

Senza Sordino

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Special Edition: The Great Electronic Media Debate

The letters that appear on the following pages were submitted in response to a request from *Senza Sordino* for opinions from the field on musicians' electronic media issues.

Our intent is to focus the discussion on the issues, not on personalities or politics, and to grant all letters, to the extent possible, equal space and equal weight. To that end, the editor adopted these precepts and procedures: 1) *Direct references to other persons and other persons' opinions have been edited out;* 2) *References to personal titles or credentials that might confer greater privilege to one author than another have been edited out;* 3) *Authors are uniformly identified only by name and pertinent orchestra/employment affiliation, except for those who wished to remain anonymous (of which there were none);* 4) *If, in the course of proofreading, suspected errors of fact were identified, writers were given the opportunity to confirm their information and revise their letters, if necessary and so desired;* 5) *Authors of letters that were much longer or much shorter than average were invited to adjust the length of their letters proportionately, so that everyone could have an equal say; and* 6) *The letters are printed in an order determined by lot.*

Each author was given an opportunity to revise and approve the final version of his/her letter.

Democracy is a risky business. It takes courage to speak out on sensitive, complicated issues. But doing so is the only way to operate in an enlightened environment and make unified progress toward a common goal. *Senza Sordino* thanks all our contributors to this issue for being willing to step forward and take a chance. It is indeed gratifying to see so many articulate and constructive contributions from our readership. We have handled this volatile subject with overall balance and restraint, yet without losing determination and focus.

Senza Sordino must continue to be a publication of the members, by the members and for the members. The pages of *Senza* remain open for debate on media and all other topics. Don't stop now.

Marsha Schweitzer
Editor, *Senza Sordino*

Ideas about the future and the possible shape of the business need to be put forward for discussion. The role of a leader is to provoke discussion about the difficult issues which the rank-and-file would just as soon abdicate to the "leadership." Having provoked discussion, interesting solutions sometimes turn up.

— Lew Waldeck

(on the union education of music students, circa 1994)



In This Issue

**Voicings
on electronic media**

GLOSSARY

Here are the meanings of some terms frequently used in electronic media:

EMF - Electronic Media Forum. A union-management discussion group, formed in 1997, that negotiated the first Symphonic Internet Agreement and then SOBAV last year. The EMF is funded in part by the Mellon Foundation and is facilitated by Fred Zenone and Paul Boulian.

EMG - Electronic Media Guarantee. An addition to musicians' regular salary that is allocated to payment for electronic media services, whether or not any electronic media services are actually performed.

[S]LPA - [Symphonic] Limited Pressing Agreement. An agreement promulgated by the AFM (not negotiated with employers), signed by the AFM and employers, that provides for a lower payment to musicians than under the SRLA for CDs with limited production (under 10,000 units).

MPSPF - Motion Picture Special Payments Fund. Like the PRSPF, except that royalties are based on the life of the film rather than the number of recording sessions.

MPTF - Music Performance Trust Fund. A fund established under the terms of the SRLA and funded by the recording industry that provides subsidies for live musical performances that are free and open to the public.

P2 [Phono 2] - The possible future EMF negotiations concerning the RNC and LP agreements.

PRSPF - Phonograph Record Special Payments Fund. An "Industry Royalty Fund," funded by the recording industry, that provides five years of payments to musicians employed under the SRLA, based on the number of recording sessions played, independent of the release of or the sales income from the subject recording.

RNC - Radio to Non-Commercial Agreement. An agreement promulgated by the AFM (not negotiated with employers), signed by the AFM and employers, that sets the terms for the use of radio broadcast tapes or archival tapes for the production of in-house, non-commercially distributed CDs by orchestras.

SOBAV - Symphony-Opera-Ballet Audio-Visual Agreement. A negotiated agreement that covers the release of symphonic audio-visual material in standard TV, cable TV, home video, and Internet marketplaces.

SRLA - Sound Recording Labor Agreement. Previously known as the P[honograph]RLA. A negotiated agreement that provides the basic terms and conditions for CD recording. The original sound recording agreement, from which MPTF and PRSPF sprang.



ON ELECTRONIC MEDIA



After this summer at the player conferences, no one could say that media issues were not on the musicians' minds. Since then, through Orchestra-L and the ROPA list, many news articles have been disseminated to people so that they can be educated further on these issues.

Clearly, a change is occurring in the recording world. The possibilities that one can imagine are enticing. But, as we have seen with the dot.com failures, big possibilities may not pan out.

Because of the economic uncertainty of these new ventures, I think it would be better for musicians not to give in to the pressure from companies or their orchestras to give away upfront payments for being recorded. I think there are very persuasive people in companies and managements who have no qualms about playing to a musician's dreams and using them.

There are many existing recording agreements already available that are flexible and yet protect the financial interests of the recording musicians. Perhaps these agreements could be looked at more closely by the orchestra managements and other companies, and ways to work with them could be found.

It shows no respect to musicians to be recorded without being paid for their time and artistry. Let's have backend payments, I'm all for them, but not at the expense of also being paid a decent upfront payment.

Jennifer Munday

Los Angeles Chamber Orchestra



With the degree of change, unrest and unknown in the recording-broadcast industry today, it's difficult to know what the best direction for all of us is going to be. The members of Los Angeles Philharmonic Orchestra Committee feel that the most important thing ICSOM can do for its members right now is to maintain an open forum for discussion and exploration of options in this field. We are not suggesting that negotiations take place in public, but that the general direction, desires and intent of those negotiations are known to all our members and the methods used to achieve our desired goals are accepted by all. Only in an atmosphere of open communication and mutual cooperation can the best result be reached.

Peter Rofe and Meredith Snow

for the Los Angeles Philharmonic Orchestra Committee



Have we forgotten our key reasons for recording?

Successful recordings achieve two goals. They are distinctive (artistically or by choice of repertoire), and they reach people (locally, or more widely). Because there are complex issues facing orchestras, understanding our goals and our history can guide our decisions as we explore new opportunities, such as self-produced projects and Internet distribution.

When recording first became a vital part of the orchestra business, it was viewed as creating a monument—a performance at such a high level that it deserved to be preserved forever. With the advent of the CD, and as music-lovers replaced their collections of LPs, it became fashionable to re-record the entire repertoire with performances by as many orchestras and conductors as could be fit into the schedule. Perhaps through our own greed (and driven by egotistical conductors and their managers), we destroyed recording as a viable business by glutting the market with indifferent performances of the same repertoire. Instead of creating monuments, we sent dozens of postcards of monuments, letting everyone know that we had “been there.”

In response to this devastated market, some have proposed that we make it less expensive for orchestras to produce numerous recordings from concert archives of current and past seasons. In this model, selling a few copies of many recordings would result in enough revenue to share with the musicians.

It is striking how far we have come from our original reasons for recording. We have reached the point of scribbling, “Maestro XX was here,” at the base of the monument so that a few passersby may stoop to take notice. Even if we could generate meaningful revenue from this (which remains to be seen), can it be considered successful?

The fact is that an ICSOM orchestra of 70 players, self-producing a recording at the lowest Limited Pressing rate, could recoup its musician and production costs by selling less than 2,000 CDs. An ICSOM orchestra of 104 players, self-producing a recording at the full SRLA rate, could recoup its musician and production costs by selling less than 7,000 CDs. Is it overly ambitious to hope that a recording reaches the same number of people that we reach in a subscription week?

Can we record at the pace we did in the 80’s and 90’s? Probably not, but we nearly destroyed the industry then. By returning to our original purposes for recording, we will avoid destroying our new opportunities with a similar glut. Although the structure of the business has changed, our growing audiences, the successes of some recent self-produced recordings, and the history of our industry indicate that emotionally compelling, vital performances that stand out among the recordings already available, will reach people in numbers that are economically viable.

*Henry Peyrebrune
The Cleveland Orchestra*



People are always looking for trends in an industry. The recent news involving a number of orchestras’ decisions to accept

concessions in their respective trade agreements has cast a pall on symphonic players nationwide and put us in a defensive mindset believing that factors are trending against us. A certain mindset, whether it be a nation’s mindset during a recession or workers’ in a particular industry, many times causes us individually and collectively to make decisions that later are regrettable and lack resolve.

As participants engaged in a political and economic struggle, we need to frame the debate in a way that is beneficial to us, which is critical for a mindset that will enable us as musicians to get paid fairly for the product we produce.

Negotiations called P2 are currently at a standstill, thanks to a resolution passed unanimously by ICSOM at its last conference. If one is not currently familiar with the issues involved, it is easy to become frustrated and quickly disinterested in the “haggling going on in New York.” One of the issues currently at stake with the P2 negotiations, though, is simple to understand. It is whether we musicians will get paid for making recordings. We are at a crossroads as a confederation of symphony musicians; we must decide whether or not to defend a fundamental principle of our profession—getting paid upfront for the work that we do.

The moment we depart from this time-honored principle of getting paid for playing services for recordings, how long do you think it will be before we are approached and asked to play other services without being compensated upfront? Would you be willing to forego your salary and play for only a cut of the ticket sales? Yet that is what we would be asked to do in making recordings if we only receive a percentage of the royalties based on the sales of the products we make and not get paid for the sessions themselves. Would our managers forgo their salaries in lieu of a system that would base their compensation on the number of tickets sold for a particular performance? I think not. Why should we be expected to do so with the recordings we make?

We do not need to be defensive. We need to stand together as we always have and say that if our product is worth recording, record companies and managers will have to pay for it. If it is not, they will not. Agreeing to record for pennies on the dollar because there is a glut of product in the market is foolish.

Ours is not a fluid marketplace like the oil business, where if there is a glut in supply (as there is right now in CD recordings) the product will be sold more cheaply until the next spike in demand. Once we change the fundamental system of the way we are paid for recordings in a currently glutted market, we will not be able to change it back even if there is an increase in demand created by improved distribution channels, new technologies or something unforeseen at this time.

The defensive nature that is beginning to befall our collective mindset is astonishing and one that needs to be altered. Disallowing our attorneys at the table and only having musicians negotiating with professional arts management people through a form of nontraditional bargaining being employed at these negotiations is reckless and idiotic. Tell your ICSOM delegate that you want to

(Turn the page)

be paid upfront for recordings and you want the expert attorneys that are on retainer from your ICSOM dues and AFM dues to be used in these negotiations. Abandoning the fundamental principle of getting paid when we record and not using our negotiating professionals will continue a negative trend for musicians that will affect us for the rest of our careers.

*Scott Weber
The Cleveland Orchestra*



As a professional working musician in the Los Angeles area, I, like many of my colleagues, have performed many different types of music in many different venues. I have also recorded under a number of the different AFM recording agreements. For the most part, I have been very satisfied with the wages and benefits I have received from working under those agreements, the only complaint being that the minimums for session payments and pension contributions could be higher.

When I found out that there was discussion about potential new media agreements for orchestras, I became concerned for the following reasons: 1) There apparently was no official communication about this to the player conference delegates before the discussions or negotiation sessions to obtain the opinions of the players involved; 2) There was not adequate information or opportunity for discussion and debate on the issue at the 2001 ROPA Conference; and 3) It seemed that any new agreement containing provisions allowing locally negotiated EM agreements would result in lower wages for all musicians.

To remedy the issues set forth in 1) and 2), I suggest, and further, I request, that no further discussions occur with the management side of the EMF, or any representative thereof, until the player conference delegates have had the opportunity to discuss, debate, and reach consensus at the 2002 Unity Conference.

As to the issue set forth in 3), I will say simply that the principle of “the race for the bottom” will apply, as it always does, and provide these additional comments: Unions set minimum work standards for wages, conditions, and benefits by negotiating CBAs with employers and by setting minimum guidelines below which no union member should work. The guidelines are not determined so much by the employer as they are by the good judgment of the AFM members and their musician representatives, though what an employer will pay is a consideration. Wages and conditions in Union CBAs should always exceed such minimum guidelines.

Unions are based upon a moral authority, which is to say moral law, where concepts of unity, fraternity (for both sexes), and solidarity are ethical standards that pave the way for such things as higher wages and greater benefits for the union worker. The strength of any union is determined largely by the extent that its members practice the moral authority, or ethics, that their Union is founded on.

*Paul Castillo
Long Beach Symphony*



Recent advances in recording and Internet technology have created different sets of challenges and opportunities for different groups of musicians. Recognizing these differences is essential as we in the classical field seek to make the most of our opportunities while supporting our pop and commercial colleagues in the difficult challenges they face. Here are a few words on the differences and on my opinion that classical musicians should be focusing more on new opportunities than on downside risk.

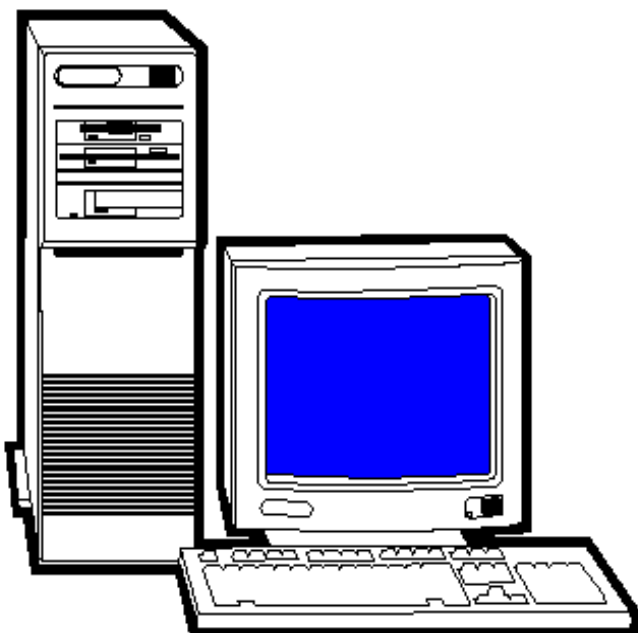
The product of pop and commercial musicians is recorded music; our product is live performance. Our recordings have aptly been characterized as souvenirs or postcards of what we do. It may well be that in the future orchestral musicians will receive substantial income from recording and broadcasts, but the true measure of our success is always going to be the size and enthusiasm of our audiences.

I am not convinced by the arguments of those who say that a glut of CDs or music on the Internet will undercut our appeal. I think that now is the time for each orchestra to be putting its best foot forward with media projects. Whatever works, insofar as it creates new interest in classical music, will benefit us all.

*Bruce Wittrig
Dallas Symphony*



The Lyric Opera of Chicago Orchestra accepts the challenges presented by the unfolding, tentacled issues regarding Electronic Media uses, and does so with a sense of resilience and optimistic forward thinking. Our electronic media products center around capturing live performances for live/syndicated radio/television broadcasts and archival/documentary audio/visual purposes. These have easily dovetailed for in-house recordings utilizing Limited Pressing Recording Agreement terms. This economically viable vehicle exemplifies how management may maximize media to the company’s best advantage. We look forward to contributing other



collaborative solutions which also address Internet issues and are mutually attractive to managements, orchestras, and audiences alike.

Lyric Opera Orchestra Members' Committee
Bill Cernota, chairman, Linda Baker, Mark Brandfonbrener,
Frank Babbitt, Greg Sarchet



As a musician in a regional orchestra, I am living with and trying to understand the Limited Pressing Agreement. *Senza Sordino's* request for discussion regarding electronic media issues is timely, as the Omaha Symphony will be producing its first compact disc sometime soon. As I write, my orchestra will be voting this week to accept or reject the terms of the Limited Pressing Agreement for recording sessions planned in May of this year. It is not an easy choice.

The LPA is being used by orchestras large and small to produce recordings for distribution on a smaller scale. Even from my vantage point here in Omaha, which admittedly is a isolated viewpoint, there seems to be as many opinions about the LPA as there are beliefs about what it is suppose to accomplish. In a letter to his musicians, President and CEO of the Omaha Symphony Fred Bronstein (soon to be President of the Dallas Symphony) recently wrote; "The Limited Pressing Agreement was created and exists precisely to facilitate recording activity among orchestras that would be otherwise unable to record under the prohibitive cost structure of the Phonograph Record (Labor) Agreement." In an article taken from the AFM *International Musician* in October 2001, Deborah Newmark, AFM Director of Symphonic Electronic Media writes about the LPA, "This agreement was developed by the AFM as a low budget alternative to the PRLA."

I have spoken with and exchanged email with people in our business who have been willing to share their own knowledge and insights of the LPA, and to whom I am most grateful. What I have learned is that the original idea for the Limited Pressing Agreement was not intended for symphony orchestras. Some 10 to 15 years ago, the concept of the Limited Pressing arose to encourage jazz and gospel musicians in the Los Angeles recording scene to record under AFM approved contracts. At the time, the complaint was that PRLA rates were too high, and jazz and gospel artists were making recordings without union contracts. The LPA was designed to correct an apparent problem in one narrow segment of the recording industry. Symphony orchestras were not allowed to use the LPA at first.

Fast forward 10 years, add a decline in CD sales, a downturn in the economy which is hurting the bottom line in many orchestras, and you can certainly expect to hear statements from orchestra managers blaming the musicians' "prohibitive" recording rates for the lack of recording work among symphony orchestras. But the fact is, the Limited Pressing Agreement is still a low budget alternative recording contract, and its adoption by symphony orchestras is in my opinion, flawed.

The "limiting" characteristic of the LPA is that orchestras are only allowed to produce a maximum of 10,000 copies of the CD recording. However, whether you are recording Mahler's 5th

Symphony under PRLA or the LPA, the music and the work to record it remain the same. I understand that the profit margin for a Limited Pressing is going to be smaller or nonexistent, but I really don't like the idea that we have placed a lesser value on the performance of the music.

In orchestras like the Omaha Symphony made up of core (full-time) musicians and per-service musicians, the LPA creates a troublesome pay situation. Work under the LPA is considered additional work outside the normal activities of the orchestra. The AFM has strongly cautioned Locals about service conversion—the idea of having recording work replace service guarantees in CBAs. (EMGs that include recording work as a portion of musicians' salaries is another subject.) The LPA sets a recording rate that all musicians will receive more or less equally, differences in pay being set by existing overscales in CBAs. Recording sessions and the fees they generate are separate and in addition to musician salaries. The problem arises when 3 or 4 recording sessions are placed within a normal work week. In order to do these, Omaha Symphony management must reduce the number of regularly scheduled services for the core musicians, in essence giving them a full week's salary for a reduced schedule. Core musicians receive a full week's salary plus recording fees. On the face of it, that looks great. But where does that leave the per-service musicians?

Under the LPA, per-service musicians receive a fee for the recording sessions but they do not receive their per-service wages. In the Omaha Symphony, we consider the per-service musicians as much a part of the orchestra as the core musicians. Adding recording sessions to our schedule creates a financial windfall for the core players that is not shared by the per-service musicians.

One other aspect of the LPA is that an orchestra can produce recordings on location—CDs made from live performances. In this case, per-service musicians do receive their per-service rate in addition to the LPA recording rate. Again, if we are doing strictly recording sessions, per-service musicians only get the recording fee. So within the same agreement, per-service musicians are treated differently. I would hope that at some point the AFM would take another look at the Limited Pressing Agreement and re-evaluate its usefulness to symphony musicians.

Ken Yoshida
Omaha Symphony



As an observer at the 2001 ICSOM conference in San Diego, I was astounded by the vigor and acrimony contained in the discussions surrounding the upcoming P2 discussions. The emotional responses from many of the participants in regard to facilitated negotiations, the importance of traditional payments for recording services, and the desire to be included in the process seemed to surprise many in attendance. The media debate at the conference has shown the organization as a house divided, and that there is a need for better communication if we are to continue to have solidarity within ICSOM.

(yep, turn it again)

Some of the issues confronting us in the P2 discussions were blurred. The Electronic Media Guarantee was characterized as a financial “shell game” whereby musicians working under EMGs are actually subsidizing recordings. This view ignores the point that EMG may also be used as payment for other services, such as television broadcasts. Just as beauty is in the eye of the beholder, compensation for electronic services is in the perception (and pockets) of the musicians, whether they receive EMG or separate payments. It is not up to members of the EMF or ICSOM officers to insist that orchestras convert EMG to salary.

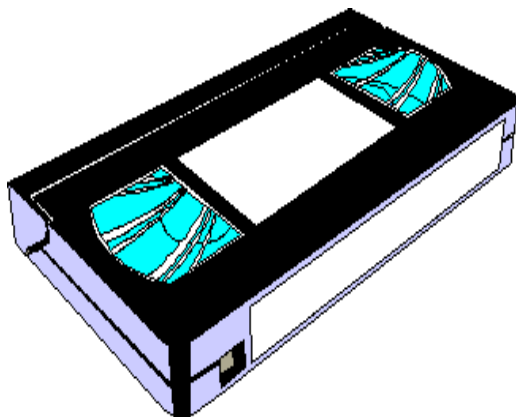
Certainly, the future of the recording industry is in doubt. From the symphonic standpoint, however, the Internet remains years away from being a viable alternative to CD recordings. Whether produced as limited pressings, on-site live recordings, or in traditional sessions, the CD format allows greater artistic and quality control, particularly to the “audiophile” listeners who purchase most symphonic recordings. The problems of distribution seem to be far greater than the costs of recording the musicians. The increases agreed to by the industry in the PRLA agreement support this.

The unanimous passage of Resolution 17 at the 2001 ICSOM Conference should become a keystone for future issues. The demand for a report from the ICSOM Media Committee before it is able to embark on further negotiations shall enable all members to give clear guidance to the EMF. Though laudable in theory, Interest-Based Bargaining may not be viable, just as revenue-sharing as a negotiating technique was abandoned in CBA discussions in the mid-90s. Perhaps most important, the Media Committee should be able to present some idea of what its members deem important in the upcoming P2 discussions.

*Paul Frankenfeld
Cincinnati Symphony Orchestra*



Several of our symphonic members who are also active in film and TV recording have requested that I participate as President of the Recording Musicians Association-Los Angeles (RMA-LA) in your special Electronic Media issue of *Senza Sordino*. Our members have asked me to issue an official response to the concept of locally generated Electronic Media agreements for ICSOM member orchestras. Clearly this is an issue that applies directly to members of the International RMA and, in particular, members of RMA-LA on whose behalf I am currently speaking.



We feel very strongly, for a number of reasons, that locally generated EM agreements are a bad idea. There has been a history of endemic problems and misapplication of the symphonic AV agreement in place of the AFM National Videotape Agreement that has caused problems for both ICSOM and RMA members. The AV agreement doesn't appropriately address or cover many of the aspects of live recording that affect symphonic musicians or recording musicians who may be participating in special nationally oriented live television programs that fall under a traditional videotape format. This misapplication can cause later problems in negotiating proper videotape contracts due to the precedent that these misapplied agreements can set for future negotiations.

In regards to local application of media agreements, we have had experience with our (non-symphonic) Limited Pressing agreements, which are locally generated contracts. This was a serious topic of conversation at the last RMA International Conference and it was clear that general misuse and numerous enforcement problems were rampant in these agreements. Much of the conversation was directed at how to change these local agreements into national agreements that would be acceptable to all parties.

RMA has been fighting very hard to gain legitimate market share in recording work for AFM musicians working under AFM contracts. We have been involved in negotiating a new Motion Picture contract that has many features that will encourage more recording work in all Federation venues by all Federation members. We have been trying hard to maintain a decent standard of living for recording musicians who rely on this work to support their families and pay their benefits such as health insurance and pension. Most RMA members don't have other areas of employment available to them that will cover these costs. I think that it is important for all ICSOM members to realize that their RMA brothers and sisters are just as passionate about making a decent living and supporting their families as ICSOM members are about keeping their orchestras strong and viable. We are all members of the same union and need to apply a good sense of unionism and ethics to our involvement in musical areas that might cross over into the areas of other musicians' livelihoods.

*Brian O'Connor
Recording Musicians Association-Los Angeles (RMA-LA)*



The great media debate often seems to occur in a realm of answers without questions. Many strong opinions are offered as to what should be done but no one seems to be sure what the fundamental problems are. Here are some questions I find myself asking: Why do orchestras record in 2002? Is there a national (or international), commercially viable market for American orchestral recording? What is in recording for working orchestral musicians? How is it part of the missions of our institutions? Are the economic benefits of our recording work the only benefits we receive?

My concern with many of the issues some ICSOM members raise about any potential changes in how and when ICSOM musicians are compensated for recording work is that they don't seem to link their concerns to any of the above questions. I want my recording work, like my subscription concert work or my

educational concert work, to both compensate me adequately and to serve the long-term financial and artistic interests of myself, my colleagues and my orchestra. Perhaps in our concern about compensation we forget the bigger picture.

Jeff Weisner
National Symphony



The musicians of the St. Louis Symphony voted heavily in favor of the SOBAV agreement presented to us last fall. We value the flexibility the new agreement gives us to create audiovisual work that our marketplace will support.

We believe that the ability to generate regional product with some leeway in negotiating our own terms is an important tool for garnering support from our local public.

St. Louis Symphony Orchestra Musicians' Council
Timothy Myers and Gary Smith, Co-chairs



I am writing to express my concern that the course currently undertaken by the Electronic Media Forum will have a significantly negative and divisive cost to ICSOM and to our member orchestras.

It is imperative that all member orchestras or their representatives that are or will be affected by the current P2 negotiations have the ability to express their views in a meaningful manner. There should be no attempt to exclude diverse and possibly unpopular views. I strongly urge the Governing Board to make careful decisions during this seemingly fragile time in ICSOM's history. Poor decisions made now could foster a discordant and troubling period for our institution.

I believe my views on the process of "Interest-Based Bargaining" are well known. At present, I disapprove of IBB and strongly believe that competent and committed counsel is required to protect our membership. Furthermore, you should be aware that the members of The Cleveland Orchestra voted nearly unanimously against the SOBAV agreement. This result was, in the main, because under certain situations, the agreement would provide a significantly lower payment to the members of The Cleveland Orchestra than to orchestra musicians in some other markets for comparable services. We are fearful that the same or worse is going to occur in P2. Having local control of certain procedures is not sufficient. Even the right to approve or veto each specific recording project, *although vital*, is not totally adequate. National and international issues need central standards. Local control, in these circumstances, pits one orchestra against another. It is wrong.

It is not necessary to radically alter the existing National Agreements when innovative but limited latitude can be granted without destroying the gains made over decades. Remember, our only product is our musical performances. These must not be devalued.

What has always worked for us in the past and will continue to work for us in the future is a national *minimum* for the same work.

The recording industry has always had periods of "recession." I have seen this over my 39 years in the business. This is no reason

to run scared. I would rather do no media at all than to sell out to the lowest bidder for this work. Once you "lower the bar," it is difficult, if not impossible, to raise it. Some managements and the organizations that represent them are trying, and I'm afraid, succeeding, in dividing us as well as successfully promoting a sweeping "lowering of the bar." Moreover, I assert that a strategy is emerging in our industry to drastically reduce and/or virtually eliminate upfront compensation to orchestral musicians for all forms of non-concert activity. Make no mistake about this. We must not let this happen.

Richard Weiner
The Cleveland Orchestra



As you know, the Saint Louis Symphony has just been through a scary and stressful time trying to find a way to keep our orchestra at a competitive level and still pay the bills. We had to take significant cuts to achieve a three-year window of opportunity to raise the endowment and earned income of the Orchestra. In a city that has just raised \$31 million from some very generous friends, we still have a challenge to engage the everyday public to think about the symphony as a community must. This is where media is our only hope. It is quite difficult to get any money for the arts, but is even more of a challenge to ask for money for a media product that traditionally does not make money. That is why we must be as flexible as possible to create projects that can help get our message out, pay us something and be an asset to all parties concerned.

We need media agreements that give us greater local control. We can tailor the time, contents and payment to fit the situation. Each area is different in all aspects from money to public recognition. The orchestras which need to build that public recognition now have a way to do it to help create a money base, without asking for money that could go to endowment or monies earned that now go to salary.

We need the Union. There really isn't much division on that point, even though we complain and try to change some procedures. Throughout our history we have needed the Union for collective bargaining and national contracts. Now we need our solidarity as much as ever, but for flexibility to ride out this economic turbulence. When we reach the end and prosperity once again has arrived, we will be in good stead to take advantage of the new economy. Until then we must be as inventive as we are artistic to address the new technology. As we see clearer where this technology will take us in years to come, we can modify any agreement to suit the times, and then we, as the International Union, can work for the betterment of the symphony orchestra world.

Jan Gippo
Saint Louis Symphony



The process surrounding the P2 negotiations has been a difficult one for us all. Many have said that electronic media is a peripheral issue because it represents just a small part of our activity and livelihoods. Unfortunately it's a big issue when it challenges

(Keep a-go-in')

and destroys the unity of unionism, the foundation of the primary strength we have.

The Resolution passed at the 2001 Conference calls for a report and resulting input from the rank-and-file about the content of future EMF negotiations and about the bargaining format. The usual discussions and surveys done in advance of action on controversial topics have not happened. In addition, what discussion has occurred has been controlled and has left a resulting negative taste with many.

Discussions usually reserved for closed sessions during a negotiation have spilled out into the public forum of Orchestra-L. One thing we have seen for sure is evidence of division among the rank-and-file, the EMF, and ICSOM in general.

Unionism is based upon democratic principles. Discussion, surveys, reports would have better taken place before now; in fact, in a traditional approach, these would have come first.

In the P2 process, too much has been put at risk. It's time to open up this process for scrutiny to the rank-and-file and above all proceed with ICSOM's and the AFM's solidarity in mind for the future.

I would like to have answers to these questions:

1. Where is technology going? The environment of electronic media is changing because with digital format of any kind, copies are originals; thus our long term beliefs about copying recordings, intellectual property and copyright laws are being challenged.

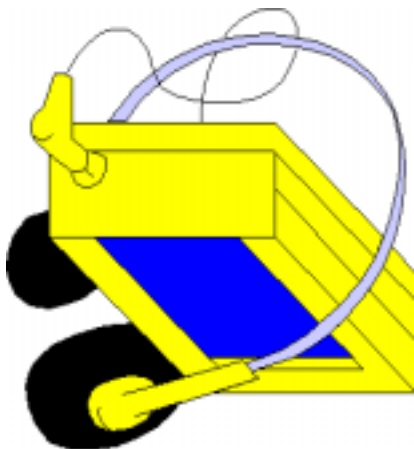
2. How are intellectual property, copyright, and ownership of product laws going to respond to the new technology?

3. How will the rank-and-file have to adapt to these new issues?

4. How will the recording industry have to adapt to these same issues? The downturn of recording sales is universal, for symphonic and pop music as well. No one knows if this trend is short- or long-term.

5. How can AFM contracts adapt to these new issues?

6. How will the development of the Internet, which knows no geographical borders, influence all the above?



Surely there is more to study, but the above questions would be a good start.

In addition, we will collectively and individually have to learn more about these subjects to make important and industry-influencing decisions. Finally, including all participants will help to mend and regenerate our strength in solidarity.

*Fred Sautter
Oregon Symphony*



The Chicago Symphony Orchestra Members Committee welcomes the opportunity to express its concerns about the current state of electronic media activity by symphony, opera, and ballet orchestras and about the negotiations governing such activity. In brief, our concerns are these:

• We are concerned that the EMF will not adequately consider a number of important factors, including the cyclic nature of recording activity, the current absence of compelling conductors and soloists, and the emergence of new technologies which could re-energize recording.

♦ The EMF process is not sufficiently representative. A select few, who may be very capable and well intentioned, are not sufficiently in touch with the field and are acting too independently. We think adequate surveys should be conducted before phono negotiations continue.

♦ The EMF process has not produced satisfactory results in the Internet and SOBAY agreements, which allow local autonomy to an extent which pits orchestra against orchestra. We support national contracts with rates established for all.

♦ Relinquishing the hard-won and long-standing guarantee of upfront payments in favor of revenue-sharing could be a disaster for orchestra musicians. We do not support such a move.

We realize that there are other points of view about what is best for our profession, and we are open to hearing those perspectives.

Chicago Symphony Orchestra Members Committee



We have recently (this year and last) been doing recordings utilizing our EMG structure. It is the general consensus that the Limited Pressing is the most viable agreement for our situation. We have recorded two CDs of French music, one of music of Frederick S. Converse (unlimited pressing), and one of the music of Griffes. We have not been able to figure out why the Converse CD was unlimited pressing. The first French CD was used very successfully as background music for an exhibit ("The Triumph of French Painting") at Buffalo's Albright-Knox Art Gallery, using hand-held units coded to the individual paintings. This was done as a New Use of the already-recorded material. Hopefully the second French CD will also be used in this fashion.

*Robert Prokes
Buffalo Philharmonic Orchestra*



Why do we record? Is it part of our basic mission, our orchestras' reason for existence? Or is it ancillary to it—for image-building, promotion, fundraising? Or is it just a vanity thing? How much we need to get paid for recording and the level of risk we should assume in the production of recordings varies greatly depending on how we answer these questions, among others.

There is a difference between payment for services rendered and payment of dividends on investments. Upfront payments are usually for services rendered (although they could be defined as advances on future dividends/royalties, as some recording companies have defined them), and backend payments, often in the form of profit-sharing, are usually investment income (although they could be defined as extensions of upfront payments, like the Phonograph Recording Special Payments, which are directly tied to the specific services rendered, not to product sales).

The decision to enter into a business partnership with management is ours to make, and doing so may be a good choice, but it is a fundamentally different business relationship from the one we have as employee service providers and involves different risks and rewards. Let's not confuse these two types of business relationships or misunderstand the speculative nature of business ownership. Rule of thumb: Don't gamble with the milk money.

One of the basic tenets of ICSOM is that what one orchestra does affects all the others. It was ICSOM orchestras' allegiance and mindfulness to that principle over the last 40 years that produced 52-week seasons, employer-paid health insurance, job security, and decent salaries. For a while, we were in a race to the top.

Now, especially as concerns recording/broadcasting, we are in a race to the bottom. The pressure of substandard recording rates and buyouts in Seattle and Europe—importantly, by orchestras that can produce a product of acceptable quality to both the producer and many consumers—has instilled fear in ICSOM. This is not unrelated to parallel phenomena being experienced in other industries in which operations have gone nonunion or been moved out of the country, or foreign workers imported into the United States to displace Americans, usually at lower wages (like the displacement of New York musicians by a Polish orchestra to perform with the Irish Tenors on Ellis Island last year).

Orchestra managements have little experience at the recording business, fear the risks, and so want us musicians to take a greater share of their burden—provide them an insurance policy against possible loss—usually in the form of lower upfront payments (musician subsidies) and/or backend profit-sharing. Pressure to provide that insurance is coming from many sources: managements, record companies, broadcasters, the marketplace, contract negotiators, and the precedential actions of other orchestras. Some orchestra musicians don't want to or can't afford to provide that insurance—profit-sharing is risk-sharing—but find the pressure to do so overwhelming and virtually impossible to resist.

What do we do in ICSOM when a fellow orchestra is fighting for a contract and encountering obstacles? In the spirit of solidarity, we move in to help—with money, counsel, letters, and most of all, cooperation. ICSOM musicians help fellow orchestras resist the

pressure, even when some of the things being fought for are things we don't necessarily want or need for ourselves. We help fight these fights that are not our own because when any contract battle is won, it strengthens the bargaining environment and raises the bar for all of us. When such battles are lost, all of us are weakened.

As we discuss any future EMF negotiations, let us be mindful that the future of ICSOM depends first and foremost on getting all ICSOM orchestras to rededicate themselves to a common direction and mutual support. There is no higher priority. Even with solidarity, this will be a tough battle. Without it, we will all surely lose.

*Marsha Schweitzer
Honolulu Symphony*



The current discussion of symphonic recording is timely, and I appreciate those who have taken the initiative to prompt it. The EMF process including “no taboos or preset parameters” in discussion is laudable in theory, but I am concerned that it has not been applied throughout, resulting in fundamental questions not being adequately addressed.

There can be little doubt that recording activity of North American orchestras has decreased significantly over the past few years. Assuming that this is a negative development requiring action through alternatives to existing recording agreements is, in my view, a “preset parameter.” It skips the most fundamental policy questions that must be asked and debated.

In its simplest form that question is, why record? What is it that we wish to accomplish? What benefits are we looking for through recording? Are the historical perceived benefits still applicable today? Does recording still represent the best, most appropriate, efficient means to accomplish those things? It may seem heretical to ask these questions, and many probably feel the answers are clear. I haven't seen or heard any such debate, however, and tend not to accept “just because” as a reasoned response to anything (marital bliss and parenting notwithstanding!).

Having an honest look at this—determining exactly what we hope to achieve and why—is a crucial first step. Only then can we determine if more recording is an appropriate strategy, if the objectives can be accommodated through existing agreements or what other models might be appropriate. Even the most basic cost-benefit analysis cannot be contemplated without knowing clearly what the expected benefit is. Skipping that first step and moving directly to strategizing may appear to be in step with current jargon like “staying ahead of the curve” and “being proactive rather than reactive.” In reality it may simply result in applying old methodologies that are inappropriate and ineffectual.

I won't go into a lengthy discussion of existing and alternative compensation models here, but do want to point out a couple of general considerations we might wish to keep in mind. No one should believe for a minute that “profit sharing” in the music business is anything novel or particularly forward thinking. It's been around far longer than most of us. In the recording area, it's

(Onward and upward!)

royalty agreements; in live performance, it's share plan engagements. With few exceptions, symphonic musicians have steered clear of such schemes, certainly in live performance agreements with their not-for-profit employers.

To me, the rhetoric surrounding discussion of alternative compensation models based on lower guarantees/upfront payments with possible added compensation based on financial performance, in both recording and live performance, is strikingly similar: "Symphonic recording is disappearing because the fixed costs are too high, there's an oversupply of product and reduced demand." "Symphony orchestra organizations are in difficulty because the fixed costs are high, there is an oversupply of product (usually expressed in weeks of activity) and reduced demand for the product from the community (expressed as not being sustainable)." If we accept the arguments in the recording area, it's perhaps unreasonable if not naive to believe expectations will not eventually be for acceptance of the same arguments applied to live engagements. After all, the parties are the same in both discussions.

Well-reasoned decisions on whether or not we ultimately change our approach in either area are unlikely if we don't first decide what we really want to achieve. Let's do the groundwork on that before developing and implementing strategies. It should reduce the risk of moving forward with eyes closed and fingers crossed!

Mark Johnson
Calgary Philharmonic



I believe we find ourselves at a defining moment as a union of musicians. It will not be news to any musician in ICSOM that the number of recordings taking place every year has decreased since 1990 or that no major orchestra now has a recording contract (i.e., an agreement for more than single occasions). The American auto industry in the mid-eighties had to adapt in order to survive in the face of foreign competition. While our very survival is no more at stake than usual, a few troubled orchestras notwithstanding, the recording business is anything but "as usual." The several recording agreements under which we record are a curious mix of negotiation and dispensation, with variances granted, it seems, for just about everything imaginable.



Here are the issues which I personally feel are most important:

- ♦ The concept of ownership and control of our recorded product (rather than by a media conglomerate);
- ♦ The discussion of different kinds of financial arrangements, but at the very least involving direct revenue sharing (or royalties);
- ♦ Negotiated contracts by which AFM member orchestras are willing to abide; and
- ♦ The agreements under which we record must be mutually self-aware so that the terms do not actually conflict.

These are the questions I believe need answering before the EMF can explore the future of the North American symphonic recording industry:

- 1) Is there a desire by the musicians to explore other options?
- 2) Do you think that the current economic model for recording will continue to work?
- 3) If you do not feel that this economic model is sustainable, which portions are most important (upfront payments, pension payments, final product time per hour, etc.)?
- 4) If your orchestra has recorded under Radio-to-Non-Commercial, which parts of that agreement need alteration?

John Koen
Philadelphia Orchestra



Labor unions have three fundamental goals: increasing workers' incomes, increasing workers' job security, and increasing workers' control over their work and their workplaces. To achieve these goals, unions have one tool around which every other activity revolves. That tool is collective bargaining.

Unfortunately, these three goals often conflict with each other. When faced with employer demands for concessions, for example, orchestra musicians will generally take wage cuts rather than eliminate orchestra positions. Contrast that with unions in the automotive, steel and transportation sectors, where collective bargaining agreements generally allow employers to lay off workers at will, without consultation or approval by the bargaining unit.

Even more problematic are those occasions when a single goal will mask internal conflict within a group, because different groups within bargaining units view the goal too much through their own needs. For example, section musicians, musicians close to retirement, principal players, and extra musicians can put very different meanings on the phrase "increasing incomes." Anyone who believes these different ideas about "increasing incomes" don't conflict has never sat at a bargaining table trying to get management to agree to more than one of them.

How do these fundamental goals and tools relate to symphonic media? First of all, we need to admit that some orchestra musicians feel shut out of media work by existing agreements, while others are fearful of losing what work they have. Collective bargaining agreements must take into account the needs of both groups.

Sometimes a monolithic national rate for media work is the only answer to employers who "shop around" the work, looking

for the cheapest labor, even if it does limit employment. Historically, that's been the case with the recording and film industries.

But our business is primarily local, not national. The real employer for most symphonic recording is generally not the recording company but the local orchestra management. This is obviously the case with CDs produced by orchestras themselves, such as the historical recordings that have been produced by "Big Five" orchestras recently. It is even true of some new recordings: Philadelphia, St. Louis, and San Francisco have recently self-produced recordings for commercial distribution and sale, while the London Symphony Orchestra just won a Grammy for their self-produced recording of Berlioz's *Les Troyens*.

National media agreements are still the best tool to deal with such product. But we may have to rethink just *how* they do so. A single national rate for media work is appropriate when employers can shop the work around and find a lower bidder. But one orchestra management is not going to hire another orchestra to make recordings. Fundamentally, an orchestra management has to deal with its own musicians.

In this situation, a single national rate—especially one that makes sense for the largest orchestras—can have the effect of preventing many other musicians from doing media work, even though musicians are in no sense competing for the same work. One alternative approach in other national media agreements is a variable or sliding rate, determined by project budget, orchestra weekly scale, market size, or some other appropriate measure. Such rates protect those already working under media agreements while creating new opportunities for other musicians.

Regardless of how the needs of different groups of musicians are addressed, the collective bargaining process is the best way to do so. The unilateral "agreements" that currently cover low-volume and radio-to-noncommercial recording are very weak reeds for us to lean on, because they are only enforceable on union members and not on employers.

All of the "Big Five" orchestras have negotiated deals to make CDs from archival tapes. All but one of those deals was in contravention of one or more terms of the AFM's Radio-to-Noncommercial Agreement. Yet the AFM has taken no enforcement action. Such inaction is easy to understand. Going after employers who violate CBAs is what unions ought to do. Going after union members who work for less than national rates, or local officers who negotiate such deals, is both unpleasant and dangerous for the national union and its officers.

This is an unusual moment in our industry's history; the trade union equivalent of having died and gone to Heaven. Our employers are waiting at the table for us to negotiate a real national collective bargaining agreement to govern a kind of product that will only increase in importance over time, but we're holding back. Collective bargaining is what unions do. Let's not miss this chance to bargain to get this work under our collective control.

*Robert Levine
Milwaukee Symphony*



"What's the problem?" A simple question that needs to be asked when dealing with the complex subject of media. In my mind the problem does not concern motion picture scoring, commercial television, or audio recording for commercial companies. The union has existing agreements with these employers which uniformly cover all members of the union. What we do not have is an enforceable national collective bargaining agreement for self-produced symphonic audio recordings. In response to the fast-changing landscape of technology, declining sales, and changing distribution systems we have seen the release of these types of recordings by some of our most highly acclaimed orchestras. Even though we have a document called the Radio-to-Non-Commercial Agreement, how these types of recordings are paid for and distributed has been the subject of intense local negotiation. Obviously, there is interest in making these kinds of recordings. Therefore the problem is: "Do we want an enforceable national collective bargaining agreement to cover this subject, or do we wish to continue the current state of affairs in which different orchestras have negotiated different interpretations of the Radio to Non-Commercial Agreement?"

I suggest that it is in our best interest to sit down with the managers of our institutions and collectively bargain a national agreement for self-produced symphonic audio recording. This agreement should define what a self-produced recording is and address the issues of what kind of music can be recorded, how the music can be recorded, local orchestra decision-making, distribution rights and ownership or control of our recorded audio product. Equally important, with the creation of a symphonic self-produced Collective Bargaining Agreement we would have the right to ratify and can include language that prevents product recorded under this agreement being used to displace live musicians either in performance or during a strike or lockout.

We have several choices to make here. Do we wish to leave our fate and the control of our recorded product totally in the hands of commercial companies? Or do we wish to create an agreement that empowers and protects symphonic musicians, and allows us to control the electronic manifestation of our art? I know what my answer is.

*Brad Buckley
St. Louis Symphony*



It wasn't all that many years ago that only the big-budget orchestras made commercial recordings. Their international following and worldwide reputations necessitated a steady flow of vinyl from the record manufacturers, who helped fatten the classical section of the Schwann Catalogue into the massive offering that it is today. However, by 1980, small-budget orchestras were beginning to view recording as a means of self-promotion within their communities. A call went out to the AFM to find a legal way to permit them to make affordable recordings which would not have a negative impact on the recording wages and benefits of other symphonic musicians. Against some pronounced opposition, in

(Flip that page one more time!)

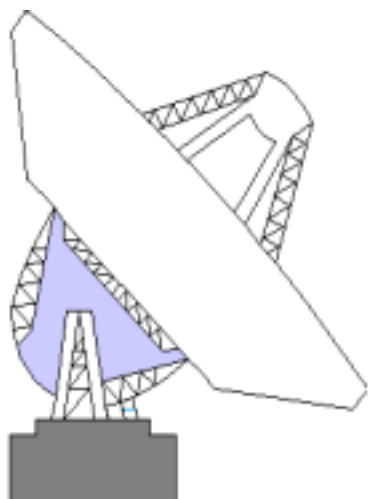
1985 the AFM's Symphonic Limited Pressing Agreement was created. Today, orchestras of all budget sizes record under many different national media agreements, including the Symphonic Limited Pressing Agreement.

The debate about recording has been evolving over the last few years. The questions used to be: How much should we be paid to record? Should we lower our recording wages to be more competitive with foreign orchestras? Should contractually negotiated EMGs replace media wages? Should service conversion be allowed in exchange for recording services? Certainly, the Seattle Symphony has pretty much proven that doing media for little or no compensation does not automatically translate into the recording industry beating your orchestra's door down. Nor does not paying the musicians in any way assist lagging recording sales—quite the contrary. The cheaper and easier it is to record, the more duplication of product there is. Slow classical sales, coupled with product glut, and a lack of interesting new music, one could argue, does not provide much of a reason to look for easier ways to get more redundant product out on the market.

At last summer's ICSOM Conference, the debate on media grappled with the question of where we go from here. Should we put a moratorium on recording to ease the product glut? Do we give away upfront payments in favor of backloaded royalties? Should all media work be negotiated locally, or should we maintain our national media agreements? Should orchestras be allowed to give away recorded product? How about the future of Special Payments? To stream or not to stream, that is the question. However you view the issue of the recording, it should be remembered that whatever wages and benefits we give away now will ultimately be lost to us forever.

Lucinda-Lewis
New Jersey Symphony

Fine ☺



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