

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

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

TESTIMONY OF

RAYMOND M. HAIR, JR.

International President of the American Federation of Musicians
of the United States and Canada

Witness for SoundExchange, Inc.

WRITTEN DIRECT TESTIMONY OF RAYMOND M. HAIR, JR.

Background and Qualifications

I am a professional musician and the International President of the American Federation of Musicians of the United States and Canada, AFL-CIO (“AFM”). I have spent my entire life playing, studying and teaching music, representing musicians, and working to improve the livelihood of professional musicians.

I began playing the drum set professionally as a youngster in Mississippi nightclubs before liquor was legal and before I could drive a car. At one time or another, I've performed every style of popular music. I was 13 years old when I performed my first professional engagement, and I became engaged as a recording musician while I was in high school. In the early 1970's, I performed and recorded with Tommy Stuart and his group, the “Rubberband.” Our hit, “Your Man Done Gone,” moved up the Billboard charts during the summer of 1970. Over the next few years, I recorded dozens of tracks, mostly demos, in Jackson, Mississippi.

Throughout those years in Mississippi and later in Texas, I earned my way through college by performing professionally. I received an undergraduate degree in music from the University of Southern Mississippi. In 1975, I left Mississippi for Texas, where I earned a graduate degree in jazz studies from North Texas State University (now the University of North Texas). I eventually taught drum set full-time at UNT and I enjoyed teaching music to undergraduate and graduate students. I never stopped performing, though. I started my own group, Yazoo, which performed in many states of the United States and experienced the many forms of exploitation that musicians endure when they work night after night a week in dance lounges, nightclubs, showrooms and concert halls in city after city. I spent time in Dallas recording studios in those years, too, doing sound recording and jingle session work.

I learned a lot of things in the studios and on the road, but the most important thing I learned was the value of the union to a professional musician. The AFM set standards for live performances to protect us from being ripped off, and stood by us if we had disputes with purchasers. The AFM negotiated industry-wide rates and terms for recording musicians that improved conditions considerably, whether recording records, television or movie soundtracks, or commercial announcements.

Ultimately, I became very involved in the union, and in 1983 I relinquished my teaching position and greatly reduced my performing career in order to become the President and Secretary of the Fort Worth Professional Musicians Association, which was Local 72 of the AFM. Later, I guided the merger of the Dallas and Fort Worth locals, and served as the President of the merged Local 72-147 continually until 2010. At various points through those years, I also served on the AFM's International Executive Board, which supervises the affairs of the entire AFM. In 2010, I was elected to my current full-time position as International President of the AFM. As the AFM International President, I also serve as a Co-Chair of the AFM & SAG-AFTRA Intellectual Property Rights Distribution Fund ("AFM & SAG-AFTRA Fund") and the AFM and Employers' Pension Fund, and as a Director on the Board of SoundExchange and of the Alliance of Artists and Recording Companies.

As a Local and International AFM officer, I've represented every kind of professional musician. I've led or participated in negotiations for local collective bargaining agreements covering symphony, opera and ballet orchestras and theaters, and I pioneered the free-to-attend, continuous, multi-stage music festival format in North Texas. On the national level, I have led or participated in negotiations in the commercial announcements, television, motion picture, and sound recording industries.

Discussion

I understand that this proceeding is for the purpose of setting the rates and terms for the statutory license that the Copyright Act grants to non-interactive webcasters. I am submitting this testimony to emphasize the importance of the statutory royalties to performing artists. I also want to express the AFM's support for the designation of SoundExchange as the sole Collective to collect and distribute the royalties at issue in this proceeding for the period of January 1, 2016 through December 31, 2020.

I. AFM

The AFM is an international labor organization representing over 80,000 professional musician members in the United States and Canada through a network of more than 200 local unions. The AFM was founded in 1896 and is the oldest and largest union of musicians in the world. AFM members record music for sound recordings, film scores, radio, television and commercial announcements, as well as perform music of every genre in every sort of venue from small jazz clubs to symphony orchestra halls to Broadway and local theaters. The AFM negotiates industry-wide agreements that set standard working conditions for all musicians who record under it. AFM members span the full range of professional musicians, from featured recording artists who are well-known celebrities to non-featured artists who work as session musicians in the recording industry.

The traditional area of activity for labor organizations is collective bargaining, and the AFM has been negotiating an industry-wide collective bargaining agreement, the Sound Recording Labor Agreement ("SLRA"), which governs terms and conditions for the major recording companies and hundreds of independent companies, for sixty years. But, the AFM has long served as an advocate for musicians' interests in various other contexts, too, including

specifically serving as a strong proponent of performers' rights and copyright protection for performers.

For example, the AFM and the American Federation of Television and Radio Artists ("AFTRA") were critically important supporters of the Digital Performance Right in Sound Recordings Act in 1995, which created the rights at issue in this proceeding. The unions' joint efforts contributed to the current structure of the Act, which requires that 50% of the royalties from the compulsory license for digital performances shall go to performers, and shall be paid by SoundExchange directly to them. I am proud that AFM and AFTRA helped secure the performance right and ensured that SoundExchange will pay 45% of the royalties from this proceeding directly to featured artists, and that it will pay 5% to the AFM & SAG-AFTRA Fund for further distribution to session musicians and vocalists.

II. The Importance of Statutory Royalties

I cannot overstate the importance of the revenue stream from the compulsory digital performance license to recording artists and musicians. In my experience as a musician and a labor leader, I know that most of us make a living by patching together revenue from many different sources. Session fees, live performing fees, royalties, teaching, you name it — they all are necessary to earn a decent living that allows you to continue to make music. Every income stream is important to a working musician, but digital performance royalties are becoming especially important as music fans change the way they consume recorded music, from purchasing CDs and downloads to listening to music on digital music services.

Traditionally, CD sales (and later, digital sales) have been a cornerstone of compensation to featured artists and session musicians. They support the industry which provides investment for artists and employment for session performers. They provide royalties to featured artists, and for session musicians, they provide payments from the union-negotiated Special Payments Fund

(“SPF”) under the SRLA. But I know from experience that sales have declined, and as a result, we see less employment under the SRLA across the country, less investment in artists (which means reduced opportunities for them) and reduced SPF payments to musicians. In fact, in the last ten years, SPF collections (and subsequent distributions to session musicians) have declined by approximately fifty percent.

Digital performance royalties are an increasingly important source of revenue to industry, artists and musicians. SoundExchange has reported that it paid out \$590.4 million in royalties to performers and copyright owners in 2013. It is impossible to overstate the value of these SoundExchange payments to thousands of featured artists who are struggling to start or maintain their careers (or to survive after their touring days are over) and to provide for their families. The royalties that artists receive from SoundExchange are particularly critical because they come to artists directly, without regard to whether any advances against royalties received from a record label have been “recouped.” And the digital performance royalties are incredibly meaningful for session musicians and vocalists, too. In fact, as physical product and digital download sales decline, I expect that digital performance royalties for session musicians will at some point exceed the SPF payments that they earn based on sales.

Our industry experts and our own experience tells us that digital performance royalties are important because patterns of music consumption are changing, so that “listening” is replacing “purchasing.” That is certainly true. But from a musician’s perspective, these royalties have a more fundamental importance. The truth is that we musicians make great music. It is our talent, our training, our hard work and our passion that results in great recordings that the public around the world wants to hear. Our work is valuable. We believe that the use of

sound recordings should command a fair price, and we believe that wherever and whenever our music adds financial value to a business, we ought to share in that value.

III. Designation of SoundExchange as the Sole Collective

In prior proceedings, the AFM has supported SoundExchange as the best entity to act on behalf of performers and copyright owners as the sole Collective for the collection and distribution of statutory royalties. For the reasons I explain below, the AFM renews its support for SoundExchange to serve as the sole designated Collective for the compulsory license fees at issue in this proceeding.

A. SoundExchange Is Controlled by Performers and Copyright Owners.

SoundExchange is governed by a Board of Directors that is equally composed of performer and copyright owner representatives. Thus, the very constituencies that are served by SoundExchange are also in control of its policies and operations. SoundExchange's officers and staff are answerable to the demands of copyright owners and performers for honest, fair and efficient distributions, and for vigorous efforts to achieve fair rates that recognize the value of our music.

The nine performer representatives include artists' attorneys and managers as well as individuals affiliated with major performer organizations — the AFM, AFTRA, the Recording Academy, the Music Manager Forum and the Future of Music Coalition — which together represent tens of thousands of performers. They bring the views and concerns of a broad range of performers to the decision-making process at SoundExchange.

I think that the level of control that performer representatives have over SoundExchange has ensured that SoundExchange is committed to serving our interests, as well as, the interests of copyright owners. SoundExchange has demonstrated this commitment by engaging in extensive efforts to make performers aware of the royalties they are owed, to find and enroll them, and to

get royalties into their hands. These efforts include reaching out to performers and their representatives directly, partnering with other organizations to get the word out to their members, attending conferences, earning media attention, placing print and web ads, and using social media like Facebook and Twitter. SoundExchange also serves performers' interests by advocating for fair royalty rates, working for reporting requirements that will help get the money into the hands of as many performers as possible, and building the computer and service systems that enable it to distribute directly to performers.

Through all of its efforts, SoundExchange has earned the trust of performers and copyright owners alike. Perhaps the best evidence of SoundExchange's commitment to the fair representation of artists and copyright owners is that tens of thousands of artists and copyright owners have registered with SoundExchange.

B. SoundExchange Is a Non-profit Organization.

The AFM firmly believes that the digital performance right was created to benefit performers and copyright owners, not to provide business opportunities for agents. It also believes that performers should receive the fullest possible benefit from the royalties, and not see their royalties reduced to pay a commission to an agent. And finally, AFM believes that the Collective's decisions should be guided by the needs of performers and copyright owners, and not by an agent's business needs.

As a non-profit organization, SoundExchange litigates rates, collects royalties and distributes them — all for the benefit of performers and copyright owners, not for its own financial gain. As a non-profit organization, SoundExchange's incentives are properly aligned with the interests of royalty recipients.

C. SoundExchange Has Substantial and Unparalleled Experience Collecting and Distributing Statutory Royalties and Has Devoted Significant Resources to Developing a Distribution Infrastructure.

I understand that in prior proceedings, it has consistently been decided that the appropriate way to administer the compulsory license is through a single Collective. The AFM has always advocated for this conclusion, and remains convinced that it is the best system for performers. I also firmly believe that SoundExchange should be that single Collective.

The license at issue here is a compulsory license, and the license rate will be set by the Copyright Royalty Judges and not by competing agents who are negotiating in the marketplace. In this structure, the AFM has always thought that having one Collective to litigate rates, and collect and distribute the royalties, is by far the most efficient system. Our view on that issue has not changed, and we remain convinced that a single Collective is the most efficient means of collecting and distributing royalties. The administrative infrastructure that is required is necessarily paid for out of the royalties. Why pay for two (or more) computer systems, two (or more) staffs, two (or more) offices, two (or more) legal and technical structures? Why pay the costs that would inevitably follow from the need to coordinate between two (or more) different entities, with their differing systems? Why should the services that are subject to the license be required to make payments and file reports to two (or more) collectives, when it is simpler, more efficient and cheaper to deal only with one? Having a single Collective avoids redundancy and streamlines costs, to the benefit of performers.

The single Collective should be SoundExchange. SoundExchange has a demonstrated record of serving the interests of performers, seeking to maximize royalty payments to them, and working hard to find the thousands of potential recipients and get royalty payments to them (regardless of whether they are SoundExchange members). SoundExchange has already invested in the systems that are needed, and has developed the experience and expertise in all the complicated aspects of receiving reports of billions of digital performances, connecting them to

the proper performer and copyright owner recipients, processing the royalties, and paying them out. Renewing SoundExchange as the Collective will serve the best interests of the performers and copyright owners that depend on digital performance royalties for their livelihood.

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

Date: 10/1/14


Raymond M. Hair, Jr.