



# NEWSLETTER

An Entertainment Industry Organization

## Regulators Start Scrutinizing EMI Deals

### The President's Corner

Welcome to the CCC. I just finished moving this past weekend. After living somewhere for nearly 20 years, you can really get encumbered by all your stuff. So the move was a good opportunity to organize and throw out. It's really quite empowering.

And with that said, I hope you'll come away from tonight's panel with a sense of empowerment in organizing your finances for your most valuable asset, your music. So whether you're looking to leverage your assets and take it to the next level or just looking forward to a secure financial future, tonight's panel can help you get there.

Next month's panel is moderated by past CCC president Teri Nelson Carpenter on Tuesday, April 24th and is entitled "Oh Canada: It's Not The 51st State When It Comes To Managing Your Music Rights." I'll hope to see you there.

And oh yeah, PLEASE JOIN THE CCC!

**Eric Polin**  
**President, California Copyright Conference.**

The wheels of EMI split acquisition -- the music division to UMG, the publishing arm to SONY -- continue to slowly move on. FINANCIAL TIMES reports that UMG has officially delivered its submission to European competition authorities; SONY's offer is imminent.

Separate teams in BRUSSELS and WASHINGTON will review the recorded music and publishing deals; it will be the first time regulators have had the chance to review both sides of the industry at the same time. The U.S. Federal Trade Commission has already sent a second request for information, signaling that it will also give both deals close scrutiny.

Lawyers told the FT that UNIVERSAL will likely have a more difficult time getting approval, since music publishing pricing is usually set by national collecting societies, and SONY owns only half of Sony ATV and 38% of the group buying EMI's publishing arm. With EMI Music in the fold, however, UMG would control about 40%, when added to SONY, would comprise 60% of the global market, leaving WMG and independent labels far behind.

"In such a highly consolidated and oligopolistic industry, we think that even the combination of the #1 player with its #4 rival might run into serious antitrust scrutiny," BERNSTEIN RESEARCH analysts noted.

WMG will likely argue that the digital world, infected with illegal downloading, has essentially negated the notions of market power or collective dominance. But the wild card here could be the impact of the merger on digital music services such as iTUNES to SPOTIFY, and whether consolidation will inhibit further

innovation. UNIVERSAL's opponents, who include smaller rivals hoping to buy assets it divests, will argue that consolidation will allow UNIVERSAL to dictate prices to digital newcomers.

## **SONY CLOSE TO SETTLING THE FIRST BIG DIGITAL ROYALTY DISPUTE**

So, a new development in the big digital royalties story that could help those veteran artists who reckon they are being short changed on digital revenue, though it could also shield Sony from the impact of the fallout of some big upcoming lawsuits on this issue, should they go in the artists' favour.

As much previously reported, many artists with pre-internet record contracts are being paid royalties on download sales as if they were record sales. But, some acts reckon download revenue – which is, after all, secured by signing one-off licensing deals with download platforms, and which is generated with much less risk than the manufacture and sale of CDs – should be treated as 'licensing income'. This is an important distinction, because artists usually earn a much bigger cut of licensing revenue versus record sale monies, often 20-35% more.

The biggest legal dispute on this issue to date, of course, was between early Eminem collaborators FBT Productions, who have a stake in the hip hop star's early recordings, and Universal Music, which distributes those recordings via its Interscope/Aftermath division. The producers sued for a bigger cut of digital royalties through the American courts and won on appeal. A court hearing is upcoming to decide how much Universal should pay FBT, both now and in terms of future digital royalties.

Universal insists that the ruling in the FBT case relates only to the specific wording of their contract, but many artists and music lawyers in the US do not agree. Rob Zombie, Chuck D and the estate of Rick James are among those now suing Universal for a bigger cut of the download loot, citing the FBT judgement, while the other majors, EMI, Warner and Sony, have been targeted by similar litigation from Kenny Rogers, Sister Sledge and Toto respectively.

But Sony actually has more experience on this issue than its rivals, because it was subject to a much earlier digital royalties dispute led by The Allman Brothers, Cheap Trick and The Youngbloods, who sued the major way back in 2006. Sony initially succeeded in fighting off that legal attack, the first lawsuit being dismissed on various technicalities. But, as previously reported, in 2009 another judge overturned that initial dismissal, giving the green light for the claimants to pursue their case anew.

But then everything went quiet, and it looked like Sony had successfully kicked the case into the long grass, perhaps because the old rockers being given the OK to proceed in 2009 coincided with the first stage of the FBT litigation, where Universal won. But no, it turns out talks between Sony and legal reps for the Allman Brothers et al have been ongoing ever since, during which time, of course, the appeals courts have found in favour of the Eminem collaborators (in 2009 the Allman Bros' lawyers were distancing themselves from that case, but presumably more recently they've been citing it quite frequently to Sony's legal monkeys).

After Toto announced they were pulling Sony into the latest round of digital royalty squabbling last month, we heard rumours that a secret multi-million deal was close to be finalised between the major and its first digital royalty foes. And last week that was confirmed as the claimants filed details of that deal to the court for judicial approval.

If approved, the deal will see Sony set aside \$7.95 million to compensate affected artists, and commit to increase those artists' cut of digital income by 3%. According to Billboard, about \$2.5 million of the upfront money would go to the lawyers. Quite how the rest would be divvied up isn't currently clear, because this is a class action, so a whole bunch of artists with pre-internet contracts with Sony Music would be entitled to benefit (whether that would include Toto isn't clear either). It is likely those artists who are big digital sellers would see the lion's share of the initial settlement, though all would get the 3% increase in digital royalties moving forward.

More important than all that, though, is that this agreement is seemingly a major label basically admitting that there is indeed a case to say that all digital royalties on pre-internet record contracts should be higher than is currently being paid. Universal, of course, maintains that that principle is not generic, and in their case only applies under the FBT Productions contract (which was much more recent than most of the other recording agreements under dispute here).

Sony conceding on this point won't help its competitors. Meanwhile, arguably, Sony bosses have contained the problem to an extent by agreeing to pay outs considerably less than the Allman Brothers' legal team were originally pitching for. Paying 3% more on download sales than CD sales makes the digital pay out considerably less than what most artists could have expected to receive from conventional 'licensing deal' arrangements.

If the Allman agreement is approved by the courts, any Sony artist deemed to be within the 'class' can claim the extra digital royalty. If they reckon they are due more, they'd have to opt out of the class action ruling and then pursue their own litigation. Many might reckon an automatic 3% increase is better than going to the time, hassle and expense of pursuing their own lawsuits.

Whether Universal and Warner can negotiate similar out of court deals with their heritage artists remain to be seen. It will likely depend a lot on what settlement the courts force on the former in the FBT case. If the Eminem producers cash in big time, other Universal acts are likely to push for similar deals.

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## **Panelist Biographies**

### **Cedar Boschan, Partner at Hurewitz, Boschan & Co. LLP**

Cedar's respected compliance audits have helped clients recover many tens of millions in unpaid music royalties over the past decade. In addition, Cedar has provided catalog valuation, litigation support and royalty statement preparation services to a wide range of clients in the music industry. She is known for her database management skills, knowledge of current industry developments, and for "thinking out of the box" to identify entirely new categories of audit claims.

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### **Cheryl Hodgson, Esq., Music Attorney and Past President, California Copyright Conference**

Attorney Cheryl Hodgson creatively guides clients in protecting and profiting value artistic and intellectual property rights. She began her career as a talent agent, and artist manager in the music industry working with artists such as Steve Martin and Jimmy Buffett and managing artists for the legendary Bill Graham in San Francisco. Cheryl serves as legal counsel in corporate, new media, and entertainment related matters, and has litigated numerous cases in music industry involving recording and publishing agreements, trademarks, copyrights, and the right of publicity. Cheryl represents a wide spectrum of clients in the music industry, entertainment, and consumer products, overseeing royalty income collection, global registration, licensing and enforcement of trademarks; and brand licensing. Cheryl is founder and President of Canto Novo Music a music publishing company. And is Past President of the California Copyright Conference. She is a member of the Arbitration and Mediation Panel of the World Intellectual Property Association, is currently serving a two year term on the Emerging Issues Committee of the International Trademark Association, and has been a featured speaker at many events. She writes regularly at the [www.brandaideblog.com](http://www.brandaideblog.com), [www.hodgson-law.com](http://www.hodgson-law.com), and [www.brand-aideblog.com](http://www.brand-aideblog.com).

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### **Michael Morris, Esq., Partner at Valensi Rose, PLC, Past President, California Copyright Conference**

Mr. Morris has blended his tax law expertise with a passion for music and entertainment into a unique practice. Experienced in tax, estate planning, music, entertainment and general business law, his practice has allowed him to develop a broad-based clientele. Mr. Morris is a former trial lawyer for the IRS and a certified specialist in taxation law. He has served as the president of the California Copyright Conference, spoken at a variety of conferences and seminars and published many articles. Mr. Morris is a member of both the Arizona and California bars.

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### **Sara Qazi, Financial Advisor, Guided Portfolio Manager, Morgan Stanley Smith Barney LLC**

Sara focuses on Strategic Wealth Planning for high net worth families, entrepreneurs and entertainers. Her investment process draws upon her knowledge of the financial markets, her expertise in trust, estate and tax planning, and investment management experience. As a Financial Advisor, she leverages the significant institutional and consulting resources of Morgan Stanley Smith Barney where she can bring comprehensive solutions to clients.

David and his team have completed literally hundreds of deals with a wide variety of companies including Verizon, AT&T, Sprint, T-Mobile, Amazon, Spotify, YouTube, Google Music, News Corp's MySpace, Microsoft, MTV and Apple – just to name a few.

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### **David Renzer, Entrepreneur and Former Chairman/CEO of Universal Music Publishing Group**

David Renzer is a veteran music and entertainment executive whose career has included leadership positions with the world's largest and most well-known music publishing companies. With over 25 years of experience in music and entertainment, Renzer most recently served at the helm of Universal Music Publishing Group as Chairman & CEO, responsible for overseeing the activities of the company's 57 offices in 47 countries.

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### **Joseph Rust, CPA, CFP, Partner at Prager and Fenton LLP**

Joe's expertise lies in the areas of royalty audits, special examinations, business valuation and financial due diligence on behalf of music publishing companies, songwriters, artists and royalty participants. He also provides business management and tax planning services to his clients to help them achieve their personal financial goals, make better financial and investment decisions, and effectively manage their day-to-day financial affairs.

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**Curtis Vega, Senior Vice President - Media & Entertainment, HSBC Bank USA, N.A.**

Curtis Vega is Senior Vice President and Team Leader for the media and entertainment group at HSBC Bank USA, N.A. in Beverly Hills, CA. The media and entertainment group is a specialist advisory team within HSBC that spans Los Angeles, New York and London and provides a full suite of banking services to the talent, principals, businesses and related entities of the entertainment industry. Curtis' focus is advising on and providing the debt finance of entertainment related intellectual property including music copyrights and film assets. Prior to joining HSBC Private Bank, Curtis was a buy-side portfolio manager at a major US financial services firm and he started his career in the marketing department of a major domestic film studio.

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