

**PUBLIC VERSION**

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

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<b>In the Matter of</b>	)	
	)	
	)	
<b>Determination of Royalty Rates</b>	)	
<b>for Digital Performance in Sound</b>	)	<b>Docket No. 14–CRB–0001–WR</b>
<b>Recordings and Ephemeral Recordings</b>	)	<b>(2016–2020)</b>
<b>(Web IV)</b>	)	

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**WRITTEN DIRECT STATEMENT OF  
GEO MUSIC GROUP**

**Volume 1**

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*Geo Music Group*

Friday, October 10, 2014

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Volume 2: Exhibits

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<b>(Web IV)</b>	)	
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**INTRODUCTORY MEMORANDUM  
TO THE WRITTEN STATEMENT  
OF GEO MUSIC GROUP**

GEO Music Group (“GEO”), *pro se* and as a non-attorney, respectfully submits this Introductory Memorandum to its Written Direct Statement in this proceeding in accordance with 37 C.F.R. § 351.4 for digital sound recordings (“DSR”). This Memorandum includes GEO’s Written Direct Statement and briefly summarizes the testimony of its witnesses. GEO has no RESTRICTED version, only this PUBLIC VERSION.

GEO respectfully requests the right to correct for any inadvertent spelling, grammar, punctuation, and footnoting errors. We also ask to amend and add to our remarks. We thank the Judges for their thoughtful consideration of the following rates and forward thinking rate structures for streaming DSRs.

## **GEO’S ROYALTY RATE PROPOSAL AND TERMS**

Pursuant to 37 C.F.R. § 351.4(b)(3), GEO proposes the following range of appropriate and reasonable<sup>1</sup> royalty rates for subscription transmissions and for eligible non-subscription transmissions made by a subscription service pursuant to 17 U.S.C. § 114 and the making of ephemeral recordings to facilitate such performances pursuant to 17 U.S.C. § 112(e) for the period between 2016 to 2020 for commercial webcasters be a usage-based royalty computed on the greater-of the following per-performance rates and percentages of revenue:

### **PROPOSAL 1**

#### **A. Proposed Royalty Rate for Non-Subscription Rates**

	<b>Per-Performance Rate</b>	<b>Percentage of Revenue</b>
<b>2016</b>	\$0.10	70%
<b>2017</b>	\$0.12	68%
<b>2018</b>	\$0.14	66%
<b>2019</b>	\$0.16	64%
<b>2020</b>	\$0.18	62%

#### **B. Proposed Royalty Rate for Subscription Rates**

	<b>Per-Performance Rate</b>	<b>Percentage of Revenue</b>
<b>2016</b>	\$0.22	70%
<b>2017</b>	\$0.24	68%
<b>2018</b>	\$0.26	66%
<b>2019</b>	\$0.28	64%
<b>2020</b>	\$0.30	62%

<sup>1</sup> “appropriate and reasonable” for the millions of individual copyright owners’ long-standing business model that have an absolute private property “right to exclude” any music licensee like Pandora, Spotify or Google as would any homeowner who has the “right to exclude” any common burglar or car thief who breaks in his home or steals his \$30,000 car from his driveway. The ASCAP and BMI Consent Decrees allows for the theft of the attached DSR. Pandora, Google, and Spotify have only considered what is “appropriate and reasonable” for their self-interests.

## PROPOSAL 2

### A. Proposed Royalty Rate(s) for Non-Subscription Rates with Copyright Cloud Locker

	Copyright Cloud Locker - One Time Fee	Per-Performance Rate	Percentage of Revenue
2016	\$0.50	\$0.01	70%
2017	\$0.55	\$0.02	68%
2018	\$0.60	\$0.03	66%
2019	\$0.65	\$0.04	64%
2020	\$0.70	\$0.05	62%

### B. Proposed Royalty Rate(s) for Subscription Rates with Copyright Cloud Locker

	Copyright Cloud Locker - One Time Fee	Per-Performance Rate	Percentage of Revenue
2016	\$0.50	\$0.10	70%
2017	\$0.55	\$0.11	68%
2018	\$0.60	\$0.12	66%
2019	\$0.65	\$0.13	64%
2020	\$0.70	\$0.14	62%

Since rates may change, GEO submits no re-write or redline changes to 37 C.F.R. § 380.2 through 380.4 at this time, but plans to in it's Amended Written Direct Statement.

Please note the **Per-Performance Rate** and **Copyright Cloud Locker One-Time Fee** Rate are what GEO is proposing. Since it is customary or required to provide a Percentage of Revenue along side a Per-Performance Rate, for “greater of” purposes, GEO has done so but is primarily proposing the **Per-Performance and Copyright Cloud Locker One-Time Fee Rate**.

## **BACKGROUND**

GEO Music Group is an independent record label that specializes in the production of analog and digital sound recordings for terrestrial radio broadcast, internet radio, digital streaming services, retail sale, video synchronization for film, television, and advertising, and other music licensees. GEO Music Group has operated on historic Music Row in Nashville Tennessee for the past 17 years and owns copyrighted master digital sound recordings with performances by legendary artists such as The Jordanaires and The Memphis Horns.

GEO looks to expand it's long-standing business model based on the constitutional protections afforded to each and every individual American creator by the "copyright clause", Article 1, Section 8 of the United States Constitution. GEO also looks to it expand its business model on all new digital music platforms using new reforms announced by the Copyright Office as well as a few of the good long-standing protections of the 1909 and 1976 Copyright Acts, including Section 106, passed by two Congresses spanning the past 100 years.

GEO has been adversely affected by the price-fixing of music royalty rates, including composition copyrights and digital sound recordings, as well as the advent of digital streaming services such as Google, YouTube, Pandora, Spotify and an array of other digital streaming services and the curious obsession with these so-called "business models". United States Copyright law, public policy and the longstanding business models of music publishers and songwriters have taken a backseat to the financial success of a handful of new start-up streaming companies.

Ironically, streamers and music licensees today are calling for the current statutory licensing system to remain in place, as is, without any rate changes.

## **SUMMARY OF WRITTEN DIRECT CASE**

The Consumer is going to have to start paying for individual songs again in a copyright “cloud locker”<sup>2</sup> or “streaming account” that pays in dollars not nano-pennies. The past 15 years of price-fixing and central planning all music copyrights at millionths of a penny for all digital streaming, webcasting or internet radio broadcasters has literally made it impossible for DSR investors, creators, artists, and performers to *record new music*, much less *survive*, or dare I say *profit*.

No music copyright creator should ever be paid anything less than a penny ever again.<sup>3</sup>

After all, copyright is a constitutional right and private property and music licensees don't own any music copyrights.

Consumers must once again be forced to *pay on a per-song basis, up-front, one-time*, per-streaming company, just like buying a CD, download or records - then stream it all they want. If streamers continue to sell advertising, subscriptions, start IPO's, or make any profit off the free use or sale of streaming copyrights, then a smaller per-stream royalty still applies.

There is a myth that when you download a song, you own it - that is absolutely false. Whether you download, purchase a CD, or stream a song of any kind, you are still only renting or licensing that copyright.

The copyright creators own the song since it's their lawful private property — not the public, not the performing rights organization, and most certainly not the music licensee.

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<sup>2</sup> [www.ghosttunes.com](http://www.ghosttunes.com)

<sup>3</sup> <http://musictechpolicy.wordpress.com/2014/07/13/garth-brooks-says-ill-take-the-80-they-can-have-the-20/> July 13, 2014 by Chris Castle - Garth Brooks Says I'll Take The 80, They Can Have the 20

The primary goal of GEO in this rate proceeding is to restore *control, negotiation, permission*, and mostly *profit* back to the rightful private property owners — all digital sound recording (“DSR”) copyright creators. **Pandora, Spotify Google have had plenty of time to grow, in fact Spotify is now making a profit UK.**<sup>4</sup> These are billion-dollar companies that waste tens of millions of dollars each year on their extravagant lifestyles.<sup>5 6 7 8</sup>

Looking at it from a fundamental mathematical point of view, any proposed rate that starts with numeral \$0.00, means there literally is no rate — it’s nothing. As the great sound recording artist Billy Preston sang, “*nothing from nothing leaves nothing, and you got have something if you want to be with me*”.

Over the past 15 years major label executives, performing rights organizations, multiple federal government agencies, and a handful of “non-profits”, trade organizations, and music lobbyists in Washington DC have made catastrophic mistakes and decisions that have ruined the lives and livelihoods of millions of songwriters, music publishers, artists, performers, musicians, singers, engineers, producers, studios and sound recording creators in LA, NY and Nashville.

As a DSR creator, GEO begs the three Copyright Royalty Board Judges to begin to change the landscape of digital music copyrights by taking a hard line on DSR copyright protection for the creators and copyright owners, not the whims or so called “business model” of a handful of music licensees - especially webcasters, internet radio and streamers.

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<sup>4</sup> <http://www.digitalmusicnews.com/permalink/2014/10/07/spotify-now-profitable-uk> Spotify Is Now Profitable In the UK, Tuesday, October 7, 2014 by Paul Resnikoff

<sup>5</sup> <http://www.digitalmusicnews.com/permalink/2014/01/30/spotifyrentmanhattan>

<sup>6</sup> <http://www.usmagazine.com/celebrity-news/news/sean-parker-wedding-pictures-show-billionaires-lavish-redwood-ceremony-201318>

<sup>7</sup> <http://www.forbes.com/sites/stevenbertoni/2013/06/26/sean-parkers-wedding-by-the-numbers/>

<sup>8</sup> <http://www.thestreet.com/story/12554263/1/pandora-cries-poor-as-executives-get-filthy-rich.html>

When it comes to copyright there is no differentiation between interactive, noninteractive, on-demand or non-demand streaming, these are merely technical definitions that have nothing do with basic copyright law and several hundred years of good precedent: for copyright, not against.

Stealing any copyrighted material is stealing the fruit of a man's labor and is no different stealing his car from his driveway. This is a moral question of the issue of theft, something that even a child can understand.

GEO, as a visual arts (VA), performance arts (PA), and sound recording (SR) music copyright creator and owner for over 30 years, understands that there is no difference between a non-subscription or subscription rate when it comes to basic copyright law which trumps those made-up technical terms 100% of the time. The term non-subscription is a brand new term for a faulty business model and doesn't not suddenly take precedent over 220 years of American copyright law with a long tradition and precedent in England. We hope the Judges adopt this fundamental position during their deliberation if they don't already hold this position.

Streamers charging less for non-subscribers is really an insult to copyright owners since they are giving away my private property against my will and then want me to take less money while I watch a music licensee steal my DSR because of the attached underlying work copyright is subject to the DOJ PRO consent decrees. It's pretty incredible.

Streamers constantly claim that as their subscriber base grows, all copyright owners will make more money, soon. So let's hold them at their word and this is why Percentage of Revenue drops on a per year to make up for increased profits by Pandora and Spotify due to "scaling".

In addition, as streamers sell more local and national advertising, taking away billions of dollars from traditional terrestrial radio advertising dollars like iHeartRadio, copyright owners

must share in the wealth in stock options, IPO's, advertising sales, increased subscription rates, investor direct payments and other non-royalty profits, not the current "*peasants's dilemma*"<sup>9</sup> so brilliantly described by computer scientist and author in "Who Own's The Future." An excerpt is provided in this document.

GEO realizes that these performance rates are a "substantial increase" from the current \$0.0012 to \$0.0022 rate per copyright stream; however, to a copyright creator and investor, it's known as a "below market rate" which is literally the understatement of the century for copyright owners. We've been held down for far too long now and we beg the Judges to let us make an actual profit, not the current guaranteed losing proposition we are bound to. Pandora and other streamers like Spotify and Google have had plenty of time to "get there businesses off the ground."<sup>10</sup>

Current and proposed rates by Pandora and even SoundExchange are unsustainable for copyright creators and that is why GEO is in this proceeding, to make it profitable for independent sound recording labels, and all self-contained artists like myself who write, sing, perform, record, and pay for all our songs and albums.

We have the right to thrive, not just survive at the expense of 3 central servers owned by 3 major streamers who pay 3 major labels and 4 performing rights organizations ("PROs"), with 3 major broadcasters who use their only product, songs, to sell billions of dollars worth of advertising, subscription rates and other non-royalty profits — copyright owners have the right to profit from their private property and we beg the Judges to let us share not only in the per-

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<sup>9</sup> See full excerpt at end of this Statement and part <http://www.wired.com/2013/04/digital-music-is-like-a-mortgage/>

<sup>10</sup> BMI attorney told me this was the reason the minimum statutory rate mechanical of 9.1 cents was abolished (without Congressional approval) for all streams which the CRB knows a stream has a mechanical part and in the opinion of GEO, not just an on-demand stream - all streams.

performance royalties but also the future IPO's, stock options, direct advances, subscription fees and all other revenue streams with streamers.

We at GEO beg the Judges to please consider the above **Per-Performance** and **Copyright Cloud Locker** Proposals and Rates seriously and if the Judges are allowed by statute to allow to lower these Rates to compromise with Music Licensing Services in this proceeding or raise these rates, then GEO looks to the discretion and wisdom of the Judges.

Major labels no longer compete, actually selling product, and would not survive in 2014 without all the stock options, 18% equity position in Spotify, advertising money, subscription rates and upfront digital breakage payments from streamers like Pandora, Spotify and Google.

There is no way that any independent record label can survive the .00012 or .00025. for a DSR. or underlying work<sup>11</sup>, especially when both copyrights are at literally fixed at nothing.

.0012 multiplied by 1 million streams or DSR performances is only \$1200 dollars income, but not a profit when an album costs at a minimum \$25,000 to upwards of \$250,000 for a standard major label budget to a superstar budget, not a superstar budget of \$1,000,000 or the \$25,000,000 million for just promotion on a major pop star, then only sell a few hundred thousand units - not quite worth the investment to a normal, reasonable person.

1 million performances on terrestrial radio pay up to \$1,000,000 dollars per 1 million performances according to BMI<sup>12</sup> without comparing the underlying work performance rate in Section 115 with 114 DSR's, just a performance in general which in this case is about *a dollar a performance*, but to a much larger per-performance audience.

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<sup>11</sup> <http://www.digitalmusicnews.com/permalink/2013/09/24/making> Taylor Swift's Label: If We Keep Making \$0.000001, We Can't Keep Making New Records...Scott Borchetta by Paul Resnikoff. September 24, 2013

<sup>12</sup> [http://www.crainsnewyork.com/article/20131201/MEDIA\\_ENTERTAINMENT/312019981/musicians-get-a-new-paymaster](http://www.crainsnewyork.com/article/20131201/MEDIA_ENTERTAINMENT/312019981/musicians-get-a-new-paymaster) Crain's NY, Musicians Get A New Paymaster by Aaron Elstein, December 1, 2013

If 1 million customers download a song on iTunes for .99 cents and listen to it just once (like a performance of the digital sound recording and the underlying work) 1 million times, the underlying work gets at least \$91,000 dollars which used to sustain Music Row.

But on the digital sound recording copyright on a download, the profit is 1 million times \$.61 cents which is \$610,000 dollars. Quite a difference for the same copyrighted property.

However, streamers have turned 1 million listeners on terrestrial radio for \$1 million dollars into 1 million listens for \$16 or \$60 dollars in general. That is the travesty of letting a few people have a monopoly on price-fixing and central economic planning - it never works.

As songwriters and music publishers become independent labels on Music Row, and other music hubs, as the 14 to 1 ratio forces music publishers to become master sound recording creators and not songwriters and publishers shows how the bad behavior and expert lawyering of a handful of streaming company music licensees and their lawyers and lobbyists are winning.

NAB even commented in the MUSIC LICENSING 2 that “the core objective of copyright law is the public good. Not the creator’s interest. Not the user’s interest. But the interest of the public at large”.<sup>13</sup> This lack of understanding of rights may be the biggest hurdle copyright owners face in 2014.

As one streamer said, “I went from *buying music* to being a *listener*”. Well, under that logic, everyone should “go from *buying food* to being an *eater*”.

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<sup>13</sup> <https://www.nab.org/documents/newsRoom/pressRelease.asp?id=3443>

## OTHER ARGUMENTS

In President John F. Kennedy's famous Inaugural address in 1961<sup>14</sup> he referenced the time-tested theory of individual natural rights which the entire Declaration of Independence and United States Constitution is based on, including the copyright clause. Kennedy said, "*The belief that the rights of man come not from the generosity of the state, but by the hand of God*".

Whether the Judges believe our rights come from a Creator or naturally by way of our individual humanity, copyright law and legal precedent pre-dates the formation of the United States and is an established right. It's not only a right to the fruit of one's labor and mind, but also an established private property right like real property.<sup>15</sup> Copyright is also an established "bundle of rights" which also includes the long held real property right of "the right to exclude."

Kennedy also referenced in that same speech to "*let us never negotiate out of fear, but let us never fear to negotiate.*" That is precisely what he did, yet no court ordered it, he was forced to make peace, individually, when it counted.

While our task in these proceedings is not as dire, the central question we are trying to answer is the same. "How do we solve negotiation"? Negotiation is a conundrum that has puzzled the entire world for thousands of years and that will never, ever be solved collectively or by government decree, it can only be done by two willing parties.

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<sup>14</sup> <http://billofrightsinstitute.org/resources/educator-resources/mericapedia/mericapedia-documents/jfk-inaugural-address/>

<sup>15</sup> [http://www.law.gmu.edu/assets/files/publications/working\\_papers/1431.pdf](http://www.law.gmu.edu/assets/files/publications/working_papers/1431.pdf) George Mason University School of Law. Written by Adam Mossoff - Professor of Law, INTELLECTUAL PROPERTY AND PROPERTY RIGHTS 2013

Do we negotiate by the use of government force, price fixing at a millionth of a penny, and involuntary central economic planning or is it by real free market negotiations of a real world “willing buyer and willing seller” in a real world “voluntary negotiation”?

Over the past year and a half I have spent the entire time researching, learning, and meeting with involved parties, but it’s time I should have spent promoting an album I just finished, writing and recording new songs — creating new copyrights, but there is no longer a reason since the incentive to create has been obliterated by a perfect storm of anti-copyright music licensees and their attorneys.

Customers have to pay a few dollars per-song up front.

#### **“DIGITAL BREAKAGE”**

As mentioned in GEO’s reply to the Interim Protective Order dated October 6, 2014, the term digital breakage refers to advances, equity grants, advertising dollars and other forms of non-royalty income is not paid to copyright creators and performers. NAB and Pandora filed earlier Motions and Request for Documents in this case, for example in the March 12, 2014.<sup>16</sup>

Under Schedule A, Request for Documents, the NAB and Pandora are attempting to subpoena the Apple agreement from the The Majors and Apple and the “digital breakage” issue is mentioned specifically, “4. *For each agreement produced or requested to be produced in response to Request Number 1., Document sufficient to show any advances equity grants paid or provided by Apple to the record company.*”

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<sup>16</sup> THE NATIONAL ASSOCIATION OF BROADCASTERS’ CONSOLIDATED (1) JOINDER IN PANDORA’S MOTION FOR ISSUING SUBPOENAS AND (2) MOTION FOR ISSUANCE OF SUBPOENAS TO APPLE INC. AND THE THREE MAJOR RECORD LABELS - SCHEDULE A - REQUESTS FOR DOCUMENTS.

So, GEO is making the exact same point as NAB and Pandora are making in the Request for the Agreements containing these advances, stock options, and other non-royalty compensation. Respecting private property and private agreements, GEO doesn't need to see these agreements and would be satisfied if only The Judges had access to these RESTRICTED documents to address this issue of advances for lack or loss of future copyright royalties on streaming, internet radio, or webcasting.

As GEO wrote in its October 6, 2014 RESPONSE TO INTERIM PROTECTIVE ORDER, "At the beginning of this proceeding, Pandora and NAB even complained in their Motions for Issuance of Subpoenas that ***"this proceeding will be substantially impaired and Pandora will be severely prejudiced in the absence of the information sought"*** from Apple and the major labels in particular - for not having a copy of everybody's private agreement. ***GEO is just as substantially impaired and severely prejudiced as Pandora in the absence of the same exact information.***"

#### **THE RIAA AND SOUNDEXCHANGE**

Back in 1971, when the RIAA was apparently way cooler than it is now, RIAA president Stanley Gortikov was called to testify in front of the House Judiciary Committee. His great quote was, *"the pirates skim the cream of what artists and record companies offer except for one particular ingredient, which he avoids like the plague...our risks."*

This is the exact predicament all independent and individual digital sound recording copyright creators are in with all streaming, internet radio, webcasting, and video streaming corporations.

## **100% DATA AND 100% TRANSPARENCY**

100% Data Transparency, Per-song royalty. I cannot stress enough how important data transparency is — 100% Transparency. Hiding behind a computer is not longer an excuse on any platform.

The main idea is that “computers ruined the music royalty business and computers can fix the music royalty business”. That means 100% Data Collection and Transparency in real time with direct deposits to all copyright owners in a bundled split into the various bank accounts on a daily basis. There is no excuse anymore.

As of September 12, 2014, BMI<sup>17</sup> has announced<sup>18</sup> that it “ will no longer be printing and sending detailed royalty statements through the mail”. BMI is gone completely paperless which is great and the only logical next step. Direct deposit will now be the primary mode of payment.

Pandora Spotify and YouTube must be 100% transparent with their data so copyright owners can have an honest accounting both performances and therefore royalties.

## **SERVICES SUBSTITUTING FOR “COPYRIGHT OWNER’S OTHER STREAMS OF REVENUE”**

In Webcaster III’s FINAL DETERMINATION OF RATES AND TERMS<sup>19</sup> AND TERMS in DocketNo. 2005-1 CRB DTRA, 72 FR 24084 (May 1, 2007)(“Webcaster II”).<sup>20</sup> gives

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<sup>17</sup> <http://www.bmi.com/paperless>

<sup>18</sup>[http://www.bmi.com/benefits/entry/direct\\_deposit\\_of\\_royalties](http://www.bmi.com/benefits/entry/direct_deposit_of_royalties)

<sup>19</sup> <http://www.loc.gov/crb/proceedings/2009-1/docs/final-determination-rates-terms.pdf> excerpt Pages 1-3 Copyright Office. From *Intercollegiate Broadcast System, Inc. v. Copyright Royalty Board*, 574 F.3d 748, 753-54 (D.C. Cir. 2009)

<sup>20</sup>The two prior webcasting proceedings often have been referred to informally as "Webcaster I" and "Webcaster II," respectively, as opposed to the formal caption "DTRA" (which stands for "Digital Transmissions Rate Adjustment"). In the current proceeding, we use the caption "Webcasting III" and intend to caption future webcasting proceedings using the term "Webcasting" followed by the appropriate Roman numeral.

“a lengthy review of the history of the sound recording compulsory license” and this history is summarized by the United States Court of Appeals for the District of Columbia Circuit in *Intercollegiate Broadcast System, Inc. v. Copyright Royalty Board*, 574 F.3d 748, 753-54 (D.C. Cir. 2009) — GEO focuses on section *Id.* [17 U.S.C. § 114(f)(2)(B)(i) which states “*Specifically, they must consider whether “the service may substitute for or may promote the sales of phonorecords” or otherwise affect the “copyright owner’s other streams of revenue.”*”

#### B. STATUTORY BACKGROUND

A lengthy review of the history of the sound recordings compulsory license is contained in the Final Determination for Rates and Terms in Docket No. 2005-1 CRB

This history was summarized by the United States Court of Appeals for the District of Columbia Circuit in *Intercollegiate Broadcast System, Inc. v. Copyright Royalty Board*, 574 F.3d 748, 753-54 (D.C. Cir. 2009), as follows:

[Since the nineteenth century, the Copyright Act protected the performance right of "musical works" (the notes and lyrics of a song), but not the "sound recording." Writers were protected but not performers.]

In 1995, Congress passed the Digital Performance Right in Sound Recordings Act. Pub. L. No. 104-39, granting the owners of sound-recordings an exclusive right in performance "by means of a digital transmission." 17 U.S.C. § 106(6); see *Beethoven.com LLC v. Librarian of Cong.*, 394 F.3d 939, 942 (D.C. Cir. 2005). The Digital Millennium Copyright Act of 1998, Pub. L. No. 105-304, "created a statutory license in performances by webcast," to serve Internet broadcasters and to provide a means of paying copyright owners. *Beethoven.com*, 394 F.3d at 942; see 17 U.S.C. § 114(d)(2), (f)(2): To govern the broadcast of sound recordings, Congress also created a licensing scheme for so-called "ephemeral" recordings "the temporary copies necessary to facilitate the transmission of sound recordings during, internet broadcasting." *Beethoven.com*, 394 F.3d at 942-43; see 17 U.S.C. § 112(e)(4).

Congress has delegated authority to set rates for these rights and licenses under several statutory schemes. The most recent, passed in 2005 [sic], directed the Librarian of Congress to appoint three Copyright Royalty Judges who serve staggered, six-year terms. See 17 U.S.C. § 801, et seq. These Judges conduct complex, adversarial proceedings, described in 17 U.S.C. § 803 and 37 C.F.R. § 351, et seq., and ultimately set "reasonable rates and terms" for royalty payments from digital performances. 17 U.S.C.

§ 114(f). . . Rates should "most clearly represent the rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller." *Id.* [17 U.S.C. § 114(f)(2)(B)] "In determining such rates and terms," the Judges must "base [their] decision on economic, competitive and programming information presented by the parties." *Id.* **Specifically, they must consider whether "the service may substitute for or may promote the sales of of phonorecords" or otherwise affect the "copyright owner's other streams of revenue."** *Id.* § 114(f)(2)(B)(i). The Judges must also consider "the relative roles of the copyright owner and the transmitting entity" with respect to "relative creative contribution, technological contribution, capital investment, cost, and risk." *Id.* § 114 (f)(2)(B)(ii). Finally; "[i]n establishing such rates and terms," the Judges "may consider the rates and terms for comparable types of digital audio transmission services and comparable circumstances under voluntary license agreements described in' subparagraph (A)." *Id.* § 114(f)(2)(B)

*Intercollegiate Broadcast System, Inc. v. Copyright Royalty Board*, 574 F.3d 748, 753-54 (D.C. Cir. 2009).

Digital download sales and CD sales have been “cannibalized” by streaming services and it is something that is obvious and common sense, but streamers have falsely claimed that streaming doesn’t cannibalize<sup>21</sup> sales and the evidence show this is not true at all.<sup>22 23 24</sup>

### **CONCLUSION**

*First*, within the authority the Judges are allowed by federal law in this digital sound recording (DSR) rate proceeding, GEO respectfully requests that the Judges adopt a “copyright bundle” or a “streaming account” minimum rate of \$.50 cents per-song, one-time, up-front payment, per-licensee on each individual DSR copyright payable to the DSR copyright owners. This cloud locker type payment should be paid by the customers one-time per-song for unlimited plays and adjusted for real inflation over the “below market” inflation figures using the federal Consumer Price Index (CPI).

*Second*, GEO respectfully requests that the Judges adopt a minimum rate of \$.10 cents per-stream royalty thereafter on all DSRs performances if profits from, stock options, advertising, subscriptions, or other non-royalty profits are being made. Both rates should be tied to actual future inflation and are reasonable since they are adjusted for past and current inflation.

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<sup>21</sup> <http://www.techspot.com/news/53300-streaming-music-is-slowly-cannibalizing-digital-download-sales.html> July 20, 2013 Streaming music is slowly cannibalizing digital download sales

<sup>22</sup> <http://www.cnbc.com/id/101640730> Is Spotify cannibalizing the music industry? Arjun Kharpal, May 29, 2014 CNBC

<sup>23</sup> <http://www.billboard.com/articles/business/6236365/album-sales-hit-a-new-low-2014> Billboard, Album Sales Hit A New Low

<sup>24</sup> <http://www.digitalmusicnews.com/permalink/2014/09/04/itunes-song-downloads-will-drop-39-five-years> September, 2014 iTunes Song Downloads Will Drop 39% In Five Years...by Paul Resnikoff

\$.50 cents per-song and \$.10 cents per stream are a bare minimum of what DSR creators and investors need to re-invest in new DSRs, much less make a profit from their private property. Of course, these two rates are suggested minimum rates and GEO respectfully requests the Judges consider these benchmarks to set the final rates for DSRs.

*Third*, GEO respectfully request that the Judge's adopt a percentage or plan where DSR copyright owners share in the digital breakage profits aka. up-front payments, stock options, advertising dollars, or any future IPOs of major record labels and music licensees, especially if the above per-song rates are not adopted. All future rates should reflect the lack of payments the past 15 years and adjustments for inflation.

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## Here is a great excerpt from computer scientist and inventor Jaron Lanier.

“Drove My Chevy to the Levee but the Levee Was Dry” by Jaron Lanier from his book “Who Owns The Future”.

“The levees weathered all manner of storms over many decades. Before the networking of everything, there was a balance of powers between levees and capital, between labor and management. The legitimizing of the levees of the middle classes reinforced the legitimacy of the levees of the rich. A symmetrical social contract between non-equals made modernity possible.

However, the storms of capital became super-energized when computers got cheap enough to network finance in the last two decades of the 20th century. That story will be told shortly. For now it’s enough to say that with Enron, Long-Term Capital Management, and their descendants in the new century, the fluid of capital became a superfluid. Just as with the real climate, the financial climate was amplified by modern technology, and extremes became more extreme.

Finally the middle-class levees were breached. One by one, they fell under the surging pressures of super-flows of information and capital. *Musicians lost many of the practical benefits of protections like copyrights and mechanicals.* Unions were unable to stop manufacturing jobs from moving about the world as fast as the tides of capital would carry them. Mortgages were over-leveraged, value was leached out of saving, and governments were forced into austerity.

The old adversaries of levees were gratified. The Wall Street mogul and the young Pirate Party voter sang the same song. All must be made fluid. Even victims often cheered at the misfortunes of people who were similar to them. Because so many people, from above and below, never like levees anyway, there was a triumphalist cheer whenever a levee was breached. We cheered when musicians were freed from the old system so that now they could earn their living from gig to gig. To this day we still dance on the grave of the music industry and speak of “unshackling musicians from labels.”<sup>1</sup> We cheered when public worker unions were weakened by austerity so that taxpayers were no long responsible for the retirements for the retirements of strangers.

Homeowners were no longer the primary players in the fates of their own mortgages, now that any investment could be unendingly leveraged from above. The cheer in that case went something like this: Isn’t it great that people are taking responsibility for the fact that life isn’t fair?

Newly uninterrupted currents disrupted the shimmering mountain of middle-class levees. *The great oceans of capital started to form themselves into a steep, tall, winner-take-all, razor-thin tower and an emaciated long tail.*

How Is Music like a Mortgage?

The principal way a powerful, unfortunately designed digital network flattens levees is by enabling data copying.\* For instance, a game or app that can’t be easily copied, perhaps because it’s locked into a hardware ecosystem, can typically be sold for more online than a file that contains music, because that kind can be more easily copied. *When copying is easy, there is almost no intrinsic scarcity, and therefore market value collapses.*

\*As we’ll see, the very idea of copying over a network is technically ill-founded, and was recognized as such by the first generation of network engineers and scientists. Copying was only added in because of bizarre, tawdry events in the decades between the invention of networking and the widespread use of networking.

There’s an endless debate about whether file sharing is “stealing.” It’s an argument I’d like to avoid, since I don’t really care to have a moral position on a software function. Copying in the abstract is vapid and neutral.

To get ahead of the argument a little, my position is that we eventually shouldn't "pirate" files, but it's premature to condemn people who do it today. It would be unfair to demand that people cease sharing/pirating files when those same people are not paid for their participation in very lucrative network schemes. Ordinary people are relentlessly spied on, and not compensated for information taken from them. While I would like to see everyone eventually pay for music and the like, I would not ask for it until there's reciprocity.

What matters most is whether we are contributing to a system that will be good for us all in the long term. *If you never knew the music business as it was, the loss of what used to be a significant middle-class job pool might not seem important. I will demonstrate, however, that we should perceive an early warning for the rest of us.*

Copying a musician's music ruins economic dignity. It doesn't necessarily deny the musician any form of income, but it does mean that the musician is restricted to a real-time economic life. *That means one gets paid to perform, perhaps, but not paid for music one has recorded in the past. It is one thing to sing for your supper occasionally, but to have to do so for every meal forces you into a peasant's dilemma.*

**The peasant's dilemma is that there's no buffer. A musician who is sick or old, or who has a sick kid, cannot perform and cannot earn.** A few musicians, a very tiny number indeed, will do well, but even the most successful real-time-only careers can fall apart suddenly because of a spate of bad luck. Real life cannot avoid those spates, so eventually almost everyone living a real-time economic life falls on hard times.

*Meanwhile, some third-party spy service like a social network or search engine will invariably create persistent wealth from the information that is copied, the recordings. A musician living a real-time career, divorced from what used to be commonplace levees like royalties or mechanicals,\* is still free to pursue reputation and even income (through live gigs, T-shirts, etc.), but no longer wealth. The wealth goes to the central server.*

\*There are laws that guarantee a musician some money whenever a physical, or "mechanical" copy of a music recording is made. This was a **hard-won levee for earlier generations of musicians.**

Please notice how similar music is to mortgages. When a mortgage is leveraged and bundled into complex undisclosed securities by unannounced third parties over a network, then the homeowner suffers a reduced chance at access to wealth. The owner's promise to repay the loan is copied, like the musicians' music file, many times. So many copies of the wealth-creating promise specific to the homeowner are created that the value of the homeowner's original copy is reduced. The copying reduces the homeowner's long-term access to wealth.

To put it another way, the promise of the homeowner to repay the loan can only be made once, but that promise, and the risk that the loan will not be repaid, can be received innumerable times. Therefore the homeowner will end up paying for that amplified risk, somehow. It will eventually turn into higher taxes (to bail out a financial concern that is "too big to fail"), reduced property values in a neighborhood burdened by stupid mortgages, and reduced access to credit.

Access to credit becomes scarce for all but those with the absolute tip-top credit ratings once all the remote recipients of the promise to repay have amplified risk. Even the wealthiest nations can have trouble holding on to top ratings. The world of real people, as opposed to the fantasy of the "sure thing," becomes disreputable to the point that lenders don't want to lend anymore.

Once you see it, it's so clear. A mortgage is similar to a music file. A securitized mortgage is similar to a pirated music file.

In either case, no immediate harm was done to the person who once upon a time stood to gain a levee benefit. After all, what has happened is just a setting of bits in someone else's computer. Nothing but an abstract copy has been created; a silent, small change, far away. In the long term, the real people at the source are harmed, however."

Excerpt From: Jaron Lanier. "Who Owns the Future?." iBooks. <https://itun.es/us/EnUAG.1> From digital pages 106-113 or 75-77 in book form.

**CERTIFICATION OF SERVICE**

I, George D. Johnson, hereby certify that a copy of the foregoing Written Direct Statement was served this 10th day of October by email on the following parties.

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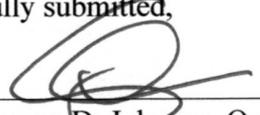
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