

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

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*In re*

DETERMINATION OF ROYALTY  
RATES AND TERMS FOR  
EPHEMERAL RECORDING AND  
DIGITAL PERFORMANCE OF SOUND  
RECORDINGS (*WEB IV*)

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) **DOCKET NO. 14-CRB-0001-WR**  
) **(2016-2020)**  
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TESTIMONY OF  
**FLETCHER FOSTER**  
President, CEO and Co-Founder  
**ICONIC ENTERTAINMENT GROUP**

Witness for SoundExchange, Inc.

## **I. BACKGROUND AND QUALIFICATIONS**

1. My name is Fletcher Foster and I am the President, CEO and Co-Founder of Iconic Entertainment Group (“Iconic”), an entertainment company. Iconic is in the business of working with artists and record labels to increase artists’ exposure across all media platforms, and to build strategic partnerships for our clients. When we launched this year, we announced our first signings: Grammy award winning star LeAnn Rimes and singer-songwriter Levi Hummon.

2. I have been in the music business for nearly thirty years. I have had the honor of working in most every aspect of the business. My experience has given me a deep respect and appreciation for the many, *many* players that are necessary to bring an artist’s work to an audience.

3. After graduating from Nashville’s Belmont University in 1985, I joined the staff of Sony Records/Nashville in their publicity department. At Sony, I worked with a roster that included Rosanne Cash, George Jones, Willie Nelson, Merle Haggard, Tammy Wynette and Johnny Cash among others. In 1990, a Vice President/Development job opened up at Arista Records’ Los Angeles office. The position focused on artist development for all of Arista’s artists. My primary responsibility at Arista involved lining up media appearances for the label’s artists including Aretha Franklin, Whitney Houston, Barry Manilow, TLC, Kenny G, Annie Lennox and more. My experience working in country music in Nashville was invaluable in that position, and being located in Los Angeles gave me the opportunity to be a real voice for the newly-formed Arista/Nashville label’s artists. At the time, Arista/Nashville was a hugely successful label – with artists like Alan Jackson, Brooks & Dunn, Pam Tillis and Diamond Rio. When I left Arista, I moved to MCA Records to continue my focus on placing artists in television and media as Vice-President, Television and Multimedia Marketing.

4. After my time at MCA, I moved back to Nashville to join Arista/Nashville. During my second stint at Arista, I produced their first soundtrack. It was for the film “Happy, Texas.” The album received two Grammy nominations and featured diverse artists including Joan Osborne, Alison Krause, Emmylou Harris and Keb Mo’. After Arista, I joined Capitol Nashville as their Senior Vice President, Marketing and held that position for over six years. When I joined Capitol Nashville, their roster had been focused on the superstar Garth Brooks, who was on the verge of announcing his early retirement. Australian upstart Keith Urban was on Capitol’s roster. He was largely unknown and selling just over a thousand units a week. We put all of our resources and attention behind Keith because we really believed in him as an artist and felt he could be an international star. Within six months, Keith had his first number one single. At Capitol, we also signed Dierks Bentley and Luke Bryan, artists I later worked with in a management capacity at Red Light Management. From Capitol Nashville, I became the General Manager of Universal South, a position I held until I left to work for Red Light in 2010. There, I ran the Nashville office, where we managed the careers of recording artists including Alabama, Luke Bryan, Dierks Bentley, Faith Hill, and Tim McGraw.

5. My passion for music brought me to the business and has driven all of my professional efforts to date. Like many of the people that I have worked with over the course of my career, when I was a kid growing up in Kansas, I dreamed of being a recording artist. I made my first record when I was twelve, and then another at fourteen and a third as junior in high school. When I moved to Nashville for college, I planned to continue my singing career. I played around town but primarily I worked my way through college recording jingles. If you recall the commercial jingle from the 1980’s “the heartbeat of America... is today’s Chevrolet,” then you have heard my voice before.

6. Through a series of internships with Nashville record labels after college, I decided to focus my love of music and performing into a career as a music executive. Frankly, for me, the risk of never really succeeding as a recording artist was too much to live with. The odds are just incredibly tough. Spending time in Nashville, I met so many people who had moved to town right out of high school with a dream just like I had. So many had been trying to make it as an artist or get signed to a label for ten, fifteen or even twenty years. Sometimes it can take that long, while sometimes it never happens at all. As a music industry executive, I have channeled my passions into supporting and developing other recording artists for the past three decades. My years as an artist have served me well in my work, because I understand the artists' perspective – what drives them to create. I can talk to them both about building their image and their brand, and I can also talk about chord and song structure. We speak a common language rooted in our shared love of music.

7. In addition to working as an artist myself, I have been privileged to be a part of recording artists' creative process time and time again. The listening public likely does not appreciate the tremendous effort, time, and financial commitment that recording artists undertake to bring us all the music that we love. I have been lucky to work with artists that have hit upon tremendous success, but I have also worked with recording artists who never reached those heights. Across the board, all of these artists invest substantially in their careers and take extreme risks to pursue their dream and bring their music to the public.

8. In this statement, I will describe these efforts and describe the kinds of investments recording artists make in their music, and the substantial risks inherent in pursuing a career as a recording artist. I also want to explain the importance to recording artists of the royalties that are the subject of this proceeding. Now more than ever, royalties from digital

streaming can make the difference for a recording artist between focusing on their music and having to supplement their income with a so-called “day job.” Record sales – the traditional means of earning royalties – have been in steep decline for the past decade. Recently, the sales of music in digital download form have also been on the decline. Streaming today represents a very important revenue stream for both new and established artists. The rate that streaming services pay for the statutory license should take into account the fact that artists depend on these royalties for their livelihood – and without artists, there would be no music for these services to play.

## **II. THE CREATIVE PROCESS BEHIND EVERY SOUND RECORDING.**

9. The process of creating a sound recording can be slow, painful, and difficult. On occasion, inspiration strikes, a song is created, and quickly comes together in a recording with ease. But that is the rare exception. Most often, making records is an arduous process that requires the creative commitment of many people over a long period of time.

10. The recording process can consume an artist for months or even years, and is focused on finding a way to create both their signature sound as well as the individual recordings themselves. The process begins with finding or creating a song to record. We often work with an artist for months to weed through hundreds of song demos in an effort to find the right match between an artist and a song. We work with the artist to develop his or her unique sound as we find what music best suits their vocal style and image. Once we and the artist have agreed upon tracks to record, the recording artists then develops those songs into recordings – applying their own style and bringing their own strengths as a musician or vocalist, or both to bear on creating their own unique recording. Technically, today’s multitrack recordings are more and more often made by recording one part at a time – the drum and bass track, the guitars and keyboards, the vocals, the background vocals, etc. – and then layering them together. Some artists have

invested in home studios where they can record some tracks or other portions of their work.

Other parts may be recorded in commercial studios, with hired session musicians or other band members.

11. Once all of the various parts of a particular song have been recorded, the parts are edited together to make a single song. Through editing a sound recording, engineers, producers and recording artists work together to move recorded portions of music from one part of the song to another, correct a bad note here or there, adjust the percussion line, etc. Once the editing process is complete, the sound is “mixed” so that it actually sounds like a recorded performance rather than a collection of tracks recorded separately. And finally, the recording is mastered into a master recording – the final product from which records are made.

12. A single part of a recording can revolutionize it. Whether it’s the sax solo in Aretha Franklin’s “Respect,” the guitar solo in the Eagles’ “Hotel California,” or the vocal track in LeAnn Rimes’ “Blue,” we can all recall the particular part of a piece of music that really transformed a song into one of our favorites. Our goal is to bring single parts of various aspects of music together in a recording to make the whole greater than the sum of its parts. To offer one example: In the 1990s, a British acid house music band called KLF had recorded a song called “Justified and Ancient.” They sought to record a version of the song with Tammy Wynette that would reference Wynette’s classic hit “Stand By Your Man,” called “Justified and Ancient (Stand by The JAMS).” Wynette recorded her part in Nashville, but never met KLF until she traveled to the UK to shoot the music video. The song became a huge hit on both UK and U.S. charts, and re-introduced Wynette to an entirely new audience. It brought Tammy Wynette back to the Billboard Hot 100 for the first time since 1969.

13. In order to create successfully, artists need to take chances, experiment, and be willing to put hours into open exploration of their ideas. The biggest chances we take yield the greatest rewards when they hit. But when they do not hit – and most often they do not – we have to start from scratch. For every song an artist records, assume that at least ten or twenty have been discarded in the process. Also, every song an artist records typically has been through many revisions. It is not just a matter of pressing the “record” button.

### **III. ARTISTS’ TREMENDOUS INVESTMENTS AND SUBSTANTIAL RISKS.**

14. Recording artists spend not only hours of time and creative energy on their craft, they invest significant dollars as well. Musical instruments, recording equipment, home studios, renting time at a recording studio, session musicians, back-up vocalists – all of these things cost money. Beyond the costs of the recording itself, substantial costs in developing artists’ image, publicizing their music, the huge expense of going on tour (with the cost gas, vehicle, hotel rooms, etc.) and other activity aimed at promoting artists’ music can all add up quickly. If a recording artist is lucky enough to have the support of an artist management company or a record company, then some of these costs may be fronted on their behalf, to be recouped if they later achieve success. But the undiscovered artists bear all of these substantial costs on their own.

15. All of this work, effort and investment takes place against a backdrop of substantial risk. There are no guarantees in the music business. The most talented artists who work very hard at their craft may never find success, even with the support of a company like ours and a major record company.

16. At Iconic, we make significant investment in the careers of young, untested artists who have yet to find mainstream commercial success, with an eye towards best positioning those artists to succeed in the marketplace. Currently, we are investing significant sums of money and

time in two young artists in particular: a young artist named Taps from Harare, Zimbabwe and another young Nashville singer-songwriter named Levi Hummon.

17. Taps is a soulful singer-songwriter whose sound is similar to the recording artist Seal. He was raised at an orphanage in his native Zimbabwe, where he was abandoned when he was only two days old. In a culture where identity is critically important, Taps grew up without any understanding of where he came from. But he knew he loved music. Music became his solace. He taught himself to play guitar on a donated instrument that belonged to another of the orphans. He became a singer and a songwriter, and lived at the orphanage until the age of 18. He survived the streets and began working at a non-profit digging water wells, when a family from the States heard about his musical talents and brought him to study music in California. Taps studied at the Musicians Institute in Hollywood and excelled beyond any other student. We were lucky enough to sign Taps and currently are working with him to set him up with potential co-writers so that we can record demos and prepare to pitch to record labels.

18. We also recently signed Levi Hummon. Levi is a fantastic young singer-songwriter from Nashville. Levi is the son of Marcus Hummon, a songwriter who has created some of Nashville's biggest hits. He wrote or co-wrote hit singles for Rascal Flatts, the Dixie Chicks, Sara Evans, Alabama, Suzy Bogguss and many more. His mother is an Episcopal Priest and started the non-profit Magdalene House, an organization for women who have survived lives of prostitution, trafficking, addiction and life on the streets. Levi brings a unique country sound that we believe will be a huge success, reminiscent of the organic folk rock sound of the Lumineers but with Levi's own unique touch. Levi is signed to Big Machine/Valory Records, and is in the process of working on his debut album. As just one indication of the time and financial commitment we are investing in Levi, he signed his record deal in June of 2014. We do



not expect the album to come out until mid to late 2015 at the earliest. We expect the process of developing Levi and his debut album to take at least that long – and this length of time between signing and a debut album release is not unusual.

19. Iconic believes in both Taps and Levi, and we obviously feel they should both be superstars or we wouldn't be investing such considerable time, energy, and money in their careers. But even with my decades of experience in the music industry, I cannot say whether one or both of them will succeed, or even whether either of them will. I cannot tell you which of these young artists is more likely to succeed: an artist like Levi with a connection to the Nashville music scene or an artist like Taps from an orphanage a world away. The odds against ever becoming a success as a recording artist in this business are so substantial that if either of them succeed, it will be remarkable. We will do all we can to best position both Levi and Taps to succeed – and our efforts on their behalves will be very different and tailored to each of their needs – but I cannot guarantee that either of them will make it in this business even with our expertise and support.

20. Simply put: even if all of the stars align and you have an incredibly talented artist who works incredibly hard, and a substantial investment from a record label, a stellar management company, a great tour booking agent, etc., success is not guaranteed by any means. Recording artist Emily West is a good example of an incredibly talented artist who has worked hard for years at creating her music, but has not yet had a hit record despite major label support. She came into the national spotlight this summer as a competitor on the television show *America's Got Talent*, where she finished as the runner-up. Audiences were wowed by her vocal performances. Emily West is no overnight success – she has been a recording artist in Nashville for over a decade. We signed her to Capitol Records Nashville in 2005. She recorded and

released a self-titled EP on iTunes in 2007, and she peaked on Billboard's Hot Country Songs chart at Number 39 with her song "Rocks in Your Shoes." In 2010, she recorded a duet with Keith Urban. But she never tapped into the public's mainstream consciousness until she auditioned for America's Got Talent almost 10 years later, where fans voted her a favorite round after round of the competition. Again – no amount of hard work, investment, and talent can guarantee success. America loved Emily West, but it took them years to discover her – and even with the recent exposure we still do not know whether she will be able to find lasting, meaningful success. People in my business know that there are hundreds of others out there that will work just as hard, and be just as talented, and release their music just as widely – but never succeed. The truth is, that Emily's story is more of an exception than the rule.

21. Once an artist finds success, there is no guarantee in this business that success will continue indefinitely. There is a saying in Nashville that "it all begins with a song", and I say it can all end with that song also – there is no guarantee in the business. Tastes shift, and a new sound this year becomes the most imitated sound the following year. As an example, LeAnn Rimes is one of the most talented vocalists I have ever worked with. When she came on the scene at the age of 13, her album *Blue* was a phenomenon. She won a Grammy for Best New Artist and to this day is still the youngest Grammy recipient in Grammy history. She has had a career that spans more than twenty years. Our work with LeAnn Rimes today looks to reestablish LeAnn as the tremendous talent she is. With a new album of dance remixes of her Greatest Hits, LeAnn today presents a different image to a different audience. This Christmas, we will release her first Christmas album in ten years on Iconic Records.

#### IV. THE IMPORTANCE OF NON-INTERACTIVE STREAMING ROYALTIES TO ARTISTS

22. Today, even artists who theoretically “succeed” have to scramble to piece enough revenue streams together in order to get by. For those artists that are able to work at their craft full time and avoid a second or third job, the royalties from every source are critical.

23. The royalties artists receive from SoundExchange are a critical royalty stream. For an established artist like LeAnn Rimes, digital royalties received from SoundExchange have been increasing and becoming a more important part of the overall financial return for her work. And for new and up and coming artists like Levi and Taps, the digital royalties from SoundExchange likely will be an even more important part of their compensation right off the bat. The share of total revenue from digital streaming services is increasing, and the royalties from digital streaming service for new artists emerging over the next rate period will be of increasing importance to their overall success.

24. Streaming services should pay a rate for the statutory license at issue in this proceeding that takes into account the significant effort, investment and risk that artists contribute. Music lovers benefit from those efforts and risks. Compensating artists fairly for their music is necessary to assure that artists remain engaged and invested in their careers and continue to create the music that we love. Without the music – there would be no streaming service to offer. Deep down, music lovers, the artists’ *fans* recognize this. They want to hear more great songs in the future, as they share the same musical passion that drives artists everywhere.

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

Date: October 6, 2014

A handwritten signature in blue ink, appearing to read "Fletcher Foster", written over a horizontal line.

Fletcher Foster