

COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34 (the “**Act**”);

AND IN THE MATTER OF an application by Stargrove Entertainment Inc. for an order pursuant to section 103.1 of the Act granting leave to bring an application under sections 75, 76, and 77 of the Act;

AND IN THE MATTER OF an application by Stargrove Entertainment Inc. for an order pursuant to sections 75, 76, and 77 of the Act;

AND IN THE MATTER OF an application by Stargrove Entertainment Inc. for an order pursuant to section 104 of the Act;

BETWEEN:

STARGROVE ENTERTAINMENT INC.

Applicant

- and -

**UNIVERSAL MUSIC PUBLISHING GROUP CANADA,
UNIVERSAL MUSIC CANADA INC.,
SONY/ATV MUSIC PUBLISHING CANADA CO.,
SONY MUSIC ENTERTAINMENT CANADA INC.,
ABKCO MUSIC & RECORDS, INC.,
CASABLANCA MEDIA PUBLISHING, and
CANADIAN MUSICAL REPRODUCTION RIGHTS AGENCY LTD.**

Respondents

APPLICATION RECORD

**(Application for Leave Pursuant to Section 103.1 of the *Competition Act* and
Application for Interim Order Pursuant to Section 104 of the *Competition Act*)**

VOLUME 1

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AND TO: Canadian Musical Reproduction Rights Agency Ltd.
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TAB A

File No. CT-2015-

COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34 (the “**Act**”);

AND IN THE MATTER OF an application by Stargrove Entertainment Inc. for an order pursuant to section 103.1 of the Act granting leave to bring an application under sections 75, 76, and 77 of the Act;

AND IN THE MATTER OF an application by Stargrove Entertainment Inc. for an order pursuant to sections 75, 76, and 77 of the Act;

AND IN THE MATTER OF an application by Stargrove Entertainment Inc. for an order pursuant to section 104 of the Act;

BETWEEN:

STARGROVE ENTERTAINMENT INC.

Applicant

- and -

**UNIVERSAL MUSIC PUBLISHING GROUP CANADA,
UNIVERSAL MUSIC CANADA INC.,
SONY/ATV MUSIC PUBLISHING CANADA CO.,
SONY MUSIC ENTERTAINMENT CANADA INC.,
ABKCO MUSIC & RECORDS, INC.,
CASABLANCA MEDIA PUBLISHING, and
CANADIAN MUSICAL REPRODUCTION RIGHTS AGENCY LTD.**

Respondents

NOTICE OF APPLICATION FOR LEAVE

(Pursuant to section 103.1 of the *Competition Act*)

TAKE NOTICE THAT:

1. The Applicant will make an application to the Competition Tribunal (“**Tribunal**”) on a date and time to be set by the Tribunal at Ottawa or Toronto, Ontario pursuant to Section 103.1 of the *Competition Act* (the “**Act**”) seeking leave to bring an application for:
 - (a) an Order pursuant to section 75(1) of the Act requiring the Respondents to accept the Applicant as a customer within 15 days of the Tribunal's order, on the same standard trade terms applicable to other applicants to the Canadian Musical Reproduction Rights Agency Ltd.;
 - (b) an Order pursuant to section 76(2) of the Act prohibiting the Respondents from continuing to engage in the practices that form the basis of this Application;
 - (c) an Order pursuant to section 76(2) of the Act requiring the Respondents to accept the Applicant as a customer within 15 days of the Tribunal's order, on the same standard trade terms applicable to other applicants to CMRRA;
 - (d) an Order pursuant to section 76(8) of the Act prohibiting the Respondents from continuing to engage in the practices that form the basis of this Application;
 - (e) an Order pursuant to section 76(8) of the Act requiring the Respondents to accept the Applicant as a customer within 15 days of the Tribunal's order, on the same standard trade terms applicable to other applicants to CMRRA;

- (f) an Order pursuant to section 77(2) of the Act prohibiting the Respondents from continuing to engage in exclusive dealing;
- (g) an Order pursuant to section 77(2) of the Act requiring the Respondents to accept the Applicant as a customer within 15 days of the Tribunal's order, on the same standard trade terms applicable to other applicants to CMRRA;
- (h) an Order expediting the hearing of the within Application;
- (i) an Order for costs, if the within Application is opposed; and
- (j) such further and other orders as the Applicant may request and the Tribunal deems just.

AND TAKE NOTICE THAT:

- 2. Concurrently with its Application for Leave, the Applicant will seek an interim order under section 104 of the Act requiring the Respondents to grant mechanical licences to the Applicant on the usual terms associated with the granting of said licences through CMRRA, lasting until a final decision is made on the Applicant's Application for Leave pursuant to s. 103.1 of the Act or, if the Application for Leave is granted, until a final decision is made on the Proposed Notice of Application pursuant to ss. 75, 76, and 77 of the Act.
- 3. The persons against whom the orders are sought are the Respondents: Universal Music Publishing Group Canada; Universal Music Canada Inc.; Sony/ATV Music Publishing Canada Co.; Sony Music Entertainment Canada Inc.; ABKCO Music & Records, Inc.;

Casablanca Media Publishing; and Canadian Musical Reproduction Rights Agency Ltd.

The Respondents' addresses are set out below.

4. The Applicant will rely on the Statement of Grounds and Material Facts attached as Schedule "A" to the Proposed Notice of Application; the Affidavit of Terry Perusini, sworn August 26, 2015; the Affidavit of Mario Bouchard, sworn August 27, 2015; the Memorandum of Fact and Law accompanying this Application; and such further or other material as counsel may advise and the Tribunal may permit.
5. The Applicant requests that this Application be heard in the English language.
6. The Applicant requests that the documents for this Application be filed in electronic form.
7. Dated at Toronto this 28th day of August, 2015.



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AND TO: Canadian Musical Reproduction Rights Agency Ltd.
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File No. CT-2015-

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AND IN THE MATTER OF an application by Stargrove Entertainment Inc. for an order pursuant to sections 75, 76, and 77 of the Act;

AND IN THE MATTER OF an application by Stargrove Entertainment Inc. for an order pursuant to section 104 of the Act;

BETWEEN:

STARGROVE ENTERTAINMENT INC.

Applicant

- and -

**UNIVERSAL MUSIC PUBLISHING GROUP CANADA,
UNIVERSAL MUSIC CANADA INC.,**

SONY/ATV MUSIC PUBLISHING CANADA CO.,

SONY MUSIC ENTERTAINMENT CANADA INC.,

ABKCO MUSIC & RECORDS, INC.,

CASABLANCA MEDIA PUBLISHING, and

CANADIAN MUSICAL REPRODUCTION RIGHTS AGENCY LTD.

Respondents

**NOTICE OF APPLICATION FOR LEAVE
(Pursuant to s. 103.1 of the *Competition Act*)**

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TAB B

File No. CT-2015-

COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34 (the “**Act**”);

AND IN THE MATTER OF an application by Stargrove Entertainment Inc. for an order pursuant to section 103.1 of the Act granting leave to bring an application under sections 75, 76, and 77 of the Act;

AND IN THE MATTER OF an application by Stargrove Entertainment Inc. for an order pursuant to sections 75, 76, and 77 of the Act;

AND IN THE MATTER OF an application by Stargrove Entertainment Inc. for an order pursuant to section 104 of the Act;

BETWEEN:

STARGROVE ENTERTAINMENT INC.

Applicant

- and -

**UNIVERSAL MUSIC PUBLISHING GROUP CANADA,
UNIVERSAL MUSIC CANADA INC.,
SONY/ATV MUSIC PUBLISHING CANADA CO.,
SONY MUSIC ENTERTAINMENT CANADA INC.,
ABKCO MUSIC & RECORDS, INC.,
CASABLANCA MEDIA PUBLISHING, and
CANADIAN MUSICAL REPRODUCTION RIGHTS AGENCY LTD.**

Respondents

PROPOSED NOTICE OF APPLICATION
(under ss. 75, 76, and 77 of the *Competition Act*)

TAKE NOTICE THAT:

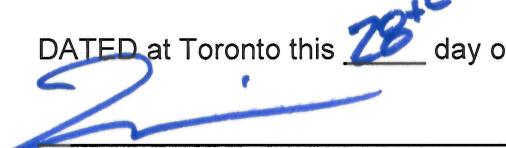
1. The Applicant will make an application to the Competition Tribunal (“**Tribunal**”) pursuant to sections 75, 76, and 77 of the *Competition Act* (the “**Act**”) for:
 - (a) an Order pursuant to section 75(1) of the Act requiring the Respondents to accept the Applicant as a customer within 15 days of the Tribunal's order, on the same standard trade terms applicable to other applicants to the Canadian Musical Reproduction Rights Agency Ltd. (“**CMRRA**”);
 - (b) an Order pursuant to section 76(2) of the Act prohibiting the Respondents from continuing to engage in the practices that form the basis of this Application;
 - (c) an Order pursuant to section 76(2) of the Act requiring the Respondents to accept the Applicant as a customer within 15 days of the Tribunal's order, on the same standard trade terms applicable to other applicants to CMRRA;
 - (d) an Order pursuant to section 76(8) of the Act prohibiting the Respondents from continuing to engage in the practices that form the basis of this Application;
 - (e) an Order pursuant to section 76(8) of the Act requiring the Respondents to accept the Applicant as a customer within 15 days of the Tribunal's order, on the same standard trade terms applicable to other applicants to CMRRA;
 - (f) an Order pursuant to section 77(2) of the Act prohibiting the Respondents from continuing to engage in exclusive dealing;
 - (g) an Order pursuant to section 77(2) of the Act requiring the Respondents to accept the Applicant as a customer within 15 days of the Tribunal's order, on the same standard trade terms applicable to other applicants to CMRRA;

- (h) an Order expediting the hearing of the within Application;
- (i) an Order for costs, if the within Application is opposed; and
- (j) such further and other orders as the Applicant may request and the Tribunal deems just.

AND TAKE NOTICE THAT:

2. The persons against whom the orders are sought are the Respondents: Universal Music Publishing Group Canada; Universal Music Canada Inc.; Sony/ATV Music Publishing Canada Co.; Sony Music Entertainment Canada Inc.; ABKCO Music & Records, Inc.; Casablanca Media Publishing; and Canadian Musical Reproduction Rights Agency Ltd. The Respondents' addresses are set out below.
3. The Applicant will rely on the Statement of Grounds and Material Facts attached as Schedule "A" hereto; the Affidavit of Terry Perusini, sworn August 26, 2015; the Affidavit of Mario Bouchard, sworn August 27, 2015; and such further and other grounds and material facts as counsel may advise and the Tribunal may permit.
4. A concise statement of the economic theory of the case is contained in Schedule "B" hereto.
5. The Applicant requests that the within Application be heard in the English language.
6. The Applicant requests that the documents for this Application be filed in electronic form.

DATED at Toronto this 28th day of August, 2015


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PART 1 - THE APPLICATION IN A NUTSHELL

1. Stargrove is a record label that manufactures CD compilations of sound recordings of The Beatles, The Rolling Stones, and other artists for sale at low prices (\$5.00) at Walmart stores. It can offer such low prices because the sound recordings it uses are no longer protected by copyright; they are in the public domain. As such, Stargrove does not require a "master sound recording licence" to use the recordings.
2. Although the sound recordings are in the public domain, the musical works (songs) on the recordings continue to be copyright protected. Stargrove requires what are known as "mechanical licences" for each song it seeks to use. In Canada, there are standard industry practices and terms that govern the issuance of mechanical licences; for the songs relevant to this application, these are administered by the Canadian Musical Reproduction Rights Agency. Stargrove is willing to abide by those terms and practices. The Respondents, however, have banded together to shut Stargrove out, having CMRRA deny Stargrove any mechanical licences (not just for the titles in question).
3. Stargrove is being targeted for its low pricing model, but the real victims are consumers; instead of being able to buy popular titles for just \$5.00 per CD, they pay much more.
4. The Respondents have campaigned to block Stargrove by pressuring Stargrove's distributor, concocting false negative reviews of Stargrove's CDs, and having CMRRA refuse to deal with Stargrove on standard terms. They have violated sections 75, 76, and 77 of the Competition Act, depriving consumers of competitive prices and artificially extending copyright over public domain recordings. This has negatively affected competition. Stargrove seeks to be treated fairly, in accordance with standard industry terms. Since the Respondents are unwilling to engage with Stargrove, Stargrove asks this Tribunal to order them to do so.

PART 2 - FACTS

A. The Parties

5. The Applicant, Stargrove Entertainment Inc. (“**Stargrove**”), is a company incorporated in July 2014 under the laws of Ontario. Stargrove is a record label in the business of manufacturing and selling competitively-priced musical compact discs (“**CDs**”).
6. The Respondents Sony/ATV Music Publishing Canada Co. and Sony Music Entertainment Canada Inc. (collectively, “**Sony**”) and Universal Music Publishing Group Canada and Universal Music Canada Inc. (collectively, “**Universal**”) are music publishing companies and record labels located in Toronto, Ontario. The Respondent Casablanca Media Publishing (“**Casablanca**”) is a music publishing company located in Toronto. The Respondent ABKCO Music and Records Inc. (“**ABKCO**”) is a record label, music publisher, and film and video production company headquartered in New York, New York.
7. The Respondent Canadian Musical Reproduction Rights Agency Ltd. (“**CMRRA**”) is a music licensing collective representing music publishers. On behalf of music publishers, CMRRA issues licences for the reproduction of musical works on various media, including mechanical licensing for the reproduction of songs on CDs.
8. Sony, Universal and Casablanca are represented by CMRRA and have representatives on the Board of Directors of CMRRA. ABKCO is represented by CMRRA but, to Stargrove's knowledge, does not have representatives on its Board of Directors.
9. Anderson Merchandisers Canada Inc. (“**Anderson**”) (which is not a party to the case) distributes CDs to major Canadian retailers, including Walmart and BestBuy. Anderson

is the exclusive distributor for CDs in Walmart in Canada and is the distributor for Stargrove's CDs.

B. Licensing Musical Works in Canada

10. For the purposes of this Application, there are two copyrights that matter:

- (1) The copyright in the musical work. In order to reproduce a musical work, a party must obtain a "**mechanical licence**" from the holder of the copyright in the musical work, if the work is protected by copyright. If the work has fallen into the "**public domain**", no licence is required to use the work.
- (2) The copyright in the master sound recording. In order to reproduce the sound recording on which a musical work is fixed, a party must obtain a "**master recording licence**" from the holder of the copyright in the sound recording. If the sound recording has fallen into the public domain, no licence is required to use the sound recording.

11. Stargrove's business is to manufacture and sell CDs. Its current business activity is to manufacture and sell CDs of musical works whose sound recordings are in the public domain. In order to do so, Stargrove needs to obtain mechanical licences for the works, but does not need to obtain master recording licences. Stargrove then manufactures and sells these CDs at very competitive prices.

12. Although a record label in Stargrove's position can seek to obtain a mechanical licence directly from the copyright holders, the common practice in Canada is for a record label to apply for mechanical licences from CMRRA, which is the authorized representative for most musical work copyright holders in Canada. For a record label of Stargrove's size,

the typical way to obtain such mechanical licences is by entering into a mechanical licence agreement (“**MLA**”) with CMRRA. A record label that has signed an MLA obtains mechanical licences on standard terms and at standard rates.

13. The standard mechanical royalty rate in Canada is currently \$0.083 per song, per copy (for recordings with a running time of five minutes or less). Applications to CMRRA are granted as a matter of course at this standard rate. CMRRA’s contracts with the publishers it represents (called “**Affiliation Agreements**”) contemplate that CMRRA “shall” issue the mechanical licences on standard terms, unless the publisher decides that it wants to deal directly with the record label to issue the licence.
14. In practice, the market for the issuance of mechanical licences operates as though it were a compulsory system. The process is so automatic that record labels almost always produce CDs even before they have obtained mechanical licences. Royalties owed on these CDs are held pending the identification of the copyright owner.

C. Stargrove's Business Was Immediately Successful

15. In January 2015, Stargrove made an application to CMRRA for mechanical licences for five titles (collectively, the “**Titles**”): The Beatles *Love Me Do*, The Beatles *Can't Buy Me Love*, The Rolling Stones *Little Red Rooster*, Bob Dylan *It Ain't Me Babe* and The Beach Boys *Fun, Fun, Fun* (each of these titles is a compilation of 11 songs).
16. For each of these titles, copyright in the musical work still exists (hence the need for a mechanical licence), but copyright in the sound recording has expired. As such, the sound recording is in the public domain, meaning that the public has the right to use and copy that recording without permission.

17. With its mechanical licence application to CMRRA, Stargrove submitted the required royalty payment of \$13,799.10.
18. CMRRA cashed Stargrove's cheque and Stargrove began producing its CDs for sale. The CDs went on sale in Walmart on February 3, 2015 for a retail price of \$5.00. In the first week of sales, The Beatles' *Love Me Do* was Walmart's top-selling CD, with 1,488 copies sold in one week alone.

D. The Respondents Ordered CMRRA to Stop Issuing Stargrove Mechanical Licences

19. The publishers associated with each of the Titles include ABKCO, Casablanca and Sony (collectively, the "**Title Holders**"). One by one, and in quick succession, each of the Title Holders gave instructions to CMRRA in January or February 2015 to stop issuing mechanical licences to Stargrove.
20. A CMRRA representative professed her surprise to Stargrove at this instruction from the Title Holders, but CMRRA followed their instruction. In fact, CMRRA went even further and refused to grant Stargrove *any* mechanical licences, whether from one of the Title Holders or not. Stargrove's attempts to enter into an MLA were stymied by CMRRA, who erected barrier after barrier to Stargrove's application.
21. CMRRA refunded Stargrove's royalty payment for the Titles at the end of February 2015.
22. On multiple occasions, Stargrove requested explanations for the refusals to grant mechanical licences, both from CMRRA and from the Title Holders directly, and asked them to reverse course. Stargrove has been refused an explanation, other than in a letter from CMRRA, which stated that the Title Holders' "refusal to deal is at least partially related to the fact that there are public domain master recordings on the products in question."

23. The Title Holders are withholding mechanical licences in order to artificially extend copyright over recordings that should be in the public domain. They are doing so in direct response to the legitimate competition that Stargrove was bringing to the market. As set out above, some Title Holders have record label divisions, while others are affiliated with record labels. They do not like Stargrove's pricing model and the fact that Stargrove was able to gain market share so quickly.

E. Universal Tried to Prevent or Harm Stargrove's Business

24. Randy Lennox, the CEO of Universal Music Canada Inc., sent an e-mail to the principals of Anderson, the distributors of Stargrove's CDs, asking Anderson to partner with Universal to find solutions and resolve what he called a "public domain issue".

25. Brian Greaves, an account manager at Universal Music Canada Inc., concocted negative reviews on Walmart's website, complaining that Stargrove's products were of poor quality. He encouraged other Universal employees to do the same and to help him with Universal's "campaign" to discourage Anderson from distributing Stargrove's CDs, stating that poor reviews would deter Anderson from distributing Stargrove's products in the future. Walmart subsequently removed all the fake reviews from its site. Stargrove's CDs had a low return rate: of the over 2000 Stargrove CDs sold, only one CD was returned.

26. Mr. Greaves noted that Stargrove's CDs were taking away from Universal's sales and market share, and claimed that Universal had already successfully removed a Rolling Stones title from the CDs offered for sale by Stargrove, despite the fact that the copyright in question was held by ABKCO, not Universal.

F. The Respondents Campaigned to Shut Stargrove Out

27. The Respondents mean to punish Stargrove for its low pricing and ability to compete with established record labels. Ultimately, this keeps the prices of CDs high. The decision to instruct CMRRA to refuse to issue mechanical licences to Stargrove surprised even the employees of CMRRA.
28. Since Stargrove has been shut out of the market, it has missed out on several lucrative opportunities to market its CDs, resulting already in an estimated loss of \$150,000 in wholesale sales. Anderson wanted approximately 20,000 copies of Beatles CDs that Stargrove would have otherwise produced. Anderson continues to identify marketing opportunities for Stargrove through Walmart that Stargrove is unable to pursue because of CMRRA's and the Respondents' refusal to issue it mechanical licences. As recently as three weeks ago, Anderson identified a lack of stock of Beatles and Rolling Stones CDs; it wanted Stargrove to help it fill its orders. Stargrove cannot do so, as long as it is being unfairly and unlawfully blocked from the market.
29. Stargrove's CDs have been pulled from Walmart's shelves, and its sales – given that it can obtain no mechanical licences from CMRRA – are now zero.

PART 3 - GROUNDS FOR THE SECTION 75, 76, AND 77 APPLICATION

30. The Respondents' conduct violates sections 75, 76, and 77 of the Act.
31. Stargrove has been directly affected by the Respondents' conduct. By refusing to deal with Stargrove and forcing CMRRA not to deal with Stargrove, the Respondents are preventing Stargrove from entering the market and from having the competitive impact that was observed in the short time that Stargrove was able to sell CDs. Without being able to obtain mechanical licences through CMRRA, Stargrove will go out of business.

A. Refusal to Deal (Section 75(1))

32. Section 75(1) of the Act sets out the requirements for the reviewable trade practice of refusal to deal:

Jurisdiction of Tribunal where refusal to deal

75. (1) Where, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that

- (a) a person is substantially affected in his business or is precluded from carrying on business due to his inability to obtain adequate supplies of a product anywhere in a market on usual trade terms,
- (b) the person referred to in paragraph (a) is unable to obtain adequate supplies of the product because of insufficient competition among suppliers of the product in the market,
- (c) the person referred to in paragraph (a) is willing and able to meet the usual trade terms of the supplier or suppliers of the product,
- (d) the product is in ample supply, and
- (e) the refusal to deal is having or is likely to have an adverse effect on competition in a market,

the Tribunal may order that one or more suppliers of the product in the market accept the person as a customer within a specified time on usual trade terms unless, within the specified time, in the case of an article, any customs duties on the article are removed, reduced or remitted and the effect of the removal, reduction or remission is to place the person on an equal footing with other persons who are able to obtain adequate supplies of the article in Canada.

33. Stargrove is substantially affected in its business and precluded from carrying on its business due to its inability to obtain the right from the Respondents to reproduce songs on usual trade terms (through mechanical licences).

34. Stargrove is unable to obtain these rights because the mechanical licences at issue are in the sole control of the Respondents.

35. Stargrove is willing to meet the usual trade terms of the Respondents through CMRRA for issuing mechanical licences. It has tried to enter into CMRRA's standard MLA, but CMRRA refuses to deal with it on its standard terms.

36. The granting of rights to reproduce songs is not limited in supply – as noted above, mechanical licences are normally granted as a matter of course.
37. The Respondents' refusal to deal is having an adverse effect on competition in the market for CDs in Canada, specifically in respect of popular music whose sound recordings are in the public domain. The consuming public, whose purchase decisions made Stargrove's CDs top sellers in their first week of sales, is being denied the low-cost alternative that Stargrove seeks to provide.
38. Stargrove therefore submits that the Respondents' refusal to deal satisfies all the elements of s. 75 of the Act and respectfully requests that the Tribunal make an order under s. 75 of the Act requiring the Respondents to accept Stargrove as a customer within 15 days of the Tribunal's order, on the same standard trade terms applicable to other applicants to CMRRA.

B. Price Maintenance (Section 76)

39. The Respondents' conduct violates s. 76 of the Act, which states, in part:

Price maintenance

76. (1) On application by the Commissioner or a person granted leave under section 103.1, the Tribunal may make an order under subsection (2) if the Tribunal finds that

- (a) a person referred to in subsection (3) directly or indirectly
 - ...
 - (ii) has refused to supply a product to or has otherwise discriminated against any person or class of persons engaged in business in Canada because of the low pricing policy of that other person or class of persons; and
- (b) the conduct has had, is having or is likely to have an adverse effect on competition in a market.
 - ...

Persons subject to order

(3) An order may be made under subsection (2) against a person who

- (a) is engaged in the business of producing or supplying a product;
- ... or
- (c) has the exclusive rights and privileges conferred by a patent, trade-mark, copyright, registered industrial design or registered integrated circuit topography.

Refusal to supply

(8) If, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that any person, by agreement, threat, promise or any like means, has induced a supplier, whether within or outside Canada, as a condition of doing business with the supplier, to refuse to supply a product to a particular person or class of persons because of the low pricing policy of that person or class of persons, and that the conduct of inducement has had, is having or is likely to have an adverse effect on competition in a market, the Tribunal may make an order prohibiting the person from continuing to engage in the conduct or requiring the person to do business with the supplier on usual trade terms.

40. The Respondents fall under both s. 76(3)(a) and (c), as they are engaged in the business of supplying rights to reproduce musical works (through mechanical licences), and they have the exclusive rights and privileges conferred by the copyright in the musical works associated with the mechanical licences.
41. The Respondents' conduct falls within s. 76(1)(a)(ii) because they have refused to supply a product to Stargrove. Specifically, the Respondents have refused to grant Stargrove the right to reproduce musical works in an attempt to keep Stargrove from competing in the market for CDs where the sound recordings are in the public domain. The Respondents are doing so because Stargrove's low pricing policies were going to disrupt the CD market and take away market share from the record labels.
42. The Respondents have also acted contrary to s. 76(1)(a)(ii) because they have "otherwise discriminated against" Stargrove. The Respondents have discriminated against Stargrove by denying it access to the right to reproduce musical works (through

mechanical licences and an MLA) and by refusing to deal with it on terms similar to the terms that would apply to any other record label. This discrimination arises because of Stargrove's low pricing policy. E-mails from executives at Universal identify that the refusal to supply and discriminatory treatment occurred because Stargrove's \$5.00 CDs were gaining market share.

43. The Respondents have also acted contrary to s. 76(8) by inducing CMRRA, as a condition of doing business with the Respondents, to refuse to supply the relevant rights (through mechanical licences and an MLA) to Stargrove. This refusal arises because of Stargrove's low pricing policy.
44. The Respondents' refusal to supply has impeded Stargrove's entry into and expansion in the CD market in Canada and has resulted, and is likely to result, in a substantial lessening or prevention of competition, as consumers are being denied access to the low-cost CDs they want.
45. Stargrove therefore respectfully requests that the Tribunal make orders pursuant to ss. 76(2) and 76(8) of the Act **(1)** prohibiting the Respondents from continuing to engage in price maintenance and **(2)** requiring the Respondents to accept the Applicant as a customer within 15 days of the Tribunal's order, on the same standard trade terms applicable to other applicants to CMRRA.

C. Exclusive Dealing (Section 77)

46. The Respondents' conduct is in violation of s. 77 of the Act.
47. Subsection 77(1) defines "exclusive dealing" as:
 - (a) any practice whereby a supplier of a product, as a condition of supplying the product to a customer, requires that customer to

(i) deal only or primarily in products supplied by or designated by the supplier or the supplier's nominee, or

(ii) refrain from dealing in a specified class or kind of product except as supplied by the supplier or the nominee, and

(b) any practice whereby a supplier of a product induces a customer to meet a condition set out in subparagraph (a)(i) or (ii) by offering to supply the product to the customer on more favourable terms or conditions if the customer agrees to meet the condition set out in either of those subparagraphs

48. Subsection 77(2) provides:

(2) Where, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that exclusive dealing or tied selling, because it is engaged in by a major supplier of a product in a market or because it is widespread in a market, is likely to

(a) impede entry into or expansion of a firm in a market,

(b) impede introduction of a product into or expansion of sales of a product in a market, or

(c) have any other exclusionary effect in a market,

with the result that competition is or is likely to be lessened substantially, the Tribunal may make an order directed to all or any of the suppliers against whom an order is sought prohibiting them from continuing to engage in that exclusive dealing or tied selling and containing any other requirement that, in its opinion, is necessary to overcome the effects thereof in the market or to restore or stimulate competition in the market.

49. The Respondent publishers and CMRRA are major suppliers of rights to reproduce musical works (through mechanical licences and MLAs) in Canada.

50. Universal pressured Anderson not to deal with Stargrove, offering veiled incentives and making veiled threats to deter Anderson from dealing with Stargrove and posting false online reviews in order to influence Anderson and others away from Stargrove.

51. The Respondents' exclusive dealing has impeded Stargrove's entry into and expansion in the CD market in Canada.

52. The Respondents' exclusive dealing has resulted, and is likely to result, in a substantial lessening of competition, as consumers are being denied access to CDs they want at low prices.
53. Stargrove therefore respectfully requests that the Tribunal make orders under s. 77(2) of the Act **(1)** prohibiting the Respondents from continuing to engage in exclusive dealing; and **(2)** requiring the Respondents to accept the Applicant as a customer within 15 days of the Tribunal's order, on the same standard trade terms applicable to other applicants to CMRRA.
54. In support of this Application, and the Grounds and Material Facts set out above, Stargrove relies on:
 - (a) the affidavit of Terry Perusini, sworn August 26, 20015;
 - (b) the affidavit of Mario Bouchard, sworn August 27, 2015;
 - (c) the *Competition Act*, RSC 1985, c C-34, as amended, including ss. 75, 76, 77 and 103.1;
 - (d) the Competition Tribunal Rules, SOR/2008-141; and
 - (e) such further and other grounds and material facts as counsel may advise and the Tribunal may permit.

ECONOMIC THEORY OF THE CASE

1. This schedule provides a concise statement of the economic theory that supports the Application requesting that the Tribunal¹ issue orders pursuant to sections 75, 76 and 77 of the Act.
2. The conduct of the Respondents, in respect of their refusal to provide the right to reproduce musical works (by way of mechanical licences and an MLA on standard terms), is not a mere exercise of intellectual property rights or of market power. This statement of economic theory identifies why the refusals increase market power and harm competition.
3. The relevant geographic market is Canada, given the Federal statutory framework that applies to copyright and that prices are unlikely to vary across the country for a given retailer.
4. The relevant product market, i.e., where competition is harmed, is in the wholesale sale of CDs containing popular music titles recorded before 1964 and that have three characteristics: (i) the sound recording being marketed is in the public domain; (ii) the musical work fixed on the sound recording remains protected by copyright; and (iii) the recordings are of performances by artists who continue to be popular. Examples include the performers of the titles at issue in this application, including The Beatles, The Rolling Stones, and The Beach Boys.

¹ This schedule adopts the definitions set out in the Notice of Application and Statement of Grounds and Material Facts.

5. The effect of the refusal is reflected in retail prices. The effect of the refusal is to maintain retail prices in the range of ~\$15 to \$20 per CD, instead of a price level of approximately \$5 per CD, the price they would be with a mechanical licence containing the usual terms, conditions, and royalty rates. In the absence of cost differences, the difference in price between the but for world with the issuance of mechanical licences (~\$5 per CD) and the price given the refusal to issue mechanical licences (~\$15 per CD) is indicative of the market power maintained by the refusal and the harm to competition.
6. The retail price difference indicates differences of similar magnitudes with respect to wholesale pricing. It should be expected that the wholesale price of the titles would be substantially less than the wholesale prices of similar CDs offered by the labels with publishing rights.
7. The price differential maintained by the refusal far exceeds the normal thresholds for the small but significant and non-transitory price increase used in the hypothetical monopolist test to define relevant markets.
8. The mere exercise of copyright to exclude others is not conduct that typically can be found to violate the *Competition Act*.² If an exclusion simply maintains market power in the supply of the copyrighted material, it is considered an acceptable cost during the lifetime of the copyright in exchange for the increased incentives

² The exception to this is Section 32 of the *Act*. Section 32 is a special remedy under which the Federal Court can make an order when the conduct involves nothing more than the mere exercise of intellectual property rights.

provided for to the creators of intellectual property. However, if the conduct by the copyright holder creates, enhances, or maintains its market power beyond the level of market power consistent with the mere exclusion of others from using its intellectual property, that conduct engages the *Competition Act*.³

9. To manufacture and sell a CD in Canada, a record label wishing to use a pre-existing sound recording must have rights (i) to the sound recording (typically by way of “master sound recording licence”) and (ii) to reproduce the song (by way of “mechanical licence”), if those rights have not expired. For certain recordings, namely recordings made in 1964 and earlier, the sound recording rights in Canada are now in the public domain, i.e., the copyright in the sound recording has expired, such that anyone can copy the recording without obtaining a master sound recording licence.
10. For sound recordings not in the public domain, the sound recording and mechanical rights are complementary. Royalties for each will be required to produce a CD. If the wholesale revenue of a CD containing songs for which both the sound recording and the mechanical rights are not in the public domain is r , then $r = p + m + \pi + c$ where p is the royalty for the performances, m the royalty

³ This is the fundamental distinction that underlies the interface between competition policy and intellectual property rights in Canada. See Section 4.2 Competition Bureau, (2000), *Intellectual Property Enforcement Guidelines*.

for the mechanical right, c all other costs of production, and π record label profits.⁴

11. Consider the case of a record label that owns both the publishing and the mechanical rights. The opportunity cost to it of licensing would be its lost profit if the CD was supplied by a rival instead of by the rights holder. If the rival record label is just as efficient as the rights holder then the joint royalty rate would be $r - c = p + m$ and the economic profits of the rights holder would be $\pi = r - c - p - m = 0$: any excess return it earns is attributable to its control of the publishing and mechanical rights.
12. If the mechanical royalty rate administered by the CMRRA is denoted m_R then $p = r - c - m_R$ is the implicit return to the holder of the performing rights if both sets of rights are not in the public domain.
13. Suppose that the sound recording rights expire. If mechanical licences were available at the administered rate m_R then the cost of production would fall to $c + m_R$. This would be the price under competition, and in the absence of other barriers to entry competition should be expected if mechanical licences are available at royalty rate m_R . The vertically integrated record label's upstream publishing division or affiliate would receive mechanical royalties equal to m_R and

⁴ These are economic profits, the excess of revenues over the opportunity cost of all inputs, including the cost of capital (normal profits). In the long run, competition will typically mean that economic profits are zero. If the label has market power in the supply of the CD, then its economic profits are monopoly profits.

its economic profits from the sale of CDs would be zero. The net profits of the integrated record label would be m_R , the royalty rate on its valid song copyrights. The net loss of the vertically integrate firm from the expiry of its performing rights is p . The price of CDs would also fall by this amount, benefiting consumers.

14. However, the vertically integrated firm can continue to capture p by following one of two strategies. It can either (i) refuse to supply other labels with a mechanical licence or (ii) it can raise its royalty rate for a mechanical licence. If it refuses to issue mechanical licences, it remains the only supplier of the CD and hence captures $r - c = p + m_R$ because it forestalls the price falling as a result of entry by competitors with lower costs. It could also, in the absence of a regulatory constraint on its mechanical royalty, raise the mechanical royalty rate for rival labels to $m_M = r - c$. Under either strategy its return is maintained at $r - c$.
15. The refusal to issue a mechanical licence to competing firms enables an integrated record label to exercise market power in CDs, maintaining their price at r (above the competitive price $c + m_R$) and earning monopoly profits of p .
16. The integrated label will be indifferent to adopting either strategy (assuming rivals are equally as efficient). The refusal to issue a mechanical licence is the only strategy that is feasible, however, if there is an external constraint on the mechanical royalty rate, limiting it to m_R . Refusal to license then allows the integrated firm to escape the constraint on its ability to raise mechanical royalty rates.

17. The relevant institutional framework here effectively establishes a compulsory licence regime for mechanical licences with a standard negotiated rate irrespective of whether a sound recording is in the public domain. Subject to a few exceptions regarding budget CDs, the negotiated rate is the same for all songs of a given length, e.g., \$0.083 for recordings with a running time of five minutes or less (on a song basis rather than a CD basis this is m_R). Hence the refusal to license and vertical integration or affiliation allows the publishers to escape the constraint on market power implicit in the relevant institutional framework for mechanical rights.
18. The conduct and its effect appears to be more than unilateral. The conduct goes beyond a simple unilateral refusal to deal by individual publishers, but involves a coordinated boycott of Stargrove by *all* Respondent music publishers that utilize CMRRA. CMRRA appears to be the instrument used by music publishers to implement a coordinated boycott of Stargrove. At least two Respondents appear to have directly coordinated efforts to refuse mechanical licences for The Rolling Stones titles in question (Universal and ABKCO) with the intent of putting Stargrove out of business, eliminating it as a potential competitor.
19. Given a fixed royalty rate, more licensing leads to greater sales of CDs that contain the song and hence higher revenues for an unaffiliated music publisher. Hence unaffiliated/non-integrated music publishers have an incentive to maximize volume if they are represented by CMRRA. The decision to not issue an MLA to Stargrove by CMRRA is not in an unaffiliated/non-integrated publisher's unilateral commercial interest. Unaffiliated/non-integrated music

publishers would prefer that Stargrove enter and compete with CDs that contain their songs.

20. The willingness of unaffiliated/non-integrated publishers to participate in the denial of mechanical licences to Stargrove is consistent with a concerted effort on behalf of all music publishers, through CMRRA, to boycott Stargrove. To the extent that the concerted boycott puts Stargrove out of business, it may maintain market power of the integrated labels – who have commercial relationships with the unaffiliated/non-integrated publishers and who have dealings with them as fellow board members of CMRRA – potentially favourably altering the terms of trade in other transactions/dealings.
21. Finally, as part of the “campaign” to prevent Stargrove from entering and supplying CDs to Canadian retailers, there is evidence of at least one integrated record label attempting to dissuade Stargrove’s distributor from handling Stargrove’s CDs. Foreclosing distribution can have a negative effect on competition if it leads to the exit or marginalization of a competitor. Walmart’s potential importance as a retailer of CDs in Canada and Anderson’s status as the exclusive distributor of CDs to Walmart, as well as being a distributor of CDs to other important retailers, e.g., Best Buy, suggest that inducing Anderson not to distribute Stargrove CDs might well result in foreclosure with negative consequences for consumers and competition. It would have this effect if replacing Anderson raised Stargrove’s costs of distribution sufficiently that it was not as effective in constraining the pricing of the integrated labels.

File No. CT-2015-

COMPETITION TRIBUNAL**IN THE MATTER OF** the *Competition Act*, R.S.C. 1985, c. C-34 (the "Act");**AND IN THE MATTER OF** an application by Stargrove Entertainment Inc. for an order pursuant to section 103.1 of the Act granting leave to bring an application under sections 75, 76, and 77 of the Act;**AND IN THE MATTER OF** an application by Stargrove Entertainment Inc. for an order pursuant to sections 75, 76, and 77 of the Act;**AND IN THE MATTER OF** an application by Stargrove Entertainment Inc. for an order pursuant to section 104 of the Act;**BETWEEN:****STARGROVE ENTERTAINMENT INC.**

Applicant

- and -

**UNIVERSAL MUSIC PUBLISHING GROUP CANADA,
UNIVERSAL MUSIC CANADA INC.,
SONY/ATV MUSIC PUBLISHING CANADA CO.,
SONY MUSIC ENTERTAINMENT CANADA INC.,
ABKCO MUSIC & RECORDS, INC.,
CASABLANCA MEDIA PUBLISHING, and
CANADIAN MUSICAL REPRODUCTION RIGHTS AGENCY LTD.**

Respondents

**PROPOSED NOTICE OF APPLICATION
(under ss. 75, 76, and 77 of the *Competition Act*)**

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Lawyers for the Applicant

TAB C

File No. CT-2015-

COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34 (the “**Act**”);

AND IN THE MATTER OF an application by Stargrove Entertainment Inc. for an order pursuant to section 103.1 of the Act granting leave to bring an application under sections 75, 76, and 77 of the Act;

AND IN THE MATTER OF an application by Stargrove Entertainment Inc. for an order pursuant to sections 75, 76, and 77 of the Act;

AND IN THE MATTER OF an application by Stargrove Entertainment Inc. for an order pursuant to section 104 of the Act;

BETWEEN:

STARGROVE ENTERTAINMENT INC.

Applicant

- and -

**UNIVERSAL MUSIC PUBLISHING GROUP CANADA,
UNIVERSAL MUSIC CANADA INC.,
SONY/ATV MUSIC PUBLISHING CANADA CO.,
SONY MUSIC ENTERTAINMENT CANADA INC.,
ABKCO MUSIC & RECORDS, INC.,
CASABLANCA MEDIA PUBLISHING, and
CANADIAN MUSICAL REPRODUCTION RIGHTS AGENCY LTD.**

Respondents

NOTICE OF APPLICATION FOR INTERIM ORDER

(Pursuant to s. 104 of the *Competition Act*)

TAKE NOTICE THAT:

1. The Applicant will make an application to the Competition Tribunal (“**Tribunal**”) pursuant to section 104 of the *Competition Act* (“**Act**”) on a date and time to be set by the Tribunal at Ottawa or Toronto, Ontario for:
 - (a) An interim and interlocutory order:
 - (i) requiring the Respondents to grant mechanical licences to the Applicant on the usual terms associated with the granting of said licences through the Canadian Musical Reproduction Rights Agency Ltd. (“**CMRRA**”), lasting until a final decision is made on the merits of the Applicant’s application for leave pursuant to s. 103.1 of the Act or, if the application for leave is granted, until a final decision is made on the merits of the Applicant’s proposed application pursuant to ss. 75, 76, and 77 of the Act;
 - (b) Costs of this Application, if opposed; and
 - (c) Such further and other final or interim orders as the Tribunal deems just.

AND TAKE NOTICE THAT:

2. The persons against whom the orders are sought are the Respondents: Universal Music Publishing Group Canada; Universal Music Canada Inc.; Sony/ATV Music Publishing Canada Co.; Sony Music Entertainment Canada Inc.; ABKCO Music & Records, Inc.; Casablanca Media Publishing; and Canadian Musical Reproduction Rights Agency Ltd. The Respondents’ addresses are set out below.
3. The Applicant will rely on the Statement of Grounds and Material Facts attached as Schedule “A” hereto; the Affidavit of Terry Perusini, sworn August 26, 2015; the Affidavit

of Mario Bouchard, sworn August 27, 2015; the Applicant's Notice of Application for leave pursuant to section 103.1 of the Act; the Applicant's Proposed Notice of Application under sections 75, 76, and 77 of the Act; and such further and other grounds and material facts as counsel may advise and the Tribunal may permit.

4. The Applicant requests that the within Application be heard in the English language.
5. The Applicant requests that the documents for this Application be filed in electronic form.

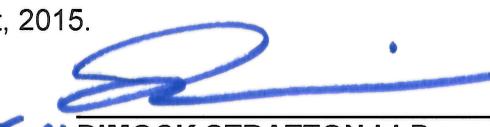
DATED AT Toronto this 28th day of August, 2015.


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AND TO: **Canadian Musical Reproduction Rights Agency Ltd.**
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Toronto, ON M5S 2S3
Tel: 416-926-1966
Fax: 416-926-7521

AND TO: **ABKCO Music & Records, Inc.**
85 5th Ave #11
New York, NY 10003
United States
Tel: 212-399-0300

AND TO: **Casablanca Media Publishing**
249 Lawrence Avenue East
Toronto, ON M4N 1T5
Tel: 416-921-9214

AND TO: **Sony/ATV Music Publishing Canada Co.**
1670 Bayview Avenue, Suite 408
Toronto, ON M4G 3C2
Tel: 416-489-5354

AND TO: **Sony Music Entertainment Canada Inc.**
150 Ferrand Drive
Toronto, ON M3C 3E5
Tel: 416-589-3000

AND TO: **Universal Music Publishing Group Canada**
(A Division of Universal Music Canada Inc.)
2450 Victoria Park Avenue, Suite 1
Toronto, ON M2J 5H3
Tel: 416-718-4000
Fax: 416-718-4224

AND TO: **Universal Music Canada Inc.**
(A Division of Universal Music Group)
2450 Victoria Park Avenue, Suite 1
Toronto, ON M2J 5H3
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PART 1 - THIS APPLICATION IN A NUTSHELL

1. In conjunction with its application for leave (“**Leave Application**”) to bring an application under sections 75, 76, and 77 of the Act against the Respondents (“**Proposed Application**”), Stargrove seeks an interim and interlocutory order requiring the Respondents to grant mechanical licences to Stargrove on the usual terms associated with the granting of said licences through the Canadian Musical Reproduction Rights Agency Ltd. (“**CMRRA**”), lasting until a final decision is made on Stargrove’s Leave Application or, if the Leave Application is granted, until a final decision is made on the Proposed Application.
2. Stargrove’s Leave Application and Proposed Application raise serious issues. Stargrove alleges that the Respondents have violated sections 75, 76, and 77 of the Act by banding together to shut Stargrove out of the market by having CMRRA refuse to deal with Stargrove on standard terms; denying Stargrove the mechanical licences that are necessary inputs for its CDs; pressuring Stargrove’s distributor; and concocting false negative reviews of Stargrove’s CDs.
3. Stargrove will be irreparably harmed absent an interim order. Without being able to obtain mechanical licences through CMRRA on usual trade terms, Stargrove will go out of business.
4. The balance of convenience favours granting the interim order. In addition to the harm Stargrove will suffer, consumers will also be harmed if Stargrove is prevented from entering into or expanding in the market, because they will be denied the low-cost CDs that Stargrove offers. The price of CDs will be maintained artificially high.

PART 2 - FACTS¹

A. The Parties

5. The Applicant, Stargrove Entertainment Inc. (“**Stargrove**”), is a company incorporated in July 2014 under the laws of Ontario. Stargrove is a record label in the business of manufacturing and selling competitively-priced musical compact discs (“**CDs**”).
6. The Respondents Sony/ATV Music Publishing Canada Co. and Sony Music Entertainment Canada Inc. (collectively, “**Sony**”) and Universal Music Publishing Group Canada and Universal Music Canada Inc. (collectively, “**Universal**”) are music publishing companies and record labels located in Toronto, Ontario. The Respondent Casablanca Media Publishing (“**Casablanca**”) is a music publishing company located in Toronto. ABKCO Music and Records Inc. (“**ABKCO**”) is a record label, music publisher, and film and video production company headquartered in New York, New York.
7. The Respondent Canadian Musical Reproduction Rights Agency Ltd. (“**CMRRA**”) is a music licensing collective representing music publishers. On behalf of music publishers, CMRRA issues licences for the reproduction of musical works on various media, including mechanical licensing for the reproduction of songs on CDs.
8. Sony, Universal and Casablanca are represented by CMRRA and have representatives on the Board of Directors of CMRRA. ABKCO is represented by CMRRA but, to Stargrove's knowledge, does not have representatives on its Board of Directors.
9. Anderson Merchandisers Canada Inc. (“**Anderson**”) (which is not a party to the case) distributes CDs to major Canadian retailers, including Walmart and BestBuy. Anderson

¹ This “Facts” section is identical to the “Facts” as set out in the Statement of Grounds and Material Facts at Schedule “A” to Stargrove’s Proposed Notice of Application (paras 5-29).

is the exclusive distributor for CDs in Walmart in Canada and is the distributor for Stargrove's CDs.

B. Licensing Musical Works in Canada

10. For the purposes of this Application, there are two copyrights that matter:

(1) The copyright in the musical work. In order to reproduce a musical work, a party must obtain a "**mechanical licence**" from the holder of the copyright in the musical work, if the work is protected by copyright. If the work has fallen into the "**public domain**", no licence is required to use the work.

(2) The copyright in the master sound recording. In order to reproduce the sound recording on which a musical work is fixed, a party must also obtain a "**master recording licence**" from the holder of the copyright in the sound recording. If the sound recording has fallen into the public domain, no licence is required to use the sound recording.

11. Stargrove's business is to manufacture and sell CDs. Its current business activity is to manufacture and sell CDs of musical works whose sound recordings are in the public domain. In order to do so, Stargrove needs to obtain mechanical licences for the works, but does not need to obtain master recording licences. Stargrove then manufactures and sells these CDs at very competitive prices.

12. Although a record label in Stargrove's position can seek to obtain a mechanical licence directly from the copyright holders, the common practice in Canada is for a record label to apply for mechanical licences from CMRRA, which is the authorized representative for most musical work copyright holders in Canada. For a record label of Stargrove's size, the typical way to obtain such mechanical licences is by entering into a mechanical

licence agreement (“**MLA**”) with CMRRA. A record label that has signed an MLA obtains mechanical licences on standard terms and at standard rates.

13. The standard mechanical royalty rate in Canada is currently \$0.083 per song, per copy (for recordings with a running time of five minutes or less). Applications to CMRRA are granted as a matter of course at this standard rate. CMRRA’s contracts with the publishers it represents (called “**Affiliation Agreements**”) contemplate that CMRRA “shall” issue the mechanical licences on standard terms, unless the publisher decides that it wants to deal directly with the record label to issue the licence.
14. In practice, the market for the issuance of mechanical licences operates as though it were a compulsory system. The process is so automatic that record labels almost always produce CDs even before they have obtained mechanical licences. Royalties owed on these CDs are held pending the identification of the copyright owner.

C. **Stargrove's Business Takes Off**

15. In January 2015, Stargrove made an application to CMRRA for mechanical licences for five titles (collectively, the “**Titles**”): The Beatles *Love Me Do*, The Beatles *Can't Buy Me Love*, The Rolling Stones *Little Red Rooster*, Bob Dylan *It Ain't Me Babe* and The Beach Boys *Fun, Fun, Fun* (each of these titles is a compilation of 10 or 11 songs).
16. For each of these titles, copyright in the musical work still exists (hence the need for a mechanical licence), but copyright in the sound recording has expired. As such, the sound recording is in the public domain, meaning that the public has the right to use and copy that recording without permission.
17. With its mechanical licence application to CMRRA, Stargrove submitted the required royalty payment of \$13,799.10.

18. CMRRA cashed Stargrove's cheque and Stargrove began producing its CDs for sale. The CDs went on sale in Walmart on February 3, 2015 for a retail price of \$5.00. In the first week of sales, The Beatles' *'Love Me Do'* was Walmart's top-selling CD, with 1,488 copies sold in one week alone.

D. The Respondents Order CMRRA to Stop Issuing Stargrove Mechanical Licences

19. The publishers associated with each of the Titles include ABKCO, Casablanca and Sony (collectively, the "**Title Holders**"). One by one, and in quick succession, each of the Title Holders gave instructions to CMRRA in January or February 2015 to stop issuing mechanical licences to Stargrove.

20. A CMRRA representative professed her surprise to Stargrove at this instruction from the Title Holders, but CMRRA followed their instruction. In fact, CMRRA went even further and refused to grant Stargrove *any* mechanical licences, whether from one of the Title Holders or not. Stargrove's attempts to enter into an MLA were stymied by CMRRA, who erected barrier after barrier to Stargrove's application.

21. CMRRA refunded Stargrove's royalty payment for the Titles at the end of February 2015.

22. On multiple occasions, Stargrove requested explanations for the refusals to grant mechanical licences, both from CMRRA and from the Title Holders directly, and asked them to reverse course. Stargrove has been refused an explanation, other than in a letter from CMRRA, which stated that the Title Holders' "refusal to deal is at least partially related to the fact that there are public domain master recordings on the products in question."

23. The Title Holders are withholding mechanical licences in order to artificially extend copyright over recordings that should be in the public domain. They are doing so in

direct response to the legitimate competition that Stargrove was bringing to the market. As set out above, some Title Holders have record label divisions, while others are affiliated with record labels. They do not like Stargrove's pricing model and the fact that Stargrove was able to gain market share so quickly.

E. Universal Tried to Prevent or Harm Stargrove's Business

24. Randy Lennox, the CEO of Universal Music Canada Inc., sent an e-mail to the principals of Anderson, the distributors of Stargrove's CDs, asking Anderson to partner with Universal to find solutions and resolve what he called a "public domain issue".
25. Brian Greaves, an account manager at Universal Music Canada Inc., concocted negative reviews on Walmart's website, complaining that Stargrove's products were of poor quality. He encouraged other Universal employees to do the same and to help him with Universal's "campaign" to discourage Anderson from distributing Stargrove's CDs, stating that poor reviews would deter Anderson from distributing Stargrove's products in the future. Walmart subsequently removed all the fake reviews from its site. Stargrove's CDs had a low return rate: of the over 2000 Stargrove CDs sold, only one CD was returned.
26. Mr. Greaves noted that Stargrove's CDs were taking away from Universal's sales and market share, and claimed that Universal had already successfully removed a Rolling Stones title from the CDs offered for sale by Stargrove, despite the fact that the copyright in question was held by ABKCO, not Universal.

F. The Respondents' Campaign to Shut Stargrove Out

27. The Respondents mean to punish Stargrove for its low pricing and ability to compete with established record labels. Ultimately, this keeps the prices of CDs high. The

decision to instruct CMRRA to refuse to issue mechanical licences to Stargrove surprised even the employees of CMRRA.

28. Since Stargrove has been shut out of the market, it has missed out on several lucrative opportunities to market its CDs, resulting already in an estimated loss of \$150,000 in wholesale sales. Anderson wanted approximately 20,000 copies of Beatles CDs that Stargrove would have otherwise produced. Anderson continues to identify marketing opportunities for Stargrove through Walmart that Stargrove is unable to pursue because of CMRRA's and the Respondents' refusal to issue it mechanical licences. As recently as three weeks ago, Anderson identified a lack of stock of Beatles and Rolling Stones CDs; it wanted Stargrove to help it fill its orders. Stargrove cannot do so, as long as it is being unfairly and unlawfully blocked from the market.
29. Stargrove's CDs have been pulled from Walmart's shelves, and its sales – given that it can obtain no mechanical licences from CMRRA – are now zero.

PART 3 - GROUNDS FOR INTERIM RELIEF

A. Stargrove has Applied for Relief Pursuant to Section 103.1

30. Concurrent with the filing of this Notice of Application, Stargrove Entertainment Inc. ("Stargrove") is filing the Leave Application pursuant to s. 103.1 of the Act for leave to make an application under ss. 75, 76, and 77 of the Act.
31. Included with its Leave Application, Stargrove has filed the Proposed Application pursuant to ss. 75, 76, and 77 of the Act, seeking relief against the Respondents on the grounds set out in the Statement of Grounds and Material Facts at Schedule "A" to the Proposed Application.

B. The Leave Application and the Proposed Application Raise Serious Issues

32. The Leave Application raises two serious issues: (1) has Stargrove been directly affected by the Respondents' conduct?; and (2) could the Respondents' conduct be the subject of an order under ss. 75, 76 or 77?
33. The Proposed Application raises several serious issues, as further described in the Statement of Grounds and Material Facts at Schedule "A" to the Proposed Application:
 - (a) Has Stargrove been substantially affected in its business or precluded from carrying on its business due to its inability to obtain rights to reproduce musical works (through mechanical licences and MLAs) to which the Title Holders hold copyright from CMRRA on usual trade terms?
 - (b) Is Stargrove unable to obtain the right to reproduce musical works (through mechanical licences and MLAs) from other suppliers?
 - (c) Is Stargrove willing and able to meet the usual trade terms of CMRRA and the Title Holders for issuing mechanical licences?
 - (d) Are rights to reproduce musical works in ample supply?
 - (e) Is the Respondents' refusal to deal likely to have an adverse effect on competition in a market?
 - (f) Have the Respondents refused to supply a product or otherwise discriminated against Stargrove because of Stargrove's low pricing policy?
 - (g) Has the Respondents' conduct had an adverse effect on competition in the market for CDs in Canada, specifically in respect of public domain sound recordings of popular music?

C. Stargrove Will be Irreparably Harmed Absent an Interim Order

34. Without an interim order requiring the Respondents to issue mechanical licences to Stargrove, the Respondents will continue to withhold mechanical licences from Stargrove, leaving Stargrove unable to sell the CDs it has manufactured and unable to produce the additional CDs it planned to produce.
35. Because of the Respondents' conduct, Stargrove's CDs have been pulled from the shelves of Walmart. Stargrove's sales have been reduced to zero. It cannot obtain any new mechanical licences from CMRRA because of CMRRA's refusal to do business with

Stargrove on usual or any trade terms. The Respondents' conduct has caused Stargrove to miss out on key business opportunities.

36. Even if Stargrove were to change its business model, CMRRA's decision not to issue Stargrove any mechanical licences to songs to which the Title Holders own copyright effectively precludes Stargrove from participating in the CD market at all.
37. Without being able to obtain mechanical licences through CMRRA for the Titles and other songs on the usual trade terms, Stargrove will go out of business. This damage cannot be compensated in monetary damages, as such damages are not available under the Act.

D. The Balance of Convenience Favours Granting an Interim Order

38. The balance of convenience favours granting the interim order. The irreparable harm that Stargrove is poised to suffer if an interim order is denied is far greater than any arguable harm to the Respondents.
39. Stargrove simply seeks an interim order granting it the right to be issued rights to reproduce songs (through mechanical licences or MLAs) through CMRRA on the same trade terms to which all other applicants are entitled when applying for mechanical licences. Granting the interim relief sought will maintain the industry's typical mechanical licensing process pending the hearing of the Leave Application and the Proposed Application.
40. In addition to the harm Stargrove will suffer, consumers will also be harmed if the interim order is not granted. Stargrove produces competitively-priced CDs that are in consumer demand. If Stargrove is prevented from entering into or expanding in the market and from competing with record labels, the price of CDs will be maintained artificially high.
41. The Respondents will suffer no corresponding anticompetitive harm. They will merely be required to do business with Stargrove on the same terms that they ordinarily do business with each other and other companies in the market.
42. Stargrove's products are of good quality and will do no harm to the reputation of the Respondents or the songs to which they hold copyright.

43. In support of this Application, and the Grounds and Material Facts set out above, Stargrove relies on:

- (a) the affidavit of Terry Perusini, sworn August 26, 2015;
- (b) the affidavit of Mario Bouchard, sworn August 27, 2015;
- (c) the Leave Application;
- (d) the Proposed Application;
- (e) the *Competition Act*, RSC 1985, c C-34, as amended, including ss. 75, 76, 77, 103.1 and 104;
- (f) the *Competition Tribunal Rules*, SOR/2008-141; and
- (g) such further and other grounds and material facts as counsel may advise and the Tribunal may permit.

File No. CT-2015-

COMPETITION TRIBUNAL**IN THE MATTER OF** the *Competition Act*, R.S.C. 1985, c. C-34 (the "Act");**AND IN THE MATTER OF** an application by Stargrove Entertainment Inc. for an order pursuant to section 103.1 of the Act granting leave to bring an application under sections 75, 76, and 77 of the Act;**AND IN THE MATTER OF** an application by Stargrove Entertainment Inc. for an order pursuant to sections 75, 76, and 77 of the Act;**AND IN THE MATTER OF** an application by Stargrove Entertainment Inc. for an order pursuant to section 104 of the Act;**BETWEEN:****STARGROVE ENTERTAINMENT INC.**

Applicant

- and -

**UNIVERSAL MUSIC PUBLISHING GROUP CANADA,
UNIVERSAL MUSIC CANADA INC.,
SONY/ATV MUSIC PUBLISHING CANADA CO.,
SONY MUSIC ENTERTAINMENT CANADA INC.,
ABKCO MUSIC & RECORDS, INC.,
CASABLANCA MEDIA PUBLISHING, and
CANADIAN MUSICAL REPRODUCTION RIGHTS AGENCY LTD.**

Respondents

**NOTICE OF APPLICATION FOR INTERIM ORDER
(Pursuant to s. 104 of the *Competition Act*)**

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TAB D

File No. CT-2015-

COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34 (the “**Act**”);

AND IN THE MATTER OF an application by Stargrove Entertainment Inc. for an order pursuant to section 103.1 of the Act granting leave to bring an application under sections 75, 76, and 77 of the Act;

AND IN THE MATTER OF an application by Stargrove Entertainment Inc. for an order pursuant to sections 75, 76, and 77 of the Act;

AND IN THE MATTER OF an application by Stargrove Entertainment Inc. for an order pursuant to section 104 of the Act;

BETWEEN:

STARGROVE ENTERTAINMENT INC.

Applicant

- and -

**UNIVERSAL MUSIC PUBLISHING GROUP CANADA,
UNIVERSAL MUSIC CANADA INC.,
SONY/ATV MUSIC PUBLISHING CANADA CO.,
SONY MUSIC ENTERTAINMENT CANADA INC.,
ABKCO MUSIC & RECORDS, INC.,
CASABLANCA MEDIA PUBLISHING, and
CANADIAN MUSICAL REPRODUCTION RIGHTS AGENCY LTD.**

Respondents

MEMORANDUM OF FACT AND LAW OF THE APPLICANT

(Application for Leave Pursuant to Section 103.1 of the *Competition Act*)

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PART I - THE APPLICATION IN A NUTSHELL

1. Stargrove seeks leave to commence an application to the Competition Tribunal against the Respondents pursuant to s. 103.1 of the *Competition Act*. Stargrove's proposed application alleges that the Respondents have violated ss. 75, 76, and 77 of the Act by refusing to grant "mechanical licences" to Stargrove, which Stargrove needs to manufacture and sell low-cost CDs in Canada.
2. Stargrove is a record label that manufactures CD compilations of sound recordings of The Beatles, The Rolling Stones, and other artists for sale at low prices (\$5.00) at Walmart stores. It can offer such low prices because the sound recordings from which it prepares the CDs are no longer protected by copyright; they are in the public domain. As such, Stargrove does not require a "master sound recording licence" to use the recordings.
3. Although the sound recordings are in the public domain, the musical works (songs) on the recordings continue to be copyright protected. Stargrove therefore requires what are known as "mechanical licences" for each song it seeks to use. In Canada, there are standard industry practices and terms that govern the issuance of mechanical licences; for the songs relevant to this application, these are administered by the Canadian Musical Reproduction Rights Agency. Stargrove is willing to abide by those terms and practices. The Respondents, however, have banded together to shut Stargrove out of the market, having CMRRA deny Stargrove any mechanical licences (not just for the titles in question).

4. Stargrove is being targeted for its low pricing model, but the real victims are consumers; instead of being able to buy popular titles for just \$5.00 per CD, they pay much more.
5. The Respondents have campaigned to block Stargrove by pressuring Stargrove's distributor, concocting false negative reviews of Stargrove's CDs, and having CMRRA refuse to deal with Stargrove on standard terms. They have violated sections 75, 76, and 77 of the *Competition Act*, depriving consumers of competitive prices and artificially extending copyright over public domain recordings. This has negatively affected competition.
6. Stargrove's proposed application readily meets the low threshold required on a leave application. The conduct complained of could be the subject of an order pursuant to each of sections 75, 76 and 77. It has directly and substantially affected Stargrove's business and has resulted in a substantial lessening or prevention of competition. The Application should be granted.

PART II - STATEMENT OF FACTS

A. The Parties

7. The Applicant, Stargrove Entertainment Inc. ("Stargrove"), is a company incorporated in July 2014 under the laws of Ontario. Stargrove is a record label in the business of manufacturing and selling competitively-priced musical compact discs ("CDs").¹

¹ Affidavit of Terry Perusini sworn August 26, 2015 ("Perusini Affidavit"), para 3.

8. The Respondents Sony/ATV Music Publishing Canada Co. and Sony Music Entertainment Canada Inc. (collectively, “**Sony**”) and Universal Music Publishing Group Canada and Universal Music Canada Inc. (collectively, “**Universal**”) are music publishing companies and record labels located in Toronto, Ontario. The Respondent Casablanca Media Publishing (“**Casablanca**”) is a music publishing company located in Toronto. The Respondent ABKCO Music and Records Inc. (“**ABKCO**”) is a record label, music publisher, and film and video production company headquartered in New York, New York.²
9. The Respondent Canadian Musical Reproduction Rights Agency Ltd. (“**CMRRA**”) is a music licensing collective representing music publishers. On behalf of music publishers, CMRRA issues licences for the reproduction of musical works on various media, including mechanical licensing for the reproduction of songs on CDs.³
10. Sony, Universal and Casablanca are represented by CMRRA and have representatives on the Board of Directors of CMRRA. ABKCO is represented by CMRRA but, to Stargrove’s knowledge, does not have representatives on its Board of Directors.⁴
11. Anderson Merchandisers Canada Inc. (“**Anderson**”) (which is not a party to the case, but plays an important role in the market) distributes CDs to major Canadian retailers, including Walmart and BestBuy. Anderson is the exclusive

² Perusini Affidavit, *ibid*, paras 4-6.

³ Perusini Affidavit, *ibid*, para 7; Affidavit of Mario Bouchard, sworn August 27, 2015, Exhibit “A” (“**Bouchard Affidavit**”), para 25.

⁴ Perusini Affidavit, *supra* note 1 at para 8.

distributor for CDs in Walmart in Canada and is the distributor for Stargrove's CDs.

B. Licensing Musical Works in Canada

12. For the purposes this Application, there are two copyrights that matter:⁵

- (1) The copyright in the musical work. In order to reproduce a musical work, a party must obtain a “**mechanical licence**” from the holder of the copyright in the musical work, if the work is protected by copyright. If the work has fallen into the “public domain”, no licence is required to use the work.
- (2) The copyright in the master sound recording. In order to reproduce the sound recording on which a musical work is fixed, a party must also obtain a “**master recording licence**” from the holder of the copyright in the sound recording, if the sound recording is protected by copyright. If the sound recording has fallen into the “public domain”, no licence is required to use the sound recording.

C. Stargrove's Business Model

13. Stargrove's business is to manufacture and sell CDs. Its current business activity is to manufacture and sell CDs of musical works whose sound recordings are in the public domain. In order to do so, Stargrove needs to obtain mechanical licenses for the works, but does not need to obtain master sound recording

⁵ Perusini Affidavit, *ibid* at paras 9-10; Bouchard Affidavit, *supra* note 3 at paras 18-19.

licences. Stargrove then manufactures and sells these CDs at very competitive prices.⁶

14. Although a record label in Stargrove's position can seek to obtain a mechanical licence directly from the publisher, the common practice in Canada is for a record label to apply for mechanical licences from CMRRA, which is the authorized representative for most musical work copyright holders in Canada. CMRRA distributes royalties to publishers, who in turn pay royalties to the authors of musical works for which a licence was issued.⁷
15. CMRRA offers two options for mechanical licences: (i) "pay-as-you-press" licencing and (ii) three standard Mechanical Licencing Agreements ("MLA"). CMRRA suggests that pay-as-you-press licences are appropriate for licensees who only occasionally manufacture products in Canada or who do so in small quantities.⁸
16. For a record label of Stargrove's size, the typical (and most cost-efficient) way to obtain such mechanical licenses is by entering into an MLA with CMRRA.⁹ A record label that has signed an MLA obtains mechanical licences on standard terms and at standard rates.
17. The standard mechanical royalty rate in Canada is currently \$0.083 per song, per copy (for recordings with a running time of five minutes or less).¹⁰ The royalty

⁶ Perusini Affidavit, *ibid* at para 20.

⁷ Bouchard Affidavit, *ibid* at para 31.

⁸ Perusini Affidavit, *ibid* at para 16; Bouchard Affidavit, *supra* note 3 at note 17.

⁹ Perusini Affidavit, *ibid* at para 16.

¹⁰ Perusini Affidavit, *ibid* at para 17.

rate is fixed on a per song/per copy basis, irrespective of the price for which a CD is sold. Applications by record labels to CMRRA for mechanical licences are granted as a matter of course at this standard rate.¹¹

18. CMRRA's contracts with the publishers it represents (called "**Affiliation Agreements**") contemplate that CMRRA "shall" issue the mechanical licences on standard terms, unless the publisher decides that it wants to deal directly with the record label to issue the licence.¹² This is the only situation in which the MLA provides that CMRRA may decline to issue a licence to a record label that has otherwise complied with the terms of its MLA.¹³
19. In practice, the market for the issuance of mechanical licences operates as though it were a compulsory system. The process is so automatic that record labels press and sell CDs before obtaining mechanical licences. Royalties owed on these CDs are held pending the identification of the copyright owner.¹⁴

D. Stargrove's Business Takes Off

20. In January 2015, Stargrove made an application to CMRRA for mechanical licences for five titles (collectively, the "**Titles**")*: The Beatles Love Me Do, The Beatles Can't Buy Me Love, The Rolling Stones Little Red Rooster, Bob Dylan It*

¹¹ The mechanical royalty rate may be lower for certain budget-priced CDs. Bouchard Affidavit, *supra* note 3 at paras 36-37.

¹² Bouchard Affidavit, *ibid* at para 34.

¹³ Bouchard Affidavit, *ibid* at para 34.

¹⁴ Bouchard Affidavit, *ibid* at paras 29, 41-49.

Ain't Me Babe and *The Beach Boys Fun, Fun, Fun* (each of these titles is a compilation of 11 songs).¹⁵

21. For each of these titles, copyright in the *musical work* still exists (hence the need for a mechanical license), but copyright in the *sound recording* has expired. As such, the sound recording is in the public domain, meaning that the public has the right to use and copy that recording without permission.
22. Although an MLA would be more appropriate for a record label like Stargrove, CMRRA required Stargrove to apply for a pay-as-you-press licence for the mechanical licences.¹⁶ With its application, Stargrove submitted the required royalty payment of \$13,799.10.¹⁷
23. CMRRA cashed Stargrove's cheque and Stargrove began producing its CDs for sale. The CDs went on sale at Walmart on February 3, 2015 for a retail price of \$5.00 each. Consumers reacted positively to this offering. In the first week of sales, *The Beatles' Love Me Do* was Walmart's top-selling CD, with 1,488 copies sold. Three of Stargrove's other titles also had strong initial sales: *Fun, Fun, Fun*, *It Ain't Me Babe*, and *Can't Buy Me Love* sold a combined total of 755 units in their first week of sales.¹⁸

¹⁵ Perusini Affidavit, *supra* note 1 at paras 24, 25, 27 and 31.

¹⁶ Perusini Affidavit, *ibid* at para 32.

¹⁷ Perusini Affidavit, *ibid* at para 32.

¹⁸ Perusini Affidavit, *ibid* at para 34.

E. The Respondents Order CMRRA to Stop Issuing Stargrove Mechanical Licences

24. The publishers associated with the Titles include ABKCO, Casablanca and Sony Publishing (collectively, the “**Title Holders**”). One by one, and in quick succession, each of the Title Holders gave instructions to CMRRA in January or February 2015 to refuse to issue the mechanical licences for Stargrove.
25. A CMRRA representative professed her surprise to Stargrove at these instructions from the Title Holders, but CMRRA followed their instructions. In fact, CMRRA went even further, and refused to grant Stargrove *any* mechanical licences, whether from one of the Title Holders or not.¹⁹ Stargrove’s attempts to enter into an MLA were stymied by CMRRA, which erected barrier after barrier to Stargrove’s application.
26. CMRRA refunded Stargrove’s royalty payment for the Titles at the end of February, 2015, causing the sale of Stargrove’s CDs to grind to a halt.²⁰
27. On multiple occasions, Stargrove requested explanations for the refusals to grant mechanical licences, both from CMRRA and from the Title Holders directly, and asked them to reverse course. Stargrove has been refused an explanation, other than in a letter from CMRRA, which stated that the Title Holders’ “refusal to deal is at least partially related to the fact that there are public domain master recordings on the products in question.”²¹ The responses that Stargrove received from ABKCO and Casablanca representatives stated, in part, that ABKCO and

¹⁹ Perusini Affidavit, *ibid* at paras 40-43.

²⁰ Perusini Affidavit, *ibid* at para 45.

²¹ Perusini Affidavit, *ibid* at para 60.

Casablanca were not required to provide an explanation for their refusal to grant licences.²²

28. The Title Holders are withholding mechanical licences in order to artificially extend copyright over recordings that should be in the public domain. They are doing so in direct response to the legitimate competition that Stargrove's low pricing policy was bringing to the market. As set out above, some Title Holders have record label divisions, while others are affiliated with record labels. They do not like the fact that Stargrove was able to gain market share so quickly.

F. Universal Tried to Prevent or Harm Stargrove's Business

29. In February 2015, fabricated, negative reviews were posted on Walmart's website about Stargrove's Beatles' titles.²³
30. Randy Lennox, the CEO of Universal Music Canada, sent an e-mail to the principals of Anderson, the distributors of Stargrove's CDs, asking Anderson not to carry Stargrove's products and to partner with Universal to resolve what he called a "public domain issue".²⁴
31. Brian Greaves, an account manager at Universal Music Canada, created reviews on Walmart's website, complaining of the poor quality of Stargrove's products. He also encouraged other Universal Music Canada employees to do the same and help him with his "campaign" to discourage Anderson from distributing

²² Perusini Affidavit, *ibid* at paras 64-65.

²³ Perusini Affidavit, *ibid* at paras 46-49.

²⁴ Perusini Affidavit, *ibid* at para 51.

Stargrove's products in the future.²⁵ Walmart subsequently removed all the fake reviews from its site. Stargrove's CDs had a low return rate: of the over 2000 Stargrove CDs sold, only one CD was returned.²⁶

32. Mr. Greaves noted that Stargrove's CDs were taking away from Universal's sales and market share, and claimed that Universal had already successfully removed a Rolling Stones title from the CDs offered by Stargrove for sale, despite the fact that the copyright in question was held by ABKCO, not Universal.²⁷ Clearly, Universal worked with ABKCO and CMRRA to have the title pulled from shelves.
33. Universal's reaction shows what an effective competitor Stargrove was going to be. The fact that Stargrove could attract so many customers in such a brief time, ousting major record labels' stranglehold on Top Ten lists at Walmart, had clearly provoked concern among the Title Holders, and prompted this concerted effort to prevent Stargrove from entering the market and competing for CD sales.

G. The Respondents Campaign to Shut Stargrove Out

34. The Respondents mean to punish Stargrove for its low pricing and ability to compete with established record labels. Ultimately, this keeps the prices of CDs high. Mechanical licences are ordinarily issued as a matter of course within the MLA structure. The process is so automatic that record labels almost always produce CDs even before they have obtained mechanical licenses.²⁸ The

²⁵ Perusini Affidavit, *ibid* at paras 50 and 52.

²⁶ Perusini Affidavit, *ibid* at paras 49, 53.

²⁷ Perusini Affidavit, *ibid* at para 52.

²⁸ Bouchard Affidavit, *supra* note 3 at para 29.

decision to instruct CMRRA to refuse to issue mechanical licences to Stargrove surprised even the employees of CMRRA.

35. Since Stargrove has been shut out of the market, it has missed out on several lucrative opportunities to market its CDs.
36. For instance, Anderson wanted Beatles CDs that Stargrove would have otherwise produced. Anderson continues to identify opportunities for Stargrove through Walmart that Stargrove is unable to pursue because of CMRRA and the Respondents' refusal to issue it mechanical licenses.²⁹ As recently as three weeks ago, Anderson noted a lack of stock of Beatles and Rolling Stones CDs; it wanted Stargrove to help it fill its orders.³⁰ Stargrove cannot do so, as long as it is being unfairly and unlawfully blocked from the market.
37. Stargrove was offered the opportunity to put 20,000 CDs of its two Beatles titles in Walmart locations for a promotional "front of store" bin sale for three weeks, from July 25 to August 14, 2015. It was unable to seize this opportunity because of the Respondents' refusal to grant mechanical licences to Stargrove.³¹
38. These lost opportunities alone have resulted in an estimated loss to Stargrove of \$150,000 in wholesale sales.³²
39. Stargrove's CDs have been pulled from Walmart's shelves, and its sales – given that it can obtain no mechanical licenses from CMRRA – are now zero.

²⁹ Perusini Affidavit, *supra* note 1 at paras 78-79.

³⁰ Perusini Affidavit, *ibid* at para 79.

³¹ Perusini Affidavit, *ibid* at paras 76-77.

³² Perusini Affidavit, *ibid* at paras 76-77.

H. Stargrove Seeks Relief at the Competition Tribunal

40. Based on the foregoing, Stargrove filed this Application for leave to commence a proceeding against the Respondents pursuant to s. 75, s. 76 and s. 77 of the *Competition Act* (“**Act**”). At Schedule “A” to its Notice of Application for Leave, it has attached its proposed Notice of Application against the Respondents if leave is granted.
41. Stargrove has concurrently filed an Application seeking an interim and interlocutory order to compel the Respondents to deal with Stargrove on CMRRA’s ordinary trade terms pending the result of this leave Application and, if it is granted, the application on the merits.³³

PART III - ISSUE

42. The sole issue on this Application is whether Stargrove should be granted leave to make an application under ss. 75, 76, and/or 77 against the Respondents.

PART IV - ARGUMENT

The Applicable Legal Test

43. Section 103.1 of the Act grants private parties the right to commence an application pursuant to ss. 75, 76 or 77 of the Act, with leave of the Competition Tribunal (“**Tribunal**”):

³³ Application for Interim Order.

Leave to make application under section 75, 76 or 77

103.1 (1) Any person may apply to the Tribunal for leave to make an application under section 75, 76 or 77. The application for leave must be accompanied by an affidavit setting out the facts in support of the person's application under that section.

44. Subsections 103.1(7) and 103.1(7.1) set out the tests to be employed by the Tribunal for requests for leave under that section to commence an action pursuant to s. 75 and s. 76, respectively:

Granting leave to make application under section 75 or 77

(7) The Tribunal may grant leave to make an application under section 75 or 77 if it has reason to believe that the applicant is directly and substantially affected in the applicants' business by any practice referred to in one of those sections that could be subject to an order under that section.

Granting leave to make application under section 76

(7.1) The Tribunal may grant leave to make an application under section 76 if it has reason to believe that the applicant is directly affected by any conduct referred to in that section that could be subject to an order under that section.

45. When determining whether to grant leave, the Tribunal is to ask whether the leave application is supported "by sufficient credible evidence to give rise to a *bona fide* belief that the applicant may have been directly and substantially affected in the applicant's business by a reviewable practice, and that the practice in question could be subject to an order."³⁴
46. The standard of proof on a leave application pursuant to s. 103.1 is lower than when the application is considered on its merits. The Tribunal needs to be

³⁴ *National Capital News Canada v Milliken*, 2002 Comp Trib 41 at para 14.

satisfied that the respondent's practice could be the subject of an order. The burden of proof is lower than the ordinary burden of balance of probabilities.³⁵

47. With this lower standard of proof in mind, the Tribunal must answer two questions on this leave application: (1) has Stargrove been directly and substantially affected in its business by a reviewable practice?; and (2) could the reviewable practice in question be the subject of an order pursuant to the sections of the Act on which Stargrove relies?

Question #1: Stargrove Has Been Directly and Substantially Affected in its Business by the Respondents' Conduct

48. An application under s. 103.1 of the Act requires sufficient credible evidence to give rise to a *bona fide* belief that the applicant may have been directly and substantially affected in its business by a reviewable practice. A "substantial" effect on business means something just beyond *de minimis*. The evidence must be direct and not speculative.³⁶
49. Together, the Respondents have campaigned to keep Stargrove from obtaining mechanical licences, and have effectively shut Stargrove out of the CD market entirely. Their conduct should therefore be considered collectively, rather than individually.
50. The Respondents' conduct has gutted Stargrove's business model and effectively locked it out of access to CMRRA, the gatekeeper for mechanical

³⁵ *Symbol Technologies Canada ULC v Barcode Systems Inc*, 2004 FCA 339 at para 17 [**Barcode**].

³⁶ *Canada (Director of Investigation & Research) v Chrysler Canada Ltd* (1989), 27 CPR (3d) 1 (Comp Trib) at 23; aff'd (1991), 38 CPR (3d) 25 (FCA).

licences. Unless the Tribunal grants relief to Stargrove, it will be put out of business, and its competitive impact will vanish.

51. The Titles effectively constitute Stargrove's entire business. There is therefore no need for the Tribunal to analyze whether the harm created by the Respondents has a substantial effect on Stargrove's business as a whole – it is specifically targeted at Stargrove's whole business. Even if Stargrove were to change its business model and focus on titles not controlled by the Title Holders, CMRRA's decision not to enter into an MLA with Stargrove precludes it from participating in CD sales to any credible degree. There is no question that Stargrove's business has been substantially and directly affected by the Respondents' conduct.

Question #2: The Respondents' Conduct Could be Subject to an Order Pursuant to Sections 75, 76, and 77 of the Act

52. In assessing the potential merits of a case, the Tribunal may address the relevant elements summarily in keeping with the expeditious nature of the leave proceeding under section 103.1.³⁷
53. Subsection 75(1) of the Act sets out the requirements for the reviewable trade practice of refusal to deal:

Jurisdiction of Tribunal where refusal to deal

75. (1) Where, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that

- (a) a person is substantially affected in his business or is precluded from carrying on business due to his inability to obtain adequate supplies of a product anywhere in a market on usual trade terms,

³⁷ *Barcode*, *supra* note 35 at para 19.

- (b) the person referred to in paragraph (a) is unable to obtain adequate supplies of the product because of insufficient competition among suppliers of the product in the market,
- (c) the person referred to in paragraph (a) is willing and able to meet the usual trade terms of the supplier or suppliers of the product,
- (d) the product is in ample supply, and
- (e) the refusal to deal is having or is likely to have an adverse effect on competition in a market,

the Tribunal may order that one or more suppliers of the product in the market accept the person as a customer within a specified time on usual trade terms unless, within the specified time, in the case of an article, any customs duties on the article are removed, reduced or remitted and the effect of the removal, reduction or remission is to place the person on an equal footing with other persons who are able to obtain adequate supplies of the article in Canada.

54. Unlike other forms of intellectual property which may not ordinarily meet these criteria,³⁸ the right to reproduce songs (through mechanical licences) is subject to standard rates and usual supply terms, with MLAs being ordinarily available to anyone willing to pay applicable fees and abide by standard terms. Stargrove is being uniquely targeted and discriminated against by CMRRA and the Title Holders; even CMRRA acknowledged that this is out of the ordinary.

55. This case meets all five requirements of s. 75:

- (a) As set out above in response to Question #1, Stargrove's business is substantially affected by its inability to obtain the right to reproduce the musical works (through mechanical licences) for the Titles. Stargrove has lost an opportunity to put at least 20,000 CDs in Walmart locations for a promotional "front of store" bin sale for three weeks, from July 25 to August 14, 2015. There are other opportunities and promotions that

³⁸ *Canada (Director of Investigation & Research) v Warner Music Canada Ltd* (1997), 78 CPR (3d) 321, CT-1997/003 Doc #22 (Comp Trib).

Stargrove could have participated in had it been granted mechanical licences by the Respondents.

- (b) Stargrove is unable to otherwise obtain the right to reproduce the musical works because the rights are in the sole control of the Respondents (there is insufficient competition among “suppliers” in the market).
- (c) Stargrove is willing to meet the usual trade terms of the Respondents through CMRRA.
- (d) The granting of rights to reproduce songs is not limited in supply – as noted above, mechanical licences are normally granted as a matter of course.
- (e) The Respondents’ refusal to deal is having an adverse effect on competition in the market for CD sales in Canada, specifically in respect of popular music whose sound recordings are in the public domain. The Respondents clearly recognized Stargrove for what it is: a maverick that has identified a way to disrupt the market and offer consumers a product they seek at far lower prices than are currently available. By blocking Stargrove’s CD sales, the Respondents are artificially suppressing competition in the market, creating a corresponding artificial inflation of their own market share and the prices for CDs. The consuming public, whose purchase decisions made Stargrove’s CDs top sellers in their first week of sales, is being denied the low-cost alternative that Stargrove seeks to provide.

56. Similarly, there is sufficient credible evidence that the Tribunal could make an order against the Respondents pursuant to ss. 76(2) and 76(8) of the Act:

Price maintenance

76. (1) On application by the Commissioner or a person granted leave under section 103.1, the Tribunal may make an order under subsection (2) if the Tribunal finds that

- (a) a person referred to in subsection (3) directly or indirectly
 - (ii) has refused to supply a product to or has otherwise discriminated against any person or class of persons engaged in business in Canada because of the low pricing policy of that other person or class of persons; and
- (b) the conduct has had, is having or is likely to have an adverse effect on competition in a market.

...

Persons subject to order

(3) An order may be made under subsection (2) against a person who

- (a) is engaged in the business of producing or supplying a product;
- ... or
- (c) has the exclusive rights and privileges conferred by a patent, trade-mark, copyright, registered industrial design or registered integrated circuit topography.

...

Refusal to supply

(8) If, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that any person, by agreement, threat, promise or any like means, has induced a supplier, whether within or outside Canada, as a condition of doing business with the supplier, to refuse to supply a product to a particular person or class of persons because of the low pricing policy of that person or class of persons, and that the conduct of inducement has had, is having or is likely to have an adverse effect on competition in a market, the Tribunal may make an order prohibiting the person from continuing to engage in the conduct or requiring the person to do business with the supplier on usual trade terms.

57. The Respondents could be subject to an order under s. 76(2) pursuant to both ss. 76(3)(a) and (c). The Respondents are engaged in the business of producing and supplying products – in the case of the record labels, CDs, and in the case of the publishers and CMRRA, the right to reproduce musical works by way of mechanical licences and MLAs. They also have copyright to the songs associated with the mechanical licences – s. 76(3)(c) explicitly makes intellectual property holders subject to an order under that subsection.
58. The Respondents' conduct falls within s. 76(1)(a)(ii) because they have refused to supply a product to Stargrove. Specifically, the Respondents have refused to grant Stargrove the right to reproduce musical works in an attempt to keep Stargrove from competing in the market for CDs where the sound recordings are in the public domain. The Respondents are doing so because Stargrove's low pricing policies were going to disrupt the CD market and take away market share from the record labels.
59. The Respondents have also acted contrary to s. 76(1)(a)(ii) because they have "otherwise discriminated against" Stargrove. The Respondents have discriminated against Stargrove by denying it access to the right to reproduce musical works (through mechanical licences and an MLA), and refusing to deal with it on terms similar to the terms that would apply to any other record label. This discrimination arises because of Stargrove's low pricing policy. E-mails from executives at Universal identify that the refusal to supply and discriminatory treatment occurred because Stargrove's \$5.00 CDs were gaining market share.

60. The Respondents have also acted contrary to s. 76(8) by inducing CMRRA, as a condition of doing business with the Respondents, to refuse to supply the relevant rights (through mechanical licences and an MLA) to Stargrove. This refusal arises because of Stargrove's low pricing policy.
61. The Respondents' refusal to supply has impeded Stargrove's entry into and expansion in the CD market in Canada and has resulted, and is likely to result, in a substantial lessening or prevention of competition, as consumers are being denied access to the low-cost CDs they want. As Mr. Greaves of Universal noted, Stargrove's sales were eating into the established players' market share. Stargrove's strong sales in just one week in the market, and the frequent requests by Anderson for more product, are indicative of the adverse impact on competition.
62. Subsection 77 has also been violated by the Respondents in this case:

Definitions

77. (1) For the purposes of this section,

"exclusive dealing" means

(a) any practice whereby a supplier of a product, as a condition of supplying the product to a customer, requires that customer to

(i) deal only or primarily in products supplied by or designated by the supplier or the supplier's nominee, or

(ii) refrain from dealing in a specified class or kind of product except as supplied by the supplier or the nominee, and

(b) any practice whereby a supplier of a product induces a customer to meet a condition set out in subparagraph (a)(i) or (ii) by offering to supply the product to the customer on more favourable terms or conditions if the customer agrees to meet the condition set out in either of those subparagraphs;

...

Exclusive dealing and tied selling

(2) Where, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that exclusive dealing or tied selling, because it is engaged in by a major supplier of a product in a market or because it is widespread in a market, is likely to

- (a) impede entry into or expansion of a firm in a market,
- (b) impede introduction of a product into or expansion of sales of a product in a market, or
- (c) have any other exclusionary effect in a market,

with the result that competition is or is likely to be lessened substantially, the Tribunal may make an order directed to all or any of the suppliers against whom an order is sought prohibiting them from continuing to engage in that exclusive dealing or tied selling and containing any other requirement that, in its opinion, is necessary to overcome the effects thereof in the market or to restore or stimulate competition in the market.

63. The Title Holders are the major suppliers of the rights to reproduce musical works (through mechanical licences and MLAs) in the market (in fact, they are the *only* suppliers for the Titles). Currently, the Respondent record labels are the only suppliers of CDs of the relevant songs. Their behaviour is specifically aimed at preventing Stargrove from entering and expanding in the market.
64. In addition to using their power over the Titles and their position within CMRRA to coordinate this harm to Stargrove, they also, in the case of Universal, sought to use their position in the broader CD market to influence Anderson to stop dealing with Stargrove.
65. Universal pressured Anderson not to distribute products of Stargrove's that competed with Universal's, offering veiled incentives and making veiled threats to

deter Anderson from dealing with Stargrove.³⁹ Universal also placed negative reviews of Stargrove's CDs on Walmart's website with a view to obtaining a similar advantage in the market. Further, Universal appears to have been complicit in ABKCO and CMRRA's activities with respect to the Rolling Stones title in issue.

66. The Respondents' conduct is not a legitimate exercise of intellectual property rights.
67. The Competition Bureau's Intellectual Property Enforcement Guidelines explain that the circumstances in which the Bureau could apply the Act to anticompetitive conduct involving intellectual property rights includes circumstances involving anticompetitive conduct that is "something more than the mere exercise of the IP right".⁴⁰ The Guidelines go on to state:

...If a company uses IP protection to engage in conduct that creates, enhances or maintains market power as proscribed by the *Competition Act*, then the Bureau may intervene.

When joint conduct of two or more firms lessens or prevents competition, the competitive harm clearly flows from something more than the mere exercise of the IP right to refuse.⁴¹

68. This is clearly the case here, with the various Respondents banding together with CMRRA to shut Stargrove out.

³⁹ Perusini Affidavit, *supra* note 1 at para 30.

⁴⁰ Competition Bureau, *Intellectual Property Enforcement Guidelines* (Ottawa: 1 September 2000), s. 4.2 at p 7.

⁴¹ *Ibid*, s. 4.2.1 at p. 8.

69. The United States Department of Justice and Federal Trade Commission describe the intersection between intellectual property law and antitrust law in their Antitrust Guidelines for the Licensing of Intellectual Property:

Intellectual property law bestows on the owners of intellectual property certain rights to exclude others. These rights help the owners to profit from the use of their property. An intellectual property owner's rights to exclude are similar to the rights enjoyed by owners of other forms of private property. As with other forms of private property, certain types of conduct with respect to intellectual property may have anticompetitive effects against which the antitrust laws can and do protect. ...

... As in other antitrust contexts, however, market power could be illegally acquired or maintained, or, even if lawfully acquired and maintained, would be relevant to the ability of an intellectual property owner to harm competition through unreasonable conduct in connection with such property.⁴²

70. While Stargrove does not gainsay the Respondents' rights to benefit from their intellectual property, the Respondents may not exploit it in a manner that violates the Act, as they are doing in this case.

71. Stargrove has met the low threshold required on a leave application pursuant to s. 103.1. It should be granted leave.

PART V - ORDER SOUGHT

72. Stargrove seeks an order:

(a) granting it leave to commence an Application against the Respondents pursuant to ss. 75, 76, and 77 of the Act, in the form contained within the Proposed Notice of Application; and

⁴² United States Department of Justice and Federal Trade Commission, *Antitrust Guidelines for the Licensing of Intellectual Property* (6 April 1995), ss. 2.1, 2.2.

(b) awarding Stargrove its costs of this Application for leave, if opposed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Date: August 28, 2015



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SCHEDULE “A” – Authorities

1. *National Capital News Canada v Milliken*, 2002 Comp Trib 41.
2. *Symbol Technologies Canada ULC v Barcode Systems Inc*, 2004 FCA 339.
3. *Canada (Director of Investigation & Research) v Chrysler Canada Ltd* (1989), 27 CPR (3d) 1 (Comp Trib); aff'd (1991), 38 CPR (3d) 25 (FCA).
4. *Canada (Director of Investigation & Research) v Warner Music Canada Ltd* (1997), 78 CPR (3d) 321, CT-1997/003 Doc #22 (Comp Trib)
5. Competition Bureau, *Intellectual Property Enforcement Guidelines* (Ottawa: 1 September 2000).
6. United States Department of Justice and Federal Trade Commission, *Antitrust Guidelines for the Licensing of Intellectual Property* (6 April 1995).

Schedule “B” – Statutes and Regulations

Competition Act, RSC, 1985, c C-34

PART VIII MATTERS REVIEWABLE BY TRIBUNAL

RESTRICTIVE TRADE PRACTICES

Refusal to Deal

Jurisdiction of Tribunal where refusal to deal

75. (1) Where, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that

- (a) a person is substantially affected in his business or is precluded from carrying on business due to his inability to obtain adequate supplies of a product anywhere in a market on usual trade terms,
- (b) the person referred to in paragraph (a) is unable to obtain adequate supplies of the product because of insufficient competition among suppliers of the product in the market,
- (c) the person referred to in paragraph (a) is willing and able to meet the usual trade terms of the supplier or suppliers of the product,
- (d) the product is in ample supply, and
- (e) the refusal to deal is having or is likely to have an adverse effect on competition in a market,

the Tribunal may order that one or more suppliers of the product in the market accept the person as a customer within a specified time on usual trade terms unless, within the specified time, in the case of an article, any customs duties on the article are removed, reduced or remitted and the effect of the removal, reduction or remission is to place the person on an equal footing with other persons who are able to obtain adequate supplies of the article in Canada.

When article is a separate product

(2) For the purposes of this section, an article is not a separate product in a market only because it is differentiated from other articles in its class by a trade-mark, proprietary name or the like, unless the article so differentiated occupies such a dominant position in that market as to substantially affect the ability of a person to carry on business in that class of articles unless that person has access to the article so differentiated.

Definition of “trade terms”

(3) For the purposes of this section, the expression “trade terms” means terms in respect of payment, units of purchase and reasonable technical and servicing requirements.

Inferences

(4) In considering an application by a person granted leave under section 103.1, the Tribunal may not draw any inference from the fact that the Commissioner has or has not taken any action in respect of the matter raised by the application.

Price Maintenance

Price maintenance

76. (1) On application by the Commissioner or a person granted leave under section 103.1, the Tribunal may make an order under subsection (2) if the Tribunal finds that

- (a) a person referred to in subsection (3) directly or indirectly
 - (i) by agreement, threat, promise or any like means, has influenced upward, or has discouraged the reduction of, the price at which the person’s customer or any other person to whom the product comes for resale supplies or offers to supply or advertises a product within Canada, or
 - (ii) has refused to supply a product to or has otherwise discriminated against any person or class of persons engaged in business in Canada because of the low pricing policy of that other person or class of persons; and
- (b) the conduct has had, is having or is likely to have an adverse effect on competition in a market.

Order

(2) The Tribunal may make an order prohibiting the person referred to in subsection (3) from continuing to engage in the conduct referred to in paragraph (1)(a) or requiring them to accept another person as a customer within a specified time on usual trade terms.

Persons subject to order

- (3) An order may be made under subsection (2) against a person who
 - (a) is engaged in the business of producing or supplying a product;
 - (b) extends credit by way of credit cards or is otherwise engaged in a business that relates to credit cards; or
 - (c) has the exclusive rights and privileges conferred by a patent, trade-mark, copyright, registered industrial design or registered integrated circuit topography.

...

Refusal to supply

(8) If, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that any person, by agreement, threat, promise or any like means, has induced a supplier, whether within or outside Canada, as a condition of doing business with the supplier, to refuse to supply a product to a particular person or class of persons because of the low pricing policy of that person or class of persons, and that the conduct of inducement has had, is having or is likely to have an adverse effect on competition in a market, the Tribunal may make an order prohibiting the person from continuing to engage in the conduct or requiring the person to do business with the supplier on usual trade terms.

...

Inferences

(10) In considering an application by a person granted leave under section 103.1, the Tribunal may not draw any inference from the fact that the Commissioner has or has not taken any action in respect of the matter raised by the application.

...

(12) For the purposes of this section, “trade terms” means terms in respect of payment, units of purchase and reasonable technical and servicing requirements.

Exclusive Dealing, Tied Selling and Market Restriction

Definitions

77. (1) For the purposes of this section,

“exclusive dealing”
“*exclusivité*”

“exclusive dealing” means

(a) any practice whereby a supplier of a product, as a condition of supplying the product to a customer, requires that customer to

(i) deal only or primarily in products supplied by or designated by the supplier or the supplier’s nominee, or

(ii) refrain from dealing in a specified class or kind of product except as supplied by the supplier or the nominee, and

(b) any practice whereby a supplier of a product induces a customer to meet a condition set out in subparagraph (a)(i) or (ii) by offering to supply the product to the customer on more favourable terms or conditions if the customer agrees to meet the condition set out in either of those subparagraphs;

...

Exclusive dealing and tied selling

(2) Where, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that exclusive dealing or tied selling, because it is engaged in by a major supplier of a product in a market or because it is widespread in a market, is likely to

- (a) impede entry into or expansion of a firm in a market,
- (b) impede introduction of a product into or expansion of sales of a product in a market, or
- (c) have any other exclusionary effect in a market,

with the result that competition is or is likely to be lessened substantially, the Tribunal may make an order directed to all or any of the suppliers against whom an order is sought prohibiting them from continuing to engage in that exclusive dealing or tied selling and containing any other requirement that, in its opinion, is necessary to overcome the effects thereof in the market or to restore or stimulate competition in the market.

Damage awards

(3.1) For greater certainty, the Tribunal may not make an award of damages under this section to a person granted leave under subsection 103.1(7).

Where no order to be made and limitation on application of order

- (4) The Tribunal shall not make an order under this section where, in its opinion,
 - (a) exclusive dealing or market restriction is or will be engaged in only for a reasonable period of time to facilitate entry of a new supplier of a product into a market or of a new product into a market,
 - (b) tied selling that is engaged in is reasonable having regard to the technological relationship between or among the products to which it applies, or
 - (c) tied selling that is engaged in by a person in the business of lending money is for the purpose of better securing loans made by that person and is reasonably necessary for that purpose,

and no order made under this section applies in respect of exclusive dealing, market restriction or tied selling between or among companies, partnerships and sole proprietorships that are affiliated.

Where company, partnership or sole proprietorship affiliated

- (5) For the purposes of subsection (4),
 - (a) one company is affiliated with another company if one of them is the subsidiary of the other or both are the subsidiaries of the same company or each of them is controlled by the same person;

- (b) if two companies are affiliated with the same company at the same time, they are deemed to be affiliated with each other;
- (c) a partnership or sole proprietorship is affiliated with another partnership, sole proprietorship or a company if both are controlled by the same person; and
- (d) a company, partnership or sole proprietorship is affiliated with another company, partnership or sole proprietorship in respect of any agreement between them whereby one party grants to the other party the right to use a trade-mark or trade-name to identify the business of the grantee, if
 - (i) the business is related to the sale or distribution, pursuant to a marketing plan or system prescribed substantially by the grantor, of a multiplicity of products obtained from competing sources of supply and a multiplicity of suppliers, and
 - (ii) no one product dominates the business.

When persons deemed to be affiliated

(6) For the purposes of subsection (4) in its application to market restriction, where there is an agreement whereby one person (the "first" person) supplies or causes to be supplied to another person (the "second" person) an ingredient or ingredients that the second person processes by the addition of labour and material into an article of food or drink that he then sells in association with a trade-mark that the first person owns or in respect of which the first person is a registered user, the first person and the second person are deemed, in respect of the agreement, to be affiliated.

Inferences

(7) In considering an application by a person granted leave under section 103.1, the Tribunal may not draw any inference from the fact that the Commissioner has or has not taken any action in respect of the matter raised by the application.

GENERAL

Leave to make application under section 75, 76 or 77

103.1 (1) Any person may apply to the Tribunal for leave to make an application under section 75, 76 or 77. The application for leave must be accompanied by an affidavit setting out the facts in support of the person's application under that section.

Notice

(2) The applicant must serve a copy of the application for leave on the Commissioner and any person against whom the order under section 75, 76 or 77, as the case may be, is sought.

Certification by Commissioner

(3) The Commissioner shall, within 48 hours after receiving a copy of an application for leave, certify to the Tribunal whether or not the matter in respect of which leave is sought

- (a) is the subject of an inquiry by the Commissioner; or
- (b) was the subject of an inquiry that has been discontinued because of a settlement between the Commissioner and the person against whom the order under section 75, 76 or 77, as the case may be, is sought.

Application discontinued

(4) The Tribunal shall not consider an application for leave respecting a matter described in paragraph (3)(a) or (b) or a matter that is the subject of an application already submitted to the Tribunal by the Commissioner under section 75, 76 or 77.

Notice by Tribunal

(5) The Tribunal shall as soon as practicable after receiving the Commissioner's certification under subsection (3) notify the applicant and any person against whom the order is sought as to whether it can hear the application for leave.

Representations

(6) A person served with an application for leave may, within 15 days after receiving notice under subsection (5), make representations in writing to the Tribunal and shall serve a copy of the representations on any other person referred to in subsection (2).

Granting leave to make application under section 75 or 77

(7) The Tribunal may grant leave to make an application under section 75 or 77 if it has reason to believe that the applicant is directly and substantially affected in the applicants' business by any practice referred to in one of those sections that could be subject to an order under that section.

Granting leave to make application under section 76

(7.1) The Tribunal may grant leave to make an application under section 76 if it has reason to believe that the applicant is directly affected by any conduct referred to in that section that could be subject to an order under that section.

Time and conditions for making application

(8) The Tribunal may set the time within which and the conditions subject to which an application under section 75, 76 or 77 must be made. The application must be made no more than one year after the practice or conduct that is the subject of the application has ceased.

Decision

(9) The Tribunal must give written reasons for its decision to grant or refuse leave and send copies to the applicant, the Commissioner and any other person referred to in subsection (2).

Limitation

(10) The Commissioner may not make an application for an order under section 75, 76, 77 or 79 on the basis of the same or substantially the same facts as are alleged in a matter for which the Tribunal has granted leave under subsection (7) or (7.1), if the person granted leave has already applied to the Tribunal under section 75, 76 or 77.

Inferences

(11) In considering an application for leave, the Tribunal may not draw any inference from the fact that the Commissioner has or has not taken any action in respect of the matter raised by it.

Inquiry by Commissioner

(12) If the Commissioner has certified under subsection (3) that a matter in respect of which leave was sought by a person is under inquiry and the Commissioner subsequently discontinues the inquiry other than by way of settlement, the Commissioner shall, as soon as practicable, notify that person that the inquiry is discontinued.

Interim order

104. (1) If an application has been made for an order under this Part, other than an interim order under section 100 or 103.3, the Tribunal, on application by the Commissioner or a person who has made an application under section 75, 76 or 77, may issue any interim order that it considers appropriate, having regard to the principles ordinarily considered by superior courts when granting interlocutory or injunctive relief.

Terms of interim order

(2) An interim order issued under subsection (1) shall be on such terms, and shall have effect for such period of time, as the Tribunal considers necessary and sufficient to meet the circumstances of the case.

...

COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34 (the "Act");

AND IN THE MATTER OF an application by Stargrove Entertainment Inc. for an order pursuant to section 103.1 of the Act granting leave to bring an application under sections 75, 76, and 77 of the Act;

AND IN THE MATTER OF an application by Stargrove Entertainment Inc. for an order pursuant to sections 75, 76, and 77 of the Act;

AND IN THE MATTER OF an application by Stargrove Entertainment Inc. for an order pursuant to section 104 of the Act;

BETWEEN:

STARGROVE ENTERTAINMENT INC.

Applicant

- and -

**UNIVERSAL MUSIC PUBLISHING GROUP CANADA,
UNIVERSAL MUSIC CANADA INC.,
SONY/ATV MUSIC PUBLISHING CANADA CO.,
SONY MUSIC ENTERTAINMENT CANADA INC.,
ABKCO MUSIC & RECORDS, INC.,
CASABLANCA MEDIA PUBLISHING, and
CANADIAN MUSICAL REPRODUCTION RIGHTS AGENCY LTD.**

Respondents

**MEMORANDUM OF FACT AND LAW OF THE APPLICANT
(Application for Leave Pursuant to Section 103.1 of the
Competition Act)**

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Lawyers for the Applicant

TAB E

File No. CT-2015-

COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34 (the “**Act**”);

AND IN THE MATTER OF an application by Stargrove Entertainment Inc. for an order pursuant to section 103.1 of the Act granting leave to bring an application under sections 75, 76, and 77 of the Act;

AND IN THE MATTER OF an application by Stargrove Entertainment Inc. for an order pursuant to sections 75, 76, and 77 of the Act;

AND IN THE MATTER OF an application by Stargrove Entertainment Inc. for an order pursuant to section 104 of the Act;

BETWEEN:

STARGROVE ENTERTAINMENT INC.

Applicant

- and -

**UNIVERSAL MUSIC PUBLISHING GROUP CANADA,
UNIVERSAL MUSIC CANADA INC.,
SONY/ATV MUSIC PUBLISHING CANADA CO.,
SONY MUSIC ENTERTAINMENT CANADA INC.,
ABKCO MUSIC & RECORDS, INC.,
CASABLANCA MEDIA PUBLISHING, and
CANADIAN MUSICAL REPRODUCTION RIGHTS AGENCY LTD.**

Respondents

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Lawyers for the Applicant

I, **TERRY PERUSINI**, of the City of Burlington, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the sole Director and Officer of Stargrove Entertainment Inc. (“**Stargrove**”), and as such I have personal knowledge of the matters herein deposed.
2. This affidavit is sworn in support of two applications being brought by Stargrove: (1) an application for an order pursuant to s. 103.1 of the *Competition Act* (“**Act**”) for leave to bring an application against the Respondents under ss. 75, 76, and 77 of the Act; and (2) an application for an interim order pursuant to s. 104 of the Act compelling the Respondents to issue mechanical licences to Stargrove on usual trade terms pending determination of Stargrove’s applications under ss. 75, 76, and 77 of the Act.

A. The Parties

3. Stargrove is a company incorporated in July 2014 under the laws of Ontario. Stargrove is a record label in the business of producing and selling competitively-priced musical compact discs.
4. The Respondents Sony/ATV Music Publishing Canada Co. and Sony Music Entertainment Canada Inc. (collectively, “**Sony**”) and Universal Music Publishing Group Canada and Universal Music Canada Inc. (collectively, “**Universal**”) are music publishing companies and record labels located in Toronto, Ontario.
5. The respondent ABKCO Music and Records, Inc. (“**ABKCO**”) is a record label, music publisher, and film and video production company headquartered in New York, New York.
6. The respondent Casablanca Media Publishing (“**Casablanca**”) is a music publishing company headquartered in Toronto. I do not know if Casablanca is affiliated with a record label, but Casablanca does rely on Universal for distribution in respect of some of the titles at issue in this proceeding. I believe that Casablanca is affiliated with another Toronto-based independent music publishing company, Red Brick Music Publishing (“**Red Brick**”), as Casablanca’s Vice President is also Red Brick’s President.
7. The respondent Canadian Musical Reproduction Rights Agency Limited (“**CMRRA**”) is a music licensing collective representing music rights-holders, on whose behalf CMRRA

issues licences for the reproduction of musical works on various media, including mechanical licensing for the reproduction of songs on CDs and similar physical products.

8. CMRRA's Board of Directors includes Gary Furniss, President of Sony Publishing; Shawn Marino, Vice President of Universal Music Canada; and Jennifer Mitchell, Vice President of Casablanca and President of Red Brick.

B. Licensing Musical Works in Canada

9. For the purposes of reproducing a pre-existing sound recording of a copyrighted musical work, there are two copyrights in issue: (1) the copyright in the musical work (i.e., song) itself, which is originally owned by the songwriter(s), and is often later assigned to a music publisher; and (2) the copyright in the "master" sound recording, which is originally owned by the "maker" of the sound recording, and may also be assigned.¹
10. There are two forms of licences that correspond to these two copyrights: "**mechanical licences**", which may be granted by the holder of the copyright in the musical work; and "**master recording licences**", which may be granted by the holder of the copyright in the master sound recording.
11. Until recently, in Canada, under the *Copyright Act*, RSC, 1985, c C-42, copyright over sound recordings continued until the end of 50 years after the end of the calendar year in which the first publication of the sound recording occurs. Sound recordings that had been published for at least 50 years were considered to be in the "public domain".
12. As discussed below in further detail, in June 2015, Bill C-59, the *Economic Action Plan 2015 Act, No. 1* received royal assent, extending the term of copyright in sound recordings from 50 years to 70 years. However, the new law is not retroactive. Therefore, a number of sound recordings that were published between 50 and 70 years ago, including the tracks for which Stargrove seeks mechanical licences, will remain in the public domain.
13. If a record label seeks to reproduce a recording of a musical work and the sound recording has fallen into the public domain, a mechanical licence may still be required in

¹ An original recording also includes a third copyright: the performance of the singers and musicians. However, this copyright is not in issue when making copies of an existing sound recording.

order to reproduce the musical work, as copyright will often still subsist in the musical work itself.

14. Obtaining a mechanical licence in Canada may be done in one of two ways. A purchaser may contact the musical work copyright holder directly and obtain a mechanical licence; however, it is much more common to apply for a mechanical licence from CMRRA, which is the authorized representative for most musical work copyright holders in Canada.
15. For example, on Sony Publishing's website, Sony Publishing advises that CMRRA is its exclusive licensing agent. A copy of Sony Publishing's website's "FAQ" section is attached hereto as **Exhibit "1"**.
16. CMRRA offers two options for mechanical licences: "pay-as-you-press" licensing and a standard Mechanical Licensing Agreement ("MLA"). CMRRA suggests that pay-as-you-press licences are appropriate for licensees who only occasionally manufacture products in Canada or who do so in small quantities. Royalties for pay-as-you-press licences must be paid in advance. CMRRA suggests that an MLA is appropriate for licensees manufacturing sound recording products on a continuing basis. Under an MLA, royalties are payable as products are sold on a quarterly basis. An MLA is more appropriate for a record label like Stargrove, who is not planning to produce CDs on a one-off or occasional basis.
17. The standard mechanical royalty rate in Canada is currently \$0.083 per song, per copy (for recordings with a running time of five minutes or less).² For example, if the applicable rate is 8.3 cents and I sell 100 CDs, CMRRA would collect \$8.30, irrespective of the price of the CD. The rate for a mechanical licence is the same regardless of whether or not the sound recording has fallen into the public domain.
18. Information from CMRRA's website describing mechanical licensing, pay-as-you-press, and MLAs is attached hereto as **Exhibit "2"**.
19. To provide a more detailed, independent explanation of relevant copyright legislation, CMRRA, and the music licensing process in Canada, I authorized my lawyers to retain

² The mechanical royalty rate may be lower for certain budget-priced CDs.

Mario Bouchard, former counsel to the Copyright Board of Canada. Mr. Bouchard's report will be filed with my applications.

C. Stargrove's Business and Business Model

20. Stargrove's business model relies on distributing low-cost compact discs. These discs consist of: (i) sound recordings of which Stargrove owns the sound recording copyright; (ii) sound recordings licensed to Stargrove from various independent labels (e.g., K-Tel International); or (iii) sound recordings that have fallen into the public domain and for which master recording licences are not required. As is described in greater detail below, the first five titles that Stargrove produced consisted of public domain sound recordings.
21. For a brief period, until it was forced to stop selling its products due to the Respondents' refusals to issue mechanical licences to Stargrove, Stargrove's products were sold at Walmart Canada ("Walmart"), in-store and online. Stargrove sells its CDs wholesale to its distributor, Anderson Merchandisers Canada Inc. ("Anderson"), for approximately \$3 unit. At Walmart, the CDs are sold to customers for a retail price of \$5.00.

D. Stargrove's Inception and First Five Titles

22. Prior to commencing operations, I wanted to ensure that Stargrove's business model was consistent with Canadian copyright law. In or around May 2014, I retained the law firm of Borden Ladner Gervais ("BLG") to provide a legal opinion regarding the law on sound recordings in Canada. Among other things, BLG provided the opinion that sound recordings first published 50 years ago would be in the public domain in Canada. A copy of the BLG opinion dated May 30, 2014 is attached hereto as **Exhibit "3"**.
23. In or around July 2014, I incorporated Stargrove and decided to compile a number of sound recordings that had fallen into the public domain and to manufacture and release CDs of these sound recordings.
24. The first six compilation CDs that Stargrove intended to produce were:
 - (a) The Beatles, *Love Me Do*
 - (b) The Beatles, *Can't Buy Me Love*
 - (c) The Rolling Stones, *Little Red Rooster*

- (d) Elvis Presley, *Suspicion*
- (e) Bob Dylan, *It Ain't Me Babe*
- (f) The Beach Boys, *Fun, Fun, Fun*

25. Each of the above titles is a compilation of 11 songs.

26. I began meeting with representatives of Anderson in November 2014 to discuss the sale of Stargrove titles in Walmart. On November 7, 2014, I contacted Patricia McAlpine of Anderson and informed her I had previews of Beatles and Rolling Stones cover art.

27. I met with Ms. McAlpine on January 7, 2015 and she informed me that Walmart was interested in selling five of our six titles—*Love Me Do*, *Can't Buy Me Love*, *Little Red Rooster*, *It Ain't Me Babe*, and *Fun, Fun, Fun*— and that Anderson would be ordering between 1000 and 3500 units per title. I received the order from Anderson on January 8 for a total quantity of 12,400 CDs. A copy of the order is attached hereto as **Exhibit “4”**.

E. Universal Music Group Had “Major Concerns” About Stargrove’s Beatles Titles Before They Were Even Released

28. In the interim, in November 20, 2014, Ken Kozey at Anderson contacted me about an email he received from Brian Greaves of Universal Music Group, in which Mr. Greaves asked Mr. Kozey who was selling “the new Beatles public domain product” and stating that the product in question “has obviously raised major concerns over here”. A copy of the e-mail chain dated November 20, 2014 is attached hereto as **Exhibit “5”**.

29. At that time, we had not pressed any titles. We were planning to release the initial titles in January 2015.

30. In a conversation with Mr. Kozey in December 2014, I was informed that in meetings between Anderson and Universal Music Canada, Universal Music Canada pressured Anderson not to carry Stargrove products and informed Anderson that Universal Music Canada was lobbying the Canadian government to make changes to the legislation regarding public domain for sound recordings.

F. Stargrove's Business Was Immediately Successful

31. In early January 2015, Stargrove contacted CMRRA to enquire about obtaining a mechanical licence for the five titles we intended to wholesale to Anderson for sale in Walmart.
32. CMRRA required Stargrove to apply for a pay-as-you-press licence for the mechanical licences. Stargrove completed CMRRA's application requirements and submitted the required royalty payment of \$13,799.10 by cheque to CMRRA on January 8, 2015.
33. CMRRA cashed Stargrove's cheque on January 9, 2015. Stargrove then began producing its CDs for sale to Anderson. Stargrove produced five CDs in its first run to fulfill Anderson's order, for a total of 12,400 units. Stargrove sold the CDs to Anderson for \$3.00 per unit. A copy of Stargrove's cheque, which was cashed January 9, 2015, is attached hereto as **Exhibit "6"**.
34. The first five Stargrove titles went on sale on Walmart's website on or around January 20, 2015 and in Walmart stores on or around February 3, 2015, for a retail price of \$5.00 each. In Stargrove's first week of CD sales in Walmart stores, its Beatles *Love Me Do* title was Walmart's top seller, with 1,488 copies sold. A copy of the list of top 10 sellers for the week of February 2 - 8, 2015 is attached hereto as **Exhibit "7"**. Three of Stargrove's other titles had strong initial sales as well: *Fun, Fun, Fun, It Ain't Me Babe*, and *Can't Buy Me Love* sold a combined total of 755 units in their first week of sales.
35. Including the six titles noted at paragraph 22, Stargrove intended to produce 45 titles for sale by 2016.

G. The Respondents' Campaign to Lock Stargrove Out

(i) ABKCO Refuses to License Rolling Stones Musical Works to Stargrove

36. On January 22, 2015, Veronica Syrtash, Vice President, Legal and Business Affairs at CMRRA, e-mailed Ms. Holt of Stargrove to advise that ABKCO had instructed CMRRA not to issue any licences for the reproduction of five musical works owned by ABKCO on Stargrove's Rolling Stones title, *Little Red Rooster*. A copy of the e-mail dated January 22, 2015 is attached hereto as **Exhibit "8"**.

37. On January 23, 2015, Alisa Coleman of ABKCO e-mailed Ned Talmey of Anderson and stated that Stargrove did not have mechanical licences for five musical works owned by ABKCO on Stargrove's Rolling Stones title, *Little Red Rooster*. Ms. Coleman requested that Anderson remove *Little Red Rooster* from its catalogue and notify Walmart to remove the CD from the marketplace and online, "before we have to take any additional legal steps to protect our rights." Ken Kozey of Anderson forwarded me Ms. Coleman's e-mail on January 24, 2015. A copy of the e-mail chain dated January 23 and 24, 2015 is attached hereto as **Exhibit "9"**.
38. As a result of ABKCO's email to Anderson, Anderson removed *Little Red Rooster* from distribution and returned the product to Stargrove. No copies of *Little Red Rooster* were sold in Walmart.

(ii) Casablanca Refuses to License Beatles Musical Works to Stargrove

39. On February 4, 2015, Nathalie Levesque, Assistant Manager, Independent Licensing & Royalties at CMRRA, e-mailed Ms. Holt to advise that Casablanca represents three musical works contained on Stargrove's Beatles titles, and that Casablanca had instructed CMRRA not to issue any licences for the reproduction of these works by Stargrove. Ms. Holt responded by e-mail the same day to ask why Casablanca had instructed CMRRA not to issue licences to Stargrove for these musical works. A copy of the e-mail chain dated February 4, 2015 is attached hereto as **Exhibit "10"**.

(iii) CMRRA Refuses to Deal With Stargrove On Any Product

40. I am advised by Ms. Holt and I believe that on February 9, 2015, Ms. Holt spoke with Caroline Rioux of CMRRA by telephone regarding the Respondent Publishers' refusals to sell mechanical licences to Stargrove. During that conversation, Ms. Rioux expressed to Ms. Holt that she was surprised by the Respondent Publishers' refusals and stated that the situation was unusual. Ms. Rioux also stated that Sony Publishing had refused to provide Stargrove with a mechanical licence.
41. On February 10, 2015, Ms. Holt e-mailed Ms. Rioux to ask which publishers had refused mechanical licences and to inquire regarding the status of all of the Stargrove mechanical licence applications. Ms. Holt also stated in her e-mail that the Respondent Publishers' refusals raised questions about "unfair trading and competition laws".

42. Ms. Rioux responded by e-mail on February 11, 2015, and wrote that CMRRA would not be processing any applications from Stargrove:

Given the concerns that you raise in your email, we think it is best that CMRRA not be involved in this situation any further. We will be returning all payments submitted by you already, and will not be processing any applications from you. I suggest that you contact the publishers directly with any questions you may have, or seek to obtain licences from them directly. ...

43. A copy of the e-mail chain dated February 9-11, 2015 is attached hereto as **Exhibit “11”**.

44. Ms. Holt responded to Ms. Rioux on February 13, 2015 and informed her that Stargrove had a number of what Ms. Holt termed “regular” titles which included compilations of “non-controversial” tracks which have been widely marketed by other lower-priced record labels for years. Ms. Holt requested that, as Stargrove was looking to manufacture catalogue titles on a continuing basis, CMRRA enter into an MLA with Stargrove. A copy of Ms. Holt’s e-mail dated February 13, 2015 to Ms. Rioux is attached hereto as **Exhibit “12”**. Ms. Holt never received a response from Ms. Rioux to this e-mail.

45. On February 25, 2015, Ms. Holt received a letter from CMRRA enclosing a refund cheque for “all payments [Stargrove] submitted to CMRRA.” A copy of CMRRA’s letter dated February 25, 2015 is attached hereto as **Exhibit “13”**.

(iv) Universal Music Group Orchestrated Fabricated Negative Reviews of Stargrove Products, Perpetuated Myth that Stargrove Products are of Inferior Quality, and Encouraged Publishers Not to Deal with Stargrove

46. On February 11, 2015, I received an email from Patricia McAlpine of Anderson. She asked me to go onto Walmart’s website (www.walmart.ca) to see negative reviews that had been left of our Beatles titles. She also told me that she had received emails from Nielsen SoundScan, Universal, and Anderson’s CEO. A copy of Ms. McAlpine’s e-mail to me dated February 11, 2015 is attached hereto as **Exhibit “14”**.

47. At that time, there were four Stargrove titles for sale in Walmart and on walmart.ca: *Can’t Buy Me Love* (Beatles); *Love Me Do* (Beatles); *Fun, Fun, Fun* (Beach Boys); and *It Ain’t*

Me Babe (Bob Dylan). I went to walmart.ca and saw that negative reviews had been left for three of the titles: *Can't Buy Me Love*; *Love Me Do*; and *Fun, Fun Fun*. There were seven reviews of *Love Me Do*, of which six were negative; eight negative reviews of *Can't Buy Me Love*; and four negative reviews of *Fun, Fun, Fun*. There were no reviews of *It Ain't Me Babe*. A copy of the reviews is attached hereto as **Exhibit "15"**.

48. I read the reviews of Stargrove's titles and believed that Stargrove had been targeted with fabricated, negative reviews, for several reasons:

- (a) I noticed that there was a great deal of overlap between the usernames of negative reviewers. For example, five of the six people that left negative reviews of *Love Me Do* also posted a negative review of *Can't Buy Me Love* or *Fun, Fun, Fun*, or both.
- (b) Some reviews indicated that the reviewer had owned the product for a greater length of time than it had existed or been available in Walmart. For example, "RingoStarr"'s review of *Love Me Do* indicated that, as of the date of his review (which I believe to have been February 9, 2015), the reviewer had owned the product for 5-6 months. *Love Me Do* was only pressed in January 2015, and at the time of "RingoStarr"'s review, had only been available in-store and online for approximately one week.
- (c) The reviews generally seemed to attack the sound quality and authenticity of the CDs. For example, reviews included the following statements: "Awful quality, was recorded from an LP"; "Very poor audio quality. Not the real thing. Don't buy this version!"; "I have seen a few of these weird versions of The Beatles lately. Buyer beware! They are not the original recordings and definitely of inferior quality"; "Subpar quality. Save your \$5 and put it towards REAL Beatles recordings"; "Do not buy, these versions aren't originals and have terrible quality;" "Don't know why someone would buy such a bad album and not the original. Save your money and get the real thing! Or you'll just waste it!"
- (d) No other Beatles titles on walmart.ca had *any* reviews, negative or positive.
- (e) The three Stargrove titles that had received negative reviews all contained sound recordings of music artists affiliated with Universal.

49. I reported the reviews to Walmart on February 13, 2015; by February 15, 2015 the reviews had been removed from walmart.ca.
50. Subsequently, it came to my attention that Brian Greaves, an account manager at Universal Music Canada, had sent an e-mail around to Universal employees identifying that he had created reviews for Stargrove's products on Walmart's website and encouraging Universal employees to do the same. He called it his "campaign" to discourage Anderson from placing Stargrove's products on its shelves.
51. I met with Patricia McAlpine and Chad Minicuci of Anderson on February 12, 2015 at Anderson's offices. I asked Ms. McAlpine what she had meant when she wrote that she had received emails from Nielsen SoundScan, Universal, and Anderson's CEO (Exhibit "14"). Ms. McAlpine showed me an e-mail from Randy Lennox, President of Universal Music Canada to Ned Talmey, CEO of Anderson, and Ken Kozey, Associate Vice President of Purchasing at Anderson. In the e-mail, Mr. Lennox asked how Universal Music Canada and Anderson could partner to "resolve the public domain issue". He specifically mentioned the Beatles and the Rolling Stones. He stated that Universal Music Canada was happy to provide very fair pricing for the "legitimate versions of the largest artists in the history of music" and wanted to discuss solutions. I understood this e-mail to be an attempt by Mr. Lennox to discourage Anderson from supporting Stargrove's products, and an insinuation that Stargrove's recordings were somehow illegitimate.
52. Below Mr. Lennox's e-mail to Mr. Talmey and Mr. Kozey was the above-noted email from Brian Greaves, Account Manager at Universal Music Group, to employees of Universal Publishing and other Universal companies. I noticed that one of the recipients was Shawn Marino, Vice President of Universal Publishing and member of the CMRRA Board of Directors. In the e-mail, Mr. Greaves asked recipients to help his "campaign" to "discourage" Anderson from selling "unlicensed/public domain product". He stated that Beatles and Beach Boys CDs being sold for \$5 retail in Walmart "are taking away from Universal sales and market share", and specifically noted two of Stargrove's Titles (*Love Me Do* and *Can't Buy Me Love*) were in the Top 100 for that week. He wrote about continuing the effort to remove these CDs from Walmart's shelves, and stated that Universal Music Group had successfully removed a Rolling Stones title. He went on to request the e-mail recipients to contribute a review on walmart.ca "as if you just

purchased a \$5 CD from Walmart and you were disappointed in the poor sound quality”, as these reviews would “bring attention of these poor quality products and will deter Anderson Merchandisers from placing these type of products in the future.”

53. Mr. Minicuci listened to Stargrove’s CDs and advised me that he was more than satisfied with the quality of the CDs. He noted that, of the over 2000 Stargrove units sold in-store at Walmart, only one CD had been returned, which suggested that customers were satisfied with the product.
54. It seems clear from the foregoing that the Respondents engaged in a concerted campaign to prevent Stargrove from entering the market and competing for CD sales.
55. Luckily for Stargrove, Anderson did not bow to the pressure from Universal and the other Respondents. Anderson is still willing to distribute Stargrove’s CDs today.

H. Despite Demand, Stargrove Is Forced to Stop Pressing and Shipping Products, Due to the Respondents’ Refusal to License Stargrove

56. During my meeting with Chad Minicuci and Patricia McAlpine on February 12, 2015, I advised that Stargrove would not press any more product until we had resolved the licensing issues with the Respondent Publishers. Mr. Minicuci was disappointed, as *Love Me Do* had been Anderson’s top CD in units sold the prior week. Taking into account the pace at which Stargrove’s titles had sold in their first sale week, Mr. Minicuci indicated that he believed that, with the total of four Beatles titles Stargrove planned to release, Stargrove could have easily surpassed 250,000 units sold in the year.
57. On February 23, 2015, I received a telephone call from Mr. Minicuci asking for an update on the Stargrove titles. I replied to Mr. Minicuci by e-mail that same day, stating that I was unfortunately still on standby. A copy of my e-mail to Mr. Minicuci dated February 23, 2015, and Mr. Minicuci’s reply dated February 24, 2015 is attached hereto as **Exhibit “16”**.

I. Stargrove Continues to Attempt to Deal with the Publishers and CMRRA

58. On March 9, 2015, Stargrove’s intellectual property lawyer, Sangeetha Punniyamoorthy of Dimock Stratton LLP, wrote to Ms. Rioux requesting further information concerning CMRRA’s refusal to grant Stargrove mechanical licences with respect to various works. Dimock Stratton’s letter requested that CMRRA provide Stargrove with a list of the

publishers that instructed CMRRA to refuse a licence to Stargrove; the publishers' stated reasons for denying a licence; and CMRRA's reasons for not providing a mechanical licence to Stargrove in respect of other publishers. A copy of the letter dated March 9, 2015 is attached hereto as **Exhibit "17"**.

59. On March 12, 2015, Veronica Syrtash, Vice President, Legal & Business Affairs at CMRRA, responded to Dimock Stratton and confirmed that the publishers that had instructed CMRRA not to issue licences to Stargrove are ABKCO, Casablanca, and Sony Publishing. A copy of Ms. Syrtash's letter dated March 12, 2015 to Dimock Stratton is attached hereto as **Exhibit "18"**.
60. In response to Dimock Stratton's questions regarding the publishers' stated reasons for denying a licence to Stargrove and CMRRA's reasons for not providing a mechanical licence to Stargrove in respect of other publishers, CMRRA replied:
 2. These publishers have not indicated to us all their reasons for denying licenses, nor do they have an obligation to. [...] What we have been told, however, is that their refusal is at least partially related to the fact that there are public domain master recordings on the products in question. Beyond that, we are simply unable to speculate on the reasoning behind their decision-making.
 3. CMRRA made a decision not to pursue licensing on behalf of other music publishers after having received an e-mail from Ms. Holt raising the issues of possible unfair trading and competition law. We felt it prudent not to remain in a position where we may be implicated in the practices of copyright owners licensing (or not licensing, as the case may be) users of those copyrights, when CMRRA is only an agent designated to facilitate this process. ...

61. Dimock Stratton replied to CMRRA by letter dated March 16, 2015, a copy of which is attached hereto as **Exhibit "19"**. Dimock Stratton wrote, in part:

...Stargrove's requested mechanical license was not limited to copyrighted material owned by only these three publishers. In fact, the vast majority of the tracks are owned by other publishers. Your letter indicates that CMRRA unilaterally made a decision on behalf of all these other musical publishers to deny a license to Stargrove because

Stargrove has raised issues of possible unfair trading and competition law. However, it is only a refusal to license that raise any such issues. ...

Further, it is Stargrove's understanding based on years of experience within the industry that the usual and ordinary course for obtaining mechanical licenses is through CMRRA, which is in the business of granting permissions on behalf of music publishers. ... CMRRA's refusal, on its own initiative, to license Stargrove on behalf of other music publishers (who have not instructed CMRRA to refuse to license Stargrove) is clearly inconsistent with CMRRA's normal course of conduct. ...

62. Dimock Stratton requested the CMRRA reconsider its decision to deny Stargrove its requested mechanical licences for what she referred to as "non-contentious" tracks.
63. On March 17, 2015, Dimock Stratton wrote to Sony Publishing, ABKCO, and Casablanca regarding their respective refusals to grant mechanical licences to Stargrove. Dimock Stratton requested that each publisher grant a mechanical licence to Stargrove with respect to musical works described in the letters; and that, if the respective publishers decided to maintain their refusals to license Stargrove, to provide their reasons for denying a licence. Dimock Stratton also wrote that "Any refusal to license Stargrove in the ordinary course for unjustified reasons may give rise to unfair trading or competition law issues." Copies of Dimock Stratton's letters dated March 17, 2015 to Sony Publishing, ABKCO, and Casablanca are attached hereto as **Exhibits "20", "21", and "22"**, respectively.
64. On March 20, 2015, ABKCO's lawyer responded to Dimock Stratton by letter, a copy of which is attached hereto as **Exhibit "23"**. ACKBO's lawyer wrote, in part, that ABKCO's decision not to grant mechanical licences to Stargrove "does not require any explanation".
65. On March 24, 2015, Jennifer Mitchell, President of Red Brick Songs and Vice President of Casablanca, responded to Ms. Punniyamoorthy by letter, a copy of which is attached hereto as **Exhibit "24"**. Ms. Mitchell wrote, in part, that a copyright owner is not required "to provide an explanation to the applicant for the refusal."

66. On March 25, 2015, Ms. Syrtash of CMRRA responded to Dimock Stratton's letter dated March 16, 2015. Ms. Syrtash advised that CMRRA had sought authorizations from publishers for the licensing of songs on Stargrove's CDs and set out the songs for which CMRRA had or had not received authorization to issue licences to Stargrove:

1. For Product Catalogue STR0009, Album Title "Fun, Fun, Fun"
 - (a) CMRRA has the authorization from the music publisher(s) to issue licenses for the following songs: *Summertime Blues, Surfer Girl, Surfin', Surfin' Safari, and Surfin' USA*.
 - (b) CMRRA does not have the authorization from the music publisher(s) to issue licenses for the following songs: *Be True To Your School, Dance Dance Dance, Fun Fun Fun, I Get Around, Ten little Indians, and When I Grow Up (To Be A Man)*.
2. For Product Catalogue STR0001, Album Title "Love Me Do"
 - (a) CMRRA has the authorization from the music publisher(s) to issue a license for the following song: *Til There Was You*
 - (b) CMRRA does not have the authorization from the music publisher(s) to issue licenses for the following songs: *All My Loving, A Hard Day's Night, I Feel Fine, If I fell, It Won't Be Long, This Boy, You Can't Do That, Love Me Do, Please Mr. Postman, and I Saw Her Standing There*.
3. For Product Catalogue STR0002, Album Title "Can't Buy Me Love"
 - (a) CMRRA has the authorization from the music publisher(s) to issue licenses for the following song: *Honey Don't*
 - (b) CMRRA does not have the authorization from the music publisher(s) to issue licenses for the following songs: *Can't Buy Me Love, And I Love Her, Do You Want To Know A Secret, From Me To You, I Wanna Be Your Man, Mr. Moonlight, No Reply, Please Please Me, and You've Really Got A Hold On Me*.

(Collectively, the songs listed in paragraphs 1(a), 2(a) and 3(a), for which CMRRA has the authorization from the music publishers to

issue licences, are referred to hereafter as “the CMRRA Licensable Songs”.)

4. For Product Catalogue STR0008, Album Title “It Ain’t Me Babe”, CMRRA does not have the authorization from the music publisher(s) to issue licenses for any of the songs.
5. For Product Catalogue STR0004, Album Title “Little Red Rooster”, CMRRA does not have the authorization from the music publisher(s) to issue licenses for any of the songs.

67. CMRRA then requested that Stargrove re-submit its licence applications for what she described as the “CMRRA Licensable Songs”. A copy of the letter dated March 25, 2015 from CMRRA to Dimock Stratton is attached hereto as **Exhibit “25”**.

68. I have made a spreadsheet setting out the publishers and distributors for the songs on the above five Stargrove titles. A copy of this spreadsheet is attached hereto as **Exhibit “26”**.

69. Between April 1 and 21, 2015, Ms. Holt corresponded with Ms. Lévesque of CMRRA in an attempt to enter into an MLA. Copies of the e-mail chains dated between April 1 and April 21, 2015 are attached hereto as **Exhibits “27” – “33”**. Copies of two MLA models for independent labels are attached hereto as **Exhibits “34” – “35”**.

70. In this correspondence, it became increasingly clear that CMRRA did not intend to enter into an MLA with Stargrove. In an e-mail dated April 16, 2015 (Exhibit “33”), Ms. Lévesque suggested that the pay-as-you-press licensing method might be best suited to Stargrove’s needs and suggested a meeting “in the coming weeks”.

71. Ms. Holt replied on April 20, 2015 and stated that Stargrove would be willing to enter into a pay-as-you-press licence; however, she wrote, “We do not want to get in the situation we just had where we pay you for units pressed, you cash that money and then we are told we cannot have the licence.” Ms. Holt further wrote, “I appreciate the offer for a meeting in the coming weeks but that does not work. This matter has become very urgent for us and I really do not have weeks to sort it.” (Exhibit “33”).

72. In Ms. Lévesque’s response dated April 21 (Exhibit “33”), she reiterated that “CMRRA has been instructed by several of our publisher principals not to act on their behalf with

respect to issuing licences to Stargrove”, and stated that “the remaining volume of licences that you would be seeking from CMRRA do not justify the work required under an MLA.”

73. On April 28, 2015, I e-mailed Ms. Lévesque, a copy of which e-mail is attached hereto as **Exhibit “36”**. I wrote, in part:

Let's be candid; members of your principal publishers sit on your board. The comment that your principal publishers (your board) are instructing you not to deal with Stargrove is the reality of what is going on here. We asked to go on a MLA and you came up with every excuse to avoid that. Even when you rejected our program we asked for a referral to another. We were happy to go with something else that worked, but oddly you had no suggestions of a program that would work for you. You suggested a pay as you press on a quarterly basis. We said happy to go with that please explain further. Instead of explain further you came back with some aside about Legacy.

Based on your principal publishers instructions it is very clear CMRRA does not want to work with Stargrove in aiding us to distribute budget priced cds in the Canadian market. Considering your “principal publishers” are subsidiaries of “principal record” labels that are not happy to have our lowered priced products, such as the Beatles in the marketplace, it is not difficult to conclude what is going here. It is unfortunate for the 1000s of publishers (artists) you represent that they are not fairly represented by CMRRA because of a board that truly does not have the interests of those publishers (artists) in mind. There is no doubt those other publishers (artists) would want the revenues our products generate them. In fact there is no doubt the artists under your “principal publishers” would also love the income our products will generate for them. Unfortunately this will not happen for them because “principal publishers” that sit on your board have record labels to protect. Your principal publishers will not deal with us therefore clearly a meeting is pointless and will not get us any further then this email exchange has.

...

74. On May 22, 2015, Stargrove’s competition lawyer, Nikiforos Iatrou of WeirFoulds LLP, wrote to Universal Publishing, Sony Publishing, ABKCO, and Casablanca, copying

CMRRA, to request that the Respondent Publishers reconsider their refusals to supply Stargrove with mechanical licences. WeirFoulds wrote, in part:

Stargrove has been engaged with each of you through the Canadian Musical Reproduction Rights Agency Limited (“**CMRRA**”) for months, to no avail, trying to find a solution to your apparent unwillingness to issue Stargrove mechanical licenses on standard terms. This refusal to supply mechanical licenses directly affects Stargrove’s business, artificially maintains elevated prices of sound recordings that are in the public domain, and is a violation of the *Competition Act*. This refusal benefits your respective affiliated labels to the expense of consumers.

75. A copy of WeirFoulds’ letter dated May 22, 2015 letter is attached hereto as **Exhibit “37”**. I understand from Mr. Iatrou that he received no substantive responses, just acknowledgments and one commitment to respond which never materialized.

J. Stargrove Continues to Lose Money As a Result of the Respondents’ Refusals to Deal

76. In May 2015, Anderson alerted me to a promotional opportunity at Walmart to use “front of store” bins for \$5 CDs for three weeks, from July 25 to August 14, 2015. Patricia McAlpine of Anderson advised me that Anderson would like to order 10,000 units each of both of Stargrove’s Beatles titles for the promotion. A copy of Ms. McAlpine’s May 27, 2015 e-mail to me is attached hereto as **Exhibit “38”**.
77. Because of the Respondents’ ongoing refusals to license public domain musical works to Stargrove, Stargrove was unable to participate in the Walmart promotion. While it is difficult to estimate Stargrove’s financial losses in this regard, as I am not aware of Walmart having ever done a CD promotion of this nature, I estimate that Stargrove lost out on approximately \$150,000 in wholesale sales as a result of our inability to participate in Walmart’s promotion.
78. Anderson continues to be interested in distributing Stargrove’s CDs in Walmart. On June 10, 2015, I received an e-mail from Mr. Minicuci at Anderson, indicating Anderson’s interest in acquiring more titles like Stargrove’s. A copy of Mr. Minicuci’s e-mail to me dated June 10, 2015 is attached hereto as **Exhibit “39”**. Mr. Minicuci wrote:

Hi Terry, as you know, we do a great volume of CD sales on the \$5 price point. Walmart customers embrace the variety of choice and of course the affordable pricing that allows them to buy more!

In particular, the Beatles 'Love Me Do' title that we shipped in February of this year was welcomed by the Walmart consumer as evident in the sales results. There is no doubt that we are in need of more titles like it. Based on the fact that defective returns were only 0.032% (way below Industry average) means the customers are satisfied with the quality of the product.

Obviously I am not in a position to make decisions or take sides on legal controversy. My primary interest is to make CD's available at Walmart that the customer is looking for at pricing they expect. The product you recently made available to us certainly hit the mark and we hope that you can provide us with more selections in the near future.

79. On August 10, 2015, I received an e-mail from Ms. McAlpine of Anderson advising that she is out of stock on Beatles titles and would "love to be able to buy some Beatles stock from someone". A copy of Ms. McAlpine's email dated August 10, 2015 is attached hereto as **Exhibit "40"**.

K. Changes to the *Copyright Act*

80. As I described above (para. 28), Ken Kozey of Anderson told me in December 2014 that Universal Music was lobbying the Canadian government to make changes to legislation regarding public domain for sound recordings.
81. On April 21, 2015, the Canadian government tabled the 2015 budget (the "**Budget**"). The Budget included a proposal to amend the *Copyright Act* "so that the term of protection of performances and sound recordings is extended from 50 years to 70 years following the date of the release of the sound recordings" (page 305). A copy of relevant portions of the Budget (including pages 22, 265, 300, 305-06) is attached hereto as **Exhibit "41"**. This amendment is further explained in Mr. Bouchard's report.
82. That same day, the Prime Minister of Canada sent a letter to Music Canada, a trade organization that represents the major record companies in Canada, including Sony Music Entertainment Canada and Universal Music Canada, confirming the amendment.

A copy of the letter from the Rt. Hon. Stephen Harper dated April 21, 2015 is attached hereto as **Exhibit “42”**.

83. Upon learning of the Budget's proposed change to the *Copyright Act*, I was concerned that these changes could affect Stargrove's business. It was not clear from the Budget whether the changes to the *Copyright Act* would have retroactive application, and we did not know when these changes would come into effect. We put our operations temporarily on hold until we could obtain more information.
84. On May 7, 2015, Bill C-59, An Act to Implement Certain Provisions of the Budget Tabled in Parliament on April 21, 2015 and Other Measures (short title: Economic Action Plan 2015 Act, No. 1), was tabled in the House of Commons. Section 81 of the Bill set out the proposed amendments to the *Copyright Act*, and s. 82 confirmed that the amendments would not operate to “revive” copyright in a sound recording in which the copyright had already expired:

81. (1) Paragraph 23(1)(b) of the *Copyright Act* is replaced by the following:

(b) if a sound recording in which the performance is fixed is published before the copyright expires, the copyright continues until the earlier of the end of 70 years after the end of the calendar year in which the first such publication occurs and the end of 100 years after the end of the calendar year in which the first fixation of the performance in a sound recording occurs.

(2) Subsection 23(1.1) of the Act is replaced by the following:

(1.1) Subject to this Act, copyright in a sound recording subsists until the end of 50 years after the end of the calendar year in which the first fixation of the sound recording occurs. However, if the sound recording is published before the copyright expires, the copyright continues until the earlier of the end of 70 years after the end of the calendar year in which the first publication of the sound recording occurs and the end of 100 years after the end of the calendar year in which that first fixation occurs.

82. Paragraph 23(1)(b) and subsection 23(1.1) of the *Copyright Act*, as enacted by section 81, do not have the effect of reviving the

copyright, or a right to remuneration, in a sound recording or performer's performance fixed in a sound recording in which the copyright or the right to remuneration had expired on the coming into force of those provisions. [Bold and underlining in original]

85. A copy of sections 81-82 of Bill C-59 is attached hereto as **Exhibit “43”**.
86. On June 23, 2015, Bill C-59 received royal assent and the amendments to the *Copyright Act* thereby came into force.
87. The amendments to the *Copyright Act* do not have retroactive effect, and thus, Stargrove's model of seeking to sell CDs like the initial five CDs it sought to sell continues to be lawful under Canadian copyright law. Unfortunately, the Respondents' concerted campaign is denying Canadian consumers Stargrove's competitive CDs.

L. The Respondents' Refusal to Deal with Stargrove is Devastating Stargrove's Business

88. Stargrove's business model relies heavily on producing CD compilations of sound recordings that are in the public domain. The Respondents' refusal to license Stargrove under usual licensing terms has caused losses to Stargrove and has cut off any future growth of the business.
89. I estimate that, if Stargrove's business is able to continue and we are able to sell a mix of licensed sound recordings, our own sound recordings, and public domain sound recordings, we will achieve sales of \$3 to \$5 million per year in Canada.
90. Under our current business model, without being able to obtain mechanical licences on ordinary terms through CMRRA, Stargrove will go out of business.

M. Stargrove Remains Willing to Deal with the Respondents

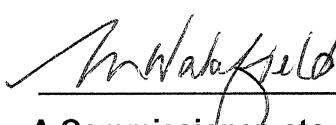
91. Stargrove remains willing to deal with CMRRA and/or the Respondent Publishers to obtain mechanical licences for public domain sound recordings.
92. Stargrove will pay CMRRA the standard royalty fees required to obtain the mechanical licences to the Titles, if given the chance.

N. The Respondents' Refusal to License Stargrove Is Having An Adverse Effect on Competition in the Market

93. As the e-mail from Mr. Greaves of Universal admits, Stargrove's CD sales were eating into Universal's market share. By freezing Stargrove out, I believe that the Respondents are artificially suppressing competition in the market, which is artificially inflating CD prices.

94. Stargrove is willing to provide an undertaking as to damages in the event it obtains the interim order sought.

SWORN before me at the City of Oakville,)
in the Province of Ontario, this 26th day of)
August, 2015.)



A Commissioner, etc.

Marie Elizabeth Wakefield, a Commissioner, etc.,
Province of Ontario, for WebPosition,
Barnstars and Buttons,
Explosive Outcomes (2015).



Terry Perusini

TO: **The Registrar
Competition Tribunal**
90 Sparks Street, Suite 600
Ottawa, ON K1P 5B4
Tel: 613-957-7851
Fax: 613-952-1123

AND TO: **John Pecman
Commissioner of Competition**
Competition Bureau
50 Victoria Street
Gatineau, QC K1A 0C9
Tel: 819-997-4282
Fax: 819-997-0324

AND TO: **Canadian Musical Reproduction Rights
Agency Ltd.**
320-56 Wellesley Street West
Toronto, ON M5S 2S3
Tel: 416-926-1966
Fax: 416-926-7521

AND TO: **ABKCO Music & Records, Inc.**
85 5th Ave #11
New York, NY 10003
United States
Tel: 212-399-0300

AND TO: **Casablanca Media Publishing**
249 Lawrence Avenue East
Toronto, ON M4N 1T5
Tel: 416-921-9214

AND TO: **Sony/ATV Music Publishing Canada Co.**
1670 Bayview Avenue, Suite 408
Toronto, ON M4G 3C2
Tel: 416-489-5354

AND TO: **Sony Music Entertainment Canada Inc.**
150 Ferrand Drive
Toronto, ON M3C 3E5
Tel: 416-589-3000

AND TO: **Universal Music Publishing Group
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AND TO: Universal Music Canada Inc.
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File No. CT-2015-

COMPETITION TRIBUNAL**IN THE MATTER OF** the *Competition Act*, R.S.C. 1985, c. C-34
(the "Act");**AND IN THE MATTER OF** an application by Stargrove Entertainment Inc. for an order pursuant to section 103.1 of the Act granting leave to bring an application under sections 75, 76, and 77 of the Act;**AND IN THE MATTER OF** an application by Stargrove Entertainment Inc. for an order pursuant to sections 75, 76, and 77 of the Act;**AND IN THE MATTER OF** an application by Stargrove Entertainment Inc. for an order pursuant to section 104 of the Act;**BETWEEN:****STARGROVE ENTERTAINMENT INC.**

Applicant

- and -

**UNIVERSAL MUSIC PUBLISHING GROUP CANADA,
UNIVERSAL MUSIC CANADA INC.,
SONY/ATV MUSIC PUBLISHING CANADA CO.,
SONY MUSIC ENTERTAINMENT CANADA INC.,
ABKCO MUSIC & RECORDS, INC.,
CASABLANCA MEDIA PUBLISHING, and
CANADIAN MUSICAL REPRODUCTION RIGHTS AGENCY LTD.**

Respondents

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Lawyers for the Applicant

1

This is **Exhibit "1"** referred to in the Affidavit of
Terry Perusini sworn before me this 26th day of
August, 2015

Marie Elizabeth Wakefield

A Commissioner for taking Affidavits, etc.

Marie Elizabeth Wakefield, a Commissioner, etc.
Province of Ontario, for WeirFoulds LLP,
Barristers and Solicitors.
Expires October 24, 2016.


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[WRITERS](#)
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FAQs

May I submit songs to Sony/ATV for review?

I want to record and release a song that is owned/controlled in whole or in part by Sony/ATV Music Publishing? What steps must be taken to obtain the necessary mechanical license?

Where can I find copies of sheet music, song folios, arrangements, etc., of songs that are owned/controlled in whole or in part by Sony/ATV Music Publishing?

I am interested in acquiring a synchronization license for use of a song that is owned/controlled in whole or in part by Sony/ATV Music Publishing. What steps must be taken to request same?

Here are the suggestions if streaming sound files is not working in SATV:

For general copyright inquiries and for ringtone, karaoke, print and merchandise licensing, please contact: janet.baker@sonyatv.com.

For general administrative inquiries please contact Janet Baker at the following address: janet.baker@sonyatv.com.

May I submit songs to Sony/ATV for review?

We are currently only accepting material from our contracted writers or from legal or business representatives known to us; we are not permitted to review any songs or accept any packages that are submitted otherwise. It is not our intention to hinder or frustrate the creative process. There are legal reasons for strict adherence to this policy on our part which cannot be altered. So, thank you again for your interest, but permission cannot be extended at this time.

[back to top](#)

I want to record and release a song that is owned/controlled in whole or in part by Sony/ATV Music Publishing? What steps must be taken to obtain the necessary mechanical license?

Please contact our exclusive licensing agent, CMRRA (Canadian Musical Reproduction Rights Agency) at <http://www.cmrra.ca>. You will be advised accordingly.

[back to top](#)

Where can I find copies of sheet music, song folios, arrangements, etc., of songs that are owned/controlled in whole or in part by Sony/ATV Music Publishing?

Please contact our exclusive print agent, The Hal Leonard Company at <http://www.halleonard.com>.

[back to top](#)

I am interested in acquiring a synchronization license for use of a song that is owned/controlled in whole or in part by Sony/ATV Music Publishing. What steps must be taken to request same?

[Click here](#) to view and print our Synchronization Request form.

[back to top](#)

Here are the suggestions if streaming sound files is not working in SATV:

1. Enter the options of the media player and choose the tab "network" (right top):
 - o Make sure, that all of your 4 Checkboxes are checked (Multicast, UDP, TCP and HTTP)
 - o No proxy server should be used
2. Try to stream on some other PCs in your office and check, whether you got the same error-message

3. Talk to your network administrator whether the proxy allows to stream files on HTTPS **1-14**
4. De-install your current Windows-Media-Player completely and download the latest version from Microsoft at <http://www.microsoft.com/windows/windowsmedia/default.mspx>)
5. Point 1, should be repeated!

[back to top](#)

For general copyright inquiries and for ringtone, karaoke, print and merchandise licensing, please contact: [Janet Baker](#).

[back to top](#)

For general administrative inquiries please contact Janet Baker at the following address:
janet.baker@sonyatv.com.

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MUSIC SEARCH

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SEARCHING FOR

Song



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[Delta Machine](#)



[OneRepublic](#)
[Native](#)



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This is **Exhibit "2"** referred to in the Affidavit of
Terry Perusini sworn before me this 26th day of
August, 2015

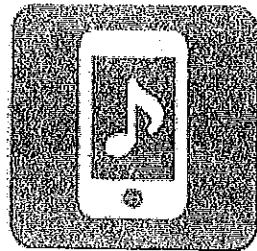
Marie Elizabeth Wakefield
A Commissioner for taking Affidavits, etc.

Marie Elizabeth Wakefield, a Commissioner, etc.,
Province of Ontario, for WeirFoulds LLP,
Barristers and Solicitors.
Expires October 24, 2016.



Need a Licence?

If you plan to offer products or services in Canada which contain songs which you don't own or control, you need to obtain permission to use those songs. Such permission is granted through different types of licences, and we're here to help you get through this process with a minimum of fuss.



Refer to the descriptions below to determine which type of licence(s) you require.

- » I am reproducing music on physical product(s), e.g. CDs, Vinyl, Cassettes, USB Keys

CMRRA issues mechanical licenses through two basic plans to individuals or companies reproducing music on physical product(s): "pay-as-you-press or import", or pursuant to the terms of the standard Mechanical Licensing Agreement. See which plan you qualify for below.

- **Limited Quantity Licensing (Pay-As-You-Press/Import):** If you are manufacturing or importing products in small quantities, or releasing sound recordings on a one-shot or limited basis, our Pay-As-You-Press/Import plan is the appropriate method of application for you. To obtain a "pay-as-you-press/import" licence, or for more detailed information about this plan, please [click here](#) or visit our Pay-As-You-Press Licensing FAQ.
- **The Mechanical Licensing Agreement:** if you are manufacturing or importing sound recording products on a continuing basis, we may require that you enter into CMRRA's standard Mechanical Licensing Agreement (MLA). Under the MLA, royalties are payable as products are sold on a quarterly basis. The MLA sets out standard terms and conditions related to licence application, royalty rates, sales and royalty reporting requirements, reserve accounting, promotional copies, deletes and, where applicable, the treatment of songs covered by controlled composition clauses. For more information regarding the MLA, please visit our Mechanical Licensing FAQ or contact our Independent Licensing Department.

► I am reproducing music for the purpose of online music distribution, e.g. permanent downloads, streaming, webcasting

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► I am a radio broadcaster

► I am a satellite radio broadcaster

► I offer a background music service in Canada

► I am reproducing music in audio-visual production

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The Pay-As-You-Press/Import Licence Application Process

Applying for a "pay-as-you-press/Import" licence is a multi-step process.

STEP 1: You must complete an Application for Mechanical Licensing Form for each song you intend to reproduce (or each song embodied on a product you intend to import).

STEP 2: You must complete the Mechanical Licensing Royalty Calculation Sheet, which summarizes the total amount payable for all the songs for which you are seeking licences. The total amount payable comprise the royalty fees, CMRRA's handling fee and the payment of all applicable taxes.

(i) First, royalties must be calculated based on (a) the standard mechanical royalty rate and (b) the total number of copies to be manufactured or imported, which must be reported on the Royalty Calculation Sheet.

Royalty Rate: the standard mechanical royalty rate in Canada is currently \$0.083 per song, per copy, where the running time of the recording is five minutes or less, plus \$0.0166 per copy for each additional minute or partial minute of running time.

Minimum number of copies: the minimum number of copies for which a mechanical licence will be issued is 500, whether or not you are pressing or importing a smaller number of copies.

Please note that a few publishers represented by CMRRA reserve the right to separately approve each application, and that their royalty rate may be higher than the current standard rate, in which case we will advise you of the additional amount to be paid. If a publisher refuses to authorize a licence, we will advise you and refund the amount in question.

(ii) Second, your application is subject to a nonrefundable Handling Fee of 6% of your total order or \$5.00; whichever is greater. This fee is necessary to cover printing, postage and other costs which are not met from the royalties alone. **120**

(iii) Third, if you are a Canadian* resident, your payment must also include the applicable taxes (HST for provinces where it is applicable, otherwise GST only for provinces with no HST).

*U.S. residents are exempt.

STEP 3: You must provide us with your royalty payment as calculated in Step 2 above. Payment may be made by way of certified cheque or money order. Where payment is made by cheque, your licence application will not be processed until your cheque has cleared. For the quickest service, pay by way of money order and provide us with the required copy of your pressing invoice at the same time.

Note on Refund Policy: if you make an application, and render payment, for a song in the public domain or not represented by CMRRA, the royalty portion of your payment for this song/share will be refunded immediately upon confirmation by CMRRA, but not the associated Handling Fee.

Important: Once a licence has been issued by CMRRA, we are unable to refund or credit any royalties for the song in question in the event you decide to not use it. It is thus critically important that you be certain of the song you wish to use before the licence is issued by CMRRA. If a licence has not been issued, and you have decided to not use the song in question, CMRRA will refund the royalty portion of your payment for this song, but not the associated Handling Fee.

STEP 4: You must provide us with a confirmation from your presser of the number of copies to be manufactured. This can take the form of a copy of your pressing order, the presser's invoice or a written confirmation from the presser of the number of copies to be manufactured. For imports, you will need to provide us with the customs manifest or other documentation confirming the number of copies to be imported.

Note that a pressing confirmation is not necessary where fewer than 200 copies are manufactured.

STEP 5: You must complete, sign and date the enclosed Pressing Information Waiver. While it is your responsibility as the licence applicant to provide us with the pressing documentation outlined above, we have found that this documentation is not always provided to us in a timely fashion. As such, it is necessary for CMRRA to be given the authorization to obtain this information directly from your presser to ensure prompt processing of your licences and of our publisher principals' royalties.

STEP 6: If you intend to create an adaptation or translation of an original work, or to use an adaptation or already existing translation, you need to obtain authorization. While CMRRA can grant mechanical licenses for the reproduction of musical works controlled by its publishers, the words and the melody used for your recording must correspond to those of the original musical work. In other words, a license can only be granted for a new arrangement of a work if no changes are brought to the fundamental structure, chords and/or lyrics of the composition. 121

With the exception of public domain works, any fundamental modifications made to a musical work must first be approved in writing by its publisher(s), and possibly its author(s), before CMRRA can grant a license for it. Please note that if a composition is owned by more than one publisher, all publishers must give their authorization before the adaptation can be recorded. Since any publisher can refuse to authorize an adaptation or translation, we recommend that you not record your version of the song before the appropriate rights are secured.

The responsibility to secure these rights is that of the adaptor, translator or eventual recipient of the license. In order to obtain these rights, you must contact the concerned publisher(s) directly. Generally, a publisher will require the following information to approve an adaption/translation of its work:

- The original title of the work used along with the name of its authors/composers;
- The new title given to the adaptation along with the names of the adaptors/translators;
- The original lyrics of the work being arranged;
- The new or translated lyrics of the adaptation;
- If the adaptation is in a language other than English, a literal English translation of the lyrics.

Once you have received the required approvals from the concerned publisher(s), CMRRA will be happy to issue the mechanical license(s) on behalf of the publisher(s) for your recording. **Please note that a copy of the signed agreement between you and the concerned publisher(s) will need to be included in your license application.**

If you wish to use an existing adaptation or translation of a musical work, you must send an application for mechanical licenses to CMRRA following the procedures outlined in the Instructions for Mechanical Licensing Application.

On the form entitled Application for Mechanical Licensing, you must include both the title of the original work and the adapted work as well as the name of the authors and composers of the original work and the name of the adaptors and/or translators.

If the adaptation is registered as authorized in our database, you will be granted a license. However, it may happen that the adaptation/translation you wish to use has never been properly authorized by the concerned parties. If this is the case, and you still wish to reproduce the arrangement, you will have to follow the steps outlined above under "Creation of an adaptation or translation of an original work." **122**

STEP 7: Mail all of the above (licence applications, payment, pressing invoice, as well as any other correspondence) to the following address:

CMRRA

Attention: Independent Licensing Department
56 Wellesley Street West, Suite 320
Toronto, Ontario
M5S 2S3.

In order to avoid any processing delays, please ensure that you have provided CMRRA the following necessary items:

- Application for Mechanical License form(s), one for each composition
- CMRRA Royalty Calculation Sheet, listing all compositions and amounts payable
- A cheque or money order in the amount payable (credit cards are not accepted)
- A copy of either your pressing order, invoice, or letter from the presser confirming the total number of units to be manufactured. CMRRA will not accept 'quotes'
- A completed copy of the Pressing Information Waiver

It is important to note that all of the items listed below must be supplied in order for CMRRA to process your application.

Where the ownership of the song you have applied for has already been confirmed and registered in our database, you can expect to receive your licences within three to six weeks. When you receive your licence, you will be required to sign and return one copy to CMRRA. Any errors should be brought to our attention immediately.

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Mechanical Licensing FAQ

General Licensing

► What is a mechanical licence?

A mechanical licence is the agreement by which permission to reproduce a musical work on a sound carrier is granted by the copyright owner or its representative. "Mechanical" refers to the reproduction of copyrighted music in a "contrivance" for the "mechanical reproduction of music." If this makes you think of music boxes, it's because it is, admittedly, somewhat outmoded language. Nevertheless, "mechanical licence" is the customary industry term for such permission.

Such a licence is extremely specific: it is limited to a particular musical work, as reproduced by the user on a particular product. The licence is also specific as to the catalogue number of the product, the playing time of the recording and the performer.

Note that mechanical licences are not issued per album but, rather, on a song-by-song basis. If a product contains 10 songs, you must obtain permission for each one. Also because the ownership of a copyright can be divided between more than one owner, licences are required from all owners before the work is fully licensed.

► Do I need a mechanical licence to import products in Canada?

Note that each country has its own mechanical licensing collective. The Mechanical Copyright Protection Society (MCPS) carries on business in the United Kingdom and issues licences for its territory, just as CMRRA does for Canada. Similarly, The Harry Fox Agency licenses for the territory of the United States. This is repeated throughout the world. If you plan to import products from another country, it is critical that you obtain mechanical licences from CMRRA as it is impossible for a foreign manufacturer to "clear" Canadian royalties unless it has entered into direct worldwide deals with the publishers involved. While possible, this is extremely rare.

The rule is simple: if you sell or distribute recordings in Canada, whether they were made here or elsewhere, they must be licensed in Canada and royalties must be paid in Canada.

» What happens if I don't apply for a mechanical licence?

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If you manufacture or import sound carriers which reproduce copyrighted songs without obtaining a mechanical licence for each song (either directly from the publisher or through CMRRA) then you have infringed the copyrights in question. Canada's copyright legislation provides for civil penalties and criminal prosecution for copyright infringement. If a product contains unlicensed music, it can be removed from the market by way of injunction. As well, anyone handling infringing merchandise is likewise guilty of infringement – including distributors, wholesalers and retailers. Copyright is the basis of the music industry. Without copyright protection, rightsholders would be unable to assure themselves of a reasonable return and the protection of law for their products. If you manufacture or import sound carriers into Canada, you must obtain licences. It's the law.

» How do I apply for a mechanical licence?

You must apply for a mechanical licence(s) for your product before you manufacture or import it. CMRRA issues mechanical licences through two basic plans: either "pay-as-you-press/ import", or pursuant to the terms of the standard Mechanical Licensing Agreement. You'll find information on both of these plans in the Need a License? section of our website.

» How much does it cost to obtain a mechanical licence?

CMRRA currently issues mechanical licences on the basis of 8.3 cents per song, per copy manufactured, where the playing time is five minutes or less. For each additional minute (or part thereof) 1.66 cents is added to the rate. Note however that a small number of publishers represented by CMRRA do not participate in the industry agreement and charge a higher-than-standard royalty rate.

This royalty rate is applicable only to reproduction of musical works embodied in audio-only sound recordings, such as CDs, cassettes and vinyl recordings. The royalty rate for the reproduction of musical works embodied in any other merchandise, such as toys, games, or any other special product is subject to individual negotiation.

If you are applying for a licence under CMRRA's "pay-as-you-press" plan, your application will be subject to an additional handling fee. Please refer to our Pay-As-You-Press Licensing FAQ for more information in this regard.

If you have entered into CMRRA's standard Mechanical Licensing Agreement, you may be entitled to a discount on the royalty rate above for budget recordings and musical works subject to controlled composition clauses. Please refer to the provisions of the agreement or contact us for assistance in this regard.

» Are all the songs listed on your database represented by CMRRA?

No. Whenever a song is indicated as "not represented" in our database, it means that, while we have logged information such as the title, composer and/or publisher of the song, we do not represent the owner of that song for mechanical licensing purposes. There are many instances where the ownership of a song is divided between two or more publishers, and CMRRA may represent some, but not all, of those publishers. In these instances, we are able to issue licences on behalf of the publishers we represent, but before the user can legally reproduce the song in question, he or she must also obtain licences directly from the copyright owners that are not represented by CMRRA.

» How do I know if CMRRA represents the songs that I want to license?

We invite you to search our song database. It's free to use and does not carry any obligation of affiliation. After accepting the terms of use, you may then carry out song searches either by song title or by writer name.

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The web site will offer you a list of potential titles based on the information that you enter. Please select the most relevant title; details will be available on the next screen that will indicate whether or not CMRRA represents shares of the song.

If you cannot find a specific title, or if you don't know the names of the composer(s), we suggest that you send in a licence application to CMRRA, providing as many details as possible about the song (e.g. Title / composer / publisher / artist who performed the title). We will then be able to research the song and, if necessary, carry out verifications with our affiliated publishers. If ultimately we do not represent the song, we will refund the amount of the royalty payment to you. If you still wish to use a song that we do not represent, it is your responsibility to obtain a licence directly from the copyright owner.

► Which songs are represented by CMRRA?

CMRRA's online database contains more than two million songs and is an excellent source of information regarding compositions written and published by copyright owners located all over the world. While we do our best to ensure that all information concerning those compositions is accurate and up-to-date, song and catalogue ownership can change hands frequently and, as a result, the information may need to be verified with the publisher(s) in question. It is also possible that the song you are looking for is not listed in our online database. This does not mean that the composition is not represented by CMRRA but it does indicate that we will have to verify its ownership with the publisher(s) concerned if that publisher is represented by CMRRA.

The process of verifying song ownerships with our publishers may take a few days to many months and we cannot issue a license until this confirmation has been obtained. It may also happen on occasion that a copyright owner cannot be identified or located. If that's the case with the composition you wish to use, CMRRA will refund the royalties to you after we have exhausted all possible avenues of research. At that point, if you can demonstrate that all reasonable efforts to locate the copyright owner have been made, you may then submit your license application to the Copyright Board of Canada pursuant to Section 70.7 of the Copyright Act. If you make applications to CMRRA for any songs which are in the public domain, or not represented by CMRRA, your payment for those songs will be refunded promptly (excluding the associated handling fees). In order to avoid submitting license applications and making a payment of royalties and handling fees for songs not represented by CMRRA, we invite you to research CMRRA's Song Database and Affiliated Publisher list in advance.

► How do I locate the music publisher?

There are, literally, tens of thousands of music publishers, ranging from multi-national organizations to individual songwriters with very small catalogues. Finding a particular one can be time-consuming. For this reason, music publishers have formed larger bodies to centralize and standardize the process of licensing and collecting royalties. One such organization is CMRRA.

CMRRA represents the majority of music publishers doing business in Canada and can generally issue most of the mechanical licences you'll need for your product. You can perform a search of CMRRA's affiliated publishers here.

In some cases, however, there may be songs (or portions of songs) that we do not represent. In those cases, it's your responsibility to obtain licences for the missing shares. There are a number of online resources available to locate

copyright owners. The following organizations each have searchable online databases that we have found to be helpful in this regard:

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<http://www.ascap.com/>
<http://www.bmi.com/>
<http://www.sesac.com/>
<http://www.sodrac.ca/>

► What about the master recording?

Every recording of a copyrighted composition actually represents a blend of two copyrights: first, the copyright in the musical work itself, which is represented by the music publisher, and second, the recording of the musical work, which is usually owned by the record producer or record company involved. If you are the producer of the original sound recording, it is likely you own the copyright in the master recording. However, if you plan to reproduce a master owned by another party, you must obtain the permission of the owner of that recording, in addition to the necessary mechanical licences. Both copyrights must be properly licensed: the penalties for infringement of the master recordings are as serious as those for infringement of the song.

► How do I get permission to use a master recording?

CMRRA does not represent the owners of master recordings and cannot obtain licences for you in this regard. For further information on master recordings please contact the following organizations:

<http://www.musiccanada.com/>
<http://www.avla.ca/>
<http://www.cimamusic.ca/>
<http://www.adisq.com/>

► I want to sample a recording and use it in my song. Do I have to pay?

Yes. In order to legally make use of songs and recordings you do not own or control, and which have been sampled in your recording, you must obtain the consent of the owners of the copyright in each of those songs, as well as the consent of the owners of each of the recordings you have used.

We suggest you start by contacting the record company that released the recording(s) you wish to sample in order to obtain a 'master rights' license. Once you have obtained the master rights licence, you must then obtain the music publisher's permission to sample the musical work. You may contact the publisher directly but providing a letter explaining your project and a copy of the master rights licence. Your letter should include:

- a) the title of the musical work
- b) a description of the use, i.e. how long the sample is
- c) how many times it is used
- d) duration of the sample
- e) where it appears in your recording and which other songs are being used in your recording
- f) any other pertinent information

Most music publishers and record companies are willing to license sample usage, but their terms and conditions can vary widely. Clearing samples can be a time-consuming process, so it is best to allow yourself ample time to complete the necessary licensing. If permission is granted, you will then need to submit a mechanical licence application pursuant to CMRRA's "Pay-As-You-Press" method, including a copy of the publishers' authorization.

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» Do I need to apply for a licence to record my own song?

If you are the sole copyright owner of the musical work, and have not assigned your rights to a music publisher or third party, you do not need to apply to CMRRA or a licence, nor pay mechanical royalties for the use of your own song. This is true even if you, as a copyright owner, are represented by CMRRA.

However, if you do not own or administer the 100% of the copyright in the song, you will need to obtain a licence for the share(s) you don't control.

» Can I change the lyrics to a song, or use the music alone and add my own words?

While CMRRA can grant mechanical licenses for the reproduction of musical works controlled by its publishers, the words and the melody used for your recording must correspond to those of the original musical work. In other words, a license can only be granted for a new arrangement of a work if no changes are brought to the fundamental structure, chords and/or lyrics of the composition.

With the exception of public domain works, any fundamental modifications made to a musical work must first be approved in writing by its publisher(s), and possibly its author(s), before CMRRA can grant a license for it. Please note that if a composition is owned by more than one publisher, all publishers must give their authorization before the adaptation can be recorded. Since any publisher can refuse to authorize an adaptation or translation, we recommend that you not record your version of the song before the appropriate rights are secured.

The responsibility to secure these rights is that of the adaptor, translator or eventual recipient of the license. In order to obtain these rights, you must contact the concerned publisher(s) directly. Generally, a publisher will require the following information to approve an adaption/translation of its work:

- The original title of the work used along with the name of its authors/composers;
- The new title given to the adaptation along with the names of the adaptors/translators;
- The original lyrics of the work being arranged;
- The new or translated lyrics of the adaptation;
- If the adaptation is in a language other than English, a literal English translation of the lyrics.

Once you have received the required approvals from the concerned publisher(s), CMRRA will be happy to issue the mechanical license(s) on behalf of the publisher(s) for your recording. Please note that a copy of the signed agreement between you and the concerned publisher(s) will need to be included in your license application.

Use of an already existing adaptation or translation:

If you wish to use an existing adaptation or translation of a musical work, you must send an application for mechanical licences to CMRRA following the procedures outlined in the Instructions for Mechanical Licensing Application. On the form entitled Application for Mechanical Licensing, you must include both the title of the original work and the adapted work as well as the name of the authors and composers of the original work and the name of the adaptors and/or translators.

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If the adaptation is registered as authorized in our database, you will be granted a license. However, it may happen that the adaptation/translation you wish to use has never been properly authorized by the concerned parties. If this is the case, and you still wish to reproduce the arrangement, you will have to follow the steps outlined above under "Creation of an adaptation or translation of an original work."

Cross-border Licensing

- » I'm pressing my CD in the U.S. but will distribute copies in Canada. Can CMRRA issue licences?

Yes, CMRRA issues licences for the sale or other distribution of audio products in Canada. If copies are pressed in the U.S. and some or all of the units are shipped to Canada, you will need to obtain a licence from CMRRA and pay royalties on those copies imported in Canada.

For the licensing of small quantities, you will need to apply for a licence under CMRRA's "pay-as-you-press/import" plan, and you will need to supply us with a cross-border confirmation instead of a pressing order.

- » I'm pressing my CD in Canada but don't reside in Canada. Can CMRRA issue licences?

To the extent the copies manufactured in Canada will also be sold or otherwise distributed in Canada, CMRRA can issue licences for your product. However, if you are manufacturing in Canada but exporting copies for distribution in the US or any other territory, CMRRA will not be able to license the copies exported outside Canada.

For the licensing of small quantities, you will need to apply for a licence under CMRRA's "pay-as-you-press/import" plan, and you will need to supply us with a cross-border confirmation instead of a pressing order.

- » I'm pressing my CD in Canada but want to export copies to another country? Can CMRRA issue licences?

CMRRA can only issue licences for the copies that remain for sale or other distribution in Canada. You will need to seek licences for the exported units from the licensing collective in the country of destination.

Pay-As-You-Press/Import Licensing

- » What is a "pay-as-you-press/import" licence?

A "pay-as-you-press/import" licence is a type of mechanical licence issued by CMRRA for licensees who only occasionally manufacture or import products in Canada or who do so in small quantities. Royalties for this type of licence must be paid in advance, along with the submission of the licence application, and is limited to the number of units manufactured/imported and paid for.

► Can I pay royalties quarterly based on my sales?

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No. The pay-as-you-press system is specifically designed for licensees who occasionally manufacture or import products, or do so in small quantities. It is not economical for CMRRA to process small amounts of royalties on a quarterly basis as products are sold. As such, we require that payment be made upfront to minimize the administrative work associated with quarterly accounting.

Labels who are licensed under the Mechanical Licensing Agreement can report royalties to CMRRA on a quarterly basis as products are sold. However, they are also required to keep track of, and process, any change in the ownership of the musical works they have used in order to produce accurate royalty statements each quarter. This task in itself can be quite time consuming for them, and if not done properly, will lead to additional administrative costs and efforts to make the appropriate corrections. For most small licensees, this administrative burden is just not worth it, and the "pay-as-you-press" plan is the best option to meet their licensing obligations.

Also, note that our "pay-as-you-press" licences are only valid for the number of units manufactured and paid for. In the event you are manufacturing additional copies, you need to apply for new licences for those additional units.

► What if I apply for licence, but the song is not represented by CMRRA?

If you have submitted a licence application and royalty payment for a song that CMRRA does not represent, we will issue a refund cheque to you once we have processed your application. Please note that CMRRA will only refund the royalties you have paid, and not the administration fee charged to process your application.

► What is a pressing order? Why is it required?

A pressing order is a document sent by you to the manufacturer that confirms the number of units of your product that will be pressed. CMRRA requires this documentation to ensure you are paying royalties on all copies manufactured. In the alternative, you can also submit your pressing invoice, which would serve the same purpose. Note that we cannot accept a quote in lieu of a pressing order.

If you are manufacturing the product yourself, please submit a signed and dated written statement detailing the number of units manufactured.

► Can the manufacturer start pressing my product as soon as I send my royalty payment to CMRRA?

No. A licence must be issued to you before your product can be manufactured. The fact that you have sent CMRRA a licence application and a royalty payment does not mean that we will be able to issue the licence you need for your project.

► The manufacturer tells me that it cannot press my product until I have my licences, and CMRRA tells me that it cannot issue licences without a pressing order. How does this work?

The pressing order is a document you must submit to the manufacturer to place your order for a certain number of units. The manufacturer can (and should) put your order on hold until such time as your licence has been issued. We require that you submit a copy of this pressing order along with your licence application and royalty payment. Once the licence has been issued, you'll be able to return to the manufacturer and get your order processed.

► How long can the licensing process take?

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Where the ownership of the song you have applied for has already been registered with CMRRA by the copyright owner, you can expect to receive your licence within a 3 to 6 week period. This is highly dependent on the volume of applications received by CMRRA at any given time, and seasonality. Spring and the period leading to Christmas are generally very busy times for us. We find that we w

If the ownership of the song has not been registered with CMRRA by the copyright owner, it could take many more weeks or months before we are able to issue the licence. While we will endeavour to identify the copyright owner(s) and seek the required copyright registration from him or her, we cannot guarantee that we will receive this documentation in a timely fashion. The licence will be issued as soon as we've received the registration. In the event we find out that the song or copyright owner is ultimately not represented by CMRRA, we will let you know and you will need to obtain your licence directly.

► What's the methods of payment?

Payment can be made to CMRRA by way of:

- 1) cheque (where payment is made by cheque, your licence application will not be processed until your cheque has been cashed – usually one week from receipt).
- 2) certified cheque or
- 3) money order

For the quickest service, pay by way of certified cheque or money order and provide us with the required copy of your pressing order/invoice at the same time.

► What's your refund policy?

CMRRA's refund policy will be applied based on the following two criteria:

Where a licence has already been issued:

Once your licence has been issued, CMRRA cannot to refund or credit any royalties for the song in question in the event you decide to not use it. It is very important that you are certain of the songs you wish to use before the licensing process is completed.

Where a licence has not yet been issued:

If a licence has not been issued, and you have decided to not use the song in question, CMRRA will refund the royalty portion of your payment for this song. Note that the Handling Fee will not be refunded to you.

► I obtained a licence for a previous pressing of my CD. Do I need a licence for subsequent pressings?

Yes. The "pay-as-you-press" licence issued to you by CMRRA is limited to the number of units you manufactured and paid for. If you intend to manufacture in excess of the number of units specified on your licence, you need to obtain a new licence.

► I misplaced/lost my licence, how can I get another copy?

If you have misplaced or lost your licence, you can submit a request for a reprint by filling out the Mechanical License Reprinting Form. There is a fee of \$20 per request, plus the applicable taxes (HST for provinces where it is applicable, otherwise GST only for provinces with no HST). U.S. residents are exempt.

► Can CMRRA send copies of my application/royalty payment/licences to my presser?

No. It is the applicant's responsibility to retain copies of his or her application forms, royalty payment and licences for this purpose. CMRRA does not forward copies of licences or other documents to anyone but the applicant.

► I want to manufacture a small number of CD's for a promotional giveaway or a charitable organization. Do I still have to pay royalties?

Yes, CMRRA does not issue gratis licences on behalf of its music publisher clients. All reproductions of a musical work must be licensed, at the applicable royalty rate, no matter what purpose they will serve or the number of copies being pressed.

► I want to make a demo CD. Do I have to obtain licences and pay royalties?

Yes. You must obtain licences for the musical works reproduced in your demo. You will be required to obtain licences using our "pay-as-you-press" plan. Our licences will authorize you to manufacture up to the number of units you paid for, with a minimum of 500 units.

► How do I license a medley? Why are the individual songs in the medley licensed separately?

The musical works in a medley are equally valued by the music publishers who own them and each one is individually licensed at the same royalty rate as non-medley works. We treat each one as though they are separate and independent songs on your product.

As such, we require a separate licence application for each song, with an indication that the song is used as part of a medley. When specifying the duration of the song, please indicate only the duration for that particular portion of the medley - and not the duration of the entire medley.

► Can publishers demand a higher royalty rate than the standard rate outlined in CMRRA's documentation?

Yes, but very few of the publishers represented by CMRRA do. We'll let you know if your licence application is subject to a higher royalty rate once we've had the opportunity to review it.

► Has the royalty rate changed since my initial pressing?

The mechanical royalty rate has increased periodically since 1988. Please refer to the table below for information on the applicable royalty rate for a given year.

The values below are stated in cents (\$C) as the minimum rate for recordings with a running time of five minutes or less and the added rate per minute or partial minute of running time:

June 22, 1988 to September 30th 1989

5.25/1.25

134

October 1st 1989 to December 31, 1991

5.9/1.18

1992-93:

6.25/1.25

1994-95:

6.47/1.30

1996-97:

6.7/1.34

1998-99:

7.1/1.42

2000-01:

7.4/1.48

2002-03:

7.7/1.54

2004-05:

8.5/1.70

2006-07:

7.7/1.54

2008-09:

8.1/1.62

2010-12:

8.3/1.66

Where a "pay-as-you-press" license has been earlier issued to you at a lower rate, you will be obliged, as the rates increase from time to time, to pay the new, higher rates should you need to press further copies of your recording.

► I want to include a song on my product that was written more than 50 years ago. Is it in the public domain?

Not necessarily. In Canada, a musical work will fall in the public domain starting on January 1st of the year following a fifty year period after the death of the last surviving author. For instance, if the last surviving author died on say, July 15, 1940, the work will enter the public domain on January 1, 1991.

So, the process is a matter of finding out when the author(s) died. Of course, if the author is still alive then the work is protected by copyright and needs to be licensed.

Likewise, note that there are many copyrighted arrangements of public domain works that also need to be licensed when reproduced. If a song is in the public domain, and you're reproducing your own arrangement, you do not require a licence and you don't need to pay royalties.

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3

This is **Exhibit "3"** referred to in the Affidavit of
Terry Perusini sworn before me this 26th day of
August, 2015

Marie Elizabeth Wakefield

A Commissioner for taking Affidavits, etc.

Marie Elizabeth Wakefield, a Commissioner, etc.,
Province of Ontario, for WeirFoulds LLP,
Barristers and Solicitors.
Expires October 24, 2016.

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May 30, 2014

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Mr. Frey and Mr. Perusini:

Re: Sound Recordings in Canada

Introduction

We have been retained to provide you with an opinion with respect to four (4) questions related to the law on sound recordings in Canada. Specifically, we have been asked to provide an opinion based on the following issues:

- (1) whether sound recordings published in Canada fall into the public domain in the calendar year following the 50th year after original publication;
- (2) that first publication in Canada is not limited to sound recordings *manufactured* in Canada, and that “publication” also includes legitimate sound recordings that are *imported* for sale in Canada;
- (3) whether a corporation may seek to manufacture (but not sell) compact discs (i.e. sound recordings) outside of Canada with the intent to import such products for sale within Canada; and
- (4) what, if any, copyright implications exist where an original release sound recording (i.e. in vinyl record format) is enhanced for release as a sound recording in compact disc format?

We have not provided an opinion with respect to any particular sound recording, or with respect to whether any copyright that exists in a country other than Canada would be contravened by the manufacture of compact discs in that country. We have also not provided an opinion related to

any other intellectual property rights that may exist or with respect to the payment of royalties or license fees to collective societies or other third parties.

Brief Conclusions

- (1) Where a sound recording is published (i.e. where copies are made available to the public) before the copyright expires, the copyright continues until the end of 50 years after the end of the calendar year in which the first publication of the sound recording occurs. It is important to note, however, that pursuant to subsection 23(1.1) of the *Copyright Act* (the “Act”), the term of copyright in sound recordings will first begin when fixation of the sound recording occurs.¹ If that sound recording is subsequently published (before the copyright resulting from fixation expires), the term of copyright is essentially extended for another 50 years after the end of the calendar year in which the first publication of the sound recording occurs. As such, any determination as to the term of copyright in a sound recording must consider when, and if, publication of the sound recording has occurred.
- (2) The first publication in Canada will not be limited to sound recordings *manufactured* in (and made available to the public in) Canada. “Publication” of a sound recording will be established, even for sound recordings that are *imported* for sale in Canada, as long as the Publication requirement is met (described in more detail below under Section “A”, “*General Background: the Law on Sound Recordings*”). As such, we do not believe that the term of copyright would begin simply upon importation of the sound recording into Canada as opposed to the date of publication, as long as publication occurred in a Berne Convention country, a Rome Convention country, or a country that is a WTO member.
- (3) There is no reason from a copyright perspective that a corporation cannot manufacture (but not sell) sound recordings outside of Canada with the intent to import such products for sale within Canada. However, manufacturing outside of Canada and then importing into Canada for the purpose of selling or distributing a sound recording that is known to infringe any existing Canadian copyright will constitute copyright infringement. It should also be noted that copyright will attach to any new sound recording (regardless of whether it is manufactured outside of, and then imported into, Canada) if the requirements for obtaining such copyright are met according to Canadian copyright law. In coming to this conclusion, we have not opined on or considered any foreign laws, such as whether foreign copyright would be contravened in the country of manufacture.
- (4) There are copyright implications for original release sound recordings (i.e. in vinyl record format) that are enhanced and fixed in compact disc format. The requirement for “originality” under copyright law suggests that the skill and judgment required to successfully mechanically reproduce the enhanced sounds (i.e. the selection of the specific sounds to be included, the treatment given to them, such as the arrangement or filtering of static or other background noise) will arguably suffice to create an “original” work under Canadian copyright law. Therefore, since fresh copyright likely exists in the “enhanced”

¹ Section 23(1.1) states that copyright subsists until the end of 50 years after the end of the calendar year in which the first fixation of the sound recording occurs.

sound recording, reproductions should, if and when possible, be made from the original release vinyl record format so as to minimize the potential for any infringement allegation if the copyright in the “enhanced” sound recording has not also expired.

There is very limited case law interpreting the various provisions of the Act relating to sound recordings, particularly those provisions that are the subject of this opinion. As such, our opinion is based on the sections of the Act themselves, and commentary where available. Therefore, it may be necessary to reassess our opinion if the Court considers these sections in the future.

Analysis

A. General Background: the Law on Sound Recordings

A “sound recording” is defined by the Act as meaning “a recording, fixed in any material form, consisting of sounds, whether or not of a performance of a work, but excludes any soundtrack of a cinematographic work where it accompanies the cinematographic work.”²

“Copyright” in relation to a work includes the sole right, in the case of a musical work, to make any sound recording (and to authorize such act) by means of which the work may be mechanically reproduced or performed.³

Section 18 of the Act sets out the rights associated with sound recordings. The maker⁴ of a sound recording has copyright in the sound recording, consisting of the sole right to do the following (and to authorize any of the following) in relation to the sound recording or any substantial part thereof:

- i. publish it for the first time (i.e. “publication” includes making of copies of a sound recording available to the public, but not through the “communication to the public by telecommunication”);⁵
- ii. reproduce it in any material form;
- iii. rent it out;
- iv. make it available to the public by telecommunication⁶ in a way that allows a member of the public to have access to it from a place and at a time individually chosen by that

² *Copyright Act*, R.S.C. 1985, as am., s. 2 [hereinafter the “Act”].

³ *Ibid.*, s. 3(1).

⁴ A “maker” is defined as the person by whom the arrangements necessary for the first fixation of the sounds are undertaken. A further definition of “maker” is found at s. 2.11, which states that, “For greater certainty, the arrangements referred to in paragraph (b) of the definition “maker” in section 2, as the term is used in section 19 and in the definition “eligible maker” in section 79, include arrangements for entering into contracts with performers, financial arrangements and technical arrangements required for the first fixation of the sounds for a sound recording.”

⁵ For further clarification of the right to “communicate to the public by telecommunication”, see footnote 6, below.

⁶ “Communication to the public by telecommunication” is known as the “making available right”. This concept was introduced through the *Copyright Modernization Act* and proclaimed into force on November 7, 2012 (see s. 2.4(1.1)). Its applicability and enforceability is currently before the Copyright Board, and inevitably, the courts. It has

member of the public and to communicate it to the public by telecommunication in that way; and

- v. if it is in the form of a tangible object, to sell or otherwise transfer ownership of the tangible object, as long as that ownership has never previously been transferred in or outside Canada with the authorization of the owner of the copyright in the sound recording.

Subsection 18(2) also provides “conditions” for copyright in sound recordings. For the rights enumerated under section 18(1) to be available to the maker of a sound recording, namely the sole right to publish it for the first time, reproduce it in any material form, or rent it out (and to authorize any such acts), one of the following factors must be satisfied:

- (1) **Citizenship requirements:** the “maker” of the sound recording was a Canadian citizen or permanent resident of Canada, or a citizen or permanent resident of a Berne Convention country, a Rome Convention country, or a country that is a WTO member, or had its headquarters in one of those countries, in the case of a corporation, at the date of the first fixation (the “Citizenship requirement”); or
- (2) **Publication requirement:** the first publication of the sound recording in such a quantity as to satisfy the reasonable demands of the public occurred in any country referred to above, in paragraph (1) (the “Publication requirement”).

Subsection 18(2.1) provides further “conditions” in relation to the rights conferred under subsection 18(1.1), which constitute the sole right to make the sound recording available to the public by telecommunication and to first sell or otherwise transfer ownership of the tangible object in or outside Canada. These conditions are virtually identical to the Citizenship requirement and Publication requirement outlined in subsection 18(2) and described above.

Therefore, copyright will have attached to a sound recording if one of the Citizenship or Publication requirements is met. The maker would have the sole right to, among other things, reproduce the sound recording in any material form.

been argued that the introduction of s. 2.4(1.1) (i.e. the “making available right”) overrules the recent decision of the Supreme Court in *ESA v. SOCAN* in 2012, where it was held that a “download” was not a “communication to the public”. New proceedings have been undertaken by the Copyright Board to clarify the “making available right” and a decision is forthcoming. While this is all being interpreted in the context of online musical works, it will have an impact on how the “making available right” will be interpreted in the context of sound recordings, as well.

B. Term of Protection

You have asked us to consider whether sound recordings published in Canada fall into the public domain in the calendar year following the 50th year after original publication.

(i) 50 Years from First Fixation (if Unpublished)

Section 23 of the Act, as recently amended by the *Copyright Modernization Act*, provides that copyright in a sound recording subsists until the end of 50 years after the end of the calendar year in which the first fixation of the sound recording occurs.

The date of fixation must be determined factually. The act of fixation refers to the commercial activity of settling the final version of the record or sound recording, which is typically carried out by a record company.⁷

(ii) 50 Years from First Publication (if Published)

However, if the sound recording is published (i.e. where copies are made available to the public)⁸ before the copyright resulting from fixation expires, the copyright continues until the end of 50 years after the end of the calendar year in which the first publication of the sound recording occurs. This amendment to section 23 applies whether the fixation occurred before or after the coming into force of the amended section 23 (on November 7, 2012).

⁷ David Vaver, *Intellectual Property Law*, 2d ed. (Toronto: Irwin Law, 2011) at 141.

⁸ It should be noted that, under subsections 2.2(1.1) and 23(1.1) of the Act, the term "publication" is defined as "making copies of a sound recording available to the public". Subsections 18(2)(b) and 18(2.1)(b) also contain reference to the concept of "first publication". Under these subsections, however, first publication of the sound recording is only achieved when the sound recording is published "in such a quantity as to satisfy the reasonable demands of the public", which appears to be a higher threshold than the meaning of "publication" found elsewhere in the Act in relation to sound recordings. It is our opinion that any apparent discrepancy can be reconciled, however, on the basis that the provisions under section 18 are with respect to the "conditions" for obtaining copyright (i.e. if fixation has occurred in a country other than those listed under section 18, or if publication occurs in one of those countries, that the publication must be in such a quantity as to satisfy the reasonable demands of the public). In order to meet the threshold for "publication" with respect to subsection 23(1.1), which corresponds to the "term" of copyright in sound recordings, the sound recording must only be "made available to the public" – arguably a lower threshold as compared to the meaning of "first publication" under section 18.

There has been no judicial consideration as to what constitutes the "reasonable demands of the public", and it is therefore a term that remains to be construed by the courts. We have conducted a search of relevant *Hansard* papers (i.e. Parliamentary debates), evidence from Parliamentary committee meetings, white papers, and Regulatory Impact Analysis Statements ("RIAS") that discuss subsections 18(2)(b) and 18(2.1)(b), which provided no further clarity.

It is our opinion that the term of copyright is the same for sound recordings made prior to the coming into force of the various amendments of the Act.⁹ As a result, it is our opinion that the above terms of protection apply in respect of sound recordings published fifty (50) years ago.

C. “Publication” of Sound Recordings

You have asked us to confirm that first “publication” in Canada is not limited to sound recordings *manufactured* in Canada, and that “publication” also includes legitimate sound recordings that are *imported* for sale in Canada. Note that our opinion is based on Canadian law only, and we are not able to opine on the potential applicability of foreign laws.

In relation to sound recordings, the Act defines “publication” to mean the making of copies of a sound recording available to the public (but does not include the performance in public, or the communication to the public by telecommunication of a sound recording).

Subsections 18(2) and (2.1) of the Act outline the current “conditions” for a maker of a sound recording to have copyright in sound recordings. In view of these provisions, a sound recording attracts copyright protection if one of these conditions is met: First, its maker must have been a citizen or permanent resident of Canada or a citizen or permanent resident of a Berne Convention country, a Rome Convention country, or a country that is a WTO member when the record was first fixed. Alternatively, if the maker is a corporation, the corporation’s headquarters must have been in Canada or a Berne/Rome Convention or WTO member country when the record was first fixed. Lastly, if neither of these conditions is met, the sound recording is protected if it was first published in Canada or a Berne/Rome Convention or WTO member country in such a quantity as to satisfy reasonable public demand.¹⁰

As a result of subsections 18(2) and (2.1), first “publication” in Canada does not appear limited to sound recordings *manufactured* in and made available to the public in Canada, but requires only that “publication” occur in any of the countries referred to in the Act, namely Berne and Rome Convention countries, or WTO member countries. A sound recording that was previously published in a Berne/Rome Convention or WTO member country, and subsequently imported for sale into Canada, is recognized as being already “published” under Canadian copyright law. A sound recording that is manufactured outside of Canada, but imported into Canada and first published in Canada, is considered “published” when the sound recording is first made publicly available, with the copyright owner’s authority.

⁹ These include amendments to the Act in 1994 (S.C. 1993, c. 44, ss. 60), 1997 (S.C. 1997, c. 24, s. 8, 14, 55) and 2012 (R.S.C. 2012, c. 20, s. 17).

¹⁰ See discussion of “reasonable demands of the public” at footnote 8, *supra*.

D. Importation of Sound Recordings into Canada for Sale in Canada

We have also been asked to consider whether a corporation may seek to manufacture (but not sell) compact discs outside of Canada with the intent to import such products for sale within Canada. We have made the assumption that the question also relates to whether new copyright is created (in the new sound recording). Again, our opinion is based on Canadian law only, and does not consider the potential applicability of foreign laws.

The "Maker" of a Sound Recording

The first copyright owner (i.e. the "maker") in a sound recording is whoever undertook the arrangements necessary to first fix the sounds. Rights under subsection 18(1) are available to maker of the sound recording who is a citizen or permanent resident of Canada, or a Berne Convention country, a Rome Convention country or a country that is a WTO member, or, if a corporation, has its headquarters in one of the foregoing countries. Therefore, by virtue of the Act and Canada's international obligations under the Act, a maker of a sound recording will be a valid copyright holder in that sound recording, even if it is manufactured outside of Canada. The Act only requires that the maker of the sound recording to be a Canadian citizen or permanent resident, or a citizen or permanent resident of one of the above-noted countries (or a corporation with its headquarters in one of those countries) at the date of first fixation or publication.

The Rights to Distribution, etc.

Copyright in sound recordings includes the right to first distribution, reproduction and authorization of such rights, as well as rights over unauthorized distribution or importation of sound recordings. The right of first distribution includes the power to decide whether to distribute the work at all and, if so, *when, where, and in what form the distribution will occur*.

Note: Infringement for Importation of Copyright-Protected Works

It should also be noted that the Act specifically deals with infringement in the context of importation of sound recordings. According to section 27(2) of the Act, it is an infringement of copyright for any person to import into Canada for the purpose of selling or distributing (to the prejudice of the copyright owner) by way of trade a sound recording that the person knows or should have known infringes copyright or would infringe copyright if it had been made in Canada by the person who made it. While it is our understanding that you are not proposing to reproduce sound recordings that are still protected by copyright, it should nevertheless be recognized that the importation and/or possession of known copyright-protected material could constitute an infringement of copyright.

Conclusion

There does not appear to be any limitation in the Act that requires a sound recording to be manufactured in Canada, if it will ultimately be imported into and sold in Canada. On the contrary, where a sound recording is manufactured outside of Canada (i.e. where it is first fixed or published in a Berne Convention country, a Rome Convention country or a country that is a WTO

member), that sound recording will be the proper and lawful subject of copyright in Canada. Such a sound recording will entitle the "maker" to all of the rights enumerated at subsections 18(1) and (1.1) of the Act, which include the ability to publish, reproduce, make available to the public by telecommunication, sell, and to authorize such acts.

Therefore, under Canadian copyright law, it is our opinion that a corporation may seek to manufacture (but not sell) sound recordings outside Canada, with the intent to import such products for sale within Canada, as long as the corporation had its headquarters in one of the above-noted countries at the date of fixation or first publication, and obtain Canadian copyright in the sound recording, assuming the other criteria for copyright are met, such as originality. This is based only on the opinion that there is nothing from a Canadian copyright perspective (apart from the application of the Citizenship or Publication requirements noted above under Section "A") preventing a corporation from manufacturing sound recordings outside Canada, with the intent to import such products for sale within Canada.

Seeking to manufacture sound recordings outside of Canada, however, will not avoid any potential copyright infringement of existing Canadian copyright, if the sound recording is to be ultimately imported for sale in Canada.¹¹ Similarly, if the concern is whether or not new copyright is created in the sound recordings that are generated by you, *where* the sound recording is manufactured is immaterial to the acquisition of enforceable copyright, subject only to the requirement that it is manufactured in a Berne Convention country, a Rome Convention country, or in a country that is a WTO member.

E. Enhancing an Original Release Sound Recording

Lastly, we have been asked to consider what, if any, copyright implications exist where an original release sound recording (i.e. a sound recording in vinyl record format) is enhanced for release as a sound recording in compact disc format. Therefore, we have prepared our review based on the situation where the choice is between reproducing music from either:

- a. an original release vinyl record, or
- b. an enhanced compact disc format of the original release vinyl record.

Originality

Originality is an important requirement of copyright law. The Act provides that copyright shall subsist in every "original" literary, dramatic, musical and artistic work (subject to certain requirements relating to citizenship or residency).

The Supreme Court has held that for a work to be "original" within the meaning of the Act, it must be more than a mere copy of another work. At the same time, it need not be creative, in the sense of being novel or unique. What is required to attract copyright protection is the exercise of skill and judgment. Skill requires the use of one's knowledge, developed aptitude or practiced

¹¹ See discussion in respect of s. 27(2), above.

ability in producing the work. Judgment requires the use of one's capacity for discernment or ability to form an opinion or evaluation by comparing different possible options in producing the work. The exercise of skill and judgment, however, must not be so trivial that it could be characterized as a purely mechanical exercise.¹²

A work which is substantially derived from pre-existing material will be the proper subject-matter of copyright if sufficient labour and skill have been invested. It has been suggested that, for works such as sound recordings, the requirement for originality will be satisfied by the "expression" (i.e. fixation) of the sounds contained in such works.

While there is no case law on this point, it has been submitted by commentators that the requirement for "originality" could be capable of being satisfied by the skill and judgment required to successfully mechanically reproduce the sounds in issue. Furthermore, the selection of the specific sounds to be included, and the treatment given to them (i.e. the arrangement or filtering of static or other background noise) could also suffice to be considered "original" under copyright law.¹³ We share this view.

Conclusion

Therefore, while not a settled legal principle, it can be reasoned that fresh copyright would subsist in an enhanced sound recording (in compact disc format) that has been derived from an original release vinyl record.

On this basis, it would be our recommendation, so as to avoid any potential claim for infringement of copyright, to reproduce music from the original release vinyl record where possible, rather than the enhanced version in compact disc format. This view assumes that copyright in the sound recording for the original release vinyl record is expired, but not for the enhanced compact disc version.

Conclusions

In view of the above, we make the following comments and recommendations:

- i. **Consider carefully the copyright term (and corresponding expiry of such copyright) attached to the sound recording that is to be reproduced.** For sound recordings that have already been published before the expiry of copyright (either in Canada or one of the treaty countries listed at section 18 of the Act), the copyright does not expire until the end of 50 years after the end of the calendar year in which the first publication of the sound recording occurred.

¹² See *CCH Canadian Ltd. v. Law Society of Upper Canada*, [2004] 1 S.C.R. 339, 2004 SCC 13.

¹³ See, for e.g., John S. McKeown, *Fox on Canadian Law of Copyright and Industrial Designs*, 4th ed. (Toronto: Thomson Reuters, 2012) at 14-19.

- ii. **Manufacture, Importation and Publication of Sound Recordings.** "Publication" occurs when copies of a sound recording are made available to the public. The Act does not appear to contain any limitations on where a sound recording is *manufactured, per se*. However, the conditions for copyright in a sound recording require the "maker" (at the date of fixation) to be a Canadian citizen or permanent resident, or a citizen/permanent resident of a Berne Convention country, a Rome Convention country or a country that is a WTO member, or, if a corporation, has its headquarters in one of the foregoing countries. Where the sound recording is published, the Act requires the first publication to have occurred in one of the above-noted countries.

As noted above, copyright in sound recordings includes the right to first distribution, reproduction and authorization of such rights, as well as rights over unauthorized distribution or importation of sound recordings. Therefore, the right of first distribution includes the power to decide whether to distribute the work at all and, if so, *when, where, and in what form the distribution will occur*.

Seeking to manufacture sound recordings outside of Canada will not avoid any potential copyright infringement of existing Canadian copyright, if the sound recording is to be ultimately imported for sale in Canada.¹⁴ Similarly, if the concern is whether or not new copyright is created in the sound recordings that are generated by you, *where* the sound recording is manufactured is immaterial to the acquisition of enforceable copyright, subject only to the requirement that it is manufactured in a Berne Convention country, a Rome Convention country, or in a country that is a WTO member.

However, first "publication" is not limited to sound recordings *manufactured* in and made available to the public in Canada; "publication" will be achieved by *importing* a sound recording for sale in Canada, and then making it available to the public for the first time in Canada.

In accordance with the Act and Canada's international obligations under the Act, it is our opinion that a corporation may seek to manufacture compact discs (reproduced from copyright-expired sound recordings) outside of Canada with the intent to import and make available such products for sale within Canada.

- iii. **Reproductions should be taken from original release vinyl records, not from enhanced compact disc versions of the same work, if the copyright has not expired in the "enhanced" sound recording.** This is based on our view that fresh copyright likely subsists in an enhanced sound recording (in compact disc format) derived from an original release vinyl record, as the requirements for originality (and thus copyright protection) can likely be made out.

¹⁴ See discussion of section 27(2) of the Act under Section "D", above.

Please let us know if you would like to discuss any of the above, or if you have any further questions.

Yours very truly,

Borden Ladner Gervais LLP



Chantal Saunders
Partner



Ryan Steeves
Associate

4

This is **Exhibit "4"** referred to in the Affidavit of
Terry Perusini sworn before me this 26th day of
August, 2015

Marie Elizabeth Wakefield

A Commissioner for taking Affidavits, etc.

Marie Elizabeth Wakefield, a Commissioner, etc.,
Province of Ontario, for WeirFoulds LLP,
Barristers and Solicitors.
Expires October 24, 2016.

BY7502 1/08/15 9:38:16

Buyer: ERINNE (ARMES)

- - - VENDOR - - -

STERGROVE ENTERTAINMENT 71756

STERGROVE ENTERTAINMENT
5041 FAIRVIEW STREET

BURLINGTON

ON L7L 4K8

905-332-0218 Fax:

Cond of Sale: RETURNABLE

Vendor Instr:

Branch Instr:

Please ship the following

Account:

PO#: 154513

Carrier:

Frt Terms:

Spl Instr:

Extra Dattng:

Deliver by 1/08/15 but not before 1/01/15

MEG Item	Artist/Author	Title	C P C	Quantity	Discount Types			Net Cost	Extended Cost
					Percent	\$/Unit	Free&D		
***** CDRP DISC *****									
756 900001	BEATLES	LOVE ME DO	005055959900012	3,500	3.0000			3.0000	10,500.00
756 900008	DYLAN BOB	IT AIN'T ME BABE	005055959900081	2,000	3.0000			3.0000	6,000.00
756 990009	BEACH BOYS	FUN FUN FUN	005055959900098	2,000	3.0000			3.0000	6,000.00
756 90004	ROLLING STONES	LITTLE TED ROOSER	005055959900043	1,600	3.0000			3.0000	4,800.00
756 381301	BEATLES	CAN'T BUY ME LOVE	005055959900029	3,500	3.0000			3.0000	10,500.00
			Subtotals:	***12,400					*****37,200.00
Total Quantity:					12,400				
Total PO #154513:					37,200.00				

150

5

This is **Exhibit "5"** referred to in the Affidavit of
Terry Perusini sworn before me this 26th day of
August, 2015

M. Wakefield
A Commissioner for taking Affidavits, etc.

Marie Elizabeth Wakefield, a Commissioner, etc.,
Province of Ontario, for WeirFoulds LLP,
Barristers and Solicitors.
Expires October 24, 2016.

From: Ken Kozey [<mailto:ken.kozey@amerchca.com>]
Sent: November-20-14 2:47 PM
To: Terry Perusini
Subject: Fwd: The Beatles

Universal is asking about the Beatles product. Per our discussion there are no issues correct?

----- Forwarded message -----

From: Greaves, Brian <Brian.Greaves@umusic.com>
Date: Thu, Nov 20, 2014 at 2:24 PM
Subject: The Beatles
To: "Ken Kozey (ken.kozey@amerchca.com)" <ken.kozey@amerchca.com>

Hey Ken, I forgot to ask you this on the phone...do you have any information about the new Beatles public domain product you've been solicited? I asked Trish about it but understandably she did not answer – I don't want to be out of line, but could I ask you who is selling it? It has obviously raised major concerns over here

6

This is Exhibit "6" referred to in the Affidavit of
Terry Perusini sworn before me this 26th day of
August, 2015

Marie Elizabeth Wakefield
A Commissioner for taking Affidavits, etc..

Marie Elizabeth Wakefield, a Commissioner, etc.,
Province of Ontario, for WeirFoulds LLP,
Barristers and Solicitors.
Expires October 24, 2016.

Close

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Important Notice

Please Print this page before you close it.

Print

[Learn more about Viewing Items Online](#)

If you have a question or a concern about this item please send us a secure message by clicking on [Investigate this Item](#) below. We will respond within 24 hours. If your inquiry is urgent, please contact us at 1 800 769-2555.

Investigate This Item

Front

000001

STARGROVE ENTERTAINMENT INC.
6041 FAIRVIEW ST.
BURLINGTON, ON L7L 4W3

ROYAL BANK OF CANADA
MILCROFT BRANCH
3225 WILLIAM O'CONNELL BLVD
BURLINGTON ON L7M 4E4

DATE 01082016
MMDDYYYY

PAY * * * * * Thirteen Thousand Seven Hundred Ninety-Nine and 10/100

\$ 43,789.10

TO THE
ORDER
OF CMRRA
58 Wellington Street West
Suite 320
Toronto, ON
M5S 2B3

STRATEGIC INFORMATION

MEMO Pay As You Press

Back

Item Details

7

This is **Exhibit "7"** referred to in the Affidavit of
Terry Perusini sworn before me this 26th day of
August, 2015

M. Wakefield
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Expires October 24, 2016.

Wal-Mart Top 10 week ending February 8, 2015

	Sku #	Artist	Title	Release Date	Total Curr Week	Total Prev Week	Lifetime	Vendor
1	10121238	BEATLES	LOVE ME DO	02/03/2015	1,488	0	1,488	STARGROVE ENTERTAINMENT
2	10121086	VARIOUS ARTISTS	2015 GRAMMY NOMINEES	01/20/2015	1,435	1,095	4,032	SONY BMG MUSIC ENTERTAINM
3	10100812	VARIOUS ARTISTS	HITS OF THE 80S	09/24/2013	1,109	1,314	22,791	PLAY 24-7 CANADA INC.
4	10104938	SEGER BOB	ICON	06/30/2014	1,083	1,284	18,701	UNIVERSAL MUSIC
5	10108696	SWIFT TAYLOR	1989	10/27/2014	927	814	32,415	UNIVERSAL MUSIC
6	10058203	CASH JOHNNY	JOHNNY CASH (2 CD)	08/31/2010	873	999	11,983	SONOMA ENTERTAINMENT L.P.
7	10104524	SMITH SAM	IN THE LONELY HOUR	06/17/2014	873	863	32,670	UNIVERSAL MUSIC
8	10104717	SHEERAN ED	X (MULTIPLY)	06/23/2014	817	828	13,608	WARNER MUSIC OF CANADA
9	10108816	KRALL DIANA	WALLFLOWER	02/03/2015	771	0	771	UNIVERSAL MUSIC
10	10121084	TRAINOR MEGHAN	TITLE	01/13/2015	716	747	3,158	SONY BMG MUSIC ENTERTAINM

8

This is **Exhibit "8"** referred to in the Affidavit of
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August, 2015

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Expires October 24, 2016.

Terry Perusini

From: Jennifer P <jplersma@hotmail.com>
Sent: January-26-15 9:41 AM
To: Terry Perusini
Subject: FW: THE ROLLING STONES - LITTLE RED ROOSTER

> Subject: THE ROLLING STONES - LITTLE RED ROOSTER
> To: jplersma@hotmail.com
> CC: NLevesque@cmrra.ca; acoleman@Abkco.com
> From: VSyrtash@cmrra.ca
> Date: Thu, 22 Jan 2015 11:29:04 -0500
>
>
> Dear Ms. Holt,
>
> It has come to my attention that Star Grove Entertainment has recently made
> applications to CMRRA to obtain licenses for the reproduction of musical
> works on an album called "Little Red Rooster". Please be advised that
> ABKCO Music & Records, Inc. ("ABKCO") is the worldwide 100% copyright
> owners of the following compositions on this release:
>
> "Heart of Stone" (Jagger/Richards)
> "What A Shame" (Jagger/Richards)
> "Good Times Bad Times" (Jagger/Richards)
> "It's All Over Now" (Womack/Womack)
> "Grown Up Wrong" (Jagger/Richards)
>
> ABKCO has instructed CMRRA not to issue any licenses for the reproduction
> of these works by Star Grove. As ABKCO's licensing agent, CMRRA must act
> pursuant to their instructions. As such, CMRRA will not be issuing any
> licenses to Star Grove for the reproduction of these works on "Little Red
> Rooster".
>
> I understand that your license application process is already underway
> through our "Pay-As-You-Press" department, and that a cheque has been sent
> to us. This application has not yet been processed by us. CMRRA will
> continue to process your license applications for the other musical works
> for which licenses are being sought, and apply your cheque to those
> licenses only. Any excess funds will be returned to you. Please advise as
> to whether you would still like us to issue licenses for the remaining
> songs on "Little Red Rooster", with the understanding that you would have
> to remove the above-noted ABKCO owned songs from that album.
>
> Thank you,
>

> Veronica Syrtash | V.P., Legal and Business Affairs
> CMRRA (Canadian Musical Reproduction Rights Agency Ltd.)
> 320 - 56 Wellesley Street West, Toronto, ON M5S 2S3
> Phone: 416-926-1966, ext. 281 | Fax: 416-926-7521 | Email:
> VSyrtash@cmrra.ca

9

This is **Exhibit "9"** referred to in the Affidavit of
Terry Perusini sworn before me this 26th day of
August, 2015

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Barristers and Solicitors,
Expires October 24, 2016.

Terry Perusini

From: Ken Kozey <ken.kozey@amerchca.com>
Sent: January-24-15 12:50 PM
To: Terry Perusini
Subject: Fwd: FW: ANDERSON - THE ROLLING STONES - LITTLE RED ROOSTER - WALMART - STAR GROVE ENTERTAINMENT

Terry, let me know how we should respond to this,

Ken

----- Forwarded message -----

From: Ned Talmey <ned.talmey@amerchca.com>
Date: Sat, Jan 24, 2015 at 12:06 AM
Subject: Re: FW: ANDERSON - THE ROLLING STONES - LITTLE RED ROOSTER - WALMART - STAR GROVE ENTERTAINMENT
To: Alisa Coleman <acoleman@abkco.com>, Ken Kozey <ken.kozey@amerchca.com>
Cc: "Nikesh.Dusara@walmart.com" <Nikesh.Dusara@walmart.com>

Ken please look into this situation first thing Monday and respond/notify all parties herein what action has been taken.

Ned

On Friday, January 23, 2015, Alisa Coleman <acoleman@abkco.com> wrote:

Dear Ned:

We have been advised that Anderson has distributed the above mentioned product by Star Grove Entertainment to Walmart for sale as is currently found in this link: <http://www.walmart.ca/en/ip/the-rolling-stones-little-red-rooster/6000191253796>

Please note that Star Grove does not have valid mechanical licenses for the use of our compositions and as such any sale of this product is an infringement of our valuable copyrights. Attached is an email from Veronica Syrtash, V.P., Legal and Business Affairs of CMRRA advising Star Grove that they do not have mechanical licenses for ABKCO's 5 compositions on this release.

We would appreciate Anderson's removal of this product from its catalog and its notification to Walmart to remove this product from the marketplace and online, before we have to take any additional legal steps to protect our rights.

Please confirm that you will act accordingly immediately by return e-mail.

Best regards,

Alisa Coleman
Senior Executive Vice President
ABKCO Music & Records, Inc.
85 Fifth Avenue
New York NY 10003
P: 212.399.0309
M: 201.704.5977
F: 212.849.9109
E: alisa@Abkco.com

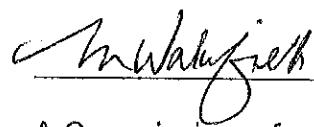
--
please note that my new email address is: ned.talmey@amerchca.com

J.E. (Ned) Talmey
Senior Vice President/GM
Anderson Merchandisers Canada Inc.
60 Leek Cres.
Richmond Hill Ontario L4B 1H1
905 - 763 - 1999 ext 424

--
Ken Kozey - AVP Purchasing
Anderson Merchandisers
60 Leek Crescent
Richmond Hill, On L4B 1H1
905-763-1999 X423
NEW EMAIL - ken.kozey@amerchca.com

10

This is **Exhibit "10"** referred to in the Affidavit
of Terry Perusini sworn before me this 26th day
of August, 2015



Marie Elizabeth Wakefield
A Commissioner for taking Affidavits, etc.

Marie Elizabeth Wakefield, a Commissioner, etc.,
Province of Ontario, for WeirFoulds LLP,
Barristers and Solicitors.
Expires October 24, 2016.

Terry Perusini

From: jennifer@stargrove.ca
Sent: February-04-15 4:34 PM
To: Terry Perusini
Subject: Fwd: Stargrove Entertainment / Love me Do (STR0001) and Can't buy me love (STR0002)

Hello Nathalie:

Thank you for letting me know about the Casablanca tracks. Do you know why Casablanca has instructed CMRRA to not issue licenses to Stargrove for these tracks?

Please continue to process the licenses for all the remaining tracks on STR0001 & STR0002.

Our original cheque has been cashed and we applied for these licenses a month ago. Do you happen to know when we can expect to receive all the mechanical licenses?

Thank you,

Jennifer Holt
 Stargrove Entertainment

Begin forwarded message:

From: Nathalie Levesque <NLevesque@cmrra.ca>
Date: February 4, 2015 at 3:38:53 PM EST
To: jennifer@stargrove.ca
Cc: Veronica Syrtash <VSyrtash@cmrra.ca>, jmitchell@casaent.com
Subject: Stargrove Entertainment / Love me Do (STR0001) and Can't buy me love (STR0002)

Ms. Holt,

Stargrove Entertainment has recently made applications to CMRRA to obtain licences for the reproduction of musical works on the following two albums:

STR0001 Love me do by The Beatles
STR0002 - Can't buy me love by The Beatles

Please be advised that Casablanca Media Publishing ('Casablanca') represents the following compositions on these releases:

I Saw Her Standing There (STR0001)
 From Me To You (STR0002)
 I Wanna Be Your Man (STR0002)

Casablanca has instructed CMRRA not to issue any licences for the reproduction of these works by Stargrove. As Casablanca's licensing agent, CMRRA must act pursuant to their instructions. As such, CMRRA will not be issuing any licences to Stargrove for the reproduction of these works on 'Love me do' by The Beatles and 'Can't buy me love' by The Beatles.

Please advise as to whether you would still like us to issue licences for the remaining songs on 'Love me do' and 'Can't buy me love', with the understanding that you would have to remove the above-noted Casablanca owned songs from these albums.

We look forward to hearing from you.

Nathalie Lévesque | Assistant Manager - Assistante à la Direction, Independent Licensing & Royalties
CMRRA (Canadian Musical Reproduction Rights Agency) www.cmrra.ca
320 - 56 Wellesley Street West, Toronto, ON M5S 2S3
Phone: 416-926-1966 ext. 251 | Fax: 416-926-7521 | Email: nlevesque@cmrra.ca

11

This is **Exhibit "11"** referred to in the Affidavit
of Terry Perusini sworn before me this 26th day
of August, 2015

Marie Elizabeth Wakefield

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Marie Elizabeth Wakefield, a Commissioner, etc.,
Province of Ontario, for WeirFoulds LLP,
Barristers and Solicitors.
Expires October 24, 2016.

Terry Perusini

From: jennifer@stargrove.ca
Sent: February-11-15 1:51 PM
To: Terry Perusini
Subject: Fwd: Stargrove Mechanical Licenses

Sent from my iPhone

Begin forwarded message:

From: Caroline Rioux <CRioux@cmrra.ca>
Date: February 11, 2015 at 1:36:23 PM EST
To: "Jennifer Holt" <jennifer@stargrove.ca>
Cc: "Nathalie Levesque" <NLevesque@cmrra.ca>, "Veronica Syrtash" <VSyrtash@cmrra.ca>
Subject: Re: Stargrove Mechanical Licenses

Dear Jennifer,

Given the concerns that you raise in your email, we think it is best that CMRRA not be involved in this situation any further. We will be returning all payments submitted by you already, and will not be processing any applications from you. I suggest that you contact the publishers directly with any questions you may have, or seek to obtain licenses from them directly. Alternatively, we can facilitate the issuance of licenses once you have received authorization from the publishers in question and if they agree to such an arrangement.

I'm sorry that we cannot be of further assistance at this time.

Best regards,

Caroline Rioux [President
 CMRRA - Canadian Musical Reproduction Rights Agency Ltd.
 Agence canadienne des droits de reproduction musicaux ltée.
 320 - 56 Wellesley Street West, Toronto, ON M2S 2S3
 Phone: 416-926-1966, ext. 234 | Cell: 416-451-8921 | Email: criloux@cmrra.ca

From: "Jennifer Holt" <jennifer@stargrove.ca>
To: "Caroline Rioux" <CRioux@cmrra.ca>
Cc: "Nathalie Levesque" <NLevesque@cmrra.ca>, "Veronica Syrtash" <VSyrtash@cmrra.ca>
Date: 02/10/2015 11:11 AM
Subject: Stargrove Mechanical Licenses

Dear Caroline,

Thank you for speaking with me yesterday.

I have spoken with head office in the UK. They are as confused as you and I, but are becoming concerned that there is some sort of commercial pressure being introduced here. You expressed how surprised you were at the refusals, the UK tell me that many of the copyrights concerned are

already in the Canadian market, probably licensed by CMRRA. It is the belief that record label influence has been pushed on the publishing arms and refusal therefore given.

This raises many questions about unfair trading and competition laws. This is outside of my area of expertise and the UK will probably be taking over the enquiry.

What they do wish to know is precisely which publishers have refused rights.

As I understand it, we have refusals from ABKCO and Casablanca. You indicated that Sony/ATV has also refused and you were contacting Universal to inquire their status.

Could you please confirm the above to me and please let me know the status of all of the Stargrove applications. That includes the Beatles and Rolling Stones titles, the Beach Boys and Bob Dylan.

Thank you,

Jennifer Holt
Stargrove Entertainment

12

This is **Exhibit "12"** referred to in the Affidavit
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Marie Elizabeth Wakefield
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Marie Elizabeth Wakefield, a Commissioner, etc.,
Province of Ontario, for WeirFoulds LLP,
Barristers and Solicitors.
Expires October 24, 2016.

Terry Perusini

Subject: FW: Stargrove Mechanical Licenses

From: Jennifer Holt [mailto:jennifer@stargrove.ca]
Sent: February 13, 2015 10:59 AM
To: 'Caroline Rioux'
Cc: 'Nathalie Levesque'; 'Veronica Syrtash'
Subject: RE: Stargrove Mechanical Licenses

Dear Caroline,

I understand what you say and appreciate you are caught somewhat in the middle. I am leaving matters up to the UK to see how they are going to proceed on these copyrights. An unfortunate consequence of this is that I need to licence a large number of what I would call 'regular' titles which include 'non-controversial' tracks that have been widely marketed by 'low price' labels for many, many years. I believe you are familiar with Madacy, St. Clair, etc. We have a number of these type of compilations to release. Can I look to you for a normal mechanical licence? I do not think the pay to press arrangement will work for either of us. I reviewed your web site and we will not be manufacturing in small quantities or releasing on a one shot limited basis. We will be manufacturing catalogue titles on a continuing basis. With that in mind we would like to enter into The Mechanical Licensing Agreement as noted on your web site. I hope that the issues on the Beatles and Rolling Stones copyrights do not further have the effect of stalling of our business. I do know our parent company has our law firm in Ottawa dealing with issues surrounding those titles. When it is sorted with the publishers and we have authorization we will then return to facilitate the issuance of those licenses as you note in your email.

Thank you,

Jennifer Holt
Stargrove Entertainment

13

This is Exhibit "13" referred to in the Affidavit
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of August, 2015



A Commissioner for taking Affidavits, etc.

Mario Elizabeth Wakefield, a Commissioner, etc.,
Province of Ontario, for WeirFoulds LLP,
Barristers and Solicitors.
Expires October 24, 2016.

CMRRA

Canadian Musical Reproduction Rights Agency Limited

56 Wellesley Street West, Suite 320, Toronto, Ontario Canada M5S 2S3

Phone: (416) 926-1966 Fax: (416) 926-7521 email: nlevesque@cmrra.ca

Web Site: www.cmrra.ca

Nathalie Lévesque, ext. 251
Assistant Manager

Toronto, February 25, 2015

Jennifer Holt
Stargrove Entertainment
1 Janet Street
Brantford, ON
N3R 3G4

Subject: Refund cheque / Stargrove Entertainment

Dear Jennifer,

As mentioned in our email of February 11, 2015, please find enclosed your refund cheque for all payments you submitted to CMRRA.

For further information, please do not hesitate to contact us.

All the best,

Cleverful

Encl.

Canadian Musical Reproduction Rights
Agency Limited

No. 173
0204451

TO: STARGROVE ENTERTAINMENT 023567

RE: RETURN FROM QUARTER 1/2015
FROM: CANADIAN MUSICAL REPRODUCTION RIGHTS AGENCY

GROSS 13799.10
TOTAL INCLUDES HST OF 1587.51
NET 13799.10

C.M.R.R.A

Canadian Musical
Reproduction Rights
Agency Limited
56 Wellesley St. W. Ste 320
Toronto, Ontario M5S 2S3

Royal Bank of Canada
2 Bloor Street East
Toronto, Ontario

No. 0204451
DATE 0 2 2 5 2 0 1 6
M M D D Y Y Y Y

PAY ****13 THOUSAND 7 HUNDRED 99 DOLLARS & 10 CENTS
TO THE
ORDER OF STARGROVE ENTERTAINMENT

By:

Cherry
AUTHORIZED SIGNATURE

****13,799.10
CDN DOLLARS

C.M.R.R.A.

14

This is **Exhibit "14"** referred to in the Affidavit
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M. Wakefield

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Barristers and Solicitors.
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Terry Perusini

From: Patricia McAlpine <patricia.mcalpine@amerohca.com>
Sent: February-11-15 3:22 PM
To: Terry Perusini
Cc: Patricia McAlpine
Subject: Beatles reviews on WM.CA

Terry - pls go onto WM.CA and look at the reviews on the Beatles \$5 CD - is the sound quality that bad? Ringo Star has sent comments. None of them are good.

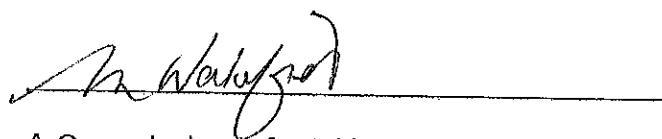
I've got emails coming in from Neilson Soundscan, UNI music, our CEO, etc.

Pls be prepared to speak to this tomorrow morning when you are here

--
Trish McAlpine
Anderson Merchandisers Canada

15

This is **Exhibit "15"** referred to in the Affidavit
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LOVE ME DO

RingoStarr

RingoStarr

Toronto, ON, Canada

Reviews 5

Votes 20

★ Top 500 Contributor

Age 35 - 44

How long have you owned this product? 5 - 6 months

Gender Male

How often do you use this product? Once a week

★ Top 500 Contributor

★★★★★ ★★★★★ 1 out of 5 stars.

RingoStarr

· 2 days ago

DO NOT BUY!!!!!!

Awful quality, was recorded from an LP. Save your \$5.

✗ No,

I do not recommend this product.

5 people found this review helpful, 0 people did not find this review helpful.

Helpful?

Yes · 5 5 people found this review helpful. Click to agree. No · 0 0 people did not find this review helpful. Click to agree.

Report

♀

Hellfreezesover

Hellfreezesover

Montreal, QC, Canada

Review 1

Votes 2

Age 45 - 54

How long have you owned this product? 2 - 7 weeks

Gender Female

How often do you use this product? Never

★☆☆☆☆ ★☆☆☆☆ 1 out of 5 stars.

Hellfreezesover

· 20 hours ago

Do not waste your money!

Audio is horrible! Wouldn't want it even it was free!

✗ No,

I do not recommend this product.

2 people found this review helpful, 0 people did not find this review helpful.

Helpful?

Yes · 2 2 people found this review helpful. Click to agree. No · 0 0 people did not find this review helpful. Click to agree.

Report

♂

ctrlaltdelete

ctrlaltdelete

Review 1

Votes 2

...

★☆☆☆☆ ★☆☆☆☆ 1 out of 5 stars.

ctrlaltdelete

· 20 hours ago

Poor Quality

Very poor audio quality. Not the real thing. Don't buy this version!

2 people found this review helpful, 0 people did not find this review helpful.

Helpful?

Yes · 2 2 people found this review helpful. Click to agree. No · 0 0 people did not find this review helpful. Click to agree.

Report

♂

JMarcus

JMarcus

Toronto, on
Review 1
Votes 2
Age 35 - 44

How long have you owned this product? 1 week or less

Gender Male

How often do you use this product? Never

★☆☆☆☆ ★☆☆☆☆ 1 out of 5 stars.

JMarcus

· 19 hours ago

Bad Sound Quality

With all of the amazing remastering that has happened to the Beatles catalogue over the last few years, it is shocking that anyone would pick this up, as it sounds so bad - save your money!

✗ No,

I do not recommend this product.

2 people found this review helpful. 0 people did not find this review helpful.

Helpful?

Yes · 2 2 people found this review helpful. Click to agree. No · 0 0 people did not find this review helpful. Click to agree.

Report

♂

5thBeatle

5thBeatle

Canada

Reviews 3

Votes 4

Age 25 - 34

How long have you owned this product? 1 week or less

Gender Male

How often do you use this product? Never

★☆☆☆☆ ★☆☆☆☆ 1 out of 5 stars.

5thBeatle

· 18 hours ago

Horrible Quality Recordings! Do Not Buy!

I have seen a few of these weird versions of The Beatles lately. Buyer beware! They are not the original recordings and definitely of inferior quality.

No,
I do not recommend this product.

2 people found this review helpful. 0 people did not find this review helpful.

Helpful?

Yes · 2 2 people found this review helpful. Click to agree. No · 0 0 people did not find this review helpful. Click to agree.

Report

♀
SunnyB

SunnyB
Toronto, ON, Canada
Reviews 4
Votes 3
Age 35 - 44

How long have you owned this product? 1 week or less

Gender Female

How often do you use this product? Never

★☆☆☆☆ ★☆☆☆☆ 1 out of 5 stars.

SunnyB
· 20 hours ago
Absolutely terrible

Subpar quality. Save your \$5 and put it towards REAL Beatles recordings.

No,
I do not recommend this product.

1 person found this review helpful. 0 people did not find this review helpful.

Helpful?

Yes · 2 1 person found this review helpful. Click to agree. No · 0 0 people did not find this review helpful. Click to agree.

Reported

You have successfully reported this content as inappropriate.

Your vote was successful. The number of positive helpfulness votes is now 2,

♂

PMcCartney

PMcCartney

London, United Kingdom

Review 1

Votes 0

Age 35 - 44

How long have you owned this product? 1 week or less

Gender Male

How often do you use this product? Every day

★★★★★ ★★★★★ 5 out of 5 stars.

PMcCartney

· 10 hours ago

Wow!! Now this is great value!!

Finally a Beatles cd in Wal-Mart that fits the Wal-Mart pricing strategy.

✓ Yes,

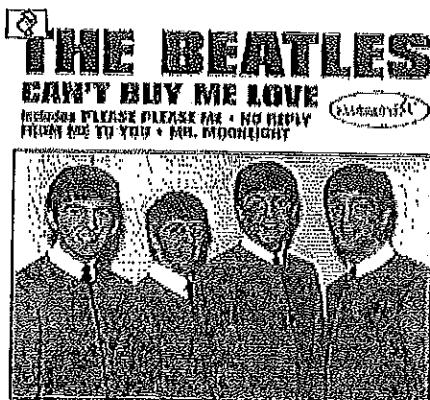
I recommend this product.

0 people found this review helpful. 0 people did not find this review helpful.

Helpful?

Yes · 0 0 people found this review helpful. Click to agree. No · 0 0 people did not find this review helpful. Click to agree.

Report



RingoStarr

RingoStarr

Toronto, ON, Canada

Reviews 5

Votes 20

★ Top 500 Contributor

Age 35 - 44

How long have you owned this product? 5 - 6 months

Gender Male

How often do you use this product? Once a week

★ Top 500 Contributor

★★★★★ ★★★★★ 1 out of 5 stars.

RingoStarr

· 2 days ago

DON'T BUY THIS!! Terrible quality

This was recorded from an LP, very poor sound quality.

✗ No,

I do not recommend this product.

7 people found this review helpful. 0 people did not find this review helpful.

Helpful?

Yes · 7 7 people found this review helpful. Click to agree. No · 0 0 people did not find this review helpful. Click to agree.

Report

♀

HarrisonLover

HarrisonLover

Toronto, ON, Canada

Review 1

Votes 4

Age 18 - 24

How long have you owned this product? 2 - 7 weeks

Gender Female

How often do you use this product? Never

★★★★★ ★★★★★ 1 out of 5 stars.

HarrisonLover

· 21 hours ago

Terrible Quality

Do not buy, these versions aren't originals and have terrible quality.

✗ No,

I do not recommend this product.

4 people found this review helpful. 0 people did not find this review helpful.

Helpful?

Yes · 4 4 people found this review helpful. Click to agree. No · 0 0 people did not find this review helpful. Click to agree.

Report

♀

DARE2CARE

DARE2CARE

Montreal, QC, Canada

Review 1

Vote 1

Age 45 - 54

How long have you owned this product? 1 week or less

Gender Female

How often do you use this product? Never

★☆☆☆☆ ★☆☆☆☆ 1 out of 5 stars.

DARE2CARE

· 20 hours ago

Awefull

Don't know why someone would buy such a bad album and not the original.
Save your money and get the real thing! Or you'll just waste it!

✗ No,

I do not recommend this product.

1 person found this review helpful. 0 people did not find this review helpful.

Helpful?

Yes · 1 1 person found this review helpful. Click to agree. No · 0 0 people did not find this review helpful. Click to agree.

Report

♂

Koza

Koza

Montréal, QC, Canada

Review 1

Vote 1

...

★☆☆☆☆ ★☆☆☆☆ 1 out of 5 stars.

Koza

· 20 hours ago

Poor sound quality

it's very low quality album, the sound is terrible.

✗ No,

I do not recommend this product.

1 person found this review helpful. 0 people did not find this review helpful.

Helpful?

Yes · 1 1 person found this review helpful. Click to agree. No · 0 0 people did not find this review helpful. Click to agree.

Report

♀

SunnyB

SunnyB

Toronto

Reviews 4

Votes 3

Age 35 - 44

How long have you owned this product? 1 week or less

Gender Female

How often do you use this product? Never

★☆☆☆☆ ★☆☆☆☆ 1 out of 5 stars.

SunnyB

· 20 hours ago

Poor Quality. Don't buy this!

Don't waste your time or money. Terrible recording.

✗ No,

I do not recommend this product.

1 person found this review helpful. 0 people did not find this review helpful.

Helpful?

Yes · 1 1 person found this review helpful. Click to agree. No · 0 0 people did not find this review helpful. Click to agree.

Report

♂

ctrlaltdelete

ctrlaltdelete

Review 1

Vote 1

...

★☆☆☆☆ ★☆☆☆☆ 1 out of 5 stars.

ctrlaltdelete

· 20 hours ago

Bad Quality

Very poor audio quality. Not the real thing. Don't buy this version!

1 person found this review helpful. 0 people did not find this review helpful.

Helpful?

Yes · 1 1 person found this review helpful. Click to agree. No · 0 0 people did not find this review helpful. Click to agree.

[Report](#)

♂

5thBeatle

5thBeatle

Canada

Reviews 3

Votes 4

Age 25 - 34

How long have you owned this product? 1 week or less

Gender Male

How often do you use this product? Never

★★★★★ ★★★★★ 1 out of 5 stars.

5thBeatle

· 18 hours ago

DO NOT BUY! Not The Real Thing!

I have seen a few of these weird versions of The Beatles lately. Buyer beware! They are not the original recordings and definitely of inferior quality.

✗ No,

I do not recommend this product.

1 person found this review helpful, 0 people did not find this review helpful.

[Helpful?](#)

Yes · 1 1 person found this review helpful. Click to agree. No · 0 0 people did not find this review helpful. Click to agree.

[Report](#)

♂

TYB64

TYB64

Review 1

Votes 0

How long have you owned this product? 1 week or less

Gender Male

★★★★★ ★★★★★ 5 out of 5 stars.

TYB64

· 10 hours ago

BEACH BOYS

RingoStarr

RingoStarr

Toronto, ON, Canada

Reviews 5

Votes 20

★ Top 500 Contributor

Age 35 - 44

How long have you owned this product? 5 - 6 months

Gender Male

How often do you use this product? Once a week

★ Top 500 Contributor

★ ★ ★ ★ ★ ★ ★ ★ ★ 1 out of 5 stars.

RingoStarr

· 2 days ago

Save your Money!!!

Terrible sound quality!!! Save your \$5!! This sounds like a cheap copy

✗ No,

I do not recommend this product.

4 people found this review helpful. 0 people did not find this review helpful.

Helpful?

Yes · 4 4 people found this review helpful. Click to agree. No · 0 0 people did not find this review helpful. Click to agree.

Report

♂

ctrlaltdelete

ctrlaltdelete

Review 1

Vote 1

...

★ ★ ★ ★ ★ ★ ★ ★ ★ 1 out of 5 stars.

ctrlaltdelete

· 20 hours ago

Poor Quality

Very poor audio quality. Not the real thing. Don't buy this version!

1 person found this review helpful. 0 people did not find this review helpful.

Helpful?

Yes · 1 1 person found this review helpful. Click to agree. No · 0 0 people did not find this review helpful. Click to agree.

Report

♂

JMarcus

JMarcus

Toronto, on

Review 1

Vote 1

Age 35 - 44

How long have you owned this product? 1 week or less

Gender Male

How often do you use this product? Never

★ ★ ★ ★ ★ ★ ★ ★ ★ 1 out of 5 stars.

JMarcus

· 19 hours ago

Terrible Sound Quality

I purchased this expecting the quality to be there with the great value, and the sound reproduction is awful - please save your money

✗ No,

I do not recommend this product.

1 person found this review helpful. 0 people did not find this review helpful.

Helpful?

Yes · 1 1 person found this review helpful. Click to agree. No · 0 0 people did not find this review helpful. Click to agree.

Report

♀

SunnyB

SunnyB

Toronto, ON, Canada

Reviews 4

Votes 3

Age 35 - 44

How long have you owned this product? 1 week or less

Gender Female

How often do you use this product? Never

★☆☆☆☆ ★☆☆☆☆ 1 out of 5 stars.

SunnyB

· 18 hours ago

Inferior Production Quality

Suggest purchasing the real thing before wasting your money.

0 people found this review helpful. 0 people did not find this review helpful.

Helpful?

Yes · 0 0 people found this review helpful. Click to agree. No · 0 0 people did not find this review helpful. Click to agree.

Report



16

This is Exhibit "16" referred to in the Affidavit
of Terry Perusini sworn before me this 26th day
of August, 2015

Marie Elizabeth Wakefield

A Commissioner for taking Affidavits, etc.

Marie Elizabeth Wakefield, a Commissioner, etc.,
Province of Ontario, for WeirFoulds LLP,
Barristers and Solicitors,
Expires October 24, 2016.

From: Chad Minicuci [<mailto:chad.minicuci@amerchca.com>]
Sent: February-24-15 7:33 AM
To: Terry Perusini
Subject: RE: up date

Thanks for the update. We're pulling for you buddy!! As always, keep me posted.

Ciao,

Chad Minicuci
AVP Sales
Anderson Merchandisers Canada Inc.
905-763-1999 ext. 431

NOTE; change of email address to chad.minicuci@amerchca.com please update your contact list.

From: Terry Perusini
Sent: Monday, February 23, 2015 2:34 PM
To: Chad Minicuci
Subject: up date

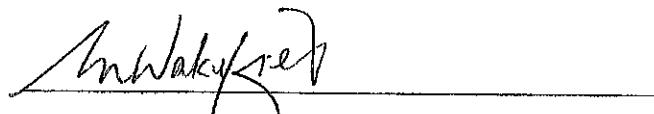
Hey Chad:

Just to give you an update unfortunately I am still on standby. It seems in an effort to prevent competition in the market place someone with similar products to ours has pretty much informed the Canadian music industry that our products are illegitimate. The products are not illegitimate but needless to say the inaccurate comments made have scared off some necessary suppliers from dealing with us. Our lawyers are working on resolving this issue and I am basically waiting for their instructions. Sorry but trust me I am doing all I can as I want to make sure we do it right.

Thanks,
Terry

17

This is **Exhibit "17"** referred to in the Affidavit
of Terry Perusini sworn before me this 26th day
of August, 2015



A Commissioner for taking Affidavits, etc.

Marie Elizabeth Wakefield, a Commissioner, etc.,
Province of Ontario, for WeirFoulds LLP,
Barristers and Solicitors.
Expires October 24, 2016.



SANGEETHA PUNNIYAMOORTHY
 416.971.7202
 spunniyamoorthy@dimock.com

SENT BY EMAIL & COURIER

March 9, 2015

Ms. Caroline Rioux
 President
 Canadian Musical Reproduction Rights Agency Ltd.
 320 - 56 Wellesley Street West
 Toronto, ON M2S 2S3

Dear Ms. Rioux:

Re: Stargrove Entertainment Inc. re CMRRA Licence Refusal
Our Ref: 3378-2 MDC/SP/TK

We represent Stargrove Entertainment Inc. ("Stargrove") and are writing for further information concerning the refusal by Canadian Musical Reproduction Rights Agency Ltd. ("CMRRA") to grant Stargrove a mechanical licence with respect to various works, as set out below.

Stargrove was surprised and confused by the denial, which it believes to be unprecedented, since such licenses are routinely sought and granted to applicants. For completeness, we have set out below a summary of the facts and interactions between Stargrove and CMRRA from December 2014 to present, as set out in the various correspondences:

- In December, 2014 Stargrove contacted CMRRA to enquire about obtaining a mechanical license for six titles (Beatles – Love Me Do; Beatles – Can't Buy Me Love; The Rolling Stones – Little Red Rooster; Elvis Presley – Suspicion; Bob Dylan – It Ain't Me Babe; The Beach Boys – Fun, Fun, Fun). Stargrove was informed that it needed to obtain a pay-as-you-press license;
- In early January, 2015, Stargrove completed and submitted to CMRRA the appropriate paperwork for the license along with a cheque for \$13,799.10 for the mechanical royalties on the units to be pressed;
- On January 9, 2015 CMRRA cashed Stargrove's cheque leading Stargrove to believe that the requested licence was in place. As such, Stargrove went to market with its products incorporating the licensed works.

- 2 -

- On January 22, 2015, Ms. Jennifer Holt at Stargrove received an email from Ms. Veronica Syrtash, V.P. Legal and Business Affairs at CMRRA. After acknowledging Stargrove's application for a license from CMRRA for an album called "Little Red Rooster", Ms. Syrtash advised Ms. Holt that ABKCO Music & Records, Inc. ("ABKCO") had instructed CMRRA not to issue any licenses for the reproduction of five songs by the Rolling Stones, the copyright in which was purportedly owned by ABKCO. CMRRA denied issuing a license for these songs, with Ms. Syrtash stating that "as ABKCO's licensing agent, CMRRA must act pursuant to their instructions";
- On February 4, 2015, Ms. Holt received another, similar email from CMRRA, this time from Nathalie Lévesque, Assistant Manager, Independent Licensing and Royalties. Ms. Lévesque advised that Casablanca Media Publishing ("Casablanca") had instructed CMRRA not to issue any licenses to Stargrove for the reproduction of three Beatles songs. That day, Ms. Holt responded to Ms. Lévesque and asked why Casablanca had instructed CMRRA not to issue licenses;
- On February 9, 2015, you had a conversation with Ms. Holt in which you stated that you were surprised by the various instructions to deny the licences. During that conversation you also stated that Sony/ATV had refused to provide Stargrove with a license;
- The conversation of February 9, 2015 was confirmed to you in an email of February 10, 2015 from Ms. Holt. In that email, Ms. Holt also requested the status of all Stargrove licence applications, including with respect to songs by the Beatles, Rolling Stones, Beach Boys, and Bob Dylan;
- You responded to Ms. Holt on February 11, 2015 by advising that CMRRA would not be involved in this "situation" and that CMRRA would be refunding Stargrove's payment;
- Two days later, on February 13, 2015, Ms. Holt wrote to you again about obtaining a mechanical license for other, "non-controversial" songs (of which there are many). Ms. Holt never received a response;
- Finally, on February 25, 2015, Ms. Holt received a letter from CMRRA enclosing a refund cheque for "all payments [Stargrove] submitted to CMRRA."

You have suggested to Stargrove that it contact the publishers directly. However, with respect, given the lack of information Stargrove has received, that suggestion is impractical and is also at odds with the normal procedure in Canada for obtaining mechanical licences. Accordingly, so that we may resolve this situation as quickly and amicably as possible, we request that you provide us with the following information:

- A list of the publishers that instructed CMRRA to refuse a license to Stargrove;
- The publishers' stated reasons for denying a licence; and

- 3 -

- CMRRA's reasons for not providing a mechanical license to Stargrove in respect of other publishers.

We look forward to hearing from you by March 13, 2015.

Yours truly,

DIMOCK STRATTON LLP

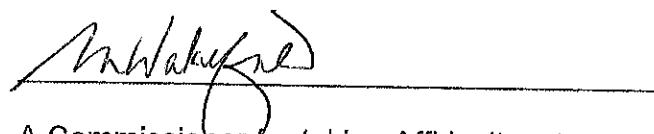


SANGEETHA PUNNIYAMOORTHY

SP: cm

18

This is Exhibit "18" referred to in the Affidavit
of Terry Perusini sworn before me this 26th day
of August, 2015



A Commissioner for taking Affidavits, etc.

Marie Elizabeth Wakefield, a Commissioner, etc.,
Province of Ontario, for WeirFoulds LLP,
Barristers and Solicitors,
Expires October 24, 2016.

CMRRA

Canadian Musical Reproduction Rights Agency Limited

56 Wellesley Street West, Suite 320, Toronto, Ontario Canada M5S 2S3

Phone: (416) 926-1966 Fax: (416) 926-7521 Internet: vsyrtash@cmrra.ca Web: www.cmrra.ca

Veronica Syrtash, Ext. 281

Vice President,

Legal & Business Affairs

March 12, 2015

Dimock Stratton LLP
 20 Queen Street West, 32nd Floor
 Toronto, Ontario
 M5H 3R3
 Attention: Sangeetha Punniyamoorthy

Dear Ms. Punniyamoorthy,

Re: Stargrove Entertainment and CMRRA

We are in receipt of your letter to Caroline Rioux, President of Canadian Musical Reproduction Rights Agency Ltd. ("CMRRA"), dated March 9, 2015.

Your summary of the situation is accurate, except that I would suggest that the normal procedure in Canada for obtaining mechanical licenses includes contacting music publishers directly, in addition to contacting CMRRA. CMRRA represents its music publisher principals on a non-exclusive basis for mechanical licensing, and direct licensing is common practice in Canada.

The following points are responses to your request for information, in order of those requests:

1. Your letter already details the publishers that instructed CMRRA not to issue licenses to Stargrove. Namely, those publishers are ABKCO, Casablanca, and Sony/ATV.
2. These publishers have not indicated to us all their reasons for denying licenses, nor do they have an obligation to. As I have stated in my correspondence with Ms. Holt, CMRRA has an agency relationship with its publisher principals and acts pursuant to their instructions. What we have been told, however, is that their refusal is at least partially related to the fact that there are public domain master recordings on the products in question. Beyond that fact, we are simply unable to speculate on the reasoning behind their decision-making.

3. CMRRA made a decision not to pursue licensing on behalf of other music publishers after having received an e-mail from Ms. Holt raising the issues of possible unfair trading and competition law. We felt it prudent not to remain in a position where we may be implicated in the practices of copyright owners licensing (or not licensing, as the case may be) users of those copyrights, when CMRRA is only an agent designated to facilitate this process. We suggested to Ms. Holt that if Stargrove could obtain the necessary authorizations from the remaining publishers, then CMRRA would continue to facilitate the licensing of the songs represented by those publishers (please refer to the e-mail from Caroline Rioux to Jennifer Holt, dated February 11, 2015).

If you have any further questions, please feel free to contact me directly.

Sincerely,



Veronica Syrtash

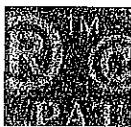
19

This is **Exhibit "19"** referred to in the Affidavit
of Terry Perusini sworn before me this 26th day
of August, 2015

Marie Elizabeth Wakefield

A Commissioner for taking Affidavits, etc.

Marie Elizabeth Wakefield, a Commissioner, etc.,
Province of Ontario, for WeirFoulds LLP,
Barristers and Solicitors.
Expires October 24, 2016.



SANGEETHA PUNNIYAMOORTHY
 416.971.7202
 spunniyamoorthy@dimock.com

SENT BY EMAIL

March 16, 2015

Ms. Veronica Syrtash
 Vice-President, Legal and Business Affairs
 CMRRA (Canadian Musical Reproduction Rights Agency Ltd.)
 320 - 56 Wellesley Street West
 Toronto, ON M2S 2S3

Dear Ms. Syrtash:

Re: Stargrove Entertainment Inc. re CMRRA Licence Refusal
Our Ref: 3378-2 SP/TK

We are writing on behalf of Stargrove Entertainment Inc. ("Stargrove") and further to your letter dated March 12, 2015.

You indicate that CMRRA was expressly instructed by ABKCO, Casablanca and Sony/ATV to not issue licenses to Stargrove and that CMRRA acted pursuant to their instructions as it is an agent for these publishers. However, Stargrove's requested mechanical license was not limited to copyrighted material owned by only these three publishers. In fact, the vast majority of the tracks are owned by other publishers. Your letter indicates that CMRRA unilaterally made a decision on behalf of all these other musical publishers to deny a license to Stargrove because Stargrove has raised issues of possible unfair trading and competition law. However, it is only a refusal to license that raises any such issues. Stargrove is not asserting any unfair trading or competition law issues in relation to CMRRA issuing licenses to Stargrove in the ordinary course. Such issuances of licenses by CMRRA cannot reasonably be interpreted as implicating CMRRA in any unfair trading or competition law issues. It is a refusal to license that raises such issues.

Further, it is Stargrove's understanding based on years of experience within the industry that the usual and ordinary course for obtaining mechanical licenses is through CMRRA, which is in the business of granting permissions on behalf of music publishers. Also, as stated on your website, in the vast majority of cases, these publishers issue their licenses through CMRRA. We understand that CMRRA issues more than 125,000 mechanical licenses every year. CMRRA's refusal, on its own initiative, to license Stargrove on behalf of other music publishers (who have not instructed CMRRA to refuse to license Stargrove) is clearly inconsistent with CMRRA's normal course of conduct. Accordingly, in light of our clarification in this letter, we ask that you

- 2 -

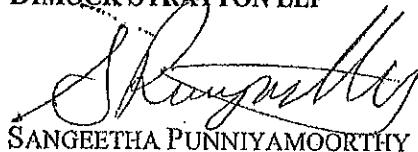
please reconsider CMRRA's decision to deny Stargrove its requested mechanical licenses for these other "non-contentious" tracks.

As noted above, the issuance by CMRRA of a mechanical license will not give rise to any unfair trading or competition law issues asserted by Stargrove against CMRRA. If, however, any party (including CMRRA) is refusing to license Stargrove for unjustified reasons, Stargrove will consider all options available to it, including but not limited to any cause of action based on unfair trading and/or competition law.

Lastly, you indicate that ABKCO, Casablanca and Sony/ATV have expressly instructed CMRRA to not issue licenses to Stargrove. Please confirm whether Universal has also instructed CMRRA to withhold licenses to Stargrove and if so, kindly provide a copy of that communication. As set out in Ms. Holt's email of February 10, 2015, CMRRA had indicated that it was contacting Universal to inquire about their status, but Stargrove has not heard anything further.

We look forward to hearing from you by March 19, 2015.

Yours very truly,
DIMOCK STRATTON LLP

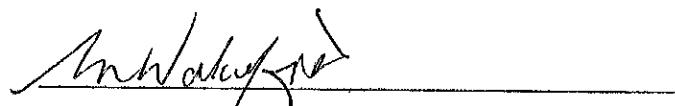


SANGEETHA PUNNIYAMOORTHY

SP: cm

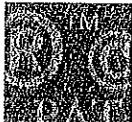
20

This is **Exhibit "20"** referred to in the Affidavit
of Terry Perusini sworn before me this 26th day
of August, 2015



A Commissioner for taking Affidavits, etc.

Marie Elizabeth Wakefield, a Commissioner, etc.,
Province of Ontario, for WeirFoulds LLP,
Barristers and Solicitors,
Expires October 24, 2016.



SANGEETHA PUNNIYAMOORTHY
 416.971.7202
 spunniyamoorthy@dimock.com

SENT BY EMAIL & COURIER

March 17, 2015

Sony/ATV Music Publishing Canada Co.
 1670 Bayview Avenue, Suite 408
 Toronto, ON
 M4G 3C2

Attention: Gary Furniss, President

Dear Mr. Furniss:

Re: Stargrove Entertainment Inc. re CMRRA Licence Refusal
Our Ref: 3378-2 SP/TK

We represent Stargrove Entertainment Inc. ("Stargrove") and are writing with respect to the refusal by Sony/ATV Music Publishing Canada Co. ("Sony/ATV") to grant Stargrove a mechanical license with respect to various works.

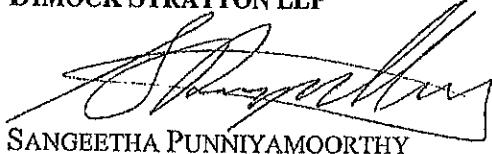
As you know, Stargrove recently applied to Canadian Musical Reproduction Rights Agency Ltd. ("CMRRA") for a mechanical licence in respect of several tracks for which we understand Sony/ATV owns the Canadian copyright. On February 9, 2015, Stargrove was advised by CMRRA that your company had instructed CMRRA to refuse Stargrove a license. Stargrove was surprised by this refusal since it is inconsistent with the normal course of conduct with these types of licenses, and in Stargrove's experience, unprecedented. The refusal to license is causing Stargrove significant financial loss and other damages. Accordingly, on behalf of Stargrove, we are writing to request a mechanical license for the various tracks. If you decide to maintain your refusal to license Stargrove, please provide your reasons for denying a license and the specific tracks for which you are refusing a license.

Any refusal to license Stargrove in the ordinary course for unjustified reasons may give rise to unfair trading or competition law issues. If there is such a refusal of a mechanical license by Sony/ATV, Stargrove will consider all options available to it, including but not limited to any cause of action based on unfair trading and/or competition law.

- 2 -

We look forward to hearing from you by March 24, 2015.

Yours truly,
DIMOCK STRATTON LLP



A handwritten signature in black ink, appearing to read "Sangeetha Punniyamoorthy". The signature is fluid and cursive, with a large, stylized 'S' at the beginning.

SANGEETHA PUNNIYAMOORTHY

SP: cm

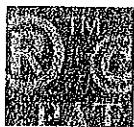
21

This is **Exhibit "21"** referred to in the Affidavit
of Terry Perusini sworn before me this 26th day
of August, 2015

Marie Elizabeth Wakefield

A Commissioner for taking Affidavits, etc.

Marie Elizabeth Wakefield, a Commissioner, etc.,
Province of Ontario, for WeirFoulds LLP,
Barristers and Solicitors,
Expires October 24, 2016.



SANGEETHA PUNNIYAMOORTHY
 416.971.7202
 spunniyamoorthy@dimock.com

SENT BY EMAIL & COURIER

March 17, 2015

ABKCO Music & Records, Inc.
 85 Fifth Avenue
 New York, NY 1003

Attention: Alisa Coleman, Senior Executive Vice President

Dear Ms. Coleman:

Re: Stargrove Entertainment Inc. re CMRRA Licence Refusal
Our Ref: 3378-2 SP/TK

We represent Stargrove Entertainment Inc. ("Stargrove") and are writing with respect to the refusal by ABKCO Music & Records Inc. ("ABKCO") to grant Stargrove a mechanical license with respect to various works, as set out below.

As you know, Stargrove recently applied to Canadian Musical Reproduction Rights Agency Ltd. ("CMRRA") for a mechanical licence in respect of the following five tracks for which we understand ABKCO owns the worldwide copyright:

- 1) Heart of Stone (Jagger/Richards);
- 2) What A Shame (Jagger/Richards);
- 3) Good Times Bad Times (Jagger/Richards);
- 4) It's All Over Now (Womack/Womack); and
- 5) Grown Up Wrong (Jagger/Richards).

On January 22, 2015, Stargrove was advised by CMRRA that your company had instructed CMRRA to refuse Stargrove a license with respect to these tracks. Stargrove was surprised by this refusal since it is inconsistent with the normal course of conduct with these types of licenses, and in Stargrove's experience, unprecedented. The refusal to license is causing Stargrove significant financial loss and other damages. Accordingly, on behalf of Stargrove, we are writing to request a mechanical license for the tracks referenced above. If you decide to maintain your refusal to license Stargrove, please provide your reasons for denying a license.

Any refusal to license Stargrove in the ordinary course for unjustified reasons may give rise to unfair trading or competition law issues. If there is such a refusal of a mechanical license by

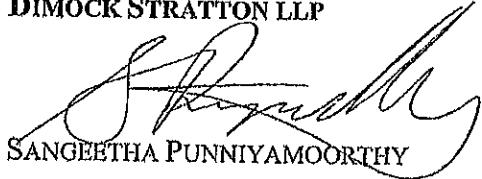
- 2 -

ABKCO, Stargrove will consider all options available to it, including but not limited to any cause of action based on unfair trading and/or competition law.

We look forward to hearing from you by March 24, 2015.

Yours truly,

DIMOCK STRATTON LLP



A handwritten signature in black ink, appearing to read "Sangeetha Punniyamoorthy". The signature is fluid and cursive, with a large, stylized 'S' at the beginning.

SANGEETHA PUNNIYAMOORTHY

SP: cm

22

This is **Exhibit "22"** referred to in the Affidavit
of Terry Perusini sworn before me this 26th day
of August, 2015

Marie Elizabeth Wakefield
A Commissioner for taking Affidavits, etc.

Marie Elizabeth Wakefield, a Commissioner, etc.,
Province of Ontario, for WeirFoulds LLP,
Barristers and Solicitors.
Expires October 24, 2016.



SANGEETHA PUNNIYAMOORTHY
 416.971.7202
 spunniyamoorthy@dimock.com

SENT BY EMAIL & COURIER

March 17, 2015

Casablanca Media Publishing
 249 Lawrence Avenue East
 Toronto, ON M4N 1T5

Attention: Jennifer Mitchell, President

Dear Ms. Mitchell:

Re: Stargrove Entertainment Inc. re CMRRA Licence Refusal
Our Ref: 3378-2 SP/TK

We represent Stargrove Entertainment Inc. ("Stargrove") and are writing with respect to the refusal by Casablanca Media Publishing ("Casablanca") to grant Stargrove a mechanical license with respect to various works, as set out below.

As you know, Stargrove recently applied to Canadian Musical Reproduction Rights Agency Ltd. ("CMRRA") for a mechanical licence in respect of the following three Beatles tracks for which we understand Casablanca owns the Canadian copyright:

- 1) I Saw Her Standing There;
- 2) From Me to You; and
- 3) I Wanna Be Your Man.

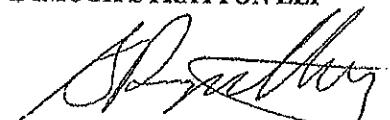
On February 4, 2015, Stargrove was advised by CMRRA that your company had instructed CMRRA to refuse Stargrove a license with respect to these tracks. Stargrove was surprised by this refusal since it is inconsistent with the normal course of conduct with these types of licenses, and in Stargrove's experience, unprecedented. The refusal to license is causing Stargrove significant financial loss and other damages. Accordingly, on behalf of Stargrove, we are writing to request a mechanical license for the tracks referenced above. If you decide to maintain your refusal to license Stargrove, please provide your reasons for denying a license.

Any refusal to license Stargrove in the ordinary course for unjustified reasons may give rise to unfair trading or competition law issues. If there is such a refusal of a mechanical license by Casablanca, Stargrove will consider all options available to it, including but not limited to any cause of action based on unfair trading and/or competition law.

- 2 -

We look forward to hearing from you by March 24, 2015.

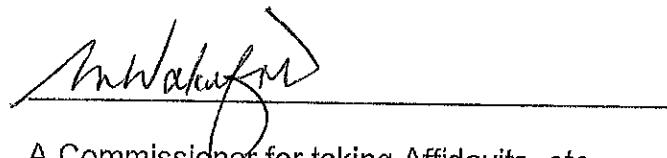
Yours truly,
DIMOCK STRATTON LLP


SANGEETHA PUNNIYAMOORTHY

SP: cm

23

This is **Exhibit "23"** referred to in the Affidavit
of Terry Perusini sworn before me this 26th day
of August, 2015



A Commissioner for taking Affidavits, etc.

Maria Elizabeth Wakefield, a Commissioner, etc.,
Province of Ontario, for WeirFoulds LLP,
Barristers and Solicitors.
Expires October 24, 2016.

MICHAEL B. KRAMER & ASSOCIATES

ATTORNEYS AT LAW

150 EAST 58TH STREET

NEW YORK, NEW YORK 10166

MICHAEL B. KRAMER*

*ADMITTED N.Y. & N.J.

TELEPHONE (212) 619-0804

FAX (212) 619-0545

WWW.MKRAMERLAW.COM

PETER T. SALZLER

MORGAN E. WEBER

ARTEMIS CROUSSOLOUDIS

mkramer@mkramerlaw.com

March 20, 2015

Via Email

Sangeetha Punniyamoorthy, Esq.
 20 Queen St. W, 32nd Floor
 Toronto, Ontario, Canada MSH 3R3
 spunniyamoorthy@dimock.com

Re: Stargrove Entertainment Inc. – CMRRA Licenses

Dear Ms. Punniyamoorthy:

This firm is counsel to ABKCO Music Inc. ("AMI"), and I am writing in response to your March 17, 2015 letter to ABKCO Music & Records, Inc. ("ABKCO") regarding AMI's decision not to grant Stargrove Entertainment, Inc. ("Stargrove") mechanical licenses for the following compositions:

- 1) Heart of Stone (Jagger/Richards);
- 2) What a Shame (Jagger/Richards);
- 3) Good Times Bad Times (Jagger/Richards);
- 4) It's All Over Now (Womack/Womack);
- 5) Grown Up Wrong (Jagger/Richards).

AMI's decision not to grant mechanical licenses to your client, through the Canadian Musical Reproduction Rights Agency, Ltd. ("CMRAA") or otherwise, quite frankly, does not require any explanation. As you know, AMI, as the owner of the worldwide copyrights in the compositions listed above, has the exclusive right to exploit such works or refrain therefrom in any manner or medium that it desires. Inherent in such rights is AMI's prerogative to license or to decline to license such works in the ordinary course of business.

Finally, any losses or damages purportedly suffered by Stargrove arise solely from Stargrove's own failures or negligence in not properly clearing rights in the music. This failure is by no means the fault of AMI.

In the future, please direct any further correspondence regarding this matter to this office.

Very truly yours,

Michael B. Kramer

cc: Jody H. Klein
Alisa Coleman
Peter J. Howard, Esq.
Peter T. Salzler, Esq.

24

This is **Exhibit "24"** referred to in the Affidavit
of Terry Perusini sworn before me this 26th day
of August, 2015

Marie Elizabeth Wakefield

A Commissioner for taking Affidavits, etc.

Marie Elizabeth Wakefield, a Commissioner, etc.,
Province of Ontario, for WeirFoulds LLP,
Barristers and Solicitors,
Expires October 24, 2016.



March 24, 2015

SENT BY EMAIL

Sangeetha Punniyamoorthy
Dimock Stratton LLP
20 Queen Street West, 32nd Floor
Toronto, Ontario. M5H 3R3

Dear Ms. Punniyamoorthy:

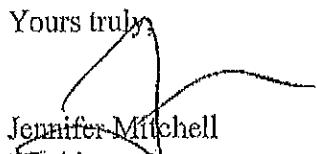
Re: Stargrove Entertainment Inc. re CMRRA License Refusal

We are in receipt of your letter dated March 17, 2015.

As you know, under the *Copyright Act* (Canada), the right to reproduce a musical work is granted exclusively to the copyright owner. A copyright owner's refusal to issue a mechanical license is a valid exercise of that exclusive right. It does not contravene any unfair trading and/or competition laws in this country, nor is the owner required to provide an explanation to the applicant for the refusal.

While it may not be common practice to refuse mechanical licenses, refusals do occur within the music industry for a variety of reasons. It is therefore incumbent upon your client to seek mechanical licenses prior to releasing product into the marketplace. Any losses that your client claims to have suffered as a result of our refusal of its application are entirely of its own making.

Yours truly,


Jennifer Mitchell
President

1652181 Ontario Inc. d/b/a Red Brick Songs
T: (416) 921-9214 ext 224
E: jennifer@redbricksongs.com

cc. Casey Chisick, Cassels Brock & Blackwell LLP

25

This is **Exhibit "25"** referred to in the Affidavit
of Terry Perusini sworn before me this 26th day
of August, 2015



A Commissioner for taking Affidavits, etc.

Marie Elizabeth Wakefield, a Commissioner, etc.,
Province of Ontario, for WeirFoulds LLP,
Barristers and Solicitors.
Expires October 24, 2016.

CMRRA

Canadian Musical Reproduction Rights Agency Limited

56 Wellesley Street West, Suite 320, Toronto, Ontario Canada M5S 2S3

Phone: (416) 926-1966 Fax: (416) 926-7521 Internet: vsyrtash@cmrra.ca Web: www.cmrra.ca

Veronica Syrtash, Ext. 281

Vice President,

Legal & Business Affairs

March 25, 2015

Dimock Stratton LLP
 20 Queen Street West, 32nd Floor
 Toronto, Ontario
 M5H 3R3
 Attention: Sangeetha Punniyamoorthy

Dear Ms. Punniyamoorthy,

Re: Stargrove Entertainment and CMRRA

I am writing in response to your letter to me, dated March 16, 2015.

As indicated in my letter to you dated March 12, 2015, Canadian Musical Reproduction Rights Agency ("CMRRA") is a licensing agency that acts pursuant to the instructions of its music publisher principals. As an agent, CMRRA cannot act contrary to the instructions of its principals. It is for this reason that CMRRA cannot issue licenses for works where the owners of such works have instructed CMRRA not to do so.

Furthermore, where a publisher principal has declined to authorize CMRRA to issue a license on its behalf, CMRRA does not know the reasons for such decisions. It only acts pursuant to instructions.

Notwithstanding the fact that we had suggested to Stargrove that CMRRA would facilitate the licensing of the songs if Stargrove could obtain the necessary authorizations from the publishers allowing us to do so, in an effort to resolve this matter as between us, we have proceeded to seek those authorizations directly, and can now advise as follows:

1. For Product Catalogue STR0009, Album Title "Fun, Fun, Fun"
 - (a) CMRRA has the authorization from the music publisher(s) to issue licenses for the following songs: *Summertime Blues, Surfer Girl, Surfin', Surfin' Safari, and Surfin' USA.*

(b) CMRRA does not have the authorization from the music publisher(s) to issue licenses for the following songs: *Be True To Your School, Dance Dance Dance, Fun Fun Fun, I Get Around, Ten Little Indians, and When I Grow Up (To Be A Man)*.

2. For Product Catalogue STR0001, Album Title "Love Me Do"

(a) CMRRA has the authorization from the music publisher(s) to issue a license for the following song: *Til There Was You*

(b) CMRRA does not have the authorization from the music publisher(s) to issue licenses for the following songs: *All My Loving, A Hard Day's Night, I Feel Fine, If I Fell, It Won't Be Long, This Boy, You Can't Do That, Love Me Do, Please Mr. Postman, and I Saw Her Standing There*.

3. For Product Catalogue STR0002, Album Title "Can't Buy Me Love"

(a) CMRRA has the authorization from the music publisher(s) to issue a license for the following song: *Honey Don't*

(b) CMRRA does not have the authorization from the music publisher(s) to issue licenses for the following songs: *Can't Buy Me Love, And I Love Her, Do You Want To Know A Secret, From Me To You, I Wanna Be Your Man, Mr. Moonlight, No Reply, Please Please Me, and You've Really Got A Hold On Me*.

(Collectively, the songs listed in paragraphs 1(a), 2(a) and 3(a), for which CMRRA has the authorization from the music publishers to issue licences, are referred to hereafter as "the CMRRA Licensable Songs".)

4. For Product Catalogue STR0008, Album Title "It Ain't Me Babe", CMRRA does not have the authorization from the music publisher(s) to issue licenses for any of the songs.

5. For Product Catalogue STR0004, Album Title "Little Red Rooster", CMRRA does not have the authorization from the music publisher(s) to issue licenses for any of the songs.

With respect to your request for us to provide a copy of our communication with at least one of our publisher principals, we are not at liberty and are under no obligation to share our business correspondence with you.

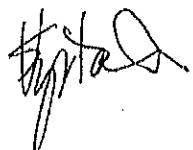
Please confirm that your client would like CMRRA to facilitate licenses for the CMRRA Licensable Songs. Once we have that confirmation from you, if Stargrove would still like to apply for licenses for the CMRRA Licensable Songs, we will kindly request that Stargrove re-submit its license applications for those songs pursuant to CMRRA's Pay-As-

You-Press licensing process.

As noted in my last correspondence, if Stargrove is able to secure the necessary authorizations from the music publishers allowing CMRRA to licence the other songs, we would be pleased to facilitate those licences for Stargrove.

I trust this information satisfies the requests that you have made of us.

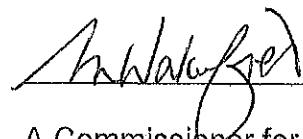
Sincerely,



Veronica Syrtash

26

This is **Exhibit "26"** referred to in the Affidavit
of Terry Perusini sworn before me this 26th day
of August, 2015



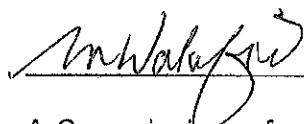
A Commissioner for taking Affidavits, etc

Marie Elizabeth Wakefield, a Commissioner, etc.,
Province of Ontario, for WeirFoulds LLP,
Barristers and Solicitors.
Expires October 24, 2016.

CAT NO	TITLE	TRACK	TRACK	Writers	Publishing	Distributed By
STR0001	Love Me Do	1	Love Me Do	Lennon/McCartney	BEECHWOOD MUSIC CORP. (OWNED BY UNIVERSAL)	Universal
		2	I Feel Fine	Lennon/McCartney	SONY/ATV MUSIC PUBLISHING	Universal
		3	This Boy	Lennon/McCartney	SONY/ATV MUSIC PUBLISHING	Universal
		4	I Saw Her Standing There	Lennon/McCartney	GIL MUSIC Corp (But refusal came from CASABLANCA).	Universal
		5	All My Loving	Lennon/McCartney	SONY/ATV MUSIC PUBLISHING	Universal
		6	Please Mister Postman	Holland	JOBETE/STONE/ UNIVERSAL	Universal
		7	A Hard Days Night	Lennon/McCartney	SONY/ATV MUSIC PUBLISHING	Universal
		8	You Can't Do That	Lennon/McCartney	SONY/ATV MUSIC PUBLISHING	Universal
		9	It Won't Be Long	Lennon/McCartney	SONY/ATV MUSIC PUBLISHING	Universal
		10	Till There Was You	Willson	Frank Music/Chappell/Mecolico	Universal
		11	If I Fell	Lennon/McCartney	SONY/ATV MUSIC PUBLISHING	Universal
STR0002	Can't Buy Me Love	1	Can't Buy Me Love	Lennon/McCartney	SONY/ATV MUSIC PUBLISHING	Universal
		2	From Me To You	Lennon/McCartney	GIL MUSIC Corp (But refusal came from CASABLANCA).	Universal
		3	Please Please Me	Lennon/McCartney	UNIVERSAL/DICK JAMES MUSIC LTD	Universal
		4	Do You Want To Know a Secret	Lennon/McCartney	SONY/ATV MUSIC PUBLISHING	Universal
		5	I Wanna Be Your Man	Lennon/McCartney	CMRRA shows nothing (But refusal came from CASABLANCA).	Universal
		6	No Reply	Lennon/McCartney	SONY/ATV MUSIC PUBLISHING	Universal
		7	Honey Don't	Perkins	CARL PERKINS MUSIC	Universal
		8	Words Of Love	Holly	PEERMUSIC LIMITED	Universal * no response on this track
		9	Mr Moonlight	Johnson	SONY/ATV MUSIC PUBLISHING	Universal
		10	And I Love Her	Lennon/McCartney	SONY/ATV MUSIC PUBLISHING	Universal
		11	You Really Got A Hold On Me	Robinson	JOBETE MUSIC/ UNIVERSAL	Universal
STR0004	Little Red Rooster	1	I Wanna Be Your Man	Lennon/McCartney	SONY/ATV MUSIC PUBLISHING	Universal
		2	Little Red Rooster	Dixon	ABKCO	Universal
		3	Heart Of Stone	Richard/Jagger	ABKCO	Universal
		4	What A Shame	Richard/Jagger	ABKCO	Universal
		5	Tell Me (You're Coming Back)	Jagger/Richard	PEERMUSIC CANADA (SIT ON CMRRA BOARD)	Universal
		6	Good Times Bad Times	Jagger/Richard	ABKCO	Universal
		7	It's All Over Now	B & S Womack	ABKCO	Universal
		8	Time Is On My Side	Meade/Norman	CMRRA show nothing	Universal
		9	Grown Up Wrong	Jagger/Richard	ABKCO	Universal
		10	If You Need Me	Pickett/Bateman/Sanders	DROP TOP MUSIC (Subject to clarification from CMRRA)	Universal
		11	Walking The Dog	Thomas	UNIVERSAL PUBLISHING	Universal
STR0008	It Ain't Me Babe	1	The Times They Are A Changin	Dylan	SONY/ATV MUSIC PUBLISHING	Sony
		2	It Ain't Me Babe	Dylan	SONY/ATV MUSIC PUBLISHING	Sony
		3	Corrina, Corrina	Dylan	SONY/ATV MUSIC PUBLISHING	Sony
		4	Blowin' In The Wind	Dylan	SONY/ATV MUSIC PUBLISHING	Sony
		5	Bob Dylan's Blues	Dylan	SONY/ATV MUSIC PUBLISHING	Sony
		6	A Hard Rain's A-Gonna Fall	Dylan	SONY/ATV MUSIC PUBLISHING	Sony
		7	Don't Think Twice It's All Right	Dylan	SONY/ATV MUSIC PUBLISHING	Sony
		8	Ballad Of Hollis Brown	Dylan	SONY/ATV MUSIC PUBLISHING	Sony
		9	Only A Pawn In Their Game	Dylan	SONY/ATV MUSIC PUBLISHING	Sony
		10	With God On Our Side	Dylan	SONY/ATV MUSIC PUBLISHING	Sony
		11	One Too Many Mornings	Dylan	SONY/ATV MUSIC PUBLISHING	Sony
STR0009	Fun Fun Fun	1	Surfin'	Love/Wilson	BUG MUSIC LIMITED	Universal
		2	Surfin' Safari	Wilson/Love	BUG MUSIC LIMITED	Universal
		3	Ten Little Indians	Wilson/Usher	UNIVERSAL MUSIC PUBLISHING LTD	Universal
		4	Surfin' U.S.A	Berry/Wilson	JEWEL MUSIC PUB. CO. LTD.	Universal
		5	Surfer Girl	Wilson	BUG MUSIC LIMITED	Universal
		6	Be True To Your School	Wilson/Love	UNIVERSAL MUSIC PUBLISHING LTD	Universal
		7	Fun Fun Fun	Wilson/Love	UNIVERSAL MUSIC PUBLISHING LTD	Universal
		8	I Get Around	Love/Wilson	UNIVERSAL MUSIC PUBLISHING LTD	Universal
		9	When I Grow Up (To Be A Man)	Wilson	UNIVERSAL MUSIC PUBLISHING LTD	Universal
		10	Dance Dance Dance	Love/Wilson	UNIVERSAL MUSIC PUBLISHING LTD	Universal
		11	Summertime Blues	Cochran	WARNER-TAMERLANE PUBLISHING CORP	Universal

27

This is Exhibit "27" referred to in the Affidavit
of Terry Perusini sworn before me this 26th day
of August, 2015



A Commissioner for taking Affidavits, etc.

Marvin Elizabeth Wakefield, a Commissioner, etc.,
Province of Ontario, for WeirFoulds LLP,
Barristers and Solicitors.
Expires October 24, 2016.

From: Jennifer Holt [mailto:jennifer@stargrove.ca]
Sent: April 1, 2015 11:39 AM
To: 'Nathalie Levesque'
Subject: Mechanical License Agreement

Hello Nathalie:

Based on communication between Veronica Syrtash and Sangeetha Punniyamorthy, can you please forward me a copy of the Mechanical License Agreement? Once I have that, I will sign and return along with applications we will have for a number of tracks we will need mechanical licenses for.

Please advise when I can expect the agreement.

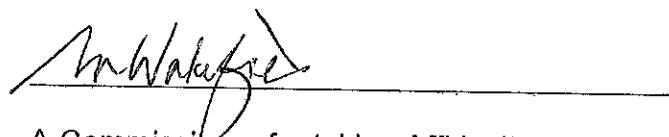
I look forward to working with you.

Thank you,

Jennifer Holt
Stargrove Entertainment

28

This is **Exhibit "28"** referred to in the Affidavit
of Terry Perusini sworn before me this 26th day
of August, 2015



A Commissioner for taking Affidavits, etc.

Marie Elizabeth Wakefield, a Commissioner, etc.
Province of Ontario, for WeirFoulds LLP,
Barristers and Solicitors.
Expires October 24, 2016.

From: Nathalie Levesque [<mailto:NLevesque@cmrra.ca>]
Sent: April 2, 2015 9:06 AM
To: Jennifer Holt
Subject: Re: Mechanical License Agreement / Stargrove

Jennifer,

Further to yesterday's conversation, please find attached the information regarding the Mechanical Licensing Agreement and our Qualifying policy.

As explained, CMRRA issues licenses either on a "pay-as-you-press/import" basis or according to the terms of the Mechanical Licensing Agreement (MLA). The MLA is an industry agreement negotiated between CMRRA and Music Canada which represents the major labels as well as several independent labels. The same MLA is extended to all labels doing business in Canada whether or not they are represented by Music Canada, provided they meet our credit requirements and can live up to the terms of the Agreement.

Depending on the volume you have on an annual basis, we may need to consider the pay as you press option. For example, if you only release a few albums a year with a limited number of CMRRA songs and in limited quantities, the best option remains the pay as you press system.

Otherwise, if your volume is considerable and you can bring more than \$1,600 in royalties payable to CMRRA on a quarterly basis and have royalty reporting system in place, then we can look into an Agreement. Some of the requirements are:

- a) error free quarterly reporting in the format outlined in the Agreement
- b) provide a security deposit, which is about the equivalent of a quarter's worth of royalties
- c) sometimes an advance against the royalties owed is also required, especially if the label has not secured licensees for products already on the market (the advance can be recouped once the label submits its first quarterly payment),
- d) ability to submit timely license applications with all the necessary supporting documents,
- e) along with a pending list, etc.

In order to determine which method we can apply, we need to have a better understanding of:

- 1) how many products are being released by your label
- 2) what kind of sales you are projecting for the rest of the year, including the number of units.

It would also be helpful if you could give us an idea of how many songs on each product would have writers and publishers represented by CMRRA. You can see CMRRA's representation by going to our Website at www.cmrra.ca (search our database). You can research the songs by title.

The benefits of going with the Pay as you press method is that, depending on the scope of what needs to be licensed, what we would request for a security deposit under the MLA may actually be greater than the actual mechanicals owed. Furthermore, there would not be any need for Quarterly reporting of sales. The only thing required would be for you to complete the application and send us your payment along with the pressing confirmation or a confirmation of the number of units being exported to Canada. In the event that you decide to do another pressing or ship additional copies, you simply reapply for your mechanicals.

Enclosed are the two MLA versions along with the corresponding royalty reporting templates (for each model) and the qualifying policy.

- 1) the 2013 Indie MLA Model 2 Final EN goes with the Excel document called Royalty reporting template New MLA 2013 and the Pending list template Final June 2013
- 2) The Indie MLA Model 1 Final goes with the Excel document called Royalty template model 1 and the Pending list template Final June 2013.

I understand that this information can somewhat be overwhelming so please let me know if I can be of further assistance or if you wish to schedule a call.

Wishing you a great Easter weekend.

Nathalie Lévesque | Assistant Manager - Assistante à la Direction, Independent Licensing & Royalties
CMRRA (Canadian Musical Reproduction Rights Agency) www.cmrra.ca
320 - 56 Wellesley Street West, Toronto, ON M5S 2S3
Phone: 416-926-1966 ext. 251 Fax: 416-926-7521 Email: nlevesque@cmrra.ca

From: "Jennifer Holl" <jennifer@stargrove.ca>
To: "Nathalie Lévesque" <NLevesque@cmrra.ca>
Date: 04/01/2016 11:38 AM
Subject: Mechanical License Agreement.

29

This is **Exhibit "29"** referred to in the Affidavit
of Terry Perusini sworn before me this 26th day
of August, 2015



A Commissioner for taking Affidavits, etc.

Marie Elizabeth Wakefield, a Commissioner, etc.,
Province of Ontario, for WeirFoulds LLP,
Barristers and Solicitors.
Expires October 24, 2016.

From: Jennifer Holt [mailto:jennifer@stargrove.ca]

Sent: April 2, 2015 10:48 AM

To: 'Nathalie Levesque'

Subject: FW: Mechanical License Agreement / Stargrove

Good Morning Nathalie:

Please see my answers to your questions below. Can you please advise as to what the difference between the two MLA's is?

I have also looked at the excel templates and they would work well with our royalty reporting.

Thank you,

Jennifer Holt
Stargrove Entertainment

Jennifer,

Further to yesterday's conversation, please find attached the information regarding the Mechanical Licensing Agreement and our Qualifying policy.

As explained, CMRRA issues licenses either on a "pay-as-you-press/import" basis or according to the terms of the Mechanical Licensing Agreement (MLA). The MLA is an industry agreement negotiated between CMRRA and Music Canada which represents the major labels as well as several independent labels. The same MLA is extended to all labels doing business in Canada whether or not they are represented by Music Canada, provided they meet our credit requirements and can live up to the terms of the Agreement.

Depending on the volume you have on an annual basis, we may need to consider the pay as you press option. For example, if you only release a few albums a year with a limited number of CMRRA songs and in limited quantities, the best option remains the pay as you press system.

Otherwise, if your volume is considerable and you can bring more than \$1,500 in royalties payable to CMRRA on a quarterly basis and have royalty reporting system in place, then we can look into an Agreement. Some of the requirements are:

- a) error free quarterly reporting in the format outlined in the Agreement
- b) provide a security deposit, which is about the equivalent of a quarter's worth of royalties
- c) sometimes an advance against the royalties owed is also required, especially if the label has not secured licences for products already on the market (the advance can be recouped once the label submits its first

quarterly payment),

- d) ability to submit timely licence applications with all the necessary supporting documents,
- e) along with a pending list, etc.

In order to determine which method we can apply, we need to have a better understanding of :

- 1) how many products are being released by your label (approximately 50 in year one, and approximately 30 each year thereafter),
- 2) what kind of sales you are projecting for the rest of the year, including the number of units. (really depends on when we finally release. But approximately 16,000 units per quarter. We will definitely be more than the \$1600 in royalties payable to CMRRA quarterly you noted above for a MLA.)

It would also be helpful if you could give us an idea of how many songs on each product would have writers and publishers represented by CMRRA. You can see CMRRA's representation by going to our Website at www.cmrra.ca (search our database). You can research the songs by title. (Based on what I have seen on your web site it looks like you will easily represent 90% of the tracks we have on our products.)

The benefits of going with the Pay as you press method is that, depending on the scope of what needs to be licensed, what we would request for a security deposit under the MLA may actually be greater than the actual mechanicals owed. Furthermore, there would not be any need for Quarterly reporting of sales. The only thing required would be for you to complete the application and send us your payment along with the pressing confirmation or a confirmation of the number of units being exported to Canada. In the event that you decide to do another pressing or ship additional copies, you simply reapply for your mechanicals. (It is important to understand that we will be shipping orders weekly and possibly even daily. Pay as you press would not work for us, as we would not be able to meet the strict turn times of our customers.)

Enclosed are the two MLA versions along with the corresponding royalty reporting templates (for each model) and the qualifying policy.

- 1) the 2013 Indie MLA Model 2 Final EN goes with the Excel document called Royalty reporting template New MLA 2013 and the Pending list template Final June 2013
- 2) The Indie MLA Model 1 Final goes with the Excel document called Royalty template model 1 and the Pending list template Final June 2013.

I understand that this information can somewhat be overwhelming so please let me know if I can be of further assistance or if you wish to schedule a call.

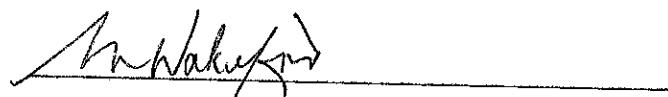
Wishing you a great Easter weekend.

Nathalie Lévesque | Assistant Manager - Assistante à la Direction, Independent Licensing & Royalties
 CMRRA (Canadian Musical Reproduction Rights Agency) www.cmrra.ca
 320 - 56 Wellesley Street West, Toronto, ON M5S 2S3
 Phone: 416-926-1966 ext. 251 Fax: 416-926-7521 Email: nlevesque@cmrra.ca

From: "Jennifer Holt" <jennifer@atarrapreve.ca>
 To: "Nathalie Levesque" <NLevesque@cmrra.ca>
 Date: 04/01/2015 11:38 AM
 Subject: Mechanical License Agreement

30

This is **Exhibit "30"** referred to in the Affidavit
of Terry Perusini sworn before me this 26th day
of August, 2015



A Commissioner for taking Affidavits, etc.

Marie Elizabeth Wakefield, a Commissioner, etc.,
Province of Ontario, for WeirFoulds LLP,
Barristers and Solicitors.
Expires October 24, 2016.

From: Jennifer Holt [mailto:jennifer@stargrove.ca]
Sent: April 7, 2015 9:31 AM
To: 'Nathalie Levesque'
Subject: FW: Mechanical License Agreement / Stargrove

Morning Nathalie:

I hope you had a wonderful Easter!

Thank you for the explanation. Model 2 is clearly best for us. I will sign and courier back to you immediately. I have a number of titles I need to submit applications for mechanical licenses. How do move forward with those applications?

Thank you,

Jennifer Holt
Stargrove Entertainment

From: Nathalie Levesque <NLevesque@cmrra.ca>
Date: April 2, 2015 at 1:59:50 PM EDT
To: "Jennifer Holt" <jennifer@stargrove.ca>
Subject: Re: FW: Mechanical License Agreement / Stargrove

Jennifer,

Thank you for your email. We usually evaluate with the label, which method is best suited to their needs and based on what they can provide.

Here are the differences between the two documents:

1) 2013 Indie MLA Model 2 Final EN : royalties are paid based on a Market share representation and report on all product sales and pay an advance against the royalties owed base on the number of units sold each quarter (less a reasonable reserve). CMRRA identifies the works and will produce the statements for each musical works / based on the number of units reported. We

will then provide copies of the statements along with a reconciliation of accounts based on the royalty advance.

Basically, although you have to fill out a report, the onus is on us to calculate the royalties owed based on representation and provide you a reconciliation. The label appoints CMRRA as its agent to seek licences from the Copyright Board of Canada for any unlocatable copyright owner where applicable pursuant to Section 77 of the Copyright Act.

The label does not have to maintain a pending list.

I would suggest that you review both documents so we can discuss further. This would likely be the preferred method as it is a simplified version of the Standard MLA, which requires a robust royalty system (see below).

2) The Indy MLA Model 1 Final. This model is for labels who have a robust royalty system in place and can generate statements while maintaining and liquidating reserves and applying returns. All the accounting is performed by the label and you must provide a pending list.

Can you tell us which royalty system you currently have in place? Do you have an up to date pending list?

Let me know if you have further questions. I'll be back in the office on Tuesday, next week.

Best regards,

Nathalie Lévesque | Assistant Manager - Assistant à la Direction, Independent Licensing & Royalties
CMRRA (Canadian Musical Reproduction Rights Agency) www.cmrra.ca
320 - 56 Wellesley Street West, Toronto, ON M5S 2S3
Phone: 416-926-1966 ext. 253 Fax: 416-926-7521 Email: nlevesque@cmrra.ca

From: "Jennifer Holt" <jennifer@stargrove.ca>
To: "Nathalie Levesque" <NLevesque@cmrra.ca>
Date: 04/02/2016 10:48 AM
Subject: FW: Mechanical License Agreement / Stargrove

31

This is **Exhibit "31"** referred to in the Affidavit
of Terry Perusini sworn before me this 26th day
of August, 2015

M. Wakefield

A Commissioner for taking Affidavits, etc.

Marie Elizabeth Wakefield, a Commissioner, etc.,
Province of Ontario, for WeirFoulds LLP,
Barristers and Solicitors,
Expires October 24, 2016.

From: Jennifer Holt [mailto:jennifer@stargrove.ca]
Sent: April 7, 2015 10:26 AM
To: 'Nathalie Levesque'
Subject: FW: Mechanical License Agreement / Stargrove

Hello Nathalie;

I saw your examples of formats to report in and we are good on that. In the past I worked for Legacy Entertainment and this is the same reporting format I used for them with CMRRA, so it is no problem at all.

I have read through the agreement and am ready to sign and return. I really want to move forward with this as it has basically put our business at a standstill. What are the other things needed to be addressed? I assume these are things outside of the agreement.

Thank you,

Jennifer Holt
Stargrove Entertainment

From: Nathalie Levesque <NLevesque@cmrra.ca>
Date: April 7, 2015 at 9:37:50 AM BDT
To: "Jennifer Holt" <jennifer@stargrove.ca>
Subject: Re: FW: Mechanical License Agreement / Stargrove

Jennifer,

Thank you for your email.

Before we extend a M.L.A to a label, we need to discuss a number of items and ensure the

manufacturer is in a position to report in the format required under the MLA.

There are a few things we need to address before you sign and return any documentation.

I'm booked for most of the day today on various meetings and conference calls. What is your availability for a call in the next couple of days?

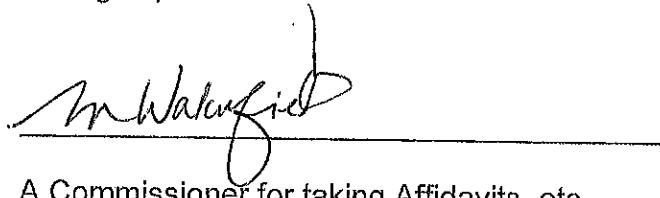
Best regards,

Nathalie Lévesque | Assistant Manager - Assistante à la Direction, Independent Licensing & Royalties
CMRRA (Canadian Musical Reproduction Rights Agency) www.cmrra.ca
320 - 56 Wellesley Street West, Toronto, ON M5S 2S3
Phone: 416-926-1966 ext. 251 Fax: 416-926-7521 Email: nlevesque@cmrra.ca

From: "Jennifer Holl" <jennifer@stargrove.ca>
To: "Nathalie Lévesque" <NLevesque@cmrra.ca>
Date: 04/07/2015 09:30 AM
Subject: FW: Mechanical License Agreement / Stargrove

32

This is Exhibit "32" referred to in the Affidavit
of Terry Perusini sworn before me this 26th day
of August, 2015



A Commissioner for taking Affidavits, etc.

Marie Elizabeth Wakefield, a Commissioner, etc.,
Province of Ontario, for WeirFoulds LLP,
Barristers and Solicitors.
Expires October 24, 2016.

From: Jennifer Holt [mailto:jennifer@stargrove.ca]
Sent: April-08-15 3:24 PM
To: 'Terry Perusini'
Subject: FW: CMRRA

Terry:

This is what I sent Nathalie earlier. I also left her a voicemail following up this email and asking if there was anything else she needed. I also asked about the online license requesting. I will be filling in the paper forms for the titles tomorrow just in case we have to send in the paper copies. This way we are all ready to go once everything is okayed.

Jenn

From: Jennifer Holt [mailto:jennifer@stargrove.ca]
Sent: April 8, 2015 12:37 PM
To: 'Nathalie Levesque'
Subject: RE: CMRRA

Hello Nathalie:

I am doing well on this rainy day – yourself?

Sorry I noted Model 2 in error. Yes I agree we are much more suited for the Standard Model being the MLA 1.

The system I plan on using is similar to that which I used with Legacy. I input the tracks and the system generates the royalties due.

A copy of the incorporation papers and credit application is attached.

In our business it is very difficult to give sales projections. We have some titles that may sell just a couple hundred units and some that will sell 1000s. We are not really in the "hits" business. We are more in the "evergreen" business which depends a lot on various promotions our customers may run at any given time.

The majority of our product will fall in line with budget pricing but we will also have a full line product. The initial plan is to come out with 25 budget titles and five "full line" products for the remainder of this year. Depending on the success those numbers may increase. The majority of our products will fall under the \$3.50 price point and we will have a "full line" products. That being the case we will be looking for the "budget rate" as outlined in section 9 that you referred me to. If it is helpful I can send you the list of titles we currently have planned to release this year.

I have attached the requested credit application.

If you would like to talk further via phone please feel free to call me at your convenience.

Thank you,

Jennifer Holt

Stargrove Entertainment

From: Nathalie Levesque [mailto:NLevesque@cmrra.ca]
Sent: April 8, 2015 11:47 AM
To: jennifer@stargrove.ca
Subject: CMRRA

Jennifer,

Hope you are well on this rainy day. I haven't heard back from you regarding this afternoon and my 2pm time slot got booked quite rapidly.

Can you please let me know if you need to speak with me?

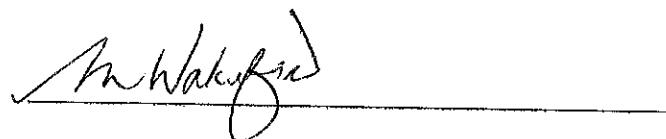
I'm available tomorrow morning between 8am and 10am or at 15h30

Let me know.

Nathalie Lévesque | Assistant Manager - Assistante à la Direction, Independent Licensing & Royalties CMRRA
(Canadian Musical Reproduction Rights Agency) www.cmrra.ca <<http://www.cmrra.ca/default.htm>>
320 - 56 Wellesley Street West, Toronto, ON M5S 2S3
Phone: 416-926-1966 ext. 251 | Fax: 416-926-7521 | Email: nlevesque@cmrra.ca
<<mailto:nlevesque@cmrra.ca>>

33

This is **Exhibit "33"** referred to in the Affidavit
of Terry Perusini sworn before me this 26th day
of August, 2015



A Commissioner for taking Affidavits, etc.

Marie Elizabeth Wakefield, a Commissioner, etc.,
Province of Ontario, for WeirFoulds LLP,
Barristers and Solicitors.
Expires October 24, 2016.

From: Nathalie Levesque [<mailto:NLevesque@cmrra.ca>]
Sent: April 21, 2015 1:20 PM
To: Jennifer Holt
Subject: CMRRA / licensing - Stargrove

Jennifer,

Thank you for your email.

As I mentioned in my last e-mail to you, there were a number of problems with Legacy's reporting under their MLA and some of these concerns were also highlighted in our correspondence. It did not work, as you're saying, so we are concerned that you are using their system as an example.

As you know, CMRRA has been instructed by several of our publisher principals not to act on their behalf with respect to issuing licences to Stargrove. Therefore, the remaining volume of licences that you would be seeking from CMRRA do not justify the work required under an MLA. As for the proposition put forward, we understand that you are eager to get your products licensed and so are we to collect the royalties on the products already on the market. However, while we are happy to explore alternatives to our processes to accommodate for the regular shipments of units, we still think that it would be best achieved by a meeting.

Finally, as an aside, can you please confirm whether Legacy's products are still being distributed in Canada? We understand from your email that Stargrove has nothing to do with Legacy, but since you were a previous employee of Legacy we hope you might be able to provide CMRRA with some information or, if you can't, let us know who we can speak to at Legacy to get this information.

Please let us know if you are available for a meeting. I'm in the office on Tuesday, Wednesday and Thursday from 8am to 6pm.

Best regards,

From: "Jennifer Holt" <jennifer@stargrove.ca>
 To: "Nathalie Levesque" <NLevesque@cmrra.ca>
 Date: 04/20/2015 09:48 AM
 Subject: FW: FW: CMRRA/ Stargrove - royalty system

Morning Nathalie:

Thank you for your email last week.

My reference to Legacy related to the fact that we would be using the same royalty reporting system they used. This system did work for CMRRA when I was with Legacy. The MLA has not changed since that time so I am somewhat confused as to the rationale how something that worked for another independent label will not work for us. Stargrove has absolutely nothing to do with Legacy. I merely used Legacy as an example to help us move matters forward.

You noted that it is somewhat difficult to envision extending Stargrove a MLA for three reasons. A) Budget Rate B) 500 units C) the threshold you require is nearly being met. Can you please elaborate on each of these points please? Do we not get the budget rate? The 500 units is not at all what we will be selling on each album. I simply put that number in the royalty report for example purposes. There will be some titles that will sell a few 1000 units and some that sell 10,000 to 50,000. It really depends on the strength of each individual title and when you are not in the hits business that really cannot be determined until the product is in the market.

We are happy to explore your suggestion that we have a pay as you press system where we report on a quarterly basis (based on pressing). With this not being your standard practice I need you to elaborate how this would work. We do not want to get in the situation we just had where we pay you for units pressed, you cash that money and then we are told we cannot have the licence. Please explain what you are referring to in terms of our distributor report and established deadlines.

I appreciate the offer for a meeting in the coming weeks but that does not work. This matter has become very urgent for us and I really do not have weeks to sort it. I am sure the publishers you represent would be very happy to start generating revenues from the products we plan to distribute. We have been trying to deal with CMRRA for months on end now, which included the involvement of our counsel. We are simply an independent label that will be manufacturing sound recordings on a continuing basis for years to come. We will be manufacturing very large quantities on some of our titles and larger than small quantities on others. On that basis we should be on a MLA as explained on your web site.

I appreciate you have administrative costs in setting up each license and I assume from your email these costs are more when dealing under an MLA versus Pay-As-You-Press. We are happy to work with you based on the guarantee that we will press more than the 500 units you qualify pay-as-you press with, such as maybe minimums of 1000 units per title.

Thank you,

Jennifer Holt
 Stargrove Entertainment

From: Nathalie Levesque [mailto:NLevesque@cmrra.ca]
Sent: April 16, 2015 4:54 PM
To: jennifer@stargrove.ca
Subject: Re: FW: CMRRA/ Stargrove - royalty system

Thank you for your email and your files.

While we appreciate all the efforts Stargrove has made in communicating the information requested in order for CMRRA to assess its eligibility for the Agreement, we still have a number of concerns and trying to determine the best way to licence your products.

Please allow us to explain. The royalty reporting system we discussed with Legacy a number of years ago was not developed specifically for your label but a system which has been in place and part of the Agreement for a number of years and applicable to all labels. If I recall correctly, when we met in 2009, it was to address the number of issues we had been having with the data, formatting, unsigned licences, lack of a pending list, deleted products, price structure list for budget products, etc.

It is our understanding that between the time we met and when Legacy ceased its operation, a number of products were released/distributed in Canada but never licensed. Do you still have products that were previously distributed by Legacy that you require licences for?

It is important to know that when a label cease operation, it is expected to provide a full reconciliation of account for all of its products. A reconciliation usually includes:

Catalogue list including :

The total units pressed / sold / remaining in inventory / destroyed and/or sold to a third party. This is something that was never provided to CMRRA.

We reviewed the document you sent and can advise as follows:

The royalty reporting contains formulas

Naming convention was not applied

Publisher summary is missing

The pending list, as explained in the MLA is not in the proper format.

Finally, we conducted a brief review of the 7 first products you plan on releasing and based on:

- a) budget rate
- b) 500 units
- c) the threshold we require is nearly being met for the songs we represent for the purposes of licensing.

It is for all these reasons that it is somewhat difficult to envision extending an Agreement under these conditions. As mentioned previously, the Pay as you press method might be best suited for your needs and requires a lot less administrative work. With the understanding that you might be shipping daily or on a regular basis, perhaps we can find a way to work around it by allowing you to submit your pay as you press applications on a quarterly basis (still based on pressing). However, this is probably something that we should discuss one on one so we can see what your distributor report looks like and established deadlines.

Let me know if you would be available for a meeting in the coming weeks.

Thank you,

Nathalie Lévesque | Assistant Manager - Assistante à la Direction, Independent Licensing & Royalties
CMRRA (Canadian Musical Reproduction Rights Agency) www.cmrra.ca
320 - 56 Wellesley Street West, Toronto, ON M5S 2S3
Phone: 416-926-1966 ext. 251 | Fax: 416-926-7521 | Email: nlevesque@cmrra.ca

To: "Nathalie Levesque" <NLLevesque@cmrra.ca>
Date: 04/15/2015 10:30 AM
Subject: FW: CMRRA/ Stargrove - royalty system

244

Morning Nathalie:

I think there is a bit of confusion. We definitely do have a royalty reporting system and it does comply with the MLA. Our royalty reporting system is one that CMRRA actually developed with us.

When we spoke the other day I mentioned how we will be using the same reporting system I used when I was with Legacy. You mentioned you believed there were problems with Legacy's reporting system and on that note I asked if there was any other system you recommended. We fully planned to start with our current system but if you had something you recommended, we would look into it as an eventual replacement if it helped you.

As for our current system, approximately 7 years ago, myself and Terry Perusini came to your office and met with staff at CMRRA, and I believe you were also in the meeting. The meeting addressed some of the problems with the way we were reporting back then. CMRRA then worked closely with us and together we created a report that worked much better and complied with the MLA. Since that meeting we had no further issues with our reporting system and all worked smoothly. It is that same system I plan to use now under Stargrove.

Sorry Nathalie, I probably should have just did this from the start. Attached is an example of that system we developed with CMRRA. I have entered in some information purely for example purposes.

This should resolve the confusion over our royalty reporting system. Hopefully you have everything you need now, and we can both move forward to finalize the MLA, where we can start generating revenues for you and the publishers CMRRA represents.

Thank you,

Jennifer Holt
Stargrove Entertainment

From: Nathalie Levesque [mailto:NLLevesque@cmrra.ca]
Sent: April 14, 2015 3:46 PM
To: Jennifer Holt
Subject: RE: CMRRA - royalty system

Jennifer,

Unfortunately, it is very hard for CMRRA to recommend a royalty system as it depends on whether you have IT resources, which system you already have in place (how the information has been tracked) and what type of budget you dispose of. There is a great variety of options available out there so you'll have to investigate which one is best suited for your needs.

At this point, given that you do not have a royalty system in place or able to produce a pending list (as required under the Standard MLA), it is somewhat difficult to envision extending an Agreement under these conditions. We will review the information you sent, including the upcoming releases so we can determine representation and assess your request.

In the mean time, if you have additional details to provide, please feel free to forward it to my attention.

Best regards,

Nathalie Lévesque | Assistant Manager - Asslstante à la Direction, Independent Licensing & Royalties
CMRRA (Canadian Musical Reproduction Rights Agency) www.cmrra.ca
320 - 56 Wellesley Street West, Toronto, ON M5S 2S3
Phone: 416-926-1966 ext. 251 | Fax: 416-926-7521 | Email: nlevesque@cmrra.ca

From: "Jennifer Holt" <jennifer@stargrove.ca>
To: "Nathalie Levesque" <NLevesque@cmrra.ca>
Date: 04/09/2015 01:28 PM
Subject: RE: CMRRA

Hello Nathalie:

Great speaking with you this morning. Thank you for taking the time.

Would you be able to recommend some of the royalty systems that other people are using? Then we could look into them and find one that works for us?

Thank you,

Jenn Holt
Stargrove Entertainment

From: Nathalie Levesque [<mailto:NLevesque@cmrra.ca>]
Sent: April 8, 2015 11:47 AM
To: jennifer@stargrove.ca
Subject: CMRRA

Jennifer,

Hope you are well on this rainy day. I haven't heard back from you regarding this afternoon and my 2pm time slot got booked quite rapidly.

Can you please let me know if you need to speak with me?

I'm available tomorrow morning between 8am and 10am or at 15h30

Let me know.

Nathalie Lévesque | Assistant Manager - Asslstante à la Direction, Independent Licensing & Royalties
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34

This is **Exhibit "34"** referred to in the Affidavit
of Terry Perusini sworn before me this 26th day
of August, 2015

Marie Elizabeth Wakefield

A Commissioner for taking Affidavits, etc.

Marie Elizabeth Wakefield, a Commissioner, etc.,
Province of Ontario, for WeirFoulds LLP,
Barristers and Solicitors,
Expires October 24, 2016.

CMRRA-
MANUFACTURER
Mechanical
Licensing
Agreement
(Independent Labels –
Model I-1)

as of January 1, 2013

MECHANICAL LICENSING AGREEMENT

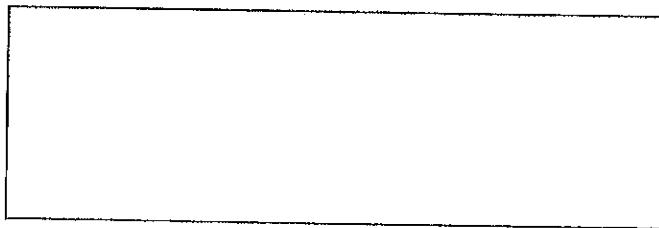
DATED as of January 1, 2013

B E T W E E N :

Canadian Musical Reproduction Rights Agency Limited, a Corporation incorporated pursuant to the laws of Canada having its principal offices at 56 Wellesley Street West, Suite 320, Toronto, Ontario Canada M5S 2S3 (“CMRRA”) on behalf of its Affiliated Publishers,

OF THE FIRST PART

AND –



(“Manufacturer”)

OF THE SECOND PART

WHEREAS CMRRA carries on business as a non-exclusive agent for certain music publishers which have engaged CMRRA to issue licenses for the mechanical reproduction of certain musical compositions to manufacturers, distributors and importers of Recordings (as hereinafter defined),

AND WHEREAS Manufacturer carries on business by way of the manufacture or authorizes the manufacture, importation and/or distribution in and into Canada of Recordings containing reproductions of certain copyrighted musical works which are owned and/or administered in Canada by CMRRA’s publisher principals,

AND WHEREAS CMRRA and Manufacturer acknowledge and agree that the prompt and efficient administration of this Agreement and of the licensing of musical compositions and accounting for and payment of royalties with respect thereto are of the utmost importance,

AND WHEREAS Manufacturer acknowledges and agrees that its prompt application for licenses hereunder, its prompt handling of licenses issued by CMRRA hereunder and its prompt and accurate entry of licensing data into its royalty accounting systems are of the essence of this

Agreement, and CMRRA acknowledges and agrees that its prompt handling of license applications and issuance of licenses hereunder are of the essence of this Agreement.

AND WHEREAS CMRRA and Manufacturer wish to enter into an Agreement for such purpose,

THEREFORE WITNESS that in consideration of the mutual covenants and warranties herein contained, and subject to all the terms and conditions hereinafter set forth, the parties hereto agree as follows:

1. Definitions

In this Agreement, the following terms shall have the meanings indicated below:

Affiliated Publisher: A music publisher for which CMRRA acts as Agent for the mechanical licensing of Authorized Compositions (as hereinafter defined) in Canada and to carry on such licensing to Manufacturer pursuant to the terms hereof. CMRRA's Affiliated Publishers are set out on Schedule "A" hereto as may be amended by CMRRA from time to time.

Authorized Composition: A musical composition owned and/or administered in whole or in part by an Affiliated Publisher, which publisher has engaged and instructed CMRRA to act as its agent for the mechanical licensing of such musical composition.

CD: A digitally recorded audio compact disc of any size or format but specifically excluding any digitally recorded and reproduced audio-visual disc of any size or format.

Digital Recording: A digitally recorded disc, tape or other contrivance, excluding CD's ("DR").

Due Date: That date which is forty-five (45) days after the end of each calendar quarter, specifically, February 15, May 15, August 15 and November 15 in each year of the Term (as hereinafter defined).

LP: An analogue vinyl record of any size or playing speed.

Manufacturer: the corporation that is the party of the Second Part to this Agreement, engaged in the business of manufacturing or authorizing the manufacture, importing and/or distributing Recordings in or into Canada.

MC: An analogue audio cassette tape, related analogue or other related audio tape format, but specifically excluding any audio-video tape in any format.

Mechanical License: A license issued by CMRRA to Manufacturer subject to the terms hereof and pursuant to section 2 hereof.

Musical Work: A “musical work” as defined in section 2 of the *Copyright Act*, R.S.C. 1985, c. C-42 (the “Act”), with reference to any Musical Work including any fractional share of the copyright in that work.

Non-Authorized Composition: A musical composition owned and/or administered in whole or in part by an Affiliated Publisher which said Affiliated Publisher has instructed CMRRA to exclude from the scope of this Agreement as listed on Schedule “B” hereto.

Non-Affiliated Publisher: A music publisher which has engaged CMRRA to act as its agent for the mechanical licensing of musical compositions to Manufacturers in Canada on terms and conditions at variance with those set out herein as listed on Schedule “B” hereto.

Prior License: A Mechanical License issued by CMRRA to Manufacturer prior to the effective date hereof.

Promotional Product: A Recording containing a reproduction or reproductions of Authorized Compositions, manufactured especially for promotional purposes, including “Radio CD’s” “Dance Pool Products” or any like configuration, including Recordings available for sale to the general public through Manufacturer’s customary distribution and retail channels, when such Recording are distributed free in Canada by Manufacturer to promote the sale thereof, provided that either the words “Promotional Copy Not For Sale” or words having the same effect are marked on each Recording so distributed or on the packaging thereof, or that each Recording so distributed is cut or drilled or otherwise marked by Manufacturer to indicate same.

Recording: The reproduction of a sound recording on LP, MC, CD, and/or DR, manufactured, imported or distributed by or on behalf of Manufacturer in or into Canada, but specifically excluding any audio-visual recording.

Release Date: The date on which Manufacturer releases a Recording for sale to the general public through its customary distribution and retail channels. Where a Recording is deleted by Manufacturer and subsequently reissued in any format, the Release Date for such Recording will be the date of such re-release for all purposes herein, including the determination of applicable Royalty Rates pursuant to sections 3 and 7 herein.

Royalty or Royalties: The amount(s) payable by Manufacturer to CMRRA pursuant to Mechanical Licenses issued under this Agreement and calculated pursuant to the rates set out herein.

Term: The term of this Agreement shall commence upon January 1, 2013 and conclude upon December 31, 2013.

Track: An audio-only sound recording embodying, subject to subsection 2(a), one or more Musical Works.

(b) *Schedules:* The following are the schedules to this Agreement, each of which forms an integral part of this Agreement:

Schedule "A" - Affiliated Publishers

Schedule "B" - Non-Affiliated Publishers and Non-Authorized Compositions

Schedule "C" - CMRRA Standard Royalty Format (Structured Data File Format)

Schedule "D" - CMRRA Standard Royalty Format (Microsoft Excel Format)

Schedule "E" - Standard Format for Publisher Summary

Schedule "F" - Unlicensed Recording List Information

Schedule "G" - License Application Information

2. Scope of Agreement

(a) *Applicability of Agreement:* This Agreement applies only to the mechanical licensing in Canada of Authorized Compositions owned and/or administered in whole or in part by Affiliated Publishers to Manufacturer.

(b.1) *Affiliated Publishers:* Upon request by Manufacturer, CMRRA shall provide Manufacturer with a list of all Affiliated Publishers, and shall provide Manufacturer with timely advice of all music publishers which become Affiliated Publishers and all music publishers which cease to be represented by CMRRA. Such list will form Schedule "A" to this Agreement and may be provided by CMRRA either in printed or electronic form. Subsequent to the date of execution hereof, and for the duration of the Term, CMRRA shall represent and issue licenses on behalf of Affiliated Publishers to Manufacturer for the uses set out herein, only pursuant to the terms hereof. Where an Affiliated Publisher ceases to be represented by CMRRA during the Term, it will no longer be bound by the terms hereof respecting the mechanical licensing of its musical compositions to Manufacturer in Canada subsequent to the date on which it ceased to be represented by CMRRA, but all Mechanical Licenses issued by CMRRA to Manufacturer while said Affiliated Publisher was represented by CMRRA will continue in full force and effect until the conclusion of the Term. Subsequent to the execution hereof, CMRRA may amend Schedule "A" by providing Manufacturer with a notice in the form attached hereto as Exhibit "B" and the provision of such notice will be deemed to be an amendment to Schedule "A". CMRRA may revise or replace the form of Schedule "A" and Exhibit "B" at any time by providing notice of same to Manufacturer.

(b.2) *Non-Affiliated Publishers:* Prior to the execution hereof, CMRRA shall provide Manufacturer with a list of all Non-Affiliated Publishers. Such list will form Schedule "B" to this Agreement. During the Term hereof, CMRRA will not undertake the representation of any further Non-Affiliated Publishers, provided that in any case where, prior to the date hereof, CMRRA has undertaken the representation of a Non-Affiliated Publisher on the basis of instructions at variance

with the terms hereof, CMRRA shall continue to so represent such Non-Affiliated Publisher and shall issue licenses with respect thereto exclusively in accordance with such instructions as the Non-Affiliated Publisher thereof has given, or may subsequently give, to CMRRA.

(c) *Notification of Non-Authorized Compositions:* Upon the execution hereof, CMRRA will provide Manufacturer with a list of all Non-Authorized Compositions. Such list will form Schedule "B" to this Agreement. During the Term hereof, CMRRA will not undertake the representation of any further Non-Authorized Compositions, provided that in any case where, prior to the date hereof, CMRRA has undertaken the representation of a Non-Authorized Composition on the basis of instructions at variance with the terms hereof, CMRRA shall continue to so represent such Non-Authorized Composition and shall issue licenses with respect thereto exclusively in accordance with such instructions as the Publisher thereof has given, or may subsequently give, to CMRRA.

(d) *Individual Licensing of Works:* This Agreement does not constitute a license.

(i.a) *Applications for Mechanical Licenses:* Manufacturer shall make application to CMRRA for Mechanical Licenses for all Recordings sold or otherwise distributed in Canada by Manufacturer where such Recordings contain reproductions of musical works. Such application will be made by way of Manufacturer providing CMRRA with one (1) copy of each CD, LP, MC or DR version of each Recording which it releases for sale to the public in the ordinary course of its business ("Sample Product"). Manufacturer will, at the same time, provide CMRRA with information respecting the Musical Works reproduced on such Recordings as set out in Schedule "G" hereto. Manufacturer's application will include all information which is indicated as "Mandatory" on the said schedule and may include information which is indicated as "Conditional". More specifically, "Conditional" information is information that must be provided to CMRRA if it is available to Manufacturer.

Manufacturer may, at its election, provide CMRRA with printed label copy as an accompaniment to, but not in place of, the copy of each Recording provided herein by way of application for licenses.

(i.b) *Controlled Compositions:* Where Manufacturer intends to rely upon the terms of a controlled composition clause in the determination of the Royalty Rate respecting any Mechanical License, it shall advise CMRRA of such intention in writing at the time such Recording is provided to CMRRA hereunder.

(i.c) *Directly Licensed Works:* Upon request by CMRRA, Manufacturer will advise CMRRA of any Mechanical Licenses which have been issued directly to Manufacturer at any time during the Term by one or more publishers or copyright owners with respect to musical works reproduced on the Recording. Manufacturer acknowledges that CMRRA has no responsibility or liability for the accuracy or sufficiency of any such directly issued

license and that Manufacturer at all times bears the risk associated with obtaining and complying with the terms of such licenses.

(ii) *Disposal of Sample Products:* CMRRA will not sell any Sample Product provided to it by Manufacturer pursuant to this section but will be under no obligation to return such Product to Manufacturer.

(iii) *Compilation Products:* Where a Recording contains Tracks performed by different performers, Manufacturer's application(s) respecting such Recording will wherever reasonably possible disclose the name(s) of the performer(s) of each composition contained therein.

(iv) *Identical Programs:* Where an LP, CD, MC or DR contains a sequence of recordings of Authorized Compositions ("Program") and such Program is reproduced more than once on such LP, MC, CD or DR, then CMRRA shall issue a Mechanical License only respecting the first such recording of each such Authorized Composition in such Program on the LP, MC, CD or DR and Manufacturer shall not be obliged to make application for a Mechanical License or pay Royalties for such Authorized Compositions in such other Program(s).

(v) *Issuance of Licenses:* Subject to the terms and conditions hereof, in response to applications received from Manufacturer pursuant to subsection (i) herein, CMRRA shall, on behalf of Affiliated Publishers, grant individual Mechanical Licenses to Manufacturer on a use-by-use basis authorizing the mechanical reproduction of Authorized Compositions on Recordings manufactured by or on behalf of Manufacturer in Canada or imported by or on behalf of Manufacturer into Canada, and authorizing the distribution thereof in Canada.

Mechanical Licenses issued hereunder may, at CMRRA's election, be provided to Manufacturer in the form of licenses individually issued with respect to one or more ownership interests in musical works or in the form of reports setting out the terms of each license. Such licenses will be subject to the terms and conditions of this Agreement. Manufacturer agrees to be bound by such licenses at the time they are issued by CMRRA. Manufacturer shall be permitted to reject a Mechanical License only by reason of a deficiency in the Mechanical License itself and shall disclose its reason for doing so with the rejection of the Mechanical License.

Each Mechanical License issued by CMRRA to Manufacturer hereunder will include the information set out on Exhibit "A" and will be deemed to include the following terms and conditions:

1. *Grant of License:* At the request of Licensee and in its capacity as agent for the Copyright Owner/Administrator, CMRRA hereby grants to Licensee a non-exclusive license to reproduce the Musical Work described above on the Recording described in the Mechanical License and to distribute and sell such Recording in

Canada for private use by the public, subject to the terms and conditions which follow. Such grant right is limited to the Percentage of Copyright owned or administered by the Copyright Owner/Administrator.

2. *Arrangement or Alteration of Musical Work:* Licensee may arrange the Musical Work for the limited purpose and to the limited extent necessary to conform it to the style or manner of interpretation of the Artist/Group involved, subject to section 2(e) of the Mechanical Licensing Agreement, but shall have no right to insert new words into the existing lyrics, to alter the basic melody or to otherwise arrange the music, or generally to change the fundamental character and unity of the Musical Work. Licensee may not claim any ownership or other interest in, or register, any arrangement permitted under this section as a work under the *Copyright Act*, R.S. 1985, c. C-42.

3. *Label and Jacket Information:* Licensee shall use best efforts to imprint the Title of the Musical Work followed by the name(s) of the Composer/Author and Copyright Owner/Administrator on the label, jacket or container of every Recording made under this License where the production of the printed matter associated with a Recording is beyond its control and where the printed matter associated with a Recording is within the Licensees control it will imprint the Title of the Musical Work followed by the name(s) of the composer/Author and Copyright Owner/Administrator on the label, jacket or container of every recording made under this License.

4. *Limitations on Use:* All reproduction or other use of the Musical Work not specifically authorized by this Mechanical License, or by the written consent of CMRRA, is prohibited.

5. This Agreement is subject to and incorporates the terms and conditions of the Mechanical Licensing Agreement (Independent Labels) dated as of January 1, 2013 between CMRRA and Licensee.

CMRRA will issue such Mechanical Licenses as soon as possible after its receipt of applications therefore from Manufacturer, provided that where Manufacturer has notified CMRRA that it relies upon the terms of a controlled composition clause as being applicable to determination of the Royalty Rate for any Mechanical License, CMRRA will refrain from issuing such license until Manufacturer has provided CMRRA with the recording agreement excerpts set forth in section 7(d) herein, or until the expiry of the time periods set out in section 7(e) herein, whichever shall first occur.

(e) *Applicability of Agreement:* This Agreement is not applicable to any of the following uses except to the extent that the same has been authorized by the Affiliated Publisher:

- (i) visual reproduction or printing of lyrics or music of any Authorized Composition;
- (ii) the use of an Authorized Composition in a medley or a mashup;
- (iii) the use of an Authorized Composition, in whole or in part, as a “sampled” use, whether the “sampling” is effected digitally or otherwise in any medium or through the use of any technology now or hereafter known;
- (iv) any parody or translation of the lyrics of an Authorized Composition.
- (v) any rental of a Recording by Manufacturer, or sale by Manufacturer of a Recording for the intentional purpose of rental;
- (vi) any commercial use of the Recording other than for distribution and sale in the Territory for private use by the public (whether for background music, disk jockey or broadcast use), unless such distribution or sale is made with the express limitation that the user is not authorized to reproduce the Recording without the express prior written consent of CMRRA or the Affiliated Publisher(s) involved;
- (vii) any reproduction of an Authorized Composition in any audio-visual recording;
- (viii) any reproduction of an Authorized Composition by way of any contrivance not specifically authorized herein;
- (ix) any reproduction of a musical composition for which Manufacturer has obtained a direct license from an Authorised Publisher.

Manufacturer may make separate application to CMRRA for the purpose of obtaining licenses for any of the above purposes, the terms and conditions of which licenses, if granted, shall be expressly subject to individual negotiation between Manufacturer and CMRRA on behalf of the Affiliated Publisher(s) involved.

(f) *Renewal of Prior Licenses:* All Prior Licenses, if any, are deemed to be and hereby are renewed for the Term hereof. The terms and conditions appearing on the back of Prior Licenses are hereby replaced by those set out in Section 2(d)(v) of this Agreement.

(g) *Amended and Reprinted Prior Licenses:* CMRRA may, where reasonable, at its discretion, amend any Mechanical License or Prior License. Such amendment may occur upon any material change in the ownership of the Authorized Composition (or partial interest therein), to replace a missing or lost license, or at the request of the Affiliated Publisher(s) involved or of the Manufacturer. The amended license will be binding upon the parties hereto respecting the Authorized Composition licensed thereby.

(h) *Provision of Retailer Materials:* Manufacturer will provide CMRRA with copies of all release announcements or notifications, deletion announcements or notifications, product catalogues which it customarily provides to its retail customers, at the same time at which such materials are provided to such retailers.

(i) *Distributed Labels:* Manufacturer acknowledges that it may, from time to time, enter into licensing, distribution or other agreements with persons, firms or corporations in the music business ("Third Parties") for the manufacture and/or distribution of Recordings which may contain reproductions of Authorized Compositions, but that the terms of such agreements put the onus and responsibility of licensing such reproduction on such Third Parties. Likewise, Manufacturer acknowledges that it may, from time to time, enter into agreements with Third Parties by which Manufacturer acquires the right to sell or otherwise distribute Recordings produced by or on behalf of such Third Parties which may contain reproductions of Authorized Compositions. Manufacturer recognizes CMRRA's interest in ensuring that such reproduction of Authorized Compositions is carried on pursuant to licenses duly issued by CMRRA to such Third Parties, and that royalties are paid by such Third Parties to CMRRA pursuant thereto. Accordingly, Manufacturer will, upon receipt of written authorization from any such Third Party, provide CMRRA, in the course of CMRRA's administration of licensing agreements with such Third Parties with such reasonable assistance and provision of information as CMRRA may from time to time request including, without limiting the foregoing, such information as CMRRA may reasonably require to conduct copyright royalty examinations of the books and records of such Third Parties. Manufacturer agrees that it will be jointly and severally liable with Third Parties to CMRRA for the payment of all royalties payable pursuant to licenses issued with respect to Recordings dealt within this paragraph and that CMRRA may at its discretion seek payment of all such royalties in the event of failure or refusal of Third Parties to pay same.

(j) *Security:* Before this Agreement takes effect, Manufacturer agrees to deposit an amount to be mutually agreed between it and CMRRA, which shall be held in trust by CMRRA as security for the proper performance by Manufacturer of all the terms and conditions of this Agreement. During the term hereof, CMRRA may apply the deposit or any part thereof towards the payment of any Royalty due or other charges by Manufacturer by reason of any default of Manufacturer in complying with the terms hereof. The deposit shall accrue interest at current bank rates on short-term deposits which shall be held in trust by CMRRA pending full and complete performance of the terms and conditions herein. CMRRA may additionally require Manufacturer to deposit further amounts with CMRRA during the term hereof for the same purpose. The amount of the initial deposit payable hereunder and any additional deposit(s), the due date(s) for payment

thereof and such other terms and conditions as CMRRA may require shall be embodied in one or more amendments to this Agreement.

3. Royalty Rate

(a) *Royalty Rate:* Subject to the provisions of sections 2, 7, 8 and 9 hereof, Manufacturer will pay Royalties pursuant to this Agreement on a quarterly basis by no later than the Due Date following the conclusion of each calendar quarter during the Term at the following royalty rate ("Royalty Rate"): for all Recordings sold or otherwise distributed during the Term, the Royalty Rate shall be, for each reproduction of an Authorized Composition,

(i) where the running time of the Recording is five (5) minutes or less, eight and three-tenths cents (\$0.083) per Authorized Composition per Recording

(ii) where the running time of the Recording is longer than (5) minutes, eight and three-tenths cents (\$0.083) per Authorized Composition per Recording for the first five (5) minutes of such Authorized Composition and one and sixty-six one-hundredths cents (\$0.0166) per additional minute or part thereof of such Authorized Composition per Recording.

(b) *Royalty Rate for Prior Periods:* Manufacturer's obligation to account for and pay Royalties will be determined pursuant to the terms hereof. Manufacturer will account for and pay Royalties at the applicable Royalty Rate during each Period in which Recordings were or are sold or otherwise distributed. The applicable Royalty Rate for prior periods are as follows:

<i>Prior Period</i>	<i>Royalty Rate</i>	<i>Per. Min. Rate</i>
Prior to October 1, 1988	0.02	0.004
From October 1, 1988 to September 30, 1990	0.0525	0.0105
From October 1, 1990 to December 31, 1991	0.059	0.0118
From January 1, 1992 to December 31, 1993	0.0625	0.0125
From January 1, 1994 to December 31, 1995	0.0647	0.0129
From January 1, 1996 to December 31, 1997	0.066	0.0132
From January 1, 1998 to December 31, 1999	0.071	0.0142
From January 1, 2000 to December 31, 2001	0.074	0.0148
From January 1, 2002 to June 30, 2007	0.077	0.0154
From July 1, 2007 to December 31, 2009	.081	0.0162
From January 1, 2010 to December 31, 2012	0.083	0.0166

4. Payment of Royalties

(a) *Obligation to Pay Royalties:* Subject to the provisions of this Agreement, royalties shall be due on all Recordings sold or otherwise distributed. All royalty payments will be net of all bank charges, Goods and Services or any other applicable tax.

(b) *Interest on Overdue Quarterly Payments:* Where Manufacturer's regular quarterly payment of Royalties is made to CMRRA later than the relevant Due Date, Manufacturer shall pay

interest on the full amount of royalties due for that quarter at that rate which is equal to the prime rate as set by the Bank of Canada prevailing on the Due Date plus two per cent (2%), calculated on a daily basis. Such interest shall be due and owing upon the day on which the overdue payment is made to CMRRA. Where Manufacturer's regular quarterly payment includes an overpayment made by Manufacturer, CMRRA shall return such amounts to Manufacturer. Such payment will be made by CMRRA either upon CMRRA's discovery of Manufacturer's overpayment or upon Manufacturer's request thereof and will not be deducted by Manufacturer from any amount otherwise payable to CMRRA hereunder in the absence of such request. If CMRRA does not make such payment to Manufacturer within thirty (30) days after CMRRA's receipt of Manufacturer's notice to CMRRA or CMRRA's discovery as the case may be, CMRRA shall in addition pay interest on such returned amount, calculated in the manner set out above. Royalty payments related to the return of Recordings subsequent to the liquidation of Manufacturer's reserve pursuant to section 11 herein will not constitute an overpayment as set out in this section.

(c) *Royalty Statements:* With respect to each quarterly period of the Term hereof, Manufacturer's payment of Royalties shall be accompanied by separate, accurate royalty statements for each Mechanical License issued by CMRRA to Manufacturer.

Such royalty statements shall be delivered to CMRRA in electronic form conforming to one of two formats: either as the format outlined in Schedule 'C' attached hereto for the submission of a structured data file, or as Schedule 'D' attached hereto for the submission of a Microsoft Excel file or such other data file agreed to in advance by CMRRA. The royalty statements will include all data which is indicated as 'Mandatory' on the said format and may include data which is indicated as 'Conditional'. More specifically, 'Conditional' data is data that must be provided to CMRRA if it is available to Manufacturer. Manufacturer will include all Conditional data for all new licenses issued by CMRRA to Manufacturer after the date of execution thereof and Manufacturer will use its best efforts to include the Conditional data for licenses issued prior to this date.

Manufacturer shall work with CMRRA in good faith to ensure that the chosen electronic format is implemented properly. Such efforts to ensure proper implementation shall include Manufacturer's submission of test electronic files to CMRRA in a timely manner, for approval by CMRRA.

In addition, Manufacturer's payment of Royalties and electronic royalty statements shall be accompanied by accurate printed and electronic summaries of the total amounts payable to each Affiliated Publisher, in the format attached hereto as Schedule 'E'. Any adjustment appearing on a statement must be accompanied by sufficient reasonable information to explain the purpose for which such adjustment was made.

The number of units for which Royalties are being paid in each quarterly period shall be adjusted to indicate any reserve(s) claimed by Manufacturer pursuant to section 11 of this Agreement, whether the reserves are withheld or liquidated. For greater clarity, each line item on Manufacturer's royalty statement shall indicate the number of units payable, accounting for any reserve. A reserve cannot be accounted for by reducing or increasing the royalty amount payable for

each line item, or by reducing or increasing the total amount of royalties payable either to an Affiliated Publisher or Non-Affiliated Publisher, or the total amount of royalties payable to CMRRA.

(d) *Unlicensed Recording Lists:* Each quarterly payment of Royalties will be accompanied by an accurate cumulative listing of all Recordings sold or otherwise distributed by Manufacturer up to the end of the quarterly period prior to the Due Date, in respect of which Royalties have not been paid by Manufacturer or Mechanical Licenses have not for any reason been obtained for any ownership interest in any musical compositions reproduced therein ("Unlicensed Recording List"). Manufacturer shall provide CMRRA with the Unlicensed Recording List in the format set out in Schedule "F" or in an electronic format mutually agreeable to CMRRA and Manufacturer. The Unlicensed Recording List will include all data which is indicated as "Mandatory" on the said format and may include data which is indicated as "Conditional". More specifically, "Conditional" data is data that must be provided to CMRRA if it is available to Manufacturer.

(e) *Licensing and Payment of Royalties on Unlicensed Recordings:* CMRRA shall, upon its receipt of an Unlicensed Recording List, review such list and identify any musical compositions which are Authorized Compositions or Non-Authorized Compositions and will issue Mechanical Licenses to Manufacturer with respect thereto pursuant to this Agreement. Manufacturer will, upon receipt of same, execute each Mechanical License and return such Mechanical License to CMRRA. Payment of all accumulated Royalties respecting such Authorized Compositions or Non-Authorized Compositions and Royalty statements respecting such payment in like form to that set out in section 4(d) herein shall be delivered to CMRRA on the following Due Date.

(f) *Interest on Unlicensed Recording:*

(i) *No Application Made:* Where CMRRA identifies a composition and issues a Mechanical License pursuant to section 4(e) herein respecting a Recording containing a reproduction of an Authorized Composition represented by an Affiliated Publisher and no proof of application for such license can be provided respecting such Recording, then interest will be payable upon the payment of Royalties with respect thereto, such interest to be calculated pursuant to section 4(g) herein from the next Due Date subsequent to the Release Date of the Recording to the date of payment.

(ii) *Where Application Made – Insufficient Information:* where CMRRA identifies a composition and issues a Mechanical License pursuant to section 4(e) herein respecting a Recording containing a reproduction of an Authorized Composition represented by an Affiliated Publisher and an application was received from Manufacturer respecting such Recording, but CMRRA advised Manufacturer that such application did not disclose at least the title of the musical composition, the name(s) of the author(s) or the publisher(s) to enable CMRRA to identify the composition, then interest will be payable upon the payment of Royalties with respect thereto, such interest to be calculated pursuant to section 4(g) herein from the

next Due Date subsequent to the Release Date of the Recording to the date of payment, excluding the period of time commencing upon the date of application to CMRRA and concluding sixty (60) days after the date of CMRRA's response to Manufacturer with respect to such application ("Interest-Free Period"). In the event that Manufacturer supplied additional information to CMRRA within such sixty (60) day period in an effort to identify the composition or the ownership thereof and such information does not enable CMRRA to do so, the conclusion of the Interest-Free Period shall be extended to that date which is sixty (60) days after which CMRRA advises Manufacturer that it remains unable to identify the composition in question. The Interest-Free Period may likewise be extended by the provision of further information by Manufacturer to CMRRA.

(iii) *Where Application Made - Unrepresented Publisher:* where CMRRA identifies a composition and issues a Mechanical License pursuant to section 4(e) herein respecting a Recording containing a reproduction of an Authorized Composition represented by an Affiliated Publisher and an application was received from Manufacturer respecting such Recording, but CMRRA advised Manufacturer that it did not represent the Publisher thereof at the time of such application, but that the publisher had become affiliated with CMRRA subsequent to such application, then no interest will be payable upon the payment of Royalties with respect thereto.

(iv) *Royalties Withheld:* Where, notwithstanding the issuance of a Mechanical License by CMRRA, Manufacturer withholds the payment of Royalties without just cause and includes such royalties on an Unlicensed Recording List, Manufacturer will pay all such Royalties to CMRRA on the next subsequent Due Date together with interest to be calculated pursuant to section 4(g) herein from the next Due Date subsequent to the Release Date of the Recording to the date of payment. CMRRA's receipt of such Royalties will not impair or diminish its remedies arising from such withholding of Royalties. Where a manufacturer withholds payment of Royalties pursuant to this subsection, it will notify CMRRA with same and its reasons for such withholding.

(g) *Calculation of Interest:* Where interest is payable pursuant to section 4(f) herein, it shall be calculated on the basis of a rate which is equal to the prime rate as set from time to time by the Bank of Canada plus two percent (2%) on a quarterly basis during the period in which interest is to be calculated pursuant to section 4(f) herein.

5. Free Goods

Except as provided in sections 6 and 7 herein, royalties will be paid quarterly on Recordings distributed on a free or no charge basis, on the same rates and terms that apply to Recordings otherwise sold.

6. Promotional Copies

(a) *Allowance:* No royalties will be payable on Promotional Products, as that term is defined herein, up to a maximum of two thousand (2,000) units (all formats combined).

(b) Manufacturer shall provide CMRRA with one (1) copy of each such Promotional Product for CMRRA's inspection at the same time at which such Promotional Product is distributed by Manufacturer. CMRRA will not sell or otherwise distribute any Promotional Products provided to it hereunder. To the extent that any Promotional Product contains any Authorized Composition, the provision of a copy of such Promotional Product to CMRRA is deemed to be an application for a Mechanical License with respect thereto, and each Authorized Composition reproduced therein is deemed to be licensed pursuant to the terms hereof, and no royalties are payable with respect thereto.

7. Controlled Compositions

(a) *Definitions:* In this Section, the following terms shall have the meanings indicated below:

Recording Agreement: A written agreement between Manufacturer and a recording artist for the production of master recordings or a like agreement between Manufacturer and a third party by which the rights granted in such agreement are assigned or licensed to Manufacturer by such recording artist or third party.

Controlled Composition: A musical composition which is wholly or partially owned or controlled by any person, firm or corporation which has granted or authorized the granting of rights thereto in a Recording Agreement.

Controlled Composition Clause: Any provision of a Recording Agreement that grants or authorizes the granting of Mechanical Licenses at a rate with respect to a Controlled Composition.

(b) *Non-Controlled Compositions:* Any Authorized Composition or partial ownership interest therein that is not subject to such control, ownership or other form of interest as would make it subject to the provisions of a Controlled Composition Clause will be payable at the applicable Royalty Rate as set out in section 3.

(c) *Licensing of Controlled Compositions:* Subject to section 7(f) herein, Manufacturer will apply to CMRRA for Mechanical Licenses for the reproduction of Controlled Compositions in Recordings pursuant to the terms hereof. The Royalty Rate payable for a Controlled Composition shall be determined solely in accordance with the Controlled Composition Clause, provided however that:

(c.i) *Pre-October 1, 1988:* Where the Release Date of a Recording occurred prior to October 1, 1988;

(i) *Definition:* The terms "statutory rate", "industry rate" or any term having a similar effect in a Recording Agreement shall be deemed to refer to the applicable royalty rate below ("Base Royalty Rate") as of the Release Date, for the first five minutes of playing time (or less) of an Authorized Composition:

<i>Release Date</i>	<i>Royalty applicable on that date</i>
Jan. 1, 1924 - Dec. 31, 1977	2 cents
Jan. 1, 1978 - Jun. 30, 1981	2 3/4 cents
Jul. 1, 1981 -Dec. 31, 1982	4 cents
Jan. 1, 1983-Jun. 30, 1984	4 1/4 cents
Jul. 1, 1984- Dec. 31, 1985	4 1/2 cents
Jan. 1, 1986-Sept. 30, 1988	5 cents

(ii) *Playing Time Exceeds Five Minutes:* Where the playing time of a Recording of a Controlled Composition exceeds five (5) minutes, the Base Royalty Rate shall be increased by one fifth of its value for each minute (or part thereof) of additional playing time;

(iii) *Minimum Per-Composition Rate:* In no case shall the Royalty Rate payable for a musical composition be less than two (2) cents;

(iv) *Payment of Royalties:* Royalties will be paid by Manufacturer pursuant to the terms of section 4 of this Agreement.

(c.2) October 1, 1988 - September 30, 1990: Where the Release Date of a Recording of a Controlled Composition occurred on or after October 1, 1988 and on or before September 30, 1990,

(i) *Definition:* The terms "statutory rate", "industry rate" or any term having a similar effect in a Recording Agreement shall be deemed to refer to the Royalty Rate for Recordings applicable during each Period as set out in section 3 herein for a Recording of five (5) minutes playing time or less.

(ii) *Royalty Rate Percentage:* Where the Percentage [hereinafter defined in section 7(c.2)(iii)] is less than seventy five percent (75%), it will be deemed to be equal to seventy-five percent (75%). Where the Percentage in the Controlled Composition Clause is higher than seventy-five (75%), the Percentage will be equal to that number set out in the Controlled Composition Clause.

(iii) *Cap Provisions:* Where a Controlled Composition Clause limits the total Royalties which a Manufacturer will pay with respect to all musical compositions reproduced on an LP, MC, CD or DR, by setting a maximum amount ("Cap") which is determined by multiplying a whole number ("Multiplier") by a percent-age ("Percentage") of the Royalty

Rate, such provision will be given full force and effect in the determination of the Royalty Rate for any Controlled Composition to which this section 7(c.2) applies, provided that in no event shall the royalty rate payable for a musical composition be at a rate which is less than fifty percent (50%) of the Royalty Rate for a Recording with a playing time of less than five (5) minutes which is applicable during each Period as set out in section 3 herein.

(iv) *Free Goods:* Where a Controlled Composition Clause provides that Royalties may be paid on less than one hundred percent (100%) of all Recordings sold, Royalties shall be paid on the proportion of all Recordings on which Manufacturer is obliged to pay Royalties which is set out in the Controlled Composition Clause, or upon eighty-five percent (85%) of all Recordings sold whichever amount is greater.

(c.3) *Post-October 1, 1990:* Where the Release Date of a Recording of a Controlled Composition occurred or occurs on or after October 1, 1990,

(i) *Definition:* The terms "statutory rate", "industry rate" or any term having a similar effect in a Recording Agreement shall be deemed to refer to the Royalty Rate for Recordings applicable during each Period as set out in section 3 herein for a Recording of five minutes playing time or less.

(ii) *Royalty Rate Percentage:* Where the Percentage [as hereinafter defined in section 7(c.3)(iii)] is less than seventy five percent (75%), it will be deemed to be equal to seventy-five percent (75%). Where the Percentage in the Controlled Composition Clause is higher than seventy-five (75%), the Percentage will be equal to that number set out in the Controlled Composition Clause.

(iii) *Cap Provisions:* Where a Controlled Composition Clause limits the total Royalties which a Manufacturer will pay with respect to all musical compositions reproduced on an LP, MC, CD or DR, by setting a maximum amount ("Cap") which is determined by multiplying a whole number ("Multiplier") by a percentage ("Percentage") of the Royalty Rate, such provision will be given full force and effect in the determination of the Royalty Rate for any Controlled Composition to which this section 7(c.3) applies, provided however that the number of compositions shall be determined as follows:

(1) *Albums:* With respect to an LP, MC, CD, or DR, containing no less than eight (8) musical compositions, where the Multiplier in the Controlled Composition Clause is less than twelve (12), it will be deemed to be equal to twelve (12). Where the Multiplier in the Controlled Composition Clause exceeds twelve (12), the Multiplier will be equal to that number.

(2) *Multiple-Album Configurations:* With respect to a multiple set consisting of more than one LP, MC, CD or DR, the Multiplier shall be as follows:

<i>Number of LP's, MC's, CD's or DR's in Multiple Set</i>	<i>Multiplier</i>
2	20
3	28
4	36
5	44
each additional	add 8

(3) *Singles and Other Formats:* With respect to singles, cassette-singles CD singles and all other non-album and non-multiple album formats, the Multiplier shall be that number set out in the Controlled Composition Clause.

(iv) *Multiple Mixes:* Where a CD single or cassette single or "extended play" product contains multiple versions of a Controlled Composition, CMRRA will issue a Mechanical License and Royalties will be payable at the full Royalty Rate by Manufacturer only with respect to the Recording of such Controlled Composition with the longest running time. Such Mechanical License will be deemed to include all other versions of such Controlled Composition reproduced on such product. In no event will this section apply to the reproduction of Non-Controlled Compositions, provided that Manufacturer may make an application to CMRRA on behalf of the Affiliated Publisher of a Non-Controlled Composition for a Royalty Rate which is at variance from that otherwise applicable pursuant to the terms of this Agreement.

(v) *Minimum Per-Composition Rate:* Notwithstanding the application of any Cap Provision, as modified by this section 7(c.3), in no event shall the royalty rate payable for a musical composition be at a rate which is less than fifty percent (50%) of the royalty rate for a Recording with a playing time of less than five (5) minutes which is applicable during each Period as set out in section 3 herein.

(vi) *Free Goods:* Where a Controlled Composition Clause provides that Royalties may be paid on less than one hundred percent (100%) of all Recordings sold, Royalties shall be paid on the proportion of all Recordings on which Manufacturer is obliged to pay Royalties which is set out in the Controlled Composition Clause, or upon eighty-five percent (85%) of all Recordings sold whichever amount is greater.

(d) *Recording Agreement Excerpts:* No Mechanical License will be issued in respect of a Controlled Composition unless and until Manufacturer provides CMRRA with excerpts from the applicable Recording Agreement which contains the Controlled Composition Clause relied upon by Manufacturer and which discloses the following information:

(i) The date of the Recording Agreement;

- (ii) the names of all parties to the Recording Agreement;
- (iii) the Controlled Composition Clause;
- (iv) any defined terms set out in any of the above excerpts; and,
- (v) the signed and dated signature page.

Notwithstanding the foregoing, nothing contained herein shall derogate from the validity or enforceability of any Controlled Composition Clause relied on by the Manufacturer as between Manufacturer and any party other than CMRRA or an Authorized Publisher.

(e) *Failure to Provide Excerpts:* In the event that the excerpts from the applicable Recording Agreements set out in section 7(d) herein are not provided to CMRRA within sixty (60) days of the Release Date of a Recording, CMRRA may provide Manufacturer with thirty (30) days' written notice of its intention to issue a Mechanical License in respect thereof at the full Royalty Rate. If Manufacturer has not provided said excerpts within said notice period, CMRRA may issue a Mechanical License respecting such Recording at the full Royalty Rate ("Full-Rate License"). Subsequent production by Manufacturer of said excerpts will retroactively cure any prior failure to provide same. On the provision of said excerpts, CMRRA will amend the Full-Rate License to conform to the applicable provisions of this section 7. Manufacturer will be entitled to make adjustments for any overpayment of Royalties which occurs pursuant to this section 7(e).

(f) *Challenge to Controlled Compositions:* It is understood and agreed that nothing in this section shall influence or affect any challenge by any persons, in any forum, of the validity or effect of any Controlled Composition Clause or part thereof.

8. Deletes

(a) *Deletion:* Where Manufacturer deletes a Recording containing reproductions of Authorized Compositions licensed to Manufacturer hereunder from its catalogue of products offered for sale to its customers ("Deleted Recordings"), it will provide CMRRA with written notice of such deletion on a quarterly basis. Manufacturer may, for this purpose, provide CMRRA with a copy of the deletion notice which it provides to its customers.

(b) Royalty:

(i) *Destruction of Deleted Recordings:* Where Manufacturer destroys Deleted Recordings, no royalty shall be payable to CMRRA with respect thereto. Manufacturer will maintain reasonable records and documentation of such destroyed goods which shall be made available to CMRRA upon request.

(ii) *Sale of Deleted Recordings:* Where Manufacturer sells Deleted Recordings, the Royalty payable will be as follows:

- (A) Where Deleted Recordings are sold at or below three dollars and fifty cents (\$3.50) each, Manufacturer will pay a Royalty equal to fifteen per cent (15%) of the proceeds of such sale.
- (B) Where Deleted Recordings are sold for greater than three dollars and fifty cents (\$3.50) each, Manufacturer will pay the Royalty Rate otherwise applicable pursuant to this Agreement.

(iii) *Payment of Royalty:* The amount and payment of Royalties referred to in subsection 8(b)(ii) herein will be payable on the next Due Date and will take into account CMRRA's share of market as agreed upon between CMRRA and Manufacturer. Manufacturer will maintain records of the proceed of sale of Deleted Recordings and submit such information to CMRRA along with its payment of Royalties

(c) *Cancellation of Licenses:* Where Manufacturer has provided CMRRA with notice of Deletion as set out in section (a) herein, CMRRA will cancel all Mechanical Licenses issued to Manufacturer respecting such Deleted Recording, provided that all rights (except for the right to manufacture further Recordings), representations, warranties, covenants, indemnifications and obligations shall survive the cancellation thereof.

9. Royalty Reduction for Budget Recordings

- (a) *Definition:* In this section,
 - (i) "*Best Selling Price*" means the price in effect to the largest-volume dealers purchasing Recordings from Manufacturer;
 - (ii) "*Full Line Product*" means the product line released by Manufacturer containing most of Manufacturer's new releases;
 - (iii) "*Budget Recording*" means a Recording, the Best Selling Price of which is fifty-five percent (55%) or less of the Best Selling Price for Full Line Product offered for sale by Manufacturer.
 - (iv) Where Manufacturer does not sell or otherwise distribute Full Line Products, "*Budget Recording*" means a CD whose Best Selling Price is less than three dollars and fifty cents (\$3.50) and an MC whose Best Selling Price is less than two dollars (\$2.00). If, during the Term hereof, Manufacturer begins selling Full Line Products, "*Budget Recording*" shall, from and after the date on which Manufacturer commences to sell or

otherwise distribute such Full Line Products, be determined according to the terms of subsection (iii) herein.

(b) *Budget Rate:* Manufacturer may apply to CMRRA for, and CMRRA shall issue, Mechanical Licenses for Authorized Compositions reproduced on Budget Recordings on the basis of three-quarters (3/4) of the Royalty Rate which would otherwise be applicable pursuant to section 3 during each Period ("Budget Reduction"). Where, pursuant to section 7 herein, Manufacturer is entitled to a Royalty Rate which would be lower than that set out in this section, Manufacturer may make application for, and CMRRA shall issue Mechanical Licenses for Authorized Compositions on such basis, provided that the Budget Reduction and any Royalty Rate reduction pursuant to section 7 herein are mutually exclusive.

(c) *Restriction:* The Budget Reduction is applicable only to Budget Recordings that contain at least either eight (8) musical works or, in the case of classical or serious music, at least thirty (30) minutes of playing time.

(d) *Mid-Line Recordings:* Recordings known in the trade as "mid-line" Recordings are specifically excluded from the Budget Reduction.

(e) *Provision of Pricing Information:* Manufacturer shall submit to CMRRA current price list information to qualify for the Budget Reduction.

(f) *Instructions of Affiliated Publishers:* The Budget Reduction is subject to the individual instructions of the Affiliated Publishers, and nothing in this section precludes Affiliated Publishers from negotiating individually a lower rate or other terms for Budget Recordings.

10. Exports

Unless otherwise agreed by the parties hereto, Recordings exported by Manufacturer will be licensed by and royalties will be paid to the mechanical rights society and/or responsible publisher(s) in the country to which the Recordings are exported, and that Manufacturer will not be liable to CMRRA for the payment of Royalties on such exported Recordings to the extent that such Recordings are otherwise subject to Mechanical Licenses issued to Manufacturer by CMRRA hereunder ("Export Exemption"). Manufacturer will provide CMRRA with advice on a timely basis of all Recordings manufactured pursuant to Mechanical Licenses issued hereunder for which exemption from Royalty payment is claimed by Manufacturer on the grounds of export, including quantity, catalogue number and identification of purchaser by name and country.

It is understood and agreed that the Export Exemption is intended to apply only to Recordings in respect of which all applicable mechanical licenses are obtained and applicable royalties are paid in the territory into which they have been exported, and that the Export Exemption is not intended to provide Manufacturer or the importer or purchaser of such exported Recordings with the opportunity to export or obtain Recordings free of any royalty payments or obligations.

In addition, Manufacturer will, upon request by CMRRA, provide representatives of CMRRA with reasonable proof that mechanical licenses have been obtained and applicable royalties have been paid on exported Recordings in the territories into which they have been exported. If Manufacturer is unable to provide CMRRA with such proof for any Recordings in respect of which it claims the benefit of this section, Manufacturer will be obliged to obtain Licenses and pay Royalties as provided hereunder in respect of such Recordings.

11. Reserves and Returns

(a) *Reserve Allowance:* Manufacturer shall be entitled to a reasonable reserve against the return of Recordings sold or otherwise distributed, save and except for "one-way sales" of Recordings where such Recordings are sold or otherwise distributed by Manufacturer where the purchaser thereof is not entitled to return same. Amounts held in reserves will be paid out on a regular quarterly basis, over a maximum period of five (5) calendar quarters, whereby any amount entering the reserve shall be fully liquidated no later than five (5) calendar quarters after such amount entered the reserve.

(b) *Reserve Accounting:* The number of units for which Royalties are paid shall be adjusted to indicate any reserve(s) claimed by Manufacturer pursuant to Section 11(a) above, whether the reserves are withheld or liquidated. For greater clarity, Manufacturer's reserve shall be withheld or liquidated only by adjusting the number units payable and not by reducing or increasing the Royalty amount payable for each line item, or by reducing or increasing the total amount of Royalties payable, either to an Affiliated Publisher, Non-Affiliated Publisher or CMRRA.

(c) *Returns in Excess of Reserves:* Royalties associated with returned Recordings in excess of the reserve held by Manufacturer shall be carried forward as a negative credit balance for the applicable Musical Work or share thereof, and shall not be recouped against royalties otherwise payable to CMRRA.

12. Termination

(a) *Termination of Agreement:*

(i) *Insolvency of CMRRA:* This Agreement shall terminate in the event that CMRRA is voluntarily wound up or becomes insolvent, makes or is the subject of an assignment in bankruptcy or if a receiver is appointed to manage the affairs of CMRRA. In the event of such termination, all Mechanical Licenses issued by CMRRA to Manufacturer will remain in full force and effect directly between Affiliated Publishers and Manufacturer for the remainder of the Term hereof.

(ii) *Insolvency of Manufacturer:* CMRRA may terminate this Agreement in the event that Manufacturer is voluntarily wound up, or is the subject of an assignment in bankruptcy or if a receiver is appointed to manage its affairs. In the event of such termination, all licenses issued to Manufacturer by CMRRA hereunder will be terminated.

forthwith and Manufacturer will render an accounting and payment to CMRRA of all royalties due and owing thereunder.

(iii) *Breach of Agreement by Manufacturer:* CMRRA may terminate this Agreement in the event of any material breach of its terms or of the terms of any Mechanical License issued by CMRRA to Manufacturer. Prior to effecting such termination, CMRRA shall give Manufacturer written notice of its intention to terminate in the manner set out herein. If Manufacturer fails to take reasonable steps to cure such breach within thirty (30) days following the date of such notice, then this Agreement and all Mechanical Licenses issued hereunder shall terminate on the thirty-first (31st) day following such notice. Upon such termination, Manufacturer will forthwith render an accounting and payment to CMRRA of all Royalties due pursuant to this Agreement.

(b) *Termination of Individual Mechanical Licenses:* Subject to the provisions of Exhibit "A" hereto, CMRRA may terminate any individual Mechanical License issued hereunder upon Manufacturer's material breach of any of the terms thereof by giving written notice of such breach as set out herein. If Manufacturer fails to take reasonable steps to cure such breach within thirty (30) days following the date of receipt of such notice, then the said Mechanical License shall terminate on the thirty-first (31st) day following the receipt of such notice. Upon any such termination of a Mechanical License, Manufacturer will render an accounting and payment to CMRRA of all Royalties due and owing thereunder in the course of its next quarterly Royalty accounting.

13. Arbitration

Disagreements regarding the interpretation of the terms of this Agreement shall first be the subject of discussion between CMRRA and Manufacturer. Failing resolution of the disagreement by such discussion, it shall be referred to arbitration pursuant to the provisions of the *Arbitrations Act*, S.O. 1991, c.17, as amended from time to time. The reference to arbitration shall be to one arbitrator, if the parties agree upon one arbitrator, otherwise to three arbitrators, one of whom shall be chosen by each party to the dispute and the third by the two so chosen and the third arbitrator so chosen shall be the Chairman. The award may be made by the majority of the arbitrators, Pursuant to s.45(3) of the said Act, the award may be appealed by either party to a Court on a question of fact or on a question of mixed fact and law.

14. Amendment and Severability

This Agreement may only be amended in writing signed by the parties hereto. A waiver by either party hereto of any term or condition of this Agreement or of any individual Mechanical License incorporating this Agreement by reference shall not be deemed or construed as a waiver of any condition or term hereof for the future or of any subsequent breach thereof. All remedies contained in this Agreement and in any individual Mechanical License incorporating the terms of this Agreement by reference shall be cumulative and none of them shall be in limitation of any other remedy. To the extent that any provision hereof may be judicially or administratively determined to

be illegal or otherwise void, other than articles 2 and 7 herein, it is severed herefrom and will not otherwise affect or otherwise derogate from any other term hereof.

15. Audit

(a) *Audit Right:* Manufacturer hereby agrees that CMRRA, on behalf of its Affiliated Publisher(s) and those listed on Schedule "B" hereto, shall have the right, not more than once in any twelve (12) month period, to conduct, at its own expense, a Copyright Royalty Examination ("Audit") of Manufacturer's books and records as the same relate to the use of the Authorized Compositions and those listed on Schedule "B" hereto, which are the subject of Mechanical Licenses incorporating this Agreement, provided that CMRRA provides Manufacturer with reasonable written notice of its intent to conduct an Audit not less than twenty (20) business days prior to such Audit, and provided further that no such Audit shall take place within thirty (30) days prior to any Due Date. The Audit right may be exercised only once during any calendar year with respect to royalty statements rendered within two (2) years of CMRRA's receipt of said statements.

(b) *Books and Records to be Kept:* Without limiting the generality of the foregoing, such books and records shall include books of account and supporting documentation relating to the manufacture, sale or other distribution and return of Recordings sold or otherwise distributed by Manufacturer. Such books and records shall be maintained in a manner consistent with such Generally Accepted Accounting Principles as are and may be established from time to time by the Canadian Institute of Chartered Accountants.

(c) *Access to Information:* Without limiting the generality of the foregoing, Manufacturer shall advise CMRRA and its agents, upon request thereof, where such records, books and supporting documentation are kept and shall provide CMRRA and its agents with such information, CMRRA and its agents shall have the right to take hand-written extracts and to make photocopies and computer reports of such records, books and supporting documentation as CMRRA and its agents determine are reasonably necessary and convenient for the efficient conduct of the Audit.

(d) *Verification by Third Party:* in lieu of exercising the Audit Right herein, CMRRA may, in its sole discretion, accept the findings of a mutually acceptable examiner engaged by and at the cost of Manufacturer, including but not limited to an auditing or accounting firm, for the purpose of verifying the accuracy of Manufacturer's records and payments made pursuant to this Agreement.

16. Applicable Law

This Agreement shall be interpreted and governed by and pursuant to the laws of the Province of Ontario.

17. Notice

Any notice or other communications hereunder will be in writing and must be delivered by personal service, facsimile or by pre-paid registered mail to CMRRA and Manufacturer at the addresses set out in this Agreement, and such notice or communication will be deemed to be received in the case of personal service on delivery, or if by facsimile on the day of transmission, or if mailed on the fifth business day following its mailing. Either party may change its address for notice provided above by giving notice to the other party. Notwithstanding the foregoing, notice of material breach of any term or condition of this Agreement shall be by prepaid registered mail and shall be deemed received on the date of actual receipt by the addressee.

18. Entire Agreement

This Agreement and the Schedules and Exhibits attached hereto constitute the entire agreement between the parties and neither party hereto is bound by any representation or inducement not set forth herein.

19. Titles

Section titles herein are merely for identification and will be of no effect whatsoever in the application and construction of this Agreement or its provisions.

20. Currency

All royalties paid pursuant to Mechanical Licenses issued hereunder shall be calculated and paid in Canadian funds.

21. Assignment

Neither this Agreement nor any Mechanical License issued by CMRRA to Manufacturer hereunder may be assigned by Manufacturer in whole or in part without the express prior written consent of CMRRA, save and except for any assignment necessitated by a change in control or ownership of Manufacturer occasioned by the acquisition of a substantial controlling interest in the shares thereof or through the merger of Manufacturer with another firm, in which case assignment will be subject to immediate notification to CMRRA, provided that the assignee in such case is a party hereto.

22. Representation and Warranty by CMRRA

CMRRA represents and warrants that its Affiliated Publishers and Non-Affiliated Publishers own and/or control the reproduction rights in the Authorized Compositions and Non-Authorized Compositions pursuant to the terms and conditions of this Agreement and that they have authorized CMRRA to enter into this Agreement with Manufacturers and to grant Mechanical Licenses to Manufacturers as set out herein.

In the event that the above representation and/or warranties is or are breached with respect to any Composition licensed hereunder, and Manufacturer is found liable or settles any claim for damages as a result thereof, CMRRA will indemnify Manufacturer against and hold Manufacturer harmless from any and all claims, demands, liabilities and losses (including reasonable legal fees, interest and court costs) arising out of or in any way related to such breach. CMRRA agrees that Manufacturer may withhold such sums due CMRRA or Affiliated Publisher pursuant to the provisions of section 4(f)(iv) herein, in such amounts reasonably related to such claims until such time as such claims are reduced to a final judgment by a court of competent jurisdiction or are settled.

CMRRA agrees that during the Term it shall maintain, in good standing, an errors and omissions insurance policy with coverage in an amount sufficient to indemnify Manufacturer(s) for any breach of representation and/or warranty as set out above.

23. Confidentiality

Either party hereto may disclose the existence of and the terms of this Agreement to any person, firm or corporation. However, all transactions carried on pursuant to this Agreement, including the application for any Mechanical License by Manufacturer, the issue of such Mechanical License by CMRRA, the payment of royalties thereunder by Manufacturer to CMRRA and the contents of any correspondence or dealings between the parties hereto respecting such applications, Mechanical Licenses or Royalty payments shall at all times be treated in a confidential manner by both parties hereto and shall not be disclosed by either party to any other person, or to any firm or corporation without the express prior written consent of the other, save and except for such disclosure as may be reasonably necessary to either party's directors, officers, auditors (including CMRRA's auditors in the course of their conduct of any audit of Manufacturers hereunder), subsidiaries or parent firms or corporations.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed as of the day and year first above written.

**CANADIAN MUSICAL REPRODUCTION
RIGHTS AGENCY LTD.**

Name: Caroline Rioux

Title: President

Date: _____

[Name of Manufacturer]

Name: _____

Title: _____

Date: _____

EXHIBIT "A" Standard CMRRA Mechanical License

Each Mechanical License issued by CMRRA to Manufacturer hereunder will set out on its face the following information:

License Number
Name of Manufacturer
Address of Manufacturer
Title of Authorized Composition
Composer(s), Author(s) and Arranger(s) of Authorized Composition
Owner/Administrator of Copyright
Percentage of Copyright owned or administered by Owner/Administrator
Featured Artist/Group performing Authorized Composition on Recording
Release Date of Recording
Playing Time of Recording
The Recording's Universal Product Code (UPC)
Manufacturer's Catalogue Number for the Recording
Contrivance
Album Title (where applicable)
Date of Issue

EXHIBIT "B" Notification of New Affiliated Publisher

TAKE NOTICE that Schedule "A" to the Mechanical Licensing Agreement dated as of January 1, 2013 between CMRRA and Manufacturer is hereby amended to add the following persons, firms and/or companies as Affiliated Publishers:

Name of Affiliated Publisher

Date: _____

SCHEDULE "A": Affiliated Publishers

The following music publisher affiliates of CMRRA are hereby added as Affiliated Publishers to the Mechanical Licensing Agreement dated as of January 1, 2013 between CMRRA and Manufacturer:

(computer printout)

SCHEDULE "B": Non-Affiliated Publishers and Non-Authorized Compositions

The following music publishers are Non-Affiliated Publishers pursuant to the Mechanical Licensing Agreement dated as of January 1, 2013 between CMRRA and Manufacturer:

Name of Non-Affiliated Publisher
Abkco Music Inc.
Ashtray Music
Axe Music
Black Ice Magic Publishing
Legs Music Inc.

The following Musical Works are Non-Authorized Compositions pursuant to the Mechanical Licensing Agreement dated as of January 1, 2013 between CMRRA and Manufacturer :

Musical Work	Author(s)	Publisher
"White Christmas"	Irving Berlin	Irving Berlin Music Corp. c/o Williamson Music

SCHEDEULE "C": Standard Royalty Format

Generalized Royalty Input file for submission of Royalty data to CMRRA rev 1.01 (as of May 11, 1999)

Note: all numeric fields are implicitly zoned numeric

<i>Field Name</i>	<i>Type</i>	<i>Mandatory</i>	<i>Detail</i>
Header Record - Company and period Identifier			1 per file
*	Record code	2a	Yes
	Company Name	50a	Yes
	Period start	8a/n	Yes
	Period end	8a/n	Yes
	Transmission date	8a/n	Yes
			HC
			left justified
			yyyyymmdd
			yyyyymmdd
			yyyyymmdd
Publisher Header Record - Publisher information			1 per publisher- precedes song information details
	Record code	2a	Yes
	Publisher number	10a	Yes
	Publisher name	50a	Yes
			HP
			left justified
			left justified
Publisher Balance Forward Detail Record			1 or more per publisher - precedes song information details
*	Record code	2a	Yes
	Publisher number	10a	Yes
	Transaction amount	13,2n	Yes
*	Transaction description	50a	No
			DP
			left justified
			Signed field
			left justified
<i>Field Name</i>	<i>Type</i>	<i>Mandatory</i>	
Song Header Record			1 per song within publisher
*	Record code	2a	Yes
*	Publisher number	10a	Yes
	Song Number	20a	No
	Song Title	50a	Yes
**	ISWC Code	20a	No
	Writer(s),Arranger(s)	100a	No
			left justified: delimited by ‘~’

	<i>Field Name</i>	<i>Type</i>	<i>Mandatory</i>	<i>Detail</i>
****	Record code	2a	Yes	DS
	Transaction code	2a	Yes	left justified Values: N = Normal (default) NC = Normal Controlled NB = Normal Budget A = Adjustment Normal AC = Adjustment Controlled AB = Adjustment Budget B = Balance Fwd Normal BC = Balance Fwd Controlled BB = Balance Fwd Budget
*	Publisher number	10a	Yes	matches 'P' record
*	Song Number	20a	No	song number left justified (if available) (matches 'S' record)
	Song Title	50a	Yes	left justified - required if song number absent
	Catalogue number	15	Yes	left justified
	CMRRA license #	15	No	left justified, concatenation of prefix, suffix
	Net Units	13,0n	Yes	Signed field
	Rate type code	1a	Yes	Values: 'P' = rate + percent ownership provided 'B' = blended rate i.e. rate x percent ownership
	Rate paid	15,9n	Yes	
	Percent ownership	7,4n	No	(if available) - see Rate type code
	Net amount	13.2n	Yes	signed field
	Timing	6,0n	No	(if available) Hhmmss (if available) includes check digit
	UPC code	20a	No	(EAN code for imports)
	ISWC code	20a	No	(if available)
	Distribution method	5a	No	(if available) left justified
Song Trailer Record				
	Record code	2a	Yes	1 per song
	Publisher number	10a	Yes	TS matches 'P' record

	<i>Field Name</i>	<i>Type</i>	<i>Mandatory</i>	<i>Detail</i>
*	Song Number	20a	No	song number left justified (if available)
*	Song Title	50a	Yes	left justified - required if song number absent
	Units	13,0n	Yes	hash total
***	Amount	13,2n	Yes	payable amount
	Record count	6,0n	Yes	
Publisher Trailer Record				
	Record code	2a	Yes	1 per publisher
*	Publisher number	10a	Yes	TP
	Units	13,0n	Yes	matches 'P' record
***	Amount	13,2n	Yes	hash total
	Record count	6,0n	Yes	payable amount
Company Trailer Record				
	Record code	2a	Yes	1 per file
*	Company Name	50a	Yes	TC
	Units	13,0n	Yes	left justified
***	Amount	13,2n	Yes	hash total
	Record count	6,0n	Yes	payable amount

Legend:

- * = added to record definition
- ** = changed relative position in record
- *** = changed description or definition
- **** = code changed

FILE NAMING CONVENTION:

Manufacturer's Royalty Statements will be named in accordance with the following convention:

Manufacturer Name_CMRRA Manufacturer ID_Type_YYYYMMDD.xls

- Manufacturer Name being the name of the manufacturer.
- CMRRA Manufacturer ID being the Manufacturer's identification number as provided by CMRRA.
- Type being Royalty Statement.
- YYYYMMDD being a sequence with YYYY indicating the year, MM indicating the month and DD indicating the day of the applicable royalty period end date.

For example: 123 Records_456_Royalty Statement_20130331.xls

SCHEDULE "D": Standard Royalty Format

Pursuant to Section 4(c) of this Agreement Manufacturer's royalty statements will be delivered to CMRRA in a Microsoft Excel file, or such other data file as agreed to in advance by CMRRA, in accordance with the format and data requirements below. The following table lists the required data fields that must appear in each file and a description of each data field. The data fields represent individual columns in the spreadsheet.

No.	Data Fields	Description	Requirement
(i)	Publisher Name	The name of the Copyright Owner as stated on CMRRA's licenses.	Mandatory
(ii)	Publisher Number	The Copyright Owner identification number, as stated on CMRRA's licenses or as used in Manufacturer's own account system, so long as such identification number is only ever used to identify one specific Copyright Owner account and is not reused to identify a different Copyright Owner account.	Mandatory
(iii)	License # Prefix	The License Number Prefix as provided by CMRRA.	Mandatory
(iv)	License # Suffix	The License Number Suffix as provided by CMRRA.	Mandatory
(v)	Song Number	The Musical Work's identification number as stated on CMRRA's licenses or as used in Manufacturer's own accounting system.	Mandatory
(vi)	Song Title	The title of the Musical Work as stated on CMRRA's licenses in respect of which Royalties are being paid.	Mandatory
(vii)	Writer Name(s)	The name of the authors and composers of the Musical Work.	Mandatory
(viii)	Unique Product Identifier	The catalogue number assigned to the Recording by Manufacturer.	Mandatory
(ix)	Contrivance	The configuration type of the Recording (contrivance).	Mandatory
(x)	Royalty Rate	The applicable Royalty Rate as per Section 3 or Section 9 of this Agreement. This value should be stated in dollars, for example, as .083	Mandatory
(xi)	Ownership Percentage	The ownership Percentage of the Copyright Owner as stated on CMRRA's licenses. Must appear as a percentage amount (33.33) without the percent symbol.	Mandatory
(xii)	Units	The number of units for which Royalties are paid in the quarterly period, net of reserves, which is the subject of the statement. Must not include comma separator.	Mandatory
(xiii)	Royalty Amount	The total Royalties paid respecting the share of the Musical Work that is the subject of the Mechanical License. Amount is rounded to two decimal places and must not include a dollar sign.	Mandatory
(xiv)	Calendar Quarter	The quarterly period that is the subject of the statement. Must be indicated as YYQQ. YY represents the last two digits of the applicable year. The second Q represents the applicable calendar quarter. For example, 12Q4 represents the 4 th calendar quarter of the year 2012.	Mandatory

SCHEDULE "D": Standard Royalty Format (continued)

As mentioned above, the data fields represent different columns of data that must appear in your Microsoft Excel report. It is of critical importance that the column sequencing is presented in exactly the same order as in the above table and that the Data Fields cannot be merged in a single column. It is essential that you do not add or remove a column.

The column width may vary; however, CMRRA requires that it be submitted in a 'flat file' format. This entails that each cell in each column is filled, even if the information is repeated from prior rows of data (i.e. publisher name). The desired result is that each row is self-sufficient and independent from the others.

Your spreadsheet must be free of embedded formulas and 'grand totals' for each column.

Manufacturer will ensure that its royalty statements conform to said format and will not make any changes thereto save and except for those which are approved in advance by CMRRA.

FILE NAMING CONVENTION:

Manufacturer's Royalty Statements will be named in accordance with the following convention:

Manufacturer Name_CMRRA Manufacturer ID_Type_YYYYMMDD.xls

- Manufacturer Name being the name of the manufacturer.
- CMRRA Manufacturer ID being the Manufacturer's identification number as provided by CMRRA.
- Type being Royalty Statement.
- YYYYMMDD being a sequence with YYYY indicating the year, MM indicating the month and DD indicating the day of the applicable royalty period end date.

For example: 123 Records_456_Royalty Statement_20130331.xls

SCHEDULE "E": Standard Format for Publisher Summary

Pursuant to Section 4(c) of this Agreement, Manufacturer's will deliver to CMRRA a summary of the total amounts payable to each Affiliated Publisher, in a Microsoft Excel file, or such other data file as agreed to in advance by CMRRA, in accordance with the format and data requirements below. The following table lists the required data fields in each summary and a description of each field. The data fields are to be presented as individual columns in the spreadsheet, with the exception of the last data field in the table below.

No.	Data Fields	Description	Requirement
(i)	Publisher Name	The name of the Copyright Owner as stated on CMRRA's licenses.	Mandatory
(ii)	Publisher Number	The Copyright Owner identification number, as stated on CMRRA's licenses or as used in Manufacturer's own account system so long as such identification number is only ever used to identify one specific Copyright Owner account and is not re-used to identify a different Copyright Owner account.	Mandatory
(iii)	Total Payable to Publisher	The total Royalties payable to each Copyright Owner.	Mandatory
(iv)	Grand CMRRA Total	The grand total payable to CMRRA. Must be indicated at the end of column (iii) above.	Mandatory

The data fields represent the different columns of data that must appear in your report with the exception of (iv) which is a sum of column (iii).

FILE NAMING CONVENTION:

Manufacturer's Publisher Summary will be named in accordance with the following convention:

Manufacturer Name_CMRRA Manufacturer ID_Type_YYYYMMDD.xls

- Manufacturer Name being the name of the manufacturer.
- CMRRA Manufacturer ID being the Manufacturer's identification number as provided by CMRRA.
- Type being Publisher Summary.
- YYYYMMDD being a sequence with YYYY indicating the year, MM indicating the month and DD indicating the day of the applicable royalty period end date.

For example: 123 Records_456_Publisher Summary_20130331

SCHEDULE "F": Unlicensed Recording List Standard Format

Pursuant to Section 4(g) of this Agreement, Manufacturer's Unlicensed Recording List will be delivered to CMRRA in a Microsoft Excel file in accordance to the format and data requirements below. The following table lists the required data fields that must appear in each file with respect to each unlicensed Musical Work, or share thereof, and a description of each data field. The data fields are to be presented as individual columns in the spreadsheet.

Data fields marked as "Conditional" must be provided to CMRRA to the extent such information is available to Manufacturer, or where such information is provided by Manufacturer to an online music service.

No.	Data Fields	Description	Requirement
(i)	Song Title	The title of the Musical Work.	Mandatory
(ii)	Catalogue Number	The catalogue number of the Recording as assigned by Manufacturer.	Mandatory
(iii)	Cumulative Units	The cumulative number of units for which Royalties are payable from inception of distribution of the Recording until the end of the quarterly period which is the subject of the statement.	Mandatory
(iv)	Royalty Rate	The applicable Royalty Rate. Should appear as dollar amount (.083).	Mandatory
(v)	Total Payable	The total Royalties payable for the Musical Work as embodied on the specific Recording.	Mandatory
(vi)	Product Title	The title of the Recording embodying the Musical Work.	Mandatory
(vii)	Performing Artist	The name of each artist to whom the Track is credited.	Mandatory
(viii)	Timing	The running time of the Track, in minutes and seconds.	Mandatory
(ix)	ISRC	ISRC number assigned to the Recording, where such Recording was released after January 1, 2007. The field is Conditional where such Recording is released prior to January 1, 2007.	Mandatory for Post-2006 Recordings, Conditional for Pre-2007 Recordings
(x)	Writer Name(s)	The name of the author(s) and composer(s) of the Musical Work.	Conditional
(xi)	Unlicensed Percentage	The percentage interest therein in respect of which Manufacturer has not obtained a Mechanical License or has not paid Royalties at the time such Unlicensed Recording List was prepared. Should appear as a percentage amount (33.33).	Conditional
(xii)	Release Date	The release date of the Recording.	Conditional

(xiii)	Recording Deletion Status	Information indicating whether the Recording is still active or has been discontinued. Expected values are the following: DR for Recordings that have been discontinued AR, for active Recordings that have not been discontinued	Mandatory
(xiv)	Deletion Date	The date on which the Recording was deleted from Manufacturer's catalogue of products offered for sale to its customers.	Conditional
(xv)	UPC Number	The Universal Product Code assigned to the album on which the Track appears.	Conditional
(xvi)	Disc Number	The disc number associated with the Track such as in a box set.	Conditional
(xvii)	Track Number	The track number of the Track on the album on which it appears.	Conditional
(xviii)	Publisher Name	The name of the music publisher(s) associated with the Musical Work.	Conditional
(xix)	Publisher Number	Manufacturer's internal identification number assigned to the music publisher.	Conditional
(xx)	Song Number	Manufacturer's internal identification number assigned to the Musical Work.	Conditional
(xxi)	Unlicensed Reason	The reason for which the Musical Work is on the Unlicensed Recording List. Expected values are the following: DISPUTE , for copyright ownership conflict of the Musical Work NO LICENSE , for Musical Works, or share thereof, for which you have not received a Mechanical License For all other reasons, you are required to provide a brief explanation.	Conditional
(xxii)	Configuration	The contrivance or format of the Recording (CD, LP, CS, etc..)	Conditional
(xxiii)	Calendar Quarter	The calendar quarter applicable to the Unlicensed Recording List.	Conditional
(xxiv)	ISWC	The International Standard Work Code of said musical composition.	Conditional
(xxv)	Label Name	Label name associated with the Recording. This relates to Manufacturers that handle Recordings for multiple labels.	Conditional
(xxvi)	Transaction Type	Identifies the method used by the Manufacturer to distribute the product. One of the following values is expected: RS , for Regular Sales FG , for Free Goods PR , for Promotional Goods	Conditional

SCHEDULE "F": Unlicensed Recording List Standard Format (continued)**FILE NAMING CONVENTION:**

Manufacturer's Unlicensed Recording List will be named in accordance with the following convention:

Manufacturer Name_CMRRA Manufacturer ID_Type_YYYYMMDD.xls

- Manufacturer Name being the name of the manufacturer.
- CMRRA Manufacturer ID being the Manufacturer's identification number as provided by CMRRA.
- Type being Unlicensed Recording List.
- YYYYMMDD being a sequence with YYYY indicating the year, MM indicating the month and DD indicating the day of the applicable royalty period end date.
- For example: 123 Records_456_Unlicensed Recording List_20130331

SCHEDULE "G": License Application Information

Pursuant to section 2.(d) of this Agreement, Manufacturer's license application must disclose at least the following mandatory information for each Track:

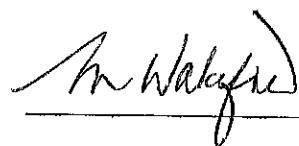
- (i) Name and address of the Manufacturer;
- (ii) Performing artist to whom the Track is credited;
- (iii) Title of the Recording;
- (iv) Release date of the Recording;
- (v) Configuration type(s) of the Recording;
- (vi) Manufacturer's unique catalogue number for each Recording configuration;
- (vii) Title of Musical Work, as well as the title of each individual Musical Work contained in a medley, mash-up or used as a sample;
- (viii) Name of each author and composer of the Musical Work(s);
- (ix) Running time of the Track as well as the running time of each individual Musical Work contained in a medley;

The following is a list of Conditional data that must be provided to CMRRA if it is available to Manufacturer:

- (i) Name of the music publisher(s) for each Musical Work;
- (ii) Where the Musical Work is a translation or adaptation of another Musical Work, the title of such original Musical Work;
- (iii) UPC (Universal Product Code);
- (iv) ISRC (International Standard Recording Code);
- (v) ISWC (International Standard Work Code);
- (vi) The wholesale price of the Recording;
- (vii) Rate Category for the Recording (Budget Rate or Full Rate);
- (viii) Number of individual Tracks on the Recording;

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This is **Exhibit "35"** referred to in the Affidavit
of Terry Perusini sworn before me this 26th day
of August, 2015



A Commissioner for taking Affidavits, etc.

Marie Elizabeth Wakefield, a Commissioner, etc.,
Province of Ontario, for WeirFoulds LLP,
Barristers and Solicitors,
Expires October 24, 2016.

MECHANICAL LICENSING AGREEMENT (Model I-2)

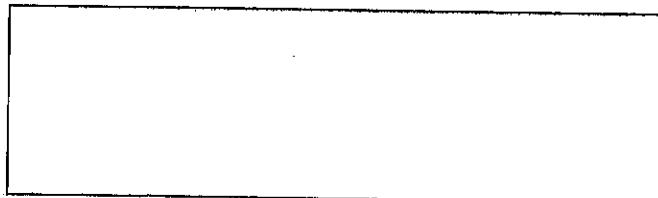
DATED as of January 1, 2013

BETWEEN :

Canadian Musical Reproduction Rights Agency Limited, a Corporation incorporated pursuant to the laws of Canada having its principal offices at 56 Wellesley Street West, Suite 320, Toronto, Ontario Canada M5S 2S3 (“CMRRA”) on behalf of its Affiliated Publishers,

OF THE FIRST PART

– and –



(“Manufacturer”)

OF THE SECOND PART

WHEREAS CMRRA carries on business as a non-exclusive agent for certain music publishers which have engaged CMRRA to issue licenses for the mechanical reproduction of certain musical compositions to manufacturers, distributors and importers of Recordings (as hereinafter defined),

AND WHEREAS Manufacturer carries on business by way of the manufacture or authorizes the manufacture, importation and/or distribution in and into Canada of Recordings containing reproductions of certain copyrighted musical works which are owned and/or administered in Canada by CMRRA’s publisher principals,

AND WHEREAS CMRRA and Manufacturer acknowledge and agree that the prompt and efficient administration of this Agreement and of the licensing of musical compositions and accounting for and payment of royalties with respect thereto are of the utmost importance,

AND WHEREAS Manufacturer acknowledges and agrees that its prompt application for licenses hereunder, its prompt handling of licenses issued by CMRRA hereunder and its prompt and accurate entry of licensing data into its royalty accounting systems are of the essence of this

Agreement, and CMRRA acknowledges and agrees that its prompt handling of license applications and issuance of licenses hereunder are of the essence of this Agreement.

AND WHEREAS Manufacturer wishes to appoint CMRRA, or its designee, to be its authorized agent for the purpose of making applications to the Copyright Board of Canada (the "Board") pursuant to section 77 of the *Copyright Act*, R.S.C. 1985, c. C-42 (the "Act") for licenses to reproduce Musical Works (as defined herein) whose owners cannot be located,

AND WHEREAS CMRRA and Manufacturer wish to enter into an Agreement for such purpose,

THEREFORE WITNESS that in consideration of the mutual covenants and warranties herein contained, and subject to all the terms and conditions hereinafter set forth, the parties hereto agree as follows:

1. Definitions

In this Agreement, the following terms shall have the meanings indicated below:

Affiliated Publisher: A music publisher for which CMRRA acts as Agent for the mechanical licensing of Authorized Compositions (as hereinafter defined) in Canada and to carry on such licensing to Manufacturer pursuant to the terms hereof. CMRRA's Affiliated Publishers are set out on Schedule "A" hereto as may be amended by CMRRA from time to time.

Authorized Composition: A musical composition owned and/or administered in whole or in part by an Affiliated Publisher, which publisher has engaged and instructed CMRRA to act as its agent for the mechanical licensing of such musical composition.

CD: A digitally recorded audio compact disc of any size or format but specifically excluding any digitally recorded and reproduced audio-visual disc of any size or format.

Digital Recording: A digitally recorded disc, tape or other contrivance, excluding CD's ("DR").

Due Date: That date which is forty-five (45) days after the end of each calendar quarter, specifically, February 15, May 15, August 15 and November 15 in each year of the Term (as hereinafter defined).

LP: An analogue vinyl record of any size or playing speed.

Manufacturer: the corporation that is the party of the Second Part to this Agreement, engaged in the business of manufacturing or authorizing the manufacture, importing and/or distributing Recordings in or into Canada.

MC: An analogue audio cassette tape, related analogue or other related audio tape format, but specifically excluding any audio-video tape in any format.

Mechanical License: A license issued by CMRRA to Manufacturer subject to the terms hereof and pursuant to section 2 hereof.

Musical Work: A “musical work” as defined in section 2 of the Act, with reference to any Musical Work including any fractional share of the copyright in that work.

Non-Authorized Composition: A musical composition owned and/or administered in whole or in part by an Affiliated Publisher which said Affiliated Publisher has instructed CMRRA to exclude from the scope of this Agreement as listed on Schedule “B” hereto.

Non-Affiliated Publisher: A music publisher which has engaged CMRRA to act as its agent for the mechanical licensing of musical compositions to Manufacturers in Canada on terms and conditions at variance with those set out herein as listed on Schedule “B” hereto.

Prior License: A Mechanical License issued by CMRRA to Manufacturer prior to the effective date hereof.

Promotional Product: A Recording containing reproductions of Authorized Compositions manufactured especially for promotional purposes, including “Radio CD’s” “Dance Pool Products” or any like configuration, including Recordings available for sale to the general public through Manufacturer’s customary distribution and retail channels, when such Recording are distributed free in Canada by Manufacturer to promote the sale thereof, provided that either the words “Promotional Copy Not For Sale” or words having the same effect are marked on each Recording so distributed or on the packaging thereof, or that each Recording so distributed is cut or drilled or otherwise marked by Manufacturer to indicate same.

Recording: A physical sound carrier (i.e. LP, MC, CD, and/or DR) embodying one or more Tracks, manufactured, imported or distributed by or on behalf of Manufacturer in or into Canada, but specifically excluding any audio/visual product.

Release Date: The date on which Manufacturer releases a Recording for sale to the general public through its customary distribution and retail channels. Where a Recording is deleted by Manufacturer and subsequently reissued in any format, the Release Date for such Recording will be the date of such re-release for all purposes herein, including the determination of applicable Royalty Rates pursuant to sections 3 and 7 herein.

Royalty or Royalties: The amount(s) payable by Manufacturer to CMRRA pursuant to Mechanical Licenses issued under this Agreement and calculated pursuant to the rates set out herein.

Term: The term of this Agreement shall commence upon January 1, 2013 and conclude upon December 31, 2013.

Track: An audio-only sound recording embodying, subject to subsection 2(a), one or more Musical Works.

Unidentified Owner(s): The owner of copyright in and to a Musical Work who has not yet been so identified by CMRRA or Manufacturer.

Unidentified Work(s): A Musical Work embodied in a Recording that has not yet been identified by CMRRA or Manufacturer.

Unlocatable Owner(s): The owner of copyright in and to a Musical Work who remains unidentified despite reasonable effort by CMRRA and Manufacturer to locate him or her.

2. Scope of Agreement

(a) *Applicability of Agreement:* This Agreement applies only to the mechanical licensing in Canada of Authorized Compositions owned and/or administered in whole or in part by Affiliated Publishers to Manufacturer.

(b.1) *Affiliated Publishers:* Upon request by Manufacturer, CMRRA shall provide Manufacturer with a list of all Affiliated Publishers, and shall, upon request by Manufacturer, provide Manufacturer with timely advice of all music publishers which become Affiliated Publishers and all music publishers which cease to be represented by CMRRA. Such list will form Schedule "A" to this Agreement and may be provided by CMRRA either in printed or electronic form. Subsequent to the date of execution hereof, and for the duration of the Term, CMRRA shall represent and issue licenses on behalf of Affiliated Publishers to Manufacturer for the uses set out herein, only pursuant to the terms hereof. Where an Affiliated Publisher ceases to be represented by CMRRA during the Term, it will no longer be bound by the terms hereof respecting the mechanical licensing of its musical compositions to Manufacturer in Canada subsequent to the date on which it ceased to be represented by CMRRA, but all Mechanical Licenses issued by CMRRA to Manufacturer while said Affiliated Publisher was represented by CMRRA will continue in full force and effect until the conclusion of the Term. Subsequent to the execution hereof, CMRRA may amend Schedule "A" by providing Manufacturer with a notice in the form attached hereto as Exhibit "B" and the provision of such notice will be deemed to be an amendment to Schedule "A". CMRRA may revise or replace the form of Schedule "A" and Exhibit "B" at any time by providing notice of same to Manufacturer.

(b.2) *Non-Affiliated Publishers:* Upon request by Manufacturer, CMRRA shall provide Manufacturer with a list of all Non-Affiliated Publishers. Such list will form Schedule "B" to this Agreement. During the Term hereof, CMRRA will not undertake the representation of any further Non-Affiliated Publishers, provided that in any case where, prior to the date hereof, CMRRA has undertaken the representation of a Non-Affiliated Publisher on the basis of instructions at variance with the terms hereof, CMRRA shall continue to so represent such Non-Affiliated Publisher and shall issue licenses with respect thereto exclusively in accordance with such instructions as the Non-Affiliated Publisher thereof has given, or may subsequently give, to CMRRA.

(c) *Notification of Non-Authorized Compositions:* Upon the execution hereof, CMRRA will provide Manufacturer with a list of all Non-Authorized Compositions. Such list will form Schedule "B" to this Agreement. During the Term hereof, CMRRA will not undertake the representation of any further Non-Authorized Compositions, provided that in any case where, prior to the date hereof, CMRRA has undertaken the representation of a Non-Authorized Composition on the basis of instructions at variance with the terms hereof, CMRRA shall continue to

so represent such Non-Authorized Composition and shall issue licenses with respect thereto exclusively in accordance with such instructions as the Publisher thereof has given, or may subsequently give, to CMRRA.

(d) *Licensing of Works:* This Agreement does not constitute a license.

(i.a) *Applications for Mechanical Licenses:* Manufacturer shall make application to CMRRA for Mechanical Licenses for all Recordings sold or otherwise distributed in Canada by Manufacturer where such Recordings contain reproductions of musical works. Such application will be made by way of Manufacturer providing CMRRA with one (1) copy of each CD, LP, MC or DR version of each Recording which it releases for sale to the public in the ordinary course of its business ("Sample Product"). Manufacturer will, at the same time, provide CMRRA with data respecting the Musical Works reproduced on such Recordings as set out in Schedule "G" hereto. Manufacturer's application will include all data which is indicated as "Mandatory" on the said schedule and may include data which is indicated as "Conditional". More specifically, "Conditional" data is data that must be provided to CMRRA if it is available to Manufacturer.

(i.b) *Directly Licensed Works:* Manufacturer will advise CMRRA of the details of any Mechanical Licenses which have been issued directly to Manufacturer at any time during the Term by one or more publishers or copyright owners with respect to musical works reproduced on the Recording. Manufacturer acknowledges that CMRRA has no responsibility or liability for the accuracy or sufficiency of any such directly issued license and that Manufacturer at all times bears the risk associated with obtaining and complying with the terms of such licenses.

(ii) *Disposal of Sample Products:* CMRRA will not sell any Sample Product provided to it by Manufacturer pursuant to this section but will be under no obligation to return such Product to Manufacturer.

(iii) *Compilation Products:* where a Recording contains Tracks performed by different performers, Manufacturer's application(s) respecting such Recording will wherever reasonably possible disclose the name(s) of the performer(s) of each composition contained therein.

(iv) *Unlocatable Owners:* Where Manufacturer has made application to CMRRA for a mechanical license for a musical work and

all or a portion of the ownership interest therein is unknown, Manufacturer hereby appoints CMRRA as its agent for the purpose of making application to the Board for a license pursuant to s.77 of the Act. Where the Board issues such license, Manufacturer agrees to comply with the requirements thereof with respect to payment of royalties and provision of accountings.

(v) *Issuance of Licenses:* Subject to the terms and conditions hereof, in response to applications received from Manufacturer pursuant to subsection (i) herein, CMRRA shall, on behalf of Affiliated Publishers, grant individual Mechanical Licenses to Manufacturer on a use-by-use basis authorizing the mechanical reproduction of Authorized Compositions on Recordings manufactured by or on behalf of Manufacturer in Canada or imported by or on behalf of Manufacturer into Canada, and authorizing the distribution thereof in Canada.

Mechanical Licenses issued hereunder may, at CMRRA's election, be provided to Manufacturer in the form of licenses individually issued with respect to one or more ownership interests in musical works or in the form of reports setting out the terms of each license. Such licenses will be subject to the terms and conditions of this Agreement. Manufacturer agrees to be bound by such licenses at the time they are issued by CMRRA. Manufacturer shall be permitted to reject a Mechanical License only by reason of a deficiency in the Mechanical License itself and shall disclose its reason for doing so with the rejection of the Mechanical License.

Each Mechanical License issued by CMRRA to Manufacturer hereunder will be deemed to include the following terms and conditions:

1. *Grant of License:* At the request of Licensee and in its capacity as agent for the Copyright Owner/Administrator, CMRRA hereby grants to Licensee a non-exclusive license to reproduce the Musical Work described above on the Recording described in the Mechanical License and to distribute and sell such Recording in Canada for private use by the public, subject to the terms and conditions which follow. Such grant right is limited to the Percentage of Copyright owned or administered by the Copyright Owner/Administrator.

2. *Arrangement or Alteration of Musical Work:* Licensee may arrange the Musical Work for the limited purpose and to the lim-

ited extent necessary to conform it to the style or manner of interpretation of the Artist/Group involved, subject to section 2(e) of the Mechanical Licensing Agreement, but shall have no right to insert new words into the existing lyrics, to alter the basic melody or to otherwise arrange the music, or generally to change the fundamental character and unity of the Musical Work. Licensee may not claim any ownership or other interest in, or register, any arrangement permitted under this section as a work under the *Copyright Act*, R.S. 1985, c. C-42.

3. *Label and Jacket Information:* Licensee shall use best efforts to imprint the Title of the Musical Work followed by the name(s) of the Composer/Author and Copyright Owner/Administrator on the label, jacket or container of every Recording made under this License where the production of the printed matter associated with a Recording is beyond its control and where the printed matter associated with a Recording is within the Licensee's control it will imprint the Title of the Musical Work followed by the name(s) of the composer/Author and Copyright Owner/Administrator on the label, jacket or container of every recording made under this License.

4. *Limitations on Use:* All reproduction or other use of the Musical Work not specifically authorized by this Mechanical License, or by the written consent of CMRRA is prohibited.

5. This Agreement is subject to and incorporates the terms and conditions of the Mechanical Licensing Agreement (Independent Labels) dated as of January 1, 2013 between CMRRA and Licensee.

(e) *Applicability of Agreement:* This Agreement is not applicable to any of the following uses except to the extent that the same has been authorized by the Affiliated Publisher:

- (i) visual reproduction or printing of lyrics or music of any Authorized Composition;
- (ii) the use of an Authorized Composition in a medley or a mashup;
- (iii) the use of an Authorized Composition, in whole or in part, as a "sampled" use, whether the "sampling" is effected digitally or otherwise in any medium or through the use of any technology now or hereafter known;

- (iv) any parody or translation of the lyrics of an Authorized Composition.
- (v) any rental of a Recording by Manufacturer, or sale by Manufacturer of a Recording for the intentional purpose of rental;
- (vi) any commercial use of the Recording other than for distribution and sale in the Territory for private use by the public (whether for background music, disk jockey or broadcast use), unless such distribution or sale is made with the express limitation that the user is not authorized to reproduce the Recording without the express prior written consent of CMRRA or the Affiliated Publisher(s) involved;
- (vii) any reproduction of an Authorized Composition in any audio-visual recording;
- (viii) any reproduction of an Authorized Composition by way of any contrivance not specifically authorized herein;
- (ix) any reproduction of a musical composition for which Manufacturer has obtained a direct license from an Authorised Publisher.

Manufacturer may make separate application to CMRRA for the purpose of obtaining licenses for any of the above purposes, the terms and conditions of which licenses, if granted, shall be expressly subject to individual negotiation between Manufacturer and CMRRA on behalf of the Affiliated Publisher(s) involved.

(f) *Renewal of Prior Licenses:* All Prior Licenses, if any, are deemed to be and hereby are renewed for the Term hereof. The terms and conditions appearing on the back of Prior Licenses are hereby replaced by those set out in Section 2(d)(v) of this Agreement.

(g) *Amended Licenses:* CMRRA may, where reasonable, at its discretion, amend any Mechanical License or Prior License. Such amendment may occur upon any material change in the ownership of the Authorized Composition (or partial interest therein), to replace a missing or lost license, or at the request of the Affiliated Publisher(s) involved or of the Manufacturer. The amended license will be binding upon the parties hereto respecting the Authorized Composition licensed thereby.

(h) *Provision of Retailer Materials:* Manufacturer will provide CMRRA with copies of all release announcements or notifications, deletion announcements or notifications, product catalogues which it customarily provides to its retail customers, at the same time at which such materials are provided to such retailers.

(i) *Distributed Labels:* Manufacturer acknowledges that it may, from time to time, enter into licensing, distribution or other agreements with persons, firms or corporations in the

music business ("Third Parties") for the manufacture and/or distribution of Recordings which may contain reproductions of Authorized Compositions, but that the terms of such agreements put the onus and responsibility of licensing such reproduction on such Third Parties. Likewise, Manufacturer acknowledges that it may, from time to time, enter into agreements with Third Parties by which Manufacturer acquires the right to sell or otherwise distribute Recordings produced by or on behalf of such Third Parties which may contain reproductions of Authorized Compositions. Manufacturer recognizes CMRRA's interest in ensuring that such reproduction of Authorized Compositions is carried on pursuant to licenses duly issued by CMRRA to such Third Parties, and that royalties are paid by such Third Parties to CMRRA pursuant thereto. Accordingly, Manufacturer will, upon receipt of written authorization from any such Third Party, provide CMRRA, in the course of CMRRA's administration of licensing agreements with such Third Parties with such reasonable assistance and provision of information as CMRRA may from time to time request including, without limiting the foregoing, such information as CMRRA may reasonably require to conduct copyright royalty examinations of the books and records of such Third Parties. Manufacturer agrees that it will be jointly and severally liable with Third Parties to CMRRA for the payment of all royalties payable pursuant to licenses issued with respect to Recordings dealt with in this paragraph and that CMRRA may at its discretion seek payment of all such royalties in the event of failure or refusal of Third Parties to pay same.

3. Royalty Rate

(a) *Royalty Rate:* Subject to the provisions of sections 2, 8 and 9 hereof, Manufacturer will pay royalties pursuant to this Agreement on a quarterly basis by no later than the Due Date following the conclusion of each calendar quarter during the Term at the following royalty rate ("Royalty Rate"): for all Recordings sold or otherwise distributed during the Term, the Royalty Rate shall be, for each reproduction of an Authorized Composition,

(i) where the running time of the reproduction is five (5) minutes or less, eight and three-tenths cents (\$0.083) per Authorized Composition per Recording

(ii) where the running time of the reproduction is longer than five (5) minutes, eight and three-tenths cents (\$0.083) per Authorized Composition per Recording for the first five (5) minutes of such reproduction and one and sixty-six one-hundredths cents (\$0.0166) per additional minute or part thereof of such reproduction per Authorized Composition per Recording.

(b) *Royalty Rate for Prior Periods:* Manufacturer's obligation to account for and pay Royalties will be determined pursuant to the terms hereof. Manufacturer will pay Royalties at the applicable Royalty Rate during each period in which Recordings were sold or otherwise distributed. The applicable Royalty Rates for prior periods are as follows:

<i>Prior Period</i>	<i>Royalty Rate</i>	<i>Per. Min. Rate</i>
Prior to October 1, 1988	0.02	0.004
From October 1, 1988 to September 30, 1990	0.0525	0.0105
From October 1, 1990 to December 31, 1991	0.059	0.0118
From January 1, 1992 to December 31, 1993	0.0625	0.0125
From January 1, 1994 to December 31, 1995	0.0647	0.0129
From January 1, 1996 to December 31, 1997	0.066	0.0132
From January 1, 1998 to December 31, 1999	0.071	0.0142
From January 1, 2000 to December 31, 2001	0.074	0.0148
From January 1, 2002 to June 30, 2007	0.077	0.0154
From July, 1, 2007 to December 31, 2009	.081	0.0162
From January 1, 2010 to December 31, 2012	0.083	0.0166

(c) *Security:* Before this Agreement takes effect, Manufacturer agrees to deposit an amount to be mutually agreed between it and CMRRA, which shall be held in trust by CMRRA as security for the proper performance by Manufacturer of all the terms and conditions of this Agreement. During the term hereof, CMRRA may apply the deposit or any part thereof towards the payment of any Royalty due or other charges by Manufacturer by reason of any default of Manufacturer in complying with the terms hereof. The deposit shall accrue interest at current bank rates on short-term deposits which shall be held in trust by CMRRA pending full and complete performance of the terms and conditions herein. CMRRA may additionally require Manufacturer to deposit further amounts with CMRRA during the term hereof for the same purpose. The amount of the initial deposit payable hereunder and any additional deposit(s), the due date(s) for payment thereof and such other terms and conditions as CMRRA may require shall be embodied in one or more amendments to this Agreement.

4. Payment of Royalties

(a) *Obligation to Pay Royalties:* Subject to the provisions of this Agreement, royalties shall be due on all Mechanical Licenses issued by CMRRA to Manufacturer for all Recordings sold or otherwise distributed by no later than the Due Date following the conclusion of the calendar quarter in which such Mechanical License were issued. All royalty payments will be net of all bank charges, Goods and Services or any other applicable tax.

(b) *Interest on Overdue Quarterly Payments:* Where Manufacturer's regular quarterly payment of Royalties, including the Royalty Advance defined in Section 4(e), is made to CMRRA later than the relevant Due Date, Manufacturer shall pay interest on the full amount due for that quarter at that rate which is equal to the prime rate as set by the Bank of Canada prevailing on the Due Date plus two per cent (2%), calculated on a daily basis. Such interest shall be due and owing upon the day on which the overdue payment is made to CMRRA.

(c) *Royalty Accounting for Pre-2013 Sales:* With respect to the sale of a Recording prior to the commencement of the Term hereof, Manufacturer shall calculate the Royalties payable pursuant to Section 4(a) above, and in accordance with Sections 5, 6 and 11 of this agreement, for each Mechanical License issued by CMRRA. Manufacturer's payment of Royalties

shall be accompanied by separate, accurate, royalty statements for each Affiliated Publisher and Non-Affiliated Publisher, to be delivered to CMRRA in electronic form conforming to the format specification outlined in Schedule "D" attached hereto, or such other electronic format mutually agreeable to CMRRA and Manufacturer. The royalty statements will include all data which is indicated as "Mandatory" on the said format and may include data which is indicated as "Conditional". More specifically, "Conditional" data is data that must be provided to CMRRA if it is available to Manufacturer. Manufacturer will include all Conditional data for all new Mechanical Licences issued by CMRRA to Manufacturer after the date of execution thereof and Manufacturer will use its best efforts to include the Conditional data for Prior Licences.

In addition, Manufacturer's payment of Royalties shall be accompanied by an accurate summary of the total amounts payable to each Affiliated Publisher and Non-Affiliated Publisher, in the form hereto attached as Schedule "E". Any adjustment appearing on a royalty statement or summary must be accompanied by sufficient reasonable information to explain the purpose for which such adjustment was made.

(d) *Sales Accounting For Post-2012 Sales:* Manufacturer will, by no later than the Due Date in each calendar quarter during the Term hereof, and in accordance with Sections 5, 6 and 11 of this agreement, provide CMRRA with a complete electronic report of all its Recording sales during the prior calendar quarter ("Sales Report"), such report to conform to the format specification attached hereto as Schedule "C". The Sales Report will include all data which is indicated as "Mandatory" on the said format and may include data which is indicated as "Conditional". More specifically, "Conditional" data is data that must be provided to CMRRA if it is available to Manufacturer.

On receipt of a Sales Report from Manufacturer, CMRRA will identify the Musical Works in respect of which it has issued Manufacturer a Mechanical License pursuant to this Agreement. CMRRA will then calculate the amount of Royalties owing with respect to Manufacturer's sales or other distributions of such Recordings pursuant to such Mechanical Licenses and will advise Manufacturer of same.

(e) *Royalty Advance:* Manufacturer will, by no later than the Due Date for each calendar quarter during the Term hereof, pay CMRRA an advance against Royalties owing for that quarter ("Royalty Advance"). The amount of the Royalty Advance will be determined by multiplying, for each Recording, the following items A, B, C and D where

- (A) is the sum of
 - (i) all units sold during the applicable calendar quarter
 - (ii) any units liquidated from reserve, if any
 - (iii) less any new units held in reserve as per Section 11 of this Agreement
 - (iv) less any units returned in the current period
 - (v) less any negative unit balance from the previous period (unapplied returns)

- (B) is the applicable Royalty Rate
- (C) is the number of audio Tracks contained in the Recording
- (D) is a percentage to be determined by CMRRA to reflect its market share on the basis of Manufacturer's past Royalty payment, its payment history and after consultation with Manufacturer ("CMRRA Market Share").

(f) *Royalty Reconciliation:* After determining the amount owing as Royalties pursuant to section 4(d) above, CMRRA will deduct such amount from Manufacturer's Royalty Advance. If the amount of Royalties in any quarter is greater than the cumulative Royalty Advance on hand, Manufacturer will, upon CMRRA's request, immediately pay CMRRA the amount by which the Royalties exceed the cumulative Royalty Advance on hand. Any such payment outstanding longer than seven (7) days will bear interest calculated on the basis of a rate which is equal to the prime rate as set from time to time by the Bank of Canada plus two percent (2%) on a quarterly basis during the period in which interest is to be calculated.

If the amount of Royalties in any quarter is less than the Royalty Advance, CMRRA will maintain the balance of the Royalty Advance as a credit toward royalties payable for any Unidentified Works, Unidentified Owners or Unlocatable Owners or retain such amount as a pre-payment of Manufacturer's subsequent royalty obligations hereunder.

(g) *Pre-2013 Unlicensed Recording List:* No later than six (6) months from the date of execution of this Agreement, Manufacturer will provide CMRRA with an accurate cumulative listing of all Recordings sold or otherwise distributed by Manufacturer up to December 31, 2012 in respect of which Royalties have not for any reason been paid by Manufacturer for any ownership interest in any musical compositions reproduced therein ("Unlicensed Recording List"). Upon request by CMRRA, Manufacturer shall thereafter provide CMRRA an updated Unlicensed Recording List.

Manufacturer shall provide CMRRA with the Unlicensed Recording List in the format set out in Schedule "F" or in an electronic format mutually agreeable to CMRRA and Manufacturer. The Unlicensed Recording List will include all data which is indicated as "Mandatory" on the said format and may include data which is indicated as "Conditional". More specifically, "Conditional" data is data that must be provided to CMRRA if it is available to Manufacturer.

Manufacturer is not required to maintain an Unlicensed Recording Lists related to the sale of Recordings post December 31, 2012.

(h) *Licensing and Payment of Royalties on Unlicensed Recordings:* CMRRA shall, upon its receipt of the Unlicensed Recording List, review such list and identify any musical compositions which are Authorized Compositions or Non-Authorized Compositions and will issue Mechanical Licenses to Manufacturer with respect thereto pursuant to this Agreement. Manufacturer will, upon receipt of same, execute each Mechanical License and return such Mechanical License to CMRRA. Payment of all accumulated Royalties respecting such Authorized Compositions or Non-Authorized Compositions and Royalty statements respecting such payment

in like form to that set out in section 4(c) herein shall be delivered to CMRRA on the following Due Date.

5. Free Goods

Except as provided in sections 6 herein, royalties will be paid quarterly on Recordings distributed on a free or no charge basis, on the same rates and terms that apply to Recordings otherwise sold. Such Recordings shall be separately identified in Manufacturer's Sales Report to CMRRA in accordance to the format specification outlined in Schedule "C".

6. Promotional Copies

(a) No royalties shall be payable on Promotional Products, as that term is defined herein, up to a maximum of two thousand (2,000) units (all formats combined).

(b) Manufacturer shall provide CMRRA with one (1) copy of each such Promotional Product for CMRRA's inspection at the same time at which such Promotional Product is distributed by Manufacturer. CMRRA will not sell or distribute any Promotional Products provided to it hereunder. To the extent that any Promotional Product contains any Authorized Composition, the provision of a copy of such Promotional Product to CMRRA is deemed to be an application for a Mechanical License with respect thereto, and each Authorized Composition reproduced therein is deemed to be licensed pursuant to the terms hereof.

(c) All Promotional Products shall be separately identified in Manufacturer's Sales Report to CMRRA in accordance to the format specification outlined in Schedule "C".

7. [Intentionally Omitted]

8. Deletes

(a) *Deletion:* Where Manufacturer deletes a Recording containing reproductions of Authorized Compositions licensed to Manufacturer hereunder from its catalogue of products offered for sale to its customers ("Deleted Recordings"), it will provide CMRRA with written notice of such deletion on a quarterly basis. Manufacturer may, for this purpose, provide CMRRA with a copy of the deletion notice which it provides to its customers.

(b) *Royalty:*

(i) *Destruction of Deleted Recordings:* Where Manufacturer destroys Deleted Recordings, no royalty shall be payable to CMRRA with respect thereto. Manufacturer will maintain reasonable records and documentation of such destroyed goods which shall be made available to CMRRA upon request.

(ii) *Sale of Deleted Recordings:* Where Manufacturer sells Deleted Recordings, the Royalty payable will be as follows:

- (A) Where Deleted Recordings are sold at or below three dollars and fifty cents (\$3.50) each, Manufacturer will pay a Royalty equal to fifteen per cent (15%) of the proceeds of such sale.
- (B) Where Deleted Recordings are sold for greater than three dollars and fifty cents (\$3.50) each, Manufacturer will pay the Royalty Rate otherwise applicable pursuant to this Agreement.

(iii) *Payment of Royalty:* The amount and payment of Royalties referred to in subsection 8(b)(ii) herein will be payable on the next Due Date and will take into account CMRRA's share of market as agreed upon between CMRRA and Manufacturer. Manufacturer will maintain records of the proceeds of sale of Deleted Recordings and submit such information to CMRRA along with its payment of Royalties.

(iv) *Cancellation of Licenses:* Where Manufacturer has provided CMRRA with notice of Deletion as set out in section (a) herein, CMRRA will cancel all Mechanical Licenses issued to Manufacturer respecting such Deleted Recording.

9. Royalty Reduction for Budget Recordings

- (a) *Definition:* In this section,
 - (i) "Best Selling Price" means the price in effect to the largest-volume dealers purchasing Recordings from Manufacturer;
 - (ii) "Full Line Product" means the product line released by Manufacturer containing most of Manufacturer's new releases;
 - (iii) "Budget Recording" means a Recording, the Best Selling Price of which is fifty-five percent (55%) or less of the Best Selling Price for Full Line Product offered for sale by Manufacturer.
 - (iv) Where Manufacturer does not sell or otherwise distribute Full Line Products, "Budget Recording" means a CD whose Best Selling Price is less than three dollars and fifty cents (\$3.50) and an MC whose Best Selling Price is less than two dollars (\$2.00). If, during the Term hereof, Manufacturer begins selling Full Line Products, "Budget Recording" shall, from and after the date on which Manufacturer commences to sell or otherwise distribute such Full Line Products, be determined according to the terms of subsection (iii) herein.

(b) *Budget Rate:* Manufacturer may apply to CMRRA for, and CMRRA shall issue, Mechanical Licenses for Authorized Compositions reproduced on Budget Recordings on the basis of three-quarters (3/4) of the Royalty Rate which would otherwise be applicable pursuant to section 3 during each Period ("Budget Reduction").

(c) *Restriction:* The Budget Reduction is applicable only to Budget Recordings that contain at least either eight (8) musical works or, in the case of classical or serious music, at least thirty (30) minutes of playing time.

(d) *Mid-Line Recordings:* Recordings known in the trade as "mid-line" Recordings are specifically excluded from the Budget Reduction.

(e) *Provision of Pricing Information:* Manufacturer shall submit to CMRRA current price list information on each Due Date to qualify for the Budget Reduction.

10. Exports

Unless otherwise agreed by the parties hereto, Recordings exported by Manufacturer will be licensed by and royalties will be paid to the mechanical rights society and/or responsible publisher(s) in the country to which the Recordings are exported, and that Manufacturer will not be liable to CMRRA for the payment of Royalties on such exported Recordings to the extent that such Recordings are otherwise subject to Mechanical Licenses issued to Manufacturer by CMRRA hereunder ("Export Exemption"). Manufacturer will provide CMRRA with advice on a timely basis of all Recordings manufactured pursuant to Mechanical Licenses issued hereunder for which exemption from Royalty payment is claimed by Manufacturer on the grounds of export, including quantity, catalogue number and identification of purchaser by name and country.

It is understood and agreed that the Export Exemption is intended to apply only to Recordings in respect of which all applicable mechanical licenses are obtained and applicable royalties are paid in the territory into which they have been exported, and that the Export Exemption is not intended to provide Manufacturer or the importer or purchaser of such exported Recordings with the opportunity to export or obtain Recordings free of any royalty payments or obligations.

In addition, Manufacturer will, upon request by CMRRA, provide reasonable proof that mechanical licenses have been obtained and applicable royalties have been paid on exported Recordings in the territories into which they have been exported. If Manufacturer is unable to provide CMRRA with such proof for any Recordings in respect of which it claims the benefit of this section, Manufacturer will be obliged to obtain Licenses and pay Royalties as provided hereunder in respect of such Recordings.

11. Reserves and Returns

(a) *Reserve Allowance:* Manufacturer shall be entitled to a reasonable reserve against the return of Recordings sold or otherwise distributed, save and except for "one-way sales" of Recordings where such Recordings are sold or otherwise distributed by Manufacturer where the

purchaser thereof is not entitled to return same. Amounts held in reserve will be paid out on a regular quarterly basis, over a maximum period of five (5) calendar quarters, whereby any amount entering the reserve shall be fully liquidated no later than five (5) calendar quarters after such amount entered the reserve.

(b) *Reserve Accounting:* The number of units for which Royalties are paid shall be adjusted to indicate any reserve(s) claimed by Manufacturer pursuant to Section 11(a) above, whether the reserves are withheld or liquidated. For greater clarity, Manufacturer's reserve shall be withheld or liquidated only by adjusting the number units payable and not by reducing or increasing the Royalty Advance or Royalties payable for each line item, to an Affiliated Publisher or Non-Affiliated Publisher, or to CMRRA.

(c) *Returns in Excess of Reserves:* Royalties associated with returned Recordings in excess of the reserve held by Manufacturer shall be carried as a negative credit balance and shall not be recouped against royalties otherwise payable to CMRRA.

12. Termination

(a) *Termination of Agreement:*

(i) *Insolvency of CMRRA:* This Agreement shall terminate in the event that CMRRA is voluntarily wound up or becomes insolvent, makes or is the subject of an assignment in bankruptcy or if a receiver is appointed to manage the affairs of CMRRA. In the event of such termination, all Mechanical Licenses issued by CMRRA to Manufacturer will remain in full force and effect directly between Affiliated Publishers and Manufacturer for the remainder of the Term hereof.

(ii) *Insolvency of Manufacturer:* CMRRA may terminate this Agreement in the event that Manufacturer is voluntarily wound up, or is the subject of an assignment in bankruptcy or if a receiver is appointed to manage its affairs. In the event of such termination, all licenses issued to Manufacturer by CMRRA hereunder will be terminated forthwith and Manufacturer will render an accounting and payment to CMRRA of all royalties due and owing thereunder.

(iii) *Breach of Agreement by Manufacturer:* CMRRA may terminate this Agreement in the event of any material breach of its terms or of the terms of any Mechanical License issued by CMRRA to Manufacturer. Prior to effecting such termination, CMRRA shall give Manufacturer written notice of its intention to terminate in the manner set out herein. If Manufacturer fails to take reasonable steps to cure such breach within thirty (30) days follow-

ing the date of such notice, then this Agreement and all Mechanical Licenses issued hereunder shall terminate on the thirty-first (31st) day following such notice. Upon such termination, Manufacturer will forthwith render an accounting and payment to CMRRA of all Royalties due pursuant to this Agreement.

(b) *Termination of Individual Mechanical Licenses:* Subject to the provisions of Section 2(d)(v) of this Agreement, CMRRA may terminate any individual Mechanical License issued hereunder upon Manufacturer's material breach of any of the terms thereof by giving written notice of such breach as set out herein. If Manufacturer fails to take reasonable steps to cure such breach within thirty (30) days following the date of such notice, then the said Mechanical License shall terminate on the thirty-first (31st) day following the date of such notice. Upon any such termination of a Mechanical License, Manufacturer will render an accounting and payment to CMRRA of all Royalties due and owing thereunder in the course of its next quarterly Royalty accounting.

13. Arbitration

Disagreements regarding the interpretation of the terms of this Agreement shall first be the subject of discussion between CMRRA and Manufacturer. Failing resolution of the disagreement by such discussion, it shall be referred to arbitration pursuant to the provisions of the *Arbitrations Act*, S.O. 1991, c.17, as amended from time to time. The reference to arbitration shall be to one arbitrator, if the parties agree upon one arbitrator, otherwise to three arbitrators, one of whom shall be chosen by each party to the dispute and the third by the two so chosen and the third arbitrator so chosen shall be the Chairman. The award may be made by the majority of the arbitrators. Pursuant to s.45(3) of the said Act, the award may be appealed by either party to a Court on a question of fact or on a question of mixed fact and law.

14. Amendment and Severability

This Agreement may only be amended in writing signed by the parties hereto. A waiver by either party hereto of any term or condition of this Agreement or of any individual Mechanical License incorporating this Agreement by reference shall not be deemed or construed as a waiver of any condition or term hereof for the future or of any subsequent breach thereof. All remedies contained in this Agreement and in any individual Mechanical License incorporating the terms of this Agreement by reference shall be cumulative and none of them shall be in limitation of any other remedy. To the extent that any provision hereof may be judicially or administratively determined to be illegal or otherwise void, other than articles 2 and 7 herein, it is severed herefrom and will not otherwise affect or otherwise derogate from any other term hereof.

15. Audit

(a) *Audit Right:* Manufacturer hereby agrees that CMRRA, on behalf of its Affiliated Publisher(s) and those listed on Schedule "B" hereto, shall have the right, not more than once in any twelve (12) month period, to conduct, at its own expense, a Copyright Royalty Examination

("Audit") of Manufacturer's books and records as the same relate to the use of the Authorized Compositions and those listed on Schedule "B" hereto, which are the subject of Mechanical Licenses incorporating this Agreement, provided that CMRRA provides Manufacturer with reasonable written notice of its intent to conduct an Audit not less than twenty (20) business days prior to such Audit, and provided further that no such Audit shall take place within thirty (30) days prior to any Due Date. The Audit right may be exercised only once during any calendar year with respect to royalty statements rendered within two (2) years of CMRRA's receipt of said statements.

(b) *Books and Records to be Kept:* Without limiting the generality of the foregoing, such books and records shall include books of account and supporting documentation, such as reports from third party manufacturers and distributors, relating to the manufacture, sale or other distribution and return of Recordings sold or otherwise distributed by Manufacturer. Such books and records shall be maintained in a manner consistent with such Generally Accepted Accounting Principles as are and may be established from time to time by the Canadian Institute of Chartered Accountants.

(c) *Access to Information:* Without limiting the generality of the foregoing, Manufacturer shall advise CMRRA and its agents, upon request thereof, where such records, books and supporting documentation are kept and shall provide CMRRA and its agents with such information, CMRRA and its agents shall have the right to take hand-written extracts and to make photocopies and computer reports of such records, books and supporting documentation as CMRRA and its agents determine are reasonably necessary and convenient for the efficient conduct of the Audit.

(d) *Verification by Third Party:* in lieu of exercising the Audit Right herein, CMRRA may, in its sole discretion, accept the findings of a mutually acceptable examiner engaged by and at the cost of Manufacturer, including but not limited to an auditing or accounting firm, for the purpose of verifying the accuracy of Manufacturer's records and payments made pursuant to this Agreement.

16. Applicable Law

This Agreement shall be interpreted and governed by and pursuant to the laws of the Province of Ontario.

17. Notice

Any notice or other communications hereunder will be in writing and must be delivered by personal service, facsimile or by pre-paid registered mail to CMRRA and Manufacturer at the addresses set out in this Agreement, and such notice or communication will be deemed to be received in the case of personal service on delivery, or if by facsimile on the day of transmission, or if mailed on the fifth business day following its mailing. Either party may change its address for notice provided above by giving notice to the other party. Notwithstanding the foregoing,

notice of material breach of any term or condition of this Agreement shall be by prepaid registered mail and shall be deemed received on the date of actual receipt by the addressee.

18. Entire Agreement

This Agreement and the Schedules and Exhibits attached hereto, constitute the entire agreement between the parties and neither party hereto is bound by any representation or inducement not set forth herein.

19. Titles

Section titles herein are merely for identification and will be of no effect whatsoever in the application and construction of this Agreement or its provisions.

20. Currency

All royalties paid pursuant to Mechanical Licenses issued hereunder shall be calculated and paid in Canadian funds.

21. Assignment

Neither this Agreement nor any Mechanical License issued by CMRRA to Manufacturer hereunder may be assigned by Manufacturer in whole or in part without the express prior written consent of CMRRA, save and except for any assignment necessitated by a change in control or ownership of Manufacturer occasioned by the acquisition of a substantial controlling interest in the shares thereof or through the merger of Manufacturer with another firm, in which case assignment will be subject to immediate notification to CMRRA, provided that the assignee in such case is a party hereto.

22. Representation and Warranty by CMRRA

CMRRA represents and warrants that its Affiliated Publishers and Non-Affiliated Publishers own and/or control the reproduction rights in the Authorized Compositions and Non-Authorized Compositions pursuant to the terms and conditions of this Agreement and that they have authorized CMRRA to enter into this Agreement with Manufacturers and to grant Mechanical Licenses to Manufacturers as set out herein.

In the event that the above representation and/or warranties is or are breached with respect to any Composition licensed hereunder, and Manufacturer is found liable or settles any claim for damages as a result thereof, CMRRA will indemnify Manufacturer against and hold Manufacturer harmless from any and all claims, demands, liabilities and losses (including reasonable legal fees, interest and court costs) arising out of or in any way related to such breach. CMRRA agrees that Manufacturer may withhold such sums due CMRRA or Affiliated Publisher pursuant to the provisions of section 4(f)(iv) herein, in such amounts reasonably related to such claims until such time as such claims are reduced to a final judgment by a court of competent jurisdiction or are settled.

CMRRA agrees that during the Term it shall maintain, in good standing, an errors and omissions insurance policy with coverage in an amount sufficient to indemnify Manufacturer(s) for any breach of representation and/or warranty as set out above.

23. Confidentiality

Either party hereto may disclose the existence of and the terms of this Agreement to any person, firm or corporation. However, all transactions carried on pursuant to this Agreement, including the application for any Mechanical License by Manufacturer, the issue of such Mechanical License by CMRRA, the payment of royalties thereunder by Manufacturer to CMRRA and the contents of any correspondence or dealings between the parties hereto respecting such applications, Mechanical Licenses or Royalty payments shall at all times be treated in a confidential manner by both parties hereto and shall not be disclosed by either party to any other person, or to any firm or corporation without the express prior written consent of the other, save and except for such disclosure as may be reasonably necessary to either party's directors, officers, auditors (including CMRRA's auditors in the course of their conduct of any audit of Manufacturers hereunder), subsidiaries or parent firms or corporations.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed as of the day and year first above written.

**CANADIAN MUSICAL REPRODUCTION
RIGHTS AGENCY LTD.**

Name: Caroline Rioux

Title: President

Date: _____

[name of manufacturer]

Name: _____

Title: _____

Date: _____

EXHIBIT "A"

Standard CMRRA Mechanical License

Each Mechanical License issued by CMRRA to Manufacturer hereunder will set out on its face the following information:

License Number

Name of Manufacturer

Address of Manufacturer

Title of Authorized Composition

Composer(s), Author(s) and Arranger(s) of Authorized Composition

Owner/Administrator of Copyright

Percentage of Copyright owned or administered by Owner/Administrator

Featured Artist/Group performing Authorized Composition on Track or Recording

Release Date of Recording

Playing Time of Track

The Recording's Universal Product Code (UPC)

Manufacturer's Catalogue Number for the Recording

Contrivance

Album Title (where applicable)

Date of Issue

EXHIBIT "B"**Notification of New Affiliated Publisher**

TAKE NOTICE that Schedule "A" to the Mechanical Licensing Agreement dated as of January 1, 2013 between CMRRA and Manufacturer is hereby amended to add the following persons, firms and/or companies as Affiliated Publishers:

Name of Affiliated Publisher

Date: _____

SCHEDULE "A": Affiliated Publishers

The following music publisher affiliates of CMRRA are hereby added as Affiliated Publishers to the Mechanical Licensing Agreement dated as of January 1, 2013 between CMRRA and Manufacturer;

(computer printout)

SCHEDULE "B": Non-Affiliated Publishers and Non-Authorized Compositions

The following music publishers are Non-Affiliated Publishers pursuant to the Mechanical Licensing Agreement dated as of January 1, 2013 between CMRRA and Manufacturer:

Name of Non-Affiliated Publisher
Abkco Music Inc.
Ashtray Music
Axe Music
Black Ice Magic Publishing
Legs Music Inc.

The following compositions are Non-Authorized Compositions pursuant to the Mechanical Licensing Agreement dated as of January 1, 2013 between CMRRA and Manufacturer:

Title	Author(s)	Publisher
"White Christmas"	Irving Berlin	Irving Berlin Music Corp. c/o Williamson Music

SCHEDULE "C": Standard Sales Report Format

Pursuant to Section 4(d) of this Agreement, Manufacturer's quarterly Sales Report will be delivered to CMRRA in a Microsoft Excel file in accordance with the format and data requirements below. The following table lists the required data fields that must appear in each file and a description of each data field. The data fields are to be presented as individual columns in the spreadsheet.

No.	Data Fields	Description	Requirement
(i)	Sales Period	The quarterly period for which the sales took place. Must be indicated as QQYYYY.Q being the applicable quarter, Q, and YYYY being year. For example, 1Q2013.	Mandatory
(ii)	UPC	The Universal Product Code assigned to the Recording.	Mandatory
(iii)	Unique Product Identifier	The catalogue number of the Recording.	Mandatory
(iv)	Product Title	The title of the Recording.	Mandatory
(v)	Performing Artist	The name of each artist to whom the Recording is credited.	Mandatory
(vi)	Release Date	The Release Date of the Recording.	Mandatory
(vii)	Transaction Type	Identifies the method used by the Manufacturer to distribute the Recording. One of the following values is expected: RS for Regular Sales FG for Free Goods PR for Promotional	Mandatory
(viii)	Import Allowance	Where an Import Allowance has been agreed to between CMRRA and Manufacturer, one of the following values is expected: IA for sales subject to the Import Allowance under such agreement NA for sales not subject to the Import Allowance under such agreement. Where no such Import Allowance has been agreed to between CMRRA and Manufacturer, the value for this field is NA	Mandatory
(ix)	Rate Category	Identifies the price category for the Recording. One of the following values are expected: FR for Full Rate as per Section 3 of this Agreement BR for Budget Rate as per Section 9 of this Agreement	Mandatory
(x)	Best Selling Wholesale Price of Recording	Identifies the price of the Recording in effect to the largest-volume dealers purchasing the Recording from Manufacturer as per Section 9 of this Agreement.	Mandatory

(xi)	Royalty Rate	The applicable Royalty Rate as per Section 3 or Section 9 of this Agreement. This value should be stated in dollars, for example, as .083	Mandatory
(xii)	Number Of Audio Tracks On Recording	The number of audio Tracks embodied on the Recording,	Mandatory
(xiii)	CMRRA Market Share	A percentage to be determined by CMRRA to reflect its market share pursuant to Section 4(e)(D) of this Agreement.	Mandatory
(xiv)	Amount Per Unit Sold	The product of the Royalty Rate (xi), the Number of Audio Tracks on Recording (xii) and the CMRRA Market Share (xiii)	Mandatory
(xv)	Sales Units For The Period (net of reserves)	The number of units for which Royalties are being paid in the quarterly period. The value in this field must be zero or positive.	Mandatory
(xvi)	Sales Units Released From Reserve For The Period	The number of units being liquidated (paid) from a reserve that was held in a prior period. The value in this field must be zero or positive.	Mandatory
(xvii)	Negative Balance Forward From Previous Period	Negative credit balance from the previous period as a result of returns in excess of reserves. The value in this field must be zero or negative.	Mandatory
(xviii)	Returns For Current Period	Returns for current period. The value in this field must be zero or negative.	Mandatory
(xix)	Total Units Payable For The Period	This is the sum of the Units sold (xv), Sales Units Released from reserve (xvi), Negative Balance Forward (xvii) and Returns (xviii)	Mandatory
(xx)	Life To Date Sales Units	Life To Date sales of the Recording.	Mandatory
(xxi)	Royalty Advance	As per Section 4(e) of this Agreement; The product of the Total Units Payable for the Period (xix), the applicable Royalty Rate (xi), the Number of audio Tracks on Recording (xii) and the CMRRA Market Share (xiii)	Mandatory

FILE NAMING CONVENTION:

Manufacturer's Sales Report will be named in accordance with the following convention:

Manufacturer Name_CMRRA Manufacturer ID_Type_YYYYMMDD.xls

- Manufacturer Name being the name of the manufacturer.
- CMRRA Manufacturer ID being the Manufacturer's identification number as provided by CMRRA.
- Type being Sales Report.
- YYYYMMDD being a sequence with YYYY indicating the year, MM indicating the month and DD indicating the day of the applicable royalty period end date.
- For example: 123 Records_45600_SalesReport_20130331.xls

SCHEDULE "D": Standard Royalty Format

Pursuant to Section 4(c) of this Agreement Manufacturer's royalty statements will be delivered to CMRRA in a Microsoft Excel file, or such other data file as agreed to in advance by CMRRA, in accordance with the format and data requirements below. The following table lists the required data fields that must appear in each file and a description of each data field. The data fields represent individual columns in the spreadsheet.

No.	Data Fields	Description	Requirement
(i)	Publisher Name	The name of the Copyright Owner as stated on CMRRA's licenses.	Mandatory
(ii)	Publisher Number	The Copyright Owner identification number, as stated on CMRRA's licenses or as used in Manufacturer's own account system, so long as such identification number is only ever used to identify one specific Copyright Owner account and is not reused to identify a different Copyright Owner account.	Mandatory
(iii)	License # Prefix	The License Number Prefix as provided by CMRRA.	Mandatory
(iv)	License # Suffix	The License Number Suffix as provided by CMRRA.	Mandatory
(v)	Song Number	The Musical Work's identification number as stated on CMRRA's licenses or as used in Manufacturer's own accounting system.	Mandatory
(vi)	Song Title	The title of the Musical Work as stated on CMRRA's licenses in respect of which Royalties are being paid.	Mandatory
(vii)	Writer Name(s)	The name of the authors and composers of the Musical Work.	Mandatory
(viii)	Unique Product Identifier	The catalogue number assigned to the Recording by Manufacturer.	Mandatory
(ix)	Contrivance	The configuration type of the Recording (contrivance).	Mandatory
(x)	Royalty Rate	The applicable Royalty Rate as per Section 3 or Section 9 of this Agreement. This value should be stated in dollars, for example, as .083	Mandatory
(xi)	Ownership Percentage	The ownership Percentage of the Copyright Owner as stated on CMRRA's licenses. Must appear as a percentage amount (33.33) without the percent symbol.	Mandatory
(xii)	Units	The number of units for which Royalties are paid in the quarterly period, net of reserves, which is the subject of the statement. Must not include comma separator.	Mandatory
(xiii)	Royalty Amount	The total Royalties paid respecting the share of the Musical Work that is the subject of the Mechanical License. Amount is rounded to two decimal places and must not include a dollar sign.	Mandatory
(xiv)	Calendar Quarter	The quarterly period that is the subject of the statement. Must be indicated as YYQQ, YY represents the last two digits of the applicable year. The second Q represents the applicable calendar quarter. For example, 12Q4 represents the 4 th calendar quarter of the year 2012.	Mandatory

SCHEDULE "D": Standard Royalty Format (continued)

As mentioned above, the data fields represent different columns of data that must appear in your Microsoft Excel report. It is of critical importance that the column sequencing is presented in exactly the same order as in the above table and that the Data Fields cannot be merged in a single column. It is essential that you do not add or remove a column.

The column width may vary; however, CMRRA requires that it be submitted in a 'flat file' format. This entails that each cell in each column is filled, even if the information is repeated from prior rows of data (i.e. publisher name). The desired result is that each row is self-sufficient and independent from the others.

Your spreadsheet must be free of embedded formulas and 'grand totals' for each column.

Manufacturer will ensure that its royalty statements conform to said format and will not make any changes thereto save and except for those which are approved in advance by CMRRA.

FILE NAMING CONVENTION:

Manufacturer's Royalty Statements will be named in accordance with the following convention:

Manufacturer Name_CMRRA Manufacturer ID_Type_YYYYMMDD.xls

- Manufacturer Name being the name of the manufacturer.
- CMRRA Manufacturer ID being the Manufacturer's identification number as provided by CMRRA [same as (xvii)].
- Type being Royalty Statement.
- YYYYMMDD being a sequence with YYYY indicating the year, MM indicating the month and DD indicating the day of the applicable royalty period end date.

For example: 123 Records_456_Royalty Statement_20130331.xls

SCHEDULE "E": Standard Format for Publisher Summary

Pursuant to Section 4(c) of this Agreement, Manufacturer's will deliver to CMRRA a summary of the total amounts payable to each Affiliated Publisher, in a Microsoft Excel file, or such other data file as agreed to in advance by CMRRA, in accordance with the format and data requirements below. The following table lists the required data fields in each summary and a description of each field. The data fields are to be presented as individual columns in the spreadsheet, with the exception of the last data field in the table below.

No.	Data Fields	Description	Requirement
(i)	Publisher Name	The name of the Copyright Owner as stated on CMRRA's licenses.	Mandatory
(ii)	Publisher Number	The Copyright Owner identification number, as stated on CMRRA's licenses or as used in Manufacturer's own account system so long as such identification number is only ever used to identify one specific Copyright Owner account and is not re-used to identify a different Copyright Owner account.	Mandatory
(iii)	Total Payable to Publisher	The total Royalties payable to each Copyright Owner.	Mandatory
(iv)	Grand CMRRA Total	The grand total payable to CMRRA. Must be indicated at the end of column (iii) above.	Mandatory

The data fields represent the different columns of data that must appear in your report with the exception of (iv) which is a sum of column (iii).

FILE NAMING CONVENTION:

Manufacturer's Publisher Summary will be named in accordance with the following convention:

Manufacturer Name_CMRRA Manufacturer ID_Type_YYYYMMDD.xls

- Manufacturer Name being the name of the manufacturer.
- CMRRA Manufacturer ID being the Manufacturer's identification number as provided by CMRRA.
- Type being Publisher Summary.
- YYYYMMDD being a sequence with YYYY indicating the year, MM indicating the month and DD indicating the day of the applicable royalty period end date.

For example: 123 Records_456_Publisher Summary_20130331

SCHEDULE "F": Unlicensed Recording List Standard Format

Pursuant to Section 4(g) of this Agreement, Manufacturer's Unlicensed Recording List will be delivered to CMRRA in a Microsoft Excel file in accordance to the format and data requirements below. The following table lists the required data fields that must appear in each file with respect to each unlicensed Musical Work, or share thereof, and a description of each data field. The data fields are to be presented as individual columns in the spreadsheet.

Data fields marked as "Conditional" must be provided to CMRRA to the extent such information is available to Manufacturer, or where such information is provided by Manufacturer to an online music service.

No.	Data Fields	Description	Requirement
(i)	Song Title	The title of the Musical Work.	Mandatory
(ii)	Catalogue Number	The catalogue number of the Recording as assigned by Manufacturer.	Mandatory
(iii)	Cumulative Units	The cumulative number of units for which Royalties are payable from inception of distribution of the Recording until the end of the quarterly period which is the subject of the statement.	Mandatory
(iv)	Royalty Rate	The applicable Royalty Rate. Should appear as dollar amount (.083).	Mandatory
(v)	Total Payable	The total Royalties payable for the Musical Work as embodied on the specific Recording.	Mandatory
(vi)	Product Title	The title of the Recording embodying the Musical Work.	Mandatory
(vii)	Performing Artist	The name of each artist to whom the Track is credited.	Mandatory
(viii)	Timing	The running time of the Track, in minutes and seconds.	Mandatory
(ix)	ISRC	ISRC number assigned to the Recording, where such Recording was released after January 1, 2007. The field is Conditional where such Recording is released prior to January 1, 2007.	Mandatory for Post-2006 Recordings, Conditional for Pre-2007 Recordings
(x)	Writer Name(s)	The name of the author(s) and composer(s) of the Musical Work.	Conditional
(xi)	Unlicensed Percentage	The percentage interest therein in respect of which Manufacturer has not obtained a Mechanical License or has not paid Royalties at the time such Unlicensed Recording List was prepared. Should appear as a percentage amount (33.33).	Conditional
(xii)	Release Date	The release date of the Recording.	Conditional

(xiii)	Recording Deletion Status	Information indicating whether the Recording is still active or has been discontinued. Expected values are the following: DR for Recordings that have been discontinued AR , for active Recordings that have not been discontinued	Mandatory
(xiv)	Deletion Date	The date on which the Recording was deleted from Manufacturer's catalogue of products offered for sale to its customers.	Conditional
(xv)	UPC Number	The Universal Product Code assigned to the album on which the Track appears.	Conditional
(xvi)	Disc Number	The disc number associated with the Track such as in a box set,	Conditional
(xvii)	Track Number	The track number of the Track on the album on which it appears.	Conditional
(xviii)	Publisher Name	The name of the music publisher(s) associated with the Musical Work,	Conditional
(xix)	Publisher Number	Manufacturer's internal identification number assigned to the music publisher,	Conditional
(xx)	Song Number	Manufacturer's internal identification number assigned to the Musical Work.	Conditional
(xxi)	Unlicensed Reason	The reason for which the Musical Work is on the Unlicensed Recording List. Expected values are the following: DISPUTE , for copyright ownership conflict of the Musical Work NO LICENSE , for Musical Works, or share thereof, for which you have not received a Mechanical License For all other reasons, you are required to provide a brief explanation.	Conditional
(xxii)	Configuration	The contrivance or format of the Recording (CD, LP, CS, etc.)	Conditional
(xxiii)	Calendar Quarter	The calendar quarter applicable to the Unlicensed Recording List,	Conditional
(xxiv)	ISWC	The International Standard Work Code of said musical composition,	Conditional
(xxv)	Label Name	Label name associated with the Recording. This relates to Manufacturers that handle Recordings for multiple labels.	Conditional
(xxvi)	Transaction Type	Identifies the method used by the Manufacturer to distribute the product. One of the following values is expected: RS , for Regular Sales FG , for Free Goods PR , for Promotional Goods	Conditional

SCHEDULE "F": Unlicensed Recording List Standard Format (continued)**FILE NAMING CONVENTION:**

Manufacturer's Unlicensed Recording List will be named in accordance with the following convention:

Manufacturer Name_CMRRA Manufacturer ID_Type_YYYYMMDD.xls

- Manufacturer Name being the name of the manufacturer.
- CMRRA Manufacturer ID being the Manufacturer's identification number as provided by CMRRA.
- Type being Unlicensed Recording List.
- YYYYMMDD being a sequence with YYYY indicating the year, MM indicating the month and DD indicating the day of the applicable royalty period end date.
- For example: 123 Records_456_Unlicensed Recording List_20130331

SCHEDULE "G": License Application

Pursuant to section 2.(d) of this Agreement, Manufacturer's license application must disclose at least the following mandatory information for each Track:

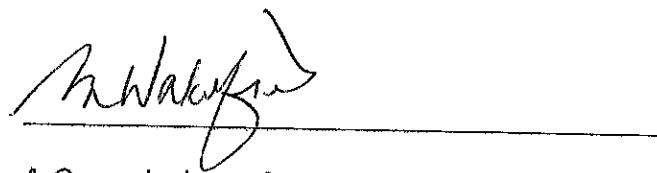
- (i) Name and address of the Manufacturer;
- (ii) Performing artist to whom the Track is credited;
- (iii) Title of the Recording;
- (iv) Release date of the Recording;
- (v) Configuration type(s) of the Recording;
- (vi) Manufacturer's unique catalogue number for each Recording configuration;
- (vii) Title of Musical Work, as well as the title of each individual Musical Work contained in a medley, mash-up or used as a sample;
- (viii) Name of each author and composer of the Musical Work(s);
- (ix) Running time of the Track as well as the running time of each individual Musical Work contained in a medley;

The following is a list of Conditional data that must be provided to CMRRA if it is available to Manufacturer:

- (i) Name of the music publisher(s) for each Musical Work;
- (ii) Where the Musical Work is a translation or adaptation of another Musical Work, the title of such original Musical Work;
- (iii) UPC (Universal Product Code);
- (iv) ISRC (International Standard Recording Code);
- (v) ISWC (International Standard Work Code);
- (vi) The wholesale price of the Recording;
- (vii) Rate Category for the Recording (Budget Rate or Full Rate);
- (viii) Number of individual Tracks on the Recording;

36

This is **Exhibit "36"** referred to in the Affidavit
of Terry Perusini sworn before me this 26th day
of August, 2015



A Commissioner for taking Affidavits, etc.

Marie Elizabeth Wakefield, a Commissioner, etc.,
Province of Ontario, for WeirFoulds LLP,
Barristers and Solicitors.
Expires October 24, 2016.

From: Terry Perusini [<mailto:terry@stargrove.ca>]
Sent: April-28-15 11:01 AM
To: 'NLevesque@cmrra.ca'
Cc: jennifer@stargrove.ca
Subject: CMRRA / Stargrove

Hi Natalie:

I hope you are well.

I assume the suggestion for Jennifer to put you on to someone at Legacy was directed at me. We are both somewhat confused why her inquiries for mechanical licenses with Stargrove has moved into your examination of Legacy. This matter is about CMRRA dealing with Stargrove in the same manner it does other record labels in Canada - not about Legacy Entertainment. In terms of the royalty program Legacy used, there seems to be a question whether that program worked or not. The fact is Legacy sent millions of dollars to CMRRA for royalties over the years I was there using that very same program. On that fact alone clearly the program used did work and accomplished what it is intended to do. This would be the case again if CMRRA was sincerely interested in working with Stargrove on behalf of the many, many publishers (artists) it represents. Jennifer informed you she does not work at Legacy any longer. I sold the company many years ago to a group in the UK and I am no longer with the company.

Let's be candid; members of your principal publishers sit on your board. The comment that your principal publishers (your board) are instructing you not to deal with Stargrove is the reality of what is going on here. We

asked to go on a MIA and you came up with every excuse to avoid that. Even when you rejected our program we asked for a referral to another. We were happy to go with something else that worked, but oddly you had no suggestions of a program that would work for you. You suggested a pay as you press on a quarterly basis. We said happy to go with that please explain further. Instead of explain further you came back with some aside about Legacy.

Based on your principal publishers instructions it is very clear CMRRA does not want to work with Stargrove including us to distribute budget priced cds in the Canadian market. Considering your "principal publishers" are subsidiaries of "principal record" labels that are not happy to have our lowered priced products, such as the Beatles in the marketplace, it is not difficult to conclude what is going here. It is unfortunate for the 1000s of publishers (artists) you represent that they are not fairly represented by CMRRA because of a board that truly does not have the interests of those publishers (artists) in mind. There is no doubt those other publishers (artists) would want the revenues our products generate them. In fact there is no doubt the artists under your "principal publishers" would also love the income our products will generate for them. Unfortunately this will not happen for them because "principal publishers" that sit on your board have record labels to protect. Your principal publishers will not deal with us therefore clearly a meeting is pointless and will not get us any further than this email exchange has.

The notion that your principal publishers are instructing you not to deal with Stargrove is clearly the central issue in CMRRA not dealing with us. We appreciate your publishers do not need to give reason for their refusal to deal with Stargrove. That being said there are very clear competition laws in Canada to insure ones rationale for refusal to deal do not discriminate because of one's pricing policy, etc, etc. This is a matter our counsel and the Canada's Competition Tribunal will investigate. There is no doubt the artists will be shocked to find they are being denied income on songs they had created. That could very well be a cause for Canada to follow the USA and EU with compulsory licenses.

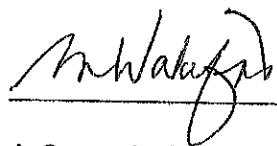
Since you will not deal with us we will follow your initial instructions to pursue the publishers directly.

Kind regards,

Terry Perusini

37

This is **Exhibit "37"** referred to in the Affidavit
of Terry Perusini sworn before me this 26th day
of August, 2015



A Commissioner for taking Affidavits, etc.

Elizabeth Wakefield, a Commissioner, etc.,
Province of Ontario, for WeirFoulds LLP,
Barristers and Solicitors,
Expires October 24, 2016

May 22, 2015

Nikiforos Iatrou
T: 416-947-5072
nlatrou@weirfoulds.com

VIA E-MAIL

File 17083.00001

Universal Music Publishing Group Canada
A Division of Universal Music Canada Inc.
2450 Victoria Park Avenue, Suite 1
Toronto ON M2J 5H3
Canada

Sony/ATV Music Publishing Canada Co.
1670 Bayview Avenue, Suite 408
Toronto, ON M4G 3C2
Canada

ABKCO Music, Inc.
85 Fifth Avenue
New York, NY 1003
Canada

Casablanca Media Publishing/ Red Brick Songs
249 Lawrence Avenue East
Toronto, ON M4N 1T5

Dear Sirs and Mesdames:

Re Stargrove Entertainment Inc. – Refusal to Supply Mechanical Licences

We act alongside Dimock Stratton LLP for Stargrove Entertainment Inc. ("Stargrove") in respect of your respective refusals to supply Stargrove with mechanical licences for the works identified in Appendix "A" to this letter (the "Works").

Stargrove has been engaged with each of you through the Canadian Musical Reproduction Rights Agency Limited ("CMRRA") for months, to no avail, trying to find a solution to your apparent unwillingness to issue Stargrove mechanical licenses on standard terms. This refusal to supply mechanical licenses directly affects Stargrove's business, artificially maintains

elevated prices of sound recordings that are in the public domain, and is a violation of the *Competition Act*. This refusal benefits your respective affiliated labels to the expense of consumers.

CMRRA has told our client that, on instructions from each of you, it will not issue mechanical licenses to Stargrove. As a result, it has refused to enter into a Mechanical License Agreement ("MLA") with Stargrove. This refusal appears to extend beyond simply licensing the Works; if CMRRA refuses to intermediate for *any* licenses between you and Stargrove, this imperils Stargrove's business in respect of all manner of rights that Stargrove owns or has licensed, wholly separate from the public domain titles that appear to have caused you to take the exceptional action that you have.

By this letter, we would ask that you each reconsider your position, failing which our instructions are to seek relief through all available means, including through the avenues available under the *Competition Act*.

This group boycott of Stargrove is anticompetitive. The principals of Stargrove, with a combined total of over 50 years in the music business internationally, including in Canada, are not aware of any instance of CMRRA having refused a mechanical license to an entity seeking to reproduce a work. Indeed, CMRRA was established for the very purpose of efficiently issuing mechanical licenses on a routine basis to numerous licensees. Further, it is in the financial interest of owners of works for their works to be licensed and reproduced as frequently as possible. The only reason we can ascertain that you as publishers are refusing to do so relates to the fact that you are affiliated with record companies that seek to compete with Stargrove.

Stargrove has been unfairly targeted because it seeks to produce low-cost CDs of sound recordings that are in the public domain. Your decision to break from the standard practice of issuing mechanical licenses to anyone who will agree to abide by CMRRA's standard terms and pay CMRRA's standard royalties can only be motivated by the goal of preventing Stargrove from offering consumers low-cost alternatives and choice.

While Stargrove does not relish the prospect of a public dispute over these practices, it cannot stand by and incur significant losses because your organizations are taking unprecedented steps to keep it from offering low-cost alternatives to Canadian consumers.

Among other competition law issues raised by the above-described refusals, we note that the price maintenance provisions in section 76 of the *Competition Act* enable the Competition Tribunal to order an entity to accept another person as a customer on usual trade terms where a

refusal to supply a product to another person, or any other form of discrimination against another person, is because of the low pricing policy of that other person, and the conduct is having or is likely to have an adverse effect on competition in a market. Section 76 expressly applies to refusals to supply or discrimination by a person that has exclusive rights and privileges conferred by copyright. Section 75 – the provision prohibiting refusals to deal – is similarly engaged.

Stargrove remains willing and able to enter into the standard CMRRA-MLA for the Works and to pay the applicable royalties and fees. Stargrove reiterates its request for CMRRA to enter into an MLA with it, and requests licenses from each of you for the Works on standard terms and your confirmation that you will not discriminate against Stargrove in respect of mechanical licenses unrelated to the Works.

Please note that if matters are not resolved to Stargrove's satisfaction by Friday, May 29, 2015, our instructions are to seek relief against you and your respective labels through all available means.

Yours truly,

WeirFoulds LLP



Nikiforos Iatrou

N!

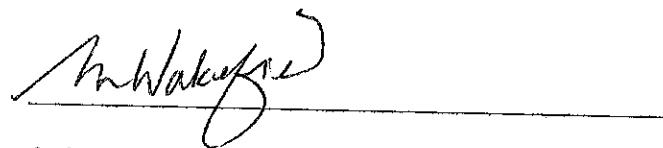
cc: Canadian Musical Reproduction Rights Agency Limited (CMRRA);
cc: Michael B. Kramer, Counsel to ABKCO Music, Inc.;
cc: Casey Chisick, Counsel to Casablanca Media Publishing
cc: Sangeetha Punniyamoorthy, Dimock Stratton LLP

8079102.3

CAT NO	TITLE	TRACK	TRACK	Writers	Publishing	Distributed by	330
STR0001	Love Me Do	1	Love Me Do	Lennon/McCartney	BEECHWOOD MUSIC CORP. (OWNED BY UNIVERSAL)	Universal	
		2	I Feel Fine	Lennon/McCartney	SONY/ATV MUSIC PUBLISHING	Universal	
		3	This Boy	Lennon/McCartney	SONY/ATV MUSIC PUBLISHING	Universal	
		4	I Saw Her Standing There	Lennon/McCartney	GIL MUSIC Corp (But refusal came from CASABLANCA)	Universal	
		5	All My Loving	Lennon/McCartney	SONY/ATV MUSIC PUBLISHING	Universal	
		6	>Please Please Me	Holland	JOBETE/STONE/UNIVERSAL	Universal	
		7	A Hard Days Night	Lennon/McCartney	SONY/ATV MUSIC PUBLISHING	Universal	
		8	You Can't Do That	Lennon/McCartney	SONY/ATV MUSIC PUBLISHING	Universal	
		9	It Won't Be Long	Lennon/McCartney	SONY/ATV MUSIC PUBLISHING	Universal	
		10	If I Fell	Lennon/McCartney	SONY/ATV MUSIC PUBLISHING	Universal	
STR0002	Can't Buy Me Love	1	Can't Buy Me Love	Lennon/McCartney	SONY/ATV MUSIC PUBLISHING	Universal	
		2	From Me To You	Lennon/McCartney	GIL MUSIC Corp (But refusal came from CASABLANCA)	Universal	
		3	Please Please Me	Lennon/McCartney	UNIVERSAL/DICK JAMES MUSIC LTD	Universal	
		4	I Want To Know A Secret	Lennon/McCartney	SONY/ATV MUSIC PUBLISHING	Universal	
		5	I Wanna Be Your Man	Lennon/McCartney	CMRRA shows nothing (But refusal came from CASABLANCA)	Universal	
		6	No Reply	Lennon/McCartney	SONY/ATV MUSIC PUBLISHING	Universal	
		7	Words Of Love	Holly	PEERMUSIC LIMITED	Universal	
		8	Mr Moonlight	Johnson	SONY/ATV MUSIC PUBLISHING	Universal	* no response on this track
		9	And I Love Her	Lennon/McCartney	SONY/ATV MUSIC PUBLISHING	Universal	
		10	You Really Got A Hold On Me	Robinson	JOBETE MUSIC/UNIVERSAL	Universal	
STR0004	Little Red Rooster	1	I Wanna Be Your Man	Lennon/McCartney	SONY/ATV MUSIC PUBLISHING	Universal	
		2	Little Red Rooster	Dixon	ABKCO	Universal	
		3	Heart Of Stone	Richard/Jagger	ABKCO	Universal	
		4	What A Shame	Richard/Jagger	ABKCO	Universal	
		5	Tell Me (You're Coming Back)	Jagger/Richard	PEERMUSIC CANADA (SIT ON CMRRA BOARD)	Universal	
		6	Good Times Bad Times	Jagger/Richard	ABKCO	Universal	
		7	It's All Over Now	B & G Womack	ABKCO	Universal	
		8	Time Is On My Side	Mende/Norman	CMRRA shows nothing	Universal	
		9	Grown Up Wrong	Jagger/Richard	ABKCO	Universal	
		10	If You Need Me	Pickett/Baleman/Staples	DROP TOP MUSIC (Subject to clarification from CMRRA)	Universal	
		11	Walking The Dog	Thomas	UNIVERSAL PUBLISHING	Universal	
STR0006	It Ain't Me Babe	1	The Times They Are A Changin	Dylan	SONY/ATV MUSIC PUBLISHING	Sony	
		2	It Ain't Me Babe	Dylan	SONY/ATV MUSIC PUBLISHING	Sony	
		3	Corrina, Corrina	Dylan	SONY/ATV MUSIC PUBLISHING	Sony	
		4	Blowin' In The Wind	Dylan	SONY/ATV MUSIC PUBLISHING	Sony	
		5	Bob Dylan's Blues	Dylan	SONY/ATV MUSIC PUBLISHING	Sony	
		6	A Hard Rain's A-Gonna Fall	Dylan	SONY/ATV MUSIC PUBLISHING	Sony	
		7	Don't Think Twice It's All Right	Dylan	SONY/ATV MUSIC PUBLISHING	Sony	
		8	Ballad Of Hollis Brown	Dylan	SONY/ATV MUSIC PUBLISHING	Sony	
		9	Only A Pawn In Their Game	Dylan	SONY/ATV MUSIC PUBLISHING	Sony	
		10	With God On Our Side	Dylan	SONY/ATV MUSIC PUBLISHING	Sony	
		11	One Too Many Mornings	Dylan	SONY/ATV MUSIC PUBLISHING	Sony	
STR0008	Fun Fun Fun	1	Ten Little Indians	Wilson/Usher	UNIVERSAL MUSIC PUBLISHING LTD	Universal	
		2	Be True To Your School	Wilson/Love	UNIVERSAL MUSIC PUBLISHING LTD	Universal	
		3	Fun Fun Fun	Wilson/Love	UNIVERSAL MUSIC PUBLISHING LTD	Universal	
		4	I Get Around	Love/Wilson	UNIVERSAL MUSIC PUBLISHING LTD	Universal	
		5	When I Grow Up (To Be A Man)	Wilson	UNIVERSAL MUSIC PUBLISHING LTD	Universal	
		6	Dance Dance Dance	Love/Wilson	UNIVERSAL MUSIC PUBLISHING LTD	Universal	

38

This is **Exhibit "38"** referred to in the Affidavit
of Terry Perusini sworn before me this 26th day
of August, 2015



A Commissioner for taking Affidavits, etc.

Marie Elizabeth Wakefield, a Commissioner, etc.,
Province of Ontario, for WeirFoulds LLP,
Barristers and Solicitors,
Expires October 24, 2016.

From: Patricia McAlpine [mailto:patricia.mcalpine@amerchca.com]
Sent: May-27-15 1:18 PM
To: Terry Perusini
Subject: Fwd: FOS Bin opportunity!!

Terry - I'd love to have 10,000 units of both of the Beatles titles for this opportunity

----- Forwarded message -----

From: **Chad Minicuci** <chad.minicuci@amerchca.com>
Date: Mon, May 25, 2015 at 4:07 PM
Subject: FOS Bin opportunity!!
To: Brian.Greaves@umusic.com, Ryan.Didier@sonymusic.com, "Reid, Pat"
<Pat.Reid@warnermusic.com>
Cc: Chad Minicuci <chad.minicuci@amerchca.com>, Patricia McAlpine
<patricia.mcalpine@amerchca.com>, Diane Di Fiore <diane.difiore@amerchca.com>, Natasha Wise
<natasha.wise@amerchca.com>, Rod Lugtenburg <rod.lugtenburg@amerchca.com>

We have an opportunity to use the Front Of Store bin for \$5 CD's for 3 weeks. (July 25 to August 14)

There 375 are stores with these bins. (314 English / 61 PQ)

We would ship roughly 10,000 units of one title and can go as many as 4 titles but might choose to go less titles depending on the offers.

So please offer us one to four titles so we can make selections.

333

Obviously if we do amazing sales, we'll get more opportunities!

Unfortunately, (you knew this was coming!) **we have to submit titles, item #'s and forecasts no later than Friday noon** therefore need you to get back to us on Wednesday.... Thursday at the latest!

Please dig into this and get back to me, thanks,

Chad Minicuci

AVP Sales

Anderson Merchandisers Canada Inc.

905-763-1999 ext. 431

chad.minicuci@amerchea.com

--
Trish McAlpine
Anderson Merchandisers Canada

39

This is **Exhibit "39"** referred to in the Affidavit
of Terry Perusini sworn before me this 26th day
of August, 2015

Marie Elizabeth Wakefield

A Commissioner for taking Affidavits, etc.

Marie Elizabeth Wakefield, a Commissioner, etc.,
Province of Ontario, for WeirFoulds LLP,
Barristers and Solicitors.
Expires October 24, 2016.

From: Chad Minicuci [<mailto:chad.minicuci@amerchca.com>]
Sent: June 10-15 10:43 AM
To: Terry Perusini
Subject: Beatles CD's

Hi Terry, as you know, we do a great volume of CD sales on the \$5 pricepoint. Walmart customers embrace the variety of choice and of course the affordable pricing that allows them to buy more! In particular, the Beatles 'Love Me Do' title that we shipped in February of this year was welcomed by the Walmart consumer as evident in the sales results. There is no doubt that we are in need of more titles like it. Based on the fact that defective returns were only 0.032% (way below industry average) means the customers are satisfied with the quality of the product.

Obviously I am not in a position to make decisions or take sides on legal controversy. My primary interest is to make CD's available at Walmart that the customer is looking for at pricing they expect. The product you recently made available to us certainly hit the mark and we hope that you can provide us with more selections in the near future.

Regards,

Chad Minicuci
AVP Sales
Anderson Merchandisers Canada Inc.
905-763-1999 ext. 431

chad.minicuci@amerchca.com

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TELL THE WORLD!!! Starting Friday July 10th...
ALL MUSIC NEW RELEASES WILL BE ON FRIDAYS!!!

40

This is **Exhibit "40"** referred to in the Affidavit
of Terry Perusini sworn before me this 26th day
of August, 2015

M. Wakefield
A Commissioner for taking Affidavits, etc.

Marie Elizabeth Wakefield, a Commissioner, etc.,
Province of Ontario, for WeirFoulds LLP,
Barristers and Solicitors,
Expires October 24, 2016.

From: Patricia McAlpine [<mailto:patricia.mcalpine@amerchca.com>]
Sent: August-10-15 11:36 AM
To: Terry Perusini
Cc: Chad Mlinicuci
Subject: Re: Beatles

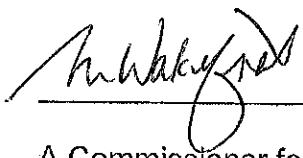
Thanks for the update Terry - pls continue to keep us advised - I'd love to be able to buy some Beatles stock from someone (read on)

just so you know - last fall (ABCO - the Beatles portion of UNI music) offered a temp deal with low costs on key Beatles titles - we temporarily lowered our retails and did a large buy in at the low cost (as did all of the music industry), with the intention of putting the retails back up when we ran out of stock in the whse (on the stock we bought at the lower cost) - flash forward 10 mths later and I'm ready to put the retails back up, as I am now out of stock on the low cost goods, and WM **will not allow increases in** retails. Consequently, I have no stock to ship or sell on titles like Beatles Ones, Abby Road, Red, Blue, White, etc.

Can you imagine the units we can sell on the \$5 titles, with none of the other catalogue ava to ship at this time? Good luck

41

This is **Exhibit "41"** referred to in the Affidavit
of Terry Perusini sworn before me this 26th day
of August, 2015



A Commissioner for taking Affidavits, etc.

Maria Elizabeth Wakefield, a Commissioner, etc.
Province of Ontario, for **WeirFoulds LLP**,
Barristers and Solicitors.
Expires October 24, 2016.

STRONG LEADERSHIP

**A BALANCED-BUDGET, LOW-TAX PLAN FOR
JOBS, GROWTH AND SECURITY**

Tabled in the House of Commons
By the Honourable Joe Oliver, P.C., M.P.
Minister of Finance

APRIL 21, 2015



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ISSN: 1719-7740

This document is also available on the Internet at www.fin.gc.ca

Cette publication est aussi disponible en français.



- Providing \$200 million over five years, starting in 2015–16, to improve First Nations education.
- Providing \$12 million over three years to Indspire to provide post-secondary scholarships and bursaries for First Nations and Inuit students.

Assisting International Communities

- Allocating \$6 million over five years, starting in 2015–16, to introduce measures that will help ensure Canadians have access to safe, reliable and lower-cost remittance services.
- Investing \$22.8 million in 2016–17 for Grand Challenges Canada to continue its promising work towards solving global health challenges through innovation.
- Establishing the Development Finance Initiative to support effective international development by providing financing, technical assistance and business advisory services to firms operating in developing countries.

Celebrating Our Heritage

- Supporting activities and events to celebrate Canada's 150th anniversary in 2017, with \$210 million over four years, starting in 2015–16.
- Providing \$13.4 million over five years, starting in 2015–16, and \$2.8 million ongoing to support and modernize the Canadian Honours System.
- Investing up to \$20 million over four years, beginning in 2016–17, to support the next generation of Canadian Olympic and Paralympic athletes.
- Providing \$25 million over five years, beginning in 2016–17, to renew the Harbourfront Centre Funding Program.
- Proposing changes to the *Copyright Act* to extend the term of protection of sound recordings and performances.

Protecting Canada's Environment

- Continuing to support, with \$75 million over three years, starting in 2015–16, the implementation of the Species at Risk Act.
- Providing \$2.0 million in 2015–16 to the Pacific Salmon Foundation to support the Salish Sea Marine Survival Project.
- Extending the Recreational Fisheries Conservation Program by providing \$10 million per year for three years, starting in 2016–17.
- Dedicating \$34 million over five years, starting in 2015–16, to continue to support meteorological and navigational warning services in the Arctic.



Assisting International Communities

- ✓ \$6 million over five years, starting in 2015–16, to introduce measures that will help ensure Canadians have access to safe, reliable and lower-cost remittance services.
- ✓ \$22.8 million in 2016–17 for Grand Challenges Canada to continue its promising work towards solving global health challenges through innovation.
- ✓ Establishing the Development Finance Initiative to support effective international development by providing financing, technical assistance and business advisory services to firms operating in developing countries.

Celebrating Our Heritage

- ✓ Supporting activities and events to celebrate Canada's 150th anniversary in 2017, with \$210 million over four years, starting in 2015–16.
- ✓ Providing \$13.4 million over five years, starting in 2015–16, and \$2.8 million ongoing to support and modernize the Canadian Honours System and bring it closer to all Canadians.
- ✓ Investing up to \$20 million over four years, beginning in 2016–17, to support the next generation of Canadian Olympic and Paralympic athletes.
- ✓ Promoting arts and culture at Toronto's waterfront by providing \$25 million over five years, beginning in 2016–17, to renew the Harbourfront Centre Funding Program.
- ✓ Proposing changes to the *Copyright Act* to extend the term of protection of sound recordings and performances.

Protecting Canada's Environment

- ✓ Continuing to support, with \$75 million over five years, starting in 2015–16, the implementation of the *Species at Risk Act* to protect Canada's diverse species and secure the necessary actions for their recovery.
- ✓ Providing \$2.0 million in 2015–16 to the Pacific Salmon Foundation to support the Salish Sea Marine Survival Project.
- ✓ Extending the Recreational Fisheries Conservation Program by providing \$10 million per year for three years, starting in 2016–17, to support the conservation of recreational fisheries across the country.
- ✓ Dedicating \$34 million over five years, starting in 2015–16, to continue to support meteorological and navigational warning services in the Arctic.



Private sector investment is the key driver of economic growth: It's essential to creating new businesses that provide jobs, earn profits and generate tax revenue, as well as other benefits to society. But some promising enterprises in many low- and middle-income countries—and Canadian companies that work in these regions—can't access the long-term financing they need to grow and reduce poverty.

—Engineers Without Borders Canada

Business and economic development go hand-in-hand. Over the past two decades, private sector-led growth has driven 90 per cent of job creation in developing countries and pulled hundreds of millions out of poverty. [...] Accelerating these private capital flows will be difficult, but instrumental to the next wave of poverty reduction.

—Canadian Chamber of Commerce

Celebrating Our Heritage

The Government is continuing to make investments which will ensure that Canadians have opportunities to celebrate and commemorate Canada's heritage and values. Economic Action Plan 2015 proposes to provide funding to support activities and events to celebrate Canada's 150th anniversary in 2017.

Economic Action Plan 2015 also proposes to provide funding to support and modernize the Canadian Honours System, to help Canada's future Olympians and Paralympians, and to support the Harbourfront Centre in Toronto. Economic Action Plan 2015 also proposes to amend the Copyright Act to protect sound recordings and performances for an additional 20 years.



Promoting Arts and Culture at Toronto's Harbourfront Centre

Economic Action Plan 2015 proposes to provide \$25 million over five years, beginning in 2016–17, to renew the Harbourfront Centre Funding Program.

Harbourfront Centre is a not-for-profit organization on the Toronto waterfront that delivers arts, culture and recreation programming. Economic Action Plan 2015 proposes to provide \$25 million to renew the Harbourfront Centre Funding Program from 2016–17 to 2020–21. This program supports the Harbourfront Centre's operating expenses, making it possible for the Centre to provide high-quality programs for residents and visitors to the city.

Programs at Toronto's Harbourfront Centre

Harbourfront Centre is a national showcase for the contemporary visual arts, crafts, literature, music, dance and theatre for adults and children. Its innovative programs and venues include:

- The Power Plant Contemporary Art Gallery, a leading public gallery devoted exclusively to contemporary visual art.
- Harbourfront Centre's World Stage, which presents theatre, dance and performance art.
- HarbourKIDS, a series of family-friendly events from skating to circus festivals.
- Harbourfront Centre's Artist-in-Residence post-graduate program, which provides creative and business training to assist emerging designers and craftspeople in establishing professional careers.

Protection of Sound Recordings and Performances

Economic Action Plan 2015 proposes to amend the Copyright Act so that the term of protection of performances and sound recordings is extended from 50 years to 70 years following the date of the release of the sound recordings.

The mid-1960s were an exciting time in Canadian music, producing many iconic Canadian performers and recordings. While songwriters enjoy the benefits flowing from their copyright throughout their lives, some performers are starting to lose copyright protection for their early recordings and performances because copyright protection for song recordings and performances following the first release of the sound recording is currently provided for only 50 years.



Economic Action Plan 2015 proposes to amend the Copyright Act to extend the term of protection of sound recordings and performances from 50 to 70 years following the first release of the sound recording. This will ensure that performers and record labels are fairly compensated for the use of their music for an additional 20 years.

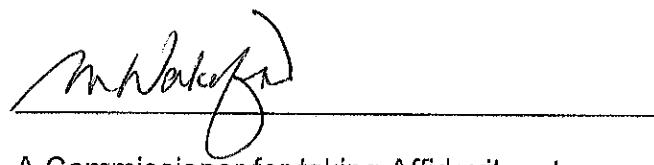
Protecting Canada's Environment

A safe and clean environment supports a high quality of life and contributes to a strong economy. Since 2006, the Government has taken significant action to create a cleaner, healthier environment and protect our natural areas. Substantial investments have been made in clean energy and energy efficiency, protecting Canadians from toxic substances, cleaning up federal contaminated sites and the Great Lakes, and improving Canada's weather services.

More recently, the Government launched the National Conservation Plan to further protect Canada's natural heritage for the benefit of future generations. The Plan will provide a more coordinated approach to conservation efforts across the country with an emphasis on enabling Canadians to conserve and restore lands and waters in and around their communities. It also includes significant investments to secure ecologically sensitive lands, support voluntary conservation and restoration actions, strengthen marine and coastal conservation, and encourage Canadians to connect with nature.

42

This is **Exhibit "42"** referred to in the Affidavit
of Terry Perusini sworn before me this 26th day
of August, 2015



A Commissioner for taking Affidavits, etc.

Marie Elizabeth Wakefield, a Commissioner, etc.,
Province of Ontario, for WeirFoulds LLP,
Baristers and Solicitors,
Expires October 24, 2016.

THE HON. MINISTER FOR CULTURE

April 21, 2015

Graham Henderson
President
Music Canada
85 Mowat Avenue
Toronto, ON M6K 3E3

Dear Mr. Henderson:

Thank you for your recent letter regarding the copyright term for sound recordings. I have reviewed this material carefully, and share your view that the current term of copyright protection for sound recordings falls short of what is required to protect artists and ensure they are fairly compensated for their work.

Please know that, as announced today in Budget 2015, our Government will extend copyright protection for sound recordings from 50 to 70 years. The extension will be incorporated into the *Budget Implementation Act*, and will be in effect immediately upon passage of the legislation.

The Government is committed to recognizing the valuable contribution that artists make to the cultural fabric of Canada. I believe this measure is important in fully acknowledging and protecting that contribution.

Once again, thank you for taking the time to share your views on this matter.

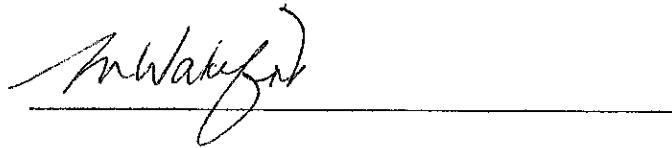
Sincerely,



The Rt. Hon. Stephen Harper, P.C., M.P.
Prime Minister of Canada

43

This is **Exhibit "43"** referred to in the Affidavit
of Terry Perusini sworn before me this 26th day
of August, 2015



A Commissioner for taking Affidavits, etc.

Marie Elizabeth Wakefield, a Commissioner, etc.,
Province of Ontario, for WeirFoulds LLP,
Barristers and Solicitors.
Expires October 24, 2016.

C-59

Second Session, Forty-first Parliament,
62-63-64 Elizabeth II, 2013-2014-2015

C-59

Deuxième session, quarante et unième législature,
62-63-64 Elizabeth II, 2013-2014-2015

HOUSE OF COMMONS OF CANADA

CHAMBRE DES COMMUNES DU CANADA

BILL C-59

PROJET DE LOI C-59

An Act to implement certain provisions of the budget tabled in
Parliament on April 21, 2015 and other measures

Loi portant exécution de certaines dispositions du budget
déposé au Parlement le 21 avril 2015 et mettant en oeuvre
d'autres mesures

AS PASSED

BY THE HOUSE OF COMMONS
JUNE 15, 2015

ADOPTÉ

PAR LA CHAMBRE DES COMMUNES
LB 15 JUIN 2015

*Coming into Force**Entrée en vigueur*

January 3, 2016 80. This Division comes into force on January 3, 2016.

80. La présente section entre en vigueur le 3 janvier 2016.

DIVISION 5

R.S., c. C-42

COPYRIGHT ACT

81. (1) Paragraph 23(1)(b) of the *Copyright Act* is replaced by the following:

(b) if a sound recording in which the performance is fixed is published before the copyright expires, the copyright continues until the earlier of the end of 70 years after the end of the calendar year in which the first such publication occurs and the end of 100 years after the end of the calendar year in which the first fixation of the performance in a sound recording occurs.

(2) Subsection 23(1.1) of the Act is replaced by the following:

(1.1) Subject to this Act, copyright in a sound recording subsists until the end of 50 years after the end of the calendar year in which the first fixation of the sound recording occurs. However, if the sound recording is published before the copyright expires, the copyright continues until the earlier of the end of 70 years after the end of the calendar year in which the first publication of the sound recording occurs and the end of 100 years after the end of the calendar year in which that first fixation occurs.

Term of
copyright—
sound recording

No revival of
copyright

82. Paragraph 23(1)(b) and subsection 23(1.1) of the *Copyright Act*, as enacted by section 81, do not have the effect of reviving the copyright, or a right to remuneration, in a sound recording or performer's performance fixed in a sound recording in which the copyright or the right to remuneration had expired on the coming into force of those provisions.

SECTION 5**LOI SUR LE DROIT D'AUTEUR**

L.R., ch. C-42

81. (1) L'alinéa 23(1)b) de la *Loi sur le droit d'auteur* est remplacé par ce qui suit :

b) si un enregistrement sonore au moyen duquel la prestation est fixée est publié avant l'expiration du droit d'auteur, celui-ci demeure jusqu'à la fin de la soixante-dixième année suivant l'année civile où un tel enregistrement sonore est publié pour la première fois ou, si elle lui est antérieure, la fin de la centième année suivant l'année civile où la prestation est fixée au moyen d'un enregistrement sonore pour la première fois.

15

(2) Le paragraphe 23(1.1) de la même loi est remplacé par ce qui suit :

(1.1) Sous réserve des autres dispositions de la présente loi, le droit d'auteur sur l'enregistrement sonore expire à la fin de la cinquantième année suivant l'année civile de sa première fixation; toutefois, s'il est publié avant l'expiration du droit d'auteur, celui-ci demeure jusqu'à la fin de la soixante-dixième année suivant l'année civile de sa première publication ou, si elle lui est antérieure, la fin de la centième année suivant l'année civile de cette fixation.

Durée du droit:
enregistrement
sonore

82. L'alinéa 23(1)b) et le paragraphe 23(1.1) de la *Loi sur le droit d'auteur*, édictés par l'article 81, n'ont pas pour effet de réactiver le droit d'auteur ou le droit à rémunération, selon le cas, sur un enregistrement sonore ou une prestation fixée au moyen d'un enregistrement sonore si ce droit était éteint à l'entrée en vigueur de ces dispositions.

Aucune
réactivation du
droit d'auteur

COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34 (the "Act");

AND IN THE MATTER OF an application by Stargrove Entertainment Inc. for an order pursuant to section 103.1 of the Act granting leave to bring an application under sections 75, 76, and 77 of the Act;

AND IN THE MATTER OF an application by Stargrove Entertainment Inc. for an order pursuant to sections 75, 76, and 77 of the Act;

AND IN THE MATTER OF an application by Stargrove Entertainment Inc. for an order pursuant to section 104 of the Act;

BETWEEN:

STARGROVE ENTERTAINMENT INC.

Applicant

- and -

**UNIVERSAL MUSIC PUBLISHING GROUP CANADA,
UNIVERSAL MUSIC CANADA INC.,
SONY/ATV MUSIC PUBLISHING CANADA CO.,
SONY MUSIC ENTERTAINMENT CANADA INC.,
ABKCO MUSIC & RECORDS, INC.,
CASABLANCA MEDIA PUBLISHING, and
CANADIAN MUSICAL REPRODUCTION RIGHTS AGENCY LTD.**

Respondents

APPLICATION RECORD – VOLUME 1
(Application for Leave Pursuant to Section 103.1 of the
***Competition Act* and Application for Interim Order Pursuant**
to Section 104 of the *Competition Act*)

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