Before the
COPYRIGHT ROYALTY BOARD
Washington, D.C.

In the Matter of	)	
	)	
Determination of Royalty Rates	)	
for Digital Performance in Sound	)	Docket Nos. FR Doc. 2013–30917
Recordings and Ephemeral Recordings	)	14–CRB–0001–WR (2016–2020)
(Web IV)	)	

PETITION TO PARTICIPATE

Pursuant to 17 U.S.C. §§ 801(b)(3) and 804(b)(8) and 37 CFR § 351.1(b)(1), GEO MUSIC GROUP record label ("Petitioner") submits it's Petition to Participate in the proceeding of the Copyright Royalty Board's Determination of Royalty Rates for Digital Performance in Sound Recordings and Ephemeral Recordings.

Pursuant to Section 351.1(b)(1)(2)(i)(A)-(C), the following information is provided:

The full name, address, telephone number, and e-mail address of the Petitioner:

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George Johnson Music Publishing (100% withdrawal from BMI)
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(1) What is the importance, if any, of the presence of economic variations among buyers and sellers?

It's of great importance in a free market, but unfortunately there currently is no free market in digital sound recording royalties or digital performance royalties, especially when all music rates have been price-fixed for over 100 years. There can be no presence of real economic variations among buyers and sellers if the market is price-fixed. This economic variation is the most important factor since in an actual free market these variations in price act as important signals in value and are the only way for free market participants to gauge a real fair market price.

When any product is price-fixed for 100 years, there is no possible way to tell what the fair market price should be. Only a true free market can set realistic prices that will have normal economic variations between buyers and sellers, not a price-fixed nano-rate of .0012 per song.

We haven't had a free market in music royalties for over 100 years and the idea that any human being has "perfect knowledge" of any market and can set rates for all people or "create" a free market is literally impossible.

What if all housing prices were fixed at 2 or 9.1 cents, or $120 or $1,200 for the last 100 years? What if every American was only allowed to earn a maximum of $3,000 a year? Is that equality?

Nobody can create a free market, a free market can only create itself. There is simply no way to replicate willing buyers and sellers in a hypothetical marketplace. This is why most rates for all digital music copyrights end up at .00000012 in the real world instead of the set rate of .0012.

Furthermore, there is no economic variation when the price is fixed at ***virtually nothing***. Price-fixing rates at .0012 or .00000012 is not a fair market price for a sound recording or any type of copyright.

The only economic variation is how much money third parties skim off the top of .0012 where the owner of the copyright only ends up with .00000012, if any.

There are huge amounts of up front money in the millions of dollars that certain premium artists secretly receive from certain streaming companies to make up for the lack of digital sound recording and performance royalties, that is another distortion of price-fixing rates at nano-pennies. A few artists are allowed millions of dollars in up front royalty money from streamers while millions of other artists, songwriters and sound recording owners are forced to accept a .00000012 royalty for their sound recording copyrights and performance copyrights.

The only long-term solution is to let digital sound recording owners negotiate in the free market.

One experiment might be for the Board to temporarily recuse itself for a time being of all royalty disputes between private parties and let them work it out to establish real free market rates, especially since most of the major record companies and their respective publishing companies are no longer bound by the consent decree for the underlying works of their sound recordings.

If Spotify or Youtube or Rdio, etc. does not offer an acceptable solution or market rate for digital sound recording performances on a per-play basis, then Universal, Warner Brothers, Sony, or Taylor Swift can pull their catalog until an acceptable offer is reached.

While the Board or others might call this a market disruption, it's really just the free market correcting itself as in the recent case of BMI losing 4 out of 5 of the top music publishers in the world with their 100% withdrawal.

So, with 4/5th of the major publishers in the world leaving BMI for good, and eventually ASCAP, it's a perfect example of how a 100 year system of price-fixing and centralized planning has failed and forced these major music publishers out forever. Collective bargaining, blanket licensing, the compulsory license, and the consent decree have taken their toll on creators. Even the great Burt Bacharach recently wrote a WSJ editorial calling to amend the consent decree, this Petitioner would like to see it abolished. The decree only allows streamers to steal sound recordings at nano-rates far below reasonable market rates without negotiating. This has to stop.

That really is the entire point: if streamers, ASCAP, record labels, publishers, songwriters, licensees, etc. had to **negotiate** with each other instead of running to the Board for every tiny dispute, all rates would be much higher in a robust and prosperous free market.

However, if the Board must set rates, it should adopt the **12** to **22** cent per-stream Pandora model as a temporary "minimum statutory rate" for all streaming, digital radio, or webcasting of digital sound recordings. Let's really raise rates. All streamers have had enough time to grow.

This is not a free market solution and just additional price-fixing, but as in the case of the Copyright Act of 1909, it may be the only temporary solution.

After that, the Board should adopt higher rates closer to **52** cents per-song for all digital sound recordings, a one-time fee, per-song, per-customer with lower per-stream rates. This is based on the 2 cent "minimum statutory rate" set for mechanical royalties in 1909 by the Copyright Act.

Adjusted for real inflation using the CPI, 2 cents in 2013 is approximately 52 cents per-song for a mechanical royalty. This inflation adjusted mechanical rate of 52 cents should be applied to digital sound recordings since real world inflation is never factored into price-fixed royalty rates.

This Petitioner's argument, though this Petition is directed at digital sound recordings, is that since a **stream is a mechanical and performance royalty at the same time**, and that any mechanical is subject to the *minimum statutory rate* of 9.1 cents, that the Board had not authority to **eliminate the minimum rate of 9.1 cents from a mechanical, or lower the rate.** This decision has literally decimated the songwriting and publishing industry overnight with no "gradual measured approach". The digital mechanical royalty of 9.1 cents must be addressed.

To continue to set digital sound recording royalty rates at nano-royalties like performance rates will also never work in the long term or short term for DSR owners, only for the streamers.

And like the mechanical royalty side of a stream, the digital sound recording royalty must also be tied to the CPI and real inflation. This means 52 cents, not 9.1, which is what CD's and downloads should currently pay for a mechanical based on the rate in the Copyright Act of 1909.

This Petitioner's primary idea is for **all streamers to create a "streaming account"** for each customer exactly like an iTunes download account, but with no downloads. All the copyrights,

the digital sound recording and performance royalty for the underlying work are all paid up front, one time, per-customer, per-song. Lawful per-stream rates still apply per-performance, but a one time 52 cents per copyright could be applied: 52 cents for the digital sound recording and 52 cents to be split by the songwriters and publishers for the mechanical stream / performance.

This one time up-front copyright fee may be a solution, however, 12 to 22 cents per-stream for digital sound recordings like Pandora may be the best answer for DSR copyright owners. The only factor, like terrestrial radio, is that rates should be multiplied by number of listeners for commercial and public uses in clubs, bars, cafes, malls, etc, if businesses are streaming DSRs.

Also, all streamers and webcasters should be 100% transparent and computer track all copyrights on a 100% per-stream basis for copyright owners to inspect on streamer websites anytime.

Further interference from alleged non-profits like NARAS and other "advocate groups" who's lobbyists have never written a song and never will, must be abolished from negotiating on behalf of their self-interests and salaries. They do not represent songwriters, artists or independent sound recording copyright owners, only themselves. This is a real problem for music creators.

(2) Should royalty rates embody any form of economic "price discrimination" in order to reflect the statutory hypothetical marketplace?

Fixing rates at .00000012 per copyright ***is*** the price discrimination being forced upon millions of sound recording owners and the attached performance copyright of the underlying work which also suffers the same price discrimination.

These rates are being forced upon millions of songwriters, music publishers, independent sound recording creators and all the heirs and assigns.

The Petitioner asks the court: What if the federal government formed a statutory hypothetical marketplace for all attorneys, created an ARB, The Attorney Royalty Board, where for the next 100 years a federal 3 judge panel would set maximum billable rates of .00000012 per-hour, or 2 cents per-day (for the next 68 years), or 9.1 cents per-week — all the while the 4 biggest law firms in the country in New York and Los Angeles were allowed to bill clients at thousands of dollars per-hour? How long do you think lawyers would stand for that? They wouldn't and it sure wouldn't last 100 years. That type of incredible price-fixing and very real world price discrimination in a real marketplace is exactly what songwriters and music publishers have had to endure the past 100 years and it looks like all copyright owners will for the next 100 years.

I say this with all due respect, but it's the sad truth that for over 100 years the Copyright Royalty Board has literally created price discrimination and destroyed the real presence of economic variations among buyers and sellers, willing sellers and willing buyers.

The irony is that, because of the Copyright Royalty Board's interference into so called "market rates" there are ***no more willing buyers*** since streamers and customers demand copyrights for free, and there are ***no more willing sellers*** since no songwriter, music publisher or sound recording owner wants to be forced by the Copyright Royalty Board to sell either of their hard earned copyrights for .00000012 per-stream, much less 9.1 cents.

(3) What are the potential disadvantages of establishing a statutory royalty rate not based on a per-performance royalty.

First, music copyright law is built on a per-performance basis so any blanket collection of digital sound recording royalties not rooted in each and every individual per-song performance being tracked by computer and a lawful royalty paid, is classic copyright infringement on a mass scale.

Second, if collection is done on a percentage only basis, like in the past, streamers, PRO's, third party aggregators and digital distributors will use accounting tricks, 2 week sampling, derivative formulas, or outright infringement to evade paying statutory royalties while in most cases, their own computer systems have 100% per-song tracking data.

Besides increasing the royalty rate for all digital streaming royalties, 100% per-performance royalty tracking is the second most important issue to creators since it keeps track of our royalty income. **100% royalty collection, 100% transparency** and **100% per-song data collection** in this age of computer systems should be the ***basis*** for all royalty collection, not just digital sound recording performances, but underlying song copyrights and terrestrial radio performances.

Third, if streamers don't know, don't track or won't reveal exactly how many times they have streamed each song, then there is no per-performance benchmark to judge price discrimination or economic variations between buyers and sellers.

Fourth, if there is no per-performance royalty, there is no benchmark to track inflation triggered royalty increases in years to come, especially if there is no set per-performance royalty rate.

Only using a gross revenue percentage as a basis would create another similar per-song infringement problem created by ASCAP and BMI who for the past 25 years still insist on paying royalties on a 2 week sample of 3 months worth of 100% computer data. This is the other major reason why all major publishers have left BMI or attempted to leave ASCAP. Therefore, as a bare minimum, to pay on nothing less than 100% per-performance data for digital sound recordings when every performance is tracked by sophisticated computer systems, would be a mistake and additional copyright infringement. A minimum per-performance royalty tied to the gross revenue percentage is the best temporary route. If gross revenues increase, the per-song royalty is increased, if gross revenues fall, the minimum per-song must be paid first to the copyright owners no matter what. In other words, sound recording copyright owners and all copyright owners need to be "secured creditors" so to speak with streaming companies and all digital radio webcasters, especially since music copyright is their ***only*** product.

Fifth, like the performance royalty for songwriters and music publishers, if for the long term the digital sound recording royalty is only price-fixed, it will only "pay" .00000012 for the next 100 years or until the entire royalty system collapses for the major record companies, which it has for the underlying song performance royalty.

a) Is it prohibitively difficult to identify webcaster revenues for the purpose of calculating a percentage-of-revenue based royalty rate?

No, it's not. Everybody in the world has computers systems and it's an excuse to not pay for all copyrights and all digital sound recordings on an individual basis, which is how the Copyright Act and how copyright law are supposed to operate, but don't. Again, as for the suggestion that either a percentage rate of gross revenue or a per-song rate should be adopted, I would agree with **the Board's idea of doing both**. Having a minimum statutory rate for digital sound recordings that can go no lower than a 12 or 22 cents per-stream tied to gross revenues and CPI inflation would be a great place to start. The other idea is to have a lower per-stream rate with a one time 9.1 or 52 cent rate per-song, per-customer to pay for the digital sound recording copyright. 52 cents is much more realistic for a sound recording owner who has put hundreds of thousands of dollars into the digital sound recording and more of a fair market price like 61 cents per dollar for an iTunes download. If the gross revenue percentage rate is higher because of increased profit to the streamer, a higher per-song rate is paid based upon increased gross revenues.

b) Is there an "intrinsic" value to a performance of a sound recording that is omitted if a percentage of revenue royalty rate were to be adopted?

Absolutely, copyright law is clearly based on an individual performance, not blanket licensing. There's also an intrinsic value to every performance of a sound recording copyright just like a performance of the underlying work. It can take decades to develop your craft as a recording artist, it can take years to write a great song and the business model of running a publishing company to pay for those writers and demos all have intrinsic value. Recording a great album can cost hundreds of thousands of dollars just for the sound recordings, that has intrinsic value, as well as the recording themselves. Does the sound recording for "Yesterday" by The Beatles have intrinsic value? Does a lithograph copy of a Picasso have intrinsic value? Again, if collection is done on a percentage only basis, third parties can evade paying statutory royalties. So, a minimum per-song rate tied to the CPI with increased royalties tied to a gross revenue percentage that increases the per-song royalty if revenues increase for the streamers.

The best solution is for the Copyright Royalty Board to get out of the way when two parties like Spotify and Universal Music Group come and ask to set sound recording royalties or any royalty rate, the Board's standard response should be for them to work it out for themselves, like normal people. As much as we need DSR rate increases, let's also start giving free markets a chance.

A description of the Petitioners significant interest in the subject matter of the proceeding.

Petitioner is not an attorney but very familiar with SR and PA copyrights and produces country and pop records as a singer/songwriter in Nashville, TN. Petitioner has an independent record label with multiple master digital sound recordings under the GEO MUSIC GROUP label and George Johnson Music Publishing for the past 16 years in Nashville, and 7 in Los Angeles, CA. Petitioner is a NARAS member for the past 14 years and voting member who has participated in Grammy on The Hill and Congressman Goodlatte's Copyright Roundtable last year as an artist, songwriter, music publisher, sound recording owner and copyright claimant. George Johnson Music Publishing was one of the 5 music publishers who filed a "New Media" or Digital Withdrawal Rights Form with BMI last year and were ruled by a federal Judge to either 100% withdrawal or stay with BMI, we were forced to 100% withdrawal like the others, or accept nothing for our copyrights. This applies to digital sound recording royalties in that both SR and PA copyrights are forever tied together and equally important.

Like Pandora, a rate of 12 to 22 cents model should be adopted for all digital sound recordings as a minimum rate on a temporary basis for non-subscription and subscription and raised to an equivalent of the inflation adjusted 52 cents per performance royalty as a minimum for songwriter / publisher copyrights, even though performance royalties are not the subject of this petition, the two copyrights are tied together forever. If the Board must set rates, the SR and the PA copyrights should be treated **equally under they law** with no price discrimination between these two equally important individual copyrights.

A song is a song is a song, it's also still a copyright based on an an individual digital sound recording copyright and an individual performance copyright. The listener didn't enjoy the song less for 3 minutes whether is was streamed on Spotify or downloaded on an iPhone, or whether the stream was interactive or non-interactive, a subscription or non-subscription. A copyright is a copyright and we must stand for creators. .0012 or .00000012 is a peasant's wage while all the wealth is transferred to the central servers of Google, Pandora, Spotify and all other streamers.

Thank you for your time and thoughtful consideration. The undersigned hereby certifies that, as of the date of submission of this Petition, I am owner of GEO MUSIC in this royalty distribution proceeding. A check in the amount of $150 accompanies this Petition.

Respectfully submitted,

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Thursday, February 6, 2014 *Petitioner*