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

INDEX

Tab

Written Direct Statement ..... A

Witness Statements

David Israelite ..... B

Irwin Robinson C

Ralph Peer II ..... D

Roger Faxon ..... E

Nicholas Firth ..... F

Bob Doyle ..... G

Rick Carnes ..... H

Steve Bogard I

Jud Friedman ..... J

Maia Sharp ..... K

Phil Galdston L

Victoria Shaw ..... M

Stephen Paulus ..... N

William Landes ..... O

Claire Enders ..... P

Helen Murphy ..... Q

Index To Copyright Owners' Exhibits ..... R

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

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

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

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

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]

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

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

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

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"

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.

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

By: Steven R. Englund / by DWL

Steven R. Englund
ARNOLD & PORTER
1600 Tysons Boulevard
Suite 900
McLean, Virginia 22102
(703) 720-7000
(703) 720-7399 (fax)

Counsel for the Recording Industry Association of America, Inc.

Of Counsel:

Cary H. Sherman
Steven M. Marks
RECORDING INDUSTRY ASSOCIATION OF AMERICA, INC.
1330 Connecticut Avenue, N.W.
Suite 300
Washington, D.C. 20036

By: Carey R. Ramos / by DWL

Carey R. Ramos
PAUL, WEISS, RIFKIND, WHARTON & GARRISON
1285 Avenue of the Americas

New York, New York 10019
(212) 373-3000
(212) 757-3990 (fax)
Counsel for the National Music Publishers' Association, Inc. and The Harry Fox Agency, Inc.

Of Counsel:

Charles J. Sanders
National Music Publishers' Association, Inc.
475 Park Avenue South
29th Floor
New York, New York 10016

Jacqueline Charlesworth
Senior Vice President and General Counsel
The Harry Fox Agency, Inc.
711 Third Avenue
New York, New York 10017

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.	[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.	.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 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.) [redacted]	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.

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

(Cite as: 64 FR 6221)

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
Carey R. Ramos
Jacqueline C. Charlesworth
1285 Avenue of the Americas
New York, New York 10019
(212) 373-3000

Counsel for NMPA

THE SONGWRITERS GUILD OF AMERICA

By: George David Weiss /By CRR

George David Weiss
President
1500 Harbor Boulevard
Weehawken, New Jersey 07087
(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
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 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.*

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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
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
New York, New York 10019
(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
Weehawken, New Jersey 07087
(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.
Suite 300
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 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 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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[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]

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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 SRG

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
New York, New York 10019
(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
Weehawken, New Jersey 07087
(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.
Suite 300
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 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

ARNOLD & PORTER
555 TWELFTH STREET, N.W.
WASHINGTON, D.C. 20004-1202
(202) 942-5000
FACSIMILE: (202) 942-5000

NEW YORK
DENVER
LOS ANGELES
LONDON

STEVEN R. ENGLUND
(202) 942-5885

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.

. x

In the Matter of	:	
PHYSICAL PHONORECORD RATE ADJUSTMENT PROCEEDING	:	Docket No. _____
	:	

. x

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

. x

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

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

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

By: Peter L. Felcher

Peter L. Felcher
Carey R. Ramos
Jacqueline C. Charlesworth
1285 Avenue of the Americas
New York, New York 10019
(212) 373-3000

Counsel for NMPA

THE SONGWRITERS GUILD OF AMERICA

By: George David Weiss

George David Weiss
President
1500 Harbor Boulevard
Weehawken, New Jersey 07087
(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
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 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 (1) 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.

- - - - - - - - - - - - - - - - - -x

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

- - - - - - - - - - - - - - - - - -x

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

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[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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EXHIBITS CO 0017 – CO 0049

WITHHELD PENDING ENTRY OF

PROTECTIVE ORDER

EXHIBITS CO 0050– CO 0100

INTENTIONALLY OMITTED

EXHIBITS CO 0101 – CO 0125

WITHHELD PENDING ENTRY OF

PROTECTIVE ORDER

EXHIBITS CO 0126– CO 0150

INTENTIONALLY OMITTED

EXHIBIT CO 0151

LM

Ring Tone License Agreement ("License")

1. General Terms:

License Date:	June 1, 2006
Licensor:	Peermusic III, Ltd. (on behalf of itself and its affiliates) 5358 Melrose Ave, Suite 400 Los Angeles, CA 90038 Attn: Elias Andrade
Licensee:	Warner Music Group Inc. 619 West 54th Street, 9th floor New York, NY 10019 Attn: Ellen Frank
Composition(s):	All musical compositions listed on Schedule A (attached hereto and incorporated herein by reference) ("Compositions"). Subject to Licensor's prior written approval, additional Compositions may be added to the Schedule A.
Purpose of License:	The License covers telecommunication personalization products ("TPPs") consisting of "MasterTones," "Ringtones" and "Master Ringbacks" embodying Compositions (as individually defined below in paragraph 2 and sometimes collectively referred to herein as a "Recording" or "Recordings"). Except as expressly provided herein, no rights to the Compositions or the Recordings will be granted to any third party including but not limited to wireless subscribers or service providers.
Length:	Each Recording as permitted hereunder shall not exceed forty-five (45) seconds.
Non-precedential:	It is understood that the terms outlined in this License are deemed to be non-precedential; the terms shall be inadmissible, and shall not be used to support any argument of law, in any litigation or arbitration or other proceeding that are of a similar nature or that concern similar issues, rights, works or materials.
Pro-Rata Royalty:	For MasterTones and Ringtones sold by a service licensed by Licensee, the greatest of: • 10% of retail price; • 20% of Licensee's receipts, additionally, if Licensee receives a portion of revenue that is not directly tied to the sale of TPPs (e.g. share of subscription fees) Publisher will also receive its pro rata share of such additional revenue; and

- 10¢ in the case of TPPs retailing for less than $1.10, 11¢ in the case of TPPs retailing for over $1.10 and less than $1.20, and 12½¢ in the case of TPPs retailing for $1.20 or more.

For MasterTones and Ringtones sold directly by Licensee, the greatest of:

- 10% of retail price;
- 10% of Licensee's receipts; additionally, if Licensee receives a portion of revenue that is not directly tied to the sale of TPPs (e.g. share of subscription fees) Publisher will also receive its pro rata share of such additional revenue; and
- 10¢ in the case of TPPs retailing for less than $1.10, 11¢ in the case of TPPs retailing for over $1.10 and less than $1.20, and 12½¢ in the case of TPPs retailing for $1.20 or more.

For Master Ringbacks sold by a service licensed by Licensee, the greatest of:

- 10% of retail price;
- 23% of Licensee's receipts; including an allocated portion of revenue streams not directly tied to the sale of particular TPPs (e.g. share of subscription fees)
- 10¢ in the case of TPPs retailing for less than $1.10, 11¢ in the case of TPPs retailing for over $1.10 and less than $1.20, and 12½¢ in the case of TPPs retailing for $1.20 or more.

For Master Ringbacks sold directly by Licensee, the greatest of:

- 10% of retail price
- 11½% of Licensee's receipts, including an allocated portion of revenue streams not directly tied to the sale of particular TPPs (e.g. a share of subscription fees); and
- 10¢ in the case of TPPs retailing for less than $1.10, 11¢ in the case of TPPs retailing for over $1.10 and less than $1.20, and 12½¢ in the case of TPPs retailing for $1.20 or more.

Most Favored Nations: If at any time during the Term hereof, Licensee pays any Royalty for the same or equivalent rights as granted herein to any other publisher, administrator or owner of musical compositions, or to any agent of the same (including any music industry rights society), that is greater or more beneficial financial terms or Royalty terms as specified above, Licensee shall pay such Royalty to Licensor retroactively to the account period during which such higher royalty and other sum(s) are accounted to such other publisher, administrator or owner.

Territory: *U.S.A and its territories ("Territory").*

Term: One (1) year from the date hereof ("Term"). Commencing on or about thirty (30) days prior to the end of the Term, the parties shall engage in

good faith negotiations to renew the Term for additional one (1) year periods.

2. Grant of Rights:

Licensor grants to Licensee the non-exclusive right, privilege and license, during the Term and throughout the Territory:

(a) To create, or cause to be created, monophonic and polyphonic MIDI recordings of the Compositions ("RingTones");

(b) To create, or cause to be created, downloadable and transmittable Recordings that are downloaded to an End-User's telecommunications device or computer to signal an incoming call or message ("MasterTones").

(c) To create or cause to be created audio Recordings that are transmitted from a remote server and heard between the initiation of a call and acceptance or termination of the call ("Master Ringbacks");

(d) To reproduce the Recordings onto Licensee's computer server(s) solely for its internal business purposes,

(e) To distribute, deliver and transmit the Recordings over the Internet (or any successor global computer network) or over a regional wireless transmission network (e.g., Short Message Service or Wireless Application Protocol) for transfer onto consumers' individual telecommunications devices solely for such consumers' personal use;

(f) To promote Licensee's ring tone service and Compositions on its website by using segments of the Recordings not to exceed fifteen (15) seconds.

No right is granted to Licensee hereunder to use the Recordings, music or the lyrics of any Composition in connection with any advertisement or commercial on television or in any printed media, including but not limited to isolating or positioning a Recording in a way that could be construed as advertising or promoting any product or service. Not withstanding the foregoing, nothing herein shall restrict Licensee's ability to advertise or promote sales of Licensee's products in the ordinary course of business.

It is understood that no performance right is granted to Licensee by Licensor.

All rights not specifically granted herein are reserved by Licensor.

In the event that Licensor shall request that Licensee cease exploiting any Composition pursuant to the rights granted hereunder prior to the expiration of the Term, Licensee shall do so as soon as practicable after receiving notice of such request.

3. Royalty and Royalty Accountings:

(a) In consideration for the rights granted herein, Licensee shall pay to Licensor royalties at the Royalty specified herein.

(b) Licensee shall render to Licensor true and detailed accounting statements, in hard copy, electronic or digital format, of all royalties payable hereunder no less often

than forty-five (45) days following the end of each calendar quarter of the Term. **(Please send to the attention of: Leticia Maldonado)** The statements shall report all royalty bearing transactions on a Composition-by-Composition and country-by-country basis, including but not limited to reporting on each Composition by title, songwriter, the number of transmissions, downloads or deliveries of such Composition and the resultant royalty payable hereunder. Each accounting statement shall be accompanied by payment to Licensor of all royalties due.

(c) All payments to Licensor shall be computed in the relevant local currency and remitted in United States dollars. Each conversion from another currency for the purpose of computing such payments shall be calculated at the rate of exchange, as published by the Wall Street Journal for major territory currencies, in effect on the date the statement concerned is rendered.

(d) Licensee shall maintain accurate and complete records and accounting books with regard to the licensing and exploitation of the Compositions, including but not limited to, all information needed to compute and verify the amounts payable to Licensor hereunder. Licensor may, at its own expense, audit such records and books no more than one time per calendar year. Licensor may make such an examination for a particular statement only once. Upon no less than thirty (30) days notice, Licensor may conduct such audit only during Licensee's normal business hours, and only at the place where Licensee keeps such records and books to be examined. In the event that any such examination or audit reveals an underpayment of amounts due in excess of ten percent (10%), then Licensee shall promptly pay any amounts owed, plus the reasonable costs of such audit or examination promptly after Licensor's submission of documented costs.

4. Termination:

(a) Either party may terminate the License by giving the other party notice if such party fails to perform any of its obligations under this License for any reason and such failure has not been remedied within thirty (30) days after such party's receipt of written notice of such failure.

(b) This License will terminate automatically, without notice, if any of the following occurs:

(i) Licensee is dissolved or its assets are liquidated, or if Licensee becomes insolvent.

(ii) A bankruptcy proceeding, for reorganization or for other relief from the claims of creditors, or any similar proceeding, takes place with respect to Licensee or its assets.

(c) A termination of the License under this Section 4 will not limit or affect any of Licensor's other rights.

(d) Upon the expiration or termination of the Term, all of Licensee's rights hereunder shall terminate. Licensee shall, at Licensor's direction, delete, or cause to be deleted, the Recordings from any database or computer server which might be used to transmit, deliver or otherwise distribute the Recordings to any consumer

end-user, and Licensee shall make no further use whatsoever of the Compositions or the Recordings. Licensee shall destroy all existing copies of the Recordings and furnish to Licensor an affidavit of destruction within thirty (30) days after the end of the Term.

5. Notices:

All notices under this License will be in writing and will be given by registered or certified mail, return receipt requested, at the respective addresses shown above or such other address as either party shall designate. Notices shall be deemed given when mailed, except that a notice of change of address shall be effective only from the date of its receipt.

6. Warranties, Representations, and Indemnities:

(a) Licensor represents, warrants and agrees that it has the full right, power and authority to enter into this License with respect to its interest in each Composition as set forth in Schedule "A" and as Licensor notifies Licensee with respect to any additional Composition licensed hereunder, and to grant to Licensee all the rights hereunder and that no use by Licensee of the Compositions as authorized in this agreement shall violate any right of any third party.

(b) Licensee warrants, represents, and agrees as follows:

(i) Licensee's principal place of business is located within the United States of America.

(ii) Licensee shall take all steps, if reasonably and commercially available, to secure and maintain protection of the Recordings, by way of encryption or otherwise, as permitted pursuant to copyright and equivalent or similar laws throughout the Territory.

(c) Each party hereunder will hold the other party, its successors, assigns, agents and licensees, free and harmless from and against any and all claims, demands, damages, expenses, losses or costs (including reasonable attorney's fees and costs), or any sums paid in settlement, arising out of or incurred as a direct result of any actual breach of the representations, warranties, agreements and undertakings of or by the party concerned. Licensor's liability shall be limited to the amounts received hereunder.

7. Miscellaneous:

(a) This agreement may not be assigned in whole or in part by either party without prior written approval by the other party. Licensee may assign this Agreement and any of its rights hereunder in whole or in part to any person or entity which controls, which is controlled by, or which is under common control with Licensee or to any person or entity owning or acquiring all or a majority of Licensee's stock and/or assets or with whom such party may merge or be merged. Notwithstanding the foregoing, Licensee shall provide written notice to Licensor of such assignment at least five (5) business days prior to the effective date of such assignment.

(b) No designation, approval, or consent provided for in this License will be deemed given unless set forth in writing and signed by an authorized officer or representative of the party concerned.

(c) This License contains the entire understanding of the parties and cannot be changed, amended or terminated except by an instrument signed by an officer or other authorized representative of each party. A waiver of any provision of this License will not waive that provision for the future or waive any subsequent breach of it. All remedies, rights, and obligations in this License shall be cumulative and none of them shall be in limitation of any other remedy, right, or obligation of either party.

(d) This License shall only be construed in accordance with the substantive and procedural laws of the State of New York applicable to agreements entered into and wholly to be performed therein. New York Courts shall have exclusive jurisdiction over this License and any controversies arising out of this License shall be brought by the parties to the Supreme Court of the State of New York, County of New York, or to the United States District Court for the Southern District of New York; the parties hereto hereby grant sole and exclusive jurisdiction to such court(s) and to any appellate courts having jurisdiction over appeals from such court(s). The relationship of the parties is that of independent contractors and nothing in this License shall render either party an agent of the other.

(e) The provisions of Sections 6 and 7 shall survive the termination of this agreement.

(f) This License will not become effective until executed and delivered by Licensor and Licensee.

Peermusic III, Ltd. (Licensor)

By:_____

Elias Andrade

Director of Copyright & Licensing

Warner Music Group Inc. (Licensee)

By:_____

LICENSED TERRITORY: USA

SCHEDULE "A"

Title	Writer
Composition Name / Writer:	***Percentage Controlled:***
I DREAM A WORLD by Langston Hughes, Robert Mathes	50%*
OLDER THAN MY YEARS by Kevin Hughes, Paul Moessl	50%*
SWAY (original words and music by Pablo Beltran Ruiz; Vocal English lyrics by Norman Gimbel)	100%
TURN IT UP! by Penelope Magnet, Scott Storch, Jeff Bowden	30%; subject to co-pubs approval

Note: Asterisks (*) are subject to approval by co-publisher

Initial: ____/_____

EXHIBITS CO 0152 – CO 0165

WITHHELD PENDING ENTRY OF

PROTECTIVE ORDER

EXHIBIT CO 0166

peermusic 75

Ring Tone License Agreement ("License")

1. General Terms:

License Date:	September 9, 2004
Licensor:	Peermusic III, Ltd. (on behalf of itself and its affiliates) 5358 Melrose Ave, Suite 400 Los Angeles, CA 90038 Attn: Elias Andrade
Licensee:	MatrixM, Inc. c/o Bomser & Studnicky LLP 853 Broadway, Suite 1001 New York, New York 10003 Attn: Ray Savant
Composition(s):	All musical compositions listed on Schedule A (attached hereto and incorporated herein by reference) ("Compositions"). Licensor acknowledges that Licensee may intend to use these and additional compositions from time to time as ring tones (the "Recordings" as further defined in Section 2 below), and that Licensee will supply Licensor from time to time with a list of proposed musical compositions to be added to Schedule A, subject to Licensor's approval.
Purpose of License:	Licensee intends to offer the Recordings that will be created from the Compositions to third party wireless subscribers through its own server or through a third party server that will be directly controlled by the Licensee. Except as expressly provided herein, no rights to the Compositions or the Recordings will be granted to any third party including but not limited to wireless subscribers or server providers. This license does not cover so-called "Ringback" or "MasterTone" services.
Length:	Each Recording as permitted hereunder shall not exceed thirty (30) seconds.
Non-Precedential:	It is understood that the terms outlined in this agreement are deemed to be non-precedential
Royalty:	Twenty-Five Dollars (US$25) for each upload of a Recording to the Licensee's server, plus the greater of the following:

(i) (A) an amount equal to ten (10%) percent of the advertised selling price of each confirmed completed transmission, download or other delivery of an operable Recording (as defined below) to a consumer end-user, except as contemplated in Section 2(d) ("Recording Sold"), with a minimum royalty for each Recording Sold of ten (US$.10) cents;

or

(ii) ten percent (10%) of all revenue actually received by Licensee from all forms of exploitation of the Compositions authorized, permitted or sublicensed by Licensee (including, but not limited to, any and all advertising revenue earned by Licensee from any web site controlled by Licensee and upon which the Recordings are featured) ("Royalty"). With respect to any co-published Compositions, the Royalty specified herein shall be pro-rated.

Most Favored Nations: If at any time during the Term hereof, Licensee pays any royalty and/or other sums, or offers any other financial terms, for the same or equivalent rights as granted herein to any other publisher, administrator or owner of musical compositions, or to any agent of the same (including any music industry rights society), that is greater or more beneficial financial terms or Royalty terms as specified above, Licensee shall pay such royalty and offer such other financial terms to Licensor retroactively to the account period during which such higher royalty and other sum(s) are accounted to such other publisher, administrator or owner.

Territory: U.S.A and its territories ("Territory").

Term: One (1) year from the date hereof ("Term"). Commencing on or about thirty (30) days prior to the end of the Term, the parties shall engage in good faith negotiations to renew the Term for additional one (1) year periods.

2. Grant of Rights:

Licensor grants to Licensee the non-exclusive right, privilege and license, during the Term and throughout the Territory, (a) to create, or cause to be created, ring tone sound recordings of the music Compositions in MIDI, WAV or similar downloadable and transmittable digital data formats ("Recordings"), (b) to reproduce the Recordings onto Licensee's computer server(s) solely for its internal business purposes, (c) to distribute, deliver and transmit the Recordings over the Internet (or any successor global computer network) or over a regional wireless transmission network (e.g., Short Message Service or Wireless Application Protocol) for transfer onto consumers' individual telecommunications devices solely for such consumers' personal use; (d) to promote Licensee's ring tone service and Compositions on its website by using segments of the Recordings not to exceed fifteen (15) seconds. Except as otherwise provided in clause (d) immediately above, no right is granted to Licensee hereunder to use the Recordings, music or the lyrics of any Composition in connection with any advertisement, commercial or in any printed form, including but not limited to isolating or positioning a Recording in a way that could be construed as advertising or promoting any product or service, including any promotion of Licensee's products or services. It is understood that Licensee shall be solely responsible for securing and paying for any necessary public performance licenses required in the Territory in connection with its ring-tone service. All rights not specifically granted herein are reserved by Licensor.

In the event that Licensor shall request that Licensee cease exploiting any Composition pursuant to the rights granted hereunder prior to the expiration of the Term, Licensee shall do so as soon as practicable after receiving notice of such request.

3. Royalty and Royalty Accountings:

(a) In consideration for the rights granted herein, Licensee shall pay to Licensor royalties at the Royalty specified herein.

(b) Licensee shall render to Licensor true and detailed accounting statements, in hard copy, electronic or digital format, of all royalties payable hereunder no less often than forty-five (45) days following the end of each calendar quarter of the Term. **(Please send to the attention of: Leticia Maldonado)** The statements shall report all royalty bearing transactions on a Composition-by-Composition and country-by-country basis, including but not limited to reporting on each Composition by title, songwriter, the number of transmissions, downloads or deliveries of such Composition and the resultant royalty payable hereunder. Each accounting statement shall be accompanied by payment to Licensor of all royalties due.

(c) All payments to Licensor shall be computed in the relevant local currency and remitted in United States dollars. Each conversion from another currency for the purpose of computing such payments shall be calculated at the rate of exchange, as published by the Wall Street Journal for major territory currencies, in effect on the date the statement concerned is rendered.

(d) Licensee shall maintain accurate and complete records and accounting books with regard to the licensing and exploitation of the Compositions, including but not limited to, all information needed to compute and verify the amounts payable to Licensor hereunder. Licensor may, at its own expense, audit such records and books no more than one time per calendar year. Licensor may make such an examination for a particular statement only once. Upon no less than thirty (30) days notice, Licensor may conduct such audit only during Licensee's normal business hours, and only at the place where Licensee keeps such records and books to be examined. In the event that any such examination or audit reveals an underpayment of amounts due in excess of ten percent (10%), then Licensee shall promptly pay any amounts owed, plus the reasonable costs of such audit or examination promptly after Licensor's submission of documented costs.

4. Termination:

(a) Either party may terminate this License by giving the other party notice if such party fails to perform any of its obligations under this License for any reason and such failure has not been remedied within thirty (30) days after such party's receipt of written notice such failure.

(b) This License will terminate automatically, without notice, if any of the following occurs:

(i) Licensee is dissolved or its assets are liquidated, or if Licensee becomes insolvent.

(ii) A bankruptcy proceeding, for reorganization or for other relief from the claims of creditors, or any similar proceeding, takes place with respect to Licensee or its assets.

(c) A termination of the License under this Section 4 will not limit or affect any of Licensor's other rights.

(d) Upon the expiration or termination of the Term, all of Licensee's rights hereunder shall terminate. Licensee shall, at Licensor's direction, delete, or cause to be deleted, the Recordings from any database or computer server which might be used to transmit, deliver or otherwise distribute the Recordings to any consumer end-user, and Licensee shall make no further use whatsoever of the Compositions or the Recordings. Licensee shall destroy all existing copies of the Recordings and furnish to Licensor an affidavit of destruction within thirty (30) days after the end of the Term.

5. Notices:

All notices under this License will be in writing and will be given by registered or certified mail, return receipt requested, at the respective addresses shown above or such other address as either party shall designate. Notices shall be deemed given when mailed, except that a notice of change of address shall be effective only from the date of its receipt.

6. Warranties, Representations, and Indemnities:

(a) Licensor represents, warrants and agrees that it has the full right, power and authority to enter into this License with respect to its interest in each composition as set forth in Schedule "A" and as Licensor notifies Licensee with respect to any additional musical conditions licensed hereunder, and to grant to Licensee all the rights hereunder and that no use by Licensee of the Compositions as authorized in this agreement shall violate any right of any third party.

(b) Licensee warrants, represents, and agrees as follows:

(i) Licensee's principal place of business is located within the United States of America.

(ii) Licensee shall take all steps, if reasonably and commercially available, to secure and maintain protection of the Compositions, by way of encryption or otherwise, as permitted pursuant to copyright and equivalent or similar laws throughout the Territory.

(c) Each party hereunder will hold the other party, its successors, assigns, agents and licensees, free and harmless from and against any and all claims, demands, damages, expenses, losses or costs (including reasonable attorney's fees and costs), or any sums paid in settlement, arising out of or incurred as a direct result of any actual breach of the representations, warranties, agreements and undertakings of or by the party concerned. Licensor's liability shall be limited to the amounts received hereunder.

7. Miscellaneous:

(a) This agreement may not be assigned in whole or in part by either party without prior written approval by the other party. Licensee may assign this Agreement and any of its rights hereunder in whole or in part to any person or entity which controls, which is controlled by, or which is under common control with Licensee or to any person or entity owning or acquiring all or a majority of

Licensee's stock and/or assets or with whom such party may merge or be merged. Notwithstanding the foregoing, Licensee shall provide written notice to Licensor of such assignment at least five (5) business days prior to the effective date of such assignment.

(b) No designation, approval, or consent provided for in this License will be deemed given unless set forth in writing and signed by an authorized officer or representative of the party concerned.

(c) This License contains the entire understanding of the parties and cannot be changed, amended or terminated except by an instrument signed by an officer or other authorized representative of each party. A waiver of any provision of this License will not waive that provision for the future or waive any subsequent breach of it. All remedies, rights, and obligations in this License shall be cumulative and none of them shall be in limitation of any other remedy, right, or obligation of either party.

(d) This License shall only be construed in accordance with the substantive and procedural laws of the State of New York applicable to agreements entered into and wholly to be performed therein. New York Courts shall have exclusive jurisdiction over this License and any controversies arising out of this License shall be brought by the parties to the Supreme Court of the State of New York, County of New York, or to the United States District Court for the Southern District of New York; the parties hereto hereby grant sole and exclusive jurisdiction to such court(s) and to any appellate courts having jurisdiction over appeals from such court(s). The relationship of the parties is that of independent contractors and nothing in this License shall render either party an agent of the other.

(e) The provisions of Sections 6 and 7 shall survive the termination of this agreement.

(f) This License will not become effective until executed and delivered by Licensor and Licensee.

Peermusic III, Ltd. (Licensor)

By: _____
Elias Andrade
Director of Copyright & Licensing

MatrixM, Inc. (Licensee)

By: _____
Ray Savant, President
MatrixM, Inc.

SCHEDULE "A"

Composition Name / Writer:	Percentage Controlled:
Mambo No. 5 by Damoso Perez Prado	100%
Obsesión by Pedro Flores	100%
Quizas Quizas Quizas by Osvaldo Farres	100%
Walk Like An Egyptian by Liam Sternberg	100%
You Are My Sunshine by Jimmie Davis	100%

Initial: _____

EXHIBITS CO 0167 – CO 0178

WITHHELD PENDING ENTRY OF

PROTECTIVE ORDER

EXHIBITS CO 0179 – CO 0200

INTENTIONALLY OMITTED

EXHIBITS CO 0201 – CO 0205

WITHHELD PENDING ENTRY OF

PROTECTIVE ORDER

EXHIBIT CO 0206

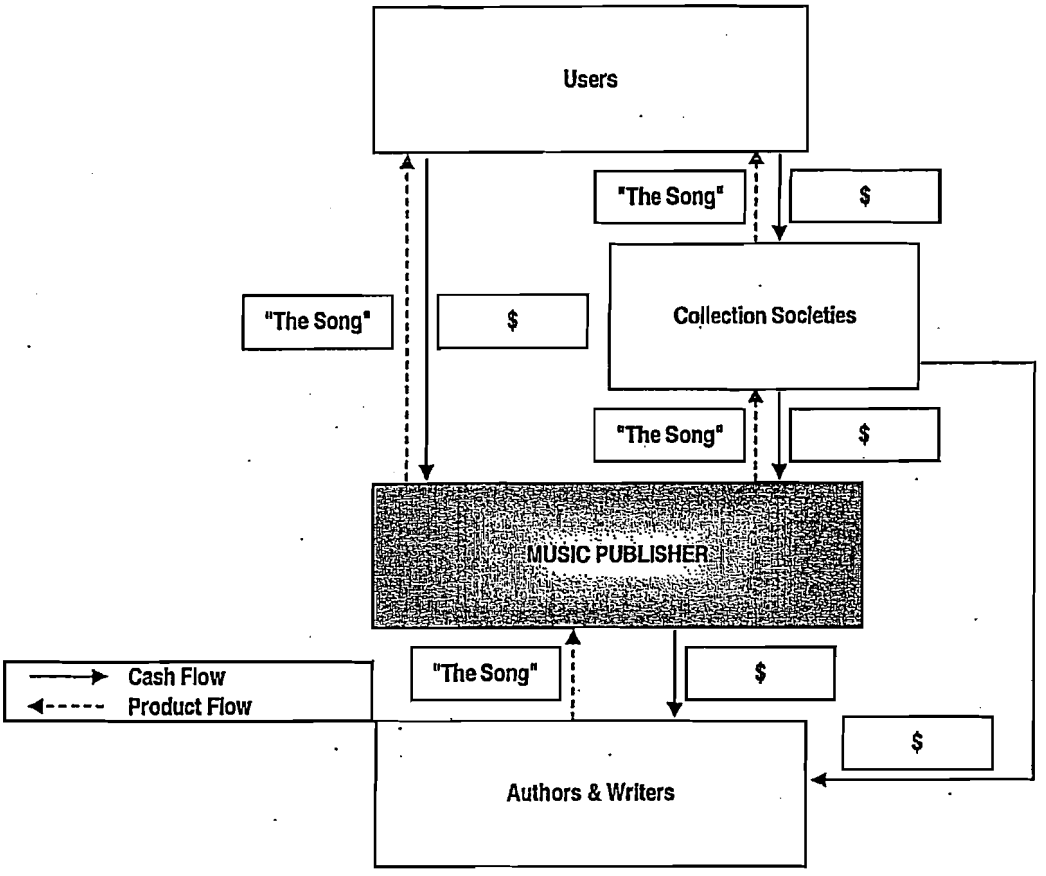
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EXHIBIT CO 0207

Exhibit 7 to Faxon Statement

2 of 22 DOCUMENTS

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Billboard

May 20, 2006

SECTION: COVER STORIES; ARTICLES

LENGTH: 246 words

HEADLINE: Big Jon: MAGIC MENTOR DEFINING CAREER MOMENTS

BODY:

drive \driv\ n (1) In 1978, **Platt** travels hours by bus to watch the Denver Nuggets practice. Coach Donnie Walsh makes the "Big Fella" their ball boy. (2) During the 1980s he becomes top Denver DJ.

He loans Public Enemy his equipment for a concert. Two years later, Platt hosts a Public Enemy show in Denver, and Chuck D tells him: "What are you going to do with your life? Every time I come to Denver, you're the man here. But unless you dream bigger, that's all you'll ever be -- just the man here. You've got something to offer the music industry." (3) Follows Chuck D's advice and lands USC basketball players an EMI publishing deal in 1992. He commutes back and forth between Los Angeles and Denver. (4) In 1993, he turns the EMI Music Publishing conference room into his office. Executive VP Jody Gerson says: "He was literally holding court, having meetings in an office that did not belong to him. I kept asking, 'Who's the dude in the office, and how much money are we spending on his phone calls?' The response was, 'Who cares? He's terrific.' " (5) Creative manager post opens at EMI Music Publishing in 1995. Platt says: "I'm going to take this opportunity and will show you how much I'm worth, then we'll talk about money." (6) He meets Jermaine Dupri through Gerson and builds relationships with his "first wave" of writers, including Warryn Campbell, Mike Mosley, Tamara Savage, Walter Milsap, AZ and Jay-Z. (7) In 2005, Platt is named executive VP and head of urban.

LOAD-DATE: May 17, 2006

3 of 22 DOCUMENTS

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Billboard

May 20, 2006

SECTION: COVER STORIES; ARTICLES

LENGTH: 203 words

HEADLINE: Big Jon: DEAL MAKER BIG JON IS A MAN ON THE MOVE WHO DELIVERS THE GOODS

BODY:

Big Jon **Platt** often sits down with his songwriters to figure out what percentage of each song a writer owns.

"A lot of people just do these albums and think that the publishing kind of takes care of itself," Platt says. "We can't do anything without song splits."

For Kanye West, clearing samples is the primary goal.

"Big Jon gets me way better rates and way better splits," West says. "That's one of the best things about having him as a publisher."

"Diamonds From Sierra Leone," the first single from West's album "Late Registration," included a sample from "Diamonds Are Forever," penned by John Barry for the James Bond movie of the same name. The sample was impossible to clear at first, says G Roberson, West's manager. "Big Jon played Inspector Gadget and helped us get to the man. He's a real lifesaver," he says.

Roberson says it's all about the one-two punch: You release one single to set up the second.

"Can you imagine if we never dropped that record? Without us dropping it to follow through with the second punch of 'Gold Digger,' who knows where we'd be at?" And given that part of the track's appeal is because of elements included from another great song, Ray Charles' "I Got a Woman," who knows indeed.

LOAD-DATE: May 17, 2006

4 of 22 DOCUMENTS

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Billboard

May 20, 2006

SECTION: COVER STORIES; ARTICLES

LENGTH: 2184 words

HEADLINE: Big Jon: A DAY IN THE LIFE OF BIG JON

BYLINE: SUSAN BUTLER

HIGHLIGHT:

Buckle Up And Hold On For The Ride -- Billboard Tags Along For One Seriously Long Day

BODY:

A warehouse worker walks into a small recording studio in Virginia and asks if anyone has ever heard of a guy named Big Jon. The room falls silent. "Big Jon **Platt?**" someone asks. The workman, whose song was recorded on a demo, says this Big Jon guy offered him something called a publishing deal. They accuse him of lying.

From small towns to major cities, practically everyone who wants to make it in hip-hop wants to "get with" Big Jon **Platt,** EMI Music Publishing's executive VP and head of urban music. Usher calls him an idol maker. Island Def Jam Music Group chairman Antonio "L.A." Reid tags him a hitmaker.

During the 11 years since the former Denver DJ hooked up with EMI to sign songwriters, **Platt** has changed the landscape of music publishing and redefined the publisher's role. But what is it exactly that makes talent like Shawn "Jay-Z" Carter, Usher, Kanye West and Pharrell Williams sing **Platt's** praises?

To answer that question, Billboard hung out with Platt one spring day as he went about his business in New York.

11:30 a.m.: A hired driver welcomes Platt and Billboard, opening the door to a black SUV at a Manhattan hotel where Los Angeles-based Platt is staying. Almost immediately, Platt's cell phone rings. After listening to the caller for a moment, he laughs, "Stay out of the magazines and send me some music!"

With a click of his thumb, Platt's on another call, rattling off names of top managers to a writer/artist who is looking for representation. Next call: Platt asks the caller whether the songwriter in question is just looking for a big check or wants a publishing deal in which EMI can use its resources to build a catalog, i.e., a full repertoire of a writer's songs that can generate revenue for years to come.

Revolutionary thinking, all before noon. Building a catalog in hip-hop music is something relatively new.

"There is a business attitude that hip-hop music in general isn't catalog music," Reid says. "When Big Jon started to sign writers like Jay-Z and Kanye West, I think many publishers had to stand up and take note that it was real songwriting. It wasn't just samples and 25 writers trying to split up a song. They were actually guys who could craft music from

scratch and be majority writers, in some cases 100% [share] writers. Publishers really didn't pay attention to hip-hop before Big Jon."

As the SUV weaves through New York traffic, Platt handles another half dozen calls before beginning a lengthy conference call. He's negotiating with a songwriter's representatives who want another advance. Although Platt says no to the proposal, his tone never turns negative. He patiently explains another advance is not possible because the writer's first advance was based on the expectation that a greater number of songs would make it onto an album. Even though the album is selling, because songwriting expectations were not met, the writer's advance is not yet recouped. EMI has to recover the first advance before giving a second. Typically a publisher like Platt would have lawyers negotiate the deals, but Platt prefers to handle the basic terms himself.

Platt pulls out his BlackBerry, responding to text messages without missing a beat of the negotiations. He places the device on his legs and pulls out a second ringing cell phone. With a phone on each ear, he handles the calls with amazing ease.

Noon: Two guys jump into the SUV -- Atlanta-based manager Bernard Parks Jr. and DJ Toomp, who produced/co-wrote T.I. hits like "What You Know," a No. 1 Hot Rap Song in April, and "U Don't Know Me." Platt has set up meetings to introduce Toomp around town.

"In writing, it's not just about physically doing the work," Usher says. "You've got to place it. Big Jon's got the right relationships. He takes pride in being able to put young entrepreneurs in this position to have bigger dreams."12:15 p.m.: At EMI's offices, Toomp burns his beats to CDs to give the executives.

Platt checks in with EMI chairman Marty Bandier and meets with creative/A&R director Jessica Rivera to explain certain deal terms. He's paying it forward. Platt has been mentored during the years by Bandier and executive VP Jody Gerson. "I was happy to bring him into an inner circle and teach him whatever I knew about the music publishing business," Bandier says. "He just soaked it up like a sponge. In no time at all, he was out on his own making whatever deals we both thought were appropriate."

12:45 p.m.: Arrive at Sony BMG Music. Anton Marchand, VP of A&R for Sony Urban, promptly sends text messages to Jay-Z and others in their network of friends, joking about Platt arriving with Billboard shadowing him. Marchand cranks up the sound system to hear Toomp's beats on huge speakers. As everyone listens, Marchand and Platt furiously punch their BlackBerrys, responding to the messages the joke spurred. Marchand slowly burns some of Toomp's beats to a CD for the label's artists to hear.

Record executives say that they have come to depend on Platt to develop talent. "He doesn't just place a song and walk away, or introduce you to a writer and walk away," Reid says. "He'll go inside. I call it 'go into the hood.' He'll go into the hood and make sure you get a hit record. He's a really rare commodity."

2:20 p.m.: Toomp is all smiles after meeting with Jay-Z. Legend has it that Jay-Z, upon hearing someone's beats, will stand next to an artist and start rapping. Toomp just experienced it himself.

Platt signed Jay-Z to EMI nearly 10 years ago. "It took me a while to really talk to Big Jon," Jay-Z says. "We came from a place where we had friends already, although I trusted him as far as handling the publishing. When we bonded, I could see that he's a special guy. In a game where people are taking other people's publishing -- how it can be viewed as a shady business -- he gives you 100% confidence that the business is being handled correctly."

Jay-Z likes Toomp's beats; he calls one of his best friends and sends Toomp to see her.

2:30 p.m.: Toomp hands his CD to Platt, who promptly hands it back to him.

"You give it to her," Platt says. "If I give it to her, then I have the relationship with her. You've got to have the relationship with her. I already know her!"

Beyoncé is gracious and welcoming as she stops her recording session after Jay-Z's phone call to hear Toomp's beats. Producer/writer Rich Harrison laughs and jokes with Platt in the studio, thanking him for the "gift basket" -- a big royalty check.

Platt signed Harrison after hearing one song -- before any release. Platt expected the first album Harrison wrote would result in an artist selling 2 million copies, but it barely went gold. About a year later, Harrison was in the studio with Beyoncé, co-producing/co-writing "a little ditty called 'Crazy in Love,' " which hit No. 1 on The Billboard Hot 100 in 2003 and stayed on Billboard's charts for 41 weeks.

Platt "hears it early," Jay-Z says. "He travels in the circles, so he knows what's happenin' on the street a little earlier than some of the guys that are flyin' at 50,000 feet."

Platt says he does not bet on records, he bets on writers.

"The first person to ever cut me a real check was Big Jon Platt," Usher says. "There's many milestones in your life that you will remember, but the day that you get a real publishing check is the day that makes a real difference, and you begin to understand. He gave me an opportunity to be taken seriously as a songwriter in this industry."

In the studio, Toomp plays his first beat. Beyoncé whispers, "That's hot." She says it again for the second and third tracks. When the sixth beat hits, Harrison walks up to the board and cranks up the sound.

After several more tracks, Harrison says, "Yo! Let us breathe for a minute! You are hittin' us over the head!" Everyone laughs, and the music stops. Toomp hands Beyoncé his CD. Their relationship has begun.

"Man, Big Jon, I don't know how you do it," Toomp says, walking out of the studio. "Every time I'm with you, you change my life."

3:15 p.m.: Over plates of pasta, Platt advises Toomp. They talk about the state of the music industry, the range of publishing royalties in videogames (5%-15% of net revenue) and which Toomp beats should be available to what acts. After Toomp's success with T.I., many people have been pressing to use his beats. It has been challenging for him to figure out when to say no and how to handle that pressure.

"Don't wake up with a no on your mind," Platt advises. "Listen to each opportunity that matters. It's their job to push on you because you've got the heat. If an artist doesn't bring a spark to you, your job that day may be to say no. It's no different than your job going into labels and trying to get on projects. When they say no, it's not personal to them. You just didn't come up with the goods that day. Don't internalize it."

Other writers value Platt's advice as well. "People usually don't take the time out, educate you and try to take you to the next level," Williams says. "But Big Jon does. This guy affects people's lives in a very positive way. When I first got a chance to work with him, I knew I was in the big leagues. He's the guy you want to run something by."

Platt's hands-on style is what separates him from other publishers. "Kanye is a perfect example," Reid says. "When the record is done, Big Jon is in the office wanting to know, 'What are your singles choices? What's your marketing strategy? How far are you gonna go with this?' If he has something to say about it, he'll say it. And there are times we'll factor those things into the plan."

This kind of involvement typically falls within the role of a manager rather than a publisher. "Sometimes I have to tell a manager, 'Just sit back and let me help you look good,' " Platt admits.

Managers do not seem to be put off by Platt's style. "There's a calmness about him that's nonthreatening," Reid says. "He's gonna give great guidance, pure honesty. He's not trying to leverage it to be the manager one day or take the client, so he's not a threat in that sense."

4 p.m.: Both cell phones start ringing. "Now my day really begins," Platt says.

Producer/writer Rick Rock is on the line. Can Platt get Duro to mix a track featuring Snoop Dogg for hardcore rap collective Federation's new record? Platt makes a call, then gets Rock back on the line. "[Duro] says you've always got an open door. He can fly out tomorrow," Platt says. In less than five minutes, Platt arranges for the track to be transferred to Duro and sets up a mixing session.

Why is a publishing executive arranging a mixing session? "They're all EMI writers," Platt shrugs. Rock, Duro and Snoop.

"Big Jon wears an A&R hat, a publishing hat, a lawyer hat, an A&R admin hat, an accounting hat," says West's manager G Roberson, who calls Platt "the mediator."

5:30 p.m.: With Toomp and Parks back at their hotel, Platt prepares for a meeting with soon-to-be-signed songwriter Kristal Oliver. He meets every songwriter he signs in person.

"I like a certain type of person and a certain type of songwriter," he says. "Most of my writers don't drink and don't smoke. They're about business." He does not mean that this is a requirement to get signed, but he explains, "They want to learn, they want to be the best."

A group gathers in the EMI conference room and listens to recordings of Oliver's songs. "We want to be a big part of your career to put it to the next level," Platt tells her. "I push hard. All I ask is that you work as hard as we work for you."

8:30 p.m.: Platt meets lawyers Matt Middleton and Nicole George for dinner. Amid the laughter, they talk about mutual friends, business matters and who's hot on the streets.

Platt finds talent in numerous ways. Sometimes he receives music from attorneys, managers and his current songwriters. Other times, he hears songs during recording sessions. Whatever the source, he relies entirely on his gut instincts to sign a writer.

11 p.m.: Back at the hotel, Platt orders warm peanut-butter cookies and water and takes two more meetings -- with an indie publisher and a songwriter's lawyer.

1 a.m.: Platt is still working. Billboard calls it a day.

What advice does Platt give his songwriters? "If you really want to write songs, then write songs every day," Platt explains. "It's that simple."

Harold Lilly, the former Virginia warehouse worker who is now a Grammy Award-winning songwriter, can attest to Platt's magic. "Ever since I met Big Jon, I don't believe in writer's block," Lilly says. "Doctors don't have doctor's block. Teachers don't have teacher's block. You just do it. Big Jon says, 'You got to write the bad songs to get to the good ones, and you got to write the good songs to get to the great ones.' "

Since meeting Platt, Lilly has co-written the Grammy-winning Alicia Keys song "You Don't Know My Name" (produced by West and Keys) and co-produced/co-wrote Jamie Foxx's single "Unpredictable," among others.

"Big Jon is passionate about music and about changing music," Williams says. "When you're looking at those great pivotal moments in music in the last 10 years, those are always Big Jon moments." ****

LOAD-DATE: May 17, 2006

EXHIBIT CO 0208

Exhibit 8 to Faxon Statement

BABY BEST

They sign bands, nurture their talent and get them on the road. Record labels, right? No, publishers.

BY SUSAN BUTLER

Music publishing is the most misunderstood business in the music industry. Since thousands of publishers focus primarily on licensing rights in songs and collecting royalties for themselves and songwriters, they are often thought to be little more than a place where a songwriter can get a check—an advance on future royalties. Yet many publishers are a home for artists who need to develop their songwriting and performing skills before they can land a major record deal. The major publishers in particular are looking near and far for the next Coldplay or James Blunt, who were both nurtured by publishers when record companies initially turned them away.

For the aspiring songwriter/artist, it can happen at any moment, anywhere. A teenager records songs with friends in a garage and puts them on a Web site. A folk singer performs in a grungy nightclub and sells CDs to the audience. Someone from a publishing company is moved by the song, the sound or the performer. They make a deal, and the development begins.

"When we can get involved with some key developing artists, then even if we're spending money trying to develop them, it's still, [in terms of] the advance, a much smarter way to do business as long as you're balancing it with top-line music," says Danny Strick, president of Sony/ATV Music U.S. "As a major, we have to constantly go after what we think are the high-end acts—the next act that's going to break, that's already signed to a label and has an imminent release... It's usually a bidding situation, those are very expensive."

By signing these acts early in their career, "we have a very unique creative input into the formative beginnings of our songwriter/artists," says Guy Moot, EMI Music Publishing U.K. managing director. "Whether it's our creative input, our studios or possibly teaming them up with management, we start laying the seeds with the record companies to inform them of an act."

Major publishers report that they are finding talent everywhere. They go to live gigs where artists are attracting crowds. They read tabloid newspapers and obscure Web sites. They talk with DJs and get tips from the media.

"The most important thing [for songwriters] is that you can get noticed because the tools are there to get noticed like they never were before," Moot says.

But how do publishers actually develop the songwriter/artists? To answer this question, Billboard picked a favorite emerging act from each major publisher to portray their development process.

David Gilbert, a consultant working for Sony/ATV Music Publishing, discovered Elyssa James last fall on MySpace.com. Gilbert called Sony/ATV U.S. president Danny Strick on a weekend, telling him about an "amazing voice." Although she just turned 17 years old, James displays a full, gutsy quality on her vocals and her soulful pop songs.

James says she was still looking for voice and piano lessons in Rochester, N.Y., a couple of years ago when she and some friends began writing together, recording the songs in a garage and putting them on MySpace "just for fun." About six weeks later, James was discovered.

"She had a lyric sensibility and was already developing her own point of view," Strick says. "There was just something about her that seemed very special."

Once the development deal was signed, the publisher began bringing James to New York on weekends and holidays to work with songwriter/producers.

"The goal is, as she is growing up, to hone in on a sound that she can own in a sense," Strick says, "for her to be a meaningful artist expressing her artistry in her lyrics and melodies. The voice just takes it to [a higher] level."

Sony/ATV is "casting a wide net" to team James with a variety of songwriter/producers, Strick says. She has already worked with teams in New York and Los Angeles, including KNS, Mike Mangini and Stargate.

"Every session I learn something new," James says. "I'm getting more in touch with how songs are written." James says that she is especially impressed that a powerful publishing company actually listens to her thoughts and ideas.

James is off to Sweden the end of August to work with Macho Psycho, a songwriting/production team that saw her on MySpace before Sony/ATV signed her. "By sending her there, it expands her horizons on every level," Strick says. "Not only musically, but just by being in Europe and experiencing the world a little more." Sony/ATV didn't disclose terms, but often, these sorts of early expenses are recoupable.

Finding James a record deal is not the first part of the strategic plan. An unknown artist with a record puts a marketing department in a position where it must sell the music to the public, essentially chasing people, Strick explains.

Instead, Sony/ATV will be pitching James for film, TV, game and advertising opportunities. In this way, people can discover her.

"We would rather have people coming to us and asking who she is," Strick says.

UNIVERSAL MUSIC PUBLISHING GROUP

The members of Dukes of Windsor were not looking for money when they signed with Universal Music Publishing Group in Australia. They wanted the relationship.

"We wanted their expert advice, contacts and support to help put Dukes of Windsor on the map," vocalist Jack Weaving says. "Given the current interest in the band and the exciting opportunities that UMPG have created for us, this is exactly what they are doing."

Melbourne-based Cory Blight, Scott Targett and Weaving had an existing relationship with the publisher before forming the band, which UMPG Australia's Heath Johns, head of A&R/creative, describes as a "head-on collision" among rock bands At the Drive In, Devo and the Police. When the guys decided to form Dukes of Windsor, they signed a development deal with the publisher. Oscar Dawson and Joe Franklin also signed with the publisher as they joined the band.

During the initial development phase, the publisher offered "creative mentoring" during the demo process, Johns says.

UMPG then found a number of opportunities for the group on prime-time TV and commercials in Australia, including that country's version of the TV show "Big Brother."

"These spots not only provided invaluable exposure for the band in an already saturated market, but also proved a handy source of income when it came time to finance touring and recording ventures," Johns says.

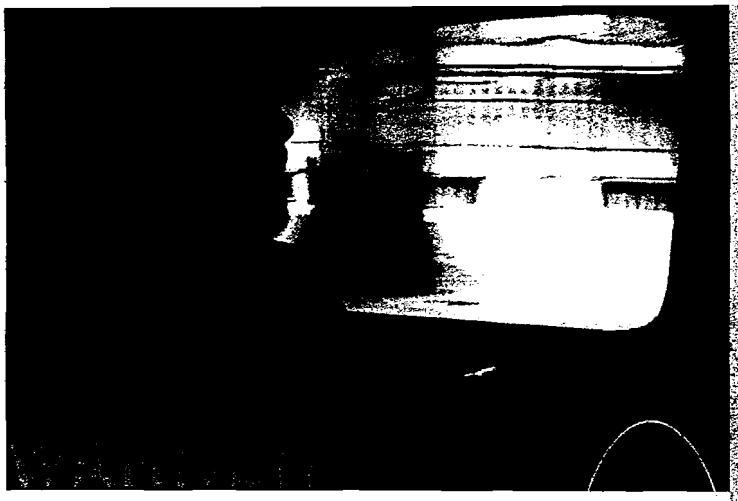
After continuing to build a fan base playing live gigs in Melbourne, the group landed a landmark partnership with the MP3 player manufacturer iriver this year. The band will front an Australia-wide advertising campaign, which begins this fall.

"iriver needed an icon cult band to promote its products," says Bob Aird, UMPG Australia managing director. "They are an unknown band. It is a good way to expose them via new technology and, for iriver, they are the type of band and music that they wanted as a partner."

As part of that deal, iriver provided a non-recoupable budget for the band to record its debut album, "The Others," with U.S. producer Jonathan Burnside and Swedish hardcore mixing engineers Pelle Henricsson and Eskil Lövström.

The self-released album is expected to be available online and in Australian retail stores in September.

JAMES GLENN CHENSTEUL; WINDSOR-SCOTT NEWITT



CHAPPELL MUSIC

A pivotal point for folk artist and Arkansas native Joe Purdy was performing at the South by Southwest festival two years ago in Austin. Greg Sowders, senior VP of A&R with Warner/Chappell Music, made the show.

"I was completely charmed by his personality, and I fell in love with his songs," Sowders says. "The next morning I was listening to his CD with my girlfriend. She looked at me and said, 'If you don't sign this artist, I'm breaking up with you.' "

The following week the two had lunch. Sowders asked Purdy, 25, what he wanted in his dream world.

"I want to create a position for myself where as many people can hear my music as possible," Purdy says he told Sowders. "But I want that only to exist under the terms where I can retain all my creative control and never have anybody really having their hands in that cookie jar."

That kind of artist control is not something most major publishers or labels are willing to accept. But Warner/Chappell made the deal and Purdy says he is happy with the relationship.

First, Warner/Chappell gave Purdy some financial support. "We were able to settle on a number that was going to help him immediately, to put him on the road," Sowders says. "He needed to gain more experience as a performer."

Purdy became a regular at the club Hotel Cafe, a home for aspiring singer/songwriters.

Then the publisher provided money for Purdy to record an album, in which Warner/Chappell shares in the revenue stream. Purdy's attorney Steve Butler says. The album, "Four Seasons," was released in July through Reincarnate, a label owned by Purdy's agent Marc Geiger.

Purdy's past and current albums are also available through CD Baby, which made deals with online services. His digital sales now total more than 60,000 downloads worldwide, Butler says.

Meanwhile, the song "Wash Away" was in the first "Lost" TV episode that included original music other than a score. Since then four of Purdy's songs have been featured on "Grey's Anatomy."

"Slowly but surely I'm in a position where I make a living making music," Purdy says. "Warner/Chappell is the reason I have the option not to scrounge around and grab something that isn't what I want. They help me to stay stubborn."

ZOMBA MUSIC PUBLISHING

CASS DILLON

Cass Dillon landed his publishing deal with Zomba Music Publishing through business connections and a private performance.

Last year, Zomba president David Mantel heard about Dillon through Rene Mata, an OCD Group management consultant. Mantel says he listened to the demo but was "not overwhelmed." Eventually the manager urged Mantel to listen to Dillon perform some songs in the Zomba offices.

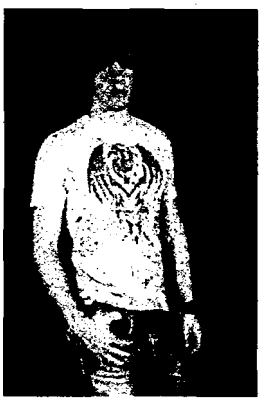
"The songs were still unstructured, still rough," Mantel says. "But there was something magical in the way that he performed with acoustic guitar."

Zomba brought 19-year-old Dillon into their fold, giving him some money to record a demo of new songs. Dillon then entered a production deal with Jay Baumgardner's NRG and hooked up with songwriter/artist Mitch Allan to co-write some songs.

As Dillon progressed through the writing and recording process, Mantel and others at Zomba provided specific feedback on the songs and the recordings. They broke apart the choruses, the bridges and the lyrics, sending the songs back for rewrites when they needed more work.

"I am a very hands-on person," Mantel says. "I can't help but think that great things happen when you really get into the small details."

Next Zomba wanted an electronic press kit to use in pitching Dillon for song placements and other promotion. Dillon and OCD put one together, but it was not exactly what Zomba wanted.



So Mantel set aside the spreadsheets and the strategy meetings for the day and paid a visit to Dillon's managers. He helped script the concept to show Dillon's energy and taught the artist how to perform in front of the camera.

"Here's the president of Zomba coming out to Long Island [N.Y.] to my manager's office making sure this video shows who I truly am," Dillon says. "It was awesome."

Dillon has now formed a rock band with Allan called Something to Live For. Zomba has been working with their managers, setting up meetings with record labels and showcases. The publisher also ensures that it has a representative at all the showcases.

"Zomba just being there as we walk through the door is important," OCD's Stefano DiBenedetto says. "Their support is amazing."

Seth Lakeman is not a new songwriter/artist, but he is about to reach new heights. His self-released album, "Kitty Jay," recorded in the kitchen of his Devon, England, cottage with brother Sean, was nominated for the 2005 Mercury Music Prize, an honor for top British albums.

"We kind of started in the underground," Lakeman says. "We built up from that folk circuit, moving toward the mainstream a bit more."

Earlier this year Lakeman, 29, signed with EMI Music Publishing in the United Kingdom.

"Folk music fascinates me because it's a vibrant live scene," says Guy Moot, EMI Music Publishing U.K. managing director. Even though it may have an older, "fuddy-duddy image," Moots says he is a firm believer that it has a younger audience.

Moot expected that EMI would have to help develop Lakeman—working with him on a way to present his music to that broader audience—for five or six months before any label offered him a record deal. But Relentless Records, the label home of KT Tunstall, snagged him within weeks.

EMI then began working closely with the indie label to set up marketing and media plans. Managing directors of both companies are spearheading pitches for film, TV, game and commercial spots. The companies are setting up lunchtime showcases for music supervisors, actively working the music press and promoting the top-quality video put together by the label.

"There is a stigma to folk and a positive to folk," Moot says. "I think people need to see there's a positive." Lakeman says that it was Moot's vision of how he saw the songwriting that swayed him to sign with EMI.

"He has this vision for songs that are more realistic and more serious," Lakeman says. "He wants young people to relate and feel like they can get in touch with England. He has a whole vision of songs that exist at the moment as well as that develop for the future—in films and in places where it could be heard a lot wider—that quite inspired me."

The artist also feels like he has a new family at EMI. He particularly likes the way the publisher talks about other artists who it has signed and shares their music with the other writers.

"Involving you in that family is important," Lakeman says. "You might find somebody who has a similar style and it suddenly sparks up some ideas. Then you can go and work with them."

While Lakeman would like to write for others, he is focusing on his own development right now.

His album, "Freedom Fields," is scheduled only for a U.K. release on Aug. 21 at this time.

EMI MUSIC PUBLISHING

SETH LAKEMAN

FILCOM ALVARADO DIRECTED TO LAKEMAN: GEORGE SAUTER

EXHIBITS CO 0209 – CO 0210

WITHHELD PENDING ENTRY OF

PROTECTIVE ORDER

EXHIBIT CO 0211

2005 Year-End Statistics

1330 Connecticut Avenue, NW, Suite 300, Washington, D.C. 20036
202-775-0101

Manufacturers' Unit Shipments and Retail Dollar Value
(In Millions, net after returns)

Physical

	1995	1996	1997	1998	1999	2000	2001	% CHANGE 2000-2001	2002	% CHANGE 2001-2002	2003	% CHANGE 2002-2003	2004	% CHANGE 2003-2004	2005	% CHANGE 2004-2005
(Units Shipped) CD[1]	722.9	778.9	753.1	847.0	938.9	942.5	881.9	-6.4%	803.3	-8.9%	746.0	-7.1%	767.0	2.8%	705.4	-8.0%
(Dollar Value) CD[1]	9,377.4	9,934.7	9,915.1	11,416.0	12,816.3	13,214.6	12,909.4	-2.3%	12,044.1	-6.7%	11,232.9	-6.7%	11446.6	1.9%	10,520.2	-8.1%
CD Single	21.5	43.2	68.7	58.0	55.9	34.2	17.3	-49.4%	4.5	-74.1%	8.3	84.5%	3.1	-62.2%	2.8	-12.1%
	110.9	184.1	272.7	213.2	222.4	142.7	79.4	-44.4%	19.6	-75.4%	36.0	83.6%	14.982	-58.4%	10.9	-27.0%
Cassette	272.6	225.3	172.6	158.5	123.6	78.0	45.0	-40.6%	31.1	-30.9%	17.2	-44.7%	5.2	-69.6%	2.5	-52.6%
	2,303.6	1,905.3	1,522.7	1,419.9	1,061.6	626.0	363.4	-41.9%	209.8	-42.3%	108.1	-48.5%	23.7	-78.1%	13.1	-44.9%
Cassette Single[2]	70.7	59.9	42.2	26.4	14.2	1.3	-1.5	-215.4%	-0.5	-68.0%	N/A	N/A	N/A	N/A	N/A	N/A
	236.3	189.3	133.5	94.4	46.0	4.6	-5.3	-215.2%	-1.6	-70.3%	N/A	N/A	N/A	N/A	N/A	N/A
LP/EP	2.2	2.9	2.7	3.4	2.9	2.2	2.3	4.5%	1.7	-23.7%	1.5	-11.5%	1.36	-11.9%	1.02	-25.0%
	25.1	36.8	33.3	34.0	31.8	27.7	27.4	-1.1%	20.5	-25.2%	21.7	6.0%	19.286	-11.3%	14.2	-26.2%
Vinyl Single	10.2	10.1	7.5	5.4	5.3	4.8	5.5	14.6%	4.4	-20.8%	3.8	-14.0%	3.5	-7.3%	2.3	-35.4%
	48.7	47.5	35.6	25.7	27.9	26.3	31.4	19.4%	24.9	-20.6%	21.5	-13.8%	19.9	-7.3%	13.2	-33.4%
Music Video	12.8	16.9	18.6	27.2	19.6	18.2	17.7	-2.7%	14.7	-17.2%	19.9	35.2%	32.8	65.0%	33.8	3.2%
	220.3	236.1	323.9	508.0	376.7	281.9	329.2	16.8%	288.4	-12.4%	399.9	38.7%	607.2	51.8%	602.2	-0.8%
DVD Audio	-	-	-	-	-	-	0.3	N/A	0.4	63.8%	0.4	1.2%	0.3	-20.5%	0.5	31.8%
	-	-	-	-	-	-	8.0	N/A	6.5	41.3%	8.0	-5.5%	6.5	-19.2%	11.2	72.2%
SACD	-	-	-	-	-	-	-	-	-	-	1.3	N/A	0.8	-39.7%	0.5	-40.5%
	-	-	-	-	-	-	-	-	-	-	26.3	N/A	16.6	-36.9%	10.0	-39.9%
DVD Video[3]	-	-	-	0.5	2.5	3.3	7.9	139.4%	10.7	34.8%	17.5	63.3%	29.0	66.0%	27.8	-4.1%
	-	-	-	12.2	66.3	80.3	190.7	137.5%	236.3	23.9%	369.6	56.4%	561.0	51.8%	539.8	-3.8%
Total Units	1112.7	1137.2	1063.4	1123.9	1160.6	1079.2	968.5	-10.3%	859.7	-11.2%	798.4	-7.1%	814.1	2.0%	748.7	-8.0%
Total Value	12320.3	12533.8	12238.8	13711.2	14584.7	14323.7	13740.9	-4.1%	12614.2	-8.2%	11854.4	-6.0%	12154.7	2.5%	11198.0	-7.9%
Total Retail Units			817.5	850.0	869.7	788.6	733.1	-7.0%	675.7	-7.8%	658.2	-2.6%	687.0	4.4%	634.8	-7.6%
Total Retail Value			10,785.8	12,165.4	13,048.0	12,705.0	12,388.8	-2.5%	11,549.0	-6.8%	11,053.4	-4.3%	11,423.0	3.3%	10,477.5	-8.3%

Digital

Download Single	-	-	-	-	-	-	-	-	-	-	-	-	139.4	N/A	366.9	163.3%
	-	-	-	-	-	-	-	-	-	-	-	-	138.0	N/A	363.3	163.3%
Download Album	-	-	-	-	-	-	-	-	-	-	-	-	4.6	N/A	13.6	196.5%
	-	-	-	-	-	-	-	-	-	-	-	-	45.5	N/A	135.7	198.5%
Kiosk[4]	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0.7	N/A
	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1.0	N/A
Music Video	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1.9	N/A
	-	-	-	-	-	-	-	-	-	-	-	-	-	-	3.7	N/A
Total Units	-	-	-	-	-	-	-	-	-	-	-		143.9	N/A	383.1	166.2%
Total Value	-	-	-	-	-	-	-	-	-	-	-		183.4	N/A	503.6	174.5%
Mobile[5]	-	-	-	-	-	-	-	-	-	-	-	-	-	-	170.0	N/A
	-	-	-	-	-	-	-	-	-	-	-	-	-	-	421.6	N/A
Subscription[6]	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1.3	N/A
	-	-	-	-	-	-	-	-	-	-	-	-	-	-	149.2	N/A

Total Digital & Physical

Total Units[7]	1,112.7	1,137.2	1,063.4	1,123.9	1,160.6	1,079.2	968.5	-10.3%	859.7	-11.2%	798.4	-7.1%	958.0	20.0%	1,301.8	35.9%
Total Value	12,320.3	12,533.8	12,238.8	13,711.2	14,584.7	14,323.7	13,740.9	-4.1%	12,614.2	-8.2%	11,854.4	-6.0%	12,338.1	4.1%	12,269.5	-0.6%

Retail value is value of shipments at recommended or estimated list price

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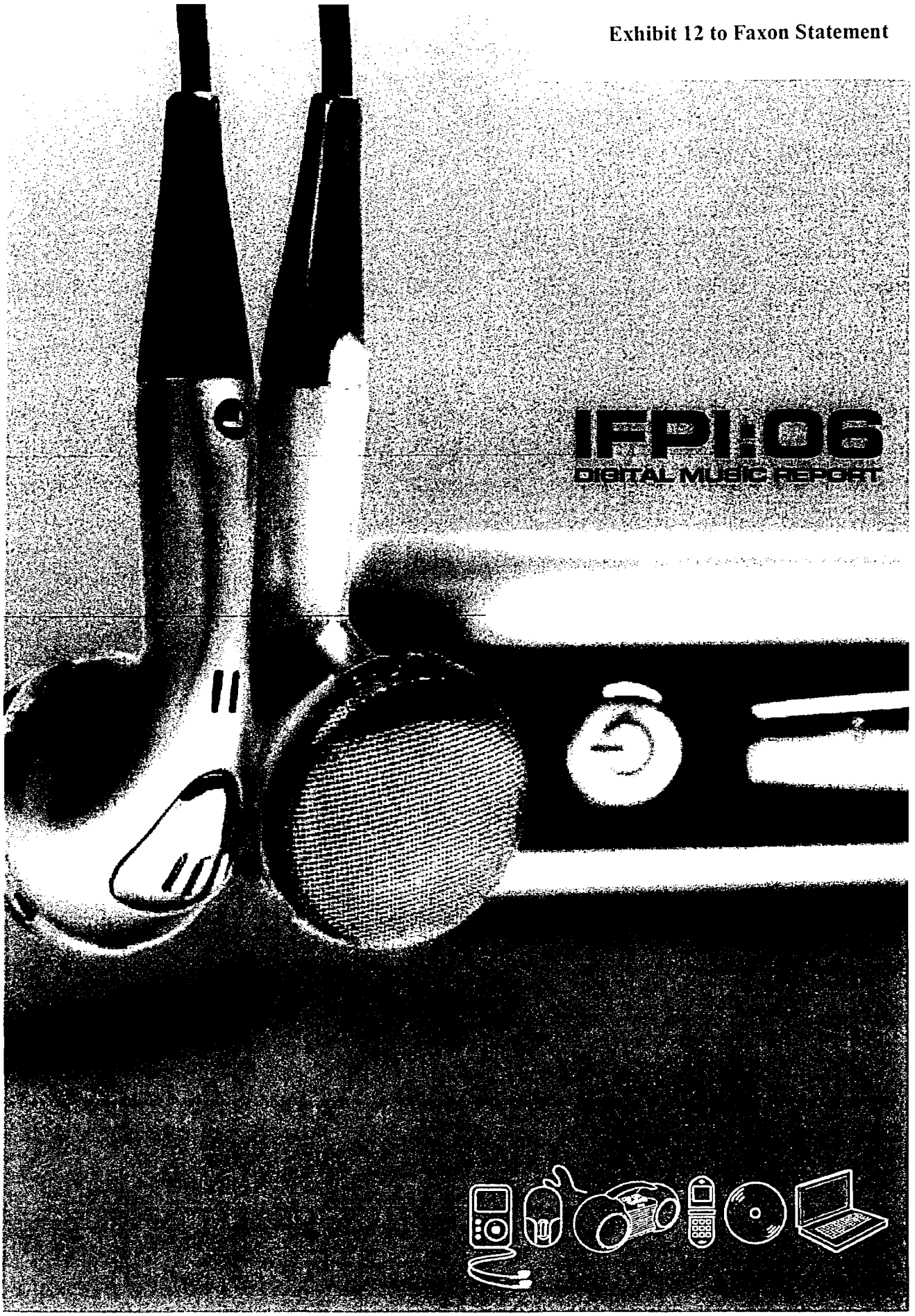
[1] Includes DualDisc
[2] RIAA's reports will no longer reflect shipments of cassette singles
[3] While broken out for this chart, DVD Video Product is included in the Music Video totals
[4] Includes Singles and Albums
[5] Includes Master Ringtones, Ringbacks, Music Videos, Full Length Downloads, and Other Mobile
[6] Weighted Annual Average
[7] Units does not include subscriptions

Exhibit 11 to Faxon Statement

EXHIBIT CO 0212

Exhibit 12 to Faxon Statement



04 THE DIGITAL MARKET TAKES SHAPE IN 2005
04 Digital music expands worldwide

07 GETTING MUSIC TO CONSUMERS IN MORE WAYS
07 Distribution channels diversify
07 Video boosts digital music
08 The record company investment
09 The marketing opportunity
09 Digital-only labels emerge
09 The new digital intermediaries

10 MOBILE MUSIC SHOWS ITS POTENTIAL
10 Mobile music spreads globally
11 From ringtones to 'real music'
11 Music drives 3G
12 The handset market
12 The future of mobile music

14 IN THE PIPELINE: LEGITIMATE P2P, DIGITAL RADIO & PODCASTING
14 Legitimate P2P
14 Digital Radio
14 Podcasting

15 MUSIC CONSUMPTION IS CHANGING
15 New IFPI research spotlights the consumer
15 Digital music versus the CD
15 The power of portability

16 CONFRONTING THE CHALLENGES
16 Internet piracy: the biggest obstacle
16 Digital stream ripping: the next big challenge
17 The call to ISPs

18 COURTS IMPROVE THE LANDSCAPE
18 Courts rule against illegal P2P
19 Shutting down 'piracy havens'

20 CONTAINING ILLEGAL FILE-SHARING
20 Deterrence: legal actions against file-sharers
20 Education
21 Is the fight against piracy working?
21 Changing attitudes

22 DRM & INTEROPERABILITY: THE KEYS TO FUTURE GROWTH
22 The challenge for DRM
22 Interoperability: a key priority

23 WHAT DIGITAL MUSIC OFFERS THE CONSUMER

MUSIC – A KEY DRIVER OF THE DIGITAL ECONOMY

A new wave of digital commerce, from mobile to broadband, is rolling out worldwide – and music is driving it

John Kennedy, Chairman & CEO, IFPI

Two years ago, few could have predicted the extraordinary growth we have seen in the digital music business. Some 420 million single tracks were downloaded in 2005, up more than twenty times on two years ago. And that excludes the entire business of music on mobile phones, a market which is not far behind music downloads in value. Together in 2005, these two new distribution channels took record company revenues from digital sales to an estimated $US 1.1 billion globally, tripling in value compared to 2004. And there will be further significant growth in 2006.

But, impressive as they are, these statistics only hint at the real underlying value of the digital music revolution. Music is today making an enormous contribution to the development of the world's digital economy. For example, in 2005 consumers bought over 60 million portable digital music players (worth an estimated $US 9 billion), paid over $US 75 billion in broadband subscriptions and purchased $US 50 billion worth of mobile data services. Nokia, the world's largest mobile handset manufacturer, sold over 40 million music-capable phones alone.

The message is clear: a new wave of digital commerce, from mobile to broadband, is rolling out across the world. It is generating billions of dollars in revenues and creating millions of jobs. And it is being driven, to a large extent, by music – by the people who create music, who produce it and who invest in it.

The music industry is delivering on its pledge to license music ubiquitously: as much music, in as many ways, to as many consumers via as many formats and distribution channels as possible – as long as it is licensed and paid for.

At the same time the industry is helping transform the experience of the music fan. In 2005 the number of legitimate music download sites reached 335, up from 50 two years ago. In just two years the volume of music made available online by record companies has increased more than six-fold to over two million songs. Digital music, no longer the preserve of a small core of large markets, is spreading internationally. And it is a reflection of the potential growth in consumer demand that even today, less than 5% of European internet users regularly buy music online.

This is a success story, but one that cannot be taken for granted. Key challenges confront the digital music industry at the start of 2006 and even threaten to hold back its growth. We are meeting these challenges.

Above all, we must protect our product. In an industry dependent on intellectual property, licensing your product is worthless if you cannot also protect it. The music industry has now taken some 20,000 legal actions against illegal file-sharers in 17 countries, and these actions will be stepped up in the next year. The strategy will not eradicate the problem, but it is containing it. Consumer research in this report shows that every second person who cut back on illegally file-sharing has done so out of concern for the legal consequences.

The same research raises other important questions. No one underestimates the challenge of persuading a young generation of music fans to pay for music that they have become used to acquiring for free.

The legitimate digital music business has for years cried out for clearer legal ground rules. On this front, 2005 saw a big leap forward. Four courts in three continents, from the US to Australia, delivered judgements against unauthorised P2P services that will help transform the landscape in which the nascent digital business is growing.

Hearts and minds are critical in this process, too. In 2005 the music industry launched four separate global education campaigns, often sponsored by national governments. They are aimed at specific audiences that shape attitudes to music on the internet – parents, business leaders, legitimate computer users and, last but not least, copyright offenders themselves.

"Music is not only the most popular consumer product in the industrialised world. It is a key driver of the digital economy."

Digital Rights Management (DRM) is a fundamental, yet sometimes misunderstood element of the digital music business. DRM is an essential tool for all industries trading in intellectual property in the digital era – from music to movies, games and TV. It helps get music to consumers in new and flexible ways and to recompense the many different rights owners involved. Technology companies need to support DRM, making their devices interoperable. Governments also have a key role to play by supporting DRM in managing the delivery and protecting the value of digital music.

We need cooperation from our partners too. Internet Service Providers are becoming the new retailers and distributors of the digital market. They are making revenues from digital music, but not taking enough responsibility for protecting our copyrights. This must change. They must take their share of responsibility in stopping infringements of the copyrighted content. In the physical world, no respectable music store or distributor would stock pirated product on its shelves or allow piracy to take place in a corner of its shop or warehouse.

The digital music business is at a pivotal moment at the start of 2006. Consumers are increasingly turning to legitimate ways of downloading music, the legal environment for our business is improving and record companies are licensing music prolifically and diversely.

The challenges ahead are clear, though. We need greater support in the fight against digital piracy; more recognition of the role of DRM; more cooperation from ISPs; and more respect for the intellectual property on which we and many other industries depend. The record industry now looks squarely at our partners in the marketplace, as well as to governments, to help achieve these aims.

THE DIGITAL MARKET TAKES SHAPE IN 2005

The legitimate digital music business has caught the imagination of consumers, sales have increased steadily and new service launches have accelerated.

2005 was a landmark year for digital music, when online and mobile music distribution emerged as the industry's fastest growing delivery channels. Digital sales in 2005 accounted for approximately 6% of global music sales based on the first six months of the year.

2005 witnessed key milestones in the development of the market:

Digital is the fastest-growing delivery channel for music. Record company revenues reached an estimated $US 1.1 billion in 2005, three times the value in 2004 ($US 380 million), with the split roughly 60:40 between online and mobile music. Digital sales have gone from practically zero to 6% of the recording industry's global worldwide revenues within the last two years.

Single track downloads in 2005 more than doubled to 420 million, proving to be the most popular online music product. Subscription service users are also growing, up from 1.5 million to 2.8 million in the last year.

Online song catalogues doubled: there are now at least two million tracks and 165,000 albums available on the major services.

Digital music expanded rapidly across the world. Globally there are now over 335 legal online music services, up from 50 two years ago. The number of services operating in more than three countries doubled to 20 in the last year.

Apple iTunes extended its service to 21 countries worldwide, launching in Scandinavia, Japan and Australia. Globally, iTunes reached sales of 850 million tracks since launch in 2003 (Apple counts album tracks in that figure).

Portable video was launched, marking the arrival of the new portable video entertainment market – one million video iPods were sold in the first three weeks since launch.

The mobile phone became a portable music device. Specially designed music phones were released by the major handset makers as dozens of 3G music services were launched, making mobile downloads widely available outside Asia.

The world's first publicly available legal peer-to-peer (P2P) service iMesh launched in beta phase with a full launch expected early in 2006. Many other P2P providers are now looking to go legitimate following legal decisions against Grokster in the US and Kazaa in Australia. Meanwhile, the legal environment for digital music improved very significantly in 2005, with decisions against file-sharing services Grokster (US) and Kazaa (Australia), as well as similar judgements over Kuro (Taiwan) and Soribada (Korea).

James Blunt topped Europe's first digital songs download chart in 2005

1. James Blunt/You're Beautiful
2. Madonna/Hung Up
3. Daniel Powter/Bad Day
4. Sugababes/Push the Button
5. Robbie Williams/Tripping
6. Gorillaz/Feel Good Inc.
7. Black Eyed Peas/Don't Phunk with my Heart
8. Coldplay/Speed of Sound
9. Kanye West/Gold Digger
10. Pussy Cat Dolls/Don't Cha

Source: Nielsen SoundScan International
Period: May-December 2005

The advance of the global digital music market

	2004	2005	Change
Broadband lines (M)	151	190	26%
Single tracks downloaded (M)	156	419	169%
Online music services	230	335	46%
Song catalogue (M)	1	2	100%
Subscription service users (M)	1.5	2.8	87%
Mobile phone subscriptions (M)	1350	1520	13%

Sources: PointTopic-IFPI, Nielsen SoundScan, OCC, IFPI Germany, SNEP, RIAJ, IFPI, subscription service providers, PWC

DIGITAL MUSIC EXPANDS WORLDWIDE

The digital music business spread internationally in 2005 led by the US, with Europe and Asia showing strong growth.

Single track downloads in the **US** more than doubled in 2005 to 353 million (Nielsen SoundScan), with a weekly sales average of 7 million tracks. Digital album downloads grew to 16 million, or 2.6% of the album market, up from 1% in 2004.

Another important development in the US was the launch of portable subscription services such as Napster To Go, Rhapsody To Go and Yahoo Music Unlimited. These allow customers to listen to entire music service libraries directly on their portable player. More recent service launches in the US include Virgin's Red Pass subscription service and music retailer Musicland's online store grazemusic.com. Retail brands Target and Best Buy also plan to launch digital services in 2006. A new MTV/ Microsoft service 'Urge' will launch in 2006.

[illegible]

Alain Levy, chairman & CEO, EMI Music

The American mobile music market is also taking off. Master ringtones are now outselling ringtones, marking the shift by mobile users towards real music products, and the first 3G full track download service was launched.

In **Europe** the digital market has begun to take shape, with the UK, Germany and France leading the way. In the UK and Germany online downloads are predominant, whereas in France and Italy mobile music has developed more quickly than online. In France mobile accounts for over half of digital sales and in Italy the share is much higher at over 80% (both based on first half of 2005).

The UK is the fastest-growing online music market in Europe. Major retail stores Virgin and HMV launched online, and existing services like Napster and iTunes are marketing their brand heavily. The UK saw sales of 26 million single track downloads during the year – a four-fold increase on 2004. Downloads have been successfully merged into the singles charts, giving digital sales greater media and public exposure.

Germany is Europe's second largest digital market, with sales in 2005 more than tripling in one year to 21 million downloads. In France, sales of 8 million downloads compared to just 1.5 million in 2004. In both markets, local services have focused on local repertoire and more varied pricing options than in the UK. In Germany, for example, Musicload is the market leader, followed by iTunes and AOL. In France, the major players are VirginMega and Fnacmusic, followed by E-Compil and iTunes. Overall in Europe, MSN is the number three retailer after iTunes and Musicload.

In **Eastern Europe** online music is yet to take off, but the mobile music market is developing quickly, with penetration rates reaching 100%

in Czech Republic and Romania. But there have been some advances in the online sector too, with the launch of Onetplejer in Poland offering catalogue from all four majors and independent labels.

There are now nearly 200 music services in total in Europe, with launches in 2005 including iTunes in Scandinavia and Ireland, Virgin in Greece and MyCokeMusic in Italy – which is now available in five markets in Europe. Napster is the first subscription service to launch in Germany, while introducing Napster To Go to offer portable subscriptions in both the UK and Germany. Meanwhile 3G mobile services have steadily expanded.

Mobile music continues to drive the digital business in **Asia**, with mobile sales in Japan accounting, for example, for 96% of Japan's total digital sales of $US 221 million in the first nine months of 2005.

Internet piracy remains a serious barrier to the development of the online market in Asia. But there are signs of potential. iTunes launched in Japan in August 2005, contributing to strong growth in downloads. Napster also plans to launch a subscription service in Japan in 2006, which should further expand the online market. In addition, Soundbuzz continues to expand and is now Asia's largest digital music company operating in 13 markets throughout the region. At least 10 new online music services launched in Asia in 2005, and portable player ownership increased. One in three people in Hong Kong now own a portable MP3 player, with ownership already at 28% in China and Korea (Synovate).

In **Australia,** digital sales have arrived with the launch of iTunes in October. It joins existing players Bigpond, NineMSN, HMV and Soundbuzz. With only one third of Australia's six million internet users on broadband, however, the overall market is still relatively small.

Latin America's digital music market continued to develop in 2005 following the launch of iMusica in Brazil in 2000. In Mexico, Tarabu launched in November with a catalogue of 300,000 songs available from all major labels and independents. Argentina also saw the launch of 10musica and Zapmusic in late 2005. Mobile music is also emerging: Brazil is among the top five biggest mobile subscription markets worldwide. However, the low penetration of music-capable phones in the region is restricting the growth of mobile music.

Eddie Cue, Vice President of iTunes, Apple

US digital music market – the key figures

	2004	2005	Change
Broadband lines (M)	34	43	26%
Single tracks downloaded (M)	143	353	147%
Album downloads (M)	6	16	193%
Mobile subscriptions (M)	163	174	7%

Sources: PointTopic-IFPI, Nielsen SoundScan, PWC

European digital market – the key figures

	2004	2005	Change
Broadband lines (M)	43	63	46%
Single tracks downloaded (M)	14	62	355%
Online music services	150	200	33%
3G mobile phone subscriptions (M)	5	18	255%

Sources: PointTopic-IFPI, OCC, IFPI Germany, SNEP, IFPI, Jupiter

ONLINE MUSIC SERVICES EXPAND INTERNATIONALLY **

Argentina
10musica*
Zapmusic*

Australia
BigPondMusic
ChaosMusic
HMV
iTunes*
JB Hi-Fi
NineMSN
Sanity.com
Soundbuzz

Austria
AonMusicDownload
Chello Music Zone
Connect
iTunes
MyCokeMusic
MSN Music

Belgium
Belgacom
Connect
Free Record Shop
iTunes
MSN Music
Tiscali

Brazil
Americanas.com
Musica
MSN Music
Yahoo! Music

Bulgaria
M.Dir
Music.bg

Canada
Archambault
iTunes
Napster
Puretracks

China
9sky*
AigoMusic*
QQ*

Denmark
Bilka
Box*
CDON
Fona*
iTunes*
Jubii
MSN Music
MTV*
Paycad
TDC Online

Finland
Bilisi
IltaSanomat Musiikki
iTunes
Lauri
MaxMusic
MSN Music
Musiikkilataamo
NetAntilla

France
Connect
E-Compil
Fnacmusic
iTunes
Magasin U*
MSN Music
MTV
Tiscali
Virgin Mega
Wanadoo

Germany
AOL Music
Connect
iTunes
mp3
MSN Music
Musicload
Napster
Vitaminic

Greece
iTunes
mpGreek*
Virgin*

Hong Kong
Eolasia*
NWTmusic
Soundbuzz*

Iceland
TonList

India
CrimsonBay*
India Times
Soundbuzz

Ireland
Connect*
Eircom
iTunes*
MyCokeMusic
Vitaminic
Wippit

Italy
iTunes
Libero iMusic*
Messaggene Digitali
MSN Music
MTV IT
MyCokeMusic*
Net Music MediaWorld*
RossoAlice
Tiscali
Buongiorno Vitaminic
Yahoo! Italia

Japan
Excite
iTunes
Kandora
Listen Music Store
Love Music Store
Mora
MSN Music
Music.jp*
Naxos*
OCN Music Store
Ongen
Oricon Style
Reco-chocku
Yahoo! Music*

Korea
Bugs
Dosirak*
Funcake
Jukeon
Maxmp3
Melon
Mukebox
Musicon
Muz
Mylisten
O.music
Tubemusic
Wavaa

Luxembourg
Connect
Free Record Shop
iTunes

Malaysia
Soundbuzz

Mexico
Tarabu*

Netherlands
Chello Music Zone
Connect
Download.nl
Free Record Shop
iTunes
MSN Music
MTV Downloads
Planet Internet Music Stream*
Tiscali
Vitaminic
Wanadoo

New Zealand
Amplifier
CokeTunes*
Digirama

Norway
CDON
iTunes*
MSN Music
MusicOnline

Poland
iPlay
Meo
Onetplejer*

Philippines
Soundbuzz

Portugal
iTunes
SAPO

Singapore
Soundbuzz
Starhub

Slovenia
Zapavaj

South Africa
MSN Music
Musica
Samp3

Spain
Carrefour
iTunes
Los40
MSN Music
MTV Downloads
MusicaPremium
Tiscali
Vitaminic
Wanadoo

Sweden
Ahlens
Bengans
CDON
Gunvor
Homedownload
iTunes*
MSN Music
Musicbrigade
Poplife
Skivhugget

Switzerland
Connect
Ex Libris*
Independentdance
i-m Music Download*
iTunes*
MSN Music
MyCokeMusic

Taiwan
KKBox*
HiMusic
Oband

Thailand
Soundbuzz

UK
Connect
HMV Digital*
iTunes
Karmadownload
Loot Tunes
Ministry of Sound
MSN Music
MTV Downloads
MyCokeMusic
Napster
Tesco
Tiscali
Virgin Digital*
Vitaminic
Wanadoo
Wippit

USA
BuyMusic
Cdigix
Connect
Ctrax2Go*
eMusic
FYE Download
Grazemusic*
iTunes
MSN Music
MusicMatch
Napster
Puretracks
Rhapsody
Streamwaves
Virgin Digital
Vitaminic
Wal-Mart
Yahoo! Music*

2005 launches

**This listing is not exhaustive and is for illustrative purposes only. See www.pro-music.org

Sudhanshu Sarronwala, CEO Soundbuzz Pte Ltd

GETTING MUSIC TO CONSUMERS IN MORE WAYS

There are now dozens of ways in which consumers can sample and buy music legally.

DISTRIBUTION CHANNELS DIVERSIFY

The digital music market is still in an early phase, with several different business models being tried and tested. Digital channels range from master ringtones to satellite radio and vary markedly in popularity from country to country. The most popular online purchasing method for the time being is a-la-carte download – with iTunes claiming as much as 70% market share of single track downloads in the US.

Subscription services are gaining popularity. Worldwide there are 2.8 million subscription service users, nearly double the 1.5 million in 2004. The vast majority of these are in the US. Music brands like Napster, Virgin and HMV have only recently begun offering subscriptions in Europe.

Mobile operators have diversified into online music. Germany's T-Mobile partnered with its sister online music company, current market leader Musicload, to offer dual downloads – that is, songs downloaded to mobile which can also be accessed online at no extra cost. This adds to consumer flexibility and has been adopted by other mobile operators – Sprint and Verizon (US), Orange (Europe) and '3' (Europe).

Conversely, the major online music brands are also branching out to mobile channels. South Korea's mobile operator SK Telcom has launched one of the first subscription services to mobile – Melon. More recently in the US, Rhapsody and Sprint have partnered to offer Rhapsody's subscription service to Sprint's

mobile subscribers. These deals could lead to mobile handset users having full access to subscription services, using mobile handsets exactly like portable digital music players.

A key development for digital music will be to improve the flexibility to play downloads on the range of devices owned by consumers – at home or on the go. Consumers want to access and play music easily through any one of the devices which they own – be that a mobile phone, PC or a 'home entertainment system' like an internet-enabled Hi-Fi system or TV, or a games platform such as PlayStation 2 or XBox.

Loudeye already launched a retail platform at the end of 2005 using Intel technology Viiv that enables consumers to buy tracks from a digital music store using a single account and download them directly to any one of these devices.

VIDEO BOOSTS DIGITAL MUSIC

Music video is now a key element in the product mix of almost all existing online and mobile services – a very strong pull from the consumers' perspective. Services like Yahoo and AOL in the US have put video at the centre of their service offerings, and some mobile operators, such as '3', have done the same.

In October 2005, Apple launched the video iPod which can hold 150 hours of video, played back through a 2.5 inch screen. Creative followed with its Zen Vision:M portable video device in December. The introduction of these portable devices highlights the potential for music videos and other music-related visual content.

Many more 'bundles' – multi-media packages with a combination of audio tracks, related sleeve art and lyrics, videos and artist interview clips – are expected to be sold in the coming months. In November 2005 Warner Japan and mobile operator KDDI partnered to launch the first 'mobile music bundle', comprising audio, video, graphic and text elements in a single, downloadable product.

"2005 has taught entertainment retailers about diversification. The sale of traditional music formats alone can no longer be relied upon to maintain entertainment retail as a viable business model. The sale of traditional product coupled with the sale of digital product and music-related goods will be the model moving forward. While online music sales are doing well, we certainly need a combination of all three sales channels to continue to grow as a sector."
Simon Wright, President, GERA; CEO Virgin Entertainment Group International

THE RECORD COMPANY INVESTMENT

The music industry invests in recording, digitising and marketing some 100,000 albums a year. While record companies continue to focus on this core business – discovering, recording, marketing and licensing music – they are rapidly adapting the ways in which they deliver it in the digital environment.

In the physical world, the release of recordings follows a structured cycle with the CD single leading to the CD album and then a DVD video. With new digital channels, however, comes far greater variety and frequency in getting new music to consumers. Many new recordings now have multiple-planned release 'windows', often starting with a ringtone or exclusive digital track several weeks before the CD single is commercially released. By the time the album is released, its individual songs are available in a multitude of ways.

A typical major record company today has between 300 and 400 separate business partners across online and mobile channels. This has been a highly complex undertaking, with the required digital business infrastructure costing many millions of dollars in investment in new technology and music digitisation. The following steps are essential in getting music out to consumers:

Three steps to digital music

Digitising content: each digital recording and original artwork needs a unique I.D. or digital fingerprint, in order to identify recordings for royalty payments.

Rights-clearance and re-negotiations: often digital licensing can mean a review of the contract between the artist and record company. Almost every song is licensed individually.

Consumer-friendly DRM and 'usage rules': the industry needs technologies to help to increase consumer choice while protecting the works of music creators from unauthorised distribution and unfair use.

WHAT'S YOUR LISTENING STYLE?

Cherry pick favourite songs with a-la-carte downloads: digital music gives consumers the option to buy only their favourite tracks from an album if they wish to do so. Some tracks are digital-only releases while others may have an exclusive period as a digital track before being released on disc.

'Try before you buy' and 'all you can eat' with subscription services: music fans have access to a catalogue of two million songs and latest releases for a monthly fee. Sampling is unrestricted, allowing consumers to preview entire tracks before buying.

'Playlist' and compile: digital services allow endless opportunities to enjoy making and recommending playlists to friends or putting together compilations.

Create the ultimate personalised radio on demand with shuffle play: many online music services allow consumers both to choose from a wide range of radio channels and to design their own personalised radio. Portable devices now let users play their entire record collections on shuffle play – the ultimate personalised listening experience.

Discover new releases with ringtones and master ringtones: these are premier releases for many artists' new material, generating demand by word of mouth. Madonna's single 'Hung Up' was available as a 30-second master ringtone four weeks ahead of its global radio and download release date.

Download music videos first: as premiers or exclusives, these are being channelled first via mobile and online services, often before the actual song release. James Blunt's music video for his single 'Goodbye My Lover' received its global premiere on mobile network '3'

Get everything about a favourite artist with digital 'bundle' releases: tracks bundled together with videos, artwork and artist interviews are ideal for 3G mobile and online customers.

Enjoy music 'on the go' through streaming or download: to a portable music player from an online subscription or to a mobile phone from an operator.

Own the physical copy: on CD single, album, DVD video or DualDisc.

Listen to music on a broadcast: on radio or TV, through analog, digital or satellite.

"Over the past year, two of the biggest developments across the web have been the proliferation of online communities and the creation of new services that let people incorporate digital content into their sites and communities. At Real, we're now laying the foundation to weave music into the fabric of the internet, creating ways to let people legally incorporate digital music into their sites in ways never before possible."
Rob Glaser, Chairman & CEO, RealNetworks

THE MARKETING OPPORTUNITY

Online and mobile channels have shaken up traditional music marketing. Today record companies rely on digital channels to promote new and existing artists to their various audiences. There have been many innovations in promoting and selling music. For example:

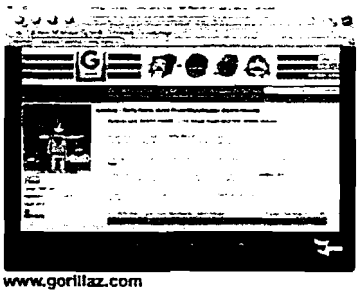
Concert downloads:
During the White Stripes' recent UK tour, concert goers were given a free blank CD-R with exclusive artwork specific to a show. Fans could burn a download of the performance of the song 'Denial Twist' on it and get an unprecedented momento of the gig.

The Stereophonics invited the audience at recent shows to text a number using their mobiles to receive that concert's version of the single 'Dakota'.

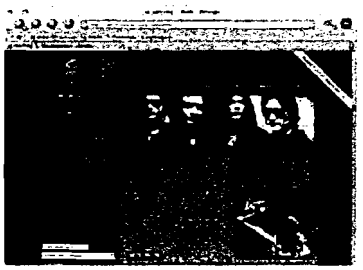
Pre-order exclusives:
Fans who pre-ordered Jamie Cullum's recent 'Catching Tales' album from iTunes also received exclusive audio and video from the artist's recent gigs at the world-renowned Ronnie Scott's Jazz Club.

Meanwhile exclusive download pre-order package for the new Robbie Williams album 'Intensive Care' included the video for the single 'Tripping', an exclusive interview video and related album artwork. In another example, exclusive bonus tracks were offered to fans pre-ordering Eminem's album 'Curtain Call' on iTunes.

Artist websites:
Fans of Gorillaz can navigate the virtual backdrop of Hong Studios, sample the band's music via an online jukebox and buy downloads, wallpapers, master ringtones and exclusive live tracks.



www.gorillaz.com



www.thedarknessrock.com

On the Darkness website, album and single downloads and master ringtones are offered to fans who can stream music clips and videos and listen to exclusive new material.

DIGITAL-ONLY LABELS EMERGE

Major labels and independents have set up digital-only record labels to promote and develop new acts. Universal launched UMe Digital in November 2004 to sign and market new artists and handle digital distribution deals for independent labels. More recently, in November 2005, Warner Music launched its own e-label, Cordless Recordings. Music from the label's first few signed bands is being sold only online, in three-song "clusters" instead of full albums. Instead of big tours, bands will be promoted on blogs and sites like MySpace.com. MySpace is attracting a lot of attention. Launched in 1999 this social networking and music-focused website has exploded in popularity, and was acquired by News Corp. in mid-2005. MySpace has 22 million member users and is attracting up to 2 million new users per month. TV shows and new music are often debuted on the site, and several US bands have gained large fan bases and record sales almost entirely by word of mouth. Interscope Records signed a deal with the site late in 2005 to create MySpace Records which released its first compilation of previously unsigned bands, known through the site, in November.

THE NEW DIGITAL INTERMEDIARIES

Many companies and services do not have resources to sign and obtain licences from thousands of independent labels. Aggregators and distributors are helping to expand the digital market by making it viable for services to extend their music catalogues with independent label content.

While aggregators collect rights and supply them to digital music stores, other specialised digital ventures have emerged to retail and market music via online and mobile channels. The Orchard is the biggest digital distributor for independent record labels, representing thousands of labels and artists in 73 countries. Vital PIAS Digital (VPD) distributes digitally for 90 independents, helping with production, sales and marketing, and digital accounting.

'White label' services that power a number of stores include US-based Loudeye, which acquired digital music pioneers OD2 in June 2004. Loudeye services digital music stores (including MyCokeMusic, MTV and MSN) in over 20 countries with around 1.3 million tracks and a range of online and mobile related services. Another major business-to-business player is 24–7 Musicshop, which operates some 20 download stores for retailers in Europe and North America, including Tesco Downloads.

Similar specialists have emerged for mobile, such as Groove Mobile, MusiWave and Melodeo.

"The biggest development of the year was that given a choice between CD, vinyl or digital, more than 25% (and growing) of consumers chose to buy digital singles in the UK. This creates a huge opportunity for indies that find it difficult to compete for shelf space at physical retail, have limited budgets and have trouble marketing and promoting releases in the traditional music industry."
Scott Cohen, Founder & President, The Orchard

MOBILE MUSIC SHOWS ITS POTENTIAL

Mobile music is a fast-growing revenue stream for record companies, accounting for almost half of the $US 1.1 billion revenues made from digital music in 2005.

Mobile handsets have evolved from a basic voice-based device to whole entertainment hubs, creating an exciting new channel for music distribution.

The consumer appeal of mobiles for music is generating much commercial activity. One in five of all mobile phone users listen to music on their phones, according to a recent report by TNS[1]. This compares with 10% who use a portable music player. Additionally, more than a third of mobile users globally choose mobile music as one of five applications they would like to start using, or use more of in the future.

In some European countries and in Asia, mobile music is developing faster than online music services, boosted by higher penetration of phones compared to portable players or broadband, and by ease of payment.

[1]TNS, sample 6,300 adults aged 16–49 in 15 countries across all regions.

Mobile music: focus on Korea

Mobile music has become a major revenue stream for music companies in South Korea, the country's second largest revenue, while operators have actively promoted the mobile music market to bring:

South Korea has 40 million mobile subscribers in a country of 48 million people and the highest adoption of 3G in the world – nearly 10 million users. The biggest development in mobile music in Korea has been the spread of music-capable phones. Today almost all newly released phones have a digital music function.

The mobile music sector is fiercely competitive, with operators and handset makers both moving actively into the market. In May 2005 SK Telecom, Korea's largest operator, bought one of Korea's leading independent labels, IBM Seoul Records. In November 2004 SK Telecom launched the music subscription service Melloo, which now has half a million active users and two million subscribers, a catalogue of 800,000 songs and is the number one music site in Korea.

MOBILE MUSIC SPREADS GLOBALLY

The sheer size of the mobile market presents the music industry with enormous opportunities, particularly as handsets develop to fully incorporate music. Today there are over 1.5 billion mobile phone subscribers worldwide – a 50% increase since 2002.

Asia leads the way, accounting for half of all mobile subscriptions in 2005. Penetration of music-capable phones is the highest in the world, given consumers' willingness to pay more for their phones in Asia. In Japan, for example, mobile music revenues totalled $US 211 million (96% of digital music revenues) in the first nine months of the year (RIAJ). By September 2005 over 70% of handset sales in Japan were 3G phones.

The European mobile music market has great potential, with many countries at 100% mobile penetration.

Mobile music in the US is also growing in popularity. While 2005 was marked by the rapid development of a master ringtone market, 2006 will see wider implementation of 3G and the roll-out of full track downloads to mobile.

GLOSSARY

3G: the term used for third generation of mobile communication systems. 3G allows for high-speed data transmission, greater voice capacity, access to multimedia features (audio and video) and internet access.

Dual download: or dual delivery download. Introduced in 2005, it allows consumers downloading full tracks to mobile to access them over the internet and transfer them to portable players or burn them on to a CD.

Full track download to mobile: an audio track downloaded via music capable phones (mainly via 3G networks).

Greetings & Dedications: messages recorded by artists for use on mobiles.

Master ringtones: are also known as master recording ringtones, true tones, master tones or real tones. These are excerpts from the original sound recording (6,18 or 30 seconds) played when the phone rings.

Monophonic ringtones: single note sounds played when the phone rings – not sourced from the master recording.

Music-capable phones: mobile phones with integrated MP3 function and music management software.

Polyphonic ringtones: were introduced in 2001 and became mass market by 2003. A combination of notes recreating a musical composition that is played when the phone rings – not sourced from the master recording.

Ringback tones: launched in 2002, they replace the 'ring-ring' sound a waiting caller hears with a song. This is to date mainly an Asian phenomenon – 45% of subscribers to South Korea's largest mobile operator use ringback tones.

Wallpaper: images or logos that can be downloaded and used as a background image on a mobile screen.

FROM RINGTONES TO 'REAL MUSIC'

The development of mobile handsets and the transition of networks from analogue to digital have been key to the early mobile music market. Master ringtones, the first 'real music' product and natural successor to ringtones, have rapidly become the largest mobile music segment by value, and will overtake polyphonic ringtones, in volume terms, by the end of 2006. This is a key development for record companies and artists, since master ringtones are sourced from master recordings, meaning record companies and artists receive a slice of revenue from every master ringtone sold.

In Europe and Japan, master ringtones already account for half the ringtone market. In the US master ringtones represent 60% of total ringtone revenues.

MUSIC DRIVES 3G

Mobile music is rapidly moving beyond just ringtones and master ringtones. With the advent of 3G mobile, download speeds have increased tremendously, allowing a wide range of new music products to be offered such as full track downloads, video streaming, and premium music content.

Introduced only three years ago in Korea, 3G has grown quickly in Asia and Europe. Globally, there were over 70 million 3G subscriptions in 2005. Vodafone, the largest European operator, launched its 3G service in November 2004 and reached 5 million customers by the end of 2005. 3G is expected to grow fast in the next two years. Jupiter estimates that by 2010 3G penetration will reach 60% in Europe. 3G has already reached 30% penetration in Japan and is expected to roll out in China in 2006.

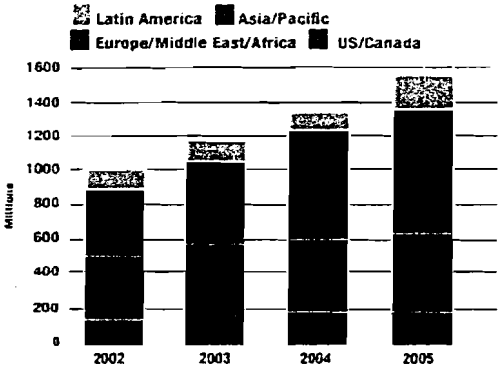
For mobile operators, the shift from voice calls to data network usage and entertainment via 3G dramatically increased customer revenues. Music, with universal appeal and relatively small network download speeds, has been a key driver of 3G adoption by consumers. Consumer research by mobile operators confirms that music is the top entertainment product, attracting the 18–35 age group in particular.

Record companies have moved quickly into this new market, making hundreds of business deals with operators, aggregators and handset makers. Examples of key mobile music initiatives in 2005 include:

- In Europe, **T-Mobile** partnered with EMI for the release of Robbie Williams' new album offering T-Mobile customers exclusive content such as concert live-streaming, full-track downloads, VIP tickets and hospitality, backstage tours and after show party tickets.
- **French operator SFR** expanded its mobile music catalogue to over 400,000 tracks and joined with Universal to launch 'Label Studio TV' – the first interactive mobile TV in Europe. Label Studio TV provides users with full programming control of nine channels featuring video clips, backstage interviews, documentary footage, interactive games and video-blogging.
- **Vodafone** included Universal's catalogue into its library of full track downloads raising it to 600,000 tracks available in 21 territories. In the US **Sprint** launched the first full track dual download service, offering a catalogue of 250,000 songs. The service is based on Groove Mobile's music delivery technology and will rely on Sprint's newly introduced high speed network.
- **Japanese operator KDDI** launched its full track download service in 2004 and crossed the 30 million sales mark in December 2005. Over 110,000 songs are available.
- SonyBMG joined with MTV for the launch of **MTV 5 Star** featuring Shakira. The initiative included exclusive 30 minute shows, full track streams prior to release and a series of Shakira "mobisodes". 5 Star utilises MTV's television, internet and mobile platforms across Asia-Pacific, Europe, Latin America and Russia to promote new releases and offer fans exclusive content.

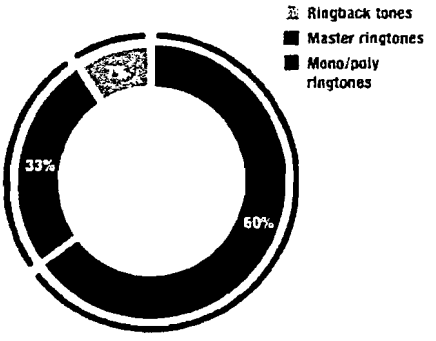
"The proliferation of digital music platforms means that consumers can now, more than ever, enjoy music virtually anytime, anywhere. The digital music revolution is also contributing to the transformation of Warner Music Group from a traditional record and songs-based company into a diverse, music-based content company capable of delivering not only songs and records but ringtones, master ringtones, music video downloads, album and lyrics and other content across an ever increasing array of distribution channels, digital devices and music services. Warner Music Group will continue to make digital music and new media a core part of the company's global mission."
Alex Zubillaga, Executive Vice President, Digital Strategy and Business Development, Warner Music Group

GROWTH IN MOBILE SUBSCRIBERS



Source: PWC, Global Entertainment and Media Outlook

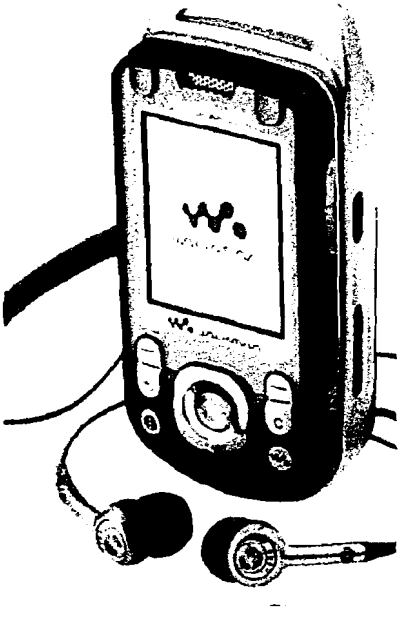
US RINGTONE MARKET REVENUES



Source: Telephia, Mobile Audio Report, July 2005

- **France Telecom** partnered with Warner Music to offer consumers in 10 European territories the ability to download ringtones, full tracks and music videos to their mobile or online.

- During 2005 **mobile operator '3'** ran multiple music campaigns, including a TV, press, outdoor, radio and online campaign with the message 'We like music'. Following the launch of 3's Video Jukebox service in August 2004, more than 15 million music videos have been watched by 3's 3G customers. In Italy, more than 30,000 single track downloads to mobile of Eros Ramazzotti's 'La Nostra Vita' were sold in the first week of release.



THE HANDSET MARKET

Music-capable phones are fast growing in popularity. Nokia sold 10 million music capable phones in 2004 (5% of their total handsets sales) and is expected to reach sales of 40 million worldwide in 2005, making it the largest manufacturer of music enabled phones in the world.

Although there has been discussion about the mobile phone as the 'iPod killer', it is likely that the market for both dedicated portable music players and music-playing mobile phones will grow substantially. While portable music players have more music features (song storage, playback quality, battery life) in the medium term, for millions of consumers the mobile phone will become the preferred portable music device.

Mobile technology is advancing fast, and 2005 saw the launch of new phones with storage capacity comparable to small flash memory portable music players.

THE FUTURE OF MOBILE MUSIC

To become the mass market phenomenon it promises to be, mobile music must continue to develop beyond master ringtones to full track downloads and premium content.

New opportunities lie in the exploitation of live content via handsets, song recognition services, digital audio broadcasting (DAB), visual radio and mobile TV. Ultimately the mobile music market will allow artists both to reach a wider audience and to win back the younger audience by reaching them in a new way.

"There are certain artists whose music appeals very strongly to the mobile customer base but not necessarily to the 30-something male with a broadband connection downloading from iTunes. There are gaps in the market that are not filled by record shops or online services that can be filled by mobile. There are a number of different access points for music and over-the-air is the most convenient for impulse purchasing when you are on the move."
Ed Kershaw, Head of Music, Vodafone

KEY MUSIC MOBILES

PHONE	LAUNCH	STORAGE CAPACITY	BATTERY LIFE	MUSIC CAPABILITIES	ADDED FEATURES
MOTOROLA ROKR	September 2005	100 songs + removable memory card	15 hours of music using wired headset and 6 hours using surround sound speakers	Apple iTunes music management software ■ Transfer songs via USB or wireless from PC or Mac ■ Surround sound speakers ■ Album art display ■ Random play ■ 3G	Camera ■ Video capture and playback ■ Games ■ Full screen view for photos and video clips
NOKIA N91	Early 2006	3000 songs	10 hours of music	Windows Media Player music management software ■ Transfer songs via USB or wireless ■ Create playlists ■ Integrated FM radio with Visual Radio support ■ Connect with home stereo ■ Headset with remote control ■ Music function keys (play, forward, rewind, etc) ■ 3G	Camera ■ Video capture and playback ■ E-mail ■ High resolution screen
ORANGE SPV C550	August 2005 Europe	500 songs + removable memory card	3 hours of music	Orange Music Player & Windows Media Player music management software ■ Transfer songs via USB or wireless ■ Connect with home stereo system ■ FM radio ■ Create own ringtones ■ Music function keys (play, forward, rewind, etc)	Camera ■ Bluetooth ■ E-mail ■ High resolution screen ■ Games
SAMSUNG SGH-i300	December 2005	1000 songs	5–9 hours of music	Windows Media Player music management software ■ Transfer songs via USB ■ Dual stereo speakers ■ Scroll wheel navigation	Camera ■ Video capture and playback ■ Bluetooth ■ E-mail ■ High resolution screen
SONY ERICSSON W800 WALKMAN	July 2005	150 songs + removable memory card	30 hours of music	Sony music management software ■ Transfer songs via USB or wireless ■ Create playlists ■ Create own polyphonic ringtones ■ FM radio ■ Sound recorder ■ Mega Bass ■ 3G	Camera ■ Video capture and playback ■ Bluetooth ■ E-mail ■ Picture editor ■ Video DJ ■ Games
TOSHIBA 803	October 2005, Europe (exclusive to Vodafone customers)	175 songs	6 hours of music	Transfer songs via USB ■ Stereo twin speakers ■ Stereo handsfree headset with remote control ■ Listen to music and surf the net at same time ■ Create and search playlists ■ 3G	Camera ■ Video capture and playback ■ Bluetooth ■ High resolution screen ■ Games

"The Walkman changed the way people used to listen to music, turning it into a mobile experience. Now we have iPods, portable PCs and millions of mobile phones, all are becoming mobile music players. I love it. My job is about developing artists and making sure they are paid for their music. Mobile music is fantastic as far as exposure is concerned, but I have now to worry about bringing the revenue back home."
Michel Lambot, Chairman of IMPALA (Independent Music Companies Association)

IN THE PIPELINE: LEGITIMATE P2P, DIGITAL RADIO & PODCASTING

2005 has seen three significant developments with future market potential: legitimate P2P, digital radio and podcasting.

LEGITIMATE P2P

Peer-to-Peer (P2P) distribution until now has largely been associated with music and film piracy. However the music industry wants to see P2P technology commercialised for the legal distribution of music. There have been numerous agreements put in place in 2005 to achieve this goal.

Snocap is one of the technology companies currently helping to develop legal P2P. Its technology, which combines audio fingerprinting filtering with a registry for licensed content, allows P2P services to present to users options to purchase a song. Record companies partnering with Snocap can set conditions for song use and can work together with their artists to license previously unreleased tracks such as live recordings.

All the major music companies and many more independents have signed deals with Snocap. New P2P service Mashboxx is being developed for launch using Snocap technology.

iMesh is the first legal P2P service to have launched commercially in a beta phase. Launched in October 2005, the iMesh network uses Audible Magic – also an audio fingerprinting technology similar to Snocap's – to identify songs traded on its network.

There are still technological and commercial questions to be resolved for legal P2P. Current models rely on the maintenance of instantly accessible, large databases which hold relevant licenses for each version of a song. This is a complex system which needs to be continuously kept up to date. Pricing structures and business economics are also untested.

DIGITAL RADIO

Digital Audio Broadcasting (DAB) presents an exciting opportunity but is also one of the greatest challenges confronting the music industry. DAB offers many consumer benefits such as a high quality sound, more stations, additional data services and interference-free reception.

DAB services are growing worldwide. Over 475 million people around the world now receive over 800 different DAB services. Likewise, the market for digital receivers is taking off – in the UK, digital receiver sales now exceed analogue.

Satellite radio is also developing fast, particularly in the US. The two companies first operating satellite broadcasting services in the US, XM Satellite Radio and Sirius Satellite Radio, now have 9 million paying subscribers between them – three times as many as online music subscription services in the US. However, digital broadcasters and the recording industry need to work together to ensure that these services do not become an unlicensed source for free downloads.

PODCASTING

Podcasts are programmes recorded in the form of digital audio files, which are downloadable and transferable to portable digital devices like digital audio players such as iPods and MP3 players. Popular content includes radio programmes that in podcast form can be 'played back anytime, anywhere'.

While early signs indicate that podcasting is rapidly spreading – a month following its introduction on iTunes, Apple reported five million podcast subscriptions from a directory of more than 15,000 programmes – its mass market potential is not yet clear.

Podcasts are a potentially interesting commercial opportunity for record companies. Many different models for licensing music in podcasts have been suggested, from a-la-carte charges per podcast, or a subscription charge covering access to a range of podcast shows. There are a number of issues that need to be resolved before podcasts can become a commercially viable delivery model, however. Notably, podcasters need to obtain the proper license agreements from copyright owners. The file format used should offer a framework of content protection based on Digital Rights Management (DRM) to ensure that podcasts are used as they were intended, rather than separated into component songs, creating a digital library.

[illegible]

Robert Summer, Executive Chairman, iMesh

MUSIC CONSUMPTION IS CHANGING

IFPI research finds legal downloading on a par with illegal file-sharing in some key markets, but attracting file-sharers to legal sites is a long-term challenge.

NEW IFPI RESEARCH SPOTLIGHTS THE CONSUMER

A new consumer survey by IFPI[1] shows that for the large majority of people in Europe, digital music – be it legitimate or illegal – is a new concept. Only 11% of European internet users swap files on P2P networks. Fewer, around 6%, regularly (i.e. on a monthly basis) download from P2P networks.

Legal downloading is clearly at an early stage in Europe. Only 6% of internet users have bought from a digital music store, while 4% – less than one in twenty – does so regularly.

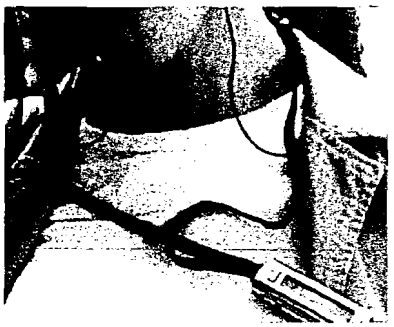
Highlights of the findings are:

1. **Legal online buying is catching up with illegal file-sharing.** Legal buying is now as popular as P2P use in the two major European digital markets, the UK and Germany. Here the number of regular legal buyers exceeds regular illegal file-sharers (5% compared to 4% in both countries). In the US, latest surveys suggest the gap between legal buying and P2P usage is narrowing (NPD). In France, Spain, Sweden and Canada[2], more users go to P2P networks, but legal online buying is growing.

2. **Turning illegal file-swappers into legal online buyers is a long-term challenge.** Only 22% of online music buyers are also file-sharers. While this shows that the industry is successfully attracting new users straight to legal services, it also shows that shifting consumers from unauthorised to legal services will take more time. One in every four illegal file-sharers is willing to move to legal services – some 25% say they would pay to download legally. The challenge for the music industry is to shift the others.

3. **Portability is a key driver of digital music.** Nearly half of all file-sharers (45%) transfer music to portable players on a monthly basis. Legal downloaders are rapidly catching up – 29% transfer to portable

[1]Research, conducted by Jupiter Research – consisted of a random sample of internet users (sample size 3,900) in France, Germany, Spain, Sweden and the UK.
[2]Polara research in Canada, June 2005.



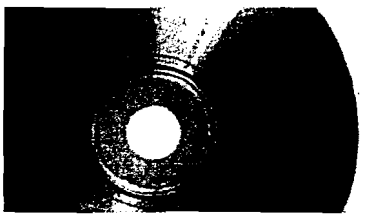
players. One in ten European internet users bought a digital audio player in 2005 (equating to approximately 23 million people) and a further 6% intend to during 2006.

4. **Digital consumption competes with CD buying but downloaders still value the CD.** Over one third (35%) of illegal file-sharers are buying fewer CDs as a result of their downloading, with 25% of online music buyers also buying fewer. Both file sharers (34%) and online music buyers (37%) value CDs more than digital music.

5. **Mobile music has huge mass market potential.** Ringtones are the most popular digital music format, with 19% of internet users having downloaded a ringtone – three times the number that have bought a track online. Already 3% of European internet users are frequently using their phones for music downloads.

DIGITAL MUSIC VERSUS THE CD

It is unclear to what extent future CD sales will be substituted by digital music, but research indicates that this will happen gradually rather than rapidly. One in three digital music buyers says that owning CDs is of more value to them than music downloads.



Digital channels promise to expand the music market in the long term. Master ringtones, ringback tones and other mobile music products are new channels – they add to existing formats and they are reaching a wider, younger market and are attracting previous non-music buyers. This is already visible in Asia.

THE POWER OF PORTABILITY

IFPI's research confirms one of the most important drivers behind the digital music market – portability of music.

IFPI's survey in Europe found that 29% of digital music buyers regularly transfer songs to a portable player. Some 10% of internet users have purchased a digital audio player in the past 12 months, which brings the proportion of internet users who own a player to 15%.

Download sales in UK and US saw a huge spike the week after Christmas 2005, with UK download sales of 1 million and US download sales of 20 million. Both spikes are directly related to consumers receiving portable players as Christmas gifts.

"We expect that 2006 will see subscription services become widely accepted as offering consumers the widest choice of music for the best value. In tandem with further growth in portable MP3 player sales, services like Napster To Go will revolutionise how people listen to music by giving them unlimited access to a lifetime's supply of music anytime, anywhere. 2006 will be the year that people embrace the 'own nothing, have everything' philosophy of music subscription."
Chris Gorog, CEO Napster

CONFRONTING THE CHALLENGES

Digital music is a huge economic and cultural opportunity – but future growth depends on how present obstacles are faced.

Within only two years, the legitimate digital music market has become a reality of consumer life. This is an important success for a music industry which has faced up to the dramatic changes brought by the internet to its way of doing business.

As with many other media and information industries, however, the transition to a digital music business has taken time and been difficult to achieve. Global music sales have fallen 16% in five years – from $US 39.7 billion in 2000 to $US 33.6 billion in 2004 – to a large extent because of the proliferation of free unauthorised music. Digital sales are now beginning to help reverse that decline, and in due course are likely to help offset the continuing fall in the physical music formats.

This new digital music market, driven by the licensing of repertoire in a diverse range of new revenue streams, offers enormous cultural and economic opportunities. But there are big challenges too. These must be addressed if the full potential of digital music is to be unlocked.

In early 2006 a number of significant obstacles hamper the progress of the digital music market. These include internet piracy, which remains a huge problem; the need for more effective cooperation from Internet Service Providers (ISPs) in containing it; the continuing lack of interoperability between formats and devices, which threatens to limit future market growth; and the emerging threat from unlicensed digital stream ripping from digital radio and internet webcasts.

DIGITAL STREAM RIPPING: THE NEXT BIG CHALLENGE

Introducing licensing arrangements [illegible] For a music that address the threat of digital stream [illegible] ripping is a key priority for the mu[illegible] industry in the US.

Since tape recorders became avail[illegible] people have recorded broadcasts [illegible] their radios, which has not been [illegible] problematic – they can listen to the programme at a time more convenient [illegible] to them. Digital stream ripp[illegible] is a different challenge.

Today's technologies can [illegible] continuous programmes (a radio s[illegible] for example), they can, through what [illegible] known as 'digital stream ripping', automatically identify and separate individual tracks from digital broadcasts and store them for future playback. In effect, a broadcast can be turned into a [illegible] services [illegible] than as on-demand services, they need to implement appropriate technical controls to ensure that they do not undermine [illegible] services.

[illegible] ream ripping to go [illegible] hugely damaging to [illegible]. Each song saved [illegible] MP3 is a lost sales [illegible] a digital music store or subscription service, as well as to the songwriter, artist and other rights holders.

INTERNET PIRACY: THE BIGGEST OBSTACLE

Internet piracy is the biggest single obstacle to the development of the digital music market. The problem is as fast-changing as the distribution technologies behind it: in 2001 internet piracy largely took the shape of web sites offering an estimated one million copyright infringing files. Today P2P networks provide the dominant source of online piracy, and the number of infringing music files on the internet stands at just under one billion.

The recording industry fights internet piracy to protect the rights of artists and other copyright holders. Digital piracy has a direct impact on legitimate music sales. Extensive third party and industry research has confirmed this impact in the last two years.

[illegible]

Thomas Hesse, President, Global Digital Business, SONY BMG Music Entertainment

Internet Piracy Reduces Music Sales: The Findings

IFPI/Jupiter – Europe November 2005. One in three illegal file-sharers in Europe buys less music, with the greatest impact on the 15–34 age group.

Pollara – Canada, June 2005. Downloaders spend less on CDs, with 33% saying they spent less on music compared to only 20% who spent more. The number one reason for buying less music for all respondents is the use of P2P networks and CD burning. www.cria.ca – www.pollara.ca

TNS/BPI – UK, April 2005. A two-year study that tracked purchasing habits of downloaders against non-downloaders revealed that over time downloaders bought less music; amounting to a loss of an estimated £650 million over two years. www.bpi.co.uk

The National Bureau of Economic Research – US, October 2004. Stated that: "downloading [from unauthorized sources] reduced music expenditure by about 10% but possibly much more." www.nber.org

Informa Media Group – US, September 2004. Potential losses to the industry from file-sharing was $US 2.1 billion in 2004 www.informamedia.com

Forrester Research – Europe, Aug 2004. More than one in three (36%) music downloaders say they buy fewer CDs because they can download music for free. Only 10% say they are buying more. www.forrester.com

THE CALL TO ISPS

Internet Service Providers (ISPs) and telecommunications companies generate huge revenues from music and are themselves becoming music retailers. It is vital that these companies fully cooperate with industries like the music and film industries in making sure that copyright laws are respected on their networks. In 2005 the recording industry stepped up its efforts to have ISPs cooperate in removing copyright-infringing content from their networks, and thereby promote legitimate digital business.

This initiative will be stepped up further in 2006. As creative content industries – first music, then film and video, news media and publishing – drive the growth of business on the internet, ISPs must share responsibility in a business where they increasingly generate revenues of their own. Revenues in the media and entertainment sectors will explode in the coming years – by 33% in the next four years to 2009, according to PWC (Global Entertainment and Media Outlook: 2005–2009).

The music industry and its ISP partners have a shared interest and a shared responsibility in controlling copyright infringement on the internet. Already, discussions on enhanced cooperation are leading the way in France, Italy, Spain and the UK. The recording industry wants these discussions to go further. ISPs should make concrete commitments to control infringements on their networks. In the European Union, IFPI is supporting the initiative by Commissioner Viviane Reding to draw up a European Charter "Content Online and IPR" by May 2006.

"The music industry has a [illegible] relationship with companies and ISPs. But the law [illegible] ISP service providers and music distributors must [illegible] doing so they will [illegible] legal content [illegible] and [illegible]"

John Kennedy, Chairman & CEO, IFPI

COURTS IMPROVE THE LANDSCAPE

For the recording industry, the business environment in which legitimate digital music has had to compete with mass-scale unauthorised free music is improving rapidly.

COURTS RULE AGAINST ILLEGAL P2P

In 2005 a wave of court rulings within three months and in three continents, gave the recording industry the most significant boost yet in the fight against P2P piracy. Between June and September, judgements against Grokster in the US, Kazaa in Australia, Soribada in Korea and Kuro in Taiwan laid down some key ground rules with global implications for the fight against illegal P2P distribution.

The message sent by the courts has been clear. Operators of unauthorised P2P networks, who encourage the use of their networks for copyright infringement, can be held liable for music piracy. P2P services cannot simply turn a blind eye to ongoing illegal activity and profit from massive infringement while avoiding putting in place effective filters or other methods to prevent it.

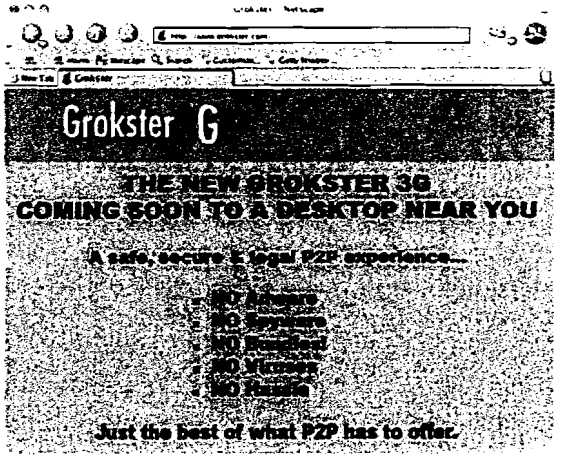
These rulings are an important turning point in the recording industry's battle against internet piracy. By clarifying the potential liability of unauthorised P2P network operators, they have confirmed the industry's ability to bring actions directly against such services. This is in addition to legal actions launched against individual uploaders, numbering some 20,000 worldwide at the end of 2005.

The US Supreme Court ruling, in particular, has shown quick results, opening the door to the development of legitimate P2P. Setting the trend, the Grokster service shut down in November following a settlement with IFPI's US affiliate RIAA. Following "cease and desist" letters sent by the US recording industry to a number of unauthorised P2P services, two major operators, eDonkey and WinMX, announced they would stop illegal activity. BitTorrent has also announced it is cooperating with the film industry to take down infringing material. Others are also involved in negotiations with a variety of industry parties to convert their networks for legitimate business. Kazaa, the biggest international brand name in music piracy, has also been found to be infringing copyright, and in December 2005 was required to filter its service or cease its authorities.

These are highly significant developments in the fight against P2P piracy. For the first time since the original Napster service shut down in 2002, the door appears to be closing even on decentralised unauthorised file-sharing networks. It will be some time before this translates into large falls in P2P traffic: for example, old versions of the Grokster programme remain available to users, while the decline in the use of programmes like WinMX has been slowed by the emergence of non-commercial clones of the software.

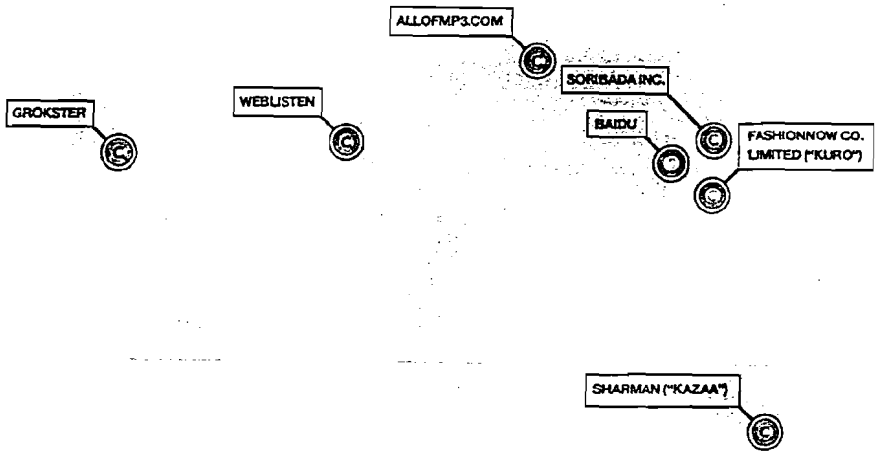
SHUTTING DOWN 'PIRACY HAVENS'

Websites searching for 'piracy havens' from which to make copyrighted repertoire available are a further barrier to the growth of the legitimate market. But there has been important progress in this area in 2005, with cases progressing in Spain, Russia, Australia and elsewhere against companies attempting to profit from others' copyrighted music (see page 19).



"Watching a cultural industry bleeding heavily is a very painful experience. Knowing many of the hundreds of people who have been made redundant over the last three to four years and artists that have been dropped, makes it even worse. We know that one of the main reasons for this is illegal file-sharing. That is why we are determined to do everything we can to contain the amount of music being distributed illegally. Would any business anywhere in the world react differently?"
Ludvig Werner, Managing Director for Bonnier Amigo Music (Swedish Independent)

COURTS TIP THE SCALES AGAINST INTERNET PIRACY IN 2005



"The ability to enjoy music legally online in a huge variety of ways is becoming such an everyday experience that it's easy to forget just how much progress has been made in the last few years. We have hundreds of legal music sites in Europe today, but the future growth of the legitimate market should not be taken for granted. The European Parliament has an ongoing role to play in encouraging the development of the online market and respect for intellectual property."
Brian Crowley, Irish Member of the European Parliament

MGM v GROKSTER – US Supreme Court decision. In June, a 9–0 unanimous decision by the US Supreme Court clearly established that P2P service providers who promote infringing use of their technology can be found liable for inducing that infringement. Providers' active steps to encourage that infringement, their profit from that infringement and their failure to implement filtering were all factors the Court found could evidence inducement. In November Grokster's owners and operators entered into a settlement with the music and film industries. Grokster accepted a permanent injunction prohibiting direct or indirect copyright infringement and immediately stopped distributing its software and operating its system.

SORIBADA INC. – Korean District Court decision. In August the Korean Court granted an injunction against Soribada, the operator of a local P2P service, finding that it had aided and abetted the infringement by its users on its service. Soribada's knowledge of infringement, profits from the service and failure to filter were all cited as reasons for its liability. Its arguments that it was not actively involved in the infringements because of the system structure were rejected, and because it was unable to put in place effective filters Soribada was forced to close the service. In November Soribada completely shut down all versions of its service.

UNIVERSAL MUSIC v SHARMAN ("Kazaa") – Australian Federal Court decision. In September the Australian Federal Court found Kazaa – the world's biggest brand name in internet piracy – liable for authorising the infringements occurring on its service. Kazaa's knowledge of infringement, its failure to curb the infringements even though it could, and its encouragement of and direct financial interest in the infringements all lead to the finding. In early 2006 Kazaa's operators were due to face contempt of court charges for failing to implement the court's order to filter the Kazaa network.

FASHIONNOW CO. LIMITED ("KURO") – Taiwanese District Court decision. In September Kuro, a popular Taiwanese subscription P2P service, and its principals were convicted of criminal copyright infringement by the Taiwanese Court. Kuro solicited users knowing they would infringe and made profits as a result of the infringement. They could have, but refused to install filters. The Court took all these factors into account. The three principals were all sentenced to two or three years' imprisonment and all three, and the company itself, were each fined $US 90,000. This is the first criminal ruling of its kind anywhere in the world.

US-listed internet links service **Baidu** was found guilty of infringement for providing "deep links" (internet links that directly initiate download of content) to copyrighted music tracks. The case against Baidu was brought by local record company Push Sound and has been followed by seven actions brought by international and local joint venture record companies which are still pending. Earlier in the year a case against ChinaMP3, another link site, was successfully brought by the international record companies. In Australia, a similar deep linking site, mp3s4free.net, was held liable for copyright infringement by the Federal Court of Australia. The ISP hosting the site was also found liable.

WEBLISTEN, the high-profile Spanish website, shut down after admitting criminal copyright infringement in May 2005. The site had for six years offered many thousands of tracks for download and streaming.

ALLOFMP3.COM is the best-known of several unlicensed Russian-based websites offering copyrighted music internationally. Allofmp3.com is an unlawful site both inside and outside Russia. IFPI successfully engaged a Moscow prosecutor to act against the site, but progress is very slow and is hampered by the inadequate enforcement procedures in Russia. Meanwhile in Germany there was a court injunction against Allofmp3.com and in Italy a local-based portal to the site was shut down by the police.

CONTAINING ILLEGAL FILE-SHARING

A thriving digital music business means containing piracy; getting support from ISPs; and making formats interoperable for consumers

DETERRENCE: LEGAL ACTIONS AGAINST FILE-SHARERS

In 2005 the music industry widened its campaign of deterrence against illegal file-sharing, nearly tripling the number of legal actions to a total of some 20,000 cases in 17 countries. The actions, taken under both civil and criminal law depending on the country, are aimed at deterring file-sharing, changing attitudes among internet users, encouraging legal downloading and raising awareness of the law. This last aim has been achieved. Seven out of 10 Europeans and Americans now know that distributing copyrighted music online without the permission of the copyright holder is illegal.

In October the fourth wave of international actions extended the litigation strategy for the first time into South East Asia and Latin America, including Hong Kong, Singapore and Argentina. In every country where actions have been launched, focused warning and education campaigns have preceded legal action. Cases are taken against people distributing hundreds of copyrighted music files, or more. More waves of lawsuits will be rolled out, in more countries, in 2006.

Nearly two years after the first of these actions were launched outside the US (in March 2004), the deterrence strategy has not only proved effective – it has, to date, weathered the cynicism of its critics. Thousands of individuals have paid settlements averaging $US 3,000 each; settlements and payments of damages have been the rule in the vast number of cases taken; challenges to the actions on data protection grounds, in Sweden and Canada, have failed; deterrent penalties, though not necessarily popular, have been widely-publicised and have played an important part in changing attitudes to illegal file-sharing.

EDUCATION

Education has a critical part to play in the development of a thriving legitimate digital music market. The recording industry launched four targeted international education campaigns in 2005, by far the biggest expansion of its public information activities in this area. Each campaign has been addressed at specific audiences and aims to help change attitudes to online music, improve understanding of copyright and promote the legitimate services.

- **Individual file-sharers.** Over 52 million instant messages have been sent directly to illegal music file-sharers in 17 countries.
- **Parents.** A campaign launched by leading charity Childnet international and the cross-sector alliance Pro-music, is aimed at educating parents about file-sharing and downloading music. The leaflet "Young People, Music and the Internet", explains the security as well as the legal risks that come with unauthorised P2P file-sharing. The guide has been distributed in schools and retailers around the world.
- **Companies.** A Copyright Security Guide for companies and governments, launched jointly with the film and video industry associations MPA and IVF and endorsed by the International Chamber of Commerce, has been mailed to organisations in seven countries.
- **Computer users.** Free software, Digital File Check, that helps people enjoy music on their computer safely and legally (go to www.ifpi.org/dfc) has been launched initially in seven countries. DFC helps people remove file-sharing programmes from their computer and avoid illegally distributing copyrighted files on P2P networks. DFC is available on disc and online. The programme has seen over 29,000 downloads in the first three months after launch.

Other digital industry players have also realised the importance of educating their customers about the risks of illegal file-sharing. AOL launched its PlayLegal campaign in December 2005.

Parents' brochure: 'Young People, Music and the Internet' (www.pro-music.org/guide)

"Companies and enterprises internationally, many of whom depend on intellectual property rights to do their business, will welcome the new Copyright and Security Guide. Online copyright theft should not be tolerated in the workplace or by employers. Whatever the business sector and whatever the country involved. This initiative clearly explains what actions companies need to take to avoid legal and security risks on their networks."
Guy Sebban, Secretary General of the International Chamber of Commerce

IS THE FIGHT AGAINST PIRACY WORKING?

There are countless different methodologies in use to measure trends in internet piracy. They vary from counting website hits to software downloads, traffic and request data and user sampling. All attempts to measure the problem are rough estimates. Results vary considerably according to which methodology is used, and for example, whether movie downloads are taken into account or not.

There is a consensus, however, that illegal file-sharing of music files has been held in check within the last two years in the context of a sharp increase in broadband penetration globally.

In January 2006, IFPI estimates the number of infringing music files available on the internet at any one time – in other words, the simultaneous availability of copyrighted music tracks for illegal download or distribution – at 885 million, of which 775 million are available on P2P networks and the remainder on websites. This is slightly up on the piracy level of January 2005 (870 million) but down compared to the level in June 2005 (900 million). By contrast, broadband uptake has risen by 26% worldwide in the past year.

Total infringing music files are down an estimated 20% on their 1.1 billion peak in April 2003, during which period broadband penetration rose 139%.

CHANGING ATTITUDES

IFPI's latest consumer survey, conducted by Jupiter Research/IPSOS, has given strong evidence that the combination of education and deterrence is changing consumer attitudes. The survey, conducted in November 2005 among a sample of 3,900 online consumers in France, Germany, Spain, Sweden and UK, shows the following:

① Legal actions are working

35% of illegal file-sharers have cut back or stopped the activity, while only 14% have increased it.

Half of illegal file-sharers who cut back on illegal file-sharing did so because of concern over the legal consequences. 35% did so out of concerns about viruses. 15% could not find the song they wanted on the P2P network.

In Spain, the only country surveyed where legal actions have not been taken, fewer file-sharers are cutting back and concern over legal action is the least cited reason.

② Legal downloading is rapidly increasing, but promotion of legal sites is critical

The number of regular legal music downloaders now exceeds the number of regular illegal file-sharers in the UK and Germany. On average only 4% of all European internet users regularly buy music online – compared to 6% who swap music illegally. Legal downloaders are more likely to be new internet music fans than P2P users: only one in five online buyers are also file-sharers.

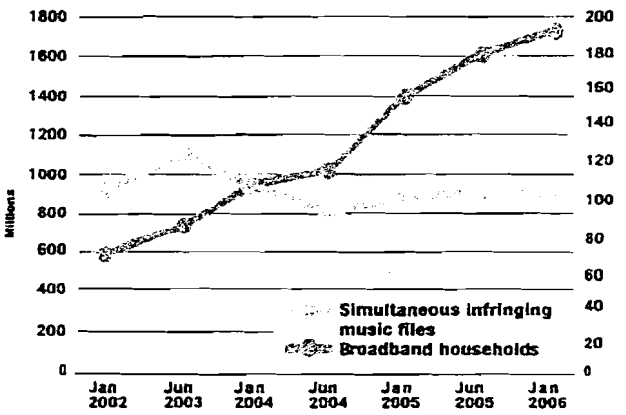
25% of illegal file-sharers would pay to download music, but 50% currently say that they would not pay.

③ Illegal file-sharers spend less on music

One in three illegal file-sharers buys less music, with the impact heaviest in the 15–34 age group.

"Piracy affects the entire music industry; all the employees that work at the labels and the recording studios as well as the artist himself. We have to become aware in this country that piracy is theft. New digital technologies should become a new tool for the marketing of music and not a tool to promote illegal downloading."
Gustavo Santaolalia, musician & producer, Latin Grammy Award winner 2005, Argentina

INFRINGING MUSIC FILES ON P2P ARE FLAT; BROADBAND IS UP 26%



Source: IFPI

Actions against illegal file-sharing at a glance

- 19,400 actions in 17 countries
- Settlements averaging $US 3,000
- Most uploaders are 20–35 year-old men
- All major networks targeted: Kazaa, WinMX, Gnutella, eDonkey, Direct Connect, BitTorrent, Bearshare, Warez, Soulseek

DRM & INTEROPERABILITY: THE KEYS TO FUTURE GROWTH

Digital Rights Management is an essential tool for any industry trading in intellectual property in the digital environment.

THE CHALLENGE FOR DRM

Digital Rights Management (DRM) helps increase consumer choice while protecting the works of creators from unauthorised distribution and unfair use. DRM technologies are sophisticated digital enablers, not simple locks and keys, allowing consumers to enjoy music in more varied ways.

DRM is needed for digital business models to work. For example, the sale of a single track, the multiple playback of a song on a portable music player linked to a subscription service, or a song streamed via an a-la-carte service, all need DRM so that content usage can be recorded and all parties involved in the creation of music can be appropriately remunerated.

DRM helps to manage consumer usage rights. A track purchased on iTunes can be securely transferred to an iPod, or burned to a blank CD, or transferred to a new computer. This is reasonable use which reflects the price paid for the song. It would be unreasonable to allow a new iPod owner to upload someone else's entire song collection on to their device; or for a subscriber to an online music service to transfer a limitless number of songs to someone else's portable player – unless they had paid for it. DRM is designed to stop the uploading of purchased songs onto file-sharing services where they will be distributed without any recompense to the rights owners.

DRM has already been very effective in helping develop the digital music business. Licenced usage rights have been secure, while allowing consumers to get music in a seamless and uncomplicated way. DRM is also allowing digital music fans flexible use with the music they buy – going far beyond the consumer experience in other forms of commercial entertainment, such as movies, games and software.

The biggest challenge with DRM technologies is to make them operate so smoothly that they are not inconvenient to consumers – and this remains a significant challenge in the current digital music market. While there are still some

technical issues to iron out, the problem largely springs from the decision by the leading technology providers to develop DRM systems which are not compatible with each other. This lack of interoperability between devices and services limits consumer choice in terms of which service they decide to use. This in turn undermines the consumer benefits which DRM is designed to provide.

INTEROPERABILITY: A KEY PRIORITY

The incompatibility of DRM systems has created a situation where digital services and devices do not inter-operate, and this lack of interoperability is a barrier to future development of the digital music business.

This situation springs from decisions made by the technology companies behind the major services. Apple, Microsoft, Sony & Real Networks have developed their offerings using preferred or proprietary technologies.

With ownership of digital players now reaching a critical mass, making digital music players compatible with the various online music services is a top priority. Record companies are playing their part, actively licensing music to meet consumers' needs for flexibility and portability. The music industry has licensed over two million songs to over 300 online partners. This has helped encourage strong competition between retailers and improve choice.

However, consumer choice remains frustrated by the limits imposed on them. For example, Apple's iTunes (in which purchased songs are encoded in the AAC format) is only currently compatible with the iPod. Most other legal online music services offer songs in the WMA (Windows Media Audio) format, making them compatible with a wide range of portable players but not including the iPod – the current market leader. There are other exceptions, such as Sony Connect, which offers songs in Sony's ATRAC3 format – compatible only with Sony players.

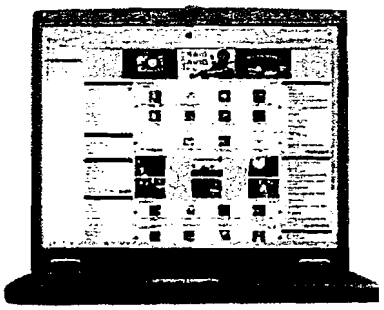
Achieving interoperability is a high priority for the recording industry. Market research evidence confirms the importance to consumers of the ability to move songs between their various listening devices. These devices will soon extend far beyond portable digital music players. They will include mobile phones, satellite and cable set top boxes, car radios, and games consoles.

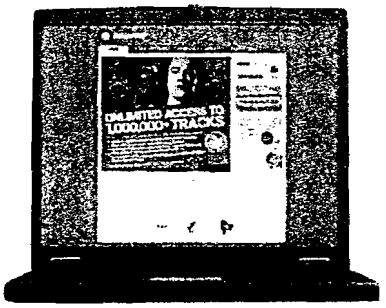
Technology companies hold the key to removing this obstacle to future market growth. They need to make proprietary DRM systems interoperable with each other. In the short term, allowing online services to use all the available systems would be an easy first step. Meanwhile new forums like CORAL – a forum of content and technology organisations created in 2005[1] and of which IFPI is a member – is working at a technical level to address this issue.

[1]For more information on CORAL go to www.coral-interop.org

Susanne Peter, Director Marketing & Sales, Musicload

WHAT DIGITAL MUSIC OFFERS THE CONSUMER





ONLINE DOWNLOADS

Quickly browse vast music catalogues (two million songs)

Easily find specific songs

Discover new music: find albums of a similar genre, download recommended playlists, have access to exclusive content

Enjoy added features: artwork, charts, artist-related information

Create own playlists, music libraries and compilations

Flexible payment: credit cards, gift vouchers, pre-pay, PayPal

Ability to buy and own songs on an individual basis

30 seconds sampling

ONLINE SUBSCRIPTION

Quickly browse vast music catalogues (two million songs)

Easily find specific songs

Discover new music: find albums of a similar genre, download recommended playlists, have access to exclusive content

Enjoy added features: artwork, charts, artist-related information

Create own playlists, music libraries and compilations

Flexible payment: credit cards, gift vouchers, pre-pay, PayPal

'All you can eat' model: access an entire catalogue for a monthly fee

Unlimited sampling before purchase

Access music as long as subscription is valid

'To Go': transfer as many songs as desired onto a portable player as long as subscription is valid

MOBILE MUSIC

Purchase music on-the-go in any location

Purchase on impulse

Added features: song recognition services, wallpapers and dedications, master ringtones, ringback tunes, exclusives

Stream music videos

One device for music playing and purchasing

Payment via mobile bill

"It should be clear by now that piracy in all of its many forms is something that society cares about. The spirited growth of the digital marketplace reflected in this report highlights two important realities: our efforts in helping legitimate digital services to be as dynamic and easy to use as possible have had a significant impact and must continue at a brisk pace; and, second, this report is a sober reminder that even with the greatest music, the most innovative technology and broadest base of enthusiastic fans, the creation of a formidable digital marketplace will only take place through the cooperative efforts of creators, technologists and local and national governments."
Larry Kenswil, President, Universal Music Group's eLabs

IFPI Secretariat
54 Regent Street
London
W1B 5RE
United Kingdom

Tel: +44 (0)20 7878 7900
Fax: +44 (0)20 7878 7950
www.ifpi.org
www.pro-music.org

EXHIBIT CO 0213

WITHHELD PENDING ENTRY OF

PROTECTIVE ORDER

EXHIBIT CO 0214

LANE BRYANT
Sizes 14-28
Exhibit 14 to Faxon Statement

TIME

FROM THE MAGAZINE

Monday, Nov. 17, 2003

The 99¢ Solution

Steve Jobs' new Music Store showed foot-dragging record labels and freeloading music pirates that there is a third way

By CHRIS TAYLOR

When Steve Jobs holds forth in public, it's usually to a mob of fawning Apple-ites--the true believers who still develop software and accessories for Apple products. Not so last month at the Moscone Center in San Francisco. This crowd was more mack daddy than Macworld. Bono, Mick Jagger and Dr. Dre made video appearances. Grateful Dead drummer Mickey Hart was in the audience. Sarah McLachlan sang her latest hits live. What was pulling these musical supernovas into Jobs' magnetic field? A software product that just might save their free-falling industry: the iTunes Music Store.

It's a disarmingly simple concept: sell songs in digital format for less than a buck and let buyers play them whenever and wherever they like--as long as it's on an Apple iPod. Jobs had proved the idea back in April when he launched the Music Store for Mac users, who represent only 3% of the computer world but promptly gobbled up a million tracks in the first week of business. By October he was ready to set the Music Store aloft in the 97% of the world that uses Windows PCs, and the prospect of converting millions of music pirates into credit-card wielding music buyers was enough to make even the most jaded rock stars take notice. How did Jobs do this trick? In a word: simplicity--the transparent ease of use that is the hallmark of Apple's entire product line, including the Music Store. "I'm a complete computer dummy," McLachlan told TIME after the event. "If I can use this, anyone can."

And, it seems, just about anyone is. Three days after the Moscone event, PC owners had downloaded a million copies of the software and paid for a million songs (adding to the 14 million music downloads already made by Mac users). In a year when record labels hit a sour note by suing students, grandparents and 12-year-old file sharers, Jobs had effectively brokered a peace agreement: he had shown the music industry how to win friends and turn a profit on the very Internet that was being used to steal their songs.

Other inventions this year may have more altruistic intentions (like Dean Kamen's water purifier) or be more visible on street corners (like those ubiquitous camera cell phones). But for finally finding a middle ground between the foot-dragging record labels and the free-for-all digital pirates and for creating a bandwagon onto which its competitors immediately jumped, Apple's iTunes Music Store is TIME's Coolest Invention of 2003.

Long before the Music Store came on the scene, frantic record-industry executives had been searching for some way to combat their nemesis: Napster, the original file-sharing service, but to no avail. Their first online ventures, MusicNet and PressPlay, were disasters, largely because the labels didn't trust their users--or one another. High subscription fees and poor selections turned off would-be customers; most skulked off to the underground services, such as Kazaa and Limewire, which had sprung up after Napster's demise.

Enter Jobs. Back in April, Apple's CEO revealed that he had spent the previous year negotiating an unprecedented deal with all five major labels and thousands of independents. His iTunes software, which had previously been nothing more than a place to store and play digital music on a Mac, would become a gateway to the Music Store, where you could easily find and save music to your hard drive, CD or iPod music player--no subscription necessary, just 99¢ per song, or $9.99 for an album. Competitors tried to match that price but couldn't come up with a service as free of restrictions. They said Jobs had been given a sweet deal by the labels because Apple, with its minuscule share of the computer market, was never going to be a real distribution threat. "The Mac world is a walled garden," said BuyMusic.com vice president Liz Brooks. "The PC environment is like the Wild West."

Then came iTunes for Windows, and suddenly there was a new sheriff in town. Not content with creating a music store for PC users that was a perfect clone of its Mac counterpart, including all of the 400,000 songs Apple now has the rights to resell, Jobs added a couple of cool new features. The best is a monthly allowance you can set up for your kids to govern their online purchases--a godsend for any parent trying to curb an offspring's downloading habit.

Jobs has another reason not to be concerned about the competition. "The dirty little secret of all this is there's no way to make money on these stores," he says. For every 99¢ Apple gets from your credit card, 65¢ goes straight to the music label. Another quarter or so gets eaten up by distribution costs. At most, Jobs is left with a dime per track, so even $500 million in annual sales would add up to a paltry $50 million profit. Why even bother? "Because we're selling iPods," Jobs says, grinning.

That may make iTunes the most benign-looking Trojan horse in software history. The Windows crowd can get iTunes free, and it offers almost all the same functionality as the paid versions of MusicMatch and Real One, two PC-based rivals. But iTunes is the only music application that will work with the enormously popular iPod, and it has features--like its powerful search function--that are unrivaled. "Once people are locked into using iTunes, the game's over," says Charles Wolf, an analyst at the New York City--based Needham & Co. investment bank. "They could sell an extra 2 million iPods because of this." And the margins on these devices make the Music Store's arithmetic look like child's play. Each $499 iPod returns as much as $175 in profit, Wolf says.

Such calculation may also explain why iTunes doesn't support Windows Media Audio files--a Microsoft format that Bill Gates had hoped would become the music-industry standard. If iTunes becomes the player of

choice for PC users, it would be a blow for Microsoft's grander audio ambitions--and may well unearth the hatchet that Jobs and Gates buried back in 1997.

For now, Jobs faces some smaller hurdles, like filling in a few significant gaps in the iTunes Music Store selection (the Beatles are the most glaring omission). Even so, Jobs continues to score points with consumers for making available songs so easy to find and so easy to download. The music industry, of course, is anything but simple. That's probably why Jobs, an inveterate challenge seeker, likes it. But can it grow his business? Stay tuned.

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EXHIBIT CO 0215

Apple Computer Inc. - Financial Summary

	Fiscal year Ended September 30,					
($ in millions)	2002	2003	2004	2005	2006	CAGR
Total net sales	$ 5,742	$ 6,207	$ 8,279	$ 13,931	$ 19,315	**35.4%**
% growth		8.1%	33.4%	68.3%	38.6%	
Operating income (loss)	$ 17	$ (1)	$ 326	$ 1,650	$ 2,454	**246.6%**
% growth		-105.9%	-32700.0%	406.1%	48.7%	
% margin	0.3%	0.0%	3.9%	11.8%	12.7%	
Net income	$ 65	$ 69	$ 276	$ 1,335	$ 1,993	**135.3%**
% growth		6.2%	300.0%	383.7%	49.3%	
% margin	1.1%	1.1%	3.3%	9.6%	10.3%	

Source: Apple Computer Inc., EMI MP finance.

7776.26531 10531.22642 14262.2102 19315

Principal Hardware Products

The Company offers a range of personal computing products including desktop and notebook personal computers, related devices and peripherals, networking and connectivity products, and various third-party hardware products. All of the Company's Macintosh products utilize PowerPC® RISC-based microprocessors. Further information regarding the Company's products may be found in Part II, Item 7 of this Form 10-K under the heading "Factors That May Affect Future Results and Financial Condition," which information is hereby incorporated by reference.

Power Mac™

The Power Mac line of desktop personal computers is targeted at business and professional users and is designed to meet the speed, expansion and networking needs of the most demanding Macintosh user. With the addition of Apple server and networking software, Power Mac systems can be used as workgroup servers. Apple's SuperDrive™, a combination CD-RW/DVD-R drive that can burn DVDs which can be played in consumer DVD players, is standard equipment on high-end Power Mac models. In July 2001, the Company announced it had suspended indefinitely production and sale of the G4 Cube, a Power Mac system introduced in 2000 that was designed for users seeking more power coupled with a small size.

PowerBook®

The PowerBook family of portable computers is specifically designed to meet the mobile computing needs of professionals and advanced consumer users. The Company's current PowerBook line, the Titanium PowerBook G4, was introduced in January 2001. The Titanium PowerBook is a full-featured notebook computer that incorporates PowerPC G4 processors, TFT wide-screen active-matrix displays, and advanced networking and graphics capabilities. The Titanium PowerBook G4 is one inch thick, weighs 5.3 pounds and is encased in a pure-grade titanium body.

iMac®

The iMac line of desktop computers is targeted at education and consumer markets. Current iMac computers feature innovative industrial design, easy Internet access, built-in support for AirPort® wireless networking, fan-less operation, and PowerPC G3 processors, making them suitable for a wide range of education and consumer applications. Three of the four current iMac standard configurations come standard with slot-loading CD-RW drives.

iBook®

Designed specifically for the portable computing needs of education and consumer users, the current iBook design was introduced in May of 2001. Current iBook models weigh less than 5 pounds, feature 12.1 inch TFT active-matrix displays, offer a choice of optical drive configurations, have long battery life, and utilize PowerPC G3 processors.

iPod™

Introduced in October 2001, the iPod portable digital music player holds up to 1,000

CD-quality songs in a 6.5 ounce design. The iPod features an intuitive user interface on a 2-inch liquid crystal display, automatic synchronization with a music collection on a Macintosh via Apple's iTunes™ 2 digital music software, a high-speed FireWire® connection for power and data transfer and a 10 hour battery life. By enhancing the overall functionality and integration of the digital music player and by expanding the value of the digital music stored on a computer, the iPod represents an important and natural extension of Apple's digital hub strategy.

Peripheral Products

The Company sells certain associated Apple-branded computer hardware peripherals, including a range of high quality flat panel TFT active-matrix digital color displays and AirPort wireless networking base stations and add-in cards. The Company also sells a variety of third-party Macintosh-compatible hardware

EXHIBIT CO 0216

The New York Times
nytimes.com

PRINTER-FRIENDLY FORMAT SPONSORED BY THE LAS OF SCO NOW IN

Exhibit 16 to Faxon Statement

November 9, 2006

Microsoft Strikes Deal for Music

By JEFF LEEDS

In a rare move, Microsoft said yesterday that it had agreed to pay a percentage of the sales of its new portable media player to the Universal Music Group.

Universal Music, a unit of Vivendi, will receive a royalty on the Zune player in exchange for licensing its recordings for Microsoft's new digital music service, the companies said.

Universal, which releases recordings from acts like U2 and Jay-Z, said it would pay half of what it receives on the device to its artists. The company is expected to receive more than $1 for each $250 device, according to executives who were briefed on the pact.

The deal represents a big departure from the standard set by Apple Computer, which pays record companies for songs sold through its iTunes service but does not give them a cut of the sales of its hugely successful iPod.

Under the deal, Universal, the world's largest music corporation, will receive a percentage of both download revenue and digital player sales when the Zune and its related service are introduced next week.

The pact comes after weeks of tense talks and averts a standoff that might have crippled Microsoft's attempt to compete against the iPod.

The accord also could represent a sea change in the dynamics between technology developers and the media companies that provide the content that plays on their devices. It illustrates how music companies are scrambling to attach themselves to fast-developing online businesses. The move also reflects Universal's recognition that, for all the runaway success of gadgets like the iPod, consumers are still not buying enough digital music to make up for declining sales of music on compact disk. Universal said it was only fair to receive payment on devices that may be repositories for stolen music.

A recent study estimated that Apple has sold an average of 20 songs per iPod — a fraction of its capacity. The rest of consumers' music files — 95 percent or more — come from ripped CDs, possibly including discs from their own collections, and illegal file-trading networks, the study said.

As a result, music companies have long coveted the revenue being generated through devices like the iPod. But so far, they have had little recourse.

In 1999, a federal appeals court ruled that one of the earliest digital music players, the Diamond Rio, was not covered by a federal law that required makers of certain audio recording devices to use anticopying technology and pay a royalty to the record labels.

In announcing the deal with Universal, Microsoft said it would now offer similar royalty deals to the rest of the industry. In discussing the rationale for the royalty, Chris Stephenson, general manager for global marketing in Microsoft's entertainment unit, said the company "needed people to rally behind" the new device and service.

"It's a higher-level business relationship," he said.

In addition, the deal may provide leverage for Universal to insist on a cut of future iPod sales when its existing contract with Apple expires next year.

"It's a major change for the industry," said David Geffen, the entertainment mogul who more than a decade ago sold the record label that bears his name to Universal. "Each of these devices is used to store unpaid-for material. This way, on top of the material people do pay for, the record companies are getting paid on the devices storing the copied music."

He added: "It certainly changes the paradigm."

Under federal legislation passed in the early 1990s, the recording industry receives a royalty on sales of certain audio devices like digital-audio tape machines. But the devices covered by the law do not generate much: the nonprofit organization that oversees those royalties distributed just $3.5 million to labels and artists last year, according to its Web site.

But Universal Music's chairman, Doug Morris, has been increasingly vocal about securing compensation for the company's music.

Two months ago, Mr. Morris took a public swipe at user-driven Web sites like MySpace and YouTube, telling a Merrill Lynch investor conference that "these new businesses are copyright infringers and owe us tens of millions of dollars." (Universal later struck a licensing deal with YouTube.)

"I'm hopeful that technology companies and creative companies will understand how each other's futures are intertwined," Mr. Morris said last night. "It can only work if one doesn't try and take advantage of the other, and so far we've come out on the short end."

Given the industry's sluggish sales, Mr. Morris has had plenty of reason to try new business

models. CD sales continue to decline, and digital music has not offset the drop. In addition, the pace of growth in digital sales has been slowing by some measures.

Microsoft ultimately had plenty of incentive to make a deal with Universal. Microsoft is laying a huge wager on the Zune. If it had not struck a deal, it would have been left in the position of trying to mount a credible challenge to the iPod without Universal, which accounts for a third of new albums sold in the United States. Microsoft also stands to benefit by cultivating a fan-friendly image with the notion that artists — not just corporations — will share in the Zune's sales.

Steve Gordon, an entertainment lawyer, said that Universal was saying, in effect: "Look, we know new technologies are here to stay. We know CDs are like typewriters, and are being replaced. "

When the companies initially licensed Apple's fledgling iTunes service, "they didn't figure he'd make tens of billions of dollars from the iPod," said Mr. Gordon, author of the book "The Future of the Music Business."

"This time they're saying, 'Well, we want a piece.' "

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EXHIBIT CO 0217

Ringtone Rumble Brewing

Key Players Jockeying For Expected $$$ Boom

BY SCOTT BANERJEE

The U.S. ringtone pie is still baking, and already battle lines are being drawn over how to divide it.

Among the parties reaching out for their share are wireless carriers, content aggregators, billing agents and repertoire owners, including labels, artists, publishers and songwriters.

"Everybody's position is that they have incremental costs or investments that they have to cover with the revenue," says Carolyn Schloeder, president of Faith West, the San Francisco-based aggregator that operates the Modtones service.

It is clear that the ringtone business is just getting going in the United States. Only 5% of U.S. cell phone users have downloaded a ringtone—whether it's a plinky 99 cent monophonic jingle or a $2.50-$3 master clip.

This compares with about 70% for Japanese cell phone users.

As Americans upgrade to next-generation phones with greater content-serving capacity, analysts predict the ringtones business will soar.

Worldwide ringtone sales of all kinds totaled $3.5 billion in 2003, according

(Continued on page 61)

Ringtones

Continued from page 1

to The Economist. In the United States, it's about a $200 million industry, according to Fabrice Grinda, CEO of content aggregator Zingy.

But Boston-based market research firm the Yankee Group predicts that U.S. business will grow to $1 billion by 2008.

Last July, master ringtones demonstrated their sales potential when Sprint PCS users flocked to the downloadable Beyoncé clips "Baby Boy" and "Crazy in Love" for $2.50 a pop. By January, the clips had sold 500,000 units, generating $1.25 million in revenue, according to New York-based market research firm Consect.

Slicing up this new chunk of revenue was easier when it involved only monophonic and polyphonic tones that were generally studio reproductions of memorable songs. On the repertoire side, these required only the payment of mechanical and performance royalties to publishing-rights holders.

However, the more expensive master ringtones—which are 30-second samples of original works—also require licensing from the owners of the master recordings.

NO STANDARD YET

No consistent model has yet emerged for dividing the proceeds of a master ringtone sale, and as technology changes, the deals are changing. But various deals have followed standards established by polyphonic ringtones and such online music stores as Apple's iTunes.

To begin with, the major wireless carriers—Sprint, Verizon, Cingular, T-Mobile and AT&T—handle billing and collection. They keep 10% to 40% of the gross revenue. Some industry sources peg the number at about 20%.

The carrier's share partially depends on whether it hosts and serves the ringtones and whether it does its own billing verification (matching cell phones to existing accounts). Generally, a third party, such as Qualcomm or QPass, handles the verification process. These agents get 10% to 16% of retail for their efforts.

Next are the aggregators, who bridge the gap between wireless carriers and the repertoire owners. The "big three" players in the U.S. market are Zingy, Faith West and Moviso.

For polyphonic ringtones, aggregators earn 35% to 65% of retail. From this, they typically pay the publishing share.

When dealing in master ringtones, however, the aggregators can get squeezed, typically down to 15% to 20%, but sometimes the cut can drop all the way down to zero.

That's because major labels, which see master ringtones as an important new revenue source, are asking for about 50% of retail in most cases. The label share includes the artist's cut, and in some cases, the publishing share, industry sources say.

Although the aggregators get a smaller share of the revenue when it comes to master ringtones, they recognize that the overall pot is getting bigger.

"The margins will go down, but the price points are increasing, so the dollar profit usually remains the same," Zingy's Grinda says.

That's if the aggregator stays in the deal at all. In some cases, major labels are able to directly license their repertoire to a carrier, bypassing the aggregator.

Sony Music in particular has internalized much of the mobile development and distribution process through its Run Tones solution. Sony has direct deals with some of the carriers but also licenses content to the aggregators.

THE PUBLISHING PIECE

Whatever type of ringtone is involved, the use and sale of the music triggers mechanical and performing-rights fees.

The performing-rights organizations have different rates for ringtone use. BMI collects 2.5% of gross; ASCAP collects 2%. SESAC fees vary depending on the number of ringtones sold.

"We feel that every application we're licensing is a performance, and our customers have signed on and are paying as such," says Richard Conlon, VP of marketing and business development with BMI.

"We're licensing the performance rights both in download and Web site previews, as well as the performance rights in the streaming product," Conlon says. "We did do a broad grant to keep it easy and remove a layer of complexities."

On the mechanical side, some publishers have made direct deals for ringtones and are collecting a minimum of 10 cents or 10% of gross per track, whichever is higher. This exceeds the statutory mechanical rate of 8.5 cents.

When a direct deal is not in place, the Harry Fox Agency handles the mechanical licensing. HFA collects 10 to 12 cents per download, plus an initial "fixation" fee of up to $50 to include the composition in a ringtone service.

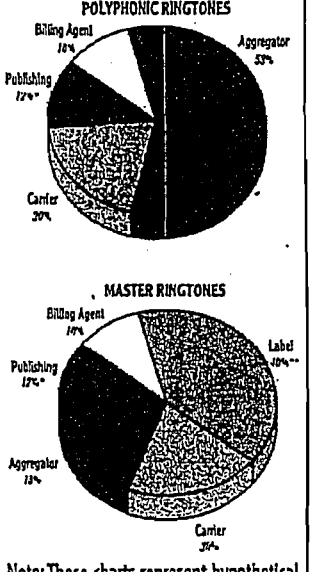
Some in the wireless business are critical of the rates being established for music use. Ralph Simon, chairman of the Mobile Entertainment Forum, says the music industry is asking for too much, too soon.

"In the early stages of the development of this new medium, ing parties shouldn't be to Simon says. "People are too p about these new initiatives; it cooperation to grow this new re channel to everybody's benefit."

Faith West's Schloeder thinks the master ringtone model will gravitate toward a 40/40/20 split for the carriers, repertoire owners and aggregators, respectively.

Grinda says the "big three" aggregators will weather the master ringtone storm because they have developed such other classes of mobile content as wallpaper, voice ringers and voicemail greetings. Revenue models for these new music uses are still developing.

The Mobile Music Pie: Two Scenarios



Note: These charts represent hypothetical scenarios based on industry practices.

* Includes mechanical and performance royalties
** Includes proceeds to be paid to artists

Getting Their Cut

How Will Acts Fare With Ringtone Revenue?

SAN FRANCISCO—While master ringtones hold the promise of a revenue windfall for labels, it remains unresolved what share will go to recording artists.

A key question is whether a master ringtone is deemed to be a license or a sale.

"Everybody's trying to protect their source of income and get as much as possible," says attorney Jay Cooper of Manatt, Phelps and Phillips in Los Angeles.

If ringtones are deemed to be licenses, artists are entitled to an even split with the label. Thus, if a label receives 40% of a $3 ringtone sale, the artist and label each keep 60 cents.

When ringtones are viewed as a sale, labels credit artists with a royalty based on their contractual rate. If, for example, an artist has a 15% royalty rate, he or she is credited with 6% of gross retail, or 18 cents on a $3 sale.

That's the reality in most cases, since few artists have the leverage to gain the more favorable licensing terms.

But Cooper says the standard remains unresolved and could end up in court.

"The royalty statements are just coming out. Unless it's an approval issue in the artist contract, it's going to be an accounting issue," Cooper concludes.

"When the first [master ringtones] came out, clearly this was viewed as licensed," says entertainment lawyer Milt Olin of Altschul & Olin LLP in Los Angeles. "But now there's a move toward iTunes' model to treat these as sales, which is a better royalty treatment for labels."

More important to Jay Rosenthal, counsel to the Recording Artists' Coalition, is determining whether digital royalties are paid directly to artists or credited against their recoupable accounts. That too can be subject to negotiation.

"You can't keep running back to the label every time a new format pops up," Rosenthal says.

SCOTT BANERJEE

EXHIBITS CO 0218 – CO 0225

WITHHELD PENDING ENTRY OF

PROTECTIVE ORDER

EXHIBITS CO 0226 – CO 0250

INTENTIONALLY OMITTED

EXHIBIT CO 0251

SHORT-FORM SYNCHRONIZATION LICENSE
BMG MUSIC PUBLISHING NA, INC.
245 FIFTH AVENUE, 8TH FLOOR
NEW YORK, NY 10016

Date: October 17, 2006
Effective as of as of commercial release of the Production – T/B/D

Electronic Arts Inc.
209 Redwood Shores Parkway
Redwood City, California USA 94065-1175

Ladies and Gentlemen:

The following will set forth the terms and conditions upon which we have agreed to license the following composition (the "Composition") in connection with the following production (the "Production"):

1. COMPOSITION: **SEE ATTACHED SCHEDULE "A"**

   Writers: **SEE ATTACHED SCHEDULE "A"**

   Ownership and/or Control: **SEE ATTACHED SCHEDULE "A"**

2. PRODUCTION: THE SIMS 2 - PETS (VIDEOGAME)

3. GRANT OF RIGHTS:

In consideration of the fee specified below, we hereby grant to you the following non-exclusive, limited rights:

a. The limited right to cause or authorize the fixation of the Composition as part of the entire Production on "Disks" (i.e. magnetic diskettes and optical disks, to be played on all platforms and formats now known and hereinafter devised, which are in a read-only format where the viewer may randomly access the images of the Production but the Composition is on a separate audio track in which the order, outcome and contents of the Composition itself [i.e. the music and/or lyrics] cannot be isolated, altered or manipulated in any manner by the viewer) and to sell and distribute such Disks to the public for use in conjunction with a playback system or mechanism in accordance with the terms, conditions and limitations contained in this license agreement.

b. The limited right to exhibit the Production, in-context only and for demonstration purposes only: (i) at industry trade shows, (ii) at retail store kiosks, street team give-aways, cover mounts and (iii) on your proprietary Web site only, provided that (A) the Composition cannot be downloaded, altered or manipulated, or accessed independent of the Production; (B) you have secured a public performance license from ASCAP; and (C) no more than sixty thirty seconds (0:60) of the Composition is

made available. The foregoing rights shall include the right to transmit the Composition as part of the rotation for jukebox use, provided that the Composition cannot be digitally copied, duplicated or distributed in any manner or medium in whole or in part, directly or indirectly, and such use does not permit the viewer to access the Composition in a non-linear (i.e., non-sequential) manner; and, further provided, such use does not allow the addition of variable content in the reproduction concerned. For the avoidance of doubt, exhibition, broadcast and/or transmission of the Composition on television and radio stations and systems is not included within the grant of rights hereunder and is expressly reserved by us.

c. The limited right to cause or authorize the fixation of the Composition as used in the Production to be included in electronic press kits to be distributed solely for promotional purposes and not for a fee.

d. The limited right to include the Composition in cross-sell trailers in other Electronic Arts products and promotional broadcast features (e.g., "making of" features aired on MTV or Entertainment Tonight), and all ad and promos excluding broadcasts on Radio, All Television Media and in Theatres.

4. USAGE OF THE COMPOSITION IN THE PRODUCTION:

- Type:	Background Vocal menu and in-game
- Maximum duration	Up to the Full Use with more than one rotation

5.	TERRITORY:	The World
6.	TERM:	Life of copyright of the Compositions and any extensions and renewals
7.	FEE:	**SEE ATTACHED SCHEDULE "A"**
8.	OPTIONS:	None
9.	CREDIT:	

We shall be accorded a credit in the Production or on the accompanying label copy. Such credit shall be in the same location, and of the same size and prominence as the credit afforded to other compositions embodied in the Production, substantially in the following form, for our share:

SEE ATTACHED SCHEDULE "A"

10. COPY:

You agree to furnish us with three (3) copies of the Production for each format, in the packaging and form as sold/distributed

11. MOST FAVORED NATIONS:

Our consent to the foregoing is given with the proviso that no co-publisher and no master recording owner of the Composition used in the Production shall receive a proportionately more favorable License Fee. In the event that you pay our co-publisher and/or master recording owner of the Composition used in the Production a higher pro-rata fee than the License Fee paid to us

hereunder, you shall pay to us the difference between such higher pro-rata fee and that License Fee paid to us.

12. WARRANTY AND INDEMNIFICATION:

We hereby warrant only that we have the right to license the Composition for the purposes set forth herein and this license is given and accepted without any other warranty or recourse. If this warranty should be breached, in whole or in part, pursuant to a final adverse judgment in a court of competent jurisdiction, our liability with respect thereto shall be limited to the Fee, if any, heretofore paid by you to us for this license. You hereby warrant and represent that the Production will not violate or infringe upon any common law or statutory rights of any party including, without limitation, contractual rights, copyrights and rights of privacy. You agree to indemnify, defend, and hold us harmless from any claim, including our attorneys fees, resulting from a breach of this warranty.

13. LAW AND JURISDICTION:

This license agreement has been entered into in the State of New York, and the validity, interpretation and legal effect of this license agreement shall be governed by the laws of the State of New York applicable to contracts entered into and performed entirely within the State of New York. The New York state and federal courts will have exclusive jurisdiction of any controversies regarding this license agreement; and any action or other proceeding which involves such a controversy will be brought in the courts located within the State and County of New York and not elsewhere. This license agreement shall not be changed or modified, or any covenant, representation, warranty or provision hereof waived, except by an agreement in writing signed by the party to be charged.

14. RESTRICTIONS:

You are not authorized to (i) alter the fundamental character of the music or the lyrics of the Composition, (ii) use the title or subtitle of the Composition as the title of the Production, (iii) use the story of the Composition, (iv) print lyrics from the Composition, (v) translate or adapt the lyrics of the Composition, (vi) make and/or distribute phonorecords of the Composition, (vii) use the Composition in any device containing nudity or sexually explicit/vulgar language, or (viii) make any use of the Composition other than as expressly set forth above.

15. ALTERATION:

Excluding your rights to shorten the playing time of the Composition or to edit for profanity in the soundtrack of the Production (which will not change or diminish any of your other obligations under this agreement), or to delete the Composition from the soundtrack of the Production, you will not alter or permit others to alter the soundtrack of the Production so that the placement therein of the Composition is changed in any manner whatsoever from that described in paragraph 4, after the initial release of the Production whether by sale or howsoever.

16. RESERVATION OF RIGHTS:

We reserve all rights not expressly granted to you in this license agreement including, but not limited to, the right to broadcast, transmit and/or download the Composition through electronic, telephonic, optical or other means, except as set forth in paragraph 3(b) hereinabove. All rights granted hereunder are granted on a non-exclusive basis.

17. ASSIGNMENT:

The rights granted to you pursuant to this license agreement shall only be assignable by you for the sole purpose of the exploitation of the Production, provided that you guarantee that the third party assignee will adhere to the limitations and restrictions set forth in this license agreement, and provided further that any disposition of any copies of the Production shall at all times be subject to the terms and conditions hereof. This license agreement itself shall not be assignable by you except to a parent, subsidiary, affiliated or controlling corporation or to any party owning, or acquiring, a substantial portion of your stock or assets or to an entity merged into or consolidated with you. We may assign this license agreement to any third party. Any assignment made in violation of the restrictions contained in this license agreement shall be null and void *ab initio*.

Notwithstanding anything to the contrary contained in this license agreement, you shall acquire no rights hereunder until actual receipt by us of the applicable license fee set forth herein and until this agreement is fully executed by us.

Very truly yours,

BMG Music Publishing NA, Inc.

By: Anne K. Pohl
Anne K. Pohl
Director Film & TV Music Licensing
Federal Tax I.D. #95-3104625

READ AND AGREED:

By: _____

Print: Patrick J. O'Brien
~~VP, Business Affairs~~
For and on behalf of
Electronic Arts Inc.

SCHEDULE "A"

	Composition	Writer(s)	Ownership and/or Control	Total Fee:	Credit(s)
1.	"Boy Hunter"	Graham Edwards, Lauren Christy, Scott Spock, Skye Sweetnam	ASCAP - 25% BMI – 50%	$3,750.00	Courtesy of Careers-BMG Music Publishing, Inc. (BMI)/BMG Songs, Inc. (ASCAP). Under License from BMG Film & TV Music
				$3,750.00	

EXHIBIT CO 0252

Ringtone & Ringback Publishing Clearance

This agreement ("Agreement") is made as of the date of final execution below ("Effective Date"), by and between The Orchard Enterprises, Inc. ("The Orchard"), 100 Park Avenue, 17th Floor, New York, New York 10017, and BMG Music Publishing NA, Inc. & Zomba Enterprises, Inc. ("Publisher"), 245 5th Ave., New York, New York 10016.

WHEREAS, Publisher controls the music publishing rights in and to certain Compositions (as defined below);

WHEREAS, The Orchard owns or controls the distribution rights to certain master recordings ("Masters"); and

WHEREAS, The Orchard desires to obtain and Publisher desires to grant a license to arrange and record each Composition to create Ringtones and Ringbacks (as defined below) from the Masters, to be distributed by means of electronic transmission pursuant to the rights granted in Section 4 below;

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

1. Definitions.

(a) "Composition" is a musical composition which is owned and/or controlled by Publisher, and which is made available to Licensee hereunder subject to the terms and conditions set forth in this Agreement and to any restrictions thereon imposed by Publisher or the composers thereof for use in the creation of Ringtones and Ringbacks. With respect to any composition owned or controlled by Publisher only in part, The Orchard shall be obligated to make appropriate payments to any third parties that own or control portions of the Composition not owned or controlled by Publisher. A list of all Compositions is attached hereto as Schedule B, and may be supplemented from time to time upon written approval of Publisher.

(b) "Ringback" means the use of an actual sound recording to replace the ringing sound a cell phone caller hears with an audio recording (instead of "ring, ring").

(c) "Ringtone" is a digital file containing an excerpt, not to exceed forty-five (45) seconds, of a Composition embodied in an actual sound recording of the Composition, capable of digital transmission to a mobile telephone handset to replace the ringing sound a cell phone caller hears with an audio recording (instead of "ring, ring").

2. Territory. The Territory shall be the United States and its territories and possessions.

3. Term. The Term shall commence on the Effective Date and continue for a period of two (2) years. Publisher shall have no obligation to renew or extend this Agreement following expiration of the Term, and may decline to do so in its discretion.

4. Grant of Rights. Publisher grants to the Orchard the non-exclusive right during the Term and throughout the Territory:

(a) to create Ringtones and Ringbacks of the Compositions in transmittable digital data formats;

(b) to reproduce the Ringtones and Ringbacks onto The Orchard's computer server(s) solely for its internal business purposes and for ultimate distribution to consumer end-users;

(c) to distribute, deliver and transmit, and to permit The Orchard's sublicensees (listed on Schedule A attached hereto, as such may be altered from time to time) to deliver, distribute and transmit, the Recordings over the internet (or any successor global computer network) or over a regional wireless transmission network (e.g., SMS or WAP) for transfer onto consumers' individual mobile telephone handsets solely for such consumers' personal use;

(d) to promote and advertise The Orchard's and its sublicensee(s)' service(s) using segments of Ringtones and Ringbacks not to exceed forty-five (45) seconds. Such right shall extend to mobile and web-based promotion and advertising, and not to television and radio.

(f) Except as otherwise provided herein, no right is granted to The Orchard hereunder to use the Compositions in connection with any advertisement, commercial or in any printed form, including but not limited to isolating or positioning a Ringtone or Ringback in a way that could be construed as advertising or promoting any product or service, including any promotion of The Orchard's products or services. Notwithstanding the foregoing, direct links to web sites selling recordings embodying the Compositions or direct links to web pages providing information on the songwriters and performing artists of the Compositions shall not be deemed a prohibited use hereunder. For the avoidance of doubt, no rights are granted in any Masters and no rights are granted other than those expressly referred to herein.

5. Advance & Royalty.

(a) The Orchard shall pay to Publisher a non-returnable advance in the amount of US Ten Thousand ($10,000.00) Dollars payable promptly following The Orchard's receipt of this fully executed agreement. Such advance shall be deemed a pre-payment of the Royalties hereunder and shall be recoupable from all monies payable or becoming payable by The Orchard to or on behalf of Publisher hereunder.

(b) In consideration for the rights granted herein, The Orchard shall pay to Publisher an amount equal to the greater of ten (10%) percent of the wholesale price received by The Orchard from its sublicensee(s) or Twelve and One Half (.125) Cents, for each Ringtone or Ringback sold by The Orchard's sublicensee(s) (the "Royalty"). In the event The Orchard agrees to (or has agreed to) pay to another publisher of any musical composition compensation in excess of the Royalty for the uses described herein, then effective as of the date of such agreement, The Orchard shall immediately pay to Publisher an amount equal to such excess compensation, and this agreement shall be deemed amended effective as of the date of such agreement to include such more favorable compensation provision.

6. Accounting.

(a) The Orchard shall render to Publisher an accounting on a quarter annual basis, forty-five (45) days after quarter end, accompanied by payment of any amounts due. Any balance due under $50 shall be rolled into the following quarter and paid only when the balance exceeds $50 (or with the last statement, if applicable).

(b) Publisher shall have the right to audit The Orchard's books and records to verify the accuracy of such statements, once with respect to any statement, once in each year, at Publisher's expense, at the place where The Orchard maintains such records, during The Orchard's normal business hours and on at least thirty (30) days' prior notice. Any objection relating to any accounting statement, or any lawsuit arising therefrom, must be made (and any lawsuit commenced), no later than two (2) years after the date the statement is rendered and Publisher hereby waives any longer statute of limitations that may be permitted by law.

(c) The Orchard shall permit Publisher on-line access to portions of The Orchard's sales reporting system to allow Publisher to monitor its sales and estimated royalty activity hereunder.

7. Other Important Provisions.

(a) All notices hereunder shall be given by certified mail, return receipt requested, or by messenger or courier, to the respective addresses below:

To Publisher:	To Orchard:	with a copy to:
BMG Music Publishing NA, Inc. &	The Orchard Enterprises, Inc.	Dimensional Associates LLC
Zomba Enterprises, Inc	100 Park Avenue, 17th Floor	1091 Boston Post Rd.
245 5th Ave.	New York, NY 10017	Rye, NY 10580
New York, NY 10016	Attn: Mr. Stanley Schneider,	Attn: Mr. Joel Schoenfeld
Attn: VP of Legal/Business Affairs		

(b) (i) Publisher warrants and represents that it has the right and authority to enter into this Agreement and to grant to The Orchard all rights specified; all of the Compositions as noted in Schedule A are owned or controlled by Publisher and shall not infringe on the copyrights or other rights of any person or entity; and that The Orchard shall have the right to exploit same in all manner hereunder free from adverse claim and without any obligation to make any payment of any nature to any person or entity (including co-publishers and writers), other than the amounts due to Publisher described in Article 5 above.

(ii) The Orchard warrants and represents that:

(A) it has the right and authority to enter into this Agreement and that the conduct of its distribution activities complies with all applicable laws;

(B) it shall take all steps reasonably necessary to secure and maintain protection of the Compositions, by way of encryption or otherwise, under copyright and equivalent or similar laws throughout the territory;

(C) upon receipt of written instructions from Publisher, the Orchard shall not, to the extent permitted by law, license any third party that, to the best of The Orchard's knowledge, is engaged in piracy, illegal activities or other unauthorized use of the Ringtones or the Compositions, or that has otherwise been designated by the RIAA, IFPI or other such body as an illegal producer or distributor; and

(D) The Orchard shall either own, control or have valid and enforceable licenses with the applicable rightsholders with respect to all aspects of its ringtone services including, without limitation, any Masters.

(iii) Each party shall defend and indemnify the other party (including its directors, members, officers, employees and other representatives) against any third party claims or expenses and losses resulting from breach, or a claim which if true would constitute a breach, of the respective warranty, or other breach of this Agreement, including reasonable outside attorneys' fees and litigation expenses. The indemnified party shall give the indemnifying party prompt notice of any claim. The indemnifying party shall defend the other party at the indemnifying party's expense with counsel approved by such other party (which approval shall not be unreasonably withheld).

(c) The Orchard and/or its (sub)licensees shall be responsible for securing, and paying for, whatever performance licenses are required in connection with its Ringtone and/or Ringback services throughout the Territory. For the avoidance of doubt, it is acknowledged and agreed that the Royalty shall not be inclusive of public performance monies which may be payable in connection with Ringtones and/or Ringbacks, if any, and no public performance license is granted hereunder.

(d) Publisher agrees that it shall, and it shall instruct in writing its attorneys, accountants and other professional advisors to, hold in confidence and not communicate, transmit, publish, disseminate or otherwise disclose any of the terms and conditions of this Agreement or any information regarding The Orchard's business learned in the course of dealing or performance hereunder (collectively, "Confidential Information"). Confidential Information shall not include information which (i) at or prior to the time of disclosure was known to or independently developed by Publisher, except to the extent unlawfully appropriated by Publisher; (ii) at or after the time of disclosure becomes generally available to the public through no wrongful or negligent act or omission on Publisher's part; (iii) Publisher receives from a third party free to make such disclosure without breach of any legal obligation; or (iv) is required to be disclosed pursuant to any statute, regulation, order, subpoena or document discovery request (as to which Publisher shall give The Orchard prompt notice). The fulfillment of Publisher's obligations under this subparagraph are integral to the success of Orchard's business dealings and The Orchard shall be entitled to injunctive relief to enforce the provisions hereof without limitation of its other rights. Neither party shall issue any press releases or other forms of publicity materials which make reference to the other party or this Agreement without prior consent of such other party.

(e) Neither party shall be deemed in breach of this Agreement unless the other party has given the breaching party notice, and the breaching party has failed to cure such breach within thirty (30) days after receipt of such notice. In no event shall any breach entitle either party to terminate this

Agreement or rescind the rights granted hereunder, but rather the aggrieved party shall only be entitled to damages reasonably related to the breach concerned and no penalty shall be awarded to either party.

(f) This Agreement supersedes any prior discussions or agreements regarding the subject matter hereof. This Agreement does not create a partnership or joint venture. This Agreement shall not be binding, nor shall any change to this Agreement be binding, unless signed by both parties. This Agreement shall be governed by New York law and the parties hereby grant to the U.S. District Court for the Southern District of New York, or the Supreme Court of the State of New York, New York County, exclusive jurisdiction to hear any disputes arising herefrom.

The Orchard Enterprises, Inc.

By: _____
Greg Scholl, President & CEO

Date of execution:

21 MARCH 06

BMG Music Publishing NA, Inc. ~~& Zomba Enterprises, Inc~~

By: _____

Name/title of signatory: _____

Zomba Enterprises, Inc.

By: _____

Schedule A

Orchard's Sublicensees

Sprint

Verizon

T-Mobile

Cingular

Schedule B

"Compositions"

Clip Name	Songwriter	Ownership %
Brothers & Sisters	GUY BERRYMAN, JON BUCKLAND, WILL CHAMPION, CHRIS MARTIN	100
Easy To Please	GUY BERRYMAN, JON BUCKLAND, WILL CHAMPION, CHRIS MARTIN	100
Home	MICHAEL JAMES HUCKNALL, STEVEN LEWISON, PETE LEWISON	25
Only Superstition	GUY BERRYMAN, JON BUCKLAND, WILL CHAMPION, CHRIS MARTIN	100
The Way You Want It	TIM RICE-OXLEY, TOM CHAPLIN, RICHARD HUGHES	100
He's My Help	FREEMAN DARNELL DAVIS	100
I Surrender All	FREEMAN DARNELL DAVIS	100
It Shall Come To Pass	FREEMAN DARNELL DAVIS	100
Now Faith	FREEMAN DARNELL DAVIS	100
Pop From The Top	BILL KENNER, ROBERT ELLIS ORRALL	50
Pop Muzik ('89 remix)	Robin Scott	100
Christmas Without You	THOMAS CAIN/JON TIVEN/SALLY TIVEN	25
Christmas Without You	THOMAS CAIN/JON TIVEN/SALLY TIVEN	50
Fake	MICHAEL HUCKNALL, D. JOHNSON, MARK JAMES, J.JOHNSON, GOTA YASHIKI, SARA BROWN, STEVEN LEWISON, KEVIN ROBSON, IAN KIRKHA	2.5
World Turning (Fleetwood Mac)	LINDSEY BUCKINGHAM CHRISTINE MCVIE	50
Say You Love Me (Fleetwood Mac)	CHRISTINE MCVIE	100
Over My Head (Fleetwood Mac)	CHRISTINE MCVIE	100
Don't Stop (Fleetwood Mac)	CHRISTINE MCVIE	100
Bump N'Grind	R. KELLY	100
You Remind Me Of Something	R. KELLY	100
Sex Me	R. KELLY	100
Step In The Name Of Love	R. KELLY	100
I Can't Sleep, Baby (If I)	R. KELLY	100
I Wish	R. KELLY	100
Honey Love	R. KELLY	100
Ignition	R. KELLY	100
I Believe I Can Fly	R. KELLY	100

Clip Name	Songwriter	Ownership %
Drop It Like It's Hot	CHAD HUGO, PHARRELL WILLIAMS, CALVIN BROADUS	33.34
Let Me Love You	KAMERON HOUFF, SCOTT SPENCER STORCH, SHAFFER SMITH	25
Baby Blue	JOAN JETT/KATHLEEN HANNA	0
Baby Blue	JOAN JETT/KATHLEEN HANNA	0
Fetish	JOAN JETT	100
Handyman	JOAN JETT/KENNY LAGUNA	100
The French Song	JOAN JETT/KENNY LAGUNA	100
Baby Blue	JOAN JETT/KATHLEEN HANNA	0
Love Is Pain	JOAN JETT/KENNY LAGUNA	100
Secret Love	JOAN JETT/KENNY LAGUNA	100
Cherry Bomb	JOAN JETT, KIM FOWLEY	37.5
Coney Island Whitefish	JOAN JETT/KENNY LAGUNA	100
Fetish (XXX)	JOAN JETT	100
Coming Home	ANDREW FROMM, JEFFREY FRANZEL, SANDY LINZER	33.34
All the Way	TAM PATRICK	100
A World of Fantasy	TAM PATRICK, R. EMMETT, M. LEVINE, G. MOORE	100

EXHIBIT CO 0253

EXHIBIT CO 0254

SHORT-FORM SYNCHRONIZATION LICENSE
BMG MUSIC PUBLISHING NA, INC.
245 FIFTH AVENUE, 8TH FLOOR
NEW YORK, NY 10016

Date: March 13, 2006
Effective as of March 1, 2006

Blind Decker Productions, Inc.
c/o Lantana
3000 W. Olympic Blvd.
Building 3, Suite 2430
Santa Monica, CA 90404

Ladies and Gentlemen:

The following will set forth the terms and conditions upon which we have agreed to license the following composition (the "Composition") in connection with the following production (the "Production"):

1. COMPOSITION: "Just What I Needed"

   Writer(s): Ric Ocasek

   Ownership and/or Control: 100% (ASCAP)

2. PRODUCTION: the television program, Brotherhood, Episode #108

3. GRANT OF RIGHTS:

In consideration of the license fee specified below, we hereby grant to you the following non-exclusive limited rights:

a. The limited right, license, privilege and authority to record the Composition in timed-relation with the Production, but not otherwise, and to make copies of such recordings only in any form now or hereafter known, including negatives, prints video, digital media necessary for "sequential, linear" exhibitions and broadcasts, solely as hereinafter provided for, in accordance with the terms, conditions and limitations contained herein. As used in this license agreement, the term "sequential, linear" shall mean a predetermined order or sequence that allows for passive viewing only; the order, outcome and contents of which, including the music, lyrics and/or placement of the Composition, cannot be selected, altered or manipulated by the viewer other than through the performance of VCR and DVD type functions (e.g. stop, play, fast forward, rewind, pause and addressable locator codes provided that there is no manipulation of the Composition). For the purposes hereof, the inclusion of "chapter stops" (i.e. addressable locator codes) on the applicable storage device, or the inclusion of expository material/interviews with directors, filmmakers, and/or other personnel involved

with the Production, contained on a separate audio or audio-visual track, shall not be deemed to constitute non-linear manipulation.

b. The right to exhibit, transmit, distribute, broadcast, reproduce, or otherwise exploit the Composition as included in the Production in the Territory, in all sequential, linear forms of media now known or hereafter devised (excluding only theatrical exhibition), including, but not limited to (i) "Free Television" (i.e. via network, syndication and/or independent local telecasts), (ii) "Basic Cable Television" (i.e. via television transmitted into the home via cable, satellite or direct broadcast where no fee is charged to the consumer for particular programming), (iii) "Pay Cable Television" (i.e. so-called 'subscription cable' and similar delivery systems, where a fee is paid by the consumer for a particular channel or tier of programming), (iv) "Pay-Per-View Television" (i.e. where a fee is paid by the consumer for a particular program), (v) "Non-theatrical Exhibition" (e.g. in-transit exhibition via plane, train or ship, and exhibition at military bases, museums, libraries and educational institutions), and (vi) the Internet and virtual private networks (VPN), provided that (A) you shall not permit and you shall ensure that no third party permits any viewer of the Production to alter or manipulate the Composition (or any portion thereof) in connection therewith, or access the Composition independent of the Production; (B) the length of that portion of the Composition used in timed-relation with the Production is not greater than the timing limitation set forth in paragraph 4 below; and (C) a valid public performance license from the applicable performance rights society(ies) has been secured for all Web sites streaming the Production. Notwithstanding the foregoing, you shall not have the right to use the Composition in any form of media which does not embody the Production substantially as originally released (excluding so-called Director's cuts, editor's cuts, special editions, foreign language versions and versions for the hearing impaired).

c. The right to cause or authorize the fixation of the Composition as part of the entire Production, in substantially its original form, on "Videograms" (i.e. video cassettes, video tapes and other sequential, linear audio-visual devices now known or hereafter devised which are intended primarily for home or personal use) and to sell, lease, rent and distribute such Videograms to the public in the Territory for home use in conjunction with a playback system or mechanism. Notwithstanding the above, you shall not have the right to use the Composition in any device which does not embody the Production substantially as originally released (excluding so-called Director's cuts, editor's cuts, special editions, foreign language versions and versions for the hearing impaired). For the purposes hereof, the inclusion of "chapter stops" (i.e. addressable locator codes) on the applicable storage device, or the inclusion of expository material/interviews with directors, filmmakers, and/or other personnel involved with the Production, contained on a separate audio or audio-visual track, shall not be deemed to constitute non-linear manipulation.

d. The foregoing shall include the right to include the portion of the Production containing the Composition, in context, for ads, clips and trailers promoting the Production (but excluding co-/cross promotions) in all media now known or hereafter devised (excluding only theatrical exhibition), including, but not limited to (i) all television media, (ii) "Non-theatrical Exhibition" (e.g. in-transit exhibition via plane, train or ship, and exhibition at military bases, museums, libraries and educational institutions), (iii) on "Videograms" (i.e. video cassettes, video tapes and other sequential, linear audio-visual devices now known or hereafter devised which are intended primarily for home or personal use); (iv) the Internet and virtual private networks (VPN), provided that (A) you shall not permit and you

shall ensure that no third party permits any viewer of the trailer to alter or manipulate the Composition (or any portion thereof) in connection therewith, or access the Composition independent of the trailer; (B) the length of that portion of the Composition used in timed-relation with the trailer is not greater than the timing limitation set forth in paragraph 4 below; and (C) a valid public performance license from the applicable performance rights society(ies) has been secured for all Web sites streaming the trailer.

4. USAGE:

- Number:	One (1)
- Type:	Background Vocal
- Duration:	Two Minutes Fifty-One Seconds (2:51)
- Scene:	Michael and Kath are in his car on a supposed mini-vacation - she turns on the radio

5.	TERRITORY:	The World
6.	TERM:	Seven (7) years commencing March 1, 2006 and terminating February 28, 2013, except with respect to Videograms the term is Life of Copyright
7.	LICENSE FEE:	(i) Twenty Thousand Dollars ($20,000.00), payable upon execution hereof; (ii) Payment shall be made payable to BMG Music Publishing NA, Inc. and sent to: **BMG Film &Television Music, Attention: Anne K. Pohl, 245 Fifth Avenue, 8th Floor, New York, New York 10016.**

8. OPTIONS:

A. We grant to you the following option(s) to extend the rights granted under this license agreement:

Based upon our receipt of Ten Thousand Dollars ($10,000.00) from you, the limited right to extend the Term of the rights as set forth above for Life of Copyright commencing upon the expiration of the current Term.

B. You must exercise the above option(s) by written notice to us prior to the expiration of the current Term. Such notice must be accompanied by the applicable payment in order to effect the valid exercise of the option. If we do not receive such notice prior to the expiration of the current Term, then the option(s) are deemed withdrawn and invalid.

9. PERFORMING RIGHTS:

The right to exhibit and/or broadcast, as applicable, the Production in the Territory by means described above is and shall be available only under the following circumstances:

Television And Other Broadcasts: You shall cause the broadcaster(s) of the Production to secure, and pay for, whatever public performance licenses are required in connection with the broadcast of the Production throughout the

Territory. For avoidance of doubt, it is acknowledged and agreed that the License Fee shall not be inclusive of public performance monies and no public performance license is granted hereunder.

10. RESTRICTIONS:

You are not authorized to (i) alter the fundamental character of the music or the lyrics of the Composition, (ii) use the title or subtitle of the Composition as the title of the Production, (iii) use the story of the Composition, (iv) print lyrics from the Composition, (v) translate the Composition (excluding translation of the Composition for subtitles and foreign language versions in context with the Production), (vi) make phonorecords of the Composition, or (vii) make any use of the Composition other than as set forth above. Specifically, the terms of this license agreement are limited to the use of the Composition as originally cleared and fixed in the Production (i.e. manner, placement, use) for the media licensed herein, it being understood that such restriction shall not prohibit standard production editing required to implement the broadcast and/or distribution rights granted under this license agreement.

11. CUE SHEETS:

You agree to furnish us with a cue sheet of the Production within sixty (60) days after the full execution of this license agreement.

12. CREDIT:

If any other publisher of a licensed composition used in the Production receives a credit in the Production, we shall be accorded a similar credit. Such credit shall be in the same location, and of the same size and prominence as the credit afforded the other publisher(s) having licensed compositions embodied in the Production, substantially in the following form:

As provided

13. MOST FAVORED NATIONS:

Our consent to the foregoing is given with the proviso that no master recording owner of the Composition used in the Production shall receive a proportionately more favorable remuneration of any kind including, but not limited to, the Fee. In the event that you pay the master recording owner of the Composition a higher pro-rata fee than the Fee paid to us hereunder, you shall pay to us the difference between such higher pro-rata fee and that Fee paid to us.

14. WARRANTY AND INDEMNIFICATION:

We hereby warrant only that we have the right to license the Composition for the purposes set forth herein and this license is given and accepted without any other warranty or recourse. If, pursuant to an adverse judgment in a court of competent jurisdiction, it is found that this warranty should be breached, in whole or in part, our liability with respect thereto shall be limited to the license fee heretofore paid by you, to us, for this license. You will give us prompt notice of any claim relating thereto and we shall have the right to assume the defense thereof.

15. LAW AND JURISDICTION:

This license agreement has been entered into in the State of New York, and the validity, interpretation and legal effect of this license agreement shall be governed by the laws of the State of New York applicable to contracts entered into and performed entirely within the State of New York. The New York state and federal courts will have exclusive jurisdiction of any controversies regarding this license agreement; and any action or other proceeding which involves such a

controversy will be brought in the courts located within the State and County of New York and not elsewhere. This agreement shall not be changed or modified, or any covenant, representation, warranty or provision hereof waived, except by an agreement in writing signed by the party to be charged.

16. RESERVATION OF RIGHTS:

We reserve all rights not expressly granted to you in this license agreement. All rights granted hereunder are granted on a non-exclusive basis.

17. ASSIGNMENT:

The rights granted to you pursuant to this license agreement shall be assignable by you to any third party but remain primarily liable for obligations and provided further that any use or disposition of any copies of the Production shall at all times be subject to the terms and conditions hereof. This license agreement itself shall not be assignable by you except to a subsidiary, affiliated or controlling corporation or to any party owning, or acquiring, a substantial portion of your stock or assets, or to a party acquiring ownership of the Production, or the right to distribute and exploit the Production in a particular territory and/or for a particular time period. Any assignment made in violation of the restrictions contained in this license agreement shall be null and void *ab initio*.

Notwithstanding anything to the contrary contained in this license agreement, you shall acquire no rights hereunder until actual receipt by us of the applicable license fee set forth herein.

Very truly yours,

BMG MUSIC PUBLISHING NA, INC.

By: Anne K Pohl
Anne K. Pohl
Director Film & TV Music Licensing
Federal Tax I.D. #95-3104625

READ AND AGREED:
BLIND DECKER PRODUCTIONS, INC.

By: _____

Print: _____
For and on behalf of
Blind Decker Productions, Inc.

EXHIBIT CO 0255

RING TONE LICENSE

Agreement made February 1, 2006 between BMG Music Publishing NA, Inc., 245 Fifth Avenue, New York, NY 10016 (hereinafter referred to as "Licensor") and Lagardere Active North America, Inc., 1633 Broadway, New York 10019 (hereinafter "Licensee").

For good and valuable consideration, Licensor and the Licensee hereby agree as follows:

1. (a) Licensor grants to Licensee the non-exclusive blanket license for the territory of the United States ("the Territory") for a term commencing on February 1, 2006 and expiring on January 31, 2007 ("the Term") to use the musical works listed on Schedule "A" attached hereto ("the Composition(s)") (but solely to the extent of Licensor's interest therein) as follows:

(i) To create an arrangement of the Compositions consisting of musical tones (the "Arrangement") provided that in no event shall any arrangement change the basic melody or fundamental character of the applicable Composition, and record up to thirty (30) seconds of an Arrangement (the "Recording(s)");

(ii) To transform the Recordings into mobile ring tone formats or to incorporate up to thirty (30) seconds of a Composition as embodied in a pre-existing master recording (a "Master Recording") into a ring tone format (individually and collectively, a "Ring Tone");

(iii) To create a database containing the Ring Tone(s) available to Licensee's customers or subscribers and/or to third party companies serviced by Licensee ("Third Party Companies") which in turn service customers or subscribers ("the Customers")

(iv) Subject to paragraph 1(b) below, to synchronize Ring Tones with graphic images (a "Graphic") (collectively, a "Graphic Tone") which may be viewed solely on a Customer's mobile telephone;

(v) To download or otherwise transmit Ring Tones or Graphic Tones onto mobile telephones (for a fee or otherwise) for personal use by the Customers (a "Download"), for the express purpose of such Ring Tone(s) sounding as a ringing alert on such mobile telephones;

(vi) To promote and advertise segments of the Graphic Tones or Ring Tones (not to exceed thirty (30) seconds each) on Customer's mobile phones and Licensee's and/or Third Party Companies' web site(s) for the sole purpose of allowing a Customer to preview a Ring Tone before purchasing same.

All of the foregoing activities shall be conducted at Licensee's sole expense.

(b) Notwithstanding anything to the contrary contained herein, each Graphic Tone shall be subject to Licensor's prior written approval and shall be listed on Schedule "B" attached hereto.

(c) Schedule "A" and Schedule "B" may be amended, in Licensor's sole discretion, from time to time as reasonably requested by Licensee on a composition-by-composition basis, subject to the terms of this Agreement. In addition, Licensor may, in its sole discretion, inform Licensee from time to time of additional Compositions it wishes to make available for license hereunder.

(d) All Arrangements created pursuant to this license shall be considered a "work made for hire" for Licensor. In the event the Arrangements shall be deemed not to be a work made for hire, then the Licensee hereby sells, assigns, and transfers over to Licensor, and releases and quitclaims unto Licensor, its successors and assigns, all right, title and interest in and to the Arrangements and all rights therein and thereto, for the United States and throughout the world, forever, including any and all copyright terms, and all extension terms of copyright, for all uses and purposes whether now known or hereafter created, free from payment of any royalty or further compensation.

2. Licensor reserves all rights in and to the Composition(s), including the right in its sole discretion to restrict or rescind the use of any Composition at any time. In the event that Licensor shall request Licensee to cease using any Composition, Licensee shall do so as soon as practicable after receiving notice.

3. In consideration of the foregoing licence, Licensee shall pay to Licensor the following:

(a) Ring Tones: With respect to each individual Download of a Ring Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Ring Tone Downloaded (the "Ring Tone Royalty"), provided that in no circumstances shall the Ring Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.125 per Download irrespective of the price (if any) actually charged;

(b) Graphic Tones: With respect to each individual Download of a Graphic Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Graphic Tone Downloaded (the "Graphic Tone Royalty"), provided that in no circumstances shall the Graphic Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.20 per Download irrespective of the price (if any) actually charged;

(c) Advance: An advance of $5,000 recoupable from all Royalties payable hereunder.

(d) Prior Advance: Reference is made to the advance of $5,000 previously paid in connection with the agreement between Licensee and Licensor dated February 1, 2005 (the "Prior Agreement"). Each party acknowledges and agrees that none of the Prior Advance has been recouped and that the balance of such advance (i.e. $5000.00) shall be treated as an additional advance under this agreement and shall be recoupable from royalties payable hereunder.

(e) If at any time during the Term hereof Licensee pays any royalty, fixing or other service fee in connection with its Ring Tone or Graphic Tone service within the Territory to any other owner or administrator of musical compositions higher than the Ring Tone Royalty, Graphic Tone Royalty or Fixing Fee specified hereunder, on a per composition basis or otherwise, Licensee shall pay such higher royalty or fixing fee to Licensor retroactively to the first accounting period during which such higher royalty or fixing fee is accounted to such other owner or administrator.

(f) Reference is made to record companies which control certain Master Recordings (the "Record Companies") who may enter in agreements with Licensee which provide, among other things, that the Record Companies will pay to Licensor a royalty in connection with Compositions contained in Master Recordings exploited as Ring Tones by Licensee (the "RC Tones"). Only to the extent that Licensor enters into separate license agreements with such Record Companies which specifically provide that the applicable Record Company will compensate Licensor with respect to the sale of RC Tones shall Licensee not be obligated to pay Licensor Ring Tone Royalties in connection with the sale of RC Tones.

4. Within forty five (45) days after the end of each quarterannual period, i.e. ending March 31, June 30, September 30 and December 31, Licensee shall render to Licensor a true and detailed accounting of (i) all Ring Tones and Graphic Tones Downloaded; and (ii) all Ring Tones and Graphic Tones created. Each accounting shall report each Composition by title, song code number (as indicated on Schedules A and B), the number of Downloads and the resultant applicable Royalties due hereunder and be accompanied by payment to Licensor of all Royalties and Fixing Fees due. All accountings and resultant royalties and fees shall be forwarded to BMG Music Publishing NA, Inc, 8750 Wilshire Boulevard, Beverly Hills, CA 90211, attn: Director of Royalties.

5. (a) Licensee shall maintain accurate and complete records and books of account detailing the creation of Ring Tones and Graphic Tones hereunder and all Downloads and containing all other information needed to compute and verify the amounts payable to Licensor hereunder. Licensor may audit those books and records. Licensor may make such an examination for a particular statement only once. Licensor may conduct such audit only during Licensee's usual business hours, and at the place where it keeps the books and records to be examined, on at least thirty (30) days prior notice.

(b) Such audit shall be conducted at Licensor's sole expense, except that if any audit reveals an error resulting in an underpayment to Licensor of five percent (5%) or more of the total amount accounted to Licensor during the accounting periods audited, then Licensee shall pay to

Licensor all reasonable audit costs, including travel, hotel and per diems, together with the underpayment.

(c) Any royalty shortfall shall bear interest at the composite "prime rate" (as published in the Wall Street Journal) plus two percent (2%).

6. Licensee may not assign, transfer or sub-licence any of its rights hereunder without Licensor's prior written consent and any purported such assignment, transfer or licence shall be void *ab initio*.

7. (a) Licensor may terminate this Agreement by giving Licensee notice in any of the following circumstances:

(i) If Licensee fails to perform any of its material obligations under this agreement for any reason (including impossibility of performance) and such failure has not been remedied to Licensor's satisfaction within thirty (30) days after Licensor gives Licensee notice of it.

(ii) If Licensee attempts to assign any of its rights under this agreement without Licensor's prior written consent, or if any of those rights succeeds to any other person or entity by operation of law.

(iii) If the control or ownership of Licensee or the majority of Licensee's capital stock vests, directly or indirectly, in any person or entity except the persons or entities who actually own Licensee's outstanding capital stock now, without Licensor's prior written consent.

(b) This Agreement will terminate automatically, without notice, if Licensee is dissolved or its assets are liquidated, or if Licensee becomes insolvent, or if a proceeding in bankruptcy, for a reorganization, or for other relief from the claims of creditors, or any similar proceeding, takes place with respect to Licensee or its property.

(c) A termination of the Agreement under this paragraph 7 will not limit or affect any of Licensor's other rights.

(d) Upon the expiration or termination of the Term, all of Licensee's rights hereunder shall terminate. Licensee shall withdraw the Ring Tones hereunder from the database of possible Customer retrieval and shall make no further use of the Composition(s), or of the Recordings or Ring Tones whatsoever.

8. (a) Licensor represents, warrants and agrees as follows (with respect to the Licensor Share of the Compositions described in Schedules A and B):

(i) Licensor has full right, power and authority to enter into this agreement and to grant to the Licensee all rights herein set out upon the terms and conditions herein.

(ii) The Compositions are original copyrighted works and in no way infringe the copyright or other rights of any third party.

(iii) Licensor will pay any and all fees, royalties and other sums due to the songwriters of the Compositions as well as to publishers and copublishers whom Licensor administer with respect to the royalties received by it hereunder.

(b) Licensee warrants, represents and agrees as follows:

(i) Licensee has the full right, power and authority to enter into and perform this agreement upon the terms and conditions set forth herein.

(ii) Licensee shall take all steps reasonably necessary to secure and maintain protection of the Compositions, by way of encryption or otherwise, under copyright and equivalent or similar laws throughout the Territory.

(iii) Upon receipt of written instruction from Licensor, Licensee shall not, to the extent permitted by law, license any Customer or other user that is engaged in piracy, illegal activities or other unauthorized use of the Ring Tones or the Compositions, or that has otherwise been designated by the RIAA, IFPI or other such body as an illegal producer or distributor.

(iv) Licensee shall either own or control and/or have valid and enforceable licenses with the applicable rights holders with respect to all aspects of their Ring Tone service including, without limitation, any Master Recordings and/or Graphics.

(c) Each party (for these purposes, "Indemnitor") shall indemnify, defend and hold the other party ("Indemnitee"), its successors, assigns, agents and licensees, free and harmless from and against any and all claims, demands, damages, expenses, losses or costs (including reasonable attorneys' fees and costs), or any sums paid in settlement, arising out of or incurred as a direct result of any actual breach of the representations, warranties, agreements and undertakings of or by the party concerned. Indemnitee shall notify Indemnitor of any claim presented to Indemnitee by a third party. Indemnitor shall defend any third party claim, at its sole expense, with counsel approved by Indemnitee, except that, at Indemnitee's option, Indemnitee may defend the claim (at Indemnitor's sole expense) and shall consult with Indemnitor about choice of counsel and the conduct of the proceeding. No such claim asserted by a third party may be settled by Indemnitee without Indemnitor's prior written consent (such consent not to be unreasonably withheld or delayed), so long as Indemnitor is actively defending such claim in a manner consistent with industry norms, unless Indemnitee shall agree not to seek indemnity from Indemnitor for any settlement payment made by Indemnitee to the claimant.

9. (a) For the avoidance of doubt, no rights are granted in any Master Recordings of the Composition(s) or Graphics, and no rights are granted other than those expressly referred to herein.

(b) Licensee shall not issue any press releases or other forms of publicity materials which make reference to Licensor or this agreement without the prior written consent of Licensor.

(c) Licensor will have no obligation to renew or extend the License after the end of the Term, and may decline to do so in its unrestricted discretion.

(d) Licensee shall be responsible for securing, and paying for, whatever public performance licenses required in connection with its Ring Tone service throughout the Territory. For avoidance of doubt, it is acknowledged and agreed that the Royalty shall not be inclusive of public performance monies payable in connection with Ring Tones, if any, and no public performance license is granted hereunder.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of New York whose courts shall have exclusive jurisdiction over any dispute arising herefrom.

11. This Agreement contains all of the terms agreed between the parties and replaces any and all previous agreements whether written or oral concerning the subject matter hereof.

AS WITNESS the hands of the parties the day and year first above written

BMG Music Publishing NA, Inc

By: _____

Lagardere Active North America, Inc.

By: _____

EXHIBIT CO 0256

RING TONE LICENSE

Agreement made February 1, 2006 between Zomba Enterprises Inc., 245 Fifth Avenue, New York, NY 10016 (hereinafter referred to as "Licensor") and Lagardere Active North America, Inc., 1633 Broadway, New York 10019 (hereinafter "Licensee").

For good and valuable consideration, Licensor and the Licensee hereby agree as follows:

1. (a) Licensor grants to Licensee the non-exclusive blanket license for the territory of the United States ("the Territory") for a term commencing on February 1, 2006 and expiring on January 31, 2007 ("the Term") to use the musical works listed on Schedule "A" attached hereto ("the Composition(s)") (but solely to the extent of Licensor's interest therein) as follows:

(i) To create an arrangement of the Compositions consisting of musical tones (the "Arrangement") provided that in no event shall any arrangement change the basic melody or fundamental character of the applicable Composition, and record up to thirty (30) seconds of an Arrangement (the "Recording(s)");
(ii) To transform the Recordings into mobile ring tone formats or to incorporate up to thirty (30) seconds of a Composition as embodied in a pre-existing master recording (a "Master Recording") into a ring tone format (individually and collectively, a "Ring Tone");
(iii) To create a database containing the Ring Tone(s) available to Licensee's customers or subscribers and/or to third party companies serviced by Licensee ("Third Party Companies") which in turn service customers or subscribers ("the Customers")
(iv) Subject to paragraph 1(b) below, to synchronize Ring Tones with graphic Images (a "Graphic") (collectively, a "Graphic Tone") which may be viewed solely on a Customer's mobile telephone;
(v) To download or otherwise transmit Ring Tones or Graphic Tones onto mobile telephones (for a fee or otherwise) for personal use by the Customers (a "Download"), for the express purpose of such Ring Tone(s) sounding as a ringing alert on such mobile telephones;
(vi) To promote and advertise segments of the Graphic Tones or Ring Tones (not to exceed thirty (30) seconds each) on Customer's mobile phones and Licensee's and/or Third Party Companies' web site(s) for the sole purpose of allowing a Customer to preview a Ring Tone before purchasing same.

All of the foregoing activities shall be conducted at Licensee's sole expense.

(b) Notwithstanding anything to the contrary contained herein, each Graphic Tone shall be subject to Licensor's prior written approval and shall be listed on Schedule "B" attached hereto.

(c) Schedule "A" and Schedule "B" may be amended, in Licensor's sole discretion, from time to time as reasonably requested by Licensee on a composition-by-composition basis, subject to the terms of this Agreement. In addition, Licensor may, in its sole discretion, inform Licensee from time to time of additional Compositions it wishes to make available for license hereunder.

(d) All Arrangements created pursuant to this license shall be considered a "work made for hire" for Licensor. In the event the Arrangements shall be deemed not to be a work made for hire, then the Licensee hereby sells, assigns, and transfers over to Licensor, and releases and quitclaims unto Licensor, its successors and assigns, all right, title and interest in and to the Arrangements and all rights therein and thereto, for the United States and throughout the world, forever, including any and all copyright terms, and all extension terms of copyright, for all uses and purposes whether now known or hereafter created, free from payment of any royalty or further compensation.

2. Licensor reserves all rights in and to the Composition(s), including the right in its sole discretion to restrict or rescind the use of any Composition at any time. In the event that Licensor shall request Licensee to cease using any Composition, Licensee shall do so as soon as practicable after receiving notice.

3. In consideration of the foregoing licence, Licensee shall pay to Licensor the following:

(a) Ring Tones: With respect to each individual Download of a Ring Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Ring Tone Downloaded (the "Ring Tone Royalty"), provided that in no circumstances shall the Ring Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.125 per Download irrespective of the price (if any) actually charged;

(b) Graphic Tones: With respect to each individual Download of a Graphic Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Graphic Tone Downloaded (the "Graphic Tone Royalty"), provided that in no circumstances shall the Graphic Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.20 per Download irrespective of the price (if any) actually charged;

(c) Advance: An advance of $5,000 recoupable from all Royalties payable hereunder.

(d) Prior Advance: Reference is made to the advance of $4,000 previously paid in connection with the agreement between Licensee and Licensor dated February 1, 2005 (the "Prior Agreement"). Each party acknowledges and agrees that $3,837.13 of the Prior Advance has been recouped and that the remaining balance of such advance (i.e. $162.87) shall be treated as an additional advance under this agreement and shall be recoupable from royalties payable hereunder.

(e) If at any time during the Term hereof Licensee pays any royalty, fixing or other service fee in connection with its Ring Tone or Graphic Tone service within the Territory to any other owner or administrator of musical compositions higher than the Ring Tone Royalty, Graphic Tone Royalty or Fixing Fee specified hereunder, on a per composition basis or otherwise, Licensee shall pay such higher royalty or fixing fee to Licensor retroactively to the first accounting period during which such higher royalty or fixing fee is accounted to such other owner or administrator.

(f) Reference is made to record companies which control certain Master Recordings (the "Record Companies") who may enter in agreements with Licensee which provide, among other things, that the Record Companies will pay to Licensor a royalty in connection with Compositions contained in Master Recordings exploited as Ring Tones by Licensee (the "RC Tones"). Only to the extent that Licensor enters into separate license agreements with such Record Companies which specifically provide that the applicable Record Company will compensate Licensor with respect to the sale of RC Tones shall Licensee not be obligated to pay Licensor Ring Tone Royalties in connection with the sale of RC Tones.

4. Within forty five (45) days after the end of each quarterannual period, i.e. ending March 31, June 30, September 30 and December 31, Licensee shall render to Licensor a true and detailed accounting of (i) all Ring Tones and Graphic Tones Downloaded; and (ii) all Ring Tones and Graphic Tones created. Each accounting shall report each Composition by title, song code number (as indicated on Schedules A and B), the number of Downloads and the resultant applicable Royalties due hereunder and be accompanied by payment to Licensor of all Royalties and Fixing Fees due. All accountings and resultant royalties and fees shall be forwarded to Zomba Enterprises Inc., 8750 Wilshire Boulevard, Beverly Hills, CA 90211, attn: Director of Royalties.

5. (a) Licensee shall maintain accurate and complete records and books of account detailing the creation of Ring Tones and Graphic Tones hereunder and all Downloads and containing all other information needed to compute and verify the amounts payable to Licensor hereunder. Licensor may audit those books and records. Licensor may make such an examination for a particular statement only once. Licensor may conduct such audit only during Licensee's usual business hours, and at the place where it keeps the books and records to be examined, on at least thirty (30) days prior notice.

(b) Such audit shall be conducted at Licensor's sole expense, except that if any audit reveals an error resulting in an underpayment to Licensor of five percent (5%) or more of the total amount accounted to Licensor during the accounting periods audited, then Licensee shall pay to

Licensor all reasonable audit costs, including travel, hotel and per diems, together with the underpayment.

(c) Any royalty shortfall shall bear interest at the composite "prime rate" (as published in the Wall Street Journal) plus two percent (2%).

6. Licensee may not assign, transfer or sub-licence any of its rights hereunder without Licensor's prior written consent and any purported such assignment, transfer or licence shall be void *ab initio*.

7. (a) Licensor may terminate this Agreement by giving Licensee notice in any of the following circumstances:

(i) If Licensee fails to perform any of its material obligations under this agreement for any reason (including impossibility of performance) and such failure has not been remedied to Licensor's satisfaction within thirty (30) days after Licensor gives Licensee notice of it.

(ii) If Licensee attempts to assign any of its rights under this agreement without Licensor's prior written consent, or if any of those rights succeeds to any other person or entity by operation of law.

(iii) If the control or ownership of Licensee or the majority of Licensee's capital stock vests, directly or indirectly, in any person or entity except the persons or entities who actually own Licensee's outstanding capital stock now, without Licensor's prior written consent.

(b) This Agreement will terminate automatically, without notice, if Licensee is dissolved or its assets are liquidated, or if Licensee becomes insolvent, or if a proceeding in bankruptcy, for a reorganization, or for other relief from the claims of creditors, or any similar proceeding, takes place with respect to Licensee or its property.

(c) A termination of the Agreement under this paragraph 7 will not limit or affect any of Licensor's other rights.

(d) Upon the expiration or termination of the Term, all of Licensee's rights hereunder shall terminate. Licensee shall withdraw the Ring Tones hereunder from the database of possible Customer retrieval and shall make no further use of the Composition(s), or of the Recordings or Ring Tones whatsoever.

8. (a) Licensor represents, warrants and agrees as follows (with respect to the Licensor Share of the Compositions described in Schedules A and B):

(i) Licensor has full right, power and authority to enter into this agreement and to grant to the Licensee all rights herein set out upon the terms and conditions herein.

(ii) The Compositions are original copyrighted works and in no way infringe the copyright or other rights of any third party.

(iii) Licensor will pay any and all fees, royalties and other sums due to the songwriters of the Compositions as well as to publishers and copublishers whom Licensor administer with respect to the royalties received by it hereunder.

(b) Licensee warrants, represents and agrees as follows:

(i) Licensee has the full right, power and authority to enter into and perform this agreement upon the terms and conditions set forth herein.

(ii) Licensee shall take all steps reasonably necessary to secure and maintain protection of the Compositions, by way of encryption or otherwise, under copyright and equivalent or similar laws throughout the Territory.

(iii) Upon receipt of written instruction from Licensor, Licensee shall not, to the extent permitted by law, license any Customer or other user that is engaged in piracy, illegal activities or other unauthorized use of the Ring Tones or the Compositions, or that has otherwise been designated by the RIAA, IFPI or other such body as an illegal producer or distributor.

(iv) Licensee shall either own or control and/or have valid and enforceable licenses with the applicable rights holders with respect to all aspects of their Ring Tone service including, without limitation, any Master Recordings and/or Graphics.

(c) Each party (for these purposes, "Indemnitor") shall indemnify, defend and hold the other party ("Indemnitee"), its successors, assigns, agents and licensees, free and harmless from and against any and all claims, demands, damages, expenses, losses or costs (including reasonable attorneys' fees and costs), or any sums paid in settlement, arising out of or incurred as a direct result of any actual breach of the representations, warranties, agreements and undertakings of or by the party concerned. Indemnitee shall notify Indemnitor of any claim presented to Indemnitee by a third party. Indemnitor shall defend any third party claim, at its sole expense, with counsel approved by Indemnitee, except that, at Indemnitee's option, Indemnitee may defend the claim (at Indemnitor's sole expense) and shall consult with Indemnitor about choice of counsel and the conduct of the proceeding. No such claim asserted by a third party may be settled by Indemnitee without Indemnitor's prior written consent (such consent not to be unreasonably withheld or delayed), so long as Indemnitor is actively defending such claim in a manner consistent with industry norms, unless Indemnitee shall agree not to seek indemnity from Indemnitor for any settlement payment made by Indemnitee to the claimant.

9. (a) For the avoidance of doubt, no rights are granted in any Master Recordings of the Composition(s) or Graphics, and no rights are granted other than those expressly referred to herein.

(b) Licensee shall not issue any press releases or other forms of publicity materials which make reference to Licensor or this agreement without the prior written consent of Licensor.

(c) Licensor will have no obligation to renew or extend the License after the end of the Term, and may decline to do so in its unrestricted discretion.

(d) Licensee shall be responsible for securing, and paying for, whatever public performance licenses required in connection with its Ring Tone service throughout the Territory. For avoidance of doubt, it is acknowledged and agreed that the Royalty shall not be inclusive of public performance monies payable in connection with Ring Tones, if any, and no public performance license is granted hereunder.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of New York whose courts shall have exclusive jurisdiction over any dispute arising herefrom.

11. This Agreement contains all of the terms agreed between the parties and replaces any and all previous agreements whether written or oral concerning the subject matter hereof.

AS WITNESS the hands of the parties the day and year first above written

Zomba Enterprises Inc.

By: _____

Lagardere Active North America, Inc.

By: _____

EXHIBIT CO 0257

RING TONE LICENSE

Agreement made January 1, 2006 between BMG Music Publishing NA, Inc. 245 Fifth Avenue, New York, NY 10016 (hereinafter referred to as "Licensor") and Genexies Mobile S.L., Avda. Pio XII, 94, Bloque 1, Bajos, 28036 Madrid (hereinafter "Licensee").

For good and valuable consideration, Licensor and the Licensee hereby agree as follows:

1. (a) Licensor grants to Licensee the non-exclusive license for the territory of the United States ("the Territory") for a term commencing on January 1, 2006 and expiring on December 31, 2006 ("the Term") to use the musical works listed on Schedule "A" attached hereto ("the Composition(s)") (but solely to the extent of Licensor's interest therein) as follows:

(i) To create an arrangement of the Compositions consisting of musical tones (the "Arrangement") provided that in no event shall any arrangement change the basic melody or fundamental character of the applicable Composition, and record up to thirty (30) seconds of an Arrangement (the "Recording(s)");

(ii) To transform the Recordings into mobile ring tone formats or to incorporate up to thirty (30) seconds of a Composition as embodied in a pre-existing master recording (a "Master Recording") into a ring tone format (individually and collectively, a "Ring Tone");

(iii) To create a database containing the Ring Tone(s) available to Licensee's customers or subscribers and/or to third party companies serviced by Licensee ("Third Party Companies") which in turn service customers or subscribers ("the Customers")

(iv) Subject to paragraph 1(b) below, to synchronize Ring Tones with graphic images (a "Graphic") (collectively, a "Graphic Tone") which may be viewed solely on a Customer's mobile telephone;

(v) To download or otherwise transmit Ring Tones or Graphic Tones onto mobile telephones (for a fee or otherwise) for personal use by the Customers (a "Download"), for the express purpose of such Ring Tone(s) sounding as a ringing alert on such mobile telephones;

(vi) To promote and advertise segments of the Graphic Tones or Ring Tones (not to exceed thirty (30) seconds each) on Customer's mobile phones and Licensee's and/or Third Party Companies' web site(s) for the sole purpose of allowing a Customer to preview a Ring Tone before purchasing same.

All of the foregoing activities shall be conducted at Licensee's sole expense.

(b) Notwithstanding anything to the contrary contained herein, each Graphic Tone shall be subject to Licensor's prior written approval and shall be listed on Schedule "B" attached hereto.

(c) Schedule "A" and Schedule "B" may be amended, in Licensor's sole discretion, from time to time as reasonably requested by Licensee on a composition-by-composition basis, subject to the terms of this Agreement. In addition, Licensor may, in its sole discretion, inform Licensee from time to time of additional Compositions it wishes to make available for license hereunder.

(d) All Arrangements created pursuant to this license shall be considered a "work made for hire" for Licensor. In the event the Arrangements shall be deemed not to be a work made for hire, then the Licensee hereby sells, assigns, and transfers over to Licensor, and releases and quitclaims unto Licensor, its successors and assigns, all right, title and interest in and to the Arrangements and all rights therein and thereto, for the United States and throughout the world, forever, including any and all copyright terms, and all extension terms of copyright, for all uses and purposes whether now known or hereafter created, free from payment of any royalty or further compensation.

2. Licensor reserves all rights in and to the Composition(s), including the right in its sole discretion to restrict or rescind the use of any Composition at any time. In the event that Licensor shall request Licensee to cease using any Composition, Licensee shall do so as soon as practicable after receiving notice.

3. In consideration of the foregoing licence, Licensee shall pay to Licensor the following:

(a) Ring Tones: With respect to each individual Download of a Ring Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Ring Tone Downloaded (the "Ring Tone Royalty"), provided that in no circumstances shall the Ring Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.125 per Download irrespective of the price (if any) actually charged;

(b) Graphic Tones: With respect to each individual Download of a Graphic Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Graphic Tone Downloaded (the "Graphic Tone Royalty"), provided that in no circumstances shall the Graphic Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.20 per Download irrespective of the price (if any) actually charged;

(c) Fixing Fee: For each Composition initially converted to a Ring Tone or Graphic Tone, a one-time non-recoupable fixing fee equal to the Licensor Share of each applicable Composition multiplied by $25 (the "Fixing Fee"). For avoidance of doubt, if a Fixing Fee for a particular Composition is paid in connection with the creation of a Ring Tone, an additional Fixing Fee will not be due if such Ring Tone is later converted to a Graphic Tone. Conversely, if a Graphic Tone is initially created by Licensee, an additional Fixing Fee will not be due if the applicable Composition is later exploited solely as a Ring Tone.

(d) Prior Advance: Reference is made to the advance of $10,000 previously paid in connection with the agreement between Licensor and Licensee dated January 1, 2005 (the "Prior Agreement"). Each party acknowledges and agrees that the Prior Advance shall be treated as the advance under this agreement and shall be recoupable from royalties payable hereunder.

(e) If at any time during the Term hereof Licensee pays any royalty, fixing or other service fee in connection with its Ring Tone or Graphic Tone service within the Territory to any other owner or administrator of musical compositions higher than the Ring Tone Royalty, Graphic Tone Royalty or Fixing Fee specified hereunder, on a per composition basis or otherwise, Licensee shall pay such higher royalty or fixing fee to Licensor retroactively to the first accounting period during which such higher royalty or fixing fee is accounted to such other owner or administrator.

(f) Reference is made to record companies which control certain Master Recordings (the "Record Companies") who may enter in agreements with Licensee which provide, among other things, that the Record Companies will pay to Licensor a royalty in connection with Compositions contained in Master Recordings exploited as Ring Tones by Licensee (the "RC Tones"). Only to the extent that Licensor enters into separate license agreements with such Record Companies which specifically provide that the applicable Record Company will compensate Licensor with respect to the sale of RC Tones shall Licensee not be obligated to pay Licensor Ring Tone Royalties in connection with the sale of RC Tones.

4. Within forty five (45) days after the end of each quarterannual period, i.e. ending March 31, June 30, September 30 and December 31, Licensee shall render to Licensor a true and detailed accounting of (i) all Ring Tones and Graphic Tones Downloaded; and (ii) all Ring Tones and Graphic Tones created. Each accounting shall report each Composition by title, song code number (as indicated on Schedules A and B), the number of Downloads and the resultant applicable Royalties due hereunder and be accompanied by payment to Licensor of all Royalties and Fixing Fees due. All accountings and resultant royalties and fees shall be forwarded to BMG Music Publishing NA, Inc., 8750 Wilshire Boulevard, Beverly Hills, CA 90211, attn: Director of Royalties.

5. (a) Licensee shall maintain accurate and complete records and books of account detailing the creation of Ring Tones and Graphic Tones hereunder and all Downloads and containing all other information needed to compute and verify the amounts payable to Licensor hereunder. Licensor may audit those books and records. Licensor may make such an examination for a particular statement only once. Licensor may conduct such audit only during Licensee's usual business hours, and at the place where it keeps the books and records to be examined, on at least

thirty (30) days prior notice.

(b) Such audit shall be conducted at Licensor's sole expense, except that if any audit reveals an error resulting in an underpayment to Licensor of five percent (5%) or more of the total amount accounted to Licensor during the accounting periods audited, then Licensee shall pay to Licensor all reasonable audit costs, including travel, hotel and per diems, together with the underpayment.

(c) Any royalty shortfall shall bear interest at the composite "prime rate" (as published in the Wall Street Journal) plus two percent (2%).

6. Licensee may not assign, transfer or sub-licence any of its rights hereunder without Licensor's prior written consent and any purported such assignment, transfer or licence shall be void *ab initio*.

7. (a) Licensor may terminate this Agreement by giving Licensee notice in any of the following circumstances:

(i) If Licensee fails to perform any of its material obligations under this agreement for any reason (including impossibility of performance) and such failure has not been remedied to Licensor's satisfaction within thirty (30) days after Licensor gives Licensee notice of it.

(ii) If Licensee attempts to assign any of its rights under this agreement without Licensor's prior written consent, or if any of those rights succeeds to any other person or entity by operation of law.

(iii) If the control or ownership of Licensee or the majority of Licensee's capital stock vests, directly or indirectly, in any person or entity except the persons or entities who actually own Licensee's outstanding capital stock now, without Licensor's prior written consent.

(b) This Agreement will terminate automatically, without notice, if Licensee is dissolved or its assets are liquidated, or if Licensee becomes insolvent, or if a proceeding in bankruptcy, for a reorganization, or for other relief from the claims of creditors, or any similar proceeding, takes place with respect to Licensee or its property.

(c) A termination of the Agreement under this paragraph 7 will not limit or affect any of Licensor's other rights.

(d) Upon the expiration or termination of the Term, all of Licensee's rights hereunder shall terminate. Licensee shall withdraw the Ring Tones hereunder from the database of possible Customer retrieval and shall make no further use of the Composition(s), or of the Recordings or Ring Tones whatsoever.

8. (a) Licensor represents, warrants and agrees as follows (with respect to the Licensor Share of the Compositions described in Schedules A and B):

(i) Licensor has full right, power and authority to enter into this agreement and to grant to the Licensee all rights herein set out upon the terms and conditions herein.

(ii) The Compositions are original copyrighted works and in no way infringe the copyright or other rights of any third party.

(iii) Licensor will pay any and all fees, royalties and other sums due to the songwriters of the Compositions as well as to publishers and copublishers whom Licensor administer with respect to the royalties received by it hereunder.

(b) Licensee warrants, represents and agrees as follows:

(i) Licensee has the full right, power and authority to enter into and perform this agreement upon the terms and conditions set forth herein.

(ii) Licensee shall take all steps reasonably necessary to secure and maintain protection of the Compositions, by way of encryption or otherwise, under copyright and equivalent or similar laws throughout the Territory.

(iii) Upon receipt of written instruction from Licensor, Licensee shall not, to the extent permitted by law, license any Customer or other user that is engaged in piracy, illegal activities or other unauthorized use of the Ring Tones or the Compositions, or that has otherwise been designated by the RIAA, IFPI or other such body as an illegal producer or distributor.

(iv) Licensee shall either own or control and/or have valid and enforceable licenses with the applicable rights holders with respect to all aspects of their Ring Tone service including, without limitation, any Master Recordings and/or Graphics.

(c) Each party (for these purposes, "Indemnitor") shall indemnify, defend and hold the other party ("Indemnitee"), its successors, assigns, agents and licensees, free and harmless from and against any and all claims, demands, damages, expenses, losses or costs (including reasonable attorneys' fees and costs), or any sums paid in settlement, arising out of or incurred as a direct result of any actual breach of the representations, warranties, agreements and undertakings of or by the party concerned. Indemnitee shall notify Indemnitor of any claim presented to Indemnitee by a third party. Indemnitor shall defend any third party claim, at its sole expense, with counsel approved by Indemnitee, except that, at Indemnitee's option, Indemnitee may defend the claim (at Indemnitor's sole expense) and shall consult with Indemnitor about choice of counsel and the conduct of the proceeding. No such claim asserted by a third party may be settled by Indemnitee without Indemnitor's prior written consent (such consent not to be unreasonably withheld or delayed), so long as Indemnitor is actively defending such claim in a manner consistent with industry norms, unless Indemnitee shall agree not to seek indemnity from Indemnitor for any settlement payment made by Indemnitee to the claimant.

9. (a) For the avoidance of doubt, no rights are granted in any Master Recordings of the Composition(s) or Graphics, and no rights are granted other than those expressly referred to herein.

(b) Licensee shall not issue any press releases or other forms of publicity materials which make reference to Licensor or this agreement without the prior written consent of Licensor.

(c) Licensor will have no obligation to renew or extend the License after the end of the Term, and may decline to do so in its unrestricted discretion.

(d) Licensee shall be responsible for securing, and paying for, whatever public performance licenses required in connection with its Ring Tone service throughout the Territory. For avoidance of doubt, it is acknowledged and agreed that the Royalty shall not be inclusive of public performance monies payable in connection with Ring Tones, if any, and no public performance license is granted hereunder.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of New York whose courts shall have exclusive jurisdiction over any dispute arising herefrom.

11. This Agreement contains all of the terms agreed between the parties and replaces any and all previous agreements whether written or oral concerning the subject matter hereof.

AS WITNESS the hands of the parties the day and year first above written

BMG Music Publishing NA, Inc.

By: _____

Genexies Mobile S.L.

By: _____

GENEXIES.com
THE ALWAYS-ON GENERATION
Avda. Pio XII 94, bloque 1 bajos 28036 Madrid
Tlf: +34 91 7691511 Fax: +34 91 3022440
info@genexies.com www.genexies.com
Cif: B82910535

EXHIBIT CO 0258

RING TONE LICENSE

Agreement made January 1, 2006 between Zomba Enterprises Inc. 245 Fifth Avenue, New York, NY 10016 (hereinafter referred to as "Licensor") and Genexies Mobile S.L., Avda. Pio XII, 94, Bloque 1, Bajos, 28036 Madrid (hereinafter "Licensee").

For good and valuable consideration, Licensor and the Licensee hereby agree as follows:

1. (a) Licensor grants to Licensee the non-exclusive license for the territory of the United States ("the Territory") for a term commencing on January 1, 2006 and expiring on December 31, 2006 ("the Term") to use the musical works listed on Schedule "A" attached hereto ("the Composition(s)") (but solely to the extent of Licensor's interest therein) as follows:

(i) To create an arrangement of the Compositions consisting of musical tones (the "Arrangement") provided that in no event shall any arrangement change the basic melody or fundamental character of the applicable Composition, and record up to thirty (30) seconds of an Arrangement (the "Recording(s)");

(ii) To transform the Recordings into mobile ring tone formats or to incorporate up to thirty (30) seconds of a Composition as embodied in a pre-existing master recording (a "Master Recording") into a ring tone format (individually and collectively, a "Ring Tone");

(iii) To create a database containing the Ring Tone(s) available to Licensee's customers or subscribers and/or to third party companies serviced by Licensee ("Third Party Companies") which in turn service customers or subscribers ("the Customers")

(iv) Subject to paragraph 1(b) below, to synchronize Ring Tones with graphic images (a "Graphic") (collectively, a "Graphic Tone") which may be viewed solely on a Customer's mobile telephone;

(v) To download or otherwise transmit Ring Tones or Graphic Tones onto mobile telephones (for a fee or otherwise) for personal use by the Customers (a "Download"), for the express purpose of such Ring Tone(s) sounding as a ringing alert on such mobile telephones;

(vi) To promote and advertise segments of the Graphic Tones or Ring Tones (not to exceed thirty (30) seconds each) on Customer's mobile phones and Licensee's and/or Third Party Companies' web site(s) for the sole purpose of allowing a Customer to preview a Ring Tone before purchasing same.

All of the foregoing activities shall be conducted at Licensee's sole expense.

(b) Notwithstanding anything to the contrary contained herein, each Graphic Tone shall be subject to Licensor's prior written approval and shall be listed on Schedule "B" attached hereto.

(c) Schedule "A" and Schedule "B" may be amended, in Licensor's sole discretion, from time to time as reasonably requested by Licensee on a composition-by-composition basis, subject to the terms of this Agreement. In addition, Licensor may, in its sole discretion, inform Licensee from time to time of additional Compositions it wishes to make available for license hereunder.

(d) All Arrangements created pursuant to this license shall be considered a "work made for hire" for Licensor. In the event the Arrangements shall be deemed not to be a work made for hire, then the Licensee hereby sells, assigns, and transfers over to Licensor, and releases and quitclaims unto Licensor, its successors and assigns, all right, title and interest in and to the Arrangements and all rights therein and thereto, for the United States and throughout the world, forever, including any and all copyright terms, and all extension terms of copyright, for all uses and purposes whether now known or hereafter created, free from payment of any royalty or further compensation.

2. Licensor reserves all rights in and to the Composition(s), including the right in its sole discretion to restrict or rescind the use of any Composition at any time. In the event that Licensor shall request Licensee to cease using any Composition, Licensee shall do so as soon as practicable after receiving notice.

3. In consideration of the foregoing licence, Licensee shall pay to Licensor the following:

(a) Ring Tones: With respect to each individual Download of a Ring Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Ring Tone Downloaded (the "Ring Tone Royalty"), provided that in no circumstances shall the Ring Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.125 per Download irrespective of the price (if any) actually charged;

(b) Graphic Tones: With respect to each individual Download of a Graphic Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Graphic Tone Downloaded (the "Graphic Tone Royalty"), provided that in no circumstances shall the Graphic Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.20 per Download irrespective of the price (if any) actually charged;

(c) Fixing Fee: For each Composition initially converted to a Ring Tone or Graphic Tone, a one-time non-recoupable fixing fee equal to the Licensor Share of each applicable Composition multiplied by $25 (the "Fixing Fee"). For avoidance of doubt, if a Fixing Fee for a particular Composition is paid in connection with the creation of a Ring Tone, an additional Fixing Fee will not be due if such Ring Tone is later converted to a Graphic Tone. Conversely, if a Graphic Tone is initially created by Licensee, an additional Fixing Fee will not be due if the applicable Composition is later exploited solely as a Ring Tone.

(d) Prior Advance: Reference is made to the advance of $10,000 previously paid in connection with the agreement between Licensor and Licensee dated January 1, 2005 (the "Prior Agreement"). Each party acknowledges and agrees that the Prior Advance shall be treated as the advance under this agreement and shall be recoupable from royalties payable hereunder.

(e) If at any time during the Term hereof Licensee pays any royalty, fixing or other service fee in connection with its Ring Tone or Graphic Tone service within the Territory to any other owner or administrator of musical compositions higher than the Ring Tone Royalty, Graphic Tone Royalty or Fixing Fee specified hereunder, on a per composition basis or otherwise, Licensee shall pay such higher royalty or fixing fee to Licensor retroactively to the first accounting period during which such higher royalty or fixing fee is accounted to such other owner or administrator.

(f) Reference is made to record companies which control certain Master Recordings (the "Record Companies") who may enter in agreements with Licensee which provide, among other things, that the Record Companies will pay to Licensor a royalty in connection with Compositions contained in Master Recordings exploited as Ring Tones by Licensee (the "RC Tones"). Only to the extent that Licensor enters into separate license agreements with such Record Companies which specifically provide that the applicable Record Company will compensate Licensor with respect to the sale of RC Tones shall Licensee not be obligated to pay Licensor Ring Tone Royalties in connection with the sale of RC Tones.

4. Within forty five (45) days after the end of each quarterannual period, i.e. ending March 31, June 30, September 30 and December 31, Licensee shall render to Licensor a true and detailed accounting of (i) all Ring Tones and Graphic Tones Downloaded; and (ii) all Ring Tones and Graphic Tones created. Each accounting shall report each Composition by title, song code number (as indicated on Schedules A and B), the number of Downloads and the resultant applicable Royalties due hereunder and be accompanied by payment to Licensor of all Royalties and Fixing Fees due. All accountings and resultant royalties and fees shall be forwarded to Zomba Enterprises Inc., 8750 Wilshire Boulevard, Beverly Hills, CA 90211, attn: Director of Royalties.

5. (a) Licensee shall maintain accurate and complete records and books of account detailing the creation of Ring Tones and Graphic Tones hereunder and all Downloads and containing all other information needed to compute and verify the amounts payable to Licensor hereunder. Licensor may audit those books and records. Licensor may make such an examination for a particular statement only once. Licensor may conduct such audit only during Licensee's usual

business hours, and at the place where it keeps the books and records to be examined, on at least thirty (30) days prior notice.

(b) Such audit shall be conducted at Licensor's sole expense, except that if any audit reveals an error resulting in an underpayment to Licensor of five percent (5%) or more of the total amount accounted to Licensor during the accounting periods audited, then Licensee shall pay to Licensor all reasonable audit costs, including travel, hotel and per diems, together with the underpayment.

(c) Any royalty shortfall shall bear interest at the composite "prime rate" (as published in the Wall Street Journal) plus two percent (2%).

6. Licensee may not assign, transfer or sub-licence any of its rights hereunder without Licensor's prior written consent and any purported such assignment, transfer or licence shall be void *ab initio*.

7. (a) Licensor may terminate this Agreement by giving Licensee notice in any of the following circumstances:

(i) If Licensee fails to perform any of its material obligations under this agreement for any reason (including impossibility of performance) and such failure has not been remedied to Licensor's satisfaction within thirty (30) days after Licensor gives Licensee notice of it.

(ii) If Licensee attempts to assign any of its rights under this agreement without Licensor's prior written consent, or if any of those rights succeeds to any other person or entity by operation of law.

(iii) If the control or ownership of Licensee or the majority of Licensee's capital stock vests, directly or indirectly, in any person or entity except the persons or entities who actually own Licensee's outstanding capital stock now, without Licensor's prior written consent.

(b) This Agreement will terminate automatically, without notice, if Licensee is dissolved or its assets are liquidated, or if Licensee becomes insolvent, or if a proceeding in bankruptcy, for a reorganization, or for other relief from the claims of creditors, or any similar proceeding, takes place with respect to Licensee or its property.

(c) A termination of the Agreement under this paragraph 7 will not limit or affect any of Licensor's other rights.

(d) Upon the expiration or termination of the Term, all of Licensee's rights hereunder shall terminate. Licensee shall withdraw the Ring Tones hereunder from the database of possible Customer retrieval and shall make no further use of the Composition(s), or of the Recordings or Ring Tones whatsoever.

8. (a) Licensor represents, warrants and agrees as follows (with respect to the Licensor Share of the Compositions described in Schedules A and B):

(i) Licensor has full right, power and authority to enter into this agreement and to grant to the Licensee all rights herein set out upon the terms and conditions herein.

(ii) The Compositions are original copyrighted works and in no way infringe the copyright or other rights of any third party.

(iii) Licensor will pay any and all fees, royalties and other sums due to the songwriters of the Compositions as well as to publishers and copublishers whom Licensor administer with respect to the royalties received by it hereunder.

(b) Licensee warrants, represents and agrees as follows:

(i) Licensee has the full right, power and authority to enter into and perform this agreement upon the terms and conditions set forth herein.

(ii) Licensee shall take all steps reasonably necessary to secure and maintain protection of the Compositions, by way of encryption or otherwise, under copyright and equivalent or similar laws throughout the Territory.

(iii) Upon receipt of written instruction from Licensor, Licensee shall not, to the extent permitted by law, license any Customer or other user that is engaged in piracy, illegal activities or other unauthorized use of the Ring Tones or the Compositions, or that has otherwise been designated by the RIAA, IFPI or other such body as an illegal producer or distributor.

(iv) Licensee shall either own or control and/or have valid and enforceable licenses with the applicable rights holders with respect to all aspects of their Ring Tone service including, without limitation, any Master Recordings and/or Graphics.

(c) Each party (for these purposes, "Indemnitor") shall indemnify, defend and hold the other party ("Indemnitee"), its successors, assigns, agents and licensees, free and harmless from and against any and all claims, demands, damages, expenses, losses or costs (including reasonable attorneys' fees and costs), or any sums paid in settlement, arising out of or incurred as a direct result of any actual breach of the representations, warranties, agreements and undertakings of or by the party concerned. Indemnitee shall notify Indemnitor of any claim presented to Indemnitee by a third party. Indemnitor shall defend any third party claim, at its sole expense, with counsel approved by Indemnitee, except that, at Indemnitee's option, Indemnitee may defend the claim (at Indemnitor's sole expense) and shall consult with Indemnitor about choice of counsel and the conduct of the proceeding. No such claim asserted by a third party may be settled by Indemnitee without Indemnitor's prior written consent (such consent not to be unreasonably withheld or delayed), so long as Indemnitor is actively defending such claim in a manner consistent with industry norms, unless Indemnitee shall agree not to seek indemnity from Indemnitor for any settlement payment made by Indemnitee to the claimant.

9. (a) For the avoidance of doubt, no rights are granted in any Master Recordings of the Composition(s) or Graphics, and no rights are granted other than those expressly referred to herein.

(b) Licensee shall not issue any press releases or other forms of publicity materials which make reference to Licensor or this agreement without the prior written consent of Licensor.

(c) Licensor will have no obligation to renew or extend the License after the end of the Term, and may decline to do so in its unrestricted discretion.

(d) Licensee shall be responsible for securing, and paying for, whatever public performance licenses required in connection with its Ring Tone service throughout the Territory. For avoidance of doubt, it is acknowledged and agreed that the Royalty shall not be inclusive of public performance monies payable in connection with Ring Tones, if any, and no public performance license is granted hereunder.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of New York whose courts shall have exclusive jurisdiction over any dispute arising herefrom.

11. This Agreement contains all of the terms agreed between the parties and replaces any and all previous agreements whether written or oral concerning the subject matter hereof.

AS WITNESS the hands of the parties the day and year first above written

Zomba Enterprises Inc.

By: _____

Genexies Mobile S.L.

By: _____

GENEXIES.com
THE ALWAYS-ON GENERATION
Avda. Ho Kii 94, Bloque 1 Bajos 28006 Madrid
Tel: +34 91 7661517 Fax: +34 91 3022440
info@genexies.com www.genexies.com
CIF 80210505

EXHIBIT CO 0259

RING TONE LICENSE

December 6 2005 JL

Agreement made ~~November 1, 2004~~ between Zomba Enterprises Inc., 1540 Broadway, New York, NY 10036 (hereinafter referred to as "Licensor") and Mobile Lifestyles, Inc., 1427 East Penrose Drive, Salt Lake City, Utah 84103 (hereinafter "Licensee").

For good and valuable consideration, Licensor and the Licensee hereby agree as follows:

December 5, 2005 JL ZB JL

1. (a) Licensor grants to Licensee the non-exclusive license for the territory of the United States ("the Territory") for a term commencing on ~~November 1, 2004~~ and expiring on ~~October 31, 2005~~ December 5, 2005 ("the Term") to use the musical works listed on Schedule "A" attached hereto ("the Composition(s)") (but solely to the extent of Licensor's interest therein) as follows:

(i) To create an arrangement of the Compositions consisting of musical tones (the "Arrangement") provided that in no event shall any arrangement change the basic melody or fundamental character of the applicable Composition, and record up to thirty (30) seconds of an Arrangement (the "Recording(s)");

(ii) To transform the Recordings into mobile ring tone formats or to incorporate up to thirty (30) seconds of a Composition as embodied in a pre-existing master recording (a "Master Recording") into a ring tone format (individually and collectively, a "Ring Tone");

(iii) To create a database containing the Ring Tone(s) available to Licensee's customers or subscribers and/or to third party companies serviced by Licensee ("Third Party Companies") which in turn service customers or subscribers ("the Customers")

(iv) Subject to paragraph 1(b) below, to synchronize Ring Tones with graphic images (a "Graphic") (collectively, a "Graphic Tone") which may be viewed solely on a Customer's mobile telephone;

(v) To download or otherwise transmit Ring Tones or Graphic Tones onto mobile telephones (for a fee or otherwise) for personal use by the Customers (a "Download"), for the express purpose of such Ring Tone(s) sounding as a ringing alert on such mobile telephones;

(vi) To promote and advertise segments of the Graphic Tones or Ring Tones (not to exceed thirty (30) seconds each) on Customer's mobile phones and Licensee's and/or Third Party Companies' web site(s) for the sole purpose of allowing a Customer to preview a Ring Tone before purchasing same.

All of the foregoing activities shall be conducted at Licensee's sole expense.

(b) Notwithstanding anything to the contrary contained herein, each Graphic Tone shall be subject to Licensor's prior written approval and shall be listed on Schedule "B" attached hereto.

(c) Schedule "A" and Schedule "B" may be amended, in Licensor's sole discretion, from time to time as reasonably requested by Licensee on a composition-by-composition basis, subject to the terms of this Agreement. In addition, Licensor may, in its sole discretion, inform Licensee from time to time of additional Compositions it wishes to make available for license hereunder.

(d) All Arrangements created pursuant to this license shall be considered a "work made for hire" for Licensor. In the event the Arrangements shall be deemed not to be a work made for hire, then the Licensee hereby sells, assigns, and transfers over to Licensor, and releases and quitclaims unto Licensor, its successors and assigns, all right, title and interest in and to the Arrangements and all rights therein and thereto, for the United States and throughout the world, forever, including any and all copyright terms, and all extension terms of copyright, for all uses and purposes whether now known or hereafter created, free from payment of any royalty or further compensation.

2. Licensor reserves all rights in and to the Composition(s), including the right in its sole discretion to restrict or rescind the use of any Composition at any time. In the event that Licensor shall request Licensee to cease using any Composition, Licensee shall do so as soon as practicable after receiving notice.

3. In consideration of the foregoing licence, Licensee shall pay to Licensor the following:

(a) Ring Tones: With respect to each individual Download of a Ring Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Ring Tone Downloaded (the "Ring Tone Royalty"), provided that in no circumstances shall the Ring Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.13 per Download irrespective of the price (if any) actually charged;

(b) Graphic Tones: With respect to each individual Download of a Graphic Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by fifteen percent (15%) of the actual price charged to Customers for each Graphic Tone Downloaded (the "Graphic Tone Royalty"), provided that in no circumstances shall the Graphic Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.20 per Download irrespective of the price (if any) actually charged;

(c) Advance: An advance of $7,500 recoupable from all Royalties payable hereunder. $3750 is due promptly following execution of the agreement and the remaining balance is due within 45 days after said execution date.

(d) If at any time during the Term hereof Licensee pays any royalty or other service fee in connection with its Ring Tone or Graphic Tone service within the Territory to any other owner or administrator of musical compositions higher than the Ring Tone Royalty or Graphic Tone Royalty specified hereunder, on a per composition basis or otherwise, Licensee shall pay such higher royalty to Licensor retroactively to the first accounting period during which such higher royalty is accounted to such other owner or administrator.

4. Within forty five (45) days after the end of each quarterannual period, i.e. ending March 31, June 30, September 30 and December 31, Licensee shall render to Licensor a true and detailed accounting of (i) all Ring Tones and Graphic Tones Downloaded; and (ii) all Ring Tones and Graphic Tones created. Each accounting shall report each Composition by title, song code number (as indicated on Schedules A and B), the number of Downloads and the resultant applicable Royalties due hereunder and be accompanied by payment to Licensor of all Royalties due. All accountings and resultant royalties and fees shall be forwarded to Zomba Enterprises Inc., 8750 Wilshire Boulevard, Beverly Hills, CA 90211, attn: Director of Royalties.

5. (a) Licensee shall maintain accurate and complete records and books of account detailing the creation of Ring Tones and Graphic Tones hereunder and all Downloads and containing all other information needed to compute and verify the amounts payable to Licensor hereunder. Licensor may audit those books and records. Licensor may make such an examination for a particular statement only once. Licensor may conduct such audit only during Licensee's usual business hours, and at the place where it keeps the books and records to be examined, on at least thirty (30) days prior notice.

(b) Such audit shall be conducted at Licensor's sole expense, except that if any audit reveals an error resulting in an underpayment to Licensor of five percent (5%) or more of the total amount accounted to Licensor during the accounting periods audited, then Licensee shall pay to Licensor all reasonable audit costs, including travel, hotel and per diems, together with the underpayment.

(c) Any royalty shortfall shall bear interest at the composite "prime rate" (as published in the Wall Street Journal) plus two percent (2%).

6. Licensee may not assign, transfer or sub-licence any of its rights hereunder without Licensor's prior written consent and any purported such assignment, transfer or licence shall be void *ab initio*.

7. (a) Licensor may terminate this Agreement by giving Licensee notice in any of the following circumstances:

(i) If Licensee fails to perform any of its material obligations under this agreement for

any reason (including impossibility of performance) and such failure has not been remedied to Licensor's satisfaction within thirty (30) days after Licensor gives Licensee notice of it.

(ii) If Licensee attempts to assign any of its rights under this agreement without Licensor's prior written consent, or if any of those rights succeeds to any other person or entity by operation of law.

(iii) If the control or ownership of Licensee or the majority of Licensee's capital stock vests, directly or indirectly, in any person or entity except the persons or entities who actually own Licensee's outstanding capital stock now, without Licensor's prior written consent.

(b) This Agreement will terminate automatically, without notice, if Licensee is dissolved or its assets are liquidated, or if Licensee becomes insolvent, or if a proceeding in bankruptcy, for a reorganization, or for other relief from the claims of creditors, or any similar proceeding, takes place with respect to Licensee or its property.

(c) A termination of the Agreement under this paragraph 7 will not limit or affect any of Licensor's other rights.

(d) Upon the expiration or termination of the Term, all of Licensee's rights hereunder shall terminate. Licensee shall withdraw the Ring Tones hereunder from the database of possible Customer retrieval and shall make no further use of the Composition(s), or of the Recordings or Ring Tones whatsoever.

8. (a) Licensor represents, warrants and agrees as follows (with respect to the Licensor Share of the Compositions described in Schedules A and B):

(i) Licensor has full right, power and authority to enter into this agreement and to grant to the Licensee all rights herein set out upon the terms and conditions herein.

(ii) The Compositions are original copyrighted works and in no way infringe the copyright or other rights of any third party.

(iii) Licensor will pay any and all fees, royalties and other sums due to the songwriters of the Compositions as well as to publishers and copublishers whom Licensor administer with respect to the royalties received by it hereunder.

(b) Licensee warrants, represents and agrees as follows:

(i) Licensee has the full right, power and authority to enter into and perform this agreement upon the terms and conditions set forth herein.

(ii) Licensee shall take all steps reasonably necessary to secure and maintain protection of the Compositions, by way of encryption or otherwise, under copyright and equivalent or similar laws throughout the Territory.

(iii) Upon receipt of written instruction from Licensor, Licensee shall not, to the extent permitted by law, license any Customer or other user that is engaged in piracy, illegal activities or other unauthorized use of the Ring Tones or the Compositions, or that has otherwise been designated by the RIAA, IFPI or other such body as an illegal producer or distributor.

(iv) Licensee shall either own or control and/or have valid and enforceable licenses with the applicable rights holders with respect to all aspects of their Ring Tone service including, without limitation, any Master Recordings and/or Graphics.

(c) Each party (for these purposes, "Indemnitor") shall indemnify, defend and hold the other party ("Indemnitee"), its successors, assigns, agents and licensees, free and harmless from and against any and all claims, demands, damages, expenses, losses or costs (including reasonable attorneys' fees and costs), or any sums paid in settlement, arising out of or incurred as a direct result

of any actual breach of the representations, warranties, agreements and undertakings of or by the party concerned. Indemnitee shall notify Indemnitor of any claim presented to Indemnitee by a third party. Indemnitor shall defend any third party claim, at its sole expense, with counsel approved by Indemnitee, except that, at Indemnitee's option, Indemnitee may defend the claim (at Indemnitor's sole expense) and shall consult with Indemnitor about choice of counsel and the conduct of the proceeding. No such claim asserted by a third party may be settled by Indemnitee without Indemnitor's prior written consent (such consent not to be unreasonably withheld or delayed), so long as Indemnitor is actively defending such claim in a manner consistent with industry norms, unless Indemnitee shall agree not to seek indemnity from Indemnitor for any settlement payment made by Indemnitee to the claimant.

9. (a) For the avoidance of doubt, no rights are granted in any Master Recordings of the Composition(s) or Graphics, and no rights are granted other than those expressly referred to herein.

(b) Licensee shall not issue any press releases or other forms of publicity materials which make reference to Licensor or this agreement without the prior written consent of Licensor.

(c) Licensor will have no obligation to renew or extend the License after the end of the Term, and may decline to do so in its unrestricted discretion.

(d) Licensee shall be responsible for securing, and paying for, whatever public performance licenses required in connection with its Ring Tone service throughout the Territory. For avoidance of doubt, it is acknowledged and agreed that the Royalty shall not be inclusive of public performance monies payable in connection with Ring Tones, if any, and no public performance license is granted hereunder.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of New York whose courts shall have exclusive jurisdiction over any dispute arising herefrom.

11. This Agreement contains all of the terms agreed between the parties and replaces any and all previous agreements whether written or oral concerning the subject matter hereof.

AS WITNESS the hands of the parties the day and year first above written

Zomba Enterprises Inc.

By: _____

Mobile Lifestyles, Inc.

By: _____

EXHIBIT CO 0260

RING TONE LICENSE

Agreement made December 1, 2005 between BMG Music Publishing NA, Inc. 245 Fifth Avenue, New York, NY 10016 (hereinafter referred to as "Licensor") and Mobile Lifestyles, Inc. 2000 Ponce de Leon Blvd., 6th Floor, Coral Gables, FL 33134 (hereinafter "Licensee").

For good and valuable consideration, Licensor and the Licensee hereby agree as follows:

1. (a) Licensor grants to Licensee the non-exclusive license for the territory of the United States ("the Territory") for a term commencing on December 1, 2005 and expiring on November 30, 2005 ("the Term") to use the musical works listed on Schedule "A" attached hereto ("the Composition(s)") (but solely to the extent of Licensor's interest therein) as follows:

(i) To create an arrangement of the Compositions consisting of musical tones (the "Arrangement") provided that in no event shall any arrangement change the basic melody or fundamental character of the applicable Composition, and record up to thirty (30) seconds of an Arrangement (the "Recording(s)");

(ii) To transform the Recordings into mobile ring tone formats or to incorporate up to thirty (30) seconds of a Composition as embodied in a pre-existing master recording (a "Master Recording") into a ring tone format (individually and collectively, a "Ring Tone");

(iii) To create a database containing the Ring Tone(s) available to Licensee's customers or subscribers and/or to third party companies serviced by Licensee ("Third Party Companies") which in turn service customers or subscribers ("the Customers")

(iv) Subject to paragraph 1(b) below, to synchronize Ring Tones with graphic images (a "Graphic") (collectively, a "Graphic Tone") which may be viewed solely on a Customer's mobile telephone;

(v) To download or otherwise transmit Ring Tones or Graphic Tones onto mobile telephones (for a fee or otherwise) for personal use by the Customers (a "Download"), for the express purpose of such Ring Tone(s) sounding as a ringing alert on such mobile telephones;

(vi) To promote and advertise segments of the Graphic Tones or Ring Tones (not to exceed thirty (30) seconds each) on Customer's mobile phones and Licensee's and/or Third Party Companies' web site(s) for the sole purpose of allowing a Customer to preview a Ring Tone before purchasing same.

All of the foregoing activities shall be conducted at Licensee's sole expense.

(b) Notwithstanding anything to the contrary contained herein, each Graphic Tone shall be subject to Licensor's prior written approval and shall be listed on Schedule "B" attached hereto.

(c) Schedule "A" and Schedule "B" may be amended, in Licensor's sole discretion, from time to time as reasonably requested by Licensee on a composition-by-composition basis, subject to the terms of this Agreement. In addition, Licensor may, in its sole discretion, inform Licensee from time to time of additional Compositions it wishes to make available for license hereunder.

(d) All Arrangements created pursuant to this license shall be considered a "work made for hire" for Licensor. In the event the Arrangements shall be deemed not to be a work made for hire, then the Licensee hereby sells, assigns, and transfers over to Licensor, and releases and quitclaims unto Licensor, its successors and assigns, all right, title and interest in and to the Arrangements and all rights therein and thereto, for the United States and throughout the world, forever, including any and all copyright terms, and all extension terms of copyright, for all uses and purposes whether now known or hereafter created, free from payment of any royalty or further compensation.

2. Licensor reserves all rights in and to the Composition(s), including the right in its sole discretion to restrict or rescind the use of any Composition at any time. In the event that Licensor shall request Licensee to cease using any Composition, Licensee shall do so as soon as practicable after receiving notice.

3. In consideration of the foregoing licence, Licensee shall pay to Licensor the following:

(a) Ring Tones: With respect to each individual Download of a Ring Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Ring Tone Downloaded (the "Ring Tone Royalty"), provided that in no circumstances shall the Ring Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.125 per Download irrespective of the price (if any) actually charged;

(b) Graphic Tones: With respect to each individual Download of a Graphic Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Graphic Tone Downloaded (the "Graphic Tone Royalty"), provided that in no circumstances shall the Graphic Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.20 per Download irrespective of the price (if any) actually charged;

(c) Prior Advance: Reference is made to the advance of $7,500 previously paid in connection with the agreement between Licensee and Licensor dated December 6, 2004 (the "Prior Agreement"). Each party acknowledges and agrees that $104.00 of the Prior Advance has been recouped and that the remaining balance of such advance (i.e. $7396.00) shall be treated as the advance under this agreement and shall be recoupable from royalties payable hereunder.

(d) If at any time during the Term hereof Licensee pays any royalty, fixing or other service fee in connection with its Ring Tone or Graphic Tone service within the Territory to any other owner or administrator of musical compositions higher than the Ring Tone Royalty or Graphic Tone Royalty specified hereunder, on a per composition basis or otherwise, Licensee shall pay such higher royalty or fixing fee to Licensor retroactively to the first accounting period during which such higher royalty or fixing fee is accounted to such other owner or administrator.

(e) Reference is made to record companies which control certain Master Recordings (the "Record Companies") who may enter in agreements with Licensee which provide, among other things, that the Record Companies will pay to Licensor a royalty in connection with Compositions contained in Master Recordings exploited as Ring Tones by Licensee (the "RC Tones"). Only to the extent that Licensor enters into separate license agreements with such Record Companies which specifically provide that the applicable Record Company will compensate Licensor with respect to the sale of RC Tones shall Licensee not be obligated to pay Licensor Ring Tone Royalties in connection with the sale of RC Tones.

4. Within forty five (45) days after the end of each quarterannual period, i.e. ending March 31, June 30, September 30 and December 31, Licensee shall render to Licensor a true and detailed accounting of (i) all Ring Tones and Graphic Tones Downloaded; and (ii) all Ring Tones and Graphic Tones created. Each accounting shall report each Composition by title, song code number (as indicated on Schedules A and B), the number of Downloads and the resultant applicable Royalties due hereunder and be accompanied by payment to Licensor of all Royalties due. All accountings and resultant royalties and fees shall be forwarded to BMG Music Publishing NA, Inc., 8750 Wilshire Boulevard, Beverly Hills, CA 90211, attn: Director of Royalties.

5. (a) Licensee shall maintain accurate and complete records and books of account detailing the creation of Ring Tones and Graphic Tones hereunder and all Downloads and containing all other information needed to compute and verify the amounts payable to Licensor hereunder. Licensor may audit those books and records. Licensor may make such an examination for a particular statement only once. Licensor may conduct such audit only during Licensee's usual business hours, and at the place where it keeps the books and records to be examined, on at least thirty (30) days prior notice.

(b) Such audit shall be conducted at Licensor's sole expense, except that if any audit reveals an error resulting in an underpayment to Licensor of five percent (5%) or more of the total amount accounted to Licensor during the accounting periods audited, then Licensee shall pay to Licensor all reasonable audit costs, including travel, hotel and per diems, together with the underpayment.

(c) Any royalty shortfall shall bear interest at the composite "prime rate" (as published in the Wall Street Journal) plus two percent (2%).

6. Licensee may not assign, transfer or sub-licence any of its rights hereunder without Licensor's prior written consent and any purported such assignment, transfer or licence shall be void *ab initio*.

7. (a) Licensor may terminate this Agreement by giving Licensee notice in any of the following circumstances:

(i) If Licensee fails to perform any of its material obligations under this agreement for any reason (including impossibility of performance) and such failure has not been remedied to Licensor's satisfaction within thirty (30) days after Licensor gives Licensee notice of it.

(ii) If Licensee attempts to assign any of its rights under this agreement without Licensor's prior written consent, or if any of those rights succeeds to any other person or entity by operation of law.

(iii) If the control or ownership of Licensee or the majority of Licensee's capital stock vests, directly or indirectly, in any person or entity except the persons or entities who actually own Licensee's outstanding capital stock now, without Licensor's prior written consent.

(b) This Agreement will terminate automatically, without notice, if Licensee is dissolved or its assets are liquidated, or if Licensee becomes insolvent, or if a proceeding in bankruptcy, for a reorganization, or for other relief from the claims of creditors, or any similar proceeding, takes place with respect to Licensee or its property.

(c) A termination of the Agreement under this paragraph 7 will not limit or affect any of Licensor's other rights.

(d) Upon the expiration or termination of the Term, all of Licensee's rights hereunder shall terminate. Licensee shall withdraw the Ring Tones hereunder from the database of possible Customer retrieval and shall make no further use of the Composition(s), or of the Recordings or Ring Tones whatsoever.

8. (a) Licensor represents, warrants and agrees as follows (with respect to the Licensor Share of the Compositions described in Schedules A and B):

(i) Licensor has full right, power and authority to enter into this agreement and to grant to the Licensee all rights herein set out upon the terms and conditions herein.

(ii) The Compositions are original copyrighted works and in no way infringe the copyright or other rights of any third party.

(iii) Licensor will pay any and all fees, royalties and other sums due to the songwriters of the Compositions as well as to publishers and copublishers whom Licensor administer with respect to the royalties received by it hereunder.

(b) Licensee warrants, represents and agrees as follows:

(i) Licensee has the full right, power and authority to enter into and perform this agreement upon the terms and conditions set forth herein.

(ii) Licensee shall take all steps reasonably necessary to secure and maintain protection of the Compositions, by way of encryption or otherwise, under copyright and equivalent or similar laws throughout the Territory.

(iii) Upon receipt of written instruction from Licensor, Licensee shall not, to the extent permitted by law, license any Customer or other user that is engaged in piracy, illegal activities or

other unauthorized use of the Ring Tones or the Compositions, or that has otherwise been designated by the RIAA, IFPI or other such body as an illegal producer or distributor.

(iv) Licensee shall either own or control and/or have valid and enforceable licenses with the applicable rights holders with respect to all aspects of their Ring Tone service including, without limitation, any Master Recordings and/or Graphics.

(c) Each party (for these purposes, "Indemnitor") shall indemnify, defend and hold the other party ("Indemnitee"), its successors, assigns, agents and licensees, free and harmless from and against any and all claims, demands, damages, expenses, losses or costs (including reasonable attorneys' fees and costs), or any sums paid in settlement, arising out of or incurred as a direct result of any actual breach of the representations, warranties, agreements and undertakings of or by the party concerned. Indemnitee shall notify Indemnitor of any claim presented to Indemnitee by a third party. Indemnitor shall defend any third party claim, at its sole expense, with counsel approved by Indemnitee, except that, at Indemnitee's option, Indemnitee may defend the claim (at Indemnitor's sole expense) and shall consult with Indemnitor about choice of counsel and the conduct of the proceeding. No such claim asserted by a third party may be settled by Indemnitee without Indemnitor's prior written consent (such consent not to be unreasonably withheld or delayed), so long as Indemnitor is actively defending such claim in a manner consistent with industry norms, unless Indemnitee shall agree not to seek indemnity from Indemnitor for any settlement payment made by Indemnitee to the claimant.

9. (a) For the avoidance of doubt, no rights are granted in any Master Recordings of the Composition(s) or Graphics, and no rights are granted other than those expressly referred to herein.

(b) Licensee shall not issue any press releases or other forms of publicity materials which make reference to Licensor or this agreement without the prior written consent of Licensor.

(c) Licensor will have no obligation to renew or extend the License after the end of the Term, and may decline to do so in its unrestricted discretion.

(d) Licensee shall be responsible for securing, and paying for, whatever public performance licenses required in connection with its Ring Tone service throughout the Territory. For avoidance of doubt, it is acknowledged and agreed that the Royalty shall not be inclusive of public performance monies payable in connection with Ring Tones, if any, and no public performance license is granted hereunder.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of New York whose courts shall have exclusive jurisdiction over any dispute arising herefrom.

11. This Agreement contains all of the terms agreed between the parties and replaces any and all previous agreements whether written or oral concerning the subject matter hereof.

AS WITNESS the hands of the parties the day and year first above written

BMG Music Publishing NA, Inc.

By: _____

Mobile Lifestyles, Inc.

By: _____

EXHIBIT CO 0261

RING TONE LICENSE

Agreement made December 1, 2005 between BMG Music Publishing NA, Inc. 245 Fifth Avenue, New York, NY 10016 (hereinafter referred to as "Licensor") and Buongiorno USA, 235 Lincoln Road, Suite 400, Miami Beach, FL 33139 (hereinafter "Licensee").

For good and valuable consideration, Licensor and the Licensee hereby agree as follows:

1. (a) Licensor grants to Licensee the non-exclusive license for the territory of the United States ("the Territory") for a term commencing on December 1, 2005 and expiring on November 30, 2006 ("the Term") to use the musical works listed on Schedule "A" attached hereto ("the Composition(s)") (but solely to the extent of Licensor's interest therein) as follows:

(i) To create an arrangement of the Compositions consisting of musical tones (the "Arrangement") provided that in no event shall any arrangement change the basic melody or fundamental character of the applicable Composition, and record up to thirty (30) seconds of an Arrangement (the "Recording(s)");
(ii) To transform the Recordings into mobile ring tone formats or to incorporate up to thirty (30) seconds of a Composition as embodied in a pre-existing master recording (a "Master Recording") into a ring tone format (individually and collectively, a "Ring Tone");
(iii) To create a database containing the Ring Tone(s) available to Licensee's customers or subscribers and/or to third party companies serviced by Licensee ("Third Party Companies") which in turn service customers or subscribers ("the Customers")
(iv) Subject to paragraph 1(b) below, to synchronize Ring Tones with graphic images (a "Graphic") (collectively, a "Graphic Tone") which may be viewed solely on a Customer's mobile telephone;
(v) To download or otherwise transmit Ring Tones or Graphic Tones onto mobile telephones (for a fee or otherwise) for personal use by the Customers (a "Download"), for the express purpose of such Ring Tone(s) sounding as a ringing alert on such mobile telephones;
(vi) To promote and advertise segments of the Graphic Tones or Ring Tones (not to exceed thirty (30) seconds each) on Customer's mobile phones and Licensee's and/or Third Party Companies' web site(s) for the sole purpose of allowing a Customer to preview a Ring Tone before purchasing same.

All of the foregoing activities shall be conducted at Licensee's sole expense.

(b) Notwithstanding anything to the contrary contained herein, each Graphic Tone shall be subject to Licensor's prior written approval and shall be listed on Schedule "B" attached hereto.

(c) Schedule "A" and Schedule "B" may be amended, in Licensor's sole discretion, from time to time as reasonably requested by Licensee on a composition-by-composition basis, subject to the terms of this Agreement. In addition, Licensor may, in its sole discretion, inform Licensee from time to time of additional Compositions it wishes to make available for license hereunder.

(d) All Arrangements created pursuant to this license shall be considered a "work made for hire" for Licensor. In the event the Arrangements shall be deemed not to be a work made for hire, then the Licensee hereby sells, assigns, and transfers over to Licensor, and releases and quitclaims unto Licensor, its successors and assigns, all right, title and interest in and to the Arrangements and all rights therein and thereto, for the United States and throughout the world, forever, including any and all copyright terms, and all extension terms of copyright, for all uses and purposes whether now known or hereafter created, free from payment of any royalty or further compensation.

2. Licensor reserves all rights in and to the Composition(s), including the right in its sole discretion to restrict or rescind the use of any Composition at any time. In the event that Licensor shall request Licensee to cease using any Composition, Licensee shall do so as soon as practicable after receiving notice.

3. In consideration of the foregoing licence, Licensee shall pay to Licensor the following:

(a) Ring Tones: With respect to each individual Download of a Ring Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Ring Tone Downloaded (the "Ring Tone Royalty"), provided that in no circumstances shall the Ring Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.125 per Download irrespective of the price (if any) actually charged;

(b) Graphic Tones: With respect to each individual Download of a Graphic Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Graphic Tone Downloaded (the "Graphic Tone Royalty"), provided that in no circumstances shall the Graphic Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.20 per Download irrespective of the price (if any) actually charged;

(c) Advance: An advance of $2,500 which shall be recoupable from all royalties payable hereunder.

(d) Prior Advance: Reference is made to the advance of $5,000 previously paid in connection with the agreement between Licensor and Licensee dated December 1, 2004 (the "Prior Agreement"). Each party acknowledges and agrees that $4164.04 of the Prior Advance has been recouped and that the remaining balance of such advance (i.e. $835.96) shall be treated as an additional advance under this agreement and shall be recoupable from royalties payable hereunder.

(e) If at any time during the Term hereof Licensee pays any royalty, fixing or other service fee in connection with its Ring Tone or Graphic Tone service within the Territory to any other owner or administrator of musical compositions higher than the Ring Tone Royalty, Graphic Tone Royalty or Fixing Fee specified hereunder, on a per composition basis or otherwise, Licensee shall pay such higher royalty or fixing fee to Licensor retroactively to the first accounting period during which such higher royalty or fixing fee is accounted to such other owner or administrator.

(f) Reference is made to record companies which control certain Master Recordings (the "Record Companies") who may enter in agreements with Licensee which provide, among other things, that the Record Companies will pay to Licensor a royalty in connection with Compositions contained in Master Recordings exploited as Ring Tones by Licensee (the "RC Tones"). Only to the extent that Licensor enters into separate license agreements with such Record Companies which specifically provide that the applicable Record Company will compensate Licensor with respect to the sale of RC Tones shall Licensee not be obligated to pay Licensor Ring Tone Royalties in connection with the sale of RC Tones.

4. Within forty five (45) days after the end of each quarterannual period, i.e. ending March 31, June 30, September 30 and December 31, Licensee shall render to Licensor a true and detailed accounting of (i) all Ring Tones and Graphic Tones Downloaded; and (ii) all Ring Tones and Graphic Tones created. Each accounting shall report each Composition by title, song code number (as indicated on Schedules A and B), the number of Downloads and the resultant applicable Royalties due hereunder and be accompanied by payment to Licensor of all Royalties and Fixing Fees due. All accountings and resultant royalties and fees shall be forwarded to BMG Music Publishing NA, Inc., 8750 Wilshire Boulevard, Beverly Hills, CA 90211, attn: Director of Royalties.

5. (a) Licensee shall maintain accurate and complete records and books of account detailing the creation of Ring Tones and Graphic Tones hereunder and all Downloads and containing all other information needed to compute and verify the amounts payable to Licensor hereunder. Licensor may audit those books and records. Licensor may make such an examination for a particular statement only once. Licensor may conduct such audit only during Licensee's usual business hours, and at the place where it keeps the books and records to be examined, on at least thirty (30) days prior notice.

(b) Such audit shall be conducted at Licensor's sole expense, except that if any audit reveals an error resulting in an underpayment to Licensor of five percent (5%) or more of the total

amount accounted to Licensor during the accounting periods audited, then Licensee shall pay to Licensor all reasonable audit costs, including travel, hotel and per diems, together with the underpayment.

(c) Any royalty shortfall shall bear interest at the composite "prime rate" (as published in the Wall Street Journal) plus two percent (2%).

6. Licensee may not assign, transfer or sub-licence any of its rights hereunder without Licensor's prior written consent and any purported such assignment, transfer or licence shall be void *ab initio*.

7. (a) Licensor may terminate this Agreement by giving Licensee notice in any of the following circumstances:

(i) If Licensee fails to perform any of its material obligations under this agreement for any reason (including impossibility of performance) and such failure has not been remedied to Licensor's satisfaction within thirty (30) days after Licensor gives Licensee notice of it.

(ii) If Licensee attempts to assign any of its rights under this agreement without Licensor's prior written consent, or if any of those rights succeeds to any other person or entity by operation of law.

(iii) If the control or ownership of Licensee or the majority of Licensee's capital stock vests, directly or indirectly, in any person or entity except the persons or entities who actually own Licensee's outstanding capital stock now, without Licensor's prior written consent.

(b) This Agreement will terminate automatically, without notice, if Licensee is dissolved or its assets are liquidated, or if Licensee becomes insolvent, or if a proceeding in bankruptcy, for a reorganization, or for other relief from the claims of creditors, or any similar proceeding, takes place with respect to Licensee or its property.

(c) A termination of the Agreement under this paragraph 7 will not limit or affect any of Licensor's other rights.

(d) Upon the expiration or termination of the Term, all of Licensee's rights hereunder shall terminate. Licensee shall withdraw the Ring Tones hereunder from the database of possible Customer retrieval and shall make no further use of the Composition(s), or of the Recordings or Ring Tones whatsoever.

8. (a) Licensor represents, warrants and agrees as follows (with respect to the Licensor Share of the Compositions described in Schedules A and B):

(i) Licensor has full right, power and authority to enter into this agreement and to grant to the Licensee all rights herein set out upon the terms and conditions herein.

(ii) The Compositions are original copyrighted works and in no way infringe the copyright or other rights of any third party.

(iii) Licensor will pay any and all fees, royalties and other sums due to the songwriters of the Compositions as well as to publishers and copublishers whom Licensor administer with respect to the royalties received by it hereunder.

(b) Licensee warrants, represents and agrees as follows:

(i) Licensee has the full right, power and authority to enter into and perform this agreement upon the terms and conditions set forth herein.

(ii) Licensee shall take all steps reasonably necessary to secure and maintain protection of the Compositions, by way of encryption or otherwise, under copyright and equivalent or similar laws throughout the Territory.

(iii) Upon receipt of written instruction from Licensor, Licensee shall not, to the extent permitted by law, license any Customer or other user that is engaged in piracy, illegal activities or other unauthorized use of the Ring Tones or the Compositions, or that has otherwise been designated by the RIAA, IFPI or other such body as an illegal producer or distributor.

(iv) Licensee shall either own or control and/or have valid and enforceable licenses with the applicable rights holders with respect to all aspects of their Ring Tone service including, without limitation, any Master Recordings and/or Graphics.

(c) Each party (for these purposes, "Indemnitor") shall indemnify, defend and hold the other party ("Indemnitee"), its successors, assigns, agents and licensees, free and harmless from and against any and all claims, demands, damages, expenses, losses or costs (including reasonable attorneys' fees and costs), or any sums paid in settlement, arising out of or incurred as a direct result of any actual breach of the representations, warranties, agreements and undertakings of or by the party concerned. Indemnitee shall notify Indemnitor of any claim presented to Indemnitee by a third party. Indemnitor shall defend any third party claim, at its sole expense, with counsel approved by Indemnitee, except that, at Indemnitee's option, Indemnitee may defend the claim (at Indemnitor's sole expense) and shall consult with Indemnitor about choice of counsel and the conduct of the proceeding. No such claim asserted by a third party may be settled by Indemnitee without Indemnitor's prior written consent (such consent not to be unreasonably withheld or delayed), so long as Indemnitor is actively defending such claim in a manner consistent with industry norms, unless Indemnitee shall agree not to seek indemnity from Indemnitor for any settlement payment made by Indemnitee to the claimant.

9. (a) For the avoidance of doubt, no rights are granted in any Master Recordings of the Composition(s) or Graphics, and no rights are granted other than those expressly referred to herein.

(b) Licensee shall not issue any press releases or other forms of publicity materials which make reference to Licensor or this agreement without the prior written consent of Licensor.

(c) Licensor will have no obligation to renew or extend the License after the end of the Term, and may decline to do so in its unrestricted discretion.

(d) Licensee shall be responsible for securing, and paying for, whatever public performance licenses required in connection with its Ring Tone service throughout the Territory. For avoidance of doubt, it is acknowledged and agreed that the Royalty shall not be inclusive of public performance monies payable in connection with Ring Tones, if any, and no public performance license is granted hereunder.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of New York whose courts shall have exclusive jurisdiction over any dispute arising herefrom.

11. This Agreement contains all of the terms agreed between the parties and replaces any and all previous agreements whether written or oral concerning the subject matter hereof.

AS WITNESS the hands of the parties the day and year first above written

BMG Music Publishing NA, Inc.

By: _____

Buongiorno USA

By: _____

EXHIBIT CO 0262

RING TONE LICENSE

Agreement made December 1, 2005 between Zomba Enterprises Inc. 245 Fifth Avenue, New York, NY 10016 (hereinafter referred to as "Licensor") and Buongiorno USA, 235 Lincoln Road, Suite 400, Miami Beach, FL 33139 (hereinafter "Licensee").

For good and valuable consideration, Licensor and the Licensee hereby agree as follows:

1. (a) Licensor grants to Licensee the non-exclusive license for the territory of the United States ("the Territory") for a term commencing on December 1, 2005 and expiring on November 30, 2006 ("the Term") to use the musical works listed on Schedule "A" attached hereto ("the Composition(s)") (but solely to the extent of Licensor's interest therein) as follows:

(i) To create an arrangement of the Compositions consisting of musical tones (the "Arrangement") provided that in no event shall any arrangement change the basic melody or fundamental character of the applicable Composition, and record up to thirty (30) seconds of an Arrangement (the "Recording(s)");

(ii) To transform the Recordings into mobile ring tone formats or to incorporate up to thirty (30) seconds of a Composition as embodied in a pre-existing master recording (a "Master Recording") into a ring tone format (individually and collectively, a "Ring Tone");

(iii) To create a database containing the Ring Tone(s) available to Licensee's customers or subscribers and/or to third party companies serviced by Licensee ("Third Party Companies") which in turn service customers or subscribers ("the Customers")

(iv) Subject to paragraph 1(b) below, to synchronize Ring Tones with graphic images (a "Graphic") (collectively, a "Graphic Tone") which may be viewed solely on a Customer's mobile telephone;

(v) To download or otherwise transmit Ring Tones or Graphic Tones onto mobile telephones (for a fee or otherwise) for personal use by the Customers (a "Download"), for the express purpose of such Ring Tone(s) sounding as a ringing alert on such mobile telephones;

(vi) To promote and advertise segments of the Graphic Tones or Ring Tones (not to exceed thirty (30) seconds each) on Customer's mobile phones and Licensee's and/or Third Party Companies' web site(s) for the sole purpose of allowing a Customer to preview a Ring Tone before purchasing same.

All of the foregoing activities shall be conducted at Licensee's sole expense.

(b) Notwithstanding anything to the contrary contained herein, each Graphic Tone shall be subject to Licensor's prior written approval and shall be listed on Schedule "B" attached hereto.

(c) Schedule "A" and Schedule "B" may be amended, in Licensor's sole discretion, from time to time as reasonably requested by Licensee on a composition-by-composition basis, subject to the terms of this Agreement. In addition, Licensor may, in its sole discretion, inform Licensee from time to time of additional Compositions it wishes to make available for license hereunder.

(d) All Arrangements created pursuant to this license shall be considered a "work made for hire" for Licensor. In the event the Arrangements shall be deemed not to be a work made for hire, then the Licensee hereby sells, assigns, and transfers over to Licensor, and releases and quitclaims unto Licensor, its successors and assigns, all right, title and interest in and to the Arrangements and all rights therein and thereto, for the United States and throughout the world, forever, including any and all copyright terms, and all extension terms of copyright, for all uses and purposes whether now known or hereafter created, free from payment of any royalty or further compensation.

2. Licensor reserves all rights in and to the Composition(s), including the right in its sole discretion to restrict or rescind the use of any Composition at any time. In the event that Licensor shall request Licensee to cease using any Composition, Licensee shall do so as soon as practicable after receiving notice.

3. In consideration of the foregoing licence, Licensee shall pay to Licensor the following:

(a) Ring Tones: With respect to each individual Download of a Ring Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Ring Tone Downloaded (the "Ring Tone Royalty"), provided that in no circumstances shall the Ring Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.125 per Download irrespective of the price (if any) actually charged;

(b) Graphic Tones: With respect to each individual Download of a Graphic Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Graphic Tone Downloaded (the "Graphic Tone Royalty"), provided that in no circumstances shall the Graphic Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.20 per Download irrespective of the price (if any) actually charged;

(c) Advance: An advance of $2,500 which shall be recoupable from all royalties payable hereunder.

(d) Prior Advance: Reference is made to the advance of $5,000 previously paid in connection with the agreement between Licensor and Licensee dated December 1, 2004 (the "Prior Agreement"). Each party acknowledges and agrees that $3743.57 of the Prior Advance has been recouped and that the remaining balance of such advance (i.e. $1256.43) shall be treated as an additional advance under this agreement and shall be recoupable from royalties payable hereunder.

(e) If at any time during the Term hereof Licensee pays any royalty, fixing or other service fee in connection with its Ring Tone or Graphic Tone service within the Territory to any other owner or administrator of musical compositions higher than the Ring Tone Royalty, Graphic Tone Royalty or Fixing Fee specified hereunder, on a per composition basis or otherwise, Licensee shall pay such higher royalty or fixing fee to Licensor retroactively to the first accounting period during which such higher royalty or fixing fee is accounted to such other owner or administrator.

(f) Reference is made to record companies which control certain Master Recordings (the "Record Companies") who may enter in agreements with Licensee which provide, among other things, that the Record Companies will pay to Licensor a royalty in connection with Compositions contained in Master Recordings exploited as Ring Tones by Licensee (the "RC Tones"). Only to the extent that Licensor enters into separate license agreements with such Record Companies which specifically provide that the applicable Record Company will compensate Licensor with respect to the sale of RC Tones shall Licensee not be obligated to pay Licensor Ring Tone Royalties in connection with the sale of RC Tones.

4. Within forty five (45) days after the end of each quarterannual period, i.e. ending March 31, June 30, September 30 and December 31, Licensee shall render to Licensor a true and detailed accounting of (i) all Ring Tones and Graphic Tones Downloaded; and (ii) all Ring Tones and Graphic Tones created. Each accounting shall report each Composition by title, song code number (as indicated on Schedules A and B), the number of Downloads and the resultant applicable Royalties due hereunder and be accompanied by payment to Licensor of all Royalties and Fixing Fees due. All accountings and resultant royalties and fees shall be forwarded to Zomba Enterprises Inc., 8750 Wilshire Boulevard, Beverly Hills, CA 90211, attn: Director of Royalties.

5. (a) Licensee shall maintain accurate and complete records and books of account detailing the creation of Ring Tones and Graphic Tones hereunder and all Downloads and containing all other information needed to compute and verify the amounts payable to Licensor hereunder. Licensor may audit those books and records. Licensor may make such an examination for a particular statement only once. Licensor may conduct such audit only during Licensee's usual business hours, and at the place where it keeps the books and records to be examined, on at least thirty (30) days prior notice.

(b) Such audit shall be conducted at Licensor's sole expense, except that if any audit reveals an error resulting in an underpayment to Licensor of five percent (5%) or more of the total

amount accounted to Licensor during the accounting periods audited, then Licensee shall pay to Licensor all reasonable audit costs, including travel, hotel and per diems, together with the underpayment.

(c) Any royalty shortfall shall bear interest at the composite "prime rate" (as published in the Wall Street Journal) plus two percent (2%).

6. Licensee may not assign, transfer or sub-licence any of its rights hereunder without Licensor's prior written consent and any purported such assignment, transfer or licence shall be void *ab initio*.

7. (a) Licensor may terminate this Agreement by giving Licensee notice in any of the following circumstances:

(i) If Licensee fails to perform any of its material obligations under this agreement for any reason (including impossibility of performance) and such failure has not been remedied to Licensor's satisfaction within thirty (30) days after Licensor gives Licensee notice of it.

(ii) If Licensee attempts to assign any of its rights under this agreement without Licensor's prior written consent, or if any of those rights succeeds to any other person or entity by operation of law.

(iii) If the control or ownership of Licensee or the majority of Licensee's capital stock vests, directly or indirectly, in any person or entity except the persons or entities who actually own Licensee's outstanding capital stock now, without Licensor's prior written consent.

(b) This Agreement will terminate automatically, without notice, if Licensee is dissolved or its assets are liquidated, or if Licensee becomes insolvent, or if a proceeding in bankruptcy, for a reorganization, or for other relief from the claims of creditors, or any similar proceeding, takes place with respect to Licensee or its property.

(c) A termination of the Agreement under this paragraph 7 will not limit or affect any of Licensor's other rights.

(d) Upon the expiration or termination of the Term, all of Licensee's rights hereunder shall terminate. Licensee shall withdraw the Ring Tones hereunder from the database of possible Customer retrieval and shall make no further use of the Composition(s), or of the Recordings or Ring Tones whatsoever.

8. (a) Licensor represents, warrants and agrees as follows (with respect to the Licensor Share of the Compositions described in Schedules A and B):

(i) Licensor has full right, power and authority to enter into this agreement and to grant to the Licensee all rights herein set out upon the terms and conditions herein.

(ii) The Compositions are original copyrighted works and in no way infringe the copyright or other rights of any third party.

(iii) Licensor will pay any and all fees, royalties and other sums due to the songwriters of the Compositions as well as to publishers and copublishers whom Licensor administer with respect to the royalties received by it hereunder.

(b) Licensee warrants, represents and agrees as follows:

(i) Licensee has the full right, power and authority to enter into and perform this agreement upon the terms and conditions set forth herein.

(ii) Licensee shall take all steps reasonably necessary to secure and maintain protection of the Compositions, by way of encryption or otherwise, under copyright and equivalent or similar laws throughout the Territory.

(iii) Upon receipt of written instruction from Licensor, Licensee shall not, to the extent permitted by law, license any Customer or other user that is engaged in piracy, illegal activities or other unauthorized use of the Ring Tones or the Compositions, or that has otherwise been designated by the RIAA, IFPI or other such body as an illegal producer or distributor.

(iv) Licensee shall either own or control and/or have valid and enforceable licenses with the applicable rights holders with respect to all aspects of their Ring Tone service including, without limitation, any Master Recordings and/or Graphics.

(c) Each party (for these purposes, "Indemnitor") shall indemnify, defend and hold the other party ("Indemnitee"), its successors, assigns, agents and licensees, free and harmless from and against any and all claims, demands, damages, expenses, losses or costs (including reasonable attorneys' fees and costs), or any sums paid in settlement, arising out of or incurred as a direct result of any actual breach of the representations, warranties, agreements and undertakings of or by the party concerned. Indemnitee shall notify Indemnitor of any claim presented to Indemnitee by a third party. Indemnitor shall defend any third party claim, at its sole expense, with counsel approved by Indemnitee, except that, at Indemnitee's option, Indemnitee may defend the claim (at Indemnitor's sole expense) and shall consult with Indemnitor about choice of counsel and the conduct of the proceeding. No such claim asserted by a third party may be settled by Indemnitee without Indemnitor's prior written consent (such consent not to be unreasonably withheld or delayed), so long as Indemnitor is actively defending such claim in a manner consistent with industry norms, unless Indemnitee shall agree not to seek indemnity from Indemnitor for any settlement payment made by Indemnitee to the claimant.

9. (a) For the avoidance of doubt, no rights are granted in any Master Recordings of the Composition(s) or Graphics, and no rights are granted other than those expressly referred to herein.

(b) Licensee shall not issue any press releases or other forms of publicity materials which make reference to Licensor or this agreement without the prior written consent of Licensor.

(c) Licensor will have no obligation to renew or extend the License after the end of the Term, and may decline to do so in its unrestricted discretion.

(d) Licensee shall be responsible for securing, and paying for, whatever public performance licenses required in connection with its Ring Tone service throughout the Territory. For avoidance of doubt, it is acknowledged and agreed that the Royalty shall not be inclusive of public performance monies payable in connection with Ring Tones, if any, and no public performance license is granted hereunder.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of New York whose courts shall have exclusive jurisdiction over any dispute arising herefrom.

11. This Agreement contains all of the terms agreed between the parties and replaces any and all previous agreements whether written or oral concerning the subject matter hereof.

AS WITNESS the hands of the parties the day and year first above written

Zomba Enterprises Inc.

By: _____

Buongiorno USA

By: _____

EXHIBIT CO 0263

RING TONE LICENSE

Agreement made December 1, 2005 between BMG Music Publishing NA, Inc. 245 Fifth Avenue, New York, NY 10016 (hereinafter referred to as "Licensor") and Mobile Streams, Inc., 720 Moorefield Park Drive, Suite 140, Richmond, Virgina 23236 (hereinafter "Licensee").

For good and valuable consideration, Licensor and the Licensee hereby agree as follows:

1. (a) Licensor grants to Licensee the non-exclusive license for the territory of the United States ("the Territory") for a term commencing on December 1, 2005 and expiring on November 30, 2006 ("the Term") to use the musical works listed on Schedule "A" attached hereto ("the Composition(s)") (but solely to the extent of Licensor's interest therein) as follows:

(i) To create an arrangement of the Compositions consisting of musical tones (the "Arrangement") provided that in no event shall any arrangement change the basic melody or fundamental character of the applicable Composition, and record up to thirty (30) seconds of an Arrangement (the "Recording(s)");

(ii) To transform the Recordings into mobile ring tone formats or to incorporate up to thirty (30) seconds of a Composition as embodied in a pre-existing master recording (a "Master Recording") into a ring tone format (individually and collectively, a "Ring Tone");

(iii) To create a database containing the Ring Tone(s) available to Licensee's customers or subscribers and/or to third party companies serviced by Licensee ("Third Party Companies") which in turn service customers or subscribers ("the Customers")

(iv) Subject to paragraph 1(b) below, to synchronize Ring Tones with graphic images (a "Graphic") (collectively, a "Graphic Tone") which may be viewed solely on a Customer's mobile telephone;

(v) To download or otherwise transmit Ring Tones or Graphic Tones onto mobile telephones (for a fee or otherwise) for personal use by the Customers (a "Download"), for the express purpose of such Ring Tone(s) sounding as a ringing alert on such mobile telephones;

(vi) To promote and advertise segments of the Graphic Tones or Ring Tones (not to exceed thirty (30) seconds each) on Customer's mobile phones and Licensee's and/or Third Party Companies' web site(s) for the sole purpose of allowing a Customer to preview a Ring Tone before purchasing same.

All of the foregoing activities shall be conducted at Licensee's sole expense.

(b) Notwithstanding anything to the contrary contained herein, each Graphic Tone shall be subject to Licensor's prior written approval and shall be listed on Schedule "B" attached hereto.

(c) Schedule "A" and Schedule "B" may be amended, in Licensor's sole discretion, from time to time as reasonably requested by Licensee on a composition-by-composition basis, subject to the terms of this Agreement. In addition, Licensor may, in its sole discretion, inform Licensee from time to time of additional Compositions it wishes to make available for license hereunder.

(d) All Arrangements created pursuant to this license shall be considered a "work made for hire" for Licensor. In the event the Arrangements shall be deemed not to be a work made for hire, then the Licensee hereby sells, assigns, and transfers over to Licensor, and releases and quitclaims unto Licensor, its successors and assigns, all right, title and interest in and to the Arrangements and all rights therein and thereto, for the United States and throughout the world, forever, including any and all copyright terms, and all extension terms of copyright, for all uses and purposes whether now known or hereafter created, free from payment of any royalty or further compensation.

2. Licensor reserves all rights in and to the Composition(s), including the right in its sole discretion to restrict or rescind the use of any Composition at any time. In the event that Licensor shall request Licensee to cease using any Composition, Licensee shall do so as soon as practicable after receiving notice.

3. In consideration of the foregoing licence, Licensee shall pay to Licensor the following:

(a) Ring Tones: With respect to each individual Download of a Ring Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Ring Tone Downloaded (the "Ring Tone Royalty"), provided that in no circumstances shall the Ring Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.125 per Download irrespective of the price (if any) actually charged;

(b) Graphic Tones: With respect to each individual Download of a Graphic Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Graphic Tone Downloaded (the "Graphic Tone Royalty"), provided that in no circumstances shall the Graphic Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.20 per Download irrespective of the price (if any) actually charged;

(c) Fixing Fee: For each Composition initially converted to a Ring Tone or Graphic Tone, a one-time non-recoupable fixing fee equal to the Licensor Share of each applicable Composition multiplied by $25 (the "Fixing Fee"). For avoidance of doubt, if a Fixing Fee for a particular Composition is paid in connection with the creation of a Ring Tone, an additional Fixing Fee will not be due if such Ring Tone is later converted to a Graphic Tone. Conversely, if a Graphic Tone is initially created by Licensee, an additional Fixing Fee will not be due if the applicable Composition is later exploited solely as a Ring Tone.

(d) Advance: Reference is made to the advance of $10,000 (the "Prior Advance") previously paid in connection with the agreement between Licensor and Licensee dated December 1, 2003 and subsequently renewed December 1, 2004 (the "Prior Agreement"). Each party acknowledges and agrees that $2990.27 of the Prior Advance has been recouped and that the remaining balance of such advance (i.e. $7009.73) shall be treated as the advance under this agreement and shall be recoupable from royalties payable hereunder.

(e) If at any time during the Term hereof Licensee pays any royalty, fixing or other service fee in connection with its Ring Tone or Graphic Tone service within the Territory to any other owner or administrator of musical compositions higher than the Ring Tone Royalty, Graphic Tone Royalty or Fixing Fee specified hereunder, on a per composition basis or otherwise, Licensee shall pay such higher royalty or fixing fee to Licensor retroactively to the first accounting period during which such higher royalty or fixing fee is accounted to such other owner or administrator.

(f) Reference is made to record companies which control certain Master Recordings (the "Record Companies") who may enter in agreements with Licensee which provide, among other things, that the Record Companies will pay to Licensor a royalty in connection with Compositions contained in Master Recordings exploited as Ring Tones by Licensee (the "RC Tones"). Only to the extent that Licensor enters into separate license agreements with such Record Companies which specifically provide that the applicable Record Company will compensate Licensor with respect to the sale of RC Tones shall Licensee not be obligated to pay Licensor Ring Tone Royalties in connection with the sale of RC Tones.

4. Within forty five (45) days after the end of each quarterannual period, i.e. ending March 31, June 30, September 30 and December 31, Licensee shall render to Licensor a true and detailed accounting of (i) all Ring Tones and Graphic Tones Downloaded; and (ii) all Ring Tones and Graphic Tones created. Each accounting shall report each Composition by title, song code number (as indicated on Schedules A and B), the number of Downloads and the resultant applicable Royalties due hereunder and be accompanied by payment to Licensor of all Royalties and Fixing Fees due. All accountings and resultant royalties and fees shall be forwarded to BMG Music Publishing NA, Inc., 8750 Wilshire Boulevard, Beverly Hills, CA 90211, attn: Director of Royalties.

5. (a) Licensee shall maintain accurate and complete records and books of account detailing the creation of Ring Tones and Graphic Tones hereunder and all Downloads and containing all other information needed to compute and verify the amounts payable to Licensor hereunder. Licensor may audit those books and records. Licensor may make such an examination for a

particular statement only once. Licensor may conduct such audit only during Licensee's usual business hours, and at the place where it keeps the books and records to be examined, on at least thirty (30) days prior notice.

(b) Such audit shall be conducted at Licensor's sole expense, except that if any audit reveals an error resulting in an underpayment to Licensor of five percent (5%) or more of the total amount accounted to Licensor during the accounting periods audited, then Licensee shall pay to Licensor all reasonable audit costs, including travel, hotel and per diems, together with the underpayment.

(c) Any royalty shortfall shall bear interest at the composite "prime rate" (as published in the Wall Street Journal) plus two percent (2%).

6. Licensee may not assign, transfer or sub-licence any of its rights hereunder without Licensor's prior written consent and any purported such assignment, transfer or licence shall be void *ab initio*.

7. (a) Licensor may terminate this Agreement by giving Licensee notice in any of the following circumstances:

(i) If Licensee fails to perform any of its material obligations under this agreement for any reason (including impossibility of performance) and such failure has not been remedied to Licensor's satisfaction within thirty (30) days after Licensor gives Licensee notice of it.

(ii) If Licensee attempts to assign any of its rights under this agreement without Licensor's prior written consent, or if any of those rights succeeds to any other person or entity by operation of law.

(iii) If the control or ownership of Licensee or the majority of Licensee's capital stock vests, directly or indirectly, in any person or entity except the persons or entities who actually own Licensee's outstanding capital stock now, without Licensor's prior written consent.

(b) This Agreement will terminate automatically, without notice, if Licensee is dissolved or its assets are liquidated, or if Licensee becomes insolvent, or if a proceeding in bankruptcy, for a reorganization, or for other relief from the claims of creditors, or any similar proceeding, takes place with respect to Licensee or its property.

(c) A termination of the Agreement under this paragraph 7 will not limit or affect any of Licensor's other rights.

(d) Upon the expiration or termination of the Term, all of Licensee's rights hereunder shall terminate. Licensee shall withdraw the Ring Tones hereunder from the database of possible Customer retrieval and shall make no further use of the Composition(s), or of the Recordings or Ring Tones whatsoever.

8. (a) Licensor represents, warrants and agrees as follows (with respect to the Licensor Share of the Compositions described in Schedules A and B):

(i) Licensor has full right, power and authority to enter into this agreement and to grant to the Licensee all rights herein set out upon the terms and conditions herein.

(ii) The Compositions are original copyrighted works and in no way infringe the copyright or other rights of any third party.

(iii) Licensor will pay any and all fees, royalties and other sums due to the songwriters of the Compositions as well as to publishers and copublishers whom Licensor administer with respect to the royalties received by it hereunder.

(b) Licensee warrants, represents and agrees as follows:

(i) Licensee has the full right, power and authority to enter into and perform this agreement upon the terms and conditions set forth herein.

(ii) Licensee shall take all steps reasonably necessary to secure and maintain protection of the Compositions, by way of encryption or otherwise, under copyright and equivalent or similar laws throughout the Territory.

(iii) Upon receipt of written instruction from Licensor, Licensee shall not, to the extent permitted by law, license any Customer or other user that is engaged in piracy, illegal activities or other unauthorized use of the Ring Tones or the Compositions, or that has otherwise been designated by the RIAA, IFPI or other such body as an illegal producer or distributor.

(iv) Licensee shall either own or control and/or have valid and enforceable licenses with the applicable rights holders with respect to all aspects of their Ring Tone service including, without limitation, any Master Recordings and/or Graphics.

(c) Each party (for these purposes, "Indemnitor") shall indemnify, defend and hold the other party ("Indemnitee"), its successors, assigns, agents and licensees, free and harmless from and against any and all claims, demands, damages, expenses, losses or costs (including reasonable attorneys' fees and costs), or any sums paid in settlement, arising out of or incurred as a direct result of any actual breach of the representations, warranties, agreements and undertakings of or by the party concerned. Indemnitee shall notify Indemnitor of any claim presented to Indemnitee by a third party. Indemnitor shall defend any third party claim, at its sole expense, with counsel approved by Indemnitee, except that, at Indemnitee's option, Indemnitee may defend the claim (at Indemnitor's sole expense) and shall consult with Indemnitor about choice of counsel and the conduct of the proceeding. No such claim asserted by a third party may be settled by Indemnitee without Indemnitor's prior written consent (such consent not to be unreasonably withheld or delayed), so long as Indemnitor is actively defending such claim in a manner consistent with industry norms, unless Indemnitee shall agree not to seek indemnity from Indemnitor for any settlement payment made by Indemnitee to the claimant.

9. (a) For the avoidance of doubt, no rights are granted in any Master Recordings of the Composition(s) or Graphics, and no rights are granted other than those expressly referred to herein.

(b) Licensee shall not issue any press releases or other forms of publicity materials which make reference to Licensor or this agreement without the prior written consent of Licensor.

(c) Licensor will have no obligation to renew or extend the License after the end of the Term, and may decline to do so in its unrestricted discretion.

(d) Licensee shall be responsible for securing, and paying for, whatever public performance licenses required in connection with its Ring Tone service throughout the Territory. For avoidance of doubt, it is acknowledged and agreed that the Royalty shall not be inclusive of public performance monies payable in connection with Ring Tones, if any, and no public performance license is granted hereunder.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of New York whose courts shall have exclusive jurisdiction over any dispute arising herefrom.

11. This Agreement contains all of the terms agreed between the parties and replaces any and all previous agreements whether written or oral concerning the subject matter hereof.

AS WITNESS the hands of the parties the day and year first above written

BMG Music Publishing NA, Inc.

By: _____

Mobile Streams, Inc.

By: _____

EXHIBIT CO 0264

RING TONE LICENSE

Agreement made December 1, 2005 between Zomba Enterprises Inc. 245 Fifth Avenue, New York, NY 10016 (hereinafter referred to as "Licensor") and Mobile Streams, Inc., 720 Moorefield Park Drive, Suite 140, Richmond, Virgina 23236 (hereinafter "Licensee").

For good and valuable consideration, Licensor and the Licensee hereby agree as follows:

1. (a) Licensor grants to Licensee the non-exclusive license for the territory of the United States ("the Territory") for a term commencing on December 1, 2005 and expiring on November 30, 2006 ("the Term") to use the musical works listed on Schedule "A" attached hereto ("the Composition(s)") (but solely to the extent of Licensor's interest therein) as follows:

(i) To create an arrangement of the Compositions consisting of musical tones (the "Arrangement") provided that in no event shall any arrangement change the basic melody or fundamental character of the applicable Composition, and record up to thirty (30) seconds of an Arrangement (the "Recording(s)");

(ii) To transform the Recordings into mobile ring tone formats or to incorporate up to thirty (30) seconds of a Composition as embodied in a pre-existing master recording (a "Master Recording") into a ring tone format (individually and collectively, a "Ring Tone");

(iii) To create a database containing the Ring Tone(s) available to Licensee's customers or subscribers and/or to third party companies serviced by Licensee ("Third Party Companies") which in turn service customers or subscribers ("the Customers")

(iv) Subject to paragraph 1(b) below, to synchronize Ring Tones with graphic images (a "Graphic") (collectively, a "Graphic Tone") which may be viewed solely on a Customer's mobile telephone;

(v) To download or otherwise transmit Ring Tones or Graphic Tones onto mobile telephones (for a fee or otherwise) for personal use by the Customers (a "Download"), for the express purpose of such Ring Tone(s) sounding as a ringing alert on such mobile telephones;

(vi) To promote and advertise segments of the Graphic Tones or Ring Tones (not to exceed thirty (30) seconds each) on Customer's mobile phones and Licensee's and/or Third Party Companies' web site(s) for the sole purpose of allowing a Customer to preview a Ring Tone before purchasing same.

All of the foregoing activities shall be conducted at Licensee's sole expense.

(b) Notwithstanding anything to the contrary contained herein, each Graphic Tone shall be subject to Licensor's prior written approval and shall be listed on Schedule "B" attached hereto.

(c) Schedule "A" and Schedule "B" may be amended, in Licensor's sole discretion, from time to time as reasonably requested by Licensee on a composition-by-composition basis, subject to the terms of this Agreement. In addition, Licensor may, in its sole discretion, inform Licensee from time to time of additional Compositions it wishes to make available for license hereunder.

(d) All Arrangements created pursuant to this license shall be considered a "work made for hire" for Licensor. In the event the Arrangements shall be deemed not to be a work made for hire, then the Licensee hereby sells, assigns, and transfers over to Licensor, and releases and quitclaims unto Licensor, its successors and assigns, all right, title and interest in and to the Arrangements and all rights therein and thereto, for the United States and throughout the world, forever, including any and all copyright terms, and all extension terms of copyright, for all uses and purposes whether now known or hereafter created, free from payment of any royalty or further compensation.

2. Licensor reserves all rights in and to the Composition(s), including the right in its sole discretion to restrict or rescind the use of any Composition at any time. In the event that Licensor shall request Licensee to cease using any Composition, Licensee shall do so as soon as practicable after receiving notice.

3. In consideration of the foregoing licence, Licensee shall pay to Licensor the following:

(a) Ring Tones: With respect to each individual Download of a Ring Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Ring Tone Downloaded (the "Ring Tone Royalty"), provided that in no circumstances shall the Ring Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.125 per Download irrespective of the price (if any) actually charged;

(b) Graphic Tones: With respect to each individual Download of a Graphic Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Graphic Tone Downloaded (the "Graphic Tone Royalty"), provided that in no circumstances shall the Graphic Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.20 per Download irrespective of the price (if any) actually charged;

(c) Fixing Fee: For each Composition initially converted to a Ring Tone or Graphic Tone, a one-time non-recoupable fixing fee equal to the Licensor Share of each applicable Composition multiplied by $25 (the "Fixing Fee"). For avoidance of doubt, if a Fixing Fee for a particular Composition is paid in connection with the creation of a Ring Tone, an additional Fixing Fee will not be due if such Ring Tone is later converted to a Graphic Tone. Conversely, if a Graphic Tone is initially created by Licensee, an additional Fixing Fee will not be due if the applicable Composition is later exploited solely as a Ring Tone.

(d) Advance: Reference is made to the advance of $10,000 (the "Prior Advance") previously paid in connection with the agreement between Licensor and Licensee dated December 1, 2003 and subsequently renewed December 1, 2004 (the "Prior Agreement"). Each party acknowledges and agrees that $2168.22 of the Prior Advance has been recouped and that the remaining balance of such advance (i.e. $7831.78) shall be treated as the advance under this agreement and shall be recoupable from royalties payable hereunder.

(e) If at any time during the Term hereof Licensee pays any royalty, fixing or other service fee in connection with its Ring Tone or Graphic Tone service within the Territory to any other owner or administrator of musical compositions higher than the Ring Tone Royalty, Graphic Tone Royalty or Fixing Fee specified hereunder, on a per composition basis or otherwise, Licensee shall pay such higher royalty or fixing fee to Licensor retroactively to the first accounting period during which such higher royalty or fixing fee is accounted to such other owner or administrator.

(f) Reference is made to record companies which control certain Master Recordings (the "Record Companies") who may enter in agreements with Licensee which provide, among other things, that the Record Companies will pay to Licensor a royalty in connection with Compositions contained in Master Recordings exploited as Ring Tones by Licensee (the "RC Tones"). Only to the extent that Licensor enters into separate license agreements with such Record Companies which specifically provide that the applicable Record Company will compensate Licensor with respect to the sale of RC Tones shall Licensee not be obligated to pay Licensor Ring Tone Royalties in connection with the sale of RC Tones.

4. Within forty five (45) days after the end of each quarterannual period, i.e. ending March 31, June 30, September 30 and December 31, Licensee shall render to Licensor a true and detailed accounting of (i) all Ring Tones and Graphic Tones Downloaded; and (ii) all Ring Tones and Graphic Tones created. Each accounting shall report each Composition by title, song code number (as indicated on Schedules A and B), the number of Downloads and the resultant applicable Royalties due hereunder and be accompanied by payment to Licensor of all Royalties and Fixing Fees due. All accountings and resultant royalties and fees shall be forwarded to Zomba Enterprises Inc., 8750 Wilshire Boulevard, Beverly Hills, CA 90211, attn: Director of Royalties.

5. (a) Licensee shall maintain accurate and complete records and books of account detailing the creation of Ring Tones and Graphic Tones hereunder and all Downloads and containing all other information needed to compute and verify the amounts payable to Licensor hereunder. Licensor may audit those books and records. Licensor may make such an examination for a

particular statement only once. Licensor may conduct such audit only during Licensee's usual business hours, and at the place where it keeps the books and records to be examined, on at least thirty (30) days prior notice.

(b) Such audit shall be conducted at Licensor's sole expense, except that if any audit reveals an error resulting in an underpayment to Licensor of five percent (5%) or more of the total amount accounted to Licensor during the accounting periods audited, then Licensee shall pay to Licensor all reasonable audit costs, including travel, hotel and per diems, together with the underpayment.

(c) Any royalty shortfall shall bear interest at the composite "prime rate" (as published in the Wall Street Journal) plus two percent (2%).

6. Licensee may not assign, transfer or sub-licence any of its rights hereunder without Licensor's prior written consent and any purported such assignment, transfer or licence shall be void *ab initio*.

7. (a) Licensor may terminate this Agreement by giving Licensee notice in any of the following circumstances:

(i) If Licensee fails to perform any of its material obligations under this agreement for any reason (including impossibility of performance) and such failure has not been remedied to Licensor's satisfaction within thirty (30) days after Licensor gives Licensee notice of it.

(ii) If Licensee attempts to assign any of its rights under this agreement without Licensor's prior written consent, or if any of those rights succeeds to any other person or entity by operation of law.

(iii) If the control or ownership of Licensee or the majority of Licensee's capital stock vests, directly or indirectly, in any person or entity except the persons or entities who actually own Licensee's outstanding capital stock now, without Licensor's prior written consent.

(b) This Agreement will terminate automatically, without notice, if Licensee is dissolved or its assets are liquidated, or if Licensee becomes insolvent, or if a proceeding in bankruptcy, for a reorganization, or for other relief from the claims of creditors, or any similar proceeding, takes place with respect to Licensee or its property.

(c) A termination of the Agreement under this paragraph 7 will not limit or affect any of Licensor's other rights.

(d) Upon the expiration or termination of the Term, all of Licensee's rights hereunder shall terminate. Licensee shall withdraw the Ring Tones hereunder from the database of possible Customer retrieval and shall make no further use of the Composition(s), or of the Recordings or Ring Tones whatsoever.

8. (a) Licensor represents, warrants and agrees as follows (with respect to the Licensor Share of the Compositions described in Schedules A and B):

(i) Licensor has full right, power and authority to enter into this agreement and to grant to the Licensee all rights herein set out upon the terms and conditions herein.

(ii) The Compositions are original copyrighted works and in no way infringe the copyright or other rights of any third party.

(iii) Licensor will pay any and all fees, royalties and other sums due to the songwriters of the Compositions as well as to publishers and copublishers whom Licensor administer with respect to the royalties received by it hereunder.

(b) Licensee warrants, represents and agrees as follows:

(i) Licensee has the full right, power and authority to enter into and perform this agreement upon the terms and conditions set forth herein.

(ii) Licensee shall take all steps reasonably necessary to secure and maintain protection of the Compositions, by way of encryption or otherwise, under copyright and equivalent or similar laws throughout the Territory.

(iii) Upon receipt of written instruction from Licensor, Licensee shall not, to the extent permitted by law, license any Customer or other user that is engaged in piracy, illegal activities or other unauthorized use of the Ring Tones or the Compositions, or that has otherwise been designated by the RIAA, IFPI or other such body as an illegal producer or distributor.

(iv) Licensee shall either own or control and/or have valid and enforceable licenses with the applicable rights holders with respect to all aspects of their Ring Tone service including, without limitation, any Master Recordings and/or Graphics.

(c) Each party (for these purposes, "Indemnitor") shall indemnify, defend and hold the other party ("Indemnitee"), its successors, assigns, agents and licensees, free and harmless from and against any and all claims, demands, damages, expenses, losses or costs (including reasonable attorneys' fees and costs), or any sums paid in settlement, arising out of or incurred as a direct result of any actual breach of the representations, warranties, agreements and undertakings of or by the party concerned. Indemnitee shall notify Indemnitor of any claim presented to Indemnitee by a third party. Indemnitor shall defend any third party claim, at its sole expense, with counsel approved by Indemnitee, except that, at Indemnitee's option, Indemnitee may defend the claim (at Indemnitor's sole expense) and shall consult with Indemnitor about choice of counsel and the conduct of the proceeding. No such claim asserted by a third party may be settled by Indemnitee without Indemnitor's prior written consent (such consent not to be unreasonably withheld or delayed), so long as Indemnitor is actively defending such claim in a manner consistent with industry norms, unless Indemnitee shall agree not to seek indemnity from Indemnitor for any settlement payment made by Indemnitee to the claimant.

9. (a) For the avoidance of doubt, no rights are granted in any Master Recordings of the Composition(s) or Graphics, and no rights are granted other than those expressly referred to herein.

(b) Licensee shall not issue any press releases or other forms of publicity materials which make reference to Licensor or this agreement without the prior written consent of Licensor.

(c) Licensor will have no obligation to renew or extend the License after the end of the Term, and may decline to do so in its unrestricted discretion.

(d) Licensee shall be responsible for securing, and paying for, whatever public performance licenses required in connection with its Ring Tone service throughout the Territory. For avoidance of doubt, it is acknowledged and agreed that the Royalty shall not be inclusive of public performance monies payable in connection with Ring Tones, if any, and no public performance license is granted hereunder.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of New York whose courts shall have exclusive jurisdiction over any dispute arising herefrom.

11. This Agreement contains all of the terms agreed between the parties and replaces any and all previous agreements whether written or oral concerning the subject matter hereof.

AS WITNESS the hands of the parties the day and year first above written

Zomba Enterprises Inc.

By: _____

Mobile Streams, Inc.

By: _____

EXHIBIT CO 0265

RING TONE LICENSE

Agreement made December 1, 2005 between Zomba Enterprises Inc. 245 Fifth Avenue, New York, NY 10016 (hereinafter referred to as "Licensor") and Mobile Lifestyles, Inc. 2000 Ponce de Leon Blvd., 6th Floor, Coral Gables, FL 33134 (hereinafter "Licensee").

For good and valuable consideration, Licensor and the Licensee hereby agree as follows:

1. (a) Licensor grants to Licensee the non-exclusive license for the territory of the United States ("the Territory") for a term commencing on December 1, 2005 and expiring on November 30, 2005 ("the Term") to use the musical works listed on Schedule "A" attached hereto ("the Composition(s)") (but solely to the extent of Licensor's interest therein) as follows:

(i) To create an arrangement of the Compositions consisting of musical tones (the "Arrangement") provided that in no event shall any arrangement change the basic melody or fundamental character of the applicable Composition, and record up to thirty (30) seconds of an Arrangement (the "Recording(s)");

(ii) To transform the Recordings into mobile ring tone formats or to incorporate up to thirty (30) seconds of a Composition as embodied in a pre-existing master recording (a "Master Recording") into a ring tone format (individually and collectively, a "Ring Tone");

(iii) To create a database containing the Ring Tone(s) available to Licensee's customers or subscribers and/or to third party companies serviced by Licensee ("Third Party Companies") which in turn service customers or subscribers ("the Customers")

(iv) Subject to paragraph 1(b) below, to synchronize Ring Tones with graphic images (a "Graphic") (collectively, a "Graphic Tone") which may be viewed solely on a Customer's mobile telephone;

(v) To download or otherwise transmit Ring Tones or Graphic Tones onto mobile telephones (for a fee or otherwise) for personal use by the Customers (a "Download"), for the express purpose of such Ring Tone(s) sounding as a ringing alert on such mobile telephones;

(vi) To promote and advertise segments of the Graphic Tones or Ring Tones (not to exceed thirty (30) seconds each) on Customer's mobile phones and Licensee's and/or Third Party Companies' web site(s) for the sole purpose of allowing a Customer to preview a Ring Tone before purchasing same.

All of the foregoing activities shall be conducted at Licensee's sole expense.

(b) Notwithstanding anything to the contrary contained herein, each Graphic Tone shall be subject to Licensor's prior written approval and shall be listed on Schedule "B" attached hereto.

(c) Schedule "A" and Schedule "B" may be amended, in Licensor's sole discretion, from time to time as reasonably requested by Licensee on a composition-by-composition basis, subject to the terms of this Agreement. In addition, Licensor may, in its sole discretion, inform Licensee from time to time of additional Compositions it wishes to make available for license hereunder.

(d) All Arrangements created pursuant to this license shall be considered a "work made for hire" for Licensor. In the event the Arrangements shall be deemed not to be a work made for hire, then the Licensee hereby sells, assigns, and transfers over to Licensor, and releases and quitclaims unto Licensor, its successors and assigns, all right, title and interest in and to the Arrangements and all rights therein and thereto, for the United States and throughout the world, forever, including any and all copyright terms, and all extension terms of copyright, for all uses and purposes whether now known or hereafter created, free from payment of any royalty or further compensation.

2. Licensor reserves all rights in and to the Composition(s), including the right in its sole discretion to restrict or rescind the use of any Composition at any time. In the event that Licensor shall request Licensee to cease using any Composition, Licensee shall do so as soon as practicable after receiving notice.

3. In consideration of the foregoing licence, Licensee shall pay to Licensor the following:

(a) Ring Tones: With respect to each individual Download of a Ring Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Ring Tone Downloaded (the "Ring Tone Royalty"), provided that in no circumstances shall the Ring Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.125 per Download irrespective of the price (if any) actually charged;

(b) Graphic Tones: With respect to each individual Download of a Graphic Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Graphic Tone Downloaded (the "Graphic Tone Royalty"), provided that in no circumstances shall the Graphic Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.20 per Download irrespective of the price (if any) actually charged;

(c) Prior Advance: Reference is made to the advance of $7,500 previously paid in connection with the agreement between Licensee and Licensor dated December 6, 2004 (the "Prior Agreement"). Each party acknowledges and agrees that $26.52 of the Prior Advance has been recouped and that the remaining balance of such advance (i.e. $7473.48) shall be treated as the advance under this agreement and shall be recoupable from royalties payable hereunder.

(d) If at any time during the Term hereof Licensee pays any royalty, fixing or other service fee in connection with its Ring Tone or Graphic Tone service within the Territory to any other owner or administrator of musical compositions higher than the Ring Tone Royalty or Graphic Tone Royalty specified hereunder, on a per composition basis or otherwise, Licensee shall pay such higher royalty or fixing fee to Licensor retroactively to the first accounting period during which such higher royalty or fixing fee is accounted to such other owner or administrator.

(e) Reference is made to record companies which control certain Master Recordings (the "Record Companies") who may enter in agreements with Licensee which provide, among other things, that the Record Companies will pay to Licensor a royalty in connection with Compositions contained in Master Recordings exploited as Ring Tones by Licensee (the "RC Tones"). Only to the extent that Licensor enters into separate license agreements with such Record Companies which specifically provide that the applicable Record Company will compensate Licensor with respect to the sale of RC Tones shall Licensee not be obligated to pay Licensor Ring Tone Royalties in connection with the sale of RC Tones.

4. Within forty five (45) days after the end of each quarterannual period, i.e. ending March 31, June 30, September 30 and December 31, Licensee shall render to Licensor a true and detailed accounting of (i) all Ring Tones and Graphic Tones Downloaded; and (ii) all Ring Tones and Graphic Tones created. Each accounting shall report each Composition by title, song code number (as indicated on Schedules A and B), the number of Downloads and the resultant applicable Royalties due hereunder and be accompanied by payment to Licensor of all Royalties due. All accountings and resultant royalties and fees shall be forwarded to Zomba Enterprises Inc., 8750 Wilshire Boulevard, Beverly Hills, CA 90211, attn: Director of Royalties.

5. (a) Licensee shall maintain accurate and complete records and books of account detailing the creation of Ring Tones and Graphic Tones hereunder and all Downloads and containing all other information needed to compute and verify the amounts payable to Licensor hereunder. Licensor may audit those books and records. Licensor may make such an examination for a particular statement only once. Licensor may conduct such audit only during Licensee's usual business hours, and at the place where it keeps the books and records to be examined, on at least thirty (30) days prior notice.

(b) Such audit shall be conducted at Licensor's sole expense, except that if any audit reveals an error resulting in an underpayment to Licensor of five percent (5%) or more of the total amount accounted to Licensor during the accounting periods audited, then Licensee shall pay to Licensor all reasonable audit costs, including travel, hotel and per diems, together with the underpayment.

(c) Any royalty shortfall shall bear interest at the composite "prime rate" (as published in the Wall Street Journal) plus two percent (2%).

6. Licensee may not assign, transfer or sub-licence any of its rights hereunder without Licensor's prior written consent and any purported such assignment, transfer or licence shall be void *ab initio*.

7. (a) Licensor may terminate this Agreement by giving Licensee notice in any of the following circumstances:

(i) If Licensee fails to perform any of its material obligations under this agreement for any reason (including impossibility of performance) and such failure has not been remedied to Licensor's satisfaction within thirty (30) days after Licensor gives Licensee notice of it.

(ii) If Licensee attempts to assign any of its rights under this agreement without Licensor's prior written consent, or if any of those rights succeeds to any other person or entity by operation of law.

(iii) If the control or ownership of Licensee or the majority of Licensee's capital stock vests, directly or indirectly, in any person or entity except the persons or entities who actually own Licensee's outstanding capital stock now, without Licensor's prior written consent.

(b) This Agreement will terminate automatically, without notice, if Licensee is dissolved or its assets are liquidated, or if Licensee becomes insolvent, or if a proceeding in bankruptcy, for a reorganization, or for other relief from the claims of creditors, or any similar proceeding, takes place with respect to Licensee or its property.

(c) A termination of the Agreement under this paragraph 7 will not limit or affect any of Licensor's other rights.

(d) Upon the expiration or termination of the Term, all of Licensee's rights hereunder shall terminate. Licensee shall withdraw the Ring Tones hereunder from the database of possible Customer retrieval and shall make no further use of the Composition(s), or of the Recordings or Ring Tones whatsoever.

8. (a) Licensor represents, warrants and agrees as follows (with respect to the Licensor Share of the Compositions described in Schedules A and B):

(i) Licensor has full right, power and authority to enter into this agreement and to grant to the Licensee all rights herein set out upon the terms and conditions herein.

(ii) The Compositions are original copyrighted works and in no way infringe the copyright or other rights of any third party.

(iii) Licensor will pay any and all fees, royalties and other sums due to the songwriters of the Compositions as well as to publishers and copublishers whom Licensor administer with respect to the royalties received by it hereunder.

(b) Licensee warrants, represents and agrees as follows:

(i) Licensee has the full right, power and authority to enter into and perform this agreement upon the terms and conditions set forth herein.

(ii) Licensee shall take all steps reasonably necessary to secure and maintain protection of the Compositions, by way of encryption or otherwise, under copyright and equivalent or similar laws throughout the Territory.

(iii) Upon receipt of written instruction from Licensor, Licensee shall not, to the extent permitted by law, license any Customer or other user that is engaged in piracy, illegal activities or

other unauthorized use of the Ring Tones or the Compositions, or that has otherwise been designated by the RIAA, IFPI or other such body as an illegal producer or distributor.

(iv) Licensee shall either own or control and/or have valid and enforceable licenses with the applicable rights holders with respect to all aspects of their Ring Tone service including, without limitation, any Master Recordings and/or Graphics.

(c) Each party (for these purposes, "Indemnitor") shall indemnify, defend and hold the other party ("Indemnitee"), its successors, assigns, agents and licensees, free and harmless from and against any and all claims, demands, damages, expenses, losses or costs (including reasonable attorneys' fees and costs), or any sums paid in settlement, arising out of or incurred as a direct result of any actual breach of the representations, warranties, agreements and undertakings of or by the party concerned. Indemnitee shall notify Indemnitor of any claim presented to Indemnitee by a third party. Indemnitor shall defend any third party claim, at its sole expense, with counsel approved by Indemnitee, except that, at Indemnitee's option, Indemnitee may defend the claim (at Indemnitor's sole expense) and shall consult with Indemnitor about choice of counsel and the conduct of the proceeding. No such claim asserted by a third party may be settled by Indemnitee without Indemnitor's prior written consent (such consent not to be unreasonably withheld or delayed), so long as Indemnitor is actively defending such claim in a manner consistent with industry norms, unless Indemnitee shall agree not to seek indemnity from Indemnitor for any settlement payment made by Indemnitee to the claimant.

9. (a) For the avoidance of doubt, no rights are granted in any Master Recordings of the Composition(s) or Graphics, and no rights are granted other than those expressly referred to herein.

(b) Licensee shall not issue any press releases or other forms of publicity materials which make reference to Licensor or this agreement without the prior written consent of Licensor.

(c) Licensor will have no obligation to renew or extend the License after the end of the Term, and may decline to do so in its unrestricted discretion.

(d) Licensee shall be responsible for securing, and paying for, whatever public performance licenses required in connection with its Ring Tone service throughout the Territory. For avoidance of doubt, it is acknowledged and agreed that the Royalty shall not be inclusive of public performance monies payable in connection with Ring Tones, if any, and no public performance license is granted hereunder.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of New York whose courts shall have exclusive jurisdiction over any dispute arising herefrom.

11. This Agreement contains all of the terms agreed between the parties and replaces any and all previous agreements whether written or oral concerning the subject matter hereof.

AS WITNESS the hands of the parties the day and year first above written

Zomba Enterprises Inc.

By: _____

Mobile Lifestyles, Inc.

By: _____ CEO

EXHIBIT CO 0266

RING TONE LICENSE

Agreement made October 1, 2005 between Zomba Enterprises Inc. Inc. 245 Fifth Avenue, New York, NY 10016 (hereinafter referred to as "Licensor") and Zapptrio, Inc., 1871 The Alameda, Suite 350, San Jose, CA 95126 (hereinafter "Licensee").

For good and valuable consideration, Licensor and the Licensee hereby agree as follows:

1. (a) Licensor grants to Licensee the non-exclusive license for the territory of the United States ("the Territory") for a term commencing on October 1, 2005 and expiring on September 30, 2008 ("the Term") to use the musical works listed on Schedule "A" attached hereto ("the Composition(s)") (but solely to the extent of Licensor's interest therein) as follows:

(i) To create an arrangement of the Compositions consisting of musical tones (the "Arrangement") provided that in no event shall any arrangement change the basic melody or fundamental character of the applicable Composition, and record up to forty five (45) seconds of an Arrangement (the "Recording(s)");

(ii) To transform the Recordings into mobile ring tone formats or to incorporate up to forty five (45) seconds of a Composition as embodied in a pre-existing master recording (a "Master Recording") into a ring tone format (individually and collectively, a "Ring Tone");

(iii) To create a database containing the Ring Tone(s) available to Licensee's customers or subscribers and/or to third party companies serviced by Licensee ("Third Party Companies") which in turn service customers or subscribers ("the Customers")

(iv) Subject to paragraph 1(b) below, to synchronize Ring Tones with graphic images (a "Graphic") (collectively, a "Graphic Tone") which may be viewed solely on a Customer's mobile telephone;

(v) To download or otherwise transmit Ring Tones or Graphic Tones onto mobile telephones (for a fee or otherwise) for personal use by the Customers (a "Download"), for the express purpose of such Ring Tone(s) sounding as a ringing alert on such mobile telephones;

(vi) To promote and advertise segments of the Graphic Tones or Ring Tones (not to exceed thirty (30) seconds each) on Customer's mobile phones and Licensee's and/or Third Party Companies' web site(s) for the sole purpose of allowing a Customer to preview a Ring Tone before purchasing same.

All of the foregoing activities shall be conducted at Licensee's sole expense.

(b) Notwithstanding anything to the contrary contained herein, each Graphic Tone shall be subject to Licensor's prior written approval and shall be listed on Schedule "B" attached hereto.

(c) Schedule "A" and Schedule "B" may be amended, in Licensor's sole discretion, from time to time as reasonably requested by Licensee on a composition-by-composition basis, subject to the terms of this Agreement. In addition, Licensor may, in its sole discretion, inform Licensee from time to time of additional Compositions it wishes to make available for license hereunder.

(d) All Arrangements created pursuant to this license shall be considered a "work made for hire" for Licensor. In the event the Arrangements shall be deemed not to be a work made for hire, then the Licensee hereby sells, assigns, and transfers over to Licensor, and releases and quitclaims unto Licensor, its successors and assigns, all right, title and interest in and to the Arrangements and all rights therein and thereto, for the United States and throughout the world, forever, including any and all copyright terms, and all extension terms of copyright, for all uses and purposes whether now known or hereafter created, free from payment of any royalty or further compensation.

2. Licensor reserves all rights in and to the Composition(s), including the right in its sole discretion to restrict or rescind the use of any Composition at any time. In the event that Licensor shall request Licensee to cease using any Composition, Licensee shall do so as soon as practicable after receiving notice.

3. In consideration of the foregoing licence, Licensee shall pay to Licensor the following:

(a) Ring Tones: With respect to each individual Download of a Ring Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Ring Tone Downloaded (the "Ring Tone Royalty"), provided that in no circumstances shall the Ring Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.125 per Download irrespective of the price (if any) actually charged;

(b) Graphic Tones: With respect to each individual Download of a Graphic Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Graphic Tone Downloaded (the "Graphic Tone Royalty"), provided that in no circumstances shall the Graphic Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.20 per Download irrespective of the price (if any) actually charged;

(c) Fixing Fee: For each Composition initially converted to a Ring Tone or Graphic Tone, a one-time non-recoupable fixing fee equal to the Licensor Share of each applicable Composition multiplied by $25 (the "Fixing Fee"). For avoidance of doubt, if a Fixing Fee for a particular Composition is paid in connection with the creation of a Ring Tone, an additional Fixing Fee will not be due if such Ring Tone is later converted to a Graphic Tone. Conversely, if a Graphic Tone is initially created by Licensee, an additional Fixing Fee will not be due if the applicable Composition is later exploited solely as a Ring Tone.

(d) If at any time during the Term hereof Licensee pays any royalty, fixing or other service fee in connection with its Ring Tone or Graphic Tone service within the Territory to any other owner or administrator of musical compositions higher than the Ring Tone Royalty, Graphic Tone Royalty or Fixing Fee specified hereunder, on a per composition basis or otherwise, Licensee shall pay such higher royalty or fixing fee to Licensor retroactively to the first accounting period during which such higher royalty or fixing fee is accounted to such other owner or administrator.

(e) Reference is made to record companies which control certain Master Recordings (the "Record Companies") who may enter in agreements with Licensee which provide, among other things, that the Record Companies will pay to Licensor a royalty in connection with Compositions contained in Master Recordings exploited as Ring Tones by Licensee (the "RC Tones"). Only to the extent that Licensor enters into separate license agreements with such Record Companies which specifically provide that the applicable Record Company will compensate Licensor with respect to the sale of RC Tones shall Licensee not be obligated to pay Licensor Ring Tone Royalties in connection with the sale of RC Tones.

4. Within forty five (45) days after the end of each quarterannual period, i.e. ending March 31, June 30, September 30 and December 31, Licensee shall render to Licensor a true and detailed accounting of (i) all Ring Tones and Graphic Tones Downloaded; and (ii) all Ring Tones and Graphic Tones created. Each accounting shall report each Composition by title, song code number (as indicated on Schedules A and B), the number of Downloads and the resultant applicable Royalties due hereunder and be accompanied by payment to Licensor of all Royalties and Fixing Fees due. All accountings and resultant royalties and fees shall be forwarded to Zomba Enterprises Inc., 8750 Wilshire Boulevard, Beverly Hills, CA 90211, attn: Director of Royalties.

5. (a) Licensee shall maintain accurate and complete records and books of account detailing the creation of Ring Tones and Graphic Tones hereunder and all Downloads and containing all other information needed to compute and verify the amounts payable to Licensor hereunder. Licensor may audit those books and records. Licensor may make such an examination for a particular statement only once. Licensor may conduct such audit only during Licensee's usual business hours, and at the place where it keeps the books and records to be examined, on at least thirty (30) days prior notice.

(b) Such audit shall be conducted at Licensor's sole expense, except that if any audit reveals an error resulting in an underpayment to Licensor of five percent (5%) or more of the total amount accounted to Licensor during the accounting periods audited, then Licensee shall pay to

Licensor all reasonable audit costs, including travel, hotel and per diems, together with the underpayment.

(c) Any royalty shortfall shall bear interest at the composite "prime rate" (as published in the Wall Street Journal) plus two percent (2%).

6. Licensee may not assign, transfer or sub-licence any of its rights hereunder without Licensor's prior written consent and any purported such assignment, transfer or licence shall be void *ab initio*.

7. (a) Licensor may terminate this Agreement by giving Licensee notice in any of the following circumstances:

(i) If Licensee fails to perform any of its material obligations under this agreement for any reason (including impossibility of performance) and such failure has not been remedied to Licensor's satisfaction within thirty (30) days after Licensor gives Licensee notice of it.

(ii) If Licensee attempts to assign any of its rights under this agreement without Licensor's prior written consent, or if any of those rights succeeds to any other person or entity by operation of law.

(iii) If the control or ownership of Licensee or the majority of Licensee's capital stock vests, directly or indirectly, in any person or entity except the persons or entities who actually own Licensee's outstanding capital stock now, without Licensor's prior written consent.

(b) This Agreement will terminate automatically, without notice, if Licensee is dissolved or its assets are liquidated, or if Licensee becomes insolvent, or if a proceeding in bankruptcy, for a reorganization, or for other relief from the claims of creditors, or any similar proceeding, takes place with respect to Licensee or its property.

(c) A termination of the Agreement under this paragraph 7 will not limit or affect any of Licensor's other rights.

(d) Upon the expiration or termination of the Term, all of Licensee's rights hereunder shall terminate. Licensee shall withdraw the Ring Tones hereunder from the database of possible Customer retrieval and shall make no further use of the Composition(s), or of the Recordings or Ring Tones whatsoever.

8. (a) Licensor represents, warrants and agrees as follows (with respect to the Licensor Share of the Compositions described in Schedules A and B):

(i) Licensor has full right, power and authority to enter into this agreement and to grant to the Licensee all rights herein set out upon the terms and conditions herein.

(ii) The Compositions are original copyrighted works and in no way infringe the copyright or other rights of any third party.

(iii) Licensor will pay any and all fees, royalties and other sums due to the songwriters of the Compositions as well as to publishers and copublishers whom Licensor administer with respect to the royalties received by it hereunder.

(b) Licensee warrants, represents and agrees as follows:

(i) Licensee has the full right, power and authority to enter into and perform this agreement upon the terms and conditions set forth herein.

(ii) Licensee shall take all steps reasonably necessary to secure and maintain protection of the Compositions, by way of encryption or otherwise, under copyright and equivalent or similar laws throughout the Territory.

(iii) Upon receipt of written instruction from Licensor, Licensee shall not, to the extent permitted by law, license any Customer or other user that is engaged in piracy, illegal activities or other unauthorized use of the Ring Tones or the Compositions, or that has otherwise been designated by the RIAA, IFPI or other such body as an illegal producer or distributor.

(iv) Licensee shall either own or control and/or have valid and enforceable licenses with the applicable rights holders with respect to all aspects of their Ring Tone service including, without limitation, any Master Recordings and/or Graphics.

(c) Each party (for these purposes, "Indemnitor") shall indemnify, defend and hold the other party ("Indemnitee"), its successors, assigns, agents and licensees, free and harmless from and against any and all claims, demands, damages, expenses, losses or costs (including reasonable attorneys' fees and costs), or any sums paid in settlement, arising out of or incurred as a direct result of any actual breach of the representations, warranties, agreements and undertakings of or by the party concerned. Indemnitee shall notify Indemnitor of any claim presented to Indemnitee by a third party. Indemnitor shall defend any third party claim, at its sole expense, with counsel approved by Indemnitee, except that, at Indemnitee's option, Indemnitee may defend the claim (at Indemnitor's sole expense) and shall consult with Indemnitor about choice of counsel and the conduct of the proceeding. No such claim asserted by a third party may be settled by Indemnitee without Indemnitor's prior written consent (such consent not to be unreasonably withheld or delayed), so long as Indemnitor is actively defending such claim in a manner consistent with industry norms, unless Indemnitee shall agree not to seek indemnity from Indemnitor for any settlement payment made by Indemnitee to the claimant.

9. (a) For the avoidance of doubt, no rights are granted in any Master Recordings of the Composition(s) or Graphics, and no rights are granted other than those expressly referred to herein.

(b) Licensee shall not issue any press releases or other forms of publicity materials which make reference to Licensor or this agreement without the prior written consent of Licensor.

(c) Licensor will have no obligation to renew or extend the License after the end of the Term, and may decline to do so in its unrestricted discretion.

(d) Licensee shall be responsible for securing, and paying for, whatever public performance licenses required in connection with its Ring Tone service throughout the Territory. For avoidance of doubt, it is acknowledged and agreed that the Royalty shall not be inclusive of public performance monies payable in connection with Ring Tones, if any, and no public performance license is granted hereunder.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of New York whose courts shall have exclusive jurisdiction over any dispute arising herefrom.

11. This Agreement contains all of the terms agreed between the parties and replaces any and all previous agreements whether written or oral concerning the subject matter hereof.

AS WITNESS the hands of the parties the day and year first above written

Zomba Enterprises Inc.

By: _____

Zapptrio, Inc.

By: _____

EXHIBIT CO 0267

RING TONE LICENSE

Agreement made October 1, 2005 between Zomba Enterprises, Inc., 245 5th Avenue, 8th Floor, New York, NY 10016 (hereinafter referred to as "Licensor") and OnLetterhead USA LLC d/b/a Monsoon Mobile, 360 South Reynolds Road, Suite B, Toledo, Ohio 43615 (hereinafter "Licensee").

For good and valuable consideration, Licensor and the Licensee hereby agree as follows:

1. (a) Licensor grants to Licensee the non-exclusive license for the territory of the United States ("the Territory") for a term commencing on March 1, 2006 and expiring on February 28, 2006 ("the Term") to use the musical works listed on Schedule "A" attached hereto ("the Composition(s)") (but solely to the extent of Licensor's interest therein) as follows:

(i) To create an arrangement of the Compositions consisting of musical tones (the "Arrangement") provided that in no event shall any arrangement change the basic melody or fundamental character of the applicable Composition, and record up to thirty (30) seconds of an Arrangement (the "Recording(s)");

(ii) To transform the Recordings into mobile ring tone formats or to incorporate up to thirty (30) seconds of a Composition as embodied in a pre-existing master recording (a "Master Recording") into a ring tone format (individually and collectively, a "Ring Tone");

(iii) To create a database containing the Ring Tone(s) available to Licensee's customers or subscribers and/or to third party companies serviced by Licensee ("Third Party Companies") which in turn service customers or subscribers ("the Customers")

(iv) Subject to paragraph 1(b) below, to synchronize Ring Tones with graphic images (a "Graphic") (collectively, a "Graphic Tone") which may be viewed solely on a Customer's mobile telephone;

(v) To download or otherwise transmit Ring Tones or Graphic Tones onto mobile telephones (for a fee or otherwise) for personal use by the Customers (a "Download"), for the express purpose of such Ring Tone(s) sounding as a ringing alert on such mobile telephones;

(vi) To promote and advertise segments of the Graphic Tones or Ring Tones (not to exceed thirty (30) seconds each) on Customer's mobile phones and Licensee's and/or Third Party Companies' web site(s) for the sole purpose of allowing a Customer to preview a Ring Tone before purchasing same.

All of the foregoing activities shall be conducted at Licensee's sole expense.

(b) Notwithstanding anything to the contrary contained herein, each Graphic Tone shall be subject to Licensor's prior written approval and shall be listed on Schedule "B" attached hereto.

(c) Schedule "A" and Schedule "B" may be amended, in Licensor's sole discretion, from time to time as reasonably requested by Licensee on a composition-by-composition basis, subject to the terms of this Agreement. In addition, Licensor may, in its sole discretion, inform Licensee from time to time of additional Compositions it wishes to make available for license hereunder.

(d) All Arrangements created pursuant to this license shall be considered a "work made for hire" for Licensor. In the event the Arrangements shall be deemed not to be a work made for hire, then the Licensee hereby sells, assigns, and transfers over to Licensor, and releases and quitclaims unto Licensor, its successors and assigns, all right, title and interest in and to the Arrangements and all rights therein and thereto, for the United States and throughout the world, forever, including any and all copyright terms, and all extension terms of copyright, for all uses and purposes whether now known or hereafter created, free from payment of any royalty or further compensation.

2. Licensor reserves all rights in and to the Composition(s), including the right in its sole discretion to restrict or rescind the use of any Composition at any time. In the event that Licensor shall request Licensee to cease using any Composition, Licensee shall do so as soon as practicable after receiving notice.

3. In consideration of the foregoing licence, Licensee shall pay to Licensor the following:

(a) Ring Tones: With respect to each individual Download of a Ring Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Ring Tone Downloaded (the "Ring Tone Royalty"), provided that in no circumstances shall the Ring Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.125 per Download irrespective of the price (if any) actually charged;

(b) Graphic Tones: With respect to each individual Download of a Graphic Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Graphic Tone Downloaded (the "Graphic Tone Royalty"), provided that in no circumstances shall the Graphic Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.20 per Download irrespective of the price (if any) actually charged;

(c) Advance: An advance of $5,000 recoupable from all Royalties payable hereunder.

(d) If at any time during the Term hereof Licensee pays any royalty, fixing or other service fee in connection with its Ring Tone or Graphic Tone service within the Territory to any other owner or administrator of musical compositions higher than the Ring Tone Royalty, Graphic Tone Royalty or Fixing Fee specified hereunder, on a per composition basis or otherwise, Licensee shall pay such higher royalty or fixing fee to Licensor retroactively to the first accounting period during which such higher royalty or fixing fee is accounted to such other owner or administrator.

(e) Reference is made to record companies which control certain Master Recordings (the "Record Companies") who may enter in agreements with Licensee which provide, among other things, that the Record Companies will pay to Licensor a royalty in connection with Compositions contained in Master Recordings exploited as Ring Tones by Licensee (the "RC Tones"). Only to the extent that Licensor enters into separate license agreements with such Record Companies which specifically provide that the applicable Record Company will compensate Licensor with respect to the sale of RC Tones shall Licensee not be obligated to pay Licensor Ring Tone Royalties in connection with the sale of RC Tones.

4. Within forty five (45) days after the end of each quarterannual period, i.e. ending March 31, June 30, September 30 and December 31, Licensee shall render to Licensor a true and detailed accounting of (i) all Ring Tones and Graphic Tones Downloaded; and (ii) all Ring Tones and Graphic Tones created. Each accounting shall report each Composition by title, song code number (as indicated on Schedules A and B), the number of Downloads and the resultant applicable Royalties due hereunder and be accompanied by payment to Licensor of all Royalties and Fixing Fees due. All accountings and resultant royalties and fees shall be forwarded to Zomba Enterprises Inc., 8750 Wilshire Boulevard, Beverly Hills, CA 90211, attn: Director of Royalties.

5. (a) Licensee shall maintain accurate and complete records and books of account detailing the creation of Ring Tones and Graphic Tones hereunder and all Downloads and containing all other information needed to compute and verify the amounts payable to Licensor hereunder. Licensor may audit those books and records. Licensor may make such an examination for a particular statement only once. Licensor may conduct such audit only during Licensee's usual business hours, and at the place where it keeps the books and records to be examined, on at least thirty (30) days prior notice.

(b) Such audit shall be conducted at Licensor's sole expense, except that if any audit reveals an error resulting in an underpayment to Licensor of five percent (5%) or more of the total amount accounted to Licensor during the accounting periods audited, then Licensee shall pay to Licensor all reasonable audit costs, including travel, hotel and per diems, together with the underpayment.

(c) Any royalty shortfall shall bear interest at the composite "prime rate" (as published in the Wall Street Journal) plus two percent (2%).

6. Licensee may not assign, transfer or sub-licence any of its rights hereunder without Licensor's prior written consent and any purported such assignment, transfer or license shall be void *ab initio*.

7. (a) Licensor may terminate this Agreement by giving Licensee notice in any of the following circumstances:

(i) If Licensee fails to perform any of its material obligations under this agreement for any reason (including impossibility of performance) and such failure has not been remedied to Licensor's satisfaction within thirty (30) days after Licensor gives Licensee notice of it.

(ii) If Licensee attempts to assign any of its rights under this agreement without Licensor's prior written consent, or if any of those rights succeeds to any other person or entity by operation of law.

(iii) If the control or ownership of Licensee or the majority of Licensee's capital stock vests, directly or indirectly, in any person or entity except the persons or entities who actually own Licensee's outstanding capital stock now, without Licensor's prior written consent.

(b) This Agreement will terminate automatically, without notice, if Licensee is dissolved or its assets are liquidated, or if Licensee becomes insolvent, or if a proceeding in bankruptcy, for a reorganization, or for other relief from the claims of creditors, or any similar proceeding, takes place with respect to Licensee or its property.

(c) A termination of the Agreement under this paragraph 7 will not limit or affect any of Licensor's other rights.

(d) Upon the expiration or termination of the Term, all of Licensee's rights hereunder shall terminate. Licensee shall withdraw the Ring Tones hereunder from the database of possible Customer retrieval and shall make no further use of the Composition(s), or of the Recordings or Ring Tones whatsoever.

8. (a) Licensor represents, warrants and agrees as follows (with respect to the Licensor Share of the Compositions described in Schedules A and B):

(i) Licensor has full right, power and authority to enter into this agreement and to grant to the Licensee all rights herein set out upon the terms and conditions herein.

(ii) The Compositions are original copyrighted works and in no way infringe the copyright or other rights of any third party.

(iii) Licensor will pay any and all fees, royalties and other sums due to the songwriters of the Compositions as well as to publishers and copublishers whom Licensor administer with respect to the royalties received by it hereunder.

(b) Licensee warrants, represents and agrees as follows:

(i) Licensee has the full right, power and authority to enter into and perform this agreement upon the terms and conditions set forth herein.

(ii) Licensee shall take all steps reasonably necessary to secure and maintain protection of the Compositions, by way of encryption or otherwise, under copyright and equivalent or similar laws throughout the Territory.

(iii) Upon receipt of written instruction from Licensor, Licensee shall not, to the extent permitted by law, license any Customer or other user that is engaged in piracy, illegal activities or other unauthorized use of the Ring Tones or the Compositions, or that has otherwise been designated by the RIAA, IFPI or other such body as an illegal producer or distributor.

(iv) Licensee shall either own or control and/or have valid and enforceable licenses with the applicable rights holders with respect to all aspects of their Ring Tone service including, without limitation, any Master Recordings and/or Graphics.

(c) Each party (for these purposes, "Indemnitor") shall indemnify, defend and hold the other party ("Indemnitee"), its successors, assigns, agents and licensees, free and harmless from and against any and all claims, demands, damages, expenses, losses or costs (including reasonable attorneys' fees and costs), or any sums paid in settlement, arising out of or incurred as a direct result of any actual breach of the representations, warranties, agreements and undertakings of or by the party concerned. Indemnitee shall notify Indemnitor of any claim presented to Indemnitee by a third party. Indemnitor shall defend any third party claim, at its sole expense, with counsel approved by Indemnitee, except that, at Indemnitee's option, Indemnitee may defend the claim (at Indemnitor's sole expense) and shall consult with Indemnitor about choice of counsel and the conduct of the proceeding. No such claim asserted by a third party may be settled by Indemnitee without Indemnitor's prior written consent (such consent not to be unreasonably withheld or delayed), so long as Indemnitor is actively defending such claim in a manner consistent with industry norms, unless Indemnitee shall agree not to seek indemnity from Indemnitor for any settlement payment made by Indemnitee to the claimant.

9. (a) For the avoidance of doubt, no rights are granted in any Master Recordings of the Composition(s) or Graphics, and no rights are granted other than those expressly referred to herein.

(b) Licensee shall not issue any press releases or other forms of publicity materials which make reference to Licensor or this agreement without the prior written consent of Licensor.

(c) Licensor will have no obligation to renew or extend the License after the end of the Term, and may decline to do so in its unrestricted discretion.

(d) Licensee shall be responsible for securing, and paying for, whatever public performance licenses required in connection with its Ring Tone service throughout the Territory. For avoidance of doubt, it is acknowledged and agreed that the Royalty shall not be inclusive of public performance monies payable in connection with Ring Tones, if any, and no public performance license is granted hereunder.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of New York whose courts shall have exclusive jurisdiction over any dispute arising herefrom.

11. This Agreement contains all of the terms agreed between the parties and replaces any and all previous agreements whether written or oral concerning the subject matter hereof.

AS WITNESS the hands of the parties the day and year first above written

Zomba Enterprises, Inc.

By: _____

OnLetterhead USA LLC d/b/a Monsoon Mobile

By: _____

EXHIBIT CO 0268

RING TONE LICENSE

Agreement made October 1, 2005 between BMG Music Publishing NA, Inc. 245 Fifth Avenue, New York, NY 10016 (hereinafter referred to as "Licensor") and Zapptrio, Inc., 1871 The Alameda, Suite 350, San Jose, CA 95126 (hereinafter "Licensee").

For good and valuable consideration, Licensor and the Licensee hereby agree as follows:

1. (a) Licensor grants to Licensee the non-exclusive license for the territory of the United States ("the Territory") for a term commencing on October 1, 2005 and expiring on September 30, 2006 ("the Term") to use the musical works listed on Schedule "A" attached hereto ("the Composition(s)") (but solely to the extent of Licensor's interest therein) as follows:

(i) To create an arrangement of the Compositions consisting of musical tones (the "Arrangement") provided that in no event shall any arrangement change the basic melody or fundamental character of the applicable Composition, and record up to forty five (45) seconds of an Arrangement (the "Recording(s)");

(ii) To transform the Recordings into mobile ring tone formats or to incorporate up to forty five (45) seconds of a Composition as embodied in a pre-existing master recording (a "Master Recording") into a ring tone format (individually and collectively, a "Ring Tone");

(iii) To create a database containing the Ring Tone(s) available to Licensee's customers or subscribers and/or to third party companies serviced by Licensee ("Third Party Companies") which in turn service customers or subscribers ("the Customers")

(iv) Subject to paragraph 1(b) below, to synchronize Ring Tones with graphic images (a "Graphic") (collectively, a "Graphic Tone") which may be viewed solely on a Customer's mobile telephone;

(v) To download or otherwise transmit Ring Tones or Graphic Tones onto mobile telephones (for a fee or otherwise) for personal use by the Customers (a "Download"), for the express purpose of such Ring Tone(s) sounding as a ringing alert on such mobile telephones;

(vi) To promote and advertise segments of the Graphic Tones or Ring Tones (not to exceed thirty (30) seconds each) on Customer's mobile phones and Licensee's and/or Third Party Companies' web site(s) for the sole purpose of allowing a Customer to preview a Ring Tone before purchasing same.

All of the foregoing activities shall be conducted at Licensee's sole expense.

(b) Notwithstanding anything to the contrary contained herein, each Graphic Tone shall be subject to Licensor's prior written approval and shall be listed on Schedule "B" attached hereto.

(c) Schedule "A" and Schedule "B" may be amended, in Licensor's sole discretion, from time to time as reasonably requested by Licensee on a composition-by-composition basis, subject to the terms of this Agreement. In addition, Licensor may, in its sole discretion, inform Licensee from time to time of additional Compositions it wishes to make available for license hereunder.

(d) All Arrangements created pursuant to this license shall be considered a "work made for hire" for Licensor. In the event the Arrangements shall be deemed not to be a work made for hire, then the Licensee hereby sells, assigns, and transfers over to Licensor, and releases and quitclaims unto Licensor, its successors and assigns, all right, title and interest in and to the Arrangements and all rights therein and thereto, for the United States and throughout the world, forever, including any and all copyright terms, and all extension terms of copyright, for all uses and purposes whether now known or hereafter created, free from payment of any royalty or further compensation.

2. Licensor reserves all rights in and to the Composition(s), including the right in its sole discretion to restrict or rescind the use of any Composition at any time. In the event that Licensor shall request Licensee to cease using any Composition, Licensee shall do so as soon as practicable after receiving notice.

3. In consideration of the foregoing licence, Licensee shall pay to Licensor the following:

(a) Ring Tones: With respect to each individual Download of a Ring Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Ring Tone Downloaded (the "Ring Tone Royalty"), provided that in no circumstances shall the Ring Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.125 per Download irrespective of the price (if any) actually charged;

(b) Graphic Tones: With respect to each individual Download of a Graphic Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Graphic Tone Downloaded (the "Graphic Tone Royalty"), provided that in no circumstances shall the Graphic Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.20 per Download irrespective of the price (if any) actually charged;

(c) Fixing Fee: For each Composition initially converted to a Ring Tone or Graphic Tone, a one-time non-recoupable fixing fee equal to the Licensor Share of each applicable Composition multiplied by $25 (the "Fixing Fee"). For avoidance of doubt, if a Fixing Fee for a particular Composition is paid in connection with the creation of a Ring Tone, an additional Fixing Fee will not be due if such Ring Tone is later converted to a Graphic Tone. Conversely, if a Graphic Tone is initially created by Licensee, an additional Fixing Fee will not be due if the applicable Composition is later exploited solely as a Ring Tone.

(d) If at any time during the Term hereof Licensee pays any royalty, fixing or other service fee in connection with its Ring Tone or Graphic Tone service within the Territory to any other owner or administrator of musical compositions higher than the Ring Tone Royalty, Graphic Tone Royalty or Fixing Fee specified hereunder, on a per composition basis or otherwise, Licensee shall pay such higher royalty or fixing fee to Licensor retroactively to the first accounting period during which such higher royalty or fixing fee is accounted to such other owner or administrator.

(e) Reference is made to record companies which control certain Master Recordings (the "Record Companies") who may enter in agreements with Licensee which provide, among other things, that the Record Companies will pay to Licensor a royalty in connection with Compositions contained in Master Recordings exploited as Ring Tones by Licensee (the "RC Tones"). Only to the extent that Licensor enters into separate license agreements with such Record Companies which specifically provide that the applicable Record Company will compensate Licensor with respect to the sale of RC Tones shall Licensee not be obligated to pay Licensor Ring Tone Royalties in connection with the sale of RC Tones.

4. Within forty five (45) days after the end of each quarterannual period, i.e. ending March 31, June 30, September 30 and December 31, Licensee shall render to Licensor a true and detailed accounting of (i) all Ring Tones and Graphic Tones Downloaded; and (ii) all Ring Tones and Graphic Tones created. Each accounting shall report each Composition by title, song code number (as indicated on Schedules A and B), the number of Downloads and the resultant applicable Royalties due hereunder and be accompanied by payment to Licensor of all Royalties and Fixing Fees due. All accountings and resultant royalties and fees shall be forwarded to BMG Music Publishing NA, Inc., 8750 Wilshire Boulevard, Beverly Hills, CA 90211, attn: Director of Royalties.

5. (a) Licensee shall maintain accurate and complete records and books of account detailing the creation of Ring Tones and Graphic Tones hereunder and all Downloads and containing all other information needed to compute and verify the amounts payable to Licensor hereunder. Licensor may audit those books and records. Licensor may make such an examination for a particular statement only once. Licensor may conduct such audit only during Licensee's usual business hours, and at the place where it keeps the books and records to be examined, on at least thirty (30) days prior notice.

(b) Such audit shall be conducted at Licensor's sole expense, except that if any audit reveals an error resulting in an underpayment to Licensor of five percent (5%) or more of the total amount accounted to Licensor during the accounting periods audited, then Licensee shall pay to

Licensor all reasonable audit costs, including travel, hotel and per diems, together with the underpayment.

(c) Any royalty shortfall shall bear interest at the composite "prime rate" (as published in the Wall Street Journal) plus two percent (2%).

6. Licensee may not assign, transfer or sub-licence any of its rights hereunder without Licensor's prior written consent and any purported such assignment, transfer or licence shall be void *ab initio*.

7. (a) Licensor may terminate this Agreement by giving Licensee notice in any of the following circumstances:

(i) If Licensee fails to perform any of its material obligations under this agreement for any reason (including impossibility of performance) and such failure has not been remedied to Licensor's satisfaction within thirty (30) days after Licensor gives Licensee notice of it.

(ii) If Licensee attempts to assign any of its rights under this agreement without Licensor's prior written consent, or if any of those rights succeeds to any other person or entity by operation of law.

(iii) If the control or ownership of Licensee or the majority of Licensee's capital stock vests, directly or indirectly, in any person or entity except the persons or entities who actually own Licensee's outstanding capital stock now, without Licensor's prior written consent.

(b) This Agreement will terminate automatically, without notice, if Licensee is dissolved or its assets are liquidated, or if Licensee becomes insolvent, or if a proceeding in bankruptcy, for a reorganization, or for other relief from the claims of creditors, or any similar proceeding, takes place with respect to Licensee or its property.

(c) A termination of the Agreement under this paragraph 7 will not limit or affect any of Licensor's other rights.

(d) Upon the expiration or termination of the Term, all of Licensee's rights hereunder shall terminate. Licensee shall withdraw the Ring Tones hereunder from the database of possible Customer retrieval and shall make no further use of the Composition(s), or of the Recordings or Ring Tones whatsoever.

8. (a) Licensor represents, warrants and agrees as follows (with respect to the Licensor Share of the Compositions described in Schedules A and B):

(i) Licensor has full right, power and authority to enter into this agreement and to grant to the Licensee all rights herein set out upon the terms and conditions herein.

(ii) The Compositions are original copyrighted works and in no way infringe the copyright or other rights of any third party.

(iii) Licensor will pay any and all fees, royalties and other sums due to the songwriters of the Compositions as well as to publishers and copublishers whom Licensor administer with respect to the royalties received by it hereunder.

(b) Licensee warrants, represents and agrees as follows:

(i) Licensee has the full right, power and authority to enter into and perform this agreement upon the terms and conditions set forth herein.

(ii) Licensee shall take all steps reasonably necessary to secure and maintain protection of the Compositions, by way of encryption or otherwise, under copyright and equivalent or similar laws throughout the Territory.

(iii) Upon receipt of written instruction from Licensor, Licensee shall not, to the extent permitted by law, license any Customer or other user that is engaged in piracy, illegal activities or other unauthorized use of the Ring Tones or the Compositions, or that has otherwise been designated by the RIAA, IFPI or other such body as an illegal producer or distributor.

(iv) Licensee shall either own or control and/or have valid and enforceable licenses with the applicable rights holders with respect to all aspects of their Ring Tone service including, without limitation, any Master Recordings and/or Graphics.

(c) Each party (for these purposes, "Indemnitor") shall indemnify, defend and hold the other party ("Indemnitee"), its successors, assigns, agents and licensees, free and harmless from and against any and all claims, demands, damages, expenses, losses or costs (including reasonable attorneys' fees and costs), or any sums paid in settlement, arising out of or incurred as a direct result of any actual breach of the representations, warranties, agreements and undertakings of or by the party concerned. Indemnitee shall notify Indemnitor of any claim presented to Indemnitee by a third party. Indemnitor shall defend any third party claim, at its sole expense, with counsel approved by Indemnitee, except that, at Indemnitee's option, Indemnitee may defend the claim (at Indemnitor's sole expense) and shall consult with Indemnitor about choice of counsel and the conduct of the proceeding. No such claim asserted by a third party may be settled by Indemnitee without Indemnitor's prior written consent (such consent not to be unreasonably withheld or delayed), so long as Indemnitor is actively defending such claim in a manner consistent with industry norms, unless Indemnitee shall agree not to seek Indemnity from Indemnitor for any settlement payment made by Indemnitee to the claimant.

9. (a) For the avoidance of doubt, no rights are granted in any Master Recordings of the Composition(s) or Graphics, and no rights are granted other than those expressly referred to herein.

(b) Licensee shall not issue any press releases or other forms of publicity materials which make reference to Licensor or this agreement without the prior written consent of Licensor.

(c) Licensor will have no obligation to renew or extend the License after the end of the Term, and may decline to do so in its unrestricted discretion.

(d) Licensee shall be responsible for securing, and paying for, whatever public performance licenses required in connection with its Ring Tone service throughout the Territory. For avoidance of doubt, it is acknowledged and agreed that the Royalty shall not be inclusive of public performance monies payable in connection with Ring Tones, if any, and no public performance license is granted hereunder.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of New York whose courts shall have exclusive jurisdiction over any dispute arising herefrom.

11. This Agreement contains all of the terms agreed between the parties and replaces any and all previous agreements whether written or oral concerning the subject matter hereof.

AS WITNESS the hands of the parties the day and year first above written

BMG Music Publishing NA, Inc.

By: _____

Zapptrio, Inc.

By: _____

EXHIBIT CO 0269

RING TONE LICENSE

2211 Elliott Ave PG

Agreement made September 1, 2005 between Zomba Enterprises Inc., 245 Fifth Avenue, New York, NY 10016 (hereinafter referred to as "Licensor") and Dwango Wireless, ~~200 West Mercer Street~~, Ste. PG 601, Seattle, Washington 98119 (hereinafter "Licensee"). Dwango North America Corp. dba PG

21 PG

For good and valuable consideration, Licensor and the Licensee hereby agree as follows:

1. (a) Licensor grants to Licensee the non-exclusive license for the territory of the United States ("the Territory") for a term commencing on September 1, 2005 and expiring on August 31, 2006 ("the Term") to use the musical works listed on Schedule "A" attached hereto ("the Composition(s)") (but solely to the extent of Licensor's interest therein) as follows:

(i) To create an arrangement of the Compositions consisting of musical tones (the "Arrangement") provided that in no event shall any arrangement change the basic melody or fundamental character of the applicable Composition, and record up to thirty (30) seconds of an Arrangement (the "Recording(s)");

(ii) To transform the Recordings into mobile ring tone formats or to incorporate up to thirty (30) seconds of a Composition as embodied in a pre-existing master recording (a "Master Recording") into a ring tone format (individually and collectively, a "Ring Tone");

(iii) To create a database containing the Ring Tone(s) available to Licensee's customers or subscribers and/or to third party companies serviced by Licensee ("Third Party Companies") which in turn service customers or subscribers ("the Customers")

(iv) Subject to paragraph 1(b) below, to synchronize Ring Tones with graphic images (a "Graphic") (collectively, a "Graphic Tone") which may be viewed solely on a Customer's mobile telephone;

(v) To download or otherwise transmit Ring Tones or Graphic Tones onto mobile telephones (for a fee or otherwise) for personal use by the Customers (a "Download"), for the express purpose of such Ring Tone(s) sounding as a ringing alert on such mobile telephones;

(vi) To promote and advertise segments of the Graphic Tones or Ring Tones (not to exceed thirty (30) seconds each) on Customer's mobile phones and Licensee's and/or Third Party Companies' web site(s) for the sole purpose of allowing a Customer to preview a Ring Tone before purchasing same.

All of the foregoing activities shall be conducted at Licensee's sole expense.

(b) Notwithstanding anything to the contrary contained herein, each Graphic Tone shall be subject to Licensor's prior written approval and shall be listed on Schedule "B" attached hereto.

(c) Schedule "A" and Schedule "B" may be amended, in Licensor's sole discretion, from time to time as reasonably requested by Licensee on a composition-by-composition basis, subject to the terms of this Agreement. In addition, Licensor may, in its sole discretion, inform Licensee from time to time of additional Compositions it wishes to make available for license hereunder.

(d) All Arrangements created pursuant to this license shall be considered a "work made for hire" for Licensor. In the event the Arrangements shall be deemed not to be a work made for hire, then the Licensee hereby sells, assigns, and transfers over to Licensor, and releases and quitclaims unto Licensor, its successors and assigns, all right, title and interest in and to the Arrangements and all rights therein and thereto, for the United States and throughout the world, forever, including any and all copyright terms, and all extension terms of copyright, for all uses and purposes whether now known or hereafter created, free from payment of any royalty or further compensation.

2. Licensor reserves all rights in and to the Composition(s), including the right in its sole discretion to restrict or rescind the use of any Composition at any time. In the event that Licensor shall request Licensee to cease using any Composition, Licensee shall do so as soon as practicable after receiving notice.

3. In consideration of the foregoing licence, Licensee shall pay to Licensor the following:

(a) Ring Tones: With respect to each individual Download of a Ring Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Ring Tone Downloaded (the "Ring Tone Royalty"), provided that in no circumstances shall the Ring Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.125 per Download irrespective of the price (if any) actually charged;

(b) Graphic Tones: With respect to each individual Download of a Graphic Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Graphic Tone Downloaded (the "Graphic Tone Royalty"), provided that in no circumstances shall the Graphic Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.20 per Download irrespective of the price (if any) actually charged;

(c) Fixing Fee: For each Composition initially converted to a Ring Tone or Graphic Tone, a one-time non-recoupable fixing fee equal to the Licensor Share of each applicable Composition multiplied by $25 (the "Fixing Fee"). For avoidance of doubt, if a Fixing Fee for a particular Composition is paid in connection with the creation of a Ring Tone, an additional Fixing Fee will not be due if such Ring Tone is later converted to a Graphic Tone. Conversely, if a Graphic Tone is initially created by Licensee, an additional Fixing Fee will not be due if the applicable Composition is later exploited solely as a Ring Tone.

(d) If at any time during the Term hereof Licensee pays any royalty, fixing or other service fee in connection with its Ring Tone or Graphic Tone service within the Territory to any other owner or administrator of musical compositions higher than the Ring Tone Royalty, Graphic Tone Royalty or Fixing Fee specified hereunder, on a per composition basis or otherwise, Licensee shall pay such higher royalty or fixing fee to Licensor retroactively to the first accounting period during which such higher royalty or fixing fee is accounted to such other owner or administrator.

(e) Reference is made to record companies which control certain Master Recordings (the "Record Companies") who may enter in agreements with Licensee which provide, among other things, that the Record Companies will pay to Licensor a royalty in connection with Compositions contained in Master Recordings exploited as Ring Tones by Licensee (the "RC Tones"). Only to the extent that Licensor enters into separate license agreements with such Record Companies which specifically provide that the applicable Record Company will compensate Licensor with respect to the sale of RC Tones shall Licensee not be obligated to pay Licensor Ring Tone Royalties in connection with the sale of RC Tones.

4. Within forty five (45) days after the end of each quarterannual period, i.e. ending March 31, June 30, September 30 and December 31, Licensee shall render to Licensor a true and detailed accounting of (i) all Ring Tones and Graphic Tones Downloaded; and (ii) all Ring Tones and Graphic Tones created. Each accounting shall report each Composition by title, song code number (as indicated on Schedules A and B), the number of Downloads and the resultant applicable Royalties due hereunder and be accompanied by payment to Licensor of all Royalties and Fixing Fees due. All accountings and resultant royalties and fees shall be forwarded to Zomba Enterprises Inc., 8750 Wilshire Boulevard, Beverly Hills, CA 90211, attn: Director of Royalties.

5. (a) Licensee shall maintain accurate and complete records and books of account detailing the creation of Ring Tones and Graphic Tones hereunder and all Downloads and containing all other information needed to compute and verify the amounts payable to Licensor hereunder. Licensor may audit those books and records. Licensor may make such an examination for a particular statement only once. Licensor may conduct such audit only during Licensee's usual business hours, and at the place where it keeps the books and records to be examined, on at least thirty (30) days prior notice.

(b) Such audit shall be conducted at Licensor's sole expense, except that if any audit reveals an error resulting in an underpayment to Licensor of five percent (5%) or more of the total amount accounted to Licensor during the accounting periods audited, then Licensee shall pay to

Licensor all reasonable audit costs, including travel, hotel and per diems, together with the underpayment.

(c) Any royalty shortfall shall bear interest at the composite "prime rate" (as published in the Wall Street Journal) plus two percent (2%).

6. Licensee may not assign, transfer or sub-licence any of its rights hereunder without Licensor's prior written consent and any purported such assignment, transfer or licence shall be void *ab initio*.

7. (a) Licensor may terminate this Agreement by giving Licensee notice in any of the following circumstances:

(i) If Licensee fails to perform any of its material obligations under this agreement for any reason (including impossibility of performance) and such failure has not been remedied to Licensor's satisfaction within thirty (30) days after Licensor gives Licensee notice of it.

(ii) If Licensee attempts to assign any of its rights under this agreement without Licensor's prior written consent, or if any of those rights succeeds to any other person or entity by operation of law.

(iii) If the control or ownership of Licensee or the majority of Licensee's capital stock vests, directly or indirectly, in any person or entity except the persons or entities who actually own Licensee's outstanding capital stock now, without Licensor's prior written consent.

(b) This Agreement will terminate automatically, without notice, if Licensee is dissolved or its assets are liquidated, or if Licensee becomes insolvent, or if a proceeding in bankruptcy, for a reorganization, or for other relief from the claims of creditors, or any similar proceeding, takes place with respect to Licensee or its property.

(c) A termination of the Agreement under this paragraph 7 will not limit or affect any of Licensor's other rights.

(d) Upon the expiration or termination of the Term, all of Licensee's rights hereunder shall terminate. Licensee shall withdraw the Ring Tones hereunder from the database of possible Customer retrieval and shall make no further use of the Composition(s), or of the Recordings or Ring Tones whatsoever.

8. (a) Licensor represents, warrants and agrees as follows (with respect to the Licensor Share of the Compositions described in Schedules A and B):

(i) Licensor has full right, power and authority to enter into this agreement and to grant to the Licensee all rights herein set out upon the terms and conditions herein.

(ii) The Compositions are original copyrighted works and in no way infringe the copyright or other rights of any third party.

(iii) Licensor will pay any and all fees, royalties and other sums due to the songwriters of the Compositions as well as to publishers and copublishers whom Licensor administer with respect to the royalties received by it hereunder.

(b) Licensee warrants, represents and agrees as follows:

(i) Licensee has the full right, power and authority to enter into and perform this agreement upon the terms and conditions set forth herein.

(ii) Licensee shall take all steps reasonably necessary to secure and maintain protection of the Compositions, by way of encryption or otherwise, under copyright and equivalent or similar laws throughout the Territory.

(iii) Upon receipt of written instruction from Licensor, Licensee shall not, to the extent permitted by law, license any Customer or other user that is engaged in piracy, illegal activities or other unauthorized use of the Ring Tones or the Compositions, or that has otherwise been designated by the RIAA, IFPI or other such body as an illegal producer or distributor.

(iv) Licensee shall either own or control and/or have valid and enforceable licenses with the applicable rights holders with respect to all aspects of their Ring Tone service including, without limitation, any Master Recordings and/or Graphics.

(c) Each party (for these purposes, "Indemnitor") shall indemnify, defend and hold the other party ("Indemnitee"), its successors, assigns, agents and licensees, free and harmless from and against any and all claims, demands, damages, expenses, losses or costs (including reasonable attorneys' fees and costs), or any sums paid in settlement, arising out of or incurred as a direct result of any actual breach of the representations, warranties, agreements and undertakings of or by the party concerned. Indemnitee shall notify Indemnitor of any claim presented to Indemnitee by a third party. Indemnitor shall defend any third party claim, at its sole expense, with counsel approved by Indemnitee, except that, at Indemnitee's option, Indemnitee may defend the claim (at Indemnitor's sole expense) and shall consult with Indemnitor about choice of counsel and the conduct of the proceeding. No such claim asserted by a third party may be settled by Indemnitee without Indemnitor's prior written consent (such consent not to be unreasonably withheld or delayed), so long as Indemnitor is actively defending such claim in a manner consistent with industry norms, unless Indemnitee shall agree not to seek indemnity from Indemnitor for any settlement payment made by Indemnitee to the claimant.

9. (a) For the avoidance of doubt, no rights are granted in any Master Recordings of the Composition(s) or Graphics, and no rights are granted other than those expressly referred to herein.

(b) Licensee shall not issue any press releases or other forms of publicity materials which make reference to Licensor or this agreement without the prior written consent of Licensor.

(c) Licensor will have no obligation to renew or extend the License after the end of the Term, and may decline to do so in its unrestricted discretion.

(d) Licensee shall be responsible for securing, and paying for, whatever public performance licenses required in connection with its Ring Tone service throughout the Territory. For avoidance of doubt, it is acknowledged and agreed that the Royalty shall not be inclusive of public performance monies payable in connection with Ring Tones, if any, and no public performance license is granted hereunder.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of New York whose courts shall have exclusive jurisdiction over any dispute arising herefrom.

11. This Agreement contains all of the terms agreed between the parties and replaces any and all previous agreements whether written or oral concerning the subject matter hereof.

AS WITNESS the hands of the parties the day and year first above written

Zomba Enterprises Inc.

By: Peter Brodsky

RCL Dwango North America Corp. dba
Dwango Wireless

By: Paul Quinn

EXHIBIT CO 0270

RING TONE LICENSE

Agreement made September 1, 2005 between Zomba Enterprises Inc., 245 Fifth Avenue, New York, NY 10016 (hereinafter referred to as "Licensor") and Namco Networks America Inc., 1740 Technology Drive, Suite 320, San Jose, CA 95110 (hereinafter "Licensee").

For good and valuable consideration, Licensor and the Licensee hereby agree as follows:

1. (a) Licensor grants to Licensee the non-exclusive license for the territory of the United States ("the Territory") for a term commencing on September 1, 2005 and expiring on August 31, 2006 ("the Term") to use the musical works listed on Schedule "A" attached hereto ("the Composition(s)") (but solely to the extent of Licensor's interest therein) as follows:

(i) To create an arrangement of the Compositions consisting of musical tones (the "Arrangement") provided that in no event shall any arrangement change the basic melody or fundamental character of the applicable Composition, and record up to thirty (30) seconds of an Arrangement (the "Recording(s)");

(ii) To transform the Recordings into mobile ring tone formats or to incorporate up to thirty (30) seconds of a Composition as embodied in a pre-existing master recording (a "Master Recording") into a ring tone format (individually and collectively, a "Ring Tone");

(iii) To create a database containing the Ring Tone(s) available to Licensee's customers or subscribers and/or to third party companies serviced by Licensee ("Third Party Companies") which in turn service customers or subscribers ("the Customers")

(iv) Subject to paragraph 1(b) below, to synchronize Ring Tones with graphic images (a "Graphic") (collectively, a "Graphic Tone") which may be viewed solely on a Customer's mobile telephone;

(v) To download or otherwise transmit Ring Tones or Graphic Tones onto mobile telephones (for a fee or otherwise) for personal use by the Customers (a "Download"), for the express purpose of such Ring Tone(s) sounding as a ringing alert on such mobile telephones;

(vi) To promote and advertise segments of the Graphic Tones or Ring Tones (not to exceed thirty (30) seconds each) on Customer's mobile phones and Licensee's and/or Third Party Companies' web site(s) for the sole purpose of allowing a Customer to preview a Ring Tone before purchasing same.

All of the foregoing activities shall be conducted at Licensee's sole expense.

(b) Notwithstanding anything to the contrary contained herein, each Graphic Tone shall be subject to Licensor's prior written approval and shall be listed on Schedule "B" attached hereto.

(c) Schedule "A" and Schedule "B" may be amended, in Licensor's sole discretion, from time to time as reasonably requested by Licensee on a composition-by-composition basis, subject to the terms of this Agreement. In addition, Licensor may, in its sole discretion, inform Licensee from time to time of additional Compositions it wishes to make available for license hereunder.

(d) All Arrangements created pursuant to this license shall be considered a "work made for hire" for Licensor. In the event the Arrangements shall be deemed not to be a work made for hire, then the Licensee hereby sells, assigns, and transfers over to Licensor, and releases and quitclaims unto Licensor, its successors and assigns, all right, title and interest in and to the Arrangements and all rights therein and thereto, for the United States and throughout the world, forever, including any and all copyright terms, and all extension terms of copyright, for all uses and purposes whether now known or hereafter created, free from payment of any royalty or further compensation.

2. Licensor reserves all rights in and to the Composition(s), including the right in its sole discretion to restrict or rescind the use of any Composition at any time. In the event that Licensor shall request Licensee to cease using any Composition, Licensee shall do so as soon as practicable after receiving notice.

3. In consideration of the foregoing licence, Licensee shall pay to Licensor the following:

(a) Ring Tones: With respect to each individual Download of a Ring Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Ring Tone Downloaded (the "Ring Tone Royalty"), provided that in no circumstances shall the Ring Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.125 per Download irrespective of the price (if any) actually charged;

(b) Graphic Tones: With respect to each individual Download of a Graphic Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Graphic Tone Downloaded (the "Graphic Tone Royalty"), provided that in no circumstances shall the Graphic Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.20 per Download irrespective of the price (if any) actually charged;

(c) Fixing Fee: For each Composition initially converted to a Ring Tone or Graphic Tone, a one-time non-recoupable fixing fee equal to the Licensor Share of each applicable Composition multiplied by $25 (the "Fixing Fee"). For avoidance of doubt, if a Fixing Fee for a particular Composition is paid in connection with the creation of a Ring Tone, an additional Fixing Fee will not be due if such Ring Tone is later converted to a Graphic Tone. Conversely, if a Graphic Tone is initially created by Licensee, an additional Fixing Fee will not be due if the applicable Composition is later exploited solely as a Ring Tone.

(d) Advance: An advance of $5,000 recoupable from all Royalties payable hereunder.

(e) If at any time during the Term hereof Licensee pays any royalty, fixing or other service fee in connection with its Ring Tone or Graphic Tone service within the Territory to any other owner or administrator of musical compositions higher than the Ring Tone Royalty, Graphic Tone Royalty or Fixing Fee specified hereunder, on a per composition basis or otherwise, Licensee shall pay such higher royalty or fixing fee to Licensor retroactively to the first accounting period during which such higher royalty or fixing fee is accounted to such other owner or administrator.

(f) Reference is made to record companies which control certain Master Recordings (the "Record Companies") who may enter in agreements with Licensee which provide, among other things, that the Record Companies will pay to Licensor a royalty in connection with Compositions contained in Master Recordings exploited as Ring Tones by Licensee (the "RC Tones"). Only to the extent that Licensor enters into separate license agreements with such Record Companies which specifically provide that the applicable Record Company will compensate Licensor with respect to the sale of RC Tones shall Licensee not be obligated to pay Licensor Ring Tone Royalties in connection with the sale of RC Tones.

4. Within forty five (45) days after the end of each quarterannual period, i.e. ending March 31, June 30, September 30 and December 31, Licensee shall render to Licensor a true and detailed accounting of (i) all Ring Tones and Graphic Tones Downloaded; and (ii) all Ring Tones and Graphic Tones created. Each accounting shall report each Composition by title, song code number (as indicated on Schedules A and B), the number of Downloads and the resultant applicable Royalties due hereunder and be accompanied by payment to Licensor of all Royalties and Fixing Fees due. All accountings and resultant royalties and fees shall be forwarded to Zomba Enterprises Inc., 8750 Wilshire Boulevard, Beverly Hills, CA 90211, attn: Director of Royalties.

5. (a) Licensee shall maintain accurate and complete records and books of account detailing the creation of Ring Tones and Graphic Tones hereunder and all Downloads and containing all other information needed to compute and verify the amounts payable to Licensor hereunder. Licensor may audit those books and records. Licensor may make such an examination for a particular statement only once. Licensor may conduct such audit only during Licensee's usual business hours, and at the place where it keeps the books and records to be examined, on at least thirty (30) days prior notice.

(b) Such audit shall be conducted at Licensor's sole expense, except that if any audit reveals an error resulting in an underpayment to Licensor of five percent (5%) or more of the total amount accounted to Licensor during the accounting periods audited, then Licensee shall pay to Licensor all reasonable audit costs, including travel, hotel and per diems, together with the underpayment.

(c) Any royalty shortfall shall bear interest at the composite "prime rate" (as published in the Wall Street Journal) plus two percent (2%).

6. Licensee may not assign, transfer or sub-licence any of its rights hereunder without Licensor's prior written consent and any purported such assignment, transfer or licence shall be void *ab initio*.

7. (a) Licensor may terminate this Agreement by giving Licensee notice in any of the following circumstances:

(i) If Licensee fails to perform any of its material obligations under this agreement for any reason (including impossibility of performance) and such failure has not been remedied to Licensor's satisfaction within thirty (30) days after Licensor gives Licensee notice of it.

(ii) If Licensee attempts to assign any of its rights under this agreement without Licensor's prior written consent, or if any of those rights succeeds to any other person or entity by operation of law.

(iii) If the control or ownership of Licensee or the majority of Licensee's capital stock vests, directly or indirectly, in any person or entity except the persons or entities who actually own Licensee's outstanding capital stock now, without Licensor's prior written consent.

(b) This Agreement will terminate automatically, without notice, if Licensee is dissolved or its assets are liquidated, or if Licensee becomes insolvent, or if a proceeding in bankruptcy, for a reorganization, or for other relief from the claims of creditors, or any similar proceeding, takes place with respect to Licensee or its property.

(c) A termination of the Agreement under this paragraph 7 will not limit or affect any of Licensor's other rights.

(d) Upon the expiration or termination of the Term, all of Licensee's rights hereunder shall terminate. Licensee shall withdraw the Ring Tones hereunder from the database of possible Customer retrieval and shall make no further use of the Composition(s), or of the Recordings or Ring Tones whatsoever.

8. (a) Licensor represents, warrants and agrees as follows (with respect to the Licensor Share of the Compositions described in Schedules A and B):

(i) Licensor has full right, power and authority to enter into this agreement and to grant to the Licensee all rights herein set out upon the terms and conditions herein.

(ii) The Compositions are original copyrighted works and in no way infringe the copyright or other rights of any third party.

(iii) Licensor will pay any and all fees, royalties and other sums due to the songwriters of the Compositions as well as to publishers and copublishers whom Licensor administer with respect to the royalties received by it hereunder.

(b) Licensee warrants, represents and agrees as follows:

(i) Licensee has the full right, power and authority to enter into and perform this agreement upon the terms and conditions set forth herein.

(ii) Licensee shall take all steps reasonably necessary to secure and maintain protection of the Compositions, by way of encryption or otherwise, under copyright and equivalent or similar laws throughout the Territory.

(iii) Upon receipt of written instruction from Licensor, Licensee shall not, to the extent permitted by law, license any Customer or other user that is engaged in piracy, illegal activities or other unauthorized use of the Ring Tones or the Compositions, or that has otherwise been designated by the RIAA, IFPI or other such body as an illegal producer or distributor.

(iv) Licensee shall either own or control and/or have valid and enforceable licenses with the applicable rights holders with respect to all aspects of their Ring Tone service including, without limitation, any Master Recordings and/or Graphics.

(c) Each party (for these purposes, "Indemnitor") shall indemnify, defend and hold the other party ("Indemnitee"), its successors, assigns, agents and licensees, free and harmless from and against any and all claims, demands, damages, expenses, losses or costs (including reasonable attorneys' fees and costs), or any sums paid in settlement, arising out of or incurred as a direct result of any actual breach of the representations, warranties, agreements and undertakings of or by the party concerned. Indemnitee shall notify Indemnitor of any claim presented to Indemnitee by a third party. Indemnitor shall defend any third party claim, at its sole expense, with counsel approved by Indemnitee, except that, at Indemnitee's option, Indemnitee may defend the claim (at Indemnitor's sole expense) and shall consult with Indemnitor about choice of counsel and the conduct of the proceeding. No such claim asserted by a third party may be settled by Indemnitee without Indemnitor's prior written consent (such consent not to be unreasonably withheld or delayed), so long as Indemnitor is actively defending such claim in a manner consistent with industry norms, unless Indemnitee shall agree not to seek indemnity from Indemnitor for any settlement payment made by Indemnitee to the claimant.

9. (a) For the avoidance of doubt, no rights are granted in any Master Recordings of the Composition(s) or Graphics, and no rights are granted other than those expressly referred to herein.

(b) Licensee shall not issue any press releases or other forms of publicity materials which make reference to Licensor or this agreement without the prior written consent of Licensor.

(c) Licensor will have no obligation to renew or extend the License after the end of the Term, and may decline to do so in its unrestricted discretion.

(d) Licensee shall be responsible for securing, and paying for, whatever public performance licenses required in connection with its Ring Tone service throughout the Territory. For avoidance of doubt, it is acknowledged and agreed that the Royalty shall not be inclusive of public performance monies payable in connection with Ring Tones, if any, and no public performance license is granted hereunder.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of New York whose courts shall have exclusive jurisdiction over any dispute arising herefrom.

11. This Agreement contains all of the terms agreed between the parties and replaces any and all previous agreements whether written or oral concerning the subject matter hereof.

AS WITNESS the hands of the parties the day and year first above written

Zomba Enterprises Inc.

By: _____

Namco Networks America, Inc.

By: _____

EXHIBIT CO 0271

RING TONE LICENSE

Agreement made September 1, 2005 between BMG Music Publishing NA, Inc., 245 Fifth Avenue, New York, NY 10016 (hereinafter referred to as "Licensor") and eWingz Systems, Inc., 665 Third Street, Suite 250, San Francisco, CA 94107 (hereinafter "Licensee").

For good and valuable consideration, Licensor and the Licensee hereby agree as follows:

1. (a) Licensor grants to Licensee the non-exclusive license for the territory of the United States ("the Territory") for a term commencing on September 1, 2005 and expiring on August 31, 2006 ("the Term") to use the musical works listed on Schedule "A" attached hereto ("the Composition(s)") (but solely to the extent of Licensor's interest therein) as follows:

(i) To create an arrangement of the Compositions consisting of musical tones (the "Arrangement") provided that in no event shall any arrangement change the basic melody or fundamental character of the applicable Composition, and record up to thirty (30) seconds of an Arrangement (the "Recording(s)");

(ii) To transform the Recordings into mobile ring tone formats or to incorporate up to thirty (30) seconds of a Composition as embodied in a pre-existing master recording (a "Master Recording") into a ring tone format (individually and collectively, a "Ring Tone");

(iii) To create a database containing the Ring Tone(s) available to Licensee's customers or subscribers and/or to third party companies serviced by Licensee ("Third Party Companies") which in turn service customers or subscribers ("the Customers")

(iv) Subject to paragraph 1(b) below, to synchronize Ring Tones with graphic images (a "Graphic") (collectively, a "Graphic Tone") which may be viewed solely on a Customer's mobile telephone;

(v) To download or otherwise transmit Ring Tones or Graphic Tones onto mobile telephones (for a fee or otherwise) for personal use by the Customers (a "Download"), for the express purpose of such Ring Tone(s) sounding as a ringing alert on such mobile telephones;

(vi) To promote and advertise segments of the Graphic Tones or Ring Tones (not to exceed thirty (30) seconds each) on Customer's mobile phones and Licensee's and/or Third Party Companies' web site(s) for the sole purpose of allowing a Customer to preview a Ring Tone before purchasing same.

All of the foregoing activities shall be conducted at Licensee's sole expense.

(b) Notwithstanding anything to the contrary contained herein, each Graphic Tone shall be subject to Licensor's prior written approval and shall be listed on Schedule "B" attached hereto.

(c) Schedule "A" and Schedule "B" may be amended, in Licensor's sole discretion, from time to time as reasonably requested by Licensee on a composition-by-composition basis, subject to the terms of this Agreement. In addition, Licensor may, in its sole discretion, inform Licensee from time to time of additional Compositions it wishes to make available for license hereunder.

(d) All Arrangements created pursuant to this license shall be considered a "work made for hire" for Licensor. In the event the Arrangements shall be deemed not to be a work made for hire, then the Licensee hereby sells, assigns, and transfers over to Licensor, and releases and quitclaims unto Licensor, its successors and assigns, all right, title and interest in and to the Arrangements and all rights therein and thereto, for the United States and throughout the world, forever, including any and all copyright terms, and all extension terms of copyright, for all uses and purposes whether now known or hereafter created, free from payment of any royalty or further compensation.

2. Licensor reserves all rights in and to the Composition(s), including the right in its sole discretion to restrict or rescind the use of any Composition at any time. In the event that Licensor shall request Licensee to cease using any Composition, Licensee shall do so as soon as practicable after receiving notice.

3. In consideration of the foregoing licence, Licensee shall pay to Licensor the following:

(a) Ring Tones: With respect to each individual Download of a Ring Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Ring Tone Downloaded (the "Ring Tone Royalty"), provided that in no circumstances shall the Ring Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.125 per Download irrespective of the price (if any) actually charged;

(b) Graphic Tones: With respect to each individual Download of a Graphic Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Graphic Tone Downloaded (the "Graphic Tone Royalty"), provided that in no circumstances shall the Graphic Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.20 per Download irrespective of the price (if any) actually charged;

(c) Fixing Fee: For each Composition initially converted to a Ring Tone or Graphic Tone, a one-time non-recoupable fixing fee equal to the Licensor Share of each applicable Composition multiplied by $25 (the "Fixing Fee"). For avoidance of doubt, if a Fixing Fee for a particular Composition is paid in connection with the creation of a Ring Tone, an additional Fixing Fee will not be due if such Ring Tone is later converted to a Graphic Tone. Conversely, if a Graphic Tone is initially created by Licensee, an additional Fixing Fee will not be due if the applicable Composition is later exploited solely as a Ring Tone.

(d) Advance: An advance of $10,000 recoupable from all Royalties payable hereunder.

(e) If at any time during the Term hereof Licensee pays any royalty, fixing or other service fee in connection with its Ring Tone or Graphic Tone service within the Territory to any other owner or administrator of musical compositions higher than the Ring Tone Royalty, Graphic Tone Royalty or Fixing Fee specified hereunder, on a per composition basis or otherwise, Licensee shall pay such higher royalty or fixing fee to Licensor retroactively to the first accounting period during which such higher royalty or fixing fee is accounted to such other owner or administrator.

(f) Reference is made to record companies which control certain Master Recordings (the "Record Companies") who may enter in agreements with Licensee which provide, among other things, that the Record Companies will pay to Licensor a royalty in connection with Compositions contained in Master Recordings exploited as Ring Tones by Licensee (the "RC Tones"). Only to the extent that Licensor enters into seperate license agreements with such Record Companies which specifically provide that the applicable Record Company will compensate Licensor with respect to the sale of RC Tones shall Licensee not be obligated to pay Licensor Ring Tone Royalties in connection with the sale of RC Tones.

4. Within forty five (45) days after the end of each quarterannual period, i.e. ending March 31, June 30, September 30 and December 31, Licensee shall render to Licensor a true and detailed accounting of (i) all Ring Tones and Graphic Tones Downloaded; and (ii) all Ring Tones and Graphic Tones created. Each accounting shall report each Composition by title, song code number (as indicated on Schedules A and B), the number of Downloads and the resultant applicable Royalties due hereunder and be accompanied by payment to Licensor of all Royalties and Fixing Fees due. All accountings and resultant royalties and fees shall be forwarded to BMG Music Publishing NA, Inc., 8750 Wilshire Boulevard, Beverly Hills, CA 90211, attn: Director of Royalties.

5. (a) Licensee shall maintain accurate and complete records and books of account detailing the creation of Ring Tones and Graphic Tones hereunder and all Downloads and containing all other information needed to compute and verify the amounts payable to Licensor hereunder. Licensor may audit those books and records. Licensor may make such an examination for a particular statement only once. Licensor may conduct such audit only during Licensee's usual business hours, and at the place where it keeps the books and records to be examined, on at least thirty (30) days prior notice.

(b) Such audit shall be conducted at Licensor's sole expense, except that if any audit reveals an error resulting in an underpayment to Licensor of five percent (5%) or more of the total amount accounted to Licensor during the accounting periods audited, then Licensee shall pay to Licensor all reasonable audit costs, including travel, hotel and per diems, together with the underpayment.

(c) Any royalty shortfall shall bear interest at the composite "prime rate" (as published in the Wall Street Journal) plus two percent (2%).

6. Licensee may not assign, transfer or sub-licence any of its rights hereunder without Licensor's prior written consent and any purported such assignment, transfer or licence shall be void *ab initio*.

7. (a) Licensor may terminate this Agreement by giving Licensee notice in any of the following circumstances:

(i) If Licensee fails to perform any of its material obligations under this agreement for any reason (including impossibility of performance) and such failure has not been remedied to Licensor's satisfaction within thirty (30) days after Licensor gives Licensee notice of it.

(ii) If Licensee attempts to assign any of its rights under this agreement without Licensor's prior written consent, or if any of those rights succeeds to any other person or entity by operation of law.

(iii) If the control or ownership of Licensee or the majority of Licensee's capital stock vests, directly or indirectly, in any person or entity except the persons or entities who actually own Licensee's outstanding capital stock now, without Licensor's prior written consent.

(b) This Agreement will terminate automatically, without notice, if Licensee is dissolved or its assets are liquidated, or if Licensee becomes insolvent, or if a proceeding in bankruptcy, for a reorganization, or for other relief from the claims of creditors, or any similar proceeding, takes place with respect to Licensee or its property.

(c) A termination of the Agreement under this paragraph 7 will not limit or affect any of Licensor's other rights.

(d) Upon the expiration or termination of the Term, all of Licensee's rights hereunder shall terminate. Licensee shall withdraw the Ring Tones hereunder from the database of possible Customer retrieval and shall make no further use of the Composition(s), or of the Recordings or Ring Tones whatsoever.

8. (a) Licensor represents, warrants and agrees as follows (with respect to the Licensor Share of the Compositions described in Schedules A and B):

(i) Licensor has full right, power and authority to enter into this agreement and to grant to the Licensee all rights herein set out upon the terms and conditions herein.

(ii) The Compositions are original copyrighted works and in no way infringe the copyright or other rights of any third party.

(iii) Licensor will pay any and all fees, royalties and other sums due to the songwriters of the Compositions as well as to publishers and copublishers whom Licensor administer with respect to the royalties received by it hereunder.

(b) Licensee warrants, represents and agrees as follows:

(i) Licensee has the full right, power and authority to enter into and perform this agreement upon the terms and conditions set forth herein.

(ii) Licensee shall take all steps reasonably necessary to secure and maintain protection of the Compositions, by way of encryption or otherwise, under copyright and equivalent or similar laws throughout the Territory.

(iii) Upon receipt of written instruction from Licensor, Licensee shall not, to the extent permitted by law, license any Customer or other user that is engaged in piracy, illegal activities or other unauthorized use of the Ring Tones or the Compositions, or that has otherwise been designated by the RIAA, IFPI or other such body as an illegal producer or distributor.

(iv) Licensee shall either own or control and/or have valid and enforceable licenses with the applicable rights holders with respect to all aspects of their Ring Tone service including, without limitation, any Master Recordings and/or Graphics.

(c) Each party (for these purposes, "Indemnitor") shall indemnify, defend and hold the other party ("Indemnitee"), its successors, assigns, agents and licensees, free and harmless from and against any and all claims, demands, damages, expenses, losses or costs (including reasonable attorneys' fees and costs), or any sums paid in settlement, arising out of or incurred as a direct result of any actual breach of the representations, warranties, agreements and undertakings of or by the party concerned. Indemnitee shall notify Indemnitor of any claim presented to Indemnitee by a third party. Indemnitor shall defend any third party claim, at its sole expense, with counsel approved by Indemnitee, except that, at Indemnitee's option, Indemnitee may defend the claim (at Indemnitor's sole expense) and shall consult with Indemnitor about choice of counsel and the conduct of the proceeding. No such claim asserted by a third party may be settled by Indemnitee without Indemnitor's prior written consent (such consent not to be unreasonably withheld or delayed), so long as Indemnitor is actively defending such claim in a manner consistent with industry norms, unless Indemnitee shall agree not to seek indemnity from Indemnitor for any settlement payment made by Indemnitee to the claimant.

9. (a) For the avoidance of doubt, no rights are granted in any Master Recordings of the Composition(s) or Graphics, and no rights are granted other than those expressly referred to herein.

(b) Licensee shall not issue any press releases or other forms of publicity materials which make reference to Licensor or this agreement without the prior written consent of Licensor.

(c) Licensor will have no obligation to renew or extend the License after the end of the Term, and may decline to do so in its unrestricted discretion.

(d) Licensee shall be responsible for securing, and paying for, whatever public performance licenses required in connection with its Ring Tone service throughout the Territory. For avoidance of doubt, it is acknowledged and agreed that the Royalty shall not be inclusive of public performance monies payable in connection with Ring Tones, if any, and no public performance license is granted hereunder.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of New York whose courts shall have exclusive jurisdiction over any dispute arising herefrom.

11. This Agreement contains all of the terms agreed between the parties and replaces any and all previous agreements whether written or oral concerning the subject matter hereof.

AS WITNESS the hands of the parties the day and year first above written

BMG Music Publishing NA, Inc.

By: _____

eWingz Systems, Inc.

By: _____

Marc Vanlebegue
CEO

EXHIBIT CO 0272

RING TONE LICENSE

Agreement made September 1, 2005 between Zomba Enterprises Inc., 245 Fifth Avenue, New York, NY 10016 (hereinafter referred to as "Licensor") and eWingz Systems, Inc., 665 Third Street, Suite 250, San Francisco, CA 94107 (hereinafter "Licensee").

For good and valuable consideration, Licensor and the Licensee hereby agree as follows:

1. (a) Licensor grants to Licensee the non-exclusive license for the territory of the United States ("the Territory") for a term commencing on September 1, 2005 and expiring on August 31, 2006 ("the Term") to use the musical works listed on Schedule "A" attached hereto ("the Composition(s)") (but solely to the extent of Licensor's interest therein) as follows:

(i) To create an arrangement of the Compositions consisting of musical tones (the "Arrangement") provided that in no event shall any arrangement change the basic melody or fundamental character of the applicable Composition, and record up to thirty (30) seconds of an Arrangement (the "Recording(s)");
(ii) To transform the Recordings into mobile ring tone formats or to incorporate up to thirty (30) seconds of a Composition as embodied in a pre-existing master recording (a "Master Recording") into a ring tone format (individually and collectively, a "Ring Tone");
(iii) To create a database containing the Ring Tone(s) available to Licensee's customers or subscribers and/or to third party companies serviced by Licensee ("Third Party Companies") which in turn service customers or subscribers ("the Customers")
(iv) Subject to paragraph 1(b) below, to synchronize Ring Tones with graphic images (a "Graphic") (collectively, a "Graphic Tone") which may be viewed solely on a Customer's mobile telephone;
(v) To download or otherwise transmit Ring Tones or Graphic Tones onto mobile telephones (for a fee or otherwise) for personal use by the Customers (a "Download"), for the express purpose of such Ring Tone(s) sounding as a ringing alert on such mobile telephones;
(vi) To promote and advertise segments of the Graphic Tones or Ring Tones (not to exceed thirty (30) seconds each) on Customer's mobile phones and Licensee's and/or Third Party Companies' web site(s) for the sole purpose of allowing a Customer to preview a Ring Tone before purchasing same.

All of the foregoing activities shall be conducted at Licensee's sole expense.

(b) Notwithstanding anything to the contrary contained herein, each Graphic Tone shall be subject to Licensor's prior written approval and shall be listed on Schedule "B" attached hereto.

(c) Schedule "A" and Schedule "B" may be amended, in Licensor's sole discretion, from time to time as reasonably requested by Licensee on a composition-by-composition basis, subject to the terms of this Agreement. In addition, Licensor may, in its sole discretion, inform Licensee from time to time of additional Compositions it wishes to make available for license hereunder.

(d) All Arrangements created pursuant to this license shall be considered a "work made for hire" for Licensor. In the event the Arrangements shall be deemed not to be a work made for hire, then the Licensee hereby sells, assigns, and transfers over to Licensor, and releases and quitclaims unto Licensor, its successors and assigns, all right, title and interest in and to the Arrangements and all rights therein and thereto, for the United States and throughout the world, forever, including any and all copyright terms, and all extension terms of copyright, for all uses and purposes whether now known or hereafter created, free from payment of any royalty or further compensation.

2. Licensor reserves all rights in and to the Composition(s), including the right in its sole discretion to restrict or rescind the use of any Composition at any time. In the event that Licensor shall request Licensee to cease using any Composition, Licensee shall do so as soon as practicable after receiving notice.

3. In consideration of the foregoing licence, Licensee shall pay to Licensor the following:

(a) Ring Tones: With respect to each individual Download of a Ring Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Ring Tone Downloaded (the "Ring Tone Royalty"), provided that in no circumstances shall the Ring Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.125 per Download irrespective of the price (if any) actually charged;

(b) Graphic Tones: With respect to each individual Download of a Graphic Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Graphic Tone Downloaded (the "Graphic Tone Royalty"), provided that in no circumstances shall the Graphic Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.20 per Download irrespective of the price (if any) actually charged;

(c) Fixing Fee: For each Composition initially converted to a Ring Tone or Graphic Tone, a one-time non-recoupable fixing fee equal to the Licensor Share of each applicable Composition multiplied by $25 (the "Fixing Fee"). For avoidance of doubt, if a Fixing Fee for a particular Composition is paid in connection with the creation of a Ring Tone, an additional Fixing Fee will not be due if such Ring Tone is later converted to a Graphic Tone. Conversely, if a Graphic Tone is initially created by Licensee, an additional Fixing Fee will not be due if the applicable Composition is later exploited solely as a Ring Tone.

(d) Advance: An advance of $10,000 recoupable from all Royalties payable hereunder.

(e) If at any time during the Term hereof Licensee pays any royalty, fixing or other service fee in connection with its Ring Tone or Graphic Tone service within the Territory to any other owner or administrator of musical compositions higher than the Ring Tone Royalty, Graphic Tone Royalty or Fixing Fee specified hereunder, on a per composition basis or otherwise, Licensee shall pay such higher royalty or fixing fee to Licensor retroactively to the first accounting period during which such higher royalty or fixing fee is accounted to such other owner or administrator.

(f) Reference is made to record companies which control certain Master Recordings (the "Record Companies") who may enter in agreements with Licensee which provide, among other things, that the Record Companies will pay to Licensor a royalty in connection with Compositions contained in Master Recordings exploited as Ring Tones by Licensee (the "RC Tones"). Only to the extent that Licensor enters into separate license agreements with such Record Companies which specifically provide that the applicable Record Company will compensate Licensor with respect to the sale of RC Tones shall Licensee not be obligated to pay Licensor Ring Tone Royalties in connection with the sale of RC Tones.

4. Within forty five (45) days after the end of each quarterannual period, i.e. ending March 31, June 30, September 30 and December 31, Licensee shall render to Licensor a true and detailed accounting of (i) all Ring Tones and Graphic Tones Downloaded; and (ii) all Ring Tones and Graphic Tones created. Each accounting shall report each Composition by title, song code number (as indicated on Schedules A and B), the number of Downloads and the resultant applicable Royalties due hereunder and be accompanied by payment to Licensor of all Royalties and Fixing Fees due. All accountings and resultant royalties and fees shall be forwarded to Zomba Enterprises Inc., 8750 Wilshire Boulevard, Beverly Hills, CA 90211, attn: Director of Royalties.

5. (a) Licensee shall maintain accurate and complete records and books of account detailing the creation of Ring Tones and Graphic Tones hereunder and all Downloads and containing all other information needed to compute and verify the amounts payable to Licensor hereunder. Licensor may audit those books and records. Licensor may make such an examination for a particular statement only once. Licensor may conduct such audit only during Licensee's usual business hours, and at the place where it keeps the books and records to be examined, on at least thirty (30) days prior notice.

(b) Such audit shall be conducted at Licensor's sole expense, except that if any audit reveals an error resulting in an underpayment to Licensor of five percent (5%) or more of the total amount accounted to Licensor during the accounting periods audited, then Licensee shall pay to Licensor all reasonable audit costs, including travel, hotel and per diems, together with the underpayment.

(c) Any royalty shortfall shall bear interest at the composite "prime rate" (as published in the Wall Street Journal) plus two percent (2%).

6. Licensee may not assign, transfer or sub-licence any of its rights hereunder without Licensor's prior written consent and any purported such assignment, transfer or licence shall be void *ab initio*.

7. (a) Licensor may terminate this Agreement by giving Licensee notice in any of the following circumstances:

(i) If Licensee fails to perform any of its material obligations under this agreement for any reason (including impossibility of performance) and such failure has not been remedied to Licensor's satisfaction within thirty (30) days after Licensor gives Licensee notice of it.

(ii) If Licensee attempts to assign any of its rights under this agreement without Licensor's prior written consent, or if any of those rights succeeds to any other person or entity by operation of law.

(iii) If the control or ownership of Licensee or the majority of Licensee's capital stock vests, directly or indirectly, in any person or entity except the persons or entities who actually own Licensee's outstanding capital stock now, without Licensor's prior written consent.

(b) This Agreement will terminate automatically, without notice, if Licensee is dissolved or its assets are liquidated, or if Licensee becomes insolvent, or if a proceeding in bankruptcy, for a reorganization, or for other relief from the claims of creditors, or any similar proceeding, takes place with respect to Licensee or its property.

(c) A termination of the Agreement under this paragraph 7 will not limit or affect any of Licensor's other rights.

(d) Upon the expiration or termination of the Term, all of Licensee's rights hereunder shall terminate. Licensee shall withdraw the Ring Tones hereunder from the database of possible Customer retrieval and shall make no further use of the Composition(s), or of the Recordings or Ring Tones whatsoever.

8. (a) Licensor represents, warrants and agrees as follows (with respect to the Licensor Share of the Compositions described in Schedules A and B):

(i) Licensor has full right, power and authority to enter into this agreement and to grant to the Licensee all rights herein set out upon the terms and conditions herein.

(ii) The Compositions are original copyrighted works and in no way infringe the copyright or other rights of any third party.

(iii) Licensor will pay any and all fees, royalties and other sums due to the songwriters of the Compositions as well as to publishers and copublishers whom Licensor administer with respect to the royalties received by it hereunder.

(b) Licensee warrants, represents and agrees as follows:

(i) Licensee has the full right, power and authority to enter into and perform this agreement upon the terms and conditions set forth herein.

(ii) Licensee shall take all steps reasonably necessary to secure and maintain protection of the Compositions, by way of encryption or otherwise, under copyright and equivalent or similar laws throughout the Territory.

(iii) Upon receipt of written instruction from Licensor, Licensee shall not, to the extent permitted by law, license any Customer or other user that is engaged in piracy, illegal activities or other unauthorized use of the Ring Tones or the Compositions, or that has otherwise been designated by the RIAA, IFPI or other such body as an illegal producer or distributor.

(iv) Licensee shall either own or control and/or have valid and enforceable licenses with the applicable rights holders with respect to all aspects of their Ring Tone service including, without limitation, any Master Recordings and/or Graphics.

(c) Each party (for these purposes, "Indemnitor") shall indemnify, defend and hold the other party ("Indemnitee"), its successors, assigns, agents and licensees, free and harmless from and against any and all claims, demands, damages, expenses, losses or costs (including reasonable attorneys' fees and costs), or any sums paid in settlement, arising out of or incurred as a direct result of any actual breach of the representations, warranties, agreements and undertakings of or by the party concerned. Indemnitee shall notify Indemnitor of any claim presented to Indemnitee by a third party. Indemnitor shall defend any third party claim, at its sole expense, with counsel approved by Indemnitee, except that, at Indemnitee's option, Indemnitee may defend the claim (at Indemnitor's sole expense) and shall consult with Indemnitor about choice of counsel and the conduct of the proceeding. No such claim asserted by a third party may be settled by Indemnitee without Indemnitor's prior written consent (such consent not to be unreasonably withheld or delayed), so long as Indemnitor is actively defending such claim in a manner consistent with industry norms, unless Indemnitee shall agree not to seek indemnity from Indemnitor for any settlement payment made by Indemnitee to the claimant.

9. (a) For the avoidance of doubt, no rights are granted in any Master Recordings of the Composition(s) or Graphics, and no rights are granted other than those expressly referred to herein.

(b) Licensee shall not issue any press releases or other forms of publicity materials which make reference to Licensor or this agreement without the prior written consent of Licensor.

(c) Licensor will have no obligation to renew or extend the License after the end of the Term, and may decline to do so in its unrestricted discretion.

(d) Licensee shall be responsible for securing, and paying for, whatever public performance licenses required in connection with its Ring Tone service throughout the Territory. For avoidance of doubt, it is acknowledged and agreed that the Royalty shall not be inclusive of public performance monies payable in connection with Ring Tones, if any, and no public performance license is granted hereunder.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of New York whose courts shall have exclusive jurisdiction over any dispute arising herefrom.

11. This Agreement contains all of the terms agreed between the parties and replaces any and all previous agreements whether written or oral concerning the subject matter hereof.

AS WITNESS the hands of the parties the day and year first above written

Zomba Enterprises Inc.

By: _____

eWingz Systems, Inc.

By: _____

Marc Vanlebeyk
CEO

EXHIBIT CO 0273

RING TONE LICENSE

Agreement made September 1, 2005 between BMG Music Publishing NA, Inc., 245 Fifth Avenue, New York, NY 10016 (hereinafter referred to as "Licensor") and Namco Networks America Inc., 1740 Technology Drive, Suite 320, San Jose, CA 95110 (hereinafter "Licensee").

For good and valuable consideration, Licensor and the Licensee hereby agree as follows:

1. (a) Licensor grants to Licensee the non-exclusive license for the territory of the United States ("the Territory") for a term commencing on September 1, 2005 and expiring on August 31, 2006 ("the Term") to use the musical works listed on Schedule "A" attached hereto ("the Composition(s)") (but solely to the extent of Licensor's interest therein) as follows:

(i) To create an arrangement of the Compositions consisting of musical tones (the "Arrangement") provided that in no event shall any arrangement change the basic melody or fundamental character of the applicable Composition, and record up to thirty (30) seconds of an Arrangement (the "Recording(s)");

(ii) To transform the Recordings into mobile ring tone formats or to incorporate up to thirty (30) seconds of a Composition as embodied in a pre-existing master recording (a "Master Recording") into a ring tone format (individually and collectively, a "Ring Tone");

(iii) To create a database containing the Ring Tone(s) available to Licensee's customers or subscribers and/or to third party companies serviced by Licensee ("Third Party Companies") which in turn service customers or subscribers ("the Customers")

(iv) Subject to paragraph 1(b) below, to synchronize Ring Tones with graphic images (a "Graphic") (collectively, a "Graphic Tone") which may be viewed solely on a Customer's mobile telephone;

(v) To download or otherwise transmit Ring Tones or Graphic Tones onto mobile telephones (for a fee or otherwise) for personal use by the Customers (a "Download"), for the express purpose of such Ring Tone(s) sounding as a ringing alert on such mobile telephones;

(vi) To promote and advertise segments of the Graphic Tones or Ring Tones (not to exceed thirty (30) seconds each) on Customer's mobile phones and Licensee's and/or Third Party Companies' web site(s) for the sole purpose of allowing a Customer to preview a Ring Tone before purchasing same.

All of the foregoing activities shall be conducted at Licensee's sole expense.

(b) Notwithstanding anything to the contrary contained herein, each Graphic Tone shall be subject to Licensor's prior written approval and shall be listed on Schedule "B" attached hereto.

(c) Schedule "A" and Schedule "B" may be amended, in Licensor's sole discretion, from time to time as reasonably requested by Licensee on a composition-by-composition basis, subject to the terms of this Agreement. In addition, Licensor may, in its sole discretion, inform Licensee from time to time of additional Compositions it wishes to make available for license hereunder.

(d) All Arrangements created pursuant to this license shall be considered a "work made for hire" for Licensor. In the event the Arrangements shall be deemed not to be a work made for hire, then the Licensee hereby sells, assigns, and transfers over to Licensor, and releases and quitclaims unto Licensor, its successors and assigns, all right, title and interest in and to the Arrangements and all rights therein and thereto, for the United States and throughout the world, forever, including any and all copyright terms, and all extension terms of copyright, for all uses and purposes whether now known or hereafter created, free from payment of any royalty or further compensation.

2. Licensor reserves all rights in and to the Composition(s), including the right in its sole discretion to restrict or rescind the use of any Composition at any time. In the event that Licensor shall request Licensee to cease using any Composition, Licensee shall do so as soon as practicable after receiving notice.

3. In consideration of the foregoing licence, Licensee shall pay to Licensor the following:

(a) Ring Tones: With respect to each individual Download of a Ring Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Ring Tone Downloaded (the "Ring Tone Royalty"), provided that in no circumstances shall the Ring Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.125 per Download irrespective of the price (if any) actually charged;

(b) Graphic Tones: With respect to each individual Download of a Graphic Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Graphic Tone Downloaded (the "Graphic Tone Royalty"), provided that in no circumstances shall the Graphic Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.20 per Download irrespective of the price (if any) actually charged;

(c) Fixing Fee: For each Composition initially converted to a Ring Tone or Graphic Tone, a one-time non-recoupable fixing fee equal to the Licensor Share of each applicable Composition multiplied by $25 (the "Fixing Fee"). For avoidance of doubt, if a Fixing Fee for a particular Composition is paid in connection with the creation of a Ring Tone, an additional Fixing Fee will not be due if such Ring Tone is later converted to a Graphic Tone. Conversely, if a Graphic Tone is initially created by Licensee, an additional Fixing Fee will not be due if the applicable Composition is later exploited solely as a Ring Tone.

(d) Advance: An advance of $5,000 recoupable from all Royalties payable hereunder.

(e) If at any time during the Term hereof Licensee pays any royalty, fixing or other service fee in connection with its Ring Tone or Graphic Tone service within the Territory to any other owner or administrator of musical compositions higher than the Ring Tone Royalty, Graphic Tone Royalty or Fixing Fee specified hereunder, on a per composition basis or otherwise, Licensee shall pay such higher royalty or fixing fee to Licensor retroactively to the first accounting period during which such higher royalty or fixing fee is accounted to such other owner or administrator.

(f) Reference is made to record companies which control certain Master Recordings (the "Record Companies") who may enter in agreements with Licensee which provide, among other things, that the Record Companies will pay to Licensor a royalty in connection with Compositions contained in Master Recordings exploited as Ring Tones by Licensee (the "RC Tones"). Only to the extent that Licensor enters into separate license agreements with such Record Companies which specifically provide that the applicable Record Company will compensate Licensor with respect to the sale of RC Tones shall Licensee not be obligated to pay Licensor Ring Tone Royalties in connection with the sale of RC Tones.

4. Within forty five (45) days after the end of each quarterannual period, i.e. ending March 31, June 30, September 30 and December 31, Licensee shall render to Licensor a true and detailed accounting of (i) all Ring Tones and Graphic Tones Downloaded; and (ii) all Ring Tones and Graphic Tones created. Each accounting shall report each Composition by title, song code number (as indicated on Schedules A and B), the number of Downloads and the resultant applicable Royalties due hereunder and be accompanied by payment to Licensor of all Royalties and Fixing Fees due. All accountings and resultant royalties and fees shall be forwarded to BMG Music Publishing NA, Inc., 8750 Wilshire Boulevard, Beverly Hills, CA 90211, attn: Director of Royalties.

5. (a) Licensee shall maintain accurate and complete records and books of account detailing the creation of Ring Tones and Graphic Tones hereunder and all Downloads and containing all other information needed to compute and verify the amounts payable to Licensor hereunder. Licensor may audit those books and records. Licensor may make such an examination for a particular statement only once. Licensor may conduct such audit only during Licensee's usual business hours, and at the place where it keeps the books and records to be examined, on at least thirty (30) days prior notice.

(b) Such audit shall be conducted at Licensor's sole expense, except that if any audit reveals an error resulting in an underpayment to Licensor of five percent (5%) or more of the total amount accounted to Licensor during the accounting periods audited, then Licensee shall pay to Licensor all reasonable audit costs, including travel, hotel and per diems, together with the underpayment.

(c) Any royalty shortfall shall bear interest at the composite "prime rate" (as published in the Wall Street Journal) plus two percent (2%).

6. Licensee may not assign, transfer or sub-licence any of its rights hereunder without Licensor's prior written consent and any purported such assignment, transfer or licence shall be void *ab initio*.

7. (a) Licensor may terminate this Agreement by giving Licensee notice in any of the following circumstances:

(i) If Licensee fails to perform any of its material obligations under this agreement for any reason (including impossibility of performance) and such failure has not been remedied to Licensor's satisfaction within thirty (30) days after Licensor gives Licensee notice of it.

(ii) If Licensee attempts to assign any of its rights under this agreement without Licensor's prior written consent, or if any of those rights succeeds to any other person or entity by operation of law.

(iii) If the control or ownership of Licensee or the majority of Licensee's capital stock vests, directly or indirectly, in any person or entity except the persons or entities who actually own Licensee's outstanding capital stock now, without Licensor's prior written consent.

(b) This Agreement will terminate automatically, without notice, if Licensee is dissolved or its assets are liquidated, or if Licensee becomes insolvent, or if a proceeding in bankruptcy, for a reorganization, or for other relief from the claims of creditors, or any similar proceeding, takes place with respect to Licensee or its property.

(c) A termination of the Agreement under this paragraph 7 will not limit or affect any of Licensor's other rights.

(d) Upon the expiration or termination of the Term, all of Licensee's rights hereunder shall terminate. Licensee shall withdraw the Ring Tones hereunder from the database of possible Customer retrieval and shall make no further use of the Composition(s), or of the Recordings or Ring Tones whatsoever.

8. (a) Licensor represents, warrants and agrees as follows (with respect to the Licensor Share of the Compositions described in Schedules A and B):

(i) Licensor has full right, power and authority to enter into this agreement and to grant to the Licensee all rights herein set out upon the terms and conditions herein.

(ii) The Compositions are original copyrighted works and in no way infringe the copyright or other rights of any third party.

(iii) Licensor will pay any and all fees, royalties and other sums due to the songwriters of the Compositions as well as to publishers and copublishers whom Licensor administer with respect to the royalties received by it hereunder.

(b) Licensee warrants, represents and agrees as follows:

(i) Licensee has the full right, power and authority to enter into and perform this agreement upon the terms and conditions set forth herein.

(ii) Licensee shall take all steps reasonably necessary to secure and maintain protection of the Compositions, by way of encryption or otherwise, under copyright and equivalent or similar laws throughout the Territory.

(iii) Upon receipt of written instruction from Licensor, Licensee shall not, to the extent permitted by law, license any Customer or other user that is engaged in piracy, illegal activities or other unauthorized use of the Ring Tones or the Compositions, or that has otherwise been designated by the RIAA, IFPI or other such body as an illegal producer or distributor.

(iv) Licensee shall either own or control and/or have valid and enforceable licenses with the applicable rights holders with respect to all aspects of their Ring Tone service including, without limitation, any Master Recordings and/or Graphics.

(c) Each party (for these purposes, "Indemnitor") shall indemnify, defend and hold the other party ("Indemnitee"), its successors, assigns, agents and licensees, free and harmless from and against any and all claims, demands, damages, expenses, losses or costs (including reasonable attorneys' fees and costs), or any sums paid in settlement, arising out of or incurred as a direct result of any actual breach of the representations, warranties, agreements and undertakings of or by the party concerned. Indemnitee shall notify Indemnitor of any claim presented to Indemnitee by a third party. Indemnitor shall defend any third party claim, at its sole expense, with counsel approved by Indemnitee, except that, at Indemnitee's option, Indemnitee may defend the claim (at Indemnitor's sole expense) and shall consult with Indemnitor about choice of counsel and the conduct of the proceeding. No such claim asserted by a third party may be settled by Indemnitee without Indemnitor's prior written consent (such consent not to be unreasonably withheld or delayed), so long as Indemnitor is actively defending such claim in a manner consistent with industry norms, unless Indemnitee shall agree not to seek indemnity from Indemnitor for any settlement payment made by Indemnitee to the claimant.

9. (a) For the avoidance of doubt, no rights are granted in any Master Recordings of the Composition(s) or Graphics, and no rights are granted other than those expressly referred to herein.

(b) Licensee shall not issue any press releases or other forms of publicity materials which make reference to Licensor or this agreement without the prior written consent of Licensor.

(c) Licensor will have no obligation to renew or extend the License after the end of the Term, and may decline to do so in its unrestricted discretion.

(d) Licensee shall be responsible for securing, and paying for, whatever public performance licenses required in connection with its Ring Tone service throughout the Territory. For avoidance of doubt, it is acknowledged and agreed that the Royalty shall not be inclusive of public performance monies payable in connection with Ring Tones, if any, and no public performance license is granted hereunder.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of New York whose courts shall have exclusive jurisdiction over any dispute arising herefrom.

11. This Agreement contains all of the terms agreed between the parties and replaces any and all previous agreements whether written or oral concerning the subject matter hereof.

AS WITNESS the hands of the parties the day and year first above written

BMG Music Publishing NA, Inc.

By: _____

Namco Networks America Inc.

By: _____

EXHIBIT CO 0274

RING TONE LICENSE

Agreement made August 1, 2005 between BMG Music Publishing NA, Inc., 245 Fifth Avenue, New York, NY 10016 (hereinafter referred to as "Licensor") and Up-Mobile Corporation, 10305 NW 41st Street, Suite 206, Miami, FL 33178 (hereinafter "Licensee").

For good and valuable consideration, Licensor and the Licensee hereby agree as follows:

1. (a) Licensor grants to Licensee the non-exclusive license for the territory of the United States ("the Territory") for a term commencing on August 1, 2005 and expiring on July 31, 2006 ("the Term") to use the musical works listed on Schedule "A" attached hereto ("the Composition(s)") (but solely to the extent of Licensor's interest therein) as follows:

(i) To create an arrangement of the Compositions consisting of musical tones (the "Arrangement") provided that in no event shall any arrangement change the basic melody or fundamental character of the applicable Composition, and record up to thirty (30) seconds of an Arrangement (the "Recording(s)");

(ii) To transform the Recordings into mobile ring tone formats or to incorporate up to thirty (30) seconds of a Composition as embodied in a pre-existing master recording (a "Master Recording") into a ring tone format (individually and collectively, a "Ring Tone");

(iii) To create a database containing the Ring Tone(s) available to Licensee's customers or subscribers and/or to third party companies serviced by Licensee ("Third Party Companies") which in turn service customers or subscribers ("the Customers")

(iv) Subject to paragraph 1(b) below, to synchronize Ring Tones with graphic images (a "Graphic") (collectively, a "Graphic Tone") which may be viewed solely on a Customer's mobile telephone;

(v) To download or otherwise transmit Ring Tones or Graphic Tones onto mobile telephones (for a fee or otherwise) for personal use by the Customers (a "Download"), for the express purpose of such Ring Tone(s) sounding as a ringing alert on such mobile telephones;

(vi) To promote and advertise segments of the Graphic Tones or Ring Tones (not to exceed thirty (30) seconds each) on Customer's mobile phones and Licensee's and/or Third Party Companies' web site(s) for the sole purpose of allowing a Customer to preview a Ring Tone before purchasing same.

All of the foregoing activities shall be conducted at Licensee's sole expense.

(b) Notwithstanding anything to the contrary contained herein, each Graphic Tone shall be subject to Licensor's prior written approval and shall be listed on Schedule "B" attached hereto.

(c) Schedule "A" and Schedule "B" may be amended, in Licensor's sole discretion, from time to time as reasonably requested by Licensee on a composition-by-composition basis, subject to the terms of this Agreement. In addition, Licensor may, in its sole discretion, inform Licensee from time to time of additional Compositions it wishes to make available for license hereunder.

(d) All Arrangements created pursuant to this license shall be considered a "work made for hire" for Licensor. In the event the Arrangements shall be deemed not to be a work made for hire, then the Licensee hereby sells, assigns, and transfers over to Licensor, and releases and quitclaims unto Licensor, its successors and assigns, all right, title and interest in and to the Arrangements and all rights therein and thereto, for the United States and throughout the world, forever, including any and all copyright terms, and all extension terms of copyright, for all uses and purposes whether now known or hereafter created, free from payment of any royalty or further compensation.

2. Licensor reserves all rights in and to the Composition(s), including the right in its sole discretion to restrict or rescind the use of any Composition at any time. In the event that Licensor shall request Licensee to cease using any Composition, Licensee shall do so as soon as practicable after receiving notice.

3. In consideration of the foregoing licence, Licensee shall pay to Licensor the following:

(a) Ring Tones: With respect to each Individual Download of a Ring Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Ring Tone Downloaded (the "Ring Tone Royalty"), provided that in no circumstances shall the Ring Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.125 per Download irrespective of the price (if any) actually charged;

(b) Graphic Tones: With respect to each individual Download of a Graphic Tone, a sum equal to Licensor's percentage of control of each applicable Composition (the "Licensor Share") multiplied by ten percent (10%) of the actual price charged to Customers for each Graphic Tone Downloaded (the "Graphic Tone Royalty"), provided that in no circumstances shall the Graphic Tone Royalty be less than the Licensor Share of each applicable Composition multiplied by $.20 per Download irrespective of the price (if any) actually charged;

(c) Fixing Fee: For each Composition initially converted to a Ring Tone or Graphic Tone, a one-time non-recoupable fixing fee equal to the Licensor Share of each applicable Composition multiplied by $25 (the "Fixing Fee"). For avoidance of doubt, if a Fixing Fee for a particular Composition is paid in connection with the creation of a Ring Tone, an additional Fixing Fee will not be due if such Ring Tone is later converted to a Graphic Tone. Conversely, if a Graphic Tone is initially created by Licensee, an additional Fixing Fee will not be due if the applicable Composition is later exploited solely as a Ring Tone.

(d) Advance: An advance of $5,000 recoupable from all Royalties payable hereunder.

(e) If at any time during the Term hereof Licensee pays any royalty, fixing or other service fee in connection with its Ring Tone or Graphic Tone service within the Territory to any other owner or administrator of musical compositions higher than the Ring Tone Royalty, Graphic Tone Royalty or Fixing Fee specified hereunder, on a per composition basis or otherwise, Licensee shall pay such higher royalty or fixing fee to Licensor retroactively to the first accounting period during which such higher royalty or fixing fee is accounted to such other owner or administrator.

(f) Reference is made to record companies which control certain Master Recordings (the "Record Companies") who may enter in agreements with Licensee which provide, among other things, that the Record Companies will pay to Licensor a royalty in connection with Compositions contained in Master Recordings exploited as Ring Tones by Licensee (the "RC Tones"). Only to the extent that Licensor enters into separate license agreements with such Record Companies which specifically provide that the applicable Record Company will compensate Licensor with respect to the sale of RC Tones shall Licensee not be obligated to pay Licensor Ring Tone Royalties in connection with the sale of RC Tones.

4. Within forty five (45) days after the end of each quarterannual period, i.e. ending March 31, June 30, September 30 and December 31, Licensee shall render to Licensor a true and detailed accounting of (i) all Ring Tones and Graphic Tones Downloaded; and (ii) all Ring Tones and Graphic Tones created. Each accounting shall report each Composition by title, song code number (as indicated on Schedules A and B), the number of Downloads and the resultant applicable Royalties due hereunder and be accompanied by payment to Licensor of all Royalties and Fixing Fees due. All accountings and resultant royalties and fees shall be forwarded to BMG Music Publishing NA, Inc., 8750 Wilshire Boulevard, Beverly Hills, CA 90211, attn: Director of Royalties.

5. (a) Licensee shall maintain accurate and complete records and books of account detailing the creation of Ring Tones and Graphic Tones hereunder and all Downloads and containing all other information needed to compute and verify the amounts payable to Licensor hereunder. Licensor may audit those books and records. Licensor may make such an examination for a particular statement only once. Licensor may conduct such audit only during Licensee's usual business hours, and at the place where it keeps the books and records to be examined, on at least thirty (30) days prior notice.

(b) Such audit shall be conducted at Licensor's sole expense, except that if any audit reveals an error resulting in an underpayment to Licensor of five percent (5%) or more of the total amount accounted to Licensor during the accounting periods audited, then Licensee shall pay to Licensor all reasonable audit costs, including travel, hotel and per diems, together with the underpayment.

(c) Any royalty shortfall shall bear interest at the composite "prime rate" (as published in the Wall Street Journal) plus two percent (2%).

6. Licensee may not assign, transfer or sub-licence any of its rights hereunder without Licensor's prior written consent and any purported such assignment, transfer or licence shall be void *ab initio*.

7. (a) Licensor may terminate this Agreement by giving Licensee notice in any of the following circumstances:

(i) If Licensee fails to perform any of its material obligations under this agreement for any reason (including impossibility of performance) and such failure has not been remedied to Licensor's satisfaction within thirty (30) days after Licensor gives Licensee notice of it.

(ii) If Licensee attempts to assign any of its rights under this agreement without Licensor's prior written consent, or if any of those rights succeeds to any other person or entity by operation of law.

(iii) If the control or ownership of Licensee or the majority of Licensee's capital stock vests, directly or indirectly, in any person or entity except the persons or entities who actually own Licensee's outstanding capital stock now, without Licensor's prior written consent.

(b) This Agreement will terminate automatically, without notice, if Licensee is dissolved or its assets are liquidated, or if Licensee becomes insolvent, or if a proceeding in bankruptcy, for a reorganization, or for other relief from the claims of creditors, or any similar proceeding, takes place with respect to Licensee or its property.

(c) A termination of the Agreement under this paragraph 7 will not limit or affect any of Licensor's other rights.

(d) Upon the expiration or termination of the Term, all of Licensee's rights hereunder shall terminate. Licensee shall withdraw the Ring Tones hereunder from the database of possible Customer retrieval and shall make no further use of the Composition(s), or of the Recordings or Ring Tones whatsoever.

8. (a) Licensor represents, warrants and agrees as follows (with respect to the Licensor Share of the Compositions described in Schedules A and B):

(i) Licensor has full right, power and authority to enter into this agreement and to grant to the Licensee all rights herein set out upon the terms and conditions herein.

(ii) The Compositions are original copyrighted works and in no way infringe the copyright or other rights of any third party.

(iii) Licensor will pay any and all fees, royalties and other sums due to the songwriters of the Compositions as well as to publishers and copublishers whom Licensor administer with respect to the royalties received by it hereunder.

(b) Licensee warrants, represents and agrees as follows:

(i) Licensee has the full right, power and authority to enter into and perform this agreement upon the terms and conditions set forth herein.

(ii) Licensee shall take all steps reasonably necessary to secure and maintain protection of the Compositions, by way of encryption or otherwise, under copyright and equivalent or similar laws throughout the Territory.

(iii) Upon receipt of written instruction from Licensor, Licensee shall not, to the extent permitted by law, license any Customer or other user that is engaged in piracy, illegal activities or other unauthorized use of the Ring Tones or the Compositions, or that has otherwise been designated by the RIAA, IFPI or other such body as an illegal producer or distributor.

(iv) Licensee shall either own or control and/or have valid and enforceable licenses with the applicable rights holders with respect to all aspects of their Ring Tone service including, without limitation, any Master Recordings and/or Graphics.

(c) Each party (for these purposes, "Indemnitor") shall indemnify, defend and hold the other party ("Indemnitee"), its successors, assigns, agents and licensees, free and harmless from and against any and all claims, demands, damages, expenses, losses or costs (including reasonable attorneys' fees and costs), or any sums paid in settlement, arising out of or incurred as a direct result of any actual breach of the representations, warranties, agreements and undertakings of or by the party concerned. Indemnitee shall notify Indemnitor of any claim presented to Indemnitee by a third party. Indemnitor shall defend any third party claim, at its sole expense, with counsel approved by Indemnitee, except that, at Indemnitee's option, Indemnitee may defend the claim (at Indemnitor's sole expense) and shall consult with Indemnitor about choice of counsel and the conduct of the proceeding. No such claim asserted by a third party may be settled by Indemnitee without Indemnitor's prior written consent (such consent not to be unreasonably withheld or delayed), so long as Indemnitor is actively defending such claim in a manner consistent with industry norms, unless Indemnitee shall agree not to seek indemnity from Indemnitor for any settlement payment made by Indemnitee to the claimant.

9. (a) For the avoidance of doubt, no rights are granted in any Master Recordings of the Composition(s) or Graphics, and no rights are granted other than those expressly referred to herein.

(b) Licensee shall not issue any press releases or other forms of publicity materials which make reference to Licensor or this agreement without the prior written consent of Licensor.

(c) Licensor will have no obligation to renew or extend the License after the end of the Term, and may decline to do so in its unrestricted discretion.

(d) Licensee shall be responsible for securing, and paying for, whatever public performance licenses required in connection with its Ring Tone service throughout the Territory. For avoidance of doubt, it is acknowledged and agreed that the Royalty shall not be inclusive of public performance monies payable in connection with Ring Tones, if any, and no public performance license is granted hereunder.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of New York whose courts shall have exclusive jurisdiction over any dispute arising herefrom.

11. This Agreement contains all of the terms agreed between the parties and replaces any and all previous agreements whether written or oral concerning the subject matter hereof.

AS WITNESS the hands of the parties the day and year first above written

BMG Music Publishing NA, Inc.

By: _____

Up-Mobile Corporation

By: _____

Vice President & CFO