Before the
COPYRIGHT ROYALTY JUDGES
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Washington, D.C.

In the Matter of Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding	Docket No. 2006-3 CRB DPRA

THE WRITTEN DIRECT STATEMENT, WITNESS STATEMENTS & EXHIBITS OF NATIONAL MUSIC PUBLISHERS' ASSOCIATION, INC., THE SONGWRITERS GUILD OF AMERICA, AND THE NASHVILLE SONGWRITERS ASSOCIATION INTERNATIONAL

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INDEX

	Tab
Written Direct Statement	A
Witness Statements	
David Israelite	B
Irwin Robinson	C
Ralph Peer II	D
Roger Faxon	E
Nicholas Firth	F
Bob Doyle	G
Rick Carnes	H
Steve Bogard	I
Jud Friedman	J
Maia Sharp	K
Phil Galdston	L
Victoria Shaw	M
Stephen Paulus	N
William Landes	O
Claire Enders	P
Helen Murphy	Q
Index To Copyright Owners' Exhibits	R

A

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**WRITTEN DIRECT STATEMENT OF
NATIONAL MUSIC PUBLISHERS' ASSOCIATION, INC.,
THE SONGWRITERS GUILD OF AMERICA AND
THE NASHVILLE SONGWRITERS ASSOCIATION INTERNATIONAL**

National Music Publishers' Association, Inc. ("NMPA"), the Songwriters Guild of America ("SGA") and the Nashville Songwriters Association International ("NSAI") (collectively, the "Copyright Owners") respectfully submit this Written Direct Statement pursuant to the order entered by the Chief Copyright Royalty Judge on October 25, 2006 in support of their proposal for rates and terms for mechanical royalties under Section 115 of the Copyright Act to be effective from January 1, 2008 through December 31, 2012.

Introduction

This proceeding will determine the mechanical royalty rate paid to songwriters and music publishers for the use of their musical works pursuant to the compulsory license provision of the Copyright Act. Songwriters — the composers and lyricists — are the authors of the work and those in whom the musical work copyright initially vests. Music publishers, to whom a songwriter frequently assigns his or her copyright in exchange for a share of the income from the work's exploitation, help

songwriters create and exploit their works by, among other activities, assisting them in their creative process, promoting the works to record companies and performing artists, and licensing and administering the works.

Notwithstanding the pivotal role they play in the music industry, songwriters face financial struggles throughout their careers. Music publishers have experienced declines in their shares of revenue from mechanical royalties, and face increasing costs in connection with their crucial services provided to songwriters.

The current statutory mechanical royalties — comprising a significant portion of songwriter and music publisher income — do not fairly compensate songwriters and music publishers. The mechanical royalty rate for the distribution of music in both physical and digital format currently is 9.1 cents — a mere 7.1 cents above the rate set nearly a century ago at the time of the compulsory license's enactment. Copyright Owners agreed to the current rate — lower than that to which they believed they were entitled at the time — in the late 1990s, when the market for the sale of music in physical CD album format was thriving and the market for the digital distribution of music was in its infancy.

Those markets stand in stark contrast to the physical and digital distribution markets of today. Among other differences, physical sales have dropped dramatically. At the same time, the legitimate market for digital distribution has flourished, increasing the value of music to consumers, reducing the costs of record companies and digital music providers of making music available to the public, and enabling consumers to purchase primarily singles rather than albums. These striking changes have caused declines in the mechanical royalties paid to the Copyright Owners

— challenging the vitality of these professions — and compel increased mechanical royalty rates.

As set forth in detail below, the Copyright Owners' proposal requests increased physical and digital rates to account for these market differences. The Copyright Owners' proposal advances the statutory goals set forth in Section 801(b) of the Copyright Act. Increased rates will ensure adequate compensation to the Copyright Owners, allowing them to continue creating songs and to continue to make their works available to the public, while providing them a fair return on their critical creative efforts. Increased rates will also more accurately reflect the relative roles of the parties in the product made available to the public in today's markets. These rates will not be disruptive to the recorded music industry, which is enjoying increasing profits. Nor should the fair division of royalties between creators of musical works and the owners of sound recordings disrupt the digital distribution of music by digital music providers.

In sum, increased mechanical royalty rates are vital to the Copyright Owners and their continued creation of musical works. The musical work is the heart of the music industry. Without the musical work, there would be no song for recording artists to perform and no song for record companies and digital music providers to sell. And without the Copyright Owners, there would be no musical works.

Background

The Copyright Owners

NMPA is the principal trade association of music publishers in the United States. Founded in 1917, it has approximately 600 members, which own or control the majority of musical compositions available for licensing in this country. NMPA

represents the rights of music publishers and, through them, songwriters, in litigation, legislation, industry-wide negotiations and rate-setting proceedings. It is the most active proponent for the interests of music publishers in the United States. NMPA's licensing affiliate, The Harry Fox Agency, Inc. ("HFA"), was established in 1927 and serves as a licensing and collecting agent on behalf of its over 27,000 publisher-principals in licensing their copyrighted musical compositions for reproduction and distribution.

The SGA is the nation's oldest and largest organization run exclusively by and for songwriters. Founded in 1931, the SGA is an unincorporated voluntary association of approximately 5,000 songwriters and songwriter estates throughout the United States. The SGA promotes the interests of songwriters by assisting them with skill development, royalty audits and collection, catalog administration and legislative advocacy. One of its primary objectives is to ensure that those who devote their careers to songwriting earn royalties adequate to support themselves and their families. Consistent with that objective, the SGA joined NMPA as representatives of the interests of songwriters and other copyright owners in prior mechanical rate proceedings.

The NSAI is a trade organization dedicated to providing a support system for songwriters of all genres. Established in 1967, the NSAI protects the legal and economic interests of its approximately 5,000 songwriter members and acts to safeguard the future of the songwriting profession. The NSAI offers a wide array of services to its members, including hosting workshops to teach them the art of songwriting, organizing festivals to showcase their talents, and lobbying on their behalf before Congress.

The Existing Mechanical Royalty Rates

The compulsory mechanical license was initially enacted as Section 1(e) of the 1909 Copyright Act. The first statutory rate for reproducing and distributing musical works was set at 2 cents per song. This rate did not change until the implementation of the Copyright Act of 1976, when Congress raised the rate to 2.75 cents and amended the law to add a rate adjustment mechanism. *See* 17 U.S.C. § 115. The last time mechanical royalties were set by a contested proceeding was in 1980. In that proceeding, the Copyright Royalty Tribunal established a compulsory rate for physical phonorecords equal to the larger of 4 cents or .75 cents per minute of playing time or fraction thereof, with scheduled increases in 1983, 1984 and 1986 to the larger of 4.25 cents or .8 cents per minute, 4.5 cents or .85 cents per minute, and 5 cents or .95 cents per minute, respectively. *See* 37 C.F.R. § 255.3; *see also* 46 F.R. 62267-02.

In 1987, pursuant to a joint proposal by NMPA, the SGA and the Recording Industry Association of America, Inc. ("RIAA"), the Copyright Royalty Tribunal established a schedule of rate increases indexed for inflation based on the CPI every two years over the next 10 years, except that rates could not be decreased below 1986-1987 levels or increased in any single adjustment by more than 25 percent. *See* 37 C.F.R. § 255.3; *see also* 52 F.R. 23546; 52 F.R. 22637. The rates were increased to the larger of 5.25 cents or 1 cent per minute in 1988, 5.7 cents or 1.1 cents per minute in 1990, 6.25 cents or 1.2 cents per minute in 1992, 6.6 cents or 1.25 cents per minute in 1994, and 6.95 cents or 1.3 cents per minute in 1996. *See id.*

In 1995, Congress passed the Digital Performance Right in Sound Recordings Act ("DPRA"), which confirmed that digital phonorecord deliveries

("DPDs") are subject to the mechanical license. *See* Pub. L. 104-39, 109 Stat. 336. The Copyright Act defines a DPD as "each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that recording." 17 U.S.C. §115(d).

The current mechanical royalty rates for physical phonorecords arise out of a 1997 agreement ("1997 Agreement") between NMPA and the SGA, on behalf of the Copyright Owners, and the RIAA. Rather than litigate a contested proceeding — a heavy expense for entities such as the Copyright Owners who lack the financial resources of the record companies — and because sales of music in physical format such as CDs had been steadily climbing, the Copyright Owners agreed to a rate for physical phonorecords lower than that to which they believed they were entitled at that time. Pursuant to the 1997 Agreement, the mechanical royalty rate for physical phonorecords as of January 1, 2006 is the larger of 9.1 cents per track or 1.75 cents per minute of playing time or fraction thereof.[1]

As part of the 1997 Agreement, the parties agreed, on a non-precedential basis, to propose rates for so-called "permanent downloads"[2] but did not address the rates

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[1] Had the penny rate of 2.1 cents set in 1909 been increased at the same rate as prices generally (as measured by the CPI), the rate, as of January 1, 2006, would have been 40.7 cents.

[2] These rates, as well as the rates for the reproduction and distribution of physical phonorecords, were embodied in a joint petition submitted by NMPA, the SGA and the RIAA to the Copyright Office on November 5, 1997. After further proceedings regarding rates and terms for DPDs, the parties reaffirmed their agreement on October 13, 1998.

for other digital uses, such as "limited downloads" and "interactive streams."[3] At the time, the market for the digital distribution of music was in its infancy and the Copyright Owners had no empirical or economic evidence that would have enabled them to value accurately the future of digital distribution of music. Given this uncertainty, and in order to avoid the substantial costs associated with a litigated rate-setting proceeding, the Copyright Owners agreed to accept physical rates for permanent downloads. Thus, the mechanical royalty rate for permanent downloads as of January 1, 2006 is the larger of 9.1 cents per track or 1.75 cents per minute of playing time or fraction thereof.

The parties did not come to an agreement on the rates for other digital uses, which remain unresolved. Beginning in 2001, the parties addressed the licensing of these additional methods of digital distribution of music and entered into a series of agreements allowing users immediately to use musical works and pay Copyright Owners for those uses later once an appropriate mechanical rate had been set.[4] In exchange for the payment of relatively modest advances to the Copyright Owners, record companies and digital music providers were allowed to set up businesses quickly so that they could

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[3] In today's world, digital distribution of music is typically categorized as falling into three different modes of delivery. A "permanent download" is a digital delivery of a sound recording of a musical work that is not limited in availability for listening by the end user either to a period of time or number of times the sound recording can be played. A "limited download" is a digital delivery of a sound recording of a musical work that is available for listening by the end user for a limited period of time or a limited number of times. An "interactive stream" is a digital delivery of a sound recording of a musical work, using streaming technology, in response to an end user's request.

[4] *See, e.g.*, Agreement between Recording Industry Association of America, Inc. and National Music Publishers' Association, Inc. and The Harry Fox Agency, Inc. (2001); Agreement Concerning the Licensing of Certain Internet Music Subscription Services between Listen.com, Inc. and The Harry Fox Agency, Inc. (2001); Agreement Concerning the Licensing of Certain Internet Music Subscription Services between FullAudio Corporation and The Harry Fox Agency, Inc. (2002).

capitalize on the new technology, without prejudicing the Copyright Owners' rights to seek appropriate digital rates once the digital distribution market became more fully evolved.

The Changes in the Markets for the Physical and Digital Distribution of Music

The current mechanical royalty rates were agreed to by the parties against the backdrop of a thriving market for the sale of music in physical format and an infant market for the digital distribution of music. Today, those markets have dramatically changed, undermining the premises upon which the current rates are based.

With respect to the sale of music in physical format, the Copyright Owners agreed to a relatively low penny rate in 1997 on the assumption that physical sales, as they had been, would continue to rise. Thus, the Copyright Owners believed that a low rate, when multiplied by a large number of full album CD sales, would yield them a fair aggregate return. In reality, physical sales have declined precipitously. This decline in physical sales resulted from a number of factors. First, the emergence of technology enabling the digital distribution of music and the initial dearth of legitimate online music services led to an unprecedented level of piracy. Because the Copyright Owners depend on mechanical royalties for every copy made of their works, the massive piracy occurring online has deprived the Copyright Owners of immeasurable royalties — losses that the Copyright Owners (subject to the compulsory license) cannot recover simply by raising prices. Second, as the legitimate market for the digital distribution of music has evolved, the market for physical sales has been diminished, resulting in fewer sales of physical product.

Moreover, the mechanical royalty rate is a ceiling above which the Copyright Owners cannot negotiate. It serves as a one-sided constraint in favor of the user. For example, the record companies frequently insist on rates below the statutory rate through so-called "controlled composition clauses" in record company agreements with songwriters who also perform their works, which clauses typically reduce the mechanical royalty rate (often to 75% or less of the statutory rate) and cap the total mechanical royalties paid to the songwriter at a certain number of songs per album.

With respect to the digital distribution of music, what was in the late 1990s a nascent market has now flourished into a vibrant and rapidly growing market characterized by significant differences from the market for the distribution of music in physical format. First, the digital distribution of music permits consumers to purchase particular tracks from an album without purchasing others. In the physical market, consumers typically purchased music on albums, each of which contained numerous tracks of varying levels of popularity, even though consumers generally sought to obtain copies of only one or two "hit" songs. Thus, although the Copyright Owners did not receive what they believed to be a high enough amount on each track on an album in the physical world, they received royalties on all of the tracks. In the digital market, by contrast, consumers are able to "cherry-pick" their purchases, resulting in the fact that the digital market is a predominantly singles-based market. Copyright Owners, therefore, get paid only for the purchased "hits."

Second, music delivered digitally provides greater value to consumers than music delivered in physical format. For example, the digital distribution of music provides consumers with greater and more convenient access to works, portability of

their music collections, and the ability to sample works prior to purchase. At the same time that music distributed digitally provides increased value to consumers, its distribution in digital format is far less costly to record companies and digital music providers than its distribution in physical format.

The result of these market changes has been a decline in the payment of mechanical royalties to songwriters and music publishers. As the Copyright Owners' songwriting witnesses will explain, songwriting as a career presents often insurmountable financial struggles. In a profession that offers no reliable income stream, any reduction of compensation in the already-modest payments received will have adverse consequences for creative output. And, as the music publishers will explain, they face declining mechanical royalties and increasing costs of providing their essential support to songwriters.

The Copyright Owners' Proposal

For these reasons and those set forth in greater detail below and in the accompanying expert reports and witness statements, the existing mechanical rates should be increased and several new terms to the compulsory license should be adopted. Thus, the Copyright Owners propose the following rates and terms:[5]

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[5] The terms proposed here supplement — and do not override — existing terms except where there is a conflict. Moreover, the Copyright Owners' proposal has been crafted pre-discovery and necessarily is preliminary. The Copyright Owners expect to discover financial information from the record companies demonstrating, among other things, their costs involved in the sale of music in digital and physical format, their margins, financial forecasts and their agreements with digital music distributors. Thus, the Copyright Owners reserve their right, and expect, to amend or supplement their proposal following discovery.

Rates

- *Physical Phonorecords*: A penny rate equal to the greater of 12.5 cents per song or 2.40 cents per minute of playing time or fraction thereof, subject to periodic adjustments for inflation, as measured by the Consumer Price Index ("CPI").

- *Permanent Downloads*: A penny rate equal to the greater of 15 cents per track or 2.90 cents per minute of playing time or fraction thereof, subject to periodic adjustments for inflation as measured by the CPI.

- *Limited Downloads*: A rate equal to the greatest of: (i) 15 percent of revenue;[6] (ii) one-third of the total content costs paid for mechanical rights to musical compositions and rights to sound recordings; or (iii) the greater of $0.0033 per use or $0.00064 per minute of playing time or fraction thereof, subject to periodic adjustments for inflation as measured by the CPI.

- *Interactive Streaming*: A rate equal to the greatest of: (i) 12 ½ percent of revenue; (ii) 27½ percent of the total content costs paid for mechanical rights to musical compositions and rights to sound recordings; or (iii) the greater of $0.00275 per use or $0.00053 per minute of playing time or fraction thereof, subject to periodic adjustments for inflation as measured by the CPI.

- *Ringtones*[7]: A rate equal to the greatest of: (i) 15 percent of revenue; (ii) one-third of the total content costs paid for mechanical rights to musical

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6 Given the rapidly evolving models of digital music distribution, the computation of revenue is of critical import. For services that are music-only, the revenue base against which the royalty would apply would be all revenue, including but not limited to subscription fees paid for access to or use of music, the fair market value of non-cash or in-kind consideration paid or payable by third parties, monies and other consideration from audio or visual advertising, promotions, sponsorships, time or space made available to subscribers of a subscription service, and monies and other consideration from the sale of any product or service directly related to a music service. For online services for which music is only one part of what is offered to consumers, or for which no separate fee for music is charged, the intention, as discussed, is to capture all revenue that is fairly attributable to music, however that revenue is generated. A more precise definition will not be possible until after discovery.

7 A ringtone is a snippet of a sound recording or digital file of a musical work of up to 30 seconds in length that is downloaded to a mobile phone or similar device to personalize its ring. The Copyright Owners believe that ringtones are not within the parameters of the compulsory license, and have appealed the Register's recent decision to the contrary. As explained in the accompanying witness statements, the

compositions and rights to sound recordings; or (iii) 15 cents per ringtone, subject to periodic adjustments for inflation as measured by the CPI.

Terms

- *Payment*: Without affecting any right to terminate a license for failure to report or pay royalties as provided in §115(c)(6), late fees shall be assessed at 1.5% per month (or the highest lawful rate, whichever is lower) from the date payment should have been made (the twentieth day of the calendar month following the month of distribution) to the date payment is actually received by the Copyright Owner. For pass-through licensing, there shall be an automatic 3% assessment on all royalty payments by the licensee to address the fact that the Copyright Owners would receive payment sooner if the retailer were paying the Copyright Owners directly (such assessment to be augmented by additional late fees at 1.5% per month if payment by the licensee is otherwise late). A Copyright Owner shall be entitled to recover from the licensee reasonable attorneys' fees expended to collect past due royalties and late fees.

- *Applicability of Rates*: The statutory rate to be applied is the rate in effect as of the date of distribution.

- *Reserves*: In the case of physical product, there is a general failure to comply with, and abuse of, the existing reserve rules (see 37 C.F.R. § 201.19) — to be further confirmed in the discovery process — with the effect of substantially decreasing and delaying payments to publishers and songwriters. Subject to our findings in discovery, the Copyright Owners may propose the elimination of reserves for physical product or, at a minimum, new rules designed to correct the abuses.

- *Specific Licensing and Reporting*: Licenses are to be taken by specific configuration (e.g., CD, cassette, permanent download, limited download, interactive stream, etc.). In addition to any other applicable requirements, reporting must be broken down by specific configuration (*i.e.*, must detail how many units distributed of a particular configuration, and the applicable rate and royalties due for that configuration) and, in the case of pass-through licensing, must be further broken down to indicate the retail outlet through which the distribution was made to the end user.

Copyright Owners have entered into numerous voluntary license agreements granting copyright users the right to create ringtones at varying rates above the current statutory fee.

The Copyright Owners' Proposal Is Reasonable

The Copyright Act sets forth several criteria to be applied in the determination of whether mechanical royalty rates and terms are reasonable. Thus, rates and terms should: (1) maximize the availability of creative works to the public; (2) afford the copyright owner a fair return for his or her creative work and the copyright user a fair income under existing economic conditions; (3) reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication; and (4) minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices. *See* 17 U.S.C. §801(b)(1). The Copyright Owners' proposal is reasonable under all of these criteria.

First, an increase in the mechanical rate consistent with the Copyright Owners' proposal is required to maximize the availability of creative works to the public by providing needed incentives to Copyright Owners to create new works. Mechanical royalties are an essential component of the incomes of both songwriters and music publishers, and over the past ten years, their mechanical royalties have steadily declined. As the songwriter witnesses will make clear, songwriting is a financially trying profession, with many songwriters forced to work odd jobs to make ends meet — thereby minimizing the time they have to devote to their craft — and others forced to abandon their songwriting aspirations altogether for other careers. Declining royalties also jeopardize the ability of music publishers to provide their critical support to songwriters. Increased rates will allow music publishers to support their songwriters and increase their

rosters, and increased rates will allow more and more songwriters to do what they do best: create musical works for the enjoyment of the public.

Increased rates will also provide the Copyright Owners with a fair return for their creative works. As the songwriter and music publisher witnesses will explain in detail, the efforts made by the Copyright Owners to create musical works are extensive. For the songwriters, songwriting is a passion requiring great dedication and often enormous sacrifice. The music publishers, too, make substantial efforts in furtherance of the creative process by providing crucial creative, financial, promotional and administrative support to songwriters. In view of these efforts — which are the most significant creative contributions in terms of the end product delivered to consumers — an increase in mechanical royalties is necessary to provide a fair return to the Copyright Owners. Indeed, in free-market transactions — perhaps the best indicator of a "fair return" — the Copyright Owners are compensated at rates far higher than the current mechanical rates. Finally, the Copyright Owners' proposal recognizes that in order to provide a fair return to Copyright Owners for music distributed digitally, digital rates must be higher than physical rates to account for the increased value to consumers and the singles-based nature of the digital market.

Further, increased royalty rates will better reflect the relative roles of the parties in making the product available to the public. Regardless of the market for distribution of music, the critical role of songwriters and music publishers remains the same: they continue to provide the most fundamental component of music — the song. The effort to create that song has not changed — if anything, it has become more difficult — and the value of that song in the digital world has increased. For the record

companies, however, the costs of distributing music have decreased. And for both the record companies and digital music providers, the costs of distributing music in digital format are lower than in physical format. As such, the contribution of songwriters and music publishers relative to that of the record companies and digital music providers has increased. Mechanical rates must reflect the increased value of music in digital form and ensure a fair distribution of total music content royalties paid to the owners of sound recordings and musical compositions.

Finally, the Copyright Owners' proposal will cause no disruption to the music industry. It preserves the penny rate royalty system in place for nearly a century where it has worked well — namely, for physical phonorecords and permanent downloads. For limited downloads and interactive streams, the Copyright Owners propose a flexible, tiered approach for new and rapidly changing services for which standard penny rates would be inconsistent with the pricing regimes currently in place. And for ringtones, the Copyright Owners' proposal follows the basic structures set forth in current ringtone agreements, which are designed to protect the Copyright Owners against changes in revenue models. By all public accounts, the record companies are enjoying and are expected to continue to enjoy an upswing in profitability and thus will be able to pay the increases proposed by the Copyright Owners.

With respect to the Copyright Owners' proposed terms, record company practices have rendered them necessary to safeguard the rights and incomes of songwriters and music publishers. Among other issues, some record companies are frequently delinquent in their payment of mechanical royalties, forcing publishers to devote time, effort and considerable expense to obtaining payment. Although license

termination will remain a statutory option, short of that remedy, a late fee on late payments is appropriate to ensure that the Copyright Owners receive fair compensation and copyright users are incentivized to pay on time. The issue of late payments is particularly acute in situations where record companies issue so-called "pass-through" licenses to online music service providers in which the record companies license the sound recording and also purport to convey the required mechanical license, warranting an assessment to be added to all mechanical royalties paid pursuant to pass-through licenses. Notwithstanding these measures to ensure full and timely payment, there may be instances in which Copyright Owners will be forced to litigate to recover the royalties they are owed. In such cases, Copyright Owners should be entitled to recover reasonable attorneys' fees expended to collect such royalties.

Moreover, clarification that the mechanical license fee is calculated and due upon distribution is necessary given current record company practices of calculating mechanical fees at the date of manufacture, adversely impacting the Copyright Owners in circumstances in which the statutory rate is higher on the date of distribution than on the date of manufacture. Subject to our findings in discovery, the terms of the mechanical license should also eliminate reserves for physical phonorecords or otherwise modify the rules to correct certain abuses that currently result in underpayment to Copyright Owners. Finally, the music publishers' costs of tracking royalty payments and auditing record companies have increased due in large measure to the record companies' frequent refusal to deliver reports of use in a usable fashion. Reports of use must be broken down by specific configuration to account for the quantity of phonorecords distributed and

royalties earned for each kind of digital use and, in the case of pass-through licenses, the particular retailers through which digital deliveries were provided.

Expert Reports And Witness Statements

The witnesses and experts who have submitted statements in support of the Copyright Owners' proposal will address the above-described points, and others. We summarize their testimony below:

NMPA President and Chief Executive Officer

David Israelite, President and Chief Executive Officer of NMPA, will describe the NMPA's role in the music publishing industry and the role of music publishers generally, and will introduce the Copyright Owners' proposal and the rationales in support of it.

Music Publishers

Five music publishers, representing over 150 years of industry experience, have submitted written statements on behalf of the Copyright Owners. They are:

- Irwin Z. Robinson, Chairman and Chief Executive Officer of Famous Music, Inc. the music publisher, an affiliate of Paramount Publishing (which is part of Viacom, Inc.), and Chairman of the Boards of Directors of NMPA and HFA.
- Ralph Peer II, Chairman and Chief Executive Officer of Peermusic, Inc., a lending independent music publisher with a catalog of over 300,000 songs.
- Roger Faxon, Co-Chief Executive Officer of EMI Music Publishing, currently the largest music publisher in the world.
- Nicholas Firth, Chairman and Chief Executive Officer of BMG Music Publishing, one of the largest music publishers in the world, with a catalog that cuts across all genres of music.
- Bob Doyle, Founder and President of Major Bob Music, a Nashville-based music publisher whose roster of songwriters includes Garth Brooks.

As the leaders of five music publishing companies, these individuals are uniquely qualified to explain the role that music publishers play, the essential contributions they make to the creation of music, and the importance of an increase in the mechanical royalty rate to them and to songwriters. Specifically, they detail the ways in which their companies discover talented songwriters, provide them with essential financial support at the earliest and most uncertain stages of their careers, nurture their creative talents by critiquing their compositions, promote their works to record companies and others, arrange collaborations with recording artists, producers and other songwriters, license their works and handle critical administrative affairs, including copyright registration and royalty collection. Finally, these publishers explain that an increase in the mechanical royalty rate is important to stem the decline in mechanical royalties experienced in recent years and to enable them to continue their crucial efforts on behalf of songwriters.

Songwriters

Seven professional songwriters, representing a variety of genres of music, have submitted written statements on behalf of the Copyright Owners. They are:

- Rick Carnes, a songwriter of country music for over 30 years who has written songs for major country recording artists such as Reba McEntire, Conway Twitty and Pam Tillis, and is the current President of the SGA.
- Steve Bogard, a songwriter for more than 40 years and the current President of the NSAI.
- Jud Friedman, a successful songwriter for more than 20 years, whose hit single "Run to You" was recorded by Whitney Houston and sold over 30 million copies.
- Maia Sharp, a second-generation songwriter who has also recorded two albums of her own works.

- Phil Galdston, a composer, lyricist, music publisher and producer for almost 40 years, whose songs have been recorded by such popular recording artists as Vanessa Williams, Celine Dion and Beyoncé.

- Victoria Shaw, a Nashville-based songwriter whose songs have been recorded by such well-known recording artists as Garth Brooks.

- Stephen Paulus, an accomplished writer of opera and other classical music, and vice president of the American Composers Forum, the largest composer service organization in the world.

These songwriters detail the challenges associated with a career in songwriting. As they explain, songwriting is a career with no guarantees and one that offers no reliable income stream and relatively small rewards even from the most successful "hit" songs. Although some of these songwriters have enjoyed financial success from songwriting, they explain that such stories are unusual, that the plight of the average songwriter is difficult, and that success is typically modest and short-lived.

Several of these songwriters also describe the critical contributions that music publishers have made to their careers. In particular, they explain in detail how their publishers nurtured their talents and trained them to produce marketable compositions, provided them essential financial support through advances that allowed them to concentrate on songwriting, and secured recordings of their songs and facilitated relationships with other songwriters and artists. Each of the songwriters agrees that increases in the statutory rate would make a substantial difference to them and to their fellow songwriters in creating their works.

Economist

William M. Landes, Clinton R. Musser Professor of Law and Economics at the University of Chicago Law School, chairman of Leaf Group, LLC, an economics consulting firm, and author of numerous scholarly works in law and economics, antitrust,

and intellectual property, including The Economic Structure of Intellectual Property Law, which he co-authored with Judge Richard A. Posner, concludes that the Copyright Owners' proposal for statutory mechanical rates, for both physical phonorecords and digital distribution of music, is reasonable.

First, he determines that the 12.5 cent rate for physical phonorecords is reasonable, because, among other reasons, the value of copyrighted songs has increased; that an increasing share of licenses issued by the HFA has been at, rather than below, the statutory rate, which suggests that the royalty rates under an increasing number of license agreements are being capped at an artificially low level; and that piracy has depressed the returns to songwriters and, thus, their incentives to create.

Second, Professor Landes determines that the Copyright Owners' proposal of 15 cents for permanent downloads is reasonable because, for reasons discussed above, music distributed digitally is more valuable to consumers than music in physical format and the digital market is "singles" based. In addition, Professor Landes concludes that virtually all licenses for permanent downloads have been at the statutory rate, which suggests that the rate is acting as a binding maximum and precluding bargaining at higher amounts.

Third, Professor Landes concludes that the Copyright Owners' proposal for subscription services offering limited downloads and interactive streaming is also reasonable. Specifically, he finds that the Copyright Owners' proposal is appropriate because it would result in the Copyright Owners receiving, in any event, no more than one-third of the total content costs paid by these services for rights to sound recordings and the mechanical rights to musical works, a proportion at or in fact below that received

by Copyright Owners in freely negotiated market transactions. Finally, Landes asserts that the Copyright Owners' proposal for ringtones is also reasonable because it is consistent with a conservative analysis of what the parties have agreed to under negotiated licensing agreements.

Digital Music Industry Expert

Claire Enders, Chief Executive Officer of Enders Analysis, an international provider of research, analysis, business strategy and advice on telecommunications, media and technology, provides an overview of the historical and current states of the U.S. digital music market to provide context for the Copyright Owners' proposal. Enders also opines that the Copyright Owners' proposal to set higher rates for the digital distribution of music than for physical phonorecords is reasonable for several reasons. In addition to the greater value to consumers from digital music and the implications of the digital market being a "singles market," she explains that record companies and digital music providers distribute digital music at lower costs and, thus, earn greater margins, than they do for physical phonorecords, while, by contrast, the contributions of the Copyright Owners to music that is digitally distributed have not declined.

Recorded Music Industry Expert

Helen Murphy, President of International Media Services Inc. ("IMS"), a New York-based strategic advisory and financial services firm, has extensive first-hand experience in the recorded music industry, including as chief financial officer of a major record company. Murphy addresses the historical, current and anticipated future financial state of the recorded music industry, and concludes that the recorded music

industry has historically undergone cyclical growth and profitability, and is now enjoying rising profits.

To that end, Murphy explains that technical innovation in the recorded music industry, such as the shift in delivery medium from albums and cassettes to compact discs in the mid-1980s, has often led to periods of decline in adapting to new technology followed by growth as the new formats for music stimulate new demand for, and fuel increased sales of, music. Concerning digital innovation specifically, Murphy notes that these emerging technologies led to significant piracy and, as lawful digital music services struggled to capture market share, record company sales and profitability waned. At the same time, record companies incurred billions of dollars in one-time restructuring costs designed to adapt their businesses to the digital age. By 2005, however, the emergence of successful, lawful digital music distribution services, coupled with the benefits of the previous restructurings, have led to a resurgence in record company profits, in part because record companies earn greater profits on digital sales than sales of physical phonorecords. According to Murphy, there is no reason to believe that these positive trends will not continue over the next five years as digital distribution of music captures a larger share of total market demand.

Conclusion

In sum, the Copyright Owners' direct case will demonstrate, and discovery will confirm, that increased mechanical royalty rates are warranted — indeed, critical — for the survival of the Copyright Owners and to ensure their continued creation of musical works.

Dated: November 30, 2006

Respectfully submitted,

NATIONAL MUSIC PUBLISHERS' ASSOCIATION, INC.

THE SONGWRITERS GUILD OF AMERICA

NASHVILLE SONGWRITERS ASSOCIATION INTERNATIONAL

By: _____

Jay Cohen
Aidan Synnott
Lynn B. Bayard
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019
Phone: (212) 373-3000
Fax: (212) 757-3990
Email: jaycohen@paulweiss.com
asynnott@paulweiss.com
lbayard@paulweiss.com

Of counsel:

Robert E. Bloch (DC Bar No. 175927)
Mayer Brown Rowe & Maw LLP
1909 K Street, NW
Washington, DC 20006
Phone: (202) 263-3203
Fax: (202) 263-5203
Email: rbloch@mayerbrownrowe.com
Counsel for EMI Music Publishing

Jacqueline C. Charlesworth
Senior Vice President & General Counsel
National Music Publishers' Association
711 Third Avenue, 8th Floor
New York, New York 10017

Phone: (212) 922-3266
Fax:(212) 922-3299
Email: jcharlesworth@nmpa.org

Charles J. Sanders
29 Kings Grant Way
Briarcliff Manor, NY 10510
Email: csanderslaw@aol.com
Counsel for SGA

Carl W. Hampe
Baker & McKenzie, LLP
815 Connecticut Ave. NW
Washington, DC 20006
Email: carl.hampe@bakernet.com
Counsel for SGA

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Before the
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Washington, D.C.

In the Matter of Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding	Docket No. 2006-3 CRB DPRA

WITNESS STATEMENT OF DAVID ISRAELITE ON BEHALF OF NATIONAL MUSIC PUBLISHERS' ASSOCIATION, INC., THE SONGWRITERS GUILD OF AMERICA AND THE NASHVILLE SONGWRITERS ASSOCIATION INTERNATIONAL

1. My name is David M. Israelite. I am President and Chief Executive Officer of National Music Publishers' Association, Inc. ("NMPA"). NMPA is the largest music publishing trade association in the United States and the leading advocate for America's music publishers.

2. I submit this statement to: (1) explain the role of NMPA and the ways in which the organization represents and advances the interests of music publishers; (2) provide an overview of the important contributions made by music publishers to the music and entertainment industries; (3) set forth the proposal of NMPA, the Songwriters Guild of America, and the Nashville Songwriters Association International (collectively, "the Copyright Owners") for statutory mechanical rates and terms for physical product and digital phonorecords ("DPDs") for the period 2008-2012; and (4) lay out the reasons why the rates should be increased as the Copyright Owners propose.

Background

3. I received a Bachelor's Degree from William Jewell College in 1990, and a Juris Doctor from the University of Missouri in 1994. After law school, I practiced as a commercial litigator for three years.

4. In 1997, I moved into the public sector to work for Missouri Senator Kit Bond, becoming the youngest Administrative Assistant in the U.S. Senate. I also served as the campaign manager for Senator Bond's successful re-election campaign in 1998. From 1998 until 2001, I served as Director of Political and Governmental Affairs for the Republican National Committee.

5. I was appointed to the Department of Justice in 2001, and served as Deputy Chief of Staff and Counselor to the Attorney General of the United States until 2005. I was also named Chairman of the Department's Task Force on Intellectual Property, which was created in 2004. The Task Force was established to help the Department of Justice strengthen and improve efforts to combat the theft of intellectual property both nationally and internationally. In that position, I worked closely with other governmental offices and gained a first-hand appreciation for the importance of protecting the nation's valuable intellectual resources.

6. I was named President and CEO of NMPA in 2005. In that capacity, I have focused my efforts on legislative initiatives with respect to revisions of the Copyright Act, including Section 115, fighting music piracy, and a wide range of issues concerning digital music, the Internet, and new technologies.

The Role of the NMPA

7. NMPA was founded in 1917. For almost ninety years, NMPA has served as the leading voice of the American music publishing industry before Congress,

in the courts, in the music and entertainment industries and to the listening public. Today, NMPA has approximately 600 members. These publishers own or control the majority of musical compositions licensed for use, manufacture and distribution in the form of phonorecords in the United States.

8. NMPA is the leading advocate for both small and large music publishers and their songwriting partners in numerous arenas. Our primary objective is to protect and enhance the value of our members' intellectual property rights. We address these issues through legislative, litigation and regulatory efforts and we represent our members in industry negotiations in order to shape a business environment that will foster both their creative and financial success.

9. NMPA took a leading role in a number of high-profile music piracy lawsuits over the past few years, including those against the Napster and Grokster services. We have also sought to stem online music piracy by promoting legitimate digital music alternatives. To that end, NMPA members entered into an agreement with the Recording Industry Association of America, Inc. ("RIAA"), in the fall of 2001 that created a framework to provide for new subscription online music services to be licensed even in the absence of an agreement with respect to the applicable royalty rates. Thereafter, NMPA's licensing affiliate, The Harry Fox Agency, Inc. ("HFA"), entered into numerous agreements with online music service providers such as Rhapsody, Full Audio, and Emusic.com, licensing the rights to use NMPA members' works.

10. Most relevant, as we are doing in this proceeding, NMPA has presented the position of music publishers in mechanical royalty rate-setting negotiations, proceedings and related hearings for over forty years. We represented the interests of

music publishers in the negotiations and formal rate setting proceedings in 1980 as well as the physical and digital rate-setting negotiations and proceedings in the mid-to-late 1990s.

11. NMPA also facilitates the licensing of music through the activities of the HFA. As the premier mechanical rights organization in the country since 1927, the HFA offers music publishers a convenient and efficient system for licensing their copyrights. HFA acts as a licensing agent for approximately 27,000 music publishers, making HFA by far the largest U.S. agency representing copyrighted musical compositions for reproduction and distribution in the form of physical phonorecords and DPDs. In that capacity, HFA has taken a leading role in licensing numerous legitimate online music services.

12. HFA also operates as an information source, clearinghouse, monitoring service and collection agent for publishers and licensees. Further, HFA conducts audits of record companies to ensure that publishers and songwriters are being paid the full amount earned by their songs. Centralizing this process in HFA shifts the burden from music publishers, allowing them to focus on the creative process. HFA-led audits have, over the years, recovered many millions of dollars in unpaid mechanical royalties.

The Role of Music Publishers in the Music Industry

13. This proceeding will determine the compensation received by songwriters and music publishers from the reproduction and distribution of their songs in both physical and digital media pursuant to the Section 115 compulsory license. The contributions music publishers make to the creation of these songs, and the music industry overall, are significant — indeed, critical — to the success of the industry. Five

witnesses — each a chief executive officer of a significant music publishing company — will testify in detail as to what music publishers do, the challenges they face, and the reasons why an increase in mechanical royalties is necessary to provide fair compensation to songwriters and music publishers and to ensure the continued vitality of American music. The Copyright Owners will also sponsor the testimony of a number of songwriters, who will describe not only their creative efforts and challenges but also the role publishers play in facilitating their work.

14. Although the music publishers and songwriters are the true "experts" on these issues, in order to provide context for the Copyright Owners' proposal, I present an overview, based on my discussions with music publishers, my review of the submissions in this proceeding, and my role as NMPA president, of the creative, promotional, financial and administrative efforts undertaken by music publishers.

15. *Creative Efforts*: Music publishers play a crucial part in the creation and development of new songs. Publishers are responsible, on a very basic level, for the creation of new material because they often are the ones who have scouted new talent, located new songwriters, or first recognized the value of a new song. The creative departments at many music publishers work with their writers, to help develop the songs themselves. They may provide writing coaches, assistance with the editing process, or simply offer general advice based on their own talents and experiences. In this way, publishers make their own creative contribution to new songs while also shaping the creative vision of the songwriters on their roster.

16. A music publisher's creative contribution extends to pairing songwriters with co-writers, recording artists and record labels. Once the musical

composition is complete, music publishers also participate in the creation of the demo recordings that will be promoted to artists, record producers and record company executives. Publishers can shape a demo in ways that they know are likely to attract artists and the labels, thereby increasing the chances that the song will really come to life off of the page.

17. *Promotional Efforts*: The completion of a demo recording triggers the music publisher's role as a song promoter, which hopefully leads to the recording and release of the song. The process of shopping a song may take a few weeks or it may take a few years. But the music publishers will be pushing the song and pulling for the songwriter the entire time. Even after the song is initially recorded and released, publishers may continue to promote it in the same way to encourage other artists and other record labels to record their own versions.

18. *Financial Support*: Music publishers frequently provide their songwriters with the money needed to live as a professional songwriter. Salary draws and advances allow songwriters to take time to hone their talents and expand their catalogues. In many cases, this financial support means that the songwriter can avoid juggling other jobs in an attempt to make ends meet. Their ability to devote all of their time to creative pursuits clearly benefits the songs they ultimately produce. A publisher's willingness to take a chance on a new songwriter with an advance is frequently what makes it possible for the songwriter to pursue his creative career at all.

19. *Administrative Services*: Music publishers also provide important administrative services for their songwriters, frequently stepping in as the primary protectors of the music copyrights. Publishers will often handle the registration of

copyrights with the U.S. Copyright Office and with the applicable organizations in other countries, and will also register new songs with the appropriate performing rights organizations. More importantly, music publishers are responsible for the collection and distribution of royalties. Similarly, publishers may also take the lead in negotiating and monitoring licensing agreements, such as synchronization or ringtone licenses.

An Increase in Mechanical Royalty Rates is Warranted

20. In the Copyright Act of 1909, Congress set the statutory rate for reproducing and distributing musical works at 2 cents per musical work. This rate did not change until 1978, almost seventy years later, when, through the Copyright Act of 1976, Congress increased rates and provided for a rate adjustment mechanism. Since then, the statutory rates have increased, through industry negotiations or litigated proceedings, to the current rate of 9.1 cents per musical work for the reproduction and distribution of both physical phonorecords and permanent downloads. I understand that had the penny rate set in 1909 been increased at the same rate as prices generally (as measured by the Consumer Price Index ("CPI"), the rate as of January 1, 2006, would be nearly 41 cents.

21. The current statutory rates arise out of an agreement reached between NMPA and the RIAA on November 4, 1997 (the "1997 Agreement"). Although the 1997 Agreement precedes my tenure, through my review of the Agreement and discussions with NMPA board members and other publishers, I am familiar not only with the substance of the agreement but also the context in which it was negotiated and the circumstances that led music publishers to enter into an agreement rather than to seek higher rates through a litigated proceeding.

22. The rates reflected in the 1997 Agreement provided for increases over the ten-year period it covered that essentially were intended to keep pace with

inflation. Although NMPA and its publisher members believed that more significant increases were warranted, they compromised for two principal reasons:

a. First, NMPA wished to avoid the expense and burden of a litigated rate proceeding. Although that is the logic behind many settlements, it applies with particular force to NMPA, a not-for-profit organization that lacks the financial resources to mount an expensive litigation and cannot match the financial resources of their sometime adversaries, the RIAA and the record companies.

b. Second, the 1997 Agreement was negotiated on the heels of a decade or more of increases in sales of recorded music in physical album format. Publishers expected continued growth in the future and believed that the modest increase in rates provided in the 1997 Agreement, multiplied by healthy increases in volume of sales to which the rate would be applied, would provide them with continued increases in mechanical royalties.

23. The 1997 Agreement set forth the parties' agreement to propose rates for DPDs, for the first time. These rates, as well as the rates for the reproduction and distribution of physical phonorecords, were embodied in a joint petition submitted by NMPA, the SGA, and the RIAA to the Copyright Office on November 5, 1997. After further proceedings with respect to rates and terms for DPDs, the parties to the joint proposal reaffirmed their agreement on October 13, 1998. No agreement was reached with respect to rates for limited downloads or interactive streaming.

24. Although less than a decade ago, 1997 was essentially a prehistoric time for the digital distribution of music. Apple's iTunes, which is widely credited as having ushered in the age of lawful online distribution of music, did not launch until 2003. The peer-to-peer service Napster, which created demand for and facilitated the downloading of unlicensed digital music, was created in 1999. As a result, the publishers agreed to the DPD rate embodied in the 1997 Agreement without any hard evidence of the economics of digital distribution or any clear understanding of the future of the digital distribution of music. For that reason, the rate that was agreed upon was expressly stated to be non-precedential for future proceedings.

25. There are many reasons why the rates set forth in the 1997 Agreement are no longer adequate to compensate the Copyright Owners.

26. First, with respect to physical product, expectations concerning the continued growth in the market have not been met. As it turns out, the 1997 Agreement predated a steep slide in the sale of CDs and other physical product, resulting in a corresponding and unexpected decline in mechanical royalties for Copyright Owners. Wall Street analysts and other forecasters, as I understand it, predict that over the next five years, sales of CDs (which comprise virtually all physical product) will, at best, remain at or near their current reduced levels. The statutory rate must adjust for this market shift.

27. The decline in physical sales is partially attributable to the rampant music piracy of the late 1990s. Sales slumped as music listeners chose to download music for free rather than purchase it in stores. That dramatically undercut the

mechanical royalty stream, which, at bottom, is premised on a payment for every copy of a recording of a song that is distributed to the public.

28. In addition, the statutory rate has become a frequently unobtainable ceiling on the royalties music publishers and songwriters are actually paid. The Copyright Owners can never receive more than the statutory rates, but they often receive less. The actual mechanical royalty rate is often reduced below the statutory rate by controlled composition clauses. These provisions, which are imposed by the record companies in their contracts with recording artists, limit the amount of mechanical royalties that will be paid for the songs recorded on their albums. Songwriters and music publishers may be forced to accept 75% or less of the already too low statutory rate. Any new rate must take into account the impact of controlled composition clauses on what Copyright Owners actually receive in order to prevent such contractual provisions from undermining the objectives of the statutory rate entirely.

29. Rates for the digital distribution of music must also be high enough to compensate Copyright Owners fairly and to continue to incentivize the creation of new music. In fact, there are a number of reasons why the rates for digital phonorecords should be higher than for physical product. Given the substantially expanded digital market, music consumers now receive increased value from the music they purchase online. They are attracted to digital music because they have access to a greater selection, can purchase music more conveniently and can use their music more flexibly than music purchased in a physical form. The costs, however, of selling and distributing digital music are much lower for the record labels as manufacturing, packaging, and distribution expenses are reduced or non-existent for online music. Because costs are

lower, the share of the financial returns on digital music attributable to the creative work itself is proportionately greater and should be reflected in a higher royalty.

30. Digital rates must also take account of the evolution of the music industry from an album-driven market, which still defines physical sales, to a singles-driven market, which better defines digital sales. Inherent in the existing rates is the assumption that they apply to multiple tracks on an album, allowing the songwriters and music publishers to make up in volume what they are not earning per song. Yet in the digital music world, consumers are much more free, and thus more likely, to cherry-pick only a hit song or two from an album, without purchasing the remaining tracks. The new digital rates must reflect these developments and make up for the album-based discount on physical records.

The Copyright Owners' Proposal

31. Let me turn then to the Copyright Owners' proposal for rates and terms for the mechanical license.

Rates:

32. For physical phonorecords, the royalty rate should be increased from the current rate of the greater of 9.1 cents per song or 1.75 cents per minute of playing time or fraction thereof to the greater of 12.5 cents per song or 2.40 cents per minute of playing time or fraction thereof, subject to periodic adjustments for inflation, as measured by the CPI.

33. For permanent downloads, the royalty rate should be increased from the current rate of the greater of 9.1 cents or 1.75 cents per minute of playing time or fraction thereof to the greater of 15 cents per song or 2.90 cents per minute of playing

time or fraction thereof. This rate will also be subject to periodic adjustments for inflation, as measured by the CPI.

34. This proceeding will also set, for the first time, the mechanical license fee for limited downloads (that is, downloads that are limited either in duration or number of uses) and interactive streaming (that is, music that is delivered to the end user's computer or portable device in response to a request for specific music). The penny rate structure that we propose for physical product and permanent downloads is less appropriate for the still-evolving revenue models that online music service providers use for limited downloads and interactive streaming.

35. Accordingly, we propose a flexible three-part rate for both of these forms of music delivery that is designed to ensure that Copyright Owners receive fair compensation for the use of their music irrespective of whether the online providers generate revenue by means of consumer subscription fees, advertising, a combination thereof or other means.

a. For limited downloads, the rate the Copyright Owners propose, therefore, is the greatest of: (1) 15 percent of revenue; (2) one-third of the total content costs paid for mechanical rights to musical compositions and rights to sound recordings; or (3) the greater of $0.0033 per use or $0.00064 per minute of playing time or fraction thereof, subject to periodic adjustments for inflation as measured by the CPI.

b. For interactive streaming, the rate the Copyright Owners propose is the greatest of: (1) 12 ½ percent of revenue; (2) 27 ½ percent of the total content costs paid for mechanical rights to musical compositions and

rights to sound recordings; or (3) the greater of $0.00275 per use or $0.00053 per minute of playing time or fraction thereof, subject to periodic adjustments for inflation as measured by the CPI.

36. These rate structures may well be further refined during the course of this proceeding as we learn more about both the economic models of the online music service providers and the agreements that those providers have entered into with record labels.

37. One issue that will be critical will be to define properly the revenue base against which the percent rates would be applied. Given the rapidly evolving business models of digital music distribution, music may generate revenue in a number of ways. For services that are music-only, the revenue base against which the royalty would apply would be all revenue, including but not limited to subscription fees paid for access to or use of music, the fair market value of non-cash or in-kind consideration paid or payable by third parties, or monies and other consideration from audio or visual advertising, promotions, sponsorships, time or space made available to subscribers of a subscription service.

38. A portion of monies and other consideration paid for the sale of products or services directly related to a music service must also be considered revenue attributable to music. This is necessary in order to properly compensate Copyright Owners for their share of the total revenue generated in situations where the sale of music may be used to drive the sale of the related products or services. For services for which music is only one part of what is offered to consumers, or for which no separate fee for music is charged, the intention, as discussed, is to capture all revenue that is fairly

attributable to music, however that revenue is generated. A more precise definition will not be possible until after discovery.

39. Finally, I understand that, in light of the Register's October 16, 2006 decision determining that certain ringtones are subject to compulsory licensing under Section 115 — a decision with which we do not agree and have appealed — a rate will be set for ringtones determined to be subject to compulsory licensing. Our proposal for ringtones is also a three-part rate. Specifically, we propose a rate of the greatest of: (1) 15 percent of revenue; (2) one-third of the total content costs paid for mechanical rights to musical compositions and rights to sound recordings; or (3) 15 cents per ringtone, subject to periodic adjustments for inflation as measured by the CPI. Although the definition of revenue may be less complicated in the context of ringtones than with respect to limited downloads or interactive streaming, a precise definition will also have to await information developed during discovery.

Terms:

40. My understanding is that the purpose of this proceeding is to set not only rates but also terms for compulsory licensing. Accordingly, we propose a series of new terms that are intended to deal with issues and ambiguities under the current statutory licensing scheme. Additional items may be proposed during the course of the proceeding as a result of information learned through discovery or otherwise. We believe that the existing terms should remain in effect except where replaced by the new terms proposed below.

41. One persistent problem is timely payment of mechanical license fees. Although the current statute sets out a timeframe for payment of royalties, not all

licensees pay on time. To ensure fair compensation for the Copyright Owners, we propose that royalty payments that are not timely made be subject to a late fee of 1.5 percent per month (or the highest lawful rate), calculated from the date on which payment was due until the date it is received by the Copyright Owner. Additionally, Copyright Owners should be reimbursed reasonable attorneys' fees for any requisite collection activities. These changes are designed to encourage prompt payment and provide fair compensation for any delay. The late payment fee is not intended to be in lieu of, but rather a supplement to, the Copyright Owners' statutory right to terminate a compulsory license for failure to account or pay royalties on time, a right which often must be exercised.

42. There is a specific payment timing problem in digital distribution that also requires a remedy. Currently, record companies issue so-called "pass-through" licenses to certain online music service providers in which the record companies license the sound recording and authorize the use of the underlying musical work. The Copyright Owners, however, prefer to license their compositions directly. By interposing themselves between the music service providers and the Copyright Owners, the record labels benefit from holding royalties that belong to publishers and songwriters and cause further delay in the receipt of mechanical license fees by the Copyright Owners. To ensure that Copyright Owners receive the full value of compulsory license fees, we propose that an assessment of 3 percent be added to all statutory royalties paid pursuant to pass-through licenses, in addition to any other late fees that might otherwise apply.

43. Another issue that must be addressed is the date on which the mechanical license fee is calculated. Currently, with respect to physical product, record

companies calculate mechanical fees from the date of manufacture, even if they are not placed in the chain of distribution until some later date. This has an adverse economic effect on Copyright Owners in circumstances in which records are stockpiled for distribution at a time when the applicable statutory fee is higher than on the date of manufacture. To remedy that situation, we propose that all statutory rates should be calculated based on the date of distribution (for digital product, distribution occurs when the phonorecord is acquired by the consumer).

44. Another issue that has adverse economic consequences for Copyright Owners relates to reserves for anticipated returns of product. Subject to our findings in discovery, we will seek the elimination of reserves for physical phonorecords or some other appropriate adjustment of the existing rule on reserves, to correct certain abuses that result in underpayment to Copyright Owners.

45. We also believe that it is essential that royalty reports be broken down by specific configuration (e.g., CD, cassette, permanent download, limited download, interactive stream) to account for the quantity of phonorecords distributed and royalties earned for each configuration, and that in the case of pass-through licenses, reports also indicate the units distributed through each retail outlet. Such changes would, among other things, allow the HFA and Copyright Owners to perform more accurate audits.

The Copyright Owners' Proposal Advances the Statutory Criteria

46. Section 801 of the Copyright Act sets forth four criteria to be used in determining appropriate statutory royalty rates. Thus, royalty rates must: 1) maximize the availability of creative works to the public; 2) afford the copyright owner a fair return

for his or her creative work and afford the copyright user a fair income under existing economic conditions; 3) reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication; and 4) minimize any disruptive impact on the industries. As numerous witnesses will describe, the Copyright Owners' proposal satisfies these statutory goals. Let me briefly explain why.

47. First, a rate increase would help to maximize the availability of creative works by incentivizing songwriters to continue to create new works. Higher rates will allow songwriters to work on writing songs rather than working at other jobs to pay their bills, and encourage aspiring songwriters to try to join the profession. Higher rates will also allow music publishers to continue to provide a strong support system for their current songwriters and expand their rosters to develop the careers of more new songwriters.

48. Similarly, higher rates are needed to provide a fair return for the creative work required to produce new music. In the years since the current rates were established, the Copyright Owners have continued to work hard to create high-quality, new music. Music publishers have continued to make a tremendous effort to find, develop, support and promote songwriters. The results of these creative contributions have been consistently innovative, exciting and attractive to music consumers. Yet the share of revenue derived from mechanical royalties no longer matches the effort required

to earn mechanical royalties. Making the same level of effort for a smaller financial return is simply unfair.

49. A rate increase would also better reflect the relative roles of the Copyright Owners and copyright users in making the creative product available. As I have described, and other witnesses will relate in detail, the effort songwriters and music publishers must make to produce hit songs has not changed. But the costs that the record labels, for example, must incur to sell these songs have declined, in the physical world and particularly in the digital world. The record companies are not responsible for the increased value consumers receive through digital music, and they are benefiting disproportionately. The new rates must provide for a fair division between the contributions of songwriters and publishers on the one hand, and record labels on the other, in the evolving digital world.

50. Finally, the increased rates we propose would not significantly disrupt the recorded music industry. Publicly available data demonstrates that record labels are once again experiencing an upswing in profitability as the market for limited digital distribution of music continues to grow. Given that mechanical license fees are a relatively minor fraction of record company costs, the rates we propose can no doubt be borne by the licensees of the Copyright Owners' musical works, particularly since those works are the essential raw material for each and every phonorecord.

Conclusion

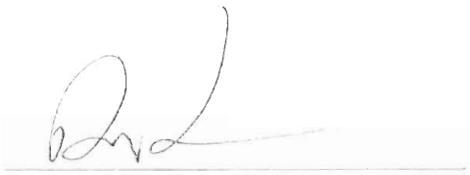
51. NMPA is committed to fighting for music publishers and promoting the vitality of their business by securing fair royalty rates. The current rates are neither reasonable nor fair, and they are insufficient to provide our music publishers

and songwriters with adequate compensation. An increased mechanical royalty rate consistent with the Copyright Owners' proposal will, by contrast, fairly compensate the Copyright Owners and help ensure the continued creation of new songs: the heart and soul of American musical culture and the American music industry.

Declaration

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 30, 2006
Washington, D.C.



David M. Israelite
President and CEO
National Music Publishers' Association, Inc.

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Before the
COPYRIGHT ROYALTY JUDGES
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding	Docket No. 2006-3 CRB DPRA

WITNESS STATEMENT OF IRWIN Z. ROBINSON ON BEHALF OF NATIONAL MUSIC PUBLISHERS' ASSOCIATION, INC., THE SONGWRITERS GUILD OF AMERICA AND THE NASHVILLE SONGWRITERS ASSOCIATION INTERNATIONAL

1. My name is Irwin Robinson. I am Chairman of the Board of National Music Publishers' Association, Inc. ("NMPA") and Chairman and Chief Executive Officer of The Famous Music Publishing Companies ("Famous"). I have been involved in the music publishing industry, in a variety of capacities, for almost fifty years.

2. Based on my extensive experience in the music publishing industry, I make this statement to (1) provide historical context to the existing mechanical royalty rates and the reasons why rate increases are necessary to provide songwriters and publishers a fair return for their work, and (2) explain the important role that music publishers play in the discovery and development of songwriters and the creation and distribution of music.

Background

3. I am a lawyer by training and was admitted to the New York State Bar in 1962. In 1964, I joined Screen Gems-Columbia Music as House Counsel. I

subsequently became Vice President and General Manager, a position I held following EMI's purchase and consolidation of the company into Screen Gems-EMI Music, Inc.

4. In 1977, I was appointed President of Chappell/Intersong Music Group, USA, another music publisher, and, starting in 1985, I served simultaneously as Senior Vice President of Chappell/Intersong's parent company, Chappell and Company, Inc. After the merger of Chappell and Warner Bros. Music in 1987, I joined EMI Music Publishing Worldwide as President and Chief Executive Officer.

5. In April 1992, I joined Famous, the worldwide music publishing division of Paramount Pictures, which is part of the entertainment operations of Viacom, Inc. At that time, Famous' catalog was almost exclusively dedicated to music from film and television, but I have since moved aggressively to expand our offerings of popular music. Today, Famous offers one of the most diverse catalogs in the music publishing industry, including songs spanning over seven decades and all genres of music, and has become one of the six or seven largest music publishing companies in the country. Despite its growth, Famous prides itself on being a boutique operation that remains small enough to provide personal service to all of its songwriters, while at the same time offering them the global resources of one of the largest media companies in the world.

6. Throughout my career, I have been heavily involved in various industry organizations and have held several leadership positions. I have been on the Board of NMPA for more than 30 years and its Chairman for more than 20 years. Founded in 1917, NMPA advances the interests of the music publishing industry and of the songwriters represented by music publishers. As Chairman, I lead NMPA's legislative, regulatory and litigation efforts and represent publishers in industry-wide

negotiations. NMPA has been party to numerous, important copyright infringement cases, including lawsuits brought against Napster and Grokster, and NMPA representatives frequently testify before Congress and provide constructive feedback on pending legislation, including recently proposed legislation to amend Section 115.

7. I am also Chairman of the Board of The Harry Fox Agency, Inc. ("HFA"), NMPA's licensing affiliate, which has entered into numerous industry-wide agreements to license online music services to ensure that the public has lawful, online access to our songs. In all its efforts, NMPA's and HFA's objective is, and has always been, to ensure that the music industry remains conducive to the ongoing creative and financial success of songwriters.

8. In addition to my longstanding service on behalf of NMPA and HFA, I am a member of the Boards of both the American Society of Composers, Authors and Publishers ("ASCAP") and the Songwriters' Hall of Fame. I have also served as trustee of the U.S. Copyright Society and was honored to receive the Abe Olman Publisher Award for lifetime achievement in music publishing at the 29th Annual Songwriters' Hall of Fame Awards Dinner and Induction Ceremony in 1998.

The Current Mechanical Royalty

9. One of the most important roles of NMPA is to represent publishers and songwriters in proceedings and industry-wide negotiations to set fair and reasonable mechanical royalty rates. As a member of the Board of NMPA, I was heavily involved in the 1997 negotiations between music publishers and the Recording Industry Association of America, Inc. ("RIAA"), which culminated in agreements determining the current mechanical rates for both physical and digital copies. Based on my longstanding

experience as a music publisher and member of the NMPA Board, as well as my involvement in the 1997 negotiations, it is my view that the existing mechanical rates must be increased in order to ensure that songwriters receive adequate compensation for their creative contributions.

10. Under the 1997 agreements, publishers agreed to accept relatively low rates for physical copies and to apply the same rates to digital copies. In retrospect, those negotiations were premised on a variety of widely held assumptions about the markets for both physical and digital music that have turned out to be wholly inaccurate. Thus, although our agreements were reasonable at the time, the rates agreed to are no longer appropriate in today's markets for physical and digital copies, for numerous reasons.

11. With respect to the physical rates, our agreement was made in the context of a market in which the volume of sales of CDs was extremely high and expected by most to continue to grow. Based on this assumption, publishers accepted a relatively low penny rate in the belief that even a low rate, when multiplied by a large number of sales, would yield an aggregate return to songwriters that would be fair and adequate.

12. These assumptions have turned out not to be true. Sales of CDs and other physical copies have steadily decreased and, as the digital market continues to grow, it is now widely expected that they will continue to do so. Thus, there is no reason to believe that songwriters will be able to earn a fair return for physical copies through increased volume. The only way to guarantee that songwriter revenues from physical

copies are adequate is to set a fair royalty rate for every physical copy — rates higher than those agreed to in 1997.

13. Agreeing to negotiated rates also had the advantage of avoiding the substantial costs associated with a litigated rate-setting proceeding against record companies, which have access to much greater resources than publishers. The process by which NMPA raises funds for litigation is difficult, and a negotiated solution allowed us to move forward without disrupting the important work of publishers.

14. With respect to digital rates, there was a great deal of uncertainty during the negotiations regarding how to value appropriately mechanical licenses for DPDs, which were a newly emerging and rapidly changing form of music distribution. Recognizing the need to allow record companies to set up businesses quickly to capitalize on the new technology, we accepted the physical rate for DPDs on a non-precedential basis in large measure because it provided a convenient benchmark that could be revisited as the digital market took shape. As that has happened, we have discovered that the market for digital sales differs in fundamental ways from the market for physical sales, leaving the physical rate an unreliable benchmark for digital uses.

15. First, the digital market — unlike the physical market — has turned out to be largely a "singles" market. Because hit songs drive CD sales, the existing royalty rate for physical sales is, by definition, an average rate premised on the understanding that some tracks on a CD are, in effect, purchased by consumers interested in acquiring a select number of other, more popular songs. In contrast, digital download technology typically permits consumers to download only those particular songs that they want, without having to purchase entire albums. Because the digital rate is not an

average rate, the physical rate undercompensates copyright owners in the digital realm. Notably, this attribute of the digital market was not known and was difficult to predict in 1997.

16. Second, music in digital form provides additional, unanticipated benefits to consumers not offered by physical copies. The rapid emergence and growth of portable music devices, which store more music using less space, the availability of 24 hour a day access to online music services, and numerous other features of digital music distribution could hardly have been predicted at the time of the 1997 negotiations. The fact that digital music now offers substantial added value to consumers renders physical rates necessarily low for digital uses.

17. Third, beginning in the late '90s, and after the current rates were set, the music industry experienced a tremendous increase in music piracy that would substantially reduce the volume of both physical and digital copies for which songwriters and other copyright owners could hope to earn any royalty revenues at all. As large numbers of consumers have satisfied their demand for music through illegal file-sharing services, piracy has denied copyright owners royalty revenues on a substantial number of copies. Although it is fair to say that the entire record industry has suffered from rampant piracy, the harm to songwriters and publishers has been most severe. Songwriters and publishers are unique in that their mechanical revenues are limited to a low, statutory maximum. Piracy has, in effect, further reduced the average, effective royalty rate that songwriters have received on the total number of copies that have been distributed. Although I am encouraged that several lawful online services have begun to achieve some success, illegal "peer-to-peer" services continue to play a significant role in the

distribution of music via the Internet and will likely continue to deprive songwriters of significant compensation for their works.

18. In hindsight, it is clear that the 1997 negotiations preceded a period of tremendous change, much of which was difficult if not impossible to fathom at the time. Our agreements were based on the best available information and allowed us to avoid the substantial costs associated with a litigated rate-setting proceeding. After participating in those negotiations, and having observed subsequent developments in the music industry, I am convinced that the mechanical royalty rates for both physical and digital reproductions agreed to in 1997 are inadequate to fairly compensate music publishers and songwriters today and in the future.

Our Financial Position and the Need for Increased Mechanical Royalty Rates

19. Given these developments, it is not surprising that music publishers have, in general, seen a decline in their mechanical revenues since the 1997 agreements. Famous in particular has experienced a substantial decrease in its mechanical royalty revenues. As a result, the share of our total revenues from mechanical royalties has also decreased from **REDACTED** of our total revenues in 1998 to **REDACTED** in 2006. These declines have been coupled with a variety of increased costs, which I discuss below.

20. First, the emergence of new technologies has multiplied both the volume and complexity of our licensing responsibilities. Although we have been happy to take the lead in licensing digital music services, ensuring efficient licensing for these rapidly emerging forms of digital distribution has placed an enormous strain on the music publishing industry in licensing mechanical rights, and it has taken an enormous effort on our part to satisfy demand. Music publishers have issued millions of licenses, which

cover the vast majority of musical works for which there is any meaningful level of consumer demand, to hundreds of different licensees for digital delivery of musical works.

21. To take just one example, Famous and other music publishers — acting through NMPA and the HFA — entered into a historic agreement with the RIAA in 2001 to license legitimate, online subscription services operated by the labels and offering limited downloads and interactive streams. These agreements stipulated that interactive streams and limited downloads involve a mechanical right and required publishers to make a large number of licenses available immediately on a bulk basis. Following that agreement, the HFA — on behalf of publishers — entered into similar agreements with independent subscription services on essentially the same terms.

22. Our agreement with the RIAA to empower legitimate subscription services, like our efforts to license many new uses, was made more difficult by the fact that there was no existing market in place to guide us as to an appropriate royalty rate. Rather than prevent these digital companies from moving forward, however, we agreed to give "use now, pay later" licenses that did not specify any royalty rate, on the condition that the applicable rate would be determined, at some point in the future, through negotiation or a royalty proceeding. We agreed to this approach in order to avoid disputes — and potential litigation — in favor of jump-starting new businesses.

23. Many of our other costs have been increasing as well. For example, our costs of collecting and auditing royalties have risen in large measure because record companies have been slow to pay royalties during the last few years, which has forced publishers to devote time and effort to ensuring payment of delinquent

royalties. Audit costs have also increased, in part due to the new forms of music distribution but also because of record companies' frequent refusal to deliver financial records. Finally, and as discussed, the emergence of digital music has significantly increased our litigation costs, as we have been forced to represent copyright owners on a variety of new fronts in the battle against piracy.

24. In addition to the recently felt effects of digital music, our revenues continue to be reduced by controlled composition clauses, which are features of contracts between record companies and songwriters. Record companies include controlled composition clauses in their contracts with singer-songwriters and producer-songwriters in order to force them to accept mechanical royalties that are lower than what would be required under the statutory rate. These clauses, which are increasingly prevalent and complex, have further reduced the mechanical royalties that songwriters receive, to the point where songwriters do not come close to receiving even the already low statutory rate on all of their songs that are produced.

25. Therefore, in light of rapid changes in the music industry, our increasing costs and our decreasing mechanical revenues, I am convinced that the rates agreed upon in 1997 are no longer sufficient

26. Accordingly, NMPA, along with several songwriter organizations, are proposing an increase in the rate for physical product, a larger increase in the rate for permanent downloads of digital product and three-tiered rates for limited downloads, interactive streams and ringtones. It is my understanding that this proceeding will be setting mechanical royalty rates for the period 2008 through 2012. These increases are essential to both music publishers and the songwriters we represent.

Continuing Contributions by Publishers to the Creation of Music

27. It is critical for mechanical rates to reflect current realities not only because songwriters must receive adequate compensation for their works but also because publishers must retain the capacity to perform their essential role in the creative accomplishments of songwriters.

28. Famous, like all music publishers, represents the interests of songwriters by promoting, and licensing the use of, their songs for reproduction and distribution on CDs, via the Internet, as well as through public performances and other means of utilizing their music. We play a critical role in the creation of music by finding and supporting songwriters and facilitating their relationships with other songwriters, recording artists and record companies. We also provide our songwriters with critical financial support and useful creative feedback and advice in order to improve their compositions and enhance their songwriting skills. Finally, we handle a variety of administrative and legal services such as royalty collection, which are essential to songwriters' ability to earn a livelihood.

Promoting and Licensing Our Songs

29. Our catalog at Famous now contains well over 125,000 copyrights of the best known popular, film and television music. Our song titles include early hits such as Leo Robin's and Richard Whiting's 1929 standard "Louise" (recorded by Maurice Chevalier) as well as a long list of more recent mega hits including: Shakira's "La Tortura" and "Hips Don't Lie"; Eminem's "Without Me" and multi-platinum album *The Eminem Show*; Tia Sillers' "I Hope You Dance" (Lee Ann Womack); Linda Perry's "Beautiful" (Christina Aguilera) and "Get the Party Started" (Pink); P.O.D's "Youth of

the Nation"; and Jet's "Are You Gonna Be My Girl." As this small sample of our catalog plainly demonstrates, Famous has had success in all major music genres.

30. One of our primary functions as a music publisher is pitching our songs to the most important music industry audiences, such as record companies, motion pictures, television programs and advertising executives, for the purpose of obtaining cover recordings and other licensing opportunities. We have extensive contacts in the music industry and years of experience developing relationships with artists, producers, and record company executives. REDACTED of our senior executives, each of whom has his or her own support staff, are dedicated to licensing.

31. Even though we devote considerable efforts to licensing full-length sound recordings of our songs, an important component of our promotional efforts involves seeking out synchronization, performance and other non-mechanical licensing opportunities, which are often useful in generating interest in our compositions.

32. Consistent with our roots in film and television, Famous Music represents a legendary catalog of film and television music including classic themes from Emmy-winning shows such as *The Brady Bunch*, *Cheers*, *Happy Days*, *Laverne and Shirley*, *Mission: Impossible*, *Beverly Hills 90210*, *The Odd Couple*, *Love Boat*, *Star Trek*, *Frasier*, *JAG*, *Twilight Zone* and *Hawaii 5-0*. Famous Music's film catalog includes scores from well-known movies such as *The Godfather*, *Braveheart*, *Titanic*, *Love Story*, *Footloose*, *Forrest Gump*, *Psycho*, *The Truman Show*, Lemony Snicket's *A Series of Unfortunate Events*, *War of the Worlds*, and many others. Famous Music's vast catalogue is regularly licensed for use in the hit television shows *American Idol*, *The*

O.C., *C.S.I.*, *C.S.I. NY*, *C.S.I. Miami*, *Lost*, *House*, *Cold Case*, *Bones*, *Medium*, *Las Vegas*, *Huff*, *Entourage*, *Family Guy*, *Nip/Tuck*, and *My Name Is Earl*.

33. In addition to films and television, Famous licenses its compositions for such varied uses as commercials, videos/DVDs, video games, karaoke, consumer products/toys, new media, theater/plays/ballet/dance, samples, record albums, trailers/promos, the Internet, arrangements, lyrics/music reprints, parodies, translations, derivative works, corporate uses and live performances. Often, the successful licensing of works for one of these uses rekindles or increases interest in mechanical licenses for the full-length songs.

34. Ringtones are another particularly popular new, digital music use for which we have issued numerous licenses. Publishers including Famous have participated actively in facilitating the increased growth and development of ringtones by taking the lead in negotiating royalty agreements on behalf of songwriters. We have encouraged the ringtone market in a variety of ways. First, we offer the master recordings that we own for ringtone licensees to use. Our ringtone licensees also receive a weekly e-mail that lists which Famous Music songs are currently available on *Billboard* charts, which ensures that they are aware of our most recent material and provides them with an easy reference tool on which to base subsequent song requests.

35. In sum, music publishers have taken great strides in helping both new and old companies distribute music to their customers and we will continue to facilitate the legal sale of music in the digital and physical worlds. Overall, our agreements have paved the way for the launch and continued viability of a wide array of music services offering a broad repertoire of music to online subscribers, cell phone users

and other consumers. Indeed, we have every incentive to participate enthusiastically, as it is through license agreements that publishers and songwriters ensure that they are compensated for their works — assuming, of course, that the royalty rates are fair.

Representing Our Songwriters

36. As representatives of our songwriters, our role includes not only finding licensing opportunities for their finished products, but also finding recording artists, producers, record companies and other songwriters with whom they can collaborate and ultimately produce new compositions. Our intimate knowledge of the abilities and objectives of both our songwriters and other music industry professionals places us in a unique position to broker successful partnerships.

37. Given our relationships with numerous songwriters who specialize in all genres of music, we are able to introduce our songwriters to others with whom they are likely to work well. Our staff members are in constant communication with our songwriters in order to determine which collaborations will produce positive results and Famous is responsible for numerous songwriting partnerships, including an ongoing relationship between two of our writers — *Freckles* and *7*. Songs written by multiple authors are increasingly common and our writers have joined others in co-writing some of the most successful and popular works, including "Every Mile A Memory," by Famous writer Steve Bogard with Dierks Bentley and Brett Beavers, "Smack That," by Famous writer Akon with Eminem and Louis Resto, and "What Ya Waiting For," by Famous writer Linda Perry with Gwen Stefani.

38. More and more of our songwriters are multi-talented individuals who also perform and/or produce music. In fact, almost REDACTED of our songwriters are

performers and almost REDACTED of our songwriters are producers. Despite their varied talents, we continue to play a significant role in representing them in the songwriting aspects of their careers as well as in facilitating their relationships with recording artists and record companies so as to help them exploit their performing and producing abilities. We have helped numerous singer-songwriters and producer-songwriters, including Hillary Lindsay, Jerry Kilgore, Big Kenny and Co-stars, obtain record company contracts that were crucial to their career development.

39. In Kilgore's case, we had previously signed him as a writer when he indicated an interest in developing a career as an artist. We helped him choose songs to use for master recordings and paid for their production. Then, we set up meetings with record label representatives in which we played the masters and explained his potential. Kilgore's work was well-received and, ultimately, we were successful in helping him obtain a contract with Virgin Records in Nashville.

40. Although an increasing proportion of our songwriters are singer-songwriters, many are not, and even those who are singers may not necessarily be the best performers for a given composition. Thus, an important aspect of promoting our songwriters and their works is finding them the best recording artists to record their songs. On numerous occasions, we have used our connections to arrange collaborations between writers and artists, many of which have been extremely successful.

41. One recent example is our efforts on behalf of Lanz, a young hip hop/rap singer-songwriter we are in the process of signing, and Akon, a Senegalese singer, songwriter and producer whose debut album *Trouble* was a multi-platinum hit in 2003. Akon is currently working with several different artists, and we at Famous are in

the process of introducing him to others. Lanz wanted tracks co-written and produced by various songwriter-producers and very much wanted to work with Akon, so we arranged for them to meet. Our efforts on behalf of Kilgore, Lanz and Akon are typical of the role we play in helping our songwriters capture the attention of, and develop relationships with, other important players in the music industry.

42. Crucially, we continue to play a role in the careers of singer-songwriters and producer-songwriters long after they have signed deals with record companies. In the case of our singer-songwriters, we often assist record companies in marketing albums even after they hit the market and work to arrange subsequent recordings of our works, so as to keep them in the mainstream and preserve the legacies of the talented songwriters whom we represent. "Silver Bells," an appropriate example for this time of year, is a Christmas standard that we regularly license during this season, a time when it is heavily recorded, included on many Christmas song albums, and used by any number of companies to help sell their products.

43. As for producer-songwriters, we are constantly engaged in arranging production opportunities. To take just one example, we have maintained a close working relationship with Akon, to whom we are always suggesting different people for him to see and with whom to consider a collaboration. In addition, our advances remain a source of income for many producer-songwriters between their production projects, when they are unlikely to receive significant income from record companies.

Discovering and Supporting Songwriters

44. Our relationships with songwriters often begin at the earliest stages of their careers, long before they have produced successful songs or otherwise developed

names for themselves in the industry. In many cases, we are responsible for discovering talented — but previously unknown — songwriters and launching their professional careers by providing crucial financial support and creative assistance while they develop their skills and abilities.

45. Famous has REDACTED employees who participate in talent-scouting and the annual budget for our efforts is in excess of REDACTED. As a boutique operation, we tend to sign fewer new talents each year than some of our competitors. As of October of this year, we have already signed REDACTED new writers, including pure songwriters, producer-songwriters and singer-songwriters. We look to sign the best songwriters from every genre of music and devote as much time and attention to them as possible. One particularly exciting signing from this year is Daniel Powter, a young and extremely promising singer-songwriter originally from British Columbia who attracted a great deal of interest from many music publishers.

46. The process of signing and evaluating a young writer is challenging and involves considerable effort on the part of our creative teams. Our signing of Lance Miller, a talented writer in Nashville, exemplifies the process involved. The head of our Nashville office knew Miller from a prior publishing relationship. We started talking to him in the summer of 2005 and ultimately signed him in December of that year. During that time, Miller frequently visited our office and played his songs, and we offered constructive advice on how he might improve his songwriting. Knowing that he also wanted to be a singer-songwriter, we regularly attended showcases at which he was performing. Eventually, Miller's talents were recognized by one of the judges of the Nashville Star, a television talent competition, who arranged for him to sign a deal with

Warner Bros. Records. We were familiar with the judges on that program as we had worked with them in their other capacities and they knew that we were interested in signing him. Having successfully signed Miller, we are eagerly anticipating his first album, which is scheduled to be released early next year.

47. Although record companies have A&R departments involved in scouting talent, our role is unique and equally essential. Even beyond our obvious importance in finding pure songwriters, we are also responsible for discovering and developing numerous singer-songwriters and producer-songwriters, many of whom were either dropped or passed over by record companies.

48. A well-known example of this is Linda Perry, now one of the most successful producer-songwriters in the industry. We first signed Perry in 1993, when she was a singer-songwriter for the group 4 Non Blondes. Although one of Perry's songs, "What's Up," enjoyed international success and helped the group's album, *Bigger, Better, Faster, More*, sell seven million copies, Perry was eventually dropped by her record label. We stayed with her for the next five years, constantly listening to her material and providing constructive criticism and ultimately talking to record labels about her ability to produce and write for other artists. Her career has since taken off as a producer-songwriter and her accomplishments include writing and producing four songs for Christina Aguilera's album *Stripped*, writing the Grammy-nominated song "Beautiful," and receiving a 2003 ASCAP Songwriter's Award for most-played song for "Get the Party Started." Perry remains one of the most sought-after producer-songwriters and is arguably the most successful female songwriter of all time.

49. Once we find a songwriter with whom we are interested in forming a relationship, and who is interested in working with us, we negotiate a songwriting agreement. Among other things, these agreements require us to advance money to the songwriter — money that is in many cases desperately needed to help him or her survive and focus on writing music. With the exception of our agreements to acquire specific songs or catalogs, virtually all of our agreements with songwriters involve the payment of advances. We are required to pay advances even under the overwhelming majority of our administration-only agreements, pursuant to which we acquire no ownership interest in copyrights but undertake simply to perform administrative tasks such as collecting and processing royalties.

50. The advances we pay are substantial, and are used by songwriters to pay for necessary equipment and other expenses associated with their career as well for basic living expenses, so that they can dedicate as much of their time as possible to songwriting instead of to odd jobs that do nothing to hone their music skills. The average advance we pay varies greatly, with pop and urban music songwriters tending to get somewhat higher advances than most country writers. Nevertheless, even our country writers typically receive advances of REDACTED, and some of the more successful Nashville writers receive advances that are REDACTED and more. Some pop and urban music writers, most of whom are also producers or singers, receive advances measured in the REDACTED, in some cases reaching REDACTED

51. In some cases, some part of the advance is contingent on the release of an album having a certain number of Famous-owned songs, but these

requirements do little to protect us from the risk that the album turns out not to be commercially successful. Fewer and fewer hit records are being produced and, in my estimation, only 2-5% of songwriters ultimately "make it." Even though we pay advances to virtually all the writers we sign, we are able to recoup our advances through our share of royalties in only some cases. Thus, our investments are extremely risky and the nature of our business is that a large proportion of our investments are ultimately written off. Regardless of how much we lose, however, we never require commercially unsuccessful writers to return our advances.

52. Notably, we have continued to provide advances even though our agreements with songwriters are typically guaranteeing us a smaller share of any royalties that are eventually earned. Although the average royalty split between a songwriter and his/her publisher used to be 50:50, the publisher's share has been declining over the past 15-20 years, such that the standard contract now provides for a 75:25 split in favor of the songwriter. Particularly popular artists, who obviously generate the most gross revenue, often demand—and receive—as much as 80-90% of royalties. Although we are always happy to see songwriters well-compensated for their works, it is important both to them and to us that publishers earn adequate revenue to perform our functions.

53. Our assistance is not limited to advancing money. We also provide considerable and ongoing guidance and feedback on our songwriters' compositions and recordings. The same creative team that participates in signing our songwriters is also involved in working with our writers. Usually, the member of our creative team who took the lead in finding and signing the songwriter will typically take the lead in providing any music-related assistance that the songwriter requests. In our Nashville

office, we have a fully-equipped recording studio in which our songwriters and creative professionals sample new artists and songs, exchange ideas and experiment with new melodies. Our development budget is substantial and has remained steady in recent years, and we expect to increase our investment in the future.

54. We also assist our songwriters by preparing their works to be promoted to record companies. In that regard, we help our songwriters create professional-quality demo recordings, which are the customary way to present works in the music industry. These demo recordings require substantial investments of time and their quality is enhanced by our expertise.

Our Administrative Services

55. Finally, we provide a variety of administrative services designed ultimately to protect the copyrights of our songwriters and, in so doing, ensure them a fair income for their contributions to the music industry. First, we assume the responsibility for registering our songs with the Copyright Office and with the appropriate entities in other countries. We also register cue sheets for all licensed films and television shows with copyright societies around the world; these sheets list all music used in any film or program and ensure that songwriters receive appropriate royalties for the use of their music.

56. Second, we are responsible for collecting and processing royalties. This is a substantial undertaking, as we have thousands of songs in our catalogue that are earning royalties for their use. We track all of our licenses, including mechanical, synchronization, lyric, ringtones and others, and we have invested in various systems to ensure that we collect the appropriate royalties. These systems have been designed to be

compatible with the penny-rate structure and are necessary to ensuring that our writers are earning all royalties to which they are entitled.

57. In sum, our efforts to promote, develop and discover our songwriters, as well as the important administrative services that we perform on their behalf, are vital contributions to the creation and distribution of the song. Increases in the mechanical royalty are essential to ensure that songwriters and publishers receive compensation that is adequate to encourage their continued investments of time and creativity.

Declaration

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 28, 2006
New York, NY

Irwin Z. Robinson
Chairman of the Board,
National Music Publishers' Association, Inc.
Chairman and Chief Executive Officer,
The Famous Music Publishing Companies

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Before the
COPYRIGHT ROYALTY JUDGES
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding	Docket No. 2006-3 CRB DPRA

WITNESS STATEMENT OF RALPH PEER II
ON BEHALF OF NATIONAL MUSIC PUBLISHERS' ASSOCIATION, INC., THE SONGWRITERS GUILD OF AMERICA AND THE NASHVILLE SONGWRITERS ASSOCIATION INTERNATIONAL

1. My name is Ralph Peer II and I am Chairman and Chief Executive Officer of Peermusic, Inc., an international group of music publishing companies founded by my father in 1928 under the name of Southern Music Publishing Company, Inc. I received a Bachelor's Degree from Stanford University in 1966 and a Masters of Business Administration from Stanford University's Graduate School of Business in 1968. Since then, I have been working for Peermusic, and have been in the music publishing business for over 38 years.

2. In addition to my work at Peermusic and its affiliated companies, I am also an active member of a number of music publishing industry organizations. I am Vice-President and Director of both National Music Publishers' Association, Inc. ("NMPA") and The Harry Fox Agency, Inc. ("HFA"). Among many other functions, NMPA represents the interests and protects the rights of music publishers and, through them, the songwriters. HFA administers licensing agreements for mechanical rights and collects mechanical royalties in this country and is an associate member of the Bureau

International de l'Edition Mecanique, an international organization representing mechanical rights societies.

3. In addition, I am a lifetime Director and past President of the Country Music Association. I also served previously as a publisher/director of the American Society of Composers, Authors and Publishers ("ASCAP") and as President of the International Federation of Popular Music Publishers. I am a former Chairman and current Vice-President of the Paris-based International Confederation of Music Publishers, and was honored at the international music market MIDEM 1998 as "Music Maker of the Year." I am also a former Trustee of the Copyright Society of the USA and, in 2001, the American Songwriters' Hall of Fame awarded me with their music publisher's award.

4. Based on my extensive experience as a music publisher and in the music publishing industry, I submit this statement to: (1) explain the role of the music publisher — in particular, the important contributions music publishers make to the creation of the song and their critical support of songwriters; and (2) emphasize the need for an increase in the statutory mechanical royalty rate in order to provide songwriters and their music publishers a fair return on their unique and essential contributions to music.

Peermusic

5. With over 200 employees and 33 offices in 27 different countries, Peermusic is one of the largest independent music publishing companies in the world. By "independent," I mean that Peermusic is not controlled by a copyright user such as a record company.

6. Peermusic has a catalogue of over 300,000 songs, including such well-known titles as "You Are My Sunshine," "Georgia On My Mind," "Mambo No.5," "Walk Like An Egyptian," "Mellow Yellow" and "You Raise Me Up." Peermusic songs have been recorded by many internationally-known artists such as Elvis Presley, The Beatles, Frank Sinatra, Nat King Cole, Willie Nelson, Al Jolson, Louis Armstrong, Rod Stewart, Celine Dion, Madonna, Whitney Houston, Art Garfunkel, Andrea Bocelli and the New York Philharmonic. Among the very many familiar and talented songwriters we have signed over the years are Buddy Holly, Donovan, the Carter Family, the Rolling Stones, David Foster, Gavin Rossdale, Stewart Harris and Kitaro.

7. Peermusic has a long and distinguished history in classical music. Composers whose works are published by Peermusic include David Diamond, Lou Harrison and Charles Ives, who is now recognized as arguably the most original and significant American composer of the first half of the 20th century. Our catalog of classical compositions includes "The Unanswered Question," Ives' most famous work.

8. Beyond being recorded and distributed worldwide, Peermusic compositions also have been featured prominently in popular television shows and movies, including *Sex and the City*, *The Simpsons*, *The Sopranos*, *Friends*, *Y Tu Mamá También*, *The Life of David Gale*, *Confessions of a Dangerous Mind*, *Moulin Rouge* and *O Brother, Where Art Thou?*.

9. On my watch, Peermusic's operations have expanded considerably. For example, during my tenure as CEO, I have extended Peermusic's operations to nine new territories, including three offices in the Asia-Pacific region. And, recognizing the importance of the Internet to the promotion and distribution of music, I

established our company's website in 1995 and, in 1998, I founded Digitalpressure Inc., an affiliated company of Peermusic, in order to explore the then-infant industry of digital distribution.

The Important Role of Music Publishers in the Creation of Music

10. Music publishers generally, and Peermusic specifically, play pivotal roles in the music industry, starting with the provision of a variety of services to songwriters that are crucial to their professional growth and success. As I describe in detail below, we devote considerable resources to discovering and developing songwriters, helping songwriters create and improve their works, promoting and licensing their songs, registering songs for copyright protection, collecting and distributing royalties to songwriters and, when necessary, taking legal steps to protect the income of our songwriters and the copyrights of their works.

Discovering Talented Songwriters

11. Since launching the careers of American icons Jimmie Rodgers and the Carter Family in the 1920s, Peermusic has a long, successful history of discovering promising young songwriters — an important first step in the creative process of making music. In 2005 alone, Peermusic signed REDACTED new songwriters.

12. We meet talented songwriters in a variety of ways, including (1) recommendations from our many contacts in the music industry, including other songwriters, managers and lawyers in the music business; (2) by a songwriter contacting us directly, in large measure because of the reputation we have developed over the years; or (3) by using many of the traditional methods used by record companies' A&R departments, such as scouting live performances of up-and-coming bands and singer-songwriters. The Internet has also provided numerous additional forums in which music

is shared and in which talent can be discovered. Thus, we continually search websites such as myspace.com and purevolume.com, as well as artists' weblogs, online radio stations and music television websites to discover new talent.

13. On very rare occasions, we simply stumble upon a rising star. But the vast majority of our songwriter discoveries derive from great expenditures of time and effort. There is one constant, however: no songwriter signs with us unless at least one member of our creative staff is passionate about the songwriter's potential and eager to help develop his or her career.

14. We expend considerable time and money on finding new talent and often take risks on unproven songwriters. Publishers like Peermusic frequently sign new talents at the earliest stages of their careers. We undertake to develop their talents and abilities with little certainty as to whether they ultimately will be commercially successful. In contrast, record companies typically will invest in talent only when their abilities are obvious and prospects for commercial success are more assured.

15. Peermusic played a major role in the commercial breakthrough of Buddy Holly, one of the founding fathers of rock 'n roll and just one example of a talent passed over by record companies but embraced by music publishers. Early in his career, Holly signed a contract with Decca Records in Nashville, but Decca refused to release Holly's work, including his song "That'll Be The Day." After Decca opted not to renew Holly's contract, Holly sought help from a producer, Norman Petty. With Petty's help, Holly recorded a new demo version of "That'll Be The Day" but, again, the record companies — Roulette Records, Columbia Records, RCA and Atlantic Records — all passed on the song, and on Holly. Petty then sent Holly's demo tape to the New York

office of what was then Southern Music, where Peermusic executives recognized Holly's potential and, through Petty, signed Holly to a songwriter agreement. Working on behalf of Holly, and believing that "That'll Be The Day" would one day be a hit, Peermusic executives forwarded the song to one of their contacts at Coral Records (ironically, a subsidiary of Decca). With Peermusic's blessing, Coral signed Holly and "That'll Be the Day," released under the group name the 'Crickets,' eventually reached No. 1 on the charts. For Holly, the rest is history.

The Music Publisher/Songwriter Agreements

16. Once a promising songwriter has been discovered, the publisher negotiates an agreement either directly with the songwriter or, more often, with his legal representative or manager. Although agreements are occasionally single-song assignments, today they are far more often three-year term deals, with an option to extend the term for an additional one or two years if the publisher concludes that the songwriter's career is developing well. The relationships between songwriters and their publishers typically last for many years, and publishers often continue to represent songwriters long after their record company deals have expired and they have been "dropped" by their record labels.

17. The allocation of royalty revenues under our contracts with songwriters varies enormously from songwriter to songwriter but, nevertheless, it is clear that the average publisher's share of royalties is decreasing over time. While in the past it was common for royalties to be shared 50:50 between songwriters and publishers, 50% has become something of a floor for songwriters, most of whom retain a larger share than that. In fact, a 75:25 split in favor of songwriters has become increasingly prevalent and

songwriters' shares of royalty income now reach as much as 95% of royalty revenue in some circumstances.

18. The contracts that we sign with songwriters almost always require that we pay the songwriter a recoupable — but not returnable — advance against future earnings. A recoupable advance means that once (and if) the songwriter begins to earn mechanical royalties, those royalties are paid to us until the advance is paid back. The advance is often "seed money" and acts as a means of providing the songwriters or singer-songwriters with an income during the early stages of their careers in order to allow them to concentrate on writing and developing their talents. These advances help ease the considerable financial challenges faced by songwriters and help make songwriting a more sustainable career choice, particularly since it often takes between 12-18 months for a song to actually earn any revenue, even after it is recorded and produced. Thus, these advances are critical to the survival of songwriters, particularly at the earliest stages of their careers.

19. The size of the advance, like all other terms of a songwriter's agreement with a publisher, is freely negotiated and the terms vary widely. Not surprisingly, advances are generally higher when there is perceived to be less risk associated with the songwriter, such as when the songwriter is better-known and/or has already released profitable records in the marketplace. In such cases, our advances are commonly REDACTED and have in some cases exceeded REDACTED

20. Despite the risks, we view it as part of our business to give substantial advances to promising new songwriters regarding whom the prospects of

success are uncertain to say the least. The size of the advance, as well as the other terms, depend on our assessment of the talent involved, the songwriter's positioning in the industry, and the specific purposes for which he or she is being signed. Even under these agreements, our advances are often worth REDACTED each year. Our advances are not always paid entirely in the form of cash. Sometimes, depending on the needs of the songwriter, we provide advances in the form of rent for an apartment, third-party marketing or a minivan needed for touring. In total, advances have constituted REDACTED of our total operating costs over the last four years.

Our Development and Support of Our Songwriters

21. Once Peermusic discovers and signs a songwriter, its work hardly ends. Peermusic, like all publishers, plays an integral role in the creation of the written song — the stem cell of recorded music. Without the song, there is nothing for a musician to play or for an artist to perform. Without the song, the record industry could not produce and distribute billions of dollars worth of music each year. Music publishers make crucial contributions to the creation of songs by collaborating with songwriters to nurture, support and direct their creative talents and efforts.

22. To that end, we have a talented staff of experienced individuals dedicated to working with songwriters to develop their songwriting skills. Our creative professionals are divided into four departments — pop, Latin, country and classical. Each of these departments REDACTED has on-staff REDACTED

staff professionals. Each of our songwriters works with a creative team of two to three individuals from the appropriate departments who review and offer constructive feedback regarding our songwriters' selections.

23. I should explain that songwriters come in different varieties. There is the so-called "pure songwriter," who only writes songs. There is also the "singer-songwriter," who is a recording artist as well as a songwriter and, as the name suggests, often performs the songs she or he writes. And there is the "producer-songwriter," who in addition to writing songs also performs the functions typically ascribed to music producers, such as selecting and arranging songs, coaching and guiding the performers and supervising the recording, mixing and mastering processes. Approximately REDACTED of our songwriters are singer-songwriters, REDACTED are producer-songwriters and REDACTED are pure songwriters.

24. We assist songwriters with developing their writing in many ways. We have built professional quality studios in many of our offices, including those in Los Angeles, Nashville and Miami, the U.S. center of Latin-American music. Each studio costs in excess of REDACTED to build and furnish with studio equipment and more than REDACTED per year to maintain. Our new signings work with a publishing team in one of our studios to develop their writing skills and, in the case of singer-songwriters, also their performance skills. Our publishing teams spend many hours listening to our songwriters' compositions and working with them to produce new songs that can eventually be marketed to record labels and artists.

25. Our creative support of classical music composers involves even greater investments of both time and resources. The process of writing and "editing" a classical composition typically takes much longer and involves greater collaboration with our creative executives than pop or country pieces. In some cases, the process continues even after the composers have passed away. The music of Charles Ives, for example, was

in disarray at the time of his passing in 1954, and yet we are still engaged in preparing critical editions of his works. Each published score represents a multi-year editorial commitment, involving our working in tandem with musicologists and the Charles Ives Society, to present the most authoritative editions possible — work that does not easily translate into increased income for Peermusic.

26. In addition, we sometimes secure full symphony orchestras or chamber groups to make master recordings of classical compositions. Once created, we lease the masters to third-party labels or release them through Digitalpressure. For example, Peermusic financed the creation of a master recording for an orchestral work composed by Richard Wilson. The recording costs alone were REDACTED plus an additional REDACTED to prepare performance materials. Sales of the CD have been disappointing, however, leaving the vast majority of our investment unrecovered. We nevertheless are pleased that the CD has increased Wilson's credibility in the industry, resulting in several additional commissions of his work and recognition from organizations such as the American Symphony Orchestra and Chamber Music America.

27. Publishers also contribute to the creative process by suggesting collaborations with other artists and songwriters. Many successful songwriters are part of a songwriting team. Teams often include two or more collaborators (co-writers) but, in some genres of music, such as rap or hip hop, teams of as many as eight to ten songwriters create individual songs. We have put together successful writing teams of all sizes and for all genres of music.

28. One example of a collaboration facilitated by Peermusic is Bachá, a contemporary tropical music group born out of our Miami office. Bachá is a duo

consisting of singer-songwriters Juliana Barrios and Jorge Luis Chacin. Prior to Bachá's formation, Barrios signed with Peermusic primarily because of her writing abilities, but after working with our creative team to record high-quality demos of her works, an artistic career also began to take shape. Meanwhile, Chacin, who was discovered by Peermusic's Venezuelan office, was receiving significant attention for his compositions as well. As Peermusic took steps to secure a recording contract for Barrios, a representative of Sony Music and two members of Peermusic's Miami team, Ramon Arias and Julio Bague, agreed that she might be most marketable as part of a group. When Bague suggested that Barrios and Chacin co-write songs, Bachá, a name which combines the first syllables of their names, was born. Arias and Bague, Bachá's producers, earned a Latin Grammy Award nomination in the Contemporary Tropical Category for their work.

29. Our myriad investments in songwriters — in the form of time, money, human resources and facilities — are substantial but unfortunately are no guarantee of success. I would estimate that only one of every ten songwriters becomes successful. Our investments, including the advances we pay songwriters who turn out not to be commercially successful, are never returnable. But regardless of success, our investments help to underwrite the culture of American music.

Our Promotional Efforts on Behalf of Our Songwriters and Their Songs

30. Of course, we try our best to ensure our songwriters' commercial success, and our promotion of their songs is one of the key ingredients to that success. Publishers like Peermusic have always been responsible for promoting their songwriters' works to artists, producers or A&R people at record labels. Some of the world's greatest songs and recordings are the products of marriages arranged by publishers, and

publishers continue to foster relationships that result in great success and increased sales of songs and albums.

31. Our promotional role is particularly crucial early in the careers of singer-songwriters and producer-songwriters, before they have been signed to record labels. Through our extensive contacts with the record industry, and by supporting gigs to which A&R people are invited (and, because of our reputation, usually attend), we have been able to introduce many of our singer-songwriters and producer-songwriters to our many contacts in the record industry, thereby facilitating new relationships with record companies that allow our songwriters to exploit all of their talents. For producer-songwriters in particular, we help find the best artists for them to work with and seek out opportunities for them to co-write or co-produce on existing projects. For singer-songwriters, we guide them through the process of obtaining their own contracts with record companies at the appropriate time. Securing the best opportunities for all of our songwriters is a delicate process, requiring significant market knowledge, adequate understanding of the songwriters' career goals and prospects, and an appreciation for which songwriters, producers, artists and record companies will work well together.

32. For example, Peermusic played a crucial role in helping the group Blondfire secure a record deal. Prior to signing with Peermusic, Blondfire self-released an extended play recording ("EP") and was once featured as independent artist of the week on iTunes. Even though one of Blondfire's songs, "L-L-Love," was one of the most downloaded songs by an unsigned artist in iTunes history, Blondfire could not obtain a record deal. Blondfire then signed with Peermusic, where creative executives decided to hire some notable dance DJs to create a re-mix of the song "L-L-Love." The

song took off in the underground dance scene and was eventually included on several dance music compilations. Peer's creative team also set Blondfire up with co-writers and several well-known artists in Los Angeles, one of which resulted in a song recently released by multi-platinum artist Jessica Simpson. These successes increased the band's visibility, which ultimately led — thanks to Peermusic efforts — to a signing of a world-wide record deal with EMI Records.

33. A particularly crucial aspect of our promotional work is the creation of demo recordings of our songs. Demo recordings can take anywhere from a day to six months to prepare, depending on whether it is for a specific artist who is looking for material or if it is being prepared with no particular audience in mind. We invest thousands of dollars and many hours of time in creating demo recordings, which we regard as an integral component of the development process, for a number of reasons.

34. First, because demo recordings often are made available online, they help to develop a fan base for the artist. Moreover, if songwriters did not make demo recordings, it would be very difficult to bring their works to the attention of artists, producers and record companies. Particularly in the case of singer-songwriters, demo recordings are the accepted way to present a polished and professional act to an industry audience. In fact, in some circumstances, demo recordings are of such high quality that record companies choose not to re-record the songs themselves and instead decide to negotiate with publishers for an outright fee or an 'over-ride' royalty for the use of the master made by the publisher. In these circumstances, demo recordings also provide an important source of early income to songwriters.

35. Peermusic demo recordings were crucial to the early development of the career of Donovan, a now well-known Scottish musician. As a young, unknown musician, Donovan frequently played at a London pub, where he happened to meet Geoff Stephens, a songwriter affiliated with Peer Southern Music. Stephens took Donovan to the basement studios in Peer's offices to record demos that were later seen by producers of a TV series, which signed Donovan for an appearance. The response to the appearance was overwhelmingly positive and, after agreeing to a writing contract with Peer, Donovan's recordings were signed to a record label. Despite his record deal, Donovan later returned to Peermusic's basement studios to record the version of "Catch the Wind" that was later released as Donovan's breakthrough single.

36. We do not limit our efforts to promoting songs to record companies. We also seek out opportunities to license the synchronization rights ("synch rights") to our songs. Synch rights involve the use of a recording of a musical work in audio-visual form, such as in a motion picture, television program, commercial announcement, computer-based product such as a videogame or CD-ROMs and many other uses. We have a staff of approximately REDACTED people dedicated to synchronization placement, which is a crucial development tool and a major part of our efforts to increase exposure for songwriters and their works.

37. There have been many instances in which synchronization opportunities were essential in drawing the attention of record labels to singer-songwriters whom had previously been neglected. For example, synch placements were crucial in spurring the record company Sire/WB to take actual steps to market and promote one of its own bands, The Shys. Until we secured placements of the group's

music in two television shows, Sire/WB was making little effort to encourage the group's development, but after the synch licenses were in place, Sire/WB began helping with marketing initiatives and made several tour investments.

38. In addition, synchronization uses of songs often result in a resurgence of interest in songs that may have slipped from the spotlight, which ultimately leads to increased sales of the full-length recordings. Illustrative of this are the six songs we licensed for use in the movie *O Brother, Where Art Thou?*. The songs we licensed were drawn from a collection of the earliest songs owned by the firm and had received little exposure in recent decades. That certainly changed with the movie, as the soundtrack album won four Grammy Awards (including for Album of the Year) in 2001 and sold millions of copies in the U.S. alone, making it one of the best-selling country soundtracks of all time. In particular, the album renewed life in classic songs, including "I'm A Man of Constant Sorry," which had previously been known only in smaller Country-music circles, and "Indian War Whoop," which emerged for the first time. As this example shows, our commitment to our songwriters and their works never ends.

39. In sum, our efforts to discover, develop and promote our songwriters in the marketplace is a significant — indeed, critical — portion of our business. REDACTED of all of our employees are creative professionals and our best estimates are that, excluding overhead expenses, advances and royalty payments, approximately REDACTED of our costs are dedicated to these direct investments in our songwriters. Our company is critically engaged in the creative process and proud of the contributions that we have made, and are continuing to make, to American music.

Our Administration of Our Songwriters' Works

40. Music publishers also play vital administrative roles for the songwriter — largely centering around the copyright in the songs. Our efforts to protect the copyrights of our songwriters are crucial to songwriters' livelihoods and, ultimately, to the health of the music industry. Our efforts in that regard are wide-ranging.

41. As a starting point, we register our songwriters' works in our worldwide internal database, with the U.S. Copyright Office and with collecting societies around the world, a function that Peermusic performs using trained personnel, software Peermusic developed for the purpose and its publishing network of wholly-owned offices. This ensures that our songwriters' works are licensed through compulsory licensing schemes, where applicable, and the national collecting societies.

42. As discussed above, with respect to certain rights that are outside the scope of compulsory license or societal agreements, we handle voluntary licensing transactions throughout the world on behalf of songwriters as well. Licensing is a critical service we provide to songwriters enjoying all levels of success — one that requires considerable skill and experience, particularly in an online age in which new and more complicated uses for music are emerging every day.

43. Peermusic has already licensed its compositions for a variety of developing uses. For example, a few years ago Peermusic and other music publishers made an agreement with Musicnotes, Inc., one of the leading sources of digital sheet music on the Internet. Our agreement granted Musicnotes the rights to distribute our catalog of songs, guaranteed the public's access to high quality print versions of our songs, and ensured that our songwriters are appropriately compensated for their works. We have also granted numerous licenses to use our compositions for ringtones. These

licenses have varied according to a variety of factors, including the term, territory, number of songs licensed and whether the ringtones are monophonic/polyphonic or mastertones. Crafting licensing agreements for these and other uses requires international reach and considerable industry knowledge.

44. One of our most important obligations is, of course, collecting and auditing royalties that are owed to songwriters for the manufacture, distribution or performance of their works. Not surprisingly, this too is a substantial undertaking, as we have thousands of songs in our catalogue that are earning such royalties. We have invested in numerous systems and procedures — which in the U.S. are predicated on a mechanical royalty expressed in terms of a penny rate — that are designed to monitor the royalties we receive in order to ensure that our songwriters are earning all to which they are entitled. Notably, we are also willing to sign administration-only agreements under which we offer our royalty collection services to the owners of copyrights that are not part of the Peermusic catalogue.

45. Finally, we also serve the important function of protecting our songwriters' works from infringement. We accomplish this by representing their interests in infringement actions, other cases that present important issues of copyright law and, of course, proceedings such as this one to establish fair and reasonable royalty rates. Consolidating these functions in our company exploits economies of scale and is far more efficient for the music industry as a whole than having songwriters responsible for them individually. Perhaps most important, our ability to provide these services permits songwriters — who would otherwise have to devote considerable time, energy and expense to such tasks — to concentrate their efforts on their musical careers.

46. It is important to note that our responsibility for these functions does not end when our songwriters sign recording contracts. Licensing, administration and copyright protection are services essential to songwriters throughout their entire careers. Even the most successful singer-songwriters often continue to maintain close working relationships with us after they have signed record company deals.

The Impact of the Digital Era on our Role as a Music Publisher

47. Although the novelty and numerousness of online offerings make the publisher's job more complex, we are greatly excited about the potential for digital music to increase the public's access to our works. Broadly speaking, the role of the publisher is the same online as it is offline. Regardless of how consumers ultimately access our works, we perform the same roles, described above, of developing the songwriters and their songs and the same administrative functions of collecting and administering the royalties generated from the sale or use of our songwriters' copyrights.

48. The Internet has, of course, helped publishers in their promotional efforts, and we are taking full advantage of the new technologies. Our efforts in this area are handled by our online division, Peermusic Online, which has three areas of focus. The first is running peermusic.com and our other websites (peerclassical.com, peercommercialmusic.com, latino.peermusic.com, etc.) that we use to market and promote our company, our songs and our songwriters. The second is operating our corporate intranet for internal communications. The third is running digitalpressure.com, our company's digital music aggregation and distribution division. In addition to facilitating the sale of master recordings, some of which are owned by Peermusic, digitalpressure is also beginning to provide web development and other technology

services to our writers and taking an active role in the online marketing and promotion of our artists.

49. In addition to these uses of technology, Peermusic has a number of staff members who promote our songs to advertising agencies by sending emails attaching music files or enclosing links to websites where music can be heard. Finally, and as discussed above, we also assist our songwriters in their efforts to build their own online presence and, as such, continue to play a proactive role in the online promotion of their songs.

The Need for Increased Mechanical Royalty Rates

50. Providing the above-described services, and providing them well, is an expensive endeavor. Although the costs of our talent-scouting efforts, equipment, outstanding staff and, indeed, our talent, continue to go up, our mechanical royalties have been declining as a percentage of our total domestic income in recent years.

51. The increased mechanical rates that NMPA and the songwriters propose would help to stem the decline in mechanical royalty revenues. The proposed rates — an increase in the penny rate for physical product, a larger increase for permanent downloads and a three-tier structure for subscription services and ringtones — are all necessary for publishers such as Peermusic to continue their critical role in the creation of new music.

52. As I understand it, other witnesses will discuss the specifics of the rate proposal in more detail. However, a few observations are in order.

a. First, the rates for both physical product and permanent downloads should continue to be expressed as a penny rate. The penny rate has been

in effect for physical product since the adoption of the compulsory license. There is no reason to abandon it and switch to a percentage of revenue or other structure at this time.

b. Second, as the proposal provides, digital rates should be higher than physical rates because of the increased value to consumers from digital music, including consumers' ability to purchase singles instead of albums, the increased portability of digital music, 24-hour access to digital music services and many others.

c. Third, although a penny rate is appropriate for physical and permanent downloads, a more flexible rate structure is required for limited downloads and interactive streaming because of the evolving nature of the business models employed by these music services. The market already includes a variety of models for revenue generation — subscription based, advertising based, mixtures of both — and other models will no doubt evolve. This makes it particularly important to adopt for the years covered by this proceeding a rate structure that can appropriately compensate the creators of music regardless of the revenue generation model of the online music service.

53. The increases in rates are necessary because our mechanical royalties have been — and continue to be — depressed by a number of factors.

54. First, mechanical royalties attributable to the sale of physical product, that is, CDs, have been declining in recent years as CD sales have continued to decline. This is a very different position from the one in which music publishers found

themselves in 1997 when we negotiated the current rates for mechanical royalties. Then, CD sales had been rising significantly for a number of years, and music publishers accepted relatively low rates for physical product under the assumption that they would nevertheless earn adequate mechanical royalty income from a higher volume of sales.

55. Second, the mechanical royalties we receive are further depressed by prevailing controlled composition clauses in contracts between record companies and songwriters. A "controlled composition" clause is a contractual device used by a record company to require a singer-songwriter or producer-songwriter to accept a mechanical royalty that is lower than what would be payable under the statutory mechanical royalty rate. These clauses were used in a limited way beginning in the mid-1960s but became prevalent in record company contracts after the royalty rate was increased to four cents in the 1980s. The clauses have become very sophisticated and broad in their reach and appear in various forms, including the following:

a. Freezing the base royalty rate under the contract to the statutory rate in existence at a fixed point in time, such as the point of delivery of the master, its manufacture or its first sale. This has the effect of denying the copyright owner the benefits of any periodic future increases in the mechanical rate that would otherwise apply to records made and distributed in future years when the higher rates take effect.

b. Requiring that payment be made at a mere percentage of the base rate, often 75%.

c. Setting a maximum total royalty rate, often ten times the controlled composition rate for albums. This means that, even if an album contains fifteen tracks, the composer receives payment only for ten.

d. Requiring that royalties paid on controlled compositions, and perhaps also artists' royalties, be reduced by amounts required to be paid in excess of the controlled rate on non-controlled compositions.

56. Regardless of the form they take, however, controlled composition clauses result in songwriters receiving even less than what they would under the already low statutory rate on all of their songs that are produced. Major record companies invariably insist on such clauses in their artist and producer contracts. Their leverage is such that in practice it is almost impossible for artists or producers to obtain recording contracts that do not contain such clauses.

57. The following example illustrates the effect of controlled composition clauses on the mechanical royalties that songwriters and publishers receive. In 2003, we signed Corna Boyz, a developing songwriting/production partnership between Pierre Medor and Dwayne Nesmith. In February 2005, Omarion, a recording artist, released "O," his first solo album with Sony Records. Peermusic, Medor and Nesmith together own a REDACTED in two songs on the album and, at the time of the album's release, the statutory rate was $0.085. If they were paid the statutory rate, then the total mechanical royalties paid to Peermusic and the songwriters for their REDACTED in both songs would be REDACTED per album. But under the controlled composition clauses that Sony Records insisted on including, the total mechanical royalties are significantly less. In particular, the agreement provides for a rate equal to REDACTED of the

statutory rate REDACTED and a REDACTED album cap, which ensures that Sony pays no more than REDACTED per album, regardless of the fact that the album actually includes 13 songs. (At the statutory rate, 13 songs would amount to $1.10) Because the album happens to include some non-controlled songs that capture most of the REDACTED available, Peermusic, Medor and Nesmith together receive a total of only REDACTED for their REDACTED in both songs, approximately REDACTED of the current statutory rate.

58. Only the most successful singer-songwriters are ever able to negotiate agreements without controlled composition clauses, while the vast majority of singer-songwriters, who have much less bargaining power, have no choice but to accept them — or forego any contract with the record company at all. Most music publishers are in the same, difficult position. Thus, in a world with controlled composition clauses, the royalty set by the Copyright Royalty Judges is no more than a ceiling against which record companies and licensees use their power to negotiate lower mechanical rates.

59. It is important to note that controlled composition clauses have contributed significantly to what I believe to be a particularly unfortunate trend: the declining number of pure songwriters. Although singer-songwriters continue to create wonderful music, pure songwriters have also produced popular, high-quality compositions that were often different in kind than those produced by singer-songwriters, who often have very different talents. Knowing that they can obtain controlled composition clauses from those artists or producers who are signed to them, record companies have contributed to the decline in the number of pure songwriters by using these clauses to penalize artists and producers who use "outside material" and thus disincentivize the use of songs composed by pure songwriters. In recent years, fewer and

fewer pure songwriters have been able to make an adequate living from songwriting and several pure songwriters signed to Peermusic have found themselves unable to support themselves on the revenues from their written compositions alone. Frankly, I doubt that a songwriter even as great as Hoagy Carmichael could make a living were he to start songwriting today. An increased mechanical rate would help halt this unfortunate trend.

60. The current mechanical royalty rate is particularly unjustifiable in light of the fact that our initial investments in songwriters are often much riskier than record companies' payments of mechanical royalties. We invest in songwriters early in their careers, when their prospects for success are uncertain, while record companies are required to pay mechanical royalties for only that precise number of records needed to satisfy their assessment of the market's immediate demand, which is often informed by considerable recent information. It makes no economic sense for their mechanical royalty to be low in light of our much riskier investments.

61. The statutory rate should be raised for the additional reason that the share of total licensing fees that copyright owners receive on any given song is smaller under the mechanical license than what the market would likely provide them in free negotiations. Notably, under most if not all of the film, television and commercial synchronization licenses we frequently (and freely) negotiate, we routinely receive half of the total licensing fees, with the other half going to the owner of the master recording. Yet, under the statutory mechanical royalty, we receive nothing close to an equal share of licensing revenue.

62. Relatedly, it is important to note that Congress has expressed its view that copyright owners should receive a greater share of total royalty fees than they

do under the mechanical license. In setting terms under the Audio Home Recording Act of 1992, which provides for royalties on digital recording devices and media, Congress required that the copyright owner receive one-third of the total royalties for blank tape recordings and the master recording owner receive two-thirds. One-third of the total royalties, which Congress found appropriate, is much more than what copyright owners receive under the statutory rate.

63. It is clear, therefore, that the royalty earnings of songwriters and publishers are depressed by the statutory royalty. Under the existing mechanical royalty regime, copyright owners earn nothing close to the 30-50% of total content fees that are available to us in other settings.

64. In light of these current economic realities, I am convinced that increases in the mechanical rates for physical and digital music products are essential to ensuring that songwriters continue to have an adequate incentive to produce great music and publishers have the ability to provide songwriters with the services that are necessary to the process of making great new songs.

Declaration

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 30, 2006
New York, NY

Ralph Peer II

Ralph Peer II
Chairman and Chief Executive Officer,
Peermusic, Inc.

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COPYRIGHT ROYALTY JUDGES

In the Matter of	)	
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Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding	)	Docket No. 2006-3 CRB DPRA
	)	
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STATEMENT OF ROGER FAXON

I. Introduction

1. My name is Roger Faxon and I am President and Co-Chief Executive Officer ("CEO") of EMI Music Publishing ("EMI MP"), a division of The EMI Group. I am submitting this statement to the Copyright Royalty Judges ("CRJs") as part of these proceedings to describe the important role music publishers play in support of songwriters and to emphasize the need for an increase in the statutory mechanical royalty rate under Section 115 of the Copyright Act.

II. Background

2. I became Co-CEO of EMI MP in April 2006. Prior to this I served as President and Chief Operating Officer ("COO") of EMI MP starting in January 2005. From early 2002 until 2005, I was Chief Financial Officer ("CFO") of EMI Group plc, which also is the parent of EMI Music, the division of EMI Group that includes its recorded music labels. From April 1999 until early 2002, I was Executive Vice President and CFO of EMI MP. From 1994 to 1999, I was Senior Vice President, Worldwide Business Development and Strategy for EMI Group, where I

directed the company's global planning process and oversaw acquisitions of related businesses as well as the company's portfolio of media investments.

3. Prior to joining EMI, in the early 1990s I was COO at Sotheby's for North and South American Operations and later CEO of Sotheby's Europe. From 1986 to 1990, I was employed at Tri-Star and Columbia Pictures and became Senior Executive Vice President of Columbia Pictures. Between 1984 and 1986, I was a founding partner at Mount Company, a motion picture and television production company whose films included *Frantic*, *Bull Durham* and *Tequila Sunrise*. From 1980 to 1984, I was Executive Vice President and COO of LUCASFILM Ltd, where I guided the operational affairs of the company, including the motion pictures *Raiders of the Lost Ark*, *Return of the Jedi* and *Indiana Jones and the Temple of Doom*. Prior to 1980, I held several positions with the U.S. government. From 1976 through 1980, I was Chief of the Professional Staff of the Subcommittee on Housing and Community Development in the U.S. House of Representatives. Prior to this I was a founding staff member of the Congressional Budget Office, an arm of the U.S. Congress.

4. I graduated from Johns Hopkins University in Baltimore with a Bachelor of Arts degree in International Relations and Political Economy in 1971.

5. I currently am a member of the board of directors of the American Society of Composers, Authors and Publishers ("ASCAP") and Music Choice, a digital music programming service.

6. EMI MP currently is the largest music publishing company in the world. We represent more songs and songwriters and generate more revenue from the dissemination of those songs than anyone in the world. For the fiscal year ended March 31, 2006, EMI MP's revenues were $787.5 million. Our roster of songwriters includes many well-known artists such as Alicia Keys,

Natasha Beddingfield, James Blunt, Eminem, Sting, Alan Jackson, Billy Joel, Carol King, Rod Stewart, Stevie Wonder, Lamont Dozier, Bill Withers, Marvin Gaye, Temptations, Diana Ross, Gladys Knight, Rob Thomas, Nelly Furtado, Snoop Dogg, Goo Goo Dolls, Hinder, The Fray, Ryan Cabrera, Jamiroquia, Gorillaz, Queen, Simply Red and White Stripes. Writer-producers on our roster include Jay-Z (whose works have been performed by Gwen Stefani, Beyoncé, Ludacris, Kanye West, and Christina Aguilera), Pharrell Williams (whose works have been performed by Britney Spears, Justin Timberlake, Usher, Nelly and others), and Cathy Denis (whose works have been performed, by among others, Kylie Minogue and Britney Spears). EMI MP's catalog has over a million titles, and includes many of the best known and most popular songs such as: *Ain't No Mountain High Enough, Bohemian Rhapsody, Can't Take My Eyes Off You, Dancing In The Moonlight, Daydream Believer, Every Breath You Take, Fields Of Gold, Get Down On It, Have Yourself A Merry Little Christmas, How Sweet It is, Hungry Like The Wolf, I Heard It Through the Grape Vine, I'm Not In Love, the James Bond Theme, Lady Marmalade, Let's Get It On, Mamma Mia, Maggie May, Mony Mony, New York, New York, Over The Rainbow, Santa Claus Is Comin' To Town, Sexual Healing, Shout, Singin' In The Rain, Strangers In The Night, That's The Way (I Like It), The Loco-motion, This Old Heart of Mine, Walking On Sunshine, We Gotta Get Out Of This Place, We Are The Champions, We Will Rock You, What's Going On, Wild Thing, You've Got A Friend,* and *You've Lost That Loving Feeling*.

III. Purpose of this Proceeding

7. My understanding of the purpose of this proceeding is that the CRJs will set a royalty rate for the compulsory mechanical license for making and distributing phonorecords under Section 115 of the Copyright Act. Rates will be set with respect to both physical music products (e.g., compact discs or "CDs," and cassette tapes), and digital music products (e.g., full downloads,

limited downloads (limited by number of times they can be played or period of time for which they can be played), on-demand or interactive streaming of songs, and ringtones). In doing so, the CRJs will apply the following criteria:

(a) To maximize the availability of creative works to the public;

(b) To afford the copyright owner a fair return for his creative work and the copyright user a fair income under existing economic conditions;

(c) To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication;

(d) To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.

8. In this statement, I provide facts that I believe will be helpful to the CRJs in applying these criteria and that support increasing and establishing a fair royalty rate for each of the music products covered by these proceedings.

IV. The Music Publisher's Role

9. All value in musical compositions derives from the unique and irreplaceable creativity of the songwriter. The song he or she creates has an intrinsic value, a value that does not and should not depend on the fiscal needs of the record labels or digital music services. In particular, the intrinsic value of the song requires that royalties payable to rights holders in musical works not be reduced simply to enable record labels and digital services to increase their revenues. The publisher's job is ensure that the songwriter receives remuneration that adequately reflects the intrinsic value of the song.

10. The fundamental role of the music publisher is to serve as a representative and advocate for the interests of the songwriter and to ensure that the creative process is rewarded. The

publisher provides a variety of services and assistance that are crucial to a songwriter's success. These include (i) discovering new songwriters, (ii) providing advances and other financial support so a songwriter can focus on writing music, (iii) providing collaborators and other creative support to help a songwriter improve his or her work, (iv) promoting a songwriter's compositions to recording artists, record labels and other licensees such as on-line services, television program producers and filmmakers, (v) ensuring a songwriter receives appropriate compensation, and (vi) taking other steps to protect a songwriter's ownership interests in his or her copyrights. In sum, the publisher supports a songwriter's creation of musical compositions, finds ways to make that music available to as many people as possible so it can be enjoyed and experienced, and helps a songwriter realize the economic value from his or her creative work so that the songwriter has a strong incentive to continue to create.

A. Discovering and Developing Songwriters

11. The first challenge a publisher faces is to discover a talented songwriter. Publishers use many means, and expend considerable resources, to make such discoveries. This includes attending live performances, listening to demonstration records, or receiving recommendations from a wide array of sources including other songwriters, club owners, managers or acquaintances. More recently, publishers have scouted the internet and "on-line communities" for new talent. In fact, EMI MP has a staff member dedicated to searching the internet looking for new songwriters. She is constantly perusing web sites such as myspace.com and purevolum.com, as well as artists' weblogs, on-line radio stations, and music television websites. We use our demo studios to try out new bands and the material of new songwriters whom we may be interested in signing or developing. Well-known songwriters discovered by EMI MP include Alicia Keys and James Blunt, both of whom I discuss in greater detail below.

12. The cornerstone of EMI MP's efforts to discover new talent is its unrivaled artist and repertoire ("A&R") staff. The A&R staff is responsible for finding and developing songwriting talent.

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Exhibit 1. A&R is the lifeblood of our company, and we constantly reassess our A&R function to ensure that it remains dynamic and attuned to current music trends.

13. This search for talent is very much a hit or miss proposition and very few of the leads pursued by our A&R employees bear fruit. An excellent description of the difficult nature of this process was provided to me recently by Jake Ottmann, Creative Director for EMI MP in New York:

> I find bands to sign to EMI. The majority of my time is spent doing the research. That involves many phone calls to contacts fanned out throughout the country and around the world. Upon speaking with a contact, follow up is required. Each contact always has three to five acts that they are recommending. Generally speaking I speak to about 50 to 60 contacts a week. The equates to roughly 200 bands to listen to per week. If you do the math that comes out to a lot of songs to go through.
>
> Upon hearing a cool song, I'll generally go back and see if the band is playing live. I always like to see a band play live before I get interested. If they are great live then it's worth pursuing. Seeing bands is always a time consuming affair. If the band is local, it's a minimum of 3 hours to see, etc. If the band is out of town, then it involves a whole day.
>
> Last year I found 3 bands that were worth signing.

14. As a result of the efforts of our A&R staff and after sifting through thousands of opportunities, we were able to sign 63 new songwriters in the U.S. in 2005.

15. Once a talented songwriter is discovered, the next step is for the publisher to negotiate a contract with the songwriter. The terms of this contract vary with the circumstances. Typically, these contracts are for a period of time (e.g., one year with options for the publisher to extend the term one year at a time) or until delivery of a certain number of songs or an album (e.g., with a publisher's option to pick up the next album or group of songs). In the majority of contracts offered by EMI MP, royalties earned by songwriter compositions are shared with the publisher,

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EMI MP pays the songwriter a recoupable, but not returnable, advance against future royalty earnings. The size of the advance depends on a number of factors, including the potential of the songwriter, whether the songwriter already has had successful songs, whether there is a "buzz" in the industry about the songwriter and whether the songwriter has a record deal. When publishers compete to sign the songwriter, the contract is likely to include a more significant advance as well as a higher share of royalties.

16. The payment of these advances by publishers is essential to enabling both new and established songwriters to develop their talent and create new songs. These payments are necessary to finance the day-to-day requirements of the songwriter's career, including for professional bills, management commissions, equipment costs, to hire vans for performances, pay taxes and for general living expenses. Advances enable songwriters to survive financially so they can concentrate on developing their talent and the musical compositions that are the fundamental source of value for the music industry.

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Exhibit 2.

17. Advances are investments in the songwriter's talent based on the anticipated success of the songwriter. There is, however, no guarantee that a particular songwriter's song will be recorded or, if it is recorded, that the single or album on which it appears will be a success. Indeed, only a small percentage of songwriters signed to publishing contracts achieve any significant success. This is reflected in our historic experience in the recoupment of advances.

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Exhibit 3.

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Exhibit 4. Further, unlike agreements between recording artists and record companies, which often contain major deductions against artist royalties for items such as promotional goods, packaging and video costs, publishers typically don't contract for major deductions against songwriter royalties.

18. Once a publisher signs a songwriter, the role of the publisher is to help the songwriter fully develop his or her talent and to promote the songwriter's songs. This requires the publisher to invest its time, money and expertise. For instance, EMI MP has recording studios that it makes available to songwriters to work on their songs and to create demos. EMI MP does not charge the songwriter for use of the studio unless the recording is used as the basis for a recorded work that will be released. It is in the interests of both the publisher and the songwriter that the recording be as marketable as possible and demo recordings are an important part of promoting the musical work. The publisher also may introduce the songwriter to other songwriters to help the songwriter with his or her work or as part of a recommended collaboration.

19. Once a songwriter has created a body of work, the publisher's next job is to promote the songwriter's songs to record labels and artists. In the case of singer-songwriters with whom EMI MP has a development deal and who have not been signed by a record label, we promote the artist to labels. It is not unusual for labels to wait to see how an artist develops under a publishing deal before signing the artist to a record contract. Our job includes trying to make such a record deal happen, which is usually necessary for the artist to take the next step in his or her career and achieve broad distribution of his or her works. The need for an artist to obtain a record contract may be changing, however, as the expansion of on-line distribution provides artists with alternative means for reaching consumers without the intervention of a record label.

20. We also engage in many other activities to promote use of our songwriters' works. For instance, EMI MP has created a digitized database of our songwriters' music to help identify the right piece of music for businesses that want to use music for promotional purposes, such as advertisements. We also actively participate in developing new product ideas to increase use of

our songwriters' compositions, including use of lyrics on mugs, posters, and websites such as www.itspopart.com.

21. Another important means by which publishers secure income for songwriters is through the issuance of synchronization licenses that allow songs to be used in television advertisements, television programs, films and electronic games. For example, one of our composers, Alex Heffes, has established himself as a leading British composer on film and television scores. His breakthrough picture was the Oscar winning documentary *One Day in September* with Kevin MacDonald. We were instrumental in enabling Alex to work on the film score and this has led to a highly successful ongoing relationship between Alex and MacDonald, including for the recently released Fox Searchlight film *The Last King of Scotland* and the film *Touching the Void*. We have been instrumental in helping Alex secure commissions for other film scores such as *The Parole Officer* and *Imagine Me & You*, and we arranged for soundtrack album releases of the score for *Touching the Void* and *The Parole Officer*. We also have helped secure advertising work for him. Similarly, we helped U.S. songwriter Pharrell Williams get his song *Mamacita* used in the film *Fast and the Furious: Tokyo Drift*, Death Cab for Cutie get its song *Someday You Will Be Loved* used in *CSI*, and The Fray get its song *How to Save a Life* used in *Grey's Anatomy* and *Scrubs*. Further, we helped James Brown get his *Living in America* in *Rocky IV* and helped get Chris Cornell's *You Know My Name* in the latest James Bond film, *Casino Royale*.

22. These efforts by a publisher to further the development of a songwriter's career represent investments that usually are made at a significant risk, because, as noted above, most songwriters do not ultimately achieve success.

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These investments must be made on behalf of a large number of songwriters, however, in order to develop the relatively small number of songwriters who do succeed.

23. Publishers also play a vital role in protecting the songwriter's rights in his or her compositions and in ensuring that the songwriter gets paid. In the first instance this relates to licensing songwriters' works. We are responsible for administering a variety rights for our songwriters. The four principal rights (which account for virtually all of most songwriters' incomes from their compositions) include: mechanical rights, which are at issue in this proceeding, performance rights, synchronization rights (for use of compositions in films, television programs, commercials and videos) and print rights. In the United States we license mechanical rights to users either through The Harry Fox Agency, which acts as a clearing house for music publisher rights or, where a licensee desires, we will license them directly. See Exhibit 6 (flowchart illustrating mechanical licensing relationships). Similarly, we license performance rights through the performance rights organizations, ASCAP, BMI and SESAC, or directly. Synchronization and print rights are licensed directly. EMI MP engages in substantial direct licensing activities in the U.S. In the U.S. we have 67 employees engaged in licensing activities out of 135 employees engaged in such activities globally. These activities account for

REDACTED and include the digital media agreements we have entered into with the major labels as well as the many ringtone licenses we have negotiated. (Both types of agreements are described in greater detail below.) In addition to licensing, the publisher will register its songwriters' works with the Register of Copyrights and with collecting societies around the world. We collect and audit royalties due to a songwriter for the reproduction, distribution, and other exploitation of his or her work. Finally,

the publisher also protects the songwriter against infringements of his or her musical works. These functions are an important and continuing service for songwriters who otherwise would have to devote considerable time and effort to such administrative tasks or pay others to do so.

B. Examples of Songwriters Discovered or Developed by EMI MP

24. To assist the CRJs in understanding the role music publishers play in discovering and developing artists and promoting their compositions, the following are examples of the role EMI MP and other publishers have played in recent years in the careers of a variety of artists, some well-known, and others who are just beginning their careers.

25. The first of these is the highly successful singer-songwriter Alicia Keys. Jody Gerson, Executive Vice President, U.S. Creative, for EMI MP in Los Angeles, first learned about Alicia from an acquaintance in the music business when Alicia was only 14 years old. After hearing a tape of Alicia's songs and meeting with her, Jody recognized Alicia's considerable talent and signed her to a contract. Jody flew Alicia to Los Angeles to work in the studio and record demos. She also introduced Alicia to other songwriters and artists such as Warryn Campbell, another promising songwriter, and shopped her songs to other artists trying to get them to record the songs. EMI MP continued Alicia's contract while she worked to develop her songs. Despite Alicia's great talent and Jody's efforts, however, it took six years before Alicia achieved any commercial success.

26. During this period, Alicia signed with Columbia Records and recorded an album, but Columbia didn't like the album and dropped her. Clive Davis, then head of Arista, bought Alicia out of her Columbia deal. Davis, however, was subsequently fired. After a bidding war between Arista and Davis's new J Records label, Alicia went to J Records. Jody provided advice to

Alicia as she considered with whom she wanted to work. In addition, advances from EMI MP helped support Alicia when she was in between labels. After Alicia moved to J Records, Jody helped get her opportunities to write music for other artists, including Aaliyah. Jody also introduced Alicia to other writers, including Jermaine Dupri and Kandi Burruss, who would write with Alicia on her first hit album, *Songs in A Minor*, which was released in 2001. That album sold 12 million copies and featured the number one single *Fallin*. Alicia followed that up with *The Diary of Alicia Keys*, in 2003. That album debuted at number one and has sold over nine million copies.

27. Since Alicia achieved success, Jody has continued to work closely with her to further develop her songwriting as well as other aspects of her career. For instance, Jody arranged for Alicia to meet Michael Mann, the director of the film *Ali*, to write music for the film. She also got Alicia involved in writing with Christina Aguilera, which resulted in the song *Impossible* on Aguilera's *Stripped* album, and in writing with Usher. Jody continues to advise Alicia on other collaborations. In addition, Jody has licensed Alicia's songs for television shows, including *American Idol*, *America's Got Talent*, *Celebrity Duets* and *Star Search*. She also has pursued licenses for branded products and video games. Further, Jody has advised and assisted Alicia with respect to obtaining film roles, a film and television deal with Disney, and advice regarding Alicia's public relations firm, legal counsel and talent agent.

28. In sum, Alicia's story illustrates that even a very talented artist may need to work at her craft for years before achieving any success, but that a publisher can help in very important ways by sticking with the artist and providing her with opportunities to develop her talent and develop relationships that can result in her music becoming widely known and appreciated. This situation also illustrates that the investment a publisher makes in an artist may take many years to

bear fruit. REDACTED

There is little doubt that without these monies she would never have been able to develop her talent and achieve the huge success we now see. Finally, Jody's continuing efforts on Alicia's behalf show that even after an artist has achieved success, a publisher continues to provide important support for the artist's creative efforts so that those efforts achieve great value both for the artist and those who distribute or license her music.

29. A second example of EMI MP's efforts on behalf of its songwriters is singer-songwriter James Blunt. James' debut Album, *Back to Bedlam*, has sold approximately 2.3 million copies in the U.S. and reached number two on the *Billboard* album charts. Worldwide it had sold over 11 million copies by the end of 2005. In 2002, Declan Morrell of EMI MP's A& R department met with James. At this stage, James had written a number of lyrically accomplished songs that the company thought had potential. However, James had not had any dealings with record companies. EMI MP felt that, despite the risks involved in signing an unproven songwriter, he had major potential and that with our creative and commercial input, that potential would be realized. In the 18 months after signing Blunt in November 2002, EMI MP contributed not only A&R expertise in the form of creative input but also recording facilities and co-writer input. A number of the songs that James had written before he was signed to EMI MP required further work before these could be recorded. One particular song was *You're Beautiful*, the hit single released from his first album that reached number one on the U.S. charts. Because James had financial support from EMI MP, he had the time and space to work on his writing and produce a body of work. We encouraged him to continue writing and to start performing so that his work would be exposed to live audiences. The popularity of an artist can grow over a very short period of live performances as it did with James. Once we had worked with James for some time

and had demo recordings, we were able to broker introductions to labels and producers. A CD of his work was circulated to various labels, but none was interested until Linda Perry of Custard Records met Sally Perryman, EMI MP's then head of A&R, and listened to a number of James' songs. As a result, and after James had performed at South by Southwest, the music industry festival in Austin, Texas, James was signed by Custard Records in a joint venture with Warner Music's Atlantic label, in 2003.

30. EMI MP also introduced James to Guy Chambers, who is signed to EMI MP and is a highly successful songwriter. James and Guy co-wrote one song, *Tears and Rain*, that was on James' album. A second song created in those writing sessions, *Wasted*, wasn't used on James' album but now has been recorded by another artist, Seal, for release in 2007. James' debut album, *Back to Bedlam*, was released in 2005 and sold initially in very modest numbers. After extensive concerts and performances arranged by his management and record company support, however, James achieved huge success. However none of that would have been possible without the substantial financial commitment made by EMI MP to James well before any record company took an interest. Our advances, REDACTED

allowed James to develop his craft as both a songwriter and performer, laying the basis for the massive success he has since achieved. James has maintained a close professional relationship with Declan Morrell and they are in contact virtually everyday to discuss the development of James' next album, including the songs to be included, the timeframes and whether collaborations with other songwriters should be considered. This album is due out in 2007.

31. Another example of how publishers assist artists can be gleaned from the work of one of EMI MP's most successful A&R executives, Big Jon Platt. Big Jon started out as a DJ in Denver

and developed a relationship with Chuck D of Public Enemy. At Chuck D's suggestion, Big Jon became involved with music publishing and began working for EMI MP in the mid-1990s. Over the next decade, Big Jon developed relationships with a number of writers, including Jay-Z. In 2005, he was named Executive Vice President and Head of Urban music for EMI MP.

32. In May of this year, *Billboard* ran an article on Big Jon. A copy of that article is attached as Exhibit 7. The article details the many ways in which Big Jon assists songwriters. His activities range from helping to focus the publishing business on the potential of hip-hop songwriters to negotiating favorable rates on samples for Kanye West. The centerpiece of the article is a description of Big Jon's activities in a single, busy day. This includes taking songwriter DJ Toomp to meet with the VP for Urban at SonyBMG, who then makes copies of Toomp's music to send to his artists. Big Jon next introduces Toomp to Jay-Z, who sends the young songwriter to see Beyoncé so she can listen to Toomp's music. Big Jon also gives Toomp advice on who he should work with and on business issues such as the range of publishing royalties on videogames. In addition to his efforts with Toomp that day, Big Jon arranges a mixing session between EMI writers, has an in-person meeting with a new writer he's going to sign and listens to some of her songs. His day continues until 1:00 am in the morning, talking to a songwriter's lawyer and an independent (non-major record company) publisher. The article further describes the broad scope of work Big Jon does for songwriters, including talking with artists such as Kanye West after their album is complete about singles and marketing strategy. In sum, Big Jon is another excellent example of how publishers help at every stage of a songwriter's career to expand the opportunities for a songwriter to develop his or her creative talent and realize economic benefits from his or her music.

33. In August of this year, *Billboard* ran another article, this one detailing the ways in which an array of publishers nurture young, unknown bands. A copy of the article is attached as Exhibit 8. The article describes an example for each of the major publishers. For instance, Sony/ATV discovered 17-year old Elyssa James from Rochester, New York after she had put her songs on myspace.com. After signing a publishing deal, Sony/ATV brought her to New York City on weekends and holidays to work with other songwriters and producers. The publisher also sent her to Europe to work with other writers and further develop her writing and sound. Sony/ATV plans to pitch Elyssa for films, TV and video games so she becomes known before seeking a record deal for her. A second example involves Warner/Chappell, which signed folk artist Joe Purdy after hearing him perform at the South by Southwest festival in Austin, Texas two years ago. The publisher gave Purdy financial support so he could go on the road and gain experience as a performer and then funded his recording an album. He had 60,000 downloads worldwide and his songs have been featured on the television programs *Lost* and *Grey's Anatomy*. Finally, Case Dillon landed a publishing deal with Zomba Music Publishing through business connections and a private performance for David Mantel, Zomba's president. Zomba gave the 19-year old money to record a demo and provided feedback on his songs and material. Mantel also personally helped Dillon put together an electronic press kit to be used to pitch his songs for placements and other promotions and is helping to promote Dillon's new band to record labels and showcases, all of which are attended by a Zomba representative. As these examples show, publishers provide young, unproven songwriters with business acumen, and financial and creative support that it would be difficult for them to obtain in any other way.

C. Providing Services to Users of Music

34. In order to facilitate the greatest possible use and distribution of its songwriters' creative works, a publisher must provide good service to users of its songwriters' music. At EMI MP, one of our core business goals is to provide exemplary service to users of music. We believe that the greater the service to the users of music the more uses will be generated for our songwriters. Services we provide to users include, but are not limited to:

(a) Identification of the most appropriate music for their needs;

(b) In the hit-driven digital world, provide users with market intelligence and early access to certain product;

(c) Targeted music-based consulting and marketing based on industry specific knowledge and music expertise, including the development of new product ideas incorporating music;

(d) Help in developing business models in the digital world by listening and responding to users' music needs, including negotiation of deals designed to promote new uses of music;

(e) Fast and efficient clearance of licensing requests (including seeking approvals of songwriters where necessary); and

(f) Assisting users to navigate the licensing and clearance process, through:

(i) education in its intricacies;

(ii) research on the status of rights in compositions desired by the user; and

(iii) direct help in clearing rights with other publishers and master rights holders.

V. The Role of Publishers in the On-Line Distribution of Music

35. Digital music distribution has grown rapidly in recent years and EMI MP expects this growth to continue. For example, global wholesale revenues from digital distribution (including ringtones, downloads and subscription services) were approximately

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See Exhibit 9.

36. The basic functions of the music publisher are essentially the same in both the on-line and off-line worlds: promoting the interests of songwriters by discovering and developing talent and achieving the broadest possible distribution of songwriters' creative works. It is important to note, however, that music publishers have played an important role in the development of the on-line distribution of music. Since as early as 2000, publishers have been licensing innovative, secure on-line music services. For example, EMI MP licensed services such as Full Audio and Click Radio, both limited download subscription services, at that time. In addition, in 2001, the NMPA and The Harry Fox Agency entered into an agreement with the RIAA under which the publishers agreed to allow the record labels to license their songwriters' works to services providing limited downloads and on-demand streaming in return for a modest advance and the promise that once a rate was set in the current proceeding, we would receive retroactive payments under the licenses. So for the last five years we and our songwriters have foregone any meaningful compensation from these services with the sole aim of encouraging the development of these services. We believed that creating additional opportunities for the dissemination of our songwriters' works in the digital space by licensing legitimate new services was the best way to serve our songwriters' interests. In contrast, in the early years of this decade the record labels were reluctant to license digital services.

37. At the same time, EMI MP began entering into dozens of ringtone and mastertone licenses that are described below. We also entered into New Digital Media Agreements with Sony BMG, Universal and Warner covering the licensing of mastertones as well as several other digital products. As these examples show, publishers have been at the vanguard of digital

licensing efforts and EMI MP expects to continue to do so. We are dedicated to helping innovative new digital services that are consumer friendly and that also protect and promote our songwriters' compositions.

38. The traditional role of record labels is changing in the on-line world and so are the labels' economics. Many of their existing functions are either unnecessary or are being subsumed by other participants. This is most clearly the case with manufacturing and distribution where, in the digital space, there is no need for the manufacture, warehousing and shipment of CDs or other physical music products. In this environment labels do not have to bear the cost of product returns. There is no product obsolescence since there are no manufactured goods, and there is little or no bad debt or faulty product. The change also is affecting other aspects of the record labels' activities. The discovery of music is increasingly being done directly by consumers through on-line sites like myspace.com, making the identification of artists with strong preexisting fan bases easier for record labels. Over time this should significantly increase the likelihood of success with new artist signings, lowering both the risk and cost of doing business for record labels. Marketing and promotion in an on-line environment also offers the prospect of reducing the cost of reaching consumers. On-line marketing is less about the money spent and more about finding avenues to reach consumers in innovative ways. As a consequence, as on-line and digital uses grow the economics for record labels will continue to improve. Record labels or their parent companies often have referenced that they already are benefiting from these improved economics even though, at this point, on-line and digital sales represent a relatively small portion of their revenues.

VI. The Publishers' Rate Proposal

A. The Proposed Rates

39. The music publishers are proposing the following mechanical royalty rates:

(a) For physical products, an increase in the statutory rate from the greatest of 9.1 cents per song or 1.75 cents per minute of playing time or fraction thereof to the greatest of 12.5 cents per song or 2.40 cents per minute of playing time or fraction thereof;

(b) For permanent or full downloads, the greatest of 15 cents per song or 2.90 cents per minute of playing time or fraction thereof;

(c) For limited downloads, the greatest of (i) 15% of revenue, (ii) one-third of the total content costs paid for mechanical rights to musical compositions and rights to sound recordings; or (iii) the greatest of $0.0033 per use or $0.00064 per minute of playing time or fraction thereof;

(d) For interactive streaming, the greatest of (i) 12.5% of revenue, (ii) 27.5% of the total content costs paid for mechanical rights to musical compositions and rights to sound recordings; or (iii) the greatest of $0.00275 per use or $0.00053 per minute of playing time or fraction thereof;

(e) For ringtones (including mastertones), the greatest of (i) 15% of revenue, (ii) 15 cents per ringtone; or (iii) one-third of the total content costs paid for mechanical rights to musical compositions and rights to sound recordings; and

(f) All penny rates in these proposed terms subject to periodic adjustments for inflation as measured by the CPI.

40. The following facts show why these rate increases are both reasonable and necessary to provide appropriate incentives to songwriters to create music.

B. The Need for Higher Rates to Incent Creativity

41. My understanding is that one criterion the CRJs will consider in setting mechanical royalty rates in this proceeding is to maximize the availability of creative works to the public. See Copyright Act Section 801(b)(1)(A). In considering the appropriate rate for this purpose, it is important to understand the process through which musical compositions are created.

42. Each year, hundreds of thousands of people attempt to write songs. See ASCAP Web Site, www.ascap.com/about/ (ASCAP alone has over 260,000 members, including songwriters, composers, lyricists and music publishers); BMI Web Site, www.bmi.com/about/backgrounder.asp (BMI has over 300,000 members, including songwriters, composers and music publishers). Of the songs that are written, very few ever will be published, and very few of the published songs ever will become successful recordings. For instance, EMI MP currently owns the rights to approximately 1.3 million songs worldwide. Of these,

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Exhibit 10. The point of these figures is that, in order to obtain the relatively small number of songs that people really want to listen to and purchase, there must be a sufficient incentive for the hundreds of thousands of people who try to write songs to continue to do so.

43. An analogy to this process is found in the development of new pharmaceuticals. Pharmaceutical companies invest in large numbers of drugs hoping to come up with the next Lipitor or Viagra. The development of each drug involves an expensive R&D process, numerous regulatory hurdles and often takes many years. Only a very small percentage of drugs in development ever become successful products, however. Development of these successful drugs requires creating a sufficient incentive so that pharmaceutical companies will fund the R&D and regulatory approval process for a large number of drugs, including the vast majority that fail.

44. Music is no different. The R&D in the composition of music are the efforts made by the hundreds of thousands of songwriters, most of which will produce nothing marketable, but out of which will come the creations on which the music industry depends for value. As often has been noted, the song is the foundation on which the music industry is based. The health and vitality of

that industry as well as our culture depends on providing sufficient incentives to songwriters to assure the very best creative output. The greater the risk of failure the greater the incentive must be.

45. The need for an increased royalty rate can be demonstrated by comparing current conditions to those that existed when the current rates originally were agreed to in 1997. Since that time, while the use of music has expanded greatly, particularly through the development of digital distribution, the decline in album sales has reduced the opportunities for songwriters to have their songs recorded. For instance, according to data compiled by the Recording Industry Association of America ("RIAA"), the record labels' trade association, in 2000, U.S. CD album sales were approximately 942 million units. In 2005, this figure was down to approximately 705 million. See RIAA 2005 Year-End Statistics, Exhibit 11. While digital album sales have been increasing (from 4.6 million units in 2004 to 13.6 million units in 2005), they do not come close to replacing these lost CD album sales. See RIAA 2005 Year-End Statistics, Exhibit 11. Piracy also has played major role in this decline. According to the International Federation of Phonographic Industries ("IFPI"), the value of pirated music worldwide is $5 billion, and the number of tracks available for illegal download is 1 billion. For every track sold legitimately there are six tracks taken illegally. See *IFPI : 2006 Digital Music Report*, 16, http://www.ifpi.org/content/library/digital-music-report-2006.pdf. Exhibit 12. The consequence is that there is less money available to support the creative process, meaning that there are many creative works, including great works, that never are composed. An increase in the mechanical rate is required to offset this decline and restore the level of economic incentive to create musical compositions that existed the last time the mechanical rate was set.

46. Another major factor in declining songwriter income is the imposition by record labels in their contracts with singer-songwriters of "controlled composition clauses," which have become increasingly prevalent since the current rates were set in 1997. While controlled composition clauses do not apply for the most part to digital products under the Digital Performance Right in Sound Recordings Act of 1995, they continue to apply to physical products. Record labels first began to demand controlled composition clauses during the 1960s and 1970s but they expanded their demands for these clauses in the early 1980s. Controlled composition clauses typically reduce the label's obligation to pay mechanical royalties to 75% of the statutory royalty rate and cap the number of songs on an album on which royalties are required to be paid (e.g., a 10-song cap), which reduces the effective rate paid to well below the statutory rate. Controlled composition clauses also reduce opportunities for songwriters who are not also recording artists. An artist subject to a controlled composition clause who wants to use a song on his or her album written by a songwriter not subject to such a clause must reduce his or her already reduced royalty further to "reimburse" the record label for having to pay a non-controlled rate for that songwriter's song. This has discouraged the involvement of songwriters in collaborations with artist/songwriters subject to controlled composition provisions in their recording contracts.

47. The adverse effect of controlled clauses on songwriter income has grown over the years for a number of reasons. First, over time, as more new music subject to controlled composition clauses has been released, the percentage of physical product subject to these clauses has increased. In addition, some of these clauses lock artists into the statutory mechanical rate that existed when they entered into their agreement with the record label, meaning that they have realized no benefit from the increases in the statutory rate since that time. Further, while the song cap has increased somewhat in recent years from the standard 10 songs to 11 songs in some

instances, or even 12 songs for significant artists, these increases have not kept pace with the growing number of songs on CDs. For all of these reasons, controlled composition clauses have reduced songwriter income on physical products, a reduction that must be addressed with an increase in the mechanical rate in order to maintain songwriters' incentives to create.

C. The Enhanced Value of Music

48. The proposed increases in the mechanical rate also are appropriate in light of the fact that the value of musical compositions has increased in recent years. As significant contributors to this trend, songwriters have a legitimate claim to benefit from that increase in value. A principal reason for this increase has been the development of various forms of digital distribution that make music more portable and accessible than it ever has been before. Consumers today can purchase music at any time of day, can put music on their computer, CD, MP3 player and phone and make digital quality copies when this is legally permitted. All of these uses not only increase the demand for music but also the value of music to consumers.

49. The value of music to the consumer also has increased because consumers have a greater ability now to purchase only the songs they want instead of having to purchase a CD album that may have a few songs they want and other songs in which they are less interested. This has important implications for the mechanical royalty rate for digital products. When rates were last set in 1997, the overwhelming majority of music purchases were albums, and the rate represented an average value for the 12-14 songs on a CD album. See RIAA 2005 Year-End Statistics (in 1997, approximately 930 million albums, containing upwards of 13 billion songs, sold in all physical configurations as compared with only about 117 million singles), Exhibit 11. As most people recognize, the value of the bundle (the album) has been driven by the value of a few songs. From a songwriter perspective that was ok -- averaging that value over the total

number of songs on the album was a reasonable compromise to facilitate licensing. A songwriter was as likely to have a song that drove the sale of the album as not, so the view was that it would all average out and over time the writers of the best songs would gain the appropriate value for their songs. However, that has changed in the on-line and digital environment, which is principally a singles world in which consumers can and do limit purchases to those songs they most want. See *IFPI : 2006 Digital Music Report*, 16, http://www.ifpi.org/content/library/digital-music-report-2006.pdf, Exhibit 12, and Exhibit 13 **REDACTED** That means they can get the songs they want without having to acquire the bundle, implicitly raising the value of the songs they purchase. Clearly, once the album was unbundled, basing a songwriter's compensation upon an average of a bundle no longer represents an equitable sharing of value. This supports a higher mechanical rate for digital downloads. (Songwriters also face increased risk in the digital world that they will not be fully compensated for their creative efforts. In the physical world all songs in the bundle represented by the album are sold, so that songwriters are paid regardless of which songs on the album turn out to be a hit. In the digital world, there is greater risk that the songs released as singles will not be the hit songs, which could lead to significantly reduced mechanical royalty income. An increased mechanical rate for digital product is required to address this risk.)

50. The increased value of a song in the on-line world reflects itself in a number of ways which are not always seen in the retail price of the song. This is most evident with Apple's iTunes service, which is designed to sell hardware (iPods) by artificially holding down the price of a download. Apple CEO Steve Jobs has said that Apple does not make any money on the sale of music through the iTunes music store, but rather on the sale of iPods (*Time* magazine,

November 17, 2003), Exhibit 14. Apple sells all of its songs regardless of whether they are hits or not at 99 cents to encourage the purchase of iPods, which have generated significant revenues and profits for the company. For instance, Apple introduced the iPod in late 2001. From 2002 through 2006 (fiscal years ending September 30), Apple's revenues more than tripled from $5.7 billion to $19.3 billion, and its net income increased from $65 million to almost $2 billion. The iPod has been the major source of this increased profitability. See Exhibit 15.

51. This aspect of the value of music also is reflected explicitly in the recent agreement between Microsoft and Universal Music regarding Microsoft's new Zune music player. In return for Universal licensing its music to Microsoft for use on Zune, Universal will receive both a percentage of revenue from the sale of downloads as well as a percentage of the revenues from sale of the Zune devices. See "Microsoft Strikes Deal for Music," *New York Times* (November 9, 2006), Exhibit 16. This transaction constitutes recognition that the value of such devices to consumers is largely based on and driven by the music that can be played on the device and that the value in the composition has been diverted to the sale of the device.

52. Finally, the value of music is reflected in Google's recent acquisition of YouTube for $1.65 billion. Much of YouTube's value derives from the music that is available on that site. In each of these models, the price of the music being made available to consumers has been set at an artificially low level (in the case of YouTube, zero), but as the descriptions of these businesses make clear, each of them derives significant value from the music associated with their products.

D. The Value of Music Reflected in Market Transactions

53. I understand the criteria the CRJs will apply in setting the mechanical royalty rate also include providing a fair return to the songwriter for his or her creative work and a fair income to the copyright user under existing economic conditions. Copyright Act, Section 801(b)(1)(B). EMI MP and other publishers have negotiated numerous arms-length agreements regarding mechanical rights in music that evidence the terms each party believed would provide it with a fair economic return. These agreements demonstrate that the rates being proposed by the publishers are consistent with the rates that would be negotiated in a free market.

54. The following are several examples of types of agreements that have resulted from arms-length negotiations between EMI MP and digital service providers or record labels.

(a) Ringtone and Mastertone Agreements

55. Since as early as 2000, EMI MP has negotiated dozens of license agreements for ringtones (monophonic and polyphonic versions of compositions licensed by EMI MP) as well as mastertones (excerpts of songs recorded by an artist). (Unless otherwise indicated, references below to "ringtones" are intended to include mastertones as well.) While these license agreements provide evidence that the market value for mechanical rights is greater than the current statutory rate, the context in which the agreements were negotiated makes clear that the rates agreed upon are likely to be below those that would be agreed upon in a truly free market. Until the Copyright Register's recent ruling that certain ringtones are covered by the compulsory license in Section 115 of the Copyright Act, EMI MP assumed that ringtones were not covered by the statutory rate and negotiated on that basis in a competitive market. Other parties, particularly the RIAA and its members, have long taken the position that Section 115 did apply. The possibility that Section 115 might apply had a constraining effect on the negotiation of these

agreements: while the rates agreed upon in these licenses consistently have been in excess of the statutory rate for a compulsory license, they likely are below the rates that would be achieved in a truly free market negotiation not subject to such a constraint.

56. For instance, in 2000 we negotiated a ringtone agreement with Beatnik, a company affiliated with former recording artist Thomas Dolby. The agreed upon royalty rate was

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significantly above the 7.55 cent statutory rate applicable at that time. An article published in *Billboard* in 2004 titled "Ringtone Rumble Brewing" demonstrates that mechanical rates for ringtones of 10% of sales price with minima of 10-12 cents were well established in the marketplace by that time. See Exhibit 17.

57. Attached as Exhibit 18 to this statement are approximately 50 EMI MP ringtone licenses as well as a chart summarizing the licenses' basic terms. As this chart and the agreements show, the rates agreed upon under these licenses tend to be REDACTED of the ringtone retail price (e.g., $1 retail price for a monophonic tone, $2.50-$3.00 for a mastertone) with minima of REDACTED The minima for mastertones are sometimes in the REDACTED cent range. For example, the agreement we entered into with Lagardere in 2004 provided for a rate of

REDACTED . See Ringtone and Mastertone License with Lagardere North America, Inc. ("Lagardere Ringtone License"), paragraph 6(c).

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Many of these agreements also include recoupable advances REDACTED and taxation fees

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58. These agreements also provide that the rates are not subject to deductions for "free" or "bonus" goods the record labels impose for CDs and that a full royalty will be paid for each ringtone. See, e.g., Lagardere Ringtone License, paragraph 7(e). In contrast, artist contracts with labels typically provide that CD units made available to retailers for free or for promotional purposes will not be subject to a royalty. Further, the requirement that full rates be paid also means that these rates are not reduced by the effect of controlled composition clauses that, as discussed above, reduce the effective rate paid well below the statutory rate. The rates agreed upon in these ringtone agreements thus result in the publisher and songwriter receiving a much higher effective rate than that typically received under Section 115.

59. The fact the rates described above have been agreed upon in such a large number of licenses with so many different parties (including affiliates of major companies such as Sony and Yamaha) over so many years is significant evidence that these agreements are the result of arms-length negotiations that are much more representative of market rates for mechanical rights to musical compositions than the current statutory mechanical royalty rate. Moreover, if all parties to these agreements had agreed that the statutory rate did not apply to ringtones, the rates in these licenses would have reflected truly free market rates that would have been higher than the rates to which the parties actually agreed.

(b) New Digital Media Agreements with Sony BMG, Universal and Warner.

60. In 2004 and 2005, EMI MP negotiated New Digital Media Agreements or "NDMAs" with Sony BMG, Universal and Warner. Copies of these agreements are attached as Exhibits 19-21. These agreements cover several products, including dual disc products (discs with an audio side and an audio-visual side), locked content products (e.g., recordings on a computer hard drive that cannot be accessed by the consumer without additional payment), mastertones and master

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ringbacks, and digital video products.

the rate for mastertones (and master ringbacks) was negotiated, as it was in the ringtone agreements described above, on the assumption by EMI MP that the statutory royalty rate in Section 115 did not apply while the record labels believed Section 115 should apply.

61. The first of these agreements was negotiated with Sony BMG. Discussions began with a meeting between my Co-CEO, Martin Bandier, and Andrew Lack, who was CEO of Sony BMG. Sony BMG was interested in obtaining a license for various digital products. The initial mastertone rate discussed was REDACTED During extensive negotiations this was further developed to include a rate for these products equal to the greatest of:

REDACTED

Exhibit 19, Sony BMG NDMA, Section 2.4.3. There also was a provision addressing "hybrid" situations in which Sony BMG was not paid by a service with respect to sales of individual mastertones (e.g., a subscription service that bundled several different products to the end user for one fee), which provided for royalties of

REDACTED

62. The negotiations lasted four to five months.

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The agreement expressly provided the rates would not be reduced by the effect of any controlled composition clause. Sony BMG NDMA, Section 2.4.2.2. EMI MP also agreed to a license for digital video products

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An amendment to the agreement added licenses for DPD lyrics, so-called "qualifying locker service streams" (i.e., streamed performances of full CDs that already have been purchased, but not yet received by the consumer, solely for the period prior to receipt by the consumer of the physical CD), and locked content DPDs and included payment of

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(The locked content DPDs were licensed

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The agreement became effective on November 1, 2004 and expires on December 31, 2006. There have been discussions regarding an extension.

63. EMI MP next negotiated a separate NDMA with Universal.

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While the agreement was not signed until Fall 2005, it has an effective date of April 1, 2005 and expires June 30, 2007.

64. Thereafter, EMI MP negotiated an NDMA with Warner.

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65. As the discussion of these agreements demonstrates, the NDMAs and the ringtone rates they contain were the product of arms-length negotiations. The rates agreed to are a clear indication that, in the absence of a statutory rate, the value attributed to the relevant music compositions by a free market would be in excess of the current statutory rate. Indeed, the actual free market value of these compositions would be higher than the rates negotiated in the NDMAs because it would not be even partially constrained by the statutory rate.

(c) Agreement with Skype

66. In April of this year, EMI MP entered into a two-year license agreement with Skype, which plans to offer a digital subscription service that includes full downloads, limited or "conditional" downloads, and mastertones. Of particular significance is that the agreement provides a worldwide license for EMI MPs U.S. and U.K repertoire. The agreement also covers both mechanical and performance rights. A copy of the agreement is attached as Exhibit 22. For limited downloads (which expire in 30 days on the subscriber's computer hard drive or expire on

a portable device if the subscription lapses), the royalty is the greatest of:

REDACTED

Similarly, for mastertones the rates are the greatest of:

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For permanent downloads, the rate

.d

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There are no deductions for free or promotional goods for limited downloads and no deductions for free or promotional goods for mastertones without EMI MP's prior approval. As in the ringtone agreements, the rates agreed upon with Skype for limited downloads and mastertones evidence that market rates for mechanical rights exceed the current statutory rate but likely were constrained for mastertones, by the possibility that the compulsory license would apply, and for limited downloads, by uncertainty about the rate that will be set for those products in this proceeding and how closely that rate may approximate a market rate.

67. The negotiation of this agreement, which took some weeks, focused on a number of issues,

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The terms support not only the rates being proposed in this proceeding by the publishers, but also show that the multi-tiered rate structure being proposed by the publishers for limited downloads and on-demand streaming reflects marketplace realities.

(d) Agreement with Spiral Frog

68. EMI MP recently entered into an agreement with an advertiser-supported service to be launched soon called Spiral Frog that will provide limited downloads and streaming at no charge to the listener. REDACTED Mechanical royalties for limited downloads and streams are

REDACTED

[1] A copy of the agreement is attached as Exhibit 23.

69. Negotiations over the agreement began when Spiral Frog approached EMI MP for a license.

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70. In sum, the agreements described above provide for the following rates for ringtones, limited downloads and on-demand streams:

71. **Rates In EMI MP Voluntary Digital Agreements**

TYPE OF AGREEMENT	RATES
Ringtone Agreements	REDACTED
NDMAs – Mastertones	REDACTED
Skype – Mastertones	REDACTED
Skype – Limited Downloads	REDACTED to
Spiral Frog – Limited Downloads/On–Demand Streams	REDACTED

72. These rates, all the result of arms-length negotiations, show that the current statutory rate is well below rates that would be negotiated in a free market, notwithstanding the constraining effect of the compulsory license on these negotiations. Moreover, when that effect is taken into account, the rates proposed by the publishers reflect and are supported by these market-based agreements.

E. Other Evidence of Market Rates

73. There are other examples of music royalty rates negotiated in the free market that show that songwriters are greatly undercompensated by the current statutory mechanical rate. For example, my understanding is that when both publishers and record companies license synchronization rights (e.g., when both the musical composition and a master recording are licensed for use in a TV program or film), they tend to receive approximately equal compensation. For instance, the synch licenses entered into by EMI MP typically contain a most favored nations clause under which, if the licensee pays a record company a greater pro rata amount for its content, it must pay EMI MP an equal amount. See, e.g., license of *Higher Ground* by Stevie Wonder for *My Name is Earl*, March 14, 2006, Section 13, and other licenses attached at Exhibit 24. In contrast, I understand record labels licensing to iTunes receive about 70 cents per 99 cent download while the publishers and songwriters receive only 9.1 cents; after taking account of the fact the labels must pay the 9.1 cents out of the 70 cents they receive, the ratio is more than 6:1 in favor of the record labels. This disparity makes no sense given that the publisher and record label each are performing the same function--licensing an IP right in music to a digital service provider. Applying the 50:50 standard, the publishers' proposal to increase the statutory mechanical royalty for full downloads to 15 cents still is well below the rates that

have resulted from free negotiations of other, similar rights, and clearly is reasonable in light of these market results.

VII. An Increase in the Mechanical Rate Will Not Disrupt the Record Labels' Operations

74. There has been much discussion about the impact that a rise in the mechanical rate may have on the record labels. I have spent much of my recent career in various financial and planning roles which have involved me in these issues. I have come to share the view of most objective observers that a rise in the mechanical rate will not disrupt the operations or capacity of the record labels to be active suppliers of music products to consumers. As important, I see such a rise as not having any measurable impact on consumer prices. A number of factors have led me to this view. Until recently, the recorded music industry was notoriously inefficient in its operations. Over the last few years and continuing to today, the major record labels have been taking action to reduce waste and inefficiency in their operations – lowering their overhead burden, outsourcing their manufacturing and distribution functions, and more effectively targeting their marketing spend, among many initiatives. In addition, as I discussed in paragraph 38, the margins of the record labels also are rising as their product mix shifts toward on-line and digital with its lower costs. The combination of becoming more efficient and the shift to on-line and digital is driving a considerable increase in record label margins, making them able to absorb any increase in mechanical royalties and still be able to service their market effectively. This is particularly true as the mechanical royalty is only a small part of the record label's overall cost structure. It also is important to appreciate that the price that consumers pay for music as CDs, downloads or ringtones, etc., is set by the free market of supply and demand.

75. Further, I understand the record labels may propose a percentage of revenue royalty rate for physical products and full downloads. This would be highly disruptive to our business. In particular, the basis on which we pay our songwriters for physical product under our songwriter agreements assumes the existence of a penny rate. Abandoning the penny rate, which has been the basis for the mechanical rate on physical product and full downloads for many years, would create great uncertainty for both us and our songwriters. On the other hand, as discussed above, the three-tier rates the publishers have proposed for limited downloads, interactive streams and ringtones are consistent with existing market understandings, provide certainty by means of a penny rate minimum, and therefore would not disrupt existing market understandings.

VIII. Terms: The Record Labels Are Poor Intermediaries

76. I understand that in addition to setting a royalty rate under Section 115, the CRJs also are responsible for setting licensing terms. Although I understand that the record labels may have a right under Section 115 to sublicense the rights they obtain from the songwriters and publishers for purposes of digital distribution, I think it is important to address the fact that the record labels have proven to be poor intermediaries in the digital context. Under the NDMAs EMI MP has entered into with Sony BMG, Universal and Warner, for instance, these labels are permitted to license compositions owned or administered by EMI MP to third-party services that provide mastertones and to account the royalties back to EMI MP. Our experience so far with the labels under these agreements has been frustrating, and difficult. As detailed in an October 16, 2006 report attached as Exhibit 25 to this statement, the labels' reporting frequently is late (e.g., Universal and Warner each were a quarter behind), is not provided in the required electronic format and does not include required detail with respect to the tiered rate structure or the identity of the third-party service involved. In addition, we have not received timely payment, which is

due within 45 days of the quarter close.

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77. Similarly, another EMI MP report details label payment shortfalls with respect to the sale of DPDs through services such as iTunes that had accumulated as of the second quarter of 2006. See DPD Royalty Shortfall Analysis, October 11, 2006 ("DPD Shortfall Analysis"), Exhibit 26. The labels license Apple and then are supposed to pay the publishers based on the statutory rate under Section 115. As discussed in the DPD Shortfall Analysis,

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78. The labels' failure to make timely payments undermines the purposes of Section 115 and devalues the mechanical royalty. Failure to pay the publishers means the publishers have less money available to pay, support and promote songwriters. Further, given the time value of money, these delays in payment constitute a hidden discount with respect to physical product and even more so for digital product, for which the delays are greater. These delays reduce songwriters' ability and incentive to create music, meaning less music is made available to consumers, a result that directly contradicts the criteria used by the CRJs in setting the mechanical royalty.

79. The fundamental problem appears to be that the labels are not equipped to play the role of middleman in the digital environment. Given that the existing statutory framework permits the record labels to sublicense, however, these reporting and payment shortfalls must be addressed.

80. Further, the difficulties publishers and songwriters have in collecting payment from the labels is not confined to the digital world. With respect to physical product, reserves taken against anticipated returns are used excessively and can delay payment for as much as one year to 18 months. Often times record labels will hold reserves for returns on CDs that have (according to Soundscan) been sold to consumers. I understand the publishers will seek discovery from the labels regarding the use and abuse of reserves in order to formulate a specific proposal to address this issue.

81. In light of these issues, EMI MP supports the strict payment and reporting obligations that would be imposed on the labels under the publishers' proposal and urges the CRJs to adopt them. These proposed requirements include:

(a) Payment. Without affecting any right to terminate a license for failure to report or pay royalties as provided in Section 115(c)(6), late fees shall be assessed at 1.5% per month (or the highest lawful rate, whichever is lower) from the date payment should have been made (the twentieth day of the calendar month following the month of distribution) to the date payment is actually received by the copyright owner. For pass-through licensing, there shall be an automatic 3% assessment on all royalty payments by the licensee to address the fact that the copyright owners would receive payment sooner if the retailer were paying the copyright owners directly (such 3% assessment to be augmented by additional late fees at 1.5% per month if payment by the licensee is otherwise late). A copyright owner shall be entitled to recover from the licensee reasonable attorneys' fees expended to collect past due royalties and late fees.

(b) Applicability of rates. The statutory rate to be applied is the rate in effect as of the date of distribution.

(c) Reserves. In the case of physical product, there is a general failure to comply with, and abuse of, the existing reserve rules (see 37 CFR 201.19) -- to be further confirmed out in the discovery process -- with the effect of substantially decreasing and delaying payments to publishers and songwriters. Subject to our findings in discovery, the copyright owners may

propose the elimination of reserves for physical product or, at a minimum, new rules designed to correct the abuses.

(d) Specific licensing and reporting. Licenses are to be taken by specific configuration (e.g., CD, cassette, DPD, limited DPD, interactive stream, etc.). In addition to any other applicable requirements, reporting must be broken down by specific configuration (i.e., must detail how many units distributed of a particular configuration, and the applicable rate and royalties due for that configuration) and, in the case of pass-through licensing, must be further detailed to indicate the retail outlet through which the distribution was made to the end user.

82. These requirements will compel the labels to upgrade their reporting capabilities and should result in more timely, accurate and complete payment to the publishers and songwriters.

IX. Conclusion

83. As I noted at the outset, all value in the music industry begins with the songwriter and the song he or she creates. All other value in the industry derives from this, including the value of recordings of that song, and the value of products like the iPod and Zune music players that depend on the existence of music to create demand. It therefore is critical to ensure that the songwriter receives adequate compensation to have an incentive to create. Over the past decade, changes in the music industry have increased the value of music significantly, but have reduced the opportunities and value accruing to the songwriter. The value of music, particularly as reflected in market based transactions, clearly exceeds the current statutory mechanical rate, which means that rate must be increased to properly compensate songwriters for their efforts. The rates proposed by the publishers address the shortfall in the current statutory rate and should be sufficient to ensure that songwriters will have the incentive to create and that publishers will have adequate resources to nurture and develop songwriters so that the best of what they create can be experienced and enjoyed by the public. I urge the CRJs to adopt these proposed rates as well as the proposed terms that will ensure that songwriters and publishers realize the full value of these rates.

I declare under penalty of perjury that the foregoing is true and correct to the best of my understanding.

Dated: November 30, 2006

Roger Faxon
Co-Chief Executive Officer
EMI Music Publishing

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Before the
COPYRIGHT ROYALTY JUDGES
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding	Docket No. 2006-3 CRB DPRA

WITNESS STATEMENT OF NICHOLAS FIRTH ON BEHALF OF NATIONAL MUSIC PUBLISHERS' ASSOCIATION, INC., THE SONGWRITERS GUILD OF AMERICA AND THE NASHVILLE SONGWRITERS ASSOCIATION INTERNATIONAL

1. My name is Nicholas Firth and I am Chairman and Chief Executive Officer of BMG Music Publishing Worldwide, the third largest music publisher in the world. I attended McGill University and Harvard Business School, and I have been involved in music publishing for 44 years.

2. Based on my extensive experience in music publishing, and consistent with my career-long interest in supporting songwriters and composers, I make this statement to (1) describe the role of music publishers in the music and entertainment industries; and (2) demonstrate the need for an increase in the statutory mechanical royalty rate.

3. To summarize, an increase in the statutory mechanical rate is needed for the following reasons, among others:

a. To provide a reasonable economic rate of return to music publishers for their substantial and ever-increasing investments in advance payments to, and creative support for, the songwriters they represent.

b. To ensure that the share of total royalties received by the owners of musical compositions under the mechanical license is comparable to the share of total royalties they receive — for the same compositions — under other forms of licenses.

c. To permit the owners of musical compositions to enter into mechanical licenses at rates that are commensurate with what they have been able to negotiate where no statutory cap limits the royalties they may receive.

d. To offset reductions by record companies in the mechanical rate paid to music publishers as a result of controlled composition clauses in recording agreements.

My Background in Music Publishing

4. Music publishing is my family's tradition. My grandfather and great uncle, Louis and Max Dreyfus, owned Chappell & Company in New York and London and also served as directors of the American Society of Composers, Authors and Publishers ("ASCAP"). My career in music publishing began in 1962, when I joined the Chappell Group's London office as a Management Trainee.

5. In 1968, Chappell was purchased by Polygram, and I moved to New York to work in PolyGram's newly-formed music publishing business. From 1981-1984, I served as President of Chappell International and Vice-President of the PolyGram Publishing Division. Some of my most memorable deals at Chappell included signing Pink Floyd shortly before their album *The Wall* was released and acquiring E.H. Morris's non-U.S. business. I left Chappell in 1984, when PolyGram sold Chappell. By the time I

left, Chappell was operating in 23 countries and was PolyGram's most profitable division.

6. Throughout my career, I have remained active in industry associations and organizations. I have negotiated numerous music publishing industry agreements in the United States, Europe and the Far East. I also serve on the boards of ASCAP, National Music Publishers' Association, Inc. ("NMPA"), the International Music Publishers' Association ("IMPA"), and the Third Street Music School Settlement. I was honored to be inducted into the Songwriters' Hall of Fame and to receive the Abe Olman Publisher Award in 2003. I now serve on the Board of the Songwriters' Hall of Fame and one of my objectives in that capacity, as in all the work that I do, is to raise awareness and ensure appropriate credit for songwriters who make the music and without whom there would be no music business.

BMG Music Publishing

7. In 1987, Bertelsmann AG, a German media company, purchased the RCA, Arista and Ariola record labels and formed BMG. I was asked to lead the newly-formed BMG Music Publishing group. I immediately recognized that BMG's existing music publishing business was very small and had received relatively little attention from the company — unlike PolyGram, which had considered music publishing a major priority. One of my challenges was to build BMG Music Publishing into a worldwide, full-fledged music publishing company.

8. Under my leadership, BMG Music Publishing has become one of the leading music publishers in the world, with 36 offices in 25 countries. Our growth has been the result of both signing and developing new songwriters and acquiring over

200 catalogues and publishing companies in 15 countries. Most notably, we have acquired Zomba Music Publishing, France's Editions Durand and Salabert, and Italy's premier music publisher, G. Ricordi. We also acquired numerous catalogues, including those of Fleetwood Mac, B.B. King, Barry Manilow, and Peter Cetera (Chicago). Some of my favorite acquisitions, as a music fan, include Gilbert Bécaud's catalogue ("What Now My Love"), which was our first acquisition, Santana's early catalogue, which includes "Samba Pa Ti," and EG Music (Bryan Ferry/Roxy Music/King Crimson).

9. We own copyrights and represent some of the most well-known past and present talents from all genres of music and from all over the world, including Nelly, Maroon 5, R. Kelly, Justin Timberlake, Linkin Park, Christina Aguilera, Coldplay, Shania Twain, Britney Spears, Robbie Williams, Keane, Joss Stone, Alanis Morissette, The Bee Gees, The Eurythmics, Korn, Limp Bizkit, Ne-Yo, Peter Maffay, Rammstein, Elvis Costello, Beck, Erykah Badu, The Cure, Annie Lennox, Wu-Tang Clan and Chingy.

10. Our songwriters have had their works recorded by numerous well-known artists including Mariah Carey, Kelly Clarkson, Alicia Keys, Black Eyed Peas, Eminem, Usher, Jessica Simpson, Shakira, George Michael, Outkast, Dido, No Doubt, Hilary Duff, 50 Cent, Destiny's Child, Faith Hill, Lonestar, Eric Clapton, Jay-Z, Bryan Adams, Sandy & Junior, Sasha, Brandy, Tiziano Ferro, Celine Dion, Westlife, Sonique, D'Angelo, Tina Turner, Mary J. Blige, Kenny Chesney, Martina McBride, Lucia Dalla, Josh Groban, Michael Bublé, Cher, Rod Stewart, Elvis Presley and Frank Sinatra.

11. Our roster of producer-songwriters includes internationally-recognized names such as Max Martin (catalogues of Britney Spears, Kelly Clarkson),

Mutt Lange (Shania Twain, Def Leppard), Jorgen Elofsson (Il Divo, Britney Spears, Westlife), Chad Hugo of The Neptunes (No Doubt, Mariah Carey), Manuel Seal (Mariah Carey, Usher), The Matrix (Korn, Shakira), Cool & Dre (The Game, Mary J. Blige) and Per Magnusson (Britney Spears, Il Divo).

12. Although we have assembled a formidable catalogue of Anglo-American popular music, at its outset BMG Music Publishing was a new company competing with larger multinationals that owned existing standard catalogues. I therefore decided to focus our growth objectives on three "niche" areas: contemporary Christian music, Classical music, and the Production Music Library business, which commissions and distributes music (both musical compositions and master recordings) specifically written and recorded for inclusion in audio and audio-visual productions such as advertisements, broadcast programs, films and videos.

13. As a result of our efforts, BMG Music Publishing now comprises one of the largest and most diverse catalogues in the world. In addition to our strong position in pop music, we are the world's largest publisher of both Classical and contemporary Christian music and the leading Production Music Library group. Soon after I joined the company, we opened a country music office in Nashville, which is also the home of our active Christian music division. Our catalogue of classical music includes works by Ravel ("Bolero"), Saint-Saens, Debussy, Poulenc and Xenakis and our acquisition of Ricordi in 1994 brought us the works of legendary composers Verdi, Puccini, Rossini, Donizette and Respighi.

14. We also have a strong presence in film and television music. Our Film and TV department has licensed many of our works in recent films including *The*

Chronicles of Narnia, *8 Mile*, *Spiderman*, *Sweet Home Alabama*, *The Scorpion King*, *Shrek*, *The Dukes of Hazzard*, *Wedding Crashers*, *The Sisterhood of the Traveling Pants*, *Monster-In-Law*, *Robots*, *Coach Carter*, *Shark Tale*, *Collateral*, *V for Vendetta*, *The Pink Panther*, *Date Movie*, *The Constant Gardener*, *King Kong* and *Starsky & Hutch*. We have also placed works in hit television programs including *Malcolm In The Middle*, *The Sopranos*, *The OC*, *CSI* and *ER*.

15. In 2004, BMG's and Sony Music's record labels merged into Sony-BMG Music Entertainment. BMG Music Publishing, however, remained wholly-owned by its parent Bertelsmann AG but separated from the recorded music operations.

16. Consistent with our focus on the importance of supporting and developing songwriters, BMG Music Publishing provides songwriters with a variety of essential services. We are involved in discovering, developing and financially supporting songwriters, providing songwriters with musical feedback and guidance, facilitating collaborations between songwriters, promoting and licensing their works, and ensuring that they are appropriately compensated and that their rights are protected.

Artist & Repertoire

17. One of the most important things I did to grow and develop BMG's music publishing business was to build up our creative departments' "Artist and Repertoire" ("A&R") in every country in which we operate. Our A&R efforts are substantial and multi-faceted, ranging from talent-scouting, providing financial support to young songwriters, helping songwriters improve their songwriting skills, editing their compositions, facilitating collaborations, promoting our songwriters and their works to record companies and other licensees, and song-plugging, which involves persuading others to record or otherwise use our songwriters' works.

18. In the United States alone, we employ REDACTED full-time employees in our A&R efforts. They are based in our New York, Los Angeles, Nashville and Miami offices. Our total investment in A&R, including salaries, travel and entertainment expenses and demo costs (but excluding advances paid to songwriters) amounts to approximately REDACTED per year, or REDACTED of our revenues. Below, I describe our A&R efforts in greater detail.

Discovering New Songwriters

19. By virtue of the efforts of our A&R professionals, we have been able to find and sign talented songwriters from all over the world. Our roster currently includes approximately REDACTED active songwriters, producers and recording artists and, in 2005 alone, we discovered and signed REDACTED new songwriters, REDACTED of whom were unknown artists or "baby bands" who had not released a commercial record and REDACTED of whom were established musicians. Notable signings during 2005 included Pitbull, All-American Rejects, Slayer, Damion Marley, Ne-Yo, T-Pane and Kirk Franklin.

20. The art of discovering new talent is relationship-based. Because of our years of industry experience, we have come to know most — if not all — of the key players (including managers and lawyers) in the industry, and they bring many leads to our attention. Our A&R staff routinely attends showcases and other similar events all over the country. In addition, aspiring songwriters often send us demos that they have made using their home recording equipment. Our goal is to identify and sign talent at the earliest possible stage, which in many cases is before a record deal is entered into.

21. After we have identified prospects, the next step is to evaluate their talent. Informed by our experience in the music industry, we assess their likelihood of

success, focusing on their skill, potential and, in the case of singer-songwriters, their marketability. If we decide to pursue an agreement with a songwriter, a courtship process begins, as many young songwriters draw interest from a variety of publishers. One member of our creative staff, usually the professional who first identified the talent, typically acts as a sponsor during the entire process, taking the lead role in evaluating, courting, and hopefully signing the songwriter.

22. A few examples of recent signings illustrate the different ways we find previously unknown talents and assess their abilities.

a. BMG Nashville's most recent signing is singer-songwriter Jason Michael Carroll. Carroll's attorney brought Carroll to our attention during discussions regarding another of the attorney's clients. Carroll's first single, which he wrote entirely himself, was the country single most-added to radio rotations during several recent weeks. We are eagerly anticipating the release of his album in the first quarter of 2007.

b. BMG discovered a band called Yellowcard at a small club in Anaheim, CA, where it was performing along with four other bands. Our A&R staff immediately recognized the band's raw talent and energy. We followed the band for a couple of months and watched as its audience grew. We signed Yellowcard shortly thereafter, and later the same year its debut album was released, ultimately selling two million copies.

c. We found the band Maxeen when we received an album called *Tribute to the Police*, which contained songs by various artists, including Maxeen. The album had been released by the label The Militia Group,

with which BMG had a relationship. We liked Maxeen's lead singer's voice, and immediately got in touch with the group. At the time, Maxeen was putting the finishing touches to an independent album and was looking to grow its audience, which we saw as an opportunity to offer help in hopes of convincing Maxeen to sign with us. After several meetings over a three-month period, we signed the band and, in turn, helped it sign with Warner Bros. Records, a major record label. Their debut album is to be released in April 2007.

23. Although record companies also search out and find previously unknown talents, our role and the role of other music publishers in finding talent has been critical for many musicians. There have been numerous instances in which we have signed talented singer-songwriters and producer-songwriters who were either passed over or dropped by record companies. A few examples prove the point: Brian Davis signed with BMG Nashville in 2003, after being showcased and courted ("shopped"), unsuccessfully, to record companies in 2000; Tania Hancheroff signed to our affiliated company Zomba in 2003, after failing to obtain a record company deal in 2002; Kelly Archer was dropped by her record label in 2004, but signed with us in 2006. Each of these singer-songwriters, after working with us for a few years, is currently attracting strong interest from record companies, and is likely to sign with one of them in the near future.

Our Agreements with Our Songwriters

24. Once we decide to sign a songwriter to a publishing agreement, we negotiate contractual terms, usually with his or her lawyer. Almost without exception,

the agreements require BMG Music Publishing to provide a substantial advance payment to the songwriter. These advances are often made before a record is released and almost always are made well in advance of the time we can hope to earn and collect any revenue under the agreements. It typically takes 18 months or more after the initial payment is made to collect any revenue on a particular song. It is not an overstatement to say that, in most cases, these advances keep the songwriters fed and clothed, and without them many aspiring songwriters would drop out of the business.

25. Advance payments are structured in a variety of ways. In contracts with pure songwriters, advances are typically paid either as monthly draws or a portion on signing with the rest on a monthly basis. For producer-songwriters, approximately half of the advance is usually paid at signing, with the balance paid as songs are released on major label albums. And, finally, for singer-songwriters, the typical contract also usually involves approximately half of the advance paid at signing with the remainder paid upon the commercial release and licensing of the songwriter's first album.

26. Our advances are substantial in size, and maintaining a roster of songwriters requires a significant capital investment by the music publisher. The average advance we paid to new songwriters in 2005 was approximately REDACTED. Although this figure reflects relatively large advances paid to more well-known songwriters, even our median advance in 2005 was REDACTED. Cumulatively, we spent almost REDACTED on advances to new songwriters in 2005 and our total spending on advances, to both new and previously-signed songwriters, was almost REDACTED. This represented over REDACTED of our total revenue, a proportion that has remained broadly consistent in recent years.

27. Even as we pay such large advances to songwriters, our agreements with songwriters are providing us with a reduced share of mechanical royalty revenues. Although the average royalty split between songwriters and publishers used to be approximately 50:50, the share percentage payable to the songwriter has increased. Current agreements are more appropriately termed co-publishing arrangements, under which songwriters receive not only the 50% share of royalties traditionally allocated to them for songwriting but also half of the 50% traditionally allocated for publishing (*i.e.*, for a total of 75%). Thus, our more recent agreements generally guarantee us only 25% of both domestic and foreign royalty revenues, with the balance owed to the songwriters.

28. In negotiating the size of their advances and their share of royalties, songwriters frequently benefit from competition between publishers who are interested in securing their services, and who are therefore motivated to provide the most generous advances possible. For artists who appear particularly likely to be successful, bidding wars have resulted in particularly high advances and royalty shares. That said, regardless of whether our agreements are with "baby" acts or established musicians, and despite our declining share of royalty revenues, substantial advances that continue to increase in size have been, and continue to be, a staple condition of songwriters' contracts with publishers. No matter what the mechanical royalty rate has been, publishers have always supported songwriters with substantial advances.

29. Although contractually we are entitled to recoup our advances, the nature of our business is that many, if not most, of the songwriters in whom we invest ultimately are not commercially successful. Songwriters who do not achieve commercial success never are required to return advances. Thus, each year we write off millions of

dollars of advances that were previously given to songwriters. From the inception of BMG Music Publishing in 1987 to the end of 2005, we have written off approximately REDACTED of our advances/payments.

Our Ongoing Creative Assistance to Our Songwriters

30. Each of our creative professionals is committed to helping our songwriters develop their skills and ultimately produce professional quality compositions and recordings that will be successful in the marketplace. Songwriters are assigned to professionals based on prior relationships, geographical location and areas of expertise. In many cases, the sponsor of the songwriter's signing continues to oversee his or her creative development. Our artist development efforts have helped produce and enhance the careers of many popular and successful artists, including Beck, Linkin Park, Maroon 5, The Calling, Yellowcard, Cypress Hill, Keane, Coldplay, M.I.A., Kings of Convenience and M People.

31. Our creative assistance takes many forms. Our creative professionals listen to, constructively criticize and edit our songwriters' songs before they are demoed and subsequently marketed to record labels and the film and television community ("pitched"). In some cases, our creative staff also manages our songwriters' daily appointment books and keeps them informed about artists' recording schedules and song needs via a "Who's Looking List," which we distribute by email on a regular basis. This list helps our songwriters focus their efforts on producing compositions that might fill immediate needs in the marketplace.

32. On occasion, we also serve as a type of "headhunter" for our songwriters for the purpose of finding them personal managers and booking agents. For

example, Jon McLaughlin, one of our recent signings, needed a personal manager so we introduced him to Darren Gilmore, a young manager who we knew to have other clients similar to McLaughlin and who we therefore thought would be a good fit. They agreed to work together and their relationship has worked well. We were also responsible for obtaining a booking agent called The Agency Group, a large international music booking firm, for our band Maxeen. This relationship has also been successful, as The Agency Group has successfully landed Maxeen tours with Blink 182 and Maroon 5, among other well-known bands.

33. We also play a pivotal role in what we believe is the art of songwriter collaboration. We screen co-writing requests made to our songwriters and solicit potential co-writing opportunities on their behalf. For our Pop/Rock department, we have REDACTED employees dedicated to facilitating co-writing opportunities for our songwriters. Ninety percent of the songs that are written by our songwriters are the result of collaborations with other songwriters or with recording artists directly. We placed Toxic, one of our producers, with Keyshia Cole, one of our artists, for Cole's most recent record. Together, they wrote a song called "Love pt11" that turned out to be a highlight of her debut album, *The Way It Is*. The album went on to sell over 1.4 million copies. For Cole's next album, we have put our producers Havoc, Toxic and the Platinum Brothers in touch with Cole, and we are expecting similar success from the album, which is due to be released in Spring 2007.

34. We also facilitate songwriting partnerships by hosting a variety of regular events that bring our songwriters together. For example, we host breakfasts and luncheons for new artists to perform for our songwriters and these events have resulted in

several co-written songs. In addition, our Nashville office hosts regular retreats ("Song Camps") to which songwriters from our offices around the world are invited. At these Song Camps, which last four or five days, songwriters have the opportunity to meet each other and generate ideas for new, jointly-written compositions, while we arrange writing sessions and demo sessions and provide free food, lodging, transportation and entertainment. Song Camps have already resulted in several popular hits, including Kenny Chesney's "Young," Trace Adkins' "Rough and Ready" and Brooks and Dunn's "That's What It's All About." We look forward to many more in the future as we continue this unique tradition.

35. The assistance we provide does not stop there. We maintain a studio in our Nashville office for our contemporary Christian business. We also have employees dedicated to working with our pop/rock songwriters to create demo recordings. Finally, from time-to-time, we provide recoupable advances for singer-songwriters to invest in home recording equipment, which is becoming more sophisticated each day.

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36. In light of all of our contributions — both financial and creative — it is fair to say that, in many cases, music publishers are primarily responsible for facilitating the early development stages of the process of recording an album.

Promoting Our Songwriters and Their Works

37. Our promotional efforts involve work on behalf of both our songs and our songwriters. Song-plugging, or finding opportunities to license our songs, is a central part of our responsibility. During most weeks, our creative professionals attend between 20 and 25 meetings to pitch songs to record label A&R executives, producers,

artists and managers. In addition, we are heavily involved in soliciting both recording artists and record producers to perform and produce our songwriters' songs, as well as songwriters to compose works for recording artists who need writing assistance.

38. Our roster now includes an increasing number of singer-songwriters and producer-songwriters. Currently, approximately REDACTED of our roster are singer-songwriters and approximately REDACTED are producer-songwriters. A small percentage of our songwriters are actually singers *and* producers of their own works. Pure songwriters, in contrast, now represent REDACTED of our roster.

39. We advance all aspects of the careers of singer-songwriters and producer-songwriters, often by lending our assistance to helping them find record company contracts to exploit their skills. For example, after signing an 18-year-old singer-songwriter Tamar, we introduced her to, and were involved in her meetings with, several record labels, including all of the majors. Tamar ultimately signed a contract with J Records. We also helped our producer-songwriter team known as The Collective, which writes music targeted for a younger audience. After signing The Collective, we arranged several meetings with record labels in New York and Los Angeles, ultimately leading to a contract with Walt Disney Records.

40. Our licensing efforts are by no means limited to maximizing the use of our songs on records. An important tool in promoting our songs and our songwriters is finding synchronization ("synch") opportunities with television programs, films, advertisers, music supervisors, studios, video game manufacturers and many others. Our work with the well-known band Maroon 5 is a clear example of the value of synch licensing in raising the profile of an up-and-coming band. In 2001, we received a

demo for Maroon 5, which was then signed to Octone Records, an independent record label. We established a relationship with the band's manager and lawyer and signed a publishing agreement in May 2002. When the band's album was released in June 2002, it did not make an immediate impact. We believed strongly in the band and pitched the songs to film and television music producers. Eventually, we brokered a deal with a new jeans company called Mavi Jeans to use one of Maroon 5's singles in a television commercial. We also arranged to have the band's single "Harder to Breathe" played in three popular television shows. These opportunities increased Maroon 5's exposure and ultimately helped the band sell 10 million copies of its debut album.

41. As this example demonstrates, our role in promoting our singer-songwriters does not end when they sign recording contracts. For example, Maroon 5's label, Octone, an independent, entered into an agreement allowing J Records, a major record label, to market the band's album as its own, but J Records was slow to express interest in and commit marketing dollars to the band. We worked to convince J Records to increase its marketing efforts on behalf of the group and only then did the album achieve its commercial success. We continue to maintain a close relationship with the band and participated heavily in the development of the group's second album, which is due to be released in 2007. Our ongoing assistance has involved visiting the band's studios, reviewing its songs and providing constructive feedback.

42. Similarly, our efforts to promote our songs do not stop after they have been recorded for the first time. Instead, we continue to look for opportunities to keep them alive in new recordings. A good example of our ability to secure multiple recordings of the same composition is a song called "Evergreen." This song, which is

currently achieving great success in England, was written by one of our songwriters named Jorgen Elofsson. The song was first recorded by the popular group Westlife and was later recorded and released as a single by Will Young, who won first place in the *Pop Idol* television talent show. His single went to number one in three weeks, selling two million copies. Gareth Gates, the runner-up on *Pop Idol*, also recorded "Evergreen," making it the B-side of his single. Both Young and Gates will be including their recordings of "Evergreen" on their upcoming albums. Our work with "Evergreen" is a classic music publishing story of obtaining multiple revenue streams from a single work.

Licensing and Other Administrative Responsibilities

43. In addition to our creative efforts, we take responsibility for a variety of administrative tasks that would be overwhelming if left to songwriters to handle on their own. One of the most important administrative tasks we perform is mechanical licensing, which is the licensing of our songs on records.

44. Mechanical licensing administration is a complicated process. When a record company produces an album, it ordinarily requests a mechanical license either directly from the applicable music publisher(s) or from The Harry Fox Agency, Inc. ("HFA"), the collecting agent responsible for administering mechanical rights for most music publishers in this country. The music publisher is responsible for confirming the number of songs and the ownership shares on the applicable album that are controlled by its songwriters and checking the record company's calculation of the applicable penny rate payable for each song. The record company is then required to obtain a license and pay the music publisher (or HFA) all royalties that are due. We have a team of employees dedicated exclusively to performing our mechanical licensing functions.

45. This licensing process involves several recurring challenges:

a. One common problem is rate calculation disputes. In many cases, record labels incorrectly calculate the mechanical royalty due under applicable controlled composition clauses, which are common provisions in recording agreements whereby record companies contractually lower the statutory mechanical rate payable to artists and producers. These clauses typically call for the payment of some reduced percentage of the statutory mechanical rate and also place a cap on the total amount of mechanical royalties payable on any particular album. Before record companies will pay any royalties, they often demand that the publisher prove that their calculation of royalties pursuant to the controlled composition clause was in fact incorrect. We regularly follow up with record companies to ensure prompt payment, but the reality is that record companies frequently hold mechanical royalties that should otherwise be payable for many months after they are properly due.

b. Another common obstacle is sample clearance. If, in creating a new song, the songwriter and/or producer used any portion of a previously-created song (a "sample"), the songwriter must obtain approval from the publisher that owns the rights to the original, or sampled, song and negotiate the ownership percentages (commonly referred to as "splits") with respect to the new song. We handle this process on behalf of our songwriters. The process involves, among other tasks, confirming ownership percentages among multiple music publishers, determining if

any of the publishers is subject to a controlled composition clause and, if so, calculating the applicable royalty rate.

46. Record companies have added to these difficulties in several ways. First, in many cases record companies distribute records even before going through the formality of obtaining mechanical licenses, despite the requirement in the Copyright Act that they obtain a license prior to distribution. Second, audits reveal that in many cases record companies hold copyright royalties in "suspense," which means they are accruing the costs on their books but not paying them out in cash to the owners of the rights to musical compositions. Third, we have discovered that, when entering into agreements with new music services such as YouTube, some record companies have been representing that they are entitled to license all of the relevant publishers' rights when in fact they do not own or control those rights. BMG Music Publishing tries very hard to minimize disputes with record companies so as to cooperate in commerce and ensure that our songwriters' careers continue to progress. Nevertheless, these aggressive practices create considerable hardship and result in increased administrative and legal costs for publishers and prevent our timely receipt of our rightful royalties.

47. Our synch licensing responsibilities are different but no less challenging. When synch license requests are initiated by licensees, we are responsible for obtaining approval from the songwriters and any other music publishers that have controlling interests in the copyrights and, in many cases, coordinating with record companies to license the synch right. Once all copyright owners have given their approvals, which often requires payment of a fee, we negotiate the terms of the synch license and, after agreement has been reached, we issue the license. We have REDACTED

employees dedicated to negotiating synch licenses and REDACTED employees dedicated to drafting synch agreements.

48. Synch licensing, like mechanical licensing, is complicated by several factors. First, the growing number of songs increasingly complicates the synch licensing process. Although, a few years ago, the number of songs available for license was generally limited to those that are immediately recognizable to the public, today licensees are willing to use songs written by unknown artists as well. This has vastly increased the universe of songs to which we must maintain the capacity to license. In addition, opportunities to license songs for commercials must be weighed against the consequences of linking songs to particular products. Allowing a song to be used for a product may leave an unfavorable impression with the consumer, thus causing a negative impact on the market for future uses of the song. As advocates for our songwriters, we help them weigh the costs and benefits of particular licensing opportunities.

49. Our administrative responsibilities are not limited to licensing. For example, we assume the responsibility of registering our songs with the U.S. Copyright Office and its counterparts around the world. We also represent the interests of songwriters in legal proceedings such as this tribunal and participate in negotiating industry-wide agreements with various partners to ensure the continued protection of the rights of our songwriters.

Our Work to Facilitate the Distribution of Music in Digital Form

50. BMG Music Publishing, like other publishers, has contributed to the commercialization of new technologies in the best way we can — by actively licensing our works to as many new users as possible. We have been willing and in fact

eager to make agreements with digital companies seeking voluntary licenses to distribute our songs, so long as they are willing to do so legally and to compensate our songwriters appropriately.

51. Earlier this year, we licensed our North American catalogues to Gracenote, a digital entertainment company seeking to distribute song lyrics on the web. The theft of song lyrics is an example of online piracy at its most virulent. Gracenote was the first company to attempt to provide lyrics legally, though many other websites had been distributing lyrics without regard to the copyrights of our songwriters. We were glad to be the first to make an agreement to facilitate the legal distribution of lyrics on the Internet and thus ensure that songwriters are compensated for their written compositions.

52. We have also been active in licensing the use of our songs as ringtones. Long before advancements in telephone handset technology made record companies relevant players in the market for ringtones, music publishers like BMG were licensing monophonic and polyphonic versions of their songs for this purpose. In our early negotiations with content aggregators, who acted on behalf of online providers, we played a major role in bargaining to establish ringtone license rates. Since the emergence of mastertones, which are ringtones produced from master recordings, we have granted licenses to major record companies that allow them, in turn, to grant licenses to ringtone service providers and telecommunication companies at the rates that were previously established in license agreements with content aggregators.

The Need for Increased Mechanical Royalty Rates

53. NMPA, together with several organizations representing songwriters, have proposed increased mechanical royalties for both physical and digital

product. These increases are essential, in my view, to incent songwriters and to enable music publishers to fulfill the essential role that we play in the creation of new music, while providing us a reasonable return on our substantial investments.

54. BMG Music Publishing's revenues from mechanical royalties have declined since 2001, as has the share of our total revenues attributable to mechanical royalties. Although mechanical revenues were approximately REDACTED of our total revenue from 1995-2001, they represented REDACTED of our total revenue in 2005.

55. The declining share of revenue that we receive from mechanical royalties is, in my view, the result of a variety of different factors. The decline in the sale of recorded music in recent years — markedly different from the prior record of substantial growth in record sales — has had an obvious and adverse effect on our mechanical royalty revenues.

56. Furthermore, the fact that publishers' revenues are capped by a statutory ceiling prevents us from fully profiting from successful hit records. Even though record companies may have initial production costs that limit their earnings on the first several thousand records they sell, once their volume of sales takes them past the break-even point, their profits increase dramatically. While their costs are quickly amortized as their sales increase, publishers, on the other hand, earn precisely the same amount, measured in only a few cents per record, on each record sold — no matter how successful a song turns out to be. Music is a hits-driven business, yet music publishers are relatively less able to benefit from their successes than record companies.

57. In addition, controlled composition clauses, which are included in virtually all artist and producer contracts, are both prevalent and increasingly expansive.

The original controlled composition clauses typically provided that if the artist controlled (wrote) her/his composition, the record company would be required to pay only some reduced fraction of the mechanical royalties due. From such a relatively simple contractual requirement, these provisions have grown dramatically in scope and complexity. They now take up significant portions of virtually all record company contracts and often seek, for example, to set rates for lyrics and video exploitations. All of these provisions have the same, single purpose: to allow record companies to retain ever greater amounts of money otherwise due songwriters and their publishers.

58. These controlled composition clauses have dramatically reduced the mechanical royalties paid, to the point where songwriters consistently receive significantly less than the already low compulsory rate on all of their songs that are recorded. As noted above, on average, these clauses fix the mechanical royalties payable by the record company at approximately 75% of the current statutory rate and impose a cap on the total number of songs on each CD for which any mechanical royalties are payable. In addition, these clauses often restrict copyright owners to grandfathered rates that were applicable to songs written and recorded decades ago, prior to statutory increases in the mechanical royalty. It is because of provisions such as these that our iconic artist-songwriter Carlos Santana, for example, continues to receive less than two cents for most of the legendary songs he wrote and recorded in the 1970s.

59. The declining share of revenue that we receive from mechanical royalties is particularly indefensible, in my view, because it stands in contrast to the increasing market value for our music. One need only look to the vibrant and burgeoning market for film, television, commercial and video game synch licenses (not to mention

the booming online world). In these important markets, the standard division of fees between owners of the composition and owners of the sound recording is generally 50:50 — in other words, parity. Conversely, the proportion of fees that songwriters earn from mechanical royalties amount to nothing close to the revenue that goes to owners of the sound recordings.

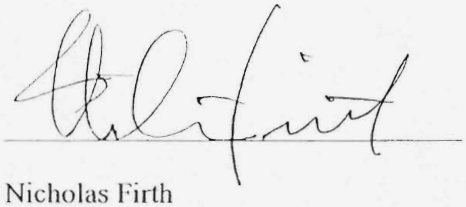
60. There are, in my view, two essential economic components of a recording — the written composition by a songwriter and the recorded performance by an artist. Fundamentally, it makes no sense to me that the owners of the former are so much less compensated than the owners of the latter. In my opinion, this is due in part to the fact that the mechanical royalty was originally set at a mere two cents. Although the statutory rate has increased somewhat over time, increases from such a low historical base have not resulted in a rate that reflects current market realities or an appropriate division of the economic pie. Had the two cent rate been adjusted only for inflation — let alone to reflect the increasing value of music — it would today be over 40 cents, more than four times its current level. Regardless of the reason for the low mechanical royalty, this tribunal has the opportunity to correct this historical injustice.

61. In conclusion, I am convinced that increases in the mechanical rates for both physical and digital copies are essential to ensuring that songwriters continue to have an adequate opportunity and incentive to produce great music, and publishers earn an appropriate economic return on our investments so that we may continue to provide songwriters with the assistance and services that are necessary to the process of creating great new songs.

Declaration

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 29, 2006
New York, NY



Nicholas Firth
Chairman and Chief Executive Officer,
BMG Music Publishing

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Before the
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LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding	Docket No. 2006-3 CRB DPRA

WITNESS STATEMENT OF BOB DOYLE
ON BEHALF OF NATIONAL MUSIC PUBLISHERS' ASSOCIATION, INC., THE SONGWRITERS GUILD OF AMERICA AND THE NASHVILLE SONGWRITERS ASSOCIATION INTERNATIONAL

1. My name is Bob Doyle and I have been the President of Major Bob Music, a music publishing group based in Nashville, Tennessee, for nineteen years. I graduated from the University of Missouri with a Bachelor's degree in Business in 1971. After serving in the Air Force as an Air Training Command Instructor Pilot for five years, I moved to Nashville in 1976 and have worked in the music industry ever since.

2. I make this statement to: (1) describe the vital role independent music publishers play in the music and entertainment industries through their work to develop songwriters, promote the craft of songwriting, and manage the creation and exploitation of their songs; and (2) emphasize the need for an increase in the statutory mechanical rate.

Background

3. I have been involved with music since I was very young. Growing up, I played percussion in grade school and high school orchestras. In college, I played

the drums in a band organized in my fraternity. I grew to love country music while I was stationed in Selma, Alabama, in the Air Force, and moved to Nashville to pursue that interest.

4. My first job in the music industry was in the mailroom at Warner Bros. Records. From there, I worked my way up to a position in the Artist & Repertoire ("A&R") department. The primary function of the department was to identify talented artists and sign them to recording contracts with the record label. It was there that I learned firsthand the great value a song adds to the success of an artist's career, and I quickly began to appreciate the value in the music copyright itself. In 1980, I went to work for the American Society of Composers, Authors and Publishers ("ASCAP"), a performing rights organization that licenses the performance right in musical compositions, in order to learn more about the music business and the value of copyrights. I served as Director of Member Relations for almost seven years. My primary job was to sign up new writer and publisher members and work towards increasing the size and value of ASCAP's repertoire.

5. While I was working for ASCAP, I met and signed to membership the then-unknown singer-songwriter, Garth Brooks. Although I knew that Garth was extremely talented and had the potential to be enormously successful, he was having a difficult time obtaining a music publishing deal. In 1987, I left ASCAP, and founded Major Bob Music in order to represent songwriters and build a publishing company. My first two writers were Garth Brooks and Larry Bastian. Bastian was an established songwriter who had begun writing in the 1970s and already had songs recorded by

Tammy Wynette, Conway Twitty and the Kendalls, among others. Brooks was still, at that point, an unsigned singer-songwriter hoping for a record deal.

6. Since then, Major Bob Music has expanded in many directions. We now have offices in Nashville and New York, and have one producer-songwriter working out of Los Angeles. We have a carefully assembled roster of dedicated and diverse songwriters who have populated our catalog with songs in the country, pop, folk and R&B/Urban genres. While Garth Brooks is still the company's most prominent songwriter, Major Bob, as a music publishing group, has been very successful. Among others, we represent Canadian George Canyon, who was honored as Canadian Country Music Association Entertainer of the Year in 2005, Neil Thrasher, the 2004 ASCAP Writer of the Year.

7. Our songs have appeared on over 45 platinum and gold-certified records in the U.S., representing around 150 million records sold. Chart hits include Reba McEntire's "What Do You Say"; Kenny Chesney's "There Goes My Life"; and Lee Ann Rimes' "Commitment," which became a triple platinum single. "The Fool," recorded by Lee Ann Womack, was the first hit by three of our songwriters and went on to win SESAC's Song of the Year award in 1997. Garth Brooks has written 14 of his 26 number one singles for Major Bob, and has now sold over 120 million records.

8. Major Bob provides songwriters with the full range of services they need to launch their careers and build on their successes. We devote considerable resources to discovering and developing songwriters. Besides me, we have a full-time creative staff of three individuals and one copyright administrator. The creative staff is dedicated to finding new talent, working with the writers on our roster, producing demos,

and pitching new songs and catalogs to record companies. Just like an editor at a publishing house, we work with our writers on a daily basis to help them hone their talent, improve their works, and promote their songs.

9. As I discuss in more detail below, Major Bob also handles important administrative tasks, such as registering songs for copyright protection, collecting and distributing royalties to songwriters, licensing the catalog for various uses, and, when necessary, taking legal steps to protect the income of our songwriters and the copyrights of their works. These efforts allow our songwriters to focus on writing songs. Everything we do is meant both to support and develop our writers and to offer quality music to the listening public.

Discovering and Developing Songwriters

10. Discovering talented songwriters is one of the most important and exciting roles of a music publisher. Like the A&R departments at the major record companies, we search for talent by attending live performances where new writers are appearing. We also rely heavily on word of mouth recommendations from our writers or other friends in the industry. I first met Garth Brooks, for example, through his landlady at the time, who was also a songwriter. She gave me a tape of his songs — which I liked immediately — and arranged our introduction. As I have already explained, when I started Major Bob Music, Brooks was still unpublished as a writer and I asked him to write for us.

11. Finding and signing new talent requires a tremendous amount of work, including evaluating whether the writer will fit our current roster and his or her likely chances for success. It is not always easy to find the sort of talented songwriters

we are looking for, but our efforts have paid off several times. In addition to Garth, another example is Neil Thrasher, whom we discovered after he moved to Tennessee to play college football and subsequently joined a quartet vocal group named Indian River. We first met Neil on the road, when Indian River opened for Garth at a benefit concert. Garth liked the group so much that he decided to use them on an album he was working on at the time. As our creative staff worked with Neil on a subsequent project, we discovered that he was also a talented songwriter with a lot of promise. We signed him to an exclusive songwriting deal soon after. Since then, he has developed into one of Nashville's finest and most respected writers. His songs have been recorded by artists such as Kenny Chesney ("There Goes My Life"), Reba McEntire ("What Do You Say"), Rascal Flatts ("Fast Cars and Freedom"), and Don Williams ("Crackerjack Diamond"), among others.

12. As this example shows, our efforts to find talent are not limited to finding only pure songwriters. We recognize that many of the best songwriters are also talented performers, and thus we look for talented singer-songwriters. We are dedicated to finding the best of both. In some cases, we have found individuals who came to us as pure songwriters, but who we believed could also become successful recording artists, and we helped them to develop their careers. I am committed to keeping a good mixture of pure songwriters and singer-songwriters on the Major Bob roster. In fact, I have recently diversified our talent base further by adding a producer-songwriter to our roster.

13. Today, about half of our songwriters are singer-songwriters. We introduce these multi-talented individuals to our many contacts in the record industry, thereby facilitating new relationships between singer-songwriters and record companies.

Garth Brooks is clearly our most prominent example of this. He signed his music publishing deal with Major Bob after being turned down by other publishers and well before he was able to get a record deal. In fact, major labels such as Columbia, RCA, MCA, Warner Bros., and initially Capitol Records, all passed on the chance to sign Garth. It was only through our efforts to get him into a music publishers' showcase, where representatives from Capitol had a chance to see him again and realize what they had missed, that Garth was finally able to secure a recording contract with the label. This story demonstrates that our efforts, and those made by other music publishers, to find and develop recording artists are just as important, and can be just as fruitful, as those made by the recording companies.

14. Once writers are signed, we play a crucial role in nurturing their talent and helping them write their songs. For our new writers, songwriting becomes a highly collaborative exchange of ideas and feedback. Along with Major Bob's experienced creative staff, I continue to work with our writers, helping them to figure out what does or does not work with a new song or to modify their lyrics and melodies. We take the intricacies of songwriting as a craft very seriously, and consider it very important to help our newer writers learn the art, improve their technique, and develop the highest quality output.

15. In addition, we help to match our writers with co-writers. These matches are made on the basis of my and my creative staff's relationships as well as Major Bob's reputation in the industry, and are especially important for young songwriters who can benefit from the experience of more established collaborators.

16. Both of our offices also have fully-equipped studios that we use to work with new artists and songs in the most realistic way possible. Each required an initial investment of over $20,000, and we continue to invest several thousand dollars each year for maintenance and upgrades. In Nashville, this studio enables us to record guitar or piano vocals when a full band recording is not needed. In the New York studio, very often a complete musical track is recorded by way of a computer, which in some cases is then used as the master recording by the record company and artist.

17. Of course, the support we provide songwriters goes beyond artistic development. Any individual with creative talent needs time to develop and exploit his abilities. We make it possible for songwriters to work on their craft by providing them significant advances on future royalties, often at very early stages of their careers and in many cases prior to their having any of their songs recorded by an artist or record company. All but one of our current writers receive advances, in the form of salary draws, from us. These advances range from average around $38,000 per year for our current roster. In many cases, our songwriters use these advances to pay for basic living expenses so that they can dedicate as much of their time as possible to songwriting instead of being forced to take other work just to get by. Because we know that making demos, traveling to co-writing opportunities, and live performance showcases for singer-songwriters are important parts of getting a new career started, we also offer to advance those costs as well. Songwriters use royalties they may later earn to cover their portion of these expenses. Even though it requires a substantial and risky financial investment on our part, we know that the financial support provided by music publishers is as important as the creative support and we remain committed to helping our writers in this way.

Unfortunately, we also know that our advances alone are hardly enough to sustain a songwriter.

18. Although we are able to recoup our advances in some cases, the nature of our business is that some of the songwriters we invest in ultimately are not commercially successful, and in those cases our advances are never recouped. With our current roster, about 85% of our yearly advances are not recouped yet. The bulk of this roster represents writers in the developing stages of their careers. When we work with new, unsigned songwriters, we are typically able to retain 50% of the copyright royalties, the entire amount earned from the publishing share. This helps to compensate us for the risk of signing totally unknown writers. This is not the case with more experienced, well-known songwriters, and those who come to us with record deals. Because increased expectations of their future successes allow these songwriters more leverage, we may negotiate as our share only 25% of the total royalties. Even with established writers and singer-songwriters, however, we still bear the risk that the work they do with us will not succeed commercially and that we will never be able to recoup our investment in their creative endeavors.

19. I believe that music publishers are increasingly taking over for the A&R departments at the record companies when it comes to artist development. As I have already mentioned, Major Bob was originally founded to launch Garth Brooks' career. No one else in Nashville wanted to take a risk on him. But I was so committed to developing his career that I mortgaged my house to provide the financial backing that he needed.

Promoting Our Artists and Their Songs

20. Many of the songs produced by our songwriters and creative staff will ultimately be shopped to record companies and artists. Given our experience producing songs that have been well received by the record companies and the music-listening public, we have developed a strong sense of music users' tastes and preferences. Accordingly, we are able to help our songwriters craft their songwriting process in an attempt to tailor their works to their audiences. We know that audiences will connect to a song before they connect to an artist, or writer. Our ability to help shape the songs as they are written increases the chances that this will happen.

21. Before we present new songs to the record labels, we must make demo recordings of the songs. From start to finish, demo recordings require a substantial investment of time, resources and creative effort, even when done in our in-house project studios. But since these recordings are so essential to the process of marketing songs, we believe they are well worth the investment.

22. An effective demo recording is not easy to produce, and we bring considerable know-how to the process. Any piece of music can be arranged in a variety of different ways, but it takes the best combination of production and vocal performance to exploit the song's full potential. Often, songwriters come to us with interesting pieces of music on paper, but without a clear sense of the best way for the song to take shape off of the page. Sometimes we tailor demo recordings to the tastes of particular recording artists who may be interested in performing certain types of songs. Along with the quality of the song, the quality of the demo tape is crucial in determining whether record companies are going to be moved by a particular song and interested in recording it with

one of their artists. Our writers benefit from years of experience presenting songs to record companies in ways that make the songs most attractive.

23. Another important element of helping our songwriters advance their careers is matching them with the best recording artists. We have extensive contacts in the music industry and well-established relationships with producers, artists and record companies. On numerous occasions, we have used our connections to arrange collaborations between our writers and artists, many of which have been extremely successful. For example, the latest album by Rascal Flatts, a country band that has become increasingly popular and just won the Country Music Association's Award for Vocal Group of the Year, has five songs written by Neil Thrasher, including "I Feel Bad" and "Ellsworth Kansas." So far, this album is the biggest selling album of 2006 in all music genres.

24. For our songwriters who also aspire to become recording artists, we are very involved in formulating career development strategies. We work closely with our singer-songwriters to select songs from their repertoire that will best reflect their artistic point of view and to present those songs as an artist package to record companies. We often pay for demos and showcases for these artists so they can further demonstrate their talents.

25. Once one of our songwriters has produced a song that we believe in, and believe will be marketable, we take the lead in presenting the song to record labels, hoping that one of their artists will record it. For both pure songwriters and singer-songwriters, the recording and release of our songs is critical for us to receive royalty revenues.

26. Sometimes our efforts in pitching a song to the labels pay off quickly. For example, Neil Thrasher's song "There Goes My Life" was picked up and recorded by Kenny Chesney only about two months after it had been written. Other times, a song might be around for years before an artist finally records and releases it. We have another song that Kenny Chesney has held, in order to record, for two years. Garth Brooks, as another example, decided to record "The Dance," which became a #1 single in 1990, roughly seven years after it was written.

27. One final example of how we guide a songwriter through this entire process is the song "I Don't Know What She Said," written by Lane Turner and released earlier this year. We had planned a demo of twelve new songs, six of which were Lane's. When he first brought the songs in, they showed real promise but also needed a lot of work. At least two rounds of editing were done before the demo was even started, and all three members of our creative staff worked with Lane to improve the songs to the point where we believed they would attract the record companies. Even while we were recording the songs in our in-house studio in Nashville, we were all still working on the lyrics. The completed demo was pitched to a wide range of recording companies and artists. BNA Entertainment, a subsidiary of RCA, licensed the song and had it recorded by Blaine Larsen. As a single, the song reached #22 on the country charts this past summer.

28. Our work is far from done when an artist records one of our songs. For example, we assist record companies in marketing albums even after they hit the market. We have supplemented the labels' radio promotional budgets, provided free

promotional downloads, and even placed advertisements on our own to help market new albums.

29. Major Bob prides itself on maintaining long-term relationships with our writers. Our collaboration with Garth Brooks, as I have explained, has lasted almost twenty years, the entire life of the company. As his publisher and manager, we have made an essential contribution to the success he has experienced over the last seventeen years. We have also enjoyed a twenty-year relationship with Larry Bastian and a thirteen-year relationship with Neil Thrasher.

30. Mechanical licenses constitute the bulk of our licensing activities, but through our copyright administrator we also handle certain other licensing activities on behalf of our writers. For example, Major Bob has participated actively in the transformation of some of our most popular songs into ringtones. When approached by a potential licensee, we take the lead in negotiating the royalty agreements for their commercial exploitation. Each ringtone is negotiated separately and we have successfully licensed about fifteen songs with a variety of ringtone companies, including "Fast Cars and Freedom," recorded by Rascal Flatts, and "Findin' a Good Man," recorded by Danielle Peck.

31. Synchronization licenses are negotiated even more frequently, and we typically handle a few requests each week. Songs by Garth Brooks and Neil Thrasher are particular favorites for, among other things, Country Music Television videos and spotlight shows. As with ringtones, synch licenses are negotiated on a case-by-case basis with terms such as timing, territory, type of use and rate determined by the producer's needs and the overall circumstances.

32. In sum, our efforts to discover, develop and promote our songwriters is a significant — if not the most significant — portion of our business. The investment we make to this part of our business is integrally connected to every other part and directly influences the quality of the music we produce. Our company is critically engaged in the creative process from beginning to end and proud of the contributions that we have made, and are continuing to make, to American music.

Protecting the Rights of Our Songwriters

33. We also make great efforts to protect our writers' copyrights. We understand that copyrights help to protect the foundation of the financial success of our songwriters and our company and the music industry. Accordingly, we recognize that it is important to monitor the copyrights we represent from the very beginning of the songwriting process.

34. First, we assume the responsibility of registering our songs with the Copyright Office and with the applicable entities in other countries. We also handle the registration of each new song with the performing rights organization with which the writer is associated.

35. Registration is only the first step. We are also responsible for collecting royalties. This itself is a substantial undertaking, as we have hundreds of songs in our catalog that earn royalties with each reproduction and distribution. Because we recognize the financial responsibilities we have for our writers to keep accurate accounts of their royalties, we have invested several thousands of dollars in Right Track, a computer system used by many music publishers and also available to the recording companies, to ensure that we collect the appropriate royalties and distribute them

correctly. We also audit the royalties we receive to be sure that our writers are earning all to which they are entitled.

36. Finally, a major aspect of our efforts to protect our songwriters' rights is by representing their interests in infringement actions or other cases that present important issues of copyright law. In addition to isolated copyright infringement suits when individual works are being infringed, we have participated in broader, more publicized actions. We sued MP3.com to challenge their unauthorized use of Garth Brooks' music, and also challenged a group of major karaoke companies for using our music without synchronization licenses. Songwriters do not have the time or resources to fight these fights individually. Consolidating these functions in our company allows our songwriters to know that their interests are being zealously protected even while they focus their own attention on their musical careers. Finally, of course, we participate in proceedings such as this to ensure that music publishers and songwriters are fairly compensated for their great contributions to American music.

The Impact of the Digital Age on Songwriters and Music Publishers

37. Country music is still a relative newcomer to the world of digital music, but we are confident that digital music will be a powerful way to increase the public's awareness of and access to our works.

38. The fact that music is increasingly distributed in digital form does not change much of what we do; our contributions to the creative process of our songwriters remain the same no matter how the public receives the finished product. At the same time, digital distribution of music has substantial implications for how consumers pay for their music and, ultimately, how songwriters receive compensation for

their works. It is critical that the royalty regime for digital music ensure a fair and adequate income for songwriters in order to preserve the incentives to create great music.

39. As we have seen with many of our songwriters, hit songs can drive album sales in CD and other physical media formats. This is important for several of our songwriters who have one or two songs on an album that are not released as singles. Not only will the purchase of an entire album generate royalties for our writers, it will also allow listeners to discover our new music even if it is not be played on the radio. Digital download technology, however, permits consumers to download only particular songs, rather than purchase an entire album as they typically would with a physical sale. Thus, in the track-based digital environment, the sale of an individual hit song no longer necessarily results in the sale of the album. This poses a serious threat to our mechanical royalty stream, because many of our writers' songs are not released as singles. We still earn royalties if the album sells, but if the market becomes almost entirely singles driven, the "hits" already being played on the radio will be purchased alone, and our writers' songs may not be. For example, none of the five Major Bob songs on the current Rascal Flatts album were released as singles. If users chose to download only those songs released as singles, we would receive very little for these songs, if anything, in the digital music market.

40. Finally, while the digital market offers some great opportunities for music publishers and songwriters alike, it has also wreaked havoc on our intellectual property rights — and consequently our compensation — by enabling an unprecedented level of music piracy.

Our Financial Position and the Need for Increased Mechanical Royalty Rates

41. Providing the services we provide to songwriters, and providing them well, is an expensive endeavor. The costs of our talent-scouting efforts, equipment, outstanding staff and, indeed, our talent itself, continues to increase. Yet our revenue, based primarily on the mechanical royalties we receive, has not been keeping pace. In volume, mechanical royalties have actually been declining. In 2000, we earned $420,000 in mechanical royalties. In 2006, we have earned only $226,000 thus far. We have tried to restructure writing deals or rely on performance royalties to make up for this, but it is not enough. Unlike record companies, which can cut costs during industry downturns, many of our costs, such as guaranteed advances to songwriters, are fixed.

42. The mechanical royalties we earn for our songs are unfortunately low given how popular some of our recent songs have been. We have had thirty-eight successful cuts so far in 2006, including songs on the recent Rascal Flatts and Carrie Underwood albums. Yet we have only earned, on average, around $6,000 in mechanical royalties per song. Given that the majority of country artists, due to the nature of the genre, typically do not produce multiplatinum albums, this average royalty rate is unlikely ever to improve, absent an increase in the mechanical rate. Furthermore, this sum is obviously far less than what record companies can make on the same pieces of music.

43. Since the late 1990s, our mechanical royalties have been — and continue to be — depressed by a number of factors. For one thing, controlled composition clauses are consistently used to reduce further the mechanical royalties that songwriters receive. These clauses, which record companies include in contracts with recording artists who are also songwriters to reduce their right to mechanical fees, are

passed down to the songwriters, producers and music publishers who work with such recording artists. A 25% reduction in the statutory royalty is common. As a result, many of our songwriters do not even receive the already low statutory rate on all of their recorded songs.

44. This problem is only exacerbated by the increasing number of cross-collateralization contracts, under which singer-songwriters receive their mechanical royalties only after deducting recording companies' expenses including digitization costs, and free goods clauses, which also reduce the base against which royalties are measured. Whenever I negotiate a contract on behalf of our writers, I make a strong effort to remove or limit the scope of controlled composition clauses. Unfortunately, my efforts rarely pay off completely as most recording companies demand these provisions.

45. As noted above, music piracy also has cut into the royalties received by songwriters and music publishers. Piracy has directly contributed to declining record sales. Selling one million copies of an album has always been considered a benchmark of a great success. Nonetheless, it used to be an attainable objective, and a threshold that our songwriters were able to reach on numerous occasions. It is now much harder to sell a million — or even a half million — records, since many music users prefer to find the music they want for free on the Internet.

46. To demonstrate the challenges in our compensation scheme, take the example of Lane Turner's "I Don't Know What She Said." As I noted earlier, the song reached #22 on the charts, and sold 60,000 copies. The writing share of this song, however, generated only $2,730, of which Lane earned only one-third, $910, as he had co-written the song with two other songwriters. His entire writing share then went to

recoup his advances with us. As publishers, we also earned only $910 in mechanical royalties since the publishing share of $2,730 was also split three ways. If the song had not been released as a single, thereby producing performance royalties, this would have been all we earned from the song. Lane has been writing for Major Bob for four years. We believe he is immensely talented and are proud of the substantial investment we have made in his career. But since our financial returns on his successes are constrained to such a degree by the statutory rates, we have a long way to go in order to recoup that investment.

47. In light of these current economic realities, and looking forward to what we can reasonably expect in the future, we are convinced that an increase in the mechanical rate is essential. Compulsory phonorecord rates are one of the few instances of price control in the American economy. In a true marketplace, songwriters and publishers would be able to push for the highest rate the market would bear. If mechanical rates are going to eliminate the opportunity to negotiate, they must be set at a level where they will sufficiently compensate songwriters and publishers for the creative contribution we all continue to make.

48. All of the decisions we make on behalf of our songwriters are affected by the royalty rate. If statutory rates were higher, we would have more money to put back into the publishing process and the songwriters on our roster would undoubtedly benefit. Our current writers would be able to earn a bigger draw from their work, or receive increased advances. We might also be able to sign additional writers. These things are not possible with rates at their current levels.

49. Increasing the mechanical rate is also a matter of simple fairness. It is clear that a recording company can license the master recording at whatever rate the company can secure. Yet today the royalty paid for the composition — the underlying song, from which any economic value necessarily originates — is limited to 9.1 cents. The discrepancy is obvious, outdated and unnecessary.

50. As many independent music publishers in Nashville can tell you anecdotally, every year proves harder for us financially. Even with a star like Garth Brooks on the Major Bob roster, we struggle to do all the things we would like to do creatively while still making a profit. We have to have something in the works at all times, and we have to keep the number of royalty-earning songs up. These are not easy things to predict or guarantee. I know that Major Bob has been extremely fortunate.

51. In sum, copyright protection was originally established to protect and promote the incentive to create. Mechanical rates must be set at a level that preserves, rather than undermines, this incentive. Only with increased royalty rates will music publishers be able to continue providing songwriters with the assistance and services that are necessary in the creative process. Only with increased royalty rates will songwriters continue to have an adequate opportunity and incentive to produce great new music.

Declaration

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 30, 2006
Nashville, TN

Bob Doyle
President,
Major Bob Music, Inc.

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Before the
COPYRIGHT ROYALTY JUDGES
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding	Docket No. 2006-3 CRB DPRA

WITNESS STATEMENT OF RICK CARNES ON BEHALF OF NATIONAL MUSIC PUBLISHERS' ASSOCIATION, INC., THE SONGWRITERS GUILD OF AMERICA AND THE NASHVILLE SONGWRITERS ASSOCIATION INTERNATIONAL

1. My name is Rick Carnes, and I live in Nashville, Tennessee. I have been a songwriter for almost thirty years. I make this statement to: (1) describe the important contributions American songwriters make to the music and entertainment industries; (2) discuss the struggles we face in making our contributions; and (3) emphasize the need for an increase in the statutory mechanical rate.

2. I am currently the President of the Songwriters Guild of America ("SGA"), and have been since 2003. The SGA is a national association of songwriters. Its primary functions are to promote the interests of authors and composers in their dealings with those who market and use their creative works, advocate for songwriters in legislative matters, and educate the community about music and songwriting.

3. The SGA is keenly aware that American music has been the backbone of entertainment exports to the rest of the world, a major foundation of America's gross national product and, more importantly, a touchstone of our emotions, memories and lives. The SGA seeks to protect this valuable commodity by ensuring that

those who seek to make music (and songwriting) their career are able to do so at a wage that allows them to care for themselves and their families.

4. For songwriters who have not yet been published, the SGA offers education, critiques, pitch opportunities, competitions and other chances to help writers hone and share their craft. For professional songwriters, the SGA offers assistance with publishing, royalty audits and collection, catalog administration, and legislative advocacy.

5. In additiona, the SGA Foundation is a non-profit agency that engages in outreach to communities and populations in need of education about songwriting, music and the role these arts play in the enrichment of our lives. Outreach efforts include educating students, teachers and others in the art of songwriting and basic music skills. The SGA Foundation also works to develop creative skills and the business skills needed to survive in the music business.

6. I care deeply about the music industry and the role of songwriters within it. Serving as SGA President keeps me on the front line of the battle to maintain the viability of songwriting as a career and creative endeavor.

Background

7. I went to Memphis State University, and graduated in 1972 with a bachelor's degree in Political Science and in 1974 received my Master's degree in Elementary Education. I began my music career shortly thereafter as both a singer and songwriter, working together with my wife, Janis. I started performing in clubs as a way to earn money during the recession in the mid-seventies. When Janis and I decided to

make our careers in the music business, we saved money for several years and then moved to Nashville in 1978.

8. Our earlier years of trying to break into the music business in Nashville were difficult. After the move, we wrote and recorded songs together but barely made enough money on which to live. Janis supplemented our income by doing commercial artwork. It took us three years to write four songs. Eventually I had some success in getting our songs recorded, and around 1985 decided to become a pure songwriter.

9. I am fortunate to have had some songwriting success. In 1981, I wrote Reba McEntire's first number one hit "I Can't Even Get the Blues No More." That year, I also co-wrote three top ten hits for The Whites: "You Put the Blue in Me," "Hangin' Around," and "Pins and Needles." Since then I have co-written a number one song for Garth Brooks, "Longneck Bottle," and have had songs recorded for major country artists such as Dean Martin, Conway Twitty, Alabama, Steve Wariner and Pam Tillis, among others.

Challenges Faced by the American Songwriter

10. The American music industry is the most successful in the world. This vast industry begins with the song, which begins with the songwriter.

11. Despite the important contributions songwriters make to the music industry, the vast majority of professional songwriters live a perilous existence. In fact, American songwriters have endured decades of decline.

12. Successful songwriting takes hard work, dedication and luck. When I am writing, I devote eight hours a day to writing and perfecting my songs. I co-

write many of my songs with other writers, including my wife. Generally, it takes one to two days to create one country song and three to four weeks to create a jazz song. Sometimes, it takes considerably longer. For example, I have songs that I have been working on for eighteen years.

13. Whether a particular song will become a hit is unknowable at the time it is written. Of course, the more songs I complete, the better likelihood I have of scoring a success. Even after the song is written, much more time will be spent in the recording studio to refine and perfect the song. I work on writing songs five days a week, and, for the past thirteen years, I have generally written between thirty-five and fifty songs per year. Of that number, few are actually recorded; I estimate that I write fifty songs for every one that gets recorded. Even of those songs that are actually recorded, only a small number go on to be commercially successful.

14. A songwriter is considered very successful if his or her song sells one million copies. I have had two million-seller songs and one song, "Longneck Bottle," that sold nineteen million copies. A success like "Longneck Bottle" is a once in a lifetime event.

15. Even million-seller songs, however, do not reap great rewards for songwriters. Under the current compulsory licensing provisions, a songwriter receives 9.1 cents per song on any CD ("phonorecord") manufactured and distributed or legally downloaded in the United States. In theory, a song that sells one million copies should net $91,000 for the songwriter. Because the songwriter typically splits that money with his or her music publisher by contract, the songwriter typically will only receive approximately 50% or $45,500. Then, if the songwriter co-wrote the song with the artist

who recorded it, the amount is split in half again or in thirds if there is more than one co-writer. Therefore, frequently the songwriter receives at most $22,750 on a million-selling song. Compare this to the federal poverty guideline of $20,000 for a family of four. It bears repeating that very few songwriters achieve anything close to this success.

16. There is another factor that could even further reduce a songwriter's royalty compensation: controlled composition clauses. A controlled composition is a song that has been written or co-written by the recording artist. Typically, record labels require clauses in their artist contracts that the mechanical royalties on the artist's co-written songs will be 75% of the statutory amount. Thus, the $22,750 a songwriter receives may be further reduced to $17,062.50. Compare this amount to the millions that the record company could receive on a million selling album. The disparity is obviously unfair and the best indication that songwriters are not fully compensated for their creative contributions.

17. This is not just an empty example; it is what happens to songwriters every day. For me, "Longneck Bottle" has been my most successful song; it first appeared on Garth Brooks's album "Sevens" in 1997, and was recently re-released on a box set called "The Limited Series." For "The Limited Series," the record company demanded that the statutory mechanical rate be cut in *half*, so that my co-writer and I would receive a royalty of 4.5 cents per song, rather than the 9.1 cents rate. The label threatened to drop the song from the album and never release it again, a legitimate threat since the company owned the master recording, if we did not agree to this rate. We then had to split the proceeds with our publishers and then divide the writer's share between ourselves. The album debuted at number 1 on the Billboard 200 and the country charts

and sold two million copies. Yet, I received only $22,500 for my work, which means the effective rate for the song was 1.125 cents.

18. The challenges faced by songwriters today do not end there. Internet piracy has caused enormous losses for record labels and songwriters alike. Every song lost to piracy harms songwriters as much as, if not more than, the lost revenue harms the record companies.

The Mechanical Royalty Rate Should be Increased

19. The Copyright Owners propose that mechanical royalties be increased in the following ways: The royalty paid for physical phonorecords should be the greater of 12.5 cents per song or 2.40 cents per minute of playing time or fraction thereof. The royalty paid for permanent digital downloads should be the greater of 15 cents per track or 2.90 cents per minute of playing time thereof. Both of these rates would be adjusted for inflation according to changes in the CPI. For limited digital downloads, the rate should be expressed in a three-part rate: the greatest of 15 percent of revenue, one-third of the costs of musical content, or the greater of $0.0033 per use or $0.00064 per minute of playing time or fraction thereof, subject to the same inflation adjustments. The rates for interactive streaming should be determined by a similar three-part rate: the greatest of 12 ½ percent of revenue, 27 ½ percent of the costs of musical content, or the greater or $0.00275 per use or $0.00053 per minute of playing time or fraction thereof, subject to inflation adjustments. Finally, for ringtones, the Copyright Owners also propose a three-part rate: the greatest of 15 percent of revenue, one-third of the costs of musical content, or 15 cents per ringtone, subject to inflation adjustments. Additionally, the Copyright Owners propose a series of terms meant to ensure the timely

and accurate payment of compulsory license fees. These changes are warranted by the many challenges facing American songwriters.

20. First, the current statutory rate does not provide a fair return to the songwriter. As explained above, songwriting is incredibly labor intensive for the writer, and even million-seller songs provide only modest returns. When this amount is compared to the millions received by record labels, which often include controlled composition clauses in their singer-songwriter contracts that effectively decrease the mechanical rate, the statutory rate must be increased out of simple fairness to songwriters and to reflect fairly the relative creative contributions of the parties.

21. Songwriters depend on mechanical royalties for their livelihood. For many songwriters, mechanical royalties simply do not provide enough money to allow them to support themselves and their families. Failing to increase the rates will force even more songwriters out of the profession. This means fewer songs, and thereby undermines the ultimate objective of the statutory rate, which is to maximize the number of creative works. By contrast, an increase in the statutory rate will allow songwriters and music publishers to increase the pool of available songs and maximize the number of creative works. If the rates are decreased, most songwriters I know, myself included, would face economic uncertainty. Many of us would not be able to pay our bills or support our families. And, as we suffer personally, American musical culture — long a source of enormous national pride, international prestige, and positive trade balance — is endangered along with us.

22. An increase in the mechanical rate is also vital to the continued livelihood of music publishers who, in turn, are critical to songwriter success. Music

publishers play an important role in song development. Music publishers allow songwriters to focus on the creative process of songwriting by focusing on the administrative details of having a song recorded and protecting that song. Music publishers take an active role in the careers of their songwriters and develop and nurture songwriter talent from the early stages. They support songwriters by providing advances to pay for our basic expenses until our songs begin to generate revenue. It must be remembered, though, that these monies are advances, not additional streams of income, and are recouped from any royalties later earned.

23. The role of a music publisher can take many forms. Music publishers are primarily responsible for pitching a writer's songs to artists, producers or A&R people at record labels. Music publishers are especially critical at the early stages of a songwriter's career when the publisher may take on an unproven songwriter and develop him or her to the stage where a record company takes him or her on. In addition, music publishers register songs for copyright protection and collect royalty payments on behalf of songwriters. Music publishers also promote songs for use in television shows, movies and other media that enable songwriters to earn synchronization royalties.

24. Music publishers depend on income from mechanical royalties. A decrease in the mechanical rate would impair their ability to develop talent and cause them to sign fewer artists. Without the support of a music publisher, many songwriters would not prosper, and ultimately, the whole music industry would suffer.

25. Since 1994, I have worked exclusively with my music publisher, Peermusic. As far as I know, I am one of their longest running employed songwriters. My relationship with Peermusic has led to many recorded hits, including "Longneck

Bottle," which sold over 19 million copies, as described above. Without Peermusic's support, I would not have achieved the success that I did.

26. Finally, in the digital music era, online downloads enable consumers to choose and purchase only the most popular tracks. These tracks, which tended to drive album sales in the physical world, can now be purchased on an individual basis. As a result, average royalty rates that were acceptable to songwriters when consumers were purchasing an album with an average of ten tracks, will not provide the same incentive to create new music in an online environment that is track-based rather than album-based, also counseling for an increase in the mechanical royalty rate.

Conclusion

27. This is an exciting time for the music industry and a critical time for songwriters. Even with the tremendous changes in the industry, what still matters most is the music. Many songwriters do not write songs just to make money; we make money just so we can keep writing songs. An increased royalty rate will further that goal.

Declaration

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 29, 2006
Brentwood, Tennessee

Rick Carnes

I

Before the
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LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding	Docket No. 2006-3 CRB DPRA

WITNESS STATEMENT OF STEVE BOGARD ON BEHALF OF NATIONAL MUSIC PUBLISHERS' ASSOCIATION, INC., THE SONGWRITERS GUILD OF AMERICA AND THE NASHVILLE SONGWRITERS ASSOCIATION INTERNATIONAL

1. My name is Steve Bogard, and I live in Nashville, Tennessee. I have been a songwriter for over 40 years, and I am now the President of the Nashville Songwriters Association International ("NSAI"). I make this statement to: (1) describe the role of the NSAI and the important creative contributions made by our members to the music and entertainment industries; and (2) express my emphatic support for the proposed increase in the statutory mechanical rate.

Background

2. I have been a songwriter most of my life. In the late 1960s and early 1970s, I led my own band and was a recording artist. In the early 1980s, I became increasingly aware of the music scene in Nashville. In 1981, a song I had written eleven years earlier, "Touch Me with Magic," was recorded by Grammy Award-winning Marty Robbins. "Magic" became a top ten hit and won a BMI Performance Award. This success prompted my family's move to Nashville. Although I had my wife and two young children to support, only $5,000 dollars in the bank, and no job lined up, I knew I

wanted to write songs and believed that Nashville was the place to pursue my dream of becoming a successful songwriter.

3. I feel very fortunate to be able to say that I have a successful songwriting career. I have had songs recorded by artists such as Waylon Jennings, Conway Twitty, Sinead O'Connor, Tim McGraw, Kenny Chesney, Reba McEntire, and Tanya Tucker, among many others. I have written eight number one country songs, including George Strait's "Carrying Your Love with Me" and "Carried Away," Rascal Flatts' "Prayin' for Daylight," and, more recently, Jack Ingram's "Wherever You Are" and Dierks Bentley's "Every Mile a Memory." My songs have been purchased on over seventy million CD's, cassettes and albums.

4. In Nashville, I have worked with some great music publishers. After a brief time with the Welk Music Group, I signed a songwriting deal with Chappell Music in 1984. I worked with the publishing staff at Chappell, which ultimately became Warner Chappell, for twenty years. In 2004, I signed a multi-year co-publishing agreement with Famous Music.

5. I became a member of the NSAI over fifteen years ago. In 2002, I increased my involvement with the organization when I was chosen to serve on the Board of Directors. I began to participate in NSAI's legislative and lobbying efforts and soon was elected Secretary. When the former President of NSAI stepped down earlier this year, I proudly accepted the role of President. As President, I am responsible for keeping up with new legislative issues, especially those arising from new technologies, as well as maintaining the progress of our ongoing legislative efforts on any issue affecting the songwriting community. I also provide input and help represent the songwriters' point of

view on an almost daily basis with NSAI's Executive Director, who spearheads our fundraising and lobbying efforts, directs our programming and services for both amateur and professional members, and supervises our full time staff.

6. I care deeply about the music industry and the place songwriters hold within it, and I participate in a number of other industry organizations to advance our interests, including the Country Music Association, the National Academy of Recording Arts and Sciences, and Leadership Music. I have also served on the Board of Directors of the Academy of Country Music and on ASCAP's Southern Writer's Advisory Board. These activities, along with my work as NSAI President, keep me involved in the ongoing fight to preserve the viability of songwriting as a career.

The Nashville Songwriters Association International

7. The NSAI was established in 1967. The organization was intended to provide a support system for the Nashville songwriting community which was, at that time, small, disorganized and under-recognized. The founding members focused on increasing songwriter recognition, revising certain copyright law provisions, and lobbying for higher royalty rates.

8. The NSAI is now the world's largest not-for-profit songwriter trade association, representing approximately 5,000 members. We are dedicated to serving songwriters in all genres of music by advocating for their legal and economic interests. We are also committed to protecting the rights and future of the songwriting profession. We are currently in the process of increasing our presence and involvement with both the California and Texas songwriting communities.

9. The NSAI offers members a wide range of services designed to help them hone their songwriting talents, better understand the music business, make connections within the music community, and, once they start to earn money from their songs, protect that income. We also advise and inform retired songwriters and the families of deceased songwriters as to their legal and royalty rights.

10. Aspiring songwriters can find workshops on these and other related topics in over one hundred cities worldwide, and they can also access video seminars and panel discussions online. They are encouraged to take advantage of our unique Song Evaluation Service, where they can send in new songs to be critiqued by professional, published songwriters. The NSAI also sponsors educational retreats, such as our "Songposium" week and Song Camps throughout the year. We organize showcases like the "Pitch-to-Publisher Nights," and have, on occasion, helped set up appointments for new artists and writers with representatives from record labels.

11. Members of the NSAI's professional division are responsible for much of the popular country music written and performed today by stars such as Reba McEntire, George Strait and Garth Brooks. Our membership also includes songwriters working in the pop, adult contemporary, and contemporary Christian genres. These more experienced songwriters benefit from NSAI efforts as well. In our ProSeries events, we provide information ranging from health insurance for songwriters to how to recapture copyrights that were transferred prior to 1978. Our professional writers are able to participate in our networking and pitching opportunities as well. We also encourage mentoring relationships between established members and new members. Such

relationships help ensure that new generations of talent will be able to perpetuate and revitalize the industry.

12. Outside the organization itself, the NSAI promotes awareness of the songwriter's cultural and creative contributions to both Nashville and to American popular music. Our yearly songwriters' festival, Tin Pan South, will celebrate its fifteenth anniversary next spring. This year's event will feature more than 250 of the nation's top professional songwriters performing in over seventy shows over a five night period. Last year's lineup included performances by NSAI members such as CMA Song of the Year Winner Craig Wiseman, Grammy-nominated singer-songwriter Beth Nielsen Chapman, two-time Emmy award-winning songwriter Victoria Shaw, and Emerson Hart, the lead singer and chief songwriter for the multi-platinum, Grammy-nominated alternative rock band Tonic. Events such as these are designed to celebrate songwriters and elevate their position in the broader music community.

13. We also champion the legal rights of professional songwriters. NSAI songwriters have lobbied Congress on a variety of issues, and thanks to these efforts, songwriters have finally earned a recognized place at the legislative table. Over the years, our songwriters have made over 2,000 individual visits to Congress, mostly at their own expense. We recently spearheaded the passage of the Songwriters Capital Gains Tax Equity Act that was signed into law on May 17, 2006. This bill corrects a decades-long inequity and allows songwriters to pay the same tax rate on catalog sales as their corporate partners. High on our current agenda is finding new ways to combat music piracy.

14. The NSAI also works with the recording industry on important issues facing songwriters. We have met to discuss transparency in accounting practices and ending the use of "pass-through" accounting, where royalties are paid to the recording companies before being passed on to the songwriters and music publishers, thereby complicating the accounting process and delaying royalty payments further. We have also pushed for better representation for songwriters in the royalty collections process, and are attempting to limit the scope of controlled composition clauses. These clauses, which reduce songwriters' rights to mechanical royalties, are insisted upon by most record companies in their agreements with singer-songwriters and producers. We remain committed to advocating for songwriters in these negotiations and in formal proceedings such as this one.

Challenges Faced by the American Songwriter

15. Our work is significant to songwriters because of the many critical challenges we face. The motto of the NSAI states that "It all begins with a song." Yet it is getting harder and harder for professional songwriters to build a career by creating those songs. Over the past decade, the number of professional songwriters has declined substantially, and Nashville has been particularly hard hit. Of the 5,000 members of the NSAI, only about 500 of them are earning a living as full-time songwriters. Most of those songwriters are not wealthy by any definition of the word. With respect to those who make their living in the music and entertainment industries, they make comparatively little. It is no longer surprising that only the most successful songwriters are able to live on their royalties alone.

16. I have felt these challenges personally. I am fortunate enough to have experienced real success at various times in my career, and I am proud to have had a number of hit songs. But I have also experienced years without a hit, and I know what it means to go through lean times. My first year in Nashville, I received a publishing draw of only $50 per month. Out of necessity, my wife worked outside the home for the first time. She took a job as a waitress in a Red Lobster restaurant, and the two of us juggled work and child care. Things have gotten better since then, but because of the debts incurred during the periods of reduced income, we have refinanced our house several times over twenty-five years.

17. With the introduction of peer-to-peer systems and the rapid increase in music piracy, my mechanical royalty stream has dropped significantly. In 1999, for example, I wrote a song, "There You Have It," that was recorded and released by BlackHawk, a popular country group. On the same day the song was released, when it could have been selling out in record stores, there were already 1,100 internet sites offering to "share it" for free on Napster and other such services.

18. I have also watched my friends and colleagues struggle. Based on my work within the songwriting community, it is my belief that there are significantly fewer songwriters than there were a decade ago. In the mid-1990s, when I was a staff writer at Warner Chappell, the roster there included approximately 200 songwriters. After the arrival of Napster, Grokster and other illegal peer-to-peer services, however, the size of this roster dropped dramatically. While I believe that a few songwriters have joined the roster recently, the overall group is certainly much smaller than it used to be. Other major music publishers have been forced to make similar cutbacks in their rosters.

As a result, many independent songwriters living on their royalties simply cannot afford to keep working at their careers.

19. Even songwriters who have experienced great successes are facing new challenges. Debi Cochran, for example, a songwriter who has earned an Emmy award and two BMI performance awards, not long ago told me that she had to take a job selling handbags at a department store to make ends meet. Every time a songwriter is forced to split his or her time between working at creating songs and working to pay the bills, the creative output suffers. Many songwriters now face a situation where they have no choice.

20. Due to corporate consolidation in the music industry and among radio stations, even those who are able to continue as full-time professional songwriters face a business landscape with far fewer opportunities. There are, for example, fewer record companies than before. Fewer radio stations have local control and playlists are much smaller. Furthermore, the use of controlled composition clauses by the labels means that when a songwriter's song is actually recorded, the royalties the songwriter will earn for the song are frequently lower than the full statutory rate. These changes do not make writing great songs any easier; they only reduce the amount of compensation songwriters receive once they do.

The Mechanical Royalty Rate Should be Increased

21. The Copyright Owners propose that mechanical royalties be increased in the following ways: The royalty paid for physical phonorecords should be the greater of 12.5 cents per song or 2.40 cents per minute of playing time or fraction thereof. The royalty paid for permanent digital downloads should be the greater of 15

cents per track or 2.90 cents per minute of playing time thereof. Both of these rates would be adjusted for inflation according to changes in the CPI. For limited digital downloads, the rate should be expressed in a three-part rate: the greatest of 15 percent of revenue, one-third of the costs of musical content, or the greater of $0.0033 per use or $0.00064 per minute of playing time or fraction thereof, subject to the same inflation adjustments. The rates for interactive streaming should be determined by a similar three-part rate: the greatest of 12 ½ percent of revenue, 27 ½ percent of the costs of musical content, or the greater or $0.00275 per use or $0.00053 per minute of playing time or fraction thereof, subject to inflation adjustments. Finally, for ringtones, the Copyright Owners also propose a three-part rate: the greatest of 15 percent of revenue, one-third of the costs of musical content, or 15 cents per ringtone, subject to inflation adjustments. Additionally, the Copyright Owners propose a series of terms meant to ensure the timely and accurate payment of compulsory license fees.

22. These rate increases are essential for songwriters, and they are warranted by the many challenges facing songwriters today. The current statutory rate does not provide a fair return for the songwriter's creative contribution. With rates as they are, songwriters earn only modest returns, even on their biggest successes, while the record labels are able to make millions on the same songs. Despite common misconceptions, even if I write a song that is released on a platinum-certified recording, which means that one million copies are sold, I do not earn millions of dollars. Rather, given that I co-write almost all of my songs, my songwriter share would total just under $25,000. That means that if each song on a ten-song, million-selling recording that sells for ten dollars is worth $1,000,000 in gross income, my share of the gross income for my

song is only roughly 2.5 percent. This is not a fair reward for the talent and effort it now takes to write a hit song, especially when it then there is a significant time lag in the payment of royalties. And we must keep in mind that neither songwriters nor music publishers get paid for the millions of illegal downloads and pirated copies of our music that we are still fighting to stop.

23. As I have already mentioned, the number of American songwriters is declining. Many songwriters I know have stopped writing professionally because they can no longer make a living. The talented songwriters responsible for such hit songs as Garth Brooks' "Friends in Low Places," and Ann Murray's "Shadows in the Moonlight," among others, have left the business entirely. The statutory rate is meant to maximize the number of creative works. But if lower rates mean fewer songwriters, and thus fewer songs, the compulsory rate scheme will have failed. Increasing the statutory rate will allow songwriters and music publishers to enlarge the talent pool and thus increase the number of songs that are recorded and released to the public.

24. Increasing the mechanical rate is also important to provide fair compensation for music publishers. Publishers typically take a very active role in developing and promoting their songwriters. My relationships with music publishers have given me the opportunities to develop as a songwriter and helped me learn to write the best possible songs I can. They have provided creative encouragement as well as industry contacts that I could never have made on my own, or, in my opinion, through A&R executives at record labels. They helped me learn to differentiate between a good song and a great one that is likely to be recorded, released and mean something to millions of people. Music publishers have also helped me discover what various

recording artists were looking for in a song and helped my songs get to the artists who were looking.

25. Most importantly, my publishing partners provided me with the flexible financial support needed to pursue my songwriting as a career. But providing such support is both risky and costly for the music publishers. If the mechanical rate is not increased, music publishers will be less likely to take chances on new songwriters and will be less willing to support new talent in the way they did for me. The loss of their support and assistance would cripple the development of new songwriters in the future.

26. The proposed increases are not only necessary, they are justified. With respect to digital music, consumers are not paying for fancy packaging, creative marketing, or transportation and warehousing of a physical product. They are buying the words and music we create. They spend their hard earned dollars because of the inherent value of our creative product. The proportion of the money generated by such sales that goes to the songwriters and producers, those responsible for creating the song, should be correspondingly higher.

27. Even with physical recordings, the contribution of the songwriters and music publishers has increased relative to the contribution of the record companies. In my opinion, as record companies have consolidated, cutting expenses with larger artist rosters but smaller creative staffs, more of the development work that might have at one time been performed by their A&R departments is now done by songwriters and music publishers. The labels often do not have the time and resources to nurture and develop new artists and writers. Songwriters, and songwriter-producers, with the help of their

music publishing partners, are increasingly performing many of these functions, and should be properly compensated for those efforts.

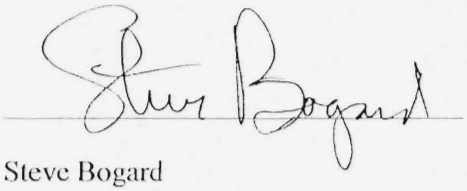
Conclusion

28. The NSAI is committed to preserving the art and craft of songwriting. But just making this commitment is not enough. To succeed in these efforts, the NSAI and all of our member songwriters need the additional financial support that would result from increased mechanical rates.

Declaration

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 25, 2006
Nashville, TN



Steve Bogard
President,
Nashville Songwriters Association International

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Before the
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LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding	Docket No. 2006-3 CRB DPRA

WITNESS STATEMENT OF JUD FRIEDMAN ON BEHALF OF NATIONAL MUSIC PUBLISHERS' ASSOCIATION, INC., THE SONGWRITERS GUILD OF AMERICA AND THE NASHVILLE SONGWRITERS ASSOCIATION INTERNATIONAL

1. My name is Jud Friedman and I am a songwriter who lives in Los Angeles, California. I make this statement in support of the mechanical license fee proposal of National Music Publishers' Association, Inc., the Songwriters Guild of America and the Nashville Songwriters Association International. Specifically, based on my extensive personal experiences as a songwriter, I submit this statement to discuss the challenges faced by songwriters in their careers and to explain and emphasize the need for an increase in the statutory mechanical license fee.

My Background as a Songwriter

2. I have been a songwriter for over twenty years. I went to Yale College and graduated in 1978. Throughout college, I wrote songs and played in coffee houses. I always loved creating music, but — given the obvious challenges faced by those who choose a career in the arts — did not know if I could make a successful and financially rewarding career of it. Recognizing the risks of pursuing a songwriting career full time, I chose to attend Harvard Law School and graduated with my law degree in

1981. I was determined not to abandon my songwriting dreams, however. After law school, I moved to New York and practiced law part time three days a week, wrote songs the other days, and played in clubs at night. After doing so for three tiring years, I moved to Los Angeles to become a full-time songwriter. For several years thereafter, however, I continued to supplement my income by practicing law part time.

3. I arrived in Los Angeles to pursue my songwriting career in 1985. Although I was lucky to find immediate encouragement from Kin Vassey, the head of Kenny Rogers' music publishing company, who also let me spend a good deal of time at Kenny's studio, I did not make any money from songwriting for a few years. I began getting single song contracts with Peermusic, and finally signed a publishing deal with them in 1988. But I did not have a hit song until 1990 with "I Don't Have the Heart," performed by James Ingram. "I Don't Have the Heart" soared to number one on the Billboard Hot One Hundred and Adult Contemporary Charts.

4. My songwriting success continued. Soon thereafter, I achieved success beyond my wildest dreams with "Run to You," which was featured in the Whitney Houston movie, *The Bodyguard*, and nominated for a Grammy in the category "Best Song Written Specifically for a Motion Picture or Television," and for an Academy Award for "Best Original Song." "Run to You" was also featured on *The Bodyguard* soundtrack, which sold 15 million copies in its first year of release, over 30 million copies worldwide to date and is the best-selling soundtrack of all time.

Success as a Songwriter Comes to Few

5. As a songwriter, I have come to know well many other songwriters. My success as a songwriter — for which I am very grateful — is not the

story of the typical songwriter, and I believe my success would have been less likely in the digital age. In the first place, albums simply no longer sell like my hit "Run to You" sold (as I believe the record companies will be able to confirm). Most artists are very lucky if they achieve gold status, which is marked by sales of 500,000 copies of a record. Ninety-nine percent of songs do not break into the Billboard 100. Although I have had other top songs, I have not had any sell like "Run to You" sold. Having a song on an album that sells 30 million copies is likely a once in my lifetime event, and an event in very few songwriters' lives.

6. In today's music business, it is exceedingly difficult to have songs recorded, and it takes a miracle for a song to be a hit. This is true no matter how hard a songwriter works or how talented the songwriter is. In the years that I have been a songwriter, the American songwriter has faced steady declines in sales and opportunities and increasing difficulties. I know many songwriters who have been forced to leave the profession. At times, I, too, have considered giving up songwriting entirely.

7. Over the years I have begun focusing more and more of my time on producing as it is much more lucrative than songwriting. Producing music is like directing a film. I spend time working with artists actually making the record in the studio. I hire musicians and we record the vocals and the tracks — essentially creating the record from soup to nuts — and then hand it off to the record company for distribution.

An Increased Mechanical Royalty Rate is Critical to the Vitality of Songwriters

8. Even with the hits that I have had, songwriting has been a financially challenging career for me. The majority of my songwriting income comes

from mechanical royalties. And that income — unlike income I could be making as a lawyer — is not steady. I only earn money when I have a hit song, and there can be, and have been, long periods in between hits. And I know that with each hit, there might never be another. Thus, I bear a lot of risk as a songwriter. But I continue to do it because I love it.

9. I invest tremendous time and energy into each and every song I write. Yet, I am only compensated for those songs that get recorded and released. Even if I am truly lucky and my song sells 500,000 or one million copies in a year, which, as I explained above, occurs only rarely, I will not earn enough to live on for that year.

10. Consider as an example the income I received from "Run to You." My publisher gave me advances on the royalties earned by "Run to You" over the years and continues to collect my royalties to recoup those advances. Imagine the financial situation of songwriters — the vast majority of them — who have no hits. Moreover, as a result of the increasing prevalence of so-called "controlled composition clauses" in many artists' contracts — that is, clauses that record companies include in contracts of recording artists that are also songwriters, which reduce their right to mechanical fees — these artists and their co-writers do not receive the full statutory mechanical rate. It is thus my view that the current mechanical royalty rate is not high enough to provide songwriters like me — and others who have not come close to having my success but who have worked equally hard at their craft — with a fair return on our creative works.

11. An increased mechanical rate is also important to ensure fair compensation for music publishers, who take an active role in developing and promoting their songwriters, which in turn benefits songwriters. Music publishers are critical for

new songwriter development. Indeed, music publishers played a crucial role in encouraging my career. I was with Peermusic for twelve years, and they took an active role in my career and helped me to develop as a songwriter. When they signed me in 1988, I received a twelve-thousand dollar advance on future royalties.

12. Receiving a music publishing contract was about much more than just the advance; it helped me to decide to cut back, and then quit, practicing law to focus on songwriting full time. That focus and the support of Peermusic paid off. Within a short time of receiving my music publishing contract, I had my first big hit. Peermusic was also instrumental in helping me get songs recorded for *The Bodyguard* and *One Fine Day* and several other movies. Today I am self-published, which means that I must record my songs at my own expense and promote my songs all on my own. This is expensive and difficult, and I have looked to sign with a music publisher so that I can again have a team to support me. These days, such deals are harder to come by.

13. If the mechanical rate is not increased, or is decreased, music publishers will be less likely to take risks on new songwriters and will be less willing to develop talent in the same way — obliterating this key support system for developing songwriters. Ultimately, the whole industry would suffer.

14. Finally, I would be remiss if I did not comment on the impact that the digital distribution of music has had on songwriters. While, of course, the Internet has many advantages for songwriters — such as providing multiple platforms for new songwriters to be discovered and songwriters to share their music and ideas — it should come as no surprise that the Internet has enabled piracy of musical works at an unprecedented level. Notwithstanding the strenuous efforts of many to stop piracy,

piracy has had, and continues to have, a devastating impact on songwriters. Today, many downloads of music over the Internet are unauthorized. This fact makes all the more urgent the need for an increase in the mechanical royalty rate to ensure that music publishers and songwriters, such as myself, receive adequate compensation for our creative works in this piracy-riddled era.

Conclusion

15. In sum, the statutory mechanical rate is in part designed to incentivize songwriters and maximize the number of creative works. Yet, the songwriter, long a part of the history of the American music industry, has great difficulty pursuing songwriting as a career with the result that I believe that there are fewer songwriters than ever before. This means fewer creative works. There will continue to be a drastic decrease in our numbers should the mechanical royalty rate be reduced. On the other hand, an increase in the statutory rate will allow songwriters and music publishers to continue producing quality songs ultimately increasing the number of creative works, to the benefit of all.

Declaration

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 27, 2006
North Hollywood, California

Jud Friedman

K

Before the
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Washington, D.C.

In the Matter of Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding	Docket No. 2006-3 CRB DPRA

WITNESS STATEMENT OF MAIA SHARP
ON BEHALF OF NATIONAL MUSIC PUBLISHERS' ASSOCIATION, INC., THE SONGWRITERS GUILD OF AMERICA AND THE NASHVILLE SONGWRITERS ASSOCIATION INTERNATIONAL

1. My name is Maia Sharp, and I live in Los Angeles, California. I have been a songwriter for over ten years. I make this statement to communicate the importance of increasing the mechanical royalty rate to American songwriters such as me.

Background

2. I grew up around the music business. My father, Randy Sharp, is also a songwriter and is at times my co-writer. I wrote and recorded my first song "Ghosts," when I was five years old. I had a strong musical background through my parents. I studied piano, guitar and saxophone as a child and continuing through college. I became focused on songwriting when I studied music theory and performance in college at California State University Northridge.

3. In addition to writing songs (for myself and others), I also sing my own material. Although I enjoy performing, songwriting is where my heart is. Generally, I split my time equally between writing songs for myself and writing songs for

the purpose of pitching them to other artists. Because I cannot survive on songwriting income alone, I have had to participate in many other aspects of the music business to stay financially afloat. In addition to songwriting, I sing back up for other artists and play the saxophone in recording sessions and live concerts to earn extra income. I also tour and perform my own music. Although these activities supplement my income, I am dependent on mechanical royalties and advances from my music publisher for the vast majority of my income.

My Life as a Songwriter

4. Songwriters who are just starting out have a very tough road ahead of them. My story is no different.

5. I began my professional songwriting career in 1996 at age 25. My first song, "Don't Come Around Here Tonight"— which I had written four years earlier in 1992 — was recorded that year on a Cher album, *It's a Man's World*. I did not receive my first royalty check until nine months later. I earned approximately $8000 for that song, which although not very much at all, led to my first album deal with I.R.S Records and a concurrent music publishing deal with I.R.S. Music in 1996.

6. Upon signing my music publishing deal, I.R.S. Music gave me $50,000 as an advance on my future royalties. Those funds were my exclusive means on which to live in 1997 and 1998. Between 1997 and 1999, I estimate that I wrote or co-wrote approximately thirty-five songs per year. I recorded two albums during that time, which included only songs I had written or co-written. The first, entitled *Hardly Glamour*, was released in 1997, but my second album was not released, although many of those songs have been appeared on subsequent albums.

7. Another reason I was so prolific during this time was that Miles Copeland, the head of I.R.S. Music (and Sting's manager) sent me to his songwriting retreat in France. There, I met and worked with countless songwriters including Carole King, the GoGos, Stewart Copeland, Jules Shear, Paul Carrack, Kim Richey and Lisa Loeb. At these retreats, the other writers and I wrote a song per day for a week. We wrote the songs during the day and recorded them at night. When any of these songs get recorded, Miles takes one-half of my publishers share.

8. Unfortunately, my contract with I.R.S. ended in 1999. At that time, I had no income and was forced to make ends meet with what was left of the second album's publishing advance, various sessions and a number of credit cards. I did have two songs recorded in 1999, but royalties take many months to be collected and distributed to the songwriter, and in the meantime, I had no real cash flow on which to live.

9. Fortunately, in 2000, I entered into a music publishing contract with Major Bob Music and because of the advances Major Bob gave me that were a part of the deal, I was able to get out of debt. Many songwriters are not so fortunate and are forced to leave the profession altogether.

10. While I was signed to Major Bob, I did a trio project with Art Garfunkel and Buddy Mondlock, which resulted in an album, *Everything Waits To Be Noticed*, and a national tour. I also recorded a self-titled album in 2002 for Concord Records, and toured to promote it as well. Thus, during 2000-2004, I was not as prolific as I had been in prior years, and I estimate that I wrote approximately fifteen songs per year.

11. In 2003, however, I had my biggest hit thus far with "A Home," co-written with my father Randy Sharp, which was recorded by the Dixie Chicks and the title track of their album. "Home" was a huge commercial success and sold six million copies.

12. In 2005, I signed a recording contract with Koch Records and released my third solo album, which is entitled *Fine Upstanding Citizen*. I have also recently released an EP album entitled *Eve and the Red Delicious*, which is a limited pressing. During 2005 and 2006 I toured to promote these two albums, and, thanks to Major Bob's past efforts, a song of mine was recorded on Trisha Yearwood's album "Jaspar County," which went gold.

13. In the last year, I have also been touring with Bonnie Raitt. I open concerts for her, and sing back up and play saxophone during her performances. Moreover, I wrote three songs — "I Don't Want Anything to Change," "Crooked Crown" and "The Bed I Made" — on her current album *Souls Alike*.

14. Songwriting is not just a job for me; it is a career and a passion. Many songwriters, like myself, are very grateful to be able to have a career in the music business. But songwriting is a creative art form that requires a lot of work. I do not write when I am touring, because the press interviews, radio performances, and evening concerts require my full energy and focus. When I am writing, however, I devote eight hours a day or more to writing, honing, and recording my songs. To increase my output, I co-write many of my songs with other writers, including my father. Several times a year, I travel from my home in Los Angeles to Nashville, New York or Austin to write with songwriters there.

15. I would not be the songwriter I am without the help of my music publishers. Music publishers play a critical role in songwriter development. Music publishers allow songwriters to focus on the creative process of songwriting while they take care of the administrative details of protecting and collecting for that song.

16. Both of my music publishers, I.R.S. Music in Los Angeles and Major Bob Music in Nashville, helped secure recordings for my songs. More importantly, they introduced me to other artists and writers. I developed key relationships with other writers at Miles Copeland's songwriting retreats when I was with I.R.S. Music. Bob Doyle, the head of Major Bob Music Publishing, also emphasized networking and, thanks to his introductions, I have many solid relationships with artists to whom I can pitch songs in Nashville as well. Finally, my music publishers gave me advances on royalty payments so that I could focus on writing songs and making music.

The Mechanical Royalty Rate Should be Increased

17. The vast majority of my songwriting income comes from mechanical royalties on album sales, not performances. The mechanical rate is therefore very important to me, as it is for many other songwriters and singer-songwriters. Moreover, I do not have standard benefits that come with typical jobs. I must pay for my own health insurance and save on my own for retirement.

18. A songwriter is considered very successful if his or her song sells one million copies. My song, "A Home" sold over six million copies and was by all counts a tremendous success. The mechanical royalty rate was 8 cents per song at the time "A Home" was released. Thus, one may think that I earned $480,000 for it. This is incorrect. My co-writer took his half, leaving $240,000. My publisher took its

contractual share, one-fourth (or half of the publishing share), leaving $180,000. In addition, some of the albums sold were free goods, on which the record company did not pay royalties. My publisher recouped most of what I was to receive to repay the royalties it had advanced me over the years, and, after all was said and done, I only received approximately $12,000 for a song that sold over six million copies.

19. Under my current recording contract with Koch Records, too, neither I nor my co-writers receive the full 9.1 cents on any songs on my album. This deal contains a controlled composition clause, which forces me to accept a 25% decrease in the statutory mechanical rate. Even worse than having to accept the 25% cut, was having to call my co-writers and ask them to accept the 25% cut as well. Thus, although the controlled composition clause is a hardship for me, it is a particular hardship for my co-writers, who did not themselves sign the contract or receive any advance under the contract.

20. For all of these reasons, in my view and based on my experience, the current statutory rate does not provide a fair return to the songwriter for his or her creative works. Songwriting is incredibly labor-intensive for the writer, and as demonstrated above, even songs that sell millions of copies — while they earn the record companies millions of dollars — provide only modest returns to the songwriter. Songwriters should not be forced to take on second jobs simply to keep their careers in songwriting. But that is precisely what almost all of us must do.

21. I expect that the record companies will assert that a small increase in the mechanical rate will not improve the financial condition of songwriters. This is not true. Any increase in the mechanical rate will help songwriters. An increase of a few

cents is not so small when millions of records are sold. Even an extra penny could mean a ten-percent increase in income on a million-seller record. And such an increase would help me to make artistically driven choices rather than financially driven choices. The importance of this cannot be overstated. It is extremely difficult, if not impossible, for songwriters to produce quality songs when they are focused on how to pay the bills. Being allowed to focus on songwriting alone provides great dividends in the quality of songs that are written.

22. A mechanical rate increase is important not only to songwriters, but also to music publishers, which earn a substantial portion of their income from mechanical royalties. If the mechanical rate is not increased, music publishers will be more reluctant to take on new songwriters. This will have a chilling effect on the discovery and support of songwriting talent, and ultimately the pool of songs created — so vital to American music culture — will be diminished.

Declaration

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 24, 2006
Algona, Iowa

Maia Sharp

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Before the
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Washington, D.C.

In the Matter of Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding	Docket No. 2006-3 CRB DPRA

WITNESS STATEMENT OF PHIL GALDSTON ON BEHALF OF NATIONAL MUSIC PUBLISHERS' ASSOCIATION, INC., THE SONGWRITERS GUILD OF AMERICA AND THE NASHVILLE SONGWRITERS ASSOCIATION INTERNATIONAL

1. My name is Phil Galdston, and I live in New York, New York. I submit this statement in support of the mechanical royalty rate proposal of National Music Publishers' Association, the Songwriters Guild of America and the Nashville Songwriters Association International. Specifically, I make this statement to discuss the role songwriters play and the challenges they face in the music industry and to emphasize the need to increase the mechanical royalty rate.

Background

2. I am a composer, lyricist, music publisher and record producer. I have been a professional songwriter for the past thirty years. I am what is known in the trade as a "pure" songwriter; that is, I am not a performer or a recording artist. I make my living and support my family by writing songs and presenting them to recording artists, producers, managers, labels, and anyone else who might help me to get them recorded and exposed to the public.

3. I am a songwriter and publisher member of the American Society of Composers, Authors and Publishers ("ASCAP"). I have served as a National Trustee and two-term President of the New York Chapter of the National Academy of Recording Arts and Sciences, the organization that grants the GRAMMY® Awards. I am a current member of the Board of the New York Chapter. I care very much about the music industry and the battle songwriters must fight to keep songwriting a viable career.

4. I have testified before Congress, before the House Judiciary Committee, Subcommittee on Courts, the Internet and Intellectual Property, in a hearing on illegal downloading and have participated in various other panels on radio, television and at international conferences. I am an adjunct member of the faculty of New York University's Tisch School of the Arts where I have taught a course on Songwriting for Producers. I teach at NYU's Steinhardt School and the University of the Arts, in Philadelphia, as well. In 1999, I was the Songwriter in Residence at the Berklee College of Music in Boston, Massachusetts.

My Experience as a Songwriter

5. I received my earliest musical training through the excellent school band program in my hometown. I began writing songs when I was only fourteen years old. At that point, I was just a kid with big dreams and I wrote because I loved music. I joined my first rock band while I was still in junior high school. We were lucky enough to sign a record deal with Epic Records in 1967. My first songs were recorded and released in 1968.

6. As a recording artist, I recorded two albums in the late 1970s with my then partner, Peter Thom, which were not commercially successful. I also worked as

a producer, producing music albums as well as comedy albums for Robert Klein and Robin Williams. Through these jobs, I met John Sebastian, the co-founder, former lead singer, and main songwriter of The Lovin' Spoonful. In 1982, I began writing songs with him and decided at that time to become a full-time songwriter.

7. Throughout this period, I continued my work as a songwriter. In 1974, I signed my first independent publishing deal with Chappell Music. Under the terms of this deal, I was a staff writer for three years and received a salary draw of $125.00 per week for the first year, which increased to $175.00 by the third year. Between the end of my contract with Chappell and the present, I have worked with a number of music publishers, both big and small, and have licensed my songs to a variety of record companies. I have also self-published my songs at times.

8. I am fortunate to have been a very successful songwriter. About twenty-five percent — an incredibly high percentage for songwriters — of the songs I have written have been recorded and released. During the course of my career, I have had several major hit songs, which have climbed most of the major charts. My best-known songs include "Save the Best for Last" and "The Sweetest Days," both recorded by Vanessa Williams. Celine Dion has also recorded five of my songs, including "The Last to Know" and "Fly." I have also had songs recorded by artists such as Beyoncé, Brandy, Kathy Mattea, Cher and Aaron Neville. My songs have appeared on over 65 million records worldwide, and I have received numerous awards, including an award from ASCAP for Song of the Year for "Save the Best for Last." My songs and productions have appeared on sixteen GRAMMY® nominated recordings. "Save the Best for Last" simultaneously reached number one on Billboard's three major charts and was

nominated for a GRAMMY® as Song of the Year, perhaps the highest accolade a songwriter can receive.

9. Aside from my hits, I have a catalog of over 700 songs that I have written over the last forty years. This catalog is my greatest asset. Intellectual property is often compared to real property in an effort to explain the rights that flow from it. But the analogy is imperfect. What songwriters create is unique. The songs that I have written would not exist if I had not composed them. As a songwriter, I am often asked, "What comes first, the words or the music?" For me, the answer is neither. What comes first is the inspiration, which comes in many varieties. This inspiration eventually becomes a song through many, many hours of writing and perfecting it, often with my co-writers.

10. I generally write about twenty to thirty songs per year. I am able to be this prolific because I am lucky enough — thanks to my prior successes — to be able to focus on songwriting alone. I co-write most of my songs with one or two other co-writers. Even though I write many songs and have achieved great success, the way I am principally compensated — namely, through mechanical royalties — means that it is highly unlikely that I will ever make as much money as I would have had I chosen another career. Moreover, because I am a pure songwriter, it is unlikely that my songs, even those that top the charts, will produce the same financial rewards as those written and performed by the industry's big name songwriter-performers.

11. But in choosing to be a songwriter, I chose to live with certain risks. Beginning with the most basic, in writing a song, there is a risk that it will not be recorded by an artist or licensed by a record label. Even if the song is recorded, it may

not be released. If it is released, it may not be successful. If my songs are not successful, I may not have any income to provide for my family. The choice to continue to be a full-time songwriter, given the nature of the music business, has not always been an easy one, despite knowing that my songs can and will continue to affect people positively.

12. To fully comprehend the risks faced by songwriters, it is important to understand how songwriters are compensated. We do not sell our songs. We license our songs to record companies and other groups, in return for royalties, if and when they are sold or played. When I license a song to a record company, I receive no fee, no advance, and no payment of any kind. I will only receive compensation when and if the recording of my song sells or is played on monitored media like radio and television. Even if my song sells, I am not paid immediately, and when I am, the rate at which I am compensated, currently 9.1 cents, is low. And, through their agreements with recording artists, the record companies frequently demand that many songwriters accept only 75% of the statutory rate. The compulsory rates act as a kind of maximum wage; while we may be paid less than the statutory rate, we are never paid more. And, while record companies can adjust what they earn for a song by changing album prices, I cannot. No matter how good or popular a song is, the songwriter can never earn more than the statutory rate.

13. The impact of this system on my career — notwithstanding my success — has been extreme. Over the years, my income has fluctuated between highs and lows, even though the number of songs I have been producing has remained fairly consistent. Each new opportunity is dependent, in part, on the opportunities that came before and on the success, or lack thereof, of the songs I have produced in the interim.

14. Moreover, the risks associated with making my living on royalty payments impacts the creative process itself. Knowing that my ability to support myself and my family depends on how my songs are received by the record companies and listening public, and how subsequent opportunities are then affected, magnifies the risks of my creative choices. It is easier to understand why many songwriters are hesitant to take chances with their work and how they could feel driven towards the market or out of the business entirely. In my opinion, if royalty rates were higher, songwriters would be able to take greater creative gambles, thereby contributing even more to our culture and providing our society with an even greater return on the investment our copyright system makes in creative activities.

15. As a songwriter, even though I am responsible for the creative products that keep the industry going, my financial remuneration is at the bottom of the business hierarchy. In the end, with royalty rates as they are now, it is virtually impossible to feel like I am being adequately compensated for my creative contribution.

Other Challenges Faced by Songwriters

16. Songwriters have had to fight on many other fronts to keep their careers viable. The music industry as a whole has fought a losing battle against Internet piracy and, in my view, record companies failed to embrace the digital market at a time when they could have limited, if not prevented, piracy. While record companies have also experienced losses due to Internet piracy, pure songwriters can least afford to lose this battle as they lack some alternatives available to other industry players to offset the absence of mechanical royalties on pirated music. For example, pure songwriters do not

receive income from t-shirt and merchandizing sales. Once I have lost a royalty, due to an unauthorized download of one of my songs, I have no way to recoup it.

17. In addition to Internet piracy, consolidation in the industry has also proven problematic for songwriters. There are now fewer record labels than ever before. As the labels have consolidated, they have trimmed their artist rosters and now sign many more songwriter-performers. This leaves fewer spots on albums for outside songwriters, like me, who are the vast majority of songwriters. All of this means fewer opportunities for us to have our songs recorded.

18. Moreover, songwriters have almost no control over the terms of the deals we sign. The record labels' expanded use of controlled composition clauses is a critical example of that. These clauses, which reduce the amount the record company will pay in mechanical royalties, began as a way for record companies to recoup their investment in new songwriter-performers and have now become standard in almost all performer contracts. Thus, if I co-write a song with a songwriter-performer subject to a controlled composition clause, it means that I have little alternative but to agree to be subject to that clause as well. As a result, I will receive only seventy-five percent of the statutory mechanical rate. The expansion of controlled composition clauses has effectively undercut the mechanical rate. Instead of receiving 9.1 cents per song, I frequently receive 6.8 cents per song. In other words, in most cases, I do not even receive the (already too-low, in my view) statutory rate. Moreover, since, like many of my colleagues, I frequently collaborate on my songs, when I co-write a song that amount is further split between me and my co-writers. Thus, I may actually receive only 3.4 cents per song or less.

The Challenging Life of a Songwriter Counsels For a Higher Mechanical Royalty Rate

19. Music is one of this country's greatest cultural assets. The music industry today generates billions of dollars. That 12 billion dollar industry only exists because my colleagues and I, through hard work and perseverance, write the songs that form its foundation.

20. I understand that two of the purposes of the mechanical rate are to provide a fair return on a songwriter's work and to increase the creative pool of available works. To fulfill these purposes, I believe that an increase in the mechanical rate is warranted. As I have previously described, the current mechanical rate does not provide a fair return on the creative or business investment made by the songwriter. In my opinion, even though we work in a penny business, songwriters should receive more than just pennies.

21. Moreover, if the mechanical rate is not increased, many songwriters will be forced to abandon their careers and many others — including the promising members of the next generation — will choose never to pursue their songwriting dreams in the first place. An obvious consequence will be that the creative pool of songs will be diminished. Increasing the mechanical rate will help ensure that songwriters are able to support themselves and their families and be able to continue to contribute to American culture and the world economy.

Declaration

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 24, 2006
New York, New York

Phil Galdston

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Before the
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Washington, D.C.

In the Matter of Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding	Docket No. 2006-3 CRB DPRA

WITNESS STATEMENT OF VICTORIA SHAW ON BEHALF OF NATIONAL MUSIC PUBLISHERS' ASSOCIATION, INC., THE SONGWRITERS GUILD OF AMERICA AND THE NASHVILLE SONGWRITERS ASSOCIATION INTERNATIONAL

1. My name is Victoria Shaw and I live in Nashville, Tennessee. I have been a songwriter for over twenty years. I make this statement to: (1) describe the important contributions of American songwriters; and (2) emphasize the need for an increase in the statutory mechanical rate.

My Life as a Songwriter

2. I first became interested in music when I was very young, growing up in Los Angeles. When I was 13 years old, I started my own band and began writing songs for us to perform. When I was 18, I moved to New York City and split my time playing the piano in various bars and working at a recording studio, High Rise Sounds. Surprisingly given the New York music scene at that time, I fell in love with country music during this period. In 1982, I began travelling to Nashville as often as I could in order to perform, network, pitch the songs I was writing, and basically try to "make it" as a songwriter and recording artist.

3. But making it in Nashville was not as easy as I thought it would be. It took me eight years to get a music publishing deal. During that time, I drove back

and forth between New York and Nashville. In New York, I still played piano in bars to support myself and allow me to spend as much time in Nashville as possible. Since I had no music publisher, I was unable to get songs recorded, but I did not give up. I kept writing and kept pitching my songs to music publishers. I really liked the community of songwriters in Nashville, which, in my opinion, is the last frontier for pure songwriters, and I was determined to find a permanent place within that community.

4. In October 1989, I finally obtained a music publishing contract with Gary Morris Music. Having a publisher made all the difference in my career. Gary Morris was able to pitch my songs to artists and record companies in a way that I could not on my own. It had taken eight long years, but thanks in large part to my publishing deal, I became something of an overnight success.

5. In fact, starting with the year I signed with Gary Morris, I had three number one hits within a twelve-month period. In 1992, Garth Brooks released "The River," which I had written two years earlier, and which ultimately won a 1992 ASCAP award. In 1993, Doug Stone recorded and released "Too Busy Being in Love," which won an ASCAP award that year. Also in 1993, John Michael Montgomery released "I Love the Way You Love Me," which received an ASCAP award in 1993 and a 1994 Academy of Country Music Award. Later, in 1995, Garth Brooks recorded and released "She's Every Woman," which also won an ASCAP Award.

6. Since those first successes, I have been able to work as a full-time professional songwriter. Although initially I had worked as a performer as well, and released my own albums in 1992 and 1994, I decided to devote myself to writing.

7. As a songwriter in Nashville, I am very fortunate to be in good company. I consider myself to be a very versatile songwriter. Although I prefer to start with a great opening line and work from there, I am comfortable writing either lyrics or music first. I enjoy writing songs in many genres and working with a wide range of co-writers.

8. Songwriting is a full-time job for me, and as the only person working outside my home, my songwriting needs to support my family. I am fortunate to have had a string of hits. My songs have appeared on over 65 million records. "The River" alone has appeared on over 45 million records. But I know all too well that the life of a songwriter is one of feast or famine. Even in my successful periods, my husband and I are careful about living humbly on our earnings. We always attempt to over-save. The highs and lows of professional songwriting are both very deceiving and very sudden, and I know that I need to be financially cautious if I am going to be able to continue to do what I love — write songs — as a career.

9. In addition to my personal creative interests, I am dedicated to advancing the interests of the songwriting community in general. To that end, I am a member of the Nashville Songwriters Association International and have been for about ten years. The Association is a national association of songwriters whose primary goal is to protect the rights of current and future songwriters and to educate them, and the music industry at large, about issues of particular concern for songwriters. For the non-professional songwriter, we offer pitch opportunities, workshops and songwriting critiques. We also travel to Capitol Hill to educate members of Congress about copyright protection and Internet piracy. For example, I testified on April 26, 2006 before the

Senate Committee on the Judiciary about the future of the music industry given the rise of digital music and the need to establish parity between different digital music services.

Challenges Faced by Songwriters

10. Without the song, there would be no music industry. The American music industry is a billion-dollar business. In my mind, that indicates that the songs — and the songwriters responsible for their creation — are doing a great job.

11. Nevertheless, American songwriters are struggling. Over the past ten years, a number of professional songwriters have been forced to give up their careers due to loss of income resulting from developments such as the consolidation of radio stations, corporate mergers in the music industry and Internet piracy. I know a number of songwriters who have had songs recorded by big-name artists but were simply unable to sustain a career as a professional songwriter. Unless the mechanical royalty rate is increased, this situation is likely to worsen and even more songwriters will be forced to leave the profession.

12. It is also increasingly difficult to have a hit song. Only a small percentage of professional songwriters will ever write a number one song. An even smaller percentage will be able to repeat that success. I know how lucky I am to have had a number of hits. I also know that the chance of repeating them in the future is slim.

13. A large portion of my income comes from mechanical royalties. Although songwriting in Nashville is treated as a 9 to 5 job, unlike other 9 to 5 jobs, my income is not steady. I only earn money when I have a hit song, and getting that hit is never guaranteed. My songs generate other forms of income, such as performance royalties and synchronization rights, but these amounts are also modest. The rewards

from my biggest successes have not made me rich, for even having a song on a million-selling album won't make me, as a songwriter, a millionaire.

14. The widespread use of controlled composition clauses also presents a major challenge for songwriters. These clauses further reduce the mechanical royalties songwriters and music publishers can receive from songs that are co-written by recording artists. Typically, record labels will place a limit of 75% of the statutory amount on the royalties we receive. Songwriters and music publishers have very little bargaining power in these situations. We can never negotiate the rates up, but everyone can negotiate us down, and controlled composition clauses are frequently the first attempt to do so. I hardly ever earn the full statutory rate.

15. Efforts to fight back against the use of such clauses will only hurt my own career, because my songs will get pulled from new albums. For example, "The River" was slated to be included in the new Garth Brooks box set released by WalMart. Although I am thrilled at the sales boost this brings my song, because I am subject to the controlled composition clauses in the deal, I will only earn half of the royalties I could be earning. In situations such as these, songwriters are forced to adopt a "something is better than nothing" mentality, but that hardly provides a real incentive for our continued creative efforts.

Role of Music Publishers

16. Starting with Gary Morris, music publishers have played a big role in the development of my music career. Over the years, I have worked with a number of music publishers, including Maverick Music, started by Madonna and now owned by Warner Bros., Deston Songs, founded by songwriter Desmond Child in 2000, and BMG

Music Publishing, my current music publisher. I have also self-published my songs at times.

17. The role of a music publisher can take many forms. Music publishers are often responsible for pitching a writer's songs to artists, producers or A&R departments at record labels. Music publishers can be critical at the early stages of a songwriter's career when the publisher may take on an unproven songwriter and develop him or her to a point where new songs are really ready to be recorded. I have recently started acting as a music publisher myself, through Shaw Enuff Songs, a company that I set up. I am working with one songwriter at the moment, and helping her develop as a songwriter and recording artist. I know that it is very important for new songwriters to learn from and be encouraged by more experienced songwriters, so I have also tried to introduce her to other writers within the community.

18. My music publishers have been partly responsible for the release of some of my biggest hits. Gary Morris, for one, tirelessly promoted "Too Busy Being in Love" and "I Love the Way You Love Me," and those efforts led directly to their recording and release. More recently, the promotional staff at BMG successfully pitched one of my new songs, which will soon be recorded as a duet by Reba McEntire and Kelly Clarkson.

19. More importantly, music publishers have allowed me to focus on the creative process of songwriting by focusing on the administrative details of getting a song recorded. They have also provided the financial support for my creative endeavors. During those periods when I was self-published, in contrast, while I may have been as

satisfied with the quality of my songs, I struggled more financially and my entire family was forced to scale back our already modest lifestyle.

The Mechanical Royalty Rate Should be Increased

20. I recognize that I am extremely fortunate to be able to write songs professionally. I have had a number of hit songs and have experienced a great deal of success. Nevertheless, because of the structure of the compulsory license system, and with rates at their current levels, I am not being fairly compensated for the efforts I make and risks I take to continue to be a professional songwriter.

21. Writing songs is an incredibly labor intensive endeavor. And as I described in detail above, the financial results are far from guaranteed. There is no certainty with respect to the amount I will earn from year to year, and no way to establish a financial routine. The personal and family stress caused by this situation can detrimentally affect my ability to produce the sort of songs I need to produce in order to continue working as a songwriter. An increase in the mechanical rates will alleviate much of this tension, provide a higher level of guaranteed revenue, and allow me to focus on writing more and worry about paying my bills less.

22. An increase in the mechanical rates will also help to decrease the clear disparity between what songwriters and music publishers earn on our songs and what record labels earn from the same songs. Not only are the labels free from statutory limits on their revenues, but, as I described above, they are able to manipulate the royalty rate through controlled compositions so that songwriters and music publishers receive even less than the current rates allow. Once again, I hardly ever receive the full statutory rate for my songs.

23. Increasing the statutory rate will also benefit music publishers. They would earn more from their efforts, thereby allowing them to continue, and even expand, the creative and financial support they provide for songwriters. Additionally, music publishers would be able to recoup the advances they give songwriters at a faster rate.

24. I understand that mechanical royalties are meant to maximize the number of creative works available and provide an incentive for continued creative contribution. Yet the current rates have created a situation where no pure songwriter can expect to make a living from a songwriting career. This situation drives potential writers away from the business, rather than encouraging them to join it, thereby frustrating the very purpose for which the rates were established. Increasing rates now would help to reverse these trends. Songwriters and music publishers would then be able to take advantage of the increasing prosperity of the music industry, an industry that, in the most basic way, is built on the songs we create.

Declaration

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 27, 2006
Colorado Springs, Colorado

Victoria Shaw

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Before the
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LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding	Docket No. 2006-3 CRB DPRA

WITNESS STATEMENT OF STEPHEN PAULUS ON BEHALF OF NATIONAL MUSIC PUBLISHERS' ASSOCIATION, INC., THE SONGWRITERS GUILD OF AMERICA AND THE NASHVILLE SONGWRITERS ASSOCIATION INTERNATIONAL

1. My name is Stephen Paulus and I live in St. Paul, Minnesota. I have been a composer of operas and other "serious" music for 30 years. I submit this statement to describe the important contributions American composers make to the American cultural landscape and to show why the Tribunal should adopt an appropriate increase in the statutory rate for mechanical rights.

2. In brief, my ability to earn a living in my chosen profession is entirely dependent on what I can earn for the intellectual property I create. I am fortunate to be considered one of the most successful American composers of classical music of my generation. My music has been performed all over the world and has been recorded on more than fifty records and CDs during my career. Yet I receive only a small amount each year from these recordings and must make my living on commission fees for major pieces. Those who have recorded my music have been able to earn greater sums from those recordings than I. A modest increase in the statutory rate would provide a fairer return to the composers who make the whole recorded music

industry possible. It would impose little additional burden on those who use our words and music.

Background

3. I have long had an interest in music. Both of my parents had musical backgrounds. My mother, a homemaker and an interior designer, studied piano while she grew up and played at home when I was growing up. My father worked at 3M and was an organist by avocation. He played at church and was a talented improviser. I have fond memories of listening to him play the pipe organ, and I believe that it was while doing so that my own desire to create began. My father had an old Reed organ on which he used to practice at home, and I started playing on that. I did not have any real piano lessons until I was ten years old.

4. I was always interested in composers. I read biographies of them when I was young. When I was about twelve, I found some blank music paper in the piano bench, and I started filling it up with notes. I soon began writing short piano pieces. They were not too original, but my piano teacher encouraged me.

5. I continued studying piano through college and received a B.A. in piano performance and a liberal arts degree from the University of Minnesota. I realized while I was in college that I did not want to be a performer. I went to graduate school at the University of Minnesota and received a Master's degree and PhD in composition.

6. In 1973, Libby Larsen, a fellow graduate student (and now, successful composer), and I, inspired by our experience at the University of Minnesota, started the Minnesota Composers Forum. This organization, which began with a $400

student activities grant, eventually grew into the American Composers Forum, now the largest composer service organization in the world, which has a yearly budget of $2 million. It is committed to supporting composers and developing new markets for their music. Its programming reaches composers and communities in all 50 states. The Forum supports composers' artistic and professional growth through a variety of commissions, performances, readings and fellowships. In addition to work with the Forum, I have also served on the ASCAP Board of Directors as the Concert Music Representative since 1990.

Life as a Composer

7. When I co-founded the Minnesota Composers Forum, which is now known as the American Composers Forum, my first performances were by graduate music students who gathered together to play pieces we had composed for my classes. These included one of my first pieces, "Three Elizabethan Songs" for soprano and piano. My graduate advisor, Paul Fetler, a composer, told me that the pieces "were not bad." I was encouraged by what I knew were words of high praise from an accomplished composer. Another professor told me that he enjoyed my work, and I realized that I might actually succeed as a composer.

8. I have an affinity for writing for voice. I sang in a choir in high school and enjoyed accompanying many singers during my graduate school years. I am fascinated by the range of color and power in the human voice when paired with words and sound.

9. I did not originally intend to write opera music, nor did I grow up going to the opera, but my teachers and others recognized dramatic qualities in my

instrumental work, and I was encouraged to focus on opera. While I was finishing my PhD, the Opera Theatre of St. Louis asked me to write a one-act opera to commemorate its twentieth anniversary season. I was surprised by the invitation because I had never written an opera before. Nonetheless, I accepted the assignment and wrote my first opera, "The Village Singer." "The Village Singer" has been performed numerous times over the years by more than fifteen opera companies, including the New York Lyric Opera and the Minnesota Opera.

10. Since that first opera, I have been commissioned by the New York Philharmonic, the Cleveland Orchestra, the Atlanta Symphony Orchestra, Minnesota Orchestra, the Dallas Symphony Orchestra, the Houston Symphony Orchestra and the St. Paul Chamber Orchestra. I have written ten operas. Some of my well-known operas include "The Postman Always Rings Twice," and "Heloise and Abelard." "The Postman Always Rings Twice" was the first American Opera to be performed at the Edinburgh Festival, which is the premier international festival for classical music, opera and theater and one of the most important cultural celebrations in the world.

11. One of my most recent notable works is entitled "To Be Certain of the Dawn," which premiered in November 2005. "To Be Certain of the Dawn" was commissioned by the Basilica of St. Mary in Minneapolis, Minnesota and first performed by the Basilica of St. Mary Choir and Children's Chorus and the Minnesota Orchestra to commemorate the sixtieth anniversary of the liberation of the Nazi death camps at the end of World War II. I feel that this is one of my most significant works, because it demonstrates the important role music plays in giving voice to the human spirit.

12. In addition, my work has been performed by the Los Angeles, Philadelphia, and St. Louis Orchestras, the National Symphony Orchestra and the BBC Radio Orchestra. I have served as Composer in Residence for the orchestras of Atlanta, Minnesota, Tucson and Annapolis. I have also received fellowships from the Guggenheim Foundation and the National Endowment for the Arts.

13. My choral works have been performed and recorded by some of the most distinguished choruses in the United States and throughout the world, including the Master Chorale of Washington, DC, the New York Concert Singers, Dale Warland Singers, the Los Angeles Master Choral, Robert Shaw Festival Singers, New Music Group of Philadelphia, and the Mormon Tabernacle Choir.

The Mechanical Rate Should be Increased

14. I am very fortunate that I am able to make a living as a composer. Not many composers of serious music can rely on the proceeds of their compositions to make a living. Most need to so something else to support themselves and their families. For example, many of my colleagues work as professors and write music on the side. I knew that I wanted to devote all of my energies to being a creator. I made a pact with my wife that I would try to make a living as a composer for three years after graduate school. We agreed that if it did not work out, I would apply for a teaching position. Fortunately for me, it worked out. I am very grateful to be considered one of the more successful composers of my generation.

15. Putting aside the grants I have received on occasion, my entire income comes from the proceeds of my compositions. These proceeds are of a number of principal types: commission fees for compositions, rental fees for the musical

materials, including scores and parts, mechanical royalties from the sale of musical works, and performance royalties.

16. Most of my income comes through commissions. They can vary in amount from $6,000 for a shorter piece to $100,000 for a full opera. On average it takes me 13 to 14 months to write a full opera. I then have to spend more months working with the opera company to finalize and perfect the work. And I have to work hard to secure such commissions in the first place. While I have had many commissions in the past, there is never a guarantee that I will receive them in the future.

17. Even though I only receive a small portion of my income from mechanical royalties, every penny I receive counts. Performance royalties are rarely significant for a composer of serious music given the limited airplay it receives. Music in the classical genre does not sell like pop, country or rap songs, so mechanical royalties comprise a much smaller portion of serious composers' incomes. But, that does not mean that we should not be compensated fairly for our work. I am one of the most frequently recorded contemporary composers and my songs have been recorded on more than fifty CDs. My best-selling work is a piece from my opera "Three Hermits," entitled "Pilgrim's Hymn." This short piece has been recorded approximately thirty times and, through those deals, approximately 30,000 CDs were made, which is widely regarded as a very high number for serious music but would not even constitute a "gold" record. I estimate that I have earned $13,000 in mechanical royalties for that piece; this figure includes the publisher's share, as I am currently self-published.

18. An increase to the mechanical rate is important to music publishers as well. I am currently self-published, but when I was first starting out as a composer, my music publisher European American Music ("EAM") was instrumental to my success and development as a composer. For example, EAM helped me to procure a very prestigious commission from the Naumburg Foundation. I was commissioned to write a quintet for brass, which was performed at Lincoln Center. This commission was important both for the money it provided and for the level of prestige it added to my career. EAM was also crucial in my getting the rights to the story for "The Postman Always Rings Twice," which was adapted from the book of the same title. As I wrote this opera when I was a relatively new composer, I did not have the clout to obtain the rights myself. Instead, the president of EAM helped me by obtaining the rights for me.

19. I did not become a composer to earn money. In fact, I believe in the words stated by music theorist Johann Josef Fux, "He who would seek riches should seek elsewhere." However, I am a firm believer that the creators in our society should be compensated fairly for what they produce. Music is a touchstone for our culture and our lives. Yet, currently, many composers are forced to scrape by or rely on teaching or other jobs to support themselves. We need an increase in the mechanical royalty so that we can keep creating.

Declaration

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 29, 2006
St. Paul, Minnesota

Stephen Paulus

Stephen Paulus

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Before the
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LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding	Docket No. 2006-3 CRB DPRA

EXPERT REPORT OF WILLIAM M. LANDES
ON BEHALF OF
NATIONAL MUSIC PUBLISHERS' ASSOCIATION, INC.,
THE SONGWRITERS GUILD OF AMERICA AND
THE NASHVILLE SONGWRITERS ASSOCIATION INTERNATIONAL

1. I, William M. Landes, am the Clifton R. Musser Professor of Law and Economics at the University of Chicago Law School. I received a Ph.D. in Economics from Columbia University in 1966. Since that time, I have taught economics on the faculties of Stanford University, Columbia University, the Graduate Center of the City University of New York, and the University of Chicago (where I have been a professor at the Law School for the past 32 years). I specialize in the economic analysis of law, industrial organization and intellectual property. At the University of Chicago Law School, I teach courses on economic analysis of law, intellectual property and art law. I have taught and published extensively on antitrust and intellectual property matters, and I recently co-authored a book with Richard A. Posner titled The Economic Structure of Intellectual Property Law. From 1991 to 2000, I served as Editor of The Journal of Legal Studies and from 1975 to 1991, I served as an Editor of The Journal of Law and Economics, both of which are leading academic journals in the field of law and economics. I

currently serve on the Editorial Board of the Journal of Cultural Economics. I served as President of the American Association of Law and Economics in 1992-93.

2. In addition to my academic experience, I am Chairman of Leaf Group LLC, an economics consulting firm that I recently co-founded. Until 2003, I was affiliated with Lexecon, which I co-founded in 1977 with Richard A. Posner and Andrew M. Rosenfield. A copy of my curriculum vitae that lists my publications and identifies cases in which I have testified in the past four years is attached as Exhibit A to this report. I am being compensated for my time at the rate of $900 per hour.

I. INTRODUCTION AND SUMMARY OF CONCLUSIONS

3. I have been asked by counsel for National Music Publishers' Association Inc. ("NMPA"), the Songwriters Guild of American and the Nashville Songwriters Association International (collectively, the "Copyright Owners") to offer my opinion on whether the Copyright Owners' proposal for statutory rates for compulsory licenses to make and distribute phonorecords ("mechanical licenses") under Section 115 of the Copyright Act is reasonable and satisfies the criteria set forth in Section 801(b) of the Copyright Act. This report is filed in advance of the discovery process. For this reason, the conclusions I offer in this report are subject to revision and modification as I obtain additional data and information through the discovery process.

4. The Copyright Owners have proposed the following set of statutory rates for 2008:

a. For physical phonorecords, a penny rate equal to the greater of 12.5 cents per song or 2.4 cents per minute of playing time or fraction thereof;

b. For Permanent Downloads, a penny rate equal to the greater of 15 cents per track or 2.9 cents per minute of playing time or fraction thereof;

c. For Limited Downloads, a rate equal to the greatest of (i) 15 percent of revenue attributable to music; (ii) one-third of the total content costs paid for mechanical rights to musical compositions and rights to sound recordings; or (iii) the greater if $.0033 per use or $0.00064 per minute of playing time or fraction thereof;

d. For Interactive Streaming, a rate equal to the greatest of (i) 12.5 percent of revenue attributable to music; (ii) 27.5 percent of the total content costs paid for mechanical rights to musical compositions and rights to sound recordings; or (iii) the greater of $.00275 per use or $0.00053 per minute of playing time or fraction thereof;

e. For Ringtones, a rate equal to the greatest of: (i) 15 percent of revenue; (ii) one-third of the total content costs paid for mechanical rights to musical compositions and rights to sound recordings; or (iii) 15 cents per ringtone.

All penny and fractional penny rates would be indexed prospectively for periodic changes in the CPI.

5. Section 115 of the Copyright Act provides that "the exclusive rights ... to make and distribute phonorecords of [nondramatic music works] are subject to compulsory licensing." The compulsory license becomes available once a recording of the copyrighted work has been distributed to the public with the

copyright holder's authorization ("first use"). The Act provides that "the royalty under a compulsory license shall be payable for every phonorecord made and distributed in accordance with the license."

6. Historically, "phonorecords" were physical products, starting with player piano rolls in the early 1900s, and then followed by gramophone records (analog sound recording devices such as 33, 45 and 78 rpm records and LPs), 8-track cartridges, cassette tapes and then CDs. Since the 1990s, digital products not embodied in physical media have gained sales. The law recognizes that these also fall under Section 115: the grant of a compulsory license entitles the licensee to "distribute or authorize the distribution of a phonorecord ... by means of a digital transmission which constitutes a digital phonorecord delivery, regardless of whether the digital transmission is also a public performance of the sound recording...(Section 115(c)(3)(A))."
7. The last litigated proceeding to set a compulsory license rate took place in 1980. In that proceeding, the compulsory rate for a mechanical license was set at four cents, with scheduled increases effective in 1983, 1984 and 1986 to 4.25 cents, 4.5 cents and 5 cents, respectively. As a result of voluntary agreements the rate has moved subsequently in incremental steps to the current rate of 9.1 cents. [1]
8. Each of these rates was denominated as a number of cents (known as a "penny rate"). Consumers purchased embodied music in discrete units or "bundles" – an LP, cassette tape or CD, for example – and the associated royalty obligation for a

[1] My staff at Leaf has prepared a figure which shows that the statutory rate of two cents that was set in 1909 would have become 41 cents today if it had been adjusted for changes in the CPI from 1913 onward (the first year that the CPI was reported).

compulsory mechanical license was a penny rate multiplied (generally) by the number of individual compositions, or songs, contained in that physical product. In effect, this meant that the more songs included in a bundle, the greater the mechanical licensing fees and the greater the cost and price of the recording.

9. This norm established uniform pricing equivalent to an "average" price for "hits" and "non-hits," since most LPs and CDs contain a mix of the two. The transition to purchasing individual songs (mainly "hits") in the digital world (i.e. "unbundling") represents an increase in the average value of music sold but a likely reduction in compensation to songwriters from music sold unless the mandatory rate rises to offset the likely decline in the total number of songs sold.

10. With the advent of digital transmissions, music distribution models have become vastly more varied and today are rapidly evolving. First, there exist today a number of subscription services for which the ultimate consumer pays a fixed monthly fee, but does not pay a per-unit fee for each downloaded or streamed song. Today, that fee generally does not depend much on whether the subscriber downloads 10, 100, or 1,000 songs, or indeed on whether the subscriber downloads any songs at all (although the fee may vary depending on whether songs are transferable to a portable player).

11. Second, certain online music services limit the time that and/or the location where music can be stored. A service may permit unlimited downloads for a single monthly fee, but those downloads are rendered inaccessible if the next month's fee is not paid. Some services provide interactive streaming where, in effect, the download is delivered for listening at the user's request. Some services limit the

number of computers to which a song may be downloaded and some do not permit the downloaded songs to be burned to a CD. I understand that, irrespective of the business model used to distribute musical compositions, a mechanical license is required.

12. Apple's iTunes currently is the most popular full digital download service. Apple has sold more than one billion downloads, and currently sells about 140 million songs each quarter.[2] The vast majority of online purchases of music are of single tracks (unbundling), and only a fraction of sales are of full albums. For new releases, in particular, most users buy individual tracks or songs (typically "hits") and not CDs or albums. This shift to purchasing "hits" fundamentally transforms the compensation likely to be paid to creators who now only receive mechanical royalties for "hits" but are not compensated for the greater average value of a song made possible by unbundling and the possible loss of royalties on non-hits previously bundled with CDs.

13. An important question I address in my report is whether the rates and terms of the statutory mechanical license should be the same for all types of music distribution business models. From an economic standpoint, I conclude that the rates and terms of the compulsory license should not cause consumers and other users of copyrighted music to make inefficient choices across distribution types (i.e., choices not affected by true resource costs). The new business models for delivery of recorded music are substitutable for one another, and so it is economically appropriate to provide a common framework for licensing mechanical rights

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[2] See, "Can Anybody Catch iTunes," Wall Street Journal, November 27, 2006, p.R1.

based on the value of the underlying music. However, it may be economically efficient in certain cases for the statutory price and terms to differ for different types of music embodiment and delivery to take account of historical licensing practices and thereby to avoid costs associated with disrupting established practices.

14. The rest of my report is organized as follows. First, I review and explain the economic principles that guide my application of the four objectives in Section 801(b) of the Copyright Act that the CRJs are required to apply in determining the statutory mechanical license rate. Second, I describe the terms of the current compulsory license and how the economic principles that I identified are reflected in the license rates and terms. Third, I describe the Copyright Owners' proposal for the statutory rate for physical products and permanent downloads and explain how this is consistent with the economic principles underlying the four objectives that the CRJs must consider. Fourth, I provide a similar analysis for (a) limited downloads and (b) interactive streaming services, again explaining that the Copyright Owners' proposal for statutory rates for these services is reasonable from the standpoint of economics. Finally, I explain why the Copyright Owners' proposal for statutory rates for ringtones is reasonable.

II. THE ECONOMIC PRINCIPLES EMBODIED IN THE FOUR OBJECTIVES

15. The economic principles that underlie copyright law are well established.[3] By granting copyright protection to creators of "expressive works," such as musical compositions, society provides economic incentives for their creation. Copyright law gives the copyright holder the exclusive right to prevent others from copying, distributing, adapting and publicly performing the copyrighted work without authorization. Without such protection (and subject to qualifications such as fair use), persons could use these works without providing any compensation to the creator, which in turn would reduce the incentive to create the work in the first place.

16. Copyright protection also generates access costs, however, because the price charged for copies generally exceeds the marginal cost of making and distributing copies in order to provide revenue to compensate creators for the time and effort in creating the work. Access costs fall on both consumers and creators of subsequent works, who reduce their use of copyrighted works in response to higher prices made possible by copyright protection. From an economic standpoint, the principal doctrines of copyright law best can be understood as efforts to promote economic efficiency and social welfare by balancing the benefits from providing incentives for persons to create and distribute copyrighted works against the costs of limiting access to these works.

[3] I discuss the economics of copyright law at length in my book co-authored with Richard Posner entitled The Economic Structure of Intellectual Property Law (2003).

17. I use the term "creators" in this report to refer to both the actual songwriters of copyrighted music and the publishers who may hold the copyrights to the music. When I discuss the costs of creating music, I include the time, effort and other costs of songwriters and publishers. Publisher and songwriter statements submitted in this proceeding explain that publishers often find, nurture and finance songwriters until they are "discovered" or (if they are singer-songwriters) obtain a recording contract.

18. The "compulsory" mechanical license eliminates the creator's right to prevent others from copying and distributing his work without his consent and thus limits the protection afforded by copyright law. Although the market generally does a better job of establishing efficient prices and providing incentives for efficient production than does a regulatory body, there are some circumstances where a compulsory license that grants rate-setting authority to regulators might better promote economic efficiency. One such circumstance is where the transactions costs of market arrangements are so high that they deter otherwise value-increasing licensing transactions. In this circumstance, a compulsory license may enable such transactions to occur. Another possible circumstance is where one party has acquired substantial monopoly power and is able to extract inefficiently high prices that produce large access costs. Here a compulsory license could limit the exercise of monopoly power, reduce access costs and still provide sufficient incentives to produce the product.

19. I understand that the compulsory mechanical license for musical works was initially instituted to provide a mechanism for licensing mechanical rights and

possibly avoid the uneconomical effects of monopoly. Today, it is unlikely that concerns about transactions costs or about monopoly power provide economic justification for the compulsory mechanical license (I discuss below why transactions costs likely are low and creators lack market power). However, my task is not to consider the desirability of a compulsory license, but rather to evaluate whether the Copyright Owners' proposal for rates for that license is reasonable given the statute as it exists today.

20. Copyright law guides the CRJs in determining the appropriate statutory rate for the compulsory mechanical license. Sec. 801(b) of the Copyright Act provides:

> The rates applicable under sections 114(f)(1)(B), 115, and 116 shall be calculated to achieve the following objectives:
>
> (A)To maximize the availability of creative works to the public;
>
> (B) To afford the copyright owner a fair return for his creative work and the copyright user a fair income under existing economic conditions;
>
> (C) To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication;
>
> (D) To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.

As I show below, the CRJs' consideration of these four objectives in setting rates for a compulsory license holds out the prospect of both enhancing the incentives to create musical compositions and limiting access costs, thus promoting economic efficiency.

21. The first and second objectives that are identified in Section 801(b) of the Copyright Act – "[t]o maximize the availability of creative works to the public"

and "[t]o afford the copyright owner a fair return for his creative work and the copyright user a fair income under existing conditions" are closely related in their economic interpretation. Both imply that the statutory rate should be set at a level that provides both adequate incentives for creative efforts by songwriters and access to copyrighted works (i.e., that limits access costs). The prescription to provide incentives for creation through a fair return for creative work calls our attention to the potential problems that would arise from setting a compulsory rate that is so low that it does not provide adequate financial incentives for persons to create music. To be sure, a low rate would encourage access to existing works but, in the long run, fewer new works would be produced and social welfare would decline. Stated differently, a "low" rate discourages the creation of music by reducing payments to creators (both current and prospective songwriters) who at the margin would not find it as remunerative to create additional songs that users value and would be willing to pay for if they did not opt for the lower statutory rate.

22. If the statutory rate were set too low to promote the goal of "maximiz[ing] the availability of creative works to the public," the harm would not be self-correcting in the marketplace. The statutory rate becomes a ceiling on rate negotiations, even if voluntary negotiations in the absence of the compulsory license would lead to higher royalties. In other words, economic theory predicts and historical experience shows that licenses are negotiated at rates below but never above the statutory rate. No potential user will offer to pay a publisher more for the right to use a composition than he has to pay if he takes a compulsory license. The net

result is that creators will be deprived of the market value of some of their compositions and the creation of new works will be discouraged.

23. The opposite, however, is not true: the statutory rate does not set a floor on negotiations between rights holders and licensees. If the statutory rate is higher than a particular user is willing to pay, then the user and publisher have an incentive to agree to a lower rate. Thus, an "excessively high" statutory rate would probably have only a negligible impact on both incentives to create music and access costs. That is, a statutory rate fixes a maximum (but not minimum) rate, since potential users have the option to negotiate lower rates, and thereby to avoid reduced access to music.

24. A principle of economics (the Coase theorem first described by Professor Ronald Coase, my former colleague at the University of Chicago Law School for over 25 years) is that a mutually beneficial outcome between copyright owners and users will be reached in the absence of high transaction costs. This means that, irrespective of the statutory rate, creators and users will agree on a lower rate if it is in their interest to do so (e.g., if, but for the lower rate, there would be no license and no use of the song). The Coase theorem teaches that if there is an outcome where the parties can be made better off, and no one made worse off, then it will be reached provided transaction costs do not prevent such an outcome. This implies that, if the statutory rate is higher than the value of the musical work to a potential user, the owner and user will negotiate a mutually beneficial lower rate.

25. There are several possible sources of high transactions costs in markets that may defeat otherwise value increasing voluntary agreements, but none of these appears to interfere with market transactions for mechanical rights:

a. The parties may be geographically distant, making it difficult to negotiate a transaction. In licensing mechanical rights, physical proximity is irrelevant since transactions in this industry typically are arranged electronically, by telephone or by fax.

b. It may be difficult to identify the party with whom to bargain. This problem can be solved by collective organizations that serve as clearing houses. This is true here, where the Harry Fox Agency ("HFA") serves as the clearinghouse for the majority of mechanical licenses.

c. Coordination problems from involvement of a large number of parties can lead to hold-out and free-rider problems that may increase transactions costs. This problem is alleviated here because agents such as Harry Fox often coordinate licensing between publishers on one side, who typically have responsibility for licensing their mechanical rights, and the record companies, who negotiate to acquire mechanical rights.

26. In sum, the principal danger today in setting a statutory rate for a compulsory mechanical license is setting the rate "too low" rather than "too high." The former discourages the creation of new music and ultimately reduces the number of works available and hence access, whereas the latter provides incentives for the parties to negotiate rates below the statutory rate that are sufficient to encourage the creation of new music without discouraging access. Economic interpretation

of the first objective, therefore, warns against the danger of setting "too low" a statutory rate that would undermine the objective of maximizing "the availability of creative works to the public."

27. To be sure, mechanical royalties are not the only determinant of the "availability of creative works to the public," because creators also receive compensation from other sources (such as performance royalties). However, I understand that mechanical royalties account for a substantial portion of many creators' compensation. Figure 1 shows that mechanical royalties account for a large fraction (in the range of 30 to 65 percent in 2005) of total publisher royalties for six publishers for which I have information. Figure 2 shows, for the two publishers for which I have data, the percentage of each publisher's writers' revenue from mechanical royalties. For these writers collectively, mechanical royalties are an important, but declining percentage of total royalties earned. Thus, a reduction in revenue from mechanical licenses could materially reduce the income of songwriters and hence the incentive for creation.

28. I note that creators and licensees (e.g., record companies and digital service providers such as Apple) and consumers of music have a common interest in maximizing the availability of creative works. All parties benefit from high-quality and abundant creative works, even though they may disagree on how the revenues from these musical creations should be divided. Record companies and firms offering subscription services, permanent downloads etc. benefit from greater availability and higher quality of creative works. Even if the statutory rate exceeds the willingness to pay for some record companies or online music

providers, these companies (and ultimately consumers) will not be injured, because they can seek and obtain licenses below the statutory rate.

29. In contrast, if the compulsory rate were set too low (for example, at a rate below the level that would provide sufficient incentives to cover the costs of creating and developing new music), record companies and online music service providers would obtain licenses on terms that, by assumption, discourage the creation and availability of new works. Ultimately, consumers would be injured by this low statutory rate, because it weakens the incentives for creating and developing new music.

30. A basic principle of economics is that efficiency is promoted if choices among competing goods are based on their marginal costs of production. This statement is true generally for physical goods, because these "rival goods" are used up when they are consumed and so efficient choices are made when prices reflect the cost of the resources used to produce and market them (or, more technically, when price equals marginal cost). The situation is more complex for non-rival goods, such as intellectual property. These goods are costly to create but, once created, the cost of making additional copies or expanding use often is negligible. In order to provide incentives to create music, one still must cover the cost of producing (or creating) the good and the marginal cost of making additional copies. However, if price were equal to marginal cost (i.e., the cost of copying), there would be no revenue left over to cover the cost of creating the intellectual property, which, in turn, would reduce or even eliminate the incentive to create the intellectual property in the first place. Consequently, for intellectual property,

efficiency may require setting prices above marginal costs such that the benefits from enhancing incentives to create new works more than offset the harm from reduced access.

31. When technology is advancing rapidly, different business models of music distribution should be permitted to develop and compete to provide music to consumers, because in the long run this will maximize availability of creative works to the public. Put differently, the supplier of an input, whether a physical input or intellectual property such as a song or sound recording, prefers that distributors and others use the most efficient distribution system, because that tends to expand demand for the input and to generate higher revenue. To an economist, the goal in setting a system of statutory rates is that they not discourage the development of new and efficient methods of distributing or delivering music, which benefit both songwriters and consumers.

32. I interpret the second objective – to provide a "fair" return or income to creators and copyright users "under existing conditions" – to have a similar interpretation to that of the first factor, namely that the statutory rate should be sufficient to encourage the creation of music and, at the same time, the rate should not be so high that it discourages the distribution of music and the development of new and innovative methods of delivering music. That is, the rate must provide incentives to create music and, at the same time, not discourage users or licensees from providing consumers with music they value.

33. New technologies that substitute for older and more traditional methods of delivering music to consumers tend to increase the value of and hence the demand

for the underlying musical works, both new and old. In a market setting, this increase in demand ordinarily would lead to an increase in compensation received by creators of these musical works. Thus, a new technology – such as digital delivery of music – that may reduce the demand for CDs but increase the overall demand for music generally should result in an increase in overall mechanical royalties to Copyright Owners.

34. I understand that a download or interactive stream of a musical work requires the user to obtain a mechanical license that recognizes the rights of the copyright holder. The lawful owner of a physical copy can use that copy, subject to limitations (such as manufacturing and distributing copies) that would compromise the rights of the copyright owner. Since these same or equivalent rights also are offered by digital distribution methods, including interactive streaming, they should be subject to a "comparable" mechanical license in order to provide incentives for both producers and consumers to develop new technologies in an efficient manner.

35. The economic interpretation of a "fair" return, which is required by this second objective, is a rate that would be voluntarily negotiated in a market between willing buyers and sellers, and that would be sufficient to cover the full costs of producing and distributing the good. Typically, such a rate would promote access and efficient production of intellectual property. When, as here, a statutory rate serves as a "ceiling" on the outcome of such negotiation, it may be lower than the rate that would be freely negotiated if there were no statutory rate. A statutory rate that is "low" in this latter sense runs the risk, therefore, of being "unfair" in

the sense that it would discourage the creation of new music and ultimately reduce the number of works available to consumers.

36. Although the original rationale for the compulsory license may have been concern about possible monopoly power,[4] this is not a concern today. No creator has a position remotely approaching a monopoly in the stock of existing and future music. Moreover, much of the demand for music is for newly created music, the supply of which is unconcentrated. A "high" statutory rate will not reduce access because lower valuing users (i.e., users who value music below the statutory rate) can freely negotiate below that rate. Empirical evidence from HFA (that I present below) shows that royalty rates below the compulsory rate are negotiated in the marketplace.

37. Two other "objectives" identified in §801(b) are to be considered in setting the compulsory mechanical rate. The first is that the rate should "reflect relative roles of copyright owner and user in the product made available to the public with respect to (1) creative contributions, (2) technological contribution, (3) capital investment, (4) cost, (5) risk and (6) contribution to opening new markets." This is consistent with the goal of promoting economic efficiency – that is, to provide financial incentives to both creators and users of creative works to undertake efforts that ultimately make more valuable works available to consumers.

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[4] According to the Register of Copyrights, "Congress [in 1909] ... was concerned that the right to make mechanical reproductions of musical works might become a monopoly controlled by a single company. Therefore, it decided that rather than provide for an exclusive right to make mechanical reproductions, it would create a compulsory license in Section 1(e) of the 1909 Act which would allow any person to make "similar use" of the musical work upon payment of a royalty of two cents for "each such part manufactured."" (See Statement of Marybeth Peters, The Register of Copyrights, before the Subcommittee on Courts, The Internet and Intellectual Property of the House Committee on the Judiciary, United States Senate, 108th Congress, 2d Session, March 11, 2004.)

38. Songwriters, publishers, record companies and distributors jointly contribute to making music. I understand from my review of publisher and songwriter statements that both make an important and meaningful contribution. The contributions of publishers and songwriters should be reflected in the statutory rate.

39. The last statutory objective to be considered by CRJs is "minimiz[ing] any disruptive impact on the structure of the industries involved and generally prevailing industry practices." Again, this can be understood as promoting economic efficiency, because abrupt changes in costs or established patterns of obtaining and compensating creators for use of their works can be costly and inefficient. Thus, all else equal, licensing schemes that work well and for which institutions and procedures are in place should be preferred over new approaches. As I discuss below, this suggests that historical reliance for physical products and permanent downloads on a penny royalty rate for each "copy" should receive deference over percentage of revenue, unless there are significant new economic considerations favoring a percentage rate. Modest increases in a penny rate for the compulsory license will not disrupt or require modification of pricing or discourage record companies or online music service providers from developing new and innovative products.[5] This conclusion is reinforced by my earlier point that, since the compulsory license sets a maximum rate, the parties are free to negotiate below that rate or on different terms if the alternative produces a more efficient outcome.

[5] I expect that information obtained in discovery will provide further evidence on this point.

III. BENCHMARKS FOR EVALUATING THE REASONABLENESS OF THE COPYRIGHT OWNERS' PROPOSAL

40. Currently, the statutory mechanical license royalty rate for both physical phonorecords and permanent downloads today is 9.1 cents.

41. I understand that no rate has been set for digital transmissions other than permanent downloads, although the RIAA, in 2001, entered into an agreement (followed by a number of digital record companies) acknowledging that such transmissions require a mechanical license. Since 2001, online music services offering limited downloads and interactive streams have avoided infringement by obtaining a mechanical license through the Harry Fox Agency ("HFA") or directly from publishers, although I understand that the royalty rate in HFA licenses is "Statutory To Be Determined." I also understand that the outcome of this proceeding will affect retroactively the rate paid under those licenses.

42. Economists view voluntary transactions as the best way of evaluating the value and appropriate price for products and services, including intellectual property. It is through such transactions that market participants (including creators and users of their creations) reveal their willingness to buy and sell – the critically important information that regulators can use to set rates that take account of and balance the interests of both creators and users of music. It also follows that transactions that take place in the shadow of compulsion and a price ceiling may not provide as useful information as do unconstrained or unfettered transactions, but still provide some evidence of the value attached to intellectual property by buyers and sellers.

43. In evaluating the reasonableness of a proposed statutory mechanical royalty ceiling, I believe that the best economic evidence is obtained from voluntary agreements – especially those that take place in situations where there is no mandatory statutory license. I have obtained information about three situations that provide evidence on the publisher's share of revenue from music embodied in a prerecorded song (or provide a proxy for this) when the publisher's royalty is not limited by statute, or not limited relative to the amount received by the sound recording. When the publisher and the record company license the user separately and the user needs both rights in order to legally offer its product or service, and when no compulsory license is available, I find that the publisher's share of the total license fees paid for the song and the sound recording ranges from about one quarter to one half.

44. My first evidence is market transactions for synchronization licenses. As shown in Figure 3, revenue from synchronization licenses accounts for up to 30-40 percent of publishers' total royalty income (based on data from six publishers). In order to "synchronize" a prerecorded song with visual images, such as those in movies, televisions shows and commercials, a synchronization license must be obtained from the music publisher (for the song) and a "master use" license must be obtained from the record company (for the sound recording). Neither of these rights is subject to a compulsory license, and both the music publisher and the owner of the sound recording can refuse a license, and thereby deny the producer of the movie, television show or commercial the ability to use the music. I understand that, typically, the license fees paid for these two rights are the same,

so that each of the publisher and record company gets 50 percent of the total content pool of the song and sound recording (and the publisher also gets performance royalties in television and commercials).[6] I also understand that this equality in license fees has been supported by use of most-favored-nation ("MFN") provisions in licenses between users and both publishers and record companies, so that the licensee is obligated to increase retroactively the fee paid to one party if the user later agrees to a higher license fee with the other rights owner.[7]

45. My second evidence comes from The Audio Home Recording Act of 1992, which provides for royalties on digital recording devices and media. This legislation was passed in response to concerns that the new Digital Audio Tapes would allow consumers to make perfect digital copies of music, and harm the market for audio recordings. Under the Act, royalties are split one third for the Musical Works Fund and two thirds for the Sound Recording Fund, giving publishers and songwriters one third of the total. Although this is not technically a license, it reveals Congress's view of the appropriate allocation of the content pool between these two rights holders.

46. My third evidence comes from voluntary agreements for ringtones and, in particular, mastertones, that have been negotiated in the past few years. Providers of mastertones must obtain the rights to both the sound recording and song. Although the RIAA has maintained that mastertones are subject to the

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[6] See "Witness Statement of Karyn Ullman" In the Matter Of: Digital Performance Right in Sound Recordings and Ephemeral Recordings, Docket No. 2005-1 CRB DATA.

[7] Ibid. In addition, I reviewed synch rights contracts between producers and publishers that contain MFN clauses.

compulsory mechanical license, the NMPA and others have disagreed, and voluntary negotiations have occurred in the shadow of possible determination that the compulsory license will be found to apply. My review of these agreements suggests that song creators' share of the total royalties for the song and sound recording tends to be 20-25 percent.[8] Although these agreements have been entered into voluntarily, they were negotiated under the shadow of possible mandation. (My detailed analysis of these agreements is described below in Part V.)

47. Even though the absolute value of prerecorded music may differ across uses, the division of total content value between the sound recording (or master) and the publisher (which together supply the "content pool") provides information about the reasonable mechanical royalty when rights to the sound recording are negotiated freely but the right to the mechanical is subject to compulsory licensing and rate setting. In addition, a proxy that links the statutory mechanical rate to market transactions for rights to sound recordings will reflect the market valuation of music when there is rapid and dramatic evolution of music distribution models. I conclude that the publisher's share of the content pool in uses where both rights are freely licensed is an appropriate proxy for a reasonable rate for a compulsory mechanical license.

48. I now examine the Copyright Owners' proposals using as guidance the voluntarily agreed upon ratio of royalties for the musical work to the combined royalties for

[8] This range comes from review of both the direct licenses between publishers and third-party ringtone providers and the agreements between publishers and record companies (the New Digital Media Agreements ("NDMAs")) that include, in addition to other products, the licensing of ringtones. My analysis of ringtone rates in Part V is based solely on the direct third party agreements.

the mechanical license and the sound recording. If the proposed rate is in the range between 25 percent (based on ringtone agreements) and 50 percent (based on synchronization licenses) of the content pool, I conclude that it is reasonable.

IV. THE RATES PROPOSED BY THE COPYRIGHT OWNERS FOR PHYSICAL PHONORECORDS AND FULL DIGITAL DOWNLOADS ARE REASONABLE

49. The mechanical royalty rate together with performance royalties and other copyright related revenues compensate creators of musical works for the value created by their underlying compositions. There has been no apparent reduction in the value of songs to consumers in recent years. Indeed, the total "value" appears to have grown substantially; copies of musical works are ubiquitous: on computers, portable players, for sale as CDs in bookstores, computer electronics stores and a vast array of on-line stores, etc. Because much of the music that is sold is newly created,[9] a continuing supply of popular music requires that creators receive appropriate compensation for their works. A substantial fraction of the use of music is of "hits" that have been recently created. The existing stock of music often is not a good substitute for new creations, so the effect of the statutory rate on the incentives to create new music should heavily influence determination of that rate. In addition, a policy that undercompensates creators for existing works could reduce the incentive to create new music, because creators of music today recognize that the reward for successful innovation is a

[9] Data from EMI show that up to 35 percent (depending on the year) of EMI's mechanical revenue is from songs that are less than three years old.

future stream of royalties. If future revenue streams are not sufficient, the effect may be to diminish innovation today.

50. The Copyright Owners propose a statutory mechanical rate for physical phonorecords – which today are primarily CDs – the greater of 12.5 cents or 2.40 cents per minute or fraction thereof for 2008, with the rate indexed for changes in CPI over the succeeding four years. They propose a statutory mechanical rate for permanent downloads of the greater of 15 cents or 2.90 cents per minute or fraction thereof for 2008, with this rate also indexed for changes in the CPI. Based on my analysis, I believe that both these rates are reasonable and indeed that they are low relative to the benchmark of one quarter to one half of the music content pool that I explained above. I understand that the Copyright Owners propose these, and not higher, rates for forms of distribution for which statutory rates exist today in deference to established industry norms in a period of technological transition.[10]

A. A Statutory Rate of 12.5 Cents is Reasonable for Physical Phonorecords

51. I base my conclusion that the Copyright Owners' proposed statutory rate for physical phonorecords is reasonable on the following analysis.

    a. First, I examine data on license agreements between HFA and the record companies.

    b. Second, I consider how piracy affects returns to artists and thus incentives for creation.

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[10] Higher rates also may be reasonable. However, because the other parties in this proceeding will not propose a higher rate, I view my assignment as considering only whether the rate proposed by the NMPA is too high.

c. Third, I evaluate whether the Copyright Owners' proposal results in a mechanical royalty rate in the range of 25 to 50 percent of the content pool, for reasons that I described above;

d. Finally, I consider whether a statutory license fee calculated as a percentage of revenue or of the price of a physical or digital copy is preferable to a penny rate royalty.

1. HFA Data Show that the Current Mechanical Rate for CDs is Too Low

52. I explained above that a statutory rate set too low will deprive artists of some royalty income that they could negotiate in a free market in which users paid based on how much they value the songs. If there were no statutory rate, we would expect a distribution of rates, with some licenses negotiated at rates below the previously existing statutory rate, some near or at that rate, and others above that rate. We can use the distribution of rates today to provide evidence of whether the existing statutory rate is appropriate. If a very large fraction of licenses contained negotiated rates below the statutory rate, it would suggest that the statutory rate is far above the value of the typical mechanical right and that voluntary negotiations established lower market rates. If, instead, only a small percentage of licenses contain rates below the statutory rate, this suggests that few users value mechanical rights at less than the statutory rate and most users value mechanical rights above or at the statutory rate. In the latter case, the statutory rate is lower than the average rate that would be negotiated in a free market and, therefore, is too low to provide a fair return to artists. This low rate would reduce the income of creators below what it would be in a free market and reduce the

incentives to create new musical works. I am not arguing that the statutory rate should be the highest mechanical rate that would be negotiated by any single buyer and seller in a free market. I argue only that it should not be so low that it leaves almost no incentive for any parties to negotiate a lower rate, but instead it should be closer to the "average" that would be paid by a willing buyer and seller if there were no compulsory license.

53. My review of data from HFA on its licensing activity indicates that the voluntarily negotiated rate for physical recordings typically would be higher than the statutory rate if rates were not limited by statute. Certainly, the HFA data provide no evidence that the statutory rate is too high or that the value of musical compositions has declined. I examined licenses issued by HFA from 1996 through 2005 to see whether the rates (relative to the statutory rate) at which HFA issues licenses have changed over this period. If musical compositions were becoming less valuable, and the market value of mechanical rights was below the statutory rate, I would expect that the fraction of HFA licenses for CDs at the statutory rate would be lower and would have fallen over time. I separately examined the licenses issued for controlled and non-controlled compositions, because controlled compositions earn less than the statutory rate because of agreements between singer-songwriters and their record companies that reduce mechanical royalties.

54. The empirical evidence shows that over the past 10 years the percentage of HFA licensing activity at, rather than below, the statutory rate has increased. Although HFA does not handle all industry licensing, it does handle licensing for many

publishers. Therefore, its activity likely is indicative of trends in the industry generally. As shown in Figure 4, the percentage of HFA licenses at the statutory rate for non-controlled compositions was between 82 and 85 percent in 1996-1998, while it reached over 95 percent in 2003 and stayed close to that level through 2005. This increase is statistically significant.[11] In addition, the percentage of HFA licensing at rates of 75-99 percent of the statutory rate declined over this period (a decline that also was statistically significant), from 12-15 percent in early years to less than seven in the later years.

55. I conclude from the statistically significant increase in the percentage of licenses issued at the statutory rate that there has been a decline in recent years in the percentage of uses of musical works where the copyright owners and the user agree that the value of the mechanical right is lower than the statutory rate. Because it is reasonable that there is a distribution of free market values that would exist if there were no statutory rate available, I conclude that this means that an increased percentage of licenses would have been negotiated at rates above the statutory rate if there were no compulsory license. The statutory rate increasingly has deprived creators of mechanical license revenue that they would receive if there were no compulsory license, and so reduces incentives for creation.

56. Further evidence that the statutory license rate has increasingly become too low relative to the value of mechanical rights is shown in Figure 5, which examines the number of units sold under licenses issued by HFA by license rate. This

[11] This conclusion is based on testing whether the difference in proportions between the years was statistically significant.

figure weights the licenses that I examined in Figure 4 by the volume of sales, so that licenses for tracks that are very successful get more weight than those that generate few sales. This figure also shows that the fraction of sales from songs licensed at the statutory rate has increased substantially, from less than 65 percent from 1996 through 2000 to over 80 percent in the past two years. Simultaneously, the fraction of sales distributed under licenses at 75-99 percent of the statutory rate has declined substantially from 34 percent in 1996 to 15 percent in 2005. Again, this evidence shows that the statutory rate increasingly has reduced the amount received by creators for their musical works below the level that would be negotiated in the absence of a compulsory license.

57. Thus, HFA data suggest that the current statutory rate is too low, because it deprives creators of value that users would be willing to pay. In turn, this would reduce the financial incentives for artists to create music. The HFA data show that the statutory rate has become a greater constraint on the value that creators receive for mechanical copyrights. Because the statutory rate is a ceiling on the rate paid for a mechanical license, it "truncates" the rates that would be negotiated if there were no compulsory license or if the statutory rate were higher. The fact that the amount of HFA license activity at the statutory rate has increased during the past 10 years suggests that the amount of licensing activity that would have occurred in a free market at rates above the statutory rate also has increased. Moreover, a higher statutory rate would not have reduced access to musical works, because users who valued music at less than the higher statutory rate would continue to use music by negotiating for access below the statutory rate.

2. **Creators of Musical Work Must Be Compensated for Piracy**

58. The record companies acknowledge that widespread illegal activity has reduced sales of CDs, with RIAA estimating a loss of up to 20 percent of CD sales.[12] Since Copyright Owners do not get paid for illegal reproductions, the effective statutory rate per copy would be about 20 percent less than the statutory rate. Thus, if some fraction of legitimately sold CDs is copied illegally (either burned to blank CDs or distributed and downloaded digitally) and displaces legal sales, it lowers the mechanical royalties received by Copyright Owners. In turn, this reduces the income of songwriters and reduces the incentive to create music.

59. Estimates of the reduction in legal sales from piracy vary substantially.[13] The RIAA claims that piracy has caused a substantial decline in CD sales since 1999. I understand that current statutory rates were negotiated and accepted by the NMPA without anticipating the sharp decline in sales from the piracy that the record companies in fact incurred.

3. **A Rate of 12.5 Cents is Reasonable.**

60. I understand that a statutory rate of 12.5 cents would fall in the range of 25 to 50 percent of the combined earnings of the content pool, if not below. I expect additional relevant information on this subject will be obtained in discovery.

4. **A Penny Rate, Rather than Percentage of Revenue, is Reasonable**

61. Finally, I conclude that the Copyright Owners' proposal for a penny rate for physical products, rather than a rate calculated as a percentage of CD price, is

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[12] Testimony of Mitch Bainwol, Chairman and CEO, Recording Industry Association of America before U.S. Senate Committee on Appropriations Subcommittee on Commerce, Justice, State and the Judiciary. 04/29/04.

[13] See, for example, "Symposium: Piracy and File Sharing," 40 J. Law and Economics (April 2006).

reasonable. I anticipate that two arguments will be raised in support of changing the historical penny-rate basis of the mechanical royalty (which has existed since the compulsory license was established in 1909) to a royalty based on the record company's selling price: (a) that this would enable the record companies to produce discount CDs that are not economical if they must pay the same mechanical royalty that they pay for full-priced CDs; and (b) that pressure from illegal downloads has forced record companies to reduce CD prices generally, which should be reflected in lower rates paid for mechanical rights. Neither argument is persuasive.

62. First, record companies are not prevented today from issuing budget CDs because mechanical royalty rates are too high. The HFA data show that there is a distribution of license rates, with a number of licenses issued at rates below the statutory rate. In 2005, 6.8 percent of licenses issued by HFA for noncontrolled physical were at 6.8 cents or less, or at rates that were no more than 80 percent of the statutory rate. This shows that record companies can and do negotiate for a mechanical rate for a particular release that is below the statutory rate. There is no economic justification for changing how the statutory mechanical license rate has been calculated for almost 100 years to address a licensing problem that does not exist.

63. Second, historically mechanical license rates have not varied directly with the price of recorded music. For example, the statutory rate for cassette tapes was the same as the statutory rate for CDs, even though in the 1980s and 1990s CDs sold

for almost twice the price of cassette tapes.[14] Even if piracy has reduced sales of CDs, it does not justify replacing a penny with a percentage rate. The value of music per lawful copy has not declined and, moreover, creators of music also are injured by reduced sales caused by piracy. For the same reason (to avoid disruption to established norms) that the Copyright Owners' propose rates that are lower than ones justified by the range of one quarter to fifty percent of the content pool, a penny rate avoids disruption.

5. **Summary**

64. For these reasons, I conclude that the Copyright Owners' proposal for a statutory rate of 12.5 cents for physical products is reasonable. It reflects a substantial discount from the upper bound of the range based on the share negotiated in applications where licensing mechanical rights is not constrained by a compulsory license and statutory rate.

B. A Statutory Rate of 15 Cents for Full Digital Downloads is Reasonable

1. A Rate of 15 Cents is Within the Range of 25-50 Percent of the Content Pool for Permanent Downloads

65. The Copyright Owners have proposed a statutory mechanical rate of 15 cents for permanent downloads. This rate is 20 percent higher than the proposed rate for physical products. Currently, the record companies receive an estimated $0.65-0.70 from Apple for each permanent download purchased from Apple's iTunes store.[15] I understand that the record companies incur virtually no incremental

[14] RIAA data show that in 1990 the average CD price was $12.05, while the average price for a cassette tape was $7.85.

[15] See Dina LaPolt,, Esq., "Taking a Glance at New Media Deals in the Music Industry," Music Biz Academy.com (http://www.musicbizacademy.com/articles/dl_newmedia.htm, downloaded 11/13/06), who estimates $0.65. See also, "Recording Industry Pushes Apple to Raise iTunes Prices," which quotes Apple

costs for each permanent download sold, so that almost all the license fee, net of mechanical royalties paid, is a return to the sound recording. A mechanical royalty of 15 cents is less than one quarter of the total content pool, and so is reasonable based on my benchmark range of the content pool.[16]

66. I also have considered whether there may be other, independent reasons why the value of the musical composition embodied in a digital track downloaded from a service such as iTunes is greater than the value of the work in the same track included on a physical CD. I conclude that a higher rate for permanent downloads than for physical CDs is reasonable for several reasons. First, a musical composition embodied in a digital transmission is more convenient to obtain and to use than is a physical copy, and its availability in this form has facilitated the development of many new and valuable products and services. Second, HFA data show that virtually all its licenses for permanent downloads for noncontrolled compositions are at the statutory rate, with virtually no negotiation on these rates. This suggests that, even more than for physical records, the permanent download statutory rate is a binding ceiling that leaves no incentive for users to negotiate above the rate and that deprives creators of compensation that users willingly would pay for licenses if there were no compulsory license or the statutory rate were higher. This is supported by my third analysis, which examines a large number of market transactions in which willing licensors and willing licensees have agreed to mechanical license fees for digital recordings at

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CEO Steve Jobs as saying record labels make 70 cents per download (http://www.technewsworld.com/story/49727.html, last accessed November 29, 2006).

much higher rates than those currently in effect for CDs and permanent downloads.

2. **The Musical Work in a Permanent Download has Greater Value than on a Physical CD**

67. Digital transmission increases the value of individual compositions, by making it feasible, indeed efficient, for consumers to purchase individual compositions, rather than purchasing the "bundle" of compositions – some that the consumer wants and some that he or she does not or has less interest in – that have been packaged into a single CD album. The consumer no longer must pay mechanical royalties for songs that, if they were offered individually, he or she would not purchase. Instead, services such as iTunes sell tracks *a la carte*, and consumers purchase only those they want. As a consequence, the average value of the underlying musical works in the downloaded (purchased) songs exceeds the average value of the songs in a CD. The "good" songs (the only ones that will be downloaded) are worth more to the user than the average song on the CD.

68. The current statutory rate was set when sales of recorded music occurred on physical media, primarily CDs, that bundled multiple songs together. Today, the digital world is based on single tracks. Thus, the "blended" rate paid to Copyright Owners in the physical world is too low for the digital world of singles where the average value of a song that is sold to consumers is greater than the average value of songs on an album.

69. Two types of empirical evidence suggest that the rate for digital downloads should be higher than that for physical CDs. First, data from HFA show that the

[16] See, "Recording Industry Pushes Apple to Raise iTunes Prices" (cited in previous footnote) which

rate for virtually all permanent downloads of noncontrolled compositions is the full statutory rate. (See Figures 6 and 7.) In contrast, there is a range of rates for non-controlled physical CDs, with a large number licenses at rates below the statutory rate. This suggests that the statutory rate for permanent downloads acts as a binding ceiling that constrains the rates below the level that would be negotiated in a free market for digital transmissions. In turn, this reduces the income and incentives of creators without expanding access to copyrighted music.

70. The second empirical evidence that the statutory mechanical rate for digital downloads should be higher than it is today is contained in ringtone agreements between music publishers and third parties.[17] These agreements give licensees the right to sell to their customers (some portion of) copyrighted musical compositions to be used as ringtones on cellphones. These agreements provide information on the value of full digital downloads, both because the transactions occur through the market and because I understand that it involves technology similar to that for permanent downloads.

71. I asked my staff to review the almost two hundred mastertone license agreements that were provided to Leaf by six publishers, and that took effect in 2004 or later. All these agreements specify a license fee based on the greater of a penny rate and a percentage of retail price and/or revenue. In addition to the royalty rate, some licenses require a one-time fixation fee (typically REDACTED) per song. Many licenses also require an advance payment that, in this sample, ranges from REDACTED to REDACTED depending on the licensee. Finally, licenses also may specify a

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reports that Apple's iTunes accounts for about 80 percent of digital downloads.

maximum length (usually 30 or 45 seconds) for the ringtone. Figures 8-10 show the distribution of the penny rate, percentage of retail price and percentage of revenue in agreements executed between 2004 and 2006.

72. As shown in these figures, the ringtone agreements of all the publishers specify royalty rates that are higher than the current statutory rate (9.1 cents) for permanent downloads. The per-penny minimum rates range from ten to 25 cents, with an average for all publishers around 12.5 cents. The percentage of retail price minimums range from 10 to 15 percent, with an average close to 10.5 percent.

73. I also use data from two publishers on the actual prices they are paid under their ringtone agreements during a quarter in 2006. I calculate the average payment received to be about 16-18 cents per ringtone for one publisher and 25 cents for the second publisher. Since the download of a full song is at least as valuable as a snippet of the song, this provides evidence that the value of the mechanical rights in permanent downloads is at least equal to 16 to 25 cents. This exceeds the current statutory rate for permanent downloads and exceeds the Copyright Owners' proposed rate of 15 cents.

74. In short, the proposal for a statutory mechanical rate for permanent downloads that is higher than that for physical CDs is reasonable. Data also suggest that the Copyright Owners' proposed rate of 15 cents is lower than rates that have been negotiated in a free market, and thus that the proposal is reasonable.

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[17] This evidence is relevant whether or not §115 applies for ringtones.

V. THE RATE PROPOSED BY THE COPYRIGHT OWNERS FOR LIMITED DOWNLOAD AND INTERACTIVE STREAMING SUBSCRIPTION SERVICES IS REASONABLE

75. The typical limited download service charges a monthly fee, and then makes its entire catalog available for limited download by subscribers as long as the subscription is in effect. The Copyright Owners have proposed a tiered structure for the compulsory mechanical royalty for these services. The rate would be the greatest of: (i) 15 percent of revenue attributable to music; (ii) one-third of the total content costs paid for mechanical rights to musical compositions and rights to sound recordings; or (iii) the greater if $.0033 per use or $0.00064 per minute of playing time or fraction thereof. This proposal is reasonable in light of its impact in enhancing incentives to create new music without imposing significant access costs on the development of improved methods of delivering music to consumers.

76. All three of the proposed tiers for this service are reasonable, both individually and as alternatives, in the sense that they are no higher than the benchmark of 25-50 percent of the amount that the record companies receive for licensing these services. I understand that the record companies today license limited download services pursuant to a similar tier structure, where the tiers are 45 to 50 percent of revenue, one penny per use or a specified dollar amount per subscriber per month.

77. Each tier of the Copyright Owners' proposal falls within the one-quarter to one-half range of the content pool (of royalties for mechanical rights and sound recordings). The first tier – 15 percent of revenue – today would constitute less than a quarter of the content pool of 65 percent of revenue. The Copyright

Owners' proposed second tier deals with the uncertainty over how distribution models will evolve in the future. For example, some record companies reportedly have licensed Microsoft's Zune service for a rate that includes one dollar per player; therefore, the revenue the record companies receive depends directly on the sale of the players and only indirectly on the use of the music. Implicitly, this pricing policy recognizes the importance of music (both sound recordings and musical works) in creating the value that is, in turn, captured by providers of music players. Copyright Owners should obtain their ratable share of this revenue stream. Finally, I understand that the record companies today license limited download services for one penny per play,[18] so the Copyright Owners proposal for their third tier of a third of a penny gives songwriters license fees equal to about one quarter of the total content pool (which insures a minimum payment).

78. The Copyright Owners' proposal for the statutory rate for interactive streaming services has a similar structure to their proposal for limited download services: a three-tiered proposal equal to the greatest of (i) 12.5 percent of revenue attributable to music; (ii) 27.5 percent of the total content costs paid for mechanical rights to musical compositions and rights to sound recordings; or (iii) the greater of $.00275 per use or $0.00053 per minute of use or fraction thereof. I understand that these types of services have the same license arrangements with record companies for the sound recording as do limited download services. Because the Copyright Owners' proposal is for lower rates for each tier than they propose for limited download services, and because I understand that the record

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[18] See, Dina LaPolt, Esq. (above, fn 15).

companies get the same compensation for interactive streaming services as for limited download services, their proposal for interactive streaming is reasonable.

VI. THE RATE PROPOSED BY THE COPYRIGHT OWNERS FOR RINGTONES IS REASONABLE

79. The Copyright Owners' proposed statutory rate for ringtones is also a tiered rage structure equal to the greatest of: (i) 15 percent of revenue; (ii) one-third of the total content costs paid for mechanical rights to musical compositions and rights to sound recordings; or (iii) 15 cents per ringtone.

80. I have reviewed a large number of mastertone licenses that were negotiated voluntarily between HFA and publishers and ringtone companies. The royalty provisions in those licenses are summarized in Figures 8-10. This free-market activity provides a reasonable basis for setting the statutory rate for mastertones, a use that has not until this proceeding been subject to a compulsory license. Because, as I explained earlier, the injury to creators in terms of incentives can be great from setting the rate too low, while the harm from reduced access that may arise from setting the rate above the market level is low, I view the maximum rates in these licenses as the most appropriate basis for evaluating the Copyright Owners' proposal.

81. To be conservative, however, I exclude the highest rates found in any of the agreements. Based on agreements signed during 2004 through 2006, a statutory rate denominated as the maximum of a penny rate and a percentage of retail price or net revenue is consistent with the typical form of voluntary agreement for

mastertone licenses. Based on these agreements, the Copyright Owners' proposal falls within the benchmark range of 25 to 50 percent of the content pool.

VII. CONCLUSION

82. I have reviewed, from an economic standpoint, the Copyright Owners' proposed set of statutory mechanical rates for 2008 through 2012. I conclude that their proposal is reasonable and is consistent with the economic principles of the statutory goals of the Copyright Act. The Copyright Owners' proposed rates have the potential to both enhance incentives to create musical compositions and to limit access costs, and thus to promote economic efficiency.

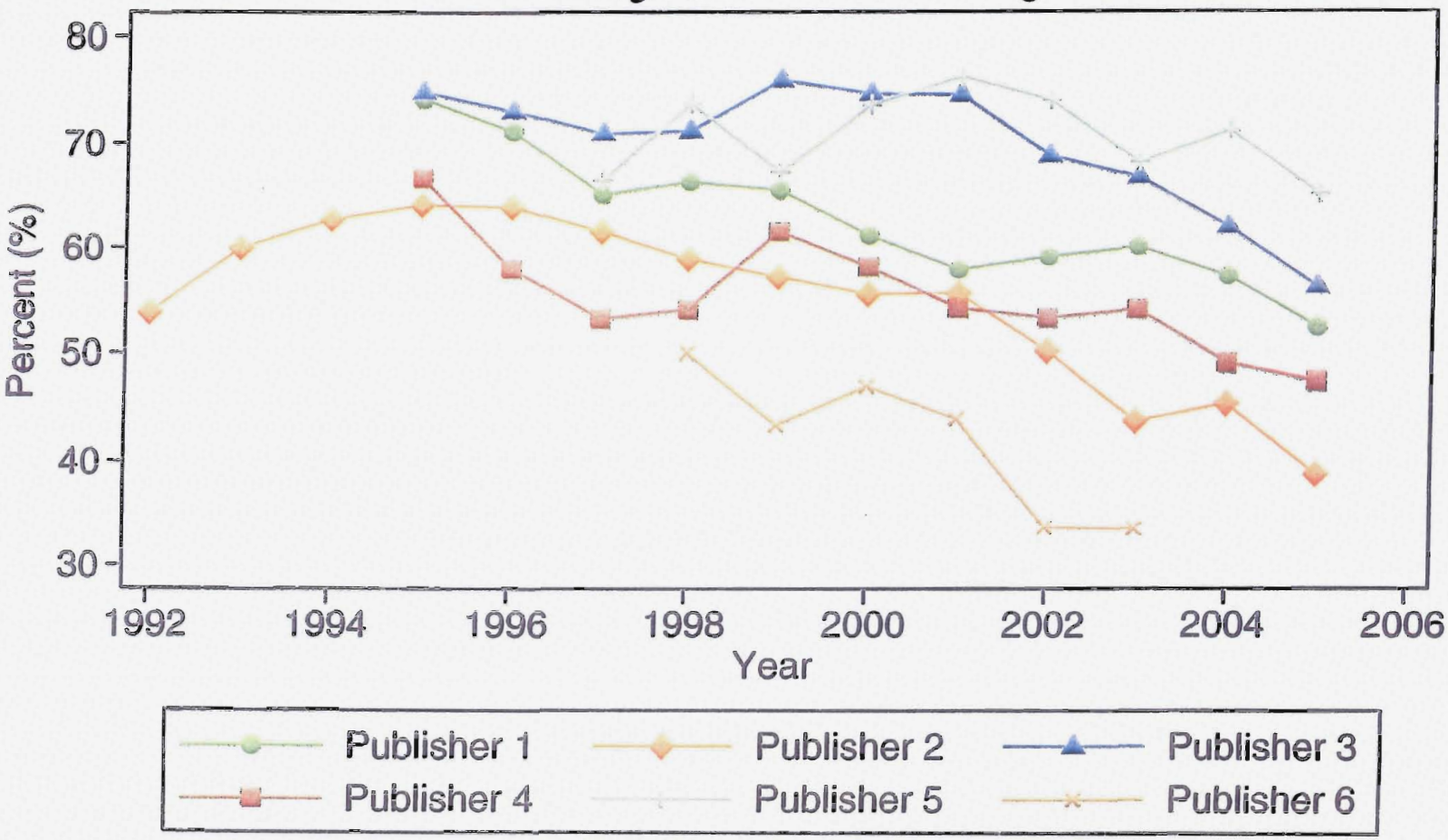
I declare under penalty of perjury that the foregoing is true and correct.

Dated: Nov. 29, 2006
Chicago, IL

William M. Landes

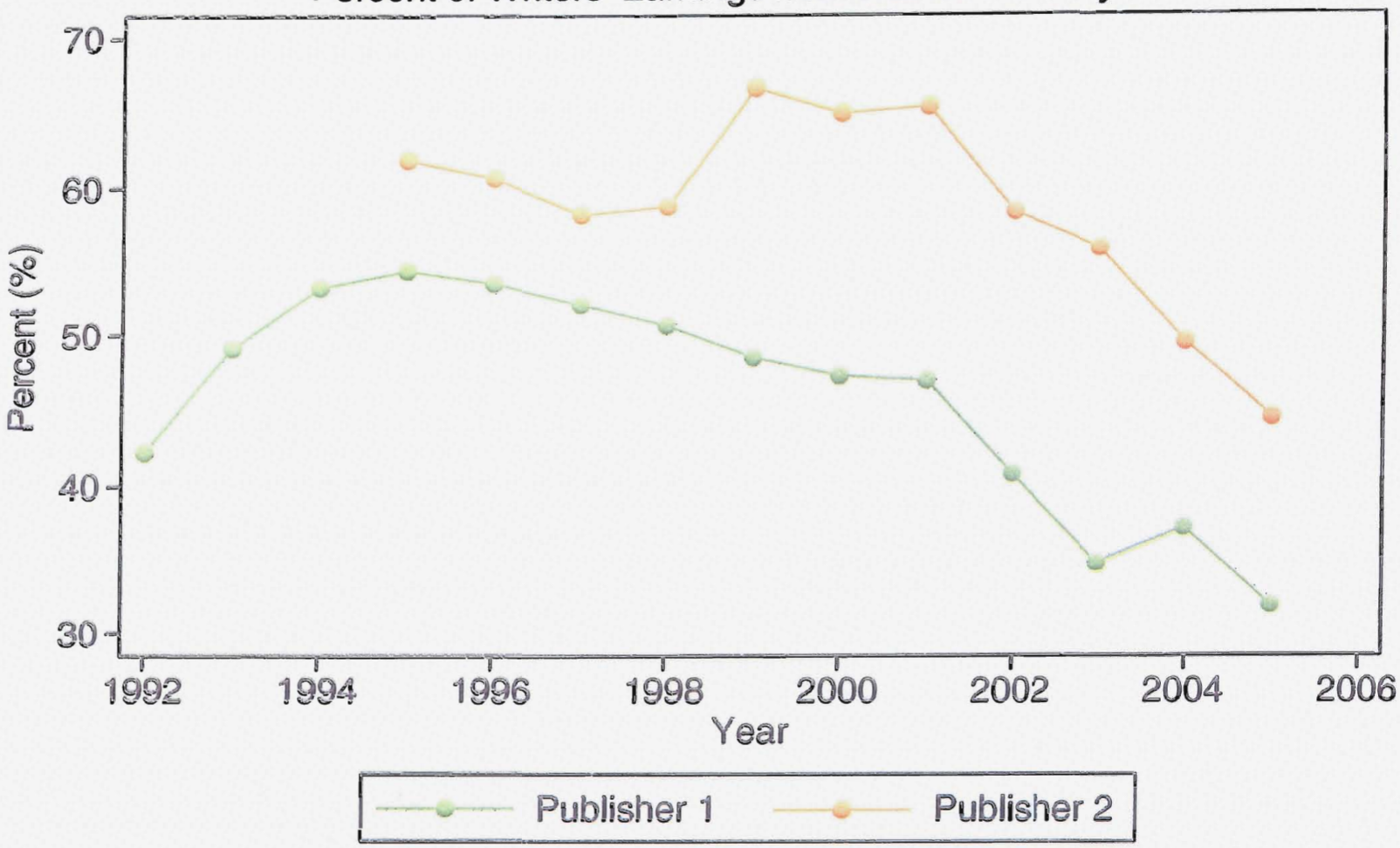
William M. Landes

Figure 1
Percentage of Publisher Revenue Generated Through Mechanical Licensing



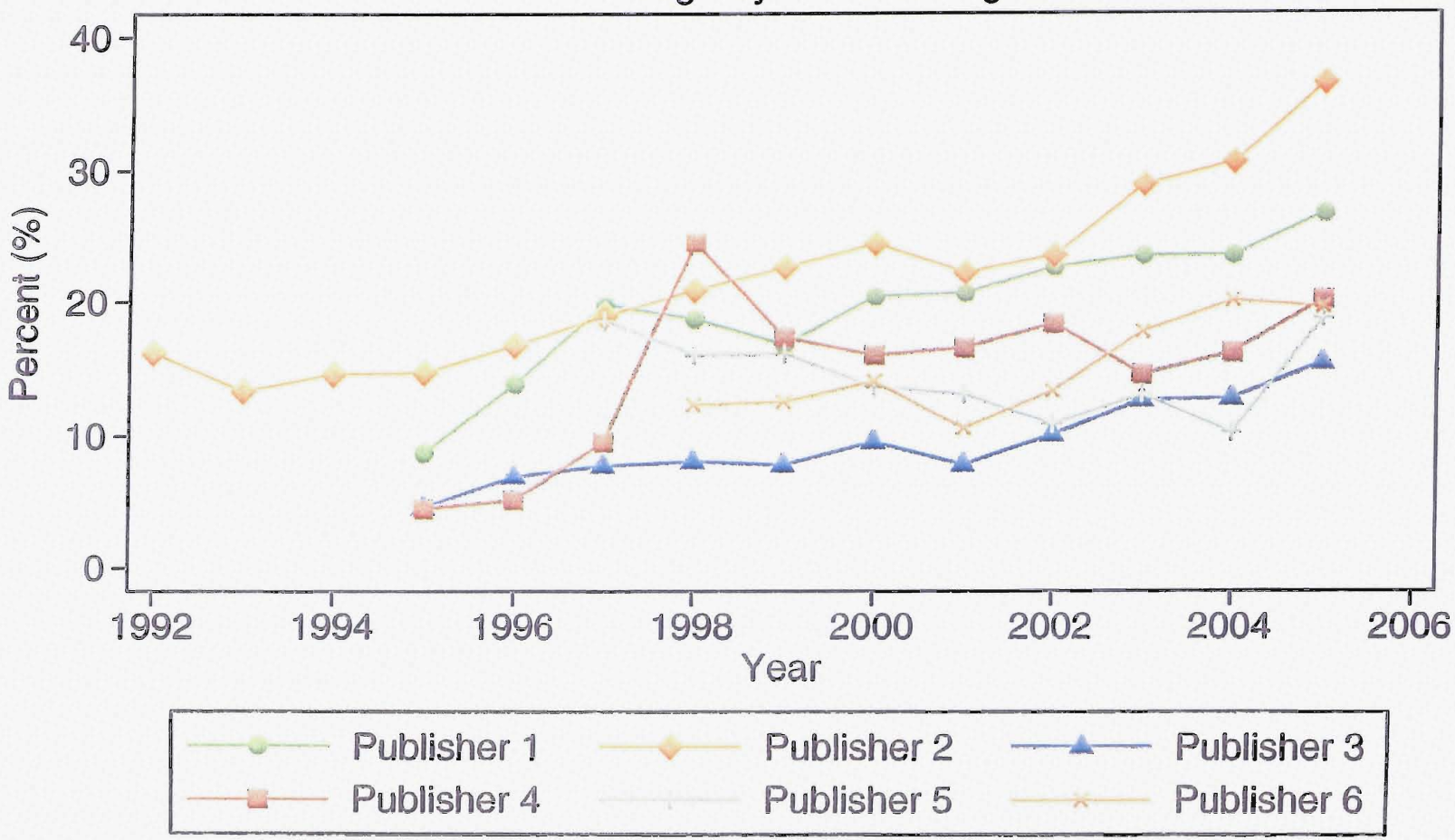
Source: Publisher data

Figure 2
Percent of Writers' Earnings from Mechanical Royalties



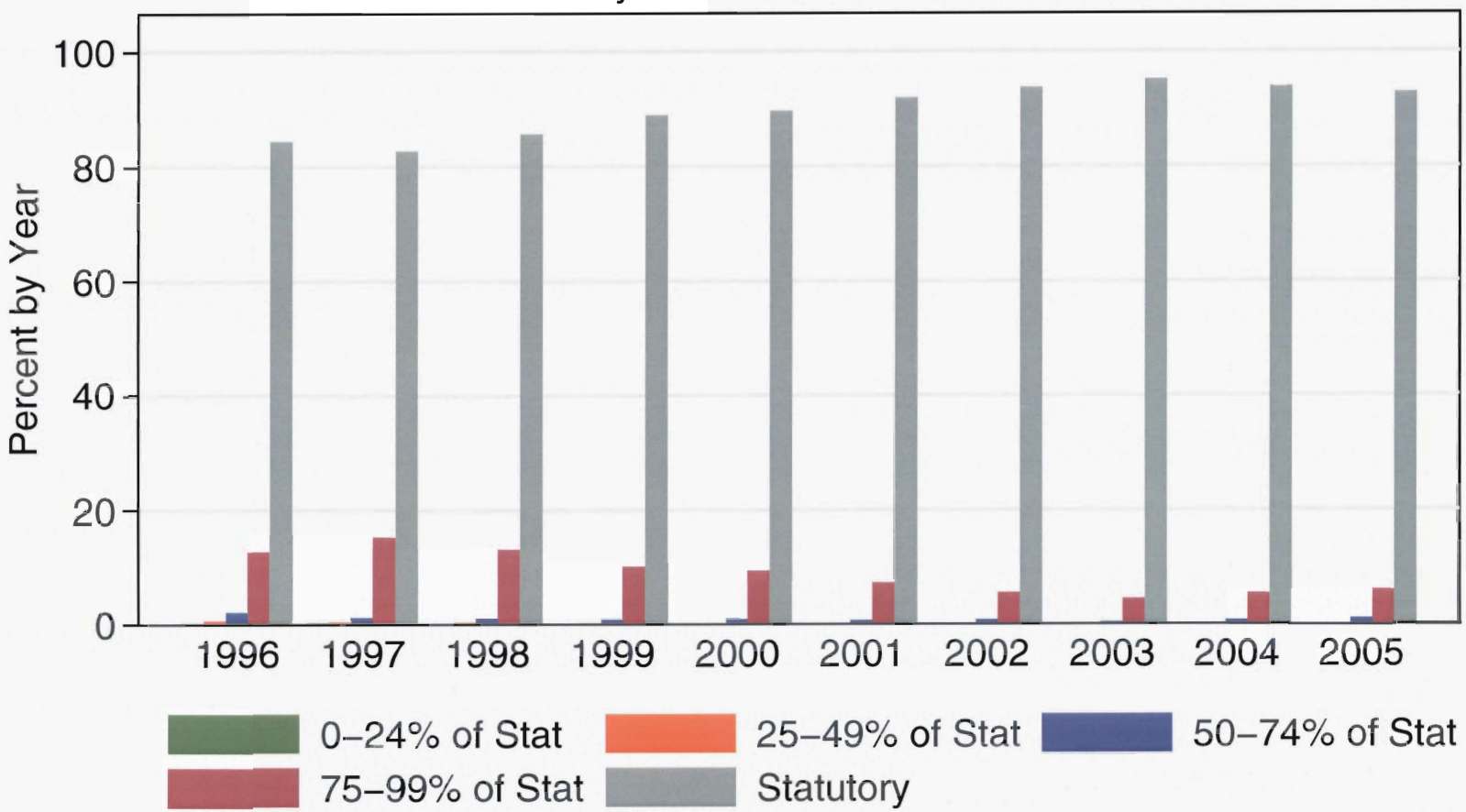
Source: Publisher Data

Figure 3
Percentage of Publisher Revenue Generated Through Synch Licensing



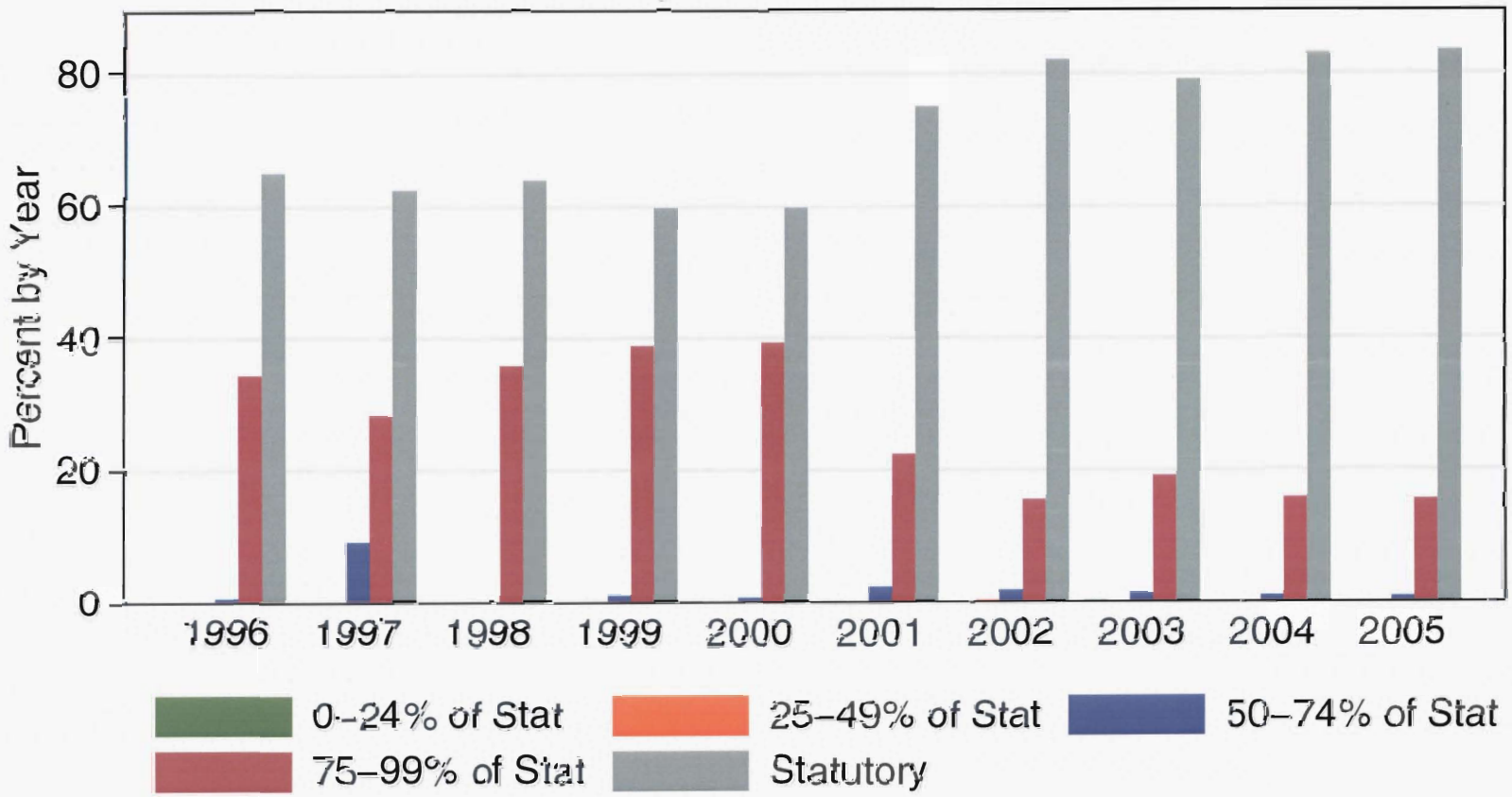
Source: Publisher data

Figure 4
Licenses Issued Each Year by HFA by Rate Category
Physical and NotControlled



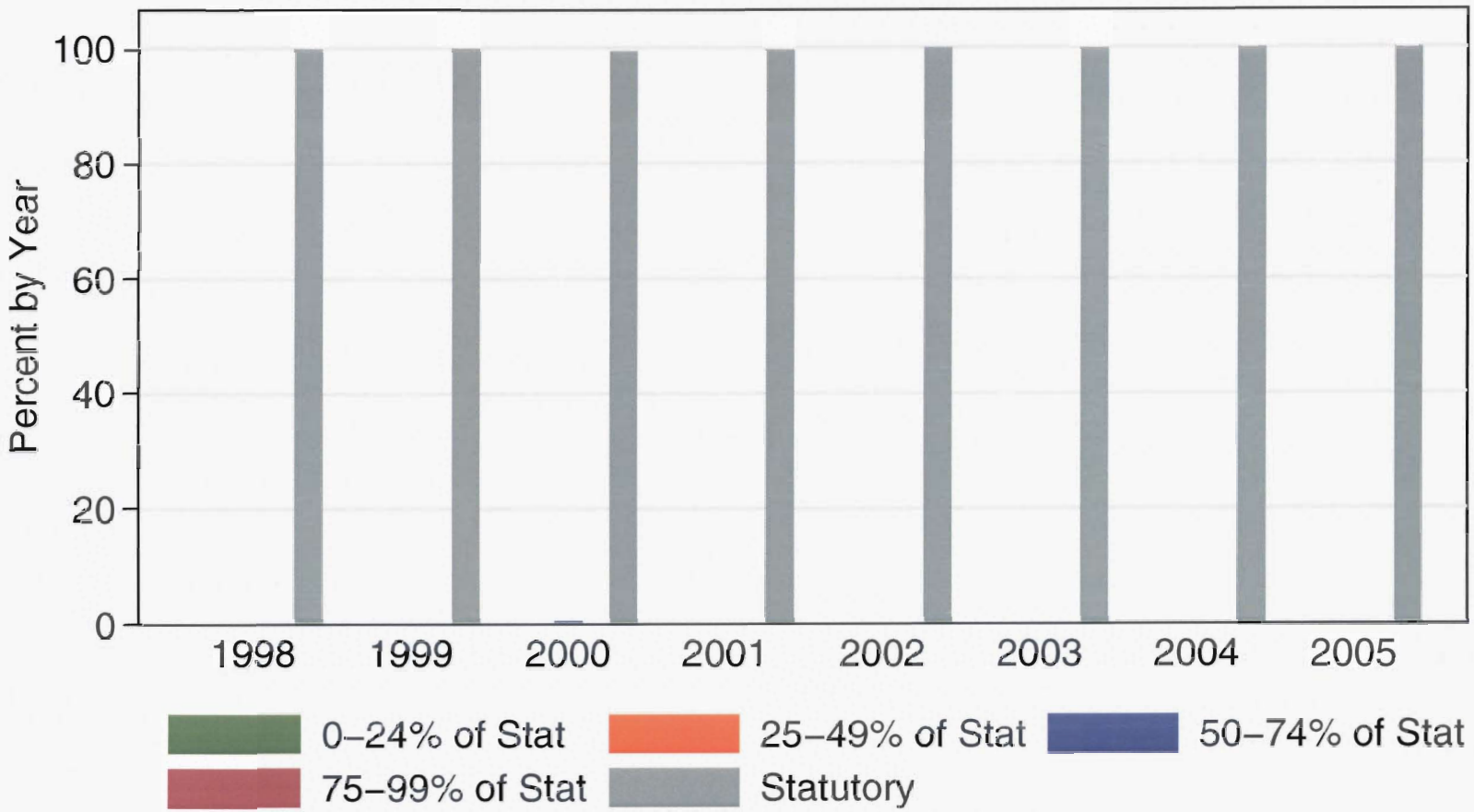
Source: HFA Data.
Excludes licenses without rate info or with rate TBD.

Figure 5
Fraction of Units Sold
by Percent of Statutory Rate by Distribution Year
Physical Not Controlled



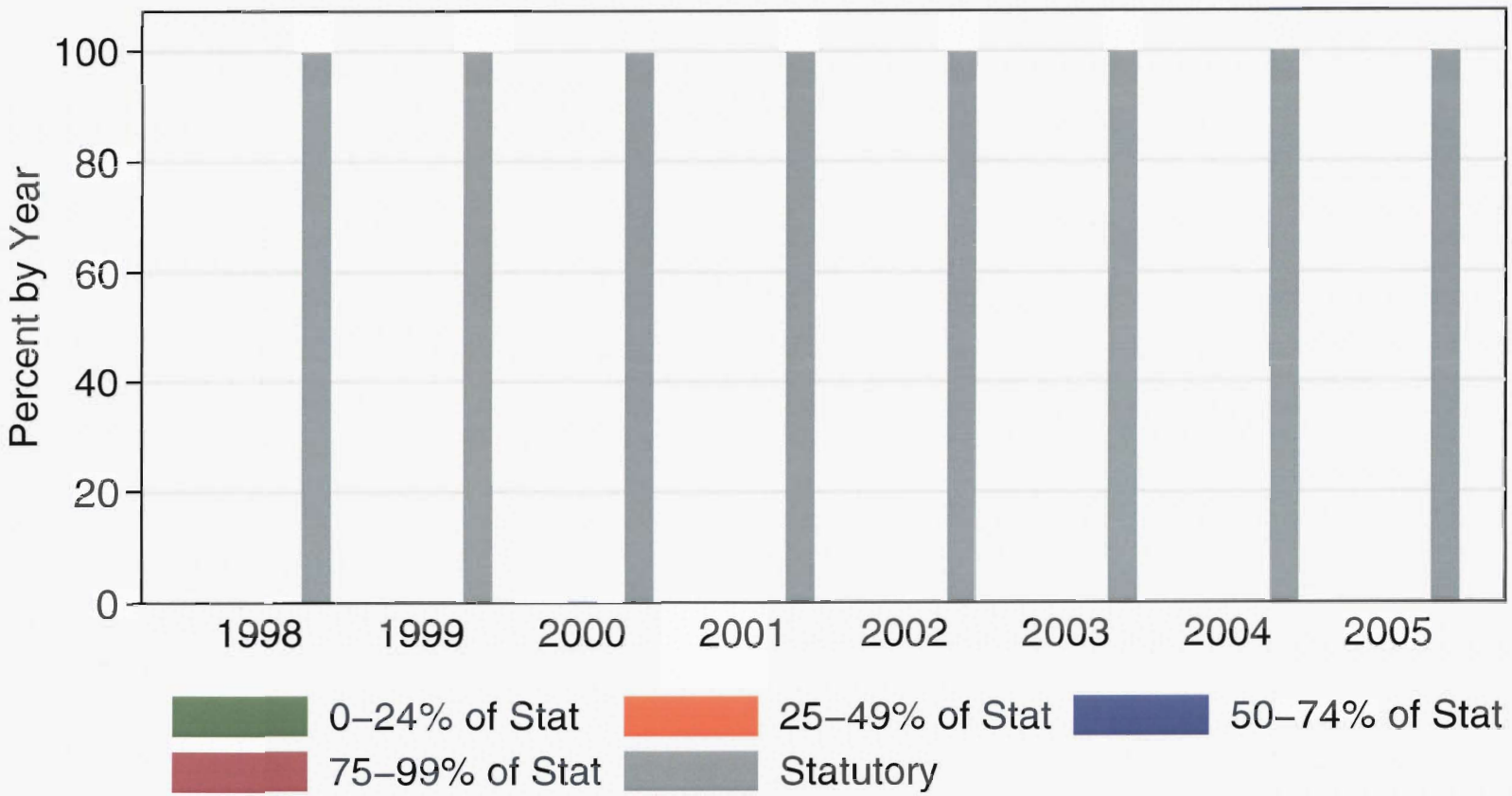
Source: HFA Data
Note: Based only on data for licenses issued later than 1995 that can be matched to distributions.

Figure 6
Licenses Issued Each Year by HFA by Rate Category
Permanent Downloads and NotControlled



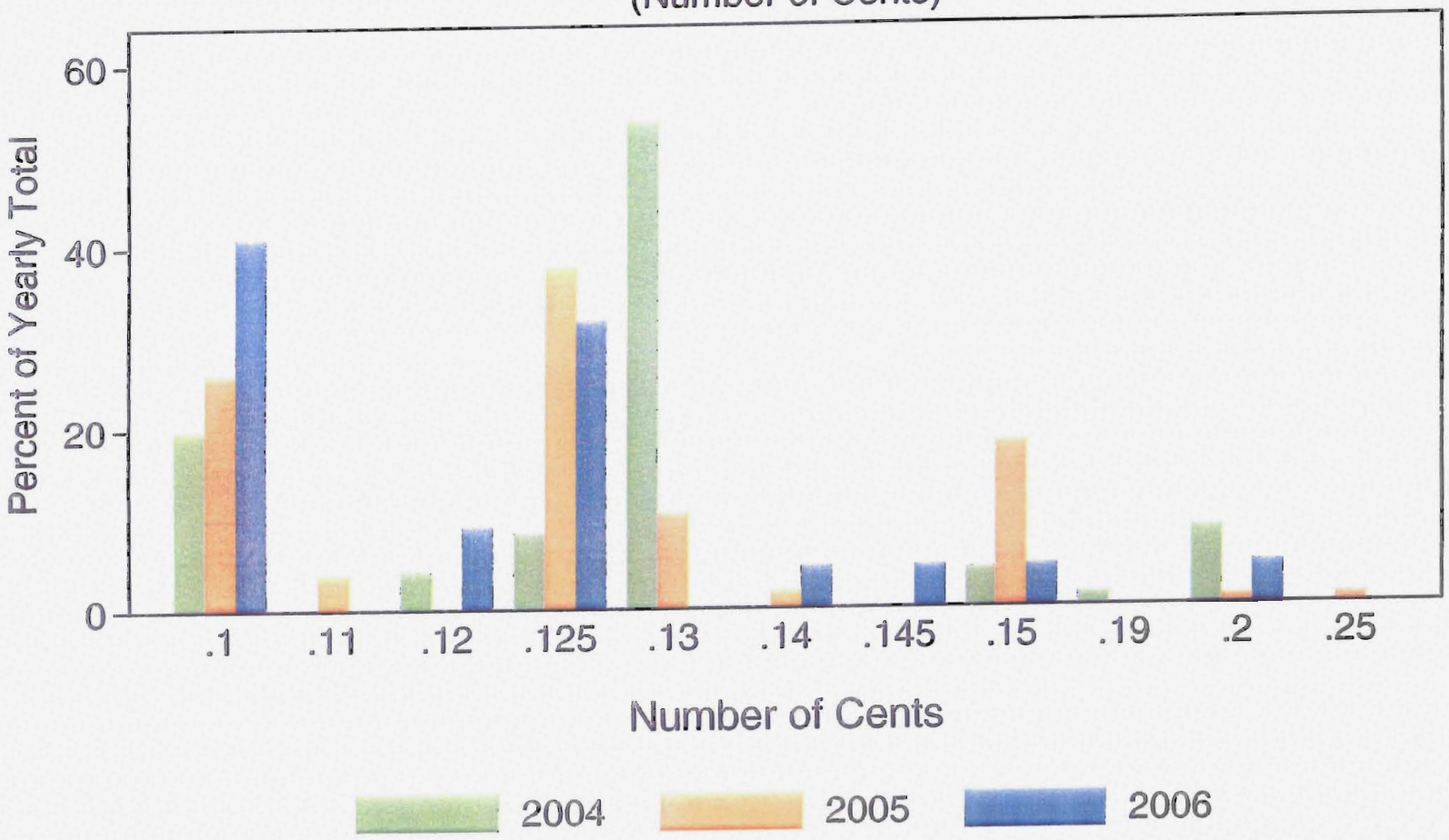
Source: HFA Data.
Excludes licenses without rate info or with rate TBD.

Figure 7
Fraction of Units Sold
by Percent of Statutory Rate by Distribution Year
Permanent Downloads Not Controlled



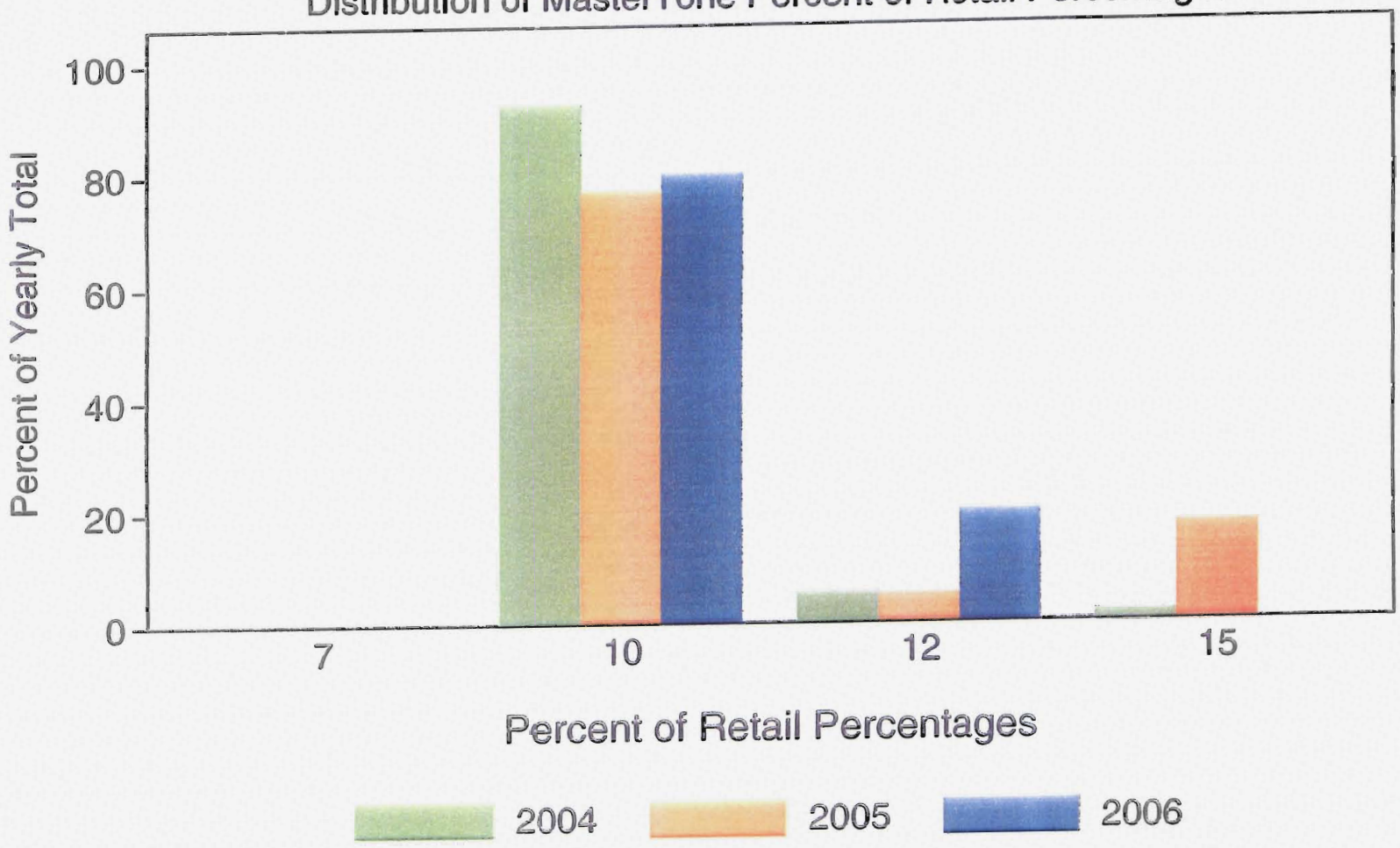
Source: HFA Data
Note: Based only on data for licenses issued later than 1995 that can be matched to distributions.

Figure 8
Distribution of MasterTone Minimums
(Number of Cents)



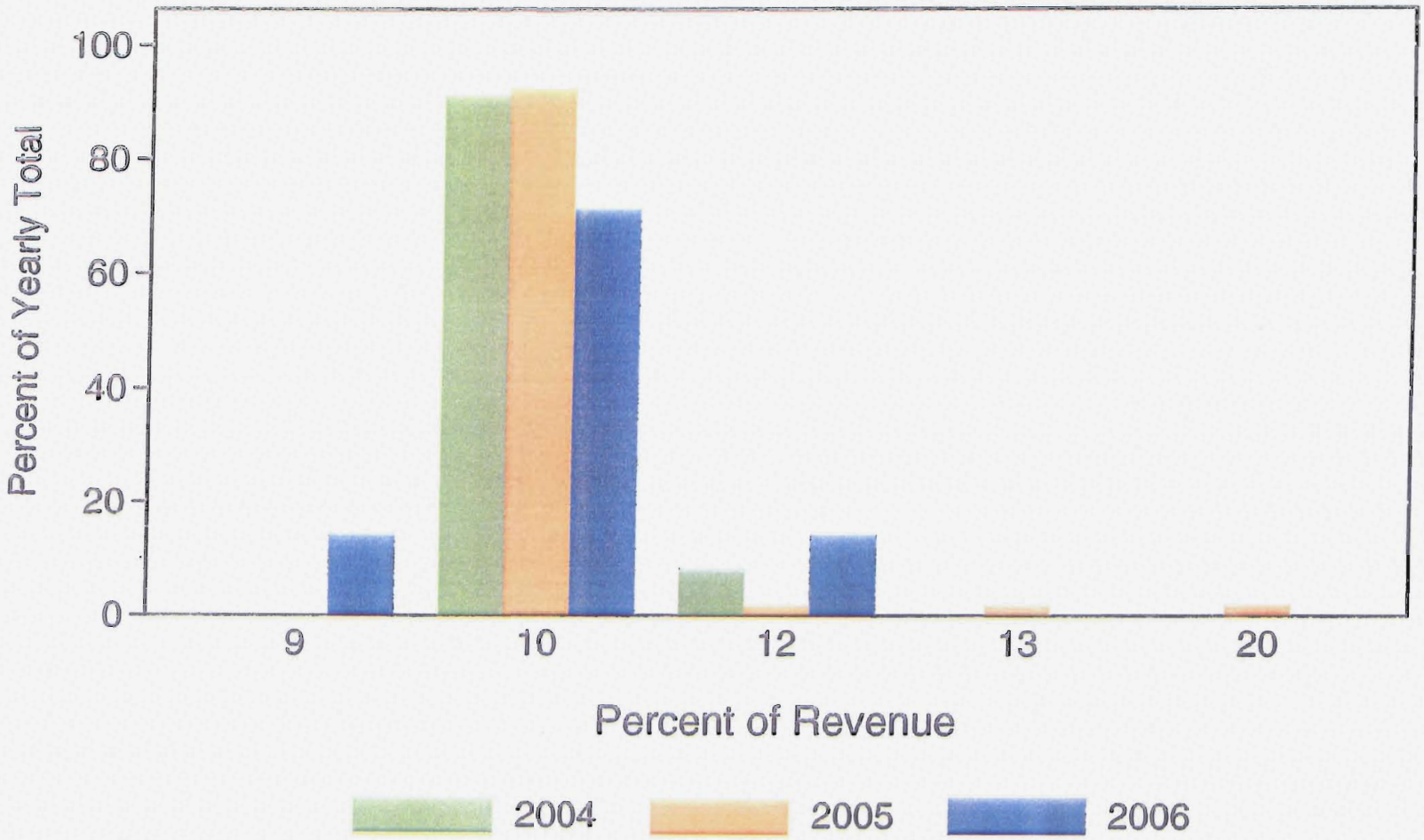
Source: License Agreements provided by Publishers.

Figure 9
Distribution of MasterTone Percent of Retail Percentages



Source: License Agreements provided by Publishers.

Figure 10
Distribution of MasterTone Percent of Revenue



Source: License Agreements provided by Publishers.

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ENDERS|ANALYSIS

U.S. Digital Music Market

November 29, 2006

Table of Contents

1. Introduction 1
2. Scope and Structure of This Report 3
3. Summary of Conclusions 5
4. History of the U.S. Digital Music Market 7
   - 4.1 Introduction 7
   - 4.2 The Traditional Physical Market for Music Sales 8
   - 4.3 The Development of the U.S. Market for Digital Music 9
     - 4.3.1 Technological and Legislative Developments 9
     - 4.3.2 The Growth of Online Music Piracy 9
     - 4.3.3 The Major Record Companies Fail to Offer Successful Online Music Services 10
     - 4.3.4 The Launch of Apple's iTunes and the iPod 12
     - 4.3.5 The Delivery of Digital Music Through Wireless Phones and Wireless Devices 14
     - 4.3.6 The History of the U.S. Digital Music Market — A Summary 14
5. The Current State of the U.S. Digital Music Market 16
   - 5.1 Introduction 16
   - 5.2 U.S. Digital Music Consumers 16
   - 5.3 U.S. Digital Music Sales 19
     - 5.3.1 Total U.S. Digital Music Sales 19
     - 5.3.2 Online Music Services 20
     - 5.3.3 Wireless Music Services 21
   - 5.4 Overview of the Major Players in the U.S. Digital Music Market 22
     - 5.4.1 Record Companies 22
     - 5.4.2 Overview of Online Digital Music Services 22
     - 5.4.3 Permanent Download Services 24
     - 5.4.4 Limited Download and Interactive Streaming Services 26
     - 5.4.5 Wireless Phone Carriers 28
   - 5.5 Costs of Digital Production and Distribution of Music 30
6. The Future of the U.S. Digital Music Market 31
7. Conclusions 33
   - 7.1 An Increased Compulsory License Fee for DPDs Is Appropriate Because The Digital Distribution of Music Provides Increased Value to Consumers 34
   - 7.2 An Increased Compulsory License Fee for DPDs Is Appropriate Because of Lower Costs and Higher Margins in Connection with the Digital Distribution of Music 35
   - 7.3 An Increased Compulsory License Fee for DPDs Is Appropriate Because the Digital Distribution of Music Is Based on Sales of Singles 35

1. Introduction

My name is Claire Enders, and I am the CEO of Enders Analysis, an international provider of research, analysis and advice on telecommunications, media and technology. Enders Analysis has a long track record of, and is a respected source for, analysis of the music industry, with a focus on digital music. I received a Bachelor's degree with honors in History from Yale University in 1979 and a MBA from the London Business School in 1984. A copy of my CV is attached as Exhibit A.

I have worked in the media and entertainment industries for over 20 years. From 1984 through 1986, I was the Head of Business Development for The Virgin Group, a U.K.-based media company focusing on entertainment, music and travel services, and the owner of the Virgin Megastores, an international chain of music stores, and Virgin Records, the well-known recording label (now owned by EMI Group plc). In that capacity, I was responsible for the development of the Group's media activities, including investments in new media.

In 1986, I became the Director of Marketing for Superchannel, a pan-European satellite television channel then owned by the ITV companies, where I was responsible for Superchannel's commercial strategy. In 1989, I became Director of Corporate Development at TVS Entertainment, the former ITV broadcaster for the South and the South-East of England, where I was responsible for group strategy, corporate development and related regulatory issues.

In 1992, I joined Thorn EMI plc, then the corporate parent of EMI Music (the record company), EMI Music Publishing and the owner of HMV, a major music retailer. As the company's Corporate Development Manager, I was responsible for advising the Chairman, Chief Executive and Group Finance Director, on major strategic issues facing the company as a whole. I concentrated on new technologies and the resulting changes for the music industry.

In 1994, I was seconded from Thorn EMI plc to be the Special Advisor on broadcasting policy for the U.K. Department of Trade and Industry, the department of the U.K. government responsible for, among other things, trade, business, and consumers, and (at the time) the regulation of U.K. broadcasting.

I founded Enders Analysis in 1997 to provide the leaders of major companies with high quality, independent research. The firm's roster of 110 subscribers includes media companies and content providers such as The Walt Disney Corporation, Time Warner, Vivendi, EMI and Sony/BMG, as well as major financial institutions such as Citigroup, JP Morgan and Kohlberg Kravis Roberts & Co.[1] The Financial News Survey of Independent Research, conducted in February 2005, cited Enders Analysis as a leader in our sector in the U.K.

I have been retained by the U.K.'s Mechanical-Copyright Protection Society Limited, the Performing Right Society Limited and the British Academy of Composers and Songwriters, to provide expert witness testimony before the U.K. Copyright Tribunal in the Matter of References Under Sections 119, 121 and 126 of the Copyright, Designs and Patents Act of 1988. This 2006 U.K. proceeding concerns the mechanical royalty rates applicable to online and mobile music services, and webcasting services, supplied to consumers for private use in the U.K. I submitted two expert reports and one supplemental report to the U.K. Copyright Tribunal in connection with that proceeding, a portion of which remains ongoing.

My work on this report has been performed with the assistance of my colleagues and staff at Enders Analysis. I am being compensated at the rate of $675 per hour for my independent analysis in this matter, and my colleagues are being compensated at their standard rates.

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[1] A more complete description of Enders Analysis and its subscribers is available on www.endersanalysis.com.

References to sources are contained in the footnotes. Where I have used news releases or articles published in the press, I have included the full citation in the relevant footnote. Where I have obtained information from a website, I have included the full address of the website, and the latest verifiable access date for the material. A list of the data and other information I have considered in reaching my conclusions is attached as Exhibit B.

2. Scope and Structure of This Report

I submit this report in support of the compulsory license fee rate proposal presented by the National Music Publishers' Association, Inc. ("NMPA"), the Songwriters Guild of America ("SGA"), and the Nashville Songwriters Association International ("NSAI") (collectively with NMPA and the SGA, the "Copyright Owners").

I understand that the Copyright Owners' proposal is as follows:

- For physical phonorecords, a penny rate equal to the greater of 12.5 cents per track or 2.40 cents per minute of playing time or fraction thereof, with a periodic adjustment for inflation as measured by the Consumer Price Index ("CPI");
- For permanent downloads, a penny rate equal to the greater of 15 cents per track or 2.90 cents per minute or fraction thereof, with a periodic adjustment for inflation as measured by the CPI;
- For limited downloads, a rate equal to the greatest of: (i) 15 percent of music provider revenue attributable to music; (ii) one-third of the amount paid for rights to musical compositions and sound recordings (the "music content"); or (iii) $0.0033 per use or $0.00064 per minute of playing time or fraction thereof, subject to a periodic adjustment for inflation as measured by the CPI;

- For interactive streams, a rate equal to the greatest of: (i) 12.5 percent of music provider revenue attributable to music; (ii) 27.5 percent of the amount paid for rights to music content; or (iii) $0.00275 per use or $0.00053 per minute of playing time or fraction thereof, subject to a periodic adjustment for inflation as measured by the CPI; and
- For ringtones, a rate equal to the greater of: (i) 15 percent of music provider revenue attributable to music; (ii) one-third of the amount paid for rights to music content; or (iii) 15 cents per ringtone subject to a periodic adjustment for inflation as measured by the CPI.

I have been asked specifically to provide my opinion as to whether the Copyright Owners' proposal for setting compulsory license fees under Section 115 of the Copyright Act for digital phonorecord deliveries ("DPDs") at rates higher than that set for physical phonorecords is appropriate. In evaluating this question, I have been asked to examine the U.S. digital music market, including the markets for permanent downloads, limited downloads, interactive streams and ringtones.[2]

A summary of my conclusions is set forth in Section 3 of this report. Section 4 of this report concerns the development of the U.S. digital music market. Section 5 focuses on the current state of the U.S. digital music market, focusing in particular on digital music consumers, market data, music providers and the costs of producing and distributing digital music. Section 6

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[2] A "permanent download" is a digital delivery of a sound recording of a musical work that is not limited in availability for listening by the consumer either to a period of times or number of times the sound recording can be played. In contrast, a "limited download" is a digital delivery of a sound recording of a musical work available for listening by the consumer for a limited period of time or a limited number of times. An "interactive stream" consists of the digital delivery of a sound recording of a musical work, using streaming technology, in response to a consumer's request. A ringtone is a digital music file or excerpt of a sound recording of a musical work up to 30 seconds in length, downloaded to a mobile phone or similar device to personalize its ring.

sets out growth projections for the U.S. digital music market for the period ending in 2012. Section 7 sets forth my conclusions and the reasons for those conclusions in greater detail.

The analyses and conclusions set forth in this report are based on the information currently available to me. I have not yet had the opportunity to examine many types of information that will likely prove relevant to my analysis, including information of a financial nature from the other parties to this proceeding such as the record companies and the digital music providers. I understand that the procedures in this suit provide that such materials can be discovered only after this report is submitted. Accordingly, I reserve the right to, and expect to, amend or supplement my report, and the analyses and conclusions herein, based on the information provided in discovery. I also reserve the right to, and expect to, amend or supplement my report, and the analyses and conclusions herein, based on other new information that becomes available such as additional market data, as well as in response to the submissions of the other parties to this proceeding and their experts.

3. Summary of Conclusions

As I set forth in more detail below, the Copyright Owners' proposal that the mechanical royalty rate for DPDs be set at a rate that is higher than that set for physical phonorecords is appropriate for a number of reasons, including:

1. Increased Value of Digital Music – Today, there is a thriving U.S. market for digital music. The digital music market has expanded rapidly and is poised for increased growth due in part to the increased value of digital music to consumers. As discussed below in Section 5.2, U.S. consumers are able to identify a number of attributes of DPDs that provide them with value, and which are not available on purchases of physical phonorecords, including the ability to purchase only the hit song without purchasing the rest of the album, *i.e.*, the ability to "cherry-pick,"

increased convenience, and immediacy of purchase. Accordingly, as set forth in further detail in Section 7.1, an increased compulsory license fee for DPDs is appropriate.

2. Lower Costs for Selling DPDs Versus Physical Phonorecords – The relative contributions of record companies and Copyright Owners in the process of creating musical works are the same whether a musical work is sold as a DPD or as a physical phonorecord. However, as is discussed in more detail in Section 5.5, the record companies and digital music providers do not incur the costs of manufacturing and distributing the physical format when musical works are sold as DPDs. The record companies in particular realize higher gross margins on the digital distribution of music. Moreover, the digital music providers incur relatively modest costs to provide digital music compared to the costs of physical retailers. The Copyright Owners make a relatively higher contribution to the sale of musical works as DPDs and accordingly, as is explained in Section 7.2, an increased compulsory license fee for DPDs is appropriate.

3. U.S. Digital Music Sales Are Singles-Driven – The current rates for physical phonorecords and for DPDs were agreed in 1997 when the U.S. digital music market was nascent and the album was the dominant format for recorded music sales. Hit songs drove the sale of albums with multiple tracks. As a result, the physical royalty rate per track was effectively a blended average of rates on hit songs and the other tracks on albums. In the digital world, consumers have the ability to purchase only the hit song without purchasing the rest of the album, *i.e.*, the ability to "cherry-pick." As Section 5.3.2 describes, the single dominates U.S.

digital music sales. As is explained in Section 7.3, an increased compulsory license fee for DPDs is appropriate to compensate Copyright Owners on a per track basis.

4. History of the U.S. Digital Music Market

4.1 Introduction

This section of my report surveys the development of the U.S. digital music market. The U.S. digital music market has only recently emerged. For decades, recorded music was sold to consumers only in physical formats such as vinyl, cassette or CD. Digital music delivered over the Internet emerged as a format for consumers to enjoy in the mid-1990s. Initial record company efforts to exploit the Internet for the sale of digital music failed. Only after the record companies largely abandoned these efforts and began licensing third-party music download providers, such as Apple, around 2002 and 2003, did the U.S. market for legitimate digital music begin to grow.

Today, the U.S. digital music market is vibrant. As discussed below, a large number of music providers have entered the U.S. digital music market. U.S. digital music sales exceeded $1 billion in 2005 and accounted for 8.8 percent of recorded music retail sales that year.[3] Growth continued in the first half of 2006, with total U.S. digital music sales rising 85 percent on a year-over-year basis, to reach $870 million, an 18.8 percent share of U.S. recorded music retail sales in that period.[4] As described more fully in Section 6, the growth of the U.S. digital music

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[3] Recording Industry Association of America ("RIAA"), "2005 Year-End Statistics", www.riaa.com [accessed November 29, 2006].

[4] Recording Industry Association of America ("RIAA"), "2006 RIAA Mid-year Statistics", www.riaa.com [accessed November 29, 2006].

market is expected to continue in the near future, and digital music sales could reach an estimated $5.8 billion by 2012.[5]

The significance of the development of the digital music market in the U.S. is best understood in the context of the traditional physical market for music sales, which I discuss below.

4.2 The Traditional Physical Market for Music Sales

For well over a decade, the compact disc or CD has been the dominant format for music sales in the U.S. Traditionally, record companies have incurred significant costs associated with the manufacture and distribution of CDs and other physical formats such as cassettes and vinyl.

For many years, record companies had divisions devoted to manufacturing (sometimes called pressing) CDs. I understand that the major record companies have largely divested themselves of these operations in recent years in order to reduce their costs, and currently outsource manufacturing. Similar expenses were incurred by record companies in connection with the manufacture of other physical formats such as cassettes and vinyl, whose sales have declined substantially over the past 10 years.[6] The distribution of physical units involves shipping CDs from the manufacturing facility via a distributor to a retailer who sells the CDs to consumers and returns unsold CDs. As discussed in Section 5.5 of this report, the record companies' costs associated with bringing CDs to market remain substantially higher than the costs associated with supplying music in digital formats to online and mobile music providers.

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[5] Enders Analysis estimates. The Enders Analysis estimates cited here and elsewhere in this report are discussed in Section 6 and the accompanying footnotes.

[6] Recording Industry Association of America ("RIAA"), "2005 Year-End Statistics," www.riaa.com [accessed November 29, 2006].

4.3 The Development of the U.S. Market for Digital Music

4.3.1 Technological and Legislative Developments

During the 1990s, advances in technology and, particularly, the growth of the Internet, made it possible to distribute digital music through means other than a CD. Personal computers equipped with CD-ROM drives grew increasingly prevalent, enabling users to copy music stored on CDs into audio files to be stored on their personal computers. The development of the MP3 file format permitted users to compress those audio files, making them easier to distribute over the Internet. At the same time, the Internet was becoming available to a growing number of consumers, setting the stage for a revolution – the digital delivery of music over the Internet.

The major record companies, which had enjoyed substantial growth in revenue and profitability through CD album sales, were slow to embrace this new means of delivering music to consumers. Congress had taken action in 1995 and in 1998 to clarify the scope of copyrights and potential infringement liability for digital music, and facilitate the entry of music providers.[7] The Copyright Owners had settled the mechanical royalty rates for certain DPDs in the context of the 1997 Mechanical Rate Adjustment Proceeding. Major record companies were reluctant to license third-party music download services until 2002 and 2003, after the launch of their own legitimate Internet-based music services in late 2001.

4.3.2 The Growth of Online Music Piracy

The absence of a viable Internet-based music service offering from the major record labels, and the delay in their licensing of successful third-party music services, fueled continued demand for the illegal copying of digital music over the Internet. The result was unprecedented

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[7] The Digital Performance Rights in Sound Recordings Act of 1995 clarified that the scope of the Section 115 compulsory license encompasses digital delivery of phonorecords. The Digital Millennium Copyright Act of 1998 granted a safe harbor from infringement claims to Internet service providers transmitting music over the Internet.

levels of piracy in the music industry, with a peak level of 1.1 billion music files available for illegal copying in April 2003.[8]

In 1999, the notorious peer-to-peer ("P2P") file sharing service, Napster, was launched. P2P file sharing software such as Napster allowed its users to make MP3 files of digital music on a users' computer available for copying by other users of that software, and enabled those users to search for and copy desired music from one "peer" computer in the network to another over the Internet.[9]

Litigation against Napster commenced in December 1999. After a preliminary injunction was entered by the trial court and affirmed by the United States Court of Appeals for the Ninth Circuit, Napster shut down in July 2001. Following Napster, a number of other P2P file sharing networks, such as Grokster, Aimster, Gnutella, and Freenet, emerged to foster Internet-based piracy of digital music. Record companies and music publishers have continued to challenge the legality of such services. Internet-based piracy of music continues today.

4.3.3 The Major Record Companies Fail to Offer Successful Online Music Services

In late 2001, the record companies finally launched their online music services.[10] These services, MusicNet and Pressplay, however, were not attractive to consumers, in part because neither had music available from all the major record companies.[11] Neither service offered

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[8] IFPI (2004), *IFPI Online Music Report 2004*, www.ifpi.org [accessed November 29, 2006].

[9] Ninth Circuit Court of Appeals, "Napster decision," February 12, 2001, www.riaa.com [accessed November 29, 2006].

[10] "Joint Statement of the Recording Industry Association of America, Inc. National Music Publisher's Association and The Harry Fox Agency, Inc.," Docket No. RM 2000-7, www.copyright.gov [accessed November 29, 2006].

[11] MusicNet was launched in December 2001 by AOL Time Warner, Bertelsmann AG, EMI Group plc and RealNetworks, Inc., without licenses from all the major record companies, which were obtained in November 2002. Musicnet was acquired by Baker Capital, a private equity firm, in 2005. MusicNet continues to operate

consumers permanent and portable downloads like those available from file-sharing networks at the time. The shortcomings of these services were readily apparent and widely reported.[12]

The RIAA has subsequently acknowledged that the key to combating piracy is to offer "a legitimate alternative that consumers will prefer" and that it is up to the music industry to offer consumers sufficiently convenient access to music, ease of use and high sound quality so that consumers will chose to use legitimate music sites.[13] The record companies' own initiatives did not meet this test and, as noted previously, the major record companies were resistant to licensing their music catalogs to third-party music download services. Although the record companies did not provide or license digital music services that were attractive to customers who sought permanent downloads, they did draw the attention of the U.S. Department of Justice, which launched an antitrust investigation of the major record companies in 2001 regarding, among other things, whether major record companies' joint ventures in the digital arena restrained competition and affected the terms on which they were willing to license their catalogs

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in the U.S. as a provider of business-to-business digital entertainment services. www.musicnet.com [accessed November 29, 2006]. Pressplay was launched in December 2001 by Sony Music Entertainment and Universal Music Group, without licenses from all the major record companies, which were obtained in November 2002. Pressplay was acquired by Roxio, a private equity firm, in May 2003, which subsequently changed its name to Napster, Inc. (having acquired the rights to the brand and the logo), and the licensed music provider Napster, Inc. launched in October 2003. www.napster.com [accessed November 29, 2006].

Other early music subscription services were likewise unsuccessful. The music provider eMusic.com launched in 1998, offering permanent music downloads in MP3 (unprotected) format from a catalog of music mainly licensed from independent record companies. Dimensional Associates, a private equity company, acquired eMusic.com in 2003. The company continues to operate in the U.S. www.emusic.com [accessed November 29, 2006]. Listen.com launched its subscription-based Rhapsody service in December 2001, without licenses from all the major record companies, which were obtained in July 2002. Listen.com was acquired by RealNetworks in August 2003, which continues to operate the Rhapsody music service. www.realnetworks.com [accessed November 29, 2006].

[12] *The Wall Street Journal*, "Music Industry Is Finally Online, But There Aren't Many Listeners," May 7, 2002 [accessed from the archive on October 21, 2006].

[13] RIAA, "Frequently asked questions – Napster and Digital Music," www.riaa.com [accessed November 29, 2006].

to music providers not owned by the record labels themselves.[14] After the investigation commenced, the major record companies began licensing competitor music providers in 2002, and the Department of Justice closed its investigation in 2003 without bringing charges. In March 2006, the Department of Justice opened an investigation into possible price-fixing among the major record companies for digital music, following a similar inquiry launched by the New York Attorney General in December 2005.[15] I understand that these investigations remain ongoing.

4.3.4 The Launch of Apple's iTunes and the iPod

After the Department of Justice investigation had begun in 2001, and after their own online music services had failed, the record companies finally licensed Apple for its iTunes Music Store.[16] This step was instrumental in the growth of the U.S. digital music market.[17]

The iTunes Store is integrated with the iPod family of players. Apple sells music content in a proprietary format, which can only be played on its iPod music players.[18] The iTunes software on the personal computer connects the consumer directly to the iTunes Store when opened. Consumers' seamless experience in purchasing music from Apple, organizing it on the

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[14] Department of Justice, "Statement by Assistant Attorney General R. Hewitt Pate regarding the closing of the digital music investigation," December 23, 2003, www.usdoj.gov [accessed November 29, 2006].

[15] P2Pnet, "DoJ probes Big Music downloads," March 3, 2006, www.p2pnet.net [accessed November 29, 2006].

[16] Apple's CEO, Steve Jobs, has noted that it took more than 18 months for the record companies to issue licenses for the iTunes music store. *Newsweek*, "Q&A: Jobs on iPod's Cultural Impact," web exclusive, October 15, 2006, www.msnbc.msn.com [accessed November 29, 2006].

[17] "The success of the Apple iTunes download shop, which sold almost 4 million tracks in its first month of operation, suggests that many consumers are willing to pay $1 per track if the interface is quick and easy to use, and if there are few limits placed on the copying and portability of downloads." *Music & Copyright*, Issue No. 252, June 11, 2003, p. 11.

[18] Apple uses proprietary digital rights management software to restrict the use of music purchased from the iTunes Store to the iPod family of music players. Two other companies, Sony and Microsoft, also use their own proprietary formats for music sold on their music stores, which can only be played on the Sony Walkman and Microsoft Zune music players, respectively.

personal computer and transferring it to the iPod, are key to the success of Apple. By mid-2006, Apple had sold more than 1.5 billion tracks and over 67 million iPod music players.

Apple launched the iTunes Music Store to Mac users in April 2003, offering *à la carte* (or pay-per-track) permanent downloads at 99 cents per track. As discussed in Section 5.4.3, below, the 99 cent per track price point set by Apple is followed by most other online music providers. The iTunes Music Store sold an average of 500,000 downloads per week in the first six months after launch, with total sales to Mac users surpassing 10 million downloads by mid-October 2003.[19] In the first week following the introduction of the iTunes Music Store for PC users in mid-October 2003, iTunes sales were 1.5 million downloads, with total sales of more than 25 million downloads by mid-December 2003.[20]

The iPod family of music players has grown over time with the introduction of new devices such as the iPod mini in January 2004, the iPod Photo in October 2004, the iPod shuffle in January 2005, the iPod Nano in September 2005 and the iPod with video capability in October 2005. These new devices have driven Apple's continued success; according to my estimates, the company has averaged sales of approximately 9 million tracks per week in 2006 in the U.S.[21] Thus, the iPod family and the iTunes Store have been remarkably successful. Having revolutionized the market for digital music, today Apple dominates the U.S. market for digital music. Numerous other music services providers pursuing a variety of business models have entered the market, as is described in more detail below.

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[19] IFPI (2004), *IFPI Online Music Report 2004*, www.ifpi.org [accessed November 29, 2006].

[20] IFPI (2004), *IFPI Online Music Report 2004*, www.ifpi.org [accessed November 29, 2006].

[21] According to data from Nielsen Soundscan, sales of single downloads averaged 11 million per week in 2006, while Apple claimed 85 percent of the U.S. music download market in the third quarter of 2006 (see Apple "Q4 FY2006 Quarterly Earnings Call," October 18, 2006 [accessed November 29, 2006]).

4.3.5 The Delivery of Digital Music Through Wireless Phones and Wireless Devices

Beginning in 2005, wireless carriers launched the sale and delivery of digital music through wireless phones and other wireless devices. Dollar sales of mobile music grew 96.8 percent from the first half of 2005 to the first half of 2006, the first period for which year over year comparisons are available.[22] To date, most of the sales of mobile music have been of ringtones. In addition, as discussed in detail in Section 5.3.3 below, wireless phone users have been able to download full tracks over wireless networks since 2005, contributing to the further growth of the U.S. digital music market. Mobile music sales are expected to increase to $1.7 billion by 2012.[23]

4.3.6 The History of the U.S. Digital Music Market — A Summary

The principal events in the development of the US digital music market discussed above are summarized in Table 1.

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[22] Recording Industry Association of America ("RIAA"), "2006 RIAA Mid-year Statistics," www.riaa.com [accessed November 29, 2006].

[23] Enders Analysis estimates.

Table 1: Digital Music Timeline in the U.S., 1998-2006

Date	Event
1998 July	eMusic.com is the first commercial provider of downloads in MP3 format. Its catalogue is mainly licensed from independent record companies.
1999 June	Shawn Fanning, a college student in the U.S., launches Napster, the original P2P file-sharing service designed to enable users to swap songs for free on the Internet.
1999 December	First lawsuit filed against Napster.
2000 January	MP3.com launches its personal Jukebox software to allow PC users to upload their CD libraries in MP3 format.
2001 January	Apple launches its jukebox software for Mac users to allow CD libraries to be uploaded to Macs in Apple's proprietary format.
2001 July	Napster shut down.
2001 Summer	U.S. Department of Justice commences antitrust investigation of major record labels' online music joint ventures and failure to license third parties.
2001 October	Apple introduces iPods (to play music stored on the iTunes JukeBox, and before introducing the iTunes music store).
2001 December	Listen.com launches subscription service Rhapsody. Sony and Universal launch subscription service Pressplay. MusicNet, a distribution platform for subscription services, is launched by AOL Time Warner, Bertelsmann AG, EMI and RealNetworks.
2002 July	Listen.com's Rhapsody subscription service offers music licensed from all major record companies.
2002 November	MusicNet and Pressplay each offer music licensed from all major record companies.
2003 April	Apple launches the Mac version of iTunes, charging 99 cents per single-track download.
2003 June	RIAA announces it will take legal action against individual file-sharers.
2003 October	Apple launches the PC version of iTunes, charging 99 cents per single-track download. MusicNet and Pressplay are sold to Roxio, which changes its name to Napster.com.
2004 January	Apple introduces the iPod Mini.
2004 May	Sony launches SonyConnect.
2005 June	U.S. Supreme Court issues Grokster decision holding that illegal file-sharing networks can be found liable for inducing infringement.
2005 October	Sprint launches its mobile download service.
2005 October	Apple introduces iPod with video capability.
2006 January	Verizon launches its mobile download service.
2006 February	Apple announces sale of 1 billionth song.
2006 November	Microsoft launches the Zune portable music player and the Zune Marketplace.

[Source: Enders Analysis based on www.pro-music.org, www.usdoj.gov, www.copyright.gov, www.riaa.com, and company websites accessed November 29, 2006]

With this background, the next section of my report examines the current U.S. market for digital music in greater detail.

5. The Current State of the U.S. Digital Music Market

5.1 Introduction

Today, the U.S. digital music market, while continuing to evolve, is flourishing. U.S. consumers appear increasingly willing to pay for legitimate digital music, regarding digital music as having a number of advantages over CDs. Sales of digital music are rising rapidly across a variety of formats and new sources of digital music sales, such as wireless music, are further increasing the size of the U.S. digital music market. The major players in the U.S. digital music market are the record companies, the online music providers, and the wireless phone companies. Online music providers are pursuing a variety of business models, increasing the choices available to consumers.

The digital distribution of music over the Internet provides important cost savings to record companies and retailers compared to the manufacture and distribution of physical music formats. I expect these cost savings to be an important focus of my analysis after discovery is taken in this matter, and expect to expand my discussion of the relevant costs of digital and physical music formats.

I examine each of these aspects of the current U.S. digital music market and its future below.

5.2 U.S. Digital Music Consumers[24]

According to Ipsos, by the second quarter of 2006, roughly 60 million Americans (aged 12 and over) had ever downloaded music files – either on a fee-paying basis or through file-sharing. Of this group of 60 million Americans, 35 million reported having paid a fee to download music and 29.5 million reported that they engaged in file sharing. Fee-based music

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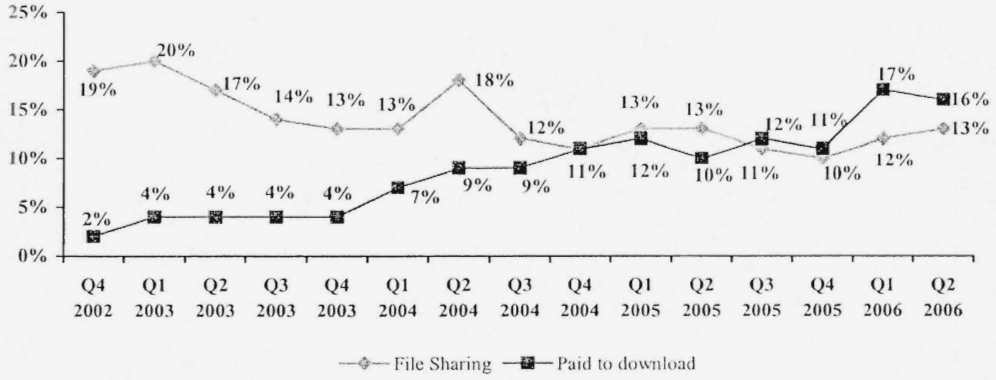
[24] Unless otherwise stated, all figures contained in this section are sourced from Ipsos, "Tempo: Keeping Pace with Digital Music Behavior," Q2 2006.

downloading has gained significant ground since the iTunes Music Store launched in 2003. At that time, only 4 percent of Americans reported that they had paid to download music, a figure that increased to 16 percent by the second quarter of 2006; as discussed in Section 6 below, the current share of Americans who pay to download music leaves room for substantial future growth. Table 2 shows the percentage of Americans who reported that they paid to download music and/or engaged in file sharing in each quarter since Q4 2002.

Table 2: Share of Americans (aged 12 or above) Who Paid to Download Music or Engaged in File Sharing



[Source: Ipsos, "Tempo: Keeping Pace with Digital Music Behavior", Q2 2006, p. 37]

Of those consumers who report that they paid to download music in the second quarter of 2006, just over half cited their desire to purchase just one track rather than the entire album (a practice known as "cherry-picking") as the principal motivation for first paying to download music. This is also the main reason these consumers give for continuing to pay for music downloads. Consumers also cite convenience and immediacy as important reasons for choosing to pay to download music.

Table 3 provides the most common reasons given by consumers for their initial decision to pay to download music.

Table 3: Reasons For *First* Paying for Music Downloads, Q2 2006

Reason	Share of fee-based music downloaders
I only wanted to purchase one song from the artist and not the entire album	52%
More convenient to download songs from the Internet than going to a store	41%
Wanted the song/album right away	39%
Acquired a portable music player	34%
Was curious about the services	26%
Wanted to experiment with this type of downloading	25%
Legal issues associated with file sharing	19%
A friend recommended I try it	15%
There was a special promotion	15%
The service had a music exclusive I wanted	10%
Received as a gift	1%
Other	6%

Note: Responses exceed 100 percent because respondents can provide multiple reasons.
[Source: Enders Analysis based on Ipsos Tempo, Q2 2006, pp. 74-75]

Consumer research concerning customers' reasons for continuing to pay to download digital music indicates that many consumers view purchasing the digital single as more economical than purchasing a CD.[25] The prevailing price of a permanent download of a track (99 cents) is about one-tenth the price of a digital album ($9.99) and about one fifteenth the price of the CD album ($14.99).

The reasons given by consumers for continuing to pay for music downloads are set forth in Table 4, below.

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[25] "The combination of searching, browsing, downloading and portability is transforming the experience of consuming music. Notably it is driving demand for the single." IFPI (2005), *IFPI:05 Digital Music Report*, p. 15, www.ifpi.org [accessed November 29, 2006].

Table 4: Reasons for *Continuing* to Pay for Music Downloads, Q2 2006

Reason	Share of fee-based music downloaders
I only wanted to purchase one song from the artist and not the entire album	51%
It's less expensive for me to download songs I want than to purchase entire albums on CD	49%
More convenient to download songs from the Internet than going to a store	45%
Wanted the song/album right away	39%
Downloading is an easier way to add to my digital collection than ripping CDs	31%
I do most of my music shopping online now	24%
I prefer digital music to physical CDs	20%
Legal issues associated with file sharing	18%
I'm still experimenting with digital music	15%
The service had a music exclusive I wanted	10%
I've made the switch to all digital collection	8%
The service has special promotions	7%
Other	2%

Note: Responses exceed 100 percent because respondents could list multiple reasons.
[Source: Enders Analysis based on Ipsos Tempo, Q2 2006, pp. 74-75]

5.3 U.S. Digital Music Sales[26]

5.3.1 Total U.S. Digital Music Sales

According to the RIAA, total U.S. digital music sales (online and mobile) grew to more than $1 billion in 2005. In the first half of 2006, U.S. digital music sales increased by more than 80 percent from the first half of 2005 to reach $869.7 million. As the growth of the U.S. digital music market continues, digital sales are expected to rise to an estimated $5.8 billion by 2012.[27]

The contribution of digital music to U.S. recorded music sales is increasing rapidly. In 2004, digital music sales constituted 1.5 percent of total U.S. recorded music sales, rising to 8.8 percent of such sales in 2005, and 18.8 percent in the first half of 2006.

The U.S. digital music market is composed of online music services (59 percent of digital music sales in the first half of 2006), and mobile services (41 percent of digital music sales in the first half of 2006).

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[26] Unless otherwise stated, all figures cited in this section are sourced from the RIAA "2005 Year-End Statistics," "2006 RIAA Mid-year Statistics," and "RIAA Announces First Half 2006 Music Shipment Numbers II", www.riaa.com [accessed November 29, 2006].

[27] Enders Analysis estimates.

5.3.2 Online Music Services

Online music services generated sales of $513.3 million in the first half of 2006, of which about 81 percent was due to download services and 19 percent to subscription services. These figures do not include the revenues generated by music providers offering ad-supported free music services.

Dollar sales of music download services are growing rapidly: from 2004 to 2005, dollar sales of digital single downloads rose 163 percent to reach $363.3 million, and rose 71 percent in the first half of 2006 (on a year-over-year basis); from 2004 to 2005, dollar sales of digital album downloads rose to $135.7 million, and rose again in the first half of 2006 (on a year-over-year basis).

The increase in digital music sales is being driven by a substantial increase in unit sales. From 2004 to 2005, unit sales of digital single downloads rose 163 percent to reach 366.9 million units; indeed, IFPI has reported that the digital single is the fastest growing format in recorded music history based on the annual number of units sold.[28] Unit sales of digital album downloads rose to reach 13.6 million units in 2005.

Based on Nielsen Soundscan data of weekly sales, U.S. digital music unit sales are composed primarily of singles, not albums, as illustrated in Table 5. Unit sales of single permanent downloads averaged 11.0 million per week in 2006, up from 6.5 million per week in 2005, and 2.6 million per week in 2004. Weekly sales of digital album downloads averaged 592,000 in 2006, up from 303,000 in 2005, and 138,000 in 2004.

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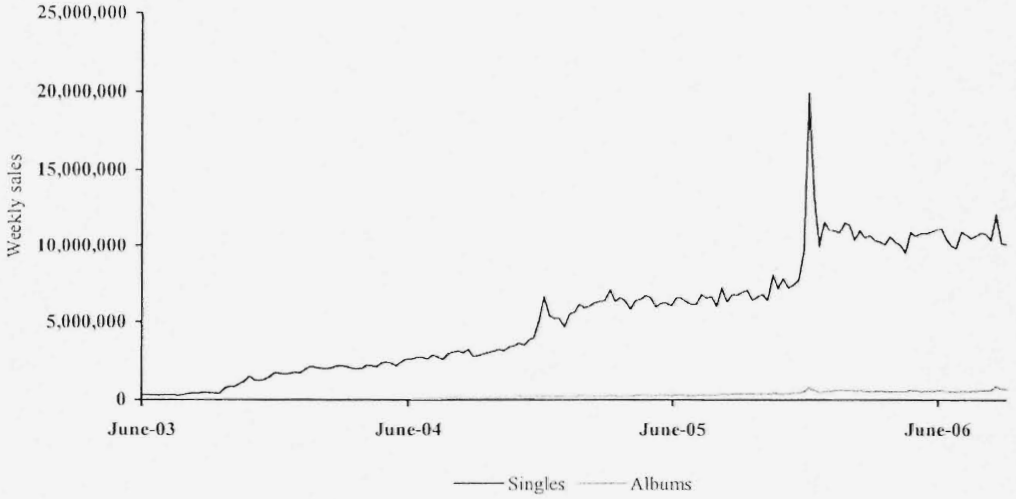
[28] IFPI (2006), *2006 Global Recording Industry in Numbers*, p. 18.

Table 5: Weekly Sales of U.S. Digital Single and Album Downloads



[Source: Enders Analysis based on Nielsen SoundScan]

Subscription services represent a small but growing segment of online music services. Such services generated revenue of $149.2 million in 2005, and then $96.1 million in the first half of 2006, up 48.3 percent from $64.8 million in the first half of 2005. During the first half of 2006, there was a monthly average of 1.9 million subscribers, up 45.1 percent from the monthly average of 1.3 million in 2005.

5.3.3 Wireless Music Services

In addition to online music services, another important segment of the current U.S. digital music market is the market for mobile music sales through wireless carriers, which includes the sale of both ringtones and full-track downloads to mobile phones. This market generated sales of $421.6 million in 2005, and $356.4 million in the first half of 2006.

The most established mobile music market is for ringtones: about 38 million Americans have downloaded ringtones.[29] According to M:Metrics, a leading mobile consumer research

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[29] Ipsos, "Tempo: Keeping Pace with Digital Music Behavior," Q2 2006, p. 54.

firm, the U.S. market for full-track downloads to mobile phones is only beginning to emerge.[30] The growth of music-enabled phones is likely to increase future digital music sales because only 14% of cell phones are music-enabled today.[31]

5.4 Overview of the Major Players in the U.S. Digital Music Market

5.4.1 Record Companies

There are four major record companies worldwide - EMI, Warner Music, Sony/BMG and Universal Music Group - all of which operate in the United States. In addition, there are a number of independent record companies in the U.S., such as American Gramophone, Equity Music Group, Koch Records, Red Ink and TVT Records. Currently, the record companies license sound recordings to many digital music providers, while other digital music providers license mechanical rights directly from Copyright Owners and license master recordings from the record companies. In either case, the record companies' licensing agreements are not in the public domain, but I expect them to be important to my analysis once they are made available in discovery. Accordingly, I reserve the right to, and expect to, supplement and amend the opinions and conclusions in this report, once I have had an opportunity to review those agreements.

5.4.2 Overview of Online Digital Music Services

Numerous music providers operate in the U.S. digital music market and offer digital music through a wide variety of business models. Today, there are at least 41 licensed online music providers active in the U.S. online music market; some offer *à la carte* permanent downloads at a fixed per track price, while others offer subscription-based limited download services or interactive streams. In addition, there are music providers that offer free, advertising-

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[30] M:Metrics Press Release, September 26, 2005, www.mmetrics.com [accessed November 29, 2006].

[31] Ipsos, "Tempo: Keeping Pace with Digital Music Behavior," Q2 2006, p. 57.

supported music in each of these formats. Finally, several companies offer consumers more than one format or pricing model.

Table 6 summarizes the various pricing models currently being offered by U.S. music providers of permanent downloads, limited downloads and interactive streams.

Table 6: Music Providers Pricing Models, November 2006

Music format	Pricing model	Music Provider
Permanent downloads	Free	SpiralFrog[1]
	À la carte	Beatport, BuyMusic, Calabash Music, Ctrax (Cdigix), Connect (Sony), eBay, Elatinmusic, Fox Music, Graze Music, Indieburn, iTunes Store, mMode Music Store,[2] Mp3tunes.com, Mperia, Musica360, Music Giants, Musicmatch Music Store, Napster Light, Passalong.com, Peer Impact, Puretracks, RCN Music Library,[3] RCN Music To Go,[3] RealPlayer Music Store, Rhapsody Unlimited,[3] Rhapsody To Go,[3] Songtouch, Soundbuzz, Tower Records Digital, Univision, URGE, Virgin Digital Red Pass, Voy Music, V Cast,[2] Wal-Mart, Yahoo! Music JukeBox, Yahoo! Music Unlimited, Yahoo! Music Unlimited To Go, Zune Marketplace
	Subscription	eMusic
Limited downloads	Free-subscription	Ctrax (Cdigix)[4], Ruckus[4]
	Subscription	AOL Music Now, AOL Music Now To Go, Best Buy Digital Music Store To Go, Ctrax2Go (Cdigix),[4] FYE Download Zone, Napster, Napster To Go, Musicmatch On Demand, RCN Music Library, RCN Music To Go, Rhapsody Unlimited, Rhapsody Unlimited To Go, Ruckus To Go,[4] URGE All Access, URGE All Access To Go, Virgin Digital Red Pass, Yahoo! Music Unlimited, Yahoo! Music Unlimited To Go, Zune Marketplace Pass
Interactive streams	Free	Best Buy Digital Music Store, Napster, Rhapsody
	Subscription	RCN Music Library, RCN Music To Go, Rhapsody Unlimited, Rhapsody Unlimited To Go, Virgin Digital Red Pass

Notes:
1. To launch in December 2006.
2. Requires a mobile phone contract.
3. To purchase permanent downloads, users must subscribe to the limited download service.
4. Restricted to educational institutions.

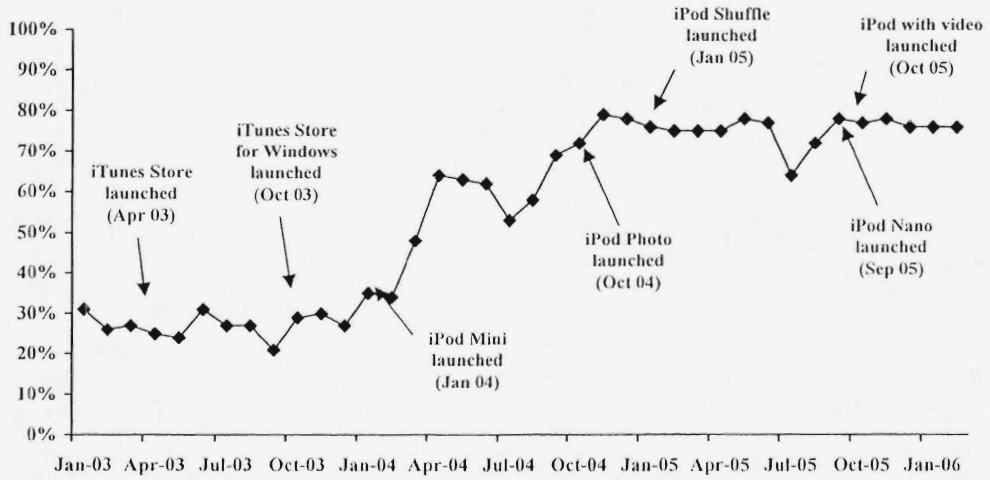
[Source: Enders Analysis based on company websites accessed November 29, 2006]

To date, the permanent download model has proven most popular with consumers, due largely to the success of Apple's iTunes Store and iPod portable music players. The discussion of the various business models in the U.S. marketplace provided below is organized by the music format offered by those music services.

5.4.3 Permanent Download Services

The most well-known and successful permanent download service is offered by Apple. Apple claims its iTunes Store has a market share of approximately 85 percent of legal music downloads in the U.S.,[32] making iTunes the dominant provider of digital music in the U.S. Likewise, Apple's iPod dominates the portable music player market, with 75.6 percent market share in the second quarter of 2006.[33] As Table 7 shows, Apple has increased its share of the U.S. portable music player market by introducing iPods with new features and with new designs, such as the iPod mini, the iPod shuffle, the iPod Photo, the iPod nano and the iPod with video capability. Thus, the iPod family and the iTunes Store have been remarkably successful, and today Apple dominates the U.S. market for digital music.

Table 7: iPod Share of U.S. Portable Music Players, 2003-2005



[Source: Enders Analysis based on NPD data from Piper Jaffray Investment Research, "A Closer Look At Apple Computer" August 2006, and company web site accessed November 29, 2006]

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32 Apple Q4FY2006 Quarterly Earnings Call, October 18, 2006, www.apple.com [accessed November 29, 2006].

33 In contrast, NPD has estimated the market shares of Apple's competitors in the second quarter of 2006 as: SanDisk's Sansa, 9.7 percent; Creative, 4.7 percent, Samsung, 1.9 percent; and Sony, 1.9 percent. *BetaNews*, "iPod continues to dominate industry," August 17, 2006, www.betanews.com [accessed November 29, 2006].

Apple's music business model is built around selling its iPods and iPod-related accessories such as speakers and headphones. Of Apple's $9.6 billion in music and music-related revenue in FY 2006, 80.3 percent of Apple's revenue was derived from the sale of iPods. (The rest came from the sale of music and accessories on the iTunes Store.) Thus, the sale of music, as such, is a small part of Apple's $19.3 billion in total annual revenue.[34]

Apple has reported publicly that it has margins in excess of 20 percent on iPods, but its philosophy is to run the iTunes Store just above breakeven.[35] When asked why Apple sells music, Peter Oppenheimer, Apple's Chief Financial Officer, has explained candidly that Apple's goal is to sell iPods.[36] As one industry analyst, Mark Mulligan, Research Director at JupiterResearch, has summarized: "The fact is, iTunes is a tool to sell iPods."[37] There are a variety of players from other manufacturers such as Sony, Microsoft, Creative Labs, Samsung and SanDisk that compete with Apple's iPod.

The prices at which Apple and its competitors sell permanent downloads are similar, as shown in Table 8. Other more recent competitors have largely adopted Apple's 99 cent per download price point as well. One exception is eMusic, which offers a subscription-based

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[34] Enders Analysis based on Apple financial data as follows: "Q4 2006 Unaudited Summary Data" and "Unaudited Condensed Consolidated Statement of Operations," October 18, 2006; "Q3 2006 Unaudited Summary Data" and "Unaudited Condensed Consolidated Statement of Operations," July 19, 2006; Apple Form 10-Q filed May 5, 2006; Apple Form 10-Q filed February 3, 2006. www.apple.com [accessed November 29, 2006].

[35] "Apple Q4 FY2006 Quarterly Earnings Call," October 18, 2006, www.apple.com [accessed November 29, 2006].

[36] At Apple's Q4 FY2006 earnings call, the CFO stated "our philosophy is to run the store a little bit over breakeven". "Apple Q4 FY2006 Quarterly Earnings Call," October 18, 2006, www.apple.com [accessed November 29, 2006]. At Apple's Q2 FY2006 earnings call, the CFO stated: "We think selling songs and video is really helping us sell iPods". "Apple Q2 FY2006 Quarterly Earnings Call," April 19, 2006, www.apple.com [accessed November 29, 2006]. Apple achieves its goal in part by selling music using proprietary digital rights management software.

[37] Red Herring, "iTunes profits, labels stew," April 20, 2006, www.redherring.com [accessed November 29, 2006].

permanent download service for music licensed from independent record companies, at an average price of as little as 25 cents per track.[38] A new music provider, SpiralFrog (to be launched in December 2006), intends to offer free limited downloads in return for viewing ads.[39]

Table 8: Prices of *à la carte* Singles and Albums, October 2006

Music provider	Single	Album
iTunes Store	$0.99	$9.99
Napster Light	$0.99	$9.95
RCN (subscribers)	$0.99	$9.99
Rhapsody	$0.99	$9.99
Rhapsody (subscribers)	$0.89	$8.99
URGE	$0.99	$9.99
Virgin Digital Red Pass	$0.99	$8.99
Wal-Mart	$0.88	$9.44
Yahoo! Music JukeBox	$0.99	$9.27
Yahoo! Music Unlimited (subscribers)	$0.79	$7.72
Zune Marketplace	$0.99	$8.69

Note: Price for a typical album is the price of Madonna's "Confessions from a Dance Floor", released in November 2005, which is available for sale on all the listed sites.
[Source: Enders Analysis based on company websites]

5.4.4 Limited Download and Interactive Streaming Services

A number of companies offer limited download services on a monthly subscription basis, which typically provide customers paying a monthly fee with a fixed or unlimited number of downloads that may be used so long as the subscription fee is paid each month. Napster, Yahoo! Music Unlimited and AOL Music Now are among the most widely known limited download services. A number of digital music providers offer two variants: limited downloads and/or interactive streams that are provided solely to a PC; and "to go" services that provide portable limited downloads to a portable music player. Rhapsody and Yahoo! Music Unlimited also allow users to convert limited downloads to permanent downloads at a discounted penny rate per track.

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[38] eMusic offers 30 downloads per month for $9.99; 50 downloads per month for $14.99; and 75 downloads per month for $19.99 (as from November 17, 2006). Based on full usage of the latter offer, the average price per track would be 25 cents.

[39] Spiral Frog Press Release, "SpiralFrog and Universal Music Group Partner in Advertising-Supported Legal Music Download Service," August 29, 2006, www.spiralfrog.com [accessed November 29, 2006].

Subscription-based services pursue a variety of revenue models. The principal objective of companies such as Yahoo! is to attract users to its site in order to sell online advertising.[40] Music subscription services are important elements in helping to drive users to web portals such as Yahoo! and to that extent aggressively price their offerings in order to maximize subscriber numbers.

Prices for subscription-based services are shown in Table 9, below.

Table 9: Pricing of Subscription-based Limited Download and Interactive Streaming Services, October 2006

Music Format	Music Provider	Pricing
Limited Downloads	AOL Music Now	AOL Music Now $9.95/month AOL Music Now To Go $14.95/month
	Ctrax	Ctrax and Ctrax2Go are restricted to educational institutions
	Napster	Napster $9.95/month Napster To Go $14.95/month
	Musicmatch	Musicmatch On Demand $71.88/year
	RCN	RCN Music Library $7.95/month RCN Music To Go $13.95/month
	Rhapsody	Rhapsody Unlimited $9.99/month Rhapsody Unlimited To Go $14.95/month
	URGE	URGE All Access $9.95/month or $99/year URGE All Access To Go $14.95/month or $149/year
	Virgin Digital	Virgin Digital Red Pass $14.99/month
	Yahoo! Music	Yahoo! Music Unlimited $8.99/month or $71.88/year Yahoo! Music Unlimited To Go $14.99/month or $143.88/year
	Zune Marketplace	Zune Marketplace $14.99/month
Interactive Streams	Best Buy	Best Buy Digital Music Store 25 Free
	Napster	Napster Free
	RCN	RCN Music Library $7.95/month RCN Music To Go $13.95/month
	Rhapsody	Rhapsody 25 Free Rhapsody Unlimited $9.99/month Rhapsody Unlimited To Go $14.95/month
	Virgin Digital	Virgin Digital Red Pass $14.99/month

[Source: Enders Analysis based on company websites]

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[40] In 2005, online advertising accounted for 87% of Yahoo's revenues of $4.954 billion in FY2005, compared to only 13% from pay services. Yahoo!'s 10-K SEC filing for FY2005 states: "We focus on increasing our user base and deepening the engagement of our users on the Yahoo! properties to enhance the value of our user base to advertisers and to increase the spending of these advertisers." March 3, 2006, www.yahoo.com [accessed November 29, 2006].

Best Buy, Rhapsody and Napster offer free, advertising-supported interactive streaming services, tapping into the booming US online advertising market worth $12.5 billion in 2005.[41] Rhapsody 25 offers users up to 25 interactive streams per month without charge.[42] Users register and download a customized version of the Rhapsody software that incorporates several advertising slots. The same model is also available from the Bestbuy.com digital music store. Napster.com has an ad-supported service also offering users interactive streams without charge.[43] The revenue streams from these different business models vary greatly. I expect to examine information concerning these different business models and the resulting revenue streams in discovery and expect to supplement my report once I have done so.

5.4.5 Wireless Phone Carriers

The last category of significant players in the U.S. digital music market are the wireless phone operators. Today, there are four major wireless phone operators, Cingular, Sprint, T-Mobile and Verizon, who together have approximately 185 million subscribers.[44]

The most established mobile music downloading activity concerns ringtones: about 38 million Americans have downloaded ringtones.[45] All networks currently offer ringtunes: Sprint offers ringtunes at $2.50 with a 90 day use limit; T-Mobile offers Hi-Fi Ringers at $1.99;

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41 IAB/PwC, IAB Internet Advertising Revenue Report 2005 Full-Year Results, April 2006; IAB/PwC, IAB Internet Advertising Revenue Report Second Quarter 2006 and First Six Months Results, September 2006, www.iab.net [accessed November 29, 2006].

42 RealNetworks Press Release, "Real introduces Rhapsody.com, the first web destination to offer free and legal access to a deep catalog of full length songs from all major labels," December 5, 2005, www.realnetworks.com [accessed November 29, 2006].

43 Napster Press Release, "Napster.com is Now Free," May 1, 2006, www.napster.com [accessed November 29, 2006].

44 Sprint, "3rd Quarter 2006 Investor Update" presentation, October 26, 2006, www.sprint.com [accessed November 29, 2006], Verizon, www.verizon.com, [accessed November 29, 2006], Cingular, www.cingular.com [accessed November 29, 2006], T-Mobile, www.w2forum.com, [accessed November 29, 2006].

45 Ipsos, "Tempo: Keeping Pace with Digital Music Behavior," Q2 2006.

Cingular offers ringtunes at $2.50 with a 90 day use limit; while Verizon's prices ringtunes at $2.49 to contract customers and $3.49 to prepay customers. Cingular[46] and Verizon[47] each also offer volume discounts for ringtones.

According to M:Metrics, a leading mobile consumer research firm, the market for full-track downloads to mobile phones is only beginning to emerge in the U.S.[48] Sprint and Verizon offer permanent downloads to their subscribers' cell phones and "dual-downloads," which provide one copy for download over the wireless network to a user's wireless phone and another copy for download over the Internet to his or her PC. Sprint charges $2.50 for the dual-download and Verizon charges $1.99.

The prices charged by Verizon, Sprint, Cingular and T-Mobile for different forms of mobile music are shown below in Table 10.

Table 10: Mobile Music Pricing, October 21, 2006

Network	Ringtune	Full track download
Verizon	$2.99 for single use on contract/$3.49 on prepay	$1.99 for dual-download
Sprint	$2.50 for 90 days use	$2.50 for dual-download
Cingular	$2.49	N/A
T-Mobile	$1.99	N/A

[Source: Enders Analysis based on company websites accessed November 29, 2006]

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46 Cingular Sounds Tone Club offers a 20% discount for a monthly 3 tone pack or a 30% discount for a 6 tone pack.

47 Verizon's contract customers pay $5.49 for 2 tones (8% discount) and $9.99 for 4 tones (17% discount), and prepay customers pay $6.49 for 2 tones (7% discount) and $11.99 for 4 tones (12% discount).

48 M:Metrics Press Release, September 26, 2005, www.mmetrics.com [accessed November 29, 2006].

5.5 Costs of Digital Production and Distribution of Music

The costs associated with the manufacture, distribution and retailing of physical music formats are not incurred in connection with digital music sold and distributed over the Internet or a wireless network. For record companies in particular, the lower costs of sales for the Internet-based sale and distribution of digital music allow them to enjoy higher gross profit margins on such sales.[49]

For online music providers, the most substantial costs incurred in selling digital music to customers are the licensing payments made under their agreements with record companies. Most music providers conclude licensing agreements with all four major record companies (EMI, Warner, Sony/BMG and Universal) as well as the leading independent record companies, to ensure that consumers can find virtually any track on their respective online music stores. For example, the iTunes Store offers its customers access to over 3.5 million tracks.[50]

The licensing agreements of the record companies with music providers are not in the public domain. They are likely to specify the terms and conditions for the delivery of digital masters to the music providers, along with digital album artwork and identifying information associated and typically transferred with the digital recording, consisting of the artist's name, the title of the track, the date of composition and the playing time, as well as payment terms and conditions for purchased music files, including usage restrictions.

I expect that the costs to record companies and music providers of providing digital music will be produced in discovery. Accordingly, I expect to amplify this section of my report after I have had the opportunity to receive and review such information.

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[49] Eric Nicoli, Chairman of EMI plc, stated: "Certain costs borne in the physical world such as manufacturing, returns and pick-pack-ship are not relevant for digital products. For physical products, these costs are in the range of 15% to 18% of sales." *EMI Annual Report 2005*, www.emigroup.com [accessed November 29, 2006].

[50] www.apple.com [accessed November 29, 2006].

6. The Future of the U.S. Digital Music Market

The U.S. digital music market has a bright future, with sales expected to increase each year to an estimated $5.8 billion by 2012.[51] Among the drivers for this expected growth are the increasing penetration of high-speed broadband Internet connections, personal computers, portable music players and music-enabled wireless phones:

- U.S. broadband penetration has increased from 29 percent in January 2005 to 42 percent of the U.S. adult population in April 2006, representing 84 million potential customers, leaving substantial room for additional growth as broadband availability continues to expand.[52]
- About 60 million (or 26 percent of) Americans aged 12 and over had downloaded music in the second quarter of 2006. Of that number, only 35 million, or about 16 percent of the U.S. population aged 12 and over, did so on a fee-paying basis. Both figures indicate substantial opportunity for future growth as younger Americans, who are currently more likely to download music and are more likely to pay for music as they grow older, continue to purchase digital music in the future.[53]
- The percentage of Americans aged 12 and older reporting that they own a portable music player in the second quarter rose to 20 percent 2006 in 2006 from only 9

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[51] Enders Analysis estimates.

[52] Broadband refers to high-speed Internet service, which allows consumers to download content from the Internet, such as music files, more rapidly. Pew/Internet reports 42% of US adult (18+) Internet users have broadband at home (84 million) in April 2006, up from 29% in January 2005. Pew/Internet, "Internet penetration and impact April 2006," www.pewinternet.org [accessed November 29, 2006].

[53] Ipsos, "Tempo: Keeping Pace with Digital Music Behavior," Q2 2006.

percent since 2003, leaving substantial room for further adoption of such devices as use of such devices continues to expand.[54]

- Only 14 percent of cell phones are music-enabled today, again leaving substantial room for further growth.[55]

As these numbers rise, U.S. digital music sales will continue to increase.[56] Because consumers perceive an increased value to digital music, the share of U.S. consumers with portable digital music players will steadily rise. Together with greater penetration of broadband Internet services, which permit the rapid downloading of digital music, I expect continued increases in sales of permanent downloads, as reflected in my forecast. However, I expect the annual growth rate of sales of music downloads to gradually decline from an estimated 100% in 2006 to about 10% by 2012 as this segment matures.

In light of the current trends in digital music purchasing, I anticipate the continued dominance of Apple's iPod+iTunes model in the U.S. online music market. The segment comprised of limited download and interactive streaming services is consequently likely to experience lower annual growth than the music download segment, as reflected in my forecast assumptions.

Sales of mobile music formats are growing rapidly. Having long offered ringtone services, the major cellular networks are just launching their single-track download services. Sprint and Verizon already offer single-track downloads to their customers, while Cingular and

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[54] Ipsos, "Tempo: Keeping Pace with Digital Music Behavior," Q2 2006.

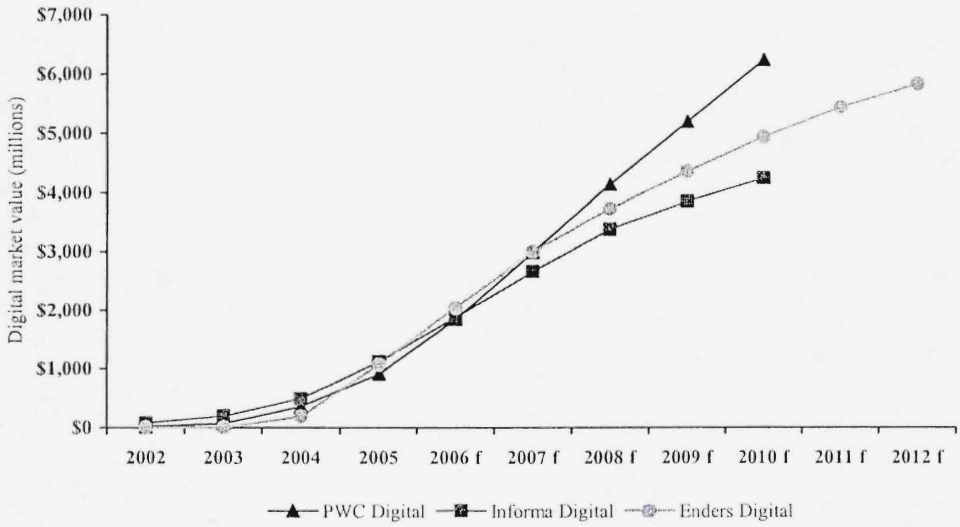
[55] Ipsos, "Tempo: Keeping Pace with Digital Music Behavior," Q2 2006.

[56] My forecast of the U.S. digital music market is based on forecasts for U.S. online and mobile music. My forecast is that U.S. online music revenue increases by 84 percent in 2006, 44 percent in 2007, 27 percent in 2008, 23 percent in 2009, 19 percent in 2010, 14 percent in 2011 and 10 percent in 2012 and that U.S. mobile music revenue increases by 100 percent in 2006, 50 percent in 2007, 20 percent in 2008, 8 percent in 2009, 4 percent in 2010 and 2 percent per year in 2011 and 2012.

T-Mobile have yet to announce their music download services. In my estimation, the pattern of sales of mobile single-track downloads in the U.S. will tend to reflect the weaker pattern of growth already witnessed in major European markets, rather than the stronger pattern of growth of Asian markets.[57]

Table 11 illustrates the growth of digital music revenues as forecast by Enders Analysis, PricewaterhouseCoopers and Informa.

Table 11: U.S. Digital Music Download Forecasts, 2006-2012



[Source: Enders Analysis based on data from *PricewaterhouseCoopers Global Entertainment and Media Outlook* and *Informa Digital Home Entertainment: Future Consumer Spending Habits*]

7. Conclusions

In light of the state of the U.S. digital market, as described in detail above, there are several reasons why I believe that it is appropriate for the mechanical royalty rate on DPDs to be set at a level higher than on physical phonorecords.

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[57] IFPI (2006), *2006 Global Recording Industry in Numbers*, p. 6.

7.1 An Increased Compulsory License Fee for DPDs Is Appropriate Because The Digital Distribution of Music Provides Increased Value to Consumers

Digital music provides increased value to consumers for a number of reasons. Digital music:

- allows consumers to cherry-pick desired single tracks rather than purchase entire albums;
- provides consumers increased portability because digital music players have the storage capacity that allows consumers to carry music more easily than the corresponding CDs;
- allows consumers to purchase the vast majority of commercially available music on a 24/7 basis;
- gives consumers immediate access to purchased music;
- allows consumers greater access to a wider catalog of commercially available music; and
- permits consumers to sample a variety of music with greater ease through the increased selection available.

The digital music purchase experience contrasts sharply with the physical phonorecord purchase experience. A consumer who shops at a traditional music retailer is limited to the selection of CDs carried by the store near him or her, must generally purchase albums rather than singles, thus spending more, must do so at the store during opening hours, can sample with less ease, and must take the CDs with him or her. By contrast, a consumer who shops at the iTunes Store can easily sample and select from 3.5 million tracks, cherry-pick the ones he or she wants and download them to a computer, at home or anywhere else, at any time, and copy that music to an iPod, which can easily transport hundreds of CDs worth of music.

Accordingly, Copyright Owners should receive a portion of the increased value of digital music. To provide a portion of the increased value of digital music to Copyright Owners in the context of a compulsory mechanical license, the statutory rate for DPDs should be higher than the statutory rate for physical phonorecords.

7.2 An Increased Compulsory License Fee for DPDs Is Appropriate Because of Lower Costs and Higher Margins in Connection with the Digital Distribution of Music

The Copyright Owners and the record companies make the same contribution to the creative process irrespective of whether a song is sold as a DPD or as part of a physical phonorecord. However, in contrast to the costs incurred in connection with the manufacture and distribution of physical phonorecords, the production of digital music is relatively inexpensive and provides higher gross profit margins for the record companies. Accordingly, the Copyright Owners' relative contribution to the sale of digital music is higher than for physical formats and the mechanical royalty rate for digital music should be higher than for physical music.

7.3 An Increased Compulsory License Fee for DPDs Is Appropriate Because the Digital Distribution of Music Is Based on Sales of Singles

As described in Section 5.3.2, the digital music market is primarily singles-based, in contrast to sales of physical phonorecords, which are typically delivered as albums. The consumer's ability to purchase just one song from an album in the digital music market has important implications for the appropriate level of the mechanical royalty rate for digital music. For physical phonorecords, the statutory mechanical rate is necessarily a blended average rate, reflecting the value of both the relatively "high-value" and the "low-value" tracks on the album to the consumer. For these physical phonorecords, Copyright Owners could count on consumer demand for the most popular tracks to drive album sales and lead to royalty payments for the other tracks on the album. Now that consumers have the ability to purchase only the tracks they

perceive to be of high value without purchasing the rest of the album, the same average statutory rate for digital sales would undercompensate Copyright Owners. As shown above, digital sales are singles-driven and singles-dominant. Thus, an increased royalty rate for digital sales is appropriate.

Declaration

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 29 2006
London, U.K.

Claire L Enders.

Claire Enders

Q

Before the
COPYRIGHT ROYALTY JUDGES
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding	Docket No. 2006-3 CRB DPRA

EXPERT REPORT OF HELEN MURPHY
ON BEHALF OF
NATIONAL MUSIC PUBLISHERS' ASSOCIATION, INC.,
THE SONGWRITERS GUILD OF AMERICA AND
THE NASHVILLE SONGWRITERS ASSOCIATION INTERNATIONAL

I. Introduction

A. Relevant Work Experience and Academic Credentials

1. Since 2004, I have been President of International Media Services Inc. (IMS), a New York based strategic advisory and financial services firm. Among other engagements, IMS has represented a number of independent music companies and private equity firms in assessing as acquisition candidates small and large music publishers. IMS also has been retained to restructure the operations of recorded music companies and music publishers.

2. From March 2001 to June 2004, I served as the Executive Vice President and Chief Financial Officer of the Warner Music Group. Warner Music Group was a division of Time Warner and was one of the world's largest recorded music companies. In the capacity of EVP and CFO, I was responsible for worldwide finance, business development, information technology, human resources, shared services (including manufacturing and distribution) and real estate.

3. From September 1999 to March 2001, I was Chief Financial and Administrative Officer for Martha Stewart Living Omnimedia Inc. I also served on the Board of Cinram, which is one of the world's largest independent manufacturers and distributors of recorded music and DVDs. Prior to that, I was Chief Financial Officer of Westvaco Corporation from January 1999 to September 1999.

4. From January 1990 to January 1999, I spent nine years in various senior financial positions at PolyGram, which was one of the largest recorded music companies worldwide and the leader outside of the United States. I was Chief Financial Officer of PolyGram Holding, Inc. from 1997-1999. From 1995-1997, I was Worldwide Senior Vice President of Investor Relations and U.S. Senior Vice President of Mergers and Acquisitions. From 1992-1995, I held the position of Senior Vice President, Corporate Finance and Treasurer. From 1990-1992, I held the positions of Vice President of Investor Relations and Treasurer.

5. I received a Masters in Business Administration from the University of Western Ontario, Canada and an Honors BA in Economics from the University of Guelph, Ontario, Canada. I am a Chartered Financial Analyst (CFA). My curriculum vitae is attached as Exhibit 1 to this report.

B. Materials Relied Upon for this Report

6. In preparing this report I relied upon my education and my experience in the area of recorded music. I also reviewed the materials listed in Exhibit 2, which include:

- International Federation of Phonographic Industry (IFPI) Reports
- Recording Industry Association of America, Inc. ("RIAA") reports and statistics
- Industry Reports

- Recorded Music Company Annual and Quarterly Reports
- Recorded Music Company Investor Presentations
- Analyst Reports
- Press releases and news articles

7. I am being compensated at a rate of $500 per hour.

II. Issues Addressed in this Report

8. I have been retained to submit this report on behalf of the National Music Publishers' Association, Inc. ("NMPA"), the Songwriters Guild of America ("SGA"), and the Nashville Songwriters Association International ("NSAI") (collectively, the "Copyright Owners"). Specifically, I have been requested by the Copyright Owners to provide my opinion as to the historical, current and anticipated future financial state of the recorded music industry.

9. My report is based solely on publicly available information to date and my knowledge and experience gained from being involved with the recorded music industry for over twenty years. I understand that the Copyright Owners will have the opportunity to obtain, among other information, financial information concerning the recorded music industry through discovery in the course of this proceeding. As a result, this report is necessarily preliminary, and I specifically reserve the right and expect to supplement it once I have received such information.

III. Summary of Conclusions

10. Historically, the recorded music industry has undergone cyclical growth and profitability. The annual value of global music sales (in total and by format) is shown at

the end of this report in Exhibit 3.[1] Technical innovation has generally led to periods of growth as new formats for the delivery of recorded music have fueled sales and created new demand for music. For example, the recorded music industry enjoyed a long period of prosperity from the mid-1980s through the late 1990s as the delivery format shifted from albums and cassettes to compact discs ("CDs"). Exhibit 4 shows the growth of the total U.S. recorded music market in dollars along with the growth in CD unit sales.

11. That period of growth abated at the very end of the 1990s as new digital technologies permitted music to be shared over the Internet through peer-to-peer and other services. As the recorded music industry struggled to find outlets for the lawful digital distribution of recorded music, sales and profitability waned. Profitability was further impacted by the billions spent by the recorded music companies in restructuring costs/write-offs as they sought to adapt their business to the new digital environment.

12. By 2005, the growing acceptance and success of lawful digital distribution of music — as well as the completion of the restructurings — have reversed the decline of profitability of the past few years. Across the recorded music industry, profitability margins are on the rise. These improved margins are driven by the fact that recorded music companies enjoy higher margins of profitability on digital sales than on the sale of physical product as well as by cost savings due to restructuring in recent years.[2]

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[1] The RIAA's reported U.S. sales are not available for the entire time period discussed in this report, and this report cites to worldwide figures when U.S. sales are unavailable. Based on my experience and study of the industry, I expect that the U.S. sales pattern will be consistent with the global sales pattern. I reserve the right and expect to revise my report once actual sales figures from the RIAA are made available in discovery.

[2] Goldman Sachs: Warner Music Group DQ05 First Take-Thesis in-Tact as Digital is Replacing Physical and Mix is Increasing Margins, February 14, 2006, page 1. Soleil Media

13. Most publicly available sources forecast continued increases in profitability for the recorded music majors over the next three to five years, particularly as the proportion of digital sales continues to grow.[3]

IV. Industry Historical Performance

14. The music business is comprised of two separate businesses: recorded music and music publishing. In simple terms, recorded music is the business of selling, marketing, and licensing recorded music in both physical and digital formats. Music publishing, among other things, retains ownership and acquires rights to musical compositions and generates revenue through royalties when a recording of a composition is sold or licensed, when a song is performed publicly, or when a song's sheet music is sold.

15. Recorded music companies have historically depended on growth of their market share (achieved through both organic growth and acquisition) to increase their profitability. Over many decades, as new formats have been introduced, recorded music companies have been able to command higher prices on the latest formats and have been able to decrease the costs of manufacturing those formats over time as economies of scale improved. This has led to higher profitability for the recorded music majors.[4]

Metrics: Warner Music Group Research Report, September 29, 2006, page 4. Deutsche Bank: EMI Report, April 4, 2005 pages 1 and 24.

[3] Among the many Wall Street research reports making such predictions are: Deutsche Bank: Warner Music Group, September 22, 2006, page 7; Lehman Brothers: Warner Music Group, October 18, 2006, page 7; EMI, May 24, 2006, page 6; Morgan Stanley: EMI, November 9, 2006, page 20; Warner Music Group, May 17, 2006, page 20; Goldman Sachs: Warner Music Group, July 16, 2006, page 5; Merrill Lynch: Warner Music Group, July 27, 2006, page 2; EMI, April 26, 2006, page 6. Citibank: EMI, January 25, 2006, page 9; Bank of America: Warner Music Group, July 27, 2006, page 5. Collins Stewart: EMI, May 17, 2006 pages 3 and 9; Pali Research: Warner Music Group, March 2, 2006, page 11.

[4] Source: PolyGram 1987 annual report, page 7.

16. Since 1969, the worldwide recorded music industry has experienced two periods of rapid growth. Each phase of rapid growth (followed by a brief downturn) was driven by a new format and new technology. The U.S. experience was similar.

17. The first growth phase, between 1969 and 1979, resulted in a compound annual sales growth rate of 18% worldwide.[5] This growth was driven by the introduction and rapid penetration of the cassette player, which allowed full portability of music for the first time. It was also a period where the majors expanded their operations globally and expanded their music manufacturing and distribution operations.

18. In the early 1980s, the recorded music industry experienced a period of contraction for two reasons: first, the industry encountered a period of economic recession; second, a new technology was introduced that facilitated piracy in the form of copying music on cassettes.[6] As a result of these events, there was an annual rate of decline in worldwide sales of 4.1% between 1980 and 1984.[7]

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[5] Source: Soleil Media Metrics Research Report, Music Industry Review, May 31, 2005 page 10.

[6] For example, in PolyGram's 1980 Annual Report, the company attributed its decline in profitability to "worldwide economic recession, rising costs and growing piracy and home taping on the music market, the mainstay of our business." The PolyGram report goes on to note that such cyclical downturns have "been seen before in the music business, and PolyGram's own development confirms this, that a slackening in growth, such as currently being experienced, does not materially affect the ultimate upward pattern" and that further upward growth is likely to result from technological innovation: "The new breed of portable, miniaturized tape players is already adding another dimension to listening habits. Videocassettes and videodiscs, high quality digital recordings, and the advanced Compact Disc, will all be major influences on the way people receive music in the future." Source: PolyGram Annual Report 1980/1981, pages 4 and 6.

[7] Source: Soleil Media Metrics Research Report, Music Industry Review, May 31, 2005, page 11.

19. Following this brief period of decline, the industry enjoyed a long period of prosperity. From the mid-1980's to the mid-1990's, the industry converted from the LP and cassette to the digital CD, which had a number of advantages, including superior sound quality. The replacement of music owned by consumers on older formats with music on CD spurred higher sales. The compound annual growth rate of the recorded music industry in this period was approximately 15% worldwide; recorded music companies also enjoyed strong growth.[8]

V. The Emergence of the Internet Music Age

20. In the mid-1990s, the Internet began to emerge as a new technology for the delivery of recorded music to the consumer. The major recorded music companies[9] knew that the digital revolution was quickly becoming a reality, yet very little was done strategically to prepare for the shift.[10] The majors struggled with the emerging technology for delivering music because they recognized that it required a completely different business model. Moreover, Internet delivery of music, which does not involve physical product, represented a new challenge for recorded music companies, which had always been in the business of selling, marketing, manufacturing and distributing physical product.

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[8] Source: Soleil Media Metrics Research Report, Music Industry Review, May 31, 2005 page 10.

[9] In the mid 1990s there were six recorded music majors: Warner, Universal, EMI, Sony, BMG and PolyGram. With the acquisition of PolyGram by Universal in 1998 and the joint venture formed between Sony and BMG in 2003, there are now four.

[10] Citigroup: Piracy in the Entertainment Industry, November 21, 2003 pages 32, 35 and 43.

21. The recorded music companies were slow to embrace the online digital format and very reluctant to expand distribution of music beyond physical retailers. There were three primary reasons for this:

(a) The majors had invested hundreds of millions of dollars in physical manufacturing and distribution assets and did not want to accelerate their obsolescence, which would cause a major write-down in the asset values on their books. To the contrary, they continued to invest heavily in physical manufacturing and distribution into the early part of this decade.[11]

(b) The recorded music companies did not want to compete with music retailers who were selling their physical product. The retailers, which had significant investments in physical infrastructure, viewed the digital delivery of music as a threat to their business model.

(c) The recorded music majors lacked expertise in digital music. In prior cycles of industry innovation, the new technology was developed by consumer electronic companies, which in the case of Sony and PolyGram were the parent companies of those recorded music companies, Sony and Philips, respectively. As a result, those recorded music companies were involved, and invested, in the development of the formats. With the introduction of digital music, however, the developers of the technology had no previous experience or affiliation with recorded music companies and intellectual property issues, or vice versa.

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[11] In 1999, there were an estimated 660 CD and optical disc plants worldwide and in 2001, there were an estimated 730 plants worldwide. The majors continued to increase their investment in physical plant facilities during this time. Source: Citibank, Piracy in the Entertainment Industry, November 21, 2003, page 52. EMI source: Proposed combination of EMI music with Warner Music Group to form Warner EMI Music, June 2, 2000, page 27, 40 & 82. PolyGram 1997 annual report, page 33.

22. The recorded music companies tried unsuccessfully to launch digital services such as MusicNet and Pressplay. These services offered consumers only limited music offerings and did not permit users to own a permanent or portable copy of the music.[12] The recorded music majors were also slow to make their music available through licensing arrangements for the online distribution of downloaded music.

23. The resistance of the major recorded music companies and retailers to embrace digital distribution helped to create a culture of intellectual property theft, which was facilitated by pirate services such as Napster, Gnutella, Freenet and others. These services provided technology to consumers enabling them to share music files over the Internet for free, fulfilling and fostering the demand for music online. As a result, online piracy became widespread.

24. Online piracy and the change from a market consisting predominantly of physical CD's to a digital market caused a period of economic dislocation for the recorded music industry that lasted through 2005. The worldwide retail market declined from approximately $36.9 billion[13] in 2000 to $33.5[14] billion in 2005 and the U.S. market declined from $14.0 billion in 2000[15] to $12.3 billion in 2005.[16]

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[12] Citibank, Piracy in the Entertainment Industry, November 21, 2003, page 47.

[13] IFPI The Recording Industry in Numbers 2005, page 160.

[14] IFPI World Sales 2005: The Key Facts and Figures, page 2.

[15] IFPI The Recording Industry in Numbers 2005, page 25.

[16] IFPI World Sales 2005: The Key Facts and Figures, page 1.

VI. Remaking of the Recorded Music Industry

25. The digital delivery of music has resulted in significant changes to the business model of the recorded music companies. In previous cycles of technological change in the delivery of music, new technology significantly improved the physical product and allowed for higher prices, which generated substantial additional margin for the recorded music companies. For example, from 1990 to 1997, profits for PolyGram more than doubled as the CD penetrated the market.[17] The primary product for sale was the album and the primary distribution was through specialty music stores. Moreover, piracy was more difficult due to physical reproduction constraints.

26. With the Internet and broadband, there was no longer a need for a physical plant and single sales became the primary product sold. Digital distribution provided low price points and more extensive product offerings. Music now faces more competition from video games and other forms of entertainment such as DVD's and the Internet. As a result, the relative price/value proposition of a CD started to look less favorable.

27. In 2001, faced with this changed market and its accompanying challenges to traditional record company business models, the major recorded music companies began significant restructuring programs.[18] The programs included: headcount reduction; the sale of LP, cassette and CD manufacturing facilities; the sale of their distribution activities and record club operations; the consolidation of owned labels to create greater scale efficiencies; compensation restructuring; and reduced capital expenditures. In

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[17] Source: PolyGram 1997 Annual Report, page 9.

[18] Many of these restructuring activities had taken place in previous cycles. In 1980 and 1996, PolyGram reduced headcount, consolidated manufacturing operations, consolidated U.S. label operations and changed management. Source: PolyGram 1980 annual report, pages 4 and 8, 1996 annual report, pages 3 and 7.

the case of one recorded music major (Warner Music Group), worldwide headcount was reduced from approximately 12,996 to 4,000 over the 1997 to 2006 period for a reduction of approximately 69%. Other majors experienced similar reductions in total headcount over this period.[19]

28. In the aggregate, the major labels incurred in excess of $7.3 billion in restructuring costs/write-offs to bring their expenses and asset values in line with the end of the era of ever-rising demand for CDs. These restructuring expenses and related write-offs are detailed in Exhibit 5. Much of the restructuring could have been avoided if costs had been controlled with stricter financial management in the prior periods.[20] These costs contributed to the decline in profitability and one-time losses/charges for the recorded music majors between 2001 and 2005 that are not likely to be repeated in the future.

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[19] EMI's headcount has declined from 10,934 in 1997 to 6,300 in 2006. Source: For 1997, Proposed combination of EMI Music with Warner Music Group to form Warner EMI Music, June 2, 2000, page 188. For Warner Music Group 2006, Yahoo Finance WMG Company Description. For EMI 2006, www.emigroup.com, company overview, page 1.

[20] Many of the financial problems experienced by the major recorded music companies were brought on by themselves. For example, the 2000/2001 BMG Annual Report (page 12) states "A difficult market environment, plus structural weaknesses long obscured by market success caused revenues to decline by 7.6% to Euro 3.7 billion. A new executive team has reorganized BMG's structure and fields of business to enable the company to focus on its core competencies: developing artists and selling music. The music clubs became part of the direct group while the storage media division was assigned to media service provider Arvato. BMG's earnings reflect not only the overall weakness in the music market, but also in the company's development in recent years."

Sony/BMG is still struggling to adapt and capitalize on the digital opportunities and this has more to do with a poor integration plan resulting from the joint venture. In its 2005 annual report (page 4) BMG's Gunther Thielen says: "The Sony BMG joint venture is turning out to be a real challenge. The merger was the right step at the right time, the only sensible response to changes in the music market, which is still shrinking, CD sales are declining, but internet and wireless music sales are showing impressive growth rates.... In the months ahead, one of the priorities will be to better bridge the two very distinct corporate cultures. This will not be easy."

29. As a result of these efforts, the reported margins for the major recorded music companies began to grow. As shown in Exhibit 6, the margins of the major recorded music companies increased by more than 33% from 2003 to 2004, from an average margin of 7.4% to an average margin of 10.8%.[21] Thereafter, the major recorded music companies estimated margins further increased from an average of 10.8% in 2004 to an average of 12.9% in 2005.

VII. The Growth of Digital Music Will Continue To Improve Record Industry Profits and Margins

30. As the major restructuring effort was coming to a close, efforts to create a market for lawful digital distribution of recorded music began to reach fruition. The launch of iTunes in 2003 and numerous other services for the lawful distribution of digital music (there are now over 335 legitimate digital services worldwide)[22] helped propel the industry back to profit growth. In 2005, the wholesale digital market represented approximately 5.5% of worldwide sales[23] and $1.14 billion in revenues.[24] For the first half of 2006, wholesale

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[21] The margins and other financial information for the major recorded music companies set forth in Exhibit 6 are the estimated annualized financial results for the major recorded music companies as a whole with adjustments made for the different fiscal year ends for each company. Although calculated from the same sources, these margins are different from the margins in Exhibit 9, which set forth the estimated margins of three major recorded music companies' record labels for the 2004/2005 fiscal year.

[22] IFPI Digital Music Report 2006, page 4.

[23] The wholesale digital market expanded in 2005 to approximately 5.5% of the worldwide market up from 1.8% in 2004(source: IFPI Digital Music Report 2006, page 4). Digital global recorded music sales in 2005 were $1.14 billion, up 188% from $397 million in 2004 (Source: IFPI Global Recording Industry in Numbers 2006, page 6). According to the IFPI, wholesale digital sales in the U.S. were $636 million for 2005 (Source: IFPI Global Recording Industry in Numbers 2006, page 3).

[24] IFPI World sales 2005: The Key Facts and Figures, page 2.

digital sales represented approximately 11% of total worldwide sales,[25] and most recorded music majors reported worldwide digital sales ranging from 8.5%-13.0% for the year to date period.[26] Exhibit 7 shows the reported digital music sales of each of the major recorded music companies as a percentage of their total revenues. The increase in sales of the higher margin digital music has contributed to the major music companies' reported growth in both revenue and profitability.[27] The recorded music majors expect the improved conditions to continue as the digital market continues to grow.[28]

31. In the U.S., total digital retail sales represented approximately 14.6% of total U.S. music market in 2005.[29] During the first half of 2006, total digital retail sales increased to approximately 17.6% of the total U.S. music market.[30] One major recorded music company reported that its first half U.S. digital sales were 20% of its total sales.[31]

32. It is common for recorded music companies to prepare internal forecasts and long-term plans for the future growth of the market and their companies. These forecasts and long-term plans may vary in length, but it is common for them to be five-year projections. While I have not had the opportunity to review the recorded music companies'

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[25] IFPI press release October 12, 2006.

[26] See Exhibit 7.

[27] Source: Deutsche Bank Research Report, April 4, 2005, page 24.

[28] Source: Soleil Media Metrics Research Report, Music Industry Review, May 31, 2005 page 10; Warner Music Group 2005 Annual Report, January 2006 Letter from Chairman & CEO, Edgar Bronfman, Jr.

[29] RIAA 2005 Year-End Statistics.

[30] RIAA 2006 Mid-year Statistics.

[31] Source: Digital Music News, October 5, 2006, press article.

latest forecasts, which I would expect to be produced in discovery, I expect that these forecasts will be directionally consistent with the publicly available forecasts of external analysts.

33. As in past cycles following technological innovation, the next cycle for recorded music companies is expected to be one of growth, led by emerging digital technology that provides consumers increased value and convenience. For example, new digital music services offer consumers a better experience than traditional retail outlets in numerous respects. While it was often frustrating to search for a particular song or album at a physical retail store, the digital world creates instant gratification with a vast, always available, collection of content that consumers can sample before they buy. The digital world also makes it easier for consumers to purchase songs individually, whereas in the physical world they were often required to buy the full album to get the song they wanted. In addition, digital music players have vast storage capabilities that allow consumers to access their personal music collections more easily and, in the case of portable players, to carry their music collections with them.

34. The growth in digital sales of recorded music will generate higher profits for recorded music companies because digital revenues generate higher margins than physical sales, primarily because there are no physical manufacturing and distribution costs. Incremental costs for digital sales are small. Indeed, the majors have cited the increased margins for digital as one of the primary reasons for their sales growth and resulting margin expansions in 2006.[32]

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[32] Source: Vivendi press release, July 27, 2006, "Vivendi Reports First Half 2006 Revenues Up 5.8% On a Comparable Basis," page 2; Warner Music Group press release, August 3, 2006, "Warner Music Group Reports Third Quarter Results," pages 2 and 3.

35. As shown in Exhibit 8, on the sale of a physical CD, the recorded music companies have an estimated margin of 12% based on wholesale sales whereas, on the sale of a digital album, the margin is conservatively estimated to be 24%, as there are no physical manufacturing and distribution costs.

36. I expect that the recorded music companies' internal margin calculations and projections of expected future margins as the recorded music market shifts increasingly toward the digital distribution of music will be an important source of information for my analysis. Accordingly, I reiterate that my conclusions from publicly available information in this area, as with the rest of my report, are necessarily provisional and subject to revision.

VIII. Record Label Costs

37. I have also been asked to examine the cost structure of the major record labels and the contribution of mechanical royalties to those costs. The major recorded music companies do not publicly report their mechanical royalty costs as a separate cost item. Instead, mechanical royalties are typically included with artist and repertoire ("A&R") and other royalty costs when estimated by analysts.

38. Exhibit 9 sets forth the estimated cost structure and profitability of the record labels of three major recorded music companies for the 2004/2005 year.[33] A company's costs are typically expressed as a percentage of net revenue (*i.e.*, gross sales less returns and discounts). In the aggregate, A&R costs and royalty costs ranged from 29.3% to 40.3% of net revenue, with an average of 33.7% for EMI, Universal and Warner. Other

[33] Sony/BMG does not publicly report detailed results of its recorded music joint venture.

significant costs include administration (average of 21.2%), marketing and promotion (average of 16%), and manufacturing and distribution (average of 21.2%).

39. Mechanical royalties are a relatively small fraction of the overall costs. Historically, they have represented 8 to 9% of net revenue. Although I do not have access to actual mechanical cost information for the major recorded music companies and their labels (which I expect to be made available to me in discovery), I estimate that mechanical royalties average 7.2% to 9.7% of net revenue today.

40. My estimate of current mechanical royalty costs is based on the following calculation: Assuming the average U.S. wholesale price is $9.43 and that recorded music companies typically pay royalties on an average of ten tracks per album at the current 9.1 cent statutory rate, mechanical royalties would represent approximately 9.7% of wholesale prices before the effect of controlled composition clauses is considered.[34] Given that many record company contracts with artists have controlled composition clauses that limit the payment of mechanical royalties to 75% of the statutory rate, mechanical royalties would represent approximately 7.2% of wholesale prices for albums subject to controlled composition. Accounting for the fact that some albums involve controlled composition agreements and some involve more tracks, and depending on the proportion of sales subject to controlled composition, I arrive at my 7.2% to 9.7% range.[35] I expect to perform this

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[34] The estimated U.S. wholesale price was derived from IFPI's 2006 Global Recording Industry In Numbers, page 24.

[35] This estimate does not take into account the fact that many controlled composition clauses further reduce the royalties paid by requiring artists to accept the statutory rate that was in effect at the time the artist entered into his or her contract with the record company, which would further lower the mechanical royalty for the average album. This estimate also does not take into account that reduced mechanical royalties are commonly paid on midline and

calculation with more precision after I receive and review actual cost data from the major recorded music companies.

IX. FORECAST FOR THE GLOBAL RECORDED MUSIC MARKET 2006-2010

41. Publicly available market forecasts for the recorded music industry project the digital market to grow rapidly over the next several years; most analysts believe that digital sales will exceed 25% of the total global business by 2010.[36] U.S. digital sales are expected to increase from an estimated 5% in 2005 to more than 33% by 2010, or approximately $4.9 billion.[37] By that point, the increased profit margin of digital music, which is already improving the recorded music companies' revenues and profit margins, should have a significantly positive effect on the overall industry revenues and profit margins. Some Wall Street analysts and industry analysts expect the conversion to digital to have a similar impact on profit margins as the CD did in earlier periods.[38] Thus, the overall forecast for the industry is for continued profitable growth and further increased margins as the industry benefits from the technological digital cycle.

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budget albums, which would again reduce the average album's mechanical royalty rate. Nor does this estimate take account of free goods, on which no mechanical royalties are paid.

[36] Source: Bank of America Research: Warner Music Group, April 6, 2006, page 12; Deutsche Bank: Warner Music Group, September 22, 2006, page 7; Pricewaterhouse Coopers, June 2006, Global Entertainment and Media Outlook: 2006-2010, page 223, 225; Deutsche Bank: EMI, April 4, 2005, page 24.

[37] Pricewaterhouse Coopers, June 2006, Global Entertainment and Media Outlook: 2006-2010, page 223, 225.

[38] Sources: Deutsche Bank research report, April 4, 2005, page 24. Soleil Media Metrics research report, September 29, 2006, pages 3 and 4. Collins Stewart research report, May 17, 2006, page 3. Credit Suisse Research, June 19, 2006, page 30.

Likewise, Music and Copyright in its April 12, 2006 publication states that: "...even without a return to growth of the physical recorded music market, the major international record companies will report profits growth rather than profit falls in 2006 and beyond."

42. These predictions are supported by recent results. The majors have generally reported positive results in 2005 and 2006 revenues and operating profits. For example, for Warner Music Group ("Warner") for fiscal 2005 (for the year ended September 30, 2005), revenues were up 1.9% and operating income increased from a loss of $954 million to a profit of $84 million.[39] For the first nine months of fiscal 2006 (ended June 30, 2006) Warner reported revenues up 2.5%, operating income up 334% (from $65 million to $217 million) and operating margins of 8.2%, up 5.7%.[40] For 2005, Universal Music Group ("Universal") reported revenues up 1.5% (or 1.6% on a constant currency basis), earnings from operations up 20.4% and an operating margin of 9.8%, up 1.5%.[41] For the first nine months of 2006, Universal reported revenues up 2.7% (or 1.4% on a constant currency basis) and EBITA (earnings before interest taxes and amortization) up 18.6% (17.9% on a constant currency basis).[42] Sony/BMG reported improved second quarter results (for the period ended September 30, 2006) with revenues up 1% and losses before taxes reduced from $58 million to $31 million. Sony/BMG reported that the improvement in profitability was due primarily to lower legal and restructuring costs in the quarter.[43]

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[39] Source: Warner Music Group 2005 10K filed December 1, 2005, page 28.

[40] Source: Warner Music Group 10Q filed August 3, 2006, page 4.

[41] Source: Vivendi-Universal Group Overview: Key Businesses.

[42] Source: Vivendi Press Release, Vivendi Reports Strong Growth of Adjusted Net Income for the First Nine Months (+16.3%) and the Third Quarter (+28.2%), November 16, 2006, page 8.

[43] Source: Sony Q2 FY 2006 Earnings Presentation Slides, page 10. The exception has been EMI, which recently reported a drop in revenue of 4.1% (at constant currency) and a drop in operating profits from 86.7 million pounds to £ 62.7 million in its first half (ended September 30, 2006) primarily due to the phasing of its planned release schedule that is weighted to the second half of the year, and the impact of a large accounting fraud in Brazil which reduced profits by £ 9 million. The company has reiterated its guidance that it expects to have full

X. Conclusion

43. The recorded music companies have come through the cyclical downturn and are now on the road to recovery. The industry has responded to the need for reformation as the recorded music majors have consolidated, and significantly reduced their fixed costs to bring their spending in line and adopt their business model to digital. The digital revolution has brought lower costs, higher margins and a level of accessibility that will lead to higher profits and increased demand for music.

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year results in line with street expectations after taking into account the accounting fraud in Brazil. Source: EMI Group Plc results for the six months ended September 30, 2006, pages 1 and 2.

Declaration

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 29, 2006
New York, NY

Helen Murphy
President,
International Media Services Inc.

EXHIBIT 1: CURRICULUM VITAE FOR HELEN MURPHY

GENERAL INFORMATION:

Name	**Helen Murphy**
Address	**7 Roland Road**
	Irvington, NY 10533
Telephone	**(917) 757-1499**
	Email: menechetti@yahoo.com

Education	1987	**Chartered Financial Analyst**
	1984	**University of Western Ontario, Ontario, Canada, Masters in Business Administration**
	1982	**University of Guelph, Ontario, Canada, Honors B.A., Economics**

SUMMARY OF BUSINESS EXPERIENCE:

2004- Present	**President**
	International Media Services, Inc.
2001 - 2004	**Executive Vice President & Chief Financial Officer**
	Warner Music Group
1999 - 2001	**Executive Vice President & Chief Financial Officer**
	Martha Stewart Living Omnimedia, Inc.
1999	**Chief Financial & Administrative Officer** Westvaco Corporation
1990 – 1999	**Senior Vice President & Chief Financial Officer**
	PolyGram Holding
1997 - 1999	**Chief Financial Officer**
1995 – 1997	**Worldwide Senior Vice President, Investor Relations,** **U.S. Senior Vice President Mergers & Acquisitions**
1992 – 1995	**Senior Vice President Corporate Finance & Treasurer**
1990 – 1992	**Vice President of Investor Relations & Treasurer**
1989 – 1990	**Vice President – Research** Richardson Greenshields of Canada Limited
1986 – 1989	**Senior Analyst – Merchandising & Entertainment** Prudential-Bache Securities
1982-1990	**Lecturer** University of Guelph
1984-1986	**Assistant Manager – Securities Research** Confederation Life Insurance Company

CAREER DETAILS:

2004-Present
International Media Services, Inc.

President

International Media Services is a strategic advisory and financial services firm specializing in media and entertainment, and the arts. Clients include global media firms as well as established entrepreneurs and celebrities with global market potential. Advisory work has included the development of business models, assistance with public and private financing, valuation analysis, and investor and public relations.

2001 – 2004
Warner Music Group
Revenues: $ 4.0 billion

Executive Vice President & Chief Financial Officer

Responsible for the finance, human resources, business development, information technology, shared services and real estate functions for the company's vast network of global music assets.

- Instrumental role in the implementation of a $1.2 billion company-wide restructuring in 2001. Reduced global headcount by 30 percent, reduced artist roster by 20%, closed and sold non-strategic joint ventures and minority investments.

- Designed and implemented total compensation program for worldwide executives and employees.

- Successfully orchestrated WMG's exit from global recorded music and DVD manufacturing and distribution. Sold the company's DVD/CD manufacturing and physical distribution businesses for $1.05 billion and negotiated long term supply agreements with a value of $550 million for Time Warner.

- Played a pivotal role in the sale of WMG recorded music and music publishing business segments to an investor group for approximately $2.6 billion. Successfully completed a $1.2 billion bond offering.

- Improved company revenue and profitability from 2001-2004 through a combination of internal growth and acquisitions despite a significant decline in industry value.

1999 – 2001
Martha Stewart Living Omnimedia, Inc.
Revenues: $ 275 million reported ($1.5 billion gross revenues)

Chief Financial & Administrative Officer

Responsible for the finance, human resources, information technology, corporate administration and investor relations functions.

- Led the company's highly successful initial public offering.
- Developed internal infrastructure for public company reporting.
- Established investor relations, tax and treasury functions as well as developing strategy and business development functions within each business segment.
- Negotiated television, merchandising, publishing and Internet deals supporting double-digit growth of the company's top and bottom line.

1999
Westvaco Corporation
Revenues: $ 3.5 billion

Senior Vice President & Chief Financial Officer

- Initiated and completed a $650 million acquisition.
- Reduced the company's capital spending
- Developed the strategic planning function

1990-1999
PolyGram Holding
Revenues: Parent $ 5.0 billion, U.S. CO. $ 1.5 billion

1997 – 1999
Chief Financial Officer

- Played a key role in the $10.4 billion transaction for the Seagram Company to acquire PolyGram in 1998.
- Completed turnaround of the company's U.S. operations from a loss of $50 million to a profit of $150 million.

1995 – 1997
Worldwide Senior Vice President, Investor Relations
U.S. Senior Vice President, Mergers & Acquisitions

1992 – 1995
Senior Vice President, Corporate Finance & Treasurer

1990 – 1992
Vice President of Investor Relations & Treasurer

1989 – 1990
Richardson Greenshields of Canada Limited

Vice President – Research

- Responsible for researching and marketing North American merchandising and entertainment companies with good investment potential for institutional and retail investors.

- Responsible for the generation of corporate finance deals in the merchandising and entertainment sectors of the market

1986-1989
Prudential-Bache Securities

Senior Analyst – Merchandising & Entertainment

- Provided research coverage of the merchandising and entertainment sectors on the Toronto Stock Exchange to institutional and retail equity investors.

- Extensively involved in domestic and international corporate finance activities. Played a key role in securing a mandate for a $300 million equity offering which in turn led to the development of significant merger and acquisition business for the company.

1982 – 1990
University of Guelph

Lecturer

- Prepared and taught the Theory of Corporate Finance, Financial Management and Intermediate Macro-Economics to senior economics and business students.

- Taught senior case study courses in Financial Management.

1984 – 1986
Confederation Life Insurance Company

Assistant Manager – Securities Research

- Responsible for all administrative aspects of operating a large in-house research department including: pension marketing, prioritizing and directing research activities, recruitment and training of eight new analysts and monitoring and evaluating the work of senior analysts.

- Provided analytical research coverage of U.S. merchandising and consumer products companies.

EXHIBIT 2: MATERIALS REVIEWED

In preparing the attached report I reviewed the following materials:

I. International Federation of Phonographic Industry (IFPI) Reports

IFPI First Half Sales 2006
IFPI: 06 Digital Music Report
IFPI The Recording Industry Piracy Report 2006
IFPI The Recording Industry in Numbers 2006
IFPI The Recording Industry in Numbers 2005
IFPI The Recording Industry World Sales 2005
IFPI The Recording Industry in Numbers 2004
IFPI The Recording Industry Interim Sales –September 2004
IFPI The Recording Industry Interim Sales –September 2003
IFPI Digital Music Report 2004
IFPI The Recording Industry in Numbers 2000

II. Recording Industry Association of America

RIAA 2006 Mid-year Statistics
RIAA 2005 Year-End Statistics
RIAA 2004 Year-End Statistics
RIAA 2003 Year-End Statistics
RIAA 2002 Year-End Statistics
RIAA 2000 Year-End Statistics
RIAA Annual Report 2000
RIAA 1999 Year-End Statistics

III. Industry Reports

Arthur Andersen Net Results 2000
Enders Analysis 2005, 2002
Forrester-European Music Download Forecast: 2006 to 2011
Forrester-Mobile Music Needs A Tune-Up 2005
Forrester August 2003 From Discs to Downloads
Pricewaterhouse Coopers-Global Entertainment and Media Outlook 2006-2010
Pricewaterhouse Coopers-Global Entertainment and Media Outlook 2004-2008
IDC-Market Analysis: U.S. Wireless Ringtone 2004-2008 Forecast and Analysis
Jupiter Research-Market Forecast Report 2004 to 2009
Jupiter Research-European Digital Music Value Chain 2005
Jupiter Research-Market Forecast Report Music Industry through 2008-August 6, 2003
Wholeview Tech Strategy Research- 2004 Digital Music Forecast-January 28, 2004

IV. Company Annual Reports and Press Releases

Vivendi-Universal:

Annual Report 2005, 2004, 2003
PolyGram Annual Report December 1997, 1996, 1995, 1992, 1991, 1990, 1989, 1988, 1987, 1986, 1985, 1984, 1981/1980, 1980/1979, 1977, 1976, 1975, 1974, 1973
PolyGram Interim Report 1990, 1992
PolyGram 20F 1990, 1991, 1992
PolyGram Facts and Figures 1998-1993
Vivendi-Universal Group Overview: Key Businesses
Press Release, Vivendi Reports Strong Growth of Adjusted Net Income for the First Nine Months (+16.3%) and the Third Quarter (+28.2%), November 16, 2006
Press Release, Vivendi Reports First Nine Months 2006 Revenues Up 4.1% on a Comparable Basis, November 7, 2006
Press Release, Good Performance for the First Half of 2006 With a 10.9% Increase in Adjusted Net Income, September 7, 2006
Press Release, Vivendi Reports First Half 2006 Revenues Up 5.8% on a Comparable Basis, July 27, 2006
Press Release, Vivendi Revises Upwards 2006 Guidance and Announces 2011 Outlook, May 17, 2006
Press Release, Vivendi Universal Reports First Quarter Revenues up 6.5% on a Comparable Basis, April 20, 2006
Press Release, Vivendi Universal Reports a 55% Growth in 2005 Adjusted Net Income and a 57% Dividend Growth, March 1, 2006
Press Release, Vivendi Universal Reports Strong 2004 Earnings and Improved Cash Flow, March 10, 2005
Press Release, Vivendi Universal Continued to Improve Overall Operating Performance in the Third Quarter of 2003, December 2, 2003
Press Release, Vivendi Universal Reports Operating Results in Strong Progress for the First Half, September 14, 2004
Press Release, 2003 Major Events and 2004 Outlook, March 17, 2004
Press Release, Vivendi Universal Reports First Half 2002 Results, August 14, 2002
Press Release, Vivendi Universal Reports 2001 Results, March 5, 2002
Press Release, Vivendi: UMG to purchase BMG Music Publishing, September 6, 2006
Universal Music Group: UMG Labels, from www.vivendi.com, November 8, 2006
Universal Music Group: "Universal Music Group is the Worlds No. 1 Music Company…", from www.vivendi.com, November 8, 2006

Sony:

Consolidated Financial Statements, March 31, 2006/2005/2004/2003/2002
Quarterly reports: FY 2006 Q2, FY 2006 Q1, FY 2005 Q4, FY 2005 Q3, FY 2005 Q2, FY 2005 Q1, FY 2004 Q4, FY 2004 Q3, FY 2004 Q2, FY 2004 Q1, FY 2003 Q4, FY 2003 Q3, FY 2003 Q2, FY 2003 Q1
Press Release, Consolidated Financial Results for the Fiscal Year, April 27, 2004
Presentation, Fiscal Year 2003
Presentation, Fiscal Year 2006 Q2
Sony Financial Highlights for 2006, 2005, and 2004
Sony Corp. Notice of Ordinary General Meeting of Shareholders June 22, 2006

BMG:

Bertelsmann AG Annual Report 2005, 2004, 2003, 2002, 2000/2001
Bertelsmann Interim Report 2003
Bertelsman Research Report July 16, 2003
Press Release, Company Confirms Forecast for Year, May 5, 2004
Press Release, Bertelsman Reports Significantly Improved Operating Profit Despite Revenue Decline in First Half of 2002, September 3, 2002
BMG Layoffs to Approach 600 Globally, Mostly U.S., Billboard Bulletin, September 28, 2001

EMI:

Annual Report March 31 2006, 2005, 2004, 2003, 2002, 1999
Proposed Combination of EMI Music with Warner Music to Form
EMI Offering Circular, September 20, 2003
Warner EMI Music Circular and Listing Particulars-June 2, 2000
Press Release, November 15, 2006
Press Release, EMI Group PLC preliminary Results for the Six Months Ended 30 September 2006
Press Release, Results for the Six Months Ended September 30, 2005
Press Release, Results for the Financial Year Ended March 31, 2006
Press Release, Results for the Financial Year Ended March 31, 2005
Press Release, Results for the Financial Year Ended March 31, 2004
Press Release, Results for the Financial Year Ended March 31, 2003
Press Release, Results for the Financial Year Ended March 31, 2002
Press Release, EMI Provides Trading Update for the Financial Year Ended 31 March 2006
Chairman's Statement - 2006 Annual General Meeting

Warner Music Group:

Form 10Q February 14, 2006
Form 10Q August 3, 2006
Form 10Q May 5, 2006
Form 8-K August 3, 2006

Earnings Transcript, June 16, 2005
Annual Report, September 30, 2005
Preliminary Prospectus April 22, 2005
Form S-4 December 16, 2004
Amendment 3 to S1 February 9, 2005
S1 Registration Statement March 11, 2005
Amendment 1 to S1 April 7, 2005
Time Warner Annual Report December 2004, 2003, 2002, 2001
Press Release, Warner Music Group WMG Reports Ten Month Results Ended September 2005, dated December 13, 2004
Press Release, Warner Music Group Corp. Reports Fiscal First Quarter Results for the Period Ended December 31, 2005, dated February 14, 2006
Press Release, Warner Music Group Reports Fiscal Third Quarter Results for 2006 August 3, 2006

V. Investor Presentations

Vivendi-Universal- The Industry Leader, Merrill Lynch, September 2006

EMI- EMI Group interim results 2006, EMI Group AGM 2006, EMI Group preliminary results 2006, MidemNet 2006, UBS 33rd Annual Global Media Conference, EMI Group interim results 2005, Merrill Lynch Media & Entertainment Conference, EMI Group AGM 2005, Merrill Lynch TMT Conference, EMI Group preliminary results 2005, Bear Stearns Annual Media Conference, UBS 32nd Annual Media Week Conference, EMI Group interim results 2004, EMI Group AGM 2004, Digital Music Investor Day, July 1, 2004

Warner Music Group
Q4 2006 Warner Music Group Earnings Conference Call, December 1, 1996
Goldman Sachs Communacopia Conference, September 19, 2006
Q3 2006 Warner Music Group Earnings Conference Call, August 3, 2006
Remarks of Edgar Bronfman, Jr. Chairman and CEO, Warner Music Group to the Music Matters - Asia Pacific Music Forum, May 10, 2006
Q2 2006 Warner Music Group Earnings Conference Call, May 5, 2006
Statement of Edgar Bronfman, Jr. Chairman and CEO, Warner Music Group Before the Committee on the Judiciary United States Senate on Parity, Platforms and Protection: The Future of The Music Industry in the Digital Radio Revolution, April 26, 2007
Warner Music Group's Presentation at Bear, Stearns & Co. 19th Annual Media Conference, February 28, 2006
Edgar Bronfman, Jr.'s Interview at CSFB Global Media Week Conference, December 6, 2005
Edgar Bronfman, Jr.'s Presentation at 33rd UBS Global Media Conference, December 5, 2005
Keynote Address at the Progress and Freedom Foundation's Annual Aspen Summit, August 22, 2005

VI. Analyst Reports

Company	Investment Bank	Date	Title
		2002	
EMI	Lehman Brothers	29-May	No Longer Expensive, But No Need to Buy
EMI	Morgan Stanley	4-Sep	Publish or Perish?
EMI	Morgan Stanley	20-Nov	Results in C Minor
		2003	
EMI	Morgan Stanley	10-Feb	Market Share Stabilizing But Industry Decline Continues
EMI	Morgan Stanley	15-May	FY Results Due March 20th
EMI	Morgan Stanley	20-May	Tough Times
EMI	Bear Stearns	4-Jul	Press Pause For Now
EMI	Morgan Stanley	6-Nov	How Much Are Synergies Really Worth?
EMI	Morgan Stanley	19-Nov	H1 Top Line Well Ahead
EMI	Morgan Stanley	25-Nov	WMG Read Across
Entertainment Industry	Citigroup Smith Barney	21-Nov	Piracy in the Entertainment Industry
		2004	
EMI	Morgan Stanley	21-Jan	A Rush of Blood to the Head?
Vivendi Universal	Credit Lyonnais Securities	26-Feb	Top-line growth in media assets: the catalyst
Vivendi Universal	Credit Lyonnais Securities	26-Feb	Finding the Turning Point
Vivendi Universal	Deutsche Bank	30-Apr	Hanging on the telephone
Vivendi Universal	Bernstein Research Call	28-Apr	Quick Take on Meetings with UMG Management
WMG	Credit Suisse	16-Apr	Initiating Coverage
EMI	Morgan Stanley	31-Mar	The First Cut is the Deepest
EMI	Morgan Stanley	25-May	Taking the Bull(s) by the Horns
EMI	Morgan Stanley	2-Jul	Investor Day Abbey Road
Vivendi Universal	Credit Suisse	9-Jul	Cheese and Cake
EMI	Bear Stearns	21-Sep	Turn Up the Volume
EMI	Citigroup	10-Sep	Technology - Something To Sing About
Vivendi Universal	Merrill Lynch	15-Sep	Heavy Lifting Done
Vivendi Universal	UBS Investment Research	15-Sep	Vivendi Universal Interim results
Vivendi Universal	Deutsche Bank	21-Sep	Hip to be square?
EMI	Bear Stearns	21-Sep	Turn Up the Volume
EMI	Morgan Stanley	Oct-06	Moved to Underweight
Vivendi Universal	Deutsche Bank	9-Nov	Vivendi Universal Q304 Results Review
Apple Computer Inc.	J.P. Morgan	15-Nov	iPod Economics
		2005	
3G	Credit Suisse / First Boston	25-Jan	Fat pipe but what will fill it?
Vivendi Universal	Bear Stearns	2-Feb	VU 2004 Revenue – A Solid Result

Vivendi Universal	Merrill Lynch	2-Feb	Outperforming On Revenues And Net Debt
Vivendi Universal	Delta Lloyd	3-Feb	Company Alert
Music Industry	Teather & Greenwood	12-Feb	Digital the Cannibal
EMI	Deutsche Bank	4-Apr	Going digital - upgrading to Buy
WMG	Soleil Media Metrics	2-May	Best Questions for Roadshow
WMG	Fulcrum	4-May	Warner Music Group IPO Preview
WMG	Bernstein	9-May	Warner Music IPO: Too Rich For Our Taste
WMG	Soleil Media Metrics	12-May	Initiating Coverage of WMG: Time to BUY
WMG	Fulcrum	23-May	Key Issues That Are Holding Us Back; Initiating at Neutral
Music Industry	Soleil Media Metrics	31-May	Music Industry Review
WMG	Lehman Brothers	1-Jul	Waiting on the Digital Breakout
WMG	Banc of America Securities	20-Jun	The Song Remains The Same (Even if the Industry Does Not)
WMG	Goldman Sachs	20-Jun	Unlocking the value of content through new distribution channels/formats
WMG	Merrill Lynch	20-Jun	Initiating with a Sell; Significant Uncertainty Remains
WMG	Morgan Stanley	20-Jun	Equal-weight-V: Untested Model in Evolving Industry
WMG	Lehman Brothers	28-Jun	Waiting on the Digital Breakout
Music Industry	Fulcrum	17-Oct	Is Digital Music Really Growing That Fast?
		2006	
WMG	Soleil Media Metrics	11-Jan	WMG: The Bull Case
WMG	Morgan Stanley	27-Jan	Lowered Digital Forecasts Don't Justify a Premium: Going to Underweight-V
WMG	Citigroup	14-Feb	WMG: Reported mixed Q106 results
WMG	Merrill Lynch	14-Feb	Cost Cutting Drives in Line Results
EMI	SG Cross Asset Research.	1-Mar	Digital market share contraction for U.S. in Q4
WMG	Pali Capital, Inc.	2-Mar	Reversing Industry View – Initiate with BUY rating & $25 Price Target
EMI	Societe Generale	4-Mar	Poor IFPI data for 2005 sows the music industry slump continuing
Media Industry	Pali Capital, Inc.	10-Mar	Is Download-to-Own/burn Finally Becoming Reality?
Sony BMG	Credit Suisse	28-Mar	Sony BMG: Minimal Impact on Valuation from BMG Selling its Stake
EMI	Deutsche Bank	29-Mar	H206 preview: Expect trading update mid-April
EMI	Morgan Stanley	20-Apr	Price Target Raised on Positive Trading Statement
WMG	Bank of America	6-Apr	Downgrading to Neutral: Maintaining Price Target & Positive Bias
Vivendi Universal	Bear Stearns	20-Apr	Music Drives Strong Q1 06 Revenues
EMI	Cazenove	20-Apr	Update: Snap Reaction

WMG	Bank of America	24-Apr	Increasing Target to $27 as Merger Talks with EMI Could Be Heating Up
EMI	Merrill Lynch	26-Apr	Merger upside largely priced in
WMG	Deutsche Bank	26-Apr	Weekly Music Sales
EMI/WMG	Pali Capital, Inc.	16-May	U.S. Digital Track Trends Weakening
WMG	Morgan Stanley	17-May	EMI Bid Makes Long-Term Cost Cuts Look Credible
EMI	Collins Stewart Research	17-May	A Deal Would Make Sweet Music
WMG	Fulcrum Global Partners	23-May	WMG: Key Issues That Are Holding Us Back
Apple Computer Inc.	Credit Suisse	23-May	iPod: How Big Can it Get?
EMI	Lehman Brothers	24-May	Encouraging schedule, though deal key
Global Music Industry	Credit Suisse	19-Jun	Just the Two of Us
EMI	Morgan Stanley	28-Jun	Come Together
EMI	Bear Stearns	29-Jun	EMI and WMG Struggle to Find the Right Note
EMI	Merrill Lynch	29-Jun	Mutual Rejection
WMG	Goldman Sachs	16-Jul	Outlook: Increasing 3QFY06 Revenue & EBITDA by 4% & 6%
WMG	Bank of America	27-Jul	EMI/WMG Merger Shelved: Reducing PT to $25 from $28.50
WMG	Credit Suisse	27-Jul	Still Stuck at the Starting Line
EMI	Merrill Lynch	27-Jul	Back to Fundamentals
WMG	Merrill Lynch	3-Aug	F3Q Still in Tune
WMG	Bank of America	3-Aug	Red Hot 3Q Results
WMG	Goldman Sachs	3-Aug	Thesis intact: Continued better-than-expected strong growth
WMG	Lehman Brothers	3-Aug	Strong F3Q06, Tougher Comps Upcoming
WMG	Credit Suisse	4-Aug	Strong Execution is Encouraging in the Face of Strategic Stalemate
WMG	Morgan Stanley	4-Aug	Analysis of F3Q06 and Revised Model
WMG	Deutsche Bank	22-Sep	Resuming Coverage with Buy Rating
WMG	Soleil Media Metrics	29-Sep	4Q Earnings Preview + Updated Models & Valuations
EMI	Credit Suisse	20-Oct	Clearing the decks
EMI	Morgan Stanley	9-Nov	Upside Case Stretched
Music industry	Pali Research	20-Nov	Can Digital Track Sales Scale a Year-End Mountain, Again? ... Could be Tough
WMG	Credit Suisse	27-Nov	Q4 Faces Tough Comps but Digital Strength Should Support Margins

VII. Other Materials

The Consumer Is King, EMI Music's Alain Levy Tells Delegates at the London Media Summit, October 27, 2006.

Donald S. Passman, All You Need to Know About the Music Business, 1991, pp. 186-191

Felix Oberholzer-Gee & Koleman-Strumpf, The Effect of File Sharing on Record Sales: An Empirical Analysis, June 2005

Music & Copyright (numerous articles)

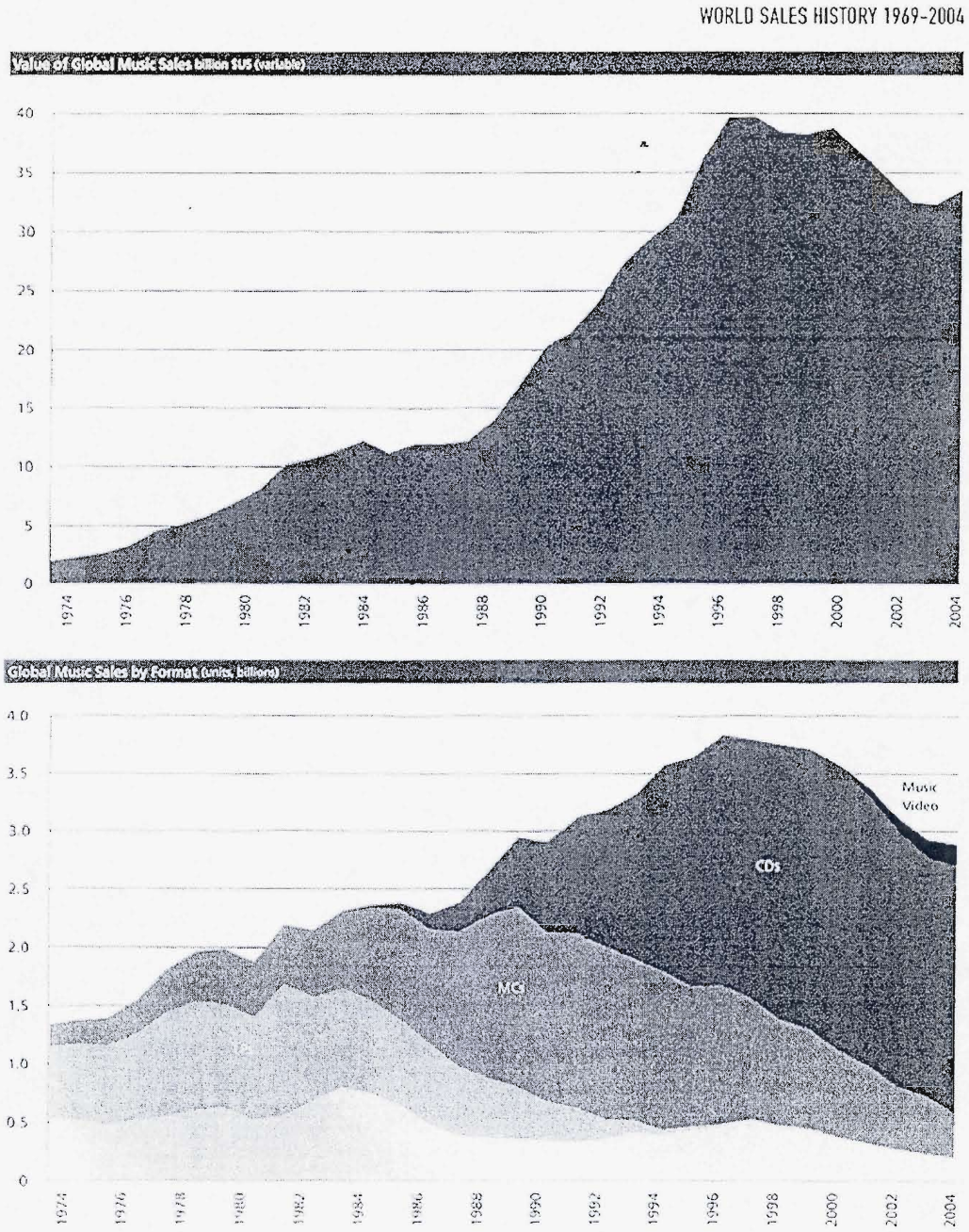
Historical Copyright Royalty Rates, 37 C.F.R. § 255.3

Digital Music News, October 5, 2006, press article

EMI Sound Values 2006, 2005, 2004, 2003, 2002, 2001, from www.emigroup.com/socialresponsibility

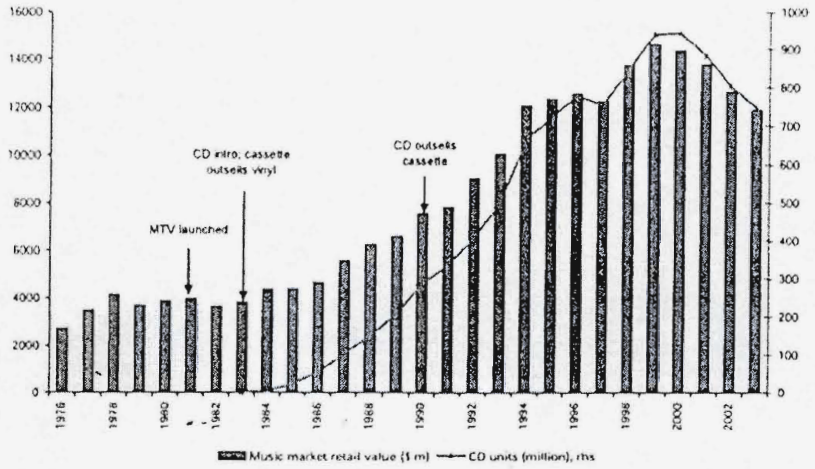
EXHIBIT 3:

VALUE OF GLOBAL MUSIC SALES & GLOBAL MUSIC SALES BY FORMAT UNITS, BILLIONS



Source: IFPI 2005 Global Recording Industry in Numbers, page 161.

EXHIBIT 4: U.S. RECORDED MUSIC MARKET 1976-2003



Source: Deutche Bank, EMI, April 4, 2005, page 29.

EXHIBIT 5:

RESTRUCTURING / WRITE-OFFS-COST REDUCTIONS OF THE MAJORS 2001-2005

	Total Restructuring and Write-Offs	Restructuring
SONY/BMG	$2,279m	$300m
EMI	$ 756m	$270m
UNIVERSAL MUSIC	$1,550m	$468m
WARNER MUSIC	$2,769m	$250m
TOTAL	$7,354m	$1,288m

Sources:

Credit Suisse Research Report, June 19, 2006, page 29.

Sony/BMG:

Sony Consolidated Financial Statements 2006, page f-64, page 2 note 1. BMG 2005 Annual Report, page 90 (50% of total cost shown on BMG's financial statements).

BMG 2002 Annual Report, page 102; 2003 Annual Report, page 58; 2004 Annual Report, page 12.

EMI:

2003 Annual report page 90; 2006 annual report page 99.

UMG:

Universal Music Group, Press Release, March 17, 2004, page 3.

WMG:

Warner Music Group, 10K filed December 1, 2005, page 28; President's letter WMG annual report January 2006, page 4.

EXHIBIT 6: REPORTED REVENUE AND OPERATING PROFIT OF MAJOR RECORDED MUSIC COMPANIES 2003-2005

US$ in millions, unless otherwise stated

	YE	2003	2004	2005
Revenue (US$M)				
Bertelsmann	Dec	3,067	3,166	NA
Sony	Mar	3,826	3,897	2,317
Sony BMG	Mar	NA	NA	3,258
EMI	Mar	3,361	3,581	3,693
Universal Music	Dec	5,625	6,201	6,080
Warner Music	Nov/Sept	3,376	3,437	3,502
Group Total		19,255	20,283	18,850
Revenue Growth				
Bertelsmann		19.8%	3.2%	NA
Sony		-25.6%	1.9%	NA
Sony BMG		NA	NA	NA
EMI		-4.1%	6.6%	3.1%
Universal Music		-5.0%	10.2%	-2.0%
Warner Music		2.6%	1.8%	1.9%
Group Total		-5.7%	5.3%	-7.1%
EBITDA (US$M)				
Bertelsmann		295	288	NA
Sony		-68	90	170
Sony BMG		NA	NA	384
EMI		459	480	459
Universal Music		495	950	944
Warner Music		236	373	466
Group Total		1,418	2,181	2,424
EBITDA Growth				
Sony BMG		NA	NA	NA
EMI		32.3%	4.6%	-4.3%
Universal Music		-45.3%	91.7%	-0.6%
Warner Music		16.8%	58.1%	24.9%
Group Total		-29.6%	53.8%	11.1%
EBITDA Margin				
Bertelsmann		9.6%	9.1%	NA
Sony		-1.8%	2.3%	7.3%
Sony BMG		NA	NA	11.8%
EMI		13.7%	13.4%	12.4%
Universal Music		8.8%	15.3%	15.5%
Warner Music		7.0%	10.9%	13.3%
Group Total		7.4%	10.8%	12.9%

Source: Company data, Credit Suisse estimates. EBITDA is before restructuring charges. Sony BMG in March 2005 is for seven months only.

Source: Credit Suisse Research Report, June 19, 2006, page 30.

EXHIBIT 7: REPORTED DIGITAL MUSIC SALES HISTORY OF THE MAJORS
(% of total revenues)

	2004	2005	2006YTD
EMI	2.6%	5.4%	8.5%
WARNER	1.0%	4.5%	9.4%
SONY/BMG	NA	7.0%	13.0%
UNIVERSAL	2.0%	5.3%	10.5%

Sources:

EMI:
2006 YTD- Press Release, EMI Group Plc Results for the Six Months Ended September 30, 2006, November 15, 2006, page 1.
2005- Press Release EMI Group Plc Results for the Six Months Ended September 30, 2006, November 15, 2006, page 1.
2004- 2005 EMI Annual Report, page 10.

WMG:
2006 YTD- Press Release Q3 August 3, 2006, page 1. Q2 Press Release May 5, 2006, page 1. Q1 Press Release February 14, 2006.
2005-WMG Press Release December 1, 2005, page 1.
2004- WMG 10K dated December 1, 2005, page 41.

SONY/BMG:
2006 YTD- BMG Interim Report 2006, page 7.
2005- BMG Annual Report 2005, page 62
2004- NA

UMG:
2006 YTD- Vivendi Press release Q3 results, November 7, 2006.
2005- Universal Music Group, The Industry Leader, Merrill Lynch, September 2006, page 10.
2004- Universal Music Group, The Industry Leader, Merrill Lynch, September 2006, page 10.

EXHIBIT 8: MARGIN ON WHOLESALE

	Physical	Digital
Wholesale revenue	100%	100%
Royalties/Publishing	-30%	-38%
Manufacturing	-20%	0%
Marketing/A&R	-25%	-25%
Fixed costs	-13%	-13%
Margin	**12%**	**24%**

Source: Company data, Credit Suisse estimates.

Source: Credit Suisse, Global Music Industry, June 19, 2006, page 19.

EXHIBIT 9: RECORD COMPANY COST STRUCTURE AND PROFITABILITY

Percentage of Divisional Recorded Music Sales

	EMI 10/1/04-9/30/05	UMG 7/1/04-6/30/05	WMG 10/1/04-9/30/05	Average
Net revenue	100%	100%	100%	100%
A&R and Royalties	31.5	40.3	29.3	33.7
Administration Costs	26.2	13.6	23.7	21.2
Marketing & Promotion	16.5	17.6	14.0	16.0
Manufacture, Distribution & Associated Costs	16.2	14.2	21.4	17.3
Total Costs	90.4	85.7	88.4	88.2
EBITDA Margin	9.5%	14.4%	11.6%	11.7%

Source: IMS estimates and Morgan Stanley Research Report, January 27, 2006, Exhibit 18, page 25 and 26.

R

In the Matter of Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding, 2006-3 CRB DPRA

EXHIBIT LIST TO WRITTEN DIRECT STATEMENT OF NMPA, THE SGA & THE NSAI

(Public Version — Filed on April 10, 2007)

Ex. No.	Sponsored By	Description
CO 0001	David Israelite	37 C.F.R. § 255.3 (2006)
CO 0002	David Israelite	Mechanical and Digital Phonorecord Delivery Compulsory License, 66 Fed. Reg. 64783, dated December 14, 2001
CO 0003	David Israelite	Joint Statement of the Recording Industry Association of America ("RIAA), National Music Publishers' Association ("NMPA"), and The Harry Fox Agency ("HFA") Regarding Notice of Inquiry Pertaining to Application of Mechanical Compulsory License to Certain Digital Music Services, dated December 6, 2001
CO 0004	David Israelite	Agreement Between the RIAA, NMPA, and HFA for Licensing and Authorization of On-demand Streams and Limited Downloads, dated October 5, 2001
CO 0005	David Israelite	Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding, 64 Fed. Reg. 6221, dated February 9, 1999
CO 0006	David Israelite	Amended Joint Petition for Adjustment of Digital Phonorecord Delivery Royalty Rates Submitted by NMPA, The Songwriters Guild of America ("SGA"), and RIAA, dated December 4, 1998
CO 0007	David Israelite	Agreement Between NMPA, SGA, and the RIAA Regarding Disposition of the Digital Phonorecord Delivery Rate Adjustment Proceeding, dated October 13, 1998
CO 0008	David Israelite	Agreement Between the NMPA and the RIAA to Consider Percentage Royalty Rate Structure During Next Adjustment of Rates for Digital Phonorecord Deliveries, dated October 13, 1998
CO 0009	David Israelite	Amended Joint Petition of NMPA, SGA, and RIAA Regarding Disposition of the Digital Phonorecord Delivery Rate Adjustment Proceeding, dated July 21, 1998

In the Matter of Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding, 2006-3 CRB DPRA

Ex. No.	Sponsored By	Description
CO 0010	David Israelite	Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding, 63 Fed. Reg. 7288, dated February 13, 1998
CO 0011	David Israelite	Joint Petition of NMPA, SGA, and RIAA for Adjustment of Physical Phonorecord and Digital Phonorecord Delivery Royalty Rates, dated November 5, 1997
CO 0012	David Israelite	Agreement Between NMPA, HFA, and RIAA Relating to the 1997 Joint Proposal, dated November 4, 1997
CO 0013	David Israelite	1987 Adjustment of the Mechanical Royalty Rate; Correction, 52 Fed. Reg. 23546, dated June 23, 1987
CO 0014	David Israelite	1987 Adjustment of the Mechanical Royalty Rate, 52 Fed. Reg. 22637, dated June 15, 1987
CO 0015	David Israelite	Joint Petition of NMPA, SGA, and RIAA for Automatic Adjustments of Mechanical Royalty Rate, dated March 18, 1987
CO 0016	David Israelite	Adjustment of Royalty Payable Under Compulsory License for Making and Distributing Phonorecords, 46 Fed. Reg. 62267, dated December 23, 1981
CO 0017	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated June 30, 2006 [Redacted]
CO 0018	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated March 9, 2006 [Redacted]
CO 0019	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated February 6, 2006 [Redacted]
CO 0020	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated January 18, 2006 [Redacted]
CO 0021	David Israelite	The Harry Fox Agency, Inc., Agreement, dated January 1, 2006 [Redacted]
CO 0022	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated January 1, 2006 [Redacted]

Ex. No.	Sponsored By	Description
CO 0023	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated November 8, 2005 [Redacted]
CO 0024	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated September 13, 2005 [Redacted]
CO 0025	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated August 5, 2005 [Redacted]
CO 0026	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated July 6, 2005 [Redacted]
CO 0027	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated March 30, 2005 [Redacted]
CO 0028	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated February 3, 2005 [Redacted]
CO 0029	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated October 28, 2004 [Redacted]
CO 0030	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated August 6, 2004 [Redacted]
CO 0031	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated August 6, 2004 [Redacted]
CO 0032	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated July 26, 2004 [Redacted]
CO 0033	David Israelite	The Harry Fox Agency, Inc., Agreement, dated July 2, 2004 [Redacted]
CO 0034	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated July 1, 2004 [Redacted]
CO 0035	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated May 20, 2004 [Redacted]

Ex. No.	Sponsored By	Description
CO 0036	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated April 21, 2004 [Redacted]
CO 0037	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated March 3, 2004 [Redacted]
CO 0038	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated January 22, 2004 [Redacted]
CO 0039	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated December 22, 2003 [Redacted]
CO 0040	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated December 1, 2003 [Redacted]
CO 0041	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated September 26, 2003 [Redacted]
CO 0042	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated September 10, 2003 [Redacted]
CO 0043	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated September 5, 2003 [Redacted]
CO 0044	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated September 5, 2003 [Redacted]
CO 0045	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated May 19, 2003 [Redacted]
CO 0046	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated February 21, 2003 [Redacted]
CO 0047	David Israelite	The Harry Fox Agency, Inc., Agreement, dated March 25, 2002 [Redacted]

Ex. No.	Sponsored By	Description
CO 0048	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated November 9, 2001 [Redacted]
CO 0049	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated September 21, 2001 [Redacted]
CO 0050 to CO 0100		Reserved
CO 0101	Irwin Robinson	Famous Music, LLC, License Agreement, dated March 31, 2006 [Redacted]
CO 0102	Irwin Robinson	Famous Music, LLC, License Agreement, dated February 1, 2006 [Redacted]
CO 0103	Irwin Robinson	The Famous Music Publishing Companies License Agreement, dated October 1, 2005 [Redacted]
CO 0104	Irwin Robinson	The Famous Music Corp. License Agreement, dated May 1, 2005 [Redacted]
CO 0105	Irwin Robinson	The Famous Music Publishing Companies License Agreement, dated February 8, 2005 [Redacted]
CO 0106	Irwin Robinson	The Famous Music Publishing Companies License Agreement, dated January 1, 2005 [Redacted]
CO 0107	Irwin Robinson	The Famous Music Publishing Companies License Agreement, dated January 1, 2005 [Redacted]
CO 0108	Irwin Robinson	The Famous Music Publishing Companies License Agreement, dated January 1, 2005 [Redacted]
CO 0109	Irwin Robinson	The Famous Music Publishing Companies License Agreement, dated January 1, 2005 [Redacted]

Ex. No.	Sponsored By	Description
CO 0110	Irwin Robinson	The Famous Music Publishing Companies License Agreement, dated January 1, 2005 [Redacted]
CO 0111	Irwin Robinson	The Famous Music Publishing Companies License Agreement, dated January 1, 2005 [Redacted]
CO 0112	Irwin Robinson	The Famous Music Publishing Companies License Agreement, dated January 1, 2005 [Redacted]
CO 0113	Irwin Robinson	The Famous Music Publishing Companies License Agreement, dated January 1, 2005 [Redacted]
CO 0114	Irwin Robinson	The Famous Music Publishing Companies License Agreement, dated January 1, 2005 [Redacted]
CO 0115	Irwin Robinson	The Famous Music Publishing Companies License Agreement, dated January 1, 2005 [Redacted]
CO 0116	Irwin Robinson	The Famous Music Publishing Companies License Agreement, dated January 1, 2005 [Redacted]
CO 0117	Irwin Robinson	Famous Music Corp. License Agreement, dated January 1, 2005 [Redacted]
CO 0118	Irwin Robinson	The Famous Music Publishing Companies License Agreement, dated January 1, 2005 [Redacted]
CO 0119	Irwin Robinson	The Famous Music Publishing Companies License Agreement, dated November 19, 2004 [Redacted]
CO 0120	Irwin Robinson	The Famous Music Publishing Companies License Agreement, dated October 1, 2004 [Redacted]

Ex. No.	Sponsored By	Description
CO 0121	Irwin Robinson	Famous Music Corp. License Agreement, dated March 30, 2004 [Redacted]
CO 0122	Irwin Robinson	Famous Music Corp. License Agreement, dated September 9, 2003 [Redacted]
CO 0123	Irwin Robinson	Famous Music Corp. License Agreement, dated May 30, 2003 [Redacted]
CO 0124	Irwin Robinson	Famous Music Corp. License Agreement, dated April 5, 2003 [Redacted]
CO 0125	Irwin Robinson	Famous Music Corp. License Agreement, dated November 20, 2002 [Redacted]
CO 0126 to CO 0150		Reserved
CO 0151	Ralph Peer	Peermusic III Ringtone License Agreement, dated June 1, 2006 [Redacted]
CO 0152	Ralph Peer	Peermusic III Ringtone License Agreement, dated March 3, 2006 [Redacted]
CO 0153	Ralph Peer	Peermusic III Ringtone License Agreement, dated October 1, 2005 [Redacted]
CO 0154	Ralph Peer	Peermusic Ringtone License Agreement, dated October 1, 2005 [Redacted]
CO 0155	Ralph Peer	Peermusic III Ringtone License Agreement, dated September 30, 2005 [Redacted]
CO 0156	Ralph Peer	Peermusic III Ringtone License Agreement, dated June 30, 2005 [Redacted]
CO 0157	Ralph Peer	Peermusic III Ringtone License Agreement, dated May 9, 2005 [Redacted]
CO 0158	Ralph Peer	Peermusic III Ringtone License Agreement, dated April 1, 2005 [Redacted]
CO 0159	Ralph Peer	Peermusic III Ringtone License Agreement, dated March 17, 2005 [Redacted]

Ex. No.	Sponsored By	Description
CO 0160	Ralph Peer	Peermusic III Ringtone License Agreement, dated February 17, 2005 [Redacted]
CO 0161	Ralph Peer	Peermusic III Ringtone License Agreement, dated February 11, 2005 [Redacted]
CO 0162	Ralph Peer	Peermusic III Ringtone License Agreement, dated October 20, 2004 [Redacted]
CO 0163	Ralph Peer	Peermusic III Ringtone License Agreement, dated October 1, 2004 [Redacted]
CO 0164	Ralph Peer	Peermusic III Ringtone License Agreement, dated October 1, 2004 [Redacted]
CO 0165	Ralph Peer	Peermusic III Ringtone License Agreement, dated October 1, 2004 [Redacted]
CO 0166	Ralph Peer	Peermusic III Ringtone License Agreement, dated September 9, 2004
CO 0167	Ralph Peer	Peermusic III Ringtone License Agreement, dated August 26, 2004 [Redacted]
CO 0168	Ralph Peer	Peermusic III Ringtone License Agreement, dated August 5, 2004 [Redacted]
CO 0169	Ralph Peer	Peermusic III Ringtone License Agreement, dated June 28, 2004 [Redacted]
CO 0170	Ralph Peer	Peermusic III Ringtone License Agreement, dated June 14, 2004 [Redacted]
CO 0171	Ralph Peer	Peermusic III Ringtone License Agreement, dated May 25, 2004 [Redacted]
CO 0172	Ralph Peer	Peermusic III Ringtone License Agreement, dated January 22, 2004 [Redacted]
CO 0173	Ralph Peer	Peermusic III Ringtone License Agreement, dated January 1, 2004 [Redacted]
CO 0174	Ralph Peer	Peermusic III Ringtone License Agreement, dated November 5, 2003 [Redacted]

Ex. No.	Sponsored By	Description
CO 0175	Ralph Peer	Peermusic III Ringtone License Agreement, dated November 5, 2003 [Redacted]
CO 0176	Ralph Peer	Peermusic III Ringtone License Agreement, dated September 10, 2003 [Redacted]
CO 0177	Ralph Peer	Peermusic III Ringtone License Agreement, dated August 1, 2003 [Redacted]
CO 0178	Ralph Peer	Peermusic Canada, Ringtone License Agreement, dated June 17, 2002 [Redacted]
CO 0179 to CO 0200		Reserved
CO 0201	Roger Faxon	Faxon Exhibit 1 [Redacted]
CO 0202	Roger Faxon	Faxon Exhibit 2 [Redacted]
CO 0203	Roger Faxon	Faxon Exhibit 3 [Redacted]
CO 0204	Roger Faxon	Faxon Exhibit 4 [Redacted]
CO 0205	Roger Faxon	Faxon Exhibit 5 [Redacted]
CO 0206	Roger Faxon	Faxon Exhibit 6
CO 0207	Roger Faxon	Faxon Exhibit 7
CO 0208	Roger Faxon	Faxon Exhibit 8
CO 0209	Roger Faxon	Faxon Exhibit 9 [Redacted]
CO 0210	Roger Faxon	Faxon Exhibit 10 [Redacted]
CO 0211	Roger Faxon	Faxon Exhibit 11
CO 0212	Roger Faxon	Faxon Exhibit 12
CO 0213	Roger Faxon	Faxon Exhibit 13 [Redacted]
CO 0214	Roger Faxon	Faxon Exhibit 14
CO 0215	Roger Faxon	Faxon Exhibit 15

Ex. No.	Sponsored By	Description
CO 0216	Roger Faxon	Faxon Exhibit 16
CO 0217	Roger Faxon	Faxon Exhibit 17
CO 0218	Roger Faxon	Faxon Exhibit 18 [Redacted]
CO 0219	Roger Faxon	Faxon Exhibit 19 [Redacted]
CO 0220	Roger Faxon	Faxon Exhibit 20 [Redacted]
CO 0221	Roger Faxon	Faxon Exhibit 21 [Redacted]
CO 0222	Roger Faxon	Faxon Exhibit 22 [Redacted]
CO 0223	Roger Faxon	Faxon Exhibit 23 [Redacted]
CO 0224	Roger Faxon	Faxon Exhibit 24 [Redacted]
CO 0225	Roger Faxon	Faxon Exhibit 25 [Redacted]
CO 0226 to CO 0250		Reserved
CO 0251	Nicholas Firth	BMG Music Publishing NA, Inc., Agreement, dated October 17, 2006
CO 0252	Nicholas Firth	BMG Music Publishing NA, Inc. / Zomba Enterprises, Inc., Ringtone License Agreement, dated March 21, 2006
CO 0253	Nicholas Firth	Omitted
CO 0254	Nicholas Firth	BMG Music Publishing NA, Inc., Synchronization License, dated March 1, 2006
CO 0255	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated February 1, 2006
CO 0256	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated February 1, 2006
CO 0257	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated January 1, 2006

Ex. No.	Sponsored By	Description
CO 0258	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated January 1, 2006
CO 0259	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated December 6, 2005
CO 0260	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated December 1, 2005
CO 0261	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated December 1, 2005
CO 0262	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated December 1, 2005
CO 0263	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, December 1, 2005
CO 0264	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated December 1, 2005
CO 0265	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated December 1, 2005
CO 0266	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated October 1, 2005
CO 0267	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated October 1, 2005
CO 0268	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated October 1, 2005
CO 0269	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated September 1, 2005
CO 0270	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated September 1, 2005
CO 0271	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated September 1, 2005
CO 0272	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated September 1, 2005

Ex. No.	Sponsored By	Description
CO 0273	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated September 1, 2005
CO 0274	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated August 1, 2005
CO 0275	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated August 1, 2005
CO 0276	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated August 1, 2005
CO 0277	Nicholas Firth	BMG Music Publishing NA, Inc., Synchronization License Agreement, dated July 19, 2005
CO 0278	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated July 1, 2005
CO 0279	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated July 1, 2005
CO 0280	Nicholas Firth	BMG Music Publishing NA, Inc., License Agreement, dated July 1, 2005
CO 0281	Nicholas Firth	BMG Music Publishing NA, Inc./ Zomba Enterprises, Inc., License Agreement, dated July 1, 2005
CO 0282	Nicholas Firth	BMG Music Publishing NA, Inc., Zomba Enterprises, Inc., License Agreement, dated July 1, 2005
CO 0283	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated June 1, 2005
CO 0284	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated June 1, 2005
CO 0285	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated June 1, 2005
CO 0286	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated June 1, 2005

Ex. No.	Sponsored By	Description
CO 0287	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated June 1, 2005
CO 0288	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated June 1, 2005
CO 0289	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated June 1, 2005
CO 0290	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated June 1, 2005
CO 0291	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated June 1, 2005
CO 0292	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated June 1, 2005
CO 0293	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated May 1, 2005
CO 0294	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated May 1, 2005
CO 0295	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated April 1, 2005
CO 0296	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated April 1, 2005
CO 0297	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated April 1, 2005
CO 0298	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated February 1, 2005
CO 0299	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated February 1, 2005
CO 0300	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated February 1, 2005
CO 0301	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated February 1, 2005

Ex. No.	Sponsored By	Description
CO 0302	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated February 1, 2005
CO 0303	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated January 1, 2005
CO 0304	Nicholas Firth	BMG Music Publishing NA, Inc. / Zomba Enterprises, Inc., Ringtone License Agreement, dated January 1, 2005
CO 0305	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated January 1, 2005
CO 0306	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated January 1, 2005
CO 0307	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated January 1, 2005
CO 0308	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated January 1, 2005
CO 0309	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated January 1, 2005
CO 0310	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated January 1, 2005
CO 0311	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated January 1, 2005
CO 0312	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated January 1, 2005
CO 0313	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated December 16, 2004
CO 0314	Nicholas Firth	Zomba Enterprises, Inc., License Agreement, dated December 16, 2004
CO 0315	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated December 6, 2004

Ex. No.	Sponsored By	Description
CO 0316	Nicholas Firth	BMG Music Publishing NA, Inc., License Agreement, dated December 1, 2004
CO 0317	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated December 1, 2004
CO 0318	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated December 1, 2004
CO 0319	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated December 1, 2004
CO 0320	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated December 1, 2004
CO 0321	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated December 1, 2004
CO 0322	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated December 1, 2004
CO 0323	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated December 1, 2004
CO 0324	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated December 1, 2004
CO 0325	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated December 1, 2004
CO 0326	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated December 1, 2004
CO 0327	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated November 1, 2004
CO 0328	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated November 1, 2004
CO 0329	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated November 1, 2004

Ex. No.	Sponsored By	Description
CO 0330	Nicholas Firth	BMG Music Publishing NA, Inc. / Zomba Enterprises, Inc., Ringtone License Agreement, dated November 1, 2004
CO 0331	Nicholas Firth	Omitted
CO 0332	Nicholas Firth	BMG Music Publishing NA, Inc. / Zomba Enterprises, Inc., License Agreement, dated November 1, 2004 [Redacted]
CO 0333	Nicholas Firth	BMG Music Publishing NA, Inc., License Agreement, dated October 1, 2004
CO 0334	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated October 1, 2004
CO 0335	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated October 1, 2004
CO 0336	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated October 1, 2004
CO 0337	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated October 1, 2004
CO 0338	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated October 1, 2004
CO 0339	Nicholas Firth	Omitted
CO 0340	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated October 1, 2004
CO 0341	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated October 1, 2004
CO 0342	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, October 1, 2004
CO 0343	Nicholas Firth	BMG Music Publishing NA, Inc., License Agreement, dated September 1, 2004
CO 0344	Nicholas Firth	BMG Music Publishing NA, Inc., License Agreement, dated September 1, 2004

Ex. No.	Sponsored By	Description
CO 0345	Nicholas Firth	BMG Music Publishing NA, Inc., Ltd., License Agreement, dated September 1, 2004
CO 0346	Nicholas Firth	Zomba Productions, Inc., License Agreement, dated September 1, 2004
CO 0347	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, September 1, 2004
CO 0348	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated September 1, 2004
CO 0349	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated September 1, 2004
CO 0350	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated September 1, 2004
CO 0351	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated September 1, 2004
CO 0352	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated September 1, 2004
CO 0353	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated September 1, 2004
CO 0354	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated September 1, 2004
CO 0355	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated September 1, 2004
CO 0356	Nicholas Firth	Omitted
CO 0357	Nicholas Firth	Careers-BMG Music Publishing, Inc., License Agreement, dated August 19, 2004
CO 0358	Nicholas Firth	Zomba Songs, Inc., Zomba Enterprises, Inc., Zomba Melodies, Inc., Ringtone License Agreement, dated July 1, 2004

Ex. No.	Sponsored By	Description
CO 0359	Nicholas Firth	BMG Songs, Inc., Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated July 1, 2004
CO 0360	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated July 1, 2004
CO 0361	Nicholas Firth	BMG Songs, Inc., License Agreement, dated June 4, 2004
CO 0362	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated June 1, 2004
CO 0363	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated June 1, 2004
CO 0364	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated June 1, 2004
CO 0365	Nicholas Firth	Zomba Songs, Inc./ Zomba Enterprises Inc. / Zomba Melodies Inc., Ringtone License Agreement, dated June 1, 2004
CO 0366	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated June 1, 2004
CO 0367	Nicholas Firth	Zomba Songs, Inc. / Zomba Enterprises, Inc. / Zomba Melodies, Inc., Ringtone License Agreement, dated May 1, 2004
CO 0368	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., Multisongs, Inc., Ringtone License Agreement, dated May 1, 2004
CO 0369	Nicholas Firth	Zomba Songs, Inc. / Zomba Enterprises, Inc. / Zomba Melodies, Inc., License Agreement, dated May 1, 2004
CO 0370	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc. License Agreement, dated May 1, 2004

Ex. No.	Sponsored By	Description
CO 0371	Nicholas Firth	Zomba Songs, Inc. / Zomba Enterprises, Inc. / Zomba Melodies, Inc., Ringtone License Agreement, dated April 1, 2004
CO 0372	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated April 1, 2004
CO 0373	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., License Agreement, dated March 1, 2004
CO 0374	Nicholas Firth	BMG Music Publishing NA, Inc. Ringtone License Agreement, dated February 15, 2004
CO 0375	Nicholas Firth	Zomba Songs, Inc. / Zomba Enterprises, Inc. / Zomba Melodies, Inc., Ringtone License Agreement, dated January 1, 2004
CO 0376	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated January 1, 2004
CO 0377	Nicholas Firth	Zomba Songs, Inc. / Zomba Enterprises, Inc. / Zomba Melodies, Inc., Ringtone License Agreement, dated January 1, 2004
CO 0378	Nicholas Firth	Zomba Songs, Inc. / Zomba Enterprises, Inc. / Zomba Melodies, Inc., Ringtone License Agreement, dated January 1, 2004
CO 0379	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated January 1, 2004
CO 0380	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated January 1, 2004
CO 0381	Nicholas Firth	Zomba Songs, Inc. / Zomba Enterprises, Inc. / Zomba Melodies, Inc., Ringtone License Agreement, dated January 1, 2004

Ex. No.	Sponsored By	Description
CO 0382	Nicholas Firth	Zomba Songs, Inc. / Zomba Enterprises, Inc. / Zomba Melodies, Inc., Ringtone License Agreement, dated January 1, 2004
CO 0383	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated December 1, 2003
CO 0384	Nicholas Firth	Zomba Songs, Inc. / Zomba Enterprises, Inc. / Zomba Melodies, Inc., Ringtone License Agreement, dated December 1, 2003
CO 0385	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated November 1, 2003
CO 0386	Nicholas Firth	Zomba Songs, Inc. / Zomba Enterprises, Inc. / Zomba Melodies, Inc., Ringtone License Agreement, dated November 1, 2003
CO 0387	Nicholas Firth	Zomba Songs, Inc. / Zomba Enterprises, Inc. / Zomba Melodies, Inc., Ringtone License Agreement, dated November 1, 2003
CO 0388	Nicholas Firth	Zomba Songs, Inc. / Zomba Enterprises, Inc. / Zomba Melodies, Inc., Ringtone License Agreement, dated November 1, 2003
CO 0389	Nicholas Firth	Zomba Songs, Inc. / Zomba Enterprises, Inc. / Zomba Melodies, Inc., Ringtone License Agreement, dated September 1, 2003
CO 0390	Nicholas Firth	Zomba Songs, Inc. / Zomba Entertainment, Inc., Ringtone License Agreement, dated September 1, 2003
CO 0391	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated September 1, 2003
CO 0392	Nicholas Firth	Zomba Songs, Inc. / Zomba Enterprises, Inc. / Zomba Melodies, Inc., Ringtone License Agreement, dated August 1, 2003

Ex. No.	Sponsored By	Description
CO 0393	Nicholas Firth	Zomba Songs, Inc. / Zomba Enterprises, Inc. / Zomba Melodies, Inc., Ringtone License Agreement, dated August 1, 2003
CO 0393A	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated July 1, 2003
CO 0394	Nicholas Firth	Zomba Songs, Inc. / Zomba Enterprises, Inc. / Zomba Melodies, Inc., License Agreement, dated July 1, 2003
CO 0395	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc. / Multisongs, Inc., License Agreement, dated July 1, 2003
CO 0396	Nicholas Firth	Zomba Songs, Inc. / Zomba Enterprises, Inc. / Zomba Melodies, Inc., Ringtone License Agreement, dated July 1, 2003
CO 0397	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated June 12, 2003
CO 0398	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated June 12, 2003
CO 0399	Nicholas Firth	Zomba Enterprises, Inc., License Agreement, dated June 1, 2003
CO 0400	Nicholas Firth	Zomba Songs, Inc. / Zomba Enterprises, Inc. / Zomba Melodies, Inc., Ringtone License Agreement, dated June 1, 2003
CO 0401	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated June 1, 2003
CO 0402	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated June 1, 2003

Ex. No.	Sponsored By	Description
CO 0403	Nicholas Firth	Zomba Songs, Inc. / Zomba Enterprises, Inc. / Zomba Melodies, Inc., Ringtone License Agreement, dated May 1, 2003
CO 0404	Nicholas Firth	BMG Music Publishing NA Inc., Ringtone License Agreement, dated March 1, 2003
CO 0405	Nicholas Firth	Zomba Songs, Inc. / Zomba Enterprises, Inc. / Zomba Melodies, Inc., dated February 3, 2003
CO 0406	Nicholas Firth	BMG Songs, Inc., Ringtone License Agreement, dated February 1, 2003
CO 0407	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated January 1, 2003
CO 0408	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated January 1, 2003
CO 0409	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated January 1, 2003
CO 0410	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated January 1, 2003
CO 0411	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated October 1, 2002
CO 0412	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated October 1, 2002
CO 0413	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated October 1, 2002

Ex. No.	Sponsored By	Description
CO 0414	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated August 1, 2002
CO 0415	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., LLC, Ringtone License Agreement, dated August 1, 2002
CO 0416	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated June 1, 2002
CO 0417	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated June 1, 2002
CO 0418	Nicholas Firth	BMG Music Publishing NA, Inc. / Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated June 1, 2002
CO 0419	Nicholas Firth	Zomba Songs, Inc. / Zomba Enterprises, Inc., Zomba Melodies, Inc., Ringtone License Agreement, dated May 1, 2002
CO 0420	Nicholas Firth	Zomba Songs, Inc. / Zomba Melodies Inc. / Zomba Enterprises, Inc., Ringtone License Agreement, dated May 1, 2002
CO 0421	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated May 1, 2002
CO 421A	Nicholas Firth	Zomba Songs, Inc. / Zomba Enterprises, Inc., Ringtone License Agreement, dated May 1, 2002
CO 0422	Nicholas Firth	Zomba Songs, Inc. / Zomba Enterprises, Inc., Ringtone License Agreement, dated May 1, 2002
CO 0423	Nicholas Firth	BMG Music Publishing Canada, Inc., Ringtone License Agreement, dated April 1, 2002

Ex. No.	Sponsored By	Description
CO 0424	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated April 1, 2002
CO 0425	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated March 1, 2002
CO 0426	Nicholas Firth	Zomba Songs, Inc. / Zomba Enterprises, Inc., Ringtone License Agreement, dated November 15, 2001
CO 0427	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated November 1, 2001
CO 0428	Nicholas Firth	Zomba Songs, Inc. / Zomba Enterprises, Inc. / Zomba Melodies, Inc., License Agreement, dated October 1, 2001
CO 0429	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated August 1, 2001
CO 0430	Nicholas Firth	Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated January 2, 2001
CO 0431	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated July 15, 1998
CO 0432	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated July 15, 1998
CO 0433 to CO 0500		Reserved
CO 0501	William M. Landes	Curriculum Vitae for William M. Landes
CO 0502	William M. Landes	Chart: Percentage of Publisher Revenue Generated Through Mechanical Licensing
CO 0503	William M. Landes	Chart: Percent of Writers' Earnings from Mechanical Royalties

Ex. No.	Sponsored By	Description
CO 0504	William M. Landes	Chart: Percentage of Publisher Revenue Generated Through Synch Licensing
CO 0505	William M. Landes	Chart: Licenses Issued Each Year by HFA by Rate Category: Physical and Not Controlled [Redacted]
CO 0506	William M. Landes	Chart: Fraction of Units Sold by Percent of Statutory Rate by Distribution Year: Physical Not Controlled [Redacted]
CO 0507	William M. Landes	Chart: Licenses Issued Each Year by HFA by Rate Category Permanent Downloads and Not Controlled [Redacted]
CO 0508	William M. Landes	Chart: Fraction of Units Sold by Percent of Statutory Rate by Distribution Year: Permanent Downloads Not Controlled [Redacted]
CO 0509	William M. Landes	Chart: Distribution of MasterTone Minimums
CO 0510	William M. Landes	Chart: Distribution of MasterTone Percent of Retail Percentages
CO 0511	William M. Landes	Chart: Distribution of MasterTone Percent of Revenue
CO 0512	William M. Landes	RIAA: "2005 Year-End statistics"
CO 0513	William M. Landes	RIAA: "1999 Year-End statistics"
CO 0514	William M. Landes	Statement of Marybeth Peters Before the Subcommittee on Courts, the Internet and Intellectual Property of the House Committee on the Judiciary, dated March 11, 2004
CO 0515	William M. Landes	Testimony of Mitch Bainwol, Chairman and CEO of RIAA Before the U.S. Senate Committee on Appropriations Subcommittee on Commerce, Justice, State and the Judiciary, dated April 29, 2004
CO 0516	William M. Landes	Witness Statement of Karyn Ulman, In the Matter Of Digital Performance Right in Sound Recordings and Ephemeral Recordings, Docket No. 2005-1 CRB DATA.
CO 0517	William M. Landes	MusicBizAcademy.com: "Taking a Glance at New Media Deals in the Music Industry," dated August 2005

Ex. No.	Sponsored By	Description
CO 0518	William M. Landes	Tech News World: "Record Industry Pushes Apple to Raise iTunes Prices," dated April 3, 2006
CO 0519	William M. Landes	Projected Mechanical Rate Adjusted with CPI from 1913
CO 0520	William M. Landes	Sony/ATV Music Publishing, LLC, License Agreement, dated August 11, 2006 [Redacted]
CO 0521	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated May 1, 2006 [Redacted]
CO 0522	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated April 1, 2006 [Redacted]
CO 0523	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, February 12, 2006 [Redacted]
CO 0524	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated January 20, 2006 [Redacted]
CO 0525	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated January 18, 2006 [Redacted]
CO 0526	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated January 13, 2006 [Redacted]
CO 0527	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated December 15, 2005 [Redacted]
CO 0528	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated December 12, 2005 [Redacted]

Ex. No.	Sponsored By	Description
CO 0529	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated November 13, 2005 [Redacted]
CO 0530	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated November 13, 2005 [Redacted]
CO 0531	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated November 12, 2005 [Redacted]
CO 0532	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated October 25, 2005 [Redacted]
CO 0533	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated October 19, 2005 [Redacted]
CO 0534	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated October 1, 2005 [Redacted]
CO 0535	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated September 30, 2005 [Redacted]
CO 0536	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated September 24, 2005 [Redacted]
CO 0537	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated September 8, 2005 [Redacted]
CO 0538	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated September 6, 2005 [Redacted]
CO 0539	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated September 1, 2005 [Redacted]

Ex. No.	Sponsored By	Description
CO 0540	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated September 1, 2005 [Redacted]
CO 0541	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated August 23, 2005 [Redacted]
CO 0542	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated August 2, 2005 [Redacted]
CO 0543	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated August 1, 2005 [Redacted]
CO 0544	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated July 29, 2005 [Redacted]
CO 0545	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated July 20, 2005 [Redacted]
CO 0546	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated July 4, 2005 [Redacted]
CO 0547	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated July 1, 2005 [Redacted]
CO 0548	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated July 1, 2005 [Redacted]
CO 0549	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated June 14, 2005 [Redacted]
CO 0550	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated June 11, 2005 [Redacted]

Ex. No.	Sponsored By	Description
CO 0551	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated June 1, 2005 [Redacted]
CO 0552	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated May 11, 2005 [Redacted]
CO 0553	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated April 26, 2005 [Redacted]
CO 0554	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated April 4, 2005 [Redacted]
CO 0555	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated March 22, 2005 [Redacted]
CO 0556	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated March 5, 2005 [Redacted]
CO 0557	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated March 1, 2005 [Redacted]
CO 0558	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated February 1, 2005 [Redacted]
CO 0559	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated December 15, 2004 [Redacted]
CO 0560	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated November 13, 2004 [Redacted]
CO 0561	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated September 7, 2004 [Redacted]

Ex. No.	Sponsored By	Description
CO 0562	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated August 1, 2004 [Redacted]
CO 0563	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated July 1, 2004 [Redacted]
CO 0564	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated May 7, 2004 [Redacted]
CO 0565	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated May 3, 2004 [Redacted]
CO 0566	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated May 2, 2004 [Redacted]
CO 0567	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated April 4, 2004 [Redacted]
CO 0568	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated March 29, 2004 [Redacted]
CO 0569	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated February 27, 2004 [Redacted]
CO 0570	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated January 21, 2004 [Redacted]
CO 0571	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated December 8, 2003 [Redacted]
CO 0572	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated December 4, 2003 [Redacted]

Ex. No.	Sponsored By	Description
CO 0573	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated September 19, 2003 [Redacted]
CO 0574	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated September 11, 2003 [Redacted]
CO 0575	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated August 1, 2003 [Redacted]
CO 0576	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated June 16, 2003 [Redacted]
CO 0577	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated May 16, 2003 [Redacted]
CO 0578	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated March 31, 2003 [Redacted]
CO 0579	William M. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated November 8, 2002 [Redacted]
CO 0580	William M. Landes	Sony/ATV Music Publishing, LLC, License Agreement, dated August 1, 1998 [Redacted]
CO 0581 to CO 0700		Reserved
CO 0701	Claire Enders	Curriculum Vitae for Claire Enders
CO 0702	Claire Enders	Table: Digital Music Timeline in the U.S., 1998-2006
CO 0703	Claire Enders	Table: Share of Americans (Aged 12 or Above) Who Paid to Download Music or Engaged in File Sharing
CO 0704	Claire Enders	Table: Reasons For *First* Paying for Music Downloads, Q2 2006
CO 0705	Claire Enders	Table: Reasons for *Continuing* to Pay for Music Downloads, Q2 2006

Ex. No.	Sponsored By	Description
CO 0706	Claire Enders	Table: Weekly Sales of U.S. Digital Single and Album Downloads
CO 0707	Claire Enders	Table: Music Providers Pricing Models, November 2006
CO 0708	Claire Enders	Table: iPod Share of U.S. Portable Music Players, 2003-2005
CO 0709	Claire Enders	Table: Prices of *à la carte* Singles and Albums, October 2006
CO 0710	Claire Enders	Table: Pricing of Subscription-Based Limited Download and Interactive Streaming Services, October 2006
CO 0711	Claire Enders	Table: Mobile Music Pricing, October 21, 2006
CO 0712	Claire Enders	Table: U.S. Digital Music Download Forecasts, 2006-2012
CO 0713	Claire Enders	U.S. Music Sales, 2004-2005
CO 0714	Claire Enders	Apple: iTunes ad
CO 0715	Claire Enders	RIAA: "2006 Mid-Year Statistics"
CO 0716	Claire Enders	RIAA: "2005 Year-End statistics"
CO 0717	Claire Enders	RIAA: "RIAA announces first half 2006 music shipment numbers II," dated October 12, 1006
CO 0718	Claire Enders	RIAA: "Frequently asked questions – Napster and digital music"
CO 0719	Claire Enders	International Federation of the Phonographic Industry: "2006 Global Recording Industry in Numbers"
CO 0720	Claire Enders	International Federation of the Phonographic Industry: "2005 IFPI Digital Music Report"
CO 0721	Claire Enders	International Federation of the Phonographic Industry: "2004 IFPI Online Music Report"
CO 0722	Claire Enders	Pricewaterhouse Coopers: "Global Entertainment and Media Outlook: 2006-2010"
CO 0723	Claire Enders	Informa: "Digital home entertainment: Future consumer spending habits" (2006)
CO 0724	Claire Enders	Ipsos: "Tempo: Keeping pace with digital music behavior" 2006 Quarter 2 Report, dated October 2006
CO 0725	Claire Enders	Pricewaterhouse Coopers: "IAB internet advertising revenue report: 2006 2nd Quarter and first six-month results," dated September 2006

Ex. No.	Sponsored By	Description
CO 0726	Claire Enders	PiperJaffray: "A closer look at Apple computer," dated August 2006 [Redacted]
CO 0727	Claire Enders	Pricewaterhouse Coopers: "IAB internet advertising revenue report: 2005 Full-Year results," dated April 2006
CO 0728	Claire Enders	Pew/Internet: Data Memo re: Internet Penetration and Impact, dated April 2006
CO 0729	Claire Enders	EMI 2005 Annual Report
CO 0730	Claire Enders	Yahoo! Inc. 10-K Form for fiscal year ended December 31, 2005
CO 0731	Claire Enders	Apple: Form 10-Q filed May 5 2006
CO 0732	Claire Enders	Apple: Form 10-Q filed February 3, 2006
CO 0733	Claire Enders	Apple: Q4 2006 Unaudited Summary Data
CO 0734	Claire Enders	Apple: Q4 2006 Unaudited Condensed Consolidated Statements of Operations, dated October 18, 2006
CO 0735	Claire Enders	Apple: Q3 2006 Unaudited Summary Data
CO 0736	Claire Enders	Apple: Q3 Unaudited Condensed Consolidated Statements of Operations, dated July 19, 2006
CO 0737	Claire Enders	Sprint: "3rd Quarter 2006 Investor Update," dated October 26, 2006
CO 0738	Claire Enders	Verizon: "Domestic Wireless" (2006)
CO 0739	Claire Enders	Cingular: "Company Overview" (2006)
CO 0740	Claire Enders	Newsweek: "Q&A: Jobs on iPod's cultural impact," dated October 15, 2006
CO 0741	Claire Enders	BetaNews: "iPod continues to dominate industry," dated August 17, 2006
CO 0742	Claire Enders	Red Herring: "iTunes profits, labels stew," dated April 20, 2006
CO 0743	Claire Enders	M:Metrics: "M:Metrics benchmark survey: when it comes to ring(tone) shopping, males and females prefer different bling," dated September 26, 2005
CO 0744	Claire Enders	SpiralFrog: "SpiralFrog and Universal Music Group Partner in advertising-supported legal music download service," dated August 29, 2006

Ex. No.	Sponsored By	Description
CO 0745	Claire Enders	P2Pnet: "DoJ probes Big Music downloads," March 3, 2006
CO 0746	Claire Enders	Wireless World Forum: "T-Mobile USA has 20 million subscribers," September 22, 2005
CO 0747	Claire Enders	Music & Copyright: Issue No. 252, dated June 11, 2003
CO 0748	Claire Enders	Wall Street Journal: "Off-key: The music industry is finally online, but few listen – big labels counter Napster with Music.net – offering little and charging for it – now, a focus on a 2.0 version," dated May 7, 2002
CO 0749	Claire Enders	Napster: "Napster.com is now free," dated May 1, 2006
CO 0750	Claire Enders	Real Networks: "Real introduces Rhapsody.com, the first web destination to offer free and legal access to a deep catalog of full length songs from all major labels," dated December 5, 2005
CO 0751	Claire Enders	Department of Justice: "Statement by assistant attorney general R. Hewitt Pate regarding the closing of the digital music investigation," December 23, 2003
CO 0752	Claire Enders	In the matter of Mechanical and Digital Phonorecord Delivery Compulsory License: "Joint statement of the RIAA, National Music Publishers' Association, and the Harry Fox Agency," December 6, 2001
CO 0753	Claire Enders	Nielsen Soundscan Data: Digital albums and tracks charts
CO 0754 to CO 0900		Reserved
CO 0901	Helen Murphy	Curriculum Vitae for Helen Murphy
CO 0902	Helen Murphy	Chart: Value of Global Music Sales & Global Music Sales by Format
CO 0903	Helen Murphy	Chart: U.S. Recorded Music Market 1976-2003
CO 0904	Helen Murphy	Table: Restructuring and Write-Offs-Cost Reductions of the Majors 2001-2005
CO 0905	Helen Murphy	Table: Reported Revenue and Operating Profit of Major Record Companies 2003-2005
CO 0906	Helen Murphy	Table: Reported Digital Music Sales History of the Majors

Ex. No.	Sponsored By	Description
CO 0907	Helen Murphy	Table: Margin on Wholesale
CO 0908	Helen Murphy	Table: Record Company Cost Structure and Profitability
CO 0909	Helen Murphy	Recorded Music Worldwide Market Share
CO 0910	Helen Murphy	RIAA: "2006 Mid-Year Statistics"
CO 0911	Helen Murphy	RIAA: "2005 Year-End Statistics"
CO 0912	Helen Murphy	International Federation of the Phonographic Industry: "2006 Global Recording Industry in Numbers"
CO 0913	Helen Murphy	International Federation of the Phonographic Industry: "2006 Digital Music Report"
CO 0914	Helen Murphy	International Federation of the Phonographic Industry: "2005 Recording Industry in Numbers"
CO 0915	Helen Murphy	International Federation of the Phonographic Industry: "World Sales 2005: The Key Facts and Figures"
CO 0916	Helen Murphy	International Federation of the Phonographic Industry: "Digital is driving first half world music sales," dated October 12, 2006
CO 0917	Helen Murphy	Pricewaterhouse Coopers: "Global Entertainment and Media Outlook: 2006-2010"
CO 0918	Helen Murphy	Bertelsmann 2006 Interim Report
CO 0919	Helen Murphy	Bertelsmann 2005 Annual Report
CO 0920	Helen Murphy	Bertelsmann 2004 Annual Report
CO 0921	Helen Murphy	Bertelsmann 2003 Annual Report
CO 0922	Helen Murphy	Bertelsmann 2002 Annual Report
CO 0923	Helen Murphy	Bertelsmann 2000/2001 Annual Report
CO 0924	Helen Murphy	EMI Group 2006 Annual Report
CO 0925	Helen Murphy	EMI Group 2005 Annual Report
CO 0926	Helen Murphy	EMI Group 2003 Annual Report
CO 0927	Helen Murphy	EMI Group: "Proposed Combination of EMI Music with Warner Music Group to Form Warner EMI Music," dated June 2, 2000
CO 0928	Helen Murphy	EMI Group: "Company Overview," dated August 2006
CO 0929	Helen Murphy	EMI Group: "EMI Group Plc results for the six months ended September 30, 2006," dated November 15, 2006
CO 0930	Helen Murphy	Polygram 1997 Annual Report
CO 0931	Helen Murphy	Polygram 1996 Annual Report
CO 0932	Helen Murphy	Polygram 1987 Annual Report
CO 0933	Helen Murphy	Polygram 1980/1981 Annual Report

Ex. No.	Sponsored By	Description
CO 0934	Helen Murphy	Sony: "Consolidated Financial Statements for the year ended March 31, 2006"
CO 0935	Helen Murphy	Sony: "Second Quarter Consolidated Results for Quarter Ended September 30, 2006"
CO 0936	Helen Murphy	Digital Music News: "Sony BMG Executive Pegs Digital Sales at 20 Percent," dated October 5, 2006
CO 0937	Helen Murphy	Universal Music Group: "The Industry Leader" presentation (2006)
CO 0938	Helen Murphy	Vivendi Universal: "Group Overview: Key Businesses"
CO 0939	Helen Murphy	Vivendi Universal: "Vivendi Reports Strong Growth of Adjusted Net Income for the First Nine Months (+16.3%) and the Third Quarter (+28.2%)
CO 0940	Helen Murphy	Vivendi Universal: "Vivendi reports first nine months 2006 revenues up 4.1% on a comparable basis," November 7, 2006
CO 0941	Helen Murphy	Vivendi Universal: "Vivendi reports first half 2006 revenues up 5.8% on a comparable basis," dated July 27, 2006
CO 0942	Helen Murphy	Vivendi Universal: "Consolidated Financial Results," dated March 17, 2004
CO 0943	Helen Murphy	Warner Music Group 2005 Annual report
CO 0944	Helen Murphy	Warner Music Group 10-K filed December 1, 2005
CO 0945	Helen Murphy	Warner Music Group 10-Q filed August 3, 2006
CO 0946	Helen Murphy	Yahoo! Finance: Warner Music Group Company Description (2006)
CO 0947	Helen Murphy	Warner Music Group: "Warner Music Group reports fiscal third quarter results for the period ended June 30, 2006," dated August 3, 2006
CO 0948	Helen Murphy	Warner Music Group: "Warner Music Group reports fiscal second quarter results for the period ended March 31, 2006, dated May 5, 2006
CO 0949	Helen Murphy	Warner Music Group: "Warner Music Group reports fiscal first quarter results for the period ended December 31, 2005," dated February 14, 2006

Ex. No.	Sponsored By	Description
CO 0950	Helen Murphy	Warner Music Group: Warner Music Group Corp. Reports Full Year and Fourth Quarter Results for the Period Ended September 30, 2005, dated December 1, 2005
CO 0951	Helen Murphy	Bank of America Research Report: Warner Music Group, "EMI/WMG Merger Shelved; Reducing PT to $25 from $26.50," dated July 27, 2006
CO 0952	Helen Murphy	Bank of America Research Report: Warner Music Group, "Downgrading to neutral: maintaining price target and positive bias," dated April 6, 2006
CO 0953	Helen Murphy	Citibank Research Report: EMI Group, "Keep Holding On," dated January 25, 2006
CO 0954	Helen Murphy	Citigroup Research Report: "Piracy in the Entertainment Industry," dated November 21, 2003
CO 0955	Helen Murphy	Collins Stewart Research Report: EMI, "A deal would make sweet music," dated May 17, 2006
CO 0956	Helen Murphy	Credit Suisse Research Report: "Global Music Industry – Just the Two of Us," dated June 19, 2006
CO 0957	Helen Murphy	Deutsche Bank Research Report: Warner Music Group, "Resuming Coverage with Buy Rating," dated September 22, 2006
CO 0958	Helen Murphy	Deutsche Bank Research Report: EMI Group, "Going Digital – Upgrading to Buy," dated April 4, 2005
CO 0959	Helen Murphy	Goldman Sachs Research Report: Warner Music Group, "Outlook: Increasing 3QFY06 revenue and EBITDA by 4% and 6%," dated July 16, 2006
CO 0960	Helen Murphy	Goldman Sachs Research Report: "DQ05 First Take – Thesis in-Tact as Digital is Replacing Physical and Mix is Increasing Margins," dated February 14, 2006
CO 0961	Helen Murphy	Lehman Brothers Research Report: Warner Music Group, "Change of earnings forecast – F4Q06," dated October 18, 2006
CO 0962	Helen Murphy	Lehman Brothers Research Report: EMI Group, "Encouraging Schedule, Though Deal Key," dated May 24, 2006

Ex. No.	Sponsored By	Description
CO 0963	Helen Murphy	Merrill Lynch Research Report: Warner Music Group, "Back to Fundamentals," dated July 27, 2006
CO 0964	Helen Murphy	Merrill Lynch Research Report: EMI Group, "Merger Upside Largely Priced In," dated April 26, 2006
CO 0965	Helen Murphy	Morgan Stanley Research Report: EMI, "Upside case stretched," dated November 9, 2006
CO 0966	Helen Murphy	Morgan Stanley Research Report: Warner Music Group, "EMI bid Makes Long-Term Cost Cuts Look Credible," dated May 17, 2006
CO 0967	Helen Murphy	Morgan Stanley Research Report: Warner Music Group, "Lowered Digital Forecasts Don't Justify a Premium: Going to Underweight-V," dated January 27, 2006
CO 0968	Helen Murphy	Pali Capital, Inc. Research Report: Warner Music Group, "Reversing Industry view – Initiate with BUY Rating & $25 Price Target," dated March 2, 2006
CO 0969	Helen Murphy	Soleil Media Metrics Research Report: Warner Music Group, "4Q earnings preview + updated models & valuations," dated September 29, 2006
CO 0970	Helen Murphy	Soleil Media Metrics Research Report: Music Industry Review, dated May 31, 2005
CO 0971	Helen Murphy	Music & Copyright: Issue No. 318, April 12, 2006
CO 0972 to CO 1000		Reserved
CO 1001	Irwin Robinson	"Silver Bells," written by Jay Livingston and Ray Evans, recorded by Bing Crosby and Rosemary Clooney
CO 1002	Irwin Robinson	"Silver Bells," written by Jay Livingston and Ray Evans, recorded by Elvis Presley
CO 1003	Irwin Robinson	"Silver Bells," written by Jay Livingston and Ray Evans, recorded by Kenny Chesney
CO 1004	Irwin Robinson	"Without Me," written by Jeff Bass, Kevin Bell, and Marshall Mathers, et al., recorded by Eminem
CO 1005	Irwin Robinson	"Are You Gonna Be My Girl," written by Nic Cester, recorded by Jet

Ex. No.	Sponsored By	Description
CO 1006	Irwin Robinson	"Get the Party Started," written by Linda Perry, recorded by Pink
CO 1007	Irwin Robinson	"Isn't It Romantic," written by Richard Rodgers and Lorenz Hart, recorded by Mel Torme
CO 1008	Irwin Robinson	"Isn't It Romantic," written by Richard Rodgers and Lorenz Hart, recorded by Steve Tyrell
CO 1009	Irwin Robinson	"Nearness of You," written by Hoagy Carmichael and Ned Washington, recorded by Mel Torme
CO 1010	Irwin Robinson	"Nearness of You," written by Hoagy Carmichael and Ned Washington, recorded by Norah Jones
CO 1011	Ralph Peer II	"You are my Sunshine," written by Jimmy Davis and Charles Mitchell, recorded by Gene Autry
CO 1012	Ralph Peer II	"You are my Sunshine," written by Jimmy Davis and Charles Mitchell, recorded by Johnny Cash
CO 1013	Ralph Peer II	"That'll Be the Day," written by Buddy Holly, Norman Petty, and Jerry Allison, recorded by Buddy Holly and the Crickets
CO 1014	Ralph Peer II	"Georgia on my Mind," written by Stuart Gorrell and Hoagy Carmichael, recorded by Louis Armstrong
CO 1015	Ralph Peer II	"Georgia on my Mind," written by Stuart Gorrell and Hoagy Carmichael, recorded by Billie Holiday
CO 1016	Ralph Peer II	"Georgia on my Mind," written by Stuart Gorrell and Hoagy Carmichael, recorded by Ray Charles
CO 1017	Ralph Peer II	"Georgia on my Mind," written by Stuart Gorrell and Hoagy Carmichael, recorded by The Band
CO 1018	Ralph Peer II	"Walk Like an Egyptian," written by Liam Sternberg, recorded by The Bangles
CO 1019	Nicholas Firth	"What a Difference a Day Makes," written by Stanley Adams, recorded by Dinah Washington
CO 1020	Nicholas Firth	"What a Difference a Day Makes," written by Stanley Adams, recorded by Frank Sinatra
CO 1021	Nicholas Firth	"What a Difference a Day Makes," written by Stanley Adams, recorded by Diana Ross

Ex. No.	Sponsored By	Description
CO 1022	Nicholas Firth	"Et Maintenant" ("What Now My Love"), written by Gilbert Bécaud, recorded by Gilbert Bécaud
CO 1023	Nicholas Firth	"What Now My Love," written by Gilbert Bécaud, recorded by Sarah Vaughan
CO 1024	Nicholas Firth	"What Now My Love", written by Gilbert Bécaud, recorded by Diana Ross
CO 1025	Bob Doyle	"Standing Outside the Fire," written by Jenny Yates and Garth Brooks, recorded by Garth Brooks
CO 1026	Bob Doyle	"Fast Cars and Freedom," written by Neil Thrasher, recorded by Rascal Flatts
CO 1027	Bob Doyle	"I Don't Know What She Said," written by Lane Turner, recorded by Blaine Larsen
CO 1028	Bob Doyle	"The Fool," written by Marla Cannon, Gene Ellswirth, Charlie Stefl, recorded by Lee Ann Womack
CO 1029	Rick Carnes	"Longneck Bottle," written by Rick Carnes, recorded by Garth Brooks
CO 1030	Rick Carnes	I Can't Even Get the Blues No More, written by Rick Carnes, recorded by Reba McEntire
CO 1031	Steve Bogard	"Every Mile a Memory," written by Steve Bogard, recorded by Dierks Bentley
CO 1032	Steve Bogard	"Carrying Your Love with Me," (demo recording) written by Steve Bogard, recorded by George Strait
CO 1033	Steve Bogard	"Carrying Your Love with Me," written by Steve Bogard, recorded by George Strait
CO 1034	Steve Bogard	"There You Have It," written by Steve Bogard, recorded by BlackHawk
CO 1035	Jud Friedman	"Run To You," written by Jud Friedman, recorded by Whitney Houston
CO 1036	Jud Friedman	"I Don't Have the Heart," written by Jud Friedman, recorded by James Ingram
CO 1037	Maia Sharp	"A Home," written by Maia Sharp, recorded by The Dixie Chicks
CO 1038	Maia Sharp	"I Don't Want Anything to Change," written by Maia Sharp, recorded by Bonnie Raitt
CO 1039	Maia Sharp	"The Bed I Made," written by Maia Sharp, recorded by Bonnie Raitt
CO 1040	Phil Galdston	"Save the Best for Last," written by Phil Galdston, recorded by Vanessa Williams
CO 1041	Phil Galdston	"The Sweetest Days," written by Phil Galdston, recorded by Vanessa Williams

Ex. No.	Sponsored By	Description
CO 1042	Victoria Shaw	"The River," written by Victoria Shaw, recorded by Garth Brooks
CO 1043	Victoria Shaw	"I Love the Way You Love Me," written by Victoria Shaw, recorded by John Michael Montgomery
CO 1044	Victoria Shaw	"Nobody Wants to be Lonely," written by Victoria Shaw, recorded by Ricky Martin
CO 1045	Victoria Shaw	"Too Busy Being in Love," written by Victoria Shaw, recorded by Doug Stone
CO 1046	Stephen Paulus	"The Three Hermits – Scene One," written by Stephen Paulus, recorded by The Saint Paul Sinfonietta
CO 1047	Stephen Paulus	"The Three Hermits – Scene Two," written by Stephen Paulus, recorded by The Saint Paul Sinfonietta
CO 1048	Stephen Paulus	"The Three Hermits – Scene Three," written by Stephen Paulus, recorded by The Saint Paul Sinfonietta