



Soundcheck

Issue 10

March 2004

Things are looking up

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

We have our fingers crossed here at HFA that we may be finally seeing the “bottom” of the sales decline for the music industry which began about five years ago.

Collections for manufacturers’ fourth quarter of 2003 have come in to HFA, and while revenue collected on mechanical licenses is still down by 7% compared to the same period in 2003, the drop was actually much less than we expected. In addition, our overall collections and distributions have been higher for this period in 2004, due to the settlement of several royalty examinations early in the year.

We’re heartened by the great sales of new releases such as the Norah Jones album, and we’re going to remain cautiously optimistic about the economic direction of 2004. Let’s keep our fingers crossed.

A handwritten signature in dark ink, appearing to be 'G. Churgin', is located below the main text.

Ringtone Opt-In Letters Due

The following Ringtone License Opt-In forms are due to our Legal Department in March – don’t miss your opportunity to be included in these deals.

**Opt-In
Dwango & For-Side – March 19**

If you have any questions about these offers, please contact J.C. Lindstrom in our Business Development department at jlindstrom@harryfox.com or 212-922-3234.

HFA 101

Last month, we wrote about the basics of HFA’s Licensing function. We thought it would be a good idea to pull back a step farther and provide an overview on HFA’s history and the services we provide.

The Origins of The Harry Fox Agency

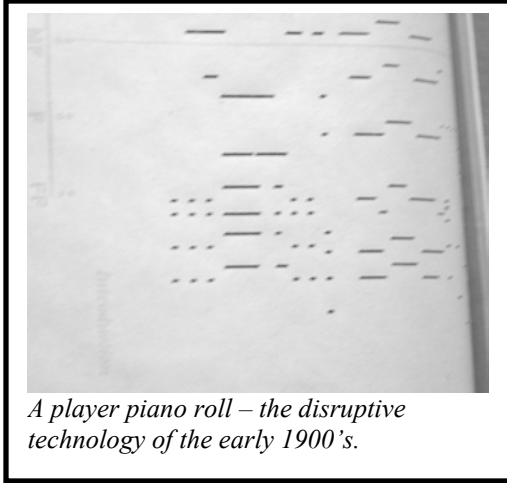
The right of mechanical reproduction was added to the U.S. Copyright Act in 1909 in response to the rise of the player piano, which was the first widespread use of recorded music. The predecessor of HFA was formed in 1927 by the trade association of leading music publishers, the Music Publishers’ Protective Association (now known as the National Music Publishers’ Association), as a service to its members to offer synchronization licenses on their behalf. The service was later expanded to offer mechanical licensing as well. A young Russian immigrant named Harry Fox (unrelated to the famous Fox families of the Vaudeville era) was the clerk in charge of handling these transactions. *(continued on page 3)*

“White Christmas” is Most Licensed Song in HFA Repertoire

We mentioned in the last issue of Soundcheck that HFA had hit the 5 million licenses processed mark in 2003. As of January 2004, the top 25 most-licensed songs in the HFA repertoire are:

<i>Song</i>	<i>Writers</i>	<i>Publishers</i>
1. White Christmas	Irving Berlin	Irving Berlin Music Co.
2. Summertime	George Gershwin, Ira Gershwin, Dubose Heyward	WB Music Corp., George Gershwin Music, Ira Gershwin Music, Dubose and Dorothy Heyward
3. Winter Wonderland	Felix Bernard, Dick Smith	WB Music Corp.
4. Have Yourself a Merry Little Christmas	Hugh Martin, Ralph Blane	EMI Feist Catalog, Inc.
5. Over the Rainbow	Harold Arlen, E.Y. Harburg	EMI Feist Catalog, Inc.
6. Silver Bells	Jay Livingston, Ray Evans	Paramount Music Corp.
7. Santa Claus is Coming to Town	J. Fred Coots, Haven Gillespie	EMI Feist Catalog, Inc. and Haven Gillespie
8. Body and Soul	Edward Heyman, Robert Sour, Frank Eyton, John Green	WB Music Corp., Druropetal Music, Range Road Music Inc., Tetrauq Music Inc.
9. I'll Be Home for Christmas	Walter Kent, Kim Gannon, Buck Ram	Gannon & Kent Music Co., Piedmont Music
10. Autumn Leaves	Jacques Prevert, Johnny Mercer, Joseph Kosma	Enoch & Cie, SDRM
11. Rudolph the Red-Nosed Reindeer	Johnny Marks	St. Nicholas Music, Inc.
12. Little Drummer Boy	Katherine K. Davis, Henry Onorati, Harry Simone	EMI Mills Music Inc., International Korwin Corp.
13. The Christmas Song	Mel Torme, Robert Wells	Edwin H. Morris and Co.
14. Embraceable You	George Gershwin, Ira Gershwin	WB Music Corp.
15. Let it Snow, Let it Snow, Let it Snow	Jule Styne, Sammy Cahn	Producers Music Publishing Co. and Cahn Music
16. 'Round Midnight	Thelonious Monk, Cootie Williams, Bernie Hanighen	WB Music Corp., Thelonious Monk Music Corp.
17. Night and Day	Cole Porter	WB Music Corp.
18. All the Things You Are	Jerome Kern, Oscar Hammerstein II	Universal-Polygram International Pub. Inc.
19. My Funny Valentine	Richard Rodgers, Lorenz Hart	Chappell & Co., Williamson Music Co.
20. Georgia on My Mind	Hoagy Carmichael, Stuart Gorrell	Peermusic III Ltd.
21. Someone to Watch Over Me	George Gershwin, Ira Gershwin	WB Music Corp.
22. Moon River	Henry Mancini, Johnny Mercer	Famous Music Corp.
23. The Man I Love	George Gershwin, Ira Gershwin	WB Music Corp.
24. Unchained Melody	Hy Zaret, Alex North	Frank Music Corp.
25. How Great Thou Art	Stuart K. Klein	Manna Music, Inc.

HFA 101 – Continued from page 1



By 1938, Harry Fox had been elevated to the position of General Manager of the NMPA, and was handling the licensing, collection and distribution activities as the agent for the music publishers. Over time, the administration of these duties became associated with him, and the area was collectively known as the Harry Fox Office. He remained the head of the company until his death in 1969, after which The Harry Fox Agency was officially incorporated as a wholly owned subsidiary of the NMPA. For a time, the NMPA and HFA were merged organizations, but HFA was once again separately managed in 2000.

HFA manages licensing for over 27,000 publisher catalogs. In 2003 alone, HFA's Client Relations Department handled over 50,000 phone calls and emails from publishers and licensees. All of HFA's services hinge on the integrity of our database of publishers, songs, and licenses, which requires the dedicated efforts of our Index and IT departments.

HFA is often confused with our performance rights agent "cousins," ASCAP, BMI and SESAC. To be clear, HFA does not administer performance rights, print rights, master use rights or sample clearance, and we do not represent songwriters for the placement of

their music in films and for use by other performers.

HFA Services

HFA represents music publishers who have songs being recorded and reproduced by third parties. HFA's services on behalf of its affiliate publishers include:

Mechanical Licensing

The licensing of copyrighted musical compositions for reproduction and distribution to the public for private use. This includes physical formats such as CDs, records, tapes, and other emerging physical configurations, as well as digital configurations including permanent downloads, on-demand streaming, limited downloads, and ringtones.

International Representation

Collection of royalties for the use of musical compositions in recordings made and distributed outside of the U.S. through reciprocal agreements with foreign societies, and also the licensing of recordings imported into this country for sale.

Royalty Collection & Distribution

The collection of royalties from licensees for the use of copyrighted musical compositions and the distribution of these royalties to the publishers. HFA discontinued its synchronization licensing (the use of music in commercials, TV and film) services in 2002, but continues to collect and distribute monies for licenses that were issued prior to that date. Generally, HFA receives royalties from licensees once a quarter.

Royalty Compliance

The periodic examination of the books and records of licensees utilizing copyrighted musical compositions based on the license issued, as well as the identification of unlicensed product.

HFA Employee Profiles

Halley Devestern

Halley joined HFA 2 ½ years ago as part of the Synch Department, and is now an Index Agent. She came to HFA from peermusic, where she had been part of the NY Creative Department. Halley is also a singer/songwriter, and plays around New York in two bands: the rock outfit the Halley Devestern Band, and the blues group the Hot Button All-Stars. HFA's Index Agents have the awesome task of maintaining all our client records and song file registries, which are core to HFA's business, but Halley appreciates the challenge. She commented, "It's always something new, and it never gets boring." Halley has also participated in cross-departmental efforts such as the HFA Team Challenge, which seeks to resolve complex client issues.



L to R: Halley Devestern, John Cosenza, John Cotter

John Cosenza

John is also an Index Agent, and has been with HFA in that capacity for three years. He came to HFA after earning a B.A. in Music Industry from SUNY Oneonta. In addition to his regular tasks maintaining our database, John leads HFA department cross-training sessions on Index functions. John is also interested in technology, and is looking forward to the introduction of new technologies such as Common Works Registration. After hours, John can be found playing area clubs in his metalcore band Human Decline, and is starting a recording studio with his band. Both he and Halley agree that as musicians, they have gained invaluable knowledge about publishing by working at HFA.

John Cotter

John has been with HFA for 5 ½ years as a Distribution Processor. He handles distributions from manufacturers such as Columbia House and Madacy, and works closely with Client Relations on publisher payment inquiries. Last year, he also took on the responsibility of maintaining all Distribution Department memos that direct royalty payment. For this work, John was recently awarded an HFA REACH Award. John also participates in the HFA Team Challenge with Halley, and is part of a departmental project team to expedite foreign society distributions. John says this team has dubbed itself the "Foreign Crusaders" because the majority of the team was born outside the U.S. (John himself is from Cork, Ireland). In his spare time, John practices karate, studies foreign languages, and collects old German beer steins.

Update: **Liliana Tapai**, who was profiled in the December 2003/January 2004 issue of Soundcheck, was awarded the first "Harry Award," which recognizes outstanding overall performance by an HFA employee that helps to advance department and company goals. Congratulations, Liliana!

Word on the Street . . . HFA Affiliate Publisher News

EMI Music Publishing Wins Big at the Grammys!

EMI Music Publishing welcomed its many Grammy wins including "Song of The Year," while congratulating its artists on another stellar year of great songs. EMI Music Publishing's writers and producers earned a total of 29 Grammys, in categories ranging from rock, pop, and R&B, to hip-hop and country. Among EMI Music Publishing's big Grammy winners were **Beyoncé** and **Jay-Z** for "**Crazy In Love**," **The Neptunes** as "Producer of The Year," **Sean Paul** for "Best Reggae Album," **Alan Jackson** for "Country Song of the Year," and "Song of The Year" for **Luther Vandross** and **Richard Marx's "Dance With My Father."**

Affiliate Profile:

Laura Claar of Bug Music

Bug Music is a unique entity in the publishing world: they perform the functions of a major publisher, but is a defiantly independent publishing administrator that vows to “keep it indie.” Laura Claar, the Licensing Administrator for Bug, spoke with HFA Soundcheck on why she thinks the company is so special.

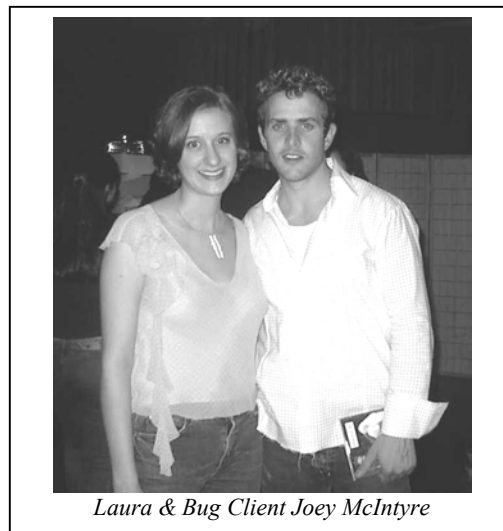
She feels the story of the company’s inception almost 30 years ago is illustrative of its overall ethic. In 1975, Del Shannon asked his then-manager Dan Bourgoise to help him regain the copyrights to his songs in return for a cut of the profits. Dan was successful, and Bug Music (“Bug Music” was less unwieldy than “Bourgoise Music”) was born. Dan’s brother Fred joined him in 1976, and they signed up a diverse roster of artists, from early punk rock to Willie Dixon, Rosanne Cash, Richard Thompson, and many, many more.

Bug now administers a number of existing catalogs from other publishers, in addition to working directly with writers. Laura says that many come to Bug despite the fact that “we cannot offer huge advances though we are willing to offer reasonable ones. Many of our writers are finding they can increase their overall earnings by working with an administrator. A lot of heirs are coming to us now when the copyrights revert to them, so we are continuing to add standards to the catalog.”

This approach has helped Bug to be profitable in the tough economic climate of the early 21st century. “In fact, Bug just had one of its best quarters ever,” said Laura. “We’re weathering the storm pretty well. We’ve been in this so long, we are a finely tuned machine. We have great people working here who really care about songs.”

Laura notes that as one of the leading publishing administrators, “Bug functions much as a major publisher does, with services from legal to creative, but our clients will probably see more income than they would from a traditional co-publishing deal.” Creative departments in each U.S. office focus on their geographic specialties: the Los Angeles office sees a lot of film and TV, Nashville is more traditional song plugging, and the New York team

captures much of the commercial placement. The two overseas offices in London and Munich help manage the worldwide network of subpublishers.



Laura & Bug Client Joey McIntyre

Current prominent TV ads that feature Bug artists include Booker T. Jones’ “Green Onions” for American Airlines and Iggy Pop’s “Lust for Life” for Royal Caribbean Cruises. Claar points to Pop as an example of a critically acclaimed artist who is finally getting some financial reward from the use of his songs through the efforts of Bug’s Creative team.

She is also proud that Bug has many writers and co-writers represented on the recent Billboard Top 200, including tracks on both Norah Jones albums – Townes Van Zandt’s “Be Here to Love Me” on the recent release and “Painter Song” by J.C. Hopkins on her first release – as well as Paul Schwartz’s “All’ improvviso Amore” on Josh Groban’s *Closer*, Erik Hickenlooper’s “Buy Me A Rose” on Luther Vandross’ *Dance With My Father*, and many more.

Bug is always looking to increase efficiency to recover more money for their publishers and writers. Bug is moving to implement Common Works Registration, and they are about to merge systems to better administer their songs in overseas markets.

Perhaps most significantly in this day and age, Bug has no intentions of ever becoming part of a conglomerate. Laura stated, “We’re a family company – our writers know that there will be no mergers, no hostile takeovers, and they don’t have to worry about where their songs will eventually wind up.”

HFA & International Royalty Collections

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 releases manufactured in 100 territories around the world.

Overall, foreign collections are a longer process. First, unlike in the U.S., most foreign societies do not collect quarterly – most remit royalties twice a year, and some collect and distribute only once a year. Statements are also provided in the local currency, which can cause some confusion. The distribution, however, is converted to U.S. dollars the day it is received by HFA. Secondly, despite “instant” communications such as email and fax, dialogue with the foreign agencies can take more time than within the U.S.

Foreign mechanicals are completely based on the country of manufacture. If a CD is manufactured in the United Kingdom, for example, but exported to Germany, the statement from the foreign society that represents the U.K., the Mechanical Copyright Protection Society (or MCPS), will report how many units were sold in the U.K. and how many were sold in Germany. If a

product is manufactured in the United States and exported, it is actually a domestic licensing and collections issue.

Foreign mechanical collections operate differently than domestic, since the license is not obtained through HFA prior to manufacture. The first step in the process is the publisher’s authorization of HFA to act as its agent with respect to a particular territory, which usually happens upon affiliation. When a publisher believes that one of its compositions is being used on a recording manufactured outside of the U.S., they can complete a Notification of Foreign Activity Form, which can be found on the HFA website at <http://www.harryfox.com/notification1.html>. HFA then contacts the foreign society, which researches the product, registers the claim, and invoices the manufacturer. After they collect the royalties and deduct their commission, they forward it to HFA for distribution to the U.S. publisher.

Or at least, that’s how it works when the process goes smoothly. Sometimes, the song has already been claimed by another publisher, or there is a belief that a sub-publishing deal is in place in that territory. Then a claim dispute needs to be filed, which can take up many months to resolve. Once one of the parties relinquishes its initial claim, a back claim must be made, and the foreign society can attempt to collect retroactively.

The same process takes place in reverse when one of the foreign societies presents HFA with a claim on behalf of one of its publisher members.

It’s important to remember that other countries have different statute of limitations laws, so if a publisher suspects that their work is being manufactured in a foreign country, they should file a claim with HFA as soon as possible in order to have the best chance of recovering those royalties.

Any questions about International royalty collections should be directed to Rich Kesser, HFA International Client Relations, phone 212-834-0196 or email rkesser@harryfox.com.

German Mechanical Royalty Rate Challenged

The German National Group of IFPI (International Federation of the Phonographic Industry) has filed a petition with the Arbitration Board of the German Patent and Trademark Office for the reduction of the current royalty rate for licensing audio carriers from 9.009 % of the Published Price for Dealers (PPD) to 5.57%. GEMA, the German mechanical rights society (with whom HFA has a reciprocal agreement) issued a strong statement in February in opposition to this move, which said in part, “In a situation where the phonographic industry should be focusing all its entrepreneurial intelligence on seeking forward-looking solutions to overcome the crisis of the audio carrier market, it comes up with the bright idea of depriving the creative composers and lyricists of their fair reward, in order to compensate for its own sales losses of past years.”

The German Music Publishers Association and the International Confederation of Music Publishers have also come out strongly against the IFPI’s move. The difference between the two rates is now being held in escrow, and the arbitration process may take up to five years. Germany is the fourth largest music market in the world, and a number of major manufacturers are based there. We will keep you updated as this action progresses.

Did you sign up your publishing company for EFT yet?

Direct Deposit, or Electronic Funds Transfer (EFT) forms, are available online at www.harryfox.com/eft/html Sorry, at this time we can only offer EFT for U.S.-based accounts.

“Return to Sender, Address Unknown”

Publishers MIA: Can You Help Us Find Them?

HFA represents over 27,000 publishers. Over time, some of them change their addresses and forget to provide us with forwarding information. While we do our best to track them down, there are some that we have been unable to reach. We need your help! Please take a moment of your time to go to <http://www.harryfox.com/publisher/infoUpdate.html> and let us know if you can provide any information that would help us locate any of the entities on the site.

If you have any comments regarding HFA’s Soundcheck, please contact Laurie Jakobsen, Senior Director, Communications, at 212-834-0133 or ljakobsen@harryfox.com.

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