

PUBLIC VERSION

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

In the Matter of

**Mechanical and Digital Phonorecord
Delivery Rate Adjustment Proceedings**

)
)
) **Docket No. 2006-3 CRB DPRA**
)
)
)

**WRITTEN DIRECT STATEMENT
OF THE
RECORDING INDUSTRY ASSOCIATION OF AMERICA, INC.
Volume 1**

Charles D. Ossola (DC Bar No. 295022)
Steven R. Englund (DC Bar No. 425613)
James L. Cooper (DC Bar No. 442475)
Michele J. Woods (DC Bar No. 426137)
ARNOLD & PORTER LLP
555 Twelfth Street, N.W.
Washington, D.C. 20004
(202) 942-5000 (Telephone)
(202) 942-5999 (Facsimile)
michele_woods@aporter.com (Email)

*Counsel for the Recording Industry Association
of America, Inc.*

Amended Filing April 10, 2007

(Original Filing Date November 30, 2006)

PUBLIC VERSION

Table of Contents for the Written Direct Statement of the Recording Industry Association of America, Inc.

Volume 1

Tab A	Introductory Memorandum
Tab B	Proposed Rates and Terms
Tab C	Index of Witness Testimonies
Tab D	Exhibit List
Tab E	Certificate of Service

Volume 2: Witness Testimonies

Volume 3: Witness Testimonies (continued)

Volume 4: Public Exhibits RIAA Exhibit Nos. A-101-DP through D-106-DP

Volume 5: Public Exhibits RIAA Exhibit Nos. E-101-DP through N-116-DP

Volume 6: Public Exhibits RIAA Exhibit Nos. O-101-DP through O-137-DP

Volume 7: Public Exhibits RIAA Exhibit Nos. O-138-DP through O-138-DP

TAB - A

**Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.**

In the Matter of)
)
)
Mechanical and Digital Phonorecord)
Delivery Rate Adjustment Proceeding)
)
_____)

Docket No. 2006-3 CRB DPRA

**INTRODUCTORY MEMORANDUM OF
THE RECORDING INDUSTRY ASSOCIATION OF AMERICA, INC.**

Pursuant to Section 351.4 of the rules of the Copyright Royalty Judges (“CRJ”), 37 C.F.R. § 351.4, and the CRJ Order of October 25, 2006, the Recording Industry Association of America, Inc. (“RIAA”), submits this Introductory Memorandum in connection with the filing of its Written Direct Statement (“RIAA’s Statement”) to provide the Copyright Royalty Judges with a brief description of RIAA’s Statement and a summary of the evidence in support of RIAA’s proposed rate request for the Section 115 mechanical royalty compulsory license.

I. INTRODUCTION

RIAA’s Statement demonstrates that record companies are suffering a contraction of their business at a time when music publisher revenues and margins have increased markedly. RIAA witnesses, including economic expert David Teece, will explain that while record companies have been forced to drastically cut costs and employees, music publisher catalogs have increased in value due to steadily rising mechanical royalty rates and alternative revenue streams made possible, yet not enjoyed, by record companies. Witnesses including David Munns, Ron Wilcox,

Victoria Bassetti and Glen Barros describe the convergence of mass piracy and fundamental changes to business conditions and models that has led to a permanent decline in the sale of physical goods, without concomitant growth in new revenue streams such as digital downloads, as well as heightened risk.

Witnesses including Michael Kushner and Tom Mackay will detail the significant creative and financial contributions that recording companies make to the creation of sound recordings – the finished product demanded by consumers and responsible for virtually all revenues enjoyed by songwriters and music publishers. Ron Wilcox, David Hughes and other RIAA witnesses will also explain the tremendous investment of record companies in developing new technologies and business models and opening new channels of distribution for songwriters and music publishers. Likewise, Victoria Bassetti will describe how record companies have taken the lead and invested huge sums to combat piracy that affects the entire music industry.

RIAA witnesses will demonstrate that the current statutory mechanical rate is too high as measured by the Section 801(b)(1) objectives governing this case, historical and international rates, and highly regarded academic theories. Dr. Teece will explain why the mechanical rate for physical and digital products in general should be reduced to a level at or below 7.8% of the licensee's wholesale revenues. RIAA also proposes a rate no greater than 9.6% of the applicable performance royalty for on-demand streams delivered through subscription digital music services.

Dr. Teece and other witnesses will also demonstrate that the mechanical royalty rate structure should be changed from a "cents rate" for each song to a percentage of wholesale revenue. These witnesses will explain that a percentage rate structure more fairly and accurately

aligns the economic incentives of the parties while providing the flexibility required to develop new business models in a rapidly changing and extremely challenging marketplace.

II. TESTIMONY OF RIAA FACT AND EXPERT WITNESSES

RIAA's Statement consists of the testimony of the following fact and expert witnesses:

Cary Sherman is the President of RIAA. Based on his experience from nearly 35 years of involvement in the recording industry, he provides an overview of the industry and the participants in the proceeding. He then describes the historical development of mechanical royalty rates, including the background and history of Section 115, the Section 801(b)(1) statutory rate-setting objectives, the 1980-1981 Section 115 rate proceeding before the CRT, and the mechanical royalty rates that are currently in effect. Mr. Sherman describes the legislative background to the application of Section 115 to "digital phonorecord deliveries" ("DPD"), and explains that this is the first litigated proceeding to set DPD rates. Mr. Sherman also discusses the need for a percentage royalty rate, which will provide flexibility and avoid disputes as Section 115 is applied to new kinds of product and service offerings.

David Munns is the Vice Chairman of EMI Music and the Chairman and Chief Executive Officer of EMI Music North America. He demonstrates that the five-year period for which rates are being set in this proceeding is a crucial transition period for the recording industry, during which the industry has to continue to develop and support its physical products despite the decline in physical sales, while investing in new and innovative digital products and services in anticipation of a future increase in digital sales. Mr. Munns describes the enormous risk and investment required to undertake this migration to the fragmented, multi-product digital marketplace. He contrasts the risks that record companies are forced to take to adjust to the changing marketplace with the much more stable business of the music publishers.

Mr. Munns also describes the devastating effect that rampant digital piracy has had on the recording industry and EMI Music over the last rate period. The resulting precipitous drop in sales led to drastic cost-cutting measures, including a severe reduction in the EMI workforce and a substantial decline in the number of artists signed and kept on the EMI roster.

Mr. Munns explains the tremendous importance in this business climate of the mechanical royalty rate set in this proceeding, and describes the greater ability to invest and flexibility to innovate that would result from a lower mechanical royalty rate and a percentage of wholesale revenue rate structure. He expresses support for the RIAA rate proposal of 7.8% of wholesale revenues, except in the case of on-demand streams through subscription services (where the proposed rate is 9.6% of the applicable performance royalty). Mr. Munns states that rates at this level would allow record companies to focus on their core business of creating albums, which generates multiple royalty streams for publishers and songwriters.

Victoria Bassetti is the Senior Vice President of Industry & Government Affairs of EMI Music and the Vice President of Anti-Piracy, North America. Ms. Bassetti demonstrates the devastating impact that the sharp increase in the level of physical and digital piracy since 1999 has had on the recording industry. The negative effects include both a substantial decline in sales and revenue and significant price constraints on legitimate products and services. She describes various forms of music piracy and music industry efforts to combat it. Ms. Bassetti details the enormous resources that the recording industry has had to devote to fighting piracy, describing the antipiracy investigation, enforcement, litigation, education and technology development activities of EMI Music, RIAA and IFPI. She also explains that music publishers have suffered significantly less than record companies from the effects of digital piracy, and that they have invested much less effort and expense in antipiracy efforts.

Geoffrey Taylor is the General Counsel and Executive Vice-President of IFPI. He places the current U.S. mechanical royalty rates in perspective by demonstrating that the United States has gone from having one of the lowest mechanical royalty rates in the world at the time of the 1981 CRT decision to having one of the highest rates in the world today. He also shows that the United States is one of the few countries in the world that does not use a percentage royalty rate structure for mechanical licensing.

Mr. Taylor describes the mechanical royalty rate structures in Japan and the United Kingdom (“U.K.”) and discusses the recent U.K. online royalty rate settlement. He suggests that the physical and online mechanical royalty rates in the United Kingdom and Japan could provide useful comparisons for setting the U.S. mechanical royalty rate, because of the similarities among the recording industries in those countries. Mr. Taylor also explains that the U.S. mechanical royalty rate for the next rate period should be lower than the royalty rates in the U.K. or Japan because the U.K. and Japanese rates are paid for performance rights as well as the mechanical license, and because of the high level of international marketing that U.S. record companies undertake.

David Hughes is the Senior Vice President of Technology at RIAA. He previously worked at Sony Music and SONY BMG, where he was involved in the development of new music technologies. He describes the significant and increasing role of the major record companies as technology innovators. They develop creative new products and services, and make substantial investments and take substantial risks, as they seek to retain their physical sales base while expanding their digital music offerings for the evolving new media marketplace. Mr. Hughes explains that music publishers do not have a similar role in developing new technologies needed to take advantage of new distribution channels, new products and new business models.

Mr. Hughes demonstrates and explains the characteristics of a range of new services and physical products, including permanent downloads, subscription services, mobile downloads, mastertones, DVD-Audio discs and DualDiscs. He also demonstrates the ease of online music piracy and describes technological contributions that record companies have made to fighting digital piracy.

Ron Wilcox is the Executive Vice President and Chief Business and Legal Affairs Officer of SONY BMG MUSIC ENTERTAINMENT. He describes current marketplace conditions that have created pressure on record company margins and caused an unprecedented contraction in the business. He also describes the diversity of products and services that are made possible by new technologies. He explains the tremendous financial and creative investment record companies have brought to the evolving music marketplace through new technologies and new marketing methods. Mr. Wilcox shows that despite frequent resistance from music publishers, record companies have pushed aggressively to distribute sound recordings through every possible physical and digital channel.

Mr. Wilcox explains that a percentage royalty rate structure is necessary to provide record companies with the flexibility to bring these new types of products and services to the marketplace. He also demonstrates that the mechanical royalty rate must be lower than its current level to adjust for the disproportionate contributions, investments, costs and risks of record companies as compared to publishers as they adapt to the rapidly evolving marketplace.

Michael Kushner is the Senior Vice President of Business and Legal Affairs of the Atlantic Records Group, a record label group that is part of Warner Music Group. He describes the investments and creative contributions that record companies bring to the many and costly steps required to make and market finished sound recordings in today's business environment.

Mr. Kushner uses an artist case study to demonstrate the growing risks for record companies. In particular, record companies face a greater risk than ever before that they will fail to recover their investment from creating and marketing an album. It is more difficult than ever to create a “hit” either by releasing a new album for an established artist or by “breaking” a new artist. Mr. Kushner also shows that in the current economic climate the rewards of success are lower. Even the most successful albums do not sell as many units today as would have been expected in 1999.

At the same time that risks have increased and rewards have decreased, Mr. Kushner explains that increased investment and recurring costs are needed as the industry transitions to the new digital marketplace. Record labels also have to work harder than ever to market recordings.

Tom Mackay is the Senior Vice President of Artist and Repertoire (“A&R”) at Universal Republic Records, a Universal Music Group record label. He describes the creative contribution of record companies through the A&R process, including each step required from discovering and signing a new artist through coordination of album release and marketing.

Glen Barros is the President and Chief Executive Officer of the Concord Music Group, an independent record label and music publisher. He explains the unique role that independent record labels play in the recording industry. They often produce music in niche genres outside of what the majors typically produce and serve as a laboratory for new kinds of music and an entry point into the music business for promising new artists and writers. Mr. Barros shows that the recent decline in the overall economic climate facing the recording industry has also been very harmful to independent labels. Among the difficulties they face are increased retail concentration leading to fewer outlets for physical music sales, low profits on digital sales,

downward price pressure together with upward cost pressure, and increasingly high mechanical royalty rates that have risen faster than record prices and are out of line with historical and international norms.

Mr. Barros contrasts the great risks taken and investments made by independent labels with the less risky and more profitable business of music publishing. He is familiar with the relative positions of the two industries, and he testifies that reducing the mechanical royalty rate and adopting a percentage of wholesale revenue rate structure will be in the best interests of the entire music industry. A lower percentage-based rate will share risk more equitably, more accurately reflect the relative contributions of artists and record companies relative to writers and publishers, and stimulate needed investment and innovation in sound recordings by record companies. Mr. Barros supports the RIAA rate request as a way to encourage record companies to invest in fresh and compelling new products and make them available to the public.

Michael Pollack is the retired Senior Vice President, Legal, at the Atlantic Records Group, and before that was the Senior Vice President, General Counsel, of the Elektra Entertainment Group. Based on his over 30 years in the recording industry, and his membership on the RIAA's Mechanical Royalty Task Force during industry negotiations of mechanical royalty rates, he describes the industry conditions in the 1980s and 1990s that surrounded the 1987 and 1997 settlement agreements between the recording industry and music publishers to establish mechanical royalty rates. While the settlements were not intended to have precedential effect when they were reached, they explain how the current mechanical royalty rate came to be well above the historical relationship between mechanical royalty rates and wholesale record prices. Mr. Pollack describes the goal of both settlements as maintaining parity between

mechanical royalty rates and wholesale prices, in order to control the effect of the mechanical royalty rate on record company margins.

Mr. Pollack explains how the reasonable assumptions made at the time of entry into both settlements turned out to be inaccurate. In particular, after the 1997 settlement, industry conditions changed dramatically, and mechanical royalty payments as a percentage of wholesale revenues increased. Mr. Pollack concludes that the lack of success in 1987 and 1997 in predicting the actual relationship of the cents rates agreed to by the parties to wholesale revenues demonstrates that a percentage royalty rate is the only way to maintain the balance between wholesale prices and mechanical royalty payments over time.

Andrea Finkelstein is the Senior Vice President of Business Operations and Administration at SONY BMG. She explains that Section 115 is not a “blanket” compulsory license. Instead, record companies obtain a separate license for each song (musical work) and each format or product in which the song appears. Ms. Finkelstein describes the practical difficulties of the mechanical licensing system, in which the compulsory process is so burdensome that it is almost never used. She discusses the complex and expensive work-by-work administrative processes associated with obtaining mechanical licenses and accounting for mechanical royalties, and contrasts the U.S. with almost every other country, where record companies assume much less of the administrative burden of mechanical licensing. She also describes the costs of license administration and the investments in systems that SONY BMG has made to carry out these complicated activities.

Ms. Finkelstein explains that the current mechanical license structure has led to disputes with publishers that have slowed record company efforts to introduce new products and services. She advocates a percentage royalty structure as a method to remove this obstacle and allow

record companies the flexibility to act quickly in the marketplace. She also suggests that there be a period for transition to a percentage rate structure and proposes several modifications to the existing terms for Section 115 to make the license operate more smoothly.

J.J. Rosen is the Senior Vice President and General Manager for U.S. Digital Business at SONY BMG. He describes the process of creating ringtones, including mastertones (typically excerpts of commercially released sound recordings) and polyphonic ringtones (specialized recordings of simplified song excerpts). Mr. Rosen demonstrates that typical mastertones are nothing more than excerpts of recordings that have been processed to meet various technical specifications. Mr. Rosen also describes the investment, costs and risks of record companies and their distribution partners. Mr. Rosen demonstrates a selection of mastertones, which consist of clips of various lengths and formats prepared from SONY BMG releases to meet the technical requirements of various mobile telephones and devices, as well as other ringtones.

Linda McLaughlin is an economist and Senior Vice President at National Economic Research Associates, Inc. (“NERA”). Ms. McLaughlin provides expert testimony about the basic economic performance of the major record company labels from 1991 through 2005. She has received data from each of the four major record companies on the revenue and expenses of their affiliated record labels, and has aggregated the data to make it consistent across companies and over time.

Richard Boulton is an expert economist with LECG in the United Kingdom. He explains the U.K. mechanical royalty rate systems for online formats and describes the features of the recent online mechanical royalty rate settlement. He also translates the U.K. rate for downloads from the settlement into a comparable rate for the U.S. market by making adjustments to reflect differences between the national royalty rate structures. He concludes that when the U.K.

download rate, taking into account the value-added tax (“VAT”), is adjusted to apply at the wholesale rather than retail level, and to remove the share of the royalty attributable to the performance right (which is included in the rate), the rate is equivalent to 7.7% of wholesale revenues.

David J. Teece, Ph.D., is a professor at the Haas School of Business and Director of the Institute of Management, Innovation and Organization at the University of California at Berkeley. Dr. Teece is also the Chairman of the consulting firm LECG, LLC. Dr. Teece provides expert testimony describing the application of the Section 801(b) objectives to setting the statutory mechanical royalty rate, putting those objectives into context based on economic theory, providing quantitative data concerning the current economic state of the recording industry, and making rate recommendations in light of his findings.

Dr. Teece describes his investigation into important economic trends in the music business. He finds that the overall recording industry has suffered a significant decline in unit sales and revenues since the beginning of the current rate period. In particular, CD sales have declined sharply, and that decline has only recently and partially been offset by increases in digital sales. At the same time, the statutory mechanical royalty rate has steadily increased at essentially the same rate as the CPI since 1981. Since 1997, it has risen substantially while wholesale CD prices have fallen. As a result, mechanical royalty rates have increased significantly as a percentage of record company wholesale revenues.

Dr. Teece explains that piracy is a primary cause of the decline in record company revenues. Piracy both reduces sales and forces record companies’ to price their products below normal competitive levels, which reduces margins. As a consequence of falling sales and

revenues, record companies have reduced costs, employment, artist rosters and recordings of new artists, and in the case of at least some companies, new releases.

Dr. Teece demonstrates that music publishers, on the other hand, have prospered as strong growth in performance, synchronization and sheet music royalty income offset any declines in mechanical royalty income. Music publishers are considerably more profitable than record companies; it is a low risk, high margin business.

Dr. Teece then presents his analysis and rate recommendation. First, he concludes that, as an economic matter, a percentage-based royalty structure is superior to a cents rate royalty structure. A percentage rate automatically adjusts for changes in selling prices and avoids the need to forecast the future accurately. It also aligns the economic incentives of the parties and permits flexibility to adjust prices to reflect changing market circumstances. Dr. Teece concludes that a percentage royalty rate structure should be based on wholesale revenues.

Turning to the quantum of the rate, Dr. Teece begins his analysis with the 1981 decision of the Copyright Royalty Tribunal (“CRT”). When the CRT increased the statutory mechanical royalty rate by 45% to four cents, that represented 5% of the retail list price of an album, a level that the CRT hoped to maintain through annual adjustments until that structure was rejected by the Court of Appeals for the D.C. Circuit. The 1981 decision implies a rate of 7.8% of wholesale revenues.

Applying the Section 801(b)(1) objectives in view of the changes in circumstances since the 1981 CRT decision, Dr. Teece concludes that achieving each objective points toward a lower rate than was determined in 1981. First, availability of works to the public would be enhanced by reducing rates to encourage record companies to deploy their specialized assets to turn more songs into recordings. Second, in view of the comparative financial positions of record

companies and music publishers, the balance of return has reversed since 1981. Third, record companies' relative contributions, investments, costs and risks have become much greater over time, while publishers' contributions generally have decreased. Finally, the recording industry is in the midst of significant disruption; reducing the mechanical royalty rate would reduce overall disruption. Accordingly, Dr. Teece concludes that the mechanical royalty rate should be rebalanced and reduced to reflect these industry changes. He determines based on the Section 801(b) objectives and the application of economic theory that a reasonable rate would be 7.8% of wholesale revenues or less.

Dr. Teece concludes by describing his analysis of two additional rate "benchmarks" that demonstrate and corroborate the reasonableness of the RIAA rate proposal. First, Dr. Teece considers the implications of changed circumstances since the settlement of mechanical royalty rates in 1997. He concludes that adjusting the 1998 statutory mechanical royalty rate to reflect current industry conditions would imply a rate of 7.6% of wholesale revenues. Second, Dr. Teece considers the relationship between the U.S. and U.K. rates for physical products. He concludes that maintaining the relationship between U.S. and U.K. rates that applied in 1981 would imply a royalty rate in the range of RIAA's rate request. Dr. Teece also finds confirmation in Richard Boulton's conclusion that the U.K. download rate that recently was agreed to is equivalent to 7.7% of wholesale revenues.

Colin Finkelstein is the Chief Financial Officer of EMI Music North America. Using EMI North America as an example, he demonstrates that the decline in the overall market creates pressure on a record company to maintain its current margins. In a declining market, the business model of a record company cannot sustain further erosion of profit margins by maintaining (much less increasing) the current mechanical royalty rate. Retail pressures are also

driving lower margins, with little or no sharing of the burden by music publishers. In addition, Mr. Finkelstein describes the challenges brought by the growth of the digital marketplace. Mr. Finkelstein concludes by describing why the current mechanical royalty rate and structure are outdated and unworkable in the current environment.

Respectfully submitted,



Charles D. Ossola (DC Bar No. 295022)
Steven R. Englund (DC Bar No. 425613)
James L. Cooper (DC Bar No. 442475)
Michele J. Woods (DC Bar No. 426137)
ARNOLD & PORTER LLP
555 Twelfth Street, N.W.
Washington, D.C. 20004
(202) 942-5000 (Telephone)
(202) 942-5999 (Facsimile)
Michele_Woods@aporter.com (Email)

Steven M. Marks (DC Bar No. 449304)
Susan Chertkof Munsat (DC Bar No.
434503)
Recording Industry Association of America,
1330 Connecticut Avenue, N.W.
Suite 300
Washington, D.C. 20036
(202) 775-0101 (Telephone)
(202) 775-7253 (Facsimile)
smarks@riaa.com (Email)

*Counsel for the Recording Industry
Association of America, Inc.*

November 30, 2006

TAB - B

**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

**PROPOSED RATES AND TERMS OF THE
RECORDING INDUSTRY ASSOCIATION OF AMERICA, INC.**

Pursuant to Section 351.4(b)(3) of the Copyright Royalty Judges' Rules and Procedures, 37 C.F.R. § 351.4(b)(3), the Recording Industry Association of America, Inc. ("RIAA"), proposes the following rates and terms for the Section 115 compulsory license. Pursuant to 37 C.F.R. § 351.4(b)(3), RIAA reserves the right to alter or amend its proposal prior to or at the time of submission of its proposed findings of fact and conclusions of law, if warranted by the record.

I. Royalty Rates

A. In General

Except as provided in Part I(B) below, the royalty payable under Section 115 for all phonorecords made and distributed on or after the effective date of the Board's determination, including by means of a digital phonorecord delivery, should be 7.8% of the licensee's wholesale revenues directly attributable to sound recordings of musical works so distributed.

B. On-Demand Streams Through Subscription Services

In the case of on-demand streams through subscription digital music services, the royalty payable under Section 115 for the process of making such on-demand streams (from the making of server reproductions to the transmission and local storage of the stream), in its entirety, should be no greater than 9.6% of any royalties payable for the public performance of the relevant musical works by means of the same transmissions.

Note:

The foregoing proposal is based on the relationship between the statutory royalty rates for reproduction of “ephemeral recordings,” and for performance, of sound recordings under Sections 112 and 114 of the Copyright Act. *See* 37 C.F.R. § 262.3(c) (“ephemeral” royalty under Section 112 is 8.8% of the total royalty under Sections 112 and 114, so the performance royalty under Section 114 is 91.2% of the total royalty; 8.8% is 9.6% of 91.2%). However, additional and detailed information concerning use of server copies, and performance royalties paid, by subscription digital music services offering on-demand streams, which is currently unavailable to RIAA, may render this an imperfect analogy. Therefore, RIAA reserves the right to alter or amend its proposal based on analysis of information obtained in discovery.

Definitions:

For this purpose --

- A “subscription digital music service” is a service that offers on-demand streams of sound recordings of musical works 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.

- An “on-demand stream” is an on-demand, real-time digital transmission of a sound recording of a 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 that is configured 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 for listening other than at substantially the time of the transmission.

II. Calculation of Royalties

A. Calculation of Royalty Base in General

For purposes of Part I above, the licensee’s wholesale revenues shall be determined in accordance with Generally Accepted Accounting Principles.

B. Calculation of Royalty Base for Bundles

If, in a single transaction, a licensee receives payment for sound recordings of musical works distributed pursuant to Section 115 and subject to the rate provided in any one of Parts I(A) or (B), as well as other products or services (e.g., because a phonorecord contains material other than sound recordings of musical works), the licensee’s revenues from the transaction shall be attributed to the sound recordings of musical works and other material in proportion to the licensee’s published prices thereof when distributed separately, if any, or otherwise in

accordance with a reasonable and non-discriminatory allocation methodology consistently applied.

C. Allocation of Royalty Among Musical Works

If, in a single transaction, a licensee receives payment for sound recordings of multiple unique musical works distributed pursuant to Section 115 and subject to one of Part I(A) or (B) (e.g., the tracks on a CD), the royalty determined as described in Part I above will need to be allocated to each musical work. RIAA believes that allocation on a pro rata basis would be equitable and practicable to administer. However, RIAA is open to an allocation based on other objective criteria such as playing time, so long as it is practicable to administer.

III. Transition Period

An appropriate transition period should be provided to allow copyright owners and licensees reasonable time to implement the percentage royalty structure described above.

IV. Terms

RIAA proposes that many, but not all, of the applicable current regulations, 37 C.F.R. § 201.18-.19, be maintained in their current form. RIAA proposes the following changes to the existing regulations:

A. Clarification of Covered Reproductions

Regulations should confirm that a compulsory license under Section 115 extends to all reproductions necessary to engage in activities covered by the compulsory license, including –

- (1) the making of reproductions by and for end users;
- (2) reproductions made on servers under the authority of the licensee; and

(3) incidental reproductions made under the authority of the licensee in the normal course of engaging in such activities, including cached, network, and buffer reproductions.

B. Accounting for Digital Phonorecord Deliveries

Modify 37 C.F.R. § 201.19(a)(6) so that when a digital phonorecord delivery is distributed under authority of the compulsory licensee and the applicable service does not provide a detailed accounting to the compulsory licensee until after the end of the month in which the phonorecord is digitally transmitted, the digital phonorecord delivery will be treated as made, distributed, voluntarily distributed, relinquished from possession and permanently parted with in the month immediately following that in which the phonorecord is digitally transmitted.

C. Signing Statements of Account

Modify 37 C.F.R. § 201.19(e)(6) and (f)(6)(i) so that monthly and annual statements of account can be signed by any duly authorized agent of the compulsory licensee.

D. Audit

Modify 37 C.F.R. § 201.19(f)(6) to confirm that an audit performed in the ordinary course of business according to generally accepted auditing standards by an independent and qualified auditor shall serve as an acceptable verification procedure with respect to the information that is within the scope of the audit.

Dated: November 30, 2006

Respectfully submitted,



Charles D. Ossola (DC Bar No. 295022)
Steven R. Englund (DC Bar No. 425613)
James L. Cooper (DC Bar No. 442475)
Michele J. Woods (DC Bar No. 426137)
ARNOLD & PORTER LLP
555 Twelfth Street, N.W.
Washington, D.C. 20004
(202) 942-5000 (Telephone)
(202) 942-5999 (Facsimile)
Michele_Woods@aporter.com (Email)

Steven M. Marks (DC Bar No. 449304)
Susan Chertkof Munsat (DC Bar No.
434503)
Recording Industry Association of America, Inc.
1330 Connecticut Avenue, N.W.
Suite 300
Washington, D.C. 20036
(202) 775-0101 (Telephone)
(202) 775-7253 (Facsimile)
smarks@riaa.com (Email)

*Counsel for the Recording Industry
Association of America, Inc.*

TAB - C

Index of Witness Testimonies

TAB	WITNESS	TITLE
A	Cary Sherman	President, RIAA
B	David Munns	Vice Chairman, EMI Music Chairman and Chief Executive Officer, EMI Music North America
C	Victoria Bassetti	Senior Vice President of Industry & Government Affairs, EMI Music Vice President of Anti-Piracy, EMI Music North America
D	Geoffrey Taylor	General Counsel and Executive Vice-President, IFPI
E	David Hughes	Senior Vice President of Technology, RIAA
F	Ron Wilcox	Executive Vice President and Chief Business and Legal Affairs Officer, SONY BMG MUSIC ENTERTAINMENT
G	Michael Kushner	Senior Vice President of Business and Legal Affairs, Atlantic Records Group
H	Tom Mackay	Senior Vice President of Artist and Repertoire, Universal Republic Records
I	Glen Barros	President and Chief Executive Officer, Concord Music Group
J	Michael Pollack	Former Senior Vice President, Legal, Atlantic Records Group (retired)
K	Andrea Finkelstein	Senior Vice President of Business Operations and Administration, SONY BMG MUSIC ENTERTAINMENT
L	J.J. Rosen	Senior Vice President and General Manager for U.S. Digital Business, SONY BMG MUSIC ENTERTAINMENT
M	Linda McLaughlin	Senior Vice President, National Economic Research Associates
N	Richard Boulton	Economist, LECG
O	David J. Teece, Ph.D.	Professor, Haas School of Business and Director of the Institute of Management, Innovation and Organization, University of California at Berkeley
P	Colin Finkelstein	Chief Financial Officer, EMI Music North America

TAB - D

Index of Public Exhibits

Exhibit No.	Sponsored By	Description
A-101-DP	Cary Sherman	Sections of the Copyright Act cited in Section I: 17 U.S.C. §§ 101, 102, 106, and 114
A-102-DP	Cary Sherman	Sheet music for the song "The First Cut is the Deepest," by Cat Stevens
A-103-DP	Cary Sherman	Biography of Cat Stevens (found at http://www.thebiographychannel.co.uk/biography_story/302:144/1/Cat_Stevens.htm) (last visited November 19, 2006).
A-104-DP	Cary Sherman	Website of songwriter Diane Warren (http://realsongs.com/) (last visited November 19, 2006)
A-105-DP	Cary Sherman	CD of the album "The Very Best of Sheryl Crow," by Sheryl Crow
A-106-DP	Cary Sherman	Songfile page for the song "The First Cut is the Deepest" (available at http://www.harryfox.com/songfile/public/publicsearch.jsp) (last visited November 25, 2006)
A-107-DP	Cary Sherman	Al Kohn & Bob Kohn, <i>Kohn on Music Licensing</i> 87-90, 445-448 (3d ed. 2002)
A-108-DP	Cary Sherman	Press Release, Harry Fox Agency, Music Publishers: Are You Getting Your Share of the Audio Home Recording Act Royalties? (Oct. 30, 2006), http://www.harryfox.com/docs/AHRA.pdf (last visited November 24, 2006).
A-109-DP	Cary Sherman	CD of the album "The Very Best of Cat Stevens," by Cat Stevens
A-110-DP	Cary Sherman	Section 115 of the Copyright Act, 17 U.S.C. § 115
A-111-DP	Cary Sherman	Regulations related to the statutory license of 17 U.S.C. § 115: 37 C.F.R. §§ 201.18, 201.19, 255.5, 255.6
A-112-DP	Cary Sherman	Statement of Marybeth Peters before the Subcommittee on Courts, the Internet and Intellectual Property of the House Committee on the Judiciary, Section 115 Compulsory License (Mar. 11, 2004)
A-113-DP	Cary Sherman	<i>White-Smith Music Publishing Co. v. Apollo Co.</i> , 209 U.S. 1 (1908)
A-114-DP	Cary Sherman	H. Rep. 90-83 at 66
A-115-DP	Cary Sherman	17 U.S.C. § 801
A-116-DP	Cary Sherman	National Music Publishers' Association, Inc. Proposed Adjustment of Royalty and Administrative Provisions
A-117-DP	Cary Sherman	Recording Industry Association of America Proposal for Adjustment of the Mechanical Royalty Rate

A-118-DP	Cary Sherman	Adjustment of Royalty Payable Under Compulsory License for Making and Distributing Phonorecords; Rates and Adjustment of Rates, 46 Fed. Reg. 10,466, 10,485 (Feb. 3, 1981) (previously codified at 37 C.F.R. § 307)
A-119-DP	Cary Sherman	<i>Recording Ass'n of Am. v. Copyright Royalty Tribunal</i> , 662 F.2d 1, 14-18 (D.C. Cir. 1981)
A-120-DP	Cary Sherman	Joint Statement of the Recording Industry Association of America, Inc., National Music Publishers' Association, Inc. and The Harry Fox Agency, Inc., dated December 6, 2001, and attached Agreement
A-121-DP	Cary Sherman	ASCAP Experimental License Agreement for Interactive Sites & Services –Release 2.0, Schedules A-C, available at http://www.ascap.com/weblicense/release2.0.pdf (last visited November 25, 2006)
A-122-DP	Cary Sherman	37 C.F.R. § 262.3
A-123-DP	Cary Sherman	Important Notice Concerning Licensing of Multisession Products, dated December 3, 2003
A-124-DP	Cary Sherman	Letter from Steven Marks to Jacqueline Charlesworth, dated January 22, 2004
A-125-DP	Cary Sherman	<i>In the Matter of Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding</i> , Docket No. RF 2006-1 (October 16, 2006)
C-101-DP	Victoria Bassetti	Christman, Ed, "New Life for CDs? Study Says There is Room For Physical Product Sales to Grow," <i>Billboard</i> , April 1, 2006
C-102-DP	Victoria Bassetti	2001 IFPI Music Piracy Report
C-103-DP	Victoria Bassetti	LimeWire download page, available at http://www.download.com/LimeWire/3000-2166_4-10552048.html?tag=pop.software (last visited Nov. 27, 2006)
C-104-DP	Victoria Bassetti	Thomas Mennecke, "Limewire Becomes P2P Icon," October 17, 2005, available at http://www.slyck.com/news.php?story=956 (last visited Nov. 29, 2006)
C-105-DP	Victoria Bassetti	IFPI Recording Industry 2006 Piracy Report
C-106-DP	Victoria Bassetti	Garrity, Brian, "From Piracy to Profit? One Year After iMesh Converted from Pirate Network to RIAA-Endorsed Play, P2P Panacea is Still a Long Way Off," <i>Billboard</i> , Oct. 7, 2006
C-107-DP	Victoria Bassetti	RIAA Website article "CD/CD-R Piracy," www.riaa.com/issues/piracy/cdcd.asp (last visited Nov. 21, 2006)
C-108-DP	Victoria Bassetti	RIAA 2005 Commercial Piracy Report

C-109-DP	Victoria Bassetti	RIAA Press Release, "RIAA Identifies 12 Piracy 'Hot Spot' Cities," May 3, 2006 (last visited Nov. 21, 2006)
C-110-DP	Victoria Bassetti	Leibowitz, Stan, "File Sharing: Creative Destruction or Just Plain Destruction?," The Journal of Law & Economics, April 2006
C-111-DP	Victoria Bassetti	Liebowitz, Stan, "Testing File-Sharing's Impact by Examining Record Sales in Cities" (April 2006). Available at SSRN: http://ssrn.com/abstract=829245 (last visited Nov. 20, 2006)
C-112-DP	Victoria Bassetti	Zentner, Alejandro, "Measuring the Effect of File Sharing on Music Purchases," The Journal of Law & Economics, April 2006
C-113-DP	Victoria Bassetti	NPD Press Release, "Illegal Peer-To-Peer Music File Declines After Supreme Court Grokster Decision, Dec. 14, 2005
C-114-DP	Victoria Bassetti	RIAA Press Release, "Kazaa Settles with Record Industry and Goes Legitimate," July 27, 2006
C-115-DP	Victoria Bassetti	NPD Press Release, "Progress Report: Digital Music Landscape Shifting, But Slowly," June 23, 2005
C-116-DP	Victoria Bassetti	RIAA Press Release, "University, Entertainment Industry Leaders Address Campus File-Sharing In New Progress Report To Congress," Sept. 21, 2005
C-117-DP	Victoria Bassetti	RIAA Press Release, "Music Industry Debuts New Educational Video for College, University Use this Fall," September 6, 2006
C-118-DP	Victoria Bassetti	RIAA Press Release, "RIAA, i-SAFE Announce New Partnership to Teach Young Fans About Legal Music," June 28, 2006
C-119-DP	Victoria Bassetti	"RIAA: New Educational Materials for Young Music Fans to Hit Classrooms This Fall," www.narm.com/Content/NavigationMenu/MediaCenter/IndustryNews/RIAAEduMaterials.htm , September 5, 2006 (last visited Nov. 29, 2006)
C-120-DP	Victoria Bassetti	IFPI Press Release, "Recording Industry Launches Fresh Wave of Actions Against Illegal File-Sharing," Oct. 17, 2006.
D-101-DP	Geoffrey Taylor	"Quick Reference Tariff Table Relating to Downloads and On-demand Streaming"
D-102-DP	Geoffrey Taylor	BPI Statistical Handbook 2006
D-103-DP	Geoffrey Taylor	IFPI 2006 Global Recording Industry in Numbers
D-104-DP	Geoffrey Taylor	BPI Press Release, "Record industry reinvests 17% of turnover in new music," April 19, 2006
D-105-DP	Geoffrey Taylor	Copyright Tribunal Decision in The Matter Between The British Phonographic Industry Ltd. and Mechanical-Copyright Protection Society Ltd. and Composers' Joint Council, Nov. 1, 1991

D-106-DP	Geoffrey Taylor	U.K. Settlement Agreement dated September 28, 2006
E-101-DP	David Hughes	List of Patents Invented or Co-Invented by David Hughes
E-102-DP	David Hughes	Video Demonstration of Music Technologies by David Hughes (on CD)
F-101-DP	Ron Wilcox	Important Notice Concerning Licensing of Multisession Products, dated December 3, 2003
F-102-DP	Ron Wilcox	37 C.F.R. § 255.3
F-103-DP	Ron Wilcox	<i>In the Matter of Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding</i> , Docket No. RF 2006-1 (Oct. 16, 2006)
F-104-DP	Ron Wilcox	17 U.S.C. § 801
F-105-DP	Ron Wilcox	17 U.S.C. §115
I-101-DP	Glen Barros	CD copy of the album "Genius Loves Company," by Ray Charles
I-102-DP	Glen Barros	CD copy of the album "Ray Sings, Basie Swings, by Ray Charles and the Count Basie Orchestra
I-103-DP	Glen Barros	Super Disk copy of the album "Givin' It Up," by George Benson and Al Jarreau (on a Super Disk)
J-101-DP	Michael Pollack	Joint Petition for Automatic Adjustments of Mechanical Royalty Rate
J-102-DP	Michael Pollack	52 Fed. Reg. 22,637 (June 15, 1987)
J-103-DP	Michael Pollack	52 Fed. Reg. 41,711 (Oct. 30, 1987); 54 Fed. Reg. 46,065-66 (Nov. 1, 1989); 58 Fed. Reg. 58,282 (Nov. 1, 1993), <i>corrected by</i> 58 Fed. Reg. 60,787 (Nov. 18, 1993); 60 Fed. Reg. 55,458 (Nov. 1, 1995)
J-104-DP	Michael Pollack	The Recording Industry Association of America's 2000 Yearend Statistics
J-105-DP	Michael Pollack	17 U.S.C. § 115
J-106-DP	Michael Pollack	RIAA Press Release, "Recording Industry Releases 1996 Anti-Piracy Report," March 12, 1997
J-107-DP	Michael Pollack	37 C.F.R. § 255.5
J-108-DP	Michael Pollack	Proposal Concerning 1997 Physical Phonorecord and Digital Phonorecord Delivery Royalty Rate Adjustment (submitted with Joint Petition for Adjustment of Physical Phonorecord and Digital Phonorecord Delivery Royalty Rates)
J-109-DP	Michael Pollack	37 C.F.R. § 255.7
J-110-DP	Michael Pollack	Amended Proposal Concerning Digital Phonorecord Delivery Royalty Rate Adjustment (submitted with Amended Joint Petition for Adjustment of Digital Phonorecord Delivery Royalty Rates)
J-111-DP	Michael Pollack	37 C.F.R. § 255.3
K-101-DP	Andrea Finkelstein	17 U.S.C. § 115

K-102-DP	Andrea Finkelstein	37 C.F.R. § 255.3
L-101-DP	J.J. Rosen	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	J.J. Rosen	Edna Gundersen, <i>Ringtone sales ring up music profits</i> , USA Today (Jan. 25, 2006), available at http://www.usatoday.com/life/music/news/2006-01-25-ringtones_x.htm .
L-103-DP	J.J. Rosen	Paul R. La Monica, "Ringtones: The Sound of Money" (Apr. 12, 2006), available at http://money.cnn.com/2006/04/12/commentary/mediabiz/ .
N-101-DP	Richard Boulton	New JOL
N-102-DP	Richard Boulton	Transcript from the Proceedings of the UK Copyright Tribunal Hearing Concerning Licensing Terms for the Supply of Musical Compositions Online, Day 1
N-103-DP	Richard Boulton	Transcript from the Proceedings of the UK Copyright Tribunal Hearing Concerning Licensing Terms for the Supply of Musical Compositions Online, Day 2
N-104-DP	Richard Boulton	BPI Market Information No. 205
N-105-DP	Richard Boulton	UK Album PPD Data Provided by OCC and Compiled by Millward Brown
N-106-DP	Richard Boulton	UK Album Retail Price Data Provided by AudioTrak
N-107-DP	Richard Boulton	BPI Press Release, "Companies agree digital royalties deal," September 28, 2006, available at www.bpi.co.uk
N-108-DP	Richard Boulton	MCPS-PRS Alliance Press Release, "Companies agree digital royalties deal," September 28, 2006, available at www.mcps-ors-alliance.co.uk/press/
N-109-DP	Richard Boulton	MCPS-PRS Alliance Press Release, "More companies agree digital royalties deal," October 9, 2006, available at www.mcps-ors-alliance.co.uk/press/
N-110-DP	Richard Boulton	MCPS-PRS Alliance Press Release, "Another company agrees digital royalties deal," October 11, 2006, available at www.mcps-ors-alliance.co.uk/press/
N-111-DP	Richard Boulton	MCPS Ringtone License, available at www.mcps-prs-alliance.co.uk
N-112-DP	Richard Boulton	PRS Ringtone License, available at www.mcps-prs-alliance.co.uk

N-113-DP	Richard Boulton	Joint Online Distribution -- General Questions, at www.mcps-prs-alliance.co.uk
N-114-DP	Richard Boulton	Apple Press Release, "iTunes Music Store Number One in the UK with 80% Market Share," September 7, 2005, available at http://www.apple.com/pr/library/2005/sep/07itms.html
N-115-DP	Richard Boulton	Extracts from iTunes, Napster, and Virgin Digital websites
N-116-DP	Richard Boulton	MCPS Licensing Scheme Summaries, excerpt relating to the AP1, AP2 and AP2A schemes, available at www.mcps-prs-alliance.co.uk
O-101-DP	David J. Teece	David J. Teece, "Profiting from technological innovation: Implications for integration, collaboration, licensing, and public policy" <i>Research Policy</i> , 15, (1986).
O-102-DP	David J. Teece	David J. Teece, Gary Pisano, and Amy Shuen, "Dynamic Capabilities and Strategic Management," <i>Strategic Management Journal</i> , Vol. 18, No. 7 (1997).
O-103-DP	David J. Teece	Joeri M. Mol, Nachoem M. Wijnberg and Charles Carroll, "Value Chain Envy: Explaining New Entry and Vertical Integration in Popular Music" <i>Journal of Management Studies</i> , Vol. 42, No. 2 (March 2005).
O-104-DP	David J. Teece	David J. Teece "Reflections on 'Profiting From Innovation'" <i>Research Policy</i> , forthcoming, December 2006.
O-105-DP	David J. Teece	NPD Music, "Year in Review", April 4, 2005.
O-106-DP	David J. Teece	Giel of RIAA. RIAA, Press Release, "Recording Industry Releases 1996 Anti-Piracy Report", March 12, 1997, available at http://www.riaa.com/newsletter/press1997/031297.asp .
O-107-DP	David J. Teece	Harry Fox.com and Testimony of Irwin Z. Robinson, President NPMA, before the Senate Judiciary Committee Subcommittee on Intellectual Property, July 12, 2005.
O-108-DP	David J. Teece	RIAA, Press Release, "Recording Industry Sues Napster for Copyright Infringement," December 7, 1999. http://www.riaa.com/news/newsletter/press1999/120799.asp .
O-109-DP	David J. Teece	IFPI, "Music Piracy Report 2000," June 2000, http://www.ifpi.org/content/library/Piracy200.pdf .
O-110-DP	David J. Teece	Ed Christman, "New Life for CDs?," <i>Billboard</i> , April 1, 2006.

O-111-DP	David J. Teece	NPD Group, "NARM Consumer Research Institute Phase One: Consumer Profiles & Return Experience," March 2006.
O-112-DP	David J. Teece	IFPI, "The Recording Industry 2006 Piracy Report." http://www.ifpi.org/content/library/piracy-report2006.pdf .
O-113-DP	David J. Teece	Stan J. Liebowitz, "File Sharing: Creative Destruction or Just Plain Destruction?," <i>Journal of Law and Economics</i> , Vol. XLIX, April 2006.
O-114-DP	David J. Teece	Rafael Rob and Joel Waldfogel, "Piracy on the High C's: Music Downloading, Sales Displacement and Social Welfare in a Sample of College Students," <i>Journal of Law and Economics</i> , Vol. XLIX, April 2006.
O-115-DP	David J. Teece	Credit Suisse, "Global Music Industry. 'Just the Two of Us'," June 19, 2006.
O-116-DP	David J. Teece	Eric Nicoli, Chairman, EMI Group, Presentation at the London Business School, undated document, presented February, 2006.
O-117-DP	David J. Teece	Warner Music Group, Earnings Conference Call, Second fiscal quarter ending March 31, 2005, FD (Fair Disclosure) Wire, June 13, 2005.
O-118-DP	David J. Teece	EMI Group, Press Release, "EMI Announces Steps to Further Strengthen Its Business", March 31, 2004.
O-119-DP	David J. Teece	Warner Music Group, Presentation at USB 33 rd Annual Media Conference, FD (Fair Disclosure) Wire, December 5, 2005.
O-120-DP	David J. Teece	Warner Music Group, Presentation at Credit Suisse First Boston Media Week, FD (Fair Disclosure) Wire, December 6, 2005.
O-121-DP	David J. Teece	Universal Music Group, Press Release, "Universal Music Group to Sell CD/DVD Manufacturers and Physical Distribution Facilities to Glenayre Technologies," May 9, 2005.
O-122-DP	David J. Teece	Cinram, Press Release, "Cinram to Acquire DVD and CD Manufactures, Physical Distribution and Related Businesses from AOL Time Warner", July 18, 2003.
O-123-DP	David J. Teece	Steven S. Wildman, <i>An Economic Analysis of Recording Contracts</i> (July 22, 2002).
O-124-DP	David J. Teece	RIAA Press Release, "Kazaa Settles with Recording Industry and Goes Legitimate," July 27, 2006, available at http://www.riaa.com/news/newsletter/072706.asp .
O-125-DP	David J. Teece	RIAA "Nationwide Anti-Piracy Enforcement Bulletin," September 2005.
O-126-DP	David J. Teece	RIAA "Nationwide Anti-Piracy Enforcement Bulletin," October 2005.

O-127-DP	David J. Teece	RIAA "Nationwide Anti-Piracy Enforcement Bulletin," November 2005.
O-128-DP	David J. Teece	RIAA "Nationwide Anti-Piracy Enforcement Bulletin," January 2006.
O-129-DP	David J. Teece	RIAA "Nationwide Anti-Piracy Enforcement Bulletin," February 2006.
O-130-DP	David J. Teece	RIAA "Nationwide Anti-Piracy Enforcement Bulletin," March 2006.
O-131-DP	David J. Teece	RIAA "Nationwide Anti-Piracy Enforcement Bulletin," April 2006.
O-132-DP	David J. Teece	RIAA "Nationwide Anti-Piracy Enforcement Bulletin," May 2006.
O-133-DP	David J. Teece	RIAA "Nationwide Anti-Piracy Enforcement Bulletin," June 2006.
O-134-DP	David J. Teece	RIAA "Nationwide Anti-Piracy Enforcement Bulletin," July 2006.
O-135-DP	David J. Teece	RIAA "Nationwide Anti-Piracy Enforcement Bulletin," September 2006.
O-136-DP	David J. Teece	RIAA, Press Release, "RIAA's Annual Commercial Piracy Report Shows Trafficking in Pirated Music Increasingly Sophisticated, Closer Ties to Criminal Syndicates," July 13, 2005. http://www.riaa.com/News/newsletter/071305.asp .
O-137-DP	David J. Teece	EMI Group, PLC, Annual Reports, for the fiscal years ending March 31, 2006.
O-138-DP	David J. Teece	EMI Group, PLC, Annual Reports, for the fiscal years ending March 31, 2005.
O-139-DP	David J. Teece	EMI Group, PLC, Annual Reports, for the fiscal years ending March 31, 2004.
O-140-DP	David J. Teece	EMI Group, PLC, Annual Reports, for the fiscal years ending March 31, 2003.
O-141-DP	David J. Teece	EMI Group, PLC, Annual Reports, for the fiscal years ending March 31, 2002.
O-142-DP	David J. Teece	Jennifer Ordonez, "Courting the Aging Rocker - Independent Labels Offer Acts Creative Freedom, Hope Fans Will Bring in Steady Profits," Wall Street Journal, April 23, 2002.
O-143-DP	David J. Teece	Ashling O'Connor, "Record Labels Shed Big Name Sales Risks," Financial Times (FT.COM), December 24, 2001.
O-144-DP	David J. Teece	EMI Group, Presentation by Duncan Bratchell, SVP Tax & Treasury at the JPMorgan High Yield Conference, February 5, 2006.
O-145-DP	David J. Teece	Warner Music Group, 2005 Annual Report.
O-146-DP	David J. Teece	David Kusek and Gerd Leonhard, <i>The Future of Music</i> (2005).

O-147-DP	David J. Teece	Geoffrey P. Hull, <i>The Recording Industry</i> , 2 nd ed., Routledge, 2004.
O-148-DP	David J. Teece	Richard E. Caves, <i>Creative Industries: Contracts Between Art and Commerce</i> , Harvard University Press, 2002.
O-149-DP	David J. Teece	Tad Lathrop, <i>This Business of Music Marketing and Promotion</i> (Rev. and Updated Ed., 2003).
O-150-DP	David J. Teece	Neville Johnson, "Music Publishing," in Halloran (ed.), <i>The Musician's Business and Legal Guide</i> (3 rd Ed., 2001).

TAB - E

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of April 2007, I caused a true and correct copy of the public version of The Recording Industry Association of America, Inc.'s Written Direct Statement to be served upon the following by U.S. Mail:

Kyle Johnson
America Online, Inc.
22000 AOL Way
Dulles, VA 20166
kylej111@aol.com

Matt Railo
Kevin Saul
Apple Inc.
1 Infinite Loop, MS 3-ITMS
Cupertino, CA 95014
mrailo@apple.com
ksaul@apple.com

Bruce D. Sokler
Fernando R. Laguarda*
Noam B. Fischman
Michael T. Haas
Mintz, Levin, Cohn, Ferris, Glovsky &
Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Washington, DC 20004
bsokler@mintz.com
flaguarda@mintz.com
nfischman@mintz.com
mthaas@mintz.com

Counsel for Digital Media Association
*Served additionally with hard copies of the public and restricted version of the Written Direct Statement by overnight Federal Express

Jonathan Potter
Digital Media Association
1029 Vermont Ave, NW
Suite 850
Washington, DC 20005
jpotter@digmedia.org

Robert E. Bloch*
Mayer, Brown, Rowe & Maw, LLP
1909 K Street, N.W.
Washington, D.C. 20006
rbloch@mayerbrownrowe.com
Counsel for EMI

*Served additionally with hard copies of the public and restricted version of the Written Direct Statement by overnight Federal Express

George Cheeks
MTV Networks, a division of Viacom, Inc.
1515 Broadway
New York, NY 10019
George.Cheeks@mtvn.com

Tom Rowland
MusicNet, Inc.
845 3rd Ave.
11th Floor
New York, NY 10022
trowland@musicnet.com

Aileen Atkins
Napster LLC
317 Madison Avenue
11th Floor, Suite 1104
New York, NY 10017
aileen.atkins@napster.com

Barton Herbison
Nashville Songwriters Association Int'l
1710 Roy Acuff Place
Nashville, TN 37203
barton@nashvillesongwriters.com

David M. Israelite
Jacqueline C. Charlesworth
National Music Publishers' Association Inc.
101 Constitution Avenue, NW
Washington, DC 20001
disraelite@nmpa.org
jcharlesworth@nmpa.org

James Pickell
Sony Connect, Inc.
1080 Center Drive
Los Angeles, CA 90045
Jim.Pickell@sonyconnect.com
Ajay.Patel@sonyconnect.com

Bob Kimball
RealNetworks, Inc.
2601 Elliott Avenue
Seattle, WA 98121
bkimball@real.com
dstewart@real.com

Charles J. Sanders
Attorney at Law PC
29 Kings Grant Way
Briarcliff Manor, NY 10510
csanderslaw@aol.com
Counsel for The Songwriters Guild of America

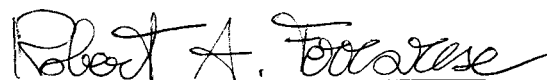
Carl W. Hampe
Baker & McKenzie LLP
815 Connecticut Ave. NW
Washington, D.C. 20006
carl.hampe@bakernet.com
Counsel for The Songwriters Guild of America

Rick Carnes
The Songwriters Guild of America
1500 Harbor Boulevard
Weehawken, NJ 07087
rickcarnes@songwritersguild.com

Jay Cohen
Aiden Synott
Lynn Bayard
Christopher Hyde Giampapa*
Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, NY 10019
jaycohen@paulweiss.com
asynnott@paulweiss.com
lbayard@paulweiss.com
cgiampapa@paulweiss.com
Counsel for NMPA, SGA, and NSAI
*Served additionally with hard copies of
the public and restricted version of the
Written Direct Statement by overnight
Federal Express

Dina Hellerstein
Yahoo!, Inc.
2700 Pennsylvania Avenue
Santa Monica, CA 90404
dhellerstein@yahoo-inc.com

Les Watkins*
Royalty Logic, Inc.
21122 Erwin St.
Woodland Hills, CA 91367
leswatkins@musicreports.com
*Served additionally with hard copies of
the public version of the Written Direct
Statement by overnight Federal Express


Robert A. Forrester