

This document may not be copied or shared  
with a third party without the express  
permission of Neal R. Gross Co. XXVII-1

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

In the matter of:

The Digital Performance  
Right in Sound Recordings  
and Ephemeral  
|| 2005-1 CRB DTRA  
(Webcasting Rate  
Adjustment Proceeding)

Docket No.  
R e c o r d i n g s

Volume 27

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

Thursday,  
June 29, 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

This document may not be copied or shared  
with a third party without the express  
permission of Neal R. Gross Co. XXVII-2

APPEARANCES

On Behalf of Sound Exchange

DAVID A. HANDZO, ESQ  
JARED O. FREEDMAN, ESQ  
PAUL M. SMITH, ESQ  
Jenner & Block  
601 Thirteenth Street, N.W.  
Suite 1200 South  
Washington, D.C. 20005  
(202) 639-6060  
dhandzo@jenner.com

GARY R. GREENSTEIN, ESQ  
General Counsel  
SoundExchange  
1330 Connecticut Avenue, N.W.  
Suite 330  
Washington, D.C. 20036  
(202) 828-0126  
greenstein@soundexchange.com

On Behalf of National Public Radio Inc.  
(NPR), NPR Member Stations, CPB-Qualified  
Public Radio Stations

DENISE B. LEARY, ESQ  
635 Massachusetts Ave., NW  
Washington DC 20001  
202.513.2049  
dleary@npr.org  
(202) 513-2049

On Behalf of Collegiate Broadcasters  
Inc. (CBI)

WILL ROBEDEE  
6100 South Main Street  
MS-529  
Houston TX 77005  
(713) 348-2935  
willr@ktru.org

**This document may not be copied or shared  
with a third party without the express  
permission of Neal R. Gross Co. XXVII-3**

On Behalf of Royalty Logic, Inc.

KENNETH D. FREUNDLICH, ESQ.  
Schleimer & Freundlich, LLP  
9100 Wilshire Boulevard  
Suite 615 - East Tower  
Beverly Hills, California 90212  
(310) 273-9807  
kfreundlich@earthlink.com

On Behalf of Intercollegiate  
Broadcasting System Inc., Harvard Radio  
Broadcasting Co. Inc.

WILLIAM MALONE, ESQ  
Miller & Van Eaton PLLC  
1155 Connecticut Ave., NW  
#1000  
Washington DC 20036-4306  
202.785.0600  
wmalone@millervaneaton.com

On Behalf of Digital Media Assoc.  
(DiMA), AOL, Live365, Microsoft Corp., Yahoo!  
Inc., National Public Radio

KENNETH L. STEINTHAL, ESQ  
Weil Gotshal & Manges LLP  
201 Redwood Shores Parkway  
Redwood Shores CA 94065  
(650) 802-3100  
kenneth.steintal@weil.com

KRISTIN KING BROWN, ESQ  
Weil Gotshal & Manges  
1300 Eye Street, N.W.  
Suite 900  
Washington, D.C. 20005  
(202) 682-7024

This document may not be copied or shared  
with a third party without the express  
permission of Neal R. Gross Co. XXVII-4

On Behalf of AccuRadio, Discombobulated LLC,  
Digitally Imported Inc., myradio.com LLC,  
Radioio.com LLC, Radio Paradise Inc., 3WK LLC,  
Educational Media Foundation

DAVID D. OXENFORD, ESQ  
Davis Wright Tremaine LLP  
1500 K Street, N.W., Suite 450  
Washington DC 20005  
202.508.6656  
davidoxenford@dwt.com

On Behalf of The National Religious  
Broadcasters Noncommercial Music License  
Committee, Bonneville International Corp.,  
Clear Channel Communications Inc., Salem  
Communications Corp., Susquehanna Radio Corp.,  
The National Religious Broadcasters Music  
License Committee

BRUCE G. JOSEPH, ESQ  
KARYN ABLIN, ESQ  
MATT ASTLE, ESQ  
MARGARET RYAN, ESQ  
SETH WOOD, ESQ  
Wiley Rein & Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006  
(202) 719-4913  
bjoseph@wrf.com

This document may not be copied or shared  
 with a third party without the express  
 permission of Neal R. Gross Co. XXVII-5

I-N-D-E-X

<u>WITNESS:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>
<u>RECROSS</u>			

Karyn Ulman			
by Mr. Steinthal	6		48
by Mr. Handzo		25	

E-X-H-I-B-I-T-S

<u>SoundExchange</u>		<u>ID</u>	<u>REC'D</u>
77	Notes of Ulman conversations	36	37

1 P-R-O-C-E-E-D-I-N-G-S

2 9:34 a.m.

3 CHIEF JUDGE SLEDGE: Mr. Steinthal?

4 MR. STEINTHAL: DiMA calls Karyn

5 Ulman.

6 CHIEF JUDGE SLEDGE: Ms. Ulman, if  
7 you'll please stand.

8 Whereupon,

9 KARYN ULMAN

10 a witness, was called by Counsel for DiMA, and  
11 having been first duly sworn, assumed the  
12 stand was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. STEINTHAL:

15 Q Good morning, Ms. Ulman.

16 A Good morning.

17 Q Have you ever testified before?

18 A No, I have not.

19 Q Well, if there's anything you  
20 don't understand that I ask you or that Mr.  
21 Handzo asks you, you just ask us to clarify,  
22 okay?

1                   First of all, how are you  
2 currently employed?

3                   A     I'm currently employed with Music  
4 Reports, Inc.

5                   Q     And what is Music Reports, Inc.?

6                   A     They're an organization involved  
7 in music clearance licensing and royalty  
8 administration for the entertainment industry.

9                   Q     And what's your title there?

10                  A     Vice President of licensing.

11                  Q     Now, let's go back in time and let  
12 the Panel know what your educational  
13 background and your career path has been  
14 before MRI. And I noted as we passed out the  
15 books that Ms. Ulman's résumé or CV, which I  
16 think was part of the original statement,  
17 isn't part of the binder that was given to  
18 you. But I'm not sure Your Honors need to  
19 have it in front of you.

20                  Let's start then with your  
21 educational background, Ms. Ulman?

22                  A     I attended Pace College now known

1 as Pace University. I started when I was 16.  
2 I went there for 2 years and then I attended  
3 a state university college at Rockport, New  
4 York for a year. I was a dance major.

5 Q As we're going to go through your  
6 career, how is it that you ended up in the  
7 music administration and clearance field?

8 A I grew up in New York and I was  
9 fortunate to be exposed to the live theater  
10 and Broadway. My father had a company briefly  
11 called Artists and Athletes where he prepared  
12 tax returns and accounting work for numerous  
13 artists and athletes and it allowed us to  
14 attend Broadway shows on a regular basis.

15 Q And did you ultimately move to  
16 California?

17 A I did.

18 Q Did you get any further  
19 educational training at UCLA?

20 A I did. I took a number of courses  
21 in the music business field at UCLA. I also  
22 took some technical classes in Pro Tolls,



1 which is a system for editing music.

2 Q Now, you state in your statement  
3 that you began your career in music  
4 administration in 1974 at April Blackwood  
5 Music. What did you do there?

6 A I began my career as a  
7 receptionist/secretary in New York at what was  
8 then owned by CBS Records, their music  
9 publishing division, April Blackwood Music.

10 Q And did you ultimately go on from  
11 there?

12 A I did. I worked -- after that I  
13 worked for Columbia Records in Business  
14 Affairs Department in a secretarial capacity  
15 where we were involved in music publishing  
16 agreements and signing artists to music  
17 publishing deals. And I briefly worked for CBS  
18 Radio before moving to California to work for  
19 Hal David, Inc.

20 Q And what did you do at Hal David,  
21 Inc.?

22 A It was a one girl office at Hal

1 David, Inc. And I performed numerous duties  
2 including licensing, copyright administration,  
3 secretarial work for the Hal David and Burt  
4 Bacharach music publishing catalogues.

5 Q And just for the sake of those  
6 that may not know who Hal David is, who is he  
7 or was he?

8 A Well, in addition to being a  
9 former President of ASCAP, he also wrote the  
10 lyrics to "What the World Needs Now is Love,"  
11 "What's New Pussycat," "Alfie" and numerous  
12 hits, many of Dionne Warwick's recordings.

13 Q Now as you say in paragraph 2 of  
14 your statement that started in 1976 and that  
15 was beginning of the time when you started  
16 actually getting involved in music clearances,  
17 is that right?

18 A Yes. I had some exposure while at  
19 April Blackwood Music because I had the  
20 opportunity to work for different people in  
21 that department, including the woman in charge  
22 of licensing. So I had some exposure to it at

1       that stage, but I became more heavily involved  
2       when I moved to California.

3               Q       Okay.   Now after Hal David you  
4       ultimately moved to Taft company. Can you tell  
5       us how long you were at Taft and what your  
6       responsibilities were there?

7               A       I was with Taft or a division of  
8       Taft for 10 years from 1978 until 1988. I  
9       began with Hanna-Barbera Productions in the  
10      music department booking the recording  
11      sessions, hiring musicians. And while I was  
12      there I started investigating their music  
13      publishing operations and music licensing  
14      procedures. Taft began acquiring different  
15      companies and I started taking over the  
16      licensing administration and music supervision  
17      for each of these entities, including Quinn  
18      Martin Productions also known as QM  
19      Productions know for such programs as  
20      "Cannon," "Streets of San Francisco,"  
21      "Barnaby Jones," "The Fugitive." Sun Classic  
22      Pictures, Keith Barish Productions, a motion

1 picture entity that produced "I am Reed" with  
2 Meryl Street and Jack Nicholson and "The  
3 Running Man." Sun Classic is known for the  
4 motion picture "Cujo" and numerous other  
5 entities in the television and motion picture  
6 production area.

7 Q So the Taft company was a holding  
8 company that had a lot of different production  
9 companies and broadcast entities, is that a  
10 fair statement?

11 A Yes. The parent company would be  
12 Taft Broadcasting Company and their television  
13 motion picture holding entity would be the  
14 Taft Entertainment Company.

15 Q Now how long were you at Taft?

16 A For ten years from 1978 to 1988.

17 Q And what did you do after Taft?

18 A After Taft I started my own music  
19 consulting company called Firecat Productions  
20 where I represented master rights holders,  
21 record companies and publishing and motion  
22 picture and television companies in music

1 rights and sync publishing administration and  
2 royalty administration.

3 Q And how long did you do that?

4 A For six years.

5 Q And then what?

6 A I briefly went to Avenue Records  
7 where I worked with the COO at Avenue Records.  
8 I was involved with their video division.

9 Q Okay. And what did you do there?

10 A Oversaw their music videos that  
11 they produced for the record label.

12 Q And then, according to your  
13 résumé, you went to DIC Entertainment? Is  
14 that how you pronounce D-I-C?

15 A Yes. D-I-C, it's a French name.  
16 It's pronounced DIC. I was there for seven  
17 years.

18 Q And what was your position there  
19 and your responsibilities?

20 A I began as Vice President of Music  
21 and I was promoted to Senior Vice President of  
22 Music for the DIC Entertainment Company as

1 well their DIC Music, their publishing  
2 operations. And I oversaw their music  
3 clearance and licensing operations as well as  
4 publishing and music supervision.

5 Q And what does DIC Entertainment  
6 do?

7 A It's a television production  
8 company best known for their animated programs  
9 including "Inspector Gadget" and Emmy Award  
10 winning "Madeline."

11 Q And then after DIC?

12 A After DIC I went to work for Music  
13 Reports, Inc. where I held positions as Vice  
14 President of Licensing for Music Reports, Inc.  
15 and also for their transactional licensing  
16 division I held the post of Senior Vice  
17 President of Music for Copyright  
18 Clearinghouse.

19 Q Okay. Copyright Clearinghouse,  
20 Inc. is an affiliate of MRI, is that right?

21 A Yes, that's correct.

22 Q And then I think in your testimony

1       you mentioned that you spent a year hiatus  
2       from MRI at eMusic.    What did you do at  
3       eMusic?

4             A       At eMusic I oversaw a ten person  
5       team in Internet music research and licensing  
6       activities where I held the post of Vice  
7       President of Music Licensing.

8             Q       So if I get it right, it's well  
9       over 25 years you've been involved in music  
10      clearance activity?

11            A       I confess to that.

12            Q       Okay.    Can you tell us in your  
13      current position at MRI is there a staff that  
14      you supervise with respect to licensing  
15      transactions?

16            A       Yes.    There's a five person team  
17      that I supervise.

18            Q       Okay.    Now is the clearance of  
19      sync and master use license is part of your  
20      responsibility?

21            A       Yes, it is.   We have a number of  
22      clients that we perform master and sync

1       licensing.

2               Q       And what kind of master and sync  
3       license clients does MRI have now?

4               A       I     am     under     confidentiality  
5       provisions with respect to the clients, but I  
6       can answer the question.

7               Q       Okay.  Is the mere fact that the  
8       client engages MRI confidential if we don't go  
9       into the actual specifics of the license  
10      terms?

11              A       No.  I think I could mention the  
12      client.

13              Q       Okay.  Good.  So why don't you  
14      give the panel an idea of some of the clients  
15      for whom you engage in sync and master use  
16      license transactions currently at MRI?

17              A       Okay.  Clients include USA Network  
18      and the SciFi Channel, QVC, Comcast Cable  
19      Communications, Inc.  We have a new client  
20      called Send a Song.

21              Q       And is Copyright Clearinghouse  
22      also still involved in the clearance of master



**This document may not be copied or shared  
with a third party without the express  
permission of Neal R. Gross Co. XXVII-17**

1 use and sync licenses for different clients?

2 A Yes. Actually, the QVC -- QVC,  
3 the SciFi Channel and USA all -- the services  
4 are performed for those entities under the  
5 name of Copyright Clearinghouse.

6 Q Now let me ask you generally can  
7 you tell the Panel what the typical process is  
8 if there is a typical process involved in how  
9 one goes about obtaining the clearance of a  
10 sync right and a master use right in a motion  
11 picture or a television show?

12 A Yes. One usually begins with a  
13 script and reads the script to determine any  
14 specific songs or recordings that are  
15 mentioned or scenes in the script that imply  
16 a certain type of music or a certain period of  
17 time needs to be evoked. And then --

18 Q Let me have you pause right there.  
19 When you say you're reading a script, you're  
20 working with the entity that's producing the  
21 actual motion picture film or the TV show, is  
22 that right?

**This document may not be copied or shared  
with a third party without the express  
permission of Neal R. Gross Co. XXVII-18**

1           A       Yes. In the television area it's  
2 usually the producer of the television program  
3 and in motion pictures it's usually the  
4 Director who you're communicating with in  
5 terms of creative ideas.

6           Q       Okay. So you can carry forward  
7 then after, you know, you've mentioned looking  
8 at the script. I just wanted to be clear  
9 about that.

10          A       Okay. Generally have a meeting  
11 with the producer or director to discuss the  
12 uses of music in the film and what their ideas  
13 are. And you look at that in conjunction with  
14 the budget you have for that particular  
15 project.

16                    You then research any songs and  
17 recordings as to the owners of those rights to  
18 determine the proper rights holders that you  
19 need to contact to secure the rights.

20                    You determine what the uses are,  
21 where the program or motion picture are going  
22 to be distributed to determine the territory

**This document may not be copied or shared  
with a third party without the express  
permission of Neal R. Gross Co. XXVII-19**

1 and the types of usages and the media as well

2 --

3 Q Once again let me just pause  
4 because you're very close to this and this is  
5 new, I think, to the Panel. And you say  
6 "types of use." Are there different types of  
7 use of music that are important in letting the  
8 sync rights owner or the master use rights  
9 owner know what prices might be appropriate?

10 A Yes. In two different areas. One  
11 is the actual use of the piece of music within  
12 the project and how it is used, such as it's  
13 a visual/vocal performance where a character  
14 is performing on camera or lip-synching on  
15 camera.

16 A background instrumental use.  
17 These -- a -- a featured use, such as a dance  
18 performance.

19 There different types of uses  
20 affect the fee that will be involved. In  
21 addition, you have different media  
22 distribution, whether it's network television,

**This document may not be copied or shared  
with a third party without the express  
permission of Neal R. Gross Co. XXVII-20**

1 cable television or Internet use or other  
2 types of media and that depending upon how  
3 broad of rights you require affects the fee.

4 Q Is that true with respect to both  
5 the sync rights and the master use rights?

6 A Yes, it is.

7 Q Okay. Now you were mentioning  
8 that you tell the sync rights owner and the  
9 master use rights owner what type of use is  
10 contemplated. And carry on from there, if you  
11 will, in the process.

12 A In addition to how the piece of  
13 music will be depicted in the movie with a  
14 scene description and the type of use, such as  
15 a visual vocal or a background instrumental or  
16 a featured performance, you also discuss the  
17 territory, what rights are required such as  
18 for television, for cable, for network. The  
19 term of the license if it's in perpetuity or  
20 for weeks. And any other factors that could  
21 effect the fee or your distribution, whether  
22 you require promotional rights or for promos

1 or trailers, things of that nature.

2 Q Okay. All right. Then once you  
3 advise the rights holder of the nature of the  
4 uses that you wish to make, what's next in the  
5 process between then and actually getting to  
6 the point of a signed agreement or a  
7 transaction relating to the sync right or to  
8 master use right?

9 A You generally are required to send  
10 a written notification conveying the deal  
11 points. And it's customary unless there are  
12 other factors involved to have the record  
13 company or music publisher advise you as to  
14 their fee quote. So you send a written  
15 request and you follow-up by telephone usually  
16 with the Director of TV Film Licensing or for  
17 the master with an attorney in the business  
18 affairs area. And then you follow-up by phone  
19 to see whether you can get a fast response.

20 They generally quote you a fee or  
21 they will send a written response with a fee.  
22 And frequently you communicate with them to

1 secure reduction in the fee quote.

2 Q So there's a back and forth in the  
3 negotiation process between you and the rights  
4 holder typically?

5 A Yes. There generally is. Again,  
6 it depends the more limited the use and the  
7 more customary the less negotiation. But for  
8 network television or motion pictures there  
9 tends to be a greater level of negotiation  
10 involved.

11 Q If the licensor, whether it be the  
12 master use right owner or the sync rights  
13 owner, perceives that you have very few  
14 choices for the music use that you're seeking  
15 to get licensed, does that affect a  
16 negotiation over price?

17 A I'm sorry, would you mind  
18 repeating?

19 Q If the licensor, whether it be a  
20 master rights owner or a sync rights owner,  
21 perceives that you don't have much choice in  
22 the different titles that you might use for

1 the particular use you want, does that affect  
2 the negotiation of price in the process you're  
3 describing?

4 A Yes. If you wanted to use a song  
5 that was number one that week on the billboard  
6 charts and that master recording as well, you  
7 would be very limited in your ability to  
8 negotiate at all. But if you have options such  
9 as if you were using a standard song and you  
10 have numerous recordings available or you have  
11 a dance scene and you can use any number of  
12 pieces of music, songs or masters, that will  
13 affect how much you pay for that particular  
14 piece of music.

15 Q Now in paragraph 5 of your written  
16 statement -- let me ask it outside of the  
17 context. I mean, you mentioned that you seek  
18 to negotiate and do negotiate both sync rights  
19 and master use rights. Are there times when  
20 you negotiate only the rights to the  
21 publishing rights, the sync rights and master  
22 use rights are not involved?

**This document may not be copied or shared  
with a third party without the express  
permission of Neal R. Gross Co. XXVII-24**

1           A       Yes.  That happens a lot in  
2 animation where you have characters performing  
3 on camera and you're using voice actors so  
4 you're creating your own master recording and  
5 you do not need to license the master rights.  
6 You only need the underlying musical  
7 composition.

8           Q       And that's because there's no  
9 prior recording that you're using in that  
10 scene?

11          A       Correct.  You're creating an  
12 original recording.

13          Q       Would that apply to with respect  
14 to live performances?

15          A       Yes.       Concert performances,  
16 "American Idol" is an example where persons  
17 are performing live or create their own  
18 recordings.  So those are additional examples.

19          Q       Now in your experience when  
20 synchronization and master uses are cleared  
21 for use of the same piece of music in a given  
22 film or TV show, is there any typical



1 relationship in the cost of securing those  
2 rights?

3 A In my experience almost always the  
4 cost of the master recording and the cost of  
5 the underlying musical composition when  
6 licensing the same rights for the same project  
7 for the same use are almost always the same.

8 Q And are there any particular  
9 features of the negotiations with publishers  
10 and record labels in relation to these rights  
11 that you attribute to that result?

12 A Yes, I do. Both parties require  
13 most favored nations clauses that they receive  
14 whatever the publisher receives or whatever  
15 the master rights holder receives.

16 Q And has this notion of most  
17 favored nations clauses being requested by  
18 publishers or master use owners always been  
19 the case or has that increased over the last  
20 several years?

21 A In my long career it has not  
22 always been the case. But I would say at least

**This document may not be copied or shared  
with a third party without the express  
permission of Neal R. Gross Co. XXVII-26**

1 the last six years, if not more, it has become  
2 standard operating procedure.

3 Q Now in paragraph 7 of your  
4 statement you say that there are some  
5 exceptions to the situation of the master and  
6 sync costing the same or substantially the  
7 same. Can you tell the Panel some examples of  
8 the circumstances or situations in which there  
9 tends to be a deviation from the sync and  
10 master bearing the same price?

11 A Sometimes when you use standard  
12 songs like "New York Yew York" or "The Shadow  
13 of Your Smile" you have a number of options  
14 available with respect to the master  
15 recordings. So you may not pay the same fee  
16 for the master and for the underlying  
17 composition when dealing with different rights  
18 holders because you can negotiate with several  
19 labels in that particular instance. Or  
20 another example may be where a particular  
21 recording artist's work is required but you  
22 have some options as to what song you might

1 want to use, so you have some options  
2 available which will allow you to negotiate a  
3 better rate.

4 Q Just to be clear, in the first  
5 example you gave the likely result would be  
6 that the publishing rights would cost more  
7 than the master rights. And in the second  
8 example you gave it would flip over; the  
9 master use would probably command a higher  
10 price than the publishing rights?

11 A Yes, that is correct.

12 Q Are there other instances that you  
13 can think of where record companies instead of  
14 seeking a higher price or willing to discount  
15 their works?

16 A On occasion I have found that a  
17 master rights holder may want to promote a new  
18 artist or band and might offer you a recording  
19 by up and coming performer to fill, for  
20 example, a dance sequence where you have some  
21 options available or a club scene, and may  
22 offer that at a discounted price.

1           Q       Now do the situations that you've  
2       described that are not situations where the  
3       master and sync bear the same price, how would  
4       you describe the frequency with which those  
5       transactions occur as opposed to the  
6       transactions in which the sync and the master  
7       bear the same price?

8           A       It's very rare that you do not pay  
9       the same fee for the master recording as you  
10      do for the underlying composition in today's  
11      market.

12          Q       I don't think I have anything  
13      further, Ms. Ulman. Thank you very much.

14                   CHIEF JUDGE SLEDGE:    Ms. Albin,  
15      any questions?

16                   MS. ALBIN:    No, Your Honor.

17                   CHIEF JUDGE SLEDGE:            Any  
18      examination by SoundExchange?

19                   MR. HANDZO:    Yes, Your Honor.

20                                    CROSS EXAMINATION

21                   BY MR. HANDZO:

22          Q       Good morning, Ms. Ulman. My name

**This document may not be copied or shared  
with a third party without the express  
permission of Neal R. Gross Co. XXVII-29**

1 is Dave Handzo. I represent SoundExchange.

2 Ms. Ulman, first I want to be  
3 clear on something. You described a process  
4 where you find out what music is needed for a  
5 TV show or a movie and then there's contact  
6 initiated with the record labels and the  
7 publishers and you get a price quote. When it  
8 comes to actually negotiating the financial  
9 terms, if there's any back and forth on that,  
10 are you the person who is actually  
11 negotiating?

12 A Yes.

13 Q Okay. And on whose behalf are you  
14 negotiating?

15 A Generally the producer or the  
16 director of the project, or the motion picture  
17 or television, or actually cable companies as  
18 well.

19 Q Okay. So I take it that it's your  
20 job to get the lowest rate that you can?

21 A Yes.

22 Q And is that generally true of

1 MRI's business generally that it is in the  
2 business of getting lowest royalty rates as it  
3 can for its clients.

4 A I'm sorry, could you say that --

5 Q Sure. Let me restate. What you're  
6 doing for your client is that generally the  
7 business of MRI to get the lowest royalty  
8 rates that it can for its clients?

9 A No, it's not just about getting  
10 the lowest royalty rates. We have to be able  
11 to secure the music that people want to use in  
12 the project. So while we're always interested  
13 in getting a reasonable fee, we have to be  
14 able to acquire the rights, otherwise we  
15 couldn't be a music clearing and licensing  
16 business.

17 Q Okay. But you want to pay the  
18 lowest price you can for the music that you  
19 want, is that right?

20 A No. Our clients want to pay the  
21 lowest price that they can and still have the  
22 music that they'd like to use.

**This document may not be copied or shared  
with a third party without the express  
permission of Neal R. Gross Co. XXVII-31**

1           Q     Okay.  And you want to get what  
2     your clients want, right?

3           A     Yes.

4           Q     Okay.  In preparing your testimony  
5     did you actually do any research into the  
6     deals that have been done by MRI or by  
7     Copyright Clearinghouse to actually get  
8     amounts paid for sync rights and master uses  
9     and compare them?

10          A     No.  I did only from my  
11     recollection and personal experience, I didn't  
12     research any of the files.  No.

13          Q     So you didn't actually go back and  
14     crunch any numbers?

15          A     I communicated with other music  
16     executives in the industry who also perform  
17     music licensing and clearance services to  
18     compare my own experiences with their recent  
19     experiences.

20          Q     Okay.

21          A     But I did not specifically crunch  
22     numbers, no.

**This document may not be copied or shared  
with a third party without the express  
permission of Neal R. Gross Co. XXVII-32**

1           Q     Okay.   Now with respect to the  
2           licensing sync rights and master use rights,  
3           I think you've indicated that there are a lot  
4           of different factors that go into what gets  
5           paid for those?

6           A     Yes.

7           Q     For example, whether the music is  
8           going to be used as background for some more  
9           featured use?

10          A     That is correct.

11          Q     Or rather there is going to be a  
12          visual vocal, right?

13          A     Yes, that affects the price.

14          Q     And how the artist production is  
15          going to be distributed is another factor that  
16          gets considered in setting the price?

17          A     Yes.

18          Q     Like whether it's a video or  
19          whether it's a movie or whether it's TV; those  
20          are all factors?

21          A     Yes.

22          Q     Any other factors that you can



**This document may not be copied or shared  
with a third party without the express  
permission of Neal R. Gross Co. XXVII-33**

1 think of that tend to affect the price here?

2 A The territory involved, the length  
3 of the term. Those are the things that come  
4 immediately to mind.

5 Q Okay. So is it fair to say that  
6 there are a number of factors that are unique  
7 to the movie and TV business that affect the  
8 price here?

9 A I'm not 100 percent sure what you  
10 mean by unique, but yes there are a number of  
11 factors that do affect the price.

12 Q Okay. Now when there is a  
13 negotiation for the master use, I take it that  
14 one of the things that factors into that  
15 negotiation is whether there is other  
16 performances of the same musical work that you  
17 could use in your production, correct?

18 A Yes.

19 Q So if there are other performances  
20 that you could use, you've got greater  
21 negotiating leverage, right?

22 A Yes, that is correct.

**This document may not be copied or shared  
with a third party without the express  
permission of Neal R. Gross Co. XXVII-34**

1           Q       And you also have the ability to  
2       just go out and rerecord the music, right?

3           A       Yes.

4           Q       So that winds up also being a  
5       negotiating leverage that you have, right?

6           A       Yes.

7           Q       Ms. Ulman, in your work at MRI do  
8       you work with Mr. Gertz?

9           A       I do work with Mr. Gertz.

10          Q       Do you report to Mr. Gertz?

11          A       No, I do not.

12          Q       Okay. Is Mr. Gertz the person who  
13       asked you to get involved in testifying in  
14       this case?

15          A       Mr. Gertz contacted me and asked  
16       me if I would have a conversation with Mr.  
17       Steinthal about television/motion picture  
18       rights.

19          Q       Okay. And did Mr. Gertz tell you  
20       why he wanted you to do that?

21          A       He didn't really give me any --  
22       much information. He asked me if I would have

1 a conversation with Mr. Steinthal.

2 Q Do you recall what information he  
3 did give you?

4 A He -- I think he said there were  
5 some rate proceedings and would I have a  
6 conversation with Mr. Steinthal about  
7 television and motion picture music licensing.

8 Q Anything beyond that that you can  
9 recall?

10 A Not that I recall.

11 Q Okay. Are you aware that Mr.  
12 Gertz has also testified in this case?

13 A I'm -- I'm aware that he -- he did  
14 testify.

15 Q Did you discuss Mr. Gertz' oral  
16 testimony with him before you came here today?

17 A I did not.

18 Q Now you mentioned earlier that you  
19 had conversations with other people in the  
20 industry, right?

21 A Yes.

22 Q Let me just give you we have

**This document may not be copied or shared  
with a third party without the express  
permission of Neal R. Gross Co. XXVII-36**

1 marked as SoundExchange trial Exhibit 77.

2 (Whereupon, the document  
3 was marked as  
4 SoundExchange Exhibit 77  
5 for identification.)

6 BY MR. HANDZO:

7 Q Ms. Ulman, do you recognize this  
8 document?

9 A Yes, I do.

10 Q Those are your notes of your  
11 conversations, correct?

12 A Well, I submitted notes to the  
13 Weil Gotshal firm, so I assume these are them.

14 Q Okay. You submitted handwritten  
15 notes?

16 A No. I submitted these typewritten  
17 notes.

18 Q Okay. So you created this  
19 document?

20 A I did.

21 Q Okay. All right.

22 MR. HANDZO: Your Honor, I'm going

**This document may not be copied or shared  
with a third party without the express  
permission of Neal R. Gross Co. XXVII-37**

1 to move the admission of SoundExchange trial  
2 Exhibit 77.

3 CHIEF JUDGE SLEDGE: Any objection  
4 to Exhibit 77?

5 MR. STEINTHAL: No objection.

6 CHIEF JUDGE SLEDGE: No objection,  
7 the exhibit is admitted.

8 (Whereupon, the document  
9 previously identified as  
10 SoundExchange Exhibit 77  
11 was received in  
12 evidence.)

13 BY MR. HANDZO:

14 Q Ms. Ulman, I assume that this  
15 document reflects all of the conversations  
16 that you had with other people in the industry  
17 in preparation for your testimony?

18 A Actually this was in preparation  
19 for my written testimony. Yes, that's correct.

20 Q Okay. But this is all of the  
21 conversations that you had in connection with  
22 preparing your written testimony, right?

1 A Yes.

2 Q Okay. And it looks to me like  
3 you've had six conversations here?

4 MR. STEINTHAL: Are you referring  
5 to the first two pages?

6 MR. HANDZO: No.

7 THE WITNESS: I actually had seven  
8 because I had two communications at -- with  
9 parties at Copyright Clearinghouse.

10 BY MR. HANDZO:

11 Q Okay. Now let me ask you to take  
12 a look for a second at your written statement  
13 at paragraph 6.

14 A One second. Okay. I'm sorry.  
15 Say.

16 Q Yes. If you'd look at your written  
17 statement that you have there on paragraph 6.  
18 I'm sorry. I should say paragraph 7. And do  
19 you see there where it says that the sync  
20 rights and the master use right are  
21 independent rights controlled by different  
22 rights owners and their agents?

**This document may not be copied or shared  
with a third party without the express  
permission of Neal R. Gross Co. XXVII-39**

1           A       Yes.

2           Q       Okay.  And if you go back to your  
3 notes the first person you talk to, Pat Woods,  
4 seems to indicate that the reason the rates  
5 are one-to-one is that most artists is self-  
6 contained and write their own songs, do you  
7 see that?

8           A       Yes.

9           Q       All right.  And you got the same  
10 statement from the next person you talked to,  
11 Mr. Winogradsky?

12          A       Yes.

13          Q       So it appears there that you're  
14 talking to people who seem to represent  
15 situations where the owners of the master use  
16 right and the sync right are the same?

17          A       No, that is not the case.  The  
18 artist's value there composition skills  
19 equally with their performance skills, but  
20 they are -- their rights are not controlled by  
21 the same parties.  The rights are held by a  
22 music publisher with respect to musical

**This document may not be copied or shared  
with a third party without the express  
permission of Neal R. Gross Co. XXVII-40**

1 compositions. And the performance rights are  
2 held for the master recordings by record  
3 labels.

4 Q Okay. Well, I'm looking at your  
5 notes of your conversation with Pat Woods and  
6 it says approvals for the use of the master or  
7 the song go through the same personnel. Do you  
8 see that?

9 A Well, it's not uncommon for the  
10 manager of an artist who is also the song  
11 writer or a song/songwriter to be involved in  
12 the approval process, particularly in a motion  
13 picture.

14 Q Okay. So in that --

15 A So they would be aware of what  
16 fees are being paid on both sides.

17 Q Okay. And they would have some  
18 input into the decision?

19 A They would have a lot of input  
20 into the decision.

21 Q And so it's natural in that  
22 circumstance that where there is one person



1 negotiating for the rights -- for both rights,  
2 there is no reason why they're going to value  
3 them differently if -- if it's all money going  
4 into the same pocket?

5 MR. STEINTHAL: Your Honor, I  
6 don't think that characterizes the testimony  
7 correctly. I don't think she said there's one  
8 person negotiating for both rights.

9 CHIEF JUDGE SLEDGE: Mr. Handzo?

10 MR. HANDZO: Yes.

11 BY MR. HANDZO:

12 Q The testimony as I understand it  
13 is that regardless of who may be the point  
14 person, there is a manager involved who is  
15 having significant input into the decision, is  
16 that correctly characterizing your testimony?

17 A Songs today are rarely written by  
18 one party, so there are multiple parties  
19 involves. Often times members of the song  
20 writing team are not necessarily the artist or  
21 the band or singular performer. And so you  
22 need to acquire the underlying composition

**This document may not be copied or shared  
with a third party without the express  
permission of Neal R. Gross Co. XXVII-42**

1 rights from numerous parties. One -- one of  
2 those parties and possibly more than one of  
3 the publisher entities may in fact be artists  
4 or band members, but nowadays with music  
5 producers and -- or just pure songwriters, you  
6 have to deal with a lot of parties who have no  
7 relationship to the band other than in the  
8 writing, for example.

9 So while it may be true that there  
10 are managers involved for the artist who is  
11 also involved on the masters' side getting  
12 approvals from the record company even though  
13 they're separate entities, there are co-  
14 writers involved who are represented by  
15 publishers who don't have any relationship  
16 with either the artist or the record company  
17 other than the songwriting and not controlled  
18 by the manager.

19 Q I'm trying to understand your  
20 conversation with -- I'm not sure whether it's  
21 Ms. or Mr. Woods here.

22 A Ms.

**This document may not be copied or shared  
with a third party without the express  
permission of Neal R. Gross Co. XXVII-43**

1 Q Ms.

2 A You are correct that -- with  
3 respect to the extent that they were  
4 representing a songwriter in these cases who  
5 was also an artist that a manager was  
6 frequently involved for the band  
7 artist/songwriter. And so that manager would  
8 have awareness. But ultimately it's the  
9 record company and the publisher that set the  
10 price. The manager may set a floor or may  
11 just say yes or no because occasionally some  
12 artists do not like their works used in motion  
13 pictures or television. And more often than  
14 not if there is a no, if you're unable to  
15 secure the rights, it's because the -- it's a  
16 creative decision that they choose not to do  
17 it and that would come through the manager.  
18 But the fee is ultimately set by the publisher  
19 and the record company.

20 Q And in this instance, at least,  
21 that Ms. Woods is talking with significant  
22 input by the manager whose representing an

**This document may not be copied or shared  
with a third party without the express  
permission of Neal R. Gross Co. XXVII-44**

1       artist who is both the songwriter and the  
2       performer, right?

3             A       In those instances, yes.

4             Q       Okay. And that's essentially the  
5       same thing that Mr. Winogradsky was saying?

6             A       Well, he says other things as  
7       well, but he may be saying that also.

8             Q       If you turn to the next page of  
9       these notes where you're having a conversation  
10      with Ms. Hunsacker. And she gave you an  
11      example of a situation involving a songwriter  
12      named Holly Knight. Do you see that?

13            A       Yes, I do.

14            Q       And apparently Tina Turner  
15      performed one of Holly Knight's compositions?  
16      Do you see that?

17            A       Yes, I do.

18            Q       Okay. Am I correct in reading  
19      this that the record company that controlled  
20      the Tina Turner sound recording didn't want to  
21      license its use?

22            A       Yes.

**This document may not be copied or shared  
with a third party without the express  
permission of Neal R. Gross Co. XXVII-45**

1           Q     And is it also right that Ms.  
2     Knight had actually performed her own version  
3     of the song?

4           A     Yes.

5           Q     And so this was a situation where  
6     the record company didn't want to license the  
7     Tina Turner use or they wanted to charge too  
8     much, there was an alternative; just use the  
9     Holly Knight version, right?

10          A     In this particular instance.  
11     However, there are examples when producers or  
12     directors have their heart set on a particular  
13     recording and they just have to have this  
14     particular artist and nothing else will  
15     satisfy them.

16          Q     But I'm correctly understanding  
17     this situation, correct?

18          A     Yes, you are. In this -- in this  
19     situation that became a plan B that was an  
20     acceptable plan B.

21          Q     Okay. Now you also indicated that  
22     there are times when the record companies want

**This document may not be copied or shared  
with a third party without the express  
permission of Neal R. Gross Co. XXVII-46**

1 to get some promotional value out of the use  
2 of their music, right?

3 A Yes.

4 Q For example, they have a new  
5 artist that they want to feature, right?

6 A (No audible response).

7 Q I'm sorry. You have to answer out  
8 loud, sorry, for the court reporter.

9 A Oh, I apologize. Yes, sir.

10 Q And there may also be situations  
11 where the record company wants to have the  
12 name of the label or the artist or the song  
13 featured in the credits of the movie, right?

14 A Where they want to?

15 Q Yes.

16 A No. It's usually a requirement.  
17 It's not something anybody wanted to do. But  
18 the labels require them to put credits in the  
19 -- in the projects.

20 Q Okay. There was some mention in  
21 your conversations with, I think Mr.  
22 Winogradsky, about getting consideration in

1 the form of putting the artist and label  
2 information on an art card?

3 A In exchange for a lower fee there  
4 are occasions where that may be an offer where  
5 budgetary considerations and ability in terms  
6 of the project you're doing make that an  
7 option.

8 Q What is an art card?

9 A It's generally Chyron that you see  
10 in the lower part of your screen or in the  
11 upper corner of your screen that lists the  
12 name of the artist and the name of the song.  
13 And on stations on MTV it may also include the  
14 video director.

15 Q And the record companies negotiate  
16 to get features on art cards or other  
17 promotional consideration?

18 A It's -- it's usually specific to a  
19 type of -- a type of project that might make  
20 that available in exchange for lower -- a  
21 lower fee compensation.

22 MR. HANDZO: That's all I have,

**This document may not be copied or shared  
with a third party without the express  
permission of Neal R. Gross Co. XXVII-48**

1 Your Honor. Thank you.

2 CHIEF JUDGE SLEDGE: Any redirect,  
3 Mr. Steinthal?

4 MR. STEINTHAL: Very short, Your  
5 Honor.

6 REDIRECT EXAMINATION

7 BY MR. STEINTHAL:

8 Q Ms. Ulman, Mr. Handzo asked you a  
9 number of questions about factors that affect  
10 the price of a sync or master use situation.  
11 I just want to confirm one thing. Those  
12 factors he went through, whether it be the  
13 type of use, the territory, the duration, et  
14 cetera, do those factors affect both the sync  
15 license price and the master use license  
16 price?

17 A Yes, they do.

18 Q Okay. Now, Mr. Handzo asked you  
19 about your notes of these calls. First of  
20 all, he asked you about the circumstance where  
21 there may be a use involving a writer/singer,  
22 or an artist, a writer/performer. Let me ask



**This document may not be copied or shared  
with a third party without the express  
permission of Neal R. Gross Co. XXVII-49**

1       you this: Is there any difference in the  
2       conclusions you've reached in the substance of  
3       your testimony that the sync rights and master  
4       use rights are generally bear the same fee, is  
5       there any difference that derives from the  
6       fact that the music involved is from a  
7       singer/songwriter as opposed to if it's not a  
8       singer/songwriter?

9               A       No. There is no difference. An  
10       example I'd like to share with you is Holly  
11       Knight, that something that happened in the  
12       last couple of weeks. I was clearing a Bon  
13       Jovi song for a Bon Jovi performance that  
14       involved master and sync and Ms. Knight is a  
15       cowriter on a Bon Jovi song and it's a  
16       situation where she has nothing to do with the  
17       band, I mean other than as a cowriter but  
18       she's not a member and doesn't go through the  
19       same manager. And nevertheless, all the rights  
20       are MFN with all the other Bon Jovi  
21       songwriters. So I have found that with a  
22       master and with the master recording equally

**This document may not be copied or shared  
with a third party without the express  
permission of Neal R. Gross Co. XXVII-50**

1 that there is no difference whether they're  
2 singer/songwriters or independent writers.

3 Q Okay. Now I don't want to read  
4 all of your notes of your calls because  
5 they're now in evidence and we can cite them  
6 later, but let me ask you this question: Did  
7 the comments that you received from the  
8 different people that you contacted concerning  
9 their experiences in clearing master use and  
10 sync rights, what did they tell you with  
11 respect to whether your experience was similar  
12 to their experience?

13 A All of them had the same  
14 experience I had where when licensing  
15 television and motion picture songs and  
16 recordings for the same use and the same  
17 project, that both the compensation to the  
18 master rights held or the compensation for the  
19 music publishers were the same.

20 MR. STEINTHAL: I have no further  
21 questions.

22 CHIEF JUDGE SLEDGE: Mr. Handzo,

**This document may not be copied or shared  
with a third party without the express  
permission of Neal R. Gross Co. XXVII-51**

1 anything further?

2 MR. HANDZO: No, Your Honor.

3 CHIEF JUDGE SLEDGE: Any questions  
4 from the Bench?

5 JUDGE WISNIEWSKI: Just one.

6 Ms. Ulman, in contacting these  
7 various people how did you happen to choose  
8 the people that you contacted?

9 THE WITNESS: They were both  
10 people that I knew. They are people who I --  
11 came from different ends of the business. One  
12 was in charge of motion pictures, one came  
13 from a major music publishing entity, one  
14 worked for a law firm that represents  
15 singer/songwriters, a couple of use companies  
16 were in the music clearance business usually  
17 representing producers and, you know, having  
18 independent viewpoint. And one was from a  
19 record label that licensed masters. So I  
20 thought it was a nice spectrum of rights  
21 holders who are involved in music licensing.

22 JUDGE WISNIEWSKI: Thank you.

**This document may not be copied or shared  
with a third party without the express  
permission of Neal R. Gross Co. XXVII-52**

1 CHIEF JUDGE SLEDGE: You said one  
2 thing that puzzled me. That the factors for  
3 setting the fees includes territory?

4 THE WITNESS: Yes.

5 CHIEF JUDGE SLEDGE: I would think  
6 that territory is a matter determined after  
7 the release and based on the popularity of the  
8 release. Doesn't the territory change if  
9 something is popular and then it goes around  
10 the world?

11 A Well, unfortunately, Your Honor,  
12 if you waited to see how popular a program  
13 was, then as a licensing person both the  
14 master rights holders and the music publishers  
15 would charge you an arm and a leg for the fees  
16 that you had synchronized to your film and it  
17 would cost you tens of thousands if not  
18 hundreds of thousands of dollars to remove  
19 that piece of music. So you need to ensure  
20 that you have broad rights to distribute your  
21 program, but what you try to do is create  
22 options where you don't have to pay that fee

**This document may not be copied or shared  
with a third party without the express  
permission of Neal R. Gross Co. XXVII-53**

1       today and you don't have to wait to see how  
2       well the project does so that you can lock in  
3       the cost that's reasonable to all the parties  
4       and the producer isn't taken advantage of if  
5       a project does extremely well.

6                   CHIEF JUDGE SLEDGE:     Does that  
7       mean that every agreement always includes  
8       worldwide distribution?

9                   THE WITNESS:    No.  No.  But what is  
10       frequently done but not always is you basic  
11       hear, for example, U.S. rights only with an  
12       option to exercise in 18 months at a set price  
13       to expand that territory to the world or you  
14       may secure rights for five years now with an  
15       option exercisable in 18 months to change that  
16       term to in perpetuity or 15 years, or to add  
17       additional media such as Internet distribution  
18       or home video rights.

19                   CHIEF JUDGE SLEDGE:   Thank you.

20                   JUDGE WISNIEWSKI:   Just following  
21       up on Judge Sledge's question there, wouldn't  
22       the rights holder, you mentioned that if they

1 knew it was going to be a hit, that they would  
2 want to charge an arm and leg for their  
3 rights. Wouldn't the rights holder have a  
4 pretty good view how much to charge depending  
5 on who they were dealing with on the other  
6 end?

7 A It is true that if you're dealing  
8 with certain studios, particularly in the  
9 motion picture field, it is possible that  
10 rights holders go into it knowing that that  
11 company will pay a higher fee just like I know  
12 certain publishers and labels charge more  
13 money than other labels and publishers, and I  
14 know that going into it. But there are  
15 advantageous to being connected with certain  
16 projects.

17 Television is sort of the hardest  
18 thing to determine, particularly with a new  
19 program. It's really difficult to ascertain  
20 how well a show is going to do, whether it  
21 will last three episodes or -- or ten years.  
22 So -- and it is very difficult once you

**This document may not be copied or shared  
with a third party without the express  
permission of Neal R. Gross Co. XXVII-55**

1       synchronize music with your project to take  
2       that music out, the cost is prohibitive. So  
3       it's a give and take because it is a  
4       relatively small community and if there's too  
5       much advantage taken on one project, you're  
6       less likely to go back to that rights holder  
7       again if you can avoid it. So there is some  
8       give and take in the negotiating process.

9                   JUDGE WISNIEWSKI: Thank you.

10                   CHIEF JUDGE SLEDGE: Any other  
11       questions?

12                   Thank you, ma'am, you're excused.

13                   THE WITNESS: Thank you very much.

14                   (Whereupon, the witness was  
15       excused).

16                   CHIEF JUDGE SLEDGE: And as that  
17       is the only witness available today, we'll  
18       conclude our hearing.

19                   Mr. Steinthal?

20                   MR. STEINTHAL: That's it for  
21       DiMA witnesses. We have concluded our case on  
22       the direct part. Just wanted to make that

**This document may not be copied or shared  
with a third party without the express  
permission of Neal R. Gross Co. XXVII-56**

1 clear.

2 CHIEF JUDGE SLEDGE: All right.

3 Mr. Handzo?

4 MR. HANDZO: I don't have anything  
5 further to add.

6 CHIEF JUDGE SLEDGE: All right.

7 Okay. We adjourned, I think the proper word  
8 is sine die. And we'll come back to order  
9 when we are able based on availability of  
10 facilities with the hope that that will be on  
11 or about July 26th. And, of course, being in  
12 touch with you about that.

13 We're adjourned.

14 (Whereupon, at 10:27 a.m. the  
15 hearing was adjourned.)

16

17

18

19

20

21

22