

**Before the  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
THE LIBRARY OF CONGRESS  
Washington, D.C.**

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**In the Matter of**

**DETERMINATION OF ROYALTY RATES     )**  
**FOR DIGITAL PERFORMANCE IN SOUND ) Docket No. 14-CRB-0001-WR**  
**RECORDINGS AND EPHEMERAL         )**  
**RECORDINGS (WEB IV)                 )**  
**(2016-2020)**

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**TESTIMONY OF TOM POLEMAN,**  
**PRESIDENT OF NATIONAL PROGRAMMING PLATFORMS, iHEARTMEDIA, INC.**

**BACKGROUND AND QUALIFICATIONS**

1. I am President of National Programming Platforms for iHeartMedia, Inc. (“iHeartMedia”). I am in charge of selecting the content for iHeartMedia’s broadcast radio stations, which are simulcast online by iHeartRadio; iHeartRadio’s custom digital radio stations; and iHeartMedia’s live events, many of which are transmitted on broadcast radio and simulcast.

2. I have been in the radio industry since 1983. In that time, I have selected music for radio stations for markets as diverse as Ithaca, New York, New Haven, Connecticut, Houston, Texas, and New York, New York.

3. Early in my career at iHeartMedia, I was Program Director for Z100, an iHeartMedia broadcast radio station in New York. When I became Programming Director in 1996, Z100 was ranked #18 in popularity in New York. Within a year, Z100 was not only the #1 station in New York, it was the most listened to station in the United States.

4. Immediately before becoming President of National Programming Platforms in August 2011, I was Senior Vice President of Programming and oversaw programming and marketing for all our radio stations in New York, Philadelphia, Boston and Providence.

5. I am submitting this statement in support of iHeartMedia's direct case in the above-captioned proceeding.

### **LIVE RADIO PROMOTES MUSIC DISCOVERY**

6. In my role as President of National Programming Platforms for iHeartMedia, I work with teams of programmers and brand managers to choose music that will resonate with our listeners and keep them tuning in to our radio stations. We know it is not enough to simply play music our listeners already know and love; we need to find and play great new music that our listeners will love to make our radio programming stand out.

7. Listening to live radio continues to be the primary way that Americans discover new music. In August 2013, iHeartMedia conducted a national survey that showed that the vast majority (73%) of people who listen to live FM radio via either broadcast radio or simulcast strongly or somewhat agree that "*FM radio is the main way I discover new music.*"<sup>1</sup> This holds true even of people who also use custom playlist services, such as Pandora or iHeartRadio's custom service, and people that also use on-demand services, such as Spotify.<sup>2</sup> Similarly, a national survey conducted by Edison Research and Triton Digital in January and February 2014 concluded that "*AM/FM Radio is the leading source for keeping up-to-date with music.*"<sup>3</sup> Of those people that consider it somewhat or very important to keep up to date with music, three out

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<sup>1</sup> iHeartMedia Proprietary Research, *Role of Radio* (2013) (national survey of 18-44 year olds).

<sup>2</sup> *Id.* Seventy percent of people that use a custom playlist service weekly and 73% of people that use an on-demand service weekly strongly or somewhat agree that "*FM radio is the main way I discover new music.*"

<sup>3</sup> Edison Research & Triton Digital, *The Infinite Dial 2014* at 60 (2014) (national telephone survey of 2,023 people aged 12 and over conducted in January and February 2014), available at <http://www.edisonresearch.com/wp-content/uploads/2014/03/The-Infinite-Dial-2014-from-Edison-Research-and-Triton-Digital.pdf>.

of four (75%) said they use radio to discover new artists and songs.<sup>4</sup> More than one in three (35%) reported that they were more likely to learn about new music from radio than any other source, including friends and family, YouTube, and Facebook.<sup>5</sup> And, nearly one in five (18%) specifically said that they use iHeartRadio to keep up to date with music.<sup>6</sup>

8. When listeners hear a song they like on the radio, it fosters their interest in buying it. In iHeartMedia's August 2013 survey, the majority of respondents (61%) agreed that hearing a song on the radio motivates or confirms their decision to buy it, saying that they "*don't usually buy a song until they've heard it a few times on FM radio.*"<sup>7</sup> Four out of five respondents (80%) agreed that they have bought a song because they heard it on the radio and liked it.<sup>8</sup>

9. I have seen first-hand that playing new music on live radio has the power to launch new hit songs and hit artists. I have repeatedly helped "break" artists that are now well-known by selecting their songs to be played on the radio. For example, I was the first programmer to play Rihanna on the radio. Rihanna has sold over 50 million albums and 190 million singles worldwide since that first spin.

10. I have also seen that radio's power to introduce listeners to new music has remained strong even as the technology listeners use to tune in has evolved. Today, listeners can tune in to iHeartMedia's live radio programming using a traditional broadcast radio, going to the iHeartRadio website, or using the iHeartRadio application on their mobile phone or other device. iHeartRadio has over 50 million registered users, and 97 million people visit the iHeartRadio

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<sup>4</sup> *Id.* at 53. Forty-seven percent of the total population said that they consider it "somewhat" or "very important" to keep-up-to-date with music.

<sup>5</sup> *Id.* at 55.

<sup>6</sup> *Id.* at 53.

<sup>7</sup> iHeart Media Proprietary Research, *Role of Radio* (2013).

<sup>8</sup> *Id.*

website and our radio stations' websites every month. The opportunities for listening to live radio have expanded, but the special immediacy and relevance of live radio is still the same. Listeners feel a bond with their favorite radio stations and personalities, and trust them to find and play music they will like.

11. The promotional power of live radio does not depend on whether listeners are tuning in to broadcast radio or simulcast, but rather on the talent of programmers to select the music listeners will love, and the personal connection between listeners and radio personalities. As a result, record labels, promoters, managers, and artists regularly request that iHeartMedia programmers and I play their songs on live radio – including simulcast – to help them sell records and develop their artist brands. Artist development is important to these individuals because it also helps them sell concert tickets, merchandise, and other ancillary revenue opportunities.

### **iHEART MEDIA'S PROMOTIONAL PROGRAMS**

12. iHeartMedia has a number of programs designed to enhance our radio stations' organic roles as music discovery platforms, including the "On the Verge" Program for new songs and artists, Album Release Parties, and the Artist Integration Program.

13. Record labels, promoters, managers, and artists have credited all of these programs – including those that are exclusive to simulcast – with breaking artists and increasing music sales. In fact, record labels of all sizes have told us that that they consider us partners in their efforts to expand their rosters of successful artists and sell records as a result of these programs. [REDACTED]

[REDACTED]

[REDACTED]

## **“ON THE VERGE”: LAUNCHING HIT SONGS**

14. iHeartMedia introduced the “On the Verge” Program in early 2014. Once every 6 to 8 weeks, our local programmers for each current-based format (e.g., Country, Alternative, Rhythmic) come together to select a new song that they believe has the potential to be a hit and increase station audience ratings. Each programmer commits to spinning the selected song 150 times over the next six to ten weeks on his or her station; listeners will hear the song whether they tune in to the station by broadcast radio or simulcast. (We believe that 150 spins typically gives listeners enough opportunities to hear a song several times, which provides enough familiarity with the song to judge it fairly and determine if they like it.) The decision to select a song for “On the Verge” is 100% a programming decision. Labels, managers, and artists cannot purchase or bargain for this program.

15. The data show that when iHeartMedia’s radio stations play a song with greater frequency as part of the “On the Verge” Program, other radio stations often start spinning the song more too and the song climbs up the MediaBase charts.<sup>9</sup> See Ex. A (“On the Verge” Recaps). Sixty-one percent of “On the Verge” songs have broken into the top 10. Ninety-one percent have broken into the top 20. And, 100% have broken into the top 25. The table below shows how specific songs shot up the charts when they were “On the Verge.”

<b>“On the Verge” Song</b>	<b>Movement Up the Charts</b>
“The Big Bang,” Katy Tiz	Jumped 140 spots on the Top 40 Chart, going from #164 to #25
“Leave the Light On,” Sam Hunt	Jumped 57 spots on the Country Chart, going from #78 to #21

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<sup>9</sup> MediaBase monitors the songs that are played on the radio in 180 markets in the United States and Canada and publishes charts with the most-played songs on broadcast radio. MediaBase data is used for a number of popular “countdown” shows, like “American Top 40” with Ryan Seacrest and “Weekend Countdown” on SiriusXM.

“Cool Kids,” Ecosmith	Jumped 54 spots on the Hot Adult Contemporary Chart, going from #69 to #15
“Stay with Me,” Sam Smith	Jumped 54 spots on the Top 40 Chart, going from #61 to #7
“Delirious,” Steve Aoki	Jumped 37 spots on the Rhythmic Chart, going from #57 to #20
“Me and My Broken Heart,” Rixton	Jumped 36 spots on the Hot Adult Contemporary Chart, going from #46 to #10
“Fancy,” Iggy Azalea	Jumped 32 spots on the Rhythmic Chart, going from #33 to #1
“Rather Be,” Clean Bandit	Jumped 31 spots on the Top 40 Chart, going from #41 to #10
“Where It’s At,” Dustin Lynch	Jumped 31 spots on the Country Chart, going from #48 to #17
“God Loves You When You’re Dancing,” Vance Joy	Jumped 27 spots on the Alternative Chart, going from #33 to #6
“The Man,” Aloe Blacc	Jumped 26 spots on the Top 40 Chart, going from #34 to #8
“Stolen Dance,” Milky Chance	Jumped 18 spots on the Alternative Chart, going from #20 to #2
“The Worst,” Jhene Aiko	Jumped 15 spots on the Urban Chart, going from #18 to #3
“I Wanna Get Better,” Bleachers	Jumped 13 spots on the Alternative Chart, going from #17 to #4
“2 On,” Tinashe	Jumped 9 spots on the Urban Chart, going from #13 to #4
“Out of the Back,” Royal Blood	Jumped 8 spots on the Mainstream Rock Chart, going from #13 to #5

16. Often songs continue to climb up the charts long after the “On the Verge”

Program ends.

[REDACTED]

[REDACTED]

[REDACTED]

17. The data also show that sales of “On the Verge” songs increase during the program. For example, during the eight weeks that Sam Smith’s “Stay with Me” was “On the Verge” weekly sales more than quadrupled and the song sold over 1.1 million copies. Ex. A. at A.15. During the ten weeks that Iggy Azalea’s “Fancy” was “On the Verge” weekly sales increased more than tenfold and the song sold over 1.3 million copies. Ex. A at A.6. The table below shows that how sales of specific songs increased as a result of “On the Verge.”

<b>“On the Verge” Song</b>	<b>Sales Before and After “On the Verge”</b>	<b>Average Weekly Sales Growth During “On the Verge”</b>
“The Big Bang,” Katy Tiz	Sales increased 8,289% from 337 units weekly to 28,272 units weekly	Sales increased by an average of 163% every week
“Fancy,” Iggy Azalea	Sales increased 1,337% from 23,380 units weekly to 335,923 units weekly	Sales increased by an average of 35% every week
“Cool Kids,” Ecosmith	Sales increased 842% from 6,894 units weekly to 64,941 units weekly	Sales increased by an average of 35% every week
“Delirious,” Steve Aoki	Sales increased 601% from 2,819 units to 19,770 units	Sales increased by an average of 30% every week
“Rather Be,” Clean Bandit	Sales increased 430% from 17,877 units weekly to 94,721 units weekly	Sales increased by an average of 24% every week
“Stay with Me,” Sam Smith	Sales increased 428% from 39,928 units weekly to 210,731 units weekly	Sales increased by an average of 30% every week
“God Loves You When You’re Dancing,” Vance Joy	Sales increased 349% from 4,830 units weekly to 21,668 units weekly	Sales increased by an average of 20% every week
“Stolen Dance,” Milky Chance	Sales increased 205% from 8,678 units to 26,478 units	Sales increased by an average of 14% every week

“I Wanna Get Better,” Bleachers	Sales increased 184% from 3,686 units weekly to 20,460 units weekly	Sales increased by an average of 11% every week
“Me and My Broken Heart,” Rixton	Sales increased 112% from 30,150 units weekly to 63,971 units weekly	Sales increased by an average of 16% every week
“Leave the Light On,” Sam Hunt	Sales increased 107% from 21,956 units weekly to 45,505 units weekly	Sales increased by an average of 17% every week
“Out of the Back,” Royal Blood	Sales increased 56% from 974 units weekly to 1,524 units weekly	Sales increased by an average of 8% every week

18. We can have confidence that airplay is driving the increase in purchases because “On the Verge” songs’ Shazam rankings increase during the program. Shazam is a mobile phone application that identifies the song playing from a radio, computer, or phone and links to an opportunity to buy the song. Shazam has more than 100 million monthly active users and is used more than 20 million times a day.<sup>10</sup> Every week, Shazam publishes a list of the “Most Shazamed Songs this Week” in the United States. When a song’s Shazam ranking increases, it means that more people are listening to the song on live radio, like it, want to identify it, and may want to purchase it. Shazam reports that it has facilitated more than \$300 million in digital sales during the last year,<sup>11</sup> and is currently facilitating over 400,000 digital music sales a day, which is about 7% of all daily digital music sales globally.<sup>12</sup> The table below shows how the Shazam ranking for specific songs increased as a result of “On the Verge.”

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<sup>10</sup> Tim Mayton, *Shazam Passes 100m Monthly Active Users*, Mobile Marketing (Aug. 21, 2104), available at <http://mobilemarketingmagazine.com/shazam-100m-monthly-users>.

<sup>11</sup> Shazam News, <http://news.shazam.com/>.

<sup>12</sup> Tim Mayton, *Shazam Passes 100m Monthly Active Users*, Mobile Marketing (Aug. 21, 2104), available at <http://mobilemarketingmagazine.com/shazam-100m-monthly-users>.



<b>“On the Verge” Song</b>	<b>Shazam Ranking</b>
“Delirious,” Steve Aoki	Jumped 269 spots, going from #312 to #42
“Stolen Dance,” Milky Chance	Jumped 31 spots, going from #48 to #17
“I Wanna Get Better,” Bleachers	Jumped 96 spots, going from #210 to #114
“Rather Be,” Clean Bandit	Jumped 24 spots, going from #25 to #1
“Where It’s At,” Dustin Lynch	Jumped 164 spots, going from #227 to #63
“Cool Kids,” Echosmith	Jumped 90 spots, going from #109 to #19
“Fancy,” Iggy Azalea	Jumped 33 spots, going from #34 to #1
“Me and My Broken Heart,” Rixton	Jumped 4 spots, going from #16 to #12
“Leave the Light On,” Sam Hunt	Jumped 57 spots, going from #86 to #29
“Stay With Me,” Sam Smith	Jumped 22 spots, going from #26 to #4
“The Big Bang,” Katy Tiz	Jumped 91 spots, going from #139 to #48
“God Loves You When You’re Dancing,” Vance Joy	Jumped 71 spots, going from #108 to #37

19. Record labels will often credit “On the Verge” with moving songs up the charts and increasing sales. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20. I am regularly asked by record labels, including by e-mail, to consider songs for inclusion in the “On the Verge” Program. [REDACTED] In

these e-mails, record labels never distinguish between broadcast radio and simulcast. I understand these record labels to be requesting that we play their artists' songs on *both* broadcast radio and simulcast.

21. Record labels thank us when our programmers choose their artists' songs for "On the Verge." [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

22. Artists and managers also thank us for "On the Verge" and credit "On the Verge" with driving record sales, increasing ticket sales, and improving artist recognition. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

## **ARTIST INTEGRATION PROGRAM: ADVERTISING NEW MUSIC**

23. iHeartMedia launched our Artist Integration Program (“AIP”) in October 2011. The AIP Program advertises new songs and albums selected by iHeartMedia’s brand managers from a pool of submissions, based on what we believe will best generate audience interest and benefit station ratings. We run 30 or 60 second commercial spots for the new music roughly 40 times per station for two weeks; these spots are heard on both broadcast radio and simulcast. Within these spots, we play portions of the new music and a clip of an interview with the artist. These spots familiarize listeners with the new music, and encourage them to buy it. We regularly include a “where to purchase” message (e.g., “Now available on iTunes” or “Now available exclusively at Walmart”). The program also helps develop the artist’s profile and brand awareness with consumers, which is very important to an artist’s career development.

24. In May 2012, we introduced a Digital Artist Integration Program (“DAIP”) that is exclusive to simulcast. When our brand managers select a song for inclusion in the DAIP Program, we’re able to play longer versions of the commercial spots, which allows us to feature more of the song – often in its entirety – on our simulcast stations during time that would otherwise be filled with paid advertisements.

25. When record labels submit a song for the AIP or DAIP Programs, they explicitly waive their right to charge sound performance copyright fees for simulcast spins. They grant us a license to spin the song in connection with the AIP and DAIP Programs in “any advertising, marketing, simulcasting, streaming, both live-online and digital on-demand and broadcasting” and agree that iHeartMedia “shall not be required to pay any royalties” to the record label or Sound Exchange, “in consideration of potential promotional opportunities afforded to [the record label] for being part of the AIP Program.” Ex. E ¶ 2.

26. Record labels and artists are constantly submitting new songs for the AIP and DAIP Programs and thank us when our brand managers select their songs. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]<sup>13</sup>

27. Record labels and artists have specifically credited DAIP with increasing sales.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>13</sup> A “synch” or synchronization license is when music is used in a TV show, movie, commercial, or video game.

## **ALBUM RELEASE PARTIES: PROMOTING NEW ALBUMS**

28. iHeartMedia occasionally hosts iHeartRadio Album Release Parties when artists release new albums, broadcasting a live performance of the artist performing his or her new songs over both broadcast radio and simulcast.

29. After iHeartMedia hosts an iHeartRadio Album Release Party, I will often get messages of gratitude from record labels. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

30. We also occasionally have special events for new singles. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

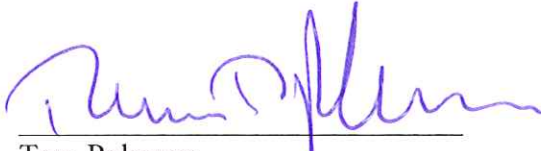
[REDACTED]

## **SUMMARY**

31. My experience as President of National Programming Platforms for iHeartMedia has been that record labels, promoters, managers, artists, and consumers treat live radio – however transmitted – as a music discovery tool. Consumers tune in to live radio, including simulcast, to find new music. Record labels, promoters, managers, and artists ask us to play their

songs on live radio, including simulcast, to help them gain fans and sell records. When we do play their songs, record labels, promoters, managers, and artists regularly credit those spins with increasing artists' popularity and sales of their music.

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

  
\_\_\_\_\_  
Tom Poleman

10/7/14  
\_\_\_\_\_  
Date