EMA – AFM
Integrated Media Agreement
April 2, 2015 – June 30, 2017

League of American Orchestras
Cleveland Conference
May, 2015
Agenda

• Overview of:
  – Bargaining history and context
  – EMA services to members

• IMA Agreement
  – Scope of agreement
  – Summary of key terms
  – Potential problem areas

• Q &A
IMA Overview

• Review of SOB multi-employer bargaining (MEB) history
  – 1982 – 2005: Media Committee role in bargaining for convenience
  – 2009: Incomplete MEB negotiation and resulting AFM drafted IMA
  – 2013: Establishment of EMA

• New Integrated Media Agreement
  – EMA - AFM overarching bargaining objectives
  – Review of bargaining process
  – Resulting agreement:
    • Some significant improvements, especially news & promotion
    • Still a complicated & inflexible agreement

• EMA objectives: 2015 – 2017
  – Assist EMA members to maximize use and benefit of new IMA
  – Gather data to prepare for next negotiations
EMA Overview

• Organization:
  – Symphony, Opera and Ballet Employers Electronic Media Association (EMA), a 501(c)(6) non-profit business league organization.

• Members:
  – Any dues-paying, non-profit symphony, opera or ballet institution in the United States that employs musicians under the terms of a collective bargaining agreement with an AFM Local union.

• Mission:
  – Representation of EMA Members in the negotiation and administration of multi-employer collective bargaining agreements with the AFM (and possibly other unions) in connection with electronic media activities distributed beyond the Local’s jurisdiction.
EMA Services to Members

• Musician collective bargaining services:
  – Representation in negotiation of electronic media CBAs
  – Advice and counsel on contract interpretation
  – Advice and counsel on dispute resolution with AFM/musicians
  – Representation (in some cases) of contract grievances

• Other electronic media consulting services:
  – Info on electronic media trends and developments
  – Helping to think strategically about electronic media activities
  – Representation in related national policy making forums
  – Advice and counsel on business and production issues
  – Advice and counsel on rights clearance issues with others (AGMA soloists, choristers, dancers; conductors; stagehands; and composers/publishers; etc.)
EMA Leadership Team

- Mark Volpe, President (Boston Symphony Orchestra)
- Bill Thomas, Chair, Negotiating Committee (NY Philharmonic)
- Marilyn Pearson, Legal Counsel (DLA Piper)
- Consultants:
  - Joe Kluger: jkluger@artsEmedia.com
  - Michael Bronson: mconbrio@mindspring.com
- Please contact EMA consultants:
  - In advance of planning any electronic media activity
  - Before you or your musicians contact the AFM on any issue
IMA Scope

• Musicians employed by symphony, opera or ballet orchestras under terms of AFM Local CBA

• Included:
  – Audio recordings from live performances
  – Audio-visual recordings from live performances or special calls
  – Audio or audio-visual recordings from archival tapes of live performances

• Excluded:
  – Local radio & television (see IMA p. 2 definitions & exclusions)
  – Audio studio session recordings
  – National Standard commercial television (e.g. “Olympics-type programs”)
  – Per-Service Orchestras < 50% “core” musicians: project approval required
  – “Non-Classical Featured Artist” programs > “historic” number or 1 per year
News, Promotion and Donor Gifts

• Within Article VIII limits, no payment to musicians required
• Capture for news, promotion and donor gifts:
  – Per service limit increased from 30 to 40 minutes
  – Additional capture with Orchestra Committee OK:
    • New material from rehearsals or concerts
    • Archival material from concerts
    • Per instance or blanket annual approval
• More liberal CBA news/promotion use terms grandfathered
• Use for News:
  – Use of material limit increased from 3 to 10 minutes
  – OK to complete work or movement up to 3 minutes
  – Up to 10 minutes on broadcaster website (no time limit)
Promotion

• Capture: 40 minutes per service or more with Orch Comm OK
• Use of material limit increased from 3 to 5 minutes; and from 9 to 15 minutes in 3 five minute segments
• Up to 6 times per year, can use up to 15 continuous minutes, including a full movement, work or aria:
  – Each segment from different work or movement;
  – Each segment either one composition up to 15 minutes or one movement of one composition up to 15 minutes;
  – Employer does not provide media payments to anyone else
  – Employer must report use of this clause to AFM
Promotion

• Can make available on Employer website, full performance for on-demand streaming for 45 days:
  – One free to public performance per season (no Orch Comm OK)
  – One not free to public performance per season (with Orch Comm OK)

• Volunteer Promotional Recordings:
  – Use of audio or audio-visual interviews/activities in which musician(s) voluntarily perform on musical instruments without compensation
  – Annual ask who is interested; equitable/suitable distribution of opportunities
  – Mutual agreement on time and place
  – Maximums: Recording, 45 minutes; Use, 15 minutes, Exhibition, 2 years
  – OK to exceed maximums, if musicians are paid for activity and AFM approves
  – Employer must report use of this clause to AFM
Promotion

• Guidelines for Gifts to Donors, Corporate Sponsors, Subscribers:
  – One CD, DVD, Audio or A-V Download, or streaming access via secure portal may be offered annually to donors as a gift
    • Donor minimum: Greater of $250 or program recognition level
    • Maximum: 1,000 units or more with Orch Comm OK
    • Orch Comm OK of project
  – With AFM approval, a CD or DVD gift may be offered annually to a major corporate sponsor or underwriter
  – 2X per year, subscribers or Multi-Ticket Buyers may receive free 10 minute download (or 2-week access to donor portal) with Orch Comm OK
National Radio

- 3 years unlimited broadcasts (live, delayed or from archive) via:
  - Terrestrial radio, satellite radio, Internet radio, and all other wired/non-wired formats worldwide
  - Includes simultaneous and on-demand streaming on employer or broadcaster/distributor websites

- Rates:
  - 4% Weekly Scale (32% per performance) per broadcast [$53.05 floor]
  - 3% Weekly Scale (24% per performance) ≥4 broadcasts [$42.44 floor]
  - Opera rate subject to local negotiation [$90.18 floor]
  - 75% of applicable rate for foreign tour concert in that country only
  - Subsequent 3-year period at 25% of original rate

- Orchestra Committee may OK add’l 3 years on demand streaming on Employer’s website only with no additional payment.

- Pre-existing radio agreements grandfathered
Local Radio

• Local Radio broadcasts excluded from IMA scope

• (ARTICLE IX.D): OK to simultaneous streaming of local radio broadcasts with no additional payment to musicians. This does not include streaming on demand which is covered by provisions in Article X.

• (ARTICLE I.B.a): If no local station has classical music format, station nearest to Local’s jurisdiction deemed a “local” station.

• (ARTICLE I.B.a): Expand definition of local to include repeater stations within the state.
Live Audio Recording: Article X

- Employer must retain ownership of copyright
- 3rd party license max 5 years (10 years with Orch Comm OK)
- CD or CD + download:
  - Symphony:
    - 5.5% of weekly/44% per performance [floor of $84.87]; + $10 per 1K > 15K
    - OR 7.5%/60% [floor of $84.87]; + No Tier payment
    - Minutes of music increased from 76 to 80
  - Opera:
    - 5.5%/week/35% per performance [floor of $84.87]; + Tier of $10 per 1K > 15K
    - OR 7.5%/week/47.7% per performance [floor of $84.87]; + No Tier payment
    - Minutes of music increased from 126 to 130
  - Per service orchestra with opera rate: upfront fee = greater of 35% or 44%
- Downloads + Streaming (no CDs):
  - 1% weekly/(8% per performance) per 45 minutes [$15.91 floor]
Live Audio Recording: Article X

• Revenue share:
  – Symphony projects: 60% of Employer’s Net Revenue (direct costs)
  – Opera projects: 22% of Employer’s Net Revenue (direct costs)

• Project approval:
  – Employer must discuss artistic/financial plan with Orch Comm
  – Project approval only if musician costs < 35% of budget

• Right to record rehearsals only in very limited circumstances

• Patch Sessions for all projects:
  – 2 hour patch following live performance; 1st 30 minutes at < of concert OT rate or SRLA patch rate; after 30 minutes at SRLA patch rate
  – 2nd patch at SRLA rates up to 2 hours, subject to Orch Comm OK
  – SRLA break rules apply to patch sessions
Live Audio Recording: Article X-A

• REQUIRES EMPLOYER ELECTION & ORCHESTRA APPROVAL; THEN SET FOR TERM OF IMA

• CD or CD + download:
  – 3rd party license max 5 years (10 years with Orch Comm OK)
  – Symphony:
    • 6.0% of weekly/48% per performance [floor of $84.87]; + $10 per 1K > 15K
    • OR 8.0%/64% [floor of $84.87]; + No Tier payment
    • Minutes of music increased from 76 to 80
  – Opera:
    • 6.0%/week/37.5% per performance [floor of $84.87]; + Tier of $10 per 1K > 15K
    • OR 8.0% /50.0% [floor of $84.87]; + No Tier payment
    • Minutes of music increased from 126 to 130
  – Per service orchestra with opera rate: upfront fee = greater of 37.5% or 48%
  – Patch sessions as per Article X
Live Audio Recording: Article X-A

• Downloads + Streaming (no CDs):
  – Employer must retain ownership of copyright and control
  – 3rd party license max 7 years
  – Orchestra Committee must agree on up-front payment, if any
  – No patch sessions permitted

• Revenue share:
  – Symphony projects: 60% of Employer’s Gross Revenue
  – Opera projects: 22% of Employer’s Gross Revenue

• Orchestra approval required for all projects
• Right to record rehearsals only in very limited circumstances
National and Foreign Television

- Per minute rates based on broadcast length of program:
  - Standard Television Rate (PBS):
    - $5.68 per minute for one or two captures
    - $6.79 per minute for 3 or more captures
  - Foreign + Non-Standard TV (cable) @ 65% of Standard TV
  - Non-Standard TV (cable) only @ 60% of Standard TV rate
  - One broadcast option (7 days unlimited) at 81.5% of Standard TV

- Rates include:
  - CD, DVD, AV streaming/download ("Full Price TV Bonus")
  - 3 years of unlimited Standard and Non-standard TV broadcasts

- Limits on recording at rehearsals:
  - Scratch tape OK at final rehearsal; $100 penalty if used in product
  - Can use final rehearsal content, if only one performance scheduled
  - $50 payment if required to wear concert dress at final rehearsal
National and Foreign Television

• New Project Discount:
  – 25% of rate if no national television program within the last 10 years.
  – Full Price Television Bonus does not apply.

• Opera programs:
  – Per-minute rate up to 2 hours;
  – 75% thereafter
Regional Television

• Emanating from within Local and expanded:
  – Statewide in Employer’s home state, or
  – Including Designated Market Areas (“DMA”), defined by Nielsen Company on August 1 annually, contiguous to Employer’s DMA

• $37.13 per hour or established local rate
• 2 hour minimum payment
• Three (3) years unlimited broadcast on regional television
Non-Television Audio-Visual

- Includes DVD, Theatrical, Streaming, Downloads & other AV
- If Employer does not retain rights at end of license period, musicians paid at Standard TV per minute rates in Article XII
- Internet or Wireless Streaming (if Employer retains rights):
  - 3X/year, 1 capture free concert: 4%/weekly (32%/per perf) [$57.29 floor]
  - 1-capture rate: 5%/weekly (40%/per perf) [$63.65 floor] Revenue @ Gross
  - 2-capture rate: 6%/weekly (48%/per performance) [$76.38 floor]
  - 3+ capture rate: 8%/weekly (64%/per performance) [$101.85 floor]
  - 5+ programs guaranteed per year:
    - 1-2 captures: 5%/weekly/40%/per service [$63.65 floor]
    - 3+ captures: 7%/weekly/56%/per service [$89.12 floor]
  - ≤30 minutes of a concert program @ 25% of applicable rate
  - ≤60 minutes of a concert program @ 50% of applicable rate
Non-Television Audio-Visual

• DVD, A-V Download, Theatrical & all other Non-Television A-V:
  – 1-2 capture: 8% of weekly/64% of per performance [$98.88 floor]
  – 3+ captures: 11% weekly/ 88% per performance [$140.04 floor]
  – 3rd party license up to 7 years (10 years if orchestra agrees)
  – Step Ups:
    • If higher fee for release in other non-broadcast TV formats
    • To full Standard TV per minute rates allows “Full TV Bonus”
  – Discount:
    • ≤30 minutes of a concert program @ 25% of rate
    • ≤60 minutes of a concert program @ 50% of rate

• Theatrical Release with 1-capture (Employer retains rights):
  – 5% of weekly scale or 40% of per performance rate [$63.65 floor]
  – Revenue participation on Gross (or Net, if DVD rate below paid)
A-V Educational Release

• Educational programming for Pre-K through 12 Classroom Use:
  – Via close-circuit, password protected internet, Internet2, DVD (not for sale) and other technologies for classroom use
  – Capture limited to one or two performances
  – Rights period limited to ten (10) years

• Two projects during term:
  – Programs ≤45 minutes distributed without payment
  – Programs > 45 minutes require 2% of weekly (16%/per perf) [$37.13 floor]

• Additional educational programs:
  – 45 min program: 2% weekly/16% per performance) [$37.13 floor]
  – 60 min program: 2.5% weekly/20% per performance [$42.44 floor]
  – 90 min program: 3% weekly/24% per performance [$50.92 floor]
Documentary, Clips, Compilations

• \( \leq 3 \) minutes: no payment to musicians; capture limited to 30 minutes at one service (rehearsal or concert/performance)

• 3+ up to 30 minutes:
  – Payment at Standard TV “multi-capture” rate of \$6.79\ per minute;
  – Capture max 1 hour at each of 2 services (rehearsal and/or performance)

• \( \geq 30 \) minutes as television or non-television audio-visual product
Audio-Visual Miscellaneous

• Rehearsal Provisions for Audio-Visual
  – Capture at rehearsals Ok only when there is 1 performance
  – Working tapes permitted at final dress rehearsal
  – If working tape material used, payment of $100 to each musician.
  – Musicians required to wear concert dress at rehearsal receive $50

• Audio-Visual Special Call and Patch Sessions
  – 3 hour Special Call = greater of $270.53 or 25% over CBA per-service rate
  – Rest periods minimum average of 10 minutes per hour with no musician required to work more than 60 continuous minutes.
Audio Buffet

• Requires orchestra approval by secret ballot vote.
• Annual buffet payment of 3% of base annual wage [$954.81 floor]
• Capture: all performances and one rehearsal of each program
• Annual release limits:
  – no more than 600 minutes of recordings
  – no more than 300 of 600 can be CDs + downloads (+ max 4 CD “albums”)
  – Balance can be download-only products
  – Unlimited radio broadcasts; streaming; and other audio uses
• Unused minutes “banked” & released later during IMA term
• Additional CDs paid on à la carte basis at Article X or X-A rates
General Provisions

• Pension:
  – Increased to 12%
  – Inclusive of current rehabilitation plan contributions

• Revenue Participation:
  – Based on % of Net Revenue (net of direct costs only) for all projects EXCEPT:
    • Article X-A audio streaming/downloading without CDs
    • Audio-Visual Streaming of Single Program Where There Is One Capture or
    • Optional Theatrical Release Rate Where There Is One Capture
  – Symphony projects: 60% of Net Revenue or Gross Revenue
  – Opera and Ballet projects will be 22% of Net Revenue or Gross Revenue
  – Revenue Participation includes pension

• Health and Welfare
  – Payment of $18 per day (maximum of $90 per week)
  – Paid to any employee not covered under an Employer plan.
General Provisions

• EMG
  – Subject to Local CBA, EMG can be used to pay up-front & per-minute fees
  – EMG cannot be used to make tier or revenue participation payments.

• Musicians to be Paid
  – All current members of the orchestra (or for per-service orchestras all musicians on the roster) shall be paid for audio and audio-visual recordings
  – In the case of symphony orchestra members performing sub-contracted services for an opera or ballet company, only those musicians actually performing shall be paid for audio and audio-visual recordings

• Labor Management Committee:
  – EMA/AFM representatives to discuss contract interpretation; financial consultation and reporting; and recommendations for consideration in the bargaining for a successor Agreement
Non-Classical Featured Artists

• Institutions that have historically done projects with “pop” or “rock” stars under symphony, opera, ballet media agreements may continue to do so under the IMA (list to be developed).
• Each other employer may do one project each year with a “pop” or “rock” star may be done under the terms of the IMA
• Add’l projects each year under appropriate AFM Agreement
• Labor Management Committee will resolve issues of interpretation, including whether an artist is a “pop” star.
• This entire provision will sunset on June 29, 2017.