



# Soundcheck

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## The Big Question

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

I have had the good fortune to speak at several events already this year, and the theme I've been returning to is a question: will the new digital participants in our industry treat music as a mere commodity, or recognize its fundamental value as creative expression?

Just looking at the news in this month's issue of HFA Soundcheck illustrates that this is an open question. We have the NMPA's participation in the lawsuit against XM Satellite Radio on the one hand, but on the other, the recent licensing agreement with Musicnotes that gives publishers the option to monetize guitar tablature – a case where the digital marketplace gives new recognition for a little-used right.

Further, we've included a guideline to the Copyright Royalty Board projected timetable for mechanical rates for physical as well as digital uses, to give you a sense of how this first important mechanical rate setting procedure of the digital era will progress.

If you've heard me speak, you know I am an inveterate optimist – but all you need to do is look at history to see that our industry can continue to flourish. The music business has always been incredibly resilient and always adapted to seismic shifts despite repeated disruptions from the piano roll of the past to the download of today.

We weathered the early format war between cylinders and flat discs, which ended when

Caruso chose to sing on discs; we outlasted Prohibition, which shut down so many live-music venues in the 20's; we withstood the huge disruption of free radio in the 20's, 30's and 40's that was a catalyst – along with the Depression – of a decline in record unit sales from 104 million units in 1927 to just 6 million units in 1932; we've overcome shellac shortages precipitated by a World War; we survived the interoperability conflict between 33's, 45's and 78's and then eight-tracks and quad that we see repeating itself in the current portable device market; we rode out home taping in the 80's, which was supposed to be the death of the industry but, instead, became a high-selling format and precursor to consumer controlled interactivity; and we learned how to get our arms around a complex and constantly changing multi-channel business model in the 90's, when we contended with vinyl, cassettes, CD's, digital compact cassettes, video and a slew of merchandising possibilities.

The challenges we face today are no less daunting. But – based on our industry's consistent and proven track record in hurdling unfathomable obstacles – we are confident that we can successfully confront the onrushing digital destiny.

A handwritten signature in blue ink, appearing to be 'G. Churgin', is located in the bottom right corner of the page.

## Musicnotes and Harry Fox Agency Announce Online Guitar Tab Licensing Agreement

Musicnotes, Inc. and HFA announced in March a licensing arrangement that will authorize a newly launched Musicnotes guitar tab download website that utilizes the copyrighted music of HFA's participating music publishers on a commission free basis.

Through this groundbreaking arrangement, which will be offered on a commission-free basis to HFA's 31,000 music publishers, participating publishers will receive a percentage of all advertising revenue generated through views or downloads of tablature of their songs on the web site, while still retaining control over their song catalog in a robust online community.

"We are excited to have the technology and the expertise to assist publishers and songwriters in monetizing this burgeoning area of interest among musicians which, until now, has largely not been served in this way. Our experience as the world's leading digital sheet music company has placed us in a unique position to deliver this guitar tablature to millions of interested consumers," said Kathleen Marsh, CEO of Musicnotes.

"Musicnotes proves the viability of a copyright-friendly, ad-supported guitar tab website," said Gary Churgin, HFA President & CEO. "HFA has expanded its licensing and royalty distribution capabilities to support this kind of service, and we will continue to adapt to new licensing opportunities and models such as this to provide the most comprehensive service for our publishers."

Musicnotes expects to launch its new guitar tab site in the summer of 2007.

HFA affiliated publishers can expect to receive the opt-in into the Musicnotes agreement in April.

### HFA Out and About in April

HFA President and CEO Gary Churgin and NMPA President and CEO David Israelite will both participate on a panel at **Temple University's Boot Camp for Music Industry Entrepreneurs**, which takes place **April 18** from 8:30 am to noon in Philadelphia. This free, interactive workshop is designed for musicians, recording artists, and lawyers and businesses involved in the music industry, and will give attendees the opportunity to learn about the legal and business aspects of the music industry, including music publishing recording, licensing arrangements, the use of new media and the Internet, and copyright issues and legislation. For more information or to register, call the Innovation and Entrepreneurship Institute at 215-204-3082.

HFA will participate in the 2<sup>nd</sup> annual **ASCAP "I Create Music" Expo**, which takes place **April 19-24** at the Hollywood Renaissance Hotel in Los Angeles. Publisher Services agents Eric Scott and Kevin Brown and Senior VP of Publisher Services Ed Hunt will be on hand to answer any questions attendants. HFA affiliates can save \$145 off the regular cost of registration, a discount of over 35%. Affiliates who are also ASCAP members get an additional \$25 discount. To register and obtain the discount, visit <http://www.ascap.com/expo/registration.html>. For more information about the ASCAP "I Create Music" EXPO, visit <http://www.ascap.com/expo>.

## **Copyright Royalty Board Procedure and Projected Schedule**

This year, the Copyright Royalty Board will begin the process of determining the next schedule of mechanical rates, which for the first time will include rates for digital music services. These proceedings will greatly impact publishers and songwriters, who have been waiting to receive payment for on-demand streaming and limited downloads since 2001. The key participants in the CRB proceedings are the NMPA, acting with SGA and NSAI, the RIAA and DiMA. Below is a projected schedule of the CRB proceeding and a brief explanation of each stage.

### **1. August 13 - 60 Day Discovery Period Begins**

The Copyright Royalty Board has scheduled a 60-day period during which every participant in the CRB proceeding is allowed to request documents from, pose written questions to, and depose witnesses of any opposing participant. Any document request or written question must be directly related to the issues in the proceeding. To the extent a participant objects to a discovery request one or all of the Copyright Royalty Judges will review the request, and then determine whether to allow the request to be considered or to deny it.

### **2. October 27 - Amended Written Statements Due**

The parties submitted initial written cases on November 30, 2006. Within 15 days after the end of the discovery period, participants are allowed to amend their written cases to reflect new information learned during the discovery process. An amended statement must meet two requirements: (1) it must explain how it differs from the previously submitted written statement it is amending and (2) demonstrate that the amendment is based on new information received during the discovery process.

### **3. By November 2 - Settlement Conference Completed**

Within 21 days of the close of the discovery period, the participants will engage in a settlement conference, outside of the presence of the Copyright Royalty Board. After this conference, the participants will file a Joint Settlement Conference Report, which details the extent to which the participants have come to a settlement.

### **4. Pre-hearing Conference**

If a complete settlement is not agreed to by the participants, the Copyright Royalty Judges will hold a pre-hearing conference to set the schedule for the submission of pre-hearing written legal arguments, and the presentation of evidence and witnesses.

### **5. Approximately January 2008 - Hearing Begins**

The Copyright Royalty Board will conduct a hearing that is similar to a trial. Each participant in the proceeding will be permitted to make an opening statement and submit evidence. All evidence that is relevant to the proceeding and is not unduly repetitious may be presented to the Copyright Royalty Board. This includes written testimony and exhibits, except where the Board sustains an objection made by an opposing party. Each party is entitled to conduct a direct examination, cross-examination and redirect of each witness. Participants may also have expert witnesses introduce studies and analyses to bolster their particular positions.

*Continued next page*

## **6. Rebuttal Statements (To be scheduled)**

After the hearing phase ends, participants will file rebuttal statements responding to each others' written cases and the evidence presented at the hearing.

## **7. Additional Discovery (To be scheduled)**

During the course of the proceedings, any participant may request relevant information from an opposing participant or witness. The request can be made by written motion to the Board or by oral motion on the record. The Board will grant a request only if they determine that without the discovery that is being sought, their own ability to achieve a just resolution of the rate proceeding would be substantially impaired.

## **8. Rebuttal Hearing (To be scheduled)**

The Copyright Royalty Judges may schedule additional proceedings and hearings at the rebuttal stage.

## **9. Closing the Record (To be scheduled)**

The Presiding Judge will announce when the taking of evidence has concluded.

## **10. Finding of Fact & Conclusions of Law (To be scheduled)**

After the record has been closed, any party to the proceeding may file written statements proposing findings of fact and conclusions of law that it believes the Copyright Royalty Board should adopt.

## **11. By October 2, 2008 - Copyright Royalty Board Decision**

### **Publishers Bring Suit Against XM Satellite Radio**

The NMPA has filed a lawsuit on behalf of music publishers against XM Satellite Radio for refusing to acknowledge the rights of or pay compensation to the music publishers and songwriters who own songs being distributed through its unauthorized digital download service.

The publishers' suit, filed March 22, 2007 in federal court in New York, alleges that XM engages in massive copyright infringement through its illegal subscription digital music download service known as "XM + MP3." The suit was filed after months of discussions between NMPA and XM regarding the satellite radio company's obligation to compensate creators fairly for the songs it distributes.

"Filing a lawsuit was our last resort, but we felt that we had no choice," said David Israelite, NMPA President and CEO. "We want new technologies to succeed, but it can't be at the expense of the creators of music. All that we ask is that music publishers and songwriters be fairly compensated for their efforts."

The music publishers allege in the lawsuit that XM operates an unlawful download service that delivers perfect digital copies of copyrighted recordings to its subscribers. The XM + MP3 service allows users to record and store individual songs on portable music players at the touch of a button, creating extensive permanent libraries for so long as the user remains an XM subscriber. The service also allows subscribers to create personal playlists and automatically record large blocks of programming from which favorite tunes can be cherry-picked and permanently retained for replay. XM, which is alleged to compete with Apple's iTunes and other legitimate download services, urges its subscribers to "Hear It, Click It, Save It!" The complaint seeks a maximum of \$150,000 in statutory damages for each work infringed by XM.

## HFA Publisher Profile:

### Carmine Appice Bianic Music

*By Paul Mauceri,*  
HFA Publisher Services Team Lead

Publishing and rock drumming don't sound like a natural combination, but it is when taking about legendary rock drummer Carmine Appice's Bianic Music. Carmine has been a fixture in the rock and roll music scene since the mid-1960s, when his band Vanilla Fudge pioneered a sound that fused elements of psychedelia and what would become known as heavy metal. His style combined aggressiveness and showmanship in a way that was completely unique and provided a blueprint for countless drummers.



But in addition to drumming for many famous artists such as Ted Nugent, Ozzy Osbourne, and Rod Stewart, Carmine has always worn numerous other hats, including bandleader, songwriter, composer, publisher, author, celebrity, and, more recently, lecturer. His constant involvement in numerous projects and his boundless energy, which remains unabated at age sixty, has enabled him to sustain a career in the music industry that is going on its fifth decade.

Carmine has led many bands after Vanilla Fudge, including Cactus - who in 2006 reunited and released a new album on Swedish label Escapi Music entitled *Cactus V - Beck, Bogert, & Appice* - Beck being guitar legend Jeff Beck and Bogert being bass player Tim Bogert from Vanilla Fudge and Cactus - KGB, Blue Murder, and King Kobra.

Among some of the most famous songs Carmine has had a hand in writing are "Do Ya Think I'm Sexy" and "Young Turks," which were both huge hits for Rod Stewart in the '70s and '80s, and continue to generate considerable royalties. Many of his songs have also been used in films, including "Lady" from *Fear and Loathing in Las Vegas* and several songs from *Chasing Destiny*.

Carmine affiliated his publishing company Bianic Music (the name "Bianic" is a combination of the names of Carmine's children Bianca and Nicholas) with HFA in 1993 on the recommendation of his younger brother Vinny, an accomplished and well-respected drummer in his own right who had his own publishing company Appice Music affiliated with HFA. In particular, as he has made more deals with independent labels for his overseas releases, Carmine says he appreciates HFA's international reach and comparatively low commission.

Early in his career, Carmine wasn't too aware of the value of owning his copyrights. But he soon learned how important this could be. One of the most lucrative copyrights he owns is not for a song but for his drum instruction book Realistic Rock, one of the best-selling drum instruction books of all time.

Written while on tour in the early '70s in his hotel room as his band mates were busy partying after gigs, Carmine felt inspired to write Realistic Rock because of the dearth of rock drum instruction books out at the time. After its first publication, Realistic Rock legitimized rock drumming, and Carmine has traveled around the world giving clinics based on the material from the book. To commemorate its thirty-fifth anniversary, Alfred Music has released Realistic Rock as a DVD along with an anniversary edition of the book.

Another of Carmine's various projects currently in the works is his stage show *Carmine Appice's Slamm*, a live performance of original drum music composed by Carmine and performed mostly by

drummers. Akin to shows like *Stomp* and *Blue Man Group*, the musicians will play, in addition to real drums, other percussive objects such as buckets and trashcans. His vision for it is to “build the biggest rock drum show there is.” Once the show is up and running, Carmine plans to take it on the road, with some summer festivals already booked.

This past March, Carmine gave the first in series of lectures, which he calls “40 Years of Cool,” at Five Towns College in Long Island. Although he did perform on the drums, the focus of the presentation was the many life lessons he has learned as a true rock and roll survivor. Among the topics discussed were how having maintained a drug-free lifestyle has enabled him to remain active and set goals for himself, music publishing and copyright ownership, and dealing with the fears and insecurities that go with starting new projects - something he still experiences.

The lecture was sprinkled with anecdotes about the times he spent with rock legends such as Jimi Hendrix, Janis Joplin, The Who, and Led Zeppelin, whose drummer John Bonham was heavily influenced by Carmine. Not surprisingly, Carmine has begun writing about these experiences for his next book, which will be more of a memoir than his previous instructional works.

While he is certainly aware of his past, Carmine Appice has never rested on his laurels. He says, “I’ve always had to create my own opportunities. You can’t sit around and wait for the phone to ring.” Having lived through the ups and downs of a career in the music business spanning four decades, his attitude is refreshingly positive. He believes “if you’re out there playing [music] and making a living at it, you should be thankful for it.” With an outlook and work ethic like his, Carmine Appice will no doubt be vital and active for many more years to come.

For more information on Carmine Appice, visit his web site at [www.carmineappice.com](http://www.carmineappice.com).

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## Louis Trebino, Jr. Named CIO for HFA



Louis Trebino, Jr. has been promoted to Chief Information Officer (CIO). Trebino had been Vice President, Program Management, and will continue to report to HFA’s President and CEO, Gary Churgin. Trebino first joined HFA in July 2006 after consulting for the company on HFA’s technology transformation projects from 2001-2005.

“With his many years of experience working directly with the company, Lou is deeply familiar with HFA’s technology, business processes, and most important, the needs of our publishers and licensees,” said Churgin. “He played an instrumental role in the major technology initiatives that brought new and improved online services to our affiliates. Since he officially joined HFA last year, he has been a critical part of my executive team as we continue to evolve the company to meet the demands of the 21<sup>st</sup> century, and I’m delighted to promote him to this new role.”

“I’ve enjoyed working with Gary and his team over the past five years, and I am excited to take on this new challenge,” said Trebino. “We’ve made tremendous strides in making HFA’s services and systems easier to use and increasing our value for our publishers and licensees. I look forward to continuing to work with the team in this new capacity to make HFA even better.”

Before joining HFA, Trebino was Senior Manager - Communications and Content Practice at BearingPoint. From 1990-2001, prior to joining BearingPoint, Lou worked at Telcordia Technologies, a leading global provider of telecommunications network software and services, where he managed projects for such clients as Pacific Bell. Before that, he was Staff Manager, Economic Analysis at NYNEX (now Verizon).

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

**BMG Music Publishing** has signed a joint venture agreement with Turkish music publisher **Taxim Edition**. Under the agreement, BMG Music Publishing will represent Taxim's local artists outside of Turkey. Taxim will continue to sub-publish BMG Music Publishing's catalogue of more than one million copyrights in Turkey.

**Cherry Lane Music Publishing Company, Inc** has entered into a multi-year administration agreement with **The Weinstein Company**. This agreement covers all music and soundtracks from films released by the Weinstein Company. Cherry Lane will represent and exploit all Weinstein Company owned music and soundtracks while securing performance rights fees from music publishers around the world.

**ARC Music Group** has extended its exclusive Canadian sub-publishing agreement with **ole** for another year. Arc Music Group is the music publishing home to classics such as Chuck Berry's "Surfin U.S.A.," Aaron Neville's "Tell It Like It Is," and Bo Diddley's "Road Runner."

**peermusic** has entered into a worldwide joint-venture publishing agreement with **Vicky and Marisol Terrazas**, leaders of the band Los Horoscopus De Durango. The

Terrazas sisters' company, Black & Blonde Music Publishing, was created to allow the group to sign third party songs, most of which will be recorded by Los Horoscopus De Durango. Peermusic also signed the sisters as exclusive songwriters and will work with them to develop their songwriting.

**Williamson Music**, a division of The Rodgers & Hammerstein Organization, has signed a deal for the music publishing representation of the score for the Broadway musical **Grey Gardens**, which features music by Scott Frankel and lyrics by Michael Korie.

*In Other News...*

**The Songwriters Hall of Fame** has announced the honorees for its 38<sup>th</sup> annual induction and awards dinner. The 2007 inductees are **Don Black, Jackson Browne, Irving Burgie, Michael Masser, Bobby Weinstein** and the late **Teddy Randazzo**. The event will be held June 7 at the Marriott Marquis Hotel in New York City. Tickets are available through Buckley Hall Events at (212) 573-6933.

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

### Upcoming AIMP NY & Los Angeles Chapter Events

The New York chapter of the AIMP will present the panel "How to Make Money in the Digital Marketplace" on April 12 from 5:30 PM to 7:00 PM at the Williams Club. Panelists include Ross Blanchard (VP of Business Development, Gracenote), Jim Griffin (Managing Director, OneHouse LLC), Marc Jacobson (Of Counsel Entertainment, Technology, New Media, Greenberg Traurig), Bob Opatrny (General Counsel, Pump Audio), and Patrick Sullivan (VP, Music Services, The Orchard). This event is free to AIMP members and \$15 for non-members.

The Los Angeles Chapter will host "O Canada, Words of Wisdom with David Basskin" on April 19 from 11:45 AM to 2:00 PM at The Bel Age Hotel in West Hollywood. David Basskin, President of the Canadian Musical Reproduction Rights Agency (CMRRA) will speak about the challenges that music publishers and songwriters face in the licensing of their music for online sale. This event is \$32 for AIMP members and \$45 for non-members.

For more information or to register 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.

***“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 at 212-834-0133 or Shaliza Thomas at 212-922-3290, or email [soundcheck@harryfox.com](mailto:soundcheck@harryfox.com).

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