



# Soundcheck

Volume VI, Number 8

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## In the Courts and On the Hill

*A few words from Gary Churgin, HFA President & CEO*

In a tremendous victory for the music publishers, record labels, and movie studios, the U.S. federal district court in Los Angeles granted summary judgment against StreamCast, the distributor of the Morpheus online peer-to-peer file-sharing software, stating that “evidence of StreamCast’s unlawful intent is overwhelming.” The U.S. Supreme Court had remanded this case back to the district court for further consideration last year. The two other services that had been named in the case, Sharman Networks (Kazaa) and Grokster, are in the process of settling out of court. The NMPA has worked tirelessly with the RIAA and MPAA to pursue this case first in the district court in California, through the appeals process, then to the Supreme Court, and back to the district court. The battle is not completely over, as StreamCast could appeal, but it is incredibly gratifying to have had the district court issue such a forceful ruling in favor of copyright holders.

Many of you may have heard updates on the Copyright Modernization Act (formerly known as SIRA) from Jacqueline Charlesworth, General Counsel of the NMPA, at the September California Copyright Conference meeting, or from David Israelite, NMPA President and CEO, at the recent AIMP New York chapter luncheon. With Congress preparing to leave for the final phase of the election campaigning season, the current version of the Copyright Modernization Act was pulled from the agenda of the House of Representatives by Rep. Lamar Smith. The bill is not expected to be reintroduced until

after the New Year, when the newly-elected members take office and leadership of the House Judiciary Committee and the Intellectual Property Subcommittee is determined. In the meantime, the NMPA and other organizations will continue to work to reach a greater level of consensus on the bill. If that can be done, the path to approval should be smoother once it is reintroduced.

While the changes to the Copyright Act continue to be debated, things are beginning to heat up in the Section 115 rate proceeding before the Copyright Royalty Judges (CRJ) in Washington, DC, which will set the next schedule for statutory rates for the use of musical works in physical products and by digital services. This is the first time we will be working under the new CRJ structure, instead of the prior Copyright Arbitration Royalty Panel. The NMPA, working with songwriter organizations, is busy preparing submissions for the proceeding.

In addition, the record labels have asked the CRJs to include mastertones in the proceeding. The CRJs, in turn, have asked the Copyright Office to rule on whether mastertones should be considered the same as a permanent digital download, and therefore subject to compulsory licensing, including the ability for the label to “pass through” the license to a third party. We have vigorously opposed this motion on a variety of grounds. Publishers and ringtone providers have been successfully able to negotiate rates in the marketplace; HFA alone has offered its publishers over 15

different ringtone licensing options. We feel this is a tactic to make the piece of the revenue “pie” larger for record labels, while taking away from the songwriters and the publishers who helped establish their careers.

The NMPA, with HFA’s support, continues to press forward on behalf of the U.S. music publishing industry – if there were ever a time to be an NMPA member, it’s NOW. Now is not the time to sit on the sidelines. Numbers count in Washington, and for only \$100 per year, you will be counted as a supporter when the NMPA stands up for

music publishers’ rights and those of the songwriters you represent. To obtain a membership application, go to [www.nmpa.org](http://www.nmpa.org) or call 202-742-4375.



### **“A Day with HFA”**

**October 25 – Los Angeles**

**November 14 – Nashville**

Got questions for HFA staffers? Always wanted some in-person training on HFA Online systems like POLI+ and eMechanical? Curious about new licensing arrangements? Just want to meet members of the HFA team in person? Then come to our “temporary regional offices” at the Bel Age Hotel in West Hollywood from noon to 5pm on Wednesday, October 25. A similar event will be held in Nashville on Tuesday, November 14 at the Hilton Downtown Nashville.

HFA CEO Gary Churgin, Sr. VP Publisher Services Ed Hunt, CIO Sam Gilchrist, CFO Al Pedecine, Sr. VP Business Affairs, General Counsel and Chief Strategic Officer Michael Simon, as well as other members of the Publisher Services, Licensing, Collections & Royalty Compliance, and Business Development departments will be on hand for in-person discussions and meetings.

At 2:30pm, there will be a demonstration of the new Income Tracking Reports (ITR) tool for publishers, and at 3:00pm, a group training session on HFA’s online system for publishers, POLI+, will be held. You’ll also be able to check out great live performances from ASCAP and SESAC singer-songwriters during the afternoon.

Please RSVP by the day before the event if you’d like to attend by emailing [press@harryfox.com](mailto:press@harryfox.com) or calling 212-922-3290. Please note in your RSVP if you plan to attend the ITR and POLI+ sessions. The Bel Age Hotel is at 1020 N. San Vicente Blvd., and the Hilton Downtown Nashville is at 121 Fourth Ave. South. Both offer parking. We look forward to seeing you!

## The Harry Fox Agency and LyricFind Enter Landmark Lyrics Licensing Arrangement

HFA and LyricFind, a legal source of song lyrics online, announced today that they have entered a lyrics licensing arrangement for a variety of digital uses, such as downloads, integration with online music services and devices, and enhanced search capability for music catalogs. HFA's over 30,000 affiliated publishers will have the option of participating in this licensing arrangement, the first lyrics licensing arrangement the company has offered.

While terms are not disclosed, this arrangement is being offered to publishers on a commission-free basis – publishers will receive the gross royalties collected by HFA for use of their catalogs' lyrics; HFA will not deduct its usual 6.75% commission. Once publishers opt in to the HFA-LyricFind licensing arrangement, they will be able to add, review, and edit lyrics on LyricFind's database. The arrangement encompasses the personal use of lyrics in the U.S.

“This licensing arrangement with HFA and LyricFind will support the development of a legal, online lyrics marketplace. Properly licensed lyric databases will be a real asset to digital music services, and promote exciting new options for consumers who love music,” said Gary Churgin, President & CEO, HFA. “In addition, this arrangement shows HFA's ability to expand beyond its traditional mechanical licensing business to provide innovative licensing solutions for digital asset businesses, resulting in new revenue opportunities for its publishers.”

“LyricFind is committed to creating a robust, legal database of digital lyrics that will make online music services even more compelling,” said Darryl Ballantyne, President, LyricFind. “This arrangement with HFA enables us to reach the majority of the U.S. publishing industry, giving us the potential to grow exponentially, while revitalizing a historic revenue stream for music publishers.”

### **Reminder:**

#### **Response to LyricFind Opt In Agreement Due November 3**

The opt-in form for the LyricFind licensing agreement was sent to publishers for response by November 3, 2006. Please note that the letter mailed to you contains a unique code that you will need to access the LyricFind website once you opt in, so please retain a copy for your records.

Don't forget that publishers with HFA Online accounts are now able to view and/or act on HFA opt-in/opt-out licensing arrangements through HFA Online, rather than signing forms and faxing or mailing them back to us. After going to the main HFA Home page at [www.harryfox.com](http://www.harryfox.com), click on the “Registered User” button, and then log in with your user name and password. Once you are logged in, click the “Authorizations” tab on the top right to access the agreements. Please note that once an agreement has been acted upon, you cannot change the authorization through HFA Online. If you have any questions, please contact HFA Publisher Services at [publisherservices@harryfox.com](mailto:publisherservices@harryfox.com) or 212-834-0100.

## HFA Abroad

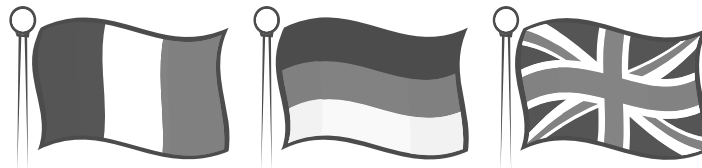
HFA is primarily known as a mechanical licensing agent for recordings manufactured and distributed in the U.S., but we also have reciprocal agreements with 33 foreign rights societies. Through these agreements, HFA can pursue royalty collections for its publishers that have elected to have HFA handle this task for them for releases manufactured in 100 territories around the world. In return, HFA performs a similar service for these foreign societies in the U.S. for their country's publishers.

Recently, HFA International agent Paul Mauceri traveled to Europe to meet with several of the larger rights societies there: the United Kingdom's MCPS, Germany's GEMA, and France's SDRM. During these meetings, we reviewed the technologies used by these societies, particularly regarding their databases, and discussed the digital activity within each society's respective country. Paul also demonstrated HFA's various online tools, including Song Inquiry, License Inquiry, License Request Inquiry, Payments Inquiry, Online License Return Approval, eSong, and online licensing agreement authorizations.

During the meeting with MCPS, they provided an overview on rates for digital usage in the UK, including the rate for ringtones, which is 15% of the wholesale price, divided 5% for performance rights and 10% for mechanical rights. MCPS also described their Joint Online License, which covers both performance and mechanical rights.

With GEMA and SDRM, much of the focus was on their technology systems and how we might more efficiently exchange data with the societies. In particular, HFA is currently in the process of gaining access to the CIS-NET/FastTrack systems in order to fully research its capabilities and how it might be integrated with our data systems.

We believe these meetings were very productive and show how HFA is dedicated to working with other mechanical rights organizations in order to find more effective ways of distributing and maintaining information and improving our international collections services. We will continue to nurture our relationships with these societies so we can better serve all of our organizations' publisher members.



## ***HFA Online: Have You Tried . . .*** **Online Royalty Statements & Royalty Direct Deposit?**

Publishers with HFA Online accounts have secure online access to the same royalty statements that are sent in paper form from HFA – except they are posted immediately to your online account, while the paper copy is in the mail, along with a copy of the check or Direct Deposit notice. You can quickly download your statement in PDF format, add electronic “sticky notes” to individual statements, sort or search for statement files or for individual transactions within the files quickly and efficiently, before the paper copy makes it to your mailbox.

To access Online Royalty Statements, first go to the HFA home page at [www.harryfox.com](http://www.harryfox.com), click on the “Registered User” button, and then log in with your user name and password. Once you are logged in, click on the “Reports” tab on the top menu bar. You can launch Online Royalty Statements by clicking either the “Reports” sub-menu item, or by clicking on the words “Online Royalty Statements” on the left menu. This will take you to a launch page. When you click on the gray “Launch Online Statements” button, this will open a new window (make sure you’ve disabled any pop-up blockers), and you will have a choice of searching your check images or your royalty reports. HFA maintains three years of past royalty statements on the website; older statements are available online by request. A complete manual is also available on the website.

Direct Deposit (also known as Electronic Funds Transfer, or EFT) is the perfect complement to Online Royalty Statements. At the same time the royalty information is being posted on HFA Online, the funds for your royalty payments are submitted electronically to your bank. Within three business days, the money is in your account – usually well before the check would arrive in the mail. You get paid faster, and there’s no risk of losing the check in transit or under a pile of papers. Through Online Royalty Statements, the deposit stub information is available immediately, so you know in advance that the money was transmitted.

If you have any questions, or would like to sign up for HFA Online or Direct Deposit, please contact HFA Publisher Services at [publisherservices@harryfox.com](mailto:publisherservices@harryfox.com) or 212-834-0100. Forms for Direct Deposit are available on our website at [www.harryfox.com](http://www.harryfox.com).

### **HFA to Speak at California Copyright Conference Meeting October 24**

HFA CEO Gary Churgin, Sr. VP Publisher Services Ed Hunt, CIO Sam Gilchrist, CFO Al Pedecine, and Sr. VP, Business Affairs, General Counsel & CSO Michael Simon will give an overview of HFA’s current and future activities at the October 24 meeting of the California Copyright Conference (CCC). This dinner event begins at 6:15pm, and will be at the Sportsmen’s Lodge in Studio City, CA. The cost to CCC members is \$28; to non-members \$38. If you would like to attend, you must RSVP by October 24. See [www.theccc.org](http://www.theccc.org) or call (818) 379-3312.

**Don't Miss Out!**  
**HFA Affiliate Publishers and Licensees Get 10% Off Registration**  
**for the**  
**2006 CMJ Music Marathon**  
**October 31-November 4 in New York City**

**Also Get Special Discounts on CMJ Publications**

HFA affiliate publishers and licensees can get 10% off their registration for the 2006 CMJ Music Marathon, which takes place at Lincoln Center in New York City October 31-November 4. HFA will be exhibiting at the event, and our Senior Vice President, Business Affairs, General Counsel and CSO Michael Simon will be on the panel, "The Ins and Outs of Music Publishing, Copyrights and Licensing," on November 1.

The CMJ Music Marathon brings together over 10,000 professionals from all sectors of the music business who converge on New York to discover the best new music and debate today's music business challenges. In addition to showcasing thousands of performers in clubs all over the city to more than 90,000 music fans, CMJ Music Marathon hosts a variety of events, including panels, keynote speeches, film premieres, mentoring sessions, and tutorials. Marathon Registration grants attendees entry to all daytime and nighttime offerings.

In addition, our affiliates can receive 25% off subscriptions to CMJ's weekly trade publication, The New Music Report, and 35% off subscriptions to the New Music Monthly, which includes a CD sampler in each issue.

To obtain the discounts for the Music Marathon Registration or the New Music Monthly, go to [www.cmj.com](http://www.cmj.com) and use the code HFOX06. To obtain the discount on the New Music Report, you need to use a special form available in the "Special Offers & Discounts" area once you log into HFA Online as a registered user at [www.harryfox.com](http://www.harryfox.com). If you do not yet have an HFA Online account, contact HFA Publisher Services at [publisherservices@harryfox.com](mailto:publisherservices@harryfox.com) or call 212-834-0100. *Please note these offers are only valid for current HFA affiliated publishers and licensees; CMJ will validate the company status with HFA before the discount is applied.*

**Upcoming AIMP NY & Los Angeles Chapter Events**

The New York chapter of the AIMP will present the panel "Developments in Music Publishing Contracts" on October 18 at 5:30pm at the Williams Club. Panelists include attorneys Wallace Collins, Peter Thall, and Palisa Kelley (Director, Business Affairs and Administration, Sony/ATV), moderated by Arthur Levy (Partner, The Levy Firm). This event is free to AIMP members and \$15 for non-members.

The Los Angeles chapter will host the lunch event "My Post-Grokster Space: The New Era of Peer-to-Peer Networks" on October 19 at the Bel Age Hotel. The deadline for reservations for this event is October 18.

For more information or to register online for either event, go to [www.aimp.org](http://www.aimp.org), or call 212-391-2532 for the NY office; 818-771-7301 for the LA office.

## Word on the Street . . . HFA Affiliate Publisher News

**BMG Music Publishing Mexico** has signed an exclusive music publishing agreement with Leonel Garcia, half of the multi-platinum band Sin Bandera. The deal includes Sin Bandera's *Mañana* (SBMG) and songs Garcia has written for other artists such as Alejandro Fernández, Frankie J, Diego, and Jesse & Joy. In 2005, Garcia was named Best Latin Songwriter by Billboard.

**EMI Music Publishing** signed a long-term worldwide co-publishing deal with artist Beyoncé Knowles. EMI Music Publishing will represent Beyoncé's newest release *B'Day*, including the hits "Déjà Vu" and "Ring The Alarm," as well as all future music projects. Beyoncé, who first gained recognition as a member of the multi-platinum female singing group Destiny's Child, has enjoyed great solo success since the release of her debut album, *Dangerously In Love*, which featured hit songs "Crazy in Love," "Baby Boy," and "Naughty Girl."

**Randy Pope**, President of **Leiber & Stoller Music Publishing**, has written a book on legendary guitarist Duane Allman. *Skydog: The Duane Allman Story* chronicles the life of The Allman Brothers Band guitarist, who was killed in a motorcycle accident at the age of 24. With a foreword written by ZZ Top's Billy F. Gibbons, *Skydog* also includes a comprehensive discography of Duane Allman's work with his own groups as well as his work on the recordings of other artists.

**peermusic** has acquired the worldwide copyright to all works in the repertoire of music publishers Caribbean Waves & Crossing Borders Music. This catalogue includes songs from some of the leading Puerto Rican singer-songwriters, including "La Voz de La Experiencia" (Celia Cruz & India), "Me Estan Hablando Del Cielo" (Celia Cruz & Kinito Mendez), "El Ultimo Beso" & "Si Tu No Te Fueras" (Marc Anthony), "Me Canse De Ser La Otra" (India), "Mi Error" (Oscar D'Leon), "Salsumba" (Domingo Quiñones & Tito

Puente), and "Dale Cara A La Vida" (Tito Nieves).

**Spirit Music** announced the signing of an exclusive three-year deal to represent the songs of the **Grateful Dead** for synchronization in film, television and new media. The agreement covers virtually all songs written by the band as well as long-time lyricist Robert Hunter via their company Ice Nine Publishing Co. In other news, the company also signed **Eric "Coptic" Matlock** to a long-term publishing agreement for his current catalog of works as well as future songs. The Brooklyn-based producer has produced records for several Bad Boy Records artists, including Notorious B.I.G., Ma\$e, Black Rob, G.Dep, and P. Diddy, as well as other artists such as Jermaine Dupri, Goodie Mob, and Memphis Bleek.

**Universal Music Publishing Group** has signed Academy Award-winning composer **Carole Bayer Sager** to an exclusive worldwide administration agreement. Her work can be heard via songs such as "Arthur's Theme," "On My Own," and the Grammy Award-winning "That's What Friends Are For," a song that she co-wrote with Burt Bacharach that featured Stevie Wonder, Elton John, Dionne Warwick and Gladys Knight. Sager's work has also been recorded by Barbara Streisand, Frank Sinatra, Bob Dylan and Michael Jackson, among others.

*In other news. . .*

The deadline for the 2006 International Songwriting Competition is October 15. This annual contest gives both amateur and professional songwriters and musicians the opportunity to have their songs heard at a professional and international level. Entries are judged by artists and industry executives. For more information, please visit the ISC Web site at [www.songwritingcompetition.com](http://www.songwritingcompetition.com).

*"Word on the Street" is taken from press release material.*

***“Return to Sender, Address Unknown”  
Publishers MIA: Can You Help Us Find Them?***

If you are a music publisher (or the assign, successor in interest, heir or beneficiary of a music publisher) that has been affiliated with HFA, and you're not sure whether HFA has your current contact information, it is possible that HFA is holding royalties due to the lack of a valid mailing address.

To find out if HFA is looking for you and to provide current information so we can pay you any royalties we may be holding, visit “Help Us Find Publishers” at [www.harryfox.com](http://www.harryfox.com), or call HFA Publisher Services at 212-834-0100.

If you've moved, please remember to update your contact information with HFA. You can obtain change of address information from the website or by contacting HFA Publisher Services.

If you have any comments regarding HFA Soundcheck, please contact Laurie Jakobsen, Vice President, Communications & Marketing, at 212-834-0133 or [ljakobsen@harryfox.com](mailto:ljakobsen@harryfox.com).

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