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

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

VOLUME II

Filed on April 10, 2007

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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

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
CO 0010	David Israelite	Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding, 63 Fed. Reg. 7288, dated February 13, 1998

In the Matter of Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding, 2006-3 CRB DPRA

Ex. No.	Sponsored By	Description
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 [Withheld]
CO 0018	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated March 9, 2006 [Withheld]
CO 0019	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated February 6, 2006 [Withheld]
CO 0020	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated January 18, 2006 [Withheld]
CO 0021	David Israelite	The Harry Fox Agency, Inc., Agreement, dated January 1, 2006 [Withheld]
CO 0022	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated January 1, 2006 [Withheld]
CO 0023	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated November 8, 2005 [Withheld]

Ex. No.	Sponsored By	Description
CO 0024	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated September 13, 2005 [Withheld]
CO 0025	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated August 5, 2005 [Withheld]
CO 0026	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated July 6, 2005 [Withheld]
CO 0027	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated March 30, 2005 [Withheld]
CO 0028	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated February 3, 2005 [Withheld]
CO 0029	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated October 28, 2004 [Withheld]
CO 0030	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated August 6, 2004 [Withheld]
CO 0031	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated August 6, 2004 [Withheld]
CO 0032	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated July 26, 2004 [Withheld]
CO 0033	David Israelite	The Harry Fox Agency, Inc., Agreement, dated July 2, 2004 [Withheld]
CO 0034	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated July 1, 2004 [Withheld]
CO 0035	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated May 20, 2004 [Withheld]
CO 0036	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated April 21, 2004 [Withheld]
CO 0037	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated March 3, 2004 [Withheld]

Ex. No.	Sponsored By	Description
CO 0038	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated January 22, 2004 [Withheld]
CO 0039	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated December 22, 2003 [Withheld]
CO 0040	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated December 1, 2003 [Withheld]
CO 0041	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated September 26, 2003 [Withheld]
CO 0042	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated September 10, 2003 [Withheld]
CO 0043	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated September 5, 2003 [Withheld]
CO 0044	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated September 5, 2003 [Withheld]
CO 0045	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated May 19, 2003 [Withheld]
CO 0046	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated February 21, 2003 [Withheld]
CO 0047	David Israelite	The Harry Fox Agency, Inc., Agreement, dated March 25, 2002 [Withheld]
CO 0048	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated November 9, 2001 [Withheld]

Ex. No.	Sponsored By	Description
CO 0049	David Israelite	The Harry Fox Agency, Inc., License Agreement, dated September 21, 2001 [Withheld]
CO 0050 to CO 0100		Reserved
CO 0101	Irwin Robinson	Famous Music, LLC, License Agreement, dated March 31, 2006 [Withheld]
CO 0102	Irwin Robinson	Famous Music, LLC, License Agreement, dated February 1, 2006 [Withheld]
CO 0103	Irwin Robinson	The Famous Music Publishing Companies License Agreement, dated October 1, 2005 [Withheld]
CO 0104	Irwin Robinson	The Famous Music Corp. License Agreement, dated May 1, 2005 [Withheld]
CO 0105	Irwin Robinson	The Famous Music Publishing Companies License Agreement, dated February 8, 2005 [Withheld]
CO 0106	Irwin Robinson	The Famous Music Publishing Companies License Agreement, dated January 1, 2005 [Withheld]
CO 0107	Irwin Robinson	The Famous Music Publishing Companies License Agreement, dated January 1, 2005 [Withheld]
CO 0108	Irwin Robinson	The Famous Music Publishing Companies License Agreement, dated January 1, 2005 [Withheld]
CO 0109	Irwin Robinson	The Famous Music Publishing Companies License Agreement, dated January 1, 2005 [Withheld]
CO 0110	Irwin Robinson	The Famous Music Publishing Companies License Agreement, dated January 1, 2005 [Withheld]

Ex. No.	Sponsored By	Description
CO 0111	Irwin Robinson	The Famous Music Publishing Companies License Agreement, dated January 1, 2005 [Withheld]
CO 0112	Irwin Robinson	The Famous Music Publishing Companies License Agreement, dated January 1, 2005 [Withheld]
CO 0113	Irwin Robinson	The Famous Music Publishing Companies License Agreement, dated January 1, 2005 [Withheld]
CO 0114	Irwin Robinson	The Famous Music Publishing Companies License Agreement, dated January 1, 2005 [Withheld]
CO 0115	Irwin Robinson	The Famous Music Publishing Companies License Agreement, dated January 1, 2005 [Withheld]
CO 0116	Irwin Robinson	The Famous Music Publishing Companies License Agreement, dated January 1, 2005 [Withheld]
CO 0117	Irwin Robinson	Famous Music Corp. License Agreement, dated January 1, 2005 [Withheld]
CO 0118	Irwin Robinson	The Famous Music Publishing Companies License Agreement, dated January 1, 2005 [Withheld]
CO 0119	Irwin Robinson	The Famous Music Publishing Companies License Agreement, dated November 19, 2004 [Withheld]
CO 0120	Irwin Robinson	The Famous Music Publishing Companies License Agreement, dated October 1, 2004 [Withheld]
CO 0121	Irwin Robinson	Famous Music Corp. License Agreement, dated March 30, 2004 [Withheld]
CO 0122	Irwin Robinson	Famous Music Corp. License Agreement, dated September 9, 2003 [Withheld]

Ex. No.	Sponsored By	Description
CO 0123	Irwin Robinson	Famous Music Corp. License Agreement, dated May 30, 2003 [Withheld]
CO 0124	Irwin Robinson	Famous Music Corp. License Agreement, dated April 5, 2003 [Withheld]
CO 0125	Irwin Robinson	Famous Music Corp. License Agreement, dated November 20, 2002 [Withheld]
CO 0126 to CO 0150		Reserved
CO 0151	Ralph Peer	Peermusic III Ringtone License Agreement, dated June 1, 2006
CO 0152	Ralph Peer	Peermusic III Ringtone License Agreement, dated March 3, 2006 [Withheld]
CO 0153	Ralph Peer	Peermusic III Ringtone License Agreement, dated October 1, 2005 [Withheld]
CO 0154	Ralph Peer	Peermusic Ringtone License Agreement, dated October 1, 2005 [Withheld]
CO 0155	Ralph Peer	Peermusic III Ringtone License Agreement, dated September 30, 2005 [Withheld]
CO 0156	Ralph Peer	Peermusic III Ringtone License Agreement, dated June 30, 2005 [Withheld]
CO 0157	Ralph Peer	Peermusic III Ringtone License Agreement, dated May 9, 2005 [Withheld]
CO 0158	Ralph Peer	Peermusic III Ringtone License Agreement, dated April 1, 2005 [Withheld]
CO 0159	Ralph Peer	Peermusic III Ringtone License Agreement, dated March 17, 2005 [Withheld]
CO 0160	Ralph Peer	Peermusic III Ringtone License Agreement, dated February 17, 2005 [Withheld]
CO 0161	Ralph Peer	Peermusic III Ringtone License Agreement, dated February 11, 2005 [Withheld]

Ex. No.	Sponsored By	Description
CO 0162	Ralph Peer	Peermusic III Ringtone License Agreement, dated October 20, 2004 [Withheld]
CO 0163	Ralph Peer	Peermusic III Ringtone License Agreement, dated October 1, 2004 [Withheld]
CO 0164	Ralph Peer	Peermusic III Ringtone License Agreement, dated October 1, 2004 [Withheld]
CO 0165	Ralph Peer	Peermusic III Ringtone License Agreement, dated October 1, 2004 [Withheld]
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 [Withheld]
CO 0168	Ralph Peer	Peermusic III Ringtone License Agreement, dated August 5, 2004 [Withheld]
CO 0169	Ralph Peer	Peermusic III Ringtone License Agreement, dated June 28, 2004 [Withheld]
CO 0170	Ralph Peer	Peermusic III Ringtone License Agreement, dated June 14, 2004 [Withheld]
CO 0171	Ralph Peer	Peermusic III Ringtone License Agreement, dated May 25, 2004 [Withheld]
CO 0172	Ralph Peer	Peermusic III Ringtone License Agreement, dated January 22, 2004 [Withheld]
CO 0173	Ralph Peer	Peermusic III Ringtone License Agreement, dated January 1, 2004 [Withheld]
CO 0174	Ralph Peer	Peermusic III Ringtone License Agreement, dated November 5, 2003 [Withheld]
CO 0175	Ralph Peer	Peermusic III Ringtone License Agreement, dated November 5, 2003 [Withheld]
CO 0176	Ralph Peer	Peermusic III Ringtone License Agreement, dated September 10, 2003 [Withheld]

Ex. No.	Sponsored By	Description
CO 0177		Peermusic III Ringtone License Agreement, dated August 1, 2003 [Withheld]
CO 0178	Ralph Peer	Peermusic Canada, Ringtone License Agreement, dated June 17, 2002 [Withheld]
CO 0179 to CO 0200		Reserved
CO 0201	Roger Faxon	Faxon Exhibit 1 [Withheld]
CO 0202	Roger Faxon	Faxon Exhibit 2 [Withheld]
CO 0203	Roger Faxon	Faxon Exhibit 3 [Withheld]
CO 0204	Roger Faxon	Faxon Exhibit 4 [Withheld]
CO 0205	Roger Faxon	Faxon Exhibit 5 [Withheld]
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 [Withheld]
CO 0210	Roger Faxon	Faxon Exhibit 10 [Withheld]
CO 0211	Roger Faxon	Faxon Exhibit 11
CO 0212	Roger Faxon	Faxon Exhibit 12
CO 0213	Roger Faxon	Faxon Exhibit 13 [Withheld]
CO 0214	Roger Faxon	Faxon Exhibit 14
CO 0215	Roger Faxon	Faxon Exhibit 15
CO 0216	Roger Faxon	Faxon Exhibit 16
CO 0217	Roger Faxon	Faxon Exhibit 17
CO 0218	Roger Faxon	Faxon Exhibit 18 [Withheld]

Ex. No.	Sponsored By	Description
CO 0219	Roger Faxon	Faxon Exhibit 19 [Withheld]
CO 0220	Roger Faxon	Faxon Exhibit 20 [Withheld]
CO 0221	Roger Faxon	Faxon Exhibit 21 [Withheld]
CO 0222	Roger Faxon	Faxon Exhibit 22 [Withheld]
CO 0223	Roger Faxon	Faxon Exhibit 23 [Withheld]
CO 0224	Roger Faxon	Faxon Exhibit 24 [Withheld]
CO 0225	Roger Faxon	Faxon Exhibit 25 [Withheld]
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	BMG Music Publishing NA, Inc., License Agreement, dated March 1, 2006
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
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

Ex. No.	Sponsored By	Description
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
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

Ex. No.	Sponsored By	Description
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., New Digital Media 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
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

In the Matter of Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding, 2006-3 CRB DPRA

Ex. No.	Sponsored By	Description
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
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

Ex. No.	Sponsored By	Description
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., 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
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

Ex. No.	Sponsored By	Description
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	Zomba Enterprises, 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
CO 0330	Nicholas Firth	BMG Music Publishing NA, Inc. / Zomba Enterprises, Inc., Ringtone License Agreement, dated November 1, 2004
CO 0331	Nicholas Firth	BMG Music Publishing NA, Inc. / Zomba Enterprises, Inc., Ringtone License Agreement, dated November 1, 2004

Ex. No.	Sponsored By	Description
CO 0332	Nicholas Firth	BMG Music Publishing NA, Inc. / Zomba Enterprises, Inc., License Agreement, dated October 1, 2004
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	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated October 1, 2004
CO 0336	Nicholas Firth	BMG Music Publishing NA, Inc., Zomba Enterprises, 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	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated October 1, 2004
CO 0340	Nicholas Firth	Zomba Enterprises, 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 October 1, 2004
CO 0344	Nicholas Firth	BMG Music Publishing NA, Inc., License Agreement, dated October 1, 2004
CO 0345	Nicholas Firth	BMG Music Publishing NA, Inc., Ltd., Ringtone License Agreement, dated September 1, 2004

Ex. No.	Sponsored By	Description
CO 0346	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated September 1, 2004
CO 0347	Nicholas Firth	Zomba Productions, Inc. and, Ringtone License Agreement, dated 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	BMG Music Publishing NA, Inc., Ringtone License Agreement, 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	Zomba Enterprises, Inc., Ringtone License Agreement, dated September 1, 2004
CO 0355	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated September 1, 2004
CO 0356	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated September 1, 2004
CO 0357	Nicholas Firth	Careers-BMG Music Publishing, Inc., Ringtone 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
CO 0359	Nicholas Firth	BMG Songs, Inc., Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated July 1, 2004

Ex. No.	Sponsored By	Description
CO 0360	Nicholas Firth	Zomba Enterprises, Inc., Ringtone License Agreement, dated July 1, 2004
CO 0361	Nicholas Firth	BMG Music Publishing NA, Inc., Ringtone License Agreement, dated June 1, 2004
CO 0362	Nicholas Firth	Zomba Enterprises, 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 Songs, Inc. / Zomba Melodies, Inc., Ringtone License Agreement, dated July 1, 2004
CO 0365	Nicholas Firth	BMG Songs, Inc., Ringtone License Agreement, dated June 4, 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
CO 0371	Nicholas Firth	Zomba Songs, Inc. / Zomba Enterprises, Inc. / Zomba Melodies, Inc., Ringtone License Agreement, dated April 1, 2004

Ex. No.	Sponsored By	Description
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
CO 0382	Nicholas Firth	Zomba Songs, Inc. / Zomba Enterprises, Inc. / Zomba Melodies, Inc., Ringtone License Agreement, dated January 1, 2004

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Ex. No.	Sponsored By	Description
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 Enterprises, Inc. / Zomba Melodies, 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
CO 0393	Nicholas Firth	Zomba Songs, Inc. / Zomba Enterprises, Inc. / Zomba Melodies, Inc., Ringtone License Agreement, dated August 1, 2003

Ex. No.	Sponsored By	Description
CO 0394	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated July 1, 2003
CO 0395	Nicholas Firth	Zomba Songs, Inc. / Zomba Enterprises, Inc. / Zomba Melodies, Inc., License Agreement, dated July 1, 2003
CO 0396	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc. / Multisongs, Inc., License Agreement, dated July 1, 2003
CO 0397	Nicholas Firth	Zomba Songs, Inc. / Zomba Enterprises, Inc. / Zomba Melodies, Inc., Ringtone License Agreement, dated July 1, 2003
CO 0398	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated June 12, 2003
CO 0399	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated June 12, 2003
CO 0400	Nicholas Firth	Zomba Enterprises, Inc., License Agreement, dated June 1, 2003
CO 0401	Nicholas Firth	Zomba Songs, Inc. / Zomba Enterprises, Inc. / Zomba Melodies, 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
CO 0403	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated June 1, 2003
CO 0404	Nicholas Firth	Zomba Songs, Inc. / Zomba Enterprises, Inc. / Zomba Melodies, Inc., Ringtone License Agreement, dated May 1, 2003

Ex. No.	Sponsored By	Description
CO 0405	Nicholas Firth	BMG Music Publishing NA Inc., Ringtone License Agreement, dated March 1, 2003
CO 0406	Nicholas Firth	Zomba Songs, Inc. / Zomba Enterprises, Inc. / Zomba Melodies, Inc., dated February 3, 2003
CO 0407	Nicholas Firth	BMG Songs, Inc., Ringtone License Agreement, dated February 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 January 1, 2003
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
CO 0414	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated October 1, 2002
CO 0415	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., Ringtone License Agreement, dated August 1, 2002

Ex. No.	Sponsored By	Description
CO 0416	Nicholas Firth	BMG Songs, Inc. / Careers-BMG Music Publishing, Inc., LLC, Ringtone License Agreement, dated August 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 Songs, 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 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 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
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

Ex. No.	Sponsored By	Description
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 to CO 0500		Reserved
CO 0501	William L. Landes	Curriculum Vitae for William L. Landes
CO 0502	William L. Landes	Chart: Percentage of Publisher Revenue Generated Through Mechanical Licensing
CO 0503	William L. Landes	Chart: Percent of Writers' Earnings from Mechanical Royalties
CO 0504	William L. Landes	Chart: Percentage of Publisher Revenue Generated Through Synch Licensing
CO 0505	William L. Landes	Chart: Licenses Issued Each Year by HFA by Rate Category: Physical and Not Controlled
CO 0506	William L. Landes	Chart: Fraction of Units Sold by Percent of Statutory Rate by Distribution Year: Physical Not Controlled
CO 0507	William L. Landes	Chart: Licenses Issued Each Year by HFA by Rate Category Permanent Downloads and Not Controlled
CO 0508	William L. Landes	Chart: Fraction of Units Sold by Percent of Statutory Rate by Distribution Year: Permanent Downloads Not Controlled
CO 0509	William L. Landes	Chart: Distribution of MasterTone Minimums

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Ex. No.	Sponsored By	Description
CO 0510	William L. Landes	Chart: Distribution of MasterTone Percent of Retail Percentages
CO 0511	William L. Landes	Chart: Distribution of MasterTone Percent of Revenue
CO 0512	William L. Landes	RIAA: "2005 Year-End statistics"
CO 0513	William L. Landes	RIAA: "1999 Year-End statistics"
CO 0514	William L. 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 L. 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 L. 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 L. Landes	MusicBizAcademy.com: "Taking a Glance at New Media Deals in the Music Industry," dated August 2005
CO 0518	William L. Landes	Tech News World: "Record Industry Pushes Apple to Raise iTunes Prices," dated April 3, 2006
CO 0519	William L. Landes	Projected Mechanical Rate Adjusted with CPI from 1913
CO 0520	William L. Landes	Sony/ATV Music Publishing, LLC, License Agreement, dated August 11, 2006 [Withheld]
CO 0521	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated May 1, 2006 [Withheld]
CO 0522	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated April 1, 2006 [Withheld]

Ex. No.	Sponsored By	Description
CO 0523	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, February 12, 2006 [Withheld]
CO 0524	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated January 20, 2006 [Withheld]
CO 0525	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated January 18, 2006 [Withheld]
CO 0526	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated January 13, 2006 [Withheld]
CO 0527	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated December 15, 2005 [Withheld]
CO 0528	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated December 12, 2005 [Withheld]
CO 0529	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated November 13, 2005 [Withheld]
CO 0530	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated November 13, 2005 [Withheld]
CO 0531	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated November 12, 2005 [Withheld]
CO 0532	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated October 25, 2005 [Withheld]
CO 0533	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated October 19, 2005 [Withheld]

Ex. No.	Sponsored By	Description
CO 0534	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated October 1, 2005 [Withheld]
CO 0535	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated September 30, 2005 [Withheld]
CO 0536	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated September 24, 2005 [Withheld]
CO 0537	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated September 8, 2005 [Withheld]
CO 0538	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated September 6, 2005 [Withheld]
CO 0539	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated September 1, 2005 [Withheld]
CO 0540	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated September 1, 2005 [Withheld]
CO 0541	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated August 23, 2005 [Withheld]
CO 0542	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated August 2, 2005 [Withheld]
CO 0543	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated August 1, 2005 [Withheld]
CO 0544	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated July 29, 2005 [Withheld]

Ex. No.	Sponsored By	Description
CO 0545	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated July 20, 2005 [Withheld]
CO 0546	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated July 4, 2005 [Withheld]
CO 0547	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated July 1, 2005 [Withheld]
CO 0548	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated July 1, 2005 [Withheld]
CO 0549	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated June 14, 2005 [Withheld]
CO 0550	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated June 11, 2005 [Withheld]
CO 0551	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated June 1, 2005 [Withheld]
CO 0552	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated May 11, 2005 [Withheld]
CO 0553	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated April 26, 2005 [Withheld]
CO 0554	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated April 4, 2005 [Withheld]
CO 0555	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated March 22, 2005 [Withheld]

Ex. No.	Sponsored By	Description
CO 0556	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated March 5, 2005 [Withheld]
CO 0557	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated March 1, 2005 [Withheld]
CO 0558	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated February 1, 2005 [Withheld]
CO 0559	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated December 15, 2004 [Withheld]
CO 0560	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated November 13, 2004 [Withheld]
CO 0561	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated September 7, 2004 [Withheld]
CO 0562	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated August 1, 2004 [Withheld]
CO 0563	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated July 1, 2004 [Withheld]
CO 0564	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated May 7, 2004 [Withheld]
CO 0565	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated May 3, 2004 [Withheld]
CO 0566	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated May 2, 2004 [Withheld]

Ex. No.	Sponsored By	Description
CO 0567	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated April 4, 2004 [Withheld]
CO 0568	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated March 29, 2004 [Withheld]
CO 0569	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated February 27, 2004 [Withheld]
CO 0570	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated January 21, 2004 [Withheld]
CO 0571	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated December 8, 2003 [Withheld]
CO 0572	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated December 4, 2003 [Withheld]
CO 0573	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated September 19, 2003 [Withheld]
CO 0574	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated September 11, 2003 [Withheld]
CO 0575	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated August 1, 2003 [Withheld]
CO 0576	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated June 16, 2003 [Withheld]
CO 0577	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated May 16, 2003 [Withheld]

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Ex. No.	Sponsored By	Description
CO 0578	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated March 31, 2003 [Withheld]
CO 0579	William L. Landes	Sony/ATV Music Publishing, LLC, Ringtone License Agreement, dated November 8, 2002 [Withheld]
CO 0580	William L. Landes	Sony/ATV Music Publishing, LLC, License Agreement, dated August 1, 1998 [Withheld]
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
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"

Ex. No.	Sponsored By	Description
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
CO 0726	Claire Enders	PiperJaffray: "A closer look at Apple computer," dated August 2006 [Withheld]
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 ay 5 206
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

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Ex. No.	Sponsored By	Description
CO 0735	Claire Enders	Apple: Q3 2006 Unaudited Summary Data
CO 0736	Claire Enders	Apple: Q3 Unaudited Condensed Consolidated Statements of Operations, dated July 9, 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	SprialFrog: "SpiralFrog and Universal Music Group Partner in advertising-supported legal music download service," dated August 29, 2006
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

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Ex. No.	Sponsored By	Description
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
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"

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Ex. No.	Sponsored By	Description
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
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%)

Ex. No.	Sponsored By	Description
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
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 [Withheld]
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 [Withheld]
CO 0953	Helen Murphy	Citibank Research Report: EMI Group, "Keep Holding On," dated January 25, 2006 [Withheld]

Ex. No.	Sponsored By	Description
CO 0954	Helen Murphy	Citigroup Research Report: "Piracy in the Entertainment Industry," dated November 21, 2003 [Withheld]
CO 0955	Helen Murphy	Collins Stewart Research Report: EMI, "A deal would make sweet music," dated May 17, 2006 [Withheld]
CO 0956	Helen Murphy	Credit Suisse Research Report: "Global Music Industry – Just the Two of Us," dated June 19, 2006 [Withheld]
CO 0957	Helen Murphy	Deutsche Bank Research Report: Warner Music Group, "Resuming Coverage with Buy Rating," dated September 22, 2006 [Withheld]
CO 0958	Helen Murphy	Deutsche Bank Research Report: EMI Group, "Going Digital – Upgrading to Buy," dated April 4, 2005 [Withheld]
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 [Withheld]
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 [Withheld]
CO 0961	Helen Murphy	Lehman Brothers Research Report: Warner Music Group, "Change of earnings forecast – F4Q06," dated October 18, 2006 [Withheld]
CO 0962	Helen Murphy	Lehman Brothers Research Report: EMI Group, "Encouraging Schedule, Though Deal Key," dated May 24, 2006 [Withheld]
CO 0963	Helen Murphy	Merrill Lynch Research Report: Warner Music Group, "Back to Fundamentals," dated July 27, 2006 [Withheld]
CO 0964	Helen Murphy	Merrill Lynch Research Report: EMI Group, "Merger Upside Largely Priced In," dated April 26, 2006 [Withheld]
CO 0965	Helen Murphy	Morgan Stanley Research Report: EMI, "Upside case stretched," dated November 9, 2006 [Withheld]
CO 0966	Helen Murphy	Morgan Stanley Research Report: Warner Music Group, "EMI bid Makes Long-Term Cost Cuts Look Credible," dated May 17, 2006 [Withheld]

Ex. No.	Sponsored By	Description
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 [Withheld]
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 [Withheld]
CO 0969	Helen Murphy	Soleil Media Metrics Research Report: Warner Music Group, "4Q earnings preview + updated models & valuations," dated September 29, 2006 [Withheld]
CO 0970	Helen Murphy	Soleil Media Metrics Research Report: Music Industry Review, dated May 31, 2005 [Withheld]
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
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

Ex. No.	Sponsored By	Description
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
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

Ex. No.	Sponsored By	Description
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
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

Ex. No.	Sponsored By	Description
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

EXHIBIT CO 0001

C

Effective: [See Text Amendments]

Code of Federal Regulations Currentness
Title 37. Patents, Trademarks, and Copyrights
Chapter II. Copyright Office, Library of Congress
Subchapter B. Copyright Arbitration Royalty Panel Rules and Procedures (Refs & Annos)
Part 255. Adjustment of Royalty Payable Under Compulsory License for Making and Distributing Phonorecords (Refs & Annos)

→§ 255.3 Adjustment of royalty rate.

(a) For every phonorecord made and distributed on or after January 1, 1983, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 4.25 cents, or 0.8 cent per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (b) through (m) of this section.

(b) For every phonorecord made and distributed on or after July 1, 1984, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 4.5 cents, or 0.85 cent per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (c) through (m) of this section.

(c) For every phonorecord made and distributed on or after January 1, 1986, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 5.0 cents, or 0.95 cent per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (d) through (m) of this section.

(d) For every phonorecord made and distributed on or after January 1, 1988, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 5.25 cents, or 1.0 cent per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (e) through (m) of this section.

(e) For every phonorecord made and distributed on or after January 1, 1990, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 5.7 cents, or 1.1 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (f) through (m) of this section.

(f) For every phonorecord made and distributed on or after January 1, 1992, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 6.25 cents, or 1.2 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (g) through (m) of this section.

(g) For every phonorecord made and distributed on or after January 1, 1994, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 6.6 cents, or 1.25 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (h) through (m) of this section.

(h) For every phonorecord made and distributed on or after January 1, 1996, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 6.95 cents, or 1.3 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (i) through (m) of this section.

(i) For every phonorecord made and distributed on or after January 1, 1998, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 7.1 cents, or 1.35 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (j) through (m) of this section.

(j) For every phonorecord made and distributed on or after January 1, 2000, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 7.55 cents, or 1.45 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (k) through (m) of this section.

(k) For every phonorecord made and distributed on or after January 1, 2002, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 8.0 cents, or 1.55 cents per minute of playing time or fraction thereof, whichever amount is

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larger, subject to further adjustment pursuant to paragraphs (l) through (m) of this section.

(l) For every phonorecord made and distributed on or after January 1, 2004, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 8.5 cents, or 1.65 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraph (m) of this section.

(m) For every phonorecord made and distributed on or after January 1, 2006, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 9.1 cents, or 1.75 cents per minute of playing time or fraction thereof, whichever amount is larger.

[46 FR 62268, Dec. 23, 1981; 52 FR 22637, June 15, 1987; 52 FR 23546, June 23, 1987; 52 FR 41711, Oct. 30, 1987; 54 FR 46066, Nov. 1, 1989; 56 FR 56157, Nov. 1, 1991; 58 FR 58283, Nov. 1, 1993; 58 FR 60787, Nov. 18, 1993; 59 FR 23993, May 9, 1994; 59 FR 33201, June 28, 1994; 60 FR 8198, Feb. 13, 1995; 60 FR 34169, June 30, 1995; 60 FR 55459, Nov. 1, 1995; 63 FR 7289, Feb. 13, 1998]

SOURCE: 46 FR 891, Jan. 5, 1981; 58 FR 67691, Dec. 22, 1993; 59 FR 23981, May 9, 1994; 59 FR 23993, May 9, 1994, unless otherwise noted.

AUTHORITY: 17 U.S.C. 801(b)(1) and 803.

37 C. F. R. § 255.3, 37 CFR § 255.3

Current through November 16, 2006; 71 FR 66693

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EXHIBIT CO 0002

Westlaw.

66 FR 64783-01, 2001 WL 1588817 (F.R.)

(Cite as: 66 FR 64783)

PROPOSED RULES

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 255

[Docket No. RM 2000-7A]

Mechanical and Digital Phonorecord Delivery Compulsory License

Friday, December 14, 2001

*64783 AGENCY: Copyright Office, Library of Congress.

ACTION: Request for comment.

SUMMARY: The Recording Industry of America, Inc. ("RIAA"), the National Music Publishers' Association, Inc. ("NMPA"), and The Harry Fox Agency, Inc. ("HFA"), have submitted a joint statement to the Copyright Office to advise the Office of certain developments relevant to the Copyright Office's Notice of Inquiry regarding the interpretation and application of the mechanical and digital phonorecord compulsory license, 17 U.S.C. 115, to certain digital music services. The Copyright Office requests additional public comment on its Notice of Inquiry in light of the RIAA/NMPA/HFA agreement filed in this proceeding.

DATES: Comments are due no later than January 28, 2002. Reply comments are due February 27, 2002.

ADDRESSES: If sent by mail, an original and ten copies of comments and reply comments should be addressed to: Office of the Copyright General Counsel, P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, an original and ten copies should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room LM-403, First and Independence Avenue, SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panels, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707-8380. Telefax: (202) 252-3423.

SUPPLEMENTARY INFORMATION: On March 9, 2001, the Copyright Office published a

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Notice of Inquiry requesting comments from the public concerning the interpretation and application of the copyright laws to certain kinds of digital transmissions of prerecorded musical works. 66 FR 14099 (March 9, 2001). Since that time, the Recording Industry of America, Inc. ("RIAA"), the National Music Publishers Association ("NMPA") and The Harry Fox Agency, Inc. ("HFA") have negotiated a private agreement which concerns the application of the mechanical compulsory license, as set forth in the Copyright Act, 17 U.S.C. 115, to "On-Demand Streams" and "Limited Downloads," two services identified in the Notice of Inquiry. RIAA, NMPA and HFA publicly announced this agreement October 9, 2001.

In the March 9 Notice of Inquiry, an "On-Demand Stream" was defined as an "on-demand, real-time transmission using streaming technology such as Real Audio, which permits users to listen to the music they want when they want and as it is transmitted to them" and a "Limited Download" was defined as an "on-demand transmission of a time-limited or other use-limited (i.e. non-permanent) download to a local storage device (e.g., the hard drive of the user's computer), using technology that causes the downloaded file to be available for listening only either during a limited time (e.g., a time certain or a time tied to ongoing subscription payments) or for a limited number of times." 66 FR at 14100.

The Office received several comments in response to the notice of inquiry, some of which raised additional issues relating to section 115 of the Copyright Act (17 U.S.C. 115), incidental digital phonorecord deliveries, and other matters relating to digital transmissions of music.

Because the RIAA/NMPA/HFA agreement concerns many of the same issues raised in the March 9 Notice of Inquiry, RIAA, NMPA and HFA submitted a joint statement with the Copyright Office on December 6, 2001, in which they explain the terms of the agreement and list the benefits these parties associate with the agreement. The parties also included a copy of the agreement as an exhibit to the filing. The joint statement and the accompanying exhibits are posted on our website at: http://www.loc.gov/copyright/carp/10-5agreement.pdf.

The Copyright Office recognizes that the RIAA/NMPA/HFA agreement is a significant development that may affect the Office's inquiry into digital transmissions of music. Consequently, the Copyright Office invites comment from the public on the effect of the RIAA/NMPA/HFA agreement on the issues identified in the Notice of Inquiry. Comments are due no later than January 28, 2002. Reply comments are due February 27, 2002.

Dated: December 11, 2001.

David O. Carson,

General Counsel.

[FR Doc. 01-30931 Filed 12-13-01; 8:45 am]

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BILLING CODE 1410-31-P

66 FR 64783-01, 2001 WL 1588817 (F.R.)

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EXHIBIT CO 0003

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DEC 6 2001
GENERAL COUNSEL OF COPYRIGHT

In the Matter of	)	
	)	
Mechanical and Digital Phonorecord Delivery Compulsory License	)	Docket No. RM 2000-7

JOINT STATEMENT OF
THE RECORDING INDUSTRY ASSOCIATION OF AMERICA, INC.,
NATIONAL MUSIC PUBLISHERS' ASSOCIATION, INC.
AND THE HARRY FOX AGENCY, INC.

The Recording Industry Association of America, Inc. ("RIAA"), the National Music Publishers' Association, Inc. ("NMPA") and The Harry Fox Agency, Inc. ("HFA"; and collectively with RIAA and NMPA, the "Parties") submit this joint statement to advise the Copyright Office of certain developments relevant to its Notice of Inquiry ("NOI") regarding the application of the mechanical compulsory license of 17 U.S.C. § 115 to certain digital music services.

Specifically, on October 9, 2001, the Parties announced an agreement among them concerning the mechanical licensing of musical works for new subscription services on the Internet (the "Agreement"). A copy of the Agreement is attached as Exhibit A. We briefly describe the Agreement and certain of its benefits below.

BACKGROUND

RIAA is the trade group that represents the U.S. recording industry. Its member record companies create, manufacture and/or distribute approximately 90% of all legitimate sound recordings produced and sold in the United States and comprise the most vibrant

national music industry in the world. They also have authorized the use of their recorded music in digital music services.

NMPA, founded in 1917, works to protect and advance the interests of the music publishing industry. With over 800 members, NMPA represents the most important and influential music publishing firms throughout the United States. HFA, the licensing affiliate of NMPA, provides an information source, clearing house and monitoring service for licensing musical copyrights, and acts as licensing agent for more than 27,000 music publisher-principals, who in turn represent the interests of more than 160,000 songwriters.

As contemplated by the Office's Notice of Initiation of Negotiation Period, 64 Fed. Reg. 38,861 (July 20, 1999), and the relevant statutory provisions, 17 U.S.C. §§ 115(c)(3)(B), (C), (F), the Parties have been negotiating terms and rates of royalty payments for digital phonorecord deliveries made under the mechanical compulsory license provisions of 17 U.S.C. § 115. Because of differences concerning certain legal and procedural questions implicated by the licensing of musical works for use in such services, it took some time for these negotiations to bear fruit. With these differences now resolved, the Parties have established a framework for licensing subscription services offering "On-Demand Streams" and/or "Limited Downloads," which will facilitate the immediate launch of licensed services that will offer consumers a broad array of musical works and diverse methods of electronic music delivery.

The Agreement itself will assist RIAA members in making music available to consumers through subscription services on a prompt and widespread basis. Moreover, it is HFA's intention to make licenses widely and directly available to any service that is willing to adopt this framework or to negotiate a mutually agreeable alternative. The Agreement also

aims at simplifying and expediting the mechanical rights licensing process. Whether a service obtains its licenses through an RIAA member or directly from HFA, the Agreement assures that an entity seeking to offer legitimate services will have the opportunity to obtain the appropriate licenses promptly and through procedures that are not burdensome. By resolving disagreements over the nature and scope of the licenses needed by services and providing a streamlined process for obtaining the necessary licenses, the Agreement also fosters competition in the nascent online music marketplace.

TERMS OF THE AGREEMENT

In the following paragraphs we describe in general terms certain key provisions of the Agreement.

What Type of Services Are Covered? The Agreement applies to subscription digital music services that include among their offerings "On-Demand Streams" and/or "Limited Downloads" (collectively, "Covered Services"). An "On-Demand Stream" is an on-demand, real-time transmission of a song to a consumer who requests that song using streaming technology, such as Real Audio or Windows Media Audio. A "Limited Download" is a download that can be played for a limited period of time or a limited number of plays. (Agt. §§ 1.1-1.4.)

Who Is Covered? Under the Agreement, a mechanical license pursuant to 17 U.S.C. § 115 for On-Demand Streams and Limited Downloads made through Covered Services is available through HFA to all RIAA member companies and to any digital music service that is majority owned by one or more RIAA members. As provided by 17 U.S.C. § 115(c)(3)(A), the rights under a license extend to any Covered Service operated by the licensee and can be extended to any Covered Service authorized by the licensee to make On-Demand Streams and/or Limited Downloads of a licensed musical work. (Agt. Art. 1.) In addition, NMPA and

HFA have publicly stated that it is their policy to license not only RIAA members but also other digital music services that wish to negotiate comparable agreements. (See, e.g., *Music Publishers Support Landmark Accord with Record Industry For Launch of Internet Subscription Services* (November 27, 2001), *available at* http://www.nmpa.org/pr/internet_subscription.html.)

What Rights Are Included? A mechanical license obtained under the Agreement includes all reproduction and distribution rights for delivery of On-Demand Streams and Limited Downloads through Covered Services. The Agreement confirms that a mechanical license for these services includes the right to make server copies, buffer copies and other related copies used in the operation of Covered Services. The Agreement also includes a royalty-free cross license for On-Demand Streams of promotional excerpts of sound recordings and musical works. A license does not include performance rights, which are licensable separately through performing rights organizations such as ASCAP, BMI and SESAC. (Agt. Art. 2.)

What Will Be the Licensing Process? The Agreement streamlines procedures for obtaining licenses through HFA. In particular, an electronic "bulk" licensing process should allow licensees to obtain large numbers of licenses very quickly. To facilitate the expeditious launch of services, licenses can be requested at once and will be retroactive to the date of request. Works will be licensed in their entirety. That means that if multiple publishers co-own the copyright in a particular song, HFA will license use of the song if it represents any one of them, with no need to obtain mechanical licenses for the same song from the other co-owners. The licensee, however, is required to pay directly to any co-owner not represented by HFA that co-owner's share of the royalties. As always, the authority of HFA to license a

particular song on behalf of a music publisher is subject to the approval of the publisher. HFA also will attempt to arrange licenses of songs where it does not represent any of the copyright owners, subject to such owner's authorization of HFA to conclude such licenses. The Agreement is nonexclusive in every respect:

- Record companies and Internet music services are free to obtain compulsory licenses other than through HFA by serving notices of intention directly on copyright owners or filing them in the Copyright Office.

- While record companies may authorize Internet music services to distribute phonorecords of licensed musical works online, pursuant to Section 115(c)(3)(A) of the Copyright Act, Internet music services are also free to obtain licenses directly from HFA or individual music publishers. (Agt. Art. 3.)

Does the Agreement Establish a Royalty Rate? The Agreement does not include specific royalty rates for On-Demand Streams and Limited Downloads made through Covered Services. The Parties have committed to negotiate those rates pursuant to 17 U.S.C. §§ 115(c)(3)(B), (C) and (F), which provide that copyright owners and persons entitled to obtain a compulsory license "may negotiate and agree upon the terms and rates of royalty payments under [the compulsory license] . . . and may designate common agents to negotiate, agree to, pay or receive such royalty payments." We hope to submit such rates to the Office for adoption pursuant to 37 C.F.R. § 251.63(b). If the negotiations are not successful the applicable rate shall be determined by a copyright arbitration royalty panel ("CARP"), pursuant to 17 U.S.C. §§ 115(c)(3)(D) and (F). (Agt. Art. 5.)

Pending the Establishment of a Royalty Rate, How Are Publishers Compensated? RIAA has paid HFA a nonrefundable advance payment of $1 million. If the statutory royalty rate is not set within two years, RIAA will pay HFA further advances of $62,500 per month (subject to adjustment in certain circumstances and to the right of RIAA or particular members to opt out of the Agreement). The advances are recoupable and may be applied to

any amounts owed by any participating licensee under mechanical licenses issued by HFA for On-Demand Streams and Limited Downloads made through Covered Services. (Agt. Art. 4.)

What Are the Accounting and Payment Procedures Under the Agreement? Licensees will account to HFA on a quarterly basis beginning with the issuance of a license. Upon the final determination of the applicable statutory royalty rates, licensees will pay for their past activities (to the extent not covered by the advance) and thereafter account and pay quarterly. Quarterly reports will include certain specified usage information and certain other information that may be requested by HFA. (Agt. Art. 6.)

What Are the Legal Issues Resolved by the Agreement? The Agreement confirms the Parties' mutual understanding of certain principles of current copyright law that provide the underpinnings for the licensing process contemplated by the Agreement. Specifically, it is agreed that (1) the process of making On-Demand Streams and of making Limited Downloads through Covered Services (from the making of server copies to the transmission and local storage of the stream or download), viewed in its entirety, involves the making and distribution of a "digital phonorecord delivery" or "DPD"; (2) a compulsory license is available under 17 U.S.C. § 115 for On-Demand Streams and Limited Downloads made through Covered Services; and (3) radio-style and other non-interactive webcasting that would qualify for a statutory license under 17 U.S.C. § 114(d)(2) does not involve the making or distribution of a DPD, and thus does not require a mechanical license.[1] (Agt. § 8.1.)

[1] Because the Parties believed that record companies and music publishers and certain of their subsidiaries should not be able to benefit from the Agreement while challenging it in an adversarial proceeding, the Parties agreed not to advocate contrary positions in certain contexts.

BENEFITS OF THE AGREEMENT

The Parties believe that this Agreement is an important milestone in the development of the online music marketplace that will give consumers access to more and better online music options, sooner. The Agreement has many benefits:

- The Agreement will facilitate the immediate launch of licensed music services that will offer consumers a broad array of musical works and diverse methods of electronic music delivery. The Parties anticipate that On-Demand Streams and Limited Downloads will take their place in the digital music marketplace alongside full downloads (for which compulsory licenses are already available at the current statutory mechanical rate). Music service providers may choose to offer some or all of these services to their subscribers. The Agreement assures that an entity seeking to offer legitimate services across this range of options will have the opportunity to obtain the appropriate licenses promptly and through procedures that are not burdensome.

- The Agreement will assist both record companies and Internet music services in launching subscription services on the Internet. The Agreement is nonexclusive, so Internet music services will have the option of obtaining licenses directly from HFA or individual publishers, or seeking authorization from record companies that take licenses under the Agreement.

- The Agreement resolves the Parties' differences over legal aspects of licensing musical works for certain online services. The Agreement will thus allow the Parties more productively to pursue negotiation of terms and rates of royalty payments.

- The Agreement confirms the parties' belief that the compulsory mechanical license provisions of the Copyright Act provide broad access to musical works for recording and distribution, including online distribution.

- It is clear that server copies will be licensed under the Agreement. Having ready access to licenses that include the right to make server copies will be particularly reassuring for companies seeking to launch services.

- The Agreement simplifies and expedites the process for licensing mechanical rights for Covered Services. Some newcomers to the music industry have complained about "complexity" in music rights licensing. The Agreement aims at simplifying and expediting the mechanical rights licensing process. It provides for electronic "bulk" licensing to allow companies to obtain mechanical licenses very quickly. The procedures will allow a potential licensee to request licenses for multiple titles at the same time. To facilitate the launch of services, licenses issued will be retroactive to the date of request. Moreover, for musical works owned by multiple copyright owners, HFA will issue a license if it represents any one of those owners, subject to the licensee paying the non-HFA co-owner its share of the royalties directly. As a further undertaking, HFA will also

attempt to arrange licenses for songs even when it does not represent any of the copyright owners, subject to its receiving authorization from the copyright owners to do so.

- By resolving disagreements over the nature and scope of the licenses needed by services and providing a streamlined process for obtaining the necessary licenses, the Agreement fosters competition in the nascent online music marketplace. NMPA and HFA have publicly stated that it is their policy to license not only RIAA members but also other digital music services that wish to negotiate comparable agreements, and NMPA and HFA recently announced that they have entered into such an agreement with Listen.com. This offer should make it easier for new services to enter the online music marketplace, thus promoting competition in that market.

- The Agreement provides a framework to establish fair royalty rates, thereby encouraging songwriting by providing for the payment of a fair royalty to songwriters for their creative efforts, while ensuring that services can launch and operate in the interim. Although the Agreement does not establish a royalty rate for On-Demand Streams or Limited Downloads, the parties have committed to engage in good faith negotiations to arrive at such a rate (or rates). If negotiations fail, an applicable rate (or rates) will be established by a CARP convened by the Copyright Office. In the interim, however, the Agreement allows licensees to launch their services now and pay the royalties due on a retroactive basis once rates are established.

- The Agreement represents the type of marketplace solution that Congress has urged to resolve these business and legal issues.

CONCLUSION

The Parties are excited about the opportunity that digital music services present as a new outlet for the distribution of music and are committed to promoting the expeditious launch of such services. The Parties hope that the Office finds this information about the Agreement helpful as it considers the issues raised in the NOI.

Dated: December 6, 2001

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Agreement

This agreement (the "Agreement"), dated as of October 5, 2001 ("Effective Date"), is made by and between the Recording Industry Association of America, Inc. ("RIAA"), on the one hand, and National Music Publishers' Association, Inc. ("NMPA") and The Harry Fox Agency, Inc. ("HFA"), on the other (all of the foregoing collectively referred to as the "Parties").

WHEREAS, record companies desire to offer to consumers, or authorize others to provide to consumers, certain digital music services that provide On-Demand Streams and Limited Downloads (as defined below);

WHEREAS, music publishers desire to make their copyrighted musical works widely available to consumers by licensing such services;

WHEREAS, while the Parties have differed concerning certain legal and procedural questions implicated by the licensing of musical works for use in such services, record companies have always believed that musical work copyright owners should receive for the use of musical works in digital music services a fair royalty that reasonably reflects the value of the use of those works, irrespective of the particular rights of the copyright owner applicable to that use, and music publishers have always believed that their copyrighted works should be made available through such services for fair compensation;

WHEREAS, there has been litigation concerning the use of musical works in digital music services; the U.S. Copyright Office has issued a Notice of Inquiry whether to conduct a rulemaking concerning the legal status of On-Demand Streams and Limited Downloads; the U.S. Copyright Office has issued a report pursuant to Section 104 of the Digital Millennium Copyright Act addressing certain issues relating to streaming; and certain record companies may prefer to make business decisions concerning the launch of Covered Services (as defined below) with greater assurance concerning the legal status of such services;

WHEREAS, the Parties desire to avoid the uncertainty and expense of litigation concerning the use of copyrighted musical works by Covered Services, and to provide assurance to record companies and others seeking to offer such services to consumers;

WHEREAS, Section 115(c)(3) of the U.S. Copyright Act authorizes voluntary negotiations for determining royalty rates and terms under the mechanical compulsory license; and

WHEREAS, in settlement of their differences and to facilitate the expeditious and widespread launch of digital music services, the Parties have reached this Agreement with respect to terms pursuant to which RIAA member record companies may obtain licenses to make and authorize On-Demand Streams and Limited Downloads of musical works in Covered Services;

NOW, THEREFORE, pursuant to 17 U.S.C. § 115(c)(3), and in consideration of the mutual promises contained in this Agreement and for other good and valuable consideration, the

adequacy and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Covered Services. Any member of RIAA that seeks to use, or authorize the use of, a copyrighted musical work for which an HFA publisher-principal has the right to grant the rights that are the subject matter of this Agreement in connection with the operation of one or more Covered Services may obtain through HFA on behalf of such HFA publisher-principal a mechanical license ("License") to make On-Demand Streams and Limited Downloads of the work through Covered Services, through to the end user, including by making server and related reproductions of the work used in the operation of Covered Services.

1.1. "Covered Service" means a service that offers (but the offerings of which are not necessarily limited to) On-Demand Streams and/or Limited Downloads of sound recordings of musical works from servers located within the United States (including the territories and possessions thereof), where the basic charge to users for the service is a recurring subscription fee (in contrast to the basic charge being a per-download, per-play or per-song fee), including any use of such a service on a limited basis without charge to users in order to promote the subscription service.

1.2. "On-Demand Stream" means an on-demand, real-time digital transmission of a sound recording of a single musical work to allow a user to listen to a particular sound recording chosen by the user at a time chosen by the user, using streaming technology, which may include but is not limited to Real Audio or Windows Media Audio, that is configured by the provider of the Covered Service in a manner designed so that such transmission will not result in a substantially complete reproduction of a sound recording being made on a local storage device (*e.g.*, the hard drive of the user's computer or a portable device) so that such reproduction is available for listening other than at substantially the time of the transmission.

1.3. "Limited Download" means a digital transmission of a time-limited or other use-limited download of a sound recording of a single musical work to a local storage device (*e.g.*, the hard drive of the user's computer or a portable device), using technology designed to cause the downloaded file to be available for listening only either (1) during a limited time (*e.g.*, a time certain or a time tied to ongoing subscription payments) not to extend more than thirty (30) days beyond the expiration of the user's subscription, or (2) for a limited number of times not to exceed twelve (12) times after the expiration of the user's subscription.

1.4. Any member of RIAA that obtains a License hereunder is referred to herein as a "Participating RIAA Member." Any member of NMPA or HFA publisher-principal that grants a License and/or accepts a portion of an Advance Payment hereunder is referred to herein as a "Participating NMPA/HFA Publisher." The terms "Participating RIAA Member" and "Participating NMPA/HFA Publisher" are limited to such entities and their majority-owned subsidiaries.

1.5. Any digital music service that is majority owned by one or more RIAA members in the aggregate shall be entitled directly to obtain a License hereunder, and so shall be treated as a "member of RIAA" for purposes of Section 3.1. If such a service either obtains a License directly or is authorized under a License hereunder to make On-Demand Streams and/or

Limited Downloads through Covered Services, such service shall be treated as a "Participating RIAA Member" for all purposes of this Agreement.

2. Covered Deliveries.

2.1. A License with respect to a musical work includes all reproduction, distribution and DPD rights necessary for Covered Services to make On-Demand Streams and Limited Downloads of that work, from the making of server reproductions to the transmission and local storage of the On-Demand Streams or Limited Downloads. A License does not extend to other transmissions made by a Covered Service or to activities not encompassed by a mechanical license, including, without limitation, print or display rights, merchandising rights, adaptation (derivative work) rights except as provided in Section 115(a)(2) of the Copyright Act, rights to synchronize musical works with visual images resulting in audiovisual works, or karaoke rights, all of which rights are specifically reserved. The Parties agree that server reproductions made under a License to transmit On-Demand Streams or Limited Downloads may be used to make transmissions other than On-Demand Streams and Limited Downloads; provided that the foregoing is without prejudice to any applicable requirement, if any, that the Participating RIAA Member also obtain a license for such other transmissions made using such server reproductions. It is understood that this Agreement does not address or extend to any performance rights that may be implicated by the making of On-Demand Streams or Limited Downloads through Covered Services.

2.2. A License includes the right to make, and there shall be no separate payment or accounting for, On-Demand Streams of Promotional Excerpts (as defined below) of sound recordings of musical works licensed hereunder used for promotional purposes, provided that the applicable Participating RIAA Member shall be deemed likewise to authorize the relevant copyright owner or copyright owners of such musical work (or an organization of copyright owners designated by such copyright owners as their common agent) to make On-Demand Streams of Promotional Excerpts of that sound recording for the purpose of promoting that musical work without payment of any royalty. "Promotional Excerpt" is defined as a stream consisting of no more than thirty (30) seconds of playing time of the sound recording of a musical work, or in the case of sound recordings with a playing time of more than five minutes, a stream that is of no more than the lesser of ten percent (10%) or sixty (60) seconds of playing time of the sound recording of the musical work.

3. Licensing Process.

3.1. Commencing on the Effective Date, a member of RIAA may submit License requests in electronic form, either individually or batched, and either for On-Demand Streams and/or Limited Downloads alone or in combination with other configurations, substantially in accordance with Exhibit A. Promptly after the Effective Date, during the opt-out period described in Section 3.2, the Parties shall arrange discussions between appropriate personnel of HFA and of certain RIAA members concerning electronic licensing procedures, with the goal of refining and testing HFA's electronic licensing procedures so that they can be used readily for the issuance of mechanical licenses expeditiously following the completion of such opt-out period, and with the goal of enhancing such procedures so that they later can be used readily by RIAA members to request and obtain mechanical licenses for all configurations for which they

desire licenses in a single request. In addition, a member of RIAA may submit License requests by other means generally accepted by HFA, including but not limited to SirNet (for so long as it is available), HFA's new web-based licensing system (when it becomes available), and HFA's standard paper form (but only using paper forms for complex License requests (e.g., requests involving medleys or samples), in limited numbers during times when electronic licensing capabilities are unavailable, or at other times in numbers that are generally consistent with such RIAA member's past use of paper forms, and in any case in numbers that do not exceed what HFA can reasonably be expected to process under the circumstances). HFA may modify its license request and license forms from time to time, provided that it gives reasonable notice thereof to RIAA and Participating RIAA Members and such modifications do not unreasonably affect the ability of Participating RIAA Members to submit license requests and obtain licenses. License forms may be issued electronically or in paper form, but when a Licensee submits a License request in electronic form in accordance with this Section 3.1, HFA shall, promptly after processing the License request, return to such Licensee an electronic file substantially in accordance with Exhibit A, with (1) the addition of that information indicated in Exhibit A as being "output" fields, (2) the addition of information, other than individual publisher share information, to complete any blank optional fields in the request, to the extent that such information is available in HFA's databases and is matched to the request in the License issuance process, (3) the substitution of information concerning HFA publisher-principal names where such information in HFA's databases is different from that in the request, and (4) the aggregated share of Participating NMPA/HFA Publishers. If an RIAA member submits a License request in accordance with this Section 3.1 but the request contains insufficient information for HFA to find a match for the relevant work in its databases, HFA will work with such RIAA member to provide the information necessary to enable a License to be issued, and if such RIAA member resubmits such request with the necessary information and the License can be issued, the provisions of Section 3.4 shall apply from the date of the original request. The Parties acknowledge the importance to NMPA, HFA and music publishers of having License requests submitted promptly, and the importance to RIAA and record companies of having License forms issued promptly. The Parties shall cooperate in good faith to promote each of those goals.

3.2. The authority of HFA to license any individual musical work on behalf of its publisher-principals is subject to the approval of the relevant publisher-principal. HFA shall not require its publisher-principals to opt in to this Agreement either before or after commencing to issue Licenses, but HFA may establish an opt-out period before commencing to issue Licenses, provided that such period ends not later than six (6) weeks following the Effective Date. If an HFA publisher-principal at any time requests that HFA not issue Licenses on its behalf (either with respect to particular musical works or in general), HFA will honor that request; provided, however, that any such request shall not affect the validity or subsistence of a License issued prior to such request. During the opt-out period described in Section 3.2, HFA shall notify RIAA weekly of HFA publisher-principals that have notified HFA that they do not wish to make Licenses of their works available under this Agreement. Thereafter, through December 31, 2002, HFA shall notify RIAA quarterly of HFA publisher-principals that have notified HFA that they do not wish to make Licenses of their works available under this Agreement.

3.3. HFA shall issue mechanical licenses for DPD configurations (including but not limited to Licenses under this Agreement) with respect to a musical work in its entirety if one or more of its publisher-principals owns or controls a partial interest in such musical work, even if other co-owners of such musical work are not HFA publisher-principals, except that, pursuant

to Section 3.2, if all the HFA publisher-principals that own or control a partial interest in such work request that HFA not issue mechanical licenses on their behalf, HFA will not issue such licenses. In the case of a mechanical license issued as descibed in this Section 3.3, a Participating RIAA Member shall pay directly to each co-owner that is not an HFA publisher-principal (or such co-owner's authorized payee) such co-owner's share of the applicable royalty payments under Section 6.1.

3.4. License forms issued by HFA pursuant to this Agreement shall be retroactive to the date of the License request made by the Participating RIAA Member on or after the Effective Date in accordance with Section 3.1. To the extent that the Participating RIAA Member makes or authorizes On-Demand Streams and Limited Downloads of musical works pending the processing by HFA of license forms in response to proper License requests submitted on or after the Effective Date in accordance with Section 3.1, NMPA and HFA shall not directly or indirectly file, encourage, aid, support, finance, contribute to, promote, or participate in any claim, suit, action or proceeding asserting that such activities are infringing.

3.5. Subject to Section 3.3, HFA shall also accept License requests to make On-Demand Streams and Limited Downloads through Covered Services of musical works as to which no HFA publisher-principal has any ownership interest or control, in whole or in part, and for which a License is not otherwise available under this Agreement. In such a case, HFA shall use commercially reasonable efforts to secure the requested Licenses from the relevant non-HFA publisher-principals on the same terms as apply to HFA publisher-principals under this Agreement. (Non-HFA publisher-principals who grant Licenses through this arrangement shall be referred to as "Participating Independent Publishers".) In addition to any commission charged to the Participating Independent Publisher, HFA may charge the relevant Participating RIAA Member a one-time administrative fee of ninety-five dollars ($95) for each publisher that agrees to become a Participating Independent Publisher (it being understood that no such administrative fee shall be payable for any subsequent Licenses issued on behalf of that Participating Independent Publisher to any Participating RIAA Member), unless the Participating Independent Publisher also authorizes HFA to grant mechanical licenses other than Licenses under this Agreement, in which case no such fee shall apply. The Advance Payment described in Article 4 may be applied to such administrative fee when payable by a Participating RIAA Member specified by RIAA, and HFA shall provide to RIAA or an independent accounting firm designated by RIAA sufficient information concerning liability for such administrative fee to allow reconciliation of the Advance Payments as described in Section 4.4. When HFA arranges Licenses from Participating Independent Publishers pursuant to this Section 3.5, HFA shall collect and distribute mechanical royalties to such Participating Independent Publisher (or other authorized payees) unless the Participating RIAA Member requests to make such payments directly.

3.6. It is understood that compilations of data supplied by HFA in electronic form pursuant to Section 3.1, except to the extent that they consist of data provided by the relevant Participating RIAA Member pursuant to Section 3.1, are proprietary in nature and shall not be used by the recipient Participating RIAA Member to engage in business activities in competition with HFA or for any purpose other than to request and administer licenses issued by HFA and/or other licenses such Participating RIAA Member acquires with respect to the same works or other works owned or controlled by the same copyright owners, and shall not be disclosed by the recipient Participating RIAA Member to any other party except insofar as it is reasonably

necessary to disclose specific data relating to particular works for the purpose of requesting or administering licenses issued by HFA and/or other licenses such Participating RIAA Member acquires with respect to the same works or other works owned or controlled by the same copyright owners.

3.7. Nothing in this Agreement, including but not limited to the availability of Licenses or the procedures for obtaining the same, shall preclude an RIAA member or digital music service from at any time serving or filing a notice of intention to obtain a compulsory license in accordance with applicable law or, other than in Article 8, imply that any notice of intention so served or filed is valid or invalid. Nothing in this Agreement shall preclude any digital music services from seeking, or HFA or any of its publisher-principals from granting, direct licenses to digital music services, including without limitation Covered Services, on whatever terms might be agreed upon between the relevant parties, and it is the intention of HFA to make such licenses widely available as described more fully in a press release to be issued by HFA. By taking Licenses pursuant to this Agreement, Participating RIAA Members will be able to facilitate on a prompt and widespread basis the availability of music over the Internet through Covered Services.

4. Advance Payment.

4.1. Within thirty (30) days after the Effective Date, RIAA, on behalf of Participating RIAA Members (including their licensees), shall pay to HFA a non-refundable advance royalty payment of one million dollars ($1,000,000) in the aggregate ("Advance Payment"). If, by the second anniversary of the Effective Date, there has then been no final non-appealable determination of royalty rates for On-Demand Streams and Limited Downloads through negotiation and/or a CARP proceeding, as the case may be, then, subject to Section 4.2, until such a determination, RIAA, on behalf of Participating RIAA Members (including their licensees), shall each month pay to HFA a supplementary Advance Payment of sixty-two thousand five-hundred dollars ($62,500) in the aggregate.

4.2. Effective at the second anniversary of the Effective Date or any time thereafter, RIAA may terminate this Agreement upon thirty (30) days advance written notice to NMPA and HFA. In the event RIAA does so, all Licenses previously issued under this Agreement shall terminate at the same time as this Agreement, without prejudice to the right of Participating RIAA Members thereafter to obtain new licenses under 17 U.S.C. § 115. Effective at the second anniversary of the Effective Date or any time thereafter, any Participating RIAA Member may opt out of this Agreement upon thirty (30) days advance written notice to each of the Parties. In the event a Participating RIAA Member does so, (1) the provisions of this Agreement thereafter shall not apply to such Participating RIAA Member except as provided in Article 7, and (2) all Licenses previously issued to such Participating RIAA Member under this Agreement shall terminate at such time, without prejudice to the right of such Participating RIAA Member thereafter to obtain new licenses under 17 U.S.C. § 115. In the case of termination by either RIAA or one or more Participating RIAA Members, (a) payments shall be due in accordance with Section 6.1 for activities under this Agreement prior to the termination of the relevant Licenses, (b) Advance Payments may be applied against such payments in accordance with Section 4.4, and (c) to the extent remaining, Advance Payments also may be applied to royalties due under new licenses for On-Demand Streams and Limited Downloads made through Covered Services, which licenses are issued by HFA at least one year after the

relevant date of termination to the Participating RIAA Members whose Licenses were terminated. In addition, in the event a Participating RIAA Member that is one of the five "major record companies" (as that term is commonly understood, including any successors thereto and the subsidiaries thereof) so opts out of this Agreement, RIAA's monthly supplementary Advance Payments under Section 4.1 thereafter shall be reduced proportionately, based on the number of major record companies at such time (e.g., if there are then five major record companies and one opts out, RIAA's monthly supplementary Advance Payments shall be reduced by twenty percent (20%)). In addition to the foregoing, if there is a decision of the U.S. Copyright Office or a court, or any new legislation, inconsistent with Section 8.1, with the result that mechanical royalties are not required to be paid for some or all On-Demand Streams and/or Limited Downloads made through Covered Services, then the amount of RIAA's monthly supplementary Advance Payments under Section 4.1 shall be reduced to take into account such decision or legislation, based on actual usage under this Agreement to date, with the exact amount of such reduction to be agreed upon by the Parties promptly after such decision or legislation; provided that if any such decision is appealed and finally reversed on appeal, the amount of RIAA's monthly supplementary Advance Payments under Section 4.1 shall be restored, and RIAA shall promptly pay to HFA the total amount by which the supplementary Advance Payment was reduced in the interim.

4.3. HFA shall deposit Advance Payments into an interest-bearing bank account (with such interest being treated as part of the Advance Payment). HFA shall be free to distribute the initial and supplementary Advance Payments to HFA publisher-principals in accordance with a reasonable and nondiscriminatory methodology based on market share, actual usage or a per musical work payment (which methodology HFA shall provide to RIAA), as well as to any Participating Independent Publishers pursuant to Section 3.5. Except insofar as it is recouped pursuant to Sections 4.4 and/or 4.5, the Advance Payment shall be nonrefundable.

4.4. Upon the final non-appealable determination of royalty rates for On-Demand Streams and Limited Downloads through negotiation and/or a CARP proceeding, as the case may be, the total amount of Advance Payments (including interest) shall be applied against undisputed amounts owed to HFA on behalf of its publisher-principals and Participating Independent Publishers by Participating RIAA Members under this Agreement. Such Advance Payments shall be applied to the accounts of individual Participating RIAA Members as specified by RIAA, or an independent accounting firm designated by RIAA, by written notice to HFA within 45 days after the date of such final non-appealable determination of royalty rates. If the Advance Payments are not fully recouped at such time, any remainder of the Advance Payments thereafter shall be applied against all undisputed amounts owed to HFA on behalf of its publisher-principals and Participating Independent Publishers by Participating RIAA Members identified by RIAA, under mechanical licenses issued by HFA for On-Demand Streams and Limited Downloads made through Covered Services (including but not limited to Licenses under this Agreement), until such amount is fully recouped, unless RIAA notifies HFA of a different allocation of the Advance Payments among the accounts of Participating RIAA Members from time to time. HFA shall provide to RIAA or an independent accounting firm designated by RIAA sufficient accounting information to allow payments between RIAA and Participating RIAA Members, or vice versa, as necessary for each Participating RIAA Member ultimately to have paid to RIAA a net amount equal to that portion of the Advance Payments recouped by royalties actually owed by such Participating RIAA Member hereunder.

4.5. At the request of HFA, with RIAA's written consent, which consent shall not be withheld unreasonably, Advance Payments may be applied to other undisputed amounts (*e.g.*, other mechanical royalties) owed by Participating RIAA Members to HFA on behalf of its publisher-principals.

5. Royalty. The royalty rate payable under a License shall be determined through negotiation and/or a CARP proceeding. The applicable rate will be structured as determined through negotiation or by the CARP, and may comprise separate royalty rate components for distinct uses of the musical work authorized by the License. The Parties shall meet to negotiate royalty rates in good faith, with the goal of concluding such negotiations promptly after the launch of Covered Services, and if an agreement is reached, jointly petition the U.S. Copyright Office for its adoption pursuant to 37 C.F.R. § 251.63(b). NMPA reserves its right to seek interest as a part of such royalty rate determination. RIAA reserves its right to seek to have such royalty rate determination reflect any payments under foreign copyrights in the case where On-Demand Streams or Limited Downloads are transmitted to users outside of the United States. Whether royalty rates are determined by negotiation or a CARP, and regardless of how royalty rate categories may be denominated, the Parties shall seek a determination of royalty rates such that it is clear which royalty rates are applicable to each of On-Demand Streams and Limited Downloads.

6. Accounting and Payment.

6.1. Beginning with the issuance of a License, a Participating RIAA Member will be required to account to HFA on a quarterly basis for activity under such License, 45 days after the close of each quarter, providing information comparable to that presently provided for physical products, and specifically including the number of On-Demand Streams and Limited Downloads of each work made during such quarter. Without limitation, quarterly reports shall include a breakdown of On-Demand Streams and Limited Downloads made by Covered Services under Licenses in the applicable quarter, by musical work and delivery method code (indicating On-Demand-Streams and/or Limited Downloads), and including ISRC number if available, catalog number if available and HFA license number if available (in the same manner indicated by the Participating RIAA Member in its License request), and shall identify the specific Covered Services in which such On-Demand Streams and Limited Downloads were made. Each Participating RIAA Member shall preserve all usage and financial data that reasonably should be expected to be relevant, upon the determination of royalty rates, to the calculation of royalties hereunder and use commercially reasonable efforts to require that each Covered Service it has authorized hereunder to make On-Demand Streams and Limited Downloads does the same. Subject to Article 4 and Section 3.3, upon the final non-appealable determination of royalty rates for On-Demand Streams and Limited Downloads through negotiation and/or a CARP proceeding, each Participating RIAA Member shall make the applicable payment for all previous quarters then completed, from the launch of the applicable Covered Services to date, within 45 days, to be accompanied by a cumulative statement setting forth and aggregating the information provided in the previous quarterly reports supplied under this Agreement. Thereafter, on a quarterly basis, 45 days after the close of each quarter, each Participating RIAA Member shall account to HFA for activities and/or revenues realized on such activities during such quarter as determined through negotiation and/or by regulation, providing such information as is required by regulation, a CARP, and/or a negotiated rate agreement, and, subject to Article 4 and Section

3.3, pay royalties at the applicable rate. Notwithstanding the foregoing, NMPA reserves its right to seek more frequent access, including without limitation real-time access, to usage information.

6.2. At the request of HFA, a Participating RIAA Member shall accompany its quarterly reports with any available data in addition to that described in Section 6.1 concerning the numbers of On-Demand Streams and Limited Downloads made through Covered Services operated or authorized by such Participating RIAA Member (but not any personally identifying information), which data is regularly gathered or compiled by such Participating RIAA Member or provided to such Participating RIAA Member by its licensees with the right to disclose such data to HFA hereunder; provided that a Participating RIAA Member may provide any such data to HFA in whatever form it is available to such Participating RIAA Member in the ordinary course of its business and subject to any applicable confidentiality and other contractual use restrictions; and provided further that, before making any such request, HFA shall review with the Participating RIAA Member the types of such data the Participating RIAA Member has and can disclose to HFA, and the form in which such data is available, and HFA shall not request, and Participating RIAA Members shall not be required to provide, data that (given the volume and form of such data, the degree to which such data is reflected in quarterly reports, the data processing capabilities of HFA and the Participating RIAA Member, HFA's intentions to use such information, and other relevant factors) would not be commercially reasonable to provide. In addition, to the extent such information is available to a Participating RIAA Member and can be disclosed to HFA hereunder, at the request of HFA, a Participating RIAA Member shall accompany its quarterly reports with the total number of subscribers to and total number of subscriber months for each Covered Service operated or authorized by such Participating RIAA Member during the reporting period; provided that any such information relating to a Covered Service operated by a Participating RIAA Member shall be subject to an appropriate confidentiality restriction, and any such information provided to a Participating RIAA Member by a third party shall be subject to any applicable confidentiality and other contractual use restrictions. Notwithstanding the foregoing, to the extent that information requested by HFA under this Section 6.2 is subject to existing, proposed or future confidentiality restrictions that would preclude its disclosure to HFA, the relevant Participating RIAA Member shall in good faith seek the consent of the party that is the source of such information to disclose such information to HFA, subject to appropriate confidentiality restrictions.

7. Term. The term of this Agreement shall commence on the Effective Date and, subject to Sections 4.2 and 8.5, continue until the final non-appealable determination of royalty rates for each of On-Demand Streams and Limited Downloads through negotiation and/or a CARP proceeding. New Licenses shall continue to be issued pursuant to this Agreement for the duration of such term. Thereafter, RIAA member companies may request, and HFA shall issue, mechanical licenses covering On-Demand Streams and Limited Downloads at the applicable royalty rates in accordance with its customary practices for the issuance of licenses where there is an applicable statutory rate, which the Parties currently understand to include the means of application described in Section 3.1. Notwithstanding the foregoing, Licenses once issued under this arrangement shall remain in effect unless terminated for default in respect to payment (once royalty rates are determined) or accounting (either before or after royalty rates are determined) pursuant to 17 U.S.C. § 115(c)(6) (or other applicable provision of law, if any), it being understood that a License may not be terminated for such a default where the default is remedied as provided in 17 U.S.C. § 115(c)(6). In addition, the provisions of Sections 3.6, 4.2, 4.4 and

4.5, and of Articles 6 and 7, shall survive the expiration or termination of this Agreement or any License under this Agreement.

8. Legal Framework for Agreement.

8.1. Subject to the other provisions of this Article 8, in order to settle issues in dispute and avoid litigation, provide assurance to record companies seeking to launch digital music services and enable HFA's issuance of license forms for Covered Services hereunder:

(a) The Parties agree that under current law the process of making On-Demand Streams through Covered Services (from the making of server reproductions to the transmission and local storage of the stream), viewed in its entirety, involves the making and distribution of a DPD, and further agree that such process in its entirety (i.e., inclusive of any server reproductions and any temporary or cached reproductions through to the transmission recipient of the On-Demand Stream) is subject to the compulsory licensing provisions of Section 115 of the Copyright Act. The Parties further agree that under current law the process of making streams that would qualify for a statutory license under Section 114(d)(2) of the Copyright Act does not involve the making or distribution of a DPD, and thus does not require a mechanical license. The foregoing does not express or imply any agreement that, and shall not be used to support any argument that, the process of making On-Demand Streams other than through Covered Services, or the process of making streams that would not qualify for a statutory license under Section 114(d)(2) of the Copyright Act (including, without limitation, because such streams are part of an "interactive service" (as that term is defined in Section 114(j)(7)) or exceed the "sound recording performance complement" (as that term is defined in Section 114(j)(13)) does or does not involve the making and distribution of a DPD, and the Parties expressly reserve all their rights with respect to that issue.

(b) The Parties agree that under current law the process of making Limited Downloads through Covered Services (from the making of server reproductions to the transmission and local storage of the Limited Download), viewed in its entirety, involves the making and distribution of a DPD, and further agree that such process in its entirety (*i.e.*, inclusive of any server reproductions and any temporary or cached reproductions through to the transmission recipient of the Limited Download) is subject to the compulsory licensing provisions of Section 115 of the Copyright Act.

(c) The Parties agree that under current law a compulsory license to make On-Demand Streams and Limited Downloads through Covered Services (from the making of server reproductions to the transmission and local storage of the On-Demand Streams and Limited Downloads) is available under Section 115 of the Copyright Act.

8.2. Subject to Sections 8.3 and 8.5, for the term of this Agreement, no Party, no Participating RIAA Member and no Participating NMPA/HFA Publisher shall take a position contrary to or inconsistent with Section 8.1, or lend support or resources, financial or otherwise, to any other person or entity taking a contrary or inconsistent position, before the Copyright Office, a CARP, a court or any other government office or tribunal. Thereafter, no Party, no Participating RIAA Member and no Participating NMPA/HFA Publisher shall commence or lend support to any action in court to challenge the validity of the rates determined pursuant to

Article 5 on the ground that On-Demand Streams and Limited Downloads do not involve the making or distribution of DPDs. It is understood that, for purposes of this Section 8.2, a Participating RIAA Member or Participating NMPA/HFA Publisher shall not be deemed to lend financial support or resources to affiliated entities merely through intra-enterprise financial arrangements in the ordinary course of business.

8.3. Notwithstanding Sections 8.1 and 8.2, the Parties, Participating RIAA Members and Participating NMPA/HFA Publishers may at any time (1) raise and litigate (including, without limitation, before a CARP) the economic value of, and the appropriate royalty rates to be applied to, On-Demand Streams and Limited Downloads; (2) take or support any position they choose with respect to sound recordings (as distinguished from any musical works embodied therein) and the rights therein, including, without limitation, rights under Sections 106 and 114 of the Copyright Act, and (3) make or lend support to any arguments they choose to prosecute, or defend or counterclaim against, an infringement claim relating to activities before the Effective Date. Notwithstanding Sections 8.1 and 8.2, RIAA and Participating RIAA Members may at any time make or lend support to any arguments they choose to defend or counterclaim against an infringement claim relating to activities on or after the Effective Date, in the event that a License with respect to the relevant works is not available hereunder (it being understood that, subject to Section 8.4, NMPA, HFA and Participating NMPA/HFA Publishers may participate in the litigation of any such claim, so long as their doing so is consistent with Sections 8.1 and 8.2). The Parties agree that they will act in good faith not to induce, promote or encourage the litigation of an infringement claim relating to activities as described in the immediately preceding sentence.

8.4. To the extent that an action being litigated by RIAA and/or a Participating RIAA Member, other than that pending case in the Southern District of New York captioned *Rodgers & Hammerstein Organization v. UMG Recordings, Inc.*, involves the question of the validity of a notice of intention to obtain a compulsory license as described in Section 8.1(c) for a musical work for which a License is not available under this Agreement, neither NMPA nor HFA shall participate in or lend support to such action. The Parties agree that they will act in good faith not to induce, promote or encourage litigation concerning the validity of a notice of intention to obtain a compulsory license as described in Section 8.1(c).

8.5. To the extent that a final, non-appealable decision of the Copyright Office or a court, or any new legislation, is inconsistent with Section 8.1, this Agreement shall be inapplicable to the extent of the inconsistency as of the date thereof, but subject to Article 4, Participating RIAA Members shall not be entitled to a refund of any monies paid prior to such date.

8.6. This Agreement is entered into in settlement and compromise of certain disputes among the Parties and to clarify certain aspects of the licensing of On-Demand Streams and Limited Downloads. Nothing in this Article 8 shall be used by, or be enforceable by, a third party not a Party to this Agreement, other than a Participating RIAA Member or Participating NMPA/HFA Publisher, in any manner or in any context, including without limitation in any legal proceeding. This Agreement does not give rise to any third-party beneficiary rights in any party other than Participating RIAA Members and Participating NMPA/HFA Publishers. The agreements set forth in this Article 8 and the course of dealing hereunder shall be inadmissible, and shall not be used to support any argument of law, in any litigation or arbitration relating to

(1) activities before the Effective Date or (2) activities other than making and distributing On-Demand Streams and Limited Downloads through Covered Services, except making streams that would qualify for a statutory license under Section 114(d)(2) of the Copyright Act.

9. Copyright Office Proceedings.

9.1. RIAA and NMPA promptly shall file in the Copyright Office, in the Mechanical and Digital Phonorecord Delivery Compulsory License rulemaking proceeding (docket number 2000-7) (the "Proceeding"), an appropriate mutually agreeable document (the "Joint Statement") signed by representatives of both RIAA and NMPA and (1) explaining that they have entered into this Agreement to resolve certain differences between them and enable the expeditious launch of subscription music services; and (2) describing the material terms of this Agreement (including without limitation the agreement in Section 8.1). Unless the Parties agree otherwise, the Joint Statement shall not address the question of whether the Copyright Office should or should not proceed with the Proceeding, and none of the Parties shall use the existence of the Agreement to argue to the Copyright Office that the Office should or should not proceed with the Proceeding.

9.2. Either in the Joint Statement, in joint comments submitted in response to the Copyright Office's Notice of Proposed Rulemaking dated August 28, 2001, or in a separate petition signed by representatives of both Parties to be filed in the Copyright Office promptly after the Effective Date, RIAA and NMPA shall request that the Copyright Office amend 37 C.F.R. § 201.18 to facilitate the licensing process for digital music services by addressing in a mutually agreeable manner such procedural issues as:

(a) Permitting combined notices of intention;

(b) Permitting service of notices of intention on the copyright owner's agent, and designating HFA as agent for the receipt of such notices;

(c) Eliminating the requirement that officer/director information be provided for publicly traded companies and their subsidiaries;

(d) Permitting notices of intention to be signed by any authorized representative of the licensee;

(e) Permitting mailing to a known correct address of the copyright owner; and

(f) Permitting the service of notices of intention by regular mail.

10. Congress. As soon as practicable after the Effective Date, and before any relevant congressional hearings then scheduled, if possible, the Parties shall draft and submit a mutually agreeable letter to appropriate members of Congress describing this Agreement and the benefits thereof.

11. Memoranda of Understanding. Promptly after the Effective Date, HFA and RIAA shall commence good-faith negotiations to (1) revise and renew for an additional year the

Memorandum of Understanding dated September 21, 2000 (the "MOU") concerning interim licenses for DPDs, the revisions to address updated licensing procedures consistent with the licensing procedures to be implemented under this Agreement, and (2) enter into a second Memorandum of Understanding concerning certain licensing, payment and additional operational issues of mutual concern to HFA and RIAA members, which issues shall include:

(a) record companies' payment to HFA of 100% of royalties due for a particular musical work regardless of whether HFA acts as an agent for all owners of such work;

(b) record companies' provision of album label copy to HFA in order to facilitate the licensing process; and

(c) what information concerning publisher names and shares appropriately should be provided by HFA to Participating RIAA Members, and the appropriate confidentiality protections therefor.

Pending completion of such negotiations, HFA will continue to issue "Interim DPD Licenses" as described in the MOU in accordance with the practice that has developed under the MOU.

12. Economic Data. In order to help the Parties better understand and evaluate emerging business models for digital music services, RIAA and NMPA shall jointly hire an independent accounting firm to collect from Participating RIAA Members on a confidential basis information concerning the economics of emerging subscription service business models and report composite information to RIAA and NMPA for the duration of this Agreement.

13. Security. If RIAA or any Participating RIAA Member learns of any substantial (in terms of number of musical works affected, number of copies or prevalence) circumvention of security measures used by Covered Services resulting in unauthorized copying or distribution of sound recordings of musical works by authorized or unauthorized users of Covered Services, RIAA and/or the Participating RIAA Member shall use commercially reasonable efforts promptly to notify HFA of such unauthorized activity; provided, however, that RIAA and Participating RIAA Members shall be liable for damages for breach of this Article 13 only if, and to the extent, that they themselves are liable for direct, contributory or vicarious copyright infringement under applicable U.S. law, and in such case such damages shall be only those payable for such infringement.

14. Electronic Reporting. The Parties agree to work together in good faith to implement means whereby accounting information relating to Licenses will be provided to HFA in electronic, machine-readable form.

15. Publicity. RIAA and NMPA will issue a joint press release announcing this arrangement. In their communications to their members concerning this Agreement, the Parties shall recommend that their members avail themselves of this Agreement. The Parties confirm that, subject to Section 8.6, this Agreement is not confidential.

16. Miscellaneous.

16.1. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York (without giving effect to conflicts of law principles thereof).

16.2. Amendment. This Agreement may be modified or amended only by a writing signed by each of the Parties.

16.3. Entire Agreement. This Agreement expresses the entire understanding of the Parties and supersedes all prior and contemporaneous agreements and undertakings of the Parties with respect to the subject matter hereof.

16.4. No Effect on Other Agreements. Without limitation, this Agreement shall not terminate, supersede, limit or otherwise affect the enforceability of, or the rights of any of the respective parties to, any of the following agreements: (1) the Settlement Agreement dated as of October 17, 2000 between HFA, MPL Communications, Inc. and Peer International Corporation, on the one hand, and MP3.com, Inc., on the other, and any amendments thereto; (2) the Governing Agreement dated as of October 2000 between HFA, MPL Communications, Inc. and Peer International Corporation, on the one hand, and MP3.com, Inc., on the other, and any amendments thereto; (3) the Digital Phonorecord Delivery License dated January 15, 1999 between HFA and Emusic.com Inc., and any amendments thereto; and (4) the Amendment Agreement dated November 2000 between HFA and Emusic.com Inc., and any amendments thereto.

16.5. Counterparts. This Agreement may be executed in counterparts, including by means of facsimile, each of which shall be deemed to be an original, but which taken together shall constitute one agreement.

16.6. Headings. The titles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Edward P. Murphy
President and CEO, NMPA

Hilary B. Rosen
President and CEO, RIAA

Gary Churgin
President and CEO HFA

Cary Sherman
Senior Executive Vice President
and General Counsel, RIAA

HFA/RIAA Electronic License Request & Output File Layout

Acceptable Data Formats:

1. *MS Access database*
2. *MS Excel Spreadsheets (with proper headings)*
3. *Flat File (follow the file layout below)*

	Description	Type	Length	Decimal	Input Option
1	Manufacturer Number	A	6		M
2	Transaction Date	N	8	0	M
3	Manufacturer Request Number	N	8	0	M
4	Label Name	A	15		M
5	ISRC Code	A	15		M
6	Playing Time - Minutes	N	3	0	M
7	Playing Time - Seconds	N	2	0	M
8	Artist	A	200		M
9	Song Title	A	200		M
10	A/K/A Song Title	A	200		O
11	ISWC Code	A	11		O
12	HFA Song Code	A	6		O
13	Song Writer(s)	A	200		C*
14	Publisher Name	A	60		C*
15	HFA Publisher Number	A	6		O
16	Publisher Share	N	7	4	O
17	Catalog Number	A	15		C*
18	Album (physical product) Title	A	200		C*
19	UPC Code	A	16		C*
20	Configuration Code	A	2		M
21	License Type	A	1		M
22	Server Fixation Date	N	8	0	M
23	Rate Code	A	1		C**
24	Rate In Cents	N	7	7	C**
25	Rate In Percentage of Statutory	N	5	2	C**
26	Rate In Percentage of Minimum Statutory	N	5	2	C**
27	HFA License Number	N	10		*Output*
28	HFA License Reject Code	A	2		*Output*
29	HFA Flag for Amended Publisher Data	A	1		*Output*

KEY:

TYPE:
A = Alphanumeric Field
N = Numeric Field

LENGTH: For Alphanumeric fields, it is the maximum number of characters required.
For Numeric fields, it is the exact number of characters required.

DECIMAL: Number of characters after decimal (for numeric fields only)

INPUT OPTION:
M = Mandatory
O = Optional
C* = Conditional — As agreed, label must provide either: (a) Songwriter *or* (b) Publisher, Catalog Number, Album Title and UPC. If (a) is provided, then (b) is not required; and vice versa.
C** = Conditional — One of the rate code fields from 23-26 must be completed

HFA/RIAA Electronic License Request & Output File Layout: Field Explanations

	Field	Type	Explanation	Example
1	Manufacturer Number	M	Account number assigned by HFA to Licensee	M12345
2	Transaction Date	M	Date electronic license request submitted to HFA	Format: YYYYMMDD Example: 3/4/2001 Data Entered: 20010304
3	Manufacturer Request Number	M	Unique identifying number (numerical only) assigned by Licensee for each work for which a license is requested	12345678
4	Label Name	M	The name of the record label that produced the applicable recording	Epic
5	ISRC Code	M	*International Standard Recording Code*, ISRC code assigned to the recording by the record label.	USSM19804780
6	Playing Time - Minutes	M	The number of minutes in the duration of the applicable recording	Duration = 5 minutes and 52 seconds Data entered: 005
7	Playing Time – Seconds	M	The number of seconds over the last full minute in the duration of the applicable recording	Duration = 5 minutes and 52 seconds Data entered: 52
8	Artist	M	The name of the artist performing the applicable recording	John Lennon, Paul McCartney
9	Song Title	M	Title of work for which a License is requested	Yesterday
10	A/K/A Song Title	O	Other names by which the work is known	Over the Rainbow; Somewhere Over the Rainbow
11	ISWC Code	O	*International Standard Musical Work Code*. Code assigned to works by the network of ISO/ISWC Local or Regional agencies	Example: T-034.524.680-1 Data Entered: T0345246801
12	HFA Song Code	O	Identifier assigned by HFA to identify a work uniquely	Example: P12345
13	Songwriter(s)	C *Provide either: (a) Songwriter or (b) Publisher, Catalog #, Album Title and UPC*	Name of the composer(s) of the work.	Format: [First Name] [Last Name], [First Name], etc Example: Michael Ross, Tom Smith

14	**Publisher Name**	C *Provide either: (a) Songwriter or (b) Publisher, Catalog #, Album Title and UPC*	Name of publisher owning a share of the work. Additional publishers should be listed on separate lines using the same manufacturer's request number assigned to the work.	EMI Mills	
15	**HFA Publisher Number**	O	Identifier assigned by HFA to identify a publisher uniquely.	P12345	
16	**Publisher Share**	O	Percent of song owned by publisher.	Example: 66.667% Data Entered: 066.6670	
17	**Catalog Number**	C *Provide either: (a) Songwriter or (b) Publisher, Catalog #, Album Title and UPC*	The catalog number of a prior physical product that has been previously licensed (where applicable.)	12345-2	
18	**Album (physical product) Title**	C *Provide either: (a) Songwriter or (b) Publisher, Catalog #, Album Title and UPC*	The title of a prior physical product that has been previously licensed (where applicable)	Parachute	
19	**UPC Code**	C *Provide either: (a) Songwriter or (b) Publisher, Catalog #, Album Title and UPC*	The UPC code of a prior physical product that has been previously licensed (where applicable).	706301694728	
20	**Configuration Code**	M	Code designating configuration type(s) applicable. Numerous options available; most relevant are in example column.	[redacted]	Use in Covered Services under this Agreement (includes LT, LU and S below)
				LT	*Time-Limited Digital Phonorecord Delivery*
				LU	*Use Limited Digital Phonorecord Delivery*
				S	*On-Demand Streaming (Single)*
				[redacted]	Digital Phonorecord Delivery (Single)
21	**License Type**	M	Classification of license type requested. Numerous options available; most relevant is in example column.	[redacted]	Digital
22	**Server Fixation Date**	M	The date the applicable recording was or is expected to be fixed to the server for distribution via streaming or downloading.	Format: YYYYMMDD Example: 3/4/2001 Data Entered: 20010304	

23	Rate Code	C (one of the rate fields from 23 – 26 must be completed).	Code designating type of rate applicable. Numerous options available; most relevant are in example column.	T	Statutory rate to be determined under this Agreement
				R	Under controlled composition clause in contract where controlled rate applies
				S	Statutory (already determined)
24	Rate in Cents	C (one of the rate fields from 23 – 26 must be completed)	Rate indicated as a penny rate.	.0765000	
25	Rate in Percentage of Statutory	C (one of the rate fields from 23 – 26 must be completed)	Rate indicated in percentage of statutory.	075.00	
26	Rate in Percentage of Minimum Statutory	C (one of the rate fields from 23 – 26 must be completed)	Rate indicated in a percentage of minimum statutory.	075.00	
27	HFA License Number	Output	Number assigned by HFA for each license	1010120001	
28	HFA License Reject Code	Output	Code designating reason why request was not licensable as submitted. Numerous options available; most relevant are in example column.	01	NO MATCH FOUND (FOR OTHER THAN SPECIFICALLY LISTED REJECT CODES)
				02	DUPLICATE LICENSE REQUEST (1ST PASS - PRELIMINARY SCAN; WITHIN THE CURRENT BATCH)
				03	DUPLICATE LICENSE REQUEST (2ND PASS; ALREADY LICENSED; PART OF EDIT VALIDATION PROCESS)
				10	SONG TITLE NOT FOUND
				11	SONG TITLE MATCH ONLY, INSUFFICIENT FOR LICENSE
				12	SONG TITLE AND ARTIST MATCH ONLY, INSUFFICIENT FOR LICENSE
				13	SONG TITLE AND ALBUM MATCH ONLY, INSUFFICIENT FOR LICENSE
				14	SONG TITLE AND CATALOG / UPC # MATCH ONLY, INSUFFICENT FOR LICENSE

				21	CONTROLLED RATE REQUEST COULD NOT BE MATCHED TO PREVIOUSLY
				81	PUBLISHER NOT REPRESENTED BY HARRY FOX AGENCY
				82	PUBLISHER UNKNOWN
				83	PUBLISHER OPTED-OUT OF AGREEMENT
				91	ORIGINAL VERSION OF SONG IS IN THE PUBLIC DOMAIN IN THE USA
				92	PUBLISHER OWNERSHIP NOT YET VERIFIED
				93	SONG PLACED ON HOLD FOR LICENSING BY PUBLISHER
				94	SONG HAS RESTRICTIONS; REQUIRES PUBLISHER APPROVAL
				95	OLD DERIVATIVE VERSION OF SONG, CURRENT PUBLISHER UNKNOWN
				96	INVALID SONG CODE
29	**HFA Flag for Amended Publisher Data**	Output	Indicates that publisher information submitted by licensee differs on HFA database (for HFA represented publishers only)	Y	Flagged so that requestor can note that HFA publisher information differs from that submitted

EXHIBIT CO 0004

Agreement

This agreement (the "Agreement"), dated as of October 5, 2001 ("Effective Date"), is made by and between the Recording Industry Association of America, Inc. ("RIAA"), on the one hand, and National Music Publishers' Association, Inc. ("NMPA") and The Harry Fox Agency, Inc. ("HFA"), on the other (all of the foregoing collectively referred to as the "Parties").

WHEREAS, record companies desire to offer to consumers, or authorize others to provide to consumers, certain digital music services that provide On-Demand Streams and Limited Downloads (as defined below);

WHEREAS, music publishers desire to make their copyrighted musical works widely available to consumers by licensing such services;

WHEREAS, while the Parties have differed concerning certain legal and procedural questions implicated by the licensing of musical works for use in such services, record companies have always believed that musical work copyright owners should receive for the use of musical works in digital music services a fair royalty that reasonably reflects the value of the use of those works, irrespective of the particular rights of the copyright owner applicable to that use, and music publishers have always believed that their copyrighted works should be made available through such services for fair compensation;

WHEREAS, there has been litigation concerning the use of musical works in digital music services; the U.S. Copyright Office has issued a Notice of Inquiry whether to conduct a rulemaking concerning the legal status of On-Demand Streams and Limited Downloads; the U.S. Copyright Office has issued a report pursuant to Section 104 of the Digital Millennium Copyright Act addressing certain issues relating to streaming; and certain record companies may prefer to make business decisions concerning the launch of Covered Services (as defined below) with greater assurance concerning the legal status of such services;

WHEREAS, the Parties desire to avoid the uncertainty and expense of litigation concerning the use of copyrighted musical works by Covered Services, and to provide assurance to record companies and others seeking to offer such services to consumers;

WHEREAS, Section 115(c)(3) of the U.S. Copyright Act authorizes voluntary negotiations for determining royalty rates and terms under the mechanical compulsory license; and

WHEREAS, in settlement of their differences and to facilitate the expeditious and widespread launch of digital music services, the Parties have reached this Agreement with respect to terms pursuant to which RIAA member record companies may obtain licenses to make and authorize On-Demand Streams and Limited Downloads of musical works in Covered Services;

NOW, THEREFORE, pursuant to 17 U.S.C. § 115(c)(3), and in consideration of the mutual promises contained in this Agreement and for other good and valuable consideration, the

adequacy and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Covered Services. Any member of RIAA that seeks to use, or authorize the use of, a copyrighted musical work for which an HFA publisher-principal has the right to grant the rights that are the subject matter of this Agreement in connection with the operation of one or more Covered Services may obtain through HFA on behalf of such HFA publisher-principal a mechanical license ("License") to make On-Demand Streams and Limited Downloads of the work through Covered Services, through to the end user, including by making server and related reproductions of the work used in the operation of Covered Services.

1.1. "Covered Service" means a service that offers (but the offerings of which are not necessarily limited to) On-Demand Streams and/or Limited Downloads of sound recordings of musical works from servers located within the United States (including the territories and possessions thereof), where the basic charge to users for the service is a recurring subscription fee (in contrast to the basic charge being a per-download, per-play or per-song fee), including any use of such a service on a limited basis without charge to users in order to promote the subscription service.

1.2. "On-Demand Stream" means an on-demand, real-time digital transmission of a sound recording of a single musical work to allow a user to listen to a particular sound recording chosen by the user at a time chosen by the user, using streaming technology, which may include but is not limited to Real Audio or Windows Media Audio, that is configured by the provider of the Covered Service in a manner designed so that such transmission will not result in a substantially complete reproduction of a sound recording being made on a local storage device (*e.g.*, the hard drive of the user's computer or a portable device) so that such reproduction is available for listening other than at substantially the time of the transmission.

1.3. "Limited Download" means a digital transmission of a time-limited or other use-limited download of a sound recording of a single musical work to a local storage device (*e.g.*, the hard drive of the user's computer or a portable device), using technology designed to cause the downloaded file to be available for listening only either (1) during a limited time (*e.g.*, a time certain or a time tied to ongoing subscription payments) not to extend more than thirty (30) days beyond the expiration of the user's subscription, or (2) for a limited number of times not to exceed twelve (12) times after the expiration of the user's subscription.

1.4. Any member of RIAA that obtains a License hereunder is referred to herein as a "Participating RIAA Member." Any member of NMPA or HFA publisher-principal that grants a License and/or accepts a portion of an Advance Payment hereunder is referred to herein as a "Participating NMPA/HFA Publisher." The terms "Participating RIAA Member" and "Participating NMPA/HFA Publisher" are limited to such entities and their majority-owned subsidiaries.

1.5. Any digital music service that is majority owned by one or more RIAA members in the aggregate shall be entitled directly to obtain a License hereunder, and so shall be treated as a "member of RIAA" for purposes of Section 3.1. If such a service either obtains a License directly or is authorized under a License hereunder to make On-Demand Streams and/or

Limited Downloads through Covered Services, such service shall be treated as a "Participating RIAA Member" for all purposes of this Agreement.

2. Covered Deliveries.

2.1. A License with respect to a musical work includes all reproduction, distribution and DPD rights necessary for Covered Services to make On-Demand Streams and Limited Downloads of that work, from the making of server reproductions to the transmission and local storage of the On-Demand Streams or Limited Downloads. A License does not extend to other transmissions made by a Covered Service or to activities not encompassed by a mechanical license, including, without limitation, print or display rights, merchandising rights, adaptation (derivative work) rights except as provided in Section 115(a)(2) of the Copyright Act, rights to synchronize musical works with visual images resulting in audiovisual works, or karaoke rights, all of which rights are specifically reserved. The Parties agree that server reproductions made under a License to transmit On-Demand Streams or Limited Downloads may be used to make transmissions other than On-Demand Streams and Limited Downloads; provided that the foregoing is without prejudice to any applicable requirement, if any, that the Participating RIAA Member also obtain a license for such other transmissions made using such server reproductions. It is understood that this Agreement does not address or extend to any performance rights that may be implicated by the making of On-Demand Streams or Limited Downloads through Covered Services.

2.2. A License includes the right to make, and there shall be no separate payment or accounting for, On-Demand Streams of Promotional Excerpts (as defined below) of sound recordings of musical works licensed hereunder used for promotional purposes, provided that the applicable Participating RIAA Member shall be deemed likewise to authorize the relevant copyright owner or copyright owners of such musical work (or an organization of copyright owners designated by such copyright owners as their common agent) to make On-Demand Streams of Promotional Excerpts of that sound recording for the purpose of promoting that musical work without payment of any royalty. "Promotional Excerpt" is defined as a stream consisting of no more than thirty (30) seconds of playing time of the sound recording of a musical work, or in the case of sound recordings with a playing time of more than five minutes, a stream that is of no more than the lesser of ten percent (10%) or sixty (60) seconds of playing time of the sound recording of the musical work.

3. Licensing Process.

3.1. Commencing on the Effective Date, a member of RIAA may submit License requests in electronic form, either individually or batched, and either for On-Demand Streams and/or Limited Downloads alone or in combination with other configurations, substantially in accordance with Exhibit A. Promptly after the Effective Date, during the opt-out period described in Section 3.2, the Parties shall arrange discussions between appropriate personnel of HFA and of certain RIAA members concerning electronic licensing procedures, with the goal of refining and testing HFA's electronic licensing procedures so that they can be used readily for the issuance of mechanical licenses expeditiously following the completion of such opt-out period, and with the goal of enhancing such procedures so that they later can be used readily by RIAA members to request and obtain mechanical licenses for all configurations for which they

desire licenses in a single request. In addition, a member of RIAA may submit License requests by other means generally accepted by HFA, including but not limited to SirNet (for so long as it is available), HFA's new web-based licensing system (when it becomes available), and HFA's standard paper form (but only using paper forms for complex License requests (e.g., requests involving medleys or samples), in limited numbers during times when electronic licensing capabilities are unavailable, or at other times in numbers that are generally consistent with such RIAA member's past use of paper forms, and in any case in numbers that do not exceed what HFA can reasonably be expected to process under the circumstances). HFA may modify its license request and license forms from time to time, provided that it gives reasonable notice thereof to RIAA and Participating RIAA Members and such modifications do not unreasonably affect the ability of Participating RIAA Members to submit license requests and obtain licenses. License forms may be issued electronically or in paper form, but when a Licensee submits a License request in electronic form in accordance with this Section 3.1, HFA shall, promptly after processing the License request, return to such Licensee an electronic file substantially in accordance with Exhibit A, with (1) the addition of that information indicated in Exhibit A as being "output" fields, (2) the addition of information, other than individual publisher share information, to complete any blank optional fields in the request, to the extent that such information is available in HFA's databases and is matched to the request in the License issuance process, (3) the substitution of information concerning HFA publisher-principal names where such information in HFA's databases is different from that in the request, and (4) the aggregated share of Participating NMPA/HFA Publishers. If an RIAA member submits a License request in accordance with this Section 3.1 but the request contains insufficient information for HFA to find a match for the relevant work in its databases, HFA will work with such RIAA member to provide the information necessary to enable a License to be issued, and if such RIAA member resubmits such request with the necessary information and the License can be issued, the provisions of Section 3.4 shall apply from the date of the original request. The Parties acknowledge the importance to NMPA, HFA and music publishers of having License requests submitted promptly, and the importance to RIAA and record companies of having License forms issued promptly. The Parties shall cooperate in good faith to promote each of those goals.

3.2. The authority of HFA to license any individual musical work on behalf of its publisher-principals is subject to the approval of the relevant publisher-principal. HFA shall not require its publisher-principals to opt in to this Agreement either before or after commencing to issue Licenses, but HFA may establish an opt-out period before commencing to issue Licenses, provided that such period ends not later than six (6) weeks following the Effective Date. If an HFA publisher-principal at any time requests that HFA not issue Licenses on its behalf (either with respect to particular musical works or in general), HFA will honor that request; provided, however, that any such request shall not affect the validity or subsistence of a License issued prior to such request. During the opt-out period described in Section 3.2, HFA shall notify RIAA weekly of HFA publisher-principals that have notified HFA that they do not wish to make Licenses of their works available under this Agreement. Thereafter, through December 31, 2002, HFA shall notify RIAA quarterly of HFA publisher-principals that have notified HFA that they do not wish to make Licenses of their works available under this Agreement.

3.3. HFA shall issue mechanical licenses for DPD configurations (including but not limited to Licenses under this Agreement) with respect to a musical work in its entirety if one or more of its publisher-principals owns or controls a partial interest in such musical work, even if other co-owners of such musical work are not HFA publisher-principals, except that, pursuant

to Section 3.2, if all the HFA publisher-principals that own or control a partial interest in such work request that HFA not issue mechanical licenses on their behalf, HFA will not issue such licenses. In the case of a mechanical license issued as descibed in this Section 3.3, a Participating RIAA Member shall pay directly to each co-owner that is not an HFA publisher-principal (or such co-owner's authorized payee) such co-owner's share of the applicable royalty payments under Section 6.1.

3.4. License forms issued by HFA pursuant to this Agreement shall be retroactive to the date of the License request made by the Participating RIAA Member on or after the Effective Date in accordance with Section 3.1. To the extent that the Participating RIAA Member makes or authorizes On-Demand Streams and Limited Downloads of musical works pending the processing by HFA of license forms in response to proper License requests submitted on or after the Effective Date in accordance with Section 3.1, NMPA and HFA shall not directly or indirectly file, encourage, aid, support, finance, contribute to, promote, or participate in any claim, suit, action or proceeding asserting that such activities are infringing.

3.5. Subject to Section 3.3, HFA shall also accept License requests to make On-Demand Streams and Limited Downloads through Covered Services of musical works as to which no HFA publisher-principal has any ownership interest or control, in whole or in part, and for which a License is not otherwise available under this Agreement. In such a case, HFA shall use commercially reasonable efforts to secure the requested Licenses from the relevant non-HFA publisher-principals on the same terms as apply to HFA publisher-principals under this Agreement. (Non-HFA publisher-principals who grant Licenses through this arrangement shall be referred to as "Participating Independent Publishers".) In addition to any commission charged to the Participating Independent Publisher, HFA may charge the relevant Participating RIAA Member a one-time administrative fee of ninety-five dollars ($95) for each publisher that agrees to become a Participating Independent Publisher (it being understood that no such administrative fee shall be payable for any subsequent Licenses issued on behalf of that Participating Independent Publisher to any Participating RIAA Member), unless the Participating Independent Publisher also authorizes HFA to grant mechanical licenses other than Licenses under this Agreement, in which case no such fee shall apply. The Advance Payment described in Article 4 may be applied to such administrative fee when payable by a Participating RIAA Member specified by RIAA, ~~and~~ HFA shall provide to RIAA or an independent accounting firm designated by RIAA sufficient information concerning liability for such administrative fee to allow reconciliation of the Advance Payments as described in Section 4.4. When HFA arranges Licenses from Participating Independent Publishers pursuant to this Section 3.5, HFA shall collect and distribute mechanical royalties to such Participating Independent Publisher (or other authorized payees) unless the Participating RIAA Member requests to make such payments directly.

3.6. It is understood that compilations of data supplied by HFA in electronic form pursuant to Section 3.1, except to the extent that they consist of data provided by the relevant Participating RIAA Member pursuant to Section 3.1, are proprietary in nature and shall not be used by the recipient Participating RIAA Member to engage in business activities in competition with HFA or for any purpose other than to request and administer licenses issued by HFA and/or other licenses such Participating RIAA Member acquires with respect to the same works or other works owned or controlled by the same copyright owners, and shall not be disclosed by the recipient Participating RIAA Member to any other party except insofar as it is reasonably

necessary to disclose specific data relating to particular works for the purpose of requesting or administering licenses issued by HFA and/or other licenses such Participating RIAA Member acquires with respect to the same works or other works owned or controlled by the same copyright owners.

3.7. Nothing in this Agreement, including but not limited to the availability of Licenses or the procedures for obtaining the same, shall preclude an RIAA member or digital music service from at any time serving or filing a notice of intention to obtain a compulsory license in accordance with applicable law or, other than in Article 8, imply that any notice of intention so served or filed is valid or invalid. Nothing in this Agreement shall preclude any digital music services from seeking, or HFA or any of its publisher-principals from granting, direct licenses to digital music services, including without limitation Covered Services, on whatever terms might be agreed upon between the relevant parties, and it is the intention of HFA to make such licenses widely available as described more fully in a press release to be issued by HFA. By taking Licenses pursuant to this Agreement, Participating RIAA Members will be able to facilitate on a prompt and widespread basis the availability of music over the Internet through Covered Services.

4. Advance Payment.

4.1. Within thirty (30) days after the Effective Date, RIAA, on behalf of Participating RIAA Members (including their licensees), shall pay to HFA a non-refundable advance royalty payment of one million dollars ($1,000,000) in the aggregate ("Advance Payment"). If, by the second anniversary of the Effective Date, there has then been no final non-appealable determination of royalty rates for On-Demand Streams and Limited Downloads through negotiation and/or a CARP proceeding, as the case may be, then, subject to Section 4.2, until such a determination, RIAA, on behalf of Participating RIAA Members (including their licensees), shall each month pay to HFA a supplementary Advance Payment of sixty-two thousand five-hundred dollars ($62,500) in the aggregate.

4.2. Effective at the second anniversary of the Effective Date or any time thereafter, RIAA may terminate this Agreement upon thirty (30) days advance written notice to NMPA and HFA. In the event RIAA does so, all Licenses previously issued under this Agreement shall terminate at the same time as this Agreement, without prejudice to the right of Participating RIAA Members thereafter to obtain new licenses under 17 U.S.C. § 115. Effective at the second anniversary of the Effective Date or any time thereafter, any Participating RIAA Member may opt out of this Agreement upon thirty (30) days advance written notice to each of the Parties. In the event a Participating RIAA Member does so, (1) the provisions of this Agreement thereafter shall not apply to such Participating RIAA Member except as provided in Article 7, and (2) all Licenses previously issued to such Participating RIAA Member under this Agreement shall terminate at such time, without prejudice to the right of such Participating RIAA Member thereafter to obtain new licenses under 17 U.S.C. § 115. In the case of termination by either RIAA or one or more Participating RIAA Members, (a) payments shall be due in accordance with Section 6.1 for activities under this Agreement prior to the termination of the relevant Licenses, (b) Advance Payments may be applied against such payments in accordance with Section 4.4, and (c) to the extent remaining, Advance Payments also may be applied to royalties due under new licenses for On-Demand Streams and Limited Downloads made through Covered Services, which licenses are issued by HFA at least one year after the

relevant date of termination to the Participating RIAA Members whose Licenses were terminated. In addition, in the event a Participating RIAA Member that is one of the five "major record companies" (as that term is commonly understood, including any successors thereto and the subsidiaries thereof) so opts out of this Agreement, RIAA's monthly supplementary Advance Payments under Section 4.1 thereafter shall be reduced proportionately, based on the number of major record companies at such time (e.g., if there are then five major record companies and one opts out, RIAA's monthly supplementary Advance Payments shall be reduced by twenty percent (20%)). In addition to the foregoing, if there is a decision of the U.S. Copyright Office or a court, or any new legislation, inconsistent with Section 8.1, with the result that mechanical royalties are not required to be paid for some or all On-Demand Streams and/or Limited Downloads made through Covered Services, then the amount of RIAA's monthly supplementary Advance Payments under Section 4.1 shall be reduced to take into account such decision or legislation, based on actual usage under this Agreement to date, with the exact amount of such reduction to be agreed upon by the Parties promptly after such decision or legislation; provided that if any such decision is appealed and finally reversed on appeal, the amount of RIAA's monthly supplementary Advance Payments under Section 4.1 shall be restored, and RIAA shall promptly pay to HFA the total amount by which the supplementary Advance Payment was reduced in the interim.

4.3. HFA shall deposit Advance Payments into an interest-bearing bank account (with such interest being treated as part of the Advance Payment). HFA shall be free to distribute the initial and supplementary Advance Payments to HFA publisher-principals in accordance with a reasonable and nondiscriminatory methodology based on market share, actual usage or a per musical work payment (which methodology HFA shall provide to RIAA), as well as to any Participating Independent Publishers pursuant to Section 3.5. Except insofar as it is recouped pursuant to Sections 4.4 and/or 4.5, the Advance Payment shall be nonrefundable.

4.4. Upon the final non-appealable determination of royalty rates for On-Demand Streams and Limited Downloads through negotiation and/or a CARP proceeding, as the case may be, the total amount of Advance Payments (including interest) shall be applied against undisputed amounts owed to HFA on behalf of its publisher-principals and Participating Independent Publishers by Participating RIAA Members under this Agreement. Such Advance Payments shall be applied to the accounts of individual Participating RIAA Members as specified by RIAA, or an independent accounting firm designated by RIAA, by written notice to HFA within 45 days after the date of such final non-appealable determination of royalty rates. If the Advance Payments are not fully recouped at such time, any remainder of the Advance Payments thereafter shall be applied against all undisputed amounts owed to HFA on behalf of its publisher-principals and Participating Independent Publishers by Participating RIAA Members identified by RIAA, under mechanical licenses issued by HFA for On-Demand Streams and Limited Downloads made through Covered Services (including but not limited to Licenses under this Agreement), until such amount is fully recouped, unless RIAA notifies HFA of a different allocation of the Advance Payments among the accounts of Participating RIAA Members from time to time. HFA shall provide to RIAA or an independent accounting firm designated by RIAA sufficient accounting information to allow payments between RIAA and Participating RIAA Members, or vice versa, as necessary for each Participating RIAA Member ultimately to have paid to RIAA a net amount equal to that portion of the Advance Payments recouped by royalties actually owed by such Participating RIAA Member hereunder.

4.5. At the request of HFA, with RIAA's written consent, which consent shall not be withheld unreasonably, Advance Payments may be applied to other undisputed amounts (*e.g.*, other mechanical royalties) owed by Participating RIAA Members to HFA on behalf of its publisher-principals.

5. Royalty. The royalty rate payable under a License shall be determined through negotiation and/or a CARP proceeding. The applicable rate will be structured as determined through negotiation or by the CARP, and may comprise separate royalty rate components for distinct uses of the musical work authorized by the License. The Parties shall meet to negotiate royalty rates in good faith, with the goal of concluding such negotiations promptly after the launch of Covered Services, and if an agreement is reached, jointly petition the U.S. Copyright Office for its adoption pursuant to 37 C.F.R. § 251.63(b). NMPA reserves its right to seek interest as a part of such royalty rate determination. RIAA reserves its right to seek to have such royalty rate determination reflect any payments under foreign copyrights in the case where On-Demand Streams or Limited Downloads are transmitted to users outside of the United States. Whether royalty rates are determined by negotiation or a CARP, and regardless of how royalty rate categories may be denominated, the Parties shall seek a determination of royalty rates such that it is clear which royalty rates are applicable to each of On-Demand Streams and Limited Downloads.

6. Accounting and Payment.

6.1. Beginning with the issuance of a License, a Participating RIAA Member will be required to account to HFA on a quarterly basis for activity under such License, 45 days after the close of each quarter, providing information comparable to that presently provided for physical products, and specifically including the number of On-Demand Streams and Limited Downloads of each work made during such quarter. Without limitation, quarterly reports shall include a breakdown of On-Demand Streams and Limited Downloads made by Covered Services under Licenses in the applicable quarter, by musical work and delivery method code (indicating On Demand-Streams and/or Limited Downloads), and including ISRC number if available, catalog number if available and HFA license number if available (in the same manner indicated by the Participating RIAA Member in its License request), and shall identify the specific Covered Services in which such On-Demand Streams and Limited Downloads were made. Each Participating RIAA Member shall preserve all usage and financial data that reasonably should be expected to be relevant, upon the determination of royalty rates, to the calculation of royalties hereunder and use commercially reasonable efforts to require that each Covered Service it has authorized hereunder to make On-Demand Streams and Limited Downloads does the same. Subject to Article 4 and Section 3.3, upon the final non-appealable determination of royalty rates for On-Demand Streams and Limited Downloads through negotiation and/or a CARP proceeding, each Participating RIAA Member shall make the applicable payment for all previous quarters then completed, from the launch of the applicable Covered Services to date, within 45 days, to be accompanied by a cumulative statement setting forth and aggregating the information provided in the previous quarterly reports supplied under this Agreement. Thereafter, on a quarterly basis, 45 days after the close of each quarter, each Participating RIAA Member shall account to HFA for activities and/or revenues realized on such activities during such quarter as determined through negotiation and/or by regulation, providing such information as is required by regulation, a CARP, and/or a negotiated rate agreement, and, subject to Article 4 and Section

3.3, pay royalties at the applicable rate. Notwithstanding the foregoing, NMPA reserves its right to seek more frequent access, including without limitation real-time access, to usage information.

6.2. At the request of HFA, a Participating RIAA Member shall accompany its quarterly reports with any available data in addition to that described in Section 6.1 concerning the numbers of On-Demand Streams and Limited Downloads made through Covered Services operated or authorized by such Participating RIAA Member (but not any personally identifying information), which data is regularly gathered or compiled by such Participating RIAA Member or provided to such Participating RIAA Member by its licensees with the right to disclose such data to HFA hereunder; provided that a Participating RIAA Member may provide any such data to HFA in whatever form it is available to such Participating RIAA Member in the ordinary course of its business and subject to any applicable confidentiality and other contractual use restrictions; and provided further that, before making any such request, HFA shall review with the Participating RIAA Member the types of such data the Participating RIAA Member has and can disclose to HFA, and the form in which such data is available, and HFA shall not request, and Participating RIAA Members shall not be required to provide, data that (given the volume and form of such data, the degree to which such data is reflected in quarterly reports, the data processing capabilities of HFA and the Participating RIAA Member, HFA's intentions to use such information, and other relevant factors) would not be commercially reasonable to provide. In addition, to the extent such information is available to a Participating RIAA Member and can be disclosed to HFA hereunder, at the request of HFA, a Participating RIAA Member shall accompany its quarterly reports with the total number of subscribers to and total number of subscriber months for each Covered Service operated or authorized by such Participating RIAA Member during the reporting period; provided that any such information relating to a Covered Service operated by a Participating RIAA Member shall be subject to an appropriate confidentiality restriction, and any such information provided to a Participating RIAA Member by a third party shall be subject to any applicable confidentiality and other contractual use restrictions. Notwithstanding the foregoing, to the extent that information requested by HFA under this Section 6.2 is subject to existing, proposed or future confidentiality restrictions that would preclude its disclosure to HFA, the relevant Participating RIAA Member shall in good faith seek the consent of the party that is the source of such information to disclose such information to HFA, subject to appropriate confidentiality restrictions.

7. Term. The term of this Agreement shall commence on the Effective Date and, subject to Sections 4.2 and 8.5, continue until the final non-appealable determination of royalty rates for each of On-Demand Streams and Limited Downloads through negotiation and/or a CARP proceeding. New Licenses shall continue to be issued pursuant to this Agreement for the duration of such term. Thereafter, RIAA member companies may request, and HFA shall issue, mechanical licenses covering On-Demand Streams and Limited Downloads at the applicable royalty rates in accordance with its customary practices for the issuance of licenses where there is an applicable statutory rate, which the Parties currently understand to include the means of application described in Section 3.1. Notwithstanding the foregoing, Licenses once issued under this arrangement shall remain in effect unless terminated for default in respect to payment (once royalty rates are determined) or accounting (either before or after royalty rates are determined) pursuant to 17 U.S.C. § 115(c)(6) (or other applicable provision of law, if any), it being understood that a License may not be terminated for such a default where the default is remedied as provided in 17 U.S.C. § 115(c)(6). In addition, the provisions of Sections 3.6, 4.2, 4.4 and

4.5, and of Articles 6 and 7, shall survive the expiration or termination of this Agreement or any License under this Agreement.

8. Legal Framework for Agreement.

8.1. Subject to the other provisions of this Article 8, in order to settle issues in dispute and avoid litigation, provide assurance to record companies seeking to launch digital music services and enable HFA's issuance of license forms for Covered Services hereunder:

(a) The Parties agree that under current law the process of making On-Demand Streams through Covered Services (from the making of server reproductions to the transmission and local storage of the stream), viewed in its entirety, involves the making and distribution of a DPD, and further agree that such process in its entirety (i.e., inclusive of any server reproductions and any temporary or cached reproductions through to the transmission recipient of the On-Demand Stream) is subject to the compulsory licensing provisions of Section 115 of the Copyright Act. The Parties further agree that under current law the process of making streams that would qualify for a statutory license under Section 114(d)(2) of the Copyright Act does not involve the making or distribution of a DPD, and thus does not require a mechanical license. The foregoing does not express or imply any agreement that, and shall not be used to support any argument that, the process of making On-Demand Streams other than through Covered Services, or the process of making streams that would not qualify for a statutory license under Section 114(d)(2) of the Copyright Act (including, without limitation, because such streams are part of an "interactive service" (as that term is defined in Section 114(j)(7)) or exceed the "sound recording performance complement" (as that term is defined in Section 114(j)(13)) does or does not involve the making and distribution of a DPD, and the Parties expressly reserve all their rights with respect to that issue.

(b) The Parties agree that under current law the process of making Limited Downloads through Covered Services (from the making of server reproductions to the transmission and local storage of the Limited Download), viewed in its entirety, involves the making and distribution of a DPD, and further agree that such process in its entirety (*i.e.*, inclusive of any server reproductions and any temporary or cached reproductions through to the transmission recipient of the Limited Download) is subject to the compulsory licensing provisions of Section 115 of the Copyright Act.

(c) The Parties agree that under current law a compulsory license to make On-Demand Streams and Limited Downloads through Covered Services (from the making of server reproductions to the transmission and local storage of the On-Demand Streams and Limited Downloads) is available under Section 115 of the Copyright Act.

8.2. Subject to Sections 8.3 and 8.5, for the term of this Agreement, no Party, no Participating RIAA Member and no Participating NMPA/HFA Publisher shall take a position contrary to or inconsistent with Section 8.1, or lend support or resources, financial or otherwise, to any other person or entity taking a contrary or inconsistent position, before the Copyright Office, a CARP, a court or any other government office or tribunal. Thereafter, no Party, no Participating RIAA Member and no Participating NMPA/HFA Publisher shall commence or lend support to any action in court to challenge the validity of the rates determined pursuant to

Article 5 on the ground that On-Demand Streams and Limited Downloads do not involve the making or distribution of DPDs. It is understood that, for purposes of this Section 8.2, a Participating RIAA Member or Participating NMPA/HFA Publisher shall not be deemed to lend financial support or resources to affiliated entities merely through intra-enterprise financial arrangements in the ordinary course of business.

8.3. Notwithstanding Sections 8.1 and 8.2, the Parties, Participating RIAA Members and Participating NMPA/HFA Publishers may at any time (1) raise and litigate (including, without limitation, before a CARP) the economic value of, and the appropriate royalty rates to be applied to, On-Demand Streams and Limited Downloads; (2) take or support any position they choose with respect to sound recordings (as distinguished from any musical works embodied therein) and the rights therein, including, without limitation, rights under Sections 106 and 114 of the Copyright Act, and (3) make or lend support to any arguments they choose to prosecute, or defend or counterclaim against, an infringement claim relating to activities before the Effective Date. Notwithstanding Sections 8.1 and 8.2, RIAA and Participating RIAA Members may at any time make or lend support to any arguments they choose to defend or counterclaim against an infringement claim relating to activities on or after the Effective Date, in the event that a License with respect to the relevant works is not available hereunder (it being understood that, subject to Section 8.4, NMPA, HFA and Participating NMPA/HFA Publishers may participate in the litigation of any such claim, so long as their doing so is consistent with Sections 8.1 and 8.2). The Parties agree that they will act in good faith not to induce, promote or encourage the litigation of an infringement claim relating to activities as described in the immediately preceding sentence.

8.4. To the extent that an action being litigated by RIAA and/or a Participating RIAA Member, other than that pending case in the Southern District of New York captioned *Rodgers & Hammerstein Organization v. UMG Recordings, Inc.*, involves the question of the validity of a notice of intention to obtain a compulsory license as described in Section 8.1(c) for a musical work for which a License is not available under this Agreement, neither NMPA nor HFA shall participate in or lend support to such action. The Parties agree that they will act in good faith not to induce, promote or encourage litigation concerning the validity of a notice of intention to obtain a compulsory license as described in Section 8.1(c).

8.5. To the extent that a final, non-appealable decision of the Copyright Office or a court, or any new legislation, is inconsistent with Section 8.1, this Agreement shall be inapplicable to the extent of the inconsistency as of the date thereof, but subject to Article 4, Participating RIAA Members shall not be entitled to a refund of any monies paid prior to such date.

8.6. This Agreement is entered into in settlement and compromise of certain disputes among the Parties and to clarify certain aspects of the licensing of On-Demand Streams and Limited Downloads. Nothing in this Article 8 shall be used by, or be enforceable by, a third party not a Party to this Agreement, other than a Participating RIAA Member or Participating NMPA/HFA Publisher, in any manner or in any context, including without limitation in any legal proceeding. This Agreement does not give rise to any third-party beneficiary rights in any party other than Participating RIAA Members and Participating NMPA/HFA Publishers. The agreements set forth in this Article 8 and the course of dealing hereunder shall be inadmissible, and shall not be used to support any argument of law, in any litigation or arbitration relating to

(1) activities before the Effective Date or (2) activities other than making and distributing On-Demand Streams and Limited Downloads through Covered Services, except making streams that would qualify for a statutory license under Section 114(d)(2) of the Copyright Act.

9. Copyright Office Proceedings.

9.1. RIAA and NMPA promptly shall file in the Copyright Office, in the Mechanical and Digital Phonorecord Delivery Compulsory License rulemaking proceeding (docket number 2000-7) (the "Proceeding"), an appropriate mutually agreeable document (the "Joint Statement") signed by representatives of both RIAA and NMPA and (1) explaining that they have entered into this Agreement to resolve certain differences between them and enable the expeditious launch of subscription music services; and (2) describing the material terms of this Agreement (including without limitation the agreement in Section 8.1). Unless the Parties agree otherwise, the Joint Statement shall not address the question of whether the Copyright Office should or should not proceed with the Proceeding, and none of the Parties shall use the existence of the Agreement to argue to the Copyright Office that the Office should or should not proceed with the Proceeding.

9.2. Either in the Joint Statement, in joint comments submitted in response to the Copyright Office's Notice of Proposed Rulemaking dated August 28, 2001, or in a separate petition signed by representatives of both Parties to be filed in the Copyright Office promptly after the Effective Date, RIAA and NMPA shall request that the Copyright Office amend 37 C.F.R. § 201.18 to facilitate the licensing process for digital music services by addressing in a mutually agreeable manner such procedural issues as:

(a) Permitting combined notices of intention;

(b) Permitting service of notices of intention on the copyright owner's agent, and designating HFA as agent for the receipt of such notices;

(c) Eliminating the requirement that officer/director information be provided for publicly traded companies and their subsidiaries;

(d) Permitting notices of intention to be signed by any authorized representative of the licensee;

(e) Permitting mailing to a known correct address of the copyright owner; and

(f) Permitting the service of notices of intention by regular mail.

10. Congress. As soon as practicable after the Effective Date, and before any relevant congressional hearings then scheduled, if possible, the Parties shall draft and submit a mutually agreeable letter to appropriate members of Congress describing this Agreement and the benefits thereof.

11. Memoranda of Understanding. Promptly after the Effective Date, HFA and RIAA shall commence good-faith negotiations to (1) revise and renew for an additional year the

Memorandum of Understanding dated September 21, 2000 (the "MOU") concerning interim licenses for DPDs, the revisions to address updated licensing procedures consistent with the licensing procedures to be implemented under this Agreement, and (2) enter into a second Memorandum of Understanding concerning certain licensing, payment and additional operational issues of mutual concern to HFA and RIAA members, which issues shall include:

(a) record companies' payment to HFA of 100% of royalties due for a particular musical work regardless of whether HFA acts as an agent for all owners of such work;

(b) record companies' provision of album label copy to HFA in order to facilitate the licensing process; and

(c) what information concerning publisher names and shares appropriately should be provided by HFA to Participating RIAA Members, and the appropriate confidentiality protections therefor.

Pending completion of such negotiations, HFA will continue to issue "Interim DPD Licenses" as described in the MOU in accordance with the practice that has developed under the MOU.

12. Economic Data. In order to help the Parties better understand and evaluate emerging business models for digital music services, RIAA and NMPA shall jointly hire an independent accounting firm to collect from Participating RIAA Members on a confidential basis information concerning the economics of emerging subscription service business models and report composite information to RIAA and NMPA for the duration of this Agreement.

13. Security. If RIAA or any Participating RIAA Member learns of any substantial (in terms of number of musical works affected, number of copies or prevalence) circumvention of security measures used by Covered Services resulting in unauthorized copying or distribution of sound recordings of musical works by authorized or unauthorized users of Covered Services, RIAA and/or the Participating RIAA Member shall use commercially reasonable efforts promptly to notify HFA of such unauthorized activity; provided, however, that RIAA and Participating RIAA Members shall be liable for damages for breach of this Article 13 only if, and to the extent, that they themselves are liable for direct, contributory or vicarious copyright infringement under applicable U.S. law, and in such case such damages shall be only those payable for such infringement.

14. Electronic Reporting. The Parties agree to work together in good faith to implement means whereby accounting information relating to Licenses will be provided to HFA in electronic, machine-readable form.

15. Publicity. RIAA and NMPA will issue a joint press release announcing this arrangement. In their communications to their members concerning this Agreement, the Parties shall recommend that their members avail themselves of this Agreement. The Parties confirm that, subject to Section 8.6, this Agreement is not confidential.

16. Miscellaneous.

16.1. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York (without giving effect to conflicts of law principles thereof).

16.2. Amendment. This Agreement may be modified or amended only by a writing signed by each of the Parties.

16.3. Entire Agreement. This Agreement expresses the entire understanding of the Parties and supersedes all prior and contemporaneous agreements and undertakings of the Parties with respect to the subject matter hereof.

16.4. No Effect on Other Agreements. Without limitation, this Agreement shall not terminate, supersede, limit or otherwise affect the enforceability of, or the rights of any of the respective parties to, any of the following agreements: (1) the Settlement Agreement dated as of October 17, 2000 between HFA, MPL Communications, Inc. and Peer International Corporation, on the one hand, and MP3.com, Inc., on the other, and any amendments thereto; (2) the Governing Agreement dated as of October 2000 between HFA, MPL Communications, Inc. and Peer International Corporation, on the one hand, and MP3.com, Inc., on the other, and any amendments thereto; (3) the Digital Phonorecord Delivery License dated January 15, 1999 between HFA and Emusic.com Inc., and any amendments thereto; and (4) the Amendment Agreement dated November 2000 between HFA and Emusic.com Inc., and any amendments thereto.

16.5. Counterparts. This Agreement may be executed in counterparts, including by means of facsimile, each of which shall be deemed to be an original, but which taken together shall constitute one agreement.

16.6. Headings. The titles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Edward P. Murphy
President and CEO, NMPA

Hilary B. Rosen
President and CEO, RIAA

Gary Churgin
President and CEO, HFA

Cary Sherman
Senior Executive Vice President
and General Counsel, RIAA

HFA/RIAA Electronic License Request & Output File Layout

Acceptable Data Formats:

1. *MS Access database*
2. *MS Excel Spreadsheets (with proper headings)*
3. *Flat File (follow the file layout below)*

	Description	Type	Length	Decimal	Input Option
1	Manufacturer Number	A	6		M
2	Transaction Date	N	8	0	M
3	Manufacturer Request Number	N	8	0	M
4	Label Name	A	15		M
5	ISRC Code	A	15		M
6	Playing Time - Minutes	N	3	0	M
7	Playing Time - Seconds	N	2	0	M
8	Artist	A	200		M
9	Song Title	A	200		M
10	A/K/A Song Title	A	200		O
11	ISWC Code-	A	11		O
12	HFA Song Code	A	6		O
13	Song Writer(s)	A	200		C*
14	Publisher Name	A	60		C*
15	HFA Publisher Number	A	6		O
16	Publisher Share	N	7	4	O
17	Catalog Number	A	15		C*
18	Album (physical product) Title	A	200		C*
19	UPC Code	A	16		C*
20	Configuration Code	A	2		M
21	License Type	A	1		M
22	Server Fixation Date	N	8	0	M
23	Rate Code	A	1		C**
24	Rate in Cents	N	7	7	C**
25	Rate in Percentage of Statutory	N	5	2	C**
26	Rate in Percentage of Minimum Statutory	N	5	2	C**
27	HFA License Number	N	10		*Output*
28	HFA License Reject Code	A	2		*Output*
29	HFA Flag for Amended Publisher Data	A	1		*Output*

KEY:

TYPE:
A = Alphanumeric Field
N = Numeric Field

LENGTH: For Alphanumeric fields, it is the maximum number of characters required.
For Numeric fields, it is the exact number of characters required

DECIMAL: Number of characters after decimal (for numeric fields only)

INPUT OPTION:
M = Mandatory
O = Optional
C* = Conditional — As agreed, label must provide either: (a) Songwriter or (b) Publisher, Catalog Number, Album Title and UPC. If (a) is provided, then (b) is not required; and vice versa.
C** = Conditional — One of the rate code fields from 23-26 must be completed

HFA/RIAA Electronic License Request & Output File Layout: Field Explanations

	Field	Type Mandatory (M) Optional (O) Conditional (C)	Explanation	Example
1	Manufacturer Number	M	Account number assigned by HFA to Licensee	M12345
2	Transaction Date	M	Date electronic license request submitted to HFA	Format: YYYYMMDD Example: 3/4/2001 Data Entered: 20010304
3	Manufacturer Request Number	M	Unique identifying number (numerical only) assigned by Licensee for each work for which a license is requested	12345678
4	Label Name	M	The name of the record label that produced the applicable recording	Epic
5	ISRC Code	M	*International Standard Recording Code.* ISRC code assigned to the recording by the record label.	USSM19804780
6	Playing Time - Minutes	M	The number of minutes in the duration of the applicable recording	Duration = 5 minutes and 52 seconds Data entered: 005
7	Playing Time – Seconds	M	The number of seconds over the last full minute in the duration of the applicable recording	Duration = 5 minutes and 52 seconds Data entered: 52
8	Artist	M	The name of the artist performing the applicable recording	John Lennon, Paul McCartney
9	Song Title	M	Title of work for which a License is requested	Yesterday
10	A/K/A Song Title	O	Other names by which the work is known	Over the Rainbow; Somewhere Over the Rainbow
11	ISWC Code	O	*International Standard Musical Work Code.* Code assigned to works by the network of ISO/ISWC Local or Regional agencies	Example: T-034.524.680-1 Data Entered: T0345246801
12	HFA Song Code	O	Identifier assigned by HFA to identify a work uniquely	Example: P12345
13	Songwriter(s)	C *Provide either: (a) Songwriter or (b) Publisher, Catalog #, Album Title and UPC*	Name of the composer(s) of the work.	Format: [First Name] [Last Name], [First Name], etc Example: Michael Ross, Tom Smith

14	**Publisher Name**	C *Provide either: (a) Songwriter or (b) Publisher, Catalog #, Album Title and UPC*	Name of publisher owning a share of the work. Additional publishers should be listed on separate lines using the same manufacturer's request number assigned to the work.	EMI Mills	
15	**HFA Publisher Number**	O	Identifier assigned by HFA to identify a publisher uniquely.	P12345	
16	**Publisher Share**	O	Percent of song owned by publisher.	Example: 66.667% Data Entered: 066.6670	
17	**Catalog Number**	C *Provide either: (a) Songwriter or (b) Publisher, Catalog #, Album Title and UPC*	The catalog number of a prior physical product that has been previously licensed (where applicable.)	12345-2	
18	**Album (physical product) Title**	C *Provide either: (a) Songwriter or (b) Publisher, Catalog #, Album Title and UPC*	The title of a prior physical product that has been previously licensed (where applicable)	Parachute	
19	**UPC Code**	C *Provide either: (a) Songwriter or (b) Publisher, Catalog #, Album Title and UPC*	The UPC code of a prior physical product that has been previously licensed (where applicable).	706301594728	
20	**Configuration Code**	M	Code designating configuration type(s) applicable. Numerous options available; most relevant are in example column.	CV	Use in Covered Services under this Agreement (includes LT, LU and S below)
				LT	*Time-Limited Digital Phonorecord Delivery*
				LU	*Use Limited Digital Phonorecord Delivery*
				S	*On-Demand Streaming (Single)*
				SP	Digital Phonorecord Delivery (Single)
21	**License Type**	M	Classification of license type requested. Numerous options available; most relevant is in example column.	G	Digital
22	**Server Fixation Date**	M	The date the applicable recording was or is expected to be fixed to the server for distribution via streaming or downloading.	Format: YYYYMMDD Example: 3/4/2001 Data Entered: 20010304	

23	Rate Code	C *(one of the rate fields from 23 – 26 must be completed)*	Code designating type of rate applicable. Numerous options available; most relevant are in example column.	T	Statutory rate to be determined under this Agreement
				R	Under controlled composition clause in contract where controlled rate applies
				S	Statutory (already determined)
24	Rate in Cents	C *(one of the rate fields from 23 – 26 must be completed)*	Rate indicated as a penny rate.	.0755000	
25	Rate In Percentage of Statutory	C *(one of the rate fields from 23 – 26 must be completed)*	Rate indicated in percentage of statutory.	075.00	
26	Rate in Percentage of Minimum Statutory	C *(one of the rate fields from 23 – 26 must be completed)*	Rate indicated in a percentage of minimum statutory.	075.00	
27	HFA License Number	Output	Number assigned by HFA for each license	1010120001	
28	HFA License Reject Code	Output	Code designating reason why request was not licensable as submitted. Numerous options available; most relevant are in example column.	01	NO MATCH FOUND (FOR OTHER THAN SPECIFICALLY LISTED REJECT CODES)
				02	DUPLICATE LICENSE REQUEST (1ST PASS - PRELIMINARY SCAN; WITHIN THE CURRENT BATCH)
				03	DUPLICATE LICENSE REQUEST (2ND PASS, ALREADY LICENSED, PART OF EDIT VALIDATION PROCESS)
				10	SONG TITLE NOT FOUND
				11	SONG TITLE MATCH ONLY, INSUFFICIENT FOR LICENSE
				12	SONG TITLE AND ARTIST MATCH ONLY, INSUFFICIENT FOR LICENSE
				13	SONG TITLE AND ALBUM MATCH ONLY, INSUFFICIENT FOR LICENSE
				14	SONG TITLE AND CATALOG / UPC # MATCH ONLY, INSUFFICENT FOR LICENSE

				21	CONTROLLED RATE REQUEST COULD NOT BE MATCHED TO PREVIOUSLY
				81	PUBLISHER NOT REPRESENTED BY HARRY FOX AGENCY
				82	PUBLISHER UNKNOWN
				83	PUBLISHER OPTED-OUT OF AGREEMENT
				91	ORIGINAL VERSION OF SONG IS IN THE PUBLIC DOMAIN IN THE USA
				92	PUBLISHER OWNERSHIP NOT YET VERIFIED
				93	SONG PLACED ON HOLD FOR LICENSING BY PUBLISHER
				94	SONG HAS RESTRICTIONS; REQUIRES PUBLISHER APPROVAL
				95	OLD DERIVATIVE VERSION OF SONG, CURRENT PUBLISHER UNKNOWN
				96	INVALID SONG CODE
29	**HFA Flag for Amended Publisher Data**	Output	Indicates that publisher information submitted by licensee differs on HFA database (for HFA represented publishers only)	Y	Flagged so that requestor can note that HFA publisher information differs from that submitted

EXHIBIT CO 0005

Westlaw.

RULES and REGULATIONS

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 255

[Docket No. 96-4 CARP DPRA]

Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding

Tuesday, February 9, 1999

*6221 AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulations.

SUMMARY: The Copyright Office of the Library of Congress is announcing final regulations setting the rate for the delivery of digital phonorecords in general and deferring until the next scheduled rate adjustment proceeding further consideration of the royalty rate for the delivery of a digital phonorecord where the reproduction or distribution *6222 is incidental to the transmission which constitutes a digital phonorecord delivery.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Attorney Advisor, Copyright Arbitration Royalty Panel ("CARP"), P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone (202) 707-8380. Telefax: (202) 252-3423.

SUPPLEMENTARY INFORMATION: On November 1, 1995, Congress passed the Digital Performance Right in Sound Recordings Act of 1995 ("Digital Performance Act"). Pub. L. 104-39, 109 Stat. 336. Among other things, the Act confirms and clarifies that the scope of the statutory license to make and distribute phonorecords of nondramatic musical compositions, 17 U.S.C. 115, includes the right to distribute or authorize distribution by means of a digital transmission which constitutes a "digital phonorecord delivery." 17 U.S.C. 115(c)(3)(A).

A "digital phonorecord delivery" is defined 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

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phonorecord of that sound recording * * *." 17 U.S.C. 115(d).

The Digital Performance Act established that the rate for all digital phonorecord deliveries ("DPDs") made or authorized under a compulsory license on or before December 31, 1997, was the same as the rate in effect for the making and distribution of physical phonorecords for that period. 17 U.S.C. 115(c)(3)(A)(i). For digital phonorecord deliveries made or authorized after December 31, 1997, the Digital Performance Act established a two-step process for determining the terms and rates; either the copyright owners of nondramatic musical works and those persons entitled to obtain a license may negotiate the rates and terms for the statutory license, or they may participate in a Copyright Arbitration Royalty Panel ("CARP") proceeding. 17 U.S.C. 115(c)(3)(A)-(D). In a CARP proceeding, the parties present evidence to a panel of three arbitrators who, based upon the written record, write a report for the Librarian of Congress in which the CARP sets out its determination concerning the appropriate rates and terms. 17 U.S.C. 802(c) and (e).

The Librarian initiated the voluntary negotiation period for this rate setting proceeding on July 17, 1996, and directed it to end on December 31, 1996. 61 FR 37213 (July 17, 1996). At the same time, the Librarian announced a schedule for a CARP proceeding in case the interested parties were unable to reach an industry-wide agreement through the negotiation process. The Librarian vacated this schedule and a second schedule for a CARP proceeding at the request of the negotiating parties, Recording Industry Association of America ("RIAA"), the National Music Publishers' Association, Inc. ("NMPA"), and The Harry Fox Agency, Inc. ("Harry Fox"). 61 FR 65243 (December 11, 1996); 62 FR 5057 (February 3, 1997).

Ultimately, these parties reached a voluntary agreement which they submitted to the Librarian of Congress on November 5, 1997, pursuant to 37 CFR 251.63(b). Section 251.63(b) allows the Librarian to adopt rates and terms embodied in a proposed settlement without convening an arbitration panel, if after conducting a notice-and-comment proceeding, no party with an intent to participate in a CARP proceeding files a substantive comment opposing the proposed regulations. See e.g., 62 FR 63502 (December 1, 1997) (proposing regulations setting rates and terms for the section 118 license). Accordingly, the Librarian published the proposed rates and terms for digital phonorecord deliveries for public comment. 62 FR 63506 (December 1, 1997).

Three parties filed comments in response to the proposed terms and rates: the United States Telephone Association ("USTA"), the Coalition of Internet Webcasters ("Webcasters"), and Broadcast Music, Inc. ("BMI"). These comments served to identify heretofore unknown parties who have a significant interest in the setting of the rates and terms for the delivery of digital phonorecord deliveries. Consequently, the parties entered a new round of negotiations in an attempt to resolve the commenters' concerns and reach a mutually acceptable industry-wide agreement.

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During the second phase of negotiations, the NMPA, SGA, and RIAA submitted a memorandum to the Copyright Office requesting that it adopt the unopposed rate for the delivery of digital phonorecords in general and the schedule for future rate adjustment proceedings set forth in its November 5, 1997, agreement, and that it either adopt the proposed rates and terms for incidental digital phonorecord deliveries set forth in the proposed regulations or sever and defer further consideration of these rates and terms until the next rate adjustment proceeding. The Copyright Office then offered the parties who had filed a Notice of Intent to Participate an opportunity to comment on the memorandum. See Order, Docket No. 96-4 CARP DPRA (October 16, 1998).

USTA responded that its concerns were fully addressed by the memorandum; and the three performing rights organizations, ASCAP, BMI, and SESAC, filed a joint comment which generally supported the recommendations outlined in the NMPA/SGA/RIAA memorandum, provided that the final regulations included a provision recognizing that the section 115 license does not affect in any way the public performance rights granted under 17 U.S.C. 106(4). Similarly, the Webcasters filed comments which supported the adoption of the rate and terms for digital phonorecord deliveries in general and the suggestion to sever and defer further consideration of rates and terms for incidental DPDs until the next rate adjustment proceeding with two modifications. First, the Webcasters sought an amendment to the proposed rules that would allow a party to petition the Copyright Office for a proceeding to set a rate for the transmission of an incidental digital phonorecord delivery prior to the next scheduled date. Second, the Webcasters requested that no rate be set for the incidental DPDs prior to the completion of a study required by Congress under section 104 of the Digital Millennium Copyright Act of 1998 ("DMCA"), subject to the right to petition for an interim rate adjustment proceeding.

In reply comments, NMPA/SGA/RIAA agreed to the ASCAP/BMI/SESAC suggestion for a clarification and the Webcasters' suggestion for a right to petition for a rate adjustment proceeding for incidental DPDs during the interim period. However, they did not support the Webcasters' request to postpone the rate adjustment proceeding for incidental DPDs until the Office completes its study on the operation of sections 109 and 117 of the Copyright Act, 17 U.S.C., as effected by Title I of the DMCA.

On December 4, 1998, the NMPA/SGA/RIAA submitted a second joint petition for adjustment of digital phonorecord delivery royalty rates, incorporating the proposed modifications except for the suggestion to postpone the rate adjustment proceeding until the completion of the study. The petition was filed pursuant to 17 U.S.C. 115(c) and 803(a) and 37 CFR 251.63(b). Section 251.63(b) allows the Librarian to adopt the proposed rates and terms at the conclusion of an unopposed notice-and-comment rulemaking proceeding. This being so, *6223 the Copyright Office requested public comment on the proposed rates and terms in a notice published in the Federal Register. 63 FR 71249 (December 24, 1998).

The Copyright Office received no comments opposing the rates and terms for the

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delivery of digital phonorecords set forth in the December 24, 1998, Federal Register notice. Therefore, by this notice, the Librarian is adopting and the Copyright Office is announcing final regulations which set the rate for the delivery of digital phonorecords in general and defer until the next scheduled rate adjustment proceeding further consideration of the royalty rate for the delivery of a digital phonorecord where the reproduction or distribution is incidental to the transmission which constitutes a digital phonorecord delivery.

List of Subjects in 37 CFR Part 255

Copyright, Recordings.

For the reasons set forth in the preamble, the Library amends 37 CFR part 255 as follows:

PART 255--ADJUSTMENT OF ROYALTY PAYABLE UNDER COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHONORECORDS

1. The authority citation for part 255 continues to read as follows:

Authority: 17 U.S.C. 801(b)(1) and 803.

37 CFR § 255.5

2. Revise §255.5 to read as follows:

37 CFR § 255.5

§255.5 Royalty rate for digital phonorecord deliveries in general.

(a) For every digital phonorecord delivery made on or before December 31, 1997, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 6.95 cents, or 1.3 cents per minute of playing time or fraction thereof, whichever amount is larger.

(b) For every digital phonorecord delivery made on or after January 1, 1998, except for digital phonorecord deliveries where the reproduction or distribution of a phonorecord is incidental to the transmission which constitutes the digital phonorecord delivery, as specified in 17 U.S.C. 115(c)(3)(C) and (D), the royalty rate payable with respect to each work embodied in the phonorecord shall be the royalty rate prescribed in §255.3 for the making and distribution of a phonorecord made and distributed on the date of the digital phonorecord delivery (the "Physical Rate"). In any future proceeding under 17 U.S.C. 115(c)(3)(C) or (D), the royalty rates payable for a compulsory license for digital phonorecord deliveries in general shall be established de novo, and no precedential effect shall be given to the royalty rate payable under this paragraph for any period prior to the period as to which the royalty rates are to be established in such future proceeding.

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3. Add §§255.6 through 255.8 to read as follows:

37 CFR § 255.6

§255.6 Royalty rate for incidental digital phonorecord deliveries.

The royalty rate for digital phonorecord deliveries where the reproduction or distribution of a phonorecord is incidental to the transmission which constitutes a digital phonorecord delivery, as specified in 17 U.S.C. 115(c)(3)(C) and (D), is deferred for consideration until the next digital phonorecord delivery rate adjustment proceeding pursuant to the schedule set forth in §255.7; provided, however, that any owner or user of a copyrighted work with a significant interest in such royalty rate, as provided in 17 U.S.C. 803(a)(1), may petition the Librarian of Congress to establish a rate prior to the commencement of the next digital phonorecord delivery rate adjustment proceeding. In the event such a petition is filed, the Librarian of Congress shall proceed in accordance with 17 U.S.C. 115(c)(3)(D), and all applicable regulations, as though the petition had been filed in accordance with 17 U.S.C. 803(a)(1).

37 CFR § 255.7

§255.7 Future proceedings.

The procedures specified in 17 U.S.C. 115(c)(3)(C) shall be repeated in 1999, 2001, 2003, and 2006 so as to determine the applicable rates and terms for the making of digital phonorecord deliveries during the periods beginning January 1, 2001, 2003, 2005, and 2008. The procedures specified in 17 U.S.C. 115(c)(3)(D) shall be repeated, in the absence of license agreements negotiated under 17 U.S.C. 115(c)(3)(B) and (C), upon the filing of a petition in accordance with 17 U.S.C. 803(a)(1), in 2000, 2002, 2004, and 2007 so as to determine new rates and terms for the making of digital phonorecord deliveries during the periods beginning January 1, 2001, 2003, 2005, and 2008. Thereafter, the procedures specified in 17 U.S.C. 115(c)(3)(C) and (D) shall be repeated in each fifth calendar year. Notwithstanding the foregoing, different years for the repeating of such proceedings may be determined in accordance with 17 U.S.C. 115(c)(3)(C) and (D).

37 CFR § 255.8

§255.8 Public performances of sound recordings and musical works.

Nothing in this part annuls or limits the exclusive right to publicly perform a sound recording or the musical work embodied therein, including by means of a digital transmission, under 17 U.S.C. 106(4) and 106(6).

Dated: January 29, 1999.

Marybeth Peters,

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Register of Copyrights.

James H. Billington,

The Librarian of Congress.

[FR Doc. 99-3119 Filed 2-8-99; 8:45 am]

BILLING CODE 1410-33-P

64 FR 6221-01, 1999 WL 54298 (F.R.)

END OF DOCUMENT

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EXHIBIT CO 0006

Before the
UNITED STATES COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.

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In the Matter of	:	Docket No. 96-4 CARP DPRA
DIGITAL PHONORECORD DELIVERY RATE ADJUSTMENT PROCEEDING	:	
	:	

---------- x

AMENDED JOINT PETITION FOR ADJUSTMENT OF DIGITAL PHONORECORD DELIVERY ROYALTY RATES SUBMITTED BY NATIONAL MUSIC PUBLISHERS' ASSOCIATION, INC., THE SONGWRITERS GUILD OF AMERICA AND RECORDING INDUSTRY ASSOCIATION OF AMERICA, INC.

This amended petition for adjustment of digital phonorecord delivery ("DPD") royalty rates is submitted jointly at the request of the Copyright Office and pursuant to 17 U.S.C. §§ 115(c) and 803(a) and 37 C.F.R. § 251.63(b) by the National Music Publishers' Association, Inc., The Songwriters Guild of America and the Recording Industry Association of America, Inc. (the "Petitioners").

The Petitioners submit the accompanying Amended Proposal Concerning Digital Phonorecord Delivery Royalty Rate Adjustments (the "Amended Proposal") and hereby request that the Copyright Office, pursuant to 17 U.S.C. § 803(a) and 37 C.F.R. § 251.63(b), promulgate regulations effecting an adjustment of the royalty rates in the manner set forth in the Amended Proposal. This Amended Proposal follows and supersedes paragraphs 3 through 6 of the original proposal (the "Original Proposal") accompanying the Joint Petition for Adjustment of Physical

Phonorecord and Digital Phonorecord Delivery Royalty Rates submitted by the Petitioners on November 5, 1997 ("Original Petition"), and resolves concerns raised in comments on the Original Proposal and the Memorandum of NMPA, SGA and RIAA Regarding Adoption of Rates for General Digital Phonorecord Deliveries by the Coalition of Internet Webcasters, Broadcast Music, Inc., the United States Telephone Association, the American Society of Authors, Composers, and Publishers and SESAC, Inc (the "Commenting Parties").

The Amended Proposal was formulated after the Petitioners and the Commenting Parties held discussions for the purpose of arriving at a mutually agreeable proposal respecting the DPD royalty rates. Based upon representations made by the Commenting Parties, the Petitioners understand that the Commenting Parties have no objection to the accompanying Amended Proposal. Petitioners believe that the promulgation of rates and terms for DPDs as provided in the Amended Proposal as soon as possible will facilitate the licensing of copyrighted musical works for the benefit of copyright owners and users and the general public. Accordingly, Petitioners suggest a notice and comment period for the Amended Proposal of thirty (30) days.

As set forth in the Original Petition, the Petitioners have a "significant interest" in the royalty rates to be adjusted, within the meaning of section 803(a)(1) of the Copyright Act. National Music Publishers' Association, Inc. ("NMPA") is an association of over 600 commercially active American music publishers, whose interests NMPA represents through a variety of legislative, legal, and public relations

initiatives. NMPA's wholly owned subsidiary, The Harry Fox Agency, Inc., acts as a licensing agent for over 17,000 music publishers.

The Songwriters Guild of America ("SGA") is a national organization of over 4,500 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, and in legislative matters. Like NMPA, SGA represents the interests of those who receive royalties for the use of copyrighted musical works.

Recording Industry Association of America, Inc. ("RIAA") is an association of approximately 350 recording companies. Its members are the leading manufacturers of the records, tapes and compact discs sold in the United States, and are engaged in the distribution of music through DPD systems. RIAA thus represents the interests of those who must pay royalties for use of copyrighted musical works in DPDs.

The accompanying Amended Proposal is submitted on the understanding that its various provisions are not severable. The Amended Proposal is without prejudice to any position, contention or argument that the Copyright Owners

or Copyright Users may take in any proceeding or litigation, and is not intended to be, and should not constitute, a precedent in any future rate adjustment proceeding.

Dated: December 4, 1998

Respectfully submitted,

NATIONAL MUSIC PUBLISHERS' ASSOCIATION, INC.

By: Edward P. Murphy /By CRR

Edward P. Murphy
President
711 Third Avenue
New York, New York 10017
(212) 370-5330

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

By: Carey R. Ramos

Peter L. Felcher
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Counsel for NMPA

THE SONGWRITERS GUILD OF AMERICA

By: George David Weiss /By CRR

George David Weiss
President
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(201) 867-7603

RECORDING INDUSTRY ASSOCIATION
OF AMERICA, INC.

By:_____

Cary H. Sherman
Senior Executive Vice President and
General Counsel
1330 Connecticut Avenue, N.W., Suite 300
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(202) 775-0101

ARNOLD & PORTER

By:_____

Steven R. Englund
555 Twelfth Street, N.W.
Washington, D.C. 20004
(202) 942-5000

Counsel for RIAA

Amended Proposal Concerning Digital Phonorecord Delivery Royalty Rate Adjustments

Amendments to 37 C.F.R. Part 255

1. The title of section 255.5 is revised to read "Royalty rate for digital phonorecord deliveries in general." and the present paragraph of section 255.5 is designated as paragraph (a).

Section 255.5 is further revised by adding the following new paragraph:

(b) For every digital phonorecord delivery made on or after January 1, 1998, except for digital phonorecord deliveries where the reproduction or distribution of a phonorecord is incidental to the transmission which constitutes the digital phonorecord delivery, as specified in 17 U.S.C. § 115(c)(3)(C) and (D), the royalty rate payable with respect to each work embodied in the phonorecord shall be the royalty rate prescribed in section 255.3 for the making and distribution of a phonorecord made and distributed on the date of the digital phonorecord delivery (the "Physical Rate"). In any future proceeding under 17 U.S.C. § 115(c)(3)(C) or (D), the royalty rates payable for a compulsory license for digital phonorecord deliveries in general shall be established de novo, and no precedential effect shall be given to the royalty rate payable under this paragraph for any period prior to the period as to which the royalty rates are to be established in such future proceeding.

2. A new section 255.6 is added, which reads as follows:

§ 255.6 Royalty rate for incidental digital phonorecord deliveries.

The royalty rate for digital phonorecord deliveries where the reproduction or distribution of a phonorecord is incidental to the transmission which constitutes a digital phonorecord delivery, as specified in 17 U.S.C. § 115(c)(3)(C) and (D), is deferred for consideration until the next digital phonorecord delivery rate adjustment proceeding pursuant to the schedule set forth in section 255.7; provided, however, that any owner or user of a copyrighted work with a significant interest in such royalty rate, as provided in

17 U.S.C. § 803(a)(1), may petition the Librarian of Congress to establish a rate prior to the commencement of the next digital phonorecord delivery rate adjustment proceeding. In the event such a petition is filed, the Librarian of Congress shall proceed in accordance with 17 U.S.C. § 115(c)(3)(D), and all applicable regulations, as though the petition had been filed in accordance with 17 U.S.C. § 803(a)(1).

3. A new section 255.7 is added, which reads as follows:

255.7 Future proceedings.

The procedures specified in 17 U.S.C. § 115(c)(3)(C) shall be repeated in 1999, 2001, 2003 and 2006 so as to determine the applicable rates and terms for the making of digital phonorecord deliveries during the periods beginning January 1, 2001, 2003, 2005 and 2008. The procedures specified in 17 U.S.C. § 115(c)(3)(D) shall be repeated, in the absence of license agreements negotiated under 17 U.S.C. § 115(c)(3)(B) and (C), upon the filing of a petition in accordance with 17 U.S.C. § 803(a)(1), in 2000, 2002, 2004 and 2007 so as to determine new rates and terms for the making of digital phonorecord deliveries during the periods beginning January 1, 2001, 2003, 2005 and 2008. Thereafter, the procedures specified in 17 U.S.C. § 115(c)(3)(C) and (D) shall be repeated in each fifth calendar year. Notwithstanding the foregoing, different years for the repeating of such proceedings may be determined in accordance with 17 U.S.C. § 115(c)(3)(C) and (D).

4. A new section 255.8 is added, which reads as follows:

255.8 Public performances of sound recordings and musical works.

Nothing in Part 255 annuls or limits the exclusive right to publicly perform a sound recording or the musical work embodied therein, including by means of a digital transmission, under 17 U.S.C. §§ 106(4) and 106(6).

EXHIBIT CO 0007

National Music Publishers' Association • Inc.
and The Harry Fox Agency, Inc.

EDWARD P. MURPHY, President
Chief Executive Officer

October 13, 1998

Cary H. Sherman, Esq.
Senior Executive Vice President and General Counsel
Recording Industry Association of America, Inc.
1330 Connecticut Avenue, N.W., Suite 300
Washington, D.C. 20036

Dear Cary:

This will confirm our agreement regarding certain rates and terms with respect to licensing of digital phonorecord deliveries ("DPDs") pursuant to Section 115(c) of the Copyright Act. NMPA, RIAA and SGA filed a joint petition with the Copyright Office on November 5, 1997, to set the statutory rates and terms for DPDs, and, by memorandum filed with the Copyright Office on July 21, 1998, amended certain provisions proposed in that petition (as thus amended, the "Joint Petition"). That petition remains pending. We have now agreed that we will jointly propose to the Copyright Office that it (a) adopt the rate for general DPDs and the schedule for future proceedings proposed in the Joint Petition and (b) adopt the rates for incidental DPDs proposed in the Joint Petition or, in the alternative, sever and defer, until the next rate adjustment proceeding, the issue of rates for incidental DPDs.

If the Copyright Office severs and defers the issue of rates and terms for incidental DPDs, then, pending the promulgation by the Copyright Office of rates and terms for incidental DPDs, each of NMPA, HFA and RIAA shall conduct its affairs as if the Copyright Office had adopted section 255.6 of the regulations proposed in the Joint Petition, as amended and annexed to our Joint Memorandum filed with the Copyright Office on July 21, 1998, subject to the provisions of the Agreement among NMPA, HFA and RIAA dated November 4, 1997. This agreement shall inure solely to the benefit of NMPA, HFA, RIAA and their respective members and/or principals. Notwithstanding the foregoing, if the Copyright Office declines to adopt the rates and terms proposed for incidental DPDs in the Joint Petition and instead initiates any proceeding with respect to rates and terms for incidental DPDs, whether a CARP or rulemaking proceeding or otherwise, each party reserves the right to make any arguments in such proceeding that it deems appropriate.

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The parties further agree that the rates and terms set forth in the DPD Joint Petition (as originally proposed and as amended), and the arrangements set forth in this agreement, shall have no precedential effect in any subsequent negotiations or proceedings between the parties to adjust the rates and terms for DPDs, and none of the parties shall make any claim to the contrary.

Please confirm your acceptance of this agreement by signing this letter in the space provided below and returning an executed copy to me.

Very truly yours,

Edward P. Murphy
EPM:cg

Enclosure

AGREED AND ACCEPTED:

RECORDING INDUSTRY ASSOCIATION
OF AMERICA, INC.

By: _____
Cary H. Sherman
Senior Executive Vice President and General Counsel

Before the
UNITED STATES COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of DIGITAL PHONORECORD DELIVERY RATE ADJUSTMENT PROCEEDING	Docket No. 96-4 CARP DPRA

MEMORANDUM OF NMPA, SGA AND RIAA REGARDING DISPOSITION OF THE DIGITAL PHONORECORD DELIVERY RATE ADJUSTMENT PROCEEDING

National Music Publishers' Association, Inc. ("NMPA"), The Songwriters Guild of America ("SGA") and the Recording Industry Association of America, Inc. ("RIAA") (collectively the "Petitioners") submit this memorandum to express their views as to the appropriate disposition of this proceeding.

Because there is no basis for convening a CARP, for the reasons set forth below, Petitioners request that the Copyright Office adopt the proposed regulations concerning DPDs published by the Copyright Office on December 1, 1997, Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding, 62 Fed. Reg. 63506, as amended by the attached amendments, which were proposed by the United States Telephone Association ("USTA") to resolve issues raised in its comments on the proposed regulations. We understand the attached amendments to be acceptable to all parties as resolving USTA's comments.

As discussed below, we submit that the remaining issues, raised solely by the Coalition of Internet Webcasters ("CIW"), are outside the statutory jurisdiction of the

Copyright Office or a CARP and hence not cognizable objections to adoption of the proposed regulations.[1]

No party -- not NMPA, SGA, RIAA, CIW, BMI or USTA -- has requested that the Copyright Office convene a CARP to determine the rates and terms for compulsory licenses with respect to DPDs. Nor has any party asserted objections to the regulations proposed by the Joint Petition that would legally warrant such a proceeding. In fact, with the sole exception of CIW, all parties have agreed to an amicable resolution of this matter.

Nonetheless, CIW continues to seek a declaration from the Copyright Office that streaming media activities do not constitute DPDs and thus are exempt from infringement liability under the Copyright Act. But as CIW itself admits, the determination of whether streaming media activities are exempt from the Copyright Act can be made only by Congress or the federal courts. It is not within the authority or jurisdiction of the Copyright Office, or a CARP, to determine whether streaming media activities are "DPDs" within the meaning of section 115 of the Copyright Act or whether such activities infringe the exclusive rights of owners of copyrights in musical works under the Copyright Act. Equally important, CIW, in the comments it filed on December 29, 1997, did not object to any of the royalty rates -- for either DPDs in general or incidental DPDs -- contained in the proposed regulations.

Rather -- over a month <u>after</u> the deadline set by the Copyright Office for filing comments concerning the proposed regulations and a month <u>after</u> the statutory deadline for filing a rate petition under section 115 of the Copyright Act -- CIW, while again asserting that it is "a matter for the courts" to determine whether streaming media infringe copyright owners' exclusive rights, <u>for the first time</u> suggested that "[i]f . . . streaming media technologies <u>might be</u> subject to the proposed regulations, <u>then</u>, [CIW had certain

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[1] In view of the present posture of this proceeding, which presents no legal basis for arbitration or other contested proceedings, Petitioners reserve objection to the status of CIW as an appropriate party to this proceeding.

issues] that would be required to be addressed in an arbitration proceeding," including a "request for an exemption from royalty payments for performances via streaming media (assuming such technologies may be found to create Incidental DPDs or Transient Phonorecords)" and "[o]pposition" to the rate proposed in the regulations for incidental DPDs.[2]

CIW's belated request for "an exemption from royalty payments" and its late-filed opposition to the proposed rate for incidental DPDs -- both couched in hypothetical terms ("if," "might," "may be") -- qualify neither as a timely petition pursuant to sections 115(c)(3)(D) and 803(a), nor as timely comments on proposed regulations of the Copyright Office and should be rejected.[3] In no event do they warrant the empaneling of a CARP.

The Issue of Whether Streaming Media Are DPDs Is Not Within the Jurisdiction of the Copyright Office or a CARP to Determine

CIW requests that its members' streaming media activities be exempted by regulation from the exclusive reproduction and distribution rights of copyright owners under 17 U.S.C. § 106(1) and (3). But there simply is no support for the proposition that a CARP, or the Copyright Office, may decide whether certain activities -- in this instance, streaming media -- constitute copyright infringement. That determination is exclusively reserved by the Copyright Act for Congress and the federal courts. It plainly exceeds the scope of the authority of either the Copyright Office or a CARP.

---

[2] Response of the Coalition of Internet Webcasters to the BMI Motion and the NMPA, SGA and RIAA Joint Reply comments at 2-3 (February 3, 1998) ("CIW Response"). Streaming media are the only activities possibly involving DPDs in which CIW professes in its pleadings to have a significant interest. However, CIW strenuously protests the characterization of streaming media as involving DPDs and urges that this is "a matter for the courts" to determine. *Id.*

[3] The Copyright Office deadline for filing comments on the proposed regulations was December 29, 1997; CIW filed its comments on December 29, 1997 and additional comments (the CIW Response) on February 3, 1998.

Section 115 of the Copyright Act establishes that the authority of a CARP is limited "to determin[ing] and publish[ing] in the Federal Register a schedule of rates and terms" for the issuance of compulsory licences under that section. 17 U.S.C. § 115(c)(3)(D) (emphasis added).[4] "Rates" refers to the royalty rates for compulsory licenses. "Terms" -- as confirmed by the legislative history of section 115 -- encompasses "such details as how payments are to be made, when and other accounting matters." Section-by-Section-Analysis, Digital Performance Right in Sound Recordings Act of 1995, 141 Cong. Rec. S11957-58, August 8, 1995 (daily ed.). Nowhere in section 115 or its legislative history is there any suggestion that a CARP has the authority to determine what activities constitute a DPD.

Indeed, the Copyright Office has recognized the limitations of the jurisdiction of a CARP convened under an analogous provision of the Copyright Act, 17 U.S.C. § 114(f)(2), and determined that "[t]here is no indication in the statutory language or in the legislative history that the scope of the terms should go beyond the creation of a workable administrative system and reach substantive issues, such as defining the scope of copyright infringement for those availing themselves of the statutory license." Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings, 63 Fed. Reg. 25394, 25411-12 (May 8, 1998) (emphasis added). The Copyright Office explicitly instructed that "[f]or the Panel to fashion a term further delineating the issue of copyright infringement when Congress has already acted is an improper exercise of authority beyond that granted under the statute." *Id.* at 25412.

Such is the case here where CIW seeks a determination of whether streaming media activities are DPDs -- precisely the type of "substantive issue" the Copyright Office found to be beyond the jurisdiction of a CARP. Were a CARP to decide whether streaming media activities are DPDs, it would necessarily have to construe the term

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[4] *See, e.g.*, *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989) (statutory interpretation must begin with the language of the statute).

"DPD" as well as the scope of copyright owners' exclusive rights under the Copyright Act, thereby usurping the federal courts' authority to interpret the Copyright Act and define the scope of copyright infringement liability. Accordingly, to convene a CARP would be futile because -- regardless of how it decided the issue of whether streaming media activities are DPDs and thus acts of infringement -- its decision would have to be rejected as contrary to law. *See id.* (recommending that the Librarian reject as contrary to law a term adopted by a CARP purporting to define the scope of copyright liability).

CIW has itself recognized that this issue "is a matter for the courts to determine" (CIW Response at 2)(emphasis added) or "better left for resolution by Congress than the Copyright Office or a CARP" (CIW Comments at 2-3) (emphasis added).[5']

Nonetheless, CIW persists in its effort to have the Copyright Office or a CARP declare as a matter of law that streaming media activities are exempt from the reach of the Copyright Act. In support, CIW urges that a "a linchpin" of proposed section 255.6(a) is "the proposal that '[i]n any future proceeding under 17 U.S.[C.] § 115(c)(3)(C) or (D), the characterization of a digital phonorecord delivery as "incidental" and the royalty rates payable for a compulsory license for Incidental DPDs shall be established de novo'" (CIW Response at 2). CIW contends that, by virtue of this language, the Copyright Office or a CARP is empowered to decide "whether particular technologies (such as streaming media) do not result in a DPD or an incidental DPD." *Id.*

[5'] In fact, even as CIW represented to the Copyright Office that it was negotiating to reach a settlement in this proceeding, CIW members, organized under the name Digital Media Association ("DiMA") and represented by CIW's counsel in this proceeding, were engaged in a lobbying effort to amend proposed legislation before Congress that would implement the WIPO treaties so as to exempt streaming media technology from copyright infringement liability -- the very relief CIW purports to seek from the Copyright Office or a CARP here. *See 7 Internet Music Firms Unite to Fight WIPO Bill*, Billboard Bulletin, June 18, 1998, at 1.

This argument is meritless. A regulation cannot confer power exceeding the mandate of the statute under which it is promulgated. In any event, CIW quotes a single clause of the regulations out of context. The complete language demonstrates that the reference in proposed Section 255.6(a) to the characterization of DPDs as "incidental" in future proceedings for purposes of establishing a royalty rate does not constitute -- as it cannot -- a legal judgment "whether particular technologies result in a DPD."[6]

Similarly, none of the other issues raised by CIW is susceptible to resolution by a CARP. For example, CIW complains that proposed section 255.6(c)(1), which permits the making of DPDs of thirty seconds or less (or, for works of more than five minutes, the lesser of ten percent or sixty seconds) for promotional purposes without payment of a royalty, is "simply too rigid . . . . [C]lips of 31, 45 or 60 seconds, [CIW contends, are not] prejudicial to the economic interests of songwriters or sound recording producers" (CIW Comments at 5). But section 255.6(c)(1) does not purport to establish a rate for DPDs made by the Webcasters, but rather DPDs made by copyright owners -- either the owners of copyrights in musical works or the owners of copyrights in sound recordings -- and represents a reciprocal arrangement between such copyright owners, negotiated by private parties on an industrywide basis as a reasonable accommodation of their respective rights. CIW does not have standing to object to this arrangement; neither does a CARP have authority to substitute its judgment for an industrywide agreement

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[6] That language reads:

> In any future proceeding under 17 U.S.C. § 115(c)(3)(C) or (D), the characterization of a digital phonorecord delivery as 'incidental' and the royalty rates payable for a compulsory license for Incidental DPDs shall be established de novo *and no precedential effect shall be given to the characterization of a digital phonorecord delivery as "incidental" under this section or to the royalty rate payable under this section* for any period prior to the period as to which the characterization of a digital phonorecord delivery as "incidental" or the royalty rates are to be established in such future proceeding.

Proposed Regulations § 255.6(a) (emphasis added).

between the owners of copyrights in musical works and sound recordings where no such owners have objected.[7]

CIW Filed No Timely Objection To The Rates Proposed in the Joint Petition

Although CIW initially claimed that streaming media activities are not DPDs and, accordingly, "should be declared to be outside the reach of section 115 by the Copyright Office, in a manner that does not require intervention of or resolution by a CARP" (CIW Comments at 4), CIW has since reversed course and suggested, without requesting that a CARP be empaneled, that a CARP may provide them the relief they desire -- "an exemption from royalty payments for performances via Streaming Media (assuming such technologies may be found to create DPDs or Transient Phonorecords)" (CIW Response at 3) (emphasis added).

Putting aside the hypothetical nature of this suggestion (discussed above), nothing in the Copyright Act empowers the Copyright Office or a CARP to grant "an exemption" from copyright royalties. Even if viewed as a request for a "zero" royalty, CIW's request should be rejected, for several reasons.

First, in its original comments, CIW took the position that streaming media activities are beyond the scope of section 115 and thus beyond the regulatory authority of the Copyright Office (CIW Comments at 4). Accordingly, if CIW asserts that streaming media activities are not within the purview of section 115, it can provide no basis to convene a CARP for the purpose of obtaining an "exemption" from royalties for such activities.

Second, if CIW genuinely desired to have the Copyright Office or a CARP establish royalty rates for streaming media activities, it should have filed a timely petition

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[7] Congress explicitly contemplated that voluntary negotiations between the interested parties (here the representatives of owners of copyrights in musical works and sound recordings respectively) could lead to industrywide agreements for adoption by rulemaking. Section-by-Section Analysis, 141 Cong. Rec. at S11957.

in 1997 pursuant to sections 115(C)(3)(D) and 803(a) of the Copyright Act requesting that such a rate be determined and detailing its members' "significant interest" in that rate. See also 37 C.F.R. §§ 251.61(a)(3), 251.62(a). CIW filed no such petition.

Third, CIW's request for an exemption was filed over a month after the deadline for comments on the proposed regulations and is thus procedurally improper.

Finally, this issue is not ripe for consideration by a CARP. CIW's members have never sought to avail themselves of the compulsory license available under section 115 and have expressed no interest in doing so now. Nor, to the best of our knowledge, has any member of CIW been sued for infringement by an owner of copyright in a musical work. Consequently, until such time as a court (or Congress) determines whether streaming media are DPDs, for a CARP to determine the applicable royalty rates would be premature and a waste of resources. In any event, the proposed regulations, if adopted, will be subject to revision in the year 2000, allowing CIW to file a petition, if it so desires, as early as January 1, 1999 -- less than six months from now.

Convening a CARP Would Be Unnecessary and Unfair

As CIW itself has said, the substantive question of whether streaming media activities infringe the exclusive rights of copyright owners and thus require a license "is a matter for the courts" (CIW Response at 2). We agree with CIW that this issue should be resolved by the courts if that should ultimately be necessary, whether or not that resolution is preceded by a burdensome and expensive CARP proceeding. In this proceeding, CIW has manifested at every opportunity a desire not to pay for the use of music in its members' businesses. Even if there were to be a CARP in this proceeding and the CARP set a rate for streaming media activities, we have no confidence that the members of CIW would seek mechanical licenses absent litigation to establish that their activities are DPDs.

Convening a CARP would simply extend further a proceeding that already has been unnecessarily long and burdensome for the parties, when none of the parties,

including CIW, seems to want a CARP. Indeed, it is particularly telling that in none of CIW's filings in this proceeding does CIW directly request that the Copyright Office convene a CARP.

It appears that CIW's primary interest in this proceeding is delay. Through repeated *Federal Register* announcements concerning this proceeding over a two year period, CIW had ample notice of this proceeding and Petitioners' negotiations concerning mechanical royalty rates for DPDs.[8] Nonetheless, CIW expressed no interest in this proceeding until the last day of the comment period for the negotiated resolution of this proceeding. Since then, CIW has delayed the conclusion of this proceeding by approximately seven months, professing to negotiate in good faith while at the same time lobbying for legislation that would render such negotiations unnecessary.[9] The Copyright Office should not reward CIW for its delay and intransigence in this proceeding by giving CIW more time to pursue its legislative strategy, and the other parties to this proceeding should not have to endure months of additional delay and the very high costs of a CARP to address a question that today, CIW acknowledges, remains hypothetical.

CIW's Interests Can Be Satisfied Without a CARP

Because a CARP does not have jurisdiction to decide the substantive question of whether streaming media activities are infringing, the only relief that CIW could obtain in this proceeding with respect to that question is assurance that the conclusion of this proceeding will not prejudice the ultimate resolution of that question by a court. We have previously suggested to CIW, and we now suggest to the Copyright Office, that the

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[8] See Notice of Initiation of Negotiation Period, 61 Fed. Reg. 37213 (July 17, 1996); Notice of Precontroversy Discovery Schedule, 61 Fed. Reg. 65243 (December 11, 1996); Notice Vacating Precontroversy Discovery Schedule and Notice of Meeting, 62 Fed. Reg. 5057 (February 3, 1997); Notice of Proposed Rulemaking, 62 Fed. Reg. 63506 (December 1, 1997).

[9] *See* note 5 *supra*.

proposed regulations be adopted with a preamble stating that the regulations do not determine whether streaming media activities constitute DPDs under the Copyright Act. Such a statement should allay any legitimate concerns of CIW, while leaving to the courts the question of whether streaming media activities are infringing -- a question that all the parties, including CIW, agree should be left to the courts.

Conclusion

Because no party has raised a timely objection to the proposed regulations that the Copyright Office or a CARP has authority to address, Petitioners respectfully request that the proposed regulations concerning DPDs, i.e., sections 255.5, 255.6 and 255.7, as amended, be adopted by the Copyright Office with a preamble stating that the regulations do not determine whether streaming media activities constitute DPDs under the Copyright Act.[10]

Dated: July 21, 1998

Respectfully Submitted,

NATIONAL MUSIC PUBLISHERS' ASSOCIATION, INC.

By: Edward P. Murphy by SRE

Edward P. Murphy
President and CEO
711 Third Avenue
New York, New York 10017
(212) 370-5330

[10] Because the attached amendments respond to comments filed by the parties in response to the Copyright Office's notice of rulemaking dated December 1, 1997, NMPA/HFA does not believe that the revised regulations need to be renoticed for further comments. 1 Kenneth Culp Davis and Richard J. Pierce, Jr., Administrative Law Treatise §7.3 (3d ed. 1994) ("If an agency were required to issue a second notice and provide an opportunity for a second set of comments . . . the rulemaking process would be endless.").

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

By: Carey Ramos by SRE

Peter L. Felcher
Carey R. Ramos
1285 Avenue of the Americas
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(212) 373-3000

Counsel for National Music Publishers' Association, Inc.

THE SONGWRITERS GUILD OF AMERICA

By: George David Weiss by SRE

George David Weiss
President
1500 Harbor Boulevard
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(201) 867-7603

RECORDING INDUSTRY ASSOCIATION
OF AMERICA, INC.

By: Cary H. Sherman by SRE

Cary H. Sherman
Senior Executive Vice President and
General Counsel
1330 Connecticut Ave., N.W.
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Washington, D.C. 20036
(202) 775-0101

ARNOLD & PORTER

By: _____

Steven R. Englund
555 Twelfth Street, N.W.
Washington, D.C. 20004
(202) 942-5000

Counsel for Recording Industry
Association of America, Inc.

AMENDMENTS TO PROPOSED DPD REGULATIONS

In § 255.6(a):

Insert comma after "Except as . . . for every digital phonorecord delivery" and before "made on or after January 1, 1998, ..."

Add following sentence at the end: "Nothing in this paragraph shall imply that any particular incidental reproduction or distribution is or is not an incidental digital phonorecord delivery."

Substitute the following for § 255.6(b)

"(b) No royalty shall be payable for any transient reproduction of a phonorecord in temporary computer memory or digital storage intermediate to the communications system through which a digital phonorecord delivery is made, where such reproduction is made in the ordinary operation of such system to facilitate the transmission to the ultimate recipient. Nothing in this paragraph shall limit or impair any rights or remedies of the copyright owner of a work against any person who makes further reproductions from such transient reproductions for any purpose other than to facilitate the transmission to the ultimate transmission recipient. Nothing in this paragraph shall impair any rights or remedies of the copyright owner with respect to the ultimate reproduction by or for the ultimate transmission recipient of each digital phonorecord delivery. Nothing in this paragraph shall imply that any particular transient reproduction either is or is not a digital phonorecord delivery or is or is not an infringement of the copyright owner's rights."

CERTIFICATE OF SERVICE

I hereby certify that I have this 21st day of July, 1998, served the foregoing Memorandum of NMPA, SGA and RIAA Regarding Disposition of the Digital Phonorecord Delivery Rate Adjustment Proceeding by overnight mail to the following counsel.

Steven R. Ehglund

Carey R. Ramos
Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, New York 10019-6064

Seth D. Greenstein
McDermott, Will & Emery
600 Thirteenth Street, N.W.
Washington, D.C. 20005

Bruce G. Joseph
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Michael J. Remington
Drinker Biddle & Reath LLP
Suite 900
901 15th Street, N.W.
Washington, D.C. 20005

EXHIBIT CO 0008

National Music Publishers' Association • Inc.
and The Harry Fox Agency, Inc.

EDWARD F. MURPHY, President
Chief Executive Officer

October 13, 1998

Cary H. Sherman, Esq.
Senior Executive Vice President and General Counsel
Recording Industry Association of America, Inc.
1330 Connecticut Avenue, N.W., Suite 300
Washington, D.C. 20036

Dear Cary:

This will confirm our understanding with respect to negotiations between NMPA and RIAA for the next adjustment of the statutory rates and terms for digital phonorecord deliveries ("DPDs"), pursuant to Section 115 of the Copyright Act. In such negotiations, in addition to the cent rate structure currently followed, we agree that NMPA and RIAA will consider and discuss a percentage royalty rate structure, among the possible rate structures for DPDs.

It is further understood that this agreement shall not obligate either NMPA or RIAA to agree to any such rate structures, that this agreement shall have no precedential effect or obligate the parties in any way in any legal or administrative proceedings (other than voluntary negotiations between NMPA and RIAA pursuant to Section 115(c)(3)(C) of the Copyright Act) or any negotiations subsequent to the next adjustment of the statutory rates and terms for DPDs, and that neither of the parties shall make any claim to the contrary.

NMPA and RIAA each reserve the right to seek a percentage or cent rate or any other rate in any future proceeding to adjust the statutory rates and terms for DPDs.

711 THIRD AVENUE, NEW YORK, N.Y. 10017 • (212) 922-3260 • FAX: (212) 953-2471

Please confirm your acceptance of this agreement by signing this letter in the space provided below and returning an executed copy to me.

Very truly yours,

Edward P. Murphy
EPM:cg

Enclosure

AGREED AND ACCEPTED:

RECORDING INDUSTRY ASSOCIATION
OF AMERICA, INC.

By: _____
Cary H. Sherman
Senior Executive Vice President and General Counsel

EXHIBIT CO 0009

Before the
UNITED STATES COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of	
DIGITAL PHONORECORD DELIVERY RATE ADJUSTMENT PROCEEDING	Docket No. 96-4 CARP DPRA

MEMORANDUM OF NMPA, SGA AND RIAA REGARDING DISPOSITION OF THE DIGITAL PHONORECORD DELIVERY RATE ADJUSTMENT PROCEEDING

National Music Publishers' Association, Inc. ("NMPA"), The Songwriters Guild of America ("SGA") and the Recording Industry Association of America, Inc. ("RIAA") (collectively the "Petitioners") submit this memorandum to express their views as to the appropriate disposition of this proceeding.

Because there is no basis for convening a CARP, for the reasons set forth below, Petitioners request that the Copyright Office adopt the proposed regulations concerning DPDs published by the Copyright Office on December 1, 1997, Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding, 62 Fed. Reg. 63506, as amended by the attached amendments, which were proposed by the United States Telephone Association ("USTA") to resolve issues raised in its comments on the proposed regulations. We understand the attached amendments to be acceptable to all parties as resolving USTA's comments.

As discussed below, we submit that the remaining issues, raised solely by the Coalition of Internet Webcasters ("CIW"), are outside the statutory jurisdiction of the

Copyright Office or a CARP and hence not cognizable objections to adoption of the proposed regulations.[1]

No party -- not NMPA, SGA, RIAA, CIW, BMI or USTA -- has requested that the Copyright Office convene a CARP to determine the rates and terms for compulsory licenses with respect to DPDs. Nor has any party asserted objections to the regulations proposed by the Joint Petition that would legally warrant such a proceeding. In fact, with the sole exception of CIW, all parties have agreed to an amicable resolution of this matter.

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Rather -- over a month <u>after</u> the deadline set by the Copyright Office for filing comments concerning the proposed regulations and a month <u>after</u> the statutory deadline for filing a rate petition under section 115 of the Copyright Act -- CIW, while again asserting that it is "a matter for the courts" to determine whether streaming media infringe copyright owners' exclusive rights, <u>for the first time</u> suggested that "[i]f . . . streaming media technologies <u>might be</u> subject to the proposed regulations, <u>then</u>, [CIW had certain

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issues] that would be required to be addressed in an arbitration proceeding," including a "request for an exemption from royalty payments for performances via streaming media (assuming such technologies may be found to create Incidental DPDs or Transient Phonorecords)" and "[o]pposition" to the rate proposed in the regulations for incidental DPDs.[2]

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CIW requests that its members' streaming media activities be exempted by regulation from the exclusive reproduction and distribution rights of copyright owners under 17 U.S.C. § 106(1) and (3). But there simply is no support for the proposition that a CARP, or the Copyright Office, may decide whether certain activities -- in this instance, streaming media -- constitute copyright infringement. That determination is exclusively reserved by the Copyright Act for Congress and the federal courts. It plainly exceeds the scope of the authority of either the Copyright Office or a CARP.

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[2] Response of the Coalition of Internet Webcasters to the BMI Motion and the NMPA, SGA and RIAA Joint Reply comments at 2-3 (February 3, 1998) ("CIW Response"). Streaming media are the only activities possibly involving DPDs in which CIW professes in its pleadings to have a significant interest. However, CIW strenuously protests the characterization of streaming media as involving DPDs and urges that this is "a matter for the courts" to determine. *Id.*

[3] The Copyright Office deadline for filing comments on the proposed regulations was December 29, 1997; CIW filed its comments on December 29, 1997 and additional comments (the CIW Response) on February 3, 1998.

Section 115 of the Copyright Act establishes that the authority of a CARP is limited "to determin[ing] and publish[ing] in the Federal Register a schedule of rates and terms" for the issuance of compulsory licences under that section. 17 U.S.C. § 115(c)(3)(D) (emphasis added).[4] "Rates" refers to the royalty rates for compulsory licenses. "Terms" -- as confirmed by the legislative history of section 115 -- encompasses "such details as how payments are to be made, when and other accounting matters." Section-by-Section-Analysis, Digital Performance Right in Sound Recordings Act of 1995, 141 Cong. Rec. S11957-58, August 8, 1995 (daily ed.). Nowhere in section 115 or its legislative history is there any suggestion that a CARP has the authority to determine what activities constitute a DPD.

Indeed, the Copyright Office has recognized the limitations of the jurisdiction of a CARP convened under an analogous provision of the Copyright Act, 17 U.S.C. § 114(f)(2), and determined that "[t]here is no indication in the statutory language or in the legislative history that the scope of the terms should go beyond the creation of a workable administrative system and reach substantive issues, such as defining the scope of copyright infringement for those availing themselves of the statutory license." Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings, 63 Fed. Reg. 25394, 25411-12 (May 8, 1998) (emphasis added). The Copyright Office explicitly instructed that "[f]or the Panel to fashion a term further delineating the issue of copyright infringement when Congress has already acted is an improper exercise of authority beyond that granted under the statute." *Id.* at 25412.

Such is the case here where CIW seeks a determination of whether streaming media activities are DPDs – precisely the type of "substantive issue" the Copyright Office found to be beyond the jurisdiction of a CARP. Were a CARP to decide whether streaming media activities are DPDs, it would necessarily have to construe the term

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[4] *See, e.g.*, *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989) (statutory interpretation must begin with the language of the statute).

"DPD" as well as the scope of copyright owners' exclusive rights under the Copyright Act, thereby usurping the federal courts' authority to interpret the Copyright Act and define the scope of copyright infringement liability. Accordingly, to convene a CARP would be futile because -- regardless of how it decided the issue of whether streaming media activities are DPDs and thus acts of infringement -- its decision would have to be rejected as contrary to law. *See id.* (recommending that the Librarian reject as contrary to law a term adopted by a CARP purporting to define the scope of copyright liability).

CIW has itself recognized that this issue "is a matter for the courts to determine" (CIW Response at 2)(emphasis added) or "better left for resolution by Congress than the Copyright Office or a CARP" (CIW Comments at 2-3) (emphasis added).[5]

Nonetheless, CIW persists in its effort to have the Copyright Office or a CARP declare as a matter of law that streaming media activities are exempt from the reach of the Copyright Act. In support, CIW urges that a "a linchpin" of proposed section 255.6(a) is "the proposal that '[i]n any future proceeding under 17 U.S.[C.] § 115(c)(3)(C) or (D), the characterization of a digital phonorecord delivery as "incidental" and the royalty rates payable for a compulsory license for Incidental DPDs shall be established de novo'" (CIW Response at 2). CIW contends that, by virtue of this language, the Copyright Office or a CARP is empowered to decide "whether particular technologies (such as streaming media) do not result in a DPD or an incidental DPD." *Id.*

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[5] In fact, even as CIW represented to the Copyright Office that it was negotiating to reach a settlement in this proceeding, CIW members, organized under the name Digital Media Association ("DiMA") and represented by CIW's counsel in this proceeding, were engaged in a lobbying effort to amend proposed legislation before Congress that would implement the WIPO treaties so as to exempt streaming media technology from copyright infringement liability -- the very relief CIW purports to seek from the Copyright Office or a CARP here. *See 7 Internet Music Firms Unite to Fight WIPO Bill*, Billboard Bulletin, June 18, 1998, at 1.

This argument is meritless. A regulation cannot confer power exceeding the mandate of the statute under which it is promulgated. In any event, CIW quotes a single clause of the regulations out of context. The complete language demonstrates that the reference in proposed Section 255.6(a) to the characterization of DPDs as "incidental" in future proceedings for purposes of establishing a royalty rate does not constitute -- as it cannot -- a legal judgment "whether particular technologies result in a DPD."[6]

Similarly, none of the other issues raised by CIW is susceptible to resolution by a CARP. For example, CIW complains that proposed section 255.6(c)(1), which permits the making of DPDs of thirty seconds or less (or, for works of more than five minutes, the lesser of ten percent or sixty seconds) for promotional purposes without payment of a royalty, is "simply too rigid . . . . [C]lips of 31, 45 or 60 seconds, [CIW contends, are not] prejudicial to the economic interests of songwriters or sound recording producers" (CIW Comments at 5). But section 255.6(c)(1) does not purport to establish a rate for DPDs made by the Webcasters, but rather DPDs made by copyright owners -- either the owners of copyrights in musical works or the owners of copyrights in sound recordings -- and represents a reciprocal arrangement between such copyright owners, negotiated by private parties on an industrywide basis as a reasonable accommodation of their respective rights. CIW does not have standing to object to this arrangement; neither does a CARP have authority to substitute its judgment for an industrywide agreement

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[6] That language reads:

> In any future proceeding under 17 U.S.C. § 115(c)(3)(C) or (D), the characterization of a digital phonorecord delivery as 'incidental' and the royalty rates payable for a compulsory license for Incidental DPDs shall be established de novo *and no precedential effect shall be given to the characterization of a digital phonorecord delivery as "incidental" under this section or to the royalty rate payable under this section* for any period prior to the period as to which the characterization of a digital phonorecord delivery as "incidental" or the royalty rates are to be established in such future proceeding.

Proposed Regulations § 255.6(a) (emphasis added).

between the owners of copyrights in musical works and sound recordings where no such owners have objected.[7]

CIW Filed No Timely Objection
To The Rates Proposed in the Joint Petition

Although CIW initially claimed that streaming media activities are not DPDs and, accordingly, "should be declared to be outside the reach of section 115 by the Copyright Office, in a manner that does not require intervention of or resolution by a CARP" (CIW Comments at 4), CIW has since reversed course and suggested, without requesting that a CARP be empaneled, that a CARP may provide them the relief they desire -- "an exemption from royalty payments for performances via Streaming Media (assuming such technologies may be found to create DPDs or Transient Phonorecords)" (CIW Response at 3) (emphasis added).

Putting aside the hypothetical nature of this suggestion (discussed above), nothing in the Copyright Act empowers the Copyright Office or a CARP to grant "an exemption" from copyright royalties. Even if viewed as a request for a "zero" royalty, CIW's request should be rejected, for several reasons.

First, in its original comments, CIW took the position that streaming media activities are beyond the scope of section 115 and thus beyond the regulatory authority of the Copyright Office (CIW Comments at 4). Accordingly, if CIW asserts that streaming media activities are not within the purview of section 115, it can provide no basis to convene a CARP for the purpose of obtaining an "exemption" from royalties for such activities.

Second, if CIW genuinely desired to have the Copyright Office or a CARP establish royalty rates for streaming media activities, it should have filed a timely petition

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[7] Congress explicitly contemplated that voluntary negotiations between the interested parties (here the representatives of owners of copyrights in musical works and sound recordings respectively) could lead to industrywide agreements for adoption by rulemaking. Section-by-Section Analysis, 141 Cong. Rec. at S11957.

in 1997 pursuant to sections 115(C)(3)(D) and 803(a) of the Copyright Act requesting that such a rate be determined and detailing its members' "significant interest" in that rate. See also 37 C.F.R. §§ 251.61(a)(3), 251.62(a). CIW filed no such petition.

Third, CIW's request for an exemption was filed over a month after the deadline for comments on the proposed regulations and is thus procedurally improper.

Finally, this issue is not ripe for consideration by a CARP. CIW's members have never sought to avail themselves of the compulsory license available under section 115 and have expressed no interest in doing so now. Nor, to the best of our knowledge, has any member of CIW been sued for infringement by an owner of copyright in a musical work. Consequently, until such time as a court (or Congress) determines whether streaming media are DPDs, for a CARP to determine the applicable royalty rates would be premature and a waste of resources. In any event, the proposed regulations, if adopted, will be subject to revision in the year 2000, allowing CIW to file a petition, if it so desires, as early as January 1, 1999 -- less than six months from now.

Convening a CARP Would Be Unnecessary and Unfair

As CIW itself has said, the substantive question of whether streaming media activities infringe the exclusive rights of copyright owners and thus require a license "is a matter for the courts" (CIW Response at 2). We agree with CIW that this issue should be resolved by the courts if that should ultimately be necessary, whether or not that resolution is preceded by a burdensome and expensive CARP proceeding. In this proceeding, CIW has manifested at every opportunity a desire not to pay for the use of music in its members' businesses. Even if there were to be a CARP in this proceeding and the CARP set a rate for streaming media activities, we have no confidence that the members of CIW would seek mechanical licenses absent litigation to establish that their activities are DPDs.

Convening a CARP would simply extend further a proceeding that already has been unnecessarily long and burdensome for the parties, when none of the parties,

including CIW, seems to want a CARP. Indeed, it is particularly telling that in none of CIW's filings in this proceeding does CIW directly request that the Copyright Office convene a CARP.

It appears that CIW's primary interest in this proceeding is delay. Through repeated *Federal Register* announcements concerning this proceeding over a two year period, CIW had ample notice of this proceeding and Petitioners' negotiations concerning mechanical royalty rates for DPDs.[8] Nonetheless, CIW expressed no interest in this proceeding until the last day of the comment period for the negotiated resolution of this proceeding. Since then, CIW has delayed the conclusion of this proceeding by approximately seven months, professing to negotiate in good faith while at the same time lobbying for legislation that would render such negotiations unnecessary.[9] The Copyright Office should not reward CIW for its delay and intransigence in this proceeding by giving CIW more time to pursue its legislative strategy, and the other parties to this proceeding should not have to endure months of additional delay and the very high costs of a CARP to address a question that today, CIW acknowledges, remains hypothetical.

CIW's Interests Can Be Satisfied Without a CARP

Because a CARP does not have jurisdiction to decide the substantive question of whether streaming media activities are infringing, the only relief that CIW could obtain in this proceeding with respect to that question is assurance that the conclusion of this proceeding will not prejudice the ultimate resolution of that question by a court. We have previously suggested to CIW, and we now suggest to the Copyright Office, that the

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[8] See Notice of Initiation of Negotiation Period, 61 Fed. Reg. 37213 (July 17, 1996); Notice of Precontroversy Discovery Schedule, 61 Fed. Reg. 65243 (December 11, 1996); Notice Vacating Precontroversy Discovery Schedule and Notice of Meeting, 62 Fed. Reg. 5057 (February 3, 1997); Notice of Proposed Rulemaking, 62 Fed. Reg. 63506 (December 1, 1997).

[9] *See* note 5 *supra*.

proposed regulations be adopted with a preamble stating that the regulations do not determine whether streaming media activities constitute DPDs under the Copyright Act. Such a statement should allay any legitimate concerns of CIW, while leaving to the courts the question of whether streaming media activities are infringing -- a question that all the parties, including CIW, agree should be left to the courts.

Conclusion

Because no party has raised a timely objection to the proposed regulations that the Copyright Office or a CARP has authority to address, Petitioners respectfully request that the proposed regulations concerning DPDs, i.e., sections 255.5, 255.6 and 255.7, as amended, be adopted by the Copyright Office with a preamble stating that the regulations do not determine whether streaming media activities constitute DPDs under the Copyright Act.[10']

Dated: July 21, 1998

Respectfully Submitted,

NATIONAL MUSIC PUBLISHERS' ASSOCIATION, INC.

By: Edward P. Murphy by SRC

Edward P. Murphy
President and CEO
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10' Because the attached amendments respond to comments filed by the parties in response to the Copyright Office's notice of rulemaking dated December 1, 1997, NMPA/HFA does not believe that the revised regulations need to be renoticed for further comments. 1 Kenneth Culp Davis and Richard J. Pierce, Jr., Administrative Law Treatise §7.3 (3d ed. 1994) ("If an agency were required to issue a second notice and provide an opportunity for a second set of comments . . . the rulemaking process would be endless.").

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AMENDMENTS TO PROPOSED DPD REGULATIONS

In § 255.6(a):

Insert comma after "Except as . . . for every digital phonorecord delivery" and before "made on or after January 1, 1998, ..."

Add following sentence at the end: "Nothing in this paragraph shall imply that any particular incidental reproduction or distribution is or is not an incidental digital phonorecord delivery."

Substitute the following for § 255.6(b)

"(b) No royalty shall be payable for any transient reproduction of a phonorecord in temporary computer memory or digital storage intermediate to the communications system through which a digital phonorecord delivery is made, where such reproduction is made in the ordinary operation of such system to facilitate the transmission to the ultimate recipient. Nothing in this paragraph shall limit or impair any rights or remedies of the copyright owner of a work against any person who makes further reproductions from such transient reproductions for any purpose other than to facilitate the transmission to the ultimate transmission recipient. Nothing in this paragraph shall impair any rights or remedies of the copyright owner with respect to the ultimate reproduction by or for the ultimate transmission recipient of each digital phonorecord delivery. Nothing in this paragraph shall imply that any particular transient reproduction either is or is not a digital phonorecord delivery or is or is not an infringement of the copyright owner's rights."

CERTIFICATE OF SERVICE

I hereby certify that I have this 21st day of July, 1998, served the foregoing Memorandum of NMPA, SGA and RIAA Regarding Disposition of the Digital Phonorecord Delivery Rate Adjustment Proceeding by overnight mail to the following counsel.

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EXHIBIT CO 0010

RULES and REGULATIONS

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 255

[Docket No. 96-4 CARP DPRA]

Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding

Friday, February 13, 1998

*7288 AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulations.

SUMMARY: The Copyright Office of the Library of Congress is announcing final regulations that became effective on January 1, 1998, adjusting royalty rates to be paid under the mechanical compulsory license, section 115 of the 1976 Copyright Act, as amended, for use of physical, or non-digital, phonorecords. The Office addresses rates for physical phonorecord delivery today, and will address rates for digital phonorecord delivery in the future.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya Sandros, Attorney Advisor, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707-8380. Fax: (202) 707-8366.

SUPPLEMENTARY INFORMATION:

Background

The mechanical compulsory license, 17 U.S.C.115, provides a mechanism outside the realm of contract for persons who want to make and distribute phonorecords of nondramatic musical works that have been distributed in the United States by the copyright owner to obtain a compulsory license to perform that activity. A person is eligible for this compulsory license if: (1) He or she has not been able to serve a notice of intention to obtain the license on the copyright owner, and (2) a notice of intention has been filed with the Copyright Office. 17 U.S.C. 115(b)(1).

Until its demise in 1993, the Copyright Royalty Tribunal had authority to adjust the statutory rates for the making and distribution of physical phonorecords, and did so in 1987, setting the rates and terms for the mechanical compulsory license for at least the next ten years. See 52 FR 22637 (June 15, 1987). The Copyright

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Office currently administers the mechanical license, and responsibility for adjusting royalty rates rests with Copyright Arbitration Royalty Panels, known as CARPs. 17 U.S.C. 801(b)(1), 803. The Copyright Act provides that during the tenth calendar year following a ratesetting, any copyright owner or user whose royalty rates are specified by the statutory license may file a petition requesting an adjustment to the rates and terms. 17 U.S.C. 803(a)(1), (3).

On November 1, 1995, Congress passed the Digital Performance Right in Sound Recordings Act of 1995 (Digital Performance Act), Pub. L. 104-39, 109 Stat. 336 (1995), which amended sections 114 and 115 of the Copyright Act, and extended the mechanical license to digital phonorecord deliveries. The mechanical rate for physical, or non-digital, phonorecords can be the same as, or different from, the rate that applies to digital phonorecord deliveries.

The legislative history for the Digital Performance Act states that: "Through 1997, the royalty rate payable for digital phonorecord delivery shall be the same as for physical phonorecords. After 1997, the rates for digital phonorecord delivery will be determined as provided by the amended provisions section 115(c)(3) [sic], and need not be the same as for the making and distribution of physical phonorecords." H.R. Rep. No. 274, 104th Cong., 1st Sess. 28 (1995). The House Report further recognizes as separate digital and physical phonorecord rates, stating: "The terms and rates shall be established [for digital use] according to the same criteria that apply to the license for making and distributing physical phonorecords * * *" Id. at 29.

The most recent royalty rate applicable under 17 U.S.C.115 was described in Copyright Office regulations at 37 CFR 255.3(h), as follows: "For every phonorecord made and distributed on or after January 1, 1996, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 6.95 cents, or 1.3 cents per minute of playing time or fraction thereof, whichever amount is larger." Id.

The year 1997 was a window year for commencing a proceeding to further adjust the mechanical phonorecord compulsory license royalty rates. The Office initiated proceedings to adjust all section 115 rates in 1997; however, modifications were made due to requests by the interested parties for extra time to negotiate terms for a new rate.

At this time the Office is announcing final regulations that adjust royalty rates for reproduction and distribution of physical phonorecords. Rate adjustment for use of digital phonorecords under section 115 will be announced in the future. The Office bifurcates this procedure in order to finalize the rate adjustment for physical phonorecords, and then to consider important legal and policy issues brought forward by interested parties that relate to application of section 115 rates for digital phonorecord delivery.

History of the Current Proceeding

On July 17, 1996, the Copyright Office published a notice which, among other things, established a schedule for convening a CARP which would have set new rates for digital phonorecord deliveries before the existing rate expired. See 61 FR 37312 (July 17, 1996). As noted supra, 1997 also was a window year for adjusting

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royalty rates for the making and distribution of physical phonorecords. The Office requested comment from interested parties on the possibility of consolidating the two proceedings, and conducting a single CARP to adjust both the physical phonorecord and the digital phonorecord delivery rates. See 61 FR 37215 (July 17, 1996).

According to the interested parties, consisting of the Recording Industry Association of America (RIAA), the National Music Publishers' Association, Inc. (NMPA), and the Harry Fox Agency, Inc. (referred to together as the Parties), the proposed schedule did not allot sufficient time for negotiating a comprehensive joint proposal. Therefore, they filed a motion with the Office on November 8, 1996, asking the Office to vacate the proposed schedule to allow them time to continue their negotiations. The Office granted the Parties' motion and rescheduled the proceeding. See 61 FR 65243 (December 11, 1996). *7289

Although the new schedule extended the negotiation period by three months, the Parties thought the time still insufficient for conducting the necessary negotiations, and requested a meeting with the Office to discuss difficulties associated with negotiating rates and terms for use of digital technology in an evolving marketplace. The Office granted the request and met with the Parties on January 9, 1997. At that meeting, the Parties again requested more time to conduct negotiations on rates and terms for the section 115 license, having acknowledged the need to establish the mechanical rate before they attempted to negotiate the rates for the digital delivery of phonorecords. The Office agreed to vacate the schedule. See 62 FR 5057 (February 3, 1997).

On November 7, 1997, NMPA, RIAA, and the Songwriters' Guild of America (SGA) filed a joint petition with the Copyright Office outlining a proposal to adjust the physical phonorecord and digital phonorecord delivery royalty rates. The Parties to the joint petition, having duly filed a proposal concerning the 1997 physical phonorecord and digital phonorecord delivery royalty rate adjustments, asked the Copyright Office to submit their proposal to a notice-and-comment proceeding to promulgate regulations to adjust the proposed rates and terms. Accordingly, pursuant to 17 U.S.C. 803(c) and 37 CFR 251.63(b), the Copyright Office invited public comment on the proposed rates and terms for adjusting the physical phonorecord and digital phonorecord delivery royalty rates, and on the regulatory language implementing the proposal. [FN1] Comments and Notices of Intent to Participate in a CARP proceeding, should it be necessary, were to be submitted to the Office by December 29, 1997.

FN1 According to 37 CFR 251.63: The Librarian may, upon the request of the parties, submit the agreed upon rate to the public in a notice-and-comment proceeding. The Librarian may adopt the rate embodied in the proposed settlement without convening an arbitration panel, provided that no opposing comment is received by the Librarian from a party with an intent to participate in a CARP proceeding. Id.

The Office received four comments in response to its Notice of Proposed Rulemaking, including three Notices of Intent to Participate in any CARP proceeding which may be instituted in this matter. None of these filings contained comments or objections to rates proposed for the reproduction and distribution of physical phonorecords under the mechanical compulsory license. Because no comments opposing

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the rates for reproduction and distribution of physical phonorecords under 17 U.S.C.115 were received, the Librarian adopted those rates, effective January 1, 1998, but not the rates concerning reproduction and distribution of digital phonorecords, as they were previously published in the Federal Register. See 62 FR 63506 (December 1, 1997).

List of Subjects in 37 CFR Part 255

Copyright, Recordings.

For the reasons set forth above, the Copyright Office amends 37 CFR part 255 as follows:

PART 255--ADJUSTMENT OF ROYALTY PAYABLE UNDER COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHONORECORDS

1. The authority citation for part 255 continues to read as follows:

Authority: 17 U.S.C. 801(b)(1) and 803.

37 CFR § 255.3

§ 255.3 [Amended]

37 CFR § 255.3

2. In § 255.3(a), the phrase "(b), (c), (d), (e), (f), (g), and (h)" is removed and the phrase "(b) through (m)" is added after the word "paragraphs".

37 CFR § 255.3

3. In § 255.3(b), the phrase "(c), (d), (e), (f), (g), and (h)" is removed and the phrase "(c) through (m)" is added after the word "paragraphs".

37 CFR § 255.3

4. In § 255.3(c), the phrase "(d), (e), (f), (g), and (h)" is removed and the phrase "(d) through (m)" is added after the word "paragraphs".

37 CFR § 255.3

5. In § 255.3(d), the phrase "(e), (f), (g), and (h)" is removed and the phrase "(e) through (m)" is added after the word "paragraphs".

37 CFR § 255.3

6. In § 255.3(e), the phrase "(f), (g), and (h)" is removed and the phrase "(f) through (m)" is added after the word "paragraphs".

37 CFR § 255.3

7. In § 255.3(f), the phrase "(g), and (h)" is removed and the phrase "(g)

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through (m)" is added after the word "paragraphs".

37 CFR § 255.3

8. In § 255.3(g), the phrase "paragraph (h)" is removed and the phrase "paragraphs (h) through (m)" is added after the phrase "pursuant to".

37 CFR § 255.3

9. In § 255.3(h), the phrase ", subject to further adjustment pursuant to paragraphs (i) through (m) of this section" is added after the word "larger".

37 CFR § 255.3

10. Add new paragraphs (i), (j), (k), (l), and (m) to § 255.3 to read as follows:

37 CFR § 255.3

§ 255.3 Adjustment of royalty rate.

* * * * *

(i) For every phonorecord made and distributed on or after January 1, 1998, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 7.1 cents, or 1.35 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (j) through (m) of this section.

(j) For every phonorecord made and distributed on or after January 1, 2000, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 7.55 cents, or 1.45 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (k) through (m) of this section.

(k) For every phonorecord made and distributed on or after January 1, 2002, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 8.0 cents, or 1.55 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (l) through (m) of this section.

(l) For every phonorecord made and distributed on or after January 1, 2004, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 8.5 cents, or 1.65 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraph (m) of this section.

(m) For every phonorecord made and distributed on or after January 1, 2006, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 9.1 cents, or 1.75 cents per minute of playing time or fraction thereof, whichever amount is larger.

Dated: January 30, 1998.

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Marybeth Peters,

Register of Copyrights.

James H. Billington,

Librarian of Congress.

[FR Doc. 98-3703 Filed 2-12-98; 8:45 am]

BILLING CODE 1410-33-P

63 FR 7288-01, 1998 WL 56126 (F.R.)

END OF DOCUMENT

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EXHIBIT CO 0011

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November 5, 1997

By Hand

William Roberts, Esquire
Senior Attorney for Compulsory Licenses
United States Copyright Office
101 Independence Avenue, S.E.
Room 403
Washington, D.C. 20559

Re: 1997 Physical Phonorecord and
Digital Phonorecord Delivery
Royalty Rate Adjustment Proceedings

Dear Mr. Roberts:

On behalf of the National Music Publishers' Association, Inc., The Songwriters Guild of America and Recording Industry Association of America, Inc., I am pleased to submit to the Copyright Office the enclosed Joint Petition for Adjustment of Physical Phonorecord and Digital Phonorecord Delivery Royalty Rates and accompanying Proposal Concerning 1997 Physical Phonorecord and Digital Phonorecord Delivery Royalty Rate Adjustments.

Sincerely,

Steven R. Englund

Enclosure

Before the
COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of	:	
PHYSICAL PHONORECORD RATE ADJUSTMENT PROCEEDING	:	Docket No. _____
	:	
In the Matter of	:	
DIGITAL PHONORECORD DELIVERY RATE ADJUSTMENT PROCEEDING	:	Docket No. 96-4 CARP DPRA
	:	

JOINT PETITION FOR ADJUSTMENT OF PHYSICAL PHONORECORD AND DIGITAL PHONORECORD DELIVERY ROYALTY RATES

SUBMITTED BY
NATIONAL MUSIC PUBLISHERS' ASSOCIATION, INC.,
THE SONGWRITERS GUILD OF AMERICA AND
RECORDING INDUSTRY ASSOCIATION OF AMERICA, INC.

This petition for adjustment of physical phonorecord and digital phonorecord delivery royalty rates is submitted jointly pursuant to 17 U.S.C. §§ 115(c) and 803(a) and 37 C.F.R. § 251.63(b) by the National Music Publishers' Association, Inc., The Songwriters Guild of America (together, the "Copyright Owners") and the Recording Industry Association of America, Inc. (the "Copyright Users").

The Copyright Owners and Copyright Users have held discussions for the purpose of arriving at a joint proposal respecting the physical phonorecord royalty and digital phonorecord delivery royalty rates to commence on January 1, 1998, as authorized under sections 115(c) and 803(a) of the Copyright Act. As a result of

these discussions, the Copyright Owners and Copyright Users are pleased to submit the accompanying Proposal Concerning 1997 Physical Phonorecord and Digital Phonorecord Delivery Royalty Rate Adjustments ("Proposal") and hereby petition the Copyright Office, pursuant to 17 U.S.C. § 803(a) and 37 C.F.R. § 251.63(b), to undertake a notice and comment proceeding to promulgate regulations effecting an adjustment of the royalty rates in the manner set forth in the Proposal. So that the new rates may go into effect as of January 1, 1998, the Copyright Owners and Copyright Users suggest a notice and comment period for the proposed regulations of thirty days.

The Copyright Owners and Copyright Users have a "significant interest" in the royalty rates to be adjusted within the meaning of section 803(a)(1) of the Copyright Act. National Music Publishers' Association, Inc. ("NMPA") is an association of over 600 commercially active American music publishers, whose interests NMPA represents through a variety of legislative, legal, and public relations initiatives. NMPA's wholly owned subsidiary, The Harry Fox Agency, Inc., acts as a licensing agent for over 17,000 music publishers.

The Songwriters Guild of America ("SGA") is a national organization of over 4,500 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, and in legislative matters. Like NMPA, SGA represents the interests of those who receive royalties for the use of copyrighted musical works.

The Recording Industry Association of America, Inc. ("RIAA") is an association of approximately 350 recording companies. Its members are the leading

manufacturers of the compact discs, tapes and records sold in the United States, and are engaged in the distribution of music through digital phonorecord delivery systems. RIAA thus represents the interests of those who must pay royalties for use of copyrighted musical works in physical phonorecords and digital phonorecord deliveries.

NMPA, SGA and RIAA were the principal participants representing the interests of copyright owners and users in the 1980 and 1987 mechanical rate adjustment proceeding and, as described above, continue to represent those interests in the current proceeding.

The accompanying Proposal is submitted on the understanding that its various provisions are not severable, and the Copyright Owners and Copyright Users request that both the physical phonorecord and digital phonorecord delivery elements of the Proposal be considered through a consolidated notice and comment proceeding. The Proposal is without prejudice to any position, contention or argument which the Copyright Owners or Copyright Users may take in any proceeding or litigation, and is not intended to be, and should not constitute, a precedent in any future rate adjustment proceeding.

Dated: November 4, 1997

Respectfully submitted,

NATIONAL MUSIC PUBLISHERS' ASSOCIATION, INC.

By: Edward P. Murphy

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Counsel for RIAA

PROPOSAL CONCERNING 1997 PHYSICAL PHONORECORD AND DIGITAL PHONORECORD DELIVERY ROYALTY RATE ADJUSTMENTS

Amendments to 37 C.F.R. Part 255

1. Section 255.3 is revised by adding the following new paragraphs:

(i) For every phonorecord made and distributed on or after January 1, 1998, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 7.1 cents, or 1.35 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (j) through (m) of this section.

(j) For every phonorecord made and distributed on or after January 1, 2000, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 7.55 cents, or 1.45 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (k) through (m) of this section.

(k) For every phonorecord made and distributed on or after January 1, 2002, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 8.0 cents, or 1.55 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (l) and (m) of this section.

(l) For every phonorecord made and distributed on or after January 1, 2004, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 8.5 cents, or 1.65 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraph (m) of this section.

(m) For every phonorecord made and distributed on or after January 1, 2006, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 9.1 cents, or 1.75 cents per minute of playing time or fraction thereof, whichever amount is larger.

2. The following conforming revisions are made to Section 255.3:

(a) In paragraph (a), the phrase "paragraphs (b), (c), (d), (e), (f), (g), and (h)" is replaced with the phrase "paragraphs (b) through (m)".

(b) In paragraph (b), the phrase "paragraphs (c), (d), (e), (f), (g), and (h)" is replaced with the phrase "paragraphs (c) through (m)".

(c) In paragraph (c), the phrase "paragraphs (d), (e), (f), (g), and (h)" is replaced with the phrase "paragraphs (d) through (m)".

(d) In paragraph (d), the phrase "paragraphs (e), (f), (g), and (h)" is replaced with the phrase "paragraphs (e) through (m)".

(e) In paragraph (e), the phrase "paragraphs (f), (g), and (h)" is replaced with the phrase "paragraphs (f) through (m)".

(f) In paragraph (f), the phrase "paragraphs (g), and (h)" is replaced with the phrase "paragraphs (g) through (m)".

(g) In paragraph (g), the phrase "paragraph (h)" is replaced with the phrase "paragraphs (h) through (m)".

(h) In paragraph (h), the phrase ", subject to further adjustment pursuant to paragraphs (i) through (m) of this section" is added to the end between the word "larger" and the final period.

3. The title of Section 255.5 is revised to read "Royalty rate for digital phonorecord deliveries in general." and the present paragraph of Section 255.5 is designated as paragraph (a).

4. Section 255.5 is revised by adding the following new paragraph:

(b) Except as provided in section 255.6, for every digital phonorecord delivery made on or after January 1, 1998, the royalty rate payable with respect to each work embodied in the phonorecord shall be the royalty rate prescribed in section 255.3 for the making and distribution of a phonorecord made and distributed on the date of the digital phonorecord delivery (the "Physical Rate"). In any future proceeding under 17 U.S.C. § 115(c)(3)(C) or (D), the royalty rates payable for a compulsory license for digital phonorecord deliveries in general shall be established de novo, and no precedential effect shall be given to the royalty rate payable under this paragraph for any period prior to the period as to which the royalty rates are to be established in such future proceeding.

5. A new section 255.6 is added, which reads as follows:

§ 255.6 Royalty rate for incidental digital phonorecord deliveries.

(a) Except as provided in paragraphs (b) and (c), for every digital phonorecord delivery made on or after January 1, 1998 where the reproduction or distribution of the phonorecord is incidental to the transmission which constitutes the digital phonorecord delivery (an "Incidental DPD"), the royalty

rate payable with respect to each work embodied in the phonorecord shall be the Physical Rate. In any future proceeding under 17 U.S.C. § 115(c)(3)(C) or (D), the characterization of a digital phonorecord delivery as "incidental" and the royalty rates payable for a compulsory license for Incidental DPDs shall be established de novo, and no precedential effect shall be given to the characterization of a digital phonorecord delivery as "incidental" under this section or to the royalty rate payable under this section for any period prior to the period as to which the characterization of a digital phonorecord delivery as "incidental" or the royalty rates are to be established in such future proceeding.

(b) No royalty shall be payable for any "Transient Phonorecord" made in the course of any digital phonorecord delivery made on or after January 1, 1998; provided that a royalty shall be payable with respect to each work embodied in the phonorecord ultimately reproduced by or for the ultimate transmission recipient of such digital phonorecord delivery at the royalty rate prescribed under section 255.5 or the other paragraphs of this section 255.6, as applicable. Nothing in this paragraph shall limit or impair any rights or remedies of the copyright owner of a work against any person who makes reproductions from a Transient Phonorecord for any purpose other than to facilitate the transmission to the ultimate transmission recipient. For the purpose of this paragraph, a "Transient Phonorecord" is a transient phonorecord reproduced in temporary computer memory or digital storage intermediate to the communications system through which a digital phonorecord delivery is made, where such transient phonorecord is made in the ordinary operation of such system solely to facilitate the transmission to the ultimate transmission recipient. An example of a Transient Phonorecord is a phonorecord reproduced temporarily in a router intermediate to the Internet.

(c) (1) For every digital phonorecord delivery made on or after January 1, 1998, no royalty shall be payable where (i) the reproduction or distribution of the phonorecord is incidental to the promotion of a sound recording embodying a work, (ii) the phonorecord is of no more than 30 seconds of playing time of the sound recording of such work, or in the case of sound recordings of a work with a playing time of more than 5 minutes, the phonorecord is of no more than the lesser of 10% or 60 seconds of playing time of the sound recording of such work, and (iii) the digital phonorecord delivery is made or authorized by the copyright owner of such sound recording.

(2) The copyright owner of any work embodied in a sound recording may, without payment of any royalty to the copyright owner of the sound recording, make or authorize a digital phonorecord delivery where (i) the reproduction or distribution of the phonorecord is incidental to the promotion of the work embodied in the sound recording; (ii) the phonorecord

is of no more than 30 seconds of playing time of the sound recording of such work, or in the case of sound recordings of a work with a playing time of more than 5 minutes, the phonorecord is of no more than the lesser of 10% or 60 seconds of playing time of the sound recording of such work, and (iii) the digital phonorecord delivery is made by the copyright owner of such work, either individually or collectively with other copyright owners of such works, or by an organization of copyright owners designated by such copyright owners as their common agent.

6. A new section 255.7 is added, which reads as follows:

§ 255.7 Future proceedings.

The procedures specified in 17 U.S.C. § 115(c)(3)(C) shall be repeated in 1998 and every second year thereafter until 2006 so as to determine the applicable rates and terms for the making of digital phonorecord deliveries during the periods beginning January 1, 2000, 2002, 2004, 2006 and 2008. The procedures specified in 17 U.S.C. § 115(c)(3)(D) shall be repeated, in the absence of license agreements negotiated under 17 U.S.C. § 115(c)(3)(B) and (C), upon the filing of a petition in accordance with 17 U.S.C. § 803(a)(1), in 1999 and every second year thereafter until 2007 so as to determine new rates and terms for the making of digital phonorecord deliveries during the periods beginning January 1, 2000, 2002, 2004, 2006 and 2008. Thereafter, the procedures specified in 17 U.S.C. § 115(c)(3)(C) and (D) shall be repeated in each fifth calendar year. Notwithstanding the foregoing, different years for the repeating of such proceedings may be determined in accordance with 17 U.S.C. § 115(c)(3)(C) and (D).

EXHIBIT CO 0012

AGREEMENT

This Agreement, entered into as of November 4, 1997, embodies certain agreements between the National Music Publishers Association, Inc. and The Harry Fox Agency, Inc. (collectively "NMPA") and the Recording Industry Association of America, Inc. ("RIAA") (collectively "the Parties"), related to the Parties' joint Proposal Concerning 1997 Physical Phonorecord and Digital Phonorecord Delivery Royalty Rate Adjustments for Digital Phonorecord Deliveries ("DPDs") for the period January 1, 1998 through December 31, 1999 (the "Interim Period").

1. Definitions.

(a) "Covered Transmission" means a transmission (other than a Real-Time Audio Transmission that is not part of an "Interactive Service," for which no royalty under the DPD Joint Proposal shall be payable by RIAA or any of its members), by means that, in their ordinary operation, allow a transmission recipient to hear a transmitted sound recording only a limited number of times or during a limited period of time.

(b) "DPD Joint Proposal" means items 3 through 6 of the Parties' joint Proposal Concerning 1997 Physical Phonorecord and Digital Phonorecord Delivery Royalty Rate Adjustments, which is attached to this Agreement.

(c) "Interactive Service" means a service that enables a member of the public to receive, on request, a transmission of a particular sound recording chosen by or on behalf of the recipient, but the ability of individuals to request that particular sound recordings be performed for reception by the public at large does not make a service an Interactive Service; if a system offers both interactive and non-interactive services (either concurrently or at different times), the non-interactive component shall not be treated as part of an Interactive Service.

(d) "Real-Time Audio Transmission" is a digital transmission of a sound recording by means that, in their ordinary operation, allow a transmission recipient to hear such sound recording only once, substantially at the time of transmission, but do not permit any subsequent hearing of such sound recording by the transmission recipient unless a subsequent transmission is made in respect of each such subsequent hearing.

2. Continuation of Rates; No Precedential Effect. The Parties have agreed to recommend in the DPD Joint Proposal that the statutory rates for DPDs continue to be the rate for physical phonorecords, with certain exceptions for which no royalty will be payable, for an additional two-year period because the Parties have been unable to determine appropriate royalty rates for all DPDs in light of present business circumstances. The Parties have therefore agreed that the statutory rates set forth in the DPD Joint Proposal, and the arrangements set forth in this Agreement, shall have no precedential effect in any subsequent negotiations or proceedings between the Parties, and none of the Parties shall make any claim to the contrary.

3. Certain Real-Time Audio Transmissions. NMPA acknowledges that whether or not a Real-Time Audio Transmission that is not part of an Interactive Service constitutes a DPD, no royalty should be payable for such a transmission under the DPD Joint Proposal during the Interim Period. Accordingly, NMPA shall not charge or collect from RIAA or any of its members any royalty under the DPD Joint Proposal for a Real-Time Audio Transmission during the Interim Period that is not part of an Interactive Service but that constitutes a DPD.

4. Negotiations.

(a) The Parties were unable to agree on which Covered Transmissions might constitute incidental DPDs. Accordingly, notwithstanding the statutory rate set forth in the DPD Joint Proposal for incidental DPDs, the Parties have agreed that if RIAA or an RIAA member makes Covered Transmissions during the Interim Period and requests NMPA to enter into good faith negotiations in an effort to agree whether the Covered Transmissions are incidental DPDs, and if so, what royalty should be payable for such Covered Transmissions during the Interim Period based on the specific business model employed by RIAA or the RIAA member, then NMPA (or its publisher client, if it elects to do so) shall enter into such good faith negotiations.

(b) If RIAA or an RIAA member wishes to negotiate with NMPA pursuant to this paragraph 4, RIAA or the RIAA member shall notify NMPA in writing of its wish to do so. Within thirty days after such notice is given, NMPA and RIAA or its member, as the case may be, shall meet, or if the parties agree, confer by telephone, to commence good faith negotiations and to establish a schedule for further negotiations, which

schedule shall provide that the negotiations are to be concluded not later than six months from the initial meeting or conference. Agreements between NMPA and RIAA or an RIAA member are subject to approval by the specific NMPA publisher clients who own the affected copyrights.

(c) RIAA and RIAA members are free to negotiate directly with individual NMPA publisher clients.

(d) If NMPA wishes to negotiate with RIAA on the general subject of what Covered Transmissions are incidental DPDs and the royalty rates that should be applicable thereto, then RIAA shall enter into good faith negotiations with NMPA in an effort to agree thereto.

5. Conditions to Litigation.

(a) NMPA shall not commence or support any copyright litigation against RIAA or an RIAA member relating to the making of Covered Transmissions during the Interim Period unless and until NMPA has, if requested to do so, attempted to negotiate in good faith with RIAA or its member, as the case may be, in an effort to agree whether the Covered Transmissions are incidental DPDs, and if so, what royalty should be payable for such Covered Transmissions pursuant to paragraph 4 above.

(b) RIAA shall not commence or support any copyright litigation against NMPA or an NMPA publisher client relating to the making of Covered Transmissions during the Interim Period unless and until RIAA or its member, as the case may be, has attempted to negotiate in good faith with NMPA or the publisher client in an effort to agree whether the Covered Transmissions are incidental DPDs, and if so, what royalty should be payable for such Covered Transmissions pursuant to paragraph 4 above.

6. Remedies.

(a) In the event that before, during or after the Interim Period NMPA commences, or makes a counterclaim in, a litigation against RIAA or an RIAA member for copyright infringement by the making of Covered Transmissions during the Interim Period because good faith negotiations have failed to result in an agreed royalty rate, then the claims and remedies available to NMPA shall be limited as follows:

(i) NMPA shall not seek injunctive relief;

(ii) NMPA shall not seek an order for the impounding, destruction or other disposition of infringing phonorecords;

(iii) NMPA shall not claim willful copyright infringement; and

(iv) NMPA may seek only damages at a royalty rate that is reasonable in light of the specific business model employed by RIAA or the RIAA member, as the case may be, and in no event shall that royalty rate be greater than the statutory rate set forth in the DPD Joint Proposal for the particular Covered Transmissions at issue.

(b) NMPA shall not in any manner whatsoever support litigation by its publisher client seeking any of the foregoing remedies in the circumstances where NMPA has agreed not to seek them.

7. Compliance with Law. Performance of the Parties' obligations under this Agreement is subject to compliance with applicable law.

8. Effects with Respect to Members. NMPA's publisher clients and the members of RIAA shall be considered third party beneficiaries of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

RECORDING INDUSTRY ASSOCIATION
OF AMERICA, INC.

By: _____
Cary H. Sherman
Senior Executive Vice
President and General Counsel

NATIONAL MUSIC PUBLISHERS ASSOCIATION, INC.

By: _____
Edward P. Murphy
President

THE HARRY FOX AGENCY, INC.

By: _____
Edward P. Murphy
President

IN WITNESS WHEREOF, the Parties have executed this Agreement.

RECORDING INDUSTRY ASSOCIATION
OF AMERICA, INC.

By: _____
Cary H. Sherman
Senior Executive Vice
President and General Counsel

NATIONAL MUSIC PUBLISHERS ASSOCIATION, INC.

By: Edward P. Murphy
Edward P. Murphy
President

THE HARRY FOX AGENCY, INC.

By: Edward P. Murphy
Edward P. Murphy
President

PROPOSAL CONCERNING 1997 PHYSICAL PHONORECORD AND DIGITAL PHONORECORD DELIVERY ROYALTY RATE ADJUSTMENTS

Amendments to 37 C.F.R. Part 255

1. Section 255.3 is revised by adding the following new paragraphs:

(i) For every phonorecord made and distributed on or after January 1, 1998, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 7.1 cents, or 1.35 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (j) through (m) of this section.

(j) For every phonorecord made and distributed on or after January 1, 2000, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 7.55 cents, or 1.45 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (k) through (m) of this section.

(k) For every phonorecord made and distributed on or after January 1, 2002, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 8.0 cents, or 1.55 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (l) and (m) of this section.

(l) For every phonorecord made and distributed on or after January 1, 2004, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 8.5 cents, or 1.65 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraph (m) of this section.

(m) For every phonorecord made and distributed on or after January 1, 2006, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 9.1 cents, or 1.75 cents per minute of playing time or fraction thereof, whichever amount is larger.

2. The following conforming revisions are made to Section 255.3:

(a) In paragraph (a), the phrase "paragraphs (b), (c), (d), (e), (f), (g), and (h)" is replaced with the phrase "paragraphs (b) through (m)".

(b) In paragraph (b), the phrase "paragraphs (c), (d), (e), (f), (g), and (h)" is replaced with the phrase "paragraphs (c) through (m)".

(c) In paragraph (c), the phrase "paragraphs (d), (e), (f), (g), and (h)" is replaced with the phrase "paragraphs (d) through (m)".

(d) In paragraph (d), the phrase "paragraphs (e), (f), (g), and (h)" is replaced with the phrase "paragraphs (e) through (m)".

(e) In paragraph (e), the phrase "paragraphs (f), (g), and (h)" is replaced with the phrase "paragraphs (f) through (m)".

(f) In paragraph (f), the phrase "paragraphs (g), and (h)" is replaced with the phrase "paragraphs (g) through (m)".

(g) In paragraph (g), the phrase "paragraph (h)" is replaced with the phrase "paragraphs (h) through (m)".

(h) In paragraph (h), the phrase ", subject to further adjustment pursuant to paragraphs (i) through (m) of this section" is added to the end between the word "larger" and the final period.

3. The title of Section 255.5 is revised to read "Royalty rate for digital phonorecord deliveries in general." and the present paragraph of Section 255.5 is designated as paragraph (a).

4. Section 255.5 is revised by adding the following new paragraph:

(b) Except as provided in section 255.6, for every digital phonorecord delivery made on or after January 1, 1998, the royalty rate payable with respect to each work embodied in the phonorecord shall be the royalty rate prescribed in section 255.3 for the making and distribution of a phonorecord made and distributed on the date of the digital phonorecord delivery (the "Physical Rate"). In any future proceeding under 17 U.S.C. § 115(c)(3)(C) or (D), the royalty rates payable for a compulsory license for digital phonorecord deliveries in general shall be established de novo, and no precedential effect shall be given to the royalty rate payable under this paragraph for any period prior to the period as to which the royalty rates are to be established in such future proceeding.

5. A new section 255.6 is added, which reads as follows:

§ 255.6 Royalty rate for incidental digital phonorecord deliveries.

(a) Except as provided in paragraphs (b) and (c), for every digital phonorecord delivery made on or after January 1, 1998 where the reproduction or distribution of the phonorecord is incidental to the transmission which constitutes the digital phonorecord delivery (an "Incidental DPD"), the royalty

rate payable with respect to each work embodied in the phonorecord shall be the Physical Rate. In any future proceeding under 17 U.S.C. § 115(c)(3)(C) or (D), the characterization of a digital phonorecord delivery as "incidental" and the royalty rates payable for a compulsory license for Incidental DPDs shall be established de novo, and no precedential effect shall be given to the characterization of a digital phonorecord delivery as "incidental" under this section or to the royalty rate payable under this section for any period prior to the period as to which the characterization of a digital phonorecord delivery as "incidental" or the royalty rates are to be established in such future proceeding.

(b) No royalty shall be payable for any "Transient Phonorecord" made in the course of any digital phonorecord delivery made on or after January 1, 1998; provided that a royalty shall be payable with respect to each work embodied in the phonorecord ultimately reproduced by or for the ultimate transmission recipient of such digital phonorecord delivery at the royalty rate prescribed under section 255.5 or the other paragraphs of this section 255.6, as applicable. Nothing in this paragraph shall limit or impair any rights or remedies of the copyright owner of a work against any person who makes reproductions from a Transient Phonorecord for any purpose other than to facilitate the transmission to the ultimate transmission recipient. For the purpose of this paragraph, a "Transient Phonorecord" is a transient phonorecord reproduced in temporary computer memory or digital storage intermediate to the communications system through which a digital phonorecord delivery is made, where such transient phonorecord is made in the ordinary operation of such system solely to facilitate the transmission to the ultimate transmission recipient. An example of a Transient Phonorecord is a phonorecord reproduced temporarily in a router intermediate to the Internet.

(c) (1) For every digital phonorecord delivery made on or after January 1, 1998, no royalty shall be payable where (i) the reproduction or distribution of the phonorecord is incidental to the promotion of a sound recording embodying a work, (ii) the phonorecord is of no more than 30 seconds of playing time of the sound recording of such work, or in the case of sound recordings of a work with a playing time of more than 5 minutes, the phonorecord is of no more than the lesser of 10% or 60 seconds of playing time of the sound recording of such work, and (iii) the digital phonorecord delivery is made or authorized by the copyright owner of such sound recording.

(2) The copyright owner of any work embodied in a sound recording may, without payment of any royalty to the copyright owner of the sound recording, make or authorize a digital phonorecord delivery where (i) the reproduction or distribution of the phonorecord is incidental to the promotion of the work embodied in the sound recording; (ii) the phonorecord

is of no more than 30 seconds of playing time of the sound recording of such work, or in the case of sound recordings of a work with a playing time of more than 5 minutes, the phonorecord is of no more than the lesser of 10% or 60 seconds of playing time of the sound recording of such work, and (iii) the digital phonorecord delivery is made by the copyright owner of such work, either individually or collectively with other copyright owners of such works, or by an organization of copyright owners designated by such copyright owners as their common agent.

6. A new section 255.7 is added, which reads as follows:

§ 255.7 Future proceedings.

The procedures specified in 17 U.S.C. § 115(c)(3)(C) shall be repeated in 1998 and every second year thereafter until 2006 so as to determine the applicable rates and terms for the making of digital phonorecord deliveries during the periods beginning January 1, 2000, 2002, 2004, 2006 and 2008. The procedures specified in 17 U.S.C. § 115(c)(3)(D) shall be repeated, in the absence of license agreements negotiated under 17 U.S.C. § 115(c)(3)(B) and (C), upon the filing of a petition in accordance with 17 U.S.C. § 803(a)(1), in 1999 and every second year thereafter until 2007 so as to determine new rates and terms for the making of digital phonorecord deliveries during the periods beginning January 1, 2000, 2002, 2004, 2006 and 2008. Thereafter, the procedures specified in 17 U.S.C. § 115(c)(3)(C) and (D) shall be repeated in each fifth calendar year. Notwithstanding the foregoing, different years for the repeating of such proceedings may be determined in accordance with 17 U.S.C. § 115(c)(3)(C) and (D).

EXHIBIT CO 0013

RULES and REGULATIONS

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Part 307

[Docket No. CRT 87-3-87MRA]

1987 Adjustment of the Mechanical Royalty Rate; Correction

Tuesday, June 23, 1987

*23546 AGENCY: Copyright Royalty Tribunal.

ACTION: Final rule; correction.

SUMMARY: The Tribunal is correcting an error in the preamble and an error in the final rule regarding adjusting the mechanical royalty rate every two years, from 1987 to 1997, which appeared in the Federal Register on June 15, 1987 (52 FR 22637).

FOR FURTHER INFORMATION CONTACT:Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street NW., Suite 450, Washington, DC 20036. (202) 653-5175.

SUPPLEMENTARY INFORMATION: The Tribunal promulgated regulations providing for adjusting the mechanical royalty rate every two years, from 1987 to 1997, on June 15, 1987 (52 FR 22637). The preamble contained an error and the final rule contained an error which are corrected by this notice.

1. In the first paragraph in the Supplementary Information section on page 22637, the Tribunal said, "The adjustment would be based solely upon changes in the Consumer Price Index (CPI), except when the CPI has declined, in which case the mechanical rate would remain the same * * *." That sentence is corrected to read, "The adjustment would be based solely upon changes in the Consumer Price Index (CPI) except when the CPI has declined, in which case the mechanical rate would go no lower than the 5 cents/.95 cent rate established in § 307.3(c) * * *."

PART 307--[AMENDED]

37 CFR § 307.3

§ 307.3 [Amended]

37 CFR § 307.3

2. Section 307.3(e)(2), on page 22637, column 3, is correctly revised to read as follows:

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* * * * *

(2) On the same date as the notice is published pursuant to paragraph (e)(1) of this section, the CRT shall publish in the Federal Register revised compulsory license royalty rates which shall adjust the amounts then in effect pursuant to § 307.3(d) or this paragraph (e), as the case may be, in direct proportion to the percent change in the CPI determined as provided in paragraph (e)(1) of this section, rounded to the nearest 1/20 th of a cent; Provided, however, that:

(i) The adjusted rates shall be no greater than 25% more than the rates then in effect; and

(ii) The adjusted rates shall be no less than the amounts set forth in § 307.3(c).

* * * * *

*23547 Dated: June 18, 1987.

J.C. Argetsinger,

Chairman.

[FR Doc. 87-14197 Filed 6-22-87; 8:45 am]

BILLING CODE 1410-09-M

52 FR 23546-02, 1987 WL 138224 (F.R.)

END OF DOCUMENT

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EXHIBIT CO 0014

RULES and REGULATIONS

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Part 307

[Docket No. CRT 87-3-87MRA]

1987 Adjustment of the Mechanical Royalty Rate

Monday, June 15, 1987

*22637 AGENCY: Copyright Royalty Tribunal.

ACTION: Final rule.

SUMMARY: This rule adopts a mechanism for adjusting the mechanical royalty rate every two years, from 1987 to 1997, based upon changes in the Consumer Price Index. This rule is based upon a proposal submitted by parties with a significant interest in the rate.

EFFECTIVE DATE: July 15, 1987.

FOR FURTHER INFORMATION CONTACT:Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street NW., Suite 450, Washington, DC 20036, (202) 653-5175).

SUPPLEMENTARY INFORMATION: Sections 801(b)(1) and 804 of the Copyright Act of 1976 authorize the Copyright Royalty Tribunal (Tribunal) to adjust the mechanical royalty rate in 1987 upon receiving a petition from a party with a significant interest in the royalty rate. On March 18, 1987, the Tribunal received such a petition from the National Music Publishers' Association, Inc., The Songwriters Guild of America, and the Recording Industry Association of America, Inc. On April 7, 1987, the Tribunal proposed to adjust the mechanical royalty rate according to the mechanism provided by the parties in their petition. Notice of Proposed Rulemaking, Docket No. 87-3-87MRA, 52 FR 11096 (April 7, 1987). Briefly stated, the proposed rule calls for adjustments of the mechanical royalty rate to be published in the Federal Register every two years (November 1, 1987, November 1, 1989, November 1, 1991, November 1, 1993, November 1, 1995). The adjustment would be based solely upon changes in the Consumer Price Index (CPI), except when the CPI has declined, in which case the mechanical rate would remain the same, or when the Index has risen by more than 25%, in which case the mechanical rate adjustment would be no greater than 25%.

The tribunal received joint comments filed by the National Music Publishers Association, Inc., The Songwriters Guild of America, and the Recording Industry Association of America, Inc. supporting the proposal. Similarly, the Tribunal received comments from SESAC, Inc., a performing rights society which also represents mechanical rights for a significant number of its publisher affiliates,

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and from Music Royalties Ltd., a company representing the mechanical rights in approximately 50,000 musical compositions. SESAC, Inc. and Music Royalties Ltd. support the proposed rule. The proposal is therefore adopted unchanged as a final rule.

List of Subjects in 37 CFR Part 307

Copyright, Music, Recordings.

PART 307--[AMENDED]

For the reasons set forth in the preamble, the Tribunal amends 37 CFR Part 307 as follows:

1. The authority citation for Part 307 continues to read as follows:

Authority: 17 U.S.C. 801(b)(1) and 804.

37 CFR § 307.3

§ 307.3 [Amended]

37 CFR § 307.3

2. Section 307.3(a) is amended by removing the words "paragraphs (b) and (c) of this section." from the end, and by adding in their place the words "paragraphs (b), (c), (d) and (e) of this section."

37 CFR § 307.3

3. Section 307.3(b) is amended by removing the words "paragraph (c) of this section." and adding in their place the words "paragraphs (c), (d) and (e) of this section."

37 CFR § 307.3

4. Section 307.3(c) is amended by adding the words ", subject to further adjustment pursuant to paragraphs (d) and (e) of this section." at the end.

37 CFR § 307.3

5. A new § 307.3(d) is added to read as follows:

* * * * *

(d)(1) On November 1, 1987, the Copyright Royalty Tribunal (CRT) shall publish in the Federal Register a notice of the percent change in the Consumer Price Index (all urban consumers, all items) (CPI) from the Index published for December, 1985 to the Index published for September, 1987, and the underlying calculations.

(2) On the same date as the notice is published pursuant to paragraph (d)(1) of this section, the CRT shall publish in the Federal Register revised compulsory license royalty rates which shall adjust the amounts set forth in § 307.3(c) in

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direct proportion to the percent change in the CPI determined as provided in paragraph (d)(1) of this section, rounded to the nearest 1/20th of a cent; provided however, that:

(i) The adjusted rates shall be no greater than 25% more than the amounts set forth in § 307.3(c); and

(ii) The adjusted rates shall be no less than the amounts set forth in § 307.3(c).

(3) The revised royalty rates for the compulsory license adjusted pursuant to this paragraph (d) shall become effective for every phonorecord made and distributed on or after January 1, 1988, subject to further adjustment pursuant to paragraph (e) of this section.

37 CFR § 307.3

6. A new § 307.3(e) is added to read as follows:

* * * * *

(e)(1) On November 1, 1989, and each November 1 biennially thereafter until November 1, 1995 (that is, November 1, 1991, 1993 and 1995), the CRT shall publish in the Federal Register a notice of the percent change in the CPI from the Index published for the September two years earlier to the Index published for the September of the year in which such notice is published, and the underlying calculations.

(2) On the same date as the notice is published pursuant to this paragraph (e)(1), the CRT shall publish in the Federal Register revised compulsory license royalty rates which shall adjust the amounts then in effect pursuant to § 307.3(d) or this paragraph (e), as the case may be, in direct proportion to the percent change in the CPI determined as provided in paragraph (e)(1) of this section, rounded to the nearest 1/20th of a cent; provided, however, that:

(i) The adjusted rates shall be no greater than 25% more than the rates then in effect; and

(ii) The adjusted rates shall be no less than the amounts set forth in § 307.3(c).

(3) The revised royalty rates for the compulsory license adjusted pursuant to this paragraph (e) shall become effective for every phonorecord made and distributed on or after January 1 of the year following that in which such notice is published; that is, on January 1, 1990, 1992, 1994 and 1996, respectively.

Dated: June 9, 1987.

J.C. Argetsinger,

Chairman.

[FR Doc. 87-13599 Filed 6-12-87; 8:45 am]

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BILLING CODE 1410-09-M

52 FR 22637-01, 1987 WL 136258 (F.R.)

END OF DOCUMENT

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EXHIBIT CO 0015

March 18, 1987

The Honorable J.C. Argetsinger
Chairman
Copyright Royalty Tribunal
1111 20th Street, N.W., 4th Floor
Washington, D.C. 20579

Re: 1987 Mechanical Royalty Adjustment

Dear Chairman Argetsinger:

We write on behalf of the National Music Publishers' Association, Inc., The Songwriters Guild of America and the Recording Industry Association of America, Inc. We are pleased to advise the Tribunal that we have concluded our discussions concerning the mechanical royalty rate adjustment and have formulated a joint proposal for consideration by the Tribunal. Accompanying this letter is a Joint Petition for Automatic Adjustments of Mechanical Royalty Rate, a Proposal Concerning 1987 Mechanical Royalty Rate Adjustment (Proposed Regulations) and a proposed Notice Commencing 1987 Mechanical Royalty Rate Adjustment Proceeding and Setting Procedural Dates.

Our understanding is that, in accordance with §§ 301.63 and 301.64 of the Tribunal's rules, the Tribunal may start to consider this petition and commence the proceedings after March 31, 1987.

We look forward to working with the Tribunal on this matter.

Respectfully submitted,

NATIONAL MUSIC PUBLISHERS' ASSOCIATION, INC.

By _____

Peter L. Felcher, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, New York 10019
(212)373-3390

THE SONGWRITERS GUILD OF AMERICA

By _____
Alvin Deutsch, Esq.
Linden & Deutsch
110 East 59 Street
New York, New York 10022
(212)758-1100

RECORDING INDUSTRY ASSOCIATION OF AMERICA, INC.

By _____
Cary H. Sherman, Esq.
Arnold & Porter
1200 New Hampshire Ave., N.W.
Washington, D.C. 20036
(202)872-6797

UNITED STATES OF AMERICA

BEFORE THE COPYRIGHT ROYALTY TRIBUNAL

WASHINGTON, D.C.

PROCEEDING FOR DETERMINATION OF INTERIM ADJUSTMENTS OF ROYALTY FOR MAKING AND DISTRIBUTING PHONORECORDS (MECHANICAL ROYALTY)	:	CRT Docket No. 87-____

JOINT PETITION FOR AUTOMATIC ADJUSTMENTS
OF MECHANICAL ROYALTY RATE

SUBMITTED BY
NATIONAL MUSIC PUBLISHERS' ASSOCIATION, INC.,
THE SONGWRITERS GUILD OF AMERICA AND
RECORDING INDUSTRY ASSOCIATION OF AMERICA, INC.

This petition is submitted jointly, pursuant to § 804(a)(2)(B) of the Copyright Act of 1976 (the "Act"), 17 U.S.C. § 804(a)(2)(B), and § 301.61(b)(2) of the Tribunal's rules, 37 C.F.R. § 301.61(b)(2), on behalf of the National Music Publishers' Association, Inc. and The Songwriters Guild of America (formerly American Guild of Authors and Composers) (hereinafter collectively referred to as the "Copyright Owners"); and the Recording Industry Association of America, Inc. (hereinafter referred to as the "Copyright Users").

National Music Publishers' Association, Inc. is a national association of over 300 commercially active American music publishers and represents the common interests of publishers of diverse types of music through a variety of legislative, legal, and public relations activities. The Songwriters Guild of America is a national association of approximately 4,000 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, and in legislative matters. Both of these organizations represent the interests of copyright royalty recipients. Recording Industry Association of America, Inc. is an association of approximately 43 recording companies. Its members are the principal manufacturers of the records, tapes and compact disks sold in the United States. The organization represents the interests of those who must pay royalties for use of copyrighted musical works in recordings.

The Copyright Owners and Copyright Users have held discussions for the purpose of arriving at a joint proposal respecting the 1987 mechanical royalty rate adjustment authorized under §§ 801(b)(1) and 804 of the Act. As a result of these discussions, we are pleased jointly to submit the attached "Proposal Concerning 1987 Mechanical Royalty Rate Adjustment" ("Proposal"). We

hereby petition the Tribunal to undertake a proceeding to promulgate regulations effecting an adjustment of the royalty rates provided in § 115 of the Copyright Act, as thereafter adjusted by the Tribunal, in the manner set forth in the Proposal.

In sum, the Proposal calls for the present mechanical royalty rates (5¢ per musical work, or .95¢ per minute of playing time or fraction thereof, whichever amount is larger) to be adjusted, in direct proportion to the percent change in the Consumer Price Index (all urban consumers, all items) (the "CPI"), on January 1 of 1988, 1990, 1992, 1994 and 1996; provided, however, that (a) the adjusted rates shall be no greater than 25% more than the rates in effect during the immediately preceding period, and (b) the adjusted rates shall be no lower than the 5¢/.95¢ rates presently in effect. Pursuant to § 804(a)(2)(B) of the Act, the Tribunal may be petitioned again in 1997 for adjustment of the royalty rates. The Proposal establishes the mechanism for periodic rate adjustments until that time.

Under the Proposal, the first rate adjustment would become effective on January 1, 1988, based on changes in the CPI for December 1985 through the CPI for September 1987. Thereafter, rate adjustments would be based on changes in the CPI in two-year intervals measured from the September CPI through the September

CPI two years later, with the adjusted rates becoming effective on the following January 1. Rates would be rounded to the nearest 1/20th of a cent.

In formulating this joint proposal, the parties have been guided by the approach which the Tribunal (46 Fed. Reg. 891 (Jan. 5, 1981); 46 Fed. Reg. 10466 (Feb. 3, 1981); 46 Fed. Reg. 55276 (Nov. 9, 1981); 46 Fed. Reg. 62267 (Dec. 23, 1981)) and the Court of Appeals for the District of Columbia Circuit (662 F.2d 1 (D.C. Cir. 1981)) adopted in the 1980 mechanical royalty rate adjustment proceeding. We believe that the Proposal is within the authority of the Tribunal to enact, and is calculated to achieve the objectives of § 801(b)(1)(A)-(D) of the Act.

The Copyright Owners and Copyright Users were the principal parties who participated in the 1980 mechanical royalty rate adjustment proceeding; they adequately represent the owners and users of copyrighted works whose royalty rates were specified by § 115 of the Act, and thereafter adjusted by the Tribunal; they have a "significant interest" in the mechanical royalty rates to be adjusted within the meaning of § 804(a)(2)(B) of the Act. The Copyright Owners and Copyright Users are presently unaware of any person or entity which would oppose the Proposal.

We recommend that the Tribunal make the Proposal available for public comment before determining whether to adopt its terms in a final decision.

The Proposal is submitted on the understanding that its various provisions are not severable. The Proposal is without prejudice to any position, contention, or argument which the Copyright Owners or Copyright Users may take in any proceeding or litigation, and is not intended to be, and should not constitute, a precedent in any rate adjustment proceedings in 1997 or thereafter.

Respectfully submitted,

NATIONAL MUSIC PUBLISHERS' ASSOCIATION, INC.

By _____

Peter L. Felcher, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, New York 10019
(212)373-3390

THE SONGWRITERS GUILD OF AMERICA

By _____

Alvin Deutsch, Esq.
Linden & Deutsch
110 East 59 Street
New York, New York 10022
(212)758-1100

RECORDING INDUSTRY ASSOCIATION OF AMERICA, INC.

By _____

Cary H. Sherman, Esq.
Arnold & Porter
1200 New Hampshire Ave., N.W.
Washington, D.C. 20036
(202)872-6797

Dated: March 18, 1987

(CRT Docket No. 87-_____)

Notice Commencing 1987 Mechanical Royalty Rate Adjustment Proceeding and Setting Procedural Dates

FOR FURTHER INFORMATION CONTACT: J.C. Argetsinger, Chairman, Copyright Royalty Tribunal, 1111 20th Street, N.W., Room 450, Washington, D.C. 20036, (202) 653-5175.

Sections 801(b)(1) and 804 of the Copyright Act of 1976 ("Act"), 17 U.S.C. §§ 801(b)(1), 804, authorize the Copyright Royalty Tribunal ("Tribunal") to adjust the mechanical royalty rate set forth in Section 115 of the Act. The first such adjustments were made by the Tribunal after a proceeding commenced in 1980.[1] Pursuant to Section 804(a)(2)(B) of the Act, parties with a "significant interest" in the mechanical royalty rate may petition the Tribunal in 1987 and every tenth year thereafter to make further adjustments.

On March 18, 1987, the Tribunal received a joint petition concerning the 1987 mechanical royalty rate adjustment from the National Music Publishers' Association, Inc. and The Songwriters Guild of America (hereinafter collectively referred to as the "Copyright Owners"), and the Recording Industry Association of America, Inc. ("Copyright Users"). These entities are described in the joint petition set forth below. The Copyright Owners and Copyright Users were the principal parties who participated in the Tribunal's 1980 mechanical royalty rate adjustment proceeding. They have a significant interest in the royalty rate subject to adjustment under Sections 801(b)(1) of the Act.

In their joint submission, the Copyright Owners and Copyright Users have petitioned the Tribunal to commence a 1987 mechanical royalty rate adjustment proceeding and to adjust the royalty rate in Section 307 of the Tribunal's rules in accordance with the Proposed

---

[1] 46 Fed. Reg. 891 (Jan. 5, 1981); 46 Fed. Reg. 10466 (Feb. 3, 1981); 46 Fed. Reg. 55276 (Nov. 9, 1981); and 46 Fed. Reg. 62267 (Dec. 23, 1981); Recording Industry Association of America v. Copyright Royalty Tribunal, 662 F.2d 1 (D.C. Cir. 1981).

Regulations set forth in their "Proposal Concerning 1987 Mechanical Royalty Rate Adjustment" ("Proposal").

The Tribunal is pleased that the principal parties who participated in the 1980 mechanical royalty rate adjustment proceeding have submitted this Proposal. The Tribunal has long encouraged voluntary resolution of the issues confronting the parties as being consistent with the spirit and intent of the Copyright Act. The Tribunal has carefully reviewed the Proposal. The Tribunal believes that the Proposal represents a good faith effort by the parties to resolve the differences among them. Nevertheless, there may be entities which have not participated in the formulation of this Proposal or the prior mechanical royalty rate adjustment proceeding who wish to express views regarding the rate adjustment.

Accordingly, and in light of the above and pursuant to Section 804 of the Act, the Tribunal hereby gives notice of commencement of the 1987 mechanical royalty rate adjustment proceeding contemplated by Section 801(b)(1) of the Act. The Tribunal directs that all interested parties notify the Tribunal no later than [thirty days from the date of publication] of their intent to participate in this proceeding. Only persons providing such notification by this date will be allowed to participate in the 1987 mechanical royalty rate adjustment proceeding.

The Tribunal further directs that all such interested parties submit comments concerning the Tribunal's adoption of the Proposal. These comments must be filed with the Tribunal no later than [sixty days from date of publication]. Any party opposing the Tribunal's adoption of the Proposal must (1) set forth the bases of its opposition; (2) set forth its position with respect to each of the provisions of the Proposal and any other matters which it wishes the Tribunal to consider relevant to the mechanical royalty rate adjustments; (3) describe what, if any, further proceedings (including oral argument and evidentiary hearings) should be held before the Tribunal makes mechanical royalty rate adjustments under Sections 801(b)(1) of the Act; and (4) describe the nature and purpose of any evidence which it would introduce should the Tribunal hold evidentiary hearings. Reply comments must be filed no later than [seventy-five days from the date of publication].

For the convenience of interested parties, the full text of the joint petition and the Proposal is set forth as part of this notice.

[Set forth text of petition and Proposal.]

J. C. Argetsinger
Chairman

April , 1987

PRESS RELEASE

NMPA, SGA, & RIAA PETITION CRT WITH JOINT PROPOSAL FOR MECHANICAL ROYALTY RATE ADJUSTMENT

Washington, D.C. March 18, 1987 -- Edward P. Murphy, President of the National Music Publishers' Association (NMPA), George David Weiss, President of The Songwriters Guild of America (SGA), and Stanley M. Gortikov, Chairman of the Board of the Recording Industry Association of America (RIAA), announced that today their organizations had jointly petitioned the Copyright Royalty Tribunal to adopt their proposal for adjustments to the statutory mechanical royalty rate over the next ten years.

The proposal calls for the present mechanical royalty rate (5¢ per tune) to be adjusted in proportion to changes in the Consumer Price Index (CPI) every two years, beginning on January 1, 1988 and continuing until January 1, 1996. Regardless of changes in the CPI, however, the rate cannot decline below 5¢ nor exceed the previous rate by more than 25% for any two-year span. Resulting royalty rates are to be rounded to the nearest 1/20¢. The "overtime" rate (presently .95¢ per minute of playing time) would likewise be adjusted in proportion to changes in the CPI.

The initial rate adjustment, which is to occur on January 1, 1988, would be based on changes in the CPI between December 31, 1985 and September 30, 1987. Thereafter, rate adjustments would be made every two years based on CPI changes from September through the September two years later, with the adjusted rates becoming effective on January 1, 1990, 1992, 1994 and 1996.

Language implementing the proposal was presented as a recommendation to the Copyright Royalty Tribunal for adoption as formal regulations. The CRT is authorized by law to review in 1987 petitioned changes in the statutory rate, which has prevailed at 5¢ per song since January 1, 1986. The next CRT review can occur in 1997.

NMPA, SGA (then AGAC), and RIAA were the principal parties participating in the 1980 mechanical royalty rate adjustment proceedings before the Tribunal. Messrs. Murphy, Weiss and Gortikov all expressed their hope that the Tribunal would act favorably on the joint proposal.

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EXHIBIT CO 0016

Westlaw.

46 FR 62267-02, 1981 WL 144993 (F.R.)

(Cite as: 46 FR 62267)

RULES and REGULATIONS

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Part 307

[Requisition No: 100-82-42]

Adjustment of Royalty Payable Under Compulsory License for Making and Distributing Phonorecords

Wednesday, December 23, 1981

*62267 AGENCY: Copyright Royalty Tribunal.

ACTION: Final rule.

SUMMARY: This rule provides for three automatic stepped increases in the mechanical royalty rate based on data in the record of the 1980 mechanical royalty proceeding concerning recent trends in record prices, and deletes the existing regulations of the Tribunal providing for interim adjustments of the mechanical royalty.

EFFECTIVE DATE: January 31, 1982.

FOR FURTHER INFORMATION CONTACT: Frances Garcia, Chairman, Copyright Royalty Tribunal, 202-653-5175.

Supplementary information: The Copyright Royalty Tribunal (Tribunal) published in the Federal Register of November 9, 1981 (46 FR 55276-7) a proposed rule to amend the regulations of the Tribunal providing for interim adjustments of the mechanical royalty. Information covering the background and purpose of the proposed rule is *62268 contained in the November 9, 1981 notice.

The Tribunal received comments on the proposed rule from the Amusement and Music Operators Association (AMOA) and Shetland Sound.

AMOA restated its legal position that the Tribunal "is not authorized to prescribe interim rate adjustments, whether they are limited to automatic adjustments or not." The Tribunal concurs in the view of the United States Court of Appeals for the District of Columbia Circuit as found in Recording Industry Association of America v. Copyright Royalty Tribunal (No. 80-2545) that "we see nothing in the statute precluding the Tribunal from adopting a reasonable

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mechanism for automatic rate changes in interim years."

Shetland Sound maintained that the rate of the incremental increases provided in the rule are "distinctly inadequate and continues to reflect the injustices of the past 67 years." The Tribunal concludes that the rates provided in the rule are reasonable and promote the statutory objectives.

The Tribunal adopts as its findings in this proceeding the Statement in Support of Proposed Regulations contained in the November 9, 1981 publication.

The Tribunal at a public meeting on December 15, 1981 adopted the rule as published on November 9, 1981.

PART 307--ADJUSTMENT OF ROYALTY PAYABLE UNDER COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHONORECORDS

Pursuant to 17 U.S.C. 801(b)(1) and 804, 37 CFR Part 307 is amended as follows:

37 CFR § 307.2

§ 307.2 [Amended]

37 CFR § 307.4

§ 307.4 [Removed]

By removing the words "§§ 307.3 and 307.4" from §307.2, and by adding in their place the words "§ 307.3" ; by removing § 307.4; and by revising § 307.3 to read as follows:

37 CFR § 307.3

§ 307.3 Adjustment of royalty rate

(a) For every phonorecord made and distributed on or after January 1, 1983, the royalty payable with respect to each work embodied in the phonorecord shall be either 4.25 cents, or .8 cent per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (b) and (c) of this section.

(b) For every phonorecord made and distributed on or after July 1, 1984, the royalty payable with respect to each work embodied in the phonorecord shall be either 4.5 cents, or .85 cent per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraph (c) of this section.

(c) For every phonorecord made and distributed on or after January 1, 1986, the royalty payable with respect to each work embodied in the phonorecord shall be

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either 5 cents, or .95 cent per minute of playing time or fraction thereof, whichever amount is larger.

Frances Garcia,

Chairman.

December 17, 1981.

[FR Doc. 81-36539 Filed 12-22-81; 8:45 am]

BILLING CODE 1410-01-M

46 FR 62267-02, 1981 WL 144993 (F.R.)

END OF DOCUMENT

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EXHIBIT CO 0017

ORIGINAL
NUMBER 2 OF
2 COUNTERPARTS

The Harry Fox Agency, Inc.
711 Third Avenue
New York, New York 10017

Dated as of June 30, 2006

COPY

Redacted

Re: The Harry Fox Agency, Inc. Redacted
Mastertone, Ringtone, and Ringback Service Licensing
Agreement made as of September 13, 2005 Amendment

Ladies and Gentlemen:

Reference is hereby made to that certain Mastertone, Ringtone, and Ringback Service Licensing Agreement made as of September 13, 2005 by and between The Harry Fox Agency, Inc. ("HFA"), a New York corporation with an office at 711 Third Avenue, New York, NY 10017 and Redacted, a Delaware corporation with offices at Redacted which agreement is in full force and effect as of the date hereof (the "Agreement").

Notwithstanding anything to the contrary contained in the Agreement, the following shall constitute the parties further understanding with respect thereto:

1. Section 1.2 and 1.3 – The term "Opt-In Period" shall be deleted and replaced with the term "Publisher Option Period."

2. Section 3 – The Term shall be extended up to and including December 31, 2008; and the date "December 31, 2006" shall be deleted.

3. Section 11.2 – effective immediately, the fax number for HFA's General Counsel is 646-487-6789.

4. Pursuant to Section 11.1 of the Agreement, Licensee shall pay to HFA an administrative fee of Redacted in consideration of HFA's administrative

5. All terms not expressly defined herein shall have the same meanings as set forth in the Agreement. Except as set forth herein, all provisions of the Agreement shall remain in full force and effect in accordance with its terms.

[Signatures Appear on Next Page.]

#55

Very truly yours,

THE HARRY FOX AGENCY, INC.

By: _____

MICHAEL SIMON
SVP, Business Affairs, General Counsel
& CSO

Accepted and Agreed:

Redacted

EXHIBIT CO 0018

ORIGINAL

NUMBER 3 OF

3 COUNTERPARTS

MASTERTONE AND RINGBACK SERVICE LICENSING AGREEMENT

This agreement ("Agreement") is entered into as of March 9, 2006 ("Effective Date") by and between Redacted ("Licensee"), a New York corporation with an office at , and The Harry Fox Agency, Inc. ("HFA"), a New York corporation with an office at 711 Third Avenue, New York, NY 10017.

WHEREAS, Licensee desires to exploit, via one or more Services (as below defined) excerpts of copyrighted musical compositions ("**Musical Works**") in the form of Ringtones (as below defined), excerpts of various master sound recordings, which in turn embody excerpts of Musical Works in the form of Mastertones (as below defined) and Ringbacks (as below defined); and

WHEREAS, in connection with the operation of the Services, Licensee seeks licenses to make Server Fixations (as below defined) and to reproduce and distribute Ringtones and Mastertones and to reproduce and transmit Ringbacks embodying Musical Works that are owned and/or controlled by publisher-principals affiliated with HFA ("**Publisher-Principals**"); and

WHEREAS, HFA is prepared to issue such licenses to the extent it is authorized to do so by such Publisher-Principals;

NOW, THEREFORE, in consideration of the promises contained in this Agreement and for other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Licensing**

1.1 Pursuant to the terms of this Agreement, and as more particularly described herein, upon receipt of appropriate license requests ("**License Requests**") from Licensee, HFA shall, to the extent authorized by particular Publisher-Principals, issue on behalf of such Publisher-Principals nonexclusive licenses ("**Licenses**") to reproduce and distribute Ringtones and Mastertones and to reproduce and transmit Ringbacks embodying Musical Works owned and/or controlled by such Publisher-Principals ("**Licensed Works**") for use on the Services in accordance with the terms of this Agreement. The license authority contemplated hereunder and granted pursuant to any License issued hereunder shall include and is limited to: (a) the digital encoding and distribution by Licensee (or by a third-party encoding entity authorized by and acting on behalf of Licensee ("**Authorized Encoder**")) of Ringtones, Mastertones and Ringbacks embodying Licensed Works for reproduction by Licensee or a Third-Party Provider, (as below defined) on a central computer server or servers owned and/or controlled by Licensee or such Third-Party Provider, located in the United States (including its territories and possessions and the Commonwealth of Puerto Rico (collectively, the "**United States**")) ("**Servers**"), solely for use in connection with the Services ("**Server Fixations**"); (b) the transmission of Ringtones and Mastertones embodying Licensed Works from such Servers for storage on Covered Ringtones/ Mastertone

Devices (as below defined), solely for use in connection with the Services; (c) the transmission of Ringbacks for playback through Covered Ringback Devices (as below defined), solely for use in connection with the Services; (d) the reproduction of Ringtones and Mastertones embodying Licensed Works on Covered Ringtones/ Mastertone Devices, solely for use in connection with the Services (each such reproduction, a "Ringtone/**Mastertone Delivery**"); and (e) the offering of Promotional Ringtones/ Mastertones (as below defined) and Promotional Ringbacks (as below defined) of Licensed Works, solely for use in connection with the Services. The license authority under any License issued hereunder is limited to and granted solely with respect to (x) the share of the copyright owned or controlled by the individual Participating Publisher-Principal(s) (as below defined) on whose behalf the License is issued by HFA; and (y) as applicable, the particular individual sound recording of the individual Licensed Work from which the excerpt embodied in the Mastertone or Ringback was derived.

1.2 The authority of HFA to issue Licenses for any individual Musical Work on behalf of any one or more Publisher-Principals is subject to the approval of the relevant Publisher-Principal(s). Before commencing to issue licenses hereunder, HFA shall for a period of time (the "**Opt-In Period**") offer to its Publisher-Principals the opportunity to agree to make their Musical Works available for licensing under this Agreement by notifying HFA of their desire to opt in to the Agreement. Notwithstanding the decision to opt in by any individual Publisher-Principal, thereby rendering such Publisher-Principal a "**Participating Publisher-Principal,**" if such Participating Publisher-Principal at any time requests that HFA not issue Licenses on its behalf (either with respect to a particular Musical Work or in general), HFA will honor that request; provided, however, that any Licenses validly issued by HFA prior to the receipt of such a request shall remain in effect until the Term (as below defined) of this Agreement expires. Notwithstanding the foregoing, if at any time HFA notifies Licensee in writing that, due to a valid, material legal or contractual concern, a particular License is to be revoked or terminated and the subject Licensed Work removed from the Services, Licensee will respond promptly by arranging to have such work removed from each Service with no further reproduction, distribution or transmission thereof, within seven (7) business days of Licensee's receipt of such notice.

1.3 Following execution of this Agreement and conclusion of the applicable Opt-In Period, Licensee may begin submitting License Requests in electronic form in accordance with the format specified in Exhibit A (as such format may be modified from time to time by HFA upon reasonable notice to Licensee, subject to Licensee's ability reasonably to comply with any such modifications) ("**Request Format**"), which License Requests shall be duly processed by HFA. Without limitation, Licensee shall include in each License Request to the extent required by the Request Format (a) the title of the Musical Work for which a License is being requested; (b) the writer(s) of the Musical Work to the extent available (but in any event at least one writer); (c) the publisher(s) of the Musical Work; (d) whether the License sought is for a Ringtone, Mastertone or Ringback ; (e) the name of the record company that produced the sound recording embodied

in the Mastertone and/or Ringback as applicable; (f) the name of the artist performing such sound recording as applicable; (g) the ISRC number for such sound recording as applicable; (h) the total playing time of such sound recording in its complete form, expressed in minutes and seconds as applicable; (i) the title of an album for which such sound recording has been previously licensed, if applicable; and (j) such other information as may be required by HFA's Request Format.

1.4 HFA shall from time to time provide to Licensee an electronic file specifying the Licenses issued under this Agreement (each such report a "**Confirmation Report**"). To aid Licensee in the calculation of royalties, with respect to each License, such Confirmation Report shall include, *inter alia*, the total percentage ownership share of the Participating Publisher-Principal(s) on whose behalf the License has been issued.

1.5 For the avoidance of doubt, and without limitation, the Licenses granted hereunder do not extend to or cover: (a) any right of public performance; (b) any copyrights or other rights in sound recordings; (c) any rights to synchronize musical works with visual images resulting in audiovisual works; (d) any print, display or karaoke rights; (e) any adaptation (derivative work) rights or right to alter the fundamental character of a Musical Work (except to reproduce and distribute Ringtones, Mastertones and/or Ringbacks, in strict accordance with the terms and conditions of this Agreement); (f) any merchandising rights; (g) any use of a musical work (whether or not embodied in a sound recording) for a marketing campaign, product tie-in, game or contest or otherwise to advertise, promote or cross-promote any product or service (other than the sound recording embodying the Licensed Work itself); or (h) any use of the title of a musical work, or the name or likeness of any writer or publisher of a musical work, except for identification purposes as described in Section 4 or in an "intro" or "outro" as described in Section 10.

1.6 The license authority contemplated by this Agreement and granted pursuant to any License issued hereunder is limited to Licensee and may not be sublicensed, assigned or otherwise transferred by Licensee except to the extent expressly permitted hereunder.

2. Reporting and Payment of Royalties

2.1 Licensee shall account and pay royalties to HFA quarterly, within forty-five (45) days after the end of each calendar quarter, on the basis of each Ringtone/ Mastertone Delivery and each Ringback Sale (as below defined) reported to Licensee during such calendar quarter. Licensee shall provide its quarterly statements ("**Statements**") in electronic form in accordance with the format specified in Exhibit B (as such format may be modified from time to time by HFA ("**Reporting Format**"). With respect to each quarterly reporting period, for each License, Licensee shall include in its Statement(s) the HFA License number; (t) the total number of Ringtone/ Mastertone Deliveries; (u) the total number of Ringback Sales; (v) a breakdown of the Ringtone/ Mastertone Deliveries by the

particular provider(s) (i.e., Licensee or the specific Third-Party Provider) through which they were made; (w) a breakdown of the Ringback Sales by the particular provider(s) through which they were made; (x) the total royalty amount being paid for the Ringtone/ Mastertone Deliveries; (y) the total royalty amount being paid for the Ringback Sales; and (z) such other information as may be required by HFA's Reporting Format. Interest on late payments shall be payable to HFA at the rate of prime plus two percent (2%) calculated from the date the royalties were due to be paid under the applicable reporting period to the date of ultimate payment to HFA.

2.2 For each Ringtone/ Mastertone Delivery and each Ringback Sale, the royalty shall be equal to the greatest of the following amounts:

(a) the greater of: (i) Redacted of the retail selling price for the Ringtone, Mastertone and/or Ringback (or the Effective Retail Price (as below defined) if the Ringtone, Mastertone or Ringback is bundled together with other products); or

(b) Redacted of Licensee's receipts attributable to the sale of the Ringtone, Mastertone or Ringback where a Third-Party Provider is involved; or

(c) a "floor" of Redacted

If Licensee is compensated in whole or in part on a revenue share basis (i.e., where Licensee does not receive a payment for each Ringtone/ Mastertone Delivery or Ringback Sale but instead receives a portion of a monthly subscription fee or other non-transaction-specific revenue paid to the Service that is not directly tied to the particular Ringtone/ Mastertone Delivery or Ringback Sale), for purposes of calculating the amount payable to HFA hereunder, the percentage under clause (b)(i) above shall be Redacted

In each case above, the royalty amount payable shall be proportionately reduced to the extent that the Participating Publisher-Principal(s) on whose behalf the License is granted own(s) or control(s) less than 100% of the Work.

3. Term

The term of this Agreement shall commence as of the Effective Date and terminate on December 31, 2007 (the "**Term**"). If Licensee wishes to renew this Agreement for an additional two (2) year term, it shall notify HFA of such desire not later than a date six (6) months prior to the end of the Term. Such notification shall include proposed terms for any such renewal. Any renewal shall be subject to the approval of individual Publisher-Principals as described in Subsection 1.2, and HFA reserves the right to propose changes to administrative and other aspects of the Agreement as it deems appropriate.

4. **Writer/Publisher Credit**

Licensee shall, to the extent commercially reasonable, include in any graphics and/or imagery displayed in connection with the marketing of any Ringtone,

Mastertone or Ringback of a Licensed Work written credit in legible form setting forth the names of the writer(s) and publisher(s) of such Licensed Work.

5. Security

5.1 In connection with the use of any Licensed Work, Licensee shall use reasonable commercial efforts to implement and maintain copy protection and digital rights management technology and systems, including software and/or hardware functional limitations consistent with standard industry practices then in effect for the applicable media (collectively, "**Security Systems**") with respect to all aspects of the Services under its supervision and/or control, including without limitation its Servers and operating systems, that, within current industry standards, (a) are designed to prevent unauthorized reproduction and distribution of the Licensed Work, in the form of Ringtones, Mastertones, Ringbacks or otherwise; (b) are sufficient to track and enforce the use limitations contemplated by this Agreement; and (c) meet or exceed current industry standards as they exist from time to time for the licensed delivery of music via digital transmission and its reproduction on devices including, without limitation, Covered Ringtone/ Mastertone Devices and Covered Ringback Devices.

5.2 To the extent Licensee employs third-party technology in order to operate, Licensee shall use its commercially reasonable efforts to maintain and upgrade such technology by (a) diligently monitoring any third-party notifications of bug-fixes, security holes and functionlity improvements; and (b) obtaining any available upgrades and bug-fixes, and installing, testing and distributing such upgrades and bug-fixes as necessary so as to maintain the integrity of its Security Systems.

5.3 Licensee shall use commercially reasonable efforts to prevent any unauthorized reproduction, distribution and/or transmission of Musical Works by Third-Party Providers, Authorized Encoders, users of the Services or others, including, without limitation, efforts to require all Third-Party Providers and Authorized Encoders to implement and maintain Security Systems consistent with the standards set forth in Subsections 5.1 and 5.2 above.

5.4 In the event it becomes aware of a material breach of its own, a Third-Party Provider's or an Authorized Encoder's Security Systems or of another material security concern relating to the Services ("**Security Breach**"), whether through its own monitoring efforts, upon being advised by another party (including HFA) or otherwise, Licensee shall use commercially reasonable efforts to, or to cause the applicable third party to, resolve the Security Breach so that Licensee's and/or the applicable third party's security is restored to full integrity as quickly as possible. If a solution to the Security Breach is not readily available (i.e., cannot be implemented by Licensee or the applicable third party within five (5) business days from the time Licensee becomes aware of the Security Breach), Licensee shall (a) promptly notify HFA of the Security Breach in writing (unless Licensee learned of the breach from HFA); and (b) cease and/or, with respect to a third party, require the cessation of, all further reproduction, distribution and/or transmission of Licensed Works to the extent such activities are or could possibly

be affected by the Security Breach, pending full resolution of the Security Breach. In such a case, Licensee (x) shall keep HFA reasonably apprised of the status of its efforts to resolve the Security Breach; and (y) shall not resume or permit the resumption of the activities that were suspended pursuant to this Subsection 5.4 until full security has been restored. In the event of a Security Breach by a Third-Party Provider or Authorized Encoder that cannot be resolved in accordance with the terms of this Subsection 5.4, it is understood and agreed that Licensee will not be in breach of this Agreement if it promptly terminates all license and/or other authority Licensee has provided to such third party to reproduce, distribute and/or transmit Licensed Works and uses its reasonable best commercial efforts to ensure that such third party in fact ceases to engage in such activities if it has not done so already.

6. Royalty and Security Compliance

6.1 Notwithstanding any other right of HFA and/or any Participating Publisher-Principal to examine the books and records of Licensee in connection with Licensee's use of Musical Works, HFA shall, at its sole expense, be entitled, upon thirty (30) days' notice to Licensee, to conduct an examination of the books, records, operations and Security Systems of Licensee ("**Royalty and Security Examination**") to determine whether Licensee is in compliance with its reporting, royalty and security obligations under this Agreement. HFA shall not seek to initiate a Royalty and Security Examination more than once every twelve (12) months or more than two (2) years following the termination of this Agreement, and no such royalty examination may be conducted with respect to a particular royalty reporting period more than one time.

6.2 During the course of a Royalty and Security Examination, upon request by HFA or an examiner acting on its behalf, Licensee shall, within ten (10) business days (a) provide access to any information that may be called for by such request, including without limitation any (i) books, records, files, logs, reports, compilations, usage data and other documentation (including Licensee's "master schedule" of ringtone, mastertone and ringback deals and copies of Licensee's agreements with Third-Party Providers), whether in paper or electronic form, that were or could be used or required to generate or verify Licensee's Statements and/or that reflect or summarize Licensees' Statements; (ii) financial information sufficient to reflect cash receipts and general revenue accounts relating directly or indirectly to the activities licensed under this Agreement (which financial information may, without limitation, include books, records, ledgers, reports, and other documentation (including general ledger trial balances for relevant accounts for the relevant periods)); (iii) all relevant Third-Party Provider Documentation (as below defined), whether obtained or generated by Licensee in connection with Third-Party Providers' regular accountings or in the course of Licensee's examinations of Third-Party Providers; and (iv) files, logs, reports, compilations, testing and monitoring data and other documentation related to and/or reflecting the operation and integrity of Licensee's Security Systems (such information, along with the information described in the items (a)(i) and (a)(iii) of this Subsection 6.2, collectively referred to as "**Documentation**"); and (b) through the assistance of personnel who are familiar with the technical and operational

aspects of relevant computer, hardware, software and Security Systems owned by or otherwise under the supervision and control of Licensee (collectively, "**Operational Systems**") who are to be made available by Licensee, provide real-time and/or historical access to such Operational Systems, as requested, sufficient to permit HFA or its examiner(s) to conduct meaningful tests and analysis to verify that (i) the Operational Systems are properly and accurately tracking and reporting the use of the Licensed Works, and royalties payable therefor, as contemplated by the terms of this Agreement; and (ii) the Operational Systems are in compliance with the security requirements set forth in Section 5 of this Agreement. Licensee shall provide the information, systems access and personnel required by this Subsection 6.2 free of charge and, unless otherwise agreed by HFA or its examiner(s), at Licensee's place of business.

6.3 During the course of and/or following completion of the Royalty and Security Examination, upon reasonable request by HFA or an examiner acting on its behalf, Licensee shall make available company personnel at an appropriate level of seniority and/or technical ability to discuss and/or resolve particular issues and findings arising out of such examination.

6.4 Licensee shall maintain any and all Documentation that reasonably might be expected to be relevant to HFA's conduct of a Royalty and Security Examination for a period of at least three (3) years following the expiration or termination of this Agreement, unless there is a Royalty and Security Examination in progress or not fully resolved as of the expiration of such period, in which case the Documentation shall be maintained until the Royalty and Security Examination is fully resolved to the satisfaction of HFA.

6.5 If a royalty examination reveals a nonpayment or underpayment of royalties due to HFA, HFA may seek interest from Licensee in accordance with its customary practices.

6.6 In addition to and without limiting any of the above terms applicable to Licensee respecting Royalty and Security Compliance, HFA shall have the additional right to participate with Licensee in any royalty compliance examinations (audits) by Licensee of Third-Party Providers, the scope of which, without limitation, shall fulfill as nearly as possible the requirements of a Royalty and Security Examination as described above, as follows:

(a) With respect to each Third-Party Provider, Licensee shall use commercially reasonable efforts to secure in its licensing agreement(s) with such Third-Party Provider relating to the Services the right for HFA to conduct, together with Licensee, a direct examination of such Third-Party Provider ("**Joint Direct Examination**"), as more particularly described below. Regardless of whether Licensee succeeds in securing a Joint Direct Examination right for HFA, HFA may choose, in its sole discretion, either to participate indirectly in any examination of a Third-Party Provider conducted by Licensee at the time of Licensee's examination ("**Indirect Examination**"), as more particularly described below, or simply to review Third-Party Provider Documentation in the

course of HFA's regular Royalty and Security Examination of Licensee, as more particularly described above.

(b) With respect to any Third-Party Provider Licensee intends to examine, prior to notifying such Third-Party Provider of the examination, Licensee shall provide HFA with at least twenty (20) days' written notice of its intent to conduct, and a proposed schedule for, the examination. If HFA seeks to conduct either Joint Direct Examination (if permitted) or an Indirect Examination of such Third-Party Provider, it shall so notify Licensee in writing within ten (10) days of its receipt of the aforementioned notice. Provided that HFA has been properly notified by Licensee of an intended examination under this clause (b), HFA's failure to exercise its option to participate in either a Joint Direct Examination (if applicable)or Indirect Examination of the relevant Third-Party Provider for the examination period at issue shall constitute a waiver of HFA's right to participate in either a Joint Direct Examination or Indirect Examination of such Third-Party Provider for such period; provided, however, that HFA will remain entitled to its share of any recovery from such Third-Party Provider as per clause (e) below and further provided that HFA may still exercise its right to examine Third-Party Provider Documentation relating to such Third-Party Provider in the course of a Royalty and Security Examination of Licensee pursuant to Subsection 6.2.

(c) In the case of a Joint Direct Examination, Licensee and HFA shall cooperate in good faith concerning the choice of an examiner and the scheduling and particulars of the examination, shall mutually agree upon and jointly assert any claim against the Third-Party Provider, and shall jointly negotiate the settlement of such Joint Direct Examination with the Third-Party Provider. If, acting in good faith, either HFA or Licensee determines in its sole discretion that such a negotiated settlement with the Third-Party Provider is not achievable, notwithstanding and in addition to any other rights or remedies HFA or Licensee may have under this Agreement or otherwise, either party may give the other written notice of its intent to discontinue negotiations and, if applicable, to take legal action against such Third-Party Provider. The costs of a Joint Direct Examination shall be (i) shared by HFA and Licensee in proportion to their relative recovery amounts; (ii) or, in the absence of a recovery, shall be borne 1/5 by HFA and 4/5 by Licensee unless HFA, acting pursuant to clause (f) below, caused the examination to be conducted notwithstanding Licensee's recommendation against conducting such examination, in which case the costs shall be borne equally by HFA and Licensee.

(d) In the case of an Indirect Examination, Licensee shall, while conducting the underlying examination, make available to HFA as it is obtained all documentation provided to Licensee by the Third-Party Provider relevant to the examination period, as well as all extrapolations, charts, summaries, claims, settlement documents and other materials generated by Licensee and/or the Third-Party Provider in connection with the examination of such Third-Party Provider ("**Third-Party Provider**

Documentation"), and HFA shall be entitled reasonably to approve and participate in any claim asserted by Licensee against the Third-Party Provider. Licensee's settlement of such examination with the Third-Party Provider shall be subject to HFA's approval, such approval not to be unreasonably withheld. If, acting in good faith, either HFA or Licensee determines in its sole discretion that a mutually agreeable negotiated settlement with the Third-Party Provider is not achievable, notwithstanding and in addition to any other rights or remedies HFA or Licensee may have under this Agreement or otherwise, either party may give the other written notice of its intent to discontinue negotiations and, if applicable, to take legal action against the Third-Party Provider. HFA and Licensee shall each bear its own costs in connection with such an Indirect HFA Examination.

(e) In the case where Licensee conducts an examination of a Third-Party Provider, regardless of whether such examination is conducted with or without the direct or indirect participation of HFA, Licensee shall within ten (10) days upon receiving any settlement proceeds from such Third-Party Provider pay to HFA HFA's share of any royalty and interest amounts due HFA from such settlement proceeds based upon the usage of Licensed Works and periods covered by the settlement, accompanied by appropriate supporting documentation setting forth the basis for such payment, the reporting periods at issue and sufficient additional detail to allow HFA to apportion and distribute the payment among affected Participating Publisher-Principals in accordance with HFA's customary practices.

(f) Commencing with the Effective Date of this Agreement, should Licensee decline to conduct an examination of any Third-Party Provider for a period of twelve (12) months or longer, HFA may request Licensee at any time in writing before three (3) years following the termination of this Agreement to initiate such an examination, and Licensee shall within ten (10) days of its receipt of such request schedule such an examination and provide to HFA the written notice described in clause (b) above. Before requesting Licensee to conduct an examination, HFA shall consult with Licensee to obtain, and Licensee shall provide to HFA, information and impressions about the Third-Party Provider relevant to the determination as to whether an examination would be productive and will, in good faith, consider such information and impressions in considering whether to require Licensee to undertake an examination; provided, however, that HFA's obligation to consult with Licensee shall in no way vitiate its right to request that such an examination be conducted

(g) The fact that HFA may examine Third-Party Providers either directly or indirectly hereunder shall in no way affect Licensee's obligations to report and pay all royalties due under the terms of this Agreement, for which Licensee assumes full responsibility, regardless of the conduct or default of any Third-Party Provider; provided, however, that in exercising any examination rights under this Agreement, HFA shall not seek to recover more than once (i.e., from both Licensee and a Third-Party

Provider) for the same royalty liability. HFA reserves the right to take independent legal action against any Third-Party Provider, subject to HFA's provision of prior written notice to Licensee as required by the above clauses (c) and (d) above or where such legal action otherwise concerns activities that are the subject of this Agreement.

6.7 HFA acknowledges the confidential nature of the Documentation that Licensee will be providing HFA and its examiners in connection with a Royalty and Security Examination hereunder. HFA agrees that, except as authorized in writing by Licensee, it will not disclose to anyone other than HFA's officers and employees (including the NMPA/HFA board of directors), legal counsel, financial advisors and HFA-affiliated publishers (collectively, "**HFA Parties**") any such Documentation. Notwithstanding the foregoing, HFA may disclose such information (a) as required under any statute, regulation, order, subpoena or document discovery request, provided that prior written notice of such disclosure is furnished to Licensee as soon as practicable in order to afford Licensee an opportunity to seek (at its own expense) a protective order, or (b) as required in the context of a legal action or proceeding relating to the enforcement of HFA's or an HFA-affiliated publisher's rights hereunder, provided Licensee is given advance written notice of HFA's intention to disclose. In connection with HFA's examination of Licensee or a Third-Party Provider under this Agreement, an examiner acting on behalf of HFA shall, if so requested by Licensee and/or such Third-Party Provider, execute a nondisclosure agreement substantially in the form of Exhibit C. If in exercising its rights under this Agreement HFA should share information of a confidential nature with Licensee, Licensee agrees that, except as authorized by HFA in writing, it will not disclose to anyone other than to Licensee's officers and employees, legal counsel and financial advisors, any such information, except (a) as required under any statute, regulation, order, subpoena or document discovery request, provided that prior written notice of such disclosure is furnished to HFA as soon as practicable in order to afford HFA an opportunity to seek (at its own expense) a protective order, or (b) as required in the context of a legal action or proceeding relating to the enforcement of Licensee's rights hereunder.

7. Representations and Warranties

Licensee represents and warrants that: (a) it has the full right, power and authority to enter into and perform this Agreement in accordance with its terms and conditions; (b) it shall take all steps necessary to implement and shall comply with (i) its security obligations set forth in Section 5, and (ii) the requirements set forth in Section 9; and (c) in connection with Licensee's exercise of the rights being granted to Licensee hereunder, Licensee shall (i) neither infringe upon nor violate the intellectual property rights or other rights of any third party, and (ii) comply with all applicable laws, rules and regulations. Licensee further represents and warrants that should it become aware or have a good-faith basis to believe (including without limitation because it has been so notified by HFA) that a Third-Party Provider is infringing or violating the intellectual property rights or other rights (each, an "**Infringement**") of any third party in any Musical Work owned or controlled by a Publisher-Principal (including, without limitation, any

Licensed Work), it shall within five (5) business days use reasonable best commercial efforts to cause such Third-Party Provider to remove from the Service and discontinue any further reproduction, distribution and/or transmission of any affected Musical Work(s). If (i) by the expiration of the applicable five (5) business day period, such Third-Party Provider shall not have removed from such Service and discontinued any further reproduction, distribution and/or transmission of the affected Musical Work(s), and HFA shall have provided to Licensee credible evidence that such Infringement is actual and willful, or (ii) if Infringements are so widespread that they cannot be effectively ended in such manner, in either case, Licensee shall, at HFA's written request, within five (5) business days, terminate all license and/or other authority Licensee has provided to such Third-Party Provider with respect to any Licensed Works in connection with such Third-Party Provider's Service, in which case Licensee shall use its reasonable best commercial efforts to ensure that such Third-Party Provider in fact ceases to reproduce, distribute and/or transmit any Licensed Works on such Service.

7.2 HFA represents and warrants that it has the full right, power and authority to enter into this Agreement and perform its obligations hereunder.

8. **Termination/Default**

8.1 All license authority pursuant to Licenses issued hereunder shall terminate upon the expiration or termination of this Agreement (unless such Licenses are renewed pursuant to a renewal of this Agreement as contemplated under Section 3, in which case the terms of renewal shall apply as appropriate), and any further transmission and/or reproduction of any Licensed Work after the expiration or termination of this Agreement shall be prohibited and actionable as an act of infringement under, and fully subject to the remedies provided by, the Copyright Act. Upon expiration or termination of this Agreement, Licensee shall itself and shall use commercially reasonable best efforts to cause all Third-Party Providers to delete or destroy all Server Fixations of Ringtones and Mastertones embodying Licensed Works; provided, however, that with respect to the Licenses issued hereunder, and further provided that the Agreement has not been terminated due to Licensee's breach or default, (a) existing Ringtone/ Mastertone Deliveries may continue to be used for playback on the Covered Ringtone/ Mastertone Devices on which they exist; and (b) solely as necessary to fulfill the terms of any Ringback Sales made to consumers prior to the expiration of the Agreement, existing Server Fixations of Ringbacks may be retained and may continue to be transmitted to Covered Ringback Devices in accordance with the terms and conditions of this Agreement for a period not to exceed twelve (12) months after the date of the expiration of the Agreement, after which time Licensee shall itself and shall use commercially reasonable best efforts to cause all Third-Party Providers to delete or destroy any such remaining Server Fixations.

8.2 Notwithstanding, without limiting and in addition to any other remedy that may be available at law or in equity and/or under this Agreement, Licensee understands and agrees that in the event that (a) Licensee fails to account to HFA and pay royalties provided for in Section 2, HFA may provide written notice to

Licensee that, unless the default is fully remedied within thirty (30) days from the date of the notice, this Agreement and any Licenses issued hereunder will be automatically terminated, and that such termination will render the further transmission and/or reproduction of any Licensed Work for which royalties have not been fully paid actionable as an act of infringement under Section 501 of the Copyright Act, and fully subject to the remedies provided by Sections 502 through 506 and 509 of the Copyright Act; (b) Licensee is in material breach or default of any of its obligations under this Agreement, HFA may provide written notice to Licensee that, unless the default is fully remedied within thirty (30) days from the date of the notice, this Agreement and any Licenses issued hereunder will be automatically terminated, and that such termination will render the further transmission and/or reproduction of any Licensed Work actionable as an act of infringement under Section 501 of the Copyright Act, and fully subject to the remedies provided by Sections 502 through 506 and 509 the Copyright Act. Licensee further understands and agrees that in the case of infringement, irreparable harm may be presumed, and HFA and/or any affected Publisher-Principal(s) shall be entitled to seek appropriate to injunctive relief, in addition to any other remedy that may be available at law or in equity and/or under this Agreement. For the avoidance of doubt, and without limitation, Licensee's breach of any of the obligations or restrictions imposed by Subsections 1.1, 1.5, 1.6 and 11.4 and Sections 2, 5, 6, 7, 9 of this Agreement shall be considered a material breach of, and default under, this Agreement.

8.3 To the extent permitted by applicable law, and without limitation, the occurrence of any of the following events shall also be considered a material breach of and default under this Agreement: (a) Licensee's dissolution and/or the liquidation of all of Licensee's assets; (b) the filing of a petition in bankruptcy or insolvency or for an arrangement or reorganization by, for or against Licensee; (c) the appointment of a receiver or trustee for all or a portion of Licensee's assets; (d) Licensee's assignment of assets for the benefit of creditors (subject to 11.4 below); (e) Licensee's insolvency; or (f) Licensee's inability to pay its debts as they become due. Upon the occurrence of any of the events described in items (a) through (f) of this Subsection 8.3, notwithstanding, without limiting and in addition to any other remedy that may be available at law or in equity and/or under this Agreement, this Agreement and all license authority pursuant to any Licenses granted hereunder shall terminate automatically without the requirement of any further action on the part of HFA or the Participating Publisher-Principals.

8.4 Notwithstanding, without limiting and in addition to any other remedy that may be available at law or in equity and/or under this Agreement, including without limitation the remedies set forth in Subsection 8.2, the material breach of a material obligation set forth in Section 5 shall entitle HFA and/or any relevant Publisher-Principal to specific performance of such provision and/or to terminate, effective immediately upon the giving of notice, the license authority pursuant to any License granted hereunder.

8.5 Notwithstanding the expiration or termination of this Agreement, Sections 2, 4, 5, 6, 7, 8, 9, 10 and 11 shall to the extent applicable survive and continue to bind the parties and their legal representatives and successors.

9. **Proprietary and Confidential Information**

9.1 HFA shall have no obligation to perform its obligations hereunder unless and until Licensee enters into a Data Access and Use Agreement in the form attached hereto as Exhibit D (the "**Data Access and Use Agreement**"), governing the nondisclosure and use of HFA Confidential Information (as defined in the Data Access and Use Agreement) by Licensee, the terms of which Data Access and Use Agreement, shall upon execution by Licensee, be fully incorporated herein.

9.2 To the extent, if any, Licensee seeks to have a third-party individual or entity obtain access to HFA Confidential Information in connection with any of the activities authorized under this Agreement (each, a "**Third-Party Administrator**"), Licensee must obtain HFA's prior consent of each such Third-Party Administrator (such consent not to be unreasonably withheld). Upon HFA's consent to Licensee's use of such Third-Party Administrator, HFA will require that such Third-Party Administrator enter into a data access and use agreement with HFA substantially in the form of the Data Access and Use Agreement attached as Exhibit D, prior to allowing such Third-Party Administrator access to any HFA Confidential Information.

10. **Definitions**

For purposes of this Agreement:

A "**Covered Ringtone/ Mastertone Device**" is a mobile telephone, pager or other portable communications device with a telephonic or messaging function that operates on a wireless communications network regulated by the U.S. Federal Communications Commission pursuant to its rules governing commercial mobile radio services.

A "**Covered Ringback Device**" is a mobile telephone, telephone, pager or other communications device with a telephonic or messaging function that operates on a wireless or wireline communications network regulated by the U.S. Federal Communications Commission.

"**Effective Retail Price**" is a price amount calculated by allocating a portion of the amount paid by the consumer or subscriber for bundled products in accordance with the ratio that the "a la carte" retail prices for each of the individual products bundled together bear to one another. (If no such prices are specified by the applicable provider, the parties will look to a comparable provider to determine the applicable "a la carte" prices.)

A "**Mastertone**" is an excerpt, not to exceed forty-five (45) seconds, of a musical composition that is embodied in a digital file representing an excerpt of no more than forty-five (45) seconds of a particular master sound recording of the composition that is intended to be transmitted to and stored in an individual consumer's Covered Ringtone/ Mastertone Device and played by such intended destination Covered Ringtone/ Mastertone Device whenever the Covered Ringtone/ Mastertone Device activates its ringing or alert function indicating the

arrival of a call, message or other notification received by the Covered Ringtone/ Mastertone Device, and is designed to be played by such Covered Ringtone/ Mastertone Device without any other distribution or transmission. A Mastertone may, together with the excerpt of the master sound recording, also include a spoken word "intro" and/or "outro" (for example, a pre-recorded message by the artist performing the master sound recording), provided that the nature and content of any such "intro" or "outro" is consistent with the limitations imposed by Subsection 1.5

A "**Promotional Ringtone/ Mastertone**" is a digital transmission of a Ringtone or a Mastertone in streamed form made available to a prospective purchaser free of charge and solely for the purpose of promoting the sale of the Ringtone or Mastertone, and that does not result in a reproduction of any part or all of the Ringtone or Mastertone that is accessible except by such prospective purchaser for an intended one-time promotional playback through the operation of a Covered Ringtone/ Mastertone Device or other device.

A "**Promotional Ringback**" is a digital transmission of a Ringback in streamed form made available to a prospective purchaser free of charge and solely for the purpose of promoting the sale of the Ringback, and that does not result in a reproduction of any part or all of the Ringback that is accessible except by such prospective purchaser for an intended one-time promotional playback through the operation of a Covered Ringback Device or other device.

A "**Ringback**" is an excerpt, not to exceed forty-five (45) seconds, of a musical composition that is embodied in a digital file representing an excerpt of no more than forty-five (45) seconds of a particular master sound recording of the composition that is intended to be transmitted to, but not stored in, a calling party's Covered Ringback Device and played back through such intended Covered Ringback Device such that it is heard by the calling party only during the period of time between the calling party's connection with a consumer's telecommunications network following initiation of a call or other communication to such consumer and, as applicable, either the acceptance of the call or communication by a person or telecommunications device or system (including, without limitation, voicemail or a call routing, call queue or hold system), or the termination of the call or communication by the calling party before it is accepted. A Ringback may, together with the excerpt of the master sound recording (i) include a spoken word "intro" and/or "outro" (for example, a pre-recorded message by the artist performing the master sound recording), provided that the nature and content of any such "intro" or "outro" is consistent with the limitations imposed by Subsection 1.5; (ii) include a spoken word message by the consumer in the form of an "intro" or "outro" (such as a greeting message identifying the consumer); and/or (iii) be accompanied by nonmelodic tones or other sounds indicating to the calling party that the consumer is being contacted (i.e., simulating the sounds of a ringing telephone in the background) that do not otherwise alter the rendition of the applicable sound recording.

A "**Ringback Sale**" is the purchase by an individual consumer of the ability to have a particular individual Ringback selection transmitted to and played back

through the Covered Ringback Device(s) of one or more calling parties who initiate calls or other communications to such consumer; provided, however, that any repurchase, renewal or other transaction requiring additional consideration to be paid by such consumer to Licensee or the Third-Party Provider to permit continuation of the playback of such Ringback selection to the consumer's callers shall constitute an additional Ringback Sale. For the avoidance of doubt, provided that such consideration is in no way payable to or to be shared with Licensee, the ongoing, recurring payment of consideration by a consumer to a Third-Party Provider for the ability to have ringback service generally as part of such consumer's telecommunications package (as opposed to a particular Ringback selection) shall not constitute an additional Ringback Sale.

A "**Ringtone**" is an excerpt, not to exceed forty-five (45) seconds, of a musical composition that is embodied in a digital file containing codes representing and capable of being rendered into audio and played back as musical notes constituting the work's melody in either monophonic or polyphonic form that is intended to be transmitted to and stored in an individual consumer's Covered Ringtone/ Mastertone Device and played by such intended destination Covered Ringtone/ Mastertone Device whenever the Covered Ringtone/ Mastertone Device activates its ringing or alert function indicating the arrival of a call, message or other notification received by the Covered Ringtone/ Mastertone Device, and is designed to be played by such Covered Ringtone/ Mastertone Device without any other distribution or transmission.

A "**Service**" is a service owned and operated by Licensee or a Third-Party Provider that offers individual consumers the ability to access and purchase (a) Ringtones embodying excerpts of Musical Works which Ringtones are digitally encoded and reproduced on Servers and transmitted from such Servers and downloaded to Covered Ringtone/ Mastertone Devices; (b) Mastertones embodying excerpts of various master sound recordings now or later owned or controlled by, or licensed to, Licensee or its affiliated record labels, in turn embodying excerpts of Musical Works, which Mastertones are digitally encoded and reproduced on Servers and transmitted from such Servers and downloaded to Covered Ringtone/ Mastertone Devices; and (c) Ringbacks embodying excerpts of various master sound recordings now or later owned or controlled by, or licensed to, Licensee or its affiliated record labels, in turn embodying excerpts of Musical Works, which are digitally encoded and reproduced on Servers and transmitted from such Servers (but not downloaded) to Covered Ringback Devices.

A "**Third-Party Provider**" is a provider of a Ringtone, Mastertone and/or Ringback Service that is operating under the authority of Licensee consistent with the terms of this Agreement such that Licensee is able to fulfill all of its reporting, payment and other obligations under this Agreement.

11. Miscellaneous

11.1. Administrative Fee. In addition to the royalties payable hereunder, within five (5) business days following execution of this Agreement, Licensee shall pay to HFA

an administrative fee of REDACTED in consideration of HFA's administrative expenses in connection with the publisher opt-in and licensing processes contemplated hereunder.

11.2 Notices. All notices hereunder shall be in writing and shall be deemed effective (a) if provided by hand delivery, upon delivery; (b) if provided by overnight courier, one (1) business day following the date sent; and (c) if provided by registered or certified mail, return receipt requested, five (5) business days following the date mailed. Notices shall be sent to the following addresses:

If to HFA:

To the address set forth above. Attn: General Counsel. Fax: 212-922-3299.

If to Licensee: To the address set forth above. Attn: General Counsel. REDACTED

11.3 Publicity. Neither party shall issue any press release or other publicity document concerning this Agreement without the prior written consent of the other party.

11.4 Assignment. This Agreement may not be assigned by either party without the prior written consent of the other party, except that either party may assign its rights and obligations hereunder to any company it owns, any parent company or any company with which it shares a common owner (an "Affiliate"), or to a third party which acquires a controlling interest in the voting stock of such party or its Affiliate.

11.5 Entire Agreement; Amendment. This Agreement represents the entire understanding of the parties with respect to the subject matter hereof, supersedes all prior and contemporaneous agreements and understandings of the parties with respect to the subject matter hereof, and may not be altered or amended except in a written instrument executed by both parties.

11.6 Reservation of Rights. Subject to the terms of this Agreement, each party reserves all rights it may have or legal positions it may take concerning this Agreement and the matters covered hereunder.

11.7 Governing Law; Jurisdiction This Agreement shall be governed by, and construed in accordance with, federal law and/or the laws of the State of New York (without giving effect to conflicts of law principles thereof), as may be applicable. With respect to any action or proceeding arising out of this Agreement, the parties (a) agree that the sole and exclusive venue for such action or proceeding shall be in a court of appropriate jurisdiction located in New York County, New York; (2) agree to the appropriateness of, and waive any objection concerning, the propriety and/or convenience of, proceeding in such venue; and (3) consent to the personal jurisdiction of such court.

11.8 Severability; Waiver. If a court should determine that any part of this Agreement is invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect. Performance of any obligation required of a party hereunder

may be waived only by a written waiver signed by a duly authorized officer of the other party, which waiver shall be effective only with respect to the specific obligation described therein.

11.9 Headings. The titles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

11.10 Assistance of Counsel Each party hereto acknowledges that it has been represented by its own independent counsel, who has reviewed this Agreement and discussed the terms herein with his or her respective client prior to execution.

11.11 Counterparts. This Agreement may be executed in multiple counterparts and delivery of an executed counterpart may be made by facsimile, each such counterpart to be considered and accepted as an original, and all such counterparts together to constitute a single Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date:

Redacted

THE HARRY FOX AGENCY, INC.

By: _____
Print name: Michael Sutton
Title: SVP Business Affairs & General Counsel

EXHIBIT A

hfa **Redacted** Phonic/Mastertone/Ringback License File Layout

Acceptable Data Format: Tab Delimited Text

	Description	Type	Length	Decimal	Input Option
1	Agreement Code - *Use ORT for this agreement*	A	3		M
2	Manufacturer Number	A	6		M
3	Transaction Date	N	8	0	M
4	Manufacturer Request Number	N	8	0	M
5	Playing Time of Phonic/Mastertone/Ringback - Seconds	N	2	0	M
6	Song Title	A	200		M
7	A/K/A Song Title	A	200		O
8	ISWC Code	A	11		O
9	HFA Song Code	A	6		O
10	Song Writer(s)	A	200		M
11	Publisher Name	A	60		M
12	HFA Publisher Number	A	6		*Input/Output*
13	Publisher Share	N	7	4	*Input/Output*
14	Catalog Number *(for matching purposes only)*	A	15		O
15	Configuration Code - *Use FX for Server Fixation; PH for Phonic Ringtone; RR for Mastertone; RB for Ringback*	A	2		M
16	UPC Code *(for matching purposes only)*	A	16		O
17	License Type - *Use G for Digital*	A	1		M
18	Server Fixation Date/Release Date	N	8	0	M
19	Rate Code - *Use J for this type of agreement*	A	1		M
20	Rate In Cents	N	7	7	C*
21	Artist Name	A	60		M
22	Album Title (if available, please provide)	A	200		O
23	Record Label	A	60		M
24	Total Playing Time - Minutes	N	3	0	O
25	Total Playing Time - Seconds	N	2	0	O
26	ISRC Code	A	15		M
27	User Defined	A	30		*Input/Output*
28	HFA License Number	N	10		*Output* **^**
29	HFA License Status Code	A	2		*Input/Output*
30	HFA License Status Code 1	A	2		*Output*
31	HFA License Status Code 2	N	2		*Output*
32	HFA Flag for Amended Publisher Data	A	1		*Output*
33	Publisher Status	A	1		*Output*

KEY:

TYPE:
A = Alphanumeric Field N = Numeric Field

LENGTH: For Alphanumeric fields, it is the maximum number of characters required.
For Numeric fields, it is the exact number of characters required.
DECIMAL: Number of characters after decimal (for numeric fields only)

INPUT OPTION:
M = Mandatory O = Optional C = Conditional

C* If rate code is J, this field may be left blank.

^ All input/output fields should be left blank upon initial license submission, EXCEPT for Field 29 which should be populated with the letter R in the input file IF the record is a resubmission that has been amended.

EXHIBIT B

hfa **Redacted** Phonic/Mastertone/Ringback Reporting Layout

FILE HEADER (Control Portion for File Transfer)

Field Name	Field Length	Decimal Places	Field Format	Mandatory Field	Field Description/Legend	Example
Line Count	15	0	Number	Yes	Number of lines of data in file; used as control to verify complete and accurate file recd.	321456

FILE BODY

	Field Name	Field Length	Decimal Places	Field Format	Mandatory Field	Field Description/Legend	Example
1	Manufacturer Number	8		Text	Yes	Account number assigned by HFA to Licensee	M12345
2	Transaction Date	8	0	Number	Yes	Date electronic royalty report submitted to HFA Format: YYYYMMDD	20020304
3	Royalty Reporting Period	6		Text	Yes	Length of period in number of months (left 2 digits), ending month (middle 2 digits), year (right 2 digits)	30602
4	HFA License Number	12		Text	Yes	Number assigned by HFA for each license.	1012345678
5	Configuration Code	2		Text	Yes	Code designating specific configuration licensed: FX - Server Fixation PH - Phonic Ringtone RR - Mastertone (pre-recorded ringtone) RB - Ringback Note: Each config must be reported as a separate line.	RR
6	Song Title	30		Text	Yes	Title of work distributed.	STARRY NIGHT
7	Units (For Period)	9	0	Number	Yes	Applicable number for each specific configuration shown in field #5	12345
8	Publisher Name	30		Text	Yes*	Name of the publisher owning a share of the work.	Famous
9	Publisher Ownership Share Percentage	7	4	Number	Yes*	Percent of song owned by specific publisher, as provided to licensee on license	33.3340
10	Rate Code	1		Text	Yes	Special code indicating royalty rate structure.	J
11	Retail Selling Price	16	4	Number	Conditional (Field #11 or 12 must be completed)	Price paid by consumer for the Phonic, Mastertone or Ringback.	1.0000
12	Effective Retail Price	16	4	Number	Conditional (Field #11 or 12 must be completed)	A price amount calculated by allocating a portion of the amount paid by the consumer or subscriber for bundled products in accordance with the ratio that the "a la carte" retail prices for each of the individual products bundled together bear to one another.	0.9800
13	Licensee Receipts for Sale	16	4	Number	Yes	Amount received by Licensee attributable to sale of Phonic, Mastertone or Ringback whether directly tied to a particular sale or other non-transaction specific revenue such as a portion of a monthly subscription fee	0.7500
14	Rate Factor	5	4	Number	Yes	Note: if floor indication flag is invoked, read rate factor as a penny rate. If floor indication not made, read as a percentage.	0.1300
15	Royalty Rate Equivalent	5	4	Number	Yes	The royalty amount applicable in accordance with agreement calculations.	0.1300
16	Net Royalty Amount to HFA	11	4	Number	Yes	The royalty amount payable to HFA for its represented shares.	0.0900
17	Floor Indication Flag	1		Text	Yes	If a royalty calculation floor was invoked, indicate with a Y.	Y
18	Licensee Direct Sale Flag	1		Text	Yes	If distribution was made by Licensee (and not a third-party), indicate with a Y.	Y
19	Service (ie: Third Party)	30		Text	Yes **	Third-party through which distribution of Phonic, Mastertone or Ringback was made.	Site.com
20	Calculation Method	8	0	Number	Yes	Indicate the calculation method was used to determine royalty rate equivalent. Codes for this agreement attached in separate document.	2
21	Agreement Code	3		Text	Yes	HFA internal code for this specific deal. Code for this agreement is ORT.	ORT

Note: Any characters or digits exceeding these per field maximums will be truncated.

** A separate publisher share % line with corresponding publisher name must be given for each if the title is not 100% payable through HFA.*

EXHIBIT C

[DATE]

[ADDRESSEE]
[LICENSEE]
[ADDRESS]
[ADDRESS]

Re: Royalty Examination of LICENSEE (EXAM PERIOD)

To Whom It May Concern:

We have been requested by The Harry Fox Agency, Inc. ("HFA") to examine, commencing on DATE, the books and records of LICENSEE for the period EXAM PERIOD in connection with LICENSEE'S royalty reports and payments to HFA-affiliated publishers and we acknowledge the confidential nature of the information that LICENSEE is providing to us in connection with such royalty examination

We agree that, except as authorized in writing by LICENSEE, (i) we will not disclose to anyone other than HFA, its officers and employees (including the NMPA/HFA board of directors), legal counsel, financial advisors and HFA-affiliated publishers (collectively, "HFA Parties") any information that we obtain from our examination of LICENSEE's books and records and (ii) any such disclosure made by us to an HFA Party shall be limited to information that relates to the purpose of providing information concerning whether, and/or ensuring that, LICENSEE is accounting to HFA on an accurate and timely basis. Notwithstanding the foregoing, we may disclose such information (a) as required under any statute, regulation, order, subpoena or document discovery request, provided that prior written notice of such disclosure is furnished to LICENSEE as soon as practicable in order to afford LICENSEE an opportunity to seek (at its own expense) a protective order, or (b) as required in the context of a legal action or proceeding relating to the enforcement of HFA's or an HFA-affiliated publisher's rights in connection with such royalty examination.

Sincerely,

[AUTHORIZED EXAMINER]
on behalf of
[EXAMINER'S FIRM]

Data Access and Use Agreement

This Data Access and Use Agreement ("Agreement") is entered into as of March 9, 2006 by and between The Harry Fox Agency, Inc., a New York corporation, having its principal place of business at 711 Third Avenue, New York, New York ("HFA") and Redacted a New York corporation with an office at Redacted ("Recipient").

WHEREAS, Recipient (also referred to at times herein as "Licensee") and HFA have entered, or expect to enter, into that certain license agreement, dated as of March 9, 2006 (the "License Agreement"), pursuant to which HFA has granted, or will grant, limited rights to certain copyrighted musical compositions (each, a "Musical Work") in connection with certain ringtone, mastertone and ringback services operated by Licensee; and

WHEREAS, Recipient seeks to access and use certain HFA Confidential Information (defined in Section 1 below) as necessary to obtain and administer the licenses issued under the License Agreement (each, a "License"), and as otherwise may be necessary to comply with Licensee's obligations under the License Agreement (collectively, the "Purpose"), and HFA has agreed to allow Recipient such limited access to and use of the HFA Confidential Information solely as necessary to accomplish the Purpose;

NOW THEREFORE, in consideration of the premises of and the mutual promises, covenants and agreements contained in this Agreement, HFA and Recipient agree as follows:

1. HFA Confidential Information.

"HFA Confidential Information" means any and all information and material disclosed by HFA to Recipient or obtained by Recipient from HFA (whether in writing, or in oral, graphic electronic or any other form) that is proprietary and/or is intended by HFA to remain confidential relating to HFA's business and its databases, products, services, business strategies, capabilities or business affairs, including without limitation, all data and information related to the Musical Works and ownership thereof and/or HFA's publisher-principals.

2. Non-Disclosure and Limited Use.

Recipient covenants (a) to hold all HFA Confidential Information in strict confidence, (b) that it shall disclose (or permit access to) the HFA Confidential Information solely to (or by) its employees, if any, who need to know or access such HFA Confidential Information to accomplish the Purpose, and who are bound by nondisclosure and use restrictions and obligations comparable to and at least as restrictive to those set forth herein, and (c) that it shall not disclose to any third party (other than Licensee), including any agent, contractor, consultant or other party, or permit any such party to access, the HFA Confidential Information, unless and until such party has entered into a written agreement with HFA in form and substance of this Agreement governing the nondisclosure and use of the HFA Confidential Information. Recipient further covenants that it shall (y) use HFA Confidential Information solely as necessary to accomplish the Purpose, and (z) not extract, aggregate, derive or copy any HFA Confidential Information, whether by bulk transfer or through individual data query and response, for use or incorporation in any database, unless the sole purpose of such use or incorporation is to accomplish the Purpose. Recipient agrees to notify HFA immediately upon obtaining any information regarding unauthorized disclosure or access to the HFA Confidential Information.

Notwithstanding the disclosure and use restrictions in this Section 2, Recipient may disclose HFA Confidential Information (i) that is independently derived or acquired from a party not subject to a duty of confidentiality to HFA, or (ii) to the extent required to respond to the request of a court of competent jurisdiction, provided that upon receiving any such request and to the extent that it may do so without violating any law, Recipient prior to such disclosure advises HFA of such request in order that HFA may take such action as it deems appropriate to protect the HFA Confidential Information. During the Term (defined in Section 5 below) and for a period of three (3) years following the termination or expiration of this Agreement, Recipient agrees to permit HFA to inspect, on a semi-

annual basis, during regular business hours and upon reasonable prior notice, the point or points at which the HFA Confidential Information is (or was) used in Recipient's facilities, if any, and to furnish whatever assistance is reasonably necessary to permit HFA to determine whether Recipient, including its employees, agents, subcontractors, independent contractors, consultants or other parties, if any, are in compliance with this Agreement.

3. Ownership

Recipient acknowledges and agrees that all right, title and interest in and to the HFA Confidential Information (including all copies, extracts and portions thereof) is and shall remain the sole property of HFA. Recipient does not acquire (by license or otherwise, whether express or implied) any intellectual property rights or other rights under this Agreement or any disclosure or access hereunder, except the limited right to use such HFA Confidential Information in strict accordance with the express provisions of this Agreement. All rights relating to the HFA Confidential Information that are not expressly granted hereunder to Recipient are reserved and retained by HFA.

4. No Warranty; Limitation of Liability.

EXCEPT AS OTHERWISE MAY BE EXPRESSLY SET FORTH IN THE LICENSE AGREEMENT WITH RESPECT TO LICENSEE, HFA MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE HFA CONFIDENTIAL INFORMATION OR ANY USE THEREOF, AND THE HFA CONFIDENTIAL INFORMATION IS PROVIDED ON AN "AS IS" BASIS. EXCEPT AS OTHERWISE MAY BE EXPRESSLY SET FORTH IN THE LICENSE AGREEMENT WITH RESPECT TO LICENSEE, HFA HEREBY EXPRESSLY DISCLAIMS ALL SUCH WARRANTIES, INCLUDING, BUT NOT LIMITED TO, CORRECTNESS, COMPLETENESS, CURRENTNESS, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE HFA CONFIDENTIAL INFORMATION OR OF THE MEDIA ON WHICH THE DATA IS PROVIDED AND SHALL NOT BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR CAUSED, IN WHOLE OR IN PART, BY HFA'S NEGLIGENT ACTS OR OMISSIONS IN PROCURING, COMPILING, COLLECTING, INTERPRETING, REPORTING, COMMUNICATING OR DELIVERING THE HFA CONFIDENTIAL INFORMATION OR IN OTHERWISE PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT, EVEN IF HFA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

5. Term; Termination.

This Agreement will continue for the term of the License Agreement (including any agreed extensions thereof) (the "**Term**"), unless otherwise terminated by HFA in accordance herewith. HFA may terminate this Agreement at any time upon written notice. Upon termination of this Agreement, HFA shall have no further obligations to disclose to Recipient or permit Recipient to access any HFA Confidential Information, but each party's rights and obligations shall otherwise survive the termination or expiration of this Agreement.

6. Purging of HFA Confidential Information.

Promptly following any expiration or termination of this Agreement, Recipient shall purge and destroy any and all records and copies of HFA Confidential Information from any Recipient databases and other systems under Recipient's direct or indirect control, and any other media on which any HFA Confidential Information may have been provided, together with all copies thereof, whether in printed or machine readable form; provided, however, that Recipient may retain any records and copies of HFA Confidential Information solely to the extent and for the period necessary to permit Licensee to fulfill any further obligations under the License Agreement, including without limitation, Licensee's accounting and royalty and security compliance obligations under Sections 2 and 6 of the License Agreement, after which period such records and copies shall be purged and destroyed as described in this Section 6. Notwithstanding the foregoing, Recipient is not required to purge and destroy any HFA Confidential Information to the extent such HFA Confidential Information was independently derived or acquired from a party not subject to a duty of confidentiality to HFA.

7. **Assistance of Counsel.**

Each party hereto acknowledges that it has been afforded the opportunity to be represented by its own independent counsel for purposes of reviewing this Agreement and discussing its terms prior to execution.

8. **Specific Performance.**

Recipient acknowledges that a breach of Recipient's obligations in Sections 2 and 6 of this Agreement may result in irreparable harm, the extent of which it would be difficult to ascertain, and therefore agrees that HFA shall be entitled to seek immediate injunctive relief to enforce any such obligation in addition to any other legal remedy to which HFA might be entitled.

9. **Miscellaneous.**

This Agreement (combined with the License Agreement, if the Recipient is the Licensee) constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior or contemporaneous representations, discussions, proposals, negotiations, conditions, communications and agreements, whether oral or written, between the parties relating to the subject matter hereof. No amendment, modification or waiver of any provision of this Agreement shall be effective unless in writing and signed by duly authorized signatories of both parties. The waiver by either party of a breach of or a default under any provision of this Agreement shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without reference to its conflicts of laws provisions. This Agreement and the rights and obligations hereunder may not be assigned or delegated by Recipient, in whole or part, whether voluntarily, by operation of law, change of control or otherwise, without the prior written consent of HFA. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be invalid or unenforceable, the remaining portions hereof shall remain in full force and effect and such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed to the extent necessary to make such provision valid and enforceable. The parties are independent contractors, and neither party shall have any authority of any kind to bind the other party in any respect whatsoever.

The parties have executed this Data Access and Use Agreement as of the date first above written:

THE HARRY FOX AGENCY, INC.

By: _____

Name: Michael Simon

Title: SVP Business Affairs & General Counsel

Redacted

EXHIBIT CO 0019

RINGTONE SERVICE
LICENSING AGREEMENT

This agreement ("Agreement") is entered into as of February 6, 2006 ("**Effective Date**") by and between **Redacted** ("Licensee"), a Delaware corporation with an office at , and The Harry Fox Agency, Inc. ("HFA"), a New York corporation with an office at 711 Third Avenue, New York, NY 10017.

COPY

WHEREAS, Licensee owns and operates a service pursuant to which excerpts of copyrighted musical compositions ("**Musical Works**") in the form of Ringtones (as below defined) are digitally reproduced on a central computer server or servers, which Ringtones are subsequently transmitted from such servers and downloaded to Covered Devices (as below defined) ("**Service**"); and

WHEREAS, in order to operate the Service, Licensee seeks licenses to make Server Fixations (as below defined) and reproduce and distribute Ringtones of Musical Works that are owned and/or controlled by publisher-principals affiliated with HFA ("**Publisher-Principals**"); and

WHEREAS, HFA is prepared to issue such licenses to the extent it is authorized to do so by such Publisher-Principals;

NOW, THEREFORE, in consideration of the promises contained in this Agreement and for other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Licensing

1.1 Pursuant to the terms of this Agreement, and as more particularly described herein, upon receipt of appropriate license requests ("**License Requests**") from Licensee, HFA shall, to the extent authorized by particular Publisher-Principals, issue on behalf of such Publisher-Principals nonexclusive licenses ("**Licenses**") to reproduce and distribute Ringtones of Musical Works owned and/or controlled by such Publisher-Principals ("**Licensed Works**") for use on Licensee's Service in accordance with the terms of this Agreement. The license authority contemplated hereunder and granted pursuant to any License issued hereunder shall include and is limited to: (a) the digital reproduction of Ringtones of Licensed Works on a central computer server or servers owned and/or controlled by Licensee and located in the United States (including its territories and possessions and the Commonwealth of Puerto Rico (collectively, the "**United States**")) ("**Servers**"), solely for use in connection with the Service ("**Server Fixations**"); (b) the digital transmission of Ringtones of Licensed Works from such Servers for storage on Covered Devices, solely for use in connection with the Service; (c) the reproduction of Ringtones of Licensed Works on Covered Devices, solely for use in

JS

connection with the Service ("**Ringtone Deliveries**"); and (d) the offering of Promotional Ringtones (as below defined) of Licensed Works, solely for use in connection with the Service. The license authority under any License issued hereunder is limited to and granted solely with respect to (x) the copyright interests of the individual Participating Publisher-Principal(s) on whose behalf the License is issued by HFA; and (y) if the Ringtone is a Pre-Recorded Ringtone (as below defined), the particular individual sound recording of the individual Licensed Work from which the excerpt embodied in the Ringtone was derived.

For purposes of this Agreement:

A "**Ringtone**" is an excerpt, not to exceed forty-five (45) seconds, of a musical composition that is embodied in either (i) a digital file containing codes representing and capable of being rendered into audio and played back as musical notes constituting the work's melody in either monophonic or polyphonic form ("**Phonic Ringtone**"), or (ii) a digital file representing an excerpt of no more than forty-five (45) seconds of a sound recording of the composition ("**Pre-Recorded Ringtone**"); in both cases, that is intended to be digitally transmitted to and stored in an end user's Covered Device and played by such intended destination Covered Device whenever the Covered Device activates its ringing or alert function indicating the arrival of a call, message or other notification received by the Covered Device, and is designed to be played by such Covered Device without any other distribution or transmission.

A "**Covered Device**" shall mean a mobile telephone, pager or other portable communications device with a telephonic or messaging function that operates on a wireless communications network regulated by the U.S. Federal Communications Commission pursuant to its rules governing commercial mobile radio services.

A "**Promotional Ringtone**" shall mean a digital transmission of a Ringtone in streamed form made available to a prospective purchaser free of charge and solely for the purpose of promoting the sale of the Ringtone, and that does not result in a reproduction of any part or all of the Ringtone that is accessible except by such prospective purchaser for an intended one-time promotional playback through the operation of a Covered Device or other device.

1.2 The authority of HFA to issue Licenses for any individual Musical Work on behalf of any one or more Publisher-Principals is subject to the approval of the relevant Publisher-Principal(s). Before commencing to issue licenses hereunder, HFA shall for a period of time (the "**Opt-In Period**") offer to its Publisher-Principals the opportunity to agree to make their Musical Works available for licensing under this Agreement by notifying HFA of their desire to opt in to the Agreement. Notwithstanding the decision to opt in by any individual Publisher-Principal, thereby rendering such Publisher-Principal a

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"**Participating Publisher-Principal,**" if such Participating Publisher-Principal at any time requests that HFA not issue Licenses on its behalf (either with respect to a particular Musical Work or in general), HFA will honor that request; provided, however, that any Licenses validly issued by HFA prior to the receipt of such a request shall remain in effect until the Term (as below defined) of this Agreement expires.

1.3 Following execution of this Agreement and conclusion of the applicable Opt-In Period, Licensee may begin submitting License Requests in electronic form in accordance with the format specified in Exhibit A (as such format may be modified from time to time by HFA upon reasonable notice to Licensee) ("**Request Format**"), which License Requests shall be duly processed by HFA. Without limitation, Licensee shall include in each License Request to the extent required by the Request Format (a) the title of the Musical Work for which a License is being requested; (b) the writer(s) of the Musical Work; (c) the publisher(s) of the Musical Work; and (d) whether the Ringtone is to be licensed in the form of a Phonic Ringtone and/or a Pre-Recorded Ringtone; and, if the Ringtone is a Pre-Recorded Ringtone, (e) the name of the record company that produced the sound recording embodied in the Ringtone; (f) the name of the artist performing such sound recording; (g) the ISRC number for such sound recording; (h) the total playing time of such sound recording in its complete form, expressed in minutes and seconds; (i) the title of an album for which such sound recording has been previously licensed; and (j) such other information as may be required by HFA's Request Format.

1.4 HFA shall from time to time provide to Licensee an electronic file specifying the Licenses issued under this Agreement (each such report a "**Confirmation Report**"). To aid Licensee in the calculation of royalties, with respect to each License, such Confirmation Report shall include, *inter alia*, the total percentage ownership share of the Participating Publisher-Principal(s) on whose behalf the License has been issued.

1.5 For the avoidance of doubt, and without limitation, the Licenses granted hereunder do not extend to or cover: (a) any right of public performance; (b) any copyrights or other rights in sound recordings; (c) any rights to synchronize musical works with visual images resulting in audiovisual works; (d) any print, display or karaoke rights; (e) any adaptation (derivative work) rights or right to alter the fundamental character of a Musical Work (except to reproduce and distribute Ringtones, in strict accordance with the terms and conditions of this Agreement); (f) any merchandising rights; (g) any use of a musical work (whether or not embodied in a sound recording) for a marketing campaign, product tie-in, game or contest or otherwise to advertise, promote or cross-promote any product or service; or (h) any use of the title of a musical work, or the name or likeness of any writer, publisher or artist associated with a musical work, except for identification purposes as described in Section 4.

1.6 The license authority contemplated by this Agreement and granted pursuant to any License issued hereunder is limited to Licensee and may not be sublicensed, assigned or otherwise transferred by Licensee except to the extent expressly permitted hereunder.

2. **Reporting and Payment of Royalties**

2.1 Licensee shall account and pay royalties to HFA quarterly, within forty-five (45) days after the end of each calendar quarter, on the basis of each Ringtone Delivery. Licensee shall provide its quarterly statements ("**Statements**") in electronic form in accordance with the format specified in Exhibit B (as such format may be modified from time to time by HFA upon reasonable notice to Licensee) ("**Reporting Format**"). With respect to each quarterly reporting period, for each License, Licensee shall include in its Statement (a) the HFA License Number (as supplied by HFA); (b) the HFA Agreement code (as supplied by HFA; (c) the HFA rate code applicable to the Agreement (as supplied by HFA); (d) a breakdown of the particular retail outlets through which the Ringtone Deliveries were made; (e) for each retail outlet, a further breakdown of the retail selling price(s) paid by end user (consumers) for Ringtone Deliveries made through that outlet; (f) for each such retail selling price, the number of units being reported at that price; (g) for each such retail selling price, the applicable royalty rate per unit (i.e., percentage rate or penny-rate "floor"); (h) for each such retail selling price, whether the penny-rate "floor" is being invoked (floor indication flag); (i) for each such retail selling price, the gross royalties (before proration to reflect the HFA-represented share of the Licensed Work payable for the Units being reported at that price; (j) for each such retail selling price, the net royalties (after proration for the HFA-represented share) payable for the units being reported at that price; (k) the total net royalties (after proration for the HFA-represented share) being paid for all Ringtone Deliveries being reported during the applicable reporting period; and (l) such other information as may be required by HFA's Reporting Format. Interest on late payments shall be payable to HFA at the rate of prime plus two percent (2%) calculated from the date the royalties were due to be paid under the applicable reporting period to the date of ultimate payment to HFA.

2.2 For each Ringtone Delivery, the royalty shall be equal to the greater of the following amounts:

(a) **Redacted** of the retail selling price paid by the end user (consumer); and

(b) a "floor" of **Redacted**

In each case above, the royalty amount payable shall be proportionately reduced to the extent that the Participating Publisher-Principal(s) on whose behalf the License is granted own(s) or control(s) less than 100% of the Work.

3. Term

The term of this Agreement shall commence as of the Effective Date and terminate on December 31, 2007 (the "**Term**"). If Licensee wishes to renew this Agreement for an additional two (2) year term, it shall notify HFA of such desire not later than a date six (6) months prior to the end of the Term. Such notification shall include proposed terms for any such renewal. Any renewal shall be subject to the approval of individual Publisher-Principals as described in Subsection 1.2, and HFA reserves the right to propose changes to administrative and other aspects of the Agreement as it deems appropriate.

4. **Writer/Publisher Credit**

Licensee shall, to the extent commercially reasonable, include in any graphics and/or imagery displayed in connection with the play of any Ringtone of a Licensed Work written credit in legible form setting forth the names of the writer(s) and publisher(s) of such Licensed Work.

5. Security

5.1 In connection with the use of any Licensed Work, Licensee shall implement and maintain copy protection and digital rights management technology and systems, including software and/or hardware functional limitations (collectively, "**Security Systems**") with respect to all aspects of the Service, including without limitation its Servers and operating systems, that (a) are designed to prevent unauthorized reproduction and distribution of the Licensed Work, in the form of Ringtones or otherwise; (b) are sufficient to track and enforce the use limitations contemplated by this Agreement; and (c) meet or exceed current industry standards as they exist from time to time for the licensed delivery of music via digital transmission and its reproduction on devices including, without limitation, Covered Devices.

5.2 In the event it becomes aware of a breach of Licensee's Security Systems ("**Security Breach**"), whether through its own monitoring efforts, upon being advised by another party (including HFA) or otherwise, Licensee shall use its best efforts to resolve the Security Breach and restore the full integrity of its Security Systems as quickly as possible. If a solution to the Security Breach is not immediately available (i.e., cannot be implemented within twenty-four (24) hours from the time Licensee becomes aware of the Security Breach), Licensee shall (a) promptly notify HFA of the Security Breach in writing (unless Licensee learned of the breach from HFA); and (b) cease all further digital transmission and/or reproduction of Licensed Works to the extent such activities are or could possibly be affected by the Security Breach, pending

full resolution of the Security Breach. In such a case, Licensee (x) shall keep HFA reasonably apprised of the status of its efforts to resolve the Security Breach; and (y) shall not resume the activities that were suspended pursuant to this Subsection 5.2 until the full integrity of its Security Systems has been restored.

5.3 To the extent Licensee employs third-party technology in order to operate, Licensee shall use its best efforts to maintain and upgrade such technology by (a) diligently monitoring any third-party notifications of bug-fixes, security holes and functionality improvements; and (b) obtaining any available upgrades and bug-fixes, and installing, testing and distributing such upgrades and bug-fixes as necessary so as to maintain the integrity of its Security Systems.

5.4 Licensee shall use its best efforts to prevent any unauthorized digital transmissions and reproductions of Musical Works by operators and users of the Service and/or in any facility, on any device (including Covered Devices), or by any person under the supervision and/or control of Licensee.

6. Royalty and Security Compliance

6.1 Notwithstanding, without limiting and in addition to the general right of HFA and/or any Participating Publisher-Principal pursuant to industry custom and practice to examine the books and records of Licensee in connection with Licensee's use of Musical Works, HFA shall be entitled, upon thirty (30) days' notice to Licensee, to conduct an examination of the books, records, operations and Security Systems of Licensee ("**Royalty and Security Examination**") to determine whether Licensee is in compliance with its reporting, royalty and security obligations under this Agreement. Absent a good-faith basis to believe that Licensee is not in compliance with such obligations, HFA shall not seek to initiate a Royalty and Security Examination more than once every twelve (12) months or more than six (6) years following the termination of this Agreement.

6.2 During the course of a Royalty and Security Examination, upon request by HFA or an examiner acting on its behalf, Licensee shall, within three (3) business days (a) provide access to any information that may be called for by such request, including without limitation any (i) books, records, files, logs, reports, compilations, usage data and other documentation, whether in paper or electronic form, that were or could be used or required to generate or verify Licensee's Statements and/or that reflect or summarize Licensees' Statements; (ii) financial information, including books, records, ledgers, reports, and other documentation, reflecting cash receipts and general revenue accounts to the extent such information relates directly or indirectly to the activities licensed under this Agreement; and (iii) files, logs, reports, compilations, testing and monitoring data and other documentation related to and/or reflecting the

operation and integrity of Licensee's Security Systems (such information, along with the information described in the items (a)(i) and (a)(ii) of this Subsection 6.2, collectively referred to as "**Documentation**"); and (b) through the assistance of personnel who are familiar with the technical and operational aspects of Licensee's computer, hardware, software, Security Systems (collectively, "**Operational Systems**") who are to be made available by Licensee, provide real-time and/or historical access to such Operational Systems, as requested, sufficient to permit HFA or its examiner(s) to conduct meaningful tests and analysis to verify that (i) the Operational Systems are properly and accurately tracking and reporting the use of the Licensed Works, and royalties payable therefor, as contemplated by the terms of this Agreement; and (ii) the Operational Systems are in compliance with the security requirements set forth in Section 5 of this Agreement. Licensee shall provide the information, systems access and personnel required by this Subsection 6.2 free of charge and, unless otherwise agreed by HFA or its examiner(s), at Licensee's place of business.

6.3 During the course of and/or following completion of the Royalty and Security Examination, upon request by HFA or an examiner acting on its behalf, Licensee shall make available company personnel at an appropriate level of seniority and/or technical ability to discuss and/or resolve particular issues and findings arising out of such examination.

6.4 Licensee shall maintain any and all Documentation that reasonably might be expected to be relevant to HFA's conduct of a Royalty and Security Examination for a period of at least six (6) years following the expiration or termination of this Agreement, unless there is a Royalty and Security Examination in progress or not fully resolved as of the expiration of such period, in which case the Documentation shall be maintained until the Royalty and Security Examination is fully resolved to the satisfaction of HFA.

6.5 If a royalty examination reveals a nonpayment or underpayment of royalties due to HFA, the amounts determined to be owing shall be subject to interest payable at the rate of prime plus two percent (2%) calculated from the date the royalties were due to be paid under the applicable reporting period to the date of ultimate payment to HFA.

7. Representations and Warranties; Disclaimer; Indemnity

7.1 Licensee represents and warrants that: (a) it has the full right, power and authority to enter into and perform this Agreement in accordance with its terms and conditions; (b) it shall take all steps necessary to implement and shall comply with (i) its security obligations set forth in Section 5, and (ii) the requirements set forth in Section 9; and (c) the Service shall (i) neither infringe upon nor violate the intellectual property rights or other rights of any third party, and (ii) comply with all applicable laws, rules and regulations.

7.2 HFA represents and warrants that it has the full right, power and authority to enter into this Agreement and perform its obligations hereunder.

7.3 Licensee agrees to indemnify, defend and hold harmless HFA from and against any losses, injuries, damages, claims, expenses and costs (including without limitation reasonable attorneys' fees) incurred or suffered by HFA, arising from any third-party actions, claims, suits or legal proceedings of any kind, caused by, incident to or arising out of Licensee's failure to perform any of its obligations under this Agreement and/or breach of any of Licensee's representations, warranties or covenants hereunder.

8. Termination/Default

8.1 All license authority pursuant to Licenses issued hereunder shall terminate upon the expiration or termination of this Agreement (unless such Licenses are renewed pursuant to a renewal of this Agreement as contemplated under Section 3, in which case the terms of renewal shall apply as appropriate), and any further transmission and/or reproduction of any Licensed Work after the expiration of this Agreement shall be prohibited and actionable as an act of infringement under, and fully subject to the remedies provided by, the Copyright Act. Notwithstanding the foregoing, provided that the Agreement has not been terminated due to Licensee's breach or default, any Server Fixations existing on Servers and/or Ringtone Deliveries existing on Covered Devices as of the expiration of the Agreement may remain on such Servers and Covered Devices; provided, however, that such existing Server Fixations (in addition to the Ringtone Deliveries) may not be further reproduced or distributed after the expiration of the Agreement.

8.2 Notwithstanding, without limiting and in addition to any other remedy that may be available at law or in equity and/or under this Agreement, Licensee understands and agrees that in the event that (a) Licensee fails to account to HFA and pay royalties provided for in Section 2, HFA may provide written notice to Licensee that, unless the default is fully remedied within thirty (30) days from the date of the notice, this Agreement and any Licenses issued hereunder will be automatically terminated, and that such termination will render the further transmission and/or reproduction of any Licensed Work for which royalties have not been fully paid actionable as an act of infringement under Section 501 of the Copyright Act, and fully subject to the remedies provided by Sections 502 through 506 and 509 of the Copyright Act;
(b) Licensee is in material breach or default of any of its obligations under this Agreement, HFA may provide written notice to Licensee that, unless the default is fully remedied within thirty (30) days from the date of the notice, this Agreement and any Licenses issued hereunder will be automatically terminated, and that such termination will render the further transmission and/or reproduction of any Licensed Work actionable as an act of

infringement under Section 501 of the Copyright Act, and fully subject to the remedies provided by Sections 502 through 506 and 509 the Copyright Act. Licensee further understands and agrees that in the case of infringement, irreparable harm may be presumed, and HFA and/or any affected Publisher-Principal(s) shall be entitled as appropriate to injunctive relief, in addition to any other remedy that may be available at law or in equity and/or under this Agreement. For the avoidance of doubt, and without limitation, Licensee's breach of any of the obligations or restrictions imposed by Subsections 1.1, 1.5, 1.6 and 10.4 and Sections 2, 5, 6, 7, 9 of this Agreement shall be considered a material breach of, and default under, this Agreement.

8.3 To the extent permitted by applicable law, and without limitation, the occurrence of any of the following events shall also be considered a material breach of and default under this Agreement: (a) Licensee's dissolution and/or the liquidation of all of Licensee's assets; (b) the filing of a petition in bankruptcy or insolvency or for an arrangement or reorganization by, for or against Licensee; (c) the appointment of a receiver or trustee for all or a portion of Licensee's assets; (d) Licensee's assignment of assets for the benefit of creditors; (e) Licensee's insolvency; or (f) Licensee's inability to pay its debts as they become due. Upon the occurrence of any of the events described in items (a) through (f) of this Subsection 8.3, notwithstanding, without limiting and in addition to any other remedy that may be available at law or in equity and/or under this Agreement, this Agreement and all license authority pursuant to any Licenses granted hereunder shall terminate automatically without the requirement of any further action on the part of HFA or the Participating Publisher-Principals.

8.4 Notwithstanding, without limiting and in addition to any other remedy that may be available at law or in equity and/or under this Agreement, including without limitation the remedies set forth in Subsection 8.2, the breach of any of the provisions set forth in Section 5 shall entitle HFA and/or any relevant Publisher-Principal to specific performance of such provision and/or to terminate, effective immediately upon the giving of notice, the license authority pursuant to any License granted hereunder.

8.5 Notwithstanding the expiration or termination of this Agreement, Sections 2, 4, 5, 6, 7, 8, 9 and10 shall to the extent applicable survive and continue to bind the parties and their legal representatives and successors.

9. Proprietary and Confidential Information

9.1 HFA shall have no obligation to perform its obligations hereunder unless and until Licensee enters into the Data Access and Use Agreement, attached hereto and incorporated herein as Exhibit C (the "**Data Access and Use Agreement**"), governing the nondisclosure and use of HFA Confidential Information (as defined in the Data Access and Use Agreement) by Licensee.

9.2 To the extent Licensee seeks to have a third-party individual or entity obtain access to HFA Confidential Information for purposes of obtaining and administering Licenses and otherwise fulfilling its obligations under this Agreement (each, a "**Third-Party Administrator**"), Licensee must obtain HFA's prior consent of each such Third-Party Administrator (such consent not to be unreasonably withheld). Upon HFA's consent to Licensee's use of such Third-Party Administrator, HFA will require that such Third-Party Administrator enter into a data access and use agreement with HFA substantially in the form of the Data Access and Use Agreement, prior to allowing such Third-Party Administrator access to any HFA Confidential Information.

10. Miscellaneous

10.1. Administrative Fee. In addition to the royalties payable hereunder, within five (5) business days following execution of this Agreement, Licensee shall pay to HFA an administrative fee of Redacted in consideration of HFA's administrative expenses in connection with the publisher opt-in and licensing processes contemplated hereunder.

10.2 Notices. All notices hereunder shall be in writing and shall be deemed effective (a) if provided by hand delivery, upon delivery; (b) if provided by overnight courier, one (1) business day following the date sent; and (c) if provided by registered or certified mail, return receipt requested, five (5) business days following the date mailed. Notices shall be sent to the following addresses:

If to HFA:

To the address set forth above. Attn: General Counsel. Fax: 646-487-6789.

If to Licensee:

To the address set forth above. Attn:

Redacted

10.3 Publicity. Neither party shall issue any press release or other publicity document concerning this Agreement without the prior written consent of the other party.

10.4 Assignment. This Agreement may not be assigned.

10.5 Entire Agreement; Amendment. This Agreement represents the entire understanding of the parties with respect to the subject matter hereof, supersedes all prior and contemporaneous agreements and understandings of

the parties with respect to the subject matter hereof, and may not be altered or amended except in a written instrument executed by both parties.

10.6 Governing Law; Jurisdiction. This Agreement shall be governed by, and construed in accordance with, federal law and/or the laws of the State of New York (without giving effect to conflicts of law principles thereof), as may be applicable. With respect to any action or proceeding arising out of this Agreement, the parties (a) agree that the sole and exclusive venue for such action or proceeding shall be in a court of appropriate jurisdiction located in New York County, New York; (2) agree to the appropriateness of, and waive any objection concerning, the propriety and/or convenience of, proceeding in such venue; and (3) consent to the personal jurisdiction of such court.

10.7 Severability; Waiver. If a court should determine that any part of this Agreement is invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect. Performance of any obligation required of a party hereunder may be waived only by a written waiver signed by a duly authorized officer of the other party, which waiver shall be effective only with respect to the specific obligation described therein.

10.8 Headings. The titles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

10.9 Assistance of Counsel. Each party hereto acknowledges that it has been represented by its own independent counsel, who has reviewed this Agreement and discussed the terms herein with his or her respective client prior to execution.

10.10 Counterparts. This Agreement may be executed in multiple counterparts and delivery of an executed counterpart may be made by facsimile, each such counterpart to be considered and accepted as an original, and all such counterparts together to constitute a single Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date:

Redacted

THE HARRY FOX AGENCY, INC.

By: _____
Print name: Michael Simon
Title: SVP, General Counsel

EXHIBIT A

PHONIC/PRE-RECORDED RINGTONE LICENSING LAYOUT

(FOR ROYALTY STRUCTURES WITH % OF RETAIL SELLING PRICE OR PENNY FLOOR ELEMENTS)

	Field Name	Field Length	Decimal Places	Field Format	Input Option
1	HFA Agreement Code	3		Text	*Input/Output*
2	Manufacturer Number	6		Text	M
3	Transaction Date	8	0	Number	M
4	Manufacturer Request Number	8	0	Number	M
5	Ringtone Playing Time - Seconds	2	0	Number	M
6	Song Title	200		Text	M
7	A/K/A Song Title	200		Text	O
8	ISWC Code	11		Text	O
9	HFA Song Code	6		Text	O
10	Song Writer(s)	200		Text	M
11	Publisher Name	60		Text	O*
12	HFA Publisher Number	6		Text	*Input/Output*
13	Publisher Share	7	4	Number	*Input/Output*
14	Catalog Number *(for matching purposes only)*	15		Text	O
15	Configuration Code	12		Text	M
16	UPC Code *(for matching purposes only)*	16		Text	O
17	License Type	1		Text	M
18	Server Fixation Date	8	0	Number	M
19	Rate Code	1		Text	M
20	Rate In Cents	7	7	Number	O
21	Artist Name (For Pre-Recorded Ringtone)	60		Text	C*
22	Album Title (For Pre-Recorded Ringtone)	200		Text	C*
23	Record Label (For Pre-Recorded Ringtone)	60		Text	C*
24	Total Playing Time - Minutes (For Pre-Recorded Ringtone)	3	0	Number	C*
25	Total Playing Time - Seconds (For Pre-Recorded Ringtone)	2	0	Number	C*
26	ISRC Code (For Pre-Recorded Ringtones)	15		Text	C*
27	User Defined	30		Text	*Input/Output*
28	HFA License Number	10		Number	*Output*
29	HFA License Status Code #1	2		Text	*Input/Output*
30	HFA License Status Code #2	2		Text	*Output*
31	HFA License Status Code #3	2		Number	*Output*
32	HFA Flag for Amended Publisher Data	1		Text	*Output*
33	Publisher Status	1		Text	*Output*

Key:

DECIMAL: Number of characters after decimal (for numeric fields only)

INPUT OPTION:

M = Mandatory

O = Optional

O* = Optional, however, providing this information will expedite the licensing process.

C* = Conditional. If request is for a Pre-Recorded Ringtone, field must be populated.

^ All input/output fields should be left blank upon initial license submission, EXCEPT for Field 28 which should be populated with the letter R in the input file IF the request is a amended resubmission.

EXHIBIT B

hfa

PHONIC/PRE-RECORDED RINGTONE REPORTING LAYOUT

(FOR ROYALTY STRUCTURES WITH % OF RETAIL SELLING PRICE OR PENNY FLOOR ELEMENTS)

FILE HEADER (Control Portion for File Transfer)

Field Name	Field Length	Decimal Places	Field Format	Input Option	Field Description/Legend	Example
Line Count	15	0	Number	Mandatory	Number of lines of data in file; used as a control.	321456

FILE BODY

	Field Name	Field Length	Decimal Places	Field Format	Input Option	Field Description/Legend	Example
1	Manufacturer Number	8		Text	Mandatory	Account number assigned by HFA to Licensee	M12345
2	Transaction Date	8	0	Number	Mandatory	Date electronic royalty report submitted to HFA Format: YYYYMMDD	20020304
3	Royalty Reporting Period	6		Text	Mandatory	Length of period in number of months (left 2 digits), ending month (middle 2 digits), year (right 2 digits)	30602
4	HFA License Number	12		Text	Mandatory	Number assigned by HFA for each license.	1012345678
5	Configuration Code	2		Text	Mandatory	Code designating configuration being reported: FX - Server Fixation PH - Phonic Ringtone RR - Pre-recorded Ringtone Note: Each config must be reported as a separate line.	RR
6	Song Title	30		Text	Mandatory	Title of work for which a license was granted.	STARRY NIGHT
7	Units (For Period)	9	0	Number	Mandatory	Applicable number for each specific configuration shown in field #5	12345
8	Publisher Name	30		Text	Mandatory*	Name of the publisher owning a share of the work.	Famous
9	Publisher Ownership Share Percentage	7	4	Number	Mandatory*	Percent of song owned by specific publisher, as provided to licensee on license	33.3340
10	Rate Code	1		Text	Mandatory	Special HFA internal code indicating royalty rate structure. For this agreement, use J.	J
11	Retail Selling Price	16	4	Number	Mandatory	Price paid by consumer for the Phonic or Pre-Recorded Ringtone	1.9900
12	Rate Factor	5	4	Number	Mandatory	Note: if floor indication flag is invoked, read rate factor as a penny rate. If floor indication not made, read as a percentage.	0.1000
13	Royalty Rate Equivalent	5	4	Number	Mandatory	The royalty amount applicable in accordance with agreement calculations.	0.1900
14	Net Royalty Amount	11	4	Number	Mandatory	The royalty amount payable to HFA for its represented shares.	0.0900
15	Total Royalty Amount	11	4	Number	Mandatory	The royalty amount payable to HFA for its represented shares X units in Field 7.	223.4000
16	Floor Indication Flag	1		Text	Mandatory	If a royalty calculation floor was invoked, indicate with a Y.	Y
17	Service (ie: Third Party)	30		Text	Mandatory	Third-party through which distribution was made.	Site.com
18	Calculation Method	7	0	Number	Mandatory	Indicate the calculation method used to determine royalty rate equivalent. Codes for this agreement will be advised.	2
19	Agreement Code	3		Text	Mandatory	HFA internal code for this specific deal. Code for this agreement will be advised.	ABC

Note: Any characters or digits exceeding these per field maximums will be truncated.

** A separate publisher share % line with corresponding publisher name must be given for each if the title is not 100% payable through HFA.*

EXHIBIT C

Data Access and Use Agreement

This Data Access and Use Agreement ("**Agreement**") is entered into as of February 6, 2006 by and between The Harry Fox Agency, Inc., a New York corporation, having its principal place of business at 711 Third Avenue, New York, New York ("HFA") and Redacted a Delaware corporation with an office at Redacted

WHEREAS, Recipient (also referred to at times herein as "Licensee") and HFA have entered, or expect to enter, into that certain Ringtone Service Licensing Agreement, dated as of February 6, 2006 (the "**License Agreement**"), pursuant to which HFA has granted, or will grant, limited rights to certain copyrighted musical compositions (each, a "**Musical Work**") in connection with the operation of Licensee's ringtones service; and

WHEREAS, Recipient seeks to access and use certain HFA Confidential Information (defined in Section 1 below) as necessary to obtain and administer the licenses issued under the License Agreement (each, a "**License**"), and as otherwise may be necessary to comply with Licensee's obligations under the License Agreement (collectively, the "**Purpose**"), and HFA has agreed to allow Recipient such limited access to and use of the HFA Confidential Information solely as necessary to accomplish the Purpose;

NOW THEREFORE, in consideration of the premises of and the mutual promises, covenants and agreements contained in this Agreement, HFA and Recipient agree as follows:

1. HFA Confidential Information.

"**HFA Confidential Information**" means any and all information and material disclosed by HFA to Recipient or obtained by Recipient from HFA (whether in writing, or in oral, graphic electronic or any other form) that is proprietary and/or is intended by HFA to remain confidential relating to HFA's business and its databases, products, services, business strategies, capabilities or business affairs, including without limitation, all data and information related to the Musical Works and ownership thereof and/or HFA's publisher-principals.

2. Non-Disclosure and Limited Use.

Recipient covenants (a) to hold all HFA Confidential Information in strict confidence, (b) that it shall disclose (or permit access to) the HFA Confidential Information solely to (or by) its employees, if any, who need to know or access such HFA Confidential Information to accomplish the Purpose, and who are bound by nondisclosure and use restrictions and obligations comparable to and at least as restrictive to those set forth herein, and (c) that it shall not disclose to any third party, including any agent, contractor, consultant or other party, or permit any such party to access, the HFA Confidential Information, unless and until such party has entered into a written agreement with HFA in form and substance of this Agreement governing the nondisclosure and use of the HFA Confidential Information. Recipient further covenants that it shall (y) use HFA Confidential Information solely as necessary to accomplish the Purpose, and (z) not extract, aggregate, derive or copy any HFA Confidential Information, whether by bulk transfer or through individual data query and response, for use or incorporation in any database, unless the sole purpose of such use or incorporation is to accomplish the Purpose. Recipient agrees to notify HFA immediately upon obtaining any information regarding unauthorized disclosure or access to the HFA Confidential Information.

Notwithstanding the disclosure and use restrictions in this Section 2, Recipient may disclose HFA Confidential Information (i) that is independently derived or acquired from a party not subject to a duty of confidentiality to HFA, or (ii) to the extent required to respond to the request of a court of competent jurisdiction, provided that upon

receiving any such request and to the extent that it may do so without violating any law, Recipient prior to such disclosure advises HFA of such request in order that HFA may take such action as it deems appropriate to protect the HFA Confidential Information. During the Term (defined in Section 5 below) and for a period of three (3) years following the termination or expiration of this Agreement, Recipient agrees to permit HFA to inspect, on a semi-annual basis, during regular business hours and upon reasonable prior notice, the point or points at which the HFA Confidential Information is (or was) used in Recipient's facilities, if any, and to furnish whatever assistance is reasonably necessary to permit HFA to determine whether Recipient, including its employees, agents, subcontractors, independent contractors, consultants or other parties, if any, are in compliance with this Agreement.

3. Ownership.

Recipient acknowledges and agrees that all right, title and interest in and to the HFA Confidential Information (including all copies, extracts and portions thereof) is and shall remain the sole property of HFA. Recipient does not acquire (by license or otherwise, whether express or implied) any intellectual property rights or other rights under this Agreement or any disclosure or access hereunder, except the limited right to use such HFA Confidential Information in strict accordance with the express provisions of this Agreement. All rights relating to the HFA Confidential Information that are not expressly granted hereunder to Recipient are reserved and retained by HFA.

4. No Warranty; Limitation of Liability.

EXCEPT AS OTHERWISE MAY BE EXPRESSLY SET FORTH IN THE LICENSE AGREEMENT WITH RESPECT TO LICENSEE, HFA MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE HFA CONFIDENTIAL INFORMATION OR ANY USE THEREOF, AND THE HFA CONFIDENTIAL INFORMATION IS PROVIDED ON AN "AS IS" BASIS. EXCEPT AS OTHERWISE MAY BE EXPRESSLY SET FORTH IN THE LICENSE AGREEMENT WITH RESPECT TO LICENSEE, HFA HEREBY EXPRESSLY DISCLAIMS ALL SUCH WARRANTIES, INCLUDING, BUT NOT LIMITED TO, CORRECTNESS, COMPLETENESS, CURRENTNESS, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE HFA CONFIDENTIAL INFORMATION OR OF THE MEDIA ON WHICH THE DATA IS PROVIDED AND SHALL NOT BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR CAUSED, IN WHOLE OR IN PART, BY HFA'S NEGLIGENT ACTS OR OMISSIONS IN PROCURING, COMPILING, COLLECTING, INTERPRETING, REPORTING, COMMUNICATING OR DELIVERING THE HFA CONFIDENTIAL INFORMATION OR IN OTHERWISE PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT, EVEN IF HFA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

5. Term; Termination.

This Agreement will continue for the term of the License Agreement (including any agreed extensions thereof) (the "Term"), unless otherwise terminated by HFA in accordance herewith. HFA may terminate this Agreement at any time upon written notice, and shall have no further obligations to disclose to or permit access by Recipient to any HFA Confidential Information; and provided, however, that each party's rights and obligations shall otherwise survive the termination or expiration of this Agreement.

6. Purging of HFA Confidential Information.

Promptly following any expiration or termination of this Agreement, Recipient shall purge and destroy any and all records and copies of HFA Confidential Information from any Recipient databases and other systems under Recipient's direct or indirect control, and any other media on which any HFA Confidential Information may have been provided, together with all copies thereof, whether in printed or machine readable form; provided, however,

that Recipient may retain any records and copies of HFA Confidential Information solely to the extent and for the period necessary to permit Licensee to fulfill any further obligations under the License Agreement, including without limitation, Licensee's accounting and royalty and security compliance obligations under Sections 2 and 6 of the License Agreement, after which period such records and copies shall be purged and destroyed as described in this Section 6. Notwithstanding the foregoing, Recipient is not required to purge and destroy any HFA Confidential Information to the extent such HFA Confidential Information was independently derived or acquired from a party not subject to a duty of confidentiality to HFA.

7. Assistance of Counsel.

Each party hereto acknowledges that it has been afforded the opportunity to be represented by its own independent counsel for purposes of reviewing this Agreement and discussing its terms prior to execution.

8. Specific Performance.

Recipient acknowledges that a breach of Recipient's obligations in Sections 2 and/or 6 of this Agreement may result in irreparable harm, the extent of which it would be difficult to ascertain, and therefore agrees that HFA shall be entitled to seek immediate injunctive relief to enforce any such obligation in addition to any other legal remedy to which HFA might be entitled.

9. Miscellaneous.

This Agreement (combined with the License Agreement, if the Recipient is the Licensee) constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior or contemporaneous representations, discussions, proposals, negotiations, conditions, communications and agreements, whether oral or written, between the parties relating to the subject matter hereof. No amendment, modification or waiver of any provision of this Agreement shall be effective unless in writing and signed by duly authorized signatories of both parties. The waiver by either party of a breach of or a default under any provision of this Agreement shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without reference to its conflicts of laws provisions. This Agreement and the rights and obligations hereunder may not be assigned or delegated by Recipient, in whole or part, whether voluntarily, by operation of law, change of control or otherwise, without the prior written consent of HFA. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be invalid or unenforceable, the remaining portions hereof shall remain in full force and effect and such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed to the extent necessary to make such provision valid and enforceable. The parties are independent contractors, and neither party shall have any authority of any kind to bind the other party in any respect whatsoever.

The parties have executed this Data Access and Use Agreement as of the date first above written:

THE HARRY FOX AGENCY, INC.

By: _____

Name: Michael Simon

Title: SVP, General Counsel

Redacted

PS

EXHIBIT CO 0020

ORIGINAL

NUMBER 1 OF

2 COUNTERPARTS

COPY

RINGTONE SERVICE
LICENSING AGREEMENT

This agreement ("**Agreement**") is entered into as of January 18, 2006 ("**Effective Date**") by and between Redacted ("**Licensee**"), a Nevada corporation with an office , and The Harry Fox Agency, Inc. ("**HFA**"), a New York corporation with an office at 711 Third Avenue, New York, NY 10017.

WHEREAS, Licensee owns and operates a service pursuant to which excerpts of copyrighted musical compositions ("**Musical Works**") in the form of Ringtones (as below defined) are digitally reproduced on a central computer server or servers, which Ringtones are subsequently transmitted from such servers and downloaded to Covered Devices (as below defined) ("**Service**"); and

WHEREAS, in order to operate the Service, Licensee seeks licenses to make Server Fixations (as below defined) and reproduce and distribute Ringtones of Musical Works that are owned and/or controlled by publisher-principals affiliated with HFA ("**Publisher-Principals**"); and

WHEREAS, HFA is prepared to issue such licenses to the extent it is authorized to do so by such Publisher-Principals;

NOW, THEREFORE, in consideration of the promises contained in this Agreement and for other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Licensing

1.1 Pursuant to the terms of this Agreement, and as more particularly described herein, upon receipt of appropriate license requests ("**License Requests**") from Licensee, HFA shall, to the extent authorized by particular Publisher-Principals, issue on behalf of such Publisher-Principals nonexclusive licenses ("**Licenses**") to reproduce and distribute Ringtones of Musical Works owned and/or controlled by such Publisher-Principals ("**Licensed Works**") for use on Licensee's Service in accordance with the terms of this Agreement. The license authority contemplated hereunder and granted pursuant to any License issued hereunder shall include and is limited to: (a) the digital reproduction of Ringtones of Licensed Works on a central computer server or servers owned and/or controlled by Licensee and located in the United States (including its territories and possessions and the Commonwealth of Puerto Rico (collectively, the "**United States**")) ("**Servers**"), solely for use in connection with the Service ("**Server Fixations**"); (b) the digital transmission of Ringtones of Licensed Works from such Servers for storage on Covered Devices, solely for use in connection with the Service; (c) the reproduction of Ringtones of Licensed Works on Covered Devices, solely for use in

connection with the Service ("**Ringtone Deliveries**"); and (d) the offering of Promotional Ringtones (as below defined) of Licensed Works, solely for use in connection with the Service. The license authority under any License issued hereunder is limited to and granted solely with respect to (x) the copyright interests of the individual Participating Publisher-Principal(s) on whose behalf the License is issued by HFA; and (y) if the Ringtone is a Pre-Recorded Ringtone (as below defined), the particular individual sound recording of the individual Licensed Work from which the excerpt embodied in the Ringtone was derived.

For purposes of this Agreement:

A "**Ringtone**" is an excerpt, not to exceed forty-five (45) seconds, of a musical composition that is embodied in either (i) a digital file containing codes representing and capable of being rendered into audio and played back as musical notes constituting the work's melody in either monophonic or polyphonic form ("**Phonic Ringtone**"), or (ii) a digital file representing an excerpt of no more than forty-five (45) seconds of a sound recording of the composition ("**Pre-Recorded Ringtone**"); in both cases, that is intended to be digitally transmitted to and stored in an end user's Covered Device and played by such intended destination Covered Device whenever the Covered Device activates its ringing or alert function indicating the arrival of a call, message or other notification received by the Covered Device, and is designed to be played by such Covered Device without any other distribution or transmission.

A "**Covered Device**" shall mean a mobile telephone, pager or other portable communications device with a telephonic or messaging function that operates on a wireless communications network regulated by the U.S. Federal Communications Commission pursuant to its rules governing commercial mobile radio services.

A "**Promotional Ringtone**" shall mean a digital transmission of a Ringtone in streamed form made available to a prospective purchaser free of charge and solely for the purpose of promoting the sale of the Ringtone, and that does not result in a reproduction of any part or all of the Ringtone that is accessible except by such prospective purchaser for an intended one-time promotional playback through the operation of a Covered Device or other device.

1.2 The authority of HFA to issue Licenses for any individual Musical Work on behalf of any one or more Publisher-Principals is subject to the approval of the relevant Publisher-Principal(s). Before commencing to issue licenses hereunder, HFA shall for a period of time (the "**Opt-In Period**") offer to its Publisher-Principals the opportunity to agree to make their Musical Works available for licensing under this Agreement by notifying HFA of their desire to opt in to the Agreement. Notwithstanding the decision to opt in by any individual Publisher-Principal, thereby rendering such Publisher-Principal a

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"Participating Publisher-Principal," if such Participating Publisher-Principal at any time requests that HFA not issue Licenses on its behalf (either with respect to a particular Musical Work or in general), HFA will honor that request; provided, however, that any Licenses validly issued by HFA prior to the receipt of such a request shall remain in effect until the Term (as below defined) of this Agreement expires.

1.3 Following execution of this Agreement and conclusion of the applicable Opt-In Period, Licensee may begin submitting License Requests in electronic form in accordance with the format specified in Exhibit A (as such format may be modified from time to time by HFA upon reasonable notice to Licensee) ("**Request Format**"), which License Requests shall be duly processed by HFA. Without limitation, Licensee shall include in each License Request to the extent required by the Request Format (a) the title of the Musical Work for which a License is being requested; (b) the writer(s) of the Musical Work; (c) the publisher(s) of the Musical Work; and (d) whether the Ringtone is to be licensed in the form of a Phonic Ringtone and/or a Pre-Recorded Ringtone; and, if the Ringtone is a Pre-Recorded Ringtone, (e) the name of the record company that produced the sound recording embodied in the Ringtone; (f) the name of the artist performing such sound recording; (g) the ISRC number for such sound recording; (h) the total playing time of such sound recording in its complete form, expressed in minutes and seconds; (i) the title of an album for which such sound recording has been previously licensed; and (j) such other information as may be required by HFA's Request Format.

1.4 HFA shall from time to time provide to Licensee an electronic file specifying the Licenses issued under this Agreement (each such report a "**Confirmation Report**"). To aid Licensee in the calculation of royalties, with respect to each License, such Confirmation Report shall include, *inter alia*, the total percentage ownership share of the Participating Publisher-Principal(s) on whose behalf the License has been issued.

1.5 For the avoidance of doubt, and without limitation, the Licenses granted hereunder do not extend to or cover: (a) any right of public performance; (b) any copyrights or other rights in sound recordings; (c) any rights to synchronize musical works with visual images resulting in audiovisual works; (d) any print, display or karaoke rights; (e) any adaptation (derivative work) rights or right to alter the fundamental character of a Musical Work (except to reproduce and distribute Ringtones, in strict accordance with the terms and conditions of this Agreement); (f) any merchandising rights; (g) any use of a musical work (whether or not embodied in a sound recording) for a marketing campaign, product tie-in, game or contest or otherwise to advertise, promote or cross-promote any product or service; or (h) any use of the title of a musical work, or the name or likeness of any writer, publisher or artist associated with a musical work, except for identification purposes as described in Section 4.

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1.6 The license authority contemplated by this Agreement and granted pursuant to any License issued hereunder is limited to Licensee and may not be sublicensed, assigned or otherwise transferred by Licensee except to the extent expressly permitted hereunder.

2. Reporting and Payment of Royalties

2.1 Licensee shall account and pay royalties to HFA quarterly, within forty-five (45) days after the end of each calendar quarter, on the basis of each Ringtone Delivery. Licensee shall provide its quarterly statements (**"Statements"**) in electronic form in accordance with the format specified in Exhibit B (as such format may be modified from time to time by HFA upon reasonable notice to Licensee) (**"Reporting Format"**). With respect to each quarterly reporting period, for each License, Licensee shall include in its Statement (a) the HFA License Number (as supplied by HFA); (b) the HFA Agreement code (as supplied by HFA; (c) the HFA rate code applicable to the Agreement (as supplied by HFA); (d) a breakdown of the particular retail outlets through which the Ringtone Deliveries were made; (e) for each retail outlet, a further breakdown of the retail selling price(s) paid by end user (consumers) for Ringtone Deliveries made through that outlet; (f) for each such retail selling price, the number of units being reported at that price; (g) for each such retail selling price, the applicable royalty rate per unit (i.e., percentage rate or penny-rate "floor"); (h) for each such retail selling price, whether the penny-rate "floor" is being invoked (floor indication flag); (i) for each such retail selling price, the gross royalties (before proration to reflect the HFA-represented share of the Licensed Work payable for the Units being reported at that price; (j) for each such retail selling price, the net royalties (after proration for the HFA-represented share) payable for the units being reported at that price; (k) the total net royalties (after proration for the HFA-represented share) being paid for all Ringtone Deliveries being reported during the applicable reporting period; and (l) such other information as may be required by HFA's Reporting Format. Interest on late payments shall be payable to HFA at the rate of prime plus two percent (2%) calculated from the date the royalties were due to be paid under the applicable reporting period to the date of ultimate payment to HFA.

2.2 For each Ringtone Delivery, the royalty shall be equal to the greater of the following amounts:

(a) Redacted of the retail selling price paid by the end user (consumer); and

(b) a "floor" of Redacted

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In each case above, the royalty amount payable shall be proportionately reduced to the extent that the Participating Publisher-Principal(s) on whose behalf the License is granted own(s) or control(s) less than 100% of the Work.

3. **Term**

The term of this Agreement shall commence as of the Effective Date and terminate on December 31, 2007 (the "**Term**"). If Licensee wishes to renew this Agreement for an additional two (2) year term, it shall notify HFA of such desire not later than a date six (6) months prior to the end of the Term. Such notification shall include proposed terms for any such renewal. Any renewal shall be subject to the approval of individual Publisher-Principals as described in Subsection 1.2, and HFA reserves the right to propose changes to administrative and other aspects of the Agreement as it deems appropriate.

4. **Writer/Publisher Credit**

Licensee shall, to the extent commercially reasonable, include in any graphics and/or imagery displayed in connection with the play of any Ringtone of a Licensed Work written credit in legible form setting forth the names of the writer(s) and publisher(s) of such Licensed Work.

5. **Security**

5.1 In connection with the use of any Licensed Work, Licensee shall implement and maintain copy protection and digital rights management technology and systems, including software and/or hardware functional limitations (collectively, "**Security Systems**") with respect to all aspects of the Service, including without limitation its Servers and operating systems, that (a) are designed to prevent unauthorized reproduction and distribution of the Licensed Work, in the form of Ringtones or otherwise; (b) are sufficient to track and enforce the use limitations contemplated by this Agreement; and (c) meet or exceed current industry standards as they exist from time to time for the licensed delivery of music via digital transmission and its reproduction on devices including, without limitation, Covered Devices.

5.2 In the event it becomes aware of a breach of Licensee's Security Systems ("**Security Breach**"), whether through its own monitoring efforts, upon being advised by another party (including HFA) or otherwise, Licensee shall use its best efforts to resolve the Security Breach and restore the full integrity of its Security Systems as quickly as possible. If a solution to the Security Breach is not immediately available (i.e., cannot be implemented within twenty-four (24) hours from the time Licensee becomes aware of the Security Breach), Licensee shall (a) promptly notify HFA of the Security Breach in writing (unless Licensee learned of the breach from HFA); and (b) cease all further digital transmission and/or reproduction of Licensed Works to the extent such activities are or could possibly be affected by the Security Breach, pending

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full resolution of the Security Breach. In such a case, Licensee (x) shall keep HFA reasonably apprised of the status of its efforts to resolve the Security Breach; and (y) shall not resume the activities that were suspended pursuant to this Subsection 5.2 until the full integrity of its Security Systems has been restored.

5.3 To the extent Licensee employs third-party technology in order to operate, Licensee shall use its best efforts to maintain and upgrade such technology by (a) diligently monitoring any third-party notifications of bug-fixes, security holes and functionality improvements; and (b) obtaining any available upgrades and bug-fixes, and installing, testing and distributing such upgrades and bug-fixes as necessary so as to maintain the integrity of its Security Systems.

5.4 Licensee shall use its best efforts to prevent any unauthorized digital transmissions and reproductions of Musical Works by operators and users of the Service and/or in any facility, on any device (including Covered Devices), or by any person under the supervision and/or control of Licensee.

6. Royalty and Security Compliance

6.1 Notwithstanding, without limiting and in addition to the general right of HFA and/or any Participating Publisher-Principal pursuant to industry custom and practice to examine the books and records of Licensee in connection with Licensee's use of Musical Works, HFA shall be entitled, upon thirty (30) days' notice to Licensee, to conduct an examination of the books, records, operations and Security Systems of Licensee (**"Royalty and Security Examination"**) to determine whether Licensee is in compliance with its reporting, royalty and security obligations under this Agreement. Absent a good-faith basis to believe that Licensee is not in compliance with such obligations, HFA shall not seek to initiate a Royalty and Security Examination more than once every twelve (12) months or more than six (6) years following the termination of this Agreement.

6.2 During the course of a Royalty and Security Examination, upon request by HFA or an examiner acting on its behalf, Licensee shall, within three (3) business days (a) provide access to any information that may be called for by such request, including without limitation any (i) books, records, files, logs, reports, compilations, usage data and other documentation, whether in paper or electronic form, that were or could be used or required to generate or verify Licensee's Statements and/or that reflect or summarize Licensees' Statements; (ii) financial information, including books, records, ledgers, reports, and other documentation, reflecting cash receipts and general revenue accounts to the extent such information relates directly or indirectly to the activities licensed under this Agreement; and (iii) files, logs, reports, compilations, testing and monitoring data and other documentation related to and/or reflecting the

operation and integrity of Licensee's Security Systems (such information, along with the information described in the items (a)(i) and (a)(ii) of this Subsection 6.2, collectively referred to as "**Documentation**"); and (b) through the assistance of personnel who are familiar with the technical and operational aspects of Licensee's computer, hardware, software, Security Systems (collectively, "**Operational Systems**") who are to be made available by Licensee, provide real-time and/or historical access to such Operational Systems, as requested, sufficient to permit HFA or its examiner(s) to conduct meaningful tests and analysis to verify that (i) the Operational Systems are properly and accurately tracking and reporting the use of the Licensed Works, and royalties payable therefor, as contemplated by the terms of this Agreement; and (ii) the Operational Systems are in compliance with the security requirements set forth in Section 5 of this Agreement. Licensee shall provide the information, systems access and personnel required by this Subsection 6.2 free of charge and, unless otherwise agreed by HFA or its examiner(s), at Licensee's place of business.

6.3 During the course of and/or following completion of the Royalty and Security Examination, upon request by HFA or an examiner acting on its behalf, Licensee shall make available company personnel at an appropriate level of seniority and/or technical ability to discuss and/or resolve particular issues and findings arising out of such examination.

6.4 Licensee shall maintain any and all Documentation that reasonably might be expected to be relevant to HFA's conduct of a Royalty and Security Examination for a period of at least six (6) years following the expiration or termination of this Agreement, unless there is a Royalty and Security Examination in progress or not fully resolved as of the expiration of such period, in which case the Documentation shall be maintained until the Royalty and Security Examination is fully resolved to the satisfaction of HFA.

6.5 If a royalty examination reveals a nonpayment or underpayment of royalties due to HFA, the amounts determined to be owing shall be subject to interest payable at the rate of prime plus two percent (2%) calculated from the date the royalties were due to be paid under the applicable reporting period to the date of ultimate payment to HFA.

7. Representations and Warranties; Disclaimer; Indemnity

7.1 Licensee represents and warrants that: (a) it has the full right, power and authority to enter into and perform this Agreement in accordance with its terms and conditions; (b) it shall take all steps necessary to implement and shall comply with (i) its security obligations set forth in Section 5, and (ii) the requirements set forth in Section 9; and (c) the Service shall (i) neither infringe upon nor violate the intellectual property rights or other rights of any third party, and (ii) comply with all applicable laws, rules and regulations.

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7.2 HFA represents and warrants that it has the full right, power and authority to enter into this Agreement and perform its obligations hereunder.

7.3 Licensee agrees to indemnify, defend and hold harmless HFA from and against any losses, injuries, damages, claims, expenses and costs (including without limitation reasonable attorneys' fees) incurred or suffered by HFA, arising from any third-party actions, claims, suits or legal proceedings of any kind, caused by, incident to or arising out of Licensee's failure to perform any of its obligations under this Agreement and/or breach of any of Licensee's representations, warranties or covenants hereunder.

8. Termination/Default

8.1 All license authority pursuant to Licenses issued hereunder shall terminate upon the expiration or termination of this Agreement (unless such Licenses are renewed pursuant to a renewal of this Agreement as contemplated under Section 3, in which case the terms of renewal shall apply as appropriate), and any further transmission and/or reproduction of any Licensed Work after the expiration of this Agreement shall be prohibited and actionable as an act of infringement under, and fully subject to the remedies provided by, the Copyright Act. Notwithstanding the foregoing, provided that the Agreement has not been terminated due to Licensee's breach or default, any Server Fixations existing on Servers and/or Ringtone Deliveries existing on Covered Devices as of the expiration of the Agreement may remain on such Servers and Covered Devices; provided, however, that such existing Server Fixations (in addition to the Ringtone Deliveries) may not be further reproduced or distributed after the expiration of the Agreement.

8.2 Notwithstanding, without limiting and in addition to any other remedy that may be available at law or in equity and/or under this Agreement, Licensee understands and agrees that in the event that (a) Licensee fails to account to HFA and pay royalties provided for in Section 2, HFA may provide written notice to Licensee that, unless the default is fully remedied within thirty (30) days from the date of the notice, this Agreement and any Licenses issued hereunder will be automatically terminated, and that such termination will render the further transmission and/or reproduction of any Licensed Work for which royalties have not been fully paid actionable as an act of infringement under Section 501 of the Copyright Act, and fully subject to the remedies provided by Sections 502 through 506 and 509 of the Copyright Act;
(b) Licensee is in material breach or default of any of its obligations under this Agreement, HFA may provide written notice to Licensee that, unless the default is fully remedied within thirty (30) days from the date of the notice, this Agreement and any Licenses issued hereunder will be automatically terminated, and that such termination will render the further transmission and/or reproduction of any Licensed Work actionable as an act of

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infringement under Section 501 of the Copyright Act, and fully subject to the remedies provided by Sections 502 through 506 and 509 the Copyright Act. Licensee further understands and agrees that in the case of infringement, irreparable harm may be presumed, and HFA and/or any affected Publisher-Principal(s) shall be entitled as appropriate to injunctive relief, in addition to any other remedy that may be available at law or in equity and/or under this Agreement. For the avoidance of doubt, and without limitation, Licensee's breach of any of the obligations or restrictions imposed by Subsections 1.1, 1.5, 1.6 and 10.4 and Sections 2, 5, 6, 7, 9 of this Agreement shall be considered a material breach of, and default under, this Agreement.

8.3 To the extent permitted by applicable law, and without limitation, the occurrence of any of the following events shall also be considered a material breach of and default under this Agreement: (a) Licensee's dissolution and/or the liquidation of all of Licensee's assets; (b) the filing of a petition in bankruptcy or insolvency or for an arrangement or reorganization by, for or against Licensee; (c) the appointment of a receiver or trustee for all or a portion of Licensee's assets; (d) Licensee's assignment of assets for the benefit of creditors; (e) Licensee's insolvency; or (f) Licensee's inability to pay its debts as they become due. Upon the occurrence of any of the events described in items (a) through (f) of this Subsection 8.3, notwithstanding, without limiting and in addition to any other remedy that may be available at law or in equity and/or under this Agreement, this Agreement and all license authority pursuant to any Licenses granted hereunder shall terminate automatically without the requirement of any further action on the part of HFA or the Participating Publisher-Principals.

8.4 Notwithstanding, without limiting and in addition to any other remedy that may be available at law or in equity and/or under this Agreement, including without limitation the remedies set forth in Subsection 8.2, the breach of any of the provisions set forth in Section 5 shall entitle HFA and/or any relevant Publisher-Principal to specific performance of such provision and/or to terminate, effective immediately upon the giving of notice, the license authority pursuant to any License granted hereunder.

8.5 Notwithstanding the expiration or termination of this Agreement, Sections 2, 4, 5, 6, 7, 8, 9 and10 shall to the extent applicable survive and continue to bind the parties and their legal representatives and successors.

9. Proprietary and Confidential Information

9.1 HFA shall have no obligation to perform its obligations hereunder unless and until Licensee enters into the Data Access and Use Agreement, attached hereto and incorporated herein as Exhibit C (the "**Data Access and Use Agreement**"), governing the nondisclosure and use of HFA Confidential Information (as defined in the Data Access and Use Agreement) by Licensee.

9.2 To the extent Licensee seeks to have a third-party individual or entity obtain access to HFA Confidential Information for purposes of obtaining and administering Licenses and otherwise fulfilling its obligations under this Agreement (each, a "**Third-Party Administrator**"), Licensee must obtain HFA's prior consent of each such Third-Party Administrator (such consent not to be unreasonably withheld). Upon HFA's consent to Licensee's use of such Third-Party Administrator, HFA will require that such Third-Party Administrator enter into a data access and use agreement with HFA substantially in the form of the Data Access and Use Agreement, prior to allowing such Third-Party Administrator access to any HFA Confidential Information.

10. Miscellaneous

10.1. Administrative Fee. In addition to the royalties payable hereunder, within five (5) business days following execution of this Agreement, Licensee shall pay to HFA an administrative fee of REDACTED in consideration of HFA's administrative expenses in connection with the publisher opt-in and licensing processes contemplated hereunder.

10.2 Notices. All notices hereunder shall be in writing and shall be deemed effective (a) if provided by hand delivery, upon delivery; (b) if provided by overnight courier, one (1) business day following the date sent; and (c) if provided by registered or certified mail, return receipt requested, five (5) business days following the date mailed. Notices shall be sent to the following addresses:

If to HFA:

To the address set forth above. Attn: General Counsel. Fax: 212-922-3299.

If to Licensee:

To the address set forth above. Attn:

Redacted

10.3 Publicity. Neither party shall issue any press release or other publicity document concerning this Agreement without the prior written consent of the other party.

10.4 Assignment. This Agreement may not be assigned.

10.5 Entire Agreement; Amendment. This Agreement represents the entire understanding of the parties with respect to the subject matter hereof, supersedes all prior and contemporaneous agreements and understandings of

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the parties with respect to the subject matter hereof, and may not be altered or amended except in a written instrument executed by both parties.

10.6 Governing Law; Jurisdiction. This Agreement shall be governed by, and construed in accordance with, federal law and/or the laws of the State of New York (without giving effect to conflicts of law principles thereof), as may be applicable. With respect to any action or proceeding arising out of this Agreement, the parties (a) agree that the sole and exclusive venue for such action or proceeding shall be in a court of appropriate jurisdiction located in New York County, New York; (2) agree to the appropriateness of, and waive any objection concerning, the propriety and/or convenience of, proceeding in such venue; and (3) consent to the personal jurisdiction of such court.

10.7 Severability; Waiver. If a court should determine that any part of this Agreement is invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect. Performance of any obligation required of a party hereunder may be waived only by a written waiver signed by a duly authorized officer of the other party, which waiver shall be effective only with respect to the specific obligation described therein.

10.8 Headings. The titles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

10.9 Assistance of Counsel. Each party hereto acknowledges that it has been represented by its own independent counsel, who has reviewed this Agreement and discussed the terms herein with his or her respective client prior to execution.

10.10 Counterparts. This Agreement may be executed in multiple counterparts and delivery of an executed counterpart may be made by facsimile, each such counterpart to be considered and accepted as an original, and all such counterparts together to constitute a single Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date:

Redacted

THE HARRY FOX AGENCY, INC.

By _____

Print name: Michael Simon

Title: SVP, Business Affairs / General Counsel / CSO

EXHIBIT A
(To Be Provided by HFA)

EXHIBIT A

PHONIC/PRE-RECORDED RINGTONE LICENSING LAYOUT

(FOR ROYALTY STRUCTURES WITH % OF RETAIL SELLING PRICE OR PENNY FLOOR ELEMENTS)

	Field Name	Field Length	Decimal Places	Field Format	Input Option
1	HFA Agreement Code	3		Text	*Input/Output*
2	Manufacturer Number	6		Text	M
3	Transaction Date	8	0	Number	M
4	Manufacturer Request Number	8	0	Number	M
5	Ringtone Playing Time - Seconds	2	0	Number	M
6	Song Title	200		Text	M
7	A/K/A Song Title	200		Text	O
8	ISWC Code	11		Text	O
9	HFA Song Code	6		Text	O
10	Song Writer(s)	200		Text	M
11	Publisher Name	60		Text	O*
12	HFA Publisher Number	6		Text	*Input/Output*
13	Publisher Share	7	4	Number	*Input/Output*
14	Catalog Number *(for matching purposes only)*	15		Text	O
15	Configuration Code	12		Text	M
16	UPC Code *(for matching purposes only)*	16		Text	O
17	License Type	1		Text	M
18	Server Fixation Date	8	0	Number	M
19	Rate Code	1		Text	M
20	Rate In Cents	7	7	Number	O
21	Artist Name (For Pre-Recorded Ringtone)	60		Text	C*
22	Album Title (For Pre-Recorded Ringtone)	200		Text	C*
23	Record Label (For Pre-Recorded Ringtone)	60		Text	C*
24	Total Playing Time - Minutes (For Pre-Recorded Ringtone)	3	0	Number	C*
25	Total Playing Time - Seconds (For Pre-Recorded Ringtone)	2	0	Number	C*
26	ISRC Code (For Pre-Recorded Ringtones)	15		Text	C*
27	User Defined	30		Text	*Input/Output*
28	HFA License Number	10		Number	*Output*
29	HFA License Status Code #1	2		Text	*Input/Output*
30	HFA License Status Code #2	2		Text	*Output*
31	HFA License Status Code #3	2		Number	*Output*
32	HFA Flag for Amended Publisher Data	1		Text	*Output*
33	Publisher Status	1		Text	*Output*

Key:

DECIMAL: Number of characters after decimal (for numeric fields only)

INPUT OPTION:

M = Mandatory

O = Optional

O* = Optional, however, providing this information will expedite the licensing process.

C* = Conditional. If request is for a Pre-Recorded Ringtone, field must be populated.

** All input/output fields should be left blank upon initial license submission, EXCEPT for Field 28 which should be populated with the letter R in the input file IF the request is a amended resubmission.

EXHIBIT B
(To Be Provided by HFA)

EXHIBIT B

hfa

PHONIC/PRE-RECORDED RINGTONE REPORTING LAYOUT

(FOR ROYALTY STRUCTURES WITH % OF RETAIL SELLING PRICE OR PENNY FLOOR ELEMENTS)

FILE HEADER (Control Portion for File Transfer)

Field Name	Field Length	Decimal Places	Field Format	Input Option	Field Description/Legend	Example
Line Count	15	0	Number	Mandatory	Number of lines of data in file; used as a control.	321456

FILE BODY

	Field Name	Field Length	Decimal Places	Field Format	Input Option	Field Description/Legend	Example
1	Manufacturer Number	8		Text	Mandatory	Account number assigned by HFA to Licensee	M12345
2	Transaction Date	8	0	Number	Mandatory	Date electronic royalty report submitted to HFA Format: YYYYMMDD	20020304
3	Royalty Reporting Period	6		Text	Mandatory	Length of period in number of months (left 2 digits), ending month (middle 2 digits), year (right 2 digits)	30602
4	HFA License Number	12		Text	Mandatory	Number assigned by HFA for each license.	1012345678
5	Configuration Code	2		Text	Mandatory	Code designating configuration being reported: FX - Server Fixation PH - Phonic Ringtone RR - Pre-recorded Ringtone Note: Each config must be reported as a separate line.	RR
6	Song Title	30		Text	Mandatory	Title of work for which a license was granted.	STARRY NIGHT
7	Units (For Period)	9	0	Number	Mandatory	Applicable number for each specific configuration shown in field #5	12345
8	Publisher Name	30		Text	Mandatory*	Name of the publisher owning a share of the work.	Famous
9	Publisher Ownership Share Percentage	7	4	Number	Mandatory*	Percent of song owned by specific publisher, as provided to licensee on license	33.3340
10	Rate Code	1		Text	Mandatory	Special HFA internal code indicating royalty rate structure. For this agreement, use J.	J
11	Retail Selling Price	16	4	Number	Mandatory	Price paid by consumer for the Phonic or Pre-Recorded Ringtone	1.9900
12	Rate Factor	5	4	Number	Mandatory	Note: if floor indication flag is invoked, read rate factor as a penny rate. If floor indication not made, read as a percentage.	0.1000
13	Royalty Rate Equivalent	5	4	Number	Mandatory	The royalty amount applicable in accordance with agreement calculations.	0.1900
14	Net Royalty Amount	11	4	Number	Mandatory	The royalty amount payable to HFA for its represented shares.	0.0900
15	Total Royalty Amount	11	4	Number	Mandatory	The royalty amount payable to HFA for its represented shares X units in Field 7.	223.4000
16	Floor Indication Flag	1		Text	Mandatory	If a royalty calculation floor was invoked, indicate with a Y.	Y
17	Service (ie: Third Party)	30		Text	Mandatory	Third-party through which distribution was made.	Site.com
18	Calculation Method	7	0	Number	Mandatory	Indicate the calculation method used to determine royalty rate equivalent. Codes for this agreement will be advised.	2
19	Agreement Code	3		Text	Mandatory	HFA internal code for this specific deal. Code for this agreement will be advised.	ABC

Note: Any characters or digits exceeding these per field maximums will be truncated.

** A separate publisher share % line with corresponding publisher name must be given for each if the title is not 100% payable through HFA.*

EXHIBIT C

Data Access and Use Agreement

This Data Access and Use Agreement ("**Agreement**") is entered into as of January 18, 2006, by and between The Harry Fox Agency, Inc., a New York corporation, having its principal place of business at 711 Third Avenue, New York, New York ("**HFA**") and Redacted, a Nevada corporation with an office at Redacted ("**Recipient**").

WHEREAS, Recipient (also referred to at times herein as "**Licensee**") and HFA have entered, or expect to enter, into that certain Ringtone Service Licensing Agreement, dated as of January 18, 2006 (the "**License Agreement**"), pursuant to which HFA has granted, or will grant, limited rights to certain copyrighted musical compositions (each, a "**Musical Work**") in connection with the operation of Licensee's ringtones service; and

WHEREAS, Recipient seeks to access and use certain HFA Confidential Information (defined in Section 1 below) as necessary to obtain and administer the licenses issued under the License Agreement (each, a "**License**"), and as otherwise may be necessary to comply with Licensee's obligations under the License Agreement (collectively, the "**Purpose**"), and HFA has agreed to allow Recipient such limited access to and use of the HFA Confidential Information solely as necessary to accomplish the Purpose;

NOW THEREFORE, in consideration of the premises of and the mutual promises, covenants and agreements contained in this Agreement, HFA and Recipient agree as follows:

1. HFA Confidential Information.

"**HFA Confidential Information**" means any and all information and material disclosed by HFA to Recipient or obtained by Recipient from HFA (whether in writing, or in oral, graphic electronic or any other form) that is proprietary and/or is intended by HFA to remain confidential relating to HFA's business and its databases, products, services, business strategies, capabilities or business affairs, including without limitation, all data and information related to the Musical Works and ownership thereof and/or HFA's publisher-principals.

2. Non-Disclosure and Limited Use.

Recipient covenants (a) to hold all HFA Confidential Information in strict confidence, (b) that it shall disclose (or permit access to) the HFA Confidential Information solely to (or by) its employees, if any, who need to know or access such HFA Confidential Information to accomplish the Purpose, and who are bound by nondisclosure and use restrictions and obligations comparable to and at least as restrictive to those set forth herein, and (c) that it shall not disclose to any third party, including any agent, contractor, consultant or other party, or permit any such party to access, the HFA Confidential Information, unless and until such party has entered into a written agreement with HFA in form and substance of this Agreement governing the nondisclosure and use of the HFA Confidential Information. Recipient further covenants that it shall (y) use HFA Confidential Information solely as necessary to accomplish the Purpose, and (z) not extract, aggregate, derive or copy any HFA Confidential Information, whether by bulk transfer or through individual data query and response, for use or incorporation in any database, unless the sole purpose of such use or incorporation is to accomplish the Purpose. Recipient agrees to notify HFA immediately upon obtaining any information regarding unauthorized disclosure or access to the HFA Confidential Information.

Notwithstanding the disclosure and use restrictions in this Section 2, Recipient may disclose HFA Confidential Information (i) that is independently derived or acquired from a party not subject to a duty of confidentiality to HFA, or (ii) to the extent required to respond to the request of a court of competent jurisdiction, provided that upon

receiving any such request and to the extent that it may do so without violating any law, Recipient prior to such disclosure advises HFA of such request in order that HFA may take such action as it deems appropriate to protect the HFA Confidential Information. During the Term (defined in Section 5 below) and for a period of three (3) years following the termination or expiration of this Agreement, Recipient agrees to permit HFA to inspect, on a semi-annual basis, during regular business hours and upon reasonable prior notice, the point or points at which the HFA Confidential Information is (or was) used in Recipient's facilities, if any, and to furnish whatever assistance is reasonably necessary to permit HFA to determine whether Recipient, including its employees, agents, subcontractors, independent contractors, consultants or other parties, if any, are in compliance with this Agreement.

3. Ownership.

Recipient acknowledges and agrees that all right, title and interest in and to the HFA Confidential Information (including all copies, extracts and portions thereof) is and shall remain the sole property of HFA. Recipient does not acquire (by license or otherwise, whether express or implied) any intellectual property rights or other rights under this Agreement or any disclosure or access hereunder, except the limited right to use such HFA Confidential Information in strict accordance with the express provisions of this Agreement. All rights relating to the HFA Confidential Information that are not expressly granted hereunder to Recipient are reserved and retained by HFA.

4. No Warranty; Limitation of Liability.

EXCEPT AS OTHERWISE MAY BE EXPRESSLY SET FORTH IN THE LICENSE AGREEMENT WITH RESPECT TO LICENSEE, HFA MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE HFA CONFIDENTIAL INFORMATION OR ANY USE THEREOF, AND THE HFA CONFIDENTIAL INFORMATION IS PROVIDED ON AN "AS IS" BASIS. EXCEPT AS OTHERWISE MAY BE EXPRESSLY SET FORTH IN THE LICENSE AGREEMENT WITH RESPECT TO LICENSEE, HFA HEREBY EXPRESSLY DISCLAIMS ALL SUCH WARRANTIES, INCLUDING, BUT NOT LIMITED TO, CORRECTNESS, COMPLETENESS, CURRENTNESS, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE HFA CONFIDENTIAL INFORMATION OR OF THE MEDIA ON WHICH THE DATA IS PROVIDED AND SHALL NOT BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR CAUSED, IN WHOLE OR IN PART, BY HFA'S NEGLIGENT ACTS OR OMISSIONS IN PROCURING, COMPILING, COLLECTING, INTERPRETING, REPORTING, COMMUNICATING OR DELIVERING THE HFA CONFIDENTIAL INFORMATION OR IN OTHERWISE PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT, EVEN IF HFA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

5. Term; Termination.

This Agreement will continue for the term of the License Agreement (including any agreed extensions thereof) (the "Term"), unless otherwise terminated by HFA in accordance herewith. HFA may terminate this Agreement at any time upon written notice, and shall have no further obligations to disclose to or permit access by Recipient to any HFA Confidential Information; and provided, however, that each party's rights and obligations shall otherwise survive the termination or expiration of this Agreement.

6. Purging of HFA Confidential Information.

Promptly following any expiration or termination of this Agreement, Recipient shall purge and destroy any and all records and copies of HFA Confidential Information from any Recipient databases and other systems under Recipient's direct or indirect control, and any other media on which any HFA Confidential Information may have been provided, together with all copies thereof, whether in printed or machine readable form; provided, however,

that Recipient may retain any records and copies of HFA Confidential Information solely to the extent and for the period necessary to permit Licensee to fulfill any further obligations under the License Agreement, including without limitation, Licensee's accounting and royalty and security compliance obligations under Sections 2 and 6 of the License Agreement, after which period such records and copies shall be purged and destroyed as described in this Section 6. Notwithstanding the foregoing, Recipient is not required to purge and destroy any HFA Confidential Information to the extent such HFA Confidential Information was independently derived or acquired from a party not subject to a duty of confidentiality to HFA.

7. Assistance of Counsel.

Each party hereto acknowledges that it has been afforded the opportunity to be represented by its own independent counsel for purposes of reviewing this Agreement and discussing its terms prior to execution.

8. Specific Performance.

Recipient acknowledges that a breach of Recipient's obligations in Sections 2 and/or 6 of this Agreement may result in irreparable harm, the extent of which it would be difficult to ascertain, and therefore agrees that HFA shall be entitled to seek immediate injunctive relief to enforce any such obligation in addition to any other legal remedy to which HFA might be entitled.

9. Miscellaneous.

This Agreement (combined with the License Agreement, if the Recipient is the Licensee) constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior or contemporaneous representations, discussions, proposals, negotiations, conditions, communications and agreements, whether oral or written, between the parties relating to the subject matter hereof. No amendment, modification or waiver of any provision of this Agreement shall be effective unless in writing and signed by duly authorized signatories of both parties. The waiver by either party of a breach of or a default under any provision of this Agreement shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without reference to its conflicts of laws provisions. This Agreement and the rights and obligations hereunder may not be assigned or delegated by Recipient, in whole or part, whether voluntarily, by operation of law, change of control or otherwise, without the prior written consent of HFA. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be invalid or unenforceable, the remaining portions hereof shall remain in full force and effect and such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed to the extent necessary to make such provision valid and enforceable. The parties are independent contractors, and neither party shall have any authority of any kind to bind the other party in any respect whatsoever.

The parties have executed this Data Access and Use Agreement as of the date first above written:

THE HARRY FOX AGENCY, INC.

By: _____

Name: Michael Simon

Title: SVP, Business Affairs & General Counsel / CSO

Redacted

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EXHIBIT CO 0021

ORIGINAL

NUMBER 2 OF

2 COUNTERPARTS

RINGTONE SERVICE
LICENSING RENEWAL AGREEMENT

This agreement ("Agreement") is entered into as of January 1, 2006 ("Effective Date") by and between REDACTED ("Licensee"), a Washington corporation with an office at REDACTED, and The Harry Fox Agency, Inc. ("HFA"), a New York corporation with an office at 711 Third Avenue, New York, NY 10017.

COPY

WHEREAS, the parties entered into a certain ringtone service licensing agreement dated as of December 22, 2003, which agreement expired December 31, 2005 ("Prior Agreement"), and which relationship the parties desire hereby to renew by the terms hereof; and

WHEREAS, Licensee owns and operates a service pursuant to which excerpts of copyrighted musical compositions ("Musical Works") in the form of Ringtones (as below defined) are digitally reproduced on a central computer server or servers, which Ringtones are subsequently transmitted from such servers and downloaded to Covered Devices (as below defined) ("Service"); and

WHEREAS, in order to operate the Service, Licensee seeks (i) the reissuance, under the terms of this Agreement, of those certain licenses granted by HFA on behalf of applicable Publisher-Principals (as below defined) that participated in the Prior Agreement, and (ii) additional licenses that may now be available to maintain and/or make Server Fixations (as below defined) and reproduce and distribute Ringtones of Musical Works that are owned and/or controlled by publisher-principals affiliated with HFA ("Publisher-Principals"); and

WHEREAS, HFA is prepared to reissue and/or issue such licenses to the extent it is authorized to do so by such Publisher-Principals;

NOW, THEREFORE, in consideration of the promises contained in this Agreement and for other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Licensing

1.1 Pursuant to the terms of this Agreement, and as more particularly described herein, upon receipt of appropriate license requests ("License Requests") from Licensee, HFA shall, to the extent authorized by particular Publisher-Principals, issue on behalf of such Publisher-Principals nonexclusive licenses ("Licenses") to reproduce and distribute Ringtones of Musical Works owned and/or controlled by such Publisher-Principals ("Licensed Works") for use on Licensee's Service in accordance with the terms of this Agreement. Subject to HFA's authority to issue licenses under the terms of this Agreement on behalf of Participating Publisher-Principals (as such term is defined in Sub-Paragraph 1.2 below), Licenses issued by HFA pursuant to the Prior

Agreement shall automatically be reissued by HFA. For the avoidance of doubt, Licensee understands and agrees that to the extent HFA has issued any licenses on behalf of a Publisher-Principal that participated in the Prior Agreement, but is not a Participating Publisher-Principal under the terms of this Agreement, such licenses, as of the expiration of the Prior Agreement, shall be deemed terminated, void, of no further force or effect and are fully subject to the Termination/Default provisions set forth in Paragraph 7 of the Prior Agreement. The license authority contemplated hereunder and granted pursuant to any License issued hereunder shall include and is limited to: (a) the digital reproduction of Ringtones of Licensed Works on a central computer server or servers owned and/or controlled by Licensee and located in the United States (including its territories and possessions and the Commonwealth of Puerto Rico (collectively, the "**United States**")) ("**Servers**"), solely for use in connection with the Service ("**Server Fixations**"); (b) the digital transmission of Ringtones of Licensed Works from such Servers for storage on Covered Devices, solely for use in connection with the Service; (c) the reproduction of Ringtones of Licensed Works on Covered Devices, solely for use in connection with the Service ("**Ringtone Deliveries**"); and (d) the offering of Promotional Ringtones (as below defined) of Licensed Works, solely for use in connection with the Service. The license authority under any License issued hereunder is limited to and granted solely with respect to (x) the copyright interests of the individual Participating Publisher-Principal(s) on whose behalf the License is issued by HFA; and (y) if the Ringtone is a Pre-Recorded Ringtone (as below defined), the particular individual sound recording of the individual Licensed Work from which the excerpt embodied in the Ringtone was derived.

For purposes of this Agreement:

A "**Ringtone**" is an excerpt, not to exceed forty-five (45) seconds, of a musical composition that is embodied in either (i) a digital file containing codes representing and capable of being rendered into audio and played back as musical notes constituting the work's melody in either monophonic or polyphonic form ("**Phonic Ringtone**"), or (ii) a digital file representing an excerpt of no more than forty-five (45) seconds of a sound recording of the composition ("**Pre-Recorded Ringtone**"); in both cases, that is intended to be digitally transmitted to and stored in an end user's Covered Device and played by such intended destination Covered Device whenever the Covered Device activates its ringing or alert function indicating the arrival of a call, message or other notification received by the Covered Device, and is designed to be played by such Covered Device without any other distribution or transmission.

A "**Covered Device**" shall mean a mobile telephone, pager or other portable communications device with a telephonic or messaging function that operates on a wireless communications network regulated by the U.S. Federal

Communications Commission pursuant to its rules governing commercial mobile radio services.

A "**Promotional Ringtone**" shall mean a digital transmission of a Ringtone in streamed form made available to a prospective purchaser free of charge and solely for the purpose of promoting the sale of the Ringtone, and that does not result in a reproduction of any part or all of the Ringtone that is accessible except by such prospective purchaser for an intended one-time promotional playback through the operation of a Covered Device or other device.

1.2 The authority of HFA to issue/reissue Licenses for any individual Musical Work on behalf of any one or more Publisher-Principals is subject to the approval of the relevant Publisher-Principal(s). Before commencing to issue licenses hereunder HFA shall for a period of time (the "**Option Period**") offer to its Publisher-Principals the opportunity, in the case of Publisher-Principals participating in the Prior Agreement, to request to make their Musical Works unavailable for licensing under this Agreement by notifying HFA of their desire to opt out of the Agreement, and in the case of Publisher-Principals not participating in the Prior Agreement, the opportunity to make their Musical Works available for licensing under this Agreement by notifying HFA of their desire to opt in to the Agreement. Individual Publisher-Principals that make their Musical Works available for licensing under this Agreement are hereinafter each referred to as a "**Participating Publisher-Principal.**" If such Participating Publisher-Principal at any time requests that HFA not issue Licenses on its behalf (either with respect to a particular Musical Work or in general), HFA will honor that request; provided, however, that any Licenses validly issued by HFA prior to the receipt of such a request shall remain in effect until the Term (as below defined) of this Agreement expires.

1.3 Following execution of this Agreement and conclusion of the applicable Option Period, Licensee may to the extent necessary begin submitting License Requests in electronic form in accordance with the format specified in Exhibit A (as such format may be modified from time to time by HFA upon reasonable notice to Licensee) ("**Request Format**"), which License Requests shall be duly processed by HFA. (If a License has already been issued by HFA under the Prior Agreement, HFA shall reissue such License subject to the option provisions described in Section 1.2 above.) Without limitation, Licensee shall include in each License Request to the extent required by the Request Format (a) the title of the Musical Work for which a License is being requested; (b) the writer(s) of the Musical Work; (c) the publisher(s) of the Musical Work; and (d) whether the Ringtone is to be licensed in the form of a Phonic Ringtone and/or a Pre-Recorded Ringtone; and, if the Ringtone is a Pre-Recorded Ringtone, (e) the name of the record company that produced the sound recording embodied in the Ringtone; (f) the name of the artist performing such sound recording; (g) the ISRC number for such sound recording; (h) the total playing time of such sound recording in its complete form, expressed in minutes and seconds; (i) the title of an album for which

such sound recording has been previously licensed; and (j) such other information as may be required by HFA's Request Format.

1.4 HFA shall from time to time provide to Licensee an electronic file specifying the Licenses issued under this Agreement (each such report a "**Confirmation Report**"). To aid Licensee in the calculation of royalties, with respect to each License, such Confirmation Report shall include, *inter alia*, the total percentage ownership share of the Participating Publisher-Principal(s) on whose behalf the License has been issued.

1.5 For the avoidance of doubt, and without limitation, the Licenses granted hereunder do not extend to or cover: (a) any right of public performance; (b) any copyrights or other rights in sound recordings; (c) any rights to synchronize musical works with visual images resulting in audiovisual works; (d) any print, display or karaoke rights; (e) any adaptation (derivative work) rights or right to alter the fundamental character of a Musical Work (except to reproduce and distribute Ringtones, in strict accordance with the terms and conditions of this Agreement); (f) any merchandising rights; (g) any use of a musical work (whether or not embodied in a sound recording) for a marketing campaign, product tie-in, game or contest or otherwise to advertise, promote or cross-promote any product or service; or (h) any use of the title of a musical work, or the name or likeness of any writer, publisher or artist associated with a musical work, except for identification purposes as described in Section 4.

1.6 The license authority contemplated by this Agreement and granted pursuant to any License issued hereunder is limited to Licensee and may not be sublicensed, assigned or otherwise transferred by Licensee except to the extent expressly permitted hereunder.

2. Reporting and Payment of Royalties

2.1 Licensee shall account and pay royalties to HFA quarterly, within forty-five (45) days after the end of each calendar quarter, on the basis of each Ringtone Delivery. Licensee shall provide its quarterly statements ("**Statements**") in electronic form in accordance with the format specified in Exhibit B (as such format may be modified from time to time by HFA upon reasonable notice to Licensee) ("**Reporting Format**"). With respect to each quarterly reporting period, for each License, Licensee shall include in its Statement (a) the HFA License Number (as supplied by HFA); (b) the HFA Agreement code (as supplied by HFA; (c) the HFA rate code applicable to the Agreement (as supplied by HFA); (d) a breakdown of the particular retail outlets through which the Ringtone Deliveries were made; (e) for each retail outlet, a further breakdown of the retail selling price(s) paid by end user (consumers) for Ringtone Deliveries made through that outlet; (f) for each such retail selling price, the number of units being reported at that price; (g) for each such retail

selling price, the applicable royalty rate per unit (i.e., percentage rate or penny-rate "floor"); (h) for each such retail selling price, whether the penny-rate "floor" is being invoked (floor indication flag); (i) for each such retail selling price, the gross royalties (before proration to reflect the HFA-represented share of the Licensed Work payable for the Units being reported at that price; (j) for each such retail selling price, the net royalties (after proration for the HFA-represented share) payable for the units being reported at that price; (k) the total net royalties (after proration for the HFA-represented share) being paid for all Ringtone Deliveries being reported during the applicable reporting period; and (l) such other information as may be required by HFA's Reporting Format. Interest on late payments shall be payable to HFA at the rate of prime plus two percent (2%) calculated from the date the royalties were due to be paid under the applicable reporting period to the date of ultimate payment to HFA.

2.2 For each Ringtone Delivery, the royalty shall be equal to the greater of the following amounts:

(a) REDACTED of the retail selling price paid by the end user (consumer); and

(b) a "floor" of REDACTED

In each case above, the royalty amount payable shall be proportionately reduced to the extent that the Participating Publisher-Principal(s) on whose behalf the License is granted own(s) or control(s) less than 100% of the Work.

3. Term

The term of this Agreement shall commence as of the Effective Date and terminate on December 31, 2008 (the "**Term**"). If Licensee wishes to renew this Agreement for an additional two (2) year term, it shall notify HFA of such desire not later than a date six (6) months prior to the end of the Term. Such notification shall include proposed terms for any such renewal. Any renewal shall be subject to the approval of individual Publisher-Principals as described in Subsection 1.2, and HFA reserves the right to propose changes to administrative and other aspects of the Agreement as it deems appropriate.

4. Writer/Publisher Credit

Licensee shall, to the extent commercially reasonable, include in any graphics and/or imagery displayed in connection with the play of any Ringtone of a Licensed Work written credit in legible form setting forth the names of the writer(s) and publisher(s) of such Licensed Work.

5. Security

5.1 In connection with the use of any Licensed Work, Licensee shall implement and maintain copy protection and digital rights management technology and systems, including software and/or hardware functional limitations (collectively, "**Security Systems**") with respect to all aspects of the Service, including without limitation its Servers and operating systems, that (a) are designed to prevent unauthorized reproduction and distribution of the Licensed Work, in the form of Ringtones or otherwise; (b) are sufficient to track and enforce the use limitations contemplated by this Agreement; and (c) meet or exceed current industry standards as they exist from time to time for the licensed delivery of music via digital transmission and its reproduction on devices including, without limitation, Covered Devices.

5.2 In the event it becomes aware of a breach of Licensee's Security Systems ("**Security Breach**"), whether through its own monitoring efforts, upon being advised by another party (including HFA) or otherwise, Licensee shall use its best efforts to resolve the Security Breach and restore the full integrity of its Security Systems as quickly as possible. If a solution to the Security Breach is not immediately available (i.e., cannot be implemented within twenty-four (24) hours from the time Licensee becomes aware of the Security Breach), Licensee shall (a) promptly notify HFA of the Security Breach in writing (unless Licensee learned of the breach from HFA); and (b) cease all further digital transmission and/or reproduction of Licensed Works to the extent such activities are or could possibly be affected by the Security Breach, pending full resolution of the Security Breach. In such a case, Licensee (x) shall keep HFA reasonably apprised of the status of its efforts to resolve the Security Breach; and (y) shall not resume the activities that were suspended pursuant to this Subsection 5.2 until the full integrity of its Security Systems has been restored.

5.3 To the extent Licensee employs third-party technology in order to operate, Licensee shall use its best efforts to maintain and upgrade such technology by (a) diligently monitoring any third-party notifications of bug-fixes, security holes and functionality improvements; and (b) obtaining any available upgrades and bug-fixes, and installing, testing and distributing such upgrades and bug-fixes as necessary so as to maintain the integrity of its Security Systems.

5.4 Licensee shall use its best efforts to prevent any unauthorized digital transmissions and reproductions of Musical Works by operators and users of the Service and/or in any facility, on any device (including Covered Devices), or by any person under the supervision and/or control of Licensee.

6. Royalty and Security Compliance

6.1 Notwithstanding, without limiting and in addition to the general right of HFA and/or any Participating Publisher-Principal pursuant to industry custom and

practice to examine the books and records of Licensee in connection with Licensee's use of Musical Works, HFA shall be entitled, upon thirty (30) days' notice to Licensee, to conduct an examination of the books, records, operations and Security Systems of Licensee ("**Royalty and Security Examination**") to determine whether Licensee is in compliance with its reporting, royalty and security obligations under this Agreement. Absent a good-faith basis to believe that Licensee is not in compliance with such obligations, HFA shall not seek to initiate a Royalty and Security Examination more than once every twelve (12) months or more than six (6) years following the termination of this Agreement.

6.2 During the course of a Royalty and Security Examination, upon request by HFA or an examiner acting on its behalf, Licensee shall, within three (3) business days (a) provide access to any information that may be called for by such request, including without limitation any (i) books, records, files, logs, reports, compilations, usage data and other documentation, whether in paper or electronic form, that were or could be used or required to generate or verify Licensee's Statements and/or that reflect or summarize Licensees' Statements; (ii) financial information, including books, records, ledgers, reports, and other documentation, reflecting cash receipts and general revenue accounts to the extent such information relates directly or indirectly to the activities licensed under this Agreement; and (iii) files, logs, reports, compilations, testing and monitoring data and other documentation related to and/or reflecting the operation and integrity of Licensee's Security Systems (such information, along with the information described in the items (a)(i) and (a)(ii) of this Subsection 6.2, collectively referred to as "**Documentation**"); and (b) through the assistance of personnel who are familiar with the technical and operational aspects of Licensee's computer, hardware, software, Security Systems (collectively, "**Operational Systems**") who are to be made available by Licensee, provide real-time and/or historical access to such Operational Systems, as requested, sufficient to permit HFA or its examiner(s) to conduct meaningful tests and analysis to verify that (i) the Operational Systems are properly and accurately tracking and reporting the use of the Licensed Works, and royalties payable therefor, as contemplated by the terms of this Agreement; and (ii) the Operational Systems are in compliance with the security requirements set forth in Section 5 of this Agreement. Licensee shall provide the information, systems access and personnel required by this Subsection 6.2 free of charge and, unless otherwise agreed by HFA or its examiner(s), at Licensee's place of business.

6.3 During the course of and/or following completion of the Royalty and Security Examination, upon request by HFA or an examiner acting on its behalf, Licensee shall make available company personnel at an appropriate level of seniority and/or technical ability to discuss and/or resolve particular issues and findings arising out of such examination.

6.4 Licensee shall maintain any and all Documentation that reasonably might be expected to be relevant to HFA's conduct of a Royalty and Security Examination for a period of at least six (6) years following the expiration or termination of this Agreement, unless there is a Royalty and Security Examination in progress or not fully resolved as of the expiration of such period, in which case the Documentation shall be maintained until the Royalty and Security Examination is fully resolved to the satisfaction of HFA.

6.5 If a royalty examination reveals a nonpayment or underpayment of royalties due to HFA, the amounts determined to be owing shall be subject to interest payable at the rate of prime plus two percent (2%) calculated from the date the royalties were due to be paid under the applicable reporting period to the date of ultimate payment to HFA.

7. Representations and Warranties; Disclaimer; Indemnity

7.1 Licensee represents and warrants that: (a) it has the full right, power and authority to enter into and perform this Agreement in accordance with its terms and conditions; (b) it shall take all steps necessary to implement and shall comply with (i) its security obligations set forth in Section 5, and (ii) the requirements set forth in Section 9; and (c) the Service shall (i) neither infringe upon nor violate the intellectual property rights or other rights of any third party, and (ii) comply with all applicable laws, rules and regulations.

7.2 HFA represents and warrants that it has the full right, power and authority to enter into this Agreement and perform its obligations hereunder.

7.3 Licensee agrees to indemnify, defend and hold harmless HFA from and against any losses, injuries, damages, claims, expenses and costs (including without limitation reasonable attorneys' fees) incurred or suffered by HFA, arising from any third-party actions, claims, suits or legal proceedings of any kind, caused by, incident to or arising out of Licensee's failure to perform any of its obligations under this Agreement and/or breach of any of Licensee's representations, warranties or covenants hereunder.

8. Termination/Default

8.1 All license authority pursuant to Licenses issued hereunder shall terminate upon the expiration or termination of this Agreement (unless such Licenses are renewed pursuant to a renewal of this Agreement as contemplated under Section 3, in which case the terms of renewal shall apply as appropriate), and any further transmission and/or reproduction of any Licensed Work after the expiration of this Agreement shall be prohibited and actionable as an act of infringement under, and fully subject to the remedies provided by, the Copyright Act. Notwithstanding the foregoing, provided that the Agreement has not been terminated due to Licensee's breach or default, any Server

Fixations existing on Servers and/or Ringtone Deliveries existing on Covered Devices as of the expiration of the Agreement may remain on such Servers and Covered Devices; provided, however, that such existing Server Fixations (in addition to the Ringtone Deliveries) may not be further reproduced or distributed after the expiration of the Agreement.

8.2 Notwithstanding, without limiting and in addition to any other remedy that may be available at law or in equity and/or under this Agreement, Licensee understands and agrees that in the event that (a) Licensee fails to account to HFA and pay royalties provided for in Section 2, HFA may provide written notice to Licensee that, unless the default is fully remedied within thirty (30) days from the date of the notice, this Agreement and any Licenses issued hereunder will be automatically terminated, and that such termination will render the further transmission and/or reproduction of any Licensed Work for which royalties have not been fully paid actionable as an act of infringement under Section 501 of the Copyright Act, and fully subject to the remedies provided by Sections 502 through 506 and 509 of the Copyright Act; (b) Licensee is in material breach or default of any of its obligations under this Agreement, HFA may provide written notice to Licensee that, unless the default is fully remedied within thirty (30) days from the date of the notice, this Agreement and any Licenses issued hereunder will be automatically terminated, and that such termination will render the further transmission and/or reproduction of any Licensed Work actionable as an act of infringement under Section 501 of the Copyright Act, and fully subject to the remedies provided by Sections 502 through 506 and 509 the Copyright Act. Licensee further understands and agrees that in the case of infringement, irreparable harm may be presumed, and HFA and/or any affected Publisher-Principal(s) shall be entitled as appropriate to injunctive relief, in addition to any other remedy that may be available at law or in equity and/or under this Agreement. For the avoidance of doubt, and without limitation, Licensee's breach of any of the obligations or restrictions imposed by Subsections 1.1, 1.5, 1.6 and 10.4 and Sections 2, 5, 6, 7, 9 of this Agreement shall be considered a material breach of, and default under, this Agreement.

8.3 To the extent permitted by applicable law, and without limitation, the occurrence of any of the following events shall also be considered a material breach of and default under this Agreement: (a) Licensee's dissolution and/or the liquidation of all of Licensee's assets; (b) the filing of a petition in bankruptcy or insolvency or for an arrangement or reorganization by, for or against Licensee; (c) the appointment of a receiver or trustee for all or a portion of Licensee's assets; (d) Licensee's assignment of assets for the benefit of creditors; (e) Licensee's insolvency; or (f) Licensee's inability to pay its debts as they become due. Upon the occurrence of any of the events described in items (a) through (f) of this Subsection 8.3, notwithstanding, without limiting and in addition to any other remedy that may be available at law or in equity and/or under this Agreement, this Agreement and all license

authority pursuant to any Licenses granted hereunder shall terminate automatically without the requirement of any further action on the part of HFA or the Participating Publisher-Principals.

8.4 Notwithstanding, without limiting and in addition to any other remedy that may be available at law or in equity and/or under this Agreement, including without limitation the remedies set forth in Subsection 8.2, the breach of any of the provisions set forth in Section 5 shall entitle HFA and/or any relevant Publisher-Principal to specific performance of such provision and/or to terminate, effective immediately upon the giving of notice, the license authority pursuant to any License granted hereunder.

8.5 Notwithstanding the expiration or termination of this Agreement, Sections 2, 4, 5, 6, 7, 8, 9 and10 shall to the extent applicable survive and continue to bind the parties and their legal representatives and successors.

9. Proprietary and Confidential Information

9.1 HFA shall have no obligation to perform its obligations hereunder unless and until Licensee enters into the Data Access and Use Agreement, substantially in the form attached hereto and incorporated herein as Exhibit C (the "**Data Access and Use Agreement**"), governing the nondisclosure and use of HFA Confidential Information (as defined in the Data Access and Use Agreement) by Licensee.

9.2 To the extent Licensee seeks to have a third-party individual or entity obtain access to HFA Confidential Information for purposes of obtaining and administering Licenses and otherwise fulfilling its obligations under this Agreement (each, a "**Third-Party Administrator**"), Licensee must obtain HFA's prior consent of each such Third-Party Administrator (such consent not to be unreasonably withheld). Upon HFA's consent to Licensee's use of such Third-Party Administrator, HFA will require that such Third-Party Administrator enter into a data access and use agreement with HFA substantially in the form of the Data Access and Use Agreement, prior to allowing such Third-Party Administrator access to any HFA Confidential Information.

10. Miscellaneous

10.1. Advance. Contemporaneous with Licensee's execution of this Agreement, Licensee shall pay to HFA an advance of REDACTED The advance is recoupable (but not refundable), and shall be applied against quarterly licensing payments to be made by Licensee in accordance with Section 2 hereof.

10.2 Notices. All notices hereunder shall be in writing and shall be deemed effective (a) if provided by hand delivery, upon delivery; (b) if provided by overnight courier, one (1) business day following the date sent; and (c) if provided by registered or certified mail, return receipt requested, five (5) business days following the date mailed. Notices shall be sent to the following addresses:

If to HFA:

To the address set forth above. Attn: General Counsel. Fax: 646-487-6789.

If to Licensee:

To the address set forth above. Attn: President.

REDACTED

10.3 Publicity. Neither party shall issue any press release or other publicity document concerning this Agreement without the prior written consent of the other party.

10.4 Assignment. This Agreement may not be assigned.

10.5 Entire Agreement; Amendment. This Agreement represents the entire understanding of the parties with respect to the subject matter hereof, supersedes all prior and contemporaneous agreements and understandings of the parties with respect to the subject matter hereof, and may not be altered or amended except in a written instrument executed by both parties. Notwithstanding the above, Sections 2, 4, 5, 6 and Subsections 7.1, 7.4, 8.2, 8.3, 8.4, 8.5, 8.6, and 8.8 of the Prior Agreement shall to the extent applicable survive and continue to bind the parties and their legal representatives and successors as to the Prior Agreement and the Licenses issued thereunder.

10.6 Governing Law; Jurisdiction. This Agreement shall be governed by, and construed in accordance with, federal law and/or the laws of the State of New York other than such laws, rules, regulations, or case law that would result in the application of the laws of a jurisdiction other than that of the State of New York. With respect to any action or proceeding arising out of this Agreement, the parties (a) agree that the sole and exclusive venue for such action or proceeding shall be in a court of appropriate jurisdiction located in New York County, New York; (2) agree to the appropriateness of, and waive any objection concerning, the propriety and/or convenience of, proceeding in such venue; and (3) consent to the personal jurisdiction of such court.

10.7 Severability; Waiver. If a court should determine that any part of this Agreement is invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect. Performance of any obligation required of a

party hereunder may be waived only by a written waiver signed by a duly authorized officer of the other party, which waiver shall be effective only with respect to the specific obligation described therein.

10.8 Headings. The titles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

10.9 Assistance of Counsel. Each party hereto acknowledges that it has been represented by its own independent counsel, who has reviewed this Agreement and discussed the terms herein with his or her respective client prior to execution.

10.10 Counterparts. This Agreement may be executed in multiple counterparts and delivery of an executed counterpart may be made by facsimile, each such counterpart to be considered and accepted as an original, and all such counterparts together to constitute a single Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date:

REDACTED

THE HARRY FOX AGENCY, INC.

By:
Print name: MICHAEL SIMON
Title: SVP, Business Affairs, GC & CSO

EXHIBIT A

PHONIC/PRE-RECORDED RINGTONE LICENSING LAYOUT

(FOR ROYALTY STRUCTURES WITH % OF RETAIL SELLING PRICE OR PENNY FLOOR ELEMENTS)

	Field Name	Field Length	Decimal Places	Field Format	Input Option
1	HFA Agreement Code	3		Text	*Input/Output*
2	Manufacturer Number	6		Text	M
3	Transaction Date	8	0	Number	M
4	Manufacturer Request Number	8	0	Number	M
5	Ringtone Playing Time - Seconds	2	0	Number	M
6	Song Title	200		Text	M
7	A/K/A Song Title	200		Text	O
8	ISWC Code	11		Text	O
9	HFA Song Code	6		Text	O
10	Song Writer(s)	200		Text	M
11	Publisher Name	60		Text	O*
12	HFA Publisher Number	6		Text	*Input/Output*
13	Publisher Share	7	4	Number	*Input/Output*
14	Catalog Number *(for matching purposes only)*	15		Text	O
15	Configuration Code	12		Text	M
16	UPC Code *(for matching purposes only)*	16		Text	O
17	License Type	1		Text	M
18	Server Fixation Date	8	0	Number	M
19	Rate Code	1		Text	M
20	Rate In Cents	7	7	Number	O
21	Artist Name (For Pre-Recorded Ringtone)	60		Text	C*
22	Album Title (For Pre-Recorded Ringtone)	200		Text	C*
23	Record Label (For Pre-Recorded Ringtone)	60		Text	C*
24	Total Playing Time - Minutes (For Pre-Recorded Ringtone)	3	0	Number	C*
25	Total Playing Time - Seconds (For Pre-Recorded Ringtone)	2	0	Number	C*
26	ISRC Code (For Pre-Recorded Ringtones)	15		Text	C*
27	User Defined	30		Text	*Input/Output*
28	HFA License Number	10		Number	*Output*
29	HFA License Status Code #1	2		Text	*Input/Output*
30	HFA License Status Code #2	2		Text	*Output*
31	HFA License Status Code #3	2		Number	*Output*
32	HFA Flag for Amended Publisher Data	1		Text	*Output*
33	Publisher Status	1		Text	*Output*

Key:

DECIMAL: Number of characters after decimal (for numeric fields only)

INPUT OPTION:

M = Mandatory

O = Optional

O* = Optional, however, providing this information will expedite the licensing process.

C* = Conditional. If request is for a Pre-Recorded Ringtone, field must be populated.

** All input/output fields should be left blank upon initial license submission, EXCEPT for Field 28 which should be populated with the letter R in the input file IF the request is a amended resubmission.

EXHIBIT B

PHONIC/PRE-RECORDED RINGTONE REPORTING LAYOUT

(FOR ROYALTY STRUCTURES WITH % OF RETAIL SELLING PRICE OR PENNY FLOOR ELEMENTS)

FILE HEADER (Control Portion for File Transfer)

Field Name	Field Length	Decimal Places	Field Format	Input Option	Field Description/Legend	Example
Line Count	15	0	Number	Mandatory	Number of lines of data in file; used as a control.	321456

FILE BODY

	Field Name	Field Length	Decimal Places	Field Format	Input Option	Field Description/Legend	Example
1	Manufacturer Number	8		Text	Mandatory	Account number assigned by HFA to Licensee	M12345
2	Transaction Date	8	0	Number	Mandatory	Date electronic royalty report submitted to HFA Format: YYYYMMDD	20020304
3	Royalty Reporting Period	6		Text	Mandatory	Length of period in number of months (left 2 digits), ending month (middle 2 digits), year (right 2 digits)	30602
4	HFA License Number	12		Text	Mandatory	Number assigned by HFA for each license.	1012345678
5	Configuration Code	2		Text	Mandatory	Code designating configuration being reported: FX - Server Fixation PH - Phonic Ringtone RR - Pre-recorded Ringtone Note: Each config must be reported as a separate line.	RR
6	Song Title	30		Text	Mandatory	Title of work for which a license was granted.	STARRY NIGHT
7	Units (For Period)	9	0	Number	Mandatory	Applicable number for each specific configuration shown in field #5	12345
8	Publisher Name	30		Text	Mandatory*	Name of the publisher owning a share of the work.	Famous
9	Publisher Ownership Share Percentage	7	4	Number	Mandatory*	Percent of song owned by specific publisher, as provided to licensee on license	33.3340
10	Rate Code	1		Text	Mandatory	Special HFA internal code indicating royalty rate structure. For this agreement, use J.	J
11	Retail Selling Price	16	4	Number	Mandatory	Price paid by consumer for the Phonic or Pre-Recorded Ringtone	1.9900
12	Rate Factor	5	4	Number	Mandatory	Note: if floor indication flag is invoked, read rate factor as a penny rate. If floor indication not made, read as a percentage.	0.1000
13	Royalty Rate Equivalent	5	4	Number	Mandatory	The royalty amount applicable in accordance with agreement calculations.	0.1900
14	Net Royalty Amount	11	4	Number	Mandatory	The royalty amount payable to HFA for its represented shares.	0.0900
15	Total Royalty Amount	11	4	Number	Mandatory	The royalty amount payable to HFA for its represented shares X units in Field 7.	223.4000
16	Floor Indication Flag	1		Text	Mandatory	If a royalty calculation floor was invoked, indicate with a Y.	Y
17	Service (ie: Third Party)	30		Text	Mandatory	Third-party through which distribution was made.	Site.com
18	Calculation Method	7	0	Number	Mandatory	Indicate the calculation method used to determine royalty rate equivalent. Codes for this agreement will be advised.	2
19	Agreement Code	3		Text	Mandatory	HFA internal code for this specific deal. Code for this agreement will be advised.	ABC

Note: Any characters or digits exceeding these per field maximums will be truncated.

** A separate publisher share % line with corresponding publisher name must be given for each if the title is not 100% payable through HFA.*

EXHIBIT C

Data Access and Use Agreement

This Data Access and Use Agreement ("Agreement") is entered into as of January 1, 2006 by and between The Harry Fox Agency, Inc., a New York corporation, having its principal place of business at 711 Third Avenue, New York, New York ("HFA") and [REDACTED a Washington corporation with an office at

WHEREAS, Recipient (also referred to at times herein as "Licensee") and HFA have entered, or expect to enter, into that certain Ringtone Service Licensing Agreement, dated as of January 1, 2006 (the "License Agreement"), pursuant to which HFA has granted, or will grant, limited rights to certain copyrighted musical compositions (each, a "Musical Work") in connection with the operation of Licensee's ringtones service; and

WHEREAS, Recipient seeks to access and use certain HFA Confidential Information (defined in Section 1 below) as necessary to obtain and administer the licenses issued under the License Agreement (each, a "License"), and as otherwise may be necessary to comply with Licensee's obligations under the License Agreement (collectively, the "Purpose"), and HFA has agreed to allow Recipient such limited access to and use of the HFA Confidential Information solely as necessary to accomplish the Purpose;

NOW THEREFORE, in consideration of the premises of and the mutual promises, covenants and agreements contained in this Agreement, HFA and Recipient agree as follows:

1. **HFA Confidential Information.**

"HFA Confidential Information" means any and all information and material disclosed by HFA to Recipient or obtained by Recipient from HFA (whether in writing, or in oral, graphic electronic or any other form) that is proprietary and/or is intended by HFA to remain confidential relating to HFA's business and its databases, products, services, business strategies, capabilities or business affairs, including without limitation, all data and information related to the Musical Works and ownership thereof and/or HFA's publisher-principals.

2. **Non-Disclosure and Limited Use.**

Recipient covenants (a) to hold all HFA Confidential Information in strict confidence, (b) that it shall disclose (or permit access to) the HFA Confidential Information solely to (or by) its employees, if any, who need to know or access such HFA Confidential Information to accomplish the Purpose, and who are bound by nondisclosure and use restrictions and obligations comparable to and at least as restrictive to those set forth herein, and (c) that it shall not disclose to any third party, including any agent, contractor, consultant or other party, or permit any such party to access, the HFA Confidential Information, unless and until such party has entered into a written agreement with HFA in form and substance of this Agreement governing the nondisclosure and use of the HFA Confidential Information. Recipient further covenants that it shall (y) use HFA Confidential Information solely as necessary to accomplish the Purpose, and (z) not extract, aggregate, derive or copy any HFA Confidential Information, whether by bulk transfer or through individual data query and response, for use or incorporation in any database, unless the sole purpose of such use or incorporation is to accomplish the Purpose. Recipient agrees to notify HFA immediately upon obtaining any information regarding unauthorized disclosure or access to the HFA Confidential Information.

Notwithstanding the disclosure and use restrictions in this Section 2, Recipient may disclose HFA Confidential Information (i) that is independently derived or acquired from a party not subject to a duty of confidentiality to HFA, or (ii) to the extent required to respond to the request of a court of competent jurisdiction, provided that upon

receiving any such request and to the extent that it may do so without violating any law, Recipient prior to such disclosure advises HFA of such request in order that HFA may take such action as it deems appropriate to protect the HFA Confidential Information. During the Term (defined in Section 5 below) and for a period of three (3) years following the termination or expiration of this Agreement, Recipient agrees to permit HFA to inspect, on a semi-annual basis, during regular business hours and upon reasonable prior notice, the point or points at which the HFA Confidential Information is (or was) used in Recipient's facilities, if any, and to furnish whatever assistance is reasonably necessary to permit HFA to determine whether Recipient, including its employees, agents, subcontractors, independent contractors, consultants or other parties, if any, are in compliance with this Agreement.

3. **Ownership.**

Recipient acknowledges and agrees that all right, title and interest in and to the HFA Confidential Information (including all copies, extracts and portions thereof) is and shall remain the sole property of HFA. Recipient does not acquire (by license or otherwise, whether express or implied) any intellectual property rights or other rights under this Agreement or any disclosure or access hereunder, except the limited right to use such HFA Confidential Information in strict accordance with the express provisions of this Agreement. All rights relating to the HFA Confidential Information that are not expressly granted hereunder to Recipient are reserved and retained by HFA.

4. **No Warranty; Limitation of Liability.**

EXCEPT AS OTHERWISE MAY BE EXPRESSLY SET FORTH IN THE LICENSE AGREEMENT WITH RESPECT TO LICENSEE, HFA MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE HFA CONFIDENTIAL INFORMATION OR ANY USE THEREOF, AND THE HFA CONFIDENTIAL INFORMATION IS PROVIDED ON AN "AS IS" BASIS. EXCEPT AS OTHERWISE MAY BE EXPRESSLY SET FORTH IN THE LICENSE AGREEMENT WITH RESPECT TO LICENSEE, HFA HEREBY EXPRESSLY DISCLAIMS ALL SUCH WARRANTIES, INCLUDING, BUT NOT LIMITED TO, CORRECTNESS, COMPLETENESS, CURRENTNESS, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE HFA CONFIDENTIAL INFORMATION OR OF THE MEDIA ON WHICH THE DATA IS PROVIDED AND SHALL NOT BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR CAUSED, IN WHOLE OR IN PART, BY HFA'S NEGLIGENT ACTS OR OMISSIONS IN PROCURING, COMPILING, COLLECTING, INTERPRETING, REPORTING, COMMUNICATING OR DELIVERING THE HFA CONFIDENTIAL INFORMATION OR IN OTHERWISE PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT, EVEN IF HFA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

5. **Term; Termination.**

This Agreement will continue for the term of the License Agreement (including any agreed extensions thereof) (the "Term"), unless otherwise terminated by HFA in accordance herewith. HFA may terminate this Agreement at any time upon written notice, and shall have no further obligations to disclose to or permit access by Recipient to any HFA Confidential Information; and provided, however, that each party's rights and obligations shall otherwise survive the termination or expiration of this Agreement.

6. **Purging of HFA Confidential Information.**

Promptly following any expiration or termination of this Agreement, Recipient shall purge and destroy any and all records and copies of HFA Confidential Information from any Recipient databases and other systems under Recipient's direct or indirect control, and any other media on which any HFA Confidential Information may have been provided, together with all copies thereof, whether in printed or machine readable form; provided, however,

that Recipient may retain any records and copies of HFA Confidential Information solely to the extent and for the period necessary to permit Licensee to fulfill any further obligations under the License Agreement, including without limitation, Licensee's accounting and royalty and security compliance obligations under Sections 2 and 6 of the License Agreement, after which period such records and copies shall be purged and destroyed as described in this Section 6. Notwithstanding the foregoing, Recipient is not required to purge and destroy any HFA Confidential Information to the extent such HFA Confidential Information was independently derived or acquired from a party not subject to a duty of confidentiality to HFA.

7. **Assistance of Counsel.**

Each party hereto acknowledges that it has been afforded the opportunity to be represented by its own independent counsel for purposes of reviewing this Agreement and discussing its terms prior to execution.

8. **Specific Performance.**

Recipient acknowledges that a breach of Recipient's obligations in Sections 2 and/or 6 of this Agreement may result in irreparable harm, the extent of which it would be difficult to ascertain, and therefore agrees that HFA shall be entitled to seek immediate injunctive relief to enforce any such obligation in addition to any other legal remedy to which HFA might be entitled.

9. **Miscellaneous.**

This Agreement (combined with the License Agreement, if the Recipient is the Licensee) constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior or contemporaneous representations, discussions, proposals, negotiations, conditions, communications and agreements, whether oral or written, between the parties relating to the subject matter hereof. No amendment, modification or waiver of any provision of this Agreement shall be effective unless in writing and signed by duly authorized signatories of both parties. The waiver by either party of a breach of or a default under any provision of this Agreement shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without reference to its conflicts of laws provisions. This Agreement and the rights and obligations hereunder may not be assigned or delegated by Recipient, in whole or part, whether voluntarily, by operation of law, change of control or otherwise, without the prior written consent of HFA. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be invalid or unenforceable, the remaining portions hereof shall remain in full force and effect and such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed to the extent necessary to make such provision valid and enforceable. The parties are independent contractors, and neither party shall have any authority of any kind to bind the other party in any respect whatsoever.

The parties have executed this Data Access and Use Agreement as of the date first above written:

THE HARRY FOX AGENCY, INC.

By: _____

Name: Michael Simon

Title: SVP, Business Affairs
GC & CSO

REDACTED

EXHIBIT CO 0022

COPY

RINGTONE SERVICE
LICENSING RENEWAL AGREEMENT

This agreement ("**Agreement**") is entered into as of January 1, 2006 ("**Effective Date**") by and between ("**Licensee**"), REDACTED REDACTED, and The Harry Fox Agency, Inc. ("**HFA**"), a New York corporation with an office at 711 Third Avenue, New York, NY 10017.

WHEREAS, the parties entered into a certain ringtone service licensing agreement dated as of July 22, 2003, which agreement terminated December 31, 2005 ("**Prior Agreement**"), and which relationship the parties desire hereby to extend and renew by the terms hereof; and

WHEREAS, Licensee owns and operates a service pursuant to which excerpts of copyrighted musical compositions ("**Musical Works**") in the form of Ringtones (as below defined) are digitally reproduced on a central computer server or servers, which Ringtones are subsequently transmitted from such servers and downloaded to Covered Devices (as below defined) ("**Service**"); and

WHEREAS, in order to operate the Service, Licensee seeks (i) the reissuance, under the terms of this Agreement, of those certain licenses granted by HFA on behalf of applicable Publisher-Principals (as below defined) that participated in the Prior Agreement, and (ii) additional licenses that may now be available to maintain and/or make Server Fixations (as below defined) and reproduce and distribute Ringtones of Musical Works that are owned and/or controlled by publisher-principals affiliated with HFA ("**Publisher-Principals**"); and

WHEREAS, HFA is prepared to reissue and/or issue such licenses to the extent it is authorized to do so by such Publisher-Principals;

NOW, THEREFORE, in consideration of the promises contained in this Agreement and for other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Licensing

1.1 Pursuant to the terms of this Agreement, and as more particularly described herein, upon receipt of appropriate license requests ("**License Requests**") from Licensee, HFA shall, to the extent authorized by particular Publisher-Principals, issue on behalf of such Publisher-Principals nonexclusive licenses ("**Licenses**") to reproduce and distribute Ringtones of Musical Works owned and/or controlled by such Publisher-Principals ("**Licensed Works**") for use on Licensee's Service in accordance with the terms of this Agreement. Subject to HFA's authority to issue licenses under the terms of this Agreement on behalf of Participating Publisher-Principals (as such term is defined in Sub-

Paragraph 1.2 below), Licenses issued by HFA pursuant to the Prior Agreement shall be reissued by HFA following HFA's receipt from Licensee of new and unused Licensee-generated license request identification numbers (i.e., license request numbers used by Licensee under the Prior Agreement are no longer valid and HFA requires new license request identification numbers in order to reissue licenses as contemplated by this Agreement). For the avoidance of doubt, Licensee understands and agrees that to the extent HFA has issued any licenses on behalf of a Publisher-Principal that participated in the Prior Agreement, but is not a Participating Publisher-Principal under the terms of this Agreement, such licenses, as of the expiration of the Prior Agreement, shall be deemed terminated, void, of no further force or effect and are fully subject to the Termination/Default provisions set forth in Paragraph 7 of the Prior Agreement. The license authority contemplated hereunder and granted pursuant to any License issued hereunder shall include and is limited to: (a) the digital reproduction of Ringtones of Licensed Works on a central computer server or servers owned and/or controlled by Licensee and located in the United States (including its territories and possessions and the Commonwealth of Puerto Rico (collectively, the "**United States**")) ("**Servers**"), solely for use in connection with the Service ("**Server Fixations**"); (b) the digital transmission of Ringtones of Licensed Works from such Servers for storage on Covered Devices, solely for use in connection with the Service; (c) the reproduction of Ringtones of Licensed Works on Covered Devices, solely for use in connection with the Service ("**Ringtone Deliveries**"); and (d) the offering of Promotional Ringtones (as below defined) of Licensed Works, solely for use in connection with the Service. The license authority under any License issued hereunder is limited to and granted solely with respect to (x) the copyright interests of the individual Participating Publisher-Principal(s) on whose behalf the License is issued by HFA; and (y) if the Ringtone is a Pre-Recorded Ringtone (as below defined), the particular individual sound recording of the individual Licensed Work from which the excerpt embodied in the Ringtone was derived.

For purposes of this Agreement:

A "**Ringtone**" is an excerpt, not to exceed forty-five (45) seconds, of a musical composition that is embodied in either (i) a digital file containing codes representing and capable of being rendered into audio and played back as musical notes constituting the work's melody in either monophonic or polyphonic form ("**Phonic Ringtone**"), or (ii) a digital file representing an excerpt of no more than forty-five (45) seconds of a sound recording of the composition ("**Pre-Recorded Ringtone**"); in both cases, that is intended to be digitally transmitted to and stored in an end user's Covered Device and played by such intended destination Covered Device whenever the Covered Device activates its ringing or alert function indicating the arrival of a call, message or other notification received by the Covered Device, and is designed to be played by such Covered Device without any other distribution or transmission.

A "**Covered Device**" shall mean a mobile telephone, pager or other portable communications device with a telephonic or messaging function that operates on a wireless communications network regulated by the U.S. Federal Communications Commission pursuant to its rules governing commercial mobile radio services.

A "**Promotional Ringtone**" shall mean a digital transmission of a Ringtone in streamed form made available to a prospective purchaser free of charge and solely for the purpose of promoting the sale of the Ringtone, and that does not result in a reproduction of any part or all of the Ringtone that is accessible except by such prospective purchaser for an intended one-time promotional playback through the operation of a Covered Device or other device.

1.2 The authority of HFA to issue/reissue Licenses for any individual Musical Work on behalf of any one or more Publisher-Principals is subject to the approval of the relevant Publisher-Principal(s). Before commencing to issue licenses hereunder HFA shall for a period of time (the "**Option Period**") offer to its Publisher-Principals the opportunity, in the case of Publisher-Principals participating in the Prior Agreement, to request to make their Musical Works unavailable for licensing under this Agreement by notifying HFA of their desire to opt out of the Agreement, and in the case of Publisher-Principals not participating in the Prior Agreement, the opportunity to make their Musical Works available for licensing under this Agreement by notifying HFA of their desire to opt in to the Agreement. Individual Publisher-Principals that make their Musical Works available for licensing under this Agreement are hereinafter each referred to as a "**Participating Publisher-Principal.**" If such Participating Publisher-Principal at any time requests that HFA not issue Licenses on its behalf (either with respect to a particular Musical Work or in general), HFA will honor that request; provided, however, that any Licenses validly issued by HFA prior to the receipt of such a request shall remain in effect until the Term (as below defined) of this Agreement expires.

1.3 Following execution of this Agreement and conclusion of the applicable Option Period, Licensee may to the extent necessary begin submitting License Requests in electronic form in accordance with the format specified in Exhibit A (as such format may be modified from time to time by HFA upon reasonable notice to Licensee) ("**Request Format**"), which License Requests shall be duly processed by HFA. (If a License has already been issued by HFA under the Prior Agreement, HFA shall reissue such License subject to the option provisions described in Section 1.2 above.) Without limitation, Licensee shall include in each License Request to the extent required by the Request Format (a) the title of the Musical Work for which a License is being requested; (b) the writer(s) of the Musical Work; (c) the publisher(s) of the Musical Work; and (d) whether the Ringtone is to be licensed in the form of a Phonic Ringtone and/or a Pre-Recorded Ringtone; and, if the Ringtone is a Pre-Recorded Ringtone, (e) the name of the record company that produced the sound recording embodied in the Ringtone; (f) the name of the artist

performing such sound recording; (g) the ISRC number for such sound recording; (h) the total playing time of such sound recording in its complete form, expressed in minutes and seconds; (i) the title of an album for which such sound recording has been previously licensed; and (j) such other information as may be required by HFA's Request Format.

1.4 HFA shall from time to time provide to Licensee an electronic file specifying the Licenses issued under this Agreement (each such report a "**Confirmation Report**"). To aid Licensee in the calculation of royalties, with respect to each License, such Confirmation Report shall include, *inter alia*, the total percentage ownership share of the Participating Publisher-Principal(s) on whose behalf the License has been issued.

1.5 For the avoidance of doubt, and without limitation, the Licenses granted hereunder do not extend to or cover: (a) any right of public performance; (b) any copyrights or other rights in sound recordings; (c) any rights to synchronize musical works with visual images resulting in audiovisual works; (d) any print, display or karaoke rights; (e) any adaptation (derivative work) rights or right to alter the fundamental character of a Musical Work (except to reproduce and distribute Ringtones, in strict accordance with the terms and conditions of this Agreement); (f) any merchandising rights; (g) any use of a musical work (whether or not embodied in a sound recording) for a marketing campaign, product tie-in, game or contest or otherwise to advertise, promote or cross-promote any product or service; or (h) any use of the title of a musical work, or the name or likeness of any writer, publisher or artist associated with a musical work, except for identification purposes as described in Section 4.

1.6 The license authority contemplated by this Agreement and granted pursuant to any License issued hereunder is limited to Licensee and may not be sublicensed, assigned or otherwise transferred by Licensee except to the extent expressly permitted hereunder.

2. Reporting and Payment of Royalties

2.1 Licensee shall account and pay royalties to HFA quarterly, within forty-five (45) days after the end of each calendar quarter, on the basis of each Ringtone Delivery. Licensee shall provide its quarterly statements ("**Statements**") in electronic form in accordance with the format specified in Exhibit B (as such format may be modified from time to time by HFA upon reasonable notice to Licensee) ("**Reporting Format**"). With respect to each quarterly reporting period, for each License, Licensee shall include in its Statement (a) the HFA License Number (as supplied by HFA); (b) the HFA Agreement code (as supplied by HFA; (c) the HFA rate code applicable to the Agreement (as supplied by HFA); (d) a breakdown of the particular retail outlets through which the Ringtone Deliveries were made; (e) for each retail outlet, a further

breakdown of the retail selling price(s) paid by end user (consumers) for Ringtone Deliveries made through that outlet; (f) for each such retail selling price, the number of units being reported at that price; (g) for each such retail selling price, the applicable royalty rate per unit (i.e., percentage rate or penny-rate "floor"); (h) for each such retail selling price, whether the penny-rate "floor" is being invoked or whether the Ringtone Delivery was made through a subscription plan (floor indication flag); (i) for each such retail selling price, the gross royalties (before proration to reflect the HFA-represented share of the Licensed Work payable for the Units being reported at that price; (j) for each such retail selling price, the net royalties (after proration for the HFA-represented share) payable for the units being reported at that price; and (k) such other information as may be required by HFA's Reporting Format. Interest on late payments shall be payable to HFA at the rate of prime plus two percent (2%) calculated from the date the royalties were due to be paid under the applicable reporting period to the date of ultimate payment to HFA.

2.2 For each "ala carte" Ringtone Delivery, the royalty shall be equal to the greater of the following amounts:

(a) REDACTED of the retail selling price paid by the end user (consumer); and

(b) a "floor" of REDACTED

For each Ringtone Delivery made through Licensee's subscription plan, the royalty shall be equal to REDACTED

For each initial Server Fixation, the royalty shall be REDACTED

In each case above, the royalty amount payable shall be proportionately reduced to the extent that the Participating Publisher-Principal(s) on whose behalf the License is granted own(s) or control(s) less than 100% of the Work.

3. Term

The term of this Agreement shall commence as of the Effective Date and terminate on December 31, 2008 (the "Term"). If Licensee wishes to renew this Agreement for an additional two (2) year term, it shall notify HFA of such desire not later than a date six (6) months prior to the end of the Term. Such notification shall include proposed terms for any such renewal. Any renewal shall be subject to the approval of individual Publisher-Principals as described in Subsection 1.2, and HFA reserves the right to propose changes to administrative and other aspects of the Agreement as it deems appropriate.

4. **Writer/Publisher Credit**

Licensee shall, to the extent commercially reasonable, include in any graphics and/or imagery displayed in connection with the play of any Ringtone of a Licensed Work written credit in legible form setting forth the names of the writer(s) and publisher(s) of such Licensed Work.

5. **Security**

5.1 In connection with the use of any Licensed Work, Licensee shall implement and maintain copy protection and digital rights management technology and systems, including software and/or hardware functional limitations (collectively, "**Security Systems**") with respect to all aspects of the Service, including without limitation its Servers and operating systems, that (a) are designed to prevent unauthorized reproduction and distribution of the Licensed Work, in the form of Ringtones or otherwise; (b) are sufficient to track and enforce the use limitations contemplated by this Agreement; and (c) meet or exceed current industry standards as they exist from time to time for the licensed delivery of music via digital transmission and its reproduction on devices including, without limitation, Covered Devices.

5.2 In the event it becomes aware of a breach of Licensee's Security Systems ("**Security Breach**"), whether through its own monitoring efforts, upon being advised by another party (including HFA) or otherwise, Licensee shall use its best efforts to resolve the Security Breach and restore the full integrity of its Security Systems as quickly as possible. If a solution to the Security Breach is not immediately available (i.e., cannot be implemented within twenty-four (24) hours from the time Licensee becomes aware of the Security Breach), Licensee shall (a) promptly notify HFA of the Security Breach in writing (unless Licensee learned of the breach from HFA); and (b) cease all further digital transmission and/or reproduction of Licensed Works to the extent such activities are or could possibly be affected by the Security Breach, pending full resolution of the Security Breach. In such a case, Licensee (x) shall keep HFA reasonably apprised of the status of its efforts to resolve the Security Breach; and (y) shall not resume the activities that were suspended pursuant to this Subsection 5.2 until the full integrity of its Security Systems has been restored.

5.3 To the extent Licensee employs third-party technology in order to operate, Licensee shall use its best efforts to maintain and upgrade such technology by (a) diligently monitoring any third-party notifications of bug-fixes, security holes and functionality improvements; and (b) obtaining any available upgrades and bug-fixes, and installing, testing and distributing such upgrades and bug-fixes as necessary so as to maintain the integrity of its Security Systems.

5.4 Licensee shall use its best efforts to prevent any unauthorized digital transmissions and reproductions of Musical Works by operators and users of the Service and/or in any facility, on any device (including Covered Devices), or by any person under the supervision and/or control of Licensee.

6. Royalty and Security Compliance

6.1 Notwithstanding, without limiting and in addition to the general right of HFA and/or any Participating Publisher-Principal pursuant to industry custom and practice to examine the books and records of Licensee in connection with Licensee's use of Musical Works, HFA shall be entitled, upon thirty (30) days' notice to Licensee, to conduct an examination of the books, records, operations and Security Systems of Licensee ("**Royalty and Security Examination**") to determine whether Licensee is in compliance with its reporting, royalty and security obligations under this Agreement. Absent a good-faith basis to believe that Licensee is not in compliance with such obligations, HFA shall not seek to initiate a Royalty and Security Examination more than once every twelve (12) months or more than six (6) years following the termination of this Agreement.

6.2 During the course of a Royalty and Security Examination, upon request by HFA or an examiner acting on its behalf, Licensee shall, within three (3) business days (a) provide access to any information that may be called for by such request, including without limitation any (i) books, records, files, logs, reports, compilations, usage data and other documentation, whether in paper or electronic form, that were or could be used or required to generate or verify Licensee's Statements and/or that reflect or summarize Licensees' Statements; (ii) financial information, including books, records, ledgers, reports, and other documentation, reflecting cash receipts and general revenue accounts to the extent such information relates directly or indirectly to the activities licensed under this Agreement; and (iii) files, logs, reports, compilations, testing and monitoring data and other documentation related to and/or reflecting the operation and integrity of Licensee's Security Systems (such information, along with the information described in the items (a)(i) and (a)(ii) of this Subsection 6.2, collectively referred to as "**Documentation**"); and (b) through the assistance of personnel who are familiar with the technical and operational aspects of Licensee's computer, hardware, software, Security Systems (collectively, "**Operational Systems**") who are to be made available by Licensee, provide real-time and/or historical access to such Operational Systems, as requested, sufficient to permit HFA or its examiner(s) to conduct meaningful tests and analysis to verify that (i) the Operational Systems are properly and accurately tracking and reporting the use of the Licensed Works, and royalties payable therefor, as contemplated by the terms of this Agreement; and (ii) the Operational Systems are in compliance with the security requirements set forth in Section 5 of this Agreement. Licensee shall provide the information, systems access and personnel required by this

Subsection 6.2 free of charge and, unless otherwise agreed by HFA or its examiner(s), at Licensee's place of business.

6.3 During the course of and/or following completion of the Royalty and Security Examination, upon request by HFA or an examiner acting on its behalf, Licensee shall make available company personnel at an appropriate level of seniority and/or technical ability to discuss and/or resolve particular issues and findings arising out of such examination.

6.4 Licensee shall maintain any and all Documentation that reasonably might be expected to be relevant to HFA's conduct of a Royalty and Security Examination for a period of at least six (6) years following the expiration or termination of this Agreement, unless there is a Royalty and Security Examination in progress or not fully resolved as of the expiration of such period, in which case the Documentation shall be maintained until the Royalty and Security Examination is fully resolved to the satisfaction of HFA.

6.5 If a royalty examination reveals a nonpayment or underpayment of royalties due to HFA, the amounts determined to be owing shall be subject to interest payable at the rate of prime plus two percent (2%) calculated from the date the royalties were due to be paid under the applicable reporting period to the date of ultimate payment to HFA.

7. Representations and Warranties; Disclaimer; Indemnity

7.1 Licensee represents and warrants that: (a) it has the full right, power and authority to enter into and perform this Agreement in accordance with its terms and conditions; (b) it shall take all steps necessary to implement and shall comply with (i) its security obligations set forth in Section 5, and (ii) the requirements set forth in Section 9; and (c) the Service shall (i) neither infringe upon nor violate the intellectual property rights or other rights of any third party, and (ii) comply with all applicable laws, rules and regulations.

7.2 HFA represents and warrants that it has the full right, power and authority to enter into this Agreement and perform its obligations hereunder.

7.3 Licensee agrees to indemnify, defend and hold harmless HFA from and against any losses, injuries, damages, claims, expenses and costs (including without limitation reasonable attorneys' fees) incurred or suffered by HFA, arising from any third-party actions, claims, suits or legal proceedings of any kind, caused by, incident to or arising out of Licensee's failure to perform any of its obligations under this Agreement and/or breach of any of Licensee's representations, warranties or covenants hereunder.

8. Termination/Default

8.1 All license authority pursuant to Licenses issued hereunder shall terminate upon the expiration or termination of this Agreement (unless such Licenses are renewed pursuant to a renewal of this Agreement as contemplated under Section 3, in which case the terms of renewal shall apply as appropriate), and any further transmission and/or reproduction of any Licensed Work after the expiration of this Agreement shall be prohibited and actionable as an act of infringement under, and fully subject to the remedies provided by, the Copyright Act. Notwithstanding the foregoing, provided that the Agreement has not been terminated due to Licensee's breach or default, any Server Fixations existing on Servers and/or Ringtone Deliveries existing on Covered Devices as of the expiration of the Agreement may remain on such Servers and Covered Devices; provided, however, that such existing Server Fixations (in addition to the Ringtone Deliveries) may not be further reproduced or distributed after the expiration of the Agreement.

8.2 Notwithstanding, without limiting and in addition to any other remedy that may be available at law or in equity and/or under this Agreement, Licensee understands and agrees that in the event that (a) Licensee fails to account to HFA and pay royalties provided for in Section 2, HFA may provide written notice to Licensee that, unless the default is fully remedied within thirty (30) days from the date of the notice, this Agreement and any Licenses issued hereunder will be automatically terminated, and that such termination will render the further transmission and/or reproduction of any Licensed Work for which royalties have not been fully paid actionable as an act of infringement under Section 501 of the Copyright Act, and fully subject to the remedies provided by Sections 502 through 506 and 509 of the Copyright Act; (b) Licensee is in material breach or default of any of its obligations under this Agreement, HFA may provide written notice to Licensee that, unless the default is fully remedied within thirty (30) days from the date of the notice, this Agreement and any Licenses issued hereunder will be automatically terminated, and that such termination will render the further transmission and/or reproduction of any Licensed Work actionable as an act of infringement under Section 501 of the Copyright Act, and fully subject to the remedies provided by Sections 502 through 506 and 509 the Copyright Act. Licensee further understands and agrees that in the case of infringement, irreparable harm may be presumed, and HFA and/or any affected Publisher-Principal(s) shall be entitled as appropriate to injunctive relief, in addition to any other remedy that may be available at law or in equity and/or under this Agreement. For the avoidance of doubt, and without limitation, Licensee's breach of any of the obligations or restrictions imposed by Subsections 1.1, 1.5, 1.6 and 10.4 and Sections 2, 5, 6, 7, 9 of this Agreement shall be considered a material breach of, and default under, this Agreement.

8.3 To the extent permitted by applicable law, and without limitation, the occurrence of any of the following events shall also be considered a material breach of and default under this Agreement: (a) Licensee's dissolution and/or

the liquidation of all of Licensee's assets; (b) the filing of a petition in bankruptcy or insolvency or for an arrangement or reorganization by, for or against Licensee; (c) the appointment of a receiver or trustee for all or a portion of Licensee's assets; (d) Licensee's assignment of assets for the benefit of creditors; (e) Licensee's insolvency; or (f) Licensee's inability to pay its debts as they become due. Upon the occurrence of any of the events described in items (a) through (f) of this Subsection 8.3, notwithstanding, without limiting and in addition to any other remedy that may be available at law or in equity and/or under this Agreement, this Agreement and all license authority pursuant to any Licenses granted hereunder shall terminate automatically without the requirement of any further action on the part of HFA or the Participating Publisher-Principals.

8.4 Notwithstanding, without limiting and in addition to any other remedy that may be available at law or in equity and/or under this Agreement, including without limitation the remedies set forth in Subsection 8.2, the breach of any of the provisions set forth in Section 5 shall entitle HFA and/or any relevant Publisher-Principal to specific performance of such provision and/or to terminate, effective immediately upon the giving of notice, the license authority pursuant to any License granted hereunder.

8.5 Notwithstanding the expiration or termination of this Agreement, Sections 2, 4, 5, 6, 7, 8, 9 and10 shall to the extent applicable survive and continue to bind the parties and their legal representatives and successors.

9. Proprietary and Confidential Information

9.1 HFA shall have no obligation to perform its obligations hereunder unless and until Licensee enters into the Data Access and Use Agreement, attached hereto and incorporated herein as Exhibit C (the "**Data Access and Use Agreement**"), governing the nondisclosure and use of HFA Confidential Information (as defined in the Data Access and Use Agreement) by Licensee.

9.2 To the extent Licensee seeks to have a third-party individual or entity obtain access to HFA Confidential Information for purposes of obtaining and administering Licenses and otherwise fulfilling its obligations under this Agreement (each, a "**Third-Party Administrator**"), Licensee must obtain HFA's prior consent of each such Third-Party Administrator (such consent not to be unreasonably withheld). Upon HFA's consent to Licensee's use of such Third-Party Administrator, HFA will require that such Third-Party Administrator enter into a data access and use agreement with HFA substantially in the form of the Data Access and Use Agreement, prior to allowing such Third-Party Administrator access to any HFA Confidential Information.

10. Miscellaneous

10.1. Administrative Fee. In addition to the royalties payable hereunder, within five (5) business days following execution of this Agreement, Licensee shall pay to HFA an administrative fee of REDACTED in consideration of HFA's administrative expenses in connection with the publisher opt-in, opt-out, and licensing processes contemplated hereunder.

10.2 Notices. All notices hereunder shall be in writing and shall be deemed effective (a) if provided by hand delivery, upon delivery; (b) if provided by overnight courier, one (1) business day following the date sent; and (c) if provided by registered or certified mail, return receipt requested, five (5) business days following the date mailed (a "Notice"). Notices shall be sent to the following addresses:

If to HFA:

To the address set forth above. Attn: General Counsel. Fax: 646-487-6789.

If to Licensee:

To the address set forth above. REDACTED

10.3 Publicity. Neither party shall issue any press release or other publicity document concerning this Agreement without the prior written consent of the other party.

10.4 Assignment. This Agreement may not be assigned.

10.5 Entire Agreement; Amendment. This Agreement represents the entire understanding of the parties with respect to the subject matter hereof, supersedes all prior and contemporaneous agreements and understandings of the parties with respect to the subject matter hereof, and may not be altered or amended except in a written instrument executed by both parties. Notwithstanding the above, Sections 2, 4, 5, 6 and Subsections 7.1, 7.4, 8.2, 8.3, 8.4, 8.5, 8.6, and 8.8 of the Prior Agreement shall to the extent applicable survive and continue to bind the parties and their legal representatives and successors as to the Prior Agreement and the Licenses issued thereunder.

10.6 Governing Law; Jurisdiction. This Agreement shall be governed by, and construed in accordance with, federal law and/or the laws of the State of New York (as permitted by Section 5-1401 of the New York General Obligations Law or any similar successor provision) without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of New York to the rights and duties of the

parties. With respect to any action or proceeding arising out of this Agreement, the parties (a) agree that the sole and exclusive venue for such action or proceeding shall be in a court of appropriate jurisdiction located in New York County, New York; (b) agree to the appropriateness of, and waive any objection concerning, the propriety and/or convenience of, proceeding in such venue; and (c) consent to the personal jurisdiction of such court

10.7 Severability; Waiver. If a court should determine that any part of this Agreement is invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect. Performance of any obligation required of a party hereunder may be waived only by a written waiver signed by a duly authorized officer of the other party, which waiver shall be effective only with respect to the specific obligation described therein.

10.8 Headings. The titles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

10.9 Assistance of Counsel. Each party hereto acknowledges that it has been represented by its own independent counsel, who has reviewed this Agreement and discussed the terms herein with his or her respective client prior to execution.

10.10 Counterparts. This Agreement may be executed in multiple counterparts and delivery of an executed counterpart may be made by facsimile, each such counterpart to be considered and accepted as an original, and all such counterparts together to constitute a single Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date:

REDACTED

THE HARRY FOX AGENCY, INC.

By:
Print name: Michael Simon
Title: SVP, Business Affairs, General Counsel & CSO

EXHIBIT A

hfa

PHONIC/PRE-RECORDED RINGTONE LICENSING LAYOUT

(FOR ROYALTY STRUCTURES WITH % OF RETAIL SELLING PRICE OR PENNY FLOOR ELEMENTS)

	Field Name	Field Length	Decimal Places	Field Format	Input Option
1	HFA Agreement Code	3		Text	*Input/Output*
2	Manufacturer Number	6		Text	M
3	Transaction Date	8	0	Number	M
4	Manufacturer Request Number	8	0	Number	M
5	Ringtone Playing Time - Seconds	2	0	Number	M
6	Song Title	200		Text	M
7	A/K/A Song Title	200		Text	O
8	ISWC Code	11		Text	O
9	HFA Song Code	6		Text	O
10	Song Writer(s)	200		Text	M
11	Publisher Name	60		Text	O*
12	HFA Publisher Number	6		Text	*Input/Output*
13	Publisher Share	7	4	Number	*Input/Output*
14	Catalog Number *(for matching purposes only)*	15		Text	O
15	Configuration Code	12		Text	M
16	UPC Code *(for matching purposes only)*	16		Text	O
17	License Type	1		Text	M
18	Server Fixation Date	8	0	Number	M
19	Rate Code	1		Text	M
20	Rate In Cents	7	7	Number	O
21	Artist Name (For Pre-Recorded Ringtone)	60		Text	C*
22	Album Title (For Pre-Recorded Ringtone)	200		Text	C*
23	Record Label (For Pre-Recorded Ringtone)	60		Text	C*
24	Total Playing Time - Minutes (For Pre-Recorded Ringtone)	3	0	Number	C*
25	Total Playing Time - Seconds (For Pre-Recorded Ringtone)	2	0	Number	C*
26	ISRC Code (For Pre-Recorded Ringtones)	15		Text	C*
27	User Defined	30		Text	*Input/Output*
28	HFA License Number	10		Number	*Output*
29	HFA License Status Code #1	2		Text	*Input/Output*
30	HFA License Status Code #2	2		Text	*Output*
31	HFA License Status Code #3	2		Number	*Output*
32	HFA Flag for Amended Publisher Data	1		Text	*Output*
33	Publisher Status	1		Text	*Output*

Key:

DECIMAL: Number of characters after decimal (for numeric fields only)

INPUT OPTION:

M = Mandatory

O = Optional

O* = Optional, however, providing this information will expedite the licensing process.

C* = Conditional. If request is for a Pre-Recorded Ringtone, field must be populated.

*** All input/output fields should be left blank upon initial license submission, EXCEPT for Field 28 which should be populated with the letter R in the input file IF the request is a amended resubmission.

EXHIBIT B

PHONIC/PRE-RECORDED RINGTONE REPORTING LAYOUT

(FOR ROYALTY STRUCTURES WITH % OF RETAIL SELLING PRICE OR PENNY FLOOR ELEMENTS)

FILE HEADER (Control Portion for File Transfer)

Field Name	Field Length	Decimal Places	Field Format	Input Option	Field Description/Legend	Example
Line Count	15	0	Number	Mandatory	Number of lines of data in file: used as a control.	321456

FILE BODY

	Field Name	Field Length	Decimal Places	Field Format	Input Option	Field Description/Legend	Example
1	Manufacturer Number	8		Text	Mandatory	Account number assigned by HFA to Licensee	M12345
2	Transaction Date	8	0	Number	Mandatory	Date electronic royalty report submitted to HFA Format: YYYYMMDD	20020304
3	Royalty Reporting Period	6		Text	Mandatory	Length of period in number of months (left 2 digits), ending month (middle 2 digits), year (right 2 digits)	30602
4	HFA License Number	12		Text	Mandatory	Number assigned by HFA for each license.	1012345678
5	Configuration Code	2		Text	Mandatory	Code designating configuration being reported: FX - Server Fixation PH - Phonic Ringtone RR - Pre-recorded Ringtone Note: Each config must be reported as a separate line.	RR
6	Song Title	30		Text	Mandatory	Title of work for which a license was granted.	STARRY NIGHT
7	Units (For Period)	9	0	Number	Mandatory	Applicable number for each specific configuration shown in field #5	12345
8	Publisher Name	30		Text	Mandatory*	Name of the publisher owning a share of the work.	Famous
9	Publisher Ownership Share Percentage	7	4	Number	Mandatory*	Percent of song owned by specific publisher, as provided to licensee on license	33.3340
10	Rate Code	1		Text	Mandatory	Special HFA internal code indicating royalty rate structure. For this agreement, use J.	J
11	Retail Selling Price	16	4	Number	Mandatory	Price paid by consumer for the Phonic or Pre-Recorded Ringtone	1.9900
12	Rate Factor	5	4	Number	Mandatory	Note: if floor indication flag is invoked, read rate factor as a penny rate. If floor indication not made, read as a percentage.	0.1000
13	Royalty Rate Equivalent	5	4	Number	Mandatory	The royalty amount applicable in accordance with agreement calculations.	0.1900
14	Net Royalty Amount	11	4	Number	Mandatory	The royalty amount payable to HFA for its represented shares.	0.0900
15	Total Royalty Amount	11	4	Number	Mandatory	The royalty amount payable to HFA for its represented shares X units in Field 7.	223.4000
16	Floor Indication Flag	1		Text	Mandatory	If a royalty calculation floor was invoked, indicate with a Y.	Y
17	Service (ie: Third Party)	30		Text	Mandatory	Third-party through which distribution was made.	Site.com
18	Calculation Method	7	0	Number	Mandatory	Indicate the calculation method used to determine royalty rate equivalent. Codes for this agreement will be advised.	2
19	Agreement Code	3		Text	Mandatory	HFA internal code for this specific deal. Code for this agreement will be advised.	ABC

Note: Any characters or digits exceeding these per field maximums will be truncated.

** A separate publisher share % line with corresponding publisher name must be given for each if the title is not 100% payable through HFA.*

EXHIBIT C

Data Access and Use Agreement

This Data Access and Use Agreement ("**Agreement**") is entered into as of January 1, 2006 by and between Inc. ("**Recipient**"), a Delaware corporation with an office at REDACTED and The Harry Fox Agency, Inc. ("**HFA**"), a New York corporation with an office at 711 Third Avenue, New York, NY 10017.

WHEREAS, Recipient (also referred to at times herein as "**Licensee**") and HFA have entered, or expect to enter, into that certain Ringtone Service Licensing Agreement, dated as of January 1, 2006 (the "**License Agreement**"), pursuant to which HFA has granted, or will grant, limited rights to certain copyrighted musical compositions (each, a "**Musical Work**") in connection with the operation of Licensee's ringtones service; and

WHEREAS, Recipient seeks to access and use certain HFA Confidential Information (defined in Section 1 below) as necessary to obtain and administer the licenses issued under the License Agreement (each, a "License"), and as otherwise may be necessary to comply with Licensee's obligations under the License Agreement (collectively, the "**Purpose**"), and HFA has agreed to allow Recipient such limited access to and use of the HFA Confidential Information solely as necessary to accomplish the Purpose;

NOW THEREFORE, in consideration of the premises of and the mutual promises, covenants and agreements contained in this Agreement, HFA and Recipient agree as follows:

1. HFA Confidential Information.

"**HFA Confidential Information**" means any and all information and material disclosed by HFA to Recipient or obtained by Recipient from HFA (whether in writing, or in oral, graphic electronic or any other form) that is proprietary and/or is intended by HFA to remain confidential relating to HFA's business and its databases, products, services, business strategies, capabilities or business affairs, including without limitation, all data and information related to the Musical Works and ownership thereof and/or HFA's publisher-principals.

2. Non-Disclosure and Limited Use.

Recipient covenants (a) to hold all HFA Confidential Information in strict confidence, (b) that it shall disclose (or permit access to) the HFA Confidential Information solely to (or by) its employees, if any, who need to know or access such HFA Confidential Information to accomplish the Purpose, and who are bound by nondisclosure and use restrictions and obligations comparable to and at least as restrictive to those set forth herein, and (c) that it shall not disclose to any third party, including any agent, contractor, consultant or other party, or permit any such party to access, the HFA Confidential Information, unless and until such party has entered into a written agreement with HFA in form and substance of this Agreement governing the nondisclosure and use of the HFA Confidential Information. Recipient further covenants that it shall (y) use HFA Confidential Information solely as necessary to accomplish the Purpose, and (z) not extract, aggregate, derive or copy any HFA Confidential Information, whether by bulk transfer or through individual data query and response, for use or incorporation in any database, unless the sole purpose of such use or incorporation is to accomplish the Purpose. Recipient agrees to notify HFA immediately upon obtaining any information regarding unauthorized disclosure or access to the HFA Confidential Information.

Notwithstanding the disclosure and use restrictions in this Section 2, Recipient may disclose HFA Confidential Information (i) that is independently derived or acquired from a party not subject to a duty of confidentiality to HFA, or (ii) to the extent required to respond to the request of a court of competent jurisdiction, provided that upon

receiving any such request and to the extent that it may do so without violating any law, Recipient prior to such disclosure advises HFA of such request in order that HFA may take such action as it deems appropriate to protect the HFA Confidential Information. During the Term (defined in Section 5 below) and for a period of three (3) years following the termination or expiration of this Agreement, Recipient agrees to permit HFA to inspect, on a semi-annual basis, during regular business hours and upon reasonable prior notice, the point or points at which the HFA Confidential Information is (or was) used in Recipient's facilities, if any, and to furnish whatever assistance is reasonably necessary to permit HFA to determine whether Recipient, including its employees, agents, subcontractors, independent contractors, consultants or other parties, if any, are in compliance with this Agreement.

3. Ownership.

Recipient acknowledges and agrees that all right, title and interest in and to the HFA Confidential Information (including all copies, extracts and portions thereof) is and shall remain the sole property of HFA. Recipient does not acquire (by license or otherwise, whether express or implied) any intellectual property rights or other rights under this Agreement or any disclosure or access hereunder, except the limited right to use such HFA Confidential Information in strict accordance with the express provisions of this Agreement. All rights relating to the HFA Confidential Information that are not expressly granted hereunder to Recipient are reserved and retained by HFA.

4. No Warranty; Limitation of Liability.

EXCEPT AS OTHERWISE MAY BE EXPRESSLY SET FORTH IN THE LICENSE AGREEMENT WITH RESPECT TO LICENSEE, HFA MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE HFA CONFIDENTIAL INFORMATION OR ANY USE THEREOF, AND THE HFA CONFIDENTIAL INFORMATION IS PROVIDED ON AN "AS IS" BASIS. EXCEPT AS OTHERWISE MAY BE EXPRESSLY SET FORTH IN THE LICENSE AGREEMENT WITH RESPECT TO LICENSEE, HFA HEREBY EXPRESSLY DISCLAIMS ALL SUCH WARRANTIES, INCLUDING, BUT NOT LIMITED TO, CORRECTNESS, COMPLETENESS, CURRENTNESS, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE HFA CONFIDENTIAL INFORMATION OR OF THE MEDIA ON WHICH THE DATA IS PROVIDED AND SHALL NOT BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR CAUSED, IN WHOLE OR IN PART, BY HFA'S NEGLIGENT ACTS OR OMISSIONS IN PROCURING, COMPILING, COLLECTING, INTERPRETING, REPORTING, COMMUNICATING OR DELIVERING THE HFA CONFIDENTIAL INFORMATION OR IN OTHERWISE PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT, EVEN IF HFA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

5. Term; Termination.

This Agreement will continue for the term of the License Agreement (including any agreed extensions thereof) (the "**Term**"), unless otherwise terminated by HFA in accordance herewith. HFA may terminate this Agreement at any time upon written notice, and shall have no further obligations to disclose to or permit access by Recipient to any HFA Confidential Information; and provided, however, that each party's rights and obligations shall otherwise survive the termination or expiration of this Agreement.

6. Purging of HFA Confidential Information.

Promptly following any expiration or termination of this Agreement, Recipient shall purge and destroy any and all records and copies of HFA Confidential Information from any Recipient databases and other systems under Recipient's direct or indirect control, and any other media on which any HFA Confidential Information may have been provided, together with all copies thereof, whether in printed or machine readable form; provided, however,

that Recipient may retain any records and copies of HFA Confidential Information solely to the extent and for the period necessary to permit Licensee to fulfill any further obligations under the License Agreement, including without limitation, Licensee's accounting and royalty and security compliance obligations under Sections 2 and 6 of the License Agreement, after which period such records and copies shall be purged and destroyed as described in this Section 6. Notwithstanding the foregoing, Recipient is not required to purge and destroy any HFA Confidential Information to the extent such HFA Confidential Information was independently derived or acquired from a party not subject to a duty of confidentiality to HFA.

7. Assistance of Counsel.

Each party hereto acknowledges that it has been afforded the opportunity to be represented by its own independent counsel for purposes of reviewing this Agreement and discussing its terms prior to execution.

8. Specific Performance.

Recipient acknowledges that a breach of Recipient's obligations in Sections 2 and/or 6 of this Agreement may result in irreparable harm, the extent of which it would be difficult to ascertain, and therefore agrees that HFA shall be entitled to seek immediate injunctive relief to enforce any such obligation in addition to any other legal remedy to which HFA might be entitled.

9. Miscellaneous.

This Agreement (combined with the License Agreement, if the Recipient is the Licensee) constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior or contemporaneous representations, discussions, proposals, negotiations, conditions, communications and agreements, whether oral or written, between the parties relating to the subject matter hereof. No amendment, modification or waiver of any provision of this Agreement shall be effective unless in writing and signed by duly authorized signatories of both parties. The waiver by either party of a breach of or a default under any provision of this Agreement shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy. This Agreement shall be governed by, and construed in accordance with, federal law and/or the laws of the State of New York (as permitted by Section 5-1401 of the New York General Obligations Law or any similar successor provision) without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of New York to the rights and duties of the parties. With respect to any action or proceeding arising out of this Agreement, the parties (a) agree that the sole and exclusive venue for such action or proceeding shall be in a court of appropriate jurisdiction located in New York County, New York; (b) agree to the appropriateness of, and waive any objection concerning, the propriety and/or convenience of, proceeding in such venue; and (c) consent to the personal jurisdiction of such court. This Agreement and the rights and obligations hereunder may not be assigned or delegated by Recipient, in whole or part, whether voluntarily, by operation of law, change of control or otherwise, without the prior written consent of HFA. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be invalid or unenforceable, the remaining portions hereof shall remain in full force and effect and such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed to the extent necessary to make such provision valid and enforceable. The parties are independent contractors, and neither party shall have any authority of any kind to bind the other party in any respect whatsoever.

The parties have executed this Data Access and Use Agreement as of the date first above written:

THE HARRY FOX AGENCY, INC.

By: _____ REDACTED

Name: Scott DeBoer

Title: VP Licensing

The Harry Fox Agency, Inc.
711 Third Avenue
New York, NY 10017
212-370-5330
212-953-2384 FAX
www.harryfox.com

INVOICE

March 23, 2006

To:

REDACTED

HFA administrative expenses associated with the publisher opt-in and licensing processes, re: licensing agreement dated 1/1/06 (Sec. 10.1)

Total Due: ..... REDACTED

Please make check payable to the Harry Fox Agency, Inc. (send attention: Collections Department). Include copy of invoice with payment.

Thank you.

Data Access and Use Agreement

This Data Access and Use Agreement ("**Agreement**") is entered into as of January 1, 2006 by and between ("**Recipient**"), a Delaware corporation with an office at REDACTED and The Harry Fox Agency, Inc. ("**HFA**"), a New York corporation with an office at 711 Third Avenue, New York, NY 10017.

WHEREAS, Recipient (also referred to at times herein as "**Licensee**") and HFA have entered, or expect to enter, into that certain Ringtone Service Licensing Agreement, dated as of January 1, 2006 (the "**License Agreement**"), pursuant to which HFA has granted, or will grant, limited rights to certain copyrighted musical compositions (each, a "**Musical Work**") in connection with the operation of Licensee's ringtones service; and

WHEREAS, Recipient seeks to access and use certain HFA Confidential Information (defined in Section 1 below) as necessary to obtain and administer the licenses issued under the License Agreement (each, a "License"), and as otherwise may be necessary to comply with Licensee's obligations under the License Agreement (collectively, the "**Purpose**"), and HFA has agreed to allow Recipient such limited access to and use of the HFA Confidential Information solely as necessary to accomplish the Purpose;

NOW THEREFORE, in consideration of the premises of and the mutual promises, covenants and agreements contained in this Agreement, HFA and Recipient agree as follows:

1. HFA Confidential Information.

"**HFA Confidential Information**" means any and all information and material disclosed by HFA to Recipient or obtained by Recipient from HFA (whether in writing, or in oral, graphic electronic or any other form) that is proprietary and/or is intended by HFA to remain confidential relating to HFA's business and its databases, products, services, business strategies, capabilities or business affairs, including without limitation, all data and information related to the Musical Works and ownership thereof and/or HFA's publisher-principals.

2. Non-Disclosure and Limited Use.

Recipient covenants (a) to hold all HFA Confidential Information in strict confidence, (b) that it shall disclose (or permit access to) the HFA Confidential Information solely to (or by) its employees, if any, who need to know or access such HFA Confidential Information to accomplish the Purpose, and who are bound by nondisclosure and use restrictions and obligations comparable to and at least as restrictive to those set forth herein, and (c) that it shall not disclose to any third party, including any agent, contractor, consultant or other party, or permit any such party to access, the HFA Confidential Information, unless and until such party has entered into a written agreement with HFA in form and substance of this Agreement governing the nondisclosure and use of the HFA Confidential Information. Recipient further covenants that it shall (y) use HFA Confidential Information solely as necessary to accomplish the Purpose, and (z) not extract, aggregate, derive or copy any HFA Confidential Information, whether by bulk transfer or through individual data query and response, for use or incorporation in any database, unless the sole purpose of such use or incorporation is to accomplish the Purpose. Recipient agrees to notify HFA immediately upon obtaining any information regarding unauthorized disclosure or access to the HFA Confidential Information.

Notwithstanding the disclosure and use restrictions in this Section 2, Recipient may disclose HFA Confidential Information (i) that is independently derived or acquired from a party not subject to a duty of confidentiality to HFA, or (ii) to the extent required to respond to the request of a court of competent jurisdiction, provided that upon receiving any such request and to the extent that it may do so without violating any law, Recipient prior to such disclosure advises HFA of such request in order that HFA may take such action as it deems appropriate to protect

the HFA Confidential Information. During the Term (defined in Section 5 below) and for a period of three (3) years following the termination or expiration of this Agreement, Recipient agrees to permit HFA to inspect, on a semi-annual basis, during regular business hours and upon reasonable prior notice, the point or points at which the HFA Confidential Information is (or was) used in Recipient's facilities, if any, and to furnish whatever assistance is reasonably necessary to permit HFA to determine whether Recipient, including its employees, agents, subcontractors, independent contractors, consultants or other parties, if any, are in compliance with this Agreement.

3. Ownership.

Recipient acknowledges and agrees that all right, title and interest in and to the HFA Confidential Information (including all copies, extracts and portions thereof) is and shall remain the sole property of HFA. Recipient does not acquire (by license or otherwise, whether express or implied) any intellectual property rights or other rights under this Agreement or any disclosure or access hereunder, except the limited right to use such HFA Confidential Information in strict accordance with the express provisions of this Agreement. All rights relating to the HFA Confidential Information that are not expressly granted hereunder to Recipient are reserved and retained by HFA.

4. No Warranty; Limitation of Liability.

EXCEPT AS OTHERWISE MAY BE EXPRESSLY SET FORTH IN THE LICENSE AGREEMENT WITH RESPECT TO LICENSEE, HFA MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE HFA CONFIDENTIAL INFORMATION OR ANY USE THEREOF, AND THE HFA CONFIDENTIAL INFORMATION IS PROVIDED ON AN "AS IS" BASIS. EXCEPT AS OTHERWISE MAY BE EXPRESSLY SET FORTH IN THE LICENSE AGREEMENT WITH RESPECT TO LICENSEE, HFA HEREBY EXPRESSLY DISCLAIMS ALL SUCH WARRANTIES, INCLUDING, BUT NOT LIMITED TO, CORRECTNESS, COMPLETENESS, CURRENTNESS, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE HFA CONFIDENTIAL INFORMATION OR OF THE MEDIA ON WHICH THE DATA IS PROVIDED AND SHALL NOT BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR CAUSED, IN WHOLE OR IN PART, BY HFA'S NEGLIGENT ACTS OR OMISSIONS IN PROCURING, COMPILING, COLLECTING, INTERPRETING, REPORTING, COMMUNICATING OR DELIVERING THE HFA CONFIDENTIAL INFORMATION OR IN OTHERWISE PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT, EVEN IF HFA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

5. Term; Termination.

This Agreement will continue for the term of the License Agreement (including any agreed extensions thereof) (the "Term"), unless otherwise terminated by HFA in accordance herewith. HFA may terminate this Agreement at any time upon written notice, and shall have no further obligations to disclose to or permit access by Recipient to any HFA Confidential Information; and provided, however, that each party's rights and obligations shall otherwise survive the termination or expiration of this Agreement.

6. Purging of HFA Confidential Information.

Promptly following any expiration or termination of this Agreement, Recipient shall purge and destroy any and all records and copies of HFA Confidential Information from any Recipient databases and other systems under Recipient's direct or indirect control, and any other media on which any HFA Confidential Information may have been provided, together with all copies thereof, whether in printed or machine readable form; provided, however, that Recipient may retain any records and copies of HFA Confidential Information solely to the extent and for the period necessary to permit Licensee to fulfill any further obligations under the License Agreement, including

without limitation, Licensee's accounting and royalty and security compliance obligations under Sections 2 and 6 of the License Agreement, after which period such records and copies shall be purged and destroyed as described in this Section 6. Notwithstanding the foregoing, Recipient is not required to purge and destroy any HFA Confidential Information to the extent such HFA Confidential Information was independently derived or acquired from a party not subject to a duty of confidentiality to HFA.

7. Assistance of Counsel.

Each party hereto acknowledges that it has been afforded the opportunity to be represented by its own independent counsel for purposes of reviewing this Agreement and discussing its terms prior to execution.

8. Specific Performance.

Recipient acknowledges that a breach of Recipient's obligations in Sections 2 and/or 6 of this Agreement may result in irreparable harm, the extent of which it would be difficult to ascertain, and therefore agrees that HFA shall be entitled to seek immediate injunctive relief to enforce any such obligation in addition to any other legal remedy to which HFA might be entitled.

9. Miscellaneous.

This Agreement (combined with the License Agreement, if the Recipient is the Licensee) constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior or contemporaneous representations, discussions, proposals, negotiations, conditions, communications and agreements, whether oral or written, between the parties relating to the subject matter hereof. No amendment, modification or waiver of any provision of this Agreement shall be effective unless in writing and signed by duly authorized signatories of both parties. The waiver by either party of a breach of or a default under any provision of this Agreement shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy. This Agreement shall be governed by, and construed in accordance with, federal law and/or the laws of the State of New York (as permitted by Section 5-1401 of the New York General Obligations Law or any similar successor provision) without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of New York to the rights and duties of the parties. With respect to any action or proceeding arising out of this Agreement, the parties (a) agree that the sole and exclusive venue for such action or proceeding shall be in a court of appropriate jurisdiction located in New York County, New York; (b) agree to the appropriateness of, and waive any objection concerning, the propriety and/or convenience of, proceeding in such venue; and (c) consent to the personal jurisdiction of such court. This Agreement and the rights and obligations hereunder may not be assigned or delegated by Recipient, in whole or part, whether voluntarily, by operation of law, change of control or otherwise, without the prior written consent of HFA. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be invalid or unenforceable, the remaining portions hereof shall remain in full force and effect and such provision shall be enforced to the maximum extent possible so as to effect the intent of

the parties and shall be reformed to the extent necessary to make such provision valid and enforceable. The parties are independent contractors, and neither party shall have any authority of any kind to bind the other party in any respect whatsoever.

The parties have executed this Data Access and Use Agreement as of the date first above written:

THE HARRY FOX AGENCY, INC.

By: _____

Name: Scott Persson.

Title: V.P. Licensing

REDACTED

EXHIBIT CO 0023

BACKGROUND MUSIC SERVICE
LICENSING AGREEMENT

This agreement ("**Agreement**") is entered into as of November 8, 2005 ("**Effective Date**") by and between Redacted ("**Licensee**"), a California limited liability company with an office at Redacted, and The Harry Fox Agency, Inc. ("**HFA**"), a New York corporation with an office at 711 Third Avenue, New York, NY 10017.

WHEREAS, Licensee owns and operates a service pursuant to which copyrighted musical compositions ("**Musical Works**") are digitally reproduced on a central computer server or servers, which Musical Works are subsequently transmitted from such central servers and downloaded to proprietary digital storage devices located in commercial establishments in order that the Musical Works are available to be played back in such establishments as background music in accordance with pre-established playlists ("**Service**"); and

WHEREAS, in order to operate the Service, Licensee seeks licenses to reproduce and distribute Musical Works that are owned and/or controlled by publisher-principals affiliated with HFA ("**Publisher-Principals**"); and

WHEREAS, HFA is prepared to issue such licenses to the extent it is authorized to do so by such Publisher-Principals;

NOW, THEREFORE, in consideration of the promises contained in this Agreement and for other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Licensing**

1.1 Pursuant to the terms of this Agreement, and as more particularly described herein, upon receipt of appropriate license requests ("**License Requests**") from Licensee, HFA shall, to the extent authorized by particular Publisher-Principals, issue on behalf of such Publisher-Principals nonexclusive licenses ("**Licenses**") to reproduce and distribute Musical Works owned and/or controlled by such Publisher-Principals ("**Licensed Works**") for use on Licensee's Service in accordance with the terms of this Agreement. The license authority contemplated hereunder and granted pursuant to any License issued hereunder shall include and is limited to: (a) the digital reproduction of the Licensed Work on a central computer server or servers owned and operated by Licensee and located in the United States (including its territories and possessions and the Commonwealth of Puerto Rico (collectively, the "**United States**")) ("**Servers**"), solely for use in connection with the Service ("**Server Fixations**"); (b) the digital transmission of the Licensed Work from such Servers for digital storage on secure proprietary devices meeting the requirements of Section 5 below that are custom manufactured on behalf of Licensee in accordance with the specifications set forth in Exhibit C and

placed by Licensee as part of its Service at establishments located in the United States ("**Local Units**"), solely for use in connection with the Service; and (c) the reproduction of the Licensed Work on such Local Units, solely for use in connection with the Service, and without any further reproduction or distribution from any individual Local Unit to another Local Unit or any other device ("**Local Unit Deliveries**"). For the avoidance of doubt, the license authority under any License issued hereunder is limited to and granted solely with respect to (x) a particular individual sound recording of the Licensed Work; and (y) the share of the copyright owned or controlled by the individual Participating Publisher-Principal(s) on whose behalf the License is issued by HFA.

1.2 The authority of HFA to issue Licenses for any individual Musical Work on behalf of any one or more Publisher-Principals is subject to the approval of the relevant Publisher-Principal(s). Before commencing to issue licenses hereunder, HFA shall for a period of time (the "**Opt-Out Period**") offer to its Publisher-Principals the opportunity to request to decline to make their Musical Works available for licensing under this Agreement by notifying HFA of their desire to opt out of this Agreement. Notwithstanding the decision not to opt out by any individual Publisher-Principal, thereby rendering such Publisher-Principal a "**Participating Publisher-Principal,**" if such Participating Publisher-Principal at any time requests that HFA not issue Licenses on its behalf (either with respect to a particular Musical Work or in general), HFA will honor that request; provided, however, that any Licenses validly issued by HFA prior to the receipt of such a request shall remain in effect until the Term (as defined below) of this Agreement expires.

1.3 Following execution of this Agreement and conclusion of the Opt-Out Period, Licensee may begin submitting License Requests in electronic form in accordance with the format specified in Exhibit A (as such format may be modified from time to time by HFA upon reasonable notice to Licensee) ("**Request Format**"), which License Requests shall be duly processed by HFA. Without limitation, Licensee shall include in each License Request to the extent required by the Request Format (a) the title of the Musical Work for which a License is being requested; (b) the writer(s) of the Musical Work; (c) the publisher(s) of the Musical Work; (d) the name of the record company that produced the sound recording embodying the Musical Work; (e) the name of the artist performing such sound recording; (f) the ISRC number for such sound recording (if available); (g) the total playing time of such sound recording, expressed in minutes and seconds; (h) the title of an album for which such sound recording has been previously licensed; and (i) such other information as may be required by HFA's Request Format.

1.4 HFA shall from time to time provide to Licensee an electronic file specifying the Licenses issued under this Agreement (each such report, a "**Confirmation Report**"). To aid Licensee in the calculation of royalties, with respect to each License, such Confirmation Report shall reflect, *inter alia*, the total of the percentage ownership share(s) of the Participating Publisher-Principal(s) on

whose behalf the License has been issued (such total, the "**HFA-Represented Share**").

1.5 For the avoidance of doubt, and without limitation, the Licenses granted hereunder do not extend to or cover: (a) any right of public performance; (b) any copyrights or other rights in sound recordings; (c) any rights to synchronize Musical Works with visual images resulting in audiovisual works; (d) any print, display or karaoke rights; (e) any adaptation (derivative work) rights; (f) any rights to alter the fundamental character of a Musical Work, including but not limited to by excerpting or fragmenting the work; (g) any merchandising rights; (h) any use of a Musical Work (whether or not embodied in a sound recording) for a marketing campaign, product tie-in, game or contest or otherwise to advertise, promote or cross-promote any product or service; or (i) any use of the title of a Musical Work, or the name or likeness of any writer, publisher or artist associated with a Musical Work, except for identification purposes as described in Section 4.

1.6 The license authority contemplated by this Agreement and granted pursuant to any License issued hereunder is limited to Licensee and may not be sublicensed, assigned or otherwise transferred by Licensee except to the extent expressly permitted hereunder.

1.7 Consistent with the terms and conditions of this Agreement, Licensee represents, warrants and covenants that to the extent that Service Users (as defined below) have an ability to control the musical content that is played back through the Service: (a) such control shall be limited to the ability to select among playlists that have been previously determined by Licensee ("**Pre-Established Playlists**"), which Pre-Established Playlists shall each consist of not less than twenty (20) different sound recordings representing a variety of songwriters, albums and recording artists; (b) the Service Users will not be permitted to alter or override the Pre-Established Playlists (except to insert Messaging Content (as defined below) solely in accordance with the terms and conditions of the Service and the terms and conditions of this Agreement); and (c) the Service Users will not be permitted to arrange for the playback of particular sound recordings of Musical Works on an individual song, artist or album basis. For the avoidance of doubt, nothing in this Sub-section 1.7 shall be deemed to prohibit Licensee from accepting and considering ad hoc suggestions and/or requests from Service Users for the inclusion of particular sound recordings in the Service in general, provided that Licensee's subsequent use of any such suggested and/or requested sound recordings in the Service remains fully subject to the provisions of this Section 1.7.

1.8 Consistent with the terms and conditions of this Agreement, Licensee represents, warrants and covenants that to the extent any messaging, advertising or other material other than sound recordings of Licensed Works (collectively, "**Messaging Content**") is permitted to be inserted into the

Service, such Messaging Content will only be incorporated such that (a) the Messaging Content is not accompanied by or presented "over" the playback of any Licensed Work(s); (b) the Messaging Content is presented without reference to and completely independent of any particular Licensed Work(s), and without any suggestion of a relationship between the Licensed Work(s) and the Messaging Content, except as expressly permitted in clause (y) of this Subsection 1.8; and(c) the playback of any particular Licensed Work is not interrupted or terminated by the Messaging Content, except as expressly permitted in clause (x) of this Subsection 1.8. Nothing herein shall be deemed to limit Licensee's ability to (x) truncate or "fade" the playback of a particular sound recording after it has played for at least one (1) minutes and thirty (30) seconds where the playback of all, or substantially all, other sound recordings is being similarly truncated or faded by Licensee in the same retail environment; or (y) to identify a particular upcoming or just-played song, sound recording, album, recording artist, label , publisher and/or songwriter(s) for such sound recording.

2. Reporting and Payment of Royalties

2.1 Licensee shall account and pay royalties to HFA quarterly, within forty-five (45) days after the end of each calendar quarter, on the basis of (a) any initial Server Fixation of a particular individual sound recording embodying a Licensed Work made on a Server (but not any subsequent fixation of the identical sound recording of the Licensed Work on the same or any other-Server made pursuant to a License issued under this Agreement) ("**Initial Server Fixation**") made during the applicable reporting period; and (b) the total number of times an individual sound recording embodying a Licensed Work is played on all Local Units throughout the Service during the applicable reporting period (each such play, a '**Licensed Play**"). Licensee shall provide its quarterly statements in electronic form in accordance with the format specified in Exhibit B (each, a "**Statement**") (as such format may be modified from time to time by HFA upon reasonable notice to Licensee) ("**Reporting Format**"). The Statements shall include the following information: With respect to the calendar quarter period that is being reported, the Statement shall set forth (i) the total Service Revenue (as defined below); (j) the total Equipment Revenue (as defined below); (k) the total Net Music Revenue (as defined below); (*l*) the total number of Service Users; (m) the Minimum Revenue Pool (as defined below); (n) an indication whether the Minimum Revenue Pool is being used as the basis for calculating the Effective Quarterly Royalty Rate (as defined below); (o) the Total Plays (as defined below); (p) the Effective Quarterly Royalty Rate (as defined below); and (q) the total royalty payment being rendered to HFA. In addition, with respect to each individual License and associated Licensed Work, the Statement shall set forth (r) the applicable HFA License number; (s) the HFA song code; (t) the Publisher-Principal or Publisher-Principals on behalf of which the License was issued; (u) each such Publisher-Principal's ownership percentage; (v) the number of Initial Server Fixations made (i.e., one (1) or

zero (0)); (w) the total number of Licensed Plays throughout the Service; (x) with respect to each applicable Publisher-Principal, the royalty amount being paid for any Initial Server Fixation based on such Publisher-Principal's ownership percentage; (y) with respect to each applicable Publisher-Principal, the aggregate royalty amount being paid for the Licensed Plays based on such Publisher-Principal's ownership percentage; and (z) such other information as may be required by the Reporting Format. Interest on late payments shall be payable to HFA at the rate of prime plus two percent (2%), calculated from the date the royalties were due to be paid under the applicable reporting period to the date of ultimate payment to HFA.

"**Service User**" is a customer of Licensee to which Licensee provides the Service at any time during a quarterly reporting period; provided, however, that in the case where a single customer of Licensee owns multiple establishments (e.g., a chain of restaurants), for purposes of reporting and calculating royalties due under this Agreement, each location where the Service is operational shall be considered an individual Service User.

"**Total Plays**" is the total number of plays of all sound recordings throughout the Service, regardless of whether the Musical Works embodied therein are licensed under this Agreement or otherwise.

"**Service Revenue**" is the total revenue derived by Licensee from its provision of the Service during a quarterly reporting period (inclusive of any Equipment Revenue).

"**Equipment Revenue**" is the revenue derived by Licensee during a quarterly reporting period from the sale, leasing and/or servicing by Licensee of Local Units and other computer hardware necessary for Service Users to receive the Service ("**Equipment Revenue**"); provided, however, that Licensee shall clearly segregate and identify in its regular invoices provided to its Service Users any charges that Licensee seeks to include in the Equipment Revenue category under this Agreement such that any such charges are readily distinguishable from Licensee's charges for the provision of music programming.

"**Net Music Revenue**" is an amount equal to Service Revenue less the Equipment Revenue for the relevant quarter, with the result multiplied by Redacted; provided, however, that in no event shall the amount deducted for Equipment Revenue exceed Redacted of the Service Revenue.

"**Minimum Revenue Pool**" is the total number of Service Users for a quarterly reporting period multiplied by Redacted

"**Effective Quarterly Royalty Rate**" is the greater of (a) Net Music Revenue divided by Total Plays, and (b) the Minimum Revenue Pool divided by Total Plays.

2.2 For each Initial Server Fixation of a Licensed Work, the royalty amount payable to HFA shall be Redacted multiplied by the HFA-Represented Share.

2.3 For each Licensed Play, the royalty amount payable to HFA shall be the Effective Quarterly Royalty Rate multiplied by the HFA-Represented Share.

3. Term

The term of this Agreement shall commence as of the Effective Date and terminate on December 31, 2007 (the "**Term**"). If Licensee wishes to extend this Agreement for an additional period, it shall notify HFA of such desire not later than a date six (6) months prior to the end of the Term. Such notification shall include proposed terms for any such extension. Any extension shall be subject to the approval of individual Publisher-Principals as described in Subsection 1.2, and HFA reserves the right to propose changes to administrative and other aspects of the Agreement as it deems appropriate.

4. Writer/Publisher Credit

Licensee shall, to the extent commercially reasonable, include in any writing, graphics and/or imagery displayed in connection with the identification and/or play of any Licensed Work within the Service written credit in legible form setting forth the names of the writer(s) and publisher(s) of such Licensed Work.

5. Security

5.1 In connection with the use of any Licensed Work, Licensee shall implement and maintain copy protection and digital rights management technology and systems, including software and/or hardware functional limitations (collectively, "**Security Systems**") with respect to all aspects of the Service, including without limitation its Servers and operating systems, that (a) are designed to prevent unauthorized reproduction and distribution of the Licensed Work; (b) are sufficient to track and enforce the use limitations contemplated by this Agreement; and (c) meet or exceed current industry standards as they exist from time to time for the licensed delivery of music via digital transmission and its reproduction on devices including, without limitation, proprietary units for digital storage of music such as the Local Units employed by Licensee. Without limitation, Licensee's Security Systems shall include those measures set forth in Exhibit C hereto. (In the event of a conflict between the requirements of this Section 5 and those of Exhibit C, the higher security standard shall prevail.) Licensee hereby represents, warrants and covenants that the exclusive method for a Service

User to access and operate the Service is through a Local Unit located on the premises of such Service User.

5.2 In the event it becomes aware of a breach of Licensee's Security Systems ("**Security Breach**"), whether through its own monitoring efforts, upon being advised by another party (including HFA) or otherwise, Licensee shall use its best efforts to resolve the Security Breach and restore the full integrity of its Security Systems as quickly as possible. If a solution to the Security Breach is not immediately available (i.e., cannot be implemented within twenty-four (24) hours from the time Licensee becomes aware of the Security Breach), Licensee shall (a) promptly notify HFA of the Security Breach in writing (unless Licensee learned of the breach from HFA); and (b) cease all further digital transmission and/or reproduction of Licensed Works to the extent such activities are or could possibly be affected by the Security Breach, pending full resolution of the Security Breach. In such a case, Licensee (x) shall keep HFA reasonably apprised of the status of its efforts to resolve the Security Breach; and (y) shall not resume the activities that were suspended pursuant to this Subsection 5.2 until the full integrity of its Security Systems has been restored.

5.3 To the extent Licensee employs third-party technology in order to operate, Licensee shall use its best efforts to maintain and upgrade such technology by (a) diligently monitoring any third-party notifications of bug-fixes, security holes and functionality improvements; and (b) obtaining any available upgrades and bug-fixes, and installing, testing and distributing such upgrades and bug-fixes as necessary so as to maintain the integrity of its Security Systems.

5.4 Licensee shall use its best efforts to prevent any unauthorized digital transmissions and reproductions of Musical Works by operators and users of the Service and/or in any facility, on any device (including but not limited to Local Units) or by any person under the supervision and/or control of Licensee.

6. **Royalty and Security Compliance**

6.1 Notwithstanding, without limiting and in addition to the general right pursuant to industry custom and practice of HFA and/or any Participating Publisher-Principal to examine the books and records of Licensee in connection with Licensee's use of the Licensed Works, HFA shall be entitled, upon thirty (30) days' prior written notice to Licensee, to conduct, at the expense of HFA, an examination of the books, records, operations and Security Systems of Licensee ("**Royalty and Security Examination**") to determine whether Licensee is in compliance with its reporting, payment and security obligations under this Agreement. Absent a good-faith basis to believe that Licensee is not in compliance with such obligations, HFA shall not seek to initiate a Royalty and Security Examination more than once every twelve (12) months or more than three (3) years following the termination of this Agreement.

After HFA conducts a Royalty and Security Examination hereunder in respect of a given period and any issues arising from such Royalty and Security Examination are fully and finally settled by the parties, such period shall not be reexamined by HFA except to the extent that a Royalty and Security Examination of another period raises issues relating to the previously settled period or in the case of demonstrable fraudulent conduct on the part of Licensee in connection with the previously settled period.

6.2 During the course of a Royalty and Security Examination, upon request by HFA or an examiner acting on its behalf, Licensee shall, within three (3) business days (a) provide access to any information that may be called for by such request, including without limitation any (i) books, records, files, logs, reports, compilations, usage data and other documentation, whether in paper or electronic form, that were or could be used or required to generate or verify Licensee's Statements and/or that reflect or summarize Licensees' Statements; (ii) financial information, including books, records, ledgers, reports, and other documentation, reflecting cash receipts and general revenue accounts to the extent such information relates directly or indirectly to the activities licensed under this Agreement; and (iii) files, logs, reports, compilations, testing and monitoring data and other documentation related to and/or reflecting the operation and integrity of Licensee's Security Systems (such information, along with the information described in the items (a)(i) and (a)(ii) of this Subsection 6.2, collectively referred to as "**Documentation**"); and (b) through the assistance of personnel who are familiar with the technical and operational aspects of Licensee's computer, hardware, software, Security Systems (collectively, "**Operational Systems**") who are to be made available by Licensee, provide real-time and/or historical access to such Operational Systems, as requested, sufficient to permit HFA or its examiner(s) to conduct meaningful tests and analysis to verify that (i) the Operational Systems are properly and accurately tracking and reporting the use of the Licensed Works, and royalties payable therefor, as contemplated by the terms of this Agreement; and (ii) the Operational Systems are in compliance with the security requirements set forth in Section 5 of this Agreement. Licensee shall provide the information, systems access and personnel required by this Subsection 6.2 free of charge and, unless otherwise agreed by HFA or its examiner(s), at Licensee's place of business. At the request of Licensee, prior to commencing the Royalty and Security Examination, any outside examiner acting on behalf of HFA shall execute a Nondisclosure Agreement substantially in the form of Exhibit D hereto.

6.3 During the course of and/or following completion of the Royalty and Security Examination, upon request by HFA or an examiner acting on its behalf, Licensee shall make available company personnel at an appropriate level of seniority and/or technical ability to discuss and/or resolve particular issues and findings arising out of such examination.

6.4 Licensee shall maintain any and all Documentation that reasonably might be expected to be relevant to HFA's conduct of a Royalty and Security

Examination for a period of at least six (6) years following the expiration or termination of this Agreement, unless there is a Royalty and Security Examination in progress or not fully resolved as of the expiration of such period, in which case the Documentation shall be maintained until the Royalty and Security Examination is fully resolved to the satisfaction of HFA.

6.5 If a royalty examination reveals a nonpayment or underpayment of royalties due to HFA, the amounts determined to be owing shall be subject to interest payable at the rate of prime plus two percent (2%) calculated from the date the royalties were due to be paid under the applicable reporting period to the date of ultimate payment to HFA.

7. Termination/Default

7.1 All license authority pursuant to Licenses issued hereunder shall terminate upon the expiration or termination of this Agreement (unless such Licenses are renewed pursuant to a renewal of this Agreement as contemplated under Section 3, in which case the terms of renewal shall apply as appropriate), and any further transmission, reproduction and/or playback of any Licensed Work after the expiration of this Agreement shall be prohibited and actionable as an act of infringement under, and fully subject to the remedies provided by, the Copyright Act. Notwithstanding the foregoing, provided that the Agreement has not been terminated due to Licensee's breach or default, any Server Fixations existing on Servers and/or Local Unit Deliveries existing on Local Units as of the expiration of the Agreement may remain on such Servers and Local Units; provided, however, that such existing Server Fixations (in addition to the Local Unit Deliveries) may not be further reproduced, distributed or played after the expiration of the Agreement.

7.2 Notwithstanding, without limiting and in addition to any other remedy that may be available at law or in equity and/or under this Agreement, Licensee understands and agrees that: (a) in the event Licensee fails to account to HFA and pay royalties provided for in Section 2, HFA may provide written notice to Licensee that, unless the default is fully remedied within thirty (30) days from the date of the notice, this Agreement and any Licenses issued hereunder will be automatically terminated, and that such termination will render the transmission and/or reproduction or both, of any Licensed Work for which royalties have not been fully paid actionable as an act of infringement under Section 501 of the Copyright Act, and fully subject to the remedies provided by Sections 502 through 506 and 509 the Copyright Act; (b) in the event Licensee is in material breach or default of any of its obligations under this Agreement, HFA may provide written notice to that, unless the default is fully remedied within thirty (30) days from the date of the notice, this Agreement and any Licenses issued hereunder will be automatically terminated, and that such termination will render the further transmission and/or reproduction, or both, of any Licensed Work actionable as an act of infringement under Section 501 of the Copyright Act, and fully subject to the remedies provided

by Sections 502 through 506 and 509 of the Copyright Act. Licensee further understands and agrees that in the case of infringement, irreparable harm may be presumed, and HFA and/or any affected Publisher-Principal(s) shall be entitled as appropriate to injunctive relief, in addition to any other remedy that may be available at law or in equity and/or under this Agreement. For the avoidance of doubt, and without limitation, Licensee's breach of any of the obligations and/or limitations imposed by Subsections 1.5, 1.6, 1.7 and 1.8 and Sections 2, 5 and 6 of this Agreement shall be considered a material breach of, and default under, this Agreement.

7.3 To the extent permitted by applicable law, and without limitation, the occurrence of any of the following events shall also be considered a material breach of and default under this Agreement: (a) Licensee's dissolution and/or the liquidation of all of Licensee's assets; (b) the filing of a petition in bankruptcy or insolvency or for an arrangement or reorganization by, for or against Licensee; (c) the appointment of a receiver or trustee for all or a portion of Licensee's assets; (d) Licensee's assignment of assets for the benefit of creditors; and (e) Licensee's insolvency. Upon the occurrence of any of the events described in items (a) through (e) of this Subsection 7.3, notwithstanding, without limiting and in addition to any other remedy that may be available at law or in equity and/or under this Agreement, this Agreement and all license authority pursuant to any Licenses granted hereunder shall terminate automatically without the requirement of any further action on the part of HFA or the Participating Publisher-Principals.

7.4 Notwithstanding, without limiting and in addition to any other remedy that may be available at law or in equity and/or under this Agreement, including without limitation the remedies set forth in Subsection 7.2, the breach of any of the provisions set forth in Subsections 1.7 and 1.8 and Sections 5 and 6 shall entitle HFA and/or any relevant Publisher-Principal to specific performance of such provision and/or to terminate, effective immediately upon the giving of notice, the license authority pursuant to any License granted hereunder.

7.5 Notwithstanding the expiration or termination of this Agreement, Sections 2, 4, 5 and 6 and Subsections 7.1, 7.4, 8.2, 8.3, 8.4, 8.6, 8.7 and 8.9 shall to the extent applicable survive and continue to bind the parties and their legal representatives and successors.

8. Proprietary and Confidential Information

8.1 HFA shall have no obligation to perform its obligations hereunder unless and until Licensee enters into the Data Access and Use Agreement, attached hereto and incorporated herein as Exhibit E (the "**Data Access and Use Agreement**"), governing the nondisclosure and use of HFA Confidential Information (as defined in the Data Access and Use Agreement) by Licensee.

8.2 To the extent Licensee seeks to have a third-party individual or entity obtain access to HFA Confidential Information for purposes of obtaining and administering Licenses and otherwise fulfilling its obligations under this Agreement (each, a **'Third-Party Administrator'**), Licensee must obtain HFA's prior consent of each such Third-Party Administrator (such consent not to be unreasonably withheld). Upon HFA's consent to Licensee's use of such Third-Party Administrator, HFA will require that such Third-Party Administrator enter into a data access and use agreement with HFA substantially in the form of the Data Access and Use Agreement, prior to allowing such Third-Party Administrator access to any HFA Confidential Information.

9. Miscellaneous

9.1. Administrative Fee. In addition to the royalties payable hereunder, within five (5) business days following execution of this Agreement, Licensee shall pay to HFA a one-time administrative fee of Redacted in consideration of HFA's administrative expenses in connection with the publisher opt-out and licensing processes contemplated hereunder. Notwithstanding the foregoing, HFA reserves its right to assess additional administrative fees in connection with future agreements between the parties.

9.2 Notices. All notices hereunder shall be in writing and shall be deemed effective (a) if provided by hand delivery, upon delivery; (b) if provided by overnight courier, one (1) business day following the date sent; and (c) if provided by registered or certified mail, return receipt requested, five (5) business days following the date mailed. Notices shall be sent to the following addresses:

If to HFA:

To the address set forth above. Attn: General Counsel. Fax: 212-922-3299.

If to Licensee:

To the address set forth above. Attn: Redacted

9.3 Publicity. Neither party shall issue any press release or other publicity document concerning this Agreement without the prior written consent of the other party.

9.4 Assignment. This Agreement is binding on the parties and their respective executors, administrators, legal representatives and successors. Neither party may assign this Agreement without the written consent of the other party.

9.5 Entire Agreement; Amendment. This Agreement represents the entire understanding of the parties with respect to the subject matter hereof, supersedes all prior and contemporaneous agreements and understandings of the parties with respect to the subject matter hereof, and may not be altered or amended except in a written instrument executed by both parties.

9.6 Governing Law; Jurisdiction. This Agreement shall be governed by, and construed in accordance with, federal law and/or the laws of the State of New York (without giving effect to conflicts of law principles thereof), as may be applicable. With respect to any action or proceeding arising out of this Agreement, the parties (a) agree that the sole and exclusive venue for such action or proceeding shall be in a court of appropriate jurisdiction located in New York County, New York; (2) agree to the appropriateness of, and waive any objection concerning, the propriety and/or convenience of, proceeding in such venue; and (3) consent to the personal jurisdiction of such court.

9.7 Severability; Waiver. If a court should determine that any part of this Agreement is invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect. Performance of any obligation required of a party hereunder may be waived only by a written waiver signed by a duly authorized officer of the other party, which waiver shall be effective only with respect to the specific obligation described therein.

9.8 Headings. The titles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

9.9 Assistance of Counsel. Each party hereto acknowledges that it has been represented by its own independent counsel, who has reviewed this Agreement and discussed the terms herein with his or her respective client prior to execution.

9.10 Counterparts. This Agreement may be executed in multiple counterparts and delivery of an executed counterpart may be made by facsimile, each such counterpart to be considered and accepted as an original, and all such counterparts together to constitute a single Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date:

Redacted

THE HARRY FOX AGENCY, INC.

By: JC Charlesworth
Title: SVP & General Counsel

Exhibit A
HFA Request Format

hfa **Redacted** Background Music - License Request Layout

Acceptable Data Format: Tab Delimited Text

	Description	Type	Length	Decimal	Input Option	
1	Agreement Code	A	3		M	
2	Manufacturer Number	A	6		M	
3	Transaction Date	N	8	0	M	
4	Manufacturer Request Number	N	8	0	M	
5	Label Name	A	15		M	
6	ISRC Code	A	15		O	
7	Playing Time - Minutes (for matching purposes only)	N	3	0	M	
8	Playing Time - Seconds (for matching purposes only)	N	2	0	M	
9	Artist	A	200		M	
10	Song Title	A	200		M	
11	AKA Song Title	A	200		O	
12	ISWC Code	A	11		O	
13	HFA Song Code	A	6		O	
14	Song Writer(s)	A	200		M	
15	Publisher Name	A	60		M	* Repeating Group
16	HFA Publisher Number	A	6		Output	**
17	Exact Per Publisher Share	N	7	4	Input (optional)/Output	
18	Catalog Number	A	15		O	
19	Album Title	A	200		M	
20	UPC Code	A	16		M	
21	Configuration Code(s)	A	2		M	
22	License Type	A	1		M	
23	Server Fixation Date	N	8	0	M	
24	Rate Code	A	1		M	
25	Rate In Cents	N	7	7	O	
26	HFA License Number	N	10		Output	
27	HFA License Status Code #1	A	2		Input/Output	
28	HFA Flag for Amended Publisher Data	A	1		Output	
29	Publisher Status	A	1		Output	
30	Total HFA Represented Share	N	7	4	Output	
31	HFA License Status Code #2	A	2		Output	
32	HFA License Status Code #3	A	2		Output	
33	User Defined	A	30		Input/Output	

KEY:

TYPE:
A = Alphanumeric Field; N = Numeric Field

LENGTH: For Alphanumeric fields, represents the maximum number of characters required.
For Numeric fields, represents the maximum number of characters required.
DECIMAL: Number of characters after decimal (for numeric fields only)

INPUT OPTION:
M = Mandatory; O = Optional; C = Conditional

** All input/output fields should be left blank upon initial license submission, EXCEPT for:
Field 27 which should be populated with the letter R only if the record is an amended resubmission

Exhibit B

HFA Reporting Format

hfa **Redacted** Background Music - Royalty Reporting Layout

Acceptable File Formats: 1. *MS Excel spreadsheet - please save it as type "csv" (comma separated variable)*
2. *ASCII text either in a delimited (csv) or fixed width format (.txt)*

FILE HEADER (Control Portion for File Transfer)

Field Name	Field Requirement Mandatory (M), Optional (O), Conditional (C)	Field Length	Decimal Places	Field Format	Field Description/Legend	Example
Line Count	M	12	0	Number	Number of lines of data in file used as control to verify complete and accurate file copy was received.	321458

FILE BODY

Field #	Field Name	Field Requirement Mandatory (M), Optional (O), Conditional (C)	Field Length	Decimal Places	Field Format	Field Description/Legend	Example
1	Manufacturer Number	M	6		Text	Account number assigned by HFA to Licensee	M12345
2	Transaction Date	M	8	0	Number	Date electronic royalty report submitted to HFA. Format: YYYYMMDD	20010304 (3/4/2001)
3	Royalty Reporting Period	M	6		Text	Length of period in number of months (left 2 digits), ending month (middle 2 digits), year (right 2 digits)	030001 (i.e., quarterly reporting period, ending the 03 month of 2001.)
4	HFA License Number	M	12		Text	HFA License Number	1010010041
5	HFA Song Code	O	6		Text	HFA Song Code, optional if HFA License Number provided.	W01266
6	ISRC	C	15		Text	International Standard Recording Code. Either the ISRC Code or the UPC Code must be submitted.	USEM30700174
7	UPC	C	16		Text	UPC Code. Either the ISRC Code or the UPC Code must be submitted.	706301594728
8	Configuration Code	M	2		Text	Code designating the specific configuration being reported. * For Initial Server Fixation, use FX. * For Licensed Plays, use LL. IMPORTANT NOTE: Each configuration must be reported as a separate line.	LL
9	HFA Song Title	M	30		Text	Title of work being licensed.	HAPPY DAY
10	HFA Publisher Name	M	30			Name of HFA publisher as appears on license	EMI Publishing
11	HFA Publisher Ownership Split	M	7	4		Percentage of song controlled by publisher in Field #10.	50
12	Total Units For Period	M	9	0	Number	Number of either fixations or plays for period for HFA License # above.	4
13	Rate Code	M	1		Text	Special code indicating royalty rate structure.	J
14	Effective Quarterly Royalty Rate	M	11	2	Number	Royalty rate for applicable configuration. For FX = $1.00; for LL = calculated effective quarterly royalty rate.	2.01
15	HFA Royalty Share	M	11	2	Number	Amount allocated to HFA publisher.	32.45
16	Floor Indication (Minimum Royalty Pool) Flag	M	1		Text	If minimum revenue pool was invoked, indicate with a Y.	Y
17	Agreement Code	M	3		Text	Specific agreement code assigned by HFA.	PLR

NOTE: Publisher Name and Publisher Split fields are repeating groups

Exhibit C
Content Security

The ability to make perfect digital reproductions has made the distribution of audio a far more complicated process. The goal is to promote the music to the listening public while protecting the owner's rights by not allowing this audio to be copied for private use or resale.

As a result, the *TuneStore* system has been designed with security in mind. A strong relationship with the record labels is vital to the success of the *TuneStore* network so protection of these assets is of paramount importance. To that end, we've implemented the following deterrents:

Physical Security

The *TuneStore* system is shipped without a monitor, keyboard, or mouse. The entire premise of the box is that it works totally unattended. There are ports on the chassis, however, to which someone could hook up these I/O devices. To prevent access by this method, the system is set up with standard Windows 2000 security. A user name and password are required to gain access but this information is never communicated to the customer. If a user attempts to put the computer a Local Area Network, no data sharing is enabled for the user to gain access through. In addition, the *TuneStar* software is not shipped with the audio device. The software that is installed on the device is locked to that particular device using an encrypted license file tied to the hard drive's serial number. If the license file is modified, or the software is transferred to a different hard drive, the software is rendered unusable. This powerful FlexLM licensing technology is from Globetrotter Software. These methods ensure that the *TuneStore* system is safe from prying hands on site.

Distribution

The *TuneStore* system is initially installed with one or more libraries of music and will receive updates by one of two primary methods:

The first method applies to systems that are not connected to the Internet. Audio updates are mailed to the store via a CD-ROM and store personnel put that disc into the appropriate drive. The box has no keyboard, monitor, or mouse so everything happens automatically once the disc is inserted.

Systems that are connected to the Internet automatically log into our secured FTP site and request any pending updates. Each system is configured with a unique ID that is required for this login. The FTP site will only allow audio that has been specifically marked with this ID to be sent to this particular box. By that method, no one system is capable of collecting data from any other system on the network.

Audio Encryption

Finally, if someone were able to retrieve the audio files, they would not be able to play them. Each audio file is in an industry standard audio format, but a layer of proprietary security is added.

Every byte of audio goes through our own encryption prior to being stored in the file. At the heart of this encryption, we use 128-bit 3DES protocol, the standard used in networking technologies such as Virtual Private Networks. The system in the retail environment knows the appropriate algorithms to decode the data before playing it back as audio. If this file were to be played on any standard PC installation, the file would not be able to be played because the player could not interpret the codes.

Exhibit D
Examiner NDA

[DATE]

[ADDRESSEE]
[LICENSEE]
[ADDRESS]
[ADDRESS]

Re: Royalty Examination of LICENSEE (EXAM PERIOD)

To Whom It May Concern:

We have been requested by The Harry Fox Agency, Inc. ("HFA") to examine, commencing on DATE, the books and records of LICENSEE for the period EXAM PERIOD in connection with LICENSEE'S royalty reports and payments to HFA-affiliated publishers.

We agree that, except as authorized in writing by LICENSEE, we will not disclose to anyone other than HFA, its officers and employees, legal counsel, and Participating Publisher-Principals, any information that we obtain from our examination of LICENSEE's books and records; provided, however, that we may disclose such information in the context of a legal action or proceeding, and further provided that it is understood that HFA and its affiliated publishers may disclose such information as they deem appropriate.

Sincerely,

[AUTHORIZED EXAMINER]
on behalf of
[EXAMINER'S FIRM]

Exhibit E
Data Access and Use Agreement

Data Access and Use Agreement

This Data Access and Use Agreement ("**Agreement**") is entered into as of November 8, 2005 by and between The Harry Fox Agency, Inc., a New York corporation, having its principal place of business at 711 Third Avenue, New York, New York ("**HFA**") and a California limited liability company with an office at Redacted ("**Recipient**").

WHEREAS, Recipient (also referred to at times herein as "**Licensee**") and HFA have entered, or expect to enter, into that certain license agreement, dated as of November 8, 2005 (the "**License Agreement**"), pursuant to which HFA has granted, or will grant, limited rights to certain copyrighted musical compositions (each, a "**Musical Work**") in connection with the operation of Licensee's digital background music service; and

WHEREAS, Recipient seeks to access and use certain HFA Confidential Information (defined in Section 1 below) as necessary to obtain and administer the licenses issued under the License Agreement (each, a "**License**"), and as otherwise may be necessary to comply with Licensee's obligations under the License Agreement (collectively, the "**Purpose**"), and HFA has agreed to allow Recipient such limited access to and use of the HFA Confidential Information solely as necessary to accomplish the Purpose;

NOW THEREFORE, in consideration of the premises of and the mutual promises, covenants and agreements contained in this Agreement, HFA and Recipient agree as follows:

1. HFA Confidential Information.

"**HFA Confidential Information**" means any and all information and material disclosed by HFA to Recipient or obtained by Recipient from HFA (whether in writing, or in oral, graphic electronic or any other form) that is proprietary and/or is intended by HFA to remain confidential relating to HFA's business and its databases, products, services, business strategies, capabilities or business affairs, including without limitation, all data and information related to the Musical Works and ownership thereof and/or HFA's publisher-principals.

2. Non-Disclosure and Limited Use.

Recipient covenants (a) to hold all HFA Confidential Information in strict confidence, (b) that it shall disclose (or permit access to) the HFA Confidential Information solely to (or by) its employees, if any, who need to know or access such HFA Confidential Information to accomplish the Purpose, and who are bound by nondisclosure and use restrictions and obligations comparable to and at least as restrictive to those set forth herein, and (c) that it shall not disclose to any third party, including any agent, contractor, consultant or other party, or permit any such party to access, the HFA Confidential Information, unless and until such party has entered into a written agreement with HFA in form and substance of this Agreement governing the nondisclosure and use of the HFA Confidential Information. Recipient further covenants that it shall (y) use HFA Confidential Information solely as necessary to accomplish the Purpose, and (z) not extract, aggregate, derive or copy any HFA Confidential Information, whether by bulk transfer or through individual data query and response, for use or incorporation in any database, unless the sole purpose of such use or incorporation is to accomplish the Purpose. Recipient agrees to notify HFA immediately upon obtaining any information regarding unauthorized disclosure or access to the HFA Confidential Information.

Notwithstanding the disclosure and use restrictions in this Section 2, Recipient may disclose HFA Confidential Information (i) that is independently derived or acquired from a party not subject to a duty of confidentiality to HFA, or (ii) to the extent required to respond to the request of a court of competent jurisdiction, provided that upon receiving any such request and to the extent that it may do so without violating any law, Recipient prior to such

disclosure advises HFA of such request in order that HFA may take such action as it deems appropriate to protect the HFA Confidential Information. During the Term (defined in Section 5 below) and for a period of three (3) years following the termination or expiration of this Agreement, Recipient agrees to permit HFA to inspect, on a semi-annual basis, during regular business hours and upon reasonable prior notice, the point or points at which the HFA Confidential Information is (or was) used in Recipient's facilities, if any, and to furnish whatever assistance is reasonably necessary to permit HFA to determine whether Recipient, including its employees, agents, subcontractors, independent contractors, consultants or other parties, if any, are in compliance with this Agreement.

3. Ownership.

Recipient acknowledges and agrees that all right, title and interest in and to the HFA Confidential Information (including all copies, extracts and portions thereof) is and shall remain the sole property of HFA. Recipient does not acquire (by license or otherwise, whether express or implied) any intellectual property rights or other rights under this Agreement or any disclosure or access hereunder, except the limited right to use such HFA Confidential Information in strict accordance with the express provisions of this Agreement. All rights relating to the HFA Confidential Information that are not expressly granted hereunder to Recipient are reserved and retained by HFA.

4. No Warranty; Limitation of Liability.

EXCEPT AS OTHERWISE MAY BE EXPRESSLY SET FORTH IN THE LICENSE AGREEMENT WITH RESPECT TO LICENSEE, HFA MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE HFA CONFIDENTIAL INFORMATION OR ANY USE THEREOF, AND THE HFA CONFIDENTIAL INFORMATION IS PROVIDED ON AN "AS IS" BASIS. EXCEPT AS OTHERWISE MAY BE EXPRESSLY SET FORTH IN THE LICENSE AGREEMENT WITH RESPECT TO LICENSEE, HFA HEREBY EXPRESSLY DISCLAIMS ALL SUCH WARRANTIES, INCLUDING, BUT NOT LIMITED TO, CORRECTNESS, COMPLETENESS, CURRENTNESS, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE HFA CONFIDENTIAL INFORMATION OR OF THE MEDIA ON WHICH THE DATA IS PROVIDED AND SHALL NOT BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR CAUSED, IN WHOLE OR IN PART, BY HFA'S NEGLIGENT ACTS OR OMISSIONS IN PROCURING, COMPILING, COLLECTING, INTERPRETING, REPORTING, COMMUNICATING OR DELIVERING THE HFA CONFIDENTIAL INFORMATION OR IN OTHERWISE PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT, EVEN IF HFA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

5. Term; Termination.

This Agreement will continue for the term of the License Agreement (including any agreed extensions thereof) (the "Term"), unless otherwise terminated by HFA in accordance herewith. HFA may terminate this Agreement at any time upon written notice. Upon termination of this Agreement, HFA shall have no further obligations to disclose to Recipient or permit Recipient to access any HFA Confidential Information, but each party's rights and obligations shall otherwise survive the termination or expiration of this Agreement.

6. Purging of HFA Confidential Information.

Promptly following any expiration or termination of this Agreement, Recipient shall purge and destroy any and all records and copies of HFA Confidential Information from any Recipient databases and other systems under Recipient's direct or indirect control, and any other media on which any HFA Confidential Information may have been provided, together with all copies thereof, whether in printed or machine readable form; provided, however, that Recipient may retain any records and copies of HFA Confidential Information solely to the extent and for the period necessary to permit Licensee to fulfill any further obligations under the License Agreement, including without limitation, Licensee's accounting and royalty and security compliance obligations under Sections 2 and 6

of the License Agreement, after which period such records and copies shall be purged and destroyed as described in this Section 6. Notwithstanding the foregoing, Recipient is not required to purge and destroy any HFA Confidential Information to the extent such HFA Confidential Information was independently derived or acquired from a party not subject to a duty of confidentiality to HFA.

7. Assistance of Counsel.

Each party hereto acknowledges that it has been afforded the opportunity to be represented by its own independent counsel for purposes of reviewing this Agreement and discussing its terms prior to execution.

8. Specific Performance.

Recipient acknowledges that a breach of Recipient's obligations in Sections 2 and 6 of this Agreement may result in irreparable harm, the extent of which it would be difficult to ascertain, and therefore agrees that HFA shall be entitled to seek immediate injunctive relief to enforce any such obligation in addition to any other legal remedy to which HFA might be entitled.

9. Miscellaneous.

This Agreement (combined with the License Agreement, if the Recipient is the Licensee) constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior or contemporaneous representations, discussions, proposals, negotiations, conditions, communications and agreements, whether oral or written, between the parties relating to the subject matter hereof. No amendment, modification or waiver of any provision of this Agreement shall be effective unless in writing and signed by duly authorized signatories of both parties. The waiver by either party of a breach of or a default under any provision of this Agreement shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without reference to its conflicts of laws provisions. This Agreement and the rights and obligations hereunder may not be assigned or delegated by Recipient, in whole or part, whether voluntarily, by operation of law, change of control or otherwise, without the prior written consent of HFA. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be invalid or unenforceable, the remaining portions hereof shall remain in full force and effect and such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed to the extent necessary to make such provision valid and enforceable. The parties are independent contractors, and neither party shall have any authority of any kind to bind the other party in any respect whatsoever.

The parties have executed this Data Access and Use Agreement as of the date first above written:

THE HARRY FOX AGENCY, INC.

By: _____

Name: Joe Charlesworth

Title: SVP & general counsel

Redacted

EXHIBIT CO 0024

MASTERTONE AND RINGBACK SERVICE LICENSING AGREEMENT

This agreement ("Agreement") is entered into as of September 13, 2005 ("Effective Date") by and between ("Licensee"), a Delaware corporation with an office at Redacted , and The Harry Fox Agency, Inc. ("HFA"), a New York corporation with an office at 711 Third Avenue, New York, NY 10017.

WHEREAS, Licensee desires to exploit, via one or more Services (as below defined) excerpts of various master sound recordings, which in turn embody excerpts of copyrighted musical compositions ("Musical Works"), in the form of Mastertones (as below defined) and Ringbacks (as below defined); and

WHEREAS, in connection with the operation of the Services, Licensee seeks licenses to make Server Fixations (as below defined) and to reproduce and distribute Mastertones and to reproduce and transmit Ringbacks embodying Musical Works that are owned and/or controlled by publisher-principals affiliated with HFA ("Publisher-Principals"); and

WHEREAS, HFA is prepared to issue such licenses to the extent it is authorized to do so by such Publisher-Principals;

NOW, THEREFORE, in consideration of the promises contained in this Agreement and for other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Licensing

1.1 Pursuant to the terms of this Agreement, and as more particularly described herein, upon receipt of appropriate license requests ("License Requests") from Licensee, HFA shall, to the extent authorized by particular Publisher-Principals, issue on behalf of such Publisher-Principals nonexclusive licenses ("Licenses") to reproduce and distribute Mastertones and to reproduce and transmit Ringbacks embodying Musical Works owned and/or controlled by such Publisher-Principals ("Licensed Works") for use on the Services in accordance with the terms of this Agreement. The license authority contemplated hereunder and granted pursuant to any License issued hereunder shall include and is limited to: (a) the digital encoding and distribution by Licensee (or by a third-party encoding entity authorized by and acting on behalf of Licensee ("Authorized Encoder")) of Mastertones and Ringbacks embodying Licensed Works for reproduction by Licensee or a Third-Party Provider (as below defined) on a central computer server or servers owned and/or controlled by Licensee or such Third-Party Provider and located in the United States (including its territories and possessions and the Commonwealth of Puerto Rico (collectively, the "United States")) ("Servers"), solely for use in connection with the Services ("Server Fixations"); (b) the transmission of

Mastertones embodying Licensed Works from such Servers for storage on Covered Mastertone Devices (as below defined), solely for use in connection with the Services; (c) the transmission of Ringbacks for playback through Covered Ringback Devices (as below defined), solely for use in connection with the Services; (d) the reproduction of Mastertones embodying Licensed Works on Covered Mastertone Devices, solely for use in connection with the Services (each such reproduction, a "**Mastertone Delivery**"); and (e) the offering of Promotional Mastertones (as below defined) and Promotional Ringbacks (as below defined) of Licensed Works, solely for use in connection with the Services. The license authority under any License issued hereunder is limited to and granted solely with respect to (x) the share of the copyright owned or controlled by the individual Participating Publisher-Principal(s) (as below defined) on whose behalf the License is issued by HFA; and (y) the particular individual sound recording of the individual Licensed Work from which the excerpt embodied in the Mastertone or Ringback was derived.

1.2 The authority of HFA to issue Licenses for any individual Musical Work on behalf of any one or more Publisher-Principals is subject to the approval of the relevant Publisher-Principal(s). Before commencing to issue licenses hereunder, HFA shall for a period of time (the "**Opt-In Period**") offer to its Publisher-Principals the opportunity to agree to make their Musical Works available for licensing under this Agreement by notifying HFA of their desire to opt in to the Agreement. Notwithstanding the decision to opt in by any individual Publisher-Principal, thereby rendering such Publisher-Principal a "**Participating Publisher-Principal,**" if such Participating Publisher-Principal at any time requests that HFA not issue Licenses on its behalf (either with respect to a particular Musical Work or in general), HFA will honor that request; provided, however, that any Licenses validly issued by HFA prior to the receipt of such a request shall remain in effect until the Term (as below defined) of this Agreement expires. Notwithstanding the foregoing, if at any time HFA notifies Licensee in writing that, due to a valid, material legal or contractual concern, a particular License is to be revoked or terminated and the subject Licensed Work removed from the Services, Licensee will respond promptly by arranging to have such work removed from each Service with no further reproduction, distribution or transmission thereof, within seven (7) business days of Licensee's receipt of such notice.

1.3 Following execution of this Agreement and conclusion of the applicable Opt-In Period, Licensee may begin submitting License Requests in electronic form in accordance with the format specified in Exhibit A (as such format may be modified from time to time by HFA upon reasonable notice to Licensee, subject to Licensee's ability reasonably to comply with any such modifications) ("**Request Format**"), which License Requests shall be duly processed by HFA. Without limitation, Licensee shall include in each License Request to the extent required by the Request Format (a) the title of the Musical Work for which a License is being requested; (b) the writer(s) of the Musical Work to the extent available (but in any event at least one writer); (c)

the publisher(s) of the Musical Work; (d) whether the License sought is for a Mastertone, Ringback or both; (e) the name of the record company that produced the sound recording embodied in the Mastertone and/or Ringback; (f) the name of the artist performing such sound recording; (g) the ISRC number for such sound recording; (h) the total playing time of such sound recording in its complete form, expressed in minutes and seconds; (i) the title of an album for which such sound recording has been previously licensed, if applicable; and (j) such other information as may be required by HFA's Request Format.

1.4 HFA shall from time to time provide to Licensee an electronic file specifying the Licenses issued under this Agreement (each such report a "**Confirmation Report**"). To aid Licensee in the calculation of royalties, with respect to each License, such Confirmation Report shall include, *inter alia*, the total percentage ownership share of the Participating Publisher-Principal(s) on whose behalf the License has been issued.

1.5 For the avoidance of doubt, and without limitation, the Licenses granted hereunder do not extend to or cover: (a) any right of public performance; (b) any copyrights or other rights in sound recordings; (c) any rights to synchronize musical works with visual images resulting in audiovisual works; (d) any print, display or karaoke rights; (e) any adaptation (derivative work) rights or right to alter the fundamental character of a Musical Work (except to reproduce and distribute Mastertones or Ringbacks, in strict accordance with the terms and conditions of this Agreement); (f) any merchandising rights; (g) any use of a musical work (whether or not embodied in a sound recording) for a marketing campaign, product tie-in, game or contest or otherwise to advertise, promote or cross-promote any product or service (other than the sound recording embodying the Licensed Work itself); or (h) any use of the title of a musical work, or the name or likeness of any writer or publisher of a musical work, except for identification purposes as described in Section 4 or in an "intro" or "outro" as described in Section 10.

1.6 The license authority contemplated by this Agreement and granted pursuant to any License issued hereunder is limited to Licensee and may not be sublicensed, assigned or otherwise transferred by Licensee except to the extent expressly permitted hereunder.

2. Reporting and Payment of Royalties

2.1 Licensee shall account and pay royalties to HFA quarterly, within forty-five (45) days after the end of each calendar quarter, on the basis of (a) each Mastertone Delivery and each Ringback Sale (as below defined) reported to Licensee during such calendar quarter. Licensee shall provide its quarterly statements ("**Statements**") in electronic form in accordance with the format specified in Exhibit B (as such format may be modified from time to time by

HFA upon reasonable notice to Licensee, subject to Licensee's ability reasonably to comply with any such modifications) ("**Reporting Format**"). With respect to each quarterly reporting period, for each License, Licensee shall include in its Statement(s) the HFA License number; (t) the total number of Mastertone Deliveries; (u) the total number of Ringback Sales; (v) a breakdown of the Mastertone Deliveries by the particular provider(s) (i.e., Licensee or the specific Third-Party Provider) through which they were made (which breakdown may be provided in a separate electronic file, as set forth in Exhibit B); (w) a breakdown of the Ringback Sales by the particular provider(s) through which they were made (which breakdown may be provided in a separate electronic file, as set forth in Exhibit B); (x) the total royalty amount being paid for the Mastertone Deliveries; (y) the total royalty amount being paid for the Ringback Sales; and (z) such other information as may be required by HFA's Reporting Format. HFA reserves the right to seek interest on late payments in accordance with its customary practices.

2.2 For each Mastertone Delivery and each Ringback Sale, the royalty shall be equal to

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In each case above, the royalty amount payable shall be proportionately reduced to the extent that the Participating Publisher-Principal(s) on whose behalf the License is granted own(s) or control(s) less than 100% of the Work.

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3. **Term**

The term of this Agreement shall commence as of the Effective Date and terminate on December 31, 2006 (the "Term"). If Licensee wishes to renew this Agreement for an additional two (2) year term, it shall notify HFA of such desire not later than a date six (6) months prior to the end of the Term. Such notification shall include proposed terms for any such renewal. Any renewal shall be subject to the approval of individual Publisher-Principals as described in Subsection 1.2, and HFA reserves the right to propose changes to administrative and other aspects of the Agreement as it deems appropriate.

4. **Writer/Publisher Credit**

Licensee shall, to the extent commercially reasonable, include in any graphics and/or imagery displayed in connection with the marketing of any Mastertone or Ringback of a Licensed Work written credit in legible form setting forth the names of the writer(s) and publisher(s) of such Licensed Work.

5. Security

5.1 In connection with the use of any Licensed Work, Licensee shall use reasonable commercial efforts to implement and maintain copy protection and digital rights management technology and systems, including software and/or hardware functional limitations consistent with standard industry practices then in effect for the applicable media (collectively, "**Security Systems**") with respect to all aspects of the Services under its supervision and/or control, including without limitation its Servers and operating systems, that, within current industry standards, (a) are designed to prevent unauthorized reproduction and distribution of the Licensed Work, in the form of Mastertones, Ringbacks or otherwise; (b) are sufficient to track and enforce the use limitations contemplated by this Agreement; and (c) meet or exceed current industry standards as they exist from time to time for the licensed delivery of music via digital transmission and its reproduction on devices including, without limitation, Covered Mastertone Devices and Covered Ringback Devices.

5.2 To the extent Licensee employs third-party technology in order to operate, Licensee shall use its commercially reasonable efforts to maintain and upgrade such technology by (a) diligently monitoring any third-party notifications of bug-fixes, security holes and functionality improvements; and (b) obtaining any available upgrades and bug-fixes, and installing, testing and distributing such upgrades and bug-fixes as necessary so as to maintain the integrity of its Security Systems.

5.3 Licensee shall use commercially reasonable efforts to prevent any unauthorized reproduction, distribution and/or transmission of Musical Works by Third-Party Providers, Authorized Encoders, users of the Services or others, including, without limitation, efforts to require all Third-Party Providers and Authorized Encoders to implement and maintain Security Systems consistent with the standards set forth in Subsections 5.1 and 5.2 above.

5.4 In the event it becomes aware of a material breach of its own, a Third-Party Provider's or an Authorized Encoder's Security Systems or of another material security concern relating to the Services ("**Security Breach**"), whether through its own monitoring efforts, upon being advised by another party (including HFA) or otherwise, Licensee shall use commercially reasonable efforts to, or to cause the applicable third party to, resolve the Security Breach so that Licensee's and/or the applicable third party's security is restored to full integrity as quickly as possible.

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and (b) cease and/or, with respect to a third party, require the cessation of, all further reproduction, distribution and/or transmission of Licensed Works to the extent such activities are or could possibly be affected by the Security Breach, pending full resolution of the Security Breach. In such a case, Licensee (x) shall keep HFA reasonably apprised of the status of its efforts to resolve the Security Breach; and (y) shall not resume or permit the resumption of the activities that were suspended pursuant to this Subsection 5.4 until full security has been restored. In the event of a Security Breach by a Third-Party Provider or Authorized Encoder that cannot be resolved in accordance with the terms of this Subsection 5.4, it is understood and agreed that Licensee will not be in breach of this Agreement if it promptly terminates all license and/or other authority Licensee has provided to such third party to reproduce, distribute and/or transmit Licensed Works and uses its reasonable best commercial efforts to ensure that such third party in fact ceases to engage in such activities if it has not done so already.

6. **Royalty and Security Compliance**

6.1 Notwithstanding any other right of HFA and/or any Participating Publisher-Principal to examine the books and records of Licensee in connection with Licensee's use of Musical Works, HFA shall be entitled, upon thirty (30) days' notice to Licensee, to conduct an examination of the books, records, operations and Security Systems of Licensee ("**Royalty and Security Examination**") to determine whether Licensee is in compliance with its reporting, royalty and security obligations under this Agreement. HFA shall not seek to initiate a Royalty and Security Examination more than once every twelve (12) months or more than three (3) years following the termination of this Agreement, and no such royalty examination may be conducted with respect to a particular royalty reporting period more than one time.

6.2 During the course of a Royalty and Security Examination, upon request by HFA or an examiner acting on its behalf, Licensee shall, REDACTED (a) provide access to any information that may be called for by such request, including without limitation any (i) books, records, files, logs, reports, compilations, usage data and other documentation (including Licensee's "master schedule" of mastertone and ringback deals and copies of Licensee's agreements with Third-Party Providers), whether in paper or electronic form, that were or could be used or required to generate or verify Licensee's Statements and/or that reflect or summarize Licensees' Statements; (ii) financial information sufficient to reflect cash receipts and general revenue accounts relating directly or indirectly to the activities licensed under this Agreement (which financial information may, without limitation, include books, records, ledgers, reports, and other documentation (including general ledger trial balances for relevant accounts for the relevant periods)); (iii) all relevant Third-Party Provider Documentation (as below defined), whether obtained or generated by Licensee in connection with Third-Party Providers'

regular accountings or in the course of Licensee's examinations of Third-Party Providers; and (iv) files, logs, reports, compilations, testing and monitoring data and other documentation related to and/or reflecting the operation and integrity of Licensee's Security Systems (such information, along with the information described in the items (a)(i) and (a)(iii) of this Subsection 6.2, collectively referred to as "**Documentation**"); and (b) through the assistance of personnel who are familiar with the technical and operational aspects of relevant computer, hardware, software and Security Systems owned by or otherwise under the supervision and control of Licensee (collectively, "**Operational Systems**") who are to be made available by Licensee, provide real-time and/or historical access to such Operational Systems, as requested, sufficient to permit HFA or its examiner(s) to conduct meaningful tests and analysis to verify that (i) the Operational Systems are properly and accurately tracking and reporting the use of the Licensed Works, and royalties payable therefor, as contemplated by the terms of this Agreement; and (ii) the Operational Systems are in compliance with the security requirements set forth in Section 5 of this Agreement. Licensee shall provide the information, systems access and personnel required by this Subsection 6.2 free of charge and, unless otherwise agreed by HFA or its examiner(s), at Licensee's place of business.

6.3 During the course of and/or following completion of the Royalty and Security Examination, upon reasonable request by HFA or an examiner acting on its behalf, Licensee shall make available company personnel at an appropriate level of seniority and/or technical ability to discuss and/or resolve particular issues and findings arising out of such examination.

6.4 Licensee shall maintain any and all Documentation that reasonably might be expected to be relevant to HFA's conduct of a Royalty and Security Examination for a period of at least three (3) years following the expiration or termination of this Agreement, unless there is a Royalty and Security Examination in progress or not fully resolved as of the expiration of such period, in which case the Documentation shall be maintained until the Royalty and Security Examination is fully resolved to the satisfaction of HFA.

6.5 If a royalty examination reveals a nonpayment or underpayment of royalties due to HFA, HFA may seek interest from Licensee in accordance with its customary practices.

6.6 In addition to and without limiting any of the above terms applicable to Licensee respecting Royalty and Security Compliance, HFA shall have the additional right to participate with Licensee in any royalty compliance examinations (audits) by Licensee of Third-Party Providers, the scope of which, without limitation, shall fulfill as nearly as possible the requirements of a Royalty and Security Examination as described above, as follows:

(a) With respect to each Third-Party Provider, Licensee shall use commercially reasonable efforts to secure in its licensing agreement(s) with such Third-Party Provider relating to the Services the right for HFA to conduct, together with Licensee, a direct examination of such Third-Party Provider ("**Joint Direct Examination**"), as more particularly described below. Regardless of whether Licensee succeeds in securing a Joint Direct Examination right for HFA, HFA may choose, in its sole discretion, either to participate indirectly in any examination of a Third-Party Provider conducted by Licensee at the time of Licensee's examination ("**Indirect Examination**"), as more particularly described below, or simply to review Third-Party Provider Documentation in the course of HFA's regular Royalty and Security Examination of Licensee, as more particularly described above.

(b) With respect to any Third-Party Provider Licensee intends to examine, prior to notifying such Third-Party Provider of the examination, Licensee shall provide HFA with REDACTED written notice of its intent to conduct, and a proposed schedule for, the examination. If HFA seeks to conduct either a Joint Direct Examination (if permitted) or an Indirect Examination of such Third-Party Provider, it shall so notify Licensee in writing within ten (10) days of its receipt of the aforementioned notice. Provided that HFA has been properly notified by Licensee of an intended examination under this clause (b), HFA's failure to exercise its option to participate in either a Joint Direct Examination (if applicable) or Indirect Examination of the relevant Third-Party Provider for the examination period at issue shall constitute a waiver of HFA's right to participate in either a Joint Direct Examination or Indirect Examination of such Third-Party Provider for such period; provided, however, that HFA will remain entitled to its share of any recovery from such Third-Party Provider as per clause (e) below and further provided that HFA may still exercise its right to examine Third-Party Provider Documentation relating to such Third-Party Provider in the course of a Royalty and Security Examination of Licensee pursuant to Subsection 6.2.

(c) In the case of a Joint Direct Examination, Licensee and HFA shall cooperate in good faith concerning the choice of an examiner and the scheduling and particulars of the examination, shall mutually agree upon and jointly assert any claim against the Third-Party Provider, and shall jointly negotiate the settlement of such Joint Direct Examination with the Third-Party Provider. If, acting in good faith, either HFA or Licensee determines in its sole discretion that such a negotiated settlement with the Third-Party Provider is not achievable, notwithstanding and in addition to any other rights or remedies HFA or Licensee may have under this Agreement or otherwise, either party may give the other written notice of its intent to discontinue

negotiations and, if applicable, to take legal action against such Third-Party Provider.

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(d) In the case of an Indirect Examination, Licensee shall, while conducting the underlying examination, make available to HFA as it is obtained all documentation provided to Licensee by the Third-Party Provider relevant to the examination period, as well as all extrapolations, charts, summaries, claims, settlement documents and other materials generated by Licensee and/or the Third-Party Provider in connection with the examination of such Third-Party Provider ("**Third-Party Provider Documentation**"), and HFA shall be entitled reasonably to approve and participate in any claim asserted by Licensee against the Third-Party Provider. Licensee's settlement of such examination with the Third-Party Provider shall be subject to HFA's approval, such approval not to be unreasonably withheld. If, acting in good faith, either HFA or Licensee determines in its sole discretion that a mutually agreeable negotiated settlement with the Third-Party Provider is not achievable, notwithstanding and in addition to any other rights or remedies HFA or Licensee may have under this Agreement or otherwise, either party may give the other written notice of its intent to discontinue negotiations and, if applicable, to take legal action against the Third-Party Provider. HFA and Licensee shall each bear its own costs in connection with such an Indirect HFA Examination.

(e) In the case where Licensee conducts an examination of a Third-Party Provider, regardless of whether such examination is conducted with or without the direct or indirect participation of HFA, Licensee shall within ten (10) days upon receiving any settlement proceeds from such Third-Party Provider pay to HFA HFA's share of any royalty and interest amounts due HFA from such settlement proceeds based upon the usage of Licensed Works and periods covered by the settlement, accompanied by appropriate supporting documentation setting forth the basis for such payment, the reporting periods at issue and sufficient additional detail to allow HFA to apportion and distribute the payment among affected Participating Publisher-Principals in accordance with HFA's customary practices.

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REDACTED

Before requesting Licensee to conduct an examination, HFA shall consult with Licensee to obtain, and Licensee shall provide to HFA, information and impressions about the Third-Party Provider relevant to the determination as to whether an examination would be productive and will, in good faith, consider such information and impressions in considering whether to require Licensee to undertake an examination; provided, however, that HFA's obligation to consult with Licensee shall in no way vitiate its right to request that such an examination be conducted.

(g) The fact that HFA may examine Third-Party Providers either directly or indirectly hereunder shall in no way affect Licensee's obligations to report and pay all royalties due under the terms of this Agreement, for which Licensee assumes full responsibility, regardless of the conduct or default of any Third-Party Provider; provided, however, that in exercising any examination rights under this Agreement, HFA shall not seek to recover more than once (i.e., from both Licensee and a Third-Party Provider) for the same royalty liability. HFA reserves the right to take independent legal action against any Third-Party Provider, subject to HFA's provision of prior written notice to Licensee as required by the above clauses (c) and (d) above or where such legal action otherwise concerns activities that are the subject of this Agreement.

6.7 HFA acknowledges the confidential nature of the Documentation that Licensee will be providing HFA and its examiners in connection with a Royalty and Security Examination hereunder. HFA agrees that, except as authorized in writing by Licensee, (i) it will not disclose to anyone other than HFA's officers and employees (including the NMPA/HFA board of directors), legal counsel, financial advisors and HFA-affiliated publishers (collectively, "HFA Parties") any such Documentation, and (ii) any such disclosure made to an HFA Party shall be limited to information that relates to the purpose of providing information concerning whether, and/or ensuring that, Licensee is accounting to HFA on an accurate and timely basis hereunder. Notwithstanding the foregoing, HFA may disclose such information (a) as required under any statute, regulation, order, subpoena or document discovery request, provided that prior written notice of such disclosure is furnished to Licensee as soon as practicable in order to afford Licensee an opportunity to seek (at its own expense) a protective order, or (b) as required in the context of a legal action or proceeding relating to the enforcement of HFA's or an

HFA-affiliated publisher's rights hereunder. In connection with HFA's examination of Licensee or a Third-Party Provider under this Agreement, an examiner acting on behalf of HFA shall, if so requested by Licensee and/or such Third-Party Provider, execute a nondisclosure agreement substantially in the form of Exhibit C. If in exercising its rights under this Agreement HFA should share information of a confidential nature with Licensee, Licensee agrees that, except as authorized by HFA in writing, it will not disclose to anyone other than to Licensee's officers and employees, legal counsel and financial advisors, any such information, except (a) as required under any statute, regulation, order, subpoena or document discovery request, provided that prior written notice of such disclosure is furnished to HFA as soon as practicable in order to afford HFA an opportunity to seek (at its own expense) a protective order, or (b) as required in the context of a legal action or proceeding relating to the enforcement of Licensee's rights hereunder.

7. Representations and Warranties

Licensee represents and warrants that: (a) it has the full right, power and authority to enter into and perform this Agreement in accordance with its terms and conditions; (b) it shall take all steps necessary to implement and shall comply with (i) its security obligations set forth in Section 5, and (ii) the requirements set forth in Section 9; and (c) in connection with Licensee's exercise of the rights being granted to Licensee hereunder, Licensee shall (i) neither infringe upon nor violate the intellectual property rights or other rights of any third party, and (ii) comply with all applicable laws, rules and regulations.

REDACTED

Licensed Works on such Service; provided, however, that HFA may not request Licensee, and Licensee shall not be required to, terminate License authority with respect to all Licensed Works on the infringing Third-Party Provider's Service hereunder unless and until HFA has first cooperated with Licensee in good faith to attempt to arrive at an alternative means of resolving the matter with the applicable Third-Party Provider satisfactory to HFA that is less disruptive to Licensee's distribution relationship with such Third-Party Provider.

7.2 HFA represents and warrants that it has the full right, power and authority to enter into this Agreement and perform its obligations hereunder.

8. **Termination/Default**

8.1 All license authority pursuant to Licenses issued hereunder shall terminate upon the expiration or termination of this Agreement (unless such Licenses are renewed pursuant to a renewal of this Agreement as contemplated under Section 3, in which case the terms of renewal shall apply as appropriate), and any further transmission and/or reproduction of any Licensed Work after the expiration or termination of this Agreement shall be prohibited and actionable as an act of infringement under, and fully subject to the remedies provided by, the Copyright Act. Notwithstanding the foregoing, with respect to the Licenses issued hereunder, provided that the Agreement has not been terminated due to Licensee's breach or default, (a) any Server Fixations of Mastertones embodying Licensed Works existing on Servers and/or Mastertone Deliveries embodying Licensed Works existing on Covered Mastertone Devices as of the expiration of the Agreement may remain on such Servers and Covered Mastertone Devices unless Licensee's agreement with a Third-Party Provider requires such Third-Party Provider to delete or destroy Server Fixations of Mastertones, in which case Licensee shall use reasonable best commercial efforts to cause such Third-Party Provider to so destroy all Server Fixations of Mastertones embodying Licensed Works; provided, however, that upon expiration of the Agreement, such existing Server Fixations of Mastertones and Mastertone Deliveries may not be further reproduced, distributed or transmitted other than in cases of Reinstalls or to fulfill purchases made prior to expiration, except that such existing Mastertone Deliveries may continue to be used for playback on the Covered Mastertone Devices on which they exist; and (b) any Server Fixations of Ringbacks of Licensed Works existing on Servers as of the expiration of the Agreement may remain on such Servers as set forth herein; provided, however, that upon expiration of the Agreement, such existing Server Fixations of Ringbacks may not be further reproduced, distributed or transmitted, except that, solely to fulfill the terms of any Ringback Sales made to consumers prior to the expiration of the Agreement, such existing Server Fixations of Ringbacks may continue to be transmitted to Covered Ringback Devices for a period not to exceed twelve (12) months after the date of

expiration of the Agreement and except that, if Licensee's agreement with the applicable Third-Party Provider requires such Third-Party Provider to destroy Server Fixations of Ringbacks, Licensee shall use reasonable best commercial efforts to cause such Third-Party Provider to destroy all Server Fixations of Ringbacks embodying Licensed Works as required by Licensee's agreement.

8.2 Notwithstanding, without limiting and in addition to any other remedy that may be available at law or in equity and/or under this Agreement, Licensee understands and agrees that in the event that (a) Licensee fails to account to HFA and pay royalties provided for in Section 2, HFA may provide written notice to Licensee that, unless the default is fully remedied within thirty (30) days from the date of the notice, this Agreement and any Licenses issued hereunder will be automatically terminated, and that such termination will render the further transmission and/or reproduction of any Licensed Work for which royalties have not been fully paid actionable as an act of infringement under Section 501 of the Copyright Act, and fully subject to the remedies provided by Sections 502 through 506 and 509 of the Copyright Act; (b) Licensee is in material breach or default of any of its obligations under this Agreement, HFA may provide written notice to Licensee that, unless the default is fully remedied within thirty (30) days from the date of the notice, this Agreement and any Licenses issued hereunder will be automatically terminated, and that such termination will render the further transmission and/or reproduction of any Licensed Work actionable as an act of infringement under Section 501 of the Copyright Act, and fully subject to the remedies provided by Sections 502 through 506 and 509 the Copyright Act. Licensee further understands and agrees that in the case of infringement, irreparable harm may be presumed, and HFA and/or any affected Publisher-Principal(s) shall be entitled to seek appropriate to injunctive relief, in addition to any other remedy that may be available at law or in equity and/or under this Agreement. For the avoidance of doubt, and without limitation, Licensee's breach of any of the obligations or restrictions imposed by Subsections 1.1, 1.5, 1.6 and 11.4 and Sections 2, 5, 6, 7, 9 of this Agreement shall be considered a material breach of, and default under, this Agreement.

8.3 To the extent permitted by applicable law, and without limitation, the occurrence of any of the following events shall also be considered a material breach of and default under this Agreement: (a) Licensee's dissolution and/or the liquidation of all of Licensee's assets; (b) the filing of a petition in bankruptcy or insolvency or for an arrangement or reorganization by, for or against Licensee; (c) the appointment of a receiver or trustee for all or a portion of Licensee's assets; (d) Licensee's assignment of assets for the benefit of creditors; (e) Licensee's insolvency; or (f) Licensee's inability to pay its debts as they become due. Upon the occurrence of any of the events described in items (a) through (f) of this Subsection 8.3, notwithstanding, without limiting and in addition to any other remedy that may be available at law or in equity and/or under this Agreement, this Agreement and all license

authority pursuant to any Licenses granted hereunder shall terminate automatically without the requirement of any further action on the part of HFA or the Participating Publisher-Principals.

8.4 Notwithstanding, without limiting and in addition to any other remedy that may be available at law or in equity and/or under this Agreement, including without limitation the remedies set forth in Subsection 8.2, the material breach of a material obligation set forth in Section 5 shall entitle HFA and/or any relevant Publisher-Principal to specific performance of such provision and/or to terminate, effective immediately upon the giving of notice, the license authority pursuant to any License granted hereunder.

8.5 Notwithstanding the expiration or termination of this Agreement, Sections 2, 4, 5, 6, 7, 8, 9, 10 and 11 shall to the extent applicable survive and continue to bind the parties and their legal representatives and successors.

9. **Proprietary and Confidential Information**

9.1 To the extent, if any, Licensee seeks to have a third-party individual or entity obtain access to HFA Confidential Information (as defined in the "Data Access and Use Agreement" attached hereto and incorporated herein as Exhibit D) in connection with any of the activities authorized under this Agreement (each, a "Third-Party Administrator"), Licensee must obtain HFA's prior consent of each such Third-Party Administrator (such consent not to be unreasonably withheld). Upon HFA's consent to Licensee's use of such Third-Party Administrator, HFA will require that such Third-Party Administrator enter into a data access and use agreement with HFA substantially in the form of the Data Access and Use Agreement, prior to allowing such Third-Party Administrator access to any HFA Confidential Information.

10. **Definitions**

For purposes of this Agreement:

A "Covered Mastertone Device" is a mobile telephone, pager or other portable communications device with a telephonic or messaging function that operates on a wireless communications network regulated by the U.S. Federal Communications Commission pursuant to its rules governing commercial mobile radio services.

A "Covered Ringback Device" is a mobile telephone, telephone, pager or other communications device with a telephonic or messaging function that operates on a wireless or wireline communications network regulated by the U.S. Federal Communications Commission.

REDACTED

A "Mastertone" is an excerpt, REDACTED of a musical composition that is embodied in a digital file representing an excerpt REDACTED of a particular master sound recording of the composition that is intended to be transmitted to and stored in an individual consumer's Covered Mastertone Device and played by such intended destination Covered Mastertone Device whenever the Covered Mastertone Device activates its ringing or alert function indicating the arrival of a call, message or other notification received by the Covered Mastertone Device, and is designed to be played by such Covered Mastertone Device without any other distribution or transmission. A Mastertone may, together with the excerpt of the master sound recording, also include a spoken word "intro" and/or "outro" (for example, a pre-recorded message by the artist performing the master sound recording), provided that the nature and content of any such "intro" or "outro" is consistent with the limitations imposed by Subsection 1.5. For the avoidance of doubt, the term "Mastertone" does not include a monophonic or polyphonic ringtone.

A "Ringback" is an excerpt, REDACTED of a musical composition that is embodied in a digital file representing an excerpt of no more than forty-five (45) seconds of a particular master sound recording of the composition that is intended to be transmitted to, but not stored in, a calling party's Covered Ringback Device and played back through such intended Covered Ringback Device such that it is heard by the calling party only during the period of time between the calling party's connection with a consumer's telecommunications network following initiation of a call or other communication to such consumer and, as applicable, either the acceptance of the call or communication by a person or telecommunications device or system (including, without limitation, voicemail or a call routing, call queue or hold system), or the termination of the call or communication by the calling party before it is accepted. A Ringback may, together with the excerpt of the master sound recording (i) include a spoken word "intro" and/or "outro" (for example, a pre-recorded message by the artist performing the master sound recording), provided that the nature and content of any such "intro" or "outro" is consistent with the limitations imposed by Subsection 1.5; (ii) include a spoken word message by the consumer in the form of an "intro" or "outro" (such as a greeting message identifying the consumer); and/or (iii) be accompanied by nonmelodic tones or other sounds indicating to the calling party that the consumer is being contacted (i.e., simulating the sounds of a ringing telephone in the background) that do not otherwise alter the rendition of the applicable sound recording.

A "**Covered Mastertone Device**" is a mobile telephone, pager or other portable communications device with a telephonic or messaging function that operates on a wireless communications network regulated by the U.S. Federal Communications Commission pursuant to its rules governing commercial mobile radio services.

A "**Promotional Mastertone**" is a digital transmission of a Mastertone in streamed form made available to a prospective purchaser free of charge and solely for the purpose of promoting the sale of the Mastertone, and that does not result in a reproduction of any part or all of the Mastertone that is accessible except by such prospective purchaser for an intended one-time promotional playback through the operation of a Covered Mastertone Device or other device.

A "**Promotional Ringback**" is a digital transmission of a Ringback in streamed form made available to a prospective purchaser free of charge and solely for the purpose of promoting the sale of the Ringback, and that does not result in a reproduction of any part or all of the Ringback that is accessible except by such prospective purchaser for an intended one-time promotional playback through the operation of a Covered Ringback Device or other device.

A "**Reinstall**" is the gratis distribution of a particular Mastertone selection to a consumer who has previously purchased the same Mastertone selection as an accommodation to such consumer in the event that such consumer loses or upgrades his or her Covered Mastertone Device or otherwise loses access to the previously purchased file embodying the Mastertone.

A "**Ringback Sale**" is the purchase by an individual consumer of the ability to have a particular individual Ringback selection transmitted to and played back through the Covered Ringback Device(s) of one or more calling parties who initiate calls or other communications to such consumer; provided, however, that any repurchase, renewal or other transaction requiring additional consideration to be paid by such consumer to Licensee or the Third-Party Provider to permit continuation of the playback of such Ringback selection to the consumer's callers shall constitute an additional Ringback Sale. For the avoidance of doubt, provided that such consideration is in no way payable to or to be shared with Licensee, the ongoing, recurring payment of consideration by a consumer to a Third-Party Provider for the ability to have ringback service generally as part of such consumer's telecommunications package (as opposed to a particular Ringback selection) shall not constitute an additional Ringback Sale.

A "**Service**" is a service owned and operated by Licensee or a Third-Party Provider that offers individual consumers the ability to access and purchase (a) Mastertones embodying excerpts of various master sound recordings now or later owned or controlled by, or licensed to, Licensee or its affiliated record

labels, in turn embodying excerpts of Musical Works, which Mastertones are digitally encoded and reproduced on Servers and transmitted from such Servers and downloaded to Covered Mastertone Devices; and (b) Ringbacks embodying excerpts of various master sound recordings now or later owned or controlled by, or licensed to, Licensee or its affiliated record labels, in turn embodying excerpts of Musical Works, which are digitally encoded and reproduced on Servers and transmitted from such Servers (but not downloaded) to Covered Ringback Devices.

A "Third-Party Provider" is a provider of a Mastertone and/or Ringback Service that is operating under the authority of Licensee consistent with the terms of this Agreement such that Licensee is able to fulfill all of its reporting, payment and other obligations under this Agreement.

11. Miscellaneous

11.1. Administrative Fee. In addition to the royalties payable hereunder, within five (5) business days following execution of this Agreement, Licensee shall pay to HFA an administrative fee of REDACTED in consideration of HFA's administrative expenses in connection with the publisher opt-in and licensing processes contemplated hereunder.

11.2 Notices. All notices hereunder shall be in writing and shall be deemed effective (a) if provided by hand delivery, upon delivery; (b) if provided by overnight courier, one (1) business day following the date sent; and (c) if provided by registered or certified mail, return receipt requested, five (5) business days following the date mailed. Notices shall be sent to the following addresses:

If to HFA:

To the address set forth above. Attn: General Counsel. Fax: 212-922-3299.

If to Licensee: To the address set forth above. Attn: Redacted

11.3 Publicity. Neither party shall issue any press release or other publicity document concerning this Agreement without the prior written consent of the other party.

11.4 Assignment. REDACTED

11.5 Entire Agreement; Amendment. This Agreement represents the entire understanding of the parties with respect to the subject matter hereof, supersedes all prior and contemporaneous agreements and understandings of

the parties with respect to the subject matter hereof, and may not be altered or amended except in a written instrument executed by both parties.

11.6 Reservation of Rights. Subject to the terms of this Agreement, each party reserves all rights it may have or legal positions it may take concerning this Agreement and the matters covered hereunder.

11.7 Governing Law; Jurisdiction. This Agreement shall be governed by, and construed in accordance with, federal law and/or the laws of the State of New York (without giving effect to conflicts of law principles thereof), as may be applicable. With respect to any action or proceeding arising out of this Agreement, the parties (a) agree that the sole and exclusive venue for such action or proceeding shall be in a court of appropriate jurisdiction located in New York County, New York; (2) agree to the appropriateness of, and waive any objection concerning, the propriety and/or convenience of, proceeding in such venue; and (3) consent to the personal jurisdiction of such court.

11.8 Severability; Waiver. If a court should determine that any part of this Agreement is invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect. Performance of any obligation required of a party hereunder may be waived only by a written waiver signed by a duly authorized officer of the other party, which waiver shall be effective only with respect to the specific obligation described therein.

11.9 Headings. The titles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

11.10 Assistance of Counsel. Each party hereto acknowledges that it has been represented by its own independent counsel, who has reviewed this Agreement and discussed the terms herein with his or her respective client prior to execution.

11.11 Counterparts. This Agreement may be executed in multiple counterparts and delivery of an executed counterpart may be made by facsimile, each such counterpart to be considered and accepted as an original, and all such counterparts together to constitute a single Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date:

Redacted

THE HARRY FOX AGENCY, INC.

By: _____
Print name: Gary L. Cunningham
Title: President & CEO

EXHIBIT A

Redacted Mastertone/Ringback Bulk License File Layout

Acceptable Data Format: Tab Delimited Text

	Description	Type	Length	Decimal	Input Option
1	Manufacturer Number	A	6		M
2	Transaction Date	N	8	0	M
3	Manufacturer Request Number	N	8	0	M
4	Mastertone or Ringback Playing Time - Seconds	N	2	0	M
5	Song Title	A	200		M
6	A/K/A Song Title	A	200		O
7	ISWC Code	A	11		O
8	HFA Song Code	A	6		O
9	Song Writer(s)	A	200		M
10	Publisher Name	A	60		M
11	HFA Publisher Number	A	6		*Input/Output*
12	Publisher Share	N	7	4	*Input/Output*
13	Catalog Number *(for matching purposes only)*	A	15		O
14	Configuration Code(s)	A	12		M
15	UPC Code *(for matching purposes only)*	A	16		O
16	License Type	A	1		M
17	Server Fixation Date/Release Date of Mastertone/Ringback	N	8	0	M
18	Rate Code	A	1		M
19	Rate In Cents	N	7	7	O
20	Artist Name	A	60		M
21	Album Title (if available, please provide)	A	200		O
22	Record Label	A	60		M
23	Total Playing Time - Minutes	N	3	0	O
24	Total Playing Time - Seconds	N	2	0	O
25	ISRC Code	A	15		M
26	User Defined	A	30		*Input/Output*
27	HFA License Number	N	10		*Output*
28	HFA License Status Code	A	2		*Input/Output* *^*
29	HFA License Status Code 1	A	2		*Output*
30	HFA License Status Code 2	N	2		*Output*
31	HFA Flag for Amended Publisher Data	A	1		*Output*
32	Publisher Status	A	1		*Output*

KEY: TYPE:
A = Alphanumeric Field N = Numeric Field

LENGTH: For Alphanumeric fields, it is the maximum number of characters required.
For Numeric fields, it is the exact number of characters required.

DECIMAL: Number of characters after decimal (for numeric fields only)

INPUT OPTION:
M = Mandatory O = Optional

^ All input/output fields should be left blank upon initial license submission, EXCEPT for Field 28 which should be populated with the letter R in the input file IF the record is a resubmission that has been amended.

EXHIBIT B

hfa Redacted Mastertone/Ringback Royalty Reporting Layout

FILE HEADER (Control Portion for File Transfer)

Field Name	Field Length	Decimal Places	Field Format	Mandatory Field	Field Definition	Example
Line Count	15	0	Number	Yes	Number of lines of data in file; used as control to verify complete and accurate file recd.	321456

FILE BODY

	Field Name	Field Length	Decimal Places	Field Format	Mandatory Field	Field Definition	Example
1	Manufacturer Number	8		Text	Yes	Account number assigned by HFA to Licensee	M12345
2	Transaction Date	8	0	Number	Yes	Date electronic royalty report submitted to HFA Format: YYYYMMDD	20020304
3	Royalty Reporting Period	6		Text	Yes	Length of period in number of months (left 2 digits), ending month (middle 2 digits), year (right 2 digits)	30602
4	HFA License Number	12		Text	Yes	Number assigned by HFA for each license.	1012345678
5	Configuration Code	2		Text	Yes	Code designating specific configuration licensed: RR - Mastertone (pre-recorded ringtone) To be advised - Ringback Note: Each config must be reported as a separate line.	RR
6	Song Title	30		Text	Yes	Title of work for which a license was granted.	STARRY NIGHT
7	Units (For Period)	9	0	Number	Yes	Applicable number for each specific configuration shown in field #5	12345
8	Publisher Name	30		Text	Yes*	Name of the publisher owning a share of the work.	Famous
9	Publisher Ownership Share Percentage	7	4	Number	Yes*	Percent of song owned by specific publisher, as provided to licensee on license	33.3340
10	Rate Code	1		Text	Yes	Special code indicating royalty rate structure. Codes for this agreement will be advised.	
11	Retail Selling Price	16	4	Number	Conditional (Field #11 or 12 must be completed)	Price paid by consumer for the Mastertone or Ringback.	1.0000
12	Effective Retail Price	16	4	Number	Conditional (Field #11 or 12 must be completed)	A price amount calculated by allocating a portion of the amount paid by the consumer or subscriber for bundled products in accordance with the ratio that the "a la carte" retail prices for each of the individual products bundled together bear to one another.	0.9800
13	Licensee Receipts for Sale	16	4	Number	Yes	Amount received by Licensee attributable to sale of Mastertone or Ringback whether directly tied to a particular sale or other non-transaction specific revenue such as a portion of a monthly subscription fee	0.7500
14	Rate Factor	5	4	Number	Yes	Note: if floor indication flag is invoked, read rate factor as a penny rate. If floor indication not made, read as a percentage. Codes for this agreement will be advised.	0.1300
15	Royalty Rate Equivalent	5	4	Number	Yes	The royalty amount applicable in accordance with agreement calculations.	0.1300
16	Net Royalty Amount	11	4	Number	Yes	The royalty amount payable to HFA for its represented shares.	0.0900
17	Floor Indication Flag	1		Text	Yes	If a royalty calculation floor was invoked, indicate with a Y.	Y
18	REDACTED	1		Text	Yes	If distribution was made by [redacted] (and not a third-party), indicate with a Y.	Y
19	Service (ie: Third Party)	30		Text	Yes **	Third-party through which distribution of Mastertone or Ringback was made.	Site.com
20	Calculation Method	8	0	Number	Optional	Indicate the calculation method was used to determine royalty rate equivalent. Codes for this agreement will be advised.	
21	Agreement Code	3		Text	Yes	HFA Internal code for this specific deal. Code for this agreement will be advised.	

Note: Any characters or digits exceeding these per field maximums will be truncated.

** A separate publisher share % line with corresponding publisher name must be given for each if the title is not 100% payable through HFA.*

*** In lieu of populating Field #19 in this layout, EMI must submit a supplemental report listing license number(s), configuration(s) and units for each third party service through which content was distributed.*

EXHIBIT C

[DATE]

[ADDRESSEE]
[LICENSEE]
[ADDRESS]
[ADDRESS]

Re: Royalty Examination of LICENSEE (EXAM PERIOD)

To Whom It May Concern:

We have been requested by The Harry Fox Agency, Inc. ("HFA") to examine, commencing on DATE, the books and records of LICENSEE for the period EXAM PERIOD in connection with LICENSEE'S royalty reports and payments to HFA-affiliated publishers and we acknowledge the confidential nature of the information that LICENSEE is providing to us in connection with such royalty examination.

We agree that, except as authorized in writing by LICENSEE, (i) we will not disclose to anyone other than HFA, its officers and employees (including the NMPA/HFA board of directors), legal counsel, financial advisors and HFA-affiliated publishers (collectively, "HFA Parties") any information that we obtain from our examination of LICENSEE's books and records and (ii) any such disclosure made by us to an HFA Party shall be limited to information that relates to the purpose of providing information concerning whether, and/or ensuring that, LICENSEE is accounting to HFA on an accurate and timely basis. Notwithstanding the foregoing, we may disclose such information (a) as required under any statute, regulation, order, subpoena or document discovery request, provided that prior written notice of such disclosure is furnished to LICENSEE as soon as practicable in order to afford LICENSEE an opportunity to seek (at its own expense) a protective order, or (b) as required in the context of a legal action or proceeding relating to the enforcement of HFA's or an HFA-affiliated publisher's rights in connection with such royalty examination.

Sincerely,

[AUTHORIZED EXAMINER]
on behalf of
[EXAMINER'S FIRM]

EXHIBIT D

Data Access and Use Agreement

This Data Access and Use Agreement ("**Agreement**") is entered into as of ____, 200_ by and between The Harry Fox Agency, Inc., a New York corporation, having its principal place of business at 711 Third Avenue, New York, New York ("**HFA**") and [_____], a [_____] corporation with an office at [_____] ("**Recipient**").

WHEREAS, Recipient (also referred to at times herein as "**Licensee**") and HFA have entered, or expect to enter, into that certain license agreement, dated as of ____, 2005 (the "**License Agreement**"), pursuant to which HFA has granted, or will grant, limited rights to certain copyrighted musical compositions (each, a "**Musical Work**") in connection with certain mastertone and ringback services operated by Licensee; and

WHEREAS, Recipient seeks to access and use certain HFA Confidential Information (defined in Section 1 below) as necessary to obtain and administer the licenses issued under the License Agreement (each, a "**License**"), and as otherwise may be necessary to comply with Licensee's obligations under the License Agreement (collectively, the "**Purpose**"), and HFA has agreed to allow Recipient such limited access to and use of the HFA Confidential Information solely as necessary to accomplish the Purpose;

NOW THEREFORE, in consideration of the premises of and the mutual promises, covenants and agreements contained in this Agreement, HFA and Recipient agree as follows:

1. HFA Confidential Information.

"**HFA Confidential Information**" means any and all information and material disclosed by HFA to Recipient or obtained by Recipient from HFA (whether in writing, or in oral, graphic electronic or any other form) that is proprietary and/or is intended by HFA to remain confidential relating to HFA's business and its databases, products, services, business strategies, capabilities or business affairs, including without limitation, all data and information related to the Musical Works and ownership thereof and/or HFA's publisher-principals.

2. Non-Disclosure and Limited Use.

Recipient covenants (a) to hold all HFA Confidential Information in strict confidence, (b) that it shall disclose (or permit access to) the HFA Confidential Information solely to (or by) its employees, if any, who need to know or access such HFA Confidential Information to accomplish the Purpose, and who are bound by nondisclosure and use restrictions and obligations comparable to and at least as restrictive to those set forth herein, and (c) that it shall not disclose to any third party (other than Licensee), including any agent, contractor, consultant or other party, or permit any such party to access, the HFA Confidential Information, unless and until such party has entered into a written agreement with HFA in form and substance of this Agreement governing the nondisclosure and use of the HFA Confidential Information. Recipient further covenants that it shall (y) use HFA Confidential Information solely as necessary to accomplish the Purpose, and (z) not extract, aggregate, derive or copy any HFA Confidential Information, whether by bulk transfer or through individual data query and response, for use or incorporation in any database, unless the sole purpose of such use or incorporation is to accomplish the Purpose. Recipient agrees to notify HFA immediately upon obtaining any information regarding unauthorized disclosure or access to the HFA Confidential Information.

Notwithstanding the disclosure and use restrictions in this Section 2, Recipient may disclose HFA Confidential Information (i) that is independently derived or acquired from a party not subject to a duty of confidentiality to HFA, or (ii) to the extent required to respond to the request of a court of competent jurisdiction, provided that upon receiving any such request and to the extent that it may do so without violating any law, Recipient prior to such disclosure advises HFA of such request in order that HFA may take such action as it deems appropriate to protect the HFA Confidential Information. During the Term (defined in Section 5 below) and for a period of three (3) years following the termination or expiration of this Agreement, Recipient agrees to permit HFA to inspect, on a semi-annual basis, during regular

business hours and upon reasonable prior notice, the point or points at which the HFA Confidential Information is (or was) used in Recipient's facilities, if any, and to furnish whatever assistance is reasonably necessary to permit HFA to determine whether Recipient, including its employees, agents, subcontractors, independent contractors, consultants or other parties, if any, are in compliance with this Agreement.

3. Ownership.

Recipient acknowledges and agrees that all right, title and interest in and to the HFA Confidential Information (including all copies, extracts and portions thereof) is and shall remain the sole property of HFA. Recipient does not acquire (by license or otherwise, whether express or implied) any intellectual property rights or other rights under this Agreement or any disclosure or access hereunder, except the limited right to use such HFA Confidential Information in strict accordance with the express provisions of this Agreement. All rights relating to the HFA Confidential Information that are not expressly granted hereunder to Recipient are reserved and retained by HFA.

4. No Warranty; Limitation of Liability.

EXCEPT AS OTHERWISE MAY BE EXPRESSLY SET FORTH IN THE LICENSE AGREEMENT WITH RESPECT TO LICENSEE, HFA MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE HFA CONFIDENTIAL INFORMATION OR ANY USE THEREOF, AND THE HFA CONFIDENTIAL INFORMATION IS PROVIDED ON AN "AS IS" BASIS. EXCEPT AS OTHERWISE MAY BE EXPRESSLY SET FORTH IN THE LICENSE AGREEMENT WITH RESPECT TO LICENSEE, HFA HEREBY EXPRESSLY DISCLAIMS ALL SUCH WARRANTIES, INCLUDING, BUT NOT LIMITED TO, CORRECTNESS, COMPLETENESS, CURRENTNESS, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE HFA CONFIDENTIAL INFORMATION OR OF THE MEDIA ON WHICH THE DATA IS PROVIDED AND SHALL NOT BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR CAUSED, IN WHOLE OR IN PART, BY HFA'S NEGLIGENT ACTS OR OMISSIONS IN PROCURING, COMPILING, COLLECTING, INTERPRETING, REPORTING, COMMUNICATING OR DELIVERING THE HFA CONFIDENTIAL INFORMATION OR IN OTHERWISE PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT, EVEN IF HFA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

5. Term; Termination.

This Agreement will continue for the term of the License Agreement (including any agreed extensions thereof) (the "**Term**"), unless otherwise terminated by HFA in accordance herewith. HFA may terminate this Agreement at any time upon written notice. Upon termination of this Agreement, HFA shall have no further obligations to disclose to Recipient or permit Recipient to access any HFA Confidential Information, but each party's rights and obligations shall otherwise survive the termination or expiration of this Agreement.

6. Purging of HFA Confidential Information.

Promptly following any expiration or termination of this Agreement, Recipient shall purge and destroy any and all records and copies of HFA Confidential Information from any Recipient databases and other systems under Recipient's direct or indirect control, and any other media on which any HFA Confidential Information may have been provided, together with all copies thereof, whether in printed or machine readable form; provided, however, that Recipient may retain any records and copies of HFA Confidential Information solely to the extent and for the period necessary to permit Licensee to fulfill any further obligations under the License Agreement, including without limitation, Licensee's accounting and royalty and security compliance obligations under Sections 2 and 6 of the License Agreement, after which period such records and copies shall be purged and destroyed as described in this Section 6. Notwithstanding the foregoing, Recipient is not required to purge and destroy any HFA Confidential Information to the extent such HFA Confidential Information was independently derived or acquired from a party not subject to a duty of confidentiality to HFA.

7. **Assistance of Counsel.**

Each party hereto acknowledges that it has been afforded the opportunity to be represented by its own independent counsel for purposes of reviewing this Agreement and discussing its terms prior to execution.

8. **Specific Performance.**

Recipient acknowledges that a breach of Recipient's obligations in Sections 2 and 6 of this Agreement may result in irreparable harm, the extent of which it would be difficult to ascertain, and therefore agrees that HFA shall be entitled to seek immediate injunctive relief to enforce any such obligation in addition to any other legal remedy to which HFA might be entitled.

9. **Miscellaneous.**

This Agreement (combined with the License Agreement, if the Recipient is the Licensee) constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior or contemporaneous representations, discussions, proposals, negotiations, conditions, communications and agreements, whether oral or written, between the parties relating to the subject matter hereof. No amendment, modification or waiver of any provision of this Agreement shall be effective unless in writing and signed by duly authorized signatories of both parties. The waiver by either party of a breach of or a default under any provision of this Agreement shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without reference to its conflicts of laws provisions. This Agreement and the rights and obligations hereunder may not be assigned or delegated by Recipient, in whole or part, whether voluntarily, by operation of law, change of control or otherwise, without the prior written consent of HFA. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be invalid or unenforceable, the remaining portions hereof shall remain in full force and effect and such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed to the extent necessary to make such provision valid and enforceable. The parties are independent contractors, and neither party shall have any authority of any kind to bind the other party in any respect whatsoever.

The parties have executed this Data Access and Use Agreement as of the date first above written:

THE HARRY FOX AGENCY, INC.	[NAME]
By: _____	By: _____
Name:	Name:
Title:	Title:

ORIGINAL
NUMBER 2 OF
2 COUNTERPARTS

The Harry Fox Agency, Inc.
711 Third Avenue
New York, New York 10017

Dated as of June 30, 2006

REDACTED

Re: The Harry Fox Agency, Inc.-w- REDACTED
Mastertone, Ringtone, and Ringback Service Licensing
Agreement made as of September 13, 2005 Amendment

Ladies and Gentlemen:

Reference is hereby made to that certain Mastertone, Ringtone, and Ringback Service Licensing Agreement made as of September 13, 2005 by and between The Harry Fox Agency, Inc. ("HFA"), a New York corporation with an office at 711 Third Avenue, New York, NY 10017 and ("Licensee"), a Delaware corporation with offices at REDACTED which agreement is in full force and effect as of the date hereof (the "Agreement").

Notwithstanding anything to the contrary contained in the Agreement, the following shall constitute the parties further understanding with respect thereto:

1. Section 1.2 and 1.3 – The term "Opt-In Period" shall be deleted and replaced with the term "Publisher Option Period."

2. Section 3 – The Term shall be extended up to and including December 31, 2008; and the date "December 31, 2006" shall be deleted.

3. Section 11.2 – effective immediately, the fax number for HFA's General Counsel is 646-487-6789.

4. Pursuant to Section 11.1 of the Agreement, Licensee shall pay to HFA an administrative fee of REDACTED Dollars in consideration of HFA's administrative

5. All terms not expressly defined herein shall have the same meanings as set forth in the Agreement. Except as set forth herein, all provisions of the Agreement shall remain in full force and effect in accordance with its terms.

[Signatures Appear on Next Page.]

#55

Very truly yours,

THE HARRY FOX AGENCY, INC.

By: _____

MICHAEL SIMON

SVP, Business Affairs, General Counsel & CSO

Accepted and Agreed:

REDACTED

#95

EXHIBIT CO 0025

The Harry Fox Agency, Inc.
711 Third Avenue
New York, NY 10017
212-922-3266
212-922-3299 FAX
www.harryfox.com

Jacqueline C. Charlesworth
Senior Vice President
General Counsel

August 5, 2005

Redacted

Re: Digital Music Subscription Services Agreement

Dear REDACTED

Upon execution by both Parties, this letter (the "Second Side Letter") will confirm the below understandings between Redacted and The Harry Fox Agency, Inc. ("HFA") in connection with that certain Digital Music Subscription Service Agreement dated as of August 6, 2004 and entered into by REDACTEDand HFA (the "Agreement") and that certain letter between the Parties dated August 6, 2004 (the "First Side Letter"), which Agreement and First Side Letter shall be amended solely to the extent and as set forth herein. Capitalized terms used in this Second Side Letter that are not defined herein shall have the same meaning as they do in the Agreement.

1. HFA seeks to continue to facilitate the growth of REDACTEDsubscription music service intended solely for the college student market ("Service") on an experimental basis, and, pursuant to Section 4.1 (a) of the Agreement, HFA hereby agrees to a nonrefundable Advance Payment for the second year of REDACTED rations in the amount of REDACTED (the "Second Year Advance"). In consideration of such modified Second Year Advance, REDACTED hereby agrees to the following additional terms and conditions:

   a. It is understood that HFA has agreed to the Second Year Advance based on REDACTEDexpress representation to HFA that, as a new service, it projects only REDACTED in revenue during its second year of operation and therefore is not in a position to pay HFA's usual advance.

   b. The Second Year Advance is nonprecedential in nature. Neither the Second Year Advance nor this Side Letter, nor the fact that HFA on behalf of Participating HFA Publishers agreed to such terms, may be relied upon by either Party in an

administrative or legal proceeding or in any other context as evidence or support for a particular royalty rate, rate structure or advance structure, including, without limitation, to suggest that a lower royalty rate or lower advance is or is not appropriate for a music service operating in the college or educational context.

c. The parties hereby agree that as contemplated by Section 4.1(b) of the Agreement, should REDACTED seek to continue its Service for a third year, as of August 6, 2006 REDACTED shall begin to pay monthly supplementary advances in an amount acceptable to HFA, such amount to be determined prior to that time.

d. REDACTED agrees that, pursuant to its obligations set forth in Section 6.1 of the Agreement, it shall include the number of Limited Downloads of each work made during the applicable quarter in its quarterly royalty reports to HFA. Notwithstanding anything to the contrary set forth in the Agreement, REDACTED shall also continue its practice of reporting the total number of plays of all Limited Downloads of each work throughout the REDACTED system during the applicable quarterly reporting period. HFA shall supply REDACTED with a modified version of Exhibit B for this purpose. In addition, within sixty (60) days of the date of this Second Side Letter, REDACTED agrees to re-submit to HFA all prior quarterly royalty reports delivered to HFA by REDACTED using the modified Exhibit B to be provided by HFA and shall include information concerning the number of Limited Downloads of each work made during the applicable quarter in such reports.

e. Notwithstanding anything to the contrary that may be contained in the Agreement, the Agreement and Licenses issued under the Agreement shall be strictly limited to the delivery of On-Demand Streams and/or Limited Downloads through REDACTED Service to individuals enrolled as students at particular colleges or universities with which REDACTED has entered into an agreement to provide its Service and who are registered as subscribers of the Service.

2. REDACTED has advised HFA of a new feature of its service that, consistent with the REDACTED-authored Technical Overview attached to this Second Side Letter as "Exhibit 1", will enable Service subscribers sharing the same campus subnet (defined as an interconnected, but independent segment of a campus network that is identified by its Internet Protocol (IP) address) to search one another's hard drives for REDACTED delivered Limited Downloads and to download reproductions of Limited Downloads directly from those residing on other Service subscribers hard drives (as opposed to downloading such Limited Downloads directly from a REDACTED server). The Parties agree that such downloads shall be deemed to be Limited Downloads, are wholly subject to the provisions of the Agreement and shall be subject to payment of royalties at the royalty rate to be established for Limited Downloads. In this regard, REDACTED hereby represents, warrants and covenants:

a. that all content available to Service subscribers using the new Limited Download searching, distribution and downloading features of the Service described in this paragraph shall be fully licensed content;

b. that it will employ technology sufficient to ensure that only authorized Service subscribers sharing the same campus subnet are able to search for, distribute and download Limited Downloads in the manner described in this paragraph;

c. that it shall employ technology sufficient to centrally track the number of each Limited Download licensed under the Agreement made from one Service subscriber's hard drive to another Service subscriber's hard drive and to track the total number of plays of each work embodied in such Limited Downloads made throughout the system and any other information required to be reported to HFA under the terms of the Agreement and this Second Side Letter;

d. that it shall report to HFA each Limited Download licensed under the Agreement made from one Service subscriber's hard drive to another Service subscriber's hard drive, and all plays of such Limited Downloads, in its regular quarterly reporting; and

e. that the operation of the Service shall not infringe the copyright, trademark, patent or other intellectual property rights of any third party.

Based on Redacted representations, warranties and covenants to HFA hereunder, HFA agrees that the above-described new features of the REDACTED as described herein (including Exhibit 1) are authorized under the Agreement.

Sincerely,

Jacqueline C. Charlesworth

AGREED AND ACCEPTED:

Redacted

By: _____ Date: _____
Print name:
Title:

EXHIBIT 1

Redacted

Technical Overview

REDACTED

A Library Sharing and Download Feature

Document Version 1.0

1. Executive Overview

1.1. Executive Summary

REDACTEDis LAN segment based music library sharing. It is similar to myTunes which shares your iTunes music library over a local LAN segment. It only shares and offers REDACTED licensed content. Users cannot download anything via REDACTED that they could not get via direct download from the REDACTED central site. Primary goals for REDACTED are to enable another major mechanism for network based media discovery that revolves around people in the form of their media library and also allows for direct download of media in a peer to peer fashion. The basis of this feature reduces load on REDACTED servers and more efficiently places that load near the actual consumers. The library sharing allows users to perform real time discovery of people physically near them through their shared media. Users of REDACTED will be able to search for and download media from their friends and other users also sharing their libraries. The download will only allow REDACTED licensed content to move, and will also manage the license delivery for that media. The LAN segment basis of this controls traffic flow such that media will only move around inside a campus physical network. REDACTED traffic will not travel over the open internet and contribute to increased inbound or outbound bandwidth.

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1.2. General REDACTED Service Overview

The REDACTED service delivers licensed and protected content only to valid subscribers of the service. REDACTED users are authenticated during login to the service. Login is performed over Secure Sockets Layer (SSL) using 128bit key length encryption. The user is validated against the REDACTED database which maintains username and account information. Login is granted provide the user account is in good standing based on the business arrangement in place with that school and student (site license or opt-in student paid). Once logged into the service the REDACTED client will determine if the student is on or off campus. If on campus it will connect to a campus located cache server. If off campus it will connect to our central site. At this point the users can then search for media and choose to download it.

All media on REDACTED is protected by Windows Media DRM and managed via subscription based licensing. The REDACTED client application manages the download of media and requests licenses for the media files. As licenses expire the client will renew them based on login and authentication validation at that time. In the Windows Media DRM model, the physical media file and media license that enables playback are delivered separately via separate requests.

A diagram of media flow and licensing for the general Ruckus service is outlined in figure 1.

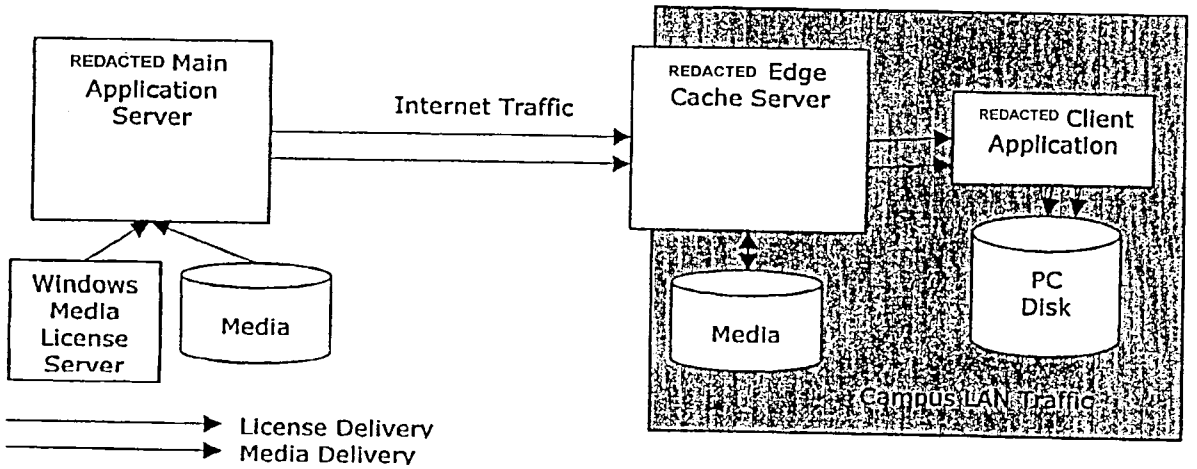

Figure 1. REDACTED **Service Media and License Delivery Data Path**

REDACTED

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1.3. REDACTED *Traffic and Data Flow*

The REDACTED application runs 100% in the REDACTED client. It is built on top of Apple's Bonjour Protocol (formerly known as Rendezvous). By design the Bonjour protocol only travels within the current LAN segment. The physical bounds of this segment are defined by how the local LAN and network administrators have setup and specified their local subnets. This design keeps all REDACTED traffic and usage limited to the campus LAN.

Each REDACTED client will offer to any other REDACTED client it's media library (this can be turned on and off by user preference). Inside the REDACTED client a user will be able to browse the local network neighborhood and view other REDACTED users media libraries. From this view they will be able to search and browse for playlists or media they are interested in and download it.

Choosing to download media from another REDACTED user will cause the files for that media to be downloaded to their PC using a direct client to client download over the HTTP protocol. REDACTED browsing and download from client to client works with either or both of the clients in a logged off mode. If a user is logged in while downloading media via REDACTED, then the client will request licenses for each file from the central site. Provided these files still are valid for playback according to the REDACTED database, the license will be delivered to that client that is appropriate for the file and level of service for that user. Figure 2 shows the data flow specific to REDACTED usage. It builds on top of what exists in the basic service as outlined above.

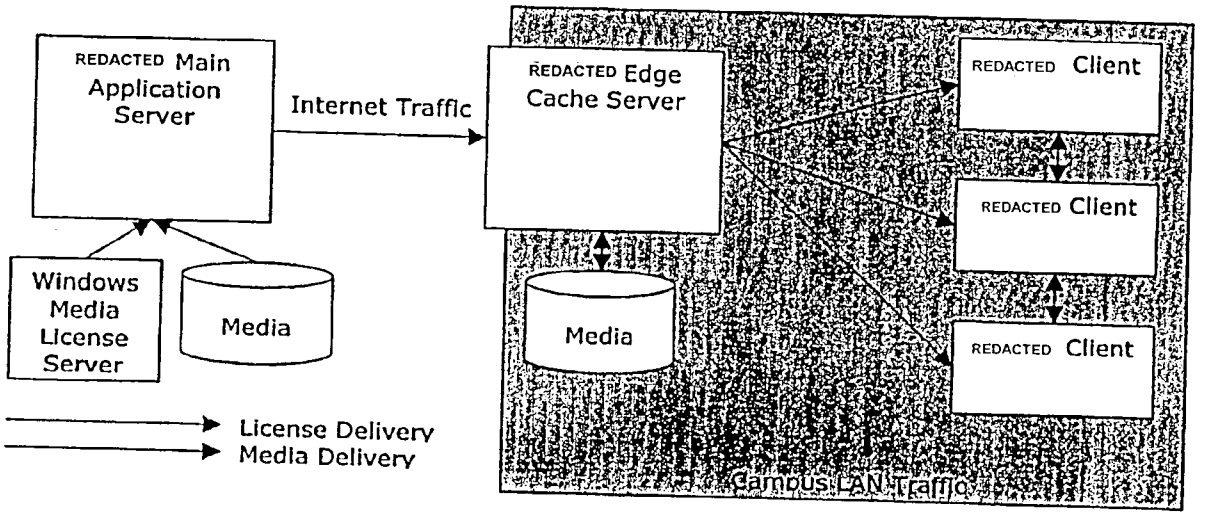

Figure 2. REDACTED **and License Delivery Data Path**

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EXHIBIT CO 0026

Digital Music Subscription Service Agreement

This agreement (the "Agreement"), dated as of July 6, 2005 ("Effective Date"), is made by and between REDACTED ("Licensee") and The Harry Fox Agency, Inc. ("HFA"), (the "Parties").

WHEREAS, Licensee desires to offer to consumers certain digital music services that provide On-Demand Streams and Limited Downloads (as defined below);

WHEREAS, music publishers desire to make their copyrighted musical works available to consumers by licensing such services;

WHEREAS, there has been litigation concerning the use of musical works in digital music services; the U.S. Copyright Office has issued a Notice of Inquiry whether to conduct a rulemaking concerning the legal status of On-Demand Streams and Limited Downloads; the U.S. Copyright Office has issued a report pursuant to Section 104 of the Digital Millennium Copyright Act addressing certain issues relating to streaming; and Licensee may prefer to make business decisions concerning the launch of Covered Services (as defined below) with greater assurance concerning the legal status of such services;

WHEREAS, the Parties desire to avoid the uncertainty and expense of litigation concerning the use of copyrighted musical works by Covered Services, and to provide assurance to Licensee and others seeking to offer such services to consumers;

WHEREAS, Section 115(c)(3) of the U.S. Copyright Act authorizes voluntary negotiations for determining royalty rates and terms under the mechanical compulsory license; and

WHEREAS, in settlement of unresolved legal issues and to facilitate the expeditious launch of digital music services, the Parties have reached this Agreement (which reflects HFA's standard terms with respect to the concepts covered herein) with respect to terms pursuant to which Licensee may obtain licenses to make On-Demand Streams and Limited Downloads of musical works in Covered Services;

NOW, THEREFORE, pursuant to 17 U.S.C. § 115(c)(3), and in consideration of the mutual promises contained in this Agreement and for other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Covered Services. When Licensee seeks to use a copyrighted musical work for which an HFA publisher-principal has the right to grant the rights that are the subject matter of this Agreement in connection with the operation of its Covered Services, it may obtain through HFA on behalf of such HFA publisher-principal a mechanical license ("License") to make On-Demand Streams and Limited Downloads of the work through Covered Services, through to the end user, including by making server and related reproductions of the work used in the operation of Covered Services.

1.1. "Covered Service" means a service that offers (but the offerings of which are not necessarily limited to) On-Demand Streams and/or Limited Downloads of sound recordings of musical works from servers located within the United States (including the territories and possessions thereof), where the basic charge to users for the service is a recurring subscription fee (in contrast to the basic charge being a per-download, per-play or per-song fee), including any use of such a service on a limited basis without charge to users in order to promote the subscription service. In the case of this Agreement, "Covered Service" refers to the REDACTED subscription music service currently branded REDACTED or a subsequently branded or co-branded service, operated by REDACTEDin accordance with the terms of this Agreement, where users are charged subscription fees for access to On-Demand Streams and/or Limited Downloads.

1.2. "On-Demand Stream" means an on-demand, real-time digital transmission of a sound recording of a single musical work to allow a user to listen to a particular sound recording chosen by the user at a time chosen by the user, using streaming technology, which may include but is not limited to REDACTEDor REDACTED , that is configured by the provider of the Covered Service in a manner designed so that such transmission will not result in a substantially complete reproduction of a sound recording being made on a local storage device (*e.g.*, the hard drive of the user's computer or a portable device) so that such reproduction is available for listening other than at substantially the time of the transmission.

1.3. "Limited Download" means a digital transmission of a time-limited or other use-limited download of a sound recording of a single musical work to a local storage device (*e.g.*, the hard drive of the user's computer or a portable device), using technology designed to cause the downloaded file to be available for listening only either (1) during a limited time (*e.g.*, a time certain or a time tied to ongoing subscription payments) not to extend more than thirty (30) days beyond the expiration of the user's subscription, or (2) for a limited number of times not to exceed twelve (12) times after the expiration of the user's subscription.

1.4. Any HFA publisher-principal that grants a License and/or accepts a portion of an Advance Payment hereunder is referred to herein as a "Participating HFA Publisher." The term "Participating HFA Publisher" is limited to such entities and their majority-owned subsidiaries.

2. Covered Deliveries.

2.1. A License with respect to a musical work includes all reproduction, distribution and DPD rights necessary for Covered Services to make On-Demand Streams and Limited Downloads of that work, from the making of server reproductions to the transmission and local storage of the On-Demand Streams or Limited Downloads, in all cases made subject to and in accordance with the terms hereof. A License does not extend to other transmissions made by a Covered Service or to activities not encompassed by a mechanical license, including, without limitation, print or display rights, merchandising rights, adaptation (derivative work) rights except as provided in Section 115(a)(2) of the Copyright Act, rights to fragment or excerpt musical works (other than for promotional purposes in strict accordance with Section 2.2 below), rights to synchronize musical works with visual images resulting in audiovisual works, or karaoke rights, all of which rights are specifically reserved. The Parties agree that server reproductions made under a License to transmit On-Demand Streams or Limited Downloads may

be used to make transmissions other than On-Demand Streams and Limited Downloads; provided that the foregoing is without prejudice to any applicable requirement, if any, that Licensee also obtain a license for such other transmissions made using such server reproductions. It is understood that this Agreement does not address or extend to any sound recording or performance rights that may be implicated by the making of On-Demand Streams or Limited Downloads through Covered Services.

2.2. A License includes the right to make, and there shall be no separate payment or accounting for, On-Demand Streams of Promotional Excerpts (as defined below) of sound recordings of musical works licensed hereunder used solely for promotional purposes, provided that the relevant copyright owner or copyright owners of such sound recordings has duly authorized the relevant copyright owner or copyright owners of such musical work (or an organization of copyright owners designated by such copyright owners as their common agent) to make On-Demand Streams of Promotional Excerpts of that sound recording for the purpose of promoting that musical work without payment of any royalty. "Promotional Excerpt" is defined as a stream consisting of no more than thirty (30) seconds of playing time of the sound recording of a musical work, or in the case of sound recordings with a playing time of more than five minutes, a stream that is of no more than the lesser of ten percent (10%) or sixty (60) seconds of playing time of the sound recording of the musical work, that is made available free of charge to the end user for promotional purposes only.

3. Licensing Process.

3.1. Commencing on the Effective Date, Licensee may submit License requests to HFA for On-Demand Streams and/or Limited Downloads made through Covered Services electronically in the form set forth in Exhibit A (as such form may reasonably be modified by HFA from time to time). When Licensee submits a License request in accordance with this Section 3.1, HFA shall, after processing the License request, return to Licensee an electronic file specifying the licenses issued. If Licensee submits a License request in accordance with this Section 3.1 but the request contains insufficient information for HFA to find a match for the relevant work in its databases, HFA will work with Licensee to provide the information necessary to enable a License to be issued, and if Licensee resubmits such request with the necessary information and the License can be issued, the provisions of Section 3.4 shall apply from the date of the original request. The Parties acknowledge the importance to HFA and music publishers of having License requests submitted promptly, and the importance to Licensee of having License forms issued promptly. The Parties shall cooperate in good faith to promote each of those goals.

3.2. The authority of HFA to license any individual musical work on behalf of its publisher principals is subject to the approval of the relevant publisher-principal. HFA shall not require its publisher principals to opt in to this Agreement either before or after commencing to issue Licenses, but will establish an opt out period before commencing to issue Licenses, which period will end no later than five weeks following the Effective Date (the "Opt Out Period"). If an HFA publisher-principal at any time requests that HFA not issue Licenses on its behalf (either with respect to particular musical works or in general), HFA will honor that request; provided, however, that any such request shall not affect the validity or subsistence of a License issued prior to such request. Upon the expiration of the Opt Out Period, if Licensee so requests, HFA shall advise Licensee of any HFA publisher principals that have notified HFA that they do not

wish to make Licenses of their works available under this Agreement (as well as any HFA publisher principals that have previously provided notice to HFA that they are opting out of all agreements of this nature).

3.3. HFA shall issue mechanical licenses hereunder with respect to a musical work in its entirety if one or more of its publisher-principals owns or controls a partial interest in such musical work, even if other co-owners of such musical work are not HFA publisher-principals, except that, pursuant to Section 3.2, if all the HFA publisher-principals that own or control a partial interest in such work request that HFA not issue mechanical licenses on their behalf, HFA will not issue such licenses. In the case of a mechanical license issued as described in this Section 3.3, Licensee shall pay directly to each co-owner that is not an HFA publisher-principal (or such co-owner's authorized payee) such co-owner's share of the applicable royalty payments under Section 6.1.

3.4. License forms issued by HFA pursuant to this Agreement shall be retroactive to the date of the License request made by Licensee on or after the Effective Date in accordance with Section 3.1. To the extent that Licensee makes On-Demand Streams and Limited Downloads of musical works pending the processing by HFA of license forms in response to proper License requests submitted on or after the Effective Date in accordance with Section 3.1, HFA shall not directly or indirectly file, encourage, aid, support, finance, contribute to, promote, or participate in any claim, suit, action or proceeding asserting that such activities are infringing.

3.5. Nothing in this Agreement, including but not limited to the availability of Licenses or the procedures for obtaining the same, shall preclude Licensee from at any time serving or filing a notice of intention to obtain a compulsory license in accordance with applicable law or, other than in Article 8, imply that any notice of intention so served or filed is valid or invalid. Nothing in this Agreement shall preclude Licensee from seeking, or HFA or any of its publisher-principals from granting, direct licenses to Licensee, including without limitation for use of musical works on the Covered Services, on whatever terms might be agreed upon between the relevant parties.

4. Advance Payment.

4.1. Within five business days following the end of the Opt Out Period, Licensee shall pay to HFA a non-refundable advance royalty payment ("Advance Payment") equal to REDACTED . If, by the second anniversary of the Effective Date, there has then been no final non-appealable determination of royalty rates for On-Demand Streams and Limited Downloads through negotiation, a CRJ proceeding and/or any applicable legislative action, as the case may be, then, subject to Section 4.2, until such a determination, Licensee shall each month pay to HFA a supplementary Advance Payment of REDACTED . If during the term of this Agreement Licensee chooses to engage a third-party "white label" provider licensed by HFA ("White Label Provider") to provide the Covered Service (rather than Licensee providing the Covered Service itself), upon written notice from Licensee and the White Label Provider, HFA shall credit the total, unrecouped amount of the Advance Payment and any supplementary Advance Payments paid by Licensee (such total constituting the "Advance Credit") to the advance account of such White Label Provider for Covered Services, where it will be available to be applied against any royalties due under the White Label Provider's Covered Services licensing agreement with HFA;

provided, however, that this shall not affect any advance amount otherwise paid or payable to HFA from such White Label Provider; and further provided that it shall be Licensee's sole responsibility to arrange with the White Label Provider for the White Label Provider to apply the Advance Credit to Licensee's account maintained by the White Label Provider in such manner as they may determine, and that HFA shall have no responsibility to account for or otherwise track the Advance Credit as between Licensee and the White Label Provider and/or other Covered Services made available by the White Label Provider under its agreement with HFA.

4.2. Effective at the second anniversary of the Effective Date or any time thereafter, Licensee may terminate this Agreement upon thirty (30) days advance written notice to HFA. In the event Licensee does so, all Licenses previously issued under this Agreement shall terminate at the same time as this Agreement, without prejudice to the right of Licensee thereafter to obtain new licenses under 17 U.S.C. § 115. In the case of termination by Licensee (a) payments shall be due in accordance with Section 6.1 for activities under this Agreement prior to the termination of the relevant Licenses, (b) Advance Payments may be applied against such payments in accordance with Section 4.4, and (c) to the extent remaining, Advance Payments also may be applied to royalties due under new licenses for On-Demand Streams and Limited Downloads made through Covered Services, which licenses are issued by HFA at least one year after the relevant date of termination of Licensee's Licenses. In addition to the foregoing, if there is a decision of the U.S. Copyright Office or a court, or any new legislation, inconsistent with Section 8.1, with the result that mechanical royalties are not required to be paid for some or all On-Demand Streams and/or Limited Downloads made through Covered Services, then the amount of Licensee's monthly supplementary Advance Payments under Section 4.1 shall be reduced to take into account such decision or legislation, based on actual usage under this Agreement to date, with the exact amount of such reduction to be agreed upon by the Parties promptly after such decision or legislation; provided that if any such decision is appealed and finally reversed on appeal, the amount of Licensee's monthly supplementary Advance Payments under Section 4.1 shall be restored, and Licensee shall promptly pay to HFA the total amount by which the supplementary Advance Payment was reduced in the interim. Licensee, by written notice to HFA, may terminate this Agreement in its sole discretion at any time prior to the non-beta commercial launch of the Covered Services. HFA acknowledges and agrees that should Licensee cease to provide Covered Services, Licensee's ongoing accounting, royalty and supplementary advance obligations hereunder shall cease; provided, however, that any outstanding accounting, royalty and advance obligations arising from periods prior to the termination of the Covered Services, as well as all other aspects of the Agreement, including but not limited to Licensee's obligations under Sections 8, 9, 10 and 11, shall continue in effect. Each party reserves all rights and remedies it may have at law and in equity should the other party be in material breach of this Agreement.

4.3. HFA shall deposit Advance Payments into an interest-bearing bank account (with such interest being treated as part of the Advance Payment). HFA shall be free to distribute the initial and supplementary Advance Payments to HFA publisher-principals in accordance with a reasonable and nondiscriminatory methodology based on market share, actual usage or a per musical work payment (which methodology HFA shall provide to Licensee). Except insofar as it is recouped pursuant to Sections 4.4 and/or 4.5, the Advance Payment shall be nonrefundable.

4.4. Upon the final non-appealable determination of royalty rates for On-Demand Streams and Limited Downloads through negotiation, a CRJ proceeding, and/or, if applicable, legislative action, as the case may be, the total amount of Advance Payments (including interest) shall be applied against undisputed amounts owed to HFA on behalf of its publisher-principals for On-Demand Streams and Limited Downloads made through Covered Services pursuant to Licenses issued under this Agreement. Such Advance Payments for these uses shall be applied to the account of Licensee. If the Advance Payments are not fully recouped at such time, any remainder of the Advance Payments thereafter shall be applied against all undisputed amounts owed to HFA on behalf of its publisher-principals by Licensee under mechanical licenses issued by HFA for On-Demand Streams and Limited Downloads made through Covered Services (including but not limited to Licenses under this Agreement), until such amount is fully recouped.

4.5. At the request of HFA, with Licensee's written consent, which consent shall not be withheld unreasonably, Advance Payments may be applied to other undisputed amounts (*e.g.*, other mechanical royalties) owed by Licensee to HFA on behalf of its publisher-principals.

5. Royalty. The royalty rate payable under a License shall be determined through negotiation, a CRJ proceeding and/or, if applicable, legislative action. The applicable rate will be structured as determined through negotiation, CRJ, and/or any applicable legislative action and may comprise separate royalty rate components for distinct uses of the musical work authorized by the License. The Parties may meet to negotiate royalty rates in good faith. HFA reserves its right to seek interest as a part of such royalty rate determination. Licensee reserves its right to seek to have such royalty rate determination reflect any payments under foreign copyrights in the case where On-Demand Streams or Limited Downloads are transmitted to users outside of the United States. Whether royalty rates are determined by negotiation, a CRJ and/or legislative action, and regardless of how royalty rate categories may be denominated, the Parties shall seek a determination of royalty rates such that it is clear which royalty rates are applicable to each of On-Demand Streams and Limited Downloads.

6. Accounting and Payment.

6.1. Beginning with the issuance of a License, Licensee will be required to account to HFA in electronic form on a quarterly basis for activity under such License, 45 days after the close of each quarter, and specifically including the number of On-Demand Streams and Limited Downloads of each work made during such quarter. Such quarterly reports shall be in the form set forth in Exhibit B (as such form may reasonably be modified by HFA from time to time) and shall include, without limitation, a breakdown of On-Demand Streams and Limited Downloads made by Covered Services under Licenses in the applicable quarter, by musical work and delivery method code (indicating On Demand-Streams and/or Limited Downloads), and including ISRC number if available, catalog number if available and HFA license number if available (in the same manner indicated by Licensee in its License request), and shall also identify the specific retail outlet through which such On-Demand Streams and Limited Downloads were made. Licensee shall preserve all usage and financial data that reasonably should be expected to be relevant, upon the determination of royalty rates, to the calculation of royalties hereunder and use commercially reasonable efforts to do so for each Covered Service it operates hereunder. Subject to Article 4 and Section 3.3, upon the final non-appealable determination of royalty rates for On-Demand Streams and Limited Downloads through

negotiation, a CRJ proceeding and/or legislative action, Licensee shall make the applicable payment for all previous quarters then completed, from the launch of the applicable Covered Services to date, within 45 days, to be accompanied by a cumulative statement setting forth and aggregating the information provided in the previous quarterly reports supplied under this Agreement. Thereafter, on a quarterly basis, 45 days after the close of each quarter, Licensee shall account to HFA for activities and/or revenues realized on such activities during such quarter as determined through negotiation and/or by regulation, providing such information as is required by regulation, a CRJ, a negotiated rate agreement and/or any applicable legislative action, and, subject to Article 4 and Section 3.3, pay royalties at the applicable rate. Notwithstanding the foregoing, HFA reserves its right to seek more frequent access, including without limitation real-time access, to usage information, subject to Licensee's consent to the terms of such access, such consent not to be unreasonably withheld if Licensee is able to provide such access in the normal course of business without undue burden..

6.2. At the request of HFA, Licensee shall accompany its quarterly reports with any available data in addition to that described in Section 6.1 concerning the numbers of On-Demand Streams and Limited Downloads made through Covered Services operated by Licensee (but not any personally identifying information), which data is regularly gathered or compiled by Licensee or provided to Licensee by its licensees with the legal right to disclose such data to HFA hereunder; provided that Licensee may provide any such data to HFA in whatever form it is available to Licensee in the ordinary course of its business and subject to any applicable confidentiality and other contractual use restrictions; and provided further that, before making any such request, HFA shall review with Licensee the types of such data Licensee has and can disclose to HFA, and the form in which such data is available, and HFA shall not request, and Licensee shall not be required to provide, data that (given the volume and form of such data, the degree to which such data is reflected in quarterly reports, the data processing capabilities of HFA and Licensee, HFA's intentions to use such information, and other relevant factors) would not be commercially reasonable to provide. Upon the final non-appealable determination of royalty rates for On-Demand Streams and Limited Downloads through negotiation, a CRJ proceeding, and/or, if applicable, legislative action, as the case may be, to the extent such information is relevant to the calculation of royalties, is available to Licensee and can be disclosed to HFA hereunder, at the request of HFA, Licensee shall accompany its quarterly reports (and amend previously submitted reports) with the total number of subscribers to and total number of subscriber months for each Covered Service operated by Licensee during the reporting period; provided that any such information relating to a Covered Service operated by Licensee shall be subject to an appropriate confidentiality restriction, and any such information provided to Licensee by a third party shall be subject to any applicable confidentiality and other contractual use restrictions.

7. Term. The term of this Agreement shall commence on the Effective Date and, subject to Sections 4.2 and 8.5, continue until the final non-appealable determination of royalty rates for each of On-Demand Streams and Limited Downloads through negotiation, a CRJ proceeding and/or, if applicable, legislative action. New Licenses shall continue to be issued pursuant to this Agreement for the duration of such term. Thereafter, Licensee may request, and HFA shall issue, mechanical licenses covering On-Demand Streams and Limited Downloads at the applicable royalty rates in accordance with its customary practices for the issuance of licenses where there is an applicable statutory rate, which the Parties currently understand to include the means of application described in Section 3.1. Notwithstanding the foregoing, Licenses once

issued under this arrangement shall remain in effect unless terminated for default in respect to payment (once royalty rates are determined) or accounting (either before or after royalty rates are determined) pursuant to 17 U.S.C. § 115(c)(6) (or other applicable provision of law, if any), it being understood that a License may not be terminated for such a default where the default is remedied as provided in 17 U.S.C. § 115(c)(6). In addition, the provisions of Sections 4.2, 4.4 and 4.5, and of Articles 6, 7 and 10, shall survive the expiration or termination of this Agreement or any License under this Agreement.

8. Legal Framework for Agreement.

8.1. Subject to the other provisions of this Article 8, in order to avoid litigation and to provide assurance to Licensee in connection with the launch of its digital music services and enable HFA's issuance of license forms for Covered Services hereunder:

(a) The Parties agree that under current law the process of making On-Demand Streams through Covered Services (from the making of server reproductions to the transmission and local storage of the stream), viewed in its entirety, involves the making and distribution of a DPD, and further agree that such process in its entirety (i.e., inclusive of any server reproductions and any temporary or cached reproductions through to the transmission recipient of the On-Demand Stream) is subject to the compulsory licensing provisions of Section 115 of the Copyright Act. The Parties further agree that under current law the process of making streams that would qualify for a statutory license under Section 114(d)(2) of the Copyright Act does not involve the making or distribution of a DPD, and thus does not require a mechanical license. The foregoing does not express or imply any agreement that, and shall not be used to support any argument that, the process of making On-Demand Streams other than through Covered Services, or the process of making streams that would not qualify for a statutory license under Section 114(d)(2) of the Copyright Act (including, without limitation, because such streams are part of an "interactive service" (as that term is defined in Section 114(j)(7)) or exceed the "sound recording performance complement" (as that term is defined in Section 114(j)(13)) does or does not involve the making and distribution of a DPD, and the Parties expressly reserve all their rights with respect to that issue.

(b) The Parties agree that under current law the process of making Limited Downloads through Covered Services (from the making of server reproductions to the transmission and local storage of the Limited Download), viewed in its entirety, involves the making and distribution of a DPD, and further agree that such process in its entirety (i.e., inclusive of any server reproductions and any temporary or cached reproductions through to the transmission recipient of the Limited Download) is subject to the compulsory licensing provisions of Section 115 of the Copyright Act.

(c) The Parties agree that under current law a compulsory license to make On-Demand Streams and Limited Downloads through Covered Services (from the making of server reproductions to the transmission and local storage of the On-Demand Streams and Limited Downloads) is available under Section 115 of the Copyright Act.

8.2. Subject to Sections 8.3 and 8.5, for the term of this Agreement, no party to this Agreement and no Participating HFA Publisher shall take a position contrary to or inconsistent with Section 8.1, or lend support or resources, financial or otherwise, to any other person or entity taking a contrary or inconsistent position, before the Copyright Office, a CRJ, or any court or any other government office or tribunal with jurisdiction or authority in the United States, its territories or possessions. Thereafter, no party to this Agreement and no Participating HFA Publisher shall commence or lend support to any action in court to challenge the validity of the rates determined pursuant to Article 5 on the ground that On-Demand Streams and Limited Downloads do not involve the making or distribution of DPDs. It is understood that, for purposes of this Section 8.2, Licensee or Participating HFA Publishers shall not be deemed to lend financial support or resources to affiliated entities (i) merely through intra-enterprise financial arrangements in the ordinary course of business; (ii) merely by being a member or sitting on the board of directors of a trade association without actively lending support to or participating in any activities contrary to or inconsistent with Section 8.1; and/or (iii) merely by paying the membership dues or fees that a trade association ordinarily requires of its members. It is further understood that provided that Licensee is in compliance with this Section 8.2, Licensee shall not be in violation of this Agreement merely by belonging to a trade association that takes a position contrary to Section 8.1.

8.3. Notwithstanding Sections 8.1 and 8.2, the Parties and Participating HFA Publishers may at any time (1) raise and litigate (including, without limitation, before a CRJ) the economic value of, and the appropriate royalty rates to be applied to, On-Demand Streams and Limited Downloads; (2) take or support any position they choose with respect to sound recordings (as distinguished from any musical works embodied therein) and the rights therein, including, without limitation, rights under Sections 106 and 114 of the Copyright Act, and (3) make or lend support to any arguments they choose to prosecute, or defend or counterclaim against, an infringement claim relating to activities before the Effective Date. Notwithstanding Sections 8.1 and 8.2, Licensee may at any time make or lend support to any arguments they choose to defend or counterclaim against an infringement claim relating to activities on or after the Effective Date, in the event that a License with respect to the relevant works is not available hereunder (it being understood that, subject to Section 8.4, HFA and Participating HFA Publishers may participate in the litigation of any such claim, so long as their doing so is consistent with Sections 8.1 and 8.2). The Parties agree that they will act in good faith not to induce, promote or encourage the litigation of an infringement claim relating to activities as described in the immediately preceding sentence. For the avoidance of doubt, nothing in Section 8.1 or 8.2 shall be construed to prevent Licensee from negotiating private, voluntary licensing arrangements according to terms of its choosing.

8.4. To the extent that an action being litigated by Licensee involves the question of the validity of a notice of intention to obtain a compulsory license as described in Section 8.1(c) for a musical work for which a License is not available under this Agreement, HFA shall not participate in or lend support to such action. The Parties agree that they will act in good faith not to induce, promote or encourage litigation concerning the validity of a notice of intention to obtain a compulsory license as described in Section 8.1(c). For purposes of this Article 8, HFA shall include its parent National Music Publishers' Association, Inc.

8.5. To the extent that a final, non-appealable decision of the Copyright Office or a court, or any new legislation, is inconsistent with Section 8.1, this Agreement shall be inapplicable to the extent of the inconsistency as of the date thereof, but subject to Article 4, Licensee shall not be entitled to a refund of any monies paid prior to such date.

8.6. Nothing in this Article 8 shall be used by, or be enforceable by, a third party not a Party to this Agreement, in any manner or in any context, including without limitation in any legal proceeding or in any context not specifically involving making and distributing DPDs. This Agreement does not give rise to any third party beneficiary rights in any party other than Participating HFA Publishers. The agreements set forth in this Article 8 and the course of dealing hereunder shall be inadmissible, and shall not be used to support any argument of law, in any litigation or arbitration relating to (1) activities before the Effective Date or (2) activities other than making and distributing On Demand Streams and Limited Downloads through Covered Services, except making streams that would qualify for a statutory license under Section 114(d)(2) of the Copyright Act.

9. Security.

9.1. Licensee shall incorporate, as part of the distribution of sound recordings embodying licensed works to users pursuant to this Agreement, a security technology, including, but not limited to, use of a digital rights management technology, for existing and prospective users that is designed to preclude unauthorized access to, copying or saving of any transmissions of sound recordings of musical works. Such security technology shall be updated as necessary to be current with prevailing industry standards for secure media content systems.

9.2. To the extent the Covered Services use third-party technology in order to satisfy the requirements of Section 9.1, Licensee shall use its commercially reasonable efforts to maintain and upgrade such technology by monitoring any third-party announcement made available to Licensee of bug-fixes, security holes and functionality improvements, obtaining such upgrades, and installing and distributing such upgrades as reasonably necessary to maintain the integrity of the Covered Services.

9.3. Without limitation, Licensee shall properly implement security technologies and methods to deliver On-Demand Streams and Limited Downloads of sound recordings embodying musical works in a secure manner through Covered Services, such that:

(a) in each case, the delivery or playback of a sound recording embodying a licensed work is reliably limited to the intended device or devices only in accordance with the use limitation rules applicable to such sound recording;

(b) all On-Demand Streams are protected to the extent commercially reasonable so as to prevent software applications from being able to capture the streams to be saved for later rendering on any device;

(c) all Limited Downloads and On-Demand Streams shall only be transmitted to devices that fully and accurately support the security technologies used by the Covered Service, in order to accurately enforce the applicable use limitation rules, including, without limitation, the applicable time limits and playback limits imposed by Article 1;

(d) On-Demand Streams and Limited Downloads cannot be re-transmitted from an intended destination device to an unauthorized device, whether now known or hereafter invented, except where a sound recording is in a secure format that is unplayable on any such unauthorized device in any manner, whether now known or hereafter invented;

(e) the Licensee at all times maintains an accurate count of the number and type of transmissions (both On-Demand Streams and Limited Downloads) into users' personal computers and other devices, whether now known or hereafter invented, the identity of the copyrighted work transmitted in each case, the applicable use limitation rule for such work, and all information necessary to fulfill the accounting requirements of Article 6 and any other obligations of Licensee under this Agreement. Notwithstanding the foregoing requirement that Licensee maintain data concerning the total number and type of transmissions to users' personal computers and other devices, for the avoidance of doubt, and provided that Licensee is in compliance with terms agreed to with licensors of sound recordings embodying musical works concerning the total number of personal computers and/or other devices to which an individual user may transmit a particular sound recording (or, if no such terms exist, with prevailing industry standards) (though in no event shall the number of personal computers exceed six (6)), with respect to Limited Downloads only, after reporting the initial transmission to a user of a Limited Download of a particular sound recording of a musical work in a quarterly report, Licensee need not include in such report or future reports additional transmissions of Limited Downloads of the identical sound recording to such user's additional allowable personal computers or devices (unless the user has no remaining copy of the Limited Download (e.g., because the user has resubscribed to the Covered Service or has exceeded the number of allowable personal computers) and must reacquire an initial copy of that sound recording, in which case the reporting requirement shall apply).

9.4. In the event of a breach of any security technology(ies) used by Licensee to perform its obligations under this Article 9, or as otherwise set forth in this Agreement, Licensee shall use its best efforts to devise a solution to such security breach (or cause such solution to be devised and implemented) or alternatively, immediately cease all distribution of the licensed works. Licensee shall restore as quickly as possible the integrity of the security technologies used in the operation of Covered Services and shall keep HFA reasonably informed as to the status thereof.

9.5. Licensee shall not intentionally edit, alter or defeat any copyright protection technology or mechanism embedded in or associated with the sound recordings embodying the licensed works.

9.6. Licensee shall use commercially reasonable efforts to prevent the creation of any unauthorized copies of any licensed works in any facilities in its control in any form (including but not limited to, copies created by employees or contractors outside the immediate scope of their employment), and shall use its commercially reasonable efforts to prevent the creation of such unauthorized copies by any users. If Licensee learns of any material circumvention of the technology used to satisfy the requirements of Section 9.1 or of any material incident of unauthorized manufacture, advertising, distribution, lease or sale of the licensed works relating to a Covered Service (any of the foregoing an "Unauthorized Use"),

Licensee shall promptly provide HFA with written notification of such Unauthorized Use and take all reasonable steps, and reasonably cooperate with HFA, to prevent such Unauthorized Use. Without limiting any other rights and remedies of HFA and its Licensors, if HFA learns, and provides Licensee with reasonably credible evidence, that there are widespread, significant and substantial Unauthorized Uses, upon ten (10) days' notice by HFA, Licensee must, unless it secures its technology against such Unauthorized Uses to the satisfaction of HFA within the ten (10) day period, suspend all On-Demand Streams or Limited Downloads of the licensed works under this Agreement pending Licensee's securing its technology against such Unauthorized Uses to the reasonable satisfaction of HFA.

10. Royalty Compliance.

10.1. HFA shall be entitled, upon thirty (30) days' prior written notice to Licensee, to conduct, solely at the expense of HFA, an examination of the books, records and operations of Licensee ("Royalty Examination") to determine whether Licensee is in compliance with its reporting and payment obligations under this Agreement. HFA shall not seek to initiate a Royalty Examination more than once every twelve (12) months or more than three (3) years following the termination of this Agreement. A Royalty Examination for a particular quarterly accounting period must be commenced (i.e., the aforementioned notice must be served by HFA) within three (3) years of the date the quarterly accounting and royalty payment were submitted by Licensee for such period (for the avoidance of doubt, a Royalty Examination may cover multiple quarterly accounting periods). HFA shall not examine the same royalty accounting period more than once. Prior to commencing a Royalty Examination, if requested by Licensee, HFA shall cause its examiners to execute a nondisclosure agreement substantially in the form of Exhibit D. Any third-party examiners engaged by HFA to act on its behalf in connection with a Royalty Examination of Licensee shall not be compensated on a "contingency fee" basis.

10.2. During the course of a Royalty Examination, upon request by HFA or an examiner acting on its behalf, Licensee shall, within three (3) business days (a) provide access to any information that may be called for by such request, including without limitation any (i) books, records, files, logs, reports, compilations, usage data and other documentation, whether in paper or electronic form, that were or could be used or required to generate or verify Licensee's quarterly reports and/or that reflect or summarize Licensees' quarterly reports; (ii) financial information, including books, records, ledgers, reports, and other documentation, reflecting cash receipts and general revenue accounts to the extent such information relates directly or indirectly to the activities licensed under this Agreement; and (iii) files, logs, reports, compilations, testing and monitoring data and other documentation related to and/or reflecting the operation and integrity of Licensee's systems (such information, along with the information described in the items (a)(i) and (a)(ii) of this Section 10.2, collectively referred to, as "Documentation"); and (b) through the assistance of personnel who are familiar with the technical and operational aspects of Licensee's computer, hardware and software systems (collectively, "Operational Systems") who are to be made available by Licensee, provide real-time and/or historical access to such Operational Systems, as requested, sufficient to permit HFA or its examiner(s) to conduct meaningful tests and analysis to verify that the Operational Systems are properly and accurately tracking and reporting the use of the Licensed Works, and royalties payable therefor, as contemplated by the terms of this Agreement. Licensee shall provide the information, systems access and personnel required by this Section 10.2 free of charge and, unless otherwise agreed by HFA or its examiner(s), at Licensee's place of business.

10.3. During the course of and/or following completion of the Royalty Examination, upon request by HFA or an examiner acting on its behalf, Licensee shall make available company personnel at an appropriate level of seniority and/or technical ability to discuss and/or resolve particular issues and findings arising out of such examination.

10.4. Licensee shall maintain any and all Documentation that reasonably might be expected to be relevant to HFA's conduct of a Royalty Examination for a period of at least three (3) years following the expiration or termination of this Agreement, unless there is a Royalty Examination in progress or not fully resolved as of the expiration of such period, in which case the Documentation shall be maintained until the Royalty Examination is fully resolved to the reasonable satisfaction of HFA.

10.5. If a royalty examination reveals a nonpayment or underpayment of royalties due to HFA, the amounts determined to be owing shall be subject to interest payable at the rate of prime plus two percent (2%) calculated from the date the royalties were due to be paid under the applicable reporting period to the date of ultimate payment to HFA.

10.6. HFA agrees that should Licensee so propose, HFA will consider the possibility of participating in a joint royalty examination conducted by a third-party examiner on behalf of multiple parties ("Joint Examination") in lieu of conducting an individual Royalty Examination of Licensee. Should HFA agree to such a Joint Examination, with respect to the royalty periods covered by the Joint Examination, the Joint Examination would supplant the process contemplated by Section 10.1 above; provided, however, that unless and until HFA has agreed in writing to such a Joint Examination, HFA shall be free to exercise its rights to initiate and conduct an independent Royalty Examination as contemplated by Section 10.1 above.

11. Confidentiality. HFA shall have no obligation to perform its obligations hereunder unless and until Licensee enters into the Data and Access Use Agreement, attached hereto and incorporated herein as Exhibit C (the "Data Access and Use Agreement"), governing the nondisclosure and use of HFA Confidential Information (as defined in the Data Access and Use Agreement) by Licensee. To the extent Licensee seeks to have a third-party individual or entity obtain access to HFA Confidential Information for purposes of obtaining and administering Licenses and otherwise fulfilling its obligations under this Agreement (each, a "Third-Party Administrator"), Licensee must obtain HFA's prior consent to each such Third-Party Administrator (such consent not to be unreasonably withheld). Upon HFA's consent to Licensee's use of such Third-Party Administrator, HFA will require that such Third-Party Administrator enter into a data access and use agreement with HFA substantially in the form of the Data Access and Use Agreement, prior to allowing such Third-Party Administrator access to any HFA Confidential Information.

12. Miscellaneous.

12.1. Publicity. Licensee and HFA may issue a mutually agreed joint press release announcing this arrangement within a reasonable time period following the Effective Date. In HFA's communications to its members concerning this Agreement, HFA shall encourage its publisher principals to avail themselves of this Agreement.

12.2. Assignment. This Agreement shall be binding upon and inure to the benefit of all of the parties and their respective permitted successors and permitted assigns. Any assignment or transfer by Licensee of any of its rights or licenses under this Agreement shall require the prior written consent of HFA.

12.3. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York (without giving effect to conflicts of law principles thereof).

12.4. Amendment. This Agreement may be modified or amended only by a writing signed by each of the Parties.

12.5. Entire Agreement. This Agreement expresses the entire understanding of the Parties and supersedes all prior and contemporaneous agreements and undertakings of the Parties with respect to the subject matter hereof.

12.6. Counterparts. This Agreement may be executed in counterparts, including by means of facsimile, each of which shall be deemed to be an original, but which taken together shall constitute one agreement.

12.7. Headings. The titles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

12.8. Notices. All notices shall be in writing and shall be deemed given when (a) delivered personally; (b) upon receipt of a transmittal confirmation if sent by facsimile or like transmission with a copy by first class U.S. mail; or (c) upon delivery if sent by Federal Express, Express Mail or similar overnight courier service, to the parties at the following addresses or facsimile numbers (or at such other address or facsimile number for a party as shall be specified by like notice):

if to HFA:

The Harry Fox Agency, Inc.
711 Third Avenue
New York, New York 10017
Attention: General Counsel
Telephone: (212) 922-3266
Facsimile: (212) 922-3299

if to Licensee:

REDACTED

with a copy to:

REDACTED

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Gary L. Churgin
President and CEO
The Harry Fox Agency, Inc.

REDACTED

EXHIBIT A

Electronic License Request & Output File Layout

Acceptable Data Formats:

1. *MS Access database*
2. *MS Excel Spreadsheets (with proper headings)*
3. *Flat File (follow the file layout below)*

	Description	Type	Length	Decimal	Input Option
1	Manufacturer Number	A	6		M
2	Transaction Date	N	8	0	M
3	Manufacturer Request Number	N	6	0	M
4	Label Name	A	15		M
5	ISRC Code	A	15		M
6	Playing Time - Minutes	N	3	0	M
7	Playing Time - Seconds	N	2	0	M
8	Artist	A	200		M
9	Song Title	A	200		M
10	A/K/A Song Title	A	200		O
11	ISWC Code	A	11		O
12	HFA Song Code	A	6		O
13	Song Writer(s)	A	200		C*
14	Publisher Name	A	60		C*
15	HFA Publisher Number	A	6		O
16	Publisher Share	N	7	4	O
17	Catalog Number	A	15		C*
18	Album (physical product) Title	A	200		C*
19	UPC Code	A	16		C*
20	Configuration Code	A	2		M
21	License Type	A	1		M
22	Server Fixation Date	N	8	0	M
23	Rate Code	A	1		C**
24	Rate in Cents	N	7	7	C**
25	Rate in Percentage of Statutory	N	5	2	C**
26	Rate in Percentage of Minimum Statutory	N	5	2	C**
27	HFA License Number	N	10		Output
28	HFA License Status Code #1	A	2		Input/Output ***
29	HFA Flag for Amended Publisher Data	A	1		Output
30	Publisher Status	A	1		Output
31	Total HFA Represented Share	N	7	4	Output
32	HFA License Status Code #2	A	2		Output
33	HFA License Status Code #3	A	2		Output
34	User Defined	A	30		Input/Output

KEY:

TYPE:
A = Alphanumeric Field
N = Numeric Field

LENGTH: For Alphanumeric fields, it is the maximum number of characters required.
For Numeric fields, it is the exact number of characters required

DECIMAL: Number of characters after decimal (for numeric fields only)

INPUT OPTION:
M = Mandatory
O = Optional
C* = Conditional — As agreed, label must provide either: (a) Songwriter or (b) Publisher, Catalog Number, Album Title and UPC. If (a) is provided, then (b) is not required; and vice versa.
C** = Conditional — One of the rate code fields from 23-26 must be completed

**** All input/output fields should be left blank upon initial license submission, EXCEPT for Field 28 which should be populated with the letter R in the input file IF the record is a resubmission that has been amended, and should be popiated with the letter D IF the record is for deletion*

EXHIBIT B

ELECTRONIC ROYALTY REPORT FILE LAYOUT

Acceptable Data Formats:
1 MS Access database
2 MS Excel Spreadsheets (with proper headings)
3 Flat File (follow the file layout below)

FILE HEADER (Control Portion for File Transfer)

Line Count	15	0	Number	Yes	Number of lines of data in file; used as control to verify complete and accurate file copy was received.	321458

FILE BODY

	Field Name	Field Length**	Decimal Places	Field Format	Mandatory Field	Field Description/Legend	Example
1	Manufacturer Number	8		Text	Yes	Account number assigned by HFA to Licensee	M12345
2	Transaction Date	8	0	Number	Yes	Date electronic royalty report submitted to HFA. Format: YYYYMMDD	20010304 (3/4/2001)
3	Royalty Reporting Period	6		Text	Yes	Length of period in number of months (left 2 digits), ending month (middle 2 digits), year (right 2 digits)	030601 (i.e., quarterly reporting period, ending the 6th month of 2001.)
4	HFA License Number	12		Text	Yes	HFA License Number	1010610541
5	ISRC	15		Text	Conditional	International Standard Recording Code. Either the ISRC Code or UPC Code must be submitted.	USEM39700174
6	UPC	16		Text	Conditional	UPC Code. Either the ISRC Code or the UPC Code must be submitted.	706301594728
7	Configuration Code	2		Text	Yes	Code designating the specific format or medium licensed	CV
8	HFA Song Title	30		Text	Yes	Title of work being licensed	Yesterday
9	Manufacturer Request Number	15		Text	Yes	Unique identifying number (numerical only) assigned by Licensee for each work for which a license is requested.	54321
10	Sales Channel	5		Text	Conditional	Field specifying the specific sales channel through which the content was delivered (i.e.: stream) S = Stream; LT = Time Limited Download; LU = Use Limited Download	S
11	Units (For Period)	9	0	Number	Yes	Applicable number of units sold under license number reported in Field #4 above for the Distribution Service reported in Field #16.	4
12	Units (To Date)	9	0	Number	Yes	Applicable number of units sold to date under license number reported in Field #4 above for the Distribution Service reported in Field #16.	12345
13	Royalty Rate	5	4	Numeric	Yes	Applicable payment per unit	0.85
14	Royalty Amount (For Period)	11	4	Numeric	Yes	Units Sold X Royalty Rate determined in Field #13	.85
15	Royalty Amount (To Date)	11	4	Numeric	Yes	Total Royalties Generated To Date for license number reported in Field #4 above for the Distribution Service reported in Field #16.	54.32
16	Service (i.e., Third Party)	30		Text	Conditional	Third party service through which the unit sold under license number reported in Field #4 was distributed (ie: iTunes, ABC service, etc.)	MUSICSERVICE.COM

Note: Please use UPPERCASE for all data entries. Any characters or digits exceeding per field maximums will be truncated.

EXHIBIT C

Data Access and Use Agreement

This Data Access and Use Agreement ("**Agreement**") is entered into as of July 6, 2005 by and between The Harry Fox Agency, Inc., a New York corporation, having its principal place of business at 711 Third Avenue, New York, New York ("**HFA**"):

REDACTED

WHEREAS, Recipient (also referred to at times herein as "**Licensee**") and HFA have entered, or expect to enter, into that certain license agreement, dated as of July 6, 2005 (the "**License Agreement**"), pursuant to which HFA has granted, or will grant, limited rights to certain copyrighted musical compositions (each, a "**Musical Work**") in connection with the operation of Licensee's digital music subscription service; and

WHEREAS, Recipient seeks to access and use certain HFA Confidential Information (defined in Section 1 below) as necessary to obtain and administer the licenses issued under the License Agreement (each, a "**License**"), and as otherwise may be necessary to comply with Licensee's obligations under the License Agreement (collectively, the "**Purpose**"), and HFA has agreed to allow Recipient such limited access to and use of the HFA Confidential Information solely as necessary to accomplish the Purpose;

NOW THEREFORE, in consideration of the premises of and the mutual promises, covenants and agreements contained in this Agreement, HFA and Recipient agree as follows:

1. HFA Confidential Information.

"**HFA Confidential Information**" means any and all information and material disclosed by HFA to Recipient or obtained by Recipient from HFA (whether in writing, or in oral, graphic electronic or any other form) that is proprietary and/or is intended by HFA to remain confidential relating to HFA's business and its databases, products, services, business strategies, capabilities or business affairs, including without limitation, all data and information related to the Musical Works and ownership thereof and/or HFA's publisher-principals.

2. Non-Disclosure and Limited Use.

Recipient covenants (a) to hold all HFA Confidential Information in strict confidence; (b) that it shall disclose (or permit access to) the HFA Confidential Information solely to (or by) its employees, contractors or consultants, if any, who need to know or access such HFA Confidential Information to accomplish the Purpose, and who are bound by nondisclosure and use restrictions and obligations comparable to and at least as restrictive to those set forth herein to which they have agreed in writing, and provided that any such aforementioned contractors and consultants are performing software-related services for Recipient, are not otherwise engaged in or affiliated with a music licensing and/or royalty-related business or enterprise and are not a competitor or potential competitor of HFA, and further provided that, without limitation, Recipient shall be responsible to HFA for any breach of any confidentiality restriction herein by any such contractor or consultant; and (c) that it shall not otherwise disclose to any third party, including any agent or other party, or permit any such party to access the HFA Confidential Information unless and until such party has entered into a written agreement with HFA in form and substance of this Agreement governing the nondisclosure and use of the HFA Confidential Information. Recipient further covenants that it shall (y) use HFA Confidential Information solely as necessary to accomplish the Purpose, and (z) not extract, aggregate, derive or copy any HFA Confidential Information, whether by bulk transfer or through individual data query and response, for use or incorporation in any database, unless the sole purpose of such use or incorporation is to accomplish the Purpose. Recipient agrees to notify HFA immediately upon obtaining any information regarding unauthorized disclosure or access to the HFA Confidential Information.

Notwithstanding the disclosure and use restrictions in this Section 2, Recipient may disclose HFA Confidential Information (i) that is independently derived or acquired from a party not subject to a duty of confidentiality to HFA, or (ii) to the extent required to respond to the request of a court of competent jurisdiction, provided that upon receiving any such request and to the extent that it may do so without violating any law, Recipient prior to such disclosure advises HFA of such request in order that HFA may take such action as it deems appropriate to protect the HFA Confidential Information. During the Term (defined in Section 5 below) and for a period of three (3) years following the termination or expiration of this Agreement, Recipient agrees to permit HFA to inspect, on an annual basis, during regular business hours and upon reasonable prior notice, the point or points at which the HFA Confidential Information is (or was) used in Recipient's facilities, if any, and to furnish whatever assistance is reasonably necessary to permit HFA to determine whether Recipient, including its employees, agents, subcontractors, independent contractors, consultants or other parties, if any, are in compliance with this Agreement.

3. Ownership.

Recipient acknowledges and agrees that all right, title and interest in and to the HFA Confidential Information (including all copies, extracts and portions thereof) is and shall remain the sole property of HFA. Recipient does not acquire (by license or otherwise, whether express or implied) any intellectual property rights or other rights under this Agreement or any disclosure or access hereunder, except the limited right to use such HFA Confidential Information in strict accordance with the express provisions of this Agreement. All rights relating to the HFA Confidential Information that are not expressly granted hereunder to Recipient are reserved and retained by HFA.

4. No Warranty; Limitation of Liability.

EXCEPT AS OTHERWISE MAY BE EXPRESSLY SET FORTH IN THE LICENSE AGREEMENT WITH RESPECT TO LICENSEE, HFA MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE HFA CONFIDENTIAL INFORMATION OR ANY USE THEREOF, AND THE HFA CONFIDENTIAL INFORMATION IS PROVIDED ON AN "AS IS" BASIS. EXCEPT AS OTHERWISE MAY BE EXPRESSLY SET FORTH IN THE LICENSE AGREEMENT WITH RESPECT TO LICENSEE, HFA HEREBY EXPRESSLY DISCLAIMS ALL SUCH WARRANTIES, INCLUDING, BUT NOT LIMITED TO, CORRECTNESS, COMPLETENESS, CURRENTNESS, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE HFA CONFIDENTIAL INFORMATION OR OF THE MEDIA ON WHICH THE DATA IS PROVIDED AND SHALL NOT BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR CAUSED, IN WHOLE OR IN PART, BY HFA'S NEGLIGENT ACTS OR OMISSIONS IN PROCURING, COMPILING, COLLECTING, INTERPRETING, REPORTING, COMMUNICATING OR DELIVERING THE HFA CONFIDENTIAL INFORMATION OR IN OTHERWISE PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT, EVEN IF HFA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

5. Term; Termination.

This Agreement will continue for the term of the License Agreement (including any agreed extensions thereof) (the "**Term**"), unless otherwise terminated by HFA in accordance herewith. HFA may terminate this Agreement at any time upon written notice. Upon termination of this Agreement, HFA shall have no further obligations to disclose to Recipient or permit Recipient to access any HFA Confidential Information, but each party's rights and obligations shall otherwise survive the termination or expiration of this Agreement.

6. Purging of HFA Confidential Information.

Promptly following any expiration or termination of this Agreement, Recipient shall purge and destroy any and all records and copies of HFA Confidential Information from any Recipient databases and other systems under Recipient's direct or indirect control, and any other media on which any HFA Confidential Information may have been provided, together with all copies thereof, whether in printed or machine readable form; provided, however, that Recipient may retain any records and copies of HFA Confidential Information solely to the extent and for the period necessary to permit Licensee to fulfill any further obligations under the License Agreement, including without limitation, Licensee's

accounting and royalty and security compliance obligations under Sections 2 and 6 of the License Agreement, after which period such records and copies shall be purged and destroyed as described in this Section 6. Notwithstanding the foregoing, Recipient is not required to purge and destroy any HFA Confidential Information to the extent such HFA Confidential Information was independently derived (including but not limited to HFA Confidential Information independently derived by a third party subject to a duty of confidentiality to HFA and provided by such third party to Recipient) or acquired from a party not subject to a duty of confidentiality to HFA with respect to the HFA Confidential Information so acquired.

7. Assistance of Counsel.

Each party hereto acknowledges that it has been afforded the opportunity to be represented by its own independent counsel for purposes of reviewing this Agreement and discussing its terms prior to execution.

8. Specific Performance.

Recipient acknowledges that a breach of Recipient's obligations in Sections 2 and 6 of this Agreement may result in irreparable harm, the extent of which it would be difficult to ascertain, and therefore agrees that HFA may seek any legal remedy to which HFA might be entitled.

9. Miscellaneous.

This Agreement (combined with the License Agreement, if the Recipient is the Licensee) constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior or contemporaneous representations, discussions, proposals, negotiations, conditions, communications and agreements, whether oral or written, between the parties relating to the subject matter hereof. No amendment, modification or waiver of any provision of this Agreement shall be effective unless in writing and signed by duly authorized signatories of both parties. The waiver by either party of a breach of or a default under any provision of this Agreement shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without reference to its conflicts of laws provisions. This Agreement and the rights and obligations hereunder may not be assigned or delegated by Recipient, in whole or part, whether voluntarily, by operation of law, change of control or otherwise, without the prior written consent of HFA. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be invalid or unenforceable, the remaining portions hereof shall remain in full force and effect and such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed to the extent necessary to make such provision valid and enforceable. The parties are independent contractors, and neither party shall have any authority of any kind to bind the other party in any respect whatsoever.

The parties have executed this Data Access and Use Agreement as of the date first above written:

THE HARRY FOX AGENCY, INC.

By: _____
Name: Gary L. Churgin
Title: President and CEO

REDACTED

EXHIBIT D

[DATE]

[ADDRESSEE]
[LICENSEE]
[ADDRESS]
[ADDRESS]

Re: Royalty Examination of LICENSEE (EXAM PERIOD)

To Whom It May Concern:

We have been requested by The Harry Fox Agency, Inc. ("HFA") to examine, commencing on DATE, the books and records of LICENSEE for the period EXAM PERIOD in connection with LICENSEE'S royalty reports and payments to HFA-affiliated publishers.

We agree that, except as authorized in writing by LICENSEE, we will not disclose to anyone other than HFA, its officers and employees, legal counsel, and HFA-affiliated publishers, any information that we obtain from our examination of LICENSEE's books and records; provided, however, that we may disclose such information in the context of a legal action or proceeding, and further provided that it is understood that HFA may disclose such information in connection with the royalty examination and matters relating to or arising out of same.

Sincerely,

[AUTHORIZED EXAMINER]
on behalf of
[EXAMINER'S FIRM]

EXHIBIT CO 0027

SECOND AMENDMENT TO MEMORANDUM OF AGREEMENT

This Second Amendment to Memorandum of Agreement ("Second Amendment") is being entered into as of March 30, 2005 (the "Effective Date"), and amends the agreement dated September 18, 2003 ("Agreement") by and between The Harry Fox Agency, Inc., having its principal place of business at 711 Third Avenue New York, 8th Floor, New York 10017 ("HFA") and , having its principal place of business at Redacted ("Licensee"). Except as otherwise provided herein, capitalized terms used in this Second Amendment have the meanings assigned to them in the Agreement.

In consideration of the mutual covenants, conditions and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to amend the Agreement such that Section 5.1 is deleted in its entirety and replaced with the following: "Unless terminated earlier in accordance with the terms set forth herein, the initial term of this Agreement shall be one year from the Effective Date (the "Initial Term") and shall automatically renew for consecutive additional six (6) month periods (each, a "Rollover Period") unless either party notifies the other in writing at least thirty (30) days before the end of the Initial Term or any Rollover Period that it does not wish to extend the Agreement (any Rollover Period(s), together with the Initial Term, the "Term").

IN WITNESS WHEREOF, the parties hereto have caused their authorized representatives to execute this Agreement.

THE HARRY FOX AGENCY, INC.

By: _____
Gary L. Churgin
President & CEO

Redacted

Doc #:NY6:461021.11

EXHIBIT CO 0028

COPY

RINGTONE SERVICE
LICENSING AGREEMENT

This agreement ("Agreement") is entered into as of February 3, 2005 ("**Effective Date**") by and between ("**Licensee**"), a Delaware limited liability company with an office at Redacted , and The Harry Fox Agency, Inc. ("**HFA**"), a New York corporation with an office at 711 Third Avenue, New York, NY 10017.

WHEREAS, Licensee owns and operates a service pursuant to which excerpts of copyrighted musical compositions ("**Musical Works**") in the form of Ringtones (as below defined) are digitally reproduced on a central computer server or servers, which Ringtones are subsequently transmitted from such servers and downloaded to Covered Devices (as below defined) ("**Service**"); and

WHEREAS, in order to operate the Service, Licensee seeks licenses to make Server Fixations (as below defined) and reproduce and distribute Ringtones of Musical Works that are owned and/or controlled by publisher-principals affiliated with HFA ("**Publisher-Principals**"); and

WHEREAS, HFA is prepared to issue such licenses to the extent it is authorized to do so by such Publisher-Principals;

NOW, THEREFORE, in consideration of the promises contained in this Agreement and for other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Licensing

1.1 Pursuant to the terms of this Agreement, and as more particularly described herein, upon receipt of appropriate license requests ("**License Requests**") from Licensee, HFA shall, to the extent authorized by particular Publisher-Principals, issue on behalf of such Publisher-Principals nonexclusive licenses ("**Licenses**") to reproduce and distribute Ringtones of Musical Works owned and/or controlled by such Publisher-Principals ("**Licensed Works**") for use on Licensee's Service in accordance with the terms of this Agreement. The license authority contemplated hereunder and granted pursuant to any License issued hereunder shall include and is limited to: (a) the digital reproduction of Ringtones of Licensed Works on a central computer server or servers owned and/or controlled by Licensee and located in the United States (including its territories and possessions and the Commonwealth of Puerto Rico (collectively, the "**United States**")) ("**Servers**"), solely for use in connection with the Service ("**Server Fixations**"); (b) the digital transmission of Ringtones of Licensed Works from such Servers for storage on Covered Devices, solely for use in connection with the Service; (c) the reproduction of Ringtones of Licensed Works on Covered Devices, solely for use in connection with the Service ("**Ringtone Deliveries**"); and (d) the offering of

Promotional Ringtones (as below defined) of Licensed Works, solely for use in connection with the Service. The license authority under any License issued hereunder is limited to and granted solely with respect to (x) the copyright interests of the individual Participating Publisher-Principal(s) on whose behalf the License is issued by HFA; and (y) if the Ringtone is a Pre-Recorded Ringtone (as below defined), the particular individual sound recording of the individual Licensed Work from which the excerpt embodied in the Ringtone was derived.

For purposes of this Agreement:

A "Ringtone" is an excerpt, not to exceed thirty (30) seconds, of a musical composition that is embodied in either (i) a digital file containing codes representing and capable of being rendered into audio and played back as musical notes constituting the work's melody in either monophonic or polyphonic form ("**Phonic Ringtone**"), or (ii) a digital file representing an excerpt of no more than sixty (60) seconds of a sound recording of the composition ("**Pre-Recorded Ringtone**"); in both cases, that is intended to be digitally transmitted to and stored in an end user's Covered Device and played by such intended destination Covered Device whenever the Covered Device activates its ringing or alert function indicating the arrival of a call, message or other notification received by the Covered Device, and is designed to be played by such Covered Device without any other distribution or transmission.

A "**Covered Device**" shall mean a mobile telephone, pager or other portable communications device with a telephonic or messaging function that operates on a wireless communications network regulated by the U.S. Federal Communications Commission pursuant to its rules governing commercial mobile radio services.

A "**Promotional Ringtone**" shall mean a digital transmission of a Ringtone in streamed form made available to a prospective purchaser free of charge and solely for the purpose of promoting the sale of the Ringtone, and that does not result in a reproduction of any part or all of the Ringtone that is accessible except by such prospective purchaser for an intended one-time promotional playback through the operation of a Covered Device or other device.

1.2 The authority of HFA to issue Licenses for any individual Musical Work on behalf of any one or more Publisher-Principals is subject to the approval of the relevant Publisher-Principal(s). Before commencing to issue licenses hereunder, HFA shall for a period of time (the "**Opt-In Period**") offer to its Publisher-Principals the opportunity to agree to make their Musical Works available for licensing under this Agreement by notifying HFA of their desire to opt in to the Agreement. Notwithstanding the decision to opt in by any individual Publisher-Principal, thereby rendering such Publisher-Principal a "**Participating Publisher-Principal,**" if such Participating Publisher-Principal at any time requests that HFA not issue Licenses on its behalf (either with respect to a particular Musical Work or in general), HFA will honor that request; provided, however, that any

Licenses validly issued by HFA prior to the receipt of such a request shall remain in effect until the Term (as below defined) of this Agreement expires.

1.3 Following execution of this Agreement and conclusion of the applicable Opt-In Period, Licensee may begin submitting License Requests in electronic form in accordance with the format specified in Exhibit A (as such format may be modified from time to time by HFA upon reasonable notice to Licensee) ("**Request Format**"), which License Requests shall be duly processed by HFA. Without limitation, Licensee shall include in each License Request to the extent required by the Request Format (a) the title of the Musical Work for which a License is being requested; (b) the writer(s) of the Musical Work; (c) the publisher(s) of the Musical Work; and (d) whether the Ringtone is to be licensed in the form of a Phonic Ringtone and/or a Pre-Recorded Ringtone; and, if the Ringtone is a Pre-Recorded Ringtone, (e) the name of the record company that produced the sound recording embodied in the Ringtone; (f) the name of the artist performing such sound recording; (g) the ISRC number for such sound recording; (h) the total playing time of such sound recording in its complete form, expressed in minutes and seconds; (i) the title of an album for which such sound recording has been previously licensed; and (j) such other information as may be required by HFA's Request Format.

1.4 HFA shall from time to time provide to Licensee an electronic file specifying the Licenses issued under this Agreement (each such report a "**Confirmation Report**"). To aid Licensee in the calculation of royalties, with respect to each License, such Confirmation Report shall include, *inter alia*, the total percentage ownership share of the Participating Publisher-Principal(s) on whose behalf the License has been issued.

1.5 For the avoidance of doubt, and without limitation, the Licenses granted hereunder do not extend to or cover: (a) any right of public performance; (b) any copyrights or other rights in sound recordings; (c) any rights to synchronize musical works with visual images resulting in audiovisual works; (d) any print, display or karaoke rights; (e) any adaptation (derivative work) rights or right to alter the fundamental character of a Musical Work (except to reproduce and distribute Ringtones, in strict accordance with the terms and conditions of this Agreement); (f) any merchandising rights; (g) any use of a musical work (whether or not embodied in a sound recording) for a marketing campaign, product tie-in, game or contest or otherwise to advertise, promote or cross-promote any product or service; or (h) any use of the title of a musical work, or the name or likeness of any writer, publisher or artist associated with a musical work, except for identification purposes as described in Section 4.

1.6 The license authority contemplated by this Agreement and granted pursuant to any License issued hereunder is limited to Licensee and may not be sublicensed, assigned or otherwise transferred by Licensee except to the extent expressly permitted hereunder.

2. **Reporting and Payment of Royalties**

2.1 Licensee shall account and pay royalties to HFA quarterly, within forty-five (45) days after the end of each calendar quarter, on the basis of (a) the initial Server Fixation of a particular individual Phonic Ringtone or Pre-Recorded Ringtone of a Licensed Work made on any Server (but not any subsequent Server Fixation of the identical Phonic Ringtone or Pre-Recorded Ringtone made on the same or any other Server) ("**Initial Server Fixation**"); and (b) each Ringtone Delivery in the form of a Phonic Ringtone ("**Phonic Ringtone Delivery**") or Pre-Recorded Ringtone ("**Pre-Recorded Ringtone Delivery**"). Licensee shall provide its quarterly statements ("**Statements**") in electronic form in accordance with the format specified in Exhibit B (as such format may be modified from time to time by HFA upon reasonable notice to Licensee) ("**Reporting Format**"). With respect to each quarterly reporting period, for each License, Licensee shall include in its Statement (t) the HFA License number; (u) whether an Initial Server Fixation was made; (v) the total number of Phonic Ringtone Deliveries and/or total number of Pre-Recorded Ringtone Deliveries, as the case may be; (w) the particular retail outlet through which each Ringtone Delivery was made; (x) the royalty amount being paid for the Initial Server Fixation; (y) the total royalty amount being paid for the Phonic Ringtone Deliveries and/or Pre-Recorded Ringtone Deliveries; and (z) such other information as may be required by HFA's Reporting Format. Interest on late payments shall be payable to HFA at the rate of prime plus two percent (2%) calculated from the date the royalties were due to be paid under the applicable reporting period to the date of ultimate payment to HFA.

2.2 For each Initial Server Fixation, the royalty shall be Redacted; provided, however, that this amount shall be proportionately reduced to the extent that the Participating Publisher-Principal(s) on whose behalf the License is granted own(s) or control(s) less than 100% of the Work.

2.3 (a) For each Phonic Ringtone Delivery, the royalty shall be Redacted; provided, however, that this amount shall be proportionately reduced to the extent that the Participating Publisher-Principal(s) on whose behalf the License is granted own(s) or control(s) less than 100% of the Work. (b) For each Pre-Recorded Ringtone Delivery, the royalty shall be Redacted; provided, however, that this amount shall be proportionately reduced to the extent that the Participating Publisher-Principal(s) on whose behalf the License is granted own(s) or control(s) less than 100% of the Work.

3. **Term**

The term of this Agreement shall commence as of the Effective Date and terminate on December 31, 2006 (the "**Term**"). If Licensee wishes to renew this Agreement for an additional two (2) year term, it shall notify HFA of such desire not later than a date six (6) months prior to the end of the Term. Such notification

shall include proposed terms for any such renewal. Any renewal shall be subject to the approval of individual Publisher-Principals as described in Subsection 1.2, and HFA reserves the right to propose changes to administrative and other aspects of the Agreement as it deems appropriate.

4. **Writer/Publisher Credit**

Licensee shall, to the extent commercially reasonable, include in any graphics and/or imagery displayed in connection with the play of any Ringtone of a Licensed Work written credit in legible form setting forth the names of the writer(s) and publisher(s) of such Licensed Work.

5. **Security**

5.1 In connection with the use of any Licensed Work, Licensee shall implement and maintain copy protection and digital rights management technology and systems, including software and/or hardware functional limitations (collectively, "**Security Systems**") with respect to all aspects of the Service, including without limitation its Servers and operating systems, that (a) are designed to prevent unauthorized reproduction and distribution of the Licensed Work, in the form of Ringtones or otherwise; (b) are sufficient to track and enforce the use limitations contemplated by this Agreement; and (c) meet or exceed current industry standards as they exist from time to time for the licensed delivery of music via digital transmission and its reproduction on devices including, without limitation, Covered Devices.

5.2 In the event it becomes aware of a breach of Licensee's Security Systems ("**Security Breach**"), whether through its own monitoring efforts, upon being advised by another party (including HFA) or otherwise, Licensee shall use its best efforts to resolve the Security Breach and restore the full integrity of its Security Systems as quickly as possible. If a solution to the Security Breach is not immediately available (i.e., cannot be implemented within twenty-four (24) hours from the time Licensee becomes aware of the Security Breach), Licensee shall (a) promptly notify HFA of the Security Breach in writing (unless Licensee learned of the breach from HFA); and (b) cease all further digital transmission and/or reproduction of Licensed Works to the extent such activities are or could possibly be affected by the Security Breach, pending full resolution of the Security Breach. In such a case, Licensee (x) shall keep HFA reasonably apprised of the status of its efforts to resolve the Security Breach; and (y) shall not resume the activities that were suspended pursuant to this Subsection 5.2 until the full integrity of its Security Systems has been restored.

5.3 To the extent Licensee employs third-party technology in order to operate, Licensee shall use its best efforts to maintain and upgrade such technology by (a) diligently monitoring any third-party notifications of bug-fixes, security holes and functionality improvements; and (b) obtaining any available upgrades and bug-fixes, and installing, testing and distributing such upgrades and bug-fixes as necessary so as to maintain the integrity of its Security Systems.

5.4 Licensee shall use its best efforts to prevent any unauthorized digital transmissions and reproductions of Musical Works by operators and users of the Service and/or in any facility, on any device (including Covered Devices), or by any person under the supervision and/or control of Licensee.

6. **Royalty and Security Compliance**

6.1 Notwithstanding, without limiting and in addition to the general right of HFA and/or any Participating Publisher-Principal pursuant to industry custom and practice to examine the books and records of Licensee in connection with Licensee's use of Musical Works, HFA shall be entitled, upon thirty (30) days' notice to Licensee, to conduct an examination of the books, records, operations and Security Systems of Licensee ("**Royalty and Security Examination**") to determine whether Licensee is in compliance with its reporting, royalty and security obligations under this Agreement. Absent a good-faith basis to believe that Licensee is not in compliance with such obligations, HFA shall not seek to initiate a Royalty and Security Examination more than once every twelve (12) months or more than six (6) years following the termination of this Agreement.

6.2 During the course of a Royalty and Security Examination, upon request by HFA or an examiner acting on its behalf, Licensee shall, within three (3) business days (a) provide access to any information that may be called for by such request, including without limitation any (i) books, records, files, logs, reports, compilations, usage data and other documentation, whether in paper or electronic form, that were or could be used or required to generate or verify Licensee's Statements and/or that reflect or summarize Licensees' Statements; (ii) financial information, including books, records, ledgers, reports, and other documentation, reflecting cash receipts and general revenue accounts to the extent such information relates directly or indirectly to the activities licensed under this Agreement; and (iii) files, logs, reports, compilations, testing and monitoring data and other documentation related to and/or reflecting the operation and integrity of Licensee's Security Systems (such information, along with the information described in the items (a)(i) and (a)(ii) of this Subsection 6.2, collectively referred to as "**Documentation**"); and (b) through the assistance of personnel who are familiar with the technical and operational aspects of Licensee's computer, hardware, software, Security Systems (collectively, "**Operational Systems**") who are to be made available by Licensee, provide real-time and/or historical access to such Operational Systems, as requested, sufficient to permit HFA or its examiner(s) to conduct meaningful tests and analysis to verify that (i) the Operational Systems are properly and accurately tracking and reporting the use of the Licensed Works, and royalties payable therefor, as contemplated by the terms of this Agreement; and (ii) the Operational Systems are in compliance with the security requirements set forth in Section 5 of this Agreement. Licensee shall provide the information, systems access and personnel required by this Subsection

6.2 free of charge and, unless otherwise agreed by HFA or its examiner(s), at Licensee's place of business.

6.3 During the course of and/or following completion of the Royalty and Security Examination, upon request by HFA or an examiner acting on its behalf, Licensee shall make available company personnel at an appropriate level of seniority and/or technical ability to discuss and/or resolve particular issues and findings arising out of such examination.

6.4 Licensee shall maintain any and all Documentation that reasonably might be expected to be relevant to HFA's conduct of a Royalty and Security Examination for a period of at least six (6) years following the expiration or termination of this Agreement, unless there is a Royalty and Security Examination in progress or not fully resolved as of the expiration of such period, in which case the Documentation shall be maintained until the Royalty and Security Examination is fully resolved to the satisfaction of HFA.

6.5 If a royalty examination reveals a nonpayment or underpayment of royalties due to HFA, the amounts determined to be owing shall be subject to interest payable at the rate of prime plus two percent (2%) calculated from the date the royalties were due to be paid under the applicable reporting period to the date of ultimate payment to HFA.

7. Representations and Warranties; Disclaimer; Indemnity

7.1 Licensee represents and warrants that: (a) it has the full right, power and authority to enter into and perform this Agreement in accordance with its terms and conditions; (b) it shall take all steps necessary to implement and shall comply with (i) its security obligations set forth in Section 5, and (ii) the requirements set forth in Section 9; and (c) the Service shall (i) neither infringe upon nor violate the intellectual property rights or other rights of any third party, and (ii) comply with all applicable laws, rules and regulations.

7.2 HFA represents and warrants that it has the full right, power and authority to enter into this Agreement and perform its obligations hereunder.

7.3 Licensee agrees to indemnify, defend and hold harmless HFA from and against any losses, injuries, damages, claims, expenses and costs (including without limitation reasonable attorneys' fees) incurred or suffered by HFA, arising from any third-party actions, claims, suits or legal proceedings of any kind, caused by, incident to or arising out of Licensee's failure to perform any of its obligations under this Agreement and/or breach of any of Licensee's representations, warranties or covenants hereunder.

8. Termination/Default

8.1 All license authority pursuant to Licenses issued hereunder shall terminate upon the expiration or termination of this Agreement (unless such Licenses are renewed pursuant to a renewal of this Agreement as contemplated under Section 3, in which case the terms of renewal shall apply as appropriate), and any further transmission and/or reproduction of any Licensed Work after the expiration of this Agreement shall be prohibited and actionable as an act of infringement under, and fully subject to the remedies provided by, the Copyright Act. Notwithstanding the foregoing, provided that the Agreement has not been terminated due to Licensee's breach or default, any Server Fixations existing on Servers and/or Ringtone Deliveries existing on Covered Devices as of the expiration of the Agreement may remain on such Servers and Covered Devices; provided, however, that such existing Server Fixations (in addition to the Ringtone Deliveries) may not be further reproduced or distributed after the expiration of the Agreement.

8.2 Notwithstanding, without limiting and in addition to any other remedy that may be available at law or in equity and/or under this Agreement, Licensee understands and agrees that in the event that (a) Licensee fails to account to HFA and pay royalties provided for in Section 2, HFA may provide written notice to Licensee that, unless the default is fully remedied within thirty (30) days from the date of the notice, this Agreement and any Licenses issued hereunder will be automatically terminated, and that such termination will render the further transmission and/or reproduction of any Licensed Work for which royalties have not been fully paid actionable as an act of infringement under Section 501 of the Copyright Act, and fully subject to the remedies provided by Sections 502 through 506 and 509 of the Copyright Act; (b) Licensee is in material breach or default of any of its obligations under this Agreement, HFA may provide written notice to Licensee that, unless the default is fully remedied within thirty (30) days from the date of the notice, this Agreement and any Licenses issued hereunder will be automatically terminated, and that such termination will render the further transmission and/or reproduction of any Licensed Work actionable as an act of infringement under Section 501 of the Copyright Act, and fully subject to the remedies provided by Sections 502 through 506 and 509 the Copyright Act. Licensee further understands and agrees that in the case of infringement, irreparable harm may be presumed, and HFA and/or any affected Publisher-Principal(s) shall be entitled as appropriate to injunctive relief, in addition to any other remedy that may be available at law or in equity and/or under this Agreement. For the avoidance of doubt, and without limitation, Licensee's breach of any of the obligations or restrictions imposed by Subsections 1.1, 1.5, 1.6 and 10.4 and Sections 2, 5, 6, 7, 9 of this Agreement shall be considered a material breach of, and default under, this Agreement.

8.3 To the extent permitted by applicable law, and without limitation, the occurrence of any of the following events shall also be considered a material breach of and default under this Agreement: (a) Licensee's dissolution and/or the liquidation of all of Licensee's assets; (b) the filing of a petition in bankruptcy or insolvency or

for an arrangement or reorganization by, for or against Licensee; (c) the appointment of a receiver or trustee for all or a portion of Licensee's assets; (d) Licensee's assignment of assets for the benefit of creditors; (e) Licensee's insolvency; or (f) Licensee's inability to pay its debts as they become due. Upon the occurrence of any of the events described in items (a) through (f) of this Subsection 8.3, notwithstanding, without limiting and in addition to any other remedy that may be available at law or in equity and/or under this Agreement, this Agreement and all license authority pursuant to any Licenses granted hereunder shall terminate automatically without the requirement of any further action on the part of HFA or the Participating Publisher-Principals.

8.4 Notwithstanding, without limiting and in addition to any other remedy that may be available at law or in equity and/or under this Agreement, including without limitation the remedies set forth in Subsection 8.2, the breach of any of the provisions set forth in Section 5 shall entitle HFA and/or any relevant Publisher-Principal to specific performance of such provision and/or to terminate, effective immediately upon the giving of notice, the license authority pursuant to any License granted hereunder.

8.5 Notwithstanding the expiration or termination of this Agreement, Sections 2, 4, 5, 6, 7, 8, 9 and10 shall to the extent applicable survive and continue to bind the parties and their legal representatives and successors.

9. Proprietary and Confidential Information

9.1 HFA shall have no obligation to perform its obligations hereunder unless and until Licensee enters into the Data Access and Use Agreement, attached hereto and incorporated herein as Exhibit C (the "**Data Access and Use Agreement**"), governing the nondisclosure and use of HFA Confidential Information (as defined in the Data Access and Use Agreement) by Licensee.

9.2 To the extent Licensee seeks to have a third-party individual or entity obtain access to HFA Confidential Information for purposes of obtaining and administering Licenses and otherwise fulfilling its obligations under this Agreement (each, a "**Third-Party Administrator**"), Licensee must obtain HFA's prior consent of each such Third-Party Administrator (such consent not to be unreasonably withheld). Upon HFA's consent to Licensee's use of such Third-Party Administrator, HFA will require that such Third-Party Administrator enter into a data access and use agreement with HFA substantially in the form of the Data Access and Use Agreement, prior to allowing such Third-Party Administrator access to any HFA Confidential Information.

10. Miscellaneous

10.1. Administrative Fee. In addition to the royalties payable hereunder, within five (5) business days following execution of this Agreement, Licensee shall pay to HFA

an administrative fee of Redacted in consideration of HFA's administrative expenses in connection with the publisher opt-in and licensing processes contemplated hereunder.

10.2 Notices. All notices hereunder shall be in writing and shall be deemed effective (a) if provided by hand delivery, upon delivery; (b) if provided by overnight courier, one (1) business day following the date sent; and (c) if provided by registered or certified mail, return receipt requested, five (5) business days following the date mailed. Notices shall be sent to the following addresses:

If to HFA:

To the address set forth above. Attn: General Counsel. Fax: 212-922-3299.

If to Licensee:

To the address set forth above. Attn: Redacted

10.3 Publicity. Neither party shall issue any press release or other publicity document concerning this Agreement without the prior written consent of the other party.

10.4 Assignment. This Agreement may not be assigned.

10.5 Entire Agreement; Amendment. This Agreement represents the entire understanding of the parties with respect to the subject matter hereof, supersedes all prior and contemporaneous agreements and understandings of the parties with respect to the subject matter hereof, and may not be altered or amended except in a written instrument executed by both parties.

10.6 Governing Law; Jurisdiction. This Agreement shall be governed by, and construed in accordance with, federal law and/or the laws of the State of New York (without giving effect to conflicts of law principles thereof), as may be applicable. With respect to any action or proceeding arising out of this Agreement, the parties (a) agree that the sole and exclusive venue for such action or proceeding shall be in a court of appropriate jurisdiction located in New York County, New York; (2) agree to the appropriateness of, and waive any objection concerning, the propriety and/or convenience of, proceeding in such venue; and (3) consent to the personal jurisdiction of such court.

10.7 Severability; Waiver. If a court should determine that any part of this Agreement is invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect. Performance of any obligation required of a party hereunder may be waived only by a written waiver signed by a duly authorized officer of the other party, which waiver shall be effective only with respect to the specific obligation described therein.

10.8 Headings. The titles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

10.9 Assistance of Counsel. Each party hereto acknowledges that it has been represented by its own independent counsel, who has reviewed this Agreement and discussed the terms herein with his or her respective client prior to execution.

10.10 Counterparts. This Agreement may be executed in multiple counterparts and delivery of an executed counterpart may be made by facsimile, each such counterpart to be considered and accepted as an original, and all such counterparts together to constitute a single Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date:

Redacted

THE HARRY FOX AGENCY, INC.

By: _____
Print name: J C Chalcinski
Title: SVP & general counsel

EXHIBIT A

Ringtone Electronic License Request & Output File Layout

Acceptable Data Formats:

1. *MS Access database*
2. *MS Excel Spreadsheets (with proper headings)*
3. *Flat File (follow the file layout below)*

	Description	Type	Length	Decimal	Input Option
1	Manufacturer Number	A	6		M
2	Transaction Date	N	8	0	M
3	Manufacturer Request Number	N	8	0	M
4	Ringtone Playing Time - Seconds	N	2	0	M
5	Song Title	A	200		M
6	A/K/A Song Title	A	200		O
7	ISWC Code	A	11		O
8	HFA Song Code	A	6		O
9	Song Writer(s)	A	200		M
10	Publisher Name	A	60		O*
11	HFA Publisher Number	A	6		*Input/Output*
12	Publisher Share	N	7	4	*Input/Output*
13	Catalog Number *(for matching purposes only)*	A	15		O
14	Configuration Code(s)	A	12		M
15	UPC Code *(for matching purposes only)*	A	16		O
16	License Type	A	1		M
17	Server Fixation Date	N	8	0	M
18	Rate Code	A	1		M
19	Rate In Cents	N	7	7	M
20	Artist Name (For Pre-Recorded Ringtone)	A	60		C*
21	Album Title (For Pre-Recorded Ringtone)	A	200		C*
22	Record Label (For Pre-Recorded Ringtone)	A	60		C*
23	Total Playing Time - Minutes (For Pre-Recorded Ringtone)	N	3	0	C*
24	Total Playing Time - Seconds (For Pre-Recorded Ringtone)	N	2	0	C*
25	ISRC Code (For Pre-Recorded Ringtones)	A	15		C*
26	User Defined	A	30		*Input/Output*
27	HFA License Number	N	10		*Output*
28	HFA License Status Code	A	2		*Input/Output* *A*
29	HFA License Status Code 1	A	2		*Output*
30	HFA License Status Code 2	N	2		*Output*
31	HFA Flag for Affiliated Publisher Data	A	1		*Output*
32	Publisher Status	A	1		*Output*

KEY:

TYPE:
A = Alphanumeric Field
N = Numeric Field

LENGTH: For Alphanumeric fields, it is the maximum number of characters required.
For Numeric fields, it is the exact number of characters required.

DECIMAL: Number of characters after decimal (for numeric fields only)

INPUT OPTION:
M = Mandatory
O = Optional
O* = Optional, however, providing this information will greatly help expedite the licensing process if the song was released within the last six months.
C* = Conditional - Information mandatory if request is for a Pre-Recorded Ringtone.

A All input/output fields should be left blank upon initial license submission, EXCEPT for Field 28 which should be populated with the letter R in the input file IF the record is a resubmission that has been amended.

EXHIBIT B

Ringtone Electronic Royalty Reporting File Layout

Acceptable file formats are:
1 MS Excel spreadsheet - please save it as type "csv" (comma separated values)
2 ASCII text either in a delimited (csv) or fixed width format (.txt)

FILE HEADER (Control Portion for File Transfer)

Field Name	Field Length	Decimal Places	Field Format	Mandatory Field	Field Description/Legend	Example
Line Count	15	0	Number	Yes	Number of lines of data in file; used as control to verify complete and accurate file copy was received.	321456

FILE BODY

	Field Name	Field Length	Decimal Places	Field Format	Mandatory Field	Field Description/Legend	Example
1	Manufacturer Number	8		Text	Yes	Account number assigned by HFA to Licensee	M12345
2	Transaction Date	8	0	Number	Yes	Date electronic royalty report submitted to HFA Format: YYYYMMDD	20020304
3	Royalty Reporting Period	6		Text	Yes	Length of period in number of months (left 2 digits), ending month (middle 2 digits), year (right 2 digits)	30602
4	HFA License Number	12		Text	Yes	Number assigned by HFA for each license.	1012345678
5	Configuration Code	2		Text	Yes	Code designating the specific configuration licensed (FX, PH, RR). FX - Initial Server Fixation PH - Phonic Ringtone RR - Pre-Recorded Ringtone IMPORTANT NOTE: Each configuration must be reported as a separate line.	PH
6	Song Title	30		Text	Yes	Title of work for which a license was granted.	STARRY NIGHT
7	Units (For Period)	9	0	Number	Yes	Applicable number for each specific configuration shown in field #5	12345
8	Publisher Name	30		Text	Yes**	Name of the publisher owning a share of the work.	Famous
9	Publisher Ownership Share Percentage	7	4	Number	Yes**	Percent of song owned by specific publisher, as provided to licensee on license	33.3340
10	Royalty Rate	5	4	Numeric	Yes**	Royalty rate for each specific configuration shown in field #5	0.1000
11	Royalty Amount (For Period)	11	4	Numeric	Yes	Total royalties generated this period for this license.	1.2500
12	Service (ie: Third Party)	30		Text	Yes	Third party service through which the content was distributed (Each third party Service must be reported on a separate line)	RINGTONE2.COM

Note: Any characters or digits exceeding these per field maximums will be truncated.

Note: You must report by configuration(s) and units for each third party service through which content was distributed. See sample report for exam

*** A separate publisher share % line with corresponding publisher name must be given for each ringtone configuration if the title is not 100% payable through HFA.*

EXHIBIT C

Data Access and Use Agreement

This Data Access and Use Agreement ("Agreement") is entered into as of February 3, 2005, by and between The Harry Fox Agency, Inc., a New York corporation, having its principal place of business at 711 Third Avenue, New York, New York ("HFA") and , a Delaware limited liability company with an office at Redacted ("Recipient").

WHEREAS, Recipient (also referred to at times herein as "Licensee") and HFA have entered, or expect to enter, into that certain Ringtone Service Licensing Agreement, dated as of February 3, 2005 (the "License Agreement"), pursuant to which HFA has granted, or will grant, limited rights to certain copyrighted musical compositions (each, a "Musical Work") in connection with the operation of Licensee's ringtones service; and

WHEREAS, Recipient seeks to access and use certain HFA Confidential Information (defined in Section 1 below) as necessary to obtain and administer the licenses issued under the License Agreement (each, a "License"), and as otherwise may be necessary to comply with Licensee's obligations under the License Agreement (collectively, the "Purpose"), and HFA has agreed to allow Recipient such limited access to and use of the HFA Confidential Information solely as necessary to accomplish the Purpose;

NOW THEREFORE, in consideration of the premises of and the mutual promises, covenants and agreements contained in this Agreement, HFA and Recipient agree as follows:

1. HFA Confidential Information.

"HFA Confidential Information" means any and all information and material disclosed by HFA to Recipient or obtained by Recipient from HFA (whether in writing, or in oral, graphic electronic or any other form) that is proprietary and/or is intended by HFA to remain confidential relating to HFA's business and its databases, products, services, business strategies, capabilities or business affairs, including without limitation, all data and information related to the Musical Works and ownership thereof and/or HFA's publisher-principals.

2. Non-Disclosure and Limited Use.

Recipient covenants (a) to hold all HFA Confidential Information in strict confidence, (b) that it shall disclose (or permit access to) the HFA Confidential Information solely to (or by) its employees, if any, who need to know or access such HFA Confidential Information to accomplish the Purpose, and who are bound by nondisclosure and use restrictions and obligations comparable to and at least as restrictive to those set forth herein, and (c) that it shall not disclose to any third party, including any agent, contractor, consultant or other party, or permit any such party to access, the HFA Confidential Information, unless and until such party has entered into a written agreement with HFA in form and substance of this Agreement governing the nondisclosure and use of the HFA Confidential Information. Recipient further covenants that it shall (y) use HFA Confidential Information solely as necessary to accomplish the Purpose, and (z) not extract, aggregate, derive or copy any HFA Confidential Information, whether by bulk transfer or through individual data query and response, for use or incorporation in any database, unless the sole purpose of such use or incorporation is to accomplish the Purpose. Recipient agrees to notify HFA immediately upon obtaining any information regarding unauthorized disclosure or access to the HFA Confidential Information.

Notwithstanding the disclosure and use restrictions in this Section 2, Recipient may disclose HFA Confidential Information (i) that is independently derived or acquired from a party not subject to a duty of confidentiality to HFA, or (ii) to the extent required to respond to the request of a court of competent jurisdiction, provided that upon receiving any such request and to the extent that it may do so without violating any law, Recipient prior to such disclosure advises HFA of such request in order that HFA may take such action as it deems appropriate to protect the HFA Confidential Information. During the Term (defined in Section 5 below) and for a period

of three (3) years following the termination or expiration of this Agreement, Recipient agrees to permit HFA to inspect, on a semi-annual basis, during regular business hours and upon reasonable prior notice, the point or points at which the HFA Confidential Information is (or was) used in Recipient's facilities, if any, and to furnish whatever assistance is reasonably necessary to permit HFA to determine whether Recipient, including its employees, agents, subcontractors, independent contractors, consultants or other parties, if any, are in compliance with this Agreement.

3. Ownership.

Recipient acknowledges and agrees that all right, title and interest in and to the HFA Confidential Information (including all copies, extracts and portions thereof) is and shall remain the sole property of HFA. Recipient does not acquire (by license or otherwise, whether express or implied) any intellectual property rights or other rights under this Agreement or any disclosure or access hereunder, except the limited right to use such HFA Confidential Information in strict accordance with the express provisions of this Agreement. All rights relating to the HFA Confidential Information that are not expressly granted hereunder to Recipient are reserved and retained by HFA.

4. No Warranty; Limitation of Liability.

EXCEPT AS OTHERWISE MAY BE EXPRESSLY SET FORTH IN THE LICENSE AGREEMENT WITH RESPECT TO LICENSEE, HFA MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE HFA CONFIDENTIAL INFORMATION OR ANY USE THEREOF, AND THE HFA CONFIDENTIAL INFORMATION IS PROVIDED ON AN "AS IS" BASIS. EXCEPT AS OTHERWISE MAY BE EXPRESSLY SET FORTH IN THE LICENSE AGREEMENT WITH RESPECT TO LICENSEE, HFA HEREBY EXPRESSLY DISCLAIMS ALL SUCH WARRANTIES, INCLUDING, BUT NOT LIMITED TO, CORRECTNESS, COMPLETENESS, CURRENTNESS, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE HFA CONFIDENTIAL INFORMATION OR OF THE MEDIA ON WHICH THE DATA IS PROVIDED AND SHALL NOT BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR CAUSED, IN WHOLE OR IN PART, BY HFA'S NEGLIGENT ACTS OR OMISSIONS IN PROCURING, COMPILING, COLLECTING, INTERPRETING, REPORTING, COMMUNICATING OR DELIVERING THE HFA CONFIDENTIAL INFORMATION OR IN OTHERWISE PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT, EVEN IF HFA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

5. Term; Termination.

This Agreement will continue for the term of the License Agreement (including any agreed extensions thereof) (the "**Term**"), unless otherwise terminated by HFA in accordance herewith. HFA may terminate this Agreement at any time upon written notice, and shall have no further obligations to disclose to or permit access by Recipient to any HFA Confidential Information; and provided, however, that each party's rights and obligations shall otherwise survive the termination or expiration of this Agreement.

6. Purging of HFA Confidential Information.

Promptly following any expiration or termination of this Agreement, Recipient shall purge and destroy any and all records and copies of HFA Confidential Information from any Recipient databases and other systems under Recipient's direct or indirect control, and any other media on which any HFA Confidential Information may have been provided, together with all copies thereof, whether in printed or machine readable form; provided, however, that Recipient may retain any records and copies of HFA Confidential Information solely to the extent and for the period necessary to permit Licensee to fulfill any further obligations under the License Agreement, including without limitation, Licensee's accounting and royalty and security compliance obligations under Sections 2 and 6 of the License Agreement, after which period such records and copies shall be purged and destroyed as described in this Section 6. Notwithstanding the foregoing, Recipient is not required to purge and destroy any HFA Confidential Information to the extent such HFA

Confidential Information was independently derived or acquired from a party not subject to a duty of confidentiality to HFA.

7. Assistance of Counsel.

Each party hereto acknowledges that it has been afforded the opportunity to be represented by its own independent counsel for purposes of reviewing this Agreement and discussing its terms prior to execution.

8. Specific Performance.

Recipient acknowledges that a breach of Recipient's obligations in Sections 2 and/or 6 of this Agreement may result in irreparable harm, the extent of which it would be difficult to ascertain, and therefore agrees that HFA shall be entitled to seek immediate injunctive relief to enforce any such obligation in addition to any other legal remedy to which HFA might be entitled.

9. Miscellaneous.

This Agreement (combined with the License Agreement, if the Recipient is the Licensee) constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior or contemporaneous representations, discussions, proposals, negotiations, conditions, communications and agreements, whether oral or written, between the parties relating to the subject matter hereof. No amendment, modification or waiver of any provision of this Agreement shall be effective unless in writing and signed by duly authorized signatories of both parties. The waiver by either party of a breach of or a default under any provision of this Agreement shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without reference to its conflicts of laws provisions. This Agreement and the rights and obligations hereunder may not be assigned or delegated by Recipient, in whole or part, whether voluntarily, by operation of law, change of control or otherwise, without the prior written consent of HFA. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be invalid or unenforceable, the remaining portions hereof shall remain in full force and effect and such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed to the extent necessary to make such provision valid and enforceable. The parties are independent contractors, and neither party shall have any authority of any kind to bind the other party in any respect whatsoever.

The parties have executed this Data Access and Use Agreement as of the date first above written:

THE HARRY FOX AGENCY, INC.

By: _____

Name: J C Charlesworth

Title: SVP & General Counsel

Redacted

EXHIBIT CO 0029

11/22/04

RINGTONE SERVICE
LICENSING AGREEMENT

This agreement ("**Agreement**") is entered into as of October 28, 2004 ("**Effective Date**") by and between Redacted ("Licensee"), a Nevada corporation with an office at , and The Harry Fox Agency, Inc. ("**HFA**"), a New York corporation with an office at 711 Third Avenue, New York, NY 10017.

COPY

WHEREAS, Licensee owns and operates a service pursuant to which excerpts of copyrighted musical compositions ("**Musical Works**") in the form of Ringtones (as below defined) are digitally reproduced on a central computer server or servers, which Ringtones are subsequently transmitted from such servers and downloaded to Covered Devices (as below defined) ("**Service**"); and

WHEREAS, in order to operate the Service, Licensee seeks licenses to make Server Fixations (as below defined) and reproduce and distribute Ringtones of Musical Works that are owned and/or controlled by publisher-principals affiliated with HFA ("**Publisher-Principals**"); and

WHEREAS, HFA is prepared to issue such licenses to the extent it is authorized to do so by such Publisher-Principals;

NOW, THEREFORE, in consideration of the promises contained in this Agreement and for other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Licensing

1.1 Pursuant to the terms of this Agreement, and as more particularly described herein, upon receipt of appropriate license requests ("**License Requests**") from Licensee, HFA shall, to the extent authorized by particular Publisher-Principals, issue on behalf of such Publisher-Principals nonexclusive licenses ("**Licenses**") to reproduce and distribute Ringtones of Musical Works owned and/or controlled by such Publisher-Principals ("**Licensed Works**") for use on Licensee's Service in accordance with the terms of this Agreement. The license authority contemplated hereunder and granted pursuant to any License issued hereunder shall include and is limited to: (a) the digital reproduction of Ringtones of Licensed Works on a central computer server or servers owned and/or controlled by Licensee and located in the United States (including its territories and possessions and the Commonwealth of Puerto Rico (collectively, the "**United States**")) ("**Servers**"), solely for use in connection with the Service ("**Server Fixations**"); (b) the digital transmission of Ringtones of Licensed Works from such Servers for storage on Covered Devices, solely for use in connection with the Service; (c) the reproduction of Ringtones of Licensed Works on Covered Devices, solely for use in

connection with the Service ("**Ringtone Deliveries**"); and (d) the offering of Promotional Ringtones (as below defined) of Licensed Works, solely for use in connection with the Service. The license authority under any License issued hereunder is limited to and granted solely with respect to (x) the copyright interests of the individual Participating Publisher-Principal(s) on whose behalf the License is issued by HFA; and (y) if the Ringtone is a Pre-Recorded Ringtone (as below defined), the particular individual sound recording of the individual Licensed Work from which the excerpt embodied in the Ringtone was derived.

For purposes of this Agreement:

A "Ringtone" is an excerpt, not to exceed thirty (30) seconds, of a musical composition that is embodied in either (i) a digital file containing codes representing and capable of being rendered into audio and played back as musical notes constituting the work's melody in either monophonic or polyphonic form ("**Phonic Ringtone**"), or (ii) a digital file representing an excerpt of no more than sixty (60) seconds of a sound recording of the composition ("**Pre-Recorded Ringtone**"); in both cases, that is intended to be digitally transmitted to and stored in an end user's Covered Device and played by such intended destination Covered Device whenever the Covered Device activates its ringing or alert function indicating the arrival of a call, message or other notification received by the Covered Device, and is designed to be played by such Covered Device without any other distribution or transmission.

A "**Covered Device**" shall mean a mobile telephone, pager or other portable communications device with a telephonic or messaging function that operates on a wireless communications network regulated by the U.S. Federal Communications Commission pursuant to its rules governing commercial mobile radio services.

A "**Promotional Ringtone**" shall mean a digital transmission of a Ringtone in streamed form made available to a prospective purchaser free of charge and solely for the purpose of promoting the sale of the Ringtone, and that does not result in a reproduction of any part or all of the Ringtone that is accessible except by such prospective purchaser for an intended one-time promotional playback through the operation of a Covered Device or other device.

1.2 The authority of HFA to issue Licenses for any individual Musical Work on behalf of any one or more Publisher-Principals is subject to the approval of the relevant Publisher-Principal(s). Before commencing to issue licenses hereunder, HFA shall for a period of time (the "**Opt-In Period**") offer to its Publisher-Principals the opportunity to agree to make their Musical Works available for licensing under this Agreement by notifying HFA of their desire to opt in to the Agreement. Notwithstanding the decision to opt in by any individual Publisher-Principal, thereby rendering such Publisher-Principal a

"**Participating Publisher-Principal,**" if such Participating Publisher-Principal at any time requests that HFA not issue Licenses on its behalf (either with respect to a particular Musical Work or in general), HFA will honor that request; provided, however, that any Licenses validly issued by HFA prior to the receipt of such a request shall remain in effect until the Term (as below defined) of this Agreement expires.

1.3 Following execution of this Agreement and conclusion of the applicable Opt-In Period, Licensee may begin submitting License Requests in electronic form in accordance with the format specified in Exhibit A (as such format may be modified from time to time by HFA upon reasonable notice to Licensee) ("**Request Format**"), which License Requests shall be duly processed by HFA. Without limitation, Licensee shall include in each License Request to the extent required by the Request Format (a) the title of the Musical Work for which a License is being requested; (b) the writer(s) of the Musical Work; (c) the publisher(s) of the Musical Work; and (d) whether the Ringtone is to be licensed in the form of a Phonic Ringtone and/or a Pre-Recorded Ringtone; and, if the Ringtone is a Pre-Recorded Ringtone, (e) the name of the record company that produced the sound recording embodied in the Ringtone; (f) the name of the artist performing such sound recording; (g) the ISRC number for such sound recording; (h) the total playing time of such sound recording in its complete form, expressed in minutes and seconds; (i) the title of an album for which such sound recording has been previously licensed; and (j) such other information as may be required by HFA's Request Format.

1.4 HFA shall from time to time provide to Licensee an electronic file specifying the Licenses issued under this Agreement (each such report a "**Confirmation Report**"). To aid Licensee in the calculation of royalties, with respect to each License, such Confirmation Report shall include, *inter alia*, the total percentage ownership share of the Participating Publisher-Principal(s) on whose behalf the License has been issued.

1.5 For the avoidance of doubt, and without limitation, the Licenses granted hereunder do not extend to or cover: (a) any right of public performance; (b) any copyrights or other rights in sound recordings; (c) any rights to synchronize musical works with visual images resulting in audiovisual works; (d) any print, display or karaoke rights; (e) any adaptation (derivative work) rights or right to alter the fundamental character of a Musical Work (except to reproduce and distribute Ringtones, in strict accordance with the terms and conditions of this Agreement); (f) any merchandising rights; (g) any use of a musical work (whether or not embodied in a sound recording) for a marketing campaign, product tie-in, game or contest or otherwise to advertise, promote or cross-promote any product or service; or (h) any use of the title of a musical work, or the name or likeness of any writer, publisher or artist associated with a musical work, except for identification purposes as described in Section 4.

1.6 The license authority contemplated by this Agreement and granted pursuant to any License issued hereunder is limited to Licensee and may not be sublicensed, assigned or otherwise transferred by Licensee except to the extent expressly permitted hereunder.

2. **Reporting and Payment of Royalties**

2.1 Licensee shall account and pay royalties to HFA quarterly, within forty-five (45) days after the end of each calendar quarter, on the basis of (a) the initial Server Fixation of a particular individual Phonic Ringtone or Pre-Recorded Ringtone of a Licensed Work made on any Server (but not any subsequent Server Fixation of the identical Phonic Ringtone or Pre-Recorded Ringtone made on the same or any other Server) (**"Initial Server Fixation"**); and (b) each Ringtone Delivery in the form of a Phonic Ringtone (**"Phonic Ringtone Delivery"**) or Pre-Recorded Ringtone (**"Pre-Recorded Ringtone Delivery"**). Licensee shall provide its quarterly statements (**"Statements"**) in electronic form in accordance with the format specified in Exhibit B (as such format may be modified from time to time by HFA upon reasonable notice to Licensee) (**"Reporting Format"**). With respect to each quarterly reporting period, for each License, Licensee shall include in its Statement (t) the HFA License number; (u) whether an Initial Server Fixation was made; (v) the total number of Phonic Ringtone Deliveries and/or total number of Pre-Recorded Ringtone Deliveries, as the case may be; (w) the particular retail outlet through which each Ringtone Delivery was made; (x) the royalty amount being paid for the Initial Server Fixation; (y) the total royalty amount being paid for the Phonic Ringtone Deliveries and/or Pre-Recorded Ringtone Deliveries; and (z) such other information as may be required by HFA's Reporting Format. Interest on late payments shall be payable to HFA at the rate of prime plus two percent (2%) calculated from the date the royalties were due to be paid under the applicable reporting period to the date of ultimate payment to HFA.

2.2 For each Initial Server Fixation, the royalty shall be Redacted

2.3 (a) For each Phonic Ringtone Delivery, the royalty shall be Redacted ; provided, however, that this amount shall be proportionately reduced to the extent that the Participating Publisher-Principal(s) on whose behalf the License is granted own(s) or control(s) less than 100% of the Work. (b) For each Pre-Recorded Ringtone Delivery, the royalty shall be Redacted ; provided, however, that this amount shall be proportionately reduced to the extent that the Participating Publisher-Principal(s) on whose behalf the License is granted own(s) or control(s) less than 100% of the Work.

3. **Term**

The term of this Agreement shall commence as of the Effective Date and terminate on December 31, 2006 (the "**Term**"). If Licensee wishes to renew this Agreement for an additional two (2) year term, it shall notify HFA of such desire not later than a date six (6) months prior to the end of the Term. Such notification shall include proposed terms for any such renewal. Any renewal shall be subject to the approval of individual Publisher-Principals as described in Subsection 1.2, and HFA reserves the right to propose changes to administrative and other aspects of the Agreement as it deems appropriate.

4. **Writer/Publisher Credit**

Licensee shall, to the extent commercially reasonable, include in any graphics and/or imagery displayed in connection with the play of any Ringtone of a Licensed Work written credit in legible form setting forth the names of the writer(s) and publisher(s) of such Licensed Work.

5. **Security**

5.1 In connection with the use of any Licensed Work, Licensee shall implement and maintain copy protection and digital rights management technology and systems, including software and/or hardware functional limitations (collectively, "**Security Systems**") with respect to all aspects of the Service, including without limitation its Servers and operating systems, that (a) are designed to prevent unauthorized reproduction and distribution of the Licensed Work, in the form of Ringtones or otherwise; (b) are sufficient to track and enforce the use limitations contemplated by this Agreement; and (c) meet or exceed current industry standards as they exist from time to time for the licensed delivery of music via digital transmission and its reproduction on devices including, without limitation, Covered Devices.

5.2 In the event it becomes aware of a breach of Licensee's Security Systems ("**Security Breach**"), whether through its own monitoring efforts, upon being advised by another party (including HFA) or otherwise, Licensee shall use its best efforts to resolve the Security Breach and restore the full integrity of its Security Systems as quickly as possible. If a solution to the Security Breach is not immediately available (i.e., cannot be implemented within twenty-four (24) hours from the time Licensee becomes aware of the Security Breach), Licensee shall (a) promptly notify HFA of the Security Breach in writing (unless Licensee learned of the breach from HFA); and (b) cease all further digital transmission and/or reproduction of Licensed Works to the extent such activities are or could possibly be affected by the Security Breach, pending full resolution of the Security Breach. In such a case, Licensee (x) shall keep HFA reasonably apprised of the status of its efforts to resolve the Security Breach; and (y) shall not resume the activities that were suspended pursuant to this Subsection 5.2 until the full integrity of its Security Systems has been restored.

5.3 To the extent Licensee employs third-party technology in order to operate, Licensee shall use its best efforts to maintain and upgrade such technology by (a) diligently monitoring any third-party notifications of bug-fixes, security holes and functionality improvements; and (b) obtaining any available upgrades and bug-fixes, and installing, testing and distributing such upgrades and bug-fixes as necessary so as to maintain the integrity of its Security Systems.

5.4 Licensee shall use its best efforts to prevent any unauthorized digital transmissions and reproductions of Musical Works by operators and users of the Service and/or in any facility, on any device (including Covered Devices), or by any person under the supervision and/or control of Licensee.

6. Royalty and Security Compliance

6.1 Notwithstanding, without limiting and in addition to the general right of HFA and/or any Participating Publisher-Principal pursuant to industry custom and practice to examine the books and records of Licensee in connection with Licensee's use of Musical Works, HFA shall be entitled, upon thirty (30) days' notice to Licensee, to conduct an examination of the books, records, operations and Security Systems of Licensee ("**Royalty and Security Examination**") to determine whether Licensee is in compliance with its reporting, royalty and security obligations under this Agreement. Absent a good-faith basis to believe that Licensee is not in compliance with such obligations, HFA shall not seek to initiate a Royalty and Security Examination more than once every twelve (12) months or more than six (6) years following the termination of this Agreement.

6.2 During the course of a Royalty and Security Examination, upon request by HFA or an examiner acting on its behalf, Licensee shall, within three (3) business days (a) provide access to any information that may be called for by such request, including without limitation any (i) books, records, files, logs, reports, compilations, usage data and other documentation, whether in paper or electronic form, that were or could be used or required to generate or verify Licensee's Statements and/or that reflect or summarize Licensees' Statements; (ii) financial information, including books, records, ledgers, reports, and other documentation, reflecting cash receipts and general revenue accounts to the extent such information relates directly or indirectly to the activities licensed under this Agreement; and (iii) files, logs, reports, compilations, testing and monitoring data and other documentation related to and/or reflecting the operation and integrity of Licensee's Security Systems (such information, along with the information described in the items (a)(i) and (a)(ii) of this Subsection 6.2, collectively referred to as "**Documentation**"); and (b) through the assistance of personnel who are familiar with the technical and operational aspects of Licensee's computer, hardware, software, Security Systems (collectively, "**Operational Systems**") who are to be made available by

Licensee, provide real-time and/or historical access to such Operational Systems, as requested, sufficient to permit HFA or its examiner(s) to conduct meaningful tests and analysis to verify that (i) the Operational Systems are properly and accurately tracking and reporting the use of the Licensed Works, and royalties payable therefor, as contemplated by the terms of this Agreement; and (ii) the Operational Systems are in compliance with the security requirements set forth in Section 5 of this Agreement. Licensee shall provide the information, systems access and personnel required by this Subsection 6.2 free of charge and, unless otherwise agreed by HFA or its examiner(s), at Licensee's place of business.

6.3 During the course of and/or following completion of the Royalty and Security Examination, upon request by HFA or an examiner acting on its behalf, Licensee shall make available company personnel at an appropriate level of seniority and/or technical ability to discuss and/or resolve particular issues and findings arising out of such examination.

6.4 Licensee shall maintain any and all Documentation that reasonably might be expected to be relevant to HFA's conduct of a Royalty and Security Examination for a period of at least six (6) years following the expiration or termination of this Agreement, unless there is a Royalty and Security Examination in progress or not fully resolved as of the expiration of such period, in which case the Documentation shall be maintained until the Royalty and Security Examination is fully resolved to the satisfaction of HFA.

6.5 If a royalty examination reveals a nonpayment or underpayment of royalties due to HFA, the amounts determined to be owing shall be subject to interest payable at the rate of prime plus two percent (2%) calculated from the date the royalties were due to be paid under the applicable reporting period to the date of ultimate payment to HFA.

7. Representations and Warranties; Disclaimer; Indemnity

7.1 Licensee represents and warrants that: (a) it has the full right, power and authority to enter into and perform this Agreement in accordance with its terms and conditions; (b) it shall take all steps necessary to implement and shall comply with (i) its security obligations set forth in Section 5, and (ii) the requirements set forth in Section 9; and (c) the Service shall (i) neither infringe upon nor violate the intellectual property rights or other rights of any third party, and (ii) comply with all applicable laws, rules and regulations.

7.2 HFA represents and warrants that it has the full right, power and authority to enter into this Agreement and perform its obligations hereunder.

7.3 Licensee agrees to indemnify, defend and hold harmless HFA from and against any losses, injuries, damages, claims, expenses and costs (including

without limitation reasonable attorneys' fees) incurred or suffered by HFA, arising from any third-party actions, claims, suits or legal proceedings of any kind, caused by, incident to or arising out of Licensee's failure to perform any of its obligations under this Agreement and/or breach of any of Licensee's representations, warranties or covenants hereunder.

8. **Termination/Default**

8.1 All license authority pursuant to Licenses issued hereunder shall terminate upon the expiration or termination of this Agreement (unless such Licenses are renewed pursuant to a renewal of this Agreement as contemplated under Section 3, in which case the terms of renewal shall apply as appropriate), and any further transmission and/or reproduction of any Licensed Work after the expiration of this Agreement shall be prohibited and actionable as an act of infringement under, and fully subject to the remedies provided by, the Copyright Act. Notwithstanding the foregoing, provided that the Agreement has not been terminated due to Licensee's breach or default, any Server Fixations existing on Servers and/or Ringtone Deliveries existing on Covered Devices as of the expiration of the Agreement may remain on such Servers and Covered Devices; provided, however, that such existing Server Fixations (in addition to the Ringtone Deliveries) may not be further reproduced or distributed after the expiration of the Agreement.

8.2 Notwithstanding, without limiting and in addition to any other remedy that may be available at law or in equity and/or under this Agreement, Licensee understands and agrees that in the event that (a) Licensee fails to account to HFA and pay royalties provided for in Section 2, HFA may provide written notice to Licensee that, unless the default is fully remedied within thirty (30) days from the date of the notice, this Agreement and any Licenses issued hereunder will be automatically terminated, and that such termination will render the further transmission and/or reproduction of any Licensed Work for which royalties have not been fully paid actionable as an act of infringement under Section 501 of the Copyright Act, and fully subject to the remedies provided by Sections 502 through 506 and 509 of the Copyright Act; (b) Licensee is in material breach or default of any of its obligations under this Agreement, HFA may provide written notice to Licensee that, unless the default is fully remedied within thirty (30) days from the date of the notice, this Agreement and any Licenses issued hereunder will be automatically terminated, and that such termination will render the further transmission and/or reproduction of any Licensed Work actionable as an act of infringement under Section 501 of the Copyright Act, and fully subject to the remedies provided by Sections 502 through 506 and 509 the Copyright Act. Licensee further understands and agrees that in the case of infringement, irreparable harm may be presumed, and HFA and/or any affected Publisher-Principal(s) shall be entitled as appropriate to injunctive relief, in addition to any other remedy that may be available at law or in equity and/or under this

Agreement. For the avoidance of doubt, and without limitation, Licensee's breach of any of the obligations or restrictions imposed by Subsections 1.1, 1.5, 1.6 and 10.4 and Sections 2, 5, 6, 7, 9 of this Agreement shall be considered a material breach of, and default under, this Agreement.

8.3 To the extent permitted by applicable law, and without limitation, the occurrence of any of the following events shall also be considered a material breach of and default under this Agreement: (a) Licensee's dissolution and/or the liquidation of all of Licensee's assets; (b) the filing of a petition in bankruptcy or insolvency or for an arrangement or reorganization by, for or against Licensee; (c) the appointment of a receiver or trustee for all or a portion of Licensee's assets; (d) Licensee's assignment of assets for the benefit of creditors; (e) Licensee's insolvency; or (f) Licensee's inability to pay its debts as they become due. Upon the occurrence of any of the events described in items (a) through (f) of this Subsection 8.3, notwithstanding, without limiting and in addition to any other remedy that may be available at law or in equity and/or under this Agreement, this Agreement and all license authority pursuant to any Licenses granted hereunder shall terminate automatically without the requirement of any further action on the part of HFA or the Participating Publisher-Principals.

8.4 Notwithstanding, without limiting and in addition to any other remedy that may be available at law or in equity and/or under this Agreement, including without limitation the remedies set forth in Subsection 8.2, the breach of any of the provisions set forth in Section 5 shall entitle HFA and/or any relevant Publisher-Principal to specific performance of such provision and/or to terminate, effective immediately upon the giving of notice, the license authority pursuant to any License granted hereunder.

8.5 Notwithstanding the expiration or termination of this Agreement, Sections 2, 4, 5, 6, 7, 8, 9 and10 shall to the extent applicable survive and continue to bind the parties and their legal representatives and successors.

9. Proprietary and Confidential Information

9.1 HFA shall have no obligation to perform its obligations hereunder unless and until Licensee enters into the Data Access and Use Agreement, attached hereto and incorporated herein as Exhibit C (the "**Data Access and Use Agreement**"), governing the nondisclosure and use of HFA Confidential Information (as defined in the Data Access and Use Agreement) by Licensee.

9.2 To the extent Licensee seeks to have a third-party individual or entity obtain access to HFA Confidential Information for purposes of obtaining and administering Licenses and otherwise fulfilling its obligations under this Agreement (each, a "**Third-Party Administrator**"), Licensee must obtain HFA's prior consent of each such Third-Party Administrator (such consent not

to be unreasonably withheld). Upon HFA's consent to Licensee's use of such Third-Party Administrator, HFA will require that such Third-Party Administrator enter into a data access and use agreement with HFA substantially in the form of the Data Access and Use Agreement, prior to allowing such Third-Party Administrator access to any HFA Confidential Information.

10. Miscellaneous

10.1. Administrative Fee. In addition to the royalties payable hereunder, within five (5) business days following execution of this Agreement, Licensee shall pay to HFA an administrative fee of Redacted in consideration of HFA's administrative expenses in connection with the publisher opt-in and licensing processes contemplated hereunder.

10.2 Notices. All notices hereunder shall be in writing and shall be deemed effective (a) if provided by hand delivery, upon delivery; (b) if provided by overnight courier, one (1) business day following the date sent; and (c) if provided by registered or certified mail, return receipt requested, five (5) business days following the date mailed. Notices shall be sent to the following addresses:

If to HFA:

To the address set forth above. Attn: General Counsel. Fax: 212-922-3299.

If to Licensee:

To the address set forth above. Attn: Redacted

10.3 Publicity. Neither party shall issue any press release or other publicity document concerning this Agreement without the prior written consent of the other party.

10.4 Assignment. This Agreement may not be assigned.

10.5 Entire Agreement; Amendment. This Agreement represents the entire understanding of the parties with respect to the subject matter hereof, supersedes all prior and contemporaneous agreements and understandings of the parties with respect to the subject matter hereof, and may not be altered or amended except in a written instrument executed by both parties.

10.6 Governing Law; Jurisdiction. This Agreement shall be governed by, and construed in accordance with, federal law and/or the laws of the State of New York (without giving effect to conflicts of law principles thereof), as may be applicable. With respect to any action or proceeding arising out of this

Agreement, the parties (a) agree that the sole and exclusive venue for such action or proceeding shall be in a court of appropriate jurisdiction located in New York County, New York; (2) agree to the appropriateness of, and waive any objection concerning, the propriety and/or convenience of, proceeding in such venue; and (3) consent to the personal jurisdiction of such court.

10.7 Severability; Waiver. If a court should determine that any part of this Agreement is invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect. Performance of any obligation required of a party hereunder may be waived only by a written waiver signed by a duly authorized officer of the other party, which waiver shall be effective only with respect to the specific obligation described therein.

10.8 Headings. The titles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

10.9 Assistance of Counsel. Each party hereto acknowledges that it has been represented by its own independent counsel, who has reviewed this Agreement and discussed the terms herein with his or her respective client prior to execution.

10.10 Counterparts. This Agreement may be executed in multiple counterparts and delivery of an executed counterpart may be made by facsimile, each such counterpart to be considered and accepted as an original, and all such counterparts together to constitute a single Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date:

Redacted

THE HARRY FOX AGENCY, INC.

By: _____
Print name: J C Chamberlain
Title: SVP & GC

EXHIBIT A

Ringtone Electronic License Request & Output File Layout

Acceptable Data Formats:

1. *MS Access database*
2. *MS Excel Spreadsheets (with proper headings)*
3. *Flat File (follow the file layout below)*

	Description	Type	Length	Decimal	Input Option
1	Manufacturer Number	A	6		M
2	Transaction Date	N	8	0	M
3	Manufacturer Request Number	N	8	0	M
4	Ringtone Playing Time - Seconds	N	2	0	M
5	Song Title	A	200		M
6	A/K/A Song Title	A	200		O
7	ISWC Code	A	11		O
8	HFA Song Code	A	6		O
9	Song Writer(s)	A	200		M
10	Publisher Name	A	60		O*
11	HFA Publisher Number	A	6		*Input/Output*
12	Publisher Share	N	7	4	*Input/Output*
13	Catalog Number *(for matching purposes only)*	A	15		O
14	Configuration Code(s)	A	12		M
15	UPC Code *(for matching purposes only)*	A	16		O
16	License Type	A	1		M
17	Server Fixation Date	N	8	0	M
18	Rate Code	A	1		M
19	Rate in Cents	N	7	7	M
20	Artist Name (For Pre-Recorded Ringtone)	A	60		C*
21	Album Title (For Pre-Recorded Ringtone)	A	200		C*
22	Record Label (For Pre-Recorded Ringtone)	A	60		C*
23	Total Playing Time - Minutes (For Pre-Recorded Ringtone)	N	3	0	C*
24	Total Playing Time - Seconds (For Pre-Recorded Ringtone)	N	2	0	C*
25	ISRC Code (For Pre-Recorded Ringtones)	A	15		C*
26	User Defined	A	30		*Input/Output*
27	HFA License Number	N	10		*Output*
28	HFA License Status Code	A	2		*Input/Output* ***
29	HFA License Status Code 1	A	2		*Output*
30	HFA License Status Code 2	N	2		*Output*
31	HFA Flag for Amended Publisher Data	A	1		*Output*
32	Publisher Status	A	1		*Output*

KEY:

TYPE:
A = Alphanumeric Field
N = Numeric Field

LENGTH: For Alphanumeric fields, it is the maximum number of characters required.
For Numeric fields, it is the exact number of characters required.

DECIMAL: Number of characters after decimal (for numeric fields only)

INPUT OPTION:
M = Mandatory
O = Optional
O* = Optional, however, providing this information will greatly help expedite the licensing process if the song was released within the last six months.
C* = Conditional — Information mandatory if request is for a Pre-Recorded Ringtone.

*** All input/output fields should be left blank upon initial license submission, EXCEPT for Field 28 which should be populated with the letter R in the input file IF the record is a resubmission that has been amended.

EXHIBIT B

Ringtone Electronic Royalty Reporting File Layout

Acceptable file formats are:
1. MS Excel spreadsheet - please save it as type "csv" (comma separated values)
2. ASCII text either in a delimited (csv) or fixed width format (.txt)

FILE HEADER (Control Portion for File Transfer)

Field Name	Field Length	Decimal Places	Field Format	Mandatory Field	Field Description/Legend	Example
Line Count	15	0	Number	Yes	Number of lines of data in file; used as control to verify complete and accurate file copy was received.	321456

FILE BODY

	Field Name	Field Length	Decimal Places	Field Format	Mandatory Field	Field Description/Legend	Example
1	Manufacturer Number	8		Text	Yes	Account number assigned by HFA to Licensee	M12345
2	Transaction Date	8	0	Number	Yes	Date electronic royalty report submitted to HFA Format: YYYYMMDD	20020304
3	Royalty Reporting Period	6		Text	Yes	Length of period in number of months (left 2 digits), ending month (middle 2 digits), year (right 2 digits)	30602
4	HFA License Number	12		Text	Yes	Number assigned by HFA for each license.	1012345678
5	Configuration Code	2		Text	Yes	Code designating the specific configuration licensed (FX, PH, RR). FX - Initial Server Fixation PH - Phonic Ringtone RR - Pre-Recorded Ringtone IMPORTANT NOTE: Each configuration must be reported as a separate line.	PH
6	Song Title	30		Text	Yes	Title of work for which a license was granted.	STARRY NIGHT
7	Units (For Period)	9	0	Number	Yes	Applicable number for each specific configuration shown in field #5	12345
8	Publisher Name	30		Text	Yes**	Name of the publisher owning a share of the work.	Famous
9	Publisher Ownership Share Percentage	7	4	Number	Yes**	Percent of song owned by specific publisher, as provided to licensee on license	33.3340
10	Royalty Rate	5	4	Numeric	Yes**	Royalty rate for each specific configuration shown in field #5	0.1000
11	Royalty Amount (For Period)	11	4	Numeric	Yes	Total royalties generated this period for this license.	1.2500
12	Service (ie: Third Party)	30		Text	Yes	Third party service through which the content was distributed (Each third party Service must be reported on a separate line)	RINGTONEZ.COM

Note: Any characters or digits exceeding these per field maximums will be truncated.

Note: You must report by configuration(s) and units for each third party service through which content was distributed. See sample report for exam

*** A separate publisher share % line with corresponding publisher name must be given for each ringtone configuration if the title is not 100% payable through HFA.*

EXHIBIT C

Data Access and Use Agreement

This Data Access and Use Agreement ("Agreement") is entered into as of October 28, 2004, by and between The Harry Fox Agency, Inc., a New York corporation, having its principal place of business at 711 Third Avenue, New York, New York ("HFA") and Redacted, a Nevada corporation with an office at Redacted ("Recipient").

WHEREAS, Recipient (also referred to at times herein as "Licensee") and HFA have entered, or expect to enter, into that certain Ringtone Service Licensing Agreement, dated as of October 28, 2004 (the "License Agreement"), pursuant to which HFA has granted, or will grant, limited rights to certain copyrighted musical compositions (each, a "Musical Work") in connection with the operation of Licensee's ringtones service; and

WHEREAS, Recipient seeks to access and use certain HFA Confidential Information (defined in Section 1 below) as necessary to obtain and administer the licenses issued under the License Agreement (each, a "License"), and as otherwise may be necessary to comply with Licensee's obligations under the License Agreement (collectively, the "Purpose"), and HFA has agreed to allow Recipient such limited access to and use of the HFA Confidential Information solely as necessary to accomplish the Purpose;

NOW THEREFORE, in consideration of the premises of and the mutual promises, covenants and agreements contained in this Agreement, HFA and Recipient agree as follows:

1. HFA Confidential Information.

"HFA Confidential Information" means any and all information and material disclosed by HFA to Recipient or obtained by Recipient from HFA (whether in writing, or in oral, graphic electronic or any other form) that is proprietary and/or is intended by HFA to remain confidential relating to HFA's business and its databases, products, services, business strategies, capabilities or business affairs, including without limitation, all data and information related to the Musical Works and ownership thereof and/or HFA's publisher-principals.

2. Non-Disclosure and Limited Use.

Recipient covenants (a) to hold all HFA Confidential Information in strict confidence, (b) that it shall disclose (or permit access to) the HFA Confidential Information solely to (or by) its employees, if any, who need to know or access such HFA Confidential Information to accomplish the Purpose, and who are bound by nondisclosure and use restrictions and obligations comparable to and at least as restrictive to those set forth herein, and (c) that it shall not disclose to any third party, including any agent, contractor, consultant or other party, or permit any such party to access, the HFA Confidential Information, unless and until such party has entered into a written agreement with HFA in form and substance of this Agreement governing the nondisclosure and use of the HFA Confidential Information. Recipient further covenants that it shall (y) use HFA Confidential Information solely as necessary to accomplish the Purpose, and (z) not extract, aggregate, derive or copy any HFA Confidential Information, whether by bulk transfer or through individual data query and response, for use or incorporation in any database, unless the sole purpose of such use or incorporation is to accomplish the Purpose. Recipient agrees to notify HFA immediately upon obtaining any information regarding unauthorized disclosure or access to the HFA Confidential Information.

Notwithstanding the disclosure and use restrictions in this Section 2, Recipient may disclose HFA Confidential Information (i) that is independently derived or acquired from a party not subject to a duty of confidentiality to HFA, or (ii) to the extent required to respond to the request of a court of competent jurisdiction, provided that upon receiving any such request and to the extent that it may do so without violating any law, Recipient prior to such

disclosure advises HFA of such request in order that HFA may take such action as it deems appropriate to protect the HFA Confidential Information. During the Term (defined in Section 5 below) and for a period of three (3) years following the termination or expiration of this Agreement, Recipient agrees to permit HFA to inspect, on a semi-annual basis, during regular business hours and upon reasonable prior notice, the point or points at which the HFA Confidential Information is (or was) used in Recipient's facilities, if any, and to furnish whatever assistance is reasonably necessary to permit HFA to determine whether Recipient, including its employees, agents, subcontractors, independent contractors, consultants or other parties, if any, are in compliance with this Agreement.

3. Ownership.

Recipient acknowledges and agrees that all right, title and interest in and to the HFA Confidential Information (including all copies, extracts and portions thereof) is and shall remain the sole property of HFA. Recipient does not acquire (by license or otherwise, whether express or implied) any intellectual property rights or other rights under this Agreement or any disclosure or access hereunder, except the limited right to use such HFA Confidential Information in strict accordance with the express provisions of this Agreement. All rights relating to the HFA Confidential Information that are not expressly granted hereunder to Recipient are reserved and retained by HFA.

4. No Warranty; Limitation of Liability.

EXCEPT AS OTHERWISE MAY BE EXPRESSLY SET FORTH IN THE LICENSE AGREEMENT WITH RESPECT TO LICENSEE, HFA MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE HFA CONFIDENTIAL INFORMATION OR ANY USE THEREOF, AND THE HFA CONFIDENTIAL INFORMATION IS PROVIDED ON AN "AS IS" BASIS. EXCEPT AS OTHERWISE MAY BE EXPRESSLY SET FORTH IN THE LICENSE AGREEMENT WITH RESPECT TO LICENSEE, HFA HEREBY EXPRESSLY DISCLAIMS ALL SUCH WARRANTIES, INCLUDING, BUT NOT LIMITED TO, CORRECTNESS, COMPLETENESS, CURRENTNESS, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE HFA CONFIDENTIAL INFORMATION OR OF THE MEDIA ON WHICH THE DATA IS PROVIDED AND SHALL NOT BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR CAUSED, IN WHOLE OR IN PART, BY HFA'S NEGLIGENT ACTS OR OMISSIONS IN PROCURING, COMPILING, COLLECTING, INTERPRETING, REPORTING, COMMUNICATING OR DELIVERING THE HFA CONFIDENTIAL INFORMATION OR IN OTHERWISE PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT, EVEN IF HFA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

5. Term; Termination.

This Agreement will continue for the term of the License Agreement (including any agreed extensions thereof) (the "Term"), unless otherwise terminated by HFA in accordance herewith. HFA may terminate this Agreement at any time upon written notice, and shall have no further obligations to disclose to or permit access by Recipient to any HFA Confidential Information; and provided, however, that each party's rights and obligations shall otherwise survive the termination or expiration of this Agreement.

6. Purging of HFA Confidential Information.

Promptly following any expiration or termination of this Agreement, Recipient shall purge and destroy any and all records and copies of HFA Confidential Information from any Recipient databases and other systems under Recipient's direct or indirect control, and any other media on which any HFA Confidential Information may have been provided, together with all copies thereof, whether in printed or machine readable form; provided, however, that Recipient may retain any records and copies of HFA Confidential Information solely to the extent and for the

period necessary to permit Licensee to fulfill any further obligations under the License Agreement, including without limitation, Licensee's accounting and royalty and security compliance obligations under Sections 2 and 6 of the License Agreement, after which period such records and copies shall be purged and destroyed as described in this Section 6. Notwithstanding the foregoing, Recipient is not required to purge and destroy any HFA Confidential Information to the extent such HFA Confidential Information was independently derived or acquired from a party not subject to a duty of confidentiality to HFA.

7. **Assistance of Counsel.**

Each party hereto acknowledges that it has been afforded the opportunity to be represented by its own independent counsel for purposes of reviewing this Agreement and discussing its terms prior to execution.

8. **Specific Performance.**

Recipient acknowledges that a breach of Recipient's obligations in Sections 2 and/or 6 of this Agreement may result in irreparable harm, the extent of which it would be difficult to ascertain, and therefore agrees that HFA shall be entitled to seek immediate injunctive relief to enforce any such obligation in addition to any other legal remedy to which HFA might be entitled.

9. **Miscellaneous.**

This Agreement (combined with the License Agreement, if the Recipient is the Licensee) constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior or contemporaneous representations, discussions, proposals, negotiations, conditions, communications and agreements, whether oral or written, between the parties relating to the subject matter hereof. No amendment, modification or waiver of any provision of this Agreement shall be effective unless in writing and signed by duly authorized signatories of both parties. The waiver by either party of a breach of or a default under any provision of this Agreement shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without reference to its conflicts of laws provisions. This Agreement and the rights and obligations hereunder may not be assigned or delegated by Recipient, in whole or part, whether voluntarily, by operation of law, change of control or otherwise, without the prior written consent of HFA. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be invalid or unenforceable, the remaining portions hereof shall remain in full force and effect and such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed to the extent necessary to make such provision valid and enforceable. The parties are independent contractors, and neither party shall have any authority of any kind to bind the other party in any respect whatsoever.

The parties have executed this Data Access and Use Agreement as of the date first above written:

THE HARRY FOX AGENCY, INC.

By: _____

Name: JC Charlesworth

Title: SVP & GC

Redacted

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