

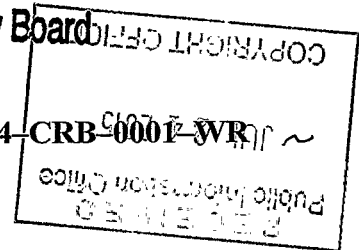
Before the  
UNITED STATES COPYRIGHT ROYALTY BOARD  
Library of Congress  
Washington, D.C.

ORIGINAL

JUL 24 2015

Copyright Royalty Board

Docket No. 14-CRB-00017-WR  
(2016-2020)



In the Matter of )  
)  
)  
Determination of Royalty Rates )  
for Digital Performance in Sound )  
Recordings and Ephemeral Recordings )  
(Web IV) )  
)

(GEO) GEORGE JOHNSON'S "BENCHMARKING" CLOSING ARGUMENTS.  
SUGGESTION AND QUOTES

In the rush to present my entire case in 15 minutes yesterday, July 21, 2015, I, George Johnson ("GEO") made an argument regarding the harmful "benchmarking" process and tactic which causes a minimum 2 year delay in music licensing deals, such as with GEO and Pandora.

GEO respectfully submits these two vitally important points I was trying to make to Your Honors yesterday on the adverse financial consequences that all American music copyright owners and creators suffer because of this benchmarking technique employed by the Services.

First, the most devastating thing about the benchmarking is that it clearly **stops the "the Progress of Science and Arts"** by forcing copyright owners and the Services to NOT do deals together, while the Services wait until a final ruling in December — just like any standard 2 year rate proceeding. Benchmarking clearly stops participants from negotiating and doing music licensing deals for at a least two years.

**If copyright is about the Progress of Science and Art, then how can a 2 year delay in music licensing deals due to “benchmarking”, NOT delay the progress of copyright and American art?** This is more harmful to the public good since it deprives them of new music.

Secondly, in addition to the 2 year wait, GEO is now forced to **not even contact any potential music licensee without potentially dragging them into one of these proceeding, and that’s not a great way to do business** —wasting their time, subjecting their private agreements to the public and competitors, and possibly costing them endless attorney fees that could be better spent on the creation of digital sound recordings, no offense to counsel. This also delays any opportunity GEO has to earn back some of his cost of copyright creation by years or more.

Moreover, even if GEO does a deal with any licensee right now, those agreements will then be subject to any future rate hearings, used as a benchmark, and it’s a horrible way to try and do business in an industry where it’s clearly hard enough to make a dollar.

Not only do benchmarking tactics impede the Progress of Arts but these are truly the “unseen” costs, as Bastiat put it, or the the lost opportunity and loss of actual future income, in other words, the costs that are incurred for NOT creating. How can benchmarking not adversely affect GEO and his profitability?

While GEO agrees that it is logical and reasonable to want to use the various deals entered into by copyright owners and music licensees as a guide in setting rates, it absolutely creates the unintended consequences of delaying and stopping the Progress of Arts and copyright by at least 2 years if not many more.

The Internet Radio Royalties rate proceeding for 2011-2015, which began in January-February of 2009 and took until April of 2014 to complete, is the perfect example. It took over 5 years to complete one rate hearing which finally set the rate at \$.00 anyway, when the real free market could have negotiated a real rate in a matter of hours, days or weeks between a real willing buyer and a real willing seller.

Or, an actual voluntary negotiation during the “voluntary negotiation” period might have yielded faster results.

As I said in my Written Direct Statement, “Only the federal government and Congress could design a digital music royalty system that takes 2 to 5 *years to negotiate one rate* in this age of *real-time Billboard charts on Twitter, computer tracking and direct deposit.*”

I hope Your Honors will accept the above statement as part of the record to amend GEO’s closing argument on July 21, 2015. If it is too late to do so, it was important to me that I finished my point on the negative consequences of “benchmarking” that I started yesterday. Thank you as always for your consideration on this matter.

In addition, GEO respectfully submits the following suggestion and/or interim solution to alleviating some of the problems of copyright creators, owners and investors and the Services.

- GEO respectfully asks if the Services would be open to testing a **voluntary \$.99 cent BUY button** on their services where the downloaded song comes directly from the servers of SiriusXM (if possible), iHeartMedia, Pandora, etc. at a profit to the Services, just like on Apple's iTunes. This way the Services could make a 20% profit, for example, on this voluntary download while building brand loyalty (when the customer is not within an iHeartMedia radio tower or wireless cel tower for Pandora) and helping to pay for cost of copyright creation.

While not part of the record, GEO thought Your Honors should at least be aware of some of these recent statements. Plus, the second part of Ms. Rosanne Cash's quote I forgot to read yesterday is relevant to the outcome of this rate proceeding. They are timely and impressive quotes on streaming from legendary artists who helped create the American songbook.

1. James Taylor recently said, *"If someone's going to be making money off of my recorded music, I think that I should be getting half of that money that they're making because I'm the one who generated the product."* *"What I'd like to see about Spotify is how much money is the company making relative to what the artist is making? For every dollar they take in, they should be giving 50 cents to the people who actually recorded the music."*

2. Neil Young recently said, *"Streaming has ended for me, It's not because of the money, although my share (like all other artists) was dramatically reduced by bad deals made without my consent"*

3. Quincy Jones recently said in an interview, *"Honey, we have no music industry. There's 90% piracy everywhere in the world. They take everything. You can't get an album out because nobody buys an album anymore."* *"That (new online distribution models) doesn't mean anything. They sell 4.5 million albums and they think it's a hit record. It's a joke. We used to do that [sell 4.5 million records] every weekend in the 80s. Today, you don't get paid."*

4. Rosanne Cash GEO Exhibit 2770 where she says on her Facebook page, *"Download' and 'stream' are different animals. If you download and pay, it's the same as buying a record. If you stream, it's just dressed-up piracy. Bring on the haters- I don't care. I'm IN this*

*business and I see young musicians give up their missions and dreams all the time because they can't make a living. Someone has to speak up for them.*

5. Roger Waters of Pink Floyd said recently that *"I feel enormously privileged to have been born in 1943 and not 1983. To have been around when there was a music business and the takeover by Silicon Valley hadn't happened, and in consequence, you could still make a living writing and recording songs and playing them to people. **When this gallery of rogues and thieves had not yet injected themselves between the people who aspire to be creative and their potential audience and steal every f\*\*\*\*\* cent anybody ever made.**"*

6. Nick Mason of Pink Floyd in the same article Exhibit GEO 2901 said, *"What's also interesting is that Apple seem to have got off scot-free. No one's blaming them. Apple has done great things, but it has also contributed to the devaluation process [of music]."*

7. Taylor Swift *"I really believe that we in the music industry can work together to bond integrity with technology. And I think we can teach a younger generation about an investment in music, not just the ephemeral consumption of it. I think that there has to be a way for streaming or any future way we access music to fairly compensate the writers."*

8. Sting, *"I'm glad I'm not starting out now in the music industry. That would be a tough one."*

9. Garth Brooks On a Fox News interview he said, *"I think the thing is you just have to put the music first,"* Brooks told FOX411. ***"The government passed a lot of laws really quickly that allowed technology to kind of just use music as a tool without paying for it, and I'd***

*like to see the government revisit that because music could come back to front and center if we could get some help.”*

“I think a lot of people are going to start following. When music starts standing up for itself, it’s going to get a lot better,” Brooks remarked. “And there are some big friends of ours in music we need to stand up to, too,” adding, “if iTunes is going to tell you how to sell your stuff and it’s only going to go this way – don’t forget who created the music and who should be doing this stuff.”

“And I’m telling you, the devil – nice people, but YouTube. Oh my gosh,” Garth replied. “They claim they pay people. They’re not paying anything either and people are getting millions and millions and millions of views and they don’t get squat. Trust me.” “Songwriters are hurting,” he continued. “I applaud Miss Taylor and I applaud everyone for standing up for the songwriters, because without them, music is nothing.”

“Yeah, you can do it (keep your music off Youtube). But you can’t get out of it. I had a sweet meeting with them. They were all fired up. They’re the sweetest... and they’re all like 12, they are the sweetest kids, so young” Brooks jokingly remarked. “I just got the first question: ‘How do you get out?’ Silence. You don’t. You don’t get out. Thanks to our wonderful, uh, somebody judging on this one, uh, the government. Yeah, it’s totally backward right now,” he continued. “If the artists will just keep hammering away, unify, stick together, then music will become the king again, which is what it should be. Music should always be first.”

10. David Lowery, artist, wrote that Pandora "*Smells like Teen Enron*" since they are not "losing money" and only using basic accounting tricks to extract hundreds of million of dollars in stock compensation for their key executives. Pandora is simply a classic Wall St. 'pump and dump' scheme.

11. Chris Castle, music attorney, "Youtubeistan" is the name Mr. Castle gives to Google and Youtube for hosting thousands of ISIS and other terrorist jihadi recruitment and training videos. In addition Google makes millions in advertising dollars off these terrorist videos, and nobody cares.

12. Steve Jobs on streaming in 2003 with release of the iTunes store, "*It's not free, but's pretty doggone close. There's no legal alternative that's worth beans.*" "*The subscription model of buying music is bankrupt.*"



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Dated: Wednesday, July 22, 2015

**CERTIFICATION OF SERVICE**

I, George D. Johnson, ("GEO") an individual and digital sound recording copyright creator, hereby certify that a copy of the foregoing (GEO) GEORGE JOHNSON'S "BENCHMARKING" CLOSING ARGUMENTS, SUGGESTION AND QUOTES has been served this 22nd day of July, 2015 by electronic mail upon the following parties:

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