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

Copyright Royalty Board

APR 21 2015

Received

In the Matter of)
)
)

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

Docket No. 14-CRB-0001-WR
(2016-2020)

Received

APR 21 2015

Copyright Royalty Board

SUBMISSION OF SUPPLEMENTAL WRITTEN REBUTTAL STATEMENTS OF
iHEARTMEDIA, INC.

Pursuant to the Judges' April 2, 2015 Order Denying Licensee Services' Motion To Strike SoundExchange's "Corrected" Written Rebuttal Testimony of Daniel Rubinfeld and Section III.E of the Written Rebuttal Testimony of Daniel Rubinfeld and Granting Other Relief, iHeartMedia, Inc. respectfully submits the attached supplemental rebuttal testimony of Professors Daniel Fischel and Douglas Lichtman, and Jeffrey Littlejohn, for the consideration of the Judges. This supplemental rebuttal testimony is limited to rebutting the new contents of the "Corrected" written rebuttal testimony of Prof. Rubinfeld and the analyses contained in Part III.E of Prof. Rubinfeld's original written rebuttal testimony.

Respectfully submitted,

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April 21, 2015



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

In the Matter of)	
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DETERMINATION OF ROYALTY RATES)	Docket No. 14-CRB-0001-WR
FOR DIGITAL PERFORMANCE IN SOUND)	(2016-2020)
RECORDINGS AND EPHEMERAL)	
RECORDINGS (<i>WEB IV</i>))	
)	

REBUTTAL TESTIMONY OF JEFFREY L. LITTLEJOHN
EXECUTIVE VICE PRESIDENT FOR ENGINEERING AND SYSTEMS
INTEGRATION, iHEARTMEDIA, INC.

BACKGROUND AND QUALIFICATIONS

1. I am the Executive Vice President for Engineering and Systems Integration at iHeartMedia, Inc. I submit this statement in support of iHeartMedia’s rebuttal case in the above-captioned proceeding.
2. I previously submitted a statement in support of iHeartMedia’s direct case in this proceeding concerning iHeartMedia’s Song Exchange feature, which allows songs in a simulcast stream to be replaced with different songs.
3. I understand that SoundExchange, Inc.’s expert witness, Daniel Rubinfeld, contends that agreements between four digital music services and various record labels are suitable benchmarks for use in this proceeding because those services are “non-interactive and/or ad-supported.”
4. Because of my role at iHeartMedia, I am familiar with the limits imposed by the statutory license authorized by the Digital Millennium Copyright Act (“DMCA”). I am also aware that statutory services generally offer users no more than six skips per hour per station.

5. I was asked to test the four services discussed by Professor Rubinfeld in Section III.E of his Corrected Written Rebuttal Testimony: Spotify’s mobile “Shuffle” service; Beats’s “The Sentence”; Rhapsody’s “unRadio”; and MixRadio. In each case, with the help of a team at iHeartMedia, I have tested whether the service offers features that exceed the statutory license. A summary of the additional, non-DMCA features offered by each of the services we tested is attached as Table 1.

SPOTIFY SHUFFLE

6. Spotify’s Shuffle service is the free, ad-supported version of Spotify that is available only on mobile phones. On personal computers and tablets, the free version of Spotify is fully interactive, meaning that users can select any song they like and play it on demand. Because of these differences in functionality, it is important to examine the mobile product (including features and royalty payments) separately from the desktop and tablet product.

7. We tested Spotify’s Shuffle service on an Apple iPhone. In our testing, we were able to create a playlist of twenty songs of our own choosing. We were then able to play back that playlist in its entirety, without the addition of songs we did not choose, in a random order. We were also able to play an entire album from start to finish in a random order. With both the playlist and the album playback, ads were played periodically during the course of the listening session.

8. For example, we played the discography of FaltyDL on Shuffle. We listened to twenty-three consecutive songs, all by FaltyDL. We were able to do the same with another artist, Disappears. No other artists were played during either session. We were also able to play the album “Untrue” by Burial in its entirety in a random order, with some additional tracks by Burial mixed in. A screenshot from the beginning of that listening session is attached as Figure 1.

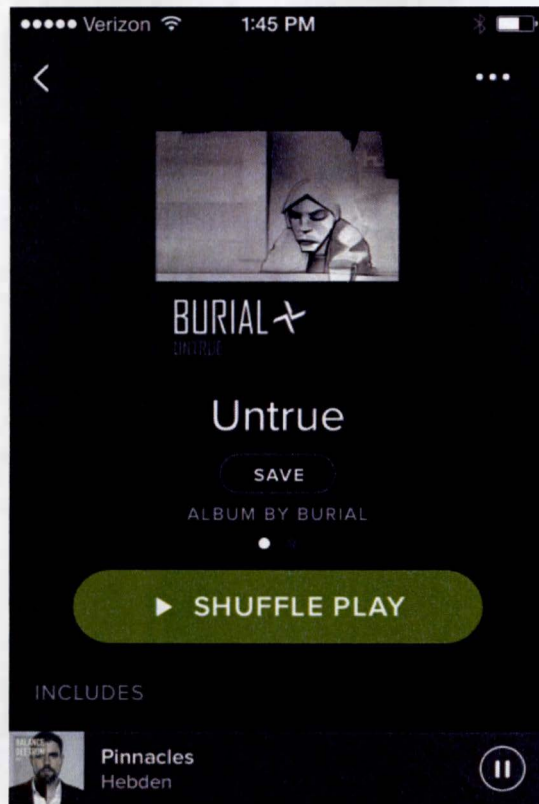


Figure 1: Spotify Shuffle users can select individual albums and listen to them in full

9. Based on my understanding of the limits imposed by the statutory license, Spotify’s Shuffle service greatly exceeds what is permitted under the DMCA. In particular, Spotify’s Shuffle service exceeds the sound recording performance complement by allowing users to listen to more than four songs from the same artist, and more than three songs from the same album, in a three-hour period. Additionally, the degree of control that Shuffle gives users to pick individual songs to be added to a playlist or to listen to an entire album renders Shuffle an “interactive” service that is ineligible for the statutory license.

10. Spotify’s Shuffle service gives users an on-demand service with one twist: playback is shuffled. In my experience, however, users of downloaded music and on-demand services often *choose* to shuffle their playlists. For those users, Spotify Shuffle is as good as an on-demand service.

BEATS THE SENTENCE

11. Beats offers a mobile-only feature known as “The Sentence.” As of today, The Sentence is available only as part of the full Beats service, which is a subscription on-demand service.¹ Beats offers a free trial of that service, which we tested on an Apple iPhone.

12. Based on our testing, The Sentence offers many important features that exceed what I understand to be the limits of the statutory license. In particular, while testing The Sentence, we were able to skip an unlimited number of songs, to cache up to three songs in advance for offline playback, and to rewind within the song being played. We were also given a link to play each song played on demand or to save that song for offline playback. A screenshot of that functionality is included as Figure 2.

¹ Beats offered a free version of The Sentence on a promotional basis only, and that promotional service was discontinued after an “unspecified” period. Walt Mossberg, *Beats Music Streams With a Human Touch*, re/code (Jan. 21, 2014, 6:00 AM), <http://recode.net/2014/01/21/beats-music-streams-with-a-human-touch/>.



Figure 2: Beats The Sentence users can save songs to their online library, add them to playlists, or make them available offline

13. For example, we created a station based on the following Sentence: “I’m in the car and feel like roadtripping with my friends to indie.” We played that Sentence for three hours. No ads were played, and we skipped over 50 songs without difficulty.

14. Because The Sentence is only available as part of Beats’s fully interactive, on-demand service, we were also able to access all of those features as well.

15. The Sentence is fully integrated into the subscription, on-demand Beats service. Users of The Sentence are permitted to save songs for offline listening, add them to playlists, skip songs they do not like, and even listen to individual songs on demand. That additional functionality gives the user extensive control over her listening experience.

RHAPSODY UNRADIO

16. Rhapsody offers a fourteen-day free trial of its ad-free unRadio service, which normally costs users \$4.99 per month. unRadio is available for both mobile and desktop, so we tested the product on both platforms (in the case of mobile, using an Apple iPhone) after signing up for the free trial. We found only minor differences in the features offered on desktop and mobile.

17. We were able to skip over 20 songs in a single, hour-long listening session without difficulty. Rhapsody advertised to me during the sign-up process that we were able to skip an unlimited number of songs. We were also able to fast-forward and rewind within individual tracks.

18. During playback, unRadio previewed the next four to five songs to be played. I understand that this type of previewing is not allowed under the statutory license. Additionally, we were able to delete any of the previewed songs before they were played, effectively vetoing songs before they were played. We were able to further customize the station as we listened by increasing the “popularity” of songs played (on desktop) or by decreasing the “variety” of the songs played (on desktop and mobile).

19. In our testing, unRadio played more than four songs by the same artist in a single three-hour period. I understand that this exceeds the sound recording performance complement of the statutory license. We were also able to rewind and fast-forward within individual songs during playback (on desktop).

20. For example, we played a station based on the artist Aphex Twin. On that station, Aphex Twin was played more than five times in less than hour. We were able to skip over forty songs in that same period. We were also able to select an individual song, “Spangle” by Seefeel, and play it on demand. No ads were played.

21. During playback on mobile, we activated “airplane mode.” While that mode was active, audio playback of the current track continued as normal. A screenshot of this functionality is included as Figure 3. We were also able to save individual songs as favorites, which allowed us to play them on demand and to save them for offline playback.

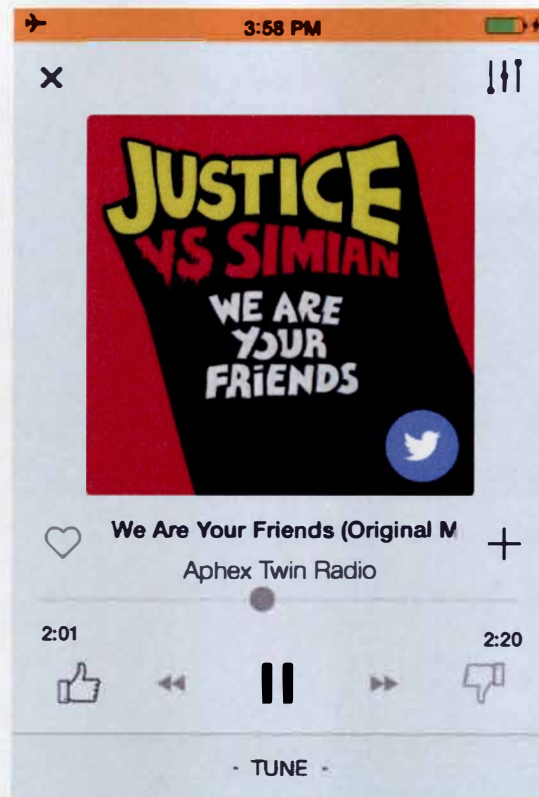


Figure 3: Rhapsody unRadio users can listen to songs offline, as well as fast-forward, rewind, and skip an unlimited number of songs

22. Together these features allowed us a significant degree of control over songs to be played. Users of Rhapsody’s unRadio can curate their listening experience so that it is highly personalized and interactive.

MIXRADIO

23. I understand that MixRadio was originally offered by Nokia and is now owned by the Line Corporation. I also understand that is only available for Microsoft Lumia phones running Windows Mobile. We tested the service on such a phone.

24. We were able to create a playlist and save it for offline use. MixRadio advertised that we could save a playlist up to four hours long and listen to it offline. We were also able to share individual songs via text message or social media, and the recipients of the playlist could listen to those songs on-demand. In our testing, recipients were able to listen to one song from our playlist, Bruno Mars's "Grenade!" without any apparent limit.

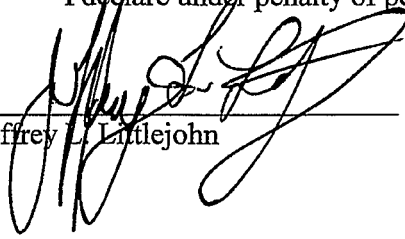
25. MixRadio also offers a highly personalized station feature called "Play Me," which is a specially created station generated primarily by a user's listening habits.

26. The additional features offered by MixRadio gave us significantly more control over when and how we could listen to and share music than we would have with a statutory service like iHeartRadio.

CONCLUSION

27. Each of the four services we tested offers features that exceed those permitted under the statutory license.

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



Jeffrey L. Littlejohn

April 21, 2015
Date

CERTIFICATE OF SERVICE

I, John Thorne, hereby certify that a copy of the foregoing iHeartMedia's Rebuttal Testimony of Jeffrey L. Littlejohn has been served on this 21st day of April 2015 on the following persons:

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Table 1



Table 1

Service	Extra skips	Listen offline/caching	Exceeds performance complement	Extra personalization/ interactivity
Spotify Shuffle			X	X
Beats The Sentence	X	X		X
Rhapsody unRadio	X	X	X	X
MixRadio		X		X