

UNITED STATES COPYRIGHT OFFICE MUSIC  
LICENSING STUDY

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PUBLIC ROUNDTABLE

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9:00 a.m.

+ + + + +

Wednesday, June 4, 2014

+ + + + +

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

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## P R O C E E D I N G S

(9:00 a.m.)

1  
2  
3 MS. CHARLESWORTH: I'm Jackie  
4 Charlesworth; I'm General Counsel of the  
5 Copyright Office. Welcome, and thank you so  
6 much for being here. To my left is Sy Damle  
7 of the Office of General Counsel of the  
8 Copyright Office, and to my far left is Rick  
9 Marshall, also in my unit, and together we'll  
10 be leading our roundtable today on music  
11 licensing issues. We're pleased to have so  
12 many people and such a high level of interest  
13 in these important issues. And I have to say  
14 I can think of no better inspiration to lead  
15 us to answers than this historic setting.

16 And I want to thank Belmont so  
17 very much for arranging to have us here,  
18 particularly Rush Hicks, Luke Gilfeather, and  
19 Wes Bulla and their colleagues here at Mike  
20 Curb for arranging for this space. I  
21 understand tables were procured as part of the  
22 process, and we really appreciate it and

1 appreciate the school's interest and  
2 Nashville's interest in these issues. And we  
3 look forward to hearing what you have to say.  
4 Thanks too to the copyright Society of the  
5 South and John Barker for leading us here.  
6 And to all of our friends down here who are so  
7 gracious in hosting us and sharing their views  
8 from Nashville.

9                   As many of you know, Register  
10 Maria Pallante, the Register of Copyrights and  
11 Director of the U.S. Copyright Office, has  
12 identified music licensing issues as a very  
13 critical priority, I would say, in terms of  
14 the review, the ongoing review of our  
15 copyright laws. I think there is a widespread  
16 view in the industry, although not shared  
17 necessarily by all based on the comments I've  
18 read, that much of the system could be  
19 improved, and that's what we're here to  
20 discuss today. Many of you here today and  
21 others who aren't in the room submitted  
22 lengthy, sometimes lengthy but always

1 thoughtful written with the level of thought,  
2 detail, the number of footnotes in some of  
3 them. But they were very thoughtful and I  
4 think honest responses to our inquiries, the  
5 many questions we posed in our notice. And we  
6 really appreciate that, that helps us so much.  
7 Because it helps us to sort of understand  
8 where the fault lines are and what areas we  
9 really need to tackle in order to make  
10 progress in this area.

11           Some of our music licensing  
12 systems, as you all well know, date back over  
13 a century, and the systems are complex and can  
14 be very difficult to navigate. And they're  
15 not always perceived as equitable, I think is  
16 fair to say. Some for different reasons. And  
17 while they're deeply embedded in the  
18 marketplace and have played an important role,  
19 I think it's fair to say that the music market  
20 has been shaped and, in some people's view, it  
21 may be constrained by the traditional  
22 structures on which we continue to rely. And



1 so much for joining us this morning.

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

12 We have about 1700 going on 2,000  
13 students in the Curb College of Entertainment  
14 and Music Business who are counting on you to  
15 make sure that their property gets protected.  
16 We have in addition to that in the School of  
17 Music about 800 more performers. So out of  
18 our 7,000 students almost 3,000 of them are in  
19 music. So you know Belmont rocks and twangs  
20 and boops and every sound you can imagine, all  
21 sorts of music, and we're very -- we find this  
22 is very, very important to us.

1                   You're in Columbia Studio A, a  
2                   place where great country legends recorded.  
3                   And in fact a place where music historians  
4                   here in Nashville say Nashville got  
5                   transformed when Bob Dylan came to town and  
6                   recorded "Nashville Skyline." And when his  
7                   friends in L.A. said why are you going to  
8                   Nashville, he said the musicians. And there  
9                   are incredible musicians that live here in  
10                  Nashville. Sometimes called the backup, but  
11                  they're not, they're the deal.

12                  The amazing musicians who are here  
13                  populated this studio for -- starting then not  
14                  only continue to be the home of great country  
15                  hits but then, you know, Boz Scaggs came to  
16                  town and Simon and Garfunkel came to town and  
17                  all that exciting stuff. And we also own and  
18                  operate Oceanway Studio just down the street  
19                  where I met Bob Seger, my hero, and he said,  
20                  you own the finest music studio in the world.  
21                  I love that. Met Gwyneth Paltrow and Chris  
22                  Martin in happier times.

1 I met Paul Simon and Edie  
2 Brickell, always happy times for them. All  
3 who come to record in our studios, and we're  
4 just -- and our students sometimes, not always  
5 but sometimes we have to keep them away. But  
6 most of the time they get to touch those  
7 experiences. And what an incredibly rich  
8 experience they have here at Belmont. So I  
9 could go on and on about that.

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

22 I shouldn't talk about being on

1 the clock. I mean I have the most fun job of  
2 all. But they are here to learn from you.  
3 Because at the end of the summer they're to  
4 present their ideas to their sponsors, the  
5 music industry here in Nashville that funds  
6 them, and so we're really excited that they're  
7 here.

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

17 We're having great success. We've  
18 graduated I think about 120 folks. And we  
19 have an intellectual property track, no  
20 surprise, in our law school and find it an  
21 opportunity for people to come and learn about  
22 the law and preserve the law. So thank you

1 all for being here. Thank you for the  
2 opportunity to stand up here and brag about  
3 Belmont. I can feel my wife's presence.  
4 She's not here but I still feel it. Thank  
5 you.

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

15 It's my understanding comments are  
16 due in early August, August 6th. So for those  
17 of you who are interested in that particular  
18 issue, and I know there are many among you,  
19 that process is underway. Just to make sure  
20 that you do not have one free moment from  
21 thinking about these issues. But, you know,  
22 other parts of the government will chime in if

1 it looks like there's a break and keep you  
2 busy writing comments. But obviously a very  
3 important development, and we're glad that  
4 they are taking a look at the consent decrees.  
5 You can see their questions I think -- where  
6 can information be found?

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

21 The problems are many, they're  
22 interconnected. This is based on reading the

1 14 comments. There are economic issues about  
2 rates and then there are administrative issues  
3 about licensing, and I think the two often get  
4 kind of tangled up together. But I look  
5 forward to the discussion. We have -- we call  
6 this a roundtable, but we actually have a  
7 rectangular table and the reason we set it up  
8 this way is so that you actually really can  
9 try and engage with each other a little bit.  
10 Because that's what I find most useful about  
11 the roundtables.

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

22           And I think we're going to use the

1 system that we've been using recently. If you  
2 want to speak, just turn your table tent up  
3 and we'll see that you have it up, and then  
4 we'll call on you hopefully in order but, you  
5 know, we'll try and get the remarks, all  
6 remarks in. If you could limit your comments  
7 to a couple minutes, we have a lot to cover  
8 and obviously quite a bit of interest and a  
9 number of participants.

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

18 Session 1 - Current Licensing Landscape

19 MS. CHARLESWORTH: Okay. So if  
20 everyone could just go around and introduce  
21 themselves and explain their affiliation for  
22 the record, that would be helpful.

1 MR. JOHNSON: George Johnson.

2 I've been in Nashville about 16 years.

3 Singer, songwriter, and I record my own stuff

4 and have my own publishing. I'm just

5 interested from that standpoint - sound

6 recording publishing and songwriting.

7 MR. OXENFORD: David Oxenford from

8 Wilkinson Barker Knauer law firm in

9 Washington, D.C. I'm here on behalf of

10 several state broadcast associations who

11 represent the interest of broadcasters in

12 their states and nationally on all sorts of

13 issues including copyright issues.

14 MS. SCHAFFER: I'm Brittany

15 Schaffer, I'm an attorney with Loeb & Loeb

16 here in Nashville. We are here to represent

17 the interests of the NMPA and other

18 independent music publishers in Nashville and

19 outside of Nashville as well.

20 MR. SELLWOOD: Good morning. My

21 name is Scott Sellwood. I'm the head of music

22 publishing at YouTube for the Americas. My

1 focus is licensing, music publishing for  
2 YouTube's music products. Prior to that I was  
3 the general counsel for a New York-based music  
4 licensing company called Rightsflow that's  
5 sole job was to license music publishing and  
6 pay songwriters. And prior to that I was a  
7 touring musician, had the opportunity to tour  
8 the United States, Canada, and Europe several  
9 times over. So have an artist side as well.

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

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

19 MR. KIMES: I'm Royal Wade Kimes.  
20 I'm a touring artist, and I own a record  
21 label, Wonderment Records, and two publishing  
22 companies, BMI ASCAP writer. And from the

1 looks of things, I'm the last cowboy on the  
2 row.

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

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

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

17 MR. COLEMAN: Hi. My name is Dan  
18 Coleman, and I'm the managing partner of  
19 Modern Works Music Publishing, which is an  
20 administrative publisher representing over  
21 30,000 copyrights with an office in New York,  
22 an office here in Nashville, and now in Los

1 Angeles. And we have a particular interest in  
2 the perspective of small firms and individual  
3 artists in the music publishing community.

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

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

16 MS. CHARLESWORTH: Okay, great.  
17 And I forgot say, you probably know this, but  
18 your remarks are being recorded and will be  
19 transcribed and made part of the public record  
20 and available on the Copyright Office web  
21 site. So here is -- I thought we'd start off  
22 with a very broad question, and if we can, if

1 everyone can kind of go around or anyone who  
2 wants to comment on this. Tell me about if  
3 you had to pick one thing that is most in need  
4 of fixing in this space, what would it be.  
5 What would your first priority be. I guess  
6 starting with Mr. Johnson and then going  
7 around for anyone who wants to comment.

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

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

19 MR. JOHNSON: Setting the rates,  
20 you know, below market rates but they're  
21 really below market rates. But just them  
22 setting them and not letting the free market,

1 the individual price points set the rate is  
2 the problem.

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

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

14 MS. CHARLESWORTH: Okay. Mr.  
15 Sellwood?

16 MR. SELLWOOD: There's one thing  
17 we've noticed that I think is the biggest  
18 challenge is the availability of ownership  
19 information about who owns copyrights. It's  
20 impossible to value licenses when we don't  
21 know what is being licensed. It's impossible  
22 for us to manage our risk when we don't

1 understand what our licenses cover. And so  
2 for us I think it's crucial that out of this  
3 process we establish some way to create some  
4 type of registry or some process by which we  
5 can understand who owns what copyrights and  
6 what copyrights are covered by which licenses,  
7 no matter which right or side of the  
8 copyright, musical copyright we're talking  
9 about.

10 MS. CHARLESWORTH: Okay. Mr.  
11 Marks?

12 MR. MARKS: First of all, thanks  
13 for having us all here. I think this is an  
14 important discussion to have at a very  
15 critical time in the industry. And on behalf  
16 of RIAA and our members we're really looking  
17 forward to this conversation and the ones that  
18 follow and hoping to find, you know, areas of  
19 consensus, as you pointed out, to address the  
20 many problems. Sticking with the theme so far  
21 on musical works, I guess the way I would  
22 frame it is, you know, the world is changing.

1 You know, if you look back 20 years ago or 30  
2 years ago or even 15 years ago the label  
3 acquired all the rights that were necessary to  
4 put out a finished product. After working  
5 with an artist, that product usually resulted  
6 in a disk and some liner notes. And, you  
7 know, much like a movie studio would do in  
8 getting the rights necessary to put out a film  
9 and then create the film and market it and  
10 everything else, it would make the film  
11 available and distribute it too so that  
12 consumers could get it from the outlets.  
13 Today things are much more complicated. The  
14 releases themselves are more complicated. We  
15 were trying actually to come up with some kind  
16 of way to describe releases today, and I think  
17 we used the term modern music release in our  
18 comments but that's by no means -- there might  
19 be a much better way to describe it. But, you  
20 know, these releases are not just a disk with,  
21 you know, some liner notes. They're multiple  
22 physical disks, they're multiple digital

1 formats. You know, we now have 17 rate  
2 categories for mechanicals whereas, you know,  
3 10 years ago we only had two. Everything  
4 today in terms of the way consumers consume  
5 music includes a screen of some sort. Whether  
6 they're looking at lyrics or a video or  
7 something static, they're looking at it on a  
8 device that's not just coming through speakers  
9 in stereo like it was many years ago but with  
10 a screen, and therefore video is a very  
11 important part. One of our members just  
12 released a very successful album, and had to  
13 obtain for that album 1481 licenses for the  
14 release of the three physical products, the 92  
15 digital products, the 27 songs across the 51  
16 songwriters. There were 89 shares. There was  
17 even a share that represented 1.5 percent  
18 interest in a song, and there were two  
19 publishers for that. So you had -- you know,  
20 the notion that you need to release -- have to  
21 get 1500 licenses today. It's just a much  
22 more complicated world as a result of all

1 those products than it was years ago. And  
2 that complication I think is compounded by the  
3 fact that things are moving at a much quicker  
4 rate. So whereas there may have been time to  
5 kind of sort out some of the complexities with  
6 regard to the licensing years ago as you move  
7 maybe from format to format or if you had, you  
8 know, a release that had a lot of different  
9 songwriters, today you have digital music  
10 services like, you know, all of Lee's members  
11 that are engaging in something of an iterative  
12 process of improving on services, coming up  
13 with new services. And two weeks from now  
14 there might be a completely new service that  
15 we know nothing about. And the current  
16 licensing system for musical works is just not  
17 very flexible or nimble right now to handle  
18 that. And so those things combined and the  
19 fact that the digital music services  
20 themselves, you need to get licenses in  
21 addition to the record companies for some of  
22 these uses just make things much more

1 difficult. We set forth a proposal, I can  
2 wait in terms of going through that proposal  
3 later 26 on so others can speak. But I just  
4 want to say that we had three kind of  
5 overarching objectives for that proposal, and  
6 we don't -- we're very clear in our comments,  
7 we don't pretend to have all the answers. You  
8 know, we view this as an open-ended discussion  
9 and figure this out all together. But we  
10 thought that objective number one should be  
11 that publishers and songwriters should be  
12 getting market rates. What's happening at the  
13 rate court especially, you know, needs to be  
14 addressed. And so whatever systems should  
15 develop should be based on market rates.  
16 Second, there needs to be, because of all the  
17 reasons that we were just going through, more  
18 aggregation of rights in the music work field.  
19 ASCAP and BMI and SESAC have done a wonderful  
20 job providing blanket licenses, aggregating  
21 rights, making things more efficient. We need  
22 to do that in the 115 area too for the reasons

1 I was just going through. And last we need to  
2 address all of the products that are today's  
3 modern music release. Because having one  
4 system for, you know, audio and one for video,  
5 just to pick one example, doesn't make a lot  
6 of sense when you need to get something out to  
7 consumers all at once in a variety of  
8 different ways to meet consumer choice. So  
9 I'll hold off on going through the specifics  
10 of what we proposed for later so others can  
11 speak.

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

14 MR. KNIFE: Just kind of not  
15 really building on but just amplifying what  
16 Mr. Sellwood and what Mr. Marks just said,  
17 I think probably the biggest problem is -- and  
18 going up another thousand feet there, is the  
19 striation, the different types of licenses  
20 that we had. When you look at the Copyright  
21 Act as it exists now in 2014 it's obviously  
22 this kind of cobbled-together set of different

1 licenses, different rates, different rights  
2 that are applicable depending on what type of  
3 media you're using, whether or not it's a  
4 song, it's a recording, it's being broadcast  
5 over analog, it's being broadcast digitally,  
6 as Mr. Marks said, whether it's got a video  
7 component attached to it or not. But that to  
8 me is probably the single biggest problem is  
9 that the licensing landscape that we have is  
10 completely striated and there is no single way  
11 to navigate your way through it. And probably  
12 the biggest thing that we could do or the  
13 best, most beneficial thing we could move  
14 towards is something that Mr. Marks was  
15 talking about, which is some kind of unified  
16 licensing. And as Mr. Sellwood said, some  
17 type of data base where we could know what all  
18 of the rights were that were attendant to a  
19 particular musical work and be able to license  
20 all of the potential uses and potential  
21 exploitations that 29 would be best for  
22 songwriters, best for their agents, best for

1 consumers, and best for services that are  
2 trying to serve both of them.

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

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

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

21 MR. EARLS: Thank you. And I  
22 wanted to let everybody know that I'm not here

1 presenting a reconciled universal music group  
2 opinion or position, and I certainly don't  
3 want to do that today. But I'm participating  
4 in a publisher capacity and because of the  
5 importance of this work, and I appreciate you  
6 guys being here. And going on with Bart and  
7 Brittany and other people have said the  
8 important thing is either phasing out over  
9 time Section 115 or definitely improving it  
10 dramatically with several things that we can  
11 get into later.

12 MS. CHARLESWORTH: Okay. Mr.  
13 Driscoll.

14 MR. DRISKILL: At this point it's  
15 just kind of reiterating, but I think the  
16 point that it is a complex system, it doesn't  
17 make sense anymore, but the system seems to  
18 have been set up to where the musical work  
19 gets penalized for the complicated system.  
20 And that doesn't make any sense. No other  
21 rights have the rate setting, have the  
22 compulsory license, and it just doesn't make

1 sense that the musical work is the one that is  
2 discriminated against because of the  
3 complicated licensing system. Let's make it  
4 easy, let's make it fair.

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

8 MR. COLEMAN: Thanks. We feel  
9 strongly that the collective right societies  
10 have a special mandate that's been sanctioned  
11 for many decades by Congress and the Supreme  
12 Court, and that can serve a special role in  
13 reconciling all of the comments that were made  
14 prior. Transparency of data, the efficiency  
15 of rights licensing, and most important from  
16 my perspective as a representative of  
17 individual composers and artists is the fair  
18 distribution of payments to them. The rights  
19 of large firms are different than the rights  
20 of individual creators, and I believe that  
21 Congress should expand the mandate of  
22 collective rights societies in the model of

1 Europe, in fact, as quasi-public cartels. And  
2 that will be a big step in the improvement of  
3 licensing in the country.

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

6 MR. BARKER: Thank you. You know,  
7 we've heard a lot already of issues that are  
8 coming up, some more specific than others. I  
9 think what we look at is as a general idea --  
10 we're hearing about a lot of things. There's  
11 a quote that says for every thousand people  
12 hacking at the leaves there's one hacking at  
13 the root. The root of the problem to me for  
14 song owners is the license process and the  
15 rates. Section 115 we think right now  
16 addresses both of those in an incorrect way  
17 simply in that the process is not as fair as  
18 other processes that other rights owners can  
19 use, and the rates are limited. So I think  
20 IPAC's position is as independent publishers  
21 and interested parties, which we would line up  
22 with a lot of the opinions around the table,

1 is let's just simply address the process  
2 system for licensing, a simplified system that  
3 is clear. It may not be easy but it should be  
4 clear, and there's a difference between the  
5 two. So if we can figure out what that is,  
6 and I wish I knew what that answer was, a  
7 clear and concise licensing process, and then  
8 one in which rates can truly be fair market  
9 value and not limited like the rates are now.

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

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

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

17 MR. OXFENFORD: And I don't want to  
18 take the position that's contrary to, for  
19 instance, my next-door neighbor here, Mr  
20 .Johnson, to say that the -- everything that  
21 the Copyright Royalty Board does is -- should  
22 be thrown out entirely. Because I think

1       broadcasters believe in simplicity, like the  
2       RIAA, and Steve and I, I think we're always  
3       amazed when we're on the same side of issues  
4       on these sorts of roundtables. We believe in  
5       simplicity too. We believe in collective  
6       licensing where necessary to address  
7       marketplace inequalities. We're concerned  
8       about what's happening on the public  
9       performance side, with some concerns about  
10      ASCAP, BMI, and SESAC not being available to  
11      represent the entire universe of publishers in  
12      the public performance side. We are concerned  
13      about the rates being too high on the 114  
14      licenses for streaming. But, you know,  
15      generally I think broadcasters with minor  
16      tweaks, you know, have a system that is  
17      relatively well-working for them. We don't  
18      have the issues for the most part on the 115  
19      side where there does, obviously I think  
20      around the table, seem to be lots of  
21      controversy. So these other issues will be  
22      ones I'm sure we'll be discussing during the

1 rest of the next two days.

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

1 to answer my question.

2 MS. SCHAFFER: I think some of  
3 this gets back to what John was saying about  
4 getting at the root of the problem. And the  
5 current 115 licensing structure was set up in  
6 1909 to avoid a monopoly of the Aeolian  
7 Company. And the marketplace has never had an  
8 opportunity to create these collective  
9 societies or to really come up with efficient  
10 licensing schemes. And I think if you add in  
11 with that the consent decrees that ASCAP, BMI  
12 and SESAC are under, it's created an  
13 environment that has placed a lot of  
14 constraints on music publishers and has  
15 created an environment that has made it  
16 difficult for us to figure out how do we work  
17 within the confines of Section 115 and the  
18 consent decrees and everything that kind of  
19 comes within that culture. And if we can take  
20 out the government price controls and the rate  
21 setting actions, I think what you will see is  
22 a marketplace that very much does want their

1 works to be used and wants to make it easy and  
2 efficient. And I think a lot of the concerns  
3 that Scott and Steven have made about making  
4 things efficient are things that we recognizes  
5 and we want to have happen. We would like to  
6 see, you know, a database where we know the  
7 rights just like they know who we need rights  
8 from. Because frequently as publishers we're  
9 placed in the exact same position where we  
10 want something licensed and, you know, we  
11 would also like to find the other party to  
12 that license. And I think what you'll see  
13 happen if 115 is eliminated and we end up with  
14 a free market system is that you'll see  
15 collective license agencies evolve. We  
16 already have Harry Fox, which represents, you  
17 know, the vast majority of publishers when it  
18 comes to granting these mechanical licenses,  
19 despite the compulsory license. And I think  
20 you'll see additional companies start to  
21 develop in that way. I think you will also  
22 see a lot of collaborative licensing that will

1       come about with -- and maybe also address the  
2       concerns with granting, you know, lyric video  
3       rights and other rights that come with that  
4       mechanical license. But what I don't  
5       understand is why we want to put a band-aid on  
6       the current licensing structure that we have.  
7       And say, okay, right now the rights that we  
8       have are -- or the issues that we have are we  
9       need -- these are lyric video licenses and we  
10      need licenses for music videos and things like  
11      that. Well, I'm sure Scott would be the first  
12      to admit that Google is constantly trying to  
13      develop new technologies and change the way  
14      that we see -- that we engage in music and  
15      that we share music with each other. And I  
16      think what we do is if we keep a licensing  
17      system in place that is structured around  
18      current technology, all we're asking for is to  
19      keep ourselves locked in the same structure  
20      for another 105 years. And it's taken us this  
21      long to realize that the system is broken,  
22      let's try to fix it. When technology is

1 changing faster and faster, why don't we leave  
2 it as there's a reproduction right, let the  
3 music publishers collectively figure out how  
4 do we make licensing efficient. And that way  
5 as new technologies develop it's much easier  
6 for private parties to enter into negotiations  
7 to address the new technologies than it is to  
8 wait 105 years for Congress to reform the  
9 Copyright Act. I mean it just doesn't make  
10 sense to me why we would be trying to limit  
11 ourselves to the current technologies. Let  
12 the music publishers have the chance that  
13 they've never been given, which is to form a  
14 collective society where they can license  
15 these works. I don't think there's a  
16 single music publisher or administrator around  
17 this table that doesn't want efficiency, that  
18 doesn't want as much money coming in as  
19 possible. But we've never been given the  
20 opportunity to make that system happen.

21 MS. CHARLESWORTH: Okay, just a  
22 quick -- I'm sorry. I know there are others

1 waiting but I want to just enter a specific  
2 question for you in light of that view. The  
3 question is let's assume, you know, publishers  
4 were given that opportunity and they got  
5 together and formed a new collective society  
6 or the right -- you know, maybe the PROs  
7 mandate will be broadened. But does that  
8 still require any kind of government  
9 regulation in your view? There are many  
10 comments who --

11 MS. SCHAFFER: Sure.

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

16 MS. SCHAFFER: The position of the  
17 NMPA and my personal view is that we're better  
18 to limit government involvement as much as  
19 possible, and to allow the free market to  
20 create some societies. At the same time I do  
21 recognize that there are those who are  
22 interested in some type of minimal government

1 oversight whether it is a number of designated  
2 agents that would be able to engage in the  
3 collective licensing or whatever the case --  
4 whatever, you know, extent we choose to have  
5 government involvement, even looking at anti-  
6 trust issues. Now, on the anti-trust issues  
7 to me that's not something that the Copyright  
8 Office is doing. That's a Justice Department  
9 issue. So I think we try to keep it out as  
10 much as possible, but if we get to that step  
11 where we're talking about do we have  
12 government oversight or do we not have  
13 government oversight, then we've made huge  
14 progress in this discussion. Because I think  
15 that's something amongst publishers that we  
16 can start to discuss amongst ourself as to  
17 what we think would be most efficient in this  
18 process. I think that that question is a  
19 little premature until we get to the step  
20 where we've all agreed and come to the  
21 conclusion that 115 should be eliminated.

22 MS. CHARLESWORTH: Okay. Thank

1 you, Ms. Schaffer. I'm sorry to pick on you  
2 a little bit, but I was curious for your  
3 views. Mr. Marks I guess, just going around.

4 MR. MARKS: I want to go back to  
5 one of the points that was made earlier about  
6 rights versus rates. Because I agree they  
7 sometimes get very confused or thrown  
8 together. And this is where I would like to  
9 throw out at least the idea we threw out in  
10 our comments. Because what we tried to do,  
11 and as I was saying before about our  
12 objectives, was to ensure that there was  
13 market value flowing to songwriters and  
14 publishers. But not at the expense of doing  
15 away with what I think many people around the  
16 table have recognized is a very good thing  
17 right now in musical work licensing, which is  
18 the aggregation of rights. And we see that on  
19 the ASCAP and BMI side in the transparency  
20 issues and the distribution issues that exist  
21 there that enure to the benefit of  
22 songwriters, for example. And so what we

1     tried to do was to take these things together  
2     and see what we can come up with with all of  
3     them, and here's what we came up with. We  
4     would eliminate the rate court and the CRB  
5     completely, so for songwriters and publishers,  
6     at least as it relates to, you know, the  
7     consumer uses of sound recordings. If there  
8     were other uses that songwriters and  
9     publishers wanted to keep under those, that  
10    would be up to them, but we would say do away  
11    with them. That way you don't have any of  
12    these issues of a rate court or a CRB  
13    potentially suppressing what would otherwise  
14    be fair market rates. But at the same time  
15    provide a blanket license for all of the  
16    rights for the kinds of uses that are needed.  
17    And this is where 44 I part company with the  
18    last comments. Because I think if you  
19    eliminate 115 it makes things more chaotic,  
20    not less chaotic. You're retaining the  
21    complexities of work-by-work, right-by-right,  
22    use-by-use licenses that lead to somebody

1     needing 1500 licenses to get a release out.  
2     Whereas if you have a blanket license that  
3     aggregates the rights in a way that still  
4     ensures a market value for songwriters and  
5     publishers, you know, it helps with the ease  
6     of licensing and you still have the market  
7     rates. And we would say you would achieve  
8     that market rate by having a free market  
9     negotiation between songwriters and publishers  
10    on the one hand and sound recording copyright  
11    with owners on the other as to a percentage of  
12    what the sound recording copyright owner gets.  
13    Very similar to the way things work in other  
14    industries for all other copyrights where you  
15    have one that's -- one company that's putting  
16    together the finished product, delivering that  
17    to consumers. You don't have, for example,  
18    Netflix negotiating with the screenplay writer  
19    for a movie. The movie company has all the  
20    rights, whatever deal is cut between -- in the  
21    free market between the screenplay writer and  
22    the movie is kind of incorporated into that,

1 and that's delivered out to the market to  
2 these companies and others so that consumers  
3 can enjoy the product. And we think there are  
4 a number of advantages to this. You've got  
5 the market rates, as mentioned. More consumer  
6 choice because it's easier for companies to  
7 get to market. There's going to be more  
8 revenue for both services and creators, we  
9 think. Because the current system where -- I  
10 mean you've got this fragmentation of rights.  
11 There's been a cottage industry of services  
12 that's developed to help companies actually  
13 clear the rights. That's sapping, you know,  
14 revenue, potential profit for those companies,  
15 potential additional revenues for creators.  
16 I mean I don't know how much any given service  
17 has to pay for that. It might be 2 percent,  
18 it might be 5 percent of their revenues. But  
19 that's meaningful money that could be going to  
20 invest in their services for their profit and  
21 for the creators. The viability of the PROs  
22 given what's happening right now with the

1 potential withdrawal we think our proposal  
2 would address in ensuring that ASCAP and BMI  
3 continue to play a vital part. So -- and I  
4 guess the last thing I would just mention is  
5 there's nothing today or for the past 10 or  
6 however many years that has stopped publishers  
7 or anybody operating as rights owners under  
8 115 from putting together the kinds of  
9 collectives that Ms. Schaffer was just  
10 talking about. So you don't have to eliminate  
11 115. You know, those designated agents, those  
12 collectives, they could've been created, but  
13 they haven't been. And given where we are and  
14 the time where things are moving very quickly  
15 in the music marketplace, we think having an  
16 aggregated blanket license but ensuring market  
17 rates is the way to go.

18 MS. CHARLESWORTH: Okay. And  
19 we'll have a lot of opportunity later on to  
20 sort of flesh out some of the -- further your  
21 concept. I'm looking at my watch, I want to  
22 make sure everyone can get their two cents in.

1 Mr. Knife, you're -- I just want to go around  
2 quickly and then I have one final question I'd  
3 like to -- it's already about -- you know, we  
4 may run a few minutes over, but.

5 MR. KNIFE: I'll try to be brief.  
6 I want to start out by saying I think it's  
7 very difficult to talk about these concepts,  
8 you know, the way we have the agenda set up  
9 today. You know, when you talk about  
10 something like, oh, should the 115 compulsory  
11 license be eliminated, it's very difficult to  
12 talk about that in a vacuum without thinking  
13 about that impact on all other types of music  
14 licensing and the marketplace in general and  
15 rates and terms and how it goes. But I think  
16 -- and I'd be interested to hear what the  
17 songwriter representatives here think of this.  
18 I think the idea of some type of -- kind of  
19 what Steve was saying. I think the idea of  
20 some type of collective licensing, whether or  
21 not that's actually compulsory or blanket or  
22 whether it's statutorily set or it's

1 voluntarily set, I think that a blanket  
2 license, a collective license has to happen.  
3 And I think there's a problem in talking  
4 about, say, in today's day and age just  
5 eliminating Section 115 whereas Steve pointed  
6 out there's always existed the possibility for  
7 music publishers, both large and small, to  
8 collectivize, to try to build efficiency into  
9 their own licensing regimes. But HFA seems to  
10 be the only entity that's doing that today,  
11 and they're the only ones that have been doing  
12 it for, I don't know, whatever it is, 50 or 75  
13 years now. And so I think if you're going to  
14 talk about moving away from the 115 compulsory  
15 license specifically, that has to be, that  
16 would have to be replaced by some type of  
17 collective licensing regime. Going back to  
18 the point that you originally asked about,  
19 which is what happens to the small individual  
20 songwriter. Again I'd be interested to hear  
21 from the songwriter representatives here  
22 whether or not individual songwriters are

1 truly upset about the rates and the rate  
2 setting process and the licensing process  
3 versus the ability to literally not license  
4 their works.

5 MS. CHARLESWORTH: Okay. Mr.  
6 Kimes.

7 MR. KIMES: I'll answer that. We  
8 are upset, and that's why we're all here  
9 today. This is the first year that I can  
10 remember that the general public has actually  
11 addressed what is going on with the music  
12 industry. Because they ignore copyrights.  
13 The 115 is eliminating itself. Nobody else is  
14 -- we're not backing it, we're not backing our  
15 own industry. That's a general blanket of  
16 everything from everybody said here. Yeah,  
17 we're upset. When I can look down off of a  
18 two-story building and see a songwriter get  
19 out of his truck and he's barely got enough  
20 money to get there and write that song that  
21 day, something's bad wrong and we've got to  
22 fix it. We can spit out all the fancy words

1 we want to but we got a big old problem. As  
2 the general public has come to that, surely to  
3 goodness today we'll fix this, and I know  
4 that's why we're all here. Yeah, the rates  
5 are too low. I mean if you had to eliminate  
6 something to get them up, do it. We got to do  
7 something. If we don't, we're going to have  
8 mediocre music, mediocre writers. Anybody can  
9 write one, anybody can record one. They're  
10 doing it right now on their couch with a  
11 laptop. And what kind of gets to the point,  
12 we're getting to -- it's like pouring Kool-aid  
13 in the ocean. If the music's no good, the  
14 people are not going to buy it they don't want  
15 to hear it. And why would they buy it if it's  
16 not real good, and it's not real good because  
17 we're not supporting our writers. When I --  
18 I was a top songwriter in this town for a  
19 while until I started recording at Warner  
20 Brothers. And I feel that once you take that  
21 step, you know, you just let that go some to  
22 record I can tell you that we had more

1 songwriters then than we do now. We had great  
2 songwriters. And a lot of those guys have  
3 left town. And all I can say is yes, we are  
4 upset and we got to fix it.

5 MS. CHARLESWORTH: Okay.

6 MR. HERBISON: Short answer for  
7 you. I think the marketplace can figure that  
8 out. I think there's reasons the publishers  
9 haven't done that. We've been frozen by  
10 Section 115 Reform Act and looking at consent  
11 decrees, but that's a long involved discussion  
12 for later. There are some points I want to  
13 make on behalf of songwriters on this topic.  
14 Depending on what Congress does and how future  
15 licensing collection agencies are incarnated,  
16 important to us is representation on the  
17 boards of the governing bodies of those  
18 organizations. Fair dispute resolution bodies  
19 with songwriter and a majority songwriter  
20 representation. I think we need to be careful  
21 about allowing people that want to get into  
22 that business to be able to compete with those

1 with larger market shares. And we need true  
2 transparency from the bottom down and from the  
3 top up. Those are important to American  
4 songwriters, those issues.

5 MS. CHARLESWORTH: Okay. Mr.  
6 Coleman?

7 MR. COLEMAN: I want to say that I  
8 believe that compulsory licensing and consent  
9 decrees are reasonable restraints on copyright  
10 monopolies, and that I respectfully disagree  
11 with the NMPA position. I believe that the  
12 government should preserve a compulsory  
13 license 53 for reproduction. But that when we  
14 talk about fair market rates in the context of  
15 large firms and blanket licensing for large  
16 firms, it means something very different than  
17 blanket licensing from a collective copyright  
18 society. When a large firm takes in a blanket  
19 license they're leveraging the most valuable  
20 copyrights they have to take in a lot of cash  
21 flow. And how they pay out that cash flow to  
22 individual songwriters is a matter of

1 contract. Why we need government intervention  
2 and strengthening of copyright collectives is  
3 a distribution system for songwriters that  
4 allows blanket licensing but that also has a  
5 much more transparent and much more pro  
6 composer method of distribution that's not  
7 bound by recording contracts and music  
8 publishing contracts.

9 MS. CHARLESWORTH: Okay. Mr.  
10 Waltz?

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

22 MS. CHARLESWORTH: Okay. Mr.

1 Barker?

2 MR. BARKER: Ms. Charlesworth,  
3 you started off by saying if 115 was repealed  
4 tomorrow what would that look like. I think  
5 Mr. Marks said it would be chaotic, which I  
6 agree with, because I think it would. I think  
7 though the elimination of 115, as Ms.  
8 Schaffer said, is ultimately where we should  
9 go. And if we approach that more as a sunset  
10 type situation of a period over time, then  
11 like Mr. Herbison said, we'd figure it out.  
12 We'd get there from here. We'd figure out  
13 what to do. I think -- you know, what I'm  
14 hearing and it seems like what the industry  
15 has done is we are so ramped up in trying to  
16 get additional income from new services and  
17 from new types of services that the industry  
18 as a whole is trying to figure out a way to  
19 simplify licenses for those services in lieu  
20 of protecting the original rights that the  
21 Constitution gave the copyright holders, which  
22 is to have exclusive rights to those works.

1 So we want to protect those. I think getting  
2 rid of 115 will help protect that because it  
3 will then give us the ability for more fair  
4 market negotiations. So I think if we look at  
5 sunsetting the 115 and say our primary goals  
6 are to come up with a simple license -- or a  
7 clear license system, one that will allow  
8 services to survive. That may not allow them  
9 exclusive rights on blanket licenses of 30,000  
10 works at one time, because there could be  
11 certain owners who choose to not have their  
12 works on a certain service, and those owners  
13 should have that right, in my opinion. Yet if  
14 we keep in mind we want to make the licensing  
15 landscape more clear as well as make the  
16 licensing landscape available for copyright  
17 holders to always fairly negotiate their  
18 rates, and with a period of time marked to get  
19 there, I think we could get there.

20 MS. CHARLESWORTH: Okay. And now  
21 we have just a couple more minutes. I'm going  
22 to run over a speed round, which is of your

1 view -- oh, Mr. Johnson. I'm sorry, I missed  
2 you. Well, you can be first on the speed  
3 round. If you had to pick something that's  
4 working the best today, okay, the best part of  
5 the system, just in a sentence or two, what  
6 would that be? If anything. If you have a  
7 part of the system that you think is  
8 functioning well.

9 MR. JOHNSON: Honestly, I don't  
10 think there's a part of it that is functioning  
11 well. I think the good thing about it is it  
12 shows collectivism never really works. I mean  
13 it can work in some situations, and it's great  
14 for group effort and all that. But  
15 collectivism always ends bad and especially  
16 economic collectivism. And I think what we're  
17 seeing is just that, just like a comet  
18 entering the atmosphere, just the whole system  
19 breaking apart, and the free market rearing  
20 its "ugly head" and taking over. And to  
21 answer your question before about what if you  
22 got rid of 115 tomorrow, I think that when you

1 look at Universal Publishing and Sony  
2 Publishing and major publishers being 100  
3 percent out of BMI this year as of January  
4 1st, that's incredible. That's historic. And  
5 what do they do, these publishers? Well, they  
6 can't negotiate for their songwriters, and  
7 that's why they got out because of the consent  
8 decree. But within this window of January or  
9 so they all made deals or at least some made  
10 deals with the streamers like Pandora and  
11 Spotify and others. So that's the free market  
12 taking over. And I think that it wouldn't  
13 matter if there was a 115 or 114, Because  
14 Universal and Sony Publishing, they have these  
15 huge catalogs. And they're going to negotiate  
16 what they want for their sound recording and  
17 what they want for the underlying composition.  
18 And so I think that part of me does want to  
19 get rid of 115. It's something I have to  
20 study a little more. But when you look at the  
21 term mechanical, it's a great term, and maybe  
22 served us well, but maybe it is outdated. And

1 when I look at it there is a sound recording  
2 and there is a composition. And if you look  
3 at the rate courts and the CRB, the hearings  
4 and all that, everybody's arguing over what  
5 the definition of mechanical is or what the  
6 definition of performance is. And you spent  
7 all this time arguing that, and really it's  
8 just a sound recording and a composition. I  
9 think that those are the two underlying  
10 copyrights, whether you have 115 or not. And  
11 that's what Universal and the big guys are  
12 going to negotiate with anyway. And Pandora  
13 and these other groups do not want to pay for  
14 songs or pay for a rate that Universal and the  
15 big guys think is acceptable. And they don't  
16 get the songs, and then Pandora goes out of  
17 business, that's fine. They're one company.  
18 One company taking millions of songwriters'  
19 songs. And you think of all the tax revenues  
20 that are gone because of these big companies,  
21 one or two, they don't pay any taxes. So I  
22 just think that in a way it really wouldn't

1 matter but I'd like to -- I just think that  
2 Universal and even independents like me, we're  
3 going to do what we want to do. And some  
4 people want to be in a collective license,  
5 that's great. But I think we should have a  
6 balance of both. And that's it.

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

13 MS. SCHAFFER: Just to I guess  
14 kind of combine your last question and the  
15 original way that you phrased it in terms of  
16 what is something that -- a type of licensing  
17 structure that's working well. I think the  
18 synchronization market is a perfect example.  
19 There's parity of power and not --  
20 synchronization licenses are generally divided  
21 in terms of income 50/50 between sound  
22 recording and the musical composition. And

1 even when we get down to smaller uses, and  
2 we're not talking about commercials or  
3 television uses, I think a great example would  
4 be of the settlement agreement that YouTube  
5 and Google entered into with approximately  
6 3,000 music publishers where -- is it a  
7 perfect arrangement? I'm sure there are those  
8 who will say it's not perfect. But I think  
9 it's a wonderful example of how licensing in  
10 the synchronization market has resulted in an  
11 outcome where -- I think even Google themselves  
12 said it's a win-win-win. Google and YouTube  
13 were able to put up user-generated content  
14 with musical compositions. Copyright owners  
15 were compensated based on the income from the  
16 advertising that's coming in. And YouTube  
17 users get to enjoy watching YouTube videos,  
18 and I will include myself amongst them. I'm  
19 glad that there's a system where that works.  
20 That's a great model example for where the  
21 system is working.

22 MS. CHARLESWORTH: Okay. And next

1 Mr. Sellwood, maybe you have some further  
2 thoughts on the YouTube license.

3 MR. SELLWOOD: Not at this point.  
4 I was going to comment in a different  
5 direction.

6 MS. CHARLESWORTH: Sure.

7 MR. SELLWOOD: If that's okay.  
8 But I do agree. I do appreciate those  
9 comments from Ms. Schaffer. What I was going  
10 to say is to your question of, speed round,  
11 what is working, the thing that I do think is  
12 really working is that there's a sense among  
13 all of the stakeholders that we really do need  
14 each other, and that innovation in the digital  
15 music space is stabilizing the music industry  
16 not only in the United States but globally.  
17 And that we do have to find solutions, and I  
18 feel like that's a really important thing for  
19 us all to recognize. There are things that I  
20 think that are part of the existing system  
21 that have really contributed to that, and I  
22 depart from a lot of the earlier comments. I

1 was going to say based on my days at  
2 Rightsflow I do think that the compulsory  
3 license under Section 115 is very important,  
4 and I do think it works for a couple of  
5 reasons. YouTube doesn't rely on Section 115  
6 for our licensing. We may at some point in  
7 the future but today we don't. So this steps  
8 back a little bit to working with record  
9 labels and music services and Rightsflow where  
10 there wasn't a collective on the publishing  
11 side other than HFA. And record labels and  
12 music services as well as small creators and  
13 artists that need a mechanical licenses came  
14 together and hired Rightsflow where we could  
15 license for them all at once and send one  
16 license request to a publisher on behalf of  
17 thousands and thousands of artists and labels.  
18 The publisher could respond to one license  
19 request at scale, get one report, and the  
20 system there really worked. We would not be  
21 able to put that system in place if there  
22 wasn't a set parameter for what that license

1 looked like under Section 115. And so we were  
2 able to put licenses in place because the  
3 rules were set. I think that's crucial, and  
4 I think without that and the set of  
5 parameters, then it becomes very chaotic and  
6 we would have to find some other way to  
7 replace that type of infrastructure. I also  
8 really like the compulsory license because it  
9 does establish a one-to-one relationship in  
10 many ways between the licensor and the  
11 licensee. You know, even if it's just a  
12 notice of intent, it's still one-to-one. I am  
13 licensing works and I'm sending reports and  
14 I'm paying directly to that rights holder.  
15 And I get concerned with collectives. I like  
16 the idea of collective licensing, but I don't  
17 like the struggle for transparency when there  
18 are more middle men added into the chain of  
19 licensing. So that's always a concern of  
20 mine. The compulsory license in general in  
21 the market for Rightsflow, if we relied on it,  
22 it was usually very quickly replaced with an

1 arms-length negotiated mechanical license that  
2 was on more friendly terms for either party  
3 that worked in the business. And I don't  
4 think without the structure of a compulsory  
5 license and without the process and the  
6 parameters that were defined by it we could  
7 reach those types of agreements.

8 MS. CHARLESWORTH: Okay. Mr.  
9 Kimes.

10 MR. KIMES: Thank you. I'm with  
11 you on that. I'm totally with you. And one  
12 thing is I think that works pretty good is the  
13 aggregators. That works pretty good. For the  
14 smaller guys it really works pretty good. And  
15 the 115, what I was saying a minute ago is  
16 that it's not much use if there's not somebody  
17 over it watching it. You understand what I'm  
18 saying? It's like we have it but you can take  
19 Amazon who can make a deal with all these big  
20 players and tell the little guy we're just  
21 going to give you whatever we want to give  
22 you. Somebody's got to watch that. Even if

1 you've got the 115, somebody's got to watch  
2 that. And that's what going on right now. I  
3 don't know if you all know that or not. You  
4 probably do. But Amazon's cutting a deal  
5 where they're going to have their own stream,  
6 their own music section, and they can give me,  
7 because I'm not Sony or EMI they can give me  
8 what they want to give me. So that needs to  
9 be watched. But I do think that's a thing  
10 that works well, the aggregators, and it's  
11 been successful for us and helped us a lot.  
12 But that little problem is still out there.

13 MS. CHARLESWORTH: Okay. Mr.  
14 Driskill.

15 MR. DRISKILL: It's interesting.  
16 I think the simple fact that all of these  
17 businesses want to get into the distribution  
18 of music says that there's tremendous value in  
19 music to the consumer. We've got to line up  
20 the value of music to the current system. We  
21 just have to. I think that historically  
22 everyone has looked at the PROs as that's a

1 model that works, not perfectly but it works,  
2 possibly the best model within licensing. You  
3 have three organizations that you can go to  
4 and generally get blanket licenses and be  
5 indemnified and covered for everything. I  
6 think we have to -- as we look at this and as  
7 we go through what this may be, I think  
8 there's even the possibility of going further  
9 than what we're talking about. And I think  
10 Mr. Marks had mentioned earlier establishing  
11 licensing through the record labels while the  
12 PROs remain separate. You know, we still have  
13 streaming that has all the performance rights  
14 included. Is there even a reason to go beyond  
15 that and include all of the rights together to  
16 establish something else. You know, it  
17 doesn't take a lot to see that a system that  
18 provides clarity and -- you know, I do hate to  
19 use the word ease but something that makes  
20 this thing a lot more simpler for all of us to  
21 operate. We do have common interests. All of  
22 us around this table have common interests,

1 and that is the creating of music and getting  
2 that music to consumers. We've got to figure  
3 out what that is. I think it's the collective  
4 system. I don't know that you'll find anybody  
5 that says across the board that's the thing  
6 that's going to cover everything, but it  
7 certainly seems to be a way that gets us to  
8 that place where we can all figure out how to  
9 work within it. If you don't have that, if  
10 you do away with 115, if you don't have that,  
11 I don't know how the digital companies, I  
12 don't know how anybody really works -- I don't  
13 know how licensing works. I don't know how  
14 you could expect them to go to 300,000 music  
15 publishers, independent copyright owners and  
16 get licenses. It doesn't make sense for them  
17 and it doesn't make sense for us. So I would  
18 be certainly in favor of more discussion  
19 around the collective entities, agencies,  
20 whatever they may be considered. Preferably  
21 as a copyright owner, I would like to see that  
22 agency be a not-for-profit. I don't want more

1 money being taken off the top for the  
2 administration of that. PROs are again a  
3 model for that.

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

6 MR. BARKER: I'll address a couple  
7 of things and ultimately get to your final  
8 question. I think I just want to address on  
9 115 again why in my opinion it doesn't work  
10 currently. That hasn't been addressed.  
11 Number one, these notices of intent are really  
12 being abused. They're not happening  
13 correctly. As an administrator, I see those  
14 every day, and I see that if I challenged many  
15 of them, I could legally, and they would not  
16 be valid. And the law is very clear to say if  
17 you don't follow the steps you cannot get one  
18 of these licenses, period. Another issue with  
19 115, compulsory licenses, is only one  
20 publisher of many may be notified and paid.  
21 That puts me or my co-publishers at a great  
22 disadvantage. Because I'm either going to

1 receive 100 percent and I have to pay it out  
2 to them or I'm not going to get anything and  
3 not know about it. And that's a problem.  
4 Plus with 115, I get no audit rights. And  
5 there are other things that plague the 115,  
6 but those are some of the ones that to me rise  
7 to the top. Ms. Schaffer talked about the  
8 YouTube license as a good example, which I  
9 agree with that. She said it's not a perfect  
10 example. I would definitely agree with that.  
11 Because in the YouTube license -- and Mr.  
12 Sellwood and I have had these conversations  
13 before. To me an audit right is incredibly  
14 important to my work. And unless with my  
15 YouTube license I have an intermediary person  
16 or party involved in that, I have no such  
17 rights. So there are things that have been  
18 built around 115 or attempted to be built  
19 around 115 that while there is a lot of  
20 positive things they're just not working  
21 correctly. I think to answer your question on  
22 what is working, again Ms. Schaffer said

1 synchronization. I would open that up to say  
2 if we think about it, any licenses that have  
3 no government regulations are working. The  
4 PRO, performance licenses with consent decrees  
5 is a regulation. Mechanical licenses for --  
6 compulsory licenses for mechanical uses are  
7 regulations. Everything outside of that,  
8 print, synchronization or any other kind of  
9 direct licenses seems to be working. Now, is  
10 the process as clear and simple as it should  
11 be? No, it's not. But again I think if -- I  
12 would venture to say if everybody around this  
13 table was asked the question do you agree that  
14 we need -- the following two statements.  
15 Number one, we need a more clear and efficient  
16 system for licensing. We would all say yes.  
17 Would we want a system that provides fair  
18 market value for all copyright holders, we  
19 would also say yes. 115 has not done that for  
20 us. So in my opinion let's don't try to  
21 correct something that's out there that's been  
22 here for over a century and clearly has not

1 worked. Because I think the stat rates some  
2 have calculated would be over 40 cents today  
3 as opposed to 2 cents when it first came into  
4 place. It's obviously not working for the  
5 copyright owners. So if we would agree that  
6 we need a new system and start with a blank  
7 piece of paper, we could get very creative and  
8 figure out what that was, given an amount of  
9 time in order to have that system in place.

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

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

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

20 MR. MARKS: It would keep the PROs  
21 intact by having them be able to -- so if a  
22 digital service, they could pay the sound

1 recording owner under this -- you know, the  
2 rates that were set, their piece, and then pay  
3 through the PROs or whatever organization --

4 MR. DRISKILL: So the packaging of  
5 materials.

6 MR. MARKS: Yeah, the -- you know,  
7 the money that's owed. So it would -- but the  
8 key is to dispense with this right-by-right  
9 kind of thing where you have one organization  
10 doing this right and one that right when most  
11 of the uses need all of the rights. And so I  
12 just wanted to clarify that it would include  
13 performance there. And, you know, the sync  
14 license, the sync is an interesting thing, but  
15 I don't know whether it works for the kind of  
16 volume that we're talking about. So it works  
17 today because, you know, it's a relatively  
18 small number of transactions compared to the  
19 number of transactions that we're talking  
20 about for a new service needing to clear 30  
21 million works, you know, to get off the  
22 ground, for example. So I agree with you that

1 115 doesn't work, which is why we proposed  
2 something else, and there seems to be a lot of  
3 consensus around that fact alone. So anyway,  
4 just a couple of quick comments.

5 MR. KNIFE: Yeah, I was going to  
6 say the same thing, remarking on what Ms.  
7 Schaffer and what Mr. Barker had said about  
8 the synchronization license. And going back  
9 to something that you pointed out before that  
10 I think we're going to have to keep bringing  
11 up to remind ourselves that there's a  
12 distinction between whether a licensing regime  
13 in and of itself works as an administrative  
14 kind of function versus whether or not the  
15 rates that are set, you know, that are applied  
16 to it by any particular entity are attractive.  
17 And those are different ideas. I mean the  
18 fact of the matter is that the synchronization  
19 license process, as Mr. Marks just pointed  
20 out, on anything larger than a single license  
21 for a single product doesn't work. I haven't  
22 done one in a while but the last time I did a

1 sync license I think my request sat at the  
2 music publisher for three and a half or four  
3 weeks before they got back to me. And indeed  
4 that process included the music publisher  
5 getting back to me and saying what's the sound  
6 recording going to get, and then I'll get back  
7 to you on that. That's not an efficient  
8 licensing process. It works on a one-to-one,  
9 as Steve was pointing out, but it doesn't work  
10 when consumers are demanding that services  
11 have, as he pointed out, 30 million songs  
12 available at once. So again I understand the  
13 concerns about the rates and the fact that  
14 within that licensing structure it's a free  
15 market. But that's a different issue than  
16 whether or not as a licensing process  
17 administratively it's efficient. It's not  
18 efficient.

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

21 MS. CHARLESWORTH: I'm sorry, just  
22 for the record it's Ms. Schaffer.

1 MS. SCHAFFER: And this may be a  
2 question for future rounds, and it probably is  
3 kind of we're at the end of this. But my  
4 question to that proposal is, how do you  
5 define a market rate when you have eliminated  
6 the market. And that -- and I don't mean that  
7 for discussion now but maybe for future  
8 rounds, that is the concern, I think.

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

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

14 MR. MARKS: I just wanted to  
15 highlight it.

16 MR. KNIFE: Yeah, right, exactly.

17 MR. MARKS: Possibly to the fact  
18 that --

19 MS. SCHAFFER: The proposal that  
20 we need to create market rates for musical  
21 sound recording or, I'm sorry, for musical  
22 compositions, and the idea that that can be

1 done through some type of compulsory system  
2 where all the rights are bundled. If you're  
3 taking out the ability to negotiate a rate in  
4 a free market, how is it possible to know what  
5 the market rate would be when there is no  
6 marketplace for an individual license for that  
7 musical composition?

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

10 VOICE: Steve --

11 MS. CHARLESWORTH: Okay. And so  
12 Mr. Marks.

13 MR. MARKS: Yeah. So, and this  
14 gets back to the trying to thread the needle  
15 of finding a way to get a market rate, get out  
16 from under this rate court and CRB system that  
17 we have now while taking advantage, as I think  
18 most people have recognized. I think your  
19 comments before were also recognizing. I mean  
20 YouTube is essentially a blanket license.  
21 It's -- I'm not sure it works because it  
22 started with litigation and, you know, was a

1 product of that, and that's not going to work  
2 for every service. But what we thought was  
3 we've heard a lot recently about -- from  
4 songwriters and publishers saying that the  
5 valuation between the recording and the  
6 composition has gotten skewed and using the  
7 rates that were set by the CRB for Pandora,  
8 for example, and what the rate court has set  
9 for the musical work for Pandora as, you know,  
10 even though they're different kinds of rates  
11 but setting all that aside. So, and a desire  
12 to have, you know, a percentage or a ratio  
13 that, you know, better reflects what, you  
14 know, each brings to the table in getting this  
15 final product to the market and looking at the  
16 investments that are made and everything else  
17 that you would do in that kind of discussion.  
18 So what we were proposing is you have a  
19 marketplace discussion, no government  
20 involved, no Congress involved, we sit down as  
21 an industry and figure out what is that ratio,  
22 what should that be. And then that in and of

1       itself is a market discussion, it's out of  
2       everything. And then the percentage is a  
3       percentage of what the sound recording  
4       copyright owners are getting from the market.  
5       And so by definition you would be getting a  
6       market rate that is unencumbered by any kind  
7       of government regulation or rate courts or  
8       anything else. Admittedly, it's under a  
9       blanket license and not a one-by-one. But for  
10      the other reasons that, you know, I discussed  
11      earlier and others have discussed, the one-by-  
12      one, right-by-right, use-by-use, format-by-  
13      format, share-by-share just doesn't work  
14      today. So it's a way of moving away from 115  
15      and getting out from under that but taking  
16      advantage of the benefits and having a  
17      transparency, the audits, you know, a not-for-  
18      profit, et cetera, administer that once the  
19      ratio is set.

20                   MS. CHARLESWORTH: I'm going to  
21      just -- I'm sorry, Mr. Coleman's been waiting  
22      for a while, and then Mr. Barker, and then,

1 Ms. Schaffer, we can get back to you.

2 MR. COLEMAN: Thank you. I just  
3 wanted to quickly say, because I wasn't on  
4 record on one topic about what's not working  
5 well in licensing that may not have another  
6 spot in the agenda, which is the Digital  
7 Millennium Copyright Act safe harbor  
8 provision. That has been the single biggest  
9 disaster for songwriters and small publishers  
10 in that it is -- it has done away with the  
11 concept of contributory infringement and  
12 vicarious liability in licensing. That's  
13 something that needs to be addressed by  
14 Congress and by the Copyright Office and  
15 reevaluated in the context of the Copyright  
16 Act. Compulsory licensing is a good context  
17 to bring into that conversation, because it is  
18 possible for licensees to be brought to the  
19 table to negotiate licenses through a  
20 compulsory scheme, but avoiding the liability  
21 has made it impossible for small publishers  
22 and composers to pursue infringing actions.

1 And there's never a sword of Damocles being  
2 held over licensees to negotiate.

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

14 MR. BARKER: Thank you. Let me  
15 first say to Mr. Marks, number one, I  
16 appreciate the ideas and the attitude I think  
17 of trying to consider, get together and  
18 consider a lot of different options and  
19 discussions and things. And not to be  
20 combative to that, but the example that you  
21 just gave of publishers or copyright song  
22 owners maybe getting a percentage of revenue

1 of record, the issue as song owners that we  
2 have with that is we're giving control to the  
3 record companies. While there may be a  
4 percentage, a percentage of a greatly reduced  
5 rate or even free, you know, could be less.  
6 I mean record companies can say we'll give you  
7 X percent of what we sell but we're going to  
8 put it on the market at 25 percent rate  
9 instead of 100 percent. We're granting you  
10 those rights, and that's not comfortable.  
11 That's kind of giving away the rights that we  
12 as copyright owners should have. I would also  
13 then pose the idea of how comfortable would  
14 record companies be in giving those same  
15 rights to the publishers as we're negotiating  
16 synchronization deals? I have a feeling you  
17 wouldn't be comfortable with that, even if we  
18 said we'll give you exactly what we negotiate  
19 for our own rights. So I appreciate the idea  
20 of coming together for ideas. That particular  
21 one is one that's not comfortable as owners of  
22 copyrights. Let me then say, kind of changing

1 back again to your question of what's working,  
2 and through some creative hand signals across  
3 the room I was reminded of one. There's an  
4 entity called CCLI, Christian Copyright  
5 Licensing, Inc., that started in the early  
6 '80s, I think, primarily to license churches  
7 for, not performances as many think, but for  
8 fixations of songs within churches, and it's  
9 working. It's created a new market that has  
10 generated a lot of income that would not  
11 otherwise have taken place. The interesting  
12 thing was when that was created, and I was  
13 around in the days where that was created,  
14 there was a blank piece of paper and they said  
15 here's a need, there's no government  
16 regulations, there's no marketplace that they  
17 have to try to look at as limiting them. It  
18 was simply a need where they created something  
19 without any other filters, if you will, or  
20 stipulations added to it, and it works. So  
21 again they took a blank piece of paper,  
22 created something, and it's worked. And I

1 think we as an industry could do that, throw  
2 away the things that are getting in the way  
3 and muddling things up and making things  
4 complicated, and come together and create that  
5 simple clear licensing system.

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

8 MS. SCHAFFER: I don't think any  
9 music publisher disagrees with the idea that  
10 there can be an efficient licensing process.  
11 Speaking from a personal standpoint, not  
12 representing anyone, I don't know that there  
13 isn't a place for that negotiation to occur  
14 with a record company. The problem that we  
15 get into if there is a regulated blanket  
16 license is that you remove any negotiation  
17 power of the music publishers when they are in  
18 this negotiation, those private negotiations  
19 with the record companies. If we cannot go  
20 out independently and say, you know what, if  
21 you can't come to a reasonable agreement on a  
22 percentage rate, we'll license it ourselves,

1 then we lose all bargaining power in being  
2 able to negotiate what that rate is. Why not  
3 eliminate the statutory license and still come  
4 together? We can have -- we don't disagree  
5 with the principles that the RIAA has talked  
6 about today and in the comments that it  
7 submitted. I mean the principle of coming  
8 together and having these negotiations is an  
9 excellent idea. It's the solution of how do  
10 we get to that room. What's stopping us in a  
11 free marketplace from having those exact same  
12 discussions but where there's a parity of  
13 power and we can say if we can't come to a  
14 reasonable solution on what the split would  
15 be, we're not here saying it needs to be  
16 50/50. But if we can't separately go out and  
17 negotiate that rate, then we have no  
18 bargaining power and we're essentially put in  
19 the position where we have to accept what the  
20 record companies or the sound recording owners  
21 dictate as the percentage that they're willing  
22 to provide. 86 And I think that gets back to

1 another point where there's a lack of trust  
2 between the record companies and the  
3 publishers. And I think that if there were --  
4 and let's say that we end up in a system where  
5 there is essentially a passthrough license,  
6 the only thing that would even get anyone  
7 anywhere close to being comfortable with that  
8 situation, which I think is a stretch, but  
9 would have to be a complete audit right. And  
10 maybe it's not every music publisher having  
11 their own independent auditor, but at least  
12 one auditor representing the music publishers  
13 who can go in there and know that we are being  
14 compensated. And I think that there's a lot  
15 of issues that we'll flesh out over the course  
16 of the next few days, but I think that's where  
17 we're coming at is that it's not that we  
18 disagree with any of the principles, it's the  
19 solution to get to those ultimate goals.

20 MS. CHARLESWORTH: Mr. Marks and  
21 then --

22 MR. MARKS: I'll be quick.

1 MS.MS. CHARLESWORTH: Yeah.

2 MR. MARKS: Just to answer that  
3 last couple of comments. We have -- you know,  
4 in the current mechanical -- I completely  
5 understand the issue of, you know, what if a  
6 record company were to give something away for  
7 free because they thought they were getting  
8 some other benefit. We tried to tackle that  
9 issue in the last mechanical negotiation, and  
10 we came up with something that we called TCCI.  
11 Okay? TCC is total content cost, which was  
12 part of the negotiations. We actually had to  
13 figure out the rates, which was that -- part  
14 of the rate structure was that publishers  
15 would get no less than a certain amount that  
16 the recording owners have. So this is already  
17 kind of something we've discussed a lot. And  
18 we added this I part to it, which stood for  
19 integrity, to ensure that things like that  
20 didn't happen. And I think we should further  
21 -- we're completely open to fleshing that out  
22 so that that kind of thing doesn't end up

1     happening where, you know, the right value  
2     doesn't flow back. Audit right, part of our  
3     proposal. We completely agree that that  
4     should exist and the transparency. And also  
5     I just wanted to clarify, we're not proposing  
6     a regulated blanket license. What we're  
7     proposing is set aside -- let's get together  
8     and have the conversation. If we're able to  
9     reach an agreement, we can then be in a  
10    position to propose something to policymakers  
11    to see if they agree that it's a good  
12    solution. And at that point, you know, it  
13    would be -- it wouldn't be regulated in any  
14    way because we'll have agreed to it up front.  
15    So we're not looking to impose a certain  
16    percentage or not. The idea is let's come  
17    together, figure out what that is, figure out  
18    ways to build in protection and many of the  
19    other complexities around it. This is not --  
20    there's no perfect solution here. I mean I  
21    think we all recognize that this is  
22    complicated. And as I said before, we were --

1 it's just one idea and we're somewhat trying  
2 to thread a needle given the two objectives of  
3 getting to fairer rates and having aggregated  
4 licensing with healthy efficiency.

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

10 MR. MARKS: And the songwriters.

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

20 MR. MARKS: You'd modify 115 so  
21 you got rid of the rate court and the CRB, and  
22 --

1 MS. CHARLESWORTH: So you --

2 MR. MARKS: -- have instead a  
3 blanket license with the percentage that we'd  
4 agreed upon in the marketplace separate and  
5 apart from any rate courts or government or  
6 anybody else.

7 MS. CHARLESWORTH: So yes. So it  
8 would still be in a sense -- you know, the  
9 term compulsory is loaded but a mandatory  
10 license, a statutory license, you know, for  
11 everything that was covered under it. But  
12 there would be no rate setting process other  
13 than there would be a legally defined split.

14 MR. MARKS: Yes.

15 MS. CHARLESWORTH: And then you  
16 would go out and negotiate based on what you  
17 described as the finished products.

18 MR. MARKS: Yeah. As record  
19 companies have done for years and all other  
20 copyright owners like, you know, movie studios  
21 do with the product that they have.

22 MS. CHARLESWORTH: Okay. Just so

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

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

1 were talking about with Mr. Marks.

2 MR. MARKS: No, not true.

3 MR. BARKER: Okay.

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

13 MR. DRISKILL: Which publishers  
14 get to decide that? Which publishers get to  
15 decide that?

16 MS. CHARLESWORTH: Okay. All  
17 right. This is not a ray of hope. This is  
18 not what I -- I was looking for someone to  
19 kind of sum this up and give us a rousing  
20 final comment. I think -- actually I am  
21 encouraged because I feel like if we're  
22 talking about these things, you know, we may,

1 as I said earlier, make some progress. And we  
2 will continue the discussion. I think our  
3 time for this panel is up. I really  
4 appreciate sort of the fact that people kind  
5 of put it out there and laid out their biggest  
6 concerns and maybe some ideas that we can  
7 focus on as the roundtable progresses. And  
8 we'll have a quick break now and reconvene at  
9 10:45. Thank you all.

10 (Break taken from 10:30 a.m. to  
11 10:45 a.m.)

12 Session 2: Sound Recordings:

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

20 MR. KASS: Sure. It's Fritz Kass.  
21 I'm the CEO of an all-volunteer organization,  
22 the Intercollegiate Broadcasting System, that

1 represents hundreds and hundreds, perhaps a  
2 thousand public school, college radio  
3 stations, which essentially are the entities  
4 of the 50 states. So our issues broadcasting  
5 and webcasting are issues of the states. So  
6 David represents the state broadcasters. We  
7 represent the actual states as far as  
8 education. I appreciate your inviting us.  
9 I'm reminded 12 years ago I was sitting on  
10 this same type of roundtable with Steve Marks  
11 over these same issues, and I was reviewing  
12 the transcript and it hasn't changed much in  
13 12 years.

14 MR. DAMLE: Great. Thank you.

15 Ms. Soled?

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

1 MR. DAMLE: Great.

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

15 MR. DAMLE: Great.

16 MR. STOLLMAN: My name is Marc  
17 Stollman. I'm a entertainment attorney from  
18 Boca Raton, Florida, south Florida, a small  
19 firm. I own the practice, fully  
20 transactional, and I'm representing probably  
21 80 percent music and 70 percent of that is in  
22 the publishing area, but I also represent a

1 lot of small independent record companies and  
2 writers. And excuse me for sounding like the  
3 lawyer in the room, but I know my card  
4 mentions that I'm here on behalf of the State  
5 Bar of Florida, but since it's on the record  
6 I just need to say that I am not taking any  
7 positions on behalf of the State Bar of  
8 Florida. This is all just personal on behalf  
9 of myself and my clients.

10 MR. MEITUS: My name is Robert  
11 Meitus. I'm an adjunct professor of law at  
12 Indiana Maurer School of Law. I also have a  
13 small firm and we represent many music  
14 clients. We have five lawyers, we represent  
15 everybody from the Alan Parsons Project to  
16 Joshua Bell to Wes Montgomery's estate to a  
17 lot of independent artists like Sufjan Stevens  
18 and Foxygen, and a few independent labels that  
19 are allied or distributed by the Secretly  
20 Canadian Group out of Bloomington. I also  
21 represent my wife as a manager, Carrie  
22 Newcomer, 12 albums on Rounder Records, and

1 recorded down here with Allison Krause and  
2 Nickel Creek. Gave us a gold record in our  
3 house recording one of her songs. So I know  
4 it very personally. Formerly a touring  
5 musician. And I will be trying to focus on  
6 the purpose of the Copyright Act today, which  
7 I didn't hear much about in that first  
8 session. And that's to incentivize the  
9 creators and trying to think about how the  
10 artists can really share in the gross income  
11 that's going to become a hundred billion  
12 dollar industry according to Marc Geiger.  
13 We've seen his keynote at Midem and I love  
14 that. But I just don't want 99 billion of  
15 that to go to the Googles and the Universals,  
16 et cetera, and my artist to share in a tiny  
17 part of that.

18 MR. DAMLE: Great. Well, the  
19 topic of this panel is sound recordings, and  
20 I think specifically about the statutory  
21 licenses 112 and 114 for digital performances  
22 of sound recordings and ephemeral copies. And

1 so obviously a lot of the attention so far has  
2 been on the musical work side of things, so  
3 this is a bit of a shift. So one question I  
4 had to sort of kick things off is just a  
5 general question about the effectiveness of  
6 the 112 and 114 licenses and the rate setting  
7 process. And I don't know if any of you have  
8 general comments about how the licenses work,  
9 whether they're working effectively, whether  
10 there are ways of improving it. And so we can  
11 go around the table, I don't know. Do you  
12 want to start, Mr. Oxenford?

13 MR. OXFORD: Sure. I guess I'll  
14 start. Conceptually the 112/114 licenses, the  
15 114 license I think makes a lot of sense.  
16 It's like the PROs in that it's a one-stop  
17 shop where anybody who's doing a  
18 noninteractive stream can pay one price, one  
19 royalty, and obtain the rights that they need  
20 to operate their service. Simplicity is  
21 great. I think practically there have been  
22 problems in the administration. Obviously

1 beyond my representation of broadcasters I've  
2 worked with a number of webcasters throughout  
3 the proceedings, and it seems like every time  
4 we come to a decision we come to post-decision  
5 decisions, alternate rates through deals  
6 afterwards. Because, practically speaking,  
7 the rates that have been set have not been  
8 rates that will allow businesses to operate  
9 and survive. So we've had to come to the  
10 post-decisions through the various webcaster  
11 settlement agreements after the rate setting  
12 proceedings have taken place. And why is that  
13 the case? You know, partially I think we're  
14 concerned about the standards. While I'm sure  
15 that I'm going to get a lot of pushback, in  
16 fact I thought I should wear the black hat  
17 when I came in here. You know, we think that  
18 the rates that have been arrived at for the  
19 114 license in many cases have just been too  
20 high. We don't think that the willing  
21 buyer/willing seller standard the way it's  
22 been administered has properly set the rates,

1 and I'm sure we can get into more discussion  
2 going forward. You know, I think another  
3 subsidiary issue is the 112 issue. I think we  
4 get to the end of all these proceedings  
5 setting a rate for streaming for the public  
6 performance of sound recording and then say,  
7 well, we'll give X percent to the 112 license,  
8 not because it really has any independent  
9 meaning, not because there's been any evidence  
10 presented during the course of the CRB  
11 hearings about a 112, just because that's the  
12 way the statute's been written. You got to  
13 get a 112 license to go with a 114 license.  
14 You know, based on some prior decisions or  
15 prior studies that you all have done in the  
16 context of the public performance right for  
17 streaming in a noninteractive service, that  
18 112 really doesn't have any independent  
19 significance. And, you know, we really I  
20 think question whether there should be a  
21 separate 112 license here. It ends up getting  
22 into arguments and complications that simply

1 aren't necessary when really what we're  
2 talking about is the public performance.

3 MR. DAMLE: Great. Thank you.  
4 Mr. Marks?

5 MR. MARKS: Yeah, I would say as a  
6 general matter that I think they've been  
7 working well. We've got a blanket license  
8 approach which makes administering -- you  
9 know, obtaining the license easy.  
10 SoundExchange and all its members on the  
11 record company side and the artist side have  
12 taken on the burden of administering that  
13 license going back, you know, 15, 17, almost  
14 20 years now. A couple of things that we  
15 think could make it more effective and be  
16 improved. One is we have a rate -- two  
17 different rate standards. You know, one  
18 willing buyer/willing seller, which is  
19 designed to give fair market value to  
20 creators. And then an 801(b)(1) standard,  
21 which is this policy-oriented hodgepodge of  
22 factors that has led in the past to below

1 market rates, which only apply to three  
2 services that were grandfathered 17 years ago  
3 or 16 years ago when the DMCA was passed with  
4 no good reason today for that same grandfather  
5 to continue to exist vis-a-vis all the other  
6 services that they are competing with. So we  
7 think there should be platform parity with  
8 regard to the rate standard that exists. We  
9 also think that the license has -- now  
10 includes more functionality kind of by default  
11 than was envisioned at the time that the  
12 license was established. In our view, the  
13 launch decision was wrongly decided. And as  
14 a result there is a lot of customization and  
15 other features that have found their way into  
16 Section 114 and yet there's been no  
17 recognition of the difference in value that a  
18 service like -- you know, a customized service  
19 has versus a truly preprogrammed radio  
20 service. And so we think that at the very  
21 least there should be some differentiation  
22 where there are higher rates paid for that

1 additional functionality. So and, you know,  
2 there's a Pre 72 issue which I'm sure we'll  
3 get to later, so I'll --

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

7 MR. KNIFE: I just want to pick up  
8 on and echo a bit of what Mr. Oxenford said,  
9 and also make the point that I'm beginning to  
10 fear is going to have to be reiterated several  
11 times during the day, that I'm trying to  
12 address the distinction between the actual  
13 licensing regime itself and any rates. And we  
14 can talk for a minute about the rate setting  
15 process. Those seem to be -- while they're  
16 obviously related, they're not necessarily the  
17 same issue. And so just like Mr. Oxenford  
18 said and Mr. Marks said, I think the 114 and  
19 112 license works again as an administrative  
20 function well because it is blanket license.  
21 It's easy, it's one-stop shopping as other  
22 commentators had said. The rate setting process

1       itself has a lot of issues attendant to it  
2       that are problematic. Not surprisingly, I  
3       disagree with Mr. Marks on some of those  
4       issues and why they're problematic. I think  
5       it's interesting that the 801(b) standard that  
6       leads to, quote, below market rates has never  
7       had to be adjusted by Congress or anybody else  
8       after a rate was set under it. Yet the  
9       willing buyer/willing seller standard  
10       continuously needs to be adjusted after rate  
11       setting proceedings have concluded. So again  
12       I think as a particular -- in the silo of  
13       licensing I think it works well. I think  
14       there are things that we can adjust with  
15       respect to the way the rates are set, the way  
16       those rates are applied. And finally I also  
17       agree with Mr. Oxenford that the distinction  
18       between -- or I should say the incorporation  
19       of the 112 license within the 114 license  
20       seems to be completely vestigial, it doesn't  
21       really seem to serve much of a purpose and  
22       certainly will serve less and less of a

1 purpose as time goes on.

2 MR. DAMLE: Mr. Kass.

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

7 MR. DAMLE: I know that one well.

8 MR. KASS: -- improperly appointed  
9 kind of reflects our view of the problems with  
10 The rate becomes not a problem in the rate but  
11 the way the rate's administered in the fact  
12 that there's a minimum which is -- blocks the  
13 buyer and seller. The terms of the rate are  
14 ridiculous. For instance, a college  
15 broadcaster that perhaps wants to support  
16 George Johnson's works is not allowed under  
17 114 to play his works more than three times or  
18 four times in a three-hour period. Now,  
19 that's obviously a violation of the free  
20 speech of that college broadcaster. For  
21 instance, if somebody calls in to a college  
22 webcaster or a public high school webcaster

1 and says, I'd like to hear Mr. Johnson's  
2 work, under 114 we're prohibited from doing  
3 that. Now, the platform between the  
4 broadcasting part of the intercollegiate  
5 broadcasting system and the webcasting part is  
6 certainly something that's been talked about.  
7 But the reality is that copyright law as it  
8 applies to broadcasters is old, it goes back  
9 to the 1930s, and it's been fleshed out. And  
10 we've determined that you can't regulate free  
11 speech. We've determined that you can't have  
12 forced program logs or programming on a  
13 broadcaster, particularly a public  
14 broadcaster. Yet 114 does exactly that. For  
15 instance, in its implementation it says you  
16 have to have 100 percent census reporting of  
17 use. And that just makes no sense. The  
18 students don't keep programming logs, they  
19 don't have it. The basic section, Article 1,  
20 Section 8 says for the progress of science,  
21 and arguably the greatest scientific  
22 achievement that's affecting our students and

1 our society is the internet. Yet 114 puts  
2 limits on the progress of science as it's  
3 practiced by students that are just simply  
4 using music as a catalyst to learn how to  
5 digitally stream and to exercise their rights.  
6 There's another very subtle issue, and that is  
7 under recent Supreme Court decisions it's been  
8 determined that in the case of states, and  
9 that's what we are, are basically representing  
10 state entities, that the federal government,  
11 if they're going to propose a rate, it's a  
12 tax. And so what you're doing is you're  
13 having a statutory license, let's say paying  
14 the minimum of \$500 for a college webcaster to  
15 SoundExchange by a state taxpayer entity using  
16 state taxpayer money. Yet SoundExchange, as  
17 part of its component, has a lobby, supports  
18 a lobbying group, Music First, which is  
19 lobbying to increase the rates on the states  
20 by taxing the broadcast component. So clearly  
21 you have a conflict there. Because most of  
22 our 50 states actually have laws on the books

1 that says that you can't use taxpayer money to  
2 support lobbyists, particularly lobbyists that  
3 are going to work against the state. Yet  
4 that's in effect what 114 does, it forces  
5 through a statutory compulsory license for  
6 state taxpayers to pay major music companies,  
7 most of which are foreign-based, a tax.

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

10 MR. MEITUS: Okay. So I do  
11 support 114 in general because of the way it  
12 compensates the performers and creators. I'm  
13 not really sure about the rate setting  
14 process, whether 801(b) or the willing  
15 buyer/willing seller process is best, but I  
16 would make a few comments. I'd say the result  
17 with regard to satellite radio, paying 9  
18 percent of gross revenue, I think personally  
19 is way too low. I think there's a convergence  
20 of technologies today. So I'm driving in my  
21 car and my house and I'm listening to the  
22 radio on my handheld pumped through my stereo

1 or I'm listening to SiriusXM. Is there really  
2 the difference that we thought there was years  
3 ago, over a decade ago? No. I think that  
4 needs to be looked at and there needs to be  
5 platform parity, and probably a unification of  
6 the rate setting standards. I will make one  
7 point outside of that that I think is  
8 important. And I think that 114 has been and  
9 is being manipulated by major labels with  
10 regard to the distinction between  
11 noninteractive and interactive. And I would  
12 rather see on behalf of my artist clients an  
13 expansion of 114's statutory license for sound  
14 recordings for interactive services so there  
15 was clear and transparent creator splits and  
16 direct payments. Because, frankly, it is  
17 impossible for us to know through the  
18 contracting process and to get to it even with  
19 leveraged well-known clients what is going on  
20 between the majors and the streaming services  
21 with regard to ownership, and when they go  
22 public these services will put a lot of money

1 in the pockets of major labels and in deals  
2 that are struck outside of the statutory  
3 licenses. I think it would benefit the  
4 creators -- I'm going to stay on point here --  
5 if we saw an expansion of 114 in some way.

6 MR. DAMLE: Mr. Johnson.

7 MR. JOHNSON: Pretty much agree  
8 with everything you said there. And I think  
9 as an independent artist, you spend money, at  
10 least in my case, to write songs, to demo  
11 them, to get the players. And then you go and  
12 you do your album, and that costs even more  
13 money. My first album cost maybe 50 grand or  
14 so, my second album I just did cost about 30  
15 grand. So, unless you're on the radio, which  
16 is basically impossible unless you're a major  
17 artist, there's no money out there. And so I  
18 look at the sound recording side of it and I  
19 like SoundExchange as far as the people who  
20 work there have been extremely nice to me,  
21 Michael Huppe and all their attorneys, and  
22 they've really got some great people running

1 it. My problem is that they were given a  
2 monopoly to exclusively collect all the  
3 digital sound recording royalties. And to me  
4 that's incredible. They have a government  
5 monopoly to collect all sound recording  
6 royalties. And I got involved in the recent  
7 CRB digital sound recording rate setting  
8 process, and it's a nightmare. And, you know,  
9 just the first two months were just the NMPA  
10 fighting with Pandora over who got a copy of  
11 the Apple license. I mean that's incredible.  
12 No wonder it's so screwed up and no wonder  
13 it's .00000012 for the song and, in some  
14 cases, the sound recording. So no offense to  
15 the RIAA but it's incredible that they own  
16 SoundExchange, that they lobbied to create  
17 SoundExchange, and that I have to go through  
18 SoundExchange in the CRB rate setting process.  
19 And if I do it on my own it will cost me two,  
20 three million dollars, which of course is  
21 ridiculous. So I think that the force that's  
22 used -- we come back to whether it's a

1 voluntary system or forced, and all it is, is  
2 all force, with your sound recording and the  
3 consent decree, and you have to go through the  
4 consent decree, through all of the compulsory  
5 licenses it's force, force, force, and  
6 everybody wants one thing, one collective  
7 license, one blanket license. And there's no  
8 option really. Even though SoundExchange is  
9 nonexclusive, BMI are nonexclusive, there  
10 really is no option to go outside that system.  
11 So I just wanted to say that I don't think the  
12 lobbyists should be controlling my individual  
13 copyright. I think that NMPA, RIAA, and even  
14 the Grammys are involved in transactions,  
15 direct transactions they have no business  
16 being involved in. And I hate to be harsh,  
17 but, you know, that's my opinion as an  
18 independent person. But copyright is an  
19 individual thing. You know, your performance  
20 or whether it's a sound recording or ASCAP or  
21 anything, it's per-performance. Your rights  
22 are individual. Copyright is a right and it

1 is individual. But everybody's obsessed with  
2 collective, collective, blanket. And I  
3 understand the problem, you've got 30,000  
4 crazy songwriters and artists, and you can't  
5 do a deal with all of them if you're Pandora,  
6 or whomever. But you see Pandora and other  
7 companies offering direct licenses. And I'm  
8 negotiating with five different streamer right  
9 now, out of nowhere. And so it's coming  
10 apart, it's happening - direct licensing. And  
11 there should be a balance between them, but  
12 this forced collective licensing by lobbyists  
13 who won an exclusive government monopoly to  
14 price fix rates is just, I think it's  
15 ridiculous. I think it's killing us. That's  
16 it.

17 MR. DAMLE: Okay. Mr. Marks.

18 MR. MARKS: I'd just like to  
19 respond to a couple points and then make one  
20 or two that I forgot earlier. Just picking up  
21 on the last point, so if we go back in time,  
22 SoundExchange started out as something that

1       RIAA invested in at the request of the  
2       licensees. So the way the statute is written  
3       is that the licensees have the obligation to  
4       find every single copyright owner, and artist  
5       for that matter, and pay them directly. And  
6       they requested -- they raised an issue about  
7       how are we going to find all these people,  
8       this is -- you know, we're willing to pay and  
9       we'll figure out what the rate is, but we just  
10      -- we've got no -- forget the resources, we  
11      just don't have the ability to even find out  
12      who that is. RIAA invested millions and  
13      millions of dollars to create a organization  
14      that was internal to RIAA at the time in  
15      response to that request to the licensees, to  
16      help the process work. So that's how it came  
17      about at the beginning. It was a request from  
18      the licensees. The organization was  
19      eventually spun off so that it was, you know,  
20      independent and 50/50 with an artist board and  
21      a label board equally represented. The  
22      lobbying that's been discussed is not done

1 with, you know, taxpayer money or any  
2 nonmember money. To the extent that  
3 SoundExchange lobbies an issue it is only with  
4 the approval of its members' money. So  
5 there's no use of nonmembers money to engage  
6 in things outside of administering the  
7 statutory license or trying to get a license,  
8 you know, the license rates or things like  
9 that. And there's nothing -- it doesn't have  
10 any exclusive right to represent sound  
11 recording operators/owners or artists in CRB  
12 proceedings. Anybody can do it. The only  
13 thing that SoundExchange has is its been  
14 designated as the agent to collect. You know,  
15 that's because it's shown itself to be the  
16 best organization to do that. But you, any  
17 record company, any group of record companies,  
18 any group of artists can participate in the  
19 CRB proceeding. And it is no doubt complex  
20 and expensive. And licensees have been  
21 calling for it to be more complex and more  
22 expensive. And SoundExchange and RIAA, maybe

1 others, have fought against that. Because we  
2 don't think it should be like federal court  
3 litigation where you have open-ended discovery  
4 that goes on for years and things like that.  
5 It's unnecessary, it's inefficient, and  
6 there's no -- nothing demonstrable that it  
7 leads to better or different rates. I mean  
8 it's just not. So I hope that answers some of  
9 the questions or issues that you had and,  
10 Fritz, that you raised about how the funds are  
11 used. The two things I wanted to mention in  
12 terms of improving the license that I forgot  
13 the first time around. One is there's no  
14 termination right for noncompliance. So  
15 Section 115, for example, you know, we talked  
16 about the warts of that compulsory license in  
17 the last panel. But one thing it's got is if  
18 you're not complying with it you get to  
19 terminate it. In 114 that's not the case.  
20 And in order to deal with noncompliance, which  
21 I have just some stats here. Last year 25  
22 percent of all payments were late. Two-thirds

1 of all licensees required to provide reports  
2 of use missed at least one report and at least  
3 25 percent hadn't provided any reports. So  
4 there's a tremendous amount of noncompliance,  
5 and yet the burden on SoundExchange would be  
6 to bring a federal court case against every  
7 single one of these, which I don't think is  
8 good for anybody in terms of, you know, the  
9 use of money that otherwise should be flowing  
10 to the recipients under the statute for it,  
11 so.

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

14 MR. KASS: First of all, I  
15 completely agree that SoundExchange is one of  
16 the best managed and most efficient, and I  
17 think Mike Huppe earns his \$700,000 in salary  
18 and benefits in making that work. And I  
19 certainly sympathize with the labels,  
20 primarily the three large primarily foreign  
21 labels, because they have the unenviable task  
22 of trying to have a worldwide copyright system

1 that works for the copyright holders as they  
2 are in the United Kingdom or Europe or Japan.  
3 The problem is that we are a constitutional  
4 republic, and we have a Constitution,  
5 specifically Article 1, what Congress can  
6 pass, and Section 8, which says for the  
7 progress in science that writers will possess  
8 their writings and inventors will possess  
9 their inventions. And that's dramatically  
10 different than what happens in Europe. So if  
11 we take the first part of Article 1, which  
12 says writers will have their writings, that's  
13 very clear. And certainly the intercollegiate  
14 broadcasting system has absolutely no problem  
15 with ASCAP, BMI, and SESAC. In fact, we are  
16 not part of the consent decree because we  
17 negotiated a rate in 1976 and we're happy with  
18 the rate, so are they, and we're still paying  
19 that rate for our broadcast stations. And we  
20 have a negotiated rate for our webcasting  
21 stations with them, no problem. Somehow,  
22 perhaps through the lobbying, whatever, the

1 idea that performing that writer's work was  
2 copyrightable under the Constitution is very  
3 interesting. Because if you take the second  
4 part of Article 1 Section 8, the inventor will  
5 hold the patent, that would mean I, for  
6 instance as a certificate pilot, sometimes  
7 working for an airline, using pilot equivalent  
8 to artist and airline equivalent to label,  
9 would be entitled to a statutory license to  
10 collect on the patents that I'm flying this  
11 aircraft with 10,000 patents. So yet the  
12 label says no, we can have a statutory license  
13 under the Constitution for performance of the  
14 writing, yet the performance of the patents,  
15 say by a pilot or a race car driver or  
16 something else, no, they can't have it. And  
17 that kind of causes a problem. Again I can  
18 see why the labels would want to do that.  
19 Because worldwide they don't have the  
20 Constitution, they don't have Article 1  
21 Section 8 --

22 MS. CHARLESWORTH: Excuse me, Mr.

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

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

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

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

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

21 MR. KASS: Essentially that's  
22 correct, but primarily because of the terms

1 and not because of the rate.

2 MS. CHARLESWORTH: Okay.

3 MR. DAMLE: Mr. Stollman.

4 MR. STOLLMAN: If I can for just a  
5 second take a step back from prior to what  
6 Fritz was saying and just comment that, A, in  
7 general I agree that SoundExchange is a  
8 navigable and manageable and useful and  
9 helpful organization doing a good job. And  
10 I'm speaking about it now more for small and  
11 independent either labels or writers. They're  
12 small, they're manage- -- they're useful,  
13 they're manageable, they're -- they do a good  
14 job. I think though there is a problem  
15 between theory and reality in a lot of cases,  
16 and a lot of what we're talking about,  
17 including on behalf of RIAA, is easier said  
18 than done. And I think that what you do,  
19 George, I wanted to -- I don't know much about  
20 it, just hearing you speak. I think is the  
21 exception, not the rule. I think speaking for  
22 the -- you're very active it sounds like, and

1     you're really hands on and you're in there  
2     doing it. And I think more of the independent  
3     labels and writers do not feel -- and I'm  
4     speaking for my clients -- do not feel like  
5     they have a seat at the table, do not feel  
6     like they have -- and that's why this forum is  
7     good, of course -- do not feel like they have  
8     a seat at the table and do not feel like they  
9     have the resources to take a seat at the  
10    table, honestly, to have their voice heard and  
11    come in and argue for themselves. They don't  
12    speak the language in some cases, and they  
13    don't have the money.

14                   MR. JOHNSON: Can I say one thing  
15    real quick? And I appreciate that and I agree  
16    with you. And I've only been at this for  
17    about a year and a half. I've been in  
18    Nashville writing songs for 16 years with my  
19    head down writing songs. And a lot of  
20    songwriters are starting to pick their heads  
21    up and they're starting to learn all this  
22    stuff. And I am the exception to the rule,

1 but then again I'm kind of the example of  
2 let's say the old guy who never made it. And  
3 I want to be an old jazz guy. I can't even be  
4 an old jazz guy anymore. And then you take  
5 the person who goes to Belmont, they're first  
6 year at Belmont and they want to make it, they  
7 want to be a recording star, a writer. We're  
8 both in the exact same boat. So I'm really  
9 trying to represent just the voice of the  
10 independent. But I agree with you that -- the  
11 only reason I have a seat at the table is  
12 because I asked, and I'm literally across the  
13 street so it isn't a big deal for me to walk  
14 across the street. But, it's a problem that  
15 the independent just kind of gets cut out of  
16 the entire process and they get left behind.  
17 And I think that's wrong and if you worry  
18 about the individual person like me, or the  
19 new person coming to Belmont, their individual  
20 copyrights, then you start to solve the  
21 problem. But if we're all worried about this,  
22 well. I spoke to a major record guy who runs

1 a major company in town last night and I asked  
2 him what he thought. And just in general,  
3 whether it's for the sound recording or for  
4 the mechanical side, what the CRB is really  
5 interested in when you go there is, oh,  
6 Pandora, they didn't break even. Okay, we're  
7 going to still keep the songwriter rate at  
8 .00000012. Oh, Spotify didn't -- they didn't  
9 break even, even though they're a billion  
10 dollar company. And even though Tim  
11 Westergren's taking out \$15 million a year he  
12 still thinks that songwriters should be paid  
13 less than .00000012. So, that's why I think  
14 we should get rid of the Copyright Royalty  
15 Board altogether is because, there's all these  
16 crazy, stupid rules that lets Pandora walk  
17 away because, oh, you didn't break even this  
18 year. Are you kidding me? And one thing real  
19 quick is what I say all the time is you've got  
20 to be kidding me. I say it three or four times  
21 a day just --

22 MS. CHARLESWORTH: Okay. Well,

1 and so do I, by the way. I'm going to  
2 interrupt you. It sounds like, in a nutshell,  
3 you're very frustrated with the CRB process,  
4 and I think for different, perhaps different  
5 or maybe overlapping or the same reasons there  
6 are many others who think it could be  
7 improved. But I want to make sure that we  
8 cover all the sort of topics that are on Sy's  
9 list here. So including there were a couple  
10 comments about the necessity of the 112  
11 license, and as sort of an add-on, although it  
12 does cover the reproductions that are used to  
13 stream the recordings. So I was wondering why  
14 since it's rolled into the proceeding, sort of  
15 what the more -- the specific concerns were  
16 about that part of the licensing structure.  
17 It's Mr. Oxenford. I think you raised it  
18 first. I'm just trying to understand, you  
19 know, assuming, if you assume that a license  
20 for those uses is necessary, for the  
21 reproductions is necessary. Or maybe you're  
22 questioning that premise, I don't know.

1                   MR. OXENFORD: I guess my question  
2                   is really is it necessary or should it be  
3                   necessary. Because really it's one process,  
4                   it's one process of performing to the public,  
5                   and those reproductions that are made in that  
6                   process are not made for any independent  
7                   purpose. It's not like, hey, charge admission  
8                   to come see my ephemeral copies. I mean  
9                   they're just there to facilitate the public  
10                  performance, and that's really all that  
11                  they're being paid for. They have no  
12                  independent value, they have no stand-alone  
13                  value, but there are additional rules that  
14                  apply. For instance, you know, technically  
15                  you're not supposed to keep a copy around for  
16                  more than six months. You're not supposed to  
17                  make more than one ephemeral copy. And part  
18                  of the question is what exactly are we talking  
19                  about. If we're talking about the copies that  
20                  are made in the transmission process that  
21                  reside on different servers during the  
22                  process, you know, there's going to be more

1 than one just as a matter of process. So it  
2 doesn't make sense If we're talking about the  
3 copies that are kept in the service's music  
4 library to be called on to be served to the  
5 public, it doesn't make any sense to have to  
6 expunge all those every six months and  
7 rerecord exactly the same thing. So the whole  
8 concept of the 112 license in connection with  
9 the public performance just adds a layer of  
10 bureaucracy that doesn't seem to serve  
11 anybody's real interest. And I think that's  
12 why we brought the issue up in the first  
13 place.

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

16 MR. MARKS: Yeah, it's not a mere  
17 technicality. So I think the main point here  
18 is copies plural. There is a right to make  
19 one. The issue here is having a statutory  
20 license, unexclusive right but having our  
21 right subject to a statutory license for  
22 however many additional copies need to be

1 made. And those copies are consequential.  
2 Because they can be the difference between the  
3 consumer experience that one site offers and  
4 the consumer experience that another site  
5 offers. If you are able to populate edge  
6 servers with additional copies so that the  
7 stream is able to get to the person sooner,  
8 you may very well have a more attractive  
9 service to the consumer than somebody who's  
10 just drawing upon, you know, one copy per  
11 codec from their own servers. So there is  
12 real value, it's been something that's been  
13 talked about in the CRB proceedings in the  
14 past, and that's the value that's supposed to  
15 be recognized by 112. What I would say is to  
16 the licensee's benefit it's gotten kind of all  
17 rolled into one transaction. Which actually  
18 is fine because, you know, record companies as  
19 a general matter, when they license a  
20 transaction they put all rights in and, you  
21 know, whatever's necessary for that  
22 transaction should happen. So it's good that

1 the two are together and there's one rate set  
2 for both of them. But that rate should  
3 recognize the value of those copies that are  
4 being made. Because services can  
5 differentiate each other -- differentiate one  
6 from another based on the making of those  
7 copies.

8 MR. DAMLE: Mr. Knife.

9 MR. KNIFE: While I certainly  
10 agree with the idea that, again as Mr.  
11 Oxenford said, the value of the copy should be  
12 inherent in the overall 114 license and right  
13 to perform, I disagree with what Mr. Marks  
14 said. I don't think the 112 license actually  
15 is intended to address the efficiencies of one  
16 process versus another. It's pretty specific.  
17 It says you can use these copies in order to  
18 engage in your performances. And as Mr.  
19 Oxenford was saying, you have to get rid of  
20 them after a certain amount of time and you  
21 can only make one copy, et cetera, et cetera.  
22 So again I respectfully disagree. I

1 understand his concern about the value but I  
2 still think you can roll all of this into a  
3 single license under 114 and say it's a  
4 license for the performance and all of the  
5 copies necessary to engage in that performance  
6 as opposed to, again sticking with all these  
7 vestigial rights that conjure up analog  
8 performances where you recorded an actual  
9 performance hours before it was broadcast.

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

12 MR. OXFENFORD: Well, actually, one  
13 of the issues that Steve brought up earlier I  
14 think ties into what he just said here too,  
15 the differentiation between services based on  
16 what they offer, whether it be interactive or  
17 noninteractive or other types of  
18 differentiation. I think that can be handled  
19 under the 114 process as there is. There is  
20 a provision in the Section 114 that allows for  
21 distinguishing between different types of  
22 services. And the Copyright Royalty Board in

1 the most recent proceeding, current proceeding  
2 has indicated some interest in looking at  
3 different types of services and whether  
4 different rates should apply to those  
5 services. And I think there may be advantages  
6 to doing that. There may be services that are  
7 totally noninteractive, like broadcasters who  
8 are merely simulcasting what they're doing  
9 over the air that have a different value than  
10 someone that is a more interactive service  
11 that allows users to pick what songs are being  
12 played or even to somehow be more efficient in  
13 their service, although I'm not sure that  
14 that's really a concern that's been  
15 recognized. But that's something that could  
16 be worked out through the process that already  
17 exists.

18 MR. DAMLE: So that raises the  
19 question of differentiation and whether does  
20 the statute have this line between interactive  
21 and noninteractive, and whether there should  
22 be another tier in the middle perhaps for

1 personalized radio, that sort of thing. Is  
2 that something that needs legislation? Is that  
3 something that may be of interest to people?  
4 Is that something that can be built into the  
5 current CRB process? Mr. Knife.

6 MR. KNIFE: I don't think we need  
7 to add any more layers to a Copyright Act that  
8 we're all here for the purposes of talking  
9 about how to simplify it and how to break it  
10 down. I'm sure it will come as no surprise to  
11 at least Steve and I and probably most of the  
12 people in the room that I would disagree that  
13 the LAUNCHcast decision is a bad decision and  
14 whatever undermines the statute. DiMA as a  
15 trade organization is happy with the outcome  
16 of the LAUNCHcast decision, and as a result,  
17 the statute as interpreted by that decision.  
18 I'm not sure that it gets us anywhere to add  
19 even another layer of complexity that's going  
20 to result in another seven and a half year  
21 long federal lawsuit to determine whether or  
22 not a particular feature set that one internet

1 broadcaster or one internet radio station  
2 might be applying is sufficiently  
3 distinguished from another so that it's --  
4 well, now it's personalized but it's not  
5 interactive but -- it's noninteractive but  
6 it's still personalized. I just don't think  
7 we should really be talking here about  
8 complicating the issue

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

11 MR. MARKS: Yeah, I guess I'd just  
12 ask the question, setting aside the issue of  
13 whether Congress should step in or not, what  
14 the words specially created for the recipient  
15 mean. Because those are the words in the  
16 statute that are supposed to provide a line  
17 between what is under the statutory license  
18 and what is not. Radio-like programming,  
19 under the statutory license. Specially  
20 created for the recipient or on demand, not  
21 under the license. And I just -- I'm at a  
22 loss for what actually qualifies as specially

1 created for the recipient. I think the  
2 LAUNCHcast decision read those words out of  
3 the statute. And so whether it's Lee or David  
4 or anybody else, I'd love to hear, you know,  
5 what do those words mean? What kind of service  
6 would qualify for that, you know, in light of  
7 what we're talking about today?

8 MR. DAMLE: Mr. Johnson.

9 MR. JOHNSON: I'm not going to  
10 answer that, but just real quick when they  
11 were talking about the ephemeral license, and  
12 I agree with all those comments, even though  
13 they're kind of contradictory. You know,  
14 sometimes it's just needed, it's there to be  
15 there to help facilitate the process and other  
16 times it's abused. And to me one of the main  
17 points that I forgot to put in my paper, I was  
18 looking at just the other day Spotify, and now  
19 announces that you can download your playlist.  
20 Okay. So it seems like all these streamers  
21 are going, and Beats has done it too, we can  
22 download. And it just seems like we should be

1     paid for mechanical.  But it's just an  
2     ephemeral copy, whatever, but it makes it  
3     easier to take your songs, you push one button  
4     Spotify and that whole playlist downloads.  
5     And in the past, as you know, the actual  
6     recording, the files go in your cache.  And so  
7     it seems like Spotify starts over at  
8     noninteractive streamer or interactive  
9     streamer, and now all of a sudden we're  
10    letting you download it and we're not paying.  
11    And I think that's kind of ridiculous.

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

15                   MR. KNIFE:  I just want to  
16    clarify, that's the second time that we've  
17    heard that Spotify is paying under the  
18    statutory license.  My understanding is --  
19    and, by the way, Spotify is not a DiMA member.  
20    But my understanding is that Spotify is not  
21    statutorily licensed -- it's not the DMCA-  
22    compliant noninteractive radio.  So they pay

1 based on a private deal struck with sound  
2 recording owners whose works are on their  
3 service. So that's not a CRB issue, it's not  
4 a Section 114 issue.

5 MR. OXENFORD: And presumably  
6 publishers as well.

7 MR. KNIFE: Yeah.

8 MR. JOHNSON: I would just say one  
9 point to that but also to the interactive and  
10 noninteractive. To me as a copyright owner it  
11 doesn't matter whether it's interactive, you  
12 know, active, whatever. It's a copyright. A  
13 song is a song is a song, and a copyright is  
14 a copyright. And I think even the word  
15 mechanical, performance, now noninteractive,  
16 interactive, subscription, nonsubscription,  
17 these are all necessary terms for the  
18 technology, let's say, for internal accounting  
19 but now that they're in the Copyright Act it  
20 just separates copyright and turns it into all  
21 these different things. We really need to go  
22 back just to copyright. And I understand that

1       broadcasters, you know, they're set up  
2       differently for interactive and  
3       noninteractive. I understand that. But I'm  
4       saying as a content creator, as a copyright  
5       owner, that individual copyright, I don't care  
6       if it's interactive or not.

7                   MS. CHARLESWORTH: Okay.

8                   MR. MARKS: To clarify, you don't  
9       care Because you think they should both be --  
10      there shouldn't be any compulsory license, you  
11      should have the right to negotiate what you  
12      think is fair --

13                  MR. JOHNSON: Well, I think --

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

17                  MR. JOHNSON: Well, I think the  
18      compulsory license, if you're going to have  
19      one, should apply to everything. And then in  
20      -- you know, I'm noninteractive so I get out  
21      of paying a whole bunch of different things.  
22      Everybody should pay for the sound recording

1 and everybody should pay for the underlying  
2 work, period, no matter what the definition  
3 of, you know, interactive is.

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

6 MR. KNIFE: Okay. I'll try to be  
7 very brief. At the risk of kind of throwing  
8 a larger net over the whole thing, I would  
9 wonder if the idea of encompassing both  
10 interactive and noninteractive with respect to  
11 performances, the idea of grouping those  
12 together and having a single license for both  
13 of those could actually be expanded to have a  
14 single music use license that would actually  
15 incorporate the mechanical. Right? The actual  
16 delivery of a physical or a digital copy.  
17 That's something that has been attractive from  
18 my side, from the licensee's side for a long  
19 time. The idea that we have to go to all of  
20 these different people, depending on whether  
21 you're interactive, you're noninteractive,  
22 whether you're downloading, whether you're

1 streaming it and the download is available to  
2 be heard while it's downloading, et cetera, et  
3 cetera. We would love to be able to simply  
4 say -- as Mr. Marks pointed out, most of my  
5 services want to do or do engage in all of  
6 those different activities at once. We'd love  
7 to be able to just get a license for music and  
8 simply report what the type of use was and pay  
9 for it.

10 MS. CHARLESWORTH: Okay.

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

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

17 MR. KNIFE: Well, I think that's  
18 where it started. That's where Mr. Johnson  
19 started, and that I think is an interesting  
20 concept. All I was saying is adding on to  
21 that could you then say expand 114 to engulf  
22 what is 115 activity now or, from the other

1 side, expand 115 to subsume what is 114-type  
2 performance activity now. I was just making  
3 the point that while we're talking about kind  
4 of -- again the thing that I think is  
5 attractive about what Mr. Johnson was talking  
6 about is it's breaking down those barriers,  
7 which are largely artificial, certainly they  
8 appear artificial to the end user, as to what  
9 actually is happening on the rights owner side  
10 of any particular user activity with respect  
11 to music. They just, consumers just want  
12 access to music, and they're very uninterested  
13 in whether or not the activity that they  
14 engage in requires one license, two licenses,  
15 three licenses, different rate, whatever.

16 MR. MEITUS: Very quick question?

17 MS. CHARLESWORTH: Mr. Meitus.

18 MR. MEITUS: Yeah. I'd like to  
19 throw a question out to the advocates of the  
20 free market as opposed to statutory licenses.  
21 In the last panel that was talked about a lot.  
22 Why hasn't there been an organization that has

1       come about for interactive streaming in the  
2       last decade that acts like an ASCAP or BMI or  
3       SESAC on behalf of sound recording owners in  
4       the interactive stream? Why has this been  
5       piecemeal with the different label groups,  
6       with the large labels, now three groups,  
7       holding most of the power?

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

10                   MS. CHARLESWORTH:  No, I think --

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

18                   MR. MEITUS:  So is it necessary --

19                   MR. MARKS:  -- organizations  
20       representing independents, like Merlin that  
21       represent smaller segments of the market, but  
22       --

1 MR. MEITUS: So for the free  
2 market plan to work in pulling back the  
3 copyright regulations, is it a predicate that  
4 the DOJ has to pull back on anti-trust  
5 regulations as well for that to work? If the  
6 anti-trust law stays as it is, can the free  
7 market plan work, that we heard so much about  
8 in the last session?

9 MR. MARKS: Well, it --

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

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

18 MS. CHARLESWORTH: Yeah, yeah,  
19 yeah, yeah.

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

22 MS. CHARLESWORTH: The question is

1 --

2 MR. MARKS: -- a huge question,  
3 yeah.

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

16 MR. TURLEY-TREJO: Turley-Trejo.

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

19 MR. TURLEY-TREJO: No, you're  
20 fine. I actually wanted to comment on what  
21 George was saying earlier. Just from a  
22 creative standpoint, I actually respectfully

1 disagree. I think there is a difference in  
2 value of an interactive service and  
3 noninteractive service. 145 And specifically  
4 the Spotify, I mean my playlist at being able  
5 to choose a song to listen to as many times as  
6 I want and put it in as many playlists as I  
7 would like is different than Pandora and is  
8 different than traditional terrestrial radio.  
9 So I -- just to put another viewpoint out  
10 there, I think that it is good that there are  
11 different rates or that interactive is not  
12 included in Section 114 and that it's -- I  
13 mean you have two models here, you have direct  
14 licensing mechanism, which Spotify has done,  
15 and then you have Pandora and iHeartRadio  
16 operating under 114. And I think 114 allows  
17 services like that to actually be creative,  
18 which I think is exciting and innovative. And  
19 I think -- it's a difficult situation because  
20 then are the owners being compensated fairly,  
21 I know. But the balance of the two does I  
22 think allow for some exciting ideas.

1 MR. DAMLE: Do you have a quick  
2 comment? I think we're running out of time.

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

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

7 MR. JOHNSON: Yield the floor.

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

10 MR. JOHNSON: I understand what  
11 you're saying, and I get it, you know. But to  
12 me a performance is a performance. I don't  
13 care if you requested it or if it played. And  
14 you don't request what happens on terrestrial  
15 radio, but they still have to pay for those  
16 performances. So a copyright's a copyright.  
17 And just because you think you can use it free  
18 -- and this whole attitude of willful  
19 ignorance and permissionless innovation and  
20 all he's worried about Pandora's  
21 permissionless innovation, Sean Parker's  
22 permissionless innovation, that is way more

1 important than the millions of copyright  
2 owners, those individual copyright owners.  
3 What matters is Sean Parker can let you  
4 download something and I think that's just  
5 ridiculous.

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

16 (Break taken from 11:50 a.m. to  
17 12:05 p.m.)

18 Session 3: Musical Works - Reproduction and  
19 Distribution

20 MS. CHARLESWORTH: All right.  
21 Welcome back, everyone. We're up to Session  
22 3, which I think will be a continuation of

1 some of the thoughts and ideas that were  
2 raised in the first session. Because this  
3 session is to discuss musical works and  
4 specially the reproduction and distribution  
5 thereof. Currently much of that activity  
6 falls under the Section 115 license, which  
7 many have raised concerns with. And I think  
8 this panel will give us an opportunity to  
9 maybe dig in to the current frustrations in  
10 the system but also, more importantly, maybe  
11 explore some of the ideas that were starting  
12 to develop earlier about ways in which we  
13 might completely change the system or modify  
14 the existing terms of 115 to make it more  
15 functional. And sort of again to me a lot of  
16 the questions are how to deal with the  
17 collective licensing if we decide that's  
18 something that remains important for at least  
19 some part of the music community and reconcile  
20 that with this issue of rates, which have  
21 gotten so caught up in the licensing  
22 structures. And I think we'll -- I anticipate

1 a lively discussion. I see some new people  
2 around the table, I think some new ones. No,  
3 maybe not. No, everyone's already been  
4 introduced. So without further ado, I think  
5 what I'd like to do is basically ask -- you  
6 know, I think we've heard sort of the outline  
7 of one proposal from the RIAA. I don't know,  
8 Steve, if you want to represent that or if you  
9 feel people understand it well enough, but I'd  
10 like to hear some other proposals as well. If  
11 people have ideas about ways to move forward,  
12 new structures, how if we get rid of the 115  
13 license, more specifically what might fill,  
14 you know, occupy that space in terms of  
15 allowing people to access music for and use it  
16 on digital services. I think this could be a  
17 very productive panel. So, Steve, just not to  
18 put you on the hot seat but if you want to  
19 just sort of outline your proposal again, and  
20 then other people, if they have ideas, should  
21 join in.

22 MR. MARKS: Sure. And just

1 quickly again, the objectives that we were --  
2 that we set out and that we were trying to  
3 achieve were, are market rates for songwriters  
4 and publishers, aggregating works in a way  
5 that makes the system more efficient and  
6 therefore easier to obtain licenses, and  
7 hopefully provides not only more consumer  
8 choices but also more money to the creators  
9 and to those services. And then, three,  
10 covering all of the products and the nature of  
11 what the modern releases and not having  
12 artificial distinctions between audio and  
13 video, for example, when consumers don't  
14 really view those as distinctions. And so the  
15 proposal was to aggregate -- first of all,  
16 eliminate the CRB and the rate court as it  
17 applies to those kinds of products that are  
18 released by record companies. And if  
19 songwriters and publishes want to extend that  
20 to other kinds of things, that's up to them.  
21 We wouldn't -- we don't have a say in that or  
22 wouldn't have a say in that. Second, to

1 aggregate -- and to do that by having a -- and  
2 this is one thing that's probably worth  
3 clarifying. The idea was to have a  
4 marketplace negotiation over what the proper  
5 split should be between labels and publishers,  
6 both being part of the necessary components  
7 and part of the end -- the creative product  
8 that results, the sound recording that  
9 consumers enjoy. And we thought that might be  
10 attractive for a couple of reasons. One is in  
11 our last two mechanical negotiations where we  
12 avoided CRB rulings on issues and negotiated  
13 something, we agreed on percentage rates that  
14 had as a component of that a percentage of  
15 what the label gets from, you know, whatever  
16 the service is. And so it's not a new  
17 concept. It's a concept we've discussed, it's  
18 a concept that we refined the second time  
19 around through this TCCI that I was referring  
20 to earlier. And second, we've heard from the  
21 songwriter and publishing community a lot  
22 about the relative values and getting those

1 more in line with what they think is  
2 appropriate given what's happened with Pandora  
3 and some other services. And actually some  
4 early versions of the Songwriter Equity Act  
5 included having the rate court establish that  
6 relationship. And so we thought, well, why  
7 have the rate court establish that  
8 relationship when the parties can just do it  
9 themselves. Instead of their putting in a  
10 rate court that has been I think relatively  
11 hostile to publishers and songwriters, at  
12 least in terms of how the rates have come out,  
13 you know, let's have that discussion ourselves  
14 with the music community. And let's do that  
15 not with, with all due respect to all of you  
16 here, not in a room like this, not in a room  
17 in Washington on the Hill or anywhere else but  
18 just with ourselves to try and figure out  
19 whether that kind of agreement can be reached  
20 among ourselves, not with any regulation or  
21 any oversight. And if it could, then, you  
22 know, we could move forward with the third

1 component, which is a blanket license that  
2 helps address the fragmentation of rights,  
3 shares, and everything else for the kinds of  
4 products that we're talking about.

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

9 MR. MARKS: Yes.

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

12 MR. MARKS: Yeah. Yeah.

13 MS. CHARLESWORTH: Because  
14 otherwise --

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

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

19 MR. MARKS: Yes.

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

22 MR. MARKS: Eventually. But it

1 would be after --

2 MS. CHARLESWORTH: I'm sorry to  
3 say.

4 MR. MARKS: Yes. It would be  
5 after having reached a consensus and coming  
6 together as a music community to say here is  
7 something that we think is a good solution  
8 and, you know, would have achieved consensus  
9 on that. And one of the questions that came  
10 up, somebody asked me during one of the breaks  
11 was, okay, this percentage gets set. So how  
12 does it -- does it ever change? How does it  
13 change? That's one of the things that we would  
14 just say let's talk about. We don't have a  
15 specific proposal on that. It may be  
16 something that we agree to revisit every so  
17 many years, you know, just to ensure that  
18 something in the market isn't changing in a  
19 way that should change the agreement we had.  
20 So that certainly could be an open part of the  
21 discussion as far as we're concerned. So and  
22 we thought that there were many advantages to

1 this as I outlined earlier for both -- for  
2 consumers, digital services, labels,  
3 songwriters, publishers, PROs, et cetera.

4 MS. CHARLESWORTH: Okay. Mr.  
5 Meitus.

6 MR. MEITUS: I'd like to clarify  
7 why is it there is an arbitrary distinction  
8 between audio/visual and audio only? To me one  
9 is clearly -- if we can say this in copyright  
10 law -- more of a derivative work. We know  
11 that a recording, granted a recording is a  
12 derivative work of a composition. We've kind  
13 of gotten beyond that in the last hundred or  
14 so years, and we look at it differently and we  
15 say that's fine to have a compulsory right to  
16 record another song for reasons of public  
17 policy. But a video, that's a whole different  
18 thing. Where do you stop? Is a sample  
19 different, is the use of a sample different  
20 than the use of a video with an underlying  
21 song or an underlying sound recording? Why is  
22 it arbitrary?

1                   MR. MARKS: Well, what I meant was  
2                   today consumers -- and I'm not talking about  
3                   all audio/visual. So uses of musical works in  
4                   television commercials, movies, you know,  
5                   typical sync categories, for those kinds of  
6                   uses, not included in this at all.

7                   MR. MEITUS: Direct licensing.

8                   MR. MARKS: Direct licensing.  
9                   Samples, direct licensing. I'm just talking  
10                  about the kinds of products that are part of  
11                  kind of the bundle that's released as part of  
12                  an album. I mean today consumers really don't  
13                  see a distinction between the two. YouTube is  
14                  the place where most people go to listen to  
15                  music but there's some audio/ visual component  
16                  to it even though it's probably the largest  
17                  service in terms of listening to music. Every  
18                  -- you know, most devices that people are  
19                  listening to music on have some kind of screen  
20                  where there's a visual component. So I was  
21                  just saying as it relates to releasing an  
22                  album project where you've got all of these

1 different things that are released together,  
2 you know, the physical products, the down- --  
3 the digital products, and the video products  
4 that are part of it, let's treat those all the  
5 same but set aside the things that are  
6 traditionally then then sync and aren't  
7 related to that, so, and leave those, you  
8 know, as they are today.

9 MS. CHARLESWORTH: Okay. I think  
10 Mr. Barker may be next.

11 MR. BARKER: Sure. I think Steven  
12 and I probably agree on a lot of things, one  
13 of which I think is the approach of how we try  
14 to resolve the issues. And that is maybe  
15 outside of this table or outside of official  
16 rooms and discussions, which he and I have  
17 already talked about. Just to respond to a  
18 couple of things that Steven has said. One is  
19 you ended your last comment by using the term  
20 blanket license. And I'm going to try to back  
21 things up to a core idea or core principle, I  
22 guess. When I hear blanket license -- and

1 that may or may not be what you meant, so  
2 maybe there's a term difference here, a  
3 definition -- but a blanket license is a  
4 license that is for all copyrights that are  
5 under that license. Each individual owner is  
6 stripped of their individual rights. Now, I'm  
7 making that sound maybe more harsh than it is.  
8 There's a difference in blanket licenses as  
9 opposed to aggregated rights or a centralized  
10 licensing agency or something like that where  
11 the model may be more clear and simple, yet an  
12 individual owner has the ability to withhold  
13 their rights on an individual type of service.  
14 For instance, record labels have the ability  
15 to withhold their recordings from Spotify.  
16 Songwriters cannot. Why would we not want to  
17 look at a fair platform where the rights  
18 owners in recordings and the rights owners in  
19 songs have comparable rights in what they can  
20 control? A panelist in the -- a member from  
21 the last panel quoted part of the Constitution  
22 in Section 1.8 I think it was. I may not --

1 clause 8, I think. That is the core idea of  
2 what we as rights holders are given the right  
3 to exclusivity in holding our rights. So a  
4 blanket license does not allow that. A  
5 centralized license kind of a situation would  
6 allow that. So again you're going to hear me  
7 kind of pulling back to the core values and  
8 saying rather than try to build on something  
9 that's already faulty, maybe we as an industry  
10 can build on -- go back and see what it is we  
11 really want, what is fair, and build a  
12 platform from that. And I know, you know, the  
13 Copyright Office is looking for solutions and  
14 for hope, as you mentioned last time, and  
15 hopefully that will -- maybe we'll see some of  
16 that today, maybe we'll see some of that  
17 outside the session. But in building that  
18 hope and in building those things I want to  
19 make sure we're building it on the right  
20 foundation rather than something that does not  
21 line up with the core principles that the  
22 Constitution offers.

1                   MR. MARKS:  And I think that's  
2                   another thing we should be talking about.  
3                   And, you know, all of these have trade-offs,  
4                   there's no perfect solution.  I think if there  
5                   were we wouldn't be here today.  So, you know,  
6                   one of -- on that, you know, we get into the,  
7                   all right, how big is the organization that  
8                   has the centralized licensing and does it need  
9                   government oversight.  And so, you know, all  
10                  right, the idea was just to like get the  
11                  government out so you didn't have that.  But  
12                  that's certainly something that we should talk  
13                  about as an alternative, you know, if the  
14                  right to opt out of something is more  
15                  important than having some government  
16                  oversight as to the rates.

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

19                 MR. COLEMAN:  I think that a lot  
20                 of the ideas that you're putting forth, Steve,  
21                 are compatible with the ideas that composers  
22                 and publishers would like to see.  Where I

1 think we get myopically off on the wrong foot  
2 is that we're using a model of reproduction  
3 and distribution that comes from the era, the  
4 pre-digital era of what record labels used to  
5 do. You mentioned the rates based on the end  
6 service that the record labels are  
7 distributing to, and John mentioned Spotify.  
8 I think we're out of step with other major  
9 Berne convention music markets in that we  
10 don't have a collective society that is  
11 actually collecting the mechanical at  
12 effectively the point of sale. And that's  
13 what we need. We need -- no matter what the  
14 rates are, we don't want the passthrough right  
15 anymore.

16 MR. MARKS: And our -- just to  
17 clarify, that's not part -- our proposal is  
18 that the service would send the money not  
19 through the record company but directly to  
20 whatever organization or organizations  
21 songwriters and publishers wanted to receive  
22 and distribute those royalties.

1                   MR. COLEMAN:  And I think that's a  
2                   very key component to the future of mechanical  
3                   licensing.

4                   MR. MARKS:  Yeah.

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

8                   MS. SCHAFFER:  I have two primary  
9                   concerns with the RIAA's proposal, and I think  
10                  they are both points that we're kind of  
11                  getting at and touching on and working our way  
12                  through to some sort of a solution.  I think  
13                  the first fundamental concern that a lot of  
14                  music publishers and songwriters have is the  
15                  loss of control and, just like John was  
16                  saying, the loss of the ability to opt in or  
17                  opt out.  But I think even more basic than  
18                  that, the recognition and understanding that  
19                  it's an equal right.  It is a separate right  
20                  to musical compositions just as there's a  
21                  separate right to the sound recording.  And I  
22                  do not envy your situation in being the one

1 record company representative here, but I  
2 think that that may be indicative of the  
3 culture nationally, possibly why the Copyright  
4 Office decided to come to Nashville. You  
5 notice that there are no record company  
6 representatives from the city of Nashville  
7 participating in any panel.

8 MR. JOHNSON: Yes, there are.

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

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

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

19 MR. MARKS: All right.

20 MS. SCHAFFER: But I think that  
21 brings up a really important point here in  
22 that it was publicly known that the point of

1 the discussions today were going to be about  
2 115. And I think in Nashville you have a  
3 culture of -- a music industry culture that  
4 truly appreciates the value of a musical  
5 composition separate and apart from the value  
6 of a sound recording. And yes, they do work  
7 together in conjunction, and we do need each  
8 other. But they are separate and independent  
9 rights that people take very close ownership  
10 of in this town especially. And I can say  
11 that living here, I'll, you know, speak for  
12 the town in that we value those rights as very  
13 separate and independent rights. And there's  
14 a true respect for the songwriter as opposed  
15 to the respect that an artist receives. And  
16 I think that that's an important distinction  
17 to make when we start talking about creating  
18 some type of blanket license or licensing  
19 system that flows, by government mandates  
20 flows only through the sound recording owner.  
21 Because I think that truly devalues the  
22 musical composition itself, and that we

1 completely lose the ability to control that  
2 distribution. And as I mentioned before, and  
3 I won't go back into this, these are questions  
4 of how do you evaluate the market value if  
5 you're taking away that market. But the other  
6 big concern I have with the RIAA's proposal --  
7 and Mr. Marks said it himself, that today's  
8 consumers and today's technology. The problem  
9 is that by the time we actually get to passing  
10 any type of new legislation or somehow  
11 revising 115, there's going to be a new  
12 service, there's going to be a new technology,  
13 there's going to be someone else that says I  
14 didn't get a seat at the table and back up,  
15 hold off, we need to revisit how we decided to  
16 structure 115 if we're reforming it. And I  
17 really have to I think ask everyone at this  
18 table why are we restricting a licensing  
19 system to today's technology when we know that  
20 two years, three years, 10 years down the road  
21 it's going to look different. The bundle of  
22 rights that we look to in sound recordings

1 today when we release the record, yes,  
2 everyone wants the lyric rights to make a  
3 lyric video, everyone wants the ability to  
4 make their music video and put it up on  
5 YouTube and put it up on Vivo. And we want  
6 all of those things to occur, but the record  
7 companies and the publishers can amongst  
8 themselves negotiate that bundle of rights  
9 license amongst themselves independently of  
10 the government being involved in that  
11 licensing process. If Sony Records and  
12 Sony/ATV Publishing want to negotiate what  
13 that bundle of rights look like, they can  
14 grant those rights as can all of the other  
15 publishers involved in this process. Now, I  
16 agree that 1400 mechanical licenses for one  
17 album is a lot, and I think that there's a  
18 recognition amongst everyone at this table  
19 that that's unrealistic for a record company  
20 when it comes to the many digital services  
21 that are out there, it's unrealistic for  
22 digital companies. And there is going to have

1 to be some type of a collective licensing.  
2 But I would like to see our proposed solution  
3 take a step back from saying here's the  
4 government-mandated license to go back to just  
5 saying here are your bundle of rights that you  
6 have as a copyright owner. You have the right  
7 of reproduction, you have the right to create  
8 derivative works. Here are your basic rights.  
9 And I recognize that -- I think John made a  
10 great point of saying maybe we have to phase  
11 out 115 gradually. But give us the  
12 opportunity to create those societies so that  
13 in two years from now when there's a new type  
14 of a service we can go to that service -- or  
15 I'm sorry, the digital service can come to  
16 these collection societies, whether it's one  
17 or five or I don't know the perfect number,  
18 but why not make that an individual discussion  
19 that they can have amongst themselves instead of  
20 it taking us decades to do it through  
21 government control. And I think that we're  
22 all on the same page in terms of the general

1 idea of what needs to happen, but I think  
2 we've seen from history that government-  
3 imposed controls are not the most efficient  
4 way of dealing with changing technologies and  
5 dealing with music licensing. So --

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

8 MS. SCHAFFER: Sure.

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

20 MS. SCHAFFER: And I think that's  
21 the idea though is that right now maybe we  
22 can't contemplate that. I didn't contemplate

1 that Google would have a self-driving vehicle,  
2 but they do. You know, I think that that's  
3 the idea is that 10 years ago we couldn't  
4 contemplate what we would think of today as  
5 being standard distribution methods in the  
6 music industry. But I think that we're  
7 getting ahead of -- well. By trying to create  
8 a licensing system that is government-imposed,  
9 you place yourself in a box. So if it ever  
10 changes, which we know it does change  
11 throughout history. Starting with the piano  
12 rolls up through what we have today it's  
13 consistently changed. And it's going to  
14 continue to change. So why not put everything  
15 on a level playing field with your basic  
16 rights and then let us amongst each other have  
17 these discussions. So that if a record  
18 company suddenly decides that part of its  
19 standard record release includes a sponsorship  
20 and that every album is sponsored by some  
21 major sponsor. Well, we know today that the  
22 sponsorship rights with music creates

1 different types -- there are different  
2 negotiations that go on when we're dealing  
3 with a song and a sponsorship of a particular  
4 product. So if that became the norm, somehow  
5 we would have to address how do we deal with  
6 this situation. And I think that we're  
7 placing ourselves in a box like we did in 1909  
8 today by doing the exact same thing. And I  
9 agree completely with the idea of us having  
10 these discussions outside of this room and  
11 figuring out, you know, maybe this is this  
12 private deal. You mentioned earlier the  
13 screenwriters and how Netflix doesn't have to  
14 go to the screenwriters. Well, that's because  
15 of private contract negotiations, not because  
16 of government-mandated regulations on how  
17 screenwriters need to license their works.  
18 That's done when the movie company's  
19 negotiating with the screenwriter to begin  
20 with. We can do the same thing.

21 MR. MARKS: Well, that's what is  
22 part of our proposal.

1 MS. CHARLESWORTH: I want to break  
2 in here because I heard you say earlier -- I  
3 mean a movie may be a multimillion dollar  
4 investment typically. So the relationship of  
5 the transaction costs of negotiating  
6 individual licenses for that film is quite  
7 different from, I think, digital service that  
8 has 30 million tracks, many of which may never  
9 even be streamed or maybe streamed once or  
10 twice. And you did mention -- I heard you  
11 acknowledge that even if some publishers and  
12 songwriters even could negotiate direct  
13 licenses with services there would still maybe  
14 be a need for collective licensing. And then  
15 I heard you sort of I think suggest that the  
16 publishing and songwriting community should be  
17 allowed to develop their own versions or --

18 MS. SCHAFFER: Collecting  
19 agencies.

20 MS. CHARLESWORTH: -- collective -  
21 - okay. So the question is how would the rate  
22 setting process or the rates charged by those

1 collecting agencies be accomplished. In other  
2 words, if you -- you know, and this gets into  
3 another area of government regulation, because  
4 when you have collective action like that,  
5 there are competition concerns that come up.  
6 And so in your view, though, what I'm hearing  
7 is there's no government regulation at all.  
8 So I'm just wondering how you reconcile the  
9 competing interests of sort of the concern  
10 about competition on the one hand and control  
11 over this collective licensing process on the  
12 other.

13 MS. SCHAFFER: I don't think it  
14 makes sense to have one collective agency  
15 setting the rates. I think that naturally the  
16 marketplace will work itself into a relative  
17 number of collective agencies that is  
18 manageable. And I think that that happens by  
19 the fact that, as you said, digital services  
20 can only go to so many people to negotiate.  
21 And I think that you reach the rate by  
22 determining what the marketplace will allow

1 for. And also by meeting with the members  
2 that you represent through the collective,  
3 which is why it's important not to have one  
4 agency but to allow there to be a few so that  
5 members feel they can go to a place where  
6 their opinions are being heard. And I think  
7 in some ways we see that with the BMI, ASCAP,  
8 and SESAC in that those three entities have  
9 developed the PRO licensing, and people can  
10 make decisions about how they feel the  
11 operations are within each of those entities  
12 to determine which of the PROs they would like  
13 to have their public performance licenses  
14 granted through and who is paying out. So I'm  
15 not saying there's a perfect solution here and  
16 that there may not be a need to have certain  
17 designated entities that -- you know, where --  
18 you know, I don't know whether it's the  
19 Copyright Office through copyright access if  
20 there are five designated agents for  
21 collective licensing and bundling the rights  
22 together. But I think that if we can remove

1 115 and revise the consent decrees, I think --  
2 and I won't speak for BMI, SESAC or ASCAP but  
3 I would assume that at least a couple of those  
4 PROs would probably expand and go with their  
5 licensing if they were able to do so.

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

10 MR. TURLEY-TREJO: All right.  
11 Thank you. No. I would like to submit that  
12 I do not think we should repeal Section 115.  
13 I think we can amend it but I do not think  
14 there's a current model in the industry that  
15 -- I think the ASCAP, BMI, SESAC model is  
16 flawed as far as transparency and as far as --  
17 I mean a lot of songwriters aren't even  
18 getting paid. And it's impossible. I  
19 understand the challenge of the PROs to -- you  
20 can't track all those performances. And to  
21 directly track my song was played this much  
22 and this person's song was played this many

1 times and pay -- it's just -- it's impossible  
2 with how large a scope that is. So I think if  
3 we move to a collective licensing law with  
4 this, we're going to run into the same  
5 problems. And I think the compulsory license,  
6 while antiquated in its original intent,  
7 works. And I think some amendments to help  
8 with certain bundling of rights by like  
9 including public performance rights in Section  
10 115 and maybe getting rid of the notice of  
11 intent and having it mirror more Section 114  
12 where you just have to do one notice of intent  
13 rather than individual notice of intent to  
14 creators. I think things like that can help  
15 amend it to make it more efficient, but I do  
16 not believe we should get rid of it. And from  
17 a licensee standpoint, because I know -- I  
18 mean so far the panel has been pretty heavily  
19 biased from the creator standpoint. From the  
20 licensee standpoint, we love the compulsory  
21 position. It is one of the only straight  
22 forward parts of music licensing. I mean in

1 my job if somebody comes to me with mechanical  
2 licensing questions I just gladly say go to  
3 Harry Fox and figure it out yourself because  
4 you don't need my help. There's a statutory  
5 rate, there's a process, and they go and they  
6 do it. If it's any sort of sync licensing or  
7 marketplace licensing, then it requires my  
8 expertise or other people's expertise. So I  
9 affirm that that is what's working. But  
10 that's also from a smaller standpoint, but I  
11 think that voice needs to be heard. And I  
12 think if in relation to this issue of  
13 technology, I think freeing up the statute or  
14 the compulsory license to allow for more  
15 flexibility would help a piece -- and it would  
16 help adapt as we move forward and things like  
17 I mentioned, like removing certain  
18 restrictions. And I do have a question I just  
19 want to throw out there. I've always wondered  
20 this. The synchronization rights, which that  
21 term exists nowhere within the code as far as  
22 I've read it, but yet it is the most

1 frequently thrown-around word in our industry.  
2 And I cannot find a very clear definition of  
3 what exclusive right the sync right is derived  
4 from. MALE VOICE: Derivative work.

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

7 MS. CHARLESWORTH: And  
8 reproduction.

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

13 MR. MARKS: It's in any medium.

14 MR. TURLEY-TREJO: Well, see,  
15 that's subject to interpretation. But I mean  
16 Kohn on Music Licensing, which is sort of the  
17 music licensing bible for a lot of people,  
18 including the Supreme Court, says that it is  
19 derived from the reproduction and distribution  
20 rights, and it's an electrical transcription  
21 license. Because you are synchronizing a  
22 musical work to a visual image. But, for

1 instance, these bundling of rights is adding  
2 a visual. That doesn't sound to me like an  
3 electrical transcription license in the same  
4 sense of synchronizing a song to a film or to  
5 an ad or any sort of -- where you're creating  
6 a product that has both the visual and the  
7 audio intertwined as opposed to just  
8 incidental visuals while you're listening.  
9 You know, YouTube, for instance.

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

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

20 MR. MARKS: We were thinking of it  
21 more from a market perspective than, you know,  
22 sync uses. Sync uses especially in commercial

1 and television, you know, a writer or an  
2 artist, you know, they have feelings about how  
3 their work wants to be -- how they want their  
4 work to be associated or whether they want  
5 their work to be associated with a certain  
6 type of product or whatever it is. And that's  
7 why we wanted to sweep that completely out.  
8 Because it's just a different animal in that  
9 regard, and those kinds of -- you know, we  
10 don't have moral rights here. But to the  
11 extent that we exercise them in the free  
12 market, in that respect they should be,  
13 continue to be respected and kept outside of  
14 what we were proposing.

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

18 MR. MARKS: A YouTube -- you mean  
19 --

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

1 MR. MARKS: Yes.

2 MR. TURLEY-TREJO: I would  
3 disagree.

4 MS. CHARLESWORTH: Okay.

5 MR. TURLEY-TREJO: But I --

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

10 MR. MARKS: What does YouTube --

11 MS. CHARLESWORTH: -- perceive of  
12 it as a reproduction or some- -- you know, you  
13 need a license, I think. And so the question  
14 is 115 is limited to audio only as we all  
15 know. So I think one of -- you know, as I  
16 understand Steve's proposal is expanding it to  
17 cover certain types of audio/visual content,  
18 let's call it that, whether -- you know,  
19 regardless of how you define sync. So, I'm  
20 sorry, if you want to say a couple words in  
21 closing. Then I want to go to Mr. Knife and  
22 some of the others.

1 MR. TURLEY-TREJO: I just think  
2 that that would be helpful to clarify that.  
3 I mean Because otherwise you're going to have  
4 talking heads about what sync is, so.

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

12 MR. KNIFE: Thanks. This will  
13 appear to be going in a different direction  
14 but it's because my remarks are based off  
15 comments that were made a while ago. So kind  
16 of two facets of what at least I conceive of  
17 as a central point. The first one is -- And,  
18 Jacqueline, you kind of touched on this. We  
19 should all remember that there needs to be a  
20 balance between whatever kind of collective  
21 licensing regime we're talking about and  
22 potential anti-trust issues. And especially

1 when we talk about things like possibly, as  
2 you said when we started out this morning, you  
3 know, taking as a theoretical throwing out the  
4 115 license, if you were to do that tomorrow  
5 given the type of -- the way the marketplace  
6 has grown up underneath the regulation that  
7 we've had, I don't think you could really just  
8 take 115 away. And indeed even phasing it out  
9 would take an awful lot of effort and a long  
10 time. We'd have to wrestle with the concerns  
11 regarding large aggregators of rights, their  
12 bargaining power in a marketplace, how they  
13 behave in that marketplace both towards their  
14 licensees and towards each other in that  
15 marketplace. And those are all concerns that  
16 are very, very real when you talk about a  
17 music licensing environment that has 30  
18 million songs in it. The other, kind of  
19 pivoting off of that for a second, I had heard  
20 Mr. Barker and Ms. Schaffer both talk about  
21 the idea that, going off of the RIAA's  
22 proposal, that their concerns were that it

1 feels as though it might be stripping  
2 individual artists from their ability to  
3 essentially saying no. And I was wondering if  
4 we're talking about a collective licensing  
5 regime, as I think Mr. Marks has laid it out,  
6 that would result in kind of basically an  
7 industrywide rate that would have a percentage  
8 split between, say, songwriters and sound  
9 recording owners. And individual songwriters  
10 as represented by Mr. Barker and Ms.  
11 Schaffer would want the ability to opt out.  
12 I'd ask the question are you asking for the  
13 ability to completely opt out or opt in to the  
14 rate as agreed? Or are you saying what we want  
15 to do is opt out and negotiate on our own  
16 behalf? Because, let's say, we found the rate  
17 that either the National Music Publishers  
18 Association or my music publisher or whatever  
19 or the overall retail rate that the RIAA  
20 company agreed to is unacceptable to you.  
21 Because if it's the latter, then you really  
22 just undermine the whole process and we're

1 just back to square one. Which means my  
2 constituency has to negotiate with every  
3 single songwriter and sound recording owner  
4 for their individual rights. So that's the  
5 question I'm wondering. To kind of further  
6 the RIAA proposal, are we talking about being  
7 able to either accept the rate that was agreed  
8 or back out and not have your works licensed,  
9 or are you saying no, I want the free  
10 marketability to negotiate a rate regardless  
11 of this collectively agreed rate.

12 MR. BARKER: Can I --

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

15 MR. BARKER: Yeah. Sure, let me  
16 give you my perspective on that. Let me just  
17 first preface that by one quick thing. And I  
18 appreciate, number one, what Ty is saying and  
19 Ty being here representing Brigham Young.  
20 Because I think it's important that an  
21 organization like that be part of the process.  
22 You and I probably think differently on some

1 things. One thing that I did read in your  
2 comments though, which I think I want to bring  
3 up in order to answer your question, is the  
4 statement was made that Brigham Young likes  
5 Section 115 Because it's about the only thing  
6 that gives leverage to you to use song  
7 copyrights. Well, the fact that there is  
8 leverage to be used against song owners is the  
9 very reason that we're trying to open this  
10 thing up so that there's fair negotiations.  
11 So that's something that -- I would say 115,  
12 we can talk all day, I'm sure we could talk  
13 all day about the things that are wrong with  
14 We've mentioned some, I have others. I won't  
15 go through go into them now. I don't like  
16 115, but -- and Steven says, to go to your  
17 point, and then I'll eventually, Lee, get to  
18 yours, because this kind of builds up to that.  
19 I agree with Ms. Schaffer in that just the  
20 fact of being tethered, if you will,  
21 songwriters and publishers being tethered to  
22 a rate that the record companies set, it is

1 again not opening up the free market. Why  
2 would we not want to -- I think as Brittany  
3 said -- look at records and songs equally in  
4 the rights that they are afforded, meaning we  
5 can both negotiate rates and we can opt in or  
6 opt out. Which then gets to your answer, Lee,  
7 to say in my opinion all of the above of what  
8 you said is what we're looking for. Why would  
9 we not want and be afforded the ability to opt  
10 in or opt out, and in the event that we opt  
11 out to be able to negotiate a rate? Now, how  
12 would that work? As you said, that's then  
13 going to create a lot of problems and maybe  
14 stick us back into this 105 years ago. Well,  
15 105 years we've had 115 or whatever it is, and  
16 this rope has built up to where it looks like  
17 we can't cut this thing. Yet it's made up of  
18 individual strands that if we can just attack  
19 each strand at a time, at some point we can  
20 get rid of that big rope. It's not going to  
21 be a quick process. That's why I would  
22 propose a sunset formula or sunset period to

1 say, hey, we want to get to a place where 115  
2 goes away and replace it with -- and perhaps  
3 this helps to answer your question as well --  
4 replace it with a centralized entity that  
5 gives the ability of the owners to belong to  
6 it and give the ability to the owners to opt  
7 in or opt out and even to accept certain  
8 rates. This morning I saw an article, and  
9 many of you may have seen it, "Amazon Caves to  
10 Independent Music Publishers." Amazon has been  
11 trying to get individual music publishers to  
12 agree to rates that are supposedly less the  
13 compulsory rates. They've caved on that now,  
14 and Amazon is now going after the compulsory  
15 statutory rates. Well, if we didn't have the  
16 stat rate, if Amazon was trying to enter in  
17 here, we didn't have the rates, then Amazon  
18 would not just move up to that rate and know  
19 that that's as far up as they need to go.  
20 Perhaps Amazon or other entities, a Spotify,  
21 could go to a central agency and say I want to  
22 start up and I'm offering this. And in a

1 perfect world if that entity or those few  
2 entities, whatever those are, and I don't have  
3 any answer to that, then have the ability for  
4 each of their members to say, you know what,  
5 I like that rate, I'm in. I don't like that  
6 rate, I'm not in. And if that entity only  
7 received 20 percent positive approval, then  
8 obviously the entity knows they need to offer  
9 more. So at that point the free market begins  
10 to take over as an aggregate of information so  
11 that those copyright holders can then opt in.  
12 And for those who may still choose not to,  
13 sure, they have the right to then negotiate on  
14 their own.

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

19 MR. MARKS: Are you asking --

20 MS. CHARLESWORTH: Yeah, I just  
21 want to make sure. Because in terms of opting  
22 out --

1                   MR. MARKS: Yeah, it would cover  
2 first use but as a -- in the course of a  
3 dealing kind of way. So, I mean today -- and  
4 I think we noted this in our comments --  
5 there's a certain assent, you know, that's  
6 expressed as part of the recording process.  
7 And so as long as that assent is expressed and  
8 somebody doesn't say something else that's not  
9 --

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

17                   MR. MARKS: Right.

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

21                   MR. MARKS: Yes.

22                   MS. CHARLESWORTH: Okay. Mr.

1 Coleman has been -- and Mr. Johnson have been  
2 very patient, so I'm going to go to them. I  
3 know you and Ms. Schaffer have more to say  
4 but I want to get to these guys.

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

7 MS. CHARLESWORTH: I'm sorry.

8 MR. COLEMAN: That's okay. Some  
9 of the free market discussion grates to the  
10 ear of an independent publisher or a  
11 songwriter. Because you have to think about  
12 who the actors are in that negotiation, if  
13 there are large firms negotiating in the free  
14 market. The other thing that grates is that  
15 if we take away some kind of statute for  
16 licensing the reproduction right, and we say  
17 that's because it's government intervention,  
18 well, then we can also take out the government  
19 intervention which is copyright in the first  
20 place. These are two sides of the same coin.  
21 And I think that we do need a baseline of rate  
22 setting. And I think there's a fundamental

1 and well-established idea in copyright that  
2 once the first use of reproduction has taken  
3 place then copyright owners can cry all the  
4 way to the bank if they don't like another  
5 version of their copyright out in the world.  
6 But at least they're guaranteed a payment on  
7 the basis of that. And what I hear as a  
8 subtext in the RIAA and large firm discussions  
9 here is this notion that the rate is all  
10 important. I would submit that the -- that we  
11 are talking about copies and uses, and that we  
12 need a floor rate in a statute. Because what  
13 we're interested in is the number of uses of  
14 our compositions. And if you have a firm that  
15 comes along with a lot of negotiating leverage  
16 that says we want to negotiate a rate for a  
17 large number of copyrights on the basis of a  
18 few copyrights that are important, that  
19 doesn't leave room for risk taking on the part  
20 of an individual songwriter who may have an  
21 opportunity to do very well with a single  
22 copyright and is not part of that system.

1 MS. CHARLESWORTH: Okay. Mr.  
2 Johnson.

3 MR. JOHNSON: There's so many  
4 subjects.

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

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

9 MS. CHARLESWORTH: Yeah.

10 MR. JOHNSON: Well, just the first  
11 use, as a creator somethings -- even Prince  
12 has said there's how many versions of the song  
13 "Kiss" but there's only one version of "Law  
14 and Order." So on TV you don't do the same  
15 copy of the same show. But his copyright, he  
16 owns it. And if he doesn't want someone else  
17 to do it, that's his prerogative. And I think  
18 that we should kind of rid of the first use.  
19 Or if we keep it, make it an opt-in or opt-out  
20 type of thing. But as far as the basic 115  
21 and 114, just thinking about it, first of all  
22 if you keep 115 you should have an audit

1 right. I think that should be put in there,  
2 I think Chris Castle is right on that. But  
3 the more I think about it if you have 115, it  
4 should just be a composition with an audit.  
5 And the only statutory part about it should be  
6 that you have to pay for it, whatever the rate  
7 is. And I think we should separate, get rid  
8 of the Copyright Royalty Board and whatever  
9 the rate should be. And the problem is that  
10 -- you know, the 9.1 cents is a perfect  
11 example, just to cap it, and that's what the  
12 minimum is, it's just a cap. And it's abused.  
13 And I have a little chart here, which isn't  
14 too big, I'm getting some more made up. But  
15 just a basic inflation chart for one dollar  
16 over 100 years. And you see it right there.

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

22 MR. JOHNSON: Anyway the point is

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

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

19 MR. SELLWOOD: Thank you. I  
20 thought as a company like YouTube that has  
21 licensed millions and millions of musical  
22 copyrights over the last couple years, maybe

1 I would weigh in just quickly. I think so  
2 much of what has been said I agree with, the  
3 company would agree with direct payments to  
4 publishers. I think that's very important.  
5 I certainly like the idea of an all-in  
6 valuation of the music copyright. Our  
7 concerns about license fragmentation between  
8 labels and publishers between the various  
9 rights, mechanical and performance, the main  
10 concern for us that comes from fragmentation  
11 is an incremental creep in total content cost  
12 from which we can't really sustain the  
13 business. So if there could be some agreement  
14 between publishers and labels as to total  
15 content cost, we don't -- we're very agnostic,  
16 we don't care whether it's a performance or a  
17 reproduction, tell us how much it costs. So  
18 I really like that idea. I also agree that  
19 there needs to be certainty in the definition  
20 of what rights are covered by whatever it is.  
21 So whether we're excluding things from the  
22 future or whether the reproduction right that

1 occurs on YouTube is covered or not, that's  
2 something that needs to be defined. Where we  
3 start struggling is with the idea of opt-outs  
4 for all the reasons that Mr. Knife described  
5 and I think that I tried to comment on a  
6 little bit earlier today. And also I really  
7 struggle with the idea of transparency with  
8 collectives. Publishers are just collectives  
9 of songwriters, really, we don't have much  
10 transparency of what happens once money gets  
11 to a publisher. I would be concerned and  
12 would hope that there would be some real meat  
13 and teeth to transparency and to what the  
14 collective is doing and how that works. And  
15 understanding again of what rights are common  
16 to somebody like us. But for the ray of hope,  
17 YouTube exists outside of Section 115. We've  
18 licensed the vast majority of the publishing  
19 market in the U.S., well over 90 percent. It  
20 has been painful, costly. It has been  
21 horribly inefficient. And, frankly, I don't  
22 know of that many other companies in the world

1 that could do what we've done. We're grateful  
2 to have had a license and agreement that has  
3 been negotiated and approved by the NMPA as  
4 wind in our sails on the work to go license  
5 all this. I don't know if we would have been  
6 able to do it without the NMPA. So it's just  
7 -- I hope that the Office would consider how  
8 painful, how inefficient, how costly it is to  
9 license a competitive repertoire of catalog  
10 without the umbrella of something in Section  
11 115. Thank you.

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

18 MR. DRISKILL: I would just urge  
19 us to understand what we're talking about  
20 here. We're talking about property rights.  
21 We're talking about if -- I would daresay that  
22 if a movie production company said, hey, I

1 want to come and use your house for free to  
2 make a movie to give to the public for the  
3 public good, you know, you're going to let me  
4 do that. Right? I mean you're not going to  
5 give up your property. But that's what we're  
6 asking copyright owners to do in a lot of ways  
7 is give up their rights to their property.  
8 And I think that's where we have to try to  
9 meet here is having an acknowledgment and an  
10 understanding that it is in fact a property  
11 right. The property right can be used in a  
12 collective manner to make things easier, but  
13 just to make it easier doesn't mean that we  
14 have to abandon the right. And I think that's  
15 the main point that I think as copyright  
16 owners that we need to make here, is that this  
17 right is a right for a reason. It is a  
18 property right. Let's don't abandon that for  
19 ease of licensing. Let's do find a simple way  
20 to do this. Let's reduce cost, let's reduce  
21 everything, efforts and everything else, but  
22 let's don't abandon this right.

1 MS. CHARLESWORTH: Okay. Mr.  
2 Marks.

3 MR. MARKS: Yeah. I agree  
4 completely and, you know, whatever discussions  
5 we have should reflect that fundamental right.  
6 You know, I completely understand all of the  
7 things that you are saying about the opt out  
8 and things like that, and we should discuss  
9 these going forward. I would just note, you  
10 know, we have something of an odd market here.  
11 Because an opt-out, just taking an opt-out as  
12 an example, you've got one song that's got  
13 eight different writers and maybe 15 different  
14 publishers. So what happens if the one that  
15 owns 5 percent opts out but the rest don't?  
16 What if their representative -- I'm assuming  
17 they will be represented by different  
18 designated agents. Very complicated things to  
19 think through and things we should think about  
20 moving forward. The other thing is that the  
21 market is just kind of odd here too. Because  
22 the normal time I think that the owner -- a

1 songwriter or a publisher as the owner of a  
2 musical work would license that work is at the  
3 creation of the work, you know, to the -- for  
4 example, to the label when they're creating a  
5 recording before the recording is done. And  
6 what we're talking about here is something  
7 very different. It's constructing a  
8 marketplace where that negotiation happens  
9 after the recordings have all been made, which  
10 introduce just a variety of some things to  
11 think about in terms of how the normal market  
12 would work that we should think about some  
13 more and think through. But I think this has  
14 been a great conversation and hopefully just  
15 the start of a good dialogue.

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

21 MS. SCHAFFER: I will not keep  
22 everyone from lunch but for a minute. Just to

1 address Mr. Coleman's point about rates not  
2 being the only thing, and I think that most of  
3 the publishers and songwriters would agree  
4 that transparency and having an audit right is  
5 essential to any revision or any collective  
6 agency that comes about is having that  
7 transparency, especially that audit right.  
8 And then just to answer the question that I  
9 was asked by Mr. Knife about if there's a  
10 collective in the opt-out right. I will not  
11 speak for any particular organization, but  
12 personally I understand where you're coming  
13 from and I think that you are right, that at  
14 some point there has to be a way for at least  
15 the most basic licenses for music services to  
16 know either if someone is in or out, and for  
17 the negotiations to have some ending point.  
18 And I think that that is something that we all  
19 have to address. Where that line is, I think  
20 is part of the discussion, but I think we  
21 would acknowledge that you're on the right  
22 track of that concern.

1 MS. CHARLESWORTH: Okay. Well,  
2 thank you. And I think this was a really good  
3 discussion and where people engaged with one  
4 another, and I appreciate that. I'm going to  
5 turn this over to my colleague, Rick Marshall,  
6 who can explain the lunch options, I guess.

7 (Lunch process explained by Rick  
8 Marshall)

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

11 MR. MARSHALL: Yes, 2:30.

12 MS. CHARLESWORTH: 2:30.

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

15 Session 4: Fair Royalty Rates and Platform  
16 Parity

17 MS. CHARLESWORTH: We have a  
18 couple more panels to go. The next one is on  
19 fair royalty rates and platform parity. We've  
20 heard something about these issues already.  
21 A lot of these panels, as I'm sure you've  
22 noticed, overlap to some degree. And that is,

1 frankly, because the issues are certainly  
2 interrelated. But on this particular panel we  
3 want to look at sort of what are some of the  
4 principles we might be able to agree on in  
5 terms of setting royalty rates in terms of  
6 either standards or should the standards be  
7 uniform. And also I'd like to -- you know, we  
8 talked a little bit about I think the CRJ  
9 process and maybe the 115 process. We haven't  
10 talked so much about the PRO rate setting  
11 process. But if people want to share their  
12 views about the actual judicial or  
13 administrative processes and things -- I think  
14 we've heard a bit about that but it will be  
15 interesting to hear more about ways in which  
16 those might be refined, assuming they're  
17 retained. And we have -- I guess before we  
18 start we have one new member of the panel.  
19 Which is Mr. McIntosh. And, Mr. McIntosh,  
20 would you like to introduce yourself and  
21 explain your affiliation.

22 MR. MCINTOSH: Sure. I'm Bruce

1 McIntosh from Codigo Music/Fania Records.  
2 We're a Latin music -- actually a legacy label  
3 out of Miami. We're in our fiftieth year this  
4 year. It all began in '64 in New York. And  
5 we've got a catalog of about 3,000 albums,  
6 about 21,000 tracks, so it's pretty much the  
7 largest independent Latin label out there.  
8 Also representing A2IM, and we are part of a  
9 coalition of about 300 plus independent  
10 labels. As you guys know, in the United  
11 States there's no collective bargaining in  
12 that sense, so it makes it tough. And a lot  
13 of what I've heard in the earlier panels,  
14 there's really -- with direct licensing it's  
15 very difficult and really almost impossible  
16 for an independent label to go in on the same  
17 footing and have a level playing field as the  
18 majors do when doing direct licensing. So  
19 that's one of the big points and one of the  
20 things we would like to advocate for is a  
21 statutory compulsory rate that provides equal  
22 pay for equal creation of works.

1 MS. CHARLESWORTH: Okay. Thank  
2 you. And welcome. So I think maybe it might  
3 help to start this panel off with a general  
4 question, which I alluded to just a moment  
5 ago, which is in thinking about this issue and  
6 assuming, let's say -- I know there's some who  
7 are of the view that all this should be done  
8 in the free market, and I'm going to set that  
9 aside for a moment. But let's just assume  
10 that there's some sort of government-defined  
11 rate setting process. What principles do you  
12 think should guide that process? What should  
13 -- you know, if we were writing it from  
14 scratch, what should it look like? Should  
15 rates be set jointly for different copyright  
16 interests or for different uses, or should  
17 they continue to remain in separate  
18 proceedings? And so I'm going to open the  
19 floor with that very broad question. Yes.

20 MR. KASS: I think the number one  
21 thing that you need to do or Congress needs to  
22 do is segment the markets. Because as we went

1 around there were so many different markets  
2 and there were so many different interests  
3 that needed to be protected that it's very  
4 hard to put in the same pool a high school  
5 radio station with CBS radio or even with  
6 XM/Sirius or all the different things. So  
7 it's quite possible that a rate is going to be  
8 entirely different for one segment of the  
9 market than another. The other thing I would  
10 encourage you to do, and that is at least make  
11 the statute, the new 114 simple enough that  
12 somebody like the CRB or CRJs could actually  
13 make a rate decision. One of the interesting  
14 things that came out of the July 6th ruling by  
15 the D.C. Circuit that the CRB was improperly  
16 appointed, when they looked back and saw what  
17 impact this would have they determined that  
18 actually the CRB didn't set any rates except  
19 for the \$500 minimum, that all the rates were  
20 negotiated because people just didn't want to  
21 use that CRB process. And again the judges  
22 are encumbered by the law, apparently, so it's

1 so complicated that they're not able to make  
2 rate decisions properly.

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

15 MR. KASS: No. I think it should  
16 be so simple that the CRB can hear evidence  
17 where there's a dispute. Obviously everybody  
18 wants 209 an open negotiation period and --  
19 which was just completed with Web.4, and then  
20 if there is arguments to be had, to work those  
21 out again between the copyright holder and the  
22 user of the copyright. But there's

1 potentially going to be disputes. And back in  
2 the olden days with the CRT, the Copyright  
3 Royalty Tribunal, it was a process that worked  
4 itself through under the direction of the  
5 librarian and the Copyright Office who could  
6 review the decisions and change them. Mr.  
7 Billington certainly changed the CARP decision  
8 dramatically on that. At this point I think  
9 you all can only review the decisions of the  
10 CRB for matters of law, and Billington can  
11 just fire the judge if that's what he wants,  
12 but he can't do anything. Well, that's really  
13 not good arbitration, that's really not good  
14 law, at least in the intercollegiate  
15 broadcasting system.

16 MS. CHARLESWORTH: Okay. Mr.  
17 Knife?

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

20 MS. CHARLESWORTH: No, I'm shaking  
21 things up, I'm going to, I'm trying to go  
22 counterclockwise.

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(All speak at once)

MR. KNIFE: So I apologize, ma'am. Dispensing with the levity for a minute, I think there are a lot of issues with the disparate rate setting standards and the rate setting processes. As a kind of an overarching concern, I think that whoever is setting the rates for whatever activity we're talking about, whether it's a federal judge sitting in the Eastern or Southern District of New York or it's a copyright royalty adjudicator, they should have available to them all information about the marketplace that they can possibly get their hands on. I think evidentiary restrictions about what deals they can look at, what deals they're allowed to weigh in on and consider as they come up with their decisions just don't make a whole lot of sense. Moving a little bit forward from that, you know, we have this kind of accelerated process in the CRB right now, which I think a lot of people initially

1 thought might be a cost benefit in that it --  
2 you know, the idea was that you get in and out  
3 very, very quickly. There's a very compressed  
4 time frame for the overall proceeding,  
5 including discovery, et cetera. And I think  
6 that ultimately that has led to actually a  
7 more costly process, quite possibly. Because  
8 it's kind of like how many people are you  
9 going to throw at a man hour problem. Right?  
10 And the point is you can pay so many lawyers  
11 to work on a case that's going to take a year  
12 and a half or you can tell them you've only  
13 got six months to do it. And your bill isn't  
14 going to be any lower because they're just  
15 going to throw more lawyers at it. And that's  
16 a little bit of a problem. And then that  
17 leads to the last point that I want to make,  
18 which is, you know, Fritz was talking about  
19 the idea of making it very, very simple.  
20 There are -- that's a double-edged sword. The  
21 idea of making these proceedings very, very  
22 simple is -- could possibly be problematic.

1 While it's attractive on one side because it  
2 might make it available to greater number of  
3 potential users in the public to be able to  
4 come into these types of proceedings, as we  
5 have kind of just touched upon a little bit  
6 today these are very, very thorny issues,  
7 they're very -- they contain a lot of  
8 subtlety. There's a lot of -- there's many,  
9 many interests involved, all with individual  
10 perspectives that don't necessarily line up.  
11 And on that front I think that having very,  
12 very learned judges to preside over these  
13 types of rates and proceedings is probably the  
14 better way to go. And the idea of doing  
15 things like having kind of an accelerated  
16 process or maybe even a small claims type of  
17 process, while it seems attractive on first  
18 blush it is probably not as attractive when  
19 you really kind of game it out as it might  
20 appear initially.

21 MS. CHARLESWORTH: Okay. Mr.  
22 Marks.

1                   MR. MARKS:  You want to team back  
2                   and forth?

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

7                   MR. MARKS:  First I would just  
8                   state that in terms of the standard, something  
9                   that represents market value is we think  
10                  critical.  If you're going to subject rights  
11                  to a compulsory license, there should be  
12                  market value as the rate standard.  You know,  
13                  I've heard a lot of -- there are a lot of  
14                  different opinions about the willing  
15                  buyer/willing seller standard.  We think it's  
16                  working.  We offer it at different standards.  
17                  There were others that we would have been fine  
18                  with that were considered at the time,  
19                  including fair market value, you know.  So I  
20                  think we remain open so long as it's very  
21                  clear that the goal is to provide market  
22                  value.  I do think, you know, getting to some

1 of the issues that Lee and Fritz were talking  
2 about, there -- certainly one way to simplify  
3 the proceedings, right now we have a direct  
4 case and then a rebuttal case in a fairly  
5 compressed time frame. And rolling those two  
6 together so that you have -- maybe you're  
7 moving more of the discovery up front and then  
8 just having one hearing may be something that  
9 should be explored. Or maybe it's something  
10 that at the option of the parties, if the  
11 parties to a particular proceeding agree that  
12 they want to do it that way, they should be  
13 able to do so. Because it does get very  
14 difficult when you get to the rebuttal stage  
15 to try and get discovery and get through that  
16 process, and it might work a little better  
17 just having one there. I think -- you know,  
18 the statute right now says that the CRB should  
19 set different rates for different types of  
20 services. So they should be doing that,  
21 they're directed to do it. I think the fact  
22 that negotiations often occur or settlements

1 often occur is a good thing. Because the idea  
2 behind the statutory license is to encourage  
3 it and to have this available as a backstop in  
4 the event that you don't have an agreement.

5 I will say, unfortunately, you know, for us we  
6 do feel like there's always at least one large  
7 party on the other side who just wants to roll  
8 the dice again. And that's why we end up in  
9 a lot of -- you know, we've ended up  
10 litigating virtually every webcasting  
11 proceeding. And that unfortunately appears to  
12 be the case again this time. So those  
13 comments I had.

14 MS. CHARLESWORTH: Okay. Mr.  
15 Oxenford.

16 MR. OXFORD: Oh. I thought you  
17 were going over there first.

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

20 MR. OXFORD: You really are. I  
21 was falling asleep here.

22 MS. CHARLESWORTH: This is so no

1 one falls asleep. It's like law school.

2 MR. OXENFORD: While Steve is  
3 talking, you're right, I couldn't have  
4 possibly fallen asleep. I think that the  
5 process, while certainly having to look at  
6 fair market value, also needs to take into  
7 account business realities. I think that's  
8 one of the biggest problems in the 114  
9 proceedings, it hasn't really looked at the  
10 business realities of the services. I mean  
11 somebody's got to be able to pay these  
12 royalties and continue to operate a business  
13 in order to afford to pay the royalties that  
14 are demanded by the copyright holders. I  
15 think also I agree with Fritz that there are  
16 different proceedings with different parties  
17 that have different interests. And to try to  
18 roll everybody into one proceeding I think is  
19 going to be just about impossible. I mean if  
20 you look at the satellite radio folks, it's a  
21 whole different business really than  
22 webcasting with different costs involved, with

1 different abilities to pay. Even broadcasters  
2 and certain webcasters have different aspects  
3 that have been accommodated in the 114  
4 proceedings but even that has created some  
5 problems. I think looking at the differences  
6 between those sorts of services, and certainly  
7 noncommercial folks have a whole different set  
8 of circumstances that are often overlooked.  
9 As to Steve's comments about the process, I  
10 don't have any problems about an idea of  
11 rolling all of the hearings into one as long  
12 as there's the opportunity to prepare a  
13 rebuttal exhibit before you prepare a -- after  
14 you've 218 seen the direct case exhibit. I  
15 think one of the issues is being able to  
16 prepare that direct case exhibit. Being able  
17 to get the information necessary to have a  
18 sufficient fact base in order to prepare the  
19 direct case exhibit. In the current  
20 proceeding, for instance, the Web.4  
21 proceeding, Pandora had requested predirect  
22 case discovery so that they could actually

1 have some numbers from which to derive a rate  
2 to be proposed. And what a concept to  
3 actually know what the world is before you  
4 propose the rates that are out there in the  
5 universe. And that was rejected by the CRB  
6 because the statute doesn't seem to provide  
7 it. It talks about discovery after the direct  
8 case exhibits and then amending the direct  
9 case exhibits, which seems awful inefficient  
10 to me. So maybe we should look at moving the  
11 discovery to prior to the direct case exhibit  
12 so that we have a basis for preparing complete  
13 direct case exhibits.

14 MS. CHARLESWORTH: Okay. Ms.  
15 Schaffer. Are you going to comment on 115 or  
16 --

17 MS. SCHAFFER: Yes, 115.

18 MS. CHARLESWORTH: Okay.

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

21 MS. CHARLESWORTH: All right.

22 Before we move to 115, do other people want to

1 comment on the 114 process?

2 (No response.)

3 MS. CHARLESWORTH: Okay.

4 MS. SCHAFFER: With respect to  
5 parity and fair rates and 115, I think a lot  
6 of it has been addressed in this morning's  
7 proceedings, with the first issue being that  
8 if we are going to keep 115, there has to be  
9 I think a fair market base rate for how we set  
10 the 115 compulsory licensing rate. Currently  
11 it's on the 801(b) standard. And I know the  
12 Songwriter Equity Act has proposed moving that  
13 to a willing seller/willing buyer model, and  
14 I think that that's a good direction that  
15 everyone would like to see us head in if 115  
16 does remain, so setting those rates to a fair  
17 standard. I think you also -- I guess this  
18 does get to 114 a little bit in that with  
19 114(i) and the fact that it prohibits ASCAP  
20 and BMI in those rate setting proceedings and  
21 from considering sound recording rates, you  
22 know, I think has dramatically undervalued

1 both licenses. And I think Pandora's a good  
2 example where I believe it's -- NMPA's  
3 comments point this out, but 48 percent of the  
4 revenue from Pandora is going to artists and  
5 labels where 4 percent is going to publishers  
6 and songwriters. So obviously there's a great  
7 disparity there. And while SESAC is not under  
8 the consent decrees, the fact that ASCAP and  
9 BMI are restricted to certain rates obviously  
10 undermines their negotiation ability even more  
11 significantly as well. So I think that's one  
12 part of it. Also with these proceedings I  
13 think you have the problem that you get the  
14 parties together to agree to a settlement and  
15 then it takes two years to approve, and then  
16 the board doesn't end up approving all aspects  
17 of it, which everyone had bargained for in  
18 kind of coming to the agreement that they had  
19 concerning what the rates would be. You know,  
20 I think that there were things that the  
21 digital services thought that they were going  
22 to get out of that settlement that weren't

1 approved and vice-versa. So I think that  
2 there needs to be a consideration if we do  
3 have a settlement agreement and the parties  
4 can come to an agreement, allowing that to  
5 stand. Then I think you also get into again  
6 just the fact that there's not an audit right  
7 under 115. And that's that point that I --  
8 we've been speaking about this morning and  
9 will continue to, but there's no transparency  
10 and ability to determine whether the monies  
11 actually being paid correspond to the uses of  
12 the music composition. So I think if 115  
13 stays in place, those are the types of reforms  
14 that we will need to take a look at.

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

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

19 MS. CHARLESWORTH: Yes.

20 MR. BARKER: Thank you. Yeah, I  
21 agree with what Brittany just said. And I  
22 think -- I kind of wanted to look at this.

1 You started this out to say there are some  
2 that want fair market value. Of course I am  
3 one of those. And to say but if we do keep  
4 115 how do we do that and 115 and 114, and I'm  
5 going to say let's get as close as we can to  
6 the fair market value. That's going to be my  
7 bottom line theme. But I did -- just so that  
8 I could better understand all of what we're  
9 talking about when it comes to 114 and 115  
10 issues and the different sources, I drew out  
11 a few weeks ago a diagram for me, which I'm  
12 not going to hold up because I know we're on  
13 radio so it doesn't matter to anybody. For me  
14 I'll look at this. But I broke down uses into  
15 eight different categories. Phonorecords,  
16 DVDs, ringtones, interactive streaming,  
17 noninteractive, terrestrial radio,  
18 synchronization, and then what I call print  
19 and other. Out of these eight categories I  
20 drew columns to say which of them -- how are  
21 they licensed under 115 and how are they  
22 licensed under 114. Or, I'm sorry, how are

1 the publishers licensed and how are the  
2 masters licensed. I realized that the  
3 publishing on every one of those have  
4 restricted licenses other than, as we talked  
5 earlier in another session, the sync and the  
6 print/other. What's interesting though is on  
7 the sound recording side there was one of  
8 those eight categories that have any  
9 restrictions whatsoever, which is the  
10 noninteractive streaming, which falls under  
11 114. So out of those eight, only one  
12 category, as I just read, has any restrictions  
13 whatsoever. Now, record companies would come  
14 and say, yeah, but we don't even have all  
15 eight. We don't have terrestrial radio, and  
16 I agree with that. And I think you should.

17 MR. MARKS: Or print.

18 MR. BARKER: Pardon me? Yes, there  
19 you go. So I think you should have eight.  
20 But the point I want to make is I think as  
21 rates are determined, whether it's the CRJ,  
22 whether it's the industry as a whole, whether

1       it's the rate courts, is that each of these  
2       eight uses be looked at equally on both sides,  
3       for both the publishing and the record. For  
4       instance, noninteractive streaming for  
5       publishers is licensed through the PROs which  
6       are limited by consent decrees. Yet sound  
7       recordings, while you do have a blanket  
8       license under 114, it does have a willing  
9       seller/willing buyer aspect to it so that  
10      there is a more free rate for that. 225 You  
11      know, if we look at phono records, DVDs,  
12      ringtones, and interactive streaming,  
13      compulsory licenses on publishing, the record  
14      companies are free market. So and then if we  
15      look at terrestrial radio, ASCAP and BMI have  
16      consent decrees, you get nothing. I think you  
17      should get something, but I think what you get  
18      should take into account what publishers get  
19      so that we can look across similar uses on  
20      both sides and determine a more fair market  
21      value. The Songwriter Equity Act I think  
22      tries to, attempts to, and I think does a good

1 job, in addressing a few of these but I think  
2 it doesn't obviously address all of them. So  
3 my suggestion is that we look at a per use and  
4 we look across on the sound recordings and the  
5 publishings, use that information, and  
6 whatever the rate setting body is, if we have  
7 to have one, they consider all of the above.

8 MS. CHARLESWORTH: Okay. Mr.  
9 Marks.

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

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

21 MR. MARKS: Yeah.

22 MR. BARKER: -- would agree that

1 they could be broader in a sense.

2 MR. MARKS: You're certainly  
3 suffering from a court that is not valuing the  
4 work as it should, I would agree with that.

5 MS. CHARLESWORTH: So we have  
6 several different rate setting standards which  
7 have been alluded to. The 801(b) standard,  
8 there's willing buyer, willing seller, and  
9 then the PROs. The consent decrees basically  
10 say a reasonable rate although that's been  
11 interpreted to be some semblance of a market  
12 rate. Does it make sense, I mean is there a  
13 justification to have different rate setting  
14 standards for different types of uses? I know  
15 no one has an opinion on this. Okay. Oh, I'm  
16 sorry, Mr. Johnson.

17 MR. JOHNSON: In a way, yes.  
18 Because Sirius is different from Pandora's  
19 different from Spotify or terrestrial radio.  
20 But I go back to again it's that basic  
21 copyright. And part of me -- you know,  
22 obviously the reason why we have a cap and

1 things are so bad is because in a way the  
2 minimum statutory rate. They paid more back  
3 then for a temporary period. But just like  
4 SoundExchange or just like if we're setting a  
5 new rate, it's always going to dwindle into  
6 nothing, really, I think, just because of the  
7 nature of it. And I also think that just like  
8 ASCAP and BMI are starting to do, that they  
9 should be able to collect from whatever they  
10 want. There's a mechanical side of the  
11 stream, which I think is a big point for me,  
12 that that 9.1 cents, which was your minimum  
13 statutory rate, and a stream is a mechanical  
14 and a performance at the same time. So when  
15 we lost that, the whole thing fell apart for  
16 us, because we depended on that 9.1 cents.  
17 And so I think the reason why, back to your  
18 question with regard to set rates, that the  
19 reason why we're in this mess is everybody's  
20 trying to avoid the CRB board or consent  
21 decree, from Universal to me and everybody in  
22 between. And so those rates, you know, that

1 -- if we didn't lose that mechanical for the  
2 stream, that would have helped a lot. We  
3 wouldn't be in as big a mess as we are now.  
4 For songwriters just the whole thing. So I  
5 think that if you price fixed the rate,  
6 temporarily, and to wait five years for the  
7 SEA-bill, the next CRB hearing for mechanical  
8 is in three years, then it's two years to  
9 complete. So we're going to wait five years  
10 to possibly consider a couple pennies on a 9.1  
11 cents mechanical for a CD that won't even  
12 exist anymore? And so it's kind of insane, the  
13 SEA-bill, in that sense, and I understand,  
14 it's great to have a free market provision and  
15 inside the CRB or you know, consider free  
16 market rates or fair market rates, whatever  
17 that means. And, you know, what is a fair  
18 market rate? Is it 52 cents, is it 20 cents,  
19 is it arbitrary? And that's why that free  
20 market, those thousands of little points are  
21 so important. So when she was talking I just  
22 had a question just thinking what happens if

1 the SEA-bill passes, but the Copyright Office  
2 gets rid of 115? You know, it doesn't even  
3 make sense --

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

8 MR. JOHNSON: What I'm saying  
9 we're here arguing whether we're going to get  
10 rid of 115 or not. And the biggest part of  
11 the SEA-bill is 115, it's mechanical license,  
12 which we don't really have mechanicals  
13 anymore. Download's on the way out. And so  
14 we don't really have downloads really anymore,  
15 CDs, they're going by the wayside, and the  
16 future is streaming. And we were talking  
17 before about what's going to be the next  
18 format. I really have no idea, and I've  
19 thought about it. You know, they may put a  
20 chip in your head or something. But wireless  
21 streaming is it, I think. It's just going to  
22 get faster and better. And so, anyway, if

1 you're going to set rates, one of my ideas is  
2 to have a "streaming account" just like a  
3 download account for iTunes. And really  
4 copyrights are going to have to go up as far  
5 as paying for the sound recording, paying for  
6 the performer, just like SoundExchange  
7 collects for, and then the split for the  
8 songwriter and the music publisher, that may  
9 be two or three dollars, that may be five  
10 dollars per song. And I know that scares the  
11 hell out of some people, but you look at  
12 costs, I was talking to this guy who ran a  
13 record company before last night, and he says  
14 you look at cable, and we're paying \$129 for  
15 the package for Comcast. But he has a house  
16 somewhere else where he's got to get DirecTV  
17 for certain other things and Netflix for these  
18 programs or whatever. But he's spending \$400  
19 or \$500 a month just on cable. And you go to  
20 -- I want to get a song. Oh, it's free on  
21 Pandora, it's free on Amazon, it's free on  
22 Facebook, and Spotify it's free on everything.

1 And that just is insane. And I think we're  
2 going to really have to start paying for  
3 songs, and I think an upfront "streaming  
4 account" per-song, per-customer and per-  
5 streamer is the way to do it. And maybe have  
6 to have the customer pay for it, maybe more ad  
7 dollars, maybe more investment, maybe higher  
8 subscriptions.

9 MS. CHARLESWORTH: Okay. Mr.  
10 Kass?

11 MR. KASS: I think the devil is  
12 always in the details, and in 114 we  
13 technically have a willing buyer/ willing  
14 seller. But as Lee pointed out, because you  
15 can't enter some willing buyer/willing seller  
16 agreements into evidence, you have, for  
17 instance, a much lower per stream rate for  
18 National Public Radio than you do for a high  
19 school webcaster. The high school webcaster  
20 pays \$500 per stream, and National Public  
21 Radio through Corporation for Public  
22 Broadcasting pays between \$50 and \$100 per

1 stream, depending on how you allocate it. So  
2 in reality it's willing buyer/willing seller  
3 after political considerations. And I think  
4 if you're going to have a marketplace or a  
5 willing buyer/willing seller you have to have  
6 what Lee talked about, and that's where  
7 everybody gets into the pie. And if a good  
8 deal agreement is made on one party, then it's  
9 going to be applicable to all.

10 MS. CHARLESWORTH: Mr. Knife.

11 MR. KNIFE: I was just going to  
12 say to answer the question that you originally  
13 posited, I think it does make sense to have a  
14 unified rate standard. I think any reasonable  
15 adjudicating body that we empower with the  
16 authority to engage in that type of rate  
17 setting ought to be able to distinguish  
18 between all of the types of activities that  
19 we've been talking about here, i.e.  
20 interactive streaming, noninteractive  
21 streaming, something in between, you know,  
22 user preferred streaming, whatever you want to

1 call it, mechanicals, sound recording,  
2 reproduction rights. I think we ought to  
3 aspire to the idea that there could be a  
4 single definition that accurately encompasses  
5 the idea that copyright owners ought to be  
6 adequately compensated for the use of their  
7 copyrighted works in whatever context that  
8 occurs, and then leave it up to the  
9 adjudicating body to determine. Just because  
10 you have the same rate setting standard does  
11 not mean that the rate that comes out of it is  
12 necessarily the same rate, depending on a  
13 whole bunch of circumstances, including, you  
14 know, market inputs and pricing, et cetera.  
15 I'm sure it's going to come as a shock to  
16 Steve that I think that rate setting standard  
17 ought to be something like 801(b) or perhaps  
18 even something higher, like what we have in  
19 the -- or I shouldn't say higher, I should say  
20 something that empowers the adjudicating body  
21 more, like what we have under the ASCAP and  
22 BMI consent decrees. But that being what it

1 is, and I'm sure Steve will take me to task  
2 for that in just a moment, I do think it's  
3 certainly attainable, and we should aspire to  
4 having the same rate setting standard and just  
5 make sure that it is actually applied. And as  
6 Fritz echoed, that the adjudicating body be  
7 able to see all of the relevant evidence for  
8 any particular market segment and any  
9 particular marketplace, and thereby come up  
10 with the appropriate rate under a fairly  
11 defined standard.

12 MS. CHARLESWORTH: Mr. Marks.

13 MR. MARKS: I would agree with Lee  
14 that you -- that one standard across all  
15 services is the way to go. And I do agree  
16 that that doesn't mean you're going to get the  
17 same rate, because different types of services  
18 are different and you're going to have to look  
19 at those differently, and therefore you might  
20 have one rate for one kind of service and  
21 another for another but at least you're  
22 operating under the same standard. As I've

1 said before, I think it should be market  
2 value. I find some of the comments  
3 interesting because it almost sounds like  
4 those that have lobbied for and are  
5 benefitting from a compulsory license, which  
6 is an incursion on the exclusive rights of the  
7 copyright owner, are complaining about being  
8 disadvantaged by it in some way whereas the  
9 politicization of it I think has enured to  
10 their benefit dramatically in at least two  
11 instances. After the first webcasting  
12 proceeding when the rate was cut in half and  
13 after the second webcasting proceeding when we  
14 were essentially forced by Congress to do a  
15 deal with Pandora and other services as a  
16 result of congressional pressure that these  
17 companies and other companies brought to bear.  
18 So I think that compulsory licenses kind of  
19 suffer from that political pressure,  
20 unfortunately, but it certainly hasn't been to  
21 our benefit at all.

22 MS. CHARLESWORTH: Okay. I see

1 you leaning in, Mr. Oxenford.

2 MR. OXENFORD: Well, I was just  
3 going to say that Steve is talking about one  
4 aspect I think of the whole purpose of  
5 copyright to fairly compensate the artist.  
6 But there is the second aspect of copyright,  
7 and that's to make available copyrighted works  
8 to the public so that the public can benefit  
9 from it. And I think that that aspect also  
10 needs to be taken into account in any  
11 analysis, which is why, like Lee, I think the  
12 801(b) standard is the standard that should be  
13 used in any rate setting decision. Because  
14 you do have to look at more than just what is  
15 the best possible rate that somebody's willing  
16 to pay, in one individual circumstance to pay  
17 a copyright holder. But also look at how can  
18 you encourage the distribution of the  
19 copyrighted works without diminishing the  
20 incentive of the creators to create. And I  
21 think there's a balancing that takes place  
22 there using something like the 801(b) standard

1 where if you're just looking at a market rate  
2 or just looking at what two particular parties  
3 have agreed to in some transactions, you don't  
4 get that balancing.

5 MR. MARKS: We have over 2,000  
6 services operating under the 114 license. Two  
7 thousand. So it seems like there's very  
8 little impediment to getting into the market  
9 and making works available.

10 MR. OXENFORD: But how many of  
11 those 2,000 services are actually operating  
12 under the rates set by the CRB? Most of those  
13 services are operating under deals that have  
14 been set -- MALE VOICE: Agreements.

15 MR. OXENFORD: -- after -- MALE  
16 VOICE: That's right.

17 MR. OXENFORD: -- the CRB  
18 decision, not based on the decision that was  
19 reached on the record using willing  
20 buyer/willing seller standard.

21 MR. MARKS: I don't think that's  
22 the case, actually. Because most of those are

1       broadcasters, and the broadcasters are paying

2       --

3                       MR. OXENFORD:   Right, the  
4       broadcasters are paying the broadcaster rate,  
5       which was set --

6                       MR. MARKS:   Which is --

7                       MR. OXENFORD:   -- in a willing  
8       buyer -- in a negotiation after the Web.2  
9       decision.

10                      MR. MARKS:   Right, but those rates  
11       are essentially the same as what the CRB said.  
12       There's no difference.   Pandora has a lower  
13       rate because it exercised, you know, in our  
14       view, its influence to try and get a lower  
15       rate from Congress.   And you do have some  
16       instances where there are negotiated deals  
17       with noncoms and some others like that.   But  
18       the vast majority are paying I think under the  
19       rate set by the CRB.

20                      MR. OXENFORD:   But those rates  
21       were set by the CRB relying on the broadcaster  
22       deal, which was a negotiated deal after Web.2.

1                   MR. KNIFE: I think Mike Huppe  
2 even testified to that. Right? I think he  
3 actually said that the preponderance of  
4 payments that SoundExchange gets --

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

6                   MR. KNIFE: -- are from --

7                   MR. MARKS: That's because --  
8 that's --

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

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

21                   MR. MARKS: Well, the payment  
22 issue is -- I mean, look at the market.

1 Pandora has 70 percent or more of the market.  
2 So we know that, because we did a deal with --  
3 or SoundExchange did a deal with Pandora that  
4 most of the payments are going to be from  
5 deals.

6 MR. KNIFE: Yeah, okay.

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

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

11 MR. MARKS: That's what Mike said.

12  
13 MR. KNIFE: Okay. Well, I thought  
14 he said -- I mean, I don't know, do you  
15 remember, David? I thought he said --

16 MR. OXENFORD: But it seems to me,  
17 Steve, if you're considering broadcasters --  
18 because the CRB eventually did adopt the  
19 broadcaster rate that was agreed to in  
20 negotiation after Web.2. They later adopted  
21 that as the broadcaster rate because it was  
22 the rate that had been negotiated, was already

1 in existence, and there was nobody to object  
2 to that. So yes, they may be paying under  
3 rates that the CRB set --

4 MR. KNIFE: Eventually.

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

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

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

22 MS. CHARLESWORTH: I think that's

1 what you're doing here today.

2 MR. KNIFE: Right. My point is --

3 MR. MARKS: We've never run to  
4 Congress about any rate that was set in the  
5 CRB.

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

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

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

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

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

17 MS. CHARLESWORTH: Okay.

18 MR. KASS: A couple things again,  
19 it's a finding of fact by the U.S. Court of  
20 Appeals in the D.C. Circuit that as of July  
21 6, 2012, when they found that the CRB was  
22 improperly appointed, that the CRB had not in

1 effect set any rates. Because when a court is  
2 improperly appointed or judges, they have to  
3 vacate all the rates that were prior to July  
4 6th. So I mean that's just a finding of fact  
5 that the CRB did not make any rate decisions  
6 prior to July 6th. But back to the point of  
7 how we can improve the law or 114. I think  
8 one of the challenges for all of the  
9 stakeholders is that it's not a transparent  
10 process. For instance, normally public funds  
11 -- and that would certainly be the Corporation  
12 for Public Broadcasting at one or \$2 million,  
13 and certainly all IBS members, which pay with  
14 public funds -- you could go onto the FOIL,  
15 Freedom of Information law, and find out what  
16 happened to that money or where it went or  
17 whatever. But in reality if you make those  
18 kinds of requests from SoundExchange it's a  
19 business secret. So I think you need to have  
20 transparency, all the stakeholders need to  
21 know where the money goes, and what's  
22 happening to it.

1 MS. CHARLESWORTH: Yeah, well,  
2 there is an audit right under 114, if I'm not  
3 mistaken. So I mean that is one area where  
4 114 differs from 115 in terms of the ability  
5 of --

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

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

1       impeding the marketplace.

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

8                   MS. CHARLESWORTH:  Okay.  Mr.  
9       Knife?

10                   MR. KNIFE:  Yeah, I was going to  
11       say even for some of my member companies,  
12       which are large ostensibly for-profit and some  
13       of them publicly traded companies, the cost  
14       and the expense both in time and money of  
15       engaging in these proceedings is, in many  
16       instances, seen as prohibitive.  I mean I've  
17       been involved in a handful of them, both in  
18       Section 114 and 115.  And I can tell you that  
19       when I poll my member companies as to whether  
20       or not they have an appetite to engage in any  
21       one of these proceedings, it's very often the  
22       decision is driven by whether or not they're

1 going to see a benefit that equals or will  
2 outweigh the cost of engaging in the  
3 proceeding itself.

4 MS. CHARLESWORTH: Okay.

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

10 MS. CHARLESWORTH: Okay. Mr.  
11 Oxenford.

12 MR. OXFENFORD: I agree with Lee  
13 that plenty of webcasters, plenty of  
14 broadcasters can't individually participate in  
15 the process. It just economically doesn't  
16 make sense for the minimal amounts of  
17 streaming that they do to participate in the  
18 process. But, unfortunately, I don't see a  
19 better way to set the rates. So many of these  
20 groups have to participate through the NAB,  
21 through DiMA, through other organizations, and  
22 litigate over whether the rates -- what the

1 rate should be. If there was an easier way to  
2 come to a decision, I wish somebody would  
3 volunteer it, as I'm sure you do as well.  
4 Part of the benefit perhaps of the high cost  
5 of getting into these proceedings though is  
6 that it should encourage settlement. And  
7 perhaps once these proceedings have reached  
8 some sort of equilibrium where parties feel  
9 that they are reaching more or less fair  
10 rates, and I'm not sure that we're there, in  
11 fact I'm sure we're not there yet on the 114  
12 side, but maybe after time you'll see more  
13 settlements like you have in the 115 side of  
14 things.

15 MS. CHARLESWORTH: Okay. Here's  
16 sort of a philosophical question. Is it  
17 possible to set really a market type rate when  
18 you have a compulsory or a statutory license  
19 in effect? In other words, I mean there really  
20 are -- having the license, say a Section 115  
21 in effect already changes sort of the playing  
22 field, if you will, or creates -- I think

1 someone quoted -- actually it was the CRB who  
2 called it the ghost in the attic. You know,  
3 even though no one actually or few people  
4 actually use the literal compulsory license,  
5 it kind of serves as a ceiling on the rates.  
6 So when you enter into a proceeding the  
7 question is -- and this gets into benchmarks  
8 and evidence and what you can look at, I mean  
9 what do people see as the best way to get to  
10 the fairest rate in terms of what a rate  
11 setting body should be looking at? I mean  
12 sometimes you see decisions that are fairly  
13 constrained in terms of the consideration of  
14 benchmarks. I think Lee may have suggested  
15 that -- or I can't remember who suggested that  
16 courts should cast the net more broadly or  
17 widely to look at other actual marketplace  
18 rates. So I'm curious to know whether people  
19 have thoughts sort of in terms of what the  
20 basic approach should be if you're trying to  
21 set a rate where there is a statutory license  
22 in effect. Mr. Marks.

1                   MR. MARKS: I think that you have  
2                   to look at marketplace agreements, just as the  
3                   CRB has been doing, and find the market that  
4                   you believe is closest to -- if there are none  
5                   that exist under the compulsory licences, and  
6                   even if there were because of things that you  
7                   were just saying about they're obviously  
8                   influenced by the fact that there is a  
9                   license, you have to look at something outside  
10                  of it that's close. And I think -- you know,  
11                  we've heard a lot today about, oh, well, let's  
12                  throw interactive in with noninteractive, it's  
13                  not that different, let's just have them all  
14                  together. And it's been the interactive  
15                  marketplace that the CRB's been looking at.  
16                  So I would hazard to say that if there's  
17                  really not that much difference between those,  
18                  and those are really the closest markets, and  
19                  that's what the CRB's been looking at in the  
20                  114 proceedings, it's probably the right thing  
21                  that they've been doing in that regard. I  
22                  don't know of other markets that would be

1 closer given that those are companies that are  
2 similar in nature.

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

6 MR. MARKS: Right.

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

10 MR. MARKS: Right.

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

21 MR. MARKS: I'll just make a quick  
22 note to finish this.

1 MS. CHARLESWORTH: Yeah, yeah, no,  
2 no. I wasn't trying to exclude you, I just --

3 MR. MARKS: No, no.

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

6 MR. MARKS: I mean 115 is a weird  
7 animal. Right? Because nobody really uses the  
8 115 license. I mean they're all individual  
9 licenses that are issued.

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

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

19 MS. CHARLESWORTH: Yes.

20 MR. MARKS: So if there was  
21 evidence that certain songs or there was a  
22 market that 50 cents instead of nine, that

1 evidence presumably would come into the  
2 proceeding or be introduced. But the fact of  
3 the matter is that the first use, which is a  
4 free market rate, is generally done at the  
5 same rate at the 9.1 cents. So is there some  
6 influence there? Maybe. But it is a free  
7 market right, and that's the rate that's  
8 negotiated at.

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

11 MS. SCHAFFER: Sure. To go back  
12 slightly, and Lee was talking about should  
13 there be a set rate. As I said before, I  
14 think there should be a fair market rate for  
15 everyone and across the board. And I think we  
16 see the negative impact of the 801(b) standard  
17 in looking at the current statutory license  
18 and the fact that if you look at inflation  
19 rates we should be around 40 or 50 percent at  
20 this point in time if you look at where it  
21 started at 2 cents in 1909. And so I think in  
22 getting to your question about what do you

1 look at to set a fair market rate, obviously  
2 we're at the perspective that it's hard to do  
3 that, which is why we'd like to get rid of  
4 115. But if you're keeping it, I think  
5 inflation rates are one of the things that you  
6 have to look at, the government inflation  
7 rates. I think that you have to consider --  
8 Mr. Marks made the comment of a first use  
9 license and what -- that no one is paying any  
10 more than 9.1 cents for that first use anyway.  
11 That may be true, but then I think you also  
12 have to look at the recording agreement and  
13 the fact that many recording artists at least  
14 co-write some of their first songs and they're  
15 bound by compulsory -- not compulsory but by  
16 a controlled composition clause in their 254  
17 record deals. And so it's all being tied up  
18 in this culture that the statutory rate is  
19 being set, even if you could negotiate a  
20 higher rate. So I think those type of just  
21 practical marketplace transactions are  
22 important to consider in looking at where

1 current rates are. But then I think you also  
2 have to look at other private deals that have  
3 taken place, even if they're not in this  
4 specific context. Looking at the  
5 synchronization deals that take place and the  
6 fact that frequently they are split 50/50.  
7 Looking at the deals that we mentioned before,  
8 through the NMPA, 3,000 music publishers did  
9 with YouTube and how were they able to set  
10 market rates and what seemed fair. And being  
11 allowed to compare the rates for musical  
12 compositions with what sound recordings are  
13 getting for those same types of services. I  
14 think all of those things have to be brought  
15 into consideration when trying to determine  
16 what is a fair rate for collective use --

17 MS. CHARLESWORTH: Okay. Mr.  
18 Knife, and then Mr. Johnson.

19 MR. KNIFE: Yeah, I just wanted to  
20 say a couple of things. The first one is I  
21 think it's interesting, you know, your  
22 original question was that there's this kind

1 of philosophical conundrum about the fact that  
2 we're trying to set a market rate within a  
3 market that never actually existed because it  
4 was created under a statute that said please  
5 apply market rate. And as Mr. Oxenford  
6 pointed out, in Section 114 it's very, very  
7 early days there. I don't think you have a  
8 marketplace that has settled out in terms of  
9 webcasting. You know, as Mr. Marks pointed  
10 out with some chagrin, there's been a lot of  
11 legislative activity regarding -- you know,  
12 surrounding the rates that have come out of  
13 the last two proceedings. It's a very  
14 tumultuous area. And I think at the very  
15 least we could get some guidance from looking  
16 at the distinction between the 115 process and  
17 the 114 process. Right? I think I  
18 participated in the first 115 process that had  
19 occurred in I think it was 27 years about five  
20 years ago or six years ago. Right? So you had  
21 a marketplace there that even though you had  
22 a statutory rate the marketplace was for half

1 a century, right, or a quarter of a century  
2 was taking care of itself. Right? There were  
3 rates that were being set. And indeed  
4 ultimately when enough of my member companies  
5 influences. Right? When the world changed  
6 enough and became digital enough that  
7 everybody saw fit to maybe, as Steve said  
8 before, kind of roll the dice again, the rates  
9 they came up with were pretty close to the  
10 voluntarily negotiated rates in the preceding  
11 period, which did not have a proceeding.  
12 Right? It was just the rate setting period  
13 wherein everybody voluntarily agreed. And  
14 again I think that's at least instructive and  
15 informative that on some level the rate  
16 setting body should be looking at the  
17 marketplace. And hopefully -- I'm not sure  
18 about how this could happen, but to allow  
19 almost in effect a little breathing room, to  
20 allow that marketplace to kind of settle out  
21 on its own outside the context of the rate  
22 setting proceeding itself. And I think the

1 way to do that or at least one way to move  
2 towards doing that is again to let those rate  
3 setting bodies, like again in particular  
4 talking about 114, let them look at as many  
5 pieces of evidence as possible. Let them look  
6 at marketplace deals both for interactive  
7 streaming and noninteractive streaming, let  
8 them look at everything that could possibly  
9 inform them, and direct them to take into  
10 account all of those considerations and all of  
11 those pieces of evidence, and to try to set  
12 their rate. And hopefully under Section 114  
13 we'll get into kind of a smooth running like  
14 we have with 115 now where it's just every  
15 once in a while when there's a new  
16 technological development the parties that  
17 have a stake in it say, well, this might be  
18 new enough and important enough for us to kind  
19 of try to get a level set again.

20 MS. CHARLESWORTH: Okay.  
21 Interesting perspective. Mr. Johnson. And  
22 we have only a couple minutes, but I want to

1 get to you and Mr. Kass.

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

5 MS. CHARLESWORTH: Thank you.  
6 Thank you for the larger chart, Mr. Johnson.

7 MR. JOHNSON: My pleasure. You'll  
8 note that it's, you know, it's interesting  
9 that the 2 cents stayed there for 68 years but  
10 9.1 cents has been there since 2006. We're  
11 going on 10 years of just keeping it right  
12 here. You know, it doesn't go up 13 cents,  
13 and I think that's ridiculous. But I think  
14 the way to solve this, if you want to stay  
15 within the CRB system, is -- you know, I'm in  
16 this new rate proceeding here. And if you  
17 think this works? This is the first two months  
18 of everybody fighting over, "oh, somebody got  
19 the Apple license." Are you kidding me? That's  
20 ridiculous, you know. And now we're on email,  
21 thank God, or it would be this high. Okay? So  
22 this is the problem here also. But the other

1     problem is that what Mr. Oxenford talked  
2     about we got to look at the business  
3     realities. And we're always concerned about  
4     the business realities and the model of  
5     Pandora. We're never ever concerned about the  
6     business realities of a basic music publisher.  
7     And then Pandora's thing is "go out and tour."  
8     Well, I don't know about any of you, 260 but  
9     I don't want to see my music publisher out on  
10    tour. But he's in the same boat as I am. But  
11    what if you're supposed to be just a  
12    songwriter? "Oh, you're a songwriter, you go  
13    out on tour." Well, what if I don't go out and  
14    tour? You know, I'm a songwriter. That's what  
15    I do. And just because I'm an artist also,  
16    it's all bundled together in these phony words  
17    - you're a "musician," you're a "rights-  
18    holder," all this other stuff. It's not about  
19    paying that individual songwriter. And  
20    there's always excuses, go tour, go tour. I'm  
21    so sick of streamers telling me to go tour.  
22    But the real solution is, like in the CRB

1 process, and this is important, because we're  
2 way because we just went through a  
3 "voluntary negotiation" period. Well, it's  
4 not really a voluntary negotiation period.  
5 And it's "a willing buyer and a willing  
6 seller," and a "hypothetical marketplace" in  
7 a "fair market" and a "free market" "value."  
8 And it's just like it's Alice in Wonderland,  
9 all these words inside a three-judge federal  
10 price fixing central economic planning panel.  
11 And you're going, "but that's an insult to the  
12 free market?" So, my point is: the real easy  
13 solution is if you're Pandora and I'm  
14 Universal or I'm ASCAP or I'm George, I say,  
15 "here's what I want, here's my sound recording  
16 side, right here." It's real simple. Here's  
17 all the streamers, Pandora, Google. Here's my  
18 song. I thought of it, it's my idea, it's my  
19 property. This is the songwriter publisher  
20 split, your PA, this is the whole song, and  
21 here's your sound recording that's owned by  
22 the artist and master with the record label.

1 And we give you the song, the streamer gives  
2 it to the customer, the customer gives them  
3 the money, the money comes back to us. But  
4 what we have is this, which is fine for a lot  
5 of people, and that's great. There you go.

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

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

12 MS. CHARLESWORTH: They are  
13 colorful.

14 MR. JOHNSON: I'll pass it around.  
15 But they're actually pretty good charts, I  
16 have to say. This is A to B and C to D -  
17 current collective licensing. So, the song  
18 side is the PA, and I have the same thing on  
19 my album right here as an independent. So my  
20 PA, my SR, goes down here to Sirius. I  
21 include Sirius and Clear Channel because I  
22 consider them the same, they're just another

1 licensee. So, but let's just say it goes to  
2 Pandora, just streamers, it goes to the  
3 customer right here, and then the money goes  
4 over to ASCAP and BMI. But it starts out at  
5 .0012 or .00012 by the CRB or whoever sets the  
6 rate. By the time BMI and ASCAP get done with  
7 it it's .00000012, six zeroes. And then you  
8 go over here, the streamer gets the money for  
9 the sound recording. It goes to  
10 SoundExchange, and it's split, which is fine.  
11 But this is just nonsense when you think about  
12 the "voluntary negotiation" period, the  
13 "willing buyer/willing seller," there are none  
14 anymore. There are no willing sellers,  
15 willing buyers because nobody wants to pay for  
16 my music, and I don't want to sell it at  
17 .00000012.

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

22 MR. KASS: In answer to your

1 original question is it possible, I think at  
2 least from the intercollegiate broadcasting  
3 point of view is absolutely yes. But you need  
4 to segment it, you need to look at what the  
5 use is, and you need to put a value and a cost  
6 on each individual use and each individual  
7 segment of the market. For instance,  
8 webcasting might be segmented down differently  
9 from the public use to the commercial use.  
10 But the answer to your question is yes, you  
11 definitely can develop rates.

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

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

19 Session 5: Data Standards

20 MR. DAMLE: So the topic for this  
21 panel is data standards, and I think of what  
22 we're interested in is the current state of

1 industry music data. Obviously it's a big  
2 topic. It's a way for people to know but to  
3 be able to identify what music is being played  
4 and used and also a way of figuring out who  
5 owns the music. So data is obviously a very  
6 big issue right now. And so I think before I  
7 ask my -- start with some questions I think we  
8 have a few new panel members. So Susan, why  
9 don't we start with you. You can introduce  
10 yourself.

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

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

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

21 MR. DAMLE: Great. Ms. Buresh.

22 MS. BURESH: Hi. I'm Heather

1 Buresh. I run the Music Row Administrators  
2 Group and I run Big Loud Bucks, which is  
3 affiliated with Big Loud Shirt industry, one  
4 of the biggest independent publishing  
5 companies and administration companies. Well,  
6 we're a small admin company, but I do all the  
7 licensing, copyright registration,  
8 distribution protect, everything for a lot of  
9 -- very renowned songwriters and artists as  
10 well.

11 MR. DAMLE: Great. So the  
12 question of data really breaks down, as I  
13 suggested, into two sort of, as I see it, two  
14 sort of issues. One is identifying the music  
15 and one is figuring out who owns the music.  
16 So maybe we'll start with the first issue,  
17 which is, is there an efficient method for  
18 matching sound recording tracks when they're  
19 played to underlying musical works, for  
20 matching sound recordings to figure out how --  
21 what is being played by the services. What  
22 are the ways that music -- the use of music is

1       being identified today? Are there improvements  
2       that are in the works? What is sort of the  
3       goal in ending up with efficient data going  
4       forward? Where are things headed right now?  
5       Mr. Johnson?

6                       MR. JOHNSON: Currently I think  
7       the most efficient tracking obviously is  
8       Nielsen BDS, as far as tracking terrestrial  
9       radio. And, of course, they pick it up in two  
10      to 15 seconds -- any play on any stations that  
11      they track. But I also think part of your  
12      question is should we have a database for all  
13      copyrights that contain the sound recording  
14      owner, various publishers splits, and the  
15      various songwriter splits, and I think that's  
16      a great idea. Actually I would argue it's a  
17      constitutional function possibly, you know.  
18      So I think that the Copyright Office itself  
19      should have a, through the registration  
20      process and other methods, compiled, like  
21      Gracenote does or those kind of things, all  
22      the different songs. And I really think that

1 -- so I like that idea. And it's the  
2 licensees, for example, or whatever can look  
3 and say, oh, I can license this person's  
4 catalog or these songs or, you know, certain  
5 artists or whatever. So I think it's a great  
6 idea. And I also think that in general the  
7 computer has kind of ruined the music  
8 industry. Primarily because you can copy a  
9 WAV file and you have the master recording,  
10 send it all over the world. And obviously  
11 through streaming in the internet and that  
12 kind of thing, the value of a song has just  
13 tanked. And so I think through 100 percent  
14 transparency for the PROs, and I'm actually  
15 serious about this, because BMI has always --  
16 and ASCAP, BMI's got rid of the process, but  
17 two week samples. And they only -- they have  
18 200 reporting stations, they take two weeks  
19 out of each three month quarter, and meanwhile  
20 they've had this computer system to track  
21 thousands of other secondary radio stations.  
22 So it's like they're committing piracy and

1 copyright fraud, frankly, and they're the ones  
2 who are supposed to be protecting it. And  
3 ASCAP still two week samples, and they both  
4 buy data. BMI buys data from Mediabase. They  
5 cover 2200 stations, about 2,000 of those are  
6 secondary stations and 200 of the 40 stations,  
7 which report to the charts. And so it's very  
8 important, you know. And so ASCAP buys 1700  
9 stations, 200 reporting, from Nielsen BDS, and  
10 they don't pay on the other 1500 stations  
11 where they have 100 percent data. So my whole  
12 thing is that -- and I've actually talked to  
13 Nielsen about this -- is that really the  
14 royalty collection process should be a simple  
15 computer program almost. And ASCAP could have  
16 theirs, SoundExchange could have theirs, BMI,  
17 and new start-up. But you have the  
18 performance, you have the mechanical side that  
19 was ignored or below the minimum. Then you  
20 have the performer, the Aretha royalty I call  
21 it to pay Aretha Franklin for her singing, and  
22 plus you have the songwriter and publisher,

1 and then you have the sound recorder. So you  
2 have them already bundled together, they're on  
3 the same songs. You track your database  
4 through the Copyright Office, I think that's  
5 great. And I think that the PROs and all of  
6 them competing in the free market could  
7 collect the best of all three or four of those  
8 copyrights at the same time.

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

18 MS. SCHAFFER: Sure. I definitely  
19 think this is a set of discussions that we've  
20 had, I know, in Nashville collectively,  
21 recently about some of these topics. And I  
22 think that in looking at the ISWC, if I'm

1 saying that correctly, code would be helpful  
2 for identifying musical works and tying that  
3 in with the recordation system. 271 I know  
4 that comments on recordation systems have been  
5 asked for and I know that ASCAP filed comments  
6 suggesting this as a possible way to update  
7 the recordation system. And I think that that  
8 really ties into our discussion about data in  
9 the context as well in providing a more easily  
10 identifiable way, an easier way to identify  
11 musical compositions that are recorded within  
12 the United States. So you could use that to  
13 create a database, potentially an independent  
14 database if the music industry comes together  
15 to form, and to be able to link that code with  
16 the recording code. And I think right now the  
17 problem we have is, if I understand the way  
18 that they're assigned currently, is ASCAP is  
19 the designated agent to assign the initial  
20 code. The problem is, if you're not an ASCAP  
21 member, most people aren't getting that code.  
22 And so you have some musical compositions that

1 have the code, some that don't. And I think  
2 that is an essential step in this process that  
3 the Copyright Office could play a very  
4 important role in, helping us to streamline  
5 how we identify data and connect the musical  
6 composition with the sound recordings. And I  
7 think that that's definitely a good place to  
8 start.

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

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

16 MR. COLEMAN: I was under the  
17 impression that SUIISA holds the master  
18 database.

19 MS. SCHAFFER: Correct. But the  
20 international body holds that, but that for  
21 the United States that ASCAP is the entity who  
22 is obtaining those codes. Like I said, I'm

1 not sure that that's the exact, precise  
2 process but -- and Ms. Buresh can probably  
3 speak to this more because I know that she's  
4 looked into what the experience statements say  
5 and where this comes up.

6 MS. BURESH: Dealing with my  
7 foreign publishers from the admin.  
8 perspective, the ISWC code is that individual  
9 unique code that should be assigned to that  
10 musical composition, not the sound recording.  
11 The musical composition has a value of its  
12 own, and it creates value as it gets recorded  
13 more and more and more. You sell a catalog  
14 based on one song sometimes with the  
15 publishers. You can value your whole catalog  
16 based on that one song. So if the ISWC code  
17 is accurately assigned to that musical  
18 composition, I don't see how any -- how you  
19 could get that mixed up with that's the wrong  
20 song performed by this person or these  
21 songwriters aren't on this song. If I'm  
22 getting paid for the same song title but it's

1 not my song from a lot of places, the  
2 compulsory license -- we get paid all the time  
3 from sources that are -- for songs that are  
4 not ours. So to have that administration  
5 burden on us, we don't have the time and the  
6 resources to pay them back their .02 cents  
7 that came in on a monthly statement from one  
8 of the compulsory licensing agents right now.  
9 It's administratively burdening.

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

14 MS. BURESH: Correct. And this is  
15 where -- because I also register the  
16 copyrights with the Copyright Office, it's  
17 where I think the Copyright Office should be  
18 the one who is, well, managing the ISWC code  
19 instead of -- or is the agency in the United  
20 States instead of ASCAP. Because I mean you  
21 look on ASCAP, you can see the ISWC code once  
22 its assigned when someone has registered the

1 song. If you're a BMI writer there is no ISWC  
2 code assigned to it. There's three BMI  
3 writers on a song. It's not linked to an  
4 ASCAP registration so there's no ISWC code.  
5 So foreign, our sub publishers or if we're  
6 doing a direct, however publishers are doing  
7 it, they go by the ISWC code. PRS is how we  
8 can track those songs. And I mean music is a  
9 huge export for the United States. We need to  
10 be able to track it worldwide, not just in the  
11 United States. But if our office can be the  
12 regulator of that, I think it would be a great  
13 idea. And furthermore, because we have to  
14 register the copyright with the Copyright  
15 Office or register the musical composition, so  
16 registering for a Form PA, I have to do it for  
17 all the songs that we -- that someone has  
18 written that's published. Now, you can  
19 register a nonpublished work, you can register  
20 a published work, you can register a sound  
21 recording. In some cases right now you can  
22 register a sound recording and a published

1 work at the same time. Which creates a lot of  
2 confusion, mass confusion when you're going to  
3 court because there was an infringement, which  
4 your song has to be filed with the Copyright  
5 Office in order to go to court anyway. Then  
6 I'm finding out in our case, from the  
7 administrative side, two songs in our catalog  
8 we have had to defend these settlements or  
9 these lawsuits that came against us, they were  
10 thrown out in summary judgment, we did not get  
11 the attorney fees that we were supposed to get  
12 per our registration with the Copyright  
13 Office. That's the perk of registering that  
14 song, and we didn't even get it. And we're --  
15 those songs were very lucrative Tim McGraw  
16 songs.

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

19 MS. BURESH: Yes. They didn't  
20 even look at it. So why am I registering a  
21 copyright with the Office. I'm wasting a lot  
22 of time doing it if I'm not getting -- even

1 reap any of the benefits of what the laws say  
2 I'm supposed to reap. And that's where I  
3 think if the ISWC code and the data is  
4 maintained within the Copyright Office  
5 correctly and there's not multiple song titles  
6 of "Live Like You Were Dying," you could find  
7 15 of those on there, and it's frustrating.  
8 Especially as a lawyer you're trying to do  
9 your due diligence to prepare for your case  
10 what song is what, who wrote what, who are the  
11 claimant on it. It's not linked to an ISWC  
12 code. You have 15 PA numbers behind it. And  
13 I just don't think it's an effective way of  
14 organizing our musical compositions. And I  
15 can continue.

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

19 MR. GOTTLIEB: You know, there's  
20 part of this, that discussion, that is  
21 primarily addressing the retroactive  
22 application of identifiers to existing works

1 that's creating a lot of use problems. Going  
2 forward we have probably more viable solutions  
3 of how to address these. But much of this  
4 discussion even so far today has been how to  
5 sort of put a hundred pounds into a 50 pound  
6 bag in terms of what we're doing with the  
7 industry. Because there is not a lot of  
8 incentive to retroactively apply unique  
9 identifiers to these works. A lot of the  
10 discussion at the DDEX Consortiums surrounds  
11 the application of a GRid, a Global Release  
12 Identifier, which I would best describe as a  
13 unit of publication. And it's my suggestion  
14 that we take a serious look at the Copyright  
15 Office administering a GRid, G-R-I-D. I know  
16 the global repertoire database, there's huge  
17 resources going into it now to assemble it.  
18 I don't know what the status of it is now.  
19 But I think that by anyone's assessment the  
20 standard by which we must look at identifiers  
21 and metadata assignments. Is can you  
22 establish through a database query, the

1 participation, of the lowliest composer or  
2 musician or participant in perhaps a sound  
3 recording (or a music work composition) and  
4 can you query that all the way up to the  
5 ultimate licensee or end user to perform an  
6 audit trail all the way through it. And if  
7 you can assemble a query, a database query of  
8 that chain of title all the way through, we  
9 have a successful unique identifier system.  
10 And it's my position that although there is  
11 not a lot of incentive for these big catalog  
12 holders to apply retroactively these GRids,  
13 that that should be the mandate of the  
14 Copyright Office. And that public  
15 notification and perfection, legal perfection  
16 of a GRid is the best way to straighten out  
17 the system prospectively and to apply it  
18 retroactively.

19 MR. DAMLE: I have two questions,  
20 one technical, one broader. So the technical  
21 question is if you could explain sort of for  
22 the record and for us the sort of differences

1 between a GRid and a ISWC, what --

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

6 MR. DAMLE: Got it.

7 MR. GOTTLIEB: -- would be the  
8 ISWC or an ISRC associated with that ISWC or  
9 any of the approved data standards that are  
10 being developed under the auspices of these  
11 various organizations. But it is the unit of  
12 publication that everybody is seeking. What  
13 is -- you know, we've got artists that are  
14 releasing 17 different versions of the same  
15 sound recording with different musicians on  
16 each one. You know, you've got -- these are  
17 not one-to-one identifiers. Okay? These are  
18 one-to-many identifiers or many-to-many  
19 identifiers. So what I'm suggesting here is  
20 that if we can define what the unit of  
21 publication is for purposes of exploitation,  
22 for purposes of tracking, for purposes of

1 functioning in the business, that that is an  
2 appropriate use of government authority in  
3 this case, and it would be an easy way to  
4 apply these standards both prospectively and  
5 retroactively.

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

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

13 MR. DAMLE: Sure.

14 MS. CHERTKOF: -- getting into  
15 this. And on the sound recording side, the  
16 equivalent to the ISWC is the ISRC, and  
17 there's a couple issues with that. And you  
18 were just sort of touching on this, which is  
19 the 17 versions of the same recording. And  
20 it's not just necessarily different recordings  
21 but then you have a radio version that's five  
22 minutes long and you have a dance club version

1 that's 10 minutes long and so on and so forth.  
2 And as I understand it, each of those  
3 different versions gets a different ISRC code.  
4 And so you have -- it's one song, so the  
5 underlying song is the same, and the artist is  
6 the same. And many of them might not be all  
7 that distinguishable to, you know, a lay  
8 person but the difference between the versions  
9 are. So you have all these different versions  
10 of a recording of an underlying song that all  
11 have different ISRC numbers. And some of them  
12 get made further on down the road and aren't  
13 even made at the time of release. And so when  
14 you start looking at questions like should  
15 sound recording copyright owners be required  
16 to include ISRC numbers when they register,  
17 some of them don't even exist at the time of  
18 registration. And so you certainly can't say  
19 they all have to be there or somehow you're  
20 dinged for something because it didn't exist  
21 at the time of registration. And beyond that  
22 our members feel very strongly that there's a

1 lot of just legwork that's involved in  
2 tracking all this, and that making ISRC  
3 numbers mandatory in either registration or  
4 recordation documents would be burdensome.  
5 And that this is something that sort of the  
6 Office should be following the industry and  
7 not making the industry follow the Office.  
8 And on the ISWC front, my understanding, and  
9 it's already sort of been said, is that  
10 they're not widely used. Record labels would  
11 love them to be more widely used. Because it  
12 makes it possible in their system to correctly  
13 link a recording to one of those versions of  
14 -- what was the name of the song you gave?

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

17 MS. CHERTKOF: Right. So if  
18 there's 16 versions of the same song, if you  
19 have an ISWC code you can link it correctly.  
20 But the last thing I wanted to say is where I  
21 think the data is most lacking in terms of any  
22 kind of existing publicly available database

1 is databases that match sound recordings to  
2 musical works. So there are sound recording  
3 databases and I assume there's musical work  
4 databases, but the matching is where it's very  
5 complicated. And then you have the fact that  
6 on the musical work side catalogs change hands  
7 very frequently. And so keeping the matched  
8 data up-to-date is a very cumbersome job.

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

13 MS. CHERTKOF: Right, right, the  
14 ownership.

15 MR. DAMLE: Right, right.

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

18 MR. DAMLE: Right, exactly.

19 MS. CHERTKOF: But you need -- for  
20 each owner of a particular share, you need to  
21 -- if that owner changes, you need to update  
22 the owner name and the contact information and

1 all that sort of thing. And I don't even  
2 know, how does ISWC account for different sub  
3 owners of a single work? I don't -- do you  
4 know?

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

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

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

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

19 MR. GOTTLIEB: Yes.

20 MS. BURESH: Yes.

21 MS. CHERTKOF: Yes, I believe they  
22 are. Well, I'm pretty certain that iTunes

1 will not put anything into its store unless it  
2 has an ISRC code, which is why ISRC  
3 registrations are way up. Because in order to  
4 get into the iTunes ecosystem, you have to  
5 have an ISRC code.

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

10 MR. DAMLE: Okay.

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

20 MS. CHARLESWORTH: So the solution  
21 would be just to take a license from the  
22 record labels, and then you'll get their ISRC

1 codes. That will solve a lot of problems all  
2 at once. That's a joke for the record. But  
3 the ISWC, I assume that is not generally  
4 required up front by, say, streaming services  
5 in people's experience.

6 MS. BURESH: No.

7 MS. CHARLESWORTH: Okay.

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

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

1 record labels, they have a tracking system.  
2 So when they go to register the SR, they can  
3 do a little dropdown box of which song is  
4 actually on this product that you're  
5 registering right now that rings to that ISWC  
6 code that that publisher or administrator had  
7 submitted to you upon your request.

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

19 MS. BURESH: Correct.

20 MS. CHARLESWORTH: Okay.

21 MR. DAMLE: I think Scott, he's  
22 been waiting very patiently over there.

1 MR. SELLWOOD: If I understood  
2 your first question right, it was you were  
3 drawing a distinction between ownership  
4 information and the linking of the sound  
5 recording to the composition.

6 MR. DAMLE: Right.

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

9 MR. DAMLE: Right.

10 MR. SELLWOOD: I can tell you what  
11 we do. I don't -- we don't pretend it's the  
12 best way. But we collect from our label  
13 partners ISRCs and as much information as they  
14 have about their releases. We collect from  
15 our publishing partners ISWCs, titles, splits,  
16 as much information as they have. And we  
17 really rely on the ISRC as a way to link a  
18 sound recording to a composition. So for us  
19 the kind of holy grail is for a publisher to  
20 be able to tell us, here's an ISRC or here are  
21 many ISRCs that embody my composition. I know  
22 that from my royalty statements or from my

1 relationships with the link. So the ISRC is  
2 the best thing for us. For reasons that other  
3 people could comment on more and some people  
4 have talked about, the ISRC is not always a  
5 unique identifier, even though it's supposed  
6 to be. ISWC is certainly not always a unique  
7 identifier. If you go to the SUIISA database  
8 and search for a particular ISWC, you're  
9 likely to find multiple compositions under  
10 that ISWC. So it's a problem.

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

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

22 MS. CHARLESWORTH: That would be

1 the same song.

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

6 MS. CHARLESWORTH: But I thought -  
7 -

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

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

13 MR. SELLWOOD: That's all right.

14 MS. BURESH: ISRC can.

15 MS. CHARLESWORTH: I thought you  
16 said ISWC.

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

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

22 MR. GOTTLIEB: Well --

1 MALE VOICE: You can't copyright a song --

2 MR. GOTTLIEB: -- you know,

3 there's been discussion about this data

4 mismatch problem in the DDEX Consortium

5 because it is a serious problem with all the

6 DSRs and the labels. Getting consistent

7 standards that would create a unique

8 identifier is an ongoing effort that requires

9 multiple iterations of review and updating of

10 the standard. So it should not come as any

11 surprise to anybody with ten dollar an hour or

12 less interns typing data into databases that

13 we have a lot of data problems throughout the

14 system. The real question is I think any

15 database engineer -- and this is really a

16 massive database engineering architecture

17 problem of dealing with metadata -- will tell

18 you that, you know, everybody's just got to

19 get together and agree on what the standard

20 is. And the great thing about standards, the

21 big joke is, there are so many of them. And

22 these mismatching problems will start to cull

1 and get rid of themselves as long as we get  
2 everybody centered on one particular standard.  
3 And I would propose -- I would put forward  
4 that the Digital Data Exchange Consortium has  
5 done about six or seven years worth of work  
6 that is now being adopted by the three major  
7 labels. Many of the DSRs are adopting the  
8 standard. It is a massive undertaking, and it  
9 is the subject of three or four preliminary  
10 sessions where there's 60 or 70 people every  
11 time coming to refine it. So there is serious  
12 efforts, and the Global Release -- the global  
13 repertoire database, if it is ultimately  
14 successful, will be a place we can all ping  
15 this. But our creators need ISNIs, they all  
16 need their unique identifiers. Our  
17 aggregators at every step at the level need  
18 their unique identifiers. And as we go up the  
19 chain to the vendors and to the ultimate users  
20 we have to perfect these data structures. And  
21 that's how we will ultimately solve these  
22 problems, it will be through the very

1 technology that has brought us to our knees.

2 MR. DAMLE: Mr. Coleman, I  
3 apologize. I didn't see your sign up before,  
4 so I'll be calling you next.

5 MR. COLEMAN: I think there's a  
6 way possibly to merge the Section 115  
7 discussion with the data discussion, which is  
8 -- first of all, I don't think that the  
9 Copyright Office needs to invest in its own  
10 database. But I do think that part of the  
11 statutory requirements for getting a license  
12 to distribute a sound recording digitally  
13 could be to file a link between the work and  
14 the recording. That would be very, very  
15 helpful. And to create an incentive, as Mr.  
16 Gottlieb says, SoundExchange (and hopefully  
17 competing collective rights organizations for  
18 digital performance rights for master  
19 recording owners) would not pay out unless  
20 that link were there. So it would be an -- so  
21 and then back to the idea of the Copyright  
22 Office not needing a database. The PRO

1 databases, because of their historical  
2 mandate, are very good. They do have problems  
3 of multiple work titles that need to be merged  
4 occasionally, but they're constantly working  
5 to make that data correct. And for  
6 publishers, that's their first stop. Because  
7 despite the recent Sturm und Drang with major  
8 publishers withdrawing certain kinds of  
9 rights, it's still the primary way that the  
10 publishers get paid on performing rights. So  
11 they're excellent databases, and those could  
12 be used as the primary repositories for this  
13 kind of linkage to the work title.

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

1 to the broader public and to services?

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

4 MR. DAMLE: Sure.

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

18 MR. DAMLE: Mr. Gottlieb.

19 MR. GOTTLIEB: Well, I think  
20 there's a overarching question as well about  
21 what does the rights holder -- what right does  
22 297 the rights holder have to know where his

1 work is. And is there a -- when you have a  
2 perfected copyright in the Copyright Office do  
3 you have a right to know who's using it. Is  
4 that a breach of the Fourth Amendment that I  
5 can't know who's using my work? And similarly  
6 do we have the right to publish our  
7 compositions and whatever intellectual  
8 property we want without using copyright, or  
9 do we have common law copyright? But I think  
10 that people who have to make their living in  
11 this industry we have to utilize the benefits  
12 of government interaction. And in doing that  
13 they have to have a public record. And the  
14 reason for the public record is to be able to  
15 enforce these rights. And I think the only  
16 question that really ultimately comes up, and  
17 to answer your question, is, okay, if I'm  
18 willing to disclose everything, can I find out  
19 from her that she's used it? And those are  
20 some pretty fundamental issues in terms of  
21 disclosures, because a lot of people don't  
22 like to disclose their ownership information.

1 But I think the more important question is do  
2 they have to disclose (cough) information in  
3 the exploitation --

4 MR. DAMLE: Ms. Schaffer.

5 MS. SCHAFFER: One thing going  
6 back to the use of any kind of unique  
7 identifier, whether it's the ISWC code or the  
8 ISNI code, which I believe is what you  
9 referred to, would be that some type of unique  
10 identifier for in particular a sound  
11 recording, the ones we talked about today,  
12 there are frequently multiple co-owners of  
13 that composition that could help. And I think  
14 this becomes a technical matter, a matter of  
15 developing enough technology that I have no  
16 doubt is available is we utilize it, is to  
17 cross-reference people's registration.  
18 Because a lot of times one of the things that  
19 we have happen is for one musical composition  
20 there may be six different registrations that  
21 all look a little difference. One may have a  
22 misspelling, one may add a co-owner.

1 Sometimes they don't all add up. And I think  
2 that by providing a unique, some type of  
3 unique identifier and when you go to submit a  
4 registration being able to run the different  
5 information that you have submitted, you  
6 submit the owners or you submit the date of  
7 creation, the date of publication, all that  
8 information, that it cross-references the  
9 system to be able to determine whether there's  
10 another registration that's very similar, that  
11 meets a certain number of points. So that  
12 maybe at that point notifications, emails are  
13 sent to the prior registrant, and a discussion  
14 can be had at that point as to are we talking  
15 about the same song, are we talking about  
16 different songs, and you can start to address  
17 it on the front end. Because I do think that  
18 the Copyright Office, while I don't think they  
19 should be required to maintain the ultimate  
20 database, is a good starting point and a good  
21 place to be able to provide that information  
22 and to streamline that process. Because then

1 I think you could take the information and  
2 ASCAP, BMI, and SESAC can use that information  
3 to help coordinate their own databases. And  
4 to answer one of your questions, a lot of that  
5 information is available on their web site if  
6 you just go and search their records that they  
7 have registered. You can find out a lot of  
8 the details on which song is registered with  
9 them, who the publishers are, what the contact  
10 information is. The problem is that not  
11 everything is in one location. And so I think  
12 using the Copyright Office maybe not as the  
13 central database for linking this information  
14 but using it as a tool so that we can  
15 streamline the information and identify the  
16 compositions from the sound recordings or  
17 provide the rest of the industry with at least  
18 a baseline from which we can start matching  
19 that information.

20 MR. DAMLE: Mr. Coleman.

21 MR. COLEMAN: To speak to what Ms.  
22 Schaffer is saying, I've been talking about

1     amplifying and increasing the mandate of the  
2     PROs.  And the PROs actually do already  
3     exactly what you just said.  As a publisher I  
4     receive emails every day saying the submission  
5     the PRO has received is similar to another  
6     submission, and we need to merge things.  
7     There's also a current project by ASCAP, BMI,  
8     and SOCAN in Canada to create one unified  
9     system for registration.  So from the  
10    publishing standpoint I think the PROs are  
11    well-situated to take care of exactly this  
12    kind of issue.  And on the Copyright Office,  
13    I would be afraid that if the Copyright Office  
14    got into the business of registration that  
15    there would be sort of a Berne Convention  
16    issue of whether that new database constituted  
17    the prima facie evidence of copyright as the  
18    registrations -- because we're not required  
19    under the Berne Convention to submit those.  
20    So I could see those turning into a Pandora's  
21    box that I think the Copyright Office probably  
22    wants to stay out of.

1 MR. DAMLE: Ms. Buresh.

2 MS. BURESH: That's why I think it  
3 gives incentive for publishers and songwriters  
4 to register their works if it's going to be  
5 assigned a unique and really a unique one, a  
6 unique code, so there's not multiple  
7 registration. People want to search for that  
8 one musical composition, figure out who they  
9 need to pay. If they can't find it on the  
10 Copyright Office -- and it's going to be a  
11 living library where you can go and make your  
12 revisions to it once there's a catalog  
13 purchase. Once somebody else -- if there's a  
14 co-ownership between this new publishing  
15 company. That kind of information could be  
16 public record unless somebody can argue that.  
17 I would like to have a public record where I  
18 can go and see this song was written by these  
19 people, this writer had this contribution  
20 share. I don't need to know the ownership of  
21 the publishing, I just need to know that that  
22 writer had 50 percent. Just dealing with sync

1 licensing people and anyone in the willing  
2 buyer/willing seller module that's licensing,  
3 they need to figure out who has that 4.17  
4 percent, who's administering that, who's  
5 collecting that. I don't think the Copyright  
6 Office needs to portray that on line, but  
7 that's 4.1 cents for this writer who has 25  
8 percent of the song. So if they cleared this  
9 amount over here but they need to clear that  
10 last remaining percentage, as long as they  
11 know it's for that writer, they can at least  
12 do the due diligence and do the research on  
13 their own to figure that out.

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

19 MR. GOTTLIEB: I wish I was a  
20 really good spokesman for them, because I'm  
21 not. But they have developed an electronic  
22 release notification standard. They have

1 developed a sales reporting standard. They  
2 have developed through collaboration with  
3 CMRRA a music works licensing standard, and  
4 that includes the choreographies that are  
5 needed to put those standards into play. But  
6 the concern that I have here, and really the  
7 thread of what I'm saying is is that as the  
8 industry, particularly the music industry  
9 progresses, the lines between the song  
10 composition and the sound recording are  
11 starting to blur. And the authors of sound  
12 recordings are arbitrarily being assigned as  
13 music work composition creators as well. And  
14 who is and who isn't, is starting to become  
15 very complicated and very cumbersome for  
16 administrators to deal with. And that is why  
17 I want to try to focus attention on this unit  
18 of publication concept may be a better way to  
19 look at things. Because the stakeholders and  
20 the participants are so varied in their  
21 descriptions and their nature. I mean what is  
22 a producer? Just that question as a piece of

1 rhetoric is a real problem. Is that a  
2 creator? Is that an engineer? And so  
3 assembling some kind of unit. So it uses this  
4 song composition with this ISRC, that's a  
5 unit. Can we assign that a global release  
6 identifier? The new version of it gets another  
7 release identifier. Some means by which  
8 people can do commerce and they can understand  
9 from the top down and from the bottom up what  
10 we're talking about. Because we're all  
11 talking about something different, and we're  
12 all registering something different. And I'm  
13 very pro DDEX because I know they are working  
14 on this problem. But as far as the Copyright  
15 Office is concerned they can't get involved in  
16 all that detail. They (the Copyright Office)  
17 and it seems to me that they are better  
18 capable of dealing with it on unit of  
19 publication standards.

20 MS. CHARLESWORTH: Can you just  
21 flesh out what you mean exactly by unit of  
22 publication?

1 MR. GOTTLIEB: I'm talking about  
2 what defines the publication.

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

7 MR. DAMLE: Like a release?

8 MR. GOTTLIEB: What comprises the  
9 release.

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

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

17 MS. CHARLESWORTH: So it's the  
18 product.

19 MR. GOTTLIEB: The product. Well,  
20 yes, but we use UPC codes in physical product,  
21 but we need one for digital product. And some  
22 of -- but then all of a sudden we write

1 another version of the same tune. Okay? And  
2 a very similar situation comes up, when you  
3 want to go track it -- because he played on  
4 the second version but he didn't play on the  
5 first version. But he's a stakeholder because  
6 he played the bass on it or something -- he  
7 wants to know how much money he got from his  
8 digital performance right all the way at RA  
9 royalties. He can't track through because  
10 he's got no way to find out what the unit of  
11 publication was, because he wasn't on the  
12 first version but he was on the second.

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

16 MR. GOTTLIEB: Well, it absolutely  
17 does. But it might be two different people  
18 putting it out. There's just -- the unit of  
19 publication as the standard would create a way  
20 to put together the bundle of rights and  
21 unbundle it too. And so when Kanye West wants  
22 to put 17 different versions of his same song

1 with 40 different musicians on it, each one of  
2 those 17 will get a different Grid and will be  
3 required to be perfected through the Copyright  
4 Office. That's what I'm suggesting.

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

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

21 MR. DAMLE: Sure.

22 MS. CHARLESWORTH: Although before

1 we move on, I mean my understanding of the  
2 DDEX, that is a messaging standard. Right?

3 MR. GOTTLIEB: Yep.

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

13 MR. GOTTLIEB: Are adopting it.

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

19 MR. GOTTLIEB: Yes.

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

22 MS. CHARLESWORTH: Right.

1 MS. BURESH: -- not a unique  
2 identifier.

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

6 MS. CHARLESWORTH: Apparently so.

7 MR. GOTTLIEB: But there are  
8 labels that are not because the retroactive  
9 application of it is so costly and have so few  
10 benefits to owners, existing owners of  
11 existing works. Because to track everything  
12 down and to assign it unique identifiers is  
13 not really worth it in the long tail. It only  
14 makes sense for the high value stuff. So, you  
15 know, the DDEX is a huge message. The music  
16 works licensing standard printed out is like  
17 600 pages. It's a lot of stuff. But it is  
18 the unique identifier system which is the  
19 value.

20 MS. CHERTKOF: Okay. So on the  
21 topic of the database I just wanted to make  
22 sure that it's not out there. So this is

1 something that the record industry has thought  
2 about a lot and we very much think that there  
3 needs to be some sort of authoritative  
4 database that has sound recordings and musical  
5 works in them, and that they're mapped to each  
6 other. And that would facilitate many of the  
7 licensing issues that we've been talking about  
8 here today. And I think the real question is  
9 how do we get this to happen when it's easier  
10 said than done. And I just wanted to talk for  
11 a minute or so about just who should do it and  
12 where it should reside. But just listening to  
13 all these comments, even if you figure that  
14 out then whoever's going to do it and wherever  
15 it's going to reside, there's all kinds of  
16 complicated questions about how you're going  
17 to do it. But our thought is that it should  
18 be a private database and it should be done in  
19 the marketplace through a consortium that  
20 would include major labels and independent  
21 labels, you know, big and small, and major  
22 publishers and independent publishers. And it

1 should be done as a marketplace initiative  
2 where it's not being run by the government or  
3 housed by the government. And for one thing  
4 we just think it makes it more nimble. I mean  
5 the whole digital marketplace for music is  
6 changing so quickly, and business models  
7 change quickly, and other people have noted  
8 the Copyright Act and copyright regulations  
9 change slowly. And so it just seems to make  
10 more sense to have it be outside the  
11 government.

12 MS. CHARLESWORTH: So the question  
13 is why hasn't it happened already then. I  
14 mean and I guess the related question is even  
15 if it's managed by private actors, you know,  
16 with say fairly minimal regulation, how might  
17 the government incentivize it so it does  
18 happen. I think what -- are there ways that  
19 we can encourage the marketplace to build  
20 this. Because everyone seems -- on this issue  
21 there seems to be very little disagreement  
22 that it would be incredibly useful for the

1 industry. So sort of the classic problem, you  
2 know, who's going to pay for it, how do you  
3 get people to coordinate, how do you get sort  
4 of vested interest to kind of back off from  
5 trying to control -- you know. So it seems  
6 some have suggested that the government could  
7 play a role in it. And I guess the question  
8 is assuming it does reside outside of the  
9 Copyright Office somewhere, how could  
10 government encourage this thing to be built?  
11 And what kinds of incentives would be  
12 required?

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

16 MR. SELLWOOD: Well, that was a  
17 question I was going to ask, encourage. I  
18 think that's the right place for the Office to  
19 be thinking is how -- you know, data  
20 availability is necessary for licensing, for  
21 reporting usage, and for paying the right  
22 people. And from the music service

1 perspective, it's also crucial to assess how  
2 far we've licensed and how much infringement  
3 liability exists. So how do we incentivize  
4 the industry to do it. It seems like I can  
5 say in the last two years working at YouTube  
6 and working with music publishers to  
7 understand their ownership and the links  
8 between their compositions and sound  
9 recordings, things have drastically improved.  
10 By and large, music publishers are far better  
11 at collecting that information, delivering it  
12 to YouTube. And there's economic incentives  
13 associated with that that get paid. And so  
14 that is always there. But I think there's  
15 more that the office can do, and I certainly  
16 don't have the answers. But one thing you  
17 could -- delivering data to someplace as a  
18 necessary prerequisite before participating in  
19 copyright infringement suits or something like  
20 that that says that as a copyright owner  
21 you're going to participate in the ecosystem  
22 by reviewing your works before you're able to

1 pursue some type of litigation. I think there  
2 are steps like that that the Office could do.

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

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

18 MS. BURESH: That's why there's  
19 copyright assignments on file as well. That  
20 should also be on file with the Copyright  
21 Office from once there's a sale, a recordation  
22 of documentation.

1 MR. DAMLE: But they're optional.

2 MS. BURESH: I know.

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

5 MS. BURESH: I know.

6 MS. CHARLESWORTH: -- you know,  
7 the problem is people who I think tend to have  
8 very commercially valuable works and they're  
9 responsible to take that step of recordation,  
10 and wisely so, but others don't. And as the  
11 Copyright Office acknowledged, our database is  
12 certainly not really 21st century. Right?  
13 We're dealing with our own set of technical  
14 issues, which the register, you know, we're  
15 working hard to take a look at to see what we  
16 can do to improve them. So that's why this is  
17 317 a very valuable conversation. But I guess  
18 -- I mean I guess the one fundamental question  
19 is is this public database, and we've heard  
20 one opinion I think from Ms. Chertkof, you  
21 know, should it reside at the Copyright  
22 Office, would the government be curating the

1 database or would it be better off in the  
2 hands of industry participants.

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

1 that they're using.

2 MR. DAMLE: Mr. Coleman, to you.

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

1 MR. DAMLE: Mr. Johnson.

2 MR. JOHNSON: I just wanted to say  
3 that it is a complicated question, and I kind  
4 of agree with Heather. But you guys do have  
5 these registrations, and that's a core thing.  
6 And at the same time it would be great if the  
7 industry got together, ASCAP, BMI, SESAC, and  
8 the three majors, and they took all their  
9 catalogs and developed some kind of database.  
10 And I think he has a great idea, if they were  
11 doing a separate worldwide catalog with a  
12 GRid, particular number for worldwide, you  
13 know, that's great. But if there's any way  
14 where you could have a server at each place  
15 and the Copyright Office, and that ASCAP, BMI,  
16 and Universe put all of their catalogs,  
17 everything set up, and should use all the  
18 numbers. And, see, the problem comes because  
19 you can't copyright a title as a songwriter,  
20 so you have the same titles, and that's why  
21 that gets messed up. But if you had your BMI  
22 registration, your ISRC code. When I'm doing

1 these things, when I load up to streamers in  
2 the past, but I have since taken them down,  
3 but ReverbNation or CD Baby or TuneCore you're  
4 required to put in your ISRC and your UPC/EAN.  
5 So does the album as a whole with UPC and  
6 ISRC, which is tracked also. So it would be  
7 nice if you could, but I don't want to add any  
8 expense to that. I'm a guy that doesn't want  
9 to add anymore government expense. But I also  
10 think it's a constitutional function to  
11 protect my private property, which is my song,  
12 my sound recording, and my underlying work.  
13 So it would be nice if everybody could get  
14 together and use all the numbers and that  
15 there were some system that if your UPC code  
16 comes up with pings on that system, and then  
17 it starts to add whether or not you have the  
18 BMI registration on it. Then you can really  
19 start to tell what that song is and not just  
20 go, oh, this is the title and it's mixed up  
21 with 12 other songs at the same time.

22 MR. DAMLE: Ms. Schaffer.

1 MS. SCHAFFER: This goes back to,  
2 I think, the theme that I've had throughout  
3 the day, which is the less government  
4 involved, the better. And that, with all  
5 respect to the Copyright Office, I don't know  
6 that it needs any additional burdens on it in  
7 terms of collecting data and information and  
8 having to update information. I know that  
9 even when you need copies of registrations  
10 that were pre-'78, you know, I think it's a  
11 process, and there's a delay and it takes time  
12 to get that information. And I think having  
13 this database reside at the Copyright Office  
14 doesn't create the kind of efficiency and  
15 nimbleness that we probably need in the  
16 database in terms of the contact information  
17 for who owns these compositions and these  
18 musical works and that chain of title and who  
19 actually owns it now. So I do think that a  
20 private entity better serves the interests of  
21 the industry being able to accomplish all of  
22 those things. And when I say industry, I also

1 mean the digital services as well and being  
2 able to identify who it is that they need to  
3 contact. But I do think that there may be a  
4 role for the Copyright Office, as I mentioned  
5 before, in terms of providing certain  
6 identification numbers and helping to  
7 streamline the registration process to make  
8 sure that -- in many ways to me it forces  
9 copyright co-owners to speak with each other  
10 through the registration process if nothing  
11 else to figure out, okay, who owns what. And,  
12 yes, we have that through the PROs now, but I  
13 think it provides an additional incentive for  
14 people to keep their information updated and  
15 for us to track that. And perhaps there are  
16 other incentives, whether it's with respect to  
17 infringement matters or -- you know, I think  
18 those are all things that we should be looking  
19 at. But I think keeping as much out of the  
20 Copyright Office is a good thing for all  
21 parties.

22 MS. CHARLESWORTH: We're trying

1 not to take that personally. But I understand  
2 your point.

3 MR. JOHNSON: One quick?

4 MR. DAMLE: Yeah.

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

19 MR. DAMLE: Susan.

20 MS. CHERTKOF: I just wanted to  
21 add on the subject of incentives that I think  
22 it would be great if we could all put our

1 heads together and think of ways that the  
2 Copyright Office could actually incentivize  
3 this. Because I think you made a very good  
4 point, which is that everyone knows this is  
5 needed but somehow there hasn't been the  
6 wherewithal to kind of make it happen. That  
7 said, we feel very strongly that incentives  
8 should be incentives and not penalties  
9 disguised as incentives. And so things like  
10 barring people from bringing infringement  
11 litigation or given statutory damages related  
12 to data issues, we would view that as a  
13 penalty and not an incentive.

14 MR. DAMLE: Mr. Gottlieb.

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

21 MS. CHARLESWORTH: Yeah, I've  
22 heard mixed things about that recently, that

1 maybe it was on hold. I don't know if anyone  
2 here -- does anyone have information about the  
3 current status?

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

15 MS. CHARLESWORTH: I -- oh, yeah.

16 MR. DAMLE: Yes.

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

21 MS. CHARLESWORTH: One thing I  
22 read in the comments in someone, I think it

1 may have been NMPA's comments is that people  
2 speak about the 30 million songs that you need  
3 to license for -- you know, to achieve full  
4 coverage for a current digital service. But  
5 the assertion was that only one to two million  
6 of those really have -- are economically  
7 significant and that many of them are not  
8 maybe -- I think it was a third are not  
9 streamed at all and another third maybe had  
10 one or two streams, which is probably less  
11 than a stamp, you know. So I guess one  
12 question sort of baked into this a little bit  
13 is in terms of the cost and the effort, I  
14 mean, should there be sort of a tiered  
15 approach where we're looking at the songs that  
16 are sort of used a lot, are they higher  
17 priority? I mean should we go through the  
18 whole 30 million others? How does that  
19 analysis impact this analysis in terms of the  
20 undertaking and what should -- or should we  
21 really be looking at the whole -- all the  
22 entire 30 million? And I say that without

1 prejudice to any particular song, but it's  
2 just sort of the reality that the cost of  
3 administering -- you know, the administration  
4 costs vary greatly depending on the usage as  
5 a percentage of royalties and so forth.

6 MR. JOHNSON: I think it's the  
7 same problem that ASCAP and BMI have  
8 traditionally had. Look at some numbers where  
9 they say that ASCAP only pays the top 24  
10 percent of their writers, that 76 percent of  
11 the writers don't get any! And a lot of it has  
12 to do with the two week sampling but a lot of  
13 it has to do with songs they just can't afford  
14 to go to track. And I had a Linked-In  
15 discussion with Dean Kay who wrote "That's  
16 Life," he's an ASCAP Board member, and he told  
17 me that, "George, if you and I both have a  
18 song on the charts and we're outside the two  
19 week sample -- if we're within we get paid, if  
20 we're outside we both get zero." So he says  
21 also that it takes ASCAP a buck 25 to go after  
22 a dollar, and we're just not going to do it.

1 And they're legally allowed to get away with  
2 that and it's because of the fingerprinting,  
3 it's hard to go get that. But still, it's  
4 kind of like copyright infringement. So I  
5 think, sure, you're tracking all those hit  
6 songs, and that's all ASCAP and BMI are about,  
7 those hit songs. And that's all they worry  
8 about. So I think you really should take --  
9 you know, take a look at that individual  
10 copyright even though it's a pain in the rear  
11 end. I think it's important to respect the  
12 individual copyright and track it, and I think  
13 the computer can help us do that easily.

14 MR. DAMLE: Mr. Sellwood.

15 MR. SELLWOOD: As someone who  
16 cares about licensing comprehensively and  
17 paying correctly all the way down the tail, I  
18 would hope that the aspiration would be  
19 everything. But I think as a practical matter  
20 the correct approach is always to kind of go  
21 from the top down when talking about applying  
22 resources to create data availability and

1 transparency. I think that that would be a  
2 reasonable thing to do. And certainly what we  
3 do is look at these each on the site and work  
4 our way down. I think just as a practical  
5 matter it makes a lot of sense.

6 MR. DAMLE: Mr. Coleman, did you  
7 --

8 MR. COLEMAN: That's on the  
9 licensee side. I would say that I don't know  
10 if this is the answer, but if these kinds of  
11 -- if we had -- if we advanced the statute to  
12 the point where this kind of data needed to be  
13 registered, the most practical solution would  
14 probably be to pick a point a time when this  
15 became a requirement for certain licensing  
16 organizations and then the older copyrights  
17 would somehow slowly catch up. But the reason  
18 why I wouldn't advocate a top down approach  
19 from a theoretical perspective is because a  
20 song that gets streamed twice may get one  
21 synchronization license that pays for 100,000  
22 streams. And that's one of the beauties of

1 having different exclusive rights under  
2 copyright is that we see as publishers  
3 different kinds of income from the same  
4 copyright, and the top down approach doesn't  
5 -- wouldn't work for us.

6 MR. JOHNSON: Just to argue real  
7 quick that the top down approach doesn't work,  
8 I mean you have Universal and Sony and all the  
9 biggest top downs at ASCAP, which is all  
10 they're worried about is the top down  
11 approach, and they're all leaving. So, you  
12 say, but I'm leaving, the small guy, then the  
13 top guys are leaving ASCAP, and all they care  
14 about are their top 1 or 2 percent writers,  
15 because that's where all their plays are. And  
16 331 so I just think there's maybe a  
17 philosophical problem there or practical  
18 problem just concentrating on just the top  
19 writers, and that's it.

20 MR. DAMLE: Okay. I think we've  
21 far exceeded our allotted time for this topic.  
22 So I thank you all for your participation.

1 It's very interesting and informative for us,  
2 obviously. So I think you want to do a brief?

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

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

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

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19  
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Before: US Copyright Office Music Licensing Study

Date: 06-04-2014

Place: Nashville, Tennessee

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