

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

In the Matter of:

DETERMINATION OF RATES AND  
TERMS FOR MAKING AND  
DISTRIBUTING PHONORECORDS  
(PHONORECORDS III)

Docket No. 16–CRB–0003–PR  
(2018–2022)

**WITNESS STATEMENT OF  
MICHAEL SAMMIS**

**PUBLIC VERSION**

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**WITNESS STATEMENT OF MICHAEL J. SAMMIS**

1. My name is Michael J. Sammis and I am Executive Vice President - Operations and Chief Financial Officer (EVP-CFO) of Universal Music Publishing Group (“UMPG”).

2. As I will explain below, music publishers are instrumental in discovering and nurturing songwriters and composers through financial investment in new writers, many of whom will not be commercially successful. Music publishers are able to make this financial investment in future songwriters in large part because of the income generated by their existing catalogues of songs. But as income being generated by existing catalogues diminishes, so may the ability of music publishers to make risky investments in the creation of new music.

3. In addition to discovering and developing new songwriting talent, music publishers support songwriters financially by paying advances against royalties that may or may not be earned in the future. These advances are funded to a degree by the income generated by music publishers’ existing catalogues. Music publishers also market, promote, and arrange for the worldwide registration, licensing and collection of royalties for the songs they control. They track the usage of the songs, collect and process all of the income received from tens of thousands of users and issue royalty statements to the writers and composers. They also undertake to protect the

copyrights against unauthorized use, through in-house and outside litigation counsel and through their support and affiliation with various music publisher associations globally (such as the National Music Publishers' Association in the United States). In short, music publishers perform many necessary global functions that cannot be performed by individual songwriters.

4. Accordingly, I make this statement to set forth the financial considerations and investments that UMPG makes in: (i) identifying, signing and supporting the creative efforts of songwriters; (ii) marketing, promoting and licensing songs both in the United States and on a worldwide basis through a global network of affiliated and third-party subpublishers; (iii) tracking the usage of the songs, collecting and processing the income paid by tens of thousands of users and assuring that the songwriters are accounted to and paid their share of the income generated by their songs; and (iv) protecting the copyrights against unauthorized use.

5. I will also discuss how shifts from the sale of physical recordings and digital downloads to digital streaming services has affected UMPG's revenues, and why I believe that, applying the criteria set forth in Section 801(b) of the Copyright Act, the mechanical royalty rates paid by Digital Services need to be increased.

#### **Professional Background**

6. I am a Certified Public Accountant and hold a Bachelor's Degree in Business Administration from Adelphi University, and a Master's Degree in Business Administration from the University of California, Los Angeles. I began my career working for accounting firms such as Ernst & Young. In 1995, I became Vice President – Finance of Windswept Pacific Entertainment, an independent music publishing company. In 1996, I began working for Universal Music Publishing Group, where I have held the titles of Chief Financial Officer (1996-2000), Senior Vice President/Chief Financial Officer (2000-2002), Executive Vice President/Chief

Financial Officer (2002-2007), and my current title, Executive Vice President – Operations/Chief Financial Officer, Worldwide (2007 to the present).

7. In my capacity as Chief Financial Officer (“CFO”), I am responsible for partnering with the Chief Executive Officer (“CEO”) and the Chief Operating Officer (“COO”) in developing and implementing the global strategy for UMPG. As a member of this senior leadership team, I also function as an advisor to divisional Presidents and Managing Directors, evaluating and assisting them with their financial plans and economic modeling. My primary CFO responsibilities also include management of the global finance organization including directing and monitoring financial performance, planning, budgeting, target setting, investment activities and infrastructure of over 40 separate reporting territories globally. In my capacity as Executive Vice President – Operations, I partner with the Executive Vice President of Global Administration and the Senior Vice President of Global Technology to identify, design and sponsor the development of IT projects and systems that meet the needs of the global publishing organization. I report to the CEO of UMPG, Jody Gerson. I also have a functional report to the Executive Vice President-CFO of the overall Universal Music Group, Boyd Muir.

### **UMPG**

8. UMPG is one of the largest music publishing companies in the world. It controls many of the most successful and valuable music catalogues of all time, representing music in every genre from some of the world’s most important songwriters and catalogues. Our catalogue includes many widely known songs by successful songwriters including ABBA, Adele, The Beach Boys, Beastie Boys, Irving Berlin, Leonard Bernstein, Justin Bieber, Mariah Carey, Alabama Shakes, The Clash, Coldplay, Elvis Costello, Neil Diamond, Eminem, Gloria and Emilio Estefan, Florence + the Machine, Ariana Grande, Al Green, Jimi Hendrix, Sam Hunt, Imagine Dragons,

Demi Lovato, Carly Rae Jepsen, Billy Joel, Elton John, Joe Jonas, Nick Jonas, The Mamas and The Papas, Pearl Jam, Maroon 5, Shawn Mendes, Miguel, Mumford & Sons, Randy Newman, New Order, Ne-Yo, Steve Perry, Otis Redding, R.E.M., Gustavo Santaolalla, Sex Pistols, Paul Simon, Britney Spears, Stax (East Memphis Music), Justin Timberlake, U2, Keith Urban, Diane Warren, Andrew Lloyd Webber and many others. UMPG is also a global leader in the Classical and Christian / Gospel genres, as well as in Production Music, which is music created specifically for use in media.

9. UMPG owns and/or administers an interest in [REDACTED] compositions written by [REDACTED] songwriters.

**Music Publishers Discover, Develop and Exploit Songwriters' Works**

10. Music publishers like UMPG employ [REDACTED] people to ensure that both new and existing songs are made available to the public. To do so, music publishers start with the artist and repertoire department. These employees are primarily dedicated to searching for new and unknown songwriters and then working with them to refine their talents, and promoting them to record labels and recording artists to record their songs. Next, the business affairs and legal departments support the effort by performing critical services, including negotiating and preparing agreements with new and existing writers, negotiating and preparing agreements for the acquisition of existing song catalogues, securing extended renewal term agreements under the United States Copyright Act with writers and their heirs, negotiating licensing agreements for the exploitation of songs, and protecting the rights in the songs with the support of outside litigation counsel.

11. In addition, a music publisher's finance department further supports the discovery, creation, and exploitation of new and existing music by, among other things, modeling deals for the acquisition of rights from both new and existing writers. This involves making financial

determinations regarding advances to be paid to writers, and performing valuations of rights for the purposes of acquiring catalogues and purchasing extended renewal term rights. Such financial modeling involves a degree of uncertainty, requiring experience and judgment. Existing catalogues and songs subject to extended renewal term rights have a past earnings history that can be used to help forecast potential future income. However, as I will explain, given the extraordinary changes that have occurred in the music industry over the past few years, the past earnings history of songs has become far less certain as a metric that can be relied upon to predict the future earnings of a song or catalogue of songs.

12. While existing catalogues have become more difficult to value, determining the value of the as yet unwritten songs that may be written in the future by an unknown songwriter present even greater forecasting problems. Unknown writers have no earnings track record and, thus, making determinations about whether and in what amount advances should be paid to such new writers and whether or not they are likely to be recouped is even more uncertain. Entering into agreements with unknown new writers has always involved a degree of risk and that risk level has only increased as sources of income that previously had a more or less predictable historical pattern, such as mechanical income, have become much more difficult to predict. Yet, without music publishers willing to invest in the talent of unknown writers, the public could potentially be deprived of the next Adele or the next Alanis Morissette or the next Alex da Kid (who has written with Eminem and Imagine Dragons, to name a few).

13. Music publishers take these financial risks, many of which never pay off, because they are calculated risks investing in the future of music and, historically, the successes have been able to outpace the losses. Moreover, music publishers are able to fund such risky advances mainly by virtue of the income being generated by their existing catalogues of songs. Ultimately, because

music publishers have been able to take these types of risks, the public receives the benefits of the music that successful new writers create, without having to bear the costs associated with the many new writers who may prove to be financially unsuccessful.

14. In addition to the artist and repertoire, business affairs and legal and finance departments, music publishers like UMPG also have departments devoted to the global administration of the copyrights, which make sure that the copyrights are protected and registered with the United States Copyright Office, properly registered with performing rights societies around the world (including ASCAP or BMI in the United States) and licensed to both affiliated or unaffiliated foreign subpublishers for exploitation abroad. The copyright administration department is also responsible for maintaining the files for songs in historical catalogues in order to ensure that they are properly registered and that the UMPG continues to collect income on songs it owns or administers.

15. In the United States, UMPG employs approximately ■ employees in its Copyright Department, and ■ employees that handle administration within its Royalty, Income Tracking and Copyright Departments combined (collectively, “Administration Departments”). UMPG also employs approximately ■ employees in its Royalty, Income Tracking and Copyright Departments worldwide.

16. In addition, licensing departments license the songs owned or administered by the music publisher, in order to generate income from the songs in their catalogues for the benefit of the music publisher and the writer. Mechanical licenses authorize the usage of songs on phonorecords, digital downloads and streaming services, while synchronization licenses authorize the use of songs in commercial advertisements and in television programs and motion pictures. In

addition, publishers license “grand rights,” which relate to the use of songs in a live theatrical presentation.

17. To support the functions identified above and detailed below, music publishers are required to make significant investments in technology, including music rights management and royalty accounting systems. The usage of songs is a worldwide business and publishers like UMPG receive royalty statements and payments from literally [REDACTED] of licensees. This data has to be collected and processed, and royalty statements have to be generated, twice yearly (and, in some instances, quarterly), to each of the [REDACTED] of writers (and, in many cases, their heirs) and co-publishers of the songs owned and administered by UMPG. As I will explain below, UMPG employs a large number of employees who are engaged in the receipt and processing of the royalty statements and payments we receive from around the world and the generating and rendering of royalty statements to our writers and co-publishers.

***Discovery and Development of Unknown Writers***

18. As stated above, UMPG makes significant investments in discovering and developing undiscovered songwriting talent to produce new music for the public. UMPG employs staff whose primary task is to discover the next great songwriter and to help develop that songwriter’s talents.

19. UMPG’s employees in our Creative / Artists and Repertoire (“A&R”) Department undertake this task. UMPG employs approximately [REDACTED] A&R professionals in the United States alone and approximately [REDACTED] A&R professionals worldwide (including Managing Directors), who are dedicated to discovering and developing fresh and diverse songwriting talent.

20. UMPG’s A&R Department, which plays a key role in the development of songwriters and the creation of new music available to the public, requires a significant portion of



UMPG's resources and represents a significant portion of UMPG's overhead costs, which are discussed in detail below.

21. Once a new writer is discovered by UMPG's A&R Department, the writer must be signed to UMPG pursuant to a songwriter, co-publisher, or administration agreement. As part of securing the right to publish or administer the future songs of a new writer (or the existing and future songs of successful writers), UMPG almost always pays an advance against the potential future royalty earnings that may be earned by those songs.

22. With proven writers, UMPG's financial modeling entails examining and analyzing, among other things, [REDACTED]. With new writers who have not yet achieved commercial success, determining what sort of an advance should be paid is more subjective. This modeling is often based on [REDACTED]

[REDACTED]

23. The modeling and financial estimates carry significant risk for UMPG with respect to both established and new writers. Indeed, [REDACTED]

[REDACTED]

[REDACTED]. Thus, the financial risks that must be assumed by UMPG to find and develop the writers of the "hits" of the future, the income from which will, in turn, support the continued search for succeeding generations of new great writers, are therefore increasing.

24. Despite these increasing risks, UMPG continues to invest in both unproven new writers and in the acquisition of rights from existing and successful writers in order to effectively compete and maintain and grow our catalogue. Advances are essential to the development of new and established songwriters, as they enable writers to perfect their craft by financing their day-to-

day expenses, including professional bills, management commissions, equipment costs, transportation, taxes and general living expenses.

25. Yet, the reality is that many of the advances UMPG invests in songwriters are never recouped and must be written off. For new writers, there is no guarantee that their songs will find commercial success. Indeed, only a small percentage of unproven songwriters signed to publishing contracts have their songs recorded and become successful. And even where we pay advances to successful writers to acquire their existing songs, the changes in the music industry's landscape may result in either failure to recoup advances or significantly delay the recoupment process.

26. UMPG's payment of advances is nevertheless crucial to the signing and development of songwriters. These advances constitute a substantial yearly expenditure by UMPG. In 2013, in the United States alone, UMPG began the year with an unrecouped balance of advances to songwriters of [REDACTED] (excluding amounts which may have been fully "written-off" in prior years). During the 2013 calendar year, UMPG paid out an [REDACTED] in advances during the year and it recouped some [REDACTED] (some of the recoupment was from prior year advances and some was from current year advances). By 2015 and 2016, however, the rate of recoupment [REDACTED]. For example, in calendar 2015 UMPG [REDACTED]. In 2016, UMPG expects to pay out [REDACTED]. As a result, the ending balance of outstanding unrecouped advances has [REDACTED]. This balance could [REDACTED]. Attached hereto as CO Ex. 6.1 is a schedule reflecting the total advances paid and recouped by UMPG for the past four years.

27. Over the past five years, UMPG has spent, on average, [REDACTED] of its yearly revenue on payment of advances to new and existing songwriters each year. To the extent that the [REDACTED], it may have a significant impact on the level of advances UMPG will be able and willing to pay in the future which, in turn, could impact the number of new writers that UMPG is able to sign. If UMPG is ultimately required to curb the amount of advances it is willing to extend, it could negatively affect the availability of new music for the public. If we sign fewer songwriters, the odds are that some of the writers we do not sign will never have the opportunity to develop their talents and will not write songs that could have become the standards of the future. In such case, the writers, the music publishers, the streaming services and most importantly, the public, will each suffer the loss of wonderful music we will never hear.

***Signing Unknown and Established Writers***

28. Once UMPG has modeled potential deals and determined the size of advances to be paid to a writer, UMPG must “sign” the writer to UMPG. UMPG’s Business and Legal Affairs Department serves a crucial role in making this deal.

29. UMPG employs [REDACTED] people in its Business and Legal Affairs Department in the United States and has more than [REDACTED] Business and Legal Affairs employees worldwide (plus access to Business and Legal Affairs personnel at UMG). The Business and Legal Affairs Department primarily employs lawyers with experience in the music industry. These professionals negotiate and draft agreements with both new and proven songwriters. They also work with UMG and outside counsel in connection with litigations for the protection of the songs in UMPG’s catalogue and in the negotiation and drafting of the more complicated license agreements.

30. The Business and Legal Affairs Department also negotiates and drafts agreements to acquire catalogues of songs from established songwriters and other publishers and to purchase extended renewal term rights, which are rights arising under the United States Copyright Act enabling writers and their heirs to recapture rights they have previously granted. Understanding and being able to address extended renewal term rights is especially critical for older catalogues such as [REDACTED] where the grants of rights made decades ago are entering into the period where the extended renewal term rights are coming due. This is increasingly becoming an issue for UMPG.

31. The work and expense UMPG incurs to maintain control and supervision over a large body of proven songs helps UMPG make the financial investments in discovering and signing new artists who may write popular songs of the future. It is the revenue generated by UMPG's successful catalogues of songs that largely provides UMPG with the financial capacity to make the risky investments in unproven writers.

32. The costs associated with all of these activities fall within the overhead costs of the A&R, Finance and Business and Legal Affairs Departments. In 2015, the overhead expenses for the A&R Departments across the United States totaled [REDACTED] and is expected to total [REDACTED] for calendar 2016. In 2015, the overhead expenses for the Business and Legal Affairs Department in the United States totaled [REDACTED], and is expected to total [REDACTED] for calendar 2016. In 2015, the overhead expenses for the Marketing Department in the United States totaled [REDACTED] and is expected to increase to [REDACTED] for calendar 2016. Attached hereto as CO Ex. 6.2 is a schedule reflecting UMPG's operating costs over the past two years. I have extracted this information from UMPG's financial reports produced in this proceeding.

33. In addition to these departments, UMPG's Film & Television Department also plays a crucial role in UMPG's publishing activities. The Film & Television Department engages in generating income through the negotiation of what are commonly referred to as "synchronization licenses." These licenses authorize the use of songs in motion pictures, television programs, television commercials, video games, or any other audiovisual medium.

34. UMPG's Film & Television Department employs approximately █ people in the United States and approximately █ people worldwide. In 2015, the Film & Television Department's overhead expenses in the United States totaled approximately █ and is expected █ for calendar 2016. (*See* CO Ex. 6.2.) The costs of maintaining this Department is yet another component of the investment UMPG makes to promote the works of our songwriters and to help generate income for their songs.

35. It is important to note that the time and effort dedicated to exposing the songs of our new and established writers to the film, television and advertising communities are generally covered by the revenues generated from our existing catalogues of songs. It would thus, be difficult for individual songwriters to incur the costs to promote their songs and procure synchronization licenses in the same manner as UMPG. Indeed, it is the aggregation of hundreds of thousands of songs that generate the revenues (not all of the millions of songs controlled by UMPG generate income) necessary for UMPG to discover and develop songwriting talent. And, without the investment in the future of music made by UMPG and other music publishers, the availability of new music would be stunted to the detriment of the public (as well as to the detriment of the streaming services and the recorded music companies, both of whose businesses rely to a great extent on the constant creation of new "hits").

*Maintaining and Growing the Value of Existing Songwriter Works*

36. Because music publishers such as UMPG likely could not continue to support the creation of the new songs on the same level without the revenues provided by our existing catalogues, we also invest substantial monies to acquire existing songs written by already successful writers (as well as their future songs) and to acquire the United States extended copyright renewal terms of existing musical compositions.

37. For proven songs with a long history of consistently generating income (often referred to as “evergreen” songs), [REDACTED] [REDACTED]. Despite this substantial expense, there is no assurance that these songs will continue to generate the same level of income as in the past. There is also no assurance that any advances paid by UMPG will be recouped in a reasonable period of time, or at all. But in order to support the investment in new writers who may produce “evergreen” songs of the future, UMPG has no alternative but to continue to make the necessary investments (to the extent doing so is economically sustainable) to retain as large a catalogue of proven songs as possible, which will, hopefully, continue to generate income for years to come.

38. In 2016, we are currently evaluating potential investments in extended renewal term rights of existing catalogues which could total as much as [REDACTED] based on the rights currently being evaluated.

39. As I have said, such acquisitions are accompanied by significant risk to the music publisher. With the changes in the music industry, specifically the migration from physical products and digital downloads to on-demand streaming, forecasting revenues that will be earned from the exploitation of “evergreen” songs is increasingly difficult. Thus, properly valuing the acquisition of songwriter royalties and/or extended renewal term rights (or even current rights in

an existing catalogue of songs) carries far greater risk than in the past. Yet music publishers have little choice, if the music industry is to continue to identify and develop the “evergreen” songs of the future, but to continue to invest not only in finding, signing and developing new writers but in retaining and acquiring the rights to successful existing songs to support the investment in the future of music.

***Protecting Songwriters’ Works and Right to Revenue***

40. In addition to discovering new songwriting talent and maintaining the value of established songs, publishers like UMPG are responsible for administering the rights in the songs in their catalogues, including by licensing mechanical rights, synchronization rights, performance rights, and print rights (among other tasks). In the United States, UMPG licenses mechanical rights to users both directly and through The Harry Fox Agency as well as through foreign societies such as MCPS in the United Kingdom and GEMA in Germany.

41. UMPG licenses what are known as “small” public performance rights in the United States through the performance rights organizations, primarily ASCAP, BMI or SESAC, as well as via direct licenses (in rare instances). Over the past four years, UMPG (and other publishers) have, directly or indirectly, invested [REDACTED] participating in what are known as “rate court” proceedings, and in a United States Department of Justice inquiry into what are known as the ASCAP and BMI “Consent Decrees,” in an effort to protect and enhance the value of the catalogues of music they control and to protect the income to be generated for writers and publishers in the future.

42. The aggregate licensing activities of UMPG comprise a large portion of the day-to-day activities of UMPG’s Business and Legal Affairs Department, Digital Rights Services Department, Copyright and Film & Television Departments.

43. One of the most important services UMPG provides is the processing of royalties received from users of songs, and the preparation of royalty statements and payments to writers and other third parties with an entitlement to royalties. As I have said, this is a worldwide business in which UMPG receives statements and payments from literally [REDACTED] of licensees and users of music every year.

44. These royalty services are administered by UMPG's Royalty Department. In the United States, UMPG employs some [REDACTED] employees within its Royalty Department. UMPG also employs [REDACTED] people globally in its Royalty Department.

45. The overhead expenses associated with the day-to-day administration of copyrights and royalties is significant. In 2015, the overhead expenses for UMPG's Administration Departments worldwide totaled approximately [REDACTED], and is expected to total [REDACTED] in 2016. (*See* CO Ex. 6.2.)

46. It is important to note that the processing of royalties is not simply a computerized activity. All of the royalty statements, whether received electronically or otherwise, must be reviewed and there are always significant statements or parts of statements that cannot be systematically matched to particular songs or writers. There are also thousands of statements and payments that continue to come in paper form and have to be coded and manually matched by our employees. As a result, manual review and matching is often necessary.

47. Further, with [REDACTED] of writers and their heirs, the employees of the Royalty Department handle a significant volume of inquiries and communications regarding royalty statements. Audits are also regularly conducted on behalf of writers and the employees of the Royalty Department also address the audit inquiries, provide responses to audit reports and participate in the resolution of any audit disputes.



48. In addition to the foregoing departments, UMPG also incurs additional costs in connection with the day-to-day administration of its vast catalogue, including UMPG's Finance Department, which as mentioned above, provides the financial modeling work with respect to new writer deals, the acquisition of existing catalogues and the purchase of writer royalty streams and extended renewal term rights. The Finance Department also manages the overall financial affairs of UMPG. The United States Finance Department overhead expenses totaled [REDACTED] in 2015, and is expected to total [REDACTED] in 2016. (See CO Ex. 6.2.)

49. UMPG's worldwide business is headed by the Global Executive Department, which is the group of executives responsible for supervising and managing all of the separate departments and each of the worldwide music publishing affiliates of UMPG (which are located in most of the major countries around the world). In 2015, the overhead expenses associated with the Global Executive Department was [REDACTED], and is expected to total [REDACTED] in 2016. (See CO Ex. 6.2.)

**Changes to Music Publishing with the Rise of Digital Music Streaming Services**

50. Over the past five years, UMPG and the music industry as a whole have experienced steady declines in the overall sale of physical product and digital downloads. UMPG's U.S.-sourced mechanical income from the sale of physical recordings and digital downloads dropped [REDACTED] from [REDACTED] in 2014 to [REDACTED] in 2015. During that same period, UMPG's mechanical income from streaming services only grew by some [REDACTED] from [REDACTED] in 2014 to [REDACTED] in 2015. In simple terms, UMPG's mechanical income diminished by [REDACTED] more than the growth provided from streaming mechanicals [REDACTED]. Even if this trend does not continue to the same extent, the decline in mechanical income complicates our ability to forecast future earnings to make

judgments about advances and acquisitions. Attached hereto as CO Ex. 6.3 is a spreadsheet reflecting mechanical income, earned from various forms of exploitation of songs for the years 2014 and 2015.

51. With the shift in revenues from the sale of physical recordings and digital downloads to digital streaming services, music publishers like UMPG are facing new difficulties in operating their business and continuing to acquire the services of new writers and existing catalogues and songs. As I have explained, income from UMPG's existing catalogue of songs supports its ability to continue to discover, sign and develop new songwriters. Yet, UMPG's ability to do so is hampered by the difficulty in predicting the future revenue that may be generated from both as yet unwritten songs and even from existing songs.

52. Furthermore, because digital streaming services often have difficulty matching their streaming data to a particular song, writers and publishers have thus far experienced significant delays in being paid completely or accurately by these streaming services. These delayed payments create further complications for both writers, as many writers are financially dependent on the income they are receiving for the exploitation of their songs, and publishers, as they further increase the difficulty in forecasting income from both new and existing songs and may contribute to the imbalance between the level of advances paid out and the recoupment of advances.

53. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

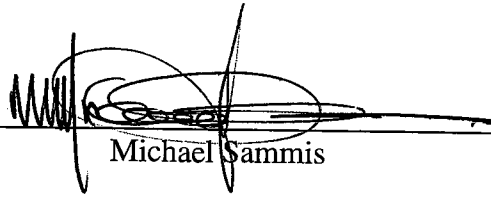
[REDACTED]

54. Beyond the potential inadequacy of the rates paid by streaming services, I believe that some of the delays in payment and accounting would be alleviated by a simpler and more straightforward means of calculating royalties, more akin to how mechanical income has been paid in the physical and digital download world. If, for example, the rate was based on a per-play and/or a per-user basis, a writer and publisher would only have to know the identity of the song and the number of plays and the number of users during a given accounting period, in order to determine the income payable to the publisher and songwriter and whether the digital services' accounting was proper.

55. I will defer to others for what that appropriate rate should be and how it corresponds to a rate for physical recordings and digital downloads, but the substantial costs that music publishers incur and the risks that they take would require that the mechanical rates paid by streaming services be increased and the calculation simplified, in order to allow music publishers to continue investing in the discovery, development, exploitation and administration of new and existing music.

I declare under penalty of perjury that the foregoing testimony is true and correct to the best of my knowledge, information and belief.

Dated: October 28, 2016



Michael Sammis

# **CO Ex. 6.1**

**RESTRICTED DOCUMENT**

**Subject to Protective Order in  
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(Phonorecords III)**

# **CO Ex. 6.2**

**RESTRICTED DOCUMENT**

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# **CO Ex. 6.3**

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**WITNESS STATEMENT OF  
GREGG BARRON**

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**WITNESS STATEMENT OF GREGG BARRON**

1. My name is Gregg Barron and I am Senior Director of Licensing at BMG Rights Management (US) LLC (“BMG”). I make this statement to briefly touch upon the role that music publishers such as BMG play in the music and entertainment industries (a topic that I know is being discussed more thoroughly by others). I also make this statement to identify the various license agreements that BMG has entered into with digital services (“Digital Services”) for rights covered by the Section 115 compulsory license, as well as with other digital music services that are not subject to such license. I will also explain why I believe the statutory mechanical rate paid by the Digital Services needs to be increased.

**I. Professional Background**

2. I graduated from Syracuse University in 1995 and, following college, went to work at EMI Music Publishing in its Synchronization Department.

3. I was hired in 2002 by Cherry Lane Music Publishing Company, Inc. which was subsequently acquired by BMG Rights Management (US) LLC and I have now been involved in the music publishing industry for over twenty years.

4. As Senior Director, Licensing at BMG, I oversee the licensing of BMG musical works to various music users, including Digital Services. I am personally responsible for BMG's licensing of online services in the United States, including Digital Services such as Amazon, Apple Music, Google Play and Spotify. I report to Joe Gillen, BMG's Chief Financial Officer.

**II. BMG**

5. BMG is an international music publisher established in 2008 (and currently owned by Bertelsmann, Inc.). In 2010, BMG made its largest acquisition to date when it purchased Cherry Lane Music, whose writers included Elvis Presley, John Denver and the Black Eyed Peas. As reported in Billboard, in the second quarter of 2016, BMG was, by market share, the fifth-largest music publisher in the United States.<sup>1</sup> BMG owns and/or administers more than [REDACTED] compositions written by thousands of songwriters, including Aerosmith (Steven Tyler and Joe Perry), Andy Grammer, Backstreet Boys, Blondie, Bruno Mars, Burt Bacharach, David Bowie, Frank Ocean, Hal David, Jeff Tweedy (Wilco), John Legend, Johnny Cash, Lady Antebellum, Nirvana (Kurt Cobain) and The Rolling Stones (Mick Jagger and Keith Richards).

**III. BMG's Role In The Development of Great Songwriters and the Creation of Great Songs**

6. I have read redacted versions of the witness statements of Peter Brodsky and David Kokakis and I agree with what they say regarding the indispensable role that music publishers play in discovering and nurturing songwriters and in helping to create great songs. Below I discuss some of BMG's experiences in particular.

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<sup>1</sup> Ed Christman, *Publishers Q2 Report: Sony/ATV Is Holding Onto the No. 1 Spot – But Barely*, Billboard (Aug. 20, 2015), <http://www.billboard.com/articles/business/6670986/publishers-q2-report-sony-atv-warner-chappell-universal-kobalt>.

7. Songwriters and the musical compositions they create provide the basic building blocks upon which the entire music industry is based. Artists need great songs to record. Digital Services need great recordings to attract customers to their services. BMG, playing a linchpin role, is instrumental in bringing new songs to market.

8. BMG, like all music publishers, plays a critical role in discovering talented songwriters, resulting in the creation of great new songs. BMG, largely through its Artist and Repertoire or “A&R” Department, discovers talent and facilitates relationships for its songwriters with recording artists, record companies and other songwriters. We have a full-time creative staff of approximately [REDACTED] individuals. In 2015 alone, BMG spent over [REDACTED] to discover and sign new talent. BMG’s current roster includes over [REDACTED] active writers and producers.

9. Some of BMG’s most successful songwriter signings in recent years (and some of the hit songs those songwriters have written) include: Breyan Isaac (“One Call Away” performed by Charlie Puth; “Whistle” and “Good Feeling” performed by Flo Rida), MeLo-X (“Sorry” performed by Beyoncé); Rook Monroe (“Somebody” performed by Natalie La Rose); Jon Randall (“Savior’s Shadow” performed by Blake Shelton; “Tin Man” performed by Miranda Lambert; “Still Feels Like Mexico” performed by Ronnie Dunn); Joe Ginsberg (“Little Red Wagon” performed by Miranda Lambert); Jason Saenz (“Southern Belle” performed by Scotty McCreery; “She Sets The City On Fire” performed by Gavin DeGraw); Jonathan Price (“That Could Still Be Us” performed by Keith Urban); Ben Goldsmith (“Blue Bandana” performed by Jerrod Niemann); Brett Beavers (“Gonna Know We Were Here” performed by Jason Aldean; and Canaan Smith (“Love You Like That” performed by Canaan Smith).

10. Notable signings in 2015 include Tony Fadd, a producer from Belarus who produced 50% of Fetty Wap’s “Trap Queen,” one of the biggest songs of 2015 and the biggest rap

song of 2015; MeLo-X, a producer and songwriter who collaborated with Beyoncé on her “Lemonade” album, including the single, “Sorry”; and DJ Khaled, a producer and songwriter whose 2016 album “Major Key” debuted at number one on the Billboard 200, and included the songs (co-written by DJ Khaled) “I Got the Keys” (featuring Jay Z and Future) and “For Free” (featuring Drake).

11. BMG’s A&R team discovers and pursues opportunities with emerging talent in many different ways. Sometimes, it is through a songwriter’s attorney or manager. For example, Andrew Gould, our Senior Vice President, Creative, heard about songwriter Brenton Duvall through Brenton’s attorney. Brenton’s talent was apparent from the music he had written, and at that time, Brenton was beginning to work with some other talented co-writers. Andrew met with Brenton, felt there was a strong connection, and decided to make him an offer, which he accepted. Andrew also helped discover another BMG songwriter (and artist), Andra Day, while meeting with Andra’s manager. When Andra’s manager played Andrew a song featuring Andra’s vocals, he knew he had to meet her. Andrew spent the next year and a half working on signing Andra, including providing her with creative services as if BMG were already her publisher.

12. Our A&R team also discovers talented songwriters through seminars and through other songwriters. They discovered the songwriter Jonny Price during a songwriting seminar, immediately recognizing Jonny’s unique talent. They helped Jonny further develop that talent through regular publisher-writer feedback sessions and collaborations. Jonny now has three cuts on a Tim McGraw-Faith Hill project and a song, “That Could Still Be Us,” on the Keith Urban album, “Ripcord,” which is nominated for a CMA Award for Album of the Year. Our A&R team discovered the songwriter Andrew DeRoberts through a different BMG songwriter, Canaan Smith.

After working regularly with a member of BMG's creative team, Andrew has landed cuts with artists Justin Moore, Kristian Bush, Eli Young Band and Brantley Gilbert.

13. When we sign a new songwriter, we enter into an agreement with that songwriter and, in virtually all cases, pay that songwriter an advance. An advance is a means to ensure that a songwriter can focus on his or her craft rather than having to find other means of support. Advances help make the profession of songwriting a sustainable career choice, particularly as it can take a year or two from the time a song is actually created and recorded for it to generate any revenue.

14. The payment of an advance is, of course, a risky endeavor. While BMG generally expects to recoup the advance from the royalties earned from licenses of the songwriter's works, frequently the royalties earned are less than the amount of the advance, so BMG is never repaid its investment in these, in most cases, non-refundable monies. Nevertheless, BMG recognizes that the payment of advances is critical to the signing and development of songwriters, and advances constitute a substantial yearly expenditure by BMG. In recent years, our advances have ranged from [REDACTED] for lesser-known songwriters writers, and from [REDACTED] for more established writers.

15. BMG's creative staff also works to help our writers further develop their unique talents and styles to facilitate their creation of songs. They frequently coordinate collaborations between or among our songwriters and/or producers, artists, and/or members of our creative staff. BMG views such collaborations (including, in some cases, between and among individuals who write, perform or focus on different genres) as an essential part of the creative process.

16. BMG has assisted songwriters in putting together successful writing teams of all sizes and for all genres of music. For example, BMG executives in Los Angeles brought together

and coordinated a session for three writers, Nate Cyphert, William Wiik Larsen and busbee, who wrote “H.O.L.Y.,” a pop-country song. A member of our Nashville creative team subsequently pitched “H.O.L.Y.” to the country duo Florida Georgia Line, and “H.O.L.Y.” has become a gigantic hit. Another member of our creative team in Los Angeles introduced Jason Evigan, who had just moved to the area, to Ammar Malik, an already-established hit maker, believing that their creative sensibilities and personalities would mesh well. Since then, Evigan and Malik have together enjoyed tremendous success, including writing the hit single “Chains,” recorded by artist Nick Jonas. BMG also recently helped facilitate another successful collaboration between the songwriters Clarence Coffee, Julia Michaels, Ian Kirkpatrick and Sarah Hudson, who wrote the song “The Feeling” on the last day of a BMG-hosted songwriting retreat in Aspen. “The Feeling” was then pitched to Justin Bieber’s team, who fell in love with it, and Justin recorded it and included it on his most recent album, “Purpose.”

17. Other successful songwriting collaborations facilitated by BMG have included busbee and artist-songwriter Maren Morris, which led to four cuts on Maren’s critically and commercially acclaimed breakout first album, two of which became hit singles (“My Church” and “80’s Mercedes”); and the songwriting trio of Hillary Lindsey, Lori McKenna and Liz Rose (who are known as The Love Junkies), whose song “Girl Crush” won numerous awards, including the 2016 Grammy Award for Best Country Song and 2015 CMA Awards for Song of the Year and Single of the Year.

18. Our creative staff also works with songwriters in our New York studios and in our writer building in Nashville to develop their writing skills and, in the case of singer-songwriters, also their performance skills. They spend hours listening to our songwriters’ compositions and

working with them to produce new songs that can eventually be marketed to record labels and artists.

19. BMG has been instrumental in helping many artist-songwriters obtain record agreements by introducing them to our many contacts in the record industry. For example, we helped develop BMG artist-songwriter Jon Bellion by sending his music around to record labels, resulting in his signing with Capitol Records. We took artist-songwriter Riley Clemmons to the largest and most successful Christian record company, Capitol CMG, where she secured a recording contract. We developed artist-songwriter Clare Dunn's career through co-write and producer collaborations, play on SiriusXM satellite radio, and outreach to several major record labels, all of which helped Clare secure a record agreement with Universal. We took German singer-songwriter Biby Bourelly, who has written several notable songs for Rihanna and others, to meetings with several record labels and she ended up signing a huge record agreement with Universal's Def Jam label.

20. BMG has also helped producer-songwriters by connecting them with artists and finding opportunities for them to co-write or co-produce on existing projects. For instance, Andra Day, whom I mentioned above, was signed to Warner Brothers at the time Andrew Gould handled her publishing agreement with BMG, and he introduced Andra to Jennifer Decilveo. Together, Andra and Jennifer wrote "Rise Up," a smash hit that was nominated this year for a Grammy for Best R&B Performance. In another case, Andrew was able to get newly-signed BMG songwriter Jake Sinclair involved with the pop punk outfit 5 Seconds of Summer, which had just signed an agreement with Capitol UK. Together they wrote "She Looks So Perfect," which was number one on the charts in numerous countries, and to date, is still the band's biggest song. On another occasion, Andrew learned that electro-house musician Steve Aoki was looking for a chorus to

complete one of his singles, entitled “Boneless.” Andrew suggested to Steve that BMG songwriter Whitney Phillips work with him on it. Whitney wrote a number of options for Steve, one of which was included in a vocal version of “Boneless,” entitled “Delirious (Boneless).”

21. We also frequently hold writing camps where we help our songwriters write songs for a particular artist or album. For example, we held multiple writing camps for the last Rihanna album which yielded placements for our writers, including Bibi Bourelly, Wondagurl and Rook Monroe.

22. While our investments in our songwriters are substantial, they cannot guarantee success. I estimate that just [REDACTED] of the writers that we sign go on to write one or more big singles. Our investments, including the advances we pay songwriters who do not achieve commercial success, are, with rare exception, never returnable. Nevertheless, notwithstanding the success of any particular writer, our investments in songwriters result in the creation of the musical works that ultimately provide the value to the Digital Services.

**IV. BMG’s Role In Promoting, Licensing and Protecting Songs**

23. For a songwriter to achieve success, his or her songs must be promoted. The individuals in BMG’s Mechanical Licensing, Synchronization Licensing and Marketing Departments work tirelessly to promote our writers and their songs to record labels, artists, producers, film, television, videogame and app companies, advertising agencies, music supervisors, and increasingly directly to brands. BMG employs [REDACTED] full-time employees in this department in the United States, and [REDACTED] additional employees outside of the United States. In 2015, this department spent over [REDACTED] to license and market our songs, and has already spent over [REDACTED] in 2016 (through September 30) to do so.



24. Some of our significant synchronization placements in the last year include Jim Croce’s classic “Time In A Bottle,” which was used in an iPhone commercial, and Audra Day’s “Rise Up,” which was featured in a Beats by Dre commercial. Synchronization placements frequently lead to increased sales of recordings of the song, and the Audra Day track was no exception. After the Beats by Dre commercial, the album “Cheers to the Fall,” which contains “Rise Up,” charted at Number 48 on the Billboard 200 for two weeks.

25. Such placements also can lead to a resurgence of interest in an older song. For example, after the iPhone ad, “Time In A Bottle” entered the Billboard Rock Charts and Hot Rock Songs charts 40 years after it had topped the Billboard Hot 100. And last year, after the film “Straight Outta Compton,” the life story of the rap group N.W.A., was released featuring numerous N.W.A. tracks, the album “Straight Outta Compton” shot to Number 4 on the Billboard 200, and “The Best of N.W.A.: The Strength of Street Knowledge,” shot to Number 72. Ice Cube’s (a member of N.W.A.) album “America’s Most Wanted,” went to Number 150.

26. But licensing the songs is not enough. We need to also collect the royalties and assure that our writers are being accurately accounted to and paid. Tracking the exploitation of songs across the globe (including via a complex maze of rights societies) and collecting and processing the income paid by licensees are substantial (and costly) endeavors. In fact, the administrative costs and burdens on publishers, including BMG, to monitor, collect and pay out royalties have increased with the growth of streaming and limited download services, including as a result of having to develop and implement new accounting procedures. BMG currently employs, in the United States alone, a team of █ full-time employees dedicated to royalty administration, and █ more overseas. In 2015, BMG spent over █ to track, administer and pay royalties to our songwriters, and has spent over █ to do so in 2016 (through September 30).

27. BMG is also responsible for protecting our writers' works. These endeavors are critical not only to songwriters and their livelihoods but also to the survival of the music business. We prosecute infringement lawsuits and immerse ourselves in cases and inquiries that present important issues of copyright law (including, of course, proceedings such as this which seek to define a fair return to the copyright owner for a compulsory license). For example, last year, we secured a \$25 million verdict against Cox Communications for secondary copyright infringement, resulting from Cox's failure to implement a repeat infringer policy as required by the DMCA.<sup>2</sup> Outside counsel's legal fees were over [REDACTED]. And while the cost of man-hours and disruption within BMG to prosecute such an action cannot be calculated, we had one staff member work on the matter for eight months to ensure clean chain of title for [REDACTED] works and attend each day of a two-week trial; our President spent three days in trial preparation and at trial; and our Deputy General Counsel spent hundreds of hours from inception to verdict and was removed from his usual obligations for over four months.

**V. The Contribution of BMG and Its Songwriters To Interactive Services**

28. In recent years (and since the last Phonorecords rate proceeding), there has been a tectonic shift in the manner in which music is distributed and consumed. The use of interactive or "on-demand" streaming and limited download services has begun to substitute both for the purchase of physical product and the permanent downloading of music (from services such as iTunes).

29. Users have become accustomed to listening to music anywhere, on a variety of different types of digital devices (including smart phones and other mobile devices). Having

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<sup>2</sup> See *BMG Rights Management (US) LLC v. Cox Communications, Inc.*, 149 F. Supp. 2d 634 (E.D. Va. 2015) (now on appeal).

access to an almost limitless catalogue of songs is of great value to consumers and, consequently, to Digital Services. Digital Services promote this access as a consumer benefit, and consumers have paid and are willing to pay for it (and advertisers have demonstrated a willingness to pay the Digital Services to pitch to these consumers).

30. Despite the publishers' and songwriters' contributions to the value of the Digital Services and their offerings, the publishers and songwriters, in my view, have not been fairly compensated for that value, as demonstrated below. In fact, it has been said that some services were built on the backs of rights holders and only secured licensing once critical mass to establish such services had been attained.

**VI. BMG and Its Songwriters Are Not Being Fairly Compensated By the Digital Services**

31. There are several reasons why the growth in interactive streaming and the value it provides to consumers have not inured to the financial benefit of songwriters and their publishers. Again, I have read redacted versions of the witness statements of Peter Brodsky and David Kokakis, and I agree with their views on this issue. To summarize:

- The current rate structure ties the compensation paid to songwriters and publishers to the business models and decisions of the Digital Services. Receiving as a royalty 10.5% of revenue is useless if the Digital Service is not focused on revenue, but rather, on customer acquisition (to build enterprise value in anticipation of an IPO or a sale, or to sell non-music related products or services).
- The current rate structure was intended to insure that the publishers and songwriters are paid at least a certain percentage of the consideration paid by the Digital Services to the record labels, but because the \$0.80 subminimum acts to cap that amount, and the Digital Services that have given equity to the labels have not

included that equity in calculating label consideration, it has failed to provide that insurance.

- A significant percentage of the money earned by songwriters and music publishers is not being paid to them by the Digital Services, or is not being paid timely. The Digital Services are technology and data companies, yet somehow they are unable to adequately fulfill their tracking and payment obligations. (This is a reason why the Judges need to clarify that the late fee provision applies not just to record labels but also to Digital Services.)

32. It is clear that the current rate structure is not working and needs to be revised, among other revisions, to provide for a per-play and per-user rate.

## **VII. Digital Services and Direct Licensing**

33. The availability of the compulsory license affects our ability to obtain rates in direct negotiations with the Digital Services that are higher than the statutory rate. Logic dictates – and industry practice generally confirms – that a Digital Service would not pay more when the compulsory option is available since that option is cheaper for the Digital Service.

34. There remain, however, incentives to negotiate direct licenses, and BMG has entered into numerous direct agreements with Digital Services for interactive streaming and limited downloads and other Subpart B & C Configurations which are covered by the Section 115 compulsory license and for which statutory rates are to be determined in this Proceeding.

35. One rationale for Digital Services being willing to negotiate directly for licenses is that they would prefer to not have to comply with the statutory compulsory license provisions. Those provisions require the service of notices of intention to obtain a compulsory license (“NOIs”) for each musical work the Digital Service wishes to license. 17 U.S.C. § 115(b)(1).

These NOIs must be served *prior to* streaming the work. *Id.* If a Digital Service does not follow these procedures then its act of streaming becomes an infringing act. *Id.* § 115(b)(2). By entering into a direct blanket license with a music publisher such as BMG, a Digital Service avoids the burden of having to timely serve NOIs and, perhaps even more importantly, the Digital Service is protected from an infringement action related to the use of any of our songs. Digital Services also prefer the quarterly accounting generally offered by the publishers whereas the compulsory license requires monthly accountings. *Id.* § 115(c)(5).

36. Of course, in some cases, a Digital Service needs rights or wishes to obtain benefits that are not provided by the compulsory license, and that provides an impetus to seek a direct agreement with a music publisher.

37. Direct licensing provides benefits to the publisher and its songwriter as well. There is an advantage to having a direct contractual relationship with an online service. In addition, in some scenarios we are able to negotiate certain terms that would not otherwise be available to us and the songwriters we represent under a compulsory license. One such example is [REDACTED]

[REDACTED]

38. I have personally negotiated several direct agreements with Digital Services in relation to interactive streams and/or limited downloads (and other Subpart B & C Configurations).

[REDACTED]

[REDACTED]

[REDACTED] Of course, the existence of the compulsory license eliminates most of the leverage we would otherwise have to negotiate a rate higher than the statutory rate. I do believe that, in the absence of the compulsory licenses, Digital Services would agree to pay more for our content, and thus the rate is too low.

39. Digital Services that make and distribute interactive streams and limited downloads and that BMG has entered into direct agreements with [REDACTED]

[REDACTED]

[REDACTED].<sup>3</sup>

40. We also have a direct deal with [REDACTED]

[REDACTED].<sup>4</sup> Eager to cut direct agreements before it went to market, [REDACTED] in June 2015. We negotiated a royalty that is

[REDACTED]

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<sup>3</sup> CO Ex. 7.1, [REDACTED]; CO Ex. 7.2, [REDACTED]; CO Ex. 7.3, [REDACTED]; CO Ex. 7.4, [REDACTED]; CO Ex. 7.5, [REDACTED]; CO Ex. 7.6, [REDACTED]; CO Ex. 7.7, [REDACTED].

<sup>4</sup> Rakesh Sharma, *Amazon Said to Launch Two New Music Services Early Next Year*, Investopedia (Oct. 10, 2016), <http://www.investopedia.com/news/amazon-said-launch-two-new-music-services-early-next-year-amzn-aapl/>.

[REDACTED]  
[REDACTED].<sup>5</sup>

41. We also entered into direct licenses [REDACTED] 37 C.F.R. Subpart C [REDACTED] with [REDACTED] for their paid locker services,<sup>6</sup> and with [REDACTED] for their “limited offering” streaming/limited download services.<sup>7</sup>

42. In a number of our agreements with Digital Services subject to the compulsory license we received advances, even though there is no statutory requirement to pay an advance. These agreements include the [REDACTED] [REDACTED].<sup>8</sup>

43. BMG also routinely enters into blanket licenses with digital music services, sites and applications for rights that are not subject to the compulsory license.

44. As a publisher, we feel that it is critical that a Digital Service is able to enter the market so that our music is exploited as broadly as possible. If our songs are not available on a service we and our songwriters are missing a revenue generating opportunity. Further, there is aggressive competition in this business, and if our songwriters’ works are not distributed as widely as the works of songwriters affiliated with other publishers, we not only risk depriving our writers of income, we risk damage to our competitive position.

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<sup>5</sup> CO Ex. 7.8, [REDACTED].

<sup>6</sup> CO Ex. 7.9, [REDACTED]; CO Ex. 7.10, [REDACTED].

<sup>7</sup> CO Ex. 7.5, [REDACTED]; CO Ex. 7.11, [REDACTED].

<sup>8</sup> CO Ex. 7.9, [REDACTED]; CO Ex. 7.2, [REDACTED]; CO Ex. 7.1, [REDACTED]; CO Ex. 7.11, [REDACTED]; CO Ex. 7.5, [REDACTED].

45. For these reasons, we have made blanket license agreements licensing our catalog to, for example, digital video services, digital karaoke services, digital music games, lyric sites and music instruction and remix apps and services.

46. In some of these agreements, we license our songs (on a blanket basis) to be used along with sound recordings that the service has licensed from record labels, and are paid at the same royalty rate as the record labels.

47. For example, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].<sup>9</sup>

48. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]<sup>10</sup> Our ability to negotiate such a most favored nation provision where we are operating in a free market, unconstrained by the compulsory license, demonstrates that the licensee considers the musical work to have the same value as the sound recording.

49. [REDACTED]  
[REDACTED]

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<sup>9</sup> CO Ex. 7.12, [REDACTED]; CO Ex. 7.13, [REDACTED].

<sup>10</sup> CO Ex. 7.14, [REDACTED].



[REDACTED]

[REDACTED]<sup>11</sup>

50. In agreements where sound recording rights are not involved, we have been able to negotiate rates as high as [REDACTED] of the service's revenues. For example, [REDACTED]

[REDACTED]

[REDACTED]<sup>12</sup>

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<sup>11</sup> CO Ex. 7.15, [REDACTED].

<sup>12</sup> CO Ex. 7.16, [REDACTED]; CO Ex. 7.17, [REDACTED].

51. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]<sup>13</sup>

52. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]<sup>14</sup>

53. [REDACTED]

[REDACTED]

[REDACTED]<sup>15</sup>

54. [REDACTED]

[REDACTED]

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<sup>13</sup> CO Ex. 7.18, [REDACTED].

<sup>14</sup> CO Ex. 7.19, [REDACTED];  
CO Ex. 7.20, [REDACTED].

<sup>15</sup> CO Ex. 7.21, [REDACTED].

[REDACTED]  
[REDACTED]<sup>16</sup>

55. In many of our agreements with services not subject to the compulsory license, [REDACTED]  
[REDACTED].<sup>17</sup>

56. I believe that the digital agreements we have made outside of the shadow of the compulsory license and that are described in paragraphs 47 - 54 are free market agreements that reflect what the parties believed at the time to provide both a fair return for BMG and its songwriters as well as a fair income to the digital service (although, even in some of these instances, we have been confronted with arguments from licensees that the rates should track the statutory mechanical rate). They are therefore, in our view, agreements which the Judges in this Proceeding can and should consider as benchmarks.

57. Our deal with the [REDACTED] is also illustrative of the value assigned to sound recordings and musical compositions outside of the context of the compulsory license. We licensed our rights to YouTube for both uses where a label master is involved and where a label master is not involved. For uses where a label master is not involved  
— [REDACTED]

[REDACTED]  
[REDACTED]

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<sup>16</sup> CO Ex. 7.22, [REDACTED].

<sup>17</sup> See CO Ex. 7.12, [REDACTED]; CO Ex. 7.14, [REDACTED]; CO Ex. 7.16, [REDACTED]; CO Ex. 7.18, [REDACTED]; CO Ex. 7.21, [REDACTED]; CO Ex. 7.22, [REDACTED]; CO Ex. 7.23, [REDACTED].

[REDACTED]. For uses where a label master is also being copied – [REDACTED]

[REDACTED]

[REDACTED].<sup>18</sup> I understand from public reports that [REDACTED] pays content owners 55% of its revenues<sup>19</sup> (although it is not clear whether that reported 55% includes the amounts payable to us for our musical works, such that the label is actually receiving 40% of revenues). Regardless, this means that for [REDACTED] using both the master and the composition, we are paid either roughly [REDACTED] of what the label is paid.

58. Here it should be noted that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>18</sup> CO Ex. 7.23, [REDACTED].

<sup>19</sup> See, e.g., [REDACTED]

[REDACTED].

[REDACTED]

[REDACTED]

**VIII. For the Reasons Discussed Above, The Judges Should  
Adopt The Copyright Owners' Proposed Rates and Terms**

59. I believe that the increase in rates proposed by the Copyright Owners, and the modifications to the rate structure to, *inter alia*, set the rate at the greater of a per-play rate and a per-user rate, is supported by the statements made herein. Music publishers, including BMG, incur substantial costs in developing and supporting songwriters and in bringing songs to market. Mechanical royalties are a primary revenue source that publishers use to recoup their costs and investments, including the significant advances we pay to songwriters. If the Digital Services are permitted to continue to pay miniscule amounts in mechanical royalties, even as the popularity of streaming is rising, it will become more and more difficult for us (and other music publishers) to recoup these investments.

60. Mechanical royalties are also a significant source of income that songwriters rely upon to meet their day-to-day living expenses. If writers continue to be paid miniscule amounts by the Digital Services, they will not be willing or able to continue to create great music, as we do not live in the age of medieval patronage.

61. With streaming becoming the primary method of music distribution and consumption, it is important that songwriters and publishers get paid for every play, at a rate that is not tied to “startup costs” and the business needs of Digital Services such as Apple, Amazon, Google and Spotify, but that instead reflects the value that songwriters and publishers contribute to the Digital Services, their customers and the value proposition of “all of the music.” I understand that the rates proposed by the Copyright Owners are, on a per-play basis, consistent with what

many of the Digital Services have already paid BMG on an “effective” per-play basis, and are therefore hardly disruptive.

62. I urge the Judges to adopt the Copyright Owners’ proposed rates, which recognize the value and the real worth of the songwriters’ and publishers’ contributions to the services being offered by the Digital Services as well as their success. I also urge the Judges to adopt the Copyright Owners’ proposed late fee term, which is intended to ensure that songwriters and publishers realize the full value of those rates. Music and the songwriters that create the themes and soundtracks of our lives can no longer be viewed as an economic afterthought.

I declare under penalty of perjury that the foregoing testimony is true and correct to the best of my knowledge, information and belief.

Dated: October 28, 2016

  
Gregg Barron

# **CO Ex. 7.1**

**RESTRICTED DOCUMENT**

**Subject to Protective Order in  
Docket No. 16-CRB-0003-PR (2018-2022)  
(Phonorecords III)**



# **CO Ex. 7.2**

**RESTRICTED DOCUMENT**

**Subject to Protective Order in  
Docket No. 16-CRB-0003-PR (2018-2022)  
(Phonorecords III)**

# **CO Ex. 7.3**

**RESTRICTED DOCUMENT**

**Subject to Protective Order in  
Docket No. 16-CRB-0003-PR (2018-2022)  
(Phonorecords III)**

# **CO Ex. 7.4**

**RESTRICTED DOCUMENT**

**Subject to Protective Order in  
Docket No. 16-CRB-0003-PR (2018-2022)  
(Phonorecords III)**

# **CO Ex. 7.5**

**RESTRICTED DOCUMENT**

**Subject to Protective Order in  
Docket No. 16-CRB-0003-PR (2018-2022)  
(Phonorecords III)**

# **CO Ex. 7.6**

**RESTRICTED DOCUMENT**

**Subject to Protective Order in  
Docket No. 16-CRB-0003-PR (2018-2022)  
(Phonorecords III)**

# **CO Ex. 7.7**

**RESTRICTED DOCUMENT**

**Subject to Protective Order in  
Docket No. 16-CRB-0003-PR (2018-2022)  
(Phonorecords III)**

# **CO Ex. 7.8**

**RESTRICTED DOCUMENT**

**Subject to Protective Order in  
Docket No. 16-CRB-0003-PR (2018-2022)  
(Phonorecords III)**

# **CO Ex. 7.9**

**RESTRICTED DOCUMENT**

**Subject to Protective Order in  
Docket No. 16-CRB-0003-PR (2018-2022)  
(Phonorecords III)**



# **CO Ex. 7.10**

**RESTRICTED DOCUMENT**

**Subject to Protective Order in  
Docket No. 16-CRB-0003-PR (2018-2022)  
(Phonorecords III)**

# **CO Ex. 7.11**

**RESTRICTED DOCUMENT**

**Subject to Protective Order in  
Docket No. 16-CRB-0003-PR (2018-2022)  
(Phonorecords III)**

# **CO Ex. 7.12**

**RESTRICTED DOCUMENT**

**Subject to Protective Order in  
Docket No. 16-CRB-0003-PR (2018-2022)  
(Phonorecords III)**

# **CO Ex. 7.13**

**RESTRICTED DOCUMENT**

**Subject to Protective Order in  
Docket No. 16-CRB-0003-PR (2018-2022)  
(Phonorecords III)**

# **CO Ex. 7.14**

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(Phonorecords III)**

# **CO Ex. 7.15**

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# **CO Ex. 7.16**

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# **CO Ex. 7.17**

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# **CO Ex. 7.18**

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# **CO Ex. 7.19**

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# **CO Ex. 7.20**

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# **CO Ex. 7.21**

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# **CO Ex. 7.22**

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# **CO Ex. 7.23**

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