

October 25, 2010

**Term Sheet for Performance Rights Agreement**

The attached term sheet describes the structural framework for an agreement between the musicFirst coalition and the NAB to proceed towards legislation under which broadcasters would agree to make payments, strictly to the limited extent described below and subject to implementation of all the terms described, for performances associated with the music played on terrestrial radio and broadcast streaming. In exchange, members of the musicFirst coalition agree to recognize the promotional value that plays on terrestrial radio provide and further agree to work cooperatively with the broadcast entities to enact legislation to implement all aspects of this framework in a mutually agreeable manner. It is specifically understood that if any term of this framework is not enacted, the agreement of the parties is null and void. It is further specifically understood that any change to the terms of the agreement must be by mutual agreement of the parties.

## Term Sheet for Performance Rights Agreement

1. Rate.
  - Percentage Rate for All Transmissions. 1% for all terrestrial and non-terrestrial transmissions covering all broadcaster industry net revenue for music formatted radio stations. Accommodations apply for small broadcasters, noncommercial broadcasters, religious programming, and incidental uses by news, talk and sports stations (see Exhibit A).
  - Additional Per Play Fee for Non-Terrestrial Transmissions. In addition to 1% rate, current rates for simulcasts, webcasts and other non-terrestrial transmissions will be changed to a per play rate equal to .07575 cents more than the “pureplay” per play rate for each year through 2015, with an increase of 2.5% in 2016 (see Exhibit B).
  
2. Term.
  - Effective date. Upon becoming law, subject to Term 7 below.
  - Percentage Rate for All Transmissions. Fixed in statute with no expiration date.
  - Non-Terrestrial Transmissions. First rate period ends December 31, 2016. Rate adjusted every six years thereafter.
  
3. Rate-Setting Mechanism.
  - Non-Terrestrial Transmissions. CRB shall have no jurisdiction with respect to the terms of this agreement. In the event the parties cannot agree on future rates such rates shall be set by a legislatively mandated rate court.
  - Terrestrial Transmissions. CRB shall have no jurisdiction with respect to the terms of this agreement.
  
4. Industry Discussions. The parties agree to meet periodically to discuss how to offer consumers more and better ways to listen to music. The artist community, musicFirst and the broadcast industry shall work together at a senior level to find mutually beneficial ways to elevate the appreciation of creative artists and the value of terrestrial radio to consumers of music.
  
5. Radio Chips in Mobile Devices. The legislation shall include a provision mandating the inclusion and activation of radio chips on their mobile devices so that consumers can receive emergency alerts that are broadcast on terrestrial radio. Such a mandate will include an acceptable phase-in period and inclusion of HD when economically feasible. The musicFirst coalition will support such provision.
  
6. No Radio Chip Mandate. In the event that the NAB and the musicFirst coalition determine that legislation mandating the inclusion of radio chips on mobile devices is unattainable the parties agree to a market-based phase-in of the Rate defined above. Specifically, the parties agree:

- Phase In. The actual percentage rate (up to a maximum of 1%) for terrestrial transmissions shall be tied to (mirror) the market percentage of mobile devices that include an enabled radio chip.
  - Floor. Except that upon enactment of legislation reflecting the terms of this agreement a .25% rate shall be established for terrestrial transmissions regardless of enabled radio chip market penetration.
  - Streaming Kicker. The discounted streaming rates contemplated above for “Additional Per Play Fee for Non-Terrestrial Transmissions” shall not take effect until 50% of mobile devices in the market include an enabled radio chip. In the event that 50% market penetration has not been reached at the end of the current term (2016) then existing streaming rates shall continue to apply.
  - Effective Market Penetration. The rate for terrestrial transmissions shall be 1% in any year market penetration of enabled radio chips in mobile devices reaches 75%.
  - Accommodations for Small, Noncommercial, Religious and Non-Music Stations. The market-based rate phase-in (with the attendant Floor and Effective Market Penetration trigger) contemplated for terrestrial transmissions above shall apply to the reduced unlimited use accommodations described in Exhibit A.
7. Simulcast of Broadcast Commercials. Parties agree that any consideration paid in recognition of a terrestrial performance royalty is predicated upon the express acknowledgment by AFTRA of broadcasters’ right to simulcast terrestrial broadcasts in their entirety on the Internet.
  8. Simplify the Reporting Process. The parties agree to adopt sample-reporting similar to the methodology employed by ASCAP/BMI.
  9. Preserve the Right of Direct Negotiations. The Parties agree that any legislation enacted pursuant to the terms of this agreement does not diminish the present right of broadcasters to negotiate directly with the artists/labels. This existing right will pre-empt any statute enacted pursuant to the terms of this agreement and will effectively reduce the amount paid to Sound Exchange by the percentage of music played that had a directly negotiated performance royalty with the broadcaster.
  10. Promotional value of terrestrial radio. There shall be explicit acknowledgement in legislative text of value to artists and record labels of promotion on free, over-the-air terrestrial radio.
  11. Ephemeral Copy Fix. musicFirst and its members will expressly recognize that ephemeral reproductions made in conjunction with digital terrestrial transmissions fall under the Section 112(a) exemption. Further, the parties agree that all ephemeral reproductions made in conjunction with “eligible nonsubscription transmissions” made by a broadcaster would fall under the Section 112(a) exemption rather than the 112(e) license. musicFirst and its members will work with NAB to amend Section 112 so that it reflects the realities of broadcasting (e.g., not purging copies after 6 months, an amount of copies “reasonably necessary” to exercise the performance licenses).

12. Section 114 Fixes. musicFirst and its members will work with NAB to create a separate statutory licensing category for broadcasters in Sections 114(d) and (f), to include (A) a sound recording performance complement (limitations on the number of songs by a particular artist or from a particular album within a 3-hour period) and pre-announcement rules tailored for broadcasters, per the terms of the RIAA waivers that accompanied the NAB/SoundExchange settlement and (B) the other terms and rates, as provided herein.

## **Exhibit A**

### **Summary of Accommodations for Small, Noncommercial, Religious and Non-Music Stations**

- For terrestrial broadcasts, any commercial or nonprofit station with revenues less than \$50,000 annually will have the option to pay the lesser of \$100 annually for unlimited use of music or 1% of revenue annually for unlimited use of music.
- For terrestrial broadcasts, any commercial or nonprofit station with revenues less than \$100,000 and more than \$50,000 annually will pay \$500 annually for unlimited use of music.
- For terrestrial broadcasts, any nonprofit station with revenues more than \$100,000 annually will pay \$1,000 annually for unlimited use of music.
- For terrestrial broadcasts, any commercial station with revenues less than \$500,000 but more than \$100,000 annually will have the option to pay the lesser of \$2500 annually for unlimited use of music or 1% of revenue annually for unlimited use of music.
- For terrestrial broadcasts, any commercial station with revenues less than \$1,250,000 but more than \$500,000 annually will pay \$5000 annually for unlimited use of music.
- For terrestrial broadcasts, any commercial station with revenues more than \$1,250,000 will pay 1% of revenue annually for unlimited use of music. Any change in that rate would be subject to agreement by both sides.
- Stations that make only incidental uses of featured music, such as “talk radio” stations, would not pay for that music.
- Religious services that are broadcast on radio would be completely exempt.

**Exhibit B**

**Per Play Fee for Non-Terrestrial Transmissions**

<u>Year</u>	<u>Amount</u>
2011	\$0.0017775
2012	\$0.0018575
2013	\$0.0019575
2014	\$0.0020575
2015	\$0.0021575