

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

In the Matter of)
)
)
DETERMINATION OF ROYALTY RATES) **Docket No. 14-CRB-0001-WR**
FOR DIGITAL PERFORMANCE IN SOUND) **(2016-2020)**
RECORDINGS AND EPHEMERAL)
RECORDINGS (WEB IV))
)

**REBUTTAL TESTIMONY OF MARISSA MORRIS, VICE PRESIDENT,
NATIONAL PROGRAMMING PLATFORMS, iHEARTMEDIA, INC.**

1. I am the Vice President within iHeartMedia, Inc.’s National Programming Platforms division specializing in Artist Relations. I invite artists and record labels to participate in iHeartMedia events, including concerts and Music Summits – gatherings of iHeartMedia’s top programmers at which record labels and artists present new music. I am also responsible for collecting song submissions for iHeartMedia’s Digital Artist Integration Program (“DAIP”). I am submitting this statement in support of iHeartMedia’s rebuttal case in the above-captioned proceeding.

2. I understand that SoundExchange, Inc.’s expert witness, Daniel Rubinfeld, contends that the promotional benefits of playing music on iHeartMedia’s radio platforms – which includes AM/FM terrestrial broadcasts and iHeartRadio – are “increasingly limited.” My personal experience is directly to the contrary, and the many record label executives and artists I deal with repeatedly tell me the opposite. These record label executives and artists tell me that having their music played on iHeartMedia’s platforms has been important to their success selling music in the past, and will be even more critical to their success selling music in the future.

3. I often hear about the promotional power of radio at iHeartMedia’s Music Summits. For the last four years, iHeartMedia has hosted two or three Music Summits for our top music programmers from around the country each year. During each Music Summit, record label executives and artists present upcoming releases to our music programmers.

4. We invite major and independent record labels to come present at Music Summits. We have increased the size and length of our Music Summits over time, but it is still always the case that we have more labels that want to present than we have time for, and the labels in effect compete to get slots. We have to carefully limit the length of presentations, because there are so many. In my experience, labels that are invited to present never decline our invitation and the labels are constantly increasing the sophistication of their presentations.

5. During their presentations, record labels’ most senior executives discuss their labels’ new artists and upcoming releases and play so-called “sizzle reels” of carefully-produced video programming, highlighting music they plan to release during the next year.

6. Often the record labels will bring selected artists to perform and discuss their new music live in front of our small group of top programmers. As many as twenty to thirty established and emerging artists will perform, often with full bands, for an audience of about 100 people. In the past, artists have re-routed their tours and changed their vacations to come to Music Summits.

7. Major artists including [REDACTED]
[REDACTED]
[REDACTED] have participated in our Music Summits.

8. “HITS Daily Double,” which covers the music industry, recently described the record labels’ presentations at an iHeartMedia Summit, writing: “Competition to woo the

audience . . . has grown stiff over the past few years, so everyone was curious to see what was in store. One after another, industry heavies took the stage armed with multimedia sizzle reels, plaques and, of course, music. . . . The labels showed off their A-game of breaking acts with performances/appearances.”¹

9. During a recent Music Summit in January 2015 in Los Angeles, a total of [REDACTED] record labels and [REDACTED] artists presented to us over the course of three days. Without exception, a key theme of each of the labels’ presentations was that exposure on the iHeartMedia radio network was necessary for their success, and that their music could not successfully be introduced to the public without being played on our radio network. The labels and artists thanked us, in unqualified terms, for playing their music in the past, and they asked us to play their new music in the future.

10. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]]

11. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹ “iHeartMedia Music Summit: Day Two,” Rumor Mill, HITS Daily Double (Jan. 22, 2015), available at <http://hitsdailydouble.com/news&id=294379>.

[REDACTED]
[REDACTED]]

12. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]]

13. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]]

14. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]]

15. The week after our January 2015 Music Summit in Los Angeles, Scooter Braun – who manages Justin Bieber, Ariana Grande, and Carly Rae Jepsen among others – said it was an “honor” to participate in the Music Summit with iHeartMedia’s programmers, “many of whom have made big decisions on records I’ve been involved with. They’ve changed the lives of those artists. They’ve changed my life.” He went on to say that even in 2015, “radio is still

significantly important. You look at [*Billboard's* Digital Songs] chart and [so many] of those records in the top 10 have been influenced by the power of radio. We can stream all we want, but we still need tastemakers.”²

16. We hear similar stories about the power of radio from artists all year round. . . For example, earlier this month, Kenny Chesney gave an interview in which he said that radio has been important to his career and is still important for young artists. When asked “What role has radio played in the success of your career?” Chesney said “Radio is how we reached the fans.” And, when asked “Would you advise young country artists to go radio station to radio station to try to get their music played today?” he said “I do think that personal connection with and at radio is important.”³

17. [[[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]]]

18. [[[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]]]

² Gary Trust, “Exclusive: Scooter Braun Talks Bieber and Rick Rubin, Carley Rae Jepsen’s Topping ‘Call Me Maybe’ & More,” Yahoo! Music (January 30, 2015), *available at* <https://www.yahoo.com/music/by-gary-trust-at-last-weeks-jan-20-23-109616701256.html> (modification in original).

³ “Radio Is How We Reach Fans,” Radio Ink (Feb. 17, 2015), *available at* <http://www.radioink.com/Article.asp?id=2895467&spid=30800>.

19. I am aware that SoundExchange’s witnesses have attempted to draw a distinction between playing music on AM/FM terrestrial radio and playing music on digital radio, like iHeartRadio, and argue that even if AM/FM terrestrial radio once promoted music sales, digital radio has an increasingly limited promotional effect on music sales. But, I have never heard an artist or a person from a record label’s marketing or promotion department make such a distinction or tell me that they do not want us to play their music on digital radio. To the contrary, record labels’ promotion and marketing staff often contact me to specifically request that we play their music as part our Digital Artist Integration Program (“DAIP”), which runs only on digital radio. Moreover, the number of requests I receive from record labels’ is increasing – not decreasing.

20. iHeartMedia’s DAIP Program is similar to iHeartMedia’s Artist Integration Program (“AIP”). Both programs feature new music selected by our brand managers from a pool of submissions. However, there are two important differences. First, whereas AIP is played on terrestrial radio and simulcast, DAIP is exclusive to digital radio and plays only on iHeartRadio streams. Second, AIP spots are less than a minute long, and never include the entire song. DAIP spots are three minutes in length, allowing us to play much more of the track within the spot.

21. Record labels submit new songs for the DAIP Program via our website or via e-mail. I send the pool of submissions to our brand managers. Our brand managers will select a song for inclusion in the DAIP Program when they believe the song has the potential to be a hit and will enhance our digital programming.

22. When record labels submit a new song for the DAIP Program, they explicitly waive their right to charge sound performance copyright fees. They grant us a license to play the song in connection with the DAIP Program in “any advertising, marketing, simulcasting,

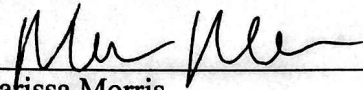
streaming, both live-online and digital on-demand and broadcasting” and agree that iHeartMedia “shall not be required to pay any royalties” to the record label or Sound Exchange, “in consideration of potential promotional opportunities afforded to [the record label] for being part of the AIP Program.” Ex. C ¶¶ 1-2. The record labels agree to this because they have decided that the promotional value of us playing one of their new songs on iHeartRadio outweighs the value of the performance copyright fee.

23. Record labels and artists are constantly submitting new songs for the DAIP Program. For example, last month we received over [REDACTED] submissions.

24. Record labels and artists thank me when our brand managers select new songs for the DAIP Program. For example, [REDACTED]
[REDACTED]
[REDACTED]]

PUBLIC

I declare under penalty of perjury that the foregoing is true and correct.



Marissa Morris

2/23/15
Date

Exhibit A

Exhibit Redacted In Its Entirety

Exhibit B

Exhibit Redacted In Its Entirety

Exhibit C

AIP PROGRAM TERMS

These are the AIP Program Terms ("Agreement") between Clear Channel Broadcasting, Inc., on behalf of itself, its subsidiaries, parents, successors in interest and affiliates ("Clear Channel") and you ("you" or "Label") with respect to Clear Channel's use of the sound recording(s) (individually and collectively, the "Recording") submitted to Clear Channel as part of Clear Channel's Artist Integration Program (the "AIP Program"). Your submission of Recordings to Clear Channel as part of the AIP Program constitutes your acceptance to be bound by this Agreement without limitation, qualification or change. If at any time you do not accept all the terms and conditions of this Agreement, you may cease participation in the AIP Program at any time by sending written notice to Clear Channel by email to digitalaip@clearchannel.com. The "Promotional Term" for each Recording begins on the first day of the month during which each Recording is submitted to Clear Channel as part of the AIP Program and ends the later of: (a) six (6) months from the date each Recording is submitted to Clear Channel as part of the AIP Program; or (b) ten (10) business days following the date Clear Channel receives written notice of Label's withdrawal of such Recording from the AIP Program.

1. **License.** You grant to Clear Channel the world-wide, non-exclusive right and license, for the Promotional Term, to use, copy, modify (solely to the extent necessary to conform with Clear Channel's programming or technical specifications), publicly perform, digitally perform, publicly display and distribute the Recordings, pictures, videos, song lyrics, still images, artist name(s), artist members' individual names, photographs, artist information, graphics, trademarks, gig listings, and/or other content related to the Recordings which are submitted by Label to Clear Channel or otherwise approved by Label for use in connection with the AIP Program (collectively, the "Label Material"), including portions, composites, likenesses or distortions or alterations of same, in whole and in part, and to prepare derivative works of, or incorporate into other works, the Label Material, in connection with Clear Channel's radio broadcasting and related services, including, but not limited to any advertising, marketing, simulcasting, streaming, both live-online and digital on-demand and broadcasting but specifically excluding downloading. The foregoing license shall be sub-licensable by Clear Channel without further permission from Label solely for the purpose of conducting the AIP Program.

2. **Consideration.** This Agreement is in consideration of potential promotional opportunities afforded to you for being part of the AIP Program. Clear Channel shall not be subject to and shall not be required to pay any royalties to you or any third party for the use of the Label Material in accordance with this Agreement during the Promotional Term, provided that nothing herein shall grant Clear Channel any rights in any underlying compositions contained in the Recordings as long as such compositions are covered through Clear Channel's agreements with ASCAP, BMI or SESAC. For the avoidance of doubt, Clear Channel shall not be subject to and Label hereby waives any royalties or fees related to Clear Channel's use of any Label Material including, without limitation, royalties payable through SoundExchange.

3. **No Obligation to Use.** Clear Channel shall have no obligation to use the Label Material.

4. **Ownership.** As between Label and Clear Channel, Clear Channel acknowledges and agrees that Label has all rights of ownership, including without limitation, all rights of copyright in the Label Material. Clear Channel acknowledges that nothing in this license gives Clear Channel any right or interest in the Label Material other than to use the Label Material as specified in this Agreement.

5. **Representations and Warranties.** You represent and warrant that:

- a. You are an authorized representative of the owner of the copyright in the Recordings, have the full right and power to enter into and perform this Agreement and have secured all third party consents necessary to enter into this Agreement and submit the Label Material;
- b. The Label Material does not and will not infringe any third party's copyright, trademark or other intellectual property or other proprietary right, or right of publicity or privacy;
- c. The Label Material does not violate any local, state, federal or international law;
- d. The Label Material is not and will not be defamatory, libelous, abusive, pornographic or obscene, or infringe upon the rights of any third party;

6. **Indemnity.** Label, jointly and severally shall be fully responsible for any violation of this Agreement including the representations and warranties, and Label agrees to indemnify and hold Clear Channel, its officers, directors, employees, and agents, harmless from any and all losses, costs, liability, damages and expenses, including reasonable attorneys' fees, arising out of or related to Label's breach of the representations and warranties made in this Agreement or any claims arising from the Label Material to Clear Channel. Label agrees to execute and deliver documents to Clear Channel that we may request to confirm our rights under this Agreement.

7. **Payola.** Label and Clear Channel acknowledge and agree that, in negotiating and entering into this Agreement, Clear Channel has made no representations, warranties or promises of any kind to Label, its agents or representatives, as an inducement to enter into this Agreement or for any other purpose, relating to the playlist of, or the frequency of spins that musical recordings in

which Label may have an interest may experience from any Clear Channel affiliated radio stations. Furthermore, Label understands, acknowledges and agrees that it is not entering into this Agreement based on any conditions relating to the playlist of, or frequency of spins that such musical recordings will experience from any Clear Channel affiliated radio stations.

8. **General Provisions.** This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns. This Agreement shall be governed by (and construed and interpreted in accordance with) the laws of the United States of America and of the state of Texas, without regard to conflict of law provisions or actual residences. If any provision of this Agreement shall be held unenforceable in any respect, the remaining provisions shall remain in full force and effect, and the parties agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision. The failure to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of any prior, concurrent or subsequent breach, and no waiver shall be effective unless in writing. This Agreement contains the entire agreement between Label and Clear Channel regarding the use of the Label Material, and it supersedes all prior and contemporaneous agreements, promises, representations, warranties, and understandings of the parties regarding the same subject matter.