The U.S. Copyright Office Roundtable on Music Licensing met at 9:00 a.m., at the New York University School of Law, Lipton Hall, 108 W. 3rd Street, New York, New York, when were present:

PRESENT

JACQUELINE CHARLESWORTH, General Counsel and Associate Register of Copyrights, U.S. Copyright Office
KARYN TEMPLE CLAGGETT, Associate Register of Copyrights and Director of Policy & International Affairs, U.S. Copyright Office
SY DAMLE, Special Advisor to the General Counsel, U.S. Copyright Office
JOHN R. RILEY, Attorney-Advisor, U.S. Copyright Office
CHRISTOS P. BADAVAS, The Harry Fox Agency, Inc.
GREGG BARRON, BMG Rights Management
RICHARD BENGOFF, American Association of Independent Music (A2IM)
JEFFREY BENNETT, SAG-AFTRA
MATT DEFLIPPIS, ASCAP
WALEED DIAB, Google/YouTube
JAMES DUFFETT-SMITH, Spotify USA, Inc.
WILLARD HOYT, Television Music License Committee, LLC
COLIN RAFFEL, Prometheus Radio Project
LEE KNIFE, Digital Media Association (DiMA)
BILL LEE, SESAC, Inc.
STEVEN MARKS, Recording Industry Association of America (RIAA)
CASEY RAE, Future of Music Coalition
GARY RINKERMAN, Drinker, Biddle & Reath LLP
JAY ROSENTHAL, National Music Publishers Association
MICHAEL G. STEINBERG, Broadcast Music, Inc. (BMI)
DOUG WOOD, National Council of Music Creator Organizations
ERIC ALBERT, Stingray Digital Group
PAUL FAKLER, National Association of Broadcasters/Music Choice
ANDREA FINKELSTEIN, Sony Music Entertainment, Inc.
CYNTHIA GREER, Sirius XM Radio Inc.
BOB KOHN, Kohn On Music Licensing
WILLIAM MALONE, Intercollegiate Broadcasting System, Inc.
ALDO MARIN, Cutting Records, Inc.
PERRY RESNICK, RZO
COLIN RUSHING, SoundExchange, Inc.
JOHN BARKER, Interested Parties Advancing Copyright (IPAC)
CATHY CARAPELLA, Global ImageWorks
ALISA COLEMAN, ABKCO Music & Records, Inc.
JOE CONYERS III, Downtown Music Publishing
CHERYL POTTS, Crystal Clear Music & CleerKut
RICK CARNES, Songwriters Guild of America
JODIE GRIFFIN, Public Knowledge
FRITZ KASS, Intercollegiate Broadcasting System, Inc.
BLAKE MORGAN, #IRespectMusic/ECR Music Group
COLIN RAFFEL
TODD DUPLER, The Recording Academy
DICK HUEY, Toolshed Inc.
LYNN LUMMEL, ASCAP
JIM MAHONEY, American Association of Independent Music (A2IM)
ANDREW RAFF, Shutterstock
AGENDA

Introduction and Opening Remarks 4

Session 1:
  Current Licensing Landscape 11

Session 2:
  Sound Recording 92

Comments:
  Congressman Jerrold Nadler 151

Session 3:
  Musical Works - Reproduction and Distribution 161

Session 4:
  Fair Royalty Rates and Platform Parity 244

Session 5:
  Data Standards 321

Day One Wrap-up 402
MS. CHARLESWORTH: Good morning, everyone. My name is Jacqueline Charlesworth, I'm the General Counsel of the U.S. Copyright Office. Welcome to the third, in our series of roundtables on music licensing. It is good to see so many of you, here today. I was telling one of our repeat attendee, that we feel very special that some of you are following us around the country. It makes us feel a little like, you know, rock stars, but in a copyright sense of the word.

I have several people here, with me, today from the Copyright Office. Maybe you can stand, so that you will see them clearly. Karyn Temple Claggett, who is, head of our policy and international affairs unit in the Copyright Office. Sy Damle, Special Advisor to the General Counsel. John Riley, Attorney Advisor. And we have -- where is Andrew? Back there, Andrew Moore, who is an intern with us,
this summer, and he is actually a student, here, at NYU Law. So we will all be listening, very closely, to everything you have to say. I want to give a special thank you to NYU Law School, and Professor Beebe in particular, for making this room available.

I think we can all agree it is a lovely setting. And, hopefully, we will get a lot of good work accomplished here. For those of you who are interested, just -- before I forget, we have -- there is wifi in this room, and we have little paper slips that John has if you need one. As many of you are aware our system of music licensing, including the government's role in that system, is an area that has been specifically called out by Register Maria Pallante as ripe for review, as Congress continues to review our copyright law.

We, obviously, put out a notice of inquiry, and are hosting this roundtable to help develop a record, and a better
understanding, of issues in the music licensing marketplace. And we have received many thoughtful, sometimes even passionate, written comments. And I want to thank you for those. I sense a lot of effort went into them, and we really appreciate them. And I can tell you that we read every single one.

We have had two previous round tables in Nashville and Los Angeles. And I think the people who were there agreed with me that they were very productive. We had excellent conversation. I think that people felt that we were able to hear the issues. And I also think that, perhaps, we saw some areas of consensus, at least high level of consensus, from those two experiences. I would say that there is, certainly agreement that this is a system that could be working better.

Some of it is over a century old, as you know, and I think that a lot of people there, at Los Angeles and in Nashville, believe that it is out of step with the
realities of the modern marketplace. So that is why we are here today. The point of these roundtables is to allow for constructive dialogue on how we might improve the system, so we can better serve the interest of music owners, music users, music lovers, and music creators. We hope you will take advantage, of this opportunity, to speak to us at the Copyright Office, and probably more importantly, to speak to each other, and try to move the discussion forward. I'm going to indulge in a little muse here, by referencing one of my favorite Doctor Seuss stories, the Zax. For those of you who may not be familiar with this tale it is about a north wing Zax and the south wing Zax come face to face one day, when they are making their tracks, and that is in the walking sense, not the music sense, but I think it is interesting, I think of it in terms of music. And there the two zax stood, face to face, each taking the position that the other was in his way. Each refused to
move one inch out of his path.

    Said the one to the other, I will
stay here not budging. I can and I will, if it
makes you and me, and the whole world stand
still.

    But as Dr. Seuss explains, well,
of course the world didn't stand still, a
highway came through, and they built it right
over those two stubborn Zax, and left them
there, standing, unbudged in their tracks. So
I say let us learn a little something from Dr.
Seuss. The highway has come through, and
rather than standing under it, let's see if
there is a way to get on it.

    Thank you all again for coming. We
look forward to a lot of good discussion. And
before we begin, I mentioned the wifi. But a
few housekeeping matters. You each have a
table tent. When you wish to speak just turn
it sideways, and we will call on you. We will
try to keep track of the order, but sometimes
we lose track. We do try to get to everyone,
in each conversation. The roundtable is being transcribed. And it is very important that you make sure that your mic is on when you are speaking, so that the recording is properly made, and the reporter can hear you.

Please try to speak one at a time. And, as I said, make sure that your mic is on, and we share mics here, so just feel free to slide them across the table if you need to. At the end of the day, tomorrow, we will have an opportunity for members of the public, or the audience, to step up and add to the public record, if they so choose. And John Riley is keeping a list of anyone who would like to do that. That is the very last session tomorrow.

And speaking of tomorrow, due to the availability of the rooms, we are starting a little earlier, we will be starting at 8:30.

For those of you who are coming back for tomorrow. And we may be in the Greenberg lounge, is that right, John?

MR. RILEY: That is correct.
MS. CHARLESWORTH: Yes, the Greenberg lounge which is in the older, the main law school building. It is in a different building, it is across the way, roughly, right? Okay. And for those of you who believe they may wish to supplement the record, written record, at some point we will be announcing a reply comment period. We haven't quite figured out the time of that but, please, keep your eye out and we will be allowing the submission of reply comments. Probably the deadline will be somewhere in mid-August, after -- I think the USPTO deadline is what, August 6th? I don't know -- well, we will probably try to schedule it after that.

And last, but not least, I'm pleased to announce that Representative Jerrold Nadler will be joining us a little later on this morning. He is going to be making some remarks. As many of you are, probably, aware he is involved in these
issues, as the ranking member of the House
Judiciary Subcommittee on Intellectual
Property.

So we are going to try to stay on track. I'm advised that this morning he is expected at 11:45, which is right when our second panel ends. So we look forward to that. And I urge you all to stay and hear what he has to say. And now I will return to my seat and we will get the discussion going.

MS. CHARLESWORTH: The first panel is to discuss the current music licensing landscape. And we are looking for people to tell us what is working, and what is not. And just to sort of point out the biggest issues that they see and, perhaps, the areas that we should focus on the most, as we consider these issues moving forward. So I'm going to ask for someone -- ask for volunteers, on the panel. Anyone who wants to speak just tilt up your table tent, don't be shy. I know there is a lot to say. Richard Bengloff is not shy. So,
Mr. Bengloff, do you want to make some
remarks?

MR. BENGLOFF: I hope you mean that
as a good thing, that I'm not shy, Jacqueline.

MS. CHARLESWORTH: Of course.

MR. BENGLOFF: Thank you. We just,
you know, we represent A2IM, I think, as most
people are aware, the small and medium sized
creators in the industry which per Billboard
Magazine represents about 34.6 percent of the
industry in 2013.

We applaud the Copyright Office on
the fact that you are looking to make
revisions to the existing laws, to reflect
what is going on, today, in the world. We have
the impression that the DPRA and the DMCA were
created, in the 1990s, to support as you said,
creators, services that use music, as well as
consumers of music, obviously, the most
important party of all. And then treating
everyone, within that pipeline, would be on a
fair and equitable basis. That process, we
believe, and the CRB process, that was created to set the rates, after those legislations were passed in the '90s, supports A2IM's belief that each song is created equally.

And that each copyright owner should be compensated equally for each song. That is the essence of the compulsory statutory rates. The size of the creators, and the song performance and the economic power of the investor in the sound recording should be irrelevant.

The only differentiation in pay should be based on consumer demand for the music. The number of streams received. So whether you have a blues song, a jazz song, a classical song, or whatever the song may be, all of them should have the same basic, single usage value, if one happens to get more plays than others, that should be the adjustment.

What we are looking for, in the revisions going forward, is an adjustment to the way the marketplace has changed. Consumers
are now consuming music in a totally different way than they did back in 1995, and 1998, when those laws were passed. Consumers want more functionality, although not necessarily total interactivity. Copyright ownership should be the way people should be compensated for the uses of that music. And that is what we are looking for, a re-definition of the compulsory statutory license, and how people are compensated for it.

MS. CHARLESWORTH: Thank you, Mr. Bengloff. And I, I apologize, I neglected, usually we go around the table and have people introduce themselves, and tell us who you are representing. So, Mr. Bengloff, you are here with 2 —

MR. BENGLOFF: I'm with the American Association of Independent Music, we are a not-for profit trade organization that represents 338 small and medium sized creator music labels around the country.

MS. CHARLESWORTH: Thank you. And
just quickly, before we take other comments
let's just go quickly around the room, and
tell us who you are, and what your affiliation is?

MR. RAE: I knew I would be first, or second. Casey Rae, from Future of Music Coalition based in Washington, D.C. We are a national non-profit organization for musicians and composers, working on research, education and advocacy. Copyright pragmatists, we are here as sort of in a semi-observer status and I'm happy to be involved in the conversation.

MS. CHARLESWORTH: Mr. Lee?

MR. LEE: Good morning, my name is Bill Lee, I'm the senior vice president of licensing operations for SESAC. SESAC based out of Nashville, is one of the three United States performance rights organizations. Our primary goal is to ensure that songwriters, and music publishers, and creators of music, are properly and fairly compensated for the use of their intellectual property.
MS. CHARLESWORTH: Mr. Barron?

MR. BARRON: I'm Greg Barron, senior director of licensing for BMG Rights Management. Our company is involved in, primarily, music publishing. But also recorded music as well.

MS. CHARLESWORTH: Mr. Badavas?

MR. BADAVAS: Christos Badavas, I'm Deputy General Counsel for Legal and Regulatory Affairs at the Harry Fox Agency, and we are a mechanical rights organization, as well as an administrative service provider for licensees.

MR. WOOD: I'm Doug Wood, a composer, and I'm here representing the National Council of Music Creators Organization, which is such a new organization that we don't even have business cards. We filed for our 501-C3. We represent songwriters, we started in New York with songwriters. We represent songwriters, film and TV writers who are caught in a,
particularly, difficult predicament with the copyright law, Broadway composers, and all other music creators for whom the copyright law was written.

MR. DIAB: Waleed Diab, I'm Senior Counsel for Music at Google. So I support various music offerings, including Youtube and Google Play. I am here, mostly in an observer perspective but, also, representing the prospective licensees.

MS. CHARLESWORTH: Okay, thank you. Mr. Knife?

MR. KNIFE: Lee Knife, from the Digital Media Association, a non-profit trade organization, in Washington, that represents consumer facing digital media companies, such as Mr. Diab's company, Google, Apple Itunes, those types of companies. Again, representing music licensors and their consumers.

MS. CHARLESWORTH: Mr. Marks?

MR. MARKS: Steven Marks, tap me right off as a groupie, I guess, since this is
my third of three.

MS. CHARLESWORTH: We are happy to have you, I think.

MR. MARKS: Yes, it is very early.

MS. CHARLESWORTH: The day is young.

MR. MARKS: Recording Industry Association of America, representing the major record labels.

MS. CHARLESWORTH: Mr. Rosenthal?

MR. ROSENTHAL: My name is Jay Rosenthal, I'm the senior vice president, and general counsel for the National Music Publishers Association, and we represent publishers, songwriters, and all the aspects of music publishing industry. And thank you for allowing us to be part of this.

MS. CHARLESWORTH: Mr. Duffett-Smith?

MR. DUFFETT-SMITH: Yes, I'm James Duffett-Smith, I'm here representing Spotify USA, Inc. Spotify is the largest interactive
subscription business in the United States.

MS. CHARLESWORTH: Mr. Bennett?

MR. BENNETT: I'm Jeffrey Bennett, I'm chief deputy general counsel of SAG-AFTRA. SAG-AFTRA is a national labor union representing over 165,000 actors, broadcasters, and recording artists. And it is the recording artists part why I'm here today.

MR. RINKERMAN: I'm Gary Rinkerman, I'm with Drinker, Biddle & Reath, LLP, I have produced records. I have made a living as a musician. I work with a lot of record companies, such as Hard Rock Records, with client -- what is called the anti-360, an agreement where the artists gets back their master rights, after 18 months, so that they can exploit them independently. I also work pro bono with a lot of musicians. And I have worked, also, for example with Wal-Mart, setting up a legal exclusive distribution, of the Eagles CD for Wal-Mart. So I'm here, today, in part to talk about these alternative
MR. DEFILIPPIS: Good morning, I'm Matt DeFilippis, vice president of New Media Licensing at ASCAP, one of the world's oldest and foremost performing rights organization. This year is going to be known -- we are celebrating both our 100th year in existence and also, we hope, the first of another 100 years. And I'm here to give a perspective from the front lines of licensing for ASCAP.

MR. HOYT: I'm Will Hoyt, with the Television Media License Committee, Executive Director. We represent about 1,200 local television stations, as users, probably I've had as much experience as anybody with the PROs over the years.

MR. STEINBERG: I'm Mike Steinberg, from BMI, I'm the senior vice president in charge of licensing, and the -- as you know, BMI is a performing rights organization, representing the rights of songwriters, composers, and music publishers. We monetize
on the value of those rights across hundreds
or thousands of businesses across the country,
including on the radio, television, bars and
restaurants, new media, websites, subscription
music services, all of the above.

MR. RAFFEL: Hi, I'm Colin Raffel,
I'm the outreach coordinator for the
Prometheus project. We are the main
representative of low power FM community radio
stations throughout the U.S.

MS. CHARLESWORTH: Thank you very
much. And, Mr. Bengloff, I apologize to you,
since I had forgotten to do the introduction
But your point was, as I understand it, that
you want to see the compulsory license re-
imagined, re-written?

If you want to just summarize the
--

MR. BENGLOFF: I would say expand
it. Just because there is a tweaking of some
functionality in response to changing consumer
demands, that have happened over the last 20
years. Shouldn't throw it out of the compulsory license. So that certain entities would be able to control the marketplace in terms of licensing compensation, and what consumers are able to receive.

MS. CHARLESWORTH: And which license, or licenses are you speaking of specifically?

MR. BENGLOFF: Well, there are people, in our community, the independent music label community, and actually others, at least one in the so-called major label community, that feel the Itunes, the new Itunes service that is streaming music, possibly, should belong under the compulsory statutory license.

MS. CHARLESWORTH: So you are talking about 114, or --

MR. BENGLOFF: Yes, 114.

MS. CHARLESWORTH: Okay.

MR. BENGLOFF: I'm very much in favor of willing buyer, willing seller. And
the 114 license, yes.

MS. CHARLESWORTH: And what about 115?

MR. BENGLOFF: We are users of the 115 license. We respect our colleagues in the creative community, the songwriters and the publishers in that community. As users we found that the compulsory statutory license works for us. We understand that they may be looking for certain changes to those licenses. We think it is worthwhile to have that discussion, as well. But at this point I have no firm address.

I'm here more, today, to talk about the 114 license, and the 112 license, than the 115 license. We feel that, overall, to be able to serve consumers, the amount of compensation should be shared fairly, across all different platforms, not cherry picking individual platforms, as to how the compensation should be divided. And that is one of the great things about the dialogue
that the Copyright Office is engaging us in,
to talk as an overall landscape, as opposed to
picking individual units.

MS. CHARLESWORTH: Thank you, Mr. Bengloff. Mr. Wood?

MR. WOOD: Thank you. I thought it was interesting, the first people you sought
to protect, when you started talking this morning, were the copyright owners. And I just, you know, I would just like to point out, as we think about our discussion, here today, that the Constitution talks about authors. And the purpose of the copyright was, I understand it, is to protect authors. And I think some times we lose sight of that. Copyright begins to be about property rights, and not about protecting authors. So I urge you to keep that in mind as you, as you think about this. I mean, it is the music creator that is the center of everything that we are here for today.

If the music creator doesn't put
that word with that note, and that chord, then
everybody else, on these next two days can go
home, because there is no music business
without that. So that is where we start. And
we start with the music creator, kind of, at
the top of the -- the pyramid. We say, okay,
how do we make sure that authors are
protected? Essentially the copyright law
being, you know, the purpose of the copyright
was to provide an economic incentive, for
people who have creative talent, to exploit
that talent. And on the theory that the
society benefits when creative people use
their talent to create things.

So that is just an overall
statement. I did want to say, and we may get
into this on other panels. But I have no idea
of how these work, so I'm going to take
advantage, while I have the microphone.

And say that, from the creators'
perspective, the PRO model is really, has been
working great for 75 years. That the whole
idea of collective licensing is something that, I think, most creators, despite their harping and griping about how they don't get paid for this, or that performance, generally find that ASCAP and BMI provide, not just an economically reasonable way to license music. But, also, they provide safe harbor for composers, and songwriters who, otherwise, live in a fairly difficult, turbulent world, where they don't necessarily have the protection that the PROs offer. And I just, I will just jump in here, one more thing, and talk about the threat of direct licensing, or the possibility of direct licensing. Music creators, I think, have a real concern about what will happen in the event of widespread direct licensing of performance rights. And that is mostly because music creators, over the past 50 years, have grown up in a milieu which includes the performing rights organizations, and nobody...
has ever thought that they wouldn't be there.

And as a result of that almost all the legal structure around how music composers and songwriters are paid, assumes that there is a performing rights organization. And in the event of direct licensing it puts most of those writers into limbo. And nobody really knows who has the rights to license performing rights because most contracts are silent on that issue.

But this is particularly important for composers who write music for film and television, where it has been done under a work-for-hire contract. And the work-for-hire contract, basically says you are entitled to receive a performing rights, the writer's share of performing rights distributed by the performing rights organizations.

And it is, absolutely, silent on what would happen in the event of a direct licensing. Of course those composers have no way to, to go and get them on it. So I will
leave it at that. I really appreciate the
opportunity to be here today, and thank you
for inviting me.

MS. CHARLESWORTH: Very glad you
are here, thank you. Mr. Marks?

MR. MARKS: Thanks very much. I
will comment on a couple of things, since we
seem to be talking about compulsory licenses,
just to give our view on the section 114
license. And then, also, just for the record,
state in brief what we think should be done on
the music side.

On the 114 license we think the
existing license has worked very well in many
respects, in terms of reducing transaction
cost, and allowing a number of radio
companies, as contemplated back in '95 and
'98, to get into business.

On the other hand the license has,
unfortunately, been expanded by what we
believe to be a poor judicial decision, in the
LAUNCHCast case, well beyond the scope of what
was intended back in '95 and '98. And we don't
think it should be extended any further beyond
that. In addition the compulsory license in
114, especially, has become very politicized.
In that even for those services that are
paying under willing buyer, willing seller
rate standard, which should be the standard
that governs everybody under 114. The
decisions that have been reached have then
been challenged so that licensees have taken,
what we view as, kind of a second bite at the
apple, to try and get the rates reduced, by
putting political pressure on the parties.

Or, in the first instance, the
Copyright Office, and other decisionmakers, in
order to reduce the rates. And that has,
unfortunately, has been successful in many
regards. So for those two reasons we would not
support expanding the section 114 license
beyond the scope it has today. And I think to
the extent that, you know, there are other
services that want to offer additional
functionality, those services, there are many
of them, Spotify is one of them, and there are
others, that have other kinds of features,
that have been able to get the licenses
necessary to get those rights.

On the section 115 front, as we
have stated at the other roundtables, and in
our comments, we would radically rewrite that.
Even get rid of, you know, 115 as it exists
today, and replace it with a system that, one,
ensures fair market value for the songwriters
and the publishers, by getting rid of the CRB
and the Rate Court. And having a marketplace
discussion about what those rates should be
instead. But, at the same time, to Mr. Wood's
comment, simplify the licensing in a blanket
license approach. So that it is easier to get
licenses for everybody. We are not losing
money out of the system, seeping through the
cracks, naming third parties to administer
what is a very difficult license to obtain and
then administer afterward.
And, third, ensure that all, what we call moderate music releases, taking into account the fact, today, that most consumers are looking at a screen, and not just listening to speakers, when they are consuming music.

That may include everything that comes out with the kinds of projects that major and independent record labels work so very hard in releasing to the public.

MS. CHARLESWORTH: Mr. Marks, just a quick point of -- a follow-up question. On the 114 license you mentioned the LAUNCHCast decision, and you don't want to expand 114. So is your assumption, though, that the personalized streaming, as was determined under LAUNCH has to be within the 114 license, would remain there, and you just don't want to see 114 expanded further, is that --

MR. MARKS: Well, I don't -- it would remain there, I guess, by virtue of --

MS. CHARLESWORTH: Judicial
decision?

MR. MARKS: -- the fact that the judicial decision is there. I don't think we would want to codify that.

But, you know, as a practical matter, Pandora is operating under that license, and paying under it right now, and has been for, since its inception. So, you know, we -- I could talk longer about the LAUNCHCast decision, but don't want to take up too much time.

MS. CHARLESWORTH: Okay, thank you.

Mr. Bengloff, did you have a quick response?

MR. BENGLOFF: I will be brief. I rarely agree with Steve. But the 114 working very well, and reducing transaction costs, I feel, he hit the nail on the head. Perry Resnick, and he will be on a panel later, with Bob Kohn's testimony, in terms of reducing those costs. And I have seen him in the house, and he will be speaking later. I guess what we feel is, since it is working so efficiently,
to expand that license would bring more
services into the marketplace, would make more
music available to consumers, because we don't
want to decide who should be in the business,
and who shouldn't be in the business,
consumers should make that decision.

MS. CHARLESWORTH: Okay, thank you.

Mr. Rosenthal?

MR. ROSENTHAL: Thank you. As you
could tell, from our submission, we intended
to start a new conversation. And that new
conversation is about doing away with Section
115, as a compulsory license. Perhaps there is
some aspects of it that might be held off,
because of all sorts of good reasons, that
everybody can agree upon.

But I think that after 105 years
we recognize that while transaction costs are
an important issue, the more important issue
is the value. And that under a compulsory
license music publishers, and songwriters, are
not being paid the free market value that they
should. We are under restrictions that others
are not. And we have to stop treating
songwriters, and music publishers, as second
class citizens. Marybeth Peters agrees with
us, totally. I'm going to paraphrase her, Let
my People Go.

MS. CHARLESWORTH: Would she agree
with that paraphrase?

MR. ROSENTHAL: Yes, I think she
would. That is, I think she would like
authorship of that little phrase right there.
And to build on your little story, putting
aside whether the Dr. Seuss estate gave you
the rights to do that, let's call it --

MS. CHARLESWORTH: I'm sure that
comes under --

MR. ROSENTHAL: Yes, that is fair
use, okay. I'll even fight with you on that,
that it is very -- you know, the creatures,
what were they called?

MS. CHARLESWORTH: The Zax.

MR. ROSENTHAL: The Zax, the Zax,
that is 115. They are sitting there, under the bridge. The bridge is the free market.

MS. CHARLESWORTH: You got the metaphor?

MR. ROSENTHAL: Oh, yes, I got it, I got it.

MS. CHARLESWORTH: Good.

MR. ROSENTHAL: And we should be talking about all the great things that we are doing, in the free market, right now. All the best licensing is going on there. We don't need section 115 any more. And the idea that songwriters, and music publishers labor under this process where, in fact, there is a question. And you know, as well as I, because we have worked so closely on these matters, there is a question of, can the government even get it right, and understand what is going on in this business?

We need to let the parties move out and to do what they need to do.

Now, with that said, and we want
that conversation to start, we also believe that there are certain aspects of 115 that can be improved. In particular songwriters and music publishers desperately need an audit right. It is ridiculous, to say the least, that under the compulsory licenses that we have, the only one that doesn't provide an audit right, of some kind, is section 115.

We also are very, very strongly motivated to pass the Songwriters Equity Act, which equalizes the standard rates across the board. And we can also talk, later on, about maybe the pass through license and possibly, you know, having a right to opt out on all of this. As a final point, two weeks ago there were hearings on Capitol Hill. And I think that one of the most compelling testimony, that we heard, was from Lee Miller of the National Songwriters Association. He spoke about what is going on with the stand-alone songwriter community in Nashville, where 10 or 15 years ago you had thousands of writers
engaged in the business of creating songs.

Today you possibly have a couple of hundred. That is a tragedy. And that is something that we have to recognize, and focus on, value. Not just economics, not just the idea of transparency, efficiency, we are not paying songwriters and music publishers what they should be paid.

That is the conversation we should be having.

MS. CHARLESWORTH: Thank you, Mr. Rosenthal. Mr. Rinkerman?

MR. RINKERMAN: Yes. It is awe inspiring to be here among the classroom and talking about Section 115. But I have something else that I would love to inject into the conversation. Let's talk about Joe Bryant and the great Jimmy Carroll and these are artists whose work --

MS. CHARLESWORTH: Can you -- I'm sorry, just speak into the microphone?

MR. RINKERMAN: I'd like to talk
about Bogie Great, Jim Carroll, Joe Byrant, the artists who actually make the music, and record it. And one of the licensing issues that takes place in the shadow of all this 115 and 114 controversy, is that many of these artists are, effectively, out of print, even though you can get them on Youtube occasionally, or stream them, because the record companies have simply banned these masters, or are splitting these masters.

I think we need to seriously consider a masters right, of performing artists, after a certain period of time, when they can get their master rights back, and exploit them through their websites, and make money that way.

I'm sad to say my good friend Jim Carroll, who lived not very far from here was actually poverty stricken, while many of his records just sat in vaults of the record companies. So we do have a termination right, and that is a great step, it is a great moral
right. But I think we need to start
considering these artists and saying, maybe
after a certain amount of time, that the
record company is not exploiting the
recordings properly, the masters revert to the
artists.

Perhaps with a residual license
for the record company. But that, to me, is on
a par equal to 114 and 115 considerations. And
if we really want to respect our legacy
artists, we will give them this type of right,
this marching right, to recover back their
livelihoods.

MS. CHARLESWORTH: Thank you.

MR. RINKERMAN: That is my soap box
for the moment.

MS. CHARLESWORTH: Okay. Well, this
is a good place to be on a soap box, so thank
you. Mr. Hoyt?

MR. HOYT: First of all, Mr. Wood
said that he felt the current system was
working relatively well. I would guess that we
would say that it is working reasonably well, in terms of television.

There are a couple of things, though, that concern us. One is the definition of free market. And we get very concerned about a free market, willing buyer, willing seller, worrying there, if you have a monopolist, who is a willing seller, and you have no other recourse but to go with that monopolistic price, that is not a willing buyer, willing seller relationship. So I get concerned about how you define willing buyer, willing seller, and how you define free market. I know that question was the last question asked at the hearing in front of Congress.

And we hope to, at least, try to expand on the definition of what we consider free market, and fair market, and competitive market. Secondly, we believe that direct licensing is the way to go. And we would prefer to direct license everything. The
problem, right now, is given the historic methodology of getting rights for television, there are third party producers, who force us to imbed the music in the program. And we are, then, forced to license those performance rights, even though we don't control them.

MS. CHARLESWORTH: Can I just -- because I have heard this a few times. I mean, hasn't that been true for a very long time?

MR. HOYT: Yes, it has.

MS. CHARLESWORTH: Okay. It has been the system for a long time.

MR. HOYT: -- the system is working reasonably well with the rate court in place. And that is why we would say, the problem we have is there is an anti-trust issue, as well as a copyright issue. So you have those two competing things going on. And so what you have to do is have something that says to a monopolist, like a PRO, you have to abide by certain regulations. And that is why we consider the current rate court system working
reasonably well from our standpoint. And we
would continue that rate court type situation
because we think it is working. It is not
working perfectly but we don't see a better
way of doing it. The other thing I might
mention is that, currently, we are not in the
center of this controversy as much as the
digital people are. I mean, if you note, most
of the discussion, discussions surrounding the
whole area don't involve television. So I
guess from our standpoint we are more worried
about collateral damage than we are anything
else.

MS. CHARLESWORTH: Okay, thank you
Mr. Hoyt. Mr. Steinberg?

MR. STEINBERG: Well, I don't think
it is a surprise, to anyone, that we do not
think the rate court is working well. It
certainly has worked well for businesses that
are interested in lowering the compensation to
composers of music. I will say that, in
response to what Will said about some of the
music that is imbedded in programming, and you
kind of followed up on this, Jacqueline. It
has always been the case, and it has always
been the case that, I think, television
stations contract with users of television
programming and enter into contracts, whereby,
if they wanted to, they can include some sort
of provision to deal with that fact.

And BMI, we aren't entering into
contracts with the users. So Mr. Hoyt mentions
in his testimony that the PROs are holding the
television stations hostage. I don't think
that is the case. We understand that music is
imbedded in the programming but it doesn't
mean that they don't have the ability to,
somehow, control the set of circumstances
going forward.

On, just to shift gears for a
little bit. We operate under a consent decree,
that dates back to the year of the theatrical
release of Citizen Kane. About five years
before the first television network ever
existed. So I don't -- it is no surprise, to
anyone, because it has been said a lot over
the last few months, that BMI is interested in
amending its Consent Decree, and getting some
relief there, for a few things that need to be
changed. And we are very pleased that the
Department of Justice is entertaining that.
And, you know, I think it is, I think it has
been made clear, Mike O'Neill testified to
Congress, the four ways in which we want to
amend the Consent Decree. We don't want the
publishers to have to make a choice between
whether they are all in, or all out of the
PRO. We think that it benefits everyone if
they have the option to decide what rights
they want to leave inside a PRO, and which
they want to directly license themselves. Mr.
Hoyt talked, as well, about direct licensing.
I think it is a two way street. It is not just
up to a licensee, who is in a position to set
the price and call the shots, when a direct
license should happen.
That is the case in the local television industry. It effective becomes, direct license effectively becomes a ceiling, and they always have the underlying license to fall back on, if they don't get the price that they want. So we think that is a two way street. The other ways in which we would like to see the Consent Decree amended is we have licensees, like Google, coming to us, asking us for multiple rights, not just the performing rights.

So we want that reflected. We, as I said, don't think the Rate Court works well, and it is expensive, it is time consuming. And we think that, obviously, there are systems in place that are going to creators. And we have also made clear that at some point, to the extent that publishers do withdraw, and the competitive playing field has changed significantly, that the Consent Decree should sunset in totality, and make the publishers, and creators, who remain with the PROs, left
on a level playing field, in terms of if they
are able to negotiate in the free market.

MS. CHARLESWORTH: Thank you, Mr.
Steinberg. Mr. DeFilippis?

MR. DEFILIPPIS: That was well
said, Michael. And I just want to pick up on
a sentiment that is expressed by Doug Wood.
And that is the critical role of collective
licensing, in the broader ecosystem. I mean,
everyone knows that ASCAP is a membership
organization whose primary mission is to
ensure fair and proper compensation to
songwriters, composers and publishers. And
while the organizational structure, it may be
slightly different than BMI and SESAC, they
are essentially aiming to achieve similar
aims. However, collective licensing plays a
very critical role in the broader ecosystem.

And that is serving the music
users and, therefore, and ultimately
consumers. And speaking from the front lines
of licensing, in the digital space, I can
attest to the real challenges that we are facing in fulfilling our critical role. We've got some creative people in our licensing group now, and I would say across the PROs, generally. And anyone who has dealt with us, recently, I hope will attest to the hard work we have put in to try to come up with new, innovative, ways to work with their very innovative services within the very restrictive regulatory environment that the PROs are operating. And to come up with win-win solutions.

But I think they will also attest that we are frequently stunted, even shackled, by the Consent Decree prohibitions. And, potentially, negative implications of our well intended efforts. And even though those limitations may, at times, be convenient even beneficial to them, I think we have reached a point where an honest and genuine examination, of our ability to perform our role, or even exist, as Doug alluded to, will lead them to
conclude that the changes we are proposing,
and Michael spoke to some of them, a similar
set of Consent Decree proposals.

That we make those proposals in
the same innovative win-win solution. And that
is to fulfill our critical role in a manner
that allow us to both serve in our mission,
for our songwriters, composer, publisher
members.

But, at the same time, to better
serve the licensees and, therefore, the end
users. And so all of these things are
reflected in our, in our comments. We could
talk about a lot of different cases, perhaps
we will get into some.

But it is critical that either
change happen in the form of Consent Decree
reform, legislation is pending, and ultimately
copyright perform, in order to preserve a very
valuable, critical element of the ecosystem
that is collective licensing.

MS. CHARLESWORTH: Thank you. Mr.
Rae, you have been very patient.

MR. RAE: I'm going to jump back to 114 because I'm sure we will have plenty of time to argue about 115 in later panels. I just wanted to give a shout-out to Gary. I hope we can talk about this exploit or die concept, later, because it sounds very intriguing to me. My organization works a lot with independent recording artists. And a lot of those folks may be signed to labels that Rich is representing. When we talk about the concept of expanding a statutory, I think that is supportable in a lot of ways, primarily because of the market share issues that Rich alluded to.

But what I would be concerned about is what the supports would look like. And also, secondarily, how the rates are determined. For us, looking at it from the recording artist, and performing artist perspective, it is about transparency, it is about leverage, or proxy leverage through PRO,
SoundExchange in the case of 114.

And it is, also, about the ability to bring a catalog of music to legal license services. Because I think that that is where we are at, in this new marketplace. And I think that is what we want to continue to keep in mind and encourage. Another thing that I would like to, just quickly flag, because this is coming up in a lot of different context, particularly in the House Subcommittee hearings. There is a -- Steve alluded to the politicization of rate setting. And I think that that happens, or can happen, on both sides of the equation, so to speak. I would like to remind folks of the distinction between the standards by which rates are determined, and the compensation structure within the collection and distribution of royalties. So right now we are in a marketplace where we feel like we are shifting to streaming. We may be entering a new era of substitution for physical and file-based
media. So, to me, it makes the distinction

between interactivity, and non-interactivity

even more important to figure out.

Because right now interactivity

seems to rest on volition. And what does

volition really mean when you are in an

environment where similarly situated services

are performing, and delivering music,

oftentimes, the same kind of consumer focus

components. It is an increasingly arbitrary

technological distinction but it is,

extremely, important when we talk about how

rates are structured and how artists are

compensated. And so for us I would underscore

that the fairest splits, the transparency and

understanding how those rates are determined,

and the mechanisms of payment, are -- for

creators, are equally important to other very,

very, very important parts of the

conversation, including direct licenses versus

expanding compulsories.

MS. CHARLESWORTH: Thank you, Mr.
Rae. I think I will go to Mr. Diab, and then Mr. Knife, and then we will come back around here and go around.

MR. DIAB: So I actually just wanted to talk, generally, about two principles that I think are going to be really important as we consider reform. The first is transparency. And I'm happy to hear Mr. Rae raise that point. I was surprised that nobody raised it earlier, because you have heard a lot about protecting authors and creators. And I think, historically, what we have seen in these industries, certainly on the PRO side, is sort of black box licensing.

Where there is no clear transparency for authors in terms of how their content is used, a sort of insight into the real valuation of, of those uses. And so I think any reform that we consider should try and improve that sort of transparency.

One way that we can do that is Through some sort of more formalized data
standards, and providing some incentives for PROs and other licensors, to comply with those data standards. The issue that we have, as licensees, is we oftentimes don't know what it is that we are licensing. Google, in particular, has begun to enter into licenses on a global basis, where data is a requirement, at the outside.

So what we do is we require our licensors to identify exactly what it is they are licensing, to us. And that helps, both from a deal implementation standpoint, as well as a deal valuation standpoint. And what I would like to see is reform that allows that sort of transparency, and those sort of data requirements, to work their way back up the chain, to the creators. So we are real interested in reform that is going to allow services to operate under that basis.

MS. CHARLESWORTH: Thank you very much. Mr. Rae?

MR. RAE: So Mr. Diab just actually
took a little bit of the wind out of my sails. I was going to talk a little bit about transparency, as well. You had given an invitation, earlier, for people to use this forum to get on their soap boxes. And we have certainly heard a lot of people get on their soapboxes. And I'm going to try not to do that now. I assume you are going to have an ample opportunity, over the next couple of days, to state a particular case. I wanted to make two general comments that are much more, I hope, objective. The first one is picking up on what Waleed was saying, about transparency. And I think transparency is super important, going in both directions. And when I say both directions, what I mean is, transparency to potential licensors is incredibly important. Licensors, as everybody has been talking about, we are moving into a new digital age. We are in, we are not moving. And we are already in a digital environment where massive licensing is really the coin of the
realm. And so transparency as to what works are available, what rights appended to those works are available, who owns those rights, who can grant those rights, on what basis they are grantable, et cetera, is extremely important. So let's call that going forward.

But, also, transparency going backwards to the creators is, also, incredibly important. It is something that Mr. Diab was talking about as well. So I think transparency going, again, in kind of both those directions, making sure that, that the number of works that are out there, are easily catalogued, that all the rights appended to them are easily addressable, and identifiable is extremely important.

Both for licensors and then going all the way back the chain to the creators. And we have heard a lot of people, you know, not surprisingly, people who are under compulsory licenses, or collectives that have consent decrees, applicable to them, they have
problems with those licensing frameworks.

But one of the things that those licensing frameworks can, at least, provide whether or not we are going to tweak them around the edges, is they provide at least some level of that transparency, because they are collectivized.

And so there you go, right, that is the crux. The collectivization of rights can assist in transparency in the marketplace in mass licensing but it also creates monopolies. And so there is a difficulty there that we should just pay attention to. And that gets me to just the second, kind of objective, point that I wanted to make. Is, and it picks up on something that Mr. Bengloff said, and I think Mr. Wood also talked about, and a couple of other people. As the Copyright Office considers modifying the existing regime that we have, I think it is important to pay attention to the fact that the business that we have, right now, has grown up underneath
these various compulsory collectives, et
cetera. And if we were to simply do something,
like do away with Section 115 next week, or
absolutely you know, just get rid of the
consent decrees, I think we would be left in
a world that, had those things not existed,
that world also wouldn't exist. The contours
of the business, that we have right now, and
Mr. Wood talked about it in terms of the
individual creators. The contours of the world
that we have, right now, are dictated by all
of these assumptions of all of these, you
know, collectives and these rights management
scenarios.

So as we go forward, and we talk
about whether or not we should, consent
decrees, or get Section 115, or heavily modify
it.

I think we would all do well to
just keep an eye on the fact that the world,
that we live in today, wouldn't exist unless
those things existed. So if we are going to
talk about moving away from them, we have to,
we have to talk about all the ramifications of
doing that as well.

MS. CHARLESWORTH: Thank you, Mr. Rae. Mr. Lee?

MR. LEE: Thank you, Jacqueline.
Actually I had just had a very brief comment.
And it is a follow-up regarding the rate
courts. And I think Jay had mentioned Lee
Miller, and Lee Miller is very prone to say
that it all begins with a song.

And I think that is a very apropos
statement. It all begins with a song, and it
is extremely important that the songwriters
are compensated for their creativity. We
believe, at SESAC, that the rate courts may
not always have that end result in mind, based
upon the activities that take place within the
rate courts.

Although SESAC is not under a rate
court, many rate court decisions do have a
negative impact on SESAC's ability to modify
license agreements. And ultimately it is the creator, the songwriter, who suffers because of that lack of modernization.

So the rate courts are not a true market environment, and it tends to depress royalties for songwriters.

MS. CHARLESWORTH: Thank you, Mr. Lee. I'm just going to go in order, because I'm not sure -- Mr. Badavas?

MR. BADAVAS: I think I would like to address the transparency and the massive licensing issues, in the context of 115, on a general basis. I understand that we are going to have another panel in more detail.

But the first thing is, transparency is the one place where Section 115 actually works, because it requires some about song-by-song licensing. So it is one of these things where you really start one product, and you figure out what parts go into the product, and you pass it through, and you pay the specific publishers, ultimately pay
the songwriters. I use parts on purpose because, what we are talking about here, is actually is, actually, supply chain management. I have a music degree, I never thought those words would come out of my mouth.

But every other industry in the world, that has to sell a product, has to figure out how to get the raw materials and parts into that product.

So when you are thinking about this problem, that way, the question isn't, is this easy, is this hard? The question is, are you expending an unreasonable amount of money doing it?

Most other industries, the automobile industry for example, have trading partner platforms, where they figure out how to deliver parts and raw materials, from around the world, through complex terrorist era importation rules, and get the parts here, and assemble them into a car that has 17,000
parts, or something like that. And the reason they spend that amount of money, on supply chain management, is that they are looking to reduce the costs of those parts, they don't want to make them here. So they are actually going to spend a lot of money managing their supply chain, in order to reduce the cost of raw materials. Here, under the compulsory license, and under the consent decrees, you've already got low cost of parts, low cost of supplies. So the availability of those structures, the history of those structures, to be fair, as they point it out, means that you can come in and talk about blanket licensing, and legal claims, and all of that, rather than actually dealing with the functional resolution of the problem. We have to deal with that every day. I understand completely. I think the licensees do, I'm not saying it is easy, it isn't. It takes work. The question is, is it an unreasonable amount of work? And no one, really, has provided
audited financial information about the cost of their supply chain management, related to compositions. So we will find out, eventually, and probably some people start talking about it. The second piece is the massive licensing issue. I'm not quite sure what that means, in the context of whether licensing works.

Because what we see, in reports that get to us -- and, by the way, we don't license everyone, so we don't see, so I understand that this would be different across licensees.

But we see it in some one to two million tracks account for the vast majority of users for the new service, maybe up to 95 percent. So, all right, there is a licensing problem. Is that just that one or two million we talking about, where we can, we can figure out who is associated with the sound recording, or the other 30 million tracks offered by the service. It is just unclear to me. And I don't know which of those things
matters, and which of those is incorporated in a compulsory license, and whether the fix that applies to the 1 to 2 million tracks, that are commercially used, versus the 30 million other tracks, which may be artistically valid, but aren't listened to very much, are different. And maybe the rules of law, and the licensing structures, and things like that, should be different. So I just raise those issues to start out with, for you to think about, in the context of the next panel.

MS. CHARLESWORTH: Thank you. Mr. Wood?

MR. WOOD: Thank you, just a quick thing on transparency. I agree one hundred percent. I think, you know, one of the reasons why transparency is so difficult is because, in the case of performing rights nobody really knows who has the rights to license. So, as I said before, so that is something to keep in mind, if you are going to require direct licensing.
MS. CHARLESWORTH: Can you explain what you mean by that, a little bit?

MR. WOOD: Yes, sure. So a typical songwriter agreement would say, for instance, the songwriter shall be entitled to collect the writer's share of performing rights, distributed by a performing rights organization, period.

What happens to the performing rights money that is not distributed by a performing rights organization? That might go to, that would fall now under the contract between the songwriter and the publisher, which might have some sort of split. It might allow a publisher, for instance, to get an advance that the writer wouldn't be sharing in, or to add administrative fees to his deal, and go to the DMX deal, as a good example.

Where DMX and MRI basically convinced one of the major music publishers to give them a license. And, as an incentive, they gave them a signing advance of 2.7
million dollars, as a kind of advance on the money that they were going to get. And then they went around to all the other publishers and said, we will give you the same deal as we gave this big publisher, and all small publishers thought, well, you know, this is one of the smarterst guys in the music business and so this must be a good deal. And so they convinced, you know, a lot of small publishers to sign an agreement, sorry, I'm skipping over a lot of facts here.

But what happened in the end was that songwriters and composers ended up losing a lot of money because of direct licensing by, in this case, a large publisher, I think, who wasn't quite aware of what was going on.

MS. CHARLESWORTH: Were the advances distributed by the publishers to the songwriters?

MR. WOOD: That is a really, that is a really good question, Ms. Charlesworth. I don't know, and nobody does, except the
publisher.

But, you know, when a PRO gets a dollar, you know, they take out their expenses, and then they cut the dollar in half, and half goes to the writer, and half goes to the publisher. When a publisher gets a dollar, for performing rights, we have no idea what happens to that dollar. That dollar might be subject to an administrative fee, a technology fee, it might be subject to, you know, we signed the agreement on Monday, so we take another ten percent off. We don't know, and there is no transparency, there is no requirement for a publisher to be transparent, to a writer, about what happened to that money.

MS. CHARLESWORTH: I'm sorry, but doesn't the -- usually, the traditional songwriter contract talk about that, talk about the split between the publisher and the songwriter?

MR. WOOD: It does, but it
determines -- the question is, what is the actual performance fee. So if you get 100 dollars from somebody, how much of that fee is the administrative fee, and how much is the performance rights fee?

It could be a 50 dollar administrative fee, and 50 dollar performance fee. So you split that with the writer, the writer got 25 dollars.

MS. CHARLESWORTH: Okay, so --

MR. WOOD: In other words, the publisher has his hand down the lever, he can move it wherever he wants, because there is no real transparency. Does the writer have the ability to audit? Yes, sure. So are you expecting the songwriter, in Des Moines, Iowa, who has a day job selling real estate, because he only makes 30,000 dollars in royalties from his song, back in 1982, is he supposed to come to New York and hire a 5,000 dollar retainer, to an entertainment attorney, to go audit the record company, and the publisher, to find out
about his money?

It is impractical. So you had asked for comments about, you know, the small market people. I'm here to represent the small market people, and to tell you about what their predicament is. And I'm happy to answer more questions. But, really, what I wanted to get to, and it is kind of tangential to this point, Mr. Hoyt brought up the question of direct licensing for television. In many cases we are talking about negotiations directly between television stations and program producers, and composers. Composers who are spending their day composing, not understanding, you know, the economics of television licensing. And so instead of a willing buyer, willing seller, you have a willing buyer, uninformed seller. You have informational asymmetry between these two parties, that is drastic and plays out every day.

Where composers, who just want
that new piece of equipment, or the new piece
of hardware, or software, or to take their
wife out to dinner, are happy to get that 100
dollar extra fee, for the performance rights,
because they have no idea what those
performance rights are really worth, and no
way of knowing. We don't have an open market
for performance rights in this country. So
there is no way for a seller, a composer,
seller of performance rights, to have any idea
what his performance rights are worth. So I
just, you know, I bring that up because,
again, I think it is important, as you
consider, you know, these changes, think about
what the implications might be for, you know,
for those of our creative community, who spend
their time doing what we want them to do,
which is to create. And recognize the role
that in this case, ASCAP, BMI, and SESAC play
in letting creative people create, while these
organizations take care of the performance
rights. And I can give you a much better
explanation of DMX.

MS. CHARLESWORTH: I have read the case, thank you very much. Mr. Bengloff?

MR. BENGLOFF: Thank you.

MS. CHARLESWORTH: And we have a lot of signs up so it is -- we are at the point, you know, I want to get everyone in, so if we can keep it to two or three minutes or so, as we go around, especially if you have spoken before.

MR. BENGLOFF: Sound bites are fine. Talking about transparency, I'm going to talk, obviously, more in terms of Section 114. We need a data base controlled by an impartial third party, with representation by third parties, such as SoundExchange, that could watch out for everybody's interest in the 114 area. It could make sure the correct creators are getting paid for the works that are being delivered to people in a fair and equitable basis. We represent creators who have a half percent market share, three quarters of a
percent market share, or a point market share.

But most of our members have significantly smaller market shares, and we have to make sure they get paid. Unfortunately, if that is not the case, but rather the money gets swept into what is called the black box, and it is allocated based on going to the largest creators, which isn't fair for anyone in any community. So we are very much against that. In terms of transparency we embrace everything that is going on, the discussions that we just had. As Mr. Diab is familiar with, last week the world-wide independent music label community met here in New York, and tackled a number of issues.

But one of them was fairness. In his testimony, this week, at the House our representative Darius VanArman will announce the Fair Deal Declaration. It was passed by the World Independent Network, last year, when my colleagues from around the world, with his
permission, we are using Tom Waits' line, "What the big print giveth, the small print taketh away". We don't feel that, that is a fair system for our artists. We plan to disclose, to all our artists, to make sure that they are paid properly. Thank you.

MS. CHARLESWORTH: Thank you. Mr. Marks?

MR. MARKS: Thank you. A couple of words on both 114 and 115. On 114, due to the current rate standard, and the politicization of the process, I think it is fair to say that we have lost billions of dollars to our industry. And, therefore, expanding 114 beyond what it covers today is something that we would not want to do, for fear of losing even more. And while, you know, the intent of the original 114 was to enable radio-like services to get into business, it has served that purpose well, given that there are 2,000 plus of those kinds of services.

But for other kinds of services
you don't have that kind of volume, and losing
that kind of money, given the challenges
facing our industry today, are not something
that we want to risk. And I, I agree that, you
know, data bases are important, data is
important, avoiding black box is important,
and a direct license would enable an
independent, or a major label, to be able to
do that.

On the 115 front, just an
observation. I think both in the first two
round tables and here, I have heard a couple
of things that I would say are fairly common
themes. Not themes that every person at the
table represents but most people seem to like.

One is ensuring fair market value
for songwriters and publishers. And the other
is some form of collective licensing. You
know, whether it is a PRO blanket license,
whether it is, as Jay's colleagues have talked
about, in terms of Youtube, and other
eamples, collective licensing is important in
order to simplify the process. I, you know, 
with all due respect to Mr. Badavas, you know, 
the song by song licensing that is today, you 
know, we had one example where it took 1,500 
licenses to get one project out the door. 

That is something that is not good 
for anybody. We can talk more, in the next 
panel, a little bit about how much money is 
being lost, for all of us, as a result of that 
kind of licensing procedure. 

But if you take those two, those 
two themes, and you add to it a lot of the 
things that Jay, and others around the table, 
have talked about, an audit right, no pass-
through. 

Where you have, you know, a direct 
relationship between the service and the 
publisher, and the songwriter, representative. 
Giving consumers, you know, what they want, 
you know, by having this kind of blanket 
system, like Lee and others have said. 
Retaining first use rights, so that you are
not, you know, folding into something, you
know, taking away rights, but doing away with
the rate court, and the CRB. Those are all
things, all elements of the idea that we
presented, which we can talk in more detail
about later, if folks would like. Again, it is
just an idea, but -- and there may be better
ones. But trying to thread this needle of
achieving fair market value, yet simplifying
licensing through some kind of collective
licensing, I think is a difficult thing to do.

But it is something, hopefully, we
can build upon either through discussion of
our proposal or our other proposals.

MS. CHARLESWORTH: Thank you, Mr.
Marks. Mr. Rosenthal?

MR. ROSENTHAL: Okay, a couple of
quick points. First of all, by proposing that
we get rid of Section 115 we are not, in any
way, proposing that we walk away from
collective licensing. As Marybeth Peters will
be quoting a lot. As stated, that two
countries have Section 115-like apparatus, Australia and the United States, the rest of the world has kind of worked out its own collective licensing approach. And we think that, that is where we need to go, we need a harmonization. The labels always talked about the rescue of radio, we need harmonization of what they are doing in Europe. Well, we believe the same thing. And we think that it can work out better, in the free market, than if it is somehow regulated. Number two, the issue of song by song, versus blanket licensing. I don't understand how, at a time when technologically we could handle song by song licensing, that the primary goal should be anything but paying the copyright owner, author, music publisher, for the usage that is being used by the services, or whomever. And to pay them with transparency, and to get to the ultimate right point, which is paying the right folks, the right amount of money. I know that over the years, with collective
licensing, especially an approach that is more like a blanket, that while it has worked, to a certain extent, in performance rights, there are still issues. And that is the history of the performance rights world, of are the right people actually getting paid, what they should be getting paid?

This is where we want to get to, by song by song. And as a last point. I cannot tell you how much I disagree with this idea that, if we do not have Section 115, there would be no digital rights ecosystem out there. The idea that publishers are so irrational that they would not have, in a free market, worked out deals with the digital services, is just simply ridiculous.

They would have, and to a large extent, what has been granted to the labels, the right to go out and not just work out deals, but to actually gain equity interest in some of these services, is a right that is not granted to the music publishers. This is why
we need to move towards a system of free
market, to allow the music publishers and the
songwriters, to get everything that the labels
had under their systems.

MS. CHARLESWORTH: We are going to
have several more panels, and we will have
more opportunity to discuss some of these
issues.

I think on a song by song, and
licensing structure, I think the question to
keep in mind is the major publishers clearly
are able to, and have done, direct deals with
many digital services. So the question, I
think, that has come out of many of these
conversations is, how do you deal with the
people who don't have that kind of leverage,
smaller players in the marketplace. How do you
ensure that they are part of this marketplace?

MR. ROSENTHAL: To a large extent
they have in the songwriter side, I mean, the
sound recording side. The idea that for the
smaller players there are companies out there,
that offer services. You can join certain
types of collectives. Might we deal with an
antitrust issue? Maybe, and we have to kind
of, you know, weave that into this whole
corversation we are having.

But I don’t see any reason why the
smaller players could not effectively deal in
a much more of a collective licensing mode.
The Youtube deal, that we have entered into,
is a perfect example of that. Major
publishers, entering into deals with Youtube
directly. Because of a lawsuit that we settled
we entered into a longer term, not longer
term, a licensing arrangement with Youtube.

Now over 3,000 publishers have
 opted into that particular deal. The free
market allows for the smaller publishers, as
well as the smaller sound recording owners, to
engage in this kind of licensing apparatus.

MS. CHARLESWORTH: Thank you, Mr.
Rosenthal. Mr. Duffett-Smith?

MR. DUFFETT-SMITH: Thanks very
much. And I just want to address that, at a high level, that we have heard a lot about free market value of licensing rate setting proceedings. We agree in principle that songwriters, and music publishers should be compensated. There is, however, a practical issue here, which is this. The services like Spotify are in danger of being caught in the cross fire, between the labels and publishers. Under the current systems, of all the money that comes in through the door at Spotify 70 Per cent goes out in royalties straight away. Before other costs are accounted for. I think it is just very important that we recognize that any changes to the system, as it currently is, recognize the fact that there is only so much money to go around. So you pay more to one person, then that must result in somebody else getting paid less.

MS. CHARLESWORTH: Thank you. Mr. Bennett?

MR. BENNETT: Thank you. I want to
talk about, very briefly, one of the positive aspects of Section 114 for, probably, the smallest market participant at the table. We have all talked about music consumers, talked about the music services, talked about the rights organizations, copyright owners, copyright authors. I'm talking about the recording artists, who sometimes are copyright owners, many times are not copyright owners. They benefit, dramatically, because of Section 114's direct payment to them. The importance of the recording artist is in the sounds that you are hearing. I can tell you, having grown up in a house with an older brother and friends who played music in the basement, you can take a really great song, and it can sound terrible, terrible, without good recording artists that know what they are doing, and know how to create the sounds. And so, to that extent, I would agree with Rich that the more services that are covered under 114, that provide direct payment to the artists, the
better. Better for the music community, for
the quality of music, and given the number of
services out there, and the ways we can
consume it, you are going to need a lot of
quality music, to make it all work. Thanks.

MS. CHARLESWORTH: Thank you. Mr. DeFilippis?

MR. DEFILIPPIS: Thank you. Two quick comments. First is blanket licensing is
not the opposite of song by song licensing. It is certainly not, it is certainly not song by
song licensing on the front end. And I would say that is more a function of efficiency and
pricing than it is being wedded to any particular license structure or scheme. And the evidence of that is, that on the back end,
every day we are closer, and closer, to a census that is song by song survey opinion.
And so the two are not mutually exclusive. With regard to transparency, ASCAP recognizes
the importance of transparency. And the evidence of that is alongside of our proposed
consent decree changes, we can express the voluntary expansion of visibility into our own, the details of our members proprietary data.

But there must be a balance. And here is where I'm glad that this issue was raised by my friend Waleed, of Youtube, given its stellar record of leadership in the halls of transparency.

But I, by no means, single out Youtube. The current consent decree, the process that has evolved from it, it truly has us pleading for the information we need in order to quote a license, we are waiting for it for many months, even years. And so when it does arrive, or when it does not arrive, the current system provides our only remedy, a very incredibly expensive and risky rate court. And so I just wanted to make a point about transparency, where there has to be a balance between the licensor and licensee.

MS. CHARLESWORTH: Just to follow-
up with that. When you say pleading for information, can you elaborate on that, for the record?

MR. DEFILIPPI: Sure. I mean, the consent decree says that when ASCAP receives a request for a license, it is entitled to request the information it needs in order to quote the fee. We are very good at making those requests. But the response is not always timely, it is not always thorough. And so what we have is a very attenuated process. And there are, there may be good reasons why the licensee does not want to be forthcoming immediately, or comprehensively, with the information. And, again, our only remedy is to march into a rate court, that costs us millions of dollars, and has very inconsistent outcomes.

MS. CHARLESWORTH: Okay. And what kind of information would you routinely request from a licensee?

MR. DEFILIPPI: Revenue usage,
subscriber information, music intensity
information, all of the things that we
consider when formulating a fee proposal.

MS. CHARLESWORTH: Thank you. Mr.
Hoyt?

MR. HOYT: Let me make, hopefully,
three quick comments. Number one, Mr. Woods
example of the direct licensing where the
composer is uninformed of what the value is.
The value to that individual is what he gets
in return in a competitive environment. So if
he wants a new guitar and he says, I'm willing
to give you this copyright for a new guitar,
that is the competitive market at work.
Secondly, I think we, there are a number of
different things where we all agree. We want
a competitive rate. We want, I think, we all
want transparency. And I would agree with Mr.
DeFilippis, that that would entail more
information from the user, as well as from the
provider. So you have that whole thing. I
think the transparency issue is fairly clear
from all aspects of things. And that is what, I think, both sides of the table want. I think we also want a competitive rate. But the problem is how do you get to those things?

Not what the ultimate goals are, but how do you get there? And I'm disagreeing mildly, I think, at times on how you get there. The third thing I want to say is the reason that the rate court exists is because the PROs are monopolists. And that is the -- and so you have to balance that monopolistic power against the efficiency of aggregating copyrights. And the aggregations, the aggregation of individual copyrights, that leads to the monopolistic practices of all three PROs, at this time. And I think, in the future, there may be more PROs that exist that use the same type of, I would say, model. And we consider the model that SESAC has put forth, as the monopolistic model that we would face, as users, if we don't have the rate courts in place, and continuously have those
rate courts in place.

MS. CHARLESWORTH: Thank you, Mr. Hoyt. Mr. Raffel.

MR. RAFFEL: Thank you. Yes, as we discussed, a new licensing policy, I just want to make a quick point that low power FM stations are critically important for community organization. And, but they are, in many ways, affected by policy that affects much more, much larger groups. You know, the royalty revenues from low power FM are a relatively tiny drop in the bucket. But about -- recently, at the survey, about half of the stations surveyed, were broadcasting on the web. And about half of those cited, web licensing fees as the reason. And it is, as you can imagine, being on the web is becoming more and more important for a station. So I just want to make a quick -- yes, just a quick point, to remember the small guys.

MS. CHARLESWORTH: Okay. Mr. Rae?

MR. RAE: Transparency is really
interesting. But it is, kind of, like
transparency for whom? You know, when you talk
to a songwriter there is, sometimes,
consternation about how those deals were
arrived at, and what the terms are. So, you
know, in some instances we can point to new
and exciting novel deals that, kind of, can
come out of direct market negotiations between
those in the music environment.

But they still do not, you know,
meet the criteria that I would apply for the
writers to understand how compensation is
arrived at, and distributed. Along those lines
there is a lot to like, you know, I read the
BMI filing, and the ASCAP filing. There is a
lot to like there.

I think that, you know, solving
the interim rate issue would be tremendous. I
think that that would relieve a lot of tension
even within the current rate court structure.

What makes me nervous is, if we
are talking so much about transparency, moving
to arbitration seems like a backwards step from transparency.

Because, as I understand, those proceedings are sealed, unless there is a directive for them not to be. So that is kind of concerning to me. I'm really glad that Doug is here, because Doug just keeps hitting on all the things that I think are, really, really, important from the creative side. Over the years on the master use, we have had tons of unattributable income. And we had a lot, a lot of deals that were struck that did not benefit the sound recording artist on any fundamental level, outside of what was stipulated in their contracts. There is, also, file sharing lawsuits, where that money did not make it to the people who were getting ripped off. So I think that this is an opportunity for us, as we figure out how we want to redraw the lines, and some designations, interactivity, non-interactivity, figuring out what process, for
rate standards is most efficient, and allows
the music to get to the marketplace more
quickly, and also compensate composers, and
performing artists fairly.

    That is the riddle. The path to
get there is interesting. Bundling rights, on
the PRO side is interesting. I can completely
understand how difficult it must be when you
look at your international peers, to see the
environment for licensing look, you know,
completely different than it is here. Of
course then you run into the problem of HFA,
song by song, and so on, and so forth.
Meanwhile, you know, folks want to get new
products to marketplace, and people want to
hear music. So somewhere in between solving
all of these little tiny problems, and ending
up with, you know, potentially passable piece
of legislation that would address them all,
seems like a tall order, even within our
industries.

    MS. CHARLESWORTH: Thank you. We
are going to try to remain optimistic. But I think there are quite a few issues that need to be solved, as we listen to the roundtables. How to reconcile collective licensing with, perhaps, some direct licensing. How to achieve fair rates, how to achieve transparency, all very important issues. Mr. Diab?

MR. DIAB: I will just be really quick because I know everybody is sort of tired. So I just wanted to respond to one point about the transparency. I think, you know, what we are really talking about is aligning incentives with those of the creators, in terms of identifying the repertoire they are licensing. And I think that is an issue that we run into, on the licensee side, where you know, whereas we are asked information about how to value a license, it is sort of, like, a chicken and egg situation.

Because, you know, obviously part of the value of the license is knowing exactly
what is being licensed to you. And that is
where you sort of run into a lot of problems.
So I think if you can look at, you know,
trying to create incentives to, maybe, enable
that information to be readily available to
licensees, I think that would be a vast
improvement.

MS. CHARLESWORTH: Okay. Yes, our
time is up. We are actually running right on
schedule, which is great. We are going to take
a break for 15 minutes, until a quarter of,
and go on to the next panel, and we will be
re-arranging the placards.

(Whereupon, the above-entitled
matter went off the record at 10:32 a.m. and
went back on the record at 10:47 a.m.)

MR. DAMLE: I think we have
everyone. Thank you very much. This next panel
is a panel on sound recordings and,
specifically, about the statutory licenses in
Sections 112 and 114. Before we get started I
wanted to offer, the new people on the panel,
an opportunity to introduce themselves, and
explain what perspective they are bringing to
the panel. So we will start over here with Mr.
Marin?

MR. MARIN: Hi. My name is Aldo
Marin, I represent Cutting Records, Inc. We
have been an independent label since 1983,
mostly in the dance and latin market.

MR. DAMLE: Okay, thank you. Ms.
Greer?

MS. GREER: Hi, Cynthia Greer,
Sirius XM Radio. We are a licensee of four
statutory licenses.

MR. DAMLE: Thank you. Ms.
Finkelstein?

MS. FINKELESTEIN: Hi. I am Andrea
Finkelstein from Sony Music. I'm in the
business affairs area and I've been with Sony
Music since it was CBS records. So quite a
long time. I oversee the mechanical licensing
area, as well as a lot of other business,
centralized business affairs functions. And I
represent Sony Music on the SoundExchange Board.

MR. DAMLE: Mr. Albert?

MR. ALBERT: Good morning, I'm Eric Albert, I'm with a company called Stingray Digital. Stingray is, actually, based in Montreal, Canada. We operate in just over 120 countries now. So I think I will be able to bring somewhat of an international perspective, if you will, to this debate. And our services leverage both the collective licensings, and also direct licensing with publishers and record labels.

MR. DAMLE: Thank you. Mr. Resnick, I think you are next.

MR. RESNICK: Yes, I am. My name is Perry Resnick, I'm an artist representative on the SoundExchange Board, but I'm not here representing SoundExchange, Colin is doing that. I'm here representing featured recording artists. I'm a principal at RZO which is a business management firm for featured
recording artists.

MR. DAMLE: Thank you. Mr. Kohn?

MR. KÖHN: Hi, I'm Bob Kohn. I'm author of Kohn on Music Licensing. I founded a company called Emusic, which is selling downloads, MP3 files, in '97, '98. And I founded a company called Royalty Share that provides digital revenue, and royalty processing services for record labels, music publishing companies, and music distributors. No longer associated with any of those organizations, other than as a shareholder. Thank you.

MR. DAMLE: Thanks. Mr. Fakler?

MR. FAKLER: Yes, hi. My name is Paul Fakler, I'm with the firm of Arent Fox. I'm here, today, representing both the National Association of Broadcasters, as well as Music Choice, which is the world's first and oldest digital music service.

MR. DAMLE: Thank you. And, Mr. Rushing?
MR. RUSHING: Hi, I'm Colin Rushing, I'm the General Counsel of SoundExchange. SoundExchange is the organization that collects and distributes the royalties that Digital Radio Services pay under the Statutory Licenses in Sections 112 and 114.

MR. DAMLE: And, Mr. Malone?

MR. MALONE: I'm Bill Malone. I'm a lawyer, for the Intercollegiate Broadcasting Company, which is the trade association, if you will, which represents a large proportion of the college broadcasters, both those on closed circuit AM companies and then educational FM licensees. And there are a few who are also commercial FM licensees. And I've -- IBS has no employees, so I'm an outside lawyer, essentially, representing them.

MR. DAMLE: Okay, thank you. So we have heard, in the written comments, and at other roundtables, and today, that the
statutory licenses in sections 112 and 114, are generally effective, but that improvements could be made around the edges. And there, obviously, was a debate in the earlier panel, about some of those improvements. So we would be interested in hearing, obviously, more about your views about those improvements. Including, for instance, the line between interactive and non-interactive. And whether there should be, perhaps, even a tier in between. There are a couple of specific things that we would be interested in hearing views about, in particular, that we haven't had a chance to explore in earlier roundtables.

One is we have heard a lot of criticism, in the written comments, from the digital service providers about the limitations in Section 112. Including, for instance, the fact that it is limited to one phono record. And the requirement to destroy that phonorecord, within six months. And so to the extent that people have views about that
critique, and whether that is a fair critique, we would be interested in hearing that.

Now, the other thing we have heard, and we'd like to delve into a little bit more, is the difficulty of settlement before the Copyright Royalty Board. And to explore, a little bit, about why that is difficult, and things that might be improved to make settlement easier before the Copyright Royalty Board. So, again, without limiting the topics that are open for discussion, I just wanted to put those two, specific, issues out there. So Mr. Resnick, I guess we will start with you.

MR. RESNICK: Okay, thank you.

First I would like to say what I do is on behalf of artists. I do audits of record companies, I do audits of music publishers, and with my clients, which include U2, Rolling Stones, David Bowie, Sting, and people like that, we have recovered over 50 million dollars in royalties, for our clients. And we
are a very, very small piece of the industry,
we are way under one percent, our clients. So
extrapolate that to the rest of the industry,
and we are talking big money, and 80 percent
of that is attributable to sound recordings,
and 20 percent of that is attributable to
copyrights, music publishing, you know, songs.
The 114 license, the best thing that you can
do for artists is to eliminate this
interactive, non-interactive artificial
dichotomy. There is a whole, it is a spectrum,
really. It is not really black and white. And
the non-interactive, which is administered by
SoundExchange, is working great. Artists get
paid 50% percent, it is transparent. And there
is hundreds of millions, billions of dollars
that is going to labels that is not being
shared with artists. And there are many ways
that this happens. This happens by guaranteed
payments, non-recoupable payments, by pieces
of -- by insisting on equity in the licensees.
And the labels have become experts at
extracting value from the digital service providers that is not related to the actual royalty stream itself. So there may be five aspects to a deal. There could be a non-recoupable payment, there could be technical setup fees, there could be a royalty rate, there could be minimum payments, there could be minimum annual guarantees. And the artist only gets paid on that one royalty rate stream, which is a fraction of the value of what is being licensed. So that is how I would like to start.

MR. DAMLE: Okay, thank you, Mr. Resnick. Mr. Kohn, I think you are next.

MR. KOHN: Thank you. I would like to make a few general comments, because I wasn't on the first panel.

MR. DAMLE: Sure.

MR. KOHN: And then we could talk on some of the details on 114. I've heard, earlier, someone saying and maybe a few people said that the purpose of the copyright law is
to compensate recording artists and
songwriters. And I think it is helpful to put
this in higher structure, in this enquiry, in
perspective. In that, that is not the case.
The purpose of the copyright law, and the
Supreme Court has said this over, and over
again, is for the public interest, it is to
promote the creation availability of writings,
of works of authorship. And we take that
perspective, you would have to understand that
compensating recording artists, and
songwriters, is a means by which you
accomplish that goal. So without the
compensation to the recording artist, and the
songwriter, you wouldn't have the incentive to
create these works, and to make them available
to the public. There would be underproduction
of copyrighted works. So you have the
compensation, so there is an efficient amount
of copyrightable works are created. And that
is where the role of transaction costs come in
to this question.
Now, nearly everyone here, I can't say everyone, but nearly everyone here, is a transaction cost. It seems to me that people who -- people don't like anybody, they don't like transaction costs unless they are the transaction cost that is going away. And that is pretty much what we have seen, this morning, what people have said. If transaction costs are money that don't go to authors, and to songwriters, and to recording artists, they go to other people. So, therefore, if the main purpose of copyright law is to create and get works available, and they are not -- the compensation is not going to the people who are actually creating the works, and they are going to somebody else, then the purpose of the copyright law is not being served. So, really, transaction costs, here, are the real problem. Now, we saw this morning, with the RIAA, they don't have a problem with 115. They like 115. But they don't like 114, and they
don't want to see 114 expanded. Now, all of
these compulsory licenses are there,
essentially, the only way you can justify them
is to reduce transaction costs. You see the
NMPA, they like to get rid of 115, okay, that
is -- they want to, that would increase
transaction costs of licensing the underlying
songs. And, of course, their agencies, and
their reason for existence, and the
transaction costs would increase, to those
entities, due to licensing of songs. Other
organizations, MRI came out against collective
licensing. Well, they don't want collective
licensing because they are making a lot of
money from all the complications. Certainly I
have made a little money selling a book, an
1,800 page book on music licensing. I'm part
of the transaction costs. Certainly that book
is, because people seem to want to buy it, to
solve some of these problems. I guess my goal
is to stop updating the book, because I want
to do something else, give it to somebody
else. So I really don't care if my transaction
costs are reduced. So I think that is the
theme that you have to think of that, why we
have copyright to begin with? It is to make
works available. And if you take a look at
what is going on, on the video side, the audio
visual work side, you have all of these movies
that are not available on Netflix, and Amazon,
Prime, and whatever.

Because everyone in the movie
industry says, we can't clear the music
rights, it is just simply not worth the time
to go back to a 1936 movie, or whatever, to go
find the que sheets, or create them, and find
out who we have to license.

Because those synchronization
licenses, back in those days, simply wouldn't
apply to anything other than exhibition in
theaters or, perhaps, television if they would
arise later on. So you have the public, and
the purpose of the copyright law is to make
these works available. And because of the
transaction costs of licensing the songs, and
the recordings, or whatever that are in these
motion pictures, they are not available. So
the public isn't being served. So if you are
going to take away 115, and take away 114, you
are going to end up even in a worse position
than we are today.

Because you are going to have what
you have on the motion picture side. So I will
leave it there. I have some specific comments
on 114, but I don't want to, you know,
dominate -- you know, talk more than I should,
so --

MR. DAMLE: You can feel free to
offer your thoughts on specific topics. 19

MR. KOHN: Okay, I thought I would
be polite. On one -- certainly on the sound
recording side I think, clearly, 106.6 has to
be expanded to include all the performances,
all public performances.

I think, generally, even the NMPA
has come out in favor of that. There have been
all of these practical issues, and problems of ASCAP, and BMI, and SESAC, perhaps being concerned that they are going to get a smaller cut, from terrestrial, radio, because some money is going to the sound recording side. And everyone is going to be watching out for their share of the pie. But, at the end of the day, you clearly have to increase -- you have to expand the right under 106.6 to include movies, not just by digital audio transmission, but by any means of public performance. It is only fair, and that should be done. But when you do that, the question is, okay. How does 114 apply to those new performance rights? And I think because it has been established, through history, that these webcasting kinds of compulsory license, under 114, that apply to digital audio transmission, should probably apply. Because it is a new right that, a new right of public performance with terrestrial radio, that it would flow through
SoundExchange through webcasting under, under 114. Half to the artist directly and half to the record companies. But I'm also suggesting that in 114, that should be expanded to, not only, include whatever it includes today, the compulsory license should include interactive streaming. And it should include permanent downloads. I can tell you, as emusic, trying to get -- I never did get any licenses from the major record labels, because they wouldn't license to MP3. I can talk about the history as to why, you know, one of the mistakes that they made over time. But, at the end of the day, the major record companies, through their ability to get massive advances, which DCs would pay money over to the small companies. None of which, like even Spotify, can find, or Pandora, can find a business model, because of what they have to deal with, in the sound recording side. It is not making these works available, and it is not helping the growth of the business. It is just, simply, going to the
transaction costs, and the bonuses of
executives, of the major record labels.

That is simply, you know, not
allowing the business to grow. And I think
that has got to stop. So I think that 114
should be fully expanded to include all of
these different digital kinds of rights. And,
of course, it should cover reproductions and
performances, you know, however you want to do
that.

On the other side, I would expand
Section 115, number one, it should be a
blanket license. Someone should just be able
to send a letter to registry and boom, you
know, you get across the board. It was
discussed, in SIRA several years ago. I was at
a roundtable that was conducted seven years
ago, whenever it was, and that would have
been, you know, the way that could have gone.
It should include 115, all forms of downloads,
of course, not just permanent downloads, but
streams, and public performance right should
be folded in. And I know this is a 114 panel, we can get into that later. But I want to show that there is some fairness, here, that these publishers are correct in terms that they need to have a direct relationship with those who they are licensing for. And there should be that kind of relationship.

MR. DAMLE: Thank you, Mr. Kohn.

Mr. Fakler?

MR. FAKLER: Sure. Well, first of all, on behalf of the National Association of Broadcasters, I would just say, in response to that, and it probably won't come as much of a surprise to you.

That, you know, there has been almost 100 years of this mutually beneficial relationship between broadcasters, record companies, and artists, and the public, that has been categorized, legally, by free air play, for free promotion, free to the public. Congress has revisited this, has been asked to revisit this issue many times and has,
consistently, and correctly, determined that it would not be wise to the ecosystem, to upend this long-standing relationship.

But, moving to the questions that you asked, about sections 112 and, particularly, settlements before the Copyright Royalty Board. With respect to your ephemeral licensing problem, what we are really talking about, here, are ancillary copies, right?

Okay, we are talking about copies that are made, or at least what I'm talking about, are copies that are made solely to facilitate an otherwise lawful performance of the sound recording. Whether it is a server copy, or multiple server copies for different bit rates, buffer copies, cache copies, all of those sorts of copies have no independent economic value, other than to facilitate that performance. And as the Copyright Office, itself, has acknowledged in the past, the value comes from the performance, that is where the value should be determined, in rate
setting, and in the statutory licenses. Both NAB, and Music Choice, would support, as has been previously recommended by the Copyright Office, getting rid of the 112(e) license, and just expanding the 12(a) exemption, to cover these sorts of ancillary copies. To the extent that these copies cannot be accessible, on demand, to the user, to the extent that their sole purpose is to facilitate these non-interactive program performances, they shouldn't be separately valued. And, frankly, they never have. Either in the settlements, in front of the Copyright Royalty Board, the decisions in front of the Copyright Royalty Board, or even in direct licenses, in unregulated sectors, where the record companies have tremendous market power, and have been able to extract any sorts of terms that they desire. Including equity and rates that have deprived those services from ever turning a profit, any one of them. Even there, there is no separate fee for these ancillary
copies.

MS. CHARLESWORTH: So just a quick follow-up on that. I mean, from a practical standpoint, when you go through the 114 and 112 proceeding and, you know, they set the rate at the end, I think, for the 112. I mean, is this a real problem?

Hasn't, at least in the 114 context, isn't the ephemeral copy problem fairly well solved through that CRB proceeding?

Or --

MR. FAKLER: Well, it is not -- not if you look at it from the perspective of you waste all this time and energy, separately trying to come to a negotiation. Sometimes it is solved at the end, sometimes it is solved at the beginning. In the last satellite and PES proceeding, at the outset, everybody agreed, well, we are just going to have it be attributed to be whatever the percentage is, of the 114.
But just because there is this kludgey work-around, that does consume a certain amount of time and energy, and it gives one side the ability to, you know, it is one other point you have to negotiate out for, really, no reason. We think there is really no point in maintaining this fiction. If we are talking about tweaking these licenses, to conform to technological business and market realities, this is low hanging fruit. And it ought to be done.

MS. CHARLESWORTH: So rather than amending, well, could you imagine a scenario where the 114 license would just, simply, include all the necessary copies?

And not so much -- maybe just get rid of the 112 exemption, altogether? Is that a -- maybe even a better solution?

So that when you set the rate under 114, just that license would be expanded to include the necessary ephemeral copies? I see some nodding down the table. I mean, that
is -- there is a provision in the 115 streaming regs, I think, that does that. And, I don't know, maybe you could both comment on that?

But I was just wondering why you need a specific exemption in 112, why can't you just roll it all up into 114?

MR. FAKLER: Well, I think part of it is because the 112 is already there, and it will have to still be there, because there are licensees, you know, business that use the 112(a) exemption, that do not use the 114. So -- and it applies to musical compositions, as well as sound recordings, 112. So it seems like the most logical place to do it.

If you can include all of those rights within 114, it seems like a much simpler thing, to take 112, which already exists, and has a broader scope than 114, and just fix it. So it covers everything that is actually being done, than to try to recreate one --
MS. CHARLESWORTH: Well, you could just -- we could just write it and just say, you know, when you get your 114 license it includes all these rights, and get, just -- you know, amend 112 so it is consistent with that. In other words, why should you -- your question why you have two different licenses, and two different proceedings. And I'm sort of suggesting maybe there is another course. I mean, we could --

MR. FAKLER: Yes.

MS. CHARLESWORTH: The rest of 112 may need to remain in some form. But --

MR. FAKLER: And, of course, it would all depend on how it was done, in the details.

But it certainly is, is a possibility, that should be considered.

MR. DAMLE: Thank you, Mr. Fakler.

MR. RESNICK: On Section 112 I just do not get paid on that, directly. That only
goes to some copyright owners, the record labels. So if it was 114 artists would get 50 percent directly, which is the fair way to do it.

MR. DAMLE: Okay. Thank you, Mr. Resnick. Mr. Rushing?

MR. FAKLER: Could I just address the issue of --

MR. DAMLE: Sure, Mr. Fakler.

MR. FAKLER: -- settlements before the Copyright Royalty Board, just --

MR. DAMLE: Yes, please.

MR. FAKLER: -- quickly. Here I can speak from Music Choice's perspective, because I represented Music Choice in two proceedings, in front of the Copyright Royalty Board. Certainly, from that perspective, the biggest impediment to settlement, is the positions that have been taken. And, frankly, in both proceedings SoundExchange's refusal to even discuss settlement with us, substantively, until the proceedings began. Literally we
could not even get a substantive response. And when we did it was, we think your rates should go up 400 percent. And then we were already in the proceeding, we were already in the process of we had filed our written direct statements. So, in fact, the first pre-existing service proceeding, in front of the Copyright Royalty Board, didn't settle until the first day of trial, when Chief Judge Sledge admonished counsel for SoundExchange to go settle.

Suddenly settlement discussions were possible, at that point. But, frankly, there has been an intransigence. Maybe part of it is because Music Choice is perceived as a small player. Although, you know, as I mentioned, you know, before when I introduced myself, as the first and oldest digital music service, with over 50 million monthly listeners.

But it is not because of -- that, I can't -- there are a lot of things wrong with Copyright Royalty Board procedure, in my view, as somebody who is a litigator,
primarily, in my legal practice. There is plenty wrong with it. I don't think you can blame the lack of settlements on Copyright Royalty Board procedure.

I think there is so much, typically, at stake, in these rate cases. And, and I think that, you know, there is a tendency towards hyper litigation in that context.

I think that was true under the CARP system. So, you know, you hear some recommendations, like we are going to solve all these problems by going to private arbitration. Does anybody remember the CARP system? I mean, everybody ran back to Congress begging them to undo that. That is how arbitration is going to work. The problem isn't -- less due process is not the answer, certainly, to keep getting these things more efficient, getting things settled. But that is --

MR. DAMLE: Okay, thank you, Mr.
Fakler. Mr. Rushing?

MR. RUSHING: Sure. I wrote some things down, but I will address some things that Mr. Fakler said. Starting with the settlement point.

I have a different recollection of the last proceeding we were in, together, in terms of settlement talks, but I won't go into details because my memory of that is a little fuzzy.

But it is not the case that we refused to engage in settlement, or that we were only willing to talk on certain terms. And I will just leave it at that, because I don't want to bring confidential settlement discussions into this sort of public forum. I will make some observations about settlement, though, which is we had an experience, years ago, where we demonstrated that settlement with large swaths of the industry was possible. It was in connection with the Webcasters Settlement Act of 2008 and 2009.
Sometimes people think about that as purely about the past, because it came up in connection with the discussions around the webcasting two rates that were then being appealed.

But the -- what happened, at that time, was a settlement that actually covered, or settlements, a series of settlements that covered the Web 3 term, as well. It went all the way, you know, so we did these agreements in 2009, covered the term from 2011 through 2015. And there were some features of that process which, I think, are worth keeping in mind. Because I think they were very effective.

One was that they had deadlines, which are very good at getting people to concentrate their attention. Two, and I think this was the most critical part of what those Acts provided. It allowed the parties to make agreements non-precedential.

One of the biggest problems, that
our industry faces when we are up against a Copyright Royalty Board process, or any sort of rate court proceeding, any time there is a set of judges who can take evidence into account, and then set a rate accordingly, at the end of the day you don't have control over what they do with the information that comes before them. And you always have to worry about, all right, I'm willing to do such and such with this particular type of service, it makes sense for that particular type of service.

What is going to be the impact on the broader case? That animates everything we do in connection with settlement. It is an unfortunate byproduct of any sort of rate court back stop, is you have to worry about the broader litigation context. The Webcaster Settlement Act removed that as a problem. The other thing that the Webcaster Settlement Act had was a feature that, frankly, allowed to us have certainty as to the settlements. We did
the agreements the way the Act, that
particular Act operated. They just became
binding on copyright owners, and then services
could elect into them or not. I'm not
necessarily advocating the sort of default
standing WSA structural, along those lines.
But one of the things that I think would help
the settlement process is if there are, in the
statute, specific deadlines when settlements
must be adopted. So, for example, one of the
things that happened to us, in Webcasting 3,
was we reached agreement with a group of
college webcasters, represented by someone
other than my friend, Mr. Malone.

But it was this group, College
Webcasters, Inc. We entered into a settlement
with them. We also did a settlement with NAB.
Neither of these settlements were actually
adopted by the CRB until the very end of the
proceeding. And so we found ourselves unsure
of what, you know, whether the settlements
were, actually, going to be adopted. And the
current panel has, actually, in their scheduling order laid out, you know, a schedule according to which they would publish any settlements that had been entered into during the negotiation period.

That was promising, I thought that -- there was an indication, to me, that they were focused on the need to promptly publish settlements, when they are reached.

Nonetheless I think a little, you know, more structure around that would help, just to give the parties certainty as to, as to whether settlement would be adopted. And so I would think those two, those three things, a deadline, deadlines always help. They can also be problems, obviously.

Allowing settlements to be non-precedential, and something to allow more certainty would be useful in terms of facilitating settlement. With respect to I think the rate settings have become very simple, as far as setting the actual rate.
I think the last three times this has been an issue, it has been resolved by stipulation. And then, essentially, in practice the ephemeral rate is just folded into the overall 114 rate. From the licensee's perspective it has an impact on distribution, and so we need a certain rate. I do think it is important that we not diminish the value of particular rights.

But, as a practical matter, I do think that the setting of the 112 license seems to be, basically, working. Which is a segue to the general point I was, otherwise, going to start with, which is -- and Sy, you alluded to it, at the beginning. So the Section 114 license does, in general, seem to be working. Stakeholder seem generally satisfied with the process. I was struck by the comments that were filed, in that you have both creators and licensors, and licensees, all sort of in general agreement that the overall system, really, basically works and
maybe needs some tweaks.
And the main tweaks that I would focus on, I think that we are going to talk about on later panels, but I will go ahead and allude to them now. First, the statutory license for sound recordings works because it is a true statutory license that covers everything. Well, as we know, there is an important gap which is how do you deal with sound recordings protected only by state law? The fact that there is that open question makes the statutory license more complicated than it was ever intended to be. So that is a problem that needs to be addressed.

Second, you know, it is -- we will talk about this on the next panel. I agree that definitely needs to cover all radio broadcasting, the lack of a terrestrial performance right is an ongoing problem. I won't spend a lot of time talking about that now because that is what the next panel is
And then, likewise, the next panel is going to get into rate standards. That is a problem, the fact that different radio services have different rate standards. We think all of these rates should be set under a willing buyer, willing seller standard. It is only fair. In terms of the system, and this is what I will spend a couple of minutes on this, and then I will go, not leave, but I will yield the -- So I think if you are going to have a statutory license, that is obviously a policy question. And, and a lot of thought has to go into that.

And the scope of the statutory license is, also, a policy question. But once you make the decision to have a statutory license, I think you have to have several important principles in mind. First, whoever administers that has got to be guided by principles of transparency, efficiency, and accuracy.
I think everyone probably, basically, agrees with that, and people talked about on the first panel.

But it is important for rights owner to know that their money is being well handled. And that the rights are being administered fairly. Related to that I think it is critical that, whoever is administering the statutory license, actually, be controlled by the people whose interests are at stake.

That, those are the people who have a direct stake in those three principles. Also, those are the -- if, if, and if it is non-profit, and if it is organized, around this basic idea, that is also going to be the group that will be focused on the biggest problem with the statutory license. And, especially, a statutory license like we administer, which is it covers all sound recordings and it applies to all artists. It is whether or not these folks have ever signed up with those. When you are facing that it is
very tempting, for an administrator, to say
that that stuff is too hard to deal with, you
know, let's get as much money out as we can,
and not worry about this stuff that is really
challenging to do.

And it is critical that that
organization have industry pressure to do what
it needs to do in order to get -- to strike
the right balance but erring on the side of
total accuracy, total transparency. And
ultimately the organization, and I think this
is what has guided SoundExchange, is we see
ourselves as working to act in service of the
overall industry. And our goal, as an
organization, is to get to a point where we
can, sort of, fade away into the background.
So the money, and the data, and all of that
just sort of flows.

I think that is the way that this
system works best. And, you know, and I think
those would be good principles for any
intermediary.
MR. DAMLE: Thank you, Mr. Rushing.

Let's see, I think I have Mr. Marks next, and then Mr. Rae.

MR. MARKS: Thank you. I have several comments. I just -- let me start with the last conversation about the limitations on 112, and the settlements. I agree, largely, with what Colin said. The biggest impediment we have had, in reaching settlements, has been the fact that you don't want to do a deal that is going to prejudice the rest of your case.

And so if there is a way to address that, especially when you are coming up upon a new proceeding, or in the middle of a new proceeding, that would be the best way to facilitate some settlements that, otherwise, would happen. I also think that the CRB, it would be nice to have, maybe, some set times for the CRB to rule on settlements that are proposed. We had, our last mechanical settlement, that was offered, a delay of almost a year. This is not good for anybody
because it just creates uncertainty about
whether the terms of the settlement are going
to be ratified, or not.

There didn't appear to be anything
objectionable, it turned out not to be
objectionable.

But, you know, you have delays
that are built into the process, it is not
good for any of the parties.

MS. CHARLESWORTH: I just want to
say, for the record, there was constitutional
litigation going on. I think that contributed
to that, in terms of the status of the
Copyright Royalty Board. I'm just --

MR. MARKS: Yes, I'm trying to
remember where the timing --

MS. CHARLESWORTH: In other words I
think that may have impacted the timing of the
adoption of the settlement, it is the IBS
case.

MR. MARKS: Well hopefully, then,
that won't be an issue going forward. To the
extent it is maybe that is something that, you know, could be addressed. You know, with regard to the idea of, you know, folding in 112 to 114 or not, you know Mr. Fakler stated that the technical business and market reality is that there is no extra value to this.

I think it is precisely the opposite with regard to all those three. The mere fact that in a direct license somebody bundles all the rights necessary so that it is easy to do the license, and doesn't demand a separate payment for, you know, a server, or other kind of copy that is necessary to make. It doesn't mean that there is a recognition that there is no value to those. So -- and I think, as we discussed in the previous panel, there are technologies, and technological services that are available, that are designed to make more copies closer to consumers.

And, therefore, provide an advantage to those services. That is just the market at work. But those copies, which are
covered by 112, have value for somebody who
wants to pay to be able to deliver their
content more quickly, or in a more stable or
robust way, to their consumers.

Whether it is folded in or not, to
114, I don't think is the issue so much as
ensuring that, you know, if it were folded in,
given that there has been kind of a de facto
folding in, in a lot of the proceedings, that
there still is required to, that the value for
those copies doesn't go by the wayside, and
there is still a requirement to address those,
address that value and figure out what it is.
With regard to terrestrial, I agree with Bob
that, we need to expand 106.6 to cover that
right. And, also, that it should be brought
within 114.

And the notion that this is
Congress that has been saying, it has been
wise not to expand it, I don't believe that to
be the case. I believe it to be politics. I
certainly hope it is not the case, because
that would put our policies in line with North Korea, Iran and, you know, other countries of the sort. So I just, I guess that is all I will say on terrestrial.

In terms of this idea of expanding, and the 50/50, I just want to take a step back for a second. When the compulsory license for 114 was created, it was created for radio-like services, where there had been no revenue and which were, at the time, thought to be akin to some of the ancillary revenue that you would find in a 50/50 split, maybe, in an artist's contract.

We all know, today, that some of the services operating within 114 but, certainly, those outside of 114, are not ancillary revenue, by any means. Streaming is a very large part of the revenues, and growing. We know that downloads have, in the last year have been declining. Digital revenues, generally, are two thirds of the revenues to the industry. So these revenues,
especially on the interactive side, and since
that is the suggestion here, to bring those
within Section 114, are critical to driving
the investment of all record labels, to create
recordings.

And, you know, we -- and I think
it was Martin Mills who recently recognized
that a 50/50 split, in a world where streaming
is the principal revenue, as opposed to
downloads, is not appropriate. You can't
operate a record label like that because the
investments that have been made, and last
decade, close to 23 billion dollars, just in
talent, an additional several billion in
marketing.

These are the kinds of investments
that need to be made in order to create
market, help artists reach their potential,
and everything else that goes into that
process. And if you just siphon off 50
percent, by statute, and, further, subject
things that are in the market now to what is,
otherwise, in the marketplace -- or into a statutory license that, as we discussed in the last panel, has a lot of problems when it comes to rate setting, in terms of leading to below-market rates.

We just would not see that as a viable way to move forward for this industry. And sweeping statements about how advances, and equity, are treated, I have heard them twice today. You know, settlements -- they are just flat wrong, okay? I'm not going to go into how any one particular company does it. But saying that advances are never shared, or equity is never shared, or settlements are never shared is just plain false.

And we should stop throwing around sweeping statements like that when it comes to those kinds of things. And all you have to do is look around. There are 500, more than 500 services that have been licensed outside the statutory license.

They are all available up on the
Why Music Matters site. There is a thriving marketplace for whatever consumers are demanding, whether it is statutory plus downloads, cloud services, on demand streaming services, you know, advertising based streaming services, whatever it is, the marketplace, on the sound recording side is addressing those.

MR. DAMLE: Yes. So we just want to make sure we don't -- we leave enough time for everyone to speak, and before Representative Nadler comes.

So if I could ask people to limit their comments to just a couple of minutes, going forward, that would be very helpful to us. So I think, Mr. Rae, you were next. And then Ms. Finkelstein. And then Mr. Bengloff after that.

MR. RAE: Of course, you said that right before I speak.

MR. DAMLE: I apologize.

MR. RAE: I know that was a
tactical move on your part. You know, I think
we have a lot of bright people in the room.
And one thing that we haven't actually figured
out, together, is establishing a protocol of
whether we call people by their first name, or
say mister. I'm inclined to do the mister
because the New York times does it. So I think
Mr. Marks raises an interesting point about
return on investment, in this new marketplace.
However, one of the things that we really
appreciate, on the creator's side, the
performer's side, is direct payment and 50/50
splits.

This is something that has been
brought up several times. I raised it, I
think, in my opening remarks on the last
panel. I definitely do not think that anyone
is complaining about the tremendous growth
that we have seen at SoundExchange, under the
current 50/50 split arrangement. Moving on I
can't really resist an opportunity to
philosophize about the constitutional compact.
I think that securing for limited times is an incentive to the author to create, for sure. I think that Mr. Kohn and, probably, everybody in this room should agree that the clause is silent with regard to intermediaries. Intermediaries bring a lot of value to the process. But, you know, we have to look at what that value is when we are trying to figure out how compensation and value accords to creators.

Mr. Fakler brought up low hanging fruit in 112. I think there is another low hanging fruit, that is frustrating hard to reach.

And that, of course, is the public performance right on terrestrial radio. I see that we have Mark and Melvin from Content Creators Coalition, really excited about the work that they are doing.

I think for the first time, ever, as we are looking at international music licensing, domestic music licensing, and what
artists bring to the table, in terms of their performances, we can solve this. And I think that it is very, very interesting that as the United States Congress considers issues of parity, across platforms, that the terrestrial radio exemption remains frustratingly out of reach, before now. Three basic value propositions.

Direct payment, where possible.

Very, very important for creators, particularly in this new environment.

Representation in rate setting processes, even through a proxy. And, right now, in 114 and the public performance right for digital, SoundExchange does provide that proxy representation and rate negotiation. I would prefer, strongly, and I know that a lot of the folks that we work with don't, necessarily, feel comfortable with having their representation in negotiations only being the folks who hold the artist under contract.

One last remark, because I think
you guys are going to cut me off any second.

I can't stand the word disruption, I think it is a stupid buzz word, and I want it retired.

But I do think that there are all kinds of new ways that we have yet to see, to bring music product to new services, to consumers that don't need to require 18 months of negotiation with three major rights holder, with tremendous upfront expense, and only within the permitted contours of innovation.

I think that, that limits our opportunity to create new products that will really drive fans to legal and licensed services. And it may end up frustrating how creators are paid at the end of the line.

MR. DAMLE: Okay. We are going to move, quickly, through the last people that have their placards up. So Ms. Finkelstein, I think you are next.

MS. FINKELSTEIN: Well, my remarks will be brief because I think my friend, Mr. Marks, covered most of the points I was going
But just to show that I'm a brave woman, I'm going to just restate some of the record company apology because I think it is important for people to understand just how much record companies put into investing.

And growing artists and songwriters by supporting every aspect of their career, through billions of dollars of investment, through many hours of commitments to making sure that artists get the tours they need, the publicity that they need, the promotion to making health and retirement contributions through the Union pension plan, to support them. And the idea of moving all of -- or significant chunks of our business, into a statutory license is, obviously, highly problematic.

That doesn't seem like a business proposition that could be retrofitted onto the business that we have today, where we have undertaken those commitments, and we have
invested billions of dollars. I also just
wanted to respond to my friend Perry's
comments about the record companies not
sharing in the advances and guarantees. And I
think that is a misconception which,
hopefully, will be corrected in future audit
work that he does.

MR. DAMLE: Okay, thank you. Mr.
Bengloff?

MR. BENGLOFF: I am going to agree
with Andrea and the fact that A2IM
constituents are the primary financial
investors in the creation process.

A lot of our members, also, invest
in the creation process in terms of their
sweat equity, and labor. And they earn low
profits, and they are really struggling in
terms of the bottom line, how much everybody
is making. I'm not really focused, too much,
on the top line, so we agree there. We need to
define what is true interactivity, as was said
by the Chair.
Everything, once we decide what is truly interactive everything else will be non-interactive. We should define what functionality is, not have any more of this functionality tweaking to create that direct licenses and get excessive income. We are for closed surface market entry.

Equity is shared, in fact, with a number of our members, but not all of our members, and that is the issue. It has to be in someone's contract. I'm not disputing the equity, and advances and things, are charged with some. But it is not charged with enough.

Fifteen plus years since the DMCA, the line is blurred, as was noted earlier by the Chair. Let's reflect current consumer demands.

Bottom line is that under Section 114 each song is created and paid equally. The overall level of creator compensation receipt is correct, and needs to be maintained.

But that creator pay needs to be allocated based on actual music usage, to the
correct owners of those copyrights. The only
criteria that matters on a fair and equitable
basis.

MR. DAMLE: Thank you. Mr. Resnick?

MR. RESNICK: Okay, thank you. The
interactive license, part of the problem is
transparency.

This came up a lot in the last
panel, it has barely come up on this panel.
And the -- yes, we use words like always, or
never, because we have no information. I do
audits of record companies, and I can't get
near any of this information. And I can't get
-- I say, can I go look at the Spotify deal?
No, you can't look at the Spotify deal. Can I
look at this? No, you can't look at that. I
mean, all these direct licenses that they are
doing, I have never seen one of them, I have
never been able to see one of them, because
everything is under confidentiality
agreements. When we do an audit it is a
confidence agreement. But if I learned
something on one artist, I can't use it for another artist?

It is just -- everything is, the only way to get transparency is to bring the interactive onto the 114. There is no other way to get transparency because major labels just don't do transparency. That is basically it.

MR. DAMLE: Thank you. Mr. Kohn? If you could just speak into the microphone?

MR. KOHN: Just to clarify one point. And that is when we expand, if we expand 106 to include the public performance, I said that that should go through 114 collective license, and to be split, as it is split today, as digital audio transmissions.

When you expand 114, as I recommend, on permanent downloads as well as interactive streams, that should go directly to the record companies because it is not a new right, it is just a reproduction right that has been there. Record companies have to
be reminded they are also part of the
transaction cost. When they talk about this
50/50 I think they have to realize that the
problem is, it is because the music publishers
are operating under certain constraints that
they are not operating under.

And nobody is at the -- all the
parties aren't at the table at the same time.
So parity has to be looked in the overall
context of both 114 and 115.

On 112 I was, I don't know, I
don't remember, did record companies, and
maybe someone can answer this, ever collect
from radio stations from making ephemeral
recordings, for the purposes of facilitating
their broadcast?

Because I was surprised that, over
a period of time, as 112 is expanded to
include the digital audio transmission, that
there was any payment for it at all. It
doesn't make sense to me, and it is just there
to facilitate what was, the licensed
transmission.

And, finally, with respect to the CRB, if you just take a look at what has gone on here, I have spent an enormous amount of time trying to figure out the 13 or 14 different licensing regimes for all of these 114 things. Mainly because whatever was decided, by the CRB, wasn't acceptable to all these various organizations and, therefore, you had these settlements. I don't know what the cause of that is. I did meet one of the CRB members, I won't say -- this was a long time ago. But he had no music industry background at all. So one of the things I recommended, in my paper, that I submitted in the comments, is that if there is going to be a CRB, or some kind of a rate board to deal with all these allocations that, at least, the board members be nominated from people in the industry. Both the service providers, the music publishers the PROs, and everybody in the industry. So at least when someone is
selected, by the Copyright Office, whoever, it
is someone who knows the business, rather than
someone coming in just fresh.

Because I think that might have
been symptomatic of what has happened with all
of these different complicated regimes under
114.

MR. DAMLE: Okay. And thank you.

Mr. Malone you are last. And if you could just
be as brief as possible?

MR. MALONE: I think that my
message, here today, is that the college radio
stations really don't belong here. You've got
volunteer staff, sometimes for academic
credit, mostly for not. You've got average
number of listeners per, you know, three. And
they are not in the business to make money off
of the record companies. They are in the
business to teach students how to run a
business, how to program, how to write. It is,
basically, an educational establishment. And
these groups exist in high schools, in
colleges of course, the military academies, and other strange configurations. And I -- the statute just doesn't really take that into account. And the first and practical problem we encounter is the fees that are being charged under Board orders are totally disproportionate to the usage being made of them. You know, SoundExchange came in and insisted on a 500 dollar minimum fee for a group that is, maybe, three hours a night during term times, to audiences of three or four listeners. And 500 dollars is just total disproportionate to what is at stake here. And the Board seemed very reluctant to accept the concept of submarkets.

But, you know, you don't sell on a permanent basis, or any other way, the same price in every submarket. And yet your Board seemed to feel that we belonged with the commercial broadcaster that use the Top 40 format. It just makes no sense. That is the heading.
MR. DAMLE: Thank you very much.

And thank you, all of you, for your participation in this panel, it was very helpful to us, as all the panels have been. And I think I will turn it over to 3 --

MS. CHARLESWORTH: I'm going to step up to the podium. Well, as you saw, we have Representative Nadler has come in and I'm so very pleased to have him here with us today. As the New Yorkers know he represents the 10th Congressional District of New York, which happens to include a lot of artsy territory, I think it is fair to say. And he is now ranking member of the House Judiciary Subcommittee on the Courts, Intellectual Property, and the Internet. Many of you, especially New Yorkers, will know Representative Nadler is a strong supporter of civil rights, civil liberties, and freedom of expression. And we are fortunate, now, to have him advocating for the very important values of our copyright system in Congress as well.
Thank you for coming here today, to offer some words of wisdom, and encouragement, as to how we might go about fixing this. This is the music licensing chart.

I think that Representative -- or Mr. Issa held up at a recent hearing. As you can see it is rather complicated, and we need your help, Congressman. I also want to acknowledge your incredible staff, especially Heather Sawyer, Chief Counsel for the subcommittee, and Lisette Morton, Legislative Director.

They have not hesitated to dive right into these issues. And they, apparently, are very fearless. So we at the Copyright Office are very grateful to be able to be working with them, and other members of your staff, Representative Nadler. And now, without further ado, I give you the Congressman.

CONGRESSMAN NADLER: Thank you.

First let me apologize, I was supposed to speak here, this morning, at 9 or 9:30, but I
had a funeral that I had to speak at. So thank
you for rescheduling. Thank you, Jacqueline,
for the kindly, warm, introduction and for
inviting me to participate in today's
roundtable. As a longstanding member of the
Judiciary Committee Intellectual Property
Subcommittee, I applaud your leadership, and
the truly outstanding work of your staff.

It is my pleasure to welcome
everybody to the great city of New York. It is
wonderful that the Copyright Office is holding
these roundtables in different areas of the
country. And engaging in a critical dialogue
with people working in all aspects of the
music industry. We are directly affected by
the laws governing music licensing.

The Subcommittee on Courts,
Intellectual Property, and the Internet, in
which I currently serve as a ranking member
is, as you probably know, conducting a
comprehensive copyright review. In one of our
very first hearings the U.S. Register of
Copyrights, Maria Pallante, called on Congress to update copyright law, and specifically mentioned music as an area in need of reform.

I wholeheartedly agree. It is often said that if we started from scratch, nobody would write the law the way it stands today. Music copyright and licensing is a pantry of reactions, at different times, to changing technologies. From the development of player pianos, and phonograph records, to the advent of radio, and the internet, the law has constantly been playing catchup and, quite often, failing. To date terrestrial, satellite, and internet based radio stations deliver music to listeners in their cars, homes, and at work.

Each of these uses of music requires licenses from copyright owners, for both the underlying musical work, and the sound recording. With the rights of each often owned and managed by different individuals, or entities. Over time, and in an effort to help
ensure equity and access to this complicated universe, Congress has created the Statutory Licensing Scheme.

Unfortunately the existing landscape is marred by inconsistent rules that place new technologies at a disadvantage, against their competitors, and inequities that deny fair compensation to music creators. Under current law, for example, the rules vary for payment of royalties by internet broadcasters, cable, radio, and satellite radio providers.

Internet broadcasters, like Pandora, pay royalty rates set to reflect a so-called willing buyer and willing seller model. By contrast the rate for cable, and satellite providers, is established through factors set in 1998, that pre-dated development of internet radio. And that many believe result in a below market royalty rate. As a result Pandora has, fairly, complained that it is at a competitive
disadvantage, and creators receive less when their works are accessed through cable or satellite, than when a consumer streams that same work over the internet.

During the last Congress I circulated draft legislation, the Interim FIRST Act, to establish parity among all digital radio services. The Songwriters Equity Act, recently introduced by Representatives Collins, and Jeffries, would similarly modernize the law to ensure that the same willing buyer, willing seller standard, governs songwriters and music publishers mechanical reproduction royalties.

Other provisions of the Copyright Act prevents songwriters and publishers from providing evidence, in Federal Rate Court, under a 1941 Consent Decree governing licensing of their works. The Songwriters Equity Act has removed that evidentiary ban, thus helping songwriters obtain a fair market value for their work.
In the meantime the Department of Justice recently announced the much-needed review of the Consent Decrees that govern ASCAP and BMI, two of the performance rights organizations responsible for collecting and distributing royalties. Meanwhile digital providers are paying nothing, at all, to artists who recorded many of our culture's greatest musical classics, before 1972, like Aretha Franklin, the Birds, and the Temptations.

The RESPECT Act, recently introduced by my colleagues, Representatives Holding and Conyers, would close a loophole in the law that has allowed digital providers to argue against paying any royalties for these great legacy artists.

Of course one of the most glaring inconsistencies, and injustices, is that our performance artists, background musicians, and other rights holders of sound recordings, receive absolutely no compensation, when their
music is played over the air on terrestrial, meaning AM or FM radio.

In 1995 Congress required payment when sound recordings are transmitted digitally. But we have yet to extend this basic protection to artists when their songs are played on AM, FM radio. This is incredibly unjust. The bottom line is that terrestrial radio profits, from the intellectual property of recording artists for free.

I'm aware of no other instance, in the United States, where this is allowed, and it needs to be remedied. We are in a short list of countries, we are joined by such other countries as Iran, North Korea, and China, that do not pay performing artists when their songs are played on the radio.

Great company. And when American artists' songs are played in Europe, or any other place that provides a sound recording right, these countries withhold performance royalties from American artists, since we
refuse to pay their artists, we don't have reciprocity. Although the existing music licensing, and copyright scheme can be difficult to understand, the solution is simple.

If Congress is going to maintain compulsory licensing then any statutory rate standard should attempt to replicate the free market to the greatest extent practicable. And the same rules should apply to everyone. The law should be platform neutral, and all music creators should be fairly compensated.

It is well past time to harmonize the rules, and put an end to Congress creating arbitrary winners and losers. There have been several proposals to address individual and equities in the music landscape. Some of which I have just mentioned, and that I support.

But if we had to rationalize the law, and level the playing field, we should take a comprehensive approach. At this year's Grammy on the Hill event, Recording Academy
President, and CEO, Neil Portnow called for
the industry to coalesce behind a music
omnibus, or music bus.

His call for unity was later
echoed by Republican Whip Kevin McCarthy -- I
should say now Republican Majority Leader,
soon to be Kevin McCarthy, and Democratic
Leader Nancy Pelosi, who agreed that the time
has come for Congress to address these issues
in one package.

Last week in the Judiciary
Committee's first music licensing hearing, I
made a public commitment to take up their
charge. With colleagues from both sides of the
aisle, I'm developing legislation to address
the various problems in existing law, in one
unified bill, bring fairness and efficiency to
a music licensing system and ensuring that no
particular business enjoys a special advantage
against new and innovative technologies.

It is my hope that, through the
Judiciary Committee hearings, the second of
which will be this Wednesday, June 25th, the
Copyright Office study, the Department of
Justice review of ASCAP and BMI’s consent
decrees, and other reform efforts, we can come
together to create a better system for radio
competitors, for music creators, and for fans,
all of whom depend on a healthy music
ecosystem.

This new system should be platform
neutral, across the board. It shouldn’t matter
which button you push in your car, as to the
rate that the creators of the music get for
that performance. And it should be based on
the willing seller, willing buyer. Thank you.
And I hope to work with all of you to develop
and pass meaningful, comprehensive review.
Again, I thank the Copyright Office for these
series of events.

MS. CHARLESWORTH: Thank you very,
very much, Representative Nadler. We really
appreciate your joining us here today.

I think we will take a 5 minute
break, and then we will carry on with the next panel.

(Whereupon, the above-entitled matter went off the record at 11:53 a.m. and went back on the record at 13 12:08 p.m.)

MS. CHARLESWORTH: So this panel, some of these issues have been raised, the 115 license is, really, what is on the table here, in terms of whether it should continue, whether it should be revised, whether it should be done away with.

I think there is a range of opinions on that. And before we get into those opinions I would like for the new panel members to introduce themselves, and explain why they are here.

MS. CARAPELLE: Hello, my name is Cathy Carapella, and I'm the Managing Director of Global Image Works. And I am a transactional cost. I have spent the better part of the last 30 years clearing music, and licensing, for film and television, and new
technology. My first new technology was home video on VHS and Beta. And I spent the better half of the '90s steeped in sampling clearances. And I, sort of, have pitched my tent at the crossroad of willing buyer, willing seller. My clients are creative individuals, making new works that contain music. And I have also ran two music clearance companies for 25 years, and myself and my contemporaries are the ones that are tasked with finding out what is fair on a per use, per license, per copyright, per percentage thereof basis.

MS. CHARLESWORTH: Thank you very much. Let's see, who else? Mr. Barron, are you -- Mr. Barron, I think you are next, as a newbie.

MR. BARRON: Yes, I'm Greg Barron, I'm director of Licensing at BMG Rights Management.

MS. CHARLESWORTH: No, you were here earlier. I'm sorry, forgive me, he mislead me, it is his fault. You did look very
familiar. Okay, yes, thank you Ms. Coleman.

I'm sorry, Mr. Barron.

MS. COLEMAN: Hi, I'm Alisa Coleman, I'm the Senior Executive Vice President of ABKCO Music & Records, Inc. We are an independent music publishing and record label, that has the music publishing rights, and the sound recordings for the Rolling Stones, the Kinks, Eric Burdon, Sam Cooke, and I'm involved on a day to day basis in all of the licensing objectives and global business development of our company.

MS. CHARLESWORTH: Thank you very much. Okay, moving around, Mr. Barker.

MR. BARKER: Thank you. I'm John Barker. My day job is Clear Box Rights Administration, which is an independent Copyright Administration firm. I'm here, really, representing a new organization called IPAC, which is Individual Independent Music Publishers, and Interested Parties, that started in Nashville, and is spreading
outside.

MS. CHARLESWORTH: Mr. Conyers?

MR. CONYERS: My name is Joe Conyers, I'm the vice president of technology for Downtown Music Publishing, representing copyrights from John Lennon's, Mike 6, and other fantastic writers. I oversee digital and other data standard issues that we deal with.

MS. CHARLESWORTH: Okay. And Ms. Potts?

MS. POTTS: Good morning, my name is Cheryl Potts, I'm the founder of Crystal Clear Music, we are a copyright and royalty administrator for sound recording owners, authors, and music publishers. In addition I'm a software engineer, currently producing a product for our company CleerKut. We are producing a rights management system for independent and dependent music owners, to be able to license, account, and manage the music they create.

MS. CHARLESWORTH: Okay. So, thank
you. And I think, as I said, there is a --
there seems to be a range of opinion on
whether to continue to work with 115, perhaps
modify it. Or whether to do away with it. So
-- and if we do away with it, or if we were to
get rid of it, what would replace it? It is a
very big question. I think everyone recognizes
that the industry, and we heard this earlier,
has been shaped in its contractual practices,
and just the assumptions and expectations, by
the 115 license. In fact, in '76 the Copyright
Office said, let's get rid of this, and too
bad you weren't around then, Jay, maybe we
wouldn't be having this conversation.

But the publishers, although there
was some resistance to maintaining the
compulsory licensing, ultimately decided that
if they could, achieve a better rate, they
could go with it for another, what has it
been, 50 years or so?

So, anyway, I want to -- I do want
to see if we can figure out, or at least
explore some ways where we might be able to
try and meet some of the objectives of, as I
understand it, the publishers and songwriters,
which is to achieve better rates, to have more
control over those rates, but to maintain
another important piece of our system, which
is collective licensing, which many also feel
is a necessary ingredient in the successful
licensing system. So who wants to take up the
-- Mr. Barker, there you go, let's hear from
you.

MR. BARKER: How about that? Well,
first of all, I guess I am one of those that
has followed, I'm a fan of the Copyright
Office, since I'm following around the
roundtables. And I have realized, you need to
kind of say it early, if you want to get it
out there. So here goes. And I will say I
agree with almost everything Mr. Rosenthal
said. And, Jay, I will say everything, other
than -- our position -- he said we need to get
rid of 115. And then, however, if not then
here is how we need to fix it. I think our position is, no, we just need to stop here and get rid of it. Because 115 is not working. Just to make sure, and as an independent administrator, I deal with 115 licenses, and things like that, on a daily basis. There are a lot of things wrong with 115. There are no audit rights, some of these things have been mentioned.

One thing that a lot of people don't realize is that the co-publisher, in a 115 license, the NOI, the Notice of Intent, can be sent to only one of the many co-publishers. And one hundred percent of the payment paid to that one publisher. So when we are talking about transparency, there is none in the 115, because as a co-owner of a song, I don't know if my song is under compulsory license or not, because I have not received a notice, nor a payment. Or I may receive a payment, and really, it is not necessarily clear that it is one hundred percent or just
my share of that. So it is not transparent.  
Basically the 115 has effectively defined a  
rate, and it has turned out to be a max rate,  
by the way the industry is operating. There is  
no control, meaning after the first use the  
publishers do not have the ability to say I  
choose to not have my song used that way. And  
the other thing, just to close that off, is  
the NOIs, I have drawers full of NOIs. And I'm  
a small administration company, so I have a  
very small percentage of songs compared to  
many players in this industry. And yet I have  
file cabinet drawers filled with NOIs many of  
which, I would argue, are probably not  
correct. And the Copyright Office is very  
clear to say, if certain hoops are not jumped  
through, meaning within 30 days of  
manufacture, the notices go out, or prior to  
release, monthly payments, audited annual  
statement. I would venture to say a high  
percentage of the NOIs, that I have in my  
office, are ineffective. And the law is clear
to say if they don't jump through the hoops, it forecloses their ability to ever get that license. So the licenses are not valid licenses. I would say a high percentage of what the industry is now seeing. So, to me, 115 does two things today. It defines a rate, and it is a process that we have begun.

Now, Jacqueline, as you said, Marybeth Peters, I think, had even made a comment that in 1961, or as we were leading up to the '76 Act, the Register of copyrights was then trying to get rid of that. And Marybeth Peters had mentioned that. And, basically, said the publishers got used to it, and thought it might cause problems in the industry, therefore they just started looking at the rates. To me we, as publishers, even though I was not around at the table at that time, we missed an opportunity to do something better. And I'm here to say, let's not make that same mistake, let's do it better. So, in closing, and I will try to make this very
quick, having participated in some of these
roundtables before, I talked to Lee, I have
seen DIMA's comments, the six pillars that
have not been mentioned, necessarily, here.

But Six Pillars for Modernization
of Copyright Laws, we agree with five and a
half of those. And Lee and I have talked about
this. Continued government oversight and
regulations, we agree halfway with that,
because we agree there may be some need for
that, but not everything. Transparency and a
centralized data base, yes. License
efficiency, and reduced transaction costs,
yes. Clarification of rights, yes. Reduction
of legal risks around licensing activities,
absolutely. Level playing field, yes. And I
won't take the thunder away from Steve, in
RIAA's position, but we agree with most
everything that they have thrown out, with the
exception of tethering the publisher right as
a percentage to the recording right.

That is one thing that we would
prefer to have, actually, a free market deal
with. And then, as Steve and I have talked
about, first use control of the ability to say
yes or no. We agree that a record company,
when we say yes to a recording artist, there
may need to be the ability to continue to
distribute that in certain ways.

But we should have a right to say
no to a new recording So what our position is,
again in closing, is we would like to see, as
the Copyright Register in 1961 had suggested,
sunset 115.

If we can come up with a term and
say, let's sunset it clearly within a, I will
throw out, a two year period. Let us, then,
take these points that we all agree with, and
understand the ones we don't, and come up with
a centralized solution that can better serve
us.

Because, clearly, 115 is a rate,
we need free market value, willing seller,
willing buyer. We have talked about that. It
is hard, for people around the table, to come up with an argument to say we should not have that, because so many around the table do.

But as far as the process, and Jacqueline, as you said and, actually, as Congressman Nadler said, if we started out with this now, if we came up with the solution today, for this, we would not come up with anything that looked like what we have in 115. So I think it is time for us to start with a blank piece of paper. We can come together, take steps toward each other, and come up with a solution that works, and a process that will allow for fair rates. The quote is: "the enemy of best is good." What we have is good. Let's don't miss the best. I think we can do better.

MS. CHARLESWORTH: Thank you, Mr. Barker. Mr. Kohn?

MR. KOHN: Again, as I -- comments I had earlier was that a lot of the problems, that have arisen with the various constituencies have with the compulsory
license has to do, or is symptomatic of the
parity problem. Which is going to be
discussed, I think, later today or tomorrow.
So they are not getting their fair share. So,
therefore, we either get rid of it, or
something. And I don't think getting rid of it
is the answer, because I do believe the
compulsory license is useful for reducing
these transaction costs. And I don't have any
particular point of view as to whether Section
114, on sound recordings and Section 115,
compulsory license for the musical works,
maybe they should be combined.

I think Bennett Linkoff had
something in his comments regarding that. And
maybe some others have it as well. I don't
know whether -- what the practical problems
are of doing that. It could be combined. But
the rates have to be separate, in the sense
that there might be a song, in the public
domain, but the recording is not on the public
domain. So maybe one side should get paid, and
the other side shouldn't. So it could be
combined. I don't have any particular
viewpoint on that. It seems like the easiest
thing is simply to amend 114 to include what
I thought it should include, and amend 115 to
include the things I mentioned, started to
mention before. It should be, I think, as the
RIAA is suggesting, in a blanket form. Someone
should just send a notice, they get everything
they need.

I think it should include all
forms of downloading, streaming, interactive,
or at least make it clear that it does include
all the forms that could be on any of these
platforms. It should include the public
performance right. It doesn't make any sense,
for the public performance entities, to go
seeking their own rates, at a different table,
from the allocation that is being made between
the sound recording, and the musical work.

That has to be done sort of at the
same time. There is no reason why it can't.
The organization or the rate board that would do the allocation, as to how much the sound recording gets, and how much the music publishing gets, and of the music publishing how much goes to the performance, and how much goes to the reproduction side.

That can be determined by some -- that rate board, and the revenue can be allocated accordingly. I do think, and agree with the comments, on the elimination of the pass-through license. It doesn't make any sense whatsoever. When I started emusic, and we talked to the Harry Fox Agency, we were doing, in 1998, MP3 clouds. No one knew what it was. And I went to Harry Fox and said, you know, it looks like I'm getting all these mechanical licenses from independent record labels. I'm the company making the reproductions. If they don't pay the music publishers, I get sued by the Harry Fox Agency. So I didn't trust the indies to actually do the accounting correctly, because
it was a whole new thing. So we agreed, with
the Harry Fox Agency, to pay directly to them.
So we paid full statutory right directly to
Harry Fox. We got all the indies to agree to
that. And Harry Fox had full ordered rights,
vis a vis emusic. And I think that is the only
way that, that could really go.

Now, in terms of transparency,
there is -- it is important that the music
service provider, who would be getting all of
these benefits from a blanket license, from a
single place to go for all of these things,
perhaps. Both on the sound -- let's say on the
music publishing side they would get both the
reproduction, and the performance right from
the same entity.

I think they have to be willing to
be very transparent as well. And what I
suggested, in my paper, is that the music
publishers, who give the licenses, and of
course the sound recording side that does,
should have access to the systems of these
companies, Spotify, and the rest. Put some
software on the systems, whatever it is, to
get real time transaction data, sort of a desk
audit. So that they know when those
transactions are taking place, and they
actually, perhaps, even to whom they are going
to. By total transparency of the copyright
owners side, in exchange for having all of
this ease of licensing, and the audit costs
would go down because, essentially, when the
royalties are paid, you just simply match it
against the transaction data that you have
access to.

I think that is an important point
here. So, again, I think a lot of the
individual comments on we have to get rid of
115, and we have to not expand 114, it all has
to do with, you know, each party trying to get
their fair share. I'm very sympathetic with
the music publishers because maybe they aren't
getting their fair share. I have no opinion on
-- we will talk about parity later. I don't
have an opinion, specifically, as to how the allocation should be done. But don't let that issue blind the process from seeing the benefits of the compulsory licenses being applied across the board, to reduce transaction costs, and get those works out there.

MS. CHARLESWORTH: I just heard a spirited defense of the compulsory license system. Let's see what Ms. Coleman has to say.

MS. COLEMAN: Thank you, Jacqueline. I'm sure you are not surprised that I disagree. We feel very strongly about a willing buyer, willing seller marketplace, in the mechanical licensing world. Especially since, you know, there are so many other areas that we are constantly working and developing that marketplace, like Sync and you know, digital exploitation. I'm here to tell you that that willing buyer, willing seller marketplace works. Harry Fox can come to us with an opt-in on a Youtube deal, and we can
make a decision on whether or not we want to
be a part of that opt-in system, or do a
direct deal. In certain cases we choose to
make direct deals. We would like to see a
designated agent set up so that smaller
publishers, or medium sized publishers, can
group together, and deal with some of the
antitrust issues. And set up guidelines so
that we all have a fair voice at the table.

That is really it, thank you.

MS. CHARLESWORTH: Okay, I just --
well, and maybe -- I don't mean to pick on
you, and you may not have an opinion on this.

But you represent some incredible
catalogues. I think a question is, if you are
looking at a voluntary system, where it is an
opt-in system, and I think we have seen some
news reports, and I have seen some comments,
you know. The big guys and significant
catalogues can actually negotiate with a large
service, a Youtube or whoever. Do you think
that is -- what about the people who don't
have that kind of leverage?

I mean, how do you address that?

Because I think we have seen some reports, and I'm not -- I just wanted to, you know, for people who haven't seen them, where it is sort of a take it or leave it type offer. And there has been some concern that the smaller marketplace participants are just, literally, in that position, take it or leave it. So I'm just wondering if you have any thoughts on that, and --

MS. COLEMAN: Absolutely.

MS. CHARLESWORTH: -- how that would, maybe, ways that might be ameliorated, addressed?

MS. COLEMAN: No, that is fine. I actually do. I mean, we chose not to opt-in to the Harry Fox offer and the NMPA agreement with Youtube because of our business decisions. And we were able to, obviously, leverage some of the great artists and songs that we have in our catalog, into making a
very suitable deal.

    What we need to give is the power

back to the music publishing community, so

that they can join together to make these
decisions. Individually we don't have that
ability. But if we are able to create a
designated agent, again, that has some
guidelines dealing with some of the antitrust
issues, we then will have that. The reports
that you are talking about I'm going to make
a leap, here, that you are talking about what
is going on in the record industry. Part of
the challenge is that they can't all come
together and make a joint deal with this, you
know, with this huge conglomerate, because of
our antitrust issues. We have to figure out
ways around that, and we have to figure out
ways to give power back to these companies, so
that they can maximize their investments in
these works.

    MS. CHARLESWORTH: Okay. Mr.

Duffett-Smith?
MR. DUFFETT-SMITH: Thanks very much. So, first of all, just on the 115. The compulsory license is very, very helpful for a service like Spotify. Our transaction costs are very, very high. Licensing takes a lot of time, it takes a lot of energy, it takes a lot of effort. It is very technical, it is very complex. It varies from territory to territory. So anything that helps us easily license works is something that we welcome. Outside of the U.S. there are lots of blanket licenses that we take advantage of, from collecting societies around the world. And, in principle, these things, these are good. The big problem that we have with Section 115 is that it is very difficult to administer. There isn't a comprehensive works data base. It is extremely difficult, and the NOI process, as you rightly point out, is very cumbersome, it doesn't really work very well. To your point about real time data, that is something that Spotify is investing, very heavily, in. And,
you know, we are working very hard to try and help, make our services more transparent, our data more transparent.

Because we recognize that it is incredibly important to make sure that everybody is being paid properly and on time. So 115 for us isn't something that is perfect, by any means. But it is a start, it is a good start for us. It does help us. It does mean that we have the comfort, you know, of at least knowing that if we follow the process then we are actually licensed. The other point that I want to make is on rates. I made this point earlier, in passing. But it is really important that rate setting does not happen in a vacuum. There is only a certain amount of money to go around. We only bring a certain amount of money in through the door. We can only pay a certain amount of money out. And if -- the danger is, if rate setting standards are applied, without taking into account the other set of rates. So if sound recording
rates are applied, without taking into account publishing rates, and vice versa, you could get into a situation where service has to come from over one hundred percent of its revenue. I know that sounds like it may be farfetched. But, you know, it is a real possibility. Licensing is incredibly difficult, as I say. And it is very expensive. And it is tough to make it as a digital music service, in the market, at the moment. Anything that increase the overall burden, the royalty burden, or the administrative burden, I think is something that we would oppose.

Now, that said, we recognize that the current system probably isn't perfect. It is arrived at through a historical process, lots of compromises, lots of political deals, over a long period of time. And, you know, I'm sure that we could echo the statement that if we were to sit down and try to design it today, we probably wouldn't design it like it is, either.
But in trying to fix things, I just want to make sure that we look at everything holistically.

Because the danger is that if we don't do that, then we will kill off the music services that are actually providing, you know, some kind of future to the music industry. And I don't think anybody wants that to happen.

MS. CHARLESWORTH: Thank you. Mr. Rosenthal? Actually before -- my colleague, she warned me in the nick of time.

MS. TEMPLE CLAGGETT: Yes, it is a good question, because it follows up on something that Jay had said earlier, as well as something that you said, just focusing on the international angle a little bit. I know that Jay alluded to the fact that, internationally, Section 115 doesn't exist, obviously, in most markets. So in terms of the experience internationally, you mentioned blanket licensing. How has that actually
worked? Is that something the United States would be able to follow?

Or are there efficiencies that are lost, that you have seen internationally, when you don't have the compulsory license? And maybe both Jay and Mr. Duffett-Smith could answer that.

MR. DUFFETT-SMITH: Yes, absolutely. I mean, the beauty of a blanket, from a licensee's point of view, is that there is a party that is guaranteeing that if you pay it, in accordance with the rate, that you agree that you are licensees. And they are guaranteeing that the repertoire will be cleared. Organizations like PRS, or GEMA or SACEM in Europe, it is their jobs to make sure that their members are being properly compensated.

They have the data base, they have the rights, you know, they have the information about what, who owns which works. And they are in a fantastic position, much
better position than a service, to actually
figure out who owns which works. Administering
the rights data base for us would be, you
know, a part of our business that would be
ancillary whereas, actually for those
organizations it is key, it is everything that
they do. So they are the professionals, they
are the people that are best able to deal with
it, in our view. So certainly blanket
licensing, collective licensing, in that
respect, is very helpful for a licensee, you
know, who is trying to do the right thing. We
are trying to make sure that everybody is paid
properly. The problem with 115 is the
requirement to identify every single composer,
and publisher, is extremely difficult, when
you don't know who they are. And I think
everybody around this table would agree to
that comment.

MR. ROSENTHAL: First of all we
have to distinguish two problems over there.
One which is, I think, solved in terms of the
structure, in Europe.

I think it would be a much more preferential system than we have here, because it puts into play free market principles that will solve many of the problems that the compulsory has.

But let's not confuse that with the problem that Europe has had with, with cross-border licensing. That is a totally different issue. And I think they are working it out in a way, talk about tough, you know, problems. Think if we had every state that had their own little collective, I know that makes people go crazy thinking about state collective licensing agencies.

But I think that there is no comparison. I think that the idea that in a free market we would be much better off, in dealing and creating these collective licensing systems. Certainly by song, by song, but in times if blanket is the way you approach it, or there is some kind of a
hybrid, depending upon the service, depending upon this, we certainly want it song by song. Because we feel like that is who gets paid directly. But I think that the free market will play all of that out.

MS. CHARLESWORTH: Mr. Duffett-Smith, just -- I'm sorry, now, to follow-up. So how, take an example of MCPS-PRS, how are rates set as between you and that organization?

MR. DUFFETT-SMITH: Well, I --

MS. CHARLESWORTH: Or any of the ones you mentioned.

MR. DUFFETT-SMITH: So the idea of a free market is, perhaps, slightly a misnomer when dealing with PRS because they are a monopoly. They are regulated. You know, there is an equivalent organization, the Copyright Royalty Board, that has jurisdiction to set rates. PRS publish tariffs. So, you know, it is not really a true free market in that sense. Certainly, as a licensee, you are
dealing with somebody on the licensor side
that has monopolistic power. And the law
recognizes that, yes.

MS. CHARLESWORTH: Is there, is
there intervention along the lines, similar to
a rate court here, or is that a rare
occurrence?

MR. DUFFETT-SMITH: We have not
resorted to rate court, no.

MS. CHARLESWORTH: So it sounds
like more -- and I'm not trying to put words
in your mouth. But is it more typical than to
agree to a license rate, in that situation,
than it may be here, or --

MR. DUFFETT-SMITH: Yes, I think in
Europe everybody knows what the rates are now.

But, you know, that is done
against the backdrop of the Copyright Tribunal
litigation the Joel litigation, the JOL
litigation, for example, went on for some
time. Which then help to set the standards.

Yes, I can't really go into any details of
confidential deals, of course.

MS. CHARLESWORTH: Thank you. Mr. Rosenthal did you have anything else you wanted to say, or --

MR. ROSENTHAL: Yes. In addition to answering the question, sure. Just to respond to a couple of things. First of all, you know, obviously you know what our position is on gradually, you know, in a manner that is informed, to get out of Section 115.

But there might be some spots where we might want to still hold on to. For instance, we have heard that the idea that the notification of the Copyright Office, in the context of you can't find a certain owner. You know, you can send it in, to the Copyright Office, they register it in one way or another. It might be even expanded to include payments of royalties.

That if you can't find an owner you pay somebody. And we feel like that, really, satisfies what is a constitutional
requirement which really is to satisfy the property interest of the songwriter. That might not be a bad thing to keep, or to think about keeping, at the end of the day. But I also just want to talk a little bit about the constitution. I know it is a weird thing to kind of dwell on here, but it was raised by Bob in the last panel. And I think that one of the reasons that we are taking the position that we are, and a position that many authors take, and authors' groups, that the copyright clause does not result in an economic theory of copyright. That is agreed upon by all parties, and that the courts are set on, and that it can never change. We believe, I personally believe, that it is not an economic theory. I believe it is a human right. And I believe it is manifested in the property interest that is conveyed upon the author. That is where we should be starting from. So it is not just a matter of
economics. It is not just a matter of transaction costs. It is more than that.

I think, you know, when you say that the Supreme Court ruled that it is an economic theory, a few years later the same Supreme Court ruled in the Dred-Scott case. Things change, and viewpoints change. And in the modern day we have an internationally human rights theory that has, we have just not even really scratched upon, to figure out what kind of obligation do we have, under these international human rights treaties, to convey upon an author a property interest that is meaningful. So a lot of where we are coming from and, I think, that a lot of where the artists are coming from, starts from there.

That one must recognize a stronger property interest than it is recognized now. Thus the idea of taking away the right to negotiate in the free market is not just, let's say, supported by constitutional economic theory. It is the wrong economic
theory to apply. It is the wrong constitutional theory to apply. And I have to say this, and I think that we have discussed this internally, and I don't think there is anything wrong with stating it.

I think that if the compulsory license is expanded, in any way, under 115 we would seriously consider a constitutional challenge. And we would think that is a regulatory taking, without just compensation. And it might even be a constitutional challenge under the Copyright Clause itself, because there must be a meaning to the word exclusive.

One cannot just take these rights, turn them all non-exclusive, and think that somehow we are not violating what the founding fathers believed should be part of the copyright law. So enough of that theory, kind of off in the clouds, to a certain extent. But I wanted to kind of lay out, that we do have a fundamental difference in constitutional
theory, as it relates to these rights.

MS. TEMPLE CLAGGETT: I just have a quick follow-up question. You mentioned constitutional concerns with expansion of 115. Would you have any concerns in terms of our international obligations, under treaties, or agreements, in terms of expansion in that --

MR. ROSENTHAL: Well, I would always have concerns about our treaty obligations. You know, there are folks in Congress who feel like that is an important issue, and others who don't. And we dealt with this on the panel with the making available right, which was an issue of are we violating the Constitution by not recognizing a certain international legal norm, and that has been agreed to, through treaty. So, yes, I think that there has to be uniformity of thinking. And I certainly think, in this context, we are off in the 19th century, in terms of how we view copyright law when, in fact, in most of the world they have a 21st century view of it,
and we would like to catch up, and convey that
upon the authors.

MS. CHARLESWORTH: Okay. Mr. Kohn,
and then I have a follow-up for Mr. Rosenthal.

MR. KOHN: Sure. We could give him
what he wants, and then do what the founders
did, and have copyright last for only 14
years.

Because the Constitution does say
for limited times.

MR. ROSENTHAL: Yes, it does say
for limited times. And, you know, as we have
gone forward with the meanings of the
different words, under copyright law, some of
the other words that is a little bit unclear
are progress. I don't think progress, any
more, is 14 years. I think that the Congress,
which has the power to pass copyright laws,
believes differently as well. And so long as
we have a copyright law, with some kind of
defined term, I think that constitutional
issue, of limited times, is satisfied.

MS. CHARLESWORTH: Mr. Rosenthal,

I'm going to ask --

MR. ROSENTHAL: Yes, go ahead.

MS. CHARLESWORTH: -- coming down a little bit from the clouds.

MR. ROSENTHAL: Yes. Let's come down from the clouds.

MS. CHARLESWORTH: And, hopefully, you won't be suing the Copyright Office.

MR. ROSENTHAL: Yes, sorry about that.

MS. CHARLESWORTH: Or Congress, or someone.

MR. ROSENTHAL: It was the School of Law thing, in the back, that just made me do that. I'm sorry.

MS. CHARLESWORTH: You should read, you know, you should read Professor June Besek, just actually published a very informative article on takings and copyright, which I commend to you.
MR. ROSENTHAL: We are collecting them all, believe me.

MS. CHARLESWORTH: Yes, that one I can recommend.

MR. ROSENTHAL: I will read hers, yes. I have great respect for her.

MS. CHARLESWORTH: So here is the question. You are very interested, obviously, in allowing publishers and songwriters to negotiate for the value of their rights.

But in a situation where, you know, the transaction costs are very high, and you have some majors, as I mentioned earlier, you have some very prominent catalogues, that would be probably perceived as necessary to many services. How do you deal with the smaller guys who aren't going to have any leverage in the system, who may not be able to get the attention of a large digital service?

And I think that is a reality that has already come to pass. As I mentioned, earlier, we have seen that. So how do you
MR. ROSENTHAL: You protect them by allowing for some form of collective rights in the marketplace.

MS. CHARLESWORTH: Okay.

MR. ROSENTHAL: We can't equalize the rights between small and big, just like for years I was trying to do that with recording artists and labels. No, you can't. You have some recording artists who get better deals than others, that is the free market.

And the same thing happens in the songwriting market as well. It is just reality.

But to allow a form of collective licensing system to be adopted, without government restrictions. And by doing this is the best answer to your question. And that is how do you get the small guys in? When we have done this in the free market, we have succeeded in getting the small guys involved.

Do they get the same value that the majors do?

No, they probably don't. Do they get close to
it? Yes, they probably do.

MS. CHARLESWORTH: Well, but there is two different -- you are -- are you referring, when you say when we have done this, what are you referring to?

MR. ROSENTHAL: Well, I'm referring to, for instance, our Youtube deal.

MS. CHARLESWORTH: Okay.

MR. ROSENTHAL: And other deals, along those lines, that we have even with the major labels.

MS. CHARLESWORTH: Okay, and I don't -- the Youtube deal was sort of, you know, there were direct licenses, and there was an offer, a licensing offer made by Youtube to other people.

MR. ROSENTHAL: Right.

MS. CHARLESWORTH: Correct me if I'm wrong, essentially take it or leave it terms, right? Is that correct?

MR. ROSENTHAL: Well, I think that
MS. CHARLESWORTH: I mean, I don't mean that in a negative way.

MR. ROSENTHAL: No, no, no.

MS. CHARLESWORTH: I'm just saying, they offered the deal and the publisher could choose to --

MR. ROSENTHAL: I think you referenced the contracts of adhesion, which is the take --

MS. CHARLESWORTH: No, it is not. I'm not trying --

MR. ROSENTHAL: -- it or leave it --

MS. CHARLESWORTH: -- to cast any aspersions on the deal. I'm just saying, it was an offer, and the publisher could choose to take it or not take it.

MR. ROSENTHAL: Yes, smaller publishers probably have a harder problem than major publishers.

MS. CHARLESWORTH: But the question is that --
MR. ROSENTHAL: That is across the board, though.

MS. CHARLESWORTH: -- if that, and this isn't about Youtube, but hypothetical service says, well we are going to do our deals with the big guys, we are going to pay them nicely.

MR. ROSENTHAL: Correct.

MS. CHARLESWORTH: And we are going to do, we are going to make an offer that is not as valuable to the smaller guys. I mean, how do the smaller participants, how are they able to achieve parity in that system?

MR. ROSENTHAL: Well, parity, I'm not sure you are ever going to achieve parity. But I think, as a practical matter, whatever the smaller guys get, through a collective licensing system, without the compulsory license is going to be valued more than what they get under the compulsory license.

That is what we believe, and that is why we are fighting for it.
MS. CHARLESWORTH: Thank you, Mr. Rosenthal. Mr. Marks?

MR. MARKS: Thank you. So I want to get back to something I said, on the first panel, which is the difference between getting fair market rate, or how the rates are set. And the obtaining of and administration of the licenses. Because I think those two are getting conflated in kind of an all or nothing way, in some of the proposals that are being made. So I have heard one proposal that, you know, we have to keep, we have to so hold onto the collective, or blanket license, or move to a blanket license, or that we have to hold on to the compulsory license as it regards rates. And then I have heard, on the other hand, let's throw out 115 completely, because we need to get better rates. But with it you are throwing out all the benefits of the collective licensing, or the ability to improve upon that. And I will let Ms. Finkelstein say, more eloquently than I could,
how difficult it is to obtain license on a
song by song, right by right, work by work,
format by format basis, for every song that
has multiple songwriters, and publishers, et
cetera. So I'm hoping we can -- I can get a
little feedback. Because our proposal, which
again was by no means a take it or leave it
offer, or anything like it, it was just an
idea.

But the essence of it was for
publishers and labels to come together, at the
outset, and figure out what the appropriate
rates should be. As they have done
historically, in the past. And it doesn't
necessarily need to be a ratio, or tethered.
I mean, that was just an idea we had based on
what songwriters and publishers were pushing
for in the Songwriters Equity Act.

If they don't want that, that is
fine, we can talk about something else. But,
you know, our proposal included first use
being retained, which let's face it, exists
today and is the ability to negotiate freely
in the market. And so that would exist.
Bundling of rights, audits, transparency,
direct pay, direct relationship with, you
know, no pass-through. All of those things I
hear, both on the publisher and songwriter
side, as well as for many of the services,
being good things. And so, and let's face it,
the way 115 works today, in terms of setting
rates, there is a first use right. That first
use right, you know, is there to be exercised.
When people say that the rates are set by 115,
that is basically a collective negotiation,
you know, that publishers and songwriters come
together, collectively, every five years, to
sit down and try and figure out what rates
should be for particular categories. So I
think everybody is understanding the benefit,
here, of the collective nature. I guess what
I'm saying is, and what we are saying is, have
that discussion upfront, between the labels
and their partners, the songwriters and the
publishers. So that -- and then, separately, after that rate has been set, through agreement, not through any rate court, not through any CRB, get rid of those completely, get rid of all of the government regulation.

That solves your other half of the five and a half of the six. We are with you on that. Get rid of all the regulation there. Have that be a free market negotiation, and have that established as the rates that exist for some period of time. That is something that we can discuss. And then, separately, set up a mechanism where we can have a blanket license. And a blanket license doesn't mean individual songs don't get remunerated in an accurate way. Let's create an authoritative data base. I have heard DIMA, you know, say this in the past. We have said it in the past, publishers have said it in the past. Let's come together and figure out how to do that. And have the blanket license rely on that, so that there is accuracy. Let the publishers and
songwriters figure out who they want to, you
know, administer. It could be ASCAP, it could
be BMI, it could be a new organization. The
governance could be established, you know,
however they deem appropriate. Labels and
services would be kept completely outside of
that. So I'm, I'm -- I would like, I guess, to
hear from Mr. Rosenthal, Mr. Barker, and
others about what about that is problematic?

8 9 And I would just say one thing
in addition. I think we have to recognize,
here, that when a label invests a lot of
money, in the creation of a recording, they do
so with the expectation they are going to be
able to exploit that recording, and have a
return on that investment, across a certain
number of uses that exist in the marketplace
at that time, or in the future. Having a
separate negotiation, after those investments
have been made, by publishers or songwriters,
is not the way a normal market would work.

That negotiation should happen upfront, at the
time of creation, so that the investments, you
know, whatever investments can be made. You
may have a songwriter who says, you know what?
I only want this use to be done for downloads
and CDs. At that point the label, and the
artist, to the extent that the artist is
different, could say I'm fine, we will invest
so much in the investment, in the creation of
this recording.

Because they know that those are
the exploitations they are going to be able to
get back on it. Or they might say, sorry, we
are going to use somebody else's song, because
we can exploit that across the full range of
services that exist today, or in the future.

That is the time for that
discussion to happen, not later on, after
investments have already been made. And I say,
let's come together, let's make that happen,
and let's include all of those other things
that publishers and songwriters want and need,
in terms of getting rid of the regulation, and
having the audit right, and the direct pay, and no pass-through the labels and everything else. And, again, it doesn't need to be a ratio. We can figure out what that rate structure is.

MS. CHARLESWORTH: Well, okay. Before I turn to Mr. Rosenthal, Mr. Barker, I really want to -- I don't want to shortchange this side of the room. And, you know, some of these issues, by the way, we have a panel, I don't know are you guys on the last panel? There is a panel about the future. And so we will have other opportunities to explore them. But we will try and get to everyone. We are going to have, since we ran over, we started a little bit late, and we will probably go until about 1:15, which still give people plenty of time for lunch.

But I want to go to Mr. Badavas, Ms. Finkelstein, Mr. Barron, and then around. And then, hopefully, we will get back to you guys to respond to Steve's question.
MR. BADAVAS: So I guess to pick up where Steve, I think, was going and left off.

When one talks about song by song licensing, one isn't necessarily talking about song by song, right by right, format by format. And one could test exactly what you are suggesting right now, by picking up a phone and getting an all format, all right license from a publisher, with a market rate negotiation. You could pick an album to try it. Just a suggestion. It could be done. And instead of the 1,100 licenses, let's make it a really, really complicated hip hop album. It would have 20 songwriters and producers on it. It is still only 20 calls, it is not 1,100. That is, I presume, actually something like what you are suggesting, at the end of the day, except under a governmentally imposed structure. You have the ability to get an all rights license for each song that gets recorded correctly. Because, at the end of the day, a license serves two purposes. It
provides liability protection for the
licensee, and it links a use to a composition,
which ultimately means royalties get paid to
both the publisher and the songwriter, on the
publishing side of the table. I understand,
actually, the record labels are very good
faith players in that. Spotify is, many of the
people at this table are.

I think we are still not quite
scoping this issue properly because that is
still -- those are still very commercially
viable entities, it includes independent
record labels, people who are really
participating in the market.

That isn't the 30 million tracks
that are being presented out there, by large
digital music services. So I'm not sure what
to do about the other 28 million tracks. Let's
assume it is 2 million. Those aren't going to
get matched by figuring out a way to license
as a percentage of a record label, a well
functioning record label's business, or some
other structure, where that is the case. And those are two different matching issues. I'm not sure how to deal with that. And that is, kind of, lost in this discussion.

MS. CHARLESWORTH: Although I think, Mr. Badavas, I mean, it may not be part of Steve's presentation. But people have been speaking about blanket licensing.

MR. BADAVAS: Yes, but the blanket license for that 30 million tracks, the idea that you can actually figure out what is being uploaded, by the garage band next door, into the system. And then place the responsibility on publishers, or centralized organization, to figure out what the link is, is way more challenging than dealing with what commercial music providers are talking about, in terms of the labels.

MR. MARKS: It is the same as what SoundExchange does. I mean, you get a report, and I'm certainly not saying that the reports, even for SoundExchange couldn't be improved.
But if you had the service reporting, you know, what their use is, and you had accurate information, as rights owners on your end, why wouldn't that work for the other 28 million?

MR. BADAVAS: My point is that those, the sound recording file, that is uploaded to the service, isn't coming from someone like you, where the meta data, in the first instance, is properly right. Right? It is coming from a kid who made the recording in the garage next door. And when they upload it to an aggregator, what is typed in is inaccurate. And it is extremely difficult to deal with. Now, I hope that as technology gets better, the matching will be better, but that is a big problem. The second thing is, we are concerned, or publishers are concerned, with what you are concerned about. Which is, under blanket licensing, at SoundExchange, 31 percent of the licensees don't even send in reports. So what we are concerned about is the
incentive to make sure that the reporting comes in, and is accurate. And that is a big deal. And we have seen, because we actually have a termination right, which is suggested by the RIAA, that that isn't really valuable in the new media world.

Because the companies don't have any assets. So they come in and out of business, frequently. Some survive, that is great. When they do they are usually good actors.

But the threat of a termination of the license, for someone who doesn't have any fixed assets to glom onto, isn't very real. So it is very, very hard, to get someone to comply who, at a certain stage, particularly early on in the life cycle of that launch, doesn't see a lot of risk. And that is kind of a big deal. So when coming up with a structure, to provide liability protection, the balance is, what is going to be the incentive, to make sure that people are
actually recording, and paying properly.

Now, some people just do it. Some licensees do it, and they do it right most of the time. And many of them are at this table.

But that is the issue being addressed by song by song. I do think, in a free market, you actually might see something like you were talking about. And I guess I will leave it there.

MS. CHARLESWORTH: Okay. I just have a question, though. If someone could wave a magic wand and, say, create a centralized data base, or agency, to manage this stuff. I mean, is it -- I hear what you are saying about the link between the musical work, or the sound recording, and the musical work, and the ownership. I mean, can that happen at a different point in the chain? In other words, because having it at the outset, what I hear from digital media companies, I think Mr. Duffett-Smith is saying that is a huge burden. And so I'm wondering if it is, the suggestion
is to drag on the system, it keeps people from, it is inhibiting innovation, it is inhibiting the launch of services. And so I guess the question is, we understand the importance of that link. Can the link occur at a different point? And, if so, what point would that be?

MR. BADAVAS: Can it occur? Yes, of course. But how effective will it be is a different issue. When you have the biggest example, in the United States, and 31 percent don't report, you have a real problem. The matching, after the fact, is -- it can be done, it is imperfect, that is okay.

But it could be done. The question is, what type of incentive would actually work to make sure that someone did it, after they already had free protection from liability, right?

If you already have liability protection what is going to force you to actually invest in the systems necessary to
make the matches right, or obtain the data that is right. So the record labels put the right data in their sound recordings, that will, eventually, get matched. And if you are talking about the first two million recordings, you know, we have a bunch of humans that sit there and do the links. And if we spend more money on doing the work, we would probably get there quicker. Resource constraints are resource constraints.

But those, eventually, get worked out, they eventually get found. It is not as quick as we would like. For the other 28 million, and I'm making up the number of 30 million, that is a different story. Those, those compositions that are imbedded, in those sound recordings, aren't necessarily written, for example, by our writers. We don't have a relationship with those people, they don't come in through us.

They come in through a large group of aggregators that charge for the service of,
essentially, selling a dream of getting your
recording put on Itunes. Which is a fine thing
for them to sell, and it is a great dream.
And, every once in a while, those folks get
discovered. But that is really different from
what we are talking about in the commercial
music industry. And so, yes, it could -- the
matching could happen later. But I don't know
if you are ever going to get to a point where
the amateur recording, that is uploaded
through an aggregator, and placed on Itunes,
and placed on a streaming service, is actually
going to match. Until computer software is so
good at identifying songs that from a bad
cover recording, you can figure out what
composition is imbedded in the recording.

MS. CHARLESWORTH: Thank you.

MR. MARKS: Can I just -- one quick
comment?

MS. CHARLESWORTH: Very quick

because I really do want to get to the -- yes.

MR. MARKS: Yes, I would just say
we understand that issue. We would just say let's figure out how to create those incentives together, rather than just, you know, throwing out the complete idea, given all the other benefits that I listed earlier, and that others seemed to agree with.

MS. CHARLESWORTH: Okay. Ms.

Finkelstein?

MS. FINKELSTEIN: Well, as I said earlier, I oversee mechanic licensing at Sony, and I have for a couple of decades. So usually I like to start with my theme music of Nobody Knows the Troubles I Have Seen.

MS. CHARLESWORTH: We do know now.

MS. FINKELSTEIN: So, you know, I would like to echo the point Steve made about the need to negotiate all rights upfront. Obviously when a record company invests in a sound recording, and undertakes to hire a producer, and the studio, and create that recording, we would require, we would expect, that we would have the right to exploit that
in any means known, or becoming known. And

Christos alluded, earlier, to the supply chain
management. I think one of the things that
would be an anathema, to any business, is to
say that you are going to leave yourself
exposed by not having the ability to exploit
the thing that you are creating, in all ways
you need to, in order to run your business.

I think artists are hurt if they
can't put their music out in Spotify, because
the publisher holds back those rights. And I
think it is odd, to us, that there is a lot of
discussion about how do you facilitate the
licensing between the services and the
publishers, when we would, you know, think
that of course there has to be a fair
compensation to the publisher.

But the ability to, you know,
throw up a roadblock and say, well even though
Beyonce recorded that song, and it has been
out on her albums, wow, we never meant for it
to be on this kind of service. For the
publisher to have that control is, you know, unsettling, shall we say?

We are trying to be as flexible and responsive to a rapidly changing marketplace as we possibly can be. We have licensed, you know, hundreds of music services across the industry. And we see, now, we are constantly kind of caught in the middle between the fact that there is the parsing of rights and say, kching, another right, kching another right. And that we are, you know, licensing for interactive streaming, there is a performance right, there is a reproduction right.

That mechanism for the payment of those became so complicated that, basically, most of the record labels, I think, didn't want to take on that complicated payment. And so the direct licensing from the services came about. I mean, for us, we have probably the most sophisticated system in the business. We would have been okay during the pass-through.
But it obviously doesn't make sense for a service to say, this set of masters has a pass-through, and this one has a direct license. There is already so much fragmentation that it kind of has to go all one way or another way. But I think, you know, one of our main issues is, of course, getting all the rights. Audio visual has become a huge issue for us. Because, as I think we said earlier, everything has a screen. People like to see something on their device. And so, suddenly those are all now, as if they came from Mars, completely different from every other exploitation of the recording that we are, otherwise, making. Which, you know, again just seems very odd. Why does that take it out of your standard licensing realm? Because you add a picture of the artist, that the consumer can see, when they are looking at their phone?

The 115 license obviously is, you know, it has been the backbone of the industry for forever. And the industry has grown up
with reliance on that. Christos' suggestion that we go under, negotiate direct licenses for those 14 tracks is quite interesting. Because just to negotiate a couple of sample licenses, for one album, can take somebody two or three weeks of calling, and begging, and leaving messages, and finding A&R people who used to work at that publishing company, who knows somebody else, who could call somebody to try to get this cleared. It is a huge undertaking. And, you know, there is just no mechanism to say we want to negotiate a direct license, here are the terms, call us back in an hour. And, you know, that is usually the time of time pressure we are under to try to get products out. And we have artists who want to deliver a record today, and have it on a service tomorrow. So we are trying to be responsive to those artists' demands, and we are doing the best we can. But that involves a lot of begging, and pleading, and faxing, and mailing requests.
MS. CHARLESWORTH: But just to follow-up. You are -- a lot of the uses do have to be negotiated directly, right? Because --

MS. FINKELSTEIN: Yes.

MS. CHARLESWORTH: -- the 115 licenses, audio only, it is limited.

MS. FINKELSTEIN: Right.

MS. CHARLESWORTH: So when you are negotiating the -- I think maybe the question was, you know, -- well maybe my question is.

If you are negotiating direct licenses for other exploitations, like an audio visual, or whatever, could you throw the mechanicals in there?

Or, I mean, is that -- why is that, since you are doing it already, why is that -- I mean, I'm not saying it is a small problem.

But could that be rolled into the negotiations over the non-compulsory uses?

MS. FINKELSTEIN: I would say that
would be extremely difficult because people
don't want to step out and say, well, we will
negotiate these rates in this way. There is a
lot of, you know, wait and see what Martin
Bandier is doing, wait and see -- let's wait
and see how this market evolves. It is very
difficult to just do a one off negotiation and
get all the rights that you need, you know, in
perpetuity. Which, of course, the mechanical
has always been in perpetuity. Now we have,
you know, people want to limit terms of
licenses. There is a lot more complexity built
in. But mostly there just isn't this mechanism
of saying, we need a license, get back to us
right away. I mean, it is very much like there
is standard mechanical licensing for
downloads, and for physical that works very
well.

But for newer types of
exploitations you don't even know what kind of
license you need. Is it a purchase content
locker, does the sale within an app means that
it can be an interactive stream, or is that a
different kind of a license that you need?

So there are a lot of creating
analogies, and study that goes into even
trying to figure out what some of these things
are.

I think, also, we have conflated
the data base, data issues, with the licensing
in ways that, perhaps, have gotten to be less
helpful.

I think we supported the pass-
through licensing concept on the one hand
because, obviously, it would give us a certain
ability to have certainty. And I think it is
an element towards market stability. But it
also seems sort of like a way to avoid the
kind of redundancy that has happened. I mean,
when we distribute Beyonce we have to know, in
order to pay the mechanicals, and physical,
and downloads, we have to know what all the
shares are, all the splits are, for the 18
songs.
If somebody wanted to use that knowledge, that we have, to just do pass-through licensing, it seems to make more sense than suddenly having every service tracking every share of those 18 songs for Beyoncé. And as our friend from Spotify pointed out they don't want to track that. So they end up going to a third party service. So, you know, there is just -- but I think that we are pretty open to the ideas of data sharing.

I think, you know, we are an active participant in DDEX. There is a lot of discussion about how to do more to share data. You know, one could imagine that, maybe, Spotify reports to us and they send a mirror copy to the, you know, with the publishing, I mean, with the same sales transaction records, to the central publishing entity. There are a lot of things that could be done to give the publishers more visibility into how their works are being used. I had suggested, at a DDEX meeting, that we start imbedding ISWC
codes, that we assign them, when we know that there is a brand new work.

Because we know the work has never been registered before. We could assign a dumb number so that, as things are sent out into cyberspace, they have both an ISCC, and an IWC, and then the information could be filled in by the publishers when they, you know, establish what the relative shares are, and that data base could be populated.

But there are a lot of things, I think, we could do if we work together. And I think that some of the politics around licensing are making some of the data, and the mechanicals, the mechanical aspects of reporting, and paying, we are not taking advantage of all that we could be doing.

MS. CHARLESWORTH: Okay. Yes, we are -- I'm sorry to report, this is a bad moderator. We are running over, again.

But did you have something, very quick, to respond to Ms. Finkelstein? And then
I do want to get to Mr. Barron. And then who else hasn't yet spoken on this panel? Okay, we are going to do a speed round with the people who haven't spoken. And it is not because we are not interested in hearing from everyone. It is just that people do need to get to lunch. So Mr. Kohn?

MR. KOHN: Just real quick. On the data issue I think it is important to separate out the reporting data that comes from the organizations, like Spotify, to the copyright owners, from the repertoire meta data of who owns what, and what is linked to what. The ISRC linking to the songs, for example. And what I have seen, and I have been in some of these meetings with the organizations. There seems to be an understanding that there is a need for a centralized data base for this. But nobody is willing to give up the data. To some of the collection organizations the data helps them maintain their existence. They will never give up the data. The, even the IPI numbers,
which are basically a list of who is who, by
the collection societies, that is managed in
Europe, nobody has the access, only the
collection societies do. Andrea mentioned that
she does have data bases of songs linked to
sound recordings. And a lot of that, and so do
the other record companies. But try to get
that out of there into a separate data base,
along with the Harry Fox data, and the ASCAP
data, and the BMI and SESAC data. Having that,
that is going to require, I think, some
legislation because there has to be
transparency. If you don't have transparency
on who owns what, complete transparency, you
are never going to have the artist and the
songwriter get paid properly.

MS. CHARLESWORTH: Okay. And we do
have a separate panel devoted to meta data. So
I hope -- I don't know if you guys will be on
it. But we can explore some of these issues in
more depth. Ms. Potts?

MS. POTTS: Hi. I would like to
voice, on behalf of a non-commercial
performers (performers distributing their own
music) that would be affected by some of the
changes being discussed in the statute of 115
of the Compulsory License. With technology
today it is very easy to be able to create a
sound recording and upload your sound
recording to retail digital stores. However,
if they want to use the compulsory license to
record a cover song is not working as easily
as it could today. But I believe with some
changes it could work on behalf of these
performers who are putting out their own
music. A lot of performers, are also doing
their own music administration. They don't
have anyone doing the administration for them.
And while it is very easy for a lot of us in
this room to make suggestions for publishers
or record labels, since we already have our
systems in place to administrate for us. But
for them it is difficult doing their own
administration. So there are a couple of
things that I think that changes in the compulsory license, I would like to suggest that would be beneficial for those who are putting out their own music and doing administration for themselves. We talked about a national registry, or possibly having a central location for trying to locate copyright owners so they can obtain a compulsory license. There has been times people complained about the difficult trying to locate copyright owners to try and obtain a compulsory license. We tell them to go to ASCAP, BMI, SESAC websites to look up who the rightful owners are. But sometimes they because music catalogues have changed, the sites are not always up to date. I hear from some independents who talked about the monthly accounting and the difficult in preparing the statements to the publishers with the compulsory license. With the publisher mechanical licenses, the accounting is done on
a quarterly basis. But with the compulsory license the accounting is done on a monthly basis. And if you are, if you are a -- following the statutory accounting rules and regulations on how to account to the publishers, most would have to hire an accountant to be able to produce the monthly statements. I would recommend that if Congress keeps the compulsory license, that they go to the same quarterly reporting as the publisher mechanical licenses are today. I would also like to recommend that for Performers releasing their own music who want to obtain a compulsory license to allow for payment to be made for an estimate number of units up front like publishers for mechanical licenses does today for non-commercial users. Users are able to get a license for let's say 1,000 units, or 2,000 units, but they have to pay the royalty upfront.

If Congress decides to keep the 115 compulsory license, and not do away with
it, I would recommend to possibly move to something along those lines for the self-releasing artists that are sound recording owners, but they are not -- they do not know what the compulsory license law states for most of us, around this table. They do know however that they have to obtain a (compulsory) license and to pay the royalties for what they distribute. On several occasions today I have heard the suggestion to do away with the compulsory licenses all together and move to "negotiated licenses" with many using the term "Willing buyer, willing seller." For many performers distributing their own music who want to record a cover song, I do not see a lot of them going directly to publishers to negotiate the use of a cover song because most do not know copyright law and I believe they would be fearful because as one other gentleman mentioned, here at the table today it is a very complicated, technical, and expensive to be able to understand what the
(mechanical) licenses are saying. I believe most feel the same way. So for those artist in the garage making music (as someone mentioned earlier) I believe should have some kind of mechanism for those Who want to record a cover song and to be able to account for the number of units distributed without having to have to go to negotiate.

Because a lot of times they could just file a notice for permission and pay the appropriate royalties and so they can be able to continue to use published the music.

MS. CHARLESWORTH: Thank you, Ms. Potts. Okay, Mr. Barron, Mr. Knife, and Mr. Bengloff. And then -- yes. I mean, we are happy to stay here longer. I mean, I don't know how hungry are the panelists. I want to make sure that you guys get lunch. So why don't we wrap it up after these guys? Are you on a subsequent panel?

Okay, so perhaps we could --

MR. ROSENTHAL: Jacqueline, one
point. Will you at least later on, if we don't
do it on this panel, give us the opportunity
to respond to Steve's request for feedback to
his proposal?

MS. CHARLESWORTH: I will. I think
both of you guys -- yes, I mean, as I said, we
are willing --

MR. ROSENTHAL: That could be
later. I just wanted to make sure that we have
involvement.

MR. MARKS: That will give him time
to think of something.

MS. CHARLESWORTH: Yes, I mean --
why don't -- we are going to reserve a little
time, I think, on a future panel for you two
to answer -- yes.

Because people are hungry. Barron,
Knife, Bengloff. And then if you have two
seconds, yes. Then we are going to break for
lunch, and we will adjust the lunch a little
bit so people have enough time to eat.

MR. BARRON: Thank you. I think
going this late in the session, I think a lot of my points have already been addressed.

But I'm glad that DDEX was brought up. Most recently, and I think we can address this in the later session, but this has proved critical to the way that publishers, and labels, are now working with these services. It is such a conglomeration of massive sets of data. And I think we learned a lot from Youtube. With the transparency that we have with them, that we don't see with the other services. Youtube has actually been very vocal about the need for ISWC, to match up with ISRC.

They have worked very hard to take data from multiple, multiple, organizations, and 20 publishers of one song, ten recordings, of course, belong to that song. It is rife for complications, and there does need to be a centralized service that can tie all that information together, and that could be available to the smaller users, who are
uneducated on who to approach, and the need to
obtain 1,480 licenses to license one album.

I think it was suggested that,
perhaps, it worked well with the Harry Fox
opt-in for the smallers, and free market
negotiations between publishers and Youtube,
for those direct licenses.

I think we have seen, and DiMA
agreements signed between labels and
publishers that have proved to be very
effective. Youtube, again, has proven very
effective. And it has been our first foray
into the transparency that we can have with
these services, that we just don't enjoy from
the other services, who are simply sending
NOIs. There is absolutely no way to be
transparent under the current system of
sending boxes, and boxes, and boxes of NOIs.
And, perhaps, not to every publisher of a
song, perhaps just to the majority
shareholder. That is the most difficult
question that I can answer for my clients,
when I have writers calling and saying I saw this on Youtube, what does it mean?

I have pretty good insight into, going to the CMS, I can see the activity, I can compare it to the royalty statements. That just doesn't exist with any of the other services. There is absolutely no way to see if we received an NOI, if the royalties are corresponding to those NOIs. There needs to be more transparency and a centralized service, I think, would go a long way towards that.

MS. CHARLESWORTH: Thank you very much, Mr. Barron. Mr. Knife?

MR. KNIFE: Really quickly. Just getting back to the original point, which was responding to the RIAA proposal there.

I think it is interesting, I don't want to get into, you know, Steve said that there is some flexibility, there, with regard to exactly how a percentage would be set, or how that relationship between music publishers, the songwriters, and the record
labels would go.

But I think it is interesting because it touches on a little bit of what Bob Kohn was talking about, in that it kind of gets us a little bit closer to a unitized, or a single, you know, kind of a one stop shop. Which is just inherently attractive. I just wanted to, you know, observe that that is a very attractive idea. And then that goes off of something that Mr. Duffett-Smith was talking about, which is ideally it would kind of contain your overall costs, right?

And I know we have a panel, later on about investment, and the ramifications of all of this.

But I think it is very important to remember that any type of bundling, or collectivization of those rights, also has that -- it has that ancillary benefit of transparency with regard to a service, or their investors looking at total costs. And making sure that your total costs, occurring
in separate negotiations, don't actually kind
of ultimately eat up the total revenue that
you might have.

MS. CHARLESWORTH: Thank you, Mr.
Knife. Mr. Bengloff?

MR. BENGLOFF: About a third of our
members are also publishers, and this consent
decree, the way judges coat and stamp their
work, we feel for our creator colleagues, who
are the songwriters and the publishers.

That all said, typically, when
everyone is looking at total content costs, as
I have described in other situations earlier
today, the people that I represent tend to end
up with less. We like the compulsory statutory
licenses under 115. We feel that some sort of
CRB type, tribunal type process could look at
-- set rates as well in willing buyer, willing
seller, and take care of that. When the judges
are instructed, they should be looking at the
total business. I keep hearing about ratios of
Pandora money, over and over again, and how we
are getting too much.

But, as Andrea has already said, we are the investors. Whether it be in terms of signings, marketing, big staffs, the judges should be looking, in their economic analysis, at the net bottom line.

Because our net bottom lines are very small profits, or unfortunately a lot of times publicly the PROs report over two billion, and distributing over 86 percent of that money.

That is what we need to do it. To the comment that Jay said earlier, and other people said the right people should get paid. We should invest to get the right people paid, otherwise it ends up in the black box. Thank you.

MS. CHARLESWORTH: Thank you, Mr. Bengloff. And last, but not least, Ms. Carapella.

MS. CARAPELLA: This is a very, very important conversation, two days, three
cities. I just want to mention that while all this theory is being discussed, let's not lose sight, at the end of the day, this all has to be put into practice. So when you are talking about the higher theories, and the concepts being discussed, here, just also take into consideration the efficiency of implementing these in the actual practice of putting these changes into effect.

MS. CHARLESWORTH: Thank you. So you are probably hungry. Do you want to start -- we can start the next panel a little late, maybe 2:40, ten minutes, it gives you an extra ten minutes, because I think you all have to go out and find lunch, in the wilds of New York which can, sometimes, be time consuming. So we will see you back at 2:40.

(Whereupon, at 1:27 p.m. the above-entitled matter was recessed for lunch.)
MS. CHARLESWORTH: Welcome back, everyone. I hope you enjoyed your lunch. And we are now up to session 4 which, I think, may end up being somewhat of a continuation of some of the earlier discussions we were having. In this session, what we are trying to focus on, Fair Royalty Rates and Platform Parity, and to try and articulate some principles, if we can, about what we feel, or what you feel, potentially Congress should be thinking about, in reviewing our music licensing system.

Some of you have mentioned issues before, but I want to explore them. I mean, obviously the rate setting standards, the Board in which rates are set, and the difference in rights, all play into this. And what we are trying to evaluate is both, how do those impact the equities of the marketplace, and also what might be done to cure any
perceived inequities. So those are big questions. I think we have a couple of new victims, here. No, I think we want to start with Ms. Griffin, and Mr. Morgan, and anyone who is new to the discussion, if you could introduce yourself, and explain your interest in music licensing that would be great.

MS. GRIFFIN: Well, I'm Jodie Griffin, from Public Knowledge. We are a consumer advocacy group based in D.C. And we work on issues, really, to open communications platforms which use copyright, telecommunications, and things like that. And in terms of my interest, personally I used music licensing in a past life.

I earned my living playing cello, and working on concert productions, and helped launch, and work for, a small record label. Which, I have to say, is still doing great work without me.

But they were really successful and it really brought -- it needs to use the
perspective of the independent musician.

MS. CHARLESWORTH: Okay, thank you

Ms. Griffin, Mr. Morgan?

MR. MORGAN: My name is Blake Morgan, I'm a recording artist, and a songwriter. And a label owner here in New York City, in fact, right up the block. And in January I started something called I Respect Music, which began as a Petition to Congress, urging Congress to support artists pay for radio play.

And many, many thousands of signatures later, it has grown into a grass roots movement, with people holding up signs, on Twitter and Facebook, and Instagram, and covered by major national press, and all sorts of terrific things. So it is a simple idea that artists should be paid for their work, when it comes to radio air play, we are the only democratic country, in the world, that does not pay artists for radio play. And this is something that fundamentally affects.
MS. CHARLESWORTH: Okay, thank you.

Mr. Carnes?

MR. CARNES: Yes, my name is Rick Carnes, I'm President of the Songwriters Guild of America, and I'm co-chair of Music Creators of North America. I'm a professional songwriter, myself, for 35 years.

MS. CHARLESWORTH: Mr. Dupler?

MR. DUPLER: Hi. I'm the Director of Government Relations for the Recording Academy. The Academy is best known for the Grammy Awards, but we are a membership organization with 20,000 members, representing songwriters, recording artists, studio professionals in the music industry.

MS. CHARLESWORTH: Well, so who wants to speak first on the issue of platform parity? Mr. Carnes, you are the loser?

MR. CARNES: That is so typical for me. Let's see, okay. I'm just going to pick it up when we talk about fair value for music in general. The Music Creators of North America
just conducted a study for a thing we are about to roll out, called Fair Trade Music. And basically what we are talking about is how do you value music?

You know, what is analogous to a music farm, you know? What workers and other professions make, you know, in the chain when they create the basic good that everyone else sells. And I'd like to be able to submit that to the Copyright Office, at some point, I will get that done. It is done, but we are still editing it.

MS. CHARLESWORTH: Well, we will have an opportunity for reply comments, probably some time in August we will be announcing that. So you will have an opportunity to submit further written comments, including that data.

MR. CARNES: Thank you very much. One of the things that I would like to discuss, real quickly and briefly, is the fact that the digital music file, as
opposed to a 45, CD, that no one remembers, a vinyl album or a CD. The digital music file is, actually, more valuable, I think because it is portable. It doesn't degrade, you can make copies of it.

But it has never had, as opposed to those other formats, it has never had its price discovery moment. It has never been sold at a free market price.

Where it got to be valued for what it was. It was always sold, in the marketplace, competing against the very same file for free.

So we start off with that basis, when we start talking about value in music. And as long as we are doing that, we are always going to be in a situation where songwriters, and artists, can't make a living. You can't compete against your own risk, okay?

So we first have to have a fair market price. And then we will have a price discovery moment. And at that point you can
start setting rates that actually work.

Because, right now, you are seeing a complete oblation, destruction of the songwriter community. As Lee Miller described, at the last copyright meeting, we really are down to about ten percent of what we were 15 years ago, okay?

So the current system is broken.

When we talk about the 115 rate setting, by the way, I have a modest proposal. If my earnings are going to be capped at 9.1, I think that my income should be taxed at 9.1. Is that asking too much?

But, basically, we have been in situations where everyone in the music business bleeds a little money. We are getting killed by parasites. And no one said that word all day long. And so it is very hard to establish a fair value of music. And we have proposed, and thank God the Copyright Office has taken it seriously, and has done a notice of enquiry about small claims court.
Where I can actually have a chance, as a person who owns intellectual property, to go defend that property, in a place where I can actually afford to do it, you know?

Instead of taking one person to court for 250,000 to a million dollars, and then find out it is a 12 year old girl who has 89 cents in a piggy bank somewhere. I can, hopefully at some point, take 100 people to court for stealing my songs, for 1,000 dollars a piece. And that would actually be a deterrent. And then you can start talking about, okay, eventually people are going to look at that and go, you know, 99 cents, whatever it is, it is better than getting dragged into small claims court for stealing something.

And I think that is a basic point of value. We need to have that price discovery moment, where a music file actually competes, you know, for what people are willing to pay
for it. Not against a free copy of it.

MS. CHARLESWORTH: Thank you, Mr. Carnes. Mr. Bengloff?

MR. BENGLOFF: Thank you. I have already spoken, today, about the fact that the compulsory license, as far as we concerned, creates equity. So I won't go over that again. But I will discuss the fact that there has to be fair rates.

The compulsory license also helps give fair rates to services, so that they are not held up for exorbitant amounts of money, which gives consumers a lot of choice, and also gives independent music labels access. There has been a lot of services that have closed, over the years, because they are unable, the economics weren't able to work for them.

And some of those services that closed, quite frankly, were very favorable to playing independent music. So we miss them very much. I really want to focus, mostly,
today on having a performance right, broadcast radio, I'm a founding member of the Music First Coalition Steering Committee. And I have been doing it now for seven and a half years. It is very important to us that we get a performance right.

Seven and a half years ago, over the air radio wasn't even playing that much independent music. We have made a lot of inroads in those past seven and a half years, so I thank your constituents for that, sir. And, but still, while we are undeserved there, the real issue is, is a lot of our music, and a lot of our members are not, necessarily pop music.

I mean, we do have Mumford and Son, is one of our members, and Howard Swift is on one of our members, and Vampire Weekend, and I can keep going on, the Lumineers, and they certainly get a lot of radio play. Of course, radio didn't embrace them until they already broke, because they seemed to be late
to the party on independent music. So I'm really not going to be amenable to hearing anything about the promotional value, right now, because it had already happened prior to breaking the artists, prior to it getting on the radio.

But what we need it for, also, is we have a lot of genre-specific members, members who do jazz, members who do the blues, members who do classical. Those are the members that need our help the most, as I discussed this morning. Most of our members, while we have members that are a half of a percent, or three quarters of a percent, or one percent of the industry, a lot of them are working specific genres. We honored, last week at our Indie Week Awards, Bruce Iglauer, of Alligator Records, which is the brand in the blues out of Chicago.

They do get played overseas. A lot of those genres of music are much bigger overseas than they are here, in the United
States, in terms of broadcast radio. Unlike the major labels, we don't have domiciles in most of the countries overseas. Most of our people may have an office in the UK, but they don't have offices around the world, like Steve's constituents might. So as a result we have to have a performance right to be able to bring our money home, and get paid for the air play that we get overseas.

This is an essential thing that we need. I have been fighting the fight for seven and a half years now, as I said I'm a founding member of the Steering Committee of Music First. And, I think, as the register has said publicly, now is the time. Thank you.

MS. CHARLESWORTH: Mr. Marks?

MR. MARKS: Thank you. I will start by echoing Richard's sentiments about the need for terrestrial right, and thank Mr. Morgan for his campaign and efforts on that front. It is, obviously, been a long continuing battle that will, hopefully, end in fairness of
terrestrial radio paying its fair share for
the recordings that it uses. When we think of
platform parity I think we also, one of the
first things that also comes to mind is
ensuring that the rate standards that are
paid, that are used for the compulsory
licenses are the same.

It doesn't mean the rates will
always be the same. But, at least, the
standard by which they are, any particular
service is paying, and the rates are being
measured, should be the same.

And we think that should be
something that reflects fair market value,
such as willing buyer, willing seller
standard. So in 114 we think that should be
changed for the three services, not platforms.
It is often said that cable and satellite
radio have this 801(b)(1) exemptions. It is,
actually, three companies that happen to be in
those spaces. That it is time for those three
companies to no longer enjoy their special
status, that was given more than 15 years ago, when they were young companies.

So that on the pretext that they should continue to enjoy a standard that they had started their business under. The other thing I would add is, on the pre-'72 front, as Colin said earlier, rather than having a patchwork of state laws that govern this area, it would be nice, in terms of paying rates, to have that brought into the compulsory license, so that all of those services are paying, just like other services that aren't operating under a compulsory license.

MS. CHARLESWORTH: Thank you. Mr. Duffett-Smith?

MR. DUFFETT-SMITH: Thanks. And at the risk of repeating myself, and something that I said before lunch, we, at Spotify, are all about making sure that everybody gets paid properly, identifying the authors, being able to make sure that the money is paid to the rightful owners.
One thing that is absolutely essential, though, is that any rate setting standard is not looked at in a vacuum. And the impact of any increase, in the rates, on the sound recording side, or decrease of rates on the sound recording side, is matched by corresponding increase and decrease on the other side.

If we have an increase in publishing rates, for example, that go up beyond, much higher than they are at the moment, then we could be in a situation where we pay out more than one hundred percent of our revenue, which is unsustainable. And to your point, earlier, about piracy, one of the ways in which people will stop pirating music is if there is, you know, good legal alternatives out there. Making sure there are good legal alternatives out there also means not stifling them by charging rates that are too high, or are uneconomical for them to be able to pay. So that was all.
MS. CHARLESWORTH: Thank you very much. Mr. Rushing?

MR. RUSHING: At the risk of piling on, but I will keep my comments short. So I just want to echo what Steve said about parity and the rate standard. It is only fair, if you are going to have a government license that says that people can use copyrighted works, and recordings.

That, at a minimum, the law ensures that there is a fair market price for whatever those works are. Still, the government doing it, it is always going to be imperfect. But at least the guidance should be a fair market touchstone. In terms of radio we, obviously, agree with what Rich and Steve, and others have said, about a need for a terrestrial performance right.

And the only detail I will add to that is the way that, you know, I think it is the way we should think about radio, terrestrial radio is just another way that
people consume music. And I sort of hate using
the word consume and music in the same
sentence. But it is an economic term, and I
think it is important, you know, the thing
that we know, from surveys, is a massive
amount of listening to music, is still done in
the car, over FM radio.

And it is not just sort of
happenstance, this is an economically,
incredibly important opportunity that radio
broadcasters have, and exploit. And they make,
you know, the whole radio industry we think
is, what, 17 billion dollars a year. Most of
that is selling ads, that they are able to
sell, because they have the attention of
people that are listening to music. And radio
broadcasters are very good at finely tuning
their programming schedule, so that the exact
right song is playing, at the exact right part
of the hour, so they can keep those people
through the bank of ads. And so that if you
happen to have a meter, you can count it, and
that helps their ratings, and on, and on, and on. And it is incredibly lucrative, and there is nothing wrong with that. But what that means is that we have a 17 billion dollar business of distributing music, of distributing recordings, and yet the people who created those recordings, play no direct role, at all, in the revenue that it generates.

And to put that in context, the recorded music industry revenues, that the RIAA put out, I think for 2013, were around seven billion dollars. So radio makes double what the whole record business makes, distributing music. And, you know, and it is a fundamental problem that must be addressed.

MS. CHARLESWORTH: Thank you. Mr. Kohn?

MR. KOHN: Okay, on platform parity, I have been struggling with a way to -- I think you have to deal on a conceptual level first, before you dig into the weeds of
the problem, and how to fix the problem. And
I was trying to come up, from the bottom up,
or from the top down. And I chose the top
down. I'm not sure it is the best way.

But you look at the book
publishing industry, which sells ebooks to
Amazon and the Ibook store, and Nook, and
everything, under what is called the agency
model.

They get 70 percent of the income.
The copyright owners get to set the price,
whatever that price is, and they get 70
percent.

If you have a developer of
software, of an app, on the app store, Apple
pays you. You set the price and Apple pays you
70 percent. So you look at it, no matter what
is going up, piece of content, what is coming
back, let's say, is 70 percent of the
revenues.

Now you have to divide it up. It
is sort of, like, what is in there, you know,
where is the value being provided and why, and
how do you separate that out. So there is one
way to break this up, is to say, you have
these webcasts that are very radio-like. You
have these interactive streams, and you have
these permanent downloads. And you have things
in the middle, like tethered downloads, and
all kinds of things. And you could say, well
permanent downloads are, perhaps, the most
valuable, I don't know.

So maybe it should be more than 70
percent of the revenue coming back for that.
Or if a webcast is less valuable, because you
have less interactivity, you have less than 70
percent. So you could change that rate based
upon the level of interactivity, or
permanence, in what you are getting. You might
say, in today's environment, what the hell is
the difference between streaming and
downloading?

The technology is all the same,
buffering is occurring, copies are always
happening, what is the difference? Let's just make it 70 percent. So you could eliminate that platform difference in terms of interactivity or not and say, look, we are going to treat it all the same, let the consumer decide.

I think that is what, maybe, Nadler was saying. You know, let the consumer decide how they want it, when they want it, whether it is on a streaming basis, or a permanent download, who cares. The other thing you have to look at, is on the audio visual work side, music licensing is really highly variable.

If a producer wants to use one of my recordings and/or songs, it really depends upon the value of the recording. Is it Lady Gaga's recording, or is it Bob Kohn singing in the shower's recording?

And, certainly, the importance of the recording, and the importance of the song, ought to affect the value that is licensed in
the audio visual work. Also the intended use
of the song.

If it is over the title, or used
throughout the entire program, or the movie,
or used the source music as background, is
going to have an affect upon the value. Highly
variable licensing when you are dealing with
individual works of music in a larger piece,
like a movie.

But, at the sound recording versus
music level, you know, sound recording with a
little bit of work, of a musical work
together, in this ball of wax, there is a lot
less variability. Yes, there is Bob Kohn
singing Lady Gaga's song, that she wrote. And
there is Lady Gaga singing a recording of my
song. And there is some variability there.

But it isn't as great as the music
licensing on the audio visual work. So what
I'm suggesting is, I think you have to have a
rule of thumb. The transaction costs of making
the distinctions between my written song, and
Lady Gaga singing it in the reverse, of her singing one of my songs, it is not worth doing it all. So we ought to come up with a rule of thumb saying it is 9.1 cents, no matter what song you use, no matter how important that song is, and it doesn't matter who you are. It could be Frank Sinatra paying 9.1 cents, or Bob Kohn paying 9.1 cent. So you have this rule of thumb.

So then you have the 70 percent coming down. It doesn't matter how it is being played, streaming, downloading, you get 70 percent of the revenues. And now you have to divide it up. A piece goes to the sound recording, a piece goes to the music publishing. On the music publishing side you have the foreman's interest, and you have a reproduction interest.

Well, it depends upon the use, but you can get transaction data from Spotify, as to what the use is, to make that proper allocation. And then you have to decide, well
how much does the sound recording get, versus the whole music publishing side? And then you get into this debate, between the music publishers and the recording industry association, as to the recording industry, we have records of -- we are doing all the work, we are making all the investment, and you wrote the song 40 years ago, while we are taking all the risk. Well, maybe they should get a higher percentage. But maybe it is not as high as it is today. And I don't know where that is.

But let a rate board, or someone, make these allocations based upon those kinds of, you know, issues as to -- maybe the first five years the sound recording side gets 75 percent. But, thereafter, they only get 25, who knows. Or maybe it is 50/50 after a certain point in time.

But you have to look at this, I think, conceptually first. Say, I'm sure Spotify is happy to pay 70 percent of their
revenues, if the service is, primarily, just using music, right?

If it is just music, right? That is what they do anyway, and that is what Apple does, and that is what Amazon MP3 does, that is what all the books -- ebooks work that way. All the app developers work that way.

Pay 70 percent, and then worry about the allocation. But this business about ASCAP has to go to a rate court, and they get a percentage, and they are upset that they are not getting enough, and the music publishers want to pull out of ASCAP so they can get a bit more money.

They are going to become just like the record companies have been, over the past several years, where the record companies had a voluntary license, and not let companies like Spotify, or Emusic, or other companies, that have been going out of business and dropping like flies. And that is why you don't have a healthy business. Rhapsody, which
started 14 years ago, probably would have had
50 million subscribers, had there been more,
less transaction costs, and getting the
license they needed to get their businesses
going. So I think start conceptually, and then
do the allocation.

Fight over the allocation, you
know, whether the recording gets 75 percent,
or 25 percent, or 50 percent, is a big issue.
And there ought to be some fights about that.
And I don't know where you come out on that,
between the songwriters and the recording
artists.

But have your fights over that, in
the same form, in a proper forum. And maybe
that is what you were suggesting earlier,
Steve. Well, you know, there is nothing wrong
with having a standard form contract to reduce
transaction costs. All marriages are standard
form contracts that the states have. Or every
corporation has a standard form contract,
let's say, in Delaware, or in New York. So
having a standard form contract, that the
little guy like ABKCO Music, or the big
publisher like Martin Bandier are in a level
playing field, is not a bad way of solving
that problem.

MS. CHARLESWORTH: Thank you, Mr.
Kohn. Mr. Fakler?

MR. FAKLER: -- between the pre-
existing service issue, and the radio issue,
since I'm the one at the table with
everybody's arrows in my back, it may take me
a little bit longer to respond to all of the
various things. Let me start out with some
general points, here, because this has been a
problem endemic to this discussion. And it has
only gotten worse in the course of this
discussion, already.

Where different types of digital
music services are all lumped together, and
when we are talking about rate standards, we
are usually talking about 114 non-interactive
programmed music services. This discussion has
all been about on demand interactive services, and all of this discussion about distribution platforms, consuming music, radio listeners consuming music, distribution platforms, it is really disingenuous, and it doesn't help.

Because programmed music services, like radio, like Music Choice, are not distributors of music. They don't sell music, the listeners don't get to keep the music. It is a programmed performance based service. And by starting out the discussion, referring to these services as mere distribution platforms, for music, you know it really devalues what these services bring to the table, which is significant.

MR. MORGAN: I didn't do that. I just said we are the only democratic country that doesn't pay artists for their work --

MR. FAKLER: I will get to that point later. But the point is, the discussion about distribution platforms, and everything else, is a red herring.
Because what makes a programmed music service valuable to consumers is, obviously the music is a part of it. The music services never tried to claim that music isn't a part of it.

But the quality of the programming is what differentiates, is what causes a consumer to listen to one provider, or another. And there is an awful lot of effort, and creativity, that goes into programming compelling music channels. So it really is less than helpful to just refer to, all of these services, as mere distribution platforms.

And I think that there is an interdependence, obviously, if you just for a moment look at it from that perspective, of the programmed music service, and the consumer, the listeners to the programmed music service. There is an interdependence, obviously, between copyright owners, the authors from whom the copyright owners get the
Copyrights, the music services, and these programmed music services, particularly the digital music services, that have had to pay a performance royalty for the sound recordings.

This provided, in 1995, a whole new revenue stream to the record companies and artists, that didn't exist before. And importantly, as compared to interactive services, it did not do this at the expense of other revenue streams. No doubt revenues, in the record industry, have gone down, and shipments have gone down, sales have gone down, depending on what point in time you do the analysis from.

But these programmed music services have not caused these declines. There are a lot of reasons for these declines, and we could spend a whole day talking about the various businesses. Somebody mentioned piracy. You know, there is also an extended economic recession that has affected all business
sectors. There is the fact that digital technology has allowed consumers, or it has prevented the record companies from continuing to force consumers to repurchase the same recordings, over and over again, when new formats came out. Also known as the product replacement cycle.

Consumers no longer are forced to buy a bundled album containing recordings that they don't want to buy. So there are a lot of factors that have gone into declines of record sales. Programmed music services have not been one of those factors. And, yet, in the policy debates about what is a fair rate, and where the rates should be, these digital music services have been asked to subsidize the record companies for those unrelated losses. So, you know, there are multiple sides to this. And you can't just look at it from the idea that it is only the music that adds the value.

Now, turning to the more
substantive specific arguments that have been going around. You know, with respect to radio, and the promotional value of terrestrial radio, all I can say is that all of the studies still always showed radio as the number one discovery vehicle for sound recordings, and driver of purchases.

That hasn't changed. The record companies still spend millions of dollars, every year, lobbying radio stations to play their music. They wouldn't be doing that if they didn't think that there was a promotional impact from that.

That would be wasted money. That behavior, really, has not changed. And, certainly, radio stations are prevented, legally, from asking for payment for that promotional value.

If the record companies were suddenly allowed to demand a royalty, and yet the radio stations, say Payola laws were all repealed at the same time, I can tell you,
everybody who is, actually, in the business of
promoting records, knows where the net flow of
cash would go. It would be going to the radio
stations.

Now, with respect to standards in
connection with the 114 license, and the pre-
existing services. I represent Music Choice
which is, really, the only surviving pre-
existing subscription service. There used to
be two others. One was DMX, it went bankrupt.
The other was Muzak. Muzak, long ago,
abandoned trying to operate in this field,
because the financials of it were impossible.
They only have one affiliate, and they only
service that affiliate, because they get
various other business benefits that relate to
their more profitable commercial background
service. So for all intents and purposes,
Music Choice is, really, the only pre-existing
service left. And Music Choice was the first
digital music service, as I said before.

They launched their service in the
late 1980s, when there were no digital music services. They had to create the technology to make digital performances happen, they had to create a market for digital music services. They invested millions, and millions of dollars, establishing their service at a time where there was no performance right, for sound recording.

MS. CHARLESWORTH: Mr. Fakler, I'm sorry, I am going to try to be more assertive, as a moderator, and keep us a little bit on track. There are a lot of other people who need to speak. So if you could wrap it up in the next minute.

MR. FAKLER: Okay.

MS. CHARLESWORTH: I really want everyone to be able to contribute to the conversation, thanks.

MR. FAKLER: So the point is that Music Choice started an investment in service at a time where there was no expectation to have to pay a performance royalty for
songwriters and players.

That is the reason that when Congress changed the legal landscape, in 1995, they created the 114 license, and the 801(b) policy standard.

That is the reason why, without Music Choice's involvement, DiMA cut a very bad deal, in 1998, for this willing buyer, willing seller standard, that has proved to be unworkable. Congress, nonetheless, grandfathered the pre-existing services under the old standard.

Now, Music Choice, nonetheless, so there is an -- and in our written testimony we go through the whole history of why there is this difference. And nothing has changed with respect to that. Having said that, Music Choice understands that willing buyer, willing seller has been unworkable, because there is no competition in that market. There is no true willing buyer, willing seller. The 801(b) standard is more flexible, and it includes
fairness issues, including a fair return to
the copyright owners. So Music Choice would,
certainly, support extending that standard to
all digital music services, subject to the
royalty.

MS. CHARLESWORTH: Here is the
question. I mean, if 801(b) is, many perceive
it to be a below market standard. And do you
agree with that?

MR. FAKLER: Not necessarily. It is
a standard that can -- it can allow for below
market rates, it does not require below market
rates. And part of the problem is, even
establishing a market rate, is such a mythical
beast, you know, the willing buyer, willing
seller rates, that have come out of the
Copyright Royalty Board, have resulted in a
digital music system, where no company has
ever turned a cumulative profit.

None, not one. So to say that,
that could even be a fair market rate, it is
not. But no doubt there is a lot more that
goes into 801(b). There are, definitely, policy issues involved. But when you look at it as providing, these are services that are not substitutional, for other revenues of the record companies. And when you look at it, in that context, we think 801(b), which is used for all sorts of other licenses, as well, it strikes an appropriate balance, and gives the judges more flexibility in a world where true competitive benchmarks don't even exist.

MS. CHARLESWORTH: Thank you, Mr. Fakler. Mr. Dupler?

MR. DUPLER: I'm glad I'm after this. Unlike Colin I'm happy to pile on and, hopefully, throw a few more arrows. First of all, we are appreciative of the Copyright Office having a consistent stand on terrestrial performance rights. While with all these other issues, we talk about what is the appropriate rate structure, what is the appropriate licensing mechanism, none of those questions apply to terrestrial radio, because
there is no performance right to begin with.

That has to be fixed. Right now we are waiting on the Supreme Court to issue a ruling on Aereo, and the principle there is that Aereo is using the video content of the broadcasters, without their permission, and without compensation. To which we would say, yes, that is completely wrong.

And what is correct, and applicable to the video content of the broadcasters is also applicable to music creators, as well, who also deserve to be compensated when their work is used. Quickly, on some of the promotion arguments that have been raised, first of all, the clear channel CEO, who is a the largest member of NAB has already stated, publicly, that promotion is not enough in terms of compensation and value to the artists, and copyright owners.

A GAO study has already shown that there is an inconclusive relationship with promotion. And even if promotion is everything
that the broadcasters say that it is, give us
a performance right and let's find out what
the value of the promotion is, if we had an
actual rate, to the public performance of that
music.

If promotion really was as, as
they say it is, then that would be factored
into the rate setting, and they may not have
to pay anything to use music if the
promotional value was so great.

If they had enough faith in what
they say is promotional value, we would be
able to test that. I would also say, in terms
of all these services being lumped together,
Pandora has used this example before, that if
you sit in your car, and you fiddle with your
dashboard, switching from FM radio, to
Pandora, to Sirius XM, you are still listening
to the same music through the speakers in your
car. And the consumer experience is not that
different from one service to the next, yet
they are all treated completely different.
In terms of the common rate standard, we do believe that there should be one common rate standard that applies no matter where you are in the music creation chain. Whether you are the songwriter, or the recording artist, or the studio professional, everyone deserves to be paid a fair market value. And the fact that we have different rate standards being used in different contexts, automatically means that not everyone is paid a fair market value consistently.

A common rate standard would provide some measure of predictability, and reliability, both for the services, and for the creators, both. I'm glad to hear NAB concede that the 801(b) standard can produce below market standards. It is interesting since disruptive innovation was brought up, earlier today, that 801(b) specifically is designed to minimize any disruptive impact. And so unless you have these tech services,
wanting to protect themselves from disruption. Lastly I will just say -- last comment, on this issue of linking songs and sound recordings that one necessarily has an impact on the value of the other, I would strongly reject that notion.

I think the musical work is worth what the musical work is worth, and the sound recording is worth what the sound recording is worth, and they should be paid accordingly.

That there is not this inverse relationship that one necessarily takes away from the other. I think that is a false premise.

MS. CHARLESWORTH: Thank you, Mr. Dupler. Ms. Griffin? And two to three minutes, if you can, so we can get everyone in.

MS. GRIFFIN: Thank you for the two to three minutes. And I think, from Public Knowledge's standpoint, maybe it is worth kind of going back to what we think the goals should be. We think that the music licensing
structures we have should be designed to create a competitive market, with lots of entrance on the distributor side, and the rates holder side, that results in services that are accountable to fans, on one end, and musicians on the other.

I think that Mr. Kohn alluded to this, in an earlier panel. But, you know, it is important to remember that, at the end of the day, we are concerned about the public, and that includes people who listen to music, and people who create music.

And I think in most cases people who do both, in some way. So I think for us one big principle that gets us towards that goal is technological neutrality.

We do think that, kind of -- Todd was saying that as you look at it, from the consumer perspective, when you are listening to a radio service, it is a radio service. I know the interactive, non-interactive distinction can be really tricky. But if we
are talking about, kind of, the Pandora or AM/FM type of services, they look very similar, from the consumer's perspective. And we think, therefore, they should be treated under the same standard.

The rates may not end up being exactly the same, but we do think that on-line radio, cable, satellite, and AM/FM should all be paying, and they should all be paying rates that are set under the same standard.

I think, and I will add one more thing about the rates. We do support the 801(b) standard. If I was to make a change to it, I would list artists, explicitly, among the factors of people who should be considered.

I think right now it lists the licensee, and the copyright owner. But I think that, particularly on the recording side, for a lot of cases, that means that it doesn't include the artist, who has sold their copyrights. And I think they should be
considered as well. And I think that it is a
market-based solution. Because we have seen,
in previous rate settings, where the CRB will
look at private deals, and then adjust based
on the factors.

MS. CHARLESWORTH: Thank you very
much. Mr. Morgan?

MR. MORGAN: I'm sorry you didn't
get to the other issue. With all due respect,
and I can imagine how you feel here.

But these aren't arrows in your
back, they are questions to your face. And the
question is, to artists and musicians, how is
it possible that anyone can agree, with a
group of countries, that don't pay artists for
radio play, the small group of countries that
include North Korea, Iran, and Rwanda.

And to hear, you are actually the
first person I have ever met, face to face,
who I presume believes that we should not have
this performance right in this country. And
Kim Jong Un agrees with you. And it is hard to
believe. This --

MR. FAKLER: Really?

MR. MORGAN: Really, sir. And there are many, many complicated issues here, but this part of it isn't. This country is an idea, it is one that has lit the world for two centuries. And the idea is we can do better. We are here to form a more perfect union. We fix injustices, large and small. Sometimes it takes us a lot longer than it should.

But we do it. And in the last century, alone, we have been able to split the atom, and put a man on the moon, and splice the gene. And I think artists and musicians are saying, can we please, can we pay Aretha Franklin, when Respect is on the radio? That is the question.

MS. CHARLESWORTH: You have 30 seconds to respond and then we will continue, since there is a direct question.

MR. FAKLER: Well, I mean, I don't know how one responds to these ad hominem. You
know, the Kim Jong Un thing, it is -- that is not, you know, an ad hominem is a great substitute for a policy argument. It is, sort of like the MPAA with the VCR and the Boston Strangler, and all of that. It makes for a good sound bite.

But the point is, the promotional value is received. It is something that has been a mutually beneficial arrangement, for many years. It has been recognized by Congress. And to ignore that promotional value, and to minimize it, we just have a disagreement. But I don't have to call you, you know, a name, or 8 -- 9

MR. MORGAN: I'm not calling you a name, sir. I'm simply reminding you that the rest of the democratic world sees value, and awareness, and promotion on the radio. And also says our work should be paid for. The only group of countries, that does not agree with that, is a bad group of countries. And it is embarrassing, I think, as the United States
of America, when blues, and rock-n-roll, and
hip hop, and Jazz, et cetera, are American
innovations, and American birthrights.

And we don't show the same amount
of respect, pardon the overuse of the word, to
those artists. So I'm not attacking you,
personally, or in any way. I'm really asking
what is a very reasonable question, to the
music maker, and music lover public. Which is
it is incomprehensible that we don't have this
right, in this country, when we are the ones,
together, who came up with these art forms,
and Belgium is able to do this, but we are
not.

MR. FAKLER: And yet the American
recorded music industry is the biggest, best,
and envied throughout the world. And it has
lived with this system for close to 100 years.

MR. MORGAN: We live with a lot of
things for a long time --

MR. FAKLER: Not to mention the
fact --
MR. MORGAN: -- until we fix them.

MR. FAKLER: -- that all of these
other countries, that you are discussing, have
very different legal regimes, as relating to
sound recordings in particular.

MS. CHARLESWORTH: Okay. I think
both sides have made their points, and we are
going to move on to Mr. Wood.

MR. WOOD: Thank you. You know, I'm
here representing music creators of all sorts,
as I said earlier this morning.

One of the things that is clear to
us is that the digital music services are,
really, the future for music creators.

And that we've got to find a way,
and we look forward to working with you, to
try to find a way to make this all work.

I think Mr. Duffett-Smith has
spent some time trying to convince everybody,
and he has made a good point, you can't, we
can't have royalty rates that exceed one
hundred percent.
So no matter how we look at this, we are going to have to come face to face with the elephant in the room, here. Which is that the rates that are currently being paid, to artists and record companies, on one side, and to songwriters and publishers on the other, are just -- are way out of whack. And it is that, it is that imbalance that is driving this whole stampede -- well, I won't use the word stampede.

This whole tendency, on the part of major publishers, to pull out of the performance rights organizations, so that they can license directly. And I'm not going to go through, again, the litany of problems that fall from that. But suffice it to say that, for music creators, the idea that a disparity in rates is going to end, you know, 75 years of collective licensing for music creators, and jeopardize the, you know, the safety and the security that PROs bring to music creators is a very, very frightening prospect. Yes, and
I really like Mr. Kohn, you know, he has some really straight on ideas. I just want to say thank you for bringing them here.

MS. CHARLESWORTH: Thank you. Ms. Greer?

MS. GREER: Thanks. While I can't agree with Paul's position on broadcast royalties, I can agree with his position on 801(b). And we think that all of the services can come together, under 801(b). And I won't repeat all of what Paul said, in the interest of time.

But I do want to point out that under willing buyer, willing seller, and 801(b) the analysis is very much the same at the beginning. In the past two CRB proceedings we have spent the majority of our time arguing over, analyzing, and then adjusting marketplace agreements, and I will use marketplace agreements that may be relevant for the judges to consider, in our 801(b) proceeding. And that is the majority of time
spent. So you get the marketplace analysis, under both standards. But under 801(b) the judges get the ability, to take into consideration fair income, fair return, the relative contributions of the parties. And all those things, I think, we want from policy consideration, to be considered, especially when we are talking about new companies coming into the market, and encouraging that innovation as well.

MS. CHARLESWORTH: I have a question. I mean, is there -- some of the comments have suggested that maybe at the time 801(b) was adopted for some of the services, I think, including yours, it made more sense, perhaps.

Because you were a newer company, and I guess the question is, is there a point at which someone, a company maybe, ages out of that?

MS. GREER: So I think, and Mike I'm sure can correct me if I'm wrong, the
801(b) has been around since the '76 Act.

MS. CHARLESWORTH: Well, I meant, I'm sorry. When 114 was adopted, the question of what standard to apply, and so forth. The reason that -- the justification that you suggested was that you want to allow new companies, or innovative companies to develop --

MS. GREER: Well, no, that is --

MS. CHARLESWORTH: -- under the 801(b) standard, and the judges are able to accommodate that start-up issue better, perhaps.

But the question is, at what point is a company considered mature, I guess, or is it -- because some of the comments suggested that, at a certain point, maybe, a company should be considered mature, and should age out of the, what some perceive is a below market standard.

MS. GREER: So I don't think it is a below market standard. But I think that the
factors, as the judges go through them, you know, they establish a zone of reasonableness, using the marketplace benchmarks. And then they look at each one of the factors and figure out whether it applies, how much weight to be given. And that may change, over time, with the company. As the company matures, a factor that might have been significant in its, you know, first CRB proceeding, may not be a factor, or has as much significance in its next proceeding.

But I think it allows the judges to take those policy considerations and use them, no matter what stage a company might be in, but without that, the judges are just left with marketplace agreements. Which I think are not real marketplace agreements. And so they have no latitude. And I think 801(b) can be used for all companies, regardless of where they are, in their life process.

MS. CHARLESWORTH: Thank you, Ms. Greer. Mr. Carnes?
MR. CARNES: I have a question I would like to address to Steve Marks, real quickly, since we are going his direction. Representative Nadler was talking about the fact that when the royalties for the performance right, when those are collected, or for American artists, in other countries, we don't have reciprocity with those countries.

But my question is, if say Sony Records France, is sitting there, and they get to collect their share of the black box, do they go collect those royalties? And if they do, do they then give them to the artists? And that is my question.

MR. MARKS: I know the answer to the first part of the question, which is that they are entitled to collect them there.

But, oftentimes, what they are collecting is only the producer's part. The producers and the artists' portion are separated. And so most of the time it is just
the producers' part.

MS. CHARLESWORTH: Is that -- are you finished? Okay. Mr. Knife?

MR. KNIFE: I was just going to ask, it sounds to me like I'm hearing a pretty definitive, whatever you want to call it, a predisposition against 801(b) as that it, that it must lead to, or that it often leads to below market rates. And you had asked the question, a moment ago, --

MS. CHARLESWORTH: Well, I'm sorry, just to clarify. I mean, there has been a lot of commentary to that effect. So I'm trying to flesh this out in terms of how people think about it, on both sides of the table.

MR. KNIFE: Okay, I understand. But, again, it is still -- you know I have heard the question asked a couple of times that, you know, it leads to below market rates. And I think Ms. Greer, you know, tried to, you know, press back on that a little bit. And I was just wondering, I mean,
you had -- even the way you had asked the question, was kind of, like, couldn't companies age out of 16 801(b)?

And I thought, her answer kind of went to something that we kind of shot right over. Which is that the 801(b) standard has been around for a really long time. And the willing buyer, willing seller standard has been around for a relatively short period of time. And I'm wondering, you know, could you flip that question and ask, is there a time that the willing buyer, willing seller standard ages out, and is no longer applicable?

MS. CHARLESWORTH: So that is your question you are putting out there?

MR. MARKS: Yes, kind of. I mean, it just seemed to me like the whole enquiry is going in one direction, only. Which is that there is this 801(b) standard and it shouldn't be applicable. And we should be moving towards a willing buyer, willing seller. And I'm just
asking, is that -- I mean, is the premise, here, that that is the only direction that we could move?

MS. CHARLESWORTH: Well, I think, you know having read through all the comments, and I'm not saying everyone sees it this way, which is why we are exploring these issues, there is a perception that 801(b) is a below, quote, below market standard. Which I think, in itself, is a somewhat complex issue, when you are dealing with the statutory license regime. And that willing buyer, willing seller results in rates that are closer to what would be, would come about in the so-called free market, or through free negotiations.

That is, at least, the theme of a lot of the comments. And, of course, we have legislation. And so I guess, underneath that, there is a question about, if that is true, if there is -- if you accept that. And I'm not saying we all must accept it or even that I, necessarily, or we necessarily accept it.
But that 801(b) is sort of a subsidy, a little bit, and willing buyer, willing seller comes closer to what people would agree to in the free marketplace. There is a significant policy question, baked in there, as to why music owners, and music creators would -- why is the government doing that? Why are we asking them to subsidize services?

And I think that is the question that a lot of people put out there. And so you may have an answer for that. So you can feel free to comment on it.

MR. KNIFE: Well, I don't necessarily have an answer for it. But, again, I think what I heard was, essentially, you saying since the preponderance of the comments seem to side with the idea, with the presumption that 801(b) is, can lead to below market rates. And that it is, somehow, an artist subsidy of the services that enjoy the 801(b) rate setting standard, that we are
starting from that premise. And that was, really, that was really my question. Is I was asking, why are we starting from that premise? And I think you kind of answered it. It is just that the preponderance of -

MS. CHARLESWORTH: Well, I think there is a lot of -- a lot of the comments suggested that. And I think even the people who support 801(b) sort of tend to frame it in terms of we need the CRB to be able to adjust rates, to help grow new services.

MR. KNIFE: Right.

MS. CHARLESWORTH: And allow them to develop in an atmosphere where the government is paying attention to the fact that they have start-up costs.

MR. KNIFE: Yes, so -- and I just thought, as I was listening to you talk that, again, I don't have the answer, you know, obviously that is why we are all here, because I don't think any of us does have the answer, and we are trying to work it out.
But, again, I would, just me personally I would weigh against, you know, whatever, the majority of comments kind of coming up with this presupposition, that 801(b) leads to a below market value, against the history of the application of 801(b), how many objections we have had to either the standard itself, as it has existed for, whatever it is, 25 or 35, 40 years, or whatever. And, you know, whatever legislative tampering with it versus willing buyer, willing seller. Again, you know, whatever. It is what it is. I was just a little bit concerned because it felt, to me, like the tone of the conversation was kind of like, well, we all kind of agree that 801(b) is this standard that leads to below market rate. And I just didn't know where that comes from. And, again, I look at the history of 801(b) as applied, and I kind of think to myself, that is a relatively new complaint, certainly, historically. And so I'm not sure that we
should completely embrace that right now. Because it is, you know, it is this new outcrop.

MS. CHARLESWORTH: Mr. Marks?

MR. MARKS: I think what is one direction, about this conversation on 801(b)(1), is the one direction is that the rate never results in something above market value. It only results in things that are either market value, or below. It is a heads I win, tails you lose kind of proposition.

There is --

MS. CHARLESWORTH: That was a very definitive --

MR. MARKS: -- you have -- right. You have, as has been described, an evaluation of the marketplace rates. But then you have a separate evaluation about whether the rates should be reduced.

That is the only direction it ever goes. And it doesn't go there all the time.

But it has gone there, enough, to where there
has been, essentially, a wealth transfer of billions of dollars, from certain services, or from record companies and artists, to certain services, when those adjustments have been made. We can look at, you know, specific decisions where you have the marketplace rate identified, and then the rate actually cut in half. And so that is the problem with the standard. It is not as though you look at a marketplace rate and then say, well, should it be a little bit higher, or a little bit lower?

It is always a matter, should it be lower, or should it not? And that is an unfair thing.

One more comment, I had, just to Mr. Fakler. You are representing Music Choice and AM/FM radio, and talked about them both as kind of program services, or pre-programmed services. And I was wondering whether your position is that neither should be paying, or both should be paying?

Because if the services are alike
I assume that either, you know, both should be paying something, or neither should be paying anything.

MR. FAKLER: Well, obviously, the ship has sailed on Music Choice paying. You know, back when Music Choice was persuaded, by the record companies that invested in it, during a particular precarious time in its history, to agree to pay a 2 percent, by the way, royalty rate asked for by the record companies. In order to help back the notion that it would, that there should be this payment for digital services. I can assure you that if Music Choice had any idea what would happen to those rates, in the intervening years, and to the system, where no digital music service has ever been cumulatively profitable, they probably would have thought twice about that.

But that ship has sailed, so there is no question of Music Choice not --

MR. MARKS: So Amazon shouldn't pay
market rates, either, since they haven't been
cumulatively profitable for anything?

MR. FAKLER: Now you are talking
about market rates. And this is -- you know,
Mr. Dupler characterized the --

MR. MARKS: No, you have raised the
concept of cumulatively profitability which
in, and --

MR. FAKLER: Yes.

MR. MARKS: -- of itself is a very
odd measure to use.

MR. FAKLER: Not to somebody who
owns a business. It means whether you have
made money or lost money.

MR. MARKS: Yes, but while you are
paying for market rates, for everything else.

MR. FAKLER: You, again --

MR. MARKS: The rents, everything
else.

MR. FAKLER: Let's be clear. The
801(b) standard does not result in -- when you
say a market rate, there is no market rate,
first of all. The question is whether it is a
fair -- first of all, the difference between
fair market, and free market, that is another
group of terms that keeps getting thrown
around interchangeably, okay?

801(b) seeks to find a fair market
rate. And it does not typically find a single
market rate. This is all --

MR. MARKS: That is not true. That
is simply not true.

MR. FAKLER: Usually there is a
range of fair, reasonable market based rates.
And the 801(b) factors are used to set a rate
in that range of rates.

MR. MARKS: The CRB is directed to
achieve the objectives that are set forth
there, not to find a market rate.

MR. FAKLER: But they --

MR. MARKS: That is not what it is.

MR. FAKLER: But they use
marketplace benchmarks, quote, unquote, in
order to set that range of reasonable rates.
MR. MARKS: Right, and then figure out whether to adjust it down.

MR. FAKLER: No, in between.

MR. MARKS: Has it ever been adjusted up?

MR. FAKLER: Sure, from the bottom of the range, it has never been set at the bottom of the range, it never once --

MS. CHARLESWORTH: Okay, all right. As usual we are running out of time. I think we have explored that issue. Mr. Knife.

MR. KNIFE: Yes, really, really quickly, because Steve did me a service and gave me another one of the --

MS. CHARLESWORTH: Really quick.

MR. KNIFE: -- arguments.

One of the arguments, about 801(b), he said, before, that 801(b) always results in either market rates or below. And I don't really think that is the case. It has been applied to the mechanical royalty rate for, again, since whatever, 1976, when it was
introduced, or whatever. And I think the
preponderance of recording agreements actually
have mechanical rates at 75 percent of what is
the statutory rate, which is set under 801(b).
So we have a market rate that is set. And then
we have tons, and tons, of commerce underneath
that rate that goes below it.

That shows that the market is
lower than the rate that was set.

MS. CHARLESWORTH: Okay. Mr. Rosenthal?

MR. ROSENTHAL: Thank you. After
listening to this conversation I don't know of
any cumulative evidence that could be brought
forward, whereby all of us shouldn't be
running to the free market as quickly as we
possibly can.

Because here we are expecting
judges to understand these distinctions, if we
can't even agree on these distinctions. I can
tell you, in terms of free market versus
801(b), even the CRB has stated that when they
apply, and this was in SDARS, even when they apply the rates, if it is an 801(b) it is going to be lower than the free market rate. And I think that we have to just accept that. So I'm going to get back to actually focusing on some legislation. We have the Songwriters Equity Act, which we are trying to bring forward which just doesn't help these guys. You know, I mean, it certainly helps 114, it helps 115, too, and it helps the PROs in a lot of different ways.

What I would like to, at least, for the Copyright Office to think about is, that while everybody is talking about an omnibus bill to solve all of these problems, we think that there is going to be such unanimity on support for this kind of a change, that this be dealt with as a separate issue from other issues. And let's, at least, get this passed. So that in the rate courts that we have to labor under we will, at least, have a better shot at getting fair, or free,
or a rate higher than we had before. And it
brings back what I think all the content
owners, including the artists, including the
songwriters, have been yelling about for the
past couple of years. And that is we are so
undervalued that something drastic has to
happen. And I think it should happen quicker
than otherwise some people would like it to
happen. So I would propose that we get this
Songwriter Equity Act passed, and that the
Copyright Office support us in that.

MS. CHARLESWORTH: Okay. Mr. Bennet?

MR. BENNETT: I have got two pages
of notes that I have whittled down to three
sentences and a postscript.

MS. CHARLESWORTH: We love that.

MR. BENNETT: Yes.

MS. CHARLESWORTH: Thank you.

MR. BENNETT: Very general, also.

First sentence, creativity, I believe,
creativity is one of this country's greatest
assets. And ingenuity. That includes the ingenuity of some of the for-profit companies at this table. I believe we want music licensing laws that reflect a culture that truly values creativity, and for this particular forum, I'm talking about songwriting process, and the work of the artists who record those songs. In order for the laws to value artists' creativity we must ensure that the artists get paid, and, ideally, they would be paid directly, and across all platforms. That was sentence three. The Postscript: Having sat next to him most of the day, I believe that James will figure this out.

(Laughter.)

MS. CHARLESWORTH: Wow, that is very good. Well, let's see, we are over time. I can take -- why don't we just, if anyone wants to, literally, say one or two sentences more, and I mean that, then -- Mr. Malone?

MR. MALONE: I can be brief. It
seems to me that there is a theoretical defect in the fair market value standard as it has been applied by the board. In other words, when a marketplace transaction takes place, there is both money changing hands, and there may be something else changing hands, tangible or intangible. And it seems to me that for the Artists -- particularly the new artists that the college radio stations deal with -- the exposure is far more important to them, than any reasonable expectation as to monetary response. And I think that if you are going to put down a fair market value standard, you have to realize that that comes with it.

MS. CHARLESWORTH: Thank you. Mr. Dupler, one to two sentences, then Mr. Kohn, we will just go around and then we will close this out.

MR. DUPLER: One sentence. As we are dealing between 801(b) or willing buyer, willing seller, there is a third option, which would be to come up with a new standard.
MS. CHARLESWORTH: That is a creative thought. Mr. Kohn?

MR. KOHN: I thought it would be fun to come to the defense of the NAB.

MS. CHARLESWORTH: Well, I think --

MR. KOHN: -- so let me just --

MS. CHARLESWORTH: -- Mr. Fakler would appreciate that, take a few arrows for him.

MR. KOHN: If the NAB were reasonable, I would think that they would come up with an argument, like, well we have had it good for the past 95 years, not having to pay these performance fees.

But they do have a legitimate fear of getting screwed. Because look at the meat grinder that all these digital services have gone through over the past ten years. And, still, haven't been able to find a business model. The other thing, terrestrial radio is a bit different than Spotify or Pandora. I would argue that the costs are, certainly,
higher. Terrestrial radio stations, with the
towers, and the regulations they have to go
through, and what they have to provide to the
public, just to continue to be on the air
should be taken into consideration on that
70/30 split. Maybe it should be far less than
that because of the costs that they have
involved. Assuming you want them to stay in
business, because you can get rid of them by
simply charging them the same fee as you would
charge Spotify, 70 percent. Then they
certainly would go out of business. They
couldn't afford the DJs, and the costs, and
everything else, and the licensing.

Now, obviously some radio stations
provide, like Spotify, I don't think have DJs,
you know, introducing things. They don't have
news, weather and sports. They don't provide
these added value services which, I think,
should be taken into consideration on the
allocation of that 70/30. And then, finally,
there is WOR, which is all talk radio, that
uses a little bit of music during the commercial, should be paying far less than WCBS which is, you know, shooting it out at HD and high quality. It is competing, to some degree, with Pandora, on an advertising basis. So it is the same conceptual problem, 70/30 or whatever, adjusted based upon the value that they are providing. And I could -- I'm sympathetic with someone who is concerned about getting thrown into the meat grinder without somebody taking into consideration their costs. And I don't think that the CRB has really done that very well. They have just simply put them off to the meat grinder, without thinking about all these other negotiations being taking place between the rate court hearings, and the PROs, and the mechanical license, and what the record companies have been doing. It has to be thought through, in one place, by people who have an understanding of what these allocations should be.
MS. CHARLESWORTH: Thank you.

MR. MARKS: But they should pay, right?

MR. KOHN: Absolutely.

MS. CHARLESWORTH: That was a couple more than two sentences, but we are going to keep trying. Mr. Rosenthal, Mr. Marks, then Mr. Carnes. Mr. Rosenthal, you are done? Are you done? I scared you off? No, you are talking, okay, good. Mr. Carnes?

MR. CARNES: I'm not intimidated.

MS. CHARLESWORTH: Good.

MR. CARNES: Let me simply say, in closing, about fair rates, and the market value, et cetera, et cetera. As a songwriter I think it needs to be clarified, and it needs to be on the record, that there is such a difference between what the rate is, and what I actually get paid, okay?

Because the rate for mechanicals, say, is 9.1 okay? That is publishing, and so on. But after everyone gets through slicing
and dicing it, and after my contract, and the
record label to ask for 3/4 rate. And after
they get through basically pillaging and
plumbing every penny that I could possibly get
taken from me, I make 17,000 dollars per
million sales. Let me repeat this for
everybody. I am making 17 grand per million
sales. That, for a family of four, is going to
put me on food stamps, okay?

So that is the rate that we are
going right now. And, by the way, that is if
anybody pays for the music. That is best case
scenario, okay?

MS. CHARLESWORTH: Thank you, Mr.
Carnes. I think Mr. Morgan is going to bring
us home.

MR. MORGAN: Just very quickly. So
this is -- you are conducting a music
licensing study about these issues. And some
of this stuff we do get lost in the tall
weeds, because it is complicated. And, Mr.
Fakler, you do have a tough gig, here today.
And I appreciate you coming here and being the standard bearer for that particular position. I guess, as part of the study, what did seem very simple to me, I didn't hear anybody else, and I'm just curious, is there anyone else, at this roundtable, that is against a performance royalty at terrestrial radio?

So everyone here, at this table, except Mr. Fakler, believes that there should be a performance royalty at terrestrial radio?

Okay, thanks.

MR. FAKLER: Would anybody else's clients actually have to pay the royalty?

(Laughter.)

MR. MORGAN: And, actually, with a little comedy, we can end with a little comedy. I appreciate that. And wherever I go, when I travel and I talk about this issue, I say that. I say I understand the NAB's position, it is legitimate, and it is one that we should pay attention to, because it is serious, and it is valid. And the valid
position is we don't want it. We don't want to pay for it. And I get it. But other than we don't want to pay for it, I have yet to hear an argument that is solid.

MS. CHARLESWORTH: Okay. Well, thank you, I'm glad we had a little bit of humor at the end.

If you can get back at 4, we are still running behind, we would be grateful.

Thank you.

(Whereupon, the above-entitled matter went off the record at 3:52 p.m. and went back on the record at 6 4:08 p.m.)

MR. DAMLE: Okay, thank you. Our next panel is on data standards. And before I -- I have a few questions to kick things off.

But I will let the new people introduce themselves. Starting with you, Mr. Raff.

MR. RAFF: Hi, there. I'm Andrew Raff, I'm with Shutterstock. We are a New York licensing company. We started out in images,
we represent about 55,000 different creators
of visual content, license about 35 million of
their assets. And we, as about a month ago,
now also license music for sync rights.

MR. DAMLE: Okay, thank you. Mr.
Huey?

MR. HUEY: Nice to meet you. I'm
Dick Huey, I'm a digital consultant to Merge
Records, a small independent record label,
home of many well known independent acts. I
handle their digital music service licensing
in an outsource capacity. And I have a group
called Toolshed that has been around for about
14 years. My history is with Beggars Group, I
started their new media department in 1997.
And since then have worked with scores of
independent record labels, more or less, in
the music service licensing space. Thanks.

MR. DAMLE: Thank you. Ms. Lummel,
am I pronouncing that correctly?

MS. LUMMEL: Lummel.

MR. DAMLE: Lummel, got you.
MS. LUMMEL: Close enough. I'm Lynn Lummel, I'm senior vice president for
distribution and repertory at ASCAP. I'm
responsible for each quarter taking in
hundreds of billions of musical performances,
and matching them to our members work
registrations. The bulk of our manual effort
is matching the performance data at title and
artists, to our title and artists on our work
registrations, and cleaning up our members'
work registrations, where we do not have a
complete copyright picture.

MR. DAMLE: Okay, thank you. Mr. Mahoney?

MR. MAHONEY: I'm Jim Mahoney, vice
president of A2IM, the American Association of
Independent Music. We are a not-for profit
trade organization representing the rights and
interests of American independent music
labels. A segment that industry trade magazine
Billboard, reports accounts for 34.6 of the
industry's recorded music partnership. We are
comprised of over 335 label members, small and
medium sized businesses, independently owned,
who are located in nearly every state of the
union, and who invest in artists and music
genres that enrich our musical experience and
culture.

MR. DAMLE: Thank you. Let's see,
who -- anyone else? No, I think that is it.
Okay, so to kick things off. I think it is
clear, from some of our discussions we have
had here, and in earlier roundtable comments,
that one of the most critical issues facing
the music licensing system is a lack of
adequate flow of data. First to identify what
music is being used. And, second, to identify
the owner, or owners, of that music. And so
there are two questions. One, it seems that
publishers and record labels should be able to
assign unique identifiers to sound recording
and musical works, that are imbedded in a
digital music file, and send that information
to music services. And then, on the other end,
it seems that music services should be able to feed that data back to the copyright owners on their reports of music use. So the first question is, to what extent is that not happening? And if it is not happening, why is it not happening? And is there anything government can do to remove any impediments?

And the second question, I think we have heard today that many services see value in having greater transparency of ownership data. Particularly with respect to musical works, you know, not song by song searches by website, but bulk access to ownership data. So, again, why is there not, to what extent is that true, why is there no greater transparency of this ownership data, and is such transparency important to the functioning of the market?

So with those questions about data, Mr. Barron, do you want to start? Sorry, if you could speak into the microphone?

MR. BARRON: To answer one of the
specific questions you asked, as to is all of that data being delivered?

    I think that is part of the problem, it is that data is being delivered by so many different sources. One single recording, attached to one composition, could have seven different unique codes. ASCAP is sending their codes, a publisher is sending their codes, a label is sending an ISRC code, we may be sending an ISWC code if, in fact, we have already received that from the PROs. In many cases it takes a while before we have that ISWC code. So when a song is at its most popular, and getting the most use, in digital services, that code doesn't exist. You throw in Harry Fox, who has a unique publisher code. But only the publisher code when the song was first created. So as catalogs exchange hands your code for the publisher remains with the acquired company, and that could be 2, 3, 4 acquisitions ago. You can see where a company like a Youtube, where they have 20, many 25
different records, being submitted by 25
different parties, all with these unique
codes, how it can get a little bit jumbled.

But why DID is such a good
solution is that they are operating, and they
are talking to all of us as to what is the
best way for us to ingest all of the different
data sets that you have, and being able to
spit them all back.

If publisher A can fill rows 1
through 3 and publisher B can fill rows 4, 5
and 8, and someone else can do 6 and 7, can
someone gather all those together, spit them
back out to the entire community, so that we
can all have identifiable works attached to
digital recordings.

MS. CHARLESWORTH: I have a follow-
up. DDEX I know, obviously, has a messaging
protocol.

But you are talking about within
that protocol having a lot of, say, open
fields where everyone could put their
proprietary identifier in there?

MR. BARRON: Right.

MS. CHARLESWORTH: And then they would accumulate. And so those identifiers would then be associated with each other?

In other words, it is sort of an open ID? Instead of making everyone adhere to one single identifier, it is allowing people to populate their particular codes?

Or am I oversimplifying that?

MR. BARRON: No, no. I think that is my understanding, and I'm only just learning about DDEX. But in speaking with them, what they are suggesting, what they are working towards, is being able to accommodate the individual needs of different sized companies, and different companies with different technologies.

If I can only provide a set of data I have, another company can provide a slightly different set of data, that they would build the infrastructure that can take
in everybody's details, tie them in and then
spit them back with the most comprehensive
information collected from every source

MS. CHARLESWORTH: And I know that
you are not DDEX. But can I ask, how are they
going to tie them in together? That is -- in
other words, how are they going to match all
these records together?

What is it --

MR. BARRON: And, again, thank you
I'm not DDEX. But I think what is being
proposed, at the simplest level, is they can
say if A equals B, and B equals C, then A
equals C. There have to be enough common
threads.

MS. CHARLESWORTH: Okay.

MR. DAMLE: Okay. Ms. Lummel, I
think you were next.

MS. LUMMEL: So I definitely get
the challenge, because we spend all of our
time trying to get identifiers into meta data,
and use detection data.
One of the things that we, at ASCAP, did was we actually started with a small test, with a technology company out of the UK, and with production music libraries. And we basically said, to the production music libraries, you need to source your music, and your meta data with this technology company. In the meta data you must imbed, in this case it is the ASCAP work ID, or the ISWC. We then give audio files, to this technology company, they run it against their data base of fingerprints, they report back to us the data with the work identifier in there. No manual work involved. We know it can work. Is it easy?

No. What we have found is that, let's take the production music library world. They have their creative piece that is basically in charge of the assets. And then they have the publishers, who are in charge of registering a copyright. Those data bases don't talk to each other. And so the
assets have to go out, because they want to exploit them. In the meantime the works need to be registered. So we had to have them talking to each other. So there is that internal kind of communication between the data bases. And I would say it is the same thing for labels, right? So you've got a sound recording going out, you've got your label and your performance artist, and now you have work registrations that need to come in. So, again, not only are the identifiers the IRSC and the work ID let's say the international standard work code marries that data.

But what we are also finding, with getting the identifiers being the utopian world, just like you discussed, in the meantime just get the title and artist straight. So when the usage meta data come in, with title and artist, what is in the labels -- title and artist -- is the same thing in the publisher work registration. So that we can match, automatically, rather than having
to do manual matches. So, in the meantime,
while we are working on these identifiers,
let's get the meta data for title and artist
correct. So we find that these are the things
that we would hope help to improve the
matching of the data.

Now, let's talk about the work
registrations, from the publishers. We have
IPI numbers, which are interested party
identifiers that should be on work
registration, so we know who the music
creators, and the publishers are. Very rarely,
especially when you have a popular song, do
you have complete data on all of your
copyright, music creators, and your
publishers. Or you may get 7 different work
registrations, with 7 different revisions. And
so what we have to spend our time on is
marrying all those work registrations to have
one complete copyright picture. So, you know,
if all the publishers would give us, at least
complete information for, certainly, the
composers and publishers that they represent, as well as if they know the other composers and publishers, we could have a more efficient process in terms of identifying who the copyright owners and songwriters are. It is, definitely, a challenge for PROs, I can tell you that. And we are constantly talking to music users, we are constantly talking to the publishers. We are working with the international community to get these international standards quicker. But it is, certainly, something that we endorse, and we try to actually come up with ways to implement.

MS. CHARLESWORTH: And just, do you assign the ISWC numbers through ASCAP?

MS. LUMMEL: Actually we have taken the work registrations and we send them out to the ISWC Agency, which is CISAC which assigns the ISWCs.

They come back in and we notify the publishers once we have an ISWC.
MR. DAMLE: And just to -- sorry to get into the technical details. So when, exactly, in the process is the ISWC assigned? Do you have to figure out all the splits before you can assign an ISWC?

MS. LUMMEL: No, you don't.

MR. DAMLE: So that can happen at the beginning, before you figure out --

MS. LUMMEL: When the work registration comes in, exactly.

MR. DAMLE: Okay, okay, thank you. Ms. Finkelstein, I think you were next.

MS. FINKELSTEIN: So where to begin? I guess to begin, on the label side we have been working with ISRC for about 20 years, and I think we are pretty good about ISRCs assigned to all the products. I wouldn't say we are totally clean in terms of not having the same sound recording, having multiple ISRCs associated with it.

But you could probably create a table of all the different ISRCs associated
with the same sound recording. So they are
tagged and I think that when we do an
integration, with a digital service provider,
we provide all that meta data, and it has the
ISRCs. So I think that is in reasonably good
shape.

MS. CHARLESWORTH: Is that when you
send the sound recording files to the
provider?

MS. FINKELSTEIN: Yes.

MS. CHARLESWORTH: Are they
imbedded in the file, or are they just
associated meta data, what is the format?

MS. FINKELSTEIN: In the associated
meta data.

MS. CHARLESWORTH: So if you could
just be specific about what the file format
is, when you are sending a sound recording
file, maybe different versions of it, right?

MS. FINKELSTEIN: Right.

MS. CHARLESWORTH: Different bit
rates, and how is the meta data attached to
that?

MS. FINKELSTEIN: I mean, there is a meta data attached to each sound file that gives all the label, artist, song title, ISRC, all the standard information.

MR. DAMLE: It is attached to the digital file itself?

MS. FINKELSTEIN: Yes.

MR. DAMLE: It is not in some separate table that then they have to match?

MS. FINKELSTEIN: No, it is attached to the digital file.

MR. DAMLE: Okay.

MS. CHARLESWORTH: And do you, but obviously you are not providing ISWC, correct? Or are you?

MS. FINKELSTEIN: No, we don't have ISWCs, and we certainly don't have them at that point.

I think I mentioned, earlier, that it seems to me that it would make sense for the label to assign a, you know, a dumb ISWC,
from day one, if we know it is a new musical work. So that then, when the process fills out, when people claim their shares, that it would already, that tag would already be there. I mean, as I think Greg pointed out, you are talking about a very dynamic situation, you are trying to create a data base where many of the fields are subject to changing values. So you have temporal limitations. We may control a catalog of masters for a certain period of time, certainly publishing catalogs very frequently change hands. And we have territorial limitations when you get beyond China or the United States.

But it is very common, in the publishing world, for the splits to change after they are, initially, determined. There are, you know, so many instances of publishing rights being clarified after six months --

MR. DAMLE: So, sorry, this goes back to my earlier question to Ms. Lummel,
which is if you can assign an ISWC, before you figure out, sort out what all the splits might be, the ownership splits might be. Just in terms of being able to identify what is the underlying musical work?

And, as I said, they are sort of two separate issues.

One is just not knowing what the underlying composition is. You know, at the time that a label sends a -- yes, sends a sound recording out, is there some way of sort of coordinating, so that there can be an -- at least before you figure out what the splits are, that there is, at least, an ISWC assigned to that?

Again, this goes into, I don't know exactly what the process is, and the timing of when --

MS. FINKELSTEIN: I don't know what the process is. But I assume there is a possibility of just being given blocks of numbers. So that if it is a new work --
MR. DAMLE: Right.

MS. FINKELSTEIN: -- and it has never been assigned an ISWC, if you assign it, 5, 6, 7 and a year later, or a month later somebody decides that is 50/50, EMI Warner Chappell, that is kept in a registry some place, the same way it is now.

But at least, then, you have already sent the work out into the world, with a tag on it.

MR. DAMLE: Right. I mean, that is sort of the idea.

MS. FINKELSTEIN: Right.

MS. CHARLESWORTH: And how would ASCAP be able to match, how would you know that, Ms. Lummel? In other words, if the label did that, how would that information get to you in terms of the ISWC, and how would you use that?

MS. LUMMEL: What would the label do?

MS. FINKELSTEIN: This is not a
fully fleshed out --

MS. CHARLESWORTH: No, we are thinking blue sky, we are not going to hold you to this.

MS. FINKELSTEIN: So you know the basics of mechanical licensing are that the record company gets, usually, from the manager, the artist.

They will say, this is the song, these are the writers, and these might be the publishers. And then there is an extensive process that the label goes through to call each one of those possible publishers, to confirm that they are, in fact, the publisher of the song, and to get their split.

That process goes on for months, sometimes years. We are probably still trying to finish licensing Fuji's album. So, you know, it makes it impossible for us to provide that information to a digital service provider, in the initial load of the files, because that information is not known at that
time. I mean, in some cases we provide preliminary information. But so, I guess, the concept would be that because we know we have a number assigned now, in this case, ISRC 678 to this musical work, we know the name, we know the songwriters, we know the presumed publishers, that somehow we would notify those two or three publishers, as part of the split gathering process. And we would say, hey, here is this new work, we need you to give us our splits and, by the way, we have given it this dummy ISWC number, that you guys should take over from here. We don't have any interest in administering that.

MS. LUMMEL: But in the ISRC is at the sound recording level, and the ISWC is for the musical composition. So it could be the musical composition is already out there, and now you have a new recording of it.

MS. FINKELSTEIN: It could be.

MS. LUMMEL: Right.

MS. FINKELSTEIN: I was just
talking about new works. Most of our front
line albums embody new works.

MS. FINKELSTEIN: Yes. And then
once you've done that, you -- I mean, so if it
is a new work, all of those publishers are
expected to register the work with the PROs,
correct?

MS. FINKELSTEIN: I don't know
whether -- how you work --

MS. LUMMEL: Yes.

MS. FINKELSTEIN: -- if the
publisher takes the lead, or -- but we are
already in contact with all those publishers,
to either confirm their splits, or ask them
for their splits.

MS. LUMMEL: Right.

MS. FINKELSTEIN: We could provide
that number to them, at that point, as part of
that enquiry.

MS. CHARLESWORTH: So under this
construct, presumably, the publishers would
then be, in theory, may be providing it to
MR. DAMLE: The PROs, right.

MS. LUMMEL: Let me think about it.

MS. FINKELSTEIN: Or we could provide it to whoever your central registry is. I mean, we are not trying to hide the ball.

MS. LUMMEL: But that works for sound recordings, right?

MR. DAMLE: The idea would be that, at the time, the goal would be that at the time the sound recording is being sent out the door, to the digital services, or whoever, that it has both an ISRC and ISWC, so that it flows back through the system. So that when you are receiving it, that has the -- I mean, ideally that would make your job easier, if you have that same ISWC associated with the composition.

MS. LUMMEL: And an ISWC is, usually, assigned when, again, you know your writer and publisher splits. So will you --
you may know your writer and publisher splits, but you may not.

MR. DAMLE: Sorry. So that went back to my earlier question, whether you needed to know --

MS. LUMMEL: Not all of them.

MR. DAMLE: -- the writer and publisher splits before you assign that ISWC?

MS. LUMMEL: Not all of them. But you need, at least, some authoritative shares, in order to get that ISWC. So somebody has to register the work to say, I control these splits.

MR. DAMLE: I see.

MS. LUMMEL: Even though you may not have all of your splits in.

MS. CHARLESWORTH: And that is a CISAC rule?

MS. LUMMEL: You know, I have my little ISWC cheat sheet with me, I will pull it out. And while you guys are talking I will see if I can find that.
MS. CHARLESWORTH: And I just had one follow-up. On the ISRC, does anyone maintain a central registry? I have heard that there is one being built?

MS. FINKELSTEIN: There is one cooking at SoundExchange.

MS. CHARLESWORTH: It is on your hard drive, right, Andrea?

MS. FINKELSTEIN: No, I think SoundExchange is undertaking, because they have a massive data base of performances, they are undertaking to sort through the ISRC issue. I know we have done a data exchange with them, to give them all of our ISRCs. And I think the other majors have, as well. I assume a lot of the indies are doing that as well. So their goal is to create a definitive look-up for ISRCs that would then be made available to others.

MS. CHARLESWORTH: And that would be tied to artists and title, is that --

MS. FINKELSTEIN: Yes.
MS. CHARLESWORTH: So, in other words, you would look it up by one of those two and then you could, in theory, determine the ISRC?

MS. FINKELSTEIN: Right. And then, of course, we would love it if the digital services, that are operating the statutory license could avail themselves of that data. So that when they report to SoundExchange they would have the ISRCs prebaked in their reporting, which would really help the value chain.

MS. CHARLESWORTH: Thanks.

MS. LUMMEL: I have an answer for you.

MR. DAMLE: Okay, Ms. Lummel.

MS. LUMMEL: Okay, so an ISWC is only Allocated a qualified number when all the Creators are identified, it doesn't have to have all the publishers, but all the creators have been uniquely identified.

MR. DAMLE: What is the qualified
agency?

MS. LUMMEL: It is the ISWC Agency -- part of the CIS plan, common information system, which CISAC, the Confederation of Societies of Authors, has developed, in order to respond to the needs of information to the digital age. It has been approved by the ISO, the International Organization for Standardization.

MR. DAMLE: So it sounds like you have to identify all --

MS. LUMMEL: Creators, the creators.

MR. DAMLE: The creators?

MS. LUMMEL: Yes.

MR. DAMLE: i.e. the songwriters?

MS. LUMMEL: The songwriters.

MR. DAMLE: Identify all the songwriters?

MS. LUMMEL: That is right.

MR. DAMLE: Yes.

MS. CHARLESWORTH: Do you need the
splits, or just the identities?

MS. LUMMEL: It looks like creators
identified by their IPI numbers, and roll
codes.

MR. DAMLE: Okay, interesting.

MS. LUMMEL: Without this minimum
information ISWC cannot be allocated. So it is
the creators who have to be there, but not the
publishers.

MR. DAMLE: Not the publishers. And
then not necessarily the splits?

MS. LUMMEL: It doesn't say the
splits.

MS. FINKELSTEIN: But, in theory,
that could be the ISWC confirmation
requirement, or something? Because whatever 8

--

MR. DAMLE: Right.

MS. FINKELSTEIN: -- you do with
those ISWCs, from that point forward, you
could still have a gate, there, for whatever
you want to have required.
But at least you already have a tag in the files.

MR. DAMLE: Yes.

MS. FINKELSTEIN: That had already

--

MR. DAMLE: Yes, I don't know that necessarily those two requirements need to be attached or not, need to be linked in anything that way. You should be able to modify the songwriters, if you can, after the fact. And just get the identification of the song, perhaps. Maybe that is the idea. Anyway, sorry, thinking out loud.

I think Mr. Kohn was next, and then we will come back around this way.

MR. KOHN: So, again, conceptually there are two things, right? There is the repertoire meta data, which is what you have been spending most of the time on, here. There is also the reporting aspect of it. And DDEX does both. There is a standard that they are trying to put together for this. There is,
also, reporting standards, et cetera.

Now, it underlying a lot of what the problem is, I mean, we know the goal is to compensate the artists and the songwriters, eventually. And I'm firmly of the belief that to make that happen you have to have transparency, particularly in the repertoire meta data. There is a lot of confidentiality on the revenue flow, of course, on the reporting, so leave that aside.

But on the repertoire meta data, there ought to be a lot of transparency. And what is the repertoire meta data?

Well, it starts out with the names of the people who are possible creators. These could be either composers, or lyricists, or arrangers, or recording artists, or publishing companies, or administrators, or agents, or PROs. And it is, basically, a name, a birth date I would think, to make it more unique, and a unique identifier, a number.

What has been used, in the music
industry, is what has been mentioned by Lynn, is the IPI. And what I think they are moving to, and I'm not sure what the cooperation and the status of it is now, is the ISNI standard. Which is the International Standard for Name Identifiers, which is going to bring in authors from the book publishing industry, as well, as the recording side, to have this one data base, and a registry for it.

But let's just take the IPI right now. If I wanted a copy of the IPI, and remember there is no revenue here, there is no song names, there is nothing except Elton John. And maybe his birth date. But, you know, he is a lyricist, or he is a composer. I just want a list of names. How would I get a copy of the IPI data base? Me, right here, sitting today. Or just access to it on the web? I want to do a look-up, can I do that?

MS. LUMMEL: I can only speak for ASCAP. And I guess the short answer is no, you can't. It is accessible, certainly, to
societies who use it. Publishers can get access through their society websites. For all of ASCAP members, who are on our public data base, you can look up their name, you can even look it up by performers. So you can find Elton John, even though he is with our competitor. But we do list their IPI name numbers.

MR. KOHN: So if I were a songwriter, or an heir of a songwriter, I would have to go through a publisher, or someone who has access to this data base, to do a look up on that.

MS. CHARLESWORTH: Can I ask, who owns the IPI data base?

MS. LUMMEL: I brought that with me, too. Let me look that up.

MR. KOHN: That is the Swiss. I think it is the Swiss organization.

MS. LUMMEL: It is SUISA who assigns it. SUISA assigns it. So the societies, when you have members, or
affiliates of the societies, they will provide
SUISA with the information, and SUISA will
assign it. There is a base number, which is
like an umbrella number. And then IPI name
numbers for each pseudonym. So each pseudonym
would have a name number. Elton John is his
performing artist name. So he has a different
legal name.

MR. DAMLE: Samuel Clemens would
have a name, and so would Mark Twain?

MS. LUMMEL: Exactly. But you can
find, the public can find that on ASCAP's
public data base as well. So you could look up
the name on ASCAP's public data base.

MR. KOHN: Okay. So there is the
name identifier, then there is the ISWC, which
is the song identifier, and then there is the
ISRC, we have been talking about, identifier.
And then a separate issue, really, is quite
separate, is the links between those. The link
between the ISNI, for example, and an ISWC. Or
a link between -- or I should say IPI. Let's
say ISNI, and the ISRC, and then of course,
the ISWC and the ISRC. So you have to separate
all these things out, and parse out who has
what data, and there was a good discussion
here, in terms of where should something be
generated for practical purposes.

But I'm not sure whether the
record companies even have the IPI access.
They are not publishers, they don't have the
IPI. So they can't even get the identifier
without going through a music publisher, to
get the IPI. And I don't think there are a lot
of people, in the publishing business, or in
the record side, are even familiar with any of
these standards, at all. Usually it is in the
back office somewhere. So there is one big
problem, here, with repertoire meta data, that
these data base don't exist. And I have tried,
the RIAA, there were meetings between the RIAA
and the music publishers, tried to put
together a licensing system for, what was it?
Micro licensing.
If you were a DJ somewhere, and you needed to get a license, and you only wanted a few hundred copies, or whatever, to do something. Where could you go?

Well, if the whole thing is useless, unless you can get both the sound recording and the song, which means there has to be a data base with a list. And I have been in meetings, five years ago I was in a meeting, and eight years ago there was a meeting, and it has just been going on for, you know, a decade. And they can't get it. So why can't they get it? I think it is a matter of control. So it may very well be that there are certain things that you can parse out legislatively and basically say, look, ISNI, everyone should have access to that. And they should, you know, whether part of it is going to be in Harry Fox, part of it is going to be at a PRO, part of it is going to be in a record company, none of them are going to want to give up their lists. All we are talking
about is a list of names, right? Same thing
with the ISWC, that is a list of songs, right?
And the ISRC, which is a list of recordings.
So you have to decide, most of this stuff I
don't know is, terribly, proprietary. It has
to be transparent to get people to get paid
properly.

Because if the number is not
there, someone is not going to get paid. And
the purpose of the copyright law is to get
someone to be paid.

Now, on the reporting data, I'm
not suggesting reporting data should be made
public, or whatever, it is totally different.
So don't confuse reporting of revenue data
with simple repertoire meta data. So that is
my soap box on data, you know?

And I have been part of efforts,
there have been all kinds of -- we pitched
royalty share, when I was there, we pitched in
the European Union for a global repertoire
data base. Somebody is now managing it.
Somebody is trying to put something together.

But, again, it is proprietary. You are not going to give up control of this. And without giving up the control, and making it more transparent, you are not going to have accurate reporting. And I don't think it is, necessarily, in your interest to -- black box money is there because of opacity.

Because it is money that they can't match to anything. So where does that go? It doesn't go to the songwriter or the recording artist. And that doesn't serve, really, anybody. Except for the people who manage to get their hands on the money.

MS. CHARLESWORTH: So I think one of the questions, if you accept that, that there should be a publicly accessible data base, let's say I guess the three -- well, we have heard four IPI, ISNI, are they essentially competing data standards?

MR. KOHN: No.

MS. CHARLESWORTH: No?
MR. KOHN: No, ISNI is a name standard, Mark Twain means Samuel Clemens.

MS. CHARLESWORTH: Right, the name.

MR. KOHN: ISWC is for the name of the song itself.

MS. CHARLESWORTH: I know that. I'm talking about ISNI and IPI.

MR. KOHN: IPI is the old thing that was on index cards all over Europe. No?

MS. LUMMEL: The CAE is the old -- ISNI is kind of wanting to replace the IPI.

But to broaden it beyond, you know, your creators and publishers, music creators and publishers.

MS. CHARLESWORTH: So it would be, in theory, one might choose one or the other?

It sounds like maybe --

MR. KOHN: Well, IPI is old. And it is not complete. I don't think it has the birth dates.

MS. LUMMEL: Absolutely it has birthdays.
MR. KOHN: It does?

MS. LUMMEL: And, again, the IPI information is on -- it certainly is on ASCAP's public data base. You can look up a name. So where we have the ASCAP work identifier, if you have an ISWC you can look up a work by ISWC, if you have that number. So we actually try to put as much data, onto our public data base, as possible, for any music user, or licensee.

MS. CHARLESWORTH: So, I guess, getting to the heart of my question. Assuming, let's assume hypothetically we pick three data points, ISRC, ISWC, ISNI, because that is the newer one. And we, the government, we wanted to incentivize people to contribute them to a public data base that would need more than manual look up, where you could actually download the data, and run it through matching processes and so forth.

What incentives could there be to, for people to do this? Because I think that
this is a situation where everyone thinks that we need it but, as people point out, we haven't been able to get there. And the question is, is there anything we can do to encourage that? Because it is -- I mean, this is the third roundtable. This is a huge, apparently, I mean this is -- I believe it is a huge issue for the music industry. It creates huge transactional costs. It slows down launches. And I, absolutely, can understand why people want to hold on to their proprietary data. So it is not, I mean, it is a lot of money, time, and manual work went into those data bases.

But if we, if there is a general consensus that we need a public data base that is, really, very usable. And, again, where people can take it, and refresh their data, and match data, what are the incentives to get people to contribute to that?

MR. DAMLE: So, Casey, I'm sorry when I called on Bob I missed that you had
your placard up, apparently. So I will let you
go first and then I will come back around.

MR. RAE: So, you know, there is a
colleague that many of you know, named Jim
Griffin, who has been banging on this drum for
a long time. And I sort of woke up to the
idea, personally, of informational data bases,
because he was talking about it an awful lot,
to anyone who would listen. He was talking
about it an awful lot to Congress who,
hopefully, listened a little bit, a week or so
ago. When I started doing the work at FMC I
was kind of looking at everything, obviously,
through more of a policy lens than a
marketplace lens. I am learning that so many
individual and highly idiosyncratic solutions
already exist in the marketplace.

What everyone seems to be having a
difficulty with is, you know, which string do
you pull first, and how do you tie this
together?

From our perspective, one of the
things that would be the most important, about
establishing meta data standards to get to, or
you need identifiers to get to interoperable
registries, would be how open and accessible
are they. Who bears the cost for these things
and, you know, who has say over their
governance. Because any workable system would
have to include a great number of copyrights
that are being generated daily, that may not
be, that may not have the same phalanx of
professional affiliations as rights that were
generated in the past. Okay, that is just a
given. So what do you do with all of that
information, and who manages it?

You mentioned incentives. And I
think that is, really, really important. What
can you do to get people to feel like this
would be a good outcome, to be a little less
proprietary, and a little bit more open in
sharing information. Well, you know, there has
been a lot of talk about, for example, remix
culture, and some folks are adamantly against
compulsory licenses, and some people support them. I actually, frankly, believe you don't need to have compulsory licenses to get smaller operators to come to terms if you have efficient informational systems. So that is an incentive right there. It is a ton of money that is left on the table. Rights holders aren't getting paid, and the artists aren't getting paid.

I think it is really an issue, the fact that we don't have complete information about all of the potential uses that somebody would want to acquire information about. Another thing that is funny, to me, as a sort of neophyte in this conversation, is eight years ago everyone was saying, in three to five years we will have global interoperable registries, that talk to each other. And it is still not here. So somebody is not telling the complete truth about why that hasn't happened. It is above my pay grade to know who it is.

But I do believe that part of the
incentive, for making this happen, is that you could actually get some of what we were arguing about before, with less of a public policy burden. For example, if you wanted to publicly perform music and have an opt-out protocol, you have to know what rights you are prohibited from performing publicly. I am really encouraged that Lynn mentioned that ASCAP does all of this public, you know, presentation of your information sets.

But I still encounter folks who are worried about liability issues when we are talking about rate court disputes, and so on and so forth. So I think that the incentive is more, like, how can we get more people to be able to do business functionally, and more seamlessly?

And what is it going to take to get everybody to go all in?

One last thing, and I will stop.

You know, you have the unique identifiers, you have the internal meta data issues, for the
purposes of identification of ownership and payment.

But you also have, to some extent, a failed promise of providing interesting and useful information, to the general public, about the people who are behind the creative work. You know, I know that the Grammys have to give the fans the credit campaign around outward facing, or consumer facing meta data. Well, you know, that actually has a revenue generation component to it, because a lot of folks are in the back line, who aren't currently captured in consumer facing meta data, get jobs because people see that they worked on a record, or so on and so forth. Not to mention geeks, like me, who grew up kind of looking at the end of the lines of a record, and buying everything by a producer, just because I like that producer, or whatever. We have more opportunities, because of technology, to bring real positive information stats for both the business management side,
and the consumer facing side. And I don't see any reason why we shouldn't work together to do that. The excuse that it just works this way, isn't good enough, you know?

Where there is entire aspects of the marketplace that aren't properly captured, right now, in classical and jazz meta data, on the consumer facing side, that frustrate fans, and also frustrate payment. And then there are entire systems, that are inefficient, because the data bases don't generally talk to each other, you know, as comprehensively as they should. And that is all I have to say about that.

MR. DAMLE: I have frequently looked for the liner notes on my Iphone, and they are not there. Mr. Rushing? And then, Ms. Potts, you had yours up earlier, I don't know if you want to say anything, I will go to you next.

MR. RUSHING: I will keep my comments brief, because I don't know anywhere
near the level of detail about ISNI and ICNIs, to be able to contribute, meaningfully, to that part of the conversation.

On the question of what the government can do to help incentivize the adoption of these, and other standards, and other unique identifiers, I think there are two areas, obviously more, but I think there are two to focus on.

One is just always focusing on interoperability between, in particular Copyright Office systems, and third party systems, whether it is through an API or something else, taking steps to make sure that Copyright Office infrastructure can always talk to and easily interact in an automated way. Some sort of systematic way with third party and private data bases is a way to facilitate just the flow of this data. The other is, you know, when it comes to sound recordings there is, actually, a set of contractual practices, around meta data, that
in my impression has worked pretty well. So that when digital services are served by record labels, it includes the meta data, that meta data is reported back to them. It is, obviously, imperfect but it is, more or less functioning. When you talk about statutory services, it is a completely different story. And the regulations governing what statutory services are supposed to provide, to a SoundExchange, are pretty limited in terms of what sort of data is required. And, in particular, ISRC is not required. It is an option. Even if it is readily available, even if it is possible for a service to get access to an ISRC, they don't have to provide it. As long as they can provide album title, album and label, and track, and artist.

MS. CHARLESWORTH: In your experience do services that do have access to that because, perhaps, Ms. Finkelstein has sent it to them, are they -- do they choose to report that voluntarily, or even when they
have it they exclude it?

MR. RUSHING: We have, there are a couple that provide it voluntarily. But the huge majority don't. And I can't remember what the percentage is now.

But, I mean, I think it is something around 90 percent of the recordings that come to us lack ISRC. We have made do without it, and have built our systems to accommodate this.

I think a few years ago, when the regulations were first set, that was maybe a more defensible place for the regulations to be.

I think the world has changed. That is something that the government can do right away that would, certainly, encourage the adoption of ISRC as the standard, and it is a standard, again, that is working in the private context. And I think there are, likely, other examples of standards that have been adopted, that the government can, you
know, also adopt and implement in the circumstances in which it finds itself playing a role in the marketplace.

MR. DAMLE: Thank you. Ms. Potts?

MS. POTTS: Just to piggy back on what Colin had also mentioned about standards and that the government has come up with a certain amount of standards. I want to speak in terms of a software development aspect. Having worked in another industry that also needed to set up standards, so I'm thinking right off my head, is the HR industry. Where they came up with an HR XML Consortium. Where all the HR companies have sat down and came up with a set of standards. I can see it working for the music industry, where the recording companies can come up with certain standards, and the tags that are applicable, and what data is going to be held in those tags. Music publishers can also sit down. All the stakeholders involved can sit down and come up with the standards that they
need for reporting. And what the HR XML Consortium, they published that information. Then you have other companies, such as background check vendors, or other vendors that use HR data information, they have also come up and used the data structure, and came up with their own sets of data. So I don't -- I know we mentioned messaging is possibly what they are using at DDEX. I would like to get more information on it.

But I believe that if there is, all the stakeholders can sit down and decide on what is very important that they need, and to be able to come up with those standards, even down to the level of tag names and the data that is also for those tag names. And all the stakeholders to sit down and to be able to use that. I would also recommend that even for music publishers, record labels have to come to music publishers to get their licensing. If the music publishers would already have a catalog, many of them have catalog song
numbers that they use on their licensing.

If we came up with a standard,

possibly they could have their ISWC also

submitted to a record label. And when the

record labels are doing their distribution,

whatever the tag, that the industry has came

up with, that information can be already

imbedded during the distribution. So those are

just some of the suggestions that I come up

with.

MR. DAMLE: Thank you. I'd like to
go to Mr. Hoyt, because I see him over here,

and then I will come back around, if that is

all right.

MR. HOYT: I guess I have a very

simplistic view of all of this. Number 1, it

seems to me the incentive for cataloguing, or

assigning ID number should be you get paid a

royalty if you sign up. Or if there is a

unique identifier.

If you don't have that unique

identifier as a composer, you don't get paid.
I mean, that is a very simplistic view of the world. In addition the reason -- one of the problems that we have had, in the television industry, is even getting the information for que sheets, which is a level, a different level of that.

But I think the proprietary view, of the PROs, at least in television, is that they don't want to give that information out.

But it seems to me, if you have a public responsibility, if what you are trying to do is something for the public, then the public should be aware of that information. And it seems to me if you have a public file, with a unique ID number, and I don't care where you get the unique ID number, but if you have a public file, with a unique identifier, for every musical work, and it has a tag on it that shows the recording, another unique ID for each recording. And then you have the publisher information, and maybe the record label information in there, too. Then the
composer can then follow that information, so that he knows whether or not he is being paid fairly. And I think that is one of the things that we hear, constantly, from the composers.

I'm not getting paid fairly. Well he may not be. But it may not be because the users are not paying a lot of money into the collectives, it is that money gets lost in that black box somewhere. So if you had the responsibility of the composer to get a unique ID number, and then I think there has to be some responsibility, on the part of the user, to give information back into that public file, somehow. So that, that composer can also follow that information, from the user standpoint. Right now I don't think users feel obligated to put, give any of that information back. And that is, probably, not fair.

MR. DAMLE: Thank you, Mr. Hoyt.

Mr. Knife? Mr. Mahoney, you had your placard up earlier, so I can --

MR. MAHONEY: Colin Rushing beat me
to the point, but I guess I can put more
directly, I believe SoundExchange has gone in
front of the Copyright Royalty Board several
times, with a petition asking the CRB to
compel users of the statutory license to
provide ISRCs. And each time it has been shot
down. I don't know what the explanation for
that would be. But I could ask more directly,
if you could speak to your friends at the CRB.

MS. CHARLESWORTH: Yes, it is a
part of a rulemaking process and I'm sure they
weigh the record before them.

I think we are thinking a little
bigger picture here, which is good. Although
their role is important and it is an important
point, that they have some ability, under the
statute, to regulate the stuff.

MR. MAHONEY: Well, if I may, then
I will say yes, it is important. SoundExchange
is distributing over 700 million this year,
700 million dollars this year, perhaps. And
they are going on artist, and title, and
sometimes album name is supplied, and we can
all get into what happens when the artists'
name has an N sign, instead of -- all those
things we can go over. Without an ISRC it is
almost laughable.

MR. DAMLE: Okay, thank you. Mr.

Knife?

MR. KNIFE: Not that I wanted to
answer, but I say that I have very little
insight into that process.

But just what little I do
understand, is one of the reasons that the
ISRC hasn't been being adopted, is because it
is relatively incomplete. And at least I
understand that part of the enquiry keeps
resulting in a finding that wouldn't be as
helpful as it might otherwise be, if we all
assume that ISRCs are perfect, and they exist
for each work, and they are applicable, and
uniform.

But I wanted to make two comments.

One kind of a little bit higher
level, and philosophical, and the other
answering directly the question about what
could government do, what could the Copyright
Office do to incentivize the adoption of these
particular data standards. And putting aside,
for a moment, what the particular data
standard is, I think, obviously picking up on
something that Mr. Rushing said. The Copyright
Office and other governmental entities can
certainly incentivize people by making the use
of whatever particular data standard, you
know, we decide to use, as a fundamental
requirement of, say, registration, and
protection, or whatever.

I could certainly even see like a
quid pro quo, that if you don't adhere to the
recommended data standard that has been
identified then, say, you don't get statutory
damages, because now you are in a position
where you are kind of playing, you know, cat
and mouse, and you seem to be intentionally
hiding. And so you shouldn't be able to avail
yourself of those types of remedies. So now
the second point that I was going to make,
which is a little bit higher. I think what we
are seeing here, with all the different data
standards and everybody's attitudes here. It
is kind of emblematic of the same issues that
we have been talking about all day, and at all
of these roundtables about, you know, have
very, very -- you have fiefdoms, you have very
siloed interests. You know, the PROs are very,
very concerned with performance royalties, and
the data that is associated with those. Record
labels are concerned with sound recordings,
and the data that is specifically associated
with them. And I had heard the phrase, a
couple of people kicked it around, something
like we understand the proprietary nature of
the data, and we understand people's desire to
protect the data. And I just would like to
say, I think that the data standard is kind of
like a lot of the other issues that we have
been talking about, you know, statutory
royalty rates, and how you set them, et cetera. In that they are also going through a violent change. The perspective of what is the value of the data that any, you know, single entity has?

Whether it be a PRO, or a record company, or music publishing, I really think we are passing into an area where the ownership of the data, and hiding the data, and the secrecy of the data, is not really the value any more. Indeed, and I don't know how we are going to get there, but I think the mentality has to shift over to that the value is, actually, in completely publicizing the data, and making sure that you, you know, generate as much revenue generating opportunities as possible.

That you, you know, that you avail yourself of them. And, obviously, it is the creator's choice, or the rights owner's choice, to decide which they do or which they don't do, subject to statutory licensing.
But the point is, I think, one of the things that we are facing here is kind of, like, a paradigm issue about the idea that, you know, we come from an old world, where the proprietary data, there was a value in having proprietary data.

And knowing the rights that you had, knowing the works that you had, knowing the artists that you had a relationship with, the works that you controlled. There was a value in that, separate and apart and above, indeed, additional to the value of what you could license those works for, and everything. And I think it would do everybody well to kind of, you know, whatever, readjust and reset that perspective and kind of think, the value might actually be in making sure that that data is completely public.

And that you, again, are availing yourself of as many rights, usage, and revenue generating opportunities as possible.

MR. DAMLE: Mr. Diab?
MR. DIAB: I'd like to just say everything that he just said. But I will just add a finer point on one of the themes. Which is the ability to match the information on the sound recording side and the composition side is absolutely necessary. And it is, probably, the part that is the most challenging. And I think what you are hearing is, there is absolutely a need for a centralized, standardized, data base, somewhere that services can go and pull that information.

And maybe it is not ISRCs, because I agree with one of the points that he made is, you know, anybody can, I mean, you can file a registration to start issuing ISRCs, and you don't have to report that, anyway.

I think that it is great that SoundExchange is going to start putting together a data base. But there needs to be some standardized way to identify sound recordings. Just so you know, on the ISCR side you can have multiple ISRCs for the same sound
recording, if they are re-issued on compilations, if they are issued in other albums. And, before you know it, you have this huge swath of identifiers, and it is not really that useful.

MR. DAMLE: So there are two separate, one is having a sound recording in different albums, with different ISRCs. Is the opposite problem, are there multiple ISRCs for -- I mean are there multiple tracks for one ISRC? Is that a problem as well?

MR. DIAB: That is a much less frequent problem.

MR. DAMLE: Okay.

MR. DIAB: But I'm sure it exists.

MS. CHARLESWORTH: So how, what is the penetration by -- I mean, do most sound recordings, or virtually all of them have an ISRC associated with them?

MS. FINKELESTEIN: I would say for the majors, everything that is in digital release has an ISRC associated.
But it certainly is an issue as far as there are, you know, the same sound recording can have multiple ISRCs. I mean, part of that is from the ISRC standard. Because when you released a Billie Holliday record on vinyl, it might have cut off at three minutes, and then there is the ten second tolerance rule. Part of it is, unfortunately, just humans trying to get their products out the door, and not putting a comprehensive search to see if there is an existing ISRC.

So that is not perfect. But to follow-up on what Mr. Knife was saying. I mean, I think that the record companies, and the participants in DDEX, overall, have really turned the corner of, psychologically any way, trying to foster a world in which the data can be shared and exchanged. There are numerous issues with every single field, and every single data base. There is a ton of work that goes on trying to say, should we have this
standard for this, do we need to have
tolerance, do we need to have variations?

The idea of the umbrella name is
very interesting. I have sort of been arguing
for an umbrella ISRC because maybe we need to
bring ISRC up a level, so that we can
consolidate all of those, sometimes erroneous,
sometimes required extra ISRCs.

But, you know, we have a lot of
artist creativity behind all of this. And so
we have artists who even though their name is
John Smith, they want their second album to
come out with the name John J. Smith. And then
they want this track title to have a
variation, within the name of the song, so
that it will display on Apple in a certain
way. Even though we would prefer to have that
in the variation field. And so there are all
of these different competing requirements. And
some of it is, you know, the bigger digital
services have said, this is the way, this is
all we can deal with, these are the fields you
have, deal with it.

And so things get concatenated,
when they wouldn't have otherwise been, and
people make adjustments. It is a very, very,
big messy issue. And you kind of have to break
it into groups and say, you guys deal with
your issues and then --

MS. CHARLESWORTH: Yes. We are
going to let Mr. Diab finish. I just want to
-- on the ISRC, Mr. Rushing, what is the
status of the effort to create an index, by
ISRCs, at SoundExchange?

MR. RUSHING: It is in process. I
mean, I think that it is something that we are
hoping to have available in some form, soon.
I don't know exactly what the time frame is.
We have a data base internally that exists.
And I think the main operational question is
figuring out how to, you know, make it usable
outside of the company.

MS. CHARLESWORTH: And would that
be publicly available?
MR. RUSHING: I think that is the idea. And the question is how best to do it. We are sort of thinking through it. For example, one of the things that we just rolled out was an artist facing portal. The next phase of our portal work would be a licensee facing portal. And whether this is part of that is still to be determined.

MS. CHARLESWORTH: Thank you.

MR. DIAB: I will just finish up with two quick points. So the, to take a point that Lee made, one step further, I think what you have seen, historically, in the music industry is, and we have been referring to it as proprietary information.

But holding on to the information also allows license owners to create the perception of value. Because licensees don't necessarily know what it is that they are or are not getting. And I'm sure that this is something you guys have probably heard in other music licensing studies, in other
But I think we are moving into an age where that information does need to be produced. It needs to be available, it needs to be available for smaller companies, as well as larger companies like ourselves. I mean, Google and other technology companies have spent millions of dollars trying to work with the existing data issues. And that is just not scalable. And if you have new entrants coming into the market, they are going to be prohibited from launching services, from innovating, because of that barrier. So -- and I think this is an area where the Copyright Office can make a huge difference. And that sort of leads me to the last point I was going to make. Which is, I think Ms. Potts made the point about potentially having, you know, a consortium of companies, of interested parties getting together and trying to solve these problems. And I think that we have seen is that, that doesn't necessarily always work,
particularly in this space. Most recently with the GRD efforts. And it is really, really hard. And the point that Ms. Finkelstein was making, I mean, it is complicated stuff.

But I do think, at the same time, with the right standards and the right oversight from the Copyright Office, can make some difference here.

MS. CHARLESWORTH: Thank you.

MR. DAMLE: Mr. Kohn?

MR. KOHN: It is a very frustrating thing to watch something that could have happened, and it hasn't happened. And there are, I mean, everyone is guilty a little bit of something here. Because really, first of all you can't conflate, let's say, having a proper ISRC standard, with the DDEX repertoire meta data going up. I mean, I have been to the DDEX meeting, and they have loaded up this repertoire data to deal with all the problems that Andrea was just saying, about we want these bundles to work this way. And all the
business rules that go into telling a service, you know, how these sound recordings should appear. That is one thing.

But ISRC 2 was an effort that some were trying to get along. It was actually within the RIAA. But no leadership, it just simply dropped. ISRC 2 would have solved the problems just the way ISBN 10 solved the problems of ISBN. It was too short, it needed to bring up the standard, the BISG book industry, a study group on the book publishing business, they got together and they actually put through a new standard. So there was no effort, or no leadership, to make something simple, like that, happen. Because of all this other stuff, like DDEX.

Now, the other problem is, on the Demandable side, there was an effort, five or six years ago, to try to have this global repertoire data. But it is not just the data base of ISRCs. It is the links between the ISRCs
and the ISWCs. That is what -- not only the
ASCAP website, you have your ISRCs, but you
don't have the ISWCs, but you don't have the
IRS series, you don't show that to the public.
So the problem, here, is DIMA, one of -- John
Potter, your predecessor wanted to get this
done. But companies like Google, and Apple,
and huge companies wouldn't want to put a dime
into it. GR Global Repertoire Data Base, Apple
was sitting at the table, they didn't want to
put a penny into this thing. And it costs
money to run a registry, a public registry,
outside of the societies, costs money. How do
you charge to create the ISBN like they do in
the book industry? Do you charge for access,
do you charge for use? It is a very big
problem.

What is the business model of a
registry, of simply of a data base? But
companies, how much are they spending on you
to be here, you know? And you wouldn't spend
that money to create the data base. So it is
MR. DIAB: I don't think that the GRD and other efforts have failed solely from lack of funding.

MR. DAMLE: Okay. I'm going to go to a couple of people that haven't had a chance to speak yet. Mr. Badavas, and then Mr. Raff, and then we can end with Ms. Lummel. We are a little over time. I hope it is okay if we stay another five or so minutes, if that is okay? Okay.

MR. BADAVAS: I think both Lee and Bob are right. Data bases will become more public as having the information out there is more valuable to the people who want to make it public, or can make it public. The PROs, HFA, others, the record labels spend a lot of money on this, too. They spend a lot of time, and have spent decades collecting the information, and building the links. We have humans who, literally, sit there looking up songs, and creating a link between an ISRC and
a composition. We have additional people who
talk to publishers, they talk to heirs, they
talk to people who claim termination rights,
to get their information, and get the facts
that still comes in from some of these people
to put into our data base.

That is real work. And that costs
money. Our publisher owners are paying for
that. In the case of the PROs, I believe, that
would be the publisher owners, and the
songwriter owners. And the labels are paying
for that, to maintain their own data bases.

That is expensive. I think more and more
people are seeing that putting this
information, out there, to be used in ways,
sort of publicly, or in some other fashion, by
other businesses, is becoming valuable. We
actually, recently, turned over our entire
ISRC linked data base to Youtube in connection
with a licensing deal. I don't think it has
been implemented yet, but it is there. And
what Bob is talking about is, yes, it costs
money to do that.

Right now publishers have invested in that, songwriters have invested in that, record labels have invested in that, because there is money to be made. And I will point out, these are the commercial licensors and licensees, of this music. We still haven't talked about whether or not it is viable to do that for all of the music that comes through aggregators for amateur product. And that is a really, it is a big problem. And what you are talking about is, okay, have someone like HFA or ASCAP give it up. Publishers might find that to be valuable if they thought they were receiving the appropriate compensation.

Maybe not for the data but, maybe, for the ultimate royalty. Maybe the very fact that Jay has been so vociferously arguing for a fair market rate, here, is actually tied to the fact that this information is not there. Supply chain networks that exist in every other unregulated industry in this country, do
this already. They track 17,000 different part
numbers. I think Bob mentioned seven. This
isn't that big a deal. It sounds awful here,
but we are in a heavily regulated industry,
and the other industries aren't. And,
therefore, you are able to point to
legislative fixes, where these people just had
to fix it. And that is all I have to say.

MR. DAMLE: Thank you. Mr. Raff?

MR. RAFF: And to pick up on that
thread. The interest of macro creators is
something that does need to be considered. We,
in the image space, it is very easy for one
person to create content that can be
commercially licensed. We are starting to see
that in music, where there are creators, now,
who aren’t working with publishers, who aren’t
working with labels, who are going to be
incredibly confused when, in order to be able
to make money, license their music, have to go
register an ISRC, ISWC, all these different
pieces of data, where they have to go through
and do the work, if they want to make money.

So the more that we can do to encourage
original creators, to make it easier for them
to register their works, the better off they
will be, and be able to actually make some
amount of money from that.

MR. DAMLE: Okay, Ms. Lummel, some
final thoughts?

MS. LUMMEL: So I have been
listening to all of this. And in terms of
timing, ASCAP generally processes its
performance data six to nine months after the
actual performance. During that time the
publishers are busy trying to get the splits
all correct, and they register their works. We
talked about the ISWC being in with the ISRC.
The ISCR should be with the work
registration, right? So when the publishers
register their work, with the PROs, if they
give us the ISRC when we get that music use
information, from a music user, if it has the
ISRC we can map it to our work registration.
So that would work. There is a field in the common works registration format that is out there now for ISRCs. We have an on-line portal that our members register their work. We are actually working with BMI on a North American repertoire data. We've talked about normalizing our data and making sure that we have complete and common work registration picture.

But I think that would help, getting the ISRCs in with the work registration, from the publishers. And, lastly, I beg the publishers that when they register their works, with the PROs, that they have as complete a picture as possible. Because a lot of our manual effort is spent on merging those works and getting out that common view, into the public. And, by the way, if we had ISRCs, we will put them on our public data base.

MS. CHARLESWORTH: Well, I was going to ask one question, I want to jump from
that. Would you be willing to send your file back to, you know, Ms. Finkelstein?

MS. LUMMEL: Our file of?

MS. CHARLESWORTH: The ISWC --

MS. LUMMEL: The mapping.

MS. CHARLESWORTH: -- with the ISRC. Because that is the data that needs to be in circulation.

MS. LUMMEL: Absolutely.

MS. CHARLESWORTH: So if they were willing to send it to you, would you be willing to send it back, in a way that, you know, interoperational with other business?

MS. LUMMEL: Yes. So we are really talking about mapping ISRCs to ISWC.

MS. CHARLESWORTH: At the moment.

MS. LUMMEL: And having a data base that maps that.

MR. DAMLE: At the moment.

MS. LUMMEL: Exactly. Why not? I mean, this is to benefit all of us, right?

But, remember, we have to be careful because
that ISWC is, you want it to be one common
work picture.

And right now, just because of all
of our resource limitations, we get in over a
million work registrations a year and fifteen
percent of those work registrations are
possible matches, or duplicates to existing
works. We merge works when there is activity.

We can't merge every single
duplicate work that comes in. So you are going
to find that there are a lot of duplicates
that are just going to be sitting out there.
So there are challenges in managing all of the
duplicate data, and creating that common work
picture with one ISWC, and maybe multiple
ISRCs, because you have multiple recordings.
That is fine, it is getting that one single
musical composition, with your writers and
publishers on it, that is the challenge.

MR. MAHONEY: So that would work
really work for Sony and for ASCAP. My
question, maybe go larger, would you and
SoundExchange do a matching?

Ms. Lummel: Tomorrow.

Mr. Rushing: I'm the wrong guy to ask, I have to talk to my COO.

Ms. Charlesworth: Well, yes. I was using, I was picking on -- I'm not picking on, but I was using Ms. Finkelstein as an example.

But the point is, if we could figure out a mechanism to get the ISRCs to you, as you are suggesting, could that then be disseminated to anyone, really, who could use those data files, you know, so that there is a two way flow?

Ms. Lummel: Yes, I mean, I think somebody said, earlier, the ASCAP work IDs are out there, with the ISWCs, on our public data base.

But they are one by one. What we are talking about is some type of a data base, a mapping data base. And I absolutely see benefit in that. We have been trying to figure out how to get ISRCs into our data base.
Because we do get IRCs in on music use reports. But because they are not in the work registration it is hard for us to do that mapping.

MS. CHARLESWORTH: Thank you.

MS. FINKELSTEIN: Can I just say, we do give ISRCs. Like when we request a license, from Harry Fox, the ISRC is part of the record. So they, theoretically, give the ISRC as part of the ISWC registration. If ASCAP is feeding them to us, that is kind of after the barn door is closed.

Because we have already sent those files out into the world. And we would like is for existing works, if we could look them up on the data base, and then we could incorporate it into our record, from day one.

MS. CHARLESWORTH: Yes, because the key is, and I mean, not that -- this is a very hard issue.

But it seems to me that when your companies send the files to the services, if
they have both pieces, or whatever data, ISRC, ISWC, then they can take that and report it back.

But the point, the most logical point would seem to be when you initially send the file to them, so it is in their data bases from the get-go, and then it circulates around.

MS. FINKELSTEIN: But such a high proportion of the very valuable exploitations, in the short term, are going to be from new works, and those will not have ISWC, that is where there is a big gap.

I mean, we could take the ISWCs from the publishers that would fill in the lot, and put it in. But those are the works, when you are doing covers, those are probably well known, already, to ASCAP.

MS. CHARLESWORTH: So it is a timing issue, as usual. Sounds familiar.

MR. DAMLE: Although if ASCAP has that data base, with the links, and you are
willing to make it publicly available to anyone -- well, if they would make it available to the services, the services would do a look-up as they are reporting that.

MS. LUMMEL: Or the services, if they have the ISRCs, and give us the ISRCs, and the publishers have given us the ISRCs in their work registration, we have a match. An automatic match.

MR. DAMLE: Well, this was a very productive conversation, I think. I thank you all very much for your help, and for putting up with our somewhat technical questions. Yes, just as a reminder, tomorrow we are starting at 8:30 a.m., in the Greenberg Lounge, which is, I gather, is in the main NYU law building. It is 40 Washington Square South. It is right next door, around the corner, main law school building at the NYU Law.

MS. CHARLESWORTH: Thank you all.

MR. DAMLE: Thank you very much.
meeting was recessed, to be continued on June 24th, at 8:30 a.m.)
none
The given document page contains a variety of terms that are likely related to legal or financial topics, given the context of terms like "SoundExchange," "Source," "spend," and "Standardization." The page appears to be from a legal or financial document, possibly discussing rights management or intellectual property. However, without clearer context from the surrounding text or additional pages, it's challenging to provide a more detailed interpretation.
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<td>375:20,21</td>
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<td>25:22 267:16</td>
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<td>99:4</td>
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<td>801(b)</td>
<td>278:4,21</td>
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<td>293:9,10,15,21</td>
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<td>303:5,6,16,19</td>
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<td>86</td>
<td>242:10</td>
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</table>

| 89 | 251:9 |
|   |   |
| 9 |   |
| 9 | 151:22 207:10 |
|   | 289:14 |
| 9.1 | 250:11,12 266:4 |
|   | 266:7,8 318:21 |
| 9:00 | 1:8 |
| 9:03 | 4:2 |
| 9:30 | 151:22 |
| 90 | 369:7 |
| 90s | 13:3 162:3 |
| 92 | 3:5 |
| 95 | 28:17 29:1 62:15 |
|   | 315:13 |
| 97 | 95:6 |
| 98 | 28:18 29:1 95:6 |
| 99 | 251:15 |
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Court Reporter

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