



Soundcheck

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Pending Ory Class Action Settlement Regarding Record Clubs

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

A number of publishers have contacted HFA because they have received notice of a proposed class action settlement in litigation currently pending in California federal court against the Columbia House (CHC) and BMG record clubs (BMG), *Babette Ory, et al. v. Columbia House Music Club, BMG Direct*.

HFA is not a party to or sponsoring this lawsuit. However, due to a number of serious concerns about the proposed settlement, HFA and a number of HFA-affiliated publishers expect to file an objection with the court arguing that the settlement should not be implemented. HFA has mailed a letter regarding the proposed settlement to our affiliated publishers, and we have posted the same information on our website at www.harryfox.com. There have also been stories regarding the settlement in the Los Angeles Times and in Billboard. **Please note that even if you did not receive a class notice from CHC or BMG, your company may be in the class. The class notice is available on the class administrator's website at www.gilardi.com.**

Plaintiffs in the *Ory* action are challenging CHC's and BMG's payment for the use of musical works at less than the full statutory rate in the absence of

negotiated licenses from the publishers. However, HFA believes that the settlement they reached with the clubs is unfair and onerous to music publishers, both in the method of opting into or out of the class action, and especially regarding the proposed future licensing practice. Instead of ending the record clubs' practice of paying publishers at a 3/4 rate (or less) without taking licenses, if the settlement goes into effect, it will establish a new website-based licensing scheme for the record clubs, which will require publishers to constantly monitor and react to proposed uses by the clubs at rates that may not even be as high as 3/4 of the statutory rate.

The proposed settlement will allow CHC and BMG to list the song they intend to distribute on a website, along with the rate the club wishes to pay, without sending *any* notice to the publisher or its representatives. **There is no floor to the rate that the clubs can propose to pay under this method.** Under this procedure, the publisher has 30 days to search for and identify its song on the website and, should the publisher object to the intended use, object to the use in writing; if the publisher fails to file a written objection (or if just one of multiple co-owners of a song fails to do so) within that 30-day period, the club will be deemed to have a license at its

chosen rate. The website licensing process can remain in effect indefinitely.

Needless to say, this scheme turns Section 115 of the Copyright Act on its head by putting the burden on publishers to constantly monitor website postings by the clubs if they wish to object to reduced rate licenses. In HFA's opinion, this would be a terrible precedent for the music publishing industry.

Please note that the dates to respond to the settlement are coming up quickly. All members of the settlement class have a right to file written objections to the settlement prior to **June 17, 2005**. If the settlement goes into effect, the failure to submit a valid request for exclusion to the class administrator on or before **June 24, 2005** means that the publisher will be bound by the terms of the settlement, including the website licensing scheme. (A publisher that has not been excluded from the class will be bound even if the publisher collects no money under the settlement.) Proofs of claim seeking to collect a share of the

settlement fund must be postmarked by **June 30, 2005**. The settlement will be put before the judge on July 11, 2005.

We will continue to add updated information regarding this case to the HFA website. **While we hope that this information is useful to you, it is not intended to be a substitute for individualized legal advice and you should consult your own legal advisor concerning how to proceed in connection with this settlement.** But I did want to make sure that HFA's affiliated publishers are aware of this very important case, and HFA's position on what it proposes.



Epic Records International recording artist and virtuoso ukulele sensation **Jake Shimabukuro** stopped by the HFA offices in May to meet with the staff and perform songs from his latest recording, *Walking Down Rainhill*, before his show at New York City's Lion's Den. Shimabukuro is published by Sony/ATV and Toastman, Inc.

Pictured left to right: Jake Shimabukuro; Paul Mauceri, International Agent, HFA; and Michele Olton, Senior Vice President, Human Resources & Administration, HFA.

Word on the Street . . . HFA Affiliate Publisher News

EMI Music Publishing picked up the Pop Publisher of the Year award from **ASCAP** and the Publisher of the Year from **BMI** at their Pop Awards. This is the 11th time the ASCAP award has gone to EMI Music Publishing Chairman/ CEO Martin Bandier and his team, and it is their third consecutive win. The ASCAP trophy was awarded for EMI Music Publishing's 17 award-winning songs: "Ain't No Mountain High Enough," "Baby Boy," "Burn," "Calling All Angels," "Confessions Part II," "Dance With My Father," "I Don't Wanna Know," "If I Ain't Got You," "Pieces Of Me," "P.I.M.P.," "Slow Jamz," "Topsy," "Toxic," "White Flag," "With You," "Yeah!" and "You Don't Know My Name." The BMI trophy was awarded to EMI Music Publishing (EMI-Blackwood Music, Inc./EMI-Stone Agate Music) with 11 award songs including: "100 Years," "Bright Lights," "Damn!," "Freek-A-Leek," "Get Low," "Heaven," "I Don't Wanna Know," "I Heard It Through the Grapevine," "Into You," "Unwell" and "Where Is the Love?."



L to R: Jim Tullio, Mavis Staples, and Jim Weider at the W.C. Handy Awards

Jim Weider of **Moon Haw Music** is pleased to announce that the song "Have a Little Faith," which he co-wrote with Jim Tullio for Mavis Staples, received the Blues Foundations' W.C. Handy Award for best Blues Song of the year. Staples received two

additional awards for the album of the same name, and the award for Best Soul Blues artist. Weider also played guitar on five songs on the album.

Dottie Burman, singer/songwriter/ president of **Burtley Productions** won second prize in the International Unisong Contest in the Social/Political Song category for her song "When the Palm Trees Grow in Central Park." There were over 4,500 entries from 80 countries. Dottie also was nominated for a MAC Award from the Manhattan Association of Cabarets for Musical Comedy Performer for her show "An Evening With Dottie Burman."

Warner Music Group announced that it has acquired from edel music AG a 50% interest in music publisher **Deston Songs LLC**. Deston Songs was founded in 2000 by world-renowned songwriter/producer Desmond Child and music industry veterans Winston Simone and David Simoné. Under the agreement, WMG's **Warner/Chappell Music Inc.** will acquire 50% of Deston with the remaining 50% continuing to be held by Deston's founders. Desmond Child, who has been an exclusive songwriter for the company since its formation, has written songs that have sold more than 200 million records worldwide. Deston recently signed exclusive long-term publishing agreements with multi-platinum recording artist Aldo Nova, who co-wrote and co-produced Celine Dion's current worldwide hit "A New Day Has Come," and with Grammy-nominated writer/producer Mark Hudson, who most recently co-wrote and co-produced Aerosmith's multi-million selling album *Just Push Play*. Deston's roster also includes the Baha Men, whose worldwide smash "Who Let The Dogs Out" reached No. 1 on charts around the world and was featured in several television commercials and feature films.

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

Technology News: “To Go” Portable Subscription Services

The latest trend in online music subscription services is the portable or “to go” model. This model allows subscribers to download an unlimited number of songs from a subscription service onto compatible portable digital music devices. A subscriber can then play the music, whether they are connected or not to the Internet. The “to go” subscription model has a feature that causes songs to expire and not be accessible in the event that a customer’s subscription lapses.

This model is attractive to subscribers who are early adopters of new technologies and dedicated music fans. It is also attractive to those who wish to preview music before making a purchase as well as to those who like to frequently change or add to their portable music collection.

The rental or “to go” subscription services are supported and secured by Janus, a Digital Rights Management (DRM) technology from Microsoft. Janus is a new form of Digital Rights Management software that combines Windows Media DRM for Portable Devices and Windows Media DRM for Network Devices. It is designed to work across devices, on next-generation Microsoft Windows Media Center systems and supports a variety of music, movies and electronics platforms. Early adopters of Janus include online music services such as Napster, Real/Rhapsody and FYE (a MusicNet distributor); content companies such as AOL and OD2; service providers such as MovieLink and VirginMega; and consumer electronics companies such as iRiver and Dell.

An important feature of Janus is that it contains a “hacker-resistant secure clock” that is designed to “time-out” subscription content when a subscriber’s right to that content has expired. Subscribers may utilize the content as long as they pay the subscription fees and periodically synchronize their portable device with the service to verify their subscription is in good standing. If a subscriber does not pay their fees, they lose all content on their player. If a subscriber wishes to have permanent access to the content, they need to purchase a full download separately from the “to go” subscription fee.

The first “to go” music subscription service was launched by Napster on February 3, 2005. Real Networks announced the launch of its service on April 26, 2005. A comparison of the two services is on the facing page.

Upcoming AIMP Los Angeles Chapter Event

The Association of Independent Music Publishers (AIMP) is hosting the following event:

“An Update on the Harry Fox Agency” – June 15, 5:30-7:30pm – Hotel Bellagio, West Hollywood

Jacqueline Charlesworth, Senior Vice President and General Counsel; Ed Hunt, Senior Vice President of the Index & Client Relations Department; Al Pedecine, Senior Vice President & Chief Financial Officer; Michael Simon, Senior Vice President of Licensing and the Chief of Strategic Development and Marketing; and Frank Wander, Chief Information Officer will provide an update on the company. This is a free event for AIMP members only. RSVP before June 13. See www.aimp.org or call 818-771-7301 for more details.

An Overview of the “To Go” Portable Subscription Services

Area	Rhapsody “To Go”	Napster “To Go”
Launched	<ul style="list-style-type: none"> ▪ April 26, 2005 	<ul style="list-style-type: none"> ▪ February 3, 2005
General Subscriber Base for Overall Service	<ul style="list-style-type: none"> ▪ Approximately 500,000 	<ul style="list-style-type: none"> ▪ 400,000+
To Go Subscription Cost	<ul style="list-style-type: none"> ▪ \$14.95/month 	<ul style="list-style-type: none"> ▪ \$14.95/month
To Go Compatible Portable Devices	<ul style="list-style-type: none"> ▪ Launched with support for two recommended devices—the iRiver H10 and Creative Zen Micro. ▪ Not compatible with iPod. 	<ul style="list-style-type: none"> ▪ iRiver H10, H320 & PMC-120, Dell Pocket DJ 20 & 30, Creative Zen Micro, Zen Portable Media Center, Audiovox SMT5600, Gateway MP3 Photo Jukebox, Samsung YH-99 Portable Media Center ▪ Not compatible with iPod
Subscription Highlights	<ul style="list-style-type: none"> ▪ Transfer, delete and retransfer any song in Rhapsody’s library to a portable device whenever convenient for user. ▪ Can make an unlimited number of song transfers/ downloads as long as subscription is maintained. ▪ Must synch portable device to service monthly to verify subscription status. ▪ Once a subscription lapses, the songs disappear from the portable players. 	<ul style="list-style-type: none"> ▪ Listen to, download and transfer an unlimited amount of music without paying by track or album. ▪ Must synch portable device to service monthly to verify subscription status. ▪ Once a subscription lapses, the songs disappear from the portable players.
Royalty Rates	<ul style="list-style-type: none"> ▪ Rhapsody is relying on its subscription service licenses to offer its “to go” services. No rate has yet been set for subscription services. 	<ul style="list-style-type: none"> ▪ Napster is relying on its subscription service licenses to offer its “to go” services. No rate has yet been set for subscription services.
Security Technology	<ul style="list-style-type: none"> ▪ Janus Digital Rights Management 	<ul style="list-style-type: none"> ▪ Janus Digital Rights Management

HFA Index 201: ESong – HFA’s Easy New Song Registration Tool

by Eric Scott, HFA Inquiry Agent

Last month, [HFA Soundcheck](#) included a story on the *Online License Request Approval* tool of HFA’s POLI+ (Publishers’ Online License Inquiry) system available through HFA Online. Another important tool on POLI+ for publishers is the *eSong* application. *eSong* is a convenient way for publishers to request new song additions to their catalogs, as well as to request changes to their existing songs.

“The Harry Fox Agency’s eSong feature in Poli+ is the most efficient way to add songs from our constantly growing catalog to the HFA database and to make them immediately available for licensing,” said Mark Roble of Bug Music. “It only takes a matter of minutes to enter in a song, complete with all the necessary publishing information, for The Harry Fox Agency to accurately issue a mechanical license on our behalf. The songs in the *eSong Request Queue* are typically processed within a matter of days, if not overnight.”

After logging on to POLI+, *eSong* can be accessed by selecting Option 11, *eSong Request Queue*. This will open the *Song Request by Publisher* page, where publishers are able to manage all of their *eSong* activity. Add a new song addition request by pressing the F6 key. This will open the *Song Inquiry Publisher Ownership/ Splits* screen, where a song search can be performed by title and/or writer, so that you can determine that the song is not already in the database. This will return a list of results for review. If the requested song is not listed, press the F6 key again to continue the addition request. This will then open the *Song Request Entry* screen, where all the applicable information about the new song can be entered.

The first required field is “*Do First Use Rights Apply?*” If the song has never had a commercial release, and the publisher wishes to be notified before HFA issues a license for the song, the publisher will enter a “Y” in the field. An “N” indicates that first use rights do not apply to this song. Please note that HFA will not issue any licenses for a song that is designated as having *First Use Rights* without written approval from the publisher.

The second field is *Priority*. Leave this field blank unless there will be a license request made within the next business day.

Complete the *Title* field with the title used for the initial search. Add alternate (or *AKA*) titles, by pressing the F14 key (or Shift + F2 on the keyboard), which will open a field to add the alternate titles. Once the *AKA* is entered, press the F5 key to save it. When all *AKAs* have been saved, press the F2 key to return to the request screen.

Then complete the writer information. *CAE* (Composer, Author, Editor) or *IPI* (Interested Parties Information) numbers can be indicated, although these are not mandatory. To add

more than four writers, simply place the cursor in the writer(s) field and press the *Page Up* key or click *Roll Up* on the screen.

Publisher information is entered into the next fields. This can be done two ways: By typing the HFA publisher (or “P” number) number into the *Publ #* field, or by performing a search for the publisher number. Place the cursor on the publisher number line and press the F4 key to open the search for the *Publisher Number* in the HFA database. Once the publisher names are completed, enter the publishing splits. If the request is 100% for one publisher, HFA will typically process the request within one business day.

In the case of split publishing, publishers should indicate their share. If the co-publisher information is known, that should be entered as well. If they do not know the co-publisher information, the balance will go into *Copyright Control*. If the co-publisher is an HFA affiliate, they will have a chance to approve their share before HFA adds the song to the database, as it will appear in their POLI+ queue. Requests that are not 100% for one publisher will usually be processed within three business days. In the event that a co-publisher is listed but has not approved their share after three days, the song will be added and the unapproved co-publisher share will be placed in *Copyright Control*. If a co-publisher lists a share for your company in one of their requests, that request will also appear in your queue. The request will appear in red, as opposed to the requests that you have submitted in which the text is displayed in green. You will need to select the request, and press the F7 (Edit) key. You can then change your publisher status from *Awaiting Approval (AA)* to *Approved (A)*, and save the request.

A publisher can request to update an existing song in the HFA database in a similar fashion. To do this, press the F6 (Add Request) key again from the *Song Request by Publisher* screen. A song can be selected by entering the HFA song code, or by performing a search for the work by title, writer, or publisher information, or any combination of the three. Select the song from the results by placing an “X” in the field next to the title. Once the song details are displayed, press the F6 key to request to modify the song. All information from the song will be displayed. The right side of the screen will show the title and writers in a read-only format, while the left side of the screen will display the same information but in an editable format.

Publishers may edit any song currently listed in their catalogs and available for mechanical licensing. If a publisher needs to claim a share from *Copyright Control*, however, they will still need to request that from the Index Department at HFA, as the company’s policy requires that all letters of direction and claim issues be received in writing.

The full instructions for *eSong* can be found in the POLI+ manual, which can be downloaded from the publisher’s *Registered User* area of *HFA Online*. If you have any questions about *eSong*, please contact our Client Relations Department at client_relations@harryfox.com or at 212-834-0100.

***“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, 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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