

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

**In the Matter of:**

**Digital Performance Right in Sound  
Recordings and Ephemeral Recordings**

**Docket No. 2009-1  
CRB Webcasting III**

**REALNETWORKS, INC.'S AND LIVE365, INC.'S  
FIRST SET OF INTERROGATORIES TO SOUNDEXCHANGE, INC.**

Pursuant to 17 U.S.C. § 803(b)(6)(C), 37 C.F.R. § 351.5(b)(2) and the Discovery Schedule issued by the Copyright Royalty Judges, RealNetworks, Inc. (“RealNetworks”) and Live365, Inc. (“Live365”) hereby request that SoundExchange, Inc. (“SoundExchange”) respond to the interrogatories set forth below no later than December 21, 2009.

**DEFINITIONS**

1. “And” and “or” have both conjunctive and disjunctive meanings as required by the context to elicit all information discoverable within the broadest scope of these interrogatories.
2. “Any” and “all” shall mean “each and every.”
3. The terms “concerning,” “discussing,” “relating to,” or “reflecting” mean anything that embodies, constitutes, comprises, evidences, reflects, identifies, states, refers to, comments on, responds to, relates to, describes, analyzes, contains information concerning, or in any way directly or indirectly bears upon or deals with the subject matter of the interrogatory.
4. “Document(s)” is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a), including, without limitation,

electronic or computerized data compilations. A draft or non-identical copy is a separate document within the meaning of this term.

5. “Including” is illustrative and not limitative and shall be construed to elicit all information discoverable within the broadest scope of these interrogatories.

6. “Pelcovits” and “Dr. Pelcovits” means Dr. Pelcovits himself and any persons assisting him, working with him or acting under his direction in connection with the preparation of his written direct testimony.

7. “Performance” means each instance in which any portion of a sound recording is publicly performed via webcasting.

8. “Royalty payments” means payments of royalties to SoundExchange for (1) the reproduction and performance of sound recordings pursuant to Section 114 of the Copyright Act or pursuant to agreements in lieu of Section 114 or (2) any other royalty paid to SoundExchange for use of copyrighted works.

9. “Service” means any online digital music service that offers webcasting.

10. “SoundExchange” refers to SoundExchange, Inc., its subsidiaries, corporate affiliates, business units, divisions, predecessors, parents, business units and divisions, and their representatives, officers, agents, servants, counsel, employees, consultants, and any person authorized to act, acting, or purporting to act on behalf of SoundExchange, including but not limited to the persons who submitted witness statements as part of the Written Direct Statement, Witness Statements, and Exhibits of SoundExchange, Inc. submitted on behalf of SoundExchange in this proceeding.

11. “Webcasting” shall be construed broadly to include public performances of sound recordings by Internet transmission and retransmissions of radio broadcast transmissions over the

Internet (simulcasts), including both subscription and non-subscription transmissions.

“Webcaster” refers to a service that offers webcasting.

12. The terms “you” and “your” refer to SoundExchange.

### **INSTRUCTIONS**

1. Please provide written responses to each interrogatory, and repeat the interrogatory before each response. If you object to any interrogatory, identify the number of the interrogatory to which you object, state the basis for your objection in sufficient detail so as to permit adjudication of the validity of the objection, and provide any information responsive to the portion of the interrogatory that you do not find objectionable.

2. Each of these interrogatories is continuing in character. If at any time up to and including the time of trial, any information responsive to these interrogatories is discovered or obtained, you are requested to produce such information promptly.

3. If any interrogatory cannot be complied with in full, it shall be complied with to the extent possible, with an explanation as to why full compliance is not possible.

4. Unless otherwise stated, the interrogatories contained in this First Set of Interrogatories cover the time period January 1, 2002, to the present.

5. Whenever you are instructed to state a date, a dollar amount, number or quantification, if such date, dollar amount, number or quantification is unknown to you, state your best estimate, indicate that the response is an estimate, and explain why you are unable to provide a more precise response and how you arrived at your estimate.

6. Whenever you are instructed to identify a specific individual, please indicate: (a) the full name of the individual; (b) the individual’s employer; and (c) the individual’s employment position or title.

7. When the identity or description of a document is requested, please indicate: (a) the type of document, such as letter, memorandum, email message, etc.; (b) the title, if any, of the document; (c) the date of the document; (d) the identity of the individual who authored the document; (e) the identity of individuals to whom the document is addressed; and (f) the identities of all recipients of copies of the documents.

8. If you produce documents in response to any of these interrogatories (including any part of any interrogatory), please respond by specifying the document(s) in sufficient detail – e.g., by Bates number – to enable RealNetworks and Live365 to readily locate and identify the responsive document(s).

9. In accordance with the Discovery Schedule (issued November 10, 2009), RealNetworks and Live365 must receive all written responses and objections to this First Set of Interrogatories no later than December 21, 2009. Please deliver one set of all responses (including any documents) and objections to Wiltshire & Grannis LLP at the address below and one set to Hovanesian & Hovanesian at the address below:

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### **INTERROGATORIES**

1. Identify the services that have opted into any voluntary agreement for the reproduction and performance of sound recordings under Sections 112(e) and 114 of the Copyright Act covering the period from 2011 to 2015, and identify the specific agreement each has opted into.

2. With respect to pages 17-19 of Dr. Pelcovits' report, identify each of the "custom radio" services Dr. Pelcovits considered for purposes of his testimony, and identify the voluntary agreements (if any) each has opted into for the reproduction and performance of sound recordings under Sections 112(e) and 114 of the Copyright Act covering the period from 2011 to 2015.
3. Identify the 610 services that paid statutory royalties to SoundExchange in 2008 (Kessler at 4) and the 41 services Dr. Pelcovits describes on page 24 of his report, and identify the total royalties each paid to SoundExchange for non-interactive streaming in 2008 and the total royalties each has paid to SoundExchange for non-interactive streaming in 2009.
4. With respect to the 41 services Dr. Pelcovits describes on page 24 of his report, identify the number of subscribers (for subscription services) and discrete listeners (for non-subscription services) to each such service in 2008, and identify the number of subscribers (for subscription services) and discrete listeners (for non-subscription services) to each such service in 2009.
5. Identify on a quarterly basis from 2002-present each of the top 100 webcasters, as measured by total webcasting royalty payments to SoundExchange, including (a) each such webcaster's name; (b) the royalties each such webcaster paid to SoundExchange for that quarter; (c) the number of webcasting performances attributable to each such webcaster during that quarter; and (d) the license under which each such webcaster made its royalty payments (*e.g.*, statutory license or a particular agreement entered into under the Webcaster Settlement Act of 2008 or Webcaster Settlement Act of 2009).
6. Identify the 500 artists who received the largest aggregate webcasting royalty payments from SoundExchange in each year from 2002 through the present, including (a) the aggregate webcasting royalty payments made to each such artist in each such year, and (b) the aggregate number of performances attributable to each such artist in each such year.
7. Identify the total amount, on an annual basis from 2002 to the present, of: (a) the total listening hours for non-interactive webcasting reported to SoundExchange; (b) the total number of non-interactive webcasting performances reported to SoundExchange; and (c) the total amount of royalties paid to SoundExchange for non-interactive webcasting performances.
8. Provide the same information requested in Interrogatory #7, but break down the requested totals between subscription-based non-interactive streaming and non-subscription-based non-interactive streaming (*e.g.*, (a) the total listening hours for non-interactive webcasting reported to SoundExchange for subscription-based non-interactive streaming and for non-subscription-based non-interactive streaming; (b) the total number of non-interactive webcasting performances reported to SoundExchange for subscription-based non-interactive streaming and non-subscription-based non-interactive streaming; and (c) the total amount of royalties paid to SoundExchange for non-interactive webcasting performances for subscription-based non-interactive streaming and non-subscription-based non-interactive streaming).

9. Identify persons most knowledgeable at Warner Music Group (“Warner”) regarding Warner’s investments in and/or or partnerships with online streaming services, including imeem, inc. and MySpace Music.

Respectfully submitted,

By \_\_\_\_\_  
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*Counsel for RealNetworks, Inc.*

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December 1, 2009