
HFA Soundcheck

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INTRODUCTION

A Few Words from Our President & CEO

Gary L. Churgin

The Harry Fox Agency, Inc.

The HFA team has been extremely busy this quarter. In addition to the transformation and the implementation of our continuous improvements programs, the HFA team has also negotiated several significant digital licensing agreements on your behalf. As most of you are aware, we have entered into licensing arrangements with the RIAA, Streamwaves.com, and Listen.com with more on the way. These confirm the need for online music services to obtain mechanical licenses to make musical works available over the Internet. This second edition of "Soundcheck" highlights these latest developments and continues to communicate what's taking place at HFA. I would like to thank everyone who provided feedback and support for the first edition of "Soundcheck," and hope all of you continue to keep the lines of communication open.

NEW OFFERINGS

The agreements mentioned above authorize HFA to license **on-demand streaming** and **limited downloads** on behalf of our clients. On-demand streaming is the real-time digital transmission of a song to a consumer who has requested to listen to that song on a computer. Limited downloads are songs that are actually put on the user's hard drive and can be played for a limited period of time or limited number of times. To support these agreements operationally, HFA has developed systems that electronically process the enormous volume of license requests generated from these arrangements, and that store the license history in our database.

The RIAA Agreement

A landmark licensing agreement was reached with the Recording Industry Association of America, Inc. (RIAA). The agreement provides a framework for the licensing of music subscription services that offer on-demand streaming and limited downloads on the Internet. Most importantly, in the agreement, the RIAA has recognized the need to obtain mechanical licenses to distribute music over the Internet.

The key aspects of the agreement are as follows:

- ❑ On-demand streaming and limited downloads offered by online subscription services require mechanical licenses and payment of mechanical royalties.
- ❑ The mechanical licenses issued for Internet subscription services will be issued under the compulsory license provisions of the Copyright Act and will cover the entire process involved in offering such transmissions (from the making of server copies through the delivery to the consumer).
- ❑ The record labels will pay mechanical royalties on a retroactive basis based on the actual usage of musical works once the royalty rates have been determined. Detailed reports will be provided by the record labels to HFA to ensure that the proper royalty payments are made when the rate is finally set. Such royalties will be payable in full within 45 days after the royalty rates are finally determined.
- ❑ In compliance with Section 115, of the U.S. Copyright Act, this agreement provides that labels may authorize third party Internet services to distribute their licensed sound recordings online. However, in order to preserve the right of publishers to license Internet services directly, the agreement states that music publishers (or HFA on their behalf) also have the right to license Internet services directly.
- ❑ The record labels will pay an advance as security against payment of future mechanical royalties. The record labels have paid to HFA a \$1 million non-refundable advance (to be increased by \$750,000 after year two, payable in monthly installments, if rates are not determined within two years). This advance represents a down payment and not the actual royalties expected to be paid by the labels once rates are determined, and it will not be distributed until a rate is set.
- ❑ HFA will continue to negotiate with the RIAA to reach an agreement on the royalty rates applicable to on-demand streaming and limited downloads. If these negotiations are not successful, the matter will be submitted for arbitration as provided in the Copyright Act.

To see a copy of the agreement, please access the HFA at www.harryfox.com and click on "Press Releases."

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Streamwaves.com

HFA entered into a licensing agreement with Streamwaves.com on September 26, 2001. Streamwaves is a subscription-based service that provides on-demand streaming of genre-based music to subscribers on a song-by-song basis. The agreement enables HFA to issue licenses to Streamwaves and to collect and distribute royalties, as well as audit Streamwaves on behalf of our clients. The following royalties are to be paid for the 2-year term of the agreement:

- \$.10 for each rendition of work that is encoded and copied on to any Streamwaves' website, and
- Monthly payments based on a revenue sharing arrangement of either the greater of
 - 10% of Streamwaves' Adjusted Gross Revenue, and
 - \$1.00 per month per user/subscriber of each unique Streamwaves' service.
- If a rate for on-demand streaming is established through industry negotiation or a Copyright Arbitration Royalty Panel (CARP), the Streamwaves' rate will be adjusted to reflect the new standard.

If you did not receive a copy of the letter that we sent to our clients or for additional information, please contact our Client Relations Department at 212-834-0100.

Listen.com

HFA also entered into an agreement with Listen.com to license musical compositions to Rhapsody,™ Listen.com's online music subscription service. Rhapsody™ gives subscribers unlimited on-demand playback of a wide variety of musical content. The terms of this deal track the terms of the RIAA agreement discussed

earlier. Once royalty rates for streaming are determined through industry negotiations or by a CARP, Listen will pay royalties on a retroactive basis. Pending that determination, Listen will pay an advance toward the royalties.

If you have not received a copy of the Listen.com letter or for additional information, please contact our Client Relations Department at 212-834-0100.

HFA at AIMP in Los Angeles

On January 16, 2002, Gary Churgin will be speaking at an Association of Music Publishers (AIMP) luncheon. Gary will speak about the changes in the music industry and within HFA.

Topics include:

- Collections and Distributions Systems
- Subscription Services
- Licensing & Industry Deals
- Licensee Relationships
- Online Licensing
- Royalty Reporting

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