UNITED STATES COPYRIGHT OFFICE MUSIC LICENSING STUDY

PUBLIC ROUNDTABLE

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

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

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

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

(General laughter)

MS. CHARLESWORTH: Excellent.

Obviously, many of you have submitted written
comments on this issue, but as I think
probably everyone in this room knows, there
have been some significant developments in the
way the PROs are operating. In recent
litigation involving Pandora, there were
efforts by large music publishers to withdraw
certain rights from those organizations. Two
different federal courts in New York City found that that violated the consent decrees. And so now I think what we're very interested in hearing about is what's the current state of play, what does the future potentially look like, what is the perceived impact of the consent decrees on the music licensing system.

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

MR. MOSENKIS: Maybe I'll start off.

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

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

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

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

We're still going to get membership applications every day and we're still going to get title registrations every day, and there was discussion about databases
and data synchronization. We still have to have people that go through that, and we do that. Someone mentioned yesterday that ASCAP and BMI, they actually go through and dig through the conflicting registration and make sure that the song 'I Love You' is spelled the same way and the same writers are on it and the same publishers are on it. We have to make sure our databases are clean, and if the revenues coming in to support that operation decreases by 60 percent, clearly operating ratios are going to increase, possibly to a point where we can't operate efficiently enough and the whole concept of efficient licensing really drops down the drain.

MS. CHARLESWORTH: Thank you.

That didn't sound like a solution, but I think you outlined the problem very well.

MR. MOSENKIS: The solution is the Justice Department opened a comment process and hopefully there might be solutions to adjust some of the problems that might deter
any of the publishers from leaving.

Publishers do not want to leave ASCAP. Our revenues are increasing. We've collected about a billion dollars this past year. We, again, distribute about 88 cents of every dollar. In a world where mechanicals are decreasing, performance rights are the future, and if the collective systems can't work to ensure that those performance royalties are collected and paid out, really the system will collapse.

Some publishers, I don't know what's going on in the back offices in Universal or in Sony, but they can make their own decisions and whether the decisions are smart decisions or not, I don't know if they can handle what ASCAP does. I don't think they can. We don't just do Pandora, we do tens of thousands, possibly even hundreds of thousands of licensees every year, from tens of thousands of radio stations to hundreds and hundreds of television stations, to bars and
restaurants. I don't know if a major publisher can do that, or whether they want to trade off the couple of percentage points from Pandora and Spotify, trade that off the for the bar and restaurant license fees that they won't be able to collect. That's up to them.

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

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

MR. MOSENKIS: I mean, there are comments, we outlined a few. Let me explain a little bit -- like the past and the current system. The past hasn't changed that much.
The bulk of our revenues are still radio and TV. Like 80 percent of our revenues are old media, but no one ever heard about the rate court 20 years ago, you didn't read in the New York Times about the rate court. We've had about 30 proceedings in the history of ASCAP's rate court, about half of them since the late '90s. We just never went to the rate court.

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

And to the extent that when those licenses terminated and we had to renegotiate because there might have been changes in the industry, because the industries were, I guess set, a radio station didn't stop paying fees because the radio license terminated, they
just paid what they were paying on an interim basis until we can reach a negotiated deal. So the money kept on flowing in. There was no situation where there was an applicant who wanted a compulsory license under the consent decree and didn't pay, it just really didn't happen.

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

But with that application, it's not like you're applying to college, where you have to have an essay and an application fee and you have to have all this information. It's just a two-sentence letter, and so they're officially licensed. It's up to ASCAP. There's no obligation to give us data,
what are your revenues, your business model, there's no obligation to pay any fees with your application. You're licensed.

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

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

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

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

You know, you talked yesterday about rate standards and fair market value and it led me to think the idea of a compulsory license, whether it's 115, 114, 118, 111, 119, a compulsory license under the decree, there are policy purposes for the compulsory license, whether it's antitrust policy, whether it's broadcast policy under 111, 119,
or even public policy under section 118 for public broadcasting. It's a deal between the licensee and Congress. Congress says: You have the license but you have to pay for it; now sit down like adults at the table and reach a fee, and you have a period to negotiate that fee. The reason for the rate court or the CRB or over the CARP or whoever is to set the fees in the absence of them acting as adults and reaching that fee in the free market.

That we have disparate fees -- and I wasn't on the panel yesterday -- but in my opinion, that we have disparate fees under all the various sections is insane. The purpose of the rate court or the CRB is to set what should be fair market value rates. And I think the Songwriter Equity Act is one step in that direction. I think they should all be fair market. But ASCAP's rate court has, under the consent decree, a reasonable rate fee, and I don't know really what that means.
-- it's kind of unreasonable to me -- but it's reasonable, and past rate court decisions have interpreted that as fair market, try to emulate the fair market value.

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

For the first time we had licenses actually negotiated in the free marketplace outside of the constraints of the consent decree. And this is not like 114 where they looked at interactive rates that were set outside the constraints of 114 as sort of proxies, they were imperfect but they were
proxies. We actually had deals entered into
by Universal and Sony, real marketplace deals.
For the first time ever a rate court can
actually not just look at a proxy in the
marketplace but for the actual service and for
the actual transmissions.

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

If you have a publisher that
doesn't join ASCAP or they leave completely
and they go to a YouTube and they sit down
with YouTube and they negotiate a fee that's
higher, to say that that's not a fair
benchmark, that that's not a willing buyer/willing seller. They're not even part of ASCAP, it's literally in the market, that's exactly what a willing buyer/willing seller fee is. But the rate court won't take it into account. So we have this insanity now, we have no way of setting fair fees. And so the publishers don't want to leave, but they feel like if that's the system, they'll have to leave, and if they leave, as I said before, I really think it breaks down.

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

MR. MOSENKIS: You can shoot me or not.

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

I'm not sure, Mr. Driskill, were you before Mr. Coleman? Mr. Driskill, would you like to comment?
MR. DRISKILL: Sure. To reiterate some of the things that he said, the concerns of independent publishers are pretty clear in that situation. We effectively need a collective body. We don't have the resources, nor, I think, YouTube wants to negotiate with every single independent publisher or songwriter or independent copyright administrator. That's a system that can't work, so we have to find a way to either maintain some of the system that we have right now, clearly update it to where it's going to work, or find something else.

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

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

We're the farm team for the
majors, in a lot of ways. You see Warner
Chappell here in town, the Combustion Music,
Disc Music, Cornman Music, these co-venture
companies that truly operate as independents
but are funded by the majors and the
copyrights are controlled by the majors,
that's where this creative cycle comes from, and if we lose that, I'm just not sure where we go.

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

MS. CHARLESWORTH: Thank you.

Mr. Kimes.

MR. KIMES: You're right, we have to have a collective system, and maybe you do collect 88 cents and pay it out, Sam, like you say, but who to? It wasn't me. I've been in ASCAP and I saw that little screen that we've got all those computers collecting every song that's being played every second, ASCAP is tracking it, yet they pay us on a survey. I sat in a meeting with them and they admitted to me that they see every song being paid, yet they pay us on a survey. And I've got radio stations out there that have sent in their
form where my song has been played but I never got paid on it.

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

We put my songs out and we see nothing from that. So that's $15,000 a pop if you want to hire them, and we do hire them, promoters to promote our songs to rural radio, wherever. So we weren't generating any money. So I asked my gang at Wonderment Records if they'd let me block off three months, I'll call these radio stations. So they did, and for twelve weeks I called those radio
stations, and, I mean, I called them from six o'clock to six o'clock every day, and you average five phone calls, if you get a station to play your music you'll average five phone calls on that station to get that station, and we gave away free goods, signed autographs, did interviews, did it all. I did that for twelve weeks, daylight to six o'clock every day, five days a week.

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

I went and I sat down with ASCAP and I talked to them for an hour and a half, two hours, and I told them, I said, "You have devaluated." Some of the guys in New York even told me they didn't bother with rural stations, collecting. I said, "Why?" It's not enough money. What do you mean it's not enough money? You're just collecting from the majors and you're not worried about these other guys out here? Well, I am because that's
where I'm getting my air play, that's where I'm touring. So if that's the case, and trust me, I believe you're doing a good job getting all the PROs, but you're doing a poor job getting the money to us, we're not getting it.

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

The other thing, you're collecting money for overhead music. I never get none of that, we don't receive any of that money. And
the fact is you've got a black box when you've
got some money that you don't even know what
it is, you just put it in there and give it to
the 1 or 2 percent top writers in Nashville
where they're at, and that's a fact because
you've admitted that to me too.

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

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

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

MR. MOSENKIS: It's interesting.

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

But we actually heard his music being played on the radio. I'm sitting there,
I'm like: Oh, my God, they're playing Escort, they're playing Eugene's song, that's amazing. And I was sort of sad to think that, you know what, he's probably not going to get a payment for that one play in the restaurant, because I'm thinking that restaurant, even if we could monitor what restaurants and nightclubs play, which is practically impossible -- if we do, it would cost millions of dollars -- but the restaurant pays 300 bucks a year.

And that's something that we have to look at in licensing where the Clear Channels and small guys, there are different rates and different payments from different licensees, and the distribution rules, at least with ASCAP, are related to the dollars that come in, we follow the dollar. So that restaurant that pays in $300, if we were to monitor every song played throughout the year at that little restaurant, Eugene's song would be worth 0.00002 cents. So that's taken into account in our distribution methodologies.
But ideally, yes, I wish everyone would get paid for every performance.

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

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

So the analogy in the direct licensing world that publishers use all the time is the option agreement, and we see it,
for example, in film. We issue film festival licenses all the time, and the idea is that it's not unlike buying the rights to a book if you're a film producer, a publisher will give the right to a song to a film maker just for a limited period and for use in specific media film festivals.

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

MS. CHARLESWORTH: Thank you.

Mr. Knife.

MR. KNIFE: A couple of observations that pertain to the consent decrees and the PROs in particular, but I think are applicable to an awful lot of what
we've been talking about over the last couple
of days and will obviously continue to talk
about.

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

But collective licensing is, in
effect, an monopoly or in the sense of a few
actors within the marketplace, it's an
oligopoly, and those monopolies come with
certain requirements. Right? And one of those
requirements is some type of oversight,
whether it's a statutory license, it's a
consent decree, or whatever it is, we need to
move into more efficient licensing, that
requires collectivization. Collectivization then requires some type of oversight. I think if you're going to act in a collective way, you've got to be willing to submit yourself to some type of oversight, and by the way, I think that works for 114, 115, PROs, these principles, I think, are universally applicable.

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

There has to be a fair process for setting the rates, something we've talked
about for the last couple of days, and
obviously there's all kinds of views about the
words are that describe that, but that has to happen. But also, I think one of the things
that has to come from that regulation, that we're hearing, again, from both the creator
side, also from the licensee side, is there has to be transparency. There has to be
transparency about what rights are being administrated by that collective, and there has to be transparency for licensees, and there has to be transparency about what happens with those rights and how the collection of those royalties is administered and ultimately paid out on behalf of creators.

Again, I'm kind of just pointing out what I think are, however you want to say it, fundamental or overarching principles. I think we're all kind of, in our own way, moving toward these kind of core principles which is why we need efficiency. Efficiency really means collective licensing, but
collective licensing means there's got to be some type of oversight and control. And I think we should really, throughout these discussions, start talking about what that means, what exactly does a collective body have to give up or submit to in order to obtain the right to be in that collective licensing posture. They owe things to their creators, they owe things to their writers, and they owe things to the marketplace in order to make sure that it's fair and it's efficient and it's transparent.

So moving off of that general observation -- which, I'm sorry, I felt compelled to make -- I wanted to ask specifically about the consent decrees as one of those kind of collective regulation bargains that we have struck between the government and licensors. Can Mr. Mosenkis talk even just a little bit about what it is about the consent decrees in particular that ASCAP would be seeking to modify in the
process that's been recently announced?

MS. CHARLESWORTH: Mr. Mosenkis,

would you like to respond to that? Because I
think it's helpful to lay some of this out, it
helps to further the discussion, and then
we'll continue with the other commenters.

MR. MOSENKIS: In terms of

specific modifications, I think the rate
setting process, so we're looking at the
potential for an efficient and quick
arbitration type process. We understand that
if the department feels that there needs to be
some regulation with some sort of a compulsory
license and an overseeing body, we think a
quick arbitration would be the better process.
And we haven't fleshed out the details, but
that's something that we're looking at.

MS. CHARLESWORTH: Excuse me.

Would that be with private

arbitrators or government?

MR. MOSENKIS: We think private

arbitration. This is something that needs to
be negotiated and discussed, the idea that the
rate court will be abolished or sunset, but it
would be moving to some sort of arbitration,
and I think user groups would approve of this.

We are looking at bundling. I
mean, there was a lot of talk about 115 and
collective management. I think if I was a
betting man and Las Vegas had a music
licensing betting chart, I would probably put
my money on the future having some sort of
digital collective bundle option. I think
115, the reasons for it go back so long. I
think in this day and age, I'm not talking
about physical world, although I don't know
how much physical world there will be in the
future, but for the Spotifys of this world,
and even the syncs or the YouTube, I think
collective licensing is pretty much, I think,
a given, maybe not tomorrow but at some point.
I deal with Europe and it seems to be so
obvious. So we're going to be looking at the
ability to bundle rights.
MS. CHARLESWORTH: Meaning just
for the record?

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

We are looking, also, to have some
flexibility, both from membership as well as
licensing. I know this is something that has
divided the membership, but there are many
members who wish to have the ability to grant
ASCAP limited rights, so if they want to
retain a new media for themselves, they can do
so and authorize ASCAP to go after radio and
bars and restaurants. The Pandora case is now
on appeal, I don't know exactly what's going
to happen with it, but should that decision be
affirmed and the decree is set in stone, as
the rate courts have interpreted it, that's
something we'll be seeking to change.

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

MS. CHARLESWORTH: Thank you.

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

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

You've got consensus, I think, to
some degree on collective licensing of some
sort, whether it's ASCAP or somebody else, or
whether there are changes that need to be
made, collective licensing is important, and
I think Lee would echo that on behalf of his
members.

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

And then you've got issues about
the nonprofit and the transparency and things,
so it doesn't necessarily seem like that may
be the best way to go. And if you don't have
the rights bundled, you have this very odd situation where we negotiated as part of the last two mechanical proceedings -- which we're very proud we were able to do with our music publisher and songwriter partners to settle those CRB proceedings to create new technical categories, and we couldn't literally bundle rights because we didn't have the right to do that, that's only something that can be done in another way. But what we did do is we set up rate structures that took into account the other royalties that are being paid.

If you had publishers coming out of ASCAP or BMI and you still had this 115 regime of rate categories the way it existed, they would essentially be wiping out all their mechanicals by increasing their performance rates, so that doesn't seem like a very good solution. So I would come back to the idea, and again, the one we threw out isn't perfect and it doesn't have to be the solution, but it has elements of, I think, a lot of the things
that were discussed here. Collective licensing, bundling of rights, getting rid of the rate court, and the CRB for that matter, ensuring transparency, having an audit right, all of those kinds of things seem to be critical, and doing so in a way where you construct a marketplace rate where you don't have to have the kinds of things that Lee was talking about that depress rates because you're operating under a compulsory or pseudo-compulsory kind of system.

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

And I guess one question is, given that some of the majors have, say, up to 30
percent market power -- maybe this is more for Mr. Knife, I don't mean to pick on you but you've clearly thought a lot about this -- you said that you would still see a need for government regulation but the PRO might possibly have a smaller market share, I think, than some of the majors in that situation -- in other words, if the majors withdrew. So I was just wondering if you had given any thought to that scenario, in other words, where you had majors representing, say, 60 percent of the market and then two or three PROs who had 10 or 15 percent amongst each, and if you had any thoughts about rate-setting in that context or how that might play out.

MR. KNIFE: I think I tried to address that a little bit yesterday when we were kind of talking about the pie in the sky stuff, and we were talking about things like what would happen if Section 115 were simply abolished tomorrow, and I tried to make the point that I don't think you can do that as a
practical concern. I know nobody thinks that's actually going to happen, but I also think based on some of the things that you're talking about, you literally couldn't have that happen because the marketplace, as it exists now, has grown up and taken on the contours that it has largely because it's grown up in the shadow of a certain amount of regulation.

In other words, I think some of the mergers that have occurred, some of the activities that have occurred, the application of the consent decrees, various things that have gone on over, let's say, just the last 10 or 15 years, have gone on entirely informed by the processes that exist, that have been in place, and that have existed over the last 20 or 25 years. So I think you're bringing up a good point which is we have a marketplace that is reflective of a half a century of regulation and we're all complaining about the fact that perhaps that regulation is in
various ways outdated and not necessarily efficient.

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

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

MR. KNIFE: I think I understand the question, and maybe I'm being whatever, and I'm not trying to be. What I'm saying is,
concentration of market power, that kind of
demands some type of oversight, again, whether
or not that's in the form of a compulsory
license, a statutory license, a consent
decree, or something like that. The DOJ looks
at all kinds of mergers and consolidations of
all types of industries all the time for
exactly this reason, and things like 60
percent market share in a very, very defined
market is a scary thing when you're a consumer
within that marketplace.

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

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

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

MR. MOSENKIS: SESAC is a PRO, not
regulated, and seems to be working. We don't
have anyone here from the television and radio
community to rebut that, or maybe there will
be, but SESAC is not regulated currently.

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

MS. SCHAFFER: Regardless of
whether you are a major publisher or a small
independent publisher, I think there is an
agreement that we need the PROs and we need
the collective licensing of the PROs. And I
think that there is also a consensus amongst
the publishing community that the consent
decrees really do need to be either
substantially modified or done away with, or
there has to be some type of a change. And
kind of keeping with the same theme I think
I've had from yesterday, I think the more that
you can allow the free market to work and for
those negotiations to occur, whether that is
through I think an important part of any type
of revision, if it is a revision of the
consent decrees which would be allowing
whether it's a major publisher or an
independent publisher to pull certain rights
out and negotiate the marketplace is an
important aspect of any type of revision that
would occur.

And I think one thing that's
important about that is not that we
necessarily end up with let's say universal
licensing all digital rights independently,
but it's the idea that if you can have that
possibility and maybe that occur in a few
instances and you can take that into
consideration in setting various rates that
the PROs set, if the PROs can get their rates
up, there's an incentive for maybe those major
publishers to keep the rights and not to
separate them out from the PROs.
There being that ability and that flexibility and that option, I think encourages a robust licensing process that adequately compensations all songwriters and all publishers and allows them the resources to hopefully be able to pay everyone, even if it's 300 plays, allows them the resources to be able to try to pay everyone that they possibly can, and the way that the consent decrees are set up right now, they can't do that.

And I do think that another important aspect of this goes back to what I know I believe is very much a reality, I know the NMPA believes is a reality, and the majority of the publishers, at least from here in Nashville think it's a reality, that if we were to eliminate 115 -- which can happen -- that it allows the PROs to very easily step into that position, if the consent decrees are eliminated or modified, to be able to be one of those collective agencies that we talked
about so much yesterday of how does that happen. To be able to bundle those rights and to be able to, especially when it comes to micro licensing, provide those bundled public performance and mechanical rights all in one, that may be needed.

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

And this likely goes into maybe the next panel, but I think what it also does, in talking about providing the additional income to the PROs or any other organization,
is that the purpose of protecting copyrights
in the first place is to promote the progress
of arts and science, and is progress the
progress of distributing the works or is
progress actually encouraging the creation of
the work.

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

I think this is very similar to
the late fees situation where a solution did
not arise until the Copyright Office took
action that forced everyone to come to a
resolution. Just like the record companies
and the publishers were able to deal with how
do we create a settlement agreement to deal
with the late fee situation and deal with the
pending and unattached funds, I think this is
similar, some action has to be taken by the
Copyright Office to allow us to find that
solution. And I think we've seen, through
various solutions that have arisen, that a
solution will arise if the consent decrees are
revised.

MS. CHARLESWORTH: Thank you, Ms.
Schaffer.

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

MR. TURLEY-TREJO: Another
perspective from the actual administration of
the PROs -- and I agree with Mr. Knife about
if we have the sort of collective agency,
there has got to be more transparency and more
oversight, because we pay, at a university level, tens of thousands of dollars for license fees to ASCAP, BMI and SESAC, and we're not required to report anything. Now, that's a problem from a creator's standpoint, I think. And I'm speaking from both because I am a creator myself, but I feel bad. And I'm the point man for our university for licensing, and I've called ASCAP, BMI and SESAC, and we used to over the years submit programs of all the concerts and all the different music played, not necessarily over the radio but particularly in public performances, and it was part of our agreement to do that. And we called them because there was a problem of where to send them, and the representatives at all three institutions said: We no longer look at those, we don't have the time, we don't have the resources. Which makes sense. It is a very difficult task to report all the public performances of music, I think everyone
understands that.

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

That's all I want to say.

MS. CHARLESWORTH: Thank you for that insight.

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

MR. COLEMAN: Since we're invoking the copyright clause, I think it's important that copyright rests in creators, not in private firms or assignees and certainly not in licensees, and one thing that the ASCAP, BMI and SESAC system has done, that the PROs have done very well, is create what looks very arbitrary from the outside looking in but what has been a very important service to the arts
which is that they divide payments between writers and publishers. One of the great fears of private firms taking over performing rights licensing is that they would start to pay publishers only and that they would, cross-collateralize their income and never pay writers, and the PROs do a very good public service that way.

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

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

MR. DRISKILL: I just wanted to comment on just the fact that we always look at the PROs as monopolistic. That was created years and years and years ago. We have to be
realistic as we get into this. I'm not sure
how much market share the radio music
licensing committee represents; I would assume
it would be a large number. That's collective
licensing. Are they antitrust? Again, we're
talking about fair, we need to put everything
on a level playing field.

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

MS. CHARLESWORTH: Thank you.
Mr. Kimes.

MR. KIMES: I'm with Lee all the way on this, but the oversight thing, it also covers the fact that like yesterday I mentioned Amazon, they're getting into the streaming business. Well, two articles came out right when they decided they were going to do that, and that was that they would give the majors, they would cut a deal with the majors, but the small independent publishers and those kind of guys would get whatever they wanted to give us, we'd have no say in it. And so we need to have our collective agencies go to those guys and say: Wait a minute, why is this? That needs to be corrected, that's something we need to keep a close eye on. Secondly, I see, because I see the checks and I see all the data that comes in at one of the records and publishers, I'm starting to see decreases -- in fact, this is the first dip we really had in digital downloads, because streaming is taking over.
So with that said, that's a mechanical that's going away, and I see mechanicals decreasing as we go. So if we do come to this and we set a new rate, we need to keep in mind that we may not have mechanicals much longer that's going to amount to anything so we better set a rate for the streaming and for performance that's going to keep us alive. As Mr. Driskill said earlier, we won't be around, so we need to keep that in mind.

MS. CHARLESWORTH: Thank you, Mr. Kimes.

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

MR. OXENFORD: I guess first to respond to Mr. Driskill, while I obviously don't represent the RMLC, I do represent broadcasters, and I think it's fairly obvious that the whole context of the RMLC negotiations with ASCAP and BMI is in the context of the rate court oversight, so there is oversight, just like there is oversight
over ASCAP. To the extent that there are
negotiations, to the extent that the positions
that the RMLC is taking are unreasonable, the
rate court is there to make that determination
as to whose positions are reasonable.

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

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

MS. CHARLESWORTH: Right.

Although the question of whether
something is a reasonable rate is separate
from whether there's an antitrust violation.

Wouldn't you agree with that?
MR. OXENFORD: I'm not an antitrust lawyer.

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

MR. OXENFORD: No problem.

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

There was the question about whether there's a radio representative in the room and whether there are concerns about the way SESAC is operating, and certainly there are, and one of those concerns is that it's impossible to figure out what the PROs cover in terms of the musical works. For radio stations that have attempted to avoid SESAC licenses, feeling that those licenses are too high for whatever reason, it has been the case in the past that it's just been impossible to
avoid all the SESAC works because there's just not a comprehensive database to avoid those issues, and I think that's part of the current litigation between both the Radio Music Licensing Committee and the TV Music Licensing Committee and SESAC as to whether SESAC should be brought under the consent decrees as well.

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

Mr. Waltz.

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

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

MS. CHARLESWORTH: Thank you, Mr. Waltz.

MR. KNIFE: Yes. So just on the order of a couple of responses. I appreciate the point that you're making about SESAC and I think it's important to understand in that
context that SESAC is the smallest, and, I believe, the newest of the -- not the newest?

MR. WALTZ: We're older than BMI.

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

And then just one other responsive comment to what Mr. Driskill said, and the exchange that you had with Mr. Oxenford, while it's true that entities like the Radio Music Licensing Committee aren't subject to something like a consent decree, number one, as Mr. Oxenford pointed out, they operate entirely within the context of a consent
decree being applicable to their behavior, and
if they ever do anything that rise to the
level of being anti-competitive, they'll be
subject to some type of control.

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

UNIDENTIFIED SPEAKER: The consent
decrees were entered into however many years
ago. Is it still the same today, that's the
discussion
MR. KNIFE: Well, we have a decision that I think was handed down this year that clearly indicates that at least Judge Cote feels that anti-competitive behavior is still occurring within the context of ASCAP, even though they've been subject to a consent decree for whatever it is, 50 years. And this is an action that was just decided earlier this year, and you have a judge saying: Yep, this consent decree is clearly necessary because we're still seeing the exact same type of behavior for which the consent decree was intended to regulate occurring. So I get that they're 50 years old and they've been modified a couple of times during their tenure, but when you have a judge who's charged with administering and overseeing that consent decree saying: Yes, this year I've reviewed the behavior of the parties here and I still think this is necessary.

MS. CHARLESWORTH: For the record, did Judge Cote actually make a finding that
the consent decree was still necessary? I don't recall that.

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

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

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

(General laughter)

MR. MOSENKIS: I'm saying it was a case with certain findings of fact, which taking my ASCAP hat off, someone that saw what was going on, it defied reason that she ruled the way she did, and the case is on appeal, I don't want to necessarily talk about it.
But I think that's the very reason why we're seeking an arbitration type of a process, because to have one judge, and as long as she retains the bench -- and we want her to be bumped up to the Second Circuit now, right? -- she's going to be literally viewing the consent decree with that same mind frame. An arbitration process would work a lot different, and, I think, a lot better for everyone.

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

And the last thing I would like to say before we end the panel is you run the
Copyright Office and you are subject to the copyright law, and I really think that the public performance right -- and this is what we're talking about, the public performance right -- I think it will become practically a nullity without the performing rights organizations. If you look under Section 101, there's a definition for performing rights society, ASCAP and BMI, they're right there in there. We are necessary for the system to work, and really without it, performances would be made with impunity without any licenses and it would really make the copyright law a joke.

MS. CHARLESWORTH: Thank you, Mr. Mosenkis.

And just before we turn to Mr. Turley-Trejo, I just want to throw out one other question. I didn't get to every question on my list, but particularly since we're in Nashville, if you want to comment, and picking up on Mr. Mosenkis's point about
the PROs pay songwriters directly, and a
question is if the PROs go away and that
direct payment system disappears, how might
that impact songwriters and their ability to
-- not withstanding Mr. Kimes's comments --
receive payment without going through an
intermediary. Mr. Turley-Trejo.

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

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

MR. TURLEY-TREJO: This is
something that's switching gears, but I just
wanted to state for the record that I think if
the collective agencies do bundle rights like
mechanical rights or the compulsory license,
that the Copyright Office -- I know a theme of
my comments has been clarification, but the
Copyright Office really needs to clarify the
difference between dramatic and non-dramatic
because the compulsory license talks about licensing of non-dramatic musical works, and that language is seen throughout the code but there is no definition. And I deal with that all the time.

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

MR. TURLEY-TREJO: There is?

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

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

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

MR. COLEMAN: Thanks. I just wanted to reiterate what I may have said which may have been too abbreviated before but it
addresses your question about what would happen if the PROs went away and songwriters were not being paid directly which is that I believe private firms would have very little incentive to pay songwriters in the transparent method that the PROs currently do. And by transparent I mean there is a procedure now in the PROs whereby 50 percent of every distributable amount goes to a songwriter and the other 50 percent goes to the publisher, and the PROs have gone to great lengths to prevent private dealing that interrupts that arrangement. It's possible but it's difficult. And I think that would go away very, very quickly because firms have different priorities and incentives and they would be looking to pay the songwriters less in order to recoup investments.


MS. SCHAFFER: I'll make these comments on a personal note as a lawyer in
Nashville who represents a lot of songwriters, and I think that in kind of connection with what Mr. Coleman said, one of the things that has become a reality in contract negotiations now is what happens if the PROs pull out and how do you address those songwriter royalties, and I think it's something that we're all starting to address now in those agreements.

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

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

And I think as publishers, especially, and record companies have seen their income going down and their ability to engage in artist development really taking a hit based on the economic hit that they've taken, the PROs have really stepped up,
whether they have the income or not, to really help foster that community. And I know especially here in Nashville there is a great amount of respect for the role that the PROs play in the development and creation of musical compositions here.

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

MS. SCHAFFER: They do.

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

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

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

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

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

MS. SCHAFFER: Correct. The
publishers directly collecting the public
performance income, then you deal with the
issues like Mr. Coleman was talking about --
or maybe it was Mr. Driskill, or whoever it
was saying are you cross-collateralizing
different income streams. And some of it is
just based on, I think, traditionally the way
they've collected and distributed the income
related to those compositions, and so I just
think it's a practical issue that will have to
be addressed if the PROs don't continue.

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

MS. SCHAFER: You mean if the majors are pulling out their digital rights?

MS. CHARLESWORTH: Right.

MS. SCHAFER: I mean, I think at that point it's all flowing through that publisher that has pulled out -- I would assume. Now, I do know that some of the PROs have taken to the administration of those rights; even if they are pulled out, they're
still administering them. So I think those
are getting into the details of -- and Mr.
Mosenkis can speak more to this -- what their
agreements are with those publishers.

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

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

MR. MOSENKIS: It's not my milieu,
actually, the details of those administration
agreements, but because the majors couldn't
process it, they really did rely on ASCAP and
BMI just continue doing what you're doing.
Essentially, they went out and negotiated the
license and the back-end result was done in-
house. And I would actually foresee that
there might be other private companies, the
MRIs of this world, trying to get into that
business and compete, but that's what it's
about, it's about competition. If ASCAP and
BMI are great at it, ASCAP has been doing it
a hundred years, I'm confident that they can
continue doing it well for them, but that's
how it would work, I would think.

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

So they know, okay, I'll do a deal
up front, a hundred bucks or whatever -- if
it's a network, a thousand bucks -- to write
the compositions up front for the film, for
the TV show, but I know if that's a hit,
that's where I'll make my money and I know
that's where my income is coming from ASCAP
and BMI when that show is performed on first
run, on syndication, on airplanes, in China or
in France, that's where I'm making my living
and that's how I'm making my living. Without
the system of the PROs, there will be no film
composers, they will be driving cabs, becoming
lawyers, possibly. Unfortunately they will
not be composing, and that's a big problem.
Hopefully you'll get a little bit more
information in Los Angeles about that.

MS. CHARLESWORTH: I hope we will.

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

MR. KIMES: Again, if you've got
majors wanting to pull out, I sat here for two
days and I'm wondering why somebody hasn't
asked the question why are they wanting to
pull out. They're not satisfied with what's going on with the PROs. I'm telling you, we had a meeting here on the Row a few weeks ago and there was a lot of writers, some publishers and some different people there; no one is satisfied with what's going on with ASCAP or BMI, they're just not satisfied, and that's the problem.

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

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

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

MR. TURLEY-TREJO: I just want to say that I would hope we can figure out how to keep it all under one blanket collective organization, because from a licensee standpoint, it would just create quite a bit
of chaos -- maybe not chaos, but it's already
difficult to try and get all the licenses that
you need. And so I think if there's some way
to help with the oversight or with changing
the system to get the rates up where there
could be more fair market rates so that way
people are happy. From a license standpoint,
I want to say I definitely would love to see
that.

MS. CHARLESWORTH: Okay. Well,

thank you all. I'm sorry we kept you more
than a few minutes late. This is a very, very
significant topic.

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

Session 7 - Industry Incentives and Investment

MR. DAMLE: The next panel is on
sort of a broad topic which is industry
incentives and investment, and basically the
question of how current challenges in
licensing are affecting the ability of
creators to develop new projects and for
publishers and record companies to develop new
talent, and the challenges faced by services
in delivering music to the public. So because
it's a broad topic, I'll start with an
appropriately broad question which is how
licensing issues are affecting the ability to
bring music to the public, both on the creator
side, intermediary side, the music services
side. So who wants to be the first one to
take that on? Mr. Coleman.

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

I'll start by saying I'm all for
bundling rights in the sense of allowing
licensees to quickly and efficiently get
rights for songs in the broad sense of that
term, whether it's a bundle of exclusive
rights to the underlying copyright and the
master in a one-stop shop. I think those are
all very, very important. What I think is
also equally important on the licensor side of
the business and in the copyright law is the
preservation of sub-economies, I would call
them, in the music business.

I'll start with the idea that an
artist cannot mitigate risk. An individual
songwriter, until they've written a thousand
songs, and even then, the act of writing music
is risky and they depend on firms, music
publishers and labels, to mitigate risk for
them, to aggregate a lot of rights, diversify,
and the practical way that happens is a music
publisher will pay an advance, a discounted
cash flow, to a writer on future earnings,
potential future earnings, and hope that they
make it back, like a venture capitalist. And a record label does the same thing with a master right.

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

So what concerns me if the discussion becomes too much about ease of licensing is that we end up with the possibility that licensing will be so
simplified that we'll have, at the other side
of the table from the licensee, a kind of
perpetual 360 deal, in the current parlance,
which is a company that is very broadly
investing in musicians but is not investing
specifically in songwriters or specifically in
performing artists and recording artists. I
think ultimately those kinds of risks, those
calculated risks are healthy for the industry
and make better art.

MR. DAMLE: Mr. Marks.

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

Revenues in the U.S. for the
industry have dropped over 50 percent since
Napster came along, so you've had a tremendous
amount of decrease in the investments that
labels make, and I can only really speak for
the labels, obviously. Artists have been
dropped, unfortunately, less amount of
available artists generally. And so your
question was about licensing. I think we've
heard a lot and we've talked a lot over the
last day and a half about the challenges in
the area of musical work licensing and there
seems to be a consensus that something needs
to be fixed, and how that gets fixed obviously
will take some time to figure out.

But if you talk to people in the
venture capital community, you will hear
things like: Getting the licenses, especially
on the publishing side, are just too complex,
I'm not going to put my money into something
where it takes two or three years because I've
got to go publisher by publisher, work by
work, right by right, share by share, to even
put something together to even launch the
business, when I can put my money somewhere
else.
So I think we need to continue to have the conversation about how to improve the licensing so we can get more investment into services that bring the music that artists and songwriters create to consumers in the way that they want to do it.

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

So we've gone through three different transitions in a very short period of time, the physical digital, then we had the PC/mobile and now we're seeing download
streaming take place, and so we need to be nimble enough to deal with those kinds of changes that are going to continue to occur over the next 5 and 10 years and on into the future.

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

MR. DAMLE: Thanks. Mr. Knife.

MR. KNIFE: I appreciate a lot of the things that Steve said. I think the data points that his organization have issued recently, and also, as well, music publishers and the PROs, in particular, is that the music industry as a whole is, if not actually on a positive upswing, it is at least stabilized. So we've had the effects of a lot of things, the digital revolution, including also just a
general depression of the United States economy over the last 5 to 7 years, and what we're seeing, thankfully, is an increase in revenues at the PROs, for the music publishers, and in many respects, for the RIAA -- I'll put on my PR hat for a minute -- thanks, in large part to my members and other similarly situated companies.

But I agree with what Steve was saying about the fact that the complexity of the licensing absolutely chills investment. Many of my companies can afford to be in this business because it's an attractive business to be in for a lot of reasons and they have revenue from other endeavors that are not music-related. And that's a good thing, I think, both for creators and for consumers because they continue to provide products that consumers want and continue to generate revenue for musicians, while it's largely an unattractive business proposition as a stand-alone.
And just as a final point to that, I think it's important that as we have these discussions about incentives, revenue, industry data points in terms of what kind of money is being made, we need to decouple the vernacular about things like market share and how much particular CEOs of digital companies might make because Wall Street is going wild on their stock, when their actual company has never generated a profit.

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

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

MS. SCHAFFER: I think we've all acknowledged over the course of the last two
days that the current licensing system is not
working and that it's not efficient, and so I
think we can start with that baseline in that
we would all like to see more efficiency, we
would like to get the music to consumers, we
would like consumers to pay reasonable rates
for it or for there to be a compensation
through ad revenue, or whatever the case may
be. But we likewise can't separate that
discussion from the importance of
incentivizing creation itself of music.

I think it's the Nashville
Songwriters Association motto is that all
begins with a song, and I think, at least in
Nashville and in having these discussions with
current and former record company executives
and current and former executives in music
publishers, everyone seems to have that same
some of the songs are not the kind of songs
that we've traditionally had or wanted, and I
think some of that is that we're losing a lot
of the investment on the song side of
developing that songwriter and incentivizing
those great songwriters to stay in this
market.

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

There are no audit rights, so even
when we are going through and have a situation
where there's licensing, songwriters don't
even know that they're getting paid what they
should be getting paid because there's no way
to go back and double check and make sure that
the monies that should be paid are actually coming through and that it's accurate.

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

Now, I personally will be the first to acknowledge that I think everyone has to look at what their business model is and how it is that they are generating income, just like publishers have started looking into the production side of things and trying to generate revenue on the production side of things, just like record companies have looked
to 360 models which in many cases it likely makes sense because of the investment that goes into that brand.

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

And so just like I think we all have to look ourselves, as a publishing industry and as a songwriting industry, what are other ways that we can supplement our income or bring value to that, I think that some of the digital companies likewise have to take a look at what their models are and does it make sense, if they want to distribute
music, is their model one that can support licensing music and paying a fair rate for music.

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

And I think if you look at it in that most basic sense of without the song none of this comes in, then I think you could really start to evaluate the value of the underlying copyright to figure out how do you incentivize the people who are creating the most fundamental aspect of this industry.
MR. DAMLE: Mr. Johnson.

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

I moved here in 1996 when the Row was happening, there were thousands of songwriters, publishers occupying all these buildings, and over the past 15 years it has died and it's a carcass of what it was. And what she's saying is absolutely true. I wrote a song called "Still Pissed at Yoko" with a guy named John Colgin: he's one of the greatest writers I've ever heard in my life. I write with Dewayne Blackwell who wrote "Friends in Low Places" and "Mr. Blue" and Dewayne says my favorite lyric writer -- and Dewayne's a genius -- is John Colgin. John Colgin just moved back to Texas where he's from and he's selling magazines to hotels, and he's a genius songwriters. All because of
streaming, all because of YouTube, all because
of Sean Parker and Spotify, and all because
copyright really doesn't work, quite frankly.
So you're just killing us, you're killing
songwriters.

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

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

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

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

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

(General talking and laughter)

MR. JOHNSON: Here's the PROs over here, here's SoundExchange which calls itself a PRO, and ASCAP and BMI and so forth. But here's the little songwriter and we hold all this up, we support all of you, and it does begin with a song. And right now we've got some of the worst songs I've ever heard on the radio, they're horrible, they are mind-numbing, and you watch the show "Nashville" and you go: Wow, why can't those songs be on the radio. "Nashville" is a TV show that's
got some incredible songs. So back to your thing about incentives, and when we first met last year at the Grammys on the Hill, I asked you, "where is our 9.1 cent mechanical?" And you gave me a great answer, I still don't understand it, but when you told me at the time, I had no idea about a lot of things you were saying just because I didn't know. But one thing I said was, "I copyright my songs and I spend $35, $60, then the CRB sells my song out the back door. How can you do this when you're supposed to protect my private property?" The CRB sells my song out the back door for .00000012 cents, in effect, once it goes through the BMI laundry machine.

I actually went down to go get some other charts than the ones I gave you yesterday but I have the one where it's a million plays for BMI you make a million bucks, according to Michael O'Neil, you make 91,000 downloads from a million downloads for the songwriter's split, and then you make $60
for Pandora for a million plays, individual performances. And that is what we must focus on. So I can't copyright this song and then get a million plays on Pandora for nothing.

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

So here I spent $1,900 in 2010 paying Ray Walker, who worked with Elvis, along with, God rest his soul, Gordon Stoker, of the Jordanaires, it cost me $1,900. How am I ever going to pay that royalty back. And
then I had to sign an agreement with AFTRA because they're background singers, and of course, AFTRA gets 5 percent, from SoundExchange and all that, but AFTRA lowered their rate for streaming. So after 500,000 records I would sell, I'm supposed to pay them another $1,900 or pay their heirs and assigns or Gordon's widow, and now they've lowered streaming low now I'm going to have to pay another royalty, and that's just garbage.

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

MS. CHARLESWORTH: Mr. Johnson, what I would suggest, at this point it might be appropriate to say I think we will be having a reply comment period for those of you who might be interested, and so what I would suggest, Mr. Johnson, since I think a lot of this is not in the written record, is that you consider submitting it with reply comments if
you'd like it to be in the record. Because we don't really have an ability to take it into the written record as we sit here today, but there will be a future opportunity. And adding to that, we've heard some sort of anecdotal descriptions of the change in songwriters, the decrease in songwriters. If anyone has empirical or statistical information that they could submit, I have seen a little bit here and there, but it would be extremely useful, I think. We often hear this anecdotally, but if there's a way to get some documentation of that into the record through the reply comment process -- particularly, I think, I hear this most often in Nashville -- it would be very helpful to us as we analyze this problem.

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

MR. JOHNSON: I appreciate that and I definitely will enter it into the record. And I just wanted to add there's
singers, background singers, and of course, there's the players that go through the music union, and that's probably four, five, six, seven grand, and then, of course, you have studio costs, whether you go to Quad or Blackbird. But you have all these ancillary costs -- and I'll shut up after this -- you really have the catering, the second engineers or the engineers, and you have these costs that go on just to support demos.

I'd like to enter into the record, and just for everybody to know, it's a pitch sheet, and there's a great quote by Stanley Gortikov -- I can't pronounce his last name -- who was head of the RIAA, and he had a quote in 1971 about, "The pirate skims the cream of what artists and record companies offer except for one particular ingredient, which he avoids like the plague our risks." Testimony to House Committee on the Judiciary in 1971. We go and do demos, spend all this money, get a pitch sheet, and it doesn't cost the labels a dime,
and now we're getting paid nothing, have no
say in our negotiation. So I'm just trying to
get you guys to understand all the stuff we've
got to go through. It's unbelievable the
amount of work that goes into it, and you
think, oh, he wrote that song in ten minutes
and recorded and it was a hit. No.

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

I don't know who was next, Mr.

Meitus or Mr. Stollman.

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

I just wanted to take us three
people backwards, and from my perspective and
from the Florida perspective, reconfirm and
reiterate what both Mr. Coleman and Ms.
Schaffer said. And I appreciate Dan using the
word "risk" at the beginning of his
conversation, because I think incentive is
largely about risk and there are two folks
that need to have incentive: one is the
songwriter that you're speaking about and one
is the other side of the songwriter's
equation, the publisher or the person that's
going to be investing in him.

And what I'm seeing on the street

sort of now, not at the highest levels but on
the street level from most of the clients --
I'll say, by the way, I'm not sure it's as
much a function in Nashville as it is in other
places what I'm about to say, and I'm also not
100 percent sure, I don't think you can
allocate it all to the licensing process, I
think it's also allocable to the state of the
industry process -- what I'm seeing on the
street is that the risk is just not being
taken, in a lot of places, on the part of the
companies that are investing in the writers
that are going to create the art. And they
are reducing their risk by investing in sure
things, as opposed to investing in developing,
as you said, writers or a good catalogue of
undiscovered songs.
Most of the deal-making that I'm working on -- and that's what I do is deal-making -- is just following the money, it's just when there is some success you will have somebody willing to invest in you. And until you have what looks like some success, that investment, that risk-taking on the part of that publisher just isn't there. They only want to pay you your money once it's partly in great.

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

MR. COLEMAN: May I add just a little corollary?
MR. DAMLE: Sure, Mr. Coleman.

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

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

MR. DAMLE: Thanks, Mr. Meitus.

MR. MEITUS: So I'll remain consistent in voicing support for the original creators to go back to the Copyright Act. We
know that that's what copyright law is initially concerned with, not so much looking at new digital platforms and such but looking at supporting the creators of songs and sound recordings in the original instance, the performers and the producers. So if you look at all of copyright law, you'll see that there are certain equities built into it to support the creators, and we know that 114 and SoundExchange and the outgrowth of that, is a very real income stream for the feature performers and the unions. That is something that I think should be taken very seriously in the whole scheme of things to see what else in copyright law, as it evolves, can support creators at the initial phase.

ASCAP, SESAC and BMI we've seen pay public performance royalties one-half to the original creators, usually, the writers. We also see the termination rights supporting and incentivizing creation through 203 now that is coming into play. We'll talk more
about that maybe more with pre-72 recordings
and how I think that should extend. So as
copyright law evolves and a full performance
right and sound recordings extends to
terrestrial radio, perhaps, we see ways in
which you can game the system for the creators
and not allow the major labels, and the
publishers to some extent, but the major
labels to create opaque systems that are
inequitable, largely. We don't know what
large payments are being received often by
labels in their deals with digital
distributors. We don't know exactly, although
in some cases we do know, the equity shares
that they own in these platforms and how they
will benefit when those platforms and those
companies go public. But we do know that
these contracts, the lawyers who work for the
artists, do know that there are clauses in
these artist contracts that state that the
artist will not share in any of those
earnings, and at every turn we will see in
those contracts those incomes being shared at a 10 to 15 percent of wholesale rate rather than a 50-50 net share.

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

But my point I just want to say is that copyright law revisions can support the original creators, the artists and the writers, so that the publishers and the labels
do not get an inequitable share of the new
money that's going to be coming in. And
statutory licensing and the consent decrees,
all of that, however it gets worked out, needs
to keep in mind, first and foremost, who are
creating these works.

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

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

So to get to some of my statistics
and talk a little bit about what labels have
been doing over the past decade, almost $25
billion invested to create recordings, and
when you look at a P&L, if you took a P&L for
a current year, for example, or a year or two
ago, the talent-related expenses were 46
percent of the label's total revenue which are
well more than four times what the label gets
in operating revenue. As a percentage of
revenue, artist royalties have increased 36
percent over the last decade, publishing royalties have increased about 44 percent over the last decade. So the trend has certainly not be that artist royalties are going down as a percentage of what labels are getting, but it's the opposite.

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

I, therefore, don't think we should base things on speculation or rumor or whatever, but rather maybe looking at some of the hard data that we've got in terms of
what's driving investment and who's putting up
dollars to drive investment for creation of
the sound recording which is ultimately the
finished product that consumers demand. Yes,
it starts with a song, but the song on a piece
of paper and lyrics, or as it's written, no
matter how great it is or how much genius has
gone into it, it's not going be heard unless
it's through the medium of a recording.

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

So there is no question but that
writers and publishers need to get fair value
for the work that they have, but I think we
should look at the role of everybody in the
system. And I don't think that defaulting to
compulsory license systems helps anybody. It has a perverse incentive when it comes to investment, because as we've all seen, they tend to depress rates, not increase rates or give fair value. And if that's what continues to happen and you have 50-50 splits on whatever money is coming through there, you're going to have 50 percent of a lot less than would otherwise be coming into the system as a result of the fact that there's more investment and more dollars to invest.

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

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

MR. MARKS: No. Think we've been very clear that the rates, especially on the performance side, that the rate court has set are not fair, and we've proposed a solution for giving a percentage of what we earn to
publishers so it's part of what's negotiated in the marketplace and not what's driving by a CRB or a rate court.

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

The other thing that I wanted to just say here is as a general matter I think we need to, as an industry, get away from this creator versus technology dichotomy that tends to exist and is perpetuated by a lot of the
comments, and sometimes just by the
frustration of how the current system is
working. But there is an interdependence
between technology and creators, and I would
say that technology companies are also
creative, and creators are also doing a lot
with technology, so even using those monikers
isn't a very good thing to do.

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

MR. DAMLE: Mr. Marks, could I
ask you to clarify one aspect of the RIAA's proposal, which is when you talk about eliminating the CRB, are you talking about eliminating it for 112 and 114, as well?

MR. MARKS: No.

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

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

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

MR. MARKS: I guess you would have to add to it that the musical work is being paid for as part of it so that you're not losing the value of that separate copyright. But we didn't suggest to abolish 112 or 114.
MR. DAMLE: And just to follow up on that, and so do you envision, just in terms of the process, that the NMPA and the music publishers would be involved in the rate-setting process before the CRB, they'd be participants in that process?

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

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

MR. KNIFE: I apologize, Steve, but just a couple of points of clarification. I'm just not entirely sure on where the RIAA proposal goes on 115 in terms of the statutory license. I think I get what you're saying about the idea that there would be a privately negotiated, whatever you want to call it, ratio participation, but does the proposal include still that there would be a compulsory license? What happens if you don't arrive at
a ratio split and a rate agreement? I mean, are compositions still compulsory available or not?

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

MR. KNIFE: But ultimately no opt out.

MR. MARKS: That's right. And we recognize that's an imperfection in the proposal, but there's a balancing, we think
it's better than the current compulsory
license which also doesn't allow an opt out,
and it will end up with making it easier, and
therefore, having more money flow in, to both
songwriters and publishers and getting them
out from under the CRB and the rate court
which is the biggest problem that exists, I
think, on their side.

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

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

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

MR. MARKS: Talent-related costs,
46 percent.
MR. KNIFE: Forty-six percent.

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

MR. MARKS: It's advances and royalties.

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

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

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

MR. MEITUS: That's fine, but you're calling it an artist-related cost, but the artist is not taking home but a small slice of that as an advance, sometimes zero,
and sometimes more, but that's on a case-by-case basis. But that is an investment in the product which you claim to own as work for hire -- you can debate that, but you do have it for at least 35 years. And so it's not going in the artist's pocket, just to be clear, it's going to producers, to recording studios, to all kinds of things to make the product.

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

MR. MEITUS: Most of that money.

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

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

MR. MARKS: Well, depends what deals you're looking at. We did a study of artist contracts that showed that every single
artist, every single artist signed to the
major labels in the 1990s, who had a gold
record, not a platinum record, not a multi-
platinum record, demanded a renegotiation of
their deal.

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

So I don't have the breakdown for
you in terms of how much in dollars are
related to those, which are the higher money
advances versus the greater volume that are
the smaller dollar advances, but I think you
have to include both and look at it in that
perspective. And we don't have a right, really, to enforce an artists saying: I'm sorry, I'm just not going to deliver the next album until you renegotiate my contract now that I have a gold record.

MR. COLEMAN: It's a tough business.

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

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

(General laughter)

MR. MARKS: Not in this industry. But George was talking a lot about Spotify and the streaming services, and I know Geiger says $100 billion business. God bless him if he's right, but I don't see that around the corner any time soon. And the best chance we have of getting anywhere closer, and Lee said earlier, yes, we've stabilized, we're not increasing,
we have stabilized, we were down a little bit last year, but if you look over the past three years it's relatively stable, although this year, as some others have mentioned, downloads are down precipitously. Streaming is up, but if you can't get people to subscribe to streaming services and move over in that direction, we're not going to get an increase at all, let alone to $100 billion. And that's not going to happen if we don't make the licensing process easier.

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

MR. KNIFE: Well, I got cut off.

MS. CHARLESWORTH: Put your placard up, Lee.

MR. KNIFE: I'll try to be really quick. I had a lot of things I was going to say, but I'll be really quick. Number one, I
think a lot of this exchange, unfortunately, while you raise a lot of important points that need to be addressed, I'm not sure that this is the right forum to address them, because they have to do with individual artist contracts and they don't really ultimately relate to the Copyright Act and how it might be amended or could ultimately be amended. I take your point that perhaps there are ways to consider these things but the points that were just made over the last couple of minutes really have to do with individual artist agreements.

But I just wanted to point out that I think Mr. Marks basically gave us a percentage of their total content costs that's lower than the total content costs that virtually any of my member companies pay for all of the rights that they need to acquire to engage in this business. So when you take PRO royalties, master recording royalties, publishing royalties, most of my member
companies pay well over 46 percent of their total revenue based on their music sales.

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

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

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

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

MR. MARKS: Yes.

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

(General talking and laughter)

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

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

Back to the speed round.

MR. DAMLE: Okay. So we'll start
with Mr. Gottlieb, Mr. Sellwood and Mr.
Barker, and then end with Ms. Buresh, with
really quick comments, because none of you
have had a chance to speak.
MR. GOTTLIEB: You know, I wanted
to raise a couple of issues, and sometimes
it's difficult to get a 10,000 foot overview
of things working in the trenches, and it's
been my perception over the years, because,
unfortunately, I have more of an affinity with
Mr. Johnson than I do with Mr. Marks in some
regard because I live on these streets and I
live with these people and support them, and
I have to make my living doing these things
too.

So I'm struck by the unfairness of
the Safe Harbor provision to small creators,
I'm struck by the fact that it renders the
copyright owner so impotent to protect their
work, and I think that it was perhaps a
necessary advantage for the cable companies
and the ISPs to develop the infrastructure,
but I think it's time that that needs to
change. And I think it has stalled innovation
at the private level to facilitate
intellectual property accounts at the
individual level where micro-transactions can be aggregated at the private level and can be marketed at the private level. And that is ultimately where we are heading. We need all these collective bargaining rate programs and initiatives to set those rates but ultimately, if the ISPs go into direct affiliation, as something will need to, because as the fractional shares develop from all these statutory heirs and termination rights, as they shake out, the ability to deal with these smaller and smaller shares of these catalogues which have provided the resources for all these companies, these catalogues, is how we have funded all this stuff. And though we are trying to foster innovation, we forget that's where the money came from, it came from these old big catalogues that financed all this stuff.

And I just would like to raise that up as a concern that the safe harbor has been damaging to a certain degree for all of
us to be able to protect and to monetize these rights.

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

MR. GOTTLIEB: Yes.

MR. DAMLE: Thank you. Mr. Sellwood.

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

Not to be mundane, but I'm going to go back to the investment question. It probably goes without saying that every dollar spent building infrastructures to licenses is a dollar that's not spent elsewhere, to marketing or promotion or anything like that. We all agree that we kind of all need each other and we should be working to get more consumers to subscribe or more advertisers to
participate. Then it would be helpful for services like YouTube and any of our competitors to be able to spend dollars promoting marketing.

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

There's an ROI in it and we're seeing investment. We're seeing investment from mainstream companies like Disney investing in creators and companies on YouTube that are working with creators in order to encourage new songwriters, new musicians, new creators on the platform. And I think a lot
of that comes from the fact that we've done a pretty good job of licensing.

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

But I found some of the comments interesting because on You Tube we're seeing labels invest heavily in compositions and we're managing compositions, and we've seen publishers invest heavily in creating and distributing sound recordings. And so from our limited vantage point, the difference between a label and publisher is really becoming blurred, and if we're an indication of the future of the market, I think the makeup of label trade groups and publishing trade groups might be a lot different a couple
of years from now, it might just not be such
a clear divided line.

And so I think we should all be
conscious of that because it's an interesting
development. I think it's a positive one.

Although, I'm going to follow up with Mr.
Coleman with his concerns about it because I
found those to be interesting. One other
thing is where we're seeing investment, I
think there was a press release from Cobalt
Music Publishing, they just raised another
140-odd million dollars. We're seeing a whole
lot of investment in companies that are
spending time managing data at a granular
level because that's really what is going to
drive the content industries a long ways. I
think it's exciting to see investment in that
area as well.

Thank you.

MR. DAMLE: Great. Thank you.

Mr. Barker.

MR. BARKER: Thanks, and I can
keep this short, I think.

Bottom line -- and I'm going to kind of pull back from the weeds a little bit, and maybe this is too simple of an approach, and I apologize for that, that's the way my mind thinks -- but I'm optimistic, there's more music available than ever before to all people, so I think that's a good thing. Now, I go to what Mr. Marks said which is to say the reality is since Napster came along the music industry has dropped 50 percent -- I think is what you said. Now, I've heard that before. So I'm thinking: Okay, what has happened. I realized that 10 years ago, or when Napster came along, the saying was: How do you compete with free? Well, the solution seemed to become: Well, let's make it almost free. We got a lot of license requests from big services trying to fill that void to say: "At least you're getting paid something; it's small but at least you're getting paid something." So as owners of content we seemed
to go along with that to say: "Hey, this is
the beginning, maybe, of something where we
can at least get something where we're
otherwise competing with free." Now we find
ourselves today, and what I'm hearing around
the table the last couple of days -- and I
don't fully disagree with this -- it seems
like we're talking about consumers having the
right to get 30 million songs at once and
we're building businesses based on that.
Whereas, 20 years ago if I wanted a record and
it wasn't available in a particular record
store, I would just have to drive to one and
find it; nobody said it was my right to pick
it up from that store.

I think a basic economic principle
is if you flood a market with something, it's
going to devalue it. If you flood the market
with diamonds, diamond value is going to go
down. I'm not saying we need to restrict
copyrights, but let's don't be afraid --
again, back to Section 115, changing things,
letting us negotiate things, letting us withhold certain things -- that perhaps we will eventually drive the value of copyrights and recordings back up to where they need to be, rather than at the present 50 percent of where we were, maybe we can grow that.

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

So I just kind of want to back up and say, you know what, as we're talking about these things and getting into the weeds of a lot of these things, let's don't forget the real value and how we can find that, and maybe it's not making everything available at once. Maybe as we determine what the next look of copyright law is, it also is not competing with free, maybe we focus on policing free --
which I know we all are in favor of that --
policing free and then understanding the true
value of the rights we have and then licensing
them accordingly.

MR. DAMLE: Thanks.

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

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

MS. BURESHE: I'll try to be as quick as possible.

As an administrator and representing Big Loud Bucks, Florida Georgia Line is our client. Craig Wiseman runs the company. We've built that company off of the song "Live Like You Were Dying" and many, many
others. He sold catalogues to invest in that. I've been with him a very long time and seen his hesitancy to invest in the administration side for licensing which I need to pick up the pace to get more digital and hire somebody to actually make it a more functional licensing system for people to get our songs quicker and faster.

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

We also have had to get -- well, not had to, but as an administration companies -- which most administration companies in Nashville, a lot of people outsource their
admin because they don't want to deal with it
on the publishing side, they want the
creative, they want to invest in the
creative, they need to invest in the
creative, they need to focus on those songs,
they need to nurture those songwriters.
Florida Georgia Line came to us.
They got whipped into shape in the studio and
look at them now, they're winning awards last
night at the CMT Awards, and they're happy as
can be. And their next album is going to come
out, we hope it has the same success as
before, but you don't know in the current
marketplace or what's going to happen in the
future.
I don't know if he's going to be
willing to invest in another act on our new
label that we have had to create for the 360
model. The 360 model was something he kind of
had to create with the Big Loud Shirt
Industries in order to continue to have a
sustainable business and support his
administration costs too.

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

Thank you.

MR. DAMLE: Thanks. Mr. Coleman.

MR. COLEMAN: Just very briefly I wanted to register my support for Mr. Meitus's comment that goes against what Mr. Knife was saying about this not being a copyright issue of how artists are ultimately paid. I think it can be very much a statutory issue. I think that the Copyright Act itself can protect artists because really some of the arguments that we're having about risk and
reward are about who is out in front
collecting and how does a license ultimately
trickle down -- I think was the phrase that
Mr. Marks used -- to the artist.

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

MR. DAMLE: Mr. Johnson, yes.

MR. JOHNSON: I thought what
Heather said was correct, I thought that was
great. Craig Wiseman is one of the greatest
songwriters of all time. And what we have
here is that YouTube, your business model is
the most important thing because it's very
exciting, we're doing all this, blah-blah-
blah, and we don't want to talk about it, or
we don't talk about the creative issue and
having to pay songwriters. But you're putting
me out of business and you're putting Craig
Wiseman out of business, straight out, not you
personally but YouTube in general because you've not paid for songs.

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

And there's a great documentary called "Downloaded" and I suggest you all watch it. It's unbelievable. Hillary Rosen from the RIAA absolutely dropped the ball for all of us. It's got Sean Parker in it explaining exactly how he hides behind the DMCA, and it's chilling, it makes me sick to my stomach. So we've got to get rid of that.
I was all for the RIAA proposal until I heard -- which I think is great, let's get rid of the CRB for 115, but why don't you want to get rid of it for 114? It's such a horrible, horrible process. We should be a free market for a sound recording and our mechanical. This is the whole issue, it's phony altruism, phony, phony altruism.

MS. CHARLESWORTH: Okay. You know what --

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

This is why the RIAA, and especially the Grammys too, should be nowhere
near my royalty process. If you want to argue for the pre-72, for the sound recording for radio, you want to argue for the Aretha rate, great. Those were easy, no-brainers. Of course we should have those; we've been debating that for 50 years. But now we need to take care of the songwriters, we really need to, and you're destroying our entire livelihood, and nobody cares. And that's the number one rule of the music business, nobody cares.

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

MR. JOHNSON: I apologize.

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

MR. MARKS: It's that we like the fact that we're under a compulsory license, I think it's safe to say that it's the artist community that wants the compulsory license more than anybody and we are trying to be good
partners. We would much prefer, in a perfect world, to get rid of all of that compulsory license too. So there's no gotcha here.

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

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

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

MS. CHARLESWORTH: Okay.

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

MS. CHARLESWORTH: All right.

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

MR. JOHNSON: I know, but you
should have put Sean Parker in jail like Gene Simmons said. He should be in jail right now, not starting another streaming company with virtual piracy, which is what it is.

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

Session 8: Pre-1972 Sound Recordings

MR. DAMLE: This panel is on a more specific topic which is how to deal with pre-72 sound recordings, and obviously, the Copyright Office, not too long ago, issued a fairly extensive report on the topic and had recommendations, but given that this is a music licensing study, I think one thing we'd be interested in is learning currently what challenges there are under the current law with licensing pre-72 sound recordings, and
then also what challenges there might be given
under a partial or full federalization of pre-
72 recordings.

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

MR. MARKS: Sure. Just generally?

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

MR. MARKS: So I guess I would
start by saying I hope we all agree that pre-
72 recordings, the use of them, the
performance of them should be compensated in
some way, shape or form, and maybe most of the
discussion would be around how best to
accomplish that. I don't know whether we'll
have agreement on that or not, but these are recordings just kind of arbitrary date that sound recordings received federal copyright protection not until 1972 and for performances not until 1995, and even then very limited performances. But the notion that one service that's using recordings created after 1972 and there's payment for it but there's not prior to 1972 just seems fundamentally unfair and something that should be fixed.

We have, as many probably know, launched two litigations to clarify those rights in the State of California and the State of New York. We are also supportive of a bill 114 that services using pre-72 should pay for pre-72 at the same rate that they pay for post-72 works. In terms of federalization, there was a separate Copyright Office proceeding on that, obviously, and our take-away from that is that there are a lot of very complicated issues that need to be addressed, and we as an industry, or at least
we and our members are open to sitting down
and trying to work through those issues, but
we see that as something that's probably going
to take a fair amount of time to do, and
therefore, things like the bill that was
introduced last week, if it could be enacted
in a short term would at least address the
inequity of having pre-'72 recordings go
uncompensated.

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

MR. MARKS: It mainly adds,
Section 114 right now, as most compulsory
licenses, have a certain number of conditions,
certain conditions that you need to abide by
in order to be eligible for the compulsory
license, so what this would is add as a
condition that if you are operating under that
compulsory license -- meaning that you're
using it for post-72 recordings, but you are
also using pre-72 recordings as part of that
service, that you would pay the same rate for
pre-72 recordings that you would for post-72
recordings. So it's a way to compensate the
use of pre-72 recordings in a rather simple
way within the confines of the structure of
Section 114.

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

MR. DAMLE: Is it your
understanding that those agreements outside of 112 and 114, that they're paying royalties for pre-72 recordings?

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

MR. DAMLE: Mr. McIntosh.

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

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

MR. DAMLE: Mr. Meitus.

MR. MEITUS: So on behalf of a number of artists, including the Wes Montgomery Estate, who have pre-72 recordings, I think it's clear that we want full federalization. I think that the Respect Act and the application of 114 non-interactive is
a good stopgap measure, but do we need another
stopgap measure. It's sort of looking at a
lot of us who want nationalized health care,
is Obamacare better, I think we've accepted
that it's better than nothing, but is it going
to mean that we don't have good health care
for all, that will remain to be seen. If this
means that we're not going to get full
federalization, then I'd say wait for it, but
114 would be better than nothing.

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

The Copyright Office concerns, I
believe, have to do with a takings clause problem, whether it's constitutional. I think it's clear that the Constitution doesn't prohibit uniformly retroactive in the civil realm, and it's not the fact that all retroactive legislation is a violation of due process. That's even if duties and liabilities are created after the fact. So this is all a question then of a balancing test that was in a Supreme Court case, Usery v. Turner, and I believe if you apply that balancing test you'll find that a retroactive law which gives federal copyright protection, full federal copyright protection, including the right of termination, comes out in favor of the recapture of those rights.

argument -- we don't need to get into the academic nature of why sound recordings were different than songs back then; we all agree, I think, now that there should be some federal protection of some sort in those sound recordings -- but those authors
deserve a second bite at the apple, just as
post-72 sound recording owners deserve a
second bite at the apple. And that's, to beat
my drum a little bit more, to incentivize the
original creators. So I believe that the
constitutional problem is not a deal-breaker,
I believe we can get around that in the
application of retroactive law.

I believe as a second best option,
the RIAA has briefed an option where there
would be perhaps not full federalization. If
I knew that's all we could get at a 50-50
split, if Congress stepped in and created this
50-50 split -- I'm sorry, NARAS proposed this
-- a 50-50 split rather than a full
federalization and right of termination --
some of you read that suggestion in the NARAS
report -- I think that would be a second best,
but I think there's not a problem with going
for full federalization with termination
rights. I think most artists who had 5
percent deals back then and certainly aren't
going to see much money at all from the state-based litigation, I think uniformly would support what I'm saying today.

MR. DAMLE: Thanks. Mr. Knife.

MR. KNIFE: First, I'll have to start out by pointing out that as a trade organization, DiMA is largely neutral on this issue in that we really don't have a very strong opinion one way or another whether pre-72 sound recordings should come under federal protection or not, but keying off of some of the things that Mr. Meitus said and Mr. Marks said, I think notions of fairness, simply to the extent that the Copyright Office and/or Congress is thinking about incorporating pre-72 sound recordings and bringing them under federal copyright protection, it should be absolute and full. I really don't understand the arguments about that there are incremental steps that we should be taking and that perhaps maybe for some interim period there
could be payment, but that songwriters and
recording artists would somehow not benefit
from acquiring their termination rights and
other people wouldn't have things like fair
use and DMCA protection, I just don't see the
distinction. If we're going to make the lift
of changing copyright law to include pre-72
sound recordings within the aegis of copyright
protection, I don't understand why you
couldn't do it all at once.

And again, I think basic notions
of fairness dictate that, that you don't
create just select rights, that you don't
leave other people by the wayside to kind of
determine that their rights may or may not be
protected in some other context. The real
reason we're here today, and will be in
California and in New York, is because we have
problems with the Copyright Act that is this
patchwork quilt of certain rights for certain
people, certain obligations for certain people
depending on the medium being used, depending
on the creative work that was exploited,
depending on the way it is being exploited.
And those are all problems.

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

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

MR. MARKS: I just think there are
practical considerations. I can understand
why Lee would rather go for full
federalization that's going to take several
more years, potentially, and have his members
continue potentially not to pay during that
time period, rather than at least getting
compensation going for the biggest swath of
things that are going uncompensated for at the
moment. But there's a practicality here: one
thing can be moved much quicker, one is going
to take a much longer period of time. So we
can try and solve part of the problem and get
the compensation issue addressed, and then
deal with all of the other issues afterward.
And I don't think that's prejudicing anybody's
rights.

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

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

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

MR. KNIFE: A couple of points in
response to Mr. Marks. First of all, it is
not at all true that we would care about
delaying the process. We don't care if it
happens tomorrow or if it happens next week,
we don't have an interest in that. Again, we are essentially neutral on the issue and one of the reasons that we are neutral on the issue is across my membership some of my members pay for pre-72 sound recordings, their exploitation of them, and some of them don't, based on individual business practices and readings of the law and the way they run their individual businesses.

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

MR. DAMLE: Mr. Sellwood.

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

MR. DAMLE: Pay on the same terms.
and same rates. Okay, thanks.

Mr. Turley-Trejo.

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

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

MR. MARKS: I think we had, I don't know, eight or ten very complicated
issues that are intertwined in many respects, 
a lot of them, that came out of that Copyright 
Office proceeding on pre-72, and I think we've 
said we're committed to working to try and 
figure them out, but it's just, as a practical 
matter, going to take some time. I mean, 
there's not even a process that's been set to 
do that.

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

MR. DAMLE: Does anyone else have
anything to say? I can go back to my
questions.

MS. CHARLESWORTH: You have Mr. Oxenford.

MR. DAMLE: Mr. Oxenford.

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

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

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

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

MR. MARKS: I think that's
correct, and I don't have it front of me.
MR. OXENFORD: But 2067 going forward, but what about going back? I mean, are we talking about every sound recording is subject to compensation even if it's a Thomas Edison cylinder from 1879?

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

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

MR. MEITUS: But that would be the
same determination of whether it was given federal copyright protection for the purposes of 114. If it's in the public domain, it's in the public domain. That's as easy of a determination as it always is -- which is not that easy -- but it is determinable.

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

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

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

MR. KNIFE: So the overarching
take-away there is that really, really
complicated issues regarding copyright,
interim can be addressed in a simple bill.

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

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

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

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

MR. MARKS: All the words on my
street are privileged and confidential.

(General talking and laughter)

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

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

MR. MARKS: Those are net of any recoupment. In other words, we're not double
counting, that's after the recoupment, those
numbers.

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

MR. DAMLE: Mr. Oxenford.

MR. OXENFORD: I think it also
should be expressed on the record that there
has been concerns raised about pre-72 sound
recordings under 114. We're taking about
incentivizing artists to create, and certainly
there's no incentive to an artist to create
for a pre-72 sound recording that was created
40 years ago with no expectation of any
royalty being paid. In effect, what the
federalization or the inclusion under 114 does
is has a transfer from users to perhaps the
record labels, perhaps to some extent the
artists, and whether that really facilitates
the underlying purpose of the Copyright Act is
a question that I know was raised in several
comments and at least, I think, bears
expressing on the record.

MR. DAMLE: Thank you. Mr.

Marks.

MR. MARKS: That's an interesting
test. So we're going to limit compensation to
what was expected at the time of the contract,
so if five years before Pandora came into
existence there was an artist contract and
there was a deal done and recordings created
and there was no expectation that Pandora
would be around, that somehow the artists and
labels shouldn't be compensated for that new
service? I mean, isn't that the same argument about 1972, the fact that it's just 30 years later as opposed to five years later?

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

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

MR. OXENFORD: But we're talking about the underlying policy of copyright, the underlying policy of copyright being to
incentivize the creation and to facilitate the
distribution. And what I'm saying is that
clearly there is no incentive to create here,
at least under the arguments that have been
made and some of the comments in the record.
Clearly, though, there would be more of a
burden on the distribution if there are new
royalties that had not been imposed before.

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

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

MR. MARKS: But not '95, so if
something was created before '95, as you were
just saying, there would have been no
expectation that you would have received performance royalties.

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

MS. CHARLESWORTH: Well, I think the question on the table is whether -- and your point which was made in the context of copyright extension and considered, actually, by the Supreme Court -- so you're suggesting that there may not be a need to do this because of your view of the incentives under the copyright law. The Supreme Court has said, in general terms, that Congress may have more flexibility in sort of thinking about incentives and also dissemination as part of the Copyright Act in terms of what is good policy, and so I think what we're here today to discuss is whether there are good reasons to pay creators and the owners of sound
recordings for pre-72 works that are being
exploited for profit. And it's a difficult
question, to the discussion that was going on
earlier, because of some of the constitutional
issues and some of the practical issues and
the contractual issues. So I think it's
important to weight all of these factors into
the discussion, so I appreciate all the
commentary. But the fact that Congress hasn't
spoken on this yet doesn't mean it could not,
in our view, in the view of the Copyright
Office.

MR. DAMLE: Mr. Meitus.

MR. MEITUS: You touched on
exactly where I was going. I think that it's
really important to look at Eldred and look at
what Justice Ginsberg's opinion said about the
extension of copyright. I think if Professor
Lawrence Lessig were here, then he would agree
with you wholeheartedly that there's no
incentive ex post facto to expand the rights.
But the Supreme Court was very clear about
that, that adding 20 years -- and I think that
is analogous to adding rights to pre-72 sound
recordings -- that adding the 20 years was
seen to be in the prerogative of Congress,
they could do that, and it was constitutional.

MR. OXENFORD: And I'm not arguing
the constitutionality, I'm just arguing the
incentive and what the ultimate result is.

MR. MEITUS: Yes.

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

MR. KNIFE: Everybody is looking
at me, so I will simply say I'll reiterate
that I started out by saying that as a trade
organization, DiMA is neutral on the issue.
We talked a little bit about whether we're incentivized or not incentivized to have a position on it based on whether we pay for these or not. The answer is it's across the board. I don't think one way or another it's going to create an incredible amount of difficulty or that it would resolve an incredible amount of difficulty on behalf of my member companies.

MR. DAMLE: Mr. Turley-Trejo.

MR. TURLEY-TREJO: I think it would.

MR. DAMLE: It would simplify things?

MR. TURLEY-TREJO: It would simplify things, because it just depends on, obviously, what kind of service or what you're doing. If it's individually negotiated in the free market, then that's already working for interactive streaming and for other things. But this SiriusXM and Turtles case, that's an example of having to go back and just the
thought and the idea of having to track all of
the recordings and the state law and the state
jurisdiction and common law that it's under,
and then trying to understand each of those
laws, and then trying to be compliant with
each of those. I mean, that's massively
complicated and impractical. So I think the
federalization would most definitely simplify
that pre-1972 licensing.

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

MR. DAMLE: Mr. Meitus.

MR. MEITUS: I'd like to actually
ask a question to the broadcast and streaming
industry folks. I'm not feeling a tremendous
amount of worry that this will cost more, and
I'm wondering is that because it's already
costing under the deals that are based on
state law rights, and that you'll think of
this just as a shift in who might be paid or
how it's being paid, not an additional cost

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

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

   But by way of clarifying the
position that I was talking about just a
moment ago, I did want to say as kind of an
adjunct to whether or not it complicates
things to incorporate or not incorporate,
again, as I said before, I think taking
interim steps and doing things like partial
incorporation are inherently complicating.
And the point that I made before I think needs to be announced again, which is to the extent that we're going to cut up these rights and we're going to say there are elements of that right that need to be addressed in a separate forum and they may need to be addressed in a different way and they may need to have different rights, and we're only going to apply certain obligations or certain rights to pre-72 sound recordings, while leaving other rights or obligations off the table, is that inherently is a complicating issue that, again, I don't think we should be countenancing it.

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

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

MR. MEITUS: I think as it's
drafted, yes.

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

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

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

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

Well, I'll just move on the second point that I was going to make, which is yes, there are other elements that are important to
my member companies, like the ability to use 
a fair use defense, the ability to apply DMCA 
standards. And again, I don't see why you can 
address some very, very specific, and very 
thorny, as we've talked about here this 
afternoon, issues about the term, the 
payments, what rights are being granted and 
what absolution from potential liability is 
being applied without addressing all of those 
issues.

MR. MARKS: But for the companies 
that the bill would apply to in practice, 
there aren't any of those issues that exist 
for them. I mean, I can understand that other 
services may want to deal with 512 and get the 
advantage of safe harbors, and others might 
have fair use defenses or something. But for 
a service like Pandora or SiriusXM, that's 
just streaming or through satellite radio 
service, those don't really exist. So by 
passing this you'd solve that problem and 
they're not giving anything up by not
addressing those, it's more dealing with the other companies and libraries and archivists and other parties. So given that, why object to it?

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

What we want to do here while we're trying to solve all the problems of this
incredibly fragmented marketplace that follows
the contours of an incredibly fragmented
Copyright Act, why we would support continuing
to entertain incremental band-aid type
adjustments of the Copyright Law.

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

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

MR. KNIFE: I think as a first
principle I understand the point that you're
making, and as a first principle and on first
impression, that is true, but again, I think
I'm trying to bring the conversation kind of
up to a higher level and I'm trying to explain
-- Steve pointed out -- that I do, in fact,
have individual companies who probably have a very, very specific view about this based, again, on their particular business model and the way they handle pre-72 sound recordings. But as a trade organization, again, and certainly within this context, our point is we really shouldn't be making incremental fixes to extant problems in the copyright law, we should be talking about holistic approaches.

MR. DAMLE: Mr. Sellwood.

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

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

MR. SELLWOOD: I should defer
specific comments on the Respect Act because
I haven't read it, but my colleagues, I'll
make sure that they're ready to talk more
specifically in L.A. and New York.

MS. CHARLESWORTH: Thank you.

Do I have anything else to ask?

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

(No response)

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

Session 9: Potential Future Developments

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

I think this has been a very

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

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

Did ideas come to mind as you were
listening to this? Do you have broad outlines of where you think a solution might lie? These are the sorts of questions I think would be most productive to discuss now, and we can continue, to the extent that people weren't able to express everything on the earlier panels, it's also an opportunity for you to chime in on further thoughts where we ran out of time.

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

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

(General laughter)

MS. CHARLESWORTH: Okay. I don't know if you have thoughts to share yet, but if
you want to lead us off. As a newcomer to the
discussion, we're hoping you have the
solution.

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

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

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

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

We have the piano roll mechanical license that's still there but has been completely transformed. 112 is, dare I say, fun to read, and so is 114. So I think everybody could agree that's not the system we would design if we started from scratch. I think after that it becomes more complicated. One thing you didn't tell me is how much time I have.
MR. MARKS: You can go on forever

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

(General laughter)

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

(General laughter)

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

MR. GERVAIS: I have dinner plans, so I think fundamentally the disagreement starts after that because the question is how much should the market be the player here. The market is not the player now, obviously, because the government stepped in and said we have all these compulsory licenses and they're not technology neutral. The idea of separating subscription/non-subscription, interactive/non-interactive, all that stuff, the fact that digital is separate from non-
digital, all of that is definitely not
technology-neutral, which is one thing that
always worries me a little, as a matter of at
least theory. There are distinctions by type
of views, type of user. We make differences
between PROs and other collectives. Again,
historically you can explain all of that, but
the question is do we still need that.

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

The second is to bear in mind that
there are very few players. We have
essentially three or four -- depends on how
you count -- we have PROs, we have how many
mechanical societies, we have three record
labels essentially, we have a few major online
players, we have a couple of big broadcasters. So maybe that's a reason why the market wouldn't necessarily be perfect if we let it operate entirely.

So what can we do? Well, some of the things if I were to rewrite the system -- because I really think it needs to be rewritten -- is first of all, ask whether online it still makes sense to separate mechanicals from performing rights. Now, of course, the Supreme Court will tell us about the extent of the performance right in the Arrow case, maybe, but we'll see. And I would also ask whether it makes sense to separate the types of people who create music and produce music. This idea that songwriters are on this side with publishers and record labels are completely separate people and they have nothing to do together, and the way that the licensing system works that's exactly the way the statute works now. I think that that is
something that is hard to justify.

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

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

Mr. Coleman.

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

Well, first of all, 106, leaving
the market to interpret the exclusive rights
of copyright doesn't make sense because

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

I think that separating different
revenue streams under the exclusive right is
very important, and there was an example that
came up yesterday when there were complaints
about the amount of money that is coming from
streaming at the moment, and I mentioned as a
publisher that I may have a song that I
represent that is streamed twice in a year on
Spotify but receives a wonderful
synchronization license that is very
remunerative to that composer. So without the
differentiation in those revenue streams,
there would be some question as to how these
different kinds of rights would offset one
another to fairly compensate. There would be
kind of a diminishing, I would think, the
entire field would have to take a haircut in
terms of the rates if they were all bundled
into one.

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

Composers may be unable to do any
of those things but still write wonderful
songs, so the way that you promote and invest in one of those kinds of artists, as opposed to the other is a different risk, a different reward and requires, I think, a different recognition in the code so that those rights are protected, those copyrights remain protected, the master use and the underlying copyright.

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

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

MR. COLEMAN: You were saying that it didn't make sense to separate different kinds of revenue streams, like performance and mechanical, and also the idea of separating, I understood you to say that you were
wondering about whether it made sense to
separate the different types of musicians that
are occupying the copyright space, composers
and recording artists.

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

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

MR. GERVAIS: So I think where
this was a shortcut for things like, for
example, when you read in the Copyright
Royalty Board determination that the value of
a sound recording is unrelated to the value of
the song, that's what I meant. To me, that
complete disconnect is not warranted, and I
don't know that the market, as you said
yourself at the end, recognizes. There's
obviously a difference in the way that the
song and the artist may be exploited in the
work or that their work might be used in the
marketplace, but in terms of the user, as you
said yourself, it's music, so they need both
rights anyway. So this idea that these are completely separate entities, one needs to be regulated by the Department of Justice and the other by this Copyright Royalty Board, is where I have an issue.

MR. COLEMAN: Do you go to the symphony?

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

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

on.

MS. CHARLESWORTH: I think maybe if I can just quickly summarize. I'm not sure there is a clear disagreement here. I think Professor Gervais had sort of a philosophical point of view he's presenting and maybe was
suggesting that the way our historic structures have grown up, they're sort of historic artifacts at this point that separate rights and don't allow for consideration of, say, the sound recording right and the musical work right together, when maybe it might make sense to do that in terms of, for example, the rates. So I think it's sort of a question of -- forgive me if I'm misstating you.

MR. GERVAIS: I specifically said online.

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

(General laughter)

MR. MARKS: We've had a lot of discussion over the last day and half about bundling rights and things like that. I would just say that I agree with your instincts that bundling rights, especially in a world where -- I mean, in the sound recording side that
happens now in the market, anyway. When the license is done, whatever rights are necessary are included in the license agreement or whatever the transaction is.

On the musical work side that's not happening because you do have these artifacts in terms of how the system grew up, notwithstanding the fact that you often have for the very same transaction the need for both rights and both sides calling for a license for each of those, and simplifying the process on them musical work side, we would agree that bundling the rights makes a lot of sense. I think what you're saying in terms of the users -- and if this is correct, I'd also agree with it -- is that if you're just thinking in terms of how most markets work, the final product, the finished good, whoever creates that usually goes into the market and negotiates with a distributor in terms of getting that to the public, whether it's a movie, to use a copyrighted work, or a car, to
use something else out of our field, and you
don't have that distributor, like Netflix, for
example, negotiating with the screenplay
writer in addition to the movie company. It's
been packaged and there's one transaction, and
that's how most markets operate and most, I
think, of Lee's companies, for example, would
prefer it to operate here.

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

MS. CHARLESWORTH: Thank you, Mr.
Marks.

Ms. Schaffer.

MS. SCHAFFER: I'm somewhat going
to take this back to your kind of initial
question that you posed in terms of overall
thoughts on this and where this is headed for
future developments and tying in with what has
been stated previously. I think we've all
acknowledged here that we all need each other, and to be completely clear, I don't think publishers in general, I'm not looking to do away with Spotify and YouTube and the continued digital innovations that come along, we need those, and I think we need each other, the musical composition owner needs the sound recording owner, and we need the companies that are distributing it.

So with that as a basis, I think part of our goal in participating in the roundtable was to bring us back to kind of those fundamental principles of the importance of recognizing that the musical composition is just as important as all of these other aspects in the process, and as we were discussing before about how the musical composition is an equal and separate right to the sound recording. Now, whether the income is distributed equally, that's obviously still up for our debate, and I don't think that we're going to come to any solutions.
But I think that in trying to find that solution the Copyright Office has gone a long way in doing that with simply putting these together, with both the discussions that have happened at the table and the discussions I think that have happened in between the panels and at lunches, and I think that that goes a long way to engaging where we see the solutions. And we're not going to come up with them by the end of today and likely not by the end of all of the roundtables, but I think we're getting closer.

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

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

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

But I think that's the direction in which all of this discussion is heading is at which place do digital service providers need to be paying more and in which cases is
it between really the musical composition
 owners and sound recording owners to start
 figuring out where is that balance between us.

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

       So what we're asking, and I think
 what the future of music licensing hopefully
 looks like and this process hopefully looks
 like, is let's start from the point of saying
 what if we did away with 115 and what if there
 wasn't a compulsory license, how would we get
 to that point. Is it a sunset point? Would
 there be a need for minimal government
regulation? I don't know, but I think if we can start at the point of saying what would
that look like and how do we bring it to the point of having sufficient regulation that it's efficient, I think we get ourselves much closer to a solution than we do to a band-aid.

And I really think that that's where a lot of this is headed, and I think the best way for me to pretty much close out my thoughts on where the future of this is headed is that Marybeth Peters in 2004 -- so ten years ago -- said, Our compulsory in the United States is an anomaly. She later said, I believe that the Section 115 license should be repealed and that licensing of sound recordings should be left to the marketplace, most likely by means of collective administration. And she concluded all of this with saying: If commentators believe mechanical licensing is not working, the blame must rest squarely on the 100-year-old history of government price controls established by
the compulsory license which incentivizes
legislative or regulatory fixes at the expense
of marketplace solutions.

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

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

I think Mr. Johnson was next.

MR. JOHNSON: I just had a couple
of comments for them, but I'd like to ask Ms.
Schaffer one question. You're a sponsor of
the SEA Bill and it will be five years before they change the mechanical. I was curious, what rate did you have in mind that you would see the Copyright Royalty Board increasing the mechanical rate in five years?

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

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

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

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

MS. SCHAFFER: The Songwriter Equity Act? Yes. I mean, if the Songwriter Equity Bill were to be passed, it would obviously become a moot point if 115 was done
away with. I think that we're all realistic
that this process is not going conclude by the
end of this year, that this is a longer
process, so in the meantime I think it
provides a solution.

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

MS. SCHAFFER: Sure. I personally
don't know that the NMPA has any particular
rate in mind. It would be based, though, on
a willing seller/willing buyer marketplace,
and I think at that time what we would be
hoping is that we could pull in comparative
rates that sound recordings are receiving,
that other negotiations in the marketplace
would be looking at, and at that point come to
a conclusion as to what the best rate would
MR. JOHNSON: So no, you did not have a rate in mind when you crafted the bill.

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

MR. JOHNSON: Who crafted it?

(General talking)

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

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

MR. JOHNSON: Okay. Just real quick, and I'll be quiet, and I'd like to give a presentation but I'd just rather real quick, Professor Gervais, I totally agree with you, and I had said before we have a sound recording and we have our underlying work and that's it, and all those terms interactive subscription, non-subscription, blah-blah-
blah. I'm sick and tired of it. They're pretty words but they have nothing to do with that general copyright.

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

    Now, a lot of people don't have respect for the Constitution anymore, but I guarantee you my copyright, my stored labor, my 25 years of working on my craft to be the best songwriter, to be the best performer, to
be the best recording person I can be, is
based upon my natural right and my stored
labor and I get to choose what I do with it,
and it is a property right, as Mr. Driskill
says, like my house or my car. And you take
one copy of it, you take the whole $50,000
from my album and all the years that I've put
into, even though it's just one copy, and then
when you take a million copies or 500,000
streams, you've got to be kidding me. But
anyway, it is a natural right, absolutely, and
until we get that through our thick heads, we
don't understand anything.

MS. CHARLESWORTH: Thank you, Mr.
Johnson.

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

MR. GOTTLIEB: I'd like to say
that Professor Gervais's view of things is
very much mine as well. I know we are
afflicted by this need to deal with what
already exists, and that is most certainly in the vast majority of the discussion we've engaged in today as to what to do about existing cataloguing going forward. But much like building the highway system, we always seem to be building the highway system that we need right now but not five years from now.

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

So the trend that I see, once the metadata issues and the ownership identifiers are resolved and there are standards put in place, is that you will see more individualization and private ownership of
things, and that the collective works will be agreed upon in advance by the participants in that, the creators in that, and they can decide in the aggregate of how much they want to charge for the license.

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

But in reality, we're living in a jukebox world again in that most people just want to pay for what they use, they don't want to be on a subscription and they don't want to
make long-term commitments, they just want to hear your tune when it comes out or they just want to watch your movie. And if you're involved in that, you just want to get paid when somebody played it, you don't really want something that you didn't get and that you weren't entitled to. And so the fact that we have this technology that's been increasing in sophistication, pretty soon everybody can have their own collection system and their own distribution system.

And that's what I see as the future, and I see that our copyright statute needs to reflect the future and then make amendatory provisions to try to bring our old legacies into that world to conform to the technology that will be ubiquitous. I mean, who would have ever thought that a song someone wrote or a movie could be distributed to Botswana in an instant. It's just inconceivable, and if we cannot globalize and set up structures to deal with this on a
global basis and to integrate it and see that future, we're just building another highway system that we need to add lanes to later and come back to this table in a few years and say this didn't really work.

So I really urge everybody to try to look ahead and realize that even a broadcast performance is just a jukebox when it hits your desktop and that's a one-time play, it's a one-time shot, and maybe I only participate as a .00, but I want mine to come right away. I'm the person who put the quarter into the jukebox, I'd like to see my guys get paid right away. And if we have a system that can think about the individual, the collectivization, if we atomize things and we normalize it down to the individual, we will be able to properly collectivize it and figure out where the junction points are for the various stakeholders. I know that's very blue sky on my part, but I really think that's essential.
And I'll make one other point, and that is that this issue of knowing who is using your intellectual property at any given time and whether or not you have a right to know who's your intellectual property is a very problematic issue. Can you consume perfected copyrights anonymously, and I don't think you can, I don't think that's a right we can tolerate. You can publish non-copyrighted, but I think when you perfect a copyright, you should be able to enforce all the way down the line to the consumer.

And so what I would also advocate is that we establish some kind of a digital reporting protocol for when a perfected copyright, which would be identified with a global release identifier, is transmitted over the web that there is some type of aggregation system which would collect that data and the copyright owner or the stakeholder in a collective work would be able to look at the global release identifier and see how many
times it went over, and that could be the
basis for infringement or not.

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

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

MS. CHARLESWORTH: Thank you, Mr. Gottlieb.

Mr. Barker.

MR. BARKER: Thank you.

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

I think it's clear, just my little area, that we need to get rid of 115, I agree with that. Ms. Schaffer has read one quote from Marybeth Peters. Another one that I have
is the Copyright Office said in 2011:
"Compulsory licenses are limitations to the
exclusive rights normally accorded to the
copyright owners." And that was in a Satellite
Television Extension Act report, I think.

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

Mr. Knife and DiMA's organization
has said in their report there were six
essentials that the organization thought
important for the modernization of copyright
laws. I agree with five of the six
wholeheartedly. Those are: transparency and
a centralized database, licensing efficiencies
and reduced transaction costs, clarification
of rights, reduction of legal risks around licensing activities, and a level playing field. I think we would be hard pressed to find anyone around the table who would not agree with those.

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

Mr. Marks, with RIAA, has said a lot of things that I agree with, some things that I disagree with. One of the things that he's spoken about is blanket licenses. I don't think blanket licenses are a solution. I think a clear and efficient license is the solution; there is a big difference in that. Blanket licenses do away with some of the rights that Mr. Gottlieb just talked about that owners should continue to have. Blanket licenses, I believe, are not our solution.
NMPA's statement said, Blanket licenses would not be an improvement but rather a step backward by limiting transparency in the digital age. I totally agree with that; I think that's a step back. You know, the free market, the record licensing is taking place in the free market, and there's nobody really yelling and screaming to say we've got to change that, it seems to be working. I would like to see the music composition marketplace go in the same direction, with the two things in mind that I mentioned a lot yesterday: a clear and efficient process and fair market rates. Those are the two principles I think we, as copyright owners, would like to stick by.

So here's my proposal. I'm going to throw this out there, and I'm going to throw this out there on the record to say here's a proposal that I may not agree with but here's a proposal that I throw out as a target to be debated, and some of which we've
talked about, and some of which have been around the table, and some of which have not.

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

    During a lunch discussion we had yesterday, someone said: "Yes, but what about a small percentage owner in that copyright holding that up." And I think we could then look at what the Copyright Office has done
with termination rights to say a majority of owners of that copyright would be able to control the copyright. Now, that may take away power from a 10 percent owner of a copyright, but that owner is a co-owner in a 100 percent entity, and they knew that going into it. So to be able to say majority rules on a song-by-song basis might work.

The right to make a fair market rate, whatever this entity is that was created, would be able to, as closely as possible, grow toward a fair market rate, willing buyer/willing seller, have as little or no government control as possible, the rates would not be tethered to any other rights, such as sound recordings. After the initial period all current licenses that were in place remain in place, and then we could even suggest that the current rates that we are operating under at that time, .091 for mechanicals, .24 for ringtones, whoever can figure out the complicated rates on the
interactive streaming, whatever those rates are, they stay in place for an additional two years after this entity is up and running in order to acquire new licenses, at which point after that four-year period the market is free to develop.

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

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

MR. BARKER: Yes.

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

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

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

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

MS. CHARLESWORTH: Okay. Thank
you very much. More food for thought.

    I think Mr. Sellwood is up next

    MR. SELLWOOD: Thanks, everyone,

    for hosting us, and thanks you all for a great
dialogue. It's been really a pleasure to be
here and participate.

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

    I think a working system also has
to reduce rights fragmentation for a number of
reasons. From our perspective, and I think
for other music users' perspective, rights
fragmentation leads to all of these parallel
dialogues as to how much rights should cost,
and while each of them may be rational in
their own right, collectively lead to
increased costs that could make running a
music service unsustainable very quickly. And
so I don't think a system that allows that to
happen is a system that works for everybody.

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

I think I heard you just agree
that all of that sounds like it kind of works
for everybody, not putting words in your
mouth, except for the penultimate which is
does the government get involved and to what
extent. And based on my experience in licensing, publishing for the last five years for labels, distributors and music services, I don't think that a pure market environment accomplishes all of those things, I haven't seen it.

And so my question -- which I think your proposal started to answer, and so I really appreciate you outlining that -- is how do we achieve those things without the umbrella of some type of compulsory licensing, without the umbrella and the assistance of consent decrees as examples, or without some type of real oversight from the Copyright Office. Because, in my experience, I haven't seen a disparate group of business models and copyright owners, who all have rational strategies for operating their business, operate in concert in a way that would work for everybody without that. So that's kind of my question to not only John but everybody else.
I'm really interested in your comment about addressing holdouts because that's obviously a very big concern of ours, but I thought I heard you say that at some point a majority stake in a copyright can kind of overrule a minority stake in a copyright and I find that to be interesting, and it seems to kind of tease out some of the concerns that you have about compulsory licensing or consent decree regulation where it's somebody else telling you when and where your copyrights can be used. You're just drawing the line slightly differently which I'm not challenging, I'm just finding it to be intellectually interesting.

So I'll end there, but thank you all very much for hearing us out and I really appreciate the openness of the conversation and the cost of licensing and everything, do you mean in terms of high costs in what you're paying out to the owners or as in your transaction costs in having to engage
in those licensing discussions?

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

Then the transaction costs of obtaining millions and millions of licensing I think comes into the licensing efficiency side of things. Without licensing efficiency, those transaction costs get out of hand and they start impacting how much you can spend on content costs and also how much you can spend marketing and promoting and doing all the
other things that you need to do to operate.

You all have the exact same business mechanics in calculations that you're making on your side as well.

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

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

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

At the risk of going on the record of agreeing with Mr. Marks and RIAA, as opposed to my natural ally which is Lee and DiMA, I think RIAA and the groups in general, following the good doctor's advice, need to have an overall solution. The fragmented solution, in the case of broadcasters -- which is what I represent, non-commercial
broadcasters -- there are two different rates, one of which RIAA gets a piece of the pie and one it doesn't. And I can well understand from RIAA's point of view that they need across the board licensing.

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

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

Plus, it's very difficult to have an uneven playing field when you're talking about marketplace. If we're going to say to the labels that they can get together and, in effect, set a price in negotiation and you
have a value of performance or advertising, are we then going to allow NAB to say, okay, we're going to take ten artists and we're not going to play their music for the next 90 days, their new music? That would be a marketplace solution, but we'd call the one restraint of trade and we'd call the other a legal bargaining process.

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

I think another thing that has to
be kept in mind is there are tremendous technological challenges which we're solving at a tremendous rate, but at the end of the day whatever fee is going to come from the government or from the marketplace, when it's received by the 50 states, it's a tax.

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

So again, thank you very, very much for helping us get out front. Love the way we began, the doctor led us, in the fact that we need something for all. Love the suggestion that RIAA has proposed which is
that you have to make it work all together,
but just kind of remember the little guy,
remember the hobbyist, remember that student
who's not using music for the purposes of
music or building an audience, they're using
it as a catalyst to learn speech, to learn
writing, to learn communication, and to build
skill sets which will be important in the
marketplace.

MS. CHARLESWORTH: Thank you, Mr. Kass.

And now back to Professor Gervais.

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

I certainly agree that removing
115 is part of a solution, I don't think it's
the solution, I don't think that solves the
problem. I think it might solve the problem
if it's part of a broader picture. And the
reason I say that is you have to ask, well,
why do we not want a compulsory license.
Right? So if you're a songwriter or a
publisher, what exclusive right do you have
now? You have no right under 115 to say no.
But frankly, if you're a member of ASCAP or
BMI, they can't say no either. That's not a
compulsory license but it's very close to one.
The government has taken your right away to
say no; it's called the Department of Justice,
not 115, but it's the same thing.

Of course, if you're ASCAP or BMI
you're probably saying "I'm in the business of
yes, I'm not in the business of no." So the
question is really not as much the no and the
yes -- and I certainly agree with the
fragmentation comment, that's part of it too
-- but the question is it the government's job
to set the price. I think to me that's really
the question here. So the yes and no is kind
of in the background, but in the performing
rights there's not a compulsory license but it
is a government set price, it's a rate court
set price.

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

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

Now, the backup solution can also
do more than just set prices, they could set
rules on transparency if necessary, they could
set rules on holdouts. There are countries,
for example, where holdouts have limited
remedies if they're really holdouts. I'm not
saying that's what I'm suggesting

specifically, what I'm saying is you can have

a regulator, a regulatory function that
doesn't presuppose what the internet will be
like in ten years, or five years, for that
matter, or next year, because I don't know.
Next year we could probably kind of call it,
five years, nah, ten years, no one around this
table, or if somebody does, please let me know
what it will look like. I don't know. How
will people be listening to music, will they
be walking with their watch like this, will it
be their glasses, who knows.

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

MS. CHARLESWORTH: Okay. Thank
you.

We're nearing the end of this
panel but I really wanted to make sure, since
it's the last opportunity around the table
here, that everyone has an opportunity to say
any final words. I see Mr. Johnson, Mr.
Gottlieb, and then anyone else who wants to
speak before we wrap up this final panel,
please be sure to put your placards up.

Mr. Johnson.

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

But I do think we need to get rid
of the Copyright Royalty Board altogether for
everything, and I doubt that's going to
happen, but if we do keep them, it would be
nice if we could all negotiate and be forced
to come up with a rate without having to
always fall back on the Copyright Royalty
Board who's always going to set the rate. And
let's say they didn't set the rate, that we really had to work it out, that Universal and Pandora had to work it out, and guess what, they did.

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

There's a guy who's a computer scientist, his name is Jaron Lanier, he wrote a book called "Who Owns the Future" and if you haven't got it, it's incredible, and there's a whole chapter on "Drove my Chevy to the Levee, But the Levee Was Dry", and it's about the mechanical rate and about how music is like a mortgage. But his main point is that YouTube, Google, Pandora, all the streamers,
Spotify, they have created what's called a "peasant's dilemma" for the songwriter specifically. And he also says that we are the canary in the coal mine for everybody else, for movies, for books, for everybody else. The computer is coming for your copyright.

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

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

So I think, just real quick, I see there's eight different things we need that we have problems with. We have streaming royalties and the price fixing and those nano-royalties, we have the real cost of inflation,
and we have no cost of living increase, the
deregulation with the consent decrees. I'm
not for the compulsory license because as far
as the first time use and having anybody be
able to record my song. We live in the
computer age now, send me an email, get on my
website.

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

I think ASCAP and BMI, their two-
week sampling is hideous. Here's a quick
poster.
MS. CHARLESWORTH: Let the record reflect another exhibit. Mr. Johnson, we're running out of time, so please, I just want to make sure you hit all your points quickly.

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

But the main thing I think we need to do is temporarily reestablish the mechanical rate for stream, 9.1 cents, that Pandora and YouTube and everybody else should start paying 9.1 cents because it is the "minimum statutory rate" and it's still the law. And I don't care about the DCMA and all this goofy stuff, it's still a minimum statutory rate and the Copyright Royalty Board
had no right to go below that for a mechanical
for a stream. And if we reestablish that --
I think that's what ruined it -- it's a
temporary bridge till we can get to a more
free market rate.

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

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

MR. COLEMAN: I hope that Congress
will consider expanding the mandate of
performing rights organizations to include a
lot of the solutions that we've discussed
under their aegis. I think the performing
rights organizations have already the
statutory mandate in the Copyright Act. I
think that they will enable excellent database
accessibility for licensees and the ability to
license bundles of rights. And also, they
have a longstanding advocacy of individual
composers that can be preserved which I'm not
sure that private firms are likely to do if we
shift away from them.

MS. CHARLESWORTH: Thank you very much.

Mr. Gottlieb.

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

MR. GERV AIS: I was agreeing with your highway metaphor.

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

MR. GERV AIS: There was no
disagreement there.

MS. CHARLES WORTH: No one
disagrees with Professor Gervais, I think
that's what we established.

Okay. Ms. Buresh.

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

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

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

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

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

(General laughter)

MS. BURESH: There's going to be technological difficulties with everything, we understand that, and that's part of growing
society as well, we encourage that, we want that to happen. So I would encourage the recordation and the revision of how registering for copyrights is upheld or how we start that process. The unique identifier code for a musical composition and a sound recording so we can track it, because I've heard a lot of people say it's too hard to track things. We're in a digital age, this is happening, numbers match, you can track them, don't give me that excuse, it doesn't make any sense to me. So the accountability, I just don't see how that's an excuse.

And as an administrator, trying to collect money and distribute it to my clients, tell them: Oh, yeah, they just told me I can't track it. Well, their eyes, that's my money, that's my money, I want my money, go find it. And I'm wasting time arguing, you have the data, just be transparent with it. I think there should be data standards and there really should be one song that everyone
can actually see online. So that's where I sit, and thank you very much.

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

MR. GERVAIS: Can I footnote that?

MS. CHARLESWORTH: Yes, Professor Gervais.

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

And so the system, I think, should do a lot more for what we call recordation than registration it should really focus on who owns what. And not only can we do it, we must, because at some point somebody needs to
get paid and you want to pay the person who
has the title. So I think what the Copyright
Office does is actually very relevant as part
of that as well. That was just a footnote.

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

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

MS. CHARLESWORTH: Are government
lawyers exempt from this?

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

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

MS. CHARLESWORTH: The songwriters
are going to lobby. Right?

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

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

Observer Comments

MS. CHARLESWORTH: Okay. Everyone have a seat.
MR. PERKINS: I am Phil Perkins. I am the president of Music Services. We are an administration company that provides services to publishers and record labels. I'm a 43-year veteran of the music industry, so I've been around a little bit. We currently have over 250,000 compositions and over 100,000 master recordings that we license, and I also designed a database so I'm familiar with registration and procedures and working with complicated systems. I'm also one of the co-founders of CCLI which was instrumental in establishing a blanket licensing to churches all over the world, which has earned for publishers and writers over $180 million. I'm also past president and current board member of the CMPA, Church Music Publishers Association, and I serve as vice president of their political action fund.

What I heard in the general consensus of the meetings, the current system is broken, cannot meet the demands of the new
music technology without requiring costly and
time-consuming negotiations and litigation.
I hear that the publishers and the PROs are
heavily restricted in getting fair market
value for the use of their songs, while record
companies have few restrictions imposed. The
creators are suffering the most.

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

Copyright owners on both sides,
record companies and publishers, are
splintered and are fighting among themselves
over market share. Here's an example of what I mean by splintered. Separate negotiations between copyright owners and digital service providers have only addressed the concerns of each individual party. That resulted in unequal sharing of revenue between the parties. The separate negotiations, in addition to the constraints of the consent decrees imposed upon the copyright owners of songs, have created a further imbalance between copyright owners.

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

They were the first to negotiate and so they got a good deal. From the balance of that it was allocated 10.5 percent of gross revenues would be divided between the PROs
representing the performance aspect and the
publishers would get what's left after the
PROs.

The PROs followed behind the
record labels and negotiated their own deals,
as well, so the PROs' share from the $2
million came to $120,000 which equated to
about 6 percent of the 10.5.

The publishers' share of what's
left came to less than 5 percent. A total of
$1,170,000 was paid to the rights holder from
this hypothetical $2 million. Out of the
combined PROs' and publishers' share of
$220,000, you would think that it was an equal
division. Unfortunately, it was not.

$120,000 went to the PROs which equated to
about 55 percent of the revenue allocation for
the song owners, and the publishers' share was
less than 45 percent.

We've heard today complaints from
many that the PRO distribution is antiquated
and needs to be based on census and not
sampling. Many publishers and writers believe they are not receiving their fair share of the PRO pot.

Some solutions. I believe that a licensing collective is needed, at the expense, probably, of my own business, but I believe that these factors are essential to the collective.

It should be a nonprofit organization, governed by a board of directors representing publishers, record companies, PRO agents and administrators representing the rights of composition owners and recording master owners. It must have a government mandate and the authority to enforce compliance. It must be transparent in license terms and rates and also in the division of revenues among the interested parties. The rates would be set by the collective, with concern given to antitrust issues. Their agents. The collective would become a one-stop location for users of
music and recordings, involving direct licensing by publisher and record company, as well. However, direct licensing by the publishers and record companies would still be permitted in certain cases, such as first use on recordings, printed products, television/motion picture licensing, advertising and commercial tie-ins, and certain other defined custom license activities.

The collective's licensing ability initially should be limited to the current 17 statutory licenses existing for physical and digital audio and audiovisual uses, with the ability to negotiate and create new licenses as required. Licenses would be issued on behalf of all copyright owners of songs and recordings, in essence, record companies, publishers and their appointed PROs, administrators and agents. I do not believe in having any opt-out provisions. United we stand, divided we fall.
The collective would collect and receive all revenues to parties, claiming the right to receive them. It would be the receiving party's responsibility to further distribute to creators according to contract. The collective would determine the revenue split for each license between the song and sound recording, and also between the mechanical rights holder and performing rights holder and any other rights holder, such as SoundExchange.

In the area of data standards, the collective would maintain a central database of both songs and recordings with unique identifiers, involving ISRC and ISWC and custom IDs provided by the individual copyright owners.

MS. CHARLESWORTH: Excuse me. I'm sorry. If you could wrap it up. And I would also encourage you, since we'll have a reply comment period, you may wish to submit this in writing.
MR. PERKINS: I've already got it.

MS. CHARLESWORTH: Okay. I'm sorry. I just want to make sure everyone has an opportunity to comment.

MR. PERKINS: Absolutely. I'm on my last point.

Another point, the current system of assigning ISWCs is in the hands of ASCAP for the United States, which has resulted in the majority of songs not having unique identifiers or not having them in a timely fashion in order to disseminate this information. This has resulted in lost foreign revenue and perpetuates the black box allocations in many countries. So the collective would seek to become the local agent for assigning ISWC identifiers and would be involved in any data initiatives such as CWR, common works registration, global repertoire database, and DDEX. The meta-data for songs and recordings would be open to the public and available through the collective's
internet site. And dispute resolution and process would be involved in it.

So speaking for my company and the hundreds of small and large clients who we represent, I want to thank you for giving us the opportunity to speak to these issues, and we pledge our support to seeing long-lasting copyright reform.

MS. CHARLESWORTH: Thank you. And I'm sorry we're in a rush, but we look forward to receiving that in writing too. There's an electronic process but Rick can explain it to you; we're very digital at the Copyright Office.

If you want to state your name and affiliation for the record at the beginning of your talk, that would be great.

MR. McGINTY: I will. I'm Casey McGinty. I'm senior vice president at Capital CMG Publishing. I've been involved in music administration for 24 years, mostly music licensing and contracts, and I'm a recent
president of the Church Music Publishers
Association, just so you know what perspective
I come from. My comments will be brief.
After 24 years, short and sweet is good, I've
learned that, if nothing else.

I will say that I was at the first
panel discussion yesterday and the last panel
discussion today. Yesterday I was not so
hopeful, I thought it was very positioning.
Today I'm very hopeful with what I heard, and
I appreciated a lot of the thoughts that I
heard, and was hopeful that there are very
smart people in our industry that are
innovators, that are realistic, that want to
look out for the good of not only our
businesses but the public. So I'm hopeful we
can come to some solutions.

I just wanted to point out what I
think is one of the greatest secrets in the
music business, and that's this organization,
CCLI, Church Copyright Licensing
International. It's one of the best kept
secrets, I think, because it's been based in
the Christian niche market and they issue
blanket licenses to churches, and as Phil said
a minute ago, they've been around for 25 years
and issued a lot, a lot of money.

And they have managed to work with
Church Music Publishers Association, the CMPA,
and their advisory board to come up with
bundled rights to churches, that have even
recently included bundling rights from sound
recordings and musical compositions, to grant
the rights for church music ministries to
create rehearsal copies of sound recordings
and actually the record companies get paid for
it, actually more than they get paid for
iTunes when you look at the pro rata breakdown
of the resulting income.

So I just want to throw that out
there as another sign of hope, that there are
models; even though they might be small for
niche markets, it can be done. And I'm
hopeful. And I want to say thank you to the
Copyright Office for coming to Nashville.

MS. CHARLESWORTH: We're delighted to be here. Thank you.

MR. BOGARD: Hi. I'm Steve Bogard and a career songwriter and former president of Nashville Songwriters Association, and I now direct something called the Copyright Forum which is a moveable feast.

I only had one short comment, but now I have two short comments because I noticed during the conversation and the agenda today that we never really talked about reciprocity and all the money that we're leaving on the table around the world. And I think that as we reexamine the United States copyright laws, it's really important that we take into account how to get some of that money back over here. And so I would like to nominate Professor Gervais as the head of the committee that started that out.

Really what I wanted to say is when I walked in for the PRO panel this
morning, I noticed that there was not a non-
performing songwriter on the panel, and I've
worked a lot in advocacy work and been the
only guy who went to the mailbox and that
determined whether my daughter went to college
or not. I think that there's an urgency that
a creator feels that no matter how dedicated
and awesome our representatives are, they
can't feel, because when the bottom drops out
they're looking at losing some of their bonus,
they're looking at being demoted, they're
looking at maybe their job being sunsetted
down the road. We're not looking at that.
I'm looking at friends who are selling the
writer's share of their catalogue, who are
losing their homes, who are working at Lowe's.

And it isn't the people who write
constant hits year after year. I've been very
fortunate, I've had chart records in six
decades and ten number one songs. Even that
is a struggle for me. But there are treasured
songwriters in this community and all over the
country, only one-third of the songwriters there were 15 years ago, but there are treasured songwriters who write songs like "I Hope You Dance" that may be the only hit they write for five years, and because of our current laws, our current systems, because of the fact that songwriters and publishers copyright is completely under the thumb of various government constructs, they have to take the big check that one time and then it's lean pickings from then on.

And what's going to happen to America if we don't add some urgency. I know the wheels turn slow. I've been writing songs, like I said, six decades of chart records, I know they turn slow. But I think this is a matter of real urgency, and I think if we look at an America which doesn't take into account all these brilliant suggestions -- I'm not going to reiterate all the things about bundling rights, all the things about ease of licensing, those are all pretty much
no-brainers and they're all great ideas, and I think the brain trust in this room can figure it out -- but we don't want our kids and our grandkids to grow up in a place where you've got to realize if there's no Sammy Cahn and Jimmy Van Heusen, there's no Frank Sinatra, if there's no Leiber and Stoller and there's no Otis Blackwell, there's no Elvis, if there's no Don Covay, no Aretha, no Steve Bogard, no George Strait.

But I would like you to all think about the urgency of this matter and the fact that we're losing wonderful creative people and songwriters are not really cut out to represent themselves, so they're probably the most vulnerable of all creatures. As Professor Gervais has said several times, sometimes creators are described as having an affliction, they have to create, they have to do what they love. Well, that affliction is easily taken advantage of. And so I would encourage, the one thing that I didn't hear,
as we talk about transparency throughout the whole process, from labels and services to publishers, that same transparency needs to come from publishers to songwriters.

So I just would encourage everybody to try to realize both the urgency and the fact that it all starts right here, it starts with guitars and ideas, and if we're starved out of this marketplace, we won't have a healthy music economy.

MS. CHARLESWORTH: Thank you very much, Mr. Bogard.

MR. GOLD: Hi. My name is Jeremy Gold. I am a senior music business and entrepreneurship student at Belmont University. I am also the student advisor to the 2014 Pipeline Project which is a music business think tank through the Curb College. We are funded by the industry and consult with various businesses this year, including the AIMP and IPAC.

I'm not going to talk about
practicalities, as that wouldn't be fit, but
I think what I can offer is my value possibly
as a young person just kind of through
disruptive innovation in an industry. Often,
as we've seen, disruptive innovation is often
initially dismissed although it could be of
possible value. This usually results in only
accepting a new technology, whether it be
streaming or the MP3, once it's too late, past
the point of no return.

The key to survival, as Clayton
Christianson, author of the "Innovator's
Dilemma" posits, is a transition where there
is a purposeful investment in the current
sustained technologies, while also investing
in the disruptive technologies.

Those of you that have sat around
the table today know the current industry far
better than I do and my colleagues here do,
but where we can add value is in those
disruptive technologies that will eventually
replace and hopefully better the current
industry. So what I ask is that whatever we do moving forward, allow us to carry our part of the deal, carry out this task of disruptive technologies.

This means continuing to keep us in the conversation, and I thank you for allowing us to be here today. I think this means setting the tone for this current crossroads, as we will eventually deal with the crossroads ourselves. I think this ultimately means seeing us as your most valuable consumer, as we have more time to buy, license and copyright music than anybody else in this room does, and I encourage you to use us as a resource for consumption habits of the future.

And I think my classmates are going to speak more about specific terms, but thank you again for having us.

MR. MARSH: My name is Alex Marsh. I'm a music business and econ double major at Belmont, and I'm going to be a junior this
coming fall semester.

Going off just kind of what Jeremy was talking about, I think the big elephant in the room that we mentioned but never really like addressed specifically was piracy. I mean, that's the whole reason that we're in this change in the first place. Everyone keeps saying 15-20 years, well, that's exactly when piracy started. And because a huge revenue stream is being lost with mechanicals, I feel like with the increased use of piracy that it was almost too little too late we jumped on trying to innovate the industry, and that piracy has already took hold and I don't see a huge easy way to fix it -- I mean, there might be but as of right now there's no easy way to fix piracy.

So I think the way I see the industry going -- which, again, I'm just a kid -- I think it's going to have to change and we can't keep relying on the old model with the change in technology. You either have to fix
the problem of piracy and continue with the
old model, or accept the problem of piracy and
figure out different revenue streams or
another solution to the problem.
And that's basically all I wanted
to say, but I think we definitely need to keep
the conversation moving and figure out what
direction we want to take.

MS. BEGIN: My name is Marissa Begin. I'm a student at Belmont, also in the
Pipeline group. I'm an entertainment studies
major, music business minor.

And I just had a quick
comment/concern more specific. So there was
talk yesterday and a little bit today about
possibly adding or adjusting a new blanket
license, and just in concern to that, I just
wanted for the record just to add on how the
bar and restaurant owners would be involved in
that process or informed and how their
involvement would go with the progression of
that.
Thank you.

MR. DURRETT: My name is Devin Dawson Durrett and I am a student at Belmont, I'll be a junior, and I'm also part of the Pipeline crew, but more importantly, I am a songwriter -- future successful songwriter, I'd like to think, hopefully, thanks to you all.

First off, I just want to say thank you to the Copyright Office and all the panel members and everything for essentially making history with everybody today, so it's kind of cool to be a part of it.

I also want to thank Mr. Kelly, who is not here, Mr. Johnson, and Mr. Bogard for representing songwriters, whether it be through cowboy rhetoric or colorful charts, I appreciate the effort.

I'm not here to offer an answer or tell you guys what to do or anything, I'm just here, like Jeremy said, to offer a friendly reminder and a fresh and young perspective on
a career that I hope to get into that I hope
is still around in five years when I am
becoming a part of it.

We talked a lot today about
incentive for creators, and I think the bottom
line -- and I guess everything comes down to
money and capital, right? -- and so obviously
that would be a great incentive, but I think
more importantly alongside of that and
parallel with that is security and reassurance
for songwriters. Outside of the humble sync
department earnings, I really think there's a
huge gap between the bottom and the top end of
songwriting earnings. It's either you owe a
hundred grand to your publisher from him
essentially helping you live for a year while
you write, or you are $100 million like up in
the clouds. Like, again, I'm a kid so I don't
know, I haven't been in the industry, but I
know there's a big gap in between, not unlike
the American middle class that we have right
now.
I think that a good metaphor that I just thought of is you could be a doctor or you could be a dishwasher. Yes, there's more importance on being a doctor and compensating them for their skills, but the dishwasher doesn't go into debt by doing what he does, the dishwasher still has an ability to live on a living wage. Whether it be barely below the poverty line or barely above or right at it, he doesn't go into debt by doing what he does. And I know that's kind of a radical metaphor or example, but sometimes we need to use radical things to get attention.

I also think there needs to be the same and equal attention to the songwriter who makes $50,000 a year and the songwriter who makes $50 million a year. And something that Ms. Buresh said, I think you said, if you have a dollar coming in but it costs you $1.25 to process it, you're just not going to do it. And I completely agree with that, but it also very much saddens me because in a world where
we're fighting for .0000012, a dollar is huge.

And so where does that dollar go? I feel like it just kind of goes off the table. But the thing that we don't understand -- or maybe you do -- the dollar can keep stacking, it can keep stacking, so maybe by the time that dollar reaches $50, it won't cost you more than $50 to process it. Again, I'm not offering an answer or a solution, but I definitely think it's something to think about.

But how do we fix that problem?

The problem is inefficiency. Right? So how do we make things more efficient? I think we need to look at unique identifiers like we were talking about, data retrieval and storage, and fair and accurate streaming like we all talked about today, whether that be through new technology to stream or through oversight of the companies that do stream, I think something needs to be done on that.

I just want to say in closing to
you, keep in mind not only the big few but the small many because we're all part of this together. I don't think we need to take money away from each other per se, I think we need to figure out how to make a way to make more money from the consumer and to rise together and not to fight over something that's so dear to all of our hearts, being the music industry. So whether it's to help yourselves or your peers or your sons and daughters or my generation, I think we need to come together, but I'm very happy that we're taking the steps to do that.

So thank you very much.

MS. CHARLESWORTH: Thank you.

MS. MORELAND: Hello. My name is Channing Moreland, and I'm studying songwriting and entrepreneurship at Belmont and I will be a junior this coming fall. And as a closer of the Pipeline group, I just want to thank you for letting us be a part of this, and I thank the panel.
And so, as you can see, we're really lucky to be able to go to this school and to be surrounded by the industry, but many people our age are not as fortunate. And so my question to you, the panel, the U.S. Copyright Office, is to really see if you find a valuable return on taking the time to educate the public on what's going on here and the decisions made and the innovations that are happening here. I really think that consumers don't understand what's really happening to the industry due to piracy and those rates, and so I just wanted to put that out there that I really think is the biggest thing we can do.

Thank you.

MS. CHARLESWORTH: All right.

Well, thank you, again, everyone, for your attendance, participation and these final remarks. This wraps up the first roundtable. Thank you, Nashville, for having us, and particularly to Belmont for this
incredible facility which I think has generated much inspired discussion. And that's it, it's a wrap.

(Whereupon, at 4:20 p.m., the roundtable was concluded)
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This is to certify that the foregoing transcript

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was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

[Signature]

Court Reporter

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