



Soundcheck

Issue 6

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New Look for Soundcheck

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



We debuted Soundcheck just over two years ago to help keep you updated on what's happening here at the Harry Fox Agency. As part of our commitment to client satisfaction, we've made some changes to deliver a more informative publication, and, we hope, more useful to you. We will now be publishing Soundcheck on a more regular basis.

In addition to updates on HFA activities, we're excited to add two new sections: Affiliate News and HFA Employee Profiles. Affiliate News is your opportunity to share what's going on at your company with the other 27,000 publisher clients of HFA. You can send

information for this to Laurie Jakobsen, ljakobsen@harryfox.com or fax 646-487-6733. We're kicking off this section with a profile of Warner Chappell. It's also important to us to introduce you to some of the people working on your behalf at HFA – this month's employee profiles are Lauren Apolito and J.C. Lindstrom, who handle our new business area.

At this point, we will still be mailing Soundcheck to you, but we expect to be able to send it by email to those who would prefer to receive it electronically starting with the December issue. We'll have more details on that in November.

Our main news of the month is on the ever-growing area of digital services. HFA has been establishing relationships in these developing businesses to provide the most current licensing opportunities for HFA affiliate publishers. As we do with traditional recorded media, HFA is committed to providing you with licensing, collection, distribution and royalty compliance services for new configurations as they are introduced in the dynamic music marketplace.

See you in a month,

Digital Services Update

Here's the update on some recent activities in the online music environment, as well as a summary of some of the digital licensing and royalty reporting activities that HFA has been handling on your behalf. This includes the **Apple Music Store**, **eMusic**, **Streamwaves**, and **ringtones**, as well as clarification of the **new licensing configuration** and **rate codes**.

- **Apple Music Store**

Many of you have inquired about the Apple Music Store, Apple's iTunes software, iPods (Apple's portable digital music player) and HFA's licensing, collection and distribution role.

The Apple Music Store is a non-subscription, "a la carte" online service, as opposed to services such as Rhapsody and MusicNet which require a monthly subscription fee. The Apple Music Store is currently available only to users of Apple equipment. The service launched with over 200,000 songs and allows Mac or iPod users to purchase single song and album downloads. Single downloads are offered at 99¢ each and album downloads start at \$9.99.

Since its debut on April 28, 2003, Apple reports that it has sold more than 10 million downloads. Downloads can be burned to an unlimited number of CDs, transferred to a total of three different Macs and transferred to an unlimited number of iPods.

HFA did not directly license music to iTunes. In keeping with the Copyright Act, record labels are able to pass along the digital phonorecord delivery ("DPD") mechanical license authority to third parties such as Apple. It is our understanding that Apple is indeed relying for mechanical license authority on DPD licenses that have been obtained by the record labels from HFA and others. HFA has already issued

many DPD licenses on behalf of its publisher principals in accordance with the mechanical compulsory licensing provisions of the Copyright Act. Under our DPD licenses, the labels must report to and pay HFA royalties for DPDs made through the Apple service. The current statutory rate for full downloads such as those offered by Apple is 8¢, or 1.55¢ for songs longer than five minutes. HFA publisher statements will include a line of data indicating through which third party service DPDs are distributed.

- **pressplay/Napster**

In May 2003, **pressplay** was purchased by Roxio and changed its name to **Napster**. The old pressplay service will continue to function until the new Napster-branded service is launched later this year. A new agreement, similar to those agreements made between HFA and Listen.com and Full Audio, was concluded between Napster and HFA. Therefore, licenses under the name of Napster will now appear on publisher statements. The licenses will have the same licensing configurations and royalty rates as those shown above for RIAA-type agreements.

- **Streamwaves**

HFA also has an agreement with an online service called **Streamwaves.com**. HFA licenses Streamwaves for central server fixations (the master copies from which online streams are derived) and on-demand streaming only. Royalties under these licenses are computed as follows: (1) 10¢ for each rendition of a work encoded and copied onto any of Streamwaves' web sites; and (2) a revenue sharing arrangement of either the greater of 10% of Streamwaves' adjusted gross revenue or \$1.00 per month per user or subscriber of each unique Streamwaves service (prorated based upon the percentage of HFA-represented works that were streamed). The fixation usages will be reported on publisher statements as a

HFA Employee Profiles

As this issue focuses on Digital Services, we thought it would be the perfect opportunity to introduce two of the people that work to craft these relationships for HFA.

Lauren Apolito

Lauren is our Vice President of Business Development, and she is responsible for structuring new licensing deals, creating alliances with strategic partners, analyzing new technologies, and creating new lines of business for HFA. She has led various industry efforts pertaining to digital licensing, and you may have seen Lauren speak at this year's Digital Wired Conference on that topic. She also teaches HFA's internal education class on piracy and new media, as well as a class on online subscription services. In addition, Lauren's chihuahua, Jack, is a registered therapy pet, and she is creating a charity program called Music & Mutts, which will bring therapy pets and musicians into nursing homes and hospitals.



J.C. Lindstrom

As the New Media Coordinator, J.C. spends much of his time researching new technologies and shares his findings with the company. He also fields digital licensing inquiries, both internal and external, serves as a point-of-contact for digital licensees and helps administer digital licensing programs. He holds a Masters Degree in Music Business from New York University and for over 20 years has performed as a dancer and singer in community theater productions (despite pleas to stop). J.C.'s five favorite musicals (in no particular order) are *Into the Woods*, *The Fantasticks*, *Kismet*, *Hello Dolly*, and *Carousel*.

licensing configuration code FX (FX means Fixation) and a rate code of N (N meaning negotiated). The streaming usages will be reported on publisher statements as licensing configuration code S (S indicating streaming) and a rate code of N (N for negotiated).

• **Emusic.com**

You may be familiar with Emusic.com, an online music subscription service owned by Universal Music Group that features indie label content. In exchange for a monthly fee (currently \$9.99 per month for a 12-month commitment or \$14.99 per month for a 3-month commitment), Emusic offers users the ability to make an unlimited number of permanent downloads of the songs available on its service.

HFA entered into an initial licensing agreement with Emusic (then known as Goodnoise Corporation) in January 1999 to issue mechanical licenses for DPDs.

Subsequently, in November 2000, the Emusic agreement was amended to enable Emusic to launch an online subscription service. Under the amendment, in any given reporting quarter, Emusic paid for DPDs offered through the subscription service at the greater of three-quarters (75%) of the current statutory rate and a set percentage of subscription revenues for that quarter.

The amended Emusic agreement described above has since expired. At Emusic's request, HFA negotiated and entered into a new licensing arrangement with Emusic to be retroactive to November 1, 2002 (i.e., from the expiration of the former agreement).

Under the new agreement, Emusic has agreed to pay the full statutory rate for each song downloaded by an Emusic user, except that Emusic will benefit from a short-term discounted rate to enable it to continue to build its service, as follows: For each sound recording embodying non-major-label

content downloaded through Emusic's subscription service during the first fourteen (14) months of the agreement, or until such time as 40 million downloads are made, whichever is sooner, Emusic will pay the greater of (a) \$.067 per end user subscriber per day during the applicable quarterly reporting period (the equivalent of about \$2 per month per subscriber) or (b) 17% of Emusic's adjusted gross subscription revenue for the applicable quarterly reporting period (total subscription fees less any affiliate and/or agency commissions). In either case, the amount payable will be prorated to reflect the ownership percentage of downloaded songs represented by HFA. As part of the licensing arrangement, Emusic has paid HFA \$1 million (which is non-refundable), recoupable from royalties owed by Emusic to HFA.

The term of the new agreement will expire on December 31, 2004 and, unless thereafter terminated by either HFA or Emusic, will automatically renew for successive twelve (12)-month periods. Please note that under the terms of the agreement, the discounted rate will expire and Emusic will begin paying for downloads at the full statutory rate no later than January 1, 2004. These usages will be reported on publisher statements as a licensing configuration code of SP (SP indicating DPD) and a rate code of N (N meaning negotiated).

- **Ringtones**

As of February 2003, HFA changed its Ringtone Licensing Program. We believe that our new approach will be most advantageous to your business and your catalog.

Under our former approach, the ringtone licensing notice we sent to you in June of 2001 required you to provide us with a single direction regarding your licensing preferences for all ringtone providers. We recognized that this approach was not the most user-friendly, so we have changed our

ringtone policy to an easier one for making licensing decisions.

Regardless of any instruction you may have provided in response to the June 2001 notice, from now on, you will receive a separate option letter with respect to each ringtone licensing arrangement offered through HFA. This will enable you to decide, on an individual proposal basis and with greater precision, if you would like to accept the proposal. Please be on the lookout for these ringtone "opt-in" notices as the ringtone market continues to develop in the United States.

Ringtone Opt-In Letters Due!

The following Ringtone License Opt-In forms are due to our Legal Department in October – don't miss your opportunity to be included in these deals. Remember that by working through HFA, we can handle all the licensing, collection and royalty compliance work related to these new digital licensing deals.

Zingy – Oct. 6

9 Squared Inc. – Oct. 31

Mitsui Comtek Corp. – Oct. 31

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

There are two basic types of ringtones: phonic and pre-recorded (sometimes called "masterclip ringtones" or musitones). Phonic ringtones are 30-45 second excerpts of musical compositions rendered in Midi-type computer tones. They can be simple melody lines (monophonic) or more complex (polyphonic). These "beep"-based tones are the most commonly supported options on U.S. cell phones at this time. Pre-recorded tones are just beginning to be supported by mobile carriers and handsets in the U.S. They are usually 30-45 second clips from the actual master recording.

As ringtones are licensed, the usages will be reported on publisher statements as a licensing configuration code FX (FX for Fixation) and a rate code of N (negotiated). The phonic ringtone usages will be reported on publisher statements as licensing configuration code PH (PH meaning phonic) and a rate code of N (negotiated). The pre-recorded ringtone usages will be reported on publisher statements as licensing configuration code RR (RR indicating prerecorded) and a rate code of N.

- **Online Service Licensing & Royalty Reporting Codes**

Under the agreement entered into in October 2001 between the Recording Industry Association of America and HFA (the “RIAA Agreement”), HFA has been issuing licenses to record labels and online services such as pressplay and MusicNet. Under similar, but separate agreements, HFA has also been licensing the Full Audio and Listen.com services, as well as the forthcoming Napster service.

Under the RIAA Agreement as well as Full Audio and Listen.com agreements, services may distribute their product through “third party distribution channels.” For instance, AOLMusic is a MusicNet distribution channel and Lycos is a Listen.com distribution channel. Online services are obliged to specify the third-party outlet in reporting usage and royalties. Therefore, future HFA royalty reports will contain this level of detail.

Licensing configurations for the various labels and online music services include:

- **RIAA Agreement “Covered Service” configurations** (streams and time- and use- limited downloads). Rates for these configurations have not yet been determined and royalties will not be paid on these configurations until

rates are set. We are still in negotiations on this with the RIAA, and we will let you know when there’s progress. These usages will be reported on publisher statements as a licensing configuration code of

Introduction of HFA Digital Royalty Statements in October

In October, HFA will begin to mail royalty statements for reported digital uses such as On-Demand Streams and Limited Downloads as well as Permanent Downloads. This will start with statements from the subscription service MusicNet.

Because rates for On-Demand Streams and Limited Downloads have not yet been determined, the statements will reflect \$0 balances. However, if our licensees report Permanent Downloads of your published works - also referred to as DPD’s (Digital Phonorecord Deliveries) - the current statutory rate applies and you will receive both a statement and payment.

The statements will detail the manufacturer and the third-party service through which the content was distributed. The third-party information will appear directly below the song title on the hard copy statement.

In the statement column “type”, the specific sales channel through which the content was delivered will be detailed as follows:

- S - On-Demand Streaming**
- TL - Time Limited Downloads**
- UL - Use Limited Downloads**

If you have any questions regarding these statements, please feel free to contact us at (212) 834-0100.

CV (where CV means Covered Services) and a rate code of T (T indicates that the Rate is to be determined under this agreement).

- Online services also have the option to license **DPDs** or “**full downloads**”, as described in the iTunes update. Royalties for these downloads are to be paid at the statutory rate (or such other rate on a current basis as may have been approved in advance by the publisher). Royalties will accrue and be payable for this configuration. These usages will be reported on publisher statements as a licensing configuration code of SP (where SP means DPD) and a rate code of S (S indicates that the rate is statutory).

Please note that HFA has been working closely with both labels and online services on the timeliness and accuracy of digital licensing and royalty reporting.

News from Client Relations

We are proud to announce that HFA has succeeded in greatly improving our response time for inquiries to Client Relations. HFA receives over 2,800 calls a month, and 1,100 emails. We have eliminated our call center voicemail backlog and we are sustaining a 24-hour initial response time. Client Relations is responding to emails received from clientrelations@harryfox.com within 72 hours. Did you know that 70% of inquiries require action from companies outside of HFA? These inquiries may take more time to resolve, but we are committed to keeping you informed of our progress as we pursue the answers.

Web-enabled License System (ILS) Update

As you may know, HFA launched a trial of a new Internet-enabled Licensing System (or ILS) in the spring through our website, www.harryfox.com. It was taken down due to some stability and performance issues, but we did get some great feedback from publishers and licensees who used the system. Based on that, we worked over the summer to refine the technical requirements for the system. We are now working on the redesign.

We have also brought on board a new CIO, Frank Wander, to spearhead the technical development from an HFA perspective. Frank has led a review and reorganization of our IT department, which we are confident will result in a more robust system when we relaunch. We have also developed extensive automated test scripts and generally beefed up our load, performance and functionality testing capabilities during this time.

While we are not yet able to give you an exact ETA on our relaunch, we will continue to keep you updated through Soundcheck on the progress of ILS.

- **Affiliate Profile**

Tony DeNeri
Warner/ Chappell Music



Tony DeNeri, Vice President of Income Tracking and Mechanical Licensing for Warner/Chappell Music, took a few moments to give Soundcheck his thoughts on how to deliver the best service for his composers and his favorite digital music experience.

Fully owned by the Warner Music Group, Warner/Chappell has a catalog of more than a million copyrights worldwide. With a history dating back to 1885, their compositions range from standards like “Happy Birthday,” “Rhapsody in Blue,” “Winter Wonderland,” and the compositions of Cole Porter to the contemporary music of Madonna, Radiohead, R.E.M., Elton John, Sheryl Crow, Smash Mouth and others.

As an aspiring songwriter, Tony had hoped that an internship at FilmTrax Music Publishing (now part of EMI) would help him learn about the business and meet other songwriters - but he found the perfect niche for himself in the publishing business, and he joined Warner/Chappell in 1990 as a copyright clerk: “It’s the one place that all the obscure music knowledge I’d amassed is an asset rather than just a cool party trick.”

Warner/Chappell has recently restructured, moving mechanical licensing and sampling in

with income tracking, and copyright administration in with the royalty department. These changes fit well with Tony’s philosophy that income policing teaches you to see the bigger picture for your composers. “This is where you learn what your client’s concerns are, right on the front lines. I’ve worked most of the publishing areas, and income tracking gives you a whole new outlook.

“While you want to make sure that everything gets in the system, it teaches you to really prioritize those songs that are likely to generate the most income for the writer. If a writer has three songs with Celine Dion, Beyonce and LeAnn Rimes, that is going to be their priority. I think our restructuring will help us better emphasize those kinds of priorities and deliver the best return for our writers.”

On the digital side, Tony recently got himself an iPod and a subscription to Rhapsody, “because I wanted to immerse myself in the download-to-own culture. I had never used Napster- really- but I wanted to know what the consumer’s experience would be - how the music was consumed, how it was managed in the electronic space, how it was paid for. In my mind, one must understand all the inputs to police and track the different income streams on the royalty statements.

He believes that legitimate services are already delivering a great experience. “I listen to so much more music now, and I’m exposed to so many things I would have never listened to. I’m into power pop, and I really have been able to grab everything that I’ve looked for on the service. I’d love for them to figure out a way to stream it wirelessly to my car - that would be perfect. Digital delivery is the music experience my 6- and 8- year old kids will know - not the world of the double album, gate-fold sleeve. My boys are already surfing around Rhapsody, building playlists, and asking their daddy to buy DPD’s of their favorites.”

- *Want to get news about your company in HFA Soundcheck? Contact Laurie Jakobsen, Senior Director, Communications, at 212-834-0133 or ljakobsen@harryfox.com.*

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Established in 1927 by the National Music Publishers Association, the Harry Fox Agency represents over 27,000 U.S. music publishers for their mechanical and digital licensing needs, and the collection and distribution of royalties. HFA also provides collection and monitoring services to its U.S. publisher clients for music distributed and sold in over 75 territories around the world. For more information about HFA, or to become an affiliate publisher or a licensee, see www.harryfox.com.