PUBLIC

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TESTIMONY OF

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TABLE OF CONTENTS

TRACK LIST FOR CD RIAA Ex. L-101-DP ii

QUALIFICATIONS 1

SUMMARY 1

DISCUSSION 2

I. Ringtones and Their Creation 3

A. Monophonic and Polyphonic Ringtones 3

B. Mastertones 5

1. Production of Mastertones in General 6

2. Multiple Mastertones from the Same Recording 8

3. Looping 9

C. Hybrid Tones 9

II. Ringtone Distribution 10

III. Contributions of Record Companies and Distributors 10

CONCLUSION 11

TRACK LIST FOR CD RIAA Ex. L-101-DP

Track	Type	Length	Artist	Song
1	Original	3:49	Beyonce	*Irreplaceable*
2	Mastertone	0:06	Beyonce	*Irreplaceable*
3	Mastertone	0:13	Beyonce	*Irreplaceable*
4	Mastertone	0:27	Beyonce	*Irreplaceable*
5	Polyphonic	0:31	Beyonce	*Irreplaceable*
6	Voicetone	0:14	Beyonce	*Let Me Cater 2 You*
7	Original	3:33	Britney Spears	*Baby One More Time*
8	Mastertone	0:12	Britney Spears	*Baby One More Time*
9	Mastertone	0:24	Britney Spears	*Baby One More Time*
10	Original	3:57	Cyndi Lauper	*Girls Just Wanna Have Fun*
11	Mastertone	0:08	Cyndi Lauper	*Girls Just Wanna Have Fun*
12	Mastertone	0:12	Cyndi Lauper	*Girls Just Wanna Have Fun*
13	Mastertone	0:28	Cyndi Lauper	*Girls Just Wanna Have Fun*
14	Polyphonic	0:30	Cyndi Lauper	*Girls Just Wanna Have Fun*
15	Original	1:58	Elvis Presley	*That's All Right*
16	Mastertone	0:07	Elvis Presley	*That's All Right*
17	Mastertone	0:13	Elvis Presley	*That's All Right*
18	Original	4:38	Justin Timberlake	*My Love*
19	Mastertone	0:06	Justin Timberlake	*My Love*
20	Mastertone	0:18	Justin Timberlake	*My Love*
21	Mastertone	0:32	Justin Timberlake	*My Love*
22	Original	4:02	Justin Timberlake	*SexyBack*
23	Mastertone	0:16	Justin Timberlake	*SexyBack*
24	Mastertone	0:16	Justin Timberlake	*SexyBack*
25	Original	3:58	The Fray	*Over My Head*
26	Mastertone	0:08	The Fray	*Over My Head*
27	Mastertone	0:18	The Fray	*Over My Head*
28	Mastertone	0:35	The Fray	*Over My Head*

QUALIFICATIONS

My name is J.J. Rosen, and I am the Senior Vice President and General Manager for U.S. Digital Business at SONY BMG MUSIC ENTERTAINMENT. I oversee SONY BMG's relationships with U.S. digital business partners and am responsible for maximizing U.S. digital revenue, as well as for working directly with each SONY BMG label to support the company's efforts to create digital assets around new releases. In this capacity, I coordinate with our Digital Operations Group to market and promote SONY BMG's mastertones and polyphonic ringtones, which are among our most critical digital assets.

Prior to the merger that created SONY BMG, I was the Vice President of Mobile Products for Sony Music and oversaw the marketing and promotion of Sony's mastertone and ringtone products. Prior to joining Sony, in 2001 I co-founded RunTones, which was a polyphonic ringtone vendor acquired by Sony Music in 2002.

SUMMARY

I understand that in this proceeding the Copyright Royalty Judges will determine royalty rates and terms for the "mechanical" compulsory license, which allows record companies and others to reproduce and distribute musical works as part of recorded music products and services. I also understand that the Register of Copyrights has determined that, as a matter of law, ringtones generally fall within the compulsory license, and accordingly, the Board will be setting a mechanical royalty rate for mastertones and other ringtones.

A ringtone is a digital audio file played by a cellular phone or other mobile device to alert the user to an incoming call or message. The most commercially important

category of ringtones, and what is relevant to this proceeding, are musical ringtones. These include mastertones (typically excerpts of commercially released sound recordings), as well as specialized recordings of excerpts of songs, known as "monophonic" and "polyphonic" ringtones. There are also what we call "hybrid" tones that combine recorded music with non-musical elements such as a spoken word message. Outside the scope of this proceeding are completely non-musical ringtones, such as audio recordings of spoken messages by performing artists and other celebrities (called "voice tones"), sound clips from motion pictures, sound effects, sports highlights, and other non-musical content.

At SONY BMG, our ringtone catalog includes approximately [[redacted]] mastertones, [[redacted]] polyphonic ringtones, and fewer than [[redacted]] hybrid ringtones. (We do not distribute monophonic ringtones.) To conduct our ringtone business, we have invested heavily in production of our ringtone catalog, as well as in the infrastructure and distributor relationships necessary for distribution of ringtones. From my experience, I also know that ringtone distributors make large investments in their infrastructure and promotional activities to generate sales.

In my testimony, I will first explain the different types of ringtones and how they are created. Second, I will briefly describe the channels for distribution of ringtones. Finally, I will describe the contributions made by record companies and their distribution partners to the production, promotion and distribution of ringtones, including their investments, costs and risks.

For illustrative purposes, I have attached to my testimony as RIAA Ex. L-101-DP a CD-ROM with 28 Tracks that contains several SONY BMG releases along with some

of the different mastertones that were excerpted from those works and corresponding polyphonic ringtones. I will refer to some of these specific tracks below.

DISCUSSION

I. Ringtones and Their Creation

A musical ringtone is nothing more than a digital file of a piece of music played by a cellular phone or other mobile device to alert the user to an incoming call or message. Virtually all modern cellular phones have the ability to accept downloads of ringtones, usually directly over the cellular telephone network. Over the last decade, a significant (yet still underdeveloped) market for downloads of ringtones has developed. Industry wide, U.S. ringtone sales were estimated to be between $500 and $600 million in 2005, which was double the size of the market in 2004.[1] At SONY BMG, our goal is to have our mastertones and other ringtones made available to the public through as many carriers and other distributors, and on as many cell phone platforms, as possible.

A. Monophonic and Polyphonic Ringtones

Ringtones first appeared in the marketplace in the early to mid 1990s. Initially, mobile carriers and other ringtone vendors distributed synthesized ringtones that embodied excerpts of musical works, but not recorded performances by featured recording artists. These earlier forms of ringtones are commonly known as "monophonic" ringtones and "polyphonic" ringtones. Monophonic ringtones are the most rudimentary and only contain a musical work's melody (or, more often, a portion of

[1] *See* Edna Gundersen, *Ringtone sales ring up music profits*, USA Today (Jan. 25, 2006), available at http://www.usatoday.com/life/music/news/2006-01-25-ringtones_x.htm (attached as RIAA Ex. L-102-DP) ; Paul R. La Monica, "Ringtones: The Sound of Money" (Apr. 12, 2006), available at http://money.cnn.com/2006/04/12/commentary/mediabiz/ (attached as RIAA Ex. L-103-DP).

the melody). Polyphonic ringtones are more musically complex and contain a musical work's melody and harmony (or, again, a portion of the harmony and melody). The ringtone company I founded, RunTones, was a ringtone vendor that generated polyphonic ringtones.

SONY BMG has a catalog of roughly [[redacted]] polyphonic ringtones that it currently makes available for distribution. For example, Track 4 of RIAA Ex. L-101-DP is a polyphonic ringtone of Cyndi Lauper's *Girls Just Wanna Have Fun.* If you have heard this song before, the ringtone is instantly recognizable as an excerpt from the original song. Cyndi Lauper's original hit is Track 10 and the portion of music used for this ringtone starts about 17 seconds into the song. Track 5 contains another example of a polyphonic ringtone with Beyonce's hit song *Irreplaceable.* The original recording on which this ringtone is based can be found at Track 1, and the portion of the song used for the ringtone starts about 44 seconds in. Both of these ringtones contain simplified versions of the melody and harmony that are designed to be played by the cell phone's synthesizer. The part of the song that is used in these ringtones is usually what is commonly referred to as the "hook" – the most recognizable or memorable part of the song. It often is the part of the song where the lyrics include the title of the song, and is often the same part of the song you might hear for previewing in record stores or on Amazon.com or iTunes.

Monophonic and polyphonic ringtones are generally no more than 30 seconds in length. The ringtones that sell best are those that bring to mind popular recordings. Accordingly, a typical monophonic or polyphonic ringtone is just a simple version of an excerpt from the relevant song. A monophonic or polyphonic ringtone could be made

from a substantially revised arrangement of the song, but that is not our practice at SONY BMG, and I have not seen such ringtones in the marketplace.

As with all of SONY BMG's polyphonic ringtones, Track 5 and Track 14 of RIAA Ex. L-101-DP were created for our Digital Operations Group by staff or contract musicians who transcribe commercially released sound recordings and then create mono and polyphonic MIDI files from their transcriptions. To prepare a ringtone, these musicians first select the excerpt they will use. They then record a performance of the melody (in the case of a monophonic ringtone), or the melody and some or all of the harmony (in the case of a polyphonic ringtone), of the chosen excerpt. These musicians create "MIDI" files, which stands for "Musical Instrument Digital Interface." MIDI is a technical format for storing musical performances and communicating them between devices such as keyboards and synthesizers. Unlike other formats such as MP3 and CD, MIDI files do not capture the ambient sound in a recording studio but instead contain individual instructions for playing each individual note of a song. Our contract MIDI musicians use electronic keyboards and/or computers to record performances of ringtones in the MIDI format.

B. Mastertones

Advances in technology now allow mobile devices such as cell phones to play excerpts of commercial sound recordings as ringtones. These ringtones are variously called "mastertones," "master ringtones," "ringtunes" and "true tones." First introduced in the U.S. in 2003, mastertones are rapidly displacing the older monophonic and polyphonic ringtones in the marketplace. The release of mastertones has become a vital component of SONY BMG's digital business strategy. The release of mastertones often precedes the release of an album and coincides with the release of the accompanying

radio single to help create "buzz" and drive sales. At SONY BMG, we have approximately [[redacted]] mastertones available for sale, which represents approximately [[redacted]] of our total digital catalog.

Virtually all of what we at SONY BMG call mastertones are nothing more than contiguous excerpts of commercially released full-length recordings. For example, Track 17 of RIAA Ex. L-101-DP is a recording you are sure to recognize. It is an eleven second mastertone of Elvis Presley's *That's All Right*. This mastertone is simply an excerpt of the hook of that famous recording, and starts at roughly six seconds from the beginning of the original song.

Track 27 is another example. It is the 16 second mastertone of the song *Over My Head* by The Fray. As is often the case, this mastertone contains lyrics that also capture the title of the song. RIAA Ex. L-101-DP contains 18 different mastertones from 7 different commercially released sound recordings, and they are all similar in character - contiguous excerpts of the original recording that capture the "hook" or chorus.

1. Production of Mastertones in General

At SONY BMG, mastertones are created by employees within our Digital Operations Group. I understand that some of our competitors farm this process out to contractors. Creation of mastertones is typically a routine process that does not involve the studio, artist, producer or songwriter. An employee or contractor within the Digital Operations Group will identify an appropriate excerpt for use as a mastertone, and the point in time in the original recording that represents the beginning of that excerpt (also referred to as "in point"). Mastertones also require some rudimentary mastering to make them suitable for playback on a small cell phone speaker.

Different phones have different amounts of memory and use different compression technologies. To allow consumers with older phones with less memory capacity to buy mastertones, and at the same time to allow consumers with newer phones with more memory capacity to enjoy more of the relevant recording, we prepare different-length versions of each of our mastertones. SONY BMG supplies mastertones to approximately [[redacted]] different distributors, including cellular carriers and ringtone vendors. Each account has its own technological requirements, and not all accounts get all mastertones, but on average our Digital Operations Group prepares 6-10 different-length versions of every mastertone released. The precise lengths vary, but for each mastertone SONY BMG generally distributes cuts from as short as 5 seconds to as long as 45 seconds in length.

A further complication in the production and distribution process is that there is no one standard mastertone format employed by all cellular carriers and phone manufacturers. The marketplace demands differently-encoded versions of the different-length versions of each mastertone. There ultimately can be hundreds of different versions of any given mastertone that we create to meet the varying technological requirements. These different versions, however, are marketed as one product. The only audible difference between them is their length, and the consumer only has the option of purchasing the mastertone that is most appropriate for his or her phone (e.g., the longest available excerpt that will fit on his or her phone, in a format consistent with cellular carrier and phone requirements).

Once our Digital Operations Group selects the starting point for a mastertone, the different versions are created by computer software that generates the necessary versions in accordance with each distributor's technological specifications.

For example, Track 16 is another version of Elvis Presley's recording of *That's All Right*. It is a 5 second version of the same mastertone focused on the same "hook" as the 13 second mastertone of that song on Track 17. This version was only 5 seconds long because some phones have digital signal processors (DSPs) and memory to enable playback of that length. Tracks 16 and 17 are different lengths, but they both sound the same and use the same hook. Consistent with typical practice, these versions start at the same in-point – the beginning of the hook – and continue for whatever duration the carrier or handset OEM has specified.

2. Multiple Mastertones from the Same Recording

Sometimes a recording may have more than one section that would make a good mastertone, and in that case, we sometimes release more than one mastertone. There are several reasons for doing so. Sometimes, our staff simply identifies multiple recognizable excerpts and processes all of them to give consumers a choice. Other times, a large carrier will want to be able to offer a mastertone on an exclusive basis, so we select an additional excerpt that the carrier can have exclusively for a limited time. And sometimes, if a recording and mastertone have been popular, we will generate a new mastertone to get more sales from people who are fans of the recording.

For example, Tracks 23 and 24 are both 16 second mastertones of Justin Timberlake's hit recording *SexyBack*. The full version of the song is on Track 22. Both of these mastertones were excerpted from different portions of the original sound recording with Track 23 starting 15 seconds into the song and Track 24 starting at 33

seconds into the song. Each mastertone, however, is itself still a contiguous excerpt of that recording.

3. Looping

After a cell phone has played a mastertone to the end, it typically will repeat it as necessary until the phone is answered or the call rolls over to voicemail. This phenomenon (sometimes called "looping") is most noticeable in the case of short ringtones like the five second mastertone on Track 16. It is important to understand that this looping is a function of the phone playing the mastertone over again. We do not typically loop portions of a song to create a mastertone.

C. Hybrid Tones

A "hybrid tone" refers to ringtones that are made available in the same technical formats as typical mastertones, but where the audio has additional spoken words or other original content rather than merely an excerpt of a commercially released sound recording. For example, Track 6 is a hybrid tone called *Let Me Cater 2 You* by the artist Beyonce of Destiny's Child. For this particular hybrid tone, Destiny's Child had a special agreement with us to create hybrid tones. *Let Me Cater 2 You* was re-recorded by the group with special voice messages by each member for specific release in the ringtone market. Beyonce is a writer of the song. Hybrid mastertones like this are very rare. No more than about [[redacted]] of SONY BMG's mastertones involve anything other than simple experts of sound recordings, such as editing the underlying song or the addition of new content. Because ringtones such as *Let Me Cater 2 You* contain additional spoken content, they are marketed by SONY BMG as "VoiceTones."

II. Ringtone Distribution

There are numerous ringtone distributors in the marketplace. These include all the cellular carriers of consequence, such as Cingular, Sprint, T-Mobile and Verizon Wireless, as well as independent ringtone vendors and companies that provide other digital music services. As I indicated above, SONY BMG distributes its ringtones through approximately [[redacted]] different distribution partners. Under our agreements with these retailers, SONY BMG handles the mechanical licensing for its ringtones.

I understand that musical work performing rights organizations (e.g., ASCAP, BMI and SESAC) have taken the position that a performance license is required for the distribution of ringtones and that some of our distribution partners do obtain performance licenses and pay performance royalties. I understand that my colleague Ron Wilcox will describe agreements we have entered into with major music publishers for mechanical licensing of mastertones. Between these two revenue streams, publishers receive an extraordinarily high rate of payment for mastertones.

The ringtone practices of different carriers vary. For example, carriers and phone manufacturers determine whether it is possible for a subscriber to buy ringtones from sources other than the carrier, and whether or not to allow users to create their own ringtones from full length tracks.

III. Contributions of Record Companies and Distributors

In considering appropriate royalty rates for ringtones, it is important to understand the relative contributions of record companies and ringtone distributors on the one hand and music publishers and songwriters on the other. In this regard, ringtone distribution is much like other forms of digital distribution.

Most important, as I understand a number of other witnesses will testify, record companies spend huge sums producing and promoting their master recordings. The mastertone business would be impossible without that investment.

At SONY BMG we have invested heavily in the infrastructure we use to produce, manage and distribute ringtones and other digital assets. A large part of that was for the creation of our digital asset management system, which stores and makes available to distributors the hundreds of versions of each of our [[redacted]] mastertones, as well as our monophonic and polyphonic ringtones, and numerous versions of each of our approximately [[redacted]] other digital products, such as tracks available for download.

The investment by our distribution partners is difficult for me to quantify. But all have made substantial investments in their own systems for managing, marketing, and distributing ringtones, including developing wireless-network-based and Internet-based ringtone stores and the back-end systems necessary to deliver and account for sales. Many of them also buy expensive television and radio advertising to promote ringtones.

By contrast, the only involvement of publishers in the ringtone business is licensing their existing catalog to record companies and distributors. The investments, cost and risk of record companies and ringtone distributors greatly outweighs the small administrative contribution of music publishers. Accordingly, the Board should set a more balanced royalty rate for ringtones.

CONCLUSION

Ringtones are conceptually simple. In the vast majority of cases a ringtone is just an excerpt of a song, and in the case of a mastertone, an excerpt of the commercial sound recording. However, the process of producing and distributing ringtones is a complex

one, made possible only by the substantial investments that record companies have made in digital infrastructure and the recurring costs they incur to produce new ringtone content. The contributions, cost and risk of record companies and their distribution partners should be taken into account in determining mechanical royalty rates for ringtones.

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

J.J. Rosen

Date: _____

Exhibits Sponsored by JJ Rosen (Public)

Exhibit Number	Description
L-101-DP	CD-ROM including 28 tracks of polyphonic ringtones, mastertones, voicetones, and original recordings from Beyonce, Britney Spears, Cyndi Lauper, Elvis Presley, Justin Timberlake and The Fray.
L-102-DP	Edna Gundersen, *Ringtone sales ring up music profits*, USA Today (Jan. 25, 2006), available at http://www.usatoday.com/life/music/news/2006-01-25-ringtones_x.htm.
L-103-DP	Paul R. La Monica, "Ringtones: The Sound of Money" (Apr. 12, 2006), available at http://money.cnn.com/2006/04/12/commentary/mediabiz/.