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In the Matter of:

**DETERMINATION OF RATES AND  
TERMS FOR MAKING AND  
DISTRIBUTING PHONORECORDS  
(PHONORECORDS III)**

Docket No. 16-CRB-00003-PR  
(2018-2022)

**Expert Report of Mark E. Zmijewski**

**February 15, 2017**

PUBLIC

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## **Appendices**

- Appendix A: Curriculum Vitae of Mark E. Zmijewski
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- Appendix C: Categories of Revenues Produced by Music Publishing Companies and Mapping to Report Charts

## I. INTRODUCTION

1. My name is Mark E. Zmijewski. I hold the Charles T. Horngren Professorship of Accounting at The University of Chicago Booth School of Business, at which I have been a faculty member since 1984. Formerly, I held the Leon Carroll Marshall Professorship (since 1999). In addition to my faculty duties at The University of Chicago, I also held the positions of Deputy Dean (1996 - 2011), Ph.D. Program faculty director, and the Center for Research in Security Prices faculty director. I am also a Senior Consultant to Charles River Associates (“CRA”), a consulting firm that provides economic, financial, and management consulting services. I discuss my qualifications in more detail in Section III and present my curriculum vitae in Appendix A.

2. I understand that this matter pertains to the determination of terms and rates for interactive streaming royalty payments under the Copyright Act. I further understand that Section 115 of the Copyright Act grants licenses related to the distribution of physical and digital phonorecords and that, under these licenses, songwriters are entitled to royalties referred to as mechanical royalties.<sup>1</sup> I understand that one of the responsibilities of the United States Copyright Board (“USCRB”) is to set mechanical royalty rates for music publishers and songwriters on music delivered in physical format, through digital download, and through interactive streaming.<sup>2</sup>

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<sup>1</sup> Mechanical royalties, or mechanical revenues, are “[r]oyalties paid to songwriters and artists when music is sold (think CD or vinyl) but also when music is streamed (streaming mechanicals) ‘on-demand’ (like Spotify).” <https://www.royaltyexchange.com/learn/mechanical-and-performance-royalties-whats-the-difference> (last accessed on February 14, 2017).

<sup>2</sup> I assume such a royalty is applicable to interactive streaming for purposes of this report.

3. I have been asked by counsel for Spotify USA Incorporated (“Spotify”), Google Incorporated (“Google”), Amazon.com Incorporated (“Amazon”) and Pandora Media Incorporated (“Pandora”, and collectively “Digital Services Companies”) to provide testimony on issues set forth in this report in the rebuttal phase of this matter before USCRB. More specifically, I have been asked by counsel for the Digital Services Companies to review certain witness statements and other testimony from Sony/ATV Music Publishing LLC (“Sony/ATV”), EMI Music Publishing Companies (“Sony/EMI”), Universal Music Publishing Group (“UMPG”), Warner/Chappell Music, Inc. (“Warner/Chappell”), BMG Rights Management (US) LLC (“BMG”) and Downtown Music Publishing (“Downtown,” and collectively, “Music Publishing Companies”) and analyze the documentation of revenues and advances submitted by the Music Publishing Companies in this matter.

4. In particular, I have been asked to analyze the time-series of various components of revenues of the Music Publishing Companies based on the data produced by those companies in this matter. I have also been asked to conduct a similar analysis for the music publishing industry based on the data provided by the National Music Publishers’ Association (“NMPA”).<sup>3</sup> Lastly, I have been asked to review and analyze the documentation provided by the Music Publishing Companies regarding initial upfront payments paid by the Music Publishing

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<sup>3</sup> “Founded in 1917, the National Music Publishers’ Association (NMPA) is the trade association representing all American music publishers and their songwriting partners. Its mission is to protect, promote, and advance the interests of music’s creators. The NMPA is the voice of both small and large music publishers, and is the leading advocate for publishers and their songwriter partners in the nation’s capital and in every area where publishers do business.” (<http://nmpa.org/about/> last accessed on February 14, 2017). I understand that NMPA collects revenue and other data from its members and has produced this data in this matter. As its membership is comprised of American music publishers, I assume that the data reported is domestic (U.S. sourced).

Companies to songwriters and performers (“Advances”)<sup>4</sup> and write-offs and recoupment of Advances by the Music Publishing Companies.

5. I have prepared my expert report to state the opinions I intend to express at trial; to describe the bases for those opinions and the reasons underlying them; to disclose the facts and data I considered in reaching my opinions; and to make all other appropriate disclosures. I express no legal opinions in this report. The work that I conducted in this matter has been informed by my education, knowledge, and experience in accounting, economics, and finance. I have considered and compiled materials as cited herein. A listing of the discovery and publicly available materials I have relied upon in the formation of my opinions is contained in Appendix B, as well as the citations in the footnotes to the text, charts and tables.

6. If I receive additional data, facts or information, I will review, evaluate, and analyze these additional data, facts, or information as they become available. I will likewise update, modify or supplement my expert report as necessary to reflect any additional data, facts, or information that I receive. I am being compensated at my usual hourly rate of \$890 for my work in this matter. Various employees of CRA have assisted me in performing services under my direction in connection with this engagement. I have a confidential contractual arrangement with CRA under

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<sup>4</sup> I understand that, under a publishing agreement, advances are paid to a songwriter by music publishers against future collections of royalties. For example, Peter Brodsky, Executive Vice President, Business and Legal Affairs at Sony/ATV, states that “[t]he contracts that we sign with songwriters almost always require that we pay the songwriter a recoupable – but not returnable – advance against future earnings. A recoupable advance means that if and when the songwriter begins to earn royalties, those royalties are retained by us until the advance is paid back. Note that the (50%) ‘writer’s share’ of performance royalties is collected and paid directly by the PRO to the songwriter and is therefore not used by the publisher to recoup the advance. Thus, advances are, for the most part, recouped from mechanical royalties, the (50%) ‘publisher’s share’ of performance royalties and synchronization royalties (discussed below) to the extent the songwriter’s works are the subject of synchronization licenses.” (Witness Statement submitted by Peter Brodsky (“Brodsky Witness Statement”), ¶¶ 1 and 29). I understand that PRO stands for “performance rights organization.”

which I may receive additional payments from CRA that are based on the fees paid to CRA on matters in which I am involved; however, none of my compensation is contingent in any way on the substance of my opinions or the outcome of this matter.

7. I organize the remainder of this report as follows. I summarize my opinions in Section II. I discuss my qualifications in Section III. In Section IV, I analyze NMPA revenue data for the music publishing industry as well as the revenue for each of the Music Publishing Companies for which I have been provided data. In Section V, I review and analyze documentation and testimony provided by the Music Publishing Companies regarding Advances paid by the Music Publishing Companies to songwriters, and write-offs and recoupment of Advances.

## **II. SUMMARY OF OPINIONS**

8. In this section, I summarize my overall opinions. In the remaining sections, I discuss the facts and data I relied upon and the analyses and other bases for those and other opinions I discuss in this report. I based my analyses and thus, rely upon, the financial information produced by the Music Publishing Companies in order to inform the opinions outlined in this report. [REDACTED]

[REDACTED]. In this report, I have adopted terminology that is consistent with the terminology generally used by the Music Publishing Companies.

9. I understand that examples of the various terms used by the Music Publishing Companies are as follows: mechanical revenues (“Mechanical”) include revenues associated with physical product (e.g. CDs, vinyl records) (“Physical Phonorecords” or “Physical Phonorecords-



Mechanical”), downloads (“Digital Downloads” or “Digital Downloads-Mechanical”) as well as interactive streaming (“Mechanical-Streaming”). Performance royalties, or performance revenues (“Performance”), are “[t]he fees music users pay when music is performed publicly. Music played over the radio, in a restaurant or bar, or over a service like Spotify or Pandora is considered a public performance.”<sup>5</sup> I understand that interactive streaming (“Streaming”) results in both Mechanical (“Mechanical-Streaming”) and Performance (“Performance-Streaming”) revenues. See Section IV for a complete discussion of the categories of revenue for each of the Music Publishing Companies.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>5</sup> <https://www.royaltyexchange.com/learn/mechanical-and-performance-royalties-whats-the-difference> (last accessed on February 14, 2017).

<sup>6</sup> Throughout this report, I use the term domestic to refer to U.S. sourced revenues.

<sup>7</sup> See Witness Statement of Thomas Kelly (“Kelly Witness Statement”) ¶ 59 for Sony/ATV, Witness Statement of Michael Sammis (“Sammis Witness Statement”) ¶ 50 for UMPG, Witness Statement of Annette Yocum (“Yocum Witness Statement”) ¶¶ 54-6 for Warner/Chappell, Witness Statement of Gregg Barron (“Barron Witness Statement”) ¶ 28 for BMG, and Witness Statement by Justin Kalifowitz (“Kalifowitz Witness Statement”) ¶ 31 for Downtown. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12. I was asked by counsel for the Digital Services Companies to analyze the change in domestic Mechanical revenues from Physical Phonorecords, Digital Downloads and Streaming revenues over the entire period for which each of the Music Publishing Companies provided data (and for the NMPA data) and to further analyze these revenues combined with Performance-Streaming revenues. Thus, I first analyze the change in domestic Mechanical revenues associated with Physical Phonorecords and Digital Downloads and compare the change in those revenues to the change in domestic Mechanical revenues associated with Streaming, both

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<sup>8</sup> Kelly Witness Statement, ¶¶ 1 and 59.

<sup>9</sup> Sammis Witness Statement, ¶¶ 1 and 50. See also Sammis Witness Statement Exhibit 6.3.

excluding and including Performance revenues associated with Streaming.<sup>10</sup>

13. To conduct my analysis, I reviewed the witness statements provided by the Music Publishing Companies and identified statements pertaining to the change in revenues. I then reviewed the financial data provided by the Music Publishing Companies to identify the types and categories of revenue. I conformed the descriptions of revenue to be consistent across the Music Publishing Companies as outlined in Section IV of this report. [REDACTED]

[REDACTED]

14. Based on my analyses, I have formed the following opinions:

[REDACTED]

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■ I understand that there is a distinction between interactive and non-interactive streaming because non-interactive services pay performance royalties only (with no mechanical rights). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>11</sup> I understand that NMPA collects revenue and other data from its members and has produced this data in this matter, and that its members consist of “all American music publishers and their songwriting partners.” (<http://nmpa.org/about/> (last accessed on February 14, 2017).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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16

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15. I understand that Music Publishing Companies may receive only the publisher's share of the Performance revenues and the writer's share may be paid directly to the songwriter; thus, in such situations, Performance revenues paid directly to the songwriter are not included in the revenue totals reported by the Music Publishing Companies.<sup>21</sup> [REDACTED]

[REDACTED]

[REDACTED] Accordingly, the results of the above analyses understate total revenues paid to the songwriter by the amount of revenues paid directly to the songwriters and not recorded by the Music Publishing Companies. In addition, to the extent songwriters are negotiating contracts in which they receive a larger proportion of the revenues, the Music Publishing Companies will receive a smaller proportion of the revenues, which I understand is not an issue in this litigation.

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<sup>20</sup> [REDACTED]

<sup>21</sup> Brodsky Witness Statement, ¶ 29. Deposition of Peter Brodsky on January 30, 2017 ("Brodsky Deposition"), pp. 43-44.

<sup>22</sup> Brodsky Deposition, pp. 43-44.

B. [REDACTED]

16. I was also asked by counsel for the Digital Services Companies to analyze the change in total domestic revenues over the entire period for which each of the Music Publishing Companies provided data (and also for the NMPA data). To conduct my analysis, I reviewed the financial data provided by the Music Publishing Companies to identify the types and categories of revenue in addition to the categories previously defined as part of my analysis of Mechanical revenues from Physical Phonorecords and Digital Downloads and Mechanical and Performance revenues associated with Streaming. I then analyzed the total domestic revenues contained in the financial data produced by the Music Publishing Companies and submitted by NMPA.

17. Based on my analyses, I have formed the following opinions:

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>23</sup> I understand that NMPA collects revenue and other data from its members and has produced this data in this matter, and that its members consist of “all American music publishers and their songwriting partners.” (<http://nmpa.org/about/> (last accessed on February 14, 2017).

<sup>24</sup> [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

18. Certain witness statements of the Music Publishing Companies indicated that declines in Mechanical revenues negatively affect Advances and, in particular, negatively affect the ability of the Music Publishing Companies to recoup Advances paid. As discussed below, the Music Publishing Companies generally acknowledge the complexities associated with estimating Advances and the timing of recoupments, which would be affected by changes in the pattern and timing of Mechanical revenues as well as write-offs of unrecouped Advances. I was asked to review the documents and testimony from the Music Publishing Companies related to Advances and analyze the testimony from the Music Publishing Companies regarding recoupment of Advances and the increase in the balance of unrecouped Advances.

19. Based on my analyses, I have formed the following opinion:

[REDACTED]

### **III. SUMMARY OF QUALIFICATIONS**

20. I specialize in the areas of accounting, economics, and finance as they relate to valuation, financial analysis, and security analysis, or more generally, financial economics. I have been on the faculty of The University of Chicago Booth School of Business since 1984. I currently hold the Charles T. Horngren Professorship, prior to which I held the Leon Carroll Marshall

Professorship. In addition to my faculty duties, I also held the positions of Deputy Dean, PhD Program faculty director, and the Center for Research in Security Prices faculty director, all at the Booth School of Business.

21. I earned my BS in 1976, MBA in 1981, and PhD with a major in accounting and minors in economics and finance in 1983, all from the State University of New York at Buffalo. In addition to The University of Chicago, I have taught at the State University of New York at Buffalo and at York University in Toronto, Canada. I have taught various courses in accounting (financial accounting, managerial accounting, and advanced accounting/mergers and acquisitions), finance (corporate finance, financial strategy and corporate transactions, financial analysis, and valuation of companies and corporate transactions), and entrepreneurship. My research focuses on firm valuation and the ways in which various capital market participants use information to value securities. I have published articles in academic journals in the areas of accounting and financial economics and also co-authored a textbook (with Professor Robert Holthausen of The Wharton School of the University of Pennsylvania) on how to value companies, parts of companies, and the securities issued by companies, titled “Corporate Valuation: Theory, Evidence and Practice.” I have been an Associate Editor of The Accounting Review, and have been on the Editorial Boards of both the Journal of Accounting Research and The Accounting Review.

22. I am a Senior Consultant to Charles River Associates, a consulting firm that provides economic, financial, and management consulting services. I am also a Senior Advisor to, and a member of, the Investment Committee at Patron Capital Partners (Funds IV and V), a private equity investment company with a focus on real estate related investments. I was a founding

partner of Chicago Partners, LLC, which was acquired by Navigant Consulting. I am the former managing director of Navigant Economics (a subsidiary of Navigant Consulting) and a former member of the corporate executive committee of Navigant Consulting.

23. I have worked as a consultant or expert in litigation matters in U.S. state and federal courts, in the Supreme Court of Victoria in Australia, and in U.S. and international arbitrations. The issues on which I have worked include: business valuation and securities valuation (valuation of corporate transactions, companies, and parts of companies, intangible assets and intellectual property, and securities); securities litigation (10b-5, section 11, section 12, ERISA, Martin Act, effect of disclosures, and insider trading); mergers and acquisitions (appraisals and price disputes, analyzing merger synergies, material adverse changes, corporate transactions, and the process of purchasing and selling companies); solvency and ability to pay (fraudulent conveyance, solvency assessment, and ability to pay government fines); antitrust litigation (analysis of merger efficiencies, failing firm defense, and financial analyses of alleged anticompetitive behavior); commercial and stockholder disputes (measurement of damages, accounting analyses, and economic assessment of transactions); accounting issues (measuring and analyzing revenue, cost structures, profitability, rates of return, interest rates, and other financial metrics and concepts); and creating and evaluating business plans.

24. The frameworks and tools I use in my work are generally applicable to all industries, and I have applied my expertise in a broad range of sectors, including airline, auto, financial services, chemical, computer hardware and software, credit card and credit card security, energy, entertainment, for-profit education, health care, insurance, heavy and light manufacturing,

pharmaceutical, retail, real estate investment funds, securities companies, technology, telecommunications, transportation, and others.

25. My curriculum vitae, which is attached to this report in Appendix A, details my qualifications, including my publications and testimonial experience within the last four years.

#### **IV. ANALYSIS OF CHANGES IN MUSIC PUBLISHING COMPANIES' REVENUES**

26. In this section of the report, I summarize the types of music publishing revenues and analyze the revenue based on the financial data and documents produced by the Music Publishing Companies. In its 2016 10-K filing, Warner Music Group<sup>30</sup> cites Music & Copyright's estimates of market share published in April 2016: "[t]he top three music publishers collectively accounted for 64% of the market."<sup>31</sup> Sony/ATV led the music publishing market with a 28% market share, which reflects administration of its EMI music publishing assets.<sup>32</sup> UMPG was the second largest music publisher with a 23% market share, followed by Warner/Chappell with a 13% share.<sup>33</sup> The fourth largest music publisher is BMG.<sup>34</sup> I

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<sup>30</sup> Warner Music Group Corp. is the parent company of Warner/Chappell (Warner Music Group Corp. Form 10-K for the fiscal year ended September 30, 2016, p. 9).

<sup>31</sup> Warner Music Group Corp. Form 10-K for the fiscal year ended September 30, 2016, p. 12.

<sup>32</sup> Warner Music Group Corp. Form 10-K for the fiscal year ended September 30, 2016, p. 12. I have received one file documenting results for Sony/ATV and another file documenting results for Sony/EMI. I assume the reference to Sony/ATV in Warner Music Group's 10-K filings combines the market share for both entities under the name Sony/ATV.

<sup>33</sup> Warner Music Group Corp. Form 10-K for the fiscal year ended September 30, 2016, p. 12.

<sup>34</sup> <https://www.bertelsmann.com/divisions/bmg/#st-1> (last accessed on February 14, 2017).

understand the remainder of the music publishing market consists of mid-sized and smaller companies, including many individual songwriters.<sup>35</sup>

27. I first review industry data and then present my analysis by company in descending market share order: Sony/ATV, Sony/EMI, UMPG, Warner/Chappell, BMG, and Downtown.

**A. Types of music publishing revenues discussed in this report**

28. The Music Publishing Companies use various terms to identify different sources of revenues. While generally similar, the terms used by each of the Music Publishing Companies are not the same across companies. In this section, when I discuss the different revenues of a specific company, I typically use that company's terminology and when I summarize my analyses across companies, I use equivalent but more general terms, which I describe in the remainder of this section.

29. I use the term Mechanical revenues for revenues that are associated with mechanical rights which are the "right to reproduce a song in the form of records, tapes, CDs and other phonorecords."<sup>36</sup> I use the term Physical Phonorecords to refer to "vinyl records, cassette tapes, CDs, and all other material objects, except audiovisual recordings."<sup>37</sup> This is consistent with my understanding that Mechanical revenues arise, in part, from the sale of Physical Phonorecords (or

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<sup>35</sup> Warner Music Group Corp. Form 10-K for the fiscal year ended September 30, 2016, p. 12. I understand that Downtown is one of the mid-sized and smaller companies in the music publishing market.

<sup>36</sup> Wilson, Lee, Making it in the music business: the business and legal guide for songwriters and performers, New York: Open Road Media, 2014, Web, Glossary.

<sup>37</sup> Wilson, Lee, Making it in the music business: the business and legal guide for songwriters and performers, New York: Open Road Media, 2014, Web, Glossary.

Mechanical-Physical Phonorecords, as defined in Section II). I further understand that Mechanical revenues also include revenues associated with Digital Downloads (or Mechanical-Digital Downloads, as defined in Section II) as well as Mechanical-Streaming (as defined in Section II).<sup>38</sup>

30. I use the term Performance revenues for revenues that are derived from performance royalties which are “[t]he fees music users pay when music is performed publicly. Music played over the radio, in a restaurant or bar, or over a service like Spotify or Pandora is considered a public performance.”<sup>39</sup> I understand that Streaming (as defined in Section II) results in both Mechanical-Streaming (as defined in Section II) and Performance-Streaming (as defined in Section II).

31. I use the term synchronization (“Synchronization”) revenues for revenues that arise when musical work is synchronized with visual content (e.g. movies).<sup>40</sup> As noted below, certain Music Publishing Companies identify streaming or digital revenue associated with Synchronization (“Synchronization – Streaming” or “Synchronization – Digital”).<sup>41</sup>

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<sup>38</sup> Mechanical royalties, or mechanical revenues, are “[r]oyalties paid to songwriters and artists when music is sold (think CD or vinyl) but also when music is streamed (streaming mechanicals) ‘on-demand’ (like Spotify).” <https://www.royaltyexchange.com/learn/mechanical-and-performance-royalties-whats-the-difference> (last accessed on February 14, 2017). As discussed in greater detail later in the report, some of the Music Publishing Companies identify Mechanical more broadly and separately identify types of digital (“Digital”) as separate categories or sub-categories.

<sup>39</sup> <https://www.royaltyexchange.com/learn/mechanical-and-performance-royalties-whats-the-difference> (last accessed on February 14, 2017).

<sup>40</sup> Wilson, Lee, Making it in the music business: the business and legal guide for songwriters and performers, New York: Open Road Media, 2014, Web, Glossary. See also Moore, Schuyler M., Taxation of the Entertainment Industry, 2015 ed., Chicago, IL: CCH Incorporated, 2015, Print, pp. 273-5.

<sup>41</sup> [REDACTED]

32. Of the Music Publishing Companies, only Warner/Chappell identified descriptions for each type of revenue in its public filings with the Securities and Exchange Commission

("SEC").<sup>42</sup> These descriptions are consistent with the definitions above.<sup>43</sup> [REDACTED]

33. In Appendix C, I include a complete list of the revenue categories as reported by each of the Music Publishing Companies and identify how they are categorized in the analyses presented in this report.

34. In this section, I describe revenue comparisons by type of revenue as reported by the NMPA and outlook for the music publishing industry as discussed by analysts.

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[REDACTED] publishing company is entitled to royalties attributable to sales of sheet music containing the written music." Moore, Schuyler M., *Taxation of the Entertainment Industry*, 2015 ed., Chicago, IL: CCH Incorporated, 2015, Print, pp. 273-5.

<sup>42</sup> Warner Music Group Corp. Form 10-K for the fiscal year ended September 30, 2016, p. 11.

<sup>43</sup> Warner Music Group Corp. Form 10-K for the fiscal year ended September 30, 2016, p. 11. For the complete text, see Section IV.F of this report.

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<sup>47</sup> NMPA00001424.

<sup>48</sup> NMPA00001424.

<sup>49</sup> NMPA00001424.



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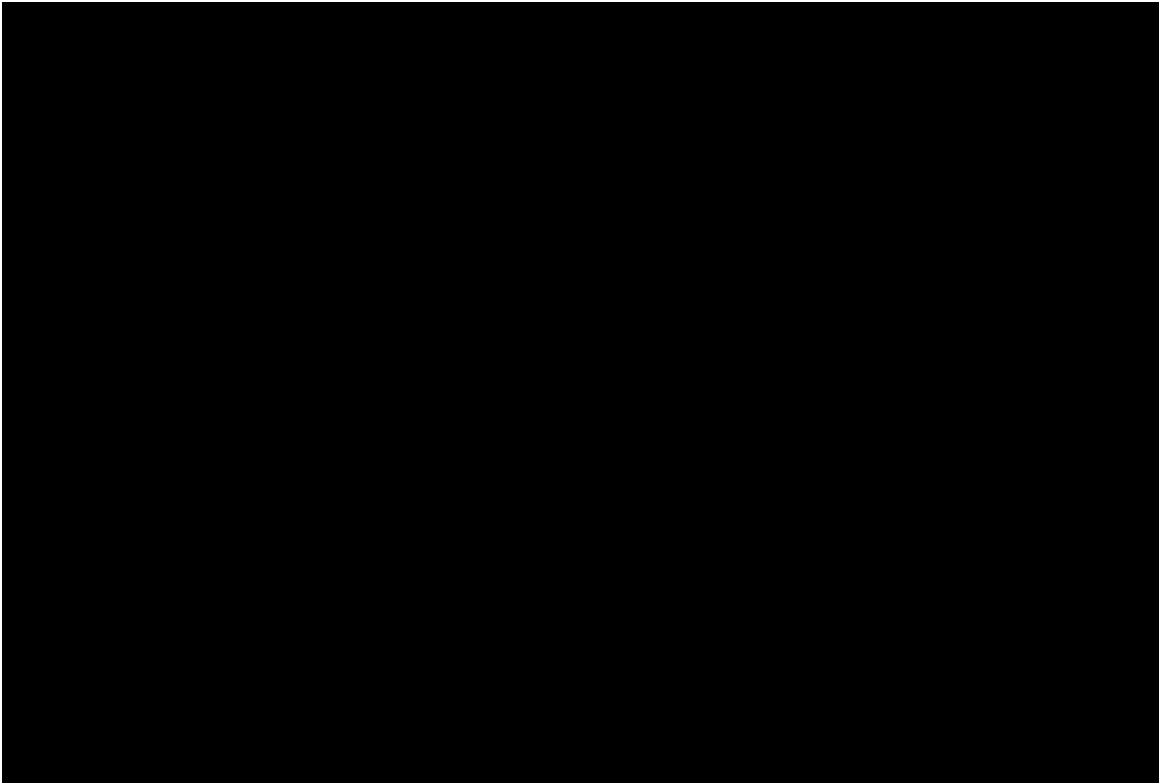
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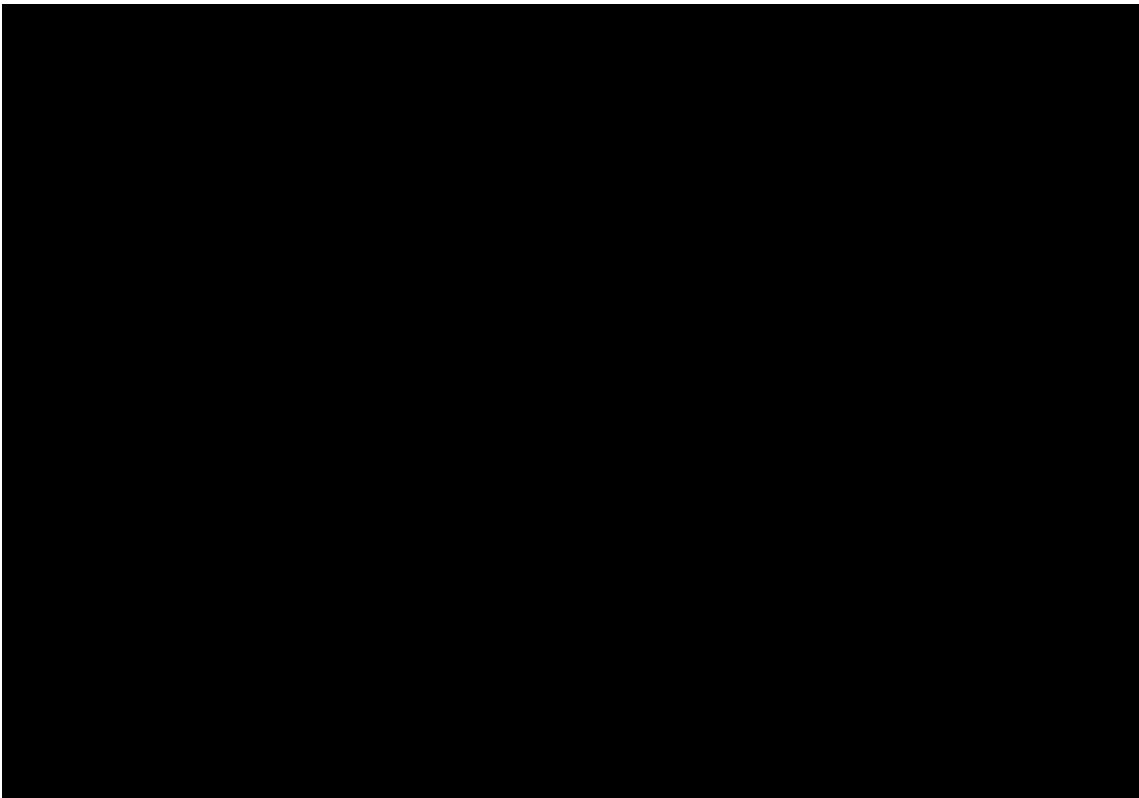
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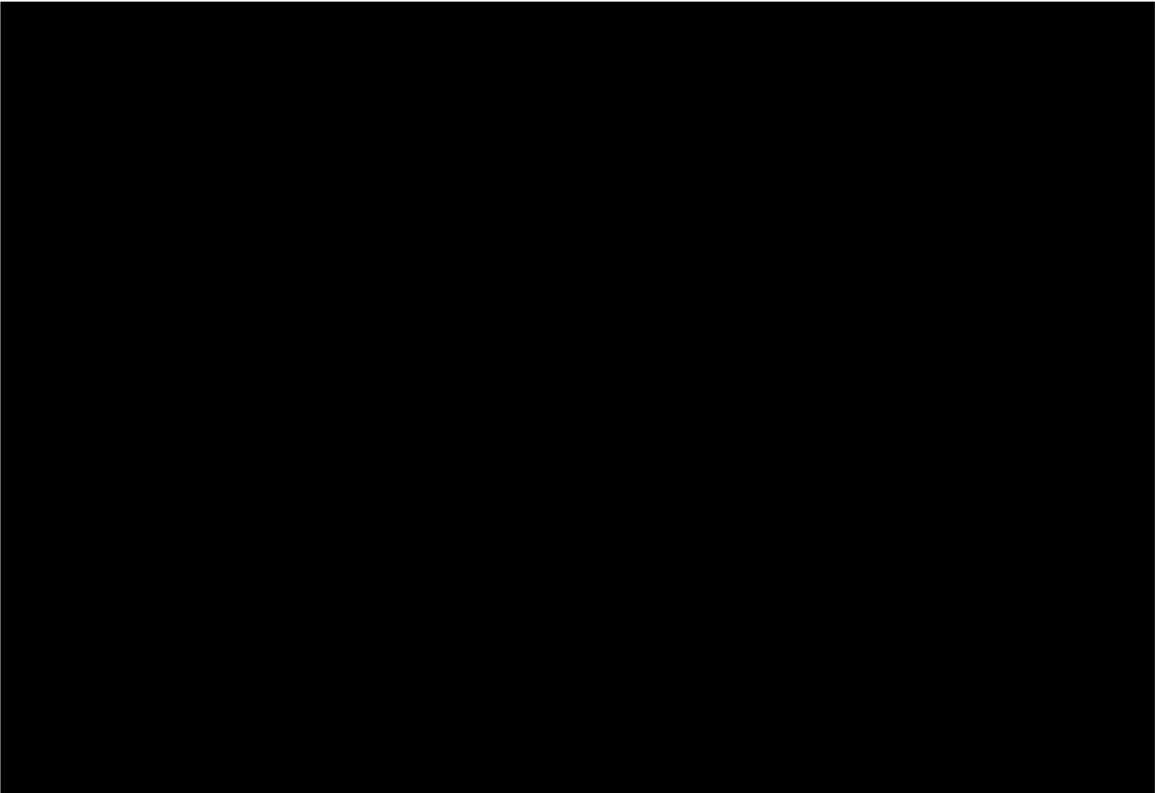
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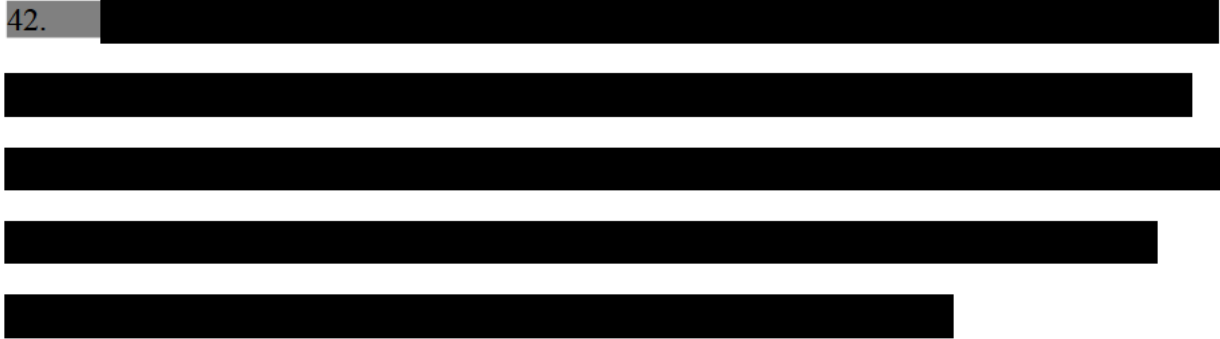
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42.



**2. Industry analysts forecast global revenue growth for the music publishing industry**

43. In this section, I summarize some of the available research by analysts regarding expected global revenue growth for the music publishing industry. Analysts generally forecast growth for the global music publishing industry; for example, in a research report dated October 6, 2016, Barclays forecasted that global publishing revenues would grow approximately 5%

annually through 2020.<sup>50</sup> Further, Enders Analysis, a subscription research service covering the media, entertainment, mobile and fixed telecommunications industries,<sup>51</sup> also states that “[m]usic publishing revenues are trending up in a broad sustainable manner across the US, Europe and Japan, underpinned by longstanding music rights regimes.”<sup>52</sup> Specifically, Enders Analysis “forecast[s] solid growth in domestic US music publishing revenues from \$1.8 billion in 2015 to \$2.1 billion by 2019. . . Mechanicals have started to grow again, the pay-TV sector is stable, despite cord-cutting, while we perceive the economy as healthy, sustaining general business revenues. An upward trend for sync is also visible.”<sup>53</sup>



44. Sony/ATV is the U.S.-based music publishing joint venture of publicly-held Sony Corporation (“Sony”) that owns and acquires rights to musical compositions, exploiting and

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<sup>50</sup> “European Media: Dancing days are here again,” Barclays, October 6, 2016, p. 11. I note that Barclays forecasted global publishing revenues and did not forecast U.S. publishing revenues. Although not directly comparable, Barclays did forecast U.S. recorded music revenues through 2020 as greater than 8% in all years but 2020. (See “European Media: Dancing days are here again,” Barclays, October 6, 2016, pp. 11, 63).

<sup>51</sup> <http://www.endersanalysis.com/> (last accessed on February 14, 2017).

<sup>52</sup> Global music publishing 2016, Enders Analysis, June 28, 2016, p. 1. (Also attached to the Written Direct Testimony of Will Page as Exhibit 38) I observe that Enders Analysis is based on their global assessment of the market using a “multi-country model of music rights collections and distributions over time” and does not “cover the results from music publishers” including some of the Music Publishing Companies referenced in this matter. (Global music publishing 2016, Enders Analysis, June 28, 2016, pp. 2, 7; also attached to the Written Direct Testimony of Will Page as Exhibit 38).

<sup>53</sup> Global music publishing 2016, Enders Analysis, June 28, 2016, p. 6. (Also attached to the Written Direct Testimony of Will Page as Exhibit 38).

marketing these compositions and receiving royalties or fees for their use.<sup>54</sup> Sony and the Estate of Michael Jackson entered into a binding Memorandum of Understanding on March 14, 2016 and a definitive agreement on April 18, 2016 for Sony to obtain full ownership of Sony/ATV by acquiring the 50 percent interest in Sony/ATV held by the Estate of Michael Jackson.<sup>55</sup> This purchase of the remaining 50% interest in Sony/ATV closed on September 30, 2016.<sup>56</sup>

45. [REDACTED] In its public filings with the SEC, Sony does not include a detailed description of the types of its music publishing revenues. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>54</sup> Sony Corporation Form 20-F for the fiscal year ended March 31, 2016, pp. 30, 32.

<sup>55</sup> Sony Corporation Form 20-F for the fiscal year ended March 31, 2016, p. 32. At the time of the Form 20-F filing, the closing of this transaction was subject to certain closing transactions, including regulatory approval.

<sup>56</sup> “Sony Corporation and Jackson Estate Announce Closing of Sony’s Purchase of Remaining 50% Interest in Sony/ATV Music Publishing,” accessed at <http://www.sony.net/SonyInfo/IR/news/20161003E.pdf> (last accessed on February 14, 2017).

<sup>57</sup> [REDACTED].”

<sup>58</sup> SONY-ATV00003701.

<sup>59</sup> SONY-ATV00003701.

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>60</sup> SONY-ATV00003701.

<sup>61</sup> SONY-ATV00003701.

<sup>62</sup> SONY-ATV00003701.



[Redacted]

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[Redacted]

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<sup>63</sup> Kelly Witness Statement, ¶ 59.

<sup>64</sup> Kelly Witness Statement, ¶¶ 60-1.

[REDACTED]

[REDACTED]

[REDACTED] During an analyst call, Sony/ATV’s management stated: “Our digital revenue can generally be placed into 2 categories, mechanical and performance. Mechanical revenue is generated from downloads where Apple iTunes is the market leader, while performance revenue

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65 [REDACTED]

is generated from interactive streaming services such as Spotify, Google Play and Sony's Music Unlimited, and Internet radio services such as Pandora and Apple's recently launched iTunes

Radio.”<sup>66</sup> [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>66</sup> Sony Corporation Analyst/Investor Day, November 21, 2013, p. 39.

<sup>67</sup> Kelly Witness Statement, ¶¶ 59-61. [REDACTED]

<sup>68</sup> SONY-ATV00003701.

[REDACTED]

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[REDACTED]

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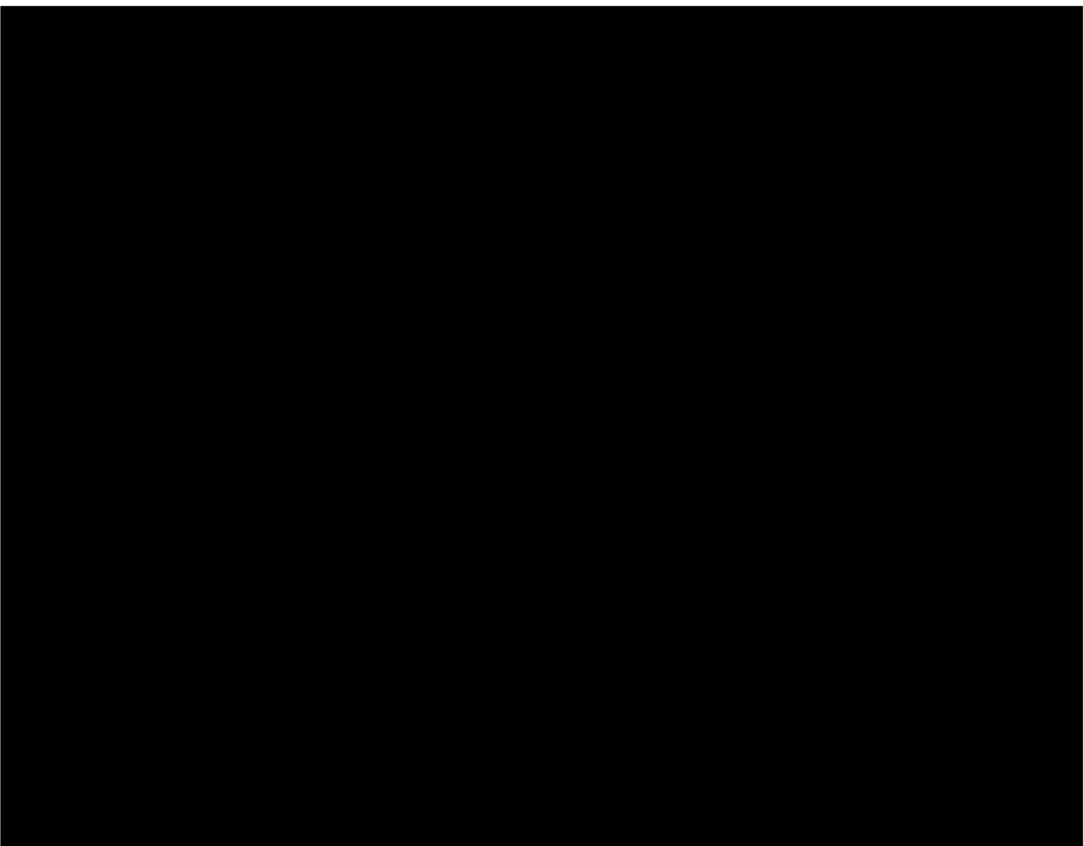
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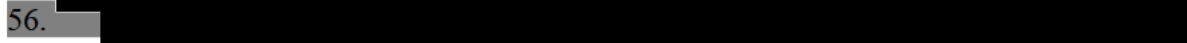
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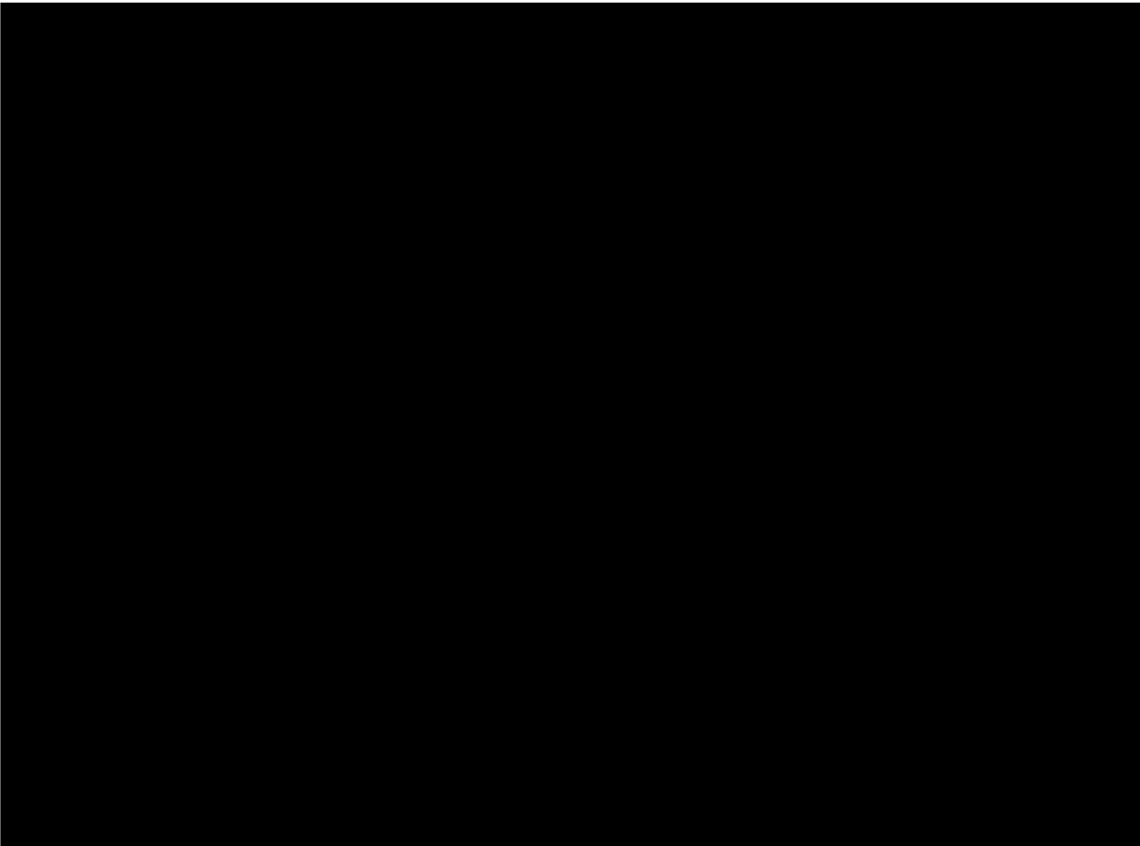
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69 [REDACTED]



56.





57. [Redacted]

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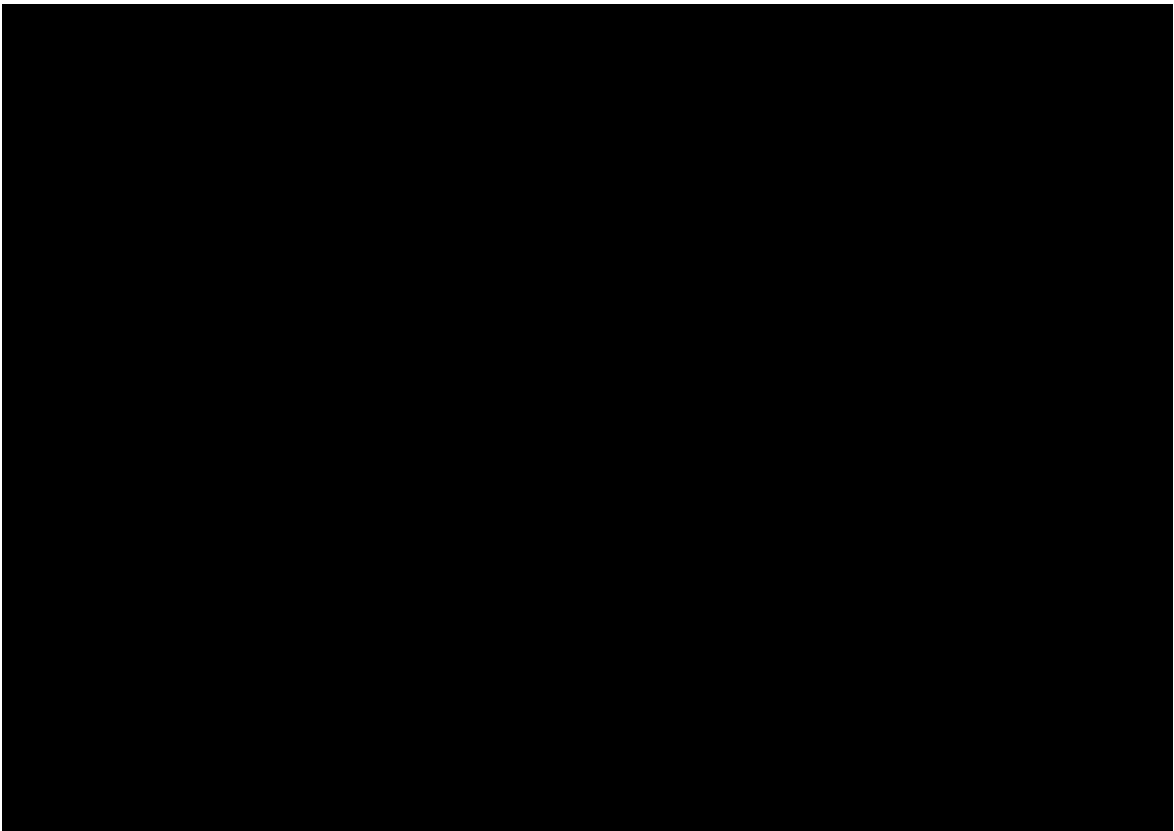
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<sup>70</sup> SONY-ATV00003701.



58. In Sony’s public filings for the fiscal year ended March 31, 2015, Sony stated that music publishing, along with other divisions, saw “sales increased, resulting in overall segment sales being essentially flat year-on-year.”<sup>71</sup> In public filings for the fiscal year ended March 31, 2016, Sony did not specifically reference revenue trends for the domestic music publishing business. Although I understand that recorded music is licensed separately with a different rate structure, Sony did discuss in its 2016 filing the change in streaming versus physical and digital download sales for recorded music, stating that “[i]n Recorded Music, digital streaming revenues

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<sup>71</sup> Sony Corporation Form 20-F for the fiscal year ended March 31, 2015, p. 55.

significantly increased, partially offset by a worldwide decline in physical and digital download sales.”<sup>72</sup>

59. Analysts covering Sony<sup>73</sup> were generally positive about the music publishing business and revenue trends, stating “we expect revenues for Sony’s music publishing to grow as the music streaming market expands”<sup>74</sup> and “[t]he Music Publishing business is seen as a source of steady growth.”<sup>75</sup>

60. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>72</sup> Sony Corporation Form 20-F for the fiscal year ended March 31, 2016, p. 55.

<sup>73</sup> I reviewed analyst reports for Sony from January 1, 2014 through December 31, 2016 (Thomson Reuters).

<sup>74</sup> Morgan Stanley, “Sony: Risk of Battery Business Impairment in F3/16, but F3/17 Earnings Outlook Unchanged,” November 12, 2015, p. 2.

<sup>75</sup> Macquarie Research, “Sony: Games & Network Services steals the show this year,” June 30, 2016, p. 6.

<sup>76</sup> [REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

61. On June 29, 2012, a wholly-owned subsidiary of Sony, as part of an investor group, completed the acquisition of EMI Music Publishing. As part of the acquisition, the investor group formed DH Publishing, L.P. (“DHP”), which acquired EMI Music Publishing for 2.2 billion U.S. dollars.<sup>78</sup> Sony accounts for its DHP interest under the equity method and classifies it as a variable interest entity.<sup>79</sup> I understand that the financial statements produced in this matter under the name Sony/EMI refer to this investment.<sup>80</sup>

62. In its public filings with the SEC, Sony does not include a detailed description of the types of music publishing revenues for Sony or its investment in Sony/EMI. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

<sup>78</sup> Sony invested 320 million U.S. dollars in DHP, through Nile Acquisition LLC, for a 39.8% equity interest. Nile Acquisition LLC is a joint venture with the third-party investor of Sony’s U.S.-based music publishing subsidiary in which Sony holds a 74.9% ownership interest. (Sony Corporation Form 20-F for the fiscal year ended March 31, 2016, p. F-29).

<sup>79</sup> Sony Corporation Form 20-F for the fiscal year ended March 31, 2016, p. F-29.

<sup>80</sup> SONY-ATV00003700.

[REDACTED]

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<sup>81</sup> [REDACTED]

<sup>82</sup> SONY-ATV00003700. [REDACTED]

<sup>83</sup> SONY-ATV00003700.

<sup>84</sup> SONY-ATV00003700.

<sup>85</sup> SONY-ATV00003700.

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

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<sup>86</sup> SONY-ATV00003700.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>87</sup> SONY-ATV00003700.

[Redacted]

[Redacted]

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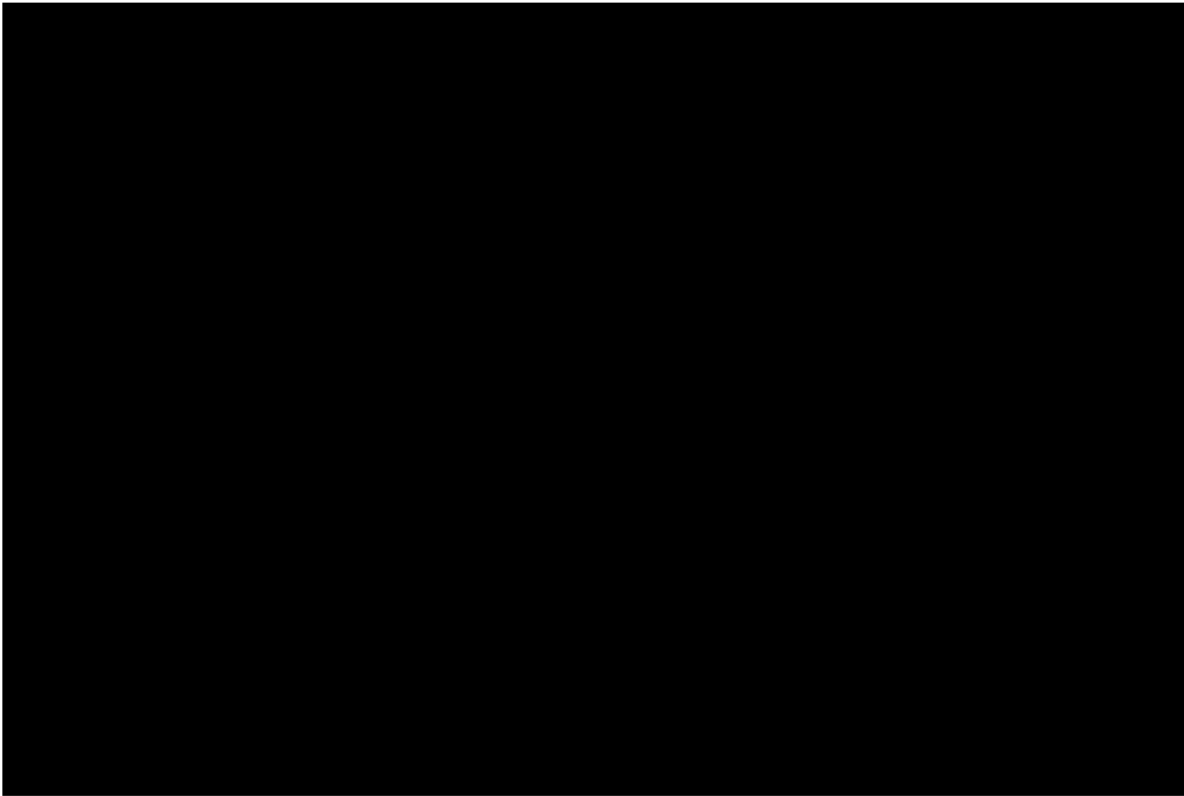
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88 [REDACTED]

[REDACTED]



71. [Redacted]  
[Redacted]  
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<sup>90</sup> SONY-ATV00003700.



72. As an investment of Sony, no public filings are available for Sony/EMI and there is no analyst coverage other than the coverage already discussed for Sony/ATV in the preceding section of this report.

73. [Redacted text block]

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91 [Redacted footnote text]



[REDACTED]

**E.** [REDACTED]

74. UMPG is the music publishing arm of Universal Music Group, which is fully owned by the French media group Vivendi SA (“Vivendi”).<sup>93</sup> UMPG “discovers and develops songwriters, and owns and administers the copyright for musical compositions...”<sup>94</sup> UMPG licenses musical compositions for use in sound recordings, films, television, advertisements, and live and other public performances. UMPG also licenses compositions for use in printed sheet music and song portfolios.<sup>95</sup> UMPG’s combined publishing catalog contains more than three million owned and administered titles.<sup>96</sup>

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<sup>92</sup> [REDACTED]

<sup>93</sup> Vivendi Annual Report 2015, p. 7.

<sup>94</sup> Vivendi Annual Report 2015, p. 30.

<sup>95</sup> Vivendi Annual Report 2015, p. 30.

<sup>96</sup> Vivendi Annual Report 2015, p. 31.

75. In its public filings with the SEC, Vivendi does not include a detailed description of the types of revenues associated with UMPG. [REDACTED]

[REDACTED]

[REDACTED]

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<sup>97</sup> UMPG00002119. [REDACTED]

<sup>98</sup> UMPG00002119. [REDACTED]

<sup>99</sup> UMPG00002119.

<sup>100</sup> UMPG00002119.

<sup>101</sup> UMPG00002119.

<sup>102</sup> UMPG00002119.

[REDACTED]

[REDACTED]

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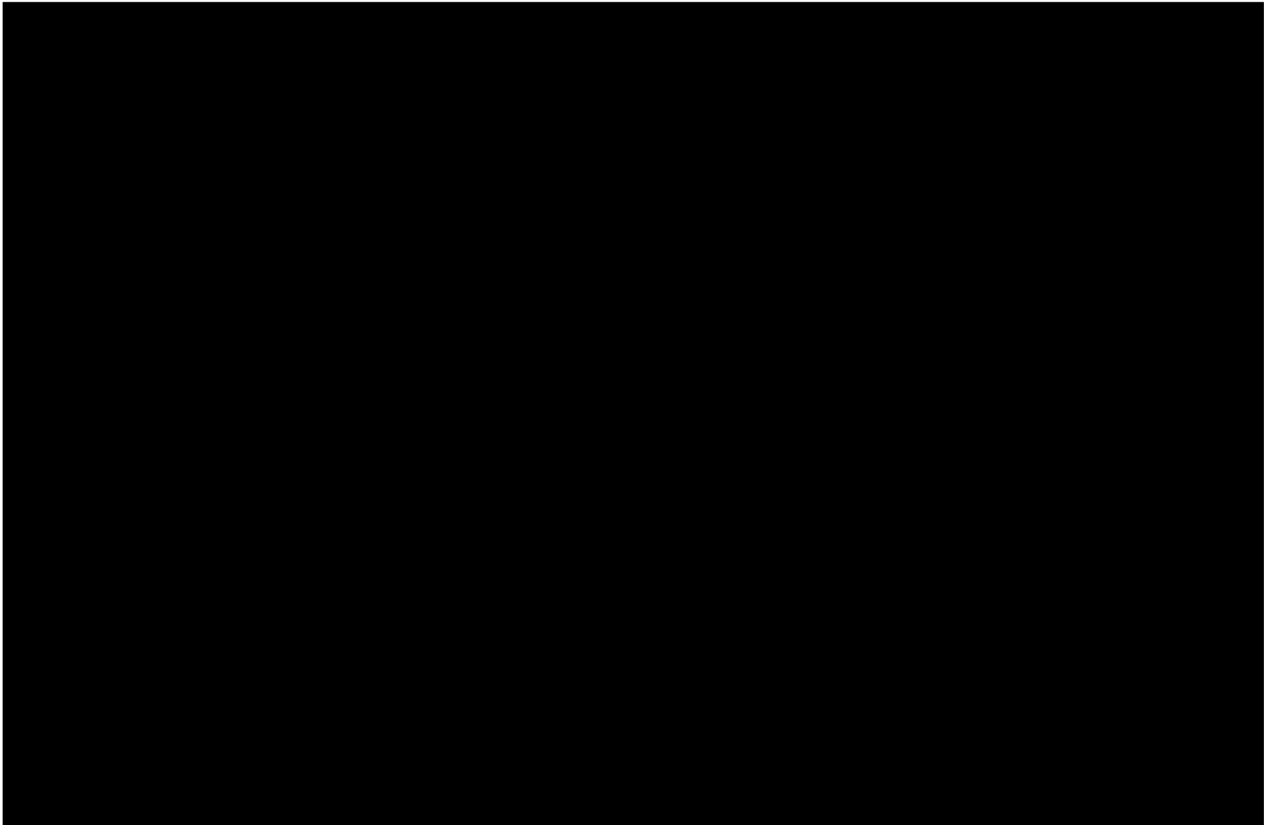
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[REDACTED]

<sup>104</sup> Sammis Witness Statement, ¶¶ 1 and 50. See also Sammis Witness Statement Exhibit 6.3.

[REDACTED]

[REDACTED]



80.

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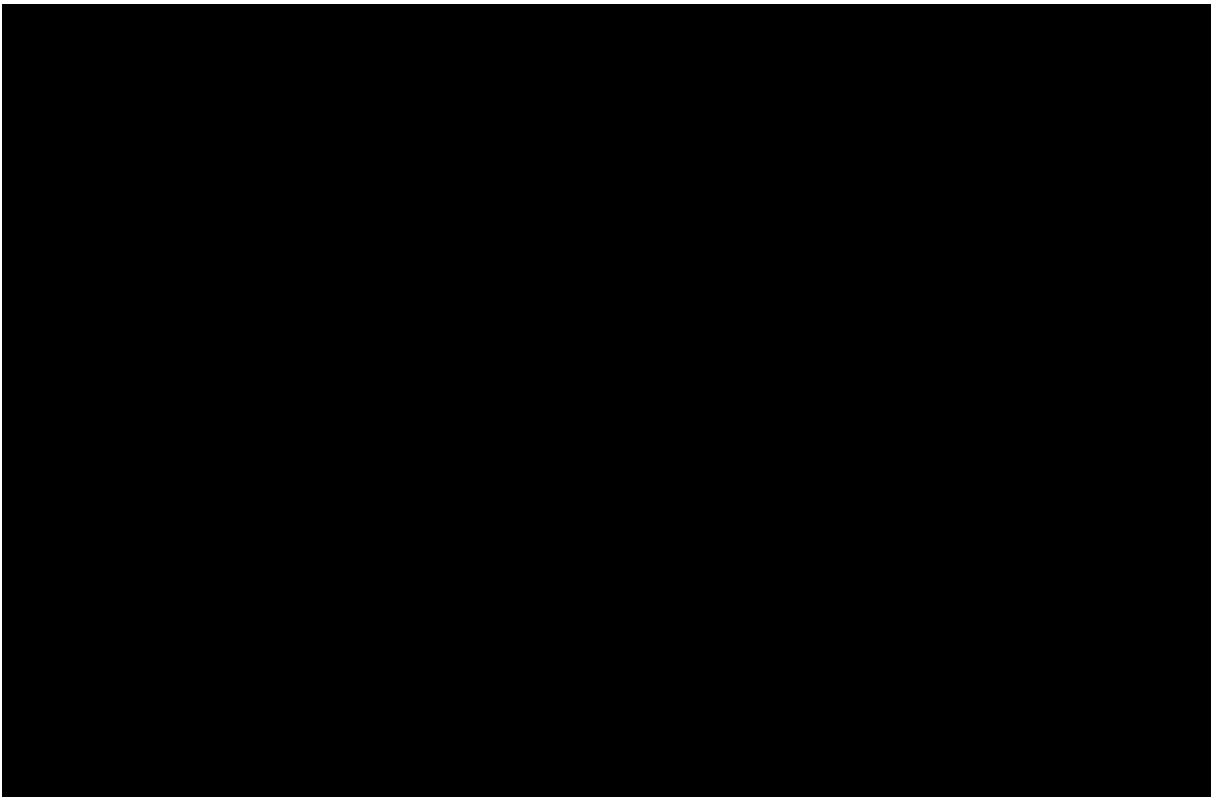
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82.

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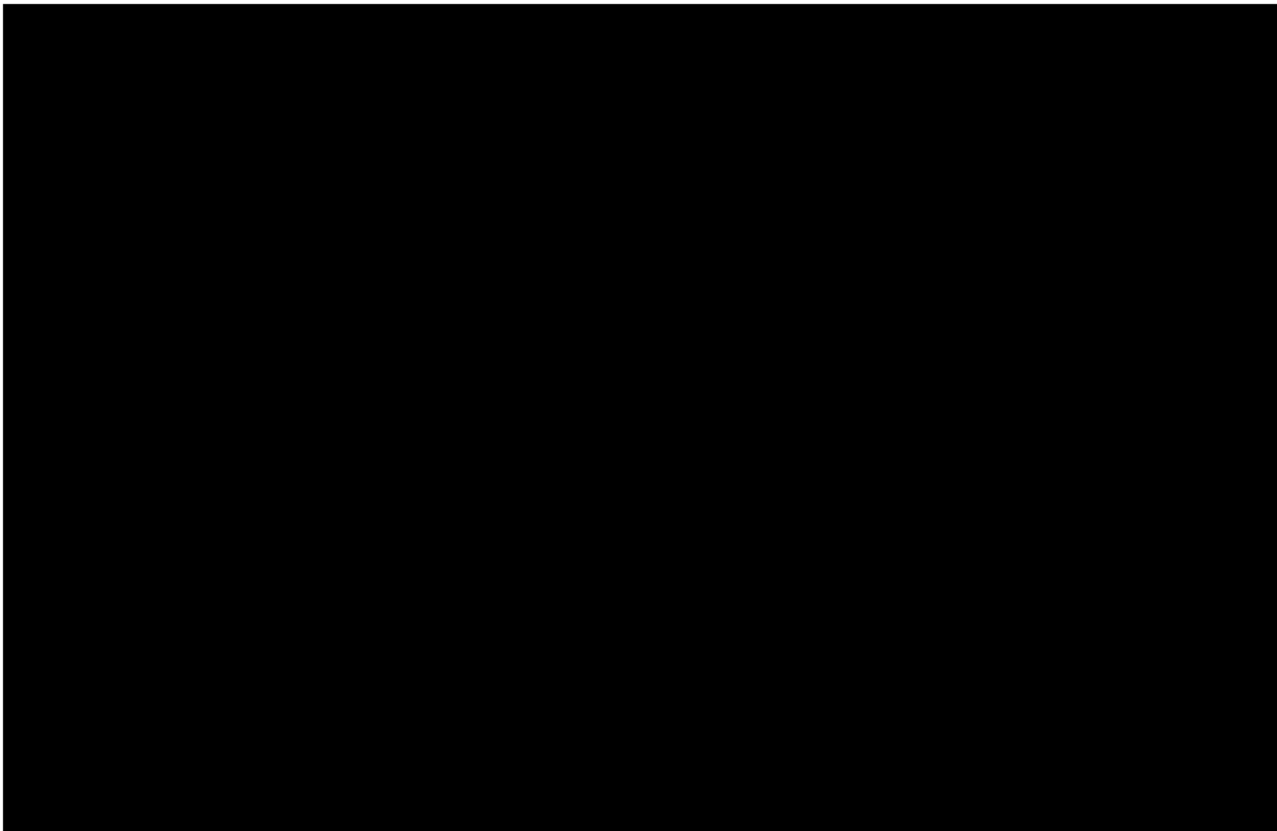
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83. [Redacted]

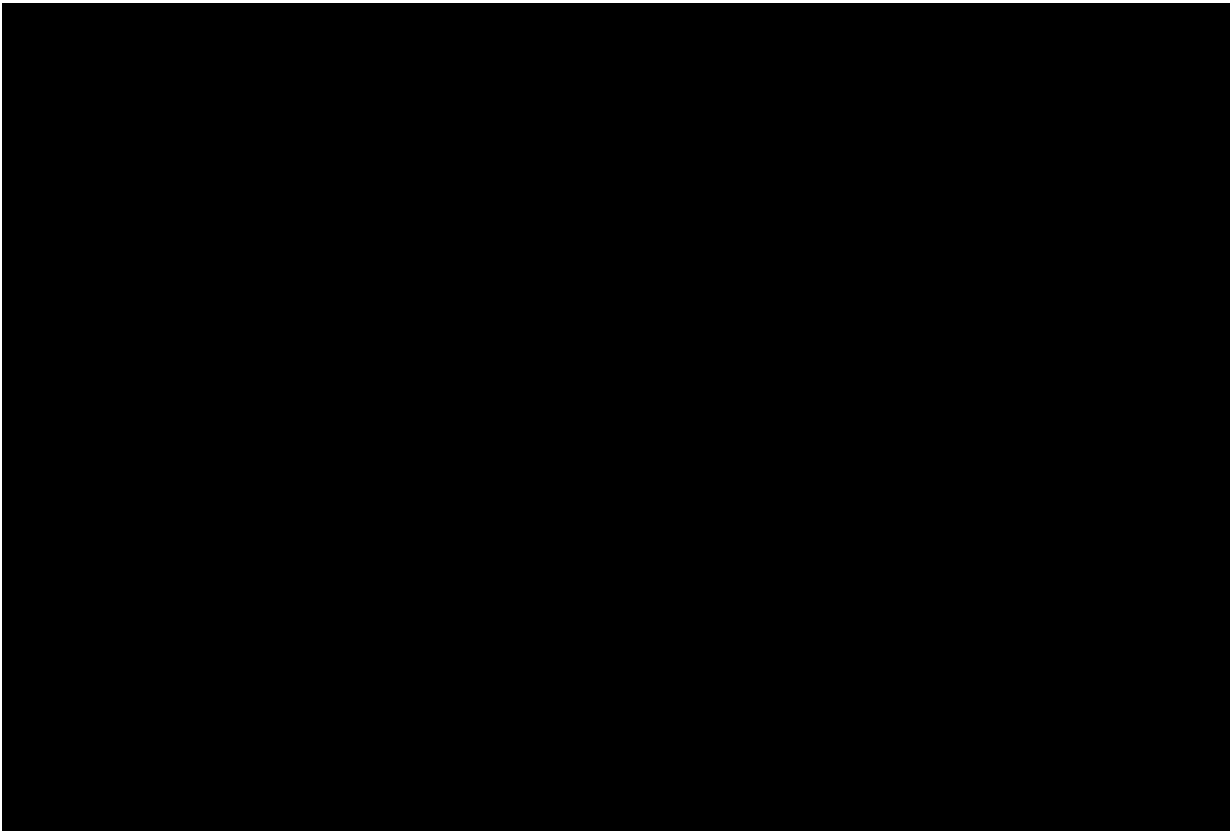
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105 [Redacted]



84. Vivendi, UMPG’s parent, does not specifically address the performance of UMPG in its discussion of annual results. Vivendi does discuss the performance of Universal Music Group, UMPG’s parent. Although I understand that recorded music is licensed separately with a different rate structure, Vivendi highlights the shift towards streaming (from digital downloads and physical product) in its 2014 annual report, stating “[r]ecorded music digital sales were flat compared to 2013 at constant currency and perimeter, as significant growth in subscription and streaming revenues offset the decline in digital download sales. However, total recorded music revenues declined due to the continued industry decline in physical sales.”<sup>106</sup>

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<sup>106</sup> Vivendi Annual Report 2014, p. 177. [REDACTED]



85. Kepler Cheuvreux, in an analyst report covering Vivendi, also commented on the replacement of Mechanical revenue with other types of revenues, stating:<sup>107</sup>

Music publishing revenues have not suffered to anything like the extent of recorded music, as performance royalties continue to be driven by reality-TV talent shows and online radio airplay, while synchronisation nudges upward thank [sic] to growth from use of music as background to adverts as well as movie soundtracks. Growth from these two sources, however, is offset by the decline in mechanical royalties, which is directly linked to sales of recorded music (CDs and digital downloads), meaning stable overall revenues.

86. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>107</sup> Kepler Cheuvreux, “Vivendi: Seeing is Believing,” April 15, 2015, pp. 10-11. See also Societe Generale, “Vivendi: Media valuation down 35% from 2015 highs; stock nearer bottom of €17-22.5 target range,” January 21, 2016, p. 23, which described Vivendi’s music publishing as a “stable” business with “good organic growth” in revenues. I reviewed analyst reports for Vivendi from January 1, 2014 through December 31, 2016 (Thomson Reuters).

<sup>108</sup> [REDACTED]

[REDACTED]

[REDACTED]

F.

87. Warner/Chappell is the global music publishing segment of Warner Music Group (“Warner”) and is headquartered in Los Angeles with operations in over 50 countries through various subsidiaries, affiliates and non-affiliated licensees.<sup>110</sup> Warner/Chappell owns or controls rights to more than one million musical compositions, and its catalog includes over 70,000 songwriters and composers and a diverse range of genres.<sup>111</sup>

88. In its public filings with the SEC, Warner describes five different types of revenues from music publishing: Performance, Digital, Mechanical, Synchronization and Other, and lists them as follows:<sup>112</sup>

Performance: performance of the song to the general public

- Broadcast of music on television, radio and cable
- Live performance at a concert or other venue (e.g., arena concerts, nightclubs)
- Broadcast of music at sporting events, restaurants or bars
- Performance of music in staged theatrical productions

Digital: sale of recorded music in various digital formats

- Digital recordings such as digital downloads, streaming services and digital performance

Mechanical: sale of recorded music in various physical formats

- Physical recordings such as CDs, Vinyl and DVDs

Synchronization: use of the song in combination with visual images

- Films or television programs
- Television commercials

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<sup>110</sup> Warner Music Group Corp. Form 10-K for the fiscal year ended September 30, 2016, p. 9.

<sup>111</sup> Warner Music Group Corp. Form 10-K for the fiscal year ended September 30, 2016, p. 9.

<sup>112</sup> Warner Music Group Corp. Form 10-K for the fiscal year ended September 30, 2016, p. 11.

- Video games
- Merchandising, toys or novelty items

Other:

- Licensing of copyrights for use in printed sheet music

89. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
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[REDACTED]  
[REDACTED]  
[REDACTED]  
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[REDACTED]  
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113 [REDACTED]  
[REDACTED]

[REDACTED]  
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115 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

93. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>116</sup> Yocum Witness Statement, ¶¶ 54-6.

<sup>117</sup> [REDACTED]

[Redacted]

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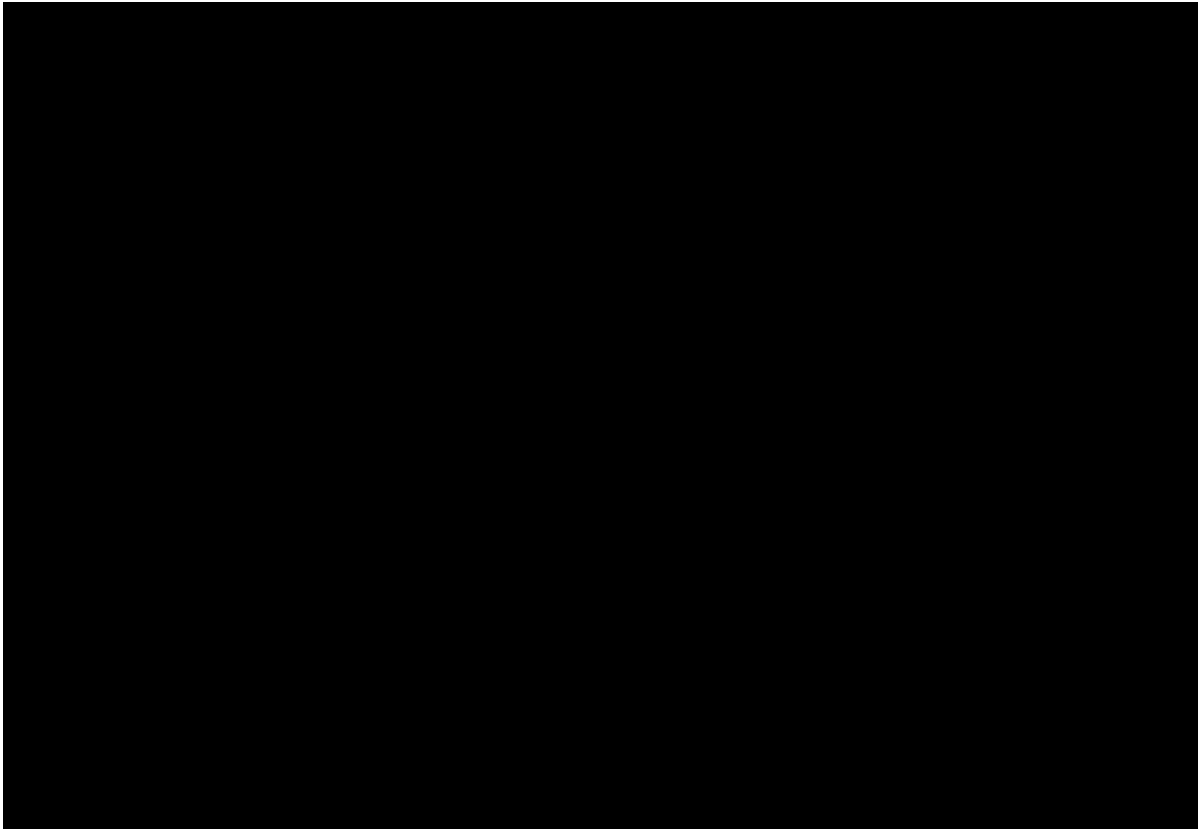
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96. This analysis is consistent with statements made by Warner in its discussion of annual results. Warner’s CEO, Stephen Cooper,<sup>120</sup> stated in the fourth quarter 2016 earnings call held on December 8, 2016:<sup>121</sup>

In fiscal '16, we saw a global double-digit revenue jump in both our Recorded Music and publishing businesses . . . For the full year, [Warner/Chappell] revenue rose 13%, with digital up 47%, performance up 11%, sync up 10%, these more than compensating for a 16% decline in mechanical.

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<sup>120</sup> Warner Music Group Corp, FQ4 2016 Earnings Call, December 8, 2016, pp. 3, 5.

<sup>121</sup> Warner Music Group Corp, FQ4 2016 Earnings Call, December 8, 2016, pp. 3, 5.



97. In responding to an analyst question about the music publishing business, Warner's CFO, Eric Joshua Levin, also stated: <sup>122</sup>

. . . .So the top line movements, similar to Recorded Music, is really driven by digital and streaming growth. You see the strong -- as we discussed streaming numbers, we talked about 74% growth this quarter in publishing. So that's really helping drive that. In addition, our market share growth in publishing has been tremendous. And since we put our new management team in, led by Jon Platt, slightly more than a year ago, they've really focused on their kind of high-touch, high-service model, connecting artists that are recording to writers. And so we've really helped drive our market share. So the combination of that plus streaming growth has led to a very strong revenue year . . . . So we think publishing is on a healthy upswing, and we're very confident in that business.

98. Warner is only covered by one analyst, Deutsche Bank. <sup>123</sup> Deutsche Bank made similar positive statements about trends in music publishing, stating "WMG turned in its best quarter of top-line growth in almost 2 years. And the improvement came from both the Recorded & Publishing segments. The transition to streaming is gaining traction, and we're encouraged that streaming growth is already offsetting download/physical declines."<sup>124</sup>

99. [REDACTED]

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<sup>122</sup> Warner Music Group Corp, FQ4 2016 Earnings Call, December 8, 2016, p. 8.

<sup>123</sup> I reviewed analyst reports for Warner from January 1, 2014 through December 31, 2016 (Thomson Reuters) and identify reports by GlobalData, MarketLine, and Deutsche Bank. Of these three, only Deutsche Bank includes investment commentary.

<sup>124</sup> Deutsche Bank, "Warner Music Group Corp: F2Q16 (March) Results Recap," May 6, 2016, p. 1.

[REDACTED]

[REDACTED]

100. BMG houses both music publishing and music recording units and is owned by Bertelsmann, a German media, services and education company. BMG represents 2.5 million songs and recordings, as well as thousands of artists and songwriters.<sup>127</sup>

101. There are no public filings available for BMG. [REDACTED]

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<sup>125</sup> [REDACTED]

[REDACTED]

<sup>127</sup> <https://www.bertelsmann.com/company/company-profile/> (last accessed on February 14, 2017).

[REDACTED]

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<sup>128</sup> BMG00000563-7. [REDACTED]

<sup>129</sup> BMG00000563-7.

<sup>130</sup> BMG00000662. BMG00000665. [REDACTED]

<sup>131</sup> BMG00000665.

103. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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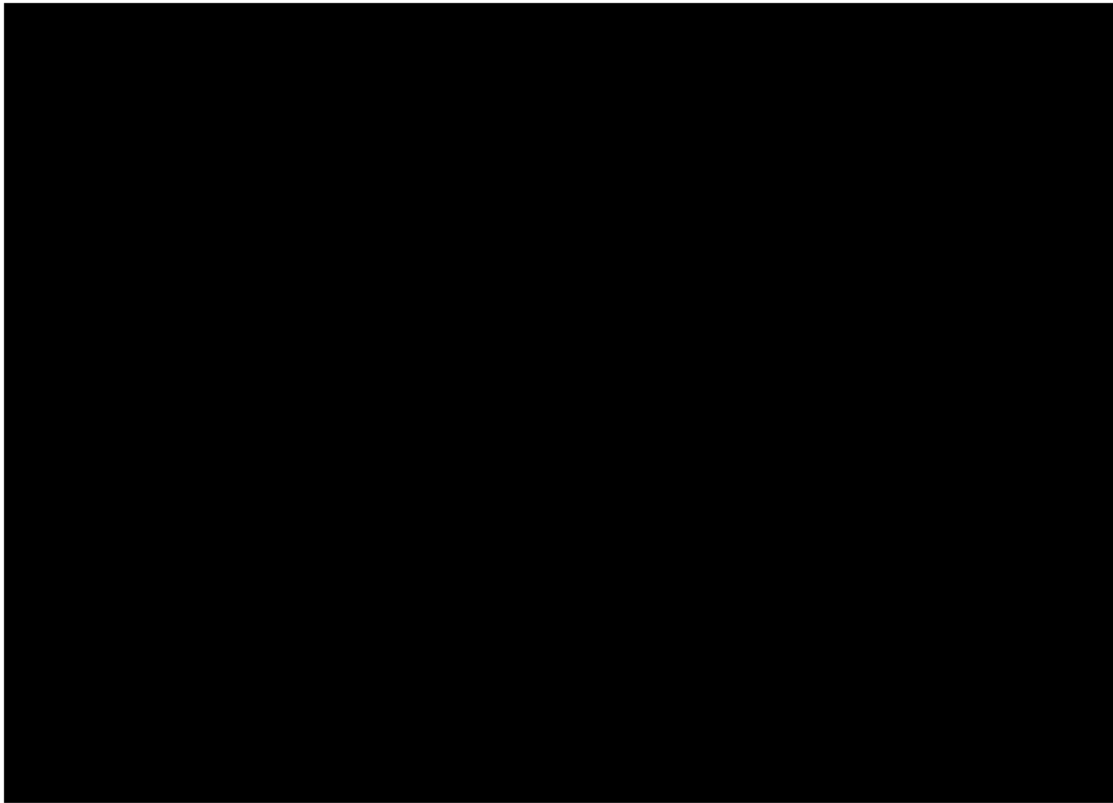
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<sup>132</sup> BMG00000662.



106.





107. [Redacted]

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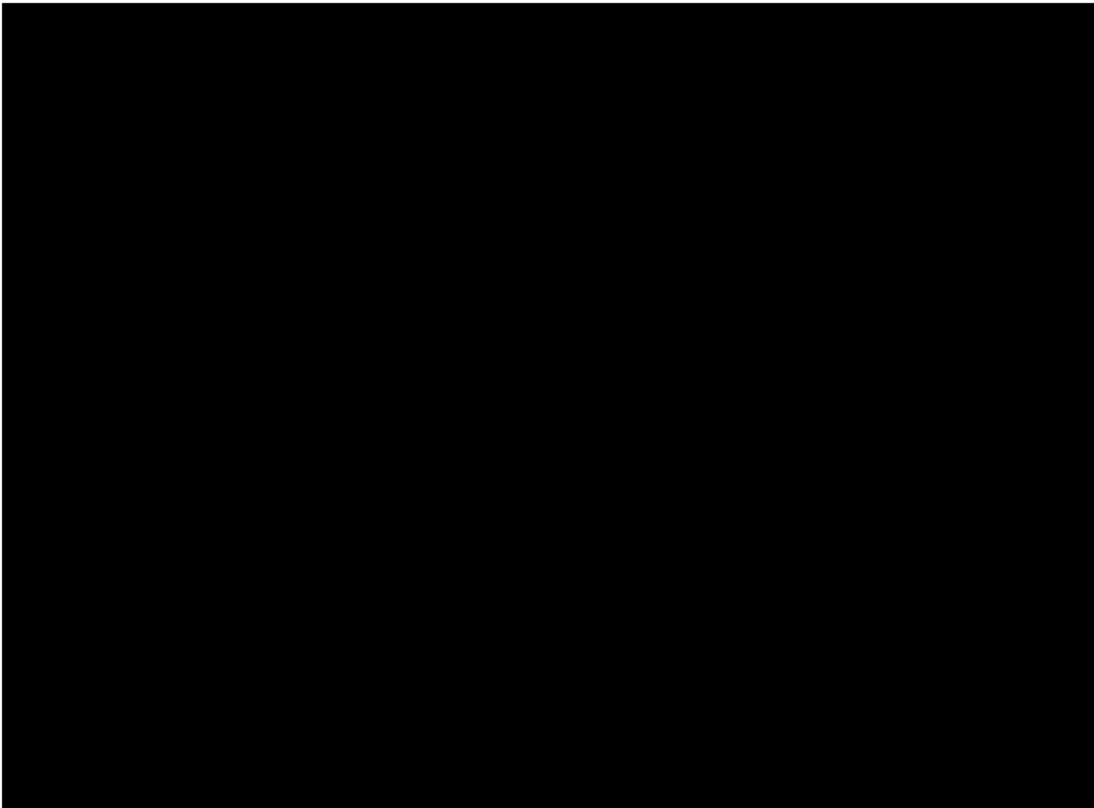
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133 [Redacted]

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108. [Redacted]

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135 [Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

109. Downtown is a privately-held music publishing company that describes itself as “the leading music rights management company for the modern age.”<sup>137</sup> [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>137</sup> <https://www.dmpgroup.com/> (last accessed on February 14, 2017). I understand that Downtown is privately-held.

<sup>138</sup> DR00000156.



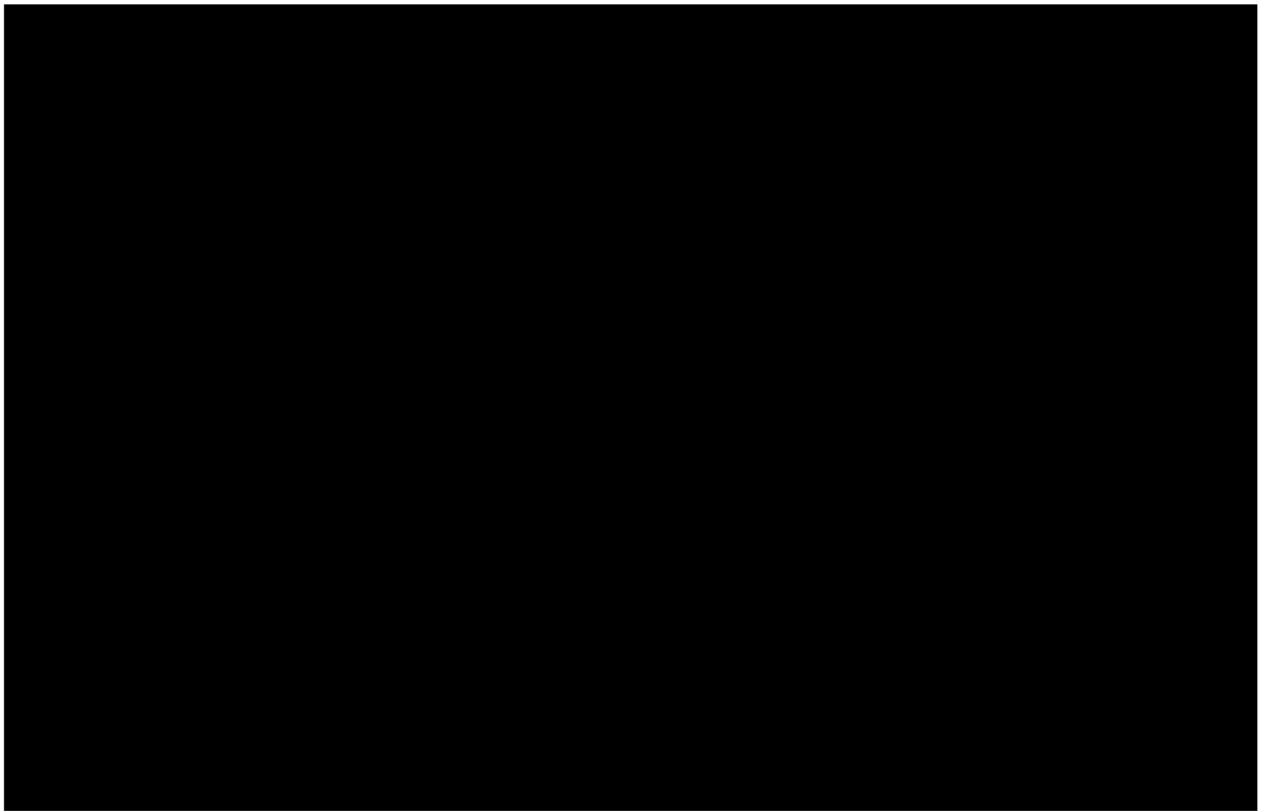
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<sup>139</sup> Kalifowitz Witness Statement, ¶¶ 1 and 31.



113. [Redacted]

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<sup>140</sup> Kalifowitz Witness Statement, ¶ 31; DR00000156.

<sup>141</sup> [Redacted]

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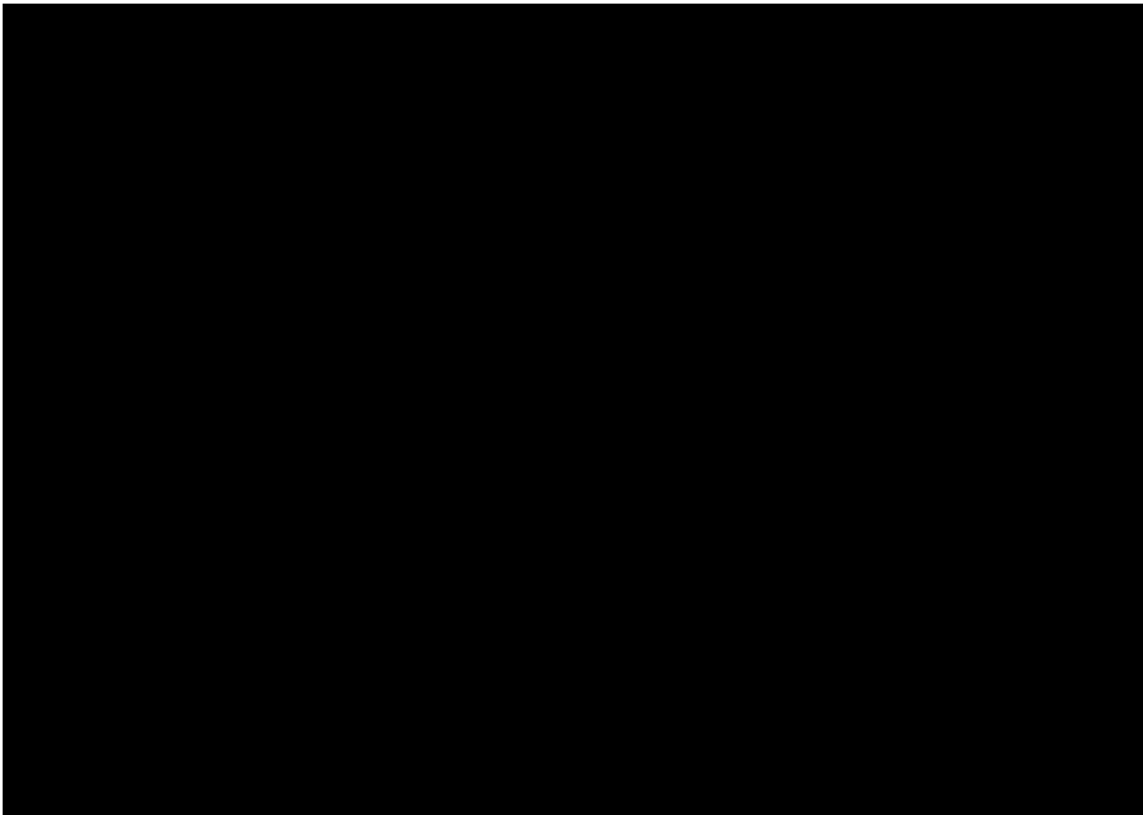
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115. [REDACTED]

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[REDACTED]

[REDACTED]



116. [Redacted]

[Redacted]

[Redacted]

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142 [Redacted]



117. As a private company, there are no public filings or analyst coverage of Downtown.

118. [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

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143 [Redacted]  
[Redacted]

[REDACTED]

[REDACTED] 144

## V. ADVANCES

119. In this section, I discuss the documents and testimony from the Music Publishing Companies about the asserted negative effect on Advances due to changes in revenue sources away from Mechanical revenues associated with Physical Phonorecords and Digital Downloads and, in particular, the ability of the Music Publishing Companies to recoup Advances paid to songwriters and the increase in the balance of Advances. As discussed below, the Music Publishing Companies generally acknowledge the complexities associated with estimating Advances and the timing of recoupments, which would be affected by a change in the pattern and timing of Mechanical revenues associated with Physical Phonorecords and Digital Downloads as well as write-offs of Advances. In the remainder of this section, I first discuss the testimony provided in the witness statements of the Music Publishing Companies about Advances, and [REDACTED]

[REDACTED]

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144 [REDACTED]

A. [REDACTED]

120. In the Kelly Witness Statement, Mr. Kelly discusses the changes in Advances for both Sony/ATV and Sony/EMI. I discuss both companies in this section of this report. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

121. To assess Mr. Kelly's statements, [REDACTED]

[REDACTED]

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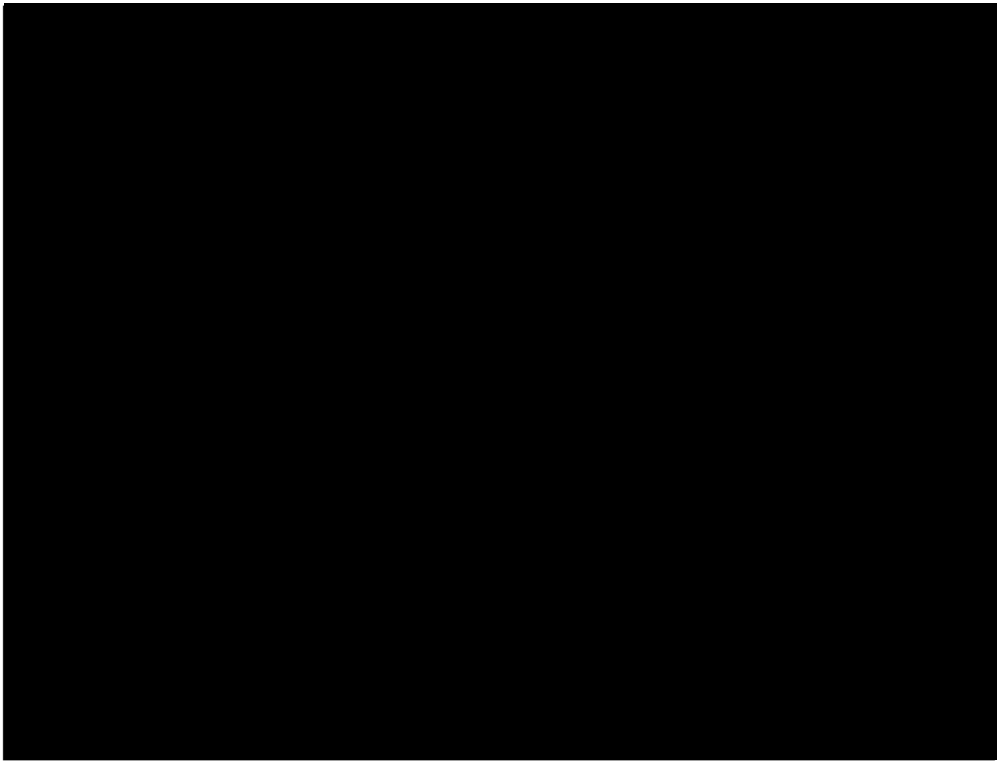
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<sup>145</sup> Kelly Witness Statement, ¶¶ 15-6.

<sup>146</sup> Kelly Witness Statement, ¶ 66.

<sup>147</sup> Kelly Witness Statement, ¶ 31.

<sup>148</sup> Kelly Witness Statement, "[REDACTED]" p. 26. See also SONY-ATV00005242.



122. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

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<sup>149</sup> Kelly Witness Statement, [REDACTED] (p. 26) and ¶ 59. See also SONY-ATV00005242. [REDACTED] (Kelly Witness Statement, ¶¶ 59-61).

<sup>150</sup> Kelly Witness Statement, “[REDACTED]” (p. 26).



[REDACTED]

124. Mr. Kelly also highlights [REDACTED]

[REDACTED]

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<sup>151</sup> Kelly Witness Statement, [REDACTED] (p. 26). See also SONY-ATV00005242.

<sup>152</sup> Kelly Witness Statement, [REDACTED] (p. 26). See also SONY-ATV00005242.

<sup>153</sup> Kelly Witness Statement, ¶ 32. [REDACTED]

<sup>154</sup> Kelly Witness Statement, [REDACTED] (p. 25); SONY-ATV00005240-1.

125. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

127. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>155</sup> Kelly Witness Statement, “[REDACTED]” (p. 25); SONY-ATV00005240-1.

<sup>156</sup> Kelly Witness Statement, “[REDACTED]” (p. 25); SONY-ATV00005240-1.

<sup>157</sup> Kelly Witness Statement, [REDACTED]

128. [REDACTED]

B. [REDACTED]

129. Mr. Sammis testified in the Sammis Witness Statement that the rate of Advances recoupment [REDACTED] Mr. Sammis also testified that [REDACTED]

[REDACTED]

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<sup>158</sup> Sammis Witness Statement, ¶ 26.

<sup>159</sup> Sammis Witness Statement, ¶ 26.

<sup>160</sup> Sammis Witness Statement, ¶ 26.

<sup>161</sup> Sammis Witness Statement, ¶ 26.

<sup>162</sup> UMPG00002272.

[REDACTED]

130. [REDACTED]  
[REDACTED]  
[REDACTED]

131. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

132. In the Yocum Witness Statement, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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<sup>163</sup> UMPG00002272. It is not clear whether this document refers only to domestic advances.

<sup>164</sup> Yocum Witness Statement, ¶ 22.

[REDACTED]

133. I begin my analysis [REDACTED]

[REDACTED]

[REDACTED]

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<sup>165</sup> Yocum Witness Statement, ¶ 22.

<sup>166</sup> Yocum Witness Statement, ¶ 22.

<sup>167</sup> WC00000829, WC00001215. It [REDACTED]

<sup>168</sup> WC00001215 [REDACTED]

134. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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

D. [REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

---

[REDACTED]  
[REDACTED]

[REDACTED]

137. To assess the statements made in the Kalifowitz Witness Statement, I review the annual Advances and recoupment activity in the documentation provided by Downtown<sup>173</sup> and present the data produced by Downtown below:<sup>174</sup>

[REDACTED]

138. [REDACTED]

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<sup>170</sup> Kalifowitz Witness Statement, ¶ 26.

<sup>171</sup> Kalifowitz Witness Statement, ¶ 24.

<sup>172</sup> Kalifowitz Witness Statement, ¶ 27.

<sup>173</sup> DR00000157.

<sup>174</sup> DR00000157.

[REDACTED]

[REDACTED]

[REDACTED]

140. In general, the ability to recoup Advances is dependent on the revenues generated by a songwriter's works, as highlighted by David Kokakis, Executive Vice President/Head of Business & Legal Affairs, Business Development and Digital at UMPG, in a statement filed in this matter ("Kokakis Witness Statement"):<sup>176</sup>

UMPg typically seeks to recoup the cost of the advance from the royalties earned from licenses of the songwriter's works (generally, mechanical, synchronization, print, merchandising, and the publisher's share of public performance royalties; the writer's share of public performance royalties is almost always paid directly to the songwriter by

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<sup>175</sup> [REDACTED]

<sup>176</sup> Kokakis Witness Statement, ¶¶ 1 and 21.



the songwriter's performing rights organization and is not in any instance used to recoup the advance), if and when the songwriter's songs generate such royalties.

141. Mr. Brodsky similarly states:<sup>177</sup>

The contracts that we sign with songwriters almost always require that we pay the songwriter a recoupable – but not returnable – advance against future earnings. A recoupable advance means that if and when the songwriter begins to earn royalties, those royalties are retained by us until the advance is paid back. Note that the (50%) 'writer's share' of performance royalties is collected and paid directly by the PRO to the songwriter and is therefore not used by the publisher to recoup the advance. Thus, advances are, for the most part, recouped from mechanical royalties, the (50%) 'publisher's share' of performance royalties and synchronization royalties (discussed below) to the extent the songwriter's works are the subject of synchronization licenses.

142. As described by both Mr. Kokakis and Mr. Brodsky, an initial upfront payment is generally made, and the Advances part of a contract is generally written, to include all sources of revenue (other than Performance revenues sent directly to songwriters) which includes Mechanical, Synchronization, Print and Other types of revenue. [REDACTED]

[REDACTED]<sup>8</sup> thus, changes in other revenue streams can affect the relation between new Advances and the recoupment of those Advances.

143. Testimony from the Music Publishing Companies conclude that contracts containing Advances are risky and the outcomes are more difficult to predict. For example, Mr. Sammis testified in the Sammis Witness Statement: "Entering into agreements with unknown new writers has always involved a degree of risk and that risk level has only increased as sources of

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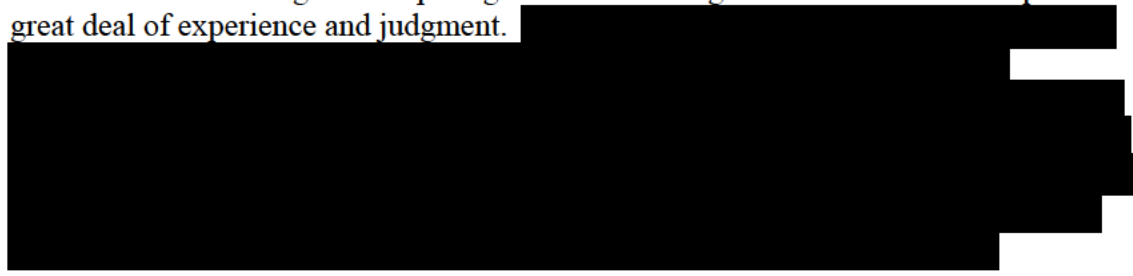
<sup>177</sup> Brodsky Witness Statement, ¶ 29.

<sup>178</sup> [REDACTED]

income that previously had a more or less predictable historical pattern, such as mechanical income, have become much more difficult to predict.”<sup>179</sup> The Sammis Witness Statement references the “significant risk” of the modeling and financial estimates required to determine an advance.<sup>180</sup> Mr. Kokakis testified that the payment of an advance is a “risky endeavor.”<sup>181</sup> In the Kalifowitz Witness Statement, Mr. Kalifowitz refers to advances as “a substantial and risky financial investment on [Downtown’s] part.”<sup>182</sup>

144. In the Yocum Witness Statement, Ms. Yocum testified.<sup>183</sup>

The financial modeling for computing new and existing writer advances . . . requires a great deal of experience and judgment.



145. Ms. Yocum further testifies that the determination of Advances “is not an exact science”<sup>184</sup> and “entail[s] growing financial risks.”<sup>185</sup>

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<sup>179</sup> Sammis Witness Statement, ¶ 12.

<sup>180</sup> Sammis Witness Statement, ¶ 23.

<sup>181</sup> Kokakis Witness Statement, ¶ 41.

<sup>182</sup> Kalifowitz Witness Statement, ¶ 15.

<sup>183</sup> Yocum Witness Statement, ¶ 17.

<sup>184</sup> Yocum Witness Statement, ¶ 18.

<sup>185</sup> Yocum Witness Statement, ¶ 19.

146. I understand that music publishers design contracts with songwriters on a case-by-case basis and may have or could adapt their bargaining process to adjust for changes in the marketplace — [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>186</sup> Deposition of David Kokakis, February 3, 2017 (“Kokakis Deposition”), pp. 100-101.

<sup>187</sup> Kokakis Deposition, p. 276.

<sup>188</sup> Kokakis Deposition, pp. 251-252.

**Before the  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
The Library of Congress**

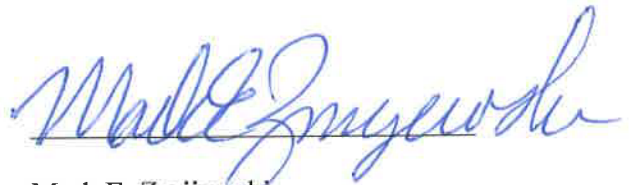
**In the Matter of**

**DETERMINATION OF RATES AND  
TERMS FOR MAKING AND  
DISTRIBUTING PHONORECORDS  
(PHONORECORDS III)**

)  
) **Docket No. 16-CRB-0003-PR (2018-**  
) **2022)**  
)  
)  
)  
)  
)

**DECLARATION OF MARK ZMIJEWSKI**

I, Mark Zmijewski, declare under penalty of perjury that the statements contained in my Written Rebuttal Testimony in the above-captioned proceeding are true and correct to the best of my knowledge, information, and belief. Executed this 15 day of February 2017 in Bonita Springs, FL, United States.



Mark E. Zmijewski

# Appendix A

## Mark E. Zmijewski (Zme – yev’ -ski) Bio

Professor Zmijewski specializes in the areas of accounting, economics, and finance as they relate to valuation, financial analysis, and security analysis, or more generally, financial economics. He has been on the faculty of The University of Chicago Booth School of Business since 1984. He currently holds the Charles T. Horngren Professorship, prior to which he held the Leon Carroll Marshall Professorship. In addition to his faculty duties, Professor Zmijewski also held the positions of Deputy Dean, PhD Program faculty director, and the Center for Research in Security Prices faculty director, all at the Booth School of Business.

Professor Zmijewski earned his BS in 1976, MBA in 1981, and PhD with a major in accounting and minors in economics and finance in 1983, all from the State University of New York at Buffalo. In addition to The University of Chicago, he has taught at the State University of New York at Buffalo and at York University in Toronto, Canada. He has taught various courses in accounting (financial accounting, managerial accounting, and advanced accounting/mergers and acquisitions), finance (corporate finance, financial strategy and corporate transactions, financial analysis, and valuation of companies and corporate transactions), and entrepreneurship. Professor Zmijewski’s research focuses on firm valuation and the ways in which various capital market participants use information to value securities. He has published articles in academic journals in the areas of accounting and financial economics and also co-authored a textbook (with Professor Robert Holthausen of The Wharton School of the University of Pennsylvania) on how to value companies, parts of companies, and the securities issued by companies, titled “Corporate Valuation: Theory, Evidence and Practice.” He has been an Associate Editor of The Accounting Review, and has been on the Editorial Boards of both the Journal of Accounting Research and The Accounting Review.

Professor Zmijewski is a Senior Consultant to Charles River Associates, a consulting firm that provides economic, financial, and management consulting services. He is also a Senior Advisor to, and a member of, the Investment Committee at Patron Capital Partners (Funds IV and V), a private equity investment company with a focus on real estate related investments. Professor Zmijewski was a founding partner of Chicago Partners, LLC, which was acquired by Navigant Consulting. He is the former managing director of Navigant Economics (a subsidiary of Navigant Consulting) and a former member of the corporate executive committee of Navigant Consulting.

Professor Zmijewski has worked as a consultant or expert in litigation matters in US state and federal courts, in the Supreme Court of Victoria in Australia, and in US and international arbitrations. The issues on which he has worked include: business valuation and securities valuation (valuation of corporate transactions, companies, and parts of companies, intangible assets and intellectual property, and securities); securities litigation (10b-5, section 11, section 12, ERISA, Martin Act, effect of disclosures, and insider trading); mergers and acquisitions (appraisals and price disputes, analyzing merger synergies, material adverse changes, corporate transactions, and the process of purchasing and selling companies); solvency and ability to pay (fraudulent conveyance, solvency assessment, and ability to pay government fines); antitrust litigation (analysis of merger efficiencies, failing firm defense, and financial analyses of alleged anticompetitive behavior); commercial and stockholder disputes (measurement of damages, accounting analyses, and economic assessment of transactions); accounting issues (measuring and analyzing revenue, cost structures, profitability, rates of return, interest rates, and other financial metrics and concepts); and creating and evaluating business plans.

The frameworks and tools he uses in his work are generally applicable to all industries, and he has applied his expertise in a broad range of sectors, including airline, auto, financial services, chemical, computer hardware and software, credit card and credit card security, energy, entertainment, for-profit education, health care, insurance, heavy and light manufacturing, pharmaceutical, retail, real estate investment funds, securities companies, technology, telecommunications, transportation, and others.

**Mark E. Zmijewski**  
**(Zme-yev'-ski)**  
Senior Consultant

PhD, Accounting  
State University of New York  
at Buffalo

MBA, Accounting  
State University of New York  
at Buffalo

BA, Accounting  
State University of New York  
at Buffalo

## Academic employment

1984–Present	The University of Chicago Booth School of Business <i>Charles T. Horngren Professor of Accounting</i> (2015–Present) <i>Leon Carroll Marshall Professor of Accounting</i> (1999–2015) <i>Deputy Dean</i> (1996–2011) <i>Professor of Accounting</i> (1992–1999) <i>Associate Dean for PhD Studies</i> (1995–1996) <i>Executive Director, Center for Research in Securities Prices (CRSP)</i> (1992–1998) <i>Associate Professor of Accounting</i> (1988–1992) <i>Assistant Professor of Accounting</i> (1984–1988)
1980–1984	<i>Assistant Professor of Accounting</i> , State University of New York at Buffalo
1979–1982	<i>Course Director</i> , York University, Toronto Canada
1977–1980	<i>Teaching Assistant</i> , State University of New York at Buffalo

## Honors and awards

Business Information Professional of the Year—Education, Beta Alpha Psi, 2007.

Hillel J. Einhorn Excellence in Teaching Award, The Executive MBA Program, The University of Chicago Graduate School of Business, 1999.

Emory Williams Award for Excellence in Teaching, The University of Chicago, 1988

Competitive Manuscript Award, American Accounting Association, 1984.

Beta Alpha Psi, Honorary Accounting Society, 1981.

Beta Gamma Sigma, Honorary Business Society, 1980.

## Grants

Research Grant, SEC and Financial Reporting Institute, 1985.

University Fellowship, State University of New York at Buffalo, 1979.

Graduate Fellowship, State University of New York at Buffalo, 1976–1978.

## Publications

*Corporate Valuation: Theory, Evidence and Practice* (textbook). With Robert W. Holthausen, Cambridge Business Publishers, LLC, 2014, 1<sup>st</sup> Edition.

“Valuation with Market Multiples: How to Avoid Pitfalls When Identifying and Using Comparable Companies.” With R. Holthausen. *Journal of Applied Corporate Finance*, Summer 2012.

“Pitfalls in Levering and Unlevering Beta and Cost of Capital Estimates in DCF Valuations.” With R. Holthausen. *Journal of Applied Corporate Finance*, Summer 2012.

“Accounting and Disclosure Issues in Structured Finance.” With Keith Bockus and W. Dana Northcut. In *Corporate Aftershock: The Public Policy Lessons from the Collapse of Enron and Other Major Corporations*, C.L. Culp and W.A. Niskanen, eds., Wiley, 2003.

“Discovery and the Financial Analyst.” With Roger Hickey. *Litigation Services Handbook*, January 1995.

“How Useful Are *Wall Street Week* Stock Recommendations?” With P. Griffin and J. Jones. *Journal of Financial Statement Analysis*, Fall 1995.

“Contemporaneous Announcements of Dividends and Earnings.” With R. Leftwich. *Journal of Accounting, Auditing, and Finance*, Autumn 1994.

“The Relative Informativeness of Accounting Disclosures in Different Countries.” With A. Alford, J. Jones, and R. Leftwich. *Journal of Accounting Research*, Supplement, 1993.

“Extensions and Violations of the Statutory SEC Form 10-K Filing Requirements.” With A. Alford and J. Jones. *Journal of Accounting and Economics*, 1993.

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*The Phish Corporation: A Practice Case in Managerial Accounting*, With R. Derstine, R. Huefner, and S. Gunn. McGraw-Hill, 1991.

“Cross-Sectional Variation in the Stock Market Response to the Announcement of Accounting Earnings.” With P. Easton. *Journal of Accounting and Economics*, 1989.

“An Evaluation of Alternative Proxies for the Market’s Expectation of Earnings.” With L. Brown, P. Griffin, and R.L. Hagerman. *Journal of Accounting and Economics*, 1987.

“Predictive Value of Accounting Information.” With P. Griffin. In *Usefulness to Investors and Creditors of Information Provided by Financial Reporting*, 2<sup>nd</sup> Edition, P. Griffin, ed. Financial Accounting Standards Board, 1987.

“Security Analyst Superiority Relative to Univariate Time-Series Models in Forecasting Quarterly Earnings.” With L. Brown, P. Griffin, and R. Hagerman. *Journal of Accounting and Economics*, 1987.

“The Effect of Labor Strikes on Security Analysts’ Forecast Superiority and on the Association between Risk-Adjusted Stock Returns and Unexpected Earnings.” With L. Brown. *Contemporary Accounting Research*, 1987.

“Estimating Models with Binary Dependent Variables: Some Theoretical and Empirical Observations.” With G. Gessner, W. Kamakura, and N. Malhotra. *Journal of Business Research*, 1987.

“Methodological Issues Related to the Estimation of Financial Distress Prediction Models.” *Journal of Accounting Research*, 1984.

“The Association Between the Magnitude of Quarterly Earnings Forecast Errors and Risk-Adjusted Stock Returns.” With R.L. Hagerman and P. Shah. *Journal of Accounting Research*, 1984.

“An Income Strategy Approach to the Positive Theory of Accounting Policy Setting/Choice.” With R.L. Hagerman. *Journal of Accounting and Economics*, 1981. Reprinted in *The Economics of Accounting Policy Choice*, Ray Ball and Clifford Smith, Jr., eds. McGraw-Hill, 1992.

“A Test of Accounting Bias and Market Structure: Some Additional Evidence.” With R.L. Hagerman. *Review of Business and Economic Research*, 1981.

“Some Economic Determinants of Accounting Policy Choice.” With R.L. Hagerman. *Journal of Accounting and Economics*, 1979.

“Predictive Value of Accounting Information.” With P. Griffin. In *Usefulness to Investors and Creditors of Information Provided by Financial Reporting*, 2<sup>nd</sup> Edition, P. Griffin, ed. Financial Accounting Standards Board, 1987.

Comments on “Earnings Forecasting Research: Its Implications for Capital Markets Research.” *International Journal of Forecasting*.

## Dissertation committees

Sandip Madan, The University of Chicago, 1999, Member

Keith Bockus, The University of Chicago, 1998, Co-Chairperson

Beverly Walther, The University of Chicago, 1995, Member

Howard Bunsis, The University of Chicago, 1993, Co-Chairperson

Phillip Berger, The University of Chicago, 1992, Member

Stuart Essig, The University of Chicago, 1991, Member



Sherri Jarrell, The University of Chicago, 1991, Member

Andrew Alford, The University of Chicago, 1990, Chairperson

Mark Lang, The University of Chicago, 1990, Member

Laureen Maines, The University of Chicago, 1990, Member

Walter Teets, The University of Chicago, 1988, Member

Siew Teoh, The University of Chicago, 1988, Member

Kirsten Ely, The University of Chicago, 1988, Member

M. Daniel Beneish, The University of Chicago, 1987, Member

Pat O'Brien, The University of Chicago, 1986, Member

W. Forbes Cavanagh, State University of New York at Buffalo, 1985, Member

## University activities

Accounting Advisory Counsel, State University of New York at Buffalo, 1993–1995.

Faculty Facilitator, Leadership, Education, and Development (LEAD) Program, The University of Chicago, Graduate School of Business, 1989, 1991.

Dean's Advisory Committee on MBA Students and Curriculum, The University of Chicago, 1988.

Executive Director, Management Development Council, State University of New York at Buffalo, 1981–1984.

Advisor, Center for Management Development, State University of New York at Buffalo, 1979–1980.

## Editorial service and boards

Associate Editor, *The Accounting Review*, 1993–1997.

Editorial Board, *Journal of Accounting Research*, 1988–1993.

Editorial Board, *The Accounting Review*, 1985–1987.

## Ad hoc referee

*Journal of Accounting, Auditing, and Finance*

*The Accounting Review*

*Contemporary Accounting Research*

*The Financial Review*

*Journal of Accounting and Economics*

*Journal of Accounting Research*

*Journal of Banking and Finance*

*Journal of Business*

*Journal of Forecasting*

*International Journal of Forecasting*

*Management Science*

## Professional organizations

American Accounting Association

The American Finance Association

## Recent testimony, declarations, and other court filings and submissions

*United States Securities and Exchange Commission v. ITT Educational Services, Inc. et al.* In the United States District Court, Southern District of Indiana, Indianapolis Division, Case No. 15-CV-00758. Report filed February 8, 2017.

*Brian Jones vs. Treasury Wine Estates Limited.* In the Federal Court of Australia, District of New South Wales, Case No. NSD 660 of 2014. Expert report filed February 4, 2017.

*PharMerica Corporation et al. v. AmerisourceBergen Drug Corporation v. BGS Pharmacy Holding Company et al.* In the Jefferson Circuit Court Division Ten (10), Case No. 14-CI-004682. Report filed January 20, 2017.

*In Re Caesars Entertainment Operating Company, Inc., et al. Chapter 11 Bankruptcy Case.* In the United States Bankruptcy Court for the Northern District of Illinois Eastern Division, Case No. 15-01145 (ABG). Declaration filed December 2, 2016.

*In Re Harman International Industries, Inc. Securities Litigation.* In the United States District Court for the District of Columbia, Case No. 1:07-cv-01757-RC. Report filed June 24, 2016. Deposition testimony July 27, 2016.

*Beef Products, Inc., BPI Technology, Inc. and Freezing Machines, Inc. v. American Broadcasting Companies, Inc., ABC News, Inc., Diane Sawyer, Jim Avila, David Kerley, Gerald Zirnstein, Carl Custer, and Kit Foshee.* In the State of South Dakota in the County of Union First Judicial Circuit, Case No. 12-292. Report filed May 6, 2016. Deposition testimony August 25, 2016.

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*Federal Trade Commission, et al., Plaintiffs v. Staples, Inc. and Office Depot, Inc., Defendants.* In the United States District Court for the District of Columbia, Civil Action No. 1:15-cv-02115-EGS. Report filed February 15, 2016. Rebuttal report filed March 10, 2016. Deposition testimony March 14, 2016.

*Pankaj Oswal v. Carson & Others; Radhika Oswal v. Australia and New Zealand Banking Group & Others.* Before the Supreme Court of Victoria, Proceedings No. SCI 2012 1995 and No. SCI 2011 4653. Expert report filed November 13, 2015.

*In Re Groupon, Inc. Securities Litigation.* In the United States District Court for the Northern District of Illinois, Eastern Division, 12-CV-2450. Report filed September 8, 2015. Deposition testimony November 5, 2015. Declaration filed January 15, 2016.

*Avisep, S.A. de C.V., and Bevisep, S.A. de C.V., Claimants, v. The Sherwin-Williams Company, and Sherwin-Williams (Caribbean) N.V., Respondents.* In the International Court of Arbitration, International Chamber of Commerce, No. 20169/RD. Report filed August 31, 2015. Report filed February 26, 2016. Arbitration testimony April 18, 2016.

*Exelon Corporation, as successor by merger to Unicom Corporation and Subsidiaries, et al., Petitioner, v. Commissioner of Internal Revenue Service, Respondent.* In the United States Tax Court, Docket Nos. 29183-13 and 29184-13. Report filed April 24, 2015. Rebuttal report filed June 12, 2015. Trial testimony August 20, 2015.

*Ahmed D. Hussein, Plaintiff, v. Sheldon Razin et al., Defendants.* In the Superior Court of the State of California For the County of Orange, Case No. 30-2013-00679600-CU-NP-CJC. Report filed May 7, 2015. Rebuttal report filed May 28, 2015. Deposition testimony June 10, 2015.

*Lavastone Capital LLC, Plaintiff, v. Coventry First LLC, LST I LLC, LST II LLC, LST Holdings Ltd., Montgomery Capital, Inc., Alan Buerger, Reid Buerger, Constance Buerger, and Krista Lake, Defendants.* In the United States District Court for the Southern District of New York, Case No. 14-CF-7139 (JSR)(DCF). Report filed April 20, 2015. Deposition testimony April 29, 2015. Trial testimony October 23, 2015.

*Dr. Robert Corwin, as trustee for the Beatrice Corwin Living Irrevocable Trust, on behalf of all those similarly situated, Plaintiff, v. British American Tobacco, PLC, et al., Defendants.* In the General Court of Justice of the State of North Carolina, Guilford County, Superior Court Division, Case No. 14 CVS 8130. Affidavit filed January 12, 2015.

*Herbert Chen and Derek Sheeler, individually and on behalf of all others similarly situated, Plaintiffs, v. Robert Howard-Anderson, et al., Defendants.* In the Court of Chancery of the State of Delaware, Case C.A. No. 5878-VCL. Report filed October 17, 2014. Rebuttal report filed November 18, 2014. Deposition testimony December 9, 2014.

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*Halliburton Co. and David Lesar v. Erica P. John Fund, Inc. FKA Archdiocese of Milwaukee Supporting Fund, Inc.* In the Supreme Court of the United States, No. 13-317. Brief of Testifying Economists as Amici Curiae in Support of Respondent filed December 5, 2014.

*The People of the State of New York by Eric T. Schneiderman, Attorney General of the State of New York, Plaintiff, v. Maurice R. Greenberg and Howard I. Smith, Defendants.* In the Supreme Court of the State of New York, County of New York, Case No. 401720/05. Report filed July 28, 2014. Rebuttal report filed November 21, 2014. Deposition testimony December 3, 2014.

*Enteris Biopharma, Inc. as Successor-In-Interest to Unigene Laboratories, Inc. v. Stealth Peptides Inc. and Stealth Peptides International, Inc.* Before the American Arbitration Association (AAA), Case No. 50 122 T 00787 13. Report filed July 18, 2014. Arbitration testimony October 23-24, 2014.

*Jefferies Group, Inc. Shareholders Litigation.* In the Court of Chancery of the State of Delaware, Case C.A. No. 8059-CS. Report filed August 15, 2014. Rebuttal report filed September 12, 2014. Deposition testimony October 1, 2014.

*Merlin Partners LP et al., Petitioners v. Autoinfo, Inc., Respondent.* In the Court of Chancery of the State of Delaware, Case C.A. No. 8509-VCN. Report filed June 25, 2014. Rebuttal report filed July 16, 2014. Deposition testimony August 1, 2014. Trial testimony September 19, 2014.

*Vincent A. Beacom v. Oracle America, Inc.* Before the United States District Court, District of Minnesota, Case No. 13-cv-00985-DWF-FLN. Report filed August 8, 2014.

*M/s. Islamic Finance Company (PJSC) v. M/s. Beit Al Batteerjee Medical Company Ltd. et al.* Before the Dubai International Arbitration Centre (DIAC), Case No. 204/2011. Report filed February 13, 2014. Rebuttal report filed February 20, 2014.

*Puda Coal Securities Inc. et al. Litigation.* In the United States District Court for the Southern District of New York, Case No. 1:11-CV-2598 (KBF). Report filed January 22, 2014. Deposition testimony January 31, 2014.

*United States of America et al., Plaintiffs v. US Airways Group, Inc. and AMR Corporation, Defendants.* In the United States District Court for the District of Columbia, Case No. 1:13-cv-01236-CKK. Report filed October 25, 2013.

*United States of America et al., Plaintiffs v. American Express Co. et al., Defendants.* In the United States District Court for the Eastern District of New York, Case No. 10-CV-4496 (NGG) (RER). Sur-Rebuttal report filed July 3, 2013. Deposition testimony August 7-8, 2013.

*Ramona Two Shields and Mary Louise Defender Wilson v. The United States of America.* In the United States Court of Federal Claims, Case No. 1:13-cv-00090-LB. Affidavit and preliminary report filed June 3, 2013.

*Thurman Ross, Plaintiff v. Career Education Corporation, Gary E. McCullough, and Michael J. Graham, Defendants.* In the United States District Court for the Northern District of Illinois, Case No. 12 C 276. Report filed March 15, 2013.

## **Appendix B**

### **Documents Relied Upon**

#### **Bates Stamped Documents**

- BMG00000563-7
- BMG00000662
- BMG00000665
- DR00000156
- DR00000157
- NMPA00001424
- SONY-ATV00003700
- SONY-ATV00003701
- SONY-ATV00005240-1
- SONY-ATV00005242
- UMPG00002119
- UMPG00002272
- WC00000829
- WC00001215

#### **Witness Statements and Depositions**

- Barron Witness Statement
- Brodsky Witness Statement
- Deposition of Peter Brodsky on January 30, 2017
- Kalifowitz Witness Statement
- Kelly Witness Statement
- Kokakis Witness Statement
- Deposition of David Kokakis on February 3, 2017
- Sammis Witness Statement
- Yocum Witness Statement

#### **Financial Statements**

- Sony Corporation Form 20-F for the fiscal year ended March 31, 2015
- Sony Corporation Form 20-F for the fiscal year ended March 31, 2016
- Vivendi Annual Report 2014
- Vivendi Annual Report 2015
- Warner Music Group Corp. Form 10-K for the fiscal year ended September 30, 2016

#### **Earnings Calls and Other Meetings with Analysts**

- Sony Corporation Analyst/Investor Day, November 21, 2013
- Warner Music Group Corp, FQ4 2016 Earnings Call, December 8, 2016

#### **Analyst Reports**

- Barclays, "European Media: Dancing days are here again," October 6, 2016
- Deutsche Bank, "Warner Music Group Corp: F2Q16 (March) Results Recap," May 6, 2016

## Appendix B

- Global music publishing 2016, Enders Analysis, June 28, 2016 (also attached to the Written Direct Testimony of Will Page as Exhibit 38)
- Kepler Cheuvreux, “Vivendi: Seeing is Believing,” April 15, 2015
- Morgan Stanley, “Sony: Risk of Battery Business Impairment in F3/16, but F3/17 Earnings Outlook Unchanged,” November 12, 2015
- Macquarie Research, “Sony: Games & Network Services steals the show this year,” June 30, 2016
- Societe Generale, “Vivendi: Media valuation down 35% from 2015 highs; stock nearer bottom of €17-22.5 target range,” January 21, 2016

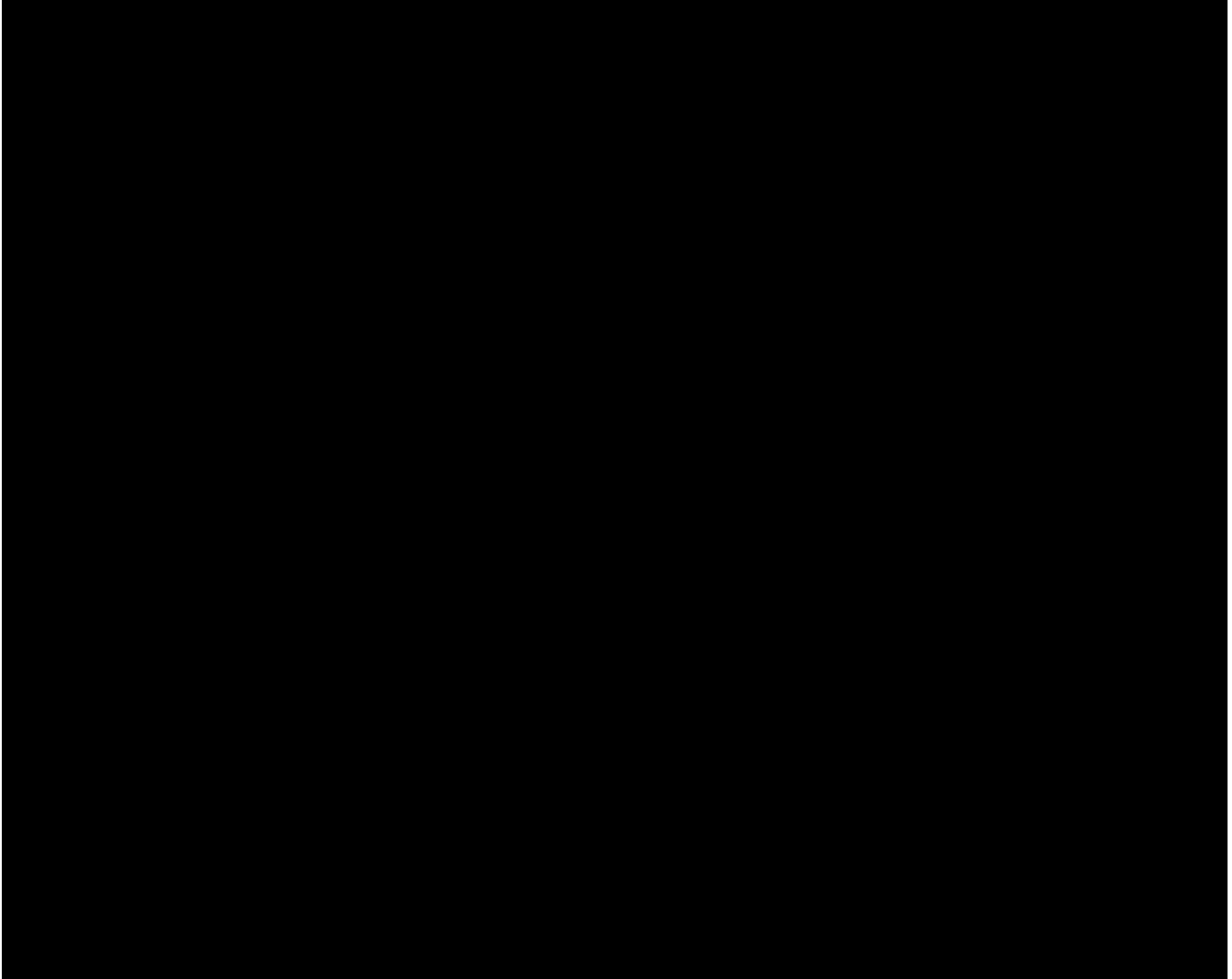
### Books

- Wilson, Lee. Making it in the music business: the business and legal guide for songwriters and performers. New York: Open Road Media, 2014. Web.
- Moore, Schuyler M. Taxation of the Entertainment Industry. 2015 ed. Chicago, IL: CCH Incorporated, 2015. Print.

### Websites

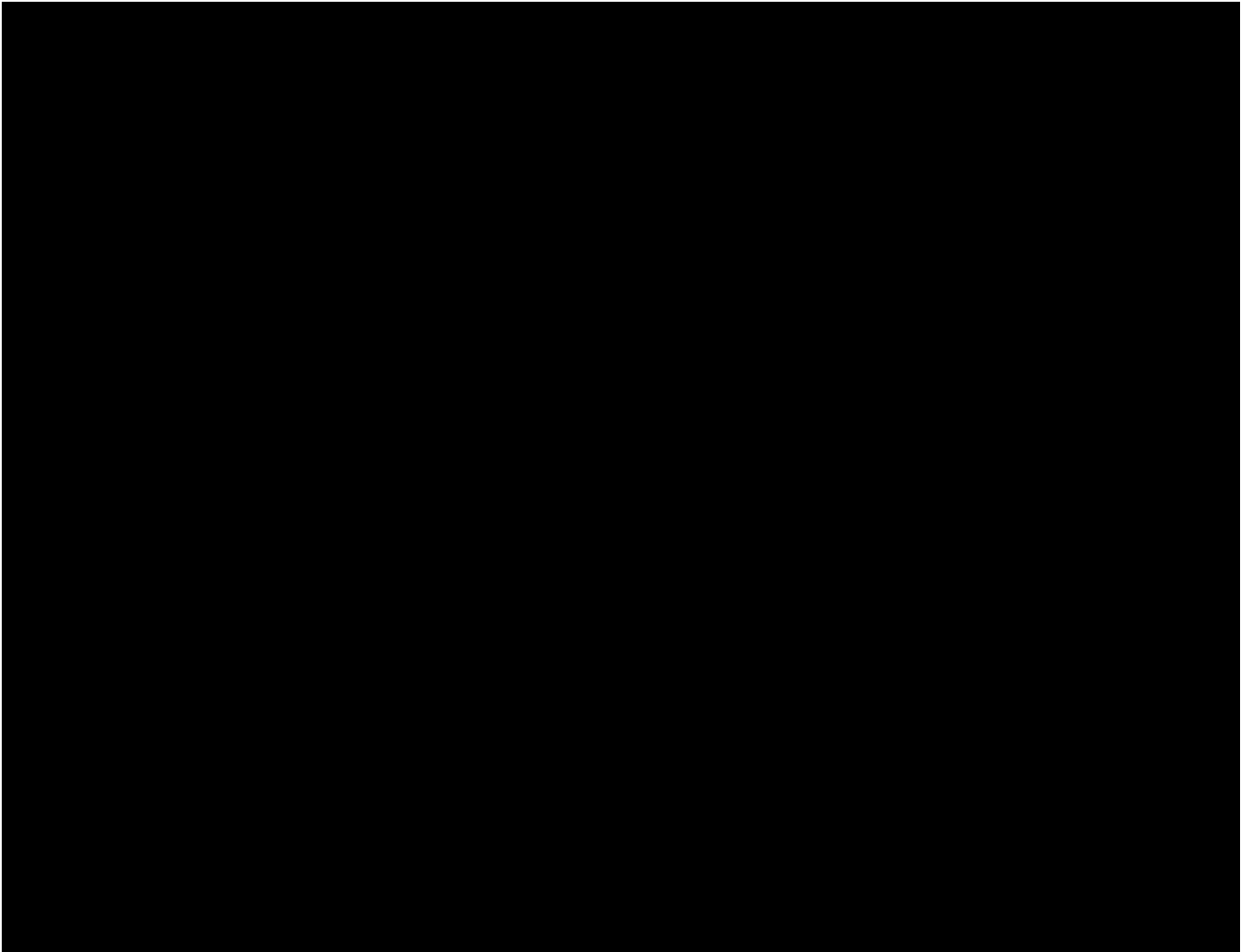
- <https://www.bertelsmann.com/divisions/bmg/#st-1> (last accessed on February 14, 2017)
- <https://www.bertelsmann.com/company/company-profile/> (last accessed on February 14, 2017)
- <https://www.dmpgroup.com/> (last accessed on February 14, 2017)
- <http://www.endersanalysis.com/> (last accessed on February 14, 2017)
- <http://nmpa.org/about/> (last accessed on February 14, 2017)
- <https://www.royaltyexchange.com/learn/mechanical-and-performance-royalties-whats-the-difference> (last accessed on February 14, 2017)
- <http://www.sony.net/SonyInfo/IR/news/20161003E.pdf> (last accessed on February 14, 2017)

Appendix C  
NMPA  
Categories of Revenues (millions)

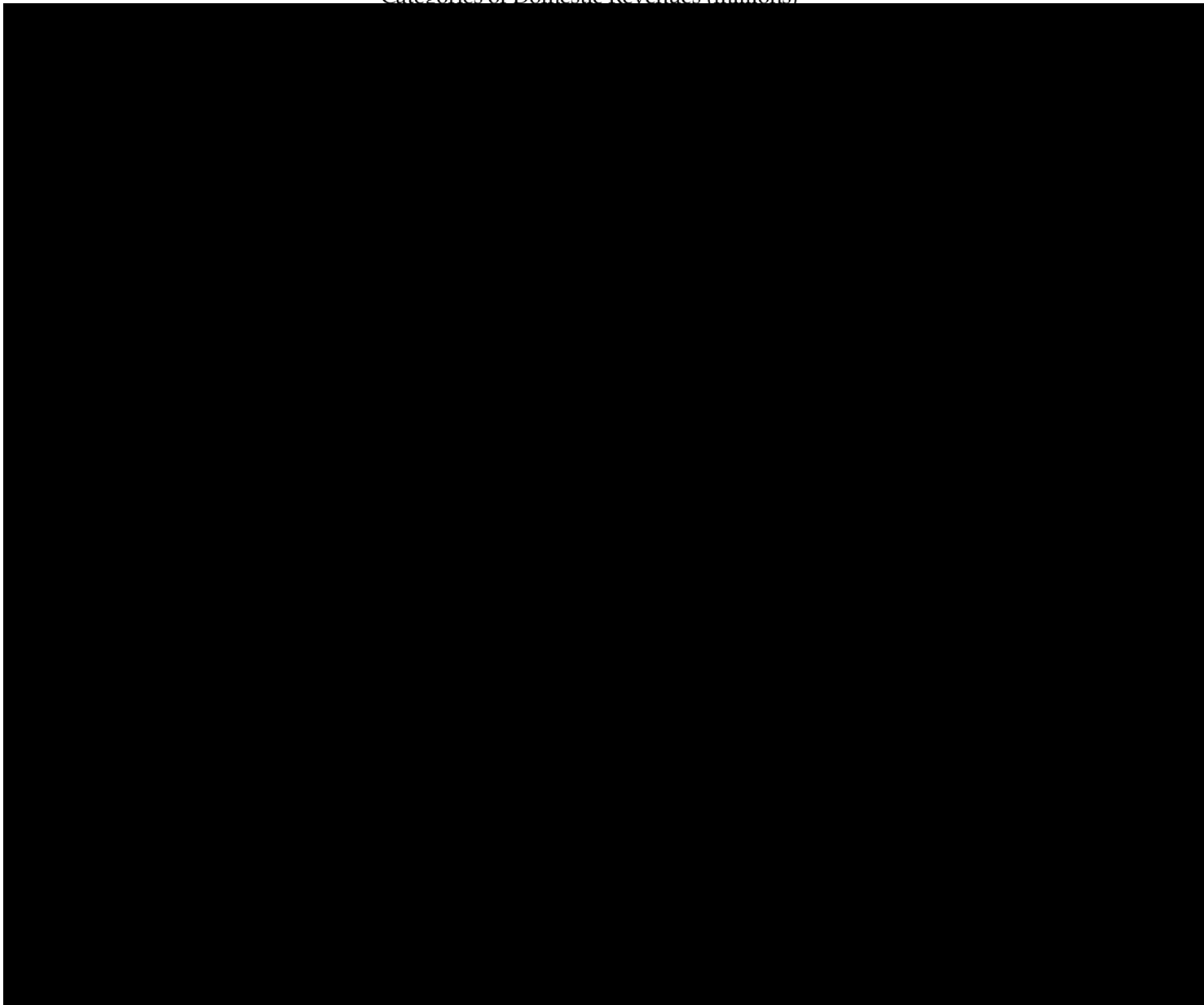




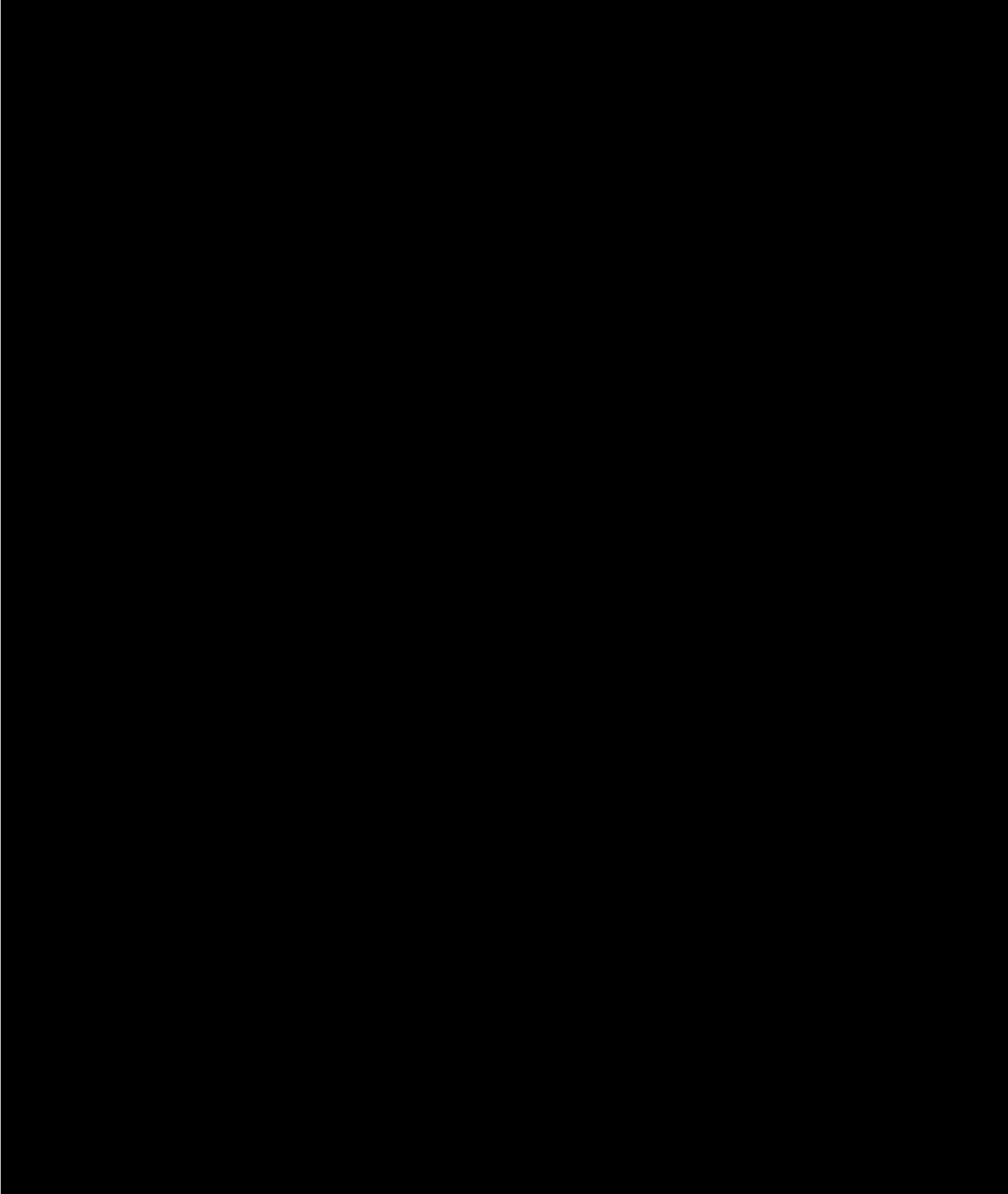
Appendix C  
Sony/ATV  
Categories of Domestic Revenues (millions)



Appendix C  
Sony/EMI  
Categories of Domestic Revenues (millions)



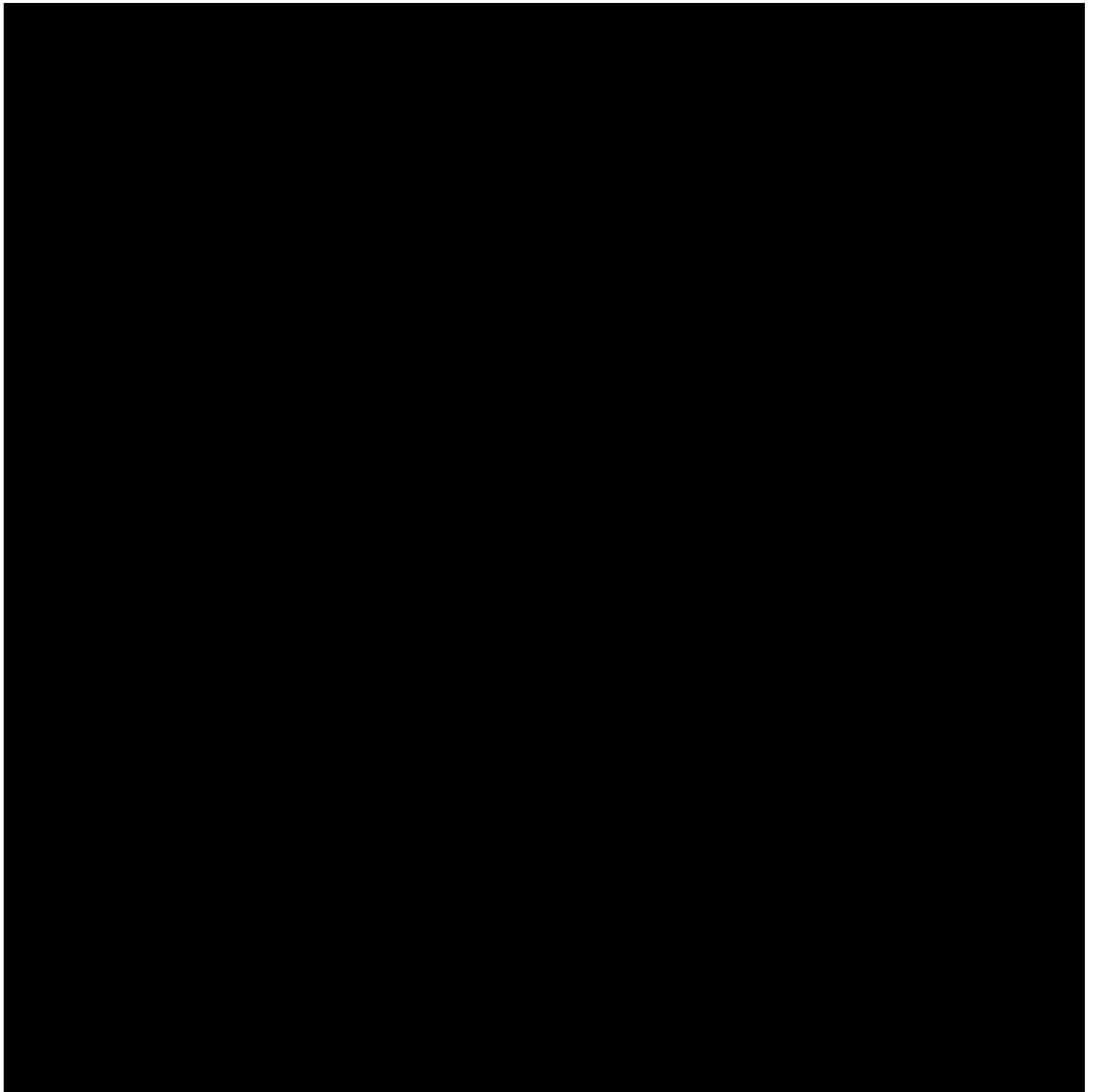
Appendix C  
UMPG  
Categories of Domestic Revenues (millions)



Appendix C  
Warner/Chappell  
Categories of Domestic Revenues (millions)



Appendix C  
BMG  
Categories of Domestic Revenues (millions)



Appendix C  
Downtown  
Categories of Domestic Revenues (millions)



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Sony_Corporation_-_Form_20-F(Jun-23-2015).pdf	Financial Statement	Public
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Vivendi_SA_-_Form_Annual_Financial_Statements(Apr-17-2015).pdf	Financial Statement	Public
Vivendi_SA_-_Form_Annual_Report(Apr-06-2016).pdf	Financial Statement	Public
Warner Music Group Corp., Q4 2016 Earnings Call, Dec 08, 2016.pdf	Earnings Call	Public
Warner_Music_Group_Corp_-_Form_10-K(Dec-08-2016).pdf	Financial Statement	Public