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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RADIO MUSIC LICENSE COMMITTEE, INC., Plaintiff, v. GLOBAL MUSIC RIGHTS, LLC, Defendant.	Civil Action No. 16 6076

ORDER

AND NOW, this __ day of November, 2016, upon consideration of Plaintiff's Motion for a Preliminary Injunction, it is hereby ORDERED that the motion is GRANTED. Until final disposition of this action or further order of the Court, Global Music Rights, LLC ("GMR") is hereby ORDERED to offer to all U.S. commercial radio stations a blanket license to GMR's entire repertory at a reasonable rate that is proportional to the annual rates each station pays to ASCAP or BMI on a weighted share basis. It is further ORDERED that GMR and anyone with actual notice of this Order who is in active concert or participation with GMR, including, without limitation, the affiliates from whom GMR acquired licensing rights, are PRELIMINARILY ENJOINED from initiating any legal proceeding against any U.S. commercial radio station for copyright infringement of any portion of GMR's repertory, unless such station has had fair opportunity to consider, and has rejected, participation in such a reasonable license.

BY THE COURT,

____
Honorable United States District Judge

CDJ

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RADIO MUSIC LICENSE COMMITTEE, INC., Plaintiff, v. GLOBAL MUSIC RIGHTS, LLC, Defendant.	Civil Action No. 16 6076 **Oral Argument Requested**

PLAINTIFF RADIO MUSIC LICENSE COMMITTEE'S MOTION FOR A PRELIMINARY INJUNCTION

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, plaintiff Radio Music License Committee, Inc. ("RMLC") respectfully moves the Court for a preliminary injunction to maintain the *status quo* and prevent defendant Global Music Rights, LLC ("GMR") from imposing unilateral and monopolistic licensing terms on RMLC's members. The grounds for this motion are as follows:

1. RMLC represents the music-licensing interests of the U.S. commercial radio industry, including in negotiations with performing rights organizations ("PROs"). Defendant GMR—now the fourth PRO operating in the United States—is a monopolist licensor of copyrighted musical works that is deploying a calculated scheme to extort the radio industry. GMR is emboldened with the knowledge that on January 1, 2017, it will have even more power to exert its monopoly over the right to license a critical mass of must-have songs that radio stations cannot avoid playing; it has implicitly threatened to start suing radio stations after this date unless they agree to pay supracompetitive rates for GMR's blanket license to play those songs. GMR's unlawful conduct violates Section 2 of the Sherman Act, and absent an injunction, radio stations will imminently suffer irreparable harm as early as January 1, 2017.

2. RMLC is likely to succeed on the merits because GMR has engaged in a nearly identical course of conduct as SESAC, another PRO, which succumbed to private rate regulation for the next 20 years after RMLC sued it in 2012 for being a monopolist and this Court both concluded that RMLC was likely to prevail on the merits and denied SESAC's motion to dismiss RMLC's monopolization claim. *Radio Music License Comm., Inc. v. SESAC, Inc.*, 2013 WL 12114098, at *1 (E.D. Pa. Dec. 23, 2013); *Radio Music License Comm., Inc. v. SESAC, Inc.*, 29 F. Supp. 3d 487, 491 (E.D. Pa. 2014). Like SESAC, GMR has similarly obtained monopoly power through exclusionary conduct, and threatens to raise prices to supracompetitive levels. GMR has intentionally pooled copyrighted musical works into a single must-have blanket license that it offers without meaningful alternatives. It also has insulated itself from competition by not enabling stations to determine with reliability the works in its repertory and by entering into *de facto* exclusive contracts with its affiliates. GMR demands licensing rates far out of proportion to what stations would have paid to ASCAP or BMI, two other PROs, before GMR monopolized the market for its repertory of must-play songs. This conduct amounts to illegal monopolization and/or attempted monopolization in violation of Section 2 of the Sherman Act.

3. RMLC and its member stations will suffer serious and irreparable harm if the Court does not issue preliminary injunctive relief. GMR's threatened exercise of its monopoly power places radio stations in an impossible position: they can cave to GMR's demands and buy a license at extortionate prices, or they can decline to do so; but, either way, they face a threat of financially ruinous copyright infringement claims. GMR does not provide stations with a reliable, transparent, and real-time way to determine precisely which works GMR's blanket license covers. Nor does GMR make available reliable, real-time information about the works in its repertory for which it only offers a "fractional" license. For those works, a license from GMR

alone does not give a station the right to play those songs without the risk of copyright infringement. Radio stations cannot practically decline a GMR license and avoid playing all of the songs in GMR's repertory because doing so would cause substantial and irreparable harm to their reputation, and they cannot risk not taking a license and having GMR make good on its implicit threat to sue them for copyright infringement if they play one of GMR's works unintentionally. Being sued for copyright infringement could also result in substantial reputational injury and loss of its listeners' good will. GMR's imminent conduct also threatens to irreparably harm radio stations' dealings with other PROs, all three of which has sought to tie their licensing fees to the anticompetitive rates that GMR is currently demanding from RMLC.

4. RMLC respectfully requests that the Court maintain the *status quo* pending the outcome of this case by preventing GMR from imposing its monopolistic will on RMLC's member stations, so that the industry does not suffer harm that no remedy in this case or any other could make right.

Wherefore, RMLC respectfully requests that this Court enter a preliminary injunction (1) requiring GMR to offer to all U.S. commercial radio stations a blanket license to GMR's entire repertory at a reasonable rate that is proportional to the annual rates that each station pays to ASCAP and BMI on a weighted share basis; and (2) precluding GMR or its agents (including its affiliates) from suing any U.S. commercial radio station for copyright infringement of any portion of the claimed GMR repertory until such station has had fair opportunity to consider, and has rejected, participation in such a reasonable license. RMLC also respectfully requests a hearing on this motion at the earliest practicable time so that it can prove these allegations and prevent further irreparable harm.

Dated: November 18, 2016

Respectfully submitted,

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Attorneys for Plaintiff
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CERTIFICATE OF SERVICE

The undersigned certifies that, on November 18, 2016, a true and correct copy of the foregoing PLAINTIFF RADIO MUSIC LICENSE COMMITTEE'S MOTION FOR A PRELIMINARY INJUNCTION was served on all counsel of record via email and via USPS first-class postage-paid mail to:

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/s/ Margaret M. Zwisler
Margaret M. Zwisler (*pro hac vice*)

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RADIO MUSIC LICENSE COMMITTEE, INC., Plaintiff, v. GLOBAL MUSIC RIGHTS, LLC, Defendant.	Civil Action No. ___

PLAINTIFF RADIO MUSIC LICENSE COMMITTEE'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR A PRELIMINARY INJUNCTION

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INTRODUCTION

Plaintiff Radio Music License Committee (RMLC) seeks a preliminary injunction to stop defendant Global Music Rights, LLC (GMR) from imminently and irreparably injuring U.S. commercial radio stations beginning on January 1, 2017. GMR is a new performing rights organization ("PRO")—now the fourth operating in the United States—that grants radio stations and other consumers the right to perform works that GMR claims are owned by the songwriters and publishers who are its affiliates. In reality, GMR is an unlawful monopolist that is deploying a calculated scheme to extort the radio industry. GMR publicly announced that it intentionally created a repertory of copyrighted songs that it knows radio stations "cannot exist without" and has implicitly threatened to start suing radio stations for copyright infringement beginning January 1, 2017 unless they agree to pay supracompetitive rates for a license to play those songs.

Although GMR has only been around since 2013, it has been established for 75 years that unregulated PROs, like GMR, violate the antitrust laws. The two largest PROs, ASCAP and BMI, have been subject to judicially-monitored consent decrees since the U.S. Department of Justice first sued them back in the 1940s. Indeed, earlier this year, after conducting a two-year investigation, DOJ refused to amend the longstanding consent decrees after finding that they were still necessary to prevent the PROs from engaging in anticompetitive conduct. The third PRO, SESAC, succumbed to private rate regulation for the next 20 years after RMLC sued it in 2012 for being a monopolist and this Court concluded that RMLC was likely to prevail on the merits. *Radio Music License Comm., Inc. v. SESAC, Inc.* ("*SESAC I*"), 2013 WL 12114098, at *1 (E.D. Pa. Dec. 23, 2013); *Radio Music License Comm., Inc. v. SESAC, Inc.* ("*SESAC II*"), 29 F. Supp. 3d 487, 491 (E.D. Pa. 2014).

GMR brazenly seeks to do exactly what got ASCAP, BMI and SESAC into so much trouble; it is leveraging its enormous monopoly power to force the radio industry into paying exorbitant prices for a license to the musical works it claims are covered by its repertory, with a credible threat of financially ruinous copyright infringement claims. In fact, GMR basically copied SESAC's same unlawful tactics, but made them even worse by adding uncertainty about the scope and legality of the license that it is forcing radio stations to buy. Because GMR has such clear monopoly power, it is able to force radio stations to buy a license, even though stations do not have a way to determine with any confidence which songs the license allows them to play at any given time without threat of copyright infringement. The risk of not having a license—up to $150,000 per song—is simply too great. GMR is, in effect, forcing stations to buy "insurance" for a risk it created without any clear idea what that insurance will cover. Worse, the effects of GMR's abuse of monopoly power would not be limited to GMR and its claimed repertory. Other PROs have made clear that they intend to use the artificially inflated GMR demands as a baseline for their own royalty demands, thus escalating GMR's abuse across the industry.

RMLC is seeking preliminary relief on behalf of its members, comprising thousands of U.S. radio stations, to maintain the status quo and reduce the potential impact of GMR's illegal activity while this litigation is pending. Although RMLC has grounds to seek much more expansive relief, at this time, it is merely asking the Court to order GMR to behave reasonably, and not anticompetitively, while the Court resolves the merits of RMLC's claims in this litigation. Specifically, RMLC requests that the Court preliminarily order that, until the termination of this litigation, (1) GMR must offer to all U.S. commercial radio stations a blanket license to GMR's entire repertory at a reasonable rate that is proportional to the annual rates that each station pays to ASCAP and BMI, the original sources of GMR's repertory, on a weighted share basis, and (2) GMR and its agents (including its affiliates) must not sue any U.S. commercial radio stations for copyright infringement of any portion of the claimed GMR repertory until such station has had fair opportunity to consider, and has rejected, participation in such a reasonable license.

BACKGROUND

RMLC is a trade association whose mission is to negotiate public-performance license fees with PROs for the benefit of its radio station members and the commercial radio industry more generally. Velez Decl.[1] ¶¶ 5, 7. Radio stations need to obtain licenses, so they can broadcast music without infringing copyrights. Levin Decl.[2] ¶ 4; Paulus Decl.[3] ¶ 2; Warshaw Decl.[4] ¶ 2; Coloff Decl.[5] ¶ 2; Velez Decl. ¶ 5. Copyright holders, including songwriters and their affiliated music publishers, have the right to directly license their works to radio stations, unless they have relinquished that right. Velez Decl. ¶ 5. It also has been the practice in the music industry for decades for copyright holders to bestow licensing authority upon a common agent, which can negotiate with and grant permissions to music users on their behalf. *Id.* ¶ 6. PROs have served this function in the music industry for more than 100 years, acting as intermediaries between consumers and copyright holders. *Id.*

It also has been established for 75 years that PROs, if left unregulated, are anticompetitive and violate the Sherman Act. Since the 1940s, the two largest PROs, ASCAP

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[1] Ex. A, Declaration of William Velez, Nov. 17, 2016 ("Velez Decl.").

[2] Ex. B, Declaration of Eugene D. Levin, Nov. 17, 2016 ("Levin Decl.").

[3] Ex. C, Declaration of Dave Paulus, Nov. 14, 2016 ("Paulus Decl.").

[4] Ex. D, Declaration of Jeffrey D. Warshaw, Nov. 15, 2016 ("Warshaw Decl.").

[5] Ex. E, Declaration of Jim Coloff, Nov. 17, 2016 ("Coloff Decl.").

and BMI, have been operating under consent decrees overseen by the U.S. Department of Justice.[6] Those consent decrees require monitoring of ASCAP and BMI's license rates by a federal court to make sure that they are not anticompetitive. DOJ Statement at 7; *see also Radio Music License Comm., Inc. v. SESAC, Inc.*, 29 F. Supp. 3d 487, 492 (E.D. Pa. 2014). The consent decrees also prohibit, among other things, each of those PROs from interfering in any way with the ability of music users, like radio stations, to license copyrights directly from the copyright owners, instead of licensing through a PRO. Velez Decl. ¶ 10. In August 2016, DOJ completed a two-year review of the ASCAP and BMI consent decrees and concluded that neither decree should be amended and that both were still necessary to prevent harm to competition. DOJ Statement at 3, 22.

In October 2012, RMLC brought suit against the third PRO, SESAC, which is not subject to any consent decree. Velez Decl. ¶ 11; *Radio Music License Comm., Inc. v. SESAC, Inc.* ("*SESAC I*"), 2013 WL 12114098, at *1 (E.D. Pa. Dec. 23, 2013); *Radio Music License Comm., Inc. v. SESAC, Inc.* ("*SESAC II*"), 29 F. Supp. 3d 487, 491 (E.D. Pa. 2014). RMLC alleged that, under new management, SESAC had in recent years hand-picked its affiliates to build an indispensable repertory of works that U.S. radio stations could not reasonably avoid broadcasting, eliminated price competition among its affiliates through *de facto* exclusive licensing arrangements, and willfully obtained a monopoly of its own by not enabling radio stations to determine reliably the musical works in its repertory, not offering to sell radio stations a non-blanket license, and implicitly threatening radio stations with hefty copyright infringement fines for broadcasting works from SESAC's repertory without a proper license. *Id.* at 492-94.

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[6] Dep't of Justice, Statement of the Department of Justice on the Closing of the Antitrust Division's Review of the ASCAP and BMI Consent Decrees at 6-7 (Aug. 4, 2016) ("DOJ Statement"), https://www.justice.gov/atr/file/882101/download.

As RMLC alleged, these actions violated, among other things, Section 2 of the Sherman Act. *Id.* Because SESAC persisted in its abusive practices during the litigation and demanded that radio stations agree to five-year contract extensions imposing anticompetitive increases in license fees, RMLC brought a motion to preliminarily enjoin SESAC from imposing unilateral and monopolistic rate increases on RMLC's members. *SESAC I*, 2013 WL 12114098, at *12; Velez Decl. ¶ 12.

On December 23, 2013, following a three-day hearing with live testimony from fact witnesses and expert economists for both sides, U.S. Magistrate Judge Lynne Sitarski found that RMLC had shown a likelihood of success on its Section 2 claim. *Id.* at *13-20. Judge Sitarski agreed with RMLC that "there are no substitutes for a SESAC license and the relevant market is the market for SESAC's blanket license." *Id.* at *10. Additionally, she found that SESAC monopolized the market by "offering only blanket licenses without any real alternatives and setting prices without restriction," and "by failing to disclose its repertory and ensuring that users have no alternatives but to purchase their licenses." *Id.* at *19-20. Despite finding that RMLC had a likelihood of success, Judge Sitarksi ultimately recommended against a preliminary injunction because she concluded that the rate increase that RMLC was seeking to enjoin could be compensated later with money damages, and therefore was not irreparable. *Id.* at *20-22.

On February 20, 2014, Judge C. Darnell Jones, II adopted Judge Sitarski's report and recommendation "in full" (except for one non-material change to one factual finding). *See RMLC* v. *SESAC Inc.*, Civ. A. No. 12-cv-5807 (E.D. Pa. Feb. 20, 2014), ECF No. 68.

On June 26, 2014, following the preliminary injunction proceeding, Judge Jones also denied SESAC's motion to dismiss RMLC's Section 2 claim. *SESAC II*, 29 F. Supp. 3d at 499-502. The Court found that the complaint "cogently portray[ed]" illegal monopolization in violation of Section 2 of the Sherman Act by alleging that "SESAC excludes competitors by obtaining a critical mass of must-have works, selling them exclusively in the blanket license format, discouraging direct licensing by not offering carve-out rights and obscuring the works in its repertory." *Id.* at 501.

Following the Court's denial of SESAC's motion to dismiss and the Court's adoption of Judge Sitarski's findings that RMLC was likely to succeed on its Section 2 claim, SESAC decided to settle the litigation. In July 2015, RMLC and SESAC entered into a 20-year settlement agreement that prevents SESAC from imposing supracompetitive rates on RMLC-represented stations and restores copyright owners' ability to competitively license their works directly to radio stations. Velez Decl. ¶ 13. Under the agreement, SESAC and RMLC agreed to negotiate in good faith to set rates and licensing terms through the year 2037. *Id.* If negotiations fail, rates are determined through binding arbitration, much like the rate court does under the consent decrees governing BMI and ASCAP. *Id.* Additionally, SESAC committed to provide greater transparency regarding the songs in its repertory and to cease entering into agreements with affiliates amounting to *de facto* exclusive licenses. *Id.*

SESAC engaged in a nearly identical course of anticompetitive licensing practices with respect to U.S. television stations. In 2009, a group of local television stations brought a class action alleging that SESAC violated Sections 1 and 2 of the Sherman Act by forcing stations to accept "all or nothing" blanket licenses and engaging in other actions "to close off to stations alternative or less expensive sources of performance rights." *Meredith Corp. v. SESAC LLC*, 1 F. Supp. 3d 180, 194-95 (S.D.N.Y. 2014). Judge Paul A. Engelmeyer of the Southern District of New York denied in part SESAC's motion for summary judgment based on evidence showing that SESAC "engaged in an overall anti-competitive course of conduct designed to eliminate meaningful competition to its blanket license" and monopolized the market for the performance rights to the music in its repertory. *Id.* at 196, 222. Following that ruling, SESAC settled the suit by paying $58.5 million to the television industry and by agreeing to an arbitration procedure to determine reasonable rates. *See Meredith Corp. v. SESAC LLC*, No. 09-cv-9177 (S.D.N.Y. Oct. 15, 2014), ECF No. 175, Ex. 1.

GMR has eagerly copied the unlawful SESAC tactics that were the subject of RMLC's 2012 lawsuit and the *Meredith* litigation. GMR was founded in 2013 under the umbrella of Azoff MSG Entertainment, a joint venture between music-industry icon Irving Azoff's Azoff Music Management and the Madison Square Garden Company. Velez Decl. ¶ 14. From its inception, GMR's goal has been to lure a relatively small but strategically selected group of coveted songwriters away from ASCAP and BMI with a promise to pay them at least 30% more than ASCAP or BMI can pay them.[7] *Id.* ¶¶ 14-16. To fund this promise, GMR intends to price gouge radio stations and force them to pay exorbitant rates for licenses to perform those songwriters' works.

GMR's management has purposefully built a select client base of artists that radio stations cannot avoid playing to enable it to extract higher licensing fees from those stations. *Id.* ¶ 15. GMR quickly amassed a bundle of an estimated 20,000 essential works, from approximately 100 songwriters, enjoying even more success than SESAC did in its own similar effort. *Id.* ¶ 14. That repertory includes works written or performed by stars Adele, Aerosmith, the Beatles, Bruno Mars, Jay-Z, Madonna, Pharrell Williams, Ryan Tedder, Steve Miller Band,

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[7] *See* Ben Sisario, "New Venture Seeks Higher Royalties for Songwriters," N.Y. TIMES (Oct. 29, 2014), http://www.nytimes.com/2014/10/30/business/media/new-venture-seeks-higher-royalties-for-songwriters.html.

Taylor Swift, Tom Petty & The Heartbreakers, and U2, among many others. Levin Decl. ¶ 5; Paulus Decl. ¶ 3; Warshaw Decl. ¶ 3; Coloff Decl. ¶ 3; Velez Decl. ¶ 14.

GMR has eliminated competition by inviting rival owners of copyrighted musical works to abandon competition among themselves and to appoint GMR as their effective exclusive selling agent. Velez Decl. ¶¶ 14, 17-18; Peterson[8] Decl. ¶¶ 18-20. In doing so, GMR makes itself the effective sole licensor of public performance rights in the works within its repertory. Velez Decl. ¶¶ 14, 17-18; Peterson Decl. ¶¶ 18-20. To ensure its ability to hold up the radio industry and other consumers, GMR has amassed a critical volume of copyright holders, thus making its blanket license indispensable. Levin Decl. ¶¶ 5, 18, 21; Paulus Decl. ¶¶ 3, 6, 9; Warshaw Decl. ¶¶ 3, 7, 10; Coloff Decl. ¶¶ 3, 6, 9; Velez Decl. ¶ 14. And this was entirely intentional; GMR has brazenly stated publicly that it designed its repertory precisely so that no radio station can "comfortably exist without" it. Velez Decl. ¶ 15.

To round out the exclusionary power of its repertory, GMR has taken additional steps to insulate itself from any competition. First, it is not offering stations any alternatives to its blanket licenses, such as adjustable fee blanket licenses or per-program licenses. Levin Decl. ¶ 9; Paulus Decl. ¶ 3; Warshaw Decl. ¶ 3; Coloff Decl. ¶ 3; Velez Decl. ¶ 17. Second, GMR has ensured that its right to license its affiliates' works are de facto exclusive. GMR will not permit radio stations any carve out rights from its blanket license price. Levin Decl. ¶ 9; Velez Decl. ¶ 17. That means, if a station were to enter into a license directly with one of GMR's songwriter affiliates, or attempt to remove the works of individual GMR affiliates from its playlist, or reduce overall spins of GMR works, GMR would not permit the station to reduce the price of its blanket license to account for any of that effort. Warshaw Decl. ¶ 5; Velez Decl. ¶¶ 17-18. This

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[8] Ex. F, Declaration of Steven R. Peterson, Nov. 18, 2016 ("Peterson Decl.").

results in de facto exclusive dealing between GMR and its affiliates because GMR knows that no economically rational radio station would ever enter into a direct license with one of its songwriter affiliates without a discount off of GMR's blanket license. Velez Decl. ¶ 18; Peterson Decl. ¶ 19. Otherwise, the station would simply be paying twice for access to the same songs. Velez Decl. ¶ 18; Peterson Decl. ¶ 19. Similarly, it would make no sense to attempt to eliminate individual GMR affiliates' works from a station's playlist or reduce spins of GMR's works, if it did not result in any reduction in the license fee GMR charges. Velez Decl. ¶ 18; Peterson Decl. ¶ 22. That means, for example, an all country station could not try to reduce its license fees by eliminating pop music artists like Adele or U2 that it is unlikely to play. All of that conduct enhances GMR's market power.

Finally, GMR has taken steps to ensure that prospective licensees cannot identify precisely which musical works are covered by the license or the degree to which they are covered. Levin Decl. ¶ 11; Paulus Decl. ¶¶ 4, 7; Warshaw Decl. ¶ 4; Coloff Decl. ¶ 5; Velez Decl. ¶¶ 19-20. Unlike ASCAP's and BMI's historic licenses to RMLC stations, GMR readily acknowledges that it does not have—or is not willing to grant—the full (or 100%) right to perform all the works in its repertory. Levin Decl. ¶ 10; Velez Decl. ¶ 20. Most of the works in GMR's repertory are works that are co-owned by multiple copyright owners, less than all of whom are affiliated with GMR. Velez Decl. ¶ 20. And GMR has made explicit that it is only willing to license works on a "fractional" basis—which means that for all these works not 100% controlled by GMR, a license from GMR does not give radio stations the right to play those works; they must still obtain separate licenses from the other owners of those works or risk infringement claims. Levin Decl. ¶ 10; Velez Decl. ¶ 20. The lack of transparency only exacerbates the problem: where works are co-owned by GMR affiliates and affiliates of other

PROs, a station's pre-existing license from those other PROs might be sufficient to obviate a GMR license to play those songs. Velez Decl. ¶ 20. But because GMR does not tell radio stations, in any reliable or transparent way, which of its works it controls 100% of the rights to perform as opposed to those it can only license "fractionally," or which works may be covered by a license from another PRO, radio stations have no way to determine what value, if any, a GMR license actually provides—or whether, conceivably, at least some stations may not need a license at all in order to avoid copyright infringement. Warshaw Decl. ¶ 4; Velez Decl. ¶ 20; Peterson Decl. ¶ 14. The net result is an economic monopoly that the radio industry is powerless to resist. Peterson Decl. ¶¶ 17, 34-35, 42-45.

GMR sought to negotiate with RMLC on behalf of its member stations beginning in mid-2015. Levin Decl. ¶ 6. RMLC negotiated in good faith, but ultimately determined that GMR threatened to perpetrate the same anticompetitive harms that SESAC wrought on the industry up until the time that it entered into the 20-year settlement agreement. *Id.* ¶¶ 6-7. GMR has demanded outrageous fees that are grossly disproportional to the underlying share of works in its repertory. First, although on information and belief GMR's share is between 5% and 7.5% based on a weighted percentage of total plays, GMR has demanded fees of over $42 million for 2017 alone from a subset of RMLC's member stations representing only about 75-80% of total U.S. radio revenues, based on an artificial "value share" that equates to more than 15% of U.S. radio public performance license fees. *Id.* ¶ 8. Second, GMR offers only a fractional license, which means that for a majority of the works within GMR's repertory which consist of co-owned works only partially controlled by GMR, GMR's position is that its blanket license would not protect a station from an infringement lawsuit by the owners of the remaining fractions. Levin Decl. ¶ 10; Velez Decl. ¶¶ 20, 24. Third, GMR has demanded additional rate increases for each of 2018 and

2019, regardless of whether GMR's repertory will contain fewer or less frequently played works, or a smaller percentage of fully-controlled works. Levin Decl. ¶ 8. GMR has made clear that it will not agree to anything but a blanket license without carve-outs for direct licensing, and has indicated that if RMLC does not agree to its demands, it is willing to pursue its remedies against radio stations that have not signed a license with GMR, meaning that stations, including RMLC member stations, without a GMR license by January 1, 2017 will be at risk of potential infringement suits. *Id.* ¶¶ 5, 9, 12; Warshaw Decl. ¶¶ 3, 5; Coloff Decl. ¶¶ 3-4; Velez Decl. ¶ 21. In early November 2016, GMR definitively refused RMLC's offer to pay an interim, reasonable royalty and have a neutral arbitrator set final rates. Levin Decl. ¶ 13.

If GMR succeeds in its unlawful scheme, it threatens to have an industry-wide adverse impact that goes far beyond GMR and its repertory. In recent months, RMLC has also sought to reach an agreement on license rates with the three other PROs; and each of those other PROs has made clear that it will try to extract higher license fees from radio stations if those stations give in to GMR's demands and pay GMR's extortionate fees. *Id.* ¶¶ 14-17; Velez Decl. ¶ 28. In the ongoing RMLC/SESAC arbitration proceedings (which were established by their settlement agreement), SESAC has held GMR out as a model for its own rate demands and is seeking to compel production of GMR's license agreements for use as benchmarks for SESAC license fees. Levin Decl. ¶ 16; Velez Decl. ¶ 28. Moreover, both ASCAP and BMI have sought "most-favored nation" or "reopener" clauses with RMLC that would be triggered in the event that RMLC's member stations agree to the demanded GMR royalty amounts. Levin Decl. ¶ 16; Velez Decl. ¶ 28. Indeed, BMI has stated that its preference is to wait out its license negotiations with RMLC until GMR can set the market. Levin Decl. ¶ 16; Velez Decl. ¶ 28. Thus, if GMR succeeds in imposing its artificially inflated rates, radio stations could be forced to suffer massive additional harm by being forced to negotiate and litigate against asserted GMR "benchmarks" and potentially to pay artificially inflated rates to these other PROs as well. Levin Decl. ¶¶ 14, 17; Velez Decl. ¶ 28.

ARGUMENT

A preliminary injunction is proper where the movant can show (1) "a likelihood of success on the merits; (2) that it will suffer irreparable harm if the injunction is denied; (3) that granting preliminary relief will not result in even greater harm to the nonmoving party; and (4) that the public interest favors such relief." *B.H. v. Easton Area Sch. Dist.*, 827 F. Supp. 2d 392, 400 (E.D. Pa. 2011). The moving party need only make a *prima facie* case showing a reasonable probability that it will prevail on the merits. *Highmark, Inc. v. UPMC Health Plan*, 276 F.3d 160, 173 (3d Cir. 2001); *see Columbia Gas Transmission, LLC v. 1.01 Acres, More or Less in Penn Twp., York County, Pa.*, 768 F.3d 300, 315 (3d Cir. 2014). RMLC amply meets these requirements.

I. RMLC IS LIKELY TO SUCCEED ON THE MERITS OF ITS ANTITRUST CLAIMS

This Court previously found that RMLC was likely to succeed on the merits of its Section 2 claim against SESAC, whose same monopolistic tactics GMR seeks to emulate, and subsequently denied SESAC's motion to dismiss, finding that RMLC properly alleged monopolization under Section 2. *See SESAC I*, 2013 WL 12114098, at *13-20 *SESAC II*, 29 F. Supp. 3d at 497-502. Similarly, the Southern District of New York concluded in 2014 that a reasonable jury could find SESAC illegally monopolized the market for performance rights to the music in its own repertory. *Meredith Corp.*, 1 F. Supp. 3d at 222-23. Like SESAC, GMR has similarly obtained and maintained monopoly power through exclusionary conduct, and threatens to raise prices to supracompetitive levels. GMR has intentionally pooled copyrighted musical works into a single must-have blanket license that it offers without meaningful alternatives, and it insulates itself from competition by not enabling stations to determine with reliability the works in its repertory and by entering into *de facto* exclusive contracts with its affiliates.

A. GMR's Monopoly Violates Section 2 Of The Sherman Act

To succeed on its clam for monopolization, RMLC must show that GMR (1) possesses monopoly power (2) that it willfully acquired or maintains "as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident." *Broadcom Corp. v. Qualcomm Inc.*, 501 F.3d 297, 307 (3d Cir. 2007). RMLC will easily be able to show both.

1. RMLC Will Show Both Direct And Indirect Evidence Of GMR's Monopoly Power

Monopoly power may be established either through "direct evidence" of anticompetitive effects, such as supracompetitive prices or restricted output, or though "indirect evidence" of a dominant share in the relevant market. *Broadcom*, 501 F.3d at 307. RMLC will prove that GMR meets both tests.

As was true for SESAC, direct evidence of GMR's monopoly power abounds. GMR has (and is threatening to exercise) the power to impose and maintain exorbitant prices that are proportionately greater than those charged by the much larger ASCAP and BMI, without suffering any loss of sales. Levin Decl. ¶¶ 8, 21; Peterson Decl. ¶ 43. GMR has demanded that RMLC member stations enter into licensing agreements and pay outrageous fees, which radio stations will have no choice but to accept unless they obtain relief from this Court. Levin Decl. ¶¶ 8, 21; Paulus Decl. ¶ 9; Warshaw Decl. ¶ 10; Coloff Decl. ¶ 9. In particular, GMR demands supracompetitive rates of over $42 million in 2017 alone from a subset of RMLC's member stations representing only about 75-80% of total U.S. radio revenues. GMR also demands that this amount increase each of the next two years. Levin Decl. ¶ 8. Neither the fee demands nor the proposed fee increases are proportional to GMR's relative share of public performances on radio, nor are they influenced by any price competition from others; they are based on GMR's ability to insulate itself from any competition. *Id.* On information and belief, these demands imply GMR values its repertory of approximately 20,000 works two to three times higher than its actual share of radio performances. *Id.*; Velez Decl. ¶ 14. It is "take it or leave it" pricing fully divorced from market constraints. The Court in *SESAC II* found that RMLC had "directly allege[d] sufficient facts from which the court could make a plausible inference that defendant possesses monopoly power" based on similar evidence of SESAC's ability to control prices. 29 F. Supp. 3d at 500.

Not only do the licensing fees that GMR demands far outstrip the actual weighted share of its repertory, they also ignore the fact GMR is only willing to license works on a "fractional" basis, and most of the works in GMR's repertory are works that are co-owned by multiple copyright owners, only one or some (but not all) of which are affiliated with GMR. Levin Decl. ¶ 8; Velez Decl. ¶ 20. As the Department of Justice found after an extensive review of the ASCAP and BMI consent decrees, blanket licenses that convey fractional interests "would not provide *immediate* use of covered compositions; users would need to obtain additional licenses before using many of the covered compositions," and they "would *not* avoid the delay of additional negotiations, because users would need to clear rights from additional owners of fractional interests in songs." DOJ Statement at 12. As DOJ noted, it was these "immediate use" efficiencies that caused the Supreme Court to conclude, in *Broadcast Music, Inc. v. Columbia Broadcasting System, Inc.*, 441 U.S. 1 (1979), that full-work blanket licenses are not per se violations of the antitrust laws, but rather are subject to the rule of reason. DOJ Statement at 7, 12. GMR's blanket license does not provide radio stations with the "immediate use" efficiencies that the Supreme Court found controlling in *BMI.* So not only is GMR demanding a grossly disproportionate price for its license, it is also offering a significantly inferior product, and one that likely constitutes a per se violation of the antitrust laws.[9]

Left unchecked, GMR's actions herald a dark future for the industry. Radio stations that historically have paid ASCAP, BMI, and SESAC for the right to play works now face the threat of having to take a license from another PRO in order to continue playing those same works. Levin Decl. ¶¶ 4, 21; Paulus Decl. ¶¶ 2, 9; Coloff Decl. ¶ 2, 9. But GMR offers no procompetitive benefits to the marketplace, such as those identified in *BMI*, that other PROs do not offer already; GMR instead seeks to impose a one-way transfer from radio stations to itself and its affiliates. Immediate injunctive relief is necessary to deter GMR (and additional entities that might be inspired to follow its model and become PROs) from nakedly anticompetitive conduct.

Thus, there is ample direct evidence of monopoly power, in the form of supracompetitive prices that do not reflect the commercial reality of GMR's portfolio of works. *United States v. Dentsply Int'l, Inc.*, 399 F.3d 181, 191 (3d Cir. 2005) (evidence that the defendant "sets prices with little concern for its competitors" established monopoly power because it is "'something a firm without a monopoly would have been unable to do'") (quoting *United States v. Microsoft Corp.*, 253 F.3d 34, 58 (D.C. Cir. 2001)); *Broadcom*, 501 F.3d at 307 ("The existence of monopoly power may be proven through direct evidence of supracompetitive prices and restricted output."); *SESAC II*, 29 F. Supp. 3d at 500 (upholding allegations of market power

[9] RMLC reserves the right to pursue a per se claim against GMR, though it is not relying on such a claim for purposes of this request for preliminary injunctive relief.

because "SESAC has raised prices . . . without any contemporaneous increase in the size or popularity of its repertory").

There is also ample indirect evidence of GMR's monopoly power; it controls 100% of the market for the copyrighted musical compositions and performances in its repertory, and there are insurmountable barriers to entering that market. Peterson Decl. ¶¶ 36-45; *see Broadcom Corp.*, 501 F.3d at 307 (indirect evidence of monopoly power from evidence of "a dominant share in a relevant market, and that significant 'entry barriers' protect that market"). By GMR's own telling, licenses sold by ASCAP, BMI, and SESAC are not reasonably interchangeable with those that GMR sells, and so GMR's repertory occupies its own market. *See Hanover 3201 Realty, LLC v. Village Supermarkets, Inc.*, 806 F.3d 162, 183 (3d Cir. 2015) ("Competing products are in the same market if they are readily substitutable for one another; a market's outer boundaries are determined by the reasonable interchangeability of use between a product and its substitute, or by the cross-elasticity of demand." (citing *Broadcom*, 501 F.3d at 307)); *Meredith Corp.*, 1 F. Supp. 3d at 218 (finding evidence that the SESAC license was not reasonably interchangeable with other PRO licenses because "despite a material increase in the price of a SESAC blanket license . . . . the relevant consumers (local television stations) did not respond by substituting another product (ASCAP or BMI licenses)"). A radio station cannot substitute a license from ASCAP, BMI or SESAC for a license from GMR because there are a critical number of works in GMR's repertory for which GMR controls 100 percent of the nondramatic public performance rights. Peterson Decl. ¶¶ 33-36. Even if a radio station were to obtain licenses from ASCAP, BMI **and** SESAC, it still would not have the right to play those particular GMR works. Peterson Decl. ¶¶ 34-35. Thus, a license from another PRO is not a substitute for a license from GMR and the other PROs' repertories are not in the same market as GMR's repertory. *Id.* ¶¶ 34-36.

Additionally, there are significant barriers to entry into GMR's market by potential competitors. Because GMR has the *de facto* exclusive ability to license the essential musical works in its repertory, and because GMR intends to share part of its monopoly profits with its affiliates, no other PRO can successfully lure significant numbers of GMR's affiliates away from it. Peterson Decl. ¶ 44. But even if a hypothetical new entrant could induce some GMR affiliates to defect at the end of their contracts, the GMR monopoly would remain in full effect so long as GMR maintained control over a critical mass of "must have" or "can't avoid" works. *Id.* ¶ 45. And because GMR could replace lost affiliates with new members that it lures away from other PROs, it could continue to acquire exclusive licensing rights over a critical mass of indispensable works even if some affiliates departed for a new entrant. *Id.* There is little likelihood of GMR losing affiliates to existing PROs based on price; because ASCAP, BMI and SESAC are price constrained, they cannot meaningfully compete with GMR for affiliates. *Id.* ¶¶ 44-45. And any potential new entrant would not be able to offer a substitute for a GMR license, in any event, because it would by definition have a different repertory of works, so just like the existing PROs, it could not constrain GMR's prices. *Id.* ¶¶ 36, 44-45.

This Court in *SESAC I* found that a PRO's own repertory can be the relevant market for antitrust purposes and that a PRO like GMR obviously would have monopoly power in it. *SESAC I*, 2013 WL 12114098, at *16 (finding sufficient evidence to make a prima facie showing that "the relevant product market is the SESAC blanket license"). Other courts have reached the same conclusion. *See Meredith Corp.*, 1 F. Supp. 3d at 218-220, 223; *Meredith Corp. v. SESAC LLC*, 2011 WL 856266, at *5-10, 15 (S.D.N.Y. Mar. 9, 2011).

2. RMLC Can Readily Show That GMR Engages In Exclusionary Conduct

The Court in *SESAC II* found that RMLC's complaint "cogently portray[ed] how SESAC allegedly obtained and preserves its monopoly power through exclusionary conduct," *SESAC II*, 29 F. Supp. 3d at 501-02, and based on the evidence presented at the preliminary injunction hearing, the Court concluded that RMLC was likely to prove that "SESAC has engaged in exclusionary conduct," *SESAC I*, 2013 WL 12114098, at *20. Because GMR has engaged in practices nearly identical to SESAC's in building its repertory and in willfully obtaining and threatening to exercise its monopoly power, there is little question that RMLC is likely to establish that GMR has engaged in exclusionary conduct. *See Broadcom Corp.*, 501 F.3d at 308.

GMR has unlawfully acquired its monopoly power by strategically handpicking its affiliates and promising to pay them greater royalties than the other PROs could afford (at least 30% more), given their rate regulation. Velez Decl. ¶¶ 14-16; *cf. SESAC II*, 29 F. Supp. 3d at 501 (upholding allegations that "SESAC excludes competitors by obtaining a critical mass of must-have works"). GMR has also entered into *de facto* exclusive dealing contracts with its affiliates that enhance its market power, by not offering any type of carve outs from its blanket license. Velez Decl. ¶ 17; *cf. SESAC II*, 29 F. Supp. 3d at 502 ("Even in the absence of explicit contractual language, plaintiff's allegations establish that SESAC has effectively forged exclusive dealing relationships with its affiliates."). GMR has refused to offer RMLC any options other than blanket licenses, effectively refusing to offer radio stations any other options for license terms, and has also not enabled radio stations to determine reliably the contents of its repertory. Levin Decl. ¶¶ 9, 11; Velez Decl. ¶¶ 17, 19-20; *cf. SESAC II*, 29 F. Supp. 3d at 502 (upholding allegations that SESAC licensed its repertory of "must-have works . . . exclusively in blanket license format" and "obscure[d] the list of works in its repertory"). These actions establish the necessary element of willful acquisition or maintenance of monopoly power. *SESAC II*, 29 F. Supp. 3d at 502; *see Dentsply*, 399 F.3d at 187 (a monopolist's *de facto* exclusive dealing policy constituted exclusionary conduct); *LePage's, Inc. v. 3M*, 324 F.3d 141, 157-58 (3d Cir. 2003) (same); *ZF Meritor, LLC v. Eaton Corp.*, 696 F.3d 254, 278-79 (3d Cir. 2012) (refusing to deal and exclusive dealing are "long recognized forms of exclusionary conduct").

B. In The Alternative, RMLC Can Prove A Section 2 Attempted Monopolization Claim

The fact that RMLC members do not lose access to GMR affiliates' works licensed under their existing ASCAP and BMI agreements until January 1, 2017 does not mean that GMR lacks monopoly power today; it has that power and it has been exercising it against stations in negotiations since last summer. But even if the Court were to conclude that the January 1 date is temporarily constraining GMR's power in the short term, RMLC certainly has a likelihood of proving its claim of attempted monopolization now. For attempted monopolization, RMLC must show that GMR (1) has a specific intent to monopolize, and (2) has engaged in anticompetitive conduct that, taken as a whole, creates (3) a dangerous probability of achieving monopoly power. *W. Penn Allegheny Health Sys., Inc. v. UPMC*, 627 F.3d 85, 108 (3d Cir. 2010).

1. RMLC Will Show that GMR Has a Specific Intent to Monopolize

RMLC will readily establish GMR's specific intent to achieve a monopoly with evidence from GMR's own mouth. GMR's founder, Irving Azoff has left little doubt that GMR set out to achieve a monopoly that will extract supracompetitive licensing fees from radio stations in order to pay affiliates higher royalties than any other PROs, stating "[w]e at GMR believe in higher rates. . . . If a BMI writer writes my guy a check, my guy's going to expect a higher rate."[10] Mr. Azoff has also admitted that GMR intentionally amassed a "full roster of songwriters that nobody can, shall we say, comfortably exist without."[11] And GMR's unconscionable licensing fee demands make clear that its intent is specifically to monopolize and extract gains from its affiliates' works. Levin Decl. ¶¶ 7-8.

Moreover, the "specific intent" requirement of an attempted monopolization claim can be established where "anticompetitive practices . . . lack[] a legitimate business justification" or are "not related to any apparent efficiency." *Broadcom*, 501 F.3d at 318. That also applies here. GMR, as a new PRO in a field that already includes three incumbents, has no pro-consumer justification for its existence. It does not even offer the efficiencies that the Supreme Court and Department of Justice have acknowledged may be benefits associated with allowing PROs to exist. *BMI*, 441 U.S. at 20; DOJ Statement at 10-11. To the contrary, GMR refuses to take efficiency-enhancing measures such as meaningfully allowing its affiliates to license their works on a non-exclusive basis, or permitting radio stations to have blanket-license carve-out rights or per-program licenses. Levin Decl. ¶ 9; Velez Decl. ¶ 17. And it reduces efficiency by siphoning works otherwise licensed by ASCAP and BMI. Moreover, GMR demands that radio stations agree to pay outrageous licensing fees that do not even account for the fact that GMR offers only to license works on a fractional basis and most of the works in its repertory are works that are co-owned by multiple copyright owners, less than all of which are affiliated with GMR. Levin

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[10] NMPA 2016: President's Welcome & Irving Azoff Keynote Discussion, at 5:50-:57, YouTube (June 14, 2016), https://www.youtube.com/watch?v=8ZocRxB-s-k.

[11] Robert Levine, "The New Pioneers: Irving Azoff on His Plan to Deal with the 'StubHub Factor' – 'You Have Lots of People Escaping With Lots of Money'," BILLBOARD.COM (Aug. 11, 2016), http://www.billboard.com/articles/business/7468545/new-pioneers-irving-azoff-stubhub-live-music-business.

Decl. ¶¶ 7-8; Velez Decl. ¶ 20. As discussed above, these fractional licenses offer comparably little efficiency benefits.

2. RMLC Will Show that GMR Has Engaged in Anticompetitive Conduct

For the same reasons that GMR's actions constitute exclusionary conduct supporting an actual monopolization claim (detailed in Section I.A.2 above), there is little question that GMR's actions constitute "anticompetitive conduct" sufficient to establish attempted monopolization. *Cf. W. Penn*, 627 F.3d at 109 (explaining that "anticompetitive conduct can come in too many different forms . . . for any court or commentator ever to have enumerated all the varieties") (internal quotation marks and citation omitted).

3. RMLC Will Show that GMR Has a Dangerous Probability of Achieving Monopoly Power

RMLC is likely to establish that GMR has *already* achieved a monopoly by acquiring a repertory of must-have works that it is wielding against radio stations in order to extract extortionate licensing fees. At minimum, RMLC will establish that GMR has a dangerous probability of achieving the same end as of January 1, 2017. There is substantial evidence of GMR's "significant market share coupled with anticompetitive practices, [and] barriers to entry." *Broadcom*, 501 F.3d at 318. GMR already controls 100% of the market for licenses to works in its repertory, and the barriers to entering that market are insurmountable. RMLC's member stations face the imminent threat that GMR will be able successfully to exercise its monopoly power by forcing them to enter into anticompetitive licensing agreements or suffering the devastating consequences of attempting to forego all of the works in GMR's repertory, if that is even possible for any station. Levin Decl. ¶ 21; Paulus Decl. ¶ 9; Warshaw Decl. ¶ 10; Coloff Decl. ¶ 9. For these reasons, RMLC is likely to show that GMR has a dangerous probably of achieving monopoly power.

II. RMLC AND ITS MEMBERS WILL SUFFER IRREPARABLE HARM IF GMR IS NOT ENJOINED

RMLC can show, at a minimum, a likelihood of success on the merits of this case after a full trial. In the meantime, however, RMLC and its members will suffer serious and irreparable harm if the Court does not issue preliminary injunctive relief before GMR's agreements with its affiliates take full effect on January 1, 2017. While GMR's conduct no doubt justifies more rigorous relief—including forcing GMR to engage in negotiations with RMLC on a court- or arbitrator-supervised basis, like ASCAP, BMI, and SESAC do—at this point RMLC merely asks that the Court maintain the status quo during this litigation, by requiring GMR to continue to make its repertory available to U.S. commercial radio stations, at rates commensurate with its share of total plays, while preserving GMR's right to be made whole through retroactive royalty payments in the event that RMLC does not succeed on its claims, and by requiring that GMR and its agents (including its affiliates) refrain from suing U.S. commercial radio stations who accept GMR's interim license for copyright infringement during the course of this litigation.

What RMLC is seeking does no more than maintain the status quo. *Kos Pharma., Inc. v. Andrx Corp.*, 369 F.3d 700, 729 (3d Cir. 2004) (preliminary injunction is designed to maintain the status quo); *EUSA Pharma (US), Inc. v. Innocoll Pharms., Ltd.*, 594 F. Supp. 2d 570, 578 (E.D. Pa. 2009) (same). GMR admits that radio stations currently have the right to play most of the songs in its repertory under the licenses they have purchased at judicially-monitored rates from ASCAP and BMI. GMR's monopoly power stems from the fact that those licenses will be expiring on December 31, 2016, and that, beginning January 1, GMR can start suing radio stations for copyright infringement, including for works currently licensed to RMLC member stations by ASCAP and BMI. Thus, an injunction preventing GMR from charging supracompetitive rates (with a possibility of true-up payments down the line) and ordering it to refrain from copyright suits would simply preserve the status quo until this litigation is resolved.

This Court has ample authority to issue the preliminary injunction RMLC requests. When crafting injunctive relief, a court has "the power to fashion any remedy deemed necessary and appropriate to do justice in the particular case," even if that remedy requires altering the status quo. *See United States v. Price*, 688 F.2d 204, 211 (3d Cir. 1982); *2660 Woodley Road Joint Venture v. ITT Sheraton Corp.*, No. Civ. A. 97-450 JJF, 1998 WL 1469541, at *8 (D. Del. Feb. 4, 1998) (granting mandatory relief where defendant threatened irreparable harm of loss of business goodwill and reputation, long term loss of trade, and injury to real property). When a monopolist's anticompetitive actions will deny a plaintiff access to a crucial input, thereby threatening an incalculable loss of goodwill and trade, a court may order the defendant to supply the product on reasonable terms. *See, e.g.*, *Bergen Drug Co. v. Parke, Davis & Co.*, 307 F.2d 725, 728-29 (3d Cir. 1962); *McKesson & Robbins, Inc. v. Charles Pfizer & Co.*, 235 F. Supp. 743, 751 (E.D. Pa. 1964); *Airfix Corp. of Am. V. Aurora Plastics Corp.*, 222 F. Supp. 703, 707 (E.D. Pa. 1963). And a court may even enjoin a monopolist "from further prosecuting, commencing, or threatening to commence any legal proceeding" when the threat of litigation arises from a contract clause identified as likely in violation of Section 2 of the Sherman Act. *See Pa. World Hockey Club, Inc. v. Pa. Hockey Club, Inc.*, 351 F. Supp. 462, 519 (E.D. Pa. 1972). This Court is thus well within its power to issue the requested relief to preserve the licensing landscape as it exists before GMR's anticompetitive actions become irreversible on January 1, 2017, and thereby preventing the irreparable harms described below.

A. GMR's Imminent Conduct Threatens To Irreparably Harm Radio Station Reputations And Goodwill

GMR's threatened exercise of its monopoly power places U.S. radio stations in an impossible position. Stations can cave to GMR's demands and buy a license at extortionate prices, or they can decline to do so; but, either way, they face a threat of financially ruinous copyright infringement claims from someone. Velez Decl. ¶ 23. That is because GMR has left radio stations in a cloud of uncertainty regarding the contents of its repertory by not providing stations with a reliable, transparent and real time way to determine with any confidence what the repertory contains at any given time. Levin Decl. ¶ 11; Paulus Decl. ¶¶ 4, 7; Warshaw Decl. ¶ 4; Coloff Decl. ¶ 5; Velez Decl. ¶¶ 19-20, 23. And because GMR only offers to license works on a fractional basis and most of its works are co-owned and have at least one additional owner that is not an affiliate of GMR, a license from GMR alone does not give a station the right to play those songs without risk of copyright infringement. Levin Decl. ¶ 10; Velez Decl. ¶ 24. Before a station could play any of those songs, with confidence, it first would have to determine which songs those are, and who owns the remainder of the licensing rights. Levin Decl. ¶ 10; Velez Decl. ¶ 24. Then the station would have to go out and obtain separate licenses from the rest of those copyright owners or the PROs with which they may be affiliated. Levin Decl. ¶ 10; Velez Decl. ¶ 24. But this is impossible because GMR is not transparent about what its repertory contains. Levin Decl. ¶¶ 10-11; Warshaw Decl. ¶ 4; Velez Decl. ¶¶ 19, 24. To be sure, there are some works in the GMR repertory that it has the full and complete right to license. Velez Decl. ¶ 20. The problem is that radio stations have no way to determine, with confidence or efficiency, which songs those are at any given point in time, so they cannot even attempt to avoid playing them. Levin Decl. ¶¶ 10-11; Warshaw Decl. ¶ 4; Velez Decl. ¶¶ 23-24.

The fact that some radio stations already hold blanket licenses with ASCAP, BMI, and SESAC that may allow them to perform most or all of the fractionally licensed works in GMR's repertory does not dampen the irreparable harm that GMR threatens. GMR offers *no* efficiencies to radio stations; it merely obligates them to obtain an additional license. And if GMR's conduct is not curtailed by injunctive relief, there is no reason to expect the number of tariffs to stop at four; additional PROs could follow the same example as GMR by creating additional obstacles to playing the same works.

Attempting to avoid playing <u>all</u> songs in GMR's repertory (if that were even possible) is not a solution either. There are some songs in the GMR repertory that are co-owned works for which at least one other co-owner is not a GMR affiliate, such that a radio station's license from ASCAP or BMI may already permit the station to play those songs. Velez Decl. ¶¶ 20, 24. But GMR does not identify these works in any manner that would enable stations on an ongoing basis to know what works require GMR licensing in order to avoid infringement claims. Levin Decl. ¶¶ 10-11; Warshaw Decl. ¶ 4; Velez Decl. ¶¶ 20, 23-24. This problem is compounded by the fact that new recordings are released for radio airplay weeks or months before GMR even releases information regarding the identity of the entities who own or administer the rights to publicly perform those compositions. Velez Decl. ¶¶ 24, 33. It would be grossly unfair to force radio stations to attempt to scrub popular songs from their playlists, unnecessarily, just because GMR is trying to insulate its monopoly. That could impact a station's reputation and goodwill with its listeners, which is well-established irreparable harm. Levin Decl. ¶ 18; Paulus Decl. ¶ 6; Warshaw Decl. ¶ 7; Coloff Decl. ¶ 6; *see Kos Pharmaceuticals, Inc. v. Andrx Corp.*, 369 F.3d 700, 725-26 (3d Cir. 2004) (explaining that "[g]rounds for irreparable injury include loss of reputation, loss of trade, and loss of goodwill," and reversing denial of preliminary injunction based in part on failure to find that defendant's actions threatened its goodwill) (internal quotation marks omitted); *Citibank N.A. v. Kyle*, 2015 WL 3755788, at *4 (E.D. Pa. June 16,

2015) (granting TRO and finding that failure to enjoin use of company's confidential information would cause irreparable loss of goodwill); *Feldman & Pinto, P.C. v. Seithel*, 2011 U.S. Dist. LEXIS 147655, at *47-50 (E.D. Pa. Dec. 22, 2011) (harm to a business's reputation is irreparable and can support preliminary injunction). It likewise would be utterly inefficient to require stations to obtain yet another license to play the same songs that they already have the full right to play based on their ASCAP and BMI licenses. *See* DOJ Statement at 10-13.

Stations also cannot risk not taking a license and having GMR make good on its implicit threat to sue them for copyright infringement (with fines up to $150,000 per infringed work). Levin Decl. ¶ 18; Paulus Decl. ¶ 8; Warshaw Decl. ¶ 6; Coloff Decl. ¶ 4; Velez Decl. ¶ 25. Being sued for copyright infringement could also result in substantial reputational injury and loss of its listeners' good will. Copyright infringement suits commonly attract significant publicity, given the stakes of each individual violation and (often) the high profile artists who seek to rectify such a violation.[12] Levin Decl. ¶ 22. This is typically by design, as such actions often are instituted to send a message to the marketplace that even the smallest violations will not be tolerated.[13] Velez Decl. ¶ 25. The stakes of such a suit are not merely financial, but reputational. "[I]t is a regrettable inevitability of litigation that most lawsuits harm the reputations of their

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12 *See, e.g.*, Travis M. Andrews, *Ed Sheeran Sued for Copyright Infringement for Second Time this Year*, Washington Post (Aug. 10, 2016), https://www.washingtonpost.com/news/morning-mix/wp/2016/08/10/ed-sheeran-sued-for-copyright-infringement-for-second-time-this-year/; Sergio Binchao, *BMI Song Lawsuits Make Rounds in Jersey Bars*, USA Today, (June 10, 2015), http://www.usatoday.com/story/money/business/2015/06/10/bmi-song-lawsuits-jersey-restaurants/71037378/; Gary Graff, *David Byrne Sues Florida Gov. Charlie Christ for $1 Million*, Billboard (May 24, 2010), http://www.billboard.com/articles/news/958119/david-byrne-sues-florida-gov-charlie-crist-for-1-million.

13 *See, e.g., ASCAP Takes Legal Action Against 10 Venues Nationwide that Infringe on Songwriters' Copyrights by Performing their Musical Works without Permission*, ASCAP.com (Apr. 12, 2016), https://www.ascap.com/en/press/2016/04-12-venues-refuse-to-pay-songwriters (promoting filing of 10 infringement lawsuits in one day against music users in major markets throughout the United States).

defendants." *SEC v. One or More Unknown Purchasers of Securities of Telvent GIT, SA*, 2013 WL 1683665, at *2 (S.D.N.Y. 2013). The fallout from a copyright infringement suit can be severe because a radio station's reputation in the music performance industry is tied to its respect for copyright laws. Velez Decl. ¶ 26; Levin Decl. ¶ 22; Paulus Decl. ¶ 8; Warshaw Decl. ¶ 9; Coloff Decl. ¶ 8. Though certain radio stations may be able to withstand the financial consequences of an infringement suit, being labeled a copyright infringer can impose lasting, irreversible harms. Levin Decl. ¶ 22; Paulus Decl. ¶ 8; Warshaw Decl. ¶ 9; Coloff Decl. ¶ 8. GMR's failure to reliably and transparently disclose the works in its blanket license, and the fractional or full-work nature of those works, threatens to subject RMLC's member stations to lasting reputational injury.

GMR has thus put radio stations to a true "Hobson's choice." They can pay extortionate prices to take a license that provides an unknown degree of copyright protection and wait and see if they get sued and whether the license ultimately protects them. Or, they can forgo a license and attempt, as best as they can, not to play any song in the GMR repertory, even though that will be over-inclusive and detrimental to their listener base, and yet still risk a copyright infringement suit from GMR the first time that they inadvertently play a GMR song, for example, in advertising or programming supplied by a third party. Levin Decl. ¶ 20; Paulus Decl. ¶ 7; Warshaw Decl. ¶ 8; Coloff Decl. ¶ 8. This is a true no-win situation for radio stations and it is irreparable. *See, e.g.*, *Beilowitz v. General Motors Corporation*, 233 F. Supp. 2d 631, 632, 638-39 (D.N.J. 2002) (irreparable injury resulting from Hobson's choice between entering franchising agreement that forfeits franchisee's market share and large percentage of its revenue or losing franchise rights altogether); *Am. Trucking Ass'ns, Inc. v. City of L.A.*, 559 F.3d 1046, 1057 (9th Cir. 2009) (Hobson's choice between signing an agreement that is unconstitutional and will require the party to incur large costs and refusing to sign and losing customer goodwill was irreparable harm); *Williams-Sonoma Direct, Inc. v. Arhaus, LLC*, 109 F. Supp. 3d 1009, 1020-21 (W.D. Tenn. 2015) (irreparable injury caused by Hobson's choice between filing suit for damages each time employee is solicited in violation of non-solicitation agreements or waiting for that employee to reveal confidential trade secrets before seeking injunction); *Everett Labs., Inc. v. Breckenridge Pharm., Inc.*, 573 F. Supp. 2d 855, 869 (D.N.J. 2008) (Hobson's choice between developing market that would serve only to benefit infringing manufacturer and ceasing all marketing was irreparable harm).

B. GMR's Imminent Conduct Also Threatens To Irreparably Infect Radio Stations' Dealings With Other PROs

The harm from GMR's actions is all the more irreparable because its effects threaten to extend beyond GMR's own repertory, to inflate artificially the rate demands of other PROs. If radio stations succumb to GMR's demands and agree to pay extortionate rates to avoid the threat of infringement suits, other PROs will use those rates as benchmarks for their own royalty demands. Levin Decl. ¶¶ 14-17. It is already clear from negotiations that GMR's conduct threatens artificially to raise licensing fees that RMLC stations will be required to pay to other PROs—namely SESAC, ASCAP, and BMI—because each of these PROs has sought to tie their licensing fees to the anticompetitive rates that GMR is currently demanding from RMLC. *Id.* ¶¶ 15-16. In arbitration with RMLC, SESAC held GMR out as a model for its own rate demands, and ASCAP and BMI have demanded most-favored nation clauses or reopener clauses that would allow them to seek higher fees in the event that RMLC stations agreed to pay GMR even a fraction of what it demands. *Id.* ¶ 16. This harm, though it is financial, is irreparable because stations cannot recover it in money damages even if they were successful in litigation against GMR. A monopolist is not liable for higher rates that its customers pay to others who supposedly price under the "umbrella" that the monopolist's conduct permitted. *See, e.g.*, *In re Processed Egg Prods. Antitrust Litig.*, 2016 WL 4670983, at *4 (E.D. Pa. Sept. 6, 2016) (plaintiff cannot recover damages where defendants' anticompetitive conduct allows defendants' competitors to raise their prices). The harm these stations will suffer absent injunctive relief will be permanent and without recourse.

* * *

Despite the untenable position that GMR has put the radio industry in, RMLC is only seeking limited temporary relief. It is asking the Court to prevent GMR from forcing stations to pay extortionate prices for a license of unknown scope, that could cause severe and irreparable ripple effects with other PROs. For the duration of this litigation, GMR should be required to offer its license on the reasonable terms set forth in the proposed preliminary injunction to any station that wants to purchase it. And GMR should be precluded from suing any station until it has done so. At least that way radio stations will not be overpaying for "insurance" that they are uncertain they even need (or that would ultimately provide them protection when they need it). And restricting GMR to a reasonable rate during the litigation will also prevent other PROs from seeking to extract more money from stations that those stations will not be able to recoup from GMR, even if they win this litigation. RMLC made a similar offer to GMR during negotiations in an attempt to avoid this lawsuit and RMLC rejected it. Levin Decl. ¶ 13. So RMLC has no choice but to ask the Court to provide this relief to its members. *Id.*

C. GMR's Imminent Conduct Will Also Irreparably Harm RMLC

RMLC negotiates on behalf of the commercial radio industry to achieve "reasonable license fees with PROs." Velez Decl. ¶ 7. GMR's imminent exercise of monopoly power threatens RMLC's mission to serve its radio-station members, for which contracts with PROs are essential. *Id.* ¶ 27. If GMR forces RMLC and its member stations to agree to the extortionate and economically groundless fees that it demands, RMLC's reputation will suffer serious harm. *Id.* ¶¶ 27-29. Such harm is irreparable. *BP Chems. Ltd. v. Formosa Chem. & Fibre Corp.*, 229 F.3d 254, 263 (3d Cir. 2000) ("injuries to reputation are difficult to calculate, and thus money damages are an inadequate remedy"); *Kos* 369 F.3d at 726 (injury to reputation can constitute irreparable harm). Final disposition of this litigation may take years. In the meantime, radio stations required to enter into a licensing agreement at egregious rates, causing them to lose listener goodwill, and stripping them of the choice in how they do business, will cause many to question RMLC's role in the industry. Velez Decl. ¶ 29. Such reputational damage would be irreversible and uncompensable.

A preliminary injunction preserving RMLC member stations' right to choose whether to enter into a license with GMR on *competitive* terms will protect RMLC's reputation with its members and the industry generally, while this case works its way to completion. Once GMR is subject to a regulatory decree and required to offer consumers a choice in licenses, RMLC will be able serve its industry function in negotiating with GMR as it does today with other PROs. Conversely, if GMR forces thousands of U.S. radio stations to enter into extortionate licensing agreements, RMLC's reputational standing will suffer, potentially damaging its bargaining position with PROs other than GMR, and thus further harming each RMLC member. *Id.* ¶¶ 27-29. A preliminary injunction is necessary to avoid this reputational harm.

III. THE BALANCE OF HARMS CLEARLY WEIGHS IN RMLC'S FAVOR

In this case, "the potential injury to the plaintiff if an injunction does not issue" far exceeds "the potential injury to the defendant if the injunction is issued," making preliminary relief appropriate. *Novartis Consumer Health, Inc. v. Johnson & Johnson-Merck Pharms. Co.*, 290 F.3d 578, 596 (3d Cir. 2002). GMR threatens to obtain profits far in excess of competitive rates on account of its unconstrained monopoly power. The rates it has demanded from RMLC's member stations alone are two to three times greater than the actual share of public performances its repertory implies, and its threatened annual rate increase highlights GMR's ability to reap further gains. Levin Decl. ¶ 8. An injunction allowing RMLC member stations to enter into licensing agreements with GMR at competitive rates would preserve the status quo: RMLC member stations will not be required to pay a greater total sum in licensing fees due to GMR's conduct, and GMR affiliates will receive royalty rates on par with those offered by their previous PROs, which operate under regulatory oversight. *Id.* ¶¶ 8, 13; Velez Decl. ¶ 32. Thus, while mandatory, the injunction will preserve the status quo for both GMR's affiliates and RMLC's member stations. Moreover, if RMLC's suit is not successful, then GMR will be able to obtain the monopoly profits to which it believes it is entitled. Further, GMR cannot allege that the loss of the opportunity to acquire funds illegally constitutes a harm that should be considered in this balancing analysis. "[A] party 'can hardly claim to be harmed [where] it brought any and all difficulties occasioned by the issuance of an injunction upon itself." *Kos*, 369 F.3d at 728.

Conversely, the injunction RMLC seeks would prevent the serious irreparable harm described above. When balancing the irreparable harm that RMLC and its members face against a cap on GMR's monopoly rents at today's level—and with a right for GMR to recoup additional fees if RMLC is unsuccessful in this litigation—there can be no doubt that the equities favor issuing the injunction.

IV. THE PUBLIC INTEREST FAVORS AN INJUNCTION

Finally, a preliminary injunction will serve the public interest. Preventing GMR from extorting the radio industry will ensure that the public continues to enjoy choice in radio broadcasting. It will reduce the pressure on stations to try to scrub all GMR songs from their broadcasts unnecessarily (such as the unidentified co-owned songs with at least one additional co-owner that is not an affiliate of GMR or newly-released recordings where the ownership of embodied compositions has not been released) and thus promote listener choice in broadcasting. Velez Decl. ¶ 33; *see Knology, Inc. v. Insight Communications Co., L.P.*, 2001 WL 1750839, at *6 (W.D. Ky. Mar. 20, 2001) ("[A] choice of consumer services serves the public interest more than no choice."). It will also ensure that radio stations can play new songs on their release date, rather than waiting months for all of the publishing splits to be finalized, thus benefiting the recording artists who rely on radio to promote interest in their sound recordings. Velez Decl. ¶ 33.

Denying the injunction, by contrast, would yield no cognizable social benefit at all. The public interest lies with protecting RMLC and its members from a monopolist.

CONCLUSION

For the preceding reasons, the Court should grant RMLC's motion for a preliminary injunction and maintain the current radio licensing status quo.

Dated: November 18, 2016

Respectfully submitted,

s/ Margaret M. Zwisler
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EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RADIO MUSIC LICENSE COMMITTEE, INC., Plaintiff, v. GLOBAL MUSIC RIGHTS, LLC, Defendant.	Civil Action No. ___

DECLARATION OF WILLIAM VELEZ

I, William Velez, do declare and state as follows:

1. I am Executive Director of the plaintiff in this action, Radio Music License Committee ("RMLC"), which is a 501(c)(6) non-profit Tennessee corporation with its headquarters at 1616 Westgate Circle, Brentwood, Tennessee 37027.

2. In my position as Executive Director, I have personal knowledge regarding RMLC, its relationship with and standing within the U.S. radio industry, its negotiations with performing rights organizations ("PROs") that license rights to copyrighted musical works, its attempts to negotiate with Global Music Rights, LLC ("GMR"), and the effect of GMR's actions on the U.S. radio industry.

3. I have worked in the music licensing industry for over 40 years and have extensive personal experience with how PROs deal with commercial radio stations in the U.S. I became Executive Director of RMLC in late 2007. Part of my job responsibility has been to negotiate with PROs on behalf of the radio industry and I have been personally involved with negotiations between RMLC and ASCAP, BMI, SESAC, and GMR. Prior to becoming Executive Director of RMLC, I previously worked for three PROs at various times, including ASCAP from 1972-1987, BMI from 1989-1993, and SESAC from 1993-2004.

4. As Executive Director of RMLC, I am regularly in contact with stations of varying sizes from around the country. It is part of my job to listen to these stations' concerns regarding PRO licensing so that RMLC can plan to take steps to address them. Because RMLC represents the interests of nearly 10,000 member stations, part of its mission is to understand the challenges and concerns that are common across the industry. To do that RMLC makes an effort to obtain information from as broad a cross-section of the industry as possible.

RMLC Represents the Interests of Radio Stations and Negotiates with PROs

5. RMLC is a trade association that exists to represent the music-licensing interests of the U.S. commercial radio industry, which comprises well in excess of 10,000 terrestrial radio stations. To broadcast music without infringing copyrights, radio stations must obtain licenses. Copyright holders, including songwriters and publishers, have the right to directly license their works to radio stations, unless they have relinquished that right.

6. It has been the practice in the music industry for decades for copyright holders to bestow licensing authority upon a common agent, which can negotiate with and grant permissions to music users, including radio stations, on their behalf. PROs have served this function in the music industry for more than 100 years, acting as intermediaries between copyright holders and consumers.

7. On behalf of its member-stations, and for the benefit of the commercial radio industry more generally, RMLC seeks to negotiate reasonable license fees with PROs—specifically, ASCAP, BMI, SESAC, and GMR. In particular, RMLC works to achieve agreement on PRO license fees that fairly and accurately reflect the state of the radio business. It also seeks alternatives to blanket licenses, which permit stations publicly to perform any musical works in the licensing PRO's repertory. The valuable alternatives that RMLC aims to make available include "per-program licenses," which grant full access to the works in a repertory for specific radio programming, and "adjustable fee blanket licenses" (AFBLs), which entitle licensees to discounts if they secure separate permissions directly from the copyright owners to musical works subsumed within the blanket license. Those alternative license arrangements give stations significant flexibility to craft or change their programming for their listeners.

8. RMLC's reputation and standing in the radio industry depend on its ability to negotiate reasonable license fees and alternative licensing arrangements with PROs. It is inconvenient and costly for each radio station separately to negotiate with each PRO to acquire appropriate licenses. By aggregating those negotiations, RMLC provides a valuable service for both the radio industry and PROs, reducing bargaining costs and facilitating reasonable prices. It is the fact of such convenience, efficiency, and value that attracts radio stations to become RMLC members.

9. RMLC has dealt effectively with the two largest PROs, ASCAP and BMI, which have consistently and actively engaged RMLC in negotiations. For example, in 2012, RMLC negotiated mutually acceptable terms with ASCAP and BMI as to the fees that the U.S. commercial radio industry will pay for licenses to the works in their repertories through 2016, and it is in the process of negotiating new licensing terms with both PROs.

10. ASCAP and BMI are subject to consent decrees with the U.S. Department of Justice Antitrust Division. Ex. 1, ASCAP Consent Decree dated June 11, 2001; Ex. 2, BMI Consent Decree dated November 18, 1994. Those decrees ensure that, if RMLC cannot agree on appropriate terms with either one or both of those two PROs, RMLC can apply to the U.S. District Court for the Southern District of New York for a judicial determination of a reasonable fee. Ex. 1, at ¶ IX(A); Ex. 2, at ¶ XIV(A). Similarly, ASCAP and BMI may not require radio stations to take only a blanket license and must offer them a genuine choice between per-program and blanket licenses. Ex. 1, at ¶ VIII(A); Ex. 2, at ¶ VIII. These regulatory constraints are important to the U.S. radio industry in dealing with ASCAP and BMI.

11. In October 2012, RMLC brought suit against SESAC, a third PRO, which is not subject to any consent decree. In its lawsuit, RMLC alleged that, under new management,

SESAC had in recent years hand-picked its affiliates to build an indispensable repertory of works that U.S. radio stations could not reasonably avoid broadcasting, eliminated price competition among its affiliates through *de facto* exclusive licensing arrangements, and willfully obtained a monopoly of its own by obscuring the musical works in its repertory, refusing to sell radio stations a non-blanket license, and threatening radio stations with hefty copyright infringement fees for broadcasting works from SESAC's repertory without a proper license.

12. Because SESAC persisted in its abusive practices during the litigation and demanded that radio stations agree to five-year contract extensions imposing anticompetitive increases in license fees, RMLC also brought a motion to preliminarily enjoin SESAC from imposing unilateral and monopolistic rate increases on RMLC's members.

13. The U.S. District Court for the Eastern District of Pennsylvania found that RMLC had shown a likelihood of success on its Section 2 claim, but ultimately recommended against a preliminary injunction. The Court subsequently denied SESAC's motion to dismiss the Section 2 claim in RMLC's complaint. After both rulings, in July 2015, RMLC and SESAC entered into a 20-year settlement agreement that prevents SESAC from imposing supracompetitive rates on RMLC-represented stations and restores copyright owners' ability to competitively license their works directly to radio stations. Ex. 3, Final SESAC RMLC Settlement Agreement dated July 23, 2015. Under the agreement, SESAC and RMLC agreed to negotiate in good faith to set rates and licensing terms through the year 2037. *Id.* at ¶ 7. If negotiations fail, rates are determined through binding arbitration, much like the rate court does under the consent decrees governing BMI and ASCAP. *Id.* ¶ 7(b). Additionally, SESAC committed to provide greater transparency regarding the identification of songs in its repertory

and to cease entering into agreements with affiliates amounting to *de facto* exclusive licenses. *Id.* at ¶¶ 5, 13.

Global Music Rights Is a New PRO that Threatens to Damage the Industry

14. GMR is a fourth PRO that was founded in 2013 under the umbrella of Azoff MSG Entertainment, a joint venture between music-industry icon Irving Azoff's Azoff Music Management and the Madison Square Garden Company. Since that time, GMR has amassed a critical volume of copyright holders as affiliates by strategically selecting a group of coveted songwriters away from ASCAP and BMI. GMR has stated publicly that it has contracts with around 100 affiliates and that it has at least 20,000 works in its repertory. Exs. 4, 8. Examples of artists that GMR has stated have recorded songs written by its affiliates include Beyoncé, Bruno Mars, the Eagles, Fleetwood Mac, John Lennon, Journey, Pharrell Williams, Ryan Tedder, and Smokey Robinson. Exs. 4, 6, 8.

15. Today, GMR's repertory includes a list of "must have" musical works that I understand that radio stations, as a practical matter, cannot avoid playing. Indeed, I understand that GMR's founder, Irving Azoff, stated that GMR has designed its repertory so that no radio station "can . . . comfortably exist without" it. Ex. 4.

16. I understand from news reports that GMR has promised to pay these affiliates at least 30% more than ASCAP, BMI, or SESAC can pay them. Exs. 6, 8. These higher royalties are possible because GMR is not subject to a government consent decree or binding arbitration process. Exs. 6, 7, 8.

17. GMR does not offer radio stations any options other than blanket licenses, effectively refusing to offer RMLC any other options for license terms. An AFBL is similar to a blanket license, except that it permits a station to negotiate licenses directly with copyright

owners for particular works and then receive an offsetting credit against the cost of the otherwise applicable blanket license fee. Similarly, GMR does not offer any type of "carve out" in the form of a reduction in the blanket fee to any stations that directly license GMR works, remove the works of individual GMR affiliates from their playlists, or reduce overall spins of GMR works.

18. From my experience in the radio industry, I understand that, when a PRO does not offer an AFBL or other type of "carve-out" right, there is no economic incentive for a station to negotiate licenses directly with copyright owners because the station would still have to pay the PRO the full price for a blanket license. Thus, they would be paying twice for a license to the same works. Similarly, I understand that, when a PRO does not offer an AFBL or other carve-out rights, station owners have no economic incentive to attempt to reduce spins of that PRO's works or eliminate that PRO's individual affiliates' works from their playlists because doing so would not result in any reduction in the license fee that the PRO seeks to impose.

19. It is my understanding that the contents of GMR's repertory changes and that it is continuing to add new songwriters and publishers to its group of affiliates. It is also my understanding that RMLC and its member stations cannot reliably identify which musical works are covered by GMR's proposed blanket license, or the degree to which they are covered. GMR does not provide a complete or real-time list of works in its catalogue that could enable RMLC or any radio station to determine with any level of confidence the contents in GMR's repertory at any given time.

20. In addition, GMR has not allowed RMLC or its member stations to determine with reliability the degree to which GMR is authorized to license the works in its repertory. GMR's repertory consists of a mix of works. I understand that most of the works in GMR's

repertory are works that are co-owned by multiple copyright owners, only one or some (but not all) of which are affiliated with GMR. I also understand that GMR is only willing to license works on a "fractional" rights basis. This means that for all works that are not 100% controlled by GMR, a license from GMR does not provide radio stations any protection from an infringement suit; they still must obtain separate licenses from other sources before they can play those songs without risk of infringement. Moreover, where works are co-owned by GMR affiliates and affiliates of other PROs, a station's pre-existing license from those other PROs might be sufficient to obviate a GMR license to play those songs. But GMR does not provide a complete or reliable real-time list of works for which it controls 100% of the rights to perform as opposed to those it can only license "fractionally," or which works may be covered by a license from another PRO.

GMR's Actions Threaten To Harm U.S. Radio Stations

21. I am familiar with and participated in the negotiations between RMLC and GMR that are detailed in the separate declaration of Eugene D. Levin. I am aware that GMR is demanding license fees that are disproportional to the underlying share of public performances of its repertory, and that GMR has indicated that if RMLC does not agree to its demands, GMR intends to pursue its remedies against radio stations, including RMLC's member stations, meaning that stations without GMR licenses by January 1, 2017 will be at risk of potential infringement claims.

22. As a result of GMR's actions, RMLC member stations face the imminent threat that they will be forced to enter into licensing agreements at whatever price GMR demands or suffer the potentially harmful consequences of attempting to forego all of the works in GMR's repertory. Because GMR has intentionally created a selective repertory of popular, "must have"

works, if stations eliminate those songs from their playlists, they risk alienating their listeners and injuring their reputations and goodwill.

23. For most stations, it would not even be possible to try to eliminate all the GMR songs from their playlists because GMR does not make available information that would allow a radio station reliably to determine with any confidence which works fall in its repertory, or the ownership share of those works, at any given time. Moreover, even if some stations were able to remove GMR's songs from their playlists, those stations may still risk an infringement suit from GMR if they inadvertently play one of its songs, for example, in advertising or programming supplied by a third party, or in the context of ambient music played in the background during a sports broadcast.

24. Because GMR only offers to license works on a fractional rights basis and most of its works are co-owned and have at least one additional owner that is not an affiliate of GMR, a license from GMR alone does not give a station the right to play those songs without risk of copyright infringement. Even if a radio station could reliably determine which songs those are, it must then investigate who owns the remainder of the licensing rights. Then, the station would have to go out and obtain licenses from the remaining copyright owners for each song, or the PROs with which they are affiliated. This problem is compounded by the fact that new recordings are released for radio airplay weeks or months before GMR even releases information regarding the identity of the entities who own or administer the rights to publicly perform those compositions.

25. GMR's actions additionally threaten to harm RMLC member stations' reputations and goodwill. Copyright infringement suits carry fines up to $150,000 per work infringed. Based on my experience in the radio industry, I believe that the harm an infringement suit inflicts

is more than merely financial because it can result in serious reputational injury and loss of listener goodwill. Copyright infringement suits often attract significant publicity because the stakes are so high and the artists involved are often household names. Copyright holders often hope to deter future infringers by sending a message to the industry, even going so far as to target small and unsophisticated businesses. For example, in early 2016, ASCAP filed 10 infringement suits in a single day against venues across the United States, and in 2014, BMI brought about 160 lawsuits against bars and other businesses that allegedly infringed its works. Exs. 9, 10.

26. The consequences of an infringement suit can be serious. A radio station's reputation in the industry is directly tied to its respect for copyright laws, and being accused as an infringer can result in the loss of business opportunities, such as concerts and performance sponsorships. Even for stations that can withstand the financial consequences of an infringement suit, these impediments can lead to a permanent loss of customer goodwill among listeners.

GMR Threatens To Cause Irreversible Injury to RMLC's Mission to Serve Its Radio-Station Members

27. GMR's imminent exercise of monopoly power threatens to cause severe harm to RMLC's mission to serve its radio-station members, for which contracts with PROs are essential. If GMR forces RMLC and its member stations to agree to the excessive fees that it demands, RMLC will suffer serious harm to its reputation. RMLC's actual and potential members are likely to see RMLC as ineffective in dealing with GMR's hold-up of the radio industry and protecting them against the risk to their reputations and goodwill.

28. The threatened damage to RMLC's reputation and goodwill is even more serious because GMR's actions threaten to raise royalty rates paid by RMLC member stations on an industry-wide basis. As set forth in the accompanying declaration of Eugene D. Levin, in recent

months, other PROs have made clear that they will try to extract higher licensing fees from radio stations if RMLC gives in to GMR's demands, and its stations are forced to pay GMR's extortionate fees. In ongoing RMLC/SESAC arbitration proceedings (as provided by the their settlement agreement), SESAC has held GMR out as a model for its own rate demands and is seeking to compel production of GMR's license agreements for use as benchmarks for SESAC license fees. Additionally, ASCAP and BMI have sought "most-favored nation" or "reopener" clauses with RMLC that would require RMLC member stations to pay higher fees if they agree to the royalty amounts GMR demands. BMI has stated that it prefers to wait out its license negotiations with RMLC until GMR can set the market rate. Thus, if GMR is successful in imposing the rates it demands, RMLC stations may be forced to succumb to a domino effect and pay higher rates to other PROs.

29. Without court intervention to halt the impact of GMR's actions on U.S. commercial radio stations, many stations will question RMLC's role in the industry, and RMLC will likely lose members on account of its damaged reputation. In this regard, RMLC receives ongoing communications from its member stations inquiring as to what actions RMLC is taking to ensure that they can perform the works in GMR's repertory without risk of infringement, and without having to pay exorbitant new license fees. This membership loss would undermine RMLC's position as a bargaining agent of the radio industry with PROs other than GMR, thus further reducing its efficacy as a representative organization and harming each RMLC member.

30. Most of RMLC's bound member stations are similarly situated when it comes to the harms that GMR threatens to impose on them. The circumstances described in the accompanying declarations of Jim Coloff, Eugene D. Levin, Dave Paulus, and Jeffrey D. Warshaw, are representative of the harms that other radio stations are likely to suffer.

<u>The Injunction RMLC Proposes Would Cure GMR's Imminently Threatened Harm and Serve the Public Interest</u>

31. I understand that RMLC has proposed that the Court issue a preliminary order that, until the termination of this litigation, (1) GMR must offer to all U.S. commercial radio stations a blanket license to GMR's entire repertory at a reasonable rate that is proportional to the annual rates that each station pays to ASCAP and BMI on a weighted share basis, and (2) GMR and its affiliates must not sue any U.S. commercial radio stations for copyright infringement of any portion of the claimed GMR repertory until such station has had a fair opportunity to consider, and has rejected, participation in such a reasonable license.

32. Based on my experience in the industry and discussions with station owners, such an order is the only way to preserve the status quo. It will mean that U.S. commercial radio stations will not be required to pay a greater total sum in licensing fees due to GMR's conduct. Likewise, GMR affiliates will receive royalty rates on par with those offered by their previous PROs, which operate under regulatory oversight. Indeed, I understand that virtually all of GMR's affiliates formerly licensed their works through ASCAP and BMI.

33. The proposed preliminary order also will serve the public interest. If stations do not obtain relief, they will face immediate pressure to try to scrub all GMR songs from their broadcasts. A court order permitting radio stations the option to take a license from GMR on reasonable terms will greatly reduce this pressure and will promote broadcast continuity. As a result, listeners will continue to receive optimal choice in broadcasting selection. Moreover, a court order will ensure that radio stations can play new songs on their release date rather than waiting weeks or months to obtain licenses from every fractional owner of each song, benefitting radio stations and consumers who want immediate access to the latest hits as well as recording artists who rely on radio to promote interest in their recordings.

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

Executed this 17th day of November 2016.

William Velez

EXHIBIT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
(WHITE PLAINS)

UNITED STATES OF AMERICA, Plaintiff, v. AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS, Defendants.	)	Civ. Action No. 41-1395 (WCC) SECOND AMENDED FINAL JUDGMENT

Plaintiff having filed its complaint herein on February 26, 1941, the original defendants having appeared and filed their answer to the complaint denying the substantive allegations thereof, all parties having consented, without trial or adjudication of any issue of fact or law therein, to the entry of a Civil Decree and Judgment, filed March 4, 1941, to the entry of an Amended Final Judgment on March 14, 1950, as subsequently amended and modified and to the entry of an Order thereunder issued on January 7, 1960, as subsequently amended and modified;

The parties having moved the Court to amend the Amended Final Judgment,

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, without admission by the defendant American Society of Composers, Authors and Publishers with respect to any such issue, and upon consent of all remaining parties hereto, it is hereby

ORDERED, ADJUDGED, AND DECREED that the Amended Final Judgment be amended as follows:

I. **Jurisdiction.** This Court has jurisdiction of the subject matter hereof and of all parties hereto. The complaint states a claim upon which relief may be granted against ASCAP under Section 1 of the Sherman Act, 15 U.S.C. § 1.

II. **Definitions.** As used in this Second Amended Final Judgment:

(A) "ASCAP" means the American Society of Composers, Authors and Publishers;

(B) "ASCAP music" means any work in the ASCAP repertory;

(C) "ASCAP repertory" means those works the right of public performance of which ASCAP has or hereafter shall have the right to license at the relevant point in time;

(D) "Background/foreground music service" means a person that transmits performances of music to subscribers and that furnishes to those subscribers equipment not otherwise available to the general public that enables subscribers to make the transmitted performances on their premises. A background/foreground music service does not include radio or television stations or networks, cable television networks or systems, persons that transmit renditions of music to private homes, apartments, or hotel or motel guest rooms, or persons that transmit renditions of music to subscribers that charge admission;

(E) "Blanket License" means a non-exclusive license that authorizes a music user to perform ASCAP music, the fee for which does not vary depending on the extent to which the music user in fact performs ASCAP music;

(F) "Broadcaster" means any person who transmits audio or audio-visual content substantially similar to content that is transmitted by over-the-air or cable radio or television stations or networks as they existed on the date of entry of this Second Amended Final Judgment or that transmits the signal of another broadcaster: (1) over the air, (2) via cable television or direct broadcast satellite, or (3) via other existing or yet-to-be-developed transmission technologies, to audiences using radios, television sets, computers, or other receiving or playing devices;

(G) "Music user" means any person that (1) owns or operates an establishment or enterprise where copyrighted musical compositions are performed publicly, or (2) is otherwise directly engaged in giving public performances of copyrighted musical compositions;

(H) "On-line music user" means a person that publicly performs works in the ASCAP repertory via the Internet or similar transmission facility including any succeeding transmission technologies developed after entry of this Second Amended Final Judgment;

(I) "Performing rights organization" means an association or corporation, such as ASCAP, Broadcast Music, Inc., or SESAC, Inc., that collectively licenses rights of public performance on behalf of numerous copyright owners;

(J) "Per-program license" means a non-exclusive license that authorizes a broadcaster to perform ASCAP music in all of the broadcaster's programs, the fee for which varies depending upon which programs contain ASCAP music not otherwise licensed for public performance;

(K) "Per-segment license" means a non-exclusive license that authorizes a music user to perform any or all works in the ASCAP repertory in all segments of the music user's activities in a single industry, the fee for which varies depending upon which segments contain ASCAP music not otherwise licensed for public performance;

(L) "Person" means an individual, partnership, firm, association, corporation or other business or legal entity;

(M) "Program" means either a discrete program exhibited by a broadcaster or on-line music user or, if such broadcaster or on-line music user does not exhibit discrete programs, such other portion of the transmissions made by the broadcaster or on-line music user as shall be agreed to by ASCAP and the broadcaster or on-line music user or as shall be determined by the Court in a proceeding conducted under Section IX of this Second Amended Final Judgment;

(N) "Public list" means such records that indicate the title, date of U.S. copyright registration, if any, writer and current publisher or other copyright owner of all works in the ASCAP repertory, including, but not limited to, the public electronic list;

(O) "Public electronic list" means separate databases of: (1) works in the ASCAP repertory that have been registered with ASCAP since January 1, 1991, or identified in ASCAP's surveys of performed works since January 1, 1978, identifying the title, writer, and current publisher or other copyright owner of each work; and (2) current ASCAP members;

(P) "Representative music user" means a music user whose frequency, intensity and type of music usage is typical of a group of similarly situated music users;

(Q) "Right of public performance" means, and "perform" refers to, the right to perform a work publicly in a nondramatic manner, sometimes referred to as the "small performing right," and any equivalent rights under foreign copyright law, including, but not limited to, rights known as the rights of transmission, retransmission, communication, diffusion and rediffusion;

(R) "Similarly situated" means music users or licensees in the same industry that perform ASCAP music and that operate similar businesses and use music in similar ways and with similar frequency; factors relevant to determining whether music users or licensees are similarly situated include, but are not limited to, the nature and frequency of musical performances, ASCAP's cost of administering licenses, whether the music users or licensees compete with one another, and the amount and source of the music users' revenue;

(S) "Through-to-the-Audience License" means a license that authorizes the simultaneous or so-called "delayed" performances of ASCAP music that are contained in content transmitted or delivered by a music user to another music user with whom the licensee has an economic relationship relating to that content;

(T) "Total license fee" means the sum of all fees paid by the music user in connection with the license, including any fee for ambient or incidental uses but excluding the administrative charges authorized by Section VII(B) of this Second Amended Final Judgment;

(U) "Work" means any copyrighted musical composition; and

(V) "Writer" means a person who has written the music or lyrics of a work.

III. **Applicability.** The provisions of this Second Amended Final Judgment shall apply to ASCAP, its successors and assigns, and to each of its officers, directors, agents, employees, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Second Amended Final Judgment by personal service or otherwise. Except as provided in Sections IV(A) and (B) of this Second Amended Final Judgment, none of the injunctions or requirements herein imposed upon ASCAP shall apply to the acquisition or licensing of the right to perform musical compositions publicly solely outside the United States of America, its territories or possessions.

IV. **Prohibited Conduct.** ASCAP is hereby enjoined and restrained from:

(A) Holding, acquiring, licensing, enforcing, or negotiating concerning any foreign or domestic rights in copyrighted musical compositions other than rights of public performance on a non-exclusive basis; provided, however, that ASCAP may collect and distribute royalties for home recording devices and media to the extent such royalty collection is required or authorized by statute;

(B) Limiting, restricting, or interfering with the right of any member to issue, directly or through an agent other than a performing rights organization, non-exclusive licenses to music users for rights of public performance;

(C) Entering into, recognizing, enforcing or claiming any rights under any license for rights of public performance which discriminates in license fees or other terms and conditions between licensees similarly situated;

(D) Granting any license to any music user for rights of public performance in excess of five years' duration;

(E) Granting to, enforcing against, collecting any monies from, or negotiating with any motion picture theater exhibitor concerning the right of public performance for music synchronized with motion pictures;

(F) Asserting or exercising any right or power to restrict from public performance by any licensee of ASCAP any work in order to exact additional consideration for the performance thereof, or for the purpose of permitting the fixing or regulating of fees for the recording or transcribing of such work; nothing in this Section IV(F) shall be construed to prevent ASCAP, when so directed by the member in interest in respect of a work, from restricting performances of a work in order reasonably to protect the work against indiscriminate performances, or the value of the public performance rights therein, or the dramatic or "grand" performing rights therein, or to prevent ASCAP from restricting performances of a work so far as may be reasonably necessary in connection with any claim or litigation involving the performing rights in any such work;

(G) Instituting, threatening to institute, maintaining, continuing, sponsoring, funding or providing any legal services for any suit or proceeding against any motion picture theater exhibitor for copyright infringement relating to the nondramatic public performance of any work contained in a motion picture, provided, however, that nothing in this Section IV(G) shall preclude ASCAP from pursuing its own *bona fide* independent interest in any such suit or proceeding; and

(H) Issuing to any broadcaster any license the fee for which is based upon a percentage of the income received by the licensee from programs that include no ASCAP music unless the broadcaster to whom such license shall be issued shall desire a license on such a basis; provided, however, that this Section IV(H) shall not limit the discretion of the Court in a proceeding conducted under Section IX of this Second Amended Final Judgment to determine a license fee on any appropriate basis.

V. **Through-to-the-Audience Licenses.** ASCAP is hereby ordered and directed to issue, upon request, a through-to-the-audience license to a broadcaster, an on-line user, a background/foreground music service, and an operator of any yet-to-be-developed technology that transmits content to other music users with whom it has an economic relationship relating to that content; provided, however, that, in accordance with Section III of this Second Amended Final Judgment, ASCAP shall not be required to issue a through-to-the-audience license to perform ASCAP music outside the United States. The fee for a through-to-the-audience license shall take into account the value of all performances made pursuant to the license.

VI. **Licensing.** ASCAP is hereby ordered and directed to grant to any music user making a written request therefor a non-exclusive license to perform all of the works in the ASCAP repertory; provided, however, that ASCAP shall not be required to issue a license to any music user that is in material breach or default of any license agreement by failing to pay to ASCAP any license fee that is indisputably owed to ASCAP. ASCAP shall not grant to any music user a license to perform one or more specified works in the ASCAP repertory, unless both the music user and member or members in interest shall have requested ASCAP in writing to do so, or unless ASCAP, at the written request of the prospective music user shall have sent a written notice of the prospective music user's request for a license to each such member at the member's last known address, and such member shall have failed to reply within thirty (30) days thereafter.

VII. **Per-Program and Per-Segment Licenses.**

(A) ASCAP is ordered and directed to offer, upon written request:

(1) To a broadcaster, a per-program license that shall, in addition, cover ambient and incidental uses and shall not require any record-keeping or monitoring of ambient and incidental uses; and

(2) To a background/foreground music service or to an on-line music user, a per-segment license if (a) the music user's performances of music can be tracked and monitored to determine with reasonable accuracy which segments of the music user's activity are subject to an ASCAP license fee; (b) the music user's performances of music can be attributed to segments commonly recognized within the music user's industry for which a license fee can be assessed; and (c) administration of the license will not impose an unreasonable burden on ASCAP; the per-segment license shall, in

addition, cover ambient and incidental uses without any record-keeping or monitoring of those uses if that is reasonably necessary to afford a genuine choice among the various types of licenses offered, or of the benefits of any of those types of licenses; if a portion of any on-line music user's transmissions consists of programs substantially similar to those transmitted by over-the-air or cable radio or television stations or networks as they existed on the date of entry of this Second Amended Final Judgment, or is a retransmission of any broadcaster's programs, it shall be presumed that each individual program shall constitute a segment and for those segments the on-line music user need not meet the requirements of subsections (a), (b) and (c) of this section.

(B) ASCAP may charge any music user that selects a per-program license or a per-segment license a fee to recover its reasonable cost of administering the license.

(C) Nothing in this Second Amended Final Judgment shall prevent ASCAP and any music user from agreeing on any other form of license.

(D) The fee for a per-program license and for any per-segment license issued to an on-line user shall be at the option of ASCAP either:

(1) Expressed in terms of dollars, requiring the payment of a specified amount for each program or segment that contains works in the ASCAP repertory not otherwise licensed for public performance, or

(2) Expressed as a percentage of the music users' revenue attributable to each program or segment that contains works in the ASCAP repertory not otherwise licensed for public performance.

VIII. **Genuine Choice.**

(A) ASCAP shall use its best efforts to avoid any discrimination among the various types of licenses offered to any group of similarly situated music users that would deprive those music users of a genuine choice among the various types of licenses offered, or of the benefits of any of those types of licenses.

(B) For a representative music user, the total license fee for a per-program or per-segment license shall, at the time the license fee is established, approximate the fee for a blanket license; for the purpose of making that approximation, it shall be assumed for the purposes of this Section VIII(B) that all of the music user's programs or segments that contain performances of ASCAP music are subject to an ASCAP fee.

(C) ASCAP shall maintain an up-to-date system for tracking music use by per-program and per-segment licensees; ASCAP shall not be required to incur any unreasonable costs in maintaining such system; ASCAP may require its members and such licensees to provide ASCAP with all information reasonably necessary to administer the per-program or per-segment license including, but not limited to:

(1) cue sheets or music logs;

(2) the date of performance of a work and identification of the program or other segment of the music user's activities that contained the performance;

(3) the title of the work performed; and

(4) the writer, publisher or performing artist;

such requirements shall be designed to avoid unreasonable burdens on ASCAP, ASCAP members and licensees.

(D) The terms and requirements of any license shall be designed to avoid imposing any unreasonable burdens or costs on licensees or ASCAP.

IX. **Determination of Reasonable Fees.**

(A) ASCAP shall, upon receipt of a written request for a license for the right of public performance of any, some or all of the works in the ASCAP repertory, advise the music user in writing of the fee that it deems reasonable for the license requested or the information that it reasonably requires in order to quote a reasonable fee. In the event ASCAP requires such additional information, it shall so advise the music user in writing, and shall advise the music user in writing of the fee that it deems reasonable within sixty (60) days of receiving such information. If the parties are unable to reach agreement within sixty (60) days from the date when the request for a license is received by ASCAP, or within sixty (60) days of ASCAP's request for information, whichever is later, the music user may apply to the Court for a determination of a reasonable fee retroactive to the date of the written request for a license, and ASCAP shall, upon receipt of notice of the filing of such request, promptly give notice of the filing to the Assistant Attorney General in charge of the Antitrust Division. If the parties are unable to agree upon a reasonable fee within ninety (90) days from the date when ASCAP advises the music user of the fee that it deems reasonable or requests additional information from the music user, and if the music user has not applied to the Court for a determination of a reasonable fee, ASCAP may apply to the Court for the determination of a reasonable fee retroactive to the date of a written request for a license and ASCAP shall upon filing such application promptly give notice of the filing to the Assistant Attorney General in charge of the Antitrust Division.

(B) In any such proceeding, the burden of proof shall be on ASCAP to establish the reasonableness of the fee it seeks except that, where a music user seeks a per-segment license, the music user shall have the burden of demonstrating that its performances of music can be tracked and monitored to determine with reasonable accuracy which segments of the music user's activity are subject to an ASCAP fee and of demonstrating that the music user's performances of music can be attributed to segments commonly recognized within the music user's industry for which a license fee can be assessed.

(C) The fees negotiated by ASCAP and any music user during the first five years that ASCAP licenses music users in that industry shall not be evidence of the reasonableness of any fees (other than an interim fee as provided in Section IX(F) of this Second Amended Final Judgment) for any license in any proceeding under this Section IX.

(D) Should ASCAP not establish that the fee it requested is reasonable, then the Court shall determine a reasonable fee based upon all the evidence.

(E) The parties shall have the matter ready for trial by the Court within one year of the filing of the application unless ASCAP and at least one music user request that the Court delay the trial for an additional period not to exceed one year. No other delay shall be granted unless good cause is shown for extending such schedule. Pending the completion of any such negotiations or proceedings, the music user shall have the right to perform any, some or all of the works in the ASCAP repertory to which its application pertains, without payment of any fee or other compensation, but subject to the provisions of Section IX(F) of this Second Amended Final Judgment, and to the final order or judgment entered by the Court in such proceeding.

(F) When a music user has the right to perform works in the ASCAP repertory pending the completion of any negotiations or pending proceedings provided for in Section IX(A) of this Second Amended Final Judgment, either the music user or ASCAP may apply to the Court to fix an interim fee pending final determination or negotiation of a reasonable fee. The Court shall then fix an interim fee within ninety (90) days of such application for an interim fee retroactive to the date of the written request for a license, allowing only such limited discovery, if any, that the Court deems necessary to the fixing of such interim fee. In fixing such interim fee, there shall be a presumption that the last existing license (if any) between the music user and ASCAP, or between licensees similarly situated to the music user and ASCAP, sets forth the appropriate interim fee. If the Court fixes such interim fee, ASCAP shall then issue and the music user shall accept a license providing for the payment of a fee at such interim rate from the date of the request by such music user for a license pursuant to Section IX(A) of this Second Amended Final Judgment. If the music user fails to accept such a license or fails to pay the interim fee in accordance therewith, such failure shall be ground for the dismissal of its application for a reasonable fee, if any.

(G) When a reasonable fee has been determined by the Court, ASCAP shall be required to offer a license at a comparable fee to all other similarly situated music users who shall thereafter request a license of ASCAP; provided, however, that any license agreement that has been executed between ASCAP and another similarly situated music user prior to such determination by the Court shall not be deemed to be in any way affected or altered by such determination for the term of such license agreement.

(H) Nothing in this Section IX shall prevent any applicant or licensee from attacking in the aforesaid proceedings or in any other controversy the validity of the copyright of any of the compositions in the ASCAP repertory, nor shall this Second Amended Final Judgment be construed as importing any validity or value to any of said copyrights.

(I) Pursuant to its responsibility to monitor and ensure compliance with this Second Amended Final Judgment, the United States may participate fully in any proceeding brought under this Section IX. Any order or agreement governing the confidentiality of documents or other products of discovery in any such proceeding shall contain the following provisions:

(1) The Department of Justice (the "Department") may make a written request for copies of any documents, deposition transcripts or other products of discovery ("products of discovery") produced in the proceeding. If the Department makes such a request to a party other than the party who produced the materials in the proceeding or to a deponent ("the producing party"), the Department and the party to whom it directed the request shall provide a copy of the request to the producing party. The producing party must file any objection to the request with the Court within thirty days of receiving the request; if the producing party does not file such an objection, the person to whom the Department directed its request shall provide the materials to the Department promptly;

(2) Any party to the proceeding may provide the Department with copies of any products of discovery produced in the proceeding. Any party who provides the Department with copies of any product of discovery shall inform the other parties to the proceeding within fifteen days of providing such materials to the Department. The producing party must file any objection to the production within fifteen days of receiving such notice; and

(3) The Department shall not disclose any products of discovery that it obtains under this order that have been designated as "confidential" in good faith or as otherwise protectable under Fed. R. Civ. P. 26(c)(7) to any third party without the consent of the producing party, except as provided in the Antitrust Civil Process Act, 15 U.S.C. § 1313(c)-(d), or as otherwise required by law.

X. **Public Lists.**

(A) Within 90 days of entry of this Second Amended Final Judgment, ASCAP shall, upon written request from any music user or prospective music user:

(1) Inform that person whether any work identified by title and writer is in the ASCAP repertory; or

(2) Make a good faith effort to do so if identifying information other than title and writer is provided.

(B) Within 90 days of entry of this Second Amended Final Judgment, ASCAP shall:

(1) Make the public list available for inspection at ASCAP's offices during regular business hours, maintain it thereafter, and update it annually; and

(2) Make the public electronic list available through on-line computer access (*e.g.*, the Internet), update it weekly, make copies of it available in a machine-readable format (*e.g.*, CD-ROM) for the cost of reproduction, and update the machine-readable copies semi-annually.

(C) Beginning 90 days after entry of this Second Amended Final Judgment, the first written offer of a license that ASCAP makes to a music user or prospective music user shall describe how to gain access to the public list and public electronic list and describe the variety of works in the ASCAP repertory, including, but not limited to, a list of writers, genres of music and works that illustrates that variety.

(D) After the date on which ASCAP makes the public electronic list available pursuant to Section X(B)(2) of this Second Amended Final Judgment, ASCAP shall not institute or threaten to institute, maintain, continue, sponsor, fund (wholly or partially, directly or indirectly) or provide any legal services for, any suit or proceeding against any music user for copyright infringement relating to the right of nondramatic public performance of any work in the ASCAP repertory that is not, at the time of the alleged infringement, identified on the public electronic list; provided, however, that nothing in this Section X shall preclude ASCAP from pursuing its own *bona fide* independent interest in any such suit or proceeding. This Section X(D) shall not apply to any such suit or proceeding pending on the date of entry of this Second Amended Final Judgment.

XI. **Membership.**

A. ASCAP is hereby ordered and directed to admit to membership, non-participating or otherwise:

(1) Any writer who shall have had at least one work regularly published, whether or not performance of the work has been recorded in an ASCAP survey; or

(2) Any person actively engaged in the music publishing business, whose musical publications have been used or distributed on a commercial scale for at least one year, and who assumes the financial risk involved in the normal publication of musical works.

B. (1) ASCAP shall distribute to its members the monies received by licensing rights of public performance, less its costs, primarily on the basis of performances of its members' works (excluding those works licensed by the member directly) as indicated by objective surveys of performances periodically made by or for ASCAP, provided, however, that ASCAP may make special awards of its distributable revenues to writers and publishers whose works have a unique prestige value, or which make a significant contribution to the ASCAP repertory. Distribution of ASCAP's distributable revenue based on such objective surveys shall reflect the value to ASCAP of performances in the various media, and the method or formula for such distribution shall be fully and clearly disclosed to all members. Upon written request of any member, ASCAP shall disclose information sufficient for that member to determine exactly how that member's payment was calculated by ASCAP.

(2) Where feasible, ASCAP shall conduct, or cause to have conducted, a census or a scientific, randomly selected sample of the performances of the works of its members. Such census or sample shall be designed to reflect accurately the number and identification of performances and the revenue attributable to those performances, made in accordance with a design made and periodically reviewed by an independent and qualified person.

(3) ASCAP shall not restrict the right of any member to withdraw from membership in ASCAP at the end of any calendar year upon giving three months' advance written notice to ASCAP; provided, however, that any writer or publisher member who resigns from ASCAP and whose works

continue to be licensed by ASCAP by reason of the continued membership of a co-writer, writer or publisher of any such works, may elect to continue receiving distribution for such works on the same basis and with the same elections as a member would have, so long as the resigning member does not license the works to any other performing rights licensing organization for performance in the United States. ASCAP may require a written acknowledgment from such resigning member that the works have not been so licensed.

(a) A resigning member shall receive distribution from ASCAP for performances occurring through the last day of the member's membership in ASCAP, regardless of the date the revenues are received.

(b) ASCAP shall not, in connection with any member's resignation, change the valuation of that member's works or the basis on which distribution is made to that member, unless such changes are part of similar changes applicable to all members in the resigning member's classification.

(c) Notwithstanding the foregoing, for any member who resigns from ASCAP, ASCAP is enjoined and restrained from requiring that member to agree that the withdrawal of such works be subject to any rights or obligations existing between ASCAP and its licensees, provided, however, that ASCAP may make withdrawal of any works from the ASCAP repertory subject to any license agreement between ASCAP and any licensee that is in effect on the date that this provision becomes effective.

C. Each provision of Section XI(B) of this Second Amended Final Judgment shall only be effective upon entry of an order in United States v. Broadcast Music, Inc., No. 64 Civ. 3787 (S.D.N.Y.), that contains a substantially identical provision. Until the provisions of Section XI(B)(3) of this Second Amended Final Judgment become effective, ASCAP shall not enter into any contract with a writer or publisher requiring such writer or publisher to grant to ASCAP performing rights for a period in excess of five years.

D. Notwithstanding the provisions of Section XI (B)(3) and (C) of this Second Amended Final Judgment, a member who requests and receives an advance from ASCAP shall remain a member of ASCAP and shall not be entitled to exercise any right to resign until the advance has been fully recouped or repaid.

XII. **Plaintiff's Access.**

(A) For the purposes of determining or securing compliance with this Second Amended Final Judgment or determining whether this Second Amended Final Judgment should be modified or terminated, and subject to any legally recognized privilege, authorized representatives of the Antitrust Division of the United States Department of Justice, shall upon written request of the Assistant Attorney

General in charge of the Antitrust Division and on reasonable notice to ASCAP, be permitted:

(1) Access during regular business hours to inspect and copy all records and documents in the possession, custody, or under the control of ASCAP, which may have counsel present, relating to any matters contained in this Second Amended Final Judgment;

(2) To interview ASCAP's members, officers, directors, employees, agents, and representatives, who may have counsel present, concerning such matters; and

(3) To obtain written reports from ASCAP, under oath if requested, relating to any matters contained in this Second Amended Final Judgment.

(B) ASCAP shall have the right to be represented by counsel in any process under this Section.

(C) No information or documents obtained by the means provided in this Section shall be divulged by the plaintiff to any person other than duly authorized representatives of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Second Amended Final Judgment, or as otherwise required by law.

(D) If, at the time information or documents are furnished by defendant to plaintiff, ASCAP represents and identifies, in writing, the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and ASCAP marks each pertinent page of such material, "subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10-days notice shall be given by plaintiff to ASCAP prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which ASCAP is not a party.

XIII. **Dismissal of Individual Defendants.** This action is dismissed with respect to Gene Buck, George Meyer and Gustave Schirmer and their estates.

XIV. **Retention of Jurisdiction.** Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this Second Amended Final Judgment to make application to the Court for such further orders and directions as may be necessary or appropriate in relation to the construction of or carrying out of this Second Amended Final Judgment, for the modification thereof, for the enforcement of compliance therewith and for the punishment of violations thereof. It is expressly understood, in addition to the foregoing, that:

(A) The plaintiff may at any time after entry of this Second Amended Final Judgment, upon reasonable notice, apply to the Court for the vacation of said Judgment, or its modification in any respect, including the dissolution of ASCAP; and

(B) If, at any time after the entry of this Second Amended Final Judgment, a stipulated amended final judgment is entered in United States v. Broadcast Music, Inc., No. 64 Civ. 3787 (S.D.N.Y.), ASCAP may move the Court, and the Court shall grant such motion, to substitute the relevant terms of that stipulated amended final judgment for those of this Second Amended Final Judgment.

XV. **Effective Date.** This Second Amended Final Judgment shall become effective three months from the date of entry hereof whereupon the Amended Final Judgment entered on March 14, 1950, all modifications or amendments thereto, the Order entered thereunder on January 7, 1960, and all modifications and amendments thereto (collectively the "Amended Final Judgment") and the Final Judgment in United States v. The American Society of Composers, Authors and Publishers, (formerly Civ. No. 42-245 (S.D.N.Y.)) entered on March 14, 1950 and all modifications and amendments thereto (the "Foreign Decree") shall be vacated. This Second Amended Final Judgment shall not be construed to make proper or lawful or sanction any acts which occurred prior to the date hereof which were enjoined, restrained or prohibited by the Amended Final Judgment or the Foreign Decree.

Dated: June 11, 2001

s/ William C. Conner
United States District Judge

EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. BROADCAST MUSIC, INC. and RKO GENERAL, INC., Defendants.	Civil No. 64-Civ-3787

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on December 10, 1964, and defendant having filed its answer denying the substantive allegations of such complaint, and the parties by their respective attorneys having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting evidence or an admission by either party with respect to any such issue:

Now, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto, it is hereby

ORDERED, ADJUDGED and DECREED as follows:

I.

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states claims for relief against the defendant under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II.

As used in this Final Judgment:

(A) "Defendant" means the defendant Broadcast Music, Inc., a New York Corporation;

(B) "Programming period" means a fifteen minute period of broadcasting commencing on the hour and at fifteen, thirty and forty-five minutes past the hour without regard to whether such period contains one or more programs or announcements.

(C) "Defendant's repertory" means those compositions, the right of public performance of which defendant has or hereafter shall have the right to license or sublicense.

III.

The provisions of this Final Judgment shall apply to defendant and to each of its subsidiaries, successors, assigns, officers, directors, servants, employees and agents, and to all persons in active concert or participation with defendant who receive actual notice of this Final Judgment by personal service or otherwise. None of the provisions of this Final Judgment shall apply outside the United States of America, its territories, and possessions.

IV.

Defendant is enjoined and restrained from:

(A) Failing to grant permission, on the written request of all writers and publishers of a musical composition including the copyright proprietor thereof, allowing such persons to issue to a music user making direct performances to the public a non-exclusive license permitting the making of specified performances of such musical composition by such music user directly to the public, provided that the defendant shall not be required to make payment with respect to performances so licensed.

(B) Engaging in the commercial publication or recording of music or in the commercial distribution of sheet music or recordings.

V.

(A) Defendant shall not refuse to enter into a contract providing for the licensing by defendant of performance rights with any writer who shall have had at least one copyrighted musical composition of his writing commercially published or recorded, or with any publisher of music actively engaged in the music publishing business whose musical publications have been commercially published or recorded and publicly promoted and distributed for at least one year, and who assumes the financial risk involved in the normal publication of musical works; provided, however, that defendant shall have the right to refuse to enter into any such contract with any writer or publisher who does not satisfy reasonable standards of literacy and integrity if the defendant is willing to submit to arbitration in the County, City and State of New York the reasonableness and applicability of such standards, under the rules then prevailing of the American Arbitration Association, with any writer or publisher with whom defendant has refused so to contract.

(B) Defendant shall not enter into any contract with a writer or publisher requiring such writer or publisher to grant to defendant performing rights for a period in excess of five years, provided, however, that defendant may continue to license, as if under the contract, all musical compositions in which the defendant has performing rights at the date of termination of any such contract until all advances made by defendant to such writers and publishers shall have been earned or repaid.

(C) Upon the termination, at any time hereafter, of any contract with a writer or publisher relating to the licensing of the right publicly to perform any musical composition, defendant shall continue to pay for performances of the musical compositions of such writer or publisher licensed by defendant upon the basis of the current performance rates generally paid by defendant to writers and publishers for similar performances of similar compositions for so long as such performing rights are not otherwise licensed.

VI.

(A) Defendant shall not acquire rights of public performance in any musical compositions from any publisher under a contract which requires the officers, directors, owners or employees of such publisher to refrain from publishing or promoting musical works licensed through another performing rights organization, provided that nothing contained in this paragraph shall prevent defendant from entering into a contract with a publishing entity which requires such entity not to license any performance rights through any other performing rights organization during the term of the contract, and requiring that any works licensed by such officers, directors, owners or employees through another performing rights organization be licensed by a separate publishing entity which does not have a name identical with or similar to the name of any publishing entity with which defendant has contracted.

(B) Defendant shall not enter into any agreement for the acquisition or the licensing of performing rights which requires the recording or public performance of any stated amount or percentage of music, the performing rights in which are licensed or are to be licensed by defendant.

VII.

(A) Defendant shall make available at reasonable intervals, to all writers and publishers who have granted performance rights to it, a complete statement of the performance payment rates (to writers, those applicable to writers, and to publishers, those applicable to publishers), currently utilized by it for all classifications of performances and musical compositions.

(B) Defendant will not offer or agree to make payments in advance for a stated period for future performing rights which are not either repayable or to be earned by means of future performance to any writer or publisher who, at the time of such offer or agreement, is a member of or under direct contract for the licensing of such performing rights with any other United States performing rights licensing organization, provided that this restriction shall not apply (1) in the case of any such writer or publisher who at any time prior to said offer or agreement had licensed performing rights through defendant or (2) in the case of any such writer or publisher who is a member of or directly affiliated with any other United States performing rights licensing organization which makes offers or makes payments similar to those forbidden in this subparagraph to writers or publishers then under contract to defendant.

(C) Defendant shall include in all contracts which it tenders to writers, publishers and music users relating to the licensing of performance rights a clause requiring the parties to submit to arbitration in the City, County and State of New York under the then prevailing rules of the American Arbitration Association, all disputes of any kind, nature or description in connection with the terms and conditions of such contracts or arising out of the performance thereof or based upon an alleged breach thereof, except that in all contracts tendered by defendant to music users, the clause requiring the parties to submit to arbitration will exclude disputes that are cognizable by the Court pursuant to Article XIV hereof.

VIII.

(A) Defendant shall not enter into, recognize as valid or perform any performing rights license agreement which shall result in discriminating in rates or terms between licensees similarly situated; provided, however, that differentials based upon applicable business factors which justify different rates or terms shall not be considered discrimination within the meaning of this section; and provided further that nothing contained in this section shall prevent changes in rates or terms from time to time by reason of changing conditions affecting the market for or marketability of performing rights.

(B) Defendant shall, upon the request of any unlicensed broadcaster, license the rights publicly to perform its repertory by broadcasting on either a per program or per programming period basis, at defendant's option. The fee for this license shall relate only to programs (including announcements), or to programming periods, during which a licensed composition is performed. The fee shall be expressed, at defendant's option, either (1) in dollars, (2) as a percentage of the revenue which the broadcaster received for the use of its broadcasting facilities or (3) in the case of sustaining programs or programming periods, as a percentage of the applicable card rate had the program or programming period been commercially sponsored. In the event defendant offers to license broadcasters on bases in addition to a per program or per programming period basis, defendant shall act in good faith so that there shall be a relationship between such per program or such per programming period basis and such other bases, justifiable by applicable business factors including availability, so that there will be no frustration of the purpose of this section to afford broadcasters alternative bases of license compensation.

IX.

(A) Defendant shall not license the public performance of any musical composition or compositions except on a basis whereby, insofar as network broadcasting by a regularly constituted network so requesting is concerned, the issuance of a single license, authorizing and fixing a single license fee for such performance by network broadcasting, shall permit the simultaneous broadcasting of such performance by all stations on the network which shall broadcast such performance, without requiring separate licenses for such several stations for such performance.

(B) With respect to any musical composition in defendant's catalogue of musical compositions licensed for broadcasting and which is or shall be lawfully recorded for performance on specified commercially sponsored programs on an electrical transcription or on other specially prepared recordation intended for broadcasting purposes, defendant shall not refuse to offer to license the public performance by designated broadcasting stations of such compositions by a single license to any manufacturer, producer or distributor of such transcription or recordation or to any advertiser or advertising agency on whose behalf such transcription or recordation shall have been made who may request such license, which single license shall authorize the broadcasting of the recorded composition by means of such transcription or recordation by all stations enumerated by the licensee, on terms and conditions fixed by defendant, without requiring separate licenses for such enumerated stations.

(C) Defendant shall not, in connection with any offer to license by it the public performance of musical compositions by music users other than broadcasters, refuse to offer a license at a price or prices to be fixed by defendant with the consent of the copyright proprietor for the performance of such specific (i.e., per piece) musical compositions, the use of which shall be requested by the prospective licensee.

X.

(A) Defendant shall not assert or exercise any right or power to restrict from public performance by any licensee of defendant any copyrighted musical composition in order to exact additional consideration for the performance thereof, or for the purpose of permitting the fixing or regulating of fees for the recording or transcribing of such composition; provided, however, that nothing in this paragraph shall prevent defendant from restricting performances of a musical composition in order reasonably to protect the work against indiscriminate performances or the value of the public performance rights therein or to protect the dramatic performing rights therein, or, as may be reasonably necessary in connection with any claim or litigation involving the performance rights in any such composition.

(B) Defendant, during the term of any license agreements with any class of licensees, shall not make any voluntary reductions in the fees payable under any such agreements, provided, however, that nothing herein shall prevent defendant from lowering any fees or rates to any or all classes of licensees in response to changing conditions affecting the value or marketability of its catalogue to such class or classes, or where necessary to meet competition.

XI.

For the purpose of securing or determining compliance with this Final Judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division. and on reasonable notice to defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Access, during office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendant relating to any matters contained in this Final Judgment;

(B) Subject to the reasonable convenience of defendant and without restraint or interference from it, to interview officers or employees of defendant, who may have counsel present regarding any such matters.

Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment.

No information obtained by the means permitted in this Section XI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the Plaintiff, except in the course of legal proceedings in which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

XII.

All of the provisions of this Final Judgment shall become effective on the entry thereof, except as to paragraph C of Article VII, which shall not become effective until 90 days after the date of entry of this Final Judgment.

XIII.

Jurisdiction is retained by this Court for the purpose of enabling either of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions thereof, for the enforcement of compliance therewith and for the punishment of violations thereof.

To best preserve the independent conduct of defendant's music licensing activities, the jurisdiction retained by this Court over this Final Judgment shall be exercised by a Judge of this Court other than one to whom has been assigned any action in which a judgment has been entered retaining jurisdiction over any music performing rights licensing organization (e.g. ASCAP) other than defendant. No reference or assignment of any issue or matter under this Final Judgment shall be made to a Magistrate Judge or Master to whom has been referred or assigned any pending issue or matter in which any music performing rights licensing organization other than defendant as to which this Court has entered judgment retaining jurisdiction, (e.g. ASCAP) is a party.

XIV.

(A) Subject to all provisions of this Final Judgment, defendant shall, within ninety (90) days of its receipt of a written application from an applicant for a license for the right of public performance of any, some or all of the compositions in defendant's repertory, advise the applicant in writing of the fee which it deems reasonable for the license requested. If the parties are unable to agree upon a reasonable fee within sixty (60) days from the date when defendant advises the applicant of the fee which it deems reasonable, the applicant may forthwith apply to this Court for the determination of a reasonable fee and defendant shall, upon receipt of notice of the filing of such application, promptly give notice thereof to the Assistant Attorney General in charge of the Antitrust Division. If the parties are unable to agree upon a reasonable fee within ninety (90) days from the date when defendant advises the applicant of the fee which it deems reasonable and no such filing by applicant for the determination of a reasonable fee for the license requested is pending, then defendant may forthwith apply to this Court for the determination of a reasonable fee and defendant shall promptly give notice of its filing of such application to the Assistant Attorney General in charge of the Antitrust Division. In any such proceeding, defendant shall have the burden of proof to establish the reasonableness of the fee requested by it. Should defendant not establish that the fee requested by it is a reasonable one, then the Court shall determine a reasonable fee based upon all the evidence. Pending the completion of any such negotiations or proceedings, the applicant shall have the right to use any, some or all of the compositions in defendant's repertory to which its application pertains, without payment of any fee or other compensation, but subject to the provisions of Subsection (B) hereof, and to the final order or judgment entered by this Court in such proceeding;

(B) When an applicant has the right to perform any compositions in defendant's repertory pending the completion of any negotiations or proceedings provided for in Subsection (A) hereof, either the applicant or defendant may apply to this Court to fix an interim fee pending final determination of what constitutes a reasonable fee. It is the purpose of this provision that an interim fee be determined promptly, and without prejudice as to the final determination of what constitutes a reasonable fee. It is further intended that interim fee proceedings be completed within 120 days of the date when application is made to fix an interim fee, subject to extension at the request of defendant or the applicant only in the interest of justice for good cause shown. If the Court fixes such interim fee, defendant shall then issue and the applicant shall accept a license providing for the payment of a fee at such interim rate from the date the applicant requested a license. If the applicant fails to accept such license or fails to pay the interim fee in accordance therewith, such failure shall be ground for the dismissal of its application. Where an interim license has been issued pursuant to this Subsection (B), the reasonable fee finally determined by this Court shall be retroactive to the date the applicant requested a license;

(C) When a reasonable fee has been finally determined by this Court, defendant shall be required to offer a license at a comparable fee to all other applicants similarly situated who shall thereafter request a license of defendant, but any license agreement which has been executed without any Court determination between defendant and another applicant similarly situated prior to such determination by the Court shall not be deemed to be in any way affected or altered by such determination for the term of such license agreement;

(D) Nothing in this Article XIV shall prevent any applicant from attacking in the aforesaid proceedings or in any other controversy the validity of the copyright of any of the compositions in defendant's repertory nor shall this Judgment be construed as importing any validity or value to any of said copyrights.

AND IT IS FURTHER ORDERED, ADJUDGED and DECREED that with respect to any music user heretofore licensed by defendant the license agreement of which expressly provides for determination by this Court of reasonable license fees or other terms for any period covered by such license, either defendant or such music user may apply to this Court for such determination provided that such license agreement provision has not otherwise expired.

Dated: New York, N. Y.
December 29, 1966

EDWARD C. MCLEAN
United States District Judge

JUDGMENT ENTERED DECEMBER 29, 1966

JOHN J. OLEAR, JR.
Clerk

Dated: New York, New York
November 18, 1994

Robert P. Patterson, Jr.
U.S.D.J.

<u>Settlement Agreement</u>

This Settlement Agreement (or "**Agreement**") is entered into as of July __, 2015, by the Radio Music License Committee, Inc. ("**RMLC**"), and SESAC, Inc., SESAC, LLC, and SESAC Holdings, Inc. (together, "**SESAC**") (collectively, the RMLC and SESAC are the "**Parties**"). This Agreement shall be effective as of the date it is signed by both Parties (the "**Effective Date**") and, as of that date, shall fully and finally settle and resolve, in its entirety, the litigation pending in the United States District Court for the Eastern District of Pennsylvania captioned: *Radio Music License Committee, Inc. v. SESAC, Inc., et al.*, No. 2:12-cv-05807-CDJ (E.D. Pa.) (the "**RMLC Proceeding**").

WHEREAS, the RMLC believes that it has meritorious claims in the RMLC Proceeding, but has concluded that — in order to avoid the delay and uncertainties associated with the RMLC Proceeding, and to assure immediate, long-term, benefits to the radio industry — entering into this Agreement would be in the best interests of the owners of commercial terrestrial stations broadcasting radio to a local geographic area in the United States (the "**Commercial Radio Stations**") that are both (i) licensees of SESAC and (ii) represented by the RMLC (such RMLC-represented SESAC licensees are the "**Represented Stations**"); and

WHEREAS, SESAC believes it has meritorious defenses to the claims against it and does not, by entering into this Agreement, admit or concede any liability, but has concluded that it is desirable that the RMLC Proceeding be settled on the terms set forth in this Agreement in order to end the distraction and diversion of its personnel and resources so that it can focus on nurturing and growing its business;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the undersigned, on behalf of the RMLC and SESAC, that the RMLC Proceeding be resolved on the following terms and conditions:

1. **Monetary Consideration.** Within five (5) business days of the Effective Date, in consideration of the RMLC's reasonable attorney's fees and associated expenses in prosecuting the RMLC Proceeding, SESAC will make a payment to the RMLC in the amount of $3,564,087.39 (Three Million Five Hundred Sixty-Four Thousand Eighty-Seven U.S. Dollars and Thirty-Nine Cents) pursuant to payment instructions provided by the RMLC's counsel.

2. **Represented Stations.**

   a. Any owner of a Commercial Radio Station that is licensed by SESAC and is not delinquent in its payments of license fees to SESAC for a period of six months or more (*i.e.*, is not a Delinquent Station, as defined herein) can become a Represented Station if, on or before December 31, 2015 as to the 2016-2018 license period, or thereafter as prescribed in paragraph 2.d hereof, it agrees in writing to be bound by this Settlement Agreement and executes an authorization form an exemplar of which is annexed as Exhibit A hereto (the "**Authorization Form**"). A Commercial Radio Station will be deemed a Delinquent Station:

      i. If the Commercial Radio Station has entered into a license agreement with SESAC calling for the payment by the station of a sum certain — that is, a dollar sum actually specified in the license as opposed to a fee calculated from a schedule, such as one keyed to highest unit ad sales rates, the application of which may be subject to varying interpretation and/or adjustment over time — and that station fails to pay that sum certain when and as invoiced by SESAC in accordance with such license agreement; for the avoidance of doubt, this paragraph 2(a)(i) includes station group licenses setting forth payment of a sum certain subject to adjustment based on acquisitions or divestitures; or

ii. If the Commercial Radio Station (A) is licensed by SESAC pursuant to an agreement or arbitration award calling for payment by the station of license fees based on a percentage of the station's revenue or pursuant to some other formula or schedule; (B) has reported to SESAC its revenue or other necessary information or input required for SESAC to invoice such station; (C) receives an invoice from SESAC accurately based on (i) such reported revenue or other information or input or, (ii) if the station has failed to report the information or input necessary for the accurate calculation of the fee to be invoiced, based on SESAC's reasonable determination thereof, pending the station's reporting to SESAC of the necessary information or input; and (D) fails to pay such invoice.

- *Provided, however,* that for purposes of the initial 2016-2018 license period of this Agreement only, a Commercial Radio Station that is currently in arrears in its payment of license fees to SESAC by more than six months may become a Represented Station if

(A) it is current in its payments of license fees to SESAC for the six-month period ending December 31, 2015, and at the time it makes its payment for this period provides written notice to medwards@SESAC.com that this payment is being made for this purpose or the Commercial Radio Station provides with its remittance a separate letter stating the period the remittance covers and (B) it does not thereafter become delinquent in its payments of license fees to SESAC for a period of six months or more. For the avoidance of doubt, SESAC's rights to seek payment for amounts due and unpaid from any Commercial Radio Station are unaffected by anything in this paragraph 2.

b. The RMLC shall, promptly after December 31, 2015, prepare and submit to SESAC a comprehensive list, in hard copy and electronic format, of all Represented Stations as of that date, including the owner's name, the station call letters, FCC facility identification number, and frequency.

c. Represented Stations that elect to be bound by this Agreement within the time period set forth in subparagraph (a) of this paragraph 2 agree to designate the RMLC to negotiate and, if necessary, to elect binding arbitration on their behalf to determine, for the license periods beginning 2016, the license fees and terms for such Represented Stations' public performances of music in the SESAC repertory within the scope of authorized uses prescribed in paragraph 4 hereof (such license fees and terms hereafter referred to as "**License Fees and Terms**").

d. Thereafter, Represented Stations or any other Commercial Radio Station meeting the criteria set forth in subparagraph (a) of this paragraph 2 may, by September 30, 2018 — and correspondingly, by September 30 of the last year of the license periods designated in list items (i)-(iv) below — similarly designate the RMLC to negotiate and, if necessary, elect binding arbitration on their behalf to determine the License Fees and Terms for the scope of licenses authorized hereunder to govern the succeeding license periods. Those license periods are:

i. January 1, 2019 through December 31, 2022
ii. January 1, 2023 through December 31, 2026
iii. January 1, 2027 through December 31, 2030
iv. January 1, 2031 through December 31, 2034.

The license periods beginning January 1, 2016 through the end of the term of this Agreement are referred to herein as **"Future License Periods."**

e. If a Represented Station changes ownership at any point from the execution of this Agreement to December 31, 2016, then, as relevant, for the remainder of 2015 on a final basis and from January 1, 2016 through December 31, 2016 on an interim basis (subject to the provisions of paragraph 7 for establishing final License Fees and Terms from January 1, 2016 through the term of this Agreement), SESAC agrees to license the new owner for the newly-acquired Represented Station at the lower of SESAC's then-existing fee schedule for the industry or any existing fee schedule with the new owner.

f. Any Represented Station wishing no longer to retain such status for succeeding license periods shall notify both the RMLC and SESAC in the manner prescribed in the Authorization Form.

g. SESAC will be obligated to offer the terms and conditions negotiated with RMLC, or determined through arbitration, only to Represented Stations that are not Delinquent Stations at the time a negotiated agreement on fees between SESAC and the RMLC is entered into or, if License Fees and Terms are set in arbitration pursuant to paragraph 7, then at the time the arbitration is commenced and at the time the arbitration award is rendered. If a station becomes a Delinquent Station after the award is rendered or an agreement is negotiated, neither the RMLC nor any other Represented Station shall be required to pay the license fees allocated to such station, without prejudice to any of SESAC's rights to seek to enforce payment of such fees in accordance with law.

h. **Definitions.** In this Agreement:

   i. "**SESAC Repertory Search Database**" means the database currently accessible at http://www.sesac.com/Repertory/Terms.aspx.

   ii. "**SESAC Song List**" means the Song List currently accessible at http://www.sesac.com/Repertory/RepertorySongListTerms.aspx.

   iii. "**SESAC repertory**" and "**SESAC musical work**" mean the music contained at any given time in the SESAC Repertory Search Database and the SESAC Song list to the full extent of SESAC's rights to represent the composers, producers or music publishers owning performance rights to such music.

3. **2015-2016 Fees.** For the remainder of 2015 on a final basis, and from January 1, 2016 forward on an interim basis (subject to the provisions of paragraph 7 hereof for establishing final License Fees and Terms from January 1, 2016 through the term of this Agreement):

a. SESAC will continue to license Represented Stations at their existing, 2015 fee levels. In turn, Represented Stations shall pay the fees to SESAC that they are contractually obligated to pay. Notwithstanding the foregoing, if a Represented Station converts from a primarily music to a primarily all-talk format, or vice versa, that station will pay license fees to SESAC at the prevailing SESAC rate for the new format, consistent with the notice provisions contained in the governing agreements. In such circumstances, SESAC shall offer the converting Represented Station licenses in the same form and at the same fee level as SESAC has promulgated for the industry for 2015.

b. SESAC will not institute any new audits against any Represented Station, will discontinue with prejudice any existing audits of any Represented Station by terminating any such existing audits (whether disputed or unpaid), and represents that it has not sought additional license fees from any Represented Station pursuant to audits closed out within the prior thirty (30) days before the Effective Date.

c. Nothing in subparagraphs (a) or (b) of this paragraph 3 shall limit SESAC's rights and remedies in pursuing the collection of license fees contractually owing and in arrears from any Represented Station.

4. **License Scope.** For all periods covered by this Agreement, the License Fees and Terms for radio performance licenses to the music in SESAC's repertory by Represented Stations either prescribed in this Agreement or to be negotiated or determined by arbitration shall include, on a non-subscription, linear transmission, through-to-the-audience basis (excluding commercial audiences) (i) public performances of SESAC-repertory works in audio-only programming, ambient music, and commercial announcements contained in stations' (and any translator stations') FCC-licensed terrestrial and HD broadcasts and multicasts, and (ii) "new media" transmissions, including performances transmitted via the Internet, wireless data networks, or any other similar transmission facilities either directly by the Represented Station or using a third party with which the Represented Station is in privity and with which it has a commercial relationship, excluding (A) on-demand, subscription service transmissions and (B) webcasting services akin to iHeartRadio and Pandora, *i.e.*, music–intensive "custom radio" services. For the avoidance of doubt, no person or enterprise that predominantly provides commercial activities or services *excluded* from the scope of license coverage under this paragraph 4 shall be a Represented Station for purposes of such excluded commercial activities or services by virtue of its acquisition of or by, or other affiliation with, (x) a Commercial Radio Station or (y) the direct or indirect owner of a Commercial Radio Station.

5. **Affiliate Agreements.** Beginning as of the Effective Date and continuing until December 31, 2037, SESAC shall not enter into agreements with its affiliated composers, producers and music publishers ("**affiliates**"), or extend the initial term of any existing agreements with affiliates, that:

a. expressly prohibit any affiliate from issuing a public performance rights license directly to a Commercial Radio Station or network or program producer (or agent thereof), or

b. have the effect of interfering with the ability of any affiliate to issue a public performance rights license directly to a Commercial Radio Station or program producer as a result of, including but not limited to by,

i. imposing penalties on the affiliate for issuing a direct license, or

ii. requiring that proceeds of any sales of direct licenses be forfeited to SESAC except that, to the extent SESAC advances monies to its publisher or writer affiliates in the form of a guarantee, advance, or otherwise, SESAC shall be permitted to enter into agreements with such affiliates requiring that a portion of the proceeds of any sales of direct licenses by those affiliates, not to exceed eighty (80) percent, be directed to SESAC for its benefit up until said guarantees, advances or the like have been recouped; or

iii. making the affiliate refer requests to renew existing direct licenses, or for new direct licenses, to SESAC in the first instance, or

iv. permitting the affiliate to issue renewals, or new direct licenses, only if SESAC did not reach agreement with the affiliate, and then only at a price equal to that for which SESAC would offer such a license.

To the extent that any such provisions are contained in existing agreements between SESAC and its affiliates, SESAC agrees not to enforce those provisions.

6. **All-Talk Amendment/Per Program License.**

a. For the remainder of 2015 and continuing on an interim basis thereafter until final License Fees and Terms are negotiated or arbitrated for the period beginning January 1, 2016, SESAC shall continue to offer Represented Stations its current form of All-Talk Amendment as an alternative to a blanket license.

b. Should the RMLC elect at the time of future license negotiations to replace the current All-Talk Amendment with a per-program license in lieu of SESAC's All-Talk Amendment, SESAC shall offer all Represented Stations such a license, the terms of which shall be determined either through negotiation or in binding arbitration conducted pursuant to paragraph 7. Those same negotiations or that same arbitration shall determine the allocated share of a one-time per-program license start-up fee (reflecting reasonable start-up costs by SESAC related to the development of the systems and mechanisms required to administer the per-program license) and administrative fees on a going-forward basis (reflecting costs reasonably incurred by SESAC to administer the per-program license) to be paid by Represented Stations. Such fees will be allocated among Represented

Stations (or per-program-electing stations) in such manner, and paid on such schedule, as the Parties may agree upon or as may be ordered by arbitration. An initial per-program license will not be offered retroactively; rather, it will be offered only prospectively following determination of all per program License Fees and Terms by agreement of the Parties or by the arbitrators; *provided, however,* that if per-program License Fees and Terms are determined in binding arbitration, the per-program license so determined shall be offered no later than six months from the date of the award finally determining all, or the last of, such License Fees and Terms. SESAC will not be required to offer both a per-program license and the All-Talk Amendment simultaneously.

7. **Future Licenses – Negotiation and Arbitration.** The Parties agree to the following process and structure to govern the setting of License Fees and Terms between SESAC and Represented Stations for the period January 1, 2016 through December 31, 2037 for the scope of licenses set forth in paragraph 4 hereof:

   a. The RMLC and SESAC shall pursue good-faith negotiations beginning no later than April 1st of each of 2016, 2018, 2022, 2026, 2030 and 2034 over License Fees and Terms for the next succeeding license period.

   b. If, by June 30, 2016, or December 31st of any of 2018, 2022, 2026, 2030 and 2034, agreement has not been reached over License Fees and Terms for the current or next succeeding license period, as applicable, then either Party, as its exclusive dispute resolution remedy, may elect to pursue binding arbitration. The initial arbitration, covering the Future License Period from

January 1, 2016 through December 31, 2018, shall be conducted during the first calendar quarter of 2017 and an award containing the License Fees and Terms to be paid by the Represented Stations shall be rendered no later than thirty (30) days after the record of such arbitration, including all briefing, is closed. Each subsequent arbitration shall, unless otherwise agreed to by the RMLC and SESAC, be completed, and an award containing the License Fees and Terms to be paid by the Represented Stations shall be rendered, within six (6) months of the date that the arbitration panel is constituted and in no event later than December 31st of each of 2020, 2023, 2027, 2031, and 2035, for the succeeding Future License Periods.

c. The RMLC shall not be permitted to represent in any negotiation or arbitration any Represented Station that is a Delinquent Station at the time that the arbitration is commenced, at the time the arbitration award is rendered, or at the time a negotiated agreement on fees is entered into, and the RMLC will not be permitted to allocate to any such station any fees awarded in arbitration pursuant to this paragraph. As provided in ¶ 2(g), above, if a station becomes a Delinquent Station after the award is rendered or an agreement is negotiated, neither the RMLC nor any other Represented Station shall be required to pay the license fees allocated to such station, without prejudice to any of SESAC's rights to seek to enforce payment of such fees in accordance with law.

d. The License Fees and Terms governing the last year of the Future License Periods ending in 2018, 2022, 2026, 2030 and 2034 shall, for each Represented Station, remain in place on an interim basis until License Fees and Terms for the subsequent License Period have been determined through negotiation or arbitration. During this interim phase, any Represented Station that continues to make payments pursuant to the terms of its expiring license (under either a blanket, All-Talk Amendment, per-program, or other applicable license) shall be treated by SESAC and its affiliates as fully licensed, to the full extent of that license, and SESAC and its affiliates shall not sue or threaten to sue any such Represented Station for copyright infringement. (The foregoing does not limit any separate claims by a SESAC affiliate relating to then-existing direct licenses with a Represented Station.) Interim fees so payable shall be retroactively adjustable to the beginning of the new license term based on the results of either negotiations between the RMLC and SESAC or binding arbitration.

e. Unless otherwise agreed to in writing between the RMLC and SESAC, the arbitrations contemplated by this paragraph 7 shall be conducted according to the following procedures:

    i. The arbitration shall be conducted by three arbitrators, one appointed by the RMLC, one appointed by SESAC, and the third, who shall serve as the chair of the panel, appointed by the first two or, if they are unable to agree, to be appointed from the panel of complex litigation neutral arbitrators of JAMS. Each Party-appointed arbitrator shall be neutral and independent of the appointing Party. Each Party shall bear the cost of its Party-appointed arbitrator as well as one-half the cost of the third arbitrator. The Parties shall otherwise bear their own costs of arbitration.

ii. The arbitration shall be conducted in New York, New York, and shall be decided in accordance with New York law, without regard to choice of law principles. To the extent any matters of federal law may be considered, they shall be determined in accordance with federal law.

iii. The award setting forth the License Fees and Terms shall be embodied in a reasoned written decision by the panel. The award shall contain, among other things, the annual fees (or the methodology for computing such fees, *e.g.*, the percentage of prescribed station revenues) to be paid by the Represented Stations to SESAC during the Future License Period under consideration as to each license to be offered by SESAC. SESAC will not oppose the setting of a prescribed minimum license fee to be charged by SESAC to smaller Represented Stations (although SESAC may contest in arbitration the amount of such minimum license fee), nor will SESAC oppose establishment of a unitary license and rate for over-the-air, streaming and HD radio transmissions within the scope of license set forth in paragraph 4, with the understanding that the award of such minimum fees and restructuring of rates into a unitary license shall not diminish the total, industry-wide license fees to which SESAC otherwise may be determined to be entitled.

iv. Any suit, action or other legal proceeding brought by either Party to enforce an award or otherwise relating to the arbitration shall be instituted in federal district court in New York, New York or, if and only if federal jurisdiction is lacking, in the Supreme Court of the State of New York, County of New York.

8. **Confidentiality.** Except to the extent disclosure is required by applicable law, the record in binding arbitration, as well as the content of the Parties' negotiations (including any proposals or positions communicated during negotiations), shall remain private and confidential and shall not be disclosed to anyone other than the Parties and the Represented Stations. This confidentiality provision shall not restrict disclosure of the License Fees and Terms that are established either by agreement between SESAC and the RMLC or in binding arbitration over the term of this Agreement.

9. **Licensing of Additional Performances.** Any Represented Station (or the RMLC, on behalf of one or more Represented Stations) shall be entitled to invoke the dispute resolution mechanism set forth in paragraphs 7(b) – 7(d) hereof with respect to unresolved license fees or terms for a SESAC license covering public performances by a Represented Station (or a corporately-affiliated entity) in relation to commercial activities or services *excluded* from the scope of license coverage under paragraph 4 of this Agreement. In the event of any such disputes, the parties (here, the Represented Station(s), the RMLC and SESAC) shall discuss the optimal procedure for resolving the matter, *e.g.*, whether as a part of an existing or prospective

arbitration determining industry-wide fees encompassed by this Agreement, as a separate arbitration, or otherwise.

10. **Split Works.** Without intending to affect the manner in which copyright law deals with joint copyright owners' licensing of so-called "split works," in adjudicating license fees and terms under paragraphs 4 and 9, the arbitrators shall determine and award the value of all music in SESAC's repertory, including the contribution to that value of works in which SESAC affiliates own less than 100% of the copyright interest. Neither the RMLC nor any Represented Station shall argue that the value to be ascribed to such works should be diminished (other than proportionately to the partial ownership interests they represent) on account of the fact that other rightsholders-in-interest not represented by SESAC also own percentages of the copyright interest in such works.

11. **Allocations.** For each license period the methodology for allocating among the Represented Stations the amounts payable to SESAC will be established either by agreement reached between SESAC and the RMLC or in arbitration in accordance with the terms of this Agreement, except to the extent that the fees determined by agreement or in arbitration are based on a percentage-of-revenue formula.

12. **Non-Precedential Nature of Prior Fees.** The sums and the methodology of computation of such sums paid to SESAC by the Represented Stations as final license fees (whether individually or in the aggregate) for all periods prior to January 1, 2016, any interim fees payable from January 1, 2016 forward are agreed to be non-precedential and shall not be used in any manner in any arbitration between the Parties as may be conducted pursuant to this Agreement. Notwithstanding the

foregoing, the existence of, and SESAC's experience with, the All-Talk Amendment may be offered in evidence in any arbitration conducted pursuant to this Agreement.

13. **SESAC Repertory.** Beginning as of the Effective Date and continuing until December 31, 2037:

a. SESAC shall maintain on its website the recently-added SESAC Song List, which will contain the titles of musical works in SESAC's repertory and the names of SESAC affiliates associated with those musical works and which will be searchable by song title or affiliate and will be downloadable;

b. SESAC will promptly identify in its Repertory Search Database and Song List music content that it is aware is being used in radio national and spot commercial announcements;

c. SESAC will not reinstate the former 100-search-per-day limitation on its Repertory Search Database, and no such limitation will be imposed on searches of the SESAC Song List; and

d. SESAC will use reasonable efforts to keep current the information in both the SESAC Song List and the SESAC Repertory Search Database.

e. SESAC and the RMLC will, at the times prescribed for negotiations pursuant to paragraph 7(a) hereof, on a good-faith basis, discuss possible modifications or augmentations of the search tools identified within this paragraph 13 – which modifications or augmentations will be adopted to the extent the parties reach agreement thereon.

14. **Forbearance from Suit/Grace Period.** SESAC will grant a Commercial Radio Station not already holding a SESAC license a forty-five (45) day grace period

beginning on the day that a musical work is first posted to the Song List or Repertory Search database to obtain a license from SESAC or via direct licensing covering that musical work (to the extent no prior such license is already in effect), during which forty-five (45) day period SESAC will not claim copyright infringement on the part of a Commercial Radio Station that performed a SESAC musical work, provided that such station acted in good faith and was unaware that the musical work is within SESAC's repertory. Prior to commencing any action for copyright infringement, SESAC will provide at least forty-five (45) days' written notice to the unlicensed Commercial Radio Station that it has performed one or more works posted to the Song List or Repertory Search database, identifying all such works (and the dates and times they were performed) that form the basis of the demand letter. Such identification will be without prejudice to assertions of additional claims by SESAC related to other performed works that were not identified in such notice, in the event the matter has not been amicably resolved. For the avoidance of doubt, this paragraph 14 encompasses musical works contained, not only in station programming, but also in commercial announcements and incidental music.

15. **RMLC Administrative Fee.**

a. The provisions of this paragraph relating to the RMLC Administrative Fee shall remain in effect for the entire term of this Agreement unless SESAC is notified by the RMLC as to the RMLC's desire to terminate them in favor of the RMLC's separate remittances to Represented Stations. Any such termination notice shall be served upon SESAC on or before November 15th of the calendar year preceding the year as to which such notice is to be effective.

b. On or about December 31, 2015, and September 30 of each of 2018, 2022, 2026, 2030 and 2034, the RMLC shall furnish to SESAC an electronic and hard copy list of all Represented Stations. In connection with the RMLC Administrative Fee and upon the RMLC's periodic request, SESAC has agreed to provide the RMLC, on a confidential basis, with an up-to-date list of the Commercial Radio Stations that are licensees of SESAC and their mailing addresses. Such list will be accompanied by an identification of Represented Stations which, in the period since the prior such list (as applicable) has been provided to the RMLC, have been deemed Delinquent Stations, provided that Represented Stations have in writing agreed to waive confidentiality as to their account status with SESAC. In either the first or second invoice that SESAC issues to each Represented Station for the following year (such invoices are currently sent in December and January, respectively), SESAC will include, in addition to the amounts owed to SESAC, an amount specified by the RMLC as the sum owed by each Represented Station to the RMLC if it chooses to be or remain a Represented Station (the "**RMLC Administrative Fee**" or "**RMLC Fee**"). (It is understood that, in 2016, the invoice in which SESAC first includes the RMLC Fee may be later than the first or second invoice of the year because SESAC will receive the electronic and hard copy list of all Represented Stations on December 31, 2015.) The RMLC shall be responsible for obtaining the consent of Represented Stations to the payment of such Administrative Fee. If a Represented Station fails to pay such invoice, SESAC will continue to reflect the unpaid RMLC Administrative Fee in each subsequent invoice SESAC sends during the same calendar year to the Represented Station for license fees due and owing to SESAC.

c. On the invoices issued pursuant to paragraph 15(b), the amount a Represented Station owes to SESAC and the amount it owes to the RMLC will be set forth as separate line items on a single invoice which will state a cumulative total payable to SESAC. All payments received by SESAC in respect of sums owing SESAC shall be credited, first, to SESAC in payment of the amounts due and owing SESAC as reflected on that invoice. No payment received from a Represented Station will be credited to the account of, or due, the RMLC until the amount due and owing to SESAC as reflected on such invoice shall have been paid, regardless of any designation by the paying station. However, if SESAC receives payment in full for a prior invoice, including payment of the RMLC Administrative Fee, after SESAC has issued a subsequent invoice, SESAC will credit the RMLC for the payment of the RMLC Fee.

d. SESAC shall pay quarterly to the RMLC amounts collected in the foregoing manner on the RMLC's behalf and shall provide appropriate support for each quarterly payment.

e. While SESAC shall have no duty to collect or seek to compel payment of monies owed by any station to the RMLC, other than by sending the invoices specified in paragraph 15(b), in the event one or more Represented Stations pays the SESAC license fee but not the RMLC Administrative Fee on the invoices described in paragraph 15(b), SESAC and the RMLC will discuss appropriate means of securing full payment from any such entities.

f. SESAC shall neither charge, nor retain, any administrative fee associated with billing these RMLC Administrative Fees.

g. Nothing in this paragraph 15 nor anything else in this Agreement shall be deemed or construed by the Parties or by any third person to create a fiduciary duty, a relationship of principal and agent, a relationship of partner or joint venturer, or any other relationship of trust and confidence between SESAC, on the one hand, and either the RMLC or any Represented Station on the other hand.

16. **Releases.**

a. The RMLC, on behalf of itself and its current and former officers, directors, principals, shareholders, partners, members, associates, employees, agents, indemnitors, insurers, attorneys and legal representatives, and each of their predecessors, successors, assigns, and all persons and entities claiming by or through them or on their behalf, and on behalf of each Represented Station (collectively, the "**RMLC Releasor**"), whether by statute, rule, contract or otherwise, hereby now and forever fully, finally and forever releases, settles, remises, acquits, relinquishes, and discharges SESAC and its affiliates, current and former officers, directors, principals, shareholders, partners, members, associates, employees, agents, indemnitors, insurers, attorneys and legal representatives, and each of their predecessors, successors, and assigns from all claims asserted in the Complaint in the RMLC Proceeding and all disputes or claims that the RMLC Releasor could have asserted against SESAC and its affiliates at any time through the date of execution hereof, except for disputes with or claims against SESAC that do not arise under the antitrust or competition laws of any jurisdiction (the "**Antitrust Laws**") for amounts due, owing or unpaid under existing licenses. The RMLC Releasor covenants not to claim in any negotiation, arbitration or litigation, for the duration of the Settlement Agreement, that SESAC is violating the Antitrust Laws to the extent SESAC conducts its business in accordance with the obligations imposed on it by this Agreement. For the avoidance of doubt, nothing shall prohibit an RMLC Releasor from bringing any claims at any time for violations of the Antitrust Laws against other entities, including but not limited to those in which SESAC now has, or in the future may have, an ownership stake or other financial interest, or with which SESAC now has, or may in the future have, a licensing or other business relationship (the "**Third Party Claims**"), but will prohibit an RMLC Releasor from asserting claims of wrongdoing by SESAC under the Antitrust Laws predicated on the complained of course of conduct that were or could have been asserted in the Complaint in the RMLC Proceeding in connection with the assertion or prosecution of such Third Party Claims and from funding any other person or entity asserting such claims.

b. SESAC, on behalf of itself and its current and former officers, directors, principals, shareholders, partners, members, associates, employees, agents, indemnitors, insurers, attorneys and legal representatives, and each of their predecessors, successors, assigns, and all persons and entities claiming by or through them or on their behalf (collectively, the "**SESAC Releasor**"), whether by statute, rule, contract or otherwise, hereby now and forever fully, finally and forever releases, settles, remises, acquits, relinquishes, and discharges the RMLC and each Represented Station, current and former officers, directors, principals, shareholders, partners, members, associates, employees, agents, indemnitors, insurers, attorneys and legal representatives, and each of their predecessors, successors, and assigns, from all claims that SESAC could have asserted through the Effective Date, except for disputes or claims against Represented Stations that do not arise under the Antitrust Laws for amounts due, owing or unpaid under existing licenses.

c. The RMLC Releasor or the SESAC Releasor may hereafter discover facts in addition to or different from those that it now knows or believes to be true with respect to the subject matter of the foregoing Releases, but each of the RMLC Releasor and SESAC Releasor shall expressly have fully, finally and forever settled, released and discharged any and all claims that are the subject matter of these Releases, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or have existed upon any theory of law or equity now existing or coming into existence in the future, without regard to the subsequent discovery or existence of such different or additional facts. Each of the RMLC Releasor and SESAC Releasor expressly waives and relinquishes, to the fullest extent permitted by law, the provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, or international or foreign law, which is similar, comparable or equivalent to Section 1542 of the California Civil Code, to the extent applicable, which provides:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

d. These Releases shall not apply to or waive or release any claim for breach or enforcement of the terms of this Agreement.

17. **Stipulation of Dismissal.** Within five (5) business days of the Effective Date, counsel for the Parties shall execute and file a Stipulation and Proposed Order under FED. R. CIV. P. 41(a)(2) for dismissal of the RMLC Proceeding.

18. **No Admission of Liability.** By entering into this Settlement Agreement, SESAC does not admit any liability whatsoever in connection with the RMLC Proceeding or that the RMLC or any Commercial Radio Stations would be entitled to any relief from SESAC. Nor shall this Agreement be construed as, or deemed to be evidence of, or a concession or an admission by SESAC, or to give rise to any sort of inference or presumption of the truth of any fact alleged, or the validity of any claim asserted by the RMLC in the RMLC Proceeding. Similarly, nor shall this Agreement be construed as, or deemed to be evidence of, or a concession or an admission by the RMLC, or to give rise to any sort of inference or presumption of the truth of any defense asserted, or the validity of any position taken by SESAC in the RMLC Proceeding. This Agreement shall not be offered or received in evidence as an

admission or concession of any liability or wrongdoing by any of the Parties with respect to any matter or thing whatsoever; provided, however, that this Agreement may be referred to, or offered or received in evidence, in any proceeding as may be necessary for the sole and exclusive purpose of consummating, effectuating or enforcing, or obtaining relief for breach of, or pursuant to, this Agreement.

19. **Arbitration of Disputes Arising under Settlement Agreement.** SESAC and the RMLC agree to submit to arbitration, at such times as are otherwise agreed to herein, any disputes or claims arising under or relating to this Settlement Agreement. The arbitrators, in their discretion, may award attorney's fees and disbursements associated with such disputes or claims to the Party that prevails with respect to each such dispute or claim, if the arbitrators determine that such an award is reasonable, taking into account the circumstances, but the arbitrators may not award attorney's fees and disbursements incurred by either Party in connection with arbitration of License Fees and Terms as contemplated herein. Notwithstanding the foregoing, nothing in this paragraph 19 shall preclude the RMLC, Represented Stations, or SESAC from seeking injunctive or other equitable relief in court arising out of asserted violations of the terms of this Agreement, pending ultimate determination by the arbitrators of whether there have been any violations of the terms of this Agreement.

20. **Entire Agreement.** This Settlement Agreement contains an entire, complete, and integrated statement of each and every term and condition agreed to by and among the Parties and is not subject to any term or condition not provided for herein. This Settlement Agreement shall not be amended, changed or otherwise modified in any

respect except by a writing executed by duly authorized representatives of the RMLC and SESAC. In entering into this Settlement Agreement, neither the RMLC nor SESAC has made or relied on any fact, matter, promise, statement, warranty or representation not specifically set forth in this Agreement. There shall be no waiver of any term or condition absent an express writing to that effect by the Party to be charged with that waiver (including, for non-natural persons, by an authorized representative thereof). No waiver of any term or condition in this Settlement Agreement by any Party shall be construed as a waiver of a subsequent breach or failure of the same term or condition, or waiver of any other term or condition of this Settlement Agreement.

21. **Severability.** If any provision of this Settlement Agreement should be held to be void or unenforceable, in whole or in part, the tribunal so holding shall reform the provision to make it enforceable while maintaining the spirit and goal of the provision, and if the tribunal finds it cannot so reform that provision, such provision or part thereof shall be treated as severable, leaving valid the remainder of this Settlement Agreement.

22. **Counterparts.** The Parties may sign this Settlement Agreement in counterparts.

23. **Governing Law.** This Settlement Agreement and any dispute arising out of or relating to it, including matters relating to the validity, construction, interpretation, enforceability and/or performance of any of the terms or provisions of this Agreement or of any Party's rights or obligations under this Agreement, shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to its conflict of laws principles.

24. **Authorization.** Each of the undersigned representatives of the Parties represents that he or she is fully authorized to enter into, and to execute, this Settlement Agreement on behalf of that Party. Each of the RMLC and SESAC agrees that, in return for the agreements herein, it is receiving good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged.

25. **Construction.** This agreement has been negotiated and drafted by counsel to both Parties. No portion of this Agreement shall be interpreted or construed against any Party as the drafter. No draft of this Agreement is admissible or may be considered in connection with the construction of this Agreement or for any other reason. The Exhibit annexed or referred to in this Agreement is hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words "include" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."

26. **Notice.** Except as set forth in paragraph 2(a)(ii) and with respect to the transmission of the completed Authorization Form by Commercial Radio Stations to the RMLC electing to become Represented Stations, all notices shall be served by electronic and by overnight courier as follows:

All notices to the RMLC, from Represented Stations or from SESAC, shall be sent to:

RADIO MUSIC LICENSE COMMITTEE
1616 Westgate Circle
Brentwood, TN 37027
Phone: (615) 844-6260
Fax: (615) 844-6261
bill@radiomlc.org
Attention: Bill Velez

with a copy to
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, N.Y. 10153
Tel: (212) 310-8170
Fax: (212) 310-8007
Email: bruce.rich@weil.com
Attention: R. Bruce Rich

All notices to SESAC, from Represented Stations or the RMLC, shall be sent to:

SESAC, Inc.
Attention: John H. Josephson, Chairman and Chief Executive Officer
152 West 57th Street, 57th Floor
New York, NY 10019
Tel. (212) 586-3450
Fax (212) 489-5690
Email: john@sesac.com
and
Attention: Patrick Collins, President and CEO of SESAC Performing Rights
55 Music Square East
Nashville, TN 37203
Tel. (615) 320-0055
Fax (615) 329-9627
Email: pcollins@sesac.com

With a copy to:
JOSEPH HAGE AARONSON LLC
485 Lexington Avenue, 30th Floor
New York, New York 10017
Tel: (212) 407-1200
Fax: (212) 407-1280
Email: gjoseph@jha.com
Attention: Gregory P. Joseph

or such other address as either Party may hereafter specify for the purpose by notice to the other Party. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient if received prior to 5 p.m. in the place of receipt and such day is a business day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed not to have been received until the next succeeding business day in the place of receipt.

Agreed to as of the 23 day of July 2015:

RADIO MUSIC LICENSE COMMITTEE, INC.	SESAC, INC. SESAC, LLC SESAC HOLDINGS, INC.
By:	By:
Name: EDWARD K. CHRISTIAN	Name:
Title: CHAIRMAN	Title:

Agreed to as of the ____ day of July 2015:

RADIO MUSIC LICENSE COMMITTEE, INC.	SESAC, INC. SESAC, LLC SESAC HOLDINGS, INC.
By:	By:
Name: ______________________	Name: JOHN A. JOSEPHSON
Title: ______________________	Title: CHAIRMAN & CEO

<u>Exhibit A</u>

<u>AUTHORIZATION TO PARTICIPATE IN SESAC LITIGATION SETTLEMENT</u>

<u>Settlement of Antitrust Lawsuit</u>

The commercial terrestrial radio broadcasting stations identified below ("Stations") agree to be bound by the terms of the Settlement Agreement resolving the antitrust case captioned *Radio Music License Committee, Inc. v. SESAC, Inc., et al.*, No. 2:12-cv-05807-CDJ (E.D. Pa.). The Stations acknowledge that a copy of the Settlement Agreement has been provided to them (and also is on the RMLC website at http://www.radiomlc.org/pages/6282116.php), and that they have reviewed the terms of the Settlement Agreement and agree to be bound by them.[1]

Subject to providing the notice described below, Stations authorize the RMLC to negotiate -- and, as appropriate in the discretion of the RMLC, to arbitrate -- with SESAC on their behalf for licenses of up to three- or four-year periods covering the 22-year span of the Settlement Agreement (2016 through 2037) and to be bound by the outcome of such negotiations and arbitrations.

Also as a part of the settlement, Stations agree to release the antitrust claims against SESAC that have been asserted on their behalf in the litigation, as more fully described in Paragraph 16 of the Settlement Agreement.

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[1] The terms of the Settlement Agreement *exclude* from participation stations that (a) are not licensed by SESAC, or, except as provided below, (b) are delinquent in their payments of license fees to SESAC for a period of six months or more (as described in Paragraph 2(a)(i)-(ii) of the Settlement Agreement).

For the initial license period 2016-2018, a station that is currently in arrears in its payment of license fees to SESAC by more than six months will still be eligible to obtain the benefits from this Settlement Agreement if (A) it is current in its payments of license fees to SESAC for the six-month period ending December 31, 2015, and at the time it makes its payment for this period provides written notice to medwards@SESAC.com that this payment is being made for this purpose or the station provides with its remittance a separate letter stating the period the remittance covers and (B) it does not thereafter become delinquent in its payments of license fees to SESAC for a period of six months or more.

Stations that are eligible and agree to be bound by the Settlement Agreement understand and consent to SESAC providing the RMLC, on a confidential basis, with information about their account status with SESAC to determine whether a station is eligible to obtain the benefits of the Settlement Agreement, as more fully described in Paragraph 15 of the Settlement Agreement, and for this limited purpose only.

RMLC Administrative Fee

The Stations understand and agree that this authorization obligates them to pay an administrative fee to the RMLC, as more fully described in Paragraph 15 of the Settlement Agreement, in support of the RMLC's ongoing activities in relation to SESAC on the industry's behalf. The accompanying letter from the RMLC notifies Stations as to that administrative fee estimate for the license period 2016-2018, and the RMLC will notify Stations by not later than July 31st of each of 2018, 2022, 2026, 2030 as to its cost estimates for the license periods commencing the January following those respective dates.

Unless you are advised that the RMLC will bill and collect directly from Stations their pro rata share of these administrative fees, the RMLC will arrange for SESAC to bill and collect the Stations' pro rata share of these administrative fees in annual installments to be remitted by SESAC to the RMLC. Stations agree to pay this fee in full immediately upon receipt of the appropriate annual bill. Stations further agree that the FCC licensee of record as of June 1 of a given year will be responsible for making full payment of the RMLC administrative fee billed for that calendar year.

Notice of Future Opt-Out

Should Stations determine, at a future point in time, to forego the ongoing benefits of this settlement, and elect instead to deal with SESAC directly in licensing matters, Stations will provide notice of such intent to the RMLC by not later than September 30th of the last year of the then-current license period. (Those license periods are set forth in Paragraph 2.d. of the Settlement Agreement.) Such notice will be transmitted by the means specified in Paragraph 26 of the Settlement Agreement and sent to the RMLC address listed there. Any such notice will become effective as of the following January 1st.

Representation

Stations acknowledge that they have had an opportunity to read and understand the terms and conditions of the Settlement Agreement, have voluntarily accepted such terms, and the signatory is fully authorized to enter into, and to execute, this authorization on behalf of Stations. If a Station changes ownership in the future, the new owner shall assume the benefits and obligations of this authorization.

Name of Company or Group: ____

Signature and Title (Owner or Officer Only): ____________________________________

Call Letters	AM/FM	FCC Facility ID	Frequency

An Addendum with additional or all Stations may be attached if the form cannot accommodate all Stations in a radio group.

December 31, 2015 is the cut-off date to be eligible to participate in this settlement beginning with the 2016-2018 license period. So that the RMLC can timely compile and exchange with SESAC the list of eligible stations who wish to participate in this settlement, a station must complete and mail, fax or email this form by **October 31, 2015** to:

RADIO MUSIC LICENSE COMMITTEE
Attention: Bill Velez
1616 Westgate Circle
Brentwood, TN 37027
Phone: (615) 844-6260
Fax: (615) 844-6261
bill@radiomlc.org

The New Pioneers: Irving Azoff on His Plan to Deal With the 'StubHub Factor' -- 'You Have Lots of People Escaping With Lots of Money'

billboard.com

August 11, 2016

Billboard .COM

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Byline: Robert Levine

Body

Some music executives see things as they are and say why. Irving Azoff dreams things that never were and asks, "Why the f-- not?"

During the course of his half-century in the music business, Azoff, 68, has asked this so often -- usually at high volume, seldom politely -- that he has changed more facets of the industry than anyone else.

Two decades ago, Azoff asked why his biggest management clients, like the *Eagles*and *Fleetwood Mac*, weren't getting higher percentages of concert grosses and merchandise sales -- and changed the economics of the touring business. Then he wondered why the live-music industry was so fragmented -- and helped bring together Front Line Management, Ticketmaster and Live Nation into a concert colossus. And he has spent much of this year calling out YouTube for paying creators less than Spotify. "Artists aren't getting their due on YouTube," he tells Billboard. "And I don't give a shit what YouTube thinks -- I'm right."

Through Azoff MSG Entertainment, a company funded by the Madison Square Garden Company, Azoff still manages '70s icons like the Eagles and *Steely Dan*, plus such pop artists as *Christina Aguilera*and *Gwen Stefani*. But his most potentially disruptive project is Global Music Rights, a for-profit firm that will compete with performing rights organizations ASCAP and BMI to represent top songwriters, then collect money on their behalf when their compositions are performed in public and online. It's a part of the music business that no one has entered for more than 75 years.

Irving Azoff Calls on Music Industry to 'Work Together' in National Music Publishers' Assn. Keynote

"I can't understand how a couple of nonprofits that are supposed to represent the interests of writers have operated their businesses the way they have," says Azoff with characteristic bluntness. The goal of Global Music Rights is to assemble enough songwriters -- including *Pharrell Williams*, *Smokey Robinson*and *Bruno Mars*-- to negotiate better public performance rights payments from radio stations, restaurants and online music services. "We have a full roster of songwriters that nobody can, shall we say, comfortably exist without," he says.

Azoff ran two labels (MCA Music Entertainment in the '80s, Giant Records in the '90s) and a concert conglomerate (he was CEO of Ticketmaster and chairman of Live Nation after the companies merged), but he is best known as a manager and dealmaker who has leveraged artists' power for their own benefit. (Earlier this year, his son Jeffrey formed a new company, Full Stop, that will manage Harry Styles and other acts.) At Front Line, he bought up enough management companies to win better terms from promoters, merchandisers and sponsors. A similar concept is behind the Arena Alliance, a new organization run by Oak View Group that brings together 24 of the top 27 U.S. arenas to give them advantages in marketing and selling tickets. (Azoff also oversaw the Madison Square Garden Company's restoration of The Forum in Inglewood, Calif., and its deal to build a new entertainment arena in Las Vegas.) "If roll-ups are done properly," says Azoff, "they provide better economics for artists."

Next, Azoff plans to enter the high-end VIP ticket business for sports and music, in partnership with Live Nation and a technology company he is not ready to name. "It's my answer to what's broken in the system, which is what I call 'the StubHub factor,' " he says. "You have lots of people with no skin in the game escaping with lots of money."

To Azoff, it's only natural to wonder why that money doesn't go to artists themselves. "If you make the right decisions for creative people, it will eventually be the right decision for your business," he says. "I don't consider a lot of what we do disruptive -- I consider it common sense."This article originally appeared in the *Aug. 20 issue of Billboard*.

Load-Date: August 12, 2016

End of Document

James Dolan (left) and Irving Azoff

TOURING

The $300 Million Comeback

Irving Azoff has teamed with friend James Dolan of

MSG to create a new kind of music company with some intriguing elements

By Ray Waddell

Irving Azoff has done it again. He has just parlayed his bevy of big-name acts like the Eagles and Christina Aguilera into another big-money deal, this time as part of a new joint venture with MSG Entertainment called Azoff MSG Entertainment (AMSGE).

Azoff and business partner Howard Kaufman began rolling up management companies in 2005, funded in part by stakeholders and initial Front Line Management backers Thomas H. Lee and Bain Capital Partners. Lee and Bain got out and then Ticketmaster parent company IAC increased its stake. Azoff had investors, but he really only sold to Ticketmaster in 2008, the same year Ticketmaster spun off from IAC. Ticketmaster acquired the minority equity stake in Front Line, then held by Warner Music Group, for approximately $123 million in cash. In 2010, Front Line was subsumed into the $2.5 billion merger of Live Nation and Ticketmaster.

The privately held AMSGE will consist of Azoff Music Management's existing artist management firm alongside other businesses still in development, including publishing, TV production, and live event and digital branding. The James Dolan-led Madison Square Garden Co. (MSG) is paying Azoff Music Management $125 million for a 50% stake in the joint venture and has also agreed to provide a $50 million line of credit, giving the deal a total valuation of $300 million. The funding will be key as Azoff and Dolan hinted strongly at ambitions to build parts of the new company through acquisition.

The non-compete constraints of Azoff's exit deal with Live Nation won't be a factor after 2014. He remains arguably the best closer in the music biz, and it wouldn't be a surprise to see some of the Artist Nation companies once aligned with him come back onboard when they're contractually allowed to do so.

While many will focus on his expected expansion of the artist management roster, probably rebuilding the Front Line Management network and leveraging MSG's live industry leadership, the most intriguing element of AMSGE is a new music rights business that could shake up the business significantly, particularly for those in the digital music space like Spotify and Rdio.

The new global music rights division is a performance rights organization—a 90% interest in a music publishing venture run by CEO Randy Grimmett and COO Sean O'Malley. The division is about "the acquisition, development, licensing and exploitation of copyrighted works for the purposes of music publishing, co-publishing, licensing, administering, developing a musical library and acting as an agent on behalf of such works," according to an announcement.

This sounds like a publishing house, but Azoff calls it a "boutique" PRO for "what we feel has been an underserved group of very important

.biz

Boy George is following in the footsteps of Prince, the Pet Shop Boys and Nick Cave by teaming with Kobalt Music Group to release *This Is What I Do*, his first new album of original songs in 18 years. The set will arrive on Boy George's Very Me imprint through Kobalt Label Services on Oct. 28, followed by a string of U.K. concerts in November.

THE BIG NUMBER

MSG's investment for a 50% stake in the new venture.

$125 MILLION

writers out there," he says. "ASCAP and BMI have hundreds of thousands of members. We'll probably have 100." In terms of leverage, clout trumps sheer numbers, Azoff believes. "It's about how much market share those 100 control, and returning the ability to those 100 to control what happens, especially with their digital licensing." Industry sources, who have been aware of the plans, say the model will not be too dissimilar to SESAC's more focused model, which allows the PRO to pay a higher royalty share to its artists.

Due to the fact that ASCAP and BMI operate under a consent decree, they have less control over the royalty rates they can charge digital services on behalf of songwriters. SESAC is a privately held business and able to charge higher rates. Some major publishers like Sony/ATV have withdrawn their songs from the PROs in order to negotiate better rates directly from services like Pandora. An even more focused PRO with major songwriters and the aggressive clout of Azoff will be a game-changer.

At the very least, AMSGE is a new animal in its broad scope, and one that could make a lot of noise as an immediate major player. "Everybody in the business whines, 'There's no place to go. There's only three record companies and Live Nation and AEG,'" Azoff says. "Hopefully, people will think of us as a place equal to one of those [companies] to come [to us] with a great idea or a great project."

So in the end, AMSGE is in the idea business, and has the leverage and resources to bring ideas to reality. This is also a "venture capital play" from MSG's perspective. Dolan says the company will be acquisitive "using the assets of both Azoff Music Management and MSG and a bunch of cash." As Azoff puts it, the new entity is "putting out a sign that says, 'Come see us if you've got a great idea, because we have the management ability and financing ability, and we're looking for great new businesses.'"

THE IMPACT ON

AZOFF MUSIC

Artists. An aggressive posture on the publishing rights front, and the promise of synergy with touring and other elements of an artist's career, will no doubt be appealing to content creators, particularly those with deep catalogs like Irving Azoff client the Eagles. Azoff says many acts are already onboard, and expect more to follow.

Management firms. Put simply, other managers like to work with Azoff, who offers deep resources and a cache of ideas while not interfering with manager/artist relationships and day-to-day decision-making. He signed up a bevy of powerful managers in building Front Line, and he could do it again.

The music industry. Azoff and Dolan/MSG make for a powerful, deep-pocketed team. It's a safe bet that AMSGE is already rattling some cages, but the firm's impact beyond its own affiliated artists will be tough to gauge for a while. It will be interesting to see if Azoff has yet another industry-altering run in him.

JUMP TO CHARTS

DOLAN & AZOFF: LESTER COHEN/WIREIMAGE; THE EAGLES: SAM JONES

The New York Times http://nyti.ms/1tE1uzD

MEDIA

New Venture Seeks Higher Royalties for Songwriters

By BEN SISARIO OCT. 29, 2014

Smokey Robinson, the Eagles, Bruno Mars, John Lennon and Megadeth would not seem to have much in common.

But they are among the famous names attached to a new music publishing venture led by Irving Azoff, the former chairman of Live Nation Entertainment, that is the latest challenge to the $2 billion market for performing rights dominated by Ascap and BMI. The company, Global Music Rights, is part of Azoff MSG Entertainment, a joint venture established last year with the Madison Square Garden Company.

The management of performing rights — how royalties are paid when songs are played on the radio, streamed online or performed in public — has been a steady part of the music business for a century. But lately the field has been primed for disruption by advances in technology and a series of lawsuits over how songs are licensed to online services like Pandora.

Ascap and BMI, which represent more than 95 percent of the songs available in the United States, are governed by decades-old regulatory agreements with the Justice Department that restrict how they negotiate with outlets that use music. Recently some big music publishers have complained that these rules lead to low royalty rates, and threatened to leave Ascap and BMI if regulatory changes were not made.

For the last year, Mr. Azoff — a longtime artist manager who represents acts like the Eagles, Van Halen and Fleetwood Mac — has quietly been building a rival by controlling the catalogs of a handful of superstar songwriters. Those include members of Journey, Foreigner, Fleetwood Mac and Soundgarden, as well as current hit makers like Pharrell Williams, Ryan Tedder, Benny Blanco and the country songwriter Shane McAnally, and the estates of Lennon and Ira Gershwin.

"I vowed when I started this company that I was going to take care of artists," Mr. Azoff said in response to questions about the company. "So I tried to identify places where I felt that artists were not getting a fair deal, and the performance rights area jumped out at me. It was a place where I felt I could help our writers."

Global Music Rights has lured clients with the promise that it can wring royalties that are as much as 30 percent higher from radio stations and online outlets than they can get through Ascap or BMI, according to three people with knowledge of the negotiations who spoke on the condition of anonymity.

On Monday, the Madison Square Garden Company — which has committed $175 million in backing to Azoff MSG Entertainment — said it would consider splitting itself into two companies, one for its sports properties and the other for entertainment. MSG declined to comment about the future of Mr. Azoff's venture. But if MSG is split, Azoff MSG Entertainment is expected to remain part of the entertainment unit.

The hunt for performing royalties has become a priority for musicians as sales of CDs and downloads decline. The National Music Publishers' Association said in June that while the publishing business in the United States generates $2.2 billion a year in revenue, another $2.3 billion is lost because of "outdated copyright law and government regulations."

On the other side of the issue, Pandora, radio broadcasters and others argue that the regulation is necessary to prevent anticompetitive behavior in the music industry and to keep music licensing costs from being burdensome.

Global Music Rights is not subject to the same regulations as Ascap and BMI, which gives it far greater control in negotiations, including the ability to refuse permission to its songs. (Another privately owned performing rights group, Sesac, is also exempt from that regulation.) Ascap and BMI, on the other hand, offer so-called blanket licenses covering everything in their catalogs, and they cannot turn down a request for music by an outlet.

Pandora, which pays music publishers about one-twelfth what it pays record labels, has become a popular target for complaints from songwriters. Randy Grimmett, a former Ascap executive now at Global Music Rights, said a hit song with around 40 million plays on Pandora would collect just $2,200 in publishing royalties under the Ascap-BMI system.

Mr. Azoff's venture is expected to demand higher rates from radio stations and online music services and not adopt some Ascap and BMI practices like the payment of bonuses for high-charting songs, which can reward current hits at the expense of other songs.

"What Irving did was look at what songwriters were earning historically and offer them a premium," said Barry M. Massarsky, an economist who specializes in music publishing and is not affiliated with Global Music Rights. "He believes he can carve out a higher value for those songs from radio and pay less in administration fees, so that ultimately the songs would make more money than they have from Ascap or BMI."

Most of the songs by Global Music Rights clients are covered under licensing agreements that were made while those writers were still at Ascap or BMI. But those agreements will begin to expire over the next several years, which could result in many popular songs disappearing from online services or even radio stations if new deals are not made.

Pandora declined to comment, and William Velez, the executive director of the Radio Music License Committee, which negotiates on behalf of radio stations, said his group had only had early "exploratory discussions" with Mr. Azoff's company.

When asked about former BMI songwriters now affiliating with Global Music

Rights, Michael O'Neill, the president of BMI, said in a statement that his organization stood by its methods.

"We believe that the departure of certain affiliates for such new organizations is driven not by any concern with this methodology," Mr. O'Neill added, "but, rather, by the latitude that these unregulated organizations have to address the needs of the modern rights marketplace."

A version of this article appears in print on October 30, 2014, on page B4 of the New York edition with the headline: New Venture Seeks Higher Royalties for Songwriters.

Source URL: http://www.hollywoodreporter.com/thr-esq/irving-azoff-threatens-yank-20000-748631

Irving Azoff Threatens to Yank 20,000 Songs From YouTube (Exclusive)

3:54 PM PST 11/12/2014 by Eriq Gardner

- 66
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- 4

The industry heavyweight, representing Pharrell Williams and others, believes that YouTube hasn't made all necessary deals for its new subscription service and is prepared to take his clients off of the YouTube ecosystem

Jeffrey Mayer/Universal Music Group

Many works composed by popular musicians including **The Eagles**, **Pharrell Williams**, Boston, Foreigner, **John Lennon, Smokey Robinson, Chris Cornell**, and **George** and **Ira Gershwin** could soon be removed from YouTube.

On Wednesday, just as Google announced the coming launch of YouTube Music Key, its much-anticipated subscription service that will compete with Spotify and Pandora, music industry heavyweight **Irving Azoff** told *The Hollywood Reporter* that he is prepared to take 42 of his clients, representing some 20,000 copyrighted works, away from the YouTube ecosystem, including the new Music Key. The move is a huge shot across Google's bow, perhaps even more significant than **Taylor Swift**'s much-discussed decision a week ago to remove her songs from Spotify over doubts about royalties.

Azoff is the former chairman of Live Nation who is now spearheading a new venture, Global Music Rights (GMR), aimed at extracting higher performance rights royalties for songwriters. Traditionally, those rights have been handled by ASCAP and BMI, which have been hamstrung by consent decrees with the Justice Department that requires a license be given whenever an outlet requests it.

Although the DOJ is currently reviewing the consent decrees, Azoff is moving quickly and has a message that appeals to many songwriters: As consumers gravitate more and more to streaming services in lieu of purchasing music, these services should be contributing more compensation to the ones who compose the music.

"The way fans listen to music is evolving daily," says Azoff. "GMR is going to give songwriters and publishers an opportunity to engage in meaningful licensing for their intellectual property. The trampling of writers' rights in the digital marketplace without any regard to their contribution to the creative process will no longer be tolerated."

The big record labels have already made deals with YouTube, owned by Google. But earlier this year, controversy erupted when smaller independent labels reacted negatively to the licensing terms being offered. At one point, there was even speculation that works from **Adele**, The White Stripes, Radiohead and Vampire Weekend would be blocked from YouTube, but in the last 24 hours came reports that Merlin, representing thousands of small labels around the world, had come to terms with YouTube.

Those deals would only cover sound recording rights, though, which have traditionally brought in the bulk of revenue from digital services.

The owners of songwriter or publishing rights, on the other hand, have long struggled to see significant compensation from digital services. In past years, publishers have employed a variety of strategies to rectify this — suing over novelties like ringtones and targeting YouTube specifically for allowing users to embed videos with music.

Most recently, the publisher war against YouTube has been fairly quiet — with ASCAP and BMI making deals with the online video service — instead focusing its attention on Pandora. Universal and Sony have made direct deals with Pandora, which is currently in the midst of a dispute over rates with song publishers [2]. But not everyone has forgotten about YouTube, which according to a recent Nielsen survey, is more popular among teenagers for music than radio.

Irving Azoff certainly has not forgotten.

Randy Grimmett, who works with Azoff at Global Music Rights, points to publisher deals with Pandora and says the same thing needs to happen as far as YouTube is concerned. He says "there's no business to be built upon unlicensed works," and adds that there needs to be "parity" between the songwriter's side and the record owner's side of the industry.

Unlike ASCAP and BMI and the publishers they represent, Azoff and Grimmett have more negotiating leverage for doing direct deals with digital services, and so on Tuesday, they are going public in an attempt to get YouTube to acknowledge that more licensing work needs to be done.

We will update with any response from YouTube.

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Christopher D'Amico Follow
Aug 14, 2015 · 7 min read

Irving Azoff: Poised and Positioned to Capture Performing Rights Market

How One Man Plans to Dominate an Industry

Irving Azoff, former Chairman of Live Nation, plans to capture $2 billion of the performing rights market dominated by ASCAP and BMI. Global Music Rights is part of Azoff MSG Entertainment, a joint venture with the Madison Square Garden Company. ASCAP and BMI represent over 95 percent of compositions internationally, however, both organizations are governed by the 1941 consent decrees, which was put in place to promote competition in the market place and restrict negotiations with music licensors. The 74-year-old consent decrees will prove to be highly beneficial to Azoff's new performing right organization, or PRO. Global Music Rights is governed under no such document, therefore, Azoff will have the ability to differentiate, and negotiate for higher performing rights royalties from streaming services, terrestrial radio, and television networks on behalf of his artists. Azoff states, "I vowed when I started this company that I was going to take care of artists… So I tried to identify places where I felt that artists were not getting a fair deal, and the performance rights area jumped out at me. It was a place where I felt I could help our writers."

Global Music Rights is claiming it can collect royalties up to 30 percent higher from radio stations and webcasters than are currently paid by ASCAP and BMI. While ASCAP and BMI are bound to offer a pre-set blanket license, Azoff's Global Music Rights along with competitor SESAC are free to charge whatever the market will bear.

Barry M. Massarsky, an economist who specializes in music publishing told the New York Times, "What Irving did was look at what songwriters were earning historically and offer them a premium." "He believes he can carve out a higher value for those songs from radio and pay less in administration fees, so that ultimately the songs would make more money than they have from ASCAP or BMI."

The Diamond Status

The company includes his artist management business, whose clients include the Eagles, Van Halen, Steely Dan and Christina Aguilera; a television and live event division; a 50 percent stake in Digital Brand Architects, which manages bloggers; and a 90 percent interest in a music publishing venture led by Randy Grimmett, a former executive at ASCAP.

Azoff and Grimmett plan to limit their representation between 40 and 60 composers, including artists that Azoff manages. Like SESAC, Global Music Rights' composers are invited to join the PRO and the company has sent out invitations to some of today's biggest talents. Among those who have accepted is OneRepublic front man Tedder, whose hits include Beyonce's "XO," Leona Lewis' "Bleeding Love" and his own band's "Apologize."

The publicly traded Madison Square Garden Company paid $125 million for a 50 percent stake in Azoff MSG Entertainment, and has provided up to $50 million of credit to the company, according to an announcement. Mr. Azoff will also serve as a consultant to the Madison Square Garden Company.

The Vision

In a joint interview, Irving Azoff and James Dolan, Executive Chairman of the Madison Square Garden Company, described the mission of the new company as being somewhat loose, saying they see it as a lean, digitally focused company that will address the needs of the evolving music business. "Over the last 10 to 15 years, the music industry has changed dramatically, and not necessarily for the better," Mr. Dolan said. "I expect that this venture will address that and find new technologies that will help artists, and new business opportunities that we will invest in together."

Azoff's advantage is not being subject to the consent decrees that govern ASCAP and BMI, therefore, GMR like SESAC will not be subject to extra regulations and restrictions when negotiating public performance licenses. In order for Azoff to be able to secure those higher rates, of course, he would need to have big name artists to leverage with music users. Though with the likes of Pharrell Williams and Ryan Tedder having joined, as well as members of acts such as Fleetwood Mac and Journey, he already does.

Smaller US performing rights societies having this advantage over ASCAP and BMI is one of the reasons the two organizations are fighting to reform of the consent decrees. Rights holders too have argued that the current system needs to be updated, with some members threatening to completely withdraw from the big collecting societies.

Leverage

The music industry has dramatically transformed in the digital era, and it has scrambled to return to its former glory. As the industry begins to see growth, represented through new emerging businesses and competition in the market place, the largest threat is fragmentation.

Irving Azoff has been a pinnacle part of the music industry since the start of his career. He has not limited himself to one sector, but has created multiple meccas in artist management, live music, and now performing rights. The disadvantage to GMR is its lack of infrastructure and its ability to only take on less than 100 artists.

As Azoff sees it, his negotiating power does not need to be in numbers, but rather the leverage of the brands he represents. There is no doubt of the potential success of GMR, but this will not be an answer to the majority of songwriters in the music industry today. Both artists and executives have questioned the new cash cow of the industry since the death of the record, but the answer might already exist.

The Landscape

ASCAP and BMI represent the majority of songwriters and catalogues in the US today. They have the infrastructures in place to collect on the behalf of artists at the lowest cost. In 2003 ASCAP reported $668 million in revenue paid out to songwriters. In 2015, they reported over $1 billion. Over the past 10 years the value of the music industry has drastically decreased; however the largest Performing Rights Organization has managed to nearly double its revenues.

Today, performers and songwriters are able to create at a lower cost and the DIY model is alive and well, however, majority of these artists are underpaid and perform over 250 shows a year in order to make a living. Presently, there is no reason for an artist to rely on their royalties from album sales, however, if the consent decrees were to be reformed or abolished the largest PROs would have the leverage of 500,000 plus artists each to increase performing arts royalties to both songwriters and publishers.

The Fight for Reform

On March 10, 2015 Elizabeth Matthews, CEO of the American Society of Composers, Authors and Publishers, testified before the U.S. Senate Committee on the Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights. Representing ASCAP's 525,000 members, Matthews spoke of the need to reform the ASCAP consent decree that governs how songwriters are paid.

Mathews demonstrated how the industry landscapes have changed along with consumer behaviors, stating, "There have been seismic changes in the music landscape. People no longer buy the music they love, they stream it. Streaming services offer more choice and more consumer control. As a result, they require access to a massive variety of songs in order to provide users with an optimally tailored content experience. This means that the use of music has increased exponentially, but the payments have not followed. For a songwriter, this is a terrifying trend."

Mathews highlights that the last time the consent decrees were revised were in 2001, before the introduction of the iPod. Written almost 75 years ago, the consent decree now threatens the very efficiencies of collective licensing it was intended to protect. Matthews emphasized the three major changes needed to streamline the music licensing system and make it more reflective of how people listen to music today. First, replace the rate court with a faster, less expensive resolution process. Second, allow ASCAP to accept a limited grant of rights from its members. Third, permit ASCAP to license all of the rights in a music composition a business needs to operate in one transaction.

Mathews stressed that songwriters are unable to earn a fair living, and major publishers are considering withdrawing from ASCAP and other PROs. This would lead to a more fragmented system, raising costs for everyone, including music fans. "If the Consent Decrees are not changed and major publishers resign from ASCAP and BMI, then the system of collective licensing may collapse and everyone loses. Copyright owners, licensees, music fans everywhere and most importantly the songwriters who are the heart and soul of the entire music industry." The publishing and licensing side of the music industry has the capabilities to support songwriters, performers, and publishers as record sales once did. Irving Azoff's new company, GMR, is a prime example of a healthy industry and a promising future, but for the good of all songwriters there needs to be a push for further reform to the consent decrees in order to allow companies like ASCAP and BMI to function to provide the greatest benefit to their customers.

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Venues Refuse to Pay Songwriters While Profiting From Their Music

ASCAP Takes Legal Action Against 10 Venues Nationwide That Infringe On Songwriters' Copyrights By Performing Their Musical Works Without Permission

NEW YORK, April 12, 2016: The American Society of Composers, Authors and Publishers (ASCAP) announced today that it has filed 10 separate copyright infringement actions against bars and restaurants nationwide, arising out of the unauthorized public performance of its members' copyrighted musical works.

ASCAP is a membership association that operates on a non-profit basis and represents more than 560,000 independent songwriters, composers and music publishers. ASCAP ensures its members can earn a living from their art by licensing the public performances of their songs, collecting those license fees, and distributing royalties to its members. Nearly 88% of the license fees ASCAP collects go directly to songwriters, composers and music publishers as royalties.

"Music is enormously valuable to bars and restaurants, creating an emotional connection with patrons and providing the right ambience to attract and retain customers," commented ASCAP Executive Vice President of Licensing **Vincent Candilora**. "Hundreds of thousands of well-run businesses across the nation recognize the importance of paying music creators to use their music, and understand that it is both the lawful and right thing to do. However, each of the establishments sued today has decided to use music without compensating songwriters. By filing these actions, ASCAP is standing up for songwriters whose creative work brings great value to all businesses that publicly perform their music."

Songwriters earn their livelihoods by licensing the performance right granted to them under the copyright law. Any business using copyrighted music has the opportunity to obtain permission to do so lawfully through a simple license, which covers the entire ASCAP repertory of over 10.5 million musical works. The average cost for bars and restaurants amounts to less than just $2 per day for the right to play an unlimited amount of music.

ASCAP President and Chairman, songwriter **Paul Williams** added: "We want every business that uses music to prosper, including bars and restaurants. After all, as songwriters and composers, we are small business owners, too, and music is more than an art form for us. It's how we put food on the table and send our kids to school. Most businesses know that an ASCAP license allows them to offer music legally, efficiently and at a reasonable price – while compensating music creators so we can earn a living from our work and keep doing what we do best – writing music."

Over the past two years, and in many cases longer, ASCAP has made numerous attempts at the establishments listed below to offer a license and educate the business owners about their obligations under federal copyright law. Two of them, The Ranch in Austin and the Barbary in Philadelphia, were delinquent licensees that were terminated for non-payment at the end of 2015. Despite these efforts, the owners of the establishments listed below repeatedly have refused to take or renew a license. Instead, they have continued to perform the copyrighted musical works of ASCAP's songwriter, composer, and music publisher members for the entertainment of their patrons without obtaining permission to do so.

Establishment (City, State):

- FuZion (Huntington Beach, CA)
- Studio 8 (San Jose, CA)
- Black Bear Saloon (Hartford, CT)
- Sportsline Bar & Grill (Lawrenceville, GA)
- Perception Lounge (Chicago, IL)
- Stonewood Tavern (Peabody, MA)
- The Tangiers (Minneapolis, MN)
- Arden Kitchen & Bar (Port Jefferson, NY)
- The Barbary (Philadelphia, PA)
- The Ranch (Austin, TX)

More information about ASCAP's licensing of bars, restaurants and music venues can be found on ASCAP's website at: **www.ascap.com/whywelicensevenues**.

About ASCAP
The American Society of Composers, Authors and Publishers (ASCAP) is a professional membership organization of songwriters, composers and music publishers of every kind of music. ASCAP's mission is to license and promote the music of its members and foreign affiliates, obtain fair compensation for the public performance of their works and to

distribute the royalties that it collects based upon those performances. ASCAP members write the world's best-loved music and ASCAP has pioneered the efficient licensing of that music to hundreds of thousands of enterprises who use it to add value to their business - from bars, restaurants and retail, to radio, TV and cable, to Internet, mobile services and more. The ASCAP license offers an efficient solution for businesses to legally perform ASCAP music while respecting the right of songwriters and composers to be paid fairly. With 575,000 members representing more than 10 million copyrighted works, ASCAP is the worldwide leader in performance royalties, service and advocacy for songwriters and composers, and the only American performing rights organization (PRO) owned and governed by its writer and publisher members. Learn more and stay in touch at www.ascap.com, on Twitter @ASCAP and on Facebook.

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Beach bar could face the music over lawsuit

The Virginian-Pilot(Norfolk, VA.)

July 7, 2015 Tuesday, The Virginian-Pilot Edition

Section: FRONT; Pg. A1

Length: 712 words

Body

By Scott Daugherty

The Virginian-Pilot

VIRGINIA BEACH

A karaoke night earlier this year could prove very expensive for a Virginia Beach bar owner.

Broadcast Music Inc., a private company with the right to license the public performance of about 8.5 million songs, is ***suing*** Bayside Bar & Grill on Shore Drive for ***copyright infringement***.

The federal ***lawsuit*** claims that Bayside failed to obtain a license for the public performance of six songs in the licensing company's repertoire, including Bell Biv DeVoe's "Poison" and Tim McGraw's "Don't Take the Girl." It seeks statutory damages ranging from $750 to $150,000 per song, plus court costs and "reasonable" attorney's fees.

Travis Seawell, the owner of Bayside Bar & Grill and a named defendant in the ***lawsuit***, did not return multiple messages seeking comment.

Broadcast Music does not like ***suing*** bars, spokeswoman

Liz Fischer stressed. She noted that the company filed only 160 ***copyright infringement*** ***lawsuits*** against bars and other businesses in 2014 - including one against Grumpy's Bar & Grill in Virginia Beach. It was settled out of court for an undisclosed sum.

"***Lawsuits*** are always a last resort," Fischer said, explaining that Broadcast Music first tries to work with bars and shops to secure licenses.

But the company is dedicated to protecting its clients' copyrights if an establishment refuses to cooperate, she said.

"These songwriters rely on their royalty payments," Fischer said. "They are essentially their own small-business owner."

Music is protected under federal copyright law, according to Gary Greenstein, a copyright and intellectual property lawyer based in Washington D.C. Under that law, the copyright owner - usually the songwriter - maintains the exclusive right to perform or play his songs.

There are some exceptions, but generally a business owner must obtain a license from at least one of four performing rights organizations operating in the United States: American Society of Composers, Authors and Publishers; SESAC; SoundExchange; and Broadcast Music.

Each maintains its own stable of clients.

"If you need a license from one, you probably need one from all," said Jesse Morris, a California-based lawyer whose practice focuses on the music industry.

To enforce their clients' copyrights, the organizations routinely hire investigators to visit businesses to make sure licenses cover the music played.

The move can rub some bar owners the wrong way.

"Oftentimes, businesses don't understand the law and feel they are being harassed," Morris said.

The Bayside ***lawsuit***, filed in U.S. District Court in Norfolk, contends the bar played the six songs on April 15. While the songs are popularized by musical acts like Bell Biv DeVoe and Tim McGraw, it's the songwriters who are Broadcast Music clients.

The cost of a license can vary greatly from bar to bar, depending on the establishment's size, occupancy, number of speakers and types and frequency of music played.

Fischer said a Broadcast Music license can cost as little as $350 a year, but business owners said they often cost much more.

Lawyers and business owners also said licensing companies are willing to negotiate.

"It all depends on the specific situation," Fischer said.

In an interview, Fischer said the music referenced in the ***lawsuit*** was played during a karaoke night. She said her company had tried since October 2013 to persuade Bayside Bar & Grill to get a license.

In all, the company sent 25 letters and placed 30 calls, court documents say. Company staff also visited the establishment twice.

Lawyers with ***copyright infringement*** experience said bar owners should take it seriously when a licensing company like Broadcast Music comes knocking. They noted that copyright law can be complicated and urged owners to call a lawyer and make sure they really need a license.

Regardless, Morris said it's best to sort out everything before a ***lawsuit*** is filed. ***Lawsuits*** usually don't go well for the bars.

"I don't hear about ***BMI*** losing," he said.

Scott Daugherty, 757-446-2343

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song licensing problem

A federal ***lawsuit*** claims Bayside Bar & Grill failed to obtain a license for the performance of six songs on April 15. A licensing company seeks statutory damages ranging from $750 to $150,000 per song, plus court costs.

Classification

Language: ENGLISH

Publication-Type: Newspaper

Subject: SUITS & CLAIMS (92%); LITIGATION (91%); INTELLECTUAL PROPERTY LAW (90%); COPYRIGHT LAW (90%); COSTS & ATTORNEY FEES (90%); COPYRIGHT (90%); LICENSING AGREEMENTS (90%); MUSIC (89%); LAWYERS (89%); SONG WRITING (89%); VISUAL & PERFORMING ARTS (78%); ENTERTAINMENT & ARTS (78%); MUSIC COMPOSITION (78%); MUSIC GROUPS & ARTISTS (78%); INTELLECTUAL PROPERTY (77%); ROYALTIES (77%); ***COPYRIGHT INFRINGEMENT*** (76%); COURT COST FINES (74%); SMALL BUSINESS (72%); SETTLEMENT & COMPROMISE (71%); LAW COURTS & TRIBUNALS (69%); WRITERS (61%); ASSOCIATIONS & ORGANIZATIONS (61%)

Company: BROADCAST MUSIC INC (91%)

Organization: BROADCAST MUSIC INC (93%)

Industry: LITIGATION (91%); MUSIC INDUSTRY (89%); DRINKING PLACES (89%); LAWYERS (89%); ENTERTAINMENT & ARTS (78%); MUSIC GROUPS & ARTISTS (78%); WRITERS (61%)

Person: TIM MCGRAW (57%)

Geographic: VIRGINIA BEACH, VA, USA (91%); CALIFORNIA, USA (79%); VIRGINIA, USA (79%); DISTRICT OF COLUMBIA, USA (79%); UNITED STATES (94%)

Load-Date: July 7, 2015

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EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RADIO MUSIC LICENSE COMMITTEE, INC., Plaintiff, v. GLOBAL MUSIC RIGHTS, LLC, Defendant.	Civil Action No. ___

DECLARATION OF EUGENE D. LEVIN

I, Eugene D. Levin, do declare and state as follows:

1. I am the Vice President, Treasurer, and Controller of Entercom Communications Corp. ("Entercom"), which operates roughly 130 radio stations in 28 radio market areas across the country. Entercom's corporate headquarters are at 401 City E. Avenue, Suite 809, Bala Cynwyd, Pennsylvania. The music played by Entercom's stations spans every genre, from adult rock and alternative music to classic hits and country. I have personal knowledge of Entercom's contracts, negotiations, and relationships with performing rights organizations ("PROs"), including ASCAP, BMI and SESAC.

2. Entercom is a member of the Radio Music License Committee ("RMLC"). I am a member of the RMLC Board of Directors and I also am a member of the RMLC Executive Committee. I have served on the Executive Committee of RMLC for almost 10 years. One major aspect of my role as an Executive Committee member is to attempt to negotiate reasonable license fees and terms with PROs on behalf of the U.S. commercial radio industry. I have been personally involved with negotiations between RMLC and ASCAP, BMI, SESAC, and Global Music Rights LLC ("GMR").

3. I was on the Executive Committee when RMLC brought a lawsuit against SESAC in 2012 for violating the antitrust laws. I also was on the Executive Committee when RMLC entered into an agreement with SESAC in 2015 to settle that lawsuit. Thus, I am familiar with that lawsuit and the terms of that settlement agreement.

4. I understand that broadcasting copyrighted music without obtaining a license to those works could subject radio stations, like those that Entercom owns, to serious penalties under U.S. copyright laws. To broadcast music without infringing copyrights, radio stations, like

Entercom, obtain licenses from three performing-rights organizations ("PROs") for the U.S. music industry: BMI, ASCAP, and SESAC.

5. I understand that GMR is a new PRO that has built a sizable repertory of rights belonging to high-profile artists and publishers, including Adele, Aerosmith, the Beatles, Bruno Mars, Jay-Z, Madonna, Pharrell Williams, Ryan Tedder, the Steve Miller Band, Taylor Swift, Tom Petty & The Heartbreakers, U2, and others. I further understand that, beginning January 1, 2017, GMR is implicitly threatening to sue radio stations, like Entercom stations, if they do not purchase a GMR license at the rates that GMR is demanding.

RMLC's Negotiations With GMR

6. GMR sought to negotiate with RMLC on behalf of U.S. commercial radio stations, including Entercom stations, beginning in mid-2015. RMLC negotiated in good faith for several months, with a goal of reaching an agreement beginning on January 1, 2017, the date on which GMR has stated that it will acquire full access to its affiliates' copyrights.

7. RMLC ultimately determined that GMR threatened to perpetrate the same damage to the radio industry that SESAC imposed up until the time that SESAC entered into a 20-year settlement with RMLC. GMR has demanded fees that are disproportional to the underlying share of public performances of its repertory or "spins" (weighted for market size, a common measurement for PROs), while impliedly threatening to bring infringement suits against any radio station that does not agree to these demands.

8. GMR has demanded over $42 million for 2017 alone from a subset of radio stations (including Entercom stations) representing only about 75-80% of total U.S. radio license fee payments to existing PROs. GMR has also demanded that this amount increase in 2018 and 2019. These demands are not tied to the number of times GMR songs are played. Indeed, I

understand that GMR's share is between 5% and 7.5% based on a weighted average of total plays. But GMR's demands imply that it values its purported repertory at more than 15% of U.S. radio public performance license fees, or two to three times higher than its actual share. GMR refers to this inflated share percentage as its "value share." GMR's demands are also not tied to the percentage of fully controlled works that its repertory contains, as opposed to works that GMR licenses only on a "fractional" basis.

9. Through negotiations, GMR has made clear that it will not agree to anything but a blanket license without carve-outs for direct licensing or a per-program alternative.

10. GMR also made clear that it is only offering radio stations a "fractional" license. That means that, for what I understand to be a majority of works in the GMR repertory, each radio station would need to get licenses from other copyright owners directly or from their PROs, in addition to GMR, before they could play those works without a risk of copyright infringement.

11. I am not aware of any way for RMLC or radio stations to reliably determine, at any given time, which works are licensable by GMR, nor can they know—in the event they might seek to avoid playing GMR works rather than take a GMR license—which works they would need to avoid playing in order to avoid the risk of significant infringement damages. GMR did not offer any solution to this problem during negotiations.

12. During negotiations GMR indicated that if RMLC does not agree to its demands, GMR intends to pursue its remedies against radio stations, including RMLC's member stations, meaning that stations without GMR licenses by January 1, 2017 will be at risk of potential infringement claims.

13. Due to this impending date, RMLC offered to pay GMR an interim, reasonable royalty rate based on its weighted spin share and to have a neutral arbitrator set final rates. In

early November 2016, GMR definitively refused that offer, leaving RMLC no choice but to file a suit and seek injunctive relief.

GMR's Demands Threaten to Raise Royalty Rates on an Industry-Wide Basis

14. GMR's actions and demands have attracted significant industry attention and threaten to raise rates beyond those that RMLC stations might otherwise be required to pay GMR without court intervention.

15. In recent months, RMLC has sought to reach agreement on license rates with other PROs; those PROs have made clear that they will try to extract higher licensing fees from radio stations if RMLC gives in to GMR's demands of value added by artists that are not measured by the number of spins, and its stations are forced to pay GMR's extortionate fees.

16. In ongoing RMLC/SESAC arbitration proceedings (as provided by the RMLC/SESAC settlement agreement), SESAC has held GMR out as a model for its own rate demands and is seeking to compel production of GMR's license agreements for use as benchmarks for SESAC license fees. Additionally, ASCAP and BMI have sought "most-favored nation" or "reopener" clauses with RMLC that would require RMLC member stations to pay higher fees if they agree to the royalty amounts GMR demands. BMI has stated that it prefers to wait out its license negotiations with RMLC until GMR can set the market rate.

17. Thus, if GMR is successful in imposing the rates it demands, radio stations may be forced to succumb to a domino effect and pay higher rates to other PROs.

GMR Threatens To Cause Irreversible Harm to Radio Stations

18. Based on my experience in the radio industry, including on the Executive Committee of the RMLC, I understand that radio stations, like Entercom, cannot afford the consequences of declining GMR's license and accidentally airing one of its songs or incidental

music contained in a commercial, as a copyright holder can seek penalties up to $150,000 for a single act of infringement. I also know that it is not practical for radio stations to try to remove all of the works from GMR's repertory from their stations' broadcasts given the broad spectrum of music and high-profile artists that the repertory includes. Radio stations face stiff competition from both other terrestrial radio stations and streaming music services. Losing the ability to broadcast all of GMR's works could seriously damage a station's reputation and cause it to lose listeners.

19. Even if stations wanted to try to remove all GMR music from their broadcasts, they cannot reliably do so, because GMR does not offer any reliable, transparent, or timely way to determine precisely what songs they would need to avoid playing at any given time.

20. Even if a radio station were to try to remove all of the GMR songs from its playlists, it would still fear a risk of a copyright infringement claim by GMR because many stations broadcast third party advertising that includes music that the station does not control.

21. As a result, many radio stations, including Entercom, will likely be forced to agree to accept a license on terms GMR dictates if the court does not issue an order to stop GMR's actions.

22. In addition to imposing significant costs, a copyright infringement suit against a radio station could seriously damage its reputation in the marketplace. Such a suit is likely to attract significant publicity at the local level where the allegedly infringing station operates, or even on a broader basis, particularly if the alleged act of infringement involves a high-profile artist.

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

Executed this 17 day of November 2016.

Eugene D. Levin

EXHIBIT C

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RADIO MUSIC LICENSE COMMITTEE, INC., Plaintiff, v. GLOBAL MUSIC RIGHTS, LLC, Defendant.	Civil Action No. ___

DECLARATION OF DAVE PAULUS

I, Dave Paulus, do declare and state as follows:

1. I am Vice President and General Manager of Max Media of Hampton Roads, LLC ("Max Media"), which operates 92.9 The Wave, Eagle 97.3, Star 1310, ESPN Radio 94.1, and Hot 100.5 in Norfolk and Virginia Beach, Virginia. Those stations play contemporary hits, classic rock, country, gospel, and sports talk radio. I have held my position with Max Media for six years and worked as a radio station general manager in Norfolk for 16 years. I have personal knowledge of Max Media's contracts, negotiations, and relationship with ASCAP, BMI, SESAC, and the Radio Music License Committee ("RMLC"), and have some familiarity with the negotiations between RMLC and Global Music Rights LLC ("GMR").

2. I understand that broadcasting copyrighted music without obtaining a license to those works could subject Max Media stations to serious penalties under U.S. copyright laws. To broadcast music without infringing copyrights, Max Media stations maintain licenses from three performing-rights organizations ("PROs") for the U.S. music industry: BMI, ASCAP, and SESAC.

3. I understand that GMR is a new PRO that has amassed a sizable repertory of rights belonging to high-profile artists and publishers, including Adele, Aerosmith, Beatles, Bruno Mars, the Eagles, Pharrell Williams, Ryan Tedder, Steve Miller Band, Taylor Swift, Tom Petty & The Heartbreakers, U2, and others, and that GMR will not license these works on anything but a blanket basis.

4. Even with my years of experience, I am unaware of any way for Max Media or its stations to reliably determine, in real time, which works are in GMR's repertory.

5. Max Media and its stations cannot afford the consequences of declining GMR's license and accidentally airing one of its songs because a copyright holder can seek significant penalties, including excessive litigation costs, for a single act of infringement.

6. Max Media stations also cannot practically withdraw every one of the songs in GMR's repertory from their broadcasts given the broad spectrum of music and "A-list" artists within that repertory. Losing the ability to broadcast songs performed by the Eagles, Bruno Mars, Adele, Taylor Swift, or other high-profile acts in GMR's repertory would certainly prevent Max Media stations from delivering a quality broadcast and would likely lead to a significant and irreversible drop in listeners. Max Media and its stations already face substantial competitive pressures from other terrestrial radio stations, satellite radio stations, and streaming services. I cannot see any viable way to operate a contemporary hits or classic hits station in this highly competitive environment without broadcasting songs in GMR's repertory.

7. Even if Max Media stations were to try to remove all of the GMR songs from its broadcasts, it is almost certain Max Media would inadvertently play a GMR song. Max Media and its stations do not have the resources to go song-by-song to identify which songs' rights belong to GMR. Even if that task was financially possible, it is administratively unimaginable that our programmers, let alone our part-time weekend employees, could remain constantly informed of the contents of GMR's repertory. And I am not aware that GMR even makes it possible (much less practical) to stay informed in real time. Even if Max Media and its stations accomplished that unimaginable task, we would still face a risk of copyright infringement claims by GMR because we play third party advertising, NFL Network games, and Old Dominion University sports broadcasts that often include ambient or background music that we cannot control.

8. A copyright infringement suit would permanently harm Max Media and its stations in a number of ways. If Max Media were subject to significant fines and excessive litigation costs, our five stations would not be able to operate. An infringement suit would also seriously damage Max Media's reputation with the businesses and organizations with whom we partner, the artists

we promote, and our listener communities. Max Media expends considerable effort to cultivate its reputation within the Norfolk and Virginia Beach area. For example, Max Media and its employees engaged in substantial community outreach when Hurricane Mathew struck in October 2016. An infringement lawsuit would threaten to permanently damage the goodwill Max Media goes to such great expense to develop, especially if the song Max Media inadvertently infringed is performed by a fan-favorite artist like Taylor Swift, Bruno Mars, or Adele.

9. The combined threat of an infringement lawsuit and the impracticability of scrubbing GMR songs from our broadcasts places Max Media and its stations in a very challenging situation. As a result, Max Media stations will likely be forced to agree to accept a license on terms GMR dictates if the court does not issue an order to stop GMR's actions.

10. Max Media has been a member of RMLC for several years. During that time, RMLC has successfully negotiated rates with ASCAP and BMI, and its lawsuit against SESAC and subsequent settlement resulted in an arbitration proceeding through which Max Media has paid reasonable licensing fees. RMLC's ability to negotiate with these PROs and achieve these results was a key factor in my decision to join the organization, and is an important reason why Max Media has remained a member.

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

Executed this 14th day of November 2016.

Dave Paulus

EXHIBIT D

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RADIO MUSIC LICENSE COMMITTEE, INC., Plaintiff, v. GLOBAL MUSIC RIGHTS, LLC, Defendant.	Civil Action No. ___

DECLARATION OF JEFFREY D. WARSHAW

I, Jeffrey D. Warshaw, do declare and state as follows:

1. I am founder and CEO of Connoisseur Media, which currently operates 39 full-power radio stations in Connecticut, Kansas, Montana, New Jersey, New York, and Pennsylvania, including 99.9 The Hawk (Lehigh Valley), ESPN Sports Radio (Lehigh Valley), and Spin Radio 107.1 (Allentown), all in the Eastern District of Pennsylvania. The music played by those stations spans nearly every genre, including alternative, country, classic rock, variety, and classic and contemporary hits. I founded Connoisseur Media in 2004 after I sold my prior radio group. I have personal knowledge of Connoisseur Media's contracts, negotiations, and relationships with ASCAP, BMI, SESAC, and Radio Music License Committee ("RMLC"), and have some familiarity with the negotiations between RMLC and Global Music Rights, LLC ("GMR").

2. I understand that broadcasting copyrighted music without obtaining a license to those works could subject Connoisseur Media or its stations to serious penalties under U.S. copyright laws. To avoid infringing copyrights in any of its broadcasts, Connoisseur Media stations hold licenses from three performing-rights organizations ("PROs") for the U.S. music industry: BMI, ASCAP, and SESAC.

3. I understand that in 2013 a new PRO, GMR, was founded by Irving Azoff and has since amassed a sizable repertory of rights belonging to high-profile songwriters and publishers, including Adele, Beatles, Bruno Mars, Bruce Springsteen, the Eagles, Pharrell Williams, and Taylor Swift. I also understand that GMR will not license these works on anything but a blanket basis.

4. I understand that GMR's repertory can change over time as it adds new songwriters and songs. Connoisseur Media does not have any way to reliably determine which

songs are in GMR's repertory at any given time. Connoisseur does not have in-house attorneys, specialists in music rights issues or others with the capability or the resources to constantly survey GMR's repertory of songs, even if GMR made that possible. I understand that GMR does not make available, in real time, a complete list of the songs in which it has any rights, nor the extent of its interest in the songs to which it has rights.

5. I understand GMR has implied that after January 1, 2017, it intends to initiate infringement lawsuits against RMLC member stations, such as Connoisseur Media's stations, if they play a GMR song (intentionally or not) without purchasing a blanket license. If we are forced to pay under a blanket license, even were we able to determine the songs to which GMR had the rights and negotiate direct licenses for some of those songs, I understand that it would not decrease our cost for the GMR license.

6. Connoisseur Media and its stations simply cannot afford the consequences of declining GMR's license and accidentally airing one of its songs. The financial impact of a fine up to $150,000 for a single act of infringement would substantially impair Connoisseur Media's ability to operate, and that impact becomes debilitating when applied to all of the Connoisseur Media stations.

7. Nor can Connoisseur Media practically direct its stations to withdraw all of the songs in GMR's repertory from their broadcasts given the high-profile artists and variety of music that it covers. Connoisseur Media stations are constantly facing heavy competition from other terrestrial radio stations within the same geographic areas, not to mention from satellite radio stations and streaming services. If my stations cannot play GMR's songs, they will encounter a distinct and immediate competitive disadvantage, and undoubtedly will lose listeners and advertising revenues that those listeners bring in. Connoisseur Media's stations have built a

reputation for playing songs listeners want to hear. Ceasing to play those songs would irreparably damage that reputation. Removing GMR's songs would also hinder Connoisseur Media's ability to employ talented programmers. Top programmers would flee Connoisseur Media stations if they could not play the artists that fans request and if they had to meticulously verify whether every song played is not in GMR's repertory.

8. Even if there were some reliable, real time way for Connoisseur Media to make every effort to have its stations remove all GMR songs from their broadcasts, those stations would still face a risk of a copyright infringement claim by GMR because we cannot control all the music we play. Connoisseur Music stations often play content with embedded or background music that is beyond our control, like third party advertising, various sports broadcasts, and syndicated programming. Thus, Connoisseur Media and its stations face the threat of a copyright infringement lawsuit if we take any action other than purchasing a GMR license.

9. A copyright infringement suit could inflict significant harm to Connoisseur Media and its stations. In addition to the high cost of an infringement lawsuit, the act of being sued could damage Connoisseur Media's relationships with artists and performers. Connoisseur Media and its stations engage promotional activities with artists to attract new listeners, to entertain and reward existing listeners, and to generate revenues. An infringement suit could damage Connoisseur Media's reputation within the artist community and undermine our ability to engage in the promotional activities that contribute significantly to our business. Any of those impediments could result in a loss of goodwill among our listeners.

10. The challenges facing radio stations have grown significantly in recent years. As a result, Connoisseur Media will likely be forced to have its stations purchase a license on terms GMR dictates if the court does not issue an order to stop GMR's actions.

11. Connoisseur Media has been a member of RMLC for several years. RMLC has successfully negotiated rates with ASCAP and BMI on our stations' behalf, and RMLC's lawsuit against SESAC and the settlement of that litigation resulted in an arbitration proceeding through which Connoisseur Media now hopes to pay reasonable licensing fees as well. RMLC's ability to negotiate with these PROs and achieve these results is an important reason why my organization joined and still remains a member.

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

Executed this 15th day of November 2016.

Jeffrey D. Warshaw

EXHIBIT E

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RADIO MUSIC LICENSE COMMITTEE, INC., Plaintiff, v. GLOBAL MUSIC RIGHTS, LLC, Defendant.	Civil Action No. ___

DECLARATION OF JIM COLOFF

I, Jim Coloff, do declare and state as follows:

1. I am President of Coloff Media, LLC ("Coloff Media"). My father started Coloff Media 38 years ago with just a few stations in small towns in Iowa. I joined the family business 25 years ago and have helped to grow Coloff Media to its current 11 Iowan stations, including several stations playing today's top hits, two country stations, two oldies stations, one classic rock station, three news/sports stations and several variety stations. I oversee Coloff Media's relationships with ASCAP, BMI, SESAC, and the Radio Music Licensing Committee ("RMLC"), and have some familiarity with the negotiations between RMLC and Global Media Rights, LLC ("GMR").

2. I know that broadcasting copyrighted music without obtaining a license to those works could subject Coloff Media or its stations to serious penalties under U.S. copyright laws. All Coloff Media stations hold licenses from the performing-rights organizations ("PROs") ASCAP, BMI, and SESAC to allow the stations to legally play all songs and to protect against an infringement lawsuit.

3. I recently learned that a new PRO, GMR, has been building a repertory of popular songs since 2013 by signing artists and songwriters from ASCAP and BMI. GMR's repertory already contains many songs that Coloff Media stations play, including songs performed by the Beatles, the Eagles, Jay-Z, Madonna, Steve Miller Band, Taylor Swift, Tom Petty & The Heartbreakers, and U2. I understand that GMR will not license its songs on anything but a blanket license basis.

4. I understand that GMR has implied that it is prepared to initiate infringement lawsuits against RMLC member stations beginning as soon as January 1, 2017, if those stations play a GMR song without purchasing a GMR license. Coloff Media operates small radio

stations that could not survive the consequences of an infringement lawsuit, which could include a fine as high as $150,000 per infringing song, not to mention the legal costs in defending the suit even if were successful.

5. Coloff Media also cannot avoid a lawsuit by attempting to stop playing all of the songs in GMR's repertory. I understand that GMR does not offer any reliable way for Coloff Media to determine in real time what songs are in GMR's repertory, which I understand can change often as GMR signs new artists. Even if GMR was completely transparent in real time, Coloff Media could not afford to hire a full-time administrative staff to constantly survey GMR's repertory of works. Years ago Coloff Media considered not playing all SESAC songs while negotiating with that PRO, but we quickly found that task impossible. As a result, Coloff Media was forced to purchase a SESAC license.

6. Even if GMR provided a reliable, cost-effective method for removing its songs, it would be damaging for our stations to do so. GMR's repertory contains many songs across a broad range of genres that are very popular with our listeners. People have many options for hearing the music they like, and radio listeners would quickly switch to competing terrestrial radio stations or to a streaming option if our stations stopped playing all the songs in GMR's repertory. A decrease in listeners would inevitably cause a loss in advertising revenue and threaten the ability of our stations to operate.

7. Removing GMR's songs from our live broadcasts also would not necessarily protect Coloff Media stations from being sued by GMR for copyright infringement. Our stations are able to viably operate in small Iowan communities because we often play prepackaged syndicated programs instead of paying live, in-house programmers. For example, we broadcast Alice Cooper and Tom Kent's syndicated programs. We have no control over which songs the

syndicated programs choose to play, and we cannot anticipate which songs some syndicated programs will play because they select songs through real-time listener requests. Additionally, our stations cannot control all the music within advertisements and live-event broadcasts. Thus, Coloff Media and its stations face the threat of a copyright infringement lawsuit if we take any action other than purchasing a GMR license.

8. If we were sued for copyright infringement it could damage our reputation and goodwill. Coloff Media is a family business that expends considerable effort to be a positive force and example within local communities where we broadcast. Our stations have won multiple awards from the U.S. National Association of Broadcasters for our year-round commitment to community service. Coloff Media and our employees take pride in those awards and in our reputation for delivering quality content, while also being an upstanding, law-abiding business. That reputation helps Coloff Media stations attract local advertisers and maintain local listeners. A copyright infringement lawsuit, whether valid or not, would damage that reputation. The damage is likely to be greatest when our stations are alleged to have illegally played a popular song, like those in GMR's repertory, because listeners have the strongest emotional connections to those songs.

9. Given the potential injury from an infringement lawsuit and our inability to completely remove all GMR songs from our playlists, Coloff Media's hands are tied. Even though GMR has not made a fair offer, we believe we will be forced to purchase their blanket license on terms they demand if the court does not intervene.

10. Coloff Media has been a member of RMLC for several years. Coloff Media has relied on RMLC's negotiation of reasonable rates with ASCAP and BMI, and on RMLC's lawsuit to compel reasonable rates and licensing terms from SESAC. Coloff Media joined and

remains a member of RMLC because of its ability to negotiate with the PROs to achieve fair results for the radio industry.

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

Executed this 17th day of November 2016.

Jim Coloff

EXHIBIT F

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RADIO MUSIC LICENSE COMMITTEE, INC., Plaintiff, v. GLOBAL MUSIC RIGHTS, LLC, Defendant.	Civil Action No. ___

DECLARATION OF STEVEN R. PETERSON

I, Steven R. Peterson, do declare and state as follows:

I. Introduction

1. I am an Executive Vice President at Compass Lexecon. Compass Lexecon is an economics consulting firm that specializes in the economics of competition, finance, and regulation, among other areas. I received my A.B. in economics from the University of California, Davis, in 1987 and my Ph.D. in economics from Harvard University in 1992. While at Harvard, my areas of specialization were economic theory and industrial organization. Industrial organization is the study of the strategic behavior of firms, regulation, and competition. Industrial organization includes the study of market power and anticompetitive conduct. Since September 2011, I have also served as an adjunct faculty member in the Department of Economics at Northeastern University where I teach courses on the economics of antitrust, regulation, and public policy.

2. During my career, I have consulted on the economics of antitrust and competition, mergers, estimation of damages, valuation, regulation, and public policy. I have extensive experience with the policy and economics of music licensing. I testified on behalf of the Radio Music License Committee ("RMLC") on issues of market definition and market power in *Radio Music License Committee v. SESAC, Inc., SESAC, LLC, and SESAC Holdings, Inc.* in the United States District Court for the Eastern District of Pennsylvania. I also testified on behalf of the National Association of Broadcasters and Pandora Media, Inc., before the United States Copyright Royalty Judges, Library of Congress, regarding appropriate rates for the performance of digital sound recordings. In addition, I submitted comments on behalf of the National Association of Broadcasters in regard to the Department of Justice's review of the American Society of Composers, Authors and Publishers ("ASCAP") and Broadcast Music, Inc. ("BMI") consent decrees. A copy of my curriculum vitae, which includes a list of my testimony in the last four years, is attached as Appendix A.

3. Compass Lexecon is being compensated for my work in this matter at the rate of \$775/hour. My compensation does not depend in any way on the outcome of this proceeding. The opinions I express here are my own, and do not necessarily represent the views of any of my employers.

A. Assignment

4. Counsel for the RMLC requested that I perform an economic analysis of issues pertinent to RMLC's claims against Global Music Rights, LLC ("GMR"). Counsel has asked that I analyze from an economic perspective the appropriate relevant market in which to assess GMR's alleged conduct, and to assess whether GMR has market power in that relevant market.

B. Materials Relied Upon

5. In reaching my opinions, I have relied on my professional training, my teaching and research, and my prior consulting experience. In addition, I have examined materials and evidence (gathered by me and my staff working under my direction) in the course of this engagement. This litigation is at a very preliminary stage, and no discovery has yet taken place. I reserve the right to amend my opinions in the future, as the litigation proceeds and additional information becomes available.

6. Among the items I have considered are:

   a. Legal filings in this matter;

   b. Publicly available data and other information regarding various aspects of the marketplace, especially those pertaining to the analytic issues raised by the parties in this lawsuit;

   c. Declarations of William Velez, Jim Coloff, Dave Paulus, Jeffrey D. Warshaw, and Eugene D. Levin; and

   d. Phone interview with William Velez.

7. A list of the materials I have relied upon is attached as Appendix B.

II. Background on Music Licensing

A. U.S. Performance Rights Organizations

8. U.S. copyright law grants composers certain rights over their works, including the exclusive right to publicly perform their compositions. If a person other than the composer or copyright owner wishes to perform a musical composition publicly, the person must obtain permission from the copyright holder. Copyright holders are free to license their works directly, but generally grant the right to license public performances of their compositions to a common agent, called a performance rights organization ("PRO"). PROs license the right to perform bundles of works to radio stations, television stations, and other organizations that publicly perform music. PRO licenses frequently take the form of a blanket license, which grants the right to perform any work in the PRO's repertory for a fixed license fee during the term of the license. The PROs pay the composers and publishers that have affiliated with them ("affiliates") for the performances of their music.[1]

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1 For background information on music licensing and PROs, see U.S. Department of Justice, Statement of the Department of Justice on the Closing of the Antitrust Division's Review of the ASCAP and BMI Consent Decrees, August 4, 2016 (hereinafter "DOJ Statement") at 5-6; Bryan T. Yeh, Copyright Licensing in Music Distribution, Reproduction, and Public Performance, September 22, 2015, Congressional Research Service, at 6-8; Dana A. Scherer, Money for

9. In the abstract, the existence of a PRO may reduce the transaction costs associated with obtaining rights to perform copyrighted music because a PRO has the potential to provide "one stop" shopping for desired musical rights. The opportunity to obtain necessary rights from a single organization may lower the transactions costs associated with obtaining performance rights relative to other methods. Unlike many other countries, however, the United States does not have a single PRO.[2] Instead, the United States now has four PROs: ASCAP, BMI, SESAC, and GMR.[3] The cost of negotiating with multiple PROs rather than one, and the attendant uncertainty of exactly what rights one is obtaining from any given PRO, reduces the efficiencies of composers' pooling their performance rights for licensing by a common agent.

10. ASCAP and BMI are the two largest PROs in the United States, each representing hundreds of thousands of songwriters; they have been in existence for many decades. The ASCAP repertory contains approximately ten million songs, and the BMI repertory contains nearly twelve million works.[4] ASCAP's licensing revenues for the period ending December 31, 2015 were more than $1 billion and BMI's licensing revenues were more than $1 billion for the period ending June 30, 2015.[5] SESAC is smaller than either ASCAP or BMI. SESAC represents approximately 30,000 affiliates,[6] and its 2014 revenues were approximately $182 million.[7] In 2013, GMR founder Irving Azoff said that GMR will probably have 100 members.[8] As of November 2014, GMR reportedly represented approximately 46 affiliates accounting for 20,000 works.[9] According to a 2015 press release from U.S. Senator Mike Lee's office, ASCAP and BMI each control approximately 45 percent of the market and SESAC and GMR control the remaining 10 percent.[10]

Something: Music Licensing in the 21st Century, January 19, 2016, Congressional Research Service, (hereinafter "CRS 2016") at 12-13.

2 Katz, Ariel, "The Potential Demise of Another Natural Monopoly: Rethinking the Collective Administration of Performing Rights," 1 *J. Competition L. & Econ.* 541, 544 (2005).

3 CRS 2016 at 12.

4 ASCAP 2015 Annual Report at 7 (www.ascap.com); http://www.bmi.com/about.

5 ASCAP 2015 Annual Report at 25 (www.ascap.com); *BMI Announced $1.06 Billion in Revenue, the Highest in Company History,* September 8, 2016 press release (www.bmi.com).

6 https://www.sesac.com/about/about.aspx.

7 Ed Christman, SESAC Buys the Harry Fox Agency, July 7, 2015 (Billboard.com).

8 Billboard, The $300 Million Comeback: Irving Azoff Teams with MSG's James Dolan to Create Intriguing Music Company, Billboard.biz, September 6, 2013.

9 Hannah Karp, YouTube Is Told to Remove Songs by Pharrell Williams, John Lennon; Music Mogul Irving Azoff Challenges Google Streaming Site over Royalties, The Wall Street Journal Online, November 18, 2014.

10 Congressional Documents and Publications, Lee Holds Hearings on the Future of Music Licensing and Antitrust Regulations; Sen. Mike Lee R-UT, March 10, 2015.

11. ASCAP and BMI are nonprofit organizations. As a result, ASCAP and BMI pass all of their income after expenses on to the composers and music publishers that have assigned their performance rights. In their most recent complete fiscal years, ASCAP and BMI distributed approximately 85% and 88% of total revenues to their members, respectively.[11] ASCAP and BMI are subject to consent decrees resulting from litigation with the U.S. Department of Justice. Under these consent decrees ASCAP and BMI are subject to court oversight of their rates.[12] In addition, ASCAP and BMI cannot refuse to provide a license to any party seeking one, even if the parties cannot agree on a license fee.[13] ASCAP and BMI have also been required to offer licenses other than a standard blanket license covering the works in their repertories.[14]

12. SESAC, unlike ASCAP and BMI, is a for-profit PRO.[15] While SESAC has existed for many years, it altered its focus and began to seek out a small but unavoidable repertory of affiliates in a conscious effort to increase the amount of royalties it would charge for a blanket license.[16] SESAC has recently settled antitrust lawsuits with licensees that require arbitration if SESAC and the licensees cannot agree on rates.[17]

13. Like SESAC, GMR is a for-profit PRO. Unlike all the other PROs operating in the U.S., however, GMR is not subject to court or other oversight of the rates it charges. I understand that GMR has offered to license the performance rights to the works in its repertory under the terms of a blanket license. As described below, blanket licenses undermine competition among individual composers to license the performance rights to their works.

B. Radio Stations' Use of Music

14. Radio stations use a variety of musical works in a number of different ways. Many stations play music as their primary programming to attract listeners. Radio stations also broadcast music as bridges between different programs and as

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11 Based on total BMI revenues and distributions of $1.06 billion and $931 million, respectively (BMI Announced $1.06 Billion in Revenue, the Highest in Company History, September 8, 2016 press release, www.bmi.com) and total ASCAP revenues and distributions of $1.014 billion and $867 million, respectively (ASCAP 2015 Annual Report at 27).

12 DOJ Statement at 6-7.

13 Carly Olson, "Changing Tides in Music Licensing? *BMI v. DMX* and *In re THP*," *Northwestern Journal of Technology and Intellectual Property*, Vol. 10, No. 3, Winter 2012 (hereinafter "Olson") at 280.

14 Declaration of William Velez, November 17, 2016, at ¶10; Olson at 281 and 287.

15 Report and Recommendation of Lynne A. Sitarski, United States Magistrate Judge, Radio Music License Committee, Inc., Plaintiff, v. SESAC Inc., et al., Defendants, In the United States District Court for the Eastern District of Pennsylvania, December 20, 2013 (hereinafter "SESAC Report and Recommendation") at ¶10.

16 SESAC Report and Recommendation at ¶24.

17 Declaration of William Velez at ¶13.

part of advertisements. Radio stations generally have control over the music they program as primary entertainment. Thus, they have some level of ability to avoid playing works in GMR's repertory. However, that ability is limited because it is not possible to definitively determine what works are in GMR's repertory.[18] The works in a PRO's repertory are constantly changing as existing affiliates write new songs and as new affiliates join the PRO. GMR does not make available to radio stations comprehensive and real-time information about the contents of its repertory.[19] Without reliable and up-to-the-minute information on the works in GMR's repertory, there is always a risk that a station would unwittingly infringe a GMR work if it did not have a GMR license. Upon infringement a station without a license would need to obtain one or would have to pay the potentially significant damages for infringement. The station would also have borne the expense and possible lost listeners and resulting lost revenue from its efforts to purge GMR music from its programming.

15. Stations do not directly control all of the music they broadcast. For example, radio stations broadcast commercials with music that may be licensed by GMR. For commercials placed by regional or national agencies, there is no practical method for a station to verify the musical content of a commercial or the PRO of the music's copyright holder.[20] Even if GMR music in commercials could be identified, radio stations cannot avoid playing commercials that contain GMR music without the expense of turning away paying advertisers and refusing to broadcast commercials containing works in GMR's repertory.

C. Penalties for the Unauthorized Broadcast of Copyrighted Musical Works

16. Radio broadcasts of copyrighted musical works are public performances that must be licensed by the composer of the work or by his or her agent (*i.e.*, a music publisher or a PRO). If a station does not have a license for the public performance, U.S. law provides for substantial penalties, reaching up to $150,000 for each act of infringement.[21] Thus, if a radio station incorrectly believed that it purged all GMR works from its broadcasts, it could be subject to substantial penalties for its unwitting infringement.

17. As a result of the practical difficulties of eliminating GMR music from a radio station's programming and the very high damages that can result from

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18 Declaration of Dave Paulus, November 14, 2016, at ¶¶4, 7; Declaration of Eugene D. Levin, November 17, 2016, at ¶11.

19 Declaration of Dave Paulus at ¶7; Declaration of Jim Coloff, November 17, 2016, at ¶5.

20 Declaration of Jeffrey D. Warshaw, November 15, 2016, at ¶8; Declaration of Eugene D. Levin at ¶20; SESAC Report and Recommendation at ¶13.

21 www.sesac.com/licensing/FAZsGeneral.aspx.

infringement, virtually all radio stations will have to choose to take a GMR license. The license is viewed as an unavoidable cost of doing business.[22]

III. Competition among Copyright Holders

18. The potential anticompetitive impact of PROs is well recognized by economists, policymakers, and courts.[23] When independent copyright owners turn their pricing and licensing decisions over to a common sales agent like GMR the common sales agent is able to set prices reflecting the owners' joint interests.[24] Thus, a PRO acting as a common sales agent for copyright owners is able to eliminate competition between the independent owners of copyrights in music. By eliminating competition among copyright owners, the common sales agent, absent regulation, could charge for the full value of the music to a broadcaster.[25]

19. Common agency can effectively eliminate competition among independent copyright owners even when they retain the legal right to license directly. If a station and a copyright owner are to agree to a direct license (not involving a PRO), each party must find it to be in its own individual interest to reach a deal. A radio station that already has a blanket license from a PRO, however, will never find it to be in its own interest to enter into a separate direct agreement with an affiliate of the PRO. This is because entering into a direct agreement with a copyright owner would not enable the station to reduce its license fee to the PRO to account for the works that it licensed directly. Thus, a station with a blanket license with a PRO and direct agreements for some works in that PRO's repertory would effectively be paying twice for the same works.[26] Therefore, the station could not lower its licensing costs by reaching a direct license agreement, unless the PRO offered a mechanism for giving a discount when an affiliate agreed to a direct license.

20. This example illustrates an anticompetitive effect of GMR's policy of offering only blanket licenses. It eliminates a station's incentives to attempt to circumvent

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22 Declaration of Dave Paulus at ¶¶5, 6, 9; Declaration of Eugene D. Levin at ¶21; Declaration of Jim Coloff at ¶9.

23 See, e.g., SESAC Report and Recommendation at 30 ("Furthermore, the current record suggests there is no restriction on SESAC's ability to raise its prices. This ability, coupled with SESAC's 100% market share of the unique product – the collection of songs in it's (sic) repertory – further supports a finding that the challenged conduct has produced anticompetitive effects in the relevant market."); SESAC Report and Recommendation at 32 ("Here, SESAC possesses 100% of the relevant market. Thus, Plaintiff has established a likelihood that SESAC has monopoly power."); DOJ Statement at 2 ("The consent decrees seek to prevent the anticompetitive exercise of market power while preserving the transformative benefits of blanket licensing."))

24 B. Douglas Bernheim and Michael D. Whinston, "Common Marketing Agency as a Device for Facilitating Collusion," *Rand Journal of Economics*, Vol. 16, No. 2, Summer 1985.

25 Wee, *e.g.*, Ariel Katz, "Commentary: Is Collective Administration of Copyrights Justified by the Economic Literature?" http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1001954

26 Declaration of William Velez at ¶18.

the PRO and to directly license the music that the station wishes to broadcast. The incentives created by the blanket licenses ensure that even if an affiliate is legally entitled to license its works independently, stations and copyright owners will not find it in their mutual interests to reach a deal. Even if PRO affiliates want to negotiate independently, they will not find a partner with the incentives to pay them. By eliminating incentives for direct licensing, GMR effectively makes itself the sole source of the performance rights to the musical works in its repertory. Moreover, the incentives created by blanket licenses effectively convert the composers' common agent into an exclusive agent. In contrast, alternative license forms, such as an adjustable-fee blanket license that provides for a reduced fee to the PRO to account for directly licensed works, would allow some incentive for stations to seek competitive, direct license agreements. As noted above, the BMI and ASCAP consent decrees require those PROs to offer alternatives to standard blanket licenses.

21. Where direct, competitive licensing has occurred, the benefits of competition to the licensee have been significant. DMX is a commercial music services company that provides music for public spaces. DMX has control over the music it includes in its programming and has the ability to increase the frequency with which it plays music it has directly licensed. DMX is, thus, able to take advantage of an adjustable-fee blanket license that reduces license fees to PROs to reflect the share of DMX's music use covered by direct licenses. DMX negotiated 550 direct licenses with copyright holders to include their works in DMX programming by the time it went to rate court with BMI in 2010.[27] The direct licenses were at a significant discount to rates DMX paid to BMI by other CMS companies.[28]

22. The same anticompetitive effects are seen in the reduced incentive of radio stations to tailor their playlists, in a setting where a PRO does not offer a discount mechanism. A station has no rational incentive to tailor its playlist so as to seek to avoid playing the works of only *some* of a PRO's affiliates, because it will still pay the same blanket license fee as if it had avoided playing none of the PRO's affiliates' works.

IV. The Relevant Market in which GMR Licenses Its Repertory

23. Market definition is an economic tool used to evaluate whether a firm or firms possess market power. The goal of market definition is to identify the

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27 726 F. Supp. 2d 355 (2010) at 360.

28 726 F. Supp. 2d 355 (2010). BMI sought a blanket license fee of $36.36 per location per year to cover BMI-licensed music only. BMI calculated this rate from license agreements with other CMS licensees. DMX's direct license fees were $25 per location per year, covering all performances. 726 F. Supp. 2d 355 (2010) at 359. The rate court accepted DMX's direct licenses as reliable benchmarks for establishing rates. 726 F. Supp. 2d 355 (2010) at 356, 361 The rate court found DMX should pay a rate that reflected license fees in DMX's direct licenses (plus fees to cover BMI's expenses). This amount was then reduced to reflect DMX's use of music that it licensed directly.

competitive options customers can turn to in order to avoid paying a price increase by a firm attempting to exercise market power. The available options are substitutable products and alternative suppliers to which customers can turn to escape an increase in the price of one product. Market definition allows the calculation of market shares and concentration indices that describe the structure of the market and offer insight into the ability of firms to exercise market power. In some instances there is direct evidence of market power, such as a price increase that is clearly not accompanied by an increase in demand or an increase in costs. Such direct evidence of market power can be used to test the reliability of a proposed market definition, but may also make market definition unnecessary.[29]

24. Market definition does not occur in the abstract. The competition issue to be addressed will determine what market(s) should be defined. For example, if the issue is a merger, market definition begins with the products and locations of the merging firms. If the issue is whether a firm possesses market power, market definition begins with the products or services the firm sells.[30] No matter the economic question that market definition is to illuminate, the approach to market definition does not change.

25. A relevant market has two dimensions, a "product" dimension and a "geographic" dimension. The boundaries of the relevant product market delineate the products that are good substitutes for one another and to which customers would turn should the price of one product in the market rise. Transportation costs frequently limit the suppliers that customers can turn to should one supplier increase prices. The geographic market encompasses the sources of supply (*i.e.*, suppliers) that customers view as interchangeable. The geographic market tracks the alternative suppliers that customers can reach out to for supply when faced with price increases.[31] In the case of performance rights the location of the suppliers is not the issue because obtaining a license does not require any physical transport of products.

26. "Market definition focuses solely on demand substitution factors, i.e., on customers' ability and willingness to substitute away from one product to another in response to a price increase or a corresponding non-price change such as a reduction in product quality or service."[32] Supply-side factors, such as entry and

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29 Jonathan Baker, "Market Definition: An Analytical Overview," 74 *Antitrust Law Journal*, No. 1, 2007, at 131 ("But market definition may not be required when market power or anticompetitive effect can be demonstrated directly through means other than inference from the number, size distribution, and other characteristics of firms.").

30 It is common to refer to the relevant product market, even when the "product" at issue is a service or, as here, a bundle of licensed rights. I follow this convention in this declaration.

31 U.S. Department of Justice and the Federal Trade Commission, "Horizontal Merger Guidelines," August 19, 2010 (hereinafter "HMG") at §4.2.1.

32 HMG at §4. Supply factors are important to the question of market power, but are considered separately from market definition.

supply substitution, must also be taken into account when analyzing market power in a market. They are not part of the market definition analysis, however.

A. The Hypothetical Monopolist Test

27. The standard method used to define markets is the "hypothetical monopolist test." Under this test, a relevant product market exists if a hypothetical profit-maximizing firm that is the only present and future seller of the products in the candidate market could profitably impose at least a small but significant and non-transitory increase in price (a "SSNIP") on at least one product in the market.[33] A SSNIP is typically taken to be a price increase of about 5%.[34]

28. To apply the hypothetical monopolist test to the product market, we define an initial candidate market around a product or group of products. If the evidence indicates that a 5% price increase of that product would not be profitable because customers would shift a large share of their purchases to competing products outside of the candidate market, the candidate market is too small. In this circumstance, we add the next-best substitute product to the candidate market and apply the hypothetical monopolist test again. The process of adding increasingly distant substitutes to the candidate market continues until the 5% SSNIP is profitable. This occurs when customers can no longer effectively substitute their purchases to products outside of the candidate market. The smallest set of products satisfying the hypothetical monopolist test defines the relevant product market.[35]

29. The hypothetical monopolist test is also used to determine the boundaries of the relevant geographic market. The analysis begins with a candidate set of suppliers of the products in the relevant product market. If a 5% price increase would not be profitable because customers would turn to suppliers outside of the candidate market, the next-best substitute supplier is added to the candidate. This process continues until a 5% SSNIP would be profitable because customers cannot substitute their purchases to suppliers outside of the candidate market.

30. The hypothetical monopolist test ensures that a relevant market contains a sufficiently large number of products and suppliers that it would be subject to market power if they were under the control of a hypothetical monopolist. This means that the market includes the substitute products and sources of supply that are good substitutes for the product subject to a SSNIP. The products and suppliers outside of the market are not sufficiently good substitutes to defeat the exercise of market power.

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33 HMG at §4.1.1.

34 HMG at §4.1.2.

35 HMG at §4.1.1.

B. The Relevant Product Market Contains only the GMR Repertory

31. GMR is in the business of licensing the musical works in its repertory for public performance. The general principle is that the relevant product market for the bundle of performance rights that GMR licenses includes the other performance rights that radio stations view as good *substitutes* for a GMR license. Thus, the question is whether stations can eliminate GMR music, replacing it with other music, and thereby forego a GMR license should GMR increase its license fees above the competitive level.

32. To eliminate all GMR music, radio stations would have to be able to identify and determine with certainty the PRO that licenses each musical work that the station will broadcast. This is a practical impossibility.[36] Stations have control over their primary programming. However, stations may face uncertainty over which PRO licenses a particular work, making it difficult to judge whether the station is licensed to broadcast a particular work or not. Moreover, PROs add works to their repertories frequently,[37] and I understand that the writers' ownership shares are not always determined by the time recordings are available to radio stations. As a result, radio stations may be unable to know whether they are licensed to play new music. In other instances, stations may not have control of their feature programming. For example, stations will not generally know what musical works are embedded in syndicated programs.[38]

33. Music in commercials is more troublesome still. It is often not possible for a radio station to determine what music is included in a particular commercial because the information is not available from the advertiser.[39] Thus, the station may not have the ability to know whether it is infringing a copyrighted work or not when agreeing to play a commercial. Clearly, refusing to play an advertiser's commercials because they may contain GMR music is a costly way to purge broadcasts of GMR music. For these reasons, most stations cannot reliably purge their broadcasts of GMR music should GMR increase license fees by about 5% above the competitive level. The direct implication is that stations cannot substitute non-GMR performance rights for GMR performance rights if GMR charges above-competitive license fees.

34. Stations' recognition of the need to take a GMR license to avoid infringement despite taking blanket licenses from ASCAP, BMI, and SESAC would indicate that stations cannot substitute ASCAP, BMI, and/or SESAC licenses for a GMR license.[40] Blanket licenses allow unlimited use of the works in a PRO's repertory

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36 Declaration of Dave Paulus at ¶¶6, 7; Declaration of Eugene D. Levin at ¶18.

37 Declaration of Jeffrey D. Warshaw at ¶4.

38 Declaration of Jeffrey D. Warshaw at ¶8; Declaration of Jim Coloff at ¶7.

39 SESAC Report and Recommendation at ¶13.

40 I understand that radio stations' existing licenses with other PROs through RMLC cover a large portion of the works in GMR's repertory through the end of 2016.

for a fixed fee. A station with ASCAP, BMI, and SESAC blanket licenses has rights to perform the vast majority of music in unlimited amounts. The station theoretically could eliminate GMR music from its broadcasts and substitute ASCAP, BMI, or SESAC music. If the station could do this, it would pay no additional fees to ASCAP, BMI, or SESAC and would reduce its licensing costs by the entire GMR license fee. I understand radio stations do not see eliminating all GMR music as a viable strategy for avoiding infringing works in GMR's repertory.[41]

35. I understand that GMR admits that ASCAP, BMI, and SESAC licenses are not substitutes for a GMR license. Indeed, GMR's founder, Irving Azoff confirms, the inability to obtain the bundle of rights GMR offers, stating that GMR has "a full roster of songwriters that nobody can, shall we say, comfortably exist without."[42]

36. There are no substitutes for a GMR license should GMR raise its price above the competitive level. Thus, the relevant market contains only the performance rights that GMR offers. Of course, not all works in the repertory are good substitutes for one another. For example, an Ira Gershwin song is probably not a good substitute for a current pop song in most circumstances. Nevertheless, it is appropriate to define the relevant market in terms of the bundle of rights that GMR actually licenses to radio stations. It does not make sense to define the product market in terms of smaller groups of musical works when the product GMR actually sells is a bundle of rights – a bundle without available substitutes.

C. The Relevant Geographic Market: Who Can Economically Supply Rights to GMR Works?

37. As noted, the relevant geographic market includes the locations of suppliers of the goods in the relevant product market that customers view as good substitutes for one another.[43] GMR affiliates are entitled to license their works independently. The question is whether it is economically practical for stations to obtain rights to GMR works from composer and music publisher affiliates directly.

38. Radio stations are not able to economically obtain necessary licenses to broadcast GMR works from individual copyright holders for essentially the same reason that they cannot purge all GMR music from their broadcasts. Radio stations cannot reliably identify each piece of music they may broadcast and its copyright owner's PRO at the time of use. Therefore, it is not economically feasible for a

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41 William Velez. Declaration of Jeffrey D. Warshaw at ¶¶6-10; Declaration of Eugene D. Levin at ¶18.

42 Robert Levine, "The New Pioneers: Irving Azoff on His Plan to Deal with the 'StubHub Factor' – You Have Lots of People Escaping with Lots of Money," Billboard, August 11, 2016.

43 For many goods the cost of transportation is an important determinant of the suppliers that are able to economically serve a group of customers. The geographic market captures these suppliers' locations and identities.

station to approach individual copyright holders to obtain rights to broadcast their works.

39. Moreover, I understand that GMR's licenses do not offer any discount to account for individually licensed works, or for avoided works.[44] As a result, GMR's blanket licenses eliminate stations' incentives to approach copyright holders individually and strike competitive deals. With no prospect of a discount for directly licensed works, a station could only benefit from individual licensing with GMR affiliates if the station could drop its GMR license. For the reasons described above, this is not a practical alternative for stations because of uncertainty over what is in GMR's ever-changing repertory and the steep penalties for infringement. GMR's insistence that stations accept blanket licenses ensures stations have the incentive to deal with GMR affiliates collectively through GMR rather than individually.

40. GMR is the only seller of the product in the relevant product market. In this case the definition of the relevant geographic market is academic. No matter what geography is chosen, GMR is the only source of rights that stations could turn to should GMR effect a small but significant non-transitory increase in price above the competitive level.

41. The fact that GMR is smaller than other PROs would be of competitive significance only if its smaller size meant that stations could avoid doing business with GMR—*i.e.*, find a *substitute* for a GMR license. Radio stations, however, are unable to substitute ASCAP, BMI, and SESAC licenses for GMR licenses. While GMR is small relative to ASCAP and BMI, it is large relative to the relevant market in which it sells performance rights. Market definition shows that GMR is the sole provider of an input to radio broadcasting that is both necessary and without substitutes. Thus, GMR has a 100% market share in the relevant market in which it sells radio stations the performance rights to its repertory. When measured against the economically relevant benchmark, GMR is not small.

V. GMR Has Market Power in the Licensing of Its Repertory

42. The hypothetical monopolist test defines a relevant market to be a group of products and suppliers of those products that, if controlled by one firm, could profitably exercise market power. The bundle of performance rights that GMR sells is not economically substitutable with other performance rights and GMR is the only viable seller of those rights in the relevant market. Thus, the analysis of the relevant market demonstrates that GMR has market power.

43. There is also direct evidence of GMR's market power. Irving Azoff's claim that GMR has "a full roster of songwriters that nobody can, shall we say, comfortably exist without"[45] is direct evidence that there are no substitutes for a GMR license

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44 Declaration of Jeffrey D. Warshaw at ¶5; Declaration of Eugene D. Levin at ¶9.

45 Robert Levine, "The New Pioneers: Irving Azoff on His Plan to Deal with the 'StubHub Factor' – You Have Lots of People Escaping with Lots of Money," Billboard, August 11, 2016.

and that radio stations that perform music are at risk of infringement should they operate without a license from GMR. Moreover, GMR's market power is reflected in its negotiations with the RMLC. GMR has reportedly demanded license fees that are significantly higher than ASCAP or BMI fees once the share of music GMR licenses has been taken into account.[46] Such demands are possible only because GMR does not face competition from other PROs that also license performance rights.

44. The market power GMR has acquired is durable. GMR is able to charge above-competitive prices for the performance rights that it licenses as the result of its effective exclusive control over them. Moreover, GMR is able to share some of its gains from exercising market power with its affiliates. The affiliates have no incentive to move their rights from GMR to ASCAP, BMI, or SESAC, which are subject to the regulation of their rates, and cannot share market power rents with affiliates to the same degree as GMR. Thus, the price constraints on competing PROs make it unlikely that GMR would lose affiliates to them.

45. Under these economic circumstances, potential entry by a fifth or sixth PRO would not limit GMR's market power and thus could not constrain GMR's prices. Following entry, GMR would continue to be the exclusive source of the performance rights it licenses. Entry of a new PRO does not mean there would be entry into the market for rights that GMR offers. The incentives created by GMR's blanket licenses and sharing of the gains from market power effectively create a barrier to entry into the market for GMR's rights. Even if the new PRO were able to win some of GMR's affiliates, GMR would likely still control a critical mass of performance rights to maintain its market power. If it did not control sufficient rights to exercise market power, GMR could reconstitute a critical mass of rights by attracting new affiliates from ASCAP, BMI, or SESAC. In any event, the new entrant would not offer performance rights that are a substitute for the rights GMR offers. The result of entry would not be increased competition. The result of entry would be an increase in the number of PROs free to exercise market power in the relevant markets for the performance rights they control.

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

Executed this 18th day of November 2016.

Steven R. Peterson

Steven R. Peterson

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46 Declaration of Eugene D. Levin at ¶8.

Appendix A

COMPASS LEXECON

CURRICULUM VITAE

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PROFESSIONAL EXPERIENCE

Compass Lexecon
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Executive Vice President, April 2013 – present
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Managing Director, August 1999 – December 2005

The Economics Resource Group, Inc.
Senior Economist, 1992 – July 1999
Economist, 1990 – 1992

Northeastern University, Boston, MA
Adjunct Faculty, 2011-2013

Harvard University, Cambridge, MA
Teaching Fellow, 1989 – 1990

EDUCATION

Harvard University, Cambridge, MA
Ph.D. in Economics, 1992
Dissertation: "Strategic Aspects of Litigation and Settlement"

University of California, Davis
A.B., Economics, 1987, Highest Honors

TESTIMONY AND CONSULTING EXPERIENCE

Sanum Investments Limited

In an Arbitration Under the Rules of the Singapore International Arbitration Centre between: *Sanum Investment Limited, Claimant, versus ST Group Co., Ltd., Sithat Xaysoulivong, S.T. Vegas Co., Ltd., S.T. Vegas Enterprise Ltd., Xaya Construction Co., Ltd. and Xaysana Xaysoulivong, Respondents*, Witness Statement, with Joseph P. Kalt and Eric Henson (April 20, 2016).

National Association of Broadcasters and Pandora Media, Inc.

In re: *Determination of Royalty Rates and terms for Ephemeral Recording and Digital Performance of Sound Recordings*, before the United States Copyright Royalty Judges, Library of Congress. Expert Report (February 23, 2015), Deposition Testimony (March 24, 2015), Hearing Testimony (May 14, 2015).

National Association of Broadcasters

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Energy Intensive Manufacturers Working Group

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Consultant to Delta Air Lines on LaGuardia/Reagan National Airport slot swap with U.S. Airways (2009 – 2010).

Imperial Credit Industries, Inc.

In re: Imperial Credit Industries, Inc., in the United States Bankruptcy Court, Central District of California, Santa Ana Division. Rebuttal Report (April 27, 2007). Trial Testimony (May 22, 2008).

Delta Air Lines, Inc.

Consultant to Delta Air Lines on Delta-Northwest merger (2007 – October 2008).

Greater Lakeside Corporation

The Higbee Company v. Greater Lakeside Corporation, Causeway LLC of Delaware, Broadway Management Corporation, and Jeffrey Feil, in the United States District Court for the Eastern District of Louisiana. Expert Report (September 18, 2007). Supplemental Expert Report (September 25, 2007). Deposition (October 19, 2007).

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Consultant to TransCanada Corporation on acquisition of ANR Group (2007).

Exxon Mobil Corporation

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Finova Capital

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Volvo Cars of North America, Inc.

Bay Ridge Volvo American, Inc. et al. v. Volvo Cars of North America, Inc., in the United States District Court Southern District of New York. Expert Report (June 1, 2005). Deposition (August 17, 2005). Supplemental Expert Report (November 11, 2005).

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Israel Electric Corporation Ltd. vs. the Public Utilities Authority, the Minister of National Infrastructures, the Minister of Finance, the Israel Securities Authority and the Government Corporations Authority (Request for Injunction): In the Israeli Supreme Court, No. /04, August 2004. Statement (August 30, 2004), with Joseph P. Kalt and Paul B. Vasington.

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Monica Pappas, Bill DeVitt, and Monica Pappas Associates

The Healthcare Financial Group, Inc., v. Monica Pappas DeVitt et al., in the District Court, Arapahoe County, Colorado. Filed written expert testimony on lost-profits damages (February 2003).

Ticketmaster Corporation

Evaluated damages from asserted anti-competitive conduct (2003).

Amoco Production Company, Amerada Hess Corporation, and Shell Western E&P, Inc.

Assessed fair market value of CO_2 for payment of royalties. Analyzed issues of market structure of CO_2 industry and marketability of CO_2 at the well (2002).

American Airlines

Conducted analysis of market structure, capacity additions, and pricing in an antitrust suit asserting predatory conduct (2001).

For a Mutual Insurance Company

Conducted market research and performed benchmarking analyses to establish pricing approach and prices for new internet services (2000).

Bass Enterprises Production Company

Assessed fair market rental value of oil-bearing property temporarily taken by the federal government (2000).

Boeing Company

Filed declaration of behalf of Boeing Company (Delta Launch Services, Inc.) for a NASA administrative proceeding regarding release of contract information under the Freedom of Information Act (2000).

Honeywell, Inc.

Conducted study of damages arising from monopolization in the market for ring laser gyroscope inertial navigation systems. Conducted analysis of damages arising from patent infringement (1998).

British Airways, Plc.

Conducted study of the competitive effects of British Airways' proposed alliance with American Airlines. Advised on and assisted with presentations before the European Commission (1998).

HarperCollins Publishers

Brother Records, Inc., et al., v. HarperCollins Pub. Inc., et. al. Filed written expert testimony on damages in libel litigation (December 1997).

Northeast Utilities

Before the Federal Energy Regulatory Commission, OA97-237-000, ER 97-1079-000, and EC97-35-000. Conducted analysis of competition in the New England generation market. Filed affidavit in support of NU's Answer to Requests to Reject or Condition Approval of Market-Based Rates (with Frank A. Felder) (July 1997).

McDonnell Douglas Corporation

McDonnell Douglas Corporation v. National Aeronautics and Space Administration, in the U.S. District Court for the District of Columbia. Filed affidavit describing how the public release of cost and price information affects negotiations and competition in markets for launch services (November 1996).

Pennzoil

Before the Federal Energy Regulatory Commission, Docket No, IS95-35-000. Provided written direct testimony (October 1996) and oral testimony (January 1997) on the cost of capital of oil pipeline facilities.

Pennzoil

Before the Federal Energy Regulatory Commission, Docket No. IS94-37-000 and *Docket No. IS 94-23-000.* Provided written direct testimony (April 1995) and oral testimony (November 1995).

BP Exploration (Alaska) Inc.

Modeled the costs and benefits associated with increased enhanced oil recovery activities within the Prudhoe Bay Unit (1995).

Burlington Northern Industries-Santa Fe Pacific Corporation

Performed cost-benefit analysis of the proposed Burlington Northern/Santa Fe merger. Analyzed the benefits accruing to shippers from expanded single-line service (1994 – 1995).

PUBLICATIONS AND RESEARCH

"Using Economics to Identify Common Impact in Antitrust Class Certification," American Bar Association, Section of Antitrust Law, Economics Committee Newsletter, Vol. 11, No. 1, Spring 2011 (with Andrew Lemon).

"Rigorous Analysis to Bridge the Inference Gap in Class Certification" (with Andrew Lemon), *Journal of Competition Law and Economics*, March 2011.

"Oil Price Volatility and Speculation" (with Kenneth Grant), *The Energy Daily*, August 25, 2009.

"Understanding Today's Crude Oil and Product Markets" (with Kenneth Grant and David Ownby), American Petroleum Institute, 2006.

"Understanding Natural Gas Markets" (with Charles Augustine and Bob Broxson), American Petroleum Institute, 2006.

"Regulatory Failure in the California Electricity Crisis" (with Charles Augustine), *The Electricity Journal*, August/September 2003.

"Market Power Analysis in a Dynamic Electric Power Industry" (with F. Felder), *The Electricity Journal*, April 1997.

"Testing the Merits of Providing Customized Risk Management" (with Frank A. Felder and Sarah E. Tobiason), 17th Annual North American Conference of the United States Association for Energy Economics, International Association for Energy Economics, October 1996.

"Competition Between Regulators and Venue Shopping by Natural Gas Pipelines in California" (with Joseph P. Kalt), 14th Annual Conference of the Advanced Workshop in Regulation and Public Utility Economics, May 1995.

"Environmental Regulation and International Competitiveness: What Does the Evidence Tell Us?" (with Adam B. Jaffe, Paul R. Portney, and Robert N. Stavins), *Journal of Economic Literature*, Vol. 33, March 1995.

"Implementation of the Core of a Two Person Exchange Economy without Integer Games or Refinements of Nash Equilibrium" (with Simon Grant, Stephen King, and Ben Polak), *Economics Letters*, 1992.

OTHER REPORTS AND PRESENTATIONS

"The Economic Impact of Delta Air Lines Seattle Expansion," (with Bryan Keating). August 14, 2015.

"Antitrust Analysis of Aftermarkets," American Bar Association, Section of Antitrust, 2010 Spring Meeting (with Edward Schwartz and Paula Render).

"Do Environmental Regulations Impair Competitiveness? A Critical Review of Economic Studies" (with Barry Galef and Kenneth Grant). Prepared by ICF Consulting Group and The Economics Resource Group, Inc., for the Office of Policy Analysis and Review, Office of Air and Radiation, U.S. Environmental Protection Agency, September 1995.

"Indexing Natural Gas Pipeline Rates" (with Amy B. Candell, Joseph P. Kalt, Sheila M. Lyons, and Stephen Makowka). Explored indexing as a form of Incentive regulation for natural gas pipelines and created the Pipeline Producer Price Index that could be used to implement indexing proposals. The Economics Resource Group, Inc., April 1995.

"Environmental Regulations and the Competitiveness of U.S. Industry" (with A. Jaffe, P. Portney and R. Stavins), U.S. Department of Commerce, Economics and Statistics Administration, Washington, DC, NTIS No. PB-93-193514, July 1993.

HONORS AND AWARDS

Jacob K. Javits Fellow, Harvard University, 1987 – 1991

Phi Beta Kappa, University of California, Davis, 1987

Appendix B
Documents Relied Upon

Legal Filings:

1. United States District Court for the Eastern District of Pennsylvania, Radio Music License Committee, Inc., Plaintiff v. SESAC INC., Defendants, Report and Recommendation of Lynne A. Sitarski, United States Magistrate Judge, December 20, 2013.
2. United States Department of Justice, Statement of the Department of Justice on the Closing of the Antitrust Division's Review of the ASCAP and BMI Consent Decrees, August 4, 2016.
3. 726 F. Supp. 2d 355 (2010).

Declarations:

4. Declaration of William Velez, November 17, 2016.
5. Declaration of Jim Coloff, November 17, 2016.
6. Declaration of Dave Paulus, November 14, 2016.
7. Declaration of Jeffrey D. Warshaw, November 15, 2016.
8. Declaration of Eugene D. Levin, November 17, 2016.

Interviews:

9. Interview of William Velez, Executive Director of the RMLC, November 7, 2016.

Publicly Available Material:

10. Katz, Ariel, The Potential Demise of Another Natural Monopoly: Rethinking the Collective Administration of Performing Rights, 1 J. Competition L. & Econ. 541, 544 (2005).
11. ASCAP 2015 Annual Report.
12. Carly Olson, "Changing Tides in Music Licensing? BMI v. DMX and In re THP," Northwestern Journal of Technology and Intellectual Property, Vol. 10, No. 3.
13. B. Douglas Bernheim and Michael D. Whinston, "Common marketing agency as a device for facilitating collusion," Rand Journal of Economics, Vol. 16, No. 2, Summer 1985.
14. Ariel Katz, "Commentary: Is Collective Administration of Copyrights Justified by the Economic Literature?"
15. Jonathan Baker, "Market Definition: An Analytical Overview," 74 Antitrust Law Journal, No. 1, 2007.
16. U.S. Department of Justice and the Federal Trade Commission, "Horizontal Merger Guidelines," August 19, 2010.
17. www.sesac.com
18. www.ascap.com
19. www.bmi.com
20. SESAC Preliminary Offering Memorandum, July 30, 2012.
21. Brian T. Yeh, Copyright Licensing in Music Distribution, Reproduction, and Public Performance, Congressional Research Service, September 22, 2015.

22. Dana A. Scherer, Money for Something: Music Licensing in the 21st Century, Congressional Research Service, January 19, 2016.
23. BMI Press Release, BMI Announces $1.060 Billion in Revenue, the Highest in Company's History, September 8, 2016.
24. Ed Christman, SESAC Buys the Harry Fox Agency, Billboard, July 7, 2015.
25. Billboard, The $300 Million Comeback: Irving Azoff Teams with MSG's James Dolan to Create Intriguing Music Company, September 6, 2013.
26. Hannah Karp, YouTube Is Told to Remove Songs by Pharrell Williams, John Lennon; Music Mogul Irving Azoff Challenges Google Streaming Site over Royalties, Wall Street Journal, November 18, 2014.
27. U.S. Government Publishing Office, Lee Holds Hearing on the Future of Music Licensing and Antitrust Regulations; Sen. Mike Lee (R-UT) News Release, March 10, 2015
28. Robert Levine, The New Pioneers: Irving Azoff on His Plan to Deal with the "StubHub Factor" – "You Have Lots of people Escaping with Lots of Money," Billboard, August 11, 2016.

CERTIFICATE OF SERVICE

The undersigned certifies that, on November 18, 2016, a true and correct copy of the foregoing PLAINTIFF RADIO MUSIC LICENSE COMMITTEE'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR A PRELIMINARY INJUNCTION was served on all counsel of record via email and via USPS first-class postage-paid mail to:

Leeann Hard
Global Music Rights, LLC
201 Santa Monica Boulevard, Suite 480
Santa Monica, CA 90401

Paracorp Inc.
Global Music Rights, LLC
2140 S. Dupont Highway
Camden, DE 19934

s/ Margaret M. Zwisler
Margaret M. Zwisler (*pro hac vice*)