

**BY HAND**

January 15, 2009

Tanya Sandros, Esq.  
Deputy General Counsel  
United States Copyright Office  
101 Independence Avenue, S.W.  
Washington, DC 20559

Re: Docket No. 2006-3 CRB DPRA

Dear Tanya:

On behalf of the Digital Media Association (“DiMA”) and its member companies participating in the proceeding, I write in response to the request by the Register of Copyrights for views with respect to possible material errors of law contained in the final determination of the Copyright Royalty Judges. Please date stamp and return a copy of this letter to the messenger as proof of service.

As an initial matter, this letter should not be interpreted as a waiver of any of my clients’ rights, all of which are expressly reserved. Generally, DiMA is of the view that none of the questions raised by the Register involve material error of law at this stage of the proceeding. DiMA has no further comments at this time, other than the following, more specific, responses:

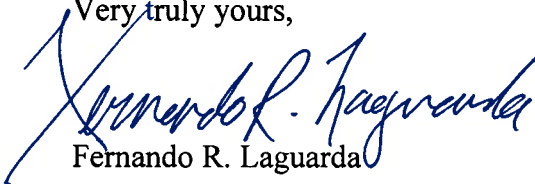
- 1) With respect to Question #4, there was no material error of law because the Copyright Royalty Judges followed the procedures established in 17 U.S.C. § 801(b)(7)(A) for adopting a settlement agreement to which no objection was made by any participant in the proceeding.
- 2) With respect to Question #7, there was no material error of law because the provisions at issue were adopted pursuant to 17 U.S.C. § 801(b)(7)(A) and are consistent with 17 U.S.C. § 803(d)(2)(B) because they apply retroactively only to activities for which rates and terms had not previously been established.

3) With respect to Question #8, there was no material error of law because the provisions at issue were adopted pursuant to 17 U.S.C. § 801(b)(7)(A) and are consistent with the discretion of the Copyright Royalty Judges to establish effective dates for rates and terms pursuant to 17 U.S.C. § 803(d)(2).

4) With respect to Question #9, there was no material error of law because the provisions at issue were adopted pursuant to 17 U.S.C. § 801(b)(7)(A) and are consistent with the authority of the Copyright Royalty Judges to establish terms under 17 U.S.C. §§ 115(c)(3)(C), 801(b), and 802(f)(1)(A)(i).

Thank you.

Very truly yours,

A handwritten signature in blue ink that reads "Fernando R. Laguarda". The signature is written in a cursive style with a large initial 'F'.

Fernando R. Laguarda

cc: Service list

## CERTIFICATE OF SERVICE

I hereby certify that on this 15<sup>th</sup> day of January 2009, I caused a true and correct copy of DiMA's response with respect to possible material errors of law to be served by email on the following:

Robert E. Bloch  
Mayer Brown Rowe & Maw LLP  
1909 K Street, NW  
Washington, DC 20006  
[rbloch@mayerbrown.com](mailto:rbloch@mayerbrown.com)  
*Counsel for EMI Music Publishing*

Jay Cohen  
Aiden Synott  
Lynn Bayard  
Paul, Weiss, Rifkind,  
Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10019  
[jaycohen@paulweiss.com](mailto:jaycohen@paulweiss.com)  
[asynnott@paulweiss.com](mailto:asynnott@paulweiss.com)  
[lbayard@paulweiss.com](mailto:lbayard@paulweiss.com)  
*Counsel for NMPA, SGA, and NSAI*

Paul M. Smith  
Thomas J. Perrelli  
Steven R. Englund  
David A. Handzo  
Molly J. Moran  
Jared O. Freedman  
JENNER & BLOCK LLP  
1099 New York Avenue, N.W.  
Suite 900  
Washington, D.C. 20001  
[psmith@jenner.com](mailto:psmith@jenner.com)  
[tperrelli@jenner.com](mailto:tperrelli@jenner.com)  
[senglund@jenner.com](mailto:senglund@jenner.com)  
[dhandzo@jenner.com](mailto:dhandzo@jenner.com)  
[mmoran@jenner.com](mailto:mmoran@jenner.com)  
[jfreedman@jenner.com](mailto:jfreedman@jenner.com)  
*Counsel for RIAA*

I further certify that on this 15<sup>th</sup> day of January 2009, I caused a true and correct copy of the DiMA's response with respect to possible material errors of law to be served by email on the following:

James D. Villa  
America Online, Inc.  
22000 AOL Way  
Dulles, VA 20166  
[James.Villa@corp.aol.com](mailto:James.Villa@corp.aol.com)

Bob Kimball, General Counsel  
RealNetworks, Inc.  
2601 Elliott Avenue  
Seattle, WA 98121  
[bkimball@real.com](mailto:bkimball@real.com)

Kevin Saul  
Matt Railo  
Apple Computer, Inc.  
1 Infinite Loop, MS 3-ITMS  
Cupertino, CA 95014  
[ksaul@apple.com](mailto:ksaul@apple.com)  
[mrailo@apple.com](mailto:mrailo@apple.com)

David M. Israelite  
National Music Publishers' Association Inc.  
101 Constitution Avenue, N.W.  
Washington, D.C. 20001  
[disraelite@nmpa.org](mailto:disraelite@nmpa.org)

Steven M. Marks  
Recording Industry Association of  
America, Inc.  
1025 F. Street, N.W.  
10<sup>th</sup> Floor  
Washington, D.C. 20036  
[smarks@riaa.com](mailto:smarks@riaa.com)

George Cheeks, General Counsel  
MTV Networks,  
a division of Viacom, Inc.  
1515 Broadway  
New York, NY 10019  
[George.Cheeks@mtvn.com](mailto:George.Cheeks@mtvn.com)

Cindy Charles  
Tom Rowland  
MusicNet, Inc.  
220 W. 42d Street  
16th Floor  
New York, NY 10036  
[trowland@musicnet.com](mailto:trowland@musicnet.com)  
[ccharles@musicnet.com](mailto:ccharles@musicnet.com)

Aileen Atkins  
Napster LLC  
317 Madison Avenue  
11th Floor, Suite 1104  
New York, NY 10017  
[aileen.atkins@napster.com](mailto:aileen.atkins@napster.com)

Carl W. Hampe  
Baker & McKenzie LLP  
815 Connecticut Avenue, N.W.  
Washington, D.C. 20006  
[carl.hampe@bakernet.com](mailto:carl.hampe@bakernet.com)

James E. Hough  
John F. Delaney  
Morrison & Foerster LLP  
1290 Avenue of the Americas  
New York, NY 10104  
[jhough@mofocom](mailto:jhough@mofocom)  
[jdelaney@mofocom](mailto:jdelaney@mofocom)

Rick Carnes  
The Songwriters Guild of America  
209 10th Avenue South, Suite 321  
Nashville, TN 37203  
[rickcarnes@songwritersguild.com](mailto:rickcarnes@songwritersguild.com)

Kathryn E. Wagner  
Vice President & Counsel  
National Music Publishers' Association  
601 W. 26th Street, Fifth Floor  
New York, NY 10001  
[kwagner@nmpa.org](mailto:kwagner@nmpa.org)

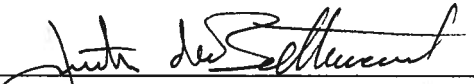
James Pickell  
Ajay A. Patel  
Sony Connect, Inc.  
1080 Center Drive  
Los Angeles, CA 90045  
[Jim.Pickell@sonyconnect.com](mailto:Jim.Pickell@sonyconnect.com)  
[Ajay.Patel@sonyconnect.com](mailto:Ajay.Patel@sonyconnect.com)

Charles J. Sanders  
Attorney at Law PC  
29 Kings Grant Way  
Briarcliff Manor, NY 10510  
[csanderslaw@aol.com](mailto:csanderslaw@aol.com)

Barton Herbison  
Nashville Songwriters Association Int'l  
1710 Roy Acuff Place  
Nashville, TN 37203  
[barton@nashvillesongwriters.com](mailto:barton@nashvillesongwriters.com)  
[Jennifer@nashvillesongwriters.com](mailto:Jennifer@nashvillesongwriters.com)

William B. Colitre  
Royalty Logic, Inc.  
21122 Erwin Street  
Woodland Hills, CA 91367  
[bcolitre@MusicReports.com](mailto:bcolitre@MusicReports.com)

Wendy Halley  
Yahoo!, Inc.  
45 W. 18th Street, 6th Floor  
New York, NY 10011  
whalley@yahoo-inc.com

  
Justin deBettencourt