

Before the  
COPYRIGHT ROYALTY BOARD  
LIBRARY OF CONGRESS  
Washington, D.C.

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In the Matter of:

The Digital Performance Right  
in Sound Recordings and  
Ephemeral Recordings

(Webcasting Rate Adjustment  
Proceeding)  
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Docket No.  
2005-1 CRB DTRA

Volume 38

Room LM-414  
Library of Congress  
First & Independence Avenue, S.E.  
Washington, D.C. 20540

Thursday,  
November 9, 2006

The above-entitled matter came on  
for hearing, pursuant to notice, at 9:30 a.m.

BEFORE:

THE HONORABLE JAMES SLEDGE, Chief Judge  
THE HONORABLE WILLIAM J. ROBERTS, JR., Judge

THE HONORABLE STAN WISNIEWSKI, Judge

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ROBERT ROBACK

CROSS

By Mr. Perrelli, Sound Exchange 104

1 matter, Yahoo is paying Universal Music Group  
2 more than its pro-rata share of 15 percent,  
3 correct, each month?

4 A We're paying on the per subscriber  
5 minimum each month.

6 Q And because you're paying on that  
7 in a greater of rate structure, that means the  
8 per subscriber minimum was greater than 15  
9 percent, correct?

10 A Greater than Universal's pro-rate  
11 share of 15 percent, correct.

12 Q Now that 15 cents that you are  
13 paying each month for each user, that's 15  
14 cents for each user of the subscription  
15 service to one record company just for the  
16 customized stations, correct?

17 A Correct.

18 Q So that's 25 to 28 percent of your  
19 customized programming and none of your  
20 preprogrammed programming for those users,  
21 correct?

22 A That's right. It does go -- it's

1 CLOSED SESSION

2 11:23 A.M.

3 CROSS EXAMINATION (CONTINUED)

4 BY MR. PERRELLI:

5 Q Mr. Roback, if you look at the top  
6 of this document it talks about, it has  
7 several lines, UMB performances, total  
8 performances and pro rate share.

9 Does that indicate to you that the  
10 percentage of performances of UMG music  
11 against the whole of customized programming in  
12 the subscription service is 25 to 28 percent,  
13 in that range?

14 A Yes.

15 Q And am I also correct that as  
16 shown in this document, Yahoo has been paying  
17 Universal Music Group -- I'm sorry, Yahoo has  
18 been paying Universal Music Group on the per  
19 subscriber minimum rather than the percentage  
20 of revenue?

21 A Yes.

22 Q So that means that as an effective

1 not just 25 to 28. It goes down as low as 20  
2 as of August.

3 Q And when you say 20, 20 percent of  
4 overall plays?

5 A Right, the pro-rata share ranges  
6 on this document from 20 percent to 28.

7 Q And you're still paying Sound  
8 Exchange for the royalties for the  
9 preprogrammed stations and you're still paying  
10 whatever the rates you pay other record  
11 companies for the remaining 75 to 80 percent  
12 of customized stations?

13 A That's correct.

14 Q But that 15 cents per month is  
15 locked in to Universal Music Group?

16 A Correct.

17 Q No matter how much you play it?

18 A Correct.

19 Q Now there's another line down here  
20 that says total royalty at the bottom that  
21 appears to be greater than the amount that's  
22 been calculated under the per sub minimum. Do

1 you see that?

2 A Yes.

3 Q Can you tell the Judges what that  
4 is?

5 A As part of our Universal license  
6 for subscription a la carte, Universal  
7 required that we implement some new security  
8 features that would control the ability to  
9 have multiple users accessing the subscription  
10 service with the same password effectively.  
11 And we were given a certain period of time in  
12 which to implement that and if we didn't get  
13 it done by that time that we would pay a  
14 percentage premium in excess of the royalty  
15 due because of our failure to meet that  
16 deadline. And as the royalty statement  
17 indicates, we did not meet that deadline for  
18 many months and continued to pay a premium on  
19 top of that.

20 Q And that reached, I guess a point  
21 where you were paying 160 percent of your  
22 otherwise, the royalty that you would

1 Q And just so I can go back, so with  
2 respect to the numbers in paragraph 18,  
3 they're not affected by the premium royalty  
4 rate that is indicated in this document?

5 A No, I don't believe so.

6 Q And do you know whether the  
7 royalty figures you provide in your written  
8 direct testimony included these fees as well?

9 A Again, I would need to see where  
10 you're talking about to be able to answer that  
11 question.

12 Q Let me provide to you your written  
13 direct testimony.

14 MR. STEINTHAL: Can I just ask for  
15 a clarification of counsel, whether he's  
16 referring to subscription or nonsubscription  
17 here.

18 MR. PERRELLI: I'm just trying to  
19 determine whether the fees are included or  
20 not.

21 MR. STEINTHAL: Okay.  
22 BY MR. PERRELLI:

1 otherwise pay for failure to comply with that  
2 contract provision?

3 A That's right.

4 Q My question is in the royalty  
5 information that you provided the Board in  
6 this, your written rebuttal testimony, and in  
7 your written direct testimony, did you include  
8 the premium fees as royalties for sound  
9 recordings for webcasting or did you exclude  
10 them?

11 A Can you show me specifically where  
12 you're talking about?

13 Q I think in your written rebuttal  
14 testimony it's in paragraph 19, sorry,  
15 paragraph 18.

16 (Pause.)

17 A Well, I believe that the subject  
18 matter in paragraph 18 that we computed  
19 everything at the statutory rate for purposes  
20 of making the comparison, so it was not one  
21 number or the other number from this  
22 statement.

1 Q Mr. Roback, I've handed you a copy  
2 of the written direct testimony and what I'm  
3 trying to understand is is whether in either  
4 the sound recording royalties that are in  
5 paragraph 15, or the calculation of sound  
6 recording royalties versus revenues in  
7 paragraph 20, or the sound recording royalties  
8 listed in paragraph 30, whether these premium  
9 fees are included or not?

10 A Well, I believe that the subject  
11 matter of these paragraphs, excuse me, with  
12 respect to nonsubscription and bundled  
13 services, so to the extent that's the case, it  
14 will be excluded because this statement  
15 reflects a la carte payments. So it's neither  
16 included or excluded because it's not the same  
17 subject matter.

18 Q With respect to paragraph 30 of  
19 your written direct --

20 A So the comment that I made earlier  
21 about the calculation was done assuming  
22 everything was paid at the statutory rate,

1 **that premium would not be part of this number.**

2 Q Thank you for that clarification.

3 MR. PERRELLI: Your Honor, I'd  
4 like to move Sound Exchange Trial Exhibit 151  
5 which was the webcasting statement with the  
6 Universal Music Group into evidence as a  
7 restricted document, subject to the protective  
8 order.

9 (Whereupon, at 11:32 a.m., the  
10 Closed Session ended.)

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