

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

JONATHAN BENDER

Chief Operating Officer, SoundExchange, Inc.

Witness for SoundExchange, Inc.

I. **Background and Qualifications**

I am the Chief Operating Officer of SoundExchange, Inc. (“SoundExchange”). I have held this position since September 2011.

I have more than 20 years of music industry business and management expertise, including senior operational roles at Concord Music Group, Universal Music Group, and EMI Music. I was senior vice president, operations, IT and digital development at Concord Music Group, one of the fastest growing independent label groups in the world. At Concord, I designed and managed a consolidated digital infrastructure to host and distribute the artist catalogs of the three combined companies: Concord Records, Fantasy Records, and Telarc International. I also led the integration of all physical product operations and revamped all of the group’s online properties. Before joining Concord, I spent seven years with Universal Music Group, most recently as vice president, digital asset management and logistics. In this role, I served as team leader for the building of the music industry's first e-commerce distribution infrastructure, and converted production operations from physical assets to digital. I also spent nine years with EMI Music, formerly one of the world's largest music companies. As director of new technology based in London, I implemented the industry's first worldwide transmission network for production assets, setting global standards for digital assets and metadata. I hold a bachelor's degree from the University of North Carolina at Chapel Hill, where I was a Morehead Scholar, and an MBA from Harvard Business School.

My responsibilities as SoundExchange's Chief Operating Officer include overseeing the collection, processing and distribution of royalty payments for the performance of sound recordings through the various types of services eligible for statutory licensing, including the webcasting services at issue in this proceeding. I supervise SoundExchange staff who receive

reports of use from licensees, determine the amounts owed to copyright owners and performers, and process the distributions of royalties to those individuals and entities. The groups within SoundExchange that handle account services, distribution services, data management, claims and license management all report to me. Additionally, I oversee SoundExchange's technical involvement with licensees and assist with coordination of its systems requirements, development, and testing.

II. **Overview**

I will address several subjects in this testimony. I will describe the operations of SoundExchange and the services it provides. I will identify the activity of webcasters during the last license period, particularly with respect to the number of licensees and types of fees paid by licensees. I will explain why SoundExchange should be the sole Collective for collecting and distributing royalties under the Section 112 and 114 licenses. Finally, I will provide reasons to support SoundExchange's proposals with respect to the minimum fees, treatment of ephemeral royalties, and terms of the statutory licenses at issue in this proceeding.

III. **SoundExchange's Processing and Distribution of Royalties**

A. **Overview of SoundExchange**

SoundExchange is a 501(c)(6) nonprofit performance rights organization established to ensure the prompt, fair and efficient collection and distribution of royalties payable to performers and sound recording copyright owners for the performance of sound recordings over, among other things, the Internet, cable and satellite television networks, and satellite radio services via digital audio transmissions. SoundExchange is governed by an 18-member Board of Directors that is made up of equal numbers of artist representatives and sound recording copyright owner representatives. Copyright owners are represented by board members associated with the major

record companies (four), independent record companies (two), the Recording Industry Association of America (two), and the American Association of Independent Music (one). Artists are represented by one representative each from the American Federation of Musicians (“AFM”) and the Screen Actors Guild - American Federation of Television and Radio Artists (“SAG-AFTRA”). There are also seven at-large artist seats, which are currently held by artists’ lawyers and managers, as well as a recording artist.

In the previous *Webcasting III* proceeding, Docket No. 2009-1 CRB Webcasting III, the Judges designated SoundExchange “as the Collective to receive statements of account and royalty payments from Licensees due under § 380.3 and to distribute such royalty payments to each Copyright Owner and Performer, or their designated agents, entitled to receive royalties under 17 U.S.C. 112(e) or 114(g).” 37 C.F.R. § 380.4(b).

Since its founding, SoundExchange has, on behalf of artists and record labels, sought the establishment of royalties and regulations that enable the prompt, fair and efficient distribution of royalties to all those artists and copyright owners entitled to such royalties. In addition to participating in rate-setting proceedings, SoundExchange has represented artists and record labels with respect to other issues, such as notice and recordkeeping. SoundExchange also undertakes a number of measures to protect the interests of artists and copyright owners under the statutory licenses, including by conducting audits of licensees, seeking and obtaining compliance by noncompliant licensees, and engaging in other enforcement and compliance measures.

SoundExchange frequently refers to those record labels and artists who have specifically authorized us to collect royalties on their behalf as “members.” We have approximately 18,000 rights owner members (including both record labels and artists who own the copyrights in their

own recordings) and more than 40,000 artist members. We also pay statutory royalties to non-members — copyright owners and artists alike — as if they were also members. In total, and because some artists and rights holders maintain multiple accounts, we maintain more than 100,000 accounts for recording artists and rights holders.

SoundExchange has distributed royalties based on trillions of digital sound recording performances, and processes royalties related to tens of billions of webcasting performances each month. To date, SoundExchange has conducted a total of 61 royalty distributions and has made more than 510,000 individual payments totaling more than \$2 billion. SoundExchange paid out statutory royalties of approximately \$293 million in 2011, \$462 million in 2012, \$590 million in 2013, and, in just the first six months of 2014, SoundExchange has already paid out \$323.6 million.

SoundExchange strives to minimize the administrative costs associated with royalty collection and distribution. SoundExchange has 142 full-time staff members. In 2013, our administrative rate was 4.5%. For comparison purposes, the American Society of Composers, Authors and Publishers (“ASCAP”) reported operating expenses of 11.6% for 2012 (<http://www.ascap.com/~media/files/pdf/about/annual-reports/2012-annual-report.pdf>).

B. Royalty Collection and Distribution

SoundExchange's core mission is to collect and distribute statutory royalties as efficiently and accurately as possible. SoundExchange has developed sophisticated systems, business processes and extensive databases uniquely suited to the challenging task of distributing statutory royalties. For managing royalty collection and distribution, SoundExchange employs the following operational procedures.

Receipt of Payment. SoundExchange's License Management Department receives from statutory licensees royalty payments and, when the system works properly, two reports: (1) statements of account that reflect the licensee's calculation of the payments for the reporting period; and (2) reports of use that log performances of sound recordings. (We also receive notices of election that indicate whether the licensee has utilized any optional rates and terms.)

When SoundExchange receives payment from a licensee, that payment is logged into SoundExchange's licensee database. If this is the first payment from a licensee, a new profile is created for the licensee. If the licensee has previously paid royalties, then the payment is entered under the existing profile. If the licensee operates services in multiple rate categories, the royalty payments are allocated among the applicable rate categories based on the statements of account. Similarly, aggregated payments by a parent corporation covering corporate subsidiaries (e.g. by a radio station group covering individual radio stations) may be allocated among the subsidiaries if the parent provides separate statements of account for each of the covered subsidiaries.

Loading of Reports of Use. Reports of use are associated with a service's payments and statements of account for a particular period and loaded into SoundExchange's system. Details of the required reporting vary among different types of services, but broadly speaking, the reports are supposed to provide information about matters such as the sound recording title, album, artist, marketing label, International Standard Recording Code ("ISRC") and other information, as well as information about the number of performances. If a report does not conform to the required format and delivery specifications, it may not load without substantial manual intervention. Instead, SoundExchange staff must review the reports, identify the kinds of corrections that need to be made, work with the service to obtain a corrected report from the service, and then attempt again to load the report into the system. In some instances, services fail

to accurately report identifying data for sound recordings by, for example, specifying that the artist is “Various,” a composer such as “Beethoven” or “Mozart,” or the disc jockey who played the sound recording, or simply not providing required information. Because the same songs have frequently been recorded by multiple artists, artist name is a critical piece of information for matching reported use to known sound recordings. Another piece of information that is important is the ISRC, which uniquely identifies a particular recording of a performance, especially where even slight differences may affect the copyright owner. For example, if an artist records an unplugged and a studio version of the same track, the ISRC can help identify which performance, and therefore which copyright owner(s) ought to be paid. In each of these instances, it is not possible to rely on the reported artist name alone to match reported use to known sound recordings. When we receive missing or inaccurate data, the ten or so employees in my Claims Department staff have to research the partially identified sound recording in order to identify accurately the sound recording copyright owners and performers entitled to royalties.

Matching. SoundExchange's systems seek to match the recordings reported in licensee reports of use with information in SoundExchange's database concerning known recordings and their copyright owners and performers. Our complex log loading algorithm attempts to match identical and similar data elements and combinations of data elements from the incoming log against performance information previously received from the services, or against source repertoire data, or otherwise contained in SoundExchange's database. If there is a match for a particular sound recording, then the system identifies the corresponding copyright owner and performer information. However, a reported recording might not match a known recording if, for example, the service has performed a recording by an unsigned artist, or a very new, old,

foreign or other obscure recording that has not previously been reported to SoundExchange, or if the service has provided incomplete or incorrect identifying information.

Research. SoundExchange has built its database of sound recordings from scratch, based in part on information reported to it by the services. To the extent a reported recording does not sufficiently match a known recording, SoundExchange personnel will research the recording in an effort to determine whether it should be added to SoundExchange's database or whether it is in the database under different identifying information. This research requires a significant amount of staff time. Such research is often required for new releases, works reported for the first time, works from small labels, compilation albums, and foreign repertoire. In the case of compilation albums, for example, finding copyright ownership information is particularly time-consuming because, although the album is issued by one label, each of the sound recordings on it is often owned by a different label.

SoundExchange conducts extensive data quality assurance work to ensure the correct association of copyright owners and performers, on the one hand, and particular performances, on the other. When we receive information that is inaccurate or in conflict with other information, we conduct research to determine the copyright owner and performers for the sound recording, and we also have a process for identifying and resolving conflicts that arise between different payees.

Account Assignment. SoundExchange then assigns reported sound recording performances to accounts belonging to copyright owners and performers. Performances for which a copyright owner or artist account is not identifiable (e.g., because the recording reported has not yet been matched to a recording known to SoundExchange) are flagged for later review and research. This is often the result of poor quality data provided by licensees, or due to artists

that have not registered with SoundExchange. Once identification is made, these performances are processed through the steps that follow, with the associated royalties being released in the next scheduled distribution.

Royalty Allocation. Once account assignment has occurred, a service's royalty payments for a given distribution period are allocated to sound recordings used by that service during that period and to SoundExchange's costs deductible under Section 114(g)(3) (sometimes referred to as SoundExchange's "administrative fee"). SoundExchange distributes royalties to performers and copyright owners based on the reporting that the services provide to SoundExchange.

Before distribution of allocated funds, SoundExchange takes several quality assurance steps to ensure accounts are payable, address and tax identification information is complete, and performances in conflict and copyright owner conflicts are resolved (to the extent practicable).

Adjustment. Once allocations are completed, it is sometimes necessary to adjust particular accounts to rectify reporting and other errors that occurred in prior distributions. For example, if Copyright Owner A was incorrectly reported as the copyright owner of Recording X and received royalties for Recording X, but the actual owner of that recording was Copyright Owner B, then SoundExchange would need to credit Copyright Owner B in a future distribution and debit Copyright Owner A's account for the improper distribution. Adjustments typically take the form of an additional payment or a reduced payment to an existing account in the next scheduled distribution. For copyright owners and artists who are newly identified and for whom royalties have been accruing, a new account is created and royalties attributed to the related repertoire are transferred to the new account.

Distribution. This process begins with aggregating allocations across licensees' reports of use within a license category according to earning entity,¹ which are then assigned to copyright owners, artists, or certain other payees (such as a producer who an artist directs SoundExchange to pay) based on the payment instructions for each. Next, the system generates a payment file, which we transmit to our banking partner. SoundExchange generally provides each payee with a statement reflecting the sound recording usage — and the licenses under which the sound recordings were performed — for which the royalty payment is made. When there is a payable balance in a payee's account above the distribution threshold, a check is mailed or funds are electronically transferred.

SoundExchange's database containing payee information is derived from account information received from record labels and artists, and includes such payees as the copyright owners and artists themselves, management companies, production companies, estates and heirs. We must, however, verify address and other information and secure appropriate tax forms directly from each artist and label. If an earning entity fails to provide SoundExchange with tax information, then we can still distribute royalties but must withhold a portion of the royalties pursuant to applicable Internal Revenue Service guidelines.

SoundExchange presently conducts monthly distributions for artists and copyright owners who have royalties due in excess of \$100 (and quarterly distributions for all others) for statutorily licensed uses and, at times, for non-statutorily licensed performances for which SoundExchange has collected royalties, typically from non-U.S. performing rights organizations that have money for U.S. performers or copyright owners. The threshold for distributing

¹ An "earning entity" is the person or entity who has earned the royalties from a tax standpoint and is not necessarily the person who receives royalties.

royalties quarterly to a payee is \$10. Distributing smaller amounts would incur significant additional transaction costs. Every payee with a balance greater than \$10 receives at least one annual distribution. Payments for which SoundExchange lacks sufficient information to distribute to the appropriate copyright owner or performer are allocated in accordance with 37 C.F.R. §§ 380.8, 380.17, or 380.27 as applicable. When SoundExchange subsequently obtains the information necessary to distribute royalties to a particular copyright owner or performer, it will do so in a future distribution.

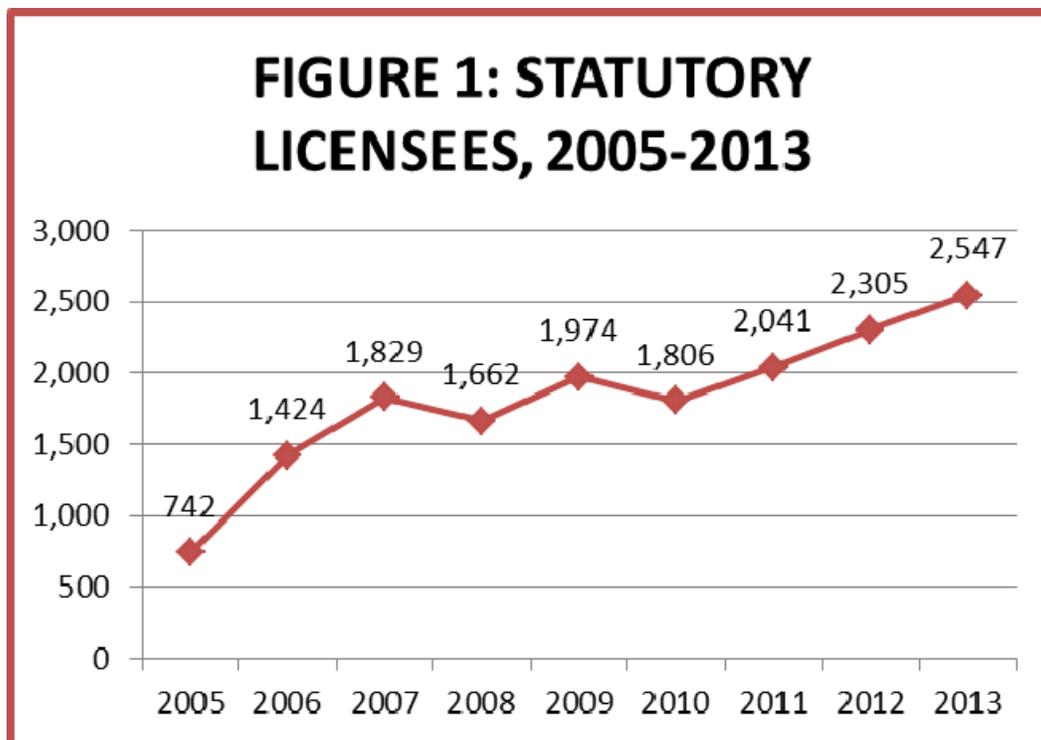
In sum, SoundExchange invests considerable time, resources, and effort into providing an unparalleled, efficient system for the administration of statutory royalties, without which it would be incredibly difficult if not impossible to make digital sound recordings available to the public while quickly and accurately compensating artists and copyright owners. Our systems and processes have been built to address the unique challenges of administering statutory digital performance royalties, and our staff has developed important technical expertise in this area. Undoubtedly, these contributions of SoundExchange are meaningful not just to the copyright owners and artists we support directly but also to the webcasting services that we enable.

IV. **Webcasting and Licensees**

The number of webcasters paying royalties to SoundExchange is robust – 2,516 webcasting services paid SoundExchange statutory royalties in 2013. In fact, that number undercounts the total number of webcasters that paid royalties in 2013. Some corporate enterprises (e.g. radio station groups like iHeartMedia or the Corporation for Public Broadcasting) pay and report in a consolidated manner on behalf of all of their affiliates, while affiliates of other enterprises pay and report separately for each station or for distinct subsets of stations (for example, on a regional basis). Taking these differences into account,

SoundExchange actually receives reporting and payments on behalf of several thousands of channels and stations.

This reflects a historical trend of an increasing number of licensees paying statutory royalties for rates set pursuant to Section 112(e) and Section 114 or settlements adopted thereto, from 2,016 webcasting licensees in 2011, to 2,273 webcasting licensees in 2012, to 2,516 webcasting licensees last year. In fact, the total number of statutory licensee numbers since 2005 to present has generally increased year to year, as follows:



SOURCE: SoundExchange Data, Resiliency Analysis

In the last rate period, in part as a consequence of settlements adopted pursuant to the Webcaster Settlement Acts, there were several license categories available to webcasting services operating under Sections 112(e) and 114. In fact, there were 13 license categories available to webcasters, including 8 for commercial webcasters (Commercial Webcaster-CRB; Commercial Webcaster-WA; Broadcaster; Microcaster; Pureplay; Small Broadcaster; Small

Pureplay; Small Webcaster) and 5 for noncommercial webcasters (Corporation for Public Broadcasting; Noncommercial Educational Webcaster; Noncommercial Microcaster; Noncommercial Webcaster–CRB; Noncommercial Webcaster–WSA). And, as noted below, the lion’s share of commercial webcasters operate pursuant to the Broadcaster rates and terms or the Commercial Webcaster-CRB rates and terms, which were set by the Judges in *Webcasting III*, or the Commercial Webcaster-WSA rates and terms, whereas the noncommercial webcasters are more evenly dispersed among the various license categories.

FIGURE 2: LICENSEES BY TYPE, 2011-2013

YEAR	2011	2012	2013
TOTAL COMMERCIAL LICENSEES	1188	1339	1517
Broadcaster	678	851	949
Commercial Webcaster-CRB	129	103	121
Commercial Webcaster-WSA	31	12	9
Microcasters	22	41	35
Pureplay	2	5	5
Small Broadcaster	252	248	319
Small Pureplay	9	15	13
Small Webcaster	65	64	66
YEAR	2011	2012	2013
TOTAL NONCOMMERCIAL LICENSEES	828	934	999
Noncommercial Educational Webcaster	423	481	516
Noncommercial Microcasters	65	84	108
Noncommercial CRB	148	165	169
Noncommercial WSA	191	203	205
Corporation for Public Broadcasting/NPR	1	1	1

SOURCE: SoundExchange Data, Licensee Counts

Since 2011, of those webcasters who were subject to the \$500 statutory minimum fee set by the Copyright Royalty Judges for the current license period (the same one that SoundExchange proposes for the next license period), approximately 97% of noncommercial webcasters paid only that minimum fee. Even among commercial webcasting licensees, a little less than half paid only the minimum fee. When combined, approximately two-thirds of all webcasting licensees subject to the minimum fee set by the Judges paid *only* that minimum fee and no additional royalties.

V. **SoundExchange Should Be Designated the Sole Collective to Collect and Distribute SDARS and PSS Royalties**

In *Webcasting II*, the Judges found “that selection of a single Collective represents the most economically and administratively efficient system for collecting royalties under the blanket license framework created by the statutory licenses.” 72 Fed. Reg. at 24105 (May 1, 2007). In *Webcasting III*, the Judges recognized this finding and acknowledged that “[o]ver the years of its service as the Collective, SoundExchange has gained knowledge and experience and has developed efficient systems for achieving the goals of the Collective at a reasonable cost to those entitled to the royalties.” 79 Fed. Reg. at 23124 (April 25, 2014). On this basis and “[i]n the absence of any request or suggestion to the contrary, the Judges designate[d] SoundExchange as the Collective for the 2011-2015 license period.” *Id.*

The Judges should likewise designate SoundExchange as the sole Collective to collect and distribute statutory royalties for the 2016-2020 license period. SoundExchange has considerable experience and expertise in administering the statutory licenses. SoundExchange has processed billions of sound recording performances. SoundExchange has continued to increase the size of its membership and the number of record label and artist accounts it maintains. For example, whereas at the time the *Webcasting III* direct testimony was submitted,

SoundExchange had approximately 9,700 record label members and 29,000 artist members, 72 Fed. Reg. at 24104, today SoundExchange has approximately 18,000 rights owner members and more than 40,000 artist members. And while SoundExchange had roughly 2 million sound recordings in its database when the written direct testimony was submitted in *Webcasting III*, today SoundExchange has more than 6 million unique entries in its database of combinations of artist names and track titles.

I do not know whether any participant in this proceeding will propose that there be more than one collection and distribution agent, but I do know that having more than one such agent would cause significant problems. Such a system is anathema to the concept of an efficient statutory licensing system. Designating a second Collective would create greater overall costs because copyright owners and performers would have to pay for duplicative systems for license administration.

VI. **Minimum Fees**

SoundExchange proposes setting the statutorily-required minimum fee at the same level as prior license periods – \$500 per channel or station, subject to a \$50,000 annual cap for commercial webcasters. As discussed above, it is likely that most webcasting licensees will *only* pay this minimum fee. SoundExchange’s proposal for this fee is consistent with long-established past practice, would require no additional burden on webcasters than they have come to expect in the market, and would ensure that every licensee makes some contribution to the costs of administering the statutory license.

More generally, one rationale for the minimum fee that has been raised in past proceedings is that it should cover SoundExchange’s administrative expenses even in the absence of royalties. 72 Fed. Reg. at 24096 (May 1, 2007). Much like SoundExchange’s

position in prior proceedings, I agree that the minimum fee should ensure that every licensee makes an appropriate contribution to the costs of administering the statutory license, as well as a reasonable payment for the usage of sound recordings. After all, if the minimum fee covered only administrative expenses, then copyright owners and performers collectively would receive no payment for the use of their sound recordings by the many services (the majority of licensees, in fact) that are paying only the minimum fee. Those payments would in effect be completely consumed by costs of administration. SoundExchange, however, has never sought to collect all of its costs from minimum fee payments. Payments from services that pay larger amounts of royalties in effect subsidize costs associated with processing payments and information from smaller services that typically pay only the minimum fee.

SoundExchange's per-service or per-station or per-channel administrative costs are difficult to quantify. The expenses that SoundExchange incurs in relation to particular services vary widely depending, for instance, on the quality of the data that a service provides to SoundExchange and on the additional work that SoundExchange may need to do when it receives poor quality data. In addition, some larger station groups submit separate statements of account and reports of use for each of their individual stations. This means that we need to process each such station individually, rather than as a group, which necessarily adds time to SoundExchange's efforts. Our costs also vary depending on the breadth and obscurity of a service's repertoire, with services that play a great deal of repertoire that is relatively unique imposing greater research costs. In addition, many of our costs are effectively shared across services – including things like research of repertoire used by multiple services, costs of artist outreach and distributing royalties once individual services' allocations are loaded, information technology and corporate overhead. SoundExchange does not track its administrative costs on a

licensee-by-licensee, station-by-station, or channel-by-channel basis and, as a result, there is no precise way to determine exactly what we must spend on such a basis.

Despite these difficulties, as a check on whether the minimum fees proposed in this proceeding are reasonable in light of our administrative costs, SoundExchange nonetheless estimated our administrative costs per service. Based on current records, SoundExchange's expenses for 2013 were approximately \$30 million. This amount includes SoundExchange staff, facilities, operating expenses, equipment depreciation, amortization of costs of rate-setting proceedings, and other costs. In 2013, based on information available in September 2014, SoundExchange had 2,547 licensees (at the statement of account level) of all license types. When SoundExchange's operating costs are divided by the number of licensees, the result is a per licensee cost of approximately \$11,778.

While the overwhelming majority of these licenses (about 2,200) operated only one station or channel, some operated multiple stations or channels. The number of individual channels or stations on a licensee's service is often an indicator of greater complexity required to handle such payments and reporting. Despite this, we have been willing to agree to a cap on the minimum fee corresponding to 100 channels or stations per licensee, and propose such a cap for commercial webcasters in this proceeding.

As a further check on our proposed per channel or per station minimum fee, we tried to determine the average number of channels or stations per webcaster licensee. Calculating the average number of channels or stations per webcaster is necessarily an inexact exercise. Services do not always report the total number of channels or stations, and, for services that allow users to create channels, it is unclear (in part because it is unreported) how many "stations" there actually are. In estimating the average number of stations or channels per webcaster, we

used actual numbers where that information is reported to us. Where that information is not reported to us, but where a service provides information about the number of its stations or channels on a publicly available website, we used that information. For the small number of services for which we lack information about their total number of stations or channels, but for which we are generally aware that they have a large number of stations or channels, we assumed 100 stations or channels. The assumption of 100 stations or channels is consistent with SoundExchange's proposal of a \$50,000 cap on minimum fees for commercial services with 100 or more stations or channels where the minimum fee is \$500.

Based on the foregoing information, we determined that there is an average of about six channels or stations per webcaster licensee at the statement of account level. If we divide the average cost at the licensee level by the average number of channels or stations per licensee, SoundExchange's average per channel or station cost for webcasters in 2013 was approximately \$1,900 (\$11,778 divided by 6). One could do the analysis differently. For example if one capped at 100 the number of channels or services known to have a much larger number of channels, one would get a lower average number of channels or stations per webcaster licensee at the statement of account level and a correspondingly higher average per channel or station cost.

The exact cost imposed by any particular licensee varied widely. Every single statement of account and every single report of use must go through the entire process described above – the payments and statements of account must be reviewed, verified, and recorded; and the reports of use must likewise be reviewed, tested, logged, and loaded into the distribution engine. Any problems with paperwork or logs can introduce problems and cause delay.

Nonetheless the estimates described above demonstrate that SoundExchange's proposed minimum fee of \$500 per station or channel is below our estimated per station or

channel costs. As indicated above, SoundExchange has never sought to collect all of its costs from minimum fee payments. Because \$500 per station or channel does not recover all of our administrative costs, particularly if the minimum fee is understood to include some payment for usage of sound recordings, that level of payment represents a reasonable and justified contribution to the costs of administering the statutory license.

VII. **Ephemerals**

In past license periods, the royalties payable under 17 U.S.C. § 112(e) have been bundled with those payable under 17 U.S.C § 114. The general rationale has been that bundling those rights makes sense because a webcasting services will need to make ephemeral copies under Section 112 if it plans to make performances under Section 114. This bundle, however, must be allocated in some fashion because, unlike Section 114 performance royalties, royalties for ephemeral copies are payable only to the copyright owner. SoundExchange’s Board – which is composed of representatives of both copyright owners and performing artists – previously passed a resolution reflecting agreement that specifically for purposes of statutory royalties under Sections 112 and 114 during the *Webcasting III*, *New Subscription II* and *SDARS I* proceedings, five percent of the value of the entire bundle is attributable to the Section 112 ephemeral copy royalties. SoundExchange has divided statutory royalties consistent with that allocation, developed its systems accordingly, and continues to make royalty payments with those guidelines in mind.

VIII. **License Terms and Other Regulations**

SoundExchange generally proposed continuing the same terms in this proceeding as the Judges adopted in the *Webcasting III* proceeding, Docket No. 2009-1, subject to the revisions described below with regards to (i) the monthly payments term; (ii) definition of “qualified

auditor”); and (iii) acceptable verification procedures, and certain technical or conforming changes. These terms are substantially the same as the terms currently applicable to both webcasting services and satellite radio services. I believe there is value in having consistency of terms across licenses and in allowing time to fully assess the effectiveness of those terms based on experience working under those terms. Such consistency aids SoundExchange's administration of the licenses and makes licensees' compliance with the terms more efficient.

I highlight one proposed change² to the webcasting terms: SoundExchange proposes revising the term for when payments are due under 37 C.F.R. §380.4(c) on a monthly basis to require payment on or before the 30th day after the end of each month for that month. The present requirement is 45 days, which was less of an issue when SoundExchange was only able to make quarterly royalty distributions to artists and copyright owners. Through efforts to improve our systems and processes, SoundExchange has introduced a new norm of monthly distributions. But, under the current 45-day payment period, SoundExchange receives most of its payments from services too late in the month to be able to ingest the reports, payments and statements of account and perform all of the operations necessary to pay copyright holders and artists by the end of the month. This creates a time lag of an additional month. By revising the requirement for service payment within 30 days – a revision of only 15 days for the service provider – SoundExchange should be able to distribute more royalties to artists and copyright owners a full one month earlier. For the sake of clarify and explanation, if Service A owes royalties for its operations during the month of August, under the current regulations, their monthly payment, report of use, and statement of account would not be due until October 15.

² I understand that other witnesses will discuss SoundExchange’s proposed revisions to terms affecting audits.

Those payments, reports, and statements come in too late for SoundExchange to process and distribute them before the end of October, and as a result, artists and copyright owners would typically have to wait until SoundExchange's distribution at the end of November. By making a modest revision to require payment of royalties, along with reports of use and statements of account,³ within 30 days, in this hypothetical, SoundExchange will be better able to include Service A's August royalties in the distribution of copyright owners and artists at the end of October.

Making this change and the other more technical ones set forth in the marked copy of the regulations included with SoundExchange's rate proposal would improve the quality of the royalty collection and distribution process and promote further use of the license by new webcasting services.

IX. **Settlement With College Broadcasters**

SoundExchange has reached a settlement with College Broadcasters, Inc. (CBI) to cover rates and terms for the next license period. The Judges adopted our prior settlement with CBI as the rates and terms that would apply to all noncommercial educational webcasters during the current license period. SoundExchange hopes that the same will be true this time as well and supports the adoption of this new settlement as the statutory rates and terms for all noncommercial educational webcasters during the next license period.

³ SoundExchange has separately raised the issue of requiring reports of use within 30 days, instead of 45 days, as part of the rulemaking proceeding currently pending before the Copyright Royalty Board, Notice and Recordkeeping for Use of Sound Recordings Under Statutory License, Docket No. 14-CRB-0005 (RM).

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

Date: October 6, 2014


Jonathan Bender