

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

MICHAEL HUPPE

President & CEO,
SoundExchange, Inc.

Witness for SoundExchange, Inc.

BACKGROUND

1. My name is Michael Huppe. I am President and CEO of SoundExchange, Inc. (“SoundExchange”) and have been directing the organization in the chief executive role since 2011. SoundExchange is the world’s leading digital performance rights organization. As the administrator for the statutory licenses under Sections 112 and 114, SoundExchange collects and distributes the royalties paid by more than 2,500 digital music services and maintains more than 100,000 recording artist and record label accounts. Our distributions go to artists ranging from local bands just starting their careers to multi-platinum stars and to record labels ranging from the smallest of the independent labels to the largest of the major record labels. Our payments to these artists and labels can be anywhere from ten dollars to millions of dollars.

2. As its President and CEO, I work to further SoundExchange’s overarching goal of supporting and protecting the long-term value of music. I work closely with our executive team to oversee our operations that carry out the collection and distribution of royalties. I spend a significant amount of time on outreach and education because it is important to us that rightsholders, artists, and musicians understand our work, and understand the rights that we administer on their behalf. I work extensively with our Board and their related constituencies to understand their interests, always under the primary goal of advancing the interests of SoundExchange and the artists and labels we represent. I often speak at music industry conferences and meetings. My role involves collaborating with our stakeholders to make policy and strategy decisions that aim to impact the direction of the industry and advocating for fair pay for all music creators and copyright owners, across all platforms. I have also testified before Congress on two separate occasions regarding the topics of music licensing that are of the most serious concern to our constituents.

3. I have dedicated much of my career to protecting the value of music for those who create it. I joined SoundExchange as its General Counsel in 2007. Before that I worked for seven years for the Recording Industry Association of America, Inc. (“RIAA”), culminating in the position of Senior Vice President for Business and Legal Affairs and Deputy General Counsel. While at the RIAA, I worked in various areas advancing and protecting intellectual property, including litigation, anti-piracy operations, licensing, and policy work. While there, I also devoted considerable time and energy to the work of SoundExchange. In all of these past positions, I have consistently focused on the value of music and ensuring that copyright owners and creators are fairly compensated for its use.

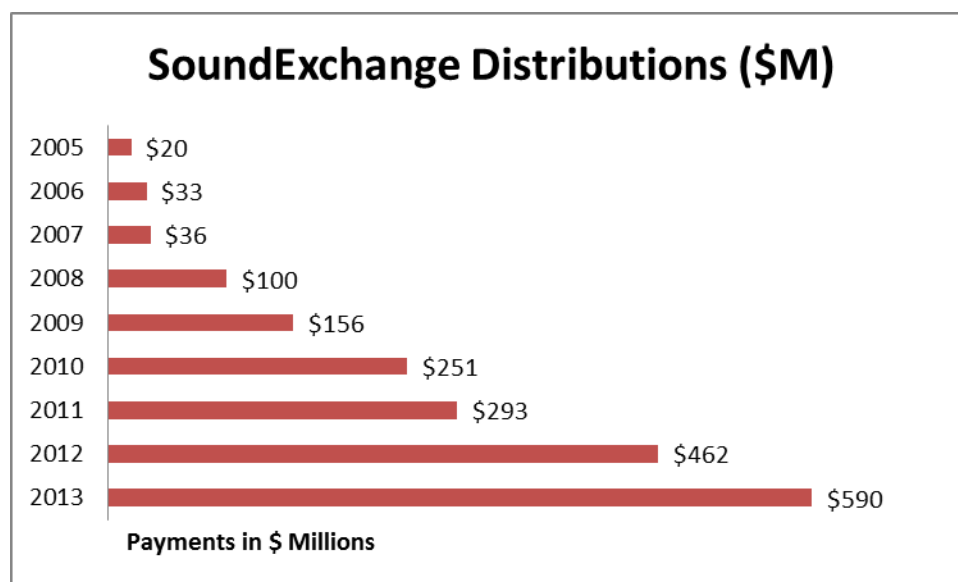
4. For the last several years, I have taught a seminar on the music industry and law at Georgetown University Law Center. I have a Bachelors of Arts (Honors Government & Foreign Affairs) from the University of Virginia and a law degree from Harvard Law School.

DISCUSSION

5. Since its inception, SoundExchange has dedicated itself to the artist and record label community. Our mission¹ is to represent the interests of artists and copyright owners in receiving fair remuneration for the use of their creative works, and to make the process of collecting and distributing royalties as simple, transparent, accurate, and efficient as possible. I am proud of the fact that through our work, the revenue engine of statutory royalties for artists and rights holders has become a strong source of income in a changing music market. In 2003,

¹ As we describe our Mission Statement on our website: “SoundExchange helps the music and creative community thrive in the digital age. As the premier digital performance rights organization in the world, it is our mission to support, protect and propel the music industry forward. We’re committed to: Advancing creative growth; being a trusted resource; and delivering exceptional service.” See SoundExchange Mission & Values *available at* <http://www.soundexchange.com/about/our-work/mission-values/> (last visited Sept. 30. 2014)

SoundExchange distributed its first royalties of \$6.3 million covering the previous five year period. We have grown rapidly since that time, and distributed \$590 million in 2013. The chart below depicts the trend of our distributions.² Since inception, SoundExchange has distributed in excess of \$2 billion in royalties.³



As of the second quarter of 2014, SoundExchange has already distributed over \$323 million, an 8% year-over-year increase from 2013.⁴ As of the end of 2013, SoundExchange payments represented 12.3% of the total wholesale revenue to the U.S. recorded music industry (\$4.8

² Data from SoundExchange 2013 Annual Review at p. 5 available at <http://www.soundexchange.com/wp-content/uploads/2014/08/2013-Annual-Review.pdf> (last visited Sept. 30, 2014).

³ SoundExchange Q2 Digital Radio Report available at <http://digitalradioreport2014q2.soundexchange.com/> (last visited Sept. 30, 2014).

⁴ *Id.*

billion).⁵ Thus far, SoundExchange payments are 14.7% of the total U.S. wholesale revenue to the recorded music industry (\$2.2 billion) for the first half of 2014.⁶

6. SoundExchange is a unique institution because it brings together and represents many different voices in the music industry. Our 18-member Board of Directors is comprised of both artist representatives and copyright owners, in equal numbers. Representatives from the Screen Actors Guild-American Federation of Television and Radio Artists (“SAG-AFTRA”) and the American Federation of Musicians (“AFM”) sit on our Board on behalf of their members. We also dedicate several additional at-large Board seats to people who speak from the recording artist and musicians’ perspective. Currently, our Board includes recording artists, as well as artists’ managers, attorneys and other representatives. As for copyright owners, our Board also includes representatives associated with each of the largest record companies in the country (Sony Music Entertainment, Inc., Universal Music Group, Warner Music Group) as well as independent labels (Secretly Group and Tommy Boy Records) and the independent label trade association, American Association of Independent Music (“A2IM”).

7. Our Board’s diversity is its greatest strength, ensuring that SoundExchange receives input and direction from each of the various groups who receive and depend on the efficient distribution of statutory royalties. And while our individual board members represent separate, distinct, and often competing interests outside the Board room, I am pleased and

⁵ News and Notes on 2013 RIAA Music Industry Shipment and Revenue Statistics *available at* <<http://riaa.com/media/2463566A-FF96-E0CA-2766-72779A364D01.pdf>> (last visited Sept. 30, 2014).

⁶ News and Notes on 2014 Mid-Year RIAA Shipment and Revenue Statistics *available at* <<http://riaa.com/media/1806D32F-B3DD-19D3-70A4-4C31C0217836.pdf>> (last visited Sept. 30, 2014).

gratified by the common goals and purposes which they demonstrate when making decisions on behalf of SoundExchange.

SoundExchange Is Dedicated to Ensuring the Efficient Operation of the Statutory License

8. SoundExchange's core operational goal is to ensure that every artist and record label receives its fair share of royalties from statutory licenses, in the most accurate, transparent and efficient way reasonable. Our distribution operations personnel process royalties for hundreds of millions of digital sound recording performances every year. As Jonathan Bender will describe in greater detail, today SoundExchange operates the most efficient system for collection and payment of royalties of any performance rights organization worldwide. Our investment in technology and processes has benefited not just rightsholders but also the licensees for whom SoundExchange facilitates a royalty payment system, freeing them from having to invest the time and effort to create their own system. I have attached as Exhibit 1 to my testimony a graphic that illustrates SoundExchange's operations.

9. In addition to processing the royalty payments for those artists and rightsholders known to us, SoundExchange goes to great lengths to locate artists and small record labels not yet registered with SoundExchange in order to ensure that they receive the compensation to which they are entitled. In this work, we regularly match our lists of unregistered artists and labels against those of organizations who keep contact information for such creators. Past organization partners in this effort include ASCAP, BandPage, CDBaby, the AFM, SAG-AFTRA, and more than 150 others. SoundExchange collaborates with these organizations to notify those recording artists and/or sound recording rights owners who have been identified as having royalties awaiting collection. SoundExchange also reaches out to artists and rightsholders in person. From sponsorships and panel discussions to standing in artists' lounges with clipboards, we attend dozens of conferences and festivals each year to educate, build

relationships and register artists and labels one-on-one. In 2013 alone, SoundExchange attended or contributed to 45 conferences, and had a sponsorship presence at 20 of these 45 conferences. And for three consecutive years, we have hosted The SoundExchange Summit at New Music Seminar to educate and inform recording artists and labels about our efforts. We also engage in media and social network campaigns to educate the industry and to help raise awareness and register industry participants who have not yet claimed their royalties.

10. We work to both increase and facilitate royalties paid to U.S. artists and copyright owners whose works are performed internationally. To that end, we have negotiated more than 30 reciprocal agreements with international performing rights organizations—covering performances from Australia to the Ukraine. This helps ensure that U.S. copyright holders and artists receive royalties for their work, regardless of where their music is performed.

11. We are efficient and relentless in our work. Now that we have begun in 2014 to distribute royalties monthly, nearly 90% of the money we collect from the 2,500+ services we work with is processed within 45 days of receipt. We are more efficient at this than anyone else in the world, with an administrative rate in 2013 of 4.5%.

The Importance of a Strong Statutory License

12. Since SoundExchange opened its doors in 2003, the music industry has changed dramatically. Historically, record labels and artists built their businesses on the sales of records in permanent copies. But the rise of streaming and digital access has fundamentally changed those expectations. As more and more consumers engage with and accept services that provide for the streaming of music, the former “ownership” model has rapidly given way to one in which “access” is the key. Rather than purchasing records sold in bins or even in download form from online stores, now the “listen” can often be the main – or only – product that consumers seek. SoundExchange has had a front row seat to this shift in consumer behavior, which has played out

in the webcasting industry. The promise of a strong statutory license – one that fairly compensates rightsholders and creates an efficient process through which webcasters can license music – serves an important role in this transition.

13. The webcasting industry has grown over the last decade under the statutory system. Based on one recent survey, the online radio audience has more than doubled from an estimated 49 million to 124 million listeners over the past 7 years and the average time spent listening has doubled in the past 5 years to more than 13 hours a week currently.⁷ Since the last webcasting rate-setting proceeding, the number of statutory licensees has increased significantly and is now well over 2,500 licensees today.⁸

14. SoundExchange and the availability of the statutory license have contributed to this growth. We offer a “one stop shop” that eases the way for new webcasters to start a new statutory service. Through SoundExchange, new webcasters can make a single payment and obtain licenses that apply to thousands of individual copyright owners. We handle this operational function for webcasters, which frees up resources and allows them to spend more time and money growing and investing in their business, rather than engaging in individual licensing discussions with a multitude of rightsholders before they can legitimately operate. And we handle the apportionment and distribution of the royalties (with all the attendant data issues, tax considerations, and so forth) to tens of thousands of payees, a function the webcasters would otherwise be required to undertake.

⁷ 2014 Infinite Dial Survey, conducted by Edison Research *available at* <http://www.edisonresearch.com/wp-content/uploads/2014/03/The-Infinite-Dial-2014-from-Edison-Research-and-Triton-Digital.pdf> (last visited Sept. 30, 2014).

⁸ See Testimony of Jonathan Bender at Figure 1.

15. Consumers also stand to benefit from the statutory license. New services and innovation mean consumers have a wider variety of, and more access to, music than ever before. No longer confined to the playlists of terrestrial radio, consumers can listen to multi-platinum stars and local garage bands, a capella and acid rock, bluegrass, symphonies, big bands, and everything in between. And they can listen at home or on the go, in their cars or on the subway, on their smartphones and tablets, wherever and whenever. The proliferation of variety and access for consumers owes to the ease with which webcasting services of all genres and audience sizes can launch quickly with few obstacles thanks to the statutory license and SoundExchange.

Statutory Royalties Are Important to Artists and Record Labels

16. Consumers of music and webcasting services alike have benefited from the growth of the webcasting industry and the ease and availability of digital music. We must work to ensure that this growth also benefits the creators and record labels behind the music around which these services are built. To do that, artists and labels must be fairly compensated for the use of their work.⁹ In my experience, I have seen that most, if not all, musicians work tirelessly to earn a living from their music. Likewise, the recorded music industry is a risky business that requires a great deal of up-front investment. Fair compensation for the use of copyrighted sound recordings enables artists and record labels to continue to make the music that we cherish and that serves as the backbone of the webcasting industry.

17. Our collections and distributions are a critical part of the new digital music ecosystem, in which listening to music – rather than the sale of recordings – generates revenue

⁹ Congress recognized the importance of fair compensation when it passed the DPRSA. The Senate Report for the Act explains that the Act’s purpose “is to ensure that performing artists, record companies and others whose livelihood depends upon effective copyright protection for sound recordings, will be protected as new technologies affect the ways in which their creative works are used.” Sen. Rep. No. 104-128, at 10 (1995), reprinted in 1995 U.S.C.C.A.N. 356, 357.

for artists and labels. In this new world the aggregate of the pennies – or fractions of pennies – that we collect make a difference to the many artists and record labels that we represent.

Streaming revenues constituted 27% of total music industry revenues in the first half of 2014.¹⁰

SoundExchange collected and distributed at least 38% of those streaming revenues.¹¹

Independent and major record labels alike depend increasingly on the statutory royalties from digital exploitation of their master recordings. Their entire business derives from their ability to receive fair compensation for the use of their master recordings, across the board.

18. Finally, royalties for the digital performance of sound recordings are of extraordinary importance to artists—both featured and backup singers and musicians. Of SoundExchange’s distributions of performance royalties, 45% go directly to the featured recording artist, even if they do not own their own masters, and even if they are not “recouped.” An additional 5% is paid to backup vocalists and session musicians through the AFM and SAG-AFTRA. The ability of artists to participate directly and immediately in this stream of revenue is a core policy of the statutory license – and of SoundExchange. Artists already struggle to earn a living from their craft. For them, every single bit of revenue counts, and a check for a few hundred dollars from SoundExchange can mean the difference between making a rent payment or not. It can also mean the difference between being able to pursue their passion professionally, or merely as a hobby or secondary pursuit. I hear from artists on a regular basis about the vital importance of the revenue that SoundExchange distributes. As artist Talib Kweli Green put it: “If you only understood how much of a life saver this check is and what you do with

¹⁰ News and Notes on 2014 Mid-Year RIAA Shipment and Revenue Statistics *available at* <<http://riaa.com/media/1806D32F-B3DD-19D3-70A4-4C31C0217836.pdf>> (last visited Sept. 30, 2014).

¹¹ *See id.*

SoundExchange is such a blessing for artists like me. I'm over here stressing how to pay bills and you always come thru. I truly appreciate it.”¹²

19. This revenue is not only significant today; all signs indicate that it will increase. Many commentators recognize that streaming revenues – including those that SoundExchange collects and distributes– represent the future of the industry. A strong statutory license administered by a reliable expert in SoundExchange is key to that future. Among other benefits, a strong statutory license that reflects market rates would level the playing field, send the message to companies built on music that rightsholders and artists should be fairly and appropriately compensated, and eliminate the transaction costs that rightsholders and artists otherwise would have to incur in obtaining their fair allocation of these revenues. Instead of negotiating with every webcaster that seeks to use their music, artists and labels can focus on creating and marketing the next great generation of sound recordings. After all, without music, webcasters have nothing to play. A strong statutory license reaffirms that this critical product is a valuable part – indeed, the **most** valuable part – of the webcasting supply chain, and supports the key principle that every participant in this industry lives by: in the end, it is all about the music.

¹² SoundExchange 2012 Annual Review at p. 11 *available at* <http://www.soundexchange.com/wp-content/uploads/2014/01/2012-Annual-Review.pdf> (last visited Sept. 30, 2014).

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

Date: Oct. 6, 2014


Michael Huppe

Exhibit Sponsored By Michael Huppe

Exhibit No.	Sponsored By	Description
SX EX. 008-DP	Michael Huppe	Exhibit 1 - SoundExchange Operations Infographic