

2006-07 Electronic Media Survey – Results (updated)

Radio

Local Public Radio

Buffalo – see Additional Comments
Cincinnati – 32 (including symphony, May Festival & opera)
Columbus – 12
Florida – see Additional Comments
Honolulu – 4
Indianapolis - 52
Louisville – 10 (repeated a 2nd time for total of 20)
Minnesota – 25-30
Nashville – 14 + 3 opera
Rochester - 14
San Antonio – 4
San Diego - 17
Syracuse – 12
Utah – approx. 65
Virginia – 17 + 1 opera (opera allowed 2 additional broadcasts)

Local Commercial Radio

San Francisco Opera – 10

Syndicated Radio

Indianapolis - 13
Minnesota – 25-30 (APM)

NPR

Baltimore - 2
Buffalo - 6
Charlotte – 1 (Margaret Garner Opera)
Los Angeles – 26 paid at the NPR rate
Nashville – 2
Philadelphia – 26 (15 used to date in 06-07)
San Diego - 3

Satellite Radio

Internet

Baltimore - 2
Louisville – simultaneous stream of 20 Local broadcasts
Nashville – simultaneous stream of local broadcasts allowed in local-side agreement
Philadelphia – simultaneous streaming of radio broadcasts on radio station websites is covered in radio broadcasts

receive for one local broadcast:

Baltimore – no compensation for local live or delayed non-commercial radio broadcast release; parties will agree to terms and conditions for any local commercial radio broadcast.
Cincinnati - \$375 total per broadcast to Local 1. Previously monies were paid to the private pension fund. When it was frozen once the orchestra joined the AFM-EPF, the monies were sent to Local 1, which now divides the proceeds (approx. \$12,000) amongst all living pre-1990 retirees, whose pensions were only about \$17,000 per year.
Columbus – no payment

Florida – 2% of weekly min. scale plus additional 2% for Internet streaming for a full concert; 3% for partial concert

Honolulu – full time musicians receive ½ service credit; part-time receive ½ service payment

Indianapolis – no payment

Louisville – no payment

Nashville - \$125 from NSA/\$300 from WPLN per broadcast to the NSPA fund; \$5 to each musician for each opera [WPLN & Opera agreements negotiated separately]

National – up to 4 repeats after initial broadcast; payment is 1% of weekly scale or \$20, whichever is greater

Oregon - \$56.25

Philadelphia - \$60

Rochester – no payment

San Antonio - \$10

San Diego - \$5

Utah – no payment

Virginia – no payment

for one syndicated broadcast:

Baltimore – payment for national radio broadcasts is 5.5% of minimum weekly scale (in effect at the time of payment) or \$58 dollars, whichever is greater, for each broadcast tape created. Payment also includes a 9% payment to the AFM-EPPF.

Indianapolis – 6.5% of weekly minimum scale per broadcast

Minnesota - \$85.58 + 12% AFM EPF

Philadelphia - \$60

San Diego – NPR rate

Recording

SRLA (Sound Recording Agreement)

Baltimore - 1

Buffalo – 1

Cincinnati - 4

Dallas - 1

Minnesota – 6-8 sessions (2)

Nashville – 6 sessions (2 completed disks beginning of 3rd)

Rochester – 2 sessions (in 05-06)

Limited Pressing

Alabama – 1

Live Recording Agreement

Baltimore - 1

Charlotte – 1 (using old archival recordings for their 75th season)

Nashville – 1 + patch

Philadelphia – 4 (3 used in 06-07)

Rochester - 1

St. Louis - 1

Internet Downloads

Baltimore - 2

Los Angeles - 4

Philadelphia – 9 works to date from 06-07. Of the downloads released during the 06-07 season, 37 works were released exclusively as digital permanent downloads (DPDs); this number does not include downloads that were released in conjunction with releases of physical formats, such as the Ondine CDs. Of the 37 works released exclusively as DPDs, 9 were recorded during the 06-07 season. In addition, 29 DPDs

corresponding to commercial CD releases were issued during the 06-07 season (including Ondine CDs, Centennial CD Collection, Sawallisch Schumann CDs).

Free recordings this season for fundraising purposes

Baltimore
Indianapolis

Audio Visual

Local TV

Louisville – 1 (MLK concert on MetroTV – no compensation)
Nashville – 2
Philadelphia – 1
St. Louis - 4
San Antonio – 1
Virginia – 1 (no compensation)

Regional TV

Nashville – 1 statewide broadcast

National TV

Cincinnati - 1
Nashville – 2
National - 2

International TV

Nashville – 1

EMG amount:

Baltimore - \$2,080 (\$40/wk) for all types of media
Buffalo - \$1,076 (\$45/wk for 39 wks) for all types of media
Cincinnati - \$3,640 (\$70/wk) for all types of media
Dallas - \$6,760 for all types of media
Florida – \$340 for all types of media
Minnesota - \$3,900 (\$75/wk) for all types of media
Nashville – \$1,040 per year (\$20/wk) for all types of media
Oregon - \$593 for all types of media
Philadelphia - \$2,080 (\$40/wk) for all types of media
St. Paul Chamber - \$7,000 per season for all types of media (see CBA)
San Diego - \$2,000 for all types of media
San Francisco Opera - \$2,152 for all types of media

Locally negotiated side agreements

Baltimore – see attached agreement

Indianapolis – during current negotiations media changes allowing projects supporting participation in Education programs via CD, DVD and/or Internet distribution (archive projects cannot be directly sold, classrooms participating must agree to terms, the Society will attempt to recover CD and/or DVD projects, each project must be approved by the Orchestra committee.) They may be used to prepare students for ISO concerts and musicians presenting programs in schools. Language is also being added to require 200% penalty for misuse of recordings.

Los Angeles – see attached agreement

Nashville – new syndicated/XM radio/European Union broadcast agreement for 5 years – 5%/3%/2% for a total of 10% of weekly scale for American Encores Series broadcasts (13 programs upcoming); see attached agreement

New York Philharmonic – see attached agreements

Oregon – established Local TV Broadcast rate of \$66.25; rebroadcast @ 75%

Philadelphia - During the 06-07 season, The Philadelphia Orchestra undertook two test transmissions of live concerts over the Internet2 network. The first transmission was sent to one remote site within the local area. For this first transmission, the LOC agreed to conduct the test without additional compensation. The second transmission was sent to six remote sites, all sites were colleges or universities located in the US and Europe. For the second transmission, the Orchestra received a waiver of payment under the terms of the Symphony, Opera, Ballet Audio-Visual Agreement from the American Federation of Musicians. Both tests were conducted free of charge to the participating institutions and audiences. A copy of the letter confirming the waiver granted the request of a waiver of payment but advised that future transmissions of the orchestra via Internet2 would require full payment due musicians under the terms of the AV agreement. See attached waiver

St. Louis – has negotiated a side agreement

St. Paul Chamber – see CBA for terms

San Antonio – side agreements are on a per-event basis.

San Francisco Opera – payment of EMG covers up to two AV simulcasts (Plazacasts) of a live performance in the War Memorial Opera House, transmitted to up to 3 locations in the Bay Area for viewing by the general public free of charge.

Additional Comments

Buffalo – The local public radio station runs a “spot” for the Philharmonic every Friday from Sept. – June. This amounts to approx. 40 short broadcasts. These broadcasts feature one work or sometimes one movement of past recorded live concerts or a selection from BPO’s CDs.

Charlotte – we don’t even make archival recordings anymore and have no written agreement. The Margaret Garner Opera was a one-time event & the “live” recording was taken from old archival recordings for the 75th season.

Dallas – Tried to negotiate a deal for Internet Download with an upfront payment but following the musicians’ counter dealing with revenue sharing and pension, management backed away.

Florida – there are usually local radio broadcasts (w/ streaming) but were not approved due to unacceptable recording quality of tapes.

Louisville – CBA uses standard AFM boilerplate language for electronic media projects. Anything not covered requires a negotiated agreement between the management and the Union/Orchestra Committee. One page of Local 11 handbook concerning negotiated rates for local broadcasts is available upon request.

Minnesota – CBA allows up to 30 broadcasts total per season, in all media combined.

San Antonio – current CBA expires Aug. 31. Many electronic media changes are on the table, including an EMG.

Syracuse – Discussion of the simultaneous internet stream of radio broadcasts throughout July produced no agreement. The stream that had been active since 9/2003 was turned off in July 2007.

Utah – so the radio station doesn't compete with the box office, they use archive recording from weeks and months previously and piece together approx. 1 hour shows in lieu of full performances. Shows are sometimes broadcast twice a week. They also get free PSAs and interviews with musicians to promote the season.

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Attached agreements

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BALTIMORE SYMPHONY ORCHESTRA

XM Satellite Radio: Broadcast Series

Proposal

To broadcast a series of eight concerts by the Baltimore Symphony Orchestra on XM Classics – the primary classical music channel of XM Satellite Radio – throughout the 2007-08 season. The series will consist of one live broadcast from the Music Center at Strathmore and seven delayed broadcasts consisting of live material from performances at the Joseph Meyerhoff Symphony Hall. (See attached list of proposed programs.) The delayed broadcasts will be recorded, engineered and edited by Leszek Wojcik. The packaging of the concerts would be created specifically for XM Classics and would be a unique offering by a symphony orchestra on satellite radio. XM Satellite Radio would be responsible for producing interviews and commentary with on-air host Martin Goldsmith, Marin Alsop, guest artists and BSO musicians. Supplemental content for the show would be cross-disciplinary drawing on insight from experts in fields such as literature, history, medicine, psychology and ethno-musicology.

Promotion

The BSO broadcasts will be promoted on XM Classics and across a broad selection of XM's 170+ channels. The BSO's presence on XM will also be highlighted on their web site and in press materials. The precedent of this relationship will be a public relations vehicle for promoting the BSO and its presence on an emerging satellite network. XM Satellite Radio currently has over 7 million subscribers and is available to millions more through their relationships with airlines, rental car companies and internet providers.

Program Scheduling and Content

The broadcasts would be repeated up to three times in the first week at alternating times of day. Usage would be limited to a maximum of six plays per year per program. While the packaging, interviews and commentary would be exclusive to XM Satellite Radio, the BSO retains all rights to the musical material and may be licensed for other media opportunities including but not limited to CDs, downloads or terrestrial radio broadcasts.

Payment to Musicians

For each program on which a full-time musician performs, he/she will receive payment of 3% (three percent) of the minimum weekly scale credited against his/her individual annual electronic media guarantee. For every payment credited against EMG, a corresponding 10% contribution will be made to the AFM Employer's Pension Fund. Non-fulltime musicians performing on these broadcasts will receive 3% (three percent) of the minimum weekly scale in addition to their per-service rate, plus \$16.50 Health and Welfare for the week and a 10% contribution to the AFM EPF.

Approval Process

Recordings of performances created for delayed broadcast on XM Satellite Radio must be mutually approved by the Music Director and the Artistic Advisory Committee prior to being released.

Financial Transparency

All financial arrangements between the Baltimore Symphony Orchestra and XM Satellite Radio, including underwriting, sponsorship, fees and expenses, will be fully disclosed and shared with the musicians of the orchestra

Archival Recording

The musicians and management of the BSO share the ambition to increase the number of concerts recorded for archival purposes in the future to be inclusive of all classical subscription offerings.

Future Agreements

"The parties agree to approach prospective media projects under applicable national AFM agreements in the spirit of cooperation, and the Musicians agree to consider in good faith approval of applicable AFM rates where appropriate."

-- 11.6.(H), Baltimore Symphony Orchestra CBA.

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LOS ANGELES PHILHARMONIC **LOCAL INTERNET OVERSIGHT COMMITTEE (LIOC) AGREEMENT**

This Agreement is made as of this 24th day of March, 2006, by and between the musician members of the Los Angeles Philharmonic (LAPO) Local Internet Oversight Committee and the Los Angeles Philharmonic Association members (LAPA) of the LIOC. The parties agree as follows:

SECTION 1. BACKGROUND AND PURPOSE

The Los Angeles Philharmonic Association entered into the Symphony, Opera, and Ballet Orchestra Internet Agreement (Internet Agreement), a multi-employer collective bargaining agreement with the American Federation of Musicians of the United States and Canada regarding the distribution of certain electronic media product over the Internet. Among other things, the Internet Agreement permits LAPA, "with the consent of the Local Internet Oversight Committee" to "[distribute] Internet Recordings and Webcasts of rehearsals and performances..." The Internet Agreement also permits LAPA to license "Internet Product to

any other entity." LAPA intends to enter into an agreement with Deutsche Grammophon (Distributor) to distribute recordings of performances of the Los Angeles Philharmonic over the Internet. To facilitate understanding of the agreements reached by the LIOC with respect to distribution of performances by such Distributors under the terms of the Internet Agreement, the musician members and management members of the LIOC are hereby memorializing those agreements.

SECTION 2. LICENSING OF CATALOG TO DISTRIBUTORS

- (a) Licensing of performances shall be subject to the terms and conditions of the Internet Agreement.
- (b) LAPA shall retain ownership rights to the recordings and not sell the ownership rights to any other party.
- (c) Licenses with all Distributors (Licensees) shall have a term no greater than five (5) years, although such agreements may be renewable for additional five (5) year terms with the consent of the LIOC, which consent shall not be unreasonably withheld
- (d) Recordings licensed under this agreement are only licensed for internet downloading and sale. No other use will be allowed unless appropriate payments are made according to the applicable AFM agreement.

SECTION 3. COMPENSATION

- (a) Compensation to LAPO musicians (collectively) shall be in the form of revenue sharing, with no upfront payment. For the recordings listed in Exhibit A, 52.27% of gross revenues received by LAPA from the Distributor will be allocated to LAPO musicians. An additional 10% (5.23% of gross revenues) of the amount received by LAPO musicians will be contributed to the AFM-EPF. 42.5% of gross revenues will be retained by the LAPA. "Gross Revenues" will be considered to be all money received from the Distributor, with no deductions for production costs or payments to conductors, soloists, or other entities.
- (b) LAPA shall provide a payment and royalty report to the LIOC according to the relevant provisions of the Internet Agreement.
- (c) The revenue due to LAPO musicians will be divided evenly between all Staff Musicians employed at the time of the

recording regardless of participation in the recording and all extra and substitute musicians required for the recording. Staff Musicians who are on long term disability, sabbatical, or unpaid leave at the time of the recording will not be eligible for payment.

- (d) Payments to individual LAPO Staff Musicians and substitute and extra musicians will be made quarterly based on the most recent reports received from Distributor. If the amount due is less than \$200 per musician at the end of each quarter, payments will be made annually at the end of each contract year.

SECTION 4. REEVALUATION AND POSSIBLE RENEGOTIATION

The terms of this agreement will apply to recordings of the concerts listed in Exhibit A and licensed to Deutsche Grammophon for posting for online sale. Terms for any additional recordings or licensees will be discussed by the LIOC and subject to renegotiation.

SECTION 5. GENERAL PROVISIONS

To the extent that none of the following provisions conflict either with the Internet Agreement, with the collective bargaining agreement currently in effect between LAPA and Professional Musicians, Local 47, AFM, or with any successor collective bargaining agreement, the parties also agree as follows:

Neither party may assign this Agreement or its rights and responsibilities without the prior written consent of the other party. This Agreement will be construed in accordance with the laws of the State of California. If any provision of this Agreement is deemed unenforceable or void, the balance of this Agreement shall remain in full force and effect. A waiver by either party of any term or condition of this Agreement in any instance will not be deemed or construed as a waiver of such term or condition for the future or any subsequent breach thereof. All remedies, rights, undertakings, obligations, or agreement contained in this Agreement will be cumulative and none of them will limit any other remedy, right, undertaking, obligation, or agreement of either party. This Agreement constitutes the entire agreement between the parties relating to its subject matter, and supersedes all prior agreements between the parties, whether oral or written, relating to its subject matter, and may not be modified except in writing signed by both parties.

Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in the county of Los Angeles, California, before a neutral arbitrator. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction, such as mediation. The arbitrator may, in the award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees to the prevailing party.

IN WITNESS WHEREOF, the parties have executed this Agreement as of March 24, 2006:

Deborah Borda
For the LAPA members of the LIOC

Peter Rofe
For the musician members of the LIOC

EXHIBIT A

March 24 and 25, 2006
Reinbert de Leeuw, conductor
Andriessen: Raconto dall'inferno
Part: Tabula Rasa
Andriessen: DeStaat

March 25 and 26, 2006
Stefan Asbury, conductor
Reich: Variations for Keyboard, Strings, and Winds
Three Movements
Tehillim

April 28, 29, and 30, 2006
Esa-Pekka Salonen, conductor
Beethoven: Leonore Overture, No.2
Lutoslawski: Symphony No.4
Beethoven: Symphony No.5

May 4 and 7, 2006
Esa-Pekka Salonen, conductor
Beethoven: Symphony No.8
Hillborg: world premiere work
Beethoven: Symphony No.7

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**“AMERICAN ENCORES SERIES”
SYNDICATED RADIO SPECIAL LETTER OF AGREEMENT**

In consideration of the mutual covenants herein contained, and of other good and valuable considerations, The Nashville Symphony Association (hereinafter called "Association") agree with The American Federation of Musicians, Local 257 (hereinafter called the "Local") on the following terms and conditions. This agreement shall pertain to the creation and payment of The Nashville Symphony's syndicated radio broadcasts entitled "American Encores Series".

1. Except as otherwise explicitly provided in this agreement, no service or any part thereof shall be recorded, reproduced or transmitted from the place of performance in any manner or by any means whatsoever, by the Association, or by any other person(s), in the absence of a specific written agreement with the American Federation of Musicians International Office.
2. Completed product for each "American Encores Series" show shall be from Classical Series archive tapes unless Local 257 is advised otherwise.
3. Material from previous archival recordings may be used as supplementary material for a broadcast show, providing that all musicians not performing or paid for the primary work featured on the show shall be compensated as stated in #11. The Association shall notify Local 257 of their intent to use additional archival material in a broadcast show.
4. The Association may provide up to three (3) minutes of the primary work featured on each broadcast show for a podcast that will be made available on the Association's website and may be downloadable to an iPod or MP3 device with appropriate disclaimers against copyright infringement.
5. Any further use of this material will be subject to further negotiation between the Association and the Local.
6. No recording of any kind shall be done without prior notification to the Union Steward and Local 257.
7. No recordings of any type shall be made of the orchestra in rehearsal or performance, except as provided herein.
8. Said tape shall, at all times, be considered the responsibility of the Association unless otherwise approved by Local 257. The Association will not permit duplication of such broadcast tapes, nor will the parties allow any use of such tapes for purposes other than review by authorized personnel (as agreed upon by the Association, Union Steward, and Orchestra Committee).
9. No tape shall ever be used as evidence in any disciplinary or dismissal proceedings.
10. The Association shall provide the Local with a B-10 form for each show broadcast.
11. Rates shall be as follows for one (1) broadcast per show (stations may repeat the broadcast one additional time during the initial twenty-four (24) hour period of release) in the following mediums:

Special Letter of Agreement

page 2

Syndicated Radio only:

7% of weekly NSO base-scale for each broadcast

Syndicated Radio plus XM Radio:

5% of weekly NSO base-scale for each broadcast for Syndicated Radio, plus
3% of weekly NSO base-scale for each broadcast for XM/Satellite Radio
for a total of 8% of NSO base-scale for each broadcast

Syndicated Radio plus Satellite Radio plus European Union Broadcast:

5% of weekly NSO base-scale for each broadcast for Syndicated Radio, plus
3% of weekly NSO base-scale for each broadcast for XM/Satellite Radio, plus
2% of weekly NSO base-scale for each broadcast for European Union Broadcast
for a total of 10% of NSO base-scale for each broadcast

The Association agrees to be bound by the Trust Indenture dated 10/2/59 as amended providing for contributions to the AFM and Employers Pension Fund and further agree to

contribute to such fund on behalf of the musicians engaged by the Association an amount equal to 10% of wages earned by said musicians.

Payment shall be to all NSO members and all extras and subs performing on each show, and shall be included in the next payroll following broadcast of each show. It is understood that weekly scale payments shall correspond to NSO scale at the time each show is broadcast.

12. Term of this agreement shall coincide with the Nashville Symphony 2007-2012 Master Agreement and will expire on July 31, 2012.

13. Should material taped for the "American Encores Series" ever be utilized for any purpose not explicitly set forth herein, including, but not limited to displacement of musicians in rehearsal or performance, demonstration or marketing of services or product by any group or individual, local or national broadcast, phonograph records, promos or commercial announcements, or background music of any type of sound or film program, the Association shall fulfill all conditions required by the appropriate agreement of the American Federation of Musicians, including, but not limited to, the payment of prevailing wages and allied fringe benefits outlined therein.

This agreement shall remain in full force and effect as long as any product created under its terms and conditions exists, notwithstanding termination of this agreement. Further, nothing in this agreement shall in any way set a precedent for future agreements between the union and the Association.

ACCEPTED AND AGREED:

ACCEPTED AND AGREED:

DATE: _____

DATE: _____

AFM, LOCAL 257

ASSOCIATION (SIGNATURE)

NAME & TITLE (PRINT)

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