

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
The Library of Congress

In re

Determination of Royalty Rates and Terms
for Transmission of Sound Recordings by
Satellite Radio and “Preexisting”
Subscription Services (SDARS III)

Docket No. 16-CRB-0001-SR/PSSR (2018-
2022) (Remand)

DECLARATION OF RUSSELL POTTS

1. My name is Russell Potts and I am Music Choice’s Senior Director, Financial Analysis. I submit this Declaration in support of Music Choice’s Opening Brief in connection with the Remand in the SDARS III proceeding. I am fully familiar with the facts set forth in this Declaration, including based upon my review of Music Choice business records and discussions with other Music Choice employees, and if called upon to further testify could do so truthfully and competently.

2. I have worked at Music Choice continuously since December of 2014. I graduated from Drew University with a Bachelor of Arts in Economics in May of 1991. I received an M.B.A. in Finance from Rutgers University in December of 2015. I have been licensed by the Commonwealth of Pennsylvania as a Certified Public Accountant since September of 2013. I am a member of the American Institute of Certified Public Accountants (AICPA), the professional organization for CPAs, which among other things promulgates various ethical and other standards for CPAs. As a licensed CPA and member of AICPA, I am familiar with the various ethical rules and other professional standards promulgated by AICPA and applicable to CPAs.

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3. In this testimony, I will discuss the history of the royalty audit provisions of the Pre-existing Subscription Service (“PSS”) regulations as they have applied to Music Choice, Music Choice’s experience with SoundExchange’s abuse of its audit rights, Music Choice’s reliance on the defensive audit option provided in those regulations, and why it would be inappropriate to adopt SoundExchange’s requested modification to the audit provision.

The PSS Royalty Audit Provisions Have Always Balanced the Legitimate Interests of All Parties By Requiring That Such Audits Be Performed by Independent CPAs Pursuant to the Professional Standards Set By AICPA and By Allowing Licensees to Proactively Conduct Defensive Audits If the Same Professional Standards Are Followed

4. In the very first proceeding to establish the rates and terms of the license applicable to Music Choice’s PSS, the CARP created the rules relating to the licensing collective’s right to audit services’ license payments to verify their accuracy. In crafting the terms for such audits, the CARP balanced the legitimate need for the collective to ensure accurate payments against the inherent disruption and burden such audits would have on licensees in the absence of any limitations or standards on such audits.

5. To that end, the CARP recognized the importance of requiring that these royalty verifications be conducted by independent auditors, pursuant to generally accepted auditing standards. Such requirements, which are governed by neutral, widely-understood standards promulgated by AICPA, are essential to ensuring that the royalty payment audits, irrespective of who conducts them, are fair and objective. Trial Ex. 979 (CARP Report) at ¶¶ 191 (to have access to licensee’s confidential information necessary to conduct royalty payment audit, collective must use an independent and qualified auditor), 194, 210.

6. Additionally, and at the licensee services’ specific request, the CARP allowed licensees to conduct their own audits. If those audits were conducted by auditors under the same

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independence and other Generally Accepted Auditing Standards (GAAS) applicable to the licensing collective's audit right, a PSS licensee has the option to tender those already-completed audits and underlying work papers, and thereby avoid the burden and disruption of the collective's audit for those periods unless the collective can demonstrate that the auditors did not actually follow generally accepted auditing standards. *Id.* at ¶¶ 194, 210.

7. These principles were ultimately upheld by the Librarian of Congress and implemented in the very first version of the PSS regulations in 1998. Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings, Docket No. 96-5 CARP DSTR, May 8, 1998, 63 Fed. Reg. 25,394, 25,414-15 (37 C.F.R. §§ 280.4(d)(2), 280.6). In this proceeding, SoundExchange has acknowledged that the regulations require all royalty audits to be performed by a CPA, bound by the ethical and other standards of AICPA including the requirement of independence. Docket No. 4734, SoundExchange *et al.* Corrected Proposed Findings of Fact and Conclusions of Law, p. 906-07, SEPFF2282, 2287 (characterizing independence requirement as “redundant” in light of C.P.A requirement, which implicitly includes AICPA standards).

8. The Judges further recognized the importance of these requirements in this proceeding, by adopting clarifying language in the definition of “Qualified Auditor,” expressly linking the independence requirement to the AICPA Code of Professional Conduct, which sets the independence standard applicable to all CPAs “when providing auditing and other attestation services.” AICPA Code of Professional Conduct, 0.300.050.01

<http://pub.aicpa.org/codeofconduct/resourceseamlesslogin.aspx?prod=ethics&tdoc=et-cod&tptr=et-cod0.300.050>. The Code of Professional Conduct defines Independence as

consisting of two elements: (1) independence of mind is the state of mind that permits a member

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to perform an attest service without being affected by influences that compromise professional judgment, thereby allowing an individual to act with integrity and exercise objectivity and professional skepticism; and (2) independence in appearance is the avoidance of circumstances that would cause a reasonable and informed third party who has knowledge of all relevant information, including the safeguards applied, to reasonably conclude that the integrity, objectivity, or professional skepticism of a firm or member of the attest engagement team is compromised. AICPA Code of Professional Conduct, 0.400.21

http://pub.aicpa.org/codeofconduct/resourcesseamlesslogin.aspx?prod=ethics&tdoc=et-cod&tptr=et-cod_def_independence.

9. Auditing and other attestation services provided by CPAs are also governed by AICPA's Generally Accepted Auditing Standards (GAAS). Under these interrelated standards, a CPA conducting an audit must comply with GAAS, which also require an auditor to maintain independence. The second general standard of GAAS states "[t]he auditor must maintain independence in mental attitude in all matters relating to the audit." AICPA Code of Professional Conduct, AU §150.2.

<https://www.aicpa.org/Research/Standards/AuditAttest/DownloadableDocuments/AU-00150.pdf>.

10. The purpose of an independent audit is for an unbiased and objective third party to examine the financial statement(s) in question along with the supporting evidence and give an opinion on whether the statement(s) accurately and fairly comply with the relevant standard.

11. The purpose of independence is expressed in the AICPA's Clarified Statements on Auditing Standards AU-C §200.A17: "In the case of an audit engagement, it is in the public interest and, therefore, required by this section, that the auditor be independent of the entity

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subject to the audit. The concept of independence refers to both independence in fact and independence in appearance. The auditor's independence from the entity safeguards the auditor's ability to form an audit opinion without being affected by influences that might compromise that opinion. Independence enhances the auditor's ability to act with integrity, to be objective, and to maintain an attitude of professional skepticism. Independence implies an impartiality that recognizes an obligation to be fair not only to management and those charged with governance of an entity but also users of the financial statements who may rely upon the independent auditor's report.”

<https://www.aicpa.org/content/dam/aicpa/research/standards/auditattest/downloadabledocuments/au-c-00200.pdf>.

12. The best-known type of independent audits are those of the financial statements of publicly traded companies. The Independent Auditor examines the company's records and, if appropriate, reassures the investment community that the company's financial statements can be relied upon as accurate and compliant with generally accepted accounting principles. This is not the only type of independent audit that may be conducted, however. Various other types of financial records may be audited pursuant to GAAS, including royalty payment records. AU-C Section 800 Special Considerations—Audits of Financial Statements Prepared in Accordance With Special Purpose Frameworks

<https://www.aicpa.org/content/dam/aicpa/research/standards/auditattest/downloadabledocuments/au-c-00800.pdf>.

13. An independent audit of a royalty statement follows the same principles as those of financial statements, except the royalty statement is the relevant financial statement and the PSS regulations are the relevant standard. The auditor, if appropriate in the exercise of his or her

independent, professional judgment, reassures interested parties that the royalty statements can be relied upon and gives a formal opinion to that effect.

SoundExchange's Abuse of the Audit Provision and Failure to Comply With Any of the Applicable Professional Standards Required by the PSS Regulations Led Music Choice to Proactively Commission Its Own Defensive Audits

14. During the first years after the PSS regulations were issued, Music Choice did not avail itself of the defensive audit option. It was not yet clear how frequently RIAA and later SoundExchange would conduct such audits. In 2005, however, SoundExchange commenced its first audit of Music Choice's PSS royalty payments, for 2001 through 2003. During the course of that process, SoundExchange's conduct and that of the accounting firm it hired – RZO LLC – was so outrageous, unduly disruptive, and burdensome that Music Choice subsequently began paying for its own proactive audits and has continued to do so ever since.

15. As a preliminary matter, SoundExchange did not use an independent auditor for the 2005 audit. Although SoundExchange represented that it intended to conduct an audit compliant with all of the regulatory requirements, including independence, it actually hired an accounting firm that was primarily in the business of recording artist business management, RZO LLC. Music Choice had no familiarity with RZO or its principals at that time. At the outset, SoundExchange informed Music Choice that certain principals of RZO had ownership interests in certain sound recordings and musical compositions, and asked Music Choice to waive the confidentiality restrictions in 37 C.F.R. § 260.4, which do not allow sound recording copyright owners to have access to Music Choice's confidential information. Music Choice agreed to this as a gesture of good faith and based on its understanding that the sound recording ownership issue was the only conflict and the promise by SoundExchange and RZO that the conflicted principals' involvement in the audit would be limited. Attached hereto as **Exhibit MC 1** is a true

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and correct copy of the confidentiality agreement between Music Choice and RZO, reflecting Music Choice's agreement to a limited waiver of the confidentiality restrictions.

16. As Music Choice only learned much later, RZO's lack of independence and conflict actually went much further than copyright ownership. One of RZO's principals who worked on the audit, Perry Resnick, was a SoundExchange board member from 2003 through 2018. Attached hereto as **Exhibit MC 2** is a true and correct copy of a printout of Mr. Resnick's LinkedIn page, reflecting his long service on the SoundExchange board. SoundExchange did not identify this major conflict when it sought Music Choice's waiver of the confidentiality provisions. Under AICPA's Code of Professional Conduct, a CPA violates his independence obligations by providing audit services to an entity if he participates in the management of that client, including specifically by board service. AICPA's Code of Professional Conduct 1.275.005 <http://pub.aicpa.org/codeofconduct/resourceseamlesslogin.aspx?prod=ethics&tdoc=et-cod&tptr=et-cod1.275>. Under the AICPA ethics rules, such a conflict cannot be waived.

AICPA's Code of Professional Conduct 1.110.010.03

<http://pub.aicpa.org/codeofconduct/resourceseamlesslogin.aspx?prod=ethics&tdoc=et-cod&tptr=et-cod1.110>.

17. In addition to RZO's lack of independence, based upon my review of its final report it is clear to me that RZO did not conduct an audit or other attestation procedure as those terms are understood by CPAs and AICPA. For example, there is no reference to an audit in the report, which is instead titled a "royalty examination." There is no attestation language, nor any statement that RZO complied with any particular standards, much less GAAS. This omission is proof of non-compliance with GAAS. The auditing standards require the report that results from an independent audit to use the word "independent" in the title and to state its compliance

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with GAAS within the report. AU-C §700.22, AU-C §700.28

<https://www.aicpa.org/research/standards/auditattest/downloadabledocuments/au-c-00700.pdf>. A

forensic accounting “examination” is not an independent audit, and falls far short of what is required by the regulations. Attached hereto as **Exhibit MC 3** is a true and correct copy of RZO’s “Royalty Examination” report (the “RZO Examination Report”).

18. My understanding is that the two RZO principals involved in the 2005 SoundExchange “audit” were Mr. Resnick and Thomas Cyrana. Although Mr. Resnick appears to be a CPA, he could not ethically conduct an audit due to his lack of independence. Mr. Cyrana does not appear to be a CPA. Attached hereto as **Exhibit MC 4** is a true and correct copy of a printout of Mr. Cyrana’s LinkedIn profile, which does not reference his being a CPA. Moreover, I performed a search of the New York State professional licensing database and while Mr. Resnick shows up as a CPA, Mr. Cyrana does not. Given the nature of RZO’s primary business, which is business management for artists, this is not surprising. From their own descriptions in their LinkedIn profiles, Mssrs. Resnick and Cyrana are not qualified auditors, as that term is understood by CPAs and AICPA. Instead, they appear to focus on forensic accounting consultation and other non-attest work, which is fundamentally different from audit and other attest work and is governed by totally different professional standards that do not require independence. To the contrary, AICPA consulting standards require that the consultant represent the client’s specific interests and objectives, a requirement inconsistent with independence as that term is understood with respect to audit and other attest work. STATEMENT ON STANDARDS FOR CONSULTING SERVICES 100.07

<https://www.aicpa.org/interestareas/forensicandvaluation/resources/standards/downloadabledocuments/sscs.pdf>.

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19. As a preliminary matter, I note that in this proceeding SoundExchange has attempted to claim that the defensive audits conducted for Music Choice were somehow inadequate in scope because the auditors employed a methodology known as “sampling.” This claim is simply wrong for a number of reasons.

20. Sampling is the process of selecting a subset of the total data within the scope of the audit and testing that subset and extrapolating the results out to the entire dataset. This methodology is commonly used in audits and many other types of accounting work, and is certainly within GAAS. In most instances, it would be wildly inefficient, if not practically impossible, to test all of the data subject to audit. Sampling methodologies have been developed to allow for efficient but accurate audits. Part of the independent and objective judgment a CPA must exercise pursuant to AICPA ethics rules and GAAS relates to using appropriate sampling methodology to generate efficiency without sacrificing accuracy. Forensic accountants also commonly use sampling, and RZO did so in its Examination Report. *See, e.g.*, RZO Examination Report at p.4 (“[[REDACTED]]”).

21. One need only review the purported findings in the RZO Examination Report to see that RZO did not exercise independence. In the RZO Examination Report, RZO took many false positions of claimed underpayments premised on unreasonable misinterpretations of the PSS regulations. Many of the claimed underpayments were premised upon revenue that Music Choice never actually received. For example, there were some instances where Music Choice had the contractual right to charge certain affiliates interest on late payments in its own discretion, but did not actually receive any interest payments. RZO took the position that Music Choice was required to include in its Gross Revenue for PSS royalty computation purposes any

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revenue to which it was legally entitled, even if it never actually received such revenue. This is flatly wrong. Gross Revenues only include monies actually received, including bad debts actually recovered; they do not include monies never received and expressly exclude bad debts that are not recovered. 37 C.F.R. § 382.11.

22. RZO also claimed underpayments based upon revenue that was not derived from actually providing the PSS to subscribers. For example, Music Choice obtained a breach of contract payment in a bankruptcy proceeding for one of its affiliates based upon that affiliate's early termination of the service. But Gross Revenues only include revenues received "from the operation of the programming service of the licensee." *Id.*

23. RZO also used improper extrapolation methods, inconsistent with GAAS. For example, RZO identified an underpayment in one single month that was caused by an Excel spreadsheet formula error in the spreadsheet for that month's statement. RZO then extrapolated that error out to all the other months that it did not test, even though Music Choice provided the spreadsheet data for all other months and the formula error was not repeated in those other months. That improper extrapolation alone added almost [[REDACTED]] to RZO's claims, by far the largest single underpayment claim in the Report.

24. Based in large part upon these various improper claims, the RZO Examination Report purported to identify a total of [[REDACTED]] in claims, including underpayments, interest, and reimbursement of audit fees, more than half of which comprised the underpayments improperly extrapolated from one spreadsheet error and associated interest.

25. Music Choice engaged with RZO in good faith to address the various errors in the RZO Examination Report. Attached hereto as **Exhibit MC 5** is a true and correct copy of Music Choice's letter to RZO, dated June 7, 2006, disputing various of the claims in the Report. In

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trying to discuss these matters with RZO, it became clear that they were not operating as independent, objective auditors but rather were acting as advocates for SoundExchange and were taking direct instructions from SoundExchange employees on how to misinterpret the regulations to maximize the claim amount, irrespective of the validity of the claims.

26. That said, the RZO Examination Report did identify certain accounting errors, including the spreadsheet formula error discussed above, that led to actual underpayments. Notably, Music Choice also found during this process a number of overpayments to SoundExchange during the same periods, which RZO did not identify. With respect to the valid errors, Music Choice promptly agreed to pay the associated amounts and tendered payment in full for those errors and associated interest in the amount of [[REDACTED]]. Attached hereto as **Exhibit MC 6** is a true and correct copy of Music Choice's letter, dated September 1, 2006, remitting this payment.

27. After Music Choice tendered this payment, it continued to dispute the validity of the remaining claims, providing detailed refutations of the bogus claims. These discussions with SoundExchange stretched on for years. Eventually, over four years after RZO began its "examination," SoundExchange agreed to settle the disputed claims – which originally totaled almost [[REDACTED]] – for a total of [[REDACTED]]. Attached hereto as **Exhibit MC 7** is a true and correct copy of the settlement agreement between SoundExchange and Music Choice, dated June 19, 2009.

28. The level of expense, disruption, harassment, and other burdens imposed on Music Choice over the course of four years in connection with the 2005 RZO examination convinced Music Choice that it was necessary to begin proactively commissioning defensive audits.

Unlike SoundExchange, Music Choice Has Always Complied With the PSS Regulations By Retaining Truly Independent Auditors to Conduct Actual Audits Under GAAS

29. Music Choice began proactively commissioning independent audits of its PSS royalty payments, beginning with the 2008 payments and continuing for every year ever since.

30. In every instance, Music Choice has retained an independent audit firm with qualified CPAs with significant experience conducting audits pursuant to GAAS. In each year, Music Choice retained the same firm it used for its company financial audits, but pursuant to a separate agreement. Using the same firm for both tasks creates efficiencies and also helps with accuracy because the firm has already spent the time to learn our business. And because both engagements involve true audit services, they are subject to the same duty of independence and objectivity. For the first few years, Music Choice hired Asher & Company Ltd. to perform the audits. Starting with the audit of Music Choice's 2012 payments, the engagement moved to BDO, which had acquired Asher & Company. Starting with the audit for 2017 payments, we began using Kreischer Miller.

31. In all instances, irrespective of which firm conducted the audit, each PSS royalty audit commissioned by Music Choice was performed by independent C.P.As and their staffs with substantial auditing experience pursuant to GAAS. The end result of each audit was a written independent auditor's report, including the auditor's formal opinion that Music Choice's royalty payments were accurate. As independent auditors under the AICPA ethics rules and GAAS, the auditors use their own independent judgments to develop the best methodology to test the accuracy of Music Choice's payments. Music Choice has no control over the choices and methodologies selected by its independent auditors. Although they review schedules of the payments prepared by Music Choice, they independently test the accuracy of those schedules and investigate the manner in which they were prepared. They independently determine compliance

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with the PSS regulations, and do not rely upon Music Choice to interpret them. Attached hereto as **Exhibit MC 8** is a true and correct copy of the Independent Auditor's Report issued by BDO at the conclusion of its audit of the 2016 PSS royalty payments. Attached hereto as **Exhibit MC 9** is a true and correct copy of Music Choice's engagement agreement with BDO for the 2016 audit.

32. As part of the audit engagement, BDO assisted Music Choice in the preparation of the royalty schedule and disclosures for the audit report based on information provided by Music Choice. Music Choice retains responsibility for the accuracy of the information. BDO's assistance with the schedule falls outside of the scope of the audit and is considered a non-attest service. This non-attest service is routine in preparing an audit report and does not impair the auditor's independence. AICPA's Code of Professional Conduct 1.295.010.06

<http://pub.aicpa.org/codeofconduct/resourceseamlesslogin.aspx?prod=ethics&tdoc=et-cod&tpr=et-cod1.295.010>.

33. As noted above, it is common and consistent with GAAS for auditors to use sampling methodologies to conduct audits, and the independent auditors engaged by Music Choice use sampling in their audits. The use of sampling should not, however, be misconstrued as somehow modifying the "scope" of the audit. The scope of every audit commissioned by Music Choice is the entirety of its payments for the PSS license in a given year. And the auditor's opinion covers the entirety of those payments, irrespective of the sampling approach commonly used.

34. Music Choice's use of defensive audits has yielded benefits for Music Choice, but also for SoundExchange's royalty recipients. For Music Choice, we obviously save the burden and disruption of SoundExchange's royalty verification procedures, which as noted above are

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not audits, are not done by independent CPAs, and take far too long to reach resolution due to the outrageous positions they take. Doing routine, proactive audits also helps Music Choice improve its accounting processes and makes ongoing payments more accurate. It is not in Music Choice's interest to have accounting errors. And to the extent small errors are found, they can be corrected much more quickly than if Music Choice waited for SoundExchange to conduct a verification. As noted above, the one time SoundExchange conducted a royalty "examination" for our PSS payments, it took over four years to conclude and covered periods as far back as eight years prior to the final settlement date. Finding errors – if they exist – on a regular basis helps Music Choice minimize interest payments, but also gets the money in the hands of SoundExchange – and presumably royalty recipients – much faster. Moreover, all of this happens at no expense to SoundExchange. Music Choice has never been found to have errors in any audit period sufficient to trigger the cost-shifting provision of the audit regulation – which are set at a lower error rate than similar cost-shifting provisions for any other statutory license – so this is a significant benefit to SoundExchange.

35. In all the years that Music Choice has been conducting its proactive independent audits, the audit process has led to Music Choice identifying a total of only [[REDACTED]] late payments to SoundExchange for which Music Choice had not remitted the correct amount of interest. In those instances, Music Choice remitted the required interest payments – totaling [[REDACTED]] between them – promptly upon discovering the error, all without SoundExchange needing to do an invasive audit of its own.

36. Other than these instances of late payments noted above, Music Choice has accurately and timely paid its PSS royalties every year. A true audit, conducted by experienced and independent auditors pursuant to GAAS, including the final report and work papers,

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provides assurances that the payments are accurate without causing undue burden and disruption to Music Choice. If SoundExchange had conducted actual audits, using independent auditors pursuant to GAAS, they would have gotten the same results. But we have learned the hard way that SoundExchange does not conduct audits, does not conduct its non-audit “examinations” pursuant to GAAS, and does not use independent auditors.

Music Choice Has Tendered Its Defensive Audits to Avoid a SoundExchange “Examination” and After a Full Investigation SoundExchange Did Not Identify Any Problems or Issues With Those Audits

37. In December of 2016, SoundExchange noticed its intent to audit Music Choice’s royalty payment under the PSS and Business Establishment Service (“BES”) licenses. SoundExchange, through its outside forensic accountants at Eisner Amper (who later moved to Prager Metis), first contacted Music Choice to commence these audits in March of 2017.

38. With respect to the proposed PSS royalty audit, Music Choice informed SoundExchange and its accountants that Music Choice previously had its own defensive audits performed by BDO and therefore would tender those audits to avoid an additional audit by SoundExchange for those periods.

39. Although it initially took the position that it was entitled to conduct its own audit irrespective of the defensive audits, SoundExchange requested that Music Choice provide the final BDO audit reports to the Prager Metis accountants, give them direct access to the BDO accountants who conducted those audits, and provide various working papers generated during the audits, so that Prager Metis could evaluate the sufficiency of those audits. Music Choice agreed to SoundExchange's requests in June of 2017. Subsequently, Prager Metis delayed the start of its audit of the BES royalty payment and instead during the Fall of 2017 through early 2018 conducted an investigation and evaluation of the BDO audits. BDO answered numerous

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questions posed by Prager Metis, attended on-site meetings, and provided various backup and working papers requested by Prager Metis.

40. In March of 2018, Prager Metis informed Music Choice that it did not need any additional information from BDO for its evaluation of the defensive audits and requested to begin the field work only for the BES royalty examination.

41. At no point did Prager Metis or SoundExchange identify to Music Choice any alleged error, problem, or insufficiency in BDO's audits. Nor did SoundExchange or Prager Metis seek to perform their own audit of the PSS royalty periods covered by the BDO audits after Prager Metis concluded its investigation. Instead, Prager Metis simply proceeded to conduct an examination limited to the BES royalty payments, and eventually issued a report on that examination similarly limited to the BES royalty payments.

SoundExchange Continues to Use Non-Compliant Procedures and Accountants For Its Royalty “Examinations”

42. As noted above, although it dropped its demand to perform its own audit of the PSS royalties after a full investigation of Music Choice’s defensive audits for those periods, SoundExchange, through Prager Metis, did proceed with a verification of Music Choice’s BES payments. Music Choice had not commissioned defensive audits for its BES payments, largely because the PSS is Music Choice’s primary business line and SoundExchange had never audited the BES payments before. In its verification of the BES payments, while SoundExchange and Prager Metis represented that they intended to conduct an audit compliant with the applicable regulations, in fact they failed to comply on all counts.

43. Music Choice fully cooperated with Prager Metis because we believed they would be doing an independent audit pursuant to GAAS. When Prager Metis provided its report,

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however, it became clear that (1) Prager Metis did not exercise independence; (2) Prager Metis did not conduct an audit, as that term is understood by CPAs and AICPA; and (3) Prager Metis did not comply with GAAS.

44. The report issued by Prager Metis is titled as a “Royalty Examination of Music Choice, LLC [sic].” On the first page of the report, Prager Metis expressly disclaims having done an audit or otherwise complying with GAAS. Instead, the report disclosed – for the first time to Music Choice – that the “[[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]”

45. As I noted above, the AICPA Consulting Standards do not require independence and in fact require the opposite: that the consulting CPA has an ethical obligation to “...Serve the client interest by seeking to accomplish the objectives established by the understanding with the client...”. STATEMENT ON STANDARDS FOR CONSULTING SERVICES 100.07 <https://www.aicpa.org/interestareas/forensicandvaluation/resources/standards/downloadabledocuments/sscs.pdf>. An independent auditor, in contrast, serves all interested parties by giving an unbiased review of the statements and evidence. The duty of independence only applies to audit and other attest services, which are governed by GAAS. But Prager Metis expressly disclaimed following GAAS. Thus, the so-called “examination” was not an audit, was not conducted by an independent, qualified auditor, and was not conducted pursuant to GAAS.

46. As should be clear from the above, the nature of services performed by partisan forensic accountants under the Consulting Standards is fundamentally different from auditing services performed under GAAS. From my review of the Prager Metis website, it seems unlikely

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that Mr. Louis Stark, the CPA who conducted the verification process for SoundExchange, acts as an auditor in any significant part of his practice. Although Prager Metis has an independent audit group, Mr. Stark does not appear to work with that group but rather is part of the “Royalty Audit & Contract Compliance” group. This group’s webpage states, “Our royalty compliance services are also designed to present the licensor’s position regarding how the agreement should be interpreted and fix reporting errors resulting in monetary recoveries and increased payments going forward.” Consistent with this mission and the AICPA Consulting Standards, Prager Metis’s objective was not an unbiased independent audit, but rather a partisan, forensic examination with a goal of maximizing claims of underpayment by promoting SoundExchange’s most aggressive positions on interpreting the regulations. This is the antithesis of independence, as understood by CPAs and AICPA.

47. If the goal of the royalty audit provisions are to ensure fair and accurate payments are ultimately received by copyright owners and recording artists without unduly burdening licensees, there is no question that an independent, objective audit conducted pursuant to GAAS is superior to the kind of advocacy-based forensic “examination” employed by SoundExchange.

48. Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: June 24, 2021
Cherry Hill, New Jersey



Russell Potts

Exhibit MC 2

Contact

www.linkedin.com/in/perry-resnick-50a9401 (LinkedIn)

Top Skills

Music Licensing
Music
Music Industry

Certifications

Certified Public Accountant

Publications

U.S Copyright Office Music Licensing Study - Rebuttal Comments

Perry Resnick

Principal at RZO, LLC
New York

Experience

RZO, LLC

Principal

July 1995 - Present (26 years)

New York

Run the day-to-day operations and staff of the RZO Royalty and Compliance Division to ensure our clients are paid in accordance with their agreements.

Have recovered in excess of \$70 Million in underpayments on their behalf.

Work with artists, their managers and attorneys on various financial matters, with an emphasis on royalties and how artists and other creative personnel are compensated. Extensive music publishing experience including administration, valuations of catalogues for purchases, sales, and estate tax purposes, and licensing. Expertise in all types of royalties, participations and neighboring rights.

SoundExchange

Member Board Of Directors

2003 - 2018 (15 years)

Artist Representative on the SoundExchange Board of Directors since its inception in 2003. The Board has overseen the growth of SoundExchange from an organization that collected just \$2 million in 2003 to paying out over \$5 billion in royalties to record labels and artists through the end of 2017.

The Board's primary responsibility is helping to guide the strategy of the organization, while representing the interests of featured recording artists in the process. Member of the Board's Finance Committee, reviewing and providing feedback on annual budgets, potential acquisitions and other financial matters that arise.

Wlodinguer, Erk & Chanzis

Manager

1990 - June 1995 (5 years)

Greater New York City Area

Business manager for mid-level recording artists. Duties similar to Prager & Fenton below, but for a larger number of artists.

Prager & Fenton (now Prager Metis)

Senior Accountant

1987 - 1990 (3 years)

Greater New York City Area

Primarily maintained the books and records of the band KISS. Created a royalty system for accounting to KISS' producers and outside songwriters. Handled home-office tour accounting functions including vendor payments, crew payroll, and booking of show settlements.

Exhibit MC 4

Contact

www.linkedin.com/in/thomas-cyrana-01b1a72b (LinkedIn)

Thomas Cyrana

Managing Director at RZO LLC
New York

Experience

RZO LLC

Managing Director

February 1995 - Present (26 years 5 months)

Primary responsibilities include managing the Firm's music publishing and administration company, oversight of the royalty group which provides royalty examination services, contract analysis, valuations of catalogs and entertainment companies for acquisition and tax related purposes, and royalty reporting. Also responsible for operation of specialty financing ventures for intellectual property-based lending.

PolyGram Holdings, Inc

Senior Vice President

December 1990 - February 1995 (4 years 3 months)

New York, NY

Participated in the development and implementation of the strategy to build a newly formed live entertainment-based division, PolyGram Diversified Entertainment, as part of the parent company's objective to expand on its core recorded-music businesses. Primarily responsible for the division's entry into the entertainment-related merchandising business. Provided administrative support for other divisional operations including live theater production; event television / pay-per view; and, special projects. Served as Associate Producer for the Woodstock '94 Festival including oversight of business affairs, merchandising, concessions and other operational areas.

BCL Entertainment Corp/Brockum

CFO

April 1985 - November 1990 (5 years 8 months)

New York/Toronto

Managed the corporate financial affairs of the parent company and its operating subsidiaries. Responsible for all financial and treasury functions. Provided direct input to and implemented corporate acquisition policies for growth and diversification. Determined the valuation for, and engineered the

acquisition of subsidiary companies Coordinated a corporate refinancing/
recapitalization of the parent company.

KPMG

Manager

July 1980 - April 1985 (4 years 10 months)

New York, NY

Planned and supervised financial audits for clients in a wide variety of industries. Performed work on projects including acquisition reviews and valuations in media and advertising, conducted litigation investigations.

Education

Rutgers University - Newark

Bachelor of Arts - BA, Accounting · (1976 - 1980)

Proof of Delivery

I hereby certify that on Thursday, July 01, 2021, I provided a true and correct copy of the Declaration of Russell Potts to the following:

Warner Music Group, represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

Johnson, George, represented by George D Johnson, served via ESERVICE at george@georgejohnson.com

Sony Music Entertainment, represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

Recording Industry Association of America, represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

American Association of Independent Music ("A2IM"), represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

Sirius XM, represented by Todd Larson, served via ESERVICE at todd.larson@weil.com

Universal Music Group, represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

SAG-AFTRA, represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

American Federation of Musicians of the United States and Canada, represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

SoundExchange, Inc., represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

Signed: /s/ Paul Fakler