Pandora S-1 Filing a Trove of Information

February 21, 2011 by Bob Tarantino

Pandora Media, Inc.'s Form S-1 (hat tip: Geist), filed with the US Securities and Exchange Commission on February 11, 2011, offers interested readers some detailed information not just about their financials, but also about the licensing arrangements that US-based online music services have to put in place:

(From the "What We Do" section): Our largest royalty expense arises from our use of sound recordings. We obtain performance rights licenses and pay performance rights royalties to the copyright owners of sound recordings, typically performing artists and recording companies, pursuant to the Digital Performing Right in Sound Recordings Act of 1995, or DPRA, as amended by the Digital Millennium Copyright Act of 1998, or DMCA. Under federal statutory licenses created by the DPRA and DMCA, we are permitted to stream any lawfully released sound recordings and to make reproductions of these recordings on our computer servers, without having to separately negotiate and obtain direct licenses with each individual copyright owner. These statutory licenses are granted to us on the condition that we operate in compliance with the rules of statutory licenses and pay the applicable royalty rates to SoundExchange, the non-profit organization designated by the Copyright Royalty Board, or CRB, to collect and distribute royalties under these statutory licenses. The rates we pay to SoundExchange for non-interactive streaming of sound recordings pursuant to these licenses are privately negotiated or set by the CRB. In 2007, the CRB set royalty rates for non-interactive, online streaming of music that were extremely high. In response to the lobbying efforts of internet webcasters, including Pandora, Congress passed the Webcaster Settlement Acts of 2008 and 2009, which permitted webcasters to negotiate alternative royalty rates directly with SoundExchange outside of the scope of the CRB process. In July 2009, certain webcasters reached a settlement agreement with SoundExchange establishing a royalty structure more favorable to us that by its terms will apply through 2015. This settlement agreement is commonly known as the “Pureplay Settlement.” Once the rates and terms of the Pureplay Settlement came into effect in July 2009, any qualifying commercial webcaster could elect to avail itself of those rates and terms by filing an initial notice, followed by annual notices, of election with SoundExchange through 2015. In July 2009, we elected to be subject to the Pureplay Settlement and have timely filed notices of election with SoundExchange for 2010 and 2011 and intend to continue to make such elections through 2015.

As the charts available in the filing show, the Pureplay Settlement, in setting rates for the non-subscription portion of Pandora's service, contemplates a licensee fee which has a *floor* of 25% of gross revenues. And that does not include payments owing in respect of Pandora's use of compositions (which are the subject of separate licenses with ASCAP, BMI and SESAC, which shave another few points off gross revenues).

Indeed, as the Statement of Operations shows (page F-3 of the filing), Pandora spends an amount equal to approximately *half* of its gross revenues on content acquisition (meaning license fees payable to rights owners). Puts the discussion from last fall about the license fees sought by Canadian music collectives in a slightly different light.
