixes
8 to extant problems in the copyright law, we
9 should be talking about holistic approaches.

10 MR. DAMLE: Mr. Sellwood.

11 MR. SELLWOOD: I guess I can add,
12 from YouTube's and Google's perspective, we're
13 neutral on the issue as well. Except for, in
14 general, Google prefers uniformity so the
15 company's position would be if there's
16 federalization, it should be for all purposes,
17 and if it's going to be excluded, it should be
18 excluded for all purposes.

19 MR. DAMLE: So then you would
20 oppose the Respect Act as it's currently
21 written.

22 MR. SELLWOOD: I should defer

1 specific comments on the Respect Act because
2 I haven't read it, but my colleagues, I'll
3 make sure that they're ready to talk more
4 specifically in L.A. and New York.

5 MS. CHARLESWORTH: Thank you.

6 Do I have anything else to ask?

7 No. Does anyone else have a point of view on
8 this particular issue before we break for
9 lunch? Has everyone said their piece?

10 (No response)

11 MR. DAMLE: Our next panel is
12 starting at 2:15, so if you could be back here
13 by then.

14 Session 9: Potential Future Developments

15 MS. CHARLESWORTH: This is the
16 last panel discussion, and then, as I
17 mentioned earlier, we have a sign-up sheet and
18 if there are members of the audience who want
19 to make brief comments for the public record,
20 we'll be doing that after this panel.

21 I think this has been a very
22 interesting and productive discussion, at

1 least from my perspective. I feel like people
2 have engaged with one another and that there's
3 been candid discussion of many of the issues
4 that we're looking at, and I think people are
5 thinking about the future in a big way as
6 opposed to just kind of hunkering down and
7 sticking to the sort of current structures,
8 and I very much appreciate that.

9 This final panel really is about
10 the future and it's an opportunity, I think,
11 and especially for many of you have been here
12 through the whole discussion, to really
13 reflect on and maybe share your thoughts about
14 what you would like to see happen in the
15 future. We've had some of that discussion,
16 but listening to the concerns and the
17 competing interests here, what I would love to
18 do is get your perhaps final thoughts, at
19 least for purposes of the roundtable, in terms
20 of where you would like to see this discussion
21 go.

22 Did ideas come to mind as you were

1 listening to this? Do you have broad outlines
2 of where you think a solution might lie? These
3 are the sorts of questions I think would be
4 most productive to discuss now, and we can
5 continue, to the extent that people weren't
6 able to express everything on the earlier
7 panels, it's also an opportunity for you to
8 chime in on further thoughts where we ran out
9 of time.

10 So without further ado, I think we
11 have one new participant here, Professor
12 Gervais. If you want to introduce yourself
13 and explain your interest in this area for the
14 record, that would be great.

15 MR. GERVAIS: Daniel Gervais from
16 Vanderbilt Law School. I teach copyright,
17 intellectual property, and something called
18 collective management of copyright, so I'm
19 vaguely interested in the topic.

20 (General laughter)

21 MS. CHARLESWORTH: Okay. I don't
22 know if you have thoughts to share yet, but if

1 you want to lead us off. As a newcomer to the
2 discussion, we're hoping you have the
3 solution.

4 MR. GERVAIS: Usually I call on
5 people, not the other way around.

6 MS. CHARLESWORTH: This is my
7 payback for having to go to law school.

8 MR. GERVAIS: Well, I actually
9 prepared something which I just flew in and
10 forgot, and so I was trying to get my note
11 from memory back. So I come at this from a
12 fairly simple perspective, maybe surprisingly,
13 which is there are a couple of things I think
14 no one would disagree with around the table,
15 hopefully. The first is I think whatever
16 happens, the system has to work for everyone,
17 and that sounds easy, but pretty much everyone
18 is here to make sure the system works for
19 whoever you work for. But if we all
20 acknowledge, well, that's okay, but you have
21 to accept that it has to work for everybody
22 else too, because that's not always the way

1 that this is approached. I think that that's
2 relatively clear; otherwise, it's unworkable.

3 The second thing is, as I tell my
4 students, if somebody flew in, the day that
5 the aliens actually make it -- because we've
6 seen all the movies so we know it's true,
7 someday we're going to get aliens to come and
8 invade -- and if an alien comes to my
9 classroom and asks me whether if we started
10 from scratch copyright would look like it does
11 today, whether we would write 112, 114 and
12 115, I think we all can pretty much agree the
13 answer is no, that's not where we would start.

14 We have the piano roll mechanical
15 license that's still there but has been
16 completely transformed. 112 is, dare I say,
17 fun to read, and so is 114. So I think
18 everybody could agree that's not the system we
19 would design if we started from scratch. I
20 think after that it becomes more complicated.

21 One thing you didn't tell me is
22 how much time I have.

1 MR. MARKS: You can go on forever

2 MS. CHARLESWORTH: That's Steve
3 Marks' approach.

4 (General laughter)

5 Don't take it personally, I'm just
6 messing with you.

7 (General laughter)

8 MS. CHARLESWORTH: You have the
9 floor for two or three more minutes, and then
10 I'm sure there will be many others who want to
11 speak.

12 MR. GERVAIS: I have dinner plans,
13 So I think fundamentally the disagreement
14 starts after that because the question is how
15 much should the market be the player here.
16 The market is not the player now, obviously,
17 because the government stepped in and said we
18 have all these compulsory licenses and they're
19 not technology neutral. The idea of
20 separating subscription/non-subscription,
21 interactive/non-interactive, all that stuff,
22 the fact that digital is separate from non-

1 digital, all of that is definitely not
2 technology-neutral, which is one thing that
3 always worries me a little, as a matter of at
4 least theory. There are distinctions by type
5 of views, type of user. We make differences
6 between PROs and other collectives. Again,
7 historically you can explain all of that, but
8 the question is do we still need that.

9 So then the question is if we were
10 to start from scratch, what do you do. Well,
11 one way is to scrap everything in the statute,
12 just leave 106 and let the market work. 106,
13 I know how much everybody knows, is just the
14 basic rights in the statute. Now, no other
15 country has tried that successfully, so that's
16 one thing to bear in mind.

17 The second is to bear in mind that
18 there are very few players. We have
19 essentially three or four -- depends on how
20 you count -- we have PROs, we have how many
21 mechanical societies, we have three record
22 labels essentially, we have a few major online

1 players, we have a couple of big broadcasters.
2 So maybe that's a reason why the market
3 wouldn't necessarily be perfect if we let it
4 operate entirely.

5 So what can we do? Well, some of
6 the things if I were to rewrite the system --
7 because I really think it needs to be
8 rewritten -- is first of all, ask whether
9 online it still makes sense to separate
10 mechanicals from performing rights. Now, of
11 course, the Supreme Court will tell us about
12 the extent of the performance right in the
13 Arrow case, maybe, but we'll see.

14 And I would also ask whether it
15 makes sense to separate the types of people
16 who create music and produce music. This idea
17 that songwriters are on this side with
18 publishers and record labels are completely
19 separate people and they have nothing to do
20 together, and the way that the licensing
21 system works that's exactly the way the
22 statute works now. I think that that is

1 something that is hard to justify.

2 And again, if you were to start
3 from scratch, I think all these things would
4 be pretty obvious. The problem is once the
5 things are in the statute, business models,
6 companies, organizations set up reflecting the
7 structure that was put in place by Congress,
8 and so changing it is hard because there's
9 inertia. But again, if we start from the
10 premise that it should work for everybody and
11 that the current system is sub-optimal, to be
12 polite, I think that's where I would start.

13 MS. CHARLESWORTH: Well, you'll
14 have other opportunities to chime in, and
15 thank you for those opening thoughts.

16 Mr. Coleman.

17 MR. COLEMAN: Professor Gervais
18 wasn't here to hear my last spiel, so I'm
19 going to rebut, just for the record, some of
20 the things that you said.

21 Well, first of all, 106, leaving
22 the market to interpret the exclusive rights

1 of copyright doesn't make sense because
2 copyright is not a natural right. Copyright
3 and restraints on copyright monopolies are two
4 sides of the same coin, and we need them in
5 order for it to make sense of the monopoly
6 that copyright affords. And I'm speaking as
7 a publisher, by the way, who would prefer to
8 have no restraints on my trade, but I
9 understand the need for that.

10 I think that separating different
11 revenue streams under the exclusive right is
12 very important, and there was an example that
13 came up yesterday when there were complaints
14 about the amount of money that is coming from
15 streaming at the moment, and I mentioned as a
16 publisher that I may have a song that I
17 represent that is streamed twice in a year on
18 Spotify but receives a wonderful
19 synchronization license that is very
20 remunerative to that composer. So without the
21 differentiation in those revenue streams,
22 there would be some question as to how these

1 different kinds of rights would offset one
2 another to fairly compensate. There would be
3 kind of a diminishing, I would think, the
4 entire field would have to take a haircut in
5 terms of the rates if they were all bundled
6 into one.

7 And most importantly, I think with
8 creators there is a very important
9 distinction, what I was mentioning in the
10 previous panel is there are two sub-economies
11 in the music business that are separated
12 between composers and recording artists, and
13 it has to do with risk and reward. And to
14 summarize that as briefly as possible, music
15 publishers invest in composers, record labels
16 invest in recording artists, and those
17 investments have different risks and different
18 rewards because recording artists are a brand,
19 they are a public image, they tour, they
20 perform.

21 Composers may be unable to do any
22 of those things but still write wonderful

1 songs, so the way that you promote and invest
2 in one of those kinds of artists, as opposed
3 to the other is a different risk, a different
4 reward and requires, I think, a different
5 recognition in the code so that those rights
6 are protected, those copyrights remain
7 protected, the master use and the underlying
8 copyright.

9 How you license them is a
10 different question. Bundling those rights to
11 make it easier for licensees is a completely
12 different question, and I'm very in favor of
13 making it as easy as possible for licensees to
14 get a collection of rights at once.

15 MR. GERVAIS: It was called a
16 rebuttal, but I'm not sure where you disagree
17 with me.

18 MR. COLEMAN: You were saying that
19 it didn't make sense to separate different
20 kinds of revenue streams, like performance and
21 mechanical, and also the idea of separating,
22 I understood you to say that you were

1 wondering about whether it made sense to
2 separate the different types of musicians that
3 are occupying the copyright space, composers
4 and recording artists.

5 MR. GERVAIS: Do you want just a
6 quick answer to that?

7 MS. CHARLESWORTH: Yes. We do let
8 people respond quickly.

9 MR. GERVAIS: So I think where
10 this was a shortcut for things like, for
11 example, when you read in the Copyright
12 Royalty Board determination that the value of
13 a sound recording is unrelated to the value of
14 the song, that's what I meant. To me, that
15 complete disconnect is not warranted, and I
16 don't know that the market, as you said
17 yourself at the end, recognizes. There's
18 obviously a difference in the way that the
19 song and the artist may be exploited in the
20 work or that their work might be used in the
21 marketplace, but in terms of the user, as you
22 said yourself, it's music, so they need both

1 rights anyway. So this idea that these are
2 completely separate entities, one needs to be
3 regulated by the Department of Justice and the
4 other by this Copyright Royalty Board, is
5 where I have an issue.

6 MR. COLEMAN: Do you go to the
7 symphony?

8 MR. GERVAIS: I was there last
9 week, actually. I think the Brahms Requiem
10 was phenomenal.

11 MR. COLEMAN: Well, if you go a
12 little bit past Brahms to the copyrighted
13 music, a lot of that is not recorded, so that
14 would be an example, I think, of one field
15 where the two copyrights are quite distinct in
16 their economies.

17 on.

18 MS. CHARLESWORTH: I think maybe
19 if I can just quickly summarize. I'm not sure
20 there is a clear disagreement here. I think
21 Professor Gervais had sort of a philosophical
22 point of view he's presenting and maybe was

1 suggesting that the way our historic
2 structures have grown up, they're sort of
3 historic artifacts at this point that separate
4 rights and don't allow for consideration of,
5 say, the sound recording right and the musical
6 work right together, when maybe it might make
7 sense to do that in terms of, for example, the
8 rates. So I think it's sort of a question of
9 -- forgive me if I'm misstating you.

10 MR. GERVAIS: I specifically said
11 online.

12 MS. CHARLESWORTH: Okay. I think
13 Mr. Marks was next, and then maybe Ms.
14 Schaffer, and then Mr. Johnson, and then
15 we'll get back over here.

16 (General laughter)

17 MR. MARKS: We've had a lot of
18 discussion over the last day and half about
19 bundling rights and things like that. I would
20 just say that I agree with your instincts that
21 bundling rights, especially in a world where
22 -- I mean, in the sound recording side that

1 happens now in the market, anyway. When the
2 license is done, whatever rights are necessary
3 are included in the license agreement or
4 whatever the transaction is.

5 On the musical work side that's
6 not happening because you do have these
7 artifacts in terms of how the system grew up,
8 notwithstanding the fact that you often have
9 for the very same transaction the need for
10 both rights and both sides calling for a
11 license for each of those, and simplifying the
12 process on them musical work side, we would
13 agree that bundling the rights makes a lot of
14 sense. I think what you're saying in terms of
15 the users -- and if this is correct, I'd also
16 agree with it -- is that if you're just
17 thinking in terms of how most markets work,
18 the final product, the finished good, whoever
19 creates that usually goes into the market and
20 negotiates with a distributor in terms of
21 getting that to the public, whether it's a
22 movie, to use a copyrighted work, or a car, to

1 use something else out of our field, and you
2 don't have that distributor, like Netflix, for
3 example, negotiating with the screenplay
4 writer in addition to the movie company. It's
5 been packaged and there's one transaction, and
6 that's how most markets operate and most, I
7 think, of Lee's companies, for example, would
8 prefer it to operate here.

9 And we made a proposal that's been
10 discussed that I won't go through again that
11 captures those two things, so I would just
12 echo the two things that you said as being
13 good.

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

16 Ms. Schaffer.

17 MS. SCHAFFER: I'm somewhat going
18 to take this back to your kind of initial
19 question that you posed in terms of overall
20 thoughts on this and where this is headed for
21 future developments and tying in with what has
22 been stated previously. I think we've all

1 acknowledged here that we all need each other,
2 and to be completely clear, I don't think
3 publishers in general, I'm not looking to do
4 away with Spotify and YouTube and the
5 continued digital innovations that come along,
6 we need those, and I think we need each other,
7 the musical composition owner needs the sound
8 recording owner, and we need the companies
9 that are distributing it.

10 So with that as a basis, I think
11 part of our goal in participating in the
12 roundtable was to bring us back to kind of
13 those fundamental principles of the importance
14 of recognizing that the musical composition is
15 just as important as all of these other
16 aspects in the process, and as we were
17 discussing before about how the musical
18 composition is an equal and separate right to
19 the sound recording. Now, whether the income
20 is distributed equally, that's obviously still
21 up for our debate, and I don't think that
22 we're going to come to any solutions.

1 But I think that in trying to find
2 that solution the Copyright Office has gone a
3 long way in doing that with simply putting
4 these together, with both the discussions that
5 have happened at the table and the discussions
6 I think that have happened in between the
7 panels and at lunches, and I think that that
8 goes a long way to engaging where we see the
9 solutions. And we're not going to come up
10 with them by the end of today and likely not
11 by the end of all of the roundtables, but I
12 think we're getting closer.

13 One of the things that I do think
14 I've observed from this process is that there
15 has been a recognition, even from Mr. Marks,
16 that a compulsory license in general depresses
17 the value of our remarks, and a recognition,
18 while we disagree with the solution that the
19 RIAA has proposed, the concept that there has
20 to be a balance between the amount of money
21 that's coming in from the sound recording and
22 the amount of money that's coming in from the

1 musical composition and finding that balance.

2 And I think that we also have to
3 recognize that certain digital services aren't
4 going to be able to increase the amount of
5 cost that they pay out or the overage cost
6 that it takes to license them. And so I think
7 in some of those cases where fair rates are
8 already being paid, much of the debate is
9 going to lie between the record companies and
10 the publishers agreeing on how we balance that
11 out.

12 I do think that there are probably
13 certain digital companies that Mr. Knife
14 represents that may end up needing to pay more
15 as we move towards what is a fair market rate,
16 whether that is in a compulsory license or
17 whether that is in the absence of a compulsory
18 license.

19 But I think that's the direction
20 in which all of this discussion is heading is
21 at which place do digital service providers
22 need to be paying more and in which cases is

1 it between really the musical composition
2 owners and sound recording owners to start
3 figuring out where is that balance between us.

4 And what we have said is let's
5 start the conversation not at how do we put a
6 band-aid on this broken system, but how can we
7 take it back to a more fundamental level that
8 allows us to continue to adapt to changes as
9 new technologies develop. And I don't know
10 what those technologies are, I don't think any
11 of us do, but why would we put ourselves back
12 in this exact same position five years from
13 now or ten years from now when there's
14 something else.

15 So what we're asking, and I think
16 what the future of music licensing hopefully
17 looks like and this process hopefully looks
18 like, is let's start from the point of saying
19 what if we did away with 115 and what if there
20 wasn't a compulsory license, how would we get
21 to that point. Is it a sunset point? Would
22 there be a need for minimal government

1 regulation? I don't know, but I think if we
2 can start at the point of saying what would
3 that look like and how do we bring it to the
4 point of having sufficient regulation that
5 it's efficient, I think we get ourselves much
6 closer to a solution than we do to a band-aid.

7 And I really think that that's
8 where a lot of this is headed, and I think the
9 best way for me to pretty much close out my
10 thoughts on where the future of this is headed
11 is that Marybeth Peters in 2004 -- so ten
12 years ago -- said, Our compulsory in the
13 United States is an anomaly. She later said,
14 I believe that the Section 115 license should
15 be repealed and that licensing of sound
16 recordings should be left to the marketplace,
17 most likely by means of collective
18 administration. And she concluded all of this
19 with saying: If commentators believe
20 mechanical licensing is not working, the blame
21 must rest squarely on the 100-year-old history
22 of government price controls established by

1 the compulsory license which incentivizes
2 legislative or regulatory fixes at the expense
3 of marketplace solutions.

4 And I think that sums up what
5 we're trying to get at perfectly, which is
6 let's not put a government band-aid on it,
7 let's get back to a marketplace situation, and
8 then figure out within that marketplace if
9 there need to be certain protections built in,
10 how do we build those in or how do we ensure
11 transparency in a collective, how do we ensure
12 that we have efficient licensing. But I don't
13 think the place to start with to find that
14 solution is with, okay, how do we fix the
15 current problem right now just to make it easy
16 for right now.

17 MS. CHARLESWORTH: Thank you very
18 much, Ms. Schaffer.

19 I think Mr. Johnson was next.

20 MR. JOHNSON: I just had a couple
21 of comments for them, but I'd like to ask Ms.
22 Schaffer one question. You're a sponsor of

1 the SEA Bill and it will be five years before
2 they change the mechanical. I was curious,
3 what rate did you have in mind that you would
4 see the Copyright Royalty Board increasing the
5 mechanical rate in five years?

6 MS. SCHAFFER: I'm sorry. You're
7 saying if we don't?

8 MR. JOHNSON: Whenever they do it,
9 it's going to be five years before it's final,
10 the next mechanical hearing will be three
11 years, it takes two years to go through.

12 MS. CHARLESWORTH: Well, I think
13 what Ms. Schaffer is advocating for is the
14 end of the CRB.

15 MR. JOHNSON: She was a sponsor of
16 the SEA Bill, I thought. Right? National
17 Music Publishers was a sponsor of the SEA
18 Bill.

19 MS. SCHAFFER: The Songwriter
20 Equity Act? Yes. I mean, if the Songwriter
21 Equity Bill were to be passed, it would
22 obviously become a moot point if 115 was done

1 away with. I think that we're all realistic
2 that this process is not going conclude by the
3 end of this year, that this is a longer
4 process, so in the meantime I think it
5 provides a solution.

6 MR. JOHNSON: But my question is
7 if the SEA Bill passed, let's say we didn't
8 get rid of the mechanical, when that rate
9 hearing comes around in three years, what rate
10 do you envision? Did you have any rate in
11 mind, I guess is my question, when you crafted
12 the bill?

13 MS. SCHAFFER: Sure. I personally
14 don't know that the NMPA has any particular
15 rate in mind. It would be based, though, on
16 a willing seller/willing buyer marketplace,
17 and I think at that time what we would be
18 hoping is that we could pull in comparative
19 rates that sound recordings are receiving,
20 that other negotiations in the marketplace
21 would be looking at, and at that point come to
22 a conclusion as to what the best rate would

1 be.

2 MR. JOHNSON: So no, you did not
3 have a rate in mind when you crafted the bill.

4 MS. SCHAFFER: Personally I did
5 not craft the bill.

6 MR. JOHNSON: Who crafted it?

7 (General talking)

8 MR. JOHNSON: I thought the
9 Grammys, NMPA, ASCAP and BMI all sponsored the
10 bill. I didn't know if it came out of the
11 Grammys or if it came out of Doug Collins's
12 office or your office.

13 MS. SCHAFFER: Truthfully, I don't
14 know the answer to that.

15 MR. JOHNSON: Okay. Just real
16 quick, and I'll be quiet, and I'd like to give
17 a presentation but I'd just rather real quick,
18 Professor Gervais, I totally agree with you,
19 and I had said before we have a sound
20 recording and we have our underlying work and
21 that's it, and all those terms interactive
22 subscription, non-subscription, blah-blah-

1 blah. I'm sick and tired of it. They're
2 pretty words but they have nothing to do with
3 that general copyright.

4 And Mr. Coleman, I absolutely
5 totally disagree with you. This is a quick
6 point. When you say we need to understand
7 that there's no doubt copyright is not a
8 natural right, you couldn't be more wrong, and
9 that is the absolute problem. Copyright
10 preceded the constitution, it is a natural
11 right, like me breathing, like the right to
12 happiness, like the right to free speech that
13 I'm expressing right now. And the
14 Constitution is the supreme law of the land,
15 whether any of you like it or not, and that
16 copyright is in that, and thank God it's in
17 there.

18 Now, a lot of people don't have
19 respect for the Constitution anymore, but I
20 guarantee you my copyright, my stored labor,
21 my 25 years of working on my craft to be the
22 best songwriter, to be the best performer, to

1 be the best recording person I can be, is
2 based upon my natural right and my stored
3 labor and I get to choose what I do with it,
4 and it is a property right, as Mr. Driskill
5 says, like my house or my car. And you take
6 one copy of it, you take the whole \$50,000
7 from my album and all the years that I've put
8 into, even though it's just one copy, and then
9 when you take a million copies or 500,000
10 streams, you've got to be kidding me. But
11 anyway, it is a natural right, absolutely, and
12 until we get that through our thick heads, we
13 don't understand anything.

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

16 I think turning to this side of
17 the room, we'll do Mr. Gottlieb and Mr.
18 Barker.

19 MR. GOTTLIEB: I'd like to say
20 that Professor Gervais's view of things is
21 very much mine as well. I know we are
22 afflicted by this need to deal with what

1 already exists, and that is most certainly in
2 the vast majority of the discussion we've
3 engaged in today as to what to do about
4 existing cataloguing going forward. But much
5 like building the highway system, we always
6 seem to be building the highway system that we
7 need right now but not five years from now.

8 I think that we should really try
9 as a business community, as an intellectual
10 property community to try to design a
11 copyright statute that is the future and amend
12 what we've got going now to try to fit that,
13 and what I see as the future is the digital
14 transmission in all its varied forms. There
15 is no such thing as a non-digitized file
16 anymore; even supposed analog systems have
17 microprocessors in them.

18 So the trend that I see, once the
19 metadata issues and the ownership identifiers
20 are resolved and there are standards put in
21 place, is that you will see more
22 individualization and private ownership of

1 things, and that the collective works will be
2 agreed upon in advance by the participants in
3 that, the creators in that, and they can
4 decide in the aggregate of how much they want
5 to charge for the license.

6 But more importantly, I see a time
7 when the individual creator of whatever
8 intellectual property is being consumed --
9 because we are all consumers of intellectual
10 property, and many people are creators as well
11 -- that we would have little IP accounts
12 associated with our internet service providers
13 and those IP accounts would be aggregator
14 functions for micro-transactions, and that the
15 collectivization would be, perhaps, in the
16 rate-setting negotiations for catalogues, it
17 could be in the negotiations for collective
18 works and for the distribution terms.

19 But in reality, we're living in a
20 jukebox world again in that most people just
21 want to pay for what they use, they don't want
22 to be on a subscription and they don't want to

1 make long-term commitments, they just want to
2 hear your tune when it comes out or they just
3 want to watch your movie. And if you're
4 involved in that, you just want to get paid
5 when somebody played it, you don't really want
6 something that you didn't get and that you
7 weren't entitled to. And so the fact that we
8 have this technology that's been increasing in
9 sophistication, pretty soon everybody can have
10 their own collection system and their own
11 distribution system.

12 And that's what I see as the
13 future, and I see that our copyright statute
14 needs to reflect the future and then make
15 amendatory provisions to try to bring our old
16 legacies into that world to conform to the
17 technology that will be ubiquitous. I mean,
18 who would have ever thought that a song
19 someone wrote or a movie could be distributed
20 to Botswana in an instant. It's just
21 inconceivable, and if we cannot globalize and
22 set up structures to deal with this on a

1 global basis and to integrate it and see that
2 future, we're just building another highway
3 system that we need to add lanes to later and
4 come back to this table in a few years and say
5 this didn't really work.

6 So I really urge everybody to try
7 to look ahead and realize that even a
8 broadcast performance is just a jukebox when
9 it hits your desktop and that's a one-time
10 play, it's a one-time shot, and maybe I only
11 participate as a .00, but I want mine to come
12 right away. I'm the person who put the
13 quarter into the jukebox, I'd like to see my
14 guys get paid right away. And if we have a
15 system that can think about the individual,
16 the collectivization, if we atomize things and
17 we normalize it down to the individual, we
18 will be able to properly collectivize it and
19 figure out where the junction points are for
20 the various stakeholders. I know that's very
21 blue sky on my part, but I really think that's
22 essential.

1 And I'll make one other point, and
2 that is that this issue of knowing who is
3 using your intellectual property at any given
4 time and whether or not you have a right to
5 know who's your intellectual property is a
6 very problematic issue. Can you consume
7 perfected copyrights anonymously, and I don't
8 think you can, I don't think that's a right we
9 can tolerate. You can publish non-
10 copyrighted, but I think when you perfect a
11 copyright, you should be able to enforce all
12 the way down the line to the consumer.

13 And so what I would also advocate
14 is that we establish some kind of a digital
15 reporting protocol for when a perfected
16 copyright, which would be identified with a
17 global release identifier, is transmitted over
18 the web that there is some type of aggregation
19 system which would collect that data and the
20 copyright owner or the stakeholder in a
21 collective work would be able to look at the
22 global release identifier and see how many

1 times it went over, and that could be the
2 basis for infringement or not.

3 But that system needs to be
4 thought through so that as we move more and
5 more toward micro-transactions and fractional
6 interests in copyrights through statutory
7 heirs and estates and all these things, that
8 we have systems in place that can handle these
9 little bits of information and we will bring
10 along the legacy. The legacy is very
11 important to us, we want these recordings to
12 last, we want these movies to last, and we
13 want everybody who participated in them to
14 make their just compensation.

15 So much of this discussion is
16 based on how are we going to fix what we've
17 got broken already, and I would say that
18 Professor Gervais said it beautifully: we
19 wouldn't design it like this if we were doing
20 it today, we would be looking at these lines
21 that are starting to blur and see them in a
22 totally different format. And I'll shut up

1 with that.

2 MS. CHARLESWORTH: Thank you, Mr.
3 Gottlieb.

4 Mr. Barker.

5 MR. BARKER: Thank you.

6 I will say, even though I've not
7 yet in the two days sat on the same side of
8 the table as Ms. Schaffer, I think I agree
9 with her on everything. Now, she may not
10 agree with me on everything that I'm about to
11 say. But I do agree, as well, that this
12 process has been great, the meetings around
13 the table and the meetings between the tables
14 have been wonderful. The thing I believe is
15 there's not a single person in this room that
16 is as smart as everybody in this room, so I
17 think everybody in this room can work together
18 to come up with a solution.

19 I think it's clear, just my little
20 area, that we need to get rid of 115, I agree
21 with that. Ms. Schaffer has read one quote
22 from Marybeth Peters. Another one that I have

1 is the Copyright Office said in 2011:
2 "Compulsory licenses are limitations to the
3 exclusive rights normally accorded to the
4 copyright owners." And that was in a Satellite
5 Television Extension Act report, I think.

6 It's clear, I think, that we need
7 to repeal 115. In my opinion, it's not an
8 argument. I think the question isn't should
9 we get rid of it, the question is what model
10 should replace it. And I think if we all came
11 down to it, that's the real issue: how are we
12 going to operate, how are the services going
13 to operate and how are the record companies
14 going to operate without that.

15 Mr. Knife and DiMA's organization
16 has said in their report there were six
17 essentials that the organization thought
18 important for the modernization of copyright
19 laws. I agree with five of the six
20 wholeheartedly. Those are: transparency and
21 a centralized database, licensing efficiencies
22 and reduced transaction costs, clarification

1 of rights, reduction of legal risks around
2 licensing activities, and a level playing
3 field. I think we would be hard pressed to
4 find anyone around the table who would not
5 agree with those.

6 The only one I slightly disagree
7 with is continued government oversight and
8 regulation of music licensing activities.
9 Now, there may need to be a level of that or
10 there may need to be levels of that that maybe
11 change over time.

12 Mr. Marks, with RIAA, has said a
13 lot of things that I agree with, some things
14 that I disagree with. One of the things that
15 he's spoken about is blanket licenses. I
16 don't think blanket licenses are a solution.
17 I think a clear and efficient license is the
18 solution; there is a big difference in that.
19 Blanket licenses do away with some of the
20 rights that Mr. Gottlieb just talked about
21 that owners should continue to have. Blanket
22 licenses, I believe, are not our solution.

1 NMPA's statement said, Blanket
2 licenses would not be an improvement but
3 rather a step backward by limiting
4 transparency in the digital age. I totally
5 agree with that; I think that's a step back.
6 You know, the free market, the record
7 licensing is taking place in the free market,
8 and there's nobody really yelling and
9 screaming to say we've got to change that, it
10 seems to be working. I would like to see the
11 music composition marketplace go in the same
12 direction, with the two things in mind that I
13 mentioned a lot yesterday: a clear and
14 efficient process and fair market rates.
15 Those are the two principles I think we, as
16 copyright owners, would like to stick by.

17 So here's my proposal. I'm going
18 to throw this out there, and I'm going to
19 throw this out there on the record to say
20 here's a proposal that I may not agree with
21 but here's a proposal that I throw out as a
22 target to be debated, and some of which we've

1 talked about, and some of which have been
2 around the table, and some of which have not.

3 Introduce a sunset period to
4 repeal 115 in a two-year period. Now, that
5 may sound aggressive, but I think we could do
6 that. If we introduce the sunset period, say
7 115 is going to go away at a certain time, at
8 that time compulsory licenses are no longer
9 available after that period, however,
10 compulsory licenses that exist through that
11 period stay in place. That would then allow,
12 I believe, a collection agency, or agencies,
13 plural, to begin to be developed under the
14 right of transparency which is a right to
15 audit, the right of owners to say yes or no,
16 we want or don't want our songs to be included
17 in certain types of uses.

18 During a lunch discussion we had
19 yesterday, someone said: "Yes, but what about
20 a small percentage owner in that copyright
21 holding that up." And I think we could then
22 look at what the Copyright Office has done

1 with termination rights to say a majority of
2 owners of that copyright would be able to
3 control the copyright. Now, that may take
4 away power from a 10 percent owner of a
5 copyright, but that owner is a co-owner in a
6 100 percent entity, and they knew that going
7 into it. So to be able to say majority rules
8 on a song-by-song basis might work.

9 The right to make a fair market
10 rate, whatever this entity is that was
11 created, would be able to, as closely as
12 possible, grow toward a fair market rate,
13 willing buyer/willing seller, have as little
14 or no government control as possible, the
15 rates would not be tethered to any other
16 rights, such as sound recordings. After the
17 initial period all current licenses that were
18 in place remain in place, and then we could
19 even suggest that the current rates that we
20 are operating under at that time, .091 for
21 mechanicals, .24 for ringtones, whoever can
22 figure out the complicated rates on the

1 interactive streaming, whatever those rates
2 are, they stay in place for an additional two
3 years after this entity is up and running in
4 order to acquire new licenses, at which point
5 after that four-year period the market is free
6 to develop.

7 So I throw that out there not as a
8 solution, so to speak, but more as a direction
9 to shoot towards. It's a long journey, as Ms.
10 Schaffer has said, and as many of us have
11 said. It's been 105 years that we've lived
12 under this, it's a huge, long journey. A
13 thousand mile journey begins with the first
14 step; I would propose that as a step.

15 MR. MARKS: Can I ask a question
16 about it?

17 MR. BARKER: Yes.

18 MR. MARKS: Would you bundle
19 performance and mechanical together? In other
20 words, you get rid of 115 with the new
21 collective or collectives license, all the
22 rights that are necessary for a certain

1 transaction?

2 MR. BARKER: You know, somehow I
3 knew you were going to ask that. I would say
4 that could be a possibility. I would not be,
5 right now, totally opposed to that. I think
6 that would be a possibility as we work toward
7 this option.

8 MS. SCHAFFER: And I think we
9 should insert into that that part of the
10 revisions that would need to take place under
11 this proposal would be a revision of the
12 consent decrees, and how the PROs and public
13 performance licenses are factored into this
14 equation

15 MR. BARKER: And I would agree
16 with Ms. Schaffer on that because I think the
17 idea here is I'm kind of focusing on 115, but
18 coming outside of that with consent decrees
19 and all of the things that are surrounding
20 that, absolutely, we want to approach
21 everything with the same mind set.

22 MS. CHARLESWORTH: Okay. Thank

1 you very much. More food for thought.

2 I think Mr. Sellwood is up next

3 MR. SELLWOOD: Thanks, everyone,
4 for hosting us, and thanks you all for a great
5 dialogue. It's been really a pleasure to be
6 here and participate.

7 I think the way I would try to
8 approach this is I agree with the opening
9 comment that this all has to work for
10 everybody, and so there are a couple of themes
11 that I think DiMA captured in their comments
12 very well and that John just outlined that I
13 think are essential for a working system:
14 transparency, authoritative understanding of
15 ownership information is necessary for a
16 working system, both to understand what's
17 license and also to pay correctly, which I
18 think is the foundation.

19 I think a working system also has
20 to reduce rights fragmentation for a number of
21 reasons. From our perspective, and I think
22 for other music users' perspective, rights

1 fragmentation leads to all of these parallel
2 dialogues as to how much rights should cost,
3 and while each of them may be rational in
4 their own right, collectively lead to
5 increased costs that could make running a
6 music service unsustainable very quickly. And
7 so I don't think a system that allows that to
8 happen is a system that works for everybody.

9 Also, I think we talked a lot
10 about efficiency. A system that works for
11 everybody, from our side who needs millions of
12 licenses and you all who are trying to respond
13 to millions of license requests, the system
14 needs to be efficient. And we have to clarify
15 what rights, whatever program is adopted, we
16 have to clarify what rights are covered so
17 that there are no gotchas in the future.

18 I think I heard you just agree
19 that all of that sounds like it kind of works
20 for everybody, not putting words in your
21 mouth, except for the penultimate which is
22 does the government get involved and to what

1 extent. And based on my experience in
2 licensing, publishing for the last five years
3 for labels, distributors and music services,
4 I don't think that a pure market environment
5 accomplishes all of those things, I haven't
6 seen it.

7 And so my question -- which I
8 think your proposal started to answer, and so
9 I really appreciate you outlining that -- is
10 how do we achieve those things without the
11 umbrella of some type of compulsory licensing,
12 without the umbrella and the assistance of
13 consent decrees as examples, or without some
14 type of real oversight from the Copyright
15 Office. Because, in my experience, I haven't
16 seen a disparate group of business models and
17 copyright owners, who all have rational
18 strategies for operating their business,
19 operate in concert in a way that would work
20 for everybody without that. So that's kind of
21 my question to not only John but everybody
22 else.

1 I'm really interested in your
2 comment about addressing holdouts because
3 that's obviously a very big concern of ours,
4 but I thought I heard you say that at some
5 point a majority stake in a copyright can kind
6 of overrule a minority stake in a copyright
7 and I find that to be interesting, and it
8 seems to kind of tease out some of the
9 concerns that you have about compulsory
10 licensing or consent decree regulation where
11 it's somebody else telling you when and where
12 your copyrights can be used. You're just
13 drawing the line slightly differently which
14 I'm not challenging, I'm just finding it to be
15 intellectually interesting.

16 So I'll end there, but thank you
17 all very much for hearing us out and I really
18 appreciate the openness of the conversation.

19 and the cost of licensing and
20 everything, do you mean in terms of high costs
21 in what you're paying out to the owners or as
22 in your transaction costs in having to engage

1 in those licensing discussions?

2 MR. SELLWOOD: That's a great
3 question. I put content costs, when I'm
4 referring to rights fragmentation and all of
5 the different parallel silos of rate
6 discussions, I'm talking more about content
7 costs, total content costs. I think there was
8 a comment at the very beginning that we really
9 have to view sound recording and publishing
10 costs or royalties, licensing fees together.
11 That's what we do, that's what anybody on this
12 side of the economic equation dose, we have to
13 look at total content costs. So that's one
14 cost.

15 Then the transaction costs of
16 obtaining millions and millions of licensing
17 I think comes into the licensing efficiency
18 side of things. Without licensing efficiency,
19 those transaction costs get out of hand and
20 they start impacting how much you can spend on
21 content costs and also how much you can spend
22 marketing and promoting and doing all the

1 other things that you need to do to operate.
2 You all have the exact same business mechanics
3 in calculations that you're making on your
4 side as well.

5 MS. CHARLESWORTH: Thank you very
6 much, Mr. Sellwood.

7 And I think Mr. Kass was next,
8 and then followed by Professor Gervais.

9 MR. KASS: First of all, thank you
10 very much in the Copyright Office. The
11 roundtable has just been fantastic and I'm
12 personally impressed how you're getting out
13 ahead of it and getting good facts and getting
14 a synergy.

15 At the risk of going on the record
16 of agreeing with Mr. Marks and RIAA, as
17 opposed to my natural ally which is Lee and
18 DiMA, I think RIAA and the groups in general,
19 following the good doctor's advice, need to
20 have an overall solution. The fragmented
21 solution, in the case of broadcasters -- which
22 is what I represent, non-commercial

1 broadcasters -- there are two different rates,
2 one of which RIAA gets a piece of the pie and
3 one it doesn't. And I can well understand
4 from RIAA's point of view that they need
5 across the board licensing.

6 I would only hope that the
7 government would get involved in making it so
8 it is, in fact, good for everybody and a level
9 playing field. There is so much in 114 --
10 which I said at the beginning I really think
11 is basically a bad unconstitutional section --
12 that it makes it hard to use 114 as a sample
13 to regulate broadcasters, public or private.
14 At least under FCC regulations, the Supreme
15 Court has fleshed out over the last decade,
16 you can't say to a broadcaster you can only
17 play an artist three times in three hours, and
18 you can't say that you're not going to take a
19 request, you can't force a broadcaster to do
20 something technologically that they physically
21 can't do.

22 So where the politically correct

1 solution is obviously marketplace, and I think
2 we all like it. I think we have to also look
3 at solutions like 801(b) that provide some
4 government input to the marketplace because,
5 in fact, there is no marketplace. There is
6 different rates coming out of negotiations and
7 copyright for different users that are the
8 same. NPR which is 67 percent identical to an
9 IBS member -- in other words, they're on a
10 campus and their license is held by a state --
11 has a completely different rate for the
12 professional station than the student station
13 that's on the same campus, both broadcasting,
14 both webcasting and owned by the state. So we
15 have to be careful in imposing a marketplace
16 solution which, in fact, hasn't worked or it
17 hasn't yielded a marketplace.

18 Plus, it's very difficult to have
19 an uneven playing field when you're talking
20 about marketplace. If we're going to say to
21 the labels that they can get together and, in
22 effect, set a price in negotiation and you

1 have a value of performance or advertising,
2 are we then going to allow NAB to say, okay,
3 we're going to take ten artists and we're not
4 going to play their music for the next 90
5 days, their new music? That would be a
6 marketplace solution, but we'd call the one
7 restraint of trade and we'd call the other a
8 legal bargaining process.

9 I would hope that in this overall
10 process, good for all, that the government and
11 Congress would remember the little person, and
12 although this sounds crazy, that they would
13 actually remember the public because at the
14 end of the day the Constitution says for the
15 progress of science and useful arts that
16 Congress should pass laws that will be
17 beneficial to the public. And it's
18 essentially the intercollegiate broadcasting
19 system that I represent represents the public
20 in the truest sense, it represents the 50
21 states and their entities.

22 I think another thing that has to

1 be kept in mind is there are tremendous
2 technological challenges which we're solving
3 at a tremendous rate, but at the end of the
4 day whatever fee is going to come from the
5 government or from the marketplace, when it's
6 received by the 50 states, it's a tax.

7 Legally it's a tax because there
8 is no such thing as the government imposing a
9 fee on the state. And I represent the 50
10 states, or more specifically, the student
11 broadcasters on there. You can impose taxes
12 on us, but if it is going to be a tax, be fair
13 and recognize that you can't use public money,
14 for instance, to pay for music lobbyists.
15 It's just not legal at the state level,
16 although that is the statute and that's the
17 way it's administered.

18 So again, thank you very, very
19 much for helping us get out front. Love the
20 way we began, the doctor led us, in the fact
21 that we need something for all. Love the
22 suggestion that RIAA has proposed which is

1 that you have to make it work all together,
2 but just kind of remember the little guy,
3 remember the hobbyist, remember that student
4 who's not using music for the purposes of
5 music or building an audience, they're using
6 it as a catalyst to learn speech, to learn
7 writing, to learn communication, and to build
8 skill sets which will be important in the
9 marketplace.

10 MS. CHARLESWORTH: Thank you, Mr.
11 Kass.

12 And now back to Professor Gervais.

13 MR. GERVAIS: Thank you. So I'm
14 very interested by what I heard, and there's
15 certainly quite a bit of support for the idea
16 that there's a need for a little bit more
17 market but not an exclusively entirely pure
18 market solution, something in between,
19 perhaps, if I read some of the comments.

20 I certainly agree that removing
21 115 is part of a solution, I don't think it's
22 the solution, I don't think that solves the

1 problem. I think it might solve the problem
2 if it's part of a broader picture. And the
3 reason I say that is you have to ask, well,
4 why do we not want a compulsory license.
5 Right? So if you're a songwriter or a
6 publisher, what exclusive right do you have
7 now? You have no right under 115 to say no.
8 But frankly, if you're a member of ASCAP or
9 BMI, they can't say no either. That's not a
10 compulsory license but it's very close to one.
11 The government has taken your right away to
12 say no; it's called the Department of Justice,
13 not 115, but it's the same thing.

14 Of course, if you're ASCAP or BMI
15 you're probably saying "I'm in the business of
16 yes, I'm not in the business of no." So the
17 question is really not as much the no and the
18 yes -- and I certainly agree with the
19 fragmentation comment, that's part of it too
20 -- but the question is it the government's job
21 to set the price. I think to me that's really
22 the question here. So the yes and no is kind

1 of in the background, but in the performing
2 rights there's not a compulsory license but it
3 is a government set price, it's a rate court
4 set price.

5 So then the question is then,
6 okay, if you don't like that and you want to
7 regulate it differently, but let's all agree
8 that there will be some regulation. For one
9 thing, the Copyright Act is not going to go
10 away, that regulation. Regulation is not
11 going to go away entirely. The question is
12 how do you regulate. And you have choice
13 here. You have the choice to regulate ex ante
14 which means basically you put something in the
15 statute, that's what we have now, very much
16 like what Mr. Gottlieb was saying, you build
17 a highway system and that's it, you've got it
18 and it's there. This is the government
19 saying: You know, I know exactly what the
20 internet will be like in ten years. Okay.
21 Please let me know. I think they might be
22 interested here too. So to me that doesn't

1 work.

2 instead of having everything in
3 the state, a regulatory approach but a softer
4 one. So to me what that means is, first of
5 all, a single regulator. I don't know that it
6 makes a lot of sense to have this totally
7 separate system, but a backup regulator, by
8 which I mean let the parties decide how they
9 want to organize themselves -- I think that's
10 a freedom that people should have -- and once
11 the parties decide to organize themselves, by
12 which I mean it could be individual or it
13 could be collective, but once they've done
14 that, let them negotiate, let the market work.
15 If it fails, then there should be a backup
16 solution.

17 Now, the backup solution can also
18 do more than just set prices, they could set
19 rules on transparency if necessary, they could
20 set rules on holdouts. There are countries,
21 for example, where holdouts have limited
22 remedies if they're really holdouts. I'm not

1 saying that's what I'm suggesting
2 specifically, what I'm saying is you can have
3 a regulator, a regulatory function that
4 doesn't presuppose what the internet will be
5 like in ten years, or five years, for that
6 matter, or next year, because I don't know.
7 Next year we could probably kind of call it,
8 five years, nah, ten years, no one around this
9 table, or if somebody does, please let me know
10 what it will look like. I don't know. How
11 will people be listening to music, will they
12 be walking with their watch like this, will it
13 be their glasses, who knows.

14 I think that's where this idea of
15 letting the regulator step in if the market,
16 in fact, fails, but based on the facts at that
17 point in time would be a better solution.

18 MS. CHARLESWORTH: Okay. Thank
19 you.

20 We're nearing the end of this
21 panel but I really wanted to make sure, since
22 it's the last opportunity around the table

1 here, that everyone has an opportunity to say
2 any final words. I see Mr. Johnson, Mr.
3 Gottlieb, and then anyone else who wants to
4 speak before we wrap up this final panel,
5 please be sure to put your placards up.

6 Mr. Johnson.

7 MR. JOHNSON: We really do
8 appreciate you having this. I've always had
9 a ton of respect for the Copyright Office, and
10 still do. I think basically we just hope that
11 you protect our copyrights, protect them from
12 piracy, do a great job registering them, and
13 if you set up a database, however that works,
14 I think that's great too.

15 But I do think we need to get rid
16 of the Copyright Royalty Board altogether for
17 everything, and I doubt that's going to
18 happen, but if we do keep them, it would be
19 nice if we could all negotiate and be forced
20 to come up with a rate without having to
21 always fall back on the Copyright Royalty
22 Board who's always going to set the rate. And

1 let's say they didn't set the rate, that we
2 really had to work it out, that Universal and
3 Pandora had to work it out, and guess what,
4 they did.

5 So I think all the comments made
6 about how this is already working out with
7 Universal and other people is the solution,
8 and the free market is always the solution, no
9 matter what. And I'm not opposed to
10 collective licensing, I'm just opposed to
11 forced collective licensing. And I think
12 ASCAP and BMI do a great job with a lot of
13 things, but I think we need a balance of both.

14 There's a guy who's a computer
15 scientist, his name is Jaron Lanier, he wrote
16 a book called "Who Owns the Future" and if you
17 haven't got it, it's incredible, and there's
18 a whole chapter on "Drove my Chevy to the
19 Levee, But the Levee Was Dry", and it's about
20 the mechanical rate and about how music is
21 like a mortgage. But his main point is that
22 YouTube, Google, Pandora, all the streamers,

1 Spotify, they have created what's called a
2 "peasant's dilemma" for the songwriter
3 specifically. And he also says that we are
4 the canary in the coal mine for everybody
5 else, for movies, for books, for everybody
6 else. The computer is coming for your
7 copyright.

8 So he makes the point that the
9 1909 mechanical was a hard-earned levy, it was
10 hard-earned to get that Copyright Act passed,
11 and I think there's something to that. And
12 whether we get rid of 115 or not, I'm not
13 sure. But with this "peasant's dilemma" is
14 there is no buffer and all the wealth goes to
15 the central server and it just gets
16 transferred in all these millions of
17 transactions, and the money goes to Google and
18 to Pandora and all of them. So the \$20 that
19 used to go to Warner Brothers or Universal
20 Records or all the labels, that's transferred
21 now over to Pandora and all the streamers in
22 subscription rates since there is no physical

1 product left.

2 So people say it's a monopoly, you
3 have a monopoly on your copyright, saying I
4 have a monopoly on my copyright is like saying
5 I have a monopoly on my hat or Mr. Weitz has
6 a monopoly on his bowtie. Of course it's a
7 monopoly. It's like on "Seinfeld" when people
8 would say, "Nice tie, Jerry," and he'd say,
9 "Thanks, I made it myself." Well, in that case
10 he built his own tie, like I built my own
11 song. And so this whole idea of monopoly,
12 it's bad when the private does it and because
13 it's a copyright, but at the same time
14 SoundExchange can have a monopoly on all
15 collection of digital sound recordings and the
16 Copyright Royalty Board has a monopoly on
17 price fixing.

18 So I think, just real quick, I see
19 there's eight different things we need that we
20 have problems with. We have streaming
21 royalties and the price fixing and those nano-
22 royalties, we have the real cost of inflation,

1 and we have no cost of living increase, the
2 deregulation with the consent decrees. I'm
3 not for the compulsory license because as far
4 as the first time use and having anybody be
5 able to record my song. We live in the
6 computer age now, send me an email, get on my
7 website.

8 Global Image Works was in the
9 comment period and I actually used them in my
10 "Still Pissed at Yoko" video to get a little
11 bit of the announcer who did the Beatles
12 thing. Okay? And it was great. We signed up,
13 we actually got to negotiate and we lowered
14 the rate, we signed and it was over. I
15 licensed James Dean for a song I had, called
16 them in Indiana, we got it done like that, no
17 problem. So direct licensing is the future,
18 I think, along with some kind of collective
19 that deals with all the new stuff.

20 I think ASCAP and BMI, their two-
21 week sampling is hideous. Here's a quick
22 poster.

1 MS. CHARLESWORTH: Let the record
2 reflect another exhibit. Mr. Johnson, we're
3 running out of time, so please, I just want to
4 make sure you hit all your points quickly.

5 MR. JOHNSON: There's copyright
6 infringement and piracy going on here in ASCAP
7 and BMI it used to be, mainly ASCAP. We have
8 nonprofits, lobbyists, the Grammys, political
9 corporatism interfering in transactions. We
10 have the public airwaves and with radio we
11 don't really have access to the airwaves
12 anymore. And of course, we have peer-to-peer
13 piracy.

14 But the main thing I think we need
15 to do is temporarily reestablish the
16 mechanical rate for stream, 9.1 cents, that
17 Pandora and YouTube and everybody else should
18 start paying 9.1 cents because it is the
19 "minimum statutory rate" and it's still the
20 law. And I don't care about the DCMA and all
21 this goofy stuff, it's still a minimum
22 statutory rate and the Copyright Royalty Board

1 had no right to go below that for a mechanical
2 for a stream. And if we reestablish that --
3 I think that's what ruined it -- it's a
4 temporary bridge till we can get to a more
5 free market rate.

6 MS. CHARLESWORTH: Thank you very
7 much, Mr. Johnson.

8 Mr. Coleman was next, and then I
9 think Mr. Gottlieb.

10 MR. COLEMAN: I hope that Congress
11 will consider expanding the mandate of
12 performing rights organizations to include a
13 lot of the solutions that we've discussed
14 under their aegis. I think the performing
15 rights organizations have already the
16 statutory mandate in the Copyright Act. I
17 think that they will enable excellent database
18 accessibility for licensees and the ability to
19 license bundles of rights. And also, they
20 have a longstanding advocacy of individual
21 composers that can be preserved which I'm not
22 sure that private firms are likely to do if we

1 shift away from them.

2 MS. CHARLESWORTH: Thank you very
3 much.

4 Mr. Gottlieb.

5 MR. GOTTLIEB: I just very briefly
6 wanted to respond to what Professor Gervais
7 had said about not knowing what the internet
8 looked like, and he was making some reference
9 to what I said. I don't even suppose to know
10 what the internet would look like. What I was
11 referring to is that I think that what's not
12 going away is a trend towards
13 individualization with respect to copyright
14 and how we transact that. And it just seems
15 to be more and more private ownership and
16 private desire to control and consume on an
17 individual level, as facilitated by the
18 internet.

19 MR. GERVAIS: I was agreeing with
20 your highway metaphor.

21 MS. CHARLESWORTH: We're having a
22 lot of confusion about your position,

1 Professor Gervais.

2 MR. GERVAIS: There was no
3 disagreement there.

4 MS. CHARLESWORTH: No one
5 disagrees with Professor Gervais, I think
6 that's what we established.

7 Okay. Ms. Buresh.

8 MS. BURESH: Thank you. I think
9 everyone has said thank you for giving
10 Nashville the attention to come down here. I
11 think our music industry in Nashville is a lot
12 different than New York and L.A., based on the
13 fact that we have a lot of houses on Music Row
14 that have studios in them, and people like
15 that. We like the community we have, the
16 creative world is here, and thank you.

17 And I like to agree a lot with
18 John Barker's comments and that line that he
19 proposed to the group. Everything he said, I
20 was pretty much agreeing with; as an
21 administrator, I can live with that.

22 The only thing that my concern is

1 with collective databases and collective
2 licensing is who owns the data, and that's
3 where, from my perspective representing a lot
4 of independent publishing companies and record
5 labels, I would like to submit my data once
6 and if it changes, have one location to go and
7 submit it again, and have a red flag online,
8 a public library that people can see, hey,
9 this has been changed. You don't need to send
10 out emails to everybody, it just has to have
11 a flag next to it.

12 I can go on the Copyright website
13 all the time and check, hey, this song has
14 been registered or it hasn't. It takes me
15 five minutes -- if it actually searches --

16 MS. CHARLESWORTH: Thank you for
17 that footnote, appreciate that. We're working
18 on that.

19 (General laughter)

20 MS. BURESH: There's going to be
21 technological difficulties with everything, we
22 understand that, and that's part of growing

1 society as well, we encourage that, we want
2 that to happen. So I would encourage the
3 recordation and the revision of how
4 registering for copyrights is upheld or how we
5 start that process. The unique identifier
6 code for a musical composition and a sound
7 recording so we can track it, because I've
8 heard a lot of people say it's too hard to
9 track things. We're in a digital age, this is
10 happening, numbers match, you can track them,
11 don't give me that excuse, it doesn't make any
12 sense to me. So the accountability, I just
13 don't see how that's an excuse.

14 And as an administrator, trying to
15 collect money and distribute it to my clients,
16 tell them: Oh, yeah, they just told me I
17 can't track it. Well, their eyes, that's my
18 money, that's my money, I want my money, go
19 find it. And I'm wasting time arguing, you
20 have the data, just be transparent with it.
21 I think there should be data standards and
22 there really should be one song that everyone

1 can actually see online. So that's where I
2 sit, and thank you very much.

3 MS. CHARLESWORTH: Well, thank
4 you. And is that it?

5 MR. GERVAIS: Can I footnote that?

6 MS. CHARLESWORTH: Yes, Professor
7 Gervais.

8 MR. GERVAIS: Very quickly,
9 because I agree. If you think about it, this
10 is about, I think, partly the Copyright Office
11 system -- at least that's how I would read
12 part of that comment. And if you buy a car,
13 that's kind of the system we have now, the
14 system tells you what's in front of you is a
15 white 2012 Lexus. I know, I'm in front of it,
16 I can see it. Now, what you really want to
17 know is who owns the car.

18 And so the system, I think, should
19 do a lot more for what we call recordation
20 than registration it should really focus on
21 who owns what. And not only can we do it, we
22 must, because at some point somebody needs to

1 get paid and you want to pay the person who
2 has the title. So I think what the Copyright
3 Office does is actually very relevant as part
4 of that as well. That was just a footnote.

5 MS. CHARLESWORTH: Okay. Speak
6 now or forever hold your peace. Oh, Mr.
7 Johnson. We're way over, so yes, you have a
8 footnote, one sentence.

9 MR. JOHNSON: I'm working on a
10 songwriter bill and so I'd like to have any
11 input, and I really am. And this is kind of
12 a "joke addendum bill" here, this isn't it,
13 but I thought we should propose an "LRB Act",
14 "Lawyer & Lobbyist Rate Board," and what it
15 does is establish in the Federal Code and "LRB
16 Board" to set statutory rates for billable
17 hourly rates to regulate compensation for all
18 attorneys and lobbyists and for other
19 purposes. So of course you have three judges,
20 of course they're going here down to the
21 client and here's the lawyer.

22 MS. CHARLESWORTH: Are government

1 lawyers exempt from this?

2 MR. JOHNSON: Actually, they
3 aren't. At the bottom there's a little note
4 here, you've got to read the fine print, of
5 course. "The top three law firms in America
6 are permitted to bill clients at whatever
7 hourly rate they choose." So of course you
8 have the Department of Justice and they've got
9 a brand new consent decree here in 2014 that's
10 going to cover all these people, and of course
11 it's sponsored by ATLA and of course the
12 American Bar Association, and we're going to
13 form a new PRO called LawExchange, they're a
14 third party aggregator, and of course they're
15 owned by ATLA and they're a federal monopoly
16 on all rate collection. And of course they
17 have this right here, the lawyer does the work
18 for the client, the money goes to the
19 LawExchange, and it turns out .00000012.

20 MR. GERVAIS: So who's going to
21 lobby for that bill

22 MS. CHARLESWORTH: The songwriters

1 are going to lobby. Right?

2 MR. JOHNSON: And it attaches to
3 our songwriter bill. Of course we're kidding.
4 But why do you think I need to live under
5 this? If you're a lawyer or you're a lobbyist,
6 why do you think I need to live under this?
7 You live under this for a while. Okay?

8 MS. CHARLESWORTH: Okay. And on
9 that note, I will officially conclude this
10 panel. Thank you all for participating, we
11 are very grateful, and I think we've really
12 moved the discussion forward. We've run over
13 on this panel but I think we'll still have
14 time for some observer comments. We'll take
15 maybe a five-minute break and we'll have
16 people come up to the mike here. Just gather
17 in this general vicinity and you will be
18 recognized and you can make your statement for
19 the record. We'll see you in five minutes.

20 Observer Comments

21 MS. CHARLESWORTH: Okay. Everyone
22 have a seat.

1 MR. PERKINS: I am Phil Perkins.
2 I am the president of Music Services. We are
3 an administration company that provides
4 services to publishers and record labels. I'm
5 a 43-year veteran of the music industry, so
6 I've been around a little bit. We currently
7 have over 250,000 compositions and over
8 100,000 master recordings that we license, and
9 I also designed a database so I'm familiar
10 with registration and procedures and working
11 with complicated systems. I'm also one of the
12 co-founders of CCLI which was instrumental in
13 establishing a blanket licensing to churches
14 all over the world, which has earned for
15 publishers and writers over \$180 million. I'm
16 also past president and current board member
17 of the CMPA, Church Music Publishers
18 Association, and I serve as vice president of
19 their political action fund.

20 What I heard in the general
21 consensus of the meetings, the current system
22 is broken, cannot meet the demands of the new

1 music technology without requiring costly and
2 time-consuming negotiations and litigation.
3 I hear that the publishers and the PROs are
4 heavily restricted in getting fair market
5 value for the use of their songs, while record
6 companies have few restrictions imposed. The
7 creators are suffering the most.

8 I see common goals as:
9 simplifying the license process; creating
10 unity between copyright owners and
11 negotiations with licensees; establishing
12 blanket licenses with fair market value being
13 allocated to the interested parties; reform
14 sections 114 and 115 in copyright law;
15 eliminate redundancy and cut down on middlemen
16 costs; return maximum revenue to the owners
17 and creators; pass-through provisions between
18 the record label and publisher should be
19 totally eliminated.

20 Copyright owners on both sides,
21 record companies and publishers, are
22 splintered and are fighting among themselves

1 over market share. Here's an example of what
2 I mean by splintered. Separate negotiations
3 between copyright owners and digital service
4 providers have only addressed the concerns of
5 each individual party. That resulted in
6 unequal sharing of revenue between the
7 parties. The separate negotiations, in
8 addition to the constraints of the consent
9 decrees imposed upon the copyright owners of
10 songs, have created a further imbalance
11 between copyright owners.

12 Based on research performed by the
13 Harry Fox Agency concerning interactive
14 streaming revenue, and I'm taking a
15 hypothetical \$2 million in gross revenues from
16 a streaming service, for that \$2 million,
17 approximately \$950,000 of that would go to the
18 label's negotiated share.

19 They were the first to negotiate
20 and so they got a good deal. From the balance
21 of that it was allocated 10.5 percent of gross
22 revenues would be divided between the PROs

1 representing the performance aspect and the
2 publishers would get what's left after the
3 PROs.

4 The PROs followed behind the
5 record labels and negotiated their own deals,
6 as well, so the PROs' share from the \$2
7 million came to \$120,000 which equated to
8 about 6 percent of the 10.5.

9 The publishers' share of what's
10 left came to less than 5 percent. A total of
11 \$1,170,000 was paid to the rights holder from
12 this hypothetical \$2 million. Out of the
13 combined PROs' and publishers' share of
14 \$220,000, you would think that it was an equal
15 division. Unfortunately, it was not.
16 \$120,000 went to the PROs which equated to
17 about 55 percent of the revenue allocation for
18 the song owners, and the publishers' share was
19 less than 45 percent.

20 We've heard today complaints from
21 many that the PRO distribution is antiquated
22 and needs to be based on census and not

1 sampling. Many publishers and writers believe
2 they are not receiving their fair share of the
3 PRO pot.

4 Some solutions. I believe that a
5 licensing collective is needed, at the
6 expense, probably, of my own business, but I
7 believe that these factors are essential to
8 the collective.

9 It should be a nonprofit
10 organization, governed by a board of directors
11 representing publishers, record companies, PRO
12 agents and administrators representing the
13 rights of composition owners and recording
14 master owners. It must have a government
15 mandate and the authority to enforce
16 compliance. It must be transparent in license
17 terms and rates and also in the division of
18 revenues among the interested parties. The
19 rates would be set by the collective, with
20 concern given to antitrust issues.

21 their agents. The collective
22 would become a one-stop location for users of

1 music and recordings, involving direct
2 licensing by publisher and record company, as
3 well. However, direct licensing by the
4 publishers and record companies would still be
5 permitted in certain cases, such as first use
6 on recordings, printed products,
7 television/motion picture licensing,
8 advertising and commercial tie-ins, and
9 certain other defined custom license
10 activities.

11 The collective's licensing ability
12 initially should be limited to the current 17
13 statutory licenses existing for physical and
14 digital audio and audiovisual uses, with the
15 ability to negotiate and create new licenses
16 as required. Licenses would be issued on
17 behalf of all copyright owners of songs and
18 recordings, in essence, record companies,
19 publishers and their appointed PROs,
20 administrators and agents. I do not believe
21 in having any opt-out provisions. United we
22 stand, divided we fall.

1 The collective would collect and
2 receive all revenues to parties, claiming the
3 right to receive them. It would be the
4 receiving party's responsibility to further
5 distribute to creators according to contract.
6 The collective would determine the revenue
7 split for each license between the song and
8 sound recording, and also between the
9 mechanical rights holder and performing rights
10 holder and any other rights holder, such as
11 SoundExchange.

12 In the area of data standards, the
13 collective would maintain a central database
14 of both songs and recordings with unique
15 identifiers, involving ISRC and ISWC and
16 custom IDs provided by the individual
17 copyright owners.

18 MS. CHARLESWORTH: Excuse me. I'm
19 sorry. If you could wrap it up. And I would
20 also encourage you, since we'll have a reply
21 comment period, you may wish to submit this in
22 writing.

1 MR. PERKINS: I've already got it.

2 MS. CHARLESWORTH: Okay. I'm
3 sorry. I just want to make sure everyone has
4 an opportunity to comment.

5 MR. PERKINS: Absolutely. I'm on
6 my last point.

7 Another point, the current system
8 of assigning ISWCs is in the hands of ASCAP
9 for the United States, which has resulted in
10 the majority of songs not having unique
11 identifiers or not having them in a timely
12 fashion in order to disseminate this
13 information. This has resulted in lost
14 foreign revenue and perpetuates the black box
15 allocations in many countries. So the
16 collective would seek to become the local
17 agent for assigning ISWC identifiers and would
18 be involved in any data initiatives such as
19 CWR, common works registration, global
20 repertoire database, and DDEX. The meta-data
21 for songs and recordings would be open to the
22 public and available through the collective's

1 internet site. And dispute resolution and
2 process would be involved in it.

3 So speaking for my company and the
4 hundreds of small and large clients who we
5 represent, I want to thank you for giving us
6 the opportunity to speak to these issues, and
7 we pledge our support to seeing long-lasting
8 copyright reform.

9 MS. CHARLESWORTH: Thank you. And
10 I'm sorry we're in a rush, but we look forward
11 to receiving that in writing too. There's an
12 electronic process but Rick can explain it to
13 you; we're very digital at the Copyright
14 Office.

15 If you want to state your name and
16 affiliation for the record at the beginning of
17 your talk, that would be great.

18 MR. MCGINTY: I will. I'm Casey
19 McGinty. I'm senior vice president at Capital
20 CMG Publishing. I've been involved in music
21 administration for 24 years, mostly music
22 licensing and contracts, and I'm a recent

1 president of the Church Music Publishers
2 Association, just so you know what perspective
3 I come from. My comments will be brief.
4 After 24 years, short and sweet is good, I've
5 learned that, if nothing else.

6 I will say that I was at the first
7 panel discussion yesterday and the last panel
8 discussion today. Yesterday I was not so
9 hopeful, I thought it was very positioning.
10 Today I'm very hopeful with what I heard, and
11 I appreciated a lot of the thoughts that I
12 heard, and was hopeful that there are very
13 smart people in our industry that are
14 innovators, that are realistic, that want to
15 look out for the good of not only our
16 businesses but the public. So I'm hopeful we
17 can come to some solutions.

18 I just wanted to point out what I
19 think is one of the greatest secrets in the
20 music business, and that's this organization,
21 CCLI, Church Copyright Licensing
22 International. It's one of the best kept

1 secrets, I think, because it's been based in
2 the Christian niche market and they issue
3 blanket licenses to churches, and as Phil said
4 a minute ago, they've been around for 25 years
5 and issued a lot, a lot of money.

6 And they have managed to work with
7 Church Music Publishers Association, the CMPA,
8 and their advisory board to come up with
9 bundled rights to churches, that have even
10 recently included bundling rights from sound
11 recordings and musical compositions, to grant
12 the rights for church music ministries to
13 create rehearsal copies of sound recordings
14 and actually the record companies get paid for
15 it, actually more than they get paid for
16 iTunes when you look at the pro rata breakdown
17 of the resulting income.

18 So I just want to throw that out
19 there as another sign of hope, that there are
20 models; even though they might be small for
21 niche markets, it can be done. And I'm
22 hopeful. And I want to say thank you to the

1 Copyright Office for coming to Nashville.

2 MS. CHARLESWORTH: We're delighted
3 to be here. Thank you.

4 MR. BOGARD: Hi. I'm Steve Bogard
5 and a career songwriter and former president
6 of Nashville Songwriters Association, and I
7 now direct something called the Copyright
8 Forum which is a moveable feast.

9 I only had one short comment, to
10 begin with, but now I have two short comments
11 because I noticed during the conversation and
12 the agenda today that we never really talked
13 about reciprocity and all the money that we're
14 leaving on the table around the world. And I
15 think that as we reexamine the United States
16 copyright laws, it's really important that we
17 take into account how to get some of that
18 money back over here. And so I would like to
19 nominate Professor Gervais as the head of the
20 committee that started that out.

21 Really what I wanted to say is
22 when I walked in for the PRO panel this

1 morning, I noticed that there was not a non-
2 performing songwriter on the panel, and I've
3 worked a lot in advocacy work and been the
4 only guy who went to the mailbox and that
5 determined whether my daughter went to college
6 or not. I think that there's an urgency that
7 a creator feels that no matter how dedicated
8 and awesome our representatives are, they
9 can't feel, because when the bottom drops out
10 they're looking at losing some of their bonus,
11 they're looking at being demoted, they're
12 looking at maybe their job being sunsetted
13 down the road. We're not looking at that.
14 I'm looking at friends who are selling the
15 writer's share of their catalogue, who are
16 losing their homes, who are working at Lowe's.

17 And it isn't the people who write
18 constant hits year after year. I've been very
19 fortunate, I've had chart records in six
20 decades and ten number one songs. Even that
21 is a struggle for me. But there are treasured
22 songwriters in this community and all over the

1 country, only one-third of the songwriters
2 there were 15 years ago, but there are
3 treasured songwriters who write songs like "I
4 Hope You Dance" that may be the only hit they
5 write for five years, and because of our
6 current laws, our current systems, because of
7 the fact that songwriters and publishers
8 copyright is completely under the thumb of
9 various government constructs, they have to
10 take the big check that one time and then it's
11 lean pickings from then on.

12 And what's going to happen to
13 America if we don't add some urgency. I know
14 the wheels turn slow. I've been writing
15 songs, like I said, six decades of chart
16 records, I know they turn slow. But I think
17 this is a matter of real urgency, and I think
18 if we look at an America which doesn't take
19 into account all these brilliant suggestions
20 -- I'm not going to reiterate all the things
21 about bundling rights, all the things about
22 ease of licensing, those are all pretty much

1 no-brainers and they're all great ideas, and
2 I think the brain trust in this room can
3 figure it out -- but we don't want our kids
4 and our grandkids to grow up in a place where
5 you've got to realize if there's no Sammy Cahn
6 and Jimmy Van Heusen, there's no Frank
7 Sinatra, if there's no Leiber and Stoller and
8 there's no Otis Blackwell, there's no Elvis,
9 if there's no Don Covay, no Aretha, no Steve
10 Bogard, no George Strait.

11 But I would like you to all think
12 about the urgency of this matter and the fact
13 that we're losing wonderful creative people
14 and songwriters are not really cut out to
15 represent themselves, so they're probably the
16 most vulnerable of all creatures. As
17 Professor Gervais has said several times,
18 sometimes creators are described as having an
19 affliction, they have to create, they have to
20 do what they love. Well, that affliction is
21 easily taken advantage of. And so I would
22 encourage, the one thing that I didn't hear,

1 as we talk about transparency throughout the
2 whole process, from labels and services to
3 publishers, that same transparency needs to
4 come from publishers to songwriters.

5 So I just would encourage
6 everybody to try to realize both the urgency
7 and the fact that it all starts right here, it
8 starts with guitars and ideas, and if we're
9 starved out of this marketplace, we won't have
10 a healthy music economy.

11 MS. CHARLESWORTH: Thank you very
12 much, Mr. Bogard.

13 MR. GOLD: Hi. My name is Jeremy
14 Gold. I am a senior music business and
15 entrepreneurship student at Belmont
16 University. I am also the student advisor to
17 the 2014 Pipeline Project which is a music
18 business think tank through the Curb College.
19 We are funded by the industry and consult with
20 various businesses this year, including the
21 AIMP and IPAC.

22 I'm not going to talk about

1 practicalities, as that wouldn't be fit, but
2 I think what I can offer is my value possibly
3 as a young person just kind of through
4 disruptive innovation in an industry. Often,
5 as we've seen, disruptive innovation is often
6 initially dismissed although it could be of
7 possible value. This usually results in only
8 accepting a new technology, whether it be
9 streaming or the MP3, once it's too late, past
10 the point of no return.

11 The key to survival, as Clayton
12 Christianson, author of the "Innovator's
13 Dilemma" posits, is a transition where there
14 is a purposeful investment in the current
15 sustained technologies, while also investing
16 in the disruptive technologies.

17 Those of you that have sat around
18 the table today know the current industry far
19 better than I do and my colleagues here do,
20 but where we can add value is in those
21 disruptive technologies that will eventually
22 replace and hopefully better the current

1 industry. So what I ask is that whatever we
2 do moving forward, allow us to carry our part
3 of the deal, carry out this task of disruptive
4 technologies.

5 This means continuing to keep us
6 in the conversation, and I thank you for
7 allowing us to be here today. I think this
8 means setting the tone for this current
9 crossroads, as we will eventually deal with
10 the crossroads ourselves. I think this
11 ultimately means seeing us as your most
12 valuable consumer, as we have more time to
13 buy, license and copyright music than anybody
14 else in this room does, and I encourage you to
15 use us as a resource for consumption habits of
16 the future.

17 And I think my classmates are
18 going to speak more about specific terms, but
19 thank you again for having us.

20 MR. MARSH: My name is Alex Marsh.
21 I'm a music business and econ double major at
22 Belmont, and I'm going to be a junior this

1 coming fall semester.

2 Going off just kind of what Jeremy
3 was talking about, I think the big elephant in
4 the room that we mentioned but never really
5 like addressed specifically was piracy. I
6 mean, that's the whole reason that we're in
7 this change in the first place. Everyone
8 keeps saying 15-20 years, well, that's exactly
9 when piracy started. And because a huge
10 revenue stream is being lost with mechanicals,
11 I feel like with the increased use of piracy
12 that it was almost too little too late we
13 jumped on trying to innovate the industry, and
14 that piracy has already took hold and I don't
15 see a huge easy way to fix it -- I mean, there
16 might be but as of right now there's no easy
17 way to fix piracy.

18 So I think the way I see the
19 industry going -- which, again, I'm just a kid
20 -- I think it's going to have to change and we
21 can't keep relying on the old model with the
22 change in technology. You either have to fix

1 the problem of piracy and continue with the
2 old model, or accept the problem of piracy and
3 figure out different revenue streams or
4 another solution to the problem.

5 And that's basically all I wanted
6 to say, but I think we definitely need to keep
7 the conversation moving and figure out what
8 direction we want to take.

9 MS. BEGIN: My name is Marissa
10 Begin. I'm a student at Belmont, also in the
11 Pipeline group. I'm an entertainment studies
12 major, music business minor.

13 And I just had a quick
14 comment/concern more specific. So there was
15 talk yesterday and a little bit today about
16 possibly adding or adjusting a new blanket
17 license, and just in concern to that, I just
18 wanted for the record just to add on how the
19 bar and restaurant owners would be involved in
20 that process or informed and how their
21 involvement would go with the progression of
22 that.

1 Thank you.

2 MR. DURRETT: My name is Devin
3 Dawson Durrett and I am a student at Belmont,
4 I'll be a junior, and I'm also part of the
5 Pipeline crew, but more importantly, I am a
6 songwriter -- future successful songwriter,
7 I'd like to think, hopefully, thanks to you
8 all.

9 First off, I just want to say
10 thank you to the Copyright Office and all the
11 panel members and everything for essentially
12 making history with everybody today, so it's
13 kind of cool to be a part of it.

14 I also want to thank Mr. Kelly,
15 who is not here, Mr. Johnson, and Mr. Bogard
16 for representing songwriters, whether it be
17 through cowboy rhetoric or colorful charts, I
18 appreciate the effort.

19 I'm not here to offer an answer or
20 tell you guys what to do or anything, I'm just
21 here, like Jeremy said, to offer a friendly
22 reminder and a fresh and young perspective on

1 a career that I hope to get into that I hope
2 is still around in five years when I am
3 becoming a part of it.

4 We talked a lot today about
5 incentive for creators, and I think the bottom
6 line -- and I guess everything comes down to
7 money and capital, right? -- and so obviously
8 that would be a great incentive, but I think
9 more importantly alongside of that and
10 parallel with that is security and reassurance
11 for songwriters. Outside of the humble sync
12 department earnings, I really think there's a
13 huge gap between the bottom and the top end of
14 songwriting earnings. It's either you owe a
15 hundred grand to your publisher from him
16 essentially helping you live for a year while
17 you write, or you are \$100 million like up in
18 the clouds. Like, again, I'm a kid so I don't
19 know, I haven't been in the industry, but I
20 know there's a big gap in between, not unlike
21 the American middle class that we have right
22 now.

1 I think that a good metaphor that
2 I just thought of is you could be a doctor or
3 you could be a dishwasher. Yes, there's more
4 importance on being a doctor and compensating
5 them for their skills, but the dishwasher
6 doesn't go into debt by doing what he does,
7 the dishwasher still has an ability to live on
8 a living wage. Whether it be barely below the
9 poverty line or barely above or right at it,
10 he doesn't go into debt by doing what he does.
11 And I know that's kind of a radical metaphor
12 or example, but sometimes we need to use
13 radical things to get attention.

14 I also think there needs to be the
15 same and equal attention to the songwriter who
16 makes \$50,000 a year and the songwriter who
17 makes \$50 million a year. And something that
18 Ms. Buresh said, I think you said, if you
19 have a dollar coming in but it costs you \$1.25
20 to process it, you're just not going to do it.
21 And I completely agree with that, but it also
22 very much saddens me because in a world where

1 we're fighting for .0000012, a dollar is huge.
2 And so where does that dollar go? I feel like
3 it just kind of goes off the table. But the
4 thing that we don't understand -- or maybe you
5 do -- the dollar can keep stacking, it can
6 keep stacking, so maybe by the time that
7 dollar reaches \$50, it won't cost you more
8 than \$50 to process it. Again, I'm not
9 offering an answer or a solution, but I
10 definitely think it's something to think
11 about.

12 But how do we fix that problem?
13 The problem is inefficiency. Right? So how do
14 we make things more efficient? I think we need
15 to look at unique identifiers like we were
16 talking about, data retrieval and storage, and
17 fair and accurate streaming like we all talked
18 about today, whether that be through new
19 technology to stream or through oversight of
20 the companies that do stream, I think
21 something needs to be done on that.

22 I just want to say in closing to

1 you, keep in mind not only the big few but the
2 small many because we're all part of this
3 together. I don't think we need to take money
4 away from each other per se, I think we need
5 to figure out how to make a way to make more
6 money from the consumer and to rise together
7 and not to fight over something that's so dear
8 to all of our hearts, being the music
9 industry. So whether it's to help yourselves
10 or your peers or your sons and daughters or my
11 generation, I think we need to come together,
12 but I'm very happy that we're taking the steps
13 to do that.

14 So thank you very much.

15 MS. CHARLESWORTH: Thank you.

16 MS. MORELAND: Hello. My name is
17 Channing Moreland, and I'm studying
18 songwriting and entrepreneurship at Belmont
19 and I will be a junior this coming fall. And
20 as a closer of the Pipeline group, I just want
21 to thank you for letting us be a part of this,
22 and I thank the panel.

1 And so, as you can see, we're
2 really lucky to be able to go to this school
3 and to be surrounded by the industry, but many
4 people our age are not as fortunate. And so
5 my question to you, the panel, the U.S.
6 Copyright Office, is to really see if you find
7 a valuable return on taking the time to
8 educate the public on what's going on here and
9 the decisions made and the innovations that
10 are happening here. I really think that
11 consumers don't understand what's really
12 happening to the industry due to piracy and
13 those rates, and so I just wanted to put that
14 out there that I really think is the biggest
15 thing we can do.

16 Thank you.

17 MS. CHARLESWORTH: All right.

18 Well, thank you, again, everyone,
19 for your attendance, participation and these
20 final remarks. This wraps up the first
21 roundtable. Thank you, Nashville, for having
22 us, and particularly to Belmont for this

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Before: US Copyright Office Music Licensing Study

Date: 06-05-2014

Place: Nashville, Tennessee

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