



Soundcheck

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The Legal Battles Continue

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

There has been some important action in the courts recently in the areas of peer-to-peer file sharing and sampling that may have implications for our publishers and licensees. While HFA is not directly involved, we do follow copyright cases with great interest, and of course, a part of our commission supports the work of the NMPA (our parent organization) in this area.

In October, the U.S. Supreme Court decided *not* to hear a case brought by the RIAA, seeking review of the decision by a lower court that requires those who choose to pursue anonymous file sharers to file a “John Doe” lawsuit for every person they believe to be trafficking in infringing works, rather than requiring the Internet service provider to provide the names. One of the results of this case is that plaintiffs will need to engage in more expensive legal proceedings. While the NMPA was not involved in the case, it was supportive of the RIAA’s position.

The Supreme Court continues to be confronted by peer-to-peer. As anticipated, in October, the NMPA, RIAA, and Motion Picture Association petitioned for U.S. Supreme Court review of the decision rendered by the U.S. Court of Appeals for the Ninth Circuit earlier this year, which found that the operators of two unlicensed, peer-to-peer services, StreamCast Networks, Inc. and Grokster, Ltd., were not liable for the exchange of copyrighted works on their services. Amicus briefs supporting the

petition for the review were filed by more than 30 copyright and professional associations, several legal music and movie download and subscription services, and 40 state attorneys general, but most notably, for the first time, more than 20 artist members of the Recording Artists Coalition. The Court is expected to decide by January whether it will take the case.

Another recent Ninth Circuit Court of Appeals decision upheld the ruling that recording artists the Beastie Boys did not infringe on the work of jazz flutist James Newton when they included a sample of his “Choir” composition in their song “Sure Shot.” The court erroneously decided that since the group had paid the owner of the recording a license fee for a sample of Newton’s recording, it did not have to pay an additional fee to license the underlying composition. It is too soon to tell what the impact of this ruling will be, but it may be of serious concern to music publishers.

We will continue to keep you informed on the progress of the pending Supreme Court peer-to-peer case and on other legal and legislative issues of concern to our affiliates.

A handwritten signature in blue ink, appearing to be 'G. Churgin', is located at the end of the text.

HFA IT Client Solutions – Operations 101

We've dedicated many pages in HFA Soundcheck to the work of the Development side of our Information Technology/Client Solutions team, who are delivering the Transformation 2 technology upgrades for HFA and our clients. But there is also a whole Operations side of the team, which supports all of the systems that keep the regular business of HFA running even as we work on the "T2" improvements.

As Rob Conlon, the Vice President of System Integration Services, puts it, the Operations team is responsible for any electronic facility or system that HFA needs to do its job, which includes everything from the wiring in the walls to websites. They maintain our 60+ computer servers, the AS400 database (the backbone of HFA), network operations, phone system, voicemail, Internet access and all of our hardware and software; administer our security and disaster-recovery programs; and staff the Help Desk to handle both HFA and client inquiries.

There are a large number of functions that keep HFA's business running, including the database that holds all of our publishers' information, and the systems that generate licenses, distribution statements, and checks. Operations also generates reports from the data in our systems for both HFA internal use and for clients.

System security is also an important aspect of IT Operations. We keep up to date on ways to protect the valuable information in HFA's databases as well as on issues such as privacy regulations and new technologies that are in the marketplace, such as kiosks, and how they use and protect secured data. We must constantly monitor our systems for any risks or security issues, and maintain a disaster recovery plan that has come in to play during events such as the blackout in 2003. Operations also handles HFA staff training on security policy and procedures, as well as on the use of regular system software.

Operations is not completely divorced from the Development side; many staffers wear hats in both areas. Ultimately, any component of T2 that is completed by Development and goes live then becomes the responsibility of Operations to maintain going forward.

The AS400 development team plays a critical role in production support. Existing systems are in continual need of maintenance to accommodate new business requirements. The demand for information by both internal and external customers grows daily. The team must be ready at any time to fulfill production requests, frequently on very short notice. They have all demonstrated tremendous dedication, flexibility and creativity in finding ways to keep our existing production systems in tune with our business needs, while also playing key roles in the development of new systems under our T2 technology transformation.

T2 Innovations for HFA Licensees

eMechanical to replace SirNet Application December 31

The improvements of HFA's Transformation 2 initiative also include new tools for licensees. In this first phase, this includes the introduction of eMechanical, which is a replacement of SirNet, and a licensee version of Online Licensing Reports.

At the end of the year SirNet will no longer be supported by its developer, so we created eMechanical as its replacement. HFA will no longer utilize SirNet after December 31, 2004. eMechanical is a web-based mechanical licensing application, so licensees will no longer have to install software on their computers to connect with HFA. eMechanical licensing includes all of the functionality of SirNet, and offers several new features that improve on the SirNet product. The new application allows licensees to submit and track the progress of license requests in real time; research their entire licensing account online, not just transactions submitted through the application; and request licenses for digital permanent download (DPD) singles and albums. Like SirNet, eMechanical is used to enter one license request at a time, not for bulk license request submissions.

Online Licensing Reports give licensees the ability to view all of their licensing transactions online and download this data to their own systems. This is the same information that licensees receive by mail each month, but this takes advantage of the flexibility that a digital format provides. The data used by the reporting application is now refreshed on a monthly basis with plans to move to weekly updates. The following reports are available in both Adobe PDF and Microsoft Excel formats: Download of License Transactions; Reports of License Transactions by Status Summary, Status Detail, Release Detail, and Song; and Notice of Song Ownership Changes.

If you are a HFA licensee, and would like to use eMechanical or Online Licensing Reports, please contact Maurice Russell, Vice President of Licensing, at 212-834-0159 or mrussell@harryfox.com.

New Index Department eMail:

index@harryfox.com

HFA has reactivated the Index Department general email address, index@harryfox.com. This is the best address for publishers to send their song catalog updates, address change information, and other Index-related notifications. Sending this correspondence to the Index address will allow us to route your inquiry so it is resolved more quickly.

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

Hit producer/songwriter **John Shanks** has re-signed a publishing pact with **Warner/Chappell Music**. The three-time Grammy nominee's most recent success includes his chart-topping collaboration with Ashlee Simpson on her hit debut album, *Autobiography*. He also produced and co-wrote Michelle Branch's 2001 hit album *The Spirit Room* and her 2003 album *Hotel Paper*. His collaboration with Keith Urban resulted in the #1 country hit "Somebody Like You."

Famous Music has re-signed an exclusive long-term global music publishing agreement with multi-faceted hit songwriter **Darrell Scott**. Named ASCAP's Country Music Songwriter of the Year in 2002 as well as Songwriter of the Year by the National Songwriters Association International in 2001, Scott is also a two-time Grammy Award nominee, for Best Country Song, "Long Time Gone," recorded by the Dixie Chicks (2003), and Best Country Instrumental, "Second Mouse" (2001). He has created an amazing catalog of hit songs including "Heartbreak Town" (Dixie Chicks), "Great Day To Be Alive" (Travis Tritt), "Born To Fly" (Sara Evans), "Family Tree" (Darryl Worley), "When No One's Around" (Garth Brooks), and "You'll Never Leave Harlan Alive," recorded by both Patty Loveless and Brad Paisley in the same year.

BMG Music Publishing UK picked up the "Publisher Of The Year" award as the music publisher with the most award-winning songs at the **ASCAP/PRS Awards** in London in October. BMG's award-winning songs (each picked up a "Performance Award") were: "All The Things She Said," artist: T.A.T.U., writer:

Sergey Galoyan, publisher: Appleby/BMG Music Publishing International; "Clocks," artist & writer: Coldplay, publisher: BMG Music Publishing UK; "You're Still The One," "Up" & "Forever & For Always," artist: Shania Twain, writer: Robert John "Mutt" Lange, publisher: Zomba Music Publishing UK; "It's My Life," artist: No Doubt, BMG-affiliated co-writer: Tim Friese-Greene, publisher: Zomba Music Publishing UK; "White Flag," artist: Dido, BMG-affiliated co-writer: Rollo Armstrong, publisher: BMG Music Publishing UK; "American Idol" (Theme Award) (Jules & Stone), 19/BMG Music Publishing UK; and Annie Lennox (BMG Music Publishing UK) won an ASCAP Film Award for "Into The West" from *The Lord of the Rings*.

Spirit Music has signed Hip-Hop/R&B producer **Mr. Devine**. Since early 2000, Devine has been an in-house producer for Ruff Ryders and has worked on projects for DMX, Jadakiss, Sheek Louch, Styles P, and the Lox. Devine is currently producing upcoming sets for artists on various labels as well as the latest Ruff Ryders signings, including three tracks for Jin, whose album *The Rest Is History* was recently released on Virgin Records.

In Other News . . .

In October, **ASCAP** announced that it had reached a \$1.7 billion deal with the Radio Music License Committee to allow their 12,000 stations to legally stream ASCAP-represented music over the Internet. The agreement, billed as the largest licensing deal in radio history, includes retroactive licensing fees for the years 2001 to 2003, and establishes a new guideline to be followed from 2004 until 2009.

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

eBay and PassAlong Networks

eBay has recently jumped into the online music market, acting as a “venue” where buyers and sellers of music can meet.

The HFA Business Development department has confirmed that eBay is conducting a “pilot” music program through the first quarter of 2005 that allows a limited number of sellers, such as Warner and PassAlong Networks, to display their music offerings. All pilot participants must sign an agreement stating that they have the rights to distribute music and that their sites are secure. All sales and distribution of music take place off of the eBay server and on the server of the seller. Therefore, the seller of the music is the “licensee,” not eBay.

PassAlong Networks, one of eBay’s pilot seller participants, is a new online music site whose catalog includes more than 500,000 songs from major labels and indies. PassAlong confirmed to HFA’s Business Development department that it has obtained permanent download (DPD) licenses for its catalog through the record labels. Therefore, PassAlong Networks will report sales of full downloads to the labels who will in turn report the usage and pay the appropriate mechanicals to HFA.

Songs Needed for Hospice Awareness Campaign

Volunteer Records is looking for holiday songs for a 2005 holiday release for a national hospice awareness campaign, and to raise money for the Saint Barnabas Hospice and Palliative Care Center. This is a follow-up to their 2002 2-CD release, *Ho Ho Ho Spice*, which featured songs from Graham Parker, Better than Ezra, Chris Stamey & the dB’s, NRBQ, and from members of Whiskeytown, The Smithereens, and The October Project.

They are looking for songs that refer to Christmas, Chanukah, and New Year’s Day. The deadline for submission is March 15, 2005. For more information, see their website at www.hohohospice.com or contact Spiro Ballas at 973-322-4866 or volrecords@aol.com.

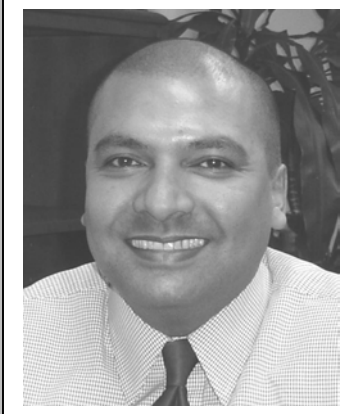
PassAlong also provides a new kind of selling proposition that allows customers to send friends a link (not an actual file or copy of the song) to a favorite song or a collection of songs by e-mail or through popular instant messaging (IM) services from AOL, MSN and Yahoo! When a song link passed through PassAlong results in a sale, members earn PassAlong Points, redeemable for digital music at any PassAlong store, including PassAlong on eBay (usually a credit equal to 10 percent of the retail price or 10 PassAlong Points).

HFA will continue to monitor these services, and we will keep you informed as they develop.

HFA Employee Profile

This month, we introduce you to Nat Annamalai, Vice President, Revenue Tracking and Royalty Compliance, and Matt Wuolle, Senior Director, Distributions.

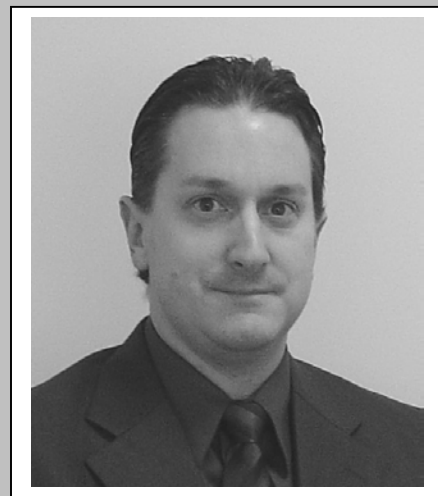
Nat Annamalai



Nat has been with HFA for almost two years, joining the company after holding a number of other senior finance positions, including Treasurer and Corporate Controller at Thorn EMI and Vice President & Treasurer at PolyGram Holding, Inc. As head of the Royalty Compliance and Collections Departments, Nat sees his role as being the “deal closer,” with the ultimate responsibility to protect the publishers’ interests while negotiating settlements with the record companies and other licensees. Outside of HFA, some of Nat’s favorite things to do include walking his dog in the park and working in his yard, and he thinks that most people would be surprised to know that one of his avid pursuits is motorcycles. He occasionally commutes to HFA on his BMW bike.

Matt Wuolle

Some might find it unusual that the man behind the intricacies of untangling record company statements into HFA distributions has a background in avant-garde musical composition, but Matt sees many parallels between his Princeton doctoral work with computer music and algorithms, and the work he does at HFA. He came to the company in 1999 as an analyst, and has worked his way up to be head of the Distributions department. Matt enjoys the problem-solving aspect of his work, and finds it interesting and challenging due to the various ways data and paper statements come in that then must be distilled into consistent, accurate statements and payments for HFA’s publisher clients. He continues to compose music and perform as a guitarist, and is also studying Japanese when he has the time.



Publisher & Licensee Forms Available on HFA Online

The following HFA forms for HFA affiliated publishers and licensees are available for download at www.harryfox.com/public/forms.jsp:

Song Registration Form

- If you are an HFA affiliated publisher, use this form to notify us of additions or changes to your song catalog. If you have a POLI+ account, you can also use eSong for this purpose, and if you have a large number of songs you would like to submit electronically, please contact HFA Client Relations at 212-834-0100 or client_relations@harryfox.com.

W-9 tax form

- If you are an HFA affiliated publisher and your tax information has changed, please use this form.

Mechanical License Request Form

- Use this form if you are a licensee making more than 2,500 copies, or if you are an affiliated publisher that wishes to notify us of an unlicensed recording.

Importation Request Form

- If you are a licensee that would like to import recordings manufactured outside of the U.S. into the country, please use this form.

Foreign Activity Notification Form

- If you are an HFA affiliated publisher that has chosen HFA to collect your foreign mechanical royalties, use this form to notify HFA of non-U.S. recordings which contain your organization's compositions.

Electronic Funds Transfer (EFT)

- Use this form to sign up for direct deposit of royalties collected by HFA.

There are also forms for new licensee accounts and for HFA publisher affiliation at this area of the website.

***“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 provide current information so we can pay you any royalties we may be holding, visit “Help Us Find Publishers” at www.HarryFox.com, or call HFA’s Client Relations Department at 212-834-0100.

And please remember to update your contact information with HFA if it should change in the future.

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

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