

**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
SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS FROM
SOUNDEXCHANGE, INC.**

Pursuant to 17 U.S.C. § 803(b)(6)(C), 37 C.F.R. § 351.5(b) and the Discovery Schedule issued by the Copyright Royalty Judges, RealNetworks, Inc. (“RealNetworks”) and Live365, Inc. (“Live365”) hereby request that SoundExchange, Inc. (“SoundExchange”) produce the documents described herein no later than January 29, 2010.

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 document requests.
2. “Any” and “all” shall mean “each and every.”
3. “Communication” means the transmittal or disclosure of information or inquiries electronically or in writing.
4. “Correspondence” means any writing or document, prepared, sent, or received by any medium, whether handwritten, person to person, in a group, by telephone, by letter, by notice, by telex, by telecopier, or by any other process related to or referring to any topic or

thing, including verbal, written, electric, electronic communication such as e-mail, together with any attachment, enclosures, exhibits, files, and/or any other writing or document referenced by or transmitted with such correspondence.

5. 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 document request.

6. “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.

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

8. “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.

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

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

11. “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.

12. “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.

13. “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.

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

INSTRUCTIONS

1. These requests are continuing in character. If at any time up to and including the time of trial, any documents responsive to these requests are discovered, created, or obtained, you are requested to produce such documents promptly.

2. If you object to any request, identify the number of the request 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 produce any documents responsive to the portion of the request that you do not find objectionable.

3. Documents sought in these requests include (a) documents currently or previously within your knowledge, possession, or control; (b) documents currently or previously within the knowledge, possession, or control of the persons who submitted the witness statements attached to SoundExchange's Written Direct Statement in this proceeding; and (c) documents which come into your possession, or into the possession of persons who submitted the witness statements attached to SoundExchange's Written Direct Statement, subsequent to service hereof.

4. When any request calls for the production of any portion of any document, the entire document containing any such portion must be produced.

5. If any document request 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.

6. More than one paragraph of this request may ask for the same document. The presence of such duplication is not to be interpreted to narrow or limit the normal interpretation placed on each individual request. When a document is requested in more than one numbered paragraph, you need only produce non-identical copies of the document.

7. Unless otherwise stated, the document requests contained in this First Set of Requests for Production of Documents cover the time period January 1, 2002, to the present.

8. 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 Requests for Production of Documents no later than December 21, 2009. Please deliver one set of all responsive documents, responses and objections to Wiltshire & Grannis LLP at the address below and one set to Hovanesian & Hovanesian at the address below:

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DOCUMENTS TO BE PRODUCED

Requests Related to Witness Statement of Dennis Kooker:

74. All of Sony Music's "commercial strategies and policies for the physical and digital distribution of [Sony Music's] repertoire" as referenced on page 1 of Mr. Kooker's statement, including those strategies and policies developed and implemented by Mr. Kooker.
75. All documents related to Mr. Kooker's statement on page 6 of his testimony that "for many consumers, digital formats – including streaming over the Internet – have replaced the consumption of physical products" and his description of "this substitution of digital for physical," including any studies, analyses, reports or other records related to the impact that digital formats have had on the consumption of physical products and any studies, analyses, reports or other records related to digital format's substitution for physical products.
76. All "revenue trends" as referenced on page 9 of Mr. Kooker's statement and similar documents forecasting the sales of digital and physical products in the industry and in Sony Music's business.
77. Documents sufficient to identify all webcasting services in which Sony Music has an equity interest, and all valuations, investor reports, projections and financial assessments related to those webcasting services.

Requests Related to Witness Statement of Michael Pelcovits:

78. All documents related to or supporting Dr. Pelcovits's statement on page 23 of his testimony that "it is reasonable to predict that the ratio of per-subscriber royalty fees to consumer subscription prices will be essentially the same in both the benchmark [interactive] and target [non-interactive] markets," including any studies, analyses, reports or other records related to the theory the ratio of per-subscriber royalty fees to consumer subscription prices are comparable in many industries entailing the use of copyrighted works (interactive webcasting, non-interactive webcasting, cable TV, pay movie channels, etc.).

Requests Related to Witness Statement of Barrie Kessler:

79. Documents sufficient to identify the members of the SoundExchange Board of Directors' licensing committee.
80. Documents sufficient to supplement SoundExchange's "Usage Reports," webcasting royalty payment information, and total listening hour information with the most current data, and documents sufficient to identify the last month from which such data is being provided.

Requests Related to Witness Statement of W. Tucker McCrady:

81. All documents related to Mr. McCrady's statement on page 2 of his testimony that Warner Music Group ("WMG") "examine[s] each new business model or proposal, not just for its likely substitutional impact on sales of physical products, but for its likely substitutional impact on other revenue sources," including any documents related to such examinations and any studies, analyses, reports or other records related to the substitutional impact of digital distribution of music.
82. All documents related to Mr. McCrady's statement on page 4 of his testimony that "WMG believes that these rates [negotiated between National Association of Broadcasters and SoundExchange] are below what the webcasting rate would be in the open market," including any studies, analyses, reports or other records related to the rates in the National Association of Broadcasters-SoundExchange agreement and any studies, analyses, reports or other records related to what the webcasting rate would be in the open market.
83. All documents related to Mr. McCrady's statements on page 6 of his testimony that "broadcasters' programming must appeal to as broad a range of listeners as possible, and that "broadcasters tend to play a variety of music organized around a genre or format . . . that will appeal to a broad market segment," including any studies, analyses, reports or other records related to broadcasters' programming practices, trends or tendencies.
84. All documents related to Mr. McCrady's statement on page 11 of his testimony that WMG's deals for online streaming are designed to "limit the substitution risk for other revenue sources (such as permanent digital downloads)," including any studies, analyses, reports or other records related to the substitutional impact that streaming (whether interactive or non-interactive) has on other revenue sources (including permanent digital downloads and other revenue sources).
85. All documents related to Mr. McCrady's statement on page 15 of his testimony that WMG "tend[s] to view the ad-supported audio business model with caution, because it has yet to generate stable revenue streams," including any studies, analyses, reports or other records related to the ad-supported streaming services and any studies, analyses, reports or other records related to revenue streams generated by ad-supported streaming services.


Respectfully submitted,

January 8, 2009

By 

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CERTIFICATE OF SERVICE

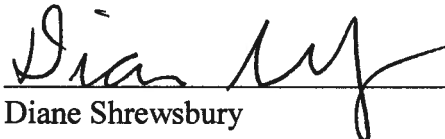
I, Diane Shrewsbury do hereby certify that copies of the foregoing Second Request for the Production of Documents from SoundExchange, Inc., was sent via email and first class mail this 8th day of January, 2010, to the following:

<p>David A. Handzo Michael DeSanctis Jared Freedman JENNER & BLOCK LLP 1099 New York Avenue, NW Washington, DC 20001 Fax: (202) 639-6066 dhandzo@jenner.com mdeanctis@jenner.com jfreedman@jenner.com</p> <p><i>Counsel for Sound Exchange</i></p>	<p>Catherine R. Gellis, Esq. PO Box 2477 Sausalito, CA 94966 202-642-2849 cbi@cathygellis.com</p> <p><i>Counsel for College Broadcasters, Inc.</i></p>
<p>William B. Colitre ROYALTY LOGIC, LLC 21122 Erwin Street Woodland Hills, CA 91367 Fax: (818) 558-3484 Bcolitre@RoyaltyLogic.com</p>	<p>William Malone James Hobson Matthew K. Schettenhelm MILLER & VAN EATON, PLLC 1155 Connecticut Avenue, NW Suite 1000 Washington, DC 20036-4306 Fax: (202) 785-1234 wmalone@millervaneaton.com mschettenhelm@millervaneaton.com</p> <p><i>Counsel for Intercollegiate Broadcasting System, Inc. and Harvard Radio Broadcasting Co. Inc.</i></p>

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