

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

In The Matter Of:	)	
	)	
Determination of Royalty Rates	)	14-CRB-0001-WR (2016-2020)
for Digital Performance in Sound	)	
Recordings and Ephemeral	)	
Recordings (Web IV)	)	

**DIRECT TESTIMONY OF  
KURT HANSON**

**(Submitted on behalf of AccuRadio, LLC)**

AccuRadio, LLC ("AccuRadio"), pursuant to the ORDER ESTABLISHING REVISED CASE SCHEDULES from the Copyright Royalty Judges setting October 7, 2014 as the date for the submission of Direct Case Exhibits, hereby submits this Direct Testimony of Kurt Hanson, which contains the rate proposal of AccuRadio.

**I. Introduction**

1. As set forth in detail below, AccuRadio is a survivor in the Internet radio industry, outlasting many other entrants who have departed the webcasting business. Even though AccuRadio has been operating for over a decade, Internet radio remains a nascent industry in which actual and potential new entrants have been curtailed by the existing rate structure. From my extensive knowledge of the Internet radio industry, I believe that there needs to be a reexamination of the current royalty structure, and that an appropriate royalty for services should be \$.000125 per performance.

## II. Background of Witness Kurt Hanson

2. My name is Kurt Hanson. For the past decade, I have been Founder/CEO of a multichannel personalizable Internet radio station called AccuRadio ([www accuradio.com](http://www accuradio.com)), one of the oldest independently owned-and-operated U.S.-based webcasters. AccuRadio is not a subsidiary of a media giant like Apple, Google, iHeartMedia (nee Clear Channel Media + Entertainment) or CBS; it is not a public company like Pandora or SiriusXM or a soon-to-be-public company like Spotify; and it is not a division of a large AM/FM broadcaster like Cumulus, Cox, or Entercom.

3. AccuRadio is the world's oldest surviving personalizable webcaster, having outlasted such pioneering brands as NetRadio.com, Yahoo! LAUNCHcast, Sonicnet, AOL Radio (nee Spinner), [WWW.com](http://www WWW.com), MediAmazing, MSN Radio, and others. We launched our product in 2001, several years before the launch of such newer entrants as Pandora and Slacker.

4. AccuRadio is headquartered at 65 E. Wacker Place #930, Chicago, IL 60601.

5. For the past 14 years I have also been Founding Editor of a daily, web-based trade publication written for the Internet radio industry, "RAIN: Radio And Internet News" ([www rainnews.com](http://www rainnews.com)), which is generally considered to be the world's leading trade publication for the field of Internet radio.

6. Out of that publication, a new company called RAIN Enterprises ("RAIN") was launched, which produces the world's leading series of conferences on the topic of Internet radio, called RAIN Summits. I remain a board member of RAIN and am

involved in planning their conferences, in addition to giving a “State of the Industry” address at each event.

7. In 2014, RAIN Enterprises has held conferences in New York, NY (in association with the Interactive Advertising Bureau), Las Vegas, NV (in association with the National Association of Broadcasters), Indianapolis, IN (in association with the Radio Advertising Bureau and National Association of Broadcasters), and in November it will hold a conference in London, England (in association with the Interactive Advertising Bureau U.K.).

8. All told, these conferences in a typical year will attract dozens of speakers and hundreds of attendees.

9. At each RAIN Summit, I give a generally well-received keynote speech (“State of the Industry Address”).

10. Prior to launching RAIN and AccuRadio, I spent most of the previous 20 years as Founder/CEO of Strategic Media Research, a multi-million-dollar market research firm that I built to serve the North American broadcast radio industry. We also did research projects for several music television channels and record labels during the period.

11. In that capacity, I met on a regular basis with and advised many of the radio industry’s top managers, programmers, consultants, and group heads in both the U.S. and Canada.

12. My position at Strategic Media Research also offered me comprehensive exposure to the tastes and attitudes of radio consumers, thanks to the hundreds of market research studies that I helped design, produce, and/or present.

13. I believe this wealth of experience has given me a profound understanding of how consumers use radio to discover new artists and recordings and to otherwise expand their tastes in music, and how this translates into increased sales for the record industry.

14. During my years with Strategic Media Research, I was generally considered one of the radio industry's top researchers and strategists.

15. I hold both an A.B. and an M.B.A from the University of Chicago, where I took a variety of sociology, mathematics, marketing, and marketing research courses.

16. During my school years (high school, college, and graduate school), I worked at a number of well-known AM/FM radio stations, including WOKY/Milwaukee, WZUU-FM/Milwaukee, WLS/Chicago, WDAI-FM/Chicago, and WLUP-FM/Chicago.

17. In total, I have over 40 years of experience in the broadcast and online radio industries.

18. As a result of the activities described above, I am generally considered to be one of the country's leading experts on the subject of Internet radio specifically and the future of radio in general.

### **III. Background of the AccuRadio Service**

19. We initially launched AccuRadio in 2001 as an exercise to show readers of the RAIN newsletter how an Internet radio property could be constructed to benefit the entire ecosystem of broadcasters, consumers, record labels, and musicians.

20. We selected AccuRadio's first channel of music, "Swingin' Pop Standards," to provide a form of radio airplay for a genre of music that typically does not

receive airplay on AM and FM radio – “pop standards” (i.e., songs written by such composers as Cole Porter, George & Ira Gershwin, Irving Berlin, Sammy Cahn, Johnny Mercer, and the like, as performed by such artists as Frank Sinatra, Ella Fitzgerald, Tony Bennett, Blossom Dearie, Rod Stewart, Diana Krall, Michael Buble, Linda Ronstadt, and Carly Simon.)

21. Over the past decade, we have expanded AccuRadio into a wide variety of other musical genres, but always with a special emphasis on those genres that receive limited airplay on terrestrial U.S. radio stations – e.g., classical music, mainstream jazz, Broadway musicals, Celtic music, world music, cabaret music, indie rock, Hawaiian music, folk music, bluegrass, smooth jazz, and other genres.

### **III. The Short-Sightedness of the U.S. Record Industry**

22. The United States’ unique historical approach to recorded music and radio airplay – including (A) no public performance right granted to the owners of sound recordings; (B) a relatively large number of broadcast radio station licenses per market issued by the FCC, and thus a large number of radio formats available in most markets; (C) the resulting higher radio listening levels by consumers compared to most countries; (D) vibrant competition among record labels (and their subcontractors, independent promoters) for radio airplay for new releases to help break new artists and expose new recordings by established artists, plus (E) radio’s continued airplay of catalog product that serves to help keep artists in the public eye (presumably benefiting both sales of catalog product and live touring) – has led to what has been generally perceived as one of the largest, healthiest, and most vibrant music industries in the world.

23. Although clearly the recorded music business in the U.S. has suffered in recent years, there is a reasonable argument that many of its travails are self-inflicted.

24. Examples of the record industry's self-inflicted travails include (A) its obstinate desire in the period 1999-2000, at what turned out to be the height of recorded music sales, to shut down the Napster music service (which had a structure that was licensable and controllable) despite warnings from a plethora of contemporary observers that the move would simply drive consumers to unlicensable and uncontrollable peer-to-peer file sharing networks which would be far worse for the industry (as it in fact did and it in fact was); (B) its delays in offering consumers the ability to legally purchase digital music (e.g., the delayed, clumsy, and unnecessarily competitive launches of the services Pressplay and MusicNet); (C) its continuing efforts to hold digital pricing at or near the historical levels of its pricing for physical product, even though digital sales have much lower production and distribution costs (e.g., no need for the production of physical product, or shipping, or returns); (D) its strategy in the mid-2000s of suing its customers for illegally uploading/downloading tracks, which generated more ill will for its industry than almost any other U.S. industry has generated in recent memory; (E) its failure to compete with the increasingly-attractive value of other competitors for the consumer's entertainment dollar (e.g., video games, TV programs, and movies);<sup>1</sup> and (F) its current pricing structure for digital purchases in which there is little or no rational financial incentive for the consumer to purchase an album (at \$9.99) over "cherry-picked" individual tracks (at \$.99 to \$1.29), which has led to a significant decline in album sales.

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<sup>1</sup> For example, the record industry continues to charge up to \$1.29 for approximately four minutes of audio when TV programs can nowadays be purchased from the same vendors for \$1.99 for up to 48 minutes of both audio and video

25. It is a common opinion held in our industry, and it is my belief as well, that entertainment companies, in the field of copyright law, often appear to misunderstand what is best for them. Famously, for example, in the early days of radio, recording artists and labels did not want radio to play their new releases for fear that as a result no one would buy them. Even more famously, in the '70s, movie studios tried to prevent the release of the VCR, which actually became key to their future profit streams.

26. I believe record labels in general have made a similar strategic error in dealing with the nascent field of Internet radio. Rather than affordably licensing their sound recordings to webcasters, thereby encouraging a large and diverse set of players in the field, and thereby increasing consumer enthusiasm for music in a wide variety of genres (which has historically increased sales of both recorded music and attendance at live performances), labels have instead focused their efforts on trying to maximize the precedential rates they want to show Copyright Royalty Board Judges in these every-five-year proceedings.

27. I believe that the Judges should attempt to help the music industry as a whole get past this flawed strategy by encouraging a thriving Internet radio marketplace, for the overall benefit of not just the labels, but also musicians, composers, other related industry players, and most importantly the public.

#### **IV. The Dearth of Sincere “Willing Sellers” In These Proceedings**

28. The recorded music business in the United States today is dominated primarily by what are called the “Big Three” record labels, comprised of Universal Music

Group, Warner Music Group, and Sony Music Entertainment, which work on many issues in a coordinated effort under the umbrella trade organization of the RIAA.

29. While the U.S. recorded music industry also includes a good number of “independent” record labels (representing in a given year up to 1/3 of U.S. record sales), a large number of those labels rely on the “Big Three” for distribution of their product, and thus can presumably be encouraged by those “Big Three” labels to support the efforts and strategies developed by the RIAA.

30. With regard to the current proceedings, we have a group of potential “Sellers” who have essentially coordinated their efforts as a single entity and a group of potential “Buyers” who operate individually, giving an unfair negotiating advantage to the “Sellers.”

31. Tipping the scales even more strongly in favor of unfair negotiating power for the “Sellers,” online radio airplay is a small portion of their overall business, giving them the freedom to operate in a “take it or leave it” manner in negotiations, whereas for many of the “Buyers,” including AccuRadio, online radio airplay is typically the core of their business or their only business, which makes it impossible for them to take this same approach.<sup>2</sup>

32. If the major record labels were operating individually, they would in fact be competing aggressively against one another for radio airplay in all of its forms,

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<sup>2</sup> “Buyers” for whom Internet radio is not their only business may be willing to enter into royalty deals with the “Sellers” at rates higher than those to which a pure webcaster would agree, as such “Buyers” see Internet radio as merely an extension or protection of their current business – not their actual core business – and are willing to pay artificially high sums to the “Sellers” just so that they can enter the business and protect their other business lines from the potential erosion of time or interest that may be offered to their customers by Internet radio companies.



including online radio, and presumably would be “Willing Sellers” at a price as low as “zero.”

33. I believe that all parties in the current proceeding would acknowledge that the previous sentence is true for new releases. However, I believe it is also true for catalog product: Artists such as Led Zeppelin, Reba McEntire, and Three Dog Night have a certain level of catalog sales and concert ticket sales today. It strains basic logic and credibility to imagine that if these artists had been absent from the radio airwaves for, say, the past decade, their sales of catalog product and concert tickets would be higher today rather than lower.<sup>3</sup>

34. My point is that the major record labels, by operating over the years in regard to Internet radio in a coordinated effort primarily designed to influence Copyright Royalty Board judges, have not been acting as sincere “Willing Sellers,” nor offering the rates they would offer if they were operating individually and competing with one another for radio airplay and its resulting benefits.

#### **V. Considering “The Shambala Experiment” As a Thought Experiment**

35. As the Judges are likely aware, a “thought experiment” considers some hypothesis, theory, or principle for the purpose of helping one think through its consequences. Given the structure of the experiment, it may or may not be possible to actually perform it, but it is a useful technique for exploring the potential consequences of the principle in question.

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<sup>3</sup> A good example from the opposite perspective would be Shaun Cassidy, who had a number of Top 40 hits in the 1970s but receives scant radio airplay today; it is virtually impossible to imagine that the lack of radio airplay today has a beneficial effect on the his catalog sales and/or potential live performance income.

36. It is a fascinating and illuminating “thought experiment” to consider whether increased radio airplay is beneficial for labels and musicians.

37. Here is how such an experiment, which I propose calling “The Shambala Experiment” after the classic “Three Dog Night” song, might work:

38. Let’s imagine that all parties on all sides of the equation (radio stations (AM, FM, satellite, and Internet), record labels, and musicians alike) would like to quantify the effect, positive or negative, of radio airplay on music sales (i.e., both recorded music and live performances), and would therefore agree to coordinate their efforts, forswearing any objections on the basis of antitrust or similar objections.

39. For “The Shambala Experiment,” said parties would agree to drop all radio airplay for a randomly-selected set of artists for a reasonably-long period of time (e.g., three years).

40. Let’s say, for example, that radio airplay was denied for all artists beginning with the letter “T” (e.g., James Taylor, Justin Timberlake, Three Dog Night, Robin Thicke, Timbaland, Tonic, Toto, the Three Tenors, Train, Toad the Wet Sprocket, and so forth) for those years.

41. Using data from such sources as SoundScan (for record sales) and Pollstar (for ticket sales), let’s see if the “T” artists, relative to a control set of artists (e.g., all artists beginning with the letter “S”), see their record sales and, if applicable, touring income go up or down.

42. (Note: A simpler variation of this experiment could be to roll a die, randomly choose one of the “Big Three” record labels, and take all of its product off

American radio for three years, and then see what happens to that label's market share and the live performance income of its acts.)

43. I believe that it is highly likely that The Shambala Experiment, if actually conducted in the real world, would prove conclusively that radio airplay is beneficial to artists and their labels at all points on an artist's career trajectory.

44. Unfortunately, I also believe that the above experiment would be impossible to conduct in the real world, as I believe labels would try to prevent its fair and impartial implementation (and new artists would not name themselves with names that alphabetically begin with "T").

45. But I would implore the Judges to consider this as a "thought experiment" at some point during the upcoming proceedings and see if they don't reach the same conclusion that I have.

#### **IV. The Dearth of "Willing Buyers" In These Proceedings**

46. Since the last time I participated in a Copyright Royalty Board tribunal (Webcaster II), online radio has become a major factor in terms of total radio listening in the United States.

47. According to the recent "Share of Ear" study produced by Edison Research, online radio listening now comprises approximately 13.6% of all U.S. radio listening (with AM/FM radio at 75.3% and satellite radio at 11.1%). (Source: <http://www.insideradio.com/article.asp?id=2837287>.)

48. According to monthly press releases issued by Triton Digital on behalf of its "Webcast Metrics" product, the AQH (Average Quarter Hour) audience size (i.e., for

all reasonable intents and purposes, the average number of simultaneous listeners) of its clients (which do not even include all webcasters) is approaching 3,000,000 listeners at the average moment Mon-Sun 6a-12m and growing at the rate of about 20% per year. (Source: <http://www.tritondigital.com/Media/Default/Rankers/may2014-ranker.pdf>, page 2.<sup>4</sup>)

49. According to recent K-1s filed by Pandora (a public company), the company is currently bringing in revenues at an annualized rate approaching \$1,000,000,000 per year and growing at the rate of approximately 40% per year. (Source: <http://investor.pandora.com/phoenix.zhtml?c=227956&p=irol-newsArticle&id=1951104>.)

50. With this fast growth and seemingly attractive business opportunity, one should reasonably expect to see a large number of businesses jumping in to compete in the consumer Internet radio space as their primary business activity.

51. In fact, however, most of the services participating in the current CRB proceeding can be characterized into the following types: (A) Broadcasters whose primary business is broadcasting, but are participating here because they provide streams of those broadcast signals that account for a small percentage of their total audience, (B) Firms whose primary business is the sale of music downloads or on-demand subscription services, but which may or may not also offer a limited number of DMCA-compliant radio channels as a side feature, (C) Firms offering business-to-business services, and (D) Pandora, which is *sui generis* as the one notably successful (at least in audience size and gross revenues, if not profitability) U.S.-based webcaster to date.

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<sup>4</sup> Note that 1,800,000,000 hours per month of listening equates to an AQH of about 3,000,000 listeners (assuming that about 90% of said hours are consumed in the 6a-12m daypart and dividing by the number of hours in a month in that daypart).

52. This leaves one final category: Firms other than Pandora that are competing in the consumer online radio space as their primary business activity. The five companies fitting this category that filed a Petition to Participate in this proceeding were 8tracks, AccuRadio, Digitally Imported, Idobi and SomaFM.

53. These five webcasters are relatively trivial in terms of the total U.S. radio audience – they appear to have a combined U.S. AQH (Mon.-Sun. 6a-12m) of under 50,000 listeners. (Source for all but 8tracks: <http://www.tritondigital.com/press-releases/triton-digital-releases-july-2014-top-20-ranker>). Note that fuller information about these firms (e.g., AQH listeners, revenues, and expenses) is available to Sound Exchange through the Monthly Statements of Account provided by these webcasters.<sup>5</sup>

54. Given the size and growth rate of the online radio marketplace as described above – again, over 3,000,000 in AQH and over \$1,000,000,000 in industry revenues – I believe the Judges should expect to see a **large set of competitors** operating in this space – in other words, a large set of potential “Willing Buyers.”

55. The reason the Judges do **not** see a healthy set of potential “Willing Buyers,” in my opinion, is that the CRB rate determination set by Webcaster II and III (and even the non-precedential lower Pureplay rate established by the Webcaster Settlement Acts, which cannot be entered into this proceeding as evidence of a negotiated “Willing Buyer / Willing Seller” rate), combined with the high cost in both time and

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<sup>5</sup> As an aside, I should note that there are a small handful of additional meaningful companies (by which I mean entities more meaningful than, say, a hobbyist operating in a basement or dorm room) known to be operating in the consumer online radio space but not participating in Webcaster IV, including Slacker, Jango, Live365, and Songza. Their lack of participation in the current proceedings may imply a lack of financial and/or manpower resources, and/or a disbelief that a proceeding operating under the current standard, with the “Big Three” labels allowed to operate as a single entity, can lead to a viable outcome. It is my impression and belief that even these four webcasters are also relatively trivial in terms of the total U.S. radio audience – that these companies probably have a combined U.S. AQH (Mon.-Sun. 6a-12m) of under 100,000 listeners. Note again that fuller information about these firms is available to Sound Exchange through the Monthly Statements of Account provided by these webcasters.

financial expense of participating in the CRB process, is so great as to have **scared off** virtually all meaningful potential “Willing Buyers” both from the industry and from the CRB proceeding.

56. Interesting fact: Of the firms described in paragraph 52 and footnote 3, virtually all are firms that were initially established (or were launched by entrepreneurs that entered the industry or had predecessor firms established) prior to Webcaster III or even Webcaster II and thus have a huge “sunk cost.” Specifically, I believe that 8tracks’s founder has a huge “sunk cost” in commitment to this industry as a career going back to 1999, that Songza’s founders were trying to recover some value from their experience with predecessor company Amie Street (founded in 2006), and that all the other firms mentioned were founded prior to Webcaster III.

57. In fact, Idobi (until recently, a single-stream “pop-punk rock” webcaster) may be the only meaningful new entrant in the Internet radio industry (i.e., in which all or a very significant portion of their operations are noninteractive webcasting) to appear on the scene in the U.S. in the past seven years – and even it apparently has a history stretching back to 1999. (Source: <http://idobi.com/about/>.)

58. From both a public policy perspective and to follow the intent of the legislation, I believe the Judges need to consider this dearth of potential “Willing Buyers” in both the industry and these CRB proceedings.

59. I believe the dearth of substantive potential “Willing Buyers” is **clear evidence** that the CRB per performance rate – and even the non-precedential Pureplay rate – is perceived as beyond the pale for potential “Buyers.”

## VII. The Royalty to which a Willing Buyer and a Willing Seller Would Agree

60. Based on my reasoning above, I believe that if the “Big Three” record labels were **not** acting primarily to affect the CRB decision (and, through their power in their role of distributor, influencing the “independent” labels to cooperate), they would in fact be competing for radio airplay and the “Willing Seller” price would be at or approaching zero.

61. According to Pandora’s publicly-released financial statements (see source references earlier), it has been monetizing its audience until very recently (e.g., in 2012, after several years of operation) at about \$.03 per listener-hour (i.e., a \$30 RPM (revenue per thousand listener hours)). Note that this figure is for the overwhelmingly leading firm in the industry, and which has a huge national sales force.

62. Because a nascent webcaster – in its early years, with a relatively small audience and a limited sales force – would lack the ability to attract the attention of national brands and advertising agencies and thereby command premium prices, from my knowledge of the industry, it would be reasonable for its founders to project that it would only be able to monetize its audience for the foreseeable future at about half of Pandora’s 2012 rate, or \$.015 per listener-hour.

63. Given the fact that such a nascent webcaster would be competing not only with Pandora and other webcasters but, in terms of total number of hours of U.S. radio listening (as described and sourced above) primarily with AM/FM radio and satellite radio, which operate with music licensing costs (for both the composition and sound recordings royalties combined) of approximately 5-15% of revenues, I believe potential

“Willing Buyers” would be comfortable budgeting for music licensing costs in that range – i.e., to use a number at the high end of that range, about 15% of revenues.

64. Given that the average length of a song is about 3 to 4 minutes, and that online webcasters typically permit, on average, a few skipped songs per hour, I believe a reasonable estimate of songs played per listener per hour is about 20 songs per hour.

65. This math suggests that the “Willing Buyer” price that would permit a meaningful set of “Willing Buyers” would be in the general vicinity of \$.0001125 (i.e.,  $$.015 \times 15\% / 20$ ) per performance.

66. In support of this argument, note that U.S.-based entrepreneurs considering the launch of an Internet radio service (i.e., potential “Willing Buyers”) would naturally compare business opportunities targeting listeners in the U.S. vs. targeting listeners in other (ideally nearby and/or English-speaking) countries.

67. In May, 2014, the Copyright Board of Canada set rates for sound recordings for commercial “semi-interactive” webcasters of \$.000102 per performance. (Source: <http://www.cb-cda.gc.ca/decisions/2014/ReSound8-60-fact-sheet-en.pdf>.)

68. Entrepreneurs who are potential “Willing Buyers” might very rationally elect to compete in the Canadian market rather than the U.S. market if a wide disparity between Canadian and U.S. rates exists, suggesting that they would not be “Willing Buyers” at the rates available in the U.S.

### **XIII. Conclusion and Royalty Proposal**

69. For the reasons set forth above, I believe that a reasonable “Willing Buyer / Willing Seller” price determination would fall somewhere between “zero,” reflecting



the rational desire for radio airplay among genuinely competing “Willing Sellers,” and \$.000125 per performance, reflecting the rate that might reasonably permit a reasonably-large set of “Willing Buyers” in the U.S. We propose the latter, higher number as the Judges’ decision for the 2016-20 rate. This royalty rate would cover both the Section 114 performance royalty, as well as the Section 112 ephemeral rights.<sup>6</sup>

70. Regarding the concept of licensing having a minimum price per station or channel (which exists in some of the licenses created in the period following the Webcaster II decision), I believe that this is an irrational concept in the world of Internet-delivered radio. In Internet radio, each stream delivery is a one-to-one delivery and each minor variation established by a consumer (e.g., a song that is given a “thumbs-up” rating) creates, essentially, a new unique station or channel. Based on 70 million active users with a presumed average of 10 to 20 stations established per user, that suggests that Pandora currently would have 700 million to 1.4 billion different stations or channels established in its databases and available to its listeners, making the concept of a minimum price per station or channel nonsensical.

71. On the subject of differing rates for subscription streams: Recall that in the Webcaster II process, labels argued for a higher rate for performances on mobile devices than on personal computers, despite the fact that achievable revenues per listener-hour have in fact proven to date to have been lower for mobile streams (according to Pandora’s financials (source previously referenced)) and that there was never a logical or rational basis presented for such price differentiation. Similarly, as long as subscription

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<sup>6</sup> As the ephemeral copies made in the streaming process are inherent in any digital transmission of music, and really have no value independent from the performance right to the consumer, we do not see any basis for setting an independent rate for the ephemeral royalty.

streams are DMCA-compliant (e.g., honoring the performance complement), there is no rational basis for different or higher pricing for subscription services.

72. Regarding annual minimums, I recommend for public policy reasons (e.g., to encourage nascent webcasters) that they reflect only the reasonable marginal cost of SoundExchange's bookkeeping and accounting procedures. I would estimate that an annual minimum of \$100 per year for nascent webcasters (i.e., individuals trying to start a business) or \$5,000 per year for webcasters of a post-nascent size (e.g., at least 1,000,000 listener-hours per month) would be appropriate.

73. Regarding reporting requirements, I believe that Sound Exchange's continual desire for census reporting shows a clear level of innumeracy on their part: Using sample data (e.g., two randomly-chosen weeks per year) rather than census data does not cause distribution amounts to smaller artists to go **down**, it merely causes them to **fluctuate** (with equal probability up or down) within what I believe would be nominal levels. Using sample data would change the payout to smaller acts by mere dollars (either higher or lower) per year per webcaster, with that variation averaging out across multiple webcasters and multiple years, and while the variation to bigger acts would be larger in terms of dollars, it would similarly average out across multiple webcasters and over the course of multiple years. As such, I urge the Judges to impose the obligation of only sample-based reporting in all cases.

Under penalty of perjury under the laws of the United States, I hereby declare that the foregoing is true and correct to the best of my knowledge, information and belief.

*Kurt Hanson*

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Kurt Hanson

Executed this 6th day of October, 2014

**CERTIFICATE OF SERVICE**

I, Irene C. Tempka, legal assistant to Jeffrey J. Jarmuth, Esq., do hereby certify that copies of the foregoing "**DIRECT TESTIMONY OF KURT HANSON**" were sent via electronic email and via first-class, postage prepaid, United States mail, this 7<sup>th</sup> day of October, 2014 to the following:

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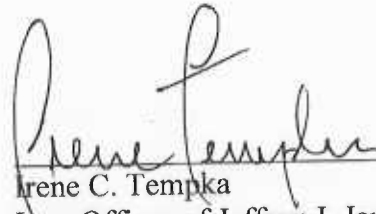


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