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## Internet Music Breakthrough: Industry Groups Agree on Mechanical Royalties for Interactive Streaming and Limited Downloads

by Cydney A. Tune and Christopher R. Lockard

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*On Tuesday, September 23, 2008, the Recording Industry Association of America (RIAA), the Digital Media Association (DiMA), the National Music Publishers' Association (NMPA) and several songwriters' associations announced the details of a landmark deal on mechanical royalties for interactive music streaming and limited music downloads.*

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The agreement, which has been submitted to the Copyright Royalty Board (CRB) in the form of proposed regulations and must be adopted by the CRB before having any legal effect, proposes a mechanical royalty rate of 10.5% of revenue effective as of January 1, 2007, with a rate of 8.5% applied retroactively to revenue earned between December 31, 2001 and December 31, 2007. According to the press release issued by the parties to the deal, any amounts owed for performance royalties will be deducted from the mechanical royalty rate. The deal also reportedly includes built-in flexibility in royalty rates for new business models.

The mechanical royalty is the fee paid to composers, songwriters and music publishers for the reproduction or distribution of their music. Interactive streaming allows users to select specific songs on demand and tailor specific music streams to their liking. Limited music downloads are restricted downloads that will be deleted or become inaccessible automatically after a certain period of time or due to a failure to comply with requirements, such as payment of a monthly fee.

The deal, which will apply to both subscription-based websites and websites supported by advertising, also allows for certain royalty-free promotional streaming. Additionally, the deal confirms that mechanical royalties are not owed for non-interactive, audio-only streaming services such as satellite radio and webcasting, although this concept was not included in the proposed regulations submitted to CRB.

The agreement, however, does not address the controversy over statutory performance royalties for Internet radio stations that are collected by SoundExchange and paid to the sound recording copyright owners, generally record labels. These performance royalty rates were increased substantially by the CRB in 2007

and remain the subject of a dispute between SoundExchange and Internet radio websites. The agreement also does not address royalty rates for permanent music downloads, cell phone ringtones or physical products.

In addition to the RIAA, DiMA and NMPA, the Nashville Songwriter's Association International and Songwriters Guild of America agreed to the deal. The CRB's judges are expected to rule on the proposed regulation by October 2, 2008.

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