

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

In the Matter of

**DETERMINATION OF RATES AND TERMS
FOR DIGITAL PERFORMANCE IN SOUND
RECORDINGS AND EPHEMERAL
RECORDINGS (WEB IV)**

Docket No. 14-CRB-0001-WR

MEMORANDUM OF LAW OF THE INDEPENDENT MUSIC PUBLISHERS FORUM (IMPF), THE ASSOCIATION OF INDEPENDENT MUSIC PUBLISHERS (AIMP), ALCHEMY COPYRIGHTS, LLC D/B/A CONCORD BICYCLE MUSIC, RAZOR AND TIE MUSIC PUBLISHING, A DIVISION OF NEW RAZOR & TIE ENTERPRISES, LLC, SC PUBLISHING, INC. D/B/A SECRETLY CANADIAN PUBLISHING, BEGGARS MUSIC LTD., 4AD MUSIC LTD., YOUNG TURKS MUSIC LTD. AND MATTITUDE MUSIC, INC., PEN MUSIC GROUP, INC. AND REEL MUZIK WERKS, LLC IN RESPONSE TO THE COPYRIGHT REGISTER'S OCTOBER 14, 2015 ORDER FOR SUPPLEMENTAL BRIEFING CONCERNING NOVEL MATERIAL QUESTION OF SUBSTANTIVE LAW

This is a Memorandum Of Law by interested parties, the Independent Music Publishers Forum (IMPF), the Association of Independent Music Publishers (AIMP), Alchemy Copyrights, LLC d/b/a Concord Bicycle Music (“Concord Bicycle”), Razor and Tie Music Publishing, a division of New Razor & Tie Enterprises, LLC (“Razor and Tie Music Publishing”), SC Publishing, Inc. d/b/a Secretly Canadian Publishing (“Secretly Canadian Publishing”), Beggars Music Ltd., 4AD Music Ltd., Young Turks Music Ltd. and Mattitude Music, Inc., PEN Music Group, Inc. (“Pen Music Group”) and Reel Muzik Werks, LLC (“Reel Muzik Werks”) in response to the Copyright Register’s October 14, 2015 Order for Supplemental Briefing Concerning Novel Material Question of Substantive Law (the “Register’s Oct. 14, 2015 Order”).

Statement Of Interest

The Independent Music Publishers Forum (IMPF) is the first ever lobbying group representing independent music publishers globally. Members include Strictly Confidential Music Publishing, Bucks Music Group Ltd., Wixen Music Publishing, Ynos Music Publishing, Songs Music Publishing, Downtown Music Publishing, Mushroom Music Publishing, Casablanca Media Publishing/Red Bricks Songs and Cooking Vinyl Music Publishing among many others.

The Association of Independent Music Publishers (AIMP) is a Los Angeles, California-based organization founded in 1977 with additional local chapters based in New York City and Nashville. The 3 chapters combined represent approximately 650 individuals who are paid members and who work in the music publishing industry or in related industries. The organization reaches thousands more individuals who have an interest in the music publishing industry. Each chapter holds monthly events that educate and further the interests of music publishers generally and specifically independent music publishers.

Concord Bicycle Music's publishing catalog includes over 55,000 copyrighted works and more than 750 Billboard® chart hits, including "Eye of the Tiger", "Man in the Mirror", "Fortunate Son", "Always On My Mind", "Guantanamera", "Come On Get Happy", "Sister Christian", "Slow Ride", "Stand By Your Man", "Down On The Corner", "The First Time Ever I Saw Your Face", "This is How We Do It", "Who'll Stop The Rain", "Time After Time", "Hey There Delilah", "Mamas Don't Let Your Babies Grow Up To Be Cowboys", "Lady Sings The Blues" and "Wild Thing", just to mention a few. The Concord Bicycle Music songwriter portfolio contains works by a wide and diverse group of creators, including Roy Ayers, Marty Balin, Glen Ballard, Sammy Cahn, Wes Farrell, The Fixx, John Fogerty, Foghat, Marvin Hamlisch, Billie Holiday, Robert Johnson, Montell Jordan, Josh Kelley, Cyndi Lauper, Ernie Maresca, Marilyn Manson, Ben Moody, Night Ranger, Nine Inch Nails, Jim Peterik, Plain White T's, Sonny Rollins, Pete Seeger and Third Eye Blind.¹

Razor and Tie Music Publishing is an active music publisher with over 40 songwriters currently signed in multiple genres and a catalog that contains over 10,000 copyrights including several number one country hits ("Alone with You" and "Whiskey in my Water", to name a few)

¹ Concord Bicycle is also one of the world's largest independent owners of recorded music. Its master recording catalog features works by AFI, Gregg Allman, Joan Baez, George Benson, The Brand New Heavies, Ray Charles, John Coltrane, The Connells, Creed, Creedence Clearwater Revival, Miles Davis, Drowning Pool, Evanescence, Finger Eleven, Vince Guaraldi, Isaac Hayes, George Jones, Kenny G, Carole King, Alison Krauss and Union Station, Steve Martin, Paul McCartney and Wings, Nickel Creek, Nine Inch Nails, The Offspring, The Pharcyde, Pierce The Veil, Robert Plant, Raffi, Otis Redding, Seether, Paul Simon, The Skyliners, Social Distortion, The Staple Singers, James Taylor, George Thorogood, Tone-Loc, Brenton Wood and Young MC. A small sampling of the company's active recording roster includes Paul McCartney, James Taylor, Alison Krauss, Steve Martin and Edie Brickell, Billy Gibbons, Ben Harper, Chris Isaak, Jewel, Andrew McMahon, Matt Nathanson, Nathaniel Rateliff and the Night Sweats, Seether, Esperanza Spalding, Valerie June, Lee Ann Womack and Kenny G; and through its partnership with Loma Vista Recordings, Ghost BC, Health, Marilyn Manson, Spoon and St. Vincent. Concord Bicycle's family of labels includes Bicycle, Concord, Fantasy, Fearless, Hear Music, Loma Vista, Milestone, Nitro, Prestige, Riverside, Rounder, Specialty, Stax, Sugar Hill, Telarc, Vanguard, Vee-Jay and Wind-up.

and many other multi-format hits including “Moneygrabber” by Fitz and the Tantrums and four number one rock hits in 2015 including the current number one “The Otherside” by Red Sun Rising.

Secretly Canadian Publishing is an independent music publisher based in Bloomington, Indiana representing a wide array of songwriters from around the world including Kishi Bashi, Linda Perhacs, Strand of Oaks, Calvin Johnson, Foxygen, and Richard Swift. Secretly Canadian Publishing is also responsible for administering the publishing catalogs of the Numero Group, an archival record label and music publisher based in Chicago, IL representing compositions and recordings sampled by the likes of Kanye West, Common, 50 Cent, Pusha T, Lil Wayne, and Jay Z.

Beggars Music Ltd., 4AD Music Ltd., Young Turks Music Ltd. and Mattitude Music Inc. are a group of affiliated publishing companies, based in the United States and the United Kingdom, who have published compositions by artists and songwriters including Glass Animals, SBTRKT, Cat Power, Kurt Vile and Deerhunter, to name a few.

PEN Music Group is a full service independent music publishing company founded in 1994. PEN Music Group currently represents approximately 25,000 copyrights ranging from “(I’ve Had) The Time Of My Life” (from *Dirty Dancing*), the works of Don Felder (formerly of The Eagles) including “Hotel California”, classic TV themes like *The Andy Griffith Show Theme* and *The Dick Van Dyke Show Theme* (amongst many other themes) as well as contemporary compositions recorded by artists such as Aloe Blacc, Kendrick Lamar, The Black Eyed Peas, Lizz Wright and numerous others.

Reel Muzik Werks is a full service music rights management company located in El Segundo, California that represents over 400,000 copyrights. Reel Muzik Werks provides global

services including writer/publisher administration, licensing and clearance to their diverse slate of clients which includes writers and publishers, broadcast networks, film/TV production companies, international performing rights societies, theme parks and Internet radio broadcasters.

The Copyright Register made clear in the Register's Oct. 14, 2015 Order that interested parties who were not participants in the Section 114 Proceeding can submit responses to both the Register's Oct. 14, 2015 Order as well as the original September 11, 2015 Referral Order by the Copyright Royalty Judges.

Response To The September 11, 2015 CRJ's Referral Order

The undersigned parties hereby adopt the Initial Memorandum of A2IM, AFM and SAG-AFTRA dated October 2, 2015 and the Response Memorandum of A2IM, AFM and SAG-AFTRA dated October 9, 2015, as though fully stated herein. The undersigned parties believe, for the reasons stated in those memoranda, that Section 114 does not permit the Copyright Royalty Judges to award different rates based on the identity or categorization of the licensors.

Response to Question No. 2 From The Register's Oct. 14, 2015 Order

2. How might the Register's decision affect other statutory licenses, e.g., the statutory license in section 115 for the making and distribution of phonorecords of nondramatic musical works? How, if at all, should any such broader implications factor into the Register's analysis?

A finding that there could be differential rates by licensor in Section 114 rate proceedings would impact all Copyright Office rate proceedings, including, of particular concern to the undersigned, the statutory license under Section 115. Given the time that has been given for the preparation of this brief, a much more detailed analysis would have to be performed in order to thoroughly assess the possible impact on Section 115 proceedings of any ruling of the Register with respect to Section 114. Therefore, the Register should specifically confine its determination

to Section 114 and expressly exclude Section 115 and other provisions of the Copyright Act from such determination, in order that the question could be addressed as to section 115 and any other such provisions separately at a later time that would allow sufficient time for full briefing and analysis.

The undersigned also note that the Copyright Royalty Judges should be aware that changes in the ownership of sound recordings and musical compositions occur frequently and thus setting different rates for the same work based on differences in the owner or licensor of the work will further complicate what is already a very complicated licensing environment. As set forth in the Initial Memorandum of A2IM et al., at 9-10, and at 9 fn. 2), as well as succinctly explained in Pandora Media's Initial Brief, October 2, 2015, at 5, there are many practical problems with implementing rates that make a distinction based on the identity or categorization of licensor. Each of the compulsory or statutory licensing regimes would bring their own unique set of problems that current infrastructures are not necessarily equipped to address on a current basis. Moreover, payments to artists and owners would be delayed even further than they are now, which already poses a major hardship for those artists and owners.

CONCLUSION

For the foregoing reasons and the reasons set forth in the Initial Memorandum and the Response Memorandum of A2IM et al., the Register should reject the setting of rates in Section 114 proceedings that differentiate based on the identity of the licensor, and particularly reject doing so in Webcasting IV.

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Respectfully submitted,



Grant Manship (IN Bar No. 29309-88)
1499 West 2nd Street
Bloomington, IN 47403
Tel: (812) 822-3618
Email: grant@secretlygroup.com

Counsel for The Independent Music Publishers Forum (IMPF), The Association of Independent Music Publishers (AIMP), Alchemy Copyrights, LLC d/b/a Concord Bicycle Music, Razor and Tie Music Publishing, a division of New Razor & Tie Enterprises, LLC, SC Publishing, Inc. d/b/a Secretly Canadian Publishing, Beggars Music Ltd., 4AD Music Ltd., Young Turks Music Ltd. and Mattitude Music, Inc., PEN Music Group, Inc. and Reel Muzik Werks, LLC