

Before the
COPYRIGHT ROYALTY BOARD
Washington, D.C.

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

PETITION TO PARTICIPATE

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

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

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

GEO MUSIC GROUP
George Johnson Music Publishing (100% withdrawal from BMI)
23 Music Square East, Suite 204
Nashville, TN 37203
Telephone: 615-242-9999
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(1) What is the importance, if any, of the presence of economic variations among buyers and sellers?

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

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

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

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

Furthermore, there is no economic variation when the price is fixed at virtually nothing.

Price fixing rates at .0012 or .00000012 is not a fair market price for a sound recording or any type of copyright.

The only variation is how much third parties skim off the top of .0012 where the owner of the copyright gets .00000012, if any.

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

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

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

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

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

With 4/5th of the major publishers in the world leaving BMI for good, and eventually ASCAP, it's a perfect example of how a 100 year system of price fixing and centralized planning has forced the music publishers out forever. Collective bargaining, blanket licensing have taken it's toll and even the great Burt Bacharach recently wrote a WSJ editorial on the elimination of the consent decree which allows streamers to steal our songs at below market rates without negotiating and that has to stop.

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

However, if the Board must set rates, it should adopt the 12 to 22 cent Pandora model as a temporary "minimum statutory rate" for all streaming, digital radio, or webcasting digital sound recordings.

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

After that, the Board should adopt higher rates closer to 52 cents per song for all digital sound recordings. This is based on the 2 cent minimum statutory rate set for mechanical royalties in 1909 by the Copyright Act.

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

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

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

And like the mechanical royalty side of stream, the digital sound recording royalty must also be tied to the CPI and real inflation.

This Petitioner's idea is for all streamers to create a streaming "account" exactly like an iTunes download account, but with no downloads. All the copyrights, digital sound recording and performance royalty for the underlying work are all paid up front, one time, per customer, per song. Nano-royalties could still apply to per-play streams but a one time 52 cents per copyright

could be applied to the song, 52 cents for the digital sound recording and 52 split for the performance/mechanical songwriter publisher split.

Otherwise, streamers could be stuck paying 12 to 22 cents per stream for digital sound recordings like Pandora. This one time fee per song may be another solution. The only factor, like terrestrial radio, is that rate should be multiplied for number of listeners for commercial public uses in clubs, bars, cafes, malls, etc is businesses are streaming.

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

Further interference from alleged non-profits like NARAS and other “advocate groups” who’s lobbyist have never written a song and never will, must be abolished from negotiating on behalf of their self-interests and salaries. They do not represent songwriters, artists or independent sound recording copyright owners, only themselves.

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

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

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

I ask the hypothetical question of what if the government created an ARB, Attorney Royalty Board, where for 100 years a federal 3 judge panel set maximum hourly rates of .00000012 per hour, or maybe per day, or per week - all the while the 4 biggest law firms in the country in New York and Los Angeles were allowed to charge thousands of dollars an hour? How long do you think lawyers would stand for that? They wouldn’t and it sure wouldn’t last 100 years. That incredible price-fixing is exactly what songwriters and music publishers have had to endure the past 100 years and it looks like for the next 100 years.

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

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

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

Like the performance royalty for songwriters and music publishers, if for the long term the digital sound recording royalty is price fixed, it will stay at .00000012 for the next 100 years or until the entire royalty system collapses for the major record companies, which it has for the performance royalty.

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

As for the suggestion that either a percentage rate of gross revenue or a per-song rate could be adopted, I would agree with the Board's idea of doing both. In other words, having a minimum statutory rate for digital sound recordings that can go no lower than a 12, 22, or 52 cent rate per song, per customer, but if the gross revenue percentage rate is higher because of increased profit to the streamer, a higher per song rate is paid based upon increased gross revenues.

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

Of course there is an intrinsic value to a performance copyright just like a performance of a sound recording. It can take years to write a great song and record a great album at hundreds of thousands of dollars just for the sound recording, that has intrinsic value. If collection is done on a percentage, like in the past, streamers, PRO's, third party aggregators and distributors will use accounting tricks to evade paying statutory royalties. Only if there is a minimum rate with increased royalties if revenue rates increase for the streamers.

The only solution is for the Copyright Royalty Board is to get out of the way and when two parties like Spotify and Universal Music Group come to the CRB to set sound recording royalties, the Board's standard response should be for them to work it out themselves, like normal people.

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

Petitioner is not an attorney but very familiar with SR and PA copyrights and produces country and pop records as a singer/songwriter in Nashville, TN. Petitioner has an independent record label with multiple master digital sound recordings under the GEO MUSIC label and George Johnson Music Publishing for the past 16 years in Nashville, and 7 in Los Angeles, CA. Petitioner is a NARAS member for the past 14 years and voting member who has participated in Grammy on The Hill and Congressman Goodlatte's Copyright Roundtable last year as an artist, songwriter, music publisher, sound recording owner and copyright claimant. George Johnson

Music Publishing was one of the 5 music publishers who filed a “New Media” or Digital Withdrawal Rights Form with BMI last year and were ruled by a federal Judge to either 100% withdrawal or stay with BMI, we were forced to 100% withdrawal like the others, or accept nothing for our copyrights. This applies to the digital sound recording royalties in that both SR and PA copyrights are forever tied together and equally important.

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

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

Thank you for your time and thoughtful consideration.

The undersigned hereby certifies that, as of the date of submission of this Petition, I am owner of GEO MUSIC in this royalty distribution proceeding. A check in the amount of \$150 accompanies this Petition.

Respectfully submitted,

GEO MUSIC GROUP

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Petitioner

Friday, January 31, 2014