Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
THE LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of

DETERMINATION OF RATES AND TERMS
FOR DIGITAL PERFORMANCE IN SOUND
RECORDINGS AND EPHEMERAL
RECORDINGS (WEB IV)

Docket No. 14-CRB-0001-WR

MEMORANDUM OF LAW OF THE INDEPENDENT MUSIC PUBLISHERS FORUM (IMPF), THE ASSOCIATION OF INDEPENDENT MUSIC PUBLISHERS (AIMP), ALCHEMY COPYRIGHTS, LLC D/B/A CONCORD BICYCLE MUSIC, RAZOR AND TIE MUSIC PUBLISHING, A DIVISION OF NEW RAZOR & TIE ENTERPRISES, LLC, SC PUBLISHING, INC. D/B/A SECRETLY CANADIAN PUBLISHING, BEGGARS MUSIC LTD., 4AD MUSIC LTD., YOUNG TURKS MUSIC LTD. AND MATTITUDE MUSIC, INC., PEN MUSIC GROUP, INC. AND REEL MUZIK WERKS, LLC IN RESPONSE TO THE COPYRIGHT REGISTER’S OCTOBER 14, 2015 ORDER FOR SUPPLEMENTAL BRIEFING CONCERNING NOVEL MATERIAL QUESTION OF SUBSTANTIVE LAW

Statement Of Interest


The Association of Independent Music Publishers (AIMP) is a Los Angeles, California-based organization founded in 1977 with additional local chapters based in New York City and Nashville. The 3 chapters combined represent approximately 650 individuals who are paid members and who work in the music publishing industry or in related industries. The organization reaches thousands more individuals who have an interest in the music publishing industry. Each chapter holds monthly events that educate and further the interests of music publishers generally and specifically independent music publishers.

Razor and Tie Music Publishing is an active music publisher with over 40 songwriters currently signed in multiple genres and a catalog that contains over 10,000 copyrights including several number one country hits (“Alone with You” and “Whiskey in my Water”, to name a few)

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and many other multi-format hits including “Moneygrabber” by Fitz and the Tantrums and four number one rock hits in 2015 including the current number one “The Otherside” by Red Sun Rising.

Secretly Canadian Publishing is an independent music publisher based in Bloomington, Indiana representing a wide array of songwriters from around the world including Kishi Bashi, Linda Perhacs, Strand of Oaks, Calvin Johnson, Foxygen, and Richard Swift. Secretly Canadian Publishing is also responsible for administering the publishing catalogs of the Numero Group, an archival record label and music publisher based in Chicago, IL representing compositions and recordings sampled by the likes of Kanye West, Common, 50 Cent, Pusha T, Lil Wayne, and Jay Z.

Beggars Music Ltd., 4AD Music Ltd., Young Turks Music Ltd. and Mattitude Music Inc. are a group of affiliated publishing companies, based in the United States and the United Kingdom, who have published compositions by artists and songwriters including Glass Animals, SBTRKT, Cat Power, Kurt Vile and Deerhunter, to name a few.

PEN Music Group is a full service independent music publishing company founded in 1994. PEN Music Group currently represents approximately 25,000 copyrights ranging from “(I’ve Had) The Time Of My Life” (from Dirty Dancing), the works of Don Felder (formerly of The Eagles) including “Hotel California”, classic TV themes like The Andy Griffith Show Theme and The Dick Van Dyke Show Theme (amongst many other themes) as well as contemporary compositions recorded by artists such as Aloe Blacc, Kendrick Lamar, The Black Eyed Peas, Lizz Wright and numerous others.

Reel Muzik Werks is a full service music rights management company located in El Segundo, California that represents over 400,000 copyrights. Reel Muzik Werks provides global
services including writer/publisher administration, licensing and clearance to their diverse slate of clients which includes writers and publishers, broadcast networks, film/TV production companies, international performing rights societies, theme parks and Internet radio broadcasters.

The Copyright Register made clear in the Register’s Oct. 14, 2015 Order that interested parties who were not participants in the Section 114 Proceeding can submit responses to both the Register’s Oct. 14, 2015 Order as well as the original September 11, 2015 Referral Order by the Copyright Royalty Judges.

Response To The September 11, 2015 CRJ’s Referral Order

The undersigned parties hereby adopt the Initial Memorandum of A2IM, AFM and SAG-AFTRA dated October 2, 2015 and the Response Memorandum of A2IM, AFM and SAG-AFTRA dated October 9, 2015, as though fully stated herein. The undersigned parties believe, for the reasons stated in those memoranda, that Section 114 does not permit the Copyright Royalty Judges to award different rates based on the identity or categorization of the licensors.

Response to Question No. 2 From The Register’s Oct. 14, 2015 Order

2. How might the Register’s decision affect other statutory licenses, e.g., the statutory license in section 115 for the making and distribution of phonorecords of nondramatic musical works? How, if at all, should any such broader implications factor into the Register’s analysis?

A finding that there could be differential rates by licensor in Section 114 rate proceedings would impact all Copyright Office rate proceedings, including, of particular concern to the undersigned, the statutory license under Section 115. Given the time that has been given for the preparation of this brief, a much more detailed analysis would have to be performed in order to thoroughly assess the possible impact on Section 115 proceedings of any ruling of the Register with respect to Section 114. Therefore, the Register should specifically confine its determination
to Section 114 and expressly exclude Section 115 and other provisions of the Copyright Act from such determination, in order that the question could be addressed as to section 115 and any other such provisions separately at a later time that would allow sufficient time for full briefing and analysis.

The undersigned also note that the Copyright Royalty Judges should be aware that changes in the ownership of sound recordings and musical compositions occur frequently and thus setting different rates for the same work based on differences in the owner or licensor of the work will further complicate what is already a very complicated licensing environment. As set forth in the Initial Memorandum of A2IM et al., at 9-10, and at 9 fn. 2), as well as succinctly explained in Pandora Media’s Initial Brief, October 2, 2015, at 5, there are many practical problems with implementing rates that make a distinction based on the identity or categorization of licensor. Each of the compulsory or statutory licensing regimes would bring their own unique set of problems that current infrastructures are not necessarily equipped to address on a current basis. Moreover, payments to artists and owners would be delayed even further than they are now, which already poses a major hardship for those artists and owners.
CONCLUSION

For the foregoing reasons and the reasons set forth in the Initial Memorandum and the Response Memorandum of A2IM et al., the Register should reject the setting of rates in Section 114 proceedings that differentiate based on the identity of the licensor, and particularly reject doing so in Webcasting IV.

DATED: October 26, 2015

Respectfully submitted,

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