



Soundcheck

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HFA Collects \$421 Million in Royalties for our almost 28,000 Affiliated Publishers in 2004

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

In February, we announced our 2004 results, and I want to share with you the highlights of that press release. Our total 2004 royalty collections from all sources on behalf of our almost 28,000 affiliated publishers was \$421 million, with over 2.3 million mechanical licenses processed in the year.

HFA's results for 2004 show total mechanical collections, exclusive of Royalty Compliance Exams, exceeded \$366 million. This represents a 2.5% increase over the prior year. Note that HFA's collections period for mechanical royalties is 45 days after the close of the calendar quarter, which means the 2004 collections period reflects the retail period of October 2003 through September 2004.

The results from HFA's Royalty Compliance work continue to be outstanding. Royalty Compliance is the process by which HFA examines the books and records of licensees to review the accuracy of royalty statements reported and payments remitted by licensees, and enters into a settlement for monies owed if they are not accurate. Collections in this area exceeded \$53 million, due in large part to the completion of several exams that covered fairly lengthy periods.

The impact of digital distribution has had an enormous effect on the number of licenses HFA processes and administers. HFA processed 2,309,484 license requests in 2004, bringing the total number of licenses HFA administers to almost 8 million. The number of licenses that HFA processes has been growing

at a nearly exponential rate due to our implementation of a bulk electronic licensing process for online music services. This allows us to easily handle in a short period a volume of license requests that is the equivalent of our entire annual licensing volume for terrestrial licenses, including CDs, cassettes, and other physical product. For 2004, the number of licenses for physical product processed by HFA was 215,651, and the number of licenses processed for digital product (permanent downloads or "DPDs," on-demand streams, tethered/limited downloads, and ringtones) was 2,092,833. As you know, while the digital market is a big growth area for HFA, until a rate is established for on-demand streams and tethered/limited downloads, there is no collections number attached to this activity.

HFA signed up 185 new DPD licensees in 2004, including Orbison Records, Rykodisc, Sanctuary Records Group, and Sound Source Recording Studios, bringing the number of companies licensing through HFA to over 200. The company also offered our affiliated publishers a number of new licensing arrangements, with ringtone providers such as Dwango, Fore-Side.com, Improvista, Matrix M, Opera Telecom, and Sharp Robot; with the TruSonic background music service; and with the Rowe AMI digital jukebox service.

In December, HFA announced that it began offering mechanical licensing for "Express Live" CDs and permanent digital downloads (DPDs). This is a new type of licensing beyond the traditional mechanical which is targeted at companies that enable music fans to purchase recordings or downloads of concerts almost immediately after the last note is played, either at the venue or from a website after the concert.

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Publishers See Disparity In Digital Music Rates: Sharing the Royalty Pie My View by Irwin Z. Robinson

This page [Billboard's "My View"] recently entertained an opinion from the executive director of Digital Media Association criticizing the music publishing industry as the "single biggest hurdle" to "hockey-stick growth" in online music services ("No More Double-Dipping," Billboard 12/18/04).

Setting aside for the moment the fact that music publishers have generously underwritten online music services for over three years – by licensing on a "use now, pay later" basis to combat piracy on the Internet – this broadside is based on several old myths that have long been disproved.

The first is that songwriters and music publishers are "double dipping" because they seek to be compensated for both the mechanical and the public performance value of their works. This argument ignores the express terms of the Copyright Act, which has long recognized that music copyright owners possess several distinct rights in their works, including the right to reproduce and distribute copies of their songs (the mechanical right) and, separately, the right to perform those songs publicly. The Copyright Act expressly entitles songwriters and music publishers to license and receive separate royalties from each of these rights.

Congress did not alter this basic principle of music copyright law in amending the Copyright Act to cover digital transmissions – in fact, it explicitly preserved the distinct income streams by providing that a digital transmission may constitute a mechanical use (a "digital phonorecord delivery") regardless of whether it also constitutes a performance, and vice versa.

It is disingenuous to seize upon the advent of digital technologies as a reason to disregard these longstanding principles of copyright law. Each of the separate rights of reproduction, distribution and public performance guaranteed by the Copyright Act represents one piece of the whole value of a musical work. Ignoring one or more of those rights would deprive songwriters

and music publishers of part of the value of their works.

The opinion also suggests that songwriters and music publishers "profit from legal uncertainty," and that they have intentionally made it difficult for online music services to get licenses. The opposite is true. Songwriters and music publishers depend on the licensing of their musical works to make a living. It is in the economic interest of songwriters and music publishers to license their works for online delivery, and for those works to be widely disseminated. In fact, music owners are eager to enter into fair licensing arrangements that will allow their creative works to be distributed over the Internet.

While the influx of new online music companies that want to offer every song ever written has put an enormous strain on the music publishing industry in licensing mechanical rights, music owners have made a Herculean effort to satisfy that desire for immediate gratification. Indeed, millions of songs have already been licensed to numerous online music services.

The real issue, as always, is the money – how much online music services must pay copyright owners and how copyright owners will divide the resulting royalty pie.

In order to offer those services, online music companies need to obtain multiple rights from multiple copyright owners. From the record labels, online services need to obtain rights of reproduction, distribution and public performance with regard to the sound recording masters. From the music publishers, online services need to obtain the equivalent rights with regard to the underlying musical compositions.

Songwriters and music publishers were the innovators in creating ASCAP as a performing rights organization (PRO) -- and supporting BMI after it was founded as a competing PRO -- and in creating the Harry Fox Agency (HFA) as a

collective mechanical rights agency for the purpose of facilitating the licensing of musical works. Pursuant to the court decrees under which they operate, the PROs must license -- and have licensed -- non-dramatic public performing rights to any user who requests, including online music services.

Likewise, the compulsory licensing provisions of the Copyright Act require music publishers to license mechanical rights to all users, including online music services. And HFA has, for over three years now, agreed to license mechanical rights to online subscription services on a “use now, pay later” basis until rates are determined. Moreover, the Copyright Office -- with the support of the music publishing industry -- recently adopted regulations greatly simplifying the process of obtaining mechanical licenses for online music services by providing for the bulk licensing of multiple songs and the service of compulsory license notices on agents for the copyright owners.

In the case of master rights, Congress first recognized the efficacy of a compulsory license in 1995, but that compulsory license was limited to the right of public performance, and only for non-interactive digital transmissions. With regard to the rights of reproduction and

distribution for masters for interactive digital transmissions, however, there is no compulsory license, no collective agency, and no obligation to license whatsoever.

So far, the record labels have taken advantage of their unfettered right to license their master rights for reproduction and distribution to demand a large segment of revenue -- 40% to 50% of gross revenues -- from online subscription services. Those services, of course, also need to pay their expenses and make a profit. The result is that songwriters and music publishers, who are compelled to grant licenses, have been left with only a tiny sliver of the remaining revenues to cover all of their rights.

It is this disparity -- and not any unwillingness on the part of the music publishing industry -- that has created the hurdles currently facing online music services, and has left songwriters and music publishers in an impossible position of struggling to obtain fair rates for their creative works on an unfairly tilted playing field.

Irwin Z. Robinson is Chairman and CEO of The Famous Music Publishing Companies, and Chairman of the National Music Publishers' Association (NMPA).

Continued from page 1: HFA 2004 Review

As I'm sure you've read about often enough in these pages, HFA completed the first phase of the transformation of its technology systems in 2004, which included successfully launching a new online licensing system, eMechanical; improvements to its publisher interface, POLI+; and online licensing reports and royalty statements, all accessed through a new version of www.harryfox.com that includes registered user access for HFA-affiliated publishers and licensee accounts.

Overall, 2004 showed the beginning of financial growth for the music industry; 2005 already promises to be a challenging year, based upon recent marketplace trends. The fourth-quarter 2004 retail market results showed a decrease in album sales compared to the same quarter in 2003. This will be what HFA's first quarter 2005 will reflect. In addition, HFA's Royalty Examination process is now generally conducted on a more current basis and covers relatively shorter periods.

It is important to note that a portion of HFA's proceeds goes to support its parent company, The National Music Publishers' Association (NMPA). The NMPA is participating in a very important case that will be heard by the U.S. Supreme Court in March on the illegal peer-to-peer file-sharing services Grokster and StreamCast. It is expected that the NMPA will also begin to participate in negotiations for future increases to the statutory mechanical rate, as the current table of increases ends with the next increase on January 1, 2006. These negotiations on behalf of the U.S. publishing industry will require significant financial resources to support.

With these factors in mind, HFA will continue to budget cautiously and work aggressively to maximize opportunities for royalty income for its affiliated publishers.

Online Music Services Overview

The chart below is a compilation of information regarding some of the most popular online music services, created from publicly available information.

	MusicNet	Rhapsody (Real Networks - Formerly Listen.com)	MusicNow (Formerly FullAudio)	eMusic
Website Address	musicnet.com	real.com/Rhapsody	musicnow.com	emusic.com
Date of Licensing Agreement with HFA (if applicable)	October 2001	November 2001	April 2002	November 2002
Service Launch	April 2001	December 2001	April 1999	August 1998
Business Model	Subscription Service, A la Carte Downloads, CD Burns * Note: MusicNet functions as a “white label” business model that provides content that can be uniquely branded by their clients	Subscription Service, A la Carte Downloads, CD Burns	Subscription Service, A la Carte Downloads, CD Burns	A la Carte Downloads, CD Burns
Configuration(s) Licensed Through HFA	DPDs (full, permanent downloads), Limited/ Tethered Downloads, On-Demand Streams	DPDs, Limited/ Tethered Downloads, On-Demand Streams	DPDs, Limited/ Tethered Downloads, On-Demand Streams	Full, Permanent Downloads (DPDs)
Retail Service/ Pricing Model	Various pricing models depending on the service	Radio Plus (50 commercial-free radio stations with customization feature): \$4.95 per month All Access (Radio Plus, streaming and CD Burning option): \$9.95 per month Single CD Burn: \$.79 each (average)	Full Access Membership (40 commercial-free radio stations, unlimited streaming and music management): \$9.95 per month Single Download: \$0.99 (average) Album Download: \$9.99 (average)	Basic (up to 40 downloads per month): \$9.99 per month eMusic Plus (65 downloads per month): \$14.99 per month Premium (90 downloads per month): \$19.99 per month
# Songs Available	600,000+	800,000+	400,000+	500,000+
Royalty Reporting	Directly to HFA; DPDs may be reported directly to labels, who report usage/ royalties to HFA	Directly to HFA; DPDs may be reported directly to labels, who report usage/ royalties to HFA	Directly to HFA; DPDs may be reported directly to labels, who report usage/ royalties to HFA	Directly to HFA; DPDs may be reported directly to labels, who report usage/ royalties to HFA

Napster 2.0 (Formerly Pressplay)	MusicMatch	Ruckus Network	iTunes	BuyMusic
napster.com	musicmatch.com	ruckusnetwork.com	itunes.com	buymusic.com
May 2003	July 2004	August 2004	Not applicable	Not applicable
November 2003	May 1998	October 2004	April 2003	July 2003
Subscription Service, A la Carte Downloads, CD Burns	Subscription Service, A la Carte Downloads, CD Burns	Subscription Service (College/ University Private Networks Only)	A la Carte Downloads, CD Burns	A la Carte Downloads, CD Burns
DPDs, Limited/ Tethered Downloads, On-Demand Streams	DPDs, Limited/ Tethered Downloads, On-Demand Streams	DPDs, Limited/ Tethered Downloads, On-Demand Streams	None (DPD licenses secured from labels)	None (DPD licenses secured from labels)
Single Download: \$0.99 (average) Album Download: \$9.99 (average) Napster To Go Online Music Service: \$14.95 per month	Single Download: \$0.99 (average) Album Download: \$9.99 (average) MusicMatch On Demand Streaming Service: \$7.95 - \$9.95 per month	Currently conducting test trials through Spring 2005. Price TBD	Single Download: \$0.99 (average) Album Download: \$9.99 (average)	Single Download: \$0.79 (average) Album Download: \$9.99 (average)
1,000,000+	800,000+	500,000+	1,000,000+	500,000+
Directly to HFA; DPDs may be reported directly to labels, who report usage/ royalties to HFA	Directly to HFA; DPDs may be reported directly to labels, who report usage/ royalties to HFA	Directly to HFA; DPDs may be reported directly to labels, who report usage/ royalties to HFA	Directly to labels, who report usage/ royalties to HFA	Directly to labels, who report usage/ royalties to HFA

Word on the Street . . . HFA Affiliate Publisher News

BMG Music Publishing and **Famous Music Publishing** have renewed their ground-breaking subpublishing agreement for an additional five years. Under the deal, BMG Music Publishing will continue to subpublish Famous Music's catalogue worldwide excluding the U.S., Japan, South Korea, Taiwan, Okinawa and Vietnam. The renewal extends the relationship of the two leading publishers, which started in 1995. Since then, both companies have enjoyed remarkable growth and expansion. BMG Music Publishing is currently the world's largest independent music publisher and the world's third largest music publisher overall. Famous Music, one of America's leading independent publishers, ranks in the top 10 of U.S.-based companies.

peermusic's Latin Creative Department announced three worldwide signings: **Plastilina Mosh**, **Martha Gonzalez**, and **Negroni's Trio**. **peermusic** will represent **Plastilina Mosh's** Latin Grammy-nominated recording, *Hola Chicuelos*, as well as future material recorded by the witty duo, **Alejandro Rosso** (programmer) and **Jonas** (vocalist/guitarist). For ten years, **Martha Gonzalez** has been the lead vocalist, percussionist and driving songwriter for the Los Angeles-based roots-rock band, **Quetzal**. As an independent songwriter, she has written for numerous local urban and national acts in the soul, world and Latin arena, including **Los Lobos**, **Los Super Seven**, **Ozomatli**, **Latin Playboys**, and **Rick Trevino**; plus **El Teatro Campesino's** play "Virgen del Tepeyac" and HBO's "Dirt." Founded and led by classically trained pianist and composer **Jose Negroni**, **Negroni's Trio** creates jazz infused music with elements of pop and Latin sounds. A professor of music at the Conservatorio de Musica de Puerto Rico for over sixteen years, **Negroni** moved to Miami in 1995 and became Creative Manager for **Sony Music Publishing**, where he mentored and signed many writers, all the while developing his

own moving compositions. He has worked with the likes of **Chayanne**, **Jose Luis Rodriguez**, jazz greats **Ed Calle**, **Sammy Figueroa**, **Federico Brito** and many others.

BMG Music Publishing has announced the signing of **Stephen Duffy** to a worldwide exclusive music publishing agreement. The deal unites **Duffy** with his superstar writing partner **Robbie Williams** at **BMG Music Publishing**. **Williams** has been a **BMG** writer since 2001. **Duffy** co-wrote two new tracks included on **Williams's** greatest hits set, "Radio" and "Misunderstood." Both released as singles, "Radio" entered the U.K. chart at number one and was a top 10 hit around the world while "Misunderstood" was a top 10 U.K. hit and featured in the hit film *Bridget Jones: The Edge of Reason*. *Greatest Hits* has sold just under six million units worldwide. **Williams** and **Duffy**, who have been writing partners for over a year, are currently writing and recording **Williams's** next album in Los Angeles.

Boosey & Hawkes, Inc. announced a new agreement with **Walton Music**, noted publishers of choral music. **Boosey & Hawkes** now handles **Walton Music's** rental works worldwide. Both companies will preserve the full independence of their publishing programs and product development. **Walton Music's** print catalog will continue to be distributed by the **Hal Leonard Corporation**. All titles in the **Walton** catalog are available for purchase through music dealers domestically and internationally.

Harald Heker will succeed **Reinhold Krelrier** as chairman of **GEMA** as of January 1, 2006. **Heker** had been managing director of the German Federal Book Industry Assoc.

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

HFA Affiliate Publisher Profile:

International Music Royalty Administration Services

Julie Russell

By Fred Beteille & Eric Scott, HFA Client Relations

Members of the HFA Client Relations department had the opportunity to spend some time discussing the music and publishing industries with Julie Russell, who heads up International Music Royalty Administration Services (IMRAS). Located in the offices of the Alan Ett Creative Group, IMRAS is a traditional music publishing royalty administration and collection company that focuses on television and film production catalogs.

That does not mean, however, that Julie is not on the lookout for new songwriters and catalogs to work with. "I'll meet with anyone who I think I can help," Julie said when asked about her approach to choosing new projects. Several of her specialties include helping songwriters to locate missing royalties and to recoup old publishing advances by working in partnership with the advance recouping publisher, which Julie laughingly describes as a bit of "Forensic Musicology." "I am sure I stole that term from someone else," she jokes, "but it is something that I enjoy doing. It is just one of the things that a writer may not have the resources to do themselves."

While IMRAS' main focus is administration and collection, Julie notes that "IMRAS has a strong, established group of foreign sub-publishers worldwide with whom we work very closely to ensure maximum collection of royalties in their respective territories. We also offer a range of other music-related services such as assistance with various music publishing-related agreements, counter-claim issues, royalty recovery, catalog acquisitions and sales." Looking ahead, she'd like to expand their catalog exploitation area. "I would never limit the services we might be able to offer in the future."

Julie's background includes positions on both sides of the publishing industry. She was Director of Music Administration for PAXtv, where she was responsible for the worldwide administration of PAXtv's publishing concerns as well as acting as a liaison between the network and the performing rights societies, negotiating agreements and handling

all reporting functions – both as a publisher and as a broadcaster. Previous to that, she was Director of Copyright and Licensing for Bug Music. She has also held positions at the law firm of Rosenfeld, Meyer and Sussman and with Steve Tyrell's Tyrell Music Group.

A division of the Alan Ett Creative Group, IMRAS clients include the Alan Ett Music Group's production music catalog of over 6,000 active works; DeepMix, a creative music production and supervision company with six active catalogs of commercial and production music; Brad Lachman Productions, producers of the "World's Funniest Videos" and "Planet's Funniest Animals" series; Brentwood Communications International Inc., producers of the series "Overhaulin'" and "Rides"; and the songwriter Barry Coffing, co-writer of the chart-topping single "How Do You Talk To An Angel."

The Alan Ett Creative Group also includes Alan Ett Music Group, Media City Sound, and Opus 1 Production Music Library. Alan Ett Music Group is an award-winning full-service music production company offering original composition, music supervision and music editing to the entire media community. AEMG's client base includes the NFL, Dick Clark Productions, the Academy Awards, ESPN, Warner Brothers, NBC and HBO. Media City Sound, one of the fastest growing audio post-production facilities in Los Angeles, offers state-of-the-art audio post-production services for feature films, network television, DVDs, CD-ROMs, and all other current and developing media formats. Opus 1 Production Music Library, established in 1998, has established itself as a premier worldwide music library, representing every continent with 16 distinctly different international music catalogs. Opus 1 is also the developer of the award-winning DMA (Digital Music Assistant) and the o1 search engine.

IMRAS is a recent affiliate of HFA, and they have jumped right in, taking advantage of the growing list of technology tools offered by the company, particularly the new eSong application on POLI+. Julie is also looking forward to being able to register songs with HFA using CWR.

To learn more about IMRAS, visit: www.imras.com or call 818-508-3376.

***“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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