Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Library of Congress
Washington, D.C.

In re	
DETERMINATION OF ROYALTY RATES AND TERMS FOR EPHEMERAL RECORDING AND DIGITAL PERFORMANCE OF SOUND RECORDINGS (*WEB IV*)	**DOCKET NO. 14-CRB-0001-WR (2016-2020)**

TESTIMONY OF

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PUBLIC VERSION

Witness for SoundExchange, Inc.

Background

1. My name is Simon Wheeler, and I have been an employee of the Beggars Group, one of the largest collections of independent record labels in the world, since 1990. For most of my 24 years with the company, I have been involved in leading our efforts to license and distribute the sound recordings of our artists. In fact, I started working with the online distribution of sound recordings in 1997, and negotiated the first ever deal for the sale of territorially restricted digital downloads of the entire group's catalogue in 1998. I have been the Director of Digital and board member at Beggars Group since about 2007. In that capacity, I lead our negotiations and licensing efforts with digital music services, and help keep our labels at the forefront of all new technologies.

2. In addition to my position at Beggars Group, I am the Chairman of the New Media Committee of the Association of Independent Music or AIM, a UK-based non-profit trade organization that represents over 850 independent record companies. I have also spoken to the Parliament in the UK and testified to the Copyright Royalty Board to represent the views of independent record companies. Since 2009, I have served as a Board Member of VPL, a UK-based company that deals with the licensing and distribution of royalty fees associated with music video played in public or on broadcast television in the UK. My career is, has been, and always will be about music. Besides my extensive work in the negotiation of licenses and agreements with digital music services, I have been a musician, re-mixer, studio engineer, producer and concert promoter.

3. I submit this testimony based on my quarter century of experience working in the market for the licensing of sound recordings on behalf of independent record labels and artists.

<u>The Beggars Group and Digital Licensing</u>

4. The Beggars Group was born out of the Beggars Banquet record shops in London in the 1970s, with the first release of the original label in 1977. Nearly forty years later, the Beggars Group is one of the leading record companies in the world, and owns all or part of the iconic record labels 4AD, Matador, Rough Trade, and XL Recordings, and distributes the sound recordings of other labels like Young Turks.

5. Since our creation, our labels have always been focused on the discovery and development of outstanding artists. We have been fortunate in this regard, and have had the opportunity to work with amazing and diverse creators including Adele, The Alabama Shakes, Arcade Fire, Beck, The Cult, Grimes, The Libertines, M.I.A., Interpol, The National, Pavement, Pixies, The Prodigy, Queens of the Stone Age, Radiohead, Lou Reed, The Strokes, TV On The Radio, Vampire Weekend, The White Stripes, The xx, and Yo La Tengo, among countless others.

6. The impact of our artists is incredible and undeniable. For instance, Adele created both of her albums *19* and *21* as an XL recording artist, and the latter album is the most successful album globally this millennium. While the *21* album was distributed in the United States by Columbia Records under license from XL Recordings, Beggars Group also had the unique accomplishment of having the 2010 release *Contra*, by our artist Vampire Weekend, become the first Number One album in the United States by a UK independent label for a quarter of a century. And, we did it twice more in 2013 with an album by Queens of the Stone Age and another Vampire Weekend album. Our artists and their releases have also earned exceptional critical acclaim, including nominations and wins at the Grammys (last year's Best Alternative Music Album, *Modern Vampires of the City* by Vampire Weekend), more than 10 wins at the

Brit Awards, and the Mercury Prize – an annual music prize awarded for the best album from the United Kingdom and Ireland – four different times (The xx, Anthony and the Johnsons, Dizzee Rascal, Badly Drawn Boy). It would be a severe understatement to say that our artists cannot be overlooked when considering what consumers are listening to in the United States and worldwide.

7. Because of the pride we have in our artists, we make every effort to have their music heard widely and have their creative endeavors compensated fairly. In particular, we have been a leader when it comes to digital distribution and licensing of new music services, with some of our first distribution deals dating back to 1998. Generally speaking, and unlike many independent record companies, we handle our own digital licensing and distribution negotiations. In fact, I believe we have never used an aggregator or other digital distributor to negotiate a license for audio streaming in the United States with a digital music service. While there are instances in which one of our labels decides our artists will be better serviced by licensing the distribution rights to a particular release in a particular territory to a different distributor – as XL did with Adele's *21* in the United States – that is generally the exception, not the rule. In fact, even though we are both supportive of and quite active in MERLIN, a global rights agency who represents the rights of many independent companies, we have only opted into a handful of the deals they have negotiated.

8. That is not a reflection of MERLIN's efforts, which are quite strong, but rather our deep experience in directly negotiating with digital music services. We were one of the first record companies, independent or otherwise, to engage digital music services in negotiations for distribution and licensing agreements. We continue to be one of the most active. I estimate that Beggars Group has [redacted] deals worldwide with digital services, including

downloads, streaming, and other forms of distribution, and [redacted] include rights to audio streaming, though not always in the United States.

9. Because we were engaging digital music services in negotiations before most anyone else had started, we had to establish our own systems to manage our own rights. And we did. While this required significant investments on our part, this early and continued ability to negotiate directly with digital partners has afforded us certain benefits. First, we are able to have direct dialogues with digital services, which allows us to deepen the conversation and partnership over our repertoire enabling global campaign planning with services, which is not possible when working via a network of distributors, such as we did with the latest Queens Of The Stone Age album with Spotify, re-skinning the client application in multiple countries over the release period, messaging listeners in each territory and running a co-ordinated series of adverts in multiple languages. This type of campaign would have been almost impossible to achieve without the direct communication with the service. This direct dialogue also often allows us to address artist relations issues, which is really everything and more for Beggars Group labels, all of whom pride themselves on being artist-friendly and artist-forward companies. More concretely, by managing our own rights, Beggars Group has gained certain financial benefits by avoiding fees we would likely otherwise pay to distributors, which can range in the marketplace from 10-30% of wholesale revenues, depending on the clout of the label seeking distribution.

<u>Resources Needed For Direct Licensing and the Independent Record Community</u>

10. Unfortunately, managing one's own rights is neither easy nor inexpensive. There are a number of resources one must obtain, and which we do at some cost to our operation. First, a record label needs personnel with expertise in negotiating digital rights. Because the lifeblood of digital music services is the sound recordings provided by record companies, digital music

services often have experienced swarms of negotiators whose only role at the company is to negotiate these deals that, over time, have become increasingly complicated and sophisticated. I am fortunate to have experience that dates back to the inception of the first digital distribution deals but certainly my level of expertise is a bit of a rarity, particularly among personnel at independent record companies.

11. Second, a record company needs significant technical infrastructure and systems to handle the ever increasing flood of data coming back from the digital marketplace. Every service has their own different set of data points and even though we endeavor to try and impose some kind of standardization this is not always possible, so every month we receive reports from all of our partners which vary massively but can run to millions of lines of data and comprise hundreds of millions of transactions. The days of being able to process this flood of data via desktop software built for the physical age have long gone. We anticipated that we will need to increase our capacity for ingesting and processing data by a factor of ten over this year alone. Alongside this financial data is the need for more visibility and intelligence on our music performance in the marketplace so we take daily feeds from those companies able to supply it. These raw data feeds dwarf the monthly financial aggregated reports, but this is not only expected by our labels, managers and artists, it is demanded and has set new demands on us, not only financially, but technically. Within the Beggars Group, we run a variety of tools, some are bespoke builds for our requirements, some are new analytics tools off the shelf such as Tableau and there is a need to be aware of new developments that can provide more capacity and efficiency in this area.

12. Third, a record company needs technical resources to operate on a professional basis and license as widely as possible. There is sometimes the phrase "DIY" thrown around as

if digital distribution from the record company side is simply a matter of flipping a switch or clicking a button to transfer a file. This is not the case. When done professionally, being able to deliver sound recordings and the accompanying metadata to a wide array of digital service providers – many of whom have exacting metadata, technical, and delivery requirements – is no small feat. In fact, in 2003, to enable our own direct licensing and that of other independent record companies, we helped found Consolidated Independent ("CI"), which is now the leading provider of digital supply chain services to the world's premier independent music companies. CI provides encoding, warehousing, and digital delivery services to over 5,000 labels and delivers content to more than 250 online and mobile distribution services. These service do not come for free, and can cost an independent record label [redacted] depending on the volume of a label's catalog and number of digital services the label wants its sound recordings delivered to. While this is no insignificant cost, it is unavoidable if a label wants to manage its own rights, as the only other viable alternative is to bear all the costs of digital supply chain services which is uneconomic without a certain level of scale. Otherwise, the label will have no choice but to use a distributor who, as I mentioned, can take a substantial proportion of the label and artist's revenue in the form of a distribution fee.

13. Fourth, and perhaps most important, managing one's own rights is in large part about the size and strength of the music. We at Beggars are fortunate to have such a sizeable and strong roster of artists and catalog of repertoire. We also have the benefit of being one of the more well-established independent record companies, as the independent record company community is often the den of the most entrepreneurial music enthusiasts, and it is not uncommon to hear that an indie company is run out of a dorm room or the bedroom of a flat. Point being, most independent record companies lack the scale of roster to attract or even to

allow direct negotiations with many digital music services. You can have all the negotiators, data processing capacity, and digital supply services in the world, but if your digital music service partner will not engage someone of your scale – even if you have fantastic repertoire and outstanding artists, it becomes impossible to manage your own rights.

14. Unfortunately, the reality is that many independent record companies lack some or all of these necessary resources. Because of our tenure and our exceptional investments, Beggars Group is the exception to this situation, however, we acknowledge that the industry would be on more solid footing if more independent record companies were treated with appropriate respect in digital service negotiations.

15. This is one of the reasons we are quite supportive of collective negotiating efforts for the independent record company community – including those of MERLIN and trade bodies such as A2IM in the United States and AIM in the UK – even though we are able to manage our own rights and opt in to only a handful of the collectively negotiated deals. This is also one of the reasons it is especially important that compulsory regimes, where available, are set at strong rates consistent with the rates offered to market participants who are not constrained in negotiations by conditions unrelated to the product they are offering. None of the resources associated with direct licensing I discussed above have anything specific to do with the quality of or consumer demand for the sound recording; they are simply commercial conditions related to the structure of the record company. Without a strong compulsory rate that provides a suitable compensation alternative for record companies, independent record companies may often be forced to sacrifice value that the market would otherwise offer for their sound recordings, merely because they are small or new businesses, and not because their sound recordings are any less valuable. That is, if they are even allowed at the negotiating table in the first place.

16. While this commercial and negotiating asymmetry – where independent record companies are often treated in direct negotiations as if their repertoire is not as important or of equivalent value as others – is widespread, I do think that position is both incorrect and short-sighted. Regardless of the size of the rights-holder, having the strength of independent artist repertoire is important for the credibility of new music services with the consumer audience. In my experience, services that are willing to launch without significant independent repertoire are, generally speaking, less commercially successful, if they are commercially viable in the long-run at all. MySpace is one of the more high profile examples where their re-launch specifically excluded many important independent labels as they believed that our repertoire was not as valuable as that owned by the larger labels, so it was not possible for us or MERLIN to achieve acceptable commercial terms. It would be fair to say that their re-launch has not been successful; other examples are, by definition, unlikely to be household names. That is because, at the end of the day, songs speak for themselves, and independently-owned songs speak to many consumers who value the sound recordings for the quality of the artist's craft, not the size of the record company's market share.

17. One area where the commercial asymmetry of license negotiations is particularly difficult for independent record companies is with digital services that allow (and sometimes emphasize) user-generated content. The entire nature of the discussion we have with such services is entirely different because we do not have a strong control over what is posted, do not have the resources to monitor what is posted with regularity, and do not have the extraordinary resources to engage in an ongoing notice-and-takedown exercise with digital music services. While I doubt this is an enterprise that any record company really wants to expend its resources on, independent record companies tend to spend the lion's share of their resources on supporting

their artists in the production of excellent sound recordings and marketing those recordings, so tend to have little to no resources to facilitate gamesmanship of legal maneuvering and compliance with issues created by user-generated content. The best we can do is expend our very limited resources on identifying what must be taken down for artist relations issues. This is no secret, including to such services. As a consequence, negotiations with them can sometimes resemble the often quoted "whack-a-mole" proposition – only we are the moles: Either we submit to the club of the terms offered or be hidden by the service (sometimes with threats of blocking or muting our official content), all the while users will continue to post our sound recordings without compensation to us or our artists. In scenarios like these where the service's design is to allow use of our product by users even where we are unwilling, the negotiation does not approximate to me what we would otherwise negotiate in the market.

<u>The Market Value of Independent Record Company Sound Recordings</u>

18. There is sometimes a perception among services or elsewhere that the value of the rights offered by independent record companies is somehow diluted or less than the value of sound recordings from other record companies, or that we care less about the value of our repertoire. That has not been my experience. Our rights are just as important, as are our artists, we are entitled to A-list prices for A-list repertoire. At Beggars Group, we are just as capable of understanding the complexity of the rights and licenses at issue and we are careful to license specific rights at specific rates.

19. For instance, my general sense of the market for the use of our repertoire on a service that includes on-demand functionality is that we would start negotiating from some form of a greater-of rate structure framework that looks something like what follows: First, Beggars Group would receive its pro-rata share of roughly [redacted] of the service's revenue. This

reflects the general sentiments that not only should we share in the revenue of a service but that a service that is built on the distribution of our content should pay a bit more than the majority of their revenue to us, particularly, in light of the general industry precedent of providing approximately 70% of retail revenue as the wholesale price for digital content, especially digital music content.

20. Second, where a service utilizes a subscription model, we would insist on our pro-rata share of a per-subscriber minimum to ensure roughly equivalent value, particularly where the service was attempting to experiment with different monetization or market share strategies to grow their audience.

21. Third, we would insist on some form of usage-based metric to ensure that the value of our sound recordings is not being diluted in the overall marketplace because of the design and operation choices of a service. Generally, that usage-rate would range from [redacted] for fully functional on-demand plays.

22. Fourth, in many instances, we would (and do) [redacted] from the service to protect the risk we bear of a service using our music but failing due to its own business choices, its own lack of focus on monetization, or the circumstances of the market.

23. Finally, we are increasingly requiring [redacted], as I worry that other, larger players in the market will be able to negotiate around the competition for consumer consumption.

24. This understanding is not just hypothetical. It reflects my real experience in actual negotiations.

<u>The Music Industry Is Shifting From a Purchasing Business to a Consumption Business</u>

25. We are currently experiencing the most important change in the recorded music business since the shift to recording music itself. Increasingly, and increasingly faster than anyone expected, we are no longer *selling* music and consumers are no longer *purchasing* music. In past format changes since the advent of recorded music, we were still selling the record, albeit in a different format, whether that be cassettes, vinyl, compact discs, or digital downloads. This shift is different: now we are *licensing* music so that consumers can listen to, or rather, *consume* it.

26. We are no longer, generally or specifically, platform agnostic. When we were *selling* music, the format of the music, which we controlled, was imperative to pricing but the platform it was offered on was far less significant (except, of course, in the case of unauthorized offerings such as piracy which were not really sales to begin with). A sale of a CD was, generally speaking, a sale of a CD, whether it be in the independent record shops which birthed Beggars Banquet or the large commercial retailers. Similarly, a sale of a download, generally speaking, was the sale of a download. As we become a consumption business and consumers consume our product everywhere, anywhere, and on many different platforms, the format is less in our control because it is more integrated into the platform. And, the platform is more specific in its business model and use of our music. Some platforms for consumption – services like Spotify, for instance – are committed to business models that maintain the value of music by encouraging listening on a subscription basis. It is nothing less than imperative that we get paid

for our usage on those services and make sure not to dilute the market value of our usage by licensing consumption to other services at rates that denigrate subscription models.

27. At Beggars Group, we see this more readily than others because we are at the head of the curve in the industry's overall shift to a digital consumption business. Like independent music companies generally, our shift to a focus on digital consumption revenue has outpaced the industry. This is in part because significant parts of our repertoire – for example, independent rock or electronic dance music – tend to attract highly-engaged music consumers, many of whom are also early adopters of technology, including streaming services. Also, specific to Beggars Group, because we have licensed our music early and often in managing our own rights, our repertoire is generally widely available in the digital space.

28. The results are noticeable, and likely a good indication of where the rest of the industry is quickly headed. At Beggars Group, already [redacted]. Moreover, of our top ten digital service partners this year, [redacted] were audio streaming businesses. I estimate that by 2020, it is conceivable that [redacted] of our revenue will come from consumption-based streaming models, including those at issue in those proceedings. And, like the rest of the industry, it seems that my predictions about the shift to consumption are often more restrained than the faster and starker shifts that occur in the market.

29. Thus, consumption-based streaming revenue, including webcasting royalty revenue, is already core revenue in our business model, and that will only increasingly be the case. Yet, core revenue needs to be able to support the core costs of a business. As the revenue

mix of record companies shifts towards what I am seeing today in the Beggars Group and webcasting revenue becomes more and more a larger portion at the center of our revenue outlook, it is simply the case that we would license it at rates that anticipate the fact that it will be a center of our business, and therefore have to support the costs associated with our business model.

Customized Webcasting Threatens to Substitute For Subscription-Based Models

30. As I said before, we cannot afford to be platform agnostic in a consumption-based market. A revenue plan for a record company in this environment may depend in some part on offering their repertoire on a number of different platforms, but it must also depend on avoiding the dilution of value of music across platforms. We cannot afford nor should we allow certain services to gain a competitive advantage over other platforms that are more willing to offer a higher value per consumption. And, when services that compete for consumer consumption with lower revenues per-stream or per-user are offered rates below those of other competitors, we are subsidizing our own demise.

31. I am troubled at the increasing customization and sophistication of webcasting services, often still billing themselves as “online radio.” It seems that they are now attempting to offer enough of a complete music experience, whether it be through their highly touted customization, personalization, or aggregation of a consumer’s listening data, to draw consumers away from the higher-revenue-per-consumption services, such as on-demand subscription services. We seem to be reaching a saturation point for most consumers with the functionality provided by these webcasting experiences; if we are not already there, I worry that we will get there within the next couple of years.

32. From what I know, this is particularly so in the United States where consumers seem more willing to accept "lean-back" music experiences instead of adopting the on-demand models that are more prevalent in Europe. For example, in analyzing usage data, I have observed that consumers in the United States have roughly [redacted]. This makes me think that there is more of a passive user experience in the United States, listening to sets of playlists on a constant consumption basis rather than a search and play experience. Also, in my discussions with others in the industry, I often hear reference to how there is more of a "lean back" mentality in the United States. Most on-demand services have launched "radio" products within their service to cater to this behavior.

33. Online webcasters seem to be pushing the edges with their customization as well. Every online radio or webcasting service seems to be coming out with their own twist of personalization or customization. A recent trend has been mood based, or activity based, curation by companies such as Songza. The algorithms and other forms of curation utilized by webcasters seem to be getting smarter, both in terms of sophistication and the amount of data they contain. It makes me wonder how different it is for a consumer to pick a particular sound recording in an instant moment or to know that the next song is going to be selected by five years of that same consumer's thumbs up or downs decisions on a station they created, seeded, and added variety to over the same period. It is not clear to me which really is the more user-influenced choice. I worry that in the last few years, these trends in webcasting seem to push the statutory requirements with respect to the consumer-facing consumption experience that webcasters are providing, particularly when balanced against the relatively lower per-play or per-user revenue they are paying to record companies like my own.

34. To be clear, this is no longer a question of ancillary revenue for Beggars Group and for the industry as a whole. From where I stand, when we address consumption-based webcasting, and its obvious relationship to consumption-based on-demand streaming models generally, we are talking about the core of the music business. And, when we address the rates for webcasting services, and their obvious relationship to the rates for directly-licensed on-demand streaming services, we are addressing core revenue streams of the recorded music business.

35. Consequently, I believe and would expect that webcasting, particularly going forward, must be licensed at rates that closely approximate the rates of on-demand streaming services. There is a real danger that webcasting services provide *enough* functionality such that most consumers will not need to or will choose not to look to on-demand subscription services. Put another way, the increasing sophistication of webcasting seems to be shrinking the difference that on-demand functionality makes to consumers.

36. This is not to say that the two consumption-based experiences are exactly the same, but only that the distinction between them is less and less a meaningful difference for consumers when I consider how they use and appreciate our repertoire. Many people do not understand the difference between say, Pandora and Spotify, they are just listening to music. With this in mind, I would expect that a negotiating framework for webcasting would largely approximate the on-demand service framework I identified above.

37. With respect to revenue sharing, there may still be some fluidity between the two types of services, but I am not sure there should be any difference between the revenue sharing rates of a webcasting service and the revenue sharing rates for on-demand services. Revenue sharing is really a reflection of the relationship between a rights holder and a service that builds

its business on the content we provide. In both instances, webcasters and on-demand models are offering one product – our sound recordings – to attract users. Also, from my vantage point, all consumption-based business models are still in the experimentation stage and relatively undeveloped, whether they be ad-supported or subscriber-based. It is not yet clear if there will be a definitive specific business model – or even a specific service – that will dominate the next era of music consumption. So, in my view, record companies cannot afford to share in revenue on only one side of the market, and risk that the other business model in the market prevails in the eyes of consumers.

38. That said, in the present state of the market, I remain skeptical of the immediate ability or desire of many online ad-supported webcasters to generate revenue, much less share it record companies. It seems to me that many are still trying to attract a critical mass of users by providing to them as much music as they can. So, for me, a strong usage-based metric, particularly a strong per-play rate is crucial, both to allow the webcasters to experiment with our music but not at our peril and to make sure that in so doing, they are not diluting the value of our repertoire. I know that the current rates paid by statutory webcasters in the US are roughly around a quarter of a cent per performance. Based on where I see the per-performance rates when negotiating licenses for on-demand streaming services, that feels about right to me for today because statutory webcasting does offer slightly less functionality (i.e. no on-demand) but there is not really much other difference.

39. Furthermore, that is my sense today, not tomorrow. Given what I have said above about the rapid shift in the industry, it is quite important that the statutory webcasting rate continue to escalate over time, particularly because unlike direct negotiations, I have no ability to revisit the situation in a year or two if the market shifts outside our expectations. Also, as

discussed above, there is a need for an escalating rate because increasingly, webcasting revenue will represent core revenue to our business and therefore have to support the core costs of our business as other streams of revenue decline.

40. In sum, consumption-based services, including both webcasting and on-demand services, are at the center of the access model to the recorded music industry, where the way we monetize sound recordings is through listening or consumption, as well as sales. At Beggars Group, we are already seeing that model take hold and only expect that trend to continue. Thus, because webcasting and on-demand services compete for consumption, we face an important challenge in our licensing landscape. Furthermore, as the webcasting services are becoming more sophisticated in the use of user-based data, it appears that there is only so much space between them and on-demand services and that space is shrinking. When I negotiate licenses in this context, I am increasingly aware that in a consumption-based model, we must be careful of the relationship between these two types of consumption-based services. This is not to say that I deny the importance of webcasting services – quite the opposite. As webcasting services have become more prevalent and predominate, I know that Beggars Group and the market more generally would and should treat them as core business revenue that has an important effect on the other services at the center of our changing recorded music business.

<u>Promotion is Simply Different in a Consumption Business</u>

41. One of the important changes as the industry shifts to a consumption based model is how we think about promotion. It used to be the case that record companies, including Beggars Group, was ultimately selling a particular and tangible product – a CD, for instance. And, the way we could sell this end product was merely by spreading awareness through limited consumption of the music itself, such as streaming the music or getting it played on the radio.

42. After this paradigm shift, what it means to be promotional will change. Promotion is remarkably different when the end product of recorded music is consumption of our music itself. No longer are free or low-value streams something we can just give away unless they are directly connected to enticing users to a higher-value method of consumption, such as a music subscription. While I recognize that it is always somewhat useful for consumers learn about our artists and their music, the value of general awareness is lessened significantly when the way we create it is by diluting the value of our end product – a stream of our sound recordings – in the process. And, it is my sense that streaming music on one service, such as a webcaster, will not induce a consumer to buy a premium subscription on another service, such as an on-demand service. Indeed, it is the incentive of the webcaster to do the exact opposite and encourage consumers not to switch.

Substantial Compulsory License Rates Are Important to Independent Record Companies

43. For an independent record company like Beggars Group that engages in a lot of direct negotiations for the licensing of sound recordings, it is imperative that the rates provided for in the compulsory license are substantial and in line with the existing market rates for other music streaming services. It is simply unavoidable that the compulsory license in a territory will create a reference point in direct negotiations, particularly because services operating under compulsory licenses do and will continue to compete with the services we license through direct negotiations.

44. Generally speaking, when a service operates under a compulsory license, it sets a rate ceiling around my negotiations for a direct license with that service, and it becomes very difficult to negotiate for a rate higher than the compulsory license rate. The digital service is aware that my company has no recourse if the service elects to use the rates and terms of the

compulsory license, no matter how large or small the service is. If the rates were set too low, particularly for a service that occupies a large portion of the consumption in a particularly territory, the only possible option my company would be to altogether stop the commercial distribution of our sound recordings in that territory. And, that is to say, we really have no option at all, as we want the public to hear the recordings our artists create.

45. Also, a strong compulsory rate is important to independent record companies like mine because services operating under a blanket compulsory license have every incentive to treat all sound recordings equally – including independently-owned sound recordings. This repertoire parity lets music stand on its own merits, which is important and offers a lot of comfort to the independent record community at large. We believe strongly in our artists and want them to have a chance to be heard at a compensation that is on par with other creators.

46. Beggars Group, like most other independent record companies, puts our artists and the music they create first. We are music fans and enthusiasts and as such, we are enthusiastic about the recordings of our artists and others. We support them in every way we can. While much of my testimony has centered on the considerable efforts we make to manage the rights of our repertoire, that is neither the beginning nor end of our efforts to support our artists. Our labels spend considerable time and effort to find new quality artists, including finding voices in areas that the existing market has not yet embraced. Once discovered, we maintain a staff that supports and assists our artists develop professionally and creatively. We work with these artists to provide them a creative and professional home so that they can record and produce recordings of the highest quality. We distribute these recordings in many territories, helping our artists navigate the complexities, rules, and regulations unique to each territory. We market artists to bring their work to a broad audience in a very competitive world and help to

realize their creativity to its fullest potential. We do all of this on top of expending the substantial resources to negotiate, license, and deliver their music to digital services where consumers can listen to their recordings. And, of course, we are their advocates, doing all we can to ensure that they and we receive fair market consideration from the businesses that are built on the backs of their songs.

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

Date: 6th October 2014

Simon Wheeler