

Wireless Carrier Infrastructure: Why Implementing and Advocating for DataRevenue.Org as a Designated Collective for MMS Data Revenue is Critical

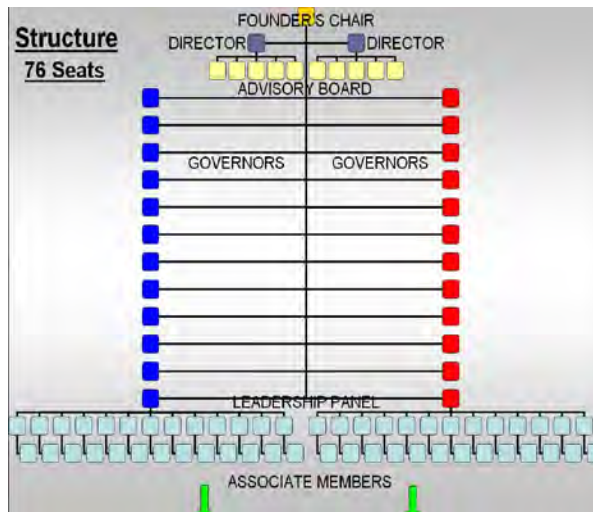
Principles of DataRevenue.Org as a Designated MMS Data Revenue Collective

- (1) Our highest priority is to provide a process for wireless carriers to flourish as multimedia co-distributors while fairly compensating MMS rights holders at the same time;
- (2) DataRevenue.Org shall consist of organizations and stakeholders representative of the multimedia community participating in the creation, distribution and publication of MMS;
- (3) DataRevenue.Org (which would include wireless carriers as governing members, as outlined in the following chart) will establish rules of governance for the administration of MMS which will equally protect wireless carriers and the holders of MMS rights;
- (4) The joint establishment of a per KB or MB throughput rate for MMS will provide a revenue pool that MMS rights holders and stakeholders may share relative to statistical input and mathematical tables for output;
- (5) The wireless carriers will not administrate the particulars and shall be insulated against copyright infringement while depositing the agreed upon throughput rate and providing transparency for the process;
- (6) While legislation may occur later, establishment of the process should begin now to prevent further copyright infringement and corporate vulnerability; we believe advocating for statutory MMS data revenue rates is in the best interests of all concerned;
- (7) The organization shall operate with full transparency, while protecting privacy rights.

Founder's Chair-1 vote
 Governor's Seat- 1 vote
 Panel Seats - 1/2 vote
 Associate's group - 2 votes

Wireless Carriers shall continuously occupy a seat within the member body

One Seat Per Entity



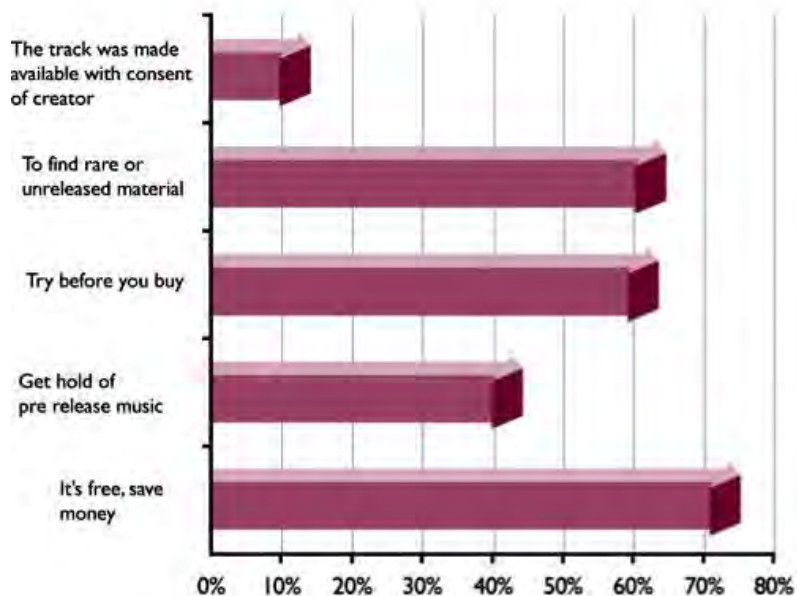
Performance rights orgs, mechanical rights orgs and other groups shall represent their members in matters of MMS data revenue sharing; Associate members shall represent themselves;

DataRevenue.Org shall sanction foreign chapters

As Mobile Networks Evolve – More Producers Will Create and Distribute Commercial MMS P2P Via Mobile Networks

- (1) DataRevenue.Org currently has member producers that are creating 30 second – 2 minute MMS videos and sound recordings that may be shared P2P on mobile networks; this is a 4 fold increase in length over what could be sent and received in early 2009;
- (2) The size of the MMS able to be shared P2P on mobile networks has doubled during the same period, (excepting 2g networks);
- (3) It should also be noted that these producers were able to send a ½ hour video from one mobile device to another mobile device. This was accomplished by breaking the video into 30 second – 2 minute parts, data optimizing the parts, sending the parts, receiving the parts, reassembling the parts and converting them back to their original state;
- (4) The above (item 3) is a description of how P2P compression and bit torrents technology is viable in this space; if the size and quality of MMS able to be sent mobile2mobile continues to progress as exemplified above, commercial MMS of richer types will be created and distributed directly to consumers on mobile networks; P2P programmers will be writing code for this space, making it possible to send an entire movie mobile2mobile, P2P within the next 5-10 years;
- (5) Thus it is reasonable to expect a large amount of P2P MMS file sharing via mobile devices just as P2P file sharing has become the “will of the people” on the Internet, (see the chart below);
- (6) **And so it is critical** for wireless carriers to be ready for these events on behalf of the U.S. Copyright system, rights holders and consumers’ preferences to share P2P.

General P2P File Sharing Stats



Source: TheRegister.com

How Do I Infringe Thee? – Let Me Count the Ways

Excerpted from Title 17 of the United States Code

§ 102. Subject matter of copyright: In general

(a) Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:

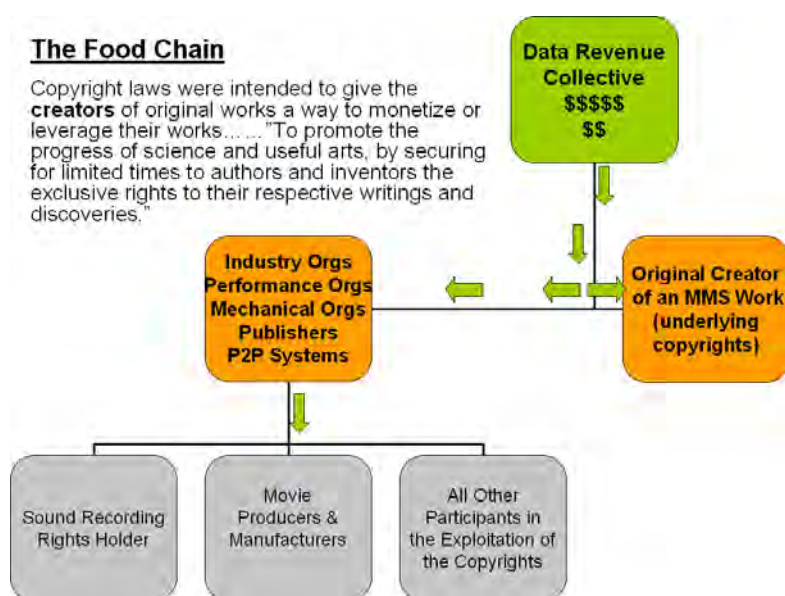
- (1) literary works;
- (2) musical works, including any accompanying words;
- (3) dramatic works, including any accompanying music;
- (4) pantomimes and choreographic works;
- (5) pictorial, graphic, and sculptural works;
- (6) motion pictures and other audiovisual works;
- (7) sound recordings; and
- (8) architectural works.

(b) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

- (1) Financially benefiting from the distribution of any of the above will be grounds for rights holders of the above to claim copyright infringement;
- (2) Financially benefiting from a performance of any of the above will be grounds for rights holders of the above to claim copyright infringement;
- (3) Participating in the publication of any of the above will be grounds for rights holders of the above to claim copyright infringement;
- (4) Participating in the broadcast of a performance of any of the above will be grounds for rights holders of the above to claim copyright infringement;
- (5) The digital age has made it easy for creators to “fix” a tangible medium of expression, and reproduce and distribute their works;
- (6) These digital age creators will be using mobile networks more and more to distribute MMS versions of their works as mobile networks evolve;
- (7) **It is critical that wireless carriers insulate themselves against the huge amount of copyright infringement** allegations that will surely arise due to the large number of “creators” empowered to exercise their copyrights protected by the Constitution of the United States of America.

DataRevenue.Org Will Utilize State of the Art Methods to Monitor, Collect and Distribute Data Revenue to Its Members

- (1) DataRevenue.Org pioneered efforts to mandate that wireless carriers allow authorized 3rd parties access to MMS throughput records to process the metadata attached to those files; a Petition for Rulemaking regarding the above was submitted to the FCC in October, 2008;
- (2) DataRevenue.Org pioneered a process that will include Colleges and Universities throughout the United States to participate in our program entitled "data dumping" whereas the sampling of opted in students' "sent and received" MMS folders on their mobile devices are uploaded regularly to our database for processing similar to audience measurement systems such as Nielsen ratings of television viewer ship;
- (3) These Colleges and Universities will be rewarded for participating in these programs on a yearly basis; it is expected they will compete for the yearly budget that goes along with this program; we anticipate that 100 schools throughout the United States will be chosen each year for this award;
- (4) Our data dumping programs may be expanded to other sectors as needed to obtain the broadest possible sampling base along with the metadata sampling of MMS throughput in order to provide the fairest disbursements possible;
- (5) Disbursements shall be made to the industry sectors as statistics dictate; the industry sector's organizations shall then share in the data revenue relative to its membership; in turn those organizations shall make disbursements to its members based upon the registration of their MMS works or other in house methods of that organization; DataRevenue.Org will make direct disbursements to Associate members based upon the registration of their MMS works; an Associate member of DataRevenue.Org may not also belong to other organizations within.



If We Can Work Together, Do We Still Need Legislation?

- (1) Setting a per KB or MB rate(s) for MMS transactions should be a relatively simple matter that could be based upon existing rates for ringtones, webcasting or other combinations of existing digital statutory rates;
- (2) Whatever rate(s) is set initially, there should be provisions for regular updates and advances in technology; we propose a bi-yearly process whereby the wireless industry can submit reasoning for or against any change in rates desired by membership; and membership can do the same;
- (3) Future legislation establishing a statutory rate(s) for MMS data revenue will be in the best interests of all as that usually allows parties to negotiate rates that may be more or less than that statutory rate; with legislation an impasse will never happen as it sometimes does in the case of labor and management disputes within unions; this also avoids injunctions and anti-trust issues;
- (4) Legislation also helps with transparency of all parties' operations;
- (5) **It is critical** that the implementation and advocacy of DataRevenue.Org as a designated collective begin immediately as there will be many impediments to the growth and strength of wireless carriers' infrastructure if this is not done soon.

Best regards,
/max davis/

Max Davis, Founder
DataRevenue.Org
22647 Ventura Blvd
Woodland Hills, CA 91364
(818) 713-1510
max.davis@datarevenue.org